



27<sup>th</sup> June, 2008

MH:BN  
Michael Hayes  
(03) 9607 9382  
mhayes@liv.asn.au

Mr Tim Sheeny  
Chartered Secretaries Australia  
GPO Box 1594  
**SYDNEY NSW 2001**

Dear Mr Sheeny,

### **Rethinking the AGM**

The Law Institute of Victoria (LIV) is the state's peak body for lawyers and those who work with them in the legal sector. The LIV's work includes making submissions to law-making bodies to improve the law for LIV members, businesses and members of the public.

The Commercial Section of the LIV deals with a range of commercial legal issues at state and federal levels. It is an active contributor to law reform, working independently and, where relevant, with the Law Council of Australia.

We are delighted to have the opportunity to respond to your invitation dated the 8<sup>th</sup> of May, 2008, to comment on the discussion paper titled, "Rethinking the AGM".

To this end, we make the following comments:

### **Proposed Amendments to Proxy Voting Procedures under the *Corporations Act 2001* (Cth)**

We note Chartered Secretaries Australia's observation that attendances at Annual General Meetings for publicly-listed companies have been declining this decade.<sup>1</sup> This is despite the AGM's purpose of:

- Being a forum in which directors report to shareholders.
- Making directors accountable to shareholders through real time questioning on company activities and plans.
- Allowing shareholders to vote on resolutions.

Given that shareholders are able to access current information on company activities under ASX continuous disclosure requirements, the LIV considers the most important function of AGMs is to allow the real time questioning of directors. Answers tendered by directors in this forum may influence shareholder voting over and above any information that shareholders receive as part of the company's continuous disclosure requirements.

The Law Institute of Victoria  
is a member of



**Law Council**  
OF AUSTRALIA

**Law Institute of Victoria Ltd**  
ABN 32 075 475 731

**Ph (03) 9607 9311** Fax (03) 9602 5270  
Email [lawinst@liv.asn.au](mailto:lawinst@liv.asn.au)  
470 Bourke Street Melbourne 3000 Australia  
DX 350 Melbourne GPO Box 263C Melbourne 3001  
Website [www.liv.asn.au](http://www.liv.asn.au)

The LIV believes that low shareholder turnout for AGMs is due in large part the requirement under section 250B(1) of the *Corporations Act 2001* (Cth) that proxies be appointed 48 hours prior to an AGM. This rule effectively requires institutional investors to decide their vote prior to the AGM (since section 250C(1) mandates that proxies vote in accordance with their instructions). Given that institutional investors who vote by proxy make up the majority of shareholders in most publicly-listed companies, shareholders may feel that the deliberative function of AGMs is largely redundant. As noted in *Rethinking the AGM*, most institutional investors meet privately with directors of companies ahead of the AGM in order to decide how they will vote on company resolutions.

Having considered these issues, the LIV supports recommendations made in *Rethinking the AGM* that the *Corporations Act* be amended to leave voting on company resolutions open for a two week period after the AGM. Such an amendment would make company decisions more transparent to all shareholders by allowing institutional investors to question company directors at a single forum while voting is still live. This may increase attendances at AGMs by non-institutional shareholders, since they will be given an opportunity – through the questioning of directors – to influence company proposals that have not already been decided prior to the meeting by proxy votes.

We look forward to a continued working relationship with Chartered Secretaries Australia and their Working Group.

If you wish to discuss this matter, please contact Michael Hayes, LIV Commercial Lawyer on (03) 9607 9382.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Anthony Burke', written in a cursive style.

**Anthony Burke**  
President  
Law Institute of Victoria

---

<sup>i</sup> Chartered Securities Australia, *Benchmarking Governance in Practice in Australia*, 4<sup>th</sup> Survey, April 2008.