

30 June 2008

Mr. T. Sheehy  
Chief Executive Officer  
Chartered Secretaries Australia  
Level 10  
5 Hunter Street  
SYDNEY NSW 2000

Dear Mr. Sheehy,

**RE: Rethinking the AGM - A Discussion Paper**

The National Institute of Accountants (“NIA”) is pleased to respond to your invitation for comment on the discussion paper “Rethinking the AGM”.

The National Institute of Accountants provides guidance and insight into long-term future planning for its 20,000 members and students in Australia and in more than 50 countries around the world as well as quality education and career progression pathways for its members and for graduates throughout Australia.

NIA members must meet prescribed standards of education, training and experience while at the same time displaying a high standard of professional ethics. NIA provides the expert representation as well as the crucial technical tools and business support members require to excel in their chosen field. NIA members benefit from the organisation’s strong alliances and leadership reaching to the international and national business sectors, State and Federal Governments in Australia as well as the public and private sectors.

Through these networks the NIA provides ‘thought leadership’ in addressing issues affecting the accounting profession. As a full member of the International Federation of Accountants (IFAC) the NIA is well positioned in its work with national and international standard setters to ensure members are fully represented and fully informed.

Our comments follow and for ease of reference are indexed to the specific areas on which you seek commentary.

Yours sincerely



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CEO

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## **RE: Re-thinking the AGM – A Discussion Paper**

1. *Should the deliberative function of the AGM be separated from the decision-making function? How do you believe this would improve shareholder engagement and participation at general meetings?*

The NIA fully supports the suggestion that the deliberative and decision making functions of the AGM should be separated, but on the basis the decision making function is the last agenda item of the AGM. We disagree that this change alone would lead to greater shareholder engagement in AGMs as that proposition is purely speculative. Whilst shareholder involvement has increased over time, that increased interest cannot be interpreted as all investors are interested in direct engagement with company management. The silent majority may be an indicator of a belief that company management is there to manage the company, they possess the expertise shareholders do not have, thus and consequently the silent majority have no interest in “greater engagement”. We instead caution that it is important to temper any desire to improve engagement, itself a good thing, but not with unrealistic expectations of the outcome to most shareholders.

These two functions should be separated for the reason that allowing the attendees, i.e., shareholders, to hear all argument and questioning prior to making a decision will assist shareholders to make an informed decision and besides, quite plainly, it is common sense.

2. *If you agree that decoupling the discussion from the formal voting is reform that would improve shareholder engagement and participation in general meetings, do you believe that the polls should stay open for 48 hours, or one week or two weeks after the close of the meeting? Why do you believe that one of these periods is more suitable than another?*

The NIA is of the view that no reform to the AGM process will improve shareholder engagement. We doubt that shareholders have reached the point where they are “demanding” more “engagement” with their holding company. It would seem that it is more the point that shareholders have significantly increased in number and diversity over the years and having witnessed at times culpable management, excessive executive remuneration and poor economic conditions, the now greater numbers of shareholders are merely acting to protect their investment, or, retirement savings. Given generally higher education levels in the community, the evolution of the shareholder voice was only a matter of time. In effect the rising prominence of the shareholder reflects the vast increase in shareholder numbers.

Your definition of “engagement” is somewhat flawed in that two components of your definition seem to define “engagement” more as occurring only if the voting is supportive and the shares do not trade hands. We would suggest that engagement should be more along the lines of providing effective infrastructure and the relevant information to shareholders so that they are able to hold the

Board accountable. There is only so far you can go to make the AGM attractive enough for shareholders to attend.

Separating the deliberative and decision making functions is a quite simple but a commonsense change. The change will allow the astute individual to hear argument and discussion on all issues together before making a decision.

It is the NIA contention that the polls should stay open but only for 48 hours after the close of the meeting. Extending beyond 48 hours may be counterproductive as the longer this period is the more likely the retail shareholder is to be distracted by other matters in life thus losing interest in the AGM and/or forgetting the key information gleaned from the meeting.

In the business environment, a week is a long time. Keeping polls open can effectively keep the market and the company on hold as well. The NIA will be concerned that important decision making should not be unduly hampered by an excessive period of time for a poll to remain open.

The NIA expects institutional and other larger shareholders to be fully if not better informed than other shareholders thus the extended voting time would be of little assistance to them.

3. *Should the decoupling of the deliberative function from the decision-making function be mandated via amendment to the Corporations Act or should it be a recommendation in the ASX Corporate Governance Council guidelines against which listed companies must report? Please provide your reasons for recommending one option or the other.*

The NIA very strongly recommends that the decoupling be mandated via a recommendation in the ASX Corporate Governance Council Guidelines. Our view on this issue stems from our strong belief that prudent management policy and practice has no place in legislation. Legislation is time consuming to draft and difficult to keep up with current thinking.

The NIA is of the firm view that this should instead be recommended as a standard to be achieved. We see the ASX Corporate Governance Council Guidelines as the standard for all forms of companies seeking best practice in the conduct of AGMs.

4. *Should there be a requirement on chairmen to announce proxies received prior to discussion on each resolution if voting is extended beyond the close of the meeting? Why do you believe such a requirement should or should not apply?*

We disagree that such a requirement should be placed on a Chairman. The purpose of the AGM is to provide shareholders with the information they need to allow prudent voting. Prudent voting occurs where the shareholder votes on the basis of their judgement of the information provided. Counting and publication

of proxies before all votes are taken may unduly influence the voting of those still undecided.

5. *If voting is decoupled from deliberation, should there be an expectation that the meeting be webcast, and maintained on the website for all investors to look at until voting closes? Should webcasting be encouraged rather than mandated, given that the cost of investment in webcasting may be prohibitive for smaller companies? Please give your reasons for your recommendation.*

The NIA believe that webcasting or other technologies should neither be encouraged nor mandated. By mandating or even encouraging the use of a particular technology, there is good potential to limit the ability of companies to find the medium that is a best fit for them and their shareholders. There is a place in the ASX Corporate Governance Council Guidelines for webcasting and other technologies to be considered, but nothing more. Irrespective of the size of the company, the cost of implementing such a change will still be a significant one and we are of the strong view that this issue is the preserve of management and should not be a regulatory issue.

6. *Should a specified minimum time be required for discussion on each resolution at the AGM if the discussion is separated from the voting? If you think that a minimum time should be mandated, what is the appropriate time? Please provide your reasons why a specified minimum time would improve shareholder engagement. If you do not think that a specified minimum time should be mandated, please provide your reasons.*

The NIA is of the strong view that the time required for discussion on each resolution should be left to the discretion of the Chairman. We do not believe that micro managing companies through regulation, legislation or otherwise will lead to better outcomes. Our philosophy is to let the managers (in this case the Chairman) manage and hold him/her accountable for the outcomes.

7. *Should the statutory period for holding the AGM be extended by one month, to provide a three-month window instead of the current two-month window? Please clarify how you think this would improve shareholder engagement if you support an extension of time, and how you think it would undermine shareholder engagement if you do not support an extension of time.*

The NIA fully supports providing a three month window to hold an AGM. This change will make no difference to the level of shareholder engagement and the expectation or claim that it may do so is purely speculative.

The NIA supports the change because it provides companies with the welcome flexibility of a more sensible window to hold the AGM.

8. *Is the one-size-fits-all approach to AGMs suitable for all public companies? Please provide your reasons why you believe the one approach should be taken for all public companies, or why you believe different approaches are required.*

The NIA does not accept that a one size fits all approach to AGMs for public companies. Companies are too different in size, shareholder composition and a myriad of other factors. To survive in the modern business world companies need to be flexible and they also need some flexibility in this arena. To impose a one size fits all will only stifle innovation especially in the area of technology, which changes quickly and often.

The NIA accepts and supports some prescription on conducting an AGM. That prescription however should be divided in two classes, required and optional. An example of required would be the period of notice given to shareholders for an AGM. An optional would be utilising webcasting or other technologies for the meeting. Our expectation is that this “list” would be the standard or model that companies/organisations of any size or structure would use as a template.

9. *Should all directors be encouraged to sit on the dais? Should committee chairmen be encouraged to present the report of their respective committees, and also take questions on the committee report as appropriate? Why do you believe this practice should be encouraged? Alternatively, why do you believe it should not be encouraged?*

The NIA agrees that all Directors should be encouraged to sit on the dais at an AGM, or, use other means of being seen to be in attendance, for example via hologram. The NIA supports that because the shareholders should be able to see firstly that all Directors are in attendance and secondly, questions from the floor can, at the discretion of the Chairman, be answered by another Director.

The NIA strongly disagrees that Committee Chairmen need to present at an AGM. We are of the unshakeable view that the Chairman is the representative of the company at the AGM. Board Committees are just that, a sub-committee of the Board without discreet power or authority to make or implement decisions. Board sub-committees should not be recognised at AGMs. Their outcomes are referred to the full Board for a decision. Any questions or challenge from the floor should be taken by the Chairman and at his/her discretion only, referred to another Director to provide an answer.

10. *Should directors standing for re-election answer relevant questions from shareholders? How do you think this would facilitate shareholder engagement? How do you think it would work against improving communication between shareholders and directors?*

The dilemma with electing Directors is that as the shareholders do the electing, it is prudent and fair to ensure they are sufficiently informed to secure a yes vote. But, given that Directors operate as a Board, there is no room for personal

opinion or undertakings on questions relating to corporate issues which only leaves available questions that may only be appropriate in the political sphere. The latter being of dubious value to anyone.

Rather than stipulate a view our recommendation is that this be an option open for a company to consider rather than a requirement.

The NIA does not see any advantage to shareholder engagement by this change. From a public and media perspective, the notion is attractive, but realistically, will make no significant difference to the voting outcome. We believe that this suggestion may have some value to retail shareholders, but no value to others. The NIA does not see this change alone as any incentive whatsoever for shareholders to attend an AGM.

