CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

16 April 2004

Senator Grant Chapman
Chair
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
CANBERRA ACT 2600

Dear Senator Chapman

CLERP (Audit Reform & Corporate Disclosure) Bill 2003

Chartered Secretaries Australia (CSA) welcomes the opportunity to respond to matters raised during its appearance before the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) on 18 March 2004 in Melbourne on the CLERP (Audit Reform & Corporate Disclosure) Bill 2003 (the CLERP Bill).

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During the Committee hearing a number of matters were raised by Senator Conroy that we would like to expand on and questions were put to CSA by Senator Murray that we would also like to respond to.

Disclosure of a company secretary's qualifications

As discussed in the hearing CSA urges the Committee to recommend in its report to Parliament an amendment to the CLERP Bill that adopts a proposal contained in the Corporations Amendment Bill 2002 - Exposure Draft requiring all listed entities to list the qualifications of their company secretary in their annual report.

An amendment of this kind would be entirely consistent with the objective of the CLERP Bill – "…to improve the operation of the market by promoting transparency…" and would assist investors make informed decisions on how seriously their company takes good corporate governance.

It should be noted that in both the UK Higgs Review and the ASX Corporate Governance Council's guidelines, specific mention was made of the importance of the company secretary in ensuring implementation of good corporate governance.

This amendment would not result in any increased compliance costs and would disclose to the market relevant information about the governance of a listed entity.

Proxy voting
Also discussed during CSA's appearance before the Committee was CSA's view that there is a general misunderstanding amongst many [principally retail] shareholders about the role of proxy voting.

CSA is of the view that many shareholders assume that when they complete and lodge a proxy form that they are in fact lodging a 'direct vote'. This is clearly not the case and CSA urges the Committee to recommend in its report to Parliament an amendment to the CLERP Bill.

It should be noted that CSA's primary interest is in ensuring that the voting intentions of shareholders are carried out, and as such, proposes an amendment to s. 250A(4)as outlined in Attachment 1.

CSA's current view is largely consistent with the June 2000 report '*Shareholder Participation in the Modern Listed Public Company*' by the then Companies & Securities Advisory Committee (CASAC) where CASAC stated:

> "There should be a legislative requirement for any person put forward by the company board as a proxy to vote the proxies on any poll according to their terms."

While CASAC limited its recommendation to persons put forward by the company board, CSA now supports the inclusion of all proxyholders who vote.

It should be noted that in CSA's 1999 submission to CASAC, CSA took the view supporting "…the position of CASAC that the obligation to vote on a poll should attach to any person put forward by the company board as a shareholder proxy. Despite this it is not felt that the Corporations Law need stipulate that any person put forward must vote. We are not aware of any cases where such a proxy has not voted on a poll but the situation may be different where the vote is taken on a show of hands and the proxy wishes to vote his or her own shares and cannot vote twice."

CSA's view in 1999 has now changed as recent court cases and practices have indicated that the practice of 'cherry-picking' is more common that previously anticipated.

The changes proposed in Attachment 1 will, we believe, go much of the way to discontinuing such practices and we urge the Committee to recommend including this change in the CLERP Bill by way of amendment.

The '100-member rule'
CSA is disappointed that the CLERP Bill did not include proposed changes to s 249D that were included in the Corporations Amendment Bill 2002 – Exposure Draft and urges the Committee to recommend its inclusion by amendment.

The 100 members/five per cent of votes 'rule' has been a longstanding issue and CSA has made numerous submissions on the matter. CSA supports the amendment of the 100-member rule for the calling of meetings and reiterates its argument that this rule has the effect of placing substantial expense on companies and their memberships.

The current situation is unacceptable and in our desire to bring this matter to a satisfactory conclusion we have supported alternative proposals that include three principles:

1. The number of shareholders required to call a meeting be in proportion to the size of the register (such as 1%).
2. A cap and a floor when determining the number of shareholders so that very small companies are not unduly burdened and shareholders in very large companies are not unduly restrained (this could be a floor of 100 and a cap of 1000 shareholders)
3. A minimum economic interest held by each requisitioning shareholder. (this could be a 'marketable parcel' currently defined by the listing rules as $500).

In May 2001 CSA and a number of other professional bodies wrote to the then Minster for Financial Services and Regulation proposing an alternative solution incorporating the above three principles.

Further to this matter, it should be pointed out that CSA has not, and will not, argue against the submission of resolutions by 100 members to be included on the notice of AGM as we believe this is the optimum solution for members wishing to raise an issue before the member without incurring an unnecessary expense.

CSA is of the view that the CLERP Bill is the appropriate mechanism to address this matter and again urges the Committee to recommend in its report to Parliament an amendment that would include this proposal.

Corporate political donations

During the Committee hearing Senator Murray raised the matter of political donations and put the following to CSA:

> "My proposition is that shareholders should either approve the actual political donations or approve a policy. The policy might be that the board has discretion over this or the board should be even-handed or the board should direct it all in particular directions, or whatever."

Following the Committee hearing on 18 March CSA consulted with its policy committees and surveyed members in the ASX Top-200 companies for their views on corporate political donations.

CSA supports the overarching principle of disclosure of information to the market so that investors can make informed decisions about their investments. In this context CSA supports disclosure of political donations in a company's annual report to a level of detail consistent with disclosure required by the Australian Electoral Commission.

However, CSA does not support a requirement for companies to seek shareholder approval for individual donations. Approval of specific donations, if they are made, is a matter for the board and management. It should be noted that the majority of companies surveyed in CSA's Rapid Response Survey do not make political donations. Only 29% of companies that responded to CSA's survey made political donations at the local, state or federal level.

Notwithstanding the above, CSA is of the view that listed companies should be encouraged to develop political donation policies and disclose the policies on their website or another suitable communication method. Development and disclosure of a policy would provide investors with sufficient information on which to make their investment decisions.

According to CSA's Rapid Response Survey, 79% of respondents currently have a policy on political or charitable donations and 59% of these companies disclose these policies to shareholders. No company sought to have their policies approved by shareholders.

Disclosure of executive remuneration
During the Committee hearing CSA was asked for its views on a variation of the disclosure of executive remuneration as follows:

> "…an either/or approach—that is, either the five rule, as it is at present, or anybody above an arbitrary figure. Five and 10 are arbitrary figures, but the arbitrary figure would be a monetary figure—say, $1 million for the total package, including options, salary, the whole works—which would mean that in some companies the five rule would stand, but in some very big organisations 14 or15 people would hit that level."

Again CSA reiterates its support for the disclosure of executive remuneration and its view that requirements in the Corporations Act for disclosure should be consistent with accounting standards. In addition, triggers for disclosure should not be focused on the level of remuneration but on who in the organisation has the ability to significantly effect the strategic direction and performance of that organisation.

A trigger of one million dollars may be an appropriate trigger in one organization but in another may not necessarily point to an individual with strategic influence.

Compulsory voting of institutions
CSA was asked for its views on the subject of compulsory voting:

> "The second area of interest is whether you should mandate voting by institution, trust, fund et cetera or by subject matter. For instance, you might only mandate voting for the election of directors, which is the most important shareholder mechanism because the shareholders effectively delegate their powers to directors, so if there is one issue they should have a say on it is that and perhaps not a myriad other technical things."

It is CSA's experience that when critical issues are put before shareholders for a vote there is a marked increase in the number of votes cast either directly or via proxies. Institutions make a rational decision on deciding whether or not to vote on a resolution and weigh up the administrative cost of voting with the importance of the matter.

While more contentious matters will always attract the attention of the media, the vast majority of matters put before shareholders are non-contentious and carried with a substantial majority. To require institutions, trusts and funds to vote on all matters in all companies that they have an investment may create substantial additional costs to be incurred by institutions with no real corresponding benefit realized by the ultimate investor.

Accordingly, CSA does not support the mandating of voting by institutions, trust and funds. However, in the interest of disclosure, CSA does support moves to encourage institutions to disclose their voting records so that investors are informed.

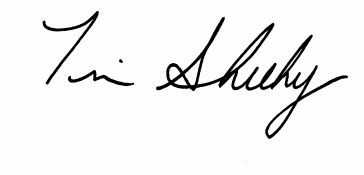
In closing, CSA urges the Committee to recommend the three amendments addressed in this letter on disclosing the qualifications of company secretaries, proxy voting and the 100-member rule. All three suggested amendments are consistent with the objectives and spirit of the CLERP

Bill, involve no additional compliance costs and work to increase effective shareholder participation in listed public companies.

In addition CSA is pleased to add further to the work of the Committee in developing its report to Parliament on the CLERP Bill on the matters of political donations, executive remuneration and compulsory voting.

I would be happy to discuss any of these matters further with you if you wish.

Yours faithfully



Tim Sheehy
Chief Executive

Attachment 1

Proposed amendment to Section 250A

Current	Proposed
250A(4) [How a proxy is to vote] An appointment may specify the way the proxy is to vote on a particular resolution. If it does: (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands; and (c) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and (d) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way. If a proxy is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member. **250A(5) [Offence]** A person who contravenes subsection (4) is guilty of an offence, but only if their appointment as a proxy resulted from the company sending to members: (a) a list of persons willing to act as proxies; or (b) a proxy appointment form holding the person out as willing to act as a proxy.	**250A(4) [How a proxy is to vote**] An appointment may specify the way the proxy is to vote on a particular resolution. If it does: (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands; (c) if the proxy is the chair – the proxy must vote on a poll, and must vote as directed in respect of each appointment; and (d) if the proxy votes on a poll and if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must vote on a poll as directed in respect of each appointment. If a proxy is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member. **250A(5) [Offence]** A person who contravenes subsection (4) is guilty of an offence.