CHARTERED SECRETARIES
AUSTRALIA

Leaders in governance

29 March 2005

Mr M Rawstron
General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Rawstron

Corporations Amendment Bill (No 2) 2005

Chartered Secretaries Australia (CSA) welcomes the opportunity to comment on the provisions contained in the government's Corporations Amendment Bill (No 2) 2005. CSA has made previous submissions on these matters and has a substantial interest in and consistent view of the proposed changes.

CSA is Australia's peak membership body for governance and compliance, and considers itself fully qualified to respond to these matters. In Australia, CSA has over 8,500 members and affiliates representing the majority of public companies listed on the Australian Stock Exchange (ASX). Members of CSA have a thorough working knowledge of the operations of the markets, the needs of investors and the issues inherent in shareholder participation.

CSA welcomes the introduction of this Bill. It addresses many of the issues raised by our members in their submissions last year on CLERP 9 and to the Parliamentary Joint Committee on Corporations and Financial Services.

In respect of the substantive provisions of the Bill, CSA comments:

- **Section 249D: calling of a general meeting by directors when requested by members**

We strongly support the repeal of the 100-member rule and the maintenance of the requirement that shareholders requesting a meeting should have at least five per cent (5%) of the votes that may be cast. CSA has made many submissions on this matter and has supported a range of different proposals designed to provide the necessary balance between allowing shareholders to participate in meetings of the company and the need to control the costs of organising shareholder meetings. This simple five per cent (5%) proposal is a welcome solution, without the complications of calculating tiered and mathematical solutions produced in the past.

- **Sections 249N(1) and 249P(2): members' resolutions and statements for annual general meetings (AGM)**

Throughout the submissions made by CSA on the repeal of the 100-member rule for calling meetings, we have supported the retention of the requirement for 100 members to place resolutions before shareholders at the general meeting. We believe this is a fair balance in allowing greater shareholder participation at meetings. From experience there have been few such resolutions, although it is clear from recent experience that they are increasing in number.

Many of these resolutions have been submitted by special interest groups with little relevance or interest to the bulk of shareholders, individual or institutional. We believe that the requirement that such resolutions should be submitted by at least 100 members should be retained without reduction, as this represents a fair measure of support that the matter deserves to be discussed at an AGM. We believe that the reduction of the threshold to 20 members without any compensating proper purpose test could see a proliferation of minor, irrelevant, vested-interest issues being included on the agendas of general meetings. This would only serve to make AGMs larger and longer, potentially to the detriment and irritation of members who attend.

We strongly recommend that this provision be withdrawn from the Bill and that the current requirement for 100 members or members with at least five per cent (5%) of the votes be retained. We note that this view is supported by other professional and investor bodies with interest and experience in this area.

- **Sections 249O(2) and 249(P6): electronic circulation of members' resolutions and statements**

CSA supports these provisions and is actively involved in promoting and establishing appropriate measures to assist companies in their dealings with members and in encouraging member participation. A significant number of companies represented by our members has already put such measures in place and are benefiting from reductions in the expenses of distribution.

- **Section 250A(4)(d): 'cherry-picking' of proxy votes**

CSA welcomes the inclusion of these proposed amendments in the Bill. CSA was first to raise this matter, in 2003, and submitted draft amendments to the law at that time. In that November 2003 submission, CSA sought to widen the current requirement for the chair of the meeting to vote as instructed so that all other directors and the company secretary appointed as proxy holders would also be obliged to vote as instructed. We recognised that widening this requirement to *all* proxyholders would not be acceptable, however desirable this might be.

We welcome, therefore, the proposed amendment requiring proxy holders (other than the chair) who vote in any capacity on a poll to vote all of the shares for which they hold instructions and not deliberately withhold votes that are contrary to their personal views. We note, however, that there have been instances of proxy holders receiving instructions to vote both for and against a resolution deciding to abstain voting all shares, thus depriving the members giving the proxies of their vote on the matter. We suggest, therefore, that where a proxy holder has specifically held themselves out as being willing to act as proxy at the meeting, they should be obliged to vote all shares as directed. This is not difficult to police: the share registrars receiving the proxy instructions will be aware of the intentions of the members giving the proxies and can inform the company if such instructions have not been followed.

- **Section 250J(1A): disclosure of proxy voting**

CSA welcomes this proposal repealing the requirement for the chair to inform the meeting of proxy votes received. While this could be seen as a measure to inform those present at the meeting of the views of the overall membership, it can often be seen as provocative when most matters are decided on a show of hands. For the reasons set out in the explanatory memorandum, such disclosure can only be indicative. We agree that repealing this provision will not preclude the chair of the meeting from providing the information if and when they so desire or if the members request it.

We note that listed companies will still be required to disclose to such details to ASX, even if the matters are decided by show of hands and not put to a poll. We believe that the provisions of section 251AA – Disclosure of proxy votes – listed companies should be revisited.

- **Section 323DA: disclosure of information filed overseas**

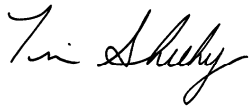
CSA supports the deletion of this section. We agree that this is a matter for the ASX and its Listing Rules.

Section 279(5): updating references to Patents/Trade Marks/Designs legislation

CSA supports the proposed amendments.

In preparing this submission, CSA has drawn on the expertise of the members of two internal national policy committees. We would welcome the opportunity to meet with you to discuss any of our views in greater detail. Please call me if you would like to set up a meeting. I can also arrange a meeting with our members.

Yours faithfully



Tim Sheehy
CHIEF EXECUTIVE