Chapter 2

Key provisions of the bill and issues raised

2.1 In this chapter, the committee considers the key provisions of the Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014 (the bill). It also identifies issues that submitters raised about specific provisions of, or omissions from, the bill.

2.2 It first discusses the general support for the bill voiced in submissions. It then outlines the provisions of the bill in turn and, where relevant, also considers issues raised by submitters. These provisions are:

- requesting a general meeting—the 100-member rule;
- improving remuneration reporting;
- clarifying the financial year;
- streamlining auditor appointment requirements for companies limited by guarantee;
- improving the efficiency of the Takeovers Panel; and
- improving the efficiency of government remuneration processes.

2.3 Lastly, the chapter outlines further concerns raised by submitters that were not specifically focussed on the bill's provisions.

General support for the bill

2.4 The majority of submissions supported of the bill's intention and provisions. Submitters particularly welcomed the bill's focus on reducing red tape and compliance costs for businesses and shareholders.

Requesting a general meeting—the 100-member rule

2.5 The Corporations Act sets out responsibilities that a company has regarding meetings of its members. It includes a rule known as the '100-member rule', which stipulates that 100 members entitled to vote at a general meeting of the company have certain powers, including to:

- require the directors of the company to arrange a general meeting;
- put a resolution on the agenda of general meetings; and
- circulate material to other members.[1]

2.6 It should be noted that, under the Corporations Act, companies are required to meet the cost of these requirements.

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1 Explanatory Memorandum, paragraph 1.3.

2.7 In practice, 100 members of a large corporation could hold a very small percentage of voting shares—often below one per cent. This means that currently a tiny minority of shareholders are able to require a company to hold a general meeting and to incur the subsequent costs, which can be substantial.[2]

2.8 By and large, resolutions that have been proposed in the past at meetings convened under the '100-member rule' have generally received little support.[3]

2.9 This bill amends section 249D of the Corporations Act so that 100 members can no longer require the directors of a company to arrange a general meeting. One hundred shareholders will still be able to put a resolution on the agenda of general meetings and circulate material to other members at the expense of the company.[4]

Support for amending the 100-member rule

2.10 Most submitters to the inquiry were strong advocates of the proposed amendments to the 100-member rule. For instance, Chartered Accountants Australia and New Zealand (CAANZ) stated:

> We strongly support the removal of the 100-member rule. We believe the current rule imposes significant costs on companies without any benefit. Even when a meeting is called under the current rule, any decisions made must be passed by a majority of shareholders.[5]

2.11 Similarly, the Group of 100 (G100) contended that this amendment would reduce costs and the administrative burden imposed on business by the 100-member rule:

> We believe that this proposal will contribute to a reduction in costs including more efficient use of executive time and reduce red tape imposed on business.[6]

2.12 The Australian Institute of Company Directors (AICD) noted that it had long called for the removal of this provision, commenting:

> The removal of the '100-member rule' would provide a good example of the type of deregulation that would allow business to operate more efficiently, without compromising the fundamental rights of shareholders.[7]

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2 It should be noted that members or groups of members with at least five per cent of the votes that may be cast at the general meeting have similar powers. Explanatory Memorandum, paragraph 1.5.

3 Explanatory Memorandum, paragraph 1.6.

4 Explanatory Memorandum, paragraphs 1.7 and 1.8.

5 *Submission 4*, p. 2.

6 *Submission 5*, p. [1].

7 *Submission 9*, p. 1.

2.13 Indeed, the AICD congratulated the government 'for putting forward a reform that preserves shareholder democracy while at the same time reduces the costs to companies, the wider body of shareholders and Australia's superannuants'.[8]

2.14 Likewise, the Law Council of Australia (Law Council) indicated that the proposed change to the 100-member rule would achieve 'an appropriate balance between the interests of minority and majority members'.[9]

2.15 The Financial Services Council (FSC) stated that the bill would effectively address the concerns about unnecessary costs borne by businesses when small groups of shareholders request an extraordinary meeting.[10] It stated that the current 100-member rule 'adds unnecessary costs without optimal outcomes'.[11]

2.16 The Australian Council of Superannuation Investors (ACSI) was yet another submitter that considered that the cost benefits and reduction of red tape for companies more than compensated for the small reduction to shareholder rights:

> ACSI accepts that the proposed removal of the right of 100 or fewer shareholders to require directors to call a general meeting (Section 249D(1) of the Corporations Act), whilst a diminution of existing shareholder rights, is a reasonable measure in the interests of cost efficiency and removal of unnecessary administration burdens on companies.[12]

2.17 The ANZ Bank informed the committee that it incurs costs of approximately $600,000 for each annual general meeting (AGM). Along with the majority of other submitters, it argued that it was 'unreasonable for a small number of shareholders to put a corporation and the large majority of shareholders to such a large expense'.[13] It suggested:

> The need to encourage shareholder participation which is an important element of financial markets must be balanced against the need to manage the costs to the company and the fact that the vast majority of shareholders are not calling for a meeting.[14]

2.18 The Governance Institute of Australia (Governance Institute) also noted that the costs of these extraordinary meetings could be very large, and ultimately the shareholders would bear the costs for these meetings. It gave the following example:

> Woolworths was forced to hold a general meeting to consider a resolution on $1 limits on poker machines. The meeting cost $500,000 to run but the resolution only received support from 2.5 per cent of the issued capital that

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8 *Submission 9*, p. 2.

9 *Submission 11*, p. 3.

10 *Submission 10*, p. 2.

11 *Submission 10*, p. [2].

12 *Submission 3*, p. 1.

13 *Submission 14*, p. [1].

14 *Submission 14*, p. [1].

> was voted at the meeting (about 1.1% of the entire issued capital). Our members query how it can be anything other than vexatious to have 100 shareholders force a company such as Woolworths to call a special general meeting that had absolutely no chance of achieving anything other than costing shareholders significant sums of money.[15]

2.19 Although it noted shareholder activism often raised legitimate concerns, the Governance Institute was of the view that the amendments would go some way to addressing shareholder activism aimed at damaging a company's reputation or financial standing:

> Our members note that their companies at various times have been approached by special interest groups threatening the use of the 100-member rule in s 249D to call a general meeting unless the corporation negotiates with the special interest group on its particular issue. From our point of view, such a threat, with its attendant costs to shareholders despite the reality that any such resolution put forward by the special interest group would not be carried at the meeting nor receive the support of the majority of shareholders, constitutes mischief.[16]

2.20 Ownership Matters (OM) submitted they supported the amendments made by the bill to the 100-member rule. It noted, however, that savings would be minimal:

> …given few listed companies have been required to convene such a meeting at the request of 100 shareholders. Among S&P/ASX 300 companies, for example, no meeting has been convened at the request of 100 shareholders in at least the past five years.[17]

2.21 Moreover, OM noted the concern that companies have about the potential costs caused by a meeting requested by a small group of shareholders:

> …is not matched by a similar concern at imposing the costs of a general meeting convened by management on shareholders—for example, to approve incentives for directors. These management convened meetings often occur in circumstances where the costs of the meeting appear just as questionable as the costs incurred with convening a general meeting called by a small minority of shareholders.[18]

Five per cent may still request a meeting

2.22 The Explanatory Memorandum makes absolutely clear that the proposed legislation:

> …will not change the right for members with at least five per cent of the vote that may be cast at the general meeting to request directors of a company to call and arrange to hold a general meeting.[19]

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15 *Submission 6*, p. 3.

16 *Submission 6*, p. 2.

17 *Submission 12*, p. 1.

18 *Submission 12*, pp. 1–2.

19 Explanatory Memorandum, paragraph 1.11.

2.23 A number of submissions supported the retention of this provision. For example, CAANZ told the committee that retaining this provision would provide 'protection for small shareholders to raise issues of importance and was consistent with shareholder rights in most overseas jurisdictions'.[20]

2.24 Similarly, OM supported continuing with this provision. In its view, the retention of the right of shareholders holding five per cent of shares to convene a general meeting:

> …strikes an appropriate balance between preserving the rights of shareholders with minimising meetings called by shareholders who collectively may hold a tiny proportion of shares on issues.[21]

2.25 The Australian Shareholder Association (ASA) agreed, submitting that:

> ASA is concerned about any reduction in shareholder rights. Whilst we will accept the Government's proposal to abolish the 100 shareholder trigger for the calling of EGMs, because of the cost involved, ASA continues to support the right for any single (or group of) shareholder(s) representing more than 5% of voting shares to be able to call EGMs.[22]

2.26 Several organisations suggested that the proposed amendments would remove unnecessary burdens from both companies and shareholders. For instance, the Commonwealth Bank (the Group) submitted it welcomed the changes made by the bill, as it would better balance the rights of shareholders to raise issues with the company and the costs to companies of being required to call and hold an extraordinary general meeting. It referred to retaining the current provision that requires the directors of a company to call and arrange a general meeting if shareholders with at least five per cent of the votes requested it. The Commonwealth Bank noted:

> This rule is unchanged by this bill and in the Group's view this is an appropriate mechanism for shareholders to request that a general meeting be held. Basing the decision on a minimum volume of shares rather than a small number of individual shareholders provides a more accurate reflection of the interests of shareholders overall.[23]

One hundred members still able to put resolution on agenda of general meeting

2.27 The Explanatory Memorandum also makes clear that 100 shareholders will still be able to put a resolution on the agenda of general meetings and circulate material to other members at the expense of the company.[24]

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20 *Submission 4*, Appendix p. 2.

21 *Submission 12*, p. 1.

22 The Australian Council of Superannuation Investors (ACSI) also supported this view, *Submission 13*.

23 *Submission 13*, p. 2.

24 Explanatory Memorandum, paragraph 1.8.

2.28 Most submissions supported the retention of this right.[25] For example, the Governance Institute noted that the bill allowed shareholders to place items for debate on the agenda for general meetings, particularly retail shareholders who 'do not necessarily have the opportunity to meet with the company prior to an [Annual General Meeting]'. It commented:

> We strongly support the retention of ss 249N(1)(b) and 249P(2)(b) that preserve the rights of shareholders (members) to use a 100-member test to put a resolution on the agenda of the AGM and request the company to distribute a statement to all its members. We believe these provisions protect the rights of small groups of members to have their concerns addressed, and that the continued support for the preservation of these rights is too often forgotten in the debate about the repeal of the 100-member rule.[26]

2.29 The Law Council also highlighted the fact that:

> A group of 100 or more members will be able to have matters of concern dealt with at an annual general meeting or some other meeting convened by the company, while the cost of convening an extraordinary general meeting will only be incurred if it is requisitioned by shareholders who have material economic interest in the company.[27]

2.30 Likewise, the ANZ Bank observed that the proposed provisions maintain appropriate shareholder rights:

> This rule provides an appropriate statutory protection of shareholder rights. Small shareholders can continue to use the 100 member rule to put a resolution to the board under section 249N of the Corporations Act but must wait until the scheduled annual general meeting to do so. They can also distribute a shareholders' statement with the notice convening the meeting.[28]

2.31 AICD agreed with the general view that the new provisions protected the rights of small groups of members to discuss their concerns, as 100 members could still place a resolution on the agenda for the company's annual general meeting, and five per cent of members of a company could still requisition an extraordinary meeting.[29]

2.32 Some submitters also observed that the bill would go some way to making Australia's corporations legislation consistent with international norms. For instance, the Commonwealth Bank suggested:

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25 See, for example, *Submission 10*.

26 *Submission 6*, p. 2.

27 *Submission 11*, p. 3.

28 *Submission 14*, p. 2.

29 *Submission 10*, p. 2.

> The bill represents sensible policy measures which bring Australian Corporations Law into line with international counterparts including New Zealand and Canada.[30]

Concerns raised

Reduction of shareholder rights

2.33 The Australia Institute opposed the repeal of the 100-member rule, suggesting that its misuse was 'overstated' as 'the rule does not have a significant history of being abused'. It argued that:

> The removal of the rule would result in a reduction in shareholder rights, which form an essential element of corporate governance. Regardless of the retention of the above-mentioned 100 member provisions, removal of subsection 249D(1) limits corporate accountability to the owners of the company. In addition, it would be an obstacle to civil society, which increasingly plays an important role using shareholder activism in pursuit of socially responsibly corporate behaviour.[31]

2.34 Furthermore, the Australia Institute recommended that other steps should be taken to increase accountability to shareholders, should the bill be passed, such as:

> Requirements for putting motions at AGMs are currently more restrictive than they are in similar developed countries.[32]

2.35 The Hon Peter R. Graham QC also opposed the erosion of shareholder rights made by the bill, arguing that amendments to the 100-member rule were not 'deregulatory' but actually 'destructive'. He proposed instead that:

> If there is a concern that the power contained in s.249D(1)(b) is open to abuse, a simple solution is available which preserves, rather than destroys, the significant shareholder right of 100 company members to requisition a general meeting. One simply inserts a section, around s.201D, providing for public companies, in general meeting, to fix minimum shareholdings for their directors, one provides that directors who fail to secure the requisite minimum shareholding within 3 months of their appointment shall forthwith cease to be directors and one amends s.249D(1)(b) by adding words to the effect "and who each have shareholdings equal to or in excess of the minimum shareholding fixed for the company's directors from time to time".[33]

2.36 ASA generally supported the proposed changes made by the bill. Even so, it was concerned about any reduction to shareholder rights, and suggested a compromise that there should be a lower threshold for placing items on the agenda of a company AGM:

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30 *Submission 13*, p. 2. See also CAANZ, *Submission 4*, p. 2; and FSC, *Submission 10*, p. 2.

31 *Submission 8*, p. 1.

32 *Submission 8*, p. 1.

33 *Submission 1*, p. 1.

> To compensate, we suggested in our 14 May submission that the number of signatories needed in subsection 249[D] to require a resolution to be put to an annual general meeting should be reduced to just 10 shareholders, provided each holding is a marketable parcel worth more than $500. Further, each of those 10 shareholders would be required to have held the shares for a period of 12 months, as is the case in the USA.[34]

Amendments should also apply to Managed Investment Schemes

2.37 Some submitters suggested that changes to the 100-member rule should not only apply to corporations, but also to Managed Investment Schemes (MIS). For instance, although despite broadly supporting the bill, the FSC stated:

> We believe the changes to the bill should also apply to unit holder meetings of MIS for the same reasons as for listed companies. 100 unit holders can currently call a general meeting while constituting a small percentage of the schemes' holdings. Applying the 5% threshold to MIS as well as listed companies will increase efficiency in terms of costs and benefits when calling unit holder meetings.[35]

Improving remuneration reporting

2.38 The Explanatory Memorandum states the bill amends the Corporations Act 'to improve and streamline remuneration reporting requirements'.[36] Furthermore, it notes the importance of having a robust remuneration framework that:

> …promotes transparency and accountability of remuneration practices and that reporting of remuneration provides relevant information to stakeholders.[37]

2.39 According to the Explanatory Memorandum, the issue of remuneration of company directors and executives has attracted 'considerable interest from shareholders, business groups and the wider community'.[38] Under the current law, a disclosing entity that is a company must disclose the value of options that lapse during a financial year for each member of the key management personnel. It must also disclose the percentage value of remuneration that consists of options for each member of the key management personnel.[39]

2.40 The Explanatory Memorandum noted that the users of remuneration reports have indicated that the disclosure of the value of lapsed options was of limited use'.[40]

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34 *Submission 2*, p. 1.

35 *Submission 10*, p. 2. See also the Law Council, *Submission 11*, p. 1.

36 Explanatory Memorandum, paragraph 2.1[a].

37 Explanatory Memorandum, paragraph 2.2[b].

38 Explanatory Memorandum, paragraph 2.1[b].

39 Explanatory Memorandum, paragraph 2.3.

40 Explanatory Memorandum, paragraph 2.4.

Further, the information on the percentage of a person's remuneration that consists of options can be readily calculated under existing regulations.[41]

2.41 Under proposed subparagraph 3000A(1)(e)(iv) a listed disclosing entity that is a company must disclose the number of options that lapsed during a financial year and the financial year in which they were granted for each of the key management personnel. There is, however, no obligation to disclose the value of the lapsed options. There is also no obligation to disclose the percentage value of remuneration that consists of options for each member of the key management personnel.[42]

2.42 Also, under current legislation unlisted disclosing entities that are companies are required to produce remuneration reports under the operation of subsection 300A(2). The proposed legislation would mean that unlisted disclosing entities that are companies would no longer be required to prepare a remuneration report.[43]

Support for improving remuneration reporting

2.43 Some submitters supported the bill's amendments to remuneration reporting requirements, as they would reduce compliance costs for business while giving more relevant information to investors and service providers. For example, ACSI stated:

> These amendments should assist in making the information in remuneration reports more relevant to institutional investors and their service providers including ACSI, whilst also removing some significant administrative overheads from listed companies.[44]

2.44 AICD also highlighted reduced compliance costs that would result from these amendments:

> …these changes will assist in reducing the regulatory burden of unlisted disclosing entities and those entities required to prepare remuneration reports.[45]

2.45 Some evidence received by the committee suggested the bill would give some clarity to current framework. For example, CAANZ explained that the current requirements to report the value of lapsed options as if they had not lapsed caused 'confusion for users of the remuneration report'.[46] The ACSI noted that these amendments relating to the remuneration reporting of listed companies:

> …should assist in making the information in remuneration reports more relevant to institutional investors and their service providers including

41 Explanatory Memorandum, paragraph 2.4.

42 Explanatory Memorandum, paragraphs 2.7 and 2.8.

43 Explanatory Memorandum, paragraphs 2.5 and 2.9.

44 *Submission 3*, p. 2.

45 *Submission 9*, p. 3. See also the submissions made by the Law Council, *Submission 11*, p. 1; and OM, *Submission 12*, p. 2.

46 *Submission 4*, p. 2.

> ACSI, whilst also removing some significant administrative overheads from listed companies.[47]

2.46 Along the same lines, ANZ Bank regarded the measures contained in the bill designed to improve remuneration reporting as 'sensible'.[48]

Concerns raised

Reducing transparency for shareholders

2.47 The Australia Institute opposed the removal of remuneration reporting by unlisted disclosing entities, arguing these amendments would reduce the transparency and accountability of companies and remove some protection for shareholders. It stated:

> Just as shareholders in listed companies, shareholders in unlisted disclosing entities require information on remuneration in order to make informed decisions.
>
> Moreover, mandatory disclosure should not impose a significant cost on the unlisted entities. It is therefore unclear why such a requirement that holds for listed entities should not also hold for unlisted entities. The proposed changes would allow listed companies to hide remunerations through unlisted companies, which is not in the interests of their shareholders and the market.[49]

2.48 ASA disagreed with the bill's proposed changes to remuneration reporting for unlisted disclosing entities, as:

> There are a great many unlisted public companies in which retail shareholders have investments—real estate development companies being an example. Unlisted finance companies issuing debentures to the public is another example. Remuneration disclosure is as important to these shareholders as it is to shareholders in listed entities. Section 300A(2) should not be altered; instead, the heading of section 300A should be amended to clarify that it applies to all disclosing entities, not just listed entities.
>
> Given the failure of many companies to protect shareholder and investor value, ASA does not want any reduction in the disclosure of director/executive remuneration.[50]

The need for further reform to remuneration reporting

2.49 Although the Law Council supported the bill's reform of disclosure requirements for remuneration reports, it suggested that:

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47 *Submission* 3, p. 2.

48 *Submission 14*, p. [2].

49 *Submission 8*, p. 2.

50 *Submission 2*, p. 2.

> …further work is needed in relation to this area of regulation, to reduce unnecessary regulation and enhance effective disclosure.[51]

2.50 The ANZ Bank voiced a similar sentiment. Although it supported the amendment generally, it also urged the government to consider further reform of remuneration reporting:

> ANZ supports this measure as a sensible measure to clarify how remuneration is reported to shareholders. We would encourage the Government to consider further improvements in the transparency of remuneration reporting and removal of unnecessary complexity from remuneration reports.[52]

2.51 The G100 supported the provision to modify the disclosure requirements for options granted to key management personnel but suggested:

> ...the general description of the remuneration framework could be included on the company's website rather than being repeated in the annual report each year. The flexibility introduced by the ASX Corporate Governance Council in respect of the corporate governance report bears consideration in this context.[53]

Clarifying the financial year

2.52 The Explanatory Memorandum indicated that there was confusion about the conditions under which directors may determine that a financial year is shorter than 12 months. The bill seeks to remove this confusion. This amendment does not change the substance of the Corporations Act. Rather, it is intended to clarify the present legislation:

> …to put beyond doubt that directors may determine that a financial year is shorter than 12 months by more than seven days irrespective of whether, during an entity's previous five financial years, the directors have determined that the financial year is shorter than 12 months:
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> • by up to seven days; or
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> • to synchronise the financial year to prepare consolidated financial statements.[54]

2.53 The Explanatory Memorandum states quite clearly that entities that amend their financial years by up to seven days should be confident that they may determine when a subsequent financial year may last for less than 12 months. Similarly, entities that have been synchronised should be confident that they may determine that a subsequent financial year may last for less than 12 months—provided that

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51 *Submission 11*, p. 1.

52 *Submission 14*, p. 2.

53 *Submission 5*, p. 1.

54 Explanatory Memorandum, paragraph 3.11.

the financial year synchronised meets the requirements of relevant subsections in the Act.[55]

Issues raised

2.54 The provision to clarify financial years for reporting purposes was generally supported by submitters to this inquiry.[56]

2.55 Although ASA stated it 'does not object to the proposed changes' to legislation about determining the financial year, it pointed out some inconvenience for companies, shareholders and the business community caused by compelling most companies to balance on 30 June. Its submission stated:

> The surcharge is calculated on the amount of profit representing an apportionment of the annual result for the changeover financial period, in addition to payment of the 'normal' income tax for the fiscal year. This is a permanent extra tax liability—not merely a timing difference. This goes back to a time when there were no instalments of income tax and the government had to wait for an annual payment from each company. The perpetuation of this impost long after it has ceased to be relevant, creates a significant and unfair tax burden and inconvenience to the entire business community, which is ultimately borne by shareholders.[57]

Streamlining auditor appointment requirements for companies limited by guarantee

2.56 Under the Corporations Act, all public companies, including companies limited by guarantee, are required to appoint and retain an auditor. This is despite amendments made to the Corporations Act in 2010, which 'removed the need for certain companies limited by guarantee to have their financial reports audited, in order to reflect their limited resources'.[58]

2.57 The bill makes amendments to the Corporations Act that would provide that:

> Certain companies limited by guarantee are no longer required to appoint or retain an auditor where they are not required to undertake an audit.[59]

2.58 All other public companies are still required to appoint and retain an auditor.[60]

Issues raised

2.59 Some submitters actively supported the bill's new provisions for auditor arrangements for companies limited by guarantee.[61] There were no substantial issues raised by submitters about these amendments.

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55 Explanatory Memorandum, paragraph 3.10.

56 *Submission 11*, p. 5; *Submission 4*, p. 1.

57 *Submission 2*, p. 2.

58 Explanatory Memorandum, paragraph 4.3.

59 Explanatory Memorandum, paragraph 4.5.

60 Explanatory Memorandum, p. 18.

Improving the efficiency of the Takeovers Panel

2.60 The Explanatory Memorandum for the bill describes the Takeovers Panel as:

> …a peer review body that regulates corporate control transactions in widely held Australian entities. Panel members are appointed from the private sector, and generally hold senior roles in banks, law firms, and significant corporations.[62]

2.61 The Takeovers Panel is authorised by the ASIC Act. The application of this legislation, however, is limited to Australia. According to the Explanatory Memorandum, this limited application could:

> …be interpreted to mean that the powers provided to the Takeovers Panel under the ASIC Act can only be exercised if the members of the Panel are physically located in Australia. This can reduce the Panel's efficiency due to the need for members to travel to fulfil other professional obligations.[63]

2.62 The bill removes the obligation for Panel members to be physically within Australia to perform Panel functions, but does not alter the substantive powers of the Panel or its members.[64]

Issues raised

2.63 Some submitters voiced support for the amendments made by the bill.[65] There were no substantial issues raised by submitters about the amendments made by the bill to improve the efficiency of the Takeovers Panel.

Improving the efficiency of Government remuneration processes

2.64 Under the ASIC Act, the Treasury portfolio Minister (Minister) determines the terms and conditions (including remuneration) of the Chairs and members of certain appointments, including for the:

- Financial Reporting Council (FRC);
- the Chair of the Australian Accounting Standards Board (AASB); and
- the Chair of the Auditing and Assurance Standards Board (AUASB).

2.65 The ASIC Act also provides for the FRC to determine the terms and conditions (including remuneration) of the offices held by the members of the AASB and the AUASB.

2.66 The Remuneration Tribunal is an independent, specialist body responsible for the remuneration setting of public offices within its determinative jurisdiction.

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61 See, for example, the Law Council, *Submission 11*, p. 1.

62 Explanatory Memorandum, paragraph 5.3.

63 Explanatory Memorandum, paragraph 5.4.

64 Explanatory Memorandum, paragraph 5.5.

65 See, for example, Law Council, *Submission 11*, p. 5.

2.67 The provisions of the bill would give the Remuneration Tribunal responsibility for determining the remuneration and full-time member recreation leave entitlements for appointments to the FRC, the AASB and the AUASB within the jurisdiction.

2.68 The Explanatory Memorandum states that the Remuneration Tribunal has specialist skills in reviewing and determining remuneration:

> …and is therefore better placed to determine the remuneration of these offices. Moreover, it will ensure consistency in the remuneration setting arrangements between the three bodies and other statutory office holders.[66]

Issues raised

2.69 There were no issues raised by submitters about the amendments made by the bill to improve government remuneration processes.

Other issues

2.70 Some submitters raised concerns about other aspects of the bill, as well as making broader points about potential reforms to Australia's corporations law framework.

Differences between the Exposure Draft and the bill

2.71 Some submitters noted there were significant elements included in the Exposure Draft, which was released for public comment in April 2014, that were not included in the final bill.

2.72 The ASA highlighted that the Exposure Draft included changes to the definitions and mechanics of paying dividends, which were omitted from the bill currently being considered. It commented that its submission to the Exposure Draft process:

> …advised that ASA had no objections to the proposed changes to the definitions and mechanics of paying dividends. These have been deleted from the bill under consideration. The business and investment community would be interested in the reasons for this change.[67]

2.73 The Law Council also noted this omission, but suggested this was because the Exposure Draft's proposed amendments were 'defective'. However, it submitted that reform of this area should be undertaken, as:

> …effective reform of Australia's highly unsatisfactory dividend law would have made a much greater contribution to efficient regulation and removal of red tape than any of the other reforms that have survived into the present bill.[68]

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66 Explanatory Memorandum, paragraph 6.7.

67 *Submission 2*, p. 1.

68 *Submission 11*, p. 2.

2.74 In its response to a written question on notice, the Department of the Treasury recognised that some 'stakeholders had raised significant concerns 'the proposed amendments to the test for the payment of dividends would not reduce the regulatory burden on businesses'. It explained:

> The provisions were omitted from the final Bill to give the Government more time to consider alternative approaches which will balance the need for certainty and simplicity for business, protections for investors and the implications for the tax treatment of dividends.[69]

2.75 The ASA noted that the Exposure Draft proposed a requirement for remuneration reports to include a 'description of the remuneration governance framework', and commented:

> This is unfortunate as it is at odds with the best practice direction taken in the United Kingdom relating to listed reporting [and] governance trends.[70]

Abolition of the Corporations and Markets Advisory Committee

2.76 The Law Council took the opportunity to urge for a review of the government's decision to introduce a bill to abolish Corporations and Markets Advisory Committee (CAMAC) to Parliament in late 2014:

> The Corporations Committee [of the Law Council] is very concerned about the future of corporate and markets law reform, if the Parliament enacts legislation to abolish the Corporations and Markets Advisory Committee (CAMAC). Australia has become a world leader in certain parts of corporate and markets law reform during the past 30 years, largely because of the research-based input of an expert, independent committee, which has evolved into CAMAC. Given that no satisfactory alternative has been identified, the abolition of CAMAC will be highly damaging for effective reform in this area, ironically at a time when the Australian Government is seeking to enhance efficient regulation and eliminate red tape, which is precisely the outcome that an expert committee is best placed to achieve.[71]

Suggestions for further reform of the Corporations Act

2.77 ACSI commented that there were areas of the Corporations Act that could be reformed not covered by the bill, such as:

> …the removal of companies' ability to circumvent the 'two-strikes' rules by confining votes to a show of hands at their AGM rather than calling a poll—a situation which arose on at least two occasions to our knowledge among mid-cap ASX-listed companies (Greencross Limited and Infomedia Limited) during the recent 2014 AGM season. Another example is the opportunity to introduce modest regulatory reforms to streamline the efficiency of Australia's proxy voting system, a topic that ACSI addressed in some detail in a 2012 submission to the Review of the AGM and

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69 Department of the Treasury, answer to question on notice, No. 1, see appendix 2 to this report.

70 *Submission 2*, p. [1].

71 *Submission 11*, p. 2.

Shareholder engagement undertaken by the (now-defunct) Corporations and Markets Advisory Committee (CAMAC).[72]

Committee view

2.78 The committee acknowledges the broad support for the bill. However, the committee also recognises that some submissions raised concerns about the bill.

2.79 A few submitters were concerned that the provisions made by the bill would reduce the protection available to shareholders under the 100-member rule currently in the Corporations Act.

2.80 The committee, however, is satisfied that the amendments made by the bill will preserve shareholder rights, while reducing red tape and compliance costs for businesses. This is particularly so, as groups of 100 shareholders will still have the right to raise important issues by placing items on the agenda of a company's general meeting. Also, the right remains intact for members with at least five per cent of the vote that may be cast at a general meeting to request directors of a company to call and arrange to hold a general meeting.

2.81 Similarly, the committee considers the bill's amendments to remuneration reporting requirements will reduce compliance costs for business while still providing sufficient information to investors and service providers.

2.82 Some submissions suggested that the government should undertake further reform of the Corporations Act, and the committee draws these suggestions to the government's attention for its consideration.

2.83 Overall, the committee considers that the amendments made by the present bill will improve the Corporations Act and the ASIC Act, by removing unnecessary regulation, clarifying existing regulatory obligations, and enhancing the efficient operation of certain government bodies.

Recommendation 1

2.84 The committee recommends that the bill be passed.

Senator Sean Edwards
Chair

72 *Submission 3*, p. 2.