

Dissenting Report by Senator Nick Xenophon

1.1 The Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014 ('the bill') ostensibly aims to reduce red tape and compliance costs for corporations but in reality it will erode the rights of shareholders across Australia.

1.2 The '100 member rule' contained within the *Corporations Act 2001* bestows certain powers on members of a company who are entitled to vote at a general meeting of that company. These powers include the ability to require directors of a company to hold an extraordinary general meeting, to put a resolution on the agenda of general meetings and to circulate material to other members of the company. The Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014 will remove the first of those powers, namely the ability of 100 members to call for an extraordinary general meeting of the company. Instead, an extraordinary general meeting could only be called when members making up five per cent of the total shareholding of the company agree to call one.

1.3 In its submission, the Australia Institute emphasised that shareholder rights form an essential part of corporate governance:

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 abovementioned 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 responsible corporate behaviour.¹

1.4 In November 2012, over 200 Woolworths shareholders (with the help of GetUp!) called for an extraordinary general meeting of the company in order to vote on a resolution in relation to Woolworths' ownership of poker machines. Woolworths, through its hotel arm the ALH Group owns approximately 13,000 poker machines and makes over \$1.2 billion in poker machine losses.

1.5 If successful, the resolution would have prohibited Woolworths from owning, operating or benefiting from:

If passed, the resolution would amend the constitution of Woolworths Ltd to prevent it owning, operating or benefiting from:

"any electronic gaming machine offering games to the public:

- i. at a cost of more than \$1 per button push; and/or
- ii. by which the machine is capable of generating net revenue at an average rate of more than \$120 per hour; and/or

1 The Australia Institute, *Submission 8*, p. 1.

iii. for more than 18 consecutive hours in a 24 hour period"
from January 2016 onward.²

1.6 While the resolution was ultimately defeated, it nonetheless enabled shareholders to force Woolworths and its shareholders to consider whether profiting from poker machine losses is socially responsible corporate behaviour.

1.7 The bill still allows for 100 members to put a resolution on the agenda of general meetings and to require material to be circulated to other members at the expense of the company. However, these provisions do not enhance good corporate governance to the extent that calling an extraordinary general meeting does. The barrister Peter R. Graham QC in his submission characterised this bill as 'destructive' rather than 'deregulatory'.³

1.8 This bill seeks to reduce the remuneration reporting requirements of disclosing entities by no longer requiring these entities to disclose the value of options that lapse during a financial year for each member of the key management personnel.⁴ As the Australia Institute pointed out, this will only serve to reduce transparency and accountability to shareholders and also creates a mechanism whereby listed companies are able to hide remuneration through unlisted companies.⁵

Recommendation

1.9 That this bill not be passed.

Senator Nick Xenophon
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2 GetUp!, *Tell Woolworths: Stop Gambling With Our Lives*, available at: <https://www.getup.org.au/campaigns/core-member-pokies-reform/1-120-solution/tell-woolworths-stop-gambling-with-lives>, accessed 10 February 2015.

3 Peter R Graham QC, *Submission 1*, p. 1.

4 Explanatory Memorandum, p. 10.

5 The Australia Institute, *Submission 8*, p. 2.