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25th July 2017

Dear Sir/Madam,

**Part A of my Submission to the Inquiry into the Corporations Amendment (Modernisation of Members Registration) Bill 2017**

Thank you for the opportunity to contribute to this Senate Economics Legislation Committee inquiry.

I wholeheartedly support this amendment introduced by Senator Xenophon.

I would like to cover two areas in my submission.

1. The need for this amendment both in terms of the immediate context of CPA Australia, and also the broader context of members rights and good governance.
2. Dealing with some of the objections to it.

**1. The need for the amendment**

I cannot improve on Senator Xenophons' Second Reading speech (15th June 2017) as to the reason for this amendment. It provides a very good summary of the need to bring this section of the Corporations Act into line with 21st century communication methods, and in so doing encouraging good corporate governance through member engagement and participation.

i. **The immediate context** is in relation to my professional membership organisation (CPA Australia with 155,000 members) which exemplifies the need and urgency for this amendment.

Major issues and concerns have arisen over the last decade within my organisation which until early this year have been kept 'hidden' from the wider membership. These issues strike at some fundamental tenets and issues for us as a professional organisation and have a significant impact on the members and their rights.

The issues have been so significant that recently the CEO was sacked, seven of the twelve directors have resigned including the Chairman, an Independent Review is currently being conducted into the organisation, and ASIC is currently investigating various matters at CPA Australia. My, and other members, contention is that these issues have arisen because the board and senior management at CPA have held power with an effective gerrymandering of the corporate governance process.

While this is all going on we have been unable to communicate these matters with the members.

We forced CPA to provide us with the members register (costing us \$2300) so we could communicate with them however the email addresses of members were not provided because they are not required by law to be kept in the members register even though it is the primary means of communication with members. Thus our only mode of communication was via traditional mail which would have cost us in the vicinity of \$180,000 to send a simple letter of explanation of our concerns.

The irony is that just after CPA provided me with the Members Register they emailed all the members (at virtually zero cost to themselves) to say that they did not trust the security of the information in my hands even though the Act clearly says it is a criminal offence to use the Register for improper purposes (which they implied I would do).

The lack of the need to include email addresses in the members register in CPA Australia has prevented member engagement and participation in the corporate governance of our organisation, and more importantly has stymied such efforts by creating a very uneven and unfair playing field such that shareholders (members) are at a significant disadvantage.

The fundamental issue involved in including emails in the members register is to provide a mode of communication which has become both normative and cost effective in the 21st century.

There may be good reasons to continue to use traditional mail and printed materials for some companies but I think it would be difficult to suggest that the internet with websites and emails are not the mainstream form of communication for most companies and individuals today.

Some of the submissions have quite strongly opposed this amendment, such as AMP and surprisingly the Governance Institute of Australia, but I think that is more a reflection of these organisations' strategic/client base than being representative of mainstream Australia.

It is an extra item to put in the Members Register (shareholders register) and that will involve some transitional arrangements and administrative adjustments initially but surely if our corporations legislation is to remain relevant then it needs to be leaning into the 21st century and not harking back to the 19th and 20th centuries in reference to modes of communication.

Already this matter of the use of technology to distribute company materials has been looked at in 2016 with two of the current submitters including their submissions on that matter to this one. What was surprising was the almost about face' approach taken by the Governance Institute. The objections of the other submitter (AMP) was perhaps predictable and consistent with their client base which has an average age of 75. I hardly think that is a representative basis of the population for legislation in 2017.

ii. **The broader** (or perhaps more philosophical or principled) **context** is that the public has a right to know who the shareholders are of a public company (Lipton and Herzberg Understanding Company Law 2006 p.200) and that access to the members register 'facilitates good corporate governance through member engagement and participation' (Ford.. Principles of Corporations Law 2015 p. 1251).

I agree.

We certainly need to balance this with protecting shareholders right to privacy, and I would suggest that currently both the courts and the legislation (esp. in relation to the use of the members register) lean very heavily on the side of this protection. The provisions of the Corporations Act regulating the use of information obtained from a members register are very clear in stating it can only be used for proper purposes (and it specifies clearly what improper purposes are) with the primary aim being to protect the privacy of shareholders.

I have attached in the footnote at the end a summary of this from the CCH Legal Database 6-035.<sup>1</sup> The protection provisions "*are generally comparable to the requirements of the National Privacy Principles (NPP) under the Privacy Act 1988 (Cth), most notably Australian Privacy Principle 7, which generally prohibits an organisation from using personal information about an individual for direct marketing purposes.*

To use the members register for improper purposes is a criminal offence. It is not something to be done lightly I would suggest.

Many of the submissions have objected to this change because of concerns about privacy, and unsolicited emails, and misuse of the register. I would suggest these concerns have nothing to do with this amendment, they are concerns relating to the accessibility of the members register, and the Act already has many provisions to protect these concerns. All this amendment is doing is adding the email address of members to provide a more relevant and cost effective mode of communication.

In the case of CPA Australia the specific purpose of obtaining the members register was to communicate with the members on major matters which impacted their rights as members. That is surely a good purpose. Access to the register for such a proper purpose is one of the safeguards we have to ensure public companies do not become secret governance institutions with member engagement discouraged, and possible abuse by a powerful leadership. The lack of email addresses in the CPA Australia members register fostered this very weakness as we were unable to communicate major concerns with the membership, while Head Office constantly used emails to communicate with members. This raises questions of equity and fairness and a level playing field that should be of concern to most.

## **2. Dealing with some of the objections**

### **a. Email usage is not a common mode of communication, nor it is widely used.**

The submissions by AMP, and the Governance Institute of Australia perhaps used this argument strongly. Examples of ASX listed companies were provided where the email addresses of members was limited to 46%, 43%, 50.4%, 45%, and the AMP topping it off with only 34% of members on their registers.

I would suggest that the most obvious reason (apart from AMP which I shall deal with in a moment) for that is because it is not mandatory or required to be kept, and that the website of those companies would be becoming the default communication access point for many members. As much as some members would prefer printed and hard copy material, the vast majority of members do not and use either the website or email.

I can appreciate that AMP have been unable to increase the use of email usage by their members but I suggest that is more a reflection of the average age of their customer base which is 75. I do not regard that as being typical of the rest of society and company member registers.

Clearly allowance needs to be made for members who do not have email addresses but I suggest that is more the exception than the rule.

The decline in the use of traditional mail for communications, and the overwhelming increase in the use of email, is beyond dispute. Page 3 of the Governance Institute attachment to their submission outlines the data to support this. They even quote Computershare's research (p.4) that 80% of shareholders surveyed prefer electronic communication, and that 95% of public company shareholders prefer online interaction.

### **b. Privacy concerns of shareholders.**

I think it is fair to say, as I have done above, that the Act currently and the courts in their interpretations and decisions have more than adequate safeguards to allay this concern. And most of these concerns expressed in the submissions can be just as easily applied to the current legislated members register with the members address details. The addition of an email address merely provides a more relevant mode of communication rather than adding to privacy issues. Members can just as easily delete an email as they can throw a letter in the bin. That's a question of how a member deals with and prefers communication, not a question of privacy.

**c. Cyber security risks.**

I read with interest page 6 of the Governance Institute which suggested this as being a reason not to require email addresses. I suggest it is just scaremongering at best. Why not ban computers because of the risk of viruses. Surely these companies use the latest technology including emails in there internal and external communications, and they need to have adequate protective measures to deal with any risks. But to suggest that adding email addresses to a members register posed additional cyber security risks was just too over the top to give it any credence.

**d. Risk of access to email addresses via the ASIC database on proprietary companies.**

**e. Dealing with bounce back emails**

I thought the Governance Institute were really stooping the bottom of the barrel to suggest these as legitimate objections (page 5 and 6). I would think ASIC can establish appropriate defence mechanisms to prevent unauthorised access to email addresses, and would think maintaining an up to date email address of members will by default require dealing with incorrect and wrong ones. But surely that is what a company would wish with from a cost and customer service perspective - an up-to-date members register.

**f. Members (shareholders) do not have an email address and/or refuse to provide it.**

**g. Cannot make mandatory what people do not have, nor be forced to provide.**

I would suggest that both these matters can be accommodated in the regulatory rules. People cannot do the impossible. They can hardly provide what they do not have, and I hardly think their refusal to provide one is cause for alarm. The overall thrust of this change is to aid communication with members, it is not to invade their privacy or impose on them a form of communication they are not happy with.

It is just acknowledging that in the vast majority of the population email is becoming, if not has already become, the standard form of communication.

It is just saying that the members register should contain the email addresses of members (and by default that means if they do not have one, or refuse to provide one, then that is not an offence) where it is provided. And, as in the case of even AMP, it would seem advantageous to encourage members to provide their email addresses to foster more cost effective, faster and better communication with members.

**h. If introduced it would mean most companies would be in breach of the law.**

I think it could be assumed that there will have to be transitional arrangements to enable companies to upgrade/modify their systems and processes to accommodate this change. But surely that is not a legitimate reason. Change is not a virtue in itself but surely if it is good change for a legitimate reason then that is reality. We just need to adjust.

**i. "Mandating any specific form of electronic communication would likely result in near-to-mid term obsolescence." (Computershare submission p.3)**

While that might seem to have credibility in an age of technological innovation and disruption, it fails to take into account that we do communicate with each other and that where a particular form of communication is prominent in any period so we need to recognise that. Normally this does not require legislative mandate or force but where it needs updating, as in the case with the members register where the assumption of traditional mail is assumed, then so be it. We update. To not update can result in this sort of imbalance and inequity where the company is using email addresses in most of its communication with members but fails to accommodate that in the members register to prevent open communication.

**Concluding remark**

What seems to be missing from the submissions which oppose this amendment is that having the correct email address of members in the members register is a good thing to aid faster, cheaper and more effective communication with members. It is a positive thing that I cannot imagine any company would not wish to have. Just having the members physical address in the register may seem adequate but it is missing one of the key reasons for having members details in the register at all (one is to identify the member) which is to communicate with them.

The reality is that most companies would already use email addresses of members to communicate with them, and those that don't would be desirous to have them (as the AMP submission readily admits), so why would we not include them in the Members Register if this aided better member engagement and participation. The example of CPA Australia shows why this amendment is a very good thing.

I therefore support this amendment.

Yours sincerely

Brett Stevenson

<sup>1</sup>The protection provisions “are generally comparable to the requirements of the National Privacy Principles (NPP) under the Privacy Act 1988 (Cth), most notably Australian Privacy Principle 7, which generally prohibits an organisation from using personal information about an individual for direct marketing purposes.

A person who obtains information about another person from a register kept under Ch 2C is prohibited from contacting or sending material to that person. Nor may he or she disclose information obtained from a register knowing that the information is likely to be used to contact or send material to that person: s 177(1) .

The rules apply whether the use is for profit or otherwise. Most significantly, the rules prohibit the use or disclosure of information from Ch 2C registers in connection with the sale and use of commercial mailing lists.

Nor may a person use any information obtained from a register for any of the prohibited purposes listed in reg 2C.1.03 for the purposes of s 173(3A) (see above): s 177(1AA) . These purposes are:

- (a) soliciting a donation from a member of a company
- (b) soliciting a member of a company by a person who is authorised to assume or use the word “stockbroker” or “sharebroker” in accordance with s 923B of the Act
- (c) gathering information about the personal wealth of a member of a company
- (d) making an offer to which Div 5A of Pt 7.9 of the Act applies, ie an unsolicited offer to purchase securities off-market
- (e) making an invitation which, if it were an offer, would be an offer to which Div 5A of Pt 7.9 of the Act applies (this is intended to encompass invitations and offers made outside Australia; s 1019D(1) (e) would otherwise restrict the scope of this “improper purpose” to offers made or received in this jurisdiction): reg 2C.1.03 .