

22 August 2017

Committee Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

*via email: economics.sen@aph.gov.au*

Dear Mr Fitt

**Inquiry into the Corporations Amendment (Modernisation of Members Registration) Bill 2017**

Thank you for the opportunity to present at the hearing of the Senate Economics Legislation Committee into the Corporations Amendment (Modernisation of Members Registration) Bill (**Bill**) held on 2 August 2017, and for the opportunity to reflect on topics discussed during our appearance.

We reiterate the comments set out in our submission dated 25 July 2017, which provides our substantive response to issues raised by the Bill.

In this letter we focus on the concept of using an independent entity as a conduit for the distribution of information to members by a person seeking to communicate with them using details on the company's register of members (**Register**), with key points and suggestions set out below.

**1. The AICD considers communication between and with members of companies for a proper purpose to be integral to good governance**

The AICD considers that the ability to communicate effectively with company members about matters relevant to their interests and rights is of fundamental importance to corporate governance.

We acknowledge that the cost of managing direct mail-outs to members using the information currently held on a Register is likely to be prohibitive for individuals acting in a personal capacity, as noted by Mr Brett Stevenson. As the Committee is aware, company members have existing opportunities to exercise their rights including, depending on the type of company and any relevant threshold, the right to ask questions at general meetings, to require the company to move members' resolutions, or to request a meeting of members (for example, to spill the board).

Companies may also elect to circulate information where they consider this is in the best interests of the membership, and will do so where required by law (for example, members' resolutions and statements per ss 249N and 249P, *Corporations Act 2001* (Cth) (**Corporations Act**)).

**2. While there are protections to guard against the improper use of information on Registers, these are limited.**

Currently, companies are required to maintain Registers<sup>1</sup> of member details including addresses.<sup>2</sup> Breaches of this requirement are strict liability offences. A company must allow anyone to inspect the Register – members at no charge and others on payment of a fee up to the maximum prescribed in the regulations.<sup>3</sup>

Companies must also provide a copy of the Register to any member or other person who requests it, subject to the applicant paying any relevant fee, providing their name and address, listing each purpose and those purposes not being a ‘prescribed purpose’ (see below).<sup>4</sup>

These provisions mean that Registers are quite open in terms of general access.

The information held on Registers – currently, the member’s name, address, date of holding and holding balance – would be considered personal information under the *Privacy Act 1988* (Cth) and in other circumstances, subject to the strict requirements of that Act.

Section 177 of the Corporations Act prohibits a person from using information obtained from a Register to contact or send information to a member unless it is relevant to the holding of the interests recorded in the Register or the rights attaching to them, or has been approved by the company.

This broad description of a proper purpose was subject to abuse<sup>5</sup> and Parliament introduced further qualifications by way of defined ‘improper purposes<sup>6</sup>’ in 2010, being:

- Soliciting a donation from a member of a company;
- Solicitation of a member by a stockbroker;
- Gathering information about the personal wealth of a member of a company; and
- Making an off-market ‘low-ball’ offer for shares held by a member.

These welcome reforms established a limited set of clear improper purposes for use of information on Registers.

Assuming, however, that an applicant does not list an improper purpose as a reason for requesting a copy of a Register, and proposes a purpose relevant to member interests or rights, the company must provide a copy of its Register. Once the Register is provided, there are no practical limitations on how the personal information of company members is stored or used by the third party. If misuse occurs, remedies would be sought after the fact (noting that criminal sanctions can apply, if proven). The AICD is concerned that if email addresses are added to the Register (whether as a compulsory, or opt-in, measure) under the current legislative settings, the opportunity for abuse increases substantially, as discussed with the Committee.

Issues that, in our view, warrant further consideration given the nature of personal information held on Registers include:

- Privacy expectations of company members and whether specific privacy obligations should attach to parties obtaining copies of Registers, including holding information securely and destroying it within a certain period of time; and
- Whether further guidance on improper purposes is warranted to avoid misuse, for example through regulatory guidance by ASIC.

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<sup>1</sup> Section 168 Corporations Act.

<sup>2</sup> Section 169 Corporations Act.

<sup>3</sup> Section 173(2) Corporations Act.

<sup>4</sup> Section 173(2) Corporations Act, and reg 2C.1.03 *Corporations Regulations 2001* (Cth) (**Corporations Regulations**)

<sup>5</sup> The practices of David Tweed were discussed during Committee hearings as one example.

<sup>6</sup> Regulation 2C.1.03 Corporations Regulations.

**3. The Committee's suggestion of a third party distribution option for contact with company members may have merit, and there is a precedent for this model in the Corporations Regulations.**

The Committee discussed the option of introducing a third party to manage the logistics of communication to members, rather than requiring the release of the Register details to an applicant who would seek to manage that communication directly.

This was partly in response to the concerns raised about the increased risk of 'spam' activity, cyber fraud attempts or harassment were email addresses to be added to Registers.

The AICD considers that this concept could resolve the privacy and security issues relevant to members of companies and Register access, if introduced with an appropriate framework of checks and balances. If email addresses are included on Registers (for example, on a voluntary basis), this would be a worthwhile addition to the legislative framework.

The introduction of a third party distribution model would not, however, resolve all our concerns about the Bill, discussed separately in our original submission (refer, in particular, to paragraphs (a), (d), (e) and (f)).

As a starting point, the AICD envisages a framework would likely include:

- Guidance on the types of distribution entities that would be appropriate (these might be agreed between the parties, set by the company or defined in regulatory guidance by ASIC);
- Guidance on the circumstances where a third party distribution model might be used (this could be at the election of the company on a case by case basis);
- The applicant bearing the cost of the third party distribution (as per the status quo, where applicants would currently bear the cost of contacting members using the register details);
- A requirement for all members to be contacted even where they have not provided electronic addresses, to avoid disenfranchising members who opt for hard copy communication (per the concerns flagged by the Australian Shareholders' Association);
- The company being the decision-making body on whether the application is for a proper purpose, and retaining the right to request an extension of time for review from ASIC (per s 173(3)) – that is, no 'filter' rights for the third party distribution body. This could be supported by greater guidance in the regulations or from ASIC on proper or improper purposes to assist companies in assessing requests; and
- The third party distribution body being a logistics provider only.

The AICD considers this model would provide company members with a greater degree of comfort on the use of their personal information on Registers and should not be overly complex to establish.

We noted for the Committee's reference the existing regime that applies in relation to access to Registers of certain types of companies, being mutual Authorised Deposit-taking Institutions (**ADIs**) such as credit unions.

While this model is specific to the mutual ADI sector, and does not envisage email contact, it is an example of where the law has been amended to require a third party distribution model to handle communication with members using information on the Register, to deal with privacy and commercial concerns.

In relation to those companies, the Corporations Regulations amend the application of s 173 to create alternative arrangements for contacting members using the information on a Register. The regulations provide that contact with members will occur via a third-party service provider

(for example, a mailing house), rather than requiring copies of the Register to be provided to members or other applicants.

The rationale for the third party distribution model in this case was the heightened concern that mutual ADIs had about sensitivity of their member register, which is also their customer list. In addition, there were arguments that for some bonded credit unions serving specific industries (such as police services, teachers, or military personnel) there were additional privacy and security concerns that the relatively open regime of access to Registers under the Corporations Act did not adequately deal with. The relevant amending Corporations Regulations are reg 12.8.06 and reg 2C.1.05 (**attached**, with relevant explanatory memorandum). At a high level the process works as below.

The mutual ADI, on receipt of a request for access to its Register, can:

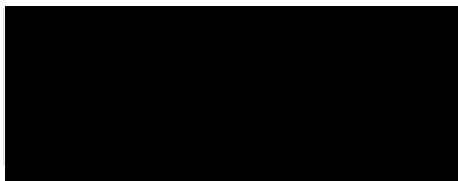
- Require the applicant to agree in writing that they will use information for a proper purpose and secure a commitment that the applicant will not divulge member details to other parties;
- Refuse access to inspect the Register or receive a copy if it is not satisfied that the application is for a proper purpose or in the interests of the members as a whole (the applicant can appeal to ASIC, which can approve access for a proper purpose in writing);
- If the application is for communication for a proper purpose (whether determined by the company or by ASIC), the company can elect that the communication be sent by a third party service provider nominated by the company, with all costs paid by the applicant;
- The regulations set out timeframes for the application, review and mail-outs to be completed.

**4. Companies can elect to circulate material to members, but should not (with the exception of existing obligations in the Act) be required to do so.**

As noted above, the Corporations Act requires that companies circulate certain resolutions and related material proposed by members at the company's expense. Companies can also elect to circulate material to members at their discretion if they determine it is in the interests of members as a whole. The Committee canvassed the concept of mandating new obligations on companies to circulate material from members directly, where this is clearly for a proper purpose. The AICD does not support this proposal. We do not consider it appropriate to add this cost to companies rather than applicants as a mandatory requirement, and believe that there could be unintended consequences that would require separate consultation and review.

We hope our response is of assistance to the Committee. If the Committee has further questions, please contact Lysarne Pelling, Senior Policy Adviser, on [REDACTED] or [REDACTED]

Yours sincerely



**LOUISE PETSCHLER**  
General Manager, Advocacy



# Corporations Amendment Regulations 2007 (No. 9)<sup>1</sup>

**Select Legislative Instrument 2007 No. 227**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 19 July 2007

P. M. JEFFERY  
Governor-General

By His Excellency's Command

CHRISTOPHER JOHN PEARCE  
Parliamentary Secretary to the Treasurer

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**1 Name of Regulations**

These Regulations are the *Corporations Amendment Regulations 2007 (No. 9)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Corporations Regulations 2001***

Schedule 1 amends the *Corporations Regulations 2001*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Before regulation 2C.1.01**

*insert*

**Part 2C.1 Prescribed financial market**

**[2] Chapter 2C, before regulation 2C.1.02**

*insert*

**Part 2C.2 Form of notice**

**[3] Chapter 2C, regulation 2C.1.02**

*renumber as regulation 2C.2.01*

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[4] **Chapter 2C, after regulation 2C.2.01 (as renumbered)**

*insert*

**Part 2C.3 Use of information on registers by bodies corporate**

**2C.3.01 Contact with members after failure to provide copy of register**

- (1) This regulation applies if a body corporate mentioned in regulation 12.8.02 has failed to give a person a copy of the part of the register of members of the body who hold member shares:
- (a) within 28 days after the person's request for a copy; or
  - (b) if a longer period has been allowed by ASIC — within the longer period.
- (2) If the person:
- (a) makes a statutory declaration that the person intends to use information that is contained in that part of the register:
    - (i) for the purpose of contacting members of the body, or sending material to members of the body, for a purpose mentioned in subsection 177 (1A) of the Act; and
    - (ii) in a way that does not contravene that subsection or another law; and
  - (b) gives the statutory declaration to the body corporate; and
  - (c) pays the reasonable costs of contacting the members, or sending material to the members;

the body corporate must do everything that is reasonably possible to arrange for the members to be contacted, or for the material to be sent to the members, on the person's behalf by a third party service provider nominated by the body corporate.

- (3) If the body corporate believes on reasonable grounds that the person intends to use information that is contained in that part of the register:
- (a) for a purpose that is not in accordance with subparagraph (2) (a) (i); or
  - (b) in a way that is not in accordance with subparagraph (2) (a) (ii);
- the body corporate is not required to arrange for the members to be contacted or for the material to be sent to the members on the person's behalf, and may terminate any existing arrangement.
- (4) The arrangements made by the body corporate must ensure that, to the extent reasonably possible:
- (a) the details, from the register of members, of each member to whom material is to be sent, or with whom contact is to be made, will be provided to the third party service provider within 14 days after the person pays the costs mentioned in subregulation (2); and
  - (b) a copy of any material that is to be sent to a member will be provided to the third party service provider within 28 days after the person provides the material to the body corporate; and
  - (c) if material is not to be sent to a member — written details of the contact that is to be made with a member must be provided to the third party service provider within 28 days after the person provides the written details to the body corporate; and
  - (d) for any material that is to be sent to a member — the material will be sent to the member within 14 days after the body corporate provides the material to the third party service provider; and
  - (e) if material is not to be sent to a member — contact will be made with the member within 14 days after the body corporate provides, to the third party service provider, the written details of the contact that is to be made with the member.



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- (5) An arrangement made under subregulation (2) must:
- (a) allow for contact to be made, or material to be sent, for a period of 6 months after the period mentioned in subregulation (1); and
  - (b) require the person to pay the reasonable costs of contacting the members or sending material to the members to be paid on each occasion before the contact is made or the material is sent.
- (6) A reference in subregulation (1) to the register of members of a body corporate who hold member shares includes a reference to:
- (a) the register of members of a body corporate that is a company limited by guarantee; and
  - (b) the register of members of a body corporate limited by shares and guarantee, who do not hold shares in the body.

**[5] Paragraph 12.8.02 (b)**

*substitute*

- (b) a company that is permitted to use the expression ***building society, credit society*** or ***credit union*** under section 66 of the *Banking Act 1959*; or
- (c) a friendly society.

**[6] Subregulation 12.8.06 (3)**

*substitute*

- (3) Section 173 of the Act is modified in relation to the body corporate by inserting after subsection 173 (1):
- (1AA) However, a body corporate mentioned in regulation 12.8.02 of the Corporations Regulations may, before allowing a person to inspect the part of the register for members of the body corporate who hold member shares, require the person to agree in writing with the body that the person will only:
- (a) divulge information obtained by the person from inspecting the register to a person who is, or to persons who are, specified in the agreement; or

- (b) use information obtained by the person from inspecting the register for a purpose that is, or purposes that are, specified in the agreement.
- (1AB) Also, the body corporate mentioned in regulation 12.8.02 of the Corporations Regulations may refuse to allow a person to inspect the part of the register for members of the body who hold member shares if:
- (a) the body is not satisfied that the person is a member of the body who intends to call a meeting of members, or of particular members, of the body; or
  - (b) the body is not satisfied that the person proposes to inspect the register for a purpose that is approved in writing by ASIC:
    - (i) on its own initiative; or
    - (ii) on the written application of the person or of another person; or
  - (c) the body is not satisfied that allowing the person to inspect that part of the register is in the interests of the members as a whole.

**[7] Subregulation 12.8.06 (4)**

*substitute*

- (4) Section 173 of the Act is modified in relation to the body corporate by inserting after subsection 173 (3):
- (3A) However, a body corporate mentioned in regulation 12.8.02 of the Corporations Regulations may, before giving a person a copy of the part of the register for members of the body corporate who hold member shares, require the person to agree in writing with the body that the person will only:
- (a) give the original copy, or a copy of that original, to a person who is, or to persons who are, specified in the agreement; or
  - (b) use information obtained from that part of the register for a purpose that is, or purposes that are, specified in the agreement.

- (3B) Also, the body corporate mentioned in regulation 12.8.02 of the Corporations Regulations may refuse to give a person a copy of the part of the register for members of the body who hold member shares if the body is not satisfied that:
- (a) the person is a member of the body who intends to call a meeting of members, or of particular members, of the body; or
  - (b) the person proposes to use information obtained from that part of the register for a purpose that is approved in writing by ASIC:
    - (i) on its own initiative; or
    - (ii) on the written application of the person or of another person; or
  - (c) giving the person the copy is in the interests of the members as a whole.

*Note* If a body corporate has failed to give a person a copy of the part of the register for members of the body who hold member shares, the body corporate must, in certain circumstances, arrange for the members to be contacted, or for material to be sent to the members, on the person's behalf — see regulation 2C.3.01 of the Corporation Regulations.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 227**

Issued by the authority of the Parliamentary Secretary to the Treasurer

*Corporations Act 2001*

*Corporations Amendment Regulations 2007 (No. 9)*

Subsection 1364(1) of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed by regulations, or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Act.

Subsection 173(1) of the Act provides that a company or registered scheme must allow anyone to inspect a register kept under Chapter 2C of the Act. Subsection 173(3) of the Act provides that a company or scheme must give a person a copy of the register within seven days if the person asks for a copy and pays any fee required by the company or scheme. ASIC may also allow a longer period to comply with a request for a copy of the register.

Subsection 177(1) of the Act restricts a person from using information about a member obtained from a register kept under Chapter 2C to contact that member, or from disclosing information of that kind knowing that the information is likely to be used to contact or send material to that member. Subsection 177(1A) of the Act states that subsection 177(1) does not apply if the use or disclosure of information is relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to them, or if it is approved by the company or scheme.

Regulation 12.8.06 in the *Corporations Regulations 2001* (the Regulations) provides additional limitations in relation to access to a register of members of a body corporate that is mentioned in regulation 12.8.02. Specifically, the body corporate may require the person seeking access to agree in writing to certain matters, and the body corporate may also refuse to grant access in certain circumstances. Bodies mentioned in regulation 12.8.02 are transferring financial institutions of a State or Territory and companies that are permitted to use the expression 'building society', 'credit society' or 'credit union' under section 66 of the *Banking Act 1959*. The term transferring financial institution is defined in Part 1 of Schedule 4 of the Act.

The Regulations introduce a broad discretion for a body corporate mentioned in regulation 12.8.02 to refuse access to a register of members, where the body is not satisfied that granting access to the register is in the interest of the members as a whole. For example, security concerns may justify the refusal of access in circumstances where membership is concentrated in the defence or police sectors.

To facilitate communication about corporate governance issues, the Regulations introduce an alternative mechanism for persons seeking to communicate with the members of a body corporate mentioned in regulation 12.8.02. This mechanism will operate where a copy of the register has not been provided within 28 days of a person's request for a copy.

Further details on the mechanism are included at [Attachment A](#).

Details of the Regulations are set out in Attachment B.

Under the Corporations Agreement 2002, the State and Territory Governments referred their constitutional powers with respect to corporate regulation to the Commonwealth. Under subclauses 506(1) and 507(2) of the Corporations Agreement, the Commonwealth is required to consult with and receive the approval of at least three State and Territory Ministers of the Ministerial Council for Corporations (the Council) before making a regulation under the national law. The Commonwealth has received approval of the Council for the Regulations. In addition, under subclause 511(3), the Commonwealth is required to consult with the Council as to whether the Regulation should be exposed for public comment for between one and three months. The Commonwealth has received the approval of the Council to waive the public disclosure period for the Regulations.

The Council approved the Regulations. The Council also waived the requirement to expose the Regulations for public comment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Regulations commence on the day after they are registered.

**ATTACHMENT A**

The person seeking to communicate with members would, under the alternative arrangements, not obtain direct access to a register of members of the body corporate. Contact with members will occur via a third-party service provider (known colloquially as a ‘mailing house’) selected by the body corporate. The person seeking to communicate with members will be required to pay the costs of contacting members, or sending material to members, prior to the institution being required to make arrangements for this to occur. The person seeking to communicate with members will also be required to sign a statutory declaration indicating that they will only use information from the register of members for contacting members of the body, or sending material to members of the body, for a purpose that is relevant to the holding of the shares or the exercise of rights attaching to those shares, and in a way that does not contravene any law.

Once the costs of making contact are paid and a statutory declaration is signed and provided to the body corporate, the body corporate will be required to do everything that is reasonably possible to arrange for members to be contacted or for material to be sent to members. Where a body corporate has reasonable grounds for believing the person will use information from the register of members to contact members of the body, or send material to members of the body, for a purpose that is not relevant to the holding of the shares or the exercise of rights attaching to those shares, or in a way that contravenes any law, the body corporate would be able to refuse to arrange for contact to be made or for material to be sent to members.

The Regulations set out timeframes within which certain things must occur to facilitate communication with members of bodies corporate. A body corporate must provide a third-party service provider with details from its register of members within 14 days of a person paying the costs of sending material to, or making contact with, members. A body corporate must provide a copy of material that is to be sent to members within 28 days after the person provides the material to the body corporate. Where contact is to be made with members, written details of the contact to be made with members must be provided to the third-party service provider within 28 days of its receipt by the body corporate.

The third party service provider will be required to send materials to members, or contact members, within 14 days after receipt of the relevant material or details, respectively. It is intended that bodies corporate will write this requirement into contracts that are made with third-party service providers to satisfy the body corporate’s obligation to ensure that this occurs.

The Regulations made with a third-party service provider are to remain in place for a period of six months from the expiry of 28 days after a person is refused access to a register of members, or six months from the expiry of a longer period allowed by ASIC. Where a person seeks to contact members on a second or subsequent occasion, the time periods mentioned above, with the exception of the 28 day period allowed before arrangements are to be made, would apply to those subsequent communications. The person will also be required to pay the reasonable costs of contacting members, or sending material to members, prior to those actions occurring on a subsequent occasion. The body corporate would be able to terminate any arrangement, thereby preventing subsequent communication, if it has reasonable grounds for believing that the person will use information from the register of members to contact members of the body, or send material to members of the body, for a purpose that is not relevant to the holding of the shares or the exercise of rights attaching to those shares, or in a way that contravenes any law.

**ATTACHMENT B****Details of the Corporations Amendment Regulations 2007 (No. 9)****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Corporations Amendment Regulations 2007 (No. 9)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendment of *Corporations Regulations 2001***

This regulation provides that the *Corporations Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments****Items [1] to [3] – Dividing Chapter 2C of the *Corporations Regulations 2001* into three parts**

Items 1, 2 and 3 of Schedule 1 amend the Principal Regulations to create separate parts of Chapter 2C of the Regulations. Parts 1 and 2 would include the existing content of Chapter 2C of the Regulations, dealing with the definition of a prescribed financial market and the form of notice under subsection 172(2) of the *Corporations Act 2001* (the Act).

**Item [4] – Chapter 2C, after Regulation 2C.2.01 (as renumbered)**

Item 4 inserts a new Part 3 of Chapter 2C dealing with use of information on a register of members.

*Application of the new regulations*

Subregulation 2C.3.01(1) applies regulation 2C.3.01 if a body corporate mentioned in regulation 12.8.02 fails to provide a person with a copy of a register of members of the body who hold member shares within 28 days of the person's request for a copy (or a longer period if ASIC allows).

Subregulation 2C.3.01(6) will provide that the regulation will also apply in relation to requests for the register of members of a body corporate that is a company limited by guarantee, and the register of members of a body corporate limited by share and guarantee who do not hold shares in the body corporate.

*Conditions to be satisfied before the body corporate is obliged to make arrangements for contact to occur with its members*

Subregulation 2C.3.01(2) provides that, prior to the new communication mechanism being made available, the person seeking to communicate with members must make a statutory declaration addressing certain matters. The person must make a statutory declaration that they intend to use information from the part of the register of members who hold members shares for a purpose that is relevant to the holding of the shares or the exercise of rights attaching to those shares. While each situation would need to be assessed in light of the particular circumstances, examples of shareholder communications that would generally satisfy this requirement include communications intended to

provide advice in relation to a takeover or the election of a director, or intended to influence company management about the operation of a company.

The declaration under subregulation 2C.3.01(2) must also provide that the person intends to use information that is contained on the register in a way that does not contravene subsection 177(1A) of the Act or any other law. Examples of other laws that may be relevant here include laws in relation to misleading and deceptive conduct or defamation.

That subsection also requires that a person pay all reasonable costs of contacting members before the body corporate is obliged to make arrangements for contacting members or sending material to members. Once payment is made and a statutory declaration is provided, the body corporate must do everything reasonably necessary to arrange for communication to occur between the person and members (whether by contact or by sending material to members).

Subregulation 2C.3.01(3) will provide that, where a body corporate has reasonable grounds for believing the person will use information from the register of members to contact members of the body, or send material to members of the body, for a purpose that is not relevant to the holding of the shares or the exercise of rights attaching to those shares, or in a way that contravenes any law, the body corporate would be able to refuse to arrange for contact to be made or for material to be sent to members.

#### *Timeframes for communication to occur with members*

Subregulation 2C.3.01(4) will provide timeframes for the actions required to facilitate contact being made with members of a body corporate. Under paragraph 2C.3.01(4)(a) a body corporate would be required to provide details from its register of members to a third party service provider within 14 days after the person seeking to contact members pays the costs associated with that contact. Under paragraph 2C.3.01(4)(b) the body corporate would be required to provide a copy of any material to the third party service provider within 28 days after the material is provided to the body corporate. It is expected that this period might be utilised by bodies corporate to make a decision, and seek legal advice if necessary to inform a decision, about whether sending the material to members would breach any law. Under paragraph 2C.3.01(4)(d), the arrangements must require the material to be sent to members within 14 days of the body corporate providing the material to the third party service provider. It is expected that this period will provide sufficient time for the mailing house to organise and conduct a mail out.

Under the amendments, it is contemplated that, in some circumstances, contact might be made with members of bodies corporate having member shares by means other than the sending of paper documents to those members. Subregulation 2C.3.01(4) makes provision for such contact to be made with members via a third party service provider. Paragraph 2C.3.01(4)(c) requires written details of any contact to be made with members to be provided to the third-party service provider within 28 days after the body corporate receives such details. Paragraph 2C.3.01(4)(d) requires that any contact is made with members within 14 days of a third party service provider receiving such details. It is envisaged that the most common form of material to be used in this context will be telephone scripts that are used for making contact with members during an election for a position on the board of a body mentioned in regulation 12.8.02. Use of telephone scripts is currently common practice in the context of takeovers under Chapter 6 of the Act.

#### *Arrangements to be in place for a period of 6 months*

Subregulation 2C.3.01(5) requires that any arrangement made under the Regulation must remain in place for a period of 6 months. This is intended to allow repeated communications with members under the regulation. The requirement to pay the reasonable costs of any communications before



such communications occur continues to apply with respect to repeated communications with members. A person is not prevented from seeking to have new arrangements made after the expiry of the six month period.

Where a body corporate has reasonable grounds for believing the person will use information from the register of members to contact members of the body, or send material to members of the body, for a purpose that is not relevant to the holding of the shares or the exercise of rights attaching to those shares, or in a way that contravenes any law, the body corporate would be able to terminate any existing arrangement.

**Item [5] – Paragraph 12.8.02(b)**

Item 5 amends paragraph 12.8.02(b) to clarify that Part 12.8 of the Principal Regulations applies to Friendly Societies.

**Item [6] – Subregulation 12.8.06(3)**

Item 6 inserts a new subparagraph 12.8.06(3)(1AB)(c) into the Principal Regulations to allow a body corporate to refuse to allow a person to inspect the part of the register for members of the body who hold member shares if it is not satisfied that such inspection is in the best interests of members as a whole. This amendment is intended to provide a body corporate with a broader discretion to refuse to allow inspection of a register. The general presumption would be that any communication to members about corporate governance issues would be in the best interest of members on a whole. An example of where this presumption may be overturned is where the membership of a body corporate is concentrated in security-sensitive industries, such as police or defence. When such a discretion is used, the alternative method of communicating with members under subregulation 2C.3.01 will remain available.

**Item [7] – Subregulation 12.8.06(4)**

Item 7 inserts a new subparagraph 12.8.06(4)(3B)(c) into the Principal Regulations to allow a body corporate to refuse to give a copy of the part of the register for members of the body who hold member shares if it is not satisfied that would be in the best interests of members as a whole. This amendment is intended to provide a body corporate with a broader discretion to refuse to provide a copy of the register. The general presumption would be that any communication to members about corporate governance issues would be in the best interest of members on a whole. An example of where this presumption may be overturned is where the membership of a body corporate is concentrated in security-sensitive industries, such as police or defence. When such discretion is used, the alternative method of communicating with members under subregulation 2C.3.01 will remain available.