



HERBERT
SMITH
FREEHILLS

Submission to Senate Standing Committee on Economics Corporations Amendment (Modernisation of Members Registration) Bill 2017

1 Summary

This submission is made by the Head Office Advisory Team at Herbert Smith Freehills in relation to the Corporations Amendment (Modernisation of Members Registration) Bill 2017.

In summary, our comments in this submission relate to:

- concerns about the broad availability of members' email addresses and the risk of such information being misused through on-going unsolicited "campaigning" by external stakeholders;
- concerns that the collection of members' email addresses will, in essence, mandate a shift to electronic communications, overriding member preferences for printed material; and
- clarification of the obligation to include email addresses in the member register and relevant practical considerations.

2 Comments on the proposed amendment

While the use of email is a common form of modern communication, we are concerned about how this contact information could be used if recorded on the register of members under the proposed revisions to section 169(1)(a) *Corporations Act 2001* (Cth) (**Corporations Act**).

2.1 Access and use of emails

If members' email addresses are easily accessible by activists and other lobby or interest groups, they will be used to disseminate unsolicited "lobbying" material, which many members will consider to be excessive and inappropriate.

We are not aware of any retail member complaints about receiving printed material, provided it is clear that they have the option to opt-in to receiving electronic communications, if that is their preference.

While there are limitations and restrictions on the use of information obtained from the register in Part 2C.1 of the Corporations Act, in practice that will be particularly difficult to monitor and enforce.

In addition, the inclusion of members' email addresses on the register would in effect result in a mandatory shift to electronic communications with members, notwithstanding a member's preference to receive printed material. We do not think it is appropriate that the interests of external stakeholders take priority over the reasonable expectations of members.



HERBERT
SMITH
FREEHILLS

2.2 Obtaining / providing email addresses

The change to section 169 will also create logistical issues for the company / scheme about:

- how a company or scheme will mandate the provision of email addresses for members (and would also raise the issue of whether having an email address is a pre-requisite to becoming a member); and
- what would happen if a member does not have an email address or is unwilling to provide one.

3 Recommended approach

We question whether any change to section 169 is appropriate.

If the section is amended to require the inclusion of email addresses in the register, that requirement should be subject to the member first having been asked whether they would prefer all communications to be sent to them electronically and to be notified that their email address will be publically available on the register.

Further, there should be a transition period to allow sufficient opportunity for companies and schemes to provide members with the option to receive communications electronically and for the entity to process members' responses.

If you have any questions or comments on the above submission, please do not hesitate to contact Quentin, Anna or Danielle.

Yours sincerely,

Quentin Digby
Partner
Herbert Smith Freehills

██████████
████████████████████

Anna Coroneo
Senior Associate
Herbert Smith Freehills

██████████
████████████████████

Danielle McFarlane
Solicitor
Herbert Smith Freehills

██████████
████████████████████

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.