

Dissenting report by Senator Nick Xenophon

Out-of-office: How modern methods of communication can improve corporate transparency and accountability

1.1 The Corporations Amendment (Modernisation of Members Registration Bill) 2017 was introduced in response to concerns raised by CPA Australia members, in particular Mr Brett Stevenson, about governance failures within CPA Australia. I thank Mr Stevenson for his tireless work on this issue. For months has been agitating for greater transparency and openness on the way CPA Australia is run.

1.2 I also thank everyone who made a submission to this inquiry, and to the committee for its work and summary of the issues in its report.

1.3 Mr Stevenson's actions, along with many other like-minded members, have to date forced CPA Australia to provide disclosure of the remuneration of the management personnel; something that is required for publicly listed companies.

1.4 CPA Australia has a convoluted board appointment process whereby the members don't directly vote for the directors, their recent AGM was in Singapore and members have been forced to rely on powers under the Corporations Act 2001 (the Act) in order to get access to the members register to communicate with CPA Australia's 155,000 members.

1.5 The extraordinary decision made by the CPA to hold their AGM in Singapore was encapsulated by Senator Hume at the committee's public hearing on 5 September 2017:

There are plenty of companies based in Australia that have shareholders overseas—significant proportions of shareholders overseas. There are plenty of organisations—like, for instance, the Australian Institute of Company Directors—that would have a number of their director members also overseas. And yet they choose to hold their AGMs in Australia. I find this extraordinary: that you would consider—particularly at a time when you knew that your governance and your board were under scrutiny from members—holding an AGM in a different country.¹

1.6 The inquiry into this bill has highlighted not only the need to modernise the communication methods contained in the Act, but how these outdated methods impede members from holding organisations to account and ensuring a high standard of governance.

1.7 Contacting a large number of members by mail could cost hundreds of thousands of dollars when it could be done for free if email addresses were to be included on the register. The ability to contact large numbers of members at little to no cost would have a positive impact on the transparency of corporate entities in Australia.

1 Senator Jane Hume, Proof Committee Hansard, 5 September 2017, p. 3

1.8 The underlying principle of the bill is to allow for greater communication methods within the Act which will in-turn increase transparency and improve corporate governance. The underlying principle of the bill has been met with broad support from a number of stakeholders who made submissions to the inquiry. I do note the concerns that were raised from a number of submitters about the practical implications of the bill and potential unintended consequences. The committee's report outlines these in detail, including privacy concerns raised by a number of stakeholders.

1.9 While acknowledging these concerns, I do not consider the addition of an email address to the Members Register to pose any real risk to privacy. The Members Register currently contains a member's name and address which is arguably more intrusive than an email address. Concerns relating to cyberattacks are, in my view, overstated and distract from the benefits an improved communication framework within the Act would deliver in terms of improving corporate accountability and governance.

1.10 There is, however, merit in the concerns relating to the mandatory obligation and a lack of transitional arrangements which can be addressed with amendments. One suggestion is that the requirement for mandatory email addresses could be amended to ensure that it only operated where an email address had been provided to the organisation.

1.11 The bill could easily be amended to commence within six months of the date of receiving the Royal Assent which would give sufficient time for corporate entities to comply with the new obligation. Concerns regarding strict liability could be addressed if directors have a reasonable excuse as to why an email address has not been included on the register.

1.12 One suggestion to overcome the unintended consequences of the mandatory obligation was to amend the bill so that it only operated when an email address has been provided to the organisation.

1.13 The argument that there is an enormous amount of members that do not have an email address does not reflect the reality of corporate Australia in the 21st century. The use of traditional mail is in decline with email being the primary form of corporate communication.²

1.14 However, given the concerns raised by some submitters it is not unreasonable to allow for the limited exception of a member not having an email address. Therefore it is appropriate that the bill be amended to have regard to circumstances when an organisation does not have the email address of a member.

1.15 Finally, if the above arguments are not accepted, an alternative approach could be a third party distribution mechanism which may allow for communication through the member register but reduce the risk of information from the register being

2 *Digital Post: Business transformation and the future sustainability of Australia Post*, March 2015, <https://mckellinstitute.org.au/app/uploads/The-McKell-Institute-Digital-Post-March-2015.pdf> Accessed 10 September 2017.

misused. Such a mechanism would obviate the arguments made against this bill and would facilitate email communication through the members register.

Recommendation 1

1.16 That the bill be amended to include an exception which applies when an organisation does not have an email address of a member, and to commence within six months after the date of receiving the Royal Assent.

Recommendation 2

1.17 That the bill include on a transitional basis a third party distribution mechanism to facilitate email communication through the members register.

Recommendation 3

1.18 That the Government undertake a comprehensive review into the modernisation of communication methods under the *Corporations Act 2001*.

Recommendation 4

1.19 That, subject to the amendments outlined in Recommendation 1, the bill be passed.

Senator Nick Xenophon

Senator for South Australia

