Business Council of Australia

Submission to the Department of the Treasury on the Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014

MAY 2014

The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

About this submission

This is the Business Council of Australia submission in response to the Exposure Draft of the Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014.

The Corporations Law plays an important role in establishing the corporate governance framework applying to Australian businesses, which underpins an effective capital market. However, Australian businesses face a high cumulative compliance burden of corporate governance regulation. Every effort should be made to reduce unnecessary burdens while retaining high-quality governance, which can be a source of competitive advantage in increasingly globalising markets.

Key points

The BCA strongly supports the government's deregulatory agenda, with its focus on removing unnecessary costs and barriers to competition, while retaining essential community protections.

The consultation document for this Bill describes the proposed changes to the Corporations Act as minor, but the BCA considers they are important improvements that should be legislated as quickly as possible.

In summary, we support the key measures that:

- remove the '100-member rule' from the Corporations Act
- amend the test for the payment of dividends
- amend the remuneration report requirements.

The other proposed changes are, in our view, consistent with the government's aim to improve the efficient operation of the Corporations Law.

The BCA continues to advocate for the government to commission a study to quantify the cumulative compliance burden of corporate governance regulation in Australia.

Removal of the 100-member rule

Flaws in this current threshold have been widely recognised, and amendment of this provision is well overdue. For example, in 1999 the Parliamentary Joint Statutory Committee on Corporations and Securities concluded that 'the present provision for 100 members to requisition a meeting of the company is inappropriate and open to abuse'.[1]

The holding of an extraordinary general meeting can cost major companies, and thus their shareholders, up to $1 million. The current low threshold of shareholders required to call a meeting (less than 0.05 per cent of shareholders for many major companies), allows one group of shareholders to impose these additional costs on all the other shareholders of a company.

As long as the 100-member rule under section 249D remains in the Act, there will be impetus for groups to unreasonably exploit it. We note that successive Commonwealth Governments have been supportive of removing this rule but that past attempts to repeal this rule have been stymied by state attorneys-general who must vote on certain amendments to the Corporations Act under the referral of power from the states.

[1] Report on matters arising from the Company Law Review Act 1998, October 1999, para 15.16.

Removing only the 100-member rule under section 249D would still leave adequate protections for shareholders to participate in corporate governance. Shareholders can raise issues at scheduled annual general meetings. Moreover, under section 249D there would still be provision for members with at least five per cent of the votes, that may be cast at the general meeting, to request directors to call an extraordinary general meeting.

Amending the test for payment of dividends

The BCA supports the move to a pure solvency test for the payment of dividends. Creating a clear link to the consideration of solvency when paying dividends, and decoupling the dividends test from the accounting standards, will enable entities that have sufficient cash resources to pay dividends to their shareholders.

We would also support efforts to ensure greater consistency between the Corporations Act and the Income Tax Assessment Act in relation to the treatment of dividends for tax purposes.

Amending remuneration report requirements

The BCA supports the proposed amendments to remuneration reporting. These changes will assist in reducing the regulatory burden of this reporting, particularly by removing the obligation to report on unlisted disclosing companies.

However, these changes only address regulatory burden at the margin. The BCA continues to support the government commissioning a study to quantify the cumulative compliance burden of corporate governance regulation in Australia. This study would include analysis of remuneration reporting.

The extent of the burden on business and complexity for shareholders of the current requirements is reflected in the average length of remuneration reports for the top 20 ASX companies in 2012 being around 14,000 words. The considerable focus on remuneration disclosures is also reflected in the board's use of time, with an Australian Institute of Company Directors survey finding that almost 50 per cent of directors listed the remuneration report as among the most time-consuming disclosures for boards. There remain significant opportunities to simplify and streamline reporting, and reduce any overlap or inconsistency with ASX requirements, to make remuneration reports more useful for shareholders and other stakeholders while reducing the regulatory burden on businesses.

BUSINESS COUNCIL OF AUSTRALIA
42/120 Collins Street Melbourne 3000 T 03 8664 2664 F 03 8664 2666 **www.bca.com.au**

© Copyright May 2014 Business Council of Australia ABN 75 008 483 216
All rights reserved. No part of this publication may be reproduced or used in any way without acknowledgement to the Business Council of Australia.

The Business Council of Australia has taken reasonable care in publishing the information contained in this publication but does not guarantee that the information is complete, accurate or current. In particular, the BCA is not responsible for the accuracy of information that has been provided by other parties. The information in this publication is not intended to be used as the basis for making any investment decision and must not be relied upon as investment advice. To the maximum extent permitted by law, the BCA disclaims all liability (including liability in negligence) to any person arising out of use or reliance on the information contained in this publication including for loss or damage which you or anyone else might suffer as a result of that use or reliance.