

Dr Anthony Marinac
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Dear Dr Marinac

Draft Bill for Consultation – Corporations Amendment Bill (No. 2) 2005

The Finance Sector Union of Australia (FSU) welcomes the opportunity to contribute to the consultation process for the Corporations Amendment Bill (No. 2) 2005.

The FSU represents 60,000 members employed in the finance sector across Australia. Our interest in the proposed reforms stems from our members' interest in working in soundly managed, accountable companies and ensuring that shareholders can participate in corporate governance and general meetings.

FSU is itself a shareholder and more importantly, has an increasing number of members who own shares in the companies for which they work. In recent years FSU has been involved in the processes of shareholder participation consistent with the relevant Corporations Law provisions.

The FSU is broadly supportive of the proposed measures contained in the draft bill in so far as they promote shareholder participation, transparency and accountability.

Calling of a general meeting by directors when requested by members — section 249D

The FSU supports genuine and legitimate shareholder participation, including the right to call a general meeting, however, we understand that there must be some reasonable threshold that determines when this can occur.

The FSU is not strongly opposed to removing the 100 member rule, however, we suggest that there may be better ways to modify the general meeting rule. One option could be to retain the 100 member rule but introduce a requirement that all signatories must have held shares of a certain monetary value for at least 1 year prior to the general meeting request. This type of prerequisite would help to ensure that those members calling the general meeting had an ongoing and genuine interest in the company. The FSU submits this would be better than using a quantitative level of shares that may (potentially) be acquired overnight or may be onerous and prohibitive.

Members' resolutions for Annual General Meetings — section 249N & Distribution of members' statements — section 249P

The FSU supports the proposed amendment to paragraph 249N(1)(b) and paragraph 249P(2)(b) to reduce the number of members required from 100 to 20 to give a notice of a resolution for the AGM and distribute a statement to members with the notice of meeting. These measures will enhance shareholders' ability to fully participate in AGMs.

Electronic circulation of members' resolutions and members' statements — sections 249O and 249P

The FSU supports the amendments to allow for electronic distribution of members' resolutions and statements.

Use of proxy votes — subsections 250A(4) and 250A(5)

The FSU supports the proposed amendment to 250A(4)(d) to prevent 'cherry picking' by providing that when a proxy, who is not the chair, decides to vote on a poll they must vote all valid directed proxies as directed. This will help to ensure that proxies are validly exercised.

The FSU recognises that there may be some practical difficulties in extending a chairman's type obligation to vote all proxies at all times, however the FSU believes that such a measure could greatly improve shareholder democracy and should be pursued. The default position (in any democratic scenario) should be to maximise the number of valid votes that are cast and counted.

A simple test could be used to ensure that only people who were aware of their appointment as a proxy but failed to exercise it would be reprimanded. Such a test already appears to be one part of the proposed offence provisions in section 250A(5). This would help to maximise shareholder participation without inadvertently punishing members.

In addition, the FSU advocates that fund managers should not be allowed to leave their proxies undirected in relation to companies that they invest in. This is based on the principle that they have a fiduciary duty to pursue the best interests of their members by actively engaging in the companies they hold shares in.

Disclosure of proxy voting — subsection 250J(1A)

The FSU appreciates that the current subsection 250J(1A) may have some practical difficulties, but that the provision is very important and should be kept rather than removed.

Disclosure of how proxies are to be voted, in particular undirected proxies, is supported by the OECD¹ and the Business Council of Australia² and is an important element for ensuring transparency and accountability in relation to shareholder participation in AGMs.

¹ See *OECD Principles of Corporate Governance 2004*, Principle II – The Rights of Shareholders and Key Ownership Functions (section 4, page 35).

² See Business Council of Australia, *General Meetings Code of Conduct*, September 2003.

As mentioned above the FSU believes that all proxies should be compelled to vote, this would then remove one of the main difficulties with full disclosure of proxy voting.

If you have any questions in relation to this submission please contact Rod Masson (03) 9261 5330 or James Bennett (03) 9261 5321.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Paul Schroder', written on a light-colored rectangular background.

Paul Schroder
National Secretary

8 April 2005