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BILL TO REPEAL 100 MEMBER RULE TO REQUISITION A GENERAL MEETING

The Corporations Amendment (Deregulatory and Other Measures) Bill 2014 (the “Bill”) proposes to amend the ability of members of a company to call for a general meeting of members (amongst other matters). Currently section 249D of the *Corporations Act 2001* (the “Act”) requires that Directors of a company must call and arrange to hold a general meeting of members on the request of:-

(a) members with at least 5% of the votes that may be cast at the general meeting; or

(b) at least 100 members who are entitled to vote at the general meeting.

The Bill proposes to delete the alternative that 100 members may call for a general meeting. The main argument being that 100 is too low a threshold and can lead to unnecessary expense and agitation.

The Senate referred the Bill to the Senate Economics Legislation Committee for inquiry and report by 11 February 2015. Submissions close on 20 January 2015.

The Australian Institute of Company Directors (AICD) and the Governance Institute have both been long time advocates for the removal of the 100 member rule.

The AICD has advocated:-

“The removal of the “100 member rule” would provide a good example of the type of deregulation that would allow business to operate more efficiently, without compromising the fundamental rights of shareholders.

We note that the removal of the 100 member rule would not in any way diminish the existing right of 100 members to raise concerns about the company by requesting that:-

- *A resolution be placed on the agenda for a company’s general meeting (section 249N(1)(b) of the Act); and/or*

- *The company distributes statements to all of its members about a resolution or a matter that may be properly considered at a general meeting (sections 249P(2)(b) of the Act).*

It would also not diminish the right of 5% of members to requisition an extraordinary general meeting (section 249D of the Act), place resolutions on the agenda for the company's annual general meeting (section 249N(1)(a) of the Act) or request the company to distribute statements to all of its members (sections 249P(2)(a) of the Act).

We [AICD] consider that these provisions protect the rights of small groups of members to express their concerns. In our view, the need to encourage shareholder participation must be balanced against the need to manage the associated costs to the company and, therefore, the body of shareholders as a whole. The right of 100 members to call an extraordinary general meeting does not represent an appropriate balance. This is particularly the case when those who have called an extraordinary general meeting do not expect that the resolutions put forward at the extraordinary general meeting will carry.

The cost to the company of being required to call and convene an extraordinary general meeting can by some accounts range from $500,000 to over $1,000,000……"

The Governance Institute expresses similar sentiments:-

"Governance Institute has, for over a decade, led a campaign against the "100 member rule", which is open to abuse by special interest groups who threaten to call an extraordinary general meeting (EGM) between AGMs unless the company negotiates on marginal issues that do not have majority shareholder support.

This is a vexatious practice, as it can cost a large listed company such as Telstra many millions of dollars to hold an EGM – a cost to shareholders who do not support the issue of the special interest group.

Shareholder rights are not curtailed by removing the 100 member rule to call a general meeting, shareholders are not disempowered because the bill still allows for groups with 5% of the votes that can be cast to requisition an EGM – ensuring that there is a level of shareholder support before other shareholders are put to the cost of an EGM. Importantly, it also preserves the right of 100 members to put issues on the agenda of the Annual General Meeting (AGM) which is a central plank in a corporate governance framework."

Some proponents of the removal of the 100 member rule refer to special interest groups such as unions, environmental groups and advocacy groups such as GetUp! who have abused the 100 member rule to draw attention to labour standards, logging and poker machines against the financial interest of shareholders. See our article "Who Runs the Club – The Board/Committee or the Members?" particularly the section

under the heading "Woolworths Case". The Article is in our website. In the Woolworths Case GetUp! as appointed representative of a small number of shareholders sought to amend the Woolworths Limited Constitution to limit Woolworth's activity with poker machines. GetUp!'s resolution was lost when over 95% of votes were cast against the attempt to limit the poker machine activities.

On the other hand the Age (Melbourne) on 29th December 2014 reported a former Federal Court Judge as saying:-

> *"As an investor with diverse interests in listed public companies, an active shareholder who has participated in numerous general meetings of such companies….I have a wealth of knowledge and experience in relation to corporate governance issues. I strongly oppose the destruction of the significant shareholder right."*

It will be interesting to see the report of the Senate Economics Legislation Committee inquiries. Submissions can be made to:-

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Note: For charities that are companies limited by guarantee and registered with the Australian Charities and Not-for-profits Commission (ACNC) section 249D of the Act does not apply. Section 111L of the Act sets out certain provisions that do not apply to ACNC registered charities which include section 249D. These provisions have been colloquially "turned off". The matter is currently determined by the ACNC Governance Principles and the charity's constitution. This will be the subject of a further article.

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