



OFFICE OF REGULATION REVIEW

INDUSTRY COMMISSION

Corporations Law
Simplification Task Force
Attorney-General's Department
BARTON ACT 2600

Attention: Mr Ian Govey

Company Meetings — Proposals for Simplification

The Office of Regulation Review (ORR) offers the following comments on the Company Meetings element of the Corporations Law Simplification Program. The ORR submission on Accounts and Audit proposals (1 February 1995) for simplification provides an overview of the role of the ORR and highlights our goals in seeking to assist the simplification Task Force.

Of the 14 specific proposals regarding Company Meetings made by the Task Force, the ORR offers comments specifically on six: Proposals 4, 5, 6, 7, 9 and 13.

Some general themes and principles for good regulation making run through the following comments. These include:

- regulations should be flexible, allowing for future contingencies, such as the introduction of new technologies;
- regulations should seek to redress market failure in the provision of information, where the benefits — such as the provision of sufficient information to allow shareholders to make informed judgements — exceeds the costs of the provision of such information; and
- there is a presumption against regulations, unless it can be shown that regulations produce net benefits which exceed those that could be derived from alternatives to regulation.

The ORR's submission of 1 February 1995 on 'Accounts and Audit' drew attention to such general principles.

Proposal 4: A company will be able to hold a general meeting at 2 or more venues using any technology that gives members attending the meeting a reasonable opportunity to hear and be heard (eg speaker telephones for small propriety companies, video-conference).

The term 'hear and be heard' has not been defined and is unclear. Does it mean that only technologies that allow verbal exchange of information will be allowed? Does this proposal exclude the use of other forms of non-verbal communication technology, such as e-mail etc? Does 'hear and be heard' discriminate against certain shareholders, such as persons who are deaf, by making it more difficult to participate in general meetings?

The ORR suggests that the goal of any such regulation should be to allow all shareholders to communicate using any generally accepted, accessible and effective technology, and should not be confined to audio technologies. Such modification to Proposal 4 would also conform to the stated goal of the Task Force of 'allowing for technological developments' (p.2).

Proposal 5: The chairperson of a general meeting must allow a reasonable opportunity for members at the meeting to question, discuss or comment on, the management of the company.

Issue 5(a): Should members be able to pass advisory resolutions concerning the management of the company, as in New Zealand and Ontario?

Shareholders can incur costs in exercising control over a company. These include the cost of:

- becoming informed about the operations of a firm;
- communicating among themselves to exchange information; and
- collective decision making to inform management of their views and opinions.

Such costs can be large and can vary substantially, according to the individual characteristics of firms, including its size, geography and number of owners etc. These costs comprise a component of total operating costs of firms and thus, impact on the competitiveness of Australian companies.

This proposal could enhance the transmission of information between the owners of a firm (the shareholders) and managers, without increasing the costs of ownership. Therefore, the ORR agrees with the proposal that shareholders be given the right to pass advisory resolutions.

Issue 5(b): Should members be able to ask questions of the auditors about their report to members?

Issue 5(c): If so, Should questions be restricted to any qualification in the report? Should the auditor be required to attend annual general meetings?

As cited in detail in the ORR submission dealing with Proposal 11 of Accounts and Audit, the ORR believes that one goal for regulations should be to reduce the expectation gap between what the public expects auditors to do and what auditors

actually do. As discussed in that submission, the ORR suggests that consideration could be given to requiring auditors to attend annual general meetings and that they be required to answer questions relevant to the financial status of the company, including issues raised in the Directors' report, their audit report and the methodologies employed by the auditors. The goal of this regulation would be to enhance shareholder information about the financial status of the company.

However, the ORR recognises that auditors should not be required to answer questions dealing with commercially sensitive or strategic information, or matters outside the ambit of the role of the auditor. Thus, regulations should ensure that auditors not be required to answer questions outside their direct area of responsibility.

Proposal 6: A member of a company (whether public or propriety) may be represented at a meeting by a proxy appointed in writing (article 54).

Issue: Should the law include a model proxy form?

As previously discussed, the ORR promotes the principle that there should be a presumption against regulations, unless it can be clearly shown that given regulations yield net benefits which exceed those that might be derived from alternatives to regulation, such as voluntary codes of conduct etc.

The use of proxy forms is both a common and simple process. The ORR believes that specification of a model proxy form is likely to yield no additional net benefits and would unnecessarily add to the volume and complexity of the corporations law. In any case, a model proxy form would have difficulty in catering for restricted proxies (eg. limited to voting on particular resolutions etc)

Proposal 7: A vote given by a proxy will be valid even if the proxy form has not been witnessed, despite anything in the company's articles.

The advantages derived from a requirement that proxy forms be witnessed are unclear. The ORR therefore agrees with the proposal that proxy forms be valid where they have not been witnessed.

Proposal 9: Public companies will no longer have to hold a statutory meeting, or prepare a statutory report, after allotting shares under their first prospectus (section 244).

A prospectus provides information to potential investors and shareholders. It is unlikely that a statutory meeting or a statutory report issued after the allotment of shares under the first prospectus, would yield useful additional information, because investors will have already made their decisions. Therefore, the ORR supports this Task Force proposal.

Proposal 13(q): The rules about general meetings will cover the following matters: Notice of a general meeting may be given to members by giving it to them personally, pre-paid post addressed to the member or any personal representative appointed to administer the member's affairs (article 95).

Issue: Should a company be able to give notice by any other means (eg by fax or e-mail)?

As discussed under Proposal 4, the goal of regulation should be to allow all members to communicate using any generally accepted, accessible and effective technology. In this case members could simply be given the right to choose the mode of communication, from existing and generally used communication technology. Making such provisions also would conform to the stated goal of the Task Force of 'allowing for technological developments' (p.2).

The contact officer for these matters is Dr. Stephen Rimmer whose contact telephone number is 264 3897.

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