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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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CORPORATIONS AMENDMENT (PROXY VOTING) BILL 2012

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EXPLANATORY MEMORANDUM

(Circulated by the authority of the  
Parliamentary Secretary to the Treasurer, the Hon Bernie Ripoll MP)



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## ***Table of contents***

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|   |   |
|---|---|
| Glossary .....  | 1 |
| General outline and financial impact.....                         | 3 |
| Chapter 1      Schedule 1 – Amendments.....                       | 5 |
| Chapter 2      Statement of Compatibility with Human Rights ..... | 7 |
| Index.....  | 9 |



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## ***Glossary***

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

| <b><i>Abbreviation</i></b> | <b><i>Definition</i></b>                        |
|----------------------------|---|
| AGM                        | Annual general meeting                          |
| Corporations Act           | <i>Corporations Act 2001</i>                    |
| Bill                       | Corporations Amendment (Proxy Voting) Bill 2012 |
| KMP                        | Key management personnel                        |
| RIS                        | Regulation Impact Statement                     |



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## ***General outline and financial impact***

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### **Outline**

The Bill amends the *Corporations Act 2001* (the Corporations Act) to clarify that the chair of an annual general meeting can vote undirected proxies in a non-binding shareholder vote on remuneration where the shareholder provides express authorisation.

***Date of effect:*** The day after the Act receives the Royal Assent.

***Financial impact:*** The Bill has no significant impact on Commonwealth expenditure or revenue.

***Human rights implications:*** This Bill does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraph 2.5.

***Compliance cost impact:*** Nil.

### **Summary of regulation impact statement**

#### **Regulation impact on business**

***Impact:*** As this amendment is machinery in nature, a Regulation Impact Statement is not required (Office of Best Practice Regulation Reference 2012/13835).





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# Chapter 1

## Schedule 1 – Amendments

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### Context of amendments

1.1 Currently, the *Corporations Act 2001* (Corporations Act) requires listed companies to prepare a remuneration report, and put the report to a non-binding shareholder vote at the annual general meeting.

1.2 During 2011, the Government enacted reforms to prohibit key management personnel (KMP) from voting in remuneration resolutions, although it provided an exception where shareholders give an undirected proxy to the chair of an annual general meeting, and the shareholder provides their informed consent for the chair to exercise the proxy. This exception for the chair is contained in subsection 250BD(2) of the Corporations Act. Some confusion has arisen as to whether this exception applies in respect of the non-binding vote required under section 250R.

### Summary of new law

1.3 The new law clarifies that the chair of an annual general meeting, who is a member of the KMP or a closely related party of a KMP, is able to vote undirected proxies in the non-binding vote where the shareholder provides their express authorisation for the chair to exercise the proxy.

### Comparison of key features of new law and current law

| <i>New law</i>  | <i>Current law</i>   |
|---|--|
| The new law clarifies that a chair of the meeting, who is also a KMP or a closely related party of a KMP, is able to vote undirected proxies in the non-binding vote if the shareholder provides express authorisation for the chair to exercise the proxy. | KMP and their closely related parties are able to vote undirected proxies on remuneration related resolutions when they are the chair of the meeting and the shareholder has expressly given their informed consent, under section 250BD. However, there is uncertainty as to whether the exception for the chair applies to the non-binding vote required under section 250R. |

## **Detailed explanation of new law**

1.4 Under subsection 250R(4) of the Corporations Act, a KMP or their closely related party must not cast a vote in the non-binding resolution on the remuneration report. However, the Corporations Act provides an exception to this requirement, under subsection 250BD(2), where a shareholder gives an undirected proxy to the chair and the shareholder provides their express authorisation for the chair to exercise the proxy.

1.5 However, confusion has arisen over whether this exception applies in respect of the non-binding vote required under section 250R, which was silent on the exception for the chair.

1.6 For the avoidance of any doubt, the new law clarifies this issue by stating that the chair of an annual general meeting, who is a member of the KMP or a closely related party of the KMP, is able to vote undirected proxies in the non-binding vote required under section 250R where the shareholder provides express authorisation for the chair to exercise the proxy. *[Schedule 1, Item 1, subsection 250R(5)]*

## **Application and transitional provisions**

1.7 The Act commences on the day after this Act receives the Royal Assent.

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## **Chapter 2**

# **Statement of Compatibility with Human Rights**

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**Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

### **Corporations Amendment (Proxy Voting) Bill 2012**

2.1 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

2.2 The *Corporations Act 2001* (Corporations Act) requires listed companies to prepare a remuneration report, and put the report to a non-binding shareholder vote at the annual general meeting.

2.3 The Government has enacted reforms to prohibit key management personnel (KMP) from voting in remuneration solutions, although it provided an exception where shareholders give an undirected proxy to the chair of an annual general meeting, and the exception for the chair is contained in subsection 250BD(2) of the Corporations Act. However, some confusion has arisen as to whether this exception applies in respect of the non-binding vote required under section 250R.

2.4 The purpose of the Bill is to clarify that the chair of an annual general meeting, who is a member of the KMP or a closely related party of a KMP, is able to vote undirected proxies in the non-binding vote where the shareholder provides their express authorisation for the chair to exercise the proxy.

#### **Human rights implications**

2.5 This Bill does not engage any of the applicable rights or freedoms.

**Conclusion**

2.6 This Bill is compatible with human rights as it does not raise any human rights issues.

**The Hon Bernie Ripoll MP, Parliamentary Secretary to the Treasurer**

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# ***Index***

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## **Schedule 1: Amendments**

| <i>Bill reference</i>      | <i>Paragraph number</i> |
|----------------------------|-------------------------|
| Item 1, subsection 250R(5) | 1.6                     |

