



26 August 2015

General Manager
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: smallptycompanies@treasury.gov.au

Dear Sir

**PEAK CARE EQUIPMENT PTY LTD
REDUCING COMPLIANCE COSTS FOR SMALL BUSINESSES**

On behalf of our client, Peak Care Equipment Pty Ltd ACN 121 552 672, thank you for the opportunity to make a submission on reducing compliance costs to small business.

Submission

This submission relates solely to the shareholder limit of proprietary companies.

Our client seeks an increase of that limit to 100.

In addition, we request a change to the definitions of a small proprietary company and large proprietary company or, alternatively, changes to the regulations so that the benefit of the increase in shareholding limit is not eroded by consequential increases to revenue or assets.

Basis for submission

As was identified by the parliamentary joint committee on corporations and financial services in the “*Better shareholders – Better company*” report of June 2008, we agree with the view formed by that committee that increasing the limit to 100 shareholders would not have any deleterious regulatory consequence. Accordingly, we endorse the recommendation that section 113 of the *Corporations Act* be amended to raise the limit for shareholders in a proprietary company to 100.

LAWYERS

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In response to the specific questions posed at 4.2 of the consultation paper:

1. We submit the law be amended to increase the permitted number of non-employee shareholders in a proprietary company and suggest that the appropriate limit is 100.
2. The benefits of the change would include the ability to welcome more shareholder members within the Peak Care Equipment buying group. We understand the Treasury submission to the “*Better shareholders – Better company*” paper from June 2008, stated that any risk to shareholder protection may be addressed by ensuring that shareholders retain effective mechanisms to examine the affairs of the company and to voice concerns to the company and its management.

We do not believe that 100 shareholders is such a diverse and remote group of shareholders that an individual shareholder cannot effectively monitor directors and management or ensure that their voice is heard at times more frequent than the general meetings.

3. We do not comment on the broader market or operating environment, however, our client ensures that all its member shareholders have access to management and information on a continuing basis. Electronic communications ensure information may be disseminated to membership promptly as and when required, despite the broad geographic spread of its membership.
4. We not make any comment on how the law should treat public companies which become eligible to be registered as proprietary companies but have issued shares under a disclosed document.

Information about Peak Care Equipment

Our client is a company whose objects are to provide a buying group for shareholders who are persons operating businesses within the healthcare industry.

By and large, the businesses of our client’s shareholders supply people healthcare products, medical devices, equipment and assistive technologies. In addition, our client assists its members improve their respective businesses. It provides information and assistance to members through setting codes of conduct reflecting a philosophy of care and support for customers. This occurs within a framework of the highest standard of professional service and legal compliance.

Our client is in some respects a hybrid corporate structure. It incorporates the objectives that one would ordinarily associate with a not for profit member based public company limited by guarantee but within a proprietary limited structure.

Our client has been motivated to adopt such a structure for some of the reasons that have been explored in the paper by Senator Andrew Murray titled “*A proposal for simplifying the legal form and regulation of small for-profit businesses and not-for-profit entities*” April 2008.

Effect of current regulatory environment

Our client currently has 44 shareholder members. Each one of the shareholders operates their own retail business. In the financial year to 30 June 2015 its consolidated revenues were \$19.66m, its consolidated gross assets were \$2.2m.

Accordingly, it is currently a small proprietary company for the purposes of the *Corporations Act*. However, once the number of shareholders exceed fifty (50), ASIC will require it to change to a public company with the consequential associated increase in reporting and disclosure requirements. Such increase reporting and disclosure will result in an increase in direct costs.

As a buying group, our client has a margin of 3.5% which equates to a gross profit of about \$700,000. It has nine (9) fulltime employees and the cost of compliance with the requirements placed upon an unlisted public company would be substantial having regard to its profitability and existing business overheads.

It is not at all clear that there will be any effective or increased benefit to shareholders as a result of becoming an unlisted public company.

Our client estimates the direct cost of the additional compliance requirements that would be imposed on becoming a public company at \$10,000 per annum. In our estimation that is a conservative estimate for the additional reporting and disclosure requirements.

As a result, the board has deliberately restricted the addition of new shareholders. In the year to 30 June 2015, we are instructed that the company rejected eleven (11) expressions of interest from retailers seeking to join Peak Care. The board recognises that the practice of rejecting new members restricts its growth and does not serve to enhance its buying power. However, when working on such thin margins the company needs to recoup, in additional sales, a ratio of 30:1 any cost incurred in the business. Therefore, compliance costs of in excess of \$10,000 per annum will require additional revenues of at least \$300,000 to break even on direct costs.

The indirect costs of management time would also be an additional burden and are not necessarily immediately quantifiable.

Yours faithfully

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