



MEMO

To: Board of Directors

From: Company Secretary

Subject: **COMPANY SECRETARIAL SERVICES – PROPRIETARY COMPANY**

You have enquired about providing company secretarial services, and the cost thereof, to an unrelated proprietary limited company.

However, before I can begin to answer your question (on the likely annual costing) I have a number of questions for which I will need answers to assist me in providing a response.

In summary, the main question is: what services am I to provide and how much time do you consider will be required of me to perform those services?

To be more specific, below are some points/issues on which I would like a response before I can consider quoting.

1. You mention this is a subsidiary, so:

- (i) what sort of company is the parent (Australian public, unincorporated body, foreign entity, etc) – which might make a difference to the Company Secretary's work
- (ii) is this a subsidiary of a foreign company (and does the parent company lodge financial statements in Australia)
- (iii) is the subsidiary a large or small proprietary company.

If the Pty Ltd company is foreign controlled and/or a large Pty company then it may be required to lodge annual financial statements, so this would involve more work for the Company Secretary.

2. How many board meetings are held each year and how long do they go for. I am located in Brisbane, so would travel be required for board meetings and/or other reasons (eg attend to updating/filing statutory records and registers).

3. How many shareholders are there and how often do changes occur in the Register of Members – which would also require more frequent lodgements with ASIC.

Plus, if there are more than 50 shareholders (eg including employees) the company will be subject to the takeover provisions which may require more diligent involvement of the Company Secretary.



Also, if there is an Employee Share Option Plan this too could add further work to the Company Secretary's role.

4. Will they want me as the appointed Company Secretary, or do they just expect me to provide company secretarial services (which could only be undertaken with an indemnity to ensure I was protected – to the extent legally possible – from any Corporations Act obligations on a Company Secretary just because I was doing the work).

5. Am I required to also provide a registered office, or share registry, for the company.

6. What duties are required of the Company Secretary. Typical duties and responsibilities are set out in the table below.

7. In addition to the above, if I was to consider taking on this role I would wish to undertake appropriate due diligence on the company beforehand and, as part of my initial assignment, review current statutory records and registers and provide the board with details of any matters that require attention/action.

8. So, I look forward to your response. And, to assist in the board's consideration of using my services/appointing me as Company Secretary I advise some personal background in the following paragraphs.

I established Australian Company Secretary Service in 1998 to provide the services of a qualified specialist Company Secretary to corporations ranging from small private (proprietary) companies to stock exchange listed public companies.

Since then my clients have included numerous small and large proprietary companies, foreign subsidiaries, many different stock exchange listed companies – some of which I have also been a director – and a number of unlisted public companies, several of which have been 'start-ups' – in a diverse range of industries.

I have qualifications in commerce and accounting and have also been a presenter in company secretarial practice at Chartered Secretaries Australia and Institute of Chartered Accountants courses and have been a state councillor of CSA.

Consequently, I am conversant with not only the legislative and regulatory environment but the practical aspects of the company secretarial function as well. This has enabled me, for my client companies, to establish appropriate corporate records and registers, put in place compliance systems and procedures, attend to administrative functions and other statutory requirements, handle all board meeting and related matters, as well as assist directors in their duties and responsibilities including in relation to good corporate governance.



COMPANY SECRETARY

DUTIES & RESPONSIBILITIES

PROPRIETARY COMPANY

A. Perform the duties and responsibilities of a Company Secretary as required by the Corporations Act, the Company's Constitution, and any other relevant legislation or regulation

- ensure that the Company complies with its statutory obligations under any relevant laws and regulations – particularly the Corporations Act
- statutory records
 - maintain registers
 - ensure requisite retention of documents and records
- ensure completion and lodgement of statutory forms/returns and reporting under the Corporations Act and any other relevant legislation/regulation, including:
 - annual accounts (if Large Proprietary or Foreign Controlled company)
 - annual return
 - change in Directors, secretaries, office locations
- Board meetings
 - arrange/co-ordinate
 - set agenda
 - compile and circulate papers to Directors prior to meetings
 - take minutes
 - initiate and direct action to give practical effect to decisions
- record declarations/conflicts of interest of Directors – including in relation to securities (if any) held in the Company
- have custody of the Common Seal and record usage
- assist with/attend to signing of contracts and other documentation in connection with administrative matters
- ensure adherence with the Company's Constitution (or Replaceable Rules)
- carry out other functions, if any, required of the Company Secretary by the Constitution
- assist the Chairman and Directors in the conduct of meetings and their directorial and governance obligations and responsibilities

B. Carry out other duties related to the corporate administration of the Company

- establish a timetable of corporate actions required during the year pursuant to Corporations Act
- prepare a company secretarial report to the Board's meetings covering such areas as:
 - share/shareholder/member statistics & movements in Register
 - ASIC filings
 - Directors' interests
 - usage of Common Seal/contracts signed



- changes in applicable laws/regulations
 - corporate governance
 - prepare charters for committees
 - write briefing papers
 - arrange meetings
 - take minutes
 - annual accounts, where applicable
 - assist with compilation
 - provide information for Directors' Report & Notes
 - ensure timely lodgement with ASIC
 - annual report, where applicable
 - prepare sections covering ASIC requirements
 - generally assist with compilation
 - arrange distribution to shareholders/members
 - general meetings, where applicable
 - arrange Annual General Meeting (and any other extraordinary general meetings)
 - give due notice
 - prepare agenda
 - compile briefing notes for Chairman to conduct meeting
 - manage proxy votes, corporate representatives
 - take minutes
 - guidance to Directors and management on various matters such as:
 - Corporations Act
 - trade practices/consumer laws
 - privacy legislation
 - environmental matters
 - workplace, health and safety
 - employment laws
 - superannuation
 - insurance
 - accounting standards
- to the extent not otherwise provided by professional advisers
- prepare a corporate governance/policy manual for Directors/ management
 - maintain members/shares/options registers (&/or liaison with external registry)
 - manage dividend payments (where shares issued)
 - arrange issuance, allotment, notification under Corporations Act of shares & issues pursuant to option plans (where applicable)
 - member/shareholder relations/enquiries
 - liaise with accountants, lawyers and other professional advisers in relation to various corporate matters
 - other matters as reasonably required by Directors from time to time

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.