COMPANY + SHAREHOLDER DIALOGUE

FRESH APPROACHES TO COMMUNICATION
BETWEEN COMPANIES AND THEIR SHAREHOLDERS

A DISCUSSION PAPER

Business Council of Australia

In conjunction with:

AUSTRALIAN INSTITUTE OF COMPANY DIRECTORS

Professionalism in Directorship

CHARTERED SECRETARIES AUSTRALIA

Keeping good companies

COMPANY + SHAREHOLDER DIALOGUE

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GLOSSARY AND ABBREVIATIONS

AGM Annual General Meeting

AICD Australian Institute of Company Directors

ASA Australian Shareholders' Association

ASX Australian Stock Exchange

BCA Business Council of Australia

CLERP 9 Corporate Law Economic Reform Program (Audit Report & Corporate Disclosure) Act 2004

CORPORATIONS ACT Corporations Act 2001

CSA Chartered Secretaries Australia

MARKETABLE PARCEL The number of shares which have a value of at least $500, where the value of each share is at the closing price on a trading day.

FOREWORD

This Discussion Paper has been prepared by the Business Council of Australia's Chairmen's Panel, the Australian Institute of Company Directors and Chartered Secretaries Australia. In preparing the Paper, the Australian Shareholders' Association was consulted, however, the views expressed in this Paper remain those of the author organisations.

The Paper aims to be a catalyst for companies to examine their communication practices, by discussing a range of innovative and alternative approaches being adopted or considered by leading companies to improve communication with shareholders.

Business Council of Australia

The Business Council of Australia (BCA) is an association of Chief Executives from leading Australian corporations with a combined national workforce of more than one million people.

It was established in 1983 to provide a forum for Australian business leadership to contribute directly to public policy debates in order to build a better and more prosperous Australian society.

The BCA Chairmen's Panel is a group of leading Chairmen and Directors that assists the BCA with its policy program. The Panel members are:

Mr Don Argus AO
Mr David Gonski AO
Ms Margaret Jackson AC
Mr Graham Kraehe AO
Ms Helen Lynch AM
Mr Hugh Morgan AC
Mr Maurice Newman AC
Mr John Ralph AC
Dr John Schubert
Mr Dick Warburton

The members of the BCA Chairmen's Panel support the approaches discussed in this Paper in general terms and will apply these or similar approaches, depending on the circumstances of their companies.

More information about the BCA is available from www.bca.com.au

Chartered Secretaries Australia

Chartered Secretaries Australia (CSA) is the peak membership body for governance professionals in Australia, representing more than 8,000 members in the private, public and not-for-profit sectors. Established by Royal Charter in 1902, CSA is the Australian Division of the only global association for governance professionals, with over 46,000 members on five continents.

CSA's mission and strategic focus is the promotion and advancement of effective governance and administration. CSA achieves this by being the authority and leading advocate on and the pre-eminent provider of technical information and support in best practice governance and administration.

For professionals genuinely determined to implement sound governance principles and practices, CSA is the preferred provider of accredited education and lifelong learning in governance and administration.

Australian Institute of Company Directors

The Australian Institute of Company Directors (AICD) is the peak body for directors, offering board level professional development, director specific information services and representation of directors' interests to government and the regulators.

AICD holds a unique leadership position in the Australian business community, representing the collective voice of over 18,500 company directors. Distinguished by its strong national and international links with government, regulators and similar peak groups, AICD is recognised as a significant force in shaping business regulation and practice in Australia.

AICD represents directors at all levels of enterprise, from the family owner-operator to the large corporations of Australia across public, private, government and not-for-profit sectors. Through its various committees, AICD produces submissions and policy papers which are the key to lobbying government departments and regulators on directors' interests.

The authors wish to express their appreciation for the support they received from Blake Dawson Waldron in preparing this Discussion Paper.

EXECUTIVE SUMMARY

Most Australians are shareholders in major corporations, either directly, through investment funds or through their superannuation. This spread of shareholding across the Australian community, combined with the recent downturn in global and Australian share markets, has led to an upsurge in scrutiny and questioning of company, Board and executive performances.

After a long 'bull market,' many Australian shareholders have recently experienced their first sustained losses or negative growth. At the same time, market pressure has resulted in some corporate collapses, revealing flawed business strategies and dubious or dishonest corporate behaviour. Shareholders, the wider community and our politicians have questioned the quality of Australia's corporate governance and demanded reform to rebuild trust in the corporate sector.

Improving communication is a vital initial step towards rebuilding that trust and reinforcing the quality of our corporate and market systems and practices. Improved communication between companies and their shareholders, particularly their retail shareholders, is essential if the wider community is to be convinced that the vast majority of company Directors and executives are highly-skilled and competent individuals focused on growing the wealth of shareholders.

This Paper aims to be a catalyst for companies to examine their communication practices, by discussing a range of innovative and alternative approaches to improving communication with shareholders, so that shareholders are truly able to make better and more informed investment

decisions. It is hoped that the Paper also gives other commentators, including those in Parliament and the media, a clearer understanding of how companies engage with their shareholders and the issues that typically arise.

The Paper sets out the current requirements for shareholder communication and explores different approaches and initiatives that build on the current requirements.

Some of the new approaches canvassed in this Paper include:

- asking shareholders in advance to identify those issues that they wish to see discussed at the annual general meeting;
- placing issues identified by shareholders formally on the agenda of the annual general meeting;
- holding regular 'shareholder meetings' to supplement annual general meetings;
- reforming the requirements for shareholder initiated general meetings and resolutions;
- improving the use of proxies and how proxy votes are disclosed at annual general meetings;
- improving the conduct of annual general meetings and the opportunities for shareholder participation;
- having the heads of Board committees available to answer shareholder questions on issues for which their committee is responsible, or alternatively, having the heads of Board committees provide shareholders with a short presentation on their area of responsibility;
- establishing and implementing 'Shareholder Communications Policies'; and
- increasing the use of electronic media for communications between companies and their shareholders.

Which of these is appropriate to a particular company will depend on that company's circumstances, including the nature and interests of its shareholders and the issues they raise with the company. Therefore, it cannot be assumed that any particular approach is suitable in all or even a majority of cases. Companies are also encouraged to find their own approaches to improving the communications between the company and its shareholders.

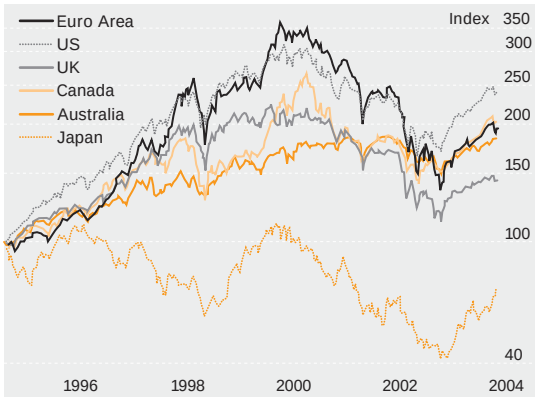
INTRODUCTION

Over the past few years, Australian listed companies have been under intense scrutiny over their financial performance, corporate governance and relationships with shareholders and the broader community. Much of this scrutiny has been against the backdrop of a prolonged decline in Australian and international share markets and well-known corporate collapses, malfeasance and mismanagement. At the same time, the high number of Australians who directly own shares, and the even greater number with an interest in the share market through the performance of superannuation funds, have watched the strong returns enjoyed before 2002 turn into low or negative returns in late 2002 and into early 2003.

Despite this criticism, Australian companies, their executives and employees have performed strongly over the past decade, producing sustained results and returns for their shareholders. Over the period 1994 to 2004, the Australian share market has performed strongly, while avoiding the heady growth and dramatic collapses experienced in the United States and Europe.

Today, Australia's largest companies provide jobs for nearly one million Australians, including a quarter of a million in rural and regional areas.[1] Company revenues exceed $300 billion annually and these companies account for over a third of all new business investment. Large companies also generate a substantial share of total output, profits and tax revenue in Australia. Strong growth in corporate tax revenue over the past two years, for example, has helped the Federal Government produce larger than expected Budget surpluses. In addition, a recent study by the Australian Stock Exchange (ASX), found that 75 per cent of investors surveyed believed that the Australian share market is well regulated, up from 64 per cent in 2002.[2]

MAJOR COUNTRIES' SHARE PRICE INDICES
LOG SCALE, DECEMBER 1994 = 00



Source: Bloomberg, Thomson Financial
(Chart by Reserve Bank of Australia)

Despite strong performance in many companies, the recovery of the Australian share market and the fact that the strategies and systems of the vast majority of major corporations have weathered the recent share market downturn well, shareholders remain uneasy about the performance and governance of many companies. Shareholders, companies, politicians and others are also looking for reforms that can help avoid some of the corporate mistakes, malfeasance and mismanagement that did occur in the past few years.

1 FIGURES BASED ON MEMBER COMPANIES OF THE BUSINESS COUNCIL OF AUSTRALIA. BCA, THE COMMUNITY OF BUSINESS – THE ROLE OF THE CORPORATION IN AUSTRALIA, FEBRUARY 2004.
2 ASX 2003 AUSTRALIAN SHARE OWNERSHIP STUDY, FEBRUARY 2004.

A key to these reforms will be improved communication between companies and their shareholders, and, in particular, between large companies and their retail shareholders. Better communication is a vital first step towards rebuilding broad community trust in the robustness of Australia's corporate sector and reinforcing the quality of our corporate and market systems and practices.

The aim of this Paper is to identify ways of improving the quality of communication between companies and their shareholders. The suggestions in this Paper should not be seen as the only or even preferred way for all companies to communicate and engage with their shareholders. Rather, the suggestions are offered to encourage companies to consider how their communications might be improved. Companies are also encouraged to develop their own innovative and effective approaches to shareholder communication that suit the circumstances of the shareholders and company. The Paper has been prepared by the Business Council through the BCA Chairmen's Panel, the Australian Institute of Company Directors and Chartered Secretaries Australia. The Members of the BCA Chairmen's Panel support the approaches discussed in this Paper in general terms and will apply these or similar approaches depending on the circumstances of their companies.

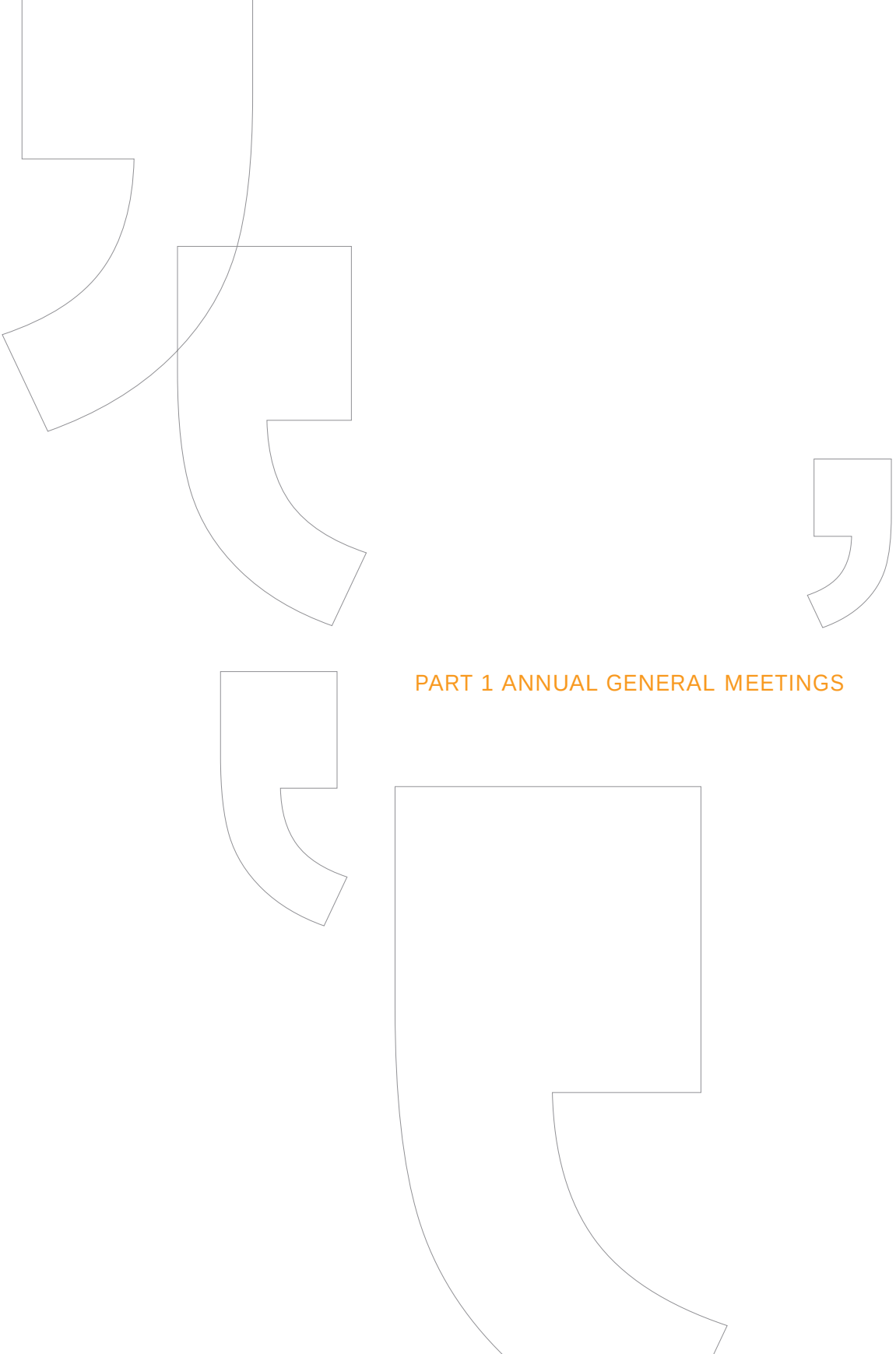
In the area of corporate governance and shareholder communication, one size does not fit all. What may work well for one company and its shareholders may not be suitable for another. Ultimately, each company and its shareholders need to agree the best approach to communication for their circumstances. This Paper sets out a range of ideas and approaches that companies are adopting or considering. The Paper is designed to trigger thinking and discussion about how shareholder and company communication can be improved.

This Paper also provides a guide to current recommendations and legal requirements around each issue covered.[3]

The Paper is divided into two main parts. The first examines annual general meetings, their ongoing relevance and ways of improving their value for shareholders, Boards and company management. The second part examines other areas of communication and engagement between companies and their shareholders, including shareholder communication policies and the use of electronic media.

The primary focus of the Paper is on larger listed corporations, which tend to attract investment by retail shareholders. Smaller companies will need to consider the alternative approaches suggested in this Paper against their own circumstances.

3 THE SUMMARY OF LEGAL REQUIREMENTS IS PROVIDED AS A GENERAL GUIDE AND SHOULD NOT BE RELIED UPON AS A DEFINITIVE GUIDE TO OBLIGATIONS UNDER THE CORPORATIONS ACT 2001 OR ANY OTHER LEGISLATION. THE INFORMATION GIVEN IS UNDERSTOOD TO BE CORRECT AT APRIL 2004, BUT ALSO TAKES ACCOUNT OF THE CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM & CORPORATE DISCLOSURE) ACT 2004, WHICH CAME INTO EFFECT ON 1 JULY 2004.



PART 1 ANNUAL GENERAL MEETINGS

OVERVIEW AND ISSUES

2 OVERVIEW AND ISSUES

2.1 RATIONALE FOR AGMs

The annual general meeting (AGM) of a company is the major event each year at which the company's owners and managers have the opportunity to come together and examine the affairs of the company. It is an opportunity for the company Board and managers, particularly the Chairman and the Chief Executive, to advise shareholders on the company's performance and prospects. It is also the opportunity for the shareholders to question their Board and company management, to consider the accounts and to vote on the election of Directors and any other business of the company. The AGM provides an important accountability mechanism. Furthermore, the AGM is not only a legal obligation for companies, but a contractual one with shareholders, through company constitutions.

LEGAL REQUIREMENTS

A public company must hold an AGM within 18 months of its registration. Subsequent AGMs must be held at least once in every calendar year, within five months of the end of the financial year: s 250N.[4]

As the principal means of engagement between a company's owners and its managers, however, the AGM is under pressure. There is a real question about whether the AGM, in its current form, provides the best centrepiece for communications between companies and their shareholders.

2.2 NEED FOR INFORMATION

The increasing pace at which markets and company fortunes change mean the annual meeting has become less important as an update on company performance and prospects. Companies now typically report on a half-yearly or quarterly basis and shareholders receive information more frequently from companies than just the annual report issued prior to the AGM.

For many shareholders, company reports and the AGM are not the principal sources of information on the performance and prospects of their companies. Retail shareholders, for example, gain most of their information from the media, particularly newspapers.[5]

4 ALL SECTION REFERENCES ARE TO THE CORPORATIONS ACT 2001, UNLESS OTHERWISE SPECIFIED.
5 ASX 2003 AUSTRALIAN SHARE OWNERSHIP STUDY, FEBRUARY 2004.

2.3 SHAREHOLDER DEMOGRAPHY

The increase in the number of Australians who hold shares, directly or indirectly, means there is much greater interest in the fortunes of our major companies (see Box 1). The information needs of these shareholders can be very different from the information required by major institutional investors. There can also be a divergence in the interests of major institutional shareholders and retail shareholders.

BOX 1
AUSTRALIA'S SHAREHOLDERS

- 51 per cent of the Australian adult population own shares
- 39 per cent of the Australian adult population own shares directly

Source: ASX 2003 Australian Share Ownership Study, February 2004

As at December 2002, private investors held approximately 18 per cent of the market capitalisation of the ASX; Australian fund managers held approximately 25 per cent, while foreign investors held around 41 per cent.[6] As Table 1 shows, while investors with small shareholdings may make up the bulk of shareholders by number, even their combined interest in a company can be quite small. These factors are significant when considering how smaller shareholders are engaged with and their interests protected.

6 INVESTMENT AND FINANCIAL SERVICES ASSOCIATION, SHAREHOLDER ACTIVISM AMONG FUND MANAGERS: POLICY AND PRACTICE, JULY 2003, PP 5 – 6.

TABLE 1
COMPARISON OF SMALL SHAREHOLDINGS (LESS THAN 1,000 SHARES) AND LARGE SHAREHOLDINGS (OVER 100,000 SHARES) BY NUMBER OF SHAREHOLDERS AND COMBINED PERCENTAGE OF COMPANY HELD

Company	Number of Shares Held	Number of Shareholders	% of Ordinary Shares
BHP Billiton Limited	1 – 1,000	140,831	2
	100,000 +	942	69
Westpac	1 – 1,000	112,500	3
	100,000 +	412	71
Woolworths	1 – 1,000	171,567	7
	100,000 +	209	53
AMP	1 – 1,000	795,846	16
	100,000 +	288	58
IAG	1 – 1,000	779,390	25
	100,000 +	158	47
Qantas	1 – 1,000	44,686	1
	100,000 +	262	70
WMC Resources	1 – 1,000	32,551	1
	100,000 +	195	81
Brambles Industries Limited	1 – 1,000	31,588	2
	100,000 +	248	72
BlueScope Steel	1 – 1,000	120,584	7
	100,000 +	162	61
Boral	1 – 1,000	50,508	4
	100,000 +	129	65
Telstra	1 – 1,000	1,084,671	10
	100,000 +	840	49

Source: 2003 Company Annual Reports

2.4 SHAREHOLDER ACTIVISM

There is a growing awareness of the role of companies within society. Combined with increased share ownership at a personal level, this is leading some groups to directly target the activities of companies and to use traditional shareholder mechanisms to deliver their messages. For example, there is an increasing trend to use the AGM as a vehicle for questioning company performance in areas such as environmental responsibility or workplace relations. At times, campaigns by special interest groups have dominated some company AGMs, resulting in the effective exclusion of many of the other retail shareholders.

Recent years have also seen the growth in managed funds with a particular focus on ethical or socially responsible investment. The level of socially responsible investment in Australia doubled between 2001 and 2003, to at least $21.3 billion at 30 June 2003.[7] The funds take a particular interest in corporate social and environmental, as well as financial, performance and are likely to become increasingly active in these areas.

Shareholder activism will also grow as superannuation trustees, including those from industry-based funds, take a more active role in publicly questioning the performance and prospects of companies than institutional investors have traditionally done (see Box 2).

BOX 2
SUPER FUND ACTIVISM

Recent Media Release from Major Super Funds

"Recent leading superannuation funds today called for less hysteria in regard to executive remuneration, in favour of a greater focus on returns for shareowners. Research commissioned by the combined Public Sector and Commonwealth Super Schemes (PSS/CSS), Catholic Super Fund (CSF) and Northern Territory Government Public Authorities Superannuation Scheme (NTGPASS) has failed to find a link between remuneration for executives and performance for shareowners. The same research found that remuneration is strongly correlated with the size and complexity of the company, but the link to company performance in terms of return on equity and return on assets is largely absent." – October 2003

"Two leading Australian superannuation funds today called on companies to improve the governance and reporting of energy use, including greenhouse gas emissions. Governance research, commissioned by the combined Public Sector and Commonwealth Superannuation Schemes (PSS/CSS) and Catholic Superannuation Fund (CSF), shows that a staggering 90 per cent of companies in the S&P/ASX200 Index do not provide information on the management of energy use, including greenhouse gas (GHG) emissions, in corporate disclosures." – July 2003

7 ETHICAL INVESTMENT ASSOCIATION, SOCIALLY RESPONSIBLE INVESTMENT IN AUSTRALIA – 2003, OCTOBER 2003.

BOX 2
SUPER FUND ACTIVISM
(continued)

"Two of Australia's leading superannuation funds, the combined Public Sector and Commonwealth Superannuation Schemes (PSS/CSS) and Catholic Superannuation Fund (CSF) today called on companies to significantly improve public reporting of workplace health & safety (WH&S) risk management." – April 2003

Source: www.css.gov.au.

The PSS and CSS are major superannuation funds with around $10 billion of funds under management.

2.5 TECHNOLOGICAL INNOVATION

Finally, technological advances raise the prospect of alternative forms of communication between shareholders and their companies, which may displace the traditional AGM as a principal means of communication and engagement. A number of companies, for example, are now webcasting AGMs and other investor briefings. According to a CSA survey in 2003, 57 per cent of large listed companies have now incorporated webcasting as a regular feature of their AGM. Legislation recently passed by the Federal Parliament also allows notices of meeting to be sent in a range of electronic forms.[8]

Over 70 per cent of Australians now have access to the Internet,[9] which can be an effective and less costly way of communicating with shareholders. However, usage is least common among people over 55,[10] which is also the age group with the highest percentage of direct shareholders.[11]

2.6 RE-INVENTING OR REFORMING THE AGM

The above issues need to be taken into account when considering the following questions:

- what is the purpose and role of AGMs today?
- how can AGMs be structured to ensure better outcomes for shareholders and the company in terms of constructive and meaningful interactions between shareholders and the directors and management?

The following two sections take these questions and apply them to the various components of the AGM, both in terms of reforming AGMs or re-inventing them. The question is also asked whether AGMs can be turned into something of greater value for shareholders, Boards and company management, or whether they are a relic of past times that can be effectively replaced.

8 CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM & CORPORATE DISCLOSURE) ACT 2004
9 NIELSEN//NETRATINGS GLOBAL INTERNET TRENDS Q4 2002, HTTP://WWW.NIELSEN-NETRATINGS.COM/PR/PR_030220.PDF
10 AUSTRALIAN BUREAU OF STATISTICS, 2001 CENSUS OF POPULATION AND HOUSING.
11 ASX 2003 AUSTRALIAN SHARE OWNERSHIP STUDY, FEBRUARY 2004.

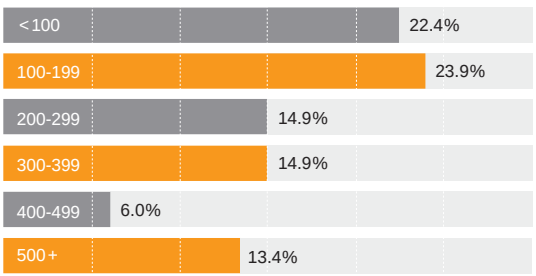
RE-INVENTING THE AGM

3 RE-INVENTING THE AGM

Historically, the AGM has been a major source of information for shareholders and their principal opportunity to engage with the company Board and management on the performance and prospects of the company. The AGM has also provided the main opportunity for shareholders to see their Directors 'in action.'

Increased disclosure by companies, greater media coverage and alternative forms of shareholder communication mean that the importance of the AGM has diminished over the years. This is reflected in the decline in attendance at most AGMs, with some estimates putting attendance at only 50 per cent of where it was 10 years ago.[12] Figure 1 shows the level of shareholder attendance at recently held AGMs, with nearly half the AGMs attracting fewer than 200 people.

FIGURE 1
NUMBER OF SHAREHOLDERS PHYSICALLY ATTENDING AGMS



Source: Chartered Secretaries Australia, Benchmarking Company Secretariat Functions in Australia, April 2004. Figures for top 200 listed public companies.

Figures based on company responses in relation to most recent AGM. 4.5 per cent of companies surveyed did not answer or had not held an AGM in the past year.

As well as an opportunity for communication and discussion, the AGM considers the financial accounts and auditor's report, together with resolutions for the appointment of the auditor (if required) and the election of Directors. The AGM may also consider changes to the company constitution and any other matters of business added to the agenda. The vast majority of these resolutions are decided by proxy votes, with the result determined by the majority of shareholders in advance of the meeting. Given the role of proxy votes, there is a question about whether, in practical terms, an AGM is necessary for passing resolutions.

The declining relevance of the AGM raises the issue of whether the AGM can be re-invented to be more valuable for shareholders, Boards and companies, or whether the AGM is no longer needed and has been supplanted by other forms of communication and discussion.

This section canvases three alternative approaches:

- restructuring the AGM;
- supplementing the AGM;
- abolishing the AGM.

The models discussed for restructuring or supplementing the AGM could be adopted by companies immediately. Abolishing the AGM would require changes to the Corporations Act, company constitutions and the ASX Listing Rules.

12 BASED ON INFORMATION PROVIDED BY COMPANY SECRETARIES OF MAJOR CORPORATIONS.

3.1 RESTRUCTURING THE AGM

While the AGM may be less important as a source of information for shareholders, it remains the principal means by which shareholders can discuss, directly with the Board and Chief Executive, issues arising from the company's performance and prospects. This opportunity is also being recognised by shareholders with particular issues with the company's performance and practices, particularly in the areas of workplace relations or environmental management. While all shareholders have the right to be heard, to ask relevant questions and to receive responses, there is growing concern that AGMs are being used as a platform for conducting campaigns on single issues. Such campaigns are an effective means of raising the profile of an issue. They can, however, mean that the AGM is dominated by a single issue, leaving other shareholders feeling disenfranchised and unable or disinclined to ask their own questions. In many instances, these shareholders will leave part way through an AGM that is becoming drawn out because of discussion or debate on the single issue. The challenge is to find a way of ensuring all shareholders have the opportunity to raise issues and have them discussed.

An alternative approach to having general discussion on issues raised from the floor of the AGM would be to have the major issues of concern to shareholders formally added to the agenda of the AGM. This model is set out below.

3.1.1 Calling for Issues

A number of companies in recent years have sought the views of shareholders on issues they would like discussed at the AGM. Typically, shareholders will be invited to identify these issues when they receive their notice of meeting and annual report. The most frequently raised issues are then collated and the Chairmen addresses these at the AGM. The list of key issues to be covered at the AGM can also be provided to each shareholder on registration at the AGM or projected onto screens in the auditorium.[13] Other issues and questions raised are responded to directly, by the company to the shareholder.

Companies that have recently adopted this practice include the Commonwealth Bank, Caltex and Telstra (see Box 3).

13 UNDER CLERP 9, A COMPANY IS ALSO REQUIRED (AT OR BEFORE THE AGM) TO MAKE REASONABLY AVAILABLE A LIST OF QUESTIONS SUBMITTED TO THE COMPANY'S AUDITOR.

BOX 3
CALLING FOR ISSUES

Prior to its 2003 AGM, the Commonwealth Bank wrote to shareholders inviting them to submit questions ahead of the meeting. Over 1,000 shareholders responded, asking around 3,000 questions. The Chairman of the Commonwealth Bank then responded to the more frequently asked questions at the AGM, with other questions replied to directly by the company. Some of the issues raised were:

- executive remuneration;
- improving customer service while reducing staff;
- share price performance;
- queue lengths, opening times and under staffing;
- funds management performance;
- Director age, abilities, remuneration and conflicts of interest;
- bank and credit card fees;
- relationship with forestry company Gunns Ltd;
- shareholder discounts; and
- AGM venue.

Source: Commonwealth Bank of Australia (http://shareholders.commbank.com.au/)

3.1.2 Agenda Items

The potential next step is to take the top issues raised and add these formally to the AGM agenda as separate items for discussion. The AGM agenda would then broadly consist of two parts – the first covering the formal business of the meeting (acceptance of accounts, election of Directors, etc), the second covering specific issues raised by shareholders. The order in which those issues are dealt with would be dictated by the number of shareholders raising the issue (that is, the issue raised most frequently by shareholders would be dealt with first). Issues placed on the agenda in this way would be for discussion and would not involve resolutions requiring a vote (options for shareholders to put resolutions on the agenda would remain). An example of an agenda under this model is set out in Box 4.

BOX 4
EXAMPLE OF AGM AGENDA:

1. Chairman's Address
2. Chief Executive's Address
3. Consideration of Financial Reports, Directors' Report and Auditors' Reports[14]
4. Election of Directors
5. Changes to Constitution (if any)
6. Non-Executive Directors' Remuneration
7. Executive Remuneration
8. Matters Raised by Shareholders[15]

14 AS REQUIRED BY CLERP 9, CONSIDERATION OF QUESTIONS SUBMITTED TO THE AUDITOR COULD BE DEALT WITH UNDER THIS ITEM OF BUSINESS AT THE AGM.

15 THOSE ISSUES OF MOST CONCERN TO ALL SHAREHOLDERS. THIS MIGHT INCLUDE ISSUES SUCH AS CUSTOMER SERVICE, SHARE PRICE PERFORMANCE, DIVIDEND POLICY, ENVIRONMENTAL ISSUES, WORKPLACE ISSUES OR THE LOCATION OF THE AGM, FOR EXAMPLE.

The agenda in Box 4 is given only as an example. The type and number of issues raised by shareholders will vary from company to company and over time. An item 'Other Business' could also be added as a last agenda item, to allow any matters that have not already been raised and discussed to be considered at the conclusion of the meeting.[16]

As an alternative to this approach, the Chairman could allow a general discussion from the floor at the conclusion of the formal business of the meeting.

Formally adding shareholder concerns to the agenda has a number of advantages. The first is that it gives shareholders some direct say in the matters that are to be discussed at the AGM and to have these formally recognised on the agenda. It also allows shareholders to raise issues at the AGM without having to place a formal resolution before the meeting that requires a vote.

Clearly setting out in the AGM agenda the issues that are to be discussed also allows deferral of the discussion of those issues to the appropriate agenda item, rather than in connection with the formal business of the meeting, such as adoption of the accounts or election of Directors. To the extent that the issues are relevant to the adoption of the accounts or election of Directors, however, the Chairman will still need to allow discussion on the issue when those agenda items are being considered and discussed.

Calling for questions prior to the meeting also allows the company to ensure the Board and Chief Executive can provide the information and answers sought by the shareholders at the AGM.

3.1.3 Variation

A variation on this model would be to have the discussion of the matters raised by shareholders dealt with early in the meeting, perhaps as an extension of the Chairman's and Chief Executive's addresses. The formal business of the meeting could then be dealt with at the end of the meeting, following the discussion of shareholder issues. This could result in any discussion on the formal business of the meeting being brief, as most issues will have already been discussed. As the formal business of the meeting is a key part of the AGM, however, it may be necessary to place a time limit on the discussion of shareholder issues to ensure that the meeting considers its formal business in reasonable time.

Where shareholders frequently raise issues related more to their personal experiences as customers than as shareholders (such as service quality, queue lengths, opening times, catering quality, etc) companies may wish to consider adopting the practices of Telstra and Qantas of having information booths in the meeting foyer, where shareholders can discuss their issues directly with company representatives.

Where a company has fewer retail shareholders or typically only has one or two issues raised by shareholders, it may be preferable for the Chairman of the company to meet with shareholders in advance of the AGM with those concerns and discuss the issues directly with them. This approach can often resolve issues or diffuse concern before the AGM. This approach can also be useful where an individual shareholder has concerns that may not be shared by a majority of retail shareholders.

16 CONSISTENT WITH THE LEGAL REQUIREMENT THAT SHAREHOLDERS PRESENT AT THE MEETING HAVE A REASONABLE OPPORTUNITY TO ASK THE DIRECTORS AND THE AUDITOR QUESTIONS OR MAKE COMMENTS IN RELATION TO THE MANAGEMENT OF THE COMPANY: 250S AND 250T.

3.2 SUPPLEMENTING THE AGM

The AGM can be broadly considered as having two components. It is a coming together of the shareholders of a company to transact the formal business of the company, such as electing Directors, changing the company constitution and accepting the company's audited accounts. It is also a communication vehicle, providing a forum for face-to-face discussion between the shareholders and the company Board and management on the performance and prospects of the company.

An alternative approach to the current AGM structure would be to separate out the communication aspect of the AGM from the formal business. This could be done by holding regular 'Shareholder Meetings' or 'Investor Meetings', leaving the AGM to the consideration of formal business alone.

3.2.1 Shareholder Meetings

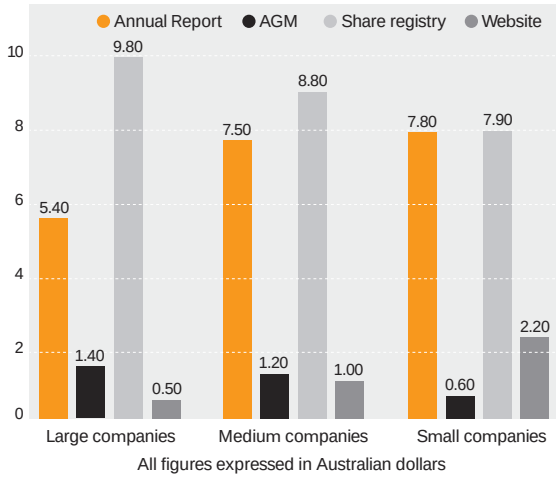
Companies could consider holding regular shareholder meetings as an alternative means of engaging with shareholders. The shareholder meetings would allow the Board and management to provide shareholders with an update on the company's performance and prospects and to address any issues raised by shareholders. Discussion could be open and general and the meeting less formal than the AGM. Such meetings would be solely for the purpose of informing shareholders and discussing their issues and would not have the power to pass resolutions or make binding decisions on the company.

The AGM, on the other hand, could be made more formal, taking less time and without the need for some of the current AGM accompaniments, such as refreshments. All voting could also be done by proxy. Under current legislative (and general law) requirements, shareholders would still have the opportunity to consider the accounts and discuss the resolutions before the AGM, together with asking questions about management and auditors in accordance with Corporations Act requirements.

Shareholder meetings could be held once or twice a year and be attended by the Chairman, key Board Committee Chairs and senior executives. Depending on the company's shareholder base, the meetings could rotate periodically around the country, or use electronic communications, such as video links or webcasting. Alternatively, where warranted, a series of shareholder meetings could be held, akin to the 'road shows' conducted for analysts and institutional investors. Shareholder meetings could also be linked to some Board meetings, making use of the presence of the Board and senior management for those meetings. A shareholder meeting could also be held around the time of the AGM.

The advantage of shareholder meetings would be the greater opportunity they would present for retail shareholders to discuss issues with the Board and for the company to inform shareholders of developments with their company, away from the formalities of the AGM. Shareholder meetings could also allow a better focus at the AGM on the formal business of the meeting, decreasing the time and effort required in preparing and conducting the AGM. Shareholder meetings would themselves, however, require an investment of time and effort and companies would need to weigh this cost against the benefits flowing from having such meetings. An indication of the costs of AGMs and hence, shareholder meetings is given in Figure 2.

FIGURE 2
COSTS TO PROVIDE SHAREHOLDER SERVICES (PER SHAREHOLDER)



Source: Chartered Secretaries Australia, Benchmarking Company Secretariat Functions in Australia, April 2004.

Large companies are defined as those having a market capitalisation over $3 billion, medium companies as having a market capitalisation between $500 million and $3 billion, and small companies as having a market capitalisation of less than $500 million.

3.2.2 Shareholder Road Shows

An alternative to shareholder meetings would be allowing retail shareholders to participate in the 'road shows' undertaken for institutional investors and analysts. A concern with this approach, however, would be the potential for special interest groups to dominate and disrupt the briefings on the 'road show'. To overcome this, a retail shareholders' 'road show' could be held in conjunction with the analysts' briefing, but at separate meetings (for example, immediately before or after the analysts' briefing). Alternatively, analyst briefings could be webcast (live and/or as downloadable recordings from the company's website).

3.2.3 Chairman's Briefings

The Board has a role in explaining and promoting the corporate governance philosophy, systems and practices operating at a company. One way for this role to be fulfilled is for the Chairman to meet with shareholders on an annual basis to explain and discuss the company's approach to corporate governance. These meetings can be with key investors, shareholder representative organisations or with groups of shareholders known to have particular concerns about governance issues at the company.

3.3 ABOLISHING THE AGM

With changes in communication, sources of information and technology, the traditional AGM may now be redundant.

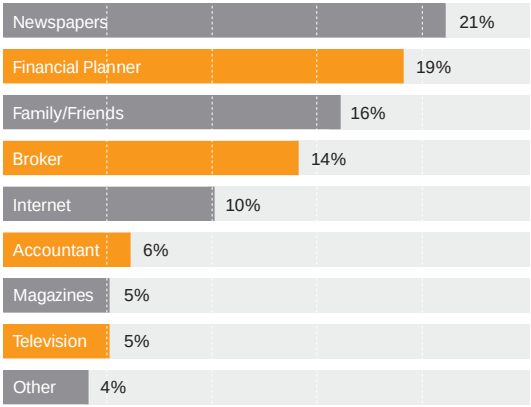
As a means of shareholders gaining information about the company's performance and prospects, the AGM rates very low, compared to the main sources of information used by shareholders (see Figure 3).

Most resolutions at AGMs are also determined by proxy votes and with moves to encourage more voting by institutional investors,[17] this is likely to increase. Resolutions are therefore determined without the need for a physical meeting. If AGMs were to be abolished, resolutions could still be put to shareholders in writing, with shareholders voting in writing or through some electronic form (for example, via the Internet). This would not be greatly different to current practice where the text of resolutions is sent out to shareholders with the AGM notice of meeting and shareholders may vote by returning their proxy forms directing their proxy how to vote on a resolution.

While the communication and formal business elements of the AGM could be managed through other processes, AGMs remain an important opportunity for retail shareholders to raise issues, question the Board and management of the company and express their views on resolutions.

Abolishing the requirement to hold an AGM would require changes both to legislation, company constitutions and the ASX Listing Rules.

FIGURE 3
MAIN SOURCE OF ADVICE ON SHARES



Source: ASX 2003 Australian Share Ownership Study, February 2004

17 THE AUSTRALIAN LABOR PARTY AND THE AUSTRALIAN DEMOCRATS, FOR EXAMPLE, HAVE BOTH PROPOSED MAKING VOTING BY INSTITUTIONS COMPULSORY.

REFORMING THE AGM

4 REFORMING THE AGM

The previous section examined changes to the structure and nature of AGMs, and whether AGMs remain necessary. This section looks at each element of the current AGM process and identifies possible improvements to that process. The alternative approaches suggested are not necessarily mutually exclusive and companies will need to consider their own circumstances to determine which, if any, of these proposals would add value to the AGM for shareholders, Boards and company management.

4.1 CONVENING THE AGM

The Corporations Act requires public companies to hold an AGM within 18 months of registration and subsequently at least once in every calendar year, within five months of the end of their financial year.[18] The AGM, or any other general meetings of the company, will generally be called by the Directors of the company. The shareholders of a company may also request that Directors hold a general meeting.[19]

4.1.1 Shareholder Initiated Meetings

The Directors of the company are required to call and hold a general meeting if requested by:

- shareholders with at least five per cent of the voting rights; or
- at least 100 shareholders who are entitled to vote at a general meeting.[20]

The Directors must call the meeting within 21 days after the request is given to the company and the meeting must be held no later than two months after the request is made.[21]

A resolution must be added to the agenda of a general meeting, including an AGM, if proposed by:

- shareholders with at least five per cent of the voting rights; or
- at least 100 shareholders who are entitled to vote at a general meeting.[22]

The company is required to distribute with the notice of meeting any statement provided by the shareholders in support of their resolution. Shareholders with at least five per cent of the voting rights, or at least 100 shareholders, may also request that the company distribute with the notice of meeting any statement provided by the shareholders on any other matter that may be properly considered at a general meeting.[23]

The '100 shareholder rule' has been contentious, however, it should be noted that the 100 shareholder threshold itself is not new. What has changed is that, prior to the Company Law Review Act 1998, to reach the threshold, the shareholders had to have an average shareholding of at least $200. Under the current law, it is theoretically possible for 100 shareholders, each holding just one share, to force a company to hold a general meeting.

The right of the shareholders of a company to call a general meeting and to place resolutions on the agenda of that meeting or the AGM, is not of itself controversial. The ability of just 100 shareholders to exercise these rights, however, has been contentious. In particular, many companies are concerned that, with rising shareholder activism, they will be required to call expensive general meetings other than the AGM to deal with single issues of concern to only a very small minority of shareholders. This has already happened a number of times (see Box 5).

18 S 250N.
19 UNDER SECTION 259CA, A DIRECTOR OF A LISTED COMPANY MAY ALSO CALL FOR A GENERAL MEETING OF SHAREHOLDERS.
20 S 249D(1).
21 S 249D(5).
22 S 249N.
23 S 249P.

BOX 5
USE OF SECTION 249D

In 1999, 122 shareholders in North Ltd called an extraordinary general meeting (EGM) to amend the company's constitution. The group of shareholders were concerned about North Ltd's involvement in the Jabiluka uranium mine. Following litigation, it was agreed the EGM would be held on the same day as the AGM. North Ltd estimated that the EGM would otherwise have cost the company $186,000. The resolution to amend the constitution received six per cent of the votes in favour.

Also in 1999, 166 shareholders in Wesfarmers called a general meeting to consider resolutions on the company's involvement in the forestry industry. At the meeting, 98 per cent of the votes were cast against the resolutions. Wesfarmers put the cost of the meeting at approximately $80,000.

In 2002, 237 shareholders in NRMA Insurance called a general meeting to consider an amendment to the company's constitution to prohibit the payment of retirement benefits to Directors without shareholder approval. The resolution gained 30 per cent support. NRMA Insurance estimated that holding a general meeting separate to its AGM would cost around $1.4 million.

Source: Tapley, M., Parliamentary Research Note 18 2001-02, (http://www.aph.gov.au/library/pubs/rn/2001-02/02rn18.htm)

The top 50 listed companies in Australia, which account for 75 per cent[24] of the Australian market by capitalisation, typically have between 100,000 and 1,000,000 shareholders.[25] A group of 100 shareholders therefore represents between 0.1 per cent and 0.01 per cent of all shareholders in the company. Corporations, however, by law do not operate on a 'one-shareholder one-vote' basis, therefore 100 shareholders may represent significantly less than 0.1 per cent and 0.01 per cent of the votes. For example, Insurance Australia Group has issued 1,682,721,213 shares.[26] Assuming 100 shareholders with the minimum marketable parcel[27] of shares (126 shares) request the company hold a general meeting or place a resolution on the agenda of the AGM, those shareholders will represent 0.000007 per cent of the votes. A general resolution requires 50 per cent of votes to pass and a special resolution 75 per cent.

The flaws in the current threshold are widely recognised[28] and therefore it remains to find a suitable and widely accepted alternative formulation.

24 AS AT 30 JUNE 2002. ASX (HTTP://WWW.ASX.COM.AU/STATISTICS/L3/INDEXDESCRIPTION_MS3.SHTM).
25 BASED ON A SAMPLE OF 2003 COMPANY ANNUAL REPORTS.
26 INSURANCE AUSTRALIA GROUP, 2003 ANNUAL REPORT. SHARE FIGURES GIVEN FOR 31 AUGUST 2003.
27 A MINIMUM MARKETABLE PARCEL OF SHARES HAS A VALUE OF $500. THEORETICALLY, 100 SHAREHOLDERS, EACH HOLDING ONE SHARE, CAN REQUIRE THE CALLING OF A GENERAL MEETING.
28 FOR EXAMPLE, THIS ISSUE WAS REVIEWED BY THE PARLIAMENTARY JOINT STATUTORY COMMITTEE ON CORPORATIONS (see over)

4.1.2 Alternatives

The shareholders of a company should have the right to call a general meeting and to place resolutions on the agenda of that meeting or the AGM. At issue is the threshold above which this right can be exercised.

The current law includes two thresholds:

1. shareholders with at least five per cent of the voting rights; or

2. at least 100 shareholders who are entitled to vote at a general meeting.

The first threshold is not contentious. Shareholders with five per cent of the voting rights obviously form a significant interest within the company and are likely to have some influence. The concerns with the second threshold have been discussed above.

A number of alternative thresholds could be considered that ensure that any group of shareholders with a significant interest or influence within the company have the ability to request a general meeting and to place resolutions on the agenda of that meeting or the AGM. Each of these is discussed briefly below and the implications of the change of threshold in terms of numbers of shareholders and votes are set out in Tables 3A and 3B later in this section.

In considering these alternatives, a distinction could be drawn between the threshold needed for shareholders to initiate a general meeting, and the threshold above which shareholders can have a resolution placed on the agenda of the AGM.

(a) Minimum Economic Interest

One simple change would be to retain the 100 shareholder threshold, but require each shareholder to hold at least a minimum economic interest, such as a marketable parcel of shares. Under the current ASX Market Rules, a marketable parcel of shares is a parcel of shares with a market value of at least $500.

This approach would prevent special interest groups with miniscule shareholdings from using rights under the law designed to empower genuine shareholders with an investment interest in the performance of the company. For example, under the current law, a small parcel of shares can be bought by a special interest group and then broken into smaller parcels of shares to be distributed among a number of individuals to make up the number of shareholders to 100. Requiring shareholders to have a minimum economic interest helps ensure that shareholders calling for general meetings or placing resolutions on the agenda of AGMs have a genuine investment in the company.

The counter view to this approach is that all shareholders, regardless of the size of their interest, should have access to the same rights under legislation. There is also concern that a genuine investor with less than a marketable parcel of shares would have to buy more shares to be able to participate in calling for a general meeting or resolution. This may be inappropriate if, for example, the reason for calling for a general meeting or resolution is to debate the falling share price of the company.

28 AND SECURITIES IN 1999. THE COMMITTEE CONCLUDED "THAT THE PRESENT PROVISION FOR 100 MEMBERS TO REQUISITION A MEETING OF THE COMPANY IS INAPPROPRIATE AND OPEN TO ABUSE" (PARA 15.16). LABOR SENATORS AND MEMBERS CONCLUDED THAT THERE WAS A "NEED FOR CHANGE TO RESTORE AN APPROPRIATE BALANCE BETWEEN PROMOTING COMPANY EFFICIENCY AND MAINTAINING CORPORATE GOVERNANCE CONCERNS OF MINORITY SHAREHOLDERS" (LABOR MEMBERS AND SENATORS MINORITY REPORT, P 175). SENATOR MURRAY FOR THE DEMOCRATS NOTED THAT "[T]HRESHOLDS NEED TO BE SENSIBLE BUT NOT UNREASONABLE. WE BELIEVE THAT THERE MAY BE MERIT IN REVISING UPWARD THE

(b) Five Per Cent of Voting Rights

Another straightforward change would be to drop the second threshold of 100 shareholders and retain the right of shareholders with at least five per cent of the voting rights to call meetings or place resolutions on the agenda.

Opponents of this change argue that a five per cent threshold alone is too high and would effectively exclude those with small shareholdings (such as most retail shareholders) from taking advantage of the right. As shown in Table 1 (p 14), for many of our largest corporations, the combined shareholding of all shareholders with less than 1,000 shares will often be less than five per cent, although this group represents a significant number of shareholders.

A partial answer to this concern is that a five per cent threshold would encourage shareholders to enlist the support of institutional investors on their issue. This is important if it is assumed that the shareholders seeking a meeting or resolution genuinely wish to have their resolution passed (with 50 per cent or 75 per cent of the vote). The support of institutional investors will be essential to achieving this. Without wider support for the resolution, it is questionable whether dealing with a shareholder issue via a special general meeting or AGM resolution is the most appropriate mechanism. The need for shareholders to exercise this right would also diminish if companies adopted the proposal in portion 3.1 of this paper ('Restructuring the AGM'), to place shareholder issues on the formal agenda of the AGM.

(c) One Per Cent of Voting Rights

An alternative would be to replace both of the current thresholds with a threshold of one per cent of voting rights. This would be significantly easier to achieve than a five per cent of voting rights threshold, while still ensuring that meetings and resolutions would only result from shareholders with a significant interest in the company.

A concern with this option would be that many individual investors can hold one per cent of a company and that this provision could then be used by a disgruntled individual shareholder, potentially disrupting the operation of the company. This could be overcome through a threshold that required at least 100 shareholders representing at least one per cent of the voting rights to be satisfied.

One per cent of voting rights can still represent a very high number of shareholders, if these are retail shareholders with small parcels of shares. Table 3A gives some examples of the number of shareholders needed to exercise the power to call a general meeting or place a resolution on the agenda, based on shareholders with parcels of 1,000 shares. By way of comparison, Table 3A also shows the effect of a 0.1% threshold.

28 THRESHOLD OF 100 MEMBERS, ESPECIALLY FOR LARGE MUTUAL ORGANISATIONS" (AUSTRALIAN DEMOCRAT MINORITY REPORT, P 184). COMMITTEE MEMBERS DID NOT AGREE, HOWEVER, ON AN ALTERNATIVE THRESHOLD.

(d) One Per Cent of Shareholders

Another option would be to base the threshold on a percentage of shareholders. Previously, a five per cent threshold has been proposed, which sets a high threshold for large companies. Companies such as Insurance Australia Group and Telstra, with shareholder bases in excess of one million, would have thresholds in excess of 50,000 shareholders. Alternatively, the threshold could be set at one per cent or 0.1 per cent. Companies with over one million shareholders would then have thresholds of 10,000 or 1000 respectively. The vast majority of companies, however, have shareholder bases considerably smaller than one million. Even large companies, such as Boral or WMC Resources, have less than 100,000 shareholders. With a one per cent or 0.1 per cent threshold, the number of shareholders needed to call a meeting would be 1,000 or 100 respectively. Therefore, the difficulty with this approach is that a threshold set sufficiently low for the companies with the largest shareholder bases, will be considerably too low for even large companies with smaller shareholder bases.

This problem could be overcome by placing upper and lower limits on the number of shareholders. For example, an upper limit of 500 shareholders and lower limit of 100 shareholders could be set. In effect, however, very few companies would fall within the 100 – 500 range. For example, if the threshold was set at one per cent, only those companies with shareholder bases between 10,000 and 50,000 shareholders would fall between the limits.

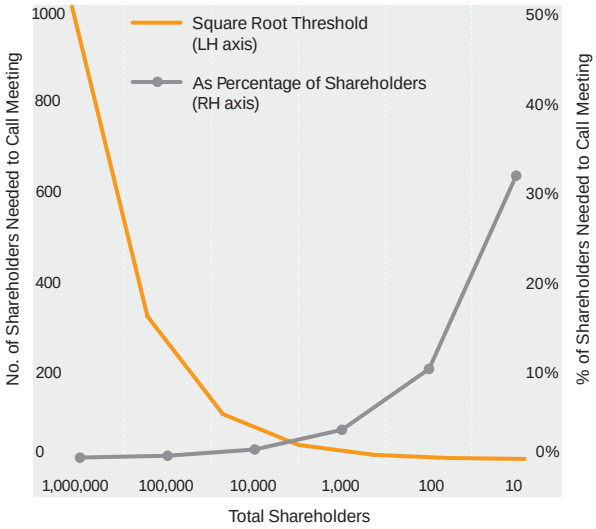
(e) Square Root Rule

It has been suggested that, for the right to request a general meeting, the current five per cent threshold be retained, but that the 100 shareholder threshold be replaced by a 'square root rule'. With such a threshold, the number of shareholders required to call a company meeting would be the square root of the total number of members of the company. So, for example, a company with 1,000,000 shareholders would have the threshold set at 1,000 (or 0.1% of shareholders). A company with 100,000 shareholders would have the threshold set at 317 (or 0.3% of shareholders). A proportional 'rule' such as the square root rule could also be combined with the requirement for a minimum economic interest for each shareholder.

This option has the advantage of being a straightforward formula that is responsive to the size of a company's shareholder base. That is, the larger the shareholder base of the company, the more shareholders are needed to call a general meeting (although the larger the shareholder base, the smaller the percentage of shareholders needed).

The concern with this proposal is at the margins. That is, for companies with very large shareholder bases, the threshold will be much higher than currently (such as 1,000 shareholders in the example above). Similarly, for companies with very small shareholder bases, the threshold will be very low (a company with a shareholder base of 1,000 shareholders, for example, would require only 32 shareholders to trigger a general meeting). Figure 4 shows how the threshold varies according to the size of a company's shareholder base.

FIGURE 4
NUMBER AND PERCENTAGE OF SHAREHOLDERS NEEDED TO TRIGGER A MEETING, USING SQUARE ROOT THRESHOLD



To address this concern, it has been suggested that the square root threshold be supplemented with upper and lower limits on the number of shareholders needed to call a general meeting. For example, a minimum number could be set at 100 and a maximum at 500. Imposing this cap could be balanced by requiring the shareholders to hold marketable parcels of shares.

(f) Timing of EGM

Consideration should also be given to the timing of an EGM called by shareholders. In particular, there could be a prohibition on shareholders calling an EGM within a fixed time period of an AGM (for example, that an EGM cannot be called 3 months before or after an AGM). The reason for this is that the AGM already provides a suitable vehicle for shareholders to raise their concerns and they should be encouraged to use the existing meeting rather than put companies to the expense of an EGM.

TABLE 3A
RULES BASED ON VOTING RIGHTS –
IMPLICATIONS OF CURRENT AND ALTERNATIVE THRESHOLDS

Company	Total Shares issued	Current 5% of Voting Rights Threshold		1% of Voting Rights Threshold		0.1% of Voting Rights Threshold	
	Million	Shares Million	No. of Share-holders[e]	Shares Million	No. of Share-holders[e]	Shares Million	No. of Share-holders[e]
Company A[a]	1,750	87.50	87,500	17.50	17,500	1.75	1,750
Company B[b]	1,500	75.00	75,000	15.00	15,000	1.50	1,500
Company C[c]	1,250	62.50	62,500	12.50	12,500	1.25	1,250
Company D[d]	1,000	50.00	50,000	10.00	10,000	1.00	1,000

(a) Examples of companies with around 1,750 million shares issued include Westpac, AMP, Insurance Australia Group and Qantas.

(b) Examples of companies with around 1,500 million shares issued include ANZ and National Australia Bank.

(c) An example of a company with around 1,250 million shares issued is the Commonwealth Bank.

(d) Examples of companies with around 1,000 million shares issued include Woolworths and WMC Resources.

(e) Number of shareholders needed, assuming each shareholder holds 1,000 shares. In practice, of course, many shareholders, particularly institutional investors, hold significantly greater parcels of shares.

TABLE 3B
RULES BASED ON NUMBER OF SHAREHOLDERS –
IMPLICATIONS OF CURRENT AND ALTERNATIVE THRESHOLDS

Company	Total Shareholders	5% of Shareholders	1% of Shareholders	Square Root Rule	Capped Square Root Rule[e]
Company A[a]	1,000,000	50,000	10,000	1,000	500
Company B[b]	200,000	10,000	2,000	447	447
Company C[c]	100,000	5,000	1,000	316	316
Company D[d]	10,000	500	100	100	100

(a) Examples of companies with around 1,000,000 shareholders include AMP and Insurance Australia Group.

(b) Examples of companies with around 200,000 shareholders include Westpac, Foster's Group, Qantas and ANZ.

(c) Examples of companies with around 100,000 shareholders include Boral, Alumina, Santos, AMCOR and WMC Resources.

(d) Examples of companies with around 10,000 shareholders include Sigma Company Limited and Coates Hire Limited.

(e) Based on square root of total number of shareholders, but requiring a minimum number of 100 and a maximum of 500.

4.2 NOTICES OF MEETING

Prior to the AGM, a notice of meeting must be sent to all shareholders that are entitled to vote at the meeting. The Corporations Act sets out the minimum information that must be provided in the notice (see 'Legal Requirements', p 35). The ASX Corporate Governance Council Principles and Recommendations[29] also includes a guide to the issuing of effective notices of meeting (see Box 6). In summary, the Council recommends that:

- notices of meeting must be honest, easy to understand, accurate and must comply with the relevant principles of the Act;[30]
- where a notice of meeting concerns the election or removal of Directors, the notice should fairly and equitably represent the views of the candidates;
- where recommendations are specifically required, notices should contain the views of all assenting and dissenting Directors;
- notices containing complex resolutions should include an explanatory statement;
- companies should encourage experts to preface reports with an executive summary;
- conflicts of interest should be clearly outlined and disclosed; and
- companies should send notices of meeting to members by electronic means if members have so requested – in addition, the company should place the notice, together with any explanatory material, on their website.

Notices of meetings are generally mailed to shareholders, together with the annual report, including the financial report, Directors' report and auditors' report. Notices may also be sent to a fax number or electronic (email) address, if one is nominated by the shareholder. Recent amendments to the Corporations Act allow notices of meeting to be sent to shareholders by any electronic means they nominate.[31] This is intended to allow companies to send a short email to shareholders, advising that the notice is available for viewing or downloading from the company website.

The notice of meeting should contain information or explanatory statements on the matters and resolutions to be considered at the meeting. As the election of Directors will be part of the business of the AGM, the notice of meeting provides Directors with an opportunity to state their claims for election or re-election to the Board. Companies should consider using the notice of meeting to set out the experience and approach that individual candidates bring to the Board. They can also include details of candidates' other significant positions (not just other Directorships of listed companies) to give shareholders some idea of the candidates' commitments, as well as significant past Directorships. A recent example of this approach was the 2003 BHP Billiton notice of meeting (see Box 7).

Companies should also give consideration to the complexity of material sent to shareholders. While it is vital that information is comprehensive and accurate, care needs to be taken that the information provided to shareholders is not obscured by legal or technical language or concepts. Documents that satisfy the lawyers will not necessarily present information in a way that is readily accessible to shareholders.

29 ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES OF GOOD CORPORATE GOVERNANCE AND BEST PRACTICE RECOMMENDATIONS, MARCH 2003 AT ATTACHMENT A.
30 CLERP 9 INTRODUCES A REQUIREMENT UNDER THE CORPORATIONS ACT THAT NOTICES ARE "WORDED AND PRESENTED IN A CLEAR, CONCISE AND EFFECTIVE MANNER" (SUBSECTION 249L(3) OF THE CORPORATIONS ACT).
31 CLERP 9, INTRODUCING NEW SUBSECTION 249J(3A) INTO THE CORPORATIONS ACT.

BOX 6
ASX CORPORATE GOVERNANCE COUNCIL GUIDELINES FOR NOTICES OF MEETING

The ASX Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations set out twelve guidelines for notices of meeting, with explanation of how these guidelines can be met.[32]

The twelve principles are:

1. Notices of meeting must be honest, accurate and not misleading. Relevant information should not be withheld or presented in a manner designed to mislead shareholders or the market as a whole.
2. Notices must clearly state and, where necessary, explain, the nature of the business of the meeting.
3. Notices must set a reasonable time and place for the meeting.
4. Notices should encourage shareholders' participation through the appointment of proxies.
5. Companies should adopt best practice drafting methods for notices of meeting.
6. Companies should combine or 'bundle' resolutions in a notice of meeting only in limited circumstances.
7. Companies should give clear guidance in notices of meeting containing resolutions for the election of directors.
8. Companies should give clear guidance in notices of meeting containing resolutions for the removal of Directors.
9. Companies should ensure notices give clear guidance on Directors' recommendations on resolutions.
10. Companies should give particular attention to notices containing complex resolutions.
11. Companies should ensure notices give clear guidance on shareholders' conflicts of interest to the extent that they are known to the company and clearly state which shareholders will be excluded from voting or have their votes disregarded.
12. Companies should endeavour to send notices of meeting to shareholders by electronic means if requested, and should place the full text of notices and accompanying explanatory material on the company website. Companies should also consider distributing explanatory material by other means, so that shareholders who do not have access to the Internet and other forms of electronic communication are not disadvantaged.

32 ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES OF GOOD CORPORATE GOVERNANCE AND BEST PRACTICE RECOMMENDATIONS, MARCH 2003 AT ATTACHMENT A.

BOX 7
EXTRACT FROM 2003 BHP BILLITON NOTICE OF MEETING, GIVING DETAILS OF CANDIDATE FOR ELECTION TO THE BOARD.

Michael Chaney
BSc, MBA, FAIM, FAICD, 53

Mike Chaney brings commercial expertise to the Board, developed over many years as the Chief Executive Officer and Managing Director of Wesfarmers Limited. He is a strong contributor to the Board from the perspective of a successful executive career, well prepared to challenge management both on financial and strategic matters.

A Director of BHP Limited since May 1995 and a Director of BHP Billiton Limited and BHP Billiton Plc since June 2001. He is a Director of Gresham Partners Group Limited, a trustee of the Committee for the Economic Development of Australia, a Member of the Business Council of Australia, a Director of the Centre for Independent Studies and Chairman of the Australian Research Alliance for Children and Youth.

He says: “Companies exist to provide their shareholders with satisfactory returns. A principal role of directors is to ensure that this objective guides decision making throughout the organisation. Long-term shareholder wealth creation requires a strong commercial focus coupled with high standards of governance and social responsibility.”

Source: BHP Billiton, http://www.bhpbilliton.com/bbContentRepository/Events/LTDNOM03.pdf

LEGAL REQUIREMENTS

Written notice of an AGM must be given to each Director, the auditor and each member entitled to vote at the meeting at least 21 days (28 days for a listed company: 249HA) prior to the meeting: 249J, 249K and 249H.

The notice of meeting must contain the information specified in 249L, including:

- the place, date and time of the meeting;
- the general nature of the meeting's business;
- if a special resolution is to be proposed at the meeting, the intention to propose the resolution and the resolution itself; and
- members’ entitlements regarding the appointment of proxies.

250R specifies that the business of an AGM may include the following, even if not referred to in the Notice of Meeting:

- consideration of the annual financial report;
- consideration of the Directors' report;
- consideration of the auditors' report;
- the election of Directors;
- the appointment of the auditor; and
- the fixing of the auditor's remuneration.

4.3 PROXIES

Shareholders may elect to appoint one or two proxies to attend and vote at the AGM on behalf of the shareholder. The Corporations Act requires companies to send a proxy appointment form to all shareholders entitled to attend and vote at the meeting. The ASX Corporate Governance Council has recommended that companies encourage shareholders to participate through the appointment of proxies and to consider allowing members to lodge proxy appointment forms electronically, subject to the adoption of appropriate authentication procedures. Chartered Secretaries Australia has produced a best practice proxy form, available at www.csaust.com.

The use of proxies raises a number of issues, including:

- how should undirected proxies be voted; and
- when should the result of proxy votes be made known at the AGM.

4.3.1 Voting Undirected Proxies

Shareholders may direct the way their proxy is to vote on particular resolutions. Shareholders may also appoint the Chairman of the company as their proxy, or where no alternative proxy is appointed, the Chairman becomes the proxy by default. Many proxy forms, however, are returned without a direction on how the proxy is to vote.

The ASX Corporate Governance Council Principles and Recommendations suggest companies should encourage shareholders appointing a proxy to consider how they wish to direct the proxy to vote – whether the shareholder wishes the proxy to vote 'for' or 'against', or abstain from voting on each resolution, or whether the decision is left to the appointed proxy after hearing the discussion at the meeting.[33]

The Principles and Recommendations also suggest that proxy forms should ensure shareholders clearly understand how the chairperson of a meeting intends to vote undirected proxies.[34]

4.3.2 Voting Directed Proxies

Where a shareholder directs how a proxy votes, the proxy must vote in accordance with the shareholder's direction, if the proxy votes.[35] The proxy may not vote against the shareholder's direction, but nor is the proxy obliged to exercise the vote. It is therefore open to the proxy to not act upon some of the proxy votes they hold. An exception to this is the Chairman, who must vote on a poll in accordance with the directions of the shareholder.[36]

This is another area where improvements in shareholder participation can be made to ensure that the voting intentions of shareholders are carried out by their appointed proxy, regardless of who has been appointed as proxy. The current debate is centred around requiring all proxy holders, if they chose to vote on a poll, to vote all proxies they hold, as directed.

Minor changes to the Corporations Act would be required to enable the above and these changes would restrict the incidence of 'cherry-picking' that occurs from time to time.

4.3.3 Direct Voting

With currently available technologies, consideration should be given to whether the proxy system can be replaced with direct voting, allowing shareholders to exercise their vote directly even when they cannot attend a meeting of shareholders.

33 ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES OF GOOD CORPORATE GOVERNANCE AND BEST PRACTICE RECOMMENDATIONS, MARCH 2003, ATTACHMENT A – GUIDELINES FOR NOTICES OF MEETING, PARA. 4.3.
34 IBID., PARA. 4.4.
35 S 250A(4).
36 S 250A(4)(C).

Before the widespread use of Internet-based technology, it was generally impractical for a company to conduct direct voting by shareholders not present at a meeting. However, there are now a number of providers of Internet based 'postal voting' type systems that have been used by organisations, such as the NRMA, to conduct polls of members.

The advantage of direct voting is that it removes the occasional problems that stem from voting via the appointment of proxies. A common argument put against direct voting is that new information can surface during an AGM that could influence how an individual votes. With new technology improving the availability of information, this concern may no longer be valid (see also 6.3, p50).

4.3.4 Disclosing Proxy Votes

Most resolutions on the agenda of the AGM will be determined by proxy votes, including directed proxies and undirected proxies held by the Chairman.[37] There is an issue therefore about the relationship between the results of the proxy vote and the discussion and voting on resolutions at the AGM, and in particular, when the results of the proxy vote should be disclosed. There are no legal requirements determining the timing of the disclosure of proxies. Nor is there a widely agreed view on when the results of proxy votes should be disclosed at the AGM.

On the one hand, it can be argued that the results of proxy votes should be revealed before the discussion on a resolution and before any show of hands from the meeting. Proponents of this view argue that to not do so risks misleading the meeting, if those attending the meeting believe they have a significant opportunity to influence the final outcome.

On the other hand, it can be argued that the results of proxy votes should only be revealed following the discussion and any show of hands. Resolutions may be passed on a show of hands or may be put to a poll, in which case the results of proxy votes can be revealed on the calling of the poll. Proponents of this view argue that revealing the results of the proxy votes in advance presents the resolution as a fait accompli and stifles any discussion or debate from the floor of the meeting. Allowing discussion first, while not influencing the final outcome of the vote, allows retail shareholders in particular to express their views.

The Business Council of Australia's Code of Conduct for AGMs[38] suggests that:

"Following the conclusion of debate on a resolution, and before the resolution is put to the meeting, the Chairman will disclose the way in which proxy votes have been cast on the resolution and the way in which the Chairman will cast those undirected proxies given to the Chairman."

An alternative approach is to put the question to shareholders at the AGM and allow them to determine when the results of proxy votes should be revealed.

Another approach would be to require that all voting take place via proxies, as discussed above. In effect, this would create a system of 'postal votes' that would allow the resolutions to be determined in advance of the AGM. This approach reflects the reality that the vast majority of resolutions are determined by proxy votes ahead of the meeting. This approach, however, would deny shareholders the opportunity to discuss resolutions and make up their minds how to vote at the AGM.

37 UNDER ASX LISTING RULE 14.2.3, IN SOME CASES (WHERE A VOTING EXCLUSION STATEMENT IS REQUIRED), THE PROXY FORM SENT WITH THE NOTICE OF AGM MUST DISCLOSE HOW THE CHAIRMAN INTENDS TO VOTE UNDIRECTED PROXIES.
38 BUSINESS COUNCIL OF AUSTRALIA, GENERAL MEETINGS CODE OF CONDUCT, SEPTEMBER 2003, AVAILABLE AT WWW.BCA.COM.AU

LEGAL REQUIREMENTS

A company must send a proxy appointment form to all members entitled to attend and vote at the meeting: 249Z.

A member who is entitled to attend and vote at an AGM may appoint a proxy to attend and vote for the member at the meeting. If the member is entitled to two or more votes, they may appoint two proxies: 249X.

To be valid, a proxy appointment must contain the information specified in section 250A and be received by the company at least 48 hours before the AGM: 250B.

The member may specify the way the proxy is to vote on particular resolutions: 250A(4).

4.4 CONDUCT OF MEETING AND PARTICIPATION OF SHAREHOLDERS

The AGM is an important opportunity for shareholders, particularly retail shareholders, to examine the company's performance and prospects, to consider the accounts and to vote on the appointment of an auditor (if relevant) and the election of Directors. The AGM should be structured and conducted in a manner that allows all shareholders present to take full advantage of that opportunity.

In September 2003, the Business Council of Australia released its Code of Conduct for AGMs.[39] The Code is designed to increase the value of AGMs for shareholders, Boards and management and was developed in consultation with the Australian Shareholders' Association, the Australian Institute of Company Directors and Chartered Secretaries Australia.

In summary, the Code suggests:

- ways of speeding up the formalities of the AGM, such as allowing resolutions to be displayed electronically and dispensing with resolution proposers and seconders;
- processes for managing questions from the floor to ensure all shareholders have a reasonable chance to question the Board and management and that proceedings are not dominated by one or more individuals; and
- approaches to ensure questions are answered relevantly and frankly and for disclosing proxy vote results.

Section 3 above also suggested alternative structures for the AGM to increase the value of AGMs for shareholders, Boards and management.

39 BUSINESS COUNCIL OF AUSTRALIA, GENERAL MEETINGS CODE OF CONDUCT, SEPTEMBER 2003, AVAILABLE AT WWW.BCA.COM.AU

4.4.1 Chairs of Board Committees

The Business Council's Code of Conduct for AGMs suggests that

"the Chairmen of relevant Board committees, such as Audit, Remuneration, Nomination and Health, Safety and Environment Committees, or their alternates, will be available to answer questions, at the Chairman's discretion."

The suggestion is that the heads of Board committees be available to answer shareholder questions on issues for which their Committee is responsible. Another approach is for the heads of Board Committees to provide shareholders with a short presentation on their area of responsibility. This is starting to be seen in the area of executive and Director remuneration, for example, where the Chair of the Remuneration Committee will provide a brief overview of the Board's remuneration policies and how these are applied in practice, before taking questions through the Chair of the meeting.

4.4.2 Convenience and Comfort of Shareholders

Because the AGM is very much a meeting for shareholders, consideration should be given to the convenience and comfort of shareholders. For example, AGMs should be held at a time and in a place which is suitable for a majority of shareholders that are likely to attend the meeting. Larger companies with substantial numbers of retail shareholders may also elect to rotate AGMs through major cities. For AGMs with high attendance numbers, there will be limited venues capable of taking such numbers, and a balance needs to be struck between shareholder comfort and venues with suitable size and visual, audio and technical facilities.

LEGAL REQUIREMENTS

The chair of an AGM must allow the shareholders present at the meeting a reasonable opportunity to ask the directors and the auditor questions or make comments in relation to the management of the company: 250S and 250T.[40]

The Explanatory Memorandum accompanying the 1998 introduction of ss 250S and 250T makes it clear that the sections do not confer a right upon each individual shareholder to ask a question, but rather gives shareholders "as a whole" opportunities to ask questions. This right must be balanced against the Chairman's common law right to run an orderly meeting. The Explanatory Memorandum also makes it clear that the Directors and auditors are not obliged to answer a question.

4.5 ELECTION OF DIRECTORS

A key part of any AGM is the election, or re-election, of Directors to the Board. Any person may stand for election to the Board as a Director,[41] subject to the company's constitution. Under the ASX Listing Rules, a company must accept nominations for the election of Directors up to (generally) 35 business days before the date of the general meeting. The constitution will typically also set out Directors' terms[42] and the method of election. The notice of meeting will set out the details of persons standing for election at the AGM.

40 UNDER CLERP 9, SHAREHOLDERS HAVE AN OPPORTUNITY TO SUBMIT WRITTEN QUESTIONS TO THE AUDITOR BEFORE THE MEETING AND THE AUDITOR MUST ATTEND THE MEETING AND HAVE A REASONABLE OPPORTUNITY TO RESPOND TO THOSE QUESTIONS (NEW SECTIONS 250PA, 250RA AND 250T OF THE CORPORATIONS ACT).

41 SUBJECT TO VARIOUS PROHIBITIONS IN THE CORPORATIONS ACT CONCERNING, FOR EXAMPLE, AGE LIMITS, INSOLVENCY AND OTHER DISQUALIFICATIONS.

42 SEE ALSO ASX LISTING RULE 14.4 CONCERNING ROTATION OF DIRECTORS.

The ASX Corporate Governance Council Principles and Recommendations[43] suggest the information that should be included in the notice of meeting to allow shareholders to make an informed decision when voting for potential Directors:

- biographical details, including competencies and qualifications and information sufficient to enable an assessment of the independence of the candidate;
- details of relationships between
  - the candidate and the company
  - the candidate and Directors of the company;
- Directorships held;[44]
- particulars of other positions which involve significant time commitments;
- the term of office currently served by any Directors subject to re-election;
- any other particulars required by law.

The Principles and Recommendations also suggest that companies give clear guidance in notices of meeting containing resolutions for the election of Directors,[45] as follows:

- where the number of candidates for election equals the number of available positions, companies should ensure that each candidate for election be considered separately in a distinct resolution;
- where the number of candidates for election exceeds the number of available positions on the Board, the notice should provide clear guidance on the voting method by which the successful candidates will be selected at the meeting as well as the method to be used for the counting of votes;
- notices of meeting for election or removal of Directors should fairly and equitably represent the views of candidates.

4.5.1 Role of Directors

There is a view that, when standing for election or re-election, candidates should address the AGM, setting out their claims in support of their candidacy. The AGM is an important opportunity for shareholders to see their Directors and potential Directors in person and to gauge their contributions and qualifications as representatives of the shareholders. Shareholders attending the meeting are often bemused that the majority of their Directors sit mute throughout the meeting, while the meeting is largely conducted through the Chairman and Chief Executive.

An alternative view is that having single Directors address the meeting detracts from the collective responsibility of the Board for company performance and prospects and may subject individual Directors to questioning on matters that are a collective rather than individual responsibility.

To reconcile these different views, a number of companies allow the individual Director to decide themselves whether they will address the meeting or not. Alternatively, or additionally, the chair of the Board Nominations Committee could set out the Board's policies and processes for selecting Board candidates and affirm that the nominees meet those policies. Directors should also give serious consideration to mixing with shareholders after the meeting, to allow shareholders to meet them and discuss any specific issues they have.

43 ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES OF GOOD CORPORATE GOVERNANCE AND BEST PRACTICE RECOMMENDATIONS, MARCH 2003 AT P 23.

44 THESE ARE DIRECTORSHIPS REQUIRED TO BE DISCLOSED BY LAW, AND ANY OTHER DIRECTORSHIPS RELEVANT TO AN ASSESSMENT OF INDEPENDENCE.

45 ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES OF GOOD CORPORATE GOVERNANCE AND BEST PRACTICE RECOMMENDATIONS, MARCH 2003, AT ATTACHMENT A, GUIDELINE 7.

4.6 THE ROLE OF INSTITUTIONAL INVESTORS

The majority of shares in Australian companies are held by institutional investors, including fund managers and superannuation funds.

Institutional investors tend not to participate in AGMs and are not as reliant on the sources of information used by retail investors.

A 2003 survey of fund managers,[46] which covered 98 per cent of the investment in Australian equities, found that Australian funds managers are active shareholders in the companies in which they invest, through high levels of voting on resolutions and through direct contact with the management of companies.

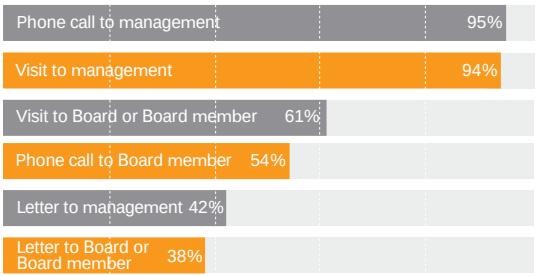
The survey found that:

- on average, fund managers vote on 92 per cent of all company resolutions; and
- routine voters, that is those who vote on at least 90 per cent of all resolutions, accounted for 91 per cent of fund managers and 98 per cent of funds under management.

While Australian fund managers are very active in voting on resolutions, overwhelmingly they consider that voting is the least effective method of influencing corporate governance outcomes. The survey found that fund managers rate direct contact with companies as nearly twice as effective in influencing Board and management decisions as casting proxy votes. Direct contact can include phone calls, meetings or letters (see Figure 5). Attendance at AGMs is seen as of very little benefit to institutional investors.

For companies, there could be advantages in more active participation by institutional investors in AGMs. Having representatives of institutional investors present would allow the institutions to pose questions to the company of interest to them (as well as questions from retail shareholders on their concerns) and could allow institutional investors to speak on resolutions being put to the meeting. It could be argued that active participation by institutional investors in AGMs would make them more 'democratic' in that institutional investors represent an overwhelming majority of the interest in most major corporations (see Box 8). The benefits to the institutional investors from this participation are questionable however.

FIGURE 5
TYPES OF CONTACT USED BY INSTITUTIONAL INVESTORS



Source: Investment and Financial Services Association, "Shareholder Activism Among Fund Managers: Policy and Practice", August 2003.

Percentages represent proportion of Australian equities funds under management held by institutions using the method.

46 INVESTMENT AND FINANCIAL SERVICES ASSOCIATION, "SHAREHOLDER ACTIVISM AMONG FUND MANAGERS: POLICY AND PRACTICE", AUGUST 2003.

BOX 8
THE ROLE AND LIMITS OF SHAREHOLDER DEMOCRACY

Parallels have been drawn between the rights of shareholders in corporations with the rights of electors in political democracies. This is often referred to as 'shareholder democracy' or 'corporate democracy' and increasing the level of democracy is argued as a necessary response to perceived failings in corporate performance.

Proponents of the shareholder democracy view argue that the same measures that apply in an advanced political democracy should be applied to the way in which corporations are run. In particular, it is argued that *"the notion of checks and balances, the regular testing of popular support, proper representation of shareholders and the separation of powers are all inadequately developed in Corporations Law."*[47]

There may be validity in this argument and lessons to be learned from the political democracy model. Care needs to be taken, however, in how that model is used and the limits of its appropriateness to shareholders and companies. For example, under the current law, 100 shareholders can call a general meeting and put a resolution to dismiss the Board. It could be argued that this right is part of shareholder democracy. However, 100 shareholders represents between 0.01 per cent and 0.1 per cent of shareholders of a large corporation. The political equivalent would be for 0.01 per cent to 0.1 per cent of the electorate to have the right to call an election.

There can also be a tendency to confuse the basis of the 'franchise' for shareholder democracy. Under the current law, each (voting) share represents one vote. An investor holding 100,000 shares therefore has 100,000 votes. Much of the discussion of shareholder democracy, which focuses on the rights of retail shareholders, loses sight of this and appears to equate shareholder democracy with each shareholder having one vote (in other words, a shareholder with 100 shares has the same voting power as a shareholder with 100,000 shares). For example, when a resolution at an AGM is lost on a show of hands, but carried overwhelmingly by proxy votes, the result is sometimes caricatured as a breakdown in shareholder democracy, despite the resolution typically having the support of over 90 per cent of the votes.

Shifting to any system that allows each shareholder an equal voting right, regardless of how many shares they own, seriously distorts the rights of major shareholders. For example, in a typical major corporation, small shareholders (those with 1000 or less shares) may represent five per cent of the current vote, but 75 per cent of all shareholders. If all shareholders were to be given one vote per shareholder, the owners of five per cent of the company would control 75 per cent of the vote, while the owners of the remaining 95 per cent of the company would control just 25 per cent of the votes. This could create a situation where small shareholders could put their interests ahead of major shareholders, including superannuation funds.

While it is important that shareholders have effective rights, there must also be limits to those rights if companies are to function effectively and efficiently. As stated in the OECD Principles of Corporate Governance:

"As a practical matter, however, the corporation cannot be managed by shareholder referendum."[48]

47 SENATOR ANDREW MURRAY, 'TOUGH LINE ON CLERP 9', PRESS RELEASE NUMBER 03/418, 10 APRIL 2003.
48 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD PRINCIPLES OF CORPORATE GOVERNANCE, 2004, P 32.

4.7 REPORTING AGMS

Companies are required to record proceedings and resolutions of the AGM and make these records available to shareholders (see 'Legal Requirements' below). For listed companies, the ASX also requires that it is advised of the results of resolutions put at AGMs.[49]

Typically, companies will provide records of their AGMs through their websites, including:

- copies of the notice of meeting and resolutions considered at the AGM;
- copies of the annual and financial reports;
- webcasts or transcripts of all or key parts of the AGM, such as the Chairmen's address and Chief Executive's report; and
- the results of voting on resolutions put to the AGM.

Where companies have sought questions from shareholders in advance of the AGM (see Section 3.1 above), the company's responses to these questions may also be posted on the website.

LEGAL REQUIREMENTS

A company must record proceedings and resolutions of the AGM in a minute book within one month of the meeting: 251A.

A listed company must record in the minutes of a meeting the total number of proxy votes: 251AA.

A company must ensure that its book of minutes is open for inspection to members, free of charge. In addition, a member may request a copy of the minutes of an AGM: 251B.

49 ASX LISTING RULE 3.13.2.

PART 2 OTHER FORMS OF COMMUNICATION

While the AGM is an important opportunity for shareholders, particularly retail shareholders, to discuss the performance and prospects of the company, it is not the only means of communication between companies and their shareholders. In particular, shareholders also get information about their companies through:

- annual reports;
- financial reports;
- full year and half year results;
- media reports;
- websites, webcasts and other electronic sources;
- newsletters and other communications, such as letters from the Chairman and Chief Executive on significant issues.

SHAREHOLDER COMMUNICATIONS POLICIES

SHAREHOLDER COMMUNICATIONS POLICIES

Many companies have Shareholder Communications Policies or Strategies, which set out the commitment of the company to communicating in an effective and timely manner (see Box 9). The ASX Corporate Governance Council Principles and Recommendations propose that companies *"design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings."*[50]

Communications Policies or Strategies will typically set out:

- what communications the shareholder can expect from the company;
- what methods of communication will be used;
- how shareholders can contact the company;
- how shareholders can amend their details on the company share registry;
- how AGMs will be conducted;
- how financial results will be communicated to shareholders, analysts and the media;
- where shareholders can access information such as annual reports, financial reports, Board charters, company announcements and media releases; and
- the company's commitment to treat all of its shareholders with respect and consideration.

BOX 9
EXAMPLES OF SHAREHOLDER COMMUNICATIONS POLICIES OR STRATEGIES

Qantas
http://www.qantas.com.au/infodetail/about/corporateGovernance/ShareholderCommunicationPolicy.pdf

Commonwealth Bank
http://shareholders.commbank.com.au
and select menu item 'Corporate Profile – Guidelines for Communication'

AMP
http://www.ampgroup.com/
and select menu item 'Shareholder Centre – Corporate Governance'
then select 'Corporate Policies'

Coles Myer
http://www.corporate.colesmyer.com/

50 ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES OF GOOD CORPORATE GOVERNANCE AND BEST PRACTICE RECOMMENDATIONS, MARCH 2003, RECOMMENDATION 6.1

INCREASING THE USE OF ELECTRONIC MEDIA

INCREASING THE USE OF ELECTRONIC MEDIA

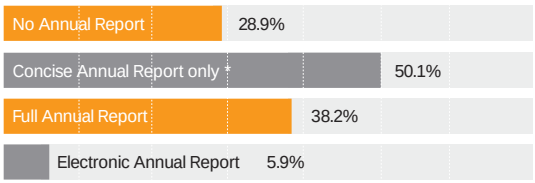
The use of electronic media potentially enables more timely and comprehensive communication between the company and its shareholders, and reduces the 'information gap' between retail and institutional shareholders. Companies can facilitate shareholder participation by electronically distributing notices of meetings and annual reports and providing for the electronic authentication and submission of proxy forms.

6.1 USE OF ELECTRONIC MEDIA

While the potential for improved communication through electronic media, including email, websites and webcasting, is significant, there are major barriers to their increased use. A significant issue is whether shareholders have the ability or desire to receive information from their companies electronically. While over 70 per cent of Australians now have access to the Internet,[51] for example, usage is least common among people over fifty-five.[52] This group is also the age group with the highest percentage of direct shareholders.[53] At present, shareholders therefore need to be given the opportunity to elect to receive electronic communications, rather than electronic communication automatically replacing existing forms of communication with shareholders.

When offered a choice of format for annual reports, for example, the vast majority of shareholders in large corporations opt for printed reports, even though nearly 80 per cent of large companies offer electronic reports (see Figure 6).

FIGURE 6
PREFERENCES OF SHAREHOLDERS IN RECEIVING ANNUAL REPORTS



Source: Chartered Secretaries Australia, Benchmarking Company Secretariat Functions in Australia, April 2004.

* Percentage electing to receive concise annual report where offered (approximately 60 per cent of large corporations offer a concise annual report – total percentage will therefore not sum to 100 per cent).

6.2 WEBSITES

Websites provide a readily accessible source of information for shareholders. Company websites will typically provided access to electronic copies of:

- annual reports;
- financial reports;
- full year and half year results;
- notices of meeting;
- media releases and ASX company announcements;
- presentations and speeches;
- past information on shareholder returns;
- information on any other shareholder benefits;
- corporate policies on issues such as corporate governance, health and safety and environmental management; and
- 'frequently asked questions', including information from the company responding to the questions most frequently asked by shareholders.

51 NIELSEN//NETRATINGS GLOBAL INTERNET TRENDS Q4 2002, HTTP://WWW.NIELSEN-NETRATINGS.COM/PR/PR_030220.PDF
52 AUSTRALIAN BUREAU OF STATISTICS, 2001 CENSUS OF POPULATION AND HOUSING.
53 ASX 2003 AUSTRALIAN SHARE OWNERSHIP STUDY, FEBRUARY 2004.

Websites can also be used to allow shareholders to update their details on the company share registry and for access to forms, for example, to elect to have dividends reinvested.

Many companies consolidate information frequently sought by shareholders in a Shareholder or Investor Centre on their websites, with a clear link from the company home page. The ASX Corporate Governance Council Principles and Recommendations also suggest that companies establish a dedicated corporate governance section within their websites, which should be referred to in the annual report.[54] The guides to reporting for each of the 10 Principles set out information that should be included in the website's corporate governance section.

The ASX Corporate Governance Council Principles and Recommendations also suggest companies:

- place all relevant announcements made to the market, and related information (eg information provided to analysts or media during briefings), on the website after they have been released to the ASX;
- consider webcasting or tele-conferencing analyst or media briefings and general meetings, or posting a transcript or summary to the website;
- place the full text of notices of meeting and explanatory material on the website;
- provide information about the last three years' press releases and announcements, plus at least three years of financial data, on the website; and
- use email to provide information updates to investors.[55]

Websites do not, however, need to be just one-way communications from the company to its shareholders. Companies can also consider including a feature on the website that allows shareholders to communicate directly with the Chairman's office, particularly to raise concerns with the Chairman on issues of company performance, policy or practice. This could be combined with a telephone 'hot line' that allows shareholders to register their issues directly with the Board through the Chairman's office. As well as replying directly to the shareholder, companies could post the most frequently asked questions, and the company's responses, on their website. Box 9 sets out the Australian Shareholders' Association's suggestions for good practice in allowing shareholders to question the company through its website.

54 ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES OF GOOD CORPORATE GOVERNANCE AND BEST PRACTICE RECOMMENDATIONS, MARCH 2003, AT P 6.
55 IBID., AT P 40.

BOX 9
STEPS TO ALLOWING SHAREHOLDERS TO QUESTION COMPANIES

1. All listed companies should have a website.

2. The website should contain all public documents, including annual reports, media releases, analyst briefings, etc.

3. At any time, shareholders should be able to ask questions of the company, by email, letter or fax.

4. These questions should be posted on the website, together with an answer.

5. The answer can include referring the questioner to already published information, or providing an answer that has not previously been published, in which case, if it is price sensitive, it must be copied to the ASX.

6. The answer should be sent back to the questioner using the medium he or she used.

7. The company may decline to answer a question but should still put the question and reasons for its refusal to answer, on the website.

8. A company representative in each capital city should have access to the website and make it available (i.e. have an operator to assist) to any shareholder who does not have Internet access (this representative could be the share registry, the company's branch office, accountants or solicitors).

9. The question and answer section of the website should have a search function.

10. Questions should be deleted from the website after a reasonable period of time, say six months.

6.3 ELECTRONIC VOTING

A recent survey by Chartered Secretaries Australia[56] found that the use of electronic and telephone proxy voting is an option that has been largely unexplored by companies. The survey found that only 12 per cent of companies use electronic proxy voting and no companies currently use telephone voting. Companies see the potential of electronic proxy voting, however, with 41 per cent of companies considering its future use. Only 19 per cent would consider using telephone voting.

One company that responded to the survey reported that it had received 65 per cent of its votes electronically.

56 CHARTERED SECRETARIES AUSTRALIA, BENCHMARKING COMPANY SECRETARIAT FUNCTIONS IN AUSTRALIA, APRIL 2004.

7

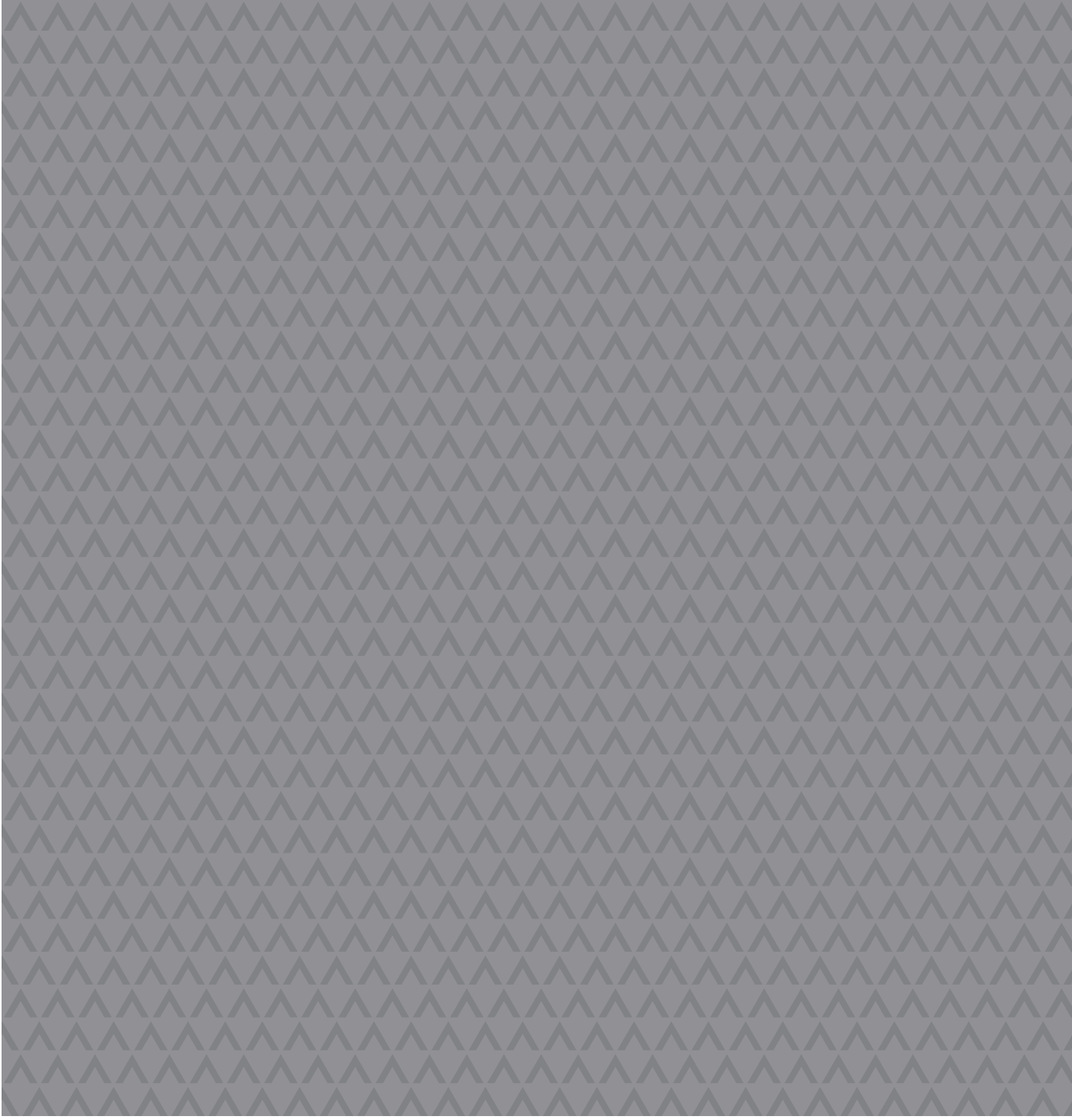
CONCLUSION

7 CONCLUSION

With Australian companies facing increased scrutiny and questioning from their shareholders and the wider community, there is a need to re-examine how companies communicate and engage with their shareholders, particularly their retail shareholders.

Improving communication is essential to rebuilding trust and reinforcing the quality of our corporate and market systems and practices, particularly if the wider community is to be convinced that the vast majority of company Directors and executives are highly skilled and competent individuals focussed on growing the wealth of shareholders.

The aim of this Paper has been to act as a catalyst for companies to examine their communication policies and practices, by setting out a range of innovative and alternative approaches to improving communication with retail shareholders. Adoption of these or similar practices will see an improvement in the relationship between shareholders and their companies and, ultimately, greater trust and understanding of the role and performance of the corporate sector. It is hoped that the Paper also gives other commentators, including those in Parliament and the media, a clearer understanding of how companies engage with their shareholders and the issues that typically arise.



Business Council of Australia

BUSINESS COUNCIL OF AUSTRALIA
42/120 COLLINS STREET
MELBOURNE

T 613 8664 2664 F 613 8664 2666
www.bca.com.au