Australia

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 103 companies in Australia as of 15 May 2008.

Although shareowners in the Australian market generally have strong shareowner rights, terms for members of boards of directors are staggered, and the appointment of a managing director is usually not subject to shareowner approval. Board members may be removed only by shareowners, not by the board; the board also may not alter the company's constituent documents without shareowner approval.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	71%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	20%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	2%	Relatively rare in the Australian market
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common but do apply in sensitive industries, such as media, telecommunications, and aviation.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Yes	This practice is standard in Australia.
Do companies allow for cumulative voting in the election of board members?	No	This type of voting is not the practice in Australia.
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or otherwise?	Yes	This ability is a (nonbinding) requirement in Australia.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes, sometimes	Approval by shareowners of non-board member executives' incentive plans is not required in Australia. Share plans for board members (including executive board members) are subject to shareowner approval, although a company can acquire shares for a board member in a non-dilutive purchase without shareowner approval. Of the companies researched for this manual, 45% have sought shareowner approval for equity-based incentive plans.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	Shareowners holding a minimum of 10% of shares (or 100 shareowners) may call an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	0%	No Australian companies have golden shares. One of the companies listed in Australia that was researched for this manual has a golden share. The company is Telecom Corporation of New Zealand, which is a New Zealand–based company, and the government of New Zealand holds a golden share.
Are shareholder rights plans (poison pills) allowed in this market?	No	No companies have poison pills.
If shareholder rights plans are in use, do they have to be approved by shareowners?	NA	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is a legal requirement.
Do companies require a supermajority vote to approve a merger?	In many cases	Acquisition bids can be successful at the 50% level to gain control, and the bidders are generally able to continue on to full acquisition by compulsion once the bidder reaches 90%. Mergers by schemes of arrangement are also possible and are more common for listed trusts. These mergers require approval by 75% of shareowners in a general meeting.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	This is a legal requirement.
Are class action suits commonly used in this market?	No	Although not unheard of, they are not common.
Are derivative suits commonly used in this market?	No	Although not unheard of, they are not common.

Current Engagement Practices and Shareowner Rights Developments

In Australia, the shareowner engagement process is reasonably mature. The most prominent body in corporate engagement is the Australian Council of Superannuation Investors, which represents many major superannuation (pension) funds when it approaches listed companies seeking governance changes. In addition, engagement consultants are increasingly prominent in Australia. Increased engagement in recent years is the product of reasonably strong shareowner rights, pressure on investment managers to vote their shares, and the introduction of a shareowner vote on compensation.

All boards are staggered over a three-year rotation process in Australia. This approach has been standard practice in Australia for decades and is unlikely to change. Although this process may entrench boards, the ability of shareowners to remove board members without cause by calling an extraordinary general meeting (EGM) does mitigate the effect of staggered board terms. New board members may be appointed to fill vacancies between annual general meetings, but their names must be submitted for approval by shareowner election at the next available general meeting (annual or extraordinary). Managing directors (CEOs) are appointed by the board usually to a contract of several years, and the appointments are not subject to shareowner approval.

Takeover rules are not a major deterrent to a bidder in Australia and serve as added pressure on companies to perform. Poison pills are not used in Australia. The Takeovers Panel (a quasi-adjudicatory body established as the arbiter of disputes relating to takeovers under the Corporations Law), which is charged with overseeing mergers and acquisitions, is largely composed of market-based practitioners. Although the Takeovers Panel is empowered to take action to ensure fairness in bids, it generally favors minimal intrusion, allowing the market to determine the success or failure of a bid. The result is a bid process in Australia that is fairly open in comparison with the processes in most other markets.

Australian companies are subject to continuous disclosure rules and cannot make selective briefings to certain shareowners. This requirement has been seen as a deterrent to shareowner communication by some but not as a reason to avoid engaging with companies.

Takeover legislation is pending that might address those situations when shareowners gather to discuss collective action against a company. The Australian market regulator, the Australian Securities and Investments Commission (ASIC), has issued a class order to protect against an inadvertent breach of the takeover legislation when investors are discussing voting intentions for a shareowner meeting. How this class order relates to discussions outside the context of an upcoming vote is unclear. Until this aspect is clarified, such discussions remain a potential source of liability for those involved in corporate engagement, as the class order has not been fully tested in any legal action.

In June 2008, the Parliamentary Joint Committee on Corporations and Financial Services published *Better Shareholders—Better Company: Shareholder Engagement and Participation in Australia*. This manual offers suggestions for enhancements to the engagement process in Australia. Recommendations include the following: abolish the 100-member rule for calling

an EGM, clarify shareowners' ability to meet and discuss their intentions outside the context of an upcoming vote, improve disclosure of derivative positions, prevent proxy holders with different vote recommendations from vote "cherry picking," and prohibit vote renting.[2]

Legal and Regulatory Framework

Key shareowner rights are contained in the Corporations Law, which embodies all corporate laws and takeover provisions affecting Australian companies. The Corporations Law is administered by ASIC, which has wide-reaching enforcement powers. Disclosure and key market regulation is also found in the Listing Rules of the Australian Securities Exchange, which has legislative backing. ASIC can get involved in listing issues if criminal enforcement is indicated. The takeover provisions of the Corporations Law are also overseen by the Takeovers Panel, which is largely composed of industry practitioners and takes a market-based approach to the provisions with the aim of ensuring fairness in the takeover process.

A number of mechanisms are available in Australia for shareowner engagement and activism. The one share, one vote system is fully entrenched in Australia, and despite the rare attempts by some companies to work around it, it is still the standard requirement. Shareowners also have strong rights when it comes to calling meetings outside the annual general meeting. An EGM of shareowners may be called by shareowners representing 10 percent of shares or totaling 100 shareowners. This meeting may be used to put forward a resolution to change the memorandum of association (equivalent to the certificate of incorporation in some markets) or articles of association (equivalent to bylaws), neither of which can be changed by the board or management and can be changed only by a resolution of the shareowners.

An EGM also can be used to remove a board member from office. Board members may be removed without cause in Australia but only by shareowners in a general meeting; they cannot be removed by the board, which gives shareowners serious clout because it reinforces the sense that the board is subject to the will of shareowners. Furthermore, all board members are subject to election on a periodic basis by majority vote and must resign before submitting themselves for reelection at an annual general meeting.

Shareowners can issue proxies for general meetings without restriction and are not required to block shares in order to vote. Recently, market participants have raised concerns that renting shares and other activities could separate economic interests from voting interests. These issues are included in the report by the Parliamentary Joint Committee on Corporations and Financial Services and are expected to be the subject of legal or regulatory reform in the near future.

Key organizations with information relevant to shareowner rights in Australia include the following:

Australian Securities and Investments Commission (www.asic.gov.au)

Australian Securities Exchange (www.asx.com.au)

Australian Council of Superannuation Investors (www.acsi.org.au)

Australian Institute of Company Directors (www.companydirectors.com.au)

Chartered Secretaries Australia (www.csaust.com)

Centre for Corporate Law and Securities Regulation (http://cclsr.law.unimelb.edu.au/)

Australasian Investor Relations Association (www.aira.org.au)

Australian Institute of Superannuation Trustees (www.aist.asn.au)

Takeovers Panel (www.takeovers.gov.au)

Corporations and Markets Advisory Committee (www.camac.gov.au)

Australian Treasury (www.treasury.gov.au)

[2]Vote renting refers to the borrowing of shares in order to vote on a transaction to secure a desired outcome.