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**Inquiry into shareholder engagement
and participation**

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CONTENTS

INTRODUCTION	1
Profile of the shareholder	2
Shareholder engagement and participation	2
Separation of ownership and control	3
Barriers to effective shareholder engagement and participation	4
Regulatory framework for shareholder engagement and participation	5
Company meetings and voting	5
Financial reporting	8
Private sector co-regulatory and self-regulatory initiatives	9
Financial Literacy Foundation	10
CONCLUSION	13
Summary of members' rights and remedies	15
Members' powers and rights.....	15
Remedies available to individual members	15

INTRODUCTION

Australia's corporate governance framework, including the rules on shareholder engagement and participation, is generally well regarded internationally.

As part of its Financial Sector Assessment Program, the International Monetary Fund (IMF) recently concluded that the corporate governance framework for Australian listed companies is largely healthy and dynamic. Specifically, it noted that an important part of the Australian framework is the activist shareholder environment in which the listed companies in Australia operate.

In the past few years in Australia, shareholders, including institutional shareholders and shareholder groups, have become significantly more active and thus have increased leverage in dealing with management and making management more accountable.¹

This observation highlights the significance of active and engaged shareholders in contributing to better corporate governance and promoting compliance and disclosure. A key concern of the framework is to facilitate shareholders' ability to access, understand and exercise their rights. This submission will examine the features of shareholder engagement and participation in Australia, including:

- the profile of the shareholder;
- the principles behind shareholder engagement and participation;
- the current framework of shareholder rights including recent reforms to address barriers to effective shareholder engagement and participation;
- private sector initiatives to promote best practice shareholder engagement and participation; and
- details of the activities of the Australian Government's Financial Literacy Foundation, aimed at improving the financial literacy of Australians and Australian shareholders.

¹ International Monetary Fund, *Financial Sector Assessment Program: Australia, Technical Note: Investor protection, disclosure, and financial literacy in Australia*, December 2005, p 4.

Profile of the shareholder

In 2006, an estimated 46 per cent of adult Australians or approximately 7.3 million people owned shares directly or indirectly (via a managed fund or self-managed superannuation fund).² Although this figure shows a decrease over recent years, the Australian Securities Exchange (ASX) survey concludes that shareholders in 2006 appear more sophisticated, as seen through:

- increased penetration of ownership of shares in an overseas exchange, from 7 per cent in 2002 to 19 per cent in 2006;
- an increase in the average number of companies held in a portfolio from six in 2002 to nine in 2006, and those having at least eight companies increasing from 22 per cent to 34 per cent (respectively);
- shareholders having more of a mixture of large and small companies in their portfolio (50 per cent in 2006) and across more than one sector (75 per cent); and
- an increase in the average number of shares trades from five in 2002 to eight in 2006, and the average share parcel traded from around \$9,000 to \$14,000 (respectively).

Shareholder engagement and participation

The engagement and participation of shareholders is a key component of a good corporate governance framework.

The *OECD Principles of Corporate Governance*, which are widely accepted as articulating good corporate governance standards applicable across all jurisdictions, state that the corporate governance framework should protect and facilitate the exercise of shareholders' rights, including giving shareholders the opportunity to participate effectively and vote in general shareholder meetings.³

From an economic perspective, this area of corporate law seeks to minimise the agency costs that arise out of the separation of ownership and control. It is assumed that managers will better promote the interests of shareholders if there are sanctions for shirking or misconduct and rewards for performance. While competitive markets will exercise a disciplinary effect on management (including incentives provided through the market for securities, the market for corporate control and the market for managers), it is generally accepted that there is a need for further monitoring by both shareholders and state authorities. Different jurisdictions have adopted different approaches to the extent to which reliance is placed on state authorities to monitor performance – with Australia generally regarded as having a very active regulator.⁴

2 Australian Securities Exchange, *Australia's Share Owners: An ASX study of share investors in 2006*, May 2007.

3 Organisation for Economic Co-operation and Development, *OECD Principles of Corporate Governance*, 2004, p 18.

4 International Monetary Fund, *Financial Sector Assessment Program: Australia, Technical Note: Investor protection, disclosure, and financial literacy in Australia*, December 2005, p 5.

Where the rights of shareholders are clearly defined and exercise of those rights facilitated, including the rights to influence management and claim residual assets, investors are more likely to contribute capital to corporations in the furtherance of an agreed objective.

The rules governing shareholder participation in Australia's corporate governance framework are generally directed toward facilitating the efficient determination of the will of the majority of shareholders in defined areas, with safeguards to ensure decision-making is informed.⁵

The position of shareholders can be contrasted to that of creditors, who have a right to a fixed income stream, or customers, whose rights are generally specified under contract. The gains and losses of good or bad company performance are ultimately the lot of shareholders, whose claims stand last in line.⁶

Separation of ownership and control

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.⁷

For this reason, the corporate governance framework reserves broad management powers to the board of directors⁸ (with day-to-day decision-making often delegated to managers). Shareholders influence the behaviour of the corporation over the longer term by exercising influence on fundamental matters.

The *Corporations Act 2001* (Corporations Act) reserves to shareholders a number of rights relating to their engagement and participation, the main ones being:

- the right to appoint and remove directors under Chapter 2D;
- the right to information and accounts under Chapter 2M;
- the right to requisition and call general meetings and propose resolutions under Chapter 2G;
- the right to vote under Chapter 2G; and

5 Companies and Securities Advisory Committee, *Shareholder participation in the modern listed public company: final report*, June 2000, p i.

6 F H Easterbrook and D R Fischel, *The Economic Structure of Corporate Law*, Harvard University Press, Cambridge, 1991, p 67.

7 Organisation for Economic Co-operation and Development, *OECD Principles of Corporate Governance*, 2004, p 32.

8 For example, section 198A of the *Corporations Act 2001* is a replaceable rule conferring broad powers on the board.

- the right to approve alterations to the share capital of a company under Chapter 2J and the company constitution under Chapter 2B.

Shareholders exercise their influence primarily through attending and/or voting at the company's general meetings. A brief summary of members' rights and obligations is contained in **Attachment A**.

This separation between the ownership of the company (the shareholders) and the control of the company (the board and managers) allows for specialisation in both risk-bearing and management.⁹

In relation to risk-bearing, the separation of ownership and control means that shareholders do not need to be experts in the operations of a company before investing in it. This allows for greater risk-spreading by investors, reducing the overall cost of capital for companies.

In relation to management, the separation of ownership and control allows for business decisions to be made by those with valuable relevant knowledge. Where valuable information is diffused among many people, delegation of decision-making to specialist managers becomes more efficient.

Barriers to effective shareholder engagement and participation

Within the defined areas reserved for shareholder determination, it is important that the corporate governance framework efficiently and effectively facilitates the will of the majority of shareholders, with safeguards to ensure decision-making is informed.

Shareholders must retain effective mechanisms to examine the affairs of the company and voice concerns to the company and its managers. Shareholder participation is vital in ensuring accountability of the company's board and management. Without effective monitoring of directors and management by shareholders, there is an increased risk of directors and managers underperforming.¹⁰ Ultimately, shareholders' ability to influence management depends on their understanding of and willingness to exercise their rights.

However, as shareholders are increasingly a widely spread group, we see more significant barriers to effective engagement and participation, such as 'free rider' problems.

The 'free rider' problem

Individual shareholders may be discouraged from investing resources personally to pursue changes with management that result in benefits to the company as a whole, given that every other shareholder would benefit without having to contribute

⁹ R A Posner, *Economic Analysis of Law: Fifth Edition*, Aspen Law & Business, New York, 1998, p 451.

¹⁰ F H Easterbrook and D R Fischel, *The Economic Structure of Corporate Law*, Harvard University Press, Cambridge, 1991, pp 76-77.

resources.¹¹ That is, shareholders have an incentive to enjoy the benefit of the improvement provided by other shareholders while providing it insufficiently themselves.

The free rider problem in this instance therefore encourages shareholders to refrain from undertaking acts of management oversight because it is in their interest for someone else to undertake these acts (allowing them to reap the benefits without bearing the costs).¹²

To address these concerns, Australia's corporate governance framework seeks to impose much of the cost of shareholders raising issues with the board or management on the company. For example, the directors of a company must convene a general meeting to consider shareholder-initiated discussion or resolution, where it can be demonstrated that there is a threshold level of shareholder sentiment in favour of considering the issue.

That being said, the requirement to hold a company meeting at the request of members, in addition to a company's annual general meeting, can impose significant costs on companies. The corporate governance framework must balance the need to facilitate shareholder participation against the need to manage the associated costs to the company (and through it other shareholders).

The need to strike a balance in this area can be seen in both the current rules and the reform proposals in the Exposure Draft of the Corporations Amendment Bill (No. 2) 2006 relating to company meetings and voting at company meetings discussed below.

Regulatory framework for shareholder engagement and participation

Company meetings and voting

Chapter 2G of the Corporations Act provides a principled framework of rules for company meetings. Under section 249D, directors of a company must call and arrange to hold a general meeting, paid for by the company, at the request of members with at least 5 per cent of the votes that may be cast at the general meeting. The law also currently allows at least 100 members who are entitled to vote at the meeting to request a general meeting. These meetings called for by members are generally referred to as extraordinary general meetings, as they are held in addition to the company's annual general meeting (AGM).

Decisions of the general meeting reflect the majority of votes cast by members, with resolutions requiring either a special or ordinary majority. Voting rights are based on the number of voting shares held by each shareholder. Thus, the concept of 'majority rule' in corporations refers to the majority of voting shares rather than the

11 A Mas-Colell, M D Whinston and J Green, *Microeconomic Theory*, Oxford University Press, New York, 1995, p 362.

12 M L Katz and H S Rosen, *Microeconomics*, Irwin, Illinois, 1991, pp 240-1.

majority of members. This reflects a view that those with the greatest economic stake in the company should have the most influence.

Where shareholders cannot be present at the general meeting, the common practice provided for in Chapter 2G is to allow the shareholder to appoint a proxy who will attend the meeting in their place and must exercise the shareholder's voting rights where directed.

Recent reforms

The rules relating to company meetings were most recently reformed in the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (the CLERP 9 Act).

The CLERP 9 Act amended the Corporations Act to:

- encourage shorter, more comprehensible notices of meetings¹³;
- facilitate distribution of notices of meetings and annual reports by electronic means¹⁴;
- improve access to general meetings by facilitating voting by proxy, and to allow bodies corporate to act as proxies¹⁵; and
- require disclosure by directors of listed companies of other directorships held.¹⁶

Prior to this, the *Company Law Review Act 1998* inserted a provision requiring chairpersons of AGMs to allow the shareholders who are present at the AGM a reasonable opportunity to ask the directors and the auditor questions or make comments in relation to the management of the company, which had been a common practice.¹⁷ These provisions are balanced to ensure shareholders 'as a whole' have the opportunity to ask questions of management, while not overly impacting on the chairperson's common law right to run an orderly meeting. Also, these provisions do not oblige directors and auditors to answer each question.

Current reform proposals

On 8 December 2005, the Parliamentary Secretary to the Treasurer, the Hon Chris Pearce MP, announced that the Government would proceed with legislative reforms in relation to company meetings and voting. Subsequently, the Exposure Draft of the Corporations Amendment Bill (No. 2) 2006 was released for consultation.

13 Subsection 249L(3) of the Corporations Act.

14 Subsections 249J(3A), 314(4) and 314(5) of the Corporations Act (which was subsequently expanded in the SRS Act).

15 Subsections 249X(1A), 250A(1A), 250B(3) and 250BA(1) and paragraph 250B(1)(b) of the Corporations Act.

16 Paragraph 300(11)(e) of the Corporations Act.

17 Sections 250S and 250T of the Corporations Act. Section 250T in relation to auditors was subsequently expanded in the CLERP 9 Act. Further information is provided on p 8.

The Bill proposes the removal of the rule allowing 100 members to call a company meeting. Removing this rule is intended to strike a better balance between facilitating shareholder participation and managing costs for companies.

This proposal will mean that extraordinary general meetings will still be able to be convened by members with 5 per cent of the votes that may be cast at the meeting. This threshold could be satisfied by one member provided they hold sufficient shares in the company. For larger companies, this threshold requirement before a meeting can be convened corresponds more closely with the thresholds for passing resolutions, which require either 50 per cent or 75 per cent of votes cast to succeed.

This reform has been the subject of public discussion from as early as October 1999. There is broad support for reform, including among business and shareholder representative groups. The proposal is consistent with recommendations from previous Parliamentary Joint Committee on Corporations and Financial Services and Corporations and Markets Advisory Committee reports.¹⁸ In addition, the proposal will bring Australia's law into line with comparable jurisdictions, whose thresholds for convening a general meeting range from 5 per cent up to 10 per cent of voting rights.¹⁹ No other comparable international jurisdiction has a numerical threshold equivalent to the 100 member rule.

This reform does not impede the right of at least 100 members to propose resolutions for consideration at AGMs²⁰ or for shareholders generally to question or make comments about the management of the company.²¹

The Bill also proposes amendments to facilitate electronic communication of shareholders' resolutions and shareholders' statements, which is in keeping with similar reforms contained in the recently enacted *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007* (the SRS Act), as well as the CLERP 9 Act, to reduce the regulatory compliance burden by facilitating the use of new technologies.

For larger companies, the cost of convening an extraordinary general meeting has been estimated at approximately \$4 million per meeting.²² The ability of small groups to impose these costs on companies gives them significant and undue leverage in negotiating with large companies.

18 Parliamentary Joint Statutory Committee on Corporations and Securities, *Report on matters arising from the Company Law Review Act 1998*, October 1999. Companies and Securities Advisory Committee, *Shareholder participation in the modern listed public company: final report*, June 2000. See also Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into the Exposure Draft of the Corporations Amendment Bill (No 2) 2005*, June 2005.

19 For example, in the United Kingdom an extraordinary meeting can be called by 10 per cent of the paid-up voting capital.

20 Paragraph 249(1)(b) of the Corporations Act.

21 Section 250S of the Corporations Act.

22 An example is NRMA Limited, which since 2003 has had seven requisitions to hold general meetings leading to three meetings being held. These meetings were called by just 0.005 per cent of members using the 100 member rule. None of the ten resolutions proposed at these meetings succeeded.

Further, the Bill proposes amendments to prevent the ‘cherry-picking’ of proxy votes. The amendments would improve shareholder confidence in proxy voting by requiring proxy holders to vote in accordance with shareholder instructions.

The Government’s introduction of this Bill into the Parliament requires the approval of the States and Territories through the Ministerial Council for Corporations under the *Corporations Agreement 2002*.²³ The Ministerial Council has not approved the introduction of the Bill at this time.

Financial reporting

A key objective of Australia’s financial reporting framework is to provide existing and potential shareholders, as well as a range of other stakeholders, with full and reliable information about a company. These disclosures enable users to make informed investment decisions, actively participate at AGMs, influence management and hold it accountable for the company’s operations. The financial reporting framework therefore provides an important platform to enable shareholders to participate and engage with a company.

Recent reforms

The financial reporting requirements have recently been reformed to promote shareholder engagement and participation.

The CLERP 9 Act included a key reform to enhance disclosure requirements relating to director and executive remuneration of listed companies. In particular, the reforms introduced a requirement for listed companies to provide a report to shareholders on the company’s policy on director and executive remuneration, the link between that policy and company performance and details of remuneration paid to directors and certain senior executives during the year.²⁴ These disclosures have equipped shareholders to hold directors accountable for their decisions regarding executive remuneration. The CLERP 9 reforms also provided shareholders with the opportunity to vote on a non-binding resolution to communicate their views on remuneration to the directors at the AGM.²⁵ While the resolution is non-binding, it provides a valuable mechanism for shareholders to communicate and engage with the directors on remuneration issues.²⁶

The CLERP 9 Act also introduced a requirement for the auditors of a listed public company to attend the AGM and provided shareholders with a greater ability to ask auditors questions regarding the conduct of the audit and the content of the audit

23 Under the *Corporations Agreement 2002*, the Ministerial Council for Corporations, comprising representatives from the Commonwealth, States and Territories, is consulted on and in some cases must approve amendments to the national corporations legislation.

24 Section 300A of the Corporations Act.

25 Subsection 250R(2) of the Corporations Act.

26 An example is Tabcorp Holdings Ltd, which in 2006 responded to shareholder concerns and withdrew an options package for its chief executive, after shareholders raised objections to the remuneration package.

report.²⁷ This measure facilitates shareholder participation at AGMs by allowing shareholders to question the company auditor directly, in writing before the AGM as well as orally at the AGM.

More recently, reforms were included in the SRS Act to allow annual reports to be placed on the Internet and hard copies to be sent only to shareholders that request them. Recent data from the Australian Bureau of Statistics indicates that 60 per cent of Australian households had home Internet access in 2005-06. The increasing use of the Internet will promote shareholder engagement and participation by allowing companies to communicate with their shareholders in an effective manner. For example, an online annual report may be hyperlinked to allow shareholders to navigate quickly and easily to particular parts of the report. The Internet will also allow companies to integrate multimedia content into the annual report. For example, rather than being in written format, the Chairman's report could be delivered through a video presentation. The use of the Internet as the primary mechanism for distributing annual reports enables companies to communicate with their shareholders in innovative ways and allows for annual reports to be more interactive and user-friendly. While this measure will produce significant cost savings, shareholders who wish to receive a hard copy of the annual report can continue to receive one, on request, free of charge.

Private sector co-regulatory and self-regulatory initiatives

Many private sector organisations have developed detailed guidance material to assist companies move beyond regulatory 'minimum standards' and better engage with their shareholders and communicate financial and non-financial information to them.

In August 2007, the ASX Corporate Governance Council released the second edition of its *Corporate governance principles and recommendations*. The revised principles clarify the disclosure requirements for listed entities in a number of ways including through providing greater explanation on the 'if not, why not' reporting requirements. The revised principles reaffirm that companies should respect the rights of shareholders and facilitate the effective exercise of those rights, and include a recommendation for companies to design and disclose their policy for communicating with shareholders.²⁸

In addition, the ASX has developed voluntary *Guidelines for notices of meetings*, to inform companies of best practice in shareholder communication and on framing resolutions.²⁹

The Business Council of Australia (BCA) has developed guidance material to encourage shareholder engagement at company meetings, entitled *General meetings – code of conduct*.³⁰

27 Section 250T of the Corporations Act.

28 ASX Corporate Governance Council, *Corporate governance principles and recommendations*, 2nd edition, August 2007.

29 ASX Corporate Governance Council, *Guidelines for notices of meetings*, August 2007.

Further, Chartered Secretaries Australia (CSA) has released a guide on how companies can provide their shareholders with the ability, under the current law, to vote directly on resolutions at company meetings they do not attend. CSA's *guide to implementing direct voting* also provides draft constitutional provisions for companies to adopt at a general meeting, draft rules governing voting and a draft voting form.³¹

In addition to preparing a full statutory annual report, an increasing number of companies are also preparing short-form reports, or 'shareholder friendly' reports. These reports provide companies with the freedom to tailor their disclosures to meet the needs of their shareholders. Companies that wish to issue these types of reports can draw on a range of guidance material, including the *Good communication with shareholders* guide issued by the Australian Institute of Company Directors (AICD).³²

In September 2004, the BCA, the AICD and CSA together released an extensive discussion paper outlining a number of new approaches companies might adopt to strengthen or improve their communication and interaction with shareholders.³³ The paper explores different approaches and initiatives building on the regulatory requirements. The paper recognises companies may need to reconsider current shareholder engagement and participation practices, such as the AGM, due to the increase in the number of shareholders, the heightened level of interest in and expectation of the performance of companies and the advent of new information and communication technologies.

In October 2004, the Investment and Financial Services Association (IFSA) released the fifth edition of its *Blue Book – Guidelines on corporate governance for fund managers and corporations*, to assist funds managers and institutional investors to pursue an active role in monitoring the corporate governance responsibilities of the companies in which they invest.³⁴ These guidelines provide a framework for how IFSA members as institutional investors should actively engage with these companies. Recommended methods include the member initiating direct communication with senior management and boards of directors and voting on all company resolutions where they have the voting authority and responsibility to do so. The Association of Superannuation Funds of Australia (ASFA) has also issued guidance for its members along similar lines.³⁵

Financial Literacy Foundation

The Australian Government has implemented a programme aimed at improving the financial literacy of Australians. In June 2005, the Australian Government established the Financial Literacy Foundation, which aims to build the capacity of all Australians

30 Business Council of Australia, *General meetings – code of conduct*, September 2003.

31 Chartered Secretaries Australia, *CSA's guide to implementing direct voting*, February 2007.

32 Australian Institute of Company Directors, *Principles of good communication with shareholders: Position paper No. 5*, April 2007.

33 Business Council of Australia, *Company + shareholder dialogue: Fresh approaches to communication between companies and their shareholders – A discussion paper*, September 2004.

34 Investment and Financial Services Association, *Guidance Note No. 2: Blue Book – Guidelines on corporate governance for fund managers and corporations*, 5th edition, October 2004.

35 Association of Superannuation Funds of Australia, *Active shareownership guidelines for superannuation fund trustees: Best practice paper 17*, May 2003.

to better understand and manage financial risk and take advantage of increased competition and choice in Australia's finance sector.

The Government has allocated the Foundation an operational budget of \$5 million (indexed) per year until 2008-09. In addition, the Government allocated \$13 million over two years from 2005-06 to be spent on the Foundation's *Understanding Money* campaign. Most recently, in the 2007-08 Budget, the Government allocated the Foundation additional funding of \$6 million: \$4 million to expand the activities of the *Understanding Money* campaign and \$2 million for teachers to support the implementation of the National Consumer and Financial Literacy Framework.

The Foundation works in partnership with government, industry and community organisations, and acts as a matchmaker by bringing together those organisations with complementary needs and skills, and common commitment to advancing financial literacy.

The Foundation has a multi-faceted approach to addressing the attitudinal, behavioural and structural barriers that stop people engaging with money issues, and equipping people to ask the right questions and make better financial choices. It is:

- providing a national focus for financial literacy issues;
- creating opportunities for Australians of all ages to learn more about money – at school, through vocational and higher education, in the workplace and in the community;
- supporting the professional development of teachers to assist them in delivering financial literacy education in schools;
- providing practical support to educators and trainers and working to improve the availability of quality financial literacy education resources;
- providing consumers with accessible and easy-to-understand information on a range of financial literacy topics and issues through the *Understanding Money* website (www.understandingmoney.gov.au) and handbook; and
- researching financial literacy issues to inform the work of the Foundation and others who are working to achieve positive change in the way Australians think about and manage their money.

In addition, the *Understanding Money* media campaign played a major part in providing a national focus for financial literacy in Australia. The aim of the campaign was to raise awareness of financial literacy and its benefits, and to encourage people to engage with financial literacy information and resources to find out more about how to make the most of their money.

The *Understanding Money* website and handbook include information on various topics and issues, including several of direct relevance to shareholders, such as investing, protecting your money and getting advice. The handbook is available in English and seven other languages, and can be downloaded from the website. The

website also includes information for consumers on High Yield Fixed Interest Investments, which emphasises the key issues people should take into consideration when making an investment decision. The Foundation has also provided this information through publications such as *News for Seniors*, to help raise awareness among older Australians of issues to consider when investing.

The Foundation is working to achieve long-term, generational improvements in the financial literacy of all Australians by:

- playing a leadership role in developing the National Consumer and Financial Literacy Framework, under which all Australian children will benefit from a concerted effort of the government, Catholic and independent school sectors to integrate financial literacy into the curriculum across the compulsory years of schooling;
- initiating the development of a National Consumer and Financial Literacy Professional Learning Strategy to support practical implementation of the National Consumer and Financial Literacy Framework; and
- publishing *Financial literacy: Australians understanding money* in September 2007 – a report on the Foundation’s survey of Australians’ attitudes to money: how confident we are and how we behave when it comes to managing our money. The report covers issues such as investing, understanding rights and responsibilities, understanding financial language, dealing with financial service providers and getting information about money.³⁶

The Foundation is also:

- engaging broadly with training sector stakeholders to scope a systemic approach to the integration of financial literacy into vocational education and training pathways;
- developing links with the higher education sector to gain an overview of the range of existing financial literacy activities and support the spread of financial literacy education initiatives in universities;
- pursuing a number of pilot programmes to introduce financial literacy education to cadets and apprentices; and
- supporting employers who are interested in providing financial literacy education to their employees in the workplace through a booklet, which consists of seven case studies and information to assist employers who want to develop a programme that fits their particular needs and resources, and web-based resources.

36 Financial Literacy Foundation, *Financial literacy: Australians understanding money*, September 2007.

CONCLUSION

As shareholders in Australia grow in number and become more sophisticated, it is important that Australia's corporate governance framework continues to provide effective and efficient means to encourage and facilitate their engagement and participation. Shareholders accessing, understanding and exercising their rights complements the legal obligations on directors and management to promote accountability and company performance.

The rules contained in the Corporations Act provide a sound principled framework for shareholder engagement and participation that is well regarded internationally. Recent reforms to the company meetings, voting and disclosure framework have simplified and streamlined requirements and allowed companies to make use of technological advances. Future reforms should reflect the evolution of the market, and seek to maintain a balance between the need to facilitate shareholder participation against the need to manage the associated costs to the company (and through it other shareholders).

Beyond these requirements, leading business and industry organisations have developed detailed guidance material to assist companies to implement best practices to engage and communicate with their shareholders.

Finally, the Financial Literacy Foundation has initiated programmes to improve financial literacy, including skills to equip current and future shareholders to play a more active role in the companies they own.

ATTACHMENT A

Summary of members' rights and remedies

Members have an important, but limited, set of decision-making powers, as well as a range of rights and remedies at common law and under the Corporations Act.

Members' powers and rights

The members in general meeting have the power to vote on certain issues reserved to them under the company's internal governance rules, the Corporations Act and the general law. These issues include:

- adoption of or amendment to the internal governance rules;
- certain transactions affecting share capital; and
- the appointment and removal of directors.

Under section 249D, a general meeting must be called if members with at least 5 per cent of the votes that may be cast or at least 100 members entitled to vote request one. Under section 293, members with at least 5 per cent of the votes in a small proprietary company can direct the company to prepare a financial report and directors' report and send them to all shareholders.

Individual shareholders do not owe duties to other shareholders, although they owe duties to the company to pay for any unpaid amount on their shares. Collectively, the majority owe a duty to act within the constitution without oppression and, where there is an alteration of the constitution involving an expropriation of share held by the minority, there is a duty to act for a proper purpose and fairly.³⁷

Remedies available to individual members

There are also a range of remedies that are available to individual members. The oppression remedy contained in Part 2F.1 of the Corporations Act is a statutory remedy that individual members of small companies can use to commence litigation. The oppressive conduct could be that of the directors or majority members of the company. An individual member may use this remedy where the member believes that the act or omission is either:

- contrary to the interests of the members as a whole; or
- oppressive to, unfairly prejudicial to, or unfairly discriminatory against a member or members.

³⁷ *Gambotto v WCP Ltd* (1995) 13 ACLC 342.

Examples of oppressive conduct include diversion of business opportunities, improper exclusion from management, unfairly restricting dividends, oppressive conduct of board meetings, issuing shares to reduce a member's ownership interest and failing to act in the interests of the company. Section 233 of the Corporations Act allows the court to choose from a broad range of remedies, including an order winding up the company, modifying the company's constitution or for the purchase of a member's shares.

If the conduct involves a breach of directors' duties, the Australian Securities and Investments Commission or the company can commence litigation and obtain remedies.

Depending on the nature of the dispute, other remedies available to individual members may include:

- seeking to wind up the company under section 461;
- seeking an injunction under section 1324;
- seeking to prevent a variation of class rights under Part 2F.2;
- taking action for breach of duty under the member's statutory derivative action in Part 2F.1A; and
- taking action to enforce a provision of the company's constitution relying on section 140.

Members also have a number of personal rights, including to inspect the register of members under section 173 and to inspect and request copies of minutes under section 251B of the Corporations Act.