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Inquiry into shareholder engagement and participation

Submission by shareholder activist Stephen Mayne

Stephen Mayne is Australia's best known shareholder activist, who has asked questions at more than 250 AGMs and run 28 times for public company boards, receiving an average vote of more than 15%. He is the founder of www.crikey.com.au and now publishes a shareholder activist newsletter and videoblog called www.maynereport.com. In order to comment from the perspective of a shareholder, Stephen has bought \$500 worth of shares in more than 420 Australian listed companies, so he is uniquely placed to observe shareholder engagement and communication in Australia.

INTRODUCTION

I start from the perspective that Australia lacks a genuine culture of shareholder pressure. Such a culture would drive greater performance and accountability from Australian listed companies.

Whilst Australia does well in sport, we should have many more genuinely global companies competing on the international stage. I've only been able to identify 70 Australian-based companies that generate more than \$200 million a year in revenue offshore, yet there are at least 250 foreign companies generating revenues of more than \$200 million from Australia each year.

Australians have risen to the top of global companies such as McDonalds, Coca Cola, Ford, Kelloggs, Dow Chemical, Phillip Morris and Campbell Soup, but we've been unable to create our own champion companies.

Tax, industrial relations and the relatively small Australian domestic economy partly explain this phenomenon – but the lack of a genuine culture of shareholder pressure is another contributing factor.

If Australian shareholders were more informed and engaged in driving best practice corporate governance, the bad boards and CEOs would have been weeded out far earlier.

What follows is 14 key points relevant to the inquiry:

1. GETTING THE RIGHT PEOPLE TO ATTEND AGMs

The unfortunate truth about Australian public company AGMs is that they are usually attended by the same group of elderly and often lonely shareholders who are simply looking for something to do.

Rarely do institutional investors or stockbroking analysts attend – let alone ask questions. One exception is JP Morgan banking analyst Bryan Johnston who has spoken at the past few Macquarie Bank AGMs. However, in 2006, Johnston was invited outside for a fight by one elderly ranter after he merely invited the shareholder to stop wasting everybody's time.

2. PROXY VOTING – TIMING OF CUT-OFF

The vast majority of AGMs are what in Davis Cup terms would be described as “dead rubbers”. This is because more than 95% of votes are cast before the proxy deadline which is 48 hours before the AGM.

The board is fully aware of the voting situation before the debate even begins at the AGM and only a very small proportion of resolutions ever go to a poll. This situation is akin to having a political leaders television debate after the polls have closed – particularly given the tiny proportion of retail and institutional shareholders who actually attend the AGM.

It would be a worthwhile reform to keep proxy voting open until 24 hours after the commencement of an AGM. This would keep boards on their toes and allow shareholders to vote based on the performance at an AGM.

How many times has a chairman announced a profit downgrade at an AGM after they've received 99% in favour of their re-election? If a chairman puts in an evasive performance at the AGM, shareholders not in attendance should be able to cast their votes based on the subsequent press coverage or share price movements.

Keep the polls open for another 72 hours and you'd suddenly have far more interesting AGMs that shareholders might want to attend.

3. WHEN THE PROXIES SHOULD BE RELEASED

Assuming there is no change to the proxy cut-off 48 hours before an AGM, the next issue is exactly when the proxies should be released during an AGM. Best practice is to do this after a debate on a resolution but before shareholders vote.

However, many companies vary the formula to suit their purposes. When Rupert Murdoch had an emphatic mandate from shareholders to shift News Corp to Delaware in 2004, he leaked the proxies to his newspapers the night before the meeting and announced the full figures within minutes of the meeting starting, thereby taking the heat out of any debate.

By way of contrast, BHP chairman Don Argus refused to reveal the proxies at any point during the contentious EGM vote in 2001 on the merger with Billiton. The proxies were far closer than Argus wanted to let on at the meeting.

4. HARD COPY ANNUAL REPORTS

It was a good initiative by the Commonwealth on environmental grounds to make the sending of hard copy annual reports voluntary for Australian listed companies. This will literally save more than \$50 million a year on annual reports which are largely ignored by retail shareholders, especially since

new regulations now make them so large. The 2006 BHP-Billiton annual report was 256 pages and the Commonwealth Bank's 2005 report was 242 pages.

I've already received more than 50 letters from companies about the change and giving the option to continue receiving the hard copy. I always elect to keep receiving the hard copy however a number of companies have already only sent the notice of meeting without first wanting if I wanted a hard copy of the annual report.

The formula should have been that all shareholders be asked if they want to receive a hard copy annual report because any listed company declines to send them. The default mechanism should be not to send it, but shareholders should be asked first.

5. CONCISE ANNUAL REPORTS AND FINANCIAL STATEMENTS

Now that companies don't have to send shareholders an annual report of any description, we should forget about the old formula of separating the concise annual report from the full financial report as most big companies have done in recent years.

There has been no consistency as to where things such as board and management remuneration is published – some companies include it in the concise annual report whilst others leave it to the full financials.

Whilst the law should be amended to get major company annual reports back under 200 pages – the distinction between concise and full report should be abandoned. However, companies that decline to send any form of annual report to shareholders, should at least include some brief description of the year along with the notice of meeting.

6. TIMING OF ANNUAL MEETINGS

Attendance rates at annual meetings have been falling in recent years, partly because the quality of the debate is so poor. However, many companies go out of their way to make it inconvenient for shareholders to attend.

The most notorious example of this was the final HIH Insurance annual meeting which was held in Redfern and started at 4pm on Friday, 15 December, 2000.

When BHP-Billiton was locking in a lucrative executive incentive scheme after its 2001 merger, the 2002 AGM was held on Melbourne Cup Eve in Melbourne and the pay resolutions were the last to be dealt with.

Qantas held its 2006 AGM in Canberra and Westpac even scurried off to Auckland in 2004.

The big banks are notorious for holding their AGMs on the last Friday before Christmas, knowing that this is the busiest working day of the year and attendance rates are likely to be lower.

It is also unfortunate that more than 1500 AGMs will be held in October and November 2007 – which makes it very difficult for shareholders to get to attend given so many of the big ones clash.

For instance, the late Kerry Packer always worked hard to keep me away from the PBL AGM. After I stirred up some debate in 1999, the 2000 PBL AGM started at exactly the same time as the John Fairfax AGM, another company I was keen to engage with.

Similarly, Packer knew all the major media reporters, including myself, would be in Adelaide for Rupert Murdoch's big move to America EGM in 2004, so he called the PBL AGM for the same day in Sydney. In 2005 he knew I was running for the board of Gunns Ltd, so the PBL AGM was scheduled for the same day I was in Launceston taking on the Tasmanian tree loppers.

If companies really want to maximise numbers at their AGM they should try the Transurban approach as the tollroad company got about 300 to the RACV in Melbourne last year for an AGM that started at 5.30pm. Lend Lease used to attract more than 500 to their evening AGM but have now reverted to the less popular morning start-time which tends to be dominated by retirees.

I'm a firm believer in companies holding the meeting at a time and venue that maximises the attendance. For instance, big banks shouldn't bother going to Adelaide or Brisbane as they've done in recent years.

7. HOW THE PERFECT AGM SHOULD RUN

James Packer used to refuse to even do a chairman's address at PBL, so the voting would be underway within minutes of the AGM starting. By way of contrast, the first shareholder wasn't invited to speak until almost two hours into last year's Telstra AGM.

The perfect AGM should include 30 minutes of presentations from the chairman and CEO at the start and then about one hour of interaction, debate and voting. Anything over two hours is usually stretching the patience of participants, but the vast majority of AGMs are wrapped up in less than one hour, often with no shareholder questions at all.

If multiple shareholders wish to speak, each should be limited to 3 minutes at the microphone and our chairs need to be far tougher on the nutters who spoil too many AGMs for everyone else.

8. AUDITORS AT AGMS

It is good that the law requires auditors to attend AGMs and be available to answer questions, but this rarely happens. Similarly, it was a welcome recent reform that shareholders could write to auditors with specific questions, but I'm not aware of anyone utilising this opportunity effectively.

I've asked auditors questions at about 10 AGMs over the years, but no matter how good the question, the answer is usually the same – the accounts have been drawn up in accordance with the relevant standards and laws.

This was even used by AMP's auditor Brian Long in 2003 when he signed accounts claiming the business had net assets of \$18 billion, when the market capitalisation was only about \$6 billion at the time.

9. THE TELSTRA APPROACH

Telstra have revolutionised shareholder communications in Australia with its pioneering nowwearetalking.com website and recent campaigning against the government over regulation and broadband.

Whilst it doesn't appear to have been particularly effective, Telstra should be commended for attempting to educate and engage with its shareholders, albeit for partly political purposes.

Allowing staff to openly blog on a company website is another sign of greater engagement with stakeholders at a time when some companies are more paranoid than ever about public statements, especially given the rigors of Australia's continuous disclosure laws.

10. LET THE PRESS ASK QUESTIONS

Seven Network chairman Kerry Stokes has pioneered one worthwhile innovation at AGMs when he invites shareholders to stick around after the formalities to hear the questions from journalists.

On numerous occasions as a shareholder, I read the papers the following day and discover quotes from the chairman or CEO that are far more interesting than anything they said during the meeting.

That's because the business press attending the meetings are generally better informed than retail investors and know exactly what sorts of questions to ask.

This is partly why I changed role from journalist to shareholder when attending AGMs because there was an enormous chasm left by retail investors who generally don't ask good questions, if any at all.

Indeed, before I started asking questions of Rupert Murdoch at the 1999 News Corp AGM in Adelaide, the former editor of *The Advertiser* in Adelaide, Peter Blunden, told me that he'd fielded just one question at the previous seven AGMs.

11. THE AGENCY PROBLEM WITH FUND MANAGERS

Whilst Australia is one of the world's greatest share owning nations, with the fourth biggest pool of superannuation savings, our system has created an agency problem in that superannuants do not identify their retirement savings with any specific stocks.

Small shareholders have little power because they are not a co-ordinated voting force and big institutions are more concerned about financial performance and fees – rather than issues of corporate governance.

Australia has a highly concentrated financial services sector so many of the biggest fund managers are owned by the major banks, which are more interested in boosting corporate relationships than taking on boards that need to lift their performance or corporate governance.

12. THE EMERGENCE OF PROXY ADVISERS

The emergence of proxy advisory firms such as Institutional Shareholder Services and CGI Glass Lewis have had a positive impact on shareholder voting and engagement in Australia.

These firms charge institutional investors as much as \$57,000 a year to advise them how to vote their shares on every resolution put up by an ASX300 company.

Whilst some institutions have lowered their in-house knowledge of corporate governance issues, many of them are buying in this expert advice from proxy advisers.

Companies including Rio Tinto, Zinifex and Oxiana have been seriously embarrassed over the past 18 months by protest votes triggered by these firms and many big companies are now more responsive to queries from the firms, or their institutional clients.

13. THE 100 SHAREHOLDER RULE

Shareholders would be far more engaged with companies if they were able to put up resolutions to be voted on. Unfortunately, Australia's 100 signature rule means that no individual small shareholder has ever put up a resolution.

I'm only aware of 12 AGMs over the past 15 years which have involved a shareholder resolution and these have all been put up by environmental groups, unions or the Australian Shareholders Association – organisations with enough resources to canvass for signatures.

US law only requires a shareholders to have \$US2000 worth of stock and this provides a far more engaged environment with hundreds of shareholder resolutions every year.

By all means, retain the 100 signature rule for the calling of EGMs, but we must lower the barrier to entry for resolutions at AGMs, especially given the meeting is going to be held anyway.

14. TIME TO DISCLOSE FUND MANAGER PAY

Australia's disclosure regime for executive pay is now working well. The market has been forced to address the issue through the non-binding remuneration report votes and some companies such as Zinifex, Oxiana and Tabcorp have been appropriately rebuked by shareholders after stepping out of line from best practice.

However, there remains a bizarre quirk in the system because many highly paid fund managers, who vote on everybody else's remuneration reports, don't have to report their own pay packets.

This is because companies are only obliged to report the 10 highest paid "executives" and fund managers don't qualify. The same applies to media personalities which is why Eddie McGuire's \$5 million a year salary only popped up in the PBL annual report after he became CEO of Channel Nine. This also explains the absence of Alan Jones's enormous pay packet from the Macquarie Radio annual report.