

Inquiry into shareholder engagement and participation

Parliamentary Joint Committee on Corporations and Financial Services

Friday, 14 September 2007

Thank you for the opportunity to contribute to this inquiry.

The Australian Shareholders' Association receives many calls about various companies and their corporate governance or resolutions to be considered at annual general meetings. The ASA intensively covers 160 companies (we would like to cover more but are constrained by limited resources), typically at the larger end of the market. The Association representatives monitor companies' performance and vote proxies given by interested shareholders in accordance with ASA policies and focus issues. Reports on the meetings are reported in the ASA magazine, *Equity*. During the 2006 calendar year, ASA received \$2.4 billion of proxies.

In considering the entirety of retail shareholder engagement we would consider the diversity of the retail shareholders to be a major challenge for companies. Retail investors range from highly sophisticated and experienced long term investors (though not necessarily meeting the legal definition of sophisticated investor) to what could be considered the accidental shareholder (who has received their only shares through demutualisation(s) or inheritance), and every variation in between.

It is difficult to engage this diversity with a single communication. However in recent times there has been evidence of a number of companies, large and small, showing great leadership in various aspects of engaging their shareholders. The difficulty seems to be to get these examples of best practice to permeate the rest of the companies listed on the ASX.

We address the terms of reference on the following pages. Please contact me for anything further.

Yours Sincerely



Stuart Wilson
CEO

About the Australian Shareholders' Association

The Australian Shareholders' Association (ASA), a not-for-profit organisation, has been protecting and advancing the rights of shareholders in Australian listed companies since 1960. With a focus on good company performance and governance, the ASA has been successful in raising the standard of corporate behaviour in Australia. Our extensive network of experienced company monitors review company performance and governance issues, analyse financial statements, raise concerns and vote at annual general meetings and report all of their insights to members. Shareholders can nominate the ASA to vote on their behalf at company meetings. The ASA also provides access to value for money, independent education seminars and workshops, regular meeting and discussion groups and a monthly magazine, *Equity*.

Terms of Reference Item 1

Barriers to effective shareholder engagement include diversity of retail shareholders (level of sophistication, education, time available to monitor investments), complexity of corporate issues, shareholder confidence to espouse concerns and competency to communicate with a corporate entity. ASA members join the association to support the effort to distil and communicate common retail shareholder issues.

Education of both investors and companies in existing best engagement practices would be enable a step forward in participation. The association has observed a number of shareholders who effectively engage their companies. They review the annual reports and take the time to raise their queries with the company by letter each year. Companies reply to these letters in varying degrees of completeness and promptness, allowing the shareholder to assess the company's management competency and attitude toward the retail shareholder, as well as lifting the shareholders' understanding of the business.

Terms of Reference Item 2

In terms of the retail perspective of Institutional shareholder engagement, we receive regular complaints that the institutions have superior access to company management. At times of dissatisfaction, with, for example, executive remuneration or preferential equity placements, these complainants may describe the institution/management relationship as overly cosy. The ASA receives adequate access to a number of companies, though this is not universal.

The Association supports voting power being determined by the number of shares (and effectively amount of capital committed). The ASA highlights retail investors, who may represent around 10% of issued shares, can be a valuable source of stable equity capital for many more companies if they address this market.

Terms of Reference Item 3 &4

The ASA identification of best practice in corporate governance tends to focus on enhancement of shareholder engagement and participation. There are a number of companies and company chairman that convey respect for the retail shareholder in the company communications, providing additional information to aid in making voting decisions. We highlight a couple of recent examples below.

The BHP website entry for the company's 2005 meeting is a good example for other companies to follow.

Retail friendly features include the cover letter for the Notice of Meeting rather than a bald Notice of Meeting and proxy form, request for questions and copy of responses. BHP addresses an issue with director election of individual shareholders not necessarily having knowledge of the individual director(s) offered for (re)election, through the Notice of meeting. The ASA also encourages directors to speak to their election at the AGM, a practice that more chairmen are adopting each year. The biographical details provided by BHP (an example of which is included in the excerpts below) are more expansive than typical and include the board's rationale for valuing the re-election of the director and a comment from the director. The greater detail address the reality that many retail shareholders' knowledge of the director will solely drawn from such company communications. The provision of the webcast, acknowledges not all shareholders can attend the meeting.

The links below are extracted from the BHP website:

"BHP Billiton Ltd/BHP Billiton Plc Annual General Meetings

19 September 2005

[*BHP Billiton Limited AGM Archived Webcast*](#)

[*BHP Billiton Plc AGM Archived Webcast*](#)

[*Chairman's and CEO's address - Ltd \(PDF 181KB\)*](#)

[*Chairman's and CEO's Address - Plc \(PDF 59KB\)*](#)

[*Invitation to submit questions - Ltd \(PDF 34KB\)*](#)

[*Invitation to submit questions - Plc \(SA Branch Register\) \(PDF 139KB\)*](#)

[*Invitation to submit questions - Plc \(UK Principal Register\) \(PDF 195KB\)*](#)

[*Notice of Meeting BHP Billiton Limited - Perth \(PDF 196KB\)*](#)

[*Notice of Meeting BHP Billiton Plc - London \(PDF 280KB\)*](#)

[*Responses to questions \(PDF 118KB\)*](#)

[*Results \(PDF 46KB\)*](#) "

The Notice of Meeting contains a more detailed explanation of the election of directors item than many such notices:

"Items 3 to 12 – Election of Directors

The merger agreements require the Boards of BHP Billiton Limited and BHP Billiton Plc to be identical. Mr C A S Cordeiro and The Hon. E G de Planque are seeking election by shareholders to both Boards (hereafter referred to as the 'Board'), having been appointed Directors since the last annual general meetings. Dr D A L Jenkins and Mr M Salamon are retiring from the Board by rotation and it is proposed that they be re-appointed.

The Board has also determined that after a non-executive Director has served on the Board for nine years from the date of their first election, that Director will stand for annual election from the first annual general meeting after the expiration of their current term. Accordingly, Mr D A Crawford is retiring from the Board and it is proposed that he be re-appointed.

The Nomination Committee of the Board has conducted an assessment of the performance of each of the retiring non-executive Directors, Mr D A Crawford and Dr D A L Jenkins. The Committee has also reviewed the skills, knowledge, experience and diversity represented on the Board. Having conducted those assessments and that review, the Board recommends to shareholders the re-election of the retiring Directors and the election of Mr C A S Cordeiro and The Hon. E G de Planque.

The performance assessments were designed to measure the effectiveness of each of the non-executive Directors. Mr C A S Cordeiro and each of the retiring non-executive Directors are considered by the Board to be independent in character and judgement and free from any business or other relationship which could interfere, or appear to interfere, with the exercise of their objective, unfettered or independent judgement. Mr M Salamon is the Group President Non-Ferrous Materials and, as an executive Director, is not considered independent. The Annual Report contains further information on the independence of Directors on pages 33 and 34.

The election of Directors to the Board is considered a significant matter and is therefore a joint electorate action. Shareholders are requested to approve the election of Directors to each Board. If a Director is elected to one Board and not the other then that Director will not be appointed to either Board. The resolutions to appoint these Directors must each be passed separately as ordinary resolutions. Biographical details, the skills and the experience of each of the Directors standing for election are set out below and on pages 31 and 32 of the Annual Report."

Biographical details are more detailed than formerly:

"Gail de Planque

AB (Mathematics), MS (Physics) PhD (Env Health Sciences), 60

Gail de Planque is an expert in nuclear technology and has over 30 years' experience as a physicist, adviser and regulator in the field of nuclear energy. She also has significant experience as a non-executive Director of global energy companies.

The Board has resolved to appoint The Hon. E G de Planque a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 19 October 2005. She is a consultant on atomic energy matters and is President of Strategy Matters Inc. and a Director of Strategists Consultancy Ltd. She is a former Commissioner of the United States Nuclear Regulatory Commission, a former Director of the Environmental Measurements Laboratory of the US Department of Energy, a Fellow and former President of the American Nuclear Society, a Fellow of the American Society for the Advancement of Science and a Member of the US National Academy of Engineering. She is a Director of TXU Corp, Northeast Utilities, Landauer Inc. BNG America Inc., and a former Director of BNFL Plc.

The Board believes that The Hon. E G de Planque's significant experience in energy, environmental, and health and safety matters brings great value to the Board.

Dr de Planque says: 'Creating shareholder value is essential, but only possible if Directors are continuously vigilant with respect to good corporate governance, company values, corporate social responsibility and respect for the health, safety and the environment of not only employees but all stakeholders. Successful companies have learned that being proactive in these areas beyond mere compliance is not only advisable but leads to outstanding business performance. In the end, striving for excellence and doing the right thing always works for all concerned.'

The Board recommends the election of The Hon. E G de Planque."

Another example of companies providing additional information to enable shareholders to make more informed judgement on determining how to vote for directors include reporting on the board performance assessment. As a company board is a collegiate unit, it is difficult for a shareholder to assess the contribution of each director to the joint operation of the board, from outside the company. Westfield's 2006 Report included feedback from the board performance assessment, which at least reports to the shareholder how the board is operating.

Extract from Westfield's 2006 Annual Report

"Principle 8: Encourage enhanced performance 8.1 Process for performance evaluation of the board, its committees and individual directors, and key executives

The Board and its Committees The Nomination Committee has been charged with responsibility for examining Board and Director performance on an ongoing basis and when determining which directors are to resubmit themselves for re-election. The role of the Nomination Committee is more fully discussed in section 2.3. The Committee met once during the Financial Year, and the agenda of that meeting included an evaluation of Board and director performance during 2006.

An induction process exists for new members joining the Westfield Board. New Board members are provided with the opportunity to experience first hand the operations of the Group, and to meet and discuss all aspects of the Group's operations with key members of executive management. As part of the induction process, the Company Secretary provides access to information in areas such as operations, finance, treasury and risk management to assist the new Board member as required. During the year, the Committee conducted a survey of all Directors on a range of issues relating to the roles, skills and performance of the Board, its procedures and practices. Feedback on the results of the survey will be provided by the Committee to the Board.

Overall, the Committee found that the Board has a wide diversity of skills, experience and views and that there are no obvious deficiencies in the collective skill set of the Board. The Committee is of the view that the Board has continued to work in a cohesive, focused and strategic way with Directors actively encouraged to express a full range of views."

Terms of Reference Item 5

We receive many calls from shareholders who have limited knowledge of corporate and financial matters seeking some support in deciphering complex documents and communications (eg the recent Alinta scheme proposal). In such circumstances these shareholders are not seeking advice but a translation into something resembling plain English. Often discussing these transactions with other shareholders at an ASA discussion group enables the shareholders to come to grips with the transaction and then read the documents with more confidence. The ASA also provides education courses which build skills and knowledge to enable shareholders to make better decisions.

Again some companies are addressing this area of engagement. Websites such as that of the Insurance Australia Group (<http://www.iag.com.au/>), contain well thought out FAQ (frequently asked questions) with answers in plain English which play an educative role as well as meeting information requirements of shareholders.

Text of article appearing in forthcoming issue of *Equity: Make your vote count*

Next to sharing in the fortunes of the company, your entitlement to vote at company meetings is the perhaps most important right you have as a shareholder.

In recent years, Australian fund managers have taken this right more seriously, which has resulted in a massive increase in the number of shares being voted at Annual General Meetings.

It is important that Do It Yourself shareholders take the same stance and aim to vote all of their shares all of the time. However, usually because they feel that their vote is insignificant compare to the total number of shares on issue, these shareholders don't bother.

For years the ASA has encouraged shareholders, large and small, to vote at AGMs. In addition, our company monitors have offered to accept proxies so that those members who cannot attend the meeting have an alternative to simply giving the chairman their votes.

Does the ASA have any voting clout?

Collectively, ASA members now have a powerful voice. The following table shows the voting clout that the ASA had last year for some of the companies that we cover. With a similar vote to a large institution, its no wonder the ASA is on the radar of company chairmen, executives and investor relations teams.

Company	Votes (m)	Equivalent Largest Shareholder
Insurance Australia Group	16	8 th
Woolworths	6	13 th
National Australia Bank	6.5	18 th
Commonwealth Bank	6	13 th
BHP Billiton	14	12 th
David Jones	3	10 th
St George Bank	4	9 th
Wesfarmers	1.5	15 th

However, the number of proxy votes we receive, whilst sizeable, could be larger. If there is one overarching message you receive from the ASA in relation to improving the corporate governance of Australian companies, it is that your vote is important. If combined with other ASA members, it can send a powerful message to companies.

For all of the companies that we monitor, we have a thorough process of evaluating the resolutions put to shareholders. The results of this process – our voting intentions – are published on the ASA website for members. How we intend to vote is always explained, and we almost never abstain from voting.

Undirected Proxies

The ASA has always encouraged members and shareholders, as the ultimate owners of companies, to consider the resolutions before them and vote either 'for' or 'against'. You may still appoint the Australian Shareholders' Association as your proxy, and we must vote your shares in accordance with your wishes.

However, for many reasons, the majority of members appoint the ASA as their proxy and leave the boxes on the proxy form blank – giving us an undirected proxy. This gives the monitor discretion to determine how those shares should be voted.

The show of hands

ASA company monitors will be present at over 150 Annual General Meetings this year, voting the proxies given to them by members and others. Usually, these votes are conducted via a show of hands, which has several benefits. The show of hands enfranchises those shareholders who made the effort to attend the meeting and will reflect the mood of shareholders who have listened to the arguments made from the floor of the AGM. It is also an efficient process that allows for the smooth running of the meeting.

However, from time-to-time members will ask the ASA representative why they did not raise their hand either 'for' or 'against' the resolution, especially if they had just spoken in favour or against the proposal.

The answer stems from a little known corporate law that states that if a proxyholder has votes both in favour and against the resolution - no matter how many – they must not vote on a show of hands. This applies to both meeting chairmen and the ASA.

Commercial Decisions

The rash of private equity deals that permeated the Australian share market has forced shareholders to consider Schemes of Arrangement, which are voted on by shareholders. These schemes are usually accompanied with documents that are longer than *War and Peace* but not nearly as entertaining. Often members contact us for advice on how they should vote on these deals.

However, because the majority of these schemes involve commercial decisions, and often have different options, taxation consequences and other implications, it is impossible for the ASA to determine what is in the best interest of the individual shareholder. Therefore we will not declare any voting intention, and simply encourage shareholders to read the documentation and come to their own conclusion.