



10 August 2018

Ms Catherine Maxwell  
Director, Policy & Advocacy  
Governance Institute of Australia  
Level 19  
5 Hunter St  
Sydney NSW 2000

Email: [Catherine.Maxwell@governanceinstitute.com.au](mailto:Catherine.Maxwell@governanceinstitute.com.au)

To Governance Institute of Australia

## SHAREHOLDER RESOLUTIONS: IS THERE A CASE FOR CHANGE?

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors and self-managed superannuation fund (SMSF) trustees. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

### Overview

#### Yes, ASA believes there is a case for change

ASA supports the introduction of a new shareholder right in the *Corporations Act 2001* (Cth) providing for the right of shareholders to move a non-binding resolution on a broad range of topics that would be subject to the following statutory rules:

- signatures of 100 shareholders or at least 5% of voting capital or an entity representing at least 100 shareholders to move the proposal
- marketable parcels being held by the signatories at the time of lodgement of the resolution
- the non-binding resolution requiring 50% of the vote in favour to pass.

ASA is of the view that a non-binding shareholder resolution right provides a mechanism for escalating issues where company engagement fails. While our preference is to raise concerns as part of our ongoing engagement program, we believe that an advisory vote forces boards to confront issues important to shareholders that have previously been given low priority or ignored. If companies have demonstrated progress or are receptive to shareholder feedback during the course of engagement, the need for a shareholder right to move a non-binding resolution on the issues under discussion does not arise.

Under the existing Australian shareholder resolution framework, shareholders' ability to bring a resolution is limited as shareholders are not permitted to propose either an advisory resolution or a shareholder vote to express an opinion. As a result, resolutions on various issues on which shareholders may be keen to express an opinion or seek further disclosure currently take the form of a constitutional change resolution, which require a 75% vote in favour, to be passed.

Investors need to price risk in their portfolios. The only other alternative available when shareholders find themselves dissatisfied with how the company is managing various risks or failing to provide disclosure as to the management of risks is to vote against one or more directors. ASA is of the view that expressing an opinion and urging directors to understand shareholders' dissatisfaction is a matter of escalated engagement. Voting directors off a board is a right that should be used when shareholders no longer support the governance arrangements of the company or a particular director or directors, and this right should not be confused with the shareholder right to express an opinion.

ASA believes that the current framework is too restrictive and needs to be reformed.

**Yes, ASA considers shareholders should be able to bring these resolutions without the need for a constitutional amendment**

ASA does not consider it appropriate to use a resolution to amend the constitution to give shareholders new voting rights or to impose reporting obligations. ASA is of the view that any new shareholder voting rights should be a matter dealt with under the Corporations Act and applicable to all companies.

ASA notes that providing shareholders with an advisory vote on a specific issue is now broadly accepted by companies and shareholders, following its introduction for the remuneration report resolution in 2004. This reform and the subsequent two-strikes rule are generally credited with having improved the level and quality of shareholder engagement in Australia.

**4. Should the timetable for lodging shareholder requisitions be extended to give companies more time to respond?**

A timetable should be clearly outlined.

**5. Do you support introducing thresholds requiring requisitioning shareholders to hold shares for a minimum period of time?**

No, ASA is of the view that it is not appropriate to impose a length of shareholding requirement as this would be difficult to establish.

**6. Do you support introducing thresholds requiring requisitioning shareholders to hold a minimum shareholding?**

No, the introduction of a new shareholder right providing for shareholders to move a non-binding resolution on a range of topics should not disenfranchise a specific, atomised group of shareholders. Individual (retail) shareholders are likely to be just such a group. Given that those shareholders have ASA representing their interests, it enfranchises that group if they can utilise their representative body to gather 100 signatures. Should the representative body be unable to gather the requisite 100 signatures, it is proof that the advisory resolution does not have sufficient shareholder support to go forward. Marketable parcels ensure that a person holding only one share cannot put forward

an advisory resolution. This ensures a balance between the amount of share ownership and the ability to be able to put a resolution.

**Conclusion**

Non-binding resolutions can assist shareholders in negotiating changes at companies. This may occur either by effective engagement which results in the resolution being withdrawn as the company and shareholders engage on the issue and arrive at a productive outcome, or by public pressure on the board to justify their current stance on the issue.

If you have any questions about this submission, please do not hesitate to contact me on (02) 92524244.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J Fox', with a long horizontal stroke extending to the right.

Judith Fox  
Chief Executive Officer