

# **An Empirical Study of Shareholders Rights in Australia: Theory and Practice**

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## Abstract

Shareholders are important because they provide finance to companies by investing in the share market. Shareholder voting rights are attached to the shares. The rights are defined by a company's constitution, shareholders agreement, the *Corporations Act 2001* (Cth) and ASX Listing Rules. The exercise of the rights is significant for the growth and trustworthiness of capital markets. Previous research has focused on evaluation of the strength of shareholders rights, shareholders activism and shareholders engagement but lacked evaluation of the ways in which shareholders exercised their rights. This thesis addresses this issue. In particular, it explores shareholders economic rights, which are divided into control and decision making rights, and how shareholders exercised these rights by voting on resolutions proposed at Annual General Meetings.

The aim of this study was to empirically and legally evaluate shareholders rights in practice in ASX 200 companies during 2014-2018. The research question was: To what extent do shareholders exercise their rights in Australian listed companies, and how and to what extent does shareholders engagement with a listed company impact on corporate decision makings at AGMs?

The mixed-method methodology included both empirical quantitative and black-letter law research methodologies. The research included development of a data base of voting behaviour at the AGMs of 122 companies; 3382 AGMs resolutions including 3214 ordinary resolutions 168 special resolution were studied over the period of 5 years.

The results showed that on average 64% shareholders exercised control and decision making rights in 2014 which increased by on average 4.0633% in 2018. Moreover, on average around 30% of shareholders have not attended AGMs and have never appointed proxies. The appointment of proxy trend consistently increased since 2014 to 2018 by on average 4.7514%. The attendance of shareholders in person was on average around 2% during 2014-2018.

The top 20 shareholders hold on average 77.5865% of voting rights in 2018 which is 3.3634% higher than 2014. Further, on average 9% of top 20 shareholders have never attended AGMs and have never appointed proxies. The blockholders voting power lay between 58% and 63% during study period. The presence of top 20 shareholders and blockholders did not have any significant influence on the voting turnouts at AGMs.

The financial benefits from the issue of dividends did not have any impact on shareholders engagement and AGMs voting turnout. The relationships of shareholders engagement with election and re-election of directors were statistically significant with shareholders voting

against resolutions, but the results confirm that shareholders cannot hold directors accountable at AGMs through their voting powers.

The current study supports the application of stewardship theory instead of agency theory at AGMs of ASX 200.

The policy recommendations were developed on the basis of empirical confirmations established from this study. In Australia, shareholders are powerful in theory and powerless in practice.

To my late father

***Syed Muhammad Raouf Shah***

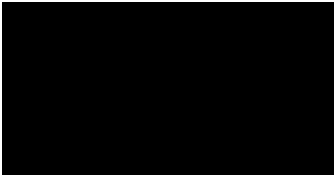
Also, it is my pleasure to dedicate  
this thesis to my supervisors

***Professor Anona Armstrong AM***  
***Dr Yongqiang Li***

for their supervision and inspiration

## Declaration

I, Syed Naveed Ul Hassan Shah, declare that the PhD thesis entitled *An Empirical Study Shareholders Rights in Australia: Theory and Practice* is no more than 100,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references and footnotes. This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work



Hassan Shah

07 August 2020

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## Contents

Abstract.....	i
Acknowledgement.....	v
Contents .....	vi
Tables.....	xi
Figures.....	xvi
Cases .....	xix
Legislation.....	xx
Chapter 1: Introduction.....	1
1.1: Introduction .....	1
1.2: Background of the Study .....	1
1.3: Aim of the Study.....	4
1.3.1: Research Aims .....	6
1.3.2: Research Objectives .....	7
1.3.3: Research Questions.....	7
1.4: Why this Research? .....	8
1.4.1: The justification of this research .....	9
1.5: Significance of the Study.....	10
1.5.1: Contribution to Knowledge (Academic Contribution).....	10
1.5.2: Statement of Significance (Practical Contribution).....	12
1.6: Summary of Highlighted Findings.....	13
1.7: Structure of the Thesis .....	13
Chapter 2: Literature Review of Shareholders Rights in Theory .....	15
2.1: Introduction .....	15
2.2: Classification of Shareholders .....	15
2.3: Mechanism of Shareholders Rights.....	16
2.3.1: Shares and Shareholders Rights.....	19
2.3.2: Company Constitution and Shareholders Rights .....	25
2.3.3: Shareholders Agreements.....	27
2.4: Classification of Shareholders Rights .....	29
2.4.1: Economic Rights of Shareholders.....	30
2.4.2: Control and Decision-Making Rights of Shareholders.....	33
2.4.3: Shareholders Voting Rights.....	35
2.4.4: Shareholders Proxy Voting Rights.....	41
2.5: Conclusion .....	42
Chapter 3: Literature Review – Shareholders Rights in Practice .....	44
3.1: Introduction .....	44
3.2: Annual General Meetings (AGMs).....	44

3.2.1: AGMs in Historical Background .....	45
3.2.2: AGMs and Shareholders Rights .....	47
3.2.3: Business of AGM and Resolutions for Shareholders Vote .....	48
3.2.4: Role of AGMs .....	49
3.2.5: Effectiveness of AGMs .....	52
3.2.6: Information Function of AGMs .....	53
3.2.7: Accountability Function of AGMs .....	54
3.2.8: Use of Technology for AGMs .....	55
3.2.9: AGMs in International Context .....	56
3.3: Shareholders Engagement .....	58
3.4: Shareholders Activism .....	62
3.5: Shareholders Empowerment .....	64
3.6: Shareholders Protection .....	66
3.7: The Shareholders and Directors and Their Rights .....	67
3.8: Balance of Power and Shareholders .....	71
3.9: Corporate Governance and Corporate Law .....	73
3.10: Theories Associated With Shareholders Rights .....	76
3.10.1: Agency Theory .....	76
3.10.1.1: Agency Theory and Shareholders .....	78
3.10.1.2: Problems with Agency Theory .....	79
3.10.1.3: Literature Suggested Solutions for Agency Problems .....	81
3.10.2: Stewardship Theory .....	81
3.10.3: Comparative View of Agency Theory and Stewardship Theory .....	84
3.10.4: Context of Agency and Stewardship Theories .....	85
3.11: Conclusion .....	86
Chapter 4: Conceptual Framework of Study .....	88
4.1: Introduction .....	88
4.2: The Place Where the Study Takes Place .....	88
4.3: Theoretical Perspective of Shareholders Rights .....	95
4.3.1: Agency Theory .....	95
4.3.2: Stewardship Theory .....	97
4.3.3: Theoretical Framework of the Study .....	98
4.4: Summary of Key Literature Studies .....	99
4.4.1: Development of Conceptual Framework of Shareholders Rights in Theory and Practice .....	100
4.5: The Research Questions and Propositions Construction .....	102
4.5.1: Question One .....	102
4.5.2: Question Two .....	103
4.5.3: Question Three .....	105
4.5.4: Question Four .....	106



4.5.5: Question Five .....	107
4.6: Conclusion .....	108
Chapter 5: Research Methodology.....	109
5.1: Introduction .....	109
5.2: Research Methodology .....	110
5.3: Research Paradigms.....	111
5.4: Mixed Method Approach .....	112
5.5: Empirical Legal Research Methodology .....	114
5.6: Development of Database.....	117
5.6.1: Sample of Empirical Study .....	117
5.6.3: Empirical Data Collection – Secondary Data .....	118
5.6.4: First Index of Empirical Data.....	119
5.6.5: Second Index of Empirical Data.....	120
5.6.5.1: Stage 1 .....	120
5.6.5.2: Stage 2 .....	123
5.6.5.3: Stage 3 .....	124
5.6.5.3.1: Construction of the Indices.....	125
5.6.5.4: Stage 4 .....	127
5.7: Issues with Data Collection .....	127
5.8: Decide How to Handle Missing Data .....	128
5.8: AGM Resolutions .....	131
5.9: The Black-Letter Law Research Methodology .....	132
5.9.1: Black-Law Data Collection (Case Laws) (2014–18).....	133
5.10: The Variables of the Study .....	133
5.10.1: Definitions of Variables.....	137
5.11: The Association and Relation of Variables of Study .....	142
5.12: Methods of Data Analysis.....	148
5.12.1: Descriptive Statistics .....	148
5.12.2: Paired T-Test.....	148
5.13: Conclusion .....	149
Chapter 6: The Results .....	150
6.1: Introduction .....	150
6.2: Shareholders Engagement in ASX 200 Companies (2014–18) .....	150
6.2.1: Participation of Shareholders at AGMs during 2014–18 .....	150
6.2.2: Average (%) of Non-Participating Shareholders at AGMs.....	151
6.2.3: Shareholders Participation at AGMs – Through Proxy.....	152
6.2.4: Shareholders Participation at AGMs – In Personam.....	153
6.2.5: Share Ownership Structure .....	153
6.2.6: Comparison of Voting Turnout and Top 20 Shareholders Voting Rights .....	156

6.2.7: Comparison of Voting Turnout and Blockholders Voting Rights at ASX 200 .....	156
6.2.8: Proxy Instructions by Shareholders to Vote 'For' Resolutions.....	157
6.2.9: Proxy Instructions by Shareholders to Vote 'Against' Resolutions .....	158
6.2.10: Voting Dissents for Proxy Votes during 2014–18 AGMs .....	159
6.2.11: <i>Australian Centre for Corporate Responsibility (ACCR) v Commonwealth Bank Australia</i> (10 June 2016) .....	160
6.3: Research Model 1 .....	161
6.3.1: Results of T-Test for Model 1 Year 2014 .....	162
6.3.2: Results of T-Test for Model 1 Year 2016 .....	165
6.3.3: Results of T-Test for Model 1 Year 2018 .....	165
6.3.4: Grant –Taylor v Babcock & Brown Ltd (in liq) (21 April 2016) .....	167
6.4: Research Model 2A.....	167
6.5: Research Model 2B.....	171
6.6: Research Model 3 .....	174
6.7: Research Model 4A.....	178
6.8: Research Model 4B.....	180
6.9: Research Model 4C .....	182
6.10: Research Model 5 .....	184
6.11: Conclusion .....	190
Chapter 7: Discussion .....	192
7.1: Introduction .....	192
7.2: Shareholders Engagement in Corporate Decision Making in Australian Listed Companies and Shareholders Voting Powers .....	193
7.3: RQ 1 – The Economic Rights of Shareholders and AGMs Corporate Decision Making .....	197
7.4: RQ 2A – Importance of AGMs and Shareholders Engagement for Corporate Decision Making .....	198
7.5: RQ 2B – Shareholders and Director's Accountability.....	199
7.6: RQ 3 – Impact of Shareholders Voting Dissents on Remuneration Policy Resolutions.....	200
7.7: RQ 4A – The Share Ownership (Top 20 Shareholders) of Shareholders and AGMs ..	201
7.8: RQ 4B – The Share Ownership of Blockholders and AGMs .....	202
7.9: RQ 4C – Blockholders and AGM's Decision Making .....	203
7.10: RQ 5 – Agency Theory or Stewardship Theory in ASX 200.....	203
7.11: Conclusion .....	206
Chapter 8: Conclusion.....	209
8.1: Introduction .....	209
8.2: Thesis Summary .....	209
8.2.1: Chapter 1 .....	210
8.2.2: Chapter 2 .....	210
8.2.3: Chapter 3 .....	211

8.2.4: Chapter 4 .....	212
8.2.5: Chapter 5 .....	213
8.2.6: Chapter 6 .....	214
8.2.7: Chapter 7 .....	215
8.3: Contribution of This Study .....	217
8.4: Implication of This Study .....	219
8.4.1: Theoretical Implication.....	219
8.4.2: Policy Implication.....	221
8.5: Policy Recommendations.....	222
8.6: Limitations of Study.....	223
8.7: Future Research .....	225
8.8: Conclusion .....	225
Bibliography .....	227

## Tables

Table 3.1: The rights of shareholders at AGMs .....	47
Table 5.1 Sample of the study.....	118
Table 5.2 Source for secondary data collection.....	119
Table 5.3: The number of resolutions presented at AGMs sessions during 2014–18 .....	131
Table 5.4: Overview definitions and sources of variables .....	137
Table 6.1: The frequency table of blockholders position in ASX 200 .....	155
Table 6.2: Descriptive statistics for model 1 year 2014.....	162
Table 6.3: T-Test for model 1 year 2014 with 5%, 1% and 10% level of significance.....	164
Table 6.4: Descriptive statistics for model 1 year 2016.....	164
Table 6.6: Descriptive statistics for model 1 year 2018.....	165
Table 6.5: T-Test for model 1 year 2016 .....	166
Table 6.7: T-Test for model 1 year 2018 .....	166
Table 6.8: Descriptive statistics for model 2A.....	168
Table 6.9: T-Test for model 2A.....	170
Table 6.10: Descriptive statistics for model 2B.....	171
Table 6.11: T-Test for model 2B.....	173
Table 6.12: Descriptive statistics for model 3 .....	174
Table 6.13: T-Test for model 3 .....	177
Table 6.14: Descriptive statistics for model 4A.....	178
Table 6.15: T-Test for model 4A.....	179
Table 6.16: Descriptive statistics for model 4B.....	180
Table 6.17: T-Test for model 4B.....	181
Table 6.18: Descriptive statistics for model 4C.....	182
Table 6.19: T-Test for model 4C.....	183
Table 6.20: ESG resolutions – 2014–18.....	186
Table 6.21: Summary of results of shareholders engagement to exercise control and decision making rights (voting and proxy voting) – propositions 1 to 18 .....	190
Table A.1: Resolutions Groups .....	A.1
Table B.1: Coding according to company's sector.....	B.1
Table C.1: Sample Companies .....	C.1
Table D.1: Cases – Economic Rights, Control and Decision Making Rights of Shareholders .....	D.1
Table E.1: Election of director's resolution- votes exercised on poll .....	E.1
Table E.2: Final voting results for ED .....	E.1
Table E.3: Election of director's resolution - resolutions passed on show of hands (S H) ...	E.1

Table E.4: Election of director's resolution - instructions given to proxy by shareholders ...	E.1
Table E.5: Re-election of director's resolution- votes exercised on poll .....	E.2
Table E.6: Final voting results for RED.....	E.2
Table E.7: Election of director's resolution - resolutions passed on show of hands .....	E.2
Table E.8: Re-election of director's resolution - instructions given to proxy by shareholders .....	E.2
Table E.9: Remuneration report resolution- votes exercised on poll.....	E.3
Table E.10: Final voting results for RR.....	E.3
Table E.11: Remuneration report resolution - resolutions passed on show of hands.....	E.3
Table E.12: Remuneration report resolution - instructions given to proxy by shareholders.	E.3
Table E.13: Director Fee's resolution- votes exercised on poll .....	E.4
Table E.14: Final voting results for DF .....	E.4
Table E.15: Director Fees resolution - resolutions passed on show of hands.....	E.4
Table E.16: Director fees resolution - instructions given to proxy by shareholders .....	E.4
Table E.17: Performance rights resolution- votes exercised on poll .....	E.5
Table E.18: Final voting results for PR .....	E.5
Table E.19: Performance rights resolution - resolutions passed on show of hands .....	E.5
Table E.20: Performance rights resolution - instructions given to proxy by shareholders ...	E.5
Table E.21: Grant of equity resolution- votes exercised on poll .....	E.6
Table E.22: Final voting results for DF .....	E.6
Table E.23: Grant of equity resolution - resolutions passed on show of hands .....	E.6
Table E.24: Grant of equity resolution - instructions given to proxy by shareholders .....	E.6
Table E.25: Director other resolution- votes exercised on poll.....	E.7
Table E.26: Final voting results for DO.....	E.7
Table E.27: Director other resolution - resolutions passed on show of hands.....	E.7
Table E.28: Director other resolution - instructions given to proxy by shareholders.....	E.7
Table E.29: Non-executive director's election resolution- votes exercised on poll .....	E.8
Table E.30: Final voting results for NEDE .....	E.8
Table E.31: Non-executive director's election resolution - resolutions passed on show of hands.....	E.8
Table E.32: Non-executive director's election resolution - instructions given to proxy by shareholders .....	E.8
Table E.33: Re-election of non-executive director's resolution- votes exercised on poll .....	E.9
Table E.34: Final voting results for RNED .....	E.9
Table E.35: Re-election of non-executive director's resolution - resolutions passed on show of hands.....	E.9
Table E.36: Re-election of non-executive director's resolution - instructions given to proxy by shareholders .....	E.9

Table E.37: Remuneration of non-executive director's resolution- votes exercised on poll .....	E.10
Table E.38: Final voting results for NED-R.....	E.10
Table E.39: Remuneration of non-executive director's resolution - resolutions passed on show of hands.....	E.10
Table E.40: Remuneration of non-executive director's resolution - instructions given to proxy by shareholders .....	E.10
Table E.41: Non-executive director's all other resolution- votes exercised on poll.....	E.11
Table E.42: Final voting results for NED-R.....	E.11
Table E.43: Non-executive director's all other resolution - resolutions passed on show of hands.....	E.11
Table E.44: Non-executive director's all other resolution - instructions given to proxy by shareholders .....	E.11
Table E.45: Auditors all resolutions- votes exercised on poll .....	E.12
Table E.46: Final voting results for Audi.....	E.12
Table E.47: Auditors all resolutions - resolutions passed on show of hands.....	E.12
Table E.48: Auditors all resolutions - instructions given to proxy by shareholders .....	E.12
Table E.49: Financial assistance resolutions- votes exercised on poll.....	E.13
Table E.50: Final voting results for FA .....	E.13
Table E.51: Financial assistance resolutions - resolutions passed on show of hands.....	E.13
Table E.52: Financial assistance resolutions - instructions given to proxy by shareholders .....	E.13
Table E.53: Takeover related resolutions- votes exercised on poll .....	E.14
Table E.54: Final voting results for Tak .....	E.14
Table E.55: Takeover related resolutions - resolutions passed on show of hands.....	E.14
Table E.56: Takeover related resolutions - instructions given to proxy by shareholders ...	E.14
Table E.57: Issue of shares related resolutions- votes exercised on poll.....	E.15
Table E.58: Final voting results for IOS .....	E.15
Table E.59: Issue of shares related resolutions - resolutions passed on show of hands...	E.15
Table E.60: Issue of shares related resolutions - instructions given to proxy by shareholders .....	E.15
Table E.61: Dividend related resolutions- votes exercised on poll .....	E.16
Table E.62: Final voting results for Divd.....	E.16
Table E.63: Dividend related resolutions - resolutions passed on show of hands.....	E.16
Table E.64: Dividend related resolutions - instructions given to proxy by shareholders ....	E.16
Table E.65: Share matters (Approval and issue of share to MD, COE, Directors etc.) related resolutions- votes exercised on poll .....	E.17
Table E.66: Final voting results for SM.....	E.17
Table E.67: Share matters (Approval and issue of share to MD, COE, Directors etc.) related resolutions - resolutions passed on show of hands .....	E.17

Table E.68: Share matters (Approval and issue of share to MD, COE, and Directors etc.) related resolutions - instructions given to proxy by shareholders.....	E.17
Table E.69: Employees shares related resolutions- votes exercised on poll.....	E.17
Table E.70: Final voting results for ES .....	E.18
Table E.71: Employees shares related resolutions - resolutions passed on show of hands .....	E.18
Table E.72: Employees shares related resolutions - instructions given to proxy by shareholders .....	E.18
Table E.73: Securities and stapled securities (approval and issues) related resolutions - votes exercised on poll.....	E.19
Table E.74: Final voting results for SSS.....	E.19
Table E.75: Securities and stapled securities (approval and issues) related resolutions - resolutions passed on show of hands .....	E.19
Table E.76: Securities and stapled securities (approval and issues) related resolutions - instructions given to proxy by shareholders.....	E.19
Table E.77: Shareholders other related resolutions - votes exercised on poll.....	E.20
Table E.78: Final voting results for SO .....	E.20
Table E.79: Securities and stapled securities (approval and issues) related resolutions - resolutions passed on show of hands .....	E.20
Table E.80: Securities and stapled securities (approval and issues) related resolutions - instructions given to proxy by shareholders.....	E.20
Table E.81: Company name related resolutions - votes exercised on poll.....	E.21
Table E.82: Final voting results for CN.....	E.21
Table E.83: Company name related resolutions - resolutions passed on show of hands..	E.21
Table E.84: Company name related resolutions - instructions given to proxy by shareholders .....	E.21
Table E.85: Company constitution related resolutions - votes exercised on poll.....	E.22
Table E.86: Final voting results for Cont.....	E.22
Table E.87: Company constitution related resolutions - resolutions passed on show of hands .....	E.22
Table E.88: Company constitution related resolutions - instructions given to proxy by shareholders .....	E.22
Table E.89: Award-incentive (long or short term) related resolutions - votes exercised on poll .....	E.23
Table E.90: Final voting results for AILS .....	E.23
Table E.91: Award-incentive (long or short term) related resolutions - resolutions passed on show of hands.....	E.23
Table E.92: Award-incentive (long or short term) related resolutions - instructions given to proxy by shareholders.....	E.23
Table E.93: Spill resolutions - votes exercised on poll.....	E.24
Table E.94: Final voting results for Spill .....	E.24

Table E.95: Spill resolutions - resolutions passed on show of hands.....	E.24
Table E.96: Spill resolutions - instructions given to proxy by shareholders.....	E.24
Table E.97: All other resolutions - votes exercised on poll.....	E.25
Table E.98: Final voting results for AO.....	E.25
Table E.99: All other resolutions - resolutions passed on show of hands .....	E.25
Table E.100: All other resolutions - instructions given to proxy by shareholders.....	E.25
Table E.101: ESG-related resolutions - votes exercised on poll .....	E.26
Table E.102: Final voting results for ESG.....	E.26
Table E.103: ESG-related resolutions - resolutions passed on show of hands .....	E.26
Table E.104: ESG-related resolutions - instructions given to proxy by shareholders .....	E.26
Table F.1: Proxy instructions given by shareholders (2014) .....	F-1
Table F.2: Proxy instructions given by shareholders (2015) .....	F-2
Table F.3: Proxy instructions given by shareholders (2016) .....	F-3
Table F.4: Proxy instructions given by shareholders (2017) .....	F-4
Table F.5: Proxy instructions given by shareholders (2018) .....	F-5



## Figures

Fig 4.1 Theoretical Framework of Shareholders Rights.....	99
Fig 4.2 Conceptual Framework: Shareholders rights in theory and practice .....	101
Fig 5.1 Research design of the study .....	111
Fig 5.2: Model 1- Relationship between dividend value and shoulders engagement .....	142
Fig 5.3: Model 2A- Relationship between AGMs resolutions and voting turnout .....	143
Fig 5.4: Model 2B - Relationship between directors' (re) election and voting against.....	144
Fig 5.5: Model 3- Relationship between boards recommended resolutions and voting turnout on remuneration policy resolutions.....	144
Fig 5.6: Model 4A- Relationship between share ownership of top 20 shareholders and voting turnout .....	145
Fig 5.7: Model 4B- Relationship between share ownership of blockholders and shareholders voting turnout .....	146
Fig 5.8: Model 4B- Relationship between share ownership of blockholders and shareholders voting turnout .....	147
Fig 5.9: Model 4A- Shareholders proposed resolutions and resolutions outcomes.....	147
Fig 6.1: The shareholders average (%) of voting turnout (2014–18).....	151
Fig 6.2: The mean (%) voting turnout of non-participating shareholders (2014–18).....	152
Fig 6.3: The average (%) of proxy voting turnout (2014–18).....	152
Fig 6.4: The shareholders average (%) of voting turnout in personam (2014–18) .....	153
Fig 6.5: Average % of share ownership of top 20 shareholders 2014-18.....	154
Fig 6.6: Average % of share ownership of blockholders (2014-2018).....	155
Fig 6.7: The ownership structure of top 20 shareholders and voting turnouts (2014-18)....	156
Fig 6.8: The ownership structure of blockholders and voting turnouts (2014–18) .....	157
Fig 6.9: Average (%) voting results for proxy instructions to vote 'For' (2014-2018) .....	158
Fig 6.10: Average (%) voting results for proxy instructions to vote 'Against' (2014-18).....	159
Fig 6.11: Average (%) voting results for proxy dissents (2014-18).....	160

## Abbreviations

Act	<i>Corporations Act 2001</i>
AGM	Annual General Meeting
AICD	Australian Institute of Company Directors
ASIC	Australian Securities and Investment Commission
ASX	Australian Securities Exchange
CEO	Chief Executive Officer
Cth	Commonwealth
EGM	Extraordinary Meeting
ESG	Environmental, Social and Governance
ICGN	International Corporate Governance Network
LR	Listing Rules
OECD	Organisation for Economic Co-operation and Development
TVC	Voting turnout
PV	Proxy voting turnout
ED	Election of directors
RED	Re-election of directors
RR	Remuneration reports
DF	Director Fees
DO	Directors other
PR	Performance rights
GE	Grant of equity
NEDE	Non-executive directors' election
REDE	Re-election of non-executive directors
NED-R	Non-executive directors' remuneration
NED-AO	Non-executive directors all other
Audi	Auditor
FA	Financial assistance
Tak	Takeover
IOS	Issue of share
Divd	Dividend

SM	Shares matters
ES	Employee shares
SSS	Securities and stapled securities
SO	Shareholders other
CN	Company name
Cont	Constitution
AILS	Award-incentives (long or short term)
AO	All other resolutions

## **Cases**

### **Australia – Commonwealth**

AXA Asia Pacific Holdings Ltd v Direct Share Purchasing Corporation Pty Ltd (2009) 173 FCR 434

National Mutual Life Association of Australia Ltd v Federal Commissioner of Taxation [2008] FCA 1871

Pilmer v The Duke Group Limited (in liq) [2001] HCA 31

QBE Insurance Group Ltd v Australian Securities and Investment Commission (1992) 38 FCR 270

Sydney Futures Exchange Ltd v Australian Stock Exchange Ltd (1995) 56 FCR 236

### **Australia – New South Wales**

ACD Tridon Inc v Tridon Australia Pty Ltd [2002] NSWSC 896 at 165–166

Archibald Howie Pty Ltd v Commissioner of Stamp Duties (NSW) (1948) 77 CLR 143

Cordiant Communications (Aust) Pty Ltd v Communications Group Holdings Pty Ltd [2005] NSWSC 1005

Gambotto v WCP Ltd (1995) 182 CLR 432 at 447

Re Marra Developments Ltd (1976) 1 ACLR 470

White v Shortall [2006] NSWSC 1379 at 197

### **Australia – Tasmania**

Clements Marshall Consolidated Ltd v ENT Ltd (1988) 13 ACLR 90

In the Matter of Sullivans Cove IXL Nominees Pty Ltd; Crawford v de Kantzow [2011] TASSC 9

### **United Kingdom**

Borland's Trustee v Steel Bros & Co Ltd [1901] 1 Ch 279

Colonial Bank v Whinney (1885) 30 Ch D 261 at 286–287

Greenhalgh v Arderne Cinemas Ltd [1945] 2 All ER 719

In re The Spanish Prospecting Company Limited [1911] 1 Ch 92

Isle of Wight Rly Co v Tahourdin (1883) 25 Ch D 320

Wood v Odessa Waterworks Co 42 ChD 636

## Legislation

### Australia

#### Commonwealth

Company Law Review Act 1998

*Corporations Act* 2001 (Cth)

s 1.9

s 9

s 134

s 135(2)

s 136(2)

s 140(1)

s 168

s 169

s 173

s 201G

s 202A

s 203D

s 203D(1)

s 205E

s 246B

s 246B(1)

s 247A

s 249(N)

s 249D

s 249D(1)

s 249D(3),(4),(5)

s 249L(1)(c)

s 249N

s 249N(1)

s 249N(4)(5)

s 249O(1)

s 250A

s 250E

s 250E(1)  
s 250M  
s 250N  
s 250PA  
s 250R  
s 250R(1)  
s 250R(2)  
s 250R(3)  
s 250R(b)  
s 250R(c, d)  
s 250 S  
s 250SA  
s 250T  
s 251AA  
s 252J(c)  
s 254A(2)  
s 254T  
s 254T(1)  
s 254U  
s 254V  
s 254W  
s 255AA  
s 1070A(1)

### **Australian Capital Territory**

Companies Ordinance 1962

### **New South Wales**

Companies Act 1961

### **Northern Territory**

Companies Ordinance 1963

### **Queensland**

Companies Act 1961

### **South Australia**

Companies Act 1962

**Tasmania**

Companies Act 1962

**Victoria**

Companies Act 1864

Companies Act 1896

Companies Act 1961

**Western Australia**

Companies Act 1961

**United Kingdom**

Companies Act 1929 (19 & 20 Geo 5 c 23)

Companies Clauses Consolidation Act 1845 (8 & 9 Vict c 16)

Companies (Consolidation) Act 1908 (8 Edw 7 c 69)

Joint Stock Companies (Registration) Act 1844 (7 & 8 Vict c 101)

Joint Stock Companies Act of 1844 (7 & 8 Vict c 110)

## **ASX Listing Rules**

LR 3.13.2

LR 14.2

LR 15.11



## Chapter 1: Introduction

*“Shareholders rights are one mechanism in the regulatory framework of corporate governance”<sup>1</sup>.*

### 1.1: Introduction

This research empirically investigates shareholders rights in Australia using a theoretical and practical framework. The context of this study is shareholders' rights in practice in Australian companies listed in the Australian Securities Exchange ASX 200 index. Shareholders provide finance to companies by investing in shares. The ownership of shares gives certain rights to shareholders. The shareholders rights are defined by bylaws of companies which are found in the company constitution and shareholders agreements, the *Corporations Act 2001* (Cth) (Act) and the Australian Securities Exchange (ASX) Listing Rules (LR).

This chapter is organised as follows: section 1.2 presents the background to the study; section 1.3 discusses the aim of the study and the research questions; section 1.4 explains why this research fills research gaps; section 1.5 discusses significance of the study; section 1.6 summarises important findings of this study and section 1.7 outlines the structure of the thesis.

### 1.2: Background of the Study

*“Respecting shareholders’ rights represents one of the fundamental principles of corporate governance”<sup>2</sup>.*

Good governance recognises the importance of shareholders and their independence from the management and company. In a governance structure the board of directors represents the shareholders but according to agency theory the interests of shareholders are not always the same as those of the board. The resolution of this possibility is through the Annual General Meeting (AGM) when shareholders have an opportunity to hold board to account by exercising their voting rights. The aim of this study was to evaluate shareholders rights in practice through engagement in the AGM when they exercise their rights.

The Australian Survey of Social Attitudes in 2003 claimed that Australia is a share owning democracy. According to Hanson and Tranter approximately half of Australian adult population directly own shares in corporations and even more have share ownership through

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<sup>1</sup> Ben Jacobsen and Howard Pender, 'The controversy continues: The case for regulatory reform on members' resolutions in Australia' (2016) 34 Company and Securities Law Journal 292-303

<sup>2</sup> Adrian Doru Bîgioi and Cristina Elena Dumitru, 'The rights of shareholders—basic principle of corporate governance by means of case-specific jurisprudence' (2016) 14 (136) The Audit Financiar Journal 401-412

superannuation<sup>3</sup>. Sixty percent of Australian adults hold some kind of investment (on-exchange and not on-exchange modes) other than institutional superannuation funds. As per February 2017 around thirty seven percent of the adult population hold an on-exchange investment<sup>4</sup>.

The Australians investment portfolio is categorised as concentrated<sup>5</sup>. The empirical research by Dignam and Galanis found that: the share ownership of Australian shareholders is more concentrated; shareholders and creditors are actively engaged in company control; Australian listed companies have blockholders and these blockholders have the ability to exercise control on companies; to interfere in management affairs; to maximise their share value; non-blockholders can get benefits if their interests align with the interests of blockholders<sup>6</sup>.

The study by Jones et al. concluded that: “it is more likely that shareholder interests are given a higher priority by directors in insider-type companies (e.g. family companies) than in outsider companies (e.g. listed companies) measured in terms of shareholder salience”<sup>7</sup>.

Morison and Ramsay described shareholders as the most important stakeholders of the company. Their study of the top hundred Australian companies concluded that in 63 companies priorities were given to shareholder’s interests<sup>8</sup>. Another study by Marshall and Ramsay argued that Australian companies give priority to shareholders primacy by pursuing their long-term and short-term interests. Further, they suggested that the directors of the companies in Australia give equal priority to the interests of the company and its shareholders<sup>9</sup>.

Mitchell et al. noted that the shareholders protection and powers are high when shareholder rights come within the sphere of corporate governance<sup>10</sup>. The study of corporate governance rules by Gompers et al. who constructed a Governance Index to examine the impact of shareholders rights in 1500 large firms concluded: “we find that firms with stronger shareholder

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<sup>3</sup> Dallas Hanson and Bruce Tranter, ‘Who are the shareholders in Australia and what are their ethical opinions? An empirical analysis’ (2006) 14 (1) Corporate Governance: An International Review 23-32

<sup>4</sup> ASX Australian Investor Study 2017 <<https://www.asx.com.au/education/2017-asx-investor-study.htm>> accessed 03 July 2018

<sup>5</sup> *ibid.*

<sup>6</sup> Alan Dignam and Michael Galanis, ‘Australia inside-out: the corporate governance system of the Australian listed market’ (2004) 28 Melb. UL Rev. 623-653

<sup>7</sup> Meredith A. Jones, Richard Mitchell Shelley D. Marshall and Ian Ramsay, ‘Company Directors’ Views Regarding Stakeholders’ (2006) University of Melbourne Legal Studies Research Paper No. 270 <<http://ssrn.com/abstract=1023259>> accessed 02 January 2016

<sup>8</sup> Reegan Grayson Morison and Ian Ramsay, ‘An Analysis of Companies’ Business Objectives’ (2014) 32 C&SLJ 438-447

<sup>9</sup> Shelly Marshall and Ian Ramsay, ‘Shareholders and Directors’ Duties: Law, Theory and Evidence’ (2012) University of Melbourne Legal Studies Research Paper No. 411 <<http://ssrn.com/abstract=1402143>> accessed 2 January 2016

<sup>10</sup> Richard Mitchell, Anthony O’ Donnell, Ian Ramsay and Michelle Welsh, ‘Shareholder protection in Australia: Institutional configurations and regulatory evolution’ (2014) 38 (68) Melb. UL Rev. 98-118

rights had higher firm value, higher profits, higher sales growth, lower capital expenditures, and made fewer corporate acquisitions”<sup>11</sup>.

In firms with weak shareholders rights, the managers of those firms exploit shareholders rights for private benefits. On other hand in firms with strong shareholders rights, managers get less opportunity to exploit shareholders rights for their private benefits<sup>12</sup>. Gompers et al.’s argument was that strength of shareholders rights depends on firms’ governance provisions. More restricted provisions means weaker shareholders rights. The firms with more favourable provisions to managers and less to shareholders present weaker shareholders rights<sup>13</sup>. The study of Jiraporn and Davidson<sup>14</sup> endorsed Gompers et al.’s findings.

The study of Deakin et al. of laws empowering shareholders for the period of mid-1990s and 2000s showed that empowering shareholders did not have any positive impact on stock markets<sup>15</sup>.

The concept of separation of ownership from control ensures the limited involvement of shareholders in day-to-day decision making of the companies<sup>16</sup>. However, the debate continues about what the level of involvement should be. McConvill has argued that, while the right of shareholders to participate in the affairs of companies may be increased with the hope of improving corporate performance of the companies, shareholders should not threaten the authority of directors, otherwise there is no opportunity to increase the participatory rights of shareholders<sup>17</sup>.

According to Sikka and Stittle, the shareholders are not the owners of the large corporations but instead the shareholders are the owners of ‘fabricated’ capital which is different from real capital. The ‘fictitious’ capital holders frequently buy and sell their shares to gain short-term profits<sup>18</sup>. Companies’ management should therefore not give preference to shareholders interests. Koutsias has supported Sikka and Stittle’s findings and argued that the concept of

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<sup>11</sup> Paul Gompers, Joy Ishii and Andrew Metrick, ‘Corporate governance and equity prices’ (2003) 118 (1) The quarterly journal of economics 107-156

<sup>12</sup> Pornsit Jiraporn, ‘Share repurchases, shareholder rights, and corporate governance provisions’ (2006) 17 North American Journal of Economics and Finance 35-47

<sup>13</sup> Gompers, Ishii and Metrick (n 11).

<sup>14</sup> Pornsit Jiraporn and Wallace Davidson, ‘Regulation, shareholder rights and corporate governance: an empirical note’ (2009) 16 (10) Applied Economics Letters 977-982

<sup>15</sup> Simon Deakin, Prabirjit Sarkar and Mathias Siems, ‘Is There a Relationship Between Shareholder Protection and Stock Market Development?’ (2017) University of Cambridge Faculty of Law Research Paper No. 9/2018 <<http://ssrn.com/abstract=3105234>> accessed 15 October 2018

<sup>16</sup> James Mayanja, ‘The proper role of shareholders in the decision-making processes of modern large Australian public companies’ (2009) 24 (1) Aust Jnl of Corp Law 9-32

<sup>17</sup> James McConvill, ‘Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation’ (2006) <<http://ssrn.com/abstract=943907>> accessed 27 December 2016

<sup>18</sup> Prem Sikka and John Stittle, ‘Debunking the myth of shareholder ownership of companies: Some implications for corporate governance and financial reporting’ (2019) 63 Critical Perspective on Account 1-15

shareholders supremacy, as shareholders own the companies, is based on a false notion. In the modern corporate world the shareholders any rights which are attached to their shares give them the rights to vote<sup>19</sup>.

The studies of Berle, Means and Dodd proposed that companies should not be operated solely in the best interests of shareholders<sup>20</sup>. Stout has challenged two pioneer arguments of scholars in the wake and innovation of corporate law: first, Berle's argument "corporations exist only to make money for shareholders"<sup>21</sup>, and second, Merrick Dodd viewed the business corporation "as an economic institution which has a social service as well as a profit-making function". Dodd further argued that the purpose of corporations was not to generate money for shareholders<sup>22</sup>.

Previous literature lacks clarity to articulate the legal position of the shareholders position within companies. Moreover, there is no consensus in prior research whether more rights should be given to the shareholders than that given to the companies. Hence, there is a dearth of empirical research which provides a detailed analysis of the ways by which shareholders exercise rights. Moreover, without evaluating current mechanisms used by shareholders to exercise their rights, discussions on the future perspectives of shareholders rights will provide minimal insight into the improvement of corporate governance and shareholders protection.

### **1.3: Aim of the Study**

The formation of the company is by "virtue of the will, enterprise and capital of the shareholders"<sup>23</sup>. One of the common objectives of the companies is to maximise and improve shareholders' value with sustainable returns<sup>24</sup>.

A shareholder is defined as: "an individual, institution, firm, or other entity that owns shares in a company"<sup>25</sup> and "shareholders are owners of the company and they have certain rights"<sup>26</sup>. In modern listed companies the shareholders can be classified as: 'significant shareholders, institutional investors and individual investors'<sup>27</sup>. The significant shareholders are any entity

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<sup>19</sup> Marios Koutsias, 'The Fallacy of Property Rights' The Fallacy of Property Rights Rhetoric in the Company Law Context: From Shareholder Exclusivity to the Erosion of Shareholders' Rights' (2017) 28 (6) International Company and Commercial Law Review 217-23

<sup>20</sup> Berle, Means and Dodd quoted by Marshall and Ramsay (n 9).

<sup>21</sup> ADOLPH A. BERLE & GARDINER C. MEANS Quoted by Lynn A. Stout, 'Bad and Not-So-Bad Arguments for Shareholder Primacy' (2001) 75 Southern California Law Review 1189-1210

<sup>22</sup> D. Gordon Smith Quoted by ibid.

<sup>23</sup> Ross Grantham, 'The Doctrinal Basis of the Rights of Company Shareholders' (1998) 57 (3) The Cambridge Law Journal 554-588

<sup>24</sup> Morison and Ramsay (n 8).

<sup>25</sup> Christine A Mallin, Corporate Governance (2nd edn, Oxford University Press 2007) 63

<sup>26</sup> Available at <<https://www.gov.uk/limited-company-formation/shareholders>> accessed 05 January 2018

<sup>27</sup> John Farrar, Corporate Governance theories, Principles, and Practices (2nd edn, Oxford University Press, 2005) 166

or individual holding 5% or 10% or more voting shares in a company<sup>28</sup>. Institutional investors' definition is restricted to those institutions who act in a fiduciary capacity regardless of investment strategy and includes: pension funds, insurance companies, mutual funds and trusts<sup>29</sup>. Individual investors are those who have individual interests<sup>30</sup>.

The engagement of shareholders is essential to monitor and to hold company boards accountable for their actions<sup>31</sup>. The shareholders have the opportunity to raise their concerns (support or record dissatisfaction) with investee companies and their directors by using their legal rights to vote at AGMs<sup>32</sup>. The board of directors have the power to influence management of a company. However, the misuse of powers leads a company towards financial crisis<sup>33</sup>.

Van der Elst established an argument on the grounds of law and finance theory that shareholders rights are important for growth and reliability of capital market<sup>34</sup>. Hutton et al. studied the rights of shareholder and concluded that: "shareholder rights are one, and only one, means of promoting the efficient running of the corporation as a legal structure designed to bring together the different parties to the firm in the delivery of its corporate purpose"<sup>35</sup>. Chi agreed and pointed out that stronger shareholders rights enable increases in firm value by reducing agency costs while a restriction on shareholders rights in firms signal the poor performance of the managers<sup>36</sup>.

Gornaova and Ryan have defined the subject of corporate governance as: "the roles, responsibilities, and balance of power among executives, directors and shareholders"<sup>37</sup>. Bîgioi and Dumitru have claimed that respecting shareholders rights is one of the fundament principles of corporate governance<sup>38</sup>.

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<sup>28</sup> Jennifer G. Hill and Randall S. Thomas (ed), Research Handbook on Shareholder Power (Edward Elgar Publishing Limited, 2015) 227

<sup>29</sup> OECD (2011), The Role of institutional Investors in Promoting Good Corporate Governance, Corporate Governance, OECD Publishing doi:10.1787/9789264128750-en

<sup>30</sup> Alessandro Varrenti, Fernando de las Cuevasa and Matthew Hurlock (ed), Shareholders' Rights: Jurisdictional comparisons (CPI William Clowes Beccles, 2011) 286

<sup>31</sup> Winifred Murray, 'The role of company boards: Are they to blame for excessive executive remuneration?' (2009) 23 Australian Journal of Corporate Law 178-194

<sup>32</sup> Amy J. Hillman, Christine Shropshire, Trevis Certo and Dan R. Dalton, Catherine M. Dalton, 'What I like about you: A multilevel

<sup>33</sup> Angualia Daniel, 'Balance of Power between Shareholders and the Board in Corporate Governance' (2010) <<http://ssrn.com/abstract=612962>> accessed 09 November 2017

<sup>34</sup> Christoph Van der Elst, 'Law and Economics of Shareholder Rights and Ownership Structures: How Trivial are Shareholder Rights for Shareholders?' (2010) Tilburg Law and Economics Center (TILEC) Law and Economics Discussion Paper 2010-009 and Tilburg Law School Legal Studies Research Paper 008/2010 <<http://ssrn.com/abstract=1553094>> accessed 15 November 2018

<sup>35</sup> Will Hutton, Colin Mayer and Philippe Schneider, 'The Rights and Wrongs of Shareholder Rights' (2017) 40 Seattle UL Rev. 375-397

<sup>36</sup> Jianxin Chi, 'Understanding the endogeneity between firm value and shareholder rights' (2005) 34 (4) Financial management 65-76

<sup>37</sup> Maria Goranova and Lori Verstegen Ryan (ed), Shareholder Empowerment: A New Era in Corporate Governance (Palgrave Macmillan, 2015) 103

<sup>38</sup> Bîgioi and Dumitru (n 2).

Prior literature shows that there is a positive link exists between corporate governance and the value of a firm. The shareholders benefit from the financial gains of increases in sales, profitability and the subsequent payout which occurs<sup>39</sup>. The shareholders do not have any direct role in driving the company, but there are different ways to influence a board of directors. Other than voting they can exit (selling shares), be loyal (holding onto shares), and use their voice (communicating with management)<sup>40</sup>.

La Porta et al. argued that corporate voting procedures can be used to evaluate shareholders rights<sup>41</sup>. So, evaluation of shareholders rights is essential to make decisions to improve the shareholders rights<sup>42</sup>. However, as Koutsias points out the shareholders can exercise only those rights which are attached to shares<sup>43</sup>. The exercise of voting rights by shareholders is an effective way at AGMs to claim responsible ownership<sup>44</sup>.

The shareholders rights include: economic rights which include right of dividend, buying and selling of shares at profit; control and decision making rights which are exercising voting rights at AGMs resolutions to approve or to reject AGM resolutions, the right to vote in person or appoint proxies; information rights; litigation and procedural rights.

### **1.3.1: Research Aims**

The general aim of present study is to develop the understanding of the shareholders rights in theory and practice.

The research aims which this research is intended to achieve are:

1. To determine the magnitude of shareholders engagement in exercising their rights in Australian listed companies and the impact of shareholders engagement on corporate decision makings.
2. To analyse shareholders engagement at AGMs to exercise their rights through voting and proxy voting.
3. To determine the relationship between shareholders economic rights and their engagement at AGMs.
4. To analyse shareholders economic rights from a legal perspective.

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<sup>39</sup> Popadak Jillian, 'A corporate culture channel: How increased shareholder governance reduces firm value' (2019) <<http://ssrn.com/abstract=2345384>> accessed 27 December 2019

<sup>40</sup> Albert O. Hirschman Quoted by Salvatore Esposito De Falco, Nicola Cucari and Emanuele Sorrentino, 'Voting dissent and corporate governance structures: The role of say on pay in a comparative analysis' (2016) 13 (4) Corporate Ownership & Control 188-196

<sup>41</sup> Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W. Vishny, 'Law and Finance' (1998) 106 Journal of Political Economy 1113-1155

<sup>42</sup> Mahdi Faghani, Reza Monem and Chew Ng, "Say on pay' regulation and chief executive officer pay: Evidence from Australia' (2015) 12 (3) Corporate Ownership & Control 28-39

<sup>43</sup> Koutsias (n 19).

<sup>44</sup> Paul Hewitt, 'The Exercise of Shareholder Rights: Country Comparison of Turnout and Dissent' (2011) OECD Corporate Governance Working Papers No. 3 <[https://www.oecd-ilibrary.org/governance/the-exercise-of-shareholder-rights\\_5kg54d0l1lvf-en](https://www.oecd-ilibrary.org/governance/the-exercise-of-shareholder-rights_5kg54d0l1lvf-en)> accessed 10 January 2018

5. To examine the role of AGMs in engagement of shareholders to determine accountability of directors.
6. To determine the resolutions which attract more voting dissent from shareholders at AGMs.
7. To identify the relationship between shareholders engagement at AGMs and ownership structure of shareholders.
8. To explore the relationship of agency theory and stewardship theory with shareholders rights at AGMs.
9. To make recommendations for better understanding of the way in which shareholders use their voting and proxy voting rights to engage in corporate decisions making and contribute to the concept of accountability of directors in ASX 200 companies.

### **1.3.2: Research Objectives**

The research objectives which this research is intended to achieve are:

- To confirm:
  - The way in which shareholders exercise their corporate decision making rights through voting at the AGMs of ASX 200 companies,
  - The relationship of shareholders ownership structure with shareholders voting and proxy voting turnouts at AGMs during 2014 to 2018's AGM sessions.
- To evaluate shareholders rights in practice at AGMs through voting powers.
- To determine the relationship between economic rights of shareholders and shareholders engagement at AGMs to exercise their control and decision making rights.
- To access the importance of shareholders behaviour in exercising their voting and proxy voting rights.
- To analyse the association of shareholders voting and proxy voting behaviour and directors' accountability.
- To assess the relationship between shareholders voting dissents and the frequency that they voice their concerns at AGMs resolutions.
- To investigate the relationship of share ownership with voting rights and its impact on corporate decision making at AGMs.
- To analyse whether Agency Theory or the Stewardship Theory may be applied to interpret corporate decision making of ASX 200 at AGMs.

### **1.3.3: Research Questions**

In order to accomplish the research objectives, six research questions were defined. These research questions are developed in Chapter 4 Conceptual Framework and outlined here. The main research question is:

To what extent shareholders engage to exercise their rights in Australian listed companies, how and to what extent does shareholders engagement with listed company's impact on corporate decision makings at AGMs?

Five sub-questions posed and answered in this research are as:

- RQ1: What is the relationship, if any, between the economic rights of shareholders and shareholders' engagement at AGMs?
- RQ2A: How, and to what extent do AGMs impact on decision making of listed companies?
- RQ2B: Do shareholders use AGM for accountability of directors or as simply a formal event?
- RQ3: Did shareholders exercise proxy voting 'Dissent' to record their concerns on board recommended resolutions –remuneration policy resolutions?
- RQ4A: What is the relationship, if any, between ownership structure of shareholders and shareholders engagement at AGM?
- RQ4B: Does ownership structure (blockholders up to top 20 shareholders) in listed companies has any impact on shareholders engagement to exercise their rights at AGMs, and do AGMs results support ownership influence in ASX 200?
- RQ4C: What is the relationship, if any, between ownership structure (number of blockholders) and annual general meetings results of listed companies?
- RQ5: How do governance theories (agency or stewardship theory) explain the relationships between the rights of shareholders in practice and investee companies in Australia?

#### **1.4: Why this Research?**

*"Australia is an interesting country for the effects of reforms of corporate governance"<sup>45</sup>.*

This study focuses on the exercise of shareholders' rights in the decision making processes of top ASX 200 companies, particularly at AGMs. The shareholders exercise decision making rights by voting on AGM resolutions directly or by appointing proxies. The significant AGMs resolutions are: remuneration, election and re-election of directors, and environmental, social and governance (ESG) resolutions.

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<sup>45</sup> De Falco, Cucari and Sorrentino (n 40).



### 1.4.1: The justification of this research

Several studies have investigated the protection offered by the law for shareholders. The high protection offered by the common law has been shown to be better in Australia than United Kingdom, the United States, France, Germany and India<sup>46</sup>.<sup>47</sup>.<sup>48</sup>. However, Ramsay found that shareholders seldom take legal actions for enforcement of their rights<sup>49</sup>.

The conclusions in many studies have been based on voting patterns in regard to various resolutions. The study of Faghani et al. on effectiveness of the two-strike rule in Australia found a significant impact of a first strike on remuneration policies<sup>50</sup>. Similar results were found in the comparative empirical study of De Falco et al. on remuneration resolutions and the two-strike rule from Italy, Australia and United States<sup>51</sup>. Jacobsen and Pender have investigated the environmental, social and governance resolutions (ESG) resolutions proposed by shareholders at Australian listed companies during 2009 to 2014 and concluded that none of the ESG resolution was passed<sup>52</sup>. Two ASIC reports published in 2017<sup>53</sup> and 2018<sup>54</sup> also addressed shareholders voting behaviour on AGMs.

The previous research has failed in some cases to conduct rigorous empirical evaluation of shareholders rights in practice. This research fills this gap by conducting an in depth assessment of voting patterns that will extend the previous research.

1. This research project presents as the first study of its kind which is aimed to measure the shareholders economic rights, control and decision making rights in Australian listed companies (ASX 200) in practice during 2014-18 AGM sessions.
2. This project serves to the first project of this kind which will investigate shareholders economic rights (which is access to a dividend), and the impact of dividend value on shareholders engagement. Their decision making rights, control and decision making rights are exercised by voting and proxy voting at AGMs.
3. This research presents the current scenario of shareholders voting and proxy voting behaviour in Australian listed companies (ASX 200) during 2014–18 and fills the gap since 1999.

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<sup>46</sup> Helen Anderson, Michelle Welsh, Ian Ramsay and Peter Gahan, 'Shareholder and Creditor Protection in Australia: A Leximetric Analysis' (2012) 61 International and Comparative Law Quarterly 171-207

<sup>47</sup> Porta, Silanes, Shleifer and Vishny (n 41).

<sup>48</sup> Hui Xian Chia and Ian Ramsay, 'An Analysis of Shareholder Resolutions Involving Australian Listed Companies from 2004 to 2013' (2016) 34 C&SLJ 618-624

<sup>49</sup> Ian M. Ramsey, 'Enforcement of corporate rights and duties by shareholders and the Australian Securities Commission: Evidence and analysis' (1995) 23 (3) Australian Business Law Review 174-183

<sup>50</sup> Faghani, Monem and Ng (n 42).

<sup>51</sup> De Falco, Cucari and Sorrentino (n 40).

<sup>52</sup> Jacobsen and Pender (n 1).

<sup>53</sup> Report 564- Annual general meeting season 2017 <<https://download.asic.gov.au/media/4633282/rep-564-published-29-january-2018.pdf>> accessed 05 March 2018

<sup>54</sup> Report 609- Annual general meeting season 2018 <<https://download.asic.gov.au/media/4997407/rep609-published-31-january-2019.pdf>> accessed 10 February 2019

4. This research fills the topical gap in research of shareholders' engagement at AGMs; shareholders role in corporate decision making; contributes to decisions about more or a reduction in the powers to shareholders; and to making AGMs an effective decision making process.
5. This research also claims to be among the first studies to contribute to agency and stewardship theory in relation to shareholders rights in practice in Australian listed companies (ASX 200).

The major contribution of this research is to provide the comprehensive analysis supported by empirical data and legal analysis of shareholders rights (economic, control and decision making) over the period of 2014-2018. In this study agency and stewardship theory are applied in relation to shareholders' proposal on ESG. The outcomes of these AGMs resolutions explain the application of both theories in ASX 200 companies.

### 1.5: Significance of the Study

*"Shareholder rights lack a clear historical, theoretical or economic foundation, and hence lack a good justification"<sup>55</sup>.*

The significance of this study is that it makes an important contributions to existing knowledge of shareholders rights in theory and practice in ASX 200 companies and shareholders engagement behaviour when exercising their voting rights.

#### 1.5.1: Contribution to Knowledge (Academic Contribution)

In the existing literature, numerous studies have been conducted on AGMs, shareholders voting behaviour, shareholders activism, shareholders voting behaviour on remuneration, and election of directors<sup>56, 57, 58</sup>. Van der Elst investigated voting turnout at AGMs, shareholders activism, shareholders voting behaviour. The results showed that share ownership can influence voting turnout and that most shareholders who attend AGMs support all the resolutions<sup>59, 60</sup>.

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<sup>55</sup> Benedict Sheehy, 'Shareholders, unicorns and stilts: An analysis of shareholder property rights' (2006) 6 (1) Journal of corporate law studies 165-212

<sup>56</sup> Christoph Van der Elst, 'Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders' (2012) 39 Annals Fac. L. Belgrade Int'l Ed. 39-64

<sup>57</sup> Steve Sauerwald, J. (Hans) Van Oosterhout and Marc Van Essen, 'Expressive shareholder democracy: A multilevel study of shareholder dissent in 15 Western European countries' (2016) 53 (4) Journal of Management Studies 520-551

<sup>58</sup> Shunlin Song, Xu Xin and Yang Yi, 'Shareholder voting in China: The role of large shareholders and institutional investors' (2020) 28 (1) Corporate Governance: An International Review 69-87

<sup>59</sup> Christoph Van der Elst, 'Shareholder Activism in Belgium: The Belgian AGMs and EGMs in 2011' (2011) Tilburg Law School Research Paper No. 002/2012 <<http://ssrn.com/abstract=1929792>> accessed 05 November 2019

<sup>60</sup> Christoph Van der Elst, 'Attendance of Shareholders and the Impact of Regulatory Corporate Governance Reforms: An Empirical Assessment of the Situation in Belgium' (2004) 5 (3) European Business Organization Law Review 471-510

This research categorised AGM resolutions into 26 groups to investigate shareholders rights in ASX 200 companies. Moreover, to study the impact of share ownership on AGMs this study divided share owners with voting rights into three categories: top 20 shareholders, blockholders and presence of blockholders. Furthermore, voting turnout was studied in relation to two classes according to whether shareholders voted directly or appointed proxies (i.e. voting turnout and proxy voting turnout).

Several studies have found that shareholders can voice their dissatisfaction with company and directors by exercising their votes against director's election resolutions at AGMs<sup>61, 62</sup>. In the current study, resolutions regarding the appointment, election and re-election of directors, shareholders voting and proxy voting behaviour were studied separately.

Other studies have evaluated shareholders activism and its connections with share ownership, election and re-election of directors and concluded that voting behaviour has no significant relationship with ownership structure, and resolutions to (re) elect directors have a significant impact on voting turnout<sup>63, 64</sup>. Voting against resolutions and shareholders activism to vote 'against' on AGMs resolutions<sup>65</sup> was strong on remuneration and election of directors resolutions<sup>66, 67</sup>. Shareholders most of the time support remuneration resolutions<sup>68</sup> but significant relationships have been found between remuneration resolutions and voting dissents<sup>69</sup>.

This study investigated shareholders' activism and shareholders voting behaviour towards board recommended resolutions, by measuring voting 'For', 'Against' and 'Abstain' on remuneration resolutions.

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<sup>61</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>62</sup> Reena Aggarwal, Sandeep Dahiya and Nagpurnanand R. Prabhala, 'The power of shareholder votes: Evidence from uncontested director elections' (2019) 133 (1) *Journal of Financial Economics* 134-153

<sup>63</sup> Christoph Van der Elst, 'Revisiting Shareholder Activism at AGMs: Voting Determinants of Large and Small Shareholders' (2011) ECGI - Finance Working Paper No. 311/2011; Tilburg Law School Research Paper No. 019/2011 <<http://ssrn.com/abstract=1886865>> accessed 06 November 2019

<sup>64</sup> Christoph Van der Elst, 'Shareholder activism in good and bad economic times' (2011) 8 (2) *Corporate Ownership and Control* 32-44

<sup>65</sup> Thomas Poulsen, Therese Strand and Steen Thomsen, 'Voting power and shareholder activism: A study of Swedish shareholder meetings' (2010) 18 (4) *Corporate Governance: An International Review* 1329-1343

<sup>66</sup> Christoph Van der Elst, 'Shareholders as Stewards: Evidence of Belgian General Meetings' (2013) *Financial Law Institute, Ghent University Working Paper Series* 2013-05 <<http://ssrn.com/abstract=2270938>> accessed 05 November 2018

<sup>67</sup> Christoph Van der Elst and Anne Lafarre, 'Shareholder Stewardship in the Netherlands: The Role of Institutional Investors in a Stakeholder Oriented Jurisdiction' (2020) *European Corporate Governance Institute - Law Working Paper* 1-27 <<http://ssrn.com/abstract=3539820>> accessed 15 February 2020

<sup>68</sup> Christoph Van der Elst and Anne Lafarre, 'Shareholder voice on executive pay: A decade of Dutch Say on Pay' (2017) 18 (1) *European Business Organization Law Review* 51-83

<sup>69</sup> Martin Conyon and Graham Sadler, 'Shareholder voting and directors' remuneration report legislation: Say on pay in the UK' (2010) 18 (4) *Corporate Governance: An International Review* 296-312

The business of an AGM is explained in section 3.2.3 of Chapter 3. Previous literature has signified the important AGMs resolutions are:

- Remuneration resolutions
- Appointment of directors (election and re-election)
- ESG resolutions

This research explored these three categories of resolutions and shareholders engagement at AGMs. The findings of this research will enrich academic theory with new conceptual framework to further explore the shareholders rights and mechanisms used by shareholders to exercise their rights.

### **1.5.2: Statement of Significance (Practical Contribution)**

In previous literature, the studies have focused on shareholders legal protection<sup>70</sup>, comparisons of legal systems of shareholders protections<sup>71</sup>, comparative studies to measure shareholders protections in legal systems<sup>72</sup>, efficiency of two-strike rule in Australia<sup>73</sup> and comparative analysis of two-strike rule<sup>74</sup>. This research will emphasise shareholders rights in practice and the effectiveness of shareholders engagement with sample companies to exercise their rights.

Several researchers have called for further research on AGMs. Cordery has pointed out that: “further research into shareholder’s attitudes affecting AGM attendance and the effectiveness of AGMs, is required”<sup>75</sup>. Jeacle has highlighted that the research is needed to fully explore the AGM as an accountability mechanism and the working of AGMs<sup>76</sup>. Van der Elst has suggested that “more serious consideration is necessary to optimize the role of general meetings”<sup>77</sup>. Hodges et al. stated that the AGM has seldom been the focus of research<sup>78</sup>. This research analysed the effectiveness of AGMs, the role of shareholders played in corporate decision making and effectiveness of shareholders engagement in corporate decision making.

The research will assist shareholders, listed companies and policy makers to reconsider the effectiveness of shareholders rights in practice. The results of this research will help policy makers and companies to improve the effectiveness of shareholders engagement and to

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<sup>70</sup> Porta, Silanes, Shleifer and Vishny (n 41).

<sup>71</sup> Mitchell, Donnell, Ramsay and Welsh (n 10).

<sup>72</sup> Anderson, Welsh, Ramsay and Gahan (n 46).

<sup>73</sup> Faghani, Monem and Ng (n 42).

<sup>74</sup> De Falco, Cucari and Sorrentino (n 40).

<sup>75</sup> Carolyn J. Cordery, ‘The Annual General Meeting as an accountability mechanism’ (2008) <<http://ssrn.com/abstract=1286930>> accessed 27 January 2018

<sup>76</sup> Ingrid Jeacle, ‘Accounting and the annual general meeting: the case of the Edinburgh University Tea Club, 1920–1945’ (2008) 13 Accounting History 451-478

<sup>77</sup> Van der Elst (n 56).

<sup>78</sup> Ron Hodges, Louise Macniven and Howard Mellett, ‘Governance of UK NHS Trusts: The Annual General Meeting’ (2004) 12 (3) Corporate Governance an International Review 343-352

improve effectiveness of AGMs in contemporary corporate governance practices of Australian listed companies.

Moreover, this research as a pioneer will help other jurisdictions to evaluate their shareholders rights in practice and to use the mechanism and results of this study for comparative analysis with Australian shareholders engagement.

### **1.6: Summary of Highlighted Findings**

The voting turnout was calculated between 64.2868% and 68.3497%, the proxy voting turnout was between 61.2494% and 66.0008%, the shareholders who have not attended AGMs were between 35.7136% and 31.6503%, the shareholders attended AGMs in person or voted directly were between 3.0370% and 2.3489% during study period of 2014 to 2018.

The top 20 shareholders held voting rights between 74.2231% and 77.5865%, moreover, blockholder were with voting rights of between 60.3701% and 60.8963% during study period. On average 9% of top 20 shareholders have not attended AGMs nor appointed proxies.

The dividend value is significant with shareholders proxy to vote 'For' on election of directors' resolutions in 2016. The number of resolutions for directors' election are statistically significant with shareholders proxy votes 'Against' directors' elections in 2014, 2015 and 2016's. Statically the number of resolutions for re-election of directors is significant with proxy voting 'Against' on re-elections of directors in 2014.

### **1.7: Structure of the Thesis**

The empirical study of shareholders rights in Australia in this thesis is presented in eight chapters.

Chapter 2 provides the literature of shareholders rights from a theoretical context. It defines shareholders classifications, mechanism of shareholders rights, classifications of shares and shareholders rights. The classification of shareholders rights in terms of economic rights, control and decision making rights. Economic rights are rights of dividend and rights of buying and selling of shares. The control and decision making rights of shareholders allow them to exercise voting rights in person or by appointing proxies for AGMs resolutions. Moreover, an academic debate discussed shareholders engagement, shareholders activism, shareholders empowerment, shareholders protection, comparison of shareholders and directors rights, balance of power and shareholders and discussion on corporate governance and corporate law on shareholders rights. Furthermore, the relationships between two theories, agency and stewardship theory, and their association with shareholders rights were discussed.

On the basis of research aims and objectives posed in Chapter 1, and the research gaps identified in Chapter 2 and Chapter 3 the research questions and research propositions were posited for analysis.

Chapter 4 provides the theoretical and conceptual framework of the study and presents summary of theories of literature associated with the research.

Chapter 5 communicates the research methods used for the completion of this study. This chapter discusses research paradigms, mixed research methods including qualitative and quantitative methods, empirical legal research methodology, population and sample selection criteria, construction of two indices and four stages of empirical data collection, the method used to handle missing data, and data compilation for statistical analysis using SPSS. To investigate shareholders rights from a legal perspective the chapter describes a black-letter law approach, and cases selection and compilation for cases analysis. Moreover, variables definitions, association and relationships between variables, modelling of independent and dependent variables and methods used for data analysis are discussed.

Chapter 6 discusses the results in two parts. The first part presents the shareholders engagement at AGMs. The second part describes the Models of the relationships between the variables, statistical testing of research propositions and discussion of significance and insignificance of results.

Chapter 7 reports the discussion of implications of statistical analysis in relations to shareholders rights in practice, shareholders voting behaviours and voting turnouts of sample Australian listed companies with reference to theoretical and empirical evidence from previous literature.

Chapter 8 outlines the key research findings of this study and implications of this study from a theoretical and policy perspective. It presents policy recommendations, the limitation of the study and makes suggestions for future research.

## Chapter 2: Literature Review of Shareholders Rights in Theory

*“Shareholder rights are not ends in themselves”<sup>79</sup>.*

### 2.1: Introduction

How shareholders are treated by directors and executive managers at the companies in which they have invested has become a point of interest since the Royal Commission into the financial industry. The findings of the Commission highlighted how management and direction of companies are not limited to directors alone. Shareholders have a role to play. Shareholders' interests, however, depend heavily upon the level of their investment in a particular firm. The rights enjoyed by shareholders and their corresponding responsibilities are attached to the shares. Rights may vary depending on the class of share owned –ordinary, performance or partly-paid. The only liability incurred by shareholders, which is discussed in the literature, is to pay any amounts pending for the shares.

Protection of shareholders rights is a focus of the Act, the stock exchange listing rules and of government regulation. In Australia, the law provides shareholders with a comprehensive bundle of rights but the enforcement of these rights depends on the contract between shareholders and company. Regardless of the class of share, rights are defined by companies in their memorandums, articles of association, charters and shareholders agreements.

This chapter seeks to review the literature and understand the historical development of shareholders rights, both in theoretical terms and in practice, to better understand perspectives on the classification of shareholders and the mechanisms and classification of shareholders rights.

### 2.2: Classification of Shareholders

Shareholders are of different kinds<sup>80</sup>, have divergent interests<sup>81</sup> and their characteristics differ in each jurisdiction<sup>82</sup>. Hill defines the visions and revisions of shareholders as owners/principal, beneficiary, bystander, a participant in a political entity, investor, watchdog and institutional investors as managerial partners<sup>83</sup>. Shareholders vary due to their characteristics, shareholdings, interests and decision making strategies and philosophies. The

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<sup>79</sup> Hutton, Mayer and Schneider (n 35).

<sup>80</sup> Iman Anabtawi, 'Some skepticism about increasing shareholder power' (2005) 53 UCLA L. Rev. 561-599

<sup>81</sup> Leo E Jr. Strine, 'Toward a True Corporate Republic: A Traditionalist Response to Bebchuk's Solution for Improving Corporate America' (2006) 19 Harvard Law Review 1759-1783

<sup>82</sup> Jennifer G. Hill, 'Images of the Shareholder—Shareholder Power and Shareholder Powerlessness' (2015) Sydney Law School Research Paper Working Paper No. 15/23, NYU Law and Economics Research Paper No. 15-23 <<http://ssrn.com/abstract=2664430>> accessed 15 November 2018

<sup>83</sup> Jennifer Hill, 'Visions and Revisions of the Shareholder' (2000) 48 (1) The American Journal of Comparative Law 39-79

systematic review conducted by Hquest and Oh on various types of shareholders which included: block shareholders and block institutional shareholders, executive shareholder (managerial ownership, director ownership), outside director shareholders, foreign investor, state ownership and family ownership, short-term and long-term investors and suggested that ownership structure of the company has a greater impact of the decision making of the company<sup>84</sup>.

Gilson and Gordon formed the view that in many jurisdictions financial institutions are the dominant shareholders in public companies<sup>85</sup>. These shareholders diverge from individual investors due to their “structure, incentives and behaviour” and they come in different forms such as: “domestic, international, long-term and short-term investors”<sup>86</sup>.

Anabtawi has discussed different kinds of shareholders as: short-term shareholders and long-term shareholders, diversified shareholders and undiversified shareholders, inside shareholders and outside shareholders, public and union pension funds and economic, hedge and unhedged shareholders. He argued that each class of shareholders has their own interests<sup>87</sup>.

Hutton et al. took a different approach by comparison, researching engaged and disengaged shareholders and their rights. Shareholders are owners and sometimes not owners, they are either engaged or disengaged. When engaged, shareholders have rights and responsibilities. They have the right to monitor the performance of the board, the company and its managers. If managers or executives are deemed not to be performing well they may be replaced. Disengaged shareholders perspectives differ in their view, the corporate purpose is supreme and the obligation of companies is to pursue the most profitable opportunities<sup>88</sup>.

This study has considered all the shareholders who own ordinary shares with voting rights in sample Australian listed companies regardless of their characteristics, shareholdings, interests and decision making strategies and philosophies<sup>89</sup>.

### **2.3: Mechanism of Shareholders Rights**

La Porta et al. argue that by giving shareholders rights it provides an economic boost to financial markets and increase investment in countries. This is enhanced when investors perceive real protection offsets their risk, for instance when rights are enshrined in law and

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<sup>84</sup> Alexander V. Laskin (ed), *The Handbook of Financial Communication and Investor Relations* (John Wiley & Sons Inc, 2018) 107-115

<sup>85</sup> Hill (n 82).

<sup>86</sup> *ibid.*

<sup>87</sup> Anabtawi (n 80).

<sup>88</sup> Hutton, Mayer and Schneider (n 35).

<sup>89</sup> Note: The shareholders categories and characterises is not the concern of this research project.



regulators enforce those rights<sup>90</sup>. A view supported by Van der Elst, who focuses on rights as a method for protecting investments or a quid pro quo arrangement (rights in exchange for capital)<sup>91</sup>. Shareholders invest money at risk in company business. The shareholders get shares in return to their investment, these shares give different kind of rights to shareholders and shareholders use these right to protect their investments in companies<sup>92</sup>. Sheehy has formulated the importance and need of shareholders as:

*“A demand for shareholders’ rights is a demand of shareholders against corporate directors, government, employees and other suppliers, for recognition and for control of the corporation and the corporate agenda, and it brooks no challenge, for it is a matter of ‘Rights!’”<sup>93</sup>.*

Shareholder rights may be in the interest of companies<sup>94</sup>. Bebchuk’s study showed that by giving more power to shareholders it may help to solve governance problems. The theory being that executive managers will not act in best interests of shareholders without their intervention. He has further argued that changes in governance will only be considered if shareholders support the company policies for company’s success<sup>95</sup>.

Strong et al. narrated the adoption of shareholders rights plans as: “many shareholder rights plans appear to be adopted either by firms with a control preference or by those in the midst of substantial restructuring”<sup>96</sup>. Hutton et al. has suggested that shareholders rights should not be weakened or reduced in any circumstances and that companies should be given the freedom to make decisions according to their requirements and business needs<sup>97</sup>.

Investors hold certain rights when they invest in products offered to finance firms. These rights (depend on shares categories or with investment policies by firms) are attached with shares. The rights include: “disclosure and accounting rules, which provide investors with the information they need to exercise other rights. Protected shareholder rights include those to receive dividends on pro-rata terms, to vote for directors, to participate in shareholders meetings, to subscribe to new issues of securities on the same terms as the insiders, to sue directors or the majority for suspected expropriation, to call extraordinary shareholders meetings, etc.”<sup>98</sup>.

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<sup>90</sup> Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert Vishny ‘Investor Protection and Corporate Governance’ (2000) 58 Journal of Financial Economics 3-27

<sup>91</sup> Van der Elst (n 34).

<sup>92</sup> Van der Elst (n 56).

<sup>93</sup> Sheehy (n 55).

<sup>94</sup> Lucian Arye Bebchuk, ‘The case for increasing shareholder power’ (2004) 118 Harv. L. Rev. 833- 914

<sup>95</sup> *ibid.*

<sup>96</sup> John S. Strong and John R. Meyer, ‘An Analysis of Shareholder Rights Plans’ (1990) 11 (2) Managerial and Decision Economics 73-86

<sup>97</sup> Hutton, Mayer and Schneider (n 35).

<sup>98</sup> Porta, Lopez-de-Silanes, Shleifer and Vishny (n 90).

While investment firms may exercise rights on behalf of their clients, managers at companies that are performing poorly may try to curtail or limit those rights<sup>99</sup>. In large companies the involvement of shareholders is limited to only to their investments<sup>100</sup>.

An opposing view is held by Bîgioi and Dumitru who consider that shareholders rights should not be infringed by management, by other shareholders or by authorities as they have property rights – “the right to receive dividends, the right to participate and vote in the general assemblies of shareholders, the right to be elected in the governing bodies, and not the least, the most important one in accounting terms, the right to be informed”<sup>101</sup>.

In the mid-1990s Ramsay analysed enforcement cases heard in Australian courts between September 1989 to March 1994 (brought by ASIC and shareholders). Approximately 900 judgments were reported in the Australian Corporations and Securities Reports, the shareholders involvement in litigation was limited to 93 cases. Shareholders engaged in litigation due to their perceived oppression, the winding-up of the company, directors’ duties, the acquisition of shares and the inspection of company books. Ramsay argued that shareholders litigation was not for the enforcement of corporate rights and duties but for some other purpose as shareholders are seldom engaged in litigation for the enforcement of corporate rights and duties<sup>102</sup>.

Hill investigated corporate law from the perspective of “should corporate law privilege the interests of shareholders?” She argued that the existing corporate model of shareholder pre-eminence, which gives priority or favour to shareholders’ interests is problematic and dangerous from a theory and policy perspective. From a legal perspective, the priority must be given to the interests of corporations as sovereign enterprises and to consider wider range of interests rather than of shareholders. No doubt shareholders have important position in corporate governance. To consider the interests of all stakeholders, it is better to prevent corporations from managerial and shareholders self-interests. The strong institutional investors can play their roles to prevent corporations from self-interests of managers and shareholders to benefit corporation as a whole<sup>103</sup>.

Popadak has criticised the concept of giving more powers to shareholders is an effort to stop speculation by short term investors. His study suggested that increasing shareholders legal rights means to facilitate short-term investors to exploited management to go for short-term

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<sup>99</sup> Chi (n 36).

<sup>100</sup> Sealy Quoted by Grantham (n 23).

<sup>101</sup> Bîgioi and Dumitru (n 2).

<sup>102</sup> Ramsey (n 49).

<sup>103</sup> Jennifer G Hill, ‘Public Beginnings, Private Ends -- Should Corporate Law Privilege the Interests of Shareholders?’ (2000) <<http://ssrn.com/abstract=885222>> accessed 05 November 2018

business on the expense of other shareholders<sup>104</sup>. Popadak's views are rejected as she offered no evidence in the study to show how existing rights are measured (before introducing new rights) or of which shareholders exploit their legal rights to force managers to go for short-term business. Further Popadak failed to address that which rules need to be amended to create a balance of power between shareholders and other parties.

Different parameters are exercised by shareholders to gain control of a company. Dominant shareholders, either individuals or families, use voting rights to control listed firms<sup>105</sup>. Large shareholders use a different classes of shares pyramids to get control of the firms<sup>106</sup>. "Pyramidal ownership, shareholder agreements and dual class of shares" are used by those shareholders not having enough cash flow rights to get control of the firm<sup>107</sup>.

It can be argued, on the basis of existing literature, that empowering shareholders can help to solve many of governance issues but only in theory. In practice it is not clear what drives shareholders to exercise their rights and powers. The next section addresses the ways shareholders rights are defined.

### 2.3.1: Shares and Shareholders Rights

*The contract contained in the articles of association is one of the original incidents of the share*<sup>108</sup>.

The shares traded on the ASX have different characteristics due to their types. ASX has explained three kinds of shares as: ordinary shares, preference shares and partly-paid shares<sup>109</sup>.

Rich, Dixon and Williams J said that share comprises as: "a congeries of rights in personam"<sup>110</sup>. Shareholders and companies alike have to be aware of terms and conditions attached with shares. Shareholders have to maintain shares conditions to meet their eligibility as shareholders according to the company's governing documents (company constitution and shareholders agreements). Failure to meet these conditions at any stage during ownership may cause the shares to be forfeited. The forfeiture of shares depends on each company's

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<sup>104</sup> Jillian (n 39).

<sup>105</sup> Luca Enriques and Paolo Volpin, 'Corporate Governance Reforms in Continental Europe' (2007) 21 (1) Journal of Economic Perspectives 117-140

<sup>106</sup> Mara Faccio and Larry H.P. Lang, 'The Ultimate Ownership of Western European Corporations' (2002) 65 (3) Journal of Financial Economics 365-395

<sup>107</sup> La Porta, Lopez-de-Silanes, and Shleifer Quoted by Enriques and Volpin (n 105).

<sup>108</sup> *Borland's Trustee v Steel Bros & Co Ltd* [1901] 1 Ch 279 at 288

<sup>109</sup> Types of Shares ASX <<https://www.asx.com.au/products/shares/types-of-shares.htm>> accessed 02 August 2018

<sup>110</sup> *Archibald Howie Pty Ltd v Commissioner of Stamp Duties (NSW)* (1948) 77 CLR 143

governing documents. Companies have rights to regulate any share forfeitures, except where prescribed by law<sup>111</sup>.

Ordinary shares are mostly traded at ASX and do not have any special rights. The shareholders with ordinary shares usually having rights to vote at AGMs and to participate in dividend at the stage of winding up of company. The preference shares as compared to ordinary shares give priority or preference to shareholder for dividend payment or on company's winding up. Preference shares are of different kinds and having different rights and characteristics. Shareholders with preference shares may have restricted voting rights depending on the terms and conditions of the shares. Another category of shares is partly-paid shares, these shares are issued by the company on the basis that purchasers make an initial payment to acquire ownership with the remainder of the balance to be paid 'on call' of the company. Partly-paid shares have same rights as those ascribed to ordinary shares<sup>112</sup>.

Farwell J's held that the share is exclusively having rights attached to it, right of dividend, rights at winding up of company and to vote<sup>113</sup>. Mohan J. held that the share "only vests in the holder that collection of rights provided by the memorandum and articles of association"<sup>114</sup>.

In the *Gambotto* case the court held that: "a share is liable to modification or destruction in appropriate circumstances but is more than a "capitalised dividend stream"; it is a form of investment that confers proprietary rights on the investor"<sup>115</sup>.

Bird has argued that in the *Gambotto* decision the definition of share holds two characteristics or legal protections. The first protection is that a share is an enforceable contract between shareholders and corporations according to the company's charter documents. The second protection is that a share is intangible property subject to property law protection. Bird stated that court suggested that shares also have a further two property forms, as a share and it has property rights which are attached with the share<sup>116</sup>.

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<sup>111</sup> Robert Gardini and Cristean Yazbeck. 'Automatic forfeiture of shares: why it could easily happen to you' (2011) 25 (2) Commercial Law Quarterly 23-26

<sup>112</sup> Types of Shares ASX <<https://www.asx.com.au/products/shares/types-of-shares.htm>> accessed 02 August 2018

<sup>113</sup> Grantham (n 23).

<sup>114</sup> *Coleman v Myers* quoted by *ibid*.

<sup>115</sup> *Gambotto v WCP Ltd* (1995) 182 CLR 432 at 447

<sup>116</sup> Helen Bird, 'A critique of the proprietary nature of share rights in Australian publicly listed corporations' (1998) 22 Melb. UL Rev 131-161

Pennington has argued that the characteristics of shares may be summarised as: "a collection of rights and obligations relating to an interest in a company of an economic and proprietary character, but not constituting a debt"<sup>117</sup>.

The share in corporate law conceived as having bundle of rights, the enforcement of these rights depends on contract between company and shareholders. Further, "Australian corporate law is in need of a touch of realism. It is time to recognise that a share in a modern public corporation is proprietary in name only. It has become a token valued by reference to the dividend stream it promises the token holder"<sup>118</sup>.

The rights and benefits attached to shares should be defined by the internal rules (company constitution) of the company<sup>119</sup>. Section 246B(1) of the Act is applicable on the company if a company's constitution declared the shares rights.

#### **246B Varying and cancelling class rights**

*If constitution sets out procedure*

*(1) If a company has a constitution that sets out the procedure for varying or cancelling:*

*(a) for a company with a share capital—rights attached to shares in a class of shares; or*

*(b) for a company without a share capital—rights of members in a class of members; those rights may be varied or cancelled only in accordance with the procedure. The procedure may be changed only if the procedure itself is complied with.*

The companies issue shares to collect capital. The person who invest or buy shares, the liability of person is to pay the full amount of share to gain the rights which are attached with shares and these rights declared by company's articles of association. The most valuable right attached with share is to get share from distribution of money by company and dividends as approved by directors. Shareholders legal rights are defined at stage of issuing of shares. These rights are "chose in action" for whom shareholders pay to company to purchase these rights<sup>120</sup>.

When shareholders buy shares they are offered the rights of members which are attached to the share and defined in the company constitution include: the right to attend meetings, to vote

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<sup>117</sup> Pennington, "Can shares in companies be defined?" (1989) 10 The Company Lawyer 140 at 144. Quoted by *Pilmer v The Duke Group Limited (in liq)* [2001] HCA 31 at 19

<sup>118</sup> Bird (n 116).

<sup>119</sup> Jeswynn Yogaratnam and Lidia Xynas, Corporations Law: in Practice (10th edn, Thomson Reuters (Professional) Australian Limited 2017) 519

<sup>120</sup> *Archibald Howie Pty Ltd v Commissioner of Stamp Duties (NSW)* (1948) 77 CLR 143

and to receive dividends<sup>121</sup>. The share gives rights to a shareholder to a specific amount from company's capital as well as remaining funds at the time of winding-up the company. Shareholders rights and liabilities are subject to article of association and legislation<sup>122</sup>. The important right is to get share of the company's money<sup>123</sup>.

According to Middleton J, shareholders interest in a company can be measured by sum of money which they invest to buy shares, but their shareholders rights depend on the class of share which they buy, moreover the preference share is having right of dividend<sup>124</sup>.

Other views on shareholders' interest by McHugh, Gummow, Hayne and Callinan JJ stated that:

*"The reference to measuring the interest of a shareholder in a company by a sum of money is no longer apt under present corporation's law in Australia, following the abolition of the concept of authorised capital"*<sup>125</sup>.

Law presumes that all the shares have same rights, regardless of the amount paid for shares. Sometimes companies have to issue different classes of shares having different rights. The company can issue different classes of shares with different rights in lawful way. Commonly shares differ as: "entitlement to dividend, right to priority in payment of dividend, voting right at general and class meeting, and right to repayment of capital on reduction of capital"<sup>126</sup>.

The shares classes issued by the company have the same rights regardless of being ordinary or any class of preference share if shares rights attached to shares are not specified in company constitution or shareholders agreements. *In the Matter of Sullivans Cove IXL Nominees Pty Ltd; Crawford v de Kantzow*, where the company issued ordinary and preference shares, but the company constitution or shareholders agreements have not specified or declared the differentiation in share rights, the court held that ordinary and preference shares be dealt with as ordinary shares with same rights as ordinary shares hold<sup>127</sup>.

Neasey J has classically addressed categories of shares, the shares categories differ appropriately in respect to "rights, benefits, or other incidents", and the capital structure of the company also differentiates between different categories of shares. His Honour held that in

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<sup>121</sup> *R v Williams* (1942) A.C. Quoted by *Archibald Howie Pty Ltd v Commissioner of Stamp Duties (NSW)* (1948) 77 CLR 143

<sup>122</sup> *Sydney Futures Exchange Ltd v Australian Stock Exchange Ltd* (1995) 56 FCR 236

<sup>123</sup> *Archibald Howie Pty Ltd v Commissioner of Stamp Duties (NSW)* (1948) 77 CLR 143

<sup>124</sup> *National Mutual Life Association of Australia Ltd v Federal Commissioner of Taxation* [2008] FCA 1871 at 45

<sup>125</sup> *Pilmer v The Duke Group Limited (in liq)* [2001] HCA 31 at 19

<sup>126</sup> R P Austin and I M Ramsay, Ford, Austin and Ramsay's Principles of Corporations Law (17th edn, LexisNexis 2018) 1162-1163

<sup>127</sup> *In the Matter of Sullivans Cove IXL Nominees Pty Ltd; Crawford v de Kantzow* [2011] TASSC 9

present scenario employees' shares are different from ordinary shares. Employee's share differ from ordinary share in respect to "voting rights, dividends rights, liability to calls" etc.<sup>128</sup>

In case of *Greenhalgh v Arderne Cinemas Ltd* shareholders approved a resolution, during an EGM, to subdivide the existing ordinary shares (10 shilling ordinary shares into 2 shilling ordinary shares) into new shares that had the same voting rights. This subdivision of shares was challenged in court. Vaisey, J, stated that share classes can be classified to meet company's business needs, one class of shares to address one purpose and other classes to meet other purposes of company<sup>129</sup>.

Section 254A(2) of the Act has defined the circumstances and rights and procedure of issuing preference shares as:

**254A Power to issue bonus, partly-paid, preference and redeemable preference shares**

*(2) A company can issue preference shares only if the rights attached to the preference shares with respect to the following matters are set out in the company's constitution (if any) or have been otherwise approved by special resolution of the company:*

- (a) repayment of capital;*
- (b) participation in surplus assets and profits;*
- (c) cumulative and non-cumulative dividends;*
- (d) voting;*
- (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares*

The companies must have to specify the voting rights attached with preference share. The gold standard of voting is one share equals one vote. In case of preference share voting rights can be restricted by company constitution in regard to certain issues<sup>130</sup>. In circumstances where the company constitution does not explain the voting rights of preferential shares, section 250E(1) of the Act is applicable in such circumstances to define voting rights<sup>131</sup>.

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<sup>128</sup> *Clements Marshall Consolidated Ltd v ENT Ltd* (1988) 13 ACLR 90

<sup>129</sup> *Greenhalgh v Arderne Cinemas Ltd* [1945] 2 All ER 719

<sup>130</sup> *Yogarathnam and Xynas* (n 119) 521.

<sup>131</sup> *ibid* 523.

**250E How many votes a member has** (replaceable rule—see section 135)

*Company with share capital*

(1) *Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:*

*(a) on a show of hands, each member has 1 vote; and*

*(b) on a poll, each member has 1 vote for each share they hold.*

In *Colonial Bank v Whinney*, Fry LJ addressed the share and its characteristics as:

*“What, then, is the character of a share in a company? Is it in its nature a chose in possession, or a chose in action? Such a share is, in my opinion, the right to receive certain benefits from a corporation, and to do certain acts as a member of that corporation; and if those benefits be withheld or those acts be obstructed, the only remedy of the owner of the share is by action. Of the share itself, in my view, there can be no occupation or enjoyment; though of the fruits arising from it there may be occupation, enjoyment, and manual possession. Such a share appears to me to be closely akin to a debt, which is one of the most familiar of choses in action; no action is required to obtain the right to the money in the case of the debt, or the right to the dividends or other accruing benefits in the case of the share; but an action is the only means of obtaining the money itself or the other benefits in specie, the right to which is called in one case a debt and in the other case a share. In the case alike of the debt and of the share, the owner of it has, to use the language of Blackstone, “a bare right without any occupation or enjoyment”<sup>132</sup>.*

In *Cody v Live Board Holdings Ltd*, Supreme Court of New South Wales gave its verdict in regards the powers of company to issue shares as:

*“The plaintiffs invoked Corporations Act, s 124(1)(a), which provides that a company has all the powers of a body corporate, including the power to issue shares; s 254A(1), which provides that a company's power to issue shares under s 124 includes the power to issue preference shares; and s 125, which provides that a company's constitution may contain an express restriction or prohibition on the company's exercise of any of its powers, but that “the exercise of a power by the company is not invalid merely because it is contrary to an express restriction or prohibition in the company's constitution”. However, the fact that the company is empowered to issue shares, including preference shares, does not mean that there was a valid and effective exercise of those powers in this case, having regard to the provisions of the constitution and the shareholders agreement”<sup>133</sup>.*

The company constitution along with shareholders agreements of company define the rights and liabilities attached with shares for shareholders and company management.

In *White v Shortall*, Campbell J. has discussed the shareholders rights as:

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<sup>132</sup> *Colonial Bank v Whinney* (1885) 30 Ch D 261 at 286-287

<sup>133</sup> [2014] NSWSC 78 at 27



*“Some of the rights to sue the company that a shareholder has exist simply by virtue of having the status of shareholder, regardless of the number of shares held. Such rights include rights to receive the information that statute requires shareholders to be given, the right to be given notice of and to attend at certain meetings of the company, and the right to vote at certain company meetings. Other rights that a shareholder has to sue the company are ones that a shareholder has proportionately to the number of shares held — such as the right to a dividend, to a return of capital, or to vote on a poll at the meeting. Some of the rights of a shareholder to sue the company arise by virtue of the contract contained in the company’s constitution. Other rights of a shareholder to sue the company — including some very important ones — might arise directly by statute (eg rights to receive accounts and reports, to join in a requisition of a company general meeting, or to appoint a proxy). Other rights that any shareholder has in a company by virtue of the status of being a shareholder can arise from a contract arising separately to the company’s constitution (e.g. if the company in question holds itself out as willing to provide goods or services to a shareholder at a special discounted price)”<sup>134</sup>.*

The company constitution defines the rights attached to share and rights depends on the category of share. The law empowers the company to define the rights, procedure to issue or cancel the shares and attached rights. Once the company’s constitution defines that they can only be changed by amending the constitution first.

### **2.3.2: Company Constitution and Shareholders Rights**

The importance and functioning of articles of association was explained by Stirling J.: “the articles of association constitute a contract not merely between the shareholders and the company, but between each individual shareholder and every other”<sup>135</sup>.

Internal management of companies explained by law as: “a company’s internal management may be governed by provisions of this Act that apply to the company as replaceable rules, by constitution or by a combination of both”<sup>136</sup>.

The company constitution is defined as: “a company’s constitution, which (where relevant) include rules and consequential amendments”<sup>137</sup>. ASX LRs 15.11–15 deal with entity’s constitution. ASX LR 15.11 states that: “an entity must have constitution”. The Act empowers a company to displace or modify replaceable rules with its constitution<sup>138</sup>.

The company constitution can be displaced, modified, repealed or any provision of the constitution by special resolution<sup>139</sup>. The provisions of company constitution may have limited

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<sup>134</sup> *White v Shortall* [2006] NSWSC 1379 at 197

<sup>135</sup> *Wood v Odessa Waterworks Co* 42 ChD 636

<sup>136</sup> Act, s 134.

<sup>137</sup> Act, s 9.

<sup>138</sup> Act, s 135(2).

<sup>139</sup> Act, s 136(2).

life and these limits are itself defined by company constitution or imposed by the Act<sup>140</sup>. The company's corporate governance rules can be changed by adopting a constitution<sup>141</sup>.

The companies issue different classes of shares, company constitution is having powers to omit or assign rights to any class of shares<sup>142</sup>. The ASX LR declared the procedure to introduce amendments in company constitution in LR 15.11.1 as: "if an entity amends its constitution, the constitution (including the amendments) must be consistent with the listing rules. This does not apply if the entity's constitution includes the provisions in Appendix 15A or Appendix 15B (as applicable)". Special resolution means "special resolution", when used in a provision outside Schedule 2 means:<sup>143</sup>

*(a) in relation to a company, a resolution:*

- (i) of which notice as set out in paragraph 249L(1)(c) has been given; and*
- (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; or*

*(b) in relation to a registered scheme, a resolution:*

- (i) of which notice as set out in paragraph 252J(c) has been given; and*
- (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution".*

Section 249L(1)(c) of the Act states that: "a notice of a meeting of a company's members must: if a special resolution is to be proposed at the meeting – set out an intention to propose the special resolution and state the resolution".

Section 252J(c) of the Act states that: "contents of notice of meetings of members: if a special or extraordinary resolution is to be proposed at the meeting--set out an intention to propose the special or extraordinary resolution and state the resolution".

The amendments in constitutions are not sometimes straightforward because company constitution itself can impose some additional requirements to amend or repeal the provisions of constitution<sup>144</sup>. The constitution can construct additional requirements for modification through special resolution like, more votes than majority of votes or consent of certain people<sup>145</sup>.

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<sup>140</sup> Austin and Ramsay (n 126) 227.

<sup>141</sup> *ibid* 226.

<sup>142</sup> *ibid* 741.

<sup>143</sup> Act, s 9.

<sup>144</sup> Austin and Ramsay (n 126) 227.

<sup>145</sup> *ibid* 227.

The Act imposes further requirements on modification through special resolutions as: “the company's constitution may provide that the special resolution does not have any effect unless a further requirement specified in the constitution relating to that modification or repeal has been complied with”<sup>146</sup>.

If a company without constitution has issued special class of shares having special rights and company want to change or cancel these rights than company has to follow s 246B of the Act for the procedure. If company is having constitution and rights are ruled by that constitution special regulation is not enough to change or cancel the rights<sup>147</sup>.

The effect of the constitution and replaceable rules are defined by section 140 and their application defined in section 140(1) of the Act as:

#### **140 Effect of constitution and replaceable rules**

*(1) A company's constitution (if any) and any replaceable rules that apply to the company have effect as a contract:*

*(a) between the company and each member; and*

*(b) between the company and each director and company secretary; and*

*(c) between a member and each other member;*

*under which each person agrees to observe and perform the constitution and rules so far as they apply to that person.*

It can be described that internal rules of the companies (company's constitution) classify, define or omit the rights attached with shares. Company constitution empower to company management to issue new shares and to define rights and powers attached with shares. Moreover, constitution define the procedure to amend the constitution or to add new provision in the constitution, all these procedures will be valid if defined procedure was adopted as defined by constitution otherwise will be invalid. So, it can be concluded that shareholders rights attached with share are defined and controlled according to company constitution and if company do not have constitution than to follow section 246B of the Act.

#### **2.3.3: Shareholders Agreements**

The shareholders agreements serve as confirmation of contracts in corporate law, where the statutory regulations are more general<sup>148</sup>.

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<sup>146</sup> Act, s 136(3).

<sup>147</sup> Austin and Ramsay (n 126) 228.

<sup>148</sup> Michael J. Duffy, 'Shareholders Agreements and Shareholders' Remedies Contract versus Statute' (2008) 20 (2) Bond L. Rev. 1-27

Austin J has addressed shareholders agreements in the following:

*“Of its nature, a shareholders' agreement is supplementary to the rights and liabilities of the shareholders conferred by company law. It does not purport to exclude or replace the shareholders' company law rights. Indeed, the statutory rights of shareholders cannot, for the most part, be taken away by an agreement. Instead, a shareholders' agreement imposes consensual limitations on the way in which certain rights, such as voting rights and the right to transfer shares, may be exercised ... The statutory and equitable rights of shareholders are, to a significant degree, rights with respect to the company rather than other shareholders. If two shareholders make an agreement with respect to the exercise of their rights, and agree to arbitrate, it would be rational for them to restrict the arbitration agreement to matters concerning their contractual relationship, and not to extend it to their overall shareholding rights and liabilities which involve the company as well”<sup>149</sup>.*

It is a common practice of parties to enter into business together to run a business. In some cases, the rights and responsibilities of parties as shareholders, directors or employees are not clearly defined. In such circumstances, it is assumed that company constitution and the Act will specify the rights and duties of parties. So, this approach fails to address all the business relationships, rights and responsibilities of participating actors. The Act confirms that companies' constitutions are a form of contract between parties participating in business practices as shareholders and directors and between shareholders as well. Company constitution do not cover all the areas of ordinary practices to define rights and responsibilities in business relationships. Shareholders agreements have bridged these gaps which were not covered by law and companies constitutions. These agreements cover commercial terms of agreed agreement which were not covered by company constitution and the Act <sup>150</sup>. The aim of shareholders agreement is to specify shareholders rights and duties in circumstances where rights and duties prescribed by law and company constitution are not considered appropriate. These agreements are mostly used when at least some or a few shareholders are the part of company's management<sup>151</sup>.

Shareholders agreements is an agreement between members in which members are facilitated by providing additional rights against each other. This agreement is a contract between individuals or all of members. This agreement addresses the investment issues which are not projected in company constitution, it can be introduced at any stage or time after incorporation, this will deal with subject matters and it is a private contract which need not to be lodged with ASIC. The provisions of shareholders agreements deal issues like: “transfer of

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<sup>149</sup> *ACD Tridon Inc v Tridon Australia Pty Ltd* [2002] NSWSC 896 at 165-166

<sup>150</sup> Shah Rusiti, 'Shareholder agreements: setting the terms of a business relationship' (2008) 46 (9) Law Society Journal 49-53

<sup>151</sup> Gilles Chemla, Michel A. Habib, and Alexander Ljungqvist, 'An analysis of shareholder agreements' (2007) 5 (1) Journal of the European Economic Association 93-121

shares between members, share buy-out, dividend payments, dispute resolution, and additional contribution of funds, confidentiality and restraint of trade (or non-compete clauses)”<sup>152</sup>.

Shareholders agreements are totally distinct documents as compared to company’s memorandum and articles of association, these agreements cannot be amended as memorandum and article of association can be. These agreements are considered a great source of minority shareholder protection. Shareholders agreement are not more than a contract, these contracts are valid and binding for the immediate parties and not on subsequent shareholders<sup>153</sup>.

The typical shareholders agreement is made for internal governance of the company. These agreements usually cover the voting rights on specific matters like appointment of directors. Also, agreement may address other members’ rights as transfer of shares<sup>154</sup>. The contractual rights as shareholders agreements between shareholders, shareholders and third parties, these rights may affect to company’s affairs but restricted to not to interfere with administrative affairs of company as governed by company’s constitution and the Act<sup>155</sup>.

Shareholders rights are defined at the stage of issuing shares, these rights are constructed in company’s constitution and shareholders agreements, company’s issue different kind of shares – ordinary, special or and each class of shares have different rights as defined by the company’s constitution and shareholders agreement. If the company constitution prohibits or does not give any right to shareholders, shareholders cannot legally claim for such rights. So, it can be argued that shareholders rights are formally defined by the company’s internal rules (company constitution and shareholders agreements).

## **2.4: Classification of Shareholders Rights**

The literature has discussed different kinds of shareholders rights attached with share and are defined by the company constitution, shareholders agreements and legislations. Shareholders rights include the right: to attend and vote at a general meetings; to participate in dividend; to receive a return of capital; to the distribution of money and to wind-up the company; to the

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<sup>152</sup> Stephen Bottomley, Kath hall, Pata Spender and Beth Nosworthy, Contemporary Australian Corporate Law (Cambridge University Press 2018) 126-127

<sup>153</sup> L. S. Sealy, ‘Shareholders’ Agreements. An Endorsement and a Warning from the House of Lords’ (1992) 51 (3) The Cambridge Law Journal 437-439

<sup>154</sup> Roman Tomasic, Stephen Bottomley and Rob McQueen, Corporations Law in Australia (2nd edn, The Federation Press 2002) 206

<sup>155</sup> *Cordiant Communications (Aust) Pty Ltd v Communications Group Holdings Pty Ltd* [2005] NSWSC 1005 at 131

repayment of capital on reduction of capital, to obtain company information; to subscribe for new issues of securities; and, to call for an EGM.

In a border sense, the classification of shareholders rights includes: economic, control and decision-making, information, litigation and procedural rights. The focus of this study is economic rights, control and decision-making rights because of availability of data (annual reports, notices of and results from AGMs, case law for 2014–18). These rights are discussed in following sections.

#### **2.4.1: Economic Rights of Shareholders**

The primary aim of shareholders investment in companies is to gain economic advantages. Shareholders can get financial benefits from their investments in two ways, first, dividend and second, by selling all or part of their shares or interests in a company<sup>156</sup>.

The common interest of shareholders in revenue, which companies generate to operate the business for their shareholders. Shareholders get their share in the shape of dividends. Shareholders play an uninvolved role in companies except when involved in dividend distribution. Shares are an investment. The value of a share is determined by the share market evaluating a firm's revenue-making potential. The shareholders are free to sell their shares if corporations fail to produce revenue to meet their profit targets. The dividend is an important element in share market which is used by listed companies to attract more shareholders<sup>157</sup>. The shareholders get financial benefits on their investment in corporations by getting dividend and by selling their shares.

**Shareholders right of dividend.** Shareholders dividend rights are defined in the company's constitution<sup>158</sup>. Part 2H.5 of the Act deals with the mechanism of dividends. The dividend rights are defined in section 254W of the Act. Dividends may be paid in accordance with section 254T of the Act, shown below.

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<sup>156</sup> Julian Velasco, 'The fundamental rights of the shareholder' (2006) 40 UC Davis L. Rev. 407- 467

<sup>157</sup> Bird (n 116).

<sup>158</sup> Act, s 254W(1)(a).

## 254T Circumstances in which a dividend may be paid

(1) A company must not pay a dividend unless:

- (a) the company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend; and
- (b) the payment of the dividend is fair and reasonable to the company's shareholders as a whole; and
- (c) the payment of the dividend does not materially prejudice the company's ability to pay its creditors.

(2) Assets and liabilities are to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the companies concerned).

Unless the criteria are met, it is unlawful for companies to issue dividends to shareholders. It is normal practice to declare profits and pay dividends from it. Section 254T of the Act permits the dividend being paid in this manner. The focus of this section is on the company's ability to pay dividends<sup>159</sup>.

Lockhart J, in *QBE Insurance Group Ltd v Australian Securities and Investment Commission* defined the profit as:

*"The statement of principle that profit should be calculated by reference to changes in the value of assets of a business during the relevant financial period in Re Spanish Prospecting is as valid today as it was in 1911 when expounded"*<sup>160</sup>.

The Fletcher Moulton LJ in *In re The Spanish Prospecting Company Limited*, his lordship observed the profit as:

*"The word 'profits' has in my opinion a well-defined legal meaning, and this meaning coincides with the fundamental conception of profits in general parlance, although in mercantile phraseology the word may at times bear meanings indicated by the special context which deviate in some respects from this fundamental signification. 'Profits' implies a comparison between the state of a business at two specific dates usually separated by an interval of a year. The fundamental meaning is the amount of gain made by the business during the year. This can only be ascertained by a comparison of the assets of the business at the two dates"*<sup>161</sup>.

The decision to pay dividend in listed companies is made after ending of financial period, this may take one or more months to be decided. The directors need to satisfy the balance sheet

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<sup>159</sup> James Routledge and Peter Slade, 'The company dividend restriction: Does it promote good corporate governance?' (2003) 21 C&SLJ 447- 456

<sup>160</sup> *QBE Insurance Group Ltd v Australian Securities and Investment Commission* (1992) 38 FCR 270 at 57

<sup>161</sup> *In re The Spanish Prospecting Company Limited* [1911] 1 Ch 92 at 98

test before making decision on dividend payment. The company's constitution empowers directors to pay or to retain dividends or interim dividend<sup>162</sup>. The dividends rights of shareholder are specified in section 254W of the Act, are shown below.

### **254W Dividend rights**

#### *Shares in public companies*

*(1) Each share in a class of shares in a public company has the same dividend rights unless:*

- (a) the company has a constitution and it provides for the shares to have different dividend rights; or*
- (b) different dividend rights are provided for by special resolution of the company.*

#### *Shares in proprietary companies (replaceable rule—see section 135)*

*(2) Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.*

Shareholders right to receive dividends appears to be limited by law and by the discretion of the board. If the company constitution does not have any provisions to take back shares from shareholders, and if any resolution passed to add such provision in constitution is prima facie oppressive for those that desire to retain their shares. Unless exceptional circumstances are declared or the company is winding-up, shareholders can retain their shares or they can sell them as they see fit. Forcing the sale of shares against shareholders will be an infringement of their rights<sup>163</sup>.

**Shareholders rights to buy and sell shares.** Shareholders buy and sell shares to make money<sup>164</sup>. The shares of companies listed on the ASX may be freely sold or transferred<sup>165</sup>. Shareholders are not the owners of corporations but enjoy ownership rights of their shares. "It is clear that at the very least, shareholders have the right to use, exclude and alienate in relation to their shares"<sup>166</sup>. Section 1070A(1) of the Act has defined the nature of shares as 'personal property'.

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<sup>162</sup> Australian Corporations Legislation 2017 Edition, LexisNexis Butterworth 422

<sup>163</sup> *Gambotto v WCP Ltd* (1995) 182 CLR 432 at 456

<sup>164</sup> *Velasco* (n 156).

<sup>165</sup> *Austin and Ramsay* (n 126) 1150.

<sup>166</sup> James McConvill and Mirko Bagaric, 'Shareholders and Their Pursuit of Happiness: A Unifying Understanding of the Corporation' (2005) 26 *Adel. L. Rev.* 103-171



Shareholders do not always sell their shares for financial gain but, on occasion, they sell as a means to exit from the company and to convey important disciplinary message to management about their company performance<sup>167</sup>.

The shareholders follow news of electronic and print media to sell or buying of shares<sup>168</sup>. So, print and electronic media is a source to control shareholders attitude of buying and selling of shares.

#### **2.4.2: Control and Decision-Making Rights of Shareholders**

In statutory decision making model, the board proposes resolutions during general meetings and shareholders may approve or reject those resolutions<sup>169</sup>. In listed companies, shareholders exercise their voting rights in two ways. First, they exercise this right to elect or to remove the members of board of directors. Second, they use their voting rights to introduce fundamental corporate changes in firms. These rights give shareholders the right to control the corporations to some extent<sup>170</sup>. Shareholders criteria to elect the director is the ability to maximise their shares value<sup>171</sup>.

Shareholders may face legal and practical problems to exercise their voting rights which can make voting meaningless. Berle and Means first stated the issue with the free-rider effect which encourages “rational apathy” between shareholders and leads them to “vote for whomever and whatever management recommends”<sup>172</sup>.

To appointment directors, sections 201G–H of the Act requires that a resolution must be passed at a general meeting by shareholders. Removal of directors by resolution is possible, refer to section 203D(1) of the Act, shown below.

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<sup>167</sup> Hutton, Mayer and Schneider (n 35).

<sup>168</sup> Hanson and Tranter (n 3).

<sup>169</sup> Amon Chizema, ‘The empowerment of shareholders: a conceptual perspective’ (2011) 36 (4) Journal of General Management 23-35

<sup>170</sup> Margaret M. Blair and Lynn A. Stout, ‘A Team Production Theory of Corporate Law’ (1999) 85 (2) Virginia Law Review 247-328

<sup>171</sup> *ibid.*

<sup>172</sup> Robert Charl quoted by *ibid.*

### **203D Removal by members—public companies**

#### *Resolution for removal of director*

*(1) A public company may by resolution remove a director from office despite anything in:*

- (a) the company's constitution (if any); or*
- (b) an agreement between the company and the director; or*
- (c) an agreement between any or all members of the company and the director.*

*If the director was appointed to represent the interests of particular shareholders or debenture holders, the resolution to remove the director does not take effect until a replacement to represent their interests has been appointed.*

The nominations of directors proposed at AGMs by management for shareholders' approval. The most important point that overwhelming majority of shareholders do not attend general meetings<sup>173</sup>.

Shareholders have statutory right to propose resolutions at a general meeting of the company, subject to section 249N(1) of the Act, see below. They also have statutory right that ensures the company will distribute supportive statements in regard to these resolutions. These right apply equally at AGMs and EGMs<sup>174</sup>.

### **249N Members' resolutions**

*(1) The following members may give a company notice of a resolution that they propose to move at a general meeting:*

- (a) members with at least 5% of the votes that may be cast on the resolution; or*
- (b) at least 100 members who are entitled to vote at a general meeting.*

Therefore, without a significant shareholding or critical mass, it may be difficult to get a resolution put to the vote. Section 249O(1) of the Act states that if a notice of resolution is given under section 249N of the Act, the resolutions is to be considered at the next AGM that occurs more than two months after the notice is given. Further, section 249N(4) and (5) of the Act put limits on members and explains the circumstances in which companies do not have statutory obligations to serve the members resolutions if they do not follow the statutory procedure when proposing a resolution.

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<sup>173</sup> Blair and Stout (n 170).

<sup>174</sup> Chia and Ramsay (n 48).

The shareholders with 5% of voting rights can request to company for general meeting. The procedure explained in section 249D(2) of the Act.

Sections 249D(3), (4) and (5) of the Act explain the requirement copies, voting percentage and time frame for calling a meeting. Voting on remuneration report section 250R(2) of the Act, section 250R(3) of the Act explained that vote on remuneration is advisory and non-binding.

#### **249D Calling of general meeting by directors when requested by members**

- (1) The directors of a company must call and arrange to hold a general meeting on the request of members with at least 5% of the votes that may be cast at the general meeting.*
- (2) The request must:*
  - (a) be in writing; and*
  - (b) state any resolution to be proposed at the meeting; and*
  - (c) be signed by the members making the request; and*
  - (d) be given to the company.*
- (3) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.*
- (4) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.*
- (5) The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.*

The shareholders rights are linked with share in listed companies, shareholders exercise their decision making rights at AGMs through voting and proxy voting. These voting rights give some control and decision making rights in governance of the companies. The matters on whom shareholders exercise their rights are explained in Chapter 3 and Appendix C.

#### **2.4.3: Shareholders Voting Rights**

The most important tool to exercise power by shareholders is to vote<sup>175</sup>. In listed companies shareholders voting is essential element of corporate governance as it facilitate communication between shareholders, management and the board<sup>176</sup>.

The move to encourage institutional shareholders to actively vote at meetings is promoted by the International Corporate Governance Network (ICGN) which claims that investors'

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<sup>175</sup> Clark Quoted by Lucian Bebchuk, Alma Cohen and Allen Ferrell, 'What matters in corporate governance?' (2008) 22 (2) The Review of financial studies 783-827

<sup>176</sup> Stephen Bainbridge, 'The case for limited shareholder voting rights' (2005) 53 UCIA L. Rev. 601- 636

involvement with companies and monitoring of management activities has positive governance outcomes<sup>177</sup>. Norli et al. has concluded that the voting rights of shareholders remains a formal power that is invoked to affect the governance practices of listed companies<sup>178</sup>. Sauerwald et al. suggested that the shareholders must be encouraged to use their voting rights to protect their residual rights on the firms<sup>179</sup>.

The study by Iliev et al. posed three questions about the shareholders voting in 43 jurisdictions as:

- *“do a country’s laws and regulations allow for meaningful votes to be cast?;*
- *do outside shareholders vote as though they are exercising governance?; and,*
- *do the votes they cast have a governance-related outcome?”*<sup>180</sup>

The unique data was used to answer these questions which encompasses sample of 12,513 AGM resolutions voted by shareholders from 717 firms from 15 countries during 2008–09.

The research results in regard to first question showed that “a shareholder vote are mandatory and binding for important corporate decisions-director elections and non-tender-offer mergers and acquisitions”, further these results provide that the laws and regulations governing the shareholder voting allow for meaningful votes to be casted<sup>181</sup>.

The results for second question support the idea that “outside shareholders use the voting process to engage in shareholder activism when they fear expropriation”. Shareholders voting engagement appears to be proportionate to shareholders protection laws and regulations in the respective countries<sup>182</sup>.

The result support the third question as “votes cast by outside shareholders influence governance-related outcomes”<sup>183</sup>.

Voting rights is an important instrument to perform corporate governance in firms – it is a way for shareholders to engage in activism and situation of where their rights infringed by investee companies. A country’s shareholders protection, laws and regulations, has a great influence on voting outcomes. Therefore, it can be argued that voting outcomes and issues/proposals put forward are reflective of the strength or weaknesses of the level of shareholder protection

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<sup>177</sup> Margaret Nowak and Margaret McCabe, ‘Institutional Investors: Do they have a Role in the Monitoring of Corporate Performance?’ (2006) 12 (2) The Journal of Contemporary Issues in Business and Governance 1-14

<sup>178</sup> Øyvind Norli, Charlotte Ostergaard and Ibolya Schindele, ‘Liquidity and Shareholder Activism’ (2015) 28 (2) The Review of Financial Studies 486-520

<sup>179</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>180</sup> Peter Iliev, Karl V. Lins, Darius P. Miller and Lukas Roth, ‘Shareholder Voting and Corporate Governance Around the World’ (2015) 28 (8) The Review of Financial Studies 2167-2202

<sup>181</sup> *ibid.*

<sup>182</sup> *ibid.*

<sup>183</sup> *ibid.*

in that jurisdiction. Voting results can be used to study the ways shareholders exercise their rights. Hence voting and proxy voting results are focus of this research.

Share ownership gives the right to vote. The voting process is not simple and straight forward. This process is costly, time-consuming and faces problems of inefficiency<sup>184</sup>. Voting is the mechanism to participate in shareholders activism, also, it is the fundamental of corporate governance in the firms around the world<sup>185</sup>.

Companies' constitutional agreements may limit shareholders ability to exercise their voting rights, thus, stifling their voices. Limitations may include setting thresholds for creating a "supermajority" requirement for mergers, charter amendments and like activities<sup>186</sup>.

Minority shareholders rarely influence decisions at AGMs as they are made by board and controlling shareholders<sup>187</sup>. González et al. highlighted that the voting procedures at AGMs do not favour the involvement of minority shareholders. Questions posed by minority shareholders to senior management that related to board composition or remuneration are largely ignored by the management<sup>188</sup>. While minority shareholders may be ignored, Levit and Malenko argued that binding and non-bindings voting failed to convey the shareholders point of view (regardless of shareholding) when there is conflict between shareholders and manger's interests<sup>189</sup>.

A study by Brooks et al. concluded that many Australian shareholders rarely attend AGMs or have appointed proxies to attend on their behalf. Their research shows that around 62% of shareholders have never attended an AGM and 38.3% shareholders have never appointed a proxy<sup>190</sup>.

Stapledon et al. investigated the level of proxy voting results in major Australian listed companies in 1999. This study used the data from proxy voting statistics at AGM which was reported to ASX as per s 251AA of the Company Law Review Act 1998. The report was based on the sample of 59 listed companies and studied 180 resolution related to election of directors. It segregated the voting and proxy voting results into two categories: resolutions was

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<sup>184</sup> ICGN (2014), 'Removing obstacles to cross border voting' <<https://www.icgn.org/sites/default/files/Removing%20obstacles%20to%20cross%20border%20voting.pdf>> accessed 17 December 2016

<sup>185</sup> Iliev, Lins, Miller and Roth (n 180).

<sup>186</sup> Cohen and Ferrell (n 175).

<sup>187</sup> Van der Elst (n 60).

<sup>188</sup> Gina-Paola González, Alexander Guzmán, Francisco Pradac and María-Andrea Trujillo, 'Annual general meetings: A waste of time or effective corporate governance bodies?' (2013) <<http://ssrn.com/abstract=2395053>> accessed 26 February 2018

<sup>189</sup> Doron Levit and Nadya Malenko, 'Nonbinding Voting for Shareholder Proposals' (2011) 5 The Journal of Finance 1579-1614

<sup>190</sup> Albie Brooks, Keryn Chalmers, Judy Oliver and Angelo Veljanovski, 'Issues Associated with Chief Executive Officers Remuneration: Shareholders' Perspective' (1999) 17 C&SLJ 360-382

passed by show of hands and resolutions passed by poll. The findings indicated that the level of shareholders voting as corporate a governance mechanism is unsatisfactory. The discourse on voting and proxy voting results of AGM in accordance with the s 251AA were far from high<sup>191</sup>. The proxy voting at AGMs is one source to measure shareholders rights in practice.

Hewitt researched the voting behaviour of shareholders at general meetings of listed companies in the OECD. The sample size for this research was 30 for two financial years (2009 and 2010), which were selected based on their market capital. A total of 1,028 resolutions from Australian listed companies were studied for average voting turnouts and average overall dissent voting. Dissent was calculated by adding of voting results of against with abstain statistics. This study considered only the resolutions which had voting results categorised as 'For, 'Against' and Abstain'. Findings indicated that Australian listed companies have improved the voting disclosure of shareholders meetings results. The general findings revealed how shareholder-introduced resolutions were rarely passed as compared to management-initiated proposals<sup>192</sup>. The shareholders show their concerns through voting dissent.

Van der Elst studied shareholders attendance and voting behaviour at ordinary general meeting in Belgian listed companies during the period of 1994–2003. The relationships between size of corporations, ownership structure and attendance rate at AGMs were determined after an empirical analysis. The results of this study show that the size of corporation does not have any effect on the attendance of shareholders or voting turnout at AGMs. Shareholders attendance at AGM is influenced by the size of their investment in the company. Hence, an association exists between AGM voting turnout and blockholders<sup>193</sup>.

Van der Elst has studied attendance and voting turnouts at general meetings of European companies using minutes (attendance and voting data) of AGMs, EGMs and notices of the meetings as data for investigation. He found that voting turnouts vary as compared to ownership structure, shareholders engagement for voting depend on their class and ownership structure, directors for re-election has positive influence on voting turnover, special resolution do not affect shareholders engagement and shareholders activism cannot be measured thorough corporate performance and other governance mechanism<sup>194</sup>.

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<sup>191</sup> Geof Stapledon, Sandy Easterbrook, Pru Bennett and Ian Ramsay 'Proxy Voting in Australia's Largest Companies' (2000) <<http://ssrn.com/abstract=1435175>> accessed 12 November 2018

<sup>192</sup> Hewitt (n 44).

<sup>193</sup> Van der Elst (n 60).

<sup>194</sup> Van der Elst (n 63).

It has been suggested by Van der Elst and Lafarre that blockchain technology can be used for voting. Once the voting item is placed, shareholders be notified to exercise their voting rights. All votes cast by shareholders can be recorded on a private ledger (to ensure privacy). The benefit to firms is that it reduces the organisational costs of hosting an AGM, improves shareholders participation in, and speeds up, the decision making process<sup>195</sup>.

The empirical research approach was used by Sauerwald et al. to study shareholders democracy in context of corporate governance arrangements of firms from 15 Western European countries. Using voting results from 12,513 proposals at 835 general meetings of 717 listed firms, the result showed that the shareholder voting dissents to demonstrate that shareholders not only exercise their voting rights to just support the outcomes of AGMs proposals in listed companies but also a tool to measure and evaluate firms' corporate governance arrangements. Furthermore, this research sought patterns in voting dissents in different jurisdictions. No significant difference was observed between variables such as firm size, financial performance, ownership structure, governance quality and AGMs proposal types<sup>196</sup>.

Shareholders voting dissent is used to study shareholders democracy and shareholders understanding of corporate governance, also shareholders use the voting right as communication channel with board of companies. Thus, shareholders voting is the only method to evaluate shareholders decision making rights in practice.

In another study, Van der Elst analysed voting turnouts and voting behaviour of small and large shareholders and the resolutions presented at AGMs during the period 2010–11. A key finding of the study was that shareholders activism was limited during the study period and the voting turnout was influenced by the ownership structure of the company<sup>197</sup>.

Hillman's et al. research also focused on shareholders voting behaviour – they analysed voting discontent (voting against) the election of directors as a governance process in United States based listed companies. The research considered that shareholders have an opportunity to give voice to their concerns with companies by approving or disapproving director nominations at AGMs by exercising their proxy voting rights. The findings showed that shareholders have voting discontent tool to voice their dissatisfaction both with company and directors<sup>198</sup>. The

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<sup>195</sup> Christoph Van der Elst and Anne Lafarre, 'Bringing the AGM to the 21st Century: Blockchain and Smart Contracting Tech for Shareholder Involvement' (2017) European Corporate Governance Institute (ECGI) - Law Working Paper No. 358/2017 <<http://ssrn.com/abstract=2992804>> accessed 21 February 2018

<sup>196</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>197</sup> Van der Elst (n 59).

<sup>198</sup> Hillman, Shropshire, Certo and Dalton and Dalton (n 32).

shareholders voting dissents is a considerable tool to study shareholders voice on directors election.

Van der Elst's attention turned to French companies in a study of the ways shareholders exercise their voting rights and the modes used to cast votes (personam, through representative, proxy votes to the chairman or via post). The sample comprised the results of 110 company AGMs held between 2011 and 2018. The results showed a decreased in shareholders who attended AGMs in personam but an overall increase in voting turnout. Postal votes increased from 43% in 2017 to 57 % in 2018, shareholders attendance in person decreased from 50% to 35% and the 1.7% of small shareholders gave proxy right to the chairman at general meetings<sup>199</sup>. Van der Elst's study serve to provide an exemplar albeit one that cannot be replicated in full as Australian listed companies only disclose voting and proxy voting results without granular details.

The study by Van der Elst has explored the shareholders attendance and voting behaviour at ordinary general meeting and relation between 'size of corporation, ownership structure and attendance rate' of Belgian listed companies. He found that the voting turnout at AGMs increased as firm size and blockholders increased<sup>200</sup>. Hence, association exist between AGM voting turnout and blockholders.

Another study by Van der Elst on shareholders activism through mean voting turnouts, also examined voting behaviour of small and large shareholders and resolutions voted at AGMs of Belgian companies. The results showed attendance of small shareholders was significantly lower, voting dissent was higher on remuneration and directors election<sup>201</sup>.

The study by Van der Elst and Lafarre to address intuitional investors' voice through shareholders voting results at AGMs in the Netherlands, showed that institutional investor oppose rate is higher on remuneration and amending company constitution resolutions as compared to other shareholders<sup>202</sup>.

The study to evaluate shareholders voting behaviour on shareholders 'say on pay', to approve the remuneration and remuneration polices in the Dutch system during 2004 and 2014 by using voting data, minutes of general meetings, ownership data and other documents

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<sup>199</sup> Christoph Van der Elst, 'Attending at the general meeting or voting by mail: The French case' (2018) (4) Corporate Finance and Capital Markets Law Review, 23-29

<sup>200</sup> Van der Elst (n 60).

<sup>201</sup> Van der Elst (n 66).

<sup>202</sup> Van der Elst and Lafarre (n 67).



disclosed on the company's website, concluded that remuneration proposals are very rarely rejected but shareholders have considerable impact on remuneration policy<sup>203</sup>.

Another study by Conyon and Sadler which has examined the elements for shareholders voting and relation between shareholdings voting dissent and CEO pays, the analysis show significance in remuneration resolutions and shareholders voting dissent<sup>204</sup>.

It can be stated that shareholders voting mechanism is clear only in directors' re-election and no other mechanism for shareholders engagement and voting turnout is with clear results.

#### **2.4.4: Shareholders Proxy Voting Rights**

*The corporate proxy is a principal means by which shareholders exercise their voting rights*<sup>205</sup>.

Proxy voting has given a new edge to shareholders wishing to exercise their voting rights<sup>206</sup>. Shareholders are entitled to attend and vote at general meetings. They also have the right to appoint a proxy to attend and cast vote for them<sup>207</sup>. It is not compulsory for shareholders to attend and exercise their voting rights at a general meeting. Most of the shareholders do not exercise their voting rights. It can be presumed that shareholders want to attend in order to vote but do not wish to incur the associated costs of attending<sup>208</sup>.

The system of proxy voting has lowered the cost of participation at AGM, hence its popularity<sup>209</sup>. Rydqvist has investigated proxy voting practices where important information was provided to the management from shareholders. The findings of the research suggested that the voting process is strategic when shareholders considered the information from the other shareholders during the voting decision-making process. "The structural estimation implies that strategic voting saves up to 8% of the value at stake in a proposal relative to not voting". They further argued that voting is important and may have adverse consequences if not done in accordance with shareholders wishes<sup>210</sup>.

The court has specified the proxy voting in its verdict in *Re Marra Developments Ltd*:

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<sup>203</sup> Van der Elst and Lafarre (n 68).

<sup>204</sup> Conyon and Sadler (n 69).

<sup>205</sup> ICGN (2016), 'ICGN Viewpoint on Vote Confirmation' <<https://www.icgn.org/sites/default/files/Vote%20Confirmation%20Viewpoint.pdf>> accessed on 17 December 2016

<sup>206</sup> Van der Elst and Lafarre (n 195).

<sup>207</sup> Available at <<http://asic.gov.au/for-business/running-a-company/members-of-a-company/>> accessed on 28 March 2017

<sup>208</sup> Tomasic (n 154) 210.

<sup>209</sup> Van der Elst and Lafarre (n 195).

<sup>210</sup> Ernst Maug Kristian Rydqvist, 'Do Shareholders Vote Strategically? Evidence on the Advisory Role of Annual General Meetings' (2004) <<http://ssrn.com/abstract=498681>> accessed 05 March 2018

*“The proxies given prior to the meeting will be far more important in determining the outcome of the dispute between the rival factions than anything that happens at the meeting”<sup>211</sup>.*

AGM attendance varies and depends on shareholders class. Van der Elst has found that the minority shareholders attend AGM in person, while the majority shareholders use a proxy<sup>212</sup>. Shareholders voting decisions are mostly influenced by other choice (superior choice/management) because of their lack (and insufficient evaluation) of information<sup>213</sup>.

An empirical study by Song et al. has addressed the paradigms and factors affect the voting behaviour of shareholders. Using AGM voting data of large shareholders, institutional shareholders and individual shareholders. The findings of the study showed that large and institutional investors are less likely to vote against the resolutions compared to small or individual shareholders<sup>214</sup>. Segregation of voting records by the type of voter (such as top 20 shareholders or blockholders) is not done in Australia. The relationship between voting outcomes and percentage of votes held by top 20 shareholders and blockholders is relevant to the current study.

## **2.5: Conclusion**

This chapter has reviewed the literature associated with shareholders rights in theory. It has discussed the mechanism by whom shareholders rights are decided and given to them. Shareholders rights depends on their investment and shares which they own. In summary the literature has defined the ways the shareholders are given rights, the rights which they owe based on their investments. The key points which literature has highlighted like;

- a. Shareholders vary due to their characteristics, rights, duties and responsibilities.
- b. Shareholders rights, and the protection of those rights, is important for reliability and growth of financial markets.
- c. Shares traded at ASX have different classes, most prominent kinds of shares includes: ordinary shares, preference shares and partly-paid shares.
- d. Company constitutions, shareholder agreements and legislation define shareholders rights attached to shares.
- e. Shareholders have different kind of rights but this study has addressed economic rights and control and decision making rights to evaluate shareholders engagement when exercising their rights in ASX 200 companies.

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<sup>211</sup> *Re Marra Developments Ltd* (1976) 1 ACLR 470

<sup>212</sup> Van der Elst (n 63).

<sup>213</sup> David Yermack, 'Shareholder Voting and Corporate Governance' (2010) 2 Annual Review of Financial Economics 103-125

<sup>214</sup> Song, Xin and Yi (n 58).

- f. Economic rights of shareholders includes: right of dividend, buying and selling of shares for financial gain.
- g. Shareholders use their voting and proxy voting rights in corporate decision making at AGMs to gain control on corporations.

The next chapter reviews the literature in context of exercising shareholders rights in practice and theories connected with shareholders rights.

## Chapter 3: Literature Review – Shareholders Rights in Practice

*“Justice Brandeis’ comments had particular resonance around the time of the global financial crisis, when attitudes to shareholder power became increasingly ambiguous and polarised”<sup>215</sup>.*

### 3.1: Introduction

The last chapter discussed shareholders rights in theoretical context. In Chapter 2, the mechanism of shareholders rights was discussed, shareholders get rights by investing in financial market, the category of share define shareholders rights attached to it, shareholders rights are defined by internal rules of companies, shareholders agreements, the Act and ASX LRs.

This chapter has developed literature review on shareholders rights in practice and organised as: section 3.2 discusses on annual general meetings (AGMs), section 3.3 addresses shareholders engagement; section 3.4 explains shareholders activism; section 3.5 discusses elaborate the concept of shareholders empowerment; section 3.6 extended to shareholders protection; section 3.7 explains shareholders and directors and their rights; section 3.8 is on balance of power and shareholders; section 3.9 discusses corporate governance and corporate law; section 3.10 explains the theories associated with shareholders rights and section 3.11 discusses conclusion.

### 3.2: Annual General Meetings (AGMs)

Historically, the concept of an AGM was introduced when the shareholders intended to interact with investee companies. The AGM was the only mode to interact physically with companies at some defined place<sup>216</sup>. The AGM is a forum where any, or all, shareholder issues could be discussed<sup>217</sup>. The AGM is also an event where companies act to fulfil the legal obligations and make decisions for the closing of the accounting year<sup>218</sup>.

Different legal sources are used for operation of AGMs which includes:

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<sup>215</sup> Hill (n 82).

<sup>216</sup> Available at <file:///F:/PhD%20Candidature%20reserch%20work/Cndidature%20work/March%202017/agm.pdf> accessed on 19 March 2017

<sup>217</sup> John Banko, Melissa B. Frye, Weishen Wang and Ann Marie Whyte, ‘Earnings management and annual general meetings: The role of managerial entrenchment’ (2012) <<http://ssrn.com/abstract=2121450>> accessed 26 February 2018

<sup>218</sup> Bino Catasus and Gustav Johed, ‘Annual general meetings—rituals of closure or ideal speech situations? A dual analysis’ (2007) 23 (2) Scand. J. Mgmt. 168–190

*“the company’s constitution, the Corporations Act 2001 (Cth), common law principles and precedents and, in the case of listed companies, the listing rules of licensed markets such as the ... ASX<sup>219</sup>.”*

The AGM is an essential element of public company corporate governance, but the practicality of AGM is under question in Australia. The communication structure which an AGM provides is flawed because AGMs provide only limited opportunity to shareholders to meet and to question directly the company directors<sup>220</sup>. However, the information provided to shareholders for AGMs is critical for them to evaluate business strategies and future visions for the company<sup>221</sup>. The AGM can be used to improve shareholders democracy and involvement. Further, overall it is an assumption in corporate law that the AGM is a place and event where shareholders can meet their fellow shareholders and directly interact with directors<sup>222</sup>.

### **3.2.1: AGMs in Historical Background**

The AGM is a representation of the desire for corporate democracy<sup>223</sup>. It has been practiced in some cantons of central and eastern Switzerland since 1378. In Victorian England, however, the Companies Clauses Consolidation Act 1845 (8 & 9 Vict c 16) introduced a new policy for corporations that was to maintain the full and true accounts and to present the balance sheet to the shareholders in half-yearly meetings. This act emphasised the need for shareholders meetings<sup>224</sup>.

The Joint Stock Companies Act 1844 has constituted new legislation for shareholders meetings that the meeting be held once a year. The full and fair balance sheet must be sent to the shareholders at their registered addresses at least ten days prior to the meeting. Also, the same balance sheet was to be presented in the shareholders meeting and the minutes of that meeting must be retained. A further requirement of the regulation of shareholders meetings that was refined in 1856 and in 1862 was a statement of income and expenditures was to be presented in the meeting along with the balance sheet. The Companies (Consolidation) Act 1908 (8 Edw 7 c 69) added a director’s report to the meetings requirements. The Companies Act 1929 (19 & 20 Geo 5 c 23) legislated that the auditor’s

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<sup>219</sup> Deborah Chew and Eugene Chen HALL & WILCOX, ‘AGM season 2011 — a refresher on AGM processes and procedures’ (2011) 15 (1) IHC 158

<sup>220</sup> Gill North, ‘Public company communication, engagement and accountability: Where are we and where should we be heading?’ (2013) 31C&SLJ 167-188

<sup>221</sup> John Price, ‘communicating clearly’ <<http://aicd.companydirectors.com.au/membership/company-director-magazine/2016-back-editions/august/the-regulator>> assessed 18 March 2017

<sup>222</sup> Van der Elst (n 63).

<sup>223</sup> Bavlly Quoted by J. Cordery (n 75).

<sup>224</sup> Armstrong & Jones Quoted by ibid.

report must be sent to the shareholders along with other requirements one week before the meeting<sup>225</sup>.

Before the Joint Stock Companies Act 1844 (7 & 8 Vict c 110 / c 111), corporations were constituted and operated under the Acts of Parliament, Crown Charter, or, after 1825, by letters of patents from the Board of Trade. The corporations had individual charters including governance rules. The shareholders meetings (ordinary, annual and extra-ordinary meeting) and procedures for these meetings were defined in the company's articles of association. The Article of Association of company also elaborated the procedures in regard to the election of the chairman election, quorum, voting (including proxies) methods, and shareholders resolution procedure along with annual accounts requirements to be presented in annual general meeting<sup>226</sup>.

Significant parts of Australia's various company laws was adopted from English Law, this innovation was the response to meet the needs of Australian society. In early period, the Australian company law helped in financing the development of the mining industry, this innovation of law has played an important role in the economic success of colonial Australia. The development of company law spread light on the relationship between economic development and legal evolution<sup>227</sup>.

In the Colony of Victoria (now, State of Victoria), the early company legislation required that the companies were obliged to maintain and present their accounts to the member's meeting. Sections 72–82 of the Companies Act 1864 (Vic) deals with company accounts, these sections compel companies to maintain true accounts, a statement of income and expenditures and that they be presented once in six months before the company in a general meeting. Section 94 of the Companies Act 1864 (Vic) states that the opinion (the balance sheet is full and fair) of the auditor about the balance sheet was required and this opinion is to be presented to the members at least once a year. The hard copy of the balance sheet was required to send to the members seven days before the meeting<sup>228</sup>.

Section 24(3) of the Companies Act 1896 (Vic) added that the certificate signed by one or more directors on the behalf of the company board stating their opinion that the balance sheet demonstrates the correct view of company affairs. Section 54 of the Companies Act 1896 (Vic) stated that their company should hold general meetings within two months after its registration.

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<sup>225</sup> Armstrong & Jones Quoted by J. Cordery (n 75).

<sup>226</sup> Armstrong & Jones Quoted by *ibid*.

<sup>227</sup> Phillip Lipton, 'A History Of Company Law in Colonial Australia: Economic Development and Legal Evolution' (2007) 31 (3) *Melb U L Rev* 805-836

<sup>228</sup> North (n 220).

During the early 1960s, uniform company legislation was enacted around Australia to homogenise state and territory legislation<sup>229</sup>. The Acts and Ordinances were contained AGM requirements similar to the AGM mechanism that is in force today under the Act<sup>230</sup>.

### 3.2.2: AGMs and Shareholders Rights

The rights of shareholders at annual general meeting (AGM) under the Act described in Table 3.1.

**Table 3.1: The rights of shareholders at AGMs**

Section of the Act	Rights and Commentary
Act, s 136(2).	shareholders can introduce changes in provisions or can repeal the constitution of the company through a special resolution (resolution which is passed by 75% votes by shareholders of the company)
Act, s 201G.	appointment of company directors
Act, s 203D.	removal of directors through resolution
Act, s 249D.	call for a general meeting for resolution with at least 5% of votes
Act, s 249N(1).	put proposals at general meeting by members with 5% controlling of the votes or 100 members with the right to vote
Act, s 202A.	directors remuneration be decided by the company through resolution
Act, s 250S.	to ask questions in general meeting or to make comments on management in AGM
Act, s 250SA.	raise questions or to make comments on the remuneration in AGM
Act, s 250T	right or opportunity to ask questions to auditors or to representatives of auditors by members in AGM
Act, s 173.	members having right to inspect and get copy of register
<i>AXA Asia Pacific Holdings Ltd v Direct Share Purchasing Corporation Pty Ltd</i> (2009) 173 FCR 434	right to get copy of register by paying required reasonable amount of fees
Act, s 247A.	member of the company can apply to the court for the inspection of books, register of investment scheme
Act, s 250R(2).	non-binding vote of shareholders on the remuneration report
<i>Source: Author</i>	

Listed companies must comply with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations. In particular, companies should note the Principle 6, which states firms should "respect the rights of security holders: A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively"<sup>231</sup>. In its commentary, the ASX also consider that:

<sup>229</sup> Companies Act 1961 (Vic, NSW, Qld, WA); Companies Act 1962 (SA, Tas); Companies Ordinance 1962 (ACT); Companies Ordinance 1963 (NT)

<sup>230</sup> North (n 220).

<sup>231</sup> ASX Corporate Governance Council, 'Corporate Governance Principles and Recommendations' 4th Edition, February (2019) <<https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>> accessed 01 October 2019

*“A fundamental underpinning of the corporate governance framework for listed entities is that security holders should be able to hold the board and, through the board, management to account for the entity’s performance. For this to occur, a listed entity needs to engage with its security holders and provide them with appropriate information and facilities”<sup>232</sup>.*

Sections 250N–P of the Act explains the business of the AGM. Section 250N of the Act has specified that the public companies must hold AGM at least once in financial year, within 18 months after company’s registration, within 5 months after the end of financial year. Further, section 250R of the Act explained that the business of an AGM is to consider the following: annual financial reports, auditor’s reports, and election of directors, appointment and remuneration of auditors. Under section 250PA of the Act the members can submit their written questions to auditors.

Hanrahan et al. argued that: “If the members have a right to elect the directors under the company’s internal governance rule, the election will generally be scheduled to be held at the AGM”<sup>233</sup>.

### **3.2.3: Business of AGM and Resolutions for Shareholders Vote**

The business of the AGM is defined in to section 250R(1) of the Act, presented below.

#### **250R Business of AGM**

- (1) The business of an AGM may include any of the following, even if not referred to in the notice of meeting:*
- (a) the consideration of the annual financial report, directors’ report and auditor’s report;*
  - (b) the election of directors;*
  - (c) the appointment of the auditor;*
  - (d) the fixing of the auditor’s remuneration.*

The study by Chia and Ramsay on shareholders resolutions which analysed information of AGM resolutions collected during period 2004–2013 from Australian listed companies. The number of resolutions increased during the period of global financial crisis, also during this period 877 resolutions were proposed by the shareholders in top 300 listed companies. The findings of this study explained that in 714 (81%) resolutions were not recommended by management, management recommended 29 (3%) resolutions and for 138 (16%) the

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<sup>232</sup> Available at <<https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>> accessed 01 January 2018, p. 25

<sup>233</sup> Pamela Hanrahan, Ian Ramsay and Geof Stapledon, Commercial Applications of Company Law (16th edn, McPherson’s Printing Group 2015)159



management made no recommendations, 92% (448 / 51% resolutions concerned with elections and 360 / 41% were for removal of directors) resolutions were for election and removal of directors and 73 (8%) resolutions were for other matters. A total of 252 (28.7%) resolutions were proposed at AGM and 625 (71.3%) resolutions were considered at EGMs<sup>234</sup>. The AGM resolutions are a good source to measure shareholders decision making rights in Australian listed companies.

The Act, ASX LRs, company constitution, shareholders agreements give shareholders decision-making rights through voting at AGMs, the issues in relation to AGMs like<sup>235</sup>:

- consideration of annual financial report
- election and re-election of directors
- directors fees
- Directors reports
- appointment and remuneration of directors
- company constitutions (amendments and adoptions of rules)
- company name
- placement of shares
- changes in Shareholders rights
- remuneration report
- auditor report
- performance rights
- grant of equity.

For further details the resolutions proposed at AGMs refer to Appendix C.

### **3.2.4: Role of AGMs**

*The AGM is corporate event*<sup>236</sup>.

The AGM has three main purposes:

- to provide the information to shareholders about the financial performance and significant management decisions of the company;
- to take shareholders' approval of management decisions; and,
- to provide platform to shareholders and directors for discussion about the performance and future policies of a company's business<sup>237</sup>.

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<sup>234</sup> Chia and Ramsay (n 48).

<sup>235</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>236</sup> Van der Elst and Lafarre (n 195).

<sup>237</sup> Rebecca Strätling, 'General Meetings: a dispensable tool for corporate governance of listed companies?' (2003) 11 (1) Corporate Governance: An International Review 74–82

Hall et al. has highlighted and concluded that legally and traditionally the AGM has three businesses as: legal formality, communication and accountability<sup>238</sup>.

According to Van der Elst et al. the core function of AGM is decision making<sup>239</sup>. The decision making function has some deficiencies, according to economic theory the cost of participation is high as per small shareholders consideration and they are unwilling to attend to vote in person. Large shareholders have greater voting power which limits the effectiveness of small shareholders votes<sup>240</sup>.

The AGM is a place where the actors of the company's interact face-to-face, the AGM facilitate the members to hold controlling actors accountable for their performance. Moreover, accountability mechanisms, along with further improvements in accountability process<sup>241</sup>. The research of Cordery and Baskerville on AGMs as an accountability event emphasised that sensemaking is a key function of the AGM and accountability process. Moreover, "through sensemaking, members construct reality, they reduce information overload through clue selection and complexity is moderated"<sup>242</sup>. The AGM is a public forum used to hold directors to account and a place which provides the voice to minority shareholders. The view that the AGM is a false example of democratic attributes and the mechanism for shareholders decision power is shallow. In this scenario the AGM is designed to best meet the directors' interests<sup>243</sup>.

The AGM of the public company is the forum which can be used to evaluate the top management's administration by the shareholders<sup>244</sup>. The decision of AGMs is made according to consent of blockholders and small shareholders presence at AGM through voting or proxy vote did not have any impact on AGM decisions<sup>245</sup>.

Armstrong and Jones view the business of an AGM through the prism of shareholder expectations:

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<sup>238</sup> Leslie Hall, Philip Lawton and Eric C. Rigby Quoted by Nicholas Apostolides, 'Exercising corporate governance at the annual general meeting' *Corporate Governance*: (2010) 10 (2) *The international journal of business in society* 140-149

<sup>239</sup> Van der Elst and Lafarre (n 195). (T. Strand, *The Owners and the Power: Insights from Annual General Meetings*, PhD series 25.2012 (Denmark: Copenhagen Business School 2012).)

<sup>240</sup> *ibid*.

<sup>241</sup> Carolyn J. Cordery and Rachel F. Baskerville, 'An ethnographic study of Annual General Meetings in Not-for-profit organisations' (2007) Victoria University, Wellington, NZ, Centre for Accounting, Governance and Taxation Research Working Paper No. 51 <<http://ssrn.com/abstract=1113918>> accessed 22 February 2018

<sup>242</sup> Weick, K. E Quoted by *ibid*.

<sup>243</sup> Jeacle (n 76).

<sup>244</sup> Kodgruppen and OECD Quoted by Thomas Carrington and Gustav Johed, 'The construction of top management as a good steward A study of Swedish annual general meetings' (2007) 20 (5) *Accounting, Auditing & Accountability Journal* 702-728

<sup>245</sup> Van der Elst (n 66).

*[they expect the] chairman to give an in-depth appraisal of the company, be willing to answer any questions, move the adoption of the accounts and propose the re-election of any retiring directors*<sup>246</sup>.

In addition to Armstrong's and Jones' procedural aspects, Rydqvist argues that most shareholder meetings have a disciplinary role, but these meetings also play an 'advisory function' as well<sup>247</sup>. Furthermore he suggests that AGMs can:

*"be an effective mechanism for quasi democratic control of the directors if on the one hand most of the votes are held by members other than the directors or those under their influence; and if on the other hand all or most of the members are able and willing to participate in the meeting"*<sup>248</sup>.

Apostolides has studied the AGM as a corporate governance method and concluded that the shareholders voting on resolutions and questioning board members show important features of self-governance which is different to external regulation<sup>249</sup>. He espouses that a successful AGM encompasses the following elements:

*"a well-balanced and independent range of skills and backgrounds on the board, accompanied by fair remuneration and reward schemes for the directors; awareness of long-term social, community and environmental issues incorporated in corporate social responsibility, alongside the more immediate matters of financial performance; and a real appreciation of the concerns of all stakeholders"*<sup>250</sup>.

A unique study which has discussed the question – "what goes on at an AGM" – was undertaken by Cathasús and Johed. The study collected unique data by attending 36 AGMs, The data includes: the length of time taken by each speaker at AGM, content of their address, questioned asked by the shareholders and management response to these questions, they also recorded if any special incident occurred during the AGM. The researchers' general impression of the AGM is also provided. A key finding o the research is that around 1% of shareholders attended the meeting in person<sup>251</sup>.

The empirical study by Song et al. explored 1,346 proposals (of which 1,210 passed and 36 were rejected) during the period 2004–09. The study has examined the voting behaviour, the decision making of large shareholders, institutional investors and individual shareholders at

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<sup>246</sup> J. Cordery (n 75).

<sup>247</sup> Rydqvist (n-236).

<sup>248</sup> Modern Company Law For a Competitive Economy Company General Meetings and Shareholders Communication, A consultation Document from the Company Law Review Steering Group, available at <<http://webarchive.nationalarchives.gov.uk/20121101192029/http://www.bis.gov.uk/files/file23274.pdf>> accessed 01 February 2018 p.6

<sup>249</sup> Nicholas Apostolides, 'Directors versus Shareholders: evaluating corporate governance in the UK using the AGM scorecard' (2007) 15 (6) Corporate Governance: An International Review 1277-1287

<sup>250</sup> Apostolides (n 238).

<sup>251</sup> Catasús and Johed (n 218).

AGMs held in China. This study makes recommendations to improve shareholders voting power by improving administration of shareholders voting<sup>252</sup>.

Van der Elst has discussed that: “the AGM should be used as a strategic governance tool for director elections while the central decision-making body should be the board, balancing shareholder primacy with board primacy”<sup>253</sup>. Two main points by Van der Elst suggestion are, first, decision making power should be with directors and balance of powers between shareholders and directors to streamline strategic governance.

Apostolides study was to explore the role of AGM play between board and its shareholders, further, the evaluation framework was made to further explore the AGMs role designed by directors entirely for shareholders. The scoring system was developed to assess the AGMs and 22 AGMs observations were analysed and results showed that there is no acceptable mechanism to evaluate the effectiveness of corporate governance of AGMs<sup>254</sup>.

### **3.2.5: Effectiveness of AGMs**

According to Australian Institute of Company Directors (AICD) criticises the effectiveness of AGM on two fronts: informational and procedural. The information about AGM is not available to the market and the material used to prepare the meeting for the directors’ report, remuneration report, corporate governance statement, audit report and for financial statements encompasses difficult and complex language, which is difficult for shareholders to understand. Institutional shareholders are better placed. They enjoy more frequent and better-quality information as compared to retail shareholders. From a procedural point, the shareholders vote according to their number or percentage of shareholding. Shareholders can also vote through proxy before the promulgation of an AGM. In such circumstances the AGMs do not play their role in terms of the outcome of meetings resolutions. The AICD suggests that shareholders meetings and AGMs are important for the sake of good corporate governance although further developments are needed to improve the validity and effectiveness of these meetings<sup>255</sup>.

A comparative study was undertaken by Van der Elst to evaluate the powers of shareholders at annual general meetings, powers of shareholders in law, comparative analysis of powers at ordinary general meeting and extra-ordinary meetings, development of shareholders rights and shareholders activism of five European countries to see the appropriateness of laws for

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<sup>252</sup> Song, Xin and Yi (n 58).

<sup>253</sup> Van der Elst (n 63).

<sup>254</sup> Apostolides (n 249).

<sup>255</sup> Steven Cole FAICD, ‘7 ways to improve AGM’ <<http://aicd.companydirectors.com.au/membership/the-boardroom-report/volume-15-issue-1/7-ways-to-improve-the-agm>> accessed 18 March 2017

shareholders rights. The Study failed to find a significant relationship between AGM items, the importance of AGM items, and shareholders attendance at AGMs. All the AGM items received were supported by shareholders. The study have not found any significance between shareholders voting turnout and remuneration resolutions<sup>256</sup>.

### **3.2.6: Information Function of AGMs**

Banko et al. research showed that the managers tend to publish the information about the company in a way that shapes market opinion of the firm. Also, their study showed the abnormal financial returns nearby to an AGM<sup>257</sup>. As a forum the AGM is imperfect. The issue as forum functions is that a very limited time is allowed for shareholders questioning session in AGM. Because AGMs review last accounting year and look forward for current years, the AGM take some hours in this regard<sup>258</sup>.

The access level to private companies' information is dependent on the size of shareholding or the personal relationships of shareholders with directors. The minority shareholders have not had enough ability to hold the management accountable in general meetings because they do not hold substantial shareholding and most likely do not have personal relationships with company directors. In fact, the law forces to conduct the physical general meeting, this physical procedure of general meetings provide the significant safeguard to the minority shareholders<sup>259</sup>.

The study by Lafarre and Van der Elst on AGM flaws as:

- information system flawed where AGM notice period and dates studied,
- flawed forum function studied on the base of question and answer sessions,
- and flawed decision-making function

Further this study has analysed the modes of shareholders participation at AGMs as: shareholders attended AGM in person, through representative, proxy to the chairman and votes through mail. The study found that only 1% to 5% of shareholders attend AGMs in person, so, use of blockchain technology will improve shareholders engagement, voting turnout, lower the proxy and voting cost and improve the speed of the decision making process<sup>260</sup>.

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<sup>256</sup> Van der Elst (n 56).

<sup>257</sup> Banko, Frye, Wang and Whyte (n 217).

<sup>258</sup> Van der Elst and Lafarre (n 195).

<sup>259</sup> Strätling (n 237).

<sup>260</sup> Van der Elst and Lafarre (n 195).

### 3.2.7: Accountability Function of AGMs

Three models of AGMs are used for the accountability in corporate governance are: private investor meetings, annual general meetings and courts. The private investors' meetings are important because these meetings help to resolve the shareholders and company management's conflicts which can possibly disturb the AGM proceedings<sup>261</sup>. The interests of the corporations are visible when they align their interests with the proprietary interests of shareholders (e.g. profitmaking)<sup>262</sup>.

The scheduling of annual general meetings away (greater distance) from the headquarters means that:

- company experiences underperformance in the stock market for the next two quarters and even below performance for rest of the year.
- managers having adverse information about the future performance of the company, also, the managers try to fully avoid the disappointment of their accountability from the shareholders, media and analysts.
- The shareholders do not predict the aims of managers for arranging the general meetings in remote locations.
- The participation of shareholders drops as per the choice of general meetings locations, although the shareholders exercise their voting rights electronically before convening of the meeting<sup>263</sup>.

Another study on AGM's (theoretical functions (information, forum and decision making)) functions when shareholders vote remotely may face procedural flaws with voting procedures. This issue may be overcome by using blockchain technology. This new technology will help to reduce the costs of holding votes. Moreover, it may increase shareholders engagement and their decision making will be faster<sup>264</sup>. Lafarre and Van der Elst propose to move physical AGMs to technology-based ones. This approach can be a significant step ahead but not practical because the potential engagement of shareholders cannot be predicted due to lack of accountability of shareholders if they do not exercise their rights.

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<sup>261</sup> Chinyere O. Uche and Jill F. Atkins, 'Accounting for rituals and ritualization: The case of shareholders' associations' (2015) 39 (1) Accounting Forum 34-50

<sup>262</sup> M M Worthington, 'The corporation as a constructed ethical agent: Monism, pluralism and options for reform' (2017) 32 Australian Journal of Corporate Law 91-121

<sup>263</sup> Yuanzhi Li and David Yermack, 'Evasive shareholder meetings' (2016) 38 Journal of Corporate Finance 318-334

<sup>264</sup> Anne Lafarre and Christoph Van der Elst, 'Blockchain Technology for Corporate Governance and Shareholder Activism' (2018) European Corporate Governance Institute (ECGI) – Law Working Paper No. 390/2018 Available at <<http://ssrn.com/abstract=3135209>> accessed 16 December 2019

### 3.2.8: Use of Technology for AGMs

This study of Van der Elst on shareholders voting behaviour emphasis to use of remote voting by using new technologies like blockchain which will help to increase the shareholders voting turnout at AGMs<sup>265</sup>.

In 2005 a survey was conducted by the AICD about the effectiveness of AGMs which found that technological changes and legislative reforms were needed if AGM efficiency is to be improved<sup>266</sup>.

Boros has addressed the issue of virtual shareholders meeting in Australian legal perspective, as well as the question of the possibility of shareholders voting by purely electronic means. From a legislative e-meetings and e-ballots are certainly possible, however only with reforms to the Act<sup>267</sup>.

Gao and Huang have also taken up the cause of online meetings suggesting that online meetings can increase the participation of shareholders, specifically retail shareholders, in corporate governance. E-meetings are also cost effective. The benefits of online meetings include: these meetings will voice the concerns of the retail shareholders, the opportunity to vote against the proposals which will potentially be against their interests, and the firms observing online meetings will have positive impact on stock returns<sup>268</sup>.

North suggests that for wider and healthy governance and accountability in firms, companies should use digital technologies to engage regularly with shareholders. Moreover, she states that: "public corporations are privileged legal constructs, and as such, they should be compelled to communicate with, and to remain accountable to the public at large"<sup>269</sup>.

Van der Elst and Lafarre consider that boards and company managers are currently communicating with shareholders via a range of platforms, however such practices are not the substitute for an AGM. General meetings remain an important event for small and individual shareholders to raise their concerns. A point of contention when engaging retail shareholders at shareholders meetings is that their votes may fail to have any positive effect on the company's decision making. Despite the plethora of information channels and the cost

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<sup>265</sup> Christoph Van der Elst, 'Shareholder Engagement and Shareholder Voting Modes: Two of a Different Kind' (2019) European Corporate Governance Institute (ECGI) – Law Working Paper No. 435/2019; <<http://ssrn.com/abstract=3323848>> accessed 15 February 2020

<sup>266</sup> Available at <<http://aicd.companydirectors.com.au/membership/the-boardroom-report/volume-13-issue-24/agm-system-reaches-tipping-point>> 18th March 2017

<sup>267</sup> Elizabeth Boros, 'Virtual Shareholder Meetings: Who decides how companies make decisions' (2004) 28 Melbourne University Law Review 265-288

<sup>268</sup> Huasheng Gao and Jun Huang, 'Can Online Annual General Meetings Increase Shareholders' Participation in Corporate Governance? Evidence from China' (2019) <<http://ssrn.com/abstract=2689618>> accessed 26 February 2018

<sup>269</sup> North (n 220).

effectiveness of e-meetings assurances are required with regard to effectiveness, fair dealing and the development of a suitable method to handle the conflict of interests during e-meetings, in accordance with the law. A suggestion by Van der Elst and Lafarre is to use blockchain to exercise voting rights<sup>270</sup>. Thus, more time is available to shareholders to hold talks with directors and company management. Hence, it can be assumed that the use of technology can improve shareholders engagement, voting outcomes and can enhance accountability mechanism of corporations to improve corporate governance of corporations.

The current study is only concerned with AGM voting practices and voting results from AGMs in order to evaluate shareholders rights in practice. AGMs, as a forum, serve as the primary place for shareholders engagement. Voting is a way for shareholders to exercise their rights hold the company and its agents and accountable for their performance.

### **3.2.9: AGMs in International Context**

To have a better understanding of AGMs in the international context, studies of AGMs undertaken outside of Australia are presented in this section.

The financial institutions (institutional investors/institutional shareholders) hold 70%–80% of the shares in the United Kingdom. Representatives of these institutions do not habitually attend general meetings and they exercise their voting rights through proxy voting. These institutions have overview of the issues to be considered in the general meeting before the meeting. After receiving the information these institutions lodge their proxy forms, in most of the cases the outcomes of these meetings are settled in advance. In such circumstances:

*“the AGM is not the debating, information exchanging and decision-making body which it purports to be. Individual shareholders have neither the participation rights nor the equality of information which the theory arguably implies”<sup>271</sup>.*

Van der Elst and Lafarre have classified the issues shareholders face during exercise of their rights due to involvement of many mediators as: “regularly resulting in inefficiencies, mistakes and costly court cases”<sup>272</sup>.

González et al. studied AGM of 11 Colombian firms listed with local market accounting and found that AGMs give significant importance to refreshment. Colombian AGMs ignored important features as:

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<sup>270</sup> Christoph Van der Elst and Anne Lafarre, 'Blockchain and Smart Contracting for the Shareholder Community' (2019) 20 European Business Organization Law Review 111-137

<sup>271</sup> Modern Company Law For a Competitive Economy Company General Meetings and Shareholders Communication, A consultation Document from the Company Law Review Steering Group, <<http://webarchive.nationalarchives.gov.uk/20121101192029/http://www.bis.gov.uk/files/file23274.pdf>> accessed 01 February 2018 p.7

<sup>272</sup> Van der Elst and Lafarre (n 270).



*“voting procedure, composition and remuneration of the board, early revelation of information regarding candidates for board positions and the use of electronic media to transmit the AGMs and to offer voting possibilities via the firms’ web sites”<sup>273</sup>.*

The study by Iwatani and Taki about the importance of AGMs in Japan, in past the AGM’s in Japan highlights that in the past AGMs were merely rubber-stamp affairs. Shareholders lacked a real opportunity to ask questions. The trend of hosting ‘open meetings’ with shareholders has sparked the voting interest of shareholders. Consequently, AGM are becoming more effective in their role as decision making bodies<sup>274</sup>.

In Japan the AGM play three functions; business decision making, monitoring role – to the performance of internal director; and advisory role for management. Study has highlighted future challenges to AGM as:

- need to improve the two ways communication model between companies and shareholders- will enhance more openness of AGM;
- second area for further improvement is “the improved decision making function of the AGM resulting from grater proxy participation has made management (internal directors) more disciplined in their efforts to raise enterprise value”<sup>275</sup>.
- Other challenges are to improve the content and quality of communication, the second issue is the circumstances when company try to secure votes behind the doors.

In these circumstances the dialogues between company and shareholders convert the management’s long-term vision to short-term. The third challenge with Japan’s AGM is the communication with the non-resident investors<sup>276</sup>.

Jong et al. study of voting behaviour of shareholders at AGM in the Netherlands sought to analyse the general meetings minutes from 245 meetings during the periods 1998–2002. A large number of shareholdings were held by pension funds, banks and insurance companies. The findings show that the pension funds are the most influential and active participants at shareholders meetings. The data suggested that in Netherlands shareholders do not have an influential impact on the management through general meetings<sup>277</sup>.

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<sup>273</sup> González, Guzmán, Francisco and Trujillo (n 88).

<sup>274</sup> Masanobu Iwatani and Toshio Taki, ‘Evolution of General Shareholders’ meetings in Japan’ (2009) 1 (1) Nomura Journal of Capital Market 1-17

<sup>275</sup> Ibid.

<sup>276</sup> Ibid.

<sup>277</sup> Abe de Jong, Gerard Mertens and Peter Roosenboom, ‘Shareholders’ Voting at General Meetings: Evidence from the Netherlands’ (2006) 10 (4) J Manage Governance 353–380

### 3.3: Shareholders Engagement

Southwood has defined 'shareholder engagement' as: "involving any attempt to pursue shareholder objectives by: "voice" without a change of control in the company"<sup>278</sup>.

The engagement of shareholders is essential to maintain good corporate governance practices, but the engagement must be balanced with the powers of directors<sup>279</sup>. The concept of shareholders engagement was introduced to provide safeguards to shareholders against corporate excesses to put limits on executive remuneration and balance the level of remuneration with community values. The rule of two-strikes was added in the Act for the approval of executive remuneration packages was largely viewed as one step further towards true shareholder empowerment<sup>280</sup>. Thus, executive remuneration report must be put in AGM resolutions of the company<sup>281</sup>. If the remuneration report resolution receives at least 25% 'Against' votes that is considered the first strike. If in the following year the remuneration report resolution receives the same result or worse (second strike) then a spill motion is generated. This procedure put the board in front of shareholders to be re-elected, if shareholders refuse to re-elect the board with at least 50% 'For', then in 90 days' time, a spill meeting be called for the re-election of directors via shareholders votes<sup>282</sup>.

The study of Faghani et al. has investigated the effectiveness of the 'two-strike rule' on CEO compensation and whether shareholders voting dissents on remuneration report resolutions has any impact on level and structure of CEO's compensation. The study has evaluated the sample of:

- 65 firms in 2011 which had one strike but avoided a second strike in year 2012;
- 52 firms in 2012 which had one strike but avoided a second strike in year 2013;

Also these samples were interrogated to better understand why a second strike was avoided and the findings were that CEO compensation is positively associated with shareholders dissent level in the year after the second strike. Moreover, after receiving their first strike, the companies introduced changes and cut CEO salaries and incentives. Faghani et al study argue that giving shareholders powers in regards to 'say on pay' can align the shareholders and managers incentives<sup>283</sup>. Shareholders voting dissent has a positive association with control

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<sup>278</sup> Southwood quoted by Nowak and McCabe (n 177).

<sup>279</sup> John Price, 'ASIC on collective action by investors and voting at general meetings' <<http://asic.gov.au/regulatory-resources/corporate-governance/corporate-governance-articles/asic-on-collective-action-by-investors-and-voting-at-general-meetings/>> accessed on 25 December 2016

<sup>280</sup> Vivien Chen, Ian Ramsay and Michelle Anne Welsh, 'Corporate law reform in Australia: An analysis of the influence of ownership structures and corporate failure' (2016) 44 ABLR 18-34

<sup>281</sup> Act s, 250R.

<sup>282</sup> Jeswynn Yogarathnam and Lidia Xynas, Corporations Law: In Principle (10th edn, Thomson Reuters (Professional) Australia Limited, 2017) 264

<sup>283</sup> Faghani, Monem and Ng (n 42).

CEOs pay and their accountability, moreover voting dissent indicate the shareholders concerns at AGMs corporate decision making.

The Hutchison and Alley showed that remuneration proposal at AGM are seldom rejected but shareholders voting right on remuneration has increased dialogues between shareholders and company and has significant influence over remunerations and directors' profiles<sup>284</sup>.

De Falco et al. highlight the factors which influence shareholders voting dissents in different jurisdictions. This study has focused on the important factors identified in the literature (relationship between voting dissent and ownership concentration, remuneration committee, CEO pay). The sample of this study was based on 120 firms from three jurisdictions (Italy, Australia and USA) and the defined study period was three years (2012–14). The results suggested that: the results was insignificant in Australian perspectives and this may be due to the implementation of “two-strike rule” in Australia. Further, the results discuss that the dissent in Australia regarding remuneration are very low means the shareholders have control and influence over board<sup>285</sup>. This research showed that shareholders are using their voting rights as a means of activism remuneration report resolutions at AGMs.

The focus of ASIC's Report 564 is shareholders engagement during 2017. ASIC found that some shareholders have actively participated in AGMs to voice different matters including under performance of companies. The modes observed during 2017 for shareholders engagement include private discussions between shareholders and companies, to media-run campaigns and shareholder-requisitioned meetings. In 2017 were 5 first strikes and one second strike in 2016 there were 11 first strikes and zero second strikes. This report has discussed the changes in vote 'For' for recommendation during 2016–17<sup>286</sup>.

In 2018, 12 first strikes and zero second strike on remuneration report were observed, which significantly increased as compared to 2017 (5 first strikes and one second strike) and to 2016 (11 first strikes and zero second strike). Further, the votes casted by shareholders 'against' the resolutions, directors election resolutions had 4.06% voting against in 2018, 3.23% in 2017 and 2.37% in 2016, the votes 'against' for remuneration report was 9.18% in 2018, 6.58% in 2017 and 7.40% in 2016, for other resolutions the shareholders exercised their votes 'against' was 6.58% in 2018, 3.58% in 2017 and 4.95% in 2016. The voting 'against' the resolutions showed that the shareholders engagement have positive increase in voting results<sup>287</sup>. ASIC reinforced that shareholders decision making rights are limited and that shareholders cannot

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<sup>284</sup> Van der Elst and Lafarre (n 68).

<sup>285</sup> Falco, Cucari and Sorrentino (n 40).

<sup>286</sup> Report 564 (n 53).

<sup>287</sup> Report 609 (n 54).

bring changes without the support of directors. The shareholders have proposed eight resolutions and none of the resolution were passed. The ASIC reports challenge the studies of Porta et al. and Anderson et al., as discussed, and show how shareholders rights are limited in Australian listed companies.

Arguably, shareholders can communicate their concerns and disappointments with firm by exercising votes on election and re-election of directors. The empirical study by Hillman et al. has used the sample size of 2,879 director's election resolution from 500 companies during 2016. The final sample of 2,099 resolutions was subject to further analysis to explain the governance process through actual voting by shareholders on directors' election. The results supported the agency theory relationship between shareholders voting dissent on director's election and directors characteristics but vary from firm to firm. Moreover, the shareholders voting withholds having significance with board size and compensation level of CEO. Further, shareholders can voice their concerns by using their votes directly or through proxy at annual general meetings<sup>288</sup>.

The effectiveness of using shareholders voting results as a means of changing company policy is debatable. Aggarwal et al. demonstrated that shareholders engagement on director's election is one way to study satisfaction and dissatisfactions of shareholders for companies polices. The sample of 83,596 director election resolutions held during the period 2003–2014 and used voting withheld percentage which was calculated by adding voting 'Against' and 'Abstained' by dividing the total votes costed for analysis and found that voting dissents have a negative impact on directors careers. Receiving high dissent appears to reduce job opportunities as dissent voting is uses a measure of the person's credibility<sup>289</sup>. The voting right of shareholders is powerful way to hold board accountable for their actions.

The traditional corporate structure provides little space for shareholders actions or participation in corporate decision making<sup>290</sup>. Mayanja argued that most of the shareholders do not have proper information and necessary knowledge to make good decisions on policy or operational issues. The involvement or intervention in operational issues can affect the quality of corporate decision making. For healthy corporate performance, the intervention of shareholders must be limited<sup>291</sup>.

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<sup>288</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>289</sup> Aggarwal, Dahiya and Prabhala (n 62).

<sup>290</sup> Harry G. Hutchison and R. Sean Alley, 'Against Shareholder Participation: A Treatment For McConvill's Psychonomicosis' (2007) George Mason Law & Economics Research Paper No. 07-23 <<http://ssrn.com/abstract=993209>> accessed 27 December 2016

<sup>291</sup> James Mayanja, 'The proper role of shareholders in the decision making processes of modern large Australian public companies' (2009) 24 (1) Aust Jnl of Corp Law 9-32

The concept of shareholders empowerment was assumed to hold directors and auditors accountable for their duties. Giving rights to shareholders to put questions to auditors in the AGM was theorised to enhance auditors accountability mechanism<sup>292</sup>. The management of a company can use faulty information to shield themselves from shareholders intervention and this situation can be avoided by introducing centralised management<sup>293</sup>.

The lack of shareholders engagement in decision making process of the company may be due to fact that shareholders assume that they have insufficient powers to affect corporate decisions<sup>294</sup>.

The shareholders engagement systems are not without deficiencies. The first problem is due the engagement of different intermediaries' which causes higher costs of engagements, the information and voting systems lacking clarity and authenticity of transmission between shareholders and companies. Second, information systems deal with shareholders according to their class and shareholdings. Such mechanisms create inequality and create problems for active shareholders democracy. The solution to these issues is to adopted technology (blockchain) to overcome these hindrances in shareholders engagements with companies<sup>295</sup>.

One of the main issues in the corporate governance is the communication between shareholders and management, and how their relationship is affected by their different agencies<sup>296</sup>. Companies need to improve their communication methods with shareholders, such relationships are based on trust but with a practical approach to meetings, efforts will foster better long-term relations<sup>297</sup>.

Van der Elst and Lafarre studied shareholders engagement system and issues related to engagement system by analysing voting methods (attending in person, represented, proxy to the chairman and votes by mail) in French companies, the finding say that only small shareholders attend AGMs in person, majority of shareholders give right of proxy to the chairman and only very few give proxy rights to fellow shareholders. Very few shareholders do not exercise their voting rights. The bulk of shareholders used the post or email to cast their votes. Postal votes equalled 63% in 2012 and increased to 77% by 2018<sup>298</sup>.

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<sup>292</sup> Chen, Ramsay and Welsh (n 280).

<sup>293</sup> Farrar (n 27) 170.

<sup>294</sup> Chizema (n 169).

<sup>295</sup> Van der Elst and Lafarre (n 270).

<sup>296</sup> Catasús and Johed (n 218).

<sup>297</sup> Simon C.Y. Wong, 'Effective board Engagement with shareholders' (2009) <<http://ssrn.com/abstract=1495846>> accessed 02 January 2019

<sup>298</sup> Van der Elst and Lafarre (n 270).

According to Sergakis the healthy and effective shareholders engagement is essential to safeguard shareholders concerns, albeit, effective engagement will help to bridge communication gaps, understanding and cooperation with investee companies<sup>299</sup>.

### 3.4: Shareholders Activism

*The shareholder activism is defined as the use of ownership position to actively influence company policy and practice*<sup>300</sup>.

Shareholders activism is defined as: “any action(s) of any shareholder or shareholder group with the purpose of bringing about change within a public company without trying to gain control”<sup>301</sup>. Shareholder activism is described as a helpful: “wealth enhancing [mechanism] for shareholders and [a] performance enhancing [mechanism] for the target companies”<sup>302</sup>.

Sharfman has argued that shareholder activism is a valued asset if the main aim of the activism is to correct managerial inefficiencies<sup>303</sup>. According to Norli et al. shareholders activism is linked with considerable costs because if shareholders desire to replace the board members they have to spend time and money by making a campaign for proxy content, pay for legal expertise and sell their shares<sup>304</sup>. Judge et al. has noted that shareholders activism is an important factor of corporate governance and the disclosure of shareholders activism is based on their motivation and nature of the firm<sup>305</sup>. This is consistent with Ying’s findings that Australian shareholders are more prepared as compared to Malaysian shareholders, to use their rights in effective way in investee companies<sup>306</sup>.

Sjöström has defined the ways shareholders activists work as:

*“shareholder activism can be exerted through letter writing, through dialogue with corporate management or the board, through asking questions at open sessions at annual general meetings and through the filing of formal shareholder proposals”*<sup>307</sup>.

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<sup>299</sup> Konstantinos Sergakis, ‘The UK Stewardship Code: Bridging the Gap between Companies and Institutional Investors’ (2013) <<http://ssrn.com/abstract=2365439>> accessed 20 January 2019

<sup>300</sup> Emma Sjöström, ‘Shareholder activism for corporate social responsibility: what do we know?’ (2008) 16 (3) Sustainable Development 141-154

<sup>301</sup> Paul Rose and Bernard S. Sharfman, ‘Shareholder Activism as a Corrective Mechanism in Corporate Governance’ (2015) Ohio State Public Law Working Paper No. 225 <<http://ssrn.com/abstract=2324151>> accessed 25 March 2017

<sup>302</sup> Bernard S. Sharfman, ‘A Theory of Shareholder Activism and Its Place in Corporate Law’ (2015) 82 (4) Tennessee Law Review 791-832

<sup>303</sup> *ibid.*

<sup>304</sup> Norli, Ostergaard and Schindele 520 (n 178).

<sup>305</sup> William Q. Judge, Ajai Gaur and Maureen I. Muller-Kahle, ‘Antecedents of Shareholder Activism in Target Firms: Evidence from a Multi-Country Study’ (2010) 18 (4) Corporate Governance: An International Review 258–273

<sup>306</sup> Kuek Chee Ying, ‘Shareholder Activism Through Exit And Voice Mechanisms In Malaysia: A Comparison With The Australian Experience’ (2014) 26 (2) Bond Law Review 87-114

<sup>307</sup> Sjöström (n 300).

According to Poulsen et al. the modes of shareholders activism include: shareholders proposal, their voting behaviour and expressed opinions at general meetings<sup>308</sup>. The shareholders activism envisage private bargaining before AGMs on management proposed resolutions, shareholders supported proposal for proxy content and shareholders suits. Moreover, he argued that the lowest cost method which used by shareholders as activism phenomena is to exercise votes against on board recommended resolutions at AGMs<sup>309</sup>. Poulsen et al. has criticised the shareholders activism because it distinguish between shareholders opinions at AGMs to act as activist which were not used for a healthy engagement with firms- how the firms' activities are- but only used to make a noise without meaningful and result oriented discussions between shareholders and management<sup>310</sup>.

Jacobsen and Pender have analysed climate change proposals at AGMs to better understand corporate democracy and shareholders activism. Their analysis was segregated into social and environment proposals in two waves. The part had 15 social and environmental proposals from the period 1998–2004, and second wave had 12 resolutions addressing social and environmental during the period 2009–2014. All of the proposals during two waves rejected at AGMs. These circumstances demonstrated that in Australia, if shareholders use social and environmental issues as a platform to be an activist and try to hold firms to account their actions will likely fail<sup>311</sup>. Therefore, the rights and activities of shareholders in terms of corporate democracy need to be re-addressed by policymakers as shareholders hold board accountable on ESG resolutions without their support.

Van der Elst has investigated shareholders activism by studying the voting turnout at, and voting behaviour during, AGM resolutions of Belgian companies by small and large shareholders. He recommends to change the position of the AGM so that its considered as 'stewardship'. Consequently, the aim is to make AGMs forum for discussion and policymaking rather than being reserved only for formal decision-making<sup>312</sup>.

Canyon and Sadler investigated shareholders voting behaviour (the relation of shareholders voting and remuneration) by exploring the shareholders voting results during the period 2002–07. They analysed the results of more than 50,000 resolutions, which divided in 11 different categories. The findings showed that only 7%–10% dissents were observed. Around 90% of the votes were 'For' the remuneration report resolution. Moreover, over the period voting dissent decreased on remuneration resolutions. The results of both categories (pay and non-

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<sup>308</sup> Poulsen, Strand and Thomsen (n 65).

<sup>309</sup> Van der Elst (n 63).

<sup>310</sup> Poulsen, Strand and Thomsen (n 65).

<sup>311</sup> Jacobsen and Pender (n 1).

<sup>312</sup> Van der Elst (n 66).

pay proposal) had significant differences. Further, the regression analysis confirmed that remuneration resolutions attract more dissents as compared to other resolutions. Shareholders voting dissent is high for resolutions related to directors' benefits (pay, stock options, incentive plans and so on). Conyon and Sadler has further argued that it is not clear that shareholders activism is having any significant relationship with desirable outcome, and that it depended on how informed shareholders are on company reports and information<sup>313</sup>.

The empirical analysis Van der Elst on shareholders activism modes at AGMs focused on four factors that influence shareholders attendance (shareholder structure, corporate performance, institutional framework and company size). The results were not significant in voting turnouts over study period (2007–10)<sup>314</sup>.

The study by Poulsen et al. has used the shareholders meetings data to analysis the impact of shareholders voting rights on shareholders activism. The results showed that very few AGM proposals was proposed by shareholders. The voting results showed that shareholders supported all the resolutions. Moreover, shareholders opinions are less practical to impact on firm, shareholders voice through voting did not support meaningful debate between shareholders and managers<sup>315</sup>.

Shareholders activism was studied by Van der Elst through the lenses ownership structure, shareholders classes, election and re-election of directors, special resolutions (changing or amending company constitution) on voting turnout's at AGMs of European companies. His study concluded that voting turnout was not significant with ownership structure of companies also share ownership of large shareholders does impact on their engagement practices, directors for re-election have significant relationship with voting turnout, special resolutions showed no impact on voting turnout, corporate performance and corporate governance practices for companies have shown no impact on voting turnout<sup>316</sup>.

### **3.5: Shareholders Empowerment**

Chizema defines shareholders empowerment as the reallocation of powers between shareholders and corporate groups (CEOs and directors)<sup>317</sup>. Anabtawi has criticised the concept of moving corporate governance power to shareholders from board of directors. Advocates of shareholders empowerment argue that additional power benefit collectively benefits shareholders. This concept is based on assumptions that shareholders have common

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<sup>313</sup> Conyon and Sadler (n 69).

<sup>314</sup> Van der Elst (n 64).

<sup>315</sup> Poulsen, Strand and Thomsen (n 65).

<sup>316</sup> Van der Elst (n 63).

<sup>317</sup> Chizema (n 169).



interests and they will discipline managers to meet their interests. Thus, company managers will increase shareholder value in the form of larger dividends values. The shareholders to exercise shareholders powers means of having personal interests in corporations<sup>318</sup>.

The concept of increasing shareholders power is with misleading assumption to provide benefits for all shareholders. More powers to shareholders means to influence management for personal interests. Moreover, it can be assumed that shareholders will use firm and other shareholders money to benefit their interests. Furthermore, introducing policies or reforms in corporate governance to increase powers of shareholders will harm shareholders wealth and firms as well<sup>319</sup>.

Bebchuk studied the division of powers between boards and shareholders of publicly-traded companies, empirical analysis showed that shareholders were not able to exercise their powers in circumstances and events where management did not favour shareholders actions. He also suggests that shareholders be given more powers to intervene in corporate decisions. For example the:

*“Power to intervene in game-ending decisions (to merge, sell all assets, or dissolve) could address management's bias in favour of the company's continued existence. Power to intervene in scaling-down decisions (to make cash or in-kind distributions) could address management's tendency to retain excessive funds and engage in empire-building”<sup>320</sup>.*

Deakin et al. have used data from 28 countries for the period covering mid-1990s to the early 2000s to study the impact of strengthening shareholders rights and the associated impact on stock markets. The study found that laws passed during 1990s to 2000s to empower shareholders did not show expected consistency on the financial market and may have negative results<sup>321</sup>. It can be argued that introducing new laws to empower shoulders has not shown positive results due to the lack of studies that analyse the practices of shareholders exercising their rights prior to introducing new laws.

Proponents of shareholder empowerment argue that giving more powers to shareholders will not be problematic. The real problem lies in how existing powers can be tested or verified in order to judge their effectiveness or not, do shareholders are effectively exercising their rights to improve corporate governance practices? Do shareholders know their powers? Or need to educate them about their rights? Without evaluating existing powers giving more powers to

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<sup>318</sup> Anabtawi (n 80).

<sup>319</sup> *ibid*.

<sup>320</sup> Bebchuk (n 94).

<sup>321</sup> Deakin, Sarkar and Siems (n 15).

shareholder will just create only complex corporate governance practices but without yielding a positive results.

### 3.6: Shareholders Protection

Australian corporate law has gone through massive changes to improve shareholders rights in a corporate governance structure. The challenge to protect rights is being fought on two fronts:

- shareholders against managers; and,
- minority shareholders against other shareholders<sup>322</sup>.

Shareholders protection has become difficult in those countries, where it is in fashion that controlling shareholders expropriate minority shareholders. In likewise circumstances, corporate governance provides a set of mechanisms for the protection of outsider investors from expropriation by managers and controlling shareholders<sup>323</sup>.

Siems has used 10 variables to measure the shareholders protection in 20 markets. He noted that the level of shareholders protection in common law countries is comparatively similar and that developed countries are more active in protecting shareholders than developing countries<sup>324</sup>.

The empirical study of La Porta et al. analysed the protection of investors' rights in civil and common law jurisdictions in 49 markets. To measure shareholders rights and their protection, the study used investors voting powers or corporate voting laws for analysis, the comparative results showed that variables are statistically not significant. La Porta et al. argued that in practice shareholders exercise their powers by voting on corporate issues and in theory, academics use voting procedure to evaluating shareholders rights<sup>325</sup>. The question for the current research is how shareholders in Australia use their voting and proxy voting results for effective engagement and to what extent does shareholders engagement impact on corporate decision making rights at AGMs.

In another study, Anderson et al. assessed the development of shareholders and creditors protection under Australian law during the period 1970–2010. To evaluate shareholders protection Anderson's et al. sample included 60 items representing of shareholders rights, and two indexes. The first index contained 42 items to measure shareholders powers in general meetings, and the second index contained 18 items to measure the number of matters in

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<sup>322</sup> Mitchell, Donnell, Ramsay and Welsh (n 10).

<sup>323</sup> *ibid*.

<sup>324</sup> Mathias M. Siems, 'Shareholder protection around the world (Leximetric II)' (2008) 33 Del. J. Corp. L. 111- 147

<sup>325</sup> Porta, Silanes, Shleifer and Vishny (n 41).

relation to general meetings<sup>326</sup>. The present study has grouped AGM resolutions in 26 groups (refer to Appendix C) to evaluate shareholders rights in practice. The question arise how much concerns shareholders shown to exercise their voting rights at AGM agendas in ASX 200 over the period of five years (2014–18). Moreover, to study the resolutions which attract more against and for votes from 26 AGMs resolution groups during study period.

Van der Elst has classified and evaluated the development of shareholders rights and determined the relationship between shareholders rights and ownership structure in six European countries. The sample for the study was of more than 1,800 listed companies. The findings found no clear evidence of a relationship between shareholders rights and ownership structure<sup>327</sup>.

Another study by van der Elst which has measured the association between development of shareholders rights and ownership structure. The study addressed shareholders rights and ownership structure in six European countries. He found that the over the period of 15 years shareholders rights grew gradually. The results showed that development of shareholders protection rights have less influence on ownership structure and the other variables like: investment environment, foreign direct investment schemes, or the interests of specific activist shareholders<sup>328</sup>.

Countries with insufficient laws to protect investors tend to have poorer-performing financial markets<sup>329</sup>. Two factors appear to influence shareholders' investment policies.

- First, is number of shareholders rights offered by legal system of country,
- Second, the dispersed ownership is envisaged in those countries where shareholders have better legal protection of shareholders rights.

It can be compelled that ownership structure depend on shareholders rights protection laws. Jurisdictions with weak shareholders protection will be with constructed ownership and strong shareholders protection will be with dispersed ownership structure<sup>330</sup>.

### **3.7: The Shareholders and Directors and Their Rights**

A proper division of power between shareholders and the board of directors is essential for a company's success. The board's responsibility is to make business decisions and meet

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<sup>326</sup> Anderson, Welsh, Ramsay and Gahan (n 46).

<sup>327</sup> Van der Elst (n 34).

<sup>328</sup> Christoph van der Elst, 'The influence of shareholder rights on shareholder behavior' (2010) (1) Corporate Finance and Capital Markets Law Review 50-62

<sup>329</sup> Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert Vishny 'Investor protection and corporate valuation' (2002) 57 (3) The Journal of Finance 1147-1170

<sup>330</sup> Van der Elst (n 34).

shareholders rights to monitor the board's behaviour<sup>331</sup>. In corporate theory, the relationship between shareholders and corporations has changed over time and in different jurisdictions. The division of powers is determined by the level of shareholders participation in corporate governance and the level of shareholders' interests in their companies' corporate governance<sup>332</sup>.

Shareholders desire solid returns on their investments. The relationships between shareholders, as well as between shareholders and management are important for the performance of the company. Conflicts of interests between the parties may affect company performance<sup>333</sup>.

The two main organs of power in a company are the board of directors and general meeting. The main statutory role of the AGM is to appoint and remove the directors and, in some cases, approve their remuneration and to change the constitution<sup>334</sup>.

Bebchuk distinguished between directors and shareholders powers. His stance was that increasing the directors' decision making powers is problematic and giving decision making powers to shareholders will improve governance of companies and also will be helpful to resolve corporate issues of companies<sup>335</sup>.

Tibbs et al. studied the benefits that shareholders get from corporate misconduct and found that shareholders financial benefits from corporate misconducts when these misconducts are publicly disclosed<sup>336</sup>. It can be questioned that in occurrence of misconduct, do shareholders get benefits or do companies facilitate shareholders to not to make noise against them.

Hutton et al. explored the notion that modern company managers align their interests with shareholders' interests only to avoid conflicts of interests and to maintain consistent business growth<sup>337</sup>. In circumstances, where shareholders and director's interests' conflict and directors refuse to favour shareholders, the companies must act as representative democracies where shareholders can overrule directors and select new team of directors that will accept and implement their proposed changes<sup>338</sup>.

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<sup>331</sup> Van der Elst (n 56).

<sup>332</sup> Jennifer G. Hill, 'The Rising Tension between Shareholder and Director Power in the Common Law World' (2010) 18 (4) *Corporate Governance: An International Review* 344-359

<sup>333</sup> Meltem Karatepe Kaya, 'Shareholders Rights and Remedies Related to Corporate Governance Principles' [2019] *Corporate Governance: Search for the Advanced Practices* 48-51

<sup>334</sup> John Farrar and Pamela Hanrahan, *Corporate Governance* (LexisNexis Butterworths Australia, 2017) 125

<sup>335</sup> Lucian A. Bebchuk, 'Letting shareholders set the rules' (2005) 119 *Harv. L. Rev.* 1784- 1813

<sup>336</sup> Samuel L. Tibbs, Deborah L. Harrell and Ronald E. Shrieves, 'Do Shareholders Benefit from Corporate Misconduct? A Long-Run Analysis' (2011) 8 (3) *Journal of Empirical Legal Studies* 449-476

<sup>337</sup> Hutton, Mayer and Schneider (n 35).

<sup>338</sup> Bebchuk (n 335).

The decision-making powers in corporate governance are vested in the directors – although amending the company constitution and mergers still requires shareholders' approval at a general meeting. Shareholders decision making is not efficient because the shareholders are not able to properly study the information about the company's governance while making decisions. Decisions are based on directors' recommendations and media hype. Also, decision making powers do not enable shareholders to address all the important issues<sup>339</sup>.

Boros has posed the question 'who has right to manage the company?' and stated that the company constitution and court verdict support the argument that managing the company is the board primacy, further, the writer has analysed the court opinion in Australian and UK's corporate law context given in *John Shaw & Sons (Salford) Ltd v Shaw*<sup>340</sup> as:

*"shareholders unhappy with the way that the board is exercising its management power should either change the allocation of power in the company's constitution or replace the directors".*

Boros concluded that the first part of court verdict can be established when veto power be given to shareholders in annual meetings and explained it further that the power to propose changes or alternation to company constitution means that at least to ensure that this resolutions of alternation be subject to debate. The second part of the opinion, the writer suggested it as straightforward subject to have enough voting powers and will to replace the directors. Moreover, in listed companies' institutional shareholders hold majority of voting power and they did not prefer direct interactions at general meetings, but they use their powers for close door interactions with investee companies. Hence, the individual or minority shareholders cannot introduce changes without institutional investor's supported board composition<sup>341</sup>. In current study, the large shareholders divided into three categories according to their share ownership with voting rights to study the impact of share ownership on corporate decision practices during 2014-18.

Shareholders power to remove directors is supported by the notion that directors are selected with responsibility to serve the shareholders' interests. The directors' selection phenomenon shows that corporate law and corporate governance does not have a legitimate mechanism to hold the board accountable for their practices. Further argument which evaluate the shareholders power to remove and hold board accountable is valuable if these powers are to be used to improve corporate performance and shareholders value<sup>342</sup>.

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<sup>339</sup> Van der Elst and Lafarre (n 195).

<sup>340</sup> [1935] 2 KB 113

<sup>341</sup> Elizabeth Boros, 'How Does the Division of Power Between the Board and the General Meeting Operate' (2010) 31 Adelaide Law Review 169-185

<sup>342</sup> Lucian A. Bebchuk, 'The myth of the shareholder franchise' [2007] Virginia Law Review 675-732

Shareholders power to elect and remove directors and hold them accountable, corporate performance and shareholders value are fundamental elements in the relationship between corporations and shareholders. Currently, there is no legal mechanism to evaluate shareholders rights in practice. This research project intends to explore how shareholders are exercising their existing rights.

In 2005, the issue of directors' duties under the Act was referred to the Corporations and Markets Advisory Committee (CAMAC) by Hon Chairs Pearce MP, as per letter to CAMAC:

*"The issue concerns the extent to which the duties of directors under the Corporations Act 2001 should include corporate social responsibilities or explicit obligations to take account of the interests of certain classes of stakeholders other than shareholders"*<sup>343</sup>.

McConvill addressed this letter as: in Australian laws, duties of directors remained unchanged. To address the issues in the letter, the main duty of directors was to address the best interests of the company. Acting in best interests of the company means to justify the interests of other stakeholders considered by company and not only of shareholders. Further, the writer commented that corporate culture is moving towards stakeholders' engagement, to accomplish long-term sustainable growth there is need to consider stakeholders' considerations at the decision-making stage of companies<sup>344</sup>. Most of the discussion is about empowering or engagement or consideration of stakeholders or shareholders with aim of attaining long-term sustainable company growth, but eliminating shareholders interests and giving priority to other stakeholders' interests be a good discussion but practically it can be difficult to eliminate one organ of company to priorities other organ but need to reduce conflicts of interest and prioritise long-term and sustainable success of the company. Need not to increase director's duties but need to develop a mechanism where we can study that do shareholders are exercising or using their rights effectively or do stakeholders interested to be active to play their role if powers given to them.

The role and identity of shareholders is ambiguous and trying to clarify it will bring about regulatory consequences and new trends in corporate law. The golden discussion of Berle and Means defining shareholders as powerless became the focal point for shareholders protection in corporate law<sup>345</sup>.

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<sup>343</sup> The letter paragraph Quoted by James McConvill, 'Directors' duties to stakeholders: a reform proposal based on three false assumptions' (2005) 18 (1) Australian journal of corporate law 88-102

<sup>344</sup> *ibid.*

<sup>345</sup> Hill (n 82).

### 3.8: Balance of Power and Shareholders

Ryan, Buchholtz and Kolb have defined corporate governance as: “the roles, responsibilities, and balance of power among executives, directors and shareholders”<sup>346</sup>. According to Van der Elst and Lafarre:

*“the general meeting of shareholders, which can be considered legally as the acting principal in the classical corporate governance principal agency relationship, can become a fast and lean actor that not only can be a driver for a modernised relationship between the board of directors and the shareholders, it can open a debate for a new equilibrium of the division of powers between the shareholders and the board of directors”<sup>347</sup>.*

Voting rights are assumed to be an essential tool to balance the interest of shareholders, the board and company management. Moreover, shareholders voting is an important mechanism for shareholders to make their voices heard on AGMs resolutions<sup>348</sup>.

Striking the right balance, as previously discussed, is key<sup>349</sup>. Bebchuk suggests that careful reconsideration of the allocation of powers between management and shareholders be done on merit. Increasing shareholders powers will be of benefit to them and it may bring about improvements in corporate performance, benefiting the company and its directors<sup>350</sup>. As such, these measures are viewed as being more constructive empowering boards<sup>351</sup>.

Shareholders monitoring function and their levels of activism are important discussions in corporate governance. These concepts are essential in moderating the balance of power between shareholders and company directors. A proper division of power between shareholders and board of directors is essential for company’s success. The board of director’s responsibility is to take mandatory business decisions and shareholders with the rights to monitor the board’s behaviour<sup>352</sup>.

Shareholders rights depends on company bylaws (company constitution and shareholders agreements) vary from company to company. The powers in companies depends on governance rules. The extreme example of shareholders power is to replace directors quickly and easily. Shareholders preference accept limitations on their powers with the hope to maximise their wealth. Gompers et al. has found that there is no clear evidence about the balance of power in governance. Theoretically, there is no clear answer explaining and

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<sup>346</sup> Goranova and Ryan (n 37) 104.

<sup>347</sup> Van der Elst and Lafarre (n 195).

<sup>348</sup> Van der Elst (n 59).

<sup>349</sup> Justin Fox and Jay W. Lorsch, ‘What Good are Shareholders?’ (2012) 90 (7/8) Harvard Business Review 49-57

<sup>350</sup> Bebchuk (n 94).

<sup>351</sup> Bebchuk (n 335).

<sup>352</sup> Van der Elst (n 56).

defining the balance of power<sup>353</sup>. Regulations and bylaws of firms define shareholders rights and to protect shareholders wealth from managers by defining restrictions on their powers. The balance of power between managers and shareholders can be reformed through regulations<sup>354</sup>.

The balance of power in the company raises the question on the relationship between company at general meeting and the board of directors. The powers (of bodies involved in the business of the company) to control the company are defined in the law (corporate law), in the company's articles of association and in its memorandum (company constitution). The question is 'who (board and shareholders) has more powers to control the company and what will be the situation if one misuses their powers to disadvantage to other?'<sup>355</sup>

In corporate world, lack of transparency, weak corporate democracy, discrepancies between shareholders and management interests and objectives can be matters of concern for shareholders. Mathur et al. suggest that there are two reasons for this.

*"first, in the real world, characterised as it is by performance linked compensation plans and information asymmetries, management may be motivated to undertake lobbying investments that may boost short run performance – and hence their payoff – at the cost of long-term value creation for shareholders. The second reason for the concern is that in the pursuit of personal interests – political connections and positions, promoting political ideologies/preferences, etc. – management may use lobbying expenses in a wasteful manner, yielding neither short term nor long term value gains"*<sup>356</sup>.

The role of shareholders and directors as: "they constitute the yin and yang of corporate law"<sup>357</sup>. Hill stresses the need for a balance of power between both parties, but she highlights that their attention should focus on considering modern commercial realities rather than following the rigid and outdated approaches of commercial world<sup>358</sup>. The principle of balance of power is workable only if shareholders rights are studied and evaluated to understand and explain their role in modern corporate world. This research project is important because its findings will explain the real picture of shareholders role of executing their powers and rights in Australian listed companies.

Ramsay has compared the role of shareholders the market regulator to enforce corporate rights and duties. He suggests that a balance is required regarding enforcement of corporate

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<sup>353</sup> Gompers, Ishii and Metrick (n 11).

<sup>354</sup> Jiraporn and Davidson (n 14).

<sup>355</sup> Daniel (n 33).

<sup>356</sup> Ike Mathur, Manohar Singh, Fred Thompson and Ali Nejadmalayeri, 'Corporate governance and lobbying strategies' (2013) 66 Journal of Business Research 547–553

<sup>357</sup> Hill (n 82).

<sup>358</sup> *ibid.*



rights between shareholders and ASIC as the corporate watchdog is more actively involved in corporate monitoring than shareholders in Australia<sup>359</sup>.

Hill has argued that aggregate theory of corporation identifies that modern corporate law “needs to give greater recognition to organisations themselves as legal persons and corporate actors”<sup>360</sup>. Her recommendations stated that more comparative research projects must be undertaken, not of the laws that govern shareholder rights, but of their operations in practice<sup>361</sup>. Nowak and McCabe too suggest that further research is required into because of the diversity of the institutions in the Australian market<sup>362</sup>. This research project will study the ways shareholders rights are in operation in ASX 200 specifically control and decision making rights by voting and proxy voting at AGMs during the period 2014–18.

### 3.9: Corporate Governance and Corporate Law

The principal of agency law is that shareholders have a formal right to control their agents and capability to overrule the decisions of board<sup>363</sup>.

Current corporate governance arrangements are a game of contracts. Managers have contracts with their shareholders and managers will be in breach of their contracts if they consider the concerns of other stakeholders. The contractual obligations are more ideological than practical<sup>364</sup>.

The OECD has defined corporate governance as:

*“Involve[ing] a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring”<sup>365</sup>.*

Sir Adrian Cadbury has defined corporate governance in The Cadbury Report as:

*“corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is*

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<sup>359</sup> Ramsey (n 49).

<sup>360</sup> Hill (n 103).

<sup>361</sup> Hill (n 332).

<sup>362</sup> Nowak and McCabe (n 177).

<sup>363</sup> *Isle of Wight Rly Co v Tahourdin* (1883) 25 Ch D 320 Quoted by Hill (n 103).

<sup>364</sup> Lorraine E. Talbot, 'Shareholder entitlement, shareholder primacy, shareholder empowerment' (2010) Warwick School of Law Research Paper No. 2010/10 <<http://ssrn.com/abstract=1605252>> accessed 18 November 2018

<sup>365</sup> OECD Principles of Corporate Governance 2004 <<http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>> accessed 21 May 2020

*in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting"*<sup>366</sup>.

Hon Justice Owen has defined the subject of corporate governance as:

*"corporate governance – as properly understood – describe the framework of rules, relationships, systems and processes within which authority is exercised and controlled in corporations. Understood in this way, the expression 'corporate governance' embraces not only the models or systems themselves but also the practices by which that exercises and control of authority is in fact effected"*<sup>367</sup>.

Hopt has defined the history of corporate governance as:

*"The history of corporate governance is also history of crises and scandals"*<sup>368</sup>.

Hill has positioned Australian experience of financial crises as:

*"Australia's experience of the global financial crisis is a reminder that financial markets do not operate in a vacuum, but rather form part of a complex economic, legal and regulatory ecosystem"*<sup>369</sup>.

Farrar, however, argues that modern corporate governance mechanisms are trying to define the duties of shareholders within the sphere of soft law (self-regulation). While Farrar states that giving more powers to shareholders in the company constitution is only possible theoretically he argues for provisions to be included in the company constitution to inhibit the powers of shareholders<sup>370</sup>.

Financial crises have cultivated behaviour that ensures shareholders and insiders gain maximum financial benefit. In the case of Australian shareholder context, financial crises have exposed weaknesses in shareholder empowerment. Therefore, given the current stress in financial markets, it is topical to investigate current shareholders powers and how they are used in practice, before introducing greater powers.

McConvill has constructed an argument that to move from 'corporate governance' to 'positive corporate governance' requires new legislation, regulations. Law is not the only aspect

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<sup>366</sup> The Cadbury Report 'The Financial Aspects of Corporate Governance' <<https://ecgi.global/sites/default/files//codes/documents/cadbury.pdf>> accessed 20 May 2020

<sup>367</sup> The Hon Justice Owen Commissioner, The HIH Royal Commission Volume 1 – A corporate collapse and its lessons <<https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>> accessed 20 May 2020

<sup>368</sup> Klaus J. Hopt, 'Comparative Corporate Governance: The State of the Art and International Regulation' (2011) Law Working Paper No. 170/2011 <<http://ssrn.com/abstract=1713750>> accessed 15 October 2018

<sup>369</sup> Jennifer Hill, 'Why Did Australia Fare So Well In The Global Financial Crisis?' (2012) Sydney Law School Research Paper No. 12/35 <<http://ssrn.com/abstract=2063267>> accessed 14 August 2018

<sup>370</sup> Farrar (n 27) 171.

– companies need to actively fostering corporate culture and to align themselves contemporary corporate governance objectives and thinking<sup>371</sup>.

Lipton and Herzberg view corporate governance through a lens best practice, defining it as:

*“Corporate governance best practice seeks to provide the mechanisms which align the interests of management with those of shareholders. The development of increased interest in corporate governance reflects higher expectations by the public and investment community that greater efforts be made by listed public companies to develop structures and procedures so as to ensure management is effective and acts in the interests of shareholders and adopts appropriate standards of corporate behaviour”<sup>372</sup>.*

The theme of the public’s views and expectations is explored by Deakin who states:

*“What we are witnessing is a shift in the content of the shareholder value norm, so that it comes to represent the idea that shareholders exercise their powers not as the representatives of the market, but as agents of society as a whole. The corporate governance of the future will be centrally concerned with how this idea is worked out in practice”<sup>373</sup>.*

Hutton et al. has discussed that today’s companies seem profitable because of implicit contracts. Work efficiency is to gain and quickly react on opportunity to achieve maximum profits for the company. If directors will not act in this way, they will be replaced<sup>374</sup>. Martin debated as: “the corporation is a rent extraction vehicle for the shortest-term shareholders”<sup>375</sup>. The consensus seems to be that companies aim to generate profit for shareholders, those same shareholders can replace managers if returns are insufficient. This may lead to short-term behaviour by shareholders as many companies are better placed than banks to offer high yield on short-term investments. Therefore, a check and balance approach to assess current shareholder rights is necessary. The literature is lacking an approach to assess and understand how shareholders exercise their rights. This research intends to fill this gap in the knowledge in the context of ASX 200 companies.

The selfish interests of shareholders was touched on by Hutton. Carney continues to explore the theme, however he argues that institutional investors are not considered while shaping corporate law<sup>376</sup>. Despite this, institutional investor concerns are addressed in companies’ constitutions, bylaws and in the provisions of shareholders agreements. Developments in soft law in corporate governance (corporate social responsibility, social licence, directors and

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<sup>371</sup> James A. McConvill, ‘Positive corporate governance’ (2006) 6 J. Bus. & Sec. 51-70

<sup>372</sup> PHILLIP LIPTON & ABE HERZBERG Quoted by ibid.

<sup>373</sup> Simon Deakin, ‘The coming transformation of shareholder value’ (2005) 13 (1) Corporate Governance: An International Review 11-18

<sup>374</sup> Hutton, Mayer and Schneider (n 35).

<sup>375</sup> Martin Wolf Quoted by Hutton, Mayer and Schneider (n 35).

<sup>376</sup> WILLIAM J. CARNEY Quoted by Strine (n 81).

gatekeepers, corporate culture, institutional investors and self-regulation) provide evidence that the relationship between corporate law and regulations, corporate governance principles and practices is not perfect. Such developments points towards a most 'post-law' approach. This involves less dependence on rules-based systems and institutions while placing greater reliance on putting public and political pressure on companies and the officers to shape behaviour<sup>377</sup>. Pressure may be exerted in the form of peer pressure, whistleblowing, or encouraging individual and corporate accountability<sup>378</sup>.

The corporate governance provisions can significantly affect shareholders- empirical evidence endorse this phenomenon. "Shareholder advisory firms, including industry leader ISS, have put forward indexes of good corporate governance based on a massive number of provisions, and the development and use of these indexes has put pressure on firms to adjust their arrangements in ways that would improve their index scores"<sup>379</sup>. So, when firms go to improve index than manipulation of facts can harm the position of shareholders either due to fabrication of facts and real data by the firms to meet index requirements etc.

### **3.10: Theories Associated With Shareholders Rights**

Governance theories address the relationship between shareholders and the directors and managers of firms. The firm is a link between individuals (owners and managers) involved in renegotiation of the contracts on the terms and conditions acceptable to both parties<sup>380</sup>. In order to conceptualise how shareholders exercise their rights in practice this section will review the literature on two theories. Agency theory – which helps to provide a greater understanding of the principal-agent relationships and how conflicts of interest are handled. The second theory is stewardship theory – which focuses on the legal perspectives and how organisational needs are prioritised over those of shareholders.

#### **3.10.1: Agency Theory**

Agency theory is defined as: "the relationship between the principals, such as shareholders, and agents such as the company executives and managers"<sup>381</sup>.

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<sup>377</sup> Pamela Hanrahan, 'Corporate governance in these 'exciting times'' (2017) 32 Australian Journal of Corporate Law 142-161

<sup>378</sup> Roman Tomasic, 'Exploring the limits of corporate culture as a regulatory tool — The case of financial institutions' (2017) 32 Australian Journal of Corporate Law 196- 221

<sup>379</sup> Bebchuk, Cohen and Ferrell (n 175).

<sup>380</sup> Armen A. Alchian and Harold Demsetz, 'Production, Information Costs, and Economic Organisation' (1972) 62 (5) American Economic Review 777-795

<sup>381</sup> Haslinda Abdullah and Benedict Valentine, 'Fundamental and Ethics Theories of Corporate Governance' (2009) 4 Middle Eastern Finance and Economics 88-96

In corporations the owners are principals, and directors are agents<sup>382</sup>. Daily et al. argued two factors for the prominence of agency theory in corporate governance. First, agency theory is simple, it reduces the participants in corporations to two – directors and shareholders. The theory assumes that both of the participants are clear and rational about their interests. Second, agency theory advocates that all the participants linked with corporation are self-interested<sup>383</sup>.

Jensen and Meckling discussed how agency theory helps to explain the governance structure of corporations and to manage the issues between owners and management<sup>384</sup>. Under agency theory the cost (agency cost) of monitoring the activities of agents can be used to explain the performance of managers<sup>385</sup>.

Jensen and Meckling stated that:

*“monitoring should be undertaken by the owner or their 'representative' (at owner's cost) up to the point at which the marginal cost of monitoring equates to the increment to wealth resulting from reducing the adverse activities of the manager”<sup>386</sup>.*

The agency relationship is based on the unwritten contracts, specifying the activities which manager can perform and mechanism of dividing the returns between managers and shareholders<sup>387</sup>. Clarke specified that agency theory has induced the nexus of firm for contract negotiation<sup>388</sup>. Agency theory provides optimal behaviour or outcome-based contracts and considers the outcomes of these contracts between principals and agents<sup>389</sup>. The argument is that the principals and agents may have different self-interests and these interests may conflict.

At the time of finalising the contract, it is not possible to predict the possibilities of achieving the expected outcome implied in the contracts. The residual control rights allocated by the principal are obscure because the right to make decisions is not anticipated in the contract.

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<sup>382</sup> Mallin (n 25) 3.

<sup>383</sup> Catherine M. Daily, Dan R. Dalton, and Albert A. Cannella, Jr. 'Corporate Governance: Decades of Dialogue and Data' (2003) 28 (3) Academy of Management Review 371-382

<sup>384</sup> Jensen and Meckling quoted by Nowak and McCabe (n 177).

<sup>385</sup> *ibid.*

<sup>386</sup> Michael C. Jensen and William H. Meckling, 'Theory of the firm: Managerial behavior, agency costs, and ownership structure' (1976) 3 Journal of Financial Economics 305-360

<sup>387</sup> Thomas Clarke, International Corporate Governance: A comparative approach (2nd edn, Taylor & Francis Group 2017) 36

<sup>388</sup> *ibid.*

<sup>389</sup> Kathleen M. Eisenhardt, 'Agency Theory: An Assessment and Review' (1989) 14 (1) Academy of Management Review 57-74

Managers are given the residual rights to allocate the funds but the principal can restrict agents from misallocating investors' funds<sup>390</sup>.

Berle and Means argued that the modern corporations face issues between owners and management<sup>391</sup>. Agency theory is linked in this context to 'separation of ownership' from control. In this scenario the shareholders are owners and managers are principals<sup>392</sup>.

In 1838 Smith has identified the separation of ownership from control as follows:

*"the directors of such companies (joint stock companies) however being the managers rather of other people's money than of their own, it cannot well be expected that they should watch over it with anxious vigilance (as it were their owners)"*<sup>393</sup>.

Padilla argued that "interestingly, there is no fundamental difference between the agency argument and the separation-of-ownership-and-control argument"<sup>394</sup>.

In agency theory, both the principal and the agent look for maximum benefit with minimal least expenditure. The rational approach of principal and agent is to seek opportunities which will give the greatest increase to their individual value<sup>395</sup>.

### **3.10.1.1: Agency Theory and Shareholders**

Agency theory may be applied to issues at different levels: agency structure is applicable to macro level issues, such as regulations, and at the micro level, for example in situations of self-interest (blame, lying, and impression management)<sup>396</sup>.

The roles of each actor as a principal or as an agent are less clearly defined. In hierarchies of control in firms, one person may perform in multiple roles. For example the vice president of the company simultaneously performs agent and principal role- agent of the president of the company and principal of managers who are under his or her control<sup>397</sup>. For this study the principals are shareholders and agents are managers and their relationship will be considered according to the agency theory to study shareholders engagement in corporate decision making of corporation at AGMs.

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<sup>390</sup> Clarke (n 387) 38.

<sup>391</sup> Berle and Means quoted by Nowak and McCabe (n 177).

<sup>392</sup> Mallin (n 25) 2.

<sup>393</sup> Smith quoted by Mallin (n 25) 15.

<sup>394</sup> Alexandre Padilla (2002) "Can Agency Theory Justify The Regulation Of Insider Trading" (2002) 5 (1) The Quarterly Journal of Austrian Economics 3-38

<sup>395</sup> James H. Davis, F. David Schoorman and Lex Donaldson, 'Toward a Stewardship Theory of Management' (1997) 22 (1) The Academy of Management Review 20-47

<sup>396</sup> Eisenhardt (n 389).

<sup>397</sup> David E. M. Sappington, 'Incentives in Principal- Agent Relationships' (1991) 5 (2) Journal of Economic Perspectives 45-66

Agency theory can be used to enhance the relationship between the ownership and management structures. Moreover, agency theory is a good model where there is conflict; it may be used to mitigate the conflicts between company management and owners to harmonise their goals<sup>398</sup>.

Agency theory is applicable in situations where contracting problems are difficult. These situations include;

- substantial goal conflict between principals and agents, such that agent opportunism is likely (e.g., owners and managers, managers and professionals, suppliers and buyers);
- sufficient outcome uncertainty to trigger the risk implications of the theory (e.g., new product innovation, young and small firms, recently deregulated industries); and
- unprogrammed or team-oriented jobs in which evaluation of behaviours is difficult<sup>399</sup>.

In the context of agency theory the AGM is a significant corporate law tool for reducing the agency problems that may exist between shareholders and managers<sup>400</sup>. In the context of corporate governance, however, the AGM is important because it can help to reduce agency conflict between agents and principals<sup>401</sup>.

Agency theory is a topical discussion in corporate law and shareholders rights, as it is based on unwritten contracts, allocation of residual rights and it addresses the conflicts of interests (principal and agents). The theory is not perfect – the problems with agency theory are discussed in the next section.

### **3.10.1.2: Problems with Agency Theory**

The reason behind the agency problems is potential conflicts of interest between shareholders and managers<sup>402</sup>. Ross has explored the issues in agency relationship (principal and agent) arise like; “in a particular domain of decision problems”<sup>403</sup>. As per this argument the issue in the agency relationship starts from the decision making stage, further it can be debated, that the decision making powers may be used in negative or in self-interest. Rather than interests of shareholders or the entity within themselves may be different.

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<sup>398</sup> Abdullah and Valentine (n 381).

<sup>399</sup> Eisenhardt (n 389).

<sup>400</sup> Van der Elst and Lafarre (n 195).

<sup>401</sup> Jensen and Meckling Quoted by Carrington and Johed (n 244).

<sup>402</sup> Ying (n 306).

<sup>403</sup> Stephen A. Ross, ‘The Economic Theory of Agency: The Principal’s Problem’ (1997) 63 (2) The American Economic Review 134-139

The academics are anxious to resolve two problems of agency theory which arise in the agency relationship. The first problem is when the agent and principal have different goals and desires. It can become expensive and difficult for a principal to identify the activities of an agent, and to verify that agent has behaved properly or not. The second problem is of risk sharing. This problem arises when the agent and principal have different approaches towards risk and they have different preferences and actions to handle the risk<sup>404</sup>.

Jiraporn applied agency theory to a study of shareholders rights in circumstances when firms seek to repurchase shares. He and concluded that agency conflict arises where there is divergence of ownership and control. Also, the firms where shareholders rights are restricted and face high agency cost due to managers exploiting weak shareholders rights for their own private benefits.

There are no agency issues when the interests of principals and agents are same. The issue of agency cost came as:

- When there is conflict of interest between principals and agents,
- The agents will use the opportunities to maximise their own utilities at the expense of their principals.
- The substantial issue with principal and agent relationship is if the agents do not have or cannot establish the same interest as of principals<sup>405</sup>.

If the manager as agent alien their interests with principals because company's interests are important. So, shareholders as principals have a single agenda to maximise their utilities and if their interests do not meet they can sell their shares and invests to some other company, in such circumstances the interests of principals be aligned with company's interests and to ignore interests of shareholders.

Sappington has highlighted the mechanism of hiring agents by the principal. The principal hires the agents to perform specific tasks for him/her. In the hiring procedure the principal consider specific skills, knowledge and ability of the agent to perform specific work for principal. In this mechanism the main question of apprehension is how the principal can motivate their agent to perform or work to meet the best interests of the principal. Monitoring the activities of agent by the principal is very much difficult and costly<sup>406</sup>. Hence, it can be claimed on the base of Sappington findings that monitoring the activities of the agent is very difficult and costly. Which means, that law is only way to overcome the monitoring difficulties, but how? This question is unaddressed in literature.

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<sup>404</sup> Eisenhardt (n 389).

<sup>405</sup> Davis, Schoorman and Donaldson (n 395).

<sup>406</sup> Sappington (n 397).



### 3.10.1.3: Literature Suggested Solutions for Agency Problems

Judge et al. suggested that agency theory advocates that for a proper governance structure, further they stated that the structural mechanism according to agency theory must be assured that the managers are closely observed and incentivised to avoid the principal agent conflicts<sup>407</sup>.

Davis et al. has emphasised that agency theory provides a useful mechanism to elaborate the principal and agent relationship in situations where the interests of the parties diverge. Interests may be re-aligned by applying a proper monitoring mechanism, and well-established compensation system for the agents to entice performance<sup>408</sup>. The rights of shareholders are defined by laws and bylaws (company constitutions and shareholders agreements). The knowledge shareholders have about their rights is also a point for consideration while discussing principal and agents relationship. This point is not addressed by existing literature.

Agency issues can be overcome largely by monitoring and observing agents incentivising the performance and by using AGMs effectively and introducing the technology to reduce the agency costs.

### 3.10.2: Stewardship Theory

The stewardship model is defined as: “one based on the manager as “steward” rather than the entirely self-interested rational economic man of agency theory”<sup>409</sup>.

Muth and Donaldson have argued that proponents of stewardship theory “focus on structures that facilitate and empower rather than those that monitor and control”<sup>410</sup>.

Etzioni considers the role of managers in stewardship theory:

*“stewardship theory holds that a manager, when confronted with a course of action seen as personally unrewarding, may comply based on sense of duty and identification with the organisation”<sup>411</sup>.*

Van Slyke views that the theory assumes:

*“long-term contractual relations are developed based on trust, reputation, collective goals, and involvement where alignment is an outcome that results from relational reciprocity”<sup>412</sup>.*

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<sup>407</sup> Judge Gaur and Kahle (n 305).

<sup>408</sup> Davis, Schoorman and Donaldson (n 395).

<sup>409</sup> Melinda M. Muth and Lex Donaldson, ‘Stewardship Theory and Board Structure: a contingency approach’ (1998) 6 (1) Corporate Governance: An International Review 5-28

<sup>410</sup> Davis, Schoorman and Donaldson (n 395).

<sup>411</sup> Atzioni A. Quoted by Muth and Donaldson (n 409).

<sup>412</sup> David M. Van Slyke, ‘Agents or Stewards: Using Theory to Understand the Government-Nonprofit Social Service Contracting Relationship’ (2007) 17 (2) Journal of Public Administration Research and Theory 157-187

Donaldson and Davis, however, see stewardship theory as a legitimate way to profit from rule breaking.

*"breaking the rule does not in fact produce the adverse consequences feared for corporate performance and returns to shareholders and is actually beneficial"*<sup>413</sup>.

Donaldson's and Davis' assertion is interesting in the context of the findings of the recent Royal Commission into the finance industry in Australia, which did not condone rule breaking for short term profit gain.

Donaldson et al. research model of stewardship theory is based on psychological and sociological characteristics for principal and steward relationship, where steward give priority to organisation and not to self-interests.

- When stewards are highly concerned about organisational agendas, serve best to organisational ends, and steward's' relation based on collective motives and lower power distance.
- The second assumption is if the choice of being steward or agent given to managers, likewise positions will depend on circumstances and perceptions regarding situation.

If manager prefer to be steward than will serve the organisational motives of maximisation which will also benefit to principals motives as well<sup>414</sup>.

Stewardship theory emphasises collective behaviour in order to achieve or realise the aims of the organisation. A steward "protects and maximises shareholders' wealth through firm performance, because, by so doing, the steward's utility functions are maximised"<sup>415</sup>.

The steward's behaviour is considered as pro-organisational (organisationally-centred) and negates self-serving behaviour. Thus, in circumstances where the interests of the steward and the principal diverge, the steward will give priority to the interests of the corporation rather than to principal. When the steward successfully improves performance of an organisation it benefits other stakeholders' as their interests are addressed as profit increases<sup>416</sup>.

Preston argued at its core, the stewardship model has a moral appeal, without moral appeal, "stewardship theory is simply a more sophisticated approach to optimised benefit-cost

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<sup>413</sup> Lex Donaldson and James H. Davis, 'Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns' (1991) 16 (1) Australian Journal of Management 49-64

<sup>414</sup> Davis, Schoorman and Donaldson (n 395).

<sup>415</sup> *ibid.*

<sup>416</sup> *ibid.*

ratios"<sup>417</sup>. Hence, the stewardship theory emphasise on company success and not the success of shareholders alone.

Under stewardship theory, executive managers are interested in doing a good job and performance as a good steward of corporate assets. Hence, the theory argue that there is no inherent problem for executive motivation. In circumstances, where the inner motivation in corporations for managers exist from executive side, the question arises that how the executives can obtain the good corporate performance as they aimed. Stewardship theory argues that "performance variations arise from whether the structural situation in which the executive is located facilitates effective action by the executive"<sup>418</sup>.

The importance of stewardship theory in corporate governance is novel because it offers a new approach to understanding the behaviour of management which may challenge the traditional role of managers and directors. For example, the theory offer new dimensions in the role of the board, in this role the board engages collectively with management and empowers managers to improve organisational outcomes<sup>419</sup>.

Van Slyke suggests that "stewards are motivated by intrinsic rewards, such as trust, reputational enhancement, reciprocity, discretion and autonomy, level of responsibility, job satisfaction, stability and tenure, and mission alignment. Fundamentally, stewardship theory relies significantly on the principal's and steward's initial trust disposition"<sup>420</sup>.

The stewardship theory facilitates the empowerment and promotes fusing the role of chairman and the CEO as it will improve the organisational effectiveness and shareholder returns compared to the philosophy that espouses the separation of those two roles<sup>421</sup>.

Hernandez has discussed the rational and motivational behaviour of leadership and further argued that these ideas promote stewardship in organisations. Further, she conceptualised stewardship as the outcome of leadership behaviour. The leadership behaviour promotes "sense of personal responsibility in followers for the long-term wellbeing of the organisation and society"<sup>422</sup>. The empirical results of Caldwell at al. research indicated that when the

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<sup>417</sup> Lee E. Preston, 'Agents, Stewards, and Stakeholders' (1998) 23 (1) The Academy of Management Review 9

<sup>418</sup> Donaldson and Davis (n 413).

<sup>419</sup> David W. Anderson, Stewart J. Melanson and Jiri Maly, 'The Evolution of Corporate Governance: power redistribution brings boards to life' (2007) 15 (5) Corporate Governance: An International Review 780-797

<sup>420</sup> Slyke (n 412).

<sup>421</sup> Donaldson and Davis (n 412).

<sup>422</sup> Morela Hernandez, 'Promoting Stewardship Behavior in Organizations: A Leadership Model' (2008) 80 (1) Journal of Business Ethics 121-128

leadership behaviour was observed trustworthy, the trust level increases and leaders who honour a high level of duties are viewed as ethical stewards<sup>423</sup>.

Organisational structure that facilitates stewardship cannot be created through formal rules<sup>424</sup>. Caldwell et al. argued that great leaders are ethical stewards. Their followers are committed where they perceive their leader has high ethical standards. Ethical stewards give importance to their duties concerned with employees, stakeholders, society and to commitment to perusal long-term wealth creation. It can be argued that if actors behave in an ethical manner and organisations have good corporate governance then there will be no issues, no scandals, no financial crises, all the actors will be happy, laws will be fully obeyed, rights of firms, employees, stakeholders shall be fully protected and no misuse of power or allegations of infringement of other rights.

Unfortunately, all the aforementioned points do exist in some form, which means that it is not possible to achieve 100% ethical behaviour all year round. The idea of ethical stewards' is a good discussion point but they do not exist in practice.

### **3.10.3: Comparative View of Agency Theory and Stewardship Theory**

The difference between agency and stewardship theories is the behaviour and role of agents<sup>425</sup>. Stewardship theory argues for board independence and this concept directly challenged by agency theory<sup>426</sup>. Most Australian companies separate the role of chairman and CEO. This suggests that agency theory is more widely followed than stewardship theory (which prefers the roles are fused) in Australian companies.

Agency theory is pivotal in addressing on conflict of interest between managers and owners. Stewardship theory argues that conflict of interest lies between "loyalty to the focal company's shareholders and other financial interests"<sup>427</sup>. Financial interests was at the forefront of Donaldson's and Davis' research which again raised the topic of fused Chairman/CEO roles. They argue that by control being vested in one person shareholders' interests are maximised<sup>428</sup>.

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<sup>423</sup> Cam Caldwell, Linda A. Hayes and Do Tien Long, 'Leadership, Trustworthiness, and Ethical Stewardship' (2010) 96 (4) Journal of Business Ethics 497-512

<sup>424</sup> Hernandez (n 422).

<sup>425</sup> Gregory Francesco Maassen, An International Comparison of Corporate Governance Models: A Study on the Formal Independence and Convergence of One-tier and Two-tier Corporate Boards of Directors in the United States of America, the United Kingdom and the Netherlands (2nd ed, 2002, Spence International) 64)

<sup>426</sup> Muth and Donaldson (n 409).

<sup>427</sup> *ibid.*

<sup>428</sup> Donaldson and Davis (n 413).

Albanese et al.<sup>429</sup> have debated the work of Davis et al.<sup>430</sup>, their work recognised the arguments regarding principal and agent relationship in two perspectives. First, at the hiring stage the theory must focus on task performed but not on the relationship. Also, the same importance be given to both principal-agent and principal-steward relationships within the sphere of same organisation. Second, agency relationships must be viewed “through a lens that can accommodate the shifting of interest alignment. In fact, today's ‘agent’ may be tomorrow's ‘steward’, or vice versa”<sup>431</sup>.

Stewardship theory challenges the concept of agency theory as self-interest. In stewardship theory managers behave as stewards of their organisations. Lin's research supports concept of stewardship theory where CEO of the company who also holds position as chairman of the company act as steward of that company. The Lin has established the arguments based on previous stewardship theorists that, the CEOs as stewards of companies, their pro-organisational actions are best indorsed in those companies where companies' corporate governance structures give high authorities and instructions to CEOs<sup>432</sup>.

The AGM is an important event for shareholders to exercise their voting rights on proposed resolutions. As such, so, shareholders have to act as stewards of the company and act as a “sounding board for the board of directors”. Hence, stewards should disclose their stewardship activities and modes of interaction with their investees<sup>433</sup>. Stewardship theory appears to promote shareholder engagement and this supports shareholders.

#### **3.10.4: Context of Agency and Stewardship Theories**

The study of Anderson et al. shows that; “investors are engaging in more active monitoring and demonstrating a willingness to intervene in the affairs of the firms in which they invest”<sup>434</sup>. It is contended that corporate governance matters will be more reliable when performed within the law. Agency and stewardship theories cannot serve all corporate governance needs of an organisation. For example, decision-making by actors and shareholders. Also, introducing new policies, legislations, rules and regulations cannot serve the needs of improving corporate governance practices and ensuring the role of each actor for the benefit of companies collectively.

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<sup>429</sup> Robert Albanese, M. Tina Dacin and Ira C. Harris, ‘Agents as Stewards’ (1997) 22 (3) The Academy of Management Review 609-611

<sup>430</sup> Davis, Schoorman and Donaldson (n 395).

<sup>431</sup> Albanese, Dacin and Harris (n 429).

<sup>432</sup> Ying-Fen Lin, ‘Corporate Governance, Leadership Structure and CEO Compensation: evidence from Taiwan’ (2005) 13 (6) Corporate Governance: An International Review 824-835

<sup>433</sup> Van der Elst (n 59).

<sup>434</sup> Anderson, Melanson and Maly (n 419).

Nicholson and Kiel's research has applied corporate governance theories (agency theory, stewardship theory and resource dependent theories) to study the link between boards of directors and their firm's performance. They applied these theories on seven cases and found that a single theory is not able to define the board demography and firm performance adequately. They argued that each theory can explain a mechanism and not whole of corporate governance system and corporate performance in firms<sup>435</sup>. Thus, it appears that each theory has its own limitations and each helps to explain an aspect of corporate governance. Agency theory explains and emphasises the principal-agent relationship and stewardship theory focuses on the principal-steward relationship.

In corporate law, shareholders do not own anything in the company except shares, their interest is only linked with dividends and they can exercise their ownership with shares and not in the company. In legal perspective it is clear that shareholders are not the owners of the corporations<sup>436</sup>.

Agency theory is based on the relationship of principal and agent. This theory face issue of convergence and divergence of interest of principal and agent – self-interests, monitoring (agency cost) and risk sharing. The academic literature has addressed the solutions of problems with agency theory close monitoring of agents, proper monitoring mechanism and use of technology can lower the agency cost and will improve the monitoring and accountability of agents.

In agency theory conflict of interests due to divergence of interests and priorities agents' interests but in stewardship theory stewards are considered morally not to give priority to self-interests. Stewardship theory support the managerial behaviour for the success of company and motivational incentives, theory advocate the empowering of directors and reject the monitoring and control of directors. The stewards behaviour towards the corporation and not towards principal but also protect the shareholders interest and wealth maximisation.

### **3.11: Conclusion**

This chapter has provided the context of shareholders rights in practice. The role of AGMs in facilitating the execution of shareholders rights in practices. The historical perspective of AGMs, legal perspective and important features of AGMs, business of AGMs, and issues with AGMs were discussed with respect to shareholders rights.

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<sup>435</sup> Gavin J. Nicholson and Geoffrey C. Kiel, 'Can directors impact performance? A case-based test of three theories of corporate governance' (2007) 15 (4) *Corporate Governance: An International Review* 585-608

<sup>436</sup> Innocent Kerekebuna, 'Shareholders as owners of the corporation: why we should care' (2013) 18 (2) *Cov. L.J.* 19-24

Further, the concepts and importance of shareholders engagement, activism, empowerment, and mechanism of shareholders protection, were discussed. Shareholders and directors rights were reviewed and a discussion of the balance of powers in context of shareholders control and decision making rights was provided.

Both agency and stewardship theory converge, no agency issues exist if principals' and agents' interests are the same and the benefits are shared between shareholders and the firm. In steward theory the steward prioritises the organisational interests (making money), therefore, stewards also satisfy the interests of shareholders and of company as well. The AGM can be used as a good tool to overcome the issues with agency theory and stewardship behaviour of directors.

The next chapter focuses on the development of conceptual framework of this study and is based on literature reviews presented in Chapters 2 and 3.

## Chapter 4: Conceptual Framework of Study

*“Corporate charters spell out the rights of shareholders and may also contain provisions that restrict shareholder rights”<sup>437</sup>.*

### 4.1: Introduction

Chapter 2 identified the different kinds of shareholders rights exercised by shareholders in companies in which they invest. This chapter illustrates the significance of current study, and the reasons why evaluation of shareholders engagement in corporate decision making at AGMs of listed companies (ASX 200) by using their voting and proxy voting rights is important.

Chapter 2 examined the ways in which shareholders rights are described in theory, and defined in literature, as economic rights to control and decision making rights. Chapter 3 discussed the ways in which shareholders exercise their rights in Australian listed companies.

For the purpose of this study economic rights are defined as dividend value. The control and decision making rights are to vote on AGMs resolutions (refer to Appendix A) proposed by directors. The level of voting is an indicator of shareholders activism (see Chapter 3). Voting can be in person or through a proxy (see Chapter 2).

This chapter addresses the theoretical framework of the study. Two corporate governance theories namely agency theory and stewardship theory are used to explain how shareholders exercise their rights in listed companies.

This chapter is presented as follows: section 4.2 discusses the place where study takes place; section 4.3 presents theoretical framework of the study; section 4.4 discusses the conceptual framework of the study; section 4.5 explains the development of research questions and research propositions and section 4.6 presents the conclusion.

### 4.2: The Place Where the Study Takes Place

*“It is a fundamental of corporate governance that shareholders should be able to hold the board – and through the board – management to account for a company’s performance”<sup>438</sup>.*

The OECD definition of corporate governance focuses on shareholders relationship with management and the effective monitoring of companies by shareholders<sup>439</sup>. Cadbury’s

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<sup>437</sup> Jiraporn and Davidson (n 14).

<sup>438</sup> John Price, ‘ASIC on collective action by investors and voting at general meetings’ <<http://asic.gov.au/regulatory-resources/corporate-governance/corporate-governance-articles/asic-on-collective-action-by-investors-and-voting-at-general-meetings/>> accessed on 25 December 2016

<sup>439</sup> OECD Principles of Corporate Governance (n 365).



definition emphasises shareholders' level of satisfaction with companies' corporate governance and that shareholders actions is subject to annual meetings where they give approval of directors and auditors approval<sup>440</sup>. Owen definition of corporate governance concentrated on relationship, exercise of powers and control on authorities and also stress on process of powers and control is performing effectively<sup>441</sup>.

As noted above, the position of shareholders is important for economy but corporate governance theory is but silent on the way the shareholders exercise their rights and the mechanism to evaluate shareholders activism and its impact the exercise of control and decision making rights

In addition, the global financial crisis (GFC) of 2008 shows observers that the issue stems from how the market was managed. This issue needs to be readdressed. During the lead up to the GFC, shareholders put pressure on executives to yield based on short-term investment behaviour. To stop this behaviour requires amendments in the compensation mechanism and politicians refraining from enacting legislative changes that increases shareholder powers (and companies from changing their constitution)<sup>442</sup>. While Australia performed quite well, compared to other markets, the GFC highlighted weakness in its shareholders powers. Corporate governance emphasises the collective role of shareholders and boards to analyse and confirm that their companies are performing well, that they are headed in the right direction with long-term consistency. The role of institutional investors is to be a pseudo-watchdog in that they are (at an early stage) to highlight issues which may result in a loss of their investment<sup>443</sup>. The move by the ICGN to encourage institutional shareholders to actively vote at AGMs is promoted by academics. The ICGN claim that institutional investor's involvement with companies and monitoring of management activities brings about positive outcomes for governance<sup>444</sup>. Institutional investors and their advisers only use the "box-ticking" at AGM for monitoring. This in turn creates a situation whereby it is difficult for them to perform as good stewards<sup>445</sup>. The intention and interest of intuitional shareholders is to maximise profits, regardless of any long-term consequences it may cause for the company and its longevity<sup>446</sup>.

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<sup>440</sup> The Cadbury Report (n 366).

<sup>441</sup> The Hon Justice Owen Commissioner (n 367).

<sup>442</sup> William W. Bratton and Michael L. Wachter, 'The Case Against Shareholder Empowerment' (2010) 158 University of Pennsylvania Law Review 653-728

<sup>443</sup> Available at <<https://www.frc.org.uk/getattachment/e2db042e-120b-4e4e-bdc7-d540923533a6/UK-Stewardship-Code-September-2012.aspx>> accessed 25 December 2019

<sup>444</sup> Nowak and McCabe (n 177).

<sup>445</sup> Andrew Keay, 'Accountability and the Corporate Governance Framework: From Cadbury to the UK Corporate Governance Code' (2012) <<http://ssrn.com/abstract=2143171>> accessed 16 December 2019

<sup>446</sup> Lorraine Talbot, 'Polanyi's Embeddedness and Shareholder Stewardship: A contextual analysis of current Anglo-American perspectives on Corporate Governance' (2012) Warwick School of Law Research Paper No. 2021/20 <<http://ssrn.com/abstract=2177645>> accessed 18 November 2018

Maximising shareholders wealth and market value, however, are two different things. Arguably, companies and asset managers should follow the policies, which are consistent with the preferences – voting on corporate policies by shareholders is the only way to achieve these ends<sup>447</sup>.

Hill has offered two views on the position of shareholders in corporate governance. First, is a need to introduce fiduciary duties in corporate law for activist shareholders to promote responsibility and their accountability. Her second position appears to doubt the effectiveness of giving more powers to shareholders in order to stave off future financial crises<sup>448</sup>. Hill suggests that while interest in corporate governance is a result of the GFC in 2008, she debates whether the financial collapses at HIH Insurance and One.Tel (in Australia) would have been averted if better corporate governance procedures were in place<sup>449</sup>.

In an academic context, therefore, it is not clear whether imposing further legal fiduciary duties on shareholders is a positive measure. Even, if giving more powers to shareholder may promote better governance in companies the literature lacks any mechanism for assessing the practical impact of the existing rights of shareholders seeking to influence the decision making process within companies in which they are invested. Previous research has addressed this issue in different way.

For example, Iliev et al. focuses on laws and regulations governing the voting process in 8,160 firms from 43 countries and concluded that “shareholder voting is an effective mechanism for exercising governance around the world”<sup>450</sup>.

Van der Elst undertook to determine the relationship between shareholders rights and their owners’ investment behaviour. The study concluded that when shareholders protection is weak, by legislative design, then it results in shareholders spending money to form voting blocks in an effort to protect their joint interests. Weak shareholder protection does not provide an incentive to invest in the market<sup>451</sup>. It appears that shareholders’ investment behaviour is determined, in part, by the level of protection offered by the market.

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<sup>447</sup> Oliver Hart and Luigi Zingales, ‘Companies Should Maximize Shareholder Welfare Not Market Value’ (2017) ECGI- Finance Working Paper No. 521/2017 <<http://ssrn.com/abstract=3004794>> accessed 11 November 2017

<sup>448</sup> Jennifer G. Hill, ‘Then and Now: Professor Berle and the Unpredictable Shareholder’ (2010) Sydney Law School Research Paper No. 10/58, Vanderbilt Law and Economics Research Paper No. 10-17, ECGI- Law Working Paper No. 163/2010 <<http://ssrn.com/abstract=1631605>> accessed 12 September 2018

<sup>449</sup> Jennifer G. Hill, ‘Regulatory Responses to Global Corporate Scandals’ (2005) Sydney Law School Research Paper No. 06/35, Vanderbilt Law and Economics Research Paper No. 06-04 <<http://ssrn.com/abstract=886104>> accessed 14 August 2018

<sup>450</sup> Iliev, Lins, Miller and Roth (n 180).

<sup>451</sup> Van der Elst (n 328).

The managers and directors are playing their plenary role and shareholders can play with few things voting, selling and suing companies but within limits<sup>452</sup>. Shareholders have been enjoying certain legal privileges but the important one is the limited liability. The maximum responsibility for the shareholders is the loss of their partial or whole initial investment<sup>453</sup>. Shareholders are with several choices in the corporate world, when they are not satisfied with company's performance as: sell their shares and exit; go for takeovers and leveraged buyout or to use voting power to influence management's decisions<sup>454</sup>. The Hill has criticism shareholders position like; "the role of shareholders in recent corporate law has become more fluid, more unpredictable, and more controversial than in Professor Berle's day"<sup>455</sup>.

Blair and Stout have evaluated the selection and removal of directors from listed companies and determined that shareholders do not elect the board – the "board elect themselves". Once directors are elected, they serve the company free from shareholders control. The removal of directors is not easy game because the removal process is cumbersome and the proxy rules and consent of other members to support the resolution may be difficult to obtain<sup>456</sup>. Shareholders rights are limited to voting 'For' or 'Against' – they cannot introduce fundamental changes in company governance and corporate decision as resolutions are generally limited to those proposed by the company.

Blair and Stout have criticised shareholders voting right as to vote on fundamental corporate changes seem like 'fig leaf'. To proceed to change the bylaws (company constitution) through voting right is exceptional because if shareholders want to change bylaws than it must be with veto powers. Directors can amend their choice of proposals to achieve their desired ends without shareholders vote. In directors' elections, shareholders have the right to vote but directors have control over proxy votes. Shareholders in such circumstances face the issue of collective actions. Shareholders ability to force fundamental changes in corporate policies (introduced by directors) by voting power, without critical mass, is limited.<sup>457</sup>. Therefore it may be argued that directors are more powerful than shareholders, particularly as they often control proxy votes.

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<sup>452</sup> Paul H. Edelman, Randall S. Thomas and Robert B. Thompson, 'Shareholder Voting in an Age of Intermediary Capitalism' (2014) European Corporate Governance Institute (ECGI)- Law Working Paper No. 246/2014 <<http://ssrn.com/abstract=2401746>> accessed 19 August 2018

<sup>453</sup> Ned Dobos, 'Non-Libertarianism and Shareholder Theory: A Reply to Schaefer' (2011) 98 Journal of Business Ethics 273–279

<sup>454</sup> Aiwu Zhao and Alexander J. Brehm, 'Cumulative voting and the conflicts between board and minority shareholders' (2011) 37 (5) Managerial Finance 465-473

<sup>455</sup> Hill (n 448).

<sup>456</sup> Blair and Stout (n 170).

<sup>457</sup> Blair and Stout (n 170).

More recently Bell has criticised the role of agents. While recognising the importance of shareholders (provision of capital) he accuses agents of hijacking the corporation in order to achieve short-term goals on behalf of shareholders. The corporations are exclusively performing to accomplish the short-term financial benefits for shareholders because the nature of shareholding has changed<sup>458</sup>. A view supported by Molton and Higgs<sup>459</sup> and Keay and Talbot<sup>460</sup>.

It appears that shareholders and their representatives are reluctant to embrace any voluntary restrictions, which will impede their fundamental practices of liquidity, short-termism and low involvement in corporate governance for the sake of shareholders wealth maximisation<sup>461</sup>.

The managers are charged primarily with achieving economic gains for the company and its shareholders, and supporting shareholders during times of conflict with non-shareholders<sup>462</sup>. Shareholders have a passive role in the day-to-day running of the company. Their voices are heard, however, at the time dividends are distributed<sup>463</sup>. Shareholders are often highly rewarded for their monitoring practices<sup>464</sup>. Lacave and Urtiaga, however, criticise the role of controlling shareholders. They believe that they are exploiting their position to select dividend policies that is of benefit to themselves and at the expense of minority shareholders. Such behaviour also hinders the firm's growth, thus indicating flaws in shareholders control mechanism<sup>465</sup>.

Popadak's research explained the effects of shareholders engagement on firms' value because firm's value depend on corporate culture of companies. Further, she concluded that that company's governance and value of company is having positive association, and shareholders interest lies only in "financial gains: increases in sales, profitability, and payout occur"<sup>466</sup>.

In a second study, Van der Elst investigated the impact of shareholders rights on ownership structure of firms and the subsequent development of the financial market. His findings

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<sup>458</sup> Interview by Gareth Bell, 'Restoring trust in the corporation: an interview with Colin Mayer, Peter Moores Professor of Management Studies at Said Business School, and author of Firm Commitment' (2013) 29 (6) Strategic Direction 35-39

<sup>459</sup> Rob Moulton and Nicola Higgs, 'Corporate governance in financial institutions' (2013) 109 (Sep) C.O.B. 1-29

<sup>460</sup> Talbot (n 364).

<sup>461</sup> Lorraine Talbot, 'Why Shareholders Shouldn't Vote: A Marxist-progressive Critique of Shareholder Empowerment' (2013) 76 (5) MLR 791-816

<sup>462</sup> Andrew Keay, 'Moving Towards Stakeholderism? Constituency Statutes, Enlightened Shareholder Value and All That: Much Ado About Little?' (2010) <<http://ssrn.com/abstract=1530990>> accessed 02 January 2019

<sup>463</sup> Bird (n 116).

<sup>464</sup> Talbot (n 364).

<sup>465</sup> Maribel Sáez Lacave and María Gutiérrez Urtiaga, 'Dividend Policy with Controlling Shareholders' (2014) European Corporate Governance Institute (ECGI)- Law Working Paper No. 250/2014 <<http://ssrn.com/abstract=2412588>> accessed 17 August 2018

<sup>466</sup> Popadak (n 39).

indicate that there is little to no support for the view that shareholders rights influence the ownership structure and the growth of the capital market. Van der Elst, is however silent on whether existing rights of shareholders should be diminished on the basis of his findings<sup>467</sup>.

In 2000, Hill argues that there was a need to restructure the legitimate role of shareholders<sup>468</sup>. Catasús and Johed, meanwhile, focused on the relationship between shareholders and management and argued that a productive relationship is of greater importance than extra rights<sup>469</sup>. These issues remain unaddressed in the literature.

Van der Elst's criticisms of shareholders decision making right extends to that shareholders voting in listed companies as being merely a tool of value creation<sup>470</sup>. Practically voting rights in listed companies is weak and almost worthless. In most of the cases, voting rights do not give control to shareholders over directors because directors are free to balance the interests of all stakeholders and firm<sup>471</sup>.

Ward et al. claimed that shareholders' interests require protection because managers can prioritise their own interests over those of shareholders and the company itself. Shareholders rights need no protection from managers if managers change or leave their mind-set to serve their self-interests and act more as stewards for firms' long-term interests<sup>472</sup>.

As such this perpetuates the view that the AGM is a 'show' to enable resolutions to be rubber-stamped by shareholders, which does little to enhance decision making<sup>473</sup>.

This may or may not be true at all companies. Most of the AGM agenda are prepared by the board of directors and managers. If shareholder-generated resolutions are hard to propose, due to the need for approval by the directors and management of the company, it shows that shareholders powers are limited (in that respect). This might account for Elst's and Lafarre's view that large shareholders' behaviour is classified as free-riding or apathetic<sup>474</sup>.

Researchers hold different views on the role of the AGM, for example, AGMs does not provide high levels of information to the market<sup>475</sup>. Argiles-Bosch et al. dispute Brickley's position as

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<sup>467</sup> Van der Elst (n 34).

<sup>468</sup> Hill (n 83).

<sup>469</sup> Catasús and Johed (n 218).

<sup>470</sup> Van der Elst (n 56).

<sup>471</sup> Blair and Stout (n 170).

<sup>472</sup> Andrew J. Ward, Jill A. Brown and Dan Rodriguez, 'Governance Bundles, Firm Performance, and the Substitutability and Complementarity of Governance Mechanisms' (2009) 17 (5) *Corporate Governance: An International Review* 646–660

<sup>473</sup> Van der Elst and Lafarre (n 195).

<sup>474</sup> Van der Elst (n 56).

<sup>475</sup> Brickley quoted by Monica Martinez-Blasco, Josep Garcia-Blandon and Josep Maria Argiles-Bosch, 'Does the informational role of the annual general meeting depend on a country's legal tradition?' (2015) 19 *J Manag Gov* 849-873

they quantified the quality and quantity of information available publicly by the companies and concluded it is much higher as compared to early decades<sup>476</sup>. Price argued that the AGM's often contain important managerial announcements<sup>477</sup>, the voting in AGM on the resolutions is the only mechanism where shareholders participate in company management<sup>478</sup>.

Hill, referring to Catasús and Johed, points to harmonious relationships as she stresses the importance of balance of power between the company and all of company actors (all stakeholders) and suggests that laws need to be reformed. "Modern corporate law needs to give greater recognition to organisations themselves as legal persons and corporate actors"<sup>479</sup>.

Coates argued that the research has given little attention to exploring the association between corporate governance and shareholders rights and powers<sup>480</sup>. The proxy voting system is flawed and needs further improvements to strengthen this system<sup>481</sup>. Another gap in the knowledge was identified by McConvill and Bagaric who conclude that more research is required to understand the procedure of proxy execution<sup>482</sup>.

Hill, in a second study, argued that companies and corporate practices need alternative principles, and practices for corporate governance and an "ancillary legal doctrine", to cater for the needs of the contemporary commercial world<sup>483</sup>. Nowak and McCabe have suggested that further research is required into this involvement due to the diversity of the institutions in the Australian market<sup>484</sup>.

The academic debate is confused on defining shareholders rights, shareholders role in corporate governance, shareholders relationships with corporations and directors, whether to balance or to empower shareholders with more rights, how rights should be exercised, and whether shareholders intentions are related to company success or only to their personal financial gain. This research tries to shed light on the black box of corporate governance by evaluating shareholders economic rights, control and decisions making rights at AGMs through voting and proxy voting in Australian listed companies (ASX 200).

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<sup>476</sup> Blasco, Blandon and Bosch (n 475).

<sup>477</sup> Rippington and Taffler quoted by *ibid*.

<sup>478</sup> James McConvill and Mirko Bagaric, 'Towards Mandatory Shareholder Committees in Australian Companies' (2004) 28 Melbourne University Law Review 125-168

<sup>479</sup> Hill (n 103).

<sup>480</sup> John C. Coates IV, 'Corporate Governance and Corporate Political Activity: What Effect will Citizens United have on Shareholder Wealth' (2010) <<http://ssrn.com/abstract=1881883>> accessed 05 January 2019

<sup>481</sup> AFM (2014), 'Flaws in proxy voting system' <<https://www.afm.nl/en/professionals/nieuws/2014/mrt/gebreken-stemmen-afstand>> accessed 1 January 2017

<sup>482</sup> James McConvill and Mirko Bagaric, 'Ambiguities and Inconsistencies in Relation to the Obligations of Proxies under Corporations Law: A Model for Reform' (2004) 1 (1) UNELawJl 109-116

<sup>483</sup> Hill (n 83).

<sup>484</sup> Nowak and McCabe (n 177).

### 4.3: Theoretical Perspective of Shareholders Rights

Governance theories address the relationship between shareholders, directors and managers of firms. The firm is a link between individuals (owners and managers) involved in renegotiation of the contracts on the terms and conditions acceptable to both parties<sup>485</sup>.

The history of corporate governance has seen endless evolutions of corporate governance theories and models. Abdullah and Valentine explored how six fundamental theories apply to corporate governance, these include: agency; stewardship; stakeholders; resource dependency; transaction cost; and political theories. Hence, they concluded that it is best to apply more than one theory or combinations of theories to study effectiveness of corporate governance practices<sup>486</sup>.

Nicholson's and Kiel's applied agency, stewardship and resource dependent theories to study relationships between board and company performance<sup>487</sup>. Anderson et al. studied behaviour of institutional shareholders and directors in Australia, Canada, New Zealand and the United States by applying agency and stewardship theories<sup>488</sup>. Fox and Hamilton investigated the diversification of companies in New Zealand in context of agency and stewardship theories<sup>489</sup>.

These studies suggested to investigate shareholders economic, control and decision making rights. Use of a single theory cannot address the aims of current study adequately as each theory can only explain one particular phenomenon. Hence, this research has applied agency and stewardship theories to theoretically contextualise shareholders rights in practice. Further, these two theories are used to analyse shareholders control and decision-making rights exercised at AGMs of listed companies through voting and proxy voting.

#### 4.3.1: Agency Theory

Jensen and Meckling have defined the agency relationship as a contract between one or more persons (the principal) to engage another person (the agent) to perform a specific service for the principal. This process involves assigning some of the principal's decision-making powers to the agent<sup>490</sup>.

Agency theory recognises that relationship issues may exist between principals and agents. Sappington highlighted that agency issues start when agent is hired<sup>491</sup>. Ying raised issues

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<sup>485</sup> Alchian and Demsetz (n 380).

<sup>486</sup> Abdullah and Valentine (n 381).

<sup>487</sup> Nicholson and Kiel (n 435).

<sup>488</sup> Anderson, Melanson and Maly (n 419).

<sup>489</sup> Mark A. Fox and Robert T. Hamilton, 'Ownership and Diversification: Agency Theory or Stewardship Theory' (1994) 31 (1) Journal of Management Studies 69-81

<sup>490</sup> Jensen and Meckling (n 386).

<sup>491</sup> Sappington (n 97).

regarding conflict of interest<sup>492</sup>. Ross pointed the issue is in decision making<sup>493</sup>. Eisenhardt considered two issues related to risk (different goals and different approaches of risk sharing between agency participants)<sup>494</sup>. Abdullah and Valentine indicated that the role of participants (principal and agent) of agency theory lacks clarity<sup>495</sup>. Finally, Davis postulated that if principal and agents interest alien than there is no agency problem<sup>496</sup>.

A possible solution to agency issues is that control and decision making rights are the responsibility of different chairs<sup>497</sup>. The AGM resolutions prepared by directors and are approved by shareholders at AGMs by exercising their control and decision making rights as voting and proxy voting.

Jiraporn has criticised firms and shareholders rights that the firms with restricted shareholders rights face high agency cost<sup>498</sup>. In another study, Gompers et al. supported the notion that agency cost is reduced in those firms in where shareholders rights are considered to be strong<sup>499</sup>. Chi reinforces this view by arguing that the stronger shareholders rights increases firm value by reducing agency cost. Restricting shareholders rights in firms may be a signal to the public of the poor performance of the management team<sup>500</sup>.

Abdullah and Valentine concluded that participants (people or employees) of agency theory must be held accountable to ensure their duties are performed and their responsibilities are met. A good governance structure should be maintained by participants. Further, the interests of shareholders need not be given priority in order to maintain a good governance structure<sup>501</sup>.

Increasing shareholders powers over management can reduce the agency cost of separation of ownership from control providing that shareholders are given ample opportunity to express their views to the company's managers (usually at an AGM).

To resolve the agency conflicts shareholders can monitor the company management. According to agency theory shareholders are the owners of the companies, as an owner shareholders have right to influence the company decision making through voting at AGMs<sup>502</sup>.

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<sup>492</sup> Ying (n 306).

<sup>493</sup> Ross (n 403).

<sup>494</sup> Eisenhardt (n 389).

<sup>495</sup> Abdullah and Valentine (n 381).

<sup>496</sup> Davis, Schoorman and Donaldson (n 395).

<sup>497</sup> Eugene F. Fama and Michael C. Jensen, 'Separation of Ownership and Control' (1983) 26 (2) *The journal of law and Economics* 301-325

<sup>498</sup> Jiraporn (n 12).

<sup>499</sup> Gompers, Ishii and Metrick (n 11).

<sup>500</sup> Chi (n 36).

<sup>501</sup> Abdullah and Valentine (n 381).

<sup>502</sup> Jill Solomon, *Corporate Governance and Accountability* (2nd edn, John Wiley & Sons, Ltd, 2007) 18



The directors' propose the resolutions for shareholders' approval at AGMs and shareholders exercise their decision making rights at AGMs through proxy voting and voting.

Hillman et al. has investigated shareholders voting and proxy voting on director's election and re-election from 500 companies (2,099 resolutions). He found that evidence of voting dissents on directors' election support agency theory<sup>503</sup>.

Agency theory promotes an agency relationship between principals and agents. Shareholders are principals. Company executives and managers are agents. To overcome agency issues (in Australian listed companies) the role of the AGM and shareholders engagement to exercise their voting and proxy voting needs to be addressed. The present study investigates AGM voting and proxy voting results to evaluate shareholders rights in practice.

#### **4.3.2: Stewardship Theory**

Stewardship theory holds that company managers are stewards and their collective priority is the success and performance of the company. This endeavour indirectly aligns with the interests of shareholders. The advocates of stewardship theory assume a strong relationship exists between organisation success and principals satisfaction<sup>504</sup>. Jiraporn et al. suggested that: "the monitoring role provided by regulators may substitute for shareholders monitoring"<sup>505</sup>. Also, stewardship theory promotes the fusing of the role of chairman and CEO to enhance the effectiveness of the board's directions and as a means of increasing company performance<sup>506</sup>.

Shareholders too act as stewards of the company from the perspective of being a sounding board for the board of directors. Hence, stewards should disclose their stewardship activities and modes of interaction with their investees<sup>507</sup>. Most shareholders attend AGMs to support all the AGM resolutions<sup>508</sup>. Such behaviour of shareholders to support all AGM resolutions indicates their stewardship commitment with investee companies.

Therefore, the actual engagement of shareholders at AGMs, and their participation in corporate decision making of companies by exercising voting and proxy voting right provide support for stewardship theory.

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<sup>503</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>504</sup> Davis, Schoorman and Donaldson (n 395).

<sup>505</sup> Jiraporn and Davidson (n 14).

<sup>506</sup> Donaldson and Davis (n 413).

<sup>507</sup> Van der Elst (n 59).

<sup>508</sup> Van der Elst (n 56).

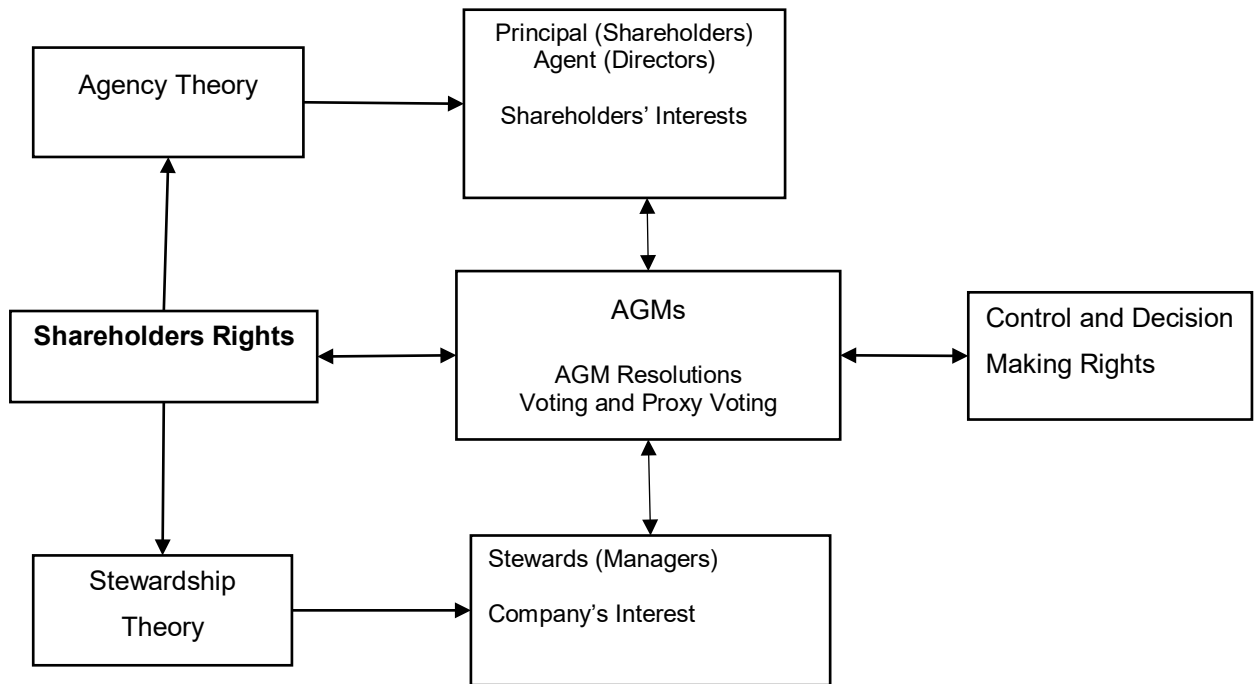
Previous literates suggested that agency theory and stewardship theory as compared to other theories provide the actual visualisation of shareholders rights in practice at AGMs by exercising voting and proxy voting rights on AGM resolutions.

#### **4.3.3: Theoretical Framework of the Study**

Agency theory promotes agency relationships between principals and agents. Principals' interests take priority over all others. Whereas in stewardship theory company performance is of prime concern.

The literature highlights that issues of agency theory can be reduced by giving stronger rights to shareholders, also the effective role of AGMs can help to overcome agency issues and reduce agency conflict of interest. Shareholders engagement at AGMs to approve AGM resolutions through voting and proxy voting is the corporate instrument which support agency theory. Stewardship theory helps shareholders to be active stewards exercise their control and decision making rights to protect their economic rights in investee companies. Figure 4.1 highlights how the theories interact.

**Fig 4.1 Theoretical Framework of Shareholders Rights**



#### 4.4: Summary of Key Literature Studies

According to Hill the shareholders differ due their characteristics, rights duties and powers<sup>509</sup>. The shareholders characteristics, are discussed by Hill<sup>510</sup>, Laskin<sup>511</sup>, Hill<sup>512</sup>, Anabtawi<sup>513</sup>, and Hutton et al.<sup>514</sup>

Shareholders rights depends on the type of shares owned. The rights attached to shares are defined by companies' constitutions, shareholders agreements, the Act and the ASX LRs. Shareholders economic rights and control and decision making rights are contextualised in this study to evaluate shareholders rights in practice in Australian listed companies (ASX 200) during the period 2014–18.

Shareholders vote in order to exercise control over companies<sup>515</sup>. Only shareholders, and their proxies, can participate in voting at AGMs as their participation and voting can influence on

<sup>509</sup> Hill (n 82).

<sup>510</sup> Hill (n 83).

<sup>511</sup> Laskin (n 84) 107-115.

<sup>512</sup> Hill (n 82).

<sup>513</sup> Anabtawi (n 80).

<sup>514</sup> Hutton, Mayer and Schneider (n 35).

<sup>515</sup> Enriques and Volpin (n 105).

AGMs corporate decisions<sup>516</sup>. Moreover, shareholders use their voting rights as tool for shareholders activism through voting<sup>517</sup>.

#### **4.4.1: Development of Conceptual Framework of Shareholders Rights in Theory and Practice**

The ASX Australian Investor Study 2017 revealed that 37% of Australians have direct on-exchange investments<sup>518</sup>. Australian corporate law takes a shareholder-centric approach and consequently it offers investors stronger protection than in other jurisdictions<sup>519</sup>.

La Porta et al. suggested that voting and proxy voting results are good tools to evaluate shareholders rights<sup>520</sup>. Mitchell et al. investigated shareholders protection through AGM resolution in Australian laws<sup>521</sup>. Chia's and Ramsay's analysed AGM resolutions proposed by shareholders and directors<sup>522</sup>. Stapledon et al. conducted an empirical study on proxy voting outcomes for directors' election resolutions<sup>523</sup>. The OECD focused on shareholders voting behaviour to record their concerns on AGM resolutions<sup>524</sup>. Jacobsen and Pender looked at shareholders activism by analysing ESG resolutions proposed by shareholders at AGMs<sup>525</sup>. Faghani et al. investigated the relationship between shareholders voting dissent on remuneration resolutions<sup>526</sup>. De Falco et al. investigated the impact of Australia's two-strike rule<sup>527</sup>. ASIC focused on the 2017<sup>528</sup> and 2018<sup>529</sup> AGMs sessions. Ramsay showed that shareholders are least interested to take legal actions against companies to enforce their rights<sup>530</sup>.

Van der Elst has studied the development of shareholders rights and its relationship with ownership structure<sup>531</sup>. In another study, Van der Elst and Lafarre focused on voting methods

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<sup>516</sup> Van der Elst (n 199).

<sup>517</sup> Jill Solomon and Aris Solomom, *Corporate Governance and Accountability* (John Wiley & Sons, Ltd, 2004) 98

<sup>518</sup> ASX Australian Investor Study 2017 <<https://www.asx.com.au/education/2017-asx-investor-study.htm>> accessed 03 July 2018

<sup>519</sup> Mitchell, Donnell, Ramsay and Welsh (n 10).

<sup>520</sup> Porta, Silanes, Shleifer and Vishny (n 41).

<sup>521</sup> Mitchell, Donnell, Ramsay and Welsh (n 10).

<sup>522</sup> Chia and Ramsay (n 48).

<sup>523</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>524</sup> Hewitt (n-10).

<sup>525</sup> Jacobsen and Pender (n 1).

<sup>526</sup> Faghani, Monem and Ng (n 42).

<sup>527</sup> Falco, Cucari and Sorrentino (n 40).

<sup>528</sup> Report 564 (n 53).

<sup>529</sup> Report 609 (n 54).

<sup>530</sup> Ramsey (n 49).

<sup>531</sup> Van der Elst (n 34).

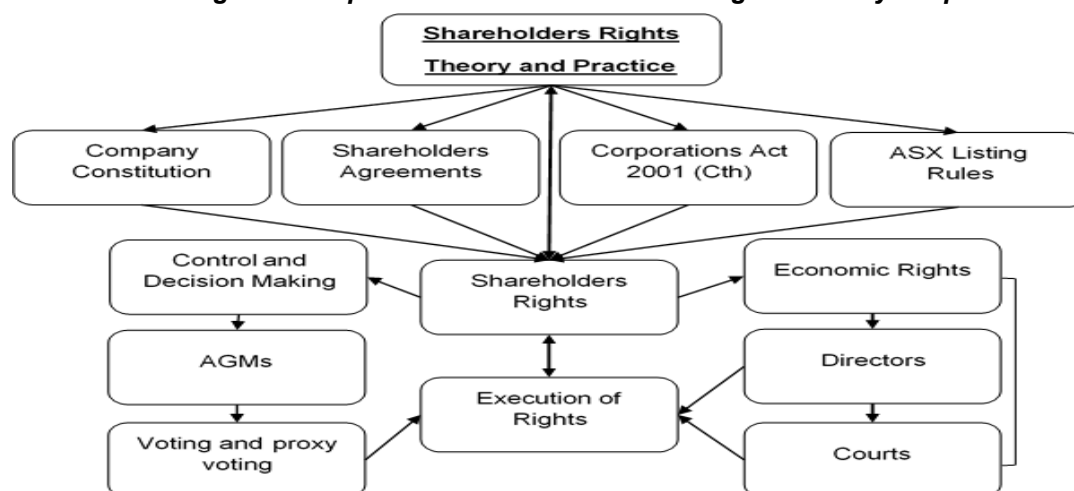
used by shareholders<sup>532</sup>. Song et al. determined factors that affect shareholders voting behaviour<sup>533</sup>. Hillman et al. has assessed shareholders voting behaviour on director's election<sup>534</sup>.

Van der Elst explored relationship of shareholders voting behaviour at AGMs<sup>535</sup>. In another study Van der Elst investigated voting turnout as shareholders activism tool<sup>536</sup>. Van der Elst broadened his research by investigating activism modes at AGMs<sup>537</sup>. Poulsen et al. studied impact of voting rights on shareholders activism<sup>538</sup>, Aggarwal et al. voting dissent and its impact on directors' future<sup>539</sup>.

Van der Elst and Lafarre addressed AGM results as investors' voice<sup>540</sup>, Conyon and Sadler examined shareholders voting on remuneration resolutions<sup>541</sup>. Sauerwald et al. focused on shareholders democracy through AGMs resolutions and shareholders voting<sup>542</sup>, Cordery<sup>543</sup>, Catasús and Johed<sup>544</sup>, Apostolides<sup>545</sup> work on AGMs (refer to Chapter 2 and 3).

The literature suggests that it is possible to study shareholders activism, voting turnout, voting dissent in order to evaluate shareholders rights in practice through the lens of shareholders engagement by analysing voting and proxy voting results for AGM resolutions.

**Fig 4.2 Conceptual Framework: Shareholders rights in theory and practice**



<sup>532</sup> Van der Elst and Lafarre (n 270).

<sup>533</sup> Song, Xin and Yi (n 58).

<sup>534</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>535</sup> Van der Elst (n 60).

<sup>536</sup> Van der Elst (n 64).

<sup>537</sup> Van der Elst (n 59).

<sup>538</sup> Poulsen, Strand and Thomsen (n 65).

<sup>539</sup> Aggarwal, Dahiya and Prabhala (n 62).

<sup>540</sup> Van der Elst and Lafarre (n 67).

<sup>541</sup> Conyon and Sadler (n 69).

<sup>542</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>543</sup> J. Cordery (n 75).

<sup>544</sup> Catasús and Johed (n 218).

<sup>545</sup> Apostolides (n 249).

#### **4.5: The Research Questions and Propositions Construction**

The research questions posed in this study focus primarily on shareholders rights under Australian corporate laws and shareholders rights in practice in ASX 200 (Australian listed companies). The purpose is to design a model for the reform of shareholders rights in Australia. The existing literature does not address the way to evaluate shareholders rights in practice or highlight the mechanisms used to measure shareholders rights in listed companies. The shareholders exercise their rights at AGMs and sometime persue the courts to be heard. Unfortunately, not enough data is publicly available. Available data includes annual reports, AGM notices and voting results. The available data has not been researched extensively – in particular, practical frameworks of shareholders rights in practice in listed companies.

The aim of this research is to evaluate shareholders rights in theory and practice and to analysis shareholders engagement with investee companies to exercise their control and decision making rights in corporate decision making. The core research question of this study designed is:

To what extent shareholders engage to exercise their rights in Australian listed companies, how and to what extent does shareholders engagement with listed company's impact on corporate decision makings at AGMs?

In order to address this question a number of sub-questions are posed and these are discussed below.

##### **4.5.1: Question One**

Shareholders invest in listed companies to receive benefits in the form of dividends. As argued in the literature, shareholders wealth maximisation is the main aim of companies. Much previous research has failed to conduct rigorous empirical evaluations of the exercise of shareholder rights often because of lack of data. This research fills this gap.

Question 1 is concerned with dividend (the economic rights of shareholders), voting on AGMs resolutions after announcement of dividend value by the company and case laws which addressed the dividend rights of shareholders during study period.

Access to dividends represents shareholders economic rights. Shareholders engagement is indicated by the extent to which they exercise their right to vote.

**RQ1: What is the relationship, if any, between the economic rights of shareholders and shareholders engagement at AGMs?**

**P1:** Shareholders voting behaviour is positively associated with dividend value announced by company.

**P2:** The exercise of shareholders proxy voting rights is positively associated with dividend value.

**P3:** The shareholders proxy voting in favour is positively associated with dividend value.

**P4:** The shareholders voting dissent is negatively correlated with dividend value.

**P5:** The shareholders voting 'Against' is negatively correlated with dividend value.

**P6:** Shareholders voting turnout is positively associated with shareholders financial gain (Dividend).

#### **4.5.2: Question Two**

The core function of AGMs are: information system (communication), forum (legal formality) and decision-making (accountability). The AGM is a tool of accountability of company management executed through voting, AGM serve as ideal place for speeches, the AGMs play a bridging role between shareholders and the board, AGMs help to promote corporate sustainability, business of AGM (refer to section 3.1.3) where shareholders exercise voting rights (control and decision making rights) to give approvals of management decisions.

AGMs are criticised in literature for reasons such as the communication system is flawed because it did not facilitate shareholders with ample opportunity to put questions to directors, the cost of participation is very high, presence of small shareholders do not have any impact on decision making, it best serve directors interests not shareholders, the material and information disclosed for shareholders information use complex language.

As Cordery has pointed out, "further research into shareholders attitudes affecting AGM attendance and the effectiveness of AGMs, is required"<sup>546</sup>. Jeacle has highlighted that the research is needed to fully explore the AGM as accountability mechanism. Further research is also needed to study the working of AGM<sup>547</sup>. Van der Elst has suggested that "more serious consideration is necessary to optimise the role of general meetings"<sup>548</sup>. Hodges et al. stated that the AGM is a tool of governance used for public and private sectors of the economy, they have further stated that the AGM is seldom been the focus of research<sup>549</sup>.

On the basis of the argument above, there appears to be a gap in the knowledge related to how listed companies are enabling their shareholders to exercise their control and decision

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<sup>546</sup> J. Cordery (n 75).

<sup>547</sup> Jeacle (n 76).

<sup>548</sup> Van der Elst (n 56).

<sup>549</sup> Hodges, Macniven and Mellett (n 78).

making rights at AGMs and the way in which shareholders exercise their economic, control and decision making rights on the basis of AGM results of companies listed in the ASX 200. This research fills this gap.

**RQ2A: How and to what extent do AGMs impact on decision making of listed companies?**

**P7:** The shareholders voting turnout is positively associated with importance of AGM (the number of AGM resolutions presented at AGMs).

**P8:** Board recommendations to vote in favour of the resolutions have positive association with voting turnout.

**P9:** The number of ordinary resolutions are negatively associated with shareholders voting behaviour.

The literature specified that shareholders participate in corporate decision making of companies through voting and proxy voting and their participation may affect corporate decision making. The minority shareholders attend AGMs in person but the majority of shareholders attend AGMs through proxy. Regardless of the mode of attendance, shareholders use the AGMs to flex their democratic muscle and use voting as a tool of communication with the board.

Previous studies used voter turnout to study shareholders voting behaviour and suggested that remuneration resolutions attract more voting dissents. Shareholders activism is common in AGMs. Voting dissents have negative impact on directors' careers. Shareholders use remuneration resolutions and policies to voice their position on the company's management.

AGMs facilitate discussion on directors' accountability. Shareholders used their voting rights as a governance process in companies and shareholders register their dissent to show their dissatisfaction on directors' election or re-election.

Previous literature has suggested that the best approach to study shareholders rights in practice is to investigate shareholders engagement in corporate decision making of investee companies. Moreover, the results of such studies will demonstrate the intentions of shareholders in companies was to get financial benefits or success of the companies.

This research questions in connected with control and decision making rights of shareholders which they exercise by using voting and proxy voting rights at AGMs.

Accountability of directors on their election and remuneration resolutions characterise control and decision making right of shareholders.



**RQ 2B: Do shareholders use AGM for accountability of directors or as simply a formal event?**

**P10:** The shareholders voting 'Against' on directors elections is positively associated with number of resolutions for election of directors'.

**P11:** Shareholders proxy voting 'Against' on re-election of directors' resolutions are positively associated with number of resolutions of re-election of directors.

**4.5.3: Question Three**

Shareholders engagement is defined in the context of this research as voicing their concerns to achieve an objective but without attempting to gain control of company. The aim of engagement is to protect and safeguard shareholders' interests. Engagement as a tool increases dialogues between shareholders and companies and may be used as an accountability mechanism.

The mechanism of shareholders engagement have drawbacks. The previous studies have stated that; lack of shareholders engagement in corporate decision making signal a deficiency of shareholders powers, the cost of engagement is higher, inappropriate information systems and deficiencies in voting systems, and information channels vary according to share ownership.

The concept of shareholders empowerment is the reallocation of power between shareholders and management of companies. Shareholders empowerment can help shareholders to enhance their value as they cannot exercise their powers without the support of management. As previously discussed in the literature, studies show that empowering shareholders, or introducing new laws and policies to strengthen shareholders rights, does not always bring about better company performance.

Shareholders empowerment has been criticised because it could create opportunities for shareholders to engage in 'rent extraction' style behaviour to achieve maximum short-term gain.

Shareholders activism means to bring changes in public companies but without the intention to gain control of company. The shareholders activism is helpful to enhance shareholders wealth and company performance. Critics of shareholders activism argue that it provides a way to make noise at AGMs but without healthy discussion between shareholders and management.

Introducing laws to improve shareholders engagement, activism and empowerment without investigating the ways shareholders exercise their powers will not be practical, hence, the previous studies failed to conduct comprehensive evaluations the way shareholders exercise their control and decision rights in Australian listed companies.

The previous studies support that without the board's recommendations shareholders proposed resolutions cannot be passed at AGMs. Shareholders raise their concerns by exercising as voting dissents on remuneration resolutions in Australian companies. ASIC 2017 and 2018 reports specified that in 2017 shareholders proposed resolution was 8 and 11 in 2018 respectively and not a single resolution was passed.

Shareholders engagement, activism and empowerment is linked with voting and proxy voting rights which is a control and corporate decision making right. The literature it is not clear on whether giving more powers to shareholders or directors at AGMs.

The current research will fill this gap by investigating shareholders engagement, empowerment and activism performed through voting at proxy voting (control and decision making right) in ASX 200 during 2014–18.

**RQ 3: Did shareholders exercise voting dissent to record their concerns on board recommended resolutions- remuneration policy resolutions?**

**P12:** Shareholders engagement is positively associated with higher voting in favour of remuneration policy resolutions at AGMs.

**P13:** Shareholders activism is positively correlated with higher voting against on board recommended resolutions and remuneration policy resolutions.

**P14:** Shareholders empowerment is positively associated with higher voting abstain on remuneration policy resolutions.

**4.5.4: Question Four**

Share ownership gives voting powers to shareholders. The shareholders voting turnout and AGM attendance depends on classes of shareholders and their share ownership. The literature highlights a positive association between voting dissent and ownership structure, which influences the vote on remuneration resolutions of Australian listed companies.

The studies mentioned earlier in this chapter emphasise the relationship between share ownership on voting turnout as well as share ownership and its impact on corporate decision making. Previous studies lack a practical evaluation of shareholders control and decision making rights in practice, impact of ownership structure on the exercise of voting and proxy

voting rights (which is linked with control and decision making rights). This research fills this gap.

**4A: What is the relationship, if any, between ownership structure of shareholders and shareholders engagement at AGM?**

**P15:** AGM voting turnout has positive relationship with shareholdings of top 20 shareholders.

**4B: Did ownership structure (blockholders up to top 20 shareholders) in listed companies has any impact on shareholders engagement to exercise their rights at AGMs, and do AGMs results support ownership influence in ASX 200?**

**P16:** The ownership structure of blockholders is positively associated with voting turnout.

**4C: What is the relationship, if any, between ownership structure (number of blockholders) and annual general meetings results of listed companies?**

**P17:** The presence of blockholders in listed companies is positively associated with voting turnout.

#### **4.5.5: Question Five**

The agency theory promotes agency relationships, in this relationship shareholders are principals and directors are agents. Agency theory prioritises shareholders' interests over others'. Stewardship theory, however, promotes the corporations' interest above all other stakeholders' interests,

The literature addressed the role of shareholders at AGMs and the effective role of AGMs in helping to overcome agency issues (and lowering agency costs). Stewardship theory encourages shareholders to be active stewards at AGMs. Both theories support shareholders engagement to exercise their control and decision making rights at AGMs. However, the previous research failed to conduct empirical research to address the mechanism of shareholders control and decision making rights follow agency theory or stewardship theory in Australian listed companies. This research fills this gap.

**RQ5: How do governance theories (agency or stewardship theory) explain the relationships between the rights of shareholders in practice and investee companies in Australia?**

**P18:** Shareholders engagement and voting turnout is positively associated with agency theory.

**P19:** Shareholders engagement and voting turnout is positively associated with stewardship theory.

#### **4.6: Conclusion**

This study has explored shareholders economic, control and decision making rights for investigation in theory and practice in ASX 200 during 2014–18. This chapter has discussed the context of the study and developed the theoretical and conceptual frameworks.

Nine research questions were posed to investigate the economic, control and decision making rights of shareholders in companies listed in the ASX 200. In addition this study contains 19 research propositions were developed to help to frame the analysis in this research.

The next chapter will conceptualise the development of specific research methodologies, defining the variables (and relationships between the variables) to answer research question and testing the research propositions.

## Chapter 5: Research Methodology

*"[I]t is vitally important to determine whether the law is based on sound assumptions about how the world works and to what extent a particular law or process is achieving its stated objective and at what cost"<sup>550</sup>.*

### 5.1: Introduction

This project used a mixed-method research method for investigating current research phenomena. The research is philosophically positioned to use both positivist and interpretive paradigms supported by quantitative and qualitative research methodology. Further, for intellectual analysis, this research has adopted two further research methods, an empirical legal methodology and black-letter law methodology to investigate shareholders rights in practice in ASX 200 companies over the period of five years (2014–18), and supporting the findings with an analysis of the legal phenomena emerging from the exercise of shareholders rights by evaluating the cases laws occurring during 2014–18.

As section 251AA of the Act, ASX LR 3.13.2 and the Financial Service Council (FSC) Guidance Note No.2.00 emphasis companies are required to disclose the voting and proxy voting results received at AGMs. Australian listed companies, and shareholders also exercise their rights to bring legal actions against the companies in circumstances where shareholders rights are infringed by companies. The companies must disclose AGMs resolutions, AGMs voting and proxy voting results, and legal actions taken by shareholders to exercise their rights. This includes the case laws precedents that enable the evaluation of empirical phenomena impacting on shareholders economic, control and decision making rights during study period.

The rational for adopting empirical and black-letter law research methodology was to meet the aims of this research that is to evaluate shareholders rights in theory and practice. These methodologies permit researchers to put the interpretation of law within a social context. The ASX 200 companies' AGMs results provide the evidence on which to base the investigation of shareholders rights in practice. Analyses of shareholders voting and proxy voting provides a reliable evidence based database from which to study shareholders engagement, and participation in corporate decision making and exercise of their control and decision making rights. The second research methodology, case study analysis was applied to establish the understanding of shareholders rights in theory and practice within a legal context.

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<sup>550</sup> N. William Hines, President, AALS, Quoted by Tracey E. George, 'An empirical study of empirical legal scholarship: the top law school' (2006) 81 Ind. LJ 141- 161

For analysis and to address research questions this study used secondary data published on-line and constructed into a large database.

This chapter describes study design, methods undertaken to complete this research project. This chapter is structured as follows: section 5.2 research methodology; section 5.3 research paradigms; section 5.4 mixed method approach; section 5.5 empirical legal research; section 5.6 development of database; section 5.7 issue with data collection; section 5.8 AGM resolutions; section 5.9 the black-letter law research methodology, section 5.10 the variables of the study; section 5.11 the association and relation of the variables; section 5.12 methods of data analysis and section 5.13 conclusion of the chapter.

## **5.2: Research Methodology**

Research methodologies are the procedures used to formulate a research project. Ellen has given meaning to methodology as: “an articulated, theoretically informed approach to the production of data”<sup>551</sup>. According to Grix the methodology means as: “methodology is concerned with the discussion of how a particular piece of research should be undertaken”<sup>552</sup>. Crotty has defined that methodology as “strategy, plan of action, process or design”<sup>553</sup>. According to Ponterotto, the research methodology is a “process and procedure” which is adopted by researchers<sup>554</sup>. The research methodology is associated with a ‘paradigm or theoretical framework’, and the method is linked with “systematic modes, procedures or tools used for collection and analysis of data”<sup>555</sup>.

The methodology enables the researcher to decide the data types required for the study, and which data collection tools are appropriate for data collection. Moreover the methodology enables the researcher to determine the ways in which a research project will be conducted<sup>556</sup>. In research, the choice of methodology depends on the assumption that what a researcher want to explore<sup>557</sup>.

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<sup>551</sup> R.F Ellen, *Ethnographic Research: A Guide to General Conduct* (Academic Press, 1984) 9

<sup>552</sup> Jonathan Grix, *The foundations of research* (3rd edn, Macmillan International Higher Education 2018) 32-33

<sup>553</sup> Michel Crotty, *The Foundations of Social Research Meaning and Perspective in the Research Process* (Sage Publication, 1998) 3

<sup>554</sup> Joseph G. Ponterotto, ‘Qualitative Research in Counseling Psychology: A Primer on Research Paradigms and Philosophy of Science’ (2005) 52 (2) *Journal of Counseling Psychology* 126-136

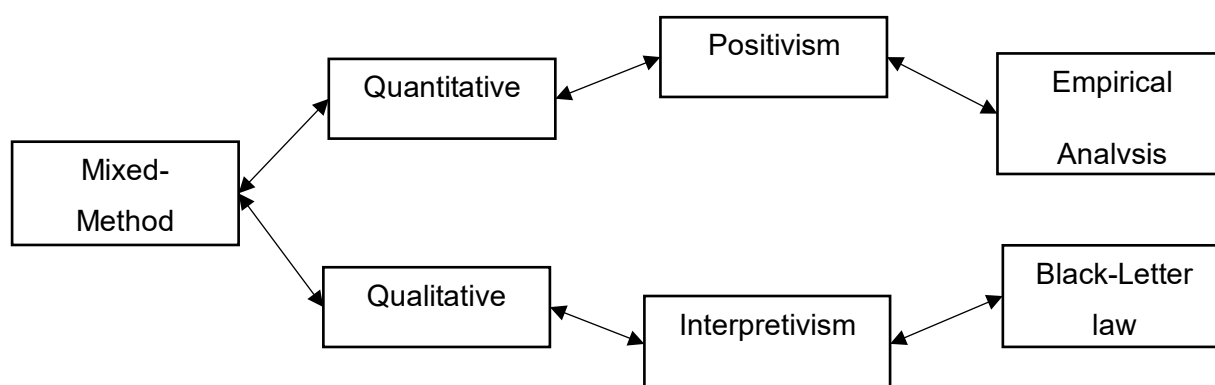
<sup>555</sup> Mackenzie Noella and Sally Knipe, ‘Research dilemmas: Paradigms, methods and methodology’ (2006) 16 (2) *Issues in educational research* 193-205

<sup>556</sup> Adil Abdul Rehman and Khalid Alharthi, ‘An introduction to research paradigms’ (2016) 3 (8) *International Journal of Educational Investigations* 51-59

<sup>557</sup> Angèle LM Cavaye, ‘Case study research: a multi-faceted research approach for IS’ (1996) 6 (3) *Information systems journal* 227-242

Figure 5.1 illustrate the design of this study. Quantitative and qualitative methods based on theoretical frameworks drawn from both positivism and interpretism research philosophies support the two methods of analyses of empirical data and black-letter law.

*Fig 5.1 Research design of the study*



### 5.3: Research Paradigms

The research paradigm is conceptualising about ideas and doing research<sup>558</sup>. Different kind of research paradigms are 'positivist, constructivist, interpretivist, transformative, emancipatory, critical, pragmatism and deconstructivist'<sup>559</sup>.

According to Cohen et al. "positivist and interpretive paradigms are essentially concerned with understanding phenomena through two different lenses. Positivism strives for objectivity, measurability, predictability, controllability, patterning, the construction of laws and rules of behaviour, and the ascription of causality; the interpretive paradigms strive to understand and interpret the world in terms of its actors"<sup>560</sup>.

The quantitative research discipline is based on the positivism paradigm. The research purpose is to give numerical description; casual explanation or prediction of a research problem. The research method used is empirical examination; variables describe the nature of data considered; data analysis means to identify statistical relationships between variables; and reporting of these statistically significance findings<sup>561</sup>.

The aim of an interpretive research methodology is to develop understandings of social phenomena in a social context<sup>562</sup>. The purpose of qualitative research is: subjective

<sup>558</sup> Stephen Kwadwo Antwi and Kasim Hamza, 'Qualitative and quantitative research paradigms in business research: A philosophical reflection' (2015) 7 (3) European journal of business and management 217-225

<sup>559</sup> Mackenzie and Knipe (n 555).

<sup>560</sup> Louis Cohen, Lawrence Manion and Keith Morrison, Research Methods in education (6th edn, Routledge 2007) 12

<sup>561</sup> Antwi and Hamza (n 558).

<sup>562</sup> Rehman and Alharthi (n 556).

description, empathetic understanding or exploration; research methods in qualitative research are like: case studies, native research and observations; qualitative research data instruments include: words, images or observations, and data from informal narrative reports are produced as final research reports<sup>563</sup>.

Noella and Knipe discussed the difference between positive and qualitative methods. Positivist research is associated with quantitative methods for data collection and analysis. The interpretivist research approach is aligned with qualitative methods for data collection and analysis<sup>564</sup>.

The positivist paradigm uses quantitative research method and experiments, quasi-experiments, test and scales tools for data collection. On other hand, interpretive paradigms undertake qualitative method and interviews, observations, documents reviews and visual data analysis tools used for data collection<sup>565</sup>. This study uses both qualitative and quantitative methods that is a mixed-method approach.

#### **5.4: Mixed Method Approach**

The method is a technique directing the ways in which research data is collected and analysed. The selection of research method depends on research designs and theoretical concepts of research<sup>566</sup>. Johnson and Onwuegbuzie have defined the mixed method as: “mixed methods research is formally defined here as the class of research where the researcher mixes or combines quantitative and qualitative research techniques, methods, approaches, concepts or language into a single study”<sup>567</sup>. Originally, the quantitative research practice on quantitative data means numerical data and qualitative research relies on qualitative data which is non-numerical<sup>568</sup>.

A mixed methods research approach which uses qualitative and quantitative data collection methods to address research questions<sup>569</sup>. In research, some circumstances, research questions and hypothesis, where the phenomena of interest cannot be developed with full and border understandings by using only one research method qualitative or quantitative. So, the

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<sup>563</sup> Antwi and Hamza (n 558).

<sup>564</sup> Mackenzie and Knipe (n 555).

<sup>565</sup> *ibid*.

<sup>566</sup> Rehman and Alharthi (n 556).

<sup>567</sup> R. Burke Johnson and Anthony J. Onwuegbuzie, ‘Mixed methods research: A research paradigm whose time has come’ (2004) 33 (7) Educational researcher 14-26

<sup>568</sup> Antwi and Hamza (n 558).

<sup>569</sup> Abbas Tashakkori and Charles Teddlie, ‘Issues and dilemmas in teaching research methods courses in social and behavioural sciences: US perspective’ (2003) 6 (1) International Journal of Social Research Methodology 61-77



mixed methods approach by combining qualitative and quantitative research methods is preferred where single research method fail to elaborate the research stance<sup>570</sup>.

Johnson and Onwuegbuzie have identified that mixed method includes eight steps namely; “determine the research question; determine whether a mixed design is appropriate; select the mixed-method or missed-model research design; collect data; analyse the data; interpret the data; legitimate the data and draw conclusion”<sup>571</sup>.

The quantitative methods strictly focus on quantification of data and a careful control mechanism for empirical variables<sup>572</sup>. The quantitative research is used to verify the correctness of existing theories to interpret the phenomena of these theories. This research approach enables the researchers to propose new theories to understand the social phenomena beyond existing theories. Quantitative research contracts with numbers, statistics and hard data<sup>573</sup>.

In contrast qualitative methods are associated with deductive reasoning. The quantitative researchers argue that “quantitative research enquires into observable, measurable and independent facts”. The researchers are divided into two categories based on research traditions- positivism and interpretivism. First is associated with quantitative research and second one is with qualitative research. Qualitative data is based on objectives and so speak for themselves<sup>574</sup>.

The qualitative data analysis helps to contribute in construction of meanings of research phenomena<sup>575</sup>. The qualitative research is defined as: “an explanation of social relations and reality as experienced”<sup>576</sup>. Yates and Leggett argued that the qualitative research is only research method which “gets at the how and why of the story”<sup>577</sup>.

Kumar has argued that a study design in qualitative research is the most appropriate to investigate ‘variation and diversity’ in any characteristic of social life. It is most appropriate for

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<sup>570</sup> Viswanath Venkatesh, Susan A. Brown and Hillol Bala, ‘Bridging the qualitative-quantitative divide: Guidelines for conducting mixed methods research in information systems’ (2013) 37 (1) MIS Quarterly 21-54

<sup>571</sup> Johnson and Onwuegbuzie (n 567).

<sup>572</sup> Ponterotto (n 554).

<sup>573</sup> Wing Hong Chui (Eric) McConville, Mike Chui and Wing Hong (ed), Research Methods for law (Edinburgh University Press, 2007) 48

<sup>574</sup> Lisa Webley, ‘Qualitative Approaches to Empirical Legal Research’ Peter Cane and Herbert Kritzer (ed) Oxford Handbook of Empirical Legal Research (Oxford University Press, 2010) 926- 950

<sup>575</sup> Steven Eric Krauss, ‘Research paradigms and meaning making: A primer’ (2005) 10 (4) The Qualitative Report 758-770

<sup>576</sup> McConville, Chui and Hong (n 573) 21.

<sup>577</sup> Jennifer Yates and Tricia Leggett, ‘Qualitative Research: An Introduction’ (2016) 88 (2) Radiologic Technology 225-230

the study of 'values, beliefs, understandings, perceptions, meanings, etc.' because qualitative research design offers researchers flexibility<sup>578</sup>.

Hence according to Cooper et al. the qualitative research starts from examining comprehensive and open-ended research problems. Their approach is dedicated to establishing 'descriptive and theoretical ideas' by the process of data collection and data analysis. The qualitative research approach is mainly a 'focused or confirmatory mode of inference'<sup>579</sup>. According to Pathik et al. qualitative research is concerned with an individual's experiences of problem under investigation. This approach is used for data collection, data analysis and interpretation of data drawn from other findings and interpretations. The qualitative research exposes the 'meanings, concepts, definitions, characteristics, metaphors, symbols, and description of things'<sup>580</sup>.

Johnson and Onwuegbuzie have discussed the characteristics of quantitative and qualitative research which are; "deduction, confirmation, theory/hypothesis testing, explanation, prediction, standardised data collection, and statistical analysis", traditionally the major characteristics of qualitative are "induction, discovery, exploration, theory/ hypothesis generation, the researcher as the primary "instrument" of data collection, and qualitative analysis"<sup>581</sup>. The qualitative and quantitative are research methods which are used for data collection, data analysis, and reporting of the results<sup>582</sup>.

### **5.5: Empirical Legal Research Methodology**

The empirical research is very much in demand and valuable in legal scholarship. From a legal perspective empirical research is a useful tool to develop understanding of the 'operation and effects' of law. Moreover, in legal scholarship the place of empirical research is a very important tool for research and analysis regardless of whether empirical research is qualitative or quantitative, or which analysis tools are used<sup>583</sup>. The empirical research can generate knowledge of law the ways laws functions in practice<sup>584</sup>.

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<sup>578</sup> Ranjit Kumar, *Research Methodology: a step-by-step guide for beginners* (3rd edn, SAGE Publication Limited 2011) 83

<sup>579</sup> Barry Cooper, Judith Glaesser, Roger Gomm and Martyn Hammersley, *Challenging the Qualitative and Quantitative Divide Explorations in Case- Focused Casual Analysis* (Continuum International Publishing Group, 2012) 6

<sup>580</sup> Md. Mamun Habib, Bishwajit Banik Pathik, Hafsa Maryam, *Research Methodology- Contemporary Practices* (Cambridge Scholars Publishing, 2014) 9

<sup>581</sup> Johnson and Onwuegbuzie (n 567).

<sup>582</sup> Antwi and Hamza (n 558).

<sup>583</sup> Felicity Bell, 'Empirical research in law' (2016) 25 (2) *Griffith Law Review* 262-282

<sup>584</sup> Susan Bright, Sarah Blandy (eds), *Researching Property Law* (Palgrave, 2016) 14

A comprehensive definition of empirical research by Diamond and Mueller included “defining empirical research as the systematic organisation of a series of observations with the method of data collection and analysis made available to audience”<sup>585</sup>.

The clear motive of empirical research is to compare and contrast the ‘law in books’ with the ‘law in action’<sup>586</sup>. In legal scholarship where the expression to real world is used, which emphasis an empirical works in legal scholarship<sup>587</sup>. Empirical research facilitates the testing of the consequence of law by measuring the influence of law against its purpose<sup>588</sup>.

Empirical research has two rationales: ‘practical or policy oriented; and the theoretical or critical’<sup>589</sup>. The important characteristic of empirical research is to use systematically collected data (qualitative or quantitative) to describe or to analyse the legal phenomenon. Some researchers use quantitative or statistical analysis to analyse collected data for inference<sup>590</sup>. This research project intended for first rational of empirical research to evaluate the law in practice for shareholders rights by investigation shareholders control and decision making rights in ASX 200.

The empirical research facilitates the researcher to make genuine and practical contributions to the existing knowledge<sup>591</sup>. Empirical research is based on the agreements which stand within the existing literature and have characteristics. These characteristics include the data which are observable and verifiable. This data can be either qualitative or quantitative to generate new knowledge about the law<sup>592</sup>. Kritzer described the data collected for empirical research. The separate feature of empirical research is “the use of systematically collected date, either qualitative or quantitative, to describe or otherwise analyse some legal phenomena”<sup>593</sup>.

Legal theorists argue that they can empirically test in a given jurisdiction whether “there are cases, statutes, maxims, principles, canons, authorities, or statements in learned legal treatises available to justify decisions in favour of both parties in all or at least most litigated

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<sup>585</sup> Shari Seidman Diamond and Pam Mueller, ‘Empirical legal scholarship in law reviews’ (2010) 6 Annual Review of Law and Social Science 581-599

<sup>586</sup> Bell (n 583). also see Roscoe Pound, ‘Law in books and law in action’ (1910) 44 Am. L. Rev 12-36; “It is the work of lawyers to make the law in action conform to the law in the books, not by futile thundering against popular lawlessness, nor eloquent exhortations to obedience of the written law, but by making the law in the books such that the law in action can conform to it, and providing a speedy, cheap and efficient legal mode of applying it”.

<sup>587</sup> George (n 550).

<sup>588</sup> Robert H. Mnookin and Lewis Kornhauser, ‘Bargaining in the shadow of the law: The case of divorce’ (1979) 88 (5) The Yale Law Journal 950-997

<sup>589</sup> Bell (n 583).

<sup>590</sup> Herbert M. Kritzer, ‘The (Nearly) Forgotten Early Empirical Legal Research’ (2009) Minnesota Studies Research Paper No. 09-26 <<http://ssrn.com/abstract=1426312>> accessed 08 September 2018

<sup>591</sup> McConville, Chui and Hong (n 573) 224.

<sup>592</sup> Bright and Blandy (n 584) 512.

<sup>593</sup> *ibid* 512-513.

cases”<sup>594</sup>. Bell has explained the phenomenon of real world in comprehensive approach as: “case studies, case analysis and arguments for law reform are all empirical methods, as they refer to the real world”<sup>595</sup>.

The mixed-method of empirical research in law and legal process is not only method that provides the information about law because other research methods also provide information about law. The distinct feature of empirical research is that it answers the questions of law which other research methods cannot. The legal rules provide little information about the actual decision-making practices. The empirical research is essential key to understand the actual implementation of legal phenomena<sup>596</sup>.

The empirical research is a worthy tool to introduce policy changes to improve the legitimacy, effectiveness, efficiency and lawfulness of regulatory supremacy. Also, empirical analysis is very helpful instrument to introduce and implement new policy reforms in corporate law and corporate governance. Moreover, empirical research can facilitate better explanation on the effectiveness of government institutes’ behaviour on shareholders rights. So, empirical research method contribute positively in policy debates and to assist the better understanding for law in social context<sup>597</sup>.

The attraction in empirical research methodology by legal scholarship and practical implementation of law are due to formulate understating like; “whether in relation to understanding evidence, basing policy decisions on sound research, or having a deep and critical understanding of law’s impact on the world”<sup>598</sup>.

In literature the scholarly studies have applied the empirical research to study shareholders role included; Stapledon et al<sup>599</sup>. Chia and Ramsay<sup>600</sup>, Hewitt<sup>601</sup>, Dignam and Galanis<sup>602</sup>, De Falco et al.<sup>603</sup>, Hillman et al.<sup>604</sup>, Van der Elst<sup>605</sup> and Song et al.<sup>606</sup>. These studies are in detail discussed in Chapter 2 and Chapter 3.

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<sup>594</sup> Frederick Schauer, Thinking Like a Lawyer Quoted by Jessie Aliev, ‘EMPIRICAL DOCTRINE’ (2015) 66 (1) Case Western Reserve Law Review 1-49

<sup>595</sup> Bell (n 583).

<sup>596</sup> Dawn Watkins and Mandy Burton (ed), Research Methods in Law (Routledge, 2013) 55

<sup>597</sup> Cary Coglianese, ‘Empirical analysis and administrative law’ [2002] University of Illinois Law Review 1111-1138

<sup>598</sup> Bell (n 583).

<sup>599</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>600</sup> Chia and Ramsay (n 48).

<sup>601</sup> Hewitt (n 44).

<sup>602</sup> Dignam and Galanis (n 6).

<sup>603</sup> Falco, Cucari and Sorrentino (n 40).

<sup>604</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>605</sup> Van der Elst (n 64).

<sup>606</sup> Song, Xin and Yi (n 58).

In this research project empirical research was a valuable tool to develop better understanding of shareholders rights in theory and practice and the way shareholders exercise their control and decision making rights in Australian listed companies. This study collected AGM and proxy voting data as they are numerical data that is observable on companies' websites and the AGM results are verifiable from the ASX website.

## **5.6: Development of Database**

The population of this study is Australian listed company on the ASX. The companies included in the ASX 200 index, which includes the top 200 companies by market value, is defined as the population of this study.

### **5.6.1: Sample of Empirical Study**

The population of this study was listed companies of ASX 200 companies. The ASX produces a number of indices that disclose performance of the share market. The S&P / ASX 200 index is designed to measure the performance of the 200 largest index-eligible stocks listed in the ASX by float-adjusted market capitalisation. The criteria for inclusion in the index was that a security must be an ordinary equity, its market capitalisation for the previous six months must be investable, its liquidity must be adequate, and its public float must also meet a minimum requirement. These companies represent 72% of the market value. Being highly liquid and having low share turnover they are relatively stable allowing the ASX 200 index to be used as a benchmark for investment returns. As they have numerous shareholders and large numbers of shareholders who attend AGMs their attendance and voting patterns are an appropriate basis for analysis of shareholders engagement, rights and decision making.

The final sample companies were selected on the basis of the ASX 200 lists of companies taken from ASX website for year 2014 to 2018. The ASX 200 lists their company code, name and sector.

These parameters applied for sample selection from defined population of ASX 200:

- The listed companies were present at ASX 200 for five years for study period of 2014 to 2018.
- The companies AGMs held for five years of period (2014 to 2018).
- The data of the companies publicly available includes notices of AGMs, AGM results and annual reports of listed companies

The company lists for each year were taken from the ASX website. The lists of ASX 200 companies was matched with each subsequent year's list (for example, 2014 ASX 200 list was matched with 2015 ASX 200 list and this helped to generate a new list which showed the name of companies which were part of ASX 200 during 2014 and 2015. Then the same approach applied for 2016, 2017 and 2018 to get the final sample list of the companies).

Only those companies were included in the sample which existed in the ASX 200 list over the period of five years. The rest of the companies were deleted from the sample.

Table 5.1 displays the sector in which the sample companies operate, and their frequency and percentage of each sector.

**Table 5.1 Sample of the study**

<b>Companies Sector</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Excluded	6	4.7
Consumer Discretionary	20	15.6
Consumer Staples	7	5.5
Energy	8	6.3
Financials	18	14.1
Health Care	7	5.5
Industrials	13	10.2
Information Technology	4	3.1
Materials	27	21.1
Real State	12	9.4
Telecommunication Services	3	2.3
Utilities	3	2.3
<b>Total</b>	<b>128</b>	<b>100.0</b>

*Source: Author*

The sample size of this study was 128 listed companies based in 11 sectors (Appendix B). For this research the shareholders engagement in Australian listed companies was indicated by the frequency of shareholders voting in person or through proxy voting at AGMs.

The final sample size was reduced to 122 (Appendix C) because six companies were eliminated from study sample of this project. The Ardent Leisure Group (AAD), Investa Office Fund Stapled Securities (IOF) and Regis Resources (RRL) were delisted from ASX at the stage of data collection. News Corp Class B Voting Common Stock-Cdi (NWS), Resmed Inc Cdi 10:1 Foreign Exempt NYSE (RMD), BWP Trust Ordinary Units FP (BWP), the AGM notices and AGM results were not publicly available on ASX or company website.

### **5.6.3: Empirical Data Collection – Secondary Data**

The data can be collected through primary sources or secondary sources. The primary data were collected for specific purpose of the study in interviews using a semi-structured questionnaires<sup>607</sup>. Primary data is a data which is directly collected from individual respondents for first time<sup>608</sup>. Secondary data<sup>609</sup> is available from 'ABS census, publicly

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<sup>607</sup> Cheng F. Lee, John C. Lee and Alice C. Lee, Statistics for Business and Financial Economics (2nd edn, World Scientific Publishing Co. Pte. Ltd. 2000) 14

<sup>608</sup> E. Narayanan Nadar, Statistics (2nd edn, PHI Learning Private Limited 2015) 33

<sup>609</sup> *ibid* 34.

available databases, previous research studies, government reports, historical data, and data from internet'<sup>610</sup>.

The aim of this study was to evaluate shareholders economic, control and decision making rights in Australian listed companies. This research used secondary data for analysis because to evaluate shareholders economic, control and decision making rights in investee companies means to study engagement of shareholders through voting and proxy voting at AGMs. The data for this study were publicly available in AGM notices, annual report and AGMs voting results are publicly available on listed companies websites as well AXS website.

**Table 5.2 Source for secondary data collection**

Source	Documents	Data
Company and ASX Website	AGM Notice	AGM resolutions, resolutions type (ordinary or special), resolution recommendations from board (to vote 'For or Against or no recommendation') and resolutions withdrawn
Company and ASX Website	AGM Results	Shareholders proxy voting and final voting results on AGM resolutions, (Refer to Appendix A for AGM resolutions and Refer to Section 5.7.1 of Chapter 5 for variables definitions).
Company and ASX Website	Annual Reports	Total number of ordinary shares issued in specific year; percentage of share ownership of top 20 shareholders, number of blockholders, and percentage of share ownership of blockholders.

The secondary data for empirical analysis (Table 5.2) were collected from the annual reports, AGM notices and AGM results of sample listed companies taken from ASX website (During October 2018 to July 2019) and websites of sample listed companies. As in a few cases the company's annual report or AGM notice or AGM results were not available at the ASX website, data were then collected from the website of the specific company. The data were divided and converted into two separate indices from the raw data.

#### **5.6.4: First Index of Empirical Data**

The secondary data for the first index was collected from AGM notices of each sample company over the study period include:

- Number of total resolutions proposed for shareholders' approval at AGMs for each sample year;
- The number of AGM proposals are separately recorded in index sheet as ordinary or special resolutions from each sample company for five years;
- In AGM notices the intentions of board about each resolutions are separately recorded like board recommended resolutions to vote:
  - For the resolutions

<sup>610</sup> Christian Heumann, Michael Schomaker and Shalabh, Introduction and Framework. In: Introduction to Statistics and Data Analysis (Springer International Publishing, 2016) 9

- Against the resolutions
- Board has not made any clear recommendation for shareholders

Further, data was extracted from annual reports of companies include:

- The data on share ownership are collected and recorded in first index as the percentage of shareholdings of ordinary shares of top 20 shareholders in sample listed companies for period 2014 to 2018;
- Number of blockholders (having greater than or equal to 5%) in each company and percentage of ordinary share ownership of blockholders was manually calculated from annual reports and recorded in index.
- The value of final dividend for each company taken from ASX website and recorded in data index.

The indices were developed manually by researcher. The complete list AGM resolutions is categories attached as Appendix A. The resolutions calculations are presented below (The resolutions of AGMs- 2014–18).

#### **5.6.5: Second Index of Empirical Data**

To answer the research questions and fulfil the aim of this study of evaluating shareholders engagement through their control and decision making rights by exercising their voting rights directly or through appointment of proxies the second index was constructed in four stages:

- Stage 1: Collection of the data
- Stage 2: Collection of resolutions
- Stage 3: Construction of voting categories
- Stage 4: Analyses of voting patterns and resolution outcomes

##### **5.6.5.1: Stage 1**

In the first stage of empirical data collection, the AGM results and annual reports of companies of sample companies were collected and studied. The Australian listed companies have a legal obligation to disclose their AGM results under Act and ASX LRs. For this stage of data collection the second index was prepared from data according to s 255AA of the Act, ASX LRs and the Financial Service Council (FSC) Guidance Note No.2.00. The companies need to disclose their AGM results according to defined legal standards. Before proceeding to next stages of data collection it seems essential to discuss the laws first.

Section 251AA of the Act as:



***Disclosure of proxy votes—listed companies***

- (1) A company must record in the minutes of a meeting, in respect of each resolution in the notice of meeting, the total number of proxy votes exercisable by all proxies validly appointed and:*

  - (a) If the resolution is decided by a show of hands—the total number of proxy votes in respect of which the appointments specified that:*

    - (i) the proxy is to vote for the resolution; and*
    - (ii) the proxy is to vote against the resolution; and*
    - (iii) The proxy is to abstain on the resolution; and*
    - (iv) (iv)The proxy may vote at the proxy's discretion; and*
  - (b) If the resolution is decided on a poll—the information specified in paragraph (a) and the total number of votes cast on the poll:*

    - (i) In favour of the resolution; and*
    - (ii) Against the resolution; and*
    - (iii) Abstaining on the resolution.*
- (2) A company that must notify the Exchange of a resolution passed by members at a meeting of the company must, at the same time, give the Exchange the information specified in subsection (1).*
- (3) This section applies only to a company that is included in an official list of the Exchange.*
- (4) This section applies despite anything in the company's constitution”.*

*The outcome in respect of each resolution put to a meeting of security holders, showing separately:*

- (a) both the number and a short description of the resolution;*
- (b) whether the resolution was passed or not passed;*
- (c) whether the resolution was decided on a show of hands or a poll;*
- (d) if the resolution was decided on a poll:*
  - (i) the number of securities that were voted for the resolution and the percentage they represented of the total number of securities that were voted on the resolution;*
  - (ii) the number of securities that were voted against the resolution and the percentage they represented of the total number of securities that were voted on the resolution; and*
  - (iii) the number of securities that formally abstained from voting on the resolution;*
- (e) regardless of how the resolution was decided, the aggregate number of securities for which valid proxies were received before the meeting, showing separately:*
  - (i) the aggregate number of securities in respect of which the proxy was directed to vote for the resolution;*
  - (ii) the aggregate number of securities in respect of which the proxy was directed to vote against the resolution;*
  - (iii) the aggregate number of securities in respect of which the proxy was directed to abstain from voting on the resolution; and*
  - (iv) the aggregate number of securities in respect of which the proxy could vote at their discretion; and*
- (f) if the resolution related to the adoption of the entity's remuneration report and the outcome constitutes a "first strike" or "second strike" under section 250U of the Corporations Act, that fact and, if a resolution was proposed in the notice of meeting but not put to the meeting, the number and a short description of the resolution, the fact that it was not put to the meeting and an explanation of why it was not put to the meeting.*

*The entity must do so immediately after the meeting has been held. If the meeting is adjourned, the entity must immediately tell ASX of the adjournment and the outcome in respect of each resolution dealt with before the adjournment.*

*The notification given to ASX must be headed "Results of Meeting" or something similar.*

A similar requirement is found in the Financial Service Council (FSC) Guidance Note No.2.00 (Corporate Governance: A Guide for Fund Managers and Corporations), Guideline 15 'Company Meeting'. It explains the disclosure of voting results as:" In announcing to the ASX the decisions made by shareholders at a general meeting, a listed company should report the

aggregate proxy votes validity received for each item of business in the notice of meeting. The report should disclose, in the case of a resolution passed on show of hands, the aggregate number of proxy votes received in each voting category ('For', 'Against', 'Left to Proxy's Discretion' and 'Abstain'). In the case of a resolution submitted to a poll, the report should disclose both the information specified in the preceding sentence and the aggregate number of votes 'For' and 'Against' on the poll"<sup>611</sup>.

The results of a by study Stapledon et al. assessed proxy voting in three ways. First; the results of proxy instructions given to proxies for widely held companies ('Vote for, Vote Against, Abstain, Discretionary and Total'), second, the voting results of resolutions of directors election when the resolutions decided by poll in widely held companies ('In favour, Against, Abstain and Total') and third one, proxy voting results on directors election resolution where proxy instructions given by shareholders ('Vote for, Vote Against, Abstain, Discretionary and Total')<sup>612</sup>.

Similar data were compiled for the current study. In the current study the actual voting results was exported manually for each resolution in the second index and second stage for data collection was applied during this process.

#### **5.6.5.2: Stage 2**

In the second stage of the analyses the AGM resolutions were grouped into 26 groups and labelled according to their characteristics. The details are discussed in Appendix A. The election (ED) and re-election of directors (RED) were divided into two groups. If any company had one or more than one resolution regarding (re) election of directors, this was considered and calculated as a single resolution. The remuneration resolution (RR) in all the AGM meetings was a single resolution. The resolutions regarding 'Directors Fees (DF)' which included; increase in directors' remuneration fees pool, directors' fees pool, to approve directors' remuneration fees pool, directors' fees pool, to approve directors remuneration policy etc. were calculated under one label.

The next third stage of data handling briefly explains the ways in which the data were combined and calculations made. All other resolutions in relation to directors other than election, re-election and director fees was categorised as 'Directors Other'. The 'Directors Other (DO)' label included AGM resolutions such as: approval of termination or potential

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<sup>611</sup> The Financial Service Council (FSC) Guidance Note No.2.00 (Corporate Governance: A Guide for Fund Managers and Corporations) available at <<https://www.fsc.org.au/>> accessed 6 April 2019

<sup>612</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

termination benefits, grant of options to managing director, approval of issues under executive incentive plan, etc.

The resolutions which were for dividends included dividend investment or declaration of dividend were labelled as dividend (Divd). The resolutions directly related to shareholders other than dividend were characterised as 'Shareholders Others (SO)'. These involved: return of capital to shareholders, consolidation of capital, reduction of capital, share consolidation, and approve on-market buy-back of shares. The resolutions related to environmental, social and governance (ESG) resolutions were taken as ESG resolutions and included the resolutions such as: human rights reports, climate risk disclosure, human right diligence etc.

Similarly, the other categories of resolutions were grouped as: performance rights (PR), grant of equity (GE), securities or stapled securities (SSS), award-incentives (long term or short term) (AILS), share matters (the resolutions regarding shares to managing directors, CEOs or to any other director) (SM), election of non-executive directors (NEDE), re-election of non-executive directors (RNED) and remuneration of non-executive directors (NED-R), non-executive directors all other (NED-AO), resolutions associated to auditors (Audi), resolution linked with financial assistance (FA), takeover (Tak), issue of share (IOS), employee shares (ES), AGM resolutions for to change company name (CN), resolutions linked to company constitution (Cont), the resolutions which was not categorised in the other defined categories were added under 'All Other (AO)' label which included; to approve related party transactions, strategies resilience for 2035 and beyond, and spill resolution (refer to Appendix A). The names of directors and other was replaced with XYZ to obey the privacy laws.

#### **5.6.5.3: Stage 3**

Section 251AA of the Act specified two possible scenarios for decisions making at AGMs, voting through either a show of hands or through a poll. ASX Listing Rule 3.13.2 and s 251AA are about discourse of proxy voting and voting results; also listing rules and s 251AA have defined the categories of voting and proxy voting to be disclosed by the listed companies. Similarly, FSC Guidance Note No.2.00 has also explained the discourse of AGM results.

If the resolutions are decided by a show of hands then listed companies are legally required to disclose the proxy voting results in the four categories; 'For, Against, Abstain and Discretion'. If the AGMs resolutions are decided by a poll than listed companies have to disclose proxy voting results ('For, Against, Abstain and Discretion') along with total number of votes casted on poll ('For, Against and Abstain').

This study has followed the Stapledon et al.<sup>613</sup> method discussed in brief in Stage 1 of recording the voting and proxy discourses of AGM resolutions. The aim of this study is to evaluate shareholders rights in theory and practice. To investigate shareholders actual engagement practices at AGMs of listed companies exercise their control and decision making rights, this study did not rely on percentages of voting and proxy voting results published by companies' on their website or on ASX's company announcements. For this study the actual voting results of 'For, Against, Abstain and Discretion' and 'For', 'Against and Abstain' were converted into percentages by using these formulas.

#### 5.6.5.3.1: Construction of the Indices

To calculate the percentage of votes casted 'For' or in 'favour', 'Against', Discretion, Abstain or both in AGM results as<sup>614</sup>:

$$\% \text{ Vote For}_i = \left( \frac{\text{Total Votes Casted For}_i}{\text{Total Ordinary Shares}_i} \right) * 100^{615}$$

The total proxy votes casted for resolutions passed by show of hands or total votes casted for resolution if the resolution was passed though poll was divided by total numbers of shares issued in specific year and declared in annual report of the listed companies in specific year.

$$\% \text{ Vote Against}_i = \left( \frac{\text{Total Votes Casted Against}_i}{\text{Total Ordinary Shares}_i} \right) * 100^{616}$$

$$\% \text{ Vote Discretion}_i = \left( \frac{\text{Total Votes Casted Discretion}_i}{\text{Total Ordinary Shares}_i} \right) * 100^{617}$$

$$\% \text{ Vote Abstain}_i = \left( \frac{\text{Total Votes Casted Abstain}_i}{\text{Total Ordinary Shares}_i} \right) * 100^{618}$$

For all these,  $i$ , represent the aggregated voted results (for each resolution presented for shareholders' approval in each sample company), for all the resolutions passed in all years through a show of hands or through a poll. In AGM voting results if there was more than one similar resolution (for example election or re-election of more than one director) at AGM, then percentage turnout of votes cast for resolutions was:

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<sup>613</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>614</sup> Note: The AGM results for the companies whose resolutions was passed at poll, their AGM voting results are based on seven categories (For, against, discretionary, abstain and final votes on the base the resolutions were passed or rejected having three categories For, Against and Abstain. So, the final voting results of three categories used to find voting turnout when the resolutions decided by pooling.)

<sup>615</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>616</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>617</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>618</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

$$\% \text{ Voting Turnout For Each Resolution} = \left( \frac{\text{Total Votes Casted Resolution}_i}{\text{Total Ordinary Shares}_i} \right) * 100^{619}$$

If the resolution passed by poll than 'Total Votes Casted for Resolution' was calculated as:

$$\text{Total Votes Casted Resolution}_i = \text{For}_i + \text{Against}_i + \text{Abstain}_i^{620}$$

If the resolution passed by poll than 'Total Votes Casted for Resolution' was calculated as:

$$\text{Total Votes Casted Resolution}_i = \text{For}_i + \text{Against}_i + \text{Discretion}_i + \text{Abstain}_i$$

The results raised the concern that 25 companies from ASX 200 passed the resolutions through show of hands rather than deciding the resolutions through poll<sup>621</sup>. The companies AGM chair is with wisdom to make decision of whether the AGMs resolutions would be passed either through show of hands or by a poll.

To calculate the overall average of votes casted at each AGM during 2014–16, this research has used the following calculation formula:

$$\% \text{ Voting Tournout}_{ij} = \left( \frac{\sum (\% \text{ Voting Turnout For Each Resolution})_{ij}}{\text{Total Number of Resolution}_{ij}} \right)$$

The voting turnout for  $ij$ , where  $i$  presents the company and  $j$  presents the year of AGM. To calculate the votes cased each year the same formula used, where  $i$  presents the company and  $j$  presents the year.

All the votes which are not casted 'For' the resolution are believed to be voting dissents<sup>622</sup>. The voting dissent for proxy instructions given by the shareholders was calculated as:

$$\% \text{ Voting Dissent} = (\% \text{ Vote Against} + \% \text{ Vote Abstain} + \% \text{ Vote Discretion})^{623}$$

The voting discretion for the resolutions which was passed through polls was calculated as:

$$\% \text{ Voting Dissent} = (\% \text{ Vote Against} + \% \text{ Vote Abstain})$$

The first stage of empirical data collection explained the nature of data be collected, second stage briefly specified the grouping and labelling of AGM resolutions, and at third stage the AGM resolutions results converted into percentages. The fourth stage explain the way voting and proxy voting results was segregated for further analysis.

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<sup>619</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191). Hewitt (n 44).

<sup>620</sup> Hewitt (n 44).

<sup>621</sup> Report 609 (n 54).

<sup>622</sup> Hewitt (n 44).

<sup>623</sup> Conyon and Sadler (n 69).

#### **5.6.5.4: Stage 4**

The 26 AGM resolution groups included: election of director (ED), re-election of directors (RED), remuneration report (RR), director fees (DF), directors other (DO), performance rights (PR), grant of equity (GE), election of non-executive directors (ENED), re-election of non-executive directors (REND), non-executive directors remuneration (NED-R), non-executive directors all other (NED-AO), auditor (Audi), financial assistance (FA), takeover (Tak), issue of shares (IOS), dividend (Divd), share matters (SM), employee shares (ES), securities / stapled securities (SSS), shareholders others (SO), company name (CN), constitution (Cont), award- incentives (long term or short term) (AILS), all others (AO), environmental, social and governance (ESG) and Spill.

The voting results from the resolution groups were separated for each AGM resolution (refer to Appendix E) and presented as:

- Votes exercised on poll (2014 to 2018)
- The proxy voting results – the resolutions passed on show of hands
- The proxy voting results – the instructions given to proxy by shareholders

#### **5.7: Issues with Data Collection**

The main issue faced during empirical data collection at stage 4, was missing values in data as the AGM resolutions were divided into 26 groups according to their characteristics. The disclosure of AGM results is according to s 251AA of the Act, ASX LR 3.13.2 and Financial Service Council (FSC) guidelines. The following missing data issues was encountered:

- If the resolutions passed on a show of hands, some of the listed companies had not disclosed the voting results of proxy instructions for one year, and in a few companies proxy voting results was not disclosed for 2 years.
- In some companies but very few resolutions passed by a show of hands or by a poll, one of the voting results of 'Against' or 'Discretion' or Abstain' was missing from AGM results.

The literature has offered different solutions to handling missing data. The easiest is to delete the sample from investigation and only consider the variables having complete data, but this research decided to handle the missing data the way explained in the proceeding section to obtain significant results.

## 5.8: Decide How to Handle Missing Data

*Unfortunately, in real- word data sets, missing data are the norm rather than the expectation*<sup>624</sup>.

Graham has established the argument that in literature two kinds of missing data categories are often mentioned as item nonresponse and item wave response. Survey research faces item nonresponse and wave nonresponse applies to longitudinal research<sup>625</sup>. Choi et al. prescribed three mechanisms which can cause missing values in the data. The values in data can be missed or missing due to missing completely at random (MCAR), missing at random (MAR) or missing not at a random (MNAR)<sup>626</sup>.

Downey and King have pointed out four mechanisms which researchers can utilize during their research to deal with the phenomenon of missing data; “ignoring the missing data, omit persons with missing data from the study, omit the persons from the particular analysis using the scale that contains the missing data, or find a way to replace the missing data with an estimate of what they might be”<sup>627</sup>.

In literature different approaches to handling missing data have been discussed by researchers. Graham summarised the methods for managing the missing data (value) as: complete case analysis, pairwise deletions, mean substitution, regression based single imputation, multiple imputation (MI) and maximum-likelihood (ML) method<sup>628</sup>. Tsiriktsis has discussed the following ways to handle the missing data: deletion procedure which includes listwise deletion or pairwise deletion, replacement procedures comprise mean substitution, regression imputation, hot-deck imputation, model-based procedures and expectation maximization<sup>629</sup>.

Downey and King has implemented ‘the person mean substitution approach (PMS) and item mean substitution method (IMS)’, the results of the study showed that both the methods are very good to represent the original data to complete the missing data. Moreover, both the methods work more efficiently when the missing data items are less than and equal to 20%.

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<sup>624</sup> Shinichi Nakagawa and Robert P. Freckleton, ‘Missing inaction: the dangers of ignoring missing data’ (2008) 23 (11) Trends in Ecology & Evolution 592-596

<sup>625</sup> John W. Graham, Missing Data: Analysis and Design (Springer Science & Business Media, 2011) 4

<sup>626</sup> Jungyeon Choi, Olaf M. Dekkers and Saskia le Cessie, ‘A comparison of different methods to handle missing data in the context of propensity score analysis’ (2019) 34 (1) European journal of epidemiology 23-36

<sup>627</sup> Ronald G. Downey, and Craig V. King, ‘Missing data in Likert ratings: A comparison of replacement methods’ (1998) 125 (2) The Journal of general psychology 175-191

<sup>628</sup> Graham (n 625) 47-48.

<sup>629</sup> Nikos Tsiriktsis, ‘A review of techniques for treating missing data in OM survey research’ (2005) 24 (1) Journal of operations management 53-62



However, the software like SPSS, SAS has made the process to handle the missing data easy and quick<sup>630</sup>.

Tsikriktsis has categorised the mean substitution method in three categories: total mean substitution, subgroup mean substitution and case mean substitution. In total mean substitution method, the missing value is filled by the mean of all the items of study. In the second method sub-group the mean substitution of a particular group value is calculated, and the rest of variable responses are ignored, and in last category the missing valued is filled with intra individual mean from the available data<sup>631</sup>. Peeters et al. conducted a simulation study to determine the most optimal approach to deal with missing data. This study used five different approaches to address missing data: 'list wise deletion, last observation carried backward, conservative imputation, multiple imputation using logistic regression and multiple imputation using predictive mean matching. The results showed that multiple imputation (MI) using predictive mean matching was the best method for missing data. Moreover, listwise deletion and carrying backward the last value of the observation also proved an acceptable approach to fill the missing data<sup>632</sup>. The mean substitution strategy is when the mean of the available data of the variables is calculated and missing data is filled with mean value as a substitute to the missing value<sup>633</sup>.

The very common approach is to omit cases with missing data from the study for further analysis and to consider in the sample only units which incorporate completely available data<sup>634</sup>. The concept to omit the samples from study which have incomplete information or to take only those samples which have complete data information is very common in the studies which investigate shareholders voting rights.

One example is the empirical study of shareholders voting power by Aggarwal et al. was with sample of 34,000 election events which encompasses 194,000 directors' positions for shareholders voting at AGMs, but the final sample size of study was of 83,469<sup>635</sup>.

Conyon and Sadle empirical study of shareholders voting and directors' remuneration used sample of 1958 companies with initial observations of 75,455 resolutions for shareholders voting, at next stage the number of observations was reduced to 51,263, and due to missing observations (missing voting results at AGM results) the final number of observations of study

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<sup>630</sup> Graham (n 625) 47-49.

<sup>631</sup> Tsikriktsis (n 629).

<sup>632</sup> Margot Peeters, Mariëlle Zondervan-Zwijnenburg, Gerko Vink & and Rens van de Schoot, 'How to handle missing data: A comparison of different approaches' (2015) 12 (4) European Journal of Developmental Psychology 377-394

<sup>633</sup> Graham (n 625) 48-49.

<sup>634</sup> Nakagawa and Freckleton (n 624).

<sup>635</sup> Aggarwal, Dahiya and Prabhala (n 62).

became 44,787<sup>636</sup>. Hillman et al.'s empirical study of shareholders voting behaviour on directors' election has built a sample of 500 firms with 2,879 observations on election and re-election of directors, the final sample was reduced to 356 firms and 2,099 observations, these sample and observation size was decreased due to missing values of the variable<sup>637</sup>. The empirical study by Poulsen et al.'s on shareholders voting and activism selected sample of 1,179 observation the sample size was reduced to 954 observation. The sample size was reduced because of the non-availability of data<sup>638</sup>. Sauerwald et al.'s research on shareholders voting on AGM resolutions to assess corporate governance of companies used 835 forms with 14,871 voting proposal as sample, but final sample of the study was reduced to 717 firms and 12,513 voting proposals<sup>639</sup>. In Lafarre's study on the AGM in Europe, the initial sample of the study was 279 companies and the final sample was reduced to 251 companies and 1,255 observations. All those companies were deleted from the sample which had not disclosed complete information about AGMs<sup>640</sup>.

Van der Elst and Lafarre's study on shareholders voice on remuneration 'say on pay' of Dutch companies in 2017 used the technique to fill the missing data as: "the amount of votes against a rejected resolution on a special bonus was not reported in the minutes of the general meeting of Vastned Retail in 2008. For calculation purposes, we therefore assume that 50% voted against this resolution"<sup>641</sup>.

In the above stated discussion the means substitution method is used with different approaches like; mean substitution approach (PMS) and item mean substitution method (IMS) and multiple imputation using predictive mean matching. Further, in literature three different mechanisms of means substitution addressed as: total mean substitution, subgroup mean substitution and case mean substitution. So, on the basis of the previous literature in the current study data, the missing values are filled by using subgroup mean substitution.

According to section 251AA of the Act and LR 3.13.2, the listed companies must disclose their voting and proxy voting results exercised by shareholders at AGMs. If the resolutions were decided on a show of hands then proxy voting results must be disclosed as: 'For, Against, Abstain and Discretion', and if the resolutions are passed by polls than proxy voting results

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<sup>636</sup> Conyon and Sadler (n 69).

<sup>637</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>638</sup> Poulsen, Strand and Thomsen (n 65).

<sup>639</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>640</sup> Anne Lafarre, *The AGM in Europe: Theory and Practice of Shareholder Behaviour* (Emerald Publishing Limited, 2017) 98

<sup>641</sup> Van der Elst and Lafarre (n 68).

and final votes casted as: For, Against, Abstain and Discretion (proxy votes) along with For, Against, Abstain (final votes cast directly or through proxy).

The characterises of all the listed companies varied in respect to shareholders voting rights, shareholders engagement to exercise their voting rights, shareholdings (top 20 shareholders, blockholders), number of ordinary shareholders issued in particular year, number of resolutions proposed and nature of resolution (ordinary or special).

## 5.8: AGM Resolutions

The table below explain the number of resolutions which are being studied in this research project to evaluate shareholders rights in practice in Australian listed companies.

**Table 5.3: The number of resolutions presented at AGMs sessions during 2014–18**

Year	2014	2015	2016	2017	2018	Total
AGM Resolutions	653	688	667	707	667	3382
Ordinary Resolutions	627	647	634	675	631	3214
Special Resolutions	26	41	33	32	36	168
Board Recommended – For	562	589	584	612	571	2918
Board Recommended- Against	11	4	3	16	14	48
Board – No Recommendation	80	95	80	79	82	416
Resolutions Withdrawn	5	11	6	6	3	31

*Source: Author*

The table presents the number of resolutions that were part of this study and analysed. They were: 3,382 resolutions over the sample period of five years (2014–18), of which 3,124 were ordinary resolutions and 168 special resolution; 2,918 resolutions supported by board to vote 'For'; 48 resolutions where the board recommended to shareholders to vote 'Against' these resolutions; and 416 resolutions where the board had not made any clear recommendations in AGM notices for shareholders to vote 'For' nor to vote 'Against' the resolutions. During this study period only 31 resolutions were withdrawn.

For the year 2018, total 667 resolutions were studied including: 631 ordinary and 36 special resolutions, 575 board recommended resolutions to vote 'For', 14 to vote 'Against', 82 resolutions without clear board recommendations for shareholders to vote 'For' or to vote 'Against' the resolution and 3 resolutions withdrawn.

The year 2017 had 707 total resolutions studied, from which 675 were ordinary resolutions and 32 special resolutions, 16 resolutions where board recommended to vote 'Against' to shareholders, more over 612 resolutions to vote 'For' and 79 resolutions where the board has not made their clear recommendation and six resolutions were withdrawn.

In year 2016, 667 resolutions were studied including 634 ordinary resolutions, 33 special resolutions, 584 board recommend to vote 'For', 3 resolutions for whom board recommended to vote 'Against', 80 resolutions where board have no recommendations either to vote 'For' or to vote 'Against' and 6 resolutions were withdrawn.

A total of 688 resolutions were studied during 2015 AGMs session of ASX 200 companies. They included 647 ordinary resolutions. 41 special resolutions, 589 board recommended resolutions to vote 'For', in 4 resolutions board recommended to vote 'Against', 95 resolutions are without board recommendation for shareholders to vote 'For' or vote 'Against' and during 2015 11 resolutions were withdrawn.

Similarly, 653 resolution were part of study from year 2014 which contain 627 ordinary resolution and 26 special resolutions, the 562 resolutions are supported by board to vote 'For', 11 resolutions with recommendation for shareholders to vote 'Against', further, for 80 resolutions board has not announced any recommendation to vote 'For' or to vote 'Against' and 5 resolutions were withdrawn during 2014 AGM sessions of sample companies.

### **5.9: The Black-Letter Law Research Methodology**

In circumstances when research approaches, or researchers, fail to demonstrate the true picture of the law, the path to understanding law in its true form is 'hard law' or black letter law through "the careful analysis and exposition of positive or written law"<sup>642</sup>.

Black-letter law scholarship is said to: "focus heavily, if not exclusively, upon the law itself as an internal self-sustaining set of principles which can be accessed through reading court judgments and statutes with little or no reference to the world outside the law" and "deriving principles and values from decided cases into a coherent framework..."<sup>643</sup>. Legal scholars use black-letter law approach to answer the questions like; "What is the law?"<sup>644</sup>

Chynoweth argued that a black-letter approach is used with the assumption that solutions of every legal issue are available in legal doctrines. In this regard we need to understand the legal logic and structure of rules through analysis and interpretation of relevant legal doctrines<sup>645</sup>. Qureshi has argued that black-letter approach is 'research-in-law rather than research-about-law'<sup>646</sup>. Manderson and Mohr have stated that black-letter approach is used

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<sup>642</sup> Colin M. Campbell and Paul Wiles, 'The study of law in society in Britain' (1976) 10 (4) Law & Society Review 547-578

<sup>643</sup> McConville, Chui and Hong (n 573) 1.

<sup>644</sup> E. Serfontein and E. de Waal, 'Advancing student research in education law' (2014) 28 (5) SAJHE 1593-1606

<sup>645</sup> Chynoweth quoted by Shazia Qureshi, 'Research Methodology in Law and Its Application to Women's Human Right Law' (2015) 22 (2) Journal of Political Studies 629-643

<sup>646</sup> *ibid*.

to understand and interpret statutes and cases<sup>647</sup>. In the views of Nelken and Thornton the black-letter approach is a study of “law in context”, rather than to study law in books and this approach helps to “open up the black box of legal culture”<sup>648</sup>.

According to Serfontein and Waal the primary legal documents issued by the legal bodies include: “constitutions, legislation, international law, case law, regulatory materials and administrative agency regulations and/or decisions and other documents that carry the force of the law”<sup>649</sup>. Additional secondary sources are explanations and interpretations of primary legal authorities. This source includes “legal encyclopaedias, textbooks, local/foreign law journals, relicts, foreign statutes /case law, newspapers, commentaries/opinions and interviews”<sup>650</sup>.

The black-letter law approach is very important content to study the shareholders practices to protect and execute their rights in companies. The aim to apply this research methodology is to study the phenomena of shareholders’ interests in legal practice.

#### **5.9.1: Black-Law Data Collection (Case Laws) (2014–18)**

To study the practical implementation of shareholders economic rights – dividends under Part 2H.5 of the Act, the secondary source were cases decided under 2H.5 of the Act during January 2014 to September 2018. The search was conducted by using number of electronic databases, for example, TimeBase, Lexis Advance, WestlawAU, Jade and AUSTLII.

The legislative provisions were used to locate the cases as: ‘the Act and Part 2H.5, the Act and section 254T, the Act and section 254U, the Act and section 254V, the Act and section 254W’.

For voting and proxy voting rights the databases were searched by using key sections, 250, 250N, 249D, 250R. The list of the cases is attached as Appendix D, but for this study only cases where listed companies were parties selected for analysis.

#### **5.10: The Variables of the Study**

The research report by Stapledon et al. was on the level of proxy voting’s at 59 Australian listed company’s AGM, this study used only two AGM resolutions- election and re-election of directors- as variables<sup>651</sup>.

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<sup>647</sup> Desmond Manderson and Richard Mohr, ‘From Oxymoron to Intersection: An Epidemiology of Legal Research’ (2002) 6 Law Text Culture 159

<sup>648</sup> Nelken and Thornton quoted by Qureshi (n 645).

<sup>649</sup> Serfontein and Waal (n 644).

<sup>650</sup> *ibid.*

<sup>651</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

Research on Australian 'say on pay' regulations, has used 'voting dissent and change in ownership concentration (the percentage of share owned by top 20 shareholders)' along with other variables. The sample of this study was 65 firms in 2011 and 52 firms in year 2012 which received a first strike<sup>652</sup>. The other variables which were used by researchers were not the subject of interest for the current study.

The research by Hewitt used seven categories of shareholders resolutions presented for shareholders' approval at AGMs and EGMs of Australian listed companies in year 2009 and 2010 as variables; "agreements, remuneration, capital, shareholder, election, articles, annual report, auditors and dividend" to study the level of shareholders engagement through voting rights, further, to analysis the level of shareholders engagement through voting rights at AGM to give voice to their concerns with investee companies on corporate issues<sup>653</sup>.

De Falco et al. has used 'percentage of shareholder dissent and first top 10 shareholders shareholdings as variables to study which the factors have impact on shareholders voting dissent on remuneration resolutions in Australia, Italy, and USA over the period of 2012 to 2014<sup>654</sup>.

Van der Elst studied shareholder activism because according to him shareholders activism is the 'hot topic' for debate in corporate governance. Shareholder activism was studied through voting turnout, voting behaviour of large and small shareholders and the resolutions presented at AGM<sup>655</sup>.

Empirical research was conducted by Sauerwald et al. to study shareholders democracy in context of corporate governance set-up of firms. Further, they used voting results from a sample of 12,513 proposals voted in the AGMs of 717 listed firms for analysis<sup>656</sup>.

Shareholders can voice their provisions or disapprovals with firms by exercising their proxy votes on election and re-election of directors. Hillman has used election and re-election of directors at AGM resolutions with 'ownership block and shareholders returns (dividends)' for analysis along with other variables such as: firm performance, CEO compensation and voting withheld with shareholders<sup>657</sup>.

The empirical study by Sauerwald et al. used shareholders voting dissents to explain the role of shareholders in corporate governance, three level of analysis (proposal level, firm level and

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<sup>652</sup> Faghani, Monem and Ng (n 42).

<sup>653</sup> Hewitt (n 44).

<sup>654</sup> Falco, Cucari and Sorrentino (n 40).

<sup>655</sup> Van der Elst (n 66).

<sup>656</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>657</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

country) used. At proposal level, 11 categories of AGM proposals were part of study which include, “annual report confirmation, auditor confirmation, profit distribution, management discharge, director elections, anti-takeover, compensation approving, capital increase, capital decrease, shareholder proposal”, the main variables including shareholder dissent, relational blockholders, and control variables include proposal types along with other variables<sup>658</sup>.

The study of Van der Elst has investigated shareholders activism by studying voting turnouts, shareholders voting behaviour of small and large shareholders at the AGM resolutions. The variables used for analysis were: ‘disclosure of AGM information, the important given to AGM by companies, attendance of shareholders at the AGM, participation behaviour of small shareholders, approval of accounts, the remuneration report, discharge of the directors and re-election of directors’, the AGM voting results in ‘For’ and abstain was used for in-depth analysis<sup>659</sup>.

The research by Conyon and Sadler on shareholders voting behaviour on AGM resolutions based on 11 variables including “ resolutions about directors(the election or re-election of a director), Resolutions about mergers and acquisitions, (approving merger or disposal of an asset), Resolutions about auditors (proposals to appoint or reappoint an auditor or to approve the auditors’ remuneration), resolutions about shares (to approve changes to the share premium account, or to approve a share split), resolutions relating to the company(to change the company name, to wind up the company, to approve a delisting, to authorise charitable donations), resolutions relating to dividends(to declare a dividend, a special dividend, or zero dividend), resolutions relating to the articles of association (to amend or adopt new articles of association), resolutions relating to remuneration (to approve a share option, bonus or long-term incentive plan; to approve changes to share option or long term incentive plans), resolutions that are contingent on the passing of one of the other mentioned resolutions first; resolutions relating to the report and accounts (accepting them;), resolution relating to the directors’ remuneration report (DRR)”<sup>660</sup>.

The variables of Aggarwal et al.’s study to empirically analyse director’s election and re-election included: firm characteristics, directors characterises, and directors (re) election related. They argued, that healthy engagement of shareholders is demonstrated by exercise of their voting right and good practice for director’s accountability. If shareholders exercise their votes as dissent (against or abstain) against directors’ elections it has a negative impact on shareholders credibility and affects the opportunities in the market. Moreover, voting

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<sup>658</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>659</sup> Van der Elst (n 66).

<sup>660</sup> Conyon and Sadler (n 69).

dissent establish an information channel for directors' job market to evaluate directors performance<sup>661</sup>.

Van der Elst has studied shareholder activism mechanism through voting turnout, voting behaviour of large and small shareholders and the resolutions presented at AGM<sup>662</sup>.

The study by Poulsen et al. had a sample of 310 companies with 461 observation over the period of 4 years (2014–18). The 10 variables of study were four activism and six control variables. Variables assessing shareholders activism were: number of proposals by 'nominated committed', proposals proposed by shareholders (shareholders proposals), number of board proposals voted against and one dummy variable with value of 1 if the proposal was addressed by shareholders, otherwise a 0 value. This study used three sets of controlled variables: the first set included firm performance (stock returns, annual dividends, return on equity, interaction between amenability and stock return); the second set included variables related to value control (firm size and firm value) and last set was book value. The statistical results show a positive significance relationship between shareholders activism, proposals by nominated committed and firm's amenability activity to shareholders<sup>663</sup>.

On the basis of the above stated studies, section 5.9 discussed the variables and their relation to analysis of the propositions of the study which were defined in Chapter 2 and Chapter 4. The variables studied in this research are defined in Section 5.10 and Table 5.4.

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<sup>661</sup> Aggarwal, Dahiya and Prabhala (n 62).

<sup>662</sup> Van der Elst (n 66).

<sup>663</sup> Poulsen, Strand and Thomsen (n 65).



### 5.10.1: Definitions of Variables

(Note: Some of the variables developed from the AGM voting resolutions, were combined under the umbrella of one variable because the same resolution was interpreted by the companies with longer or shorter titles and in many resolutions the name of directors, managers or CEOs varied. For a detailed prescription please see Appendix C)

**Table 5.4: Overview definitions and sources of variables**

Variables	Description	Source of the variable
Total resolutions proposed for AGMs	The total number of proposals proposed in AGM for shareholders voting as proxy voting.	Poulsen et al <sup>664</sup> , Chia and Ramsay <sup>665</sup> , Van der Elst <sup>666</sup> and AGM Notices of ASX 200
Resolutions Type	The number of AGMs proposal are of two kinds, ordinary and special resolution, AGM notices specify category of resolution.	Sauerwald et al <sup>667</sup> . AGM Notices.
Board recommendations on AGM Proposals	In AGM notice, board made their recommendation for shareholders to vote 'For' or 'Against' or no clear recommendation.	Sauerwald et al <sup>668</sup> . Poulsen et al <sup>669</sup> . AGM Notice (Explanatory Statement)
Blockholders (≥ 5%)	The blockholders defined by Sauerwald et al. shareholders having at least 10% of ownership. Hillman et al. has used the 5% blockholders threshold. Van der Elst has use the blockholders have more than 5% of voting rights. But the present research has considered the blockholder as having 5% or more than 5% of ownership (holding ordinary shares).	Sauerwald et al <sup>670</sup> . Hillman et al <sup>671</sup> . Van der Elst <sup>672</sup> , Annual Reports
Number of Blockholders	The number of blockholders who are having ≥ 5% shares.	Annual Reports
% of Share owned by Blockholders (≥ 5%)	The ownership of blockholders by adding the share ownership owned by blockholders.	Annual Reports
Ownership- Top 20 shareholders (Ownership structure)	Total percentage of share ownership of top 20 shareholders.	Faghani et al <sup>673</sup> . De Falco et al <sup>674</sup> . Van der Elst <sup>675</sup> Annual Reports

<sup>664</sup> Poulsen, Strand and Thomsen (n 65).

<sup>665</sup> Chia and Ramsay (n 48).

<sup>666</sup> Van der Elst (n 63).

<sup>667</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>668</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>669</sup> Poulsen, Strand and Thomsen (n 65).

<sup>670</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>671</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>672</sup> Van der Elst (n 63).

<sup>673</sup> Faghani, Monem and Ng (n 42).

<sup>674</sup> Falco, Cucari and Sorrentino (n 40).

<sup>675</sup> Van der Elst (n 66).

Variables	Description	Source of the variable
Company performance – Dividend	The current study has used the final dividend value which was available at ASX dividend history of individual listed company for 5 years (2014–18).	Hillman et al <sup>676</sup> , Poulsen et al <sup>677</sup> , Van der Elst <sup>678</sup> , ASX website
Voting Turnout (2014–18) (Attendance at AGM)	In current study, we have calculated it as total votes casted= voting turnover, by taking the average of all the total voting costed for resolutions in each year of sample companies for 5 years.	Hewitt <sup>679</sup> , Van der Elst <sup>680</sup> , Van der Elst <sup>681</sup> , AGM Results
Participation of shareholders in AGM	Proxy voting; Approval of resolution on poll; Approval of resolutions by show of hands	AGM Results
Dividend	The AGM resolutions related to dividend like: reinvestment and dividend declaration resolutions.	Conyon and Sadler <sup>682</sup> , AGM notice and AGM results
Shareholders Others	All the shareholders resolutions regarding return on capital to shareholders, consolidation of capital, share consolidation etc. (Refer to Appendix A)	AGM notice and AGM results
ESG Resolutions	The AGM resolution for ESG like; human rights reports, climate risk disclosure etc. (Refer to Appendix A)	AGM notice and AGM results
Voting Dissent (Shareholders dissent)	The shareholders dissent was calculated as the percentage of votes which was exercised against directors recommendation, the percentage of voting dissent is sum of 'Against, Discretion and Abstain' votes at AGM resolutions.	Conyon and Sadler <sup>683</sup> , Faghani et al <sup>684</sup> , De Falco et al <sup>685</sup> , Sauerwald et al <sup>686</sup> , Hillman et al <sup>687</sup> , Hewitt <sup>688</sup> , AGM notice and AGM results
Directors Election	The total votes exercised (For, Against, Abstain) was divided by the total number of ordinary shares issued and converted into percentage. The resolutions related to director's election are for each year during period of 2014 to 2018.	Stapledon et al <sup>689</sup> , Conyon and Sadler <sup>690</sup> , Van der Elst <sup>691</sup> , Van der Elst <sup>692</sup> , AGM notice and AGM results s 250R(b), the Act

<sup>676</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>677</sup> Poulsen, Strand and Thomsen (n 65).

<sup>678</sup> Van der Elst (n 63).

<sup>679</sup> Hewitt (n 44).

<sup>680</sup> Van der Elst (n 66).

<sup>681</sup> Van der Elst (n 63).

<sup>682</sup> Conyon and Sadler (n 69).

<sup>683</sup> Conyon and Sadler (n 69).

<sup>684</sup> Faghani, Monem and Ng (n 42).

<sup>685</sup> Falco, Cucari and Sorrentino (n 40).

<sup>686</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>687</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>688</sup> Hewitt (n 44).

<sup>689</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>690</sup> Conyon and Sadler (n 69).

<sup>691</sup> Van der Elst (n 66).

<sup>692</sup> *ibid.*

<b>Variables</b>	<b>Description</b>	<b>Source of the variable</b>
Re-election of Directors	The voting turnout on re-election of directors, the average voting percentage (For, Against and Abstain) was calculated, and if the resolutions for re-election of directors were more than one otherwise only percentage of voting results.	Hillman et al <sup>693</sup> , Van der Elst <sup>694</sup> , Van der Elst <sup>695</sup> , AGM notice and AGM results
Remuneration Report	The percentage of voting turnout (For, Against and Abstain) on remuneration resolutions was addressed as variables of study separately.	Canyon and Sadler <sup>696</sup> , s 250R(b), the Act - AGM results
Director fees	All the resolutions related to director fees as: increase in director's remuneration fees pool, director fees poll etc. (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Directors Other	The resolution except, (re) election, remuneration, direct fees were added as 'Directors Other' (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Performance Rights	The resolutions at AGM in relation to performance rights like; performance share rights, issue of performance rights to CEO, approval of performance rights and options etc. (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM result
Grant of equity	The resolutions related to grant of equity were mentioned as single item (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	Canyon and Sadler <sup>697</sup> , AGM notice and AGM results
Securities/ Stapled Securities	All the resolutions in relation to securities and stapled securities (approval of securities to the managing director and chief executive director, approval of issue of securities, issue of equity of securities etc.) (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Award- Incentives (Long or short term)	In this variable all the resolutions as award and incentives for long-term or short term like; executive incentive plan, long term incentive share rights plan, award of incentives to director, managing director and chief executive office etc. (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Share Matters	All the resolutions are taken as 'Share Matter'- approval of shares to director, issue of shares to managing directors, issue of shares and provision of financial assistance to managing director etc. In current investigation project we have define the two categories like; Award- Incentives (Long or short term) and share matters (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	Canyon and Sadler <sup>698</sup> , AGM notice and AGM results

<sup>693</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>694</sup> Van der Elst (n 66).

<sup>695</sup> Van der Elst (n 63).

<sup>696</sup> Canyon and Sadler (n 69).

<sup>697</sup> *ibid.*

<sup>698</sup> *ibid.*

<b>Variables</b>	<b>Description</b>	<b>Source of the variable</b>
Election of Non-Executive Directors	In present research study, the average voting percentage are calculated if the resolutions of election of non-executive directors were more than one otherwise only percentage of voting results.	AGM notice and AGM results
Re-election of Non-Executive Directors	The average voting percentage are calculated if the resolutions of re-election of non-executive directors were more than one otherwise only percentage of voting results.	AGM notice and AGM results
Non-executive director's remuneration	The resolution regarding remuneration report of non-executive directors. The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Non-executive directors- All other	The resolutions for non-executive directors other than election, re-election and remuneration are taken under this variable.	AGM notice and AGM results
Auditor	The appointment and re-appointment, remuneration, fees and expense and external auditor related resolutions. The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	Conyon and Sadler <sup>699</sup> , ss 250R (c) and (d), the Act, AGM notice and AGM results
Financial Assistance	The AGM resolutions provisions dealt with financial assistance, approval of resolution for grant of financial assistance are taken as 'Financial Assistance' variable. (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	Section 260B(2), the Act, AGM notice and AGM results
Takeover	All the AGM items in relation to takeover (approval or renewal of takeover provisions, renewal of proportional takeover bid approval rule). (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Issue of Share	AGM resolutions related to issue of shares agenda items are taken as single item like; approval of issue of shares, rectification of share issue, approval of capital raising shares etc. (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Employee shares	Under this variable the resolutions related to employees shares. The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Company Name	The resolutions deal the matters to change the company name. The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	Conyon and Sadler <sup>700</sup> , AGM notice and AGM results
Constitution	This variable covers all the resolutions related to company constitution, either amending the single or more clauses, adoption of new constitution, amend the article of association etc. (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	Conyon and Sadler <sup>701</sup> , AGM notice and AGM results

<sup>699</sup> *ibid.*

<sup>700</sup> *ibid.*

<sup>701</sup> *ibid.*

<b>Variables</b>	<b>Description</b>	<b>Source of the variable</b>
All Others-	The resolutions other than above defined variables are putted under 'All others' variable, the resolutions like; to approve potential benefits, termination benefits, authority to make political donations etc. (Refer to Appendix A). The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results
Spill Resolutions	The resolutions in relation to remuneration report at second stage of two strike rule. The percentage of voting turnout (For, Against and Abstain) was calculated and taken as variables of study.	AGM notice and AGM results

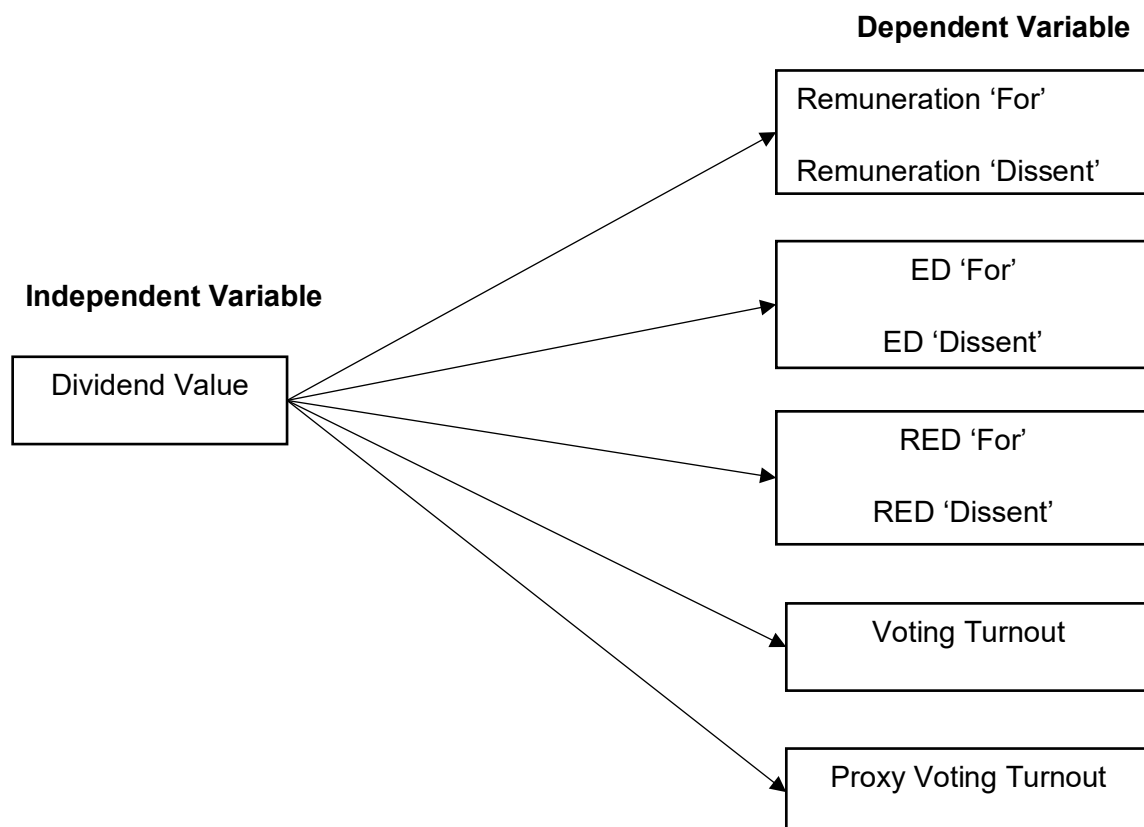
### 5.11: The Association and Relation of Variables of Study

The AGM resolutions grouped in Appendix A and variables defined above, during data collection it was clearly observed the resolution (remuneration report, directors' election and re-election resolutions) was part of AGMs almost in each company.

RQ 1: What is the relationship, if any, between the economic rights of shareholders and shareholders' engagement at AGMs?

To answer the research question 1 and to address the first six propositions, the independent variable is 'Dividend' final value declared by sample companies for five years (2014–18), the dependent variables are: the voting results 'For, Dissent' cast on remuneration resolutions for five years, the voting results for election and re-election of directors, and voting turnout (average percentage) for each year and for each sample company for study period (2014–18). The list of propositions is listed in Table 6.21.

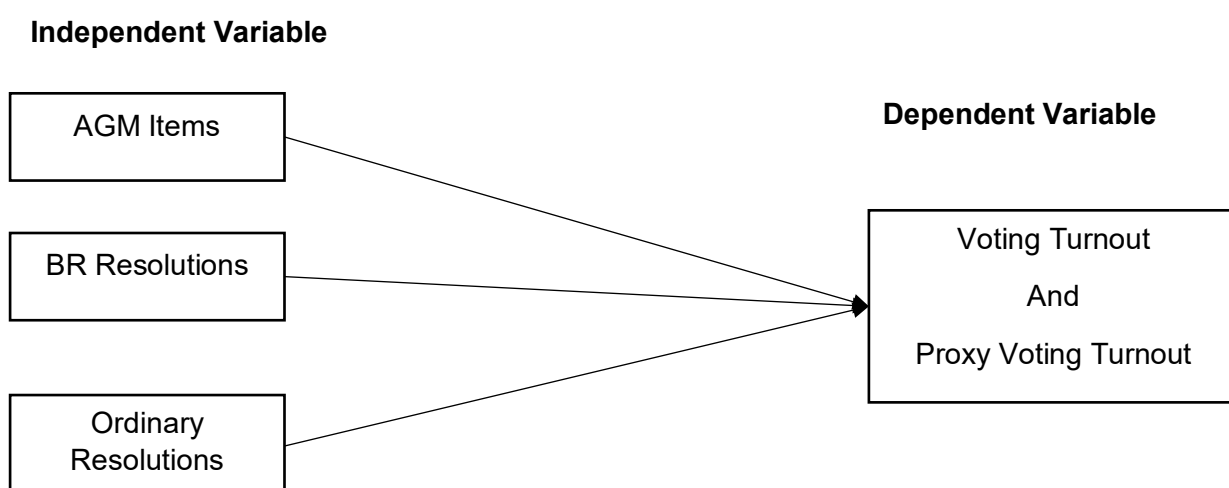
**Fig 5.2: Model 1- Relationship between dividend value and shoulders engagement**



RQ 2A: How and to what extent do AGMs impact on decision making of listed companies?

Three independent variables and one dependent variable were analysed to address research question 2A and propositions number 7 to 10. The independent variable included the total number of AGM resolutions proposed for shareholders voting and proxy voting, number of board recommended resolutions and number of ordinary resolutions presented at AGMs. The dependent variable is voting turnout for each year for each company.

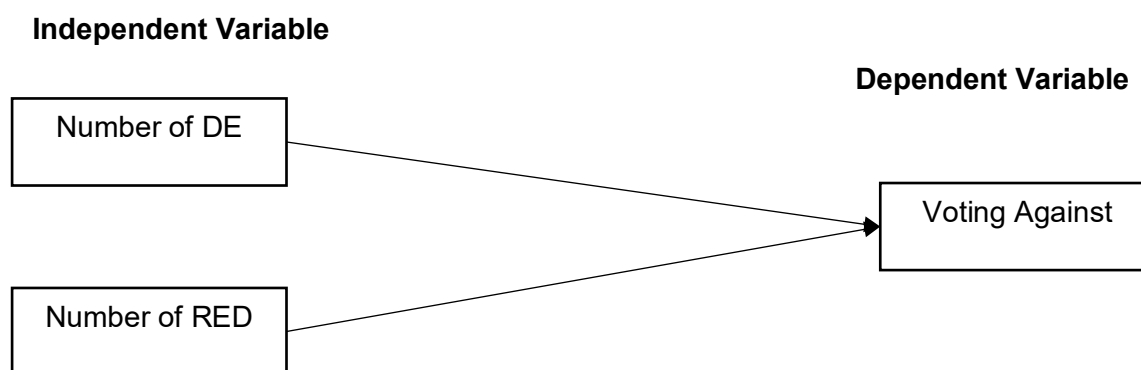
**Fig 5.3: Model 2A- Relationship between AGMs resolutions and voting turnout**



RQ 2B: Do shareholders use AGM for accountability of directors or as a formal event?

To analysis the research question 2B and propositions 11 to 14, two independent and one dependent variable were investigated to study the relationships of AGMs as an accountability tool for shareholders to hold directors and management accountable for their performance. The independent variables were number of directors' elections and re-election proposals for shareholders approvals. The dependent variables is voting against directors' election and re-election.

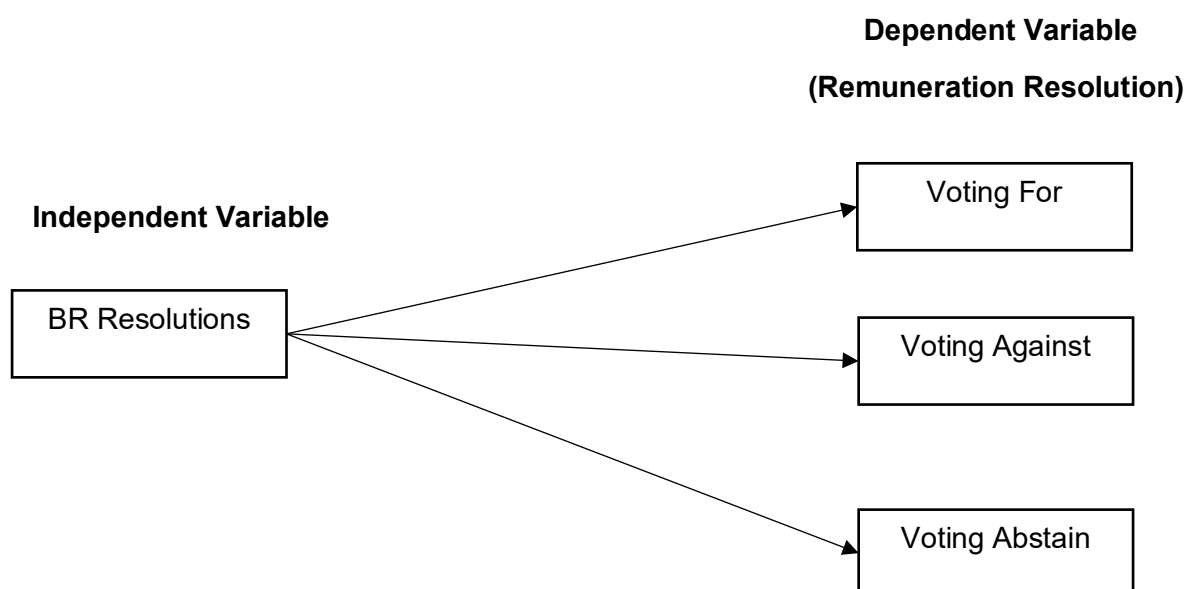
**Fig 5.4: Model 2B - Relationship between directors' (re) election and voting against**



RQ 3: Did shareholders exercise voting dissent to record their concerns instead to sell and exit, and which resolutions attract more dissents at AGMs?

To study the research question 3 and proposition number 15 to 17, one independent and three dependent variables were used: the number of board recommended resolutions to vote 'For' as independent variable, voting results 'For, Against and Dissent' as dependent variables.

**Fig 5.5: Model 3- Relationship between boards recommended resolutions and voting turnout on remuneration policy resolutions**

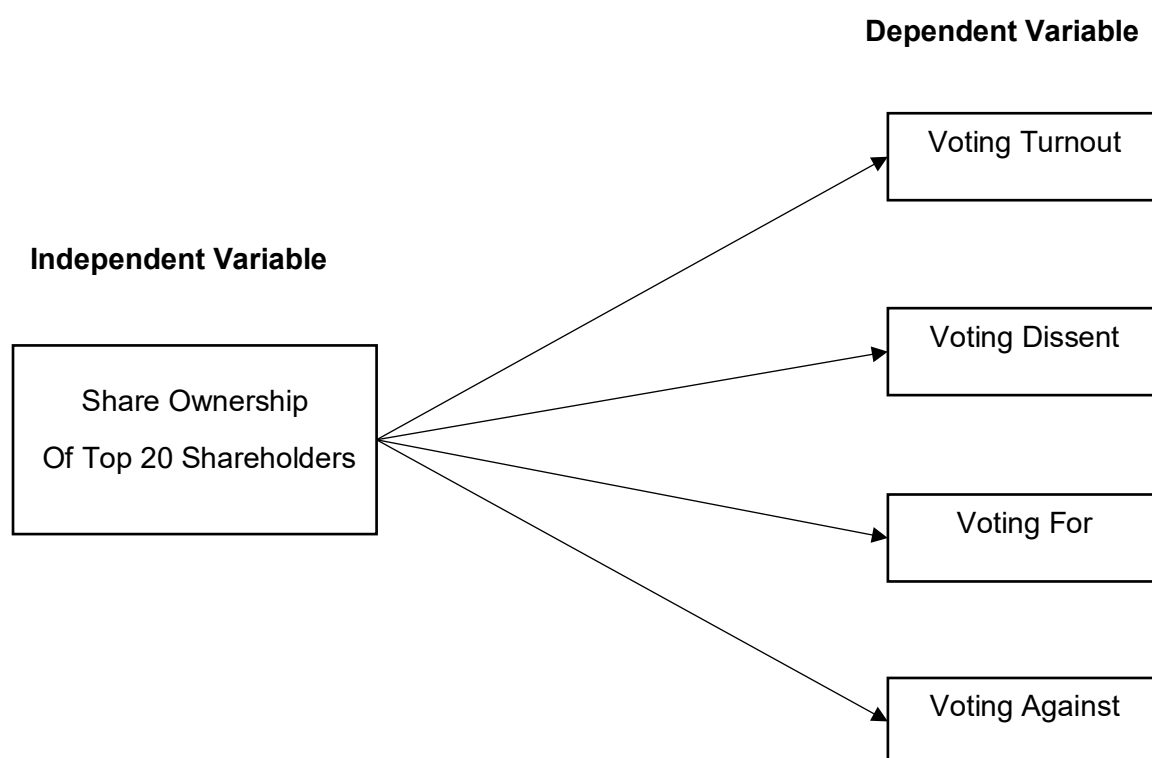




RQ 4A: What is the relationship, if any, between ownership structure of shareholders and shareholders engagement at AGM?

The ownership measurement is divided into three parts, to answer the question 4A and proposition 18, what is the relationship between independent and dependent variables. The independent variable is the percentage of share ownership of the top 20 shareholders and dependent variables, voting dissent, voting 'For' and voting 'Against' on remuneration, election and re-election resolutions and voting turnout.

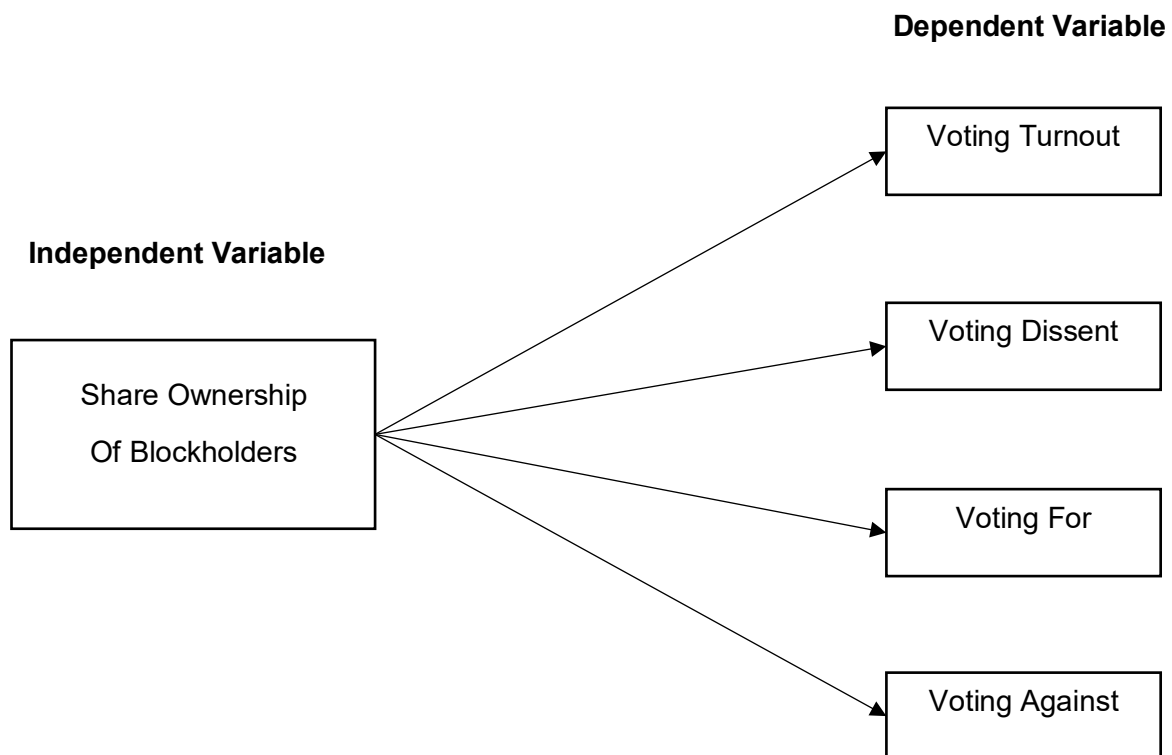
**Fig 5.6: Model 4A- Relationship between share ownership of top 20 shareholders and voting turnout**



RQ 4B: Did ownership structure (percentage of share ownership of blockholders) in listed companies have any impact on shareholders engagement to exercise their rights at AGMs, and do AGMs results support ownership influence in ASX 200?

To analyse the impact of share ownership of blockholders on shareholders engagement and to address proposition number 19 and 20, one independent variable, percentage of share ownership of blockholders,, and four dependent variables were: voting dissent, voting For and voting Against on remuneration, election and re-election resolutions and voting turnout.

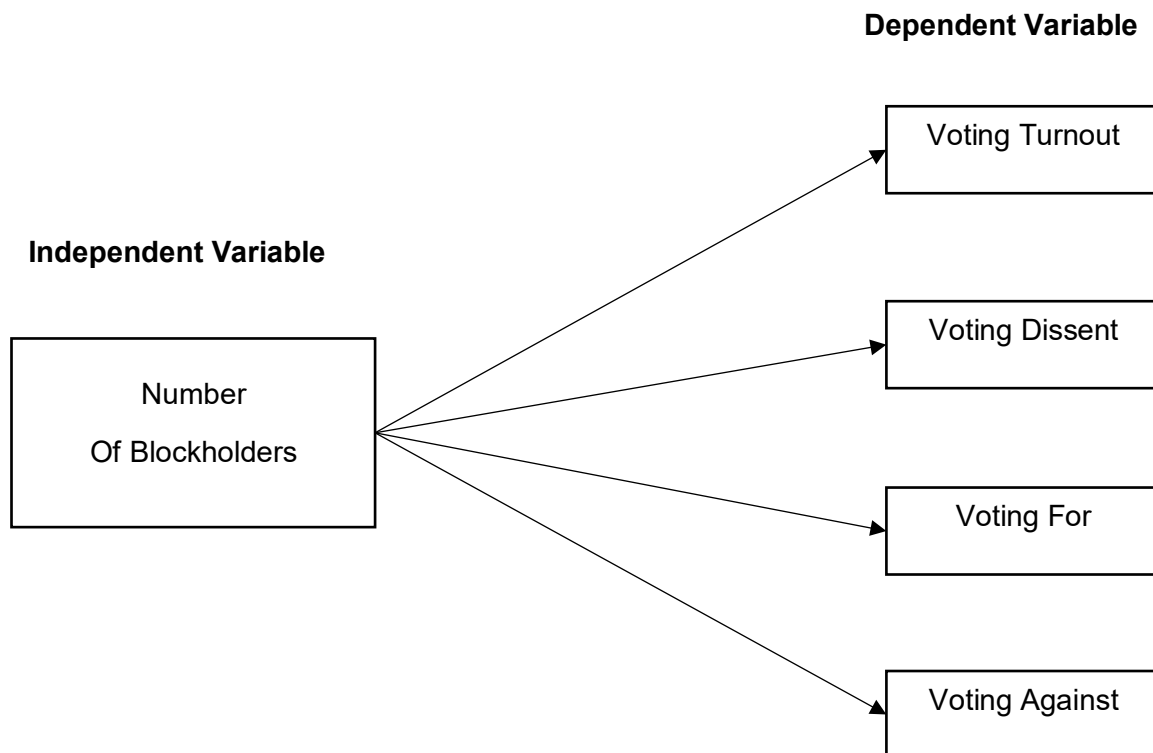
**Fig 5.7: Model 4B- Relationship between share ownership of blockholders and shareholders voting turnout**



RQ 4C: What is the relationship between ownership structure (number of blockholders) and annual general meetings results of listed companies?

To investigate the relationship of presence of number of blockholders in the sample of listed companies with shareholders engagement in corporate decision making and to explain proposition 21. The independent variable is the number of blockholders, the dependent variables were voting dissent, voting 'For' and voting 'Against' on remuneration, election and re-election resolutions and voting turnout.

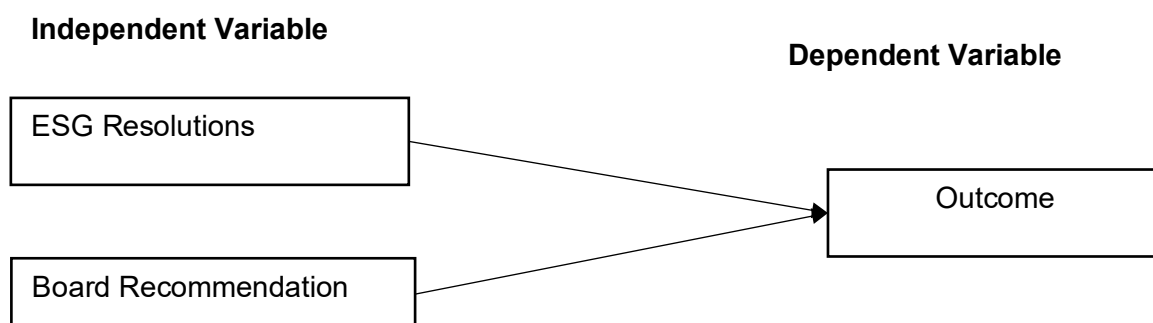
**Fig 5.8: Model 4B- Relationship between share ownership of blockholders and shareholders voting turnout**



RQ 5: How do governance theories (agency or stewardship theory) explain the relationships between the rights of shareholders in practice and investee companies in Australia?

To investigate propositions number 22 and 23, two independent and one dependent variable the independent variable was ESG resolutions proposed by shareholders and board recommendation to vote 'For or Against' the resolution, and dependent variable was the outcome of the ESG proposal (shareholders voting outcomes).

**Fig 5.9: Model 4A- Shareholders proposed resolutions and resolutions outcomes**



## 5.12: Methods of Data Analysis

The data analysis is a process of accomplishing goals of research which includes: relationships, ideas decision making, and working itself on actual data. Moreover, data analysis includes the ways actions performed on information or data to support research work, plans and goals of research<sup>702</sup>. The selection of data analysis method depends on different features like: type, nature and distribution shape of the variables, the study designed used to figure out variables and methods used for data collection about variables<sup>703</sup>.

The statistical methods used for data analysis are classified as: descriptive and inferential statistics. The descriptive statistics helps to organise, summarise or to explain the data. Whereas, inferential statistics helps to infer about the population of study on the base of sample drawn from population<sup>704</sup>.

### 5.12.1: Descriptive Statistics

Descriptive statistics are used to measure central tendency and dispersion. The measures of central tendency include mean and median, and measures of dispersion such as standard deviation and range<sup>705</sup>.

Academic research has used descriptive statistics to study shareholders voting and proxy votes by. Poulsen et al.<sup>706</sup>, Aggarwal et al.<sup>707</sup> and Van der Elst<sup>708</sup>. Conyon and Sadler have studied shareholders voting by applying descriptive statistics like: mean, standard deviation, and inter-quartile range (p25 to p75)<sup>709</sup>.

For this study descriptive statistics used consisted of mean, median, standard deviation, minimum and maximum.

### 5.12.2: Paired T-Test

The T-Test is used to decide statistical significance between two sample distribution means<sup>710</sup>. Typically a test such as the paired T-Test (for matched sample) of the difference between two or more independent groups is used in statistical in research<sup>711</sup>.

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<sup>702</sup> Brain Richmand and Academy for Educational Development, 'Introduction to Data Analysis Handbook' (Spring, 2006) 13

<sup>703</sup> Kultar Singh, Quantitative Social Research Methods (Sage Publication India, 2007) 124

<sup>704</sup> ibid 124-125.

<sup>705</sup> Lee, Lee and Lee (n 607) 4.

<sup>706</sup> Poulsen, Strand and Thomsen (n 65).

<sup>707</sup> Aggarwal, Dahiya and Prabhala (n 62).

<sup>708</sup> Van der Elst (n 63).

<sup>709</sup> Conyon and Sadler (n 69).

<sup>710</sup> Pamela S. Schindler, Business Research Method (13 edn, Mc Graw Hill Education, 2019) 372

<sup>711</sup> Manfei Xu, Drew Fralick, Julia Z. Zheng, , Bokai Wang, Xin M. Tu and Changyong Feng, 'The differences and similarities between two-sample t-test and paired t-test' (2017) 29 (3) Shanghai archives of psychiatry 184-188

The T-Test is commonly used to compare two independent groups of data<sup>712</sup>. Faghani et al. have used paired T-Test (2012–13) to investigate say on pay regulations and used shareholders voting dissent for analysis<sup>713</sup>. Song et al. have studied voting shareholders in China and used T-Test for analysis<sup>714</sup>. Reena et al. have used T-Test for analysis on power of shareholders votes<sup>715</sup>. Van der Elst has used T-Test on the development of position of largest shareholders, and sum of blocks of large shareholders within 1999 and 2005<sup>716</sup>.

So, T-Test is best is best statistical parameter to study significant differences between two means. Therefore, T-Test is used in this study by using SPSS with 1%, 5% and 10% level of significance.

### **5.13: Conclusion**

The current chapter begins with a discussion on research methodology, then discusses the research paradigm and explanation of positivism and interpretivist paradigms. This research used a mixed method approach which included qualitative and quantitative research methods. In addition, the chapter discussed empirical legal research methodology, population and sample size, four stages of data collection, issues while data collecting and managing techniques for missing data in empirical research and an explanation of the AGM resolutions studied. This was followed by the black letter law research methodology and data collection for this methodology. Moreover, an explanation of the selection of the variables, their definitions, and association and relationships between variables was discussed. The methods used for data analysis included descriptive statistics and a paired T-Test. In the next chapter the results of shareholders economic, control and decision making will be discussed.

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<sup>712</sup> Marie Delacre, Daniel Lakens, and Christophe Leys, 'Why psychologists should by default use Welch's t-test instead of Student's t-test' (2017) 30 1 International Review of Social Psychology 92-101

<sup>713</sup> Faghani, Monem and Ng (n 42).

<sup>714</sup> Song, Xin and Yi (n 58).

<sup>715</sup> Aggarwal, Dahiya and Prabhala (n 62).

<sup>716</sup> Van der Elst (n 63).

## **Chapter 6: The Results**

### **6.1: Introduction**

The previous chapter discussed the research methodologies adopted to meet the aim of this research project and to evaluate research questions and propositions proposed in Chapter 4. The models of the relationships between variables were presented in Chapter 5.

This chapter presents the results for the tests of shareholder engagement in AGMs during 2014–18. The results and descriptive statistics for the eight research models are presented before the concluding remarks.

### **6.2: Shareholders Engagement in ASX 200 Companies (2014–18)**

The section contains the results of the analyses of shareholders engagement at AGMs through voting and proxy voting, shareholders share ownership with voting rights of top 20 shareholders, blockholders and comparison of share ownership and voting turnout to explain and answer research question:

To what extent shareholders engage to exercise their rights in Australian listed companies, how and to what extent does shareholders engagement with listed company's impact on corporate decision makings at AGMs?

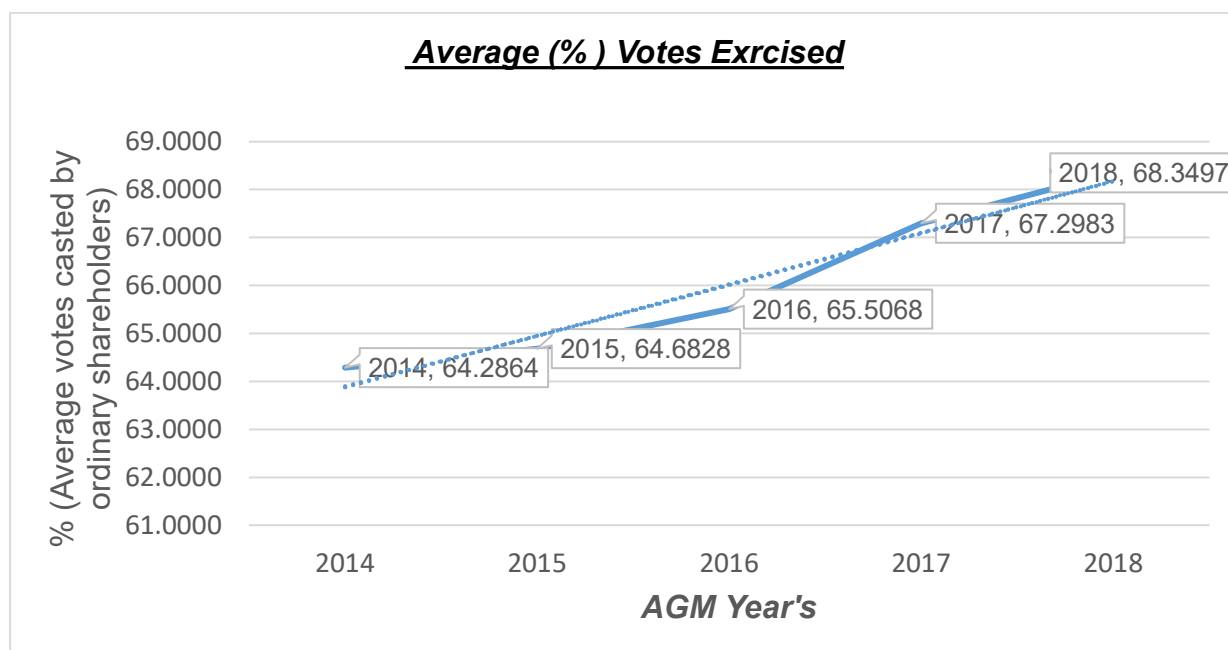
#### **6.2.1: Participation of Shareholders at AGMs during 2014–18**

Shareholders exercise their control and decision making rights at AGMs by voting on resolutions proposed by company directors. The AGMs resolutions are decided by show of hands or through a poll. On a show of hands each member has one vote regardless of the number of shares that they own. With a poll shareholders have one vote for each share they own.

To evaluate shareholders rights in practice, 3,382 resolutions from 122 listed companies AGMs were analysed. Figure 6.1 outlines shareholders participation the AGMs of sample of 122 listed companies during 2014–18 on 3382 AGM resolutions. On average the number of shareholders in attendance at AGMs through proxy and voting remained around and above 60% during study period. The mean percentage attendance rate of shareholders in 2014 was 64.2864%, in 2015 it was 64.6828%, the attendance in 2016 was 65.5068%, in 2017 the average percentage of attendance was 67.2983% and in 2018 it was 68.3497%.

Over the study period voting turnout at AGMs increased. The attendance of shareholders improved by 4.0633% from 2014 to 2018. Figure 6.1 shows an upward trend in the AGMs voting turnout and a consistent improvement in shareholders engagement at since 2014.

**Fig 6.1: The shareholders average (%) of voting turnout (2014–18)**

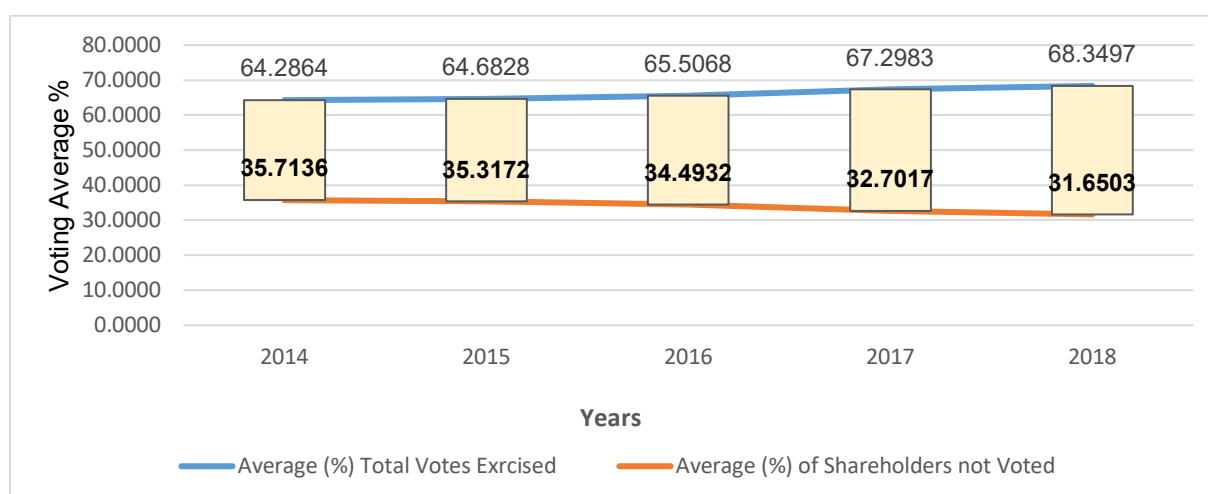


### **6.2.2: Average (%) of Non-Participating Shareholders at AGMs**

The average (percentage) of shareholders who have not exercised their voting and proxy votes at AGMs of ASX 200 companies during the period 2014–18 was determined by subtracting voter turnout from 100%.

Figure 6.2 shows that overall 30% of shareholders have not attended an AGMs, and not exercised their voting or proxy voting rights during 2014 to 2018. The result show that during the period 2014–18 the non-attendance of shareholders decreased by 2.99%, non-attendance in 2014 was 35.7136%, in 2018 it was 31.6503%, 35.3172% in 2015, 34.4932% in 2016 and 32.7017% in 2017.

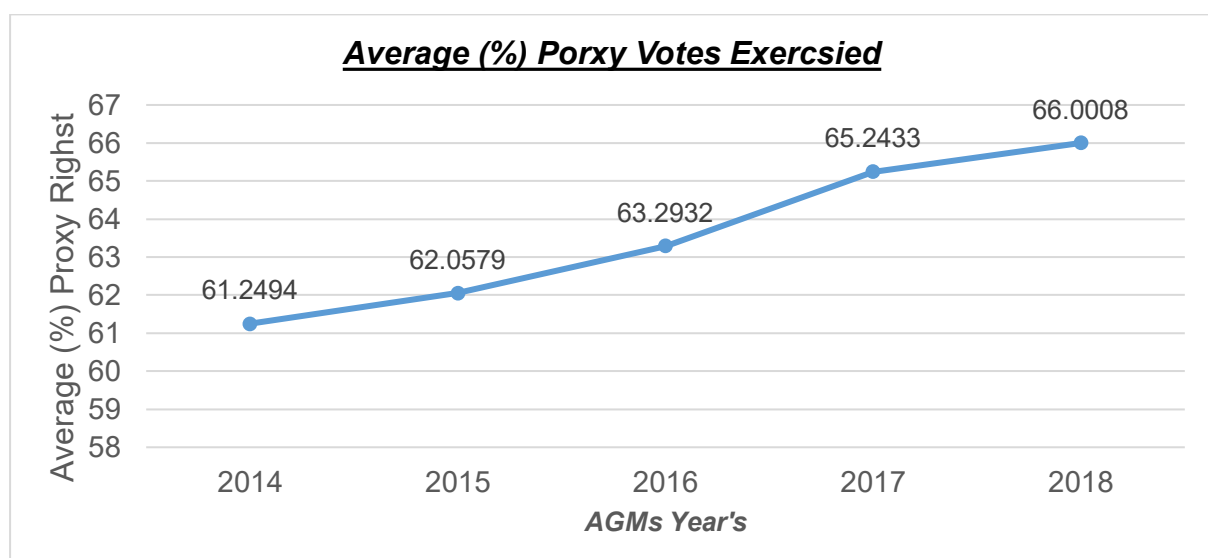
**Fig 6.2: The mean (%) voting turnout of non-participating shareholders (2014–18)**



### 6.2.3: Shareholders Participation at AGMs – Through Proxy

Australian shareholders have two options to exercise their control and decision making rights in companies: vote in person or appoint a proxy to vote on their behalf. Figure 6.3 shows the average (percentage) results over five years – around 61% and above of the total number of shareholders exercise their control and decision making rights of votes through a proxy. Sixty-one per cent (61.2494%) of shareholders used a proxy in 2014. Shareholders engagement through proxies grew by 4.7514% from 2014 to 2018.

**Fig 6.3: The average (%) of proxy voting turnout (2014–18)**



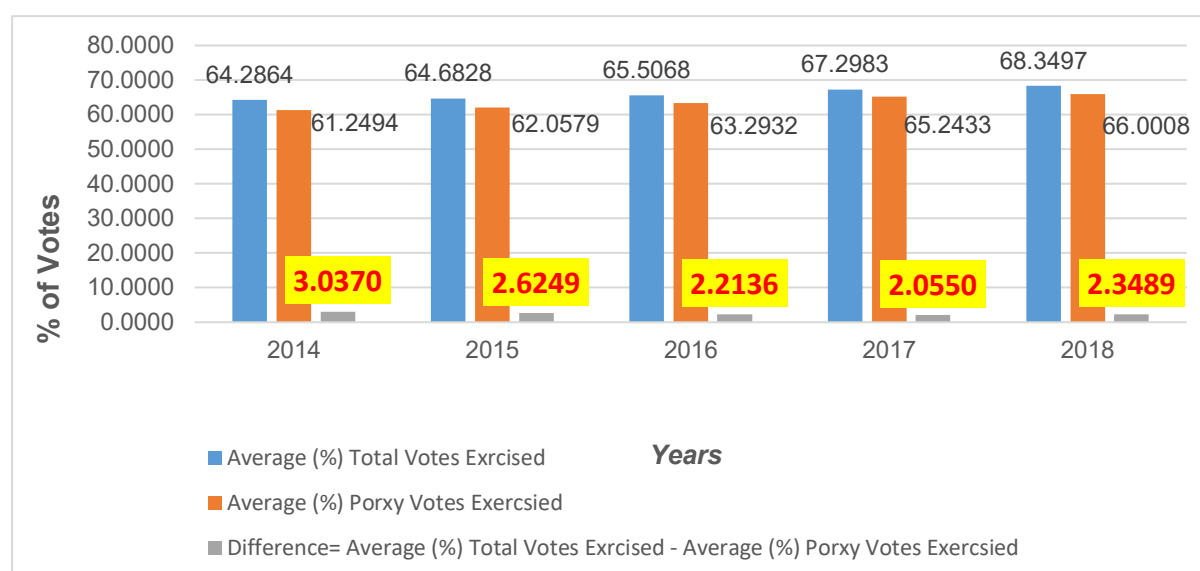


#### 6.2.4: Shareholders Participation at AGMs – In Personam

Shareholders who attend AGMs in person exercised their voting rights directly during the period 2014–18. On average, shareholders participation in person decreased consistently and resulted in a 0.6881% decrease overall. The results show that in 2014 only 3.0370% exercised their voting rights in person by attending AGMs or voting directly through emails. Similarly, in 2015 this figure was 2.6249%, in 2016 it was 2.2136%, in 2017 and 2018 was 2.0550% and 2.3489% respectively.

In Australian listed companies, it seems the presence of shareholders in personam at AGMs every year is to fulfil their legal obligations, otherwise decisions are made through proxy.

**Fig 6.4: The shareholders average (%) of voting turnout in personam (2014–18)**

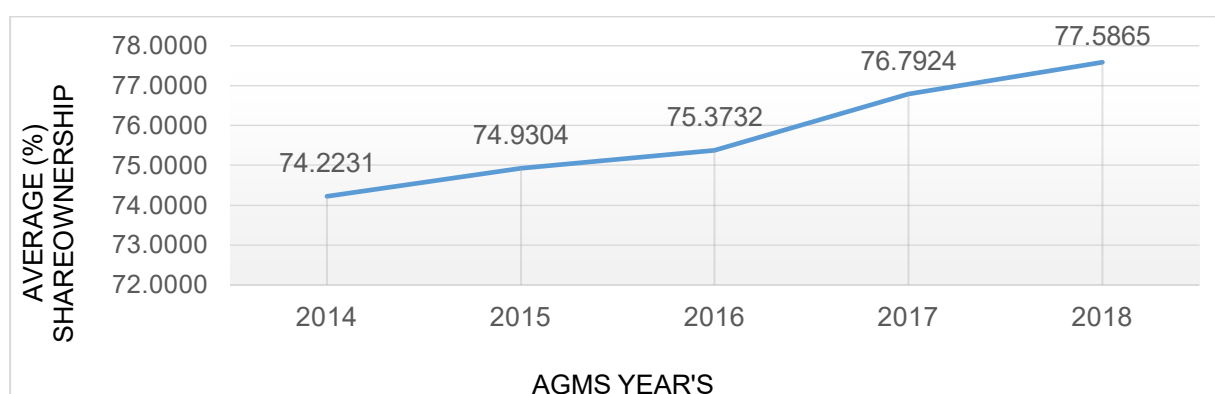


#### 6.2.5: Share Ownership Structure

The large shareholders are divided in three categories as: top 20 shareholders, blockholders and number of blockholders in each sample company. The voting powers and voting turnouts studied in this project.

**Ownership Structure of Top 20 Shareholders in ASX 200.** Share ownership structure and exercise of voting rights are indicators of the power of different ownership groups to influence decision-making. In Australian ASX 200 companies the share ownership of shareholders is very high. Figure 6.5 shows that the share ownership (ordinary shares) has significantly increased since 2014 to 2018. Moreover, more than half are under the control of the top 20 shareholders whose average ownership figure starts in 2014 at 74% of voting rights and rises to 77% in 2018 (increase of 3.3634%).

**Fig 6.5: Average % of share ownership of top 20 shareholders 2014-18**



**Ownership Structure of Blockholders in ASX 200.** The blockholders are the largest shareholders or parties holding 5% or more of share ownership with voting rights in the ASX 200. The blockholders were extracted from top 20 shareholders share ownership lists in annual reports. The share ownership and number of blockholders were calculated manually by adding the share ownership of blockholders in each of the sample companies.

In Australian listed companies, blockholders had the major ownership of shares and the voting rights attached to ordinary shares. The overall share ownership of blockholders was above 58% during 2014 and increased to 63% by 2018.

In 2014's AGMs share ownership with voting rights of blockholders was 54.4881%, 60.3701% in 2015, 60.8980%, 62.4065 for year 2016 and 2017 respectively, and 60.8963% in year 2018 respectively. The consistent growth of blockholders can be visualised in sample ASX 200 companies, share ownership of blockholders increased 5.4082% since 2014 to 2018.

**Fig 6.6: Average % of share ownership of blockholders (2014-2018)**

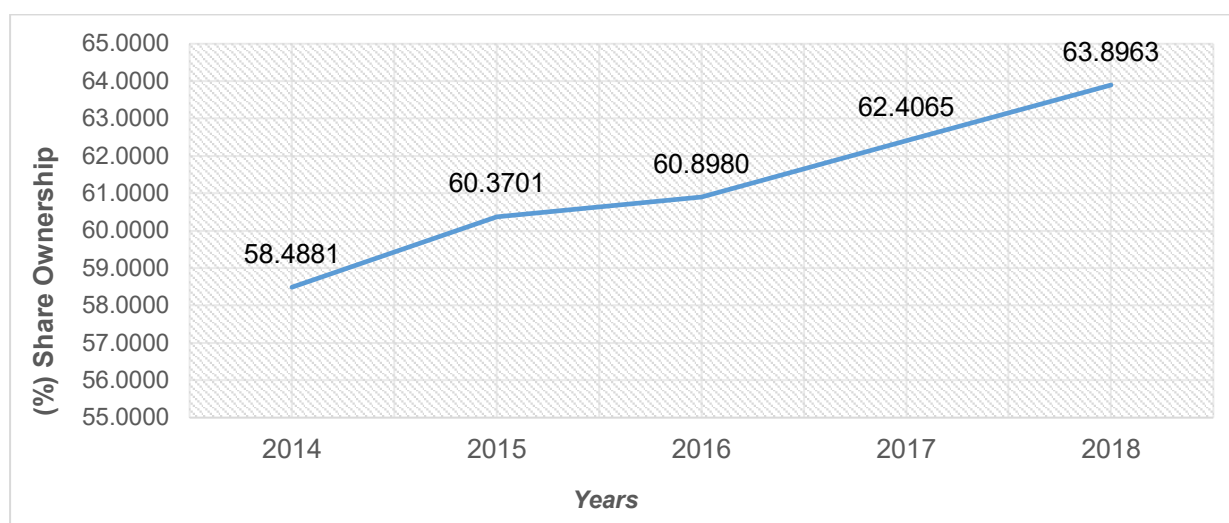


Table 6.1 illustrates that only six companies had 1 blockholder and also one company had 9 blockholders. Most of the companies had 3, 4 or 5 blockholders.

**Table 6.1: The frequency table of blockholders position in ASX 200**

Blockholders ( $\geq 5\%$ of share ownership)	
Blockholders	Frequency
1	6
2	25
3	129
4	275
5	133
6	30
7	8
8	2
9	1
<b>Total</b>	<b>609</b>

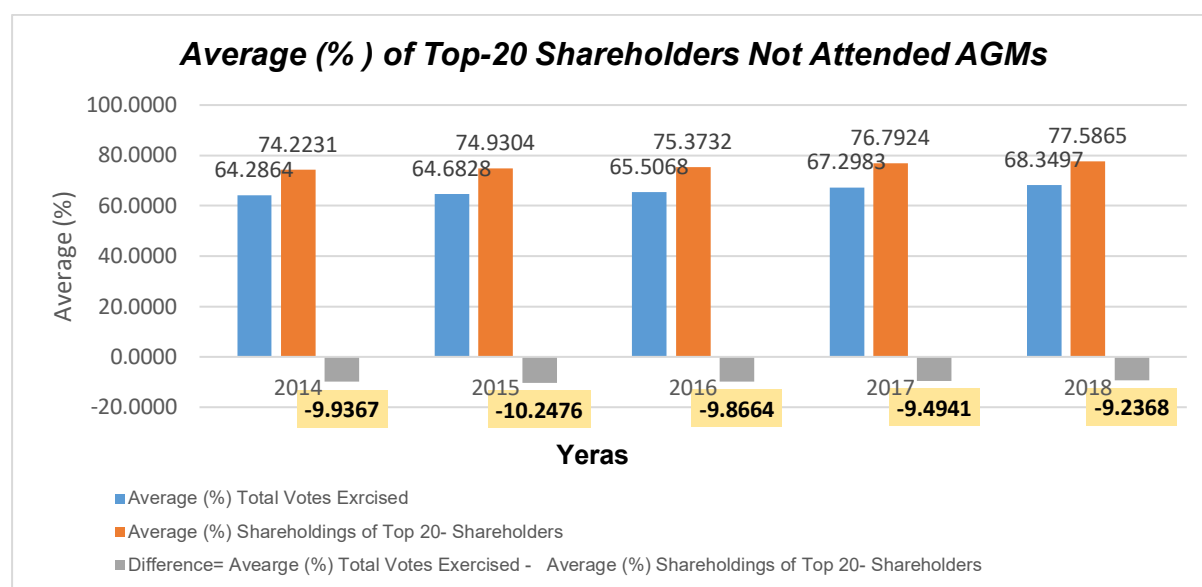
The maximum number of blockholders in Australian listed companies was 4 within 275 companies (e.g. in Aristocrat Leisure (ALL) four blockholders had 73.742% of voting shares in 2017 and 75.164% in 2018). The presence of 3 blockholders in 129 listed companies (e.g. in Wesfarmers Limited (WES) three blockholders had 37.54% of voting shares in 2014), the number of blockholders in 133 listed companies was 5 (e.g. in Oil Search Limited 10 Toea (OSH) where five blockholders had 75.11% of voting shares in 2016).

### 6.2.6: Comparison of Voting Turnout and Top 20 Shareholders Voting Rights

The average (percentage) of overall voting turnout and voting rights held with top 20 shareholders from all companies during 2014–18 is presented in Figure 6.7. The difference<sup>717</sup>, which shows the average percentage of top 20 shareholders who have not exercised their voting rights and neither appointed a proxy.

The results show that during the period 2014–18 the average percentage of shareholders voting turnout at AGMs is lower than the voting rights held with top 20 shareholders. The percentage of voting rights exercised by the top 20 shareholders is higher than the voting turnout of other shareholders. In the year 2014, 9.9367% of voting right was not exercised by top 20 shareholders, similarly in year 2015 10.2959%, in year 2016, 2017 and 2018 the voting rights by 9.6792%, 10.0219% and 9.4497% voting rights were not executed by top 20 shareholders. There is a steady movement in voting rights which were not exercised. During 2014–18 voting turnout in the top 20 shareholders is improving. The voting behaviour of to 20 shareholders can have significant influence over the voting turnout if they see their voting rights as a duty.

**Fig 6.7: The ownership structure of top 20 shareholders and voting turnouts (2014-18)**



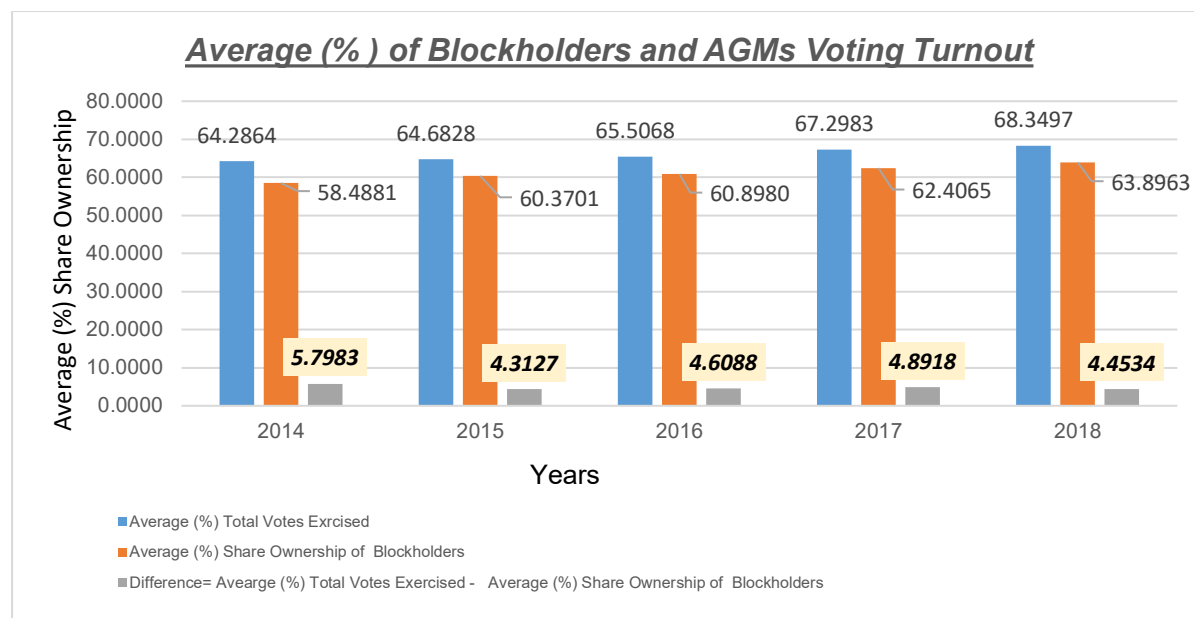
### 6.2.7: Comparison of Voting Turnout and Blockholders Voting Rights at ASX 200

In 2014 the difference between the AGMs average percentage voting turnout and the blockholders turnout is 5.7983%. In 2015 it was 4.3127%, similarly in 2016 it was 4.6088%, it

<sup>717</sup> Difference calculated (Difference= Average votes exercised -Top 20- shareholdings)

was 4.8918% in 2017 and 4.4534% in 2018. The difference decreased by 1.3449% during the period 2014–18.

**Fig 6.8: The ownership structure of blockholders and voting turnouts (2014–18)**



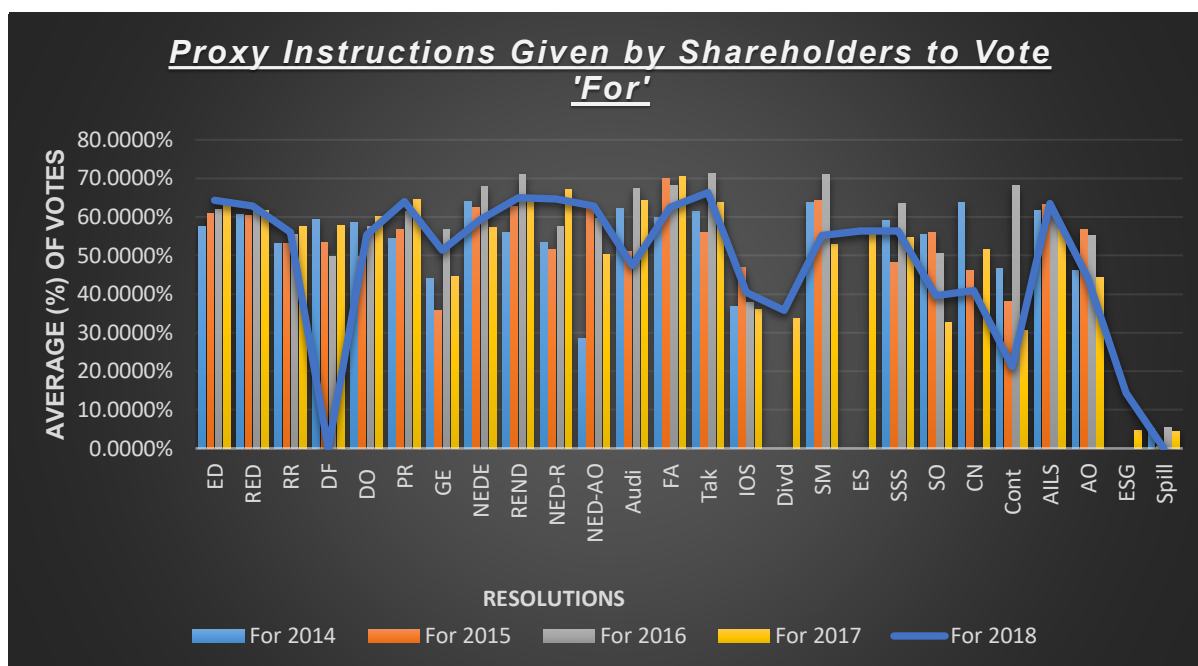
### 6.2.8: Proxy Instructions by Shareholders to Vote ‘For’ Resolutions

Shareholders average percentage of proxy instructions given was, on average, 61% in 2014 and 66% in 2018 respectively. Figure 6.9 shows the results of proxy instructions given by shareholders during the period 2014–18 on AGM resolutions.

The number of proxy votes on remuneration report resolutions were recoded as: 53.1499% in 2014; 53.0833% in 2015; 55.3833% in 2016; 57.6024% in 2017 and 56.0407% in year 2018. The proxy instructions to vote ‘For’ on election and re-election of directors were 57.5711% and 60.6761% in 2014, 60.9957% and 60.4807% in 2015, 61.9361% and 62.2881% in 2016, 63.5748% and 61.6285% in 2017, 64.3366% and 62.7939% in 2018.

No resolution on ESG issues was seen in sample company annual reports in 2014, 2015 and 2016. The number of voting proxies ‘For’ on ESG regulations for year 2017 and 2018 were recorded as: 4.7777% and 14.4567% respectively. Shareholders proxy instructions for ‘Spill’ resolutions (where the board recommended to shareholders to vote against the resolution), the spill resolutions received proxies votes in favour as: 5.1246% in 2014; 0.4445% in 2015; 5.3309% in 2016 and 4.4083% in 2017 and in 2018 the spill resolutions were withdrawn.

**Fig 6.9: Average (%) voting results for proxy instructions to vote 'For' (2014-2018)**



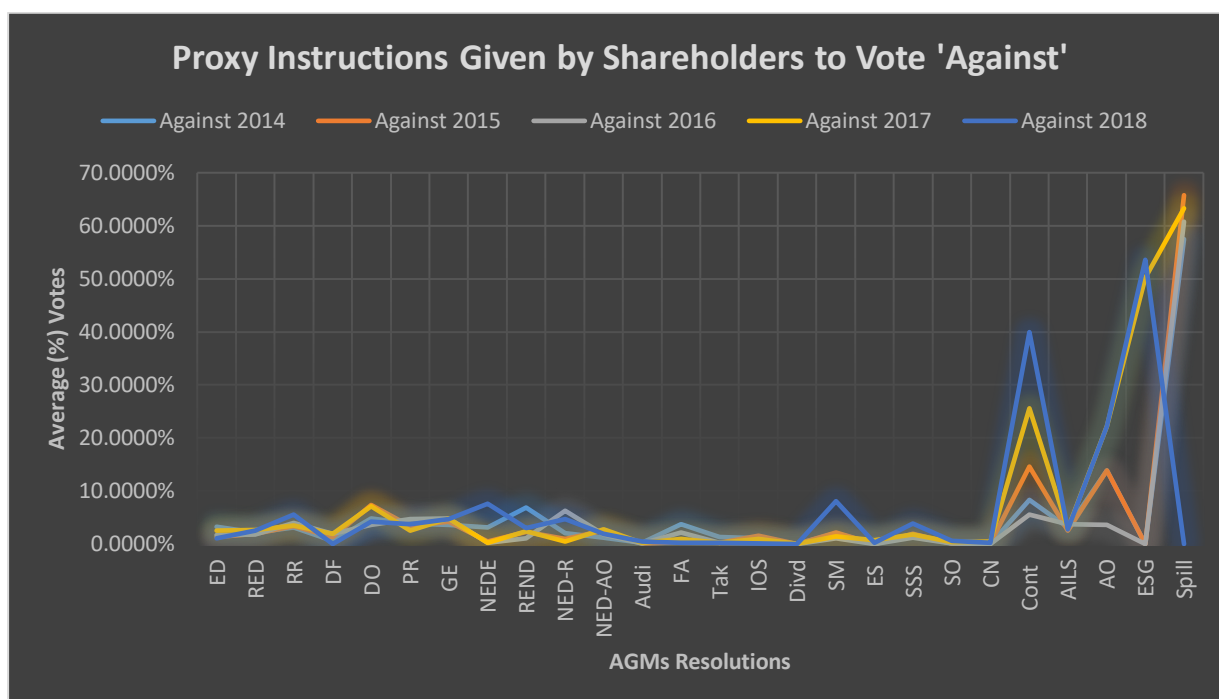
**Note:** Election of directors (ED), re-election of directors (RED), remuneration reports (RR), director fees (DF), directors other (DO), performance rights (PR), grant of equity (GE), non-executive directors election (NEDE), re-election of non-executive directors (REDE), non-executive directors remuneration (NED-R), non-executive directors all other (NED-AO), Auditor (Audi), financial assistance (FA), takeover (Tak), issue of share (IOS), dividend (Divd), shares matters (SM), employee shares (ES), securities and stapled securities (SSS), shareholders other (SO), company name (CN), constitution (Cont), award- incentives (long or short term) (AILS), all other (AO), environmental, social and governance (ESG) and spill resolutions.

## 6.2.9: Proxy Instructions by Shareholders to Vote 'Against' Resolutions

Resolutions proposed by shareholders, and the resolutions where board recommended to shareholders to vote 'Against' have received higher 'Against' proxy votes from shareholders.

The maximum proxy 'Against' was for 'Spill' resolutions, in 2014 it was 57.4851%, 65.7587% in 2015, 60.7641% in 2016 and 63.2941% in 2017. ESG resolutions increased during the period – results were 50.1808% in 2017 and 53.5789% in 2018. Votes by proxy 'Against' the remuneration resolutions increased from 3.1347% in 2014 and 5.5662% in 2018. For resolutions of election of directors in 2014 'Against' proxy vote was 3.1863% and it decreased in 2018 (1.1061%). The re-election of directors' resolutions 'Against' proxy votes were: 2.1589% in 2014 and 2.4836% in 2018.

**Fig 6.10: Average (%) voting results for proxy instructions to vote 'Against' (2014-18)**

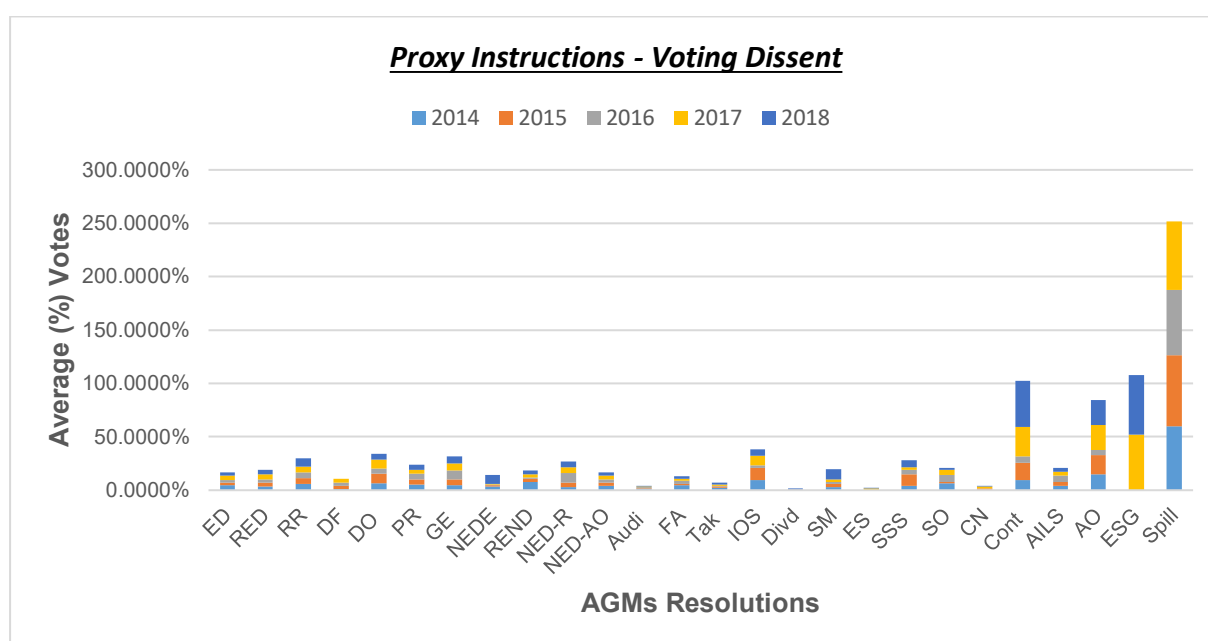


**Note:** Election of directors (ED), re-election of directors (RED), remuneration reports (RR), director fees (DF), directors other (DO), performance rights (PR), grant of equity (GE), non-executive directors election (NEDE), re-election of non-executive directors (REDE), non-executive directors remuneration (NED-R), non-executive directors all other (NED-AO), Auditor (Audi), financial assistance (FA), takeover (Tak), issue of share (IOS), dividend (Divd), shares matters (SM), employee shares (ES), securities and stapled securities (SSS), shareholders other (SO), company name (CN), constitution (Cont), award- incentives (long or short term) (AILS), all other (AO), environmental, social and governance (ESG) and spill resolutions.

#### 6.2.10: Voting Dissents for Proxy Votes during 2014–18 AGMs

Figure 6.11 shows the voting dissent trends for the 26 resolutions groups during the period 2014–18. The highest voting dissent was calculated for 'Spill' resolutions in 2016, which had 66.5489% proxy voting dissents. The remuneration report voting dissent was 4.4101% for 2014, 2.5103% for 2015, 2.7648% for 2016, 3.8460% and 3.0560% 2017 and 2018. The remuneration report resolutions has faced proxy voting dissent of 3.3364% in 2014 and 7.8454% in year 2018. The resolutions for re-election of directors has received 3.3364% in 2014 and 4.5476% in 2018.

**Fig 6.11: Average (%) voting results for proxy dissents (2014-18)**



**Note:** Election of directors (ED), re-election of directors (RED), remuneration reports (RR), director fees (DF), directors other (DO), performance rights (PR), grant of equity (GE), non-executive directors election (NEDE), re-election of non-executive directors (REDE), non-executive directors remuneration (NED-R), non-executive directors all other (NED-AO), Auditor (Audi), financial assistance (FA), takeover (Tak), issue of share (IOS), dividend (Divd), shares matters (SM), employee shares (ES), securities and stapled securities (SSS), shareholders other (SO), company name (CN), constitution (Cont), award- incentives (long or short term) (AILS), all other (AO), environmental, social and governance (ESG) and spill resolutions.

### 6.2.11: Australian Centre for Corporate Responsibility (ACCR) v Commonwealth Bank Australia (10 June 2016)

The judgment was handed down by the Federal Court of Australia. This case has addressed members' rights to put resolutions at general meetings. The Act, ss 249N, 250R and 250S was applied.

#### Facts:

Australian Centre for Corporate Responsibility exercising their powers under s 250N of the Act proposed three resolutions at the AGM and stated that one from these three resolutions be included in the Commonwealth Bank's AGM notice:

1. The directors of the bank provide a report pertaining information on greenhouse gas emissions for which the company is providing finance and all related information in this regard as well.
2. "In consideration of the annual director' report, the shareholders express their concerns at the absence in the report" the information in this matter.
3. The special resolution to amend bank constitution and to add new clause to the present directors' report on greenhouse emission on the company has responsibility for providing finance.

Commonwealth Bank of Australia has addressed the ACCR proposed resolutions as:



1. The bank included the third resolution in its AGM notice. As for the first two resolutions the bank stated that these resolutions matters are subject to management powers and as such are not valid to be added in AGM notice.
2. The bank stated that according to clause 12.1(1) of bank's constitution as: "The business of the company shall be managed by or under the direction of the directors, who may exercise all such powers of the company as are not, by the Corporations Act or this constitution, required to be exercised by the company in general meeting."
3. The bank's board made a statement in its AGM notice that third AGM resolution to amend bank constitution is not in the best interest of members and recommended they vote against it.

### **Judgment:**

ACCR's appeal was dismissed and the court held that:

1. The shareholders had no powers to act or speak on the behalf of company in general meeting except only in those circumstances if company constitution or relevant statutes empower shareholders to do so.
2. The company's acts or decisions must be taken as per the company's capacity. The interests of shareholders in its management capacity are distinct to propose and justify proposed resolutions for general meetings because powers and capacity of company are defined in the company constitution, which are different from shareholders legitimate interests.
3. Legally, individuals do not have powers to presume and act on the behalf of a company at general meetings to express an opinion or by resolution on the issues which are solely in the capacity of management.

### **Conclusion:**

This judgment has made clear that shareholders can exercise only those rights and powers which are given in company constitution.

## **6.3: Research Model 1**

RQ1: What is the relationship, if any, between the economic rights of shareholders and shareholders' engagement at AGMs?

Table 6.2 presents descriptive statistics for 'Model 1' variables (see Chapter 5) which describes the relationship between the independent variable 'dividend value' and dependent variables: total voting turnout (TVC), total proxy votes instructed (PV), total proxy instructions given to vote 'For, voting dissent' for remuneration report (RR), election of directors (ED) and re-election of directors (RED) in 2014, 2016 and 2018 to address RQ1 and propositions P1–P6. The descriptive statistics assesses the relationship of shareholders financial rights (dividend value, and its impact on shareholders engagement). The exercise of their control and decision making rights (voting and proxy voting at AGMs). In 2014 the mean and median are A\$0.28 and A\$0.11, respectively. The minimum dividend value which was declared by the

sample of 122 listed companies was recorded as minimum A\$0.00 and maximum dividend value as A\$4.01.

**Table 6.2: Descriptive statistics for model 1 year 2014**

	Mean	Median	Mode	Std. Deviation	Variance	Min	Max
Dividends	.280861	.110000	.0000	.5026609	.253	.0000	4.0100
TVC	.642864	.662403	.5706	.1401855	.020	.1015	.9210
PV	.612442	.634850	.5700	.1466457	.022	.1014	.8681
Proxy For RR	.530303	.534500	.5241	.1721418	.030	.0605	.8650
Proxy Dissent RR	.123759	.028350	.0055	.7090250	.503	.0018	.3608
Proxy For ED	.588170	.616250	.0268	.1803515	.033	.0268	.8535
Proxy Dissent ED	.008974	.007301	.0000	.0071249	.000	.0000	.0332
Proxy For RED	.603924	.619000	.5076	.1534578	.024	.0998	.8671
Proxy Dissent RED	.032990	.017743	.0627	.0434020	.002	.0000	.2279

In 2014 the maximum votes cast by shareholders was 92% and number of proxy votes was 86%. The maximum proxy votes 'For' and 'Voting Dissent' are 86% and 36%. The maximum proxy votes 'For' election and re-election of directors' resolutions are 85% and 86%. The maximum proxy voting dissent for election and re-election of directors are 3% and 22% respectively.

### 6.3.1: Results of T-Test for Model 1 Year 2014

Propositions P1–P6 were tested on the basis of empirical data – it is assumed that dividend value influenced the shareholders voting and proxy behaviour of engagement in AGMs of investee companies. The paired T-Test was performed on dividend value and voting turnout, proxy voting turnout, proxy instructions of shareholders to vote 'For' and 'Voting Dissent' on remuneration, election and re-election of directors resolutions in 2014.

The mean dividend value and voting turnout, proxy voting turnout, proxy votes 'For' and 'Dissent' on remuneration, directors election and re-election of directors resolutions are significantly different.

The results of T-Test in Table 6.3 (overleaf) show that in year 2014, shareholders dividend value does not have any impact and influence on shareholders engagement to exercise their voting and proxy voting rights. So, statistical results do not support the propositions (P1 to P6).

Table 6.4 (overleaf) presents descriptive statistics for the independent variable 'dividend value' and dependent variables voting turnout, total proxy votes instructed, total proxy instructions given to vote 'For, voting dissent' for remuneration report (RR), election of directors (ED) and re-election of directors (RED) in year 2016 to address RQ1 and propositions P1 to P6.

The minimum dividend value in 2016 was announced A\$0.00 and A\$4.30 maximum dividend value recorded. The mean for proxy dissent for remuneration report was calculated as 5.13%,

1.09% for directors' election and 3.47% for re-election of directors. The minimum and maximum values for voting instructions as proxy by shareholders on voting dissent for remuneration resolutions, resolutions in relation to election of directors and re-election of directors as: 0.24% and 32.35%, 0.04% and 15.24%, 0.19% and 53.53%. The proxy voting dissent is higher on the resolutions where the board recommended to vote against the resolution.

**Table 6.3: T-Test for model 1 year 2014 with 5%, 1% and 10% level of significance**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2014 Dividends – 2014TVC	-.4547361	-.2555640	-.4868137	-.2234864	-.4385228	-.2717774	18.643	.000
2014 Dividends – 2014 PV	-.4333179	-.2272625	-.4665561	-.1940243	-.4165309	-.2440494	20.091	.000
2014 Dividends – 2014 For RR	-.3464466	-.1380855	-.3800814	-.1044507	-.3294655	-.1550666	21.139	.000
2014 Dividends – 2014 Dissent RR	-.0043240	.3382129	-.0596322	.3935211	.0235958	.3102931	21.812	.000
2014 Dividends – 2014 For ED P	-.4261535	-.0082665	-.4958552	.0614352	-.3915276	-.0428924	22.932	.000
2014 Dividends – 2014 Dissent ED	.1885003	.5542579	.1275667	.6151916	.2187884	.5239699	23.045	.000
2014 Dividends – 2014 For RED	-.4363957	-.2253323	-.4705508	-.1911772	-.4191728	-.2425552	23.642	.000
2014 Dividends – 2014 Dissent Proxy RED	.1455870	.3345531	.1150078	.3651324	.1610067	.3191334	27.671	.000

**Table 6.4: Descriptive statistics for model 1 year 2016**

	Mean	Median	Mode	Std. Deviation	Variance	Min	Max
Dividends	.5011	.2500	.10	.71365	.509	.00	4.30
TVC	.655068	.679885	.1965	.1361171	.019	.1965	.9370
PV	.632882	.664200	.6508	.1420787	.020	.1964	.8790
Proxy For RR	.553778	.572850	.0386	.1733601	.030	.0386	.8761
Proxy Dissent RR	.051263	.025650	.0071	.0660957	.004	.0024	.3235
Proxy For ED	.614816	.638400	.4898	.1610968	.026	.2570	.8880
Proxy Dissent ED	.010941	.006911	.0004	.0224986	.001	.0004	.1524
Proxy For RED	.622061	.663600	.1193	.1661658	.028	.1193	.8797
Proxy Dissent RED	.034729	.012904	.0019	.0776290	.006	.0019	.5355

### 6.3.2: Results of T-Test for Model 1 Year 2016

The T-Test results presented in Table 6.5 (overleaf) show that mean voting outcome has a significant relationship with dividend value and proxy voting instructions by shareholders to vote 'For' the resolutions of directors election for 5%, 1% and 10% level of significance in 2016. Thus only proposition P3 was supported.

The T-Test results for the relationships of dividend and voting turnout, dividend and proxy voting turnout, dividend value and proxy voting 'For' re-election of directors resolutions, dividend value proxy votes 'Dissent' are close to significance.

Table 6.6 presents descriptive statistics for the independent variable 'dividend value' and dependent variables, total voting turnout (TVC), total proxy votes instructed (PV), total proxy instructions given to vote 'For, voting dissent' for remuneration report (RR), election of directors (ED) and re-election of directors (RED) in year 2018 to address RQ1 and propositions P1 to P6.

The maximum dividend was given to shareholders in 2018 was A\$5.53, the mode average percentage for voting turnout was 76.44% and median 58.34%. The minimum and maximum proxy votes recorded during 2018 was 28.78% and 87.19%, respectively. The maximum value for the resolutions of re-election of directors recorded 92.45% and the highest proxy voting dissent for election of directors' resolution was 41.53%.

**Table 6.6: Descriptive statistics for model 1 year 2018**

	Mean	Median	Mode	Std. Deviation	Variance	Min	Max
Dividends	.5968	.2800	.00	.86498	.748	.00	5.35
TVC	.683497	.711272	.7644	.1305335	.017	.2875	.9328
PV	.659959	.679900	.5727	.1394104	.019	.2875	.8719
Proxy For RR	.557548	.573700	.7274	.1896392	.036	.0000	.8665
Proxy Dissent RR	.076961	.041300	.0215	.0915275	.008	.0000	.4230
Proxy For ED	.644782	.685350	.7590	.1532813	.023	.3127	.8597
Proxy Dissent ED	.019292	.005929	.0033	.0574355	.003	.0000	.4153
Proxy For RED	.630586	.651807	.6939	.1576897	.025	.1989	.9245
Proxy Dissent RED	.046764	.023986	.0702	.0712103	.005	.0016	.4177

### 6.3.3: Results of T-Test for Model 1 Year 2018

The results for T-Test in Table 6.7 (overleaf) shows that not a single pair was found to be statistically significant, but the relation of dividend with proxy 'For' on remuneration resolutions, proxy 'For' for election of directors and re-election of directors resolutions was found close to significance for 5%, 1% and 10% level of significance in 2018

**Table 6.5: T-Test for model 1 year 2016**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2016 Dividends – 2016TVC	-.2863205	-.0134021	-.3302572	.0305345	-.2641086	-.0356140	-2.174	.032
2016 Dividends – 2016 PV	-.2696975	.0246543	-.3171900	.0721467	-.2457143	.0006710	-1.650	.102
2016 Dividends – 2016 For RR	-.1910527	.1153490	-.2405263	.1648225	-.1660782	.0903745	-.490	.625
2016 Dividends – 2016 Dissent RR	.3253224	.6040036	.2803247	.6490012	.3480374	.5812885	6.611	.000
2016 Dividends – 2016 For ED P	-.2440500	.2584189	-.3284332	.3428021	-.2022719	.2166408	.058	.954
2016 Dividends – 2016 Dissent ED	.3832685	.8388501	.3067594	.9153592	.4211481	.8009705	5.406	.000
2016 Dividends – 2016 For RED	-.2891636	.0272646	-.3403848	.0784858	-.2633390	.0014400	-1.642	.104
2016 Dividends – 2016 Dissent Proxy RED	.3097356	.6030291	.2622592	.6505054	.3336721	.5790926	6.176	.000

**Table 6.7: T-Test for model 1 year 2018**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2018 Dividends – 2018 TVC	-.2581478	.0683436	-.3107090	.1209048	-.2315758	.0417716	-1.151	.252
2018 Dividends – 2018 PV	-.2647752	.0655917	-.3181049	.1189214	-.2378508	.0386673	-1.195	.235
2018 Dividends – 2018 For RR	-.14848	.19544	-.20403	.25099	-.12045	.16741	.271	.787
2018 Dividends – 2018 Dissent RR	.3452446	.6628899	.2939423	.7141922	.3711390	.6369956	6.292	.000
2018 Dividends – 2018 For ED	-.3214431	.2061645	-.4088717	.2935932	-.2778703	.1625917	-.438	.663
2018 Dividends – 2018 Dissent ED	.3145032	.8062114	.2331011	.8876135	.3550917	.7656229	4.566	.000
2018 Dividends – 2018 For RED	-.2537137	.1234301	-.3149481	.1846644	-.2228868	.0926031	-.686	.494
2018 Dividends – 2018 Dissent Proxy RED	.0123305	.0514298	.0059774	.0577829	.0155276	.0482327	3.241	.002

#### **6.3.4: Grant –Taylor v Babcock & Brown Ltd (in liq) (21 April 2016)**

The judgment was handed down by the Federal Court of Australia. The application of legislation of interest for this study is s 254T of the Act.

##### **Facts:**

1. The company paid a dividend from capital instead of profit for financial year 2005, 2006 and 2007 which was contrary to s 254T of the Act and the company's constitution.
2. The financial report of the company has not declared true and fair view of financial position during years 2005, 2006 and 2007 also the company has not expressly declared that dividend was paid from capital of the company and the company's share capital reduced.

Babcock & Brown Ltd (BBL) verdict on the allegations:

1. The company accepted that it paid dividend for the years 2005, 2006 and 2007 from company's capital and that this was unlawful. It did not accept that the company had an obligation to declare it. This breach was due to accounting error.

##### **Judgment:**

1. "The non-disclosure of the final dividend information had no economic significance to the shareholders of BBL. It also had no financial significance to those interested in the group's performance as a whole. The final dividend information was economically irrelevant to the value of the traded BBL shares".
2. "The non-disclosure of the final report information was economically irrelevant".

##### **Conclusion:**

The shareholders cannot exercise the powers which are purely entitled to company's management.

#### **6.4: Research Model 2A**

RQ2a: How and to what extent do AGMs impact on decision making of listed companies?

Table 6.8 below contains descriptive statistics of AGMs items (resolutions), ordinary resolutions and resolutions endorsed by boards. The maximum number of resolutions endorsed by the board to vote 'For' was 12 in 2014 and 2015, 11 resolutions was in 2016, 2017 and 2018.

**Table 6.8: Descriptive statistics for model 2A**

	Mean	Median	Mode	Std. Deviation	Variance	Min	Max
2014 Resolutions	5.40	5.00	5	2.806	7.875	1	25
2014 Ordinary	5.17	5.00	5	2.644	6.989	1	23
2014 BR Resolutions	4.63	5.00	5	2.082	4.336	0	12
2015 Resolutions	5.64	5.00	5	3.128	9.786	2	25
2015 Ordinary	5.30	5.00	5	2.634	6.940	2	18
2015 BR Resolutions	4.83	5.00	5	2.255	5.086	0	12
2016 Resolutions	5.47	5.00	5	2.484	6.168	1	20
2016 Ordinary	5.20	5.00	5	2.251	5.068	1	18
2016 BR Resolutions	4.79	5.00	5	2.021	4.086	0	11
2017 Resolutions	5.80	5.00	4	2.769	7.668	2	23
2017 Ordinary	5.53	5.00	5	2.540	6.449	2	20
2017 BR Resolutions	5.04	5.00	5	2.168	4.701	0	11
2018 Resolutions	5.47	5.00	5	2.503	6.268	1	19
2018 Ordinary	5.17	5.00	4	2.288	5.235	1	18
2018 BR Resolutions	4.68	5.00	5	1.989	3.955	0	11

P7: The shareholders voting turnout is positively associated with importance of AGM (number of AGM resolutions presented at AGMs).

The AGM items in 2014 had a minimum of 1 resolution and a maximum of 25, similarly in 2015 the mode was 5, minimum and maximum was 2 and 25 resolutions, 2018 the AGM resolution was 1 recorded as minimum and 19 as maximum.

The results for the T-Test presented in Table 6.9, suggest that a relationship between AGM resolutions in 2014 and voting turnout are significantly different at 5%, 1% and 10% levels of significance. The mean voting outcome for AGM resolutions and AGMs voting turnout are not significant in year 2016 and 2018 respectively.

The results do not support proposition P7. Moreover, shareholders control and decision making at ASX 200 AGMs do not have significant influence on the importance of AGMs resolutions in 2014, 2016 and 2018's AGMs sessions.

P8: Board recommendations to vote in favour of the resolutions have positive association with voting turnout.

The study observations had 2,018 resolutions for which the board made recommendations in companies' AGMs notices for shareholders to vote 'For' the resolutions and 48 resolutions which was having board recommendation to vote 'Against', 416 AGMs resolutions was without any recommendation from the boards in AGMs notices (refer to Table 5.3).

The median and mode for board recommended resolutions during the period 2014–18 was 5. The maximum number of board recommended resolutions was recorded 12 in year 2014 and 2015, 11 resolutions in 2016, 2017 and 2018.



The T-Test results suggested that there is no significant results presented in Table 6.9 in any year during the period 2014–18. The number of AGM board recommended resolutions does not attract significance of shareholders control and decision making rights in ASX 200.

P9: The number of ordinary resolutions are negatively associated with shareholders proxy voting behaviour.

This study has investigated 3,214 ordinary resolution (refer to Table 5.3). In Table 6.8 the minimum number of ordinary resolutions in 2014 was recorded as 1 and maximum 23. Tables 6.1, 6.4 and 6.6 present descriptive statistics for shareholders proxy voting turnout at AGMs. The T-test results in Table 6.9 shows the relationship of number of ordinary resolutions and proxy voting turnout in 2014, 2016 and 2018. The statistical results do not support proposition P9 because the statistical relationship between ordinary resolutions and proxy voting turnout is significantly different. Moreover, the results suggest that the number of ordinary resolutions does not impact on the exercise of control and decision making rights of shareholders through proxy voting rights during 2014, 2016 and 2018.

**Table 6.9: T-Test for model 2A**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2014 Resolutions – 2014TVC	4.2698579	5.2847495	4.3524738	5.2021337	4.1064048	5.4482027	18.643	.000
2014 Ordinary – 2014 PV	4.0111524	4.8889636	4.0826662	4.8174499	3.8695552	5.0305609	20.091	.000
2014 BR Resolutions – 2014TVC	3.6290939	4.3792950	3.6901630	4.3182259	3.5082705	4.5001185	21.139	.000
2016 Resolutions – 2016 TVC	4.3938731	5.2711976	4.4652756	5.1997952	4.2526343	5.4124364	21.812	.000
2016 Ordinary – 2016 PV	4.0226406	4.7836675	4.0846477	4.7216605	3.8998520	4.9064561	22.932	.000
2016 BR Resolutions – 2016 TVC	3.7978756	4.5118233	3.8559813	4.4537175	3.6829384	4.6267604	23.045	.000
2018 Resolutions – 2018 TVC	4.2806239	5.0631256	4.3443090	4.9994405	4.1546503	5.1890992	23.642	.000
2018 Ordinary – 2018 PV	3.9354646	4.5427831	3.9849601	4.4932876	3.8374279	4.6408198	27.671	.000
2018 BR Resolutions – 2018 TVC	3.6115600	4.3107019	3.6684607	4.2538012	3.4990064	4.4232555	22.435	.000

## 6.5: Research Model 2B

RQ2b: Do shareholders use AGM for accountability of directors or as simply a formal event?

Table 6.10 presents descriptive statistics for voting and proxy voting on AGM resolutions of election and re-election during the period 2014–18.

**Table 6.10: Descriptive statistics for model 2B**

	Mean	Median	Mode	Std. Deviation	Variance	Min	Max
2014 ED	1.814450	2.000000	2.0000	1.4211935	2.020	.0000	12.0000
2014 RED	.676519	.000000	.0000	.8785400	.772	.0000	5.0000
2014 Against ED	.030704	.002250	.0019	.0790804	.006	.0002	.4590
2014 Against RED	.021390	.005200	.0008	.0384487	.001	.0003	.2177
2015 ED	1.811475	2.000000	2.0000	1.3565389	1.840	.0000	10.0000
2015 RED	.655738	.000000	.0000	.8697914	.757	.0000	4.0000
2015 Against ED	.013120	.002900	.0008	.0457799	.002	.0002	.3165
2015 Against RED	.019683	.004950	.0025	.0339519	.001	.0000	.1816
2016 ED	1.893443	2.000000	2.0000	1.4871759	2.212	.0000	11.0000
2016 RED	.622951	.000000	.0000	.8462642	.716	.0000	3.0000
2016 Against ED	.017116	.002200	.0004	.0697730	.005	.0003	.4642
2016 Against RED	.018293	.004800	.0005	.0408159	.002	.0001	.2886
2017 ED	1.885246	2.000000	2.0000	1.2933186	1.673	.0000	9.0000
2017 RED	.688525	.000000	.0000	.8535968	.729	.0000	3.0000
2017 Against ED	.025012	.002000	.0004	.0897010	.008	.0002	.5037
2017 Against RED	.026900	.007000	.0018	.0436094	.002	.0000	.1816
2018ED	1.581967	1.000000	2.0000	1.3535394	1.832	.0000	9.0000
2018 RED	.754098	1.000000	.0000	.9474758	.898	.0000	5.0000
2018 Against ED	.011091	.002450	.0004	.0298429	.001	.0001	.2077
2018 Against RED	.026043	.010750	.0009	.0394523	.002	.0001	.2245

### **P10: The shareholders voting ‘Against’ on directors elections is positively associated with number of resolutions for election of directors’**

Table 6.10 presents the descriptive statistics on the member of resolutions proposed for shareholders’ approval and proxy vote ‘Against’ for accountability of directors to exercise their control and decision making rights by voting and proxy voting and during the period 2014–18. The statistics show that the maximum number of directors’ elections resolutions was 12 in 2014, 10 in 2015, 11 in 2016 and 9 in both 2017 and 2018.

The T- Test results in Table 6.11, the mean number of directors’ resolutions and mean of proxy votes ‘Against’ election of directors is statistically significant in 2014, 2015 and 2017. The mean number of director’s elections in 2014, 2015 and 2016 has attracted shareholders engagement to exercise control and decision making rights. The mean number of director’s resolutions and mean of proxy votes ‘Against’ election of directors are statistically not significant in both 2017 and 2018 but the significance level is very close to being significant.

Results for 2014, 2015 and 2016 support research proposition P10, the shareholders voting 'Against' on directors elections is positively associated with number of resolutions for election of directors.

P11: Shareholders proxy voting 'Against' on re-election of directors' resolutions are positively associated with number of resolutions of re-election of directors.

The maximum number of resolutions for re-elections of directors is 5 in 2014, 4 in 2015, 3 in both 2016 and 2017, and 3 in 2018. The shareholders proxy votes 'Against' re-election of directors attracted higher average proxies of 28.86% in 2016.

The mean proxy voting 'Against' outcomes is significant with mean number of resolution for re-election of directors in 2014. The T-Test's statistical results are close to significance in 2015, 2016, 2017 and 2018.

Hence, P11 (shareholders proxy voting 'Against' on re-election of directors' resolutions are positively associated with number of resolutions of re-election of directors) is supported 2014 and the T-Test results suggested that in 2015, 2016, 2017 and 2018 the relationship of number of resolutions (RED) with proxy voting 'Against' is close to association.

**Table 6.11: T-Test for model 2B**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2014 ED – 2014 Against ED	-.6487317	1.2238957	-.9610778	1.5362418	-.4935670	1.0687310	.617	.540
2014 RED – 2014 Against RED	-.3824887	.5217655	-.5288631	.6681399	-.3086899	.4479667	.306	.761
2015 ED – 2015 Against ED	-.1654680	1.4366440	-.4326933	1.7038693	-.0327180	1.3038940	1.594	.117
2015 RED – 2015 Against RED	.4129195	.7277105	.3619788	.7786513	.4386066	.7020234	7.190	.000
2016 ED – 2016 Against ED	.1040650	1.6004194	-.1472287	1.8517131	.2284802	1.4760043	2.296	.027
2016 RED – 2016 Against RED	-.1176009	.5637908	-.2278999	.6740898	-.0619906	.5081805	1.299	.197
2017 ED – 2017 Against ED	-.0435678	1.5016973	-.3010022	1.7591316	.0843942	1.3737352	1.895	.064
2017 RED – 2017 Against RED	-.0450585	.6132565	-.1515582	.7197563	.0086522	.5595458	1.712	.090
2018ED – 2018 Against ED	-.9090093	.4614486	-1.1361046	.6885439	-.7958291	.3482684	-.654	.516
2018 RED- 2018 Against RED	.2070586	-.0616909	.2075086	-1.952904	.0055665	.6938935	1.689	.095

## 6.6: Research Model 3

RQ3: Did shareholders exercise proxy voting dissent to record their concerns on board recommended resolutions -remuneration resolutions?

Table 6.12 presents descriptive statistics of proxy votes of shareholders to vote 'For, Against and Abstain' on remuneration reports to show their dissatisfaction with companies instead of selling their shares.

**Table 6.12: Descriptive statistics for model 3**

	Mean	Median	Mode	Std. Deviation	Variance	Min	Max
2014 For RR	.530303	.534500	.5241	.1721418	.030	.0605	.8650
2014 Against RR	.031074	.013900	.0087	.0504663	.003	.0007	.2999
2014 Abstain RR	.016936	.002800	.0017	.0783003	.006	.0000	.6140
2015 For RR	.531389	.570200	.5717	.1765453	.031	.0099	.8786
2015 Against RR	.033414	.011798	.0000	.0461268	.002	.0000	.2210
2015 Abstain RR	.014187	.003800	.0003	.0579779	.003	.0000	.5907
2016 For RR	.553778	.572850	.0386	.1733601	.030	.0386	.8761
2016 Against RR	.039189	.012350	.0023	.0638627	.004	.0003	.3178
2016 Abstain RR	.006283	.002669	.0000	.0139521	.000	.0000	.1303
2017 For RR	.578503	.593200	.1126	.1668498	.028	.1126	.9389
2017 Against RR	.013409	.004200	.0004	.0305999	.001	.0001	.2678
2017 Abstain RR	.006225	.002887	.0000	.0132845	.000	.0000	.1225
2018 For RR	.557548	.573700	.7274	.1896392	.036	.0000	.8665
2018 Against RR	.054634	.023900	.0000	.0781513	.006	.0000	.3704
2018 Abstain RR	.010012	.003700	.0004	.0169508	.000	.0001	.1219

P12: Shareholders engagement is positively associated with higher voting in favour of remuneration policy resolutions at AGMs.

The T-test results in Table 6.13 do not support significance between means of board recommended resolutions and proxy votes 'For' on remuneration reports during AGMs during the period 2014–18. These results do not support the proposition P12, hence the shareholders proxy voting results to support the remuneration reports does not show any significance and shareholders dissatisfaction with ASX 200.

P13: Shareholders activism is positively correlated with higher voting against on board recommended resolutions and remuneration policy resolutions.

Shareholders activism at AGMs during the period 2014–18 was studied by investigating the relationship between board-recommended resolutions and proxy voting 'Against' remuneration policy resolutions, the T-Test does not show the relationship or close significance between means of board recommended resolutions and proxy voting 'Against'. The results do not support proposition P17.

The remuneration policy resolution attracted maximum 29.99% proxy 'Against' in PRY-Primary Health Care and second highest proxy 'Against' was 26.59% in HVN-Harvey Norman

in 2014, 22.10% proxy votes 'Against' in 2015 in DOW, 11.19% in DMP, 11.00% in IVC, 13.46 PMV, 11.97 in GNC, 10.30 in STO, 15.16% in SDF, 22.10% in ANN, 15.44% ALQ, 13.00% in SEK and 16.88 in ABP.

The highest proxy vote 'Against' remuneration policy resolution 31.78% GMG- Goodman Group 'Against' in 2016, moreover, in 2016 shareholders were activists to some extent, 14.86% in CWN, 10.36% in DMP, 13.32% in TAH, 16.73% in NEC, 19.74% in MTS, 19.38% in CBA, 14.37% in CSL, 16.86% in BLD, 29.55% in MIN, 24.91% in SGM and 24.43% in SKI.

In 2017 the maximum 'Against' and proxy 'Against' was 26.78% in MIN, the notable 'Against' proxy votes was 14.17% in CWN, 10.87% in DMP, BXB 16.82%, 15.69% in ILU, 19.59% in GMG, 13.59% in TPM, 11.15% in SKI and 12.53% in AST.

In 2018 the GMG had a maximum 'Against' proxy vote was 37.04% for remuneration policy resolutions, also the notable shareholders activism on remuneration report by giving 'Against' proxy included 12.57% in BRG, 15.53% in JBH, 25.57% in TAH, 12.66% in CCL, 34.28% in AMP, 16.02% in CGF, 34.64% in NAB, 30.54% in QBE, 25.50 in WBC, 15.09% in RHC, 14.05% in SEK, 12.54% in QUB, 15.26% in APA.

P14: Shareholders empowerment is positively associated with higher voting abstain on remuneration policy resolutions.

The maximum proxy voting 'Abstain' in 2014 was 61.39% on remuneration report of PTM and in final voting results 'Abstain' voting plus proxy voting results was calculated 37.03%. The second highest 'Abstain' figure was 54.25% for CMH's remuneration report resolution, which was passed on show of hands.

PTM has seen highest 'Abstain' proxy votes of 59.06% in 2015 and final 'Abstain' was declared as 36.69%, the second highest proxy vote 'Abstain' recorded for SWW in 2015 with 14.03% and the remuneration report resolution was passed on a show of hands.

In 2016, the maximum proxy votes 'Abstain' was AOG with 13.03% and the remuneration report resolution was passed on a show of hands. The maximum proxy voting 'Abstain' in 2017 and 2018 was 26.78% (AOG) and 12.19% (AOG) respectively.

The descriptive statistics of shareholders proxy voting 'Abstain' on remuneration reports supported by the board's recommendation to vote 'For' showed that in ASX 200 the trend of shareholders to 'Abstain' their control and decision making rights is very limited only in the sample of current study only in six AGMs the shareholders voting 'Abstain' was notably high.

The T- Test showed that mean value of board-recommended resolutions are not significant with proxy vote 'Abstain' on remuneration report during study period. Moreover, there was no close significance either.



**Table 6.13: T-Test for model 3**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2014 BR Resolutions – 2014 For RR	3.8899823	4.6457425	3.7679834	4.7677414	3.9515756	4.5841492	22.387	.000
2014 BR Resolutions – 2014 Against RR	4.3980291	5.1694523	4.2734702	5.2940113	4.4609070	5.1065744	24.586	.000
2014 BR Resolutions – 2014 Abstain RR	4.4001118	5.1771271	4.2746499	5.3025890	4.4634455	5.1137934	24.434	.000
2015 BR Resolutions – 2015 For RR	3.9307177	4.7362336	3.8007511	4.8662003	3.9963497	4.6706017	21.323	.000
2015 BR Resolutions – 2015 Against RR	4.4244396	5.2384617	4.2931005	5.3698008	4.4907646	5.1721367	23.525	.000
2015 BR Resolutions – 2015 Abstain RR	4.4424205	5.2589345	4.3106793	5.3906757	4.5089485	5.1924065	23.546	.000
2016 BR Resolutions – 2016 For RR	3.9674182	4.7028041	3.8486780	4.8215442	4.0273587	4.6428635	23.372	.000
2016 BR Resolutions – 2016 Against RR	4.4729456	5.2264544	4.3512793	5.3481207	4.5343634	5.1650366	25.518	.000
2016 BR Resolutions – 2016 Abstain RR	4.5230603	5.2774584	4.4012188	5.3992998	4.5845585	5.2159601	25.756	.000
2017 BR Resolutions – 2017 For RR	4.2198644	4.9867665	4.0960976	5.1105333	4.2823579	4.9242730	23.793	.000
2017 BR Resolutions – 2017 Against RR	4.8152042	5.5904102	4.6901279	5.7154865	4.8783665	5.5272479	26.601	.000
2017 BR Resolutions – 2017 Abstain RR	4.8090691	5.5821508	4.6842740	5.7069459	4.8720741	5.5191458	26.643	.000
2018 BR Resolutions – 2018 For RR	3.9401907	4.6082654	3.8322912	4.7161649	3.9946519	4.5538042	25.369	.000
2018 BR Resolutions – 2018 Against RR	4.4461885	5.1080956	4.3392852	5.2149989	4.5001470	5.0541372	28.618	.000
2018 BR Resolutions – 2018 Abstain RR	4.4573790	5.1075022	4.3523511	5.2125300	4.5103838	5.0544973	29.172	.000

## 6.7: Research Model 4A

RQ4a: What is the relationship, if any, between ownership structure of shareholders and shareholders engagement at AGM?

In Australian listed companies the share ownership of top 20 shareholders is presented in Figure 6.5. The maximum shareholdings of top 20 shareholders in 2014 was 97.90% with minimum 17.46%. Similarly in 2018, 38.20% was minimum share ownership with maximum 94.87%.

In Figure 6.8 the comparison of shareholders voting turnout and share ownership of top 20 shareholders presented.

**Table 6.14: Descriptive statistics for model 4A**

			Mean	Median	Mode	Std. Deviation	Variance	Min	Max
2014	Top	20	.742231	.782700	.8785	.1502729	.023	.1764	.9790
	Shareholdings								
2014	For RR		.530303	.534500	.5241	.1721418	.030	.0605	.8650
2014	Against RR		.031013	.013800	.0086	.0504661	.003	.0007	.2998
2014	Dissent RR		.055610	.028100	.0055	.0932014	.009	.0007	.6341
2018	Top	20	.773530	.817050	.8611	.1362495	.019	.3820	.9487
	Shareholdings								
2018	Dissent ED		.019292	.005929	.0033	.0574355	.003	.0000	.4153
2018	Dissent Proxy		.046764	.023986	.0702	.0712103	.005	.0016	.4177
	RED								

P15: AGM voting turnout has positive relationship with shareholdings of top 20 shareholders.

The shareholders exercise their control and decision making rights through voting and proxy voting. The T-Test show that in ASX 200 the mean of top 20 shareholders share ownership is not significant with the mean of voting turnout in 2014 and 2018. The relationship between the top 20 shareholdings is significantly different from proxy voting turnout and shareholders proxy votes 'For, Against and Dissent'. Also, statistical significance was not found between the means of top 20 shareholders share ownership and proxy voting turnout, proxy 'Dissent' on election and re-election of directors.

Proposition P15, the AGM voting turnout is having positive relation with shareholdings of to 20 shareholders not supported by the T-test results.

**Table 6.15: T-Test for model 4A**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2014 Top 20 Shareholdings 2014TVC	.0782162	.1189543	.0716551	.1255154	.0815324	.1156381	9.584	.000
2014 Top 20 Shareholdings 2014 PV	.1101272	.1518924	.1033902	.1586295	.1135297	.1484899	12.432	.000
2014 Top 20 Shareholdings 2014 For RR	.1794180	.2464242	.1686016	.2572406	.1848789	.2409633	12.597	.000
2014 Top 20 Shareholdings 2014 Against RR	.6840438	.7392358	.6751322	.7481474	.6885425	.7347371	51.121	.000
2014 Top 20 Shareholdings 2014 Dissent RR	.6557045	.7167992	.6458398	.7266639	.6606843	.7118194	44.535	.000
2018 Top 20 Shareholdings 2018 TVC	.0774771	.1105281	.0721541	.1158511	.0801676	.1078376	11.264	.000
2018 Top 20 Shareholdings 2018 PV	.0957040	.1306396	.0900616	.1362820	.0985519	.1277917	12.845	.000
2018 Top 20 Shareholdings 2018 Dissent ED	.7281415	.8047372	.7154490	.8174297	.7344672	.7984115	40.106	.000
2016 Top 20 Shareholdings 2018 Dissent Proxy RED	.6742356	.7421670	.6631976	.7532050	.6797903	.7366123	41.443	.000

## 6.8: Research Model 4B

RQ4b: Did ownership structure (blockholders up to top 20 shareholders) in listed companies has any impact on shareholders engagement to exercise their rights at AGMs, and do AGMs results support ownership influence in ASX 200?

The frequencies of number of blockholders presence in ASX 200 during the period 2014–18 presented in Table 6.1. Figure 6.6 showed the average percentage of share ownership of blockholders in each year of study period and Figure 6.8 offers a comparison of voting turnout and blockholders share ownership of ordinary shares.

The Table 6.16 shows the maximum number of share ownership of blockholders was 82.74% in 2014, 84.79% in 2015, 84.48% in 2016, 85.00% in 2017 and 84.58% in 2018.

**Table 6.16: Descriptive statistics for model 4B**

		Mean	Median	Mode	Std. Deviation	Variance	Min	Max
2014	Share of Blockholders	.584881	.621000	.7514	.1634447	.027	.0528	.8274
2015	Share of Blockholders	.602596	.619800	.6393	.1527782	.023	.1180	.8479
2016	Share of Blockholders	.606475	.622450	.4660	.1536888	.024	.0550	.8448
2017	Share of Blockholders	.621256	.643650	.5365	.1456248	.021	.1260	.8500
2018	Share of Blockholders	.635774	.671150	.4902	.1478741	.022	.1920	.8458

P16: The ownership structure of blockholders is positively associated with voting turnout.

The t-test showed close significance between means of share ownership with voting rights of blockholders and proxy votes 'For' on remuneration report in 2014. Moreover, the means of shareholdings of blockholders and proxy voting turnout is close to statistical significance in 2014 and 2018. Proposition P16 is not supported.

**Table 6.17: T-Test for model 4B**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2014 Share Ownership of Blockholders – 2014TVC	-.0790360	-.0338747	-.0863095	-.0266012	-.0753597	-.0375510	-4.951	.000
2014 Share Ownership of Blockholders – 2014 PV	-.0501180	-.0011325	-.0580197	.0067692	-.0461272	-.0051233	-2.073	.040
2014 Share Ownership of Blockholders – 2014 For RR	.0215527	.0910192	.0103391	.1022328	.0272141	.0853578	3.212	.002
2014 Share Ownership of Blockholders – 2014 Against RR	.3470554	.6282941	.3016448	.6737047	.3699789	.6053706	6.875	.000
2014 Share Ownership of Blockholders – 2014 Dissent RR	.3191897	.6037782	.2732382	.6497297	.3423862	.5805817	6.429	.000
2018 Share Ownership of Blockholders – 2018 TVC	-.0611112	-.0260043	-.0667653	-.0203501	-.0582533	-.0288621	-4.914	.000
2018 Share Ownership of Blockholders – 2018 PV	-.0410209	-.0062053	-.0466439	-.0005823	-.0381827	-.0090434	-2.689	.008
2018 Share Ownership of Blockholders – 2018 Dissent ED	.6023935	.6792023	.5896657	.6919301	.6087368	.6728590	33.439	.000
2018 Share Ownership of Blockholders – 2018 Dissent Proxy RED	.5620473	.6309176	.5508568	.6421081	.5676787	.6252861	34.429	.000

## 6.9: Research Model 4C

RQ4c: What is the relationship, if any, between ownership structure (number of blockholders) and annual general meetings results of listed companies?

The descriptive statistics in Table 6.18 shows the maximum and minimum number of blockholders was 9 and 1 in 2014, in year 2015 it was 7 and 2, 1 and 7 in 2016 and 2017, and 8 and 1 in 2018 respectively.

**Table 6.18: Descriptive statistics for model 4C**

			Mean	Median	Mode	Std. Deviation	Variance	Min	Max
2014	No	of	4.107438	4.000000	4.0000	1.1818182	1.397	1.0000	9.0000
	Blockholders								
			.642864	.662403	.5706	.1401855	.020	.1015	.9210
2014	PV		.612442	.634850	.5700	.1466457	.022	.1014	.8681
2015	No	of	4.258333	4.000000	4.0000	.9915257	.983	2.0000	7.0000
	Blockholders								
			.646828	.672761	.1925	.1355869	.018	.1925	.8804
2015	TVC		.620524	.659600	.7367	.1508234	.023	.1925	.8803
2015	PV								
2016	No	of	4.183333	4.000000	4.0000	1.0123883	1.025	1.0000	7.0000
	Blockholders								
			.655068	.679885	.1965	.1361171	.019	.1965	.9370
2016	TVC		.632882	.664200	.6508	.1420787	.020	.1964	.8790
2016	PV								
2017	No	of	3.825000	4.000000	4.0000	.9407890	.885	1.0000	7.0000
	Blockholders								
			.672983	.686955	.1660	.1412148	.020	.1660	.9839
2017	TVC		.652380	.673800	.7703	.1483894	.022	.1659	.9473
2017	PV								
2018	No	of	3.841667	4.000000	4.0000	1.0370922	1.076	1.0000	8.0000
	Blockholders								
			.683497	.711272	.7644	.1305335	.017	.2875	.9328
2018	TVC		.659959	.679900	.5727	.1394104	.019	.2875	.8719
2018	PV								

P17: The presence of blockholders in listed companies is positively associated with voting turnout.

Table 6.19 show there is no or close significance was found between number of blockholders, voting and proxy voting turnout during 2014 and 2018, proxy votes 'For', 'Against' and 'Dissent' on remuneration resolutions in 2014. Further, the means of proxy voting 'Dissent' for election and re-election of directors and means of number of blockholders during 2018. Therefore, proposition P17 is not supported.

**Table 6.19: T-Test for model 4C**

Pairs	95% C.I		99% C.I		90% C.I		t	Sig. (2-tailed)
	Lower	Upper	Lower	Upper	Lower	Upper		
2014 No of Blockholders – 2014TVC	3.2444169	3.6547283	3.1783343	3.7208109	3.2778178	3.6213275	33.297	.000
2014 No of Blockholders – 2014 PV	3.3005911	3.7245249	3.2322076	3.7929085	3.3351283	3.6899878	32.837	.000
2014 No of Blockholders – 2014 For RR	3.3636648	3.8142618	3.2909270	3.8869996	3.4003878	3.7775388	31.576	.000
2014 No of Blockholders – 2014 Against RR	3.7673486	4.2950588	3.6821412	4.3802662	3.8103617	4.2520457	30.287	.000
2014 No of Blockholders – 2014 Dissent RR	3.7133949	4.2427903	3.6279153	4.3282699	3.7565454	4.1996398	29.793	.000
2018 No of Blockholders – 2018 TVC	2.9885750	3.3473414	2.9307940	3.4051225	3.0177799	3.3181365	34.972	.000
2018 No of Blockholders – 2018 PV	2.9947601	3.3835969	2.9319598	3.4463972	3.0264579	3.3518991	32.522	.000
2018 No of Blockholders – 2018 Dissent ED	3.6059616	4.0335625	3.5351048	4.1044192	3.6412753	3.9982487	35.804	.000
2018 No of Blockholders – 2018 Dissent Proxy RED	3.6776099	4.1139440	3.6067115	4.1848424	3.7132887	4.0782653	35.492	.000

## 6.10: Research Model 5

RQ5: How do governance theories (agency or stewardship theory) explain the relationships between the rights of shareholders in practice and investee companies in Australia?

In Chapter agency and stewardship theory were explained. This section discussed the resolutions related to ESG resolutions proposed by the shareholders to evaluate the practical implementation of agency or stewardship theory in ASX 200 during 2014–18.

The shareholders proposed ESG resolutions' by exerting the rights in s 249N of the Act as:

### **249N Members' resolutions**

*(1) The following members may give a company notice of a resolution that they propose to move at a general meeting:*

*(a) members with at least 5% of the votes that may be cast on the resolution; or*

*(b) at least 100 members who are entitled to vote at a general meeting.*

*(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:*

*(a) a particular company; or*

*(b) a particular class of company.*

*Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.*

This research analysed 3,381 resolutions from 122 companies during the period 2014–18. The Table 6.20 highlights the resolutions in detail. Of the resolutions only 12 were related to ESG, the board recommended in all cases to vote 'Against' the resolution. All the resolutions were contingent resolution subject to pass of special resolution to 'amend the company constitution' with 75% or more votes in favour, not a single resolution was subject to a vote at an AGM.

Twelve ESG resolutions was studied during study period of 2014–18 and all the resolutions was not passed. Similarly Jacobsen and Pender<sup>718</sup> studied 14 ESG resolutions during first study period of 1998–04, 12 ESG resolutions was studied during second study period of 2010–14 with 12 ESG resolutions, the results of Jacobsen and Pender study and of current study suggested that non-board recommended resolutions to vote for have very less chances to be passed.

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<sup>718</sup> Jacobsen and Pender (n-1).



Section 249N of the Act has given right to shareholders to propose the resolutions at AGMs of the resolutions proposed, not a single resolution was passed where it sought to assess ESG issues.

The other dimension of the argument are that minority shareholders cannot hold directors accountable without the support of institutional investors or blockholders. This raises questions as to how institutional shareholders support minority shareholders proposal of social responsibility? This question not addressed by literature.

Table 6.20 below illustrates the ESG proposals proposed under s 249N of the Act in sample listed companies during the period 2014–18.

**Table 6.20: ESG resolutions – 2014–18**

	Year	Company	Sector	Endorsed By	Subject of Resolution	Resolution Conditions	Outcome	Board Recommendation
1	2015	ANZ	Financials	Australian Centre for Corporate Governance and other supportive shareholders	Contingent resolution- Climate change issues <sup>719</sup>	Amend the company constitution	Was not put to the meeting <sup>720</sup>	Vote Against
2	2017	BHP	Materials	Australian Centre for Corporate Governance	Contingent resolution- Public policy advocacy on climate change and energy <sup>721</sup>	Amend company constitution	Not Valid <sup>722</sup>	Vote Against
3	2017	ORG	Energy	Unknown	Contingent resolutions Climate risk disclosure Transition Planning Short-lived climate pollutants <sup>723</sup>	Amendment to the constitution	Not applicable Not applicable Not applicable <sup>724</sup>	Vote Against
4	2018	WOW	Consumer Staples	Australian Centre for Corporate Governance and LUCRF Pty Ltd.	Contingent resolution- Human Rights Reporting <sup>725</sup>	Amend the company Constitution	Not put to the meeting <sup>726</sup>	Vote Against
5	2018	WHC	Energy	Unknown	Contingent resolution-	Amend Company Constitution		Vote Against

<sup>719</sup> ASX announcement: AGM Notice 2015, Australian and New Zealand Banking Group Limited (ANZ) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ANZ&timeframe=Y&year=2015> accessed 01 April 2019

<sup>720</sup> ASX announcement: AGM results 2015, Australian and New Zealand Banking Group Limited (ANZ) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ANZ&timeframe=Y&year=2015> accessed 01 April 2019

<sup>721</sup> ASX announcement: 2017 Resolution Under s249N of the Corporation Act- , BHP Group Limited (BHP) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=BHP&timeframe=Y&year=2017> accessed 12 April 2019

<sup>722</sup> ASX announcement: AGM results 2017, BHP Group Limited (BHP) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=BHP&timeframe=Y&year=2017> accessed 12 April 2019

<sup>723</sup> ASX announcement: AGM Notice 2017, Origin Energy Limited (ORG) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ORG&timeframe=Y&year=2017> accessed 15 March 2019

<sup>724</sup> ASX announcement: AGM results 2017, Origin Energy Limited (ORG) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ORG&timeframe=Y&year=2017> accessed 15 March 2019

<sup>725</sup> ASX announcement: AGM Notice 2018, Woolworths Group Limited (WOW) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=WOW&timeframe=Y&year=2018> accessed 03 March 2019

<sup>726</sup> ASX announcement: AGM results 2018, Woolworths Group Limited (WOW) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=WOW&timeframe=Y&year=2018> accessed 03 March 2019

					Climate change-related risk Risk and opportunity associated with climate change <sup>727</sup>	(Advisory Resolution)	Not Applicable Not Applicable <sup>728</sup>	
6	2018	ORG	Energy	Unknown	Contingent resolutions- Free, prior and Informed consent Interim emission targets Public policy advocacy on climate change and energy by Relevant Industry Associations <sup>729</sup>	Amendment to the constitution	Not Applicable Not Applicable Not Applicable <sup>730</sup>	Vote Against
7	2018	QAN	Industrials	Australian Centre for Corporate Governance	Contingent resolution – Human Rights Due Diligence <sup>731</sup>	To Amend company Constitution	Not Applicable <sup>732</sup>	Vote Against

Source: Author

<sup>727</sup> ASX announcement: AGM Notice 2018, Whitehaven Coal Limited (WHC) available at  
<<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=WHC&timeframe=Y&year=2018>> accessed 10 April 2019

<sup>728</sup> ASX announcement: AGM results 2018, Whitehaven Coal Limited (WHC) available at  
<<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=WHC&timeframe=Y&year=2018>> accessed 10 April 2019

<sup>729</sup> ASX announcement: AGM Notice 2018, Origin Energy Limited (ORG) available at  
<<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ORG&timeframe=Y&year=2018>> accessed 15 March 2019

<sup>730</sup> ASX announcement: AGM results 2018, Origin Energy Limited (ORG) available at  
<<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ORG&timeframe=Y&year=2018>> accessed 15 March 2019

<sup>731</sup> ASX announcement: AGM results 2018, Qantas Airways Limited (QAN) available at  
<<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=QAN&timeframe=Y&year=2018>> accessed 05 April 2019

<sup>732</sup> ASX announcement: AGM Notice 2018, Qantas Airways Limited (QAN) available at  
<<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=QAN&timeframe=Y&year=2018>> accessed 05 April 2019

The ESG resolutions discussed in Table 6.20 above. Twelve ESG resolutions were studied during study period in sample Australian listed companies. Below, all 12 ESG resolutions with voting results and board recommendations discussed to demonstrate the importance and impact of shareholders proposed resolution on decision making in ASX 200.

### **Explanation of Resolution – ESG – 2014–18**

1. In 2015 AGM of Australian and New Zealand Banking Group Limited (ANZ), the shareholders proposed the ordinary resolution 'Climate change issues', this was a contingent resolution subject to pass of 'Special resolution – Amendment to Constitution', board recommended to vote against, the special resolution was not passed, the voting results were as: For 5.3226%, Against 49.5199% and Abstain 5.9953%. So, the climate change resolution was not put to the meeting.
2. BHP Group Limited (BHP) – 2017 AGM was with two resolutions backed by shareholders, first, contingent resolution – 'Public policy advocacy on climate change and energy' as ordinary resolution. Second, was special resolution 'To amend company constitution', the special resolution was not carried (6.6389% 'For', 86.7117% 'Against', 5.0353% 'Abstain'), the contingent resolution was not valid at AGM because the special resolution to amend the company constitution was passed with 75% votes.
3. Three non-board endorsed contingent resolutions supported by shareholders at Origin Energy Limited (ORG) 2017 AGM, these resolutions were contingent to resolution 'Amend to the constitution', this special resolution with intention for disclosure of powers of directors and the way these powers disposed-off. All the resolutions were non-board supported. The voting outcome at AGM has not passed the resolution, voting results were as: 2.7687% 'For', 56.5466% 'Against' and 1.6483% 'Abstain'. Rest of three resolutions were not put for shareholders' approval.
4. In the Woolworths Group Limited (WOW), 2018 AGM, two resolutions caught attraction, these resolutions were sponsored by 'Australian Centre for Corporate Governance Responsibility and L.U.C.R.F. Pty Ltd', the first resolution (special resolution) was to amend the company constitutional to empower shareholders through ordinary resolution can request at annual meeting for disclosure of directors' powers. The contingent resolution-human rights reporting was subject to approval of special resolution, the directors recommended that shareholders vote against first resolution. The first resolution has received 3.0185% votes 'For', 49.1031% 'Against' and 2.7254% were 'Abstain' and was not successful. The special resolution to amend the company constitution clause was unsuccessful and contingent resolution-human rights reporting was not put to meeting.
5. Two resolutions 'Climate change-related risk, risk and opportunity associated with climate change', these resolutions were subject to approval to change company constitution to add 'Advisory Resolution' as special resolution at Whitehaven Coal Limited (WHC) 2018 AGM. This resolution had 3.5172% votes 'For', 71.6250% votes 'Against' and 4.7140% votes 'Abstain'. The rest of the two resolutions were not put for shareholders' approval. All these

three-resolution had board recommendation for shareholders to vote 'Against' to amend the company constitution.

6. A group of shareholders proposed three resolutions subject to amend the company constitution (special resolution) to add new clause at Origin Energy Limited (ORG) 2018 AGM. The board recommended to votes 'against' these resolutions. The AGM voting results for company constitution resolution were notes as: 5.3226% votes 'For', 49.5199% 'Against' and 5.9953% 'Abstain', this special resolution was not passed and rest of three resolutions, 'Free, prior and Informed consent, Interim emission targets, Public policy advocacy on climate change and energy by Relevant Industry Associations' was not applicable.
7. The contingent resolution- 'Human Rights Due Diligence' was proposed by Qantas Airways Limited (QAN) shareholders for 2018 AGM subject to special resolution- to amend the company constitution, the special resolution AGM voting results (For 3.5626% , 80.1929% Against and 3.0487% Abstain) not supported this resolution and 'Human Rights Due Diligence' resolution not applicable to AGM.

Some point can be presumed addressing the factors directors think when shareholders try to intervene in directors' powers regime,

1. ESG Resolutions were submitted by shareholders. The directors appear to assume that shareholders are trying to supersede or challenge directors' rights which the law and company constitution has given.
2. The directors further assume that shareholder resolutions may not conform to company values and indeed may not work and only can cause to damage the company's credibility in financial markets.

The obstacles to shareholders ESG resolutions can be overruled by introducing new policies or laws which can define the limits on shareholders proposed resolutions or define the issues on which shareholders can make proposals – and be heard by policymakers and directors be compelled to put these resolutions without subject to any conditions and board recommendation.

P17: Shareholders engagement and voting turnout is positively associated with agency theory.

Twelve ESG resolutions were studied. For these resolutions the board recommended in AGM notices for shareholders to not to support ESG resolutions because these resolutions are not in the best interest of shareholders or the companies concerned.

P18: Shareholders engagement and voting turnout is positively associated with stewardship theory.

Stewardship theory support directors' intentions. To be a steward means to give priority to company interests and not to individuals or single groups. The board recommendations on ESG resolutions intentionally gave priority to company and to reject endorsement of

shareholders groups to protect the interests of all shareholders and the associated companies. The non-support to ESG resolutions by board suggested that Australian listed companies prefer and support stewardship theory.

Hence, the results show that ASX 200 support stewardship theory instead agency theory.

## 6.11: Conclusion

The statistical results presented in this chapter provided evidence to support some of the research propositions and identify the relationships between independent and dependent variables proposed in research testing models in Chapter 4. The summary of findings presented below in Table 6.21.

**Table 6.21: Summary of results of shareholders engagement to exercise control and decision making rights (voting and proxy voting) – propositions 1 to 18**

Proposition		Results
Economic Rights and Decision Making Rights		
P1	Shareholders voting behaviour is positively associated with dividend value announced by company	Not supported
P2	The exercise of shareholders proxy voting rights is positively associated with dividend value	Not supported
P3	The shareholders proxy voting in favour is positively associated with dividend value	Not supported
P4	The shareholders voting dissent is negatively correlated with dividend value	Not supported
P5	The shareholders voting 'Against' is negatively correlated with dividend value	Not supported
P6	Shareholders voting turnout is positively associated with shareholders financial gain (Dividend)	Not supported
Control and Decision Making Rights in Practice		
P7	The shareholders voting turnout is positively associated with importance of AGM (number of AGM resolutions presented at AGMs).	Not Supported
P8	Board recommended resolutions to vote in favour of the resolutions have positive association with voting turnout	Not Supported
P9	The number of ordinary resolutions are negatively associated with shareholders proxy voting behaviour	Not Supported
P10	The shareholders voting 'Against' on directors elections is positively associated with number of resolutions for election of directors	Supported (2014 and 2015)
P11	Shareholders proxy voting 'Against' on re-election of directors' resolutions are positively associated with number of resolutions of re-election of directors	Supported (2014)
P12	Shareholders engagement is positively associated with higher voting in favour of remuneration policy resolutions at AGMs	Not Supported
P13	Shareholders activism is positively correlated with higher voting against on board recommended resolutions and remuneration policy resolutions	Not Supported
P14	Shareholders empowerment is positively associated with higher voting abstain on remuneration policy resolutions	Not Supported
P15	AGM voting turnout has positive relationship with shareholdings of top 20 shareholders	Not Supported
P16	The ownership structure of blockholders is positively associated with voting turnout.	Not Supported
P17	The presence of blockholders in listed companies is positively associated with voting turnout	Not Supported
P17	Shareholders engagement and voting turnout is positively associated with agency theory	Not Supported
P18	Shareholders engagement and voting turnout is positively associated with stewardship theory	Supported

The implementation of the findings of this chapter on shareholders economic, control and decision making rights in ASX 200 are discussed in proceeding Chapter.

## **Chapter 7: Discussion**

### **7.1: Introduction**

The aim of this study was to empirically analyse shareholders rights in theory and practice in the context of Australian listed companies. This chapter debates research findings of this research project discussed in Chapter 6 within context of previous empirical studies discussed in literature reviews.

The study has focused on shareholders economic rights and its relationships with shareholders voting and proxy voting rights which are control and decision making rights at AGMs. In Australia, shareholders use two methods to exercise their corporate decision making rights through appointing proxies or by attending AGMs in person or direct participation by using technology. To evaluate shareholders rights in practice, the study has focused on voting turnout at AGMs and voting results for AGMs resolutions presented for shareholders' approval in ASX 200 companies. Moreover, the impact of share ownership on voting turnout the study has focused on share ownership of top 20 shareholders and of blockholders. Also, voting turnouts 'For', 'Against' and voting 'Dissents' studied to explain the trends of shareholders engagement through votes on AGMs resolutions.

Shareholders voting powers depend on share ownership of ordinary shares. Section 7.2 discusses shareholders participation in decision making through voting and proxy voting, share ownership and voting powers owned by large shareholders, comparisons of AGMs voting turnout and large shareholders voting rights. Also this section addresses the importance of AGMs in Australian listed companies.

The shareholders invest on shares to get share from company's profit as dividend. As, previous literature argued that main aim of companies is wealth maximisation. In section 7.3, the relationship between dividend value and shareholders voting turnout at AGMs is discussed.

The importance of AGMs depends on the business conducted at AGMs. This study examined the importance of AGMs through AGMs resolutions, board recommended resolutions and ordinary resolutions and their relationships with shareholders voting turnout. Section 7.4 discusses the statistical results based on importance of AGMs and shareholders voting turnouts.

The AGMs facilitate shareholders' actions by providing a platform for the accountability of directors. Shareholders use their voting rights to hold directors accountable for their actions.



Section 7.5 discusses the relationships between number of election and re-election of directors' resolutions and shareholders votes 'Against' on these resolutions.

Upon dissatisfaction with companies, shareholders had two options to show their dissatisfaction either to sell their shares or make their voice heard by the company. Section 7.6 debates shareholders voice on board recommended resolutions through their votes.

The voting powers of shareholders depends on the size of their holding of financial investments in companies' shares. Section 7.7 discusses the share ownership of top 20 shareholders, section 7.8 addresses voting powers of blockholders, section 7.9 address the presence of blockholders and their relationship with voting turnouts on remuneration policy resolutions.

Agency theory and stewardship theory define two different phenomenon to priorities shareholders' and companies interests. Section 7.10 explains the practical application of agency or stewardship theory in Australian listed companies on base of ESG resolutions proposed by shareholders for AGMs followed by conclusion.

## **7.2: Shareholders Engagement in Corporate Decision Making in Australian Listed Companies and Shareholders Voting Powers**

This section elaborates on the role of shareholders engagement in corporate decision making of Australian listed companies during 2014 to 2018's AGMs. The empirical results of shareholders voting turnout is outlined in section 6.2.1 of Chapter 6. To evaluate shareholders engagement in exercising voting and proxy voting rights (which is control and decision making rights), this section discusses how shareholders demonstrated their rights in practice. The results presented voting turnout, proxy voting turnout, shareholders who have not attended AGMs and not exercised their voting and proxy voting rights, voting powers of top 20 shareholders and blockholders.

Figure 6.1 showed the average percentage of voting turnout at AGMs has consistently increased by 4.06% from 2014-2018. Shareholders' engagement to exercise their control and decision making rights consistently improved since 2014.

In previous literature, the OECD report on the voting behaviour of investors at AGMs for 2009 and 2010 showed that in Australian listed companies the average voting turnout was calculated as 58.48%<sup>733</sup>. The OECD results of voting turnout and the results of current research showed that the shareholders participation at AGMs of Australian listed companies

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<sup>733</sup> Hewitt (n 44).

have significant and consistent improvement since OECD study of 2009-2010 and current study period (2014-2018).

Shareholder attendance at ASX 200 companies is higher than the OECD study. The shareholders mean (%) attendance in 2018 was 4.0633% higher than 2014's mean (%) attendance. The comparison of the OECD study with the current study showed that by 2018 the Australian AGMs voting turnout had improved by 9.87%.

Figure 6.2 of Chapter 6, exhibit that on average more than 31% of Australian shareholders had never attended AGMs to exercise their decision making rights through voting or appointing proxies during 2014 to 2018, but shareholders non-attendance rate decreased by 4.06% since 2014 and non-attendance rate was calculated 35.7136% for 2014's AGMs which means shareholders are considering the importance of their voting rights. The shareholders participation need to be improved because in 2017 67.2383% of shareholders exercised their control and decision making rights. Similarly, 32.7167% of share owners did not exercised their voting and proxies rights.

According to Brooks et al. approximately around 62% of Australian shareholders have never attended an AGM and 38.3% have never used proxy voting<sup>734</sup>. The shareholders engagement at AGMs, to exercise control and decision making rights, has therefore improved during 2014 to 2018.

Figure 6.3 of Chapter 6, showed that in 2018 around on average 66% of Australian shareholders have exercised their control and decision making rights through proxy votes in ASX 200. Between 2014 and 2018, the trend towards exercise of voting rights through proxies increased by on average 4.75%.

The results in Chapter 6, Figure 6.4, described the average percentage of Australian shareholders who have attended AGMs in person or have exercised their decision making rights directly was 2.3489% in 2018 and 3.0370% in 2014. Hence, the attendance at AGMs in person by Australian shareholders was consistently decreasing. A point of concern is that the physical absence of shareholders does not add any value to corporate decision making function of AGMs.

The results of this study are consistent with previous literature on shareholders attendance of AGMs in person. Catasús and Johed found that only around 1% shareholders attend AGMs in person<sup>735</sup>. Van der Elst and Lafarre established that only minority shareholders attend

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<sup>734</sup> Brooks, Chalmers, Oliver and Veljanovski (n 190).

<sup>735</sup> Catasús and Johed (n 251).

AGMs in person<sup>736</sup>. Moreover, in person AGMs attendance is decreasing<sup>737</sup>. Van der Elst found over the period small shareholders attendance is significantly decreasing<sup>738</sup>. Another study by Van der Elst and Lafarre found that between 1% to 5% shareholders attend AGMs in person<sup>739</sup>.

Figure 6.5 presented share ownership with voting rights of top 20 shareholders in ASX 200. Top 20 shareholders held 77.5865% of the voting powers in 2018; on average 74% and above voting rights were with the top 20 shareholders during the study period. The voting powers of top 20 shareholders increased during study period.

The comparison of voting turnout and voting rights of top 20 shareholders presented in Figure 6.7 showed that approximately on average 9% of control and decision making rights were not exercised by top 20 shareholders during 2014-2018.

Blockholders share ownership with voting rights presented in Figure 6.6, and frequencies in Table 6.1, blockholders hold on average 63.9% of voting rights in 2018. The maximum number of blockholders present in a company was 4 in 275 listed companies. Blockholders share ownership increased during study period 2014 to 2018.

The shareholders exercised their proxy voting rights to vote 'For' as shown in Figure 6.10, The least 'For' vote was calculated for ESG and Spill resolutions, Figure 6.11 proxy voting dissents, the highest proxy voting dissent was recorded against ESG and Spill resolutions because of board recommendation to vote against these resolutions (refer to Chapter 6).

Examination of the resolutions which have attracted more dissent votes helps to understand the concerns of shareholders for further discussion and engagement with investee companies. Another perspective is that the voting results with high turnout and approval of management proposed resolutions signals a healthy relationship and engagement between management and investors. Moreover, these positive signals transport message to market to attract investors to such a company<sup>740</sup>.

The previous literature has interpreted shareholders voting dissent as a tool to disclose relationships between companies and shareholders. The findings of this research contradicts previous literature such as: Sauerwald et al. who found shareholders use voting dissent to

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<sup>736</sup> Van der Elst and Lafarre (n 270).

<sup>737</sup> Van der Elst (n 199).

<sup>738</sup> Van der Elst (n 66).

<sup>739</sup> Van der Elst and Lafarre (n 195).

<sup>740</sup> Hewitt (n 44).

evaluate corporate governance of companies and to voice their concerns<sup>741</sup>; Conyon and Sadler who confirm that directors' benefits resolutions attracted more voting dissents<sup>742</sup>; and Aggarwal et al. who claim that voting dissent has a negative impact on directors' future positions and careers<sup>743</sup>.

Instead this research accepts the ideas of Van der Elst that boards and controlling shareholders make decisions at AGMs<sup>744</sup>. Stapledon et al. found that shareholders voting in Australian listed companies is not satisfactory mechanism of corporate governance<sup>745</sup>. The results of this study support Van der Elst and Stapledon et al. findings.

La Porta et al. found common law countries provide the best combinations of laws for shareholders protection<sup>746</sup> and Mitchell et al.<sup>747</sup> and Anderson<sup>748</sup> claim that Australian law provides the best shareholders protection. The findings of current study contradict with La Porta et al., Anderson et al. and Mitchell et al. because stronger shareholders rights does not means that shareholders are exercising their rights effectively, as they are not exercising their rights means not to priorities their interests and to empower shareholders with more powers.

Figure 6.1 showed shareholders voting turnouts improved by on average 4.06% in 2018 since 2014 but (Figure 6.2) 31.65% shareholders have not exercised their voting rights in 2018, Figure 6.4 presented a comparison of shareholders proxy votes and voting turnouts, Figure 6.5 and 6.6 and Table 6.1 discussed voting powers of large shareholders, Figure 6.7 conclude that in Australian listed companies (ASX 200) all the top 20 shareholders never exercised their voting and proxy voting rights to participate corporate decision making process. Moreover, from a comparative perspective Table 6.1 and Figure 6.8 show that only blockholders (3 or 4 or 5) can make corporate decisions at AGMs. The results demonstrate consistent increases in blockholders ownership at ASX 200. But Australian listed companies do not disclose the voting or proxy voting behaviour of blockholders publically. If listed companies and blockholders disclosed their voting and proxy voting decisions publically it would enhance the accountability of blockholders and also this practice would help to increase the trust of local and foreign shareholders.

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<sup>741</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>742</sup> Conyon and Sadler (n 69).

<sup>743</sup> Aggarwal, Dahiya and Prabhala (n 62).

<sup>744</sup> Van der Elst (n 60).

<sup>745</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>746</sup> Porta, Silanes, Shleifer and Vishny (n 41).

<sup>747</sup> Mitchell, Donnell, Ramsay and Welsh (n 10).

<sup>748</sup> Anderson, Welsh, Ramsay and Gahan (n 46).

The current study support the Jeacle, Blair and Stout, ASIC reports that: the AGMs are an event that supports directors' interests<sup>749</sup>; Blair and Stout elaborated that shareholders cannot introduce corporate changes in companies through their voting powers<sup>750</sup>; ASIC Report number 564<sup>751</sup> and 609<sup>752</sup> suggest that shareholders exercise of decision making rights did not have any impact on corporate decision making at AGMs of Australian listed companies.

This study found that giving more powers to shareholders or putting limits on their rights will not affect corporate governance of Australian listed companies.

A comparative analysis suggested that AGMs were conducted to fulfil a legal formality otherwise AGMs did not add anything in decision making because the proxy votes decide AGMs resolutions before AGMs were held.

Hence, at AGMs shareholders cannot hold directors accountable for their performance, because presence of shareholders at AGMs did not have any impact on corporate decision making either shareholders attend AGMs in person or not.

### **7.3: RQ 1 – The Economic Rights of Shareholders and AGMs Corporate Decision Making**

The RQ 1 and propositions P1 to P6 in Chapter 4, and Model 1 in Chapter 5, the relationship between dividend value and voting and proxy turnout, proxy votes 'For and Dissent' on remuneration report resolutions, election and re-election of directors. The statistical results in Table 6.3, 6.5 and 6.7 found insignificant relationship between variables as defined in Model1. Our research propositions P1 and P6 (refer to Table 6.21) were not supported statistically for year 2014 and 2018. The P3 was supported by results of the study for year 2016 that means voting outcome have significant relationship between dividend value and proxy voting instructions by shareholders to vote 'For' the resolutions of directors election at 5%, 1% and 10% level of significance.

Moreover, the dividend value of the financial benefits of shareholders did not have any impact on shareholders engagement in corporate decision making at AGMs of Australian listed companies. Hence, the increase or decrease or no dividend in particular years, declared dividend value in annual reports of companies before AGMs held have not shown any impact on shareholders engagement in AGMs and voting on remuneration and (re) election of directors resolutions in Australian listed companies.

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<sup>749</sup> Jeacle (n 76).

<sup>750</sup> Blair and Stout (n 170).

<sup>751</sup> Report 564 (n 53).

<sup>752</sup> Report 609 (n 54).

The empirical results of the current study supported previous literature findings in relationship to dividend value and shareholders engagement. Van der Elst showed that companies' financial performance did not have any impact on shareholders attendance at AGMs<sup>753</sup>. Deakin et al. has found no relationship between legally empowering shareholders and stock markets growth<sup>754</sup>. The empirical study showed that non from four factors (shareholders structure, corporate performance, institutional framework and companies' size) have had significance with shareholders voting turnouts<sup>755</sup>.

The findings of this research are contradictory to McConvill and Bebchuk's findings. McConvill shows that shareholders participation should increase company's corporate performance<sup>756</sup>. According Bebchuk giving more powers to shareholders will have positive impact on company's corporate performance<sup>757</sup>. Faghani et al. found that shareholders voting dissent is having positive impact on CEOs compensation in Australia due to two-strike rule<sup>758</sup>.

As discussed in section 7.10 of this Chapter that shareholders corporate decision making is heavily influenced by board recommendations and shareholders exercise their voting rights at AGMs by following board recommendations. So, the current study has not found any clear statistical evidence of a relationship between shareholders dividend and their voting and proxy voting ('For' or 'Dissent'), the results are supported by previous literature. Conyon and Sadler found that around 90% of shareholders support remuneration resolutions at AGMs<sup>759</sup>. According De Falco et al. Australian voting dissent did not have any significant impact on remuneration policy resolutions due to the two- strike rule<sup>760</sup>.

So, the research prepositions P1 to P6 (refer to table 6.21) to explain research question 1 were not supported and hence shareholders financial benefits such as dividends did not attract shareholders engagement to support or to reject AGMs resolutions by exercising their control and decision making rights during 2014-18.

#### **7.4: RQ 2A – Importance of AGMs and Shareholders Engagement for Corporate Decision Making**

The importance of AGMs was investigated through number of AGMs resolutions, board recommended resolutions and ordinary resolutions presented for shareholders' approval and

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<sup>753</sup> Van der Elst (n 64).

<sup>754</sup> Deakin, Sarkar and Siems (n 15).

<sup>755</sup> Van der Elst (n 64).

<sup>756</sup> James McConvill, 'Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation' (2006) <<http://ssrn.com/abstract=943907>> accessed 27 December 2016

<sup>757</sup> Bebchuk (n 94).

<sup>758</sup> Faghani, Monem and Ng (n 42).

<sup>759</sup> Conyon and Sadler (n 69).

<sup>760</sup> Falco, Cucari and Sorrentino (n 40).

its impact on voting and proxy voting turnout. The RQ 2A, proposition P7 to P9 and Model 2A (refer to Chapter 5), the statistical results in Table 6.9 found that there was no significance relationship between AGMs importance and voting turnouts as the variables defined in Model 2A. Further, statistical results did not showed any significance between boards recommended resolutions and AGMs voting turnout, but section 7.10 bellow showed that shareholders voted according to board recommendation even though no clear or close statistical significance was found. Moreover, the study found that a number of ordinary resolutions also did not have any impact on shareholders engagement and voting turnouts at AGMs. The research propositions to investigate and elaborate research question 2A (How, and to what extent do AGMs impact on decision making of listed companies?) was not statistically supported.

The results of current study confirm the findings of Van der Elst that there is no significance between AGMs proposal and shareholders attendance<sup>761</sup>.

This empirical study has not found any clear evidence of engagement of Australian shareholders of listed companies at AGMs due to the importance of AGMs or for financial benefits. The study did not support Van der Elst study which found that attendance at AGMs influenced by shareholders stakes<sup>762</sup>.

### **7.5: RQ 2B – Shareholders and Director’s Accountability**

This section addresses research question 2B, research propositions P10 and P11 (refer to Table 6.21), and Model 2B of Chapter 4. Table 6.11 presented T-Test results of statistical relationship between number of directors’ election and re-election proposals at AGMs and shareholders voting ‘Against’ these resolutions to hold directors accountable for their performance.

Voting ‘Against’ the resolutions showed shareholders dissatisfaction. The statistical results of this study found significant relationship between the number of AGMs proposals for election of directors and shareholders votes against these resolutions in 2014, 2015 and 2017’s AGMs. Moreover, in year 2016 and 2018 no clear or close significance was found but statistical results showed that shareholders attempted to hold directors accountable for their actions in listed companies. Research proposition P10 (refer to table 6.21) was supported statistically.

This study has found statistical significance between numbers of resolutions for re-election of directors and shareholders vote ‘Against’ these resolutions in 2014. Moreover, close

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<sup>761</sup> Van der Elst (n 56).

<sup>762</sup> Van der Elst (n 60).

significance was seen during 2015, 2016, 2017 and 2018. The research proposition P 11 (refer to Table 6.21) was clearly supported in 2014.

The statistical results showed that Australian shareholders wisely use their voting dissents to attempt to hold directors accountable for their actions and for companies' performance. Moreover, as discussed in section 7.10, only those proposals for election of directors was not passed because of board non-endorsement. The rest of the resolutions for election of directors was passed because boards endorsed the resolutions.

The results of this study endorse the previous literature. Van der Elst found significant relationship between shareholders engagement and elections and re-election of directors<sup>763</sup>. Aggarwal et al. found positive impact of shareholders voting rights with directors' accountability<sup>764</sup>.

The findings of this study rejects the previous literature and indorse Jong et al. findings that shareholders cannot influence management through AGMs<sup>765</sup>.

Hence, in Australian listed companies, shareholders cannot hold directors accountable for their actions without board support because the evidence and results discussed in section 7.2 and 7.10 elaborate that even shareholders voting trends are controlled by the board and shareholders vote according to board recommendations.

### **7.6: RQ 3 – Impact of Shareholders Voting Dissents on Remuneration Policy Resolutions**

The research question 3 and research propositions P12 to P 14, Model 3 (refer to Chapter 5) and statistical results discussed in this section with conjunction to previous literature.

The statistical relationship was tested between numbers of board recommended resolutions and voting turnout (For, Against, Abstain) on remuneration policy resolutions as developed in Model 3. T-Test results in Table 6.13 showed that shareholders voting 'For' on remuneration resolutions did not showed any significance and shareholders dissatisfaction in sample companies. Moreover, shareholders voting 'Against' and Abstain' on remuneration policy did not show any clear or close significance. Hence, shareholder activism on remuneration report resolutions did not have any impact on shareholders engagement to exercise decision making rights at AGMs. The statistical results did not supported research propositions P12 to P14 (refer to table 6.21).

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<sup>763</sup> Van der Elst (n 63).

<sup>764</sup> Aggarwal, Dahiya and Prabhala (n 62).

<sup>765</sup> Mertens and Roosenboom (n 227).



The previous literature was not supported by the current study and contradicts previous studies by Van der Elst who showed positive engagement of shareholders on remuneration resolutions<sup>766</sup> and Conyon and Sadler found a significant relationship between shareholders voting dissents on remuneration resolutions<sup>767</sup>.

The current study is consistent with the Van der Elst findings that there is no significance on shareholders voting turnout and remuneration resolutions<sup>768</sup>. Another study by Van der Elst's study found non-significance between shareholders activism and AGMs voting turnout<sup>769</sup>. Poulsen et al. the shareholders activism did not support significant dialogues between shareholders and company management<sup>770</sup>.

Moreover, the findings of this study found that higher voting opposition was found for Spill, ESG resolutions and resolutions which were not supported by board (AGMs resolutions on election of directors disused in section 7.10), so, the study does not support Van der Elst and Lafarre findings of higher voting opposing rate on remuneration and company constitution resolutions<sup>771</sup>.

Hence, the dissatisfied shareholders in Australian listed companies cannot voice their concerns through voting except to sell their shares.

#### **7.7: RQ 4A – The Share Ownership (Top 20 Shareholders) of Shareholders and AGMs**

Research question 4A, research proposition 15 and Model 4A, Table 6.15 presented the results of T-Test, Figure 6.5 explained the average percentage of share ownership of top 20 shareholders with voting rights, Figure 6.7 displayed comparison of voting turnout and voting rights of top 20 shareholders in sample companies during study period (2014-2018).

The statistical relationships between voting rights of top 20 shareholders with voting and proxy voting turnout, shareholders voting 'For and Dissent' on remuneration report, voting 'Dissent' for election and re-election of directors. The results found a statistically non-significant impact of share ownership with voting powers of top 20 shareholders and AGMs voting turnouts. The results have not supported the research proposition P15 (refer to table 6.21).

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<sup>766</sup> Van der Elst and Lafarre (n 68).

<sup>767</sup> Conyon and Sadler (n 69).

<sup>768</sup> Van der Elst (n 56).

<sup>769</sup> Van der Elst (n 64).

<sup>770</sup> Poulsen, Strand and Thomsen (n 65).

<sup>771</sup> Van der Elst and Lafarre (n 67).

The findings of this research matched with previous literature. Van der Elst found that ownership structure is insignificant with voting turnouts<sup>772</sup>. Song et al. found that large shareholders support management supported AGM resolutions<sup>773</sup>.

On the other hand research findings also contradicts with findings of Van der Elst that the ownership structure have positive relation with AGMs voting turnout<sup>774</sup>. The results of another study of Van der Elst suggested that ownership structure of companies have a positive influence on voting turnouts of AGMs<sup>775</sup>.

The presence of large shareholders in Australian listed companies did not have any impact on AGMs voting turnout. It can be argued on the basis of these results that top 20 shareholders also follow board recommendations while exercising control and decision making rights at AGMs resolutions. Moreover, the publically disclosure of large shareholders voting decision to support or not to support the resolutions can enable the researchers to explore large shareholders voting behaviours in future.

#### **7.8: RQ 4B – The Share Ownership of Blockholders and AGMs**

Figure 6.6 presented the average percentage of share ownership with voting rights of blockholders. Figure 6.8 showed the comparison of voting turnout and voting powers held with blockholders in 122 sample companies during 2014-2018.

The descriptive statistics in Table 6.7 showed that maximum share ownership of blockholders was between 82% and 84%, the minimum share ownerships was 5% and 19% during 2014 to 2018. The results of T-Test with 1%, 5% and 10% level of significance showed that there was no clear or close significance was found. This means that voting powers held by blockholders did not have any impact on voting and proxy voting turnout and the presence of blockholders in Australian listed companies does not have any impact on corporate decision making at AGMs. Moreover, action during the study period has not seen any activism from blockholders on the basis of their voting powers and voting against and showing dissent on remuneration policy, directors (re) election resolutions at AGMs.

The study investigated the relationship between voting powers of blockholders and its impact on AGMs decision making, the results suggested that presence of blockholders in Australian companies did not show any significant impact at AGMs results. The findings reject previous literature such as: Hiquist and Oh study found that the share ownership structure of

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<sup>772</sup> Van der Elst (n 63).

<sup>773</sup> Song, Xin and Yi (n 58).

<sup>774</sup> Van der Elst (n 64).

<sup>775</sup> Van der Elst (n 59).

shareholders has an impact on corporate decision making<sup>776</sup>. Dignam and Galanis defined that blockholders in Australia companies can control management through their voting powers<sup>777</sup>. According to Van der Elst and Lafarre blockholders unscrupulous behaviour can be minimized by transferring more powers to directors instead of shareholders<sup>778</sup>.

### **7.9: RQ 4C – Blockholders and AGM’s Decision Making**

Table 6.1 presented the frequencies of blockholders in ASX 200, most of the companies in sample companies have blockholders, 3 blockholders in 129 companies, 4 in 275 and 5 in 133 companies. This illustrates impact of blockholders presence in listed companies and its impact on voting and proxy voting turnouts at AGMs.

The study has not seen any clear or close statistical significance which showed that the presence of blockholders with voting rights emphasise and impact on AGMs voting and proxy voting turnouts during study period of five years.

The results support the findings of Van der Elst<sup>779</sup> and Song et al<sup>780</sup>. Moreover study rejects the findings of Hiquet and Oh<sup>781</sup> and Dignam and Galanis<sup>782</sup> because the share ownership and presence of blockholders in Australian listed companies did not add value to corporate decision making process through their voting and proxy voting.

Clear evidence was lacking because the data on voting behaviour of blockholders was not available to investigate how and which mechanisms they consider while going for voting and proxy voting.

### **7.10: RQ 5 – Agency Theory or Stewardship Theory in ASX 200**

Research question 5 (Chapter 4), Model 5 (Chapter 5) and Table 6.20 addressed the shareholders supported ESG resolutions studied to answer research question 5 and proposition P17 and P18.

Section 249(N) of Act powered shareholders to propose resolutions for AGMs. Twelve ESG resolutions were contingent subject to amend company constitution. Table 6.20 identified that board recommended to vote ‘Against’ all ESG resolutions proposed by shareholders and study results presented that all the resolutions were with contingent conditions which were not met,

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<sup>776</sup> Laskin (n 84) 114.

<sup>777</sup> Dignam and Galanis (n 6).

<sup>778</sup> Van der Elst and Lafarre (n 195).

<sup>779</sup> Van der Elst (n 63).

<sup>780</sup> Song, Xin and Yi (n 58).

<sup>781</sup> Laskin (n 84) 107- 115.

<sup>782</sup> Dignam and Galanis (n 6).

and due to this ESG resolutions were not presented for shareholders corporate decision at AGMs.

The result of these resolutions are consistent with Jacobsen and Pender, where they have divided the study in two periods, first one, 1998 to 2004, during this period 14 resolutions related to social and environmental issues were proposed, half of the resolutions were supported by unions and rest of half by environmental groups. Second period covered 12 resolutions during 2010 to 2014, three out of 12 resolutions were withdrawn, three were omitted and six resolutions went for voting. In both periods not a single shareholders proposed resolution was passed. The maximum 'For' votes were 26% in 2002's AGM of National Australian Bank (NAB)<sup>783</sup>.

The results of this study are consistent with previous literature. Daniel found that shareholders can exercise only those rights which a company constitution allows them<sup>784</sup>. The shareholders follow a board's recommendations while exercising their voting rights<sup>785</sup>, that is, the voting rights of shareholders are influenced by directors<sup>786</sup>. Bebchuk concluded that shareholders cannot exercise their powers without management support<sup>787</sup>. Sauerwald et al. found that shareholders participation at AGMs is just to support directors' decisions<sup>788</sup>. Van der Elst showed that shareholders collective actions can add value to their proposals<sup>789</sup>. González found that minority participation in corporate decision making is ignored by management<sup>790</sup>.

This study also confirmed previous studies according to: McConvill, that the primary duty of directors is best to service company interests<sup>791</sup>; Hill, that priorities be given to companies interests and not shareholders<sup>792</sup>; and Levit and Malenko who showed directors' influence on corporate decision making at AGMs<sup>793</sup>.

The current study rejected the findings of Hutton et al. which stressed that directors be given powers to make corporate decisions which are in the interest of companies<sup>794</sup>, because in

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<sup>783</sup> Ben Jacobsen and Howard Pender, 'The controversy continues: The case for regulatory reform on members' resolutions in Australia' (2016) 34 Company and Securities Law Journal 292-303

<sup>784</sup> Daniel (n 33).

<sup>785</sup> Robert Charl Quoted by Blair and Stout (n 170).

<sup>786</sup> Modern Company Law For a Competitive Economy Company General Meetings and Shareholders Communication, A consultation Document from the Company Law Review Steering Group, <<http://webarchive.nationalarchives.gov.uk/20121101192029/http://www.bis.gov.uk/files/file23274.pdf>> accessed 01 February 2018 p.6

<sup>787</sup> Bebchuk (n 94).

<sup>788</sup> Sauerwald, Oosterhout and Essen (n 57).

<sup>789</sup> Van der Elst (n 63).

<sup>790</sup> González, Guzmán, Francisco and Trujillo (n 88).

<sup>791</sup> McConvill (n 343).

<sup>792</sup> Hill (n 103).

<sup>793</sup> Levit and Malenko (n 189).

<sup>794</sup> Hutton, Mayer and Schneider (n 35).

Australia listed companies directors are more powerful than shareholders. As Table 6.20 confirmed AGM resolutions are decided according board recommendations and shareholders exercise their decision making rights according to board recommendations.

Further this study also reject Hillman et al.'s findings that shareholders voting and proxy voting rights on elections of directors support agency theory<sup>795</sup>. In the current study resolutions of election of directors were rejected if not board endorsed and recommended by a board to vote 'Against'. ( This occurred in the Woolworth Group (WOW) 2014 the election of one director, Woolworth Group (WOW) 2017 the election of one director, Commonwealth Bank (CBA) 2014 election one director, Insurance Australia Group Limited (IAG) 2014 1 director, Macquarie Group Limited (MQG) 2015 one director's election, BHP Billition Limited (BHP) 2014, Spark Infrastructure Group (SKI) 2016 election of 2 directors, Spark Infrastructure Group (SKI) 2017 election of 1 directors, were not endorsed by the board and was rejected). This means that in the current study the results of the analysis of voting on the resolutions of the election of directors endorses stewardship theory instead of agency theory because resolutions were not endorsed by the board as these resolutions were not seen to be in the best interest of the company. Hence, from a theoretical perspective Australian listed companies follow stewardship theory instead of agency theory.

All the resolutions which were proposed by the shareholders had votes against recommendations by management, and resolutions brought with management concerns always with recommendations for shareholder to vote in favour of those resolutions<sup>796</sup>. Hence, board recommendations which signal whether the resolutions are in the best interests of the company or not, support implementation of stewardship theory rather than agency theory.

The current study confirms the previous literature. Donaldson and Davis support that stewardship theory in Australian companies is valued instead of agency theory<sup>797</sup>.

So, all the ESG resolutions were generally not supported by shareholders at AGMs. If it is assumed that shareholders wanted the resolution passed, it would show Australian listed companies did not endorse agency theory. However, as the majority of shareholders chose not to support the resolutions, perhaps this support stewardship theory.

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<sup>795</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>796</sup> Hewitt (n 44).

<sup>797</sup> Donaldson and Davis (n 413).

### **7.11: Conclusion**

This chapter explored and discussed the results drawn from the analysis on Chapter 6, research questions and research propositions defined in Chapter 4, the variables models developed in Chapter 5 to meet research aim and objects developed in Chapter 1 and the results were compared with previous literature discussed in Chapter 2 and Chapter 3.

The shareholders engagement at AGMs improved over the study period. Moreover, on average percentage of shareholders who never attended AGMs decreased, but on average 31% Australian shareholders have never participated in corporate decision making during 2014 to 2018s AGMs. The AGMs decision are made on the basis of proxy votes before AGMs were held because on average 66% shareholders participate in decision making process through voting and only on average 2% shareholder attend AGMs in person.

The share ownership with voting rights of top 20 shareholders was on average between 74 % and 77%, the share ownership of blockholders was between 58% and 63%, the minimum number of blockholders presence was 1 in 6 sample companies and maximum 9 blockholders in only one company and highest number of blockholders were 4 in 275 listed companies during study period (2014-2018). Hence, only 4 major blockholders can control corporate decision making process of Australian listed companies.

The study has shown that on average 31% Australian shareholders have not attended AGMs and never appointed proxies, similarly on average 9% of top 20 shareholders have never attended AGMs and not appointed any proxy.

Moreover, the maximum vote 'Against' and voting 'Dissent' was recorded on non-board recommended resolutions which was proposed by shareholders and lowest 'For' votes were also received by shareholders proposed resolutions.

The study has not found any statistically significant relationship between shareholders economic rights which is dividend and voting turnouts at AGMs on remuneration policy, election and re-election of directors' resolutions. The research propositions P1 to P6 (refer to table 6.21) were not supported by our statistical results. Hence, dividend value did not showed any significance with shareholders engagement at AGMs.

The importance of AGMs and shareholders engagement was studied but results of this study has not supported research proposition P7 to P9 (refer to table 6.21). Hence, the number of AGMs resolutions, ordinary or board recommended resolutions did not have any significant impact on shareholders engagement and voting turnout at AGMs of sample companies.

The research proposition P10 and P11 was supported statistically, the number of proposals for election of directors have significant relationship with shareholders voting against in 2014, 2015 and 2016. Moreover, in 2017 and 2018 close to significance was found.

Also, the number of resolutions in relation to re-election of directors and shareholders voting against was found statistically significant in year 2014 and close significance was seen in rest of the years. Hence, shareholders can hold directors accountable by exercising their decision making rights.

Shareholders voted 'Dissents' as a shareholders' tool to show their dissatisfaction with a company, but the study has not found a significant relationship between shareholders voting outcomes on remuneration policy resolutions. Research propositions P12 to P14 were not supported statistically. Hence, in the sample companies' shareholders cannot voice their concerns through exercising voting on remuneration resolutions.

The majority of voting powers are held by the top 20 shareholders and blockholders in Australian listed companies, but the presence of large shareholders in ASX 200 companies during study period did not have any impact on voting turnouts at AGMs. The research propositions P15 to P17 was not supported by T-Test results.

The results of this study support stewardship theory instead of agency theory applied in Australian listed companies by directors. The research proposition P18 was supported by this study and not supported P19.

In corporate world, it seems that giving more powers to shareholders means shielding directors to take all the decisions for sake of company or for large shareholders and putting in show case that shareholders have given approvals to do so at AGMs.

Moreover, current study has studied 3,382 AGM resolutions of ASX 200, only those resolutions were not carried forward or approved which were proposed by shareholders and board endorsed to vote against these resolutions.

All the resolutions which were board recommended to vote 'For' were passed. As disused above the highest votes exercised 'Against' the resolutions were Spill and ESG resolutions because board recommended to vote 'Against' these resolutions,

On other side lowest votes 'For' was received by Spill and ESG resolutions. Moreover, (section 7.10) for 12 ESG resolutions discussed and proposed by shareholders, boards recommended to vote against. Shareholders followed the board recommendations and results of resolutions were according to board recommendations.

As, discussed in Table 5.3, none of 48 AGMs resolutions where boards recommended to vote 'Against' the resolutions were passed because of the board recommendations.

The findings of this study showed that in Australian listed companies the shareholders are powerful in theory and are powerless in practice. Which means giving more powers to shareholders or to eliminating shareholders powers cannot enable shareholders to hold directors accountable except in circumstance where media creates hype.

Moreover, AGMs are not and cannot add value in exercising corporate decision making rights in Australian listed companies because AGMs decisions are made on the basis of proxies which make the AGMs decision clear before the AGMs held.



## Chapter 8: Conclusion

*“The line between what is to be decided by the board and what should be decided by the board and what should remain for the shareholders is difficult to draw”<sup>798</sup>.*

### 8.1: Introduction

Chapter 8 provides an overview of this thesis and summaries the main research findings. It considers both the academic and practical contributions the study makes to existing knowledge of shareholders rights in Australian listed companies in theory and practice. This chapter also examines the policy implication of this study and policy recommendations. It also includes the limitations of the study and suggestions for future research guidelines.

This research concluded that, at the very least, this research has provided some indications of the way in which shareholders interact with investee companies to exercise their control and decision making rights in Australian listed companies.

This chapter summarises the discussions on shareholders rights in theory and practice. The importance, background, context, research gaps, aims and objectives, justification and summary of key findings of this study were discussed in Chapter 1. The literature review on shareholders rights in theory was presented in Chapter 2. The literature review on shareholders rights in practice and corporate governance theories associated with this study were discussed in Chapter 3. Theoretical and conceptual frameworks developed to undertake this study and research methods adopted for this study are explained in Chapter 4 and Chapter 5. The results presented in Chapter 6 and discussions on the results in conjunction with previous literature is developed in Chapter 7.

This chapter was arranged as follow: section 8.2 summarises all the chapters; section 8.3 highlights contribution of this study; section 8.4 discusses implication of the study from theoretical and policy perspective; section 8.5 provides recommendations for policy makers; section 8.6 acknowledges limitations of the study, section 8.7 illustrates proposed future work and section 8.8 draws the conclusion of research.

### 8.2: Thesis Summary

The contents and outcomes from each chapter are summarized below.

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<sup>798</sup> J. Hopt (n-419).

### **8.2.1: Chapter 1**

The role of shareholders is important because shareholders provide finance to listed companies by investing on the share market. The share ownership gives them rights which are attached to their shares and defined by company bylaws and corporate laws. The shareholders get financial benefits as dividend and corporate decision making rights which they exercise at AGMs resolutions through votes.

The background to the study addressed the importance of shareholders, business of the company, and importance of shareholders rights. Academic criticism of shareholders rights made clear that the academic literature does not have a clear stance on improving or decreasing the shareholders rights and this needed to be addressed.

In a broader sense, this study has endeavored to explain an inclusive understanding of shareholders rights in theory and practice in Australian listed companies. The intentions for doing this research were discussed in section 1.4. They included, the research gaps and contributions of this study, its aims and objectives, the research questions which were canvased, its importance and originality, justification of the study and summary of important findings of this study.

### **8.2.2: Chapter 2**

This chapter focused on reviewing the literature on shareholders rights in theory and the ways shareholders rights are defined, different kinds of shareholders and the mechanisms used by shareholders to exercise their rights in investee listed companies.

This chapter discussed different classes of shares and the importance of shareholders rights for financial markets. The academic debate is not clear about the adoption of a mechanism to define more powers or to reduce shareholders rights. The debate in previous literature has shown a lack of clarity in researching shareholders rights because of the lack of an extensive study which evaluates shareholders rights in practice in Australian listed companies.

Shares are of different kinds: ordinary, preference share and partly paid shares. Shareholders rights are attached with shares they own. The corporate law has defined different kind of rights. The shareholders rights are defined by a company's constitution, shareholders agreements and legislation (Act and ASX LRs). However, rights and responsibilities of shareholders defined by a company constitution are supreme in the Australian legal system.

Shareholders' agreements help to define rights and duties in some circumstances when rights and responsibilities are not clearly defined between shareholders, directors or employees, in company constitution and corporate laws.

The shareholders rights can be classified as: economic rights, control and decision making rights, right of information, litigation rights and procedural rights. The focus of this study was economic rights which is access to a dividend, shareholders voting rights on AGMs resolutions which is 'control and decision making' right.

The shareholders get financial benefits from investee companies in two ways. First, getting share from a company's profit which is dividend and second by selling their partial or whole shares for profit.

The shareholders exercise their control and decision making rights by using their voting rights at AGMs to vote on resolutions proposed by directors for their approval.

Responsible voting by shareholders is very important for shaping the corporate governance of companies. Shareholders exercise their vote by attending AGMs or by appointing proxy to vote on their behalf.

### **8.2.3: Chapter 3**

Chapter 3 reviewed literature on shareholders rights in practice and theories associated with this study.

The AGMs are essential elements for the corporate governance of listed companies and also a legal obligation as well. The AGMs provide opportunity to shareholders to make physical and face-to-face interaction with company management.

The history of AGMs has dated back to 1378 in pursuit of democracy when they were used to vote for top officials once in a year. In the start, the AGMs was used for presentation of balance sheet to shareholders. Later statement of income and expenditures were added as a legal obligation with as balance sheet for shareholders. Further on, director's reports and auditor reports were added to AGMs business. The articles of associations were introduced with a requirement for election of a chairman, a quorum for meetings, and voting methods. The early *Australian Companies Act 1896* (Vic) elaborated the business and requirements of holding the AGMs.

The Act defined shareholders rights at AGMs and shareholders can exercise their voting and proxy voting rights to give approvals for AGMs resolutions proposed by company directors. The shareholders have rights to propose resolutions to be considered for AGMs under Act.

The business of AGMs is mainly three dimensional: legal formality, communication and accountability. The core function of AGMs is decision making on the issues presented at AGMs for shareholders' approval on company's annual reports, directors and auditors'

reports, election and re-election of directors, remuneration policy, ESG resolutions, and amendments to the company constitution are discussed in detail in Chapter 3.

Further, the effectiveness, informational function, accountability function and the issues faced by AGMs were reviewed and discussed.

The shareholders engagement with investee companies is essential to maintain good corporate governance practices of companies. The effective engagement of shareholders is to exercise control and decision making rights at AGMs. Moreover, shareholders can voice their concerns through engagement at AGMs and exercising their voting powers.

Shareholders activism is an important factor of corporate governance. The shareholders use different modes for activism but the effective mode is to put forward proposals at AGMs and exercise their voting rights effectively at AGMs.

The shareholders empowerment means the reallocation of powers between shareholders and directors. The balance of powers and proper division of powers is essential for healthy success of companies. The countries with stronger shareholders rights attract more investment for financial market as compared to countries which have weaker shareholders rights.

Section 10 of this chapter examined theories associated to the shareholders rights, namely agency theory and stewardship theory. The pioneers and propositions for both theories were reviewed.

#### **8.2.4: Chapter 4**

Chapter 4 started with context of the study and described the shareholders position in corporate governance, and the importance and objectives of listed companies. Historical perspective and developments in corporate governance and the shareholders role included financial crises and shareholders role, intentions of shareholders and their role to execute voting and proxy voting rights, limited rights of shareholders to vote or to exit by selling their shares, the management control of shareholders voting through their recommendations on AGMs proposals, and how shareholders rights are limited and their only intentions are to get financial benefits. This section confirmed lack of clarity in existing literature in defining shareholders role in contemporary corporate governance of companies.

This study has relied on two governance theories namely agency theory and stewardship theory. The theoretical conceptual framework developed was based on agency and stewardship theory. Agency theory supports the governance practices that give priority to shareholders interests and stewardship theory supports company interests over those of shareholders. Chapter 2 and Chapter 3 expanded on shareholders rights in theory and in

practice. Chapter 5 discussed how agency theory and stewardship theory support shareholders engagement with investee companies for corporate decision making at AGMs.

Moreover, this chapter has summarized evidence on shareholders rights presented in Chapter 2 and Chapter 3 and applied in Chapter 4. Furthermore, on the basis of the literature review the conceptual framework was developed on which this study is based. Two common places used by shareholders to exercise their rights are AGMs and through courts.

On the basis of theories defined in Chapter 2, Chapter 3, Chapter 4 and research gaps identified in Chapter 1, the research questions were defined to accomplish the aims of this study. The aim of this study was to investigate shareholders rights in theory and the way shareholders exercise their rights in Australian listed companies. Nine research questions and 18 research propositions were developed to guide this research.

### **8.2.5: Chapter 5**

The conceptual framework of this study was charted in Chapter 4, and the research design and methodology implemented to conduct this research was presented in Chapter 5.

A mixed-method including both qualitative and quantitative methods was used to achieve the research aims and to address the research questions and propositions. Two research paradigms positivist and interpretive paradigms were supported by quantitative and qualitative research methods. For an in-depth analysis of laws in books and laws in practice empirical legal research addressed shareholders rights in law using black-letter law methodology.

The population of this study and mechanism used to define the research sample were discussed. The sources of data collection of this study and construction of two separate indices for data analysis were elaborated in detail. The data were collected in 4 stages. Each stage of data collection and issues faced during data collection and the mechanism to handle missing values of data were briefly explained. The number of resolutions, categories of resolutions and board recommendations on AGMs resolutions were explained as well.

To study the legal phenomenon of shareholder rights a black-law approach, the mode used for defining the case laws of interest for study, were discussed in Chapter 5. The selection of the defined cases was limited only to those applying to listed companies and rest of the cases were intentionally ignored.

Chapter 5 also introduced the variables of the study, the sources of their definitions, and models of the expected relationships between independent and dependent variables. These were to answer each research question and to test research proposition defined in Chapter 5. Also, explained statistical techniques and software used for the analysis of collected data.

### **8.2.6: Chapter 6**

This Chapter reported the results from analysis to measure the models defined in the relationships between variables of this study in Chapter 5 and to address research questions and research propositions developed in Chapter 4 on the base of previous literature in Chapter 2 and Chapter 3.

The results of the analyses are discussed below.

#### **Shareholders Engagement at AGMs**

To address shareholders engagement at AGMs to exercise their decision making rights, the study explored shareholders voting turnouts at AGMs during 2014 to 2018's AGMs sessions, the factual presentation of shareholders who have not attended AGMs and not appointed proxies during the study period, the average % of shareholders who have exercised their votes by appointing the proxies and in person. It included the ownership structure in the sample of listed companies, the voting powers held with top 20 shareholders, blockholders and presence of blockholders during study period. The comparison of AGMs voting turnouts with top 20 shareholders and blockholders voting rights to explain voting trends of the top 20 shareholders and blockholders.

#### **The Exercise of Proxies**

The results of shareholders proxy instructions to vote 'For'. 'Against' and voting 'Dissent' was recorded for 26 AGMs resolutions groups during 2014 to 2018's AGMs session. Shareholders supported resolutions have attracted lower 'For' proxy votes and higher proxies 'Against' and 'Dissent' as compared to board recommended resolutions. The results showed that board recommendations control shareholders voting turnouts.

#### **The Impact of Economic Rights on Shareholders Engagement**

Research question 1 and P1 to P6 were statistically tested. In the year 2014 the first six propositions was not statistically supported. In the year 2016, research proposition P3 (The shareholders proxy voting in favour is positively associated with dividend value) was statistically significant.

The statistical relationship between dividend value and exercise of shareholders' proxy to vote 'For' on remuneration report resolutions was close to significance. Similarly in year 2018 it was not significant but close to statistical significance was found between dividend value and proxy instructions to vote 'For' on remuneration report, election and re-election of directors resolutions.

## **The Importance of AGMs**

The importance of AGMs and shareholders voting outcomes was studied to address research question 2A and research propositions P7 to P9. These propositions were not statistically supported.

## **Accountability and AGMs**

Further, the study investigated the AGMs as an accountability forum for shareholders on election and re-election of director's resolutions and shareholders voting behavior (RQ 2B P10 and P11). P10 (the shareholders voting 'Against' on directors' elections is positively associated with number of resolutions for election of directors') was statistically supported in 2014 and 2015. Moreover, in 2017 and 2018 close to statistical significance was observed. The research proposition P11 (Shareholders proxy voting 'Against' on re-election of directors' resolutions are positively associated with number of resolutions of re-election of directors) was statistically supported only in 2014 and was close to significance in 2015 to 2018.

The statistical results tested P12, P13 and P14 showed that the relationships claimed in propositions and intentions of research, addressing question 3, that shareholders can voice their concerns of being not satisfied with directors by exercising their voting rights against remuneration policy resolutions at AGMs, was not supported statistically.

## **The influence of large shareholders**

The impact and significance of voting powers of the top 20 shareholders and of blockholders on voting and proxy voting turnout was reported in Chapter 6. The results have not supported research propositions P15 and P16. Moreover the impact of blockholders presence on AGMs voting and proxy voting turnout (P17) was statistically insignificant.

## **Agency and stewardship theory**

The research proposition P17 was not supported by results instead P18 was statistically supported. The results showed that shareholders engagement and voting turnout is positively associated with stewardship theory.

## **8.2.7: Chapter 7**

Chapter 7 discussed the research findings from Chapter 6 in conjunction with previous literature based on theories and empirical studies. This chapter was structured in 11 sections.

## **Shareholders engagement**

Section 7.2 discussed the empirical results of the core research question in the context of previous literature, how the engagement of Australian shareholders at AGMs improved

decision making, the preference of shareholders to exercise their decision making rights through proxies instead of in person, and how the voting powers of top 20 shareholders and blockholders had improved across the study period.

The results suggested that giving more powers or decreasing shareholders powers will not affect corporate decision making or the voting turnout at AGMs of Australian listed companies.

### **Influence of dividend value**

Section 7.3 described the results of research question 1 and first six research propositions. The research proposition P3 (The shareholders proxy voting 'For' is positively associated with dividend value) was supported statistically. The findings for RQ 1 was supported and contradicted with previous theories but results suggested that AGMs voting turnout is being influenced by board recommendations.

In section 7.4, the importance of AGMs and its impact on shareholders voting behavior as proposed in RQ 2A and research propositions P7 to P9. The results did not supported the claim developed in research question 2 and research propositions P7 to P9 (refer to Table 6.21).

### **Holding the directors to account**

Shareholders can hold the directors account at AGMs by casting votes against the election and re-election of directors. The RQ 2B and research proposition P10 and P11 was discussed in section 7.5. The results supported P10 (The shareholders voting 'Against' on directors' elections is positively associated with number of resolutions for election of directors') in year 2014, 2015. And 2016. The statistical results of 2017 and 2018 were close to significance. Moreover research proposition P11 (Shareholders proxy voting 'Against' on re-election of directors' resolutions are positively associated with number of resolutions of re-election of directors) was supported in 2014 but T-Test results for 2015 to 2018 showed closeness to significance.

The results from Chapter 6 discussed in conjunction with previous literature in section 7 explored the shareholders opportunity to voice their dissatisfaction with the company by exercising their voting powers on remuneration resolutions at AGMs (Research question 3 and research proposition P12 to P14).

Hence, the results showed that the dissatisfied shareholders in Australian listed companies cannot voice their concerns through the AGMs and their only recourse is to sell the shares.



## **Influence of blockholders**

Research question 4 segregated in three questions 4A, 4B and 4C. Section 7.7 discussed RQ 4A and research proposition P15, section 7.8 elaborated RQ 2B and research proposition P16 and section 7.9 discussed RQ 2C and research proposition P17 with relation to top 20 shareholders, blockholders and presence of blockholders in sample companies. The results have not supported research propositions.

Hence, voting powers of top 20 shareholders, blockholders and presence of blockholders in listed companies did not have any impact on voting turnout at AGMs which mean large shareholders of Australian listed companies obey board recommendations while exercising their decision making rights.

## **ESG resolutions**

Section 7.10 has debated on research question 5 and research proposition P17 and P18.

ESG resolutions were proposed by shareholders to be considered for AGMs. All ESG resolutions were contingent to amending company constitutions. Boards recommended not to support these resolutions because management suggested that these resolutions were not in best interest of companies and shareholders. All the resolutions followed board recommendations and all these resolutions were not passed.

So, the results supported P18 (Shareholders engagement and voting turnout is positively associated with stewardship theory) instead of P17 (Shareholders engagement and voting turnout is positively associated with agency theory).

Some conclusions are that AGMs in Australian listed companies are conducted to fulfil legal obligations only. Further, shareholders do not add to corporate decision making because shareholders follow board recommendations on AGMs resolutions while exercising their control and decision making rights. Moreover, shareholders economic rights also do not have any impact on voting turnout at AGMs.

The shareholders of Australian listed companies are powerful in theory and powerless in practice.

## **8.3: Contribution of This Study**

This research extends the previous research into shareholder activism explained in Chapter 3. It is the first study to empirically investigate shareholders rights with implications for both theory and practice in Australia.

Theories of corporate governance, specifically agency and stewardship theory, address two different mechanisms on shareholders' interests in investee companies. Moreover, previous literature on agency and stewardship theory emphasized shareholders engagement with investee companies at AGMs to exercise their voting rights. The previous empirical studies ignored investigation of the application of agency theory and stewardship theory at AGMs of listed companies. The findings of this study showed that AGM practices of Australian listed companies' apply stewardship theory instead of agency theory.

The empirical work in this research is the first research work to examine shareholders' control and decision making rights and the impact of the economic rights of shareholders on shareholders voting behavior in 122 Australian listed companies during 2014 to 2018's AGMs sessions.

The presence of shareholders is important for the growth of financial market of countries. Prior studies have focused on measuring the strength of shareholders' protection laws. Australian law has consistently improved shareholders protection. Australian laws provide stronger shareholders protection than United States and United Kingdom laws but previous studies failed to measure how the given rights of shareholders influenced the ways in which they exercise their rights.

In previous literature, the first study was conducted in 1999 to assess proxy voting level on directors' resolutions in 59 sample Australian listed companies<sup>799</sup>. A second comparative study was conducted by OECD on shareholders voting behavior of listed companies of Australia, Chili and Germany for study period of two year (2009 and 2010)<sup>800</sup>. This current research contributes to knowledge of shareholders voting and proxy voting rights by extending the gap in research since 1999 to 2018.

Existing empirical studies have focused on shareholders' voting results to investigate shareholders activism, effectiveness of two-strike rule in Australia, say on pay, voting dissents and directors' elections and development of shareholders rights but failed to develop the framework to evaluate shareholders rights in practice.

This study's original contribution to knowledge of shareholders rights and shareholders engagement with investee companies, discloses how they exercise their rights and the impact of their engagement on AGMs decision making and the importance of AGMs in Australia.

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<sup>799</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>800</sup> Hewitt (n 44).

Despite its potential limitations, this study has addressed aforementioned gaps and contributed to the research literature of shareholders rights and engagement with investee companies to exercise their rights.

#### **8.4: Implication of This Study**

The theoretical and practical contributions of this study are disused as follow.

##### **8.4.1: Theoretical Implication**

This research provides new understanding of shareholders rights in practice in Australian listed companies. It seeks to contribute to theory in the field of shareholders rights research in five main areas:

Previous studies have focused on development of shareholders rights<sup>801</sup>, development of shareholders protection laws<sup>802</sup> and shareholders legal actions to enforce their rights. In addition, existing literature has focused on AGMs resolutions proposed by directors and shareholders in Australian listed companies<sup>803</sup>, AGMs practices<sup>804</sup>, shareholders voting behavior for corporate decision making at AGMs<sup>805</sup>, proxy voting level on election of directors<sup>806</sup>, ESG resolutions at AGMs<sup>807</sup> and say on pay resolutions<sup>808</sup>. This study used a sample of 122 Australian listed companies and their AGMs practices for a period of five years (2014-2018) to analyse the role of AGMs and shareholders voting practices. Furthermore, the AGMs resolutions were defined in 26 groups to develop two indices for empirical analysis. Also the study developed models of the relationships between independent and dependent variables to explore research propositions of this study.

The empirical examinations of shareholders economic rights and its impact on shareholders engagement to exercise their voting powers in Australian listed companies was not previously investigated. Prior studies of the assumptions addressed by this research were: McConvill's proposition that shareholders engagement should increase company performance<sup>809</sup> and Bebchuk's assumption that giving more powers to shareholder will have positive impact on

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<sup>801</sup> Porta, Silanes, Shleifer and Vishny (n 41).

<sup>802</sup> Mitchell, Donnell, Ramsay and Welsh (n 10).

<sup>803</sup> Chia and Ramsay (n 48).

<sup>804</sup> Catasús and Johed (n 218).

<sup>805</sup> Song, Xin and Yi (n 58).

<sup>806</sup> Stapledon, Easterbrook, Bennett and Ramsay (n 191).

<sup>807</sup> Ben Jacobsen and Howard Pender, 'The controversy continues: The case for regulatory reform on members' resolutions in Australia' (2016) 34 Company and Securities Law Journal 292-303

<sup>808</sup> Faghani, Monem and Ng (n 42).

<sup>809</sup> James McConvill, 'Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation' (2006) <<http://ssrn.com/abstract=943907>> accessed 27 December 2016

company performance<sup>810</sup>. This study investigated the relationship between dividend value and shareholders voting behaviours at AGMs to verify previous literature defined propositions.

The importance of AGMs and shareholders engagement was explored by developing independent and dependent variables modeling. Unique relationships were tested between AGM resolutions, board recommended resolutions, ordinary resolutions and voting turnouts.

This study agrees with the assumption of Jong et al. that shareholders cannot influence company management at AGMs<sup>811</sup>, which was statistically tested by this research from an Australian perspective. Moreover, AGMs as an opportunity for directors' accountability and shareholders voting behavior on election and re-election of directors was explored.

This study has retested theories defined in previous literature. The study challenged findings according to Song et al. that large shareholders exercise voting rights to support management at AGMs<sup>812</sup>, Van der Elst that share ownership structure has positive influence on voting turnout at AGMs<sup>813</sup>, Dignam and Galanis defined that blockholders in Australia companies can control management through their voting powers<sup>814</sup>, and Hiquet and Oh who found that the share ownership structure of shareholders has an impact on corporate decision making<sup>815</sup>.

This study has explored the impact of share ownership on corporate decision making from three perspectives: share ownership of top 20 shareholders, share ownership of blockholders and presence of blockholders in Australian listed companies. The findings agreed with Song et al., and disagreed with Van der Elst, Dignam and Galanis and Hiquet and Oh.

The agency and stewardship theory support effective engagement of shareholders at AGMs to participate in corporate decision making process. The theoretical contribution of this study by explaining the process which shareholders use to exercise their voting and proxy voting rights on AGMs resolutions. This study addressed the call of Jeacle to study the working of AGMs<sup>816</sup>, Hillman et al.'s assumption that shareholders follow agency theory on election and re-election resolutions at AGMs<sup>817</sup> and McConvill<sup>818</sup> and Hill's<sup>819</sup> propositions that companies interests be given priority and not shareholders.

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<sup>810</sup> Bebchuk (n 94).

<sup>811</sup> Mertens and Roosenboom (n 227).

<sup>812</sup> Song, Xin and Yi (n 58).

<sup>813</sup> Van der Elst (n 59).

<sup>814</sup> Dignam and Galanis (n 6).

<sup>815</sup> Laskin (n 84) 115.

<sup>816</sup> Jeacle (n 76).

<sup>817</sup> Hillman, Shropshire, Certo, Dalton and Dalton (n 32).

<sup>818</sup> McConvill (n 343).

<sup>819</sup> Hill (n 103).

So, the original theoretical contribution made by this study is that stewardship theory is applied in AGMs corporate decision makings in Australian listed companies.

#### **8.4.2: Policy Implication**

This research provides insights for policy makers interested in enhancing shareholders engagement to improve corporate decision making at AGMs.

This study has made a contribution to understanding the role of shareholders in exercising their control and decision making rights in Australian listed companies, and the mechanism of shareholders engagement at AGMs by casting their votes on AGMs resolutions. This will benefits future policy reforms to enhance shareholders voting rights.

The critics of shareholders rights may be surprised that in Australia on average 31% of shareholders never exercised their voting rights during study period. On average 2% of shareholders attend AGMs in person or vote directly on AGMs resolutions, and on average 9% of the top 20 shareholders have not participated in corporate decision making. To enhance enforcement of laws to improve shareholders participation, reforms to AGMs practices and of shareholders voting practices are required.

Shareholders have limited powers which are restricted to approving or not approving the AGMs resolutions and less to say on polices and limited opportunities to ask a question. Board recommendations on AGMs resolutions positively influence shareholders voting behavior for corporate decision making. This can be an important point for debate on shareholders empowerment or to reduce of shareholders rights, to reconsider the role of AGMs from a legal perspective to fulfill legal obligations or be an event for policy making. Policy makers should consider the findings of this research to address shareholders rights.

A recommendation from this research to policy makers is to consider the findings of this study in conjunction with previous finding as well. According to Van der Elst that AGMs should be used for policy making<sup>820</sup>. Song et al. suggested that shareholders voting rights be improved but parallel to improving the administration of voting<sup>821</sup>. According to Ramsey, shareholders do not bother to go for litigation for the enforcement of their corporate rights<sup>822</sup>.

The International Corporate Governance Network (ICGN) has highlighted six issues to improve the voting structure at meetings: “ensuring the reliability of agendas; uniform voting deadlines; clarifying and disclosing fees structures; improving the transparency of share

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<sup>820</sup> Van der Elst (n 66).

<sup>821</sup> Song, Xin and Yi (n 58).

<sup>822</sup> Ramsey (n 49).

ownership; promoting efficient electronic communications and creating a reliable vote confirmation system”<sup>823</sup>.

## 8.5: Policy Recommendations

Empirical analysis of this research has shown that the effectiveness of AGMs as a decision making process still lacks practical implementations because of a lack of evidence about the engagement of shareholders in corporate decision making and their intentions to vote and proxy votes did have any clear evidence. This study has addressed this by investigating which AGMs resolutions attracted shareholders voting turnouts and proxy voting turnout. Also, the relationships between shareholders engagements and dividend value, importance of AGMs, accountability of directors and impact of share ownership on shareholders decision making rights. The recommendations are disused bellow.

It is recommended that policy makers should consider alternative modes to holding face-to-face AGMs as specified in section 250N of Act because results of this study show that on average 2% of shareholders attend AGMs in person or directly exercised their votes. This raises concerns for the effectiveness of AGMs and engagement of shareholders in Australian listed companies. Moreover, this study endorses the suggestions and finding of previous studies. The Australian Institute of Company Directors (AICD) suggested that efficiency of AGM need technological changes and legislative reforms<sup>824</sup>. Gao and Huang stressed for online meetings<sup>825</sup>, North suggested to use digital technologies for AGMs<sup>826</sup>, Boros advised use of virtual meetings and electronic ballots<sup>827</sup>, Lafarre and Van der Elst have recommended to change AGMs from face-to-face to blockchain technology to improve effectiveness and participations of shareholders in corporate decision making<sup>828</sup>. Another study of Lafarre and Van der Elst has suggested that changing AGMs from face-to-face to a blockchain technology which will help to reduce voting cost<sup>829</sup>.

This study also recommended the introduction of the new powers to shareholders, who attend AGMs in person to vote on election and re-lection and remuneration of directors. It would enhance the AGMs importance if resolutions needed to be passed by proxies as well as by the shareholders who attend AGMs in person. The board can communicate with directors to

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<sup>823</sup> ICGN (2014), 'Removing obstacles to cross border voting' <<https://www.icgn.org/sites/default/files/Removing%20obstacles%20to%20cross%20border%20voting.pdf>> accessed 17 December 2016

<sup>824</sup> Available at <<http://aicd.companydirectors.com.au/membership/the-boardroom-report/volume-13-issue-24/agm-system-reaches-tipping-point>> accessed 18 March 2017

<sup>825</sup> Gao and Huang (n 268).

<sup>826</sup> North (n 220).

<sup>827</sup> Boros (n 267).

<sup>828</sup> Van der Elst and Lafarre (n 195).

<sup>829</sup> Lafarre and Van der Elst (n 264).

alter company constitutions to facilitate shareholders engagement, to bridge communication barriers between companies and shareholders. If policy makers and companies want to make AGMs an effective tool for policy making then prioritise the intentions and corporate decision making on the base of shareholders present at AGMs.

This study also recommends a consideration of changes in a company's AGMs disclosure to comply with section 251AA of Act and ASX LR 3.13.2 on AGMs voting results. The AGMs results should also specify the voting results if shareholders casted their votes through mails and emails. Moreover, the proxy instructions of large shareholders for each AGMs resolutions should be disclosed separately. This study indorses Van der Elst recommendation that shareholders should disclose activates of AGMs<sup>830</sup>. Furthermore, policy makers can consider shareholders voting as a fiduciary responsibility. Moreover, public disclosure of large shareholders voting decisions to support or not to support the resolutions can enable the researchers to explore large shareholders voting behaviours in future.

The results also support a recommendation for changes to be considered to the decision making process at AGMs as specified in section 205E of Act to define a uniform process that AGMs' decisions be made through a poll instead of a show of hands. This process will enhance transparency and accountability of directors.

## **8.6: Limitations of Study**

This study encompasses a number of limitations. This study has only begun the process of understanding shareholders behavior to exercise their rights with investee companies.

This was investigated by considering voting results as indicators to measure share control and decision making rights, the relationship between economic rights of shareholders and its impact on shareholders engagement and voting turnout at AGMs. Only variables which have direct connection with shareholders rights in practice were considered. As, in Chapter 5 and Appendix C indicates, this research was limited to investigating AGMs resolutions, voting turnouts on AGMs resolutions, shareholders share ownership of top 20 shareholders and blockholders, in financial perspective the economic right of shareholders which is dividend value. Investigation of other variables such as performance of the company and worth of company as financial perspective could be addressed to achieve greater accuracy of results.

The population of this study is ASX 200 companies and the study period was 2014 to 2018 which has confined the study sample to 122 companies. Eight companies which were eliminated included companies which have not disclosed AGMs data and were not part of the

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<sup>830</sup> Van der Elst (n 59).

ASX 200 companies during the sample period. Future study can be enhanced by extending the population to ASX 300 companies and extending the study period for 10 years instead of 5 years which produce more accurate results and presentation of the shareholders behavior of engagement to exercise their voting powers.

The data used for this study was drawn from annual reports, AGM notices and AGMs results. The companies AGM minutes were not available and was available on cost. The AGMs minutes can be helpful to provide insight on shareholders engagement with companies through the questions raised by shareholders, and the mechanism and trends can trace the ways shareholders try to hold company management accountable for their performance at AGMs. Moreover, that could provide a sense of shareholders views from their raised questions. The questions can help to understand the priorities of minority and large shareholders to indicate the impacts on shareholders engagements to exercise their voting rights. Furthermore, descriptive statistics and T-Test were used for data analysis, but application of ordinary regression and multiple regression analysis applied for analysis could be useful to evaluate shareholders rights in practice.

This study used secondary data for the investigation but a future study could include conducting interviews with shareholders by attending AGMs that include minority and large shareholders and doing in-depth analysis of shareholders concerns and identifying points which they consider while exercising their voting rights. Furthermore, open ended questionnaires could enable researchers to study shareholders' intentions of their engagements to exercise their control and decision making rights. This study adopted a univariate analysis approach which may be expanded to multivariate analysis in the future.

Moreover, future research could address a comparison of the proxy advisors recommendations data and the actual AGMs results, and interviews with proxy advisors teams to see which factors they consider before advising shareholders the way in which they should vote. The availability of this data was very costly. This study is limited to Australian listed companies, but comparison of Australian shareholders voting behavior with other jurisdictions could enable to differentiate shareholders role in decision making.

This study has not used AGM minutes, interviews, and proxy advisors data for in-depth analysis of shareholders control and decision making rights. If this data was considered, the sample size and study period increased to 10 years, and sample selection of ASX 300 instead ASX 200, the results can be more sophisticated and show a clear picture and understanding of shareholders engagement and shareholders voting behaviors.



### **8.7: Future Research**

This study is one of the first studies to analyse shareholders control and decision making rights, shareholders engagement to exercise their corporate decision making rights through voting and proxy voting. Further analysis is recommended of the factors which contribute to shareholders engagement in decision making processes in Australian listed companies.

First, the comparative study of shareholders rights in theory and practice with common law jurisdictions will help to understand the ways Australian and other countries shareholders are exercising their rights in practice.

Second, in depth study of AGMs documents, AGMs minutes, shareholders proxy instructions, shareholders raised questions and significance of these questions to introduce new rules which can enhance shareholders engagement and can improve corporate decision making mechanism of Australian Listed companies.

Third, the study of blockholders and to 20 shareholders voting behaviour at AGMs by using the primary data and to get better incite to conduct interviews with open ended questions which will help to develop new theories on shareholders practices to exercise their control and decision making rights.

Last but not least, the shareholders engagement with investee companies to exercise decision making rights is a critical component together with further assessment of practical difficulties faced by shareholders to exercise their rights and their impacts on corporate decision making. In order to get a complete picture of shareholders behaviour to exercise their rights, a call by Cordery for further research be addressed that is to study the factors which obstruct shareholders engagement at AGMs<sup>831</sup> but in an Australian context.

### **8.8: Conclusion**

The shareholders rights are attached to shares which shareholders own. The rights are defined by the Act, ASX LRs, company constitution and shareholders agreements. The economic rights of shareholders which is dividend defined by company directors, shareholders control and decision making rights is to exercise their voting rights at AGMs proposal proposed and resolutions for AGMs decided by company directors.

Hence, shareholders have only options to accept company directors declared dividend value or to go for legal proceedings to gain their economic rights. Furthermore, to exercise control and decision making rights shareholders are with only options to approve or reject AGMs

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<sup>831</sup> J. Cordery (n 75).

proposal through their votes. But unfortunately, shareholders voting practices are controlled by board recommendations on AGMs resolutions specified in AGMs notices.

The results of this study found that shareholders of Australian listed company are very strong in theory but in practice shareholders are very weak because although they can say 'yes' or 'no', the decision does not impact on the corporate governance practices of Australian listed companies.

## **Bibliography**

- Austin RP and Ramsay IM, Ford, Austin and Ramsay's Principles of Corporations Law (17th edn, LexisNexis 2018)
- Australian Corporations Legislation 2017 Edition, LexisNexis Butterworth 422
- Bottomley S, Hall K, Spender P and Nosworthy B, Contemporary Australian Corporate Law (Cambridge University Press 2018)
- Bright S and Blandy S (ed), Researching Property Law (Palgrave, 2016)
- Christian Heumann, Shalabh MS, Introduction and Framework. In: Introduction to Statistics and Data Analysis (Springer International Publishing, 2016)
- Clarke T, International Corporate Governance: A comparative approach (2nd edn, Taylor & Francis Group 2017)
- Cohen L, Manion L and Morrison K, Research Methods in education (6th edn, Routledge 2007)
- Cooper B, Glaesser J, Gomm R and Hammersley M, Challenging the Qualitative and Quantitative Divide Explorations in Case- Focused Casual Analysis (Continuum International Publishing Group, 2012)
- Crotty M, The Foundations of Social Research Meaning and Perspective in the Research Process (Sage Publication, 1998)
- Dignam A and Lowry J, Company Law (Oxford University Press, 2012)
- Ellen RF, Ethnographic Research: A Guide to General Conduct (Academic Press, 1984)
- Farrar J and Hanrahan P, Corporate Governance (LexisNexis Butterworths Australia, 2017)
- Farrar J, Corporate Governance theories, Principles, and Practices (2nd edn, Oxford University Press, 2005)
- Goranova M and Ryan LV (ed), Shareholder Empowerment: A New Era in Corporate Governance (Palgrave Macmillan, 2015)
- Graham JW, Missing Data: Analysis and Design (Springer Science & Business Media, 2011)
- Grix J, The foundations of research (3rd edn, Macmillan International Higher Education 2018)
- Habib Md. M, Pathik BB and Maryam H, Research Methodology- Contemporary Practices (Cambridge Scholars Publishing, 2014)
- Hanrahan P, Ramsay I and Stapledon G, Commercial Applications of Company Law (16th edn, McPherson's Printing Group 2015)
- Hill JG and Thomas RS (ed), Research Handbook on Shareholder Power (Edward Elgar Publishing Limited, 2015)
- Kumar R, Research Methodology: a step-by-step guide for beginners (3rd edn, SAGE Publication Limited 2011)
- Lafarre A, The AGM in Europe: Theory and Practice of Shareholder Behaviour (Emerald Publishing Limited, 2017)
- Laskin AV (ed.), The Handbook of Financial Communication and Investor Relations (John Wiley & Sons Inc, 2018)
- Lee CF, Lee JC and Lee AC, Statistics for Business and Financial Economics (2nd edn, World Scientific Publishing Co. Pte. Ltd., 2000)
- Maassen GF, An International Comparison of Corporate Governance Models: A Study on the Formal Independence and Convergence of One-tier and Two-tier Corporate Boards of

- Directors in the United States of America, the United Kingdom and the Netherlands (2nd edn, Spence International, 2002)
- Mallin CA, Corporate Governance (2nd edn, Oxford University Press 2007)
- McConville WHC (Eric), Chui M and Hong W (ed), Research Methods for law (Edinburgh University Press, 2007)
- Nadar EN, Statistics (2nd edn, PHI Learning Private Limited 2015)
- Richmand B and Academy for Educational Development, Introduction to Data Analysis Handbook (Spring, 2006)
- Schindler PS, Business Research Method (13 edn, Mc Graw Hill Education, 2019)
- Singh K, Quantitative Social Research Methods (Sage Publication India, 2007)
- Solomon J and Solomom A, Corporate Governance and Accountability (John Wiley & Sons, Ltd, 2004)
- Solomon J, Corporate Governance and Accountability (2nd edn, John Wiley & Sons, Ltd, 2007)
- Tomasic R, Bottomley S and McQueen R, Corporations Law in Australia (2nd edn, The Federation Press 2002)
- Watkins D and Burton M (ed), Research Methods in Law (Routledge, 2013)
- Webley L, 'Qualitative Approaches to Empirical Legal Research' Peter Cane and Herbert Kritzer (ed) Oxford Handbook of Empirical Legal Research (Oxford University Press, 2010)
- Yogarathnam J and Xynas L, Corporations Law: in Practice (10th edn, Thomson Reuters (Professional) Australian Limited 2017)
- 
- Abdullah H and Valentine B, 'Fundamental and Ethics Theories of Corporate Governance' (2009) 4 Middle Eastern Finance and Economics 88
- Aggarwal R, Dahiya S and Prabhala NR, 'The power of shareholder votes: Evidence from uncontested director elections' (2019) 133 (1) Journal of Financial Economics 134
- Albanese R, Dacin MT and Harris IC, 'Agents as Stewards' (1997) 22 (3) The Academy of Management Review 609
- Alchian AA and Demsetz H, 'Production, Information Costs, and Economic Organisation' (1972) 62 (5) American Economic Review 777
- Anabtawi I, 'Some skepticism about increasing shareholder power' (2005) 53 UCLA L. Rev. 561
- Anderson DW, Melanson SJ and Maly J, 'The Evolution of Corporate Governance: power redistribution brings boards to life' (2007) 15 (5) Corporate Governance: An International Review 780
- Anderson H, Welsh M, Ramsay I and Gahan P, 'Shareholder and Creditor Protection in Australia: A Leximetric Analysis' (2012) 61 International and Comparative Law Quarterly 171
- Anderson M, Jones M, Marshall S, Mitchell R and Ramsay I, 'Shareholder Primacy and Directors' Duties: An Australian Perspective' (2008) 8 J. Corp. L. Stud. 161
- Antwi SK and Hamza K, 'Qualitative and quantitative research paradigms in business research: A philosophical reflection' (2015) 7 (3) European journal of business and management 217

- Apostolides N, 'Directors versus Shareholders: evaluating corporate governance in the UK using the AGM scorecard' (2007) 15 (6) *Corporate Governance: An International Review* 1277
- Apostolides N, 'Exercising corporate governance at the annual general meeting- Corporate Governance: (2010) 10 (2) *The international journal of business in society* 140
- Bainbridge S, 'The case for limited shareholder voting rights' (2005) 53 *UCIA L. Rev.* 601
- Banko J, Frye MB, Wang W and Whyte AM, 'Earnings management and annual general meetings: The role of managerial entrenchment' (2012) <<http://ssrn.com/abstract=2121450>> accessed 26 February 2018
- Bebchuk L, Cohen A and Ferrell A, 'What matters in corporate governance?' (2008) 22 (2) *The Review of financial studies* 783
- Bebchuk LA, 'Letting shareholders set the rules' (2005) 119 *Harv. L. Rev.* 1784
- Bebchuk LA, 'The case for increasing shareholder power' (2004) 118 *Harv. L. Rev.* 833
- Bebchuk LA, 'The myth of the shareholder franchise' (2007) *Virginia Law Review* 675
- Bell F, 'Empirical research in law' (2016) 25 (2) *Griffith Law Review* 262
- Bell G, 'Restoring trust in the corporation: an interview with Colin Mayer, Peter Moores Professor of Management Studies at Said Business School, and author of *Firm Commitment*' (2013) 29 (6) *Strategic Direction* 35
- Bîgioi AD and Dumitru CE, 'The rights of shareholders—basic principle of corporate governance by means of case-specific jurisprudence' (2016) 14 (136) *The Audit Financiar Journal* 401
- Bird H, 'A critique of the proprietary nature of share rights in Australian publicly listed corporations' (1998) 22 *Melb. UL Rev* 131
- Blair MM and Stout LA, 'A Team Production Theory of Corporate Law' (1999) 85 (2) *Virginia Law Review* 247
- Blasco MM, Blandon JG and Bosch JMA, 'Does the informational role of the annual general meeting depend on a country's legal tradition?' (2015) 19 *J Manag Gov* 849
- Boros E, 'How Does the Division of Power between the Board and the General Meeting Operate' (2010) 31 *Adelaide Law Review* 169
- Boros E, 'Virtual Shareholder Meetings: Who decides how companies make decisions' (2004) 28 *Melbourne University Law Review* 265
- Bratton WW and Wachter ML, 'The Case Against Shareholder Empowerment' (2010) 158 *University of Pennsylvania Law Review* 653
- Brooks A, Chalmers K, Oliver J and Veljanovski A, 'Issues Associated with Chief Executive Officers Remuneration: Shareholders' Perspective' (1999) 17 *C&SLJ* 360
- Caldwell C, Hayes LA and Long DT, 'Leadership, Trustworthiness, and Ethical Stewardship' (2010) 96 (4) *Journal of Business Ethics* 497
- Caldwell C, Hayes LA, Karri R and Bernal P, 'Ethical Stewardship: Implications for Leadership and Trust' *Journal of Business Ethics*, (2008) 78 (1-2) *Journal of business ethics* 7153
- Campbell CM and Wiles P, 'The study of law in society in Britain' (1976) 10 (4) *Law & Society Review* 547
- Carrington T and Johed G, 'The construction of top management as a good steward A study of Swedish annual general meetings' (2007) 20 (5) *Accounting, Auditing & Accountability Journal* 702

- Catasu's B and Johed G, 'Annual general meetings—rituals of closure or ideal speech situations? A dual analysis' (2007) 23 (2) *Scand. J. Mgmt.* 168
- Cavaye ALM, 'Case study research: a multi-faceted research approach for IS' (1996) 6 (3) *Information systems journal* 227
- Chemla G, Habib MA and Ljungqvist A, 'An analysis of shareholder agreements' (2007) 5 (1) *Journal of the European Economic Association* 93
- Chen V, Ramsay I and Welsh MA 'Corporate law reform in Australia: An analysis of the influence of ownership structures and corporate failure' (2016) 44 *ABLR* 18
- Chew D and HALL & WILCOX EC, 'AGM season 2011 — a refresher on AGM processes and procedures' (2011) 15 (1) *IHC* 158
- Chi Jianxin, 'Understanding the endogeneity between firm value and shareholder rights' (2005) 34 (4) *Financial management* 65
- Chia HX and Ramsay I, 'An Analysis of Shareholder Resolutions Involving Australian Listed Companies from 2004 to 2013' (2016) 34 *C&SLJ* 618
- Chizema A, 'The empowerment of shareholders: a conceptual perspective' (2011) 36 (4) *Journal of General Management* 23
- Choi J, Dekkers OM and Cessie SI, 'A comparison of different methods to handle missing data in the context of propensity score analysis' (2019) 34 (1) *European journal of epidemiology* 23
- Coates JC, 'Corporate Governance and Corporate Political Activity: What Effect will Citizens United have on Shareholder Wealth' (2010) <<http://ssrn.com/abstract=1881883>> accessed 05 January 2019
- Coglianesi C, 'Empirical analysis and administrative law' [2002] *University of Illinois Law Review* 1111
- Canyon M and Sadler G, 'Shareholder voting and directors' remuneration report legislation: Say on pay in the UK' (2010) 18 (4) *Corporate Governance: An International Review* 296
- Cordery CJ and Baskerville RF, 'An ethnographic study of Annual General Meetings in Not-for-profit organisations' (2007) Victoria University, Wellington, NZ, Centre for Accounting, Governance and Taxation Research Working Paper No. 51 <<http://ssrn.com/abstract=1113918>> accessed 22 February 2018
- Cordery CJ, 'The Annual General Meeting as an accountability mechanism' (2008) <<http://ssrn.com/abstract=1286930>> accessed 27 January 2018
- Daily CM, Dalton DR and Canella AA Jr 'Corporate Governance: Decades of Dialogue and Data' (2003) 28 (3) *Academy of Management Review* 371
- Daniel A, 'Balance of Power between Shareholders and the Board in Corporate Governance' (2010) <<http://ssrn.com/abstract=1612962>> accessed 09 November 2017
- Davis JH, Schoorman FD and Donaldson L, 'Toward a Stewardship Theory of Management' (1997) 22 (1) *The Academy of Management Review* 20
- De Falco SE, Cucari N and Sorrentino E, 'Voting dissent and corporate governance structures: The role of say on pay in a comparative analysis' (2016) 13 (4) *Corporate Ownership & Control* 188
- De Jong A, Mertens G and Roosenboom P, 'Shareholders' Voting at General Meetings: Evidence from the Netherlands' (2006) 10 (4) *J Manage Governance* 353-380

- Deakin S, 'The coming transformation of shareholder value' (2005) 13 (1) *Corporate Governance: An International Review* 11
- Deakin S, Sarkar P and Siems M, 'Is There a Relationship Between Shareholder Protection and Stock Market Development?' (2017) University of Cambridge Faculty of Law Research Paper No. 9/2018 <<http://ssrn.com/abstract=3105234>> accessed 15 October 2018
- Delacre M, Lakens D and Leys C, 'Why psychologists should by default use Welch's t-test instead of Student's t-test' (2017) 30 (1) *International Review of Social Psychology* 92
- Diamond SS and Mueller P, 'Empirical legal scholarship in law reviews' (2010) 6 *Annual Review of Law and Social Science* 581
- Dignam A and Galanis M 'Australia inside-out: the corporate governance system of the Australian listed market' (2004) 28 *Melb. UL Rev.* 623
- Dobos N, 'Non-Libertarianism and Shareholder Theory: A Reply to Schaefer' (2011) 98 *Journal of Business Ethics* 273
- Donaldson L and Davis JH, 'Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns' (1991) 16 (1) *Australian Journal of Management* 49
- Downey RG and King CV, 'Missing data in Likert ratings: A comparison of replacement methods' (1998) 125 (2) *The Journal of general psychology* 175
- Edelman PH, Thomas RS and Thompson RB, 'Shareholder Voting in an Age of Intermediary Capitalism' (2014) European Corporate Governance Institute (ECGI)- Law Working Paper No. 246/2014 <<http://ssrn.com/abstract=2401746>> accessed 19 August 2018
- Eisenhardt KM, 'Agency Theory: An Assessment and Review' (1989) 14 (1) *Academy of Management Review* 57
- Enriques L and Volpin P, 'Corporate Governance Reforms in Continental Europe' (2007) 21 (1) *Journal of Economic Perspectives* 117
- Faccio M and Lang LHP, 'The Ultimate Ownership of Western European Corporations' (2002) 65 (3) *Journal of Financial Economics* 365
- Faghani M, Monem Reza and Ng C, 'Say on pay' regulation and chief executive officer pay: Evidence from Australia' (2015) 12 (3) *Corporate Ownership & Control* 28
- Fama EF and Jensen MC, 'Separation of Ownership and Control' (1983) 26 (2) *The journal of law and Economics* 301
- Fox J and Lorsch JW, 'What Good are Shareholders?' (2012) 90 (7/8) *Harvard Business Review* 49
- Fox MA and Hamilton RT, 'Ownership and Diversification: Agency Theory or Stewardship Theory' (1994) 31 (1) *Journal of Management Studies* 69
- Gao H and Huang J, 'Can Online Annual General Meetings Increase Shareholders' Participation in Corporate Governance? Evidence from China' (2019) <<http://ssrn.com/abstract=2689618>> accessed 26 February 2018
- Gardini R and Yazbeck C, 'Automatic forfeiture of shares: why it could easily happen to you' (2011) 25 (2) *Commercial Law Quarterly* 23
- George TE, 'An empirical study of empirical legal scholarship: the top law school' (2006) 81 *Ind. LJ* 141
- Gompers P, Ishii J and Metrick A, 'Corporate governance and equity prices' (2003) 118 (1) *The quarterly journal of economics* 107

- González GP, Guzmán A, Pradac F and Trujillo MA, 'Annual general meetings: A waste of time or effective corporate governance bodies?' (2013) <<http://ssrn.com/abstract=2395053>> accessed 26 February 2018
- Grantham R, 'The Doctrinal Basis of the Rights of Company Shareholders' (1998) 57 (3) The Cambridge Law Journal 554
- Hanrahan P, 'Corporate governance in these 'exciting times'' (2017) 32 Australian Journal of Corporate Law 142
- Hanson D and Tranter B, 'Who are the shareholders in Australia and what are their ethical opinions? An empirical analysis' (2006) 14 (1) Corporate Governance: An International Review 23
- Hart O and Zingales L, 'Companies Should Maximize Shareholder Welfare Not Market Value' (2017) ECGI- Finance Working Paper No. 521/2017 <<http://ssrn.com/abstract=3004794>> accessed 11 November 2017
- Hernandez M, 'Promoting Stewardship Behavior in Organizations: A Leadership Model' (2008) 80 (1) Journal of Business Ethics 121
- Hill J, 'Visions and Revisions of the Shareholder' (2000) 48 (1) The American Journal of Comparative Law 39
- Hill J, 'Why Did Australia Fare So Well In The Global Financial Crisis?' (2012) Sydney Law School Research Paper No. 12/35 <<http://ssrn.com/abstract=2063267>> accessed 14 August 2018
- Hill JG, 'Public Beginnings, Private Ends -- Should Corporate Law Privilege the Interests of Shareholders?' (2000) <<http://ssrn.com/abstract=885222>> accessed 05 November 2018
- Hill JG, 'Regulatory Responses to Global Corporate Scandals' (2005) Sydney Law School Research Paper No. 06/35, Vanderbilt Law and Economics Research Paper No. 06-04 <<http://ssrn.com/abstract=886104>> accessed 14 August 2018
- Hill JG, 'The Rising Tension between Shareholder and Director Power in the Common Law World' (2010) 18 (4) Corporate Governance: An International Review 344
- Hill JG, 'Then and Now: Professor Berle and the Unpredictable Shareholder' (2010) Sydney Law School Research Paper No. 10/58, Vanderbilt Law and Economics Research Paper No. 10-17, ECGI- Law Working Paper No. 163/2010 <<http://ssrn.com/abstract=1631605>> accessed 12 September 2018
- Hill JG., 'Images of the Shareholder – Shareholder Power and Shareholder Powerlessness' (2015) Sydney Law School Research Paper Working Paper No. 15/23, NYU Law and Economics Research Paper No. 15-23 <<http://ssrn.com/abstract=2664430>> accessed 15 November 2018
- Hillman AJ, Shropshire C, Certo T, Dalton DR and Dalton CM, 'What I like about you: A multilevel study of shareholder discontent with director monitoring' (2011) 22 (3) Organization Science 675
- Hodges R, Macniven L and Mellett H, 'Governance of UK NHS Trusts: The Annual General Meeting' (2004) 12 (3) Corporate Governance an International Review 343
- Hopt KJ, 'Comparative Corporate Governance: The State of the Art and International Regulation' (2011) Law Working Paper No. 170/2011 <<http://ssrn.com/abstract=1713750>> accessed 15 October 2018



- Hopt KJ, 'Modern Company and Capital Market Problems: Improving European Corporate Governance after Enron' (2007) ECGI Law Working Paper No. 05/2002 <<http://ssrn.com/abstract=356102>> accessed 09 July 2020
- Hutchison HG and Alley RS, 'Against Shareholder Participation: A Treatment For McConvill's Psychonomicosis' (2007) George Mason Law & Economics Research Paper No. 07-23 <<http://ssrn.com/abstract=993209>> accessed 27 December 2016
- Hutton W, Mayer C and Schneider P, 'The Rights and Wrongs of Shareholder Rights' (2017) 40 Seattle UL Rev. 375
- Iliev P, Lins KV, Miller DP and Roth L, 'Shareholder Voting and Corporate Governance around the World' (2015) 28 (8) The Review of Financial Studies 2167
- Iwatani M and Taki T, 'Evolution of General Shareholders' meetings in Japan' (2009) 1 (1) Nomura Journal of Capital Market 1
- Jacobsen B and Pender H, 'The controversy continues: The case for regulatory reform on members' resolutions in Australia' (2016) 34 Company and Securities Law Journal 292
- Jeacle I, 'Accounting and the annual general meeting: the case of the Edinburgh University Tea Club, 1920–1945' (2008) 13 Accounting History 451
- Jensen MC and Meckling WH, 'Theory of the firm: Managerial behavior, agency costs, and ownership structure' (1976) 3 Journal of Financial Economics 305
- Jillian P, 'A corporate culture channel: How increased shareholder governance reduces firm value' (2019) <<http://ssrn.com/abstract=2345384>> accessed 27 December 2019
- Jiraporn P and Davidson W, 'Regulation, shareholder rights and corporate governance: an empirical note' (2009) 16 (10) Applied Economics Letters 977
- Jiraporn P, 'Share repurchases, shareholder rights, and corporate governance provisions' (2006) 17 North American Journal of Economics and Finance 35
- Johnson RB and Onwuegbuzie AJ, 'Mixed methods research: A research paradigm whose time has come' (2004) 33 (7) Educational researcher 14
- Jones MA, Mitchell SD, Marshall R and Ramsay I, 'Company Directors' Views Regarding Stakeholders' (2006) University of Melbourne Legal Studies Research Paper No. 270 <<http://ssrn.com/abstract=1023259>> accessed 02 January 2016
- Judge WQ, Gaur A and Muller-Kahle MI, 'Antecedents of Shareholder Activism in Target Firms: Evidence from a Multi-Country Study' (2010) 18 (4) Corporate Governance: An International Review 258
- Kaya MK, 'Shareholders Rights and Remedies Related to Corporate Governance Principles' (2019) Corporate Governance: Search for the Advanced Practices 48
- Keay A, 'Accountability and the Corporate Governance Framework: From Cadbury to the UK Corporate Governance Code' (2012) <<http://ssrn.com/abstract=2143171>> accessed 16 December 2019
- Keay A, 'Moving Towards Stakeholderism? Constituency Statutes, Enlightened Shareholder Value and All That: Much Ado About Little?' (2010) <<http://ssrn.com/abstract=1530990>> accessed 02 January 2019
- Keay A, 'The Duty to Promote the Success of the Company: Is it Fit for Purpose?' (2010) University of Leeds School of Law, Centre for Business Law and Practice Working Paper <<http://ssrn.com/abstract=1662411>> accessed 06 January 2018

- Kerekebuna I, 'Shareholders as owners of the corporation: why we should care' (2013) 18 (2) *Cov. L.J.* 19
- Koutsias M, 'The Fallacy of Property Rights' *The Fallacy of Property Rights Rhetoric in the Company Law Context: From Shareholder Exclusivity to the Erosion of Shareholders' Rights* (2017) 28 (6) *International Company and Commercial Law Review* 217
- Krauss SE, 'Research paradigms and meaning making: A primer' (2005) 10 (4) *The Qualitative Report* 758
- Kritzer HM, 'The (Nearly) Forgotten Early Empirical Legal Research' (2009) *Minnesota Studies Research Paper No. 09-26* <<http://ssrn.com/abstract=1426312>> accessed 08 September 2018
- La Porta R, Lopez-de-Silanes F, Shleifer A and Vishny R, 'Investor Protection and Corporate Governance' (2000) 58 *Journal of Financial Economics* 3
- La Porta R, Lopez-de-Silanes F, Shleifer A and Vishny RW 'Legal determinants of external finance' (1997) 52 (3) *The Journal of Finance* 1131
- La Porta R, Lopez-de-Silanes F, Shleifer A and Vishny RW, 'Law and Finance' (1998) 106 *Journal of Political Economy* 1113
- Lacave MS and Urtiaga MG, 'Dividend Policy with Controlling Shareholders' (2014) *European Corporate Governance Institute (ECGI) - Law Working Paper No. 250/2014* <<http://ssrn.com/abstract=2412588>> accessed 17 August 2018
- Lafarre A and Van der Elst C, 'Blockchain Technology for Corporate Governance and Shareholder Activism' (2018) *European Corporate Governance Institute (ECGI) - Law Working Paper No. 390/2018* <<http://ssrn.com/abstract=3135209>> accessed 16 December 2019
- Lafarre A and Van der Elst C, 'Shareholder Sustainability Activism in the Netherlands' (2018) *European Corporate Governance Institute (ECGI) - Law Working Paper No. 396/2018* <<http://ssrn.com/abstract=3156614>> accessed 15 December 2019
- Levit D and Malenko N, 'Nonbining Voting for Shareholder Proposals' (2011) 5 *The Journal of Finance* 1579
- Li Y and Yermack D, 'Evasive shareholder meetings' (2016) 38 *Journal of Corporate Finance* 318
- Lin YF, 'Corporate Governance, Leadership Structure and CEO Compensation: evidence from Taiwan' (2005) 13 (6) *Corporate Governance: An International Review* 824
- Lipton P, 'A History of Company Law in Colonial Australia: Economic Development and Legal Evolution' (2007) 31 (3) *Melb U L Rev* 805
- Mackenzie N and Knipe S 'Research dilemmas: Paradigms, methods and methodology' (2006) 16 (2) *Issues in educational research* 193
- Manderson D and Mohr R, 'From Oxymoron to Intersection: An Epidemiology of Legal Research' (2002) 6 *Law Text Culture* 159
- Marshall S and Ramsay I, 'Shareholders and Directors' Duties: Law, Theory and Evidence' (2012) *University of Melbourne Legal Studies Research Paper No. 411* <<http://ssrn.com/abstract=1402143>> accessed 2 January 2016
- Mathur I, Singh M, Thompson F and Nejadmalayeri A, 'Corporate governance and lobbying strategies' (2013) 66 *Journal of Business Research* 547

- Mayanja J, 'The proper role of shareholders in the decision-making processes of modern large Australian public companies' (2009) 24 (1) Aust Jnl of Corp Law 9
- McConvill J and Bagaric M, 'Ambiguities and Inconsistencies in Relation to the Obligations of Proxies under Corporations Law: A Model for Reform' (2004) 1 (1) UNELawJl 109
- McConvill J and Bagaric M, 'Shareholders and Their Pursuit of Happiness: A Unifying Understanding of the Corporation' (2005) 26 Adel. L. Rev. 103
- McConvill J and Bagaric M, 'Towards Mandatory Shareholder Committees in Australian Companies' (2004) 28 Melbourne University Law Review 125
- McConvill J, 'Directors' duties to stakeholders: a reform proposal based on three false assumptions' (2005) 18 (1) Australian journal of corporate law 88
- McConvill J, 'Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation' (2006) <<http://ssrn.com/abstract=943907>> accessed 27 December 2016
- McConvill JA, 'Positive corporate governance' (2006) 6 J. Bus. & Sec.51
- Michael J. Duffy, 'Shareholders Agreements and Shareholders' Remedies Contract versus Statute' (2008) 20 (2) Bond L. Rev. 1
- Mitchell R, Donnell AO, Ramsay I and Welsh M, 'Shareholder protection in Australia: Institutional configurations and regulatory evolution' (2014) 38 (68) Melb. UL Rev. 98
- Mnookin RH and Kornhauser L, 'Bargaining in the shadow of the law: The case of divorce' (1979) 88 (5) The Yale Law Journal 950
- Morison R and Ramsay, 'An Analysis of Companies' Business Objectives' (2014) 32 C&SLJ 438
- Moulton R and Higgs N, 'Corporate governance in financial institutions' (2013) 109 (Sep) C.O.B. 1
- Murray W, 'The role of company boards: Are they to blame for excessive executive remuneration?' (2009) 23 Australian Journal of Corporate Law 178
- Muth MM and Donaldson L, 'Stewardship Theory and Board Structure: a contingency approach' (1998) 6 (1) Corporate Governance: An International Review 5
- Nakagawa S and Freckleton RP, 'Missing inaction: the dangers of ignoring missing data' (2008) 23 (11) Trends in Ecology & Evolution 592
- Nicholson GJ and Kiel GC, 'Can directors impact performance? A case-based test of three theories of corporate governance' (2007) 15 (4) Corporate Governance: An International Review 585
- Norli Ø, Charlotte Ostergaard and Ibolya Schindele, 'Liquidity and Shareholder Activism' (2015) 28 (2) The Review of Financial Studies 486
- North G, 'Public company communication, engagement and accountability: Where are we and where should we be heading?' (2013) 31 C&SLJ 167
- Nowak M and McCabe M, 'Institutional Investors: Do they have a Role in the Monitoring of Corporate Performance?' (2006) 12 (2) The Journal of Contemporary 1
- Hewitt P, 'The Exercise of Shareholder Rights: Country Comparison of Turnout and Dissent' (2011) OECD Corporate Governance Working Papers No. 3 <[https://www.oecd-ilibrary.org/governance/the-exercise-of-shareholder-rights\\_5kg54d011vf-en](https://www.oecd-ilibrary.org/governance/the-exercise-of-shareholder-rights_5kg54d011vf-en)> accessed 10 January 2018

- Padilla A 'Can Agency Theory Justify The Regulation Of Insider Trading' (2002) 5 (1) The Quarterly Journal of Austrian Economics 3
- Peeters M, Zwijnenburg MZ, Vink Ge and van de Schoot R, 'How to handle missing data: A comparison of different approaches' (2015) 12 (4) European Journal of Developmental Psychology 377
- Ponterotto JG, 'Qualitative Research in Counseling Psychology: A Primer on Research Paradigms and Philosophy of Science' (2005) 52 (2) Journal of Counseling Psychology 126
- Poulsen T, Strand T and Thomsen S, 'Voting power and shareholder activism: A study of Swedish shareholder meetings' (2010) 18 (4) Corporate Governance: An International Review 1329
- Preston LE, 'Agents, Stewards, and Stakeholders' (1998) 23 (1) The Academy of Management Review 9
- Qureshi S, 'Research Methodology in Law and Its Application to Women's Human Right Law' (2015) 22 (2) Journal of Political Studies 629
- Ramsey IM, 'Enforcement of corporate rights and duties by shareholders and the Australian Securities Commission: Evidence and analysis' (1995) 23 (3) Australian Business Law Review 174
- Rehman AA and Alharthi K, 'An introduction to research paradigms' (2016) 3 (8) International Journal of Educational Investigations 51
- Rose P and Sharfman BS, 'Shareholder Activism as a Corrective Mechanism in Corporate Governance' Ohio State Public Law Working Paper No. 225 <<http://ssrn.com/abstract=2324151>> accessed 25 March 2017
- Ross SA, 'The Economic Theory of Agency: The Principal's Problem' (1997) 63 (2) The American Economic Review 134
- Routledge J and Slade P, 'The company dividend restriction: Does it promote good corporate governance?' (2003) 21 C&SLJ 447
- Rusiti S, 'Shareholder agreements: setting the terms of a business relationship' (2008) 46 (9) Law Society Journal 49
- Rydqvist EMK, 'Do Shareholders Vote Strategically? Evidence on the Advisory Role of Annual General Meetings' (2004) <<http://ssrn.com/abstract=498681>> accessed 05 March 2018
- Sappington DEM, 'Incentives in Principal- Agent Relationships' (1991) 5 (2) Journal of Economic Perspectives 45
- Sauerwald S, Oosterhout J. (Hans) V and Essen MV, 'Expressive shareholder democracy: A multilevel study of shareholder dissent in 15 Western European countries' (2016) 53 (4) Journal of Management Studies 520
- Schauer F, Thinking Like a Lawyer Quoted by Jessie Aliev, 'EMPIRICAL DOCTRINE' (2015) 66 (1) Case Western Reserve Law Review 1
- Sealy LS, 'Shareholders' Agreements. An Endorsement and a Warning from the House of Lords' (1992) 51 (3) The Cambridge Law Journal 437
- Serfontein E and de Waal E, 'Advancing student research in education law' (2014) 28 (5) SAJHE 1593
- Sergakis K, 'The UK Stewardship Code: Bridging the Gap between Companies and Institutional Investors' (2013) <<http://ssrn.com/abstract=2365439>> accessed 20 January 2019

- Sharfman BS, 'A Theory of Shareholder Activism and Its Place in Corporate Law' (2015) 82 (4) *Tennessee Law Review* 791
- Sheehy B, 'Shareholders, unicorns and stilts: An analysis of shareholder property rights' (2006) 6 (1) *Journal of corporate law studies* 165
- Siems MM, 'Shareholder protection around the world (Leximetric II)' [2008] 33 *Del. J. Corp. L.* 111
- Sikka P and Stittle J, 'Debunking the myth of shareholder ownership of companies: Some implications for corporate governance and financial reporting' (2019) 63 *Critical Perspective on Account* 1
- Sjöström E, 'Shareholder activism for corporate social responsibility: what do we know?' (2008) 16 (3) *Sustainable Development* 141
- Slyke DMV, 'Agents or Stewards: Using Theory to Understand the Government-Nonprofit Social Service Contracting Relationship' (2007) 17 (2) *Journal of Public Administration Research and Theory* 157
- Song S, Xin X and Yi Y, 'Shareholder voting in China: The role of large shareholders and institutional investors' (2020) 28 (1) *Corporate Governance: An International Review* 69
- Stapledon G, Easterbrook S, Bennett P and Ramsay I 'Proxy Voting in Australia's Largest Companies' (2000) <<http://ssrn.com/abstract=1435175>> accessed 12 November 2018
- Stout LA, 'Bad and Not-So-Bad Arguments for Shareholder Primacy' [2001] 75 *Southern California Law Review* 1189
- Strätling R, 'General Meetings: a dispensable tool for corporate governance of listed companies?' (2003) 11 (1) *Corporate Governance: An International Review* 74
- Strine LE Jr, 'Toward a True Corporate Republic: A Traditionalist Response to Bebchuk's Solution for Improving Corporate America' (2006) 19 *Harvard Law Review* 1759
- Strong JS and Meyer JR, 'An Analysis of Shareholder Rights Plans' (1990) 11 (2) *Managerial and Decision Economics* 73
- Talbot L, 'Polanyi's Embeddedness and Shareholder Stewardship: A contextual analysis of current Anglo-American perspectives on Corporate Governance' (2012) *Warwick School of Law Research Paper No. 2021/20* <<http://ssrn.com/abstract=2177645>> accessed 18 November 2018
- Talbot L, 'Why Shareholders Shouldn't Vote: A Marxist-progressive Critique of Shareholder Empowerment' (2013) 76 (5) *MLR* 791
- Talbot LE, 'Of insane forms. From Collectives to Management Controlled Organisations to Shareholder Value Organisation: Building Societies a Case Study' (2009) *Warwick School of Law Research Paper No. 2009/04* <<http://ssrn.com/abstract=1491060>> accessed 18 November 2018
- Talbot LE, 'Shareholder entitlement, shareholder primacy, shareholder empowerment' (2010) *Warwick School of Law Research Paper No. 2010/10* <<http://ssrn.com/abstract=1605252>> accessed 18 November 2018
- Tashakkori A and Teddlie C, 'Issues and dilemmas in teaching research methods courses in social and behavioural sciences: US perspective' (2003) 6 (1) *International Journal of Social Research Methodology* 61
- Tibbs SL, Harrell DL and Shrieves RE, 'Do Shareholders Benefit from Corporate Misconduct? A Long-Run Analysis' (2011) 8 (3) *Journal of Empirical Legal Studies* 449

- Tomasic Roman, 'Exploring the limits of corporate culture as a regulatory tool - The case of financial institutions' (2017) 32 Australian Journal of Corporate Law 196
- Tsikriktis N, 'A review of techniques for treating missing data in OM survey research' (2005) 24 (1) Journal of operations management 53
- Uche CO and Atkins JF, 'Accounting for rituals and ritualization: The case of shareholders' associations' (2015) 39 (1) Accounting Forum 34
- Van der Elst C and Lafarre A, 'Blockchain and Smart Contracting for the Shareholder Community' (2019) 20 European Business Organization Law Review 111
- Van der Elst C and Lafarre A, 'Bringing the AGM to the 21st Century: Blockchain and Smart Contracting Tech for Shareholder Involvement' (2017) European Corporate Governance Institute (ECGI) - Law Working Paper No. 358/2017 <<http://ssrn.com/abstract=2992804>> accessed 21 February 2018
- Van der Elst C and Lafarre A, 'Shareholder Stewardship in the Netherlands: The Role of Institutional Investors in a Stakeholder Oriented Jurisdiction' (2020) European Corporate Governance Institute - Law Working Paper 492/2020 <<http://ssrn.com/abstract=3539820>> accessed 15 February 2020
- Van der Elst C and Lafarre A, 'Shareholder voice on executive pay: A decade of Dutch Say on Pay' (2017) 18 (1) European Business Organization Law Review 51
- Van der Elst C, 'Attendance of Shareholders and the Impact of Regulatory Corporate Governance Reforms: An Empirical Assessment of the Situation in Belgium' (2004) 5 (3) European Business Organization Law Review 471
- Van der Elst C, 'Attending at the general meeting or voting by mail: The French case' (2018) (4) Corporate Finance and Capital Markets Law Review 23
- Van der Elst C, 'Law and Economics of Shareholder Rights and Ownership Structures: How Trivial are Shareholder Rights for Shareholders?' (2010) Tilburg Law and Economics Center (TILEC) Law and Economics Discussion Paper 2010-009 and Tilburg Law School Legal Studies Research Paper 008/2010 <<http://ssrn.com/abstract=1553094>> accessed 15 November 2018
- Van der Elst C, 'Revisiting Shareholder Activism at AGMs: Voting Determinants of Large and Small Shareholders' (2011) ECGI - Finance Working Paper No. 311/2011; Tilburg Law School Research Paper No. 019/2011 <<http://ssrn.com/abstract=1886865>> accessed 06 November 2019
- Van der Elst C, 'Shareholder Activism in Belgium: The Belgian AGMs and EGMs in 2011' (2011) Tilburg Law School Research Paper No. 002/2012 <<http://ssrn.com/abstract=1929792>> accessed 05 November 2019
- Van der Elst C, 'Shareholder activism in good and bad economic times' (2011) 8 (2) Corporate Ownership and Control 32
- Van der Elst C, 'Shareholder Engagement and Shareholder Voting Modes: Two of a Different Kind' (2019) European Corporate Governance Institute (ECGI) - Law Working Paper No. 435/2019 <<http://ssrn.com/abstract=3323848>> accessed 15 February 2020
- Van der Elst C, 'Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders' (2012) 39 Annals Fac. L. Belgrade Int'l Ed. 39
- Van der Elst C, 'Shareholders as Stewards: Evidence of Belgian General Meetings' (2013) Financial Law Institute, Ghent University Working Paper Series 2013-05 <<http://ssrn.com/abstract=2270938>> accessed 05 November 2018

- Van der Elst C, 'The influence of shareholder rights on shareholder behavior' (2010) (1) Corporate Finance and Capital Markets Law Review 50
- Varrenti A, de las Cuevas F and Hurlock M (ed), Shareholders' Rights: Jurisdictional comparisons (CPI William Clowes Beccles, 2011)
- Velasco J, 'The fundamental rights of the shareholder' (2006) 40 UC Davis L. Rev. 407
- Venkatesh V, Brown SA and Bala H, 'Bridging the qualitative-quantitative divide: Guidelines for conducting mixed methods research in information systems' (2013) 37 (1) MIS Quarterly 21
- Ward AJ, Brown JA and Rodriguez D, 'Governance Bundles, Firm Performance, and the Substitutability and Complementarity of Governance Mechanisms' (2009) 17 (5) Corporate Governance: An International Review 646
- Wen S, 'Revisiting the corporate objective through the economic lens - the UK perspective' (2013) 24 (8) I.C.C.L.R. 302
- Wong SCY, 'Effective board Engagement with shareholders' (2009) <<http://ssrn.com/abstract=1495846>> accessed 02 January 2019
- Worthington MM, 'The corporation as a constructed ethical agent: Monism, pluralism and options for reform' (2017) 32 Australian Journal of Corporate Law 91
- Xu M, Fralick D, Zheng JZ, Wang B, Tu XM and Feng C, 'The differences and similarities between two-sample t-test and paired t-test' (2017) 29 (3) Shanghai archives of psychiatry 184
- Yates J and Leggett T, 'Qualitative Research: An Introduction' (2016) 88 (2) Radiologic Technology 225
- Yermack D, 'Shareholder Voting and Corporate Governance' (2010) 2 Annual Review of Financial Economics 103
- Ying KC, 'Shareholder Activism Through Exit And Voice Mechanisms In Malaysia: A Comparison With The Australian Experience' (2014) 26 (2) Bond Law Review 87
- Zhao A and Brehm AJ, 'Cumulative voting and the conflicts between board and minority shareholders' (2011) 37 (5) Managerial Finance 465
- AFM (2014), 'Flaws in proxy voting system' available at <<https://www.afm.nl/en/professionals/nieuws/2014/mrt/gebreken-stemmen-afstand>> accessed 1 January 2017
- ASX announcement: 2017 Resolution Under s249N of the Corporation Act- , BHP Group Limited (BHP) available at <<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=BHP&timeframe=Y&year=2017>> accessed 12 April 2019
- ASX announcement: AGM Notice 2015, Australian and New Zealand Banking Group Limited (ANZ) available at <<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ANZ&timeframe=Y&year=2015>> accessed 01 April 2019
- ASX announcement: AGM Notice 2017, Origin Energy Limited (ORG) available at <<https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ORG&timeframe=Y&year=2017>> accessed 15 March 2019

ASX announcement: AGM Notice 2018, Origin Energy Limited (ORG) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ORG&timeframe=Y&year=2018> accessed 15 March 2019

ASX announcement: AGM Notice 2018, Qantas Airways Limited (QAN) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=QAN&timeframe=Y&year=2018> accessed 05 April 2019

ASX announcement: AGM Notice 2018, Whitehaven Coal Limited (WHC) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=WHC&timeframe=Y&year=2018> accessed 10 April 2019

ASX announcement: AGM Notice 2018, Woolworths Group Limited (WOW) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=WOW&timeframe=Y&year=2018> accessed 03 March 2019

ASX announcement: AGM results 2015, Australian and New Zealand Banking Group Limited (ANZ) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ANZ&timeframe=Y&year=2015> accessed 01 April 2019

ASX announcement: AGM results 2017, BHP Group Limited (BHP) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=BHP&timeframe=Y&year=2017> accessed 12 April 2019

ASX announcement: AGM results 2017, Origin Energy Limited (ORG) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ORG&timeframe=Y&year=2017> accessed 15 March 2019

ASX announcement: AGM results 2018, Origin Energy Limited (ORG) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=ORG&timeframe=Y&year=2018> accessed 15 March 2019

ASX announcement: AGM results 2018, Qantas Airways Limited (QAN) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=QAN&timeframe=Y&year=2018> accessed 05 April 2019

ASX announcement: AGM results 2018, Whitehaven Coal Limited (WHC) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=WHC&timeframe=Y&year=2018> accessed 10 April 2019

ASX announcement: AGM results 2018, Woolworths Group Limited (WOW) available at <https://www.asx.com.au/asx/statistics/announcements.do?by=asxCode&asxCode=WOW&timeframe=Y&year=2018> accessed 03 March 2019

ASX Australian Investor Study 2017, available at <https://www.asx.com.au/education/2017-asx-investor-study.htm> accessed 03 July 2018

Available at <https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf> accessed 01 January 2018, p. 25

Available at <file:///F:/PhD%20Candidature%20research%20work/Cndidature%20work/March%202017/agm.pdf> accessed 19 March 2017

Available at <http://aicd.companydirectors.com.au/membership/the-boardroom-report/volume-13-issue-24/agm-system-reaches-tipping-point> 18th March 2017

Available at <http://asic.gov.au/for-business/running-a-company/members-of-a-company/> accessed 28 March 2017



Available at <<https://www.asx.com.au/products/shares/types-of-shares.htm>> accessed 02 August 2018

Available at <<https://www.frc.org.uk/getattachment/e2db042e-120b-4e4e-bdc7-d540923533a6/UK-Stewardship-Code-September-2012.aspx>> accessed 25 December 2019

Available at <<https://www.gov.uk/limited-company-formation/shareholders>> accessed 05 January 2018

Corporate Governance Principles and Recommendations (2014) available at <<http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>> accessed 15 November 2016

Duct Authority for Financial Markets AFM, 'Lost your right to make yourself heard?' (2014) <<https://www.afm.nl/en/professionals/nieuws/2014/mrt/gebreken-stemmen-afstand>> accessed 01 January 2017

FAICD SC, '7 ways to improve AGM' <<http://aicd.companydirectors.com.au/membership/the-boardroomreport/volume-15-issue-1/7-ways-to-improve-the-agm>> accessed 18 March 2017

ICGN (2014), 'Removing obstacles to cross border voting' <<https://www.icgn.org/sites/default/files/Removing%20obstacles%20to%20cross%20border%20voting.pdf>> accessed 17 December 2016

ICGN (2016), 'ICGN Viewpoint on Vote Confirmation' <<https://www.icgn.org/sites/default/files/Vote%20Confirmation%20Viewpoint.pdf>> accessed 17 December 2016

Modern Company Law for a Competitive Economy Company General Meetings and Shareholders Communication, A consultation Document from the Company Law Review Steering Group, <<http://webarchive.nationalarchives.gov.uk/20121101192029/http://www.bis.gov.uk/files/file23274.pdf>> accessed 01 February 2018

OECD (2011), The Role of institutional Investors in Promoting Good Corporate Governance, Corporate Governance, OECD Publishing doi: 10.1787/9789264128750-en

OECD Principles of Corporate Governance 2004 <<http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>> accessed 21 May 2020

Price J, 'ASIC on collective action by investors and voting at general meetings' <<http://asic.gov.au/regulatory-resources/corporate-governance/corporate-governance-articles/asic-on-collective-action-by-investors-and-voting-at-general-meetings/>> accessed 25 December 2016

Price J, 'communicating clearly' <<http://aicd.companydirectors.com.au/membership/company-director-magazine/2016-back-editions/august/the-regulator>> 18<sup>th</sup> March 2017

Report 564 - Annual general meeting season 2017 <<https://download.asic.gov.au/media/4633282/rep-564-published-29-january-2018.pdf>> accessed 05 March 2018

Report 609 - Annual general meeting season 2018 <<https://download.asic.gov.au/media/4997407/rep609-published-31-january-2019.pdf>> accessed 10 February 2019

- The Cadbury Report 'The Financial Aspects of Corporate Governance' <<https://ecgi.global/sites/default/files//codes/documents/cadbury.pdf>> accessed 20 May 2020
- The Financial Service Council (FSC) Guidance Note No.2.00 (Corporate Governance: A Guide for Fund Managers and Corporations) available at <<https://www.fsc.org.au/>> accessed 6 April 2019
- The Hon Justice Owen Commissioner, The HIH Royal Commission Volume 1 - A corporate collapse and its lessons <<https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>> accessed 20 May 2020

## Appendix A : AGMs resolutions groups

**Table A.1: Resolutions Groups**

Variable		Indicator / Explanation	Explanation
General Meetings	AGM	Number of AGMs Held	The AGMs held during 2014 and 2018 for sample companies
	EGM	Number of EGM Held	The AGMs held during 2014 and 2018 for sample companies
Total resolutions		Total number of resolutions put at AGM for shareholders' approval	The total number of resolutions was calculated from the AGM notices for each company
Proposal Types	Ordinary Resolutions	Number of Ordinary Resolutions	The AGM notices specify the category of each resolution ordinary resolution or special resolution. The number of ordinary was calculated manually.
	Special Resolutions	Number of Special Resolutions	The special resolutions were calculated on same way as ordinary resolutions.
Proposal Recommendations	Directors supported resolution	Total resolutions	The AGM notice specify under explanatory notes that this resolution supported by the board and recommended to vote 'For'.
	Non-directors supported resolutions	Total resolutions	The AGM notice specify under explanatory notes that this resolution non-supported by the board and recommended to vote 'Against'.
	Without directors' recommendations	Total resolutions	The resolutions at AGM notice, without board recommendations to vote 'For' or 'Against'. All such resolutions without clear indicators considered to fall in this section.
Blockholders ( $\geq 5\%$ )	Number of Blockholders	The shareholders having more than or equal to 5% of ordinary shares in the company	In annual reports under 'Shareholder information' section, the information of top 20 holders is given, from this information manually calculated the number of blockholders in sample companies.
	% of Share owned by Blockholders ( $\geq 5\%$ )	The percentage or number of shareholders having less than or equal to 5% of ordinary shares in the company	Also, the percentage of share ownership for blaockholders calculated from annual reports of companies.
Ownership- Top 20 shareholders (Ownership structure)		The total ordinary shares held by to 20 shareholders in each year	Total percentage of ordinary shares owned by top 20 shareholders was calculated manually if not provided in the annual report of the company.
Dividend		Final dividend for each year (2014–18)	Final dividend value for sample year was extracted from ASX website, and for year 2014 maximum companies' dividend values was not publicly available.
Voting Turnout (2014–2018) (Attendance at AGM)		The shareholders use the voting rights for each resolution in each year for each sample company	The voting turnout was calculated from AGM results for each resolution and for each company and calculated the % average votes rights exercised by shareholders for each AGM of sample year. Also, the voting average for each year was calculated.
Dividend		All the resolutions related to dividends at AGMs	The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated.

	considered as single resolution	<ul style="list-style-type: none"> <li>• Dividend reinvestment</li> <li>• Deceleration of dividend</li> </ul>
Shareholders Others	The resolutions related to shareholders other than dividends calculated as 1 resolution.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated.</p> <ul style="list-style-type: none"> <li>• Return of capital to shareholders</li> <li>• Consolidation of capital</li> <li>• Reduction of capital</li> <li>• Approval of capital return to shareholders</li> <li>• Approval of capital reduction</li> <li>• Approval of the selective capital reduction of convertible preference shares</li> <li>• Approval for capital reduction of the company and lend lease trust capitalisation (LLC)</li> <li>• Approval of the selective capital reduction in respect of XYZ<sup>832</sup> company convertible preference shares</li> <li>• Selective capital reduction of convertible preference shares (CPS) under the CPS terms</li> <li>• Share consolidation</li> <li>• Approval of issue of 150,000 convertible notes</li> <li>• Restructure of terms of all unsecured notes</li> <li>• Approval of issue of 35,000,000 options</li> <li>• Approval of additional 10% placement capacity</li> <li>• Approve on-market buy-back of shares</li> <li>• Approval to extend the on-market share buy-back</li> <li>• Buy-back of XYZ company shares in the company</li> <li>• That the conduct, terms and conditions of the first selective buy-back scheme in relation to the convertible preference shares issued by the company on dated, as described in the explanatory statement, be approved.</li> <li>• Selective buy-back of convertible preference shares</li> <li>• To approve the terms and conditions of the first buy- back scheme of XYZ convertible preference shares</li> <li>• To approve the terms and conditions of the second buy- back scheme of xyz c convertible preference shares</li> <li>• General authority to allot shares</li> <li>• Disapplication of pre-emption rights</li> <li>• Authority to purchase XYZ Company shares</li> <li>• Notice period for general meetings other than annual general meetings</li> <li>• Scrip dividend authority</li> <li>• Renewal of off-market and on- market share buyback authorities</li> </ul>

<sup>832</sup> Note: XYZ used in data instead of company director's , managers or CEO, company's name (intention to not to specify their names to give respect to privacy)

ESG Resolutions			All the resolutions items related to ESG Resolutions will be considered single resolution.	The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated <ul style="list-style-type: none"> <li>• Human rights reporting</li> <li>• Contingent resolution - climate risk disclosure</li> <li>• Contingent resolution – human rights due diligence</li> <li>• To approve member request on public policy advocacy on climate change and energy (an ordinary resolution, the validity of which is conditional on Item XYZ being passed)</li> </ul>
Directors Election	(re) Election of director		The election of 1 director or more than 1 are considered as single resolution	The resolutions of director's election are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated
	Re-election of directors	of	The election of 1 director or more than 1 are considered as single resolution	The resolutions of director's re- election are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated
Remuneration	Remuneration Reports		The remuneration AGM is always single	This value of voting as % is calculated for the AGM results specifying – For, Again, Discretion and Abstain- by using the actual total number of ordinary shares given in annual reports.
Director fees			The resolutions related to director fees calculated as 1 resolution.	The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated <ul style="list-style-type: none"> <li>• Increase in directors' remuneration fee pool</li> <li>• Director fee pool</li> <li>• Increase in director fee pool</li> <li>• To approve the directors' remuneration policy (an ordinary resolution)</li> <li>• To approve the remuneration report other than the part containing the directors' remuneration policy (a non-binding ordinary resolution)</li> </ul>
Directors Other			The resolutions other than (re) election of directors, directors fees is categorised as "Directors Other" calculated as 1 resolution	The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated <ul style="list-style-type: none"> <li>• Approval of termination or potential termination benefits (STI/ LTI)</li> <li>• Approval of the termination benefits framework</li> <li>• Grant of options to managing director</li> <li>• Approval to issue adviser options</li> <li>• Approval of the giving of a retirement benefit to managing director</li> <li>• Increase number / maximum number of directors of directors</li> <li>• To approve the issue of restricted shares pursuant to the LTI Plan by way of a mandatory deferral of % of the managing director's short term incentive (STI)</li> <li>• Approve the award of shares rights to managing director</li> <li>• That approval is given for the company to grant to the company's managing director and chief executive officer,</li> <li>• Grant of rights to managing director under equity incentive plan</li> <li>• Grant of rights to the managing director and chief executive officer</li> </ul>

		<ul style="list-style-type: none"> <li>• Approval for grant of rights to the managing director and chief executive officer</li> <li>• Approval to participate in capital raising</li> <li>• Approval of the participation by XYZ in the company through my share plan for the purposes of ASX Listing Rule 10.4</li> <li>• Election of external nominee as a voting director</li> <li>• Approve grant of conditional rights to group chief executive officer</li> <li>• To approve the grant of securities to XYZ under Executive incentive Plan</li> <li>• Requisitioned resolution – powers of the board</li> <li>• To approve leaving entitlements (an ordinary resolution)</li> <li>• Renewal of approval of leaving entitlement under the long-term equity incentive plan</li> <li>• Employee incentive plan approval</li> <li>• Share acquisition rights under the employee equity incentive plan on the terms set out in the explanatory notes to the notice of meeting</li> <li>• Approval of executive voting director's participation in the employee retained equity plan</li> <li>• Issue of service rights to XYZ</li> <li>• To approve grants to (an ordinary resolution)</li> <li>• To approve leaving entitlements (an ordinary resolution)</li> <li>• Grant of rights under the executive incentive plan</li> <li>• approval of issues under executive incentive plan</li> <li>• Appointment of XYZ as a director</li> </ul>
Performance Rights	The resolutions addressing 'Performance Rights' are categorised under this heading	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Performance share rights</li> <li>• Approval of the participation by XYZ in the company's performance share plan for the purposes of ASX Listing Rule 10.4</li> <li>• Issue of performance rights to CEO</li> <li>• Approval/ Grant of LTI grant to managing director performance rights long term incentive plan (LTIP)</li> <li>• Approval of the grant of performance rights and options</li> <li>• Performance rights granted under the company's performance rights plan – amendment and MD/CEO approval</li> <li>• Terms of performance rights granted under the company's performance rights plan – management approval</li> <li>• Approval of new class of securities (Class B Performance Shares)/ (Class A Performance Shares)</li> <li>• Issue of Class A Performance Shares to XYZ Vendors</li> <li>• Grant of performance rights to XYZ</li> <li>• Grant of performance rights to managing director and chief executive officer</li> <li>• Grant of restricted shares and performance shares to the group managing director</li> <li>• Long-Term incentive plan grant of performance rights to XYZ</li> </ul>

		<ul style="list-style-type: none"> <li>• Approval of adjustment to performance rights issued under the company's equity incentive plan</li> <li>• Grant of share price performance rights to XYZ</li> <li>• Grant of long-term incentive performance rights to XYZ</li> <li>• Approval of performance award rights under the managing directors long term incentive package</li> <li>• Grant of performance rights to the managing director and group CEO</li> <li>• Approval for the grant of performance rights to managing director</li> <li>• Amend hurdles for performance rights to CEO</li> <li>• participation in the company's performance rights plan by XYZ</li> <li>• Refresh approval if the performance rights plan</li> <li>• Approval of performance rights plan</li> <li>• Approval to issue performance rights to XYZ</li> <li>• Approval of issue to the managing director under the incite pivot performance rights plan</li> <li>• Approval for the Company to Issue performance rights to XYZ under the long-term incentive plan</li> <li>• Approval of long-term incentive grant of performance rights to the CEO</li> <li>• Approval of the Initial grant of performance rights to the CEO</li> <li>• One-off grant of performance rights to XYZ</li> <li>• Issue of services rights to XYZ and XYZ (Performance Rights and Options Plan) (Deferred proportion of STI)</li> <li>• Issue of performance rights (Long term incentive) to XYZ and XYZ (Performance Rights and Options Plan)</li> <li>• Issue of Performance rights under the long-term incentive plan to XYZ</li> <li>• Approve the participation by the CEO &amp; managing director in the company long term performance plan</li> </ul>
Grant of equity	The resolutions addressing 'Grant of Equity are categorised under this heading	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Approval of 10% placement capacity (issue of equity securities)</li> <li>• Approval of 10% placement capacity</li> <li>• Grant of equity to managing director</li> <li>• Grant of equity and termination benefits</li> <li>• Grant/ allocation of equity to CEO</li> <li>• Approval of 10% Placement facility</li> <li>• Grant of one equity right to XYZ</li> <li>• Grant of LTI rights to XYZ</li> </ul>
Securities/ Stapled Securities	All the resolutions related to Securities/ Stapled Securities are calculated as single resolution	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Approval of issue of securities to the managing director and chief executive</li> </ul>

		<ul style="list-style-type: none"> <li>• Approval of issue of securities</li> <li>• Ratification of prior issue of securities</li> <li>• Ratification of issue of securities</li> <li>• Ratification of prior issue of stapled units</li> <li>• Issue of equity securities to XYZ</li> <li>• Approval of issue, allocation or transfer of securities to XYZ</li> <li>• Issue of Securities to directors and proposed directors</li> <li>• Approval of the issue of Securities to XYZ, managing director, under the company's short-term incentive offer</li> <li>• Approval of securities issued under the EIP</li> <li>• Refresh capacity to issue new security to issue new security</li> <li>• Refresh capacity to issue new securities - option shares</li> <li>• Refresh capacity to issue new securities – placement</li> <li>• Approval of the issue of securities under the XYZ Company Employee Option Plan as an exception to ASX Listing Rule 7.1</li> <li>• To approve the authority to allot equity securities in XYZ Company for cash (a special resolution)</li> <li>• Grant of deferred security acquisition rights to the managing director</li> <li>• Approval of allocations of performance securities and deferred securities to the managing director (LLC and LLT)</li> <li>• Approval of allocations of securities and deferred securities to the managing director</li> </ul>
Award- Incentives (Long or short term)	All the resolutions related to Award- Incentives are calculated as single resolution	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions are calculated</p> <ul style="list-style-type: none"> <li>• Executive incentive plan</li> <li>• Participation by executive director in the specified Years</li> <li>• Long term incentive plan (LTIP)</li> <li>• Long Term incentive share rights plan</li> <li>• Renewal of approval of the beach executive incentive plan</li> <li>• Approval of chief executive officer's long-term incentive for XYZ company</li> <li>• approval of future issues under the award rights plan</li> <li>• Approval of future issuances under the XYZ company restricted share plan</li> <li>• Approval of future issuances under the XYZ company award rights plan</li> <li>• Approval of primary health care rights plan and short-term incentive plan</li> <li>• Approval of long-term incentives for XYZ, managing director and chief executive officer</li> <li>• Amendment to long term incentive plan</li> <li>• Issue of awards to the managing director</li> <li>• Grant of options and performance rights to managing director (long term incentive plan)</li> <li>• Award of LTI and deferred STI rights to XYZ, CEO &amp; managing director</li> <li>• Award of rights to XYZ, CEO &amp; managing director</li> </ul>



		<ul style="list-style-type: none"> <li>• Approval of grant of alignment rights to XYZ under the company's long-term incentive plan</li> <li>• Approval of grant of share rights to XYZ under the company's short-term incentive plan</li> <li>• Re-approve long term incentive plan</li> <li>• Approval of potential termination benefits under the company's long-term incentive plan</li> <li>• Long term incentive multi-tranche award to managing director and chief executive officer</li> <li>• Adoption of XYZ company long term incentive plan</li> <li>• participation in the company's long term incentive plan (LTIP) by XYZ</li> <li>• Grant of restricted stock units (RSU) award to XYZ</li> <li>• To approve the grant to the executive director (an ordinary resolution)</li> <li>• Issue of 99,638 short term incentive deferred Securities to XYZ</li> <li>• Approval of the issue of performance rights to the executive director in accordance with the XYZ company long term incentive plan</li> <li>• Issue of short-term incentive rights under the executive incentive plan to the chief executive officer, XYZ</li> <li>• Issue of long-term incentive rights under the executive incentive plan to the chief executive officer, XYZ</li> </ul>
(MD, CEO or to any Director etc.) Shares Matters	All the resolutions related to Share matters to CEO, Managing Directors and Directors are calculated as single resolution	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Issue of Shares to party nominated by XYZ</li> <li>• Approval of the managing director's participation in the employee salary sacrifice, deferred share and performance share plan</li> <li>• Allocation of share rights to XYZ MD and CEO</li> <li>• Allocation of share rights to XYZ</li> <li>• Allocation of share rights to XYZ, managing director and chief executive officer</li> <li>• To approve the issue of plan shares to XYZ</li> <li>• Approval of the issue of XYZ shares on an exchange of XYZ company additional capital securities</li> <li>• Variable reward deferred shares-group CEO</li> <li>• Ratification of issue of 1,500,000 shares &amp; 2,500,000 performance rights to XYZ</li> <li>• Grant of wealth sharing plan rights XYZ</li> <li>• Grant of shares to the MD &amp; CEO</li> <li>• Grant of share rights to MD &amp; CEO under STIP</li> <li>• Grant of share rights to the commercial director</li> <li>• Approval of grant of deferred share rights to the managing director and CEO</li> <li>• Grant of share rights to managing director (management incentive plan - equity)</li> <li>• Allocation of shares to XYZ</li> <li>• Proposed issue of new evolution shares to XYZ Company</li> <li>• Issue of deferred shares to XYZ</li> </ul>

(Re) Election of Non-Executive Directors	Election of Non-Executive Directors	The election of 1 Non-executive director or more than 1 are considered as single resolution	The resolutions of non-executive director's election are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated
	Re- Election of Non-Executive Directors	The re-election of 1 non-executive director or more than 1 are considered as single resolution	The resolutions of non-executive director's re- election are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated
Non-Executive Directors Remuneration		The resolutions related to non- executive director's remunerations (Increase) resolutions are considered as 1 item.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Increase in remuneration of non-executive directors</li> <li>• Increase to non- executive directors' remuneration pool</li> <li>• Increase in the maximum aggregate annual remuneration of non-executive directors</li> <li>• Increase max remuneration of non-exec directors</li> <li>• Approval for the increase in the maximum aggregate annual remuneration of the non-executive directors</li> <li>• Amendment to maximum aggregate remuneration payable to non-executive directors</li> </ul>
Non-Executive Directors -all other		All the resolutions other non-executive director's (re) election and remuneration are categorised as 'Non-Executive Directors -all other.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Fees Pool / increase in fees</li> <li>• To increase the maximum aggregate fees payable to non-executive directors</li> <li>• Increase in non-executive directors' fee cap</li> <li>• Increase non- executive director maximum aggregate fees</li> <li>• Proposed increase in limit of aggregate non- executive directors' fees</li> <li>• Non-executive director share plan</li> <li>• Grant of share rights to non- executive directors</li> <li>• Approve non-executive directors' equity plan</li> <li>• Non-executive director equity plan</li> <li>• To approve the issue of plan shares to non-executive directors XYZ and XYZ</li> <li>• Approval of the non-executive director share rights plan and the grant of share rights to non-executive directors</li> <li>• The non-executive director shareholding plan and the acquisition of shares in the company by current and future non-executive directors under that plan on the terms set out in the explanatory note of the notice of the meeting</li> </ul>

Auditor	The resolutions related to 'Auditors' are taken under this category.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Appointment of Auditor</li> <li>• Auditor's remuneration</li> <li>• To authorise the directors to fix the auditor's remuneration</li> <li>• Re-appoint to XYZ as the company's auditor and to authorise the directors to fix the fees and expenses of the auditor</li> <li>• That the directors be authorised to fix the fees and expenses of the auditor</li> <li>• Fix external auditor remuneration to appoint XYZ as auditor of the Company</li> </ul>
Financial Assistance	The AGM resolutions related to financial assistance /approval of grant of financial assistance are taken as single resolution.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Approval of financial assistance in connection with the acquisition of XYZ company</li> <li>• Granting of a guarantee by XYZ company and provision of other financial assistance in relation to the Company's acquisition of XYZ company</li> <li>• Granting of a guarantee by XYZ company and provision of other financial assistance in relation to the company's proposed acquisition of XYZ company</li> <li>• To approve the giving of financial assistance under section 260B (2) of the Act</li> <li>• To approve financial assistance to non-executive directors XYZ and XYZ</li> <li>• To approve financial assistance to XYZ (special resolution)</li> </ul>
Takeover	The AGM resolutions addressing the takeover issue.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Reinsertion of proportional takeover approval provisions</li> <li>• Proportional takeover approval provisions</li> <li>• Renewal of takeover provisions</li> <li>• Renewal of proportional takeover bid approval rule</li> <li>• Renewal of proportional takeover plebiscite</li> <li>• Renewal of proportional takeover provisions in constitution</li> <li>• Renew the company's proportional takeover provisions</li> <li>• Amendment to constitution - proportional takeover</li> <li>• To approve the renewal of the proportional takeover provisions in the constitution</li> </ul>
Issue of Share	All resolutions related to issue of shares are taken as single item.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Approval of issue of shares</li> <li>• Approval of issue of shares on conversion of 100,000 Convertible Notes</li> <li>• Approval of the issue of shares under the placement</li> <li>• Approval of the issue of shares under the XYZ Company My Share Plan for the purposes of ASX Listing Rule 7.2, exception 9</li> </ul>

		<ul style="list-style-type: none"> <li>• Ratification of Share Issue</li> <li>• Ratification of Prior Issue of Shares</li> <li>• Ratification of issue of shares pursuant to institutional placement</li> <li>• Ratification of Tranche 1 (Ratification of previous Share issue under Listing Rule, 7.1 and 7.4)</li> <li>• Approval for completion of Tranche 2 (Ratification of previous Share issue under Listing Rule 7.1)</li> <li>• Issue of Ordinary Shares to the XYZ App Vendors</li> <li>• Approval of Issue of Ordinary Shares on Conversion of Convertible Notes</li> <li>• Share Cellar Plan</li> <li>• Ratification of issue of Capital notices</li> <li>• Ratification of issue of XYZ shares</li> <li>• Ratification of issue of XYZ options</li> <li>• That for all ASX Listing Rule purposes, including Listing Rule 7.4, the issue of the additional ordinary shares under the institutional Share Placement (Placement) announced dated and summarised in the explanatory Notes to the Notice of Meeting, be approved</li> <li>• That for all ASX Listing Rule purposes, including Listing Rule 7.4, the issue of up to A\$XYZ millions of Challenger Capital Notes (Notes) on the terms set out in the Replacement Prospectus issued dated--- and summarised in the Explanatory Notes to the Notice of Meeting, be approved.</li> <li>• Approval of the Issue of XYZ Company Capital Notes 2</li> <li>• Approval for Issue of Tranche 2 Shares and Strategic Alliance with Evolution Mining Ltd</li> <li>• Ratification of Past Placement of Shares to XYZ Company</li> <li>• Ratification of Past Placement of Shares to Institutional and Sophisticated Investors</li> <li>• To renew the general authority to issue shares in XYZ Company (an ordinary resolution)</li> <li>• To approve the authority to issue shares in XYZ Company for cash (a special resolution)</li> <li>• To approve the repurchase of shares in XYZ Company (a special resolution)</li> <li>• Approval to issue Capital Raising Shares</li> </ul>
Employee shares	All resolutions related to employee shares are taken as single item.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Approval of XYZ share plan</li> <li>• Grant of options to XYZ pursuant to employee share option plan</li> <li>• Approval of future issuances under the XYZ employee share plan</li> <li>• Approval of the employee share option and performance rights plan</li> </ul>
Company Name	The resolution of change of Name of Company	<p>The resolutions subjected to company name taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p>

Constitution	The AGM resolutions addressing the company constitution,	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• Amending single clause or more than once clauses</li> <li>• Adoption of new constitution</li> <li>• Amendment of constitution – director voting</li> <li>• Adoption of new constitution (amended form)</li> <li>• Re-insertion of proportional takeover approval provisions in constitution</li> <li>• Amend memorandum of association</li> <li>• amend articles of association</li> <li>• Approval of amendments to constitution</li> <li>• To approve the amendments to the xyz company constitution for simultaneous general meetings (a special resolution)</li> <li>• To approve the amendments to the XYZ Company's Articles of Association for the XYZ company dividend share (a special resolution)</li> <li>• To approve the amendments to the XYZ company structure sharing agreement for the XYZ company dividend share (a special resolution)</li> <li>• Adoption of the new XYZ company articles of association</li> <li>• Re-insertion of the partial takeover provisions in the constitution</li> </ul>
All Others	The resolutions in this group are all other except resolutions a category specified above.	<p>The resolutions given below are taken from AGM notices and AGM results and if in any AGM results these resolutions are more than once than average and % of these resolutions calculated</p> <ul style="list-style-type: none"> <li>• To approve potential termination benefits/ Termination benefits</li> <li>• Prospective termination payments</li> <li>• Strategic resilience for 2035 and beyond</li> <li>• Authority to make political donations</li> <li>• Termination benefits for employees holding managerial or executive offices</li> <li>• Approval of issue of units to XYZ Company</li> <li>• Change of nature and scale of activities – capital raising- that the XYZ company project in location be withdrawn from XYZ portfolio</li> <li>• Contingent resolution- report on methane emissions (non- board indorsed)</li> <li>• Contingent resolution - strategy alignment</li> <li>• To approve related party benefits</li> <li>• Refresh of 15% placement capacity</li> <li>• Procedural motion – approval to amend Resolution</li> <li>• To approve the demerger of South 32 from XYZ company</li> <li>• Ratification of institutional placement</li> <li>• Approval of issue of unites to XYZ group / Section 195 Approval</li> </ul>
Spill	The spill resolutions	This value of voting as % is calculated for the AGM results specifying – For, Again, Discretion and Abstain- by using the actual total number of ordinary shares given in annual reports. He

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spills resolutions are contingent resolutions subject to resolution passed of "Amend the company constitution"- special resolution

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## Appendix B : Sample companies' sectors

***Table B.1: Coding according to company's sector***

<b>Sector</b>	<b>Coding</b>
Consumer Discretionary	1
Consumer Staples	2
Energy	3
Financials	4
Health Care	5
Industrials	6
Information Technology	7
Materials	8
Real State	9
Telecommunication Services	10
Utilities	11

## Appendix C : List of sample companies

**Table C.1: Sample Companies**

Company Code	Company	Sector	Coding
ABC	Adelaide Brighton	Materials	8
ABP	Abacus Property Group Units/ Stapled Securities	Real Estate	9
ALL	Aristocrat Leisure	Consumer Discretionary	1
ALQ	Als Limited	Industrials	6
AMC	Amcor Limited	Materials	8
AMP	AMP Limited	Financials	4
ANN	Ansell Limited	Health Care	5
ANZ	ANZ Banking Group Limited	Financials	4
AOG	Aveo Group Ordinary/Units FP Stapled Securities	Real Estate	9
APA	APA Group Units FP Stapled Securities	Utilities	11
AST	Ausnet Services Limited	Utilities	11
ASX	ASX Limited	Financials	4
AWC	Alumina Limited	Materials	8
AZJ	Aurizon Holdings Limited	Industrials	6
BEN	Bendigo and Adelaide	Financials	4
BGA	Bega Cheese Limited	Consumer Staples	2
BHP	BHP Billiton Limited	Materials	8
BLD	Boral Limited	Materials	8
BOQ	Bank of Queensland	Financials	4
BPT	Beach Energy Limited	Energy	3
BRG	Breville Group Limited	Consumer Discretionary	1
BSL	Bluescope Steel Limited	Materials	8
BXB	Brambles Limited	Industrials	6
CBA	Commonwealth Bank	Financials	4
CCL	Coca-Cola Amatil	Consumer Staples	2
CGF	Challenger Limited	Financials	4
CHC	Charter Hall Group Stapled Securities US Prohibited	Real Estate	9
CMW	Cromwell Prop Ordinary/Units FP Stapled Securities	Real Estate	9
COH	Cochlear Limited	Health Care	5
CPU	Computershare Limited	Information Technology	7
CQR	Charter Hall Retail Units FP	Real Estate	9
CSL	CSL Limited	Health Care	5
CSR	CSR Limited	Materials	8
CTX	Caltex Australia	Energy	3
CWN	Crown Resorts Limited	Consumer Discretionary	1
DLX	Duluxgroup Limited	Materials	8
DMP	Domino PIZZA Enterpr	Consumer Discretionary	1
DOW	Downer Edi Limited	Industrials	6
EVN	Evolution Mining Limited	Materials	8
FBU	Fletcher Building Foreign Exempt NZX	Materials	8
FLT	Flight Centre Travel	Consumer Discretionary	1
FMG	Fortescue Metals Group	Materials	8
GEM	G8 Education Limited	Consumer Discretionary	1
GMG	Goodman Group Stapled Securities FP	Real Estate	9
GNC	Graincorp Limited Class A	Consumer Staples	2
GPT	GPT Group Stapled Securities FP	Real Estate	9
GUD	G.U.D. Holdings	Consumer Discretionary	1
GWA	GWA Group Limited	Industrials	6
HSO	Healthscope Limited	Health Care	5
HVN	Harvey Norman	Consumer Discretionary	1
IAG	Insurance Australia	Financials	4
IFL	IOOF Holdings Limited	Financials	4
IGO	Independence Group	Materials	8
ILU	Iluka Resources	Materials	8
IPL	Incitec Pivot	Materials	8



IRE	Iress Limited	Information Technology	7
IVC	Invocare Limited	Consumer Discretionary	1
JBH	JB Hi-Fi Limited	Consumer Discretionary	1
JHX	James Hardie Indust Chess Depositary Interests 1:1	Materials	8
LLC	Lendlease Group Unit/ Stapled Securities	Real Estate	9
MFG	Magellan Fin Group Limited	Financials	4
MGR	Mirvac Group Stapled Securities	Real Estate	9
MIN	Mineral Resources	Materials	8
MMS	Mcmillan Shakespeare	Industrials	6
MND	Monadelphous Group	Industrials	6
MQG	Maccquarie Group Limited	Financials	4
MTS	Metcash Limited	Consumer Staples	2
NAB	National Aust. Bank	Financials	4
NCM	Newcrest Mining	Materials	8
NEC	Nine Entertainment	Consumer Discretionary	1
NST	Northern Star	Materials	8
NUF	Nufarm Limited	Materials	8
NVT	Navitas Limited	Consumer Discretionary	1
ORA	Orora Limited	Materials	8
ORG	Origin Energy	Energy	3
ORI	Orica Limited	Materials	8
OSH	Oil Search Limited 10 Toea	Energy	3
OZL	OZ Minerals	Materials	8
PGH	Pact Group Holdings Limited	Materials	8
PMV	Premier Investments	Consumer Discretionary	1
PPT	Perpetual Limited	Financials	4
PRY	Primary Health Care	Health Care	5
PTM	Platinum Asset	Financials	4
QAN	Qantas Airways	Industrials	6
QBE	QBE Insurance Group	Financials	4
QUB	QUBE Holdings Limited	Industrials	6
REA	REA Group	Information Technology	7
RHC	Ramsay Health Care	Health Care	5
RIO	RIO Tinto Limited	Materials	8
SCG	Scentre Group Stapled Securities	Real Estate	9
SCP	Sca Property Group Units FP Stapled Securities	Real Estate	9
SDF	Steadfast Group Limited	Financials	4
SEK	Seek Limited	Industrials	6
SFR	Sandfire Resources	Materials	8
SGM	Sims Metal MGMT Limited	Materials	8
SGP	Stockland Units/ Stapled Securities	Real Estate	9
SHL	Sonic Healthcare	Health Care	5
SKC	Skycity Ent Group Limited Foreign Exempt NZX	Consumer Discretionary	1
SKI	Spark Infrastructure Stapled \$0.65 Loan Note and Unit US Prohib	Utilities	11
		Telecommunication	
SPK	Spark New Zealand Foreign Exempt NZX	Services	10
STO	Santos Limited	Energy	3
SUL	Super Ret Rep Limited	Consumer Discretionary	1
SUN	Suncorp Group Limited	Financials	4
SVW	Seven Group Holdings	Industrials	6
SWW	Seven West Media Limited	Consumer Discretionary	1
SXL	STHN Cross Media	Consumer Discretionary	1
SYD	SYD Airport FP Stapled Securities	Industrials	6
	Transurban Group Ordinary Shares/Units FP Triple Stapled	Industrials	6
TCL	Tassal Group Limited	Consumer Staples	2
TAH	Tabcorp Holdings Limited	Consumer Discretionary	1
		Telecommunication	
TLS	Telstra Corporation	Services	10
TME	Trade Me Group Foreign Exempt NZX	Consumer Discretionary	1
TNE	Technology One	Information Technology	7
		Telecommunication	
TPM	TPG Telecom Limited	Services	10

TWE	Treasury Wine Estate	Consumer Staples	2
WBC	Westpac Banking Corp	Financials	4
WES	Wesfarmers Limited	Consumer Discretionary	1
WHC	Whitehaven Coal	Energy	3
WOR	Worleyparsons Limited	Energy	3
WOW	Woolworths Group Limited	Consumer Staples	2
WPL	Woodside Petroleum	Energy	3
WSA	Western Areas Limited	Materials	8

## Appendix D : List of Cases

**Table D.1: Cases – Economic Rights, Control and Decision Making Rights of Shareholders**

Year	Case Citation	Company Type
2014	BB Retail Capital Pty Ltd v Alexandria Landfill Pty Ltd [2014] NSWSC 1499 (30 October 2014)	Non-Listed
2014	HUNT & ATKINS AND ORS [2014] FamCA 1076 (04 December 2014)	Non-Listed
2014	ICM INVESTMENTS PTY LIMITED [2014] VSCA 246 (03 October 2014)	Non-Listed
2014	Wambo Coal Pty Ltd v Sumiseki Materials Co Ltd [2014] NSWCA 326 (17 September 2014)	Non-Listed
2015	Grant-Taylor v Babcock & Brown Limited [2015] FCA 149 (04 March 2015)	Listed
2015	KGD Investments Pty Ltd v Placard Holdings Pty Ltd [2015] VSC 712 (11 December 2015)	Non-Listed
2016	Grant-Taylor v Babcock & Brown Limited [2015] FCA 149 (21 April 2016)	Listed
2016	IN THE MATTER OF ALEXANDRIA LANDFILL PTY LIMITED [2016] NSWSC 1503 (25 October 2016)	Non-Listed
2016	In the matter of Tolco Pty Limited [2016] NSWSC 1069 (03 August 2016)	Non-Listed
2016	In the matter of Alexandria Landfill Pty Limited [2016] NSWSC 1503 (25 October 2016)	Non-Listed
2017	In the matter of Sirrah Pty Limited [2017] NSWSC 1683 (05 December 2017)	Non-Listed
2018	In the matter of Jobema Pty Ltd [2018] NSWSC 856 (07 June 2018)	Non-Listed
2016	Australian Centre for Corporate Governance Responsibility v Commonwealth Bank of Australia [2016] FCAFC 80 (10 June 2016)	Listed

*Legend: Listed = Public Listed Company, Non-Listed = Australian Private Company*

## Appendix E : Voting results for AGMs resolution (2014-2018)

### Election of Directors (ED)

**Table E.1: Election of director's resolution- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	52.2401%	3.8678%	1.2220%	0.2651%	5.3549%	57.5950%
2015 Poll	60.0497%	1.4403%	0.9058%	0.2999%	2.6461%	62.6957%
2016 Poll	60.6726%	1.6671%	0.5898%	0.5698%	2.8267%	63.4992%
2017 Poll	63.3826%	2.8158%	0.4438%	0.2140%	3.4737%	66.8562%
2018 Poll	65.0395%	1.1280%	0.8854%	0.3657%	2.3791%	67.4186%

**Table E.2: Final voting results for ED**

For	Against	Abstain	Dissent (Final)	Total (Final Voting)	Total Voting Difference	Difference of Dissent
59.5171%	4.2427%	0.2956%	4.5383%	64.0553%	6.4603%	-0.8166%
65.5117%	0.8202%	0.5480%	1.3682%	66.8800%	4.1843%	-1.2778%
63.2367%	5.4020%	0.5362%	5.9382%	69.1748%	5.6756%	3.1115%
67.4558%	2.5485%	0.3799%	2.9283%	70.3841%	3.5279%	-0.5453%
68.2194%	1.1991%	0.3669%	1.5661%	69.7855%	2.3669%	-0.8130%

Source: Author

**Table E.3: Election of director's resolution - resolutions passed on show of hands (S H)**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	71.9239%	1.3514%	0.3609%	0.1542%	1.8665%	73.7904%
2015 S H	66.6721%	0.6583%	0.8113%	0.2260%	1.6955%	68.3676%
2016 S H	75.2033%	1.8470%	0.1687%	0.0993%	2.1150%	77.3183%
2017 S H	65.0169%	0.1421%	6.3215%	0.1752%	6.6388%	71.6557%
2018 S H	45.0062%	0.5052%	21.1077%	0.0589%	21.6717%	66.6779%

Source: Author

**Table E.4: Election of director's resolution - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	57.5711%	3.1863%	0.9887%	0.2350%	4.4101%	61.9812%
2015 PI	60.9957%	1.3286%	0.8923%	0.2894%	2.5103%	63.5060%
2016 PI	61.9361%	1.6827%	0.5532%	0.5288%	2.7648%	64.7009%
2017 PI	63.5748%	2.5013%	1.1353%	0.2095%	3.8460%	67.4209%
2018 PI	64.3366%	1.1061%	1.5950%	0.3550%	3.0560%	67.3927%

Source: Author

**Re-election of Directors (RED)**

**Table E.5: Re-election of director's resolution- votes exercised on poll**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	57.6268%	2.1443%	0.6532%	0.4469%	3.2445%	60.8712%
2015 Poll	59.2234%	2.1325%	0.9004%	0.7023%	3.7352%	62.9586%
2016 Poll	62.9513%	1.8702%	0.6671%	0.6512%	3.1884%	66.1398%
2017 Poll	63.2047%	2.6939%	0.8879%	0.2303%	3.8121%	67.0168%
2018 Poll	63.2316%	2.5555%	1.2011%	0.4373%	4.1939%	67.4255%

**Table E.6: Final voting results for RED**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
63.8020%	2.0608%	0.3313%	2.3920%	66.1941%	5.3228%	-0.8524%
63.6912%	2.3236%	0.6605%	2.9841%	66.6752%	3.7166%	-0.7511%
65.8931%	1.7752%	0.2357%	2.0109%	67.9040%	1.7643%	-1.1775%
66.1000%	2.5777%	0.2627%	2.8404%	68.9404%	1.9235%	-0.9718%
68.2676%	4.2511%	0.4442%	4.6953%	72.9629%	5.5374%	0.5014%

Source: Author

**Table E.7: Election of director's resolution - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	64.4877%	2.1775%	1.0396%	0.2320%	3.4490%	67.9367%
2015 S H	64.4877%	2.1775%	1.0396%	0.2320%	3.4490%	67.9367%
2016 S H	59.1281%	1.6160%	3.1751%	0.0765%	4.8676%	63.9957%
2017 S H	48.5892%	2.5350%	6.9135%	1.0527%	10.5013%	59.0905%
2018 S H	55.4396%	1.2761%	10.9328%	0.0691%	12.2781%	67.7177%

Source: Author

**Table E.8: Re-election of director's resolution - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	60.6761%	2.1589%	0.8249%	0.3526%	3.3364%	64.0125%
2015 PI	60.4807%	1.9721%	0.9248%	0.5882%	3.4850%	63.9658%
2016 PI	62.2881%	1.8261%	1.1022%	0.5564%	3.4846%	65.7727%
2017 PI	61.6285%	2.6768%	1.5378%	0.3190%	4.5335%	66.1620%
2018 PI	62.7939%	2.4836%	1.6435%	0.4205%	4.5476%	67.3415%

Source: Author

## **Remuneration Report (RR)**

**Table E.9: Remuneration report resolution- votes exercised on poll**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	53.4070%	3.1834%	0.7894%	1.4402%	5.4130%	58.8200%
2015 Poll	53.5857%	3.5433%	0.5635%	1.4613%	5.5681%	59.1539%
2016 Poll	55.5872%	4.4118%	0.5620%	0.5000%	5.4739%	61.0611%
2017 Poll	58.3754%	3.6996%	0.5976%	1.3195%	5.6167%	63.9921%
2018 Poll	56.4807%	5.8297%	0.8465%	1.0326%	7.7088%	64.1895%

Source: Author

**Table E.10: Final voting results for RR**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
57.8553%	3.3466%	1.0911%	4.4377%	62.2930%	3.4730%	-0.9753%
56.8501%	4.2886%	1.2561%	5.5446%	62.3947%	3.2409%	-0.0235%
57.6121%	4.5574%	0.5520%	5.1093%	62.7214%	1.6603%	-0.3646%
60.4477%	3.8389%	0.7993%	4.6382%	65.0859%	1.0938%	-0.9785%
58.0249%	6.4570%	1.1181%	7.5751%	65.6000%	1.4104%	-0.1338%

**Table E.11: Remuneration report resolution - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	52.6285%	3.0331%	1.1620%	2.1524%	6.3475%	58.9759%
2015 S H	51.2830%	2.7567%	1.6986%	1.3238%	5.7791%	57.0621%
2016 S H	54.2918%	1.2787%	0.7420%	1.3576%	3.3783%	57.6701%
2017 S H	51.2896%	1.5698%	4.2453%	0.1793%	5.9944%	57.2840%
2018 S H	47.4170%	0.4009%	9.6687%	0.4524%	10.5220%	57.9390%

Source: Author

**Table E.12: Remuneration report resolution - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	53.1499%	3.1347%	0.9102%	1.6754%	5.7203%	58.8701%
2015 PI	53.0833%	3.3717%	0.8030%	1.4313%	5.6060%	58.6893%
2016 PI	55.3833%	3.9187%	0.5903%	0.6283%	5.1373%	60.5206%
2017 PI	57.6024%	3.4672%	0.9955%	1.2045%	5.6672%	63.2696%
2018 PI	56.0407%	5.5662%	1.2748%	1.0044%	7.8454%	63.8861%

Source: Author

### **Director Fees (DF)**

**Table E.13: Director Fee's resolution- votes exercised on poll**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	47.0066%	0.8610%	1.3039%	0.4041%	2.5690%	49.5756%
2015 Poll	54.8393%	1.4320%	0.7294%	0.2068%	2.3681%	57.2075%
2016 Poll	55.0726%	2.3007%	0.9421%	0.4690%	3.7118%	58.7844%
2017 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2018 Poll	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.14: Final voting results for DF**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
89.3114%	2.0916%	0.6694%	2.7610%	92.0724%	42.4968%	0.1920%
76.1793%	2.8625%	0.6275%	3.4901%	79.6693%	22.4619%	1.1219%
67.4629%	2.5369%	0.5470%	3.0840%	70.5468%	11.7625%	-0.6278%
N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A

**Table E.15: Director Fees resolution - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	65.3556%	0.4175%	0.1386%	0.1765%	0.7326%	66.0882%
2015 S H	50.3616%	0.9825%	1.9462%	0.8304%	3.7591%	54.1207%
2016 S H	28.1408%	0.4357%	0.7491%	0.0412%	1.2259%	29.3667%
2017 S H	57.6707%	1.9428%	1.1240%	0.1886%	3.2554%	60.9261%
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.16: Director fees resolution - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	59.2393%	0.5653%	0.5270%	0.2524%	1.3447%	60.5840%
2015 PI	53.3467%	1.2821%	1.1350%	0.4147%	2.8318%	56.1785%
2016 PI	49.6862%	1.9277%	0.9035%	0.3834%	3.2146%	52.9009%
2017 PI	57.6707%	1.9428%	1.1240%	0.1886%	3.2554%	60.9261%
2018 PI	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

### Performance Rights (PR)

**Table E.17: Performance rights resolution- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	57.5225%	3.5733%	0.6410%	0.6996%	4.9140%	62.4365%
2015 Poll	55.9841%	3.9810%	0.8530%	0.5142%	5.3482%	61.3323%
2016 Poll	60.6389%	5.2196%	0.5018%	0.4139%	6.1353%	66.7742%
2017 Poll	64.7599%	2.5985%	0.6765%	0.3154%	3.5904%	68.3502%
2018 Poll	64.1410%	3.7288%	0.9637%	0.2601%	4.9526%	69.0936%

Source: Author

**Table E.18: Final voting results for PR**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
58.1123%	3.9960%	0.7729%	4.7690%	62.8813%	0.4448%	-0.1450%
61.2984%	3.8851%	0.4756%	4.3607%	65.6590%	4.3267%	-0.9875%
61.7598%	4.4473%	0.4189%	4.8662%	66.6260%	-0.1481%	-1.2690%
65.7737%	2.6633%	0.3322%	2.9955%	68.7692%	0.4190%	-0.5948%
65.5545%	3.9137%	0.2977%	4.2115%	69.7659%	0.6724%	-0.7411%

**Table E.19: Performance rights resolution - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Hands	62.8961%	3.1292%	0.5924%	0.5675%	4.2892%	67.1853%
2015 Hands	60.3658%	0.6816%	0.4421%	0.7326%	1.8564%	62.2221%
2016 Hands	67.1852%	0.9328%	0.3750%	0.3104%	1.6183%	68.8035%
2017 Hands	61.5415%	2.2224%	1.4250%	0.1393%	3.7867%	65.3282%
2018 Hands	57.2150%	1.1381%	0.7555%	1.2021%	3.0957%	60.3107%

Source: Author

**Table E.20: Performance rights resolution - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	54.5372%	3.8200%	0.6680%	0.7731%	5.2611%	59.7983%
2015 PI	56.8414%	3.3355%	0.7726%	0.5569%	4.6650%	61.5064%
2016 PI	61.5316%	4.6350%	0.4845%	0.3998%	5.5193%	67.0509%
2017 PI	64.5587%	2.5750%	0.7233%	0.3044%	3.6026%	68.1613%
2018 PI	63.9967%	3.6749%	0.9594%	0.2797%	4.9139%	68.9106%

Source: Author



## Grant of Equity (DF)

**Table E.21: Grant of equity resolution- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	50.8765%	8.3077%	0.7107%	0.4376%	9.4561%	60.3326%
2015 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2016 Poll	56.6192%	4.7988%	3.1891%	0.4624%	8.4503%	65.0695%
2017 Poll	51.5868%	6.0532%	1.5059%	0.3892%	7.9482%	59.5350%
2018 Poll	58.8543%	6.2682%	1.6861%	0.6096%	8.5638%	67.4181%

Source: Author

**Table E.22: Final voting results for DF**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
51.7004%	8.3166%	0.4396%	8.7562%	60.4566%	0.1240%	-0.6999%
N/A	N/A	N/A	N/A	N/A	N/A	N/A
60.3895%	4.8090%	0.4632%	5.2722%	65.6617%	0.5923%	-3.1781%
53.5305%	6.2352%	0.3894%	6.6246%	60.1551%	0.6201%	-1.3236%
60.6127%	6.2584%	0.6118%	6.8702%	67.4829%	0.0648%	-1.6936%

Source: Author

**Table E.23: Grant of equity resolution - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	39.4844%	0.4165%	0.4877%	0.1597%	1.0639%	40.5483%
2015 S H	35.6566%	4.1681%	0.8440%	0.7296%	5.7417%	41.3983%
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	16.5592%	0.0363%	0.0000%	0.0005%	0.0368%	16.5960%
2018 S H	28.7071%	0.0010%	0.0000%	0.0435%	0.0446%	28.7517%

Source: Author

**Table E.24: Grant of equity resolution - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	44.0412%	3.5730%	0.5769%	0.2709%	4.4208%	48.4620%
2015 PI	35.6566%	4.1681%	0.8440%	0.7296%	5.7417%	41.3983%
2016 PI	56.6192%	4.7988%	3.1891%	0.4624%	8.4503%	65.0695%
2017 PI	44.5813%	4.8498%	1.2047%	0.3115%	6.3660%	50.9472%
2018 PI	51.3175%	4.7014%	1.2646%	0.4681%	6.4340%	57.7515%

Source: Author

**Director Other (DO)**

**Table E.25: Director other resolution- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	46.8944%	1.4524%	1.0347%	0.5228%	3.0099%	49.9043%
2015 Poll	47.4756%	7.9235%	0.6795%	0.4850%	9.0881%	56.5637%
2016 Poll	56.6469%	3.6879%	0.5785%	0.5573%	4.8238%	61.4706%
2017 Poll	59.9937%	7.0894%	0.4623%	0.4886%	8.0403%	68.0340%
2018 Poll	55.2838%	4.2269%	0.4801%	0.8681%	5.5751%	60.8589%

Source: Author

**Table E.26: Final voting results for DO**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
64.7613%	3.4837%	0.4950%	3.9787%	68.7400%	18.8357%	0.9689%
57.5467%	7.3848%	0.5145%	7.8993%	65.4460%	8.8824%	-1.1887%
63.4250%	3.5683%	0.5422%	4.1105%	67.5355%	6.0649%	-0.7132%
63.9323%	6.6233%	0.4905%	7.1139%	71.0461%	3.0122%	-0.9265%
60.2169%	4.7120%	0.7853%	5.4973%	65.7142%	4.8553%	-0.0778%

**Table E.27: Director other resolution - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	51.9296%	5.3810%	0.4633%	0.4103%	6.2545%	58.1841%
2015 S H	68.0776%	2.9740%	0.0727%	3.8351%	6.8818%	74.9594%
2016 S Hands	71.2864%	2.7828%	0.1133%	2.8377%	5.7337%	77.0201%
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.28: Director other resolution - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	58.6705%	4.8665%	0.4071%	1.3546%	6.6282%	65.2987%
2015 PI	49.7647%	7.3735%	0.6121%	0.8573%	8.8429%	58.6076%
2016 PI	57.6228%	3.6276%	0.5475%	0.7093%	4.8844%	62.5073%
2017 PI	59.9937%	7.0894%	0.4623%	0.4886%	8.0403%	68.0340%
2018 PI	55.2838%	4.2269%	0.4801%	0.8681%	5.5751%	60.8589%

Source: Author

### Non-Executive Directors Election (NEDE)

**Table E.29: Non-executive director's election resolution- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	67.9601%	0.3066%	0.2751%	0.0497%	0.6315%	68.5915%
2015 Poll	62.4476%	0.5215%	0.5567%	0.1942%	1.2725%	63.7201%
2016 Poll	67.9782%	0.1796%	0.2275%	0.1457%	0.5528%	68.5310%
2017 Poll	57.2597%	0.1703%	0.5393%	0.1871%	0.8968%	58.1564%
2018 Poll	59.3070%	7.6424%	0.4159%	0.1159%	8.1741%	67.4811%

Source: Author

**Table E.30: Final voting results for NEDE**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
68.3280%	0.3070%	0.0497%	0.3568%	68.6848%	0.0933%	-0.2747%
63.8365%	0.5225%	0.1790%	0.7015%	64.5380%	0.8179%	-0.5710%
68.4502%	0.1811%	0.1466%	0.3277%	68.7779%	0.2470%	-0.2251%
58.7939%	0.1963%	0.1048%	0.3011%	59.0950%	0.9385%	-0.5957%
61.6330%	7.7579%	0.1390%	7.8968%	69.5299%	2.0488%	-0.2773%

**Table E.31: Non-executive director's election resolution - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	56.4511%	8.6271%	0.2231%	0.1029%	8.9532%	65.4042%
2015 S H	N/A	N/A	N/A	N/A	N/A	N/A
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.32: Non-executive director's election resolution - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	64.1237%	3.0801%	0.2578%	0.0674%	3.4054%	67.5291%
2015 PI	62.4476%	0.5215%	0.5567%	0.1942%	1.2725%	63.7201%
2016 PI	67.9782%	0.1796%	0.2275%	0.1457%	0.5528%	68.5310%
2017 PI	57.2597%	0.1703%	0.5393%	0.1871%	0.8968%	58.1564%
2018 PI	59.3070%	7.6424%	0.4159%	0.1159%	8.1741%	67.4811%

Source: Author

**Re-Election of Non-Executive Directors Election (RNED)**

**Table E.33: Re-election of non-executive director's resolution- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	53.5098%	3.3443%	0.8458%	0.2155%	4.4056%	57.9154%
2015 Poll	62.9858%	0.6035%	0.5111%	0.3485%	1.4631%	64.4489%
2016 Poll	70.3806%	0.4396%	0.2381%	0.1153%	0.7931%	71.1737%
2017 Poll	63.6030%	2.1584%	0.2591%	0.1705%	2.5880%	66.1910%
2018 Poll	64.9610%	2.9860%	0.3922%	0.2288%	3.6069%	68.5679%

Source: Author

**Table E.34: Final voting results for RNED**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
61.8814%	3.2197%	0.1819%	3.4017%	65.2831%	7.3677%	-1.0039%
64.1771%	0.6083%	0.3384%	0.9467%	65.1238%	0.6749%	-0.5164%
70.8627%	0.4858%	0.1156%	0.6014%	71.4641%	0.2905%	-0.1917%
64.2289%	2.3061%	0.1156%	2.4217%	66.6506%	0.4596%	-0.1663%
66.2008%	3.0606%	0.1684%	3.2290%	69.4298%	0.8619%	-0.3780%

**Table E.35: Re-election of non-executive director's resolution - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	59.8595%	12.2677%	0.2503%	0.2300%	12.7480%	72.6075%
2015 S H	62.3438%	7.3597%	0.1929%	0.0926%	7.6453%	69.9891%
2016 S H	71.8938%	2.3094%	0.1599%	0.0599%	2.5292%	74.4229%
2017 S H	78.5397%	4.8842%	0.2929%	0.3285%	5.5056%	84.0453%
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.36: Re-election of non-executive director's resolution - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	56.0497%	6.9136%	0.6076%	0.2213%	7.7426%	63.7922%
2015 PI	62.8253%	2.2926%	0.4316%	0.2845%	3.0086%	65.8340%
2016 PI	70.8850%	1.0629%	0.2121%	0.0968%	1.3718%	72.2568%
2017 PI	65.2626%	2.4612%	0.2629%	0.1880%	2.9122%	68.1748%
2018 PI	64.9610%	2.9860%	0.3922%	0.2288%	3.6069%	68.5679%

Source: Author

### **Remuneration of Non-Executive Directors (NED-R)**

**Table E.37: Remuneration of non-executive director's resolution- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	51.4427%	1.6770%	0.3398%	0.1151%	2.1319%	53.5746%
2015 Poll	51.2879%	0.3648%	0.6218%	0.3534%	1.3400%	52.6279%
2016 Poll	56.7045%	5.1569%	0.3786%	2.5360%	8.0715%	64.7760%
2017 Poll	68.3158%	0.3792%	0.6190%	0.1377%	1.1359%	69.4517%
2018 Poll	64.6415%	4.6499%	0.6905%	0.3237%	5.6642%	70.3057%

Source: Author

**Table E.38: Final voting results for NED-R**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
60.8977%	2.1692%	0.2354%	2.4047%	63.3023%	9.7277%	0.2728%
50.6513%	14.1582%	0.3067%	14.4648%	65.1162%	12.4883%	13.1248%
57.1127%	5.2137%	2.5258%	7.7395%	64.8522%	0.0762%	-0.3319%
69.5221%	0.5095%	0.1681%	0.6776%	70.1997%	0.7480%	-0.4583%
65.3808%	4.6531%	0.3258%	4.9789%	70.3597%	0.0540%	-0.6852%

**Table E.39: Remuneration of non-executive director's resolution - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	55.1913%	2.4876%	0.3633%	0.3880%	3.2389%	58.4302%
2015 S H	52.0380%	3.0201%	12.9375%	0.1487%	16.1064%	68.1444%
2016 S H	66.1983%	17.1946%	0.1860%	0.0327%	17.4133%	83.6116%
2017 S H	63.8548%	0.6314%	18.2591%	0.1441%	19.0346%	82.8893%
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.40: Remuneration of non-executive director's resolution - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	53.3170%	2.0823%	0.3516%	0.2515%	2.6854%	56.0024%
2015 PI	51.4379%	0.8959%	3.0850%	0.3125%	4.2933%	55.7312%
2016 PI	57.5676%	6.2512%	0.3611%	2.3085%	8.9207%	66.4883%
2017 PI	67.2005%	0.4422%	5.0290%	0.1393%	5.6105%	72.8111%
2018 PI	64.6415%	4.6499%	0.6905%	0.3237%	5.6642%	70.3057%

Source: Author

**Non-Executive Directors All Other Resolutions (NED-R)**

**Table E.41: Non-executive director's all other resolution- votes exercised on poll**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2015 Poll	62.8488%	2.4893%	0.5229%	0.3514%	3.3637%	66.2125%
2016 Poll	61.9124%	1.9325%	0.6008%	0.1423%	2.6756%	64.5880%
2017 Poll	50.2779%	2.7867%	0.7577%	0.2559%	3.8002%	54.0781%
2018 Poll	62.8539%	1.9163%	0.4317%	0.5957%	2.9437%	65.7976%

Source: Author

**Table E.42: Final voting results for NED-R**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
81.2766%	0.3484%	0.2233%	0.5717%	81.8483%	N/A	N/A
64.2669%	2.5957%	0.3555%	2.9513%	67.2182%	1.0057%	-0.4124%
62.9378%	2.0165%	0.1541%	2.1706%	65.1085%	0.5204%	-0.5050%
54.5575%	2.5063%	0.2776%	2.7839%	57.3414%	3.2633%	-1.0163%
63.3325%	1.9295%	0.5960%	2.5255%	65.8580%	0.0604%	-0.4183%

Source: Author

**Table E.43: Non-executive director's all other resolution - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	28.4679%	1.2375%	2.4461%	0.3145%	3.9981%	32.4661%
2015 S H	N/A	N/A	N/A	N/A	N/A	N/A
2016 S H	45.4531%	1.1413%	0.1191%	0.1163%	1.3767%	46.8298%
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.44: Non-executive director's all other resolution - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	28.4679%	1.2375%	2.4461%	0.3145%	3.9981%	32.4661%
2015 PI	62.8488%	2.4893%	0.5229%	0.3514%	3.3637%	66.2125%
2016 PI	59.5611%	1.8194%	0.5320%	0.1386%	2.4900%	62.0512%
2017 PI	50.2779%	2.7867%	0.7577%	0.2559%	3.8002%	54.0781%
2018 PI	62.8539%	1.9163%	0.4317%	0.5957%	2.9437%	65.7976%

Source: Author

**Auditors- All Resolutions (Audi)**

**Table E.45: Auditors all resolutions- votes exercised on poll**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	61.0190%	0.2420%	0.5581%	0.1542%	0.9542%	61.9732%
2015 Poll	50.9721%	0.1497%	0.7059%	0.2453%	1.1009%	52.0730%
2016 Poll	67.4395%	0.0961%	0.4544%	0.1200%	0.6705%	68.1100%
2017 Poll	64.1372%	0.2742%	0.4561%	0.0912%	0.8215%	64.9587%
2018 Poll	47.3238%	0.4681%	0.1550%	0.0388%	0.6619%	47.9856%

Source: Author

**Table E.46: Final voting results for Audi**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
71.6881%	0.7338%	0.2470%	0.9808%	72.6689%	10.6958%	0.0266%
75.0676%	0.3300%	0.1540%	0.4840%	75.5515%	23.4785%	-0.6169%
76.4388%	0.3468%	0.1853%	0.5321%	76.9709%	8.8609%	-0.1384%
76.7335%	0.5044%	0.1764%	0.6808%	77.4143%	12.4557%	-0.1406%
69.7587%	0.4339%	0.2069%	0.6407%	70.3994%	22.4138%	-0.0212%

Source: Author

**Table E.47: Auditors all resolutions - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	64.9994%	0.1072%	0.4414%	0.1993%	0.7479%	65.7472%
2015 S H	N/A	N/A	N/A	N/A	N/A	N/A
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.48: Auditors all resolutions - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	62.1562%	0.2035%	0.5247%	0.1671%	0.8953%	63.0515%
2015 PI	50.9721%	0.1497%	0.7059%	0.2453%	1.1009%	52.0730%
2016 PI	67.4395%	0.0961%	0.4544%	0.1200%	0.6705%	68.1100%
2017 PI	64.1372%	0.2742%	0.4561%	0.0912%	0.8215%	64.9587%
2018 PI	47.3238%	0.4681%	0.1550%	0.0388%	0.6619%	47.9856%

Source: Author

### Financial Assistance- (FA)

**Table E.49: Financial assistance resolutions- votes exercised on poll**

Resolutions	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	46.1372%	5.6245%	1.3038%	0.3211%	7.2493%	53.3866%
2015 Poll	74.9363%	0.4801%	0.2114%	0.1880%	0.8795%	75.8157%
2016 Poll	64.3290%	2.8977%	0.4397%	0.6396%	3.9770%	68.3059%
2017 Poll	70.5251%	0.9889%	0.6301%	0.1810%	1.8000%	72.3251%
2018 Poll	62.4537%	0.2726%	2.0434%	0.2445%	2.5606%	65.0143%

Source: Author

**Table E.50: Final voting results for FA**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
47.6613%	5.6331%	0.3282%	5.9614%	53.6227%	0.2361%	-1.2880%
75.4111%	0.4805%	0.1941%	0.6746%	76.0857%	0.2700%	-0.2049%
65.0236%	2.9038%	0.6416%	3.5454%	68.5690%	0.2630%	-0.4316%
71.3021%	0.9902%	0.4401%	1.4302%	72.7324%	0.4073%	-0.3698%
66.0865%	0.2732%	0.2458%	0.5190%	66.6055%	1.5912%	-2.0416%

Source: Author

**Table E.51: Financial assistance resolutions - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	87.1663%	0.0132%	0.2713%	0.0906%	0.3751%	87.5415%
2015 S H	60.2822%	0.1524%	0.7818%	0.2226%	1.1568%	61.4391%
2016 S H	79.2574%	0.0412%	0.0948%	0.0476%	0.1837%	79.4410%
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.52: Financial assistance resolutions - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	59.8136%	3.7541%	0.9596%	0.2442%	4.9579%	64.7715%
2015 PI	70.0516%	0.3709%	0.4015%	0.1995%	0.9719%	71.0235%
2016 PI	68.0611%	2.1836%	0.3535%	0.4916%	3.0286%	71.0897%
2017 PI	70.5251%	0.9889%	0.6301%	0.1810%	1.8000%	72.3251%
2018 PI	62.4537%	0.2726%	2.0434%	0.2445%	2.5606%	65.0143%

Source: Author



### Takeover (Tak)

**Table E.53: Takeover related resolutions- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	61.8539%	1.8511%	0.2232%	0.1599%	2.2342%	64.0882%
2015 Poll	55.6389%	0.2778%	0.8298%	0.2703%	1.3779%	57.0168%
2016 Poll	70.7032%	0.1768%	0.4779%	0.1532%	0.8078%	71.5110%
2017 Poll	64.6065%	0.1884%	0.6442%	0.1587%	0.9913%	65.5978%
2018 Poll	66.3159%	0.2239%	0.9145%	0.7462%	1.8846%	68.2005%

Source: Author

**Table E.54: Final voting results for Tak**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
62.1761%	1.8534%	0.1599%	2.0132%	64.1893%	0.1011%	-0.2210%
59.1314%	0.3040%	0.2281%	0.5320%	59.6635%	2.6466%	-0.8459%
71.6212%	0.1722%	0.1542%	0.3264%	71.9476%	0.4366%	-0.4815%
73.9864%	0.1885%	0.1590%	0.3475%	74.3339%	8.7361%	-0.6438%
67.3387%	0.2445%	0.7010%	0.9455%	68.2842%	0.0837%	-0.9391%

Source: Author

**Table E.55: Takeover related resolutions - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	60.2419%	0.2753%	0.9284%	0.4021%	1.6058%	61.8477%
2015 S H	58.9675%	0.1567%	0.1796%	0.0936%	0.4300%	59.3975%
2016 S H	78.8719%	0.0490%	0.1176%	0.0347%	0.2012%	79.0731%
2017 S H	58.9106%	0.6926%	1.0776%	0.2506%	2.0207%	60.9314%
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.56: Takeover related resolutions - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	61.3166%	1.3259%	0.4583%	0.2406%	2.0248%	63.3413%
2015 PI	55.9163%	0.2678%	0.7756%	0.2556%	1.2989%	57.2152%
2016 PI	71.1837%	0.1692%	0.4567%	0.1462%	0.7722%	71.9558%
2017 PI	63.7928%	0.2604%	0.7061%	0.1718%	1.1383%	64.9312%
2018 PI	66.3159%	0.2239%	0.9145%	0.7462%	1.8846%	68.2005%

Source: Author

### **Issue of Shares (IOS)**

**Table E.57: Issue of shares related resolutions- votes exercised on poll**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	35.1731%	0.9015%	0.8187%	0.0824%	1.8025%	36.9755%
2015 Poll	51.8334%	0.5328%	0.7937%	7.7425%	9.0690%	60.9024%
2016 Poll	37.8161%	0.2733%	0.8968%	1.3787%	2.5488%	40.3650%
2017 Poll	39.7831%	0.9090%	2.1264%	6.6860%	9.7214%	49.5046%
2018 Poll	40.4784%	0.1454%	0.3268%	5.5119%	5.9842%	46.4626%

Source: Author

**Table E.58: Final voting results for IOS**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
62.6141%	0.9733%	0.1406%	1.1139%	63.7279%	26.7524%	-0.6886%
56.8428%	9.2369%	6.4911%	15.7280%	72.5709%	11.6684%	6.6590%
58.2500%	0.9264%	1.4021%	2.3285%	60.5785%	20.2135%	-0.2204%
60.2428%	0.9948%	5.7470%	6.7418%	66.9846%	17.4800%	-2.9796%
48.8647%	0.1548%	8.5959%	8.7508%	57.6155%	11.1529%	2.7666%

Source: Author

**Table E.59: Issue of shares related resolutions - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	41.7283%	1.3542%	18.9766%	11.3749%	31.7057%	73.4340%
2015 S H	34.3233%	4.1900%	7.7941%	5.0313%	17.0154%	51.3387%
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	12.8173%	1.1489%	3.4770%	0.0098%	4.6357%	17.4530%
2018 S H	28.6745%	0.0336%	0.0000%	0.0435%	0.0771%	28.7517%

Source: Author

**Table E.60: Issue of shares related resolutions - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	36.8119%	1.0146%	5.3581%	2.9055%	9.2783%	46.0901%
2015 PI	46.8305%	1.5777%	2.7938%	6.9679%	11.3394%	58.1700%
2016 PI	37.8161%	0.2733%	0.8968%	1.3787%	2.5488%	40.3650%
2017 PI	35.9309%	0.9433%	2.3194%	5.7323%	8.9949%	44.9258%
2018 PI	40.4784%	0.1454%	0.3268%	5.5119%	5.9842%	46.4626%

Source: Author

**Dividend- (Divd)**

**Table E.61: Dividend related resolutions- votes exercised on poll**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2015 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2016 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2017 Poll	33.5700%	0.0342%	0.1354%	0.6097%	0.7794%	34.3493%
2018 Poll	35.7640%	0.0427%	0.0886%	0.5447%	0.6759%	36.4399%

Source: Author

**Table E.62: Final voting results for Divd**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A
84.8909%	0.0279%	0.0305%	0.0585%	84.9494%	N/A	N/A
84.8913%	0.0342%	0.6097%	0.6440%	85.5352%	49.0953%	-33.7054%
86.8759%	0.0428%	0.5447%	0.5875%	87.4633%	87.4633%	-35.8524%

Source: Author

**Table E.63: Dividend related resolutions - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	87.7369%	0.0068%	0.1996%	0.0200%	0.2264%	87.9633%
2015 S H	83.6506%	0.0391%	0.0988%	0.0438%	0.1817%	83.8323%
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.64: Dividend related resolutions - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	N/A	N/A	N/A	N/A	N/A	N/A
2015 PI	N/A	N/A	N/A	N/A	N/A	N/A
2016 PI	N/A	N/A	N/A	N/A	N/A	N/A
2017 PI	33.5700%	0.0342%	0.1354%	0.6097%	0.7794%	34.3493%
2018 PI	35.7640%	0.0427%	0.0886%	0.5447%	0.6759%	36.4399%

Source: Author

### Share Matters - (SM)

**Table E.65: Share matters (Approval and issue of share to MD, COE, Directors etc.) related resolutions- votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	63.4062%	1.7058%	0.4713%	0.1586%	2.3358%	65.7420%
2015 Poll	64.2059%	2.1916%	0.4681%	0.5961%	3.2558%	67.4617%
2016 Poll	68.6038%	1.4214%	0.2919%	0.1768%	1.8901%	70.4938%
2017 Poll	46.1147%	1.5891%	0.7561%	0.2577%	2.6029%	48.7176%
2018 Poll	59.0452%	9.2588%	1.2085%	1.1287%	11.5961%	70.6413%

Source: Author

**Table E.66: Final voting results for SM**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
67.6936%	2.5406%	0.3993%	2.9399%	70.6335%	4.8915%	0.6041%
65.7736%	4.3227%	0.5514%	4.8741%	70.6477%	3.1860%	1.6183%
61.6900%	5.2037%	0.2127%	5.4164%	67.1064%	-3.3874%	3.5263%
52.6018%	2.2318%	0.5040%	2.7358%	55.3377%	6.6200%	0.1329%
58.8955%	10.0589%	1.0544%	11.1133%	70.0088%	-0.6324%	-0.4827%

Source: Author

**Table E.67: Share matters (Approval and issue of share to MD, COE, Directors etc.) related resolutions - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	65.6840%	3.3438%	0.2300%	1.0063%	4.5801%	70.2641%
2015 S H	62.3902%	4.5861%	6.5282%	0.1052%	11.2195%	73.6097%
2016 S H	78.6834%	0.1137%	0.1029%	0.0403%	0.2569%	78.9403%
2017 S H	94.1591%	0.1548%	0.2893%	0.1084%	0.5526%	94.7117%
2018 S H	28.6738%	0.0344%	0.0000%	0.0435%	0.0779%	28.7517%

Source: Author

**Table E.68: Share matters (Approval and issue of share to MD, COE, and Directors etc.) related resolutions - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	63.8618%	2.0334%	0.4231%	0.3282%	2.7847%	66.6464%
2015 PI	64.2059%	2.1916%	0.4681%	0.5961%	3.2558%	67.4617%
2016 PI	71.1237%	1.0945%	0.2447%	0.1427%	1.4818%	72.6055%
2017 PI	52.9782%	1.3842%	0.6894%	0.2364%	2.3100%	55.2882%
2018 PI	55.2488%	8.1058%	1.0574%	0.9931%	10.1563%	65.4051%

Source: Author

### Employee Share - (ES)

**Table E.69: Employees shares related resolutions- votes exercised on poll**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2015 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2016 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2017 Poll	44.1541%	1.0176%	1.1423%	0.2110%	2.3708%	46.5249%
2018 Poll	56.4179%	0.2508%	0.1827%	0.3059%	0.7394%	57.1573%

Source: Author

**Table E.70: Final voting results for ES**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>For</b>
N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A
45.3951%	1.0311%	0.2186%	1.2498%	46.6449%	0.1200%	45.3951%
73.2208%	1.0807%	0.2907%	1.3714%	74.5922%	17.4349%	73.2208%

Source: Author

**Table E.71: Employees shares related resolutions - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	59.5018%	7.9966%	0.2131%	0.0235%	8.2332%	67.7350%
2015 S H	N/A	N/A	N/A	N/A	N/A	N/A
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	69.6861%	0.4399%	0.1636%	0.0271%	0.6305%	70.3166%
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.72: Employees shares related resolutions - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	N/A	N/A	N/A	N/A	N/A	N/A
2015 PI	N/A	N/A	N/A	N/A	N/A	N/A
2016 PI	N/A	N/A	N/A	N/A	N/A	N/A
2017 PI	56.9201%	0.7287%	0.6529%	0.1190%	1.5007%	58.4208%
2018 PI	56.4179%	0.2508%	0.1827%	0.3059%	0.7394%	57.1573%

Source: Author

**Securities/ Stapled Securities - (SSS)**

**Table E.73: Securities and stapled securities (approval and issues) related resolutions - votes exercised on poll**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	55.1530%	1.1562%	0.5216%	2.4046%	4.0824%	59.2354%
2015 Poll	40.6275%	2.0335%	0.8573%	8.4539%	11.3448%	51.9723%
2016 Poll	58.9737%	1.7299%	0.8664%	0.4050%	3.0014%	61.9751%
2017 Poll	56.5723%	2.2175%	0.4715%	0.2154%	2.9045%	59.4768%
2018 Poll	56.3604%	3.8107%	0.6672%	2.4861%	6.9640%	63.3244%

Source: Author

**Table E.74: Final voting results for SSS**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
59.2733%	1.3688%	2.4949%	3.8637%	63.1370%	3.9016%	-0.2187%
44.2681%	2.7161%	8.5087%	11.2248%	55.4929%	3.5206%	-0.1200%
59.2356%	1.5296%	0.4153%	1.9448%	61.1804%	-0.7946%	-1.0565%
70.6277%	2.5838%	0.2295%	2.8134%	73.4411%	13.9643%	-0.0911%
63.6148%	4.0073%	2.4961%	6.5035%	70.1183%	6.7939%	-0.4605%

Source: Author

**Table E.75: Securities and stapled securities (approval and issues) related resolutions - resolutions passed on show of hands**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	67.8344%	2.9802%	0.2863%	0.3512%	3.6177%	71.4521%
2015 S H	59.2591%	1.7975%	0.3756%	8.8287%	11.0018%	70.2609%
2016 S H	72.4510%	0.2167%	0.1317%	4.8097%	5.1580%	77.6090%
2017 S H	48.2855%	0.1359%	0.2839%	0.0969%	0.5167%	48.8022%
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.76: Securities and stapled securities (approval and issues) related resolutions - instructions given to proxy by shareholders**

<b>Year</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	58.9574%	1.7034%	0.4510%	1.7886%	3.9430%	62.9004%
2015 PI	48.0802%	1.9391%	0.6646%	8.6038%	11.2076%	59.2878%
2016 PI	63.4661%	1.2255%	0.6215%	1.8732%	3.7203%	67.1864%
2017 PI	54.7308%	1.7550%	0.4298%	0.1891%	2.3739%	57.1047%
2018 PI	56.3604%	3.8107%	0.6672%	2.4861%	6.9640%	63.3244%

Source: Author

## Shareholders Other (SO)

**Table E.77: Shareholders other related resolutions - votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	55.4327%	0.1618%	5.5820%	0.9768%	6.7206%	62.1533%
2015 Poll	55.8760%	0.1592%	0.6324%	0.4182%	1.2097%	57.0857%
2016 Poll	50.5377%	0.1307%	0.3994%	5.6995%	6.2296%	56.7673%
2017 Poll	36.0500%	0.2650%	0.8660%	3.7436%	4.8746%	40.9246%
2018 Poll	39.5494%	0.6384%	0.6565%	0.8722%	2.1672%	41.7166%

Source: Author

**Table E.78: Final voting results for SO**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
56.7871%	0.1772%	1.0148%	1.1920%	57.9790%	-4.1743%	-5.5286%
56.5337%	0.1604%	0.4466%	0.6070%	57.1407%	0.0550%	-0.6027%
52.0435%	0.2033%	5.7395%	5.9427%	57.9862%	1.2189%	-0.2869%
37.8942%	0.2971%	3.7490%	4.0461%	41.9403%	1.0157%	-0.8285%
42.1976%	0.6867%	0.9110%	1.5977%	43.7953%	2.0787%	-0.5695%

Source: Author

**Table E.79: Securities and stapled securities (approval and issues) related resolutions - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	N/A	N/A	N/A	N/A	N/A	N/A
2015 S H	N/A	N/A	N/A	N/A	N/A	N/A
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	12.8222%	1.1478%	3.4770%	0.0061%	4.6309%	17.4530%
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.80: Securities and stapled securities (approval and issues) related resolutions - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	55.4327%	0.1618%	5.5820%	0.9768%	6.7206%	62.1533%
2015 PI	55.8760%	0.1592%	0.6324%	0.4182%	1.2097%	57.0857%
2016 PI	50.5377%	0.1307%	0.3994%	5.6995%	6.2296%	56.7673%
2017 PI	32.7317%	0.3911%	1.2390%	3.2097%	4.8398%	37.5715%
2018 PI	39.5494%	0.6384%	0.6565%	0.8722%	2.1672%	41.7166%

Source: Author

**Company Name - (CN)**

**Table E.81: Company name related resolutions - votes exercised on poll**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	63.7131%	0.0319%	0.1687%	0.1576%	0.3582%	64.0712%
2015 Poll	58.6937%	0.1705%	1.5322%	0.2090%	1.9117%	60.6054%
2016 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2017 Poll	51.6398%	0.4194%	1.1054%	0.2696%	1.7944%	53.4342%
2018 Poll	40.9578%	0.1959%	0.0817%	0.1498%	0.4275%	41.3853%

Source: Author

**Table E.82: Final voting results for CN**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
84.1863%	0.0325%	0.1576%	0.1901%	84.3764%	20.3052%	-0.1680%
60.5032%	0.1801%	0.2118%	0.3920%	60.8952%	0.2898%	-1.5198%
N/A	N/A	N/A	N/A	N/A	N/A	N/A
52.8202%	0.4247%	0.2721%	0.6969%	53.5170%	0.0829%	-1.0975%
41.0957%	0.1987%	0.1500%	0.3487%	41.4444%	0.0591%	-0.0788%

Source: Author

**Table E.83: Company name related resolutions - resolutions passed on show of hands**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	N/A	N/A	N/A	N/A	N/A	N/A
2015 S H	33.4663%	N/A	0.9880%	N/A	0.9880%	34.4543%
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.84: Company name related resolutions - instructions given to proxy by shareholders**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	63.7131%	0.0319%	0.1687%	0.1576%	0.3582%	64.0712%
2015 PI	46.0800%	0.0852%	1.2601%	0.1045%	1.4499%	47.5299%
2016 PI	N/A	N/A	N/A	N/A	N/A	N/A
2017 PI	51.6398%	0.4194%	1.1054%	0.2696%	1.7944%	53.4342%
2018 PI	40.9578%	0.1959%	0.0817%	0.1498%	0.4275%	41.3853%

Source: Author



### Company Constitution- (Cont)

**Table E.85: Company constitution related resolutions - votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	43.5307%	10.2728%	0.8290%	0.5101%	11.6119%	55.1425%
2015 Poll	34.2752%	18.8387%	0.8093%	0.5398%	20.1878%	54.4630%
2016 Poll	68.0686%	5.5010%	0.3971%	0.1822%	6.0804%	74.1490%
2017 Poll	30.6858%	25.5700%	0.7446%	1.1644%	27.4790%	58.1647%
2018 Poll	21.1536%	39.9927%	0.5211%	2.9803%	43.4941%	64.6478%

Source: Author

**Table E.86: Final voting results for Cont**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
54.9953%	9.9291%	0.4745%	10.4037%	65.3989%	10.2564%	-1.2082%
44.6939%	16.7066%	0.4518%	17.1585%	61.8523%	7.3894%	-3.0293%
69.6379%	5.9042%	0.1805%	6.0847%	75.7226%	1.5737%	0.0043%
35.7338%	30.7225%	9.5680%	40.2905%	76.0243%	17.8596%	12.8115%
26.5781%	37.1483%	2.6865%	39.8348%	66.4129%	1.7651%	-3.6593%

Source: Author

**Table E.87: Company constitution related resolutions - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	58.8420%	0.1975%	1.3522%	0.2474%	1.7971%	60.6390%
2015 S H	51.1221%	0.0029%	0.5175%	0.0345%	0.5548%	51.6769%
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.88: Company constitution related resolutions - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	46.5929%	8.2577%	0.9336%	0.4576%	9.6489%	56.2418%
2015 PI	38.0189%	14.6530%	0.7444%	0.4275%	15.8249%	53.8439%
2016 PI	68.0686%	5.5010%	0.3971%	0.1822%	6.0804%	74.1490%
2017 PI	30.6858%	25.5700%	0.7446%	1.1644%	27.4790%	58.1647%
2018 PI	21.1536%	39.9927%	0.5211%	2.9803%	43.4941%	64.6478%

Source: Author

**Award- Incentives (Long or short term) (AILS)**

**Table E.89: Award-incentive (long or short term) related resolutions - votes exercised on poll**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 Poll	58.8897%	2.6314%	0.6032%	0.3287%	3.5633%	62.4529%
2015 Poll	61.8367%	2.6835%	0.4408%	0.4147%	3.5389%	65.3756%
2016 Poll	60.3751%	3.9029%	0.5857%	1.9261%	6.4146%	66.7898%
2017 Poll	57.0234%	2.7809%	0.3547%	0.2405%	3.3762%	60.3996%
2018 Poll	63.5410%	2.7789%	0.3994%	0.2128%	3.3912%	66.9322%

Source: Author

**Table E.90: Final voting results for AILS**

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Dissent (Final)</b>	<b>Total (Final)</b>	<b>Total Voting Difference</b>	<b>Difference of Dissent</b>
63.0833%	2.6847%	0.3433%	3.0280%	66.1113%	3.6584%	-0.5353%
63.0983%	3.6075%	0.4642%	4.0718%	67.1701%	1.7945%	0.5328%
60.8202%	3.6633%	1.8873%	5.5506%	66.3707%	-0.4191%	-0.8641%
60.6796%	2.9113%	0.3668%	3.2781%	63.9577%	3.5582%	-0.0980%
65.0944%	2.7050%	0.2094%	2.9144%	68.0088%	1.0766%	-0.4767%

Source: Author

**Table E.91: Award-incentive (long or short term) related resolutions - resolutions passed on show of hands**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 S H	70.7720%	4.6386%	0.2854%	0.9897%	5.9136%	76.6857%
2015 S H	73.2029%	1.8434%	0.0965%	1.9501%	3.8900%	77.0928%
2016 S H	67.0303%	0.3674%	0.6860%	0.1066%	1.1601%	68.1903%
2017 S H	57.2187%	4.3361%	3.0156%	0.1640%	7.5157%	64.7345%
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.92: Award-incentive (long or short term) related resolutions - instructions given to proxy by shareholders**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
2014 PI	61.6317%	3.0946%	0.5299%	0.4812%	4.1057%	65.7374%
2015 PI	63.3522%	2.5715%	0.3949%	0.6194%	3.5857%	66.9379%
2016 PI	60.7911%	3.6819%	0.5920%	1.8123%	6.0862%	66.8773%
2017 PI	57.0342%	2.8673%	0.5026%	0.2363%	3.6062%	60.6404%
2018 PI	63.5410%	2.7789%	0.3994%	0.2128%	3.3912%	66.9322%

Source: Author

## Spill

**Table E.93: Spill resolutions - votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	5.1246%	57.4851%	1.1889%	0.9355%	59.6095%	64.7341%
2015 Poll	0.4445%	65.7587%	0.2765%	0.5137%	66.5489%	66.9933%
2016 Poll	5.3309%	60.7641%	0.4273%	0.3553%	61.5467%	66.8776%
2017 Poll	4.4083%	63.2941%	0.5347%	0.3518%	64.1806%	68.5889%
2018 Poll	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn

Source: Author

**Table E.94: Final voting results for Spill**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn
Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn
Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn
0.5497%	64.5792%	0.0893%	64.6686%	65.2183%	-3.3706%	0.4880%
Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn

Source: Author

**Table E.95: Spill resolutions - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	N/A	N/A	N/A	N/A	N/A	N/A
2015 S H	N/A	N/A	N/A	N/A	N/A	N/A
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.96: Spill resolutions - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	5.1246%	57.4851%	1.1889%	0.9355%	59.6095%	64.7341%
2015 PI	0.4445%	65.7587%	0.2765%	0.5137%	66.5489%	66.9933%
2016 PI	5.3309%	60.7641%	0.4273%	0.3553%	61.5467%	66.8776%
2017 PI	4.4083%	63.2941%	0.5347%	0.3518%	64.1806%	68.5889%
2018 PI	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn

Source: Author

### All Others (AO)

**Table E.97: All other resolutions - votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	41.6666%	17.5956%	0.5815%	0.6232%	18.8003%	60.4669%
2015 Poll	63.3395%	0.8428%	0.3053%	6.5470%	7.6950%	71.0345%
2016 Poll	55.0915%	3.6033%	0.5642%	0.7899%	4.9574%	60.0489%
2017 Poll	44.2553%	22.2296%	0.4646%	0.5154%	23.2096%	67.4649%
2018 Poll	44.2553%	22.2296%	0.4646%	0.5154%	23.2096%	67.4649%

Source: Author

**Table E.98: Final voting results for AO**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
42.1866%	17.8411%	0.5099%	18.3510%	60.5376%	0.0707%	-0.4493%
63.7000%	0.8446%	6.4625%	7.3070%	71.0071%	-0.0275%	-0.3880%
67.0285%	2.6538%	0.7535%	3.4073%	70.4358%	10.3869%	-1.5501%
71.2520%	1.3050%	0.2695%	1.5745%	72.8265%	5.3616%	-21.6351%
71.2520%	1.3050%	0.2695%	1.5745%	72.8265%	5.3616%	-21.6351%

Source: Author

**Table E.99: All other resolutions - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	55.3012%	6.2965%	0.8835%	0.1615%	7.3415%	62.6427%
2015 S H	43.8565%	0.5089%	1.2660%	0.1668%	1.9417%	45.7981%
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.100: All other resolutions - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	46.2115%	13.8293%	0.6821%	0.4693%	14.9807%	61.1922%
2015 PI	55.5463%	0.7092%	0.6896%	3.9949%	5.3937%	60.9400%
2016 PI	55.0915%	3.6033%	0.5642%	0.7899%	4.9574%	60.0489%
2017 PI	44.2553%	22.2296%	0.4646%	0.5154%	23.2096%	67.4649%
2018 PI	44.2553%	22.2296%	0.4646%	0.5154%	23.2096%	67.4649%

Source: Author

## ESG

**Table E.101: ESG-related resolutions - votes exercised on poll**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2015 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2016 Poll	N/A	N/A	N/A	N/A	N/A	N/A
2017 Poll	4.7777%	50.1808%	0.8379%	0.9530%	51.9717%	56.7494%
2018 Poll	14.4567%	53.5789%	0.6342%	1.6934%	55.9066%	70.3632%

Source: Author

**Table E.102: Final voting results for ESG**

For	Against	Abstain	Dissent (Final)	Total (Final)	Total Voting Difference	Difference of Dissent
N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A
8.4648%	84.8200%	5.1037%	89.9237%	98.3885%	41.6392%	37.9520%
N/A	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.103: ESG-related resolutions - resolutions passed on show of hands**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 S H	N/A	N/A	N/A	N/A	N/A	N/A
2015 S H	N/A	N/A	N/A	N/A	N/A	N/A
2016 S H	N/A	N/A	N/A	N/A	N/A	N/A
2017 S H	N/A	N/A	N/A	N/A	N/A	N/A
2018 S H	N/A	N/A	N/A	N/A	N/A	N/A

Source: Author

**Table E.104: ESG-related resolutions - instructions given to proxy by shareholders**

Year	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
2014 PI	N/A	N/A	N/A	N/A	N/A	N/A
2015 PI	N/A	N/A	N/A	N/A	N/A	N/A
2016 PI	N/A	N/A	N/A	N/A	N/A	N/A
2017 PI	4.7777%	50.1808%	0.8379%	0.9530%	51.9717%	56.7494%
2018 PI	14.4567%	53.5789%	0.6342%	1.6934%	55.9066%	70.3632%

Source: Author

## Appendix F : Proxy voting results of AGMs resolutions (2014-18)

**Table F.1: Proxy instructions given by shareholders (2014)**

Resolutions	For	Against	Discretion	Abstain	Dissent (Proxy Instructions)	Total (Proxy Instructions)
ED	57.5711%	3.1863%	0.9887%	0.2350%	4.4101%	61.9812%
RED	60.6761%	2.1589%	0.8249%	0.3526%	3.3364%	64.0125%
RR	53.1499%	3.1347%	0.9102%	1.6754%	5.7203%	58.8701%
DF	59.2393%	0.5653%	0.5270%	0.2524%	1.3447%	60.5840%
DO	58.6705%	4.8665%	0.4071%	1.3546%	6.6282%	65.2987%
PR	54.5372%	3.8200%	0.6680%	0.7731%	5.2611%	59.7983%
GE	44.0412%	3.5730%	0.5769%	0.2709%	4.4208%	48.4620%
NEDE	64.1237%	3.0801%	0.2578%	0.0674%	3.4054%	67.5291%
REND	56.0497%	6.9136%	0.6076%	0.2213%	7.7426%	63.7922%
NED-R	53.3170%	2.0823%	0.3516%	0.2515%	2.6854%	56.0024%
NED-AO	28.4679%	1.2375%	2.4461%	0.3145%	3.9981%	32.4661%
Audi	62.1562%	0.2035%	0.5247%	0.1671%	0.8953%	63.0515%
FA	59.8136%	3.7541%	0.9596%	0.2442%	4.9579%	64.7715%
Tak	61.3166%	1.3259%	0.4583%	0.2406%	2.0248%	63.3413%
IOS	36.8119%	1.0146%	5.3581%	2.9055%	9.2783%	46.0901%
Divd	N/A	N/A	N/A	N/A	N/A	N/A
SM	63.8618%	2.0334%	0.4231%	0.3282%	2.7847%	66.6464%
ES	N/A	N/A	N/A	N/A	N/A	N/A
SSS	58.9574%	1.7034%	0.4510%	1.7886%	3.9430%	62.9004%
SO	55.4327%	0.1618%	5.5820%	0.9768%	6.7206%	62.1533%
CN	63.7131%	0.0319%	0.1687%	0.1576%	0.3582%	64.0712%
Cont	46.5929%	8.2577%	0.9336%	0.4576%	9.6489%	56.2418%
AILS	61.6317%	3.0946%	0.5299%	0.4812%	4.1057%	65.7374%
AO	46.2115%	13.8293%	0.6821%	0.4693%	14.9807%	61.1922%
ESG	N/A	N/A	N/A	N/A	N/A	N/A
Spill	5.1246%	57.4851%	1.1889%	0.9355%	59.6095%	64.7341%

**Table F.2: Proxy instructions given by shareholders (2015)**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
ED	60.9957%	1.3286%	0.8923%	0.2894%	2.5103%	63.5060%
RED	60.4807%	1.9721%	0.9248%	0.5882%	3.4850%	63.9658%
RR	53.0833%	3.3717%	0.8030%	1.4313%	5.6060%	58.6893%
DF	53.3467%	1.2821%	1.1350%	0.4147%	2.8318%	56.1785%
DO	49.7647%	7.3735%	0.6121%	0.8573%	8.8429%	58.6076%
PR	56.8414%	3.3355%	0.7726%	0.5569%	4.6650%	61.5064%
GE	35.6566%	4.1681%	0.8440%	0.7296%	5.7417%	41.3983%
NEDE	62.4476%	0.5215%	0.5567%	0.1942%	1.2725%	63.7201%
REND	62.8253%	2.2926%	0.4316%	0.2845%	3.0086%	65.8340%
NED-R	51.4379%	0.8959%	3.0850%	0.3125%	4.2933%	55.7312%
NED-AO	62.8488%	2.4893%	0.5229%	0.3514%	3.3637%	66.2125%
Audi	50.9721%	0.1497%	0.7059%	0.2453%	1.1009%	52.0730%
FA	70.0516%	0.3709%	0.4015%	0.1995%	0.9719%	71.0235%
Tak	55.9163%	0.2678%	0.7756%	0.2556%	1.2989%	57.2152%
IOS	46.8305%	1.5777%	2.7938%	6.9679%	11.3394%	58.1700%
Divd	N/A	N/A	N/A	N/A	N/A	N/A
SM	64.2059%	2.1916%	0.4681%	0.5961%	3.2558%	67.4617%
ES	N/A	N/A	N/A	N/A	N/A	N/A
SSS	48.0802%	1.9391%	0.6646%	8.6038%	11.2076%	59.2878%
SO	55.8760%	0.1592%	0.6324%	0.4182%	1.2097%	57.0857%
CN	46.0800%	0.0852%	1.2601%	0.1045%	1.4499%	47.5299%
Cont	38.0189%	14.6530%	0.7444%	0.4275%	15.8249%	53.8439%
AILS	63.3522%	2.5715%	0.3949%	0.6194%	3.5857%	66.9379%
AO	56.7898%	13.8840%	1.0839%	3.0271%	17.9950%	74.7848%
ESG	N/A	N/A	N/A	N/A	N/A	N/A
Spill	0.4445%	65.7587%	0.2765%	0.5137%	66.5489%	66.9933%

**Table F.3: Proxy instructions given by shareholders (2016)**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
ED	61.9361%	1.6827%	0.5532%	0.5288%	2.7648%	64.7009%
RED	62.2881%	1.8261%	1.1022%	0.5564%	3.4846%	65.7727%
RR	55.3833%	3.9187%	0.5903%	0.6283%	5.1373%	60.5206%
DF	49.6862%	1.9277%	0.9035%	0.3834%	3.2146%	52.9009%
DO	57.6228%	3.6276%	0.5475%	0.7093%	4.8844%	62.5073%
PR	61.5316%	4.6350%	0.4845%	0.3998%	5.5193%	67.0509%
GE	56.6192%	4.7988%	3.1891%	0.4624%	8.4503%	65.0695%
NEDE	67.9782%	0.1796%	0.2275%	0.1457%	0.5528%	68.5310%
REND	70.8850%	1.0629%	0.2121%	0.0968%	1.3718%	72.2568%
NED-R	57.5676%	6.2512%	0.3611%	2.3085%	8.9207%	66.4883%
NED-AO	59.5611%	1.8194%	0.5320%	0.1386%	2.4900%	62.0512%
Audi	67.4395%	0.0961%	0.4544%	0.1200%	0.6705%	68.1100%
FA	68.0611%	2.1836%	0.3535%	0.4916%	3.0286%	71.0897%
Tak	71.1837%	0.1692%	0.4567%	0.1462%	0.7722%	71.9558%
IOS	37.8161%	0.2733%	0.8968%	1.3787%	2.5488%	40.3650%
Divd	N/A	N/A	N/A	N/A	N/A	N/A
SM	71.1237%	1.0945%	0.2447%	0.1427%	1.4818%	72.6055%
ES	N/A	N/A	N/A	N/A	N/A	N/A
SSS	63.4661%	1.2255%	0.6215%	1.8732%	3.7203%	67.1864%
SO	50.5377%	0.1307%	0.3994%	5.6995%	6.2296%	56.7673%
CN	N/A	N/A	N/A	N/A	N/A	N/A
Cont	68.0686%	5.5010%	0.3971%	0.1822%	6.0804%	74.1490%
AILS	60.7911%	3.6819%	0.5920%	1.8123%	6.0862%	66.8773%
AO	55.0915%	3.6033%	0.5642%	0.7899%	4.9574%	60.0489%
ESG	N/A	N/A	N/A	N/A	N/A	N/A
Spill	5.3309%	60.7641%	0.4273%	0.3553%	61.5467%	66.8776%



**Table F.4: Proxy instructions given by shareholders (2017)**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
ED	63.5748%	2.5013%	1.1353%	0.2095%	3.8460%	67.4209%
RED	61.6285%	2.6768%	1.5378%	0.3190%	4.5335%	66.1620%
RR	57.6024%	3.4672%	0.9955%	1.2045%	5.6672%	63.2696%
DF	57.6707%	1.9428%	1.1240%	0.1886%	3.2554%	60.9261%
DO	59.9937%	7.0894%	0.4623%	0.4886%	8.0403%	68.0340%
PR	64.5587%	2.5750%	0.7233%	0.3044%	3.6026%	68.1613%
GE	44.5813%	4.8498%	1.2047%	0.3115%	6.3660%	50.9472%
NEDE	57.2597%	0.1703%	0.5393%	0.1871%	0.8968%	58.1564%
REND	65.2626%	2.4612%	0.2629%	0.1880%	2.9122%	68.1748%
NED-R	67.2005%	0.4422%	5.0290%	0.1393%	5.6105%	72.8111%
NED-AO	50.2779%	2.7867%	0.7577%	0.2559%	3.8002%	54.0781%
Audi	64.1372%	0.2742%	0.4561%	0.0912%	0.8215%	64.9587%
FA	70.5251%	0.9889%	0.6301%	0.1810%	1.8000%	72.3251%
Tak	63.7928%	0.2604%	0.7061%	0.1718%	1.1383%	64.9312%
IOS	35.9309%	0.9433%	2.3194%	5.7323%	8.9949%	44.9258%
Divd	33.5700%	0.0342%	0.1354%	0.6097%	0.7794%	34.3493%
SM	52.9782%	1.3842%	0.6894%	0.2364%	2.3100%	55.2882%
ES	56.9201%	0.7287%	0.6529%	0.1190%	1.5007%	58.4208%
SSS	54.7308%	1.7550%	0.4298%	0.1891%	2.3739%	57.1047%
SO	32.7317%	0.3911%	1.2390%	3.2097%	4.8398%	37.5715%
CN	51.6398%	0.4194%	1.1054%	0.2696%	1.7944%	53.4342%
Cont	30.6858%	25.5700%	0.7446%	1.1644%	27.4790%	58.1647%
AILS	57.0342%	2.8673%	0.5026%	0.2363%	3.6062%	60.6404%
AO	44.2553%	22.2296%	0.4646%	0.5154%	23.2096%	67.4649%
ESG	4.7777%	50.1808%	0.8379%	0.9530%	51.9717%	56.7494%
Spill	4.4083%	63.2941%	0.5347%	0.3518%	64.1806%	68.5889%

**Table F.5: Proxy instructions given by shareholders (2018)**

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Discretion</b>	<b>Abstain</b>	<b>Dissent (Proxy Instructions)</b>	<b>Total (Proxy Instructions)</b>
ED	64.3366	1.1061	1.5950	0.3550	3.0560	67.3927
RED	62.7939	2.4836	1.6435	0.4205	4.5476	67.3415
RR	56.0407	5.5662	1.2748	1.0044	7.8454	63.8861
DF	N/A	N/A	N/A	N/A	N/A	N/A
DO	55.2838	4.2269	0.4801	0.8681	5.5751	60.8589
PR	63.9967	3.6749	0.9594	0.2797	4.9139	68.9106
GE	51.3175	4.7014	1.2646	0.4681	6.4340	57.7515
NEDE	59.3070	7.6424	0.4159	0.1159	8.1741	67.4811
REND	64.9610	2.9860	0.3922	0.2288	3.6069	68.5679
NED-R	64.6415	4.6499	0.6905	0.3237	5.6642	70.3057
NED-AO	62.8539	1.9163	0.4317	0.5957	2.9437	65.7976
Audi	47.3238	0.4681	0.1550	0.0388	0.6619	47.9856
FA	62.4537	0.2726	2.0434	0.2445	2.5606	65.0143
Tak	66.3159	0.2239	0.9145	0.7462	1.8846	68.2005
IOS	40.4784	0.1454	0.3268	5.5119	5.9842	46.4626
Divd	35.7640	0.0427	0.0886	0.5447	0.6759	36.4399
SM	55.2488	8.1058	1.0574	0.9931	10.1563	65.4051
ES	56.4179	0.2508	0.1827	0.3059	0.7394	57.1573
SSS	56.3604	3.8107	0.6672	2.4861	6.9640	63.3244
SO	39.5494	0.6384	0.6565	0.8722	2.1672	41.7166
CN	40.9578	0.1959	0.0817	0.1498	0.4275	41.3853
Cont	21.1536	39.9927	0.5211	2.9803	43.4941	64.6478
AILS	63.5410	2.7789	0.3994	0.2128	3.3912	66.9322
AO	44.2553	22.2296	0.4646	0.5154	23.2096	67.4649
ESG	14.4567	53.5789	0.6342	1.6934	55.9066	70.3632
Spill	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn	Withdrawn