

## HOW SHOULD SMALL SHAREHOLDERS HAVE A VOICE? LESSONS FROM GUNNS LTD EXTRAORDINARY GENERAL MEETING

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### Abstract

In Australian corporate governance, section 249D of the Corporations Act 2001 gives small shareholders a voice by empowering them to call for an Extraordinary General Meeting (EGM). We discuss the principles behind this section, and illustrate its action with the case of Gunns Ltd, a logger of old growth forests in the green oriented island the State of Tasmania. Our conclusion is that the section needs to be redrafted with more stringent conditions attached to calling an EGM but while still empowering small shareholders.

**Keywords:** Governance, Stakeholder, General meeting, Pressure group

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### Introduction

Within the realm of corporate governance theory there has been recognition of the importance of small or 'marginal shareholders' (for example see Charron, 2007; Hanson & White, 2004). However, there is little evidence of the manner in which action on their behalf is operationalised, nor how effective it can be in influencing boardroom decision-making. This is an important issue in countries such as Australia, where small shareholders make up an important and growing social group. In Australia, around 50 percent of the population qualify as a 'small shareholder' that has direct share ownership in one or more companies (note: this is distinct from indirect ownership through managed fund or superannuation arrangements). Despite this pattern, corporate governance systems in Australia follow those used throughout the OECD, which favour large 'block shareholders'. Large block shareholders are defined as those have a large percentage stake in the company's operation, and possess expertise and power to analyse and advise company actions (Hanson, Dowling, Hitt, Ireland and Hoskisson 2008). This dominance of the large block shareholders (typically large banks and financial institutions in Australia) creates an imbalance in the corporate governance mechanisms, with a small number of 'empowered elite' able to influence boardroom decision-making at the expense of the 'numerous and powerless majority'.

In Australia, the Federal Government has used its Corporations' Law powers in an attempt to redress this imbalance through amendments to Clause 249D. This

states that directors of a company must call an Extraordinary General Meeting (EGM) within two months of being requested to do so by either:

- (a) Members that collectively represent 5 percent of the votes that may be cast at the general meeting (the 'capital test');
- or
- (b) At least 100 members who are entitled to vote at the general meeting (the 'numerical test').

The 'capital test' is considered 'standard' within OECD nations. In the UK it is slightly higher than the norm at 10 percent, in Canada and NZ 5 percent, and in Europe generally varies from between 5-20 percent (Murray, 2007). The 100 member rule ('numerical test') is the more controversial of the two, and there have been concerted attempts in Australia to abolish it. The basic argument for the abolition of the numerical rule is that it is open to abuse by frivolous or vexatious shareholders, and therefore does not provide a mechanism that is truly representative of small shareholder concerns (Murray, 2007). The abolition was first recommended by a federal committee in its *Inquiry into the Exposure Draft of the Corporations Amendment (No 2) Bill 2005*, and was proposed again in the Exposure Draft of the *Corporations Amendment (No 2) Bill 2006*. The abolition had bi-partisan support in the Federal arena, but did not receive support from sufficient state attorneys-generals.

The questions that are central to the ongoing debate between the Federal Government and the State Attorney-Generals may be summarised as the following: Does the numerical principle provide a reasonable measure that represents and protects small

shareholder interests? If its abolition will likely be detrimental to small shareholders, how might it be constructed to be a more effective governance tool? The debate is timely; Australia has a small shareholder oriented system that currently provides small shareholders a voice but, in its present form is under attack. These issues are investigated through the case of Gunns Ltd, the largest forestry company in the 'greenest' region of Australia. In 2003, Gunns Ltd were attacked by a well organised and supported "Green pressure group" of shareholders who called an Extraordinary General Meeting (EGM) to protest against what they believed as 'the company's unsustainable nature of old-growth logging' (i.e. forest that had never been logged previously). This case parallels the situation upon which the Federal Government has based its argument to abolish the 'numerical rule'. The case also serves to highlight an important distinction between 'activists that become small shareholders' (for the purposes of attacking a company with whom they have fundamental disagreements) and arguably 'legitimate groups of small shareholders with collective concerns'.

## **Method**

This study was based on an extensive review of secondary data sources pertinent to the old-growth logging controversy in Tasmania. These sources included annual corporate reports, government press releases, quotations from various Australian newspaper articles, television and radio interviews with figures central to the old-growth logging issue, and a 250-page commissioned history of Gunns Ltd (hereafter 'Gunns'). Given the importance of the subject matter to the regional Tasmanian economy (a subject dealt with in the case description), the quantity of data available made a detailed and comprehensive case analysis relatively straightforward. The data was then arranged in chronological order and the case study written. The interpretation of the data, and the verification of the conclusions, were facilitated by the use of the QSR NUD\*IST software package. In the method literature, it has been emphasised that computer software programs such as QSR NUD\*IST, are of significant value in qualitative analysis and any subsequent theory building (Kelle, 1995; Richards & Richards, 1995; Weitzman & Miles, 1995). The secondary data were then scrutinised for significant terms, events, and issues located therein according to units of observation, and coded accordingly.

## **The Context: Tasmania, the 'Natural State' and the Old-Growth Logging Debate**

Tasmania is the smallest Australian state at 315km across its greatest width. The centre of the island is mountainous and features scattered lakes and alpine vegetation, the West faces the Indian ocean and is rain swept with much of it is covered in impenetrable

'vertical scrub', the East coast is much dryer and has golden beaches, the North West Coast has deep soils and a climate suited to vegetable growing and dairying, the South and a plain next to the mountains (the midlands) is dry and a wool growing area that achieves some of the highest prices for fine wool in the world (Pritchett, 2001). The government branch of parks and Wildlife manage 354 reserves covering over 33 per cent of the state and the Forestry Commission, a state government authority, controls even more. Almost 1.4 million hectares is the Tasmanian Wilderness World heritage listed. In Tasmania, the world traveller can find the equivalents of the burnished hills of southern California, the hills of the grape districts of southern France, Wordsworthian English country sides and the golden beaches that are stereotypically Australian (Gee, 2001). This is a pleasant land with a temperate climate first settled by Europeans in 1802. The new settlers set about clearing the land for agriculture, displacing indigenous inhabitants while setting up a wool/wheat/cattle system modelled on England, complete with hawthorn, oaks, rabbits and much other exotic material. There was a thriving timber industry harvesting an apparently inexhaustible resources and successive Tasmania governments sought to attract foreign investment into it (Perrin, 1898).

Since European settlement, there have been occasional outbursts from environmental conservationists, but the pattern of cutting burning/clearing old-growth forests continued relatively quietly until 1972, when the post-war transition to hydro-electrification of industry via damming of major rivers collided with the state's Green movement. Damming policy was led by the Hydro Electric Corporation (HEC), at the time a virtual government within government. The focus of debate was the damming of the South West's Gordon River and flooding of Lake Pedder, a remote lake with an unusual large sandy beach (Tasmania Together, 2002). This led to the formation of the United Tasmania Group, the world's first formal 'Green' party (Gee, 2001). In 1976, the debate reignited with another major dam proposal and the formation of the Tasmanian Wilderness Society. A major campaign resulted. This was a world event – "NO DAMS" was the cry in street protest marches all over Australia, and all levels of government and the High Court of Australia were involved before the HEC's plans were blocked and the Franklin River saved (see The Wilderness Society website, 2008). 'Green debate' against the tide of unsustainable development was by then a staple of mainstream conversation.

Meanwhile, export wood chipping had begun, mainly sourced from the charismatic old-growth eucalypts in the state's virgin forests. Yehudi Menuhin (the great violinist and humanist) along with other international figures protested bitterly at this practice (see Gee, 2001). Their sentiments were shared by a generation of Tasmanians who continued to contribute

to an ongoing forestry debate on radio, in newspapers and in the streets. In 2002, a government-sponsored survey found that a significant majority of Tasmanians (72 percent) wanted an end to old-growth logging, an opinion that crossed conventional political lines (see *Tasmania Together*, 2002). The Green side of the debate was led by the Tasmanian Green parliamentarians, (there are four in the 25 seat lower house), the Wilderness Society, the Tasmanian Conservation Trust and the Australian Conservation Foundation. On the other side, the State's incumbent Labor government was pro-forestry (it is a conservative union influenced government), and the pro-forestry Forest Protection Society (no evident intention of irony in the name) acted as a vocal pressure group.

### **Gunns – A Company with Connections**

The two brothers Gunn started a building business in Northern Tasmania in 1877, and soon turned to milling their own timber. They prospered and quickly became leading saw millers. The industry was reliant on 'crown-logs', those cut off government land under license, and Gunns had good access to this resource. The industry grew as did Gunns, who, in the 1950s initiated policy of buying smaller saw millers, private forests and rights to crown-logs. This process gathered pace after 1970 when it became evident that the supply of crown-logs was limited. From 1982, led by John Gay, Gunns also sought to consolidate exiting markets and expand into the growing export market for hardwood (Lyons, 1998).

In 1986, the company was floated on the Australian Stock Exchange with Gay as the CEO. The board at that time included as chairman Peter Wade (CEO of mining and pulp and paper giant, North Broken Hill), Edmund Rouse (the chair of the biggest Northern Tasmanian media firm and a local power-broker), Mr Clement of Tasmanian firm Clements and Marshall, and two from HMA, major investors in Gunns. In later moves, Wade was replaced by David McQuestin, (a Rouse connection) and still later ex-Premier, Robin Gray was appointed (Lyons, 1998).

This was an era in which the external environment of Gunns was also undergoing crucial changes, especially politically. Development oriented Liberal Premier Robin Gray called a state election in 1989 only to lose his majority. Labor and the Independents (as the Greens had been called) combined to become the Labor Green Accord (LGA) to prevent the Liberals remaining as a minority government (Graeme-Evans, 1995). This upset the forest industry which campaigned for a second election before the LGA could take power - a campaign which collapsed when Edmund Rouse was imprisoned for attempting to bribe Labor MP Jim Cox to cross the floor to prevent the LGA from taking power. Pritchett (2001) records that a Royal Commission also implicated the Managing Director of Rouse's firm, David McQuestin, in the

bribery attempt. McQuestin was later cleared of being unlawfully involved as a principal offender in Rouse's bribery charges though the investigation acknowledged that his acquiescence with Rouse's direction was highly improper. Pritchett also notes that during the investigation into these bribery charges, it was revealed that the campaign for a second election actually stemmed from Gray's office, although it was funded by the forest industry (2001).

The LGA eventually came to power and, in a (failed) endeavour to settle the forest industry-conservation debate, the Forest and Forest Industry Council (FFIC) was established. However before long, the FFIC shifted ground to become more concerned with preserving the forest industry, and proposed Resource Security legislation that would give the forest industry guaranteed access to the forests. At the same time the publicly owned Forestry Commission became a government enterprise, and was given exemption from freedom of information legislation. Labor's attempt to pass the Resource Security legislation caused the downfall of the LGA coalition and Labor called an election in 1991 - an election that returned the Liberal Party to power under the premiership of Ray Groom.

Meanwhile, Gunns had positioned itself in the early 1990s to undertake the bulk of the seasoned hardwood milling, molding, and veneers in the North and North-West of the state, leaving only a handful of significant, independent, locally-owned family businesses remaining in this sector of the forests industry in the North and North-West of the state (Lyons, 1998). In reaching this position the Company defended two High Court appeals against the issue of licenses to cut timber. This strategic positioning continued through the late 1990s and beyond, illustrated by Gunns buy-out of Boral's Tasmanian wood chipping interests and the acquisition (aided by the ANZ bank) of North Forest Products - owners of major tree holding including a 120 000 hectare tree farm. This witnessed Gunns become Tasmania's only wood chipping company, exporting 5.5 million tonnes of woodchips from the state each year. A significant proportion of this came from old growth forests including the Styx Valley of the Giants (as it is called by the Wilderness Society) - the location of the world's tallest flowering eucalypts.

### **Greens Pressuring the Institutional Shareholders**

The opening years of the 21st Century saw one of Gunns' major shareholders, the Commonwealth Bank (Australia's biggest bank), targeted by a major Green lobby group - The Wilderness Society. Its strategy was to urge Bank's shareholders to pressure the Bank's Board to use its part-ownership of Gunns (at the time, just over 17 per cent) to force the company to stop its unsustainable old-growth deforestation. Other Australian banks came under pressure from various

quarters also. In particular, the ANZ Banking Group Ltd (at this time indicating that it did *not* hold a share in Gunns but rather just had a banking relationship) was pressured to the point where its Chairperson Charles Goode was forced to release a statement that said: ‘We are prepared to enter into dialogue with community groups such as the Wilderness Society,’ (The Age, 2003a). In 2003, the Board had a half-day strategy meeting on environmental issues and the Chairman and some executives visited the Gunns forestry sites in Tasmania in February 2003. Gunns’ Managing Director, John Gay, contended that the company had issued invitations to all the major banking institutions that had been targeted by the Wilderness Society with what he termed ‘misinformation’.

### Corporate Intransigence

A group of 100 Gunns shareholders who opposed the firm's logging practices took the step of requesting an extraordinary general meeting of the Company in February of 2003 using S249D. Gunns senior management initially refused to hold the special meeting, and Executive Chairman John Gay was reported as saying that directors had decided that convening a special meeting to consider the issues raised by the Wilderness Society would be an inappropriate use of Company funds. The Company said the special meeting sought would cost tens of thousands of dollars, and Gay said that directors had

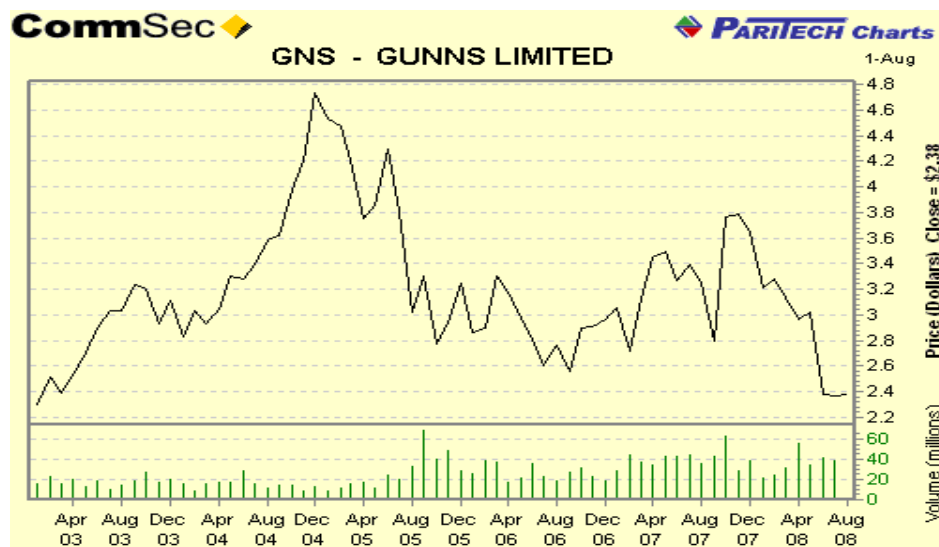
decided that the Wilderness Society's demand was not valid under existing regulations (Altmann, 2003). Directors Institute Tasmanian President Gerald Loughran (a Northern Tasmanian based business-person) said legislation to change the 100-person rule was before the Senate and he hoped it would be resolved soon (Altmann, 2003), however Loughran seemingly ignored the fact that the ‘100-Person Rule’ *did* apply at the time the request for a meeting was made (and as we now know change was not implemented).

Gunns maintained that the requisition notices were invalid, and that the shareholders who had called for an extraordinary general meeting had ‘clearly not abided by the articles of association of the company’, although the Company did not given the actual reason that the requisition was deemed to be invalid. Executive Chairman John Gay said that because of the *Privacy Act* he could not say exactly what was wrong with the requisition. He objected strongly and the Wilderness Society rethought its tactics.

### Business Performance

At the time of this dispute, Gunns had developed a solid reputation as a successful company with an appreciating share price and consistently growing profits. The share price, a key indicator of performance for almost all shareholders, is presented in Figure 1 below. For the period under discussion profit was good and the share price was high.

Figure 1. Gunns’ Share Performance and Sales



(Source: Comsec, 2008).

### Extraordinary General Meeting – 29 August, 2003

In the lead-up to the August Extraordinary General Meeting at Gunns, helpful corporate professionals entered the fray on the Greens’ side:

- Fund managers showed the Wilderness Society how to draft better resolutions; lawyers gave *pro bono* advice on procedural matters, secondary boycotts and defamation issues;

- Naomi Edwards (retired partner of Deloitte Touche Tohmatsu and former director of Trowbridge Consulting), analysed pertinent numbers for the Wilderness Society to back its claim that the company can refrain from unsustainable logging old-growth forests without losing money;
- An international business strategist used by some of Australia's biggest companies provided advice on the anti logging campaign in Japan (most of the Gunns woodchips are exported to Japan and China, where they are used in paper production);
- A 1980s corporate raider gave tips on tactics for dealing with corporations and hosted private lunches in Sydney to put activists in touch with senior executives.

Wilderness Society campaigner Leanne Minshull did not 'name names', but she confirmed meetings with AMP, BT Financial Group, Commonwealth Bank, local and Federal Government superannuation schemes, National Australia Bank, and Perpetual Trustees. Perpetual's John Sevier says it is the first time he has experienced a campaign of this kind, and it could be the first of many: 'The world is getting more determined in a lot of ways' (The Wilderness Society Website, 2007). The campaign seemed at this stage to have had some effect. Westpac-owned BT Financial Group, which has a small-undisclosed stake in Gunns, indicated its intention to abstain from voting, citing insufficient information on which to make a decision. The financial house said it recognises the sensitive nature of environmental issues, and it that it believed there was a lack of adequate data or information on the possible effects of adopting the resolution. There was an international dimension to this campaign: Minshull indicated that a loose coalition of activist organisations around the world including Friends of the Earth International, Britain's WWF (World Wide Fund for Nature), Greenpeace, and the Rainforest Action Network helped on the Gunns campaign by lobbying institutional shareholders in Britain (ABC News Online, 2005).

Few, however, really expected the Wilderness Society to prevail at the EGM. Gunns said the shareholder activists controlled fewer than 250,000 shares, or about 0.3 percent of the share, and Minshull, conceded that the resolution was unlikely to get anywhere near the 75 per cent needed. Gay accused the environmentalists of wasting shareholders' money on what amounted to a protest meeting. 'That is disgusting,' he said. 'They conceded they haven't got a hope in hell but they are taking this company through the pain.' Gay indicated that there is no prospect of Gunns working with the activists because the Company operates within State laws and Tasmania is a signatory to the 1997 Regional Forest Agreement between State and Federal governments. 'If I rejected [the opportunity] to take some logs, they would just issue them to someone else. They can keep coming

but we don't make the decisions. They are just damaging the shareholders of Gunns and the superannuation funds of Australia by harassing Gunns for a decision that Gunns doesn't make. That's how stupid it is.'

AMP Henderson indicated that the company would vote against the Wilderness Society resolution at the Extraordinary General Meeting. AMP Henderson's chief investment officer, Merv Peacock, told Walsh (2003) on 27 August 2003, that AMP had long discussions with a range of parties including Gunns' and Forestry Tasmania. He concluded that the resolution would have a material negative impact on the company's profits. Overall, a trend towards an 'abstain' or 'against' vote at the EGM emerged, as institutional shareholders balanced the risk of a consumer backlash with their fiduciary obligation to investors. UniSuper, the Australian university employees' superannuation fund announced it would abstain, saying that a vote was 'premature' (Investor Daily, 2003) and the large Commonwealth Government employee fund PSS/CSS decided to vote against the resolution. Perpetual Trustees and Colonial First State would not disclose their voting intentions, and the SIRIS Proxy Voting Service also declined to say how it advised its clients to vote at the meeting. No institutional shareholder however, went on record as directly supporting the Wilderness Society led resolution. Dean Paatsch, Director of SIRIS Governance Services Unit, said his considerations varied - depending on whether the client had an environmental policy as part of its investment process. Paatsch said he believed most institutions would abstain because of their concern for 'reputation risk'.

### The Meeting – a 'Green Fizzer'

The EGM was held at 10 am on 29 August, 2003 at 110 Lindsay Street in the Northern Tasmanian city of Launceston. More than 200 pro- and anti-logging demonstrators gathered outside Gunns offices, and log trucks lined the street in a show of strength for the industry. The resolution called on Gunns not to source any timber from the 'Tasmania Together' forests, which include the Styx, Tarkine, Great Western Tiers, Southern Forests, Tasman Peninsula, North-East Highlands, Eastern Tiers and proposed extensions to the Ben Lomond National Park. The Wilderness Society had encouraged shareholders to attend the EGM and vote for the resolution, had sought proxy voting rights, and had run stalls outside many Commonwealth Banks leading up to the EGM providing information and *pro forma* letters for people to send to the Commonwealth Bank (Australian Business Intelligence, 2003).

Some 20 speakers addressed the 90-minute meeting, and as expected, shareholders voted overwhelmingly against The Wilderness Society's resolution for Gunns to withdraw from 240,000 hectares of old-growth forest. The resolution was lost

by 54.8 million to 248,000 votes. Institutions representing some 1.5 million votes abstained. Mr Gay said the vote demonstrated clear support for the board: ‘This whole action was nothing more than a publicity stunt by The Wilderness Society, staged for political purposes in a futile attempt to attack a well-performing and legitimate Tasmanian business’. In percentage terms, the resolution was easily defeated with 98 per cent of votes against. But most disappointing for green groups and activists was that only 2.6 percent of voters abstained - the usual form of protest for institutional investors. So, Perpetual with 10.2 percent of shares, the Commonwealth Bank with 8.6 percent, and AMP with 7.21 percent, were effectively saying they were in favour of logging old growth forests, despite the unsustainability of the industry (Australian Business Intelligence, 2003).

Perhaps due to the failure of their EGM strategy, the Green groups redoubled their protest efforts throughout the remainder of 2003 and 2004 to undermine Gunns forestry operations, this time at the ‘front line’. Through the use of disruptive and/or delay tactics in the forests themselves (usually in the form of blockades and sit-ins), or through public relations exercises and political manoeuvres in the mass media, the Green activists sought to highlight the ‘damage’ (as they saw it) Gunns was doing to the pristine Tasmanian environment. Buoyed by the support from their shareholders, Gunns senior management had recognised a powerful new strategy for dealing with their much maligned stakeholder group. Instead of placating the Green groups (as they had attempted to do through their own public relations and expensive advertising strategies during 2001-2002), Gunns changed tack and took it upon themselves to serve writs to 20 prominent Green activist and politicians charging them with “conspiring to interfere unlawfully with its business at logging sites and through corporate vilification” (Morton, 2004: 1). Although widely criticised for its legal strategy (see ABC Online, 2004; Konkes, 2005; McIlroy, 2005), the new strategy appeared to have been a very effective one that marginalised, and more importantly silenced, a very vocal opposition. During 2006, for example, a community group protesting Gunns \$1.5 billion Tasmanian pulp mill actually refused to lodge a submission with the Federal government’s assessment process, “fearing the forestry company might use any adverse comments as a basis for legal action”. A spokesman for Tasmanians Against the Pulp Mill, Bob McMahon, said “Gunns had a history of taking legal action against activists who spoke out against logging practices. There is a very real fear that will be exposed to the possibility of legal action intimidation” (Grigg, 2007: 1).

## Discussion

In an environmentally aware State in which forestry (and any other environmental) practices are a

controversial issue, Gunns is a company often targeted for condemnation by vocal Green groups. Despite this, the company has managed to maintain its own style of ‘managerial self determination’ in the face of small shareholder opposition through its ability to mobilise its political influence and value to its large block investors. The ‘frivolous activism’ of the Green pressure groups (as framed by the media and company spokespeople) has been one case that has been used to underpin calls for the planned change to s249D. Given that the proposed abolition of the ‘numerical rule’ is popularly based on cases such as the one presented here (i.e. a potential ‘high jacking’ of the process by non-representative small shareholder activists) it would appear unjust for ‘representative small shareowners’ to be further disadvantaged by actions not attributable to the ‘silenced majority’.

Given the manner in which small shareholder governance mechanisms can be marginalised, it appears that some form of numerical principle remains an extremely useful tool in allowing small shareholders access to (and influence over) boardroom decisions. The growth of share ownership in the OECD generally, and in Australia particularly, has meant that the numerical majority of share owners are becoming more and more powerless. The question for the maintenance of the ‘numerical system’ should arguably not be ‘how quickly can it be abolished’ but rather ‘what form should it take in order for it to have merit?’ The Gunns case provides some lessons in this debate.

Was the numerical principle well used in this case? The obvious answer is ‘no’ – but it was not because the number of shares involved was inconsequential (or even the number of shareholders for that matter). It is more important that the EGM was not, at least in the first instance, representative of the concerns of ‘company shareholders’ but rather of specialist pressure groups. The motive behind the so-called ‘shareholder revolt’ were specifically connected to a long held campaign against Gunns that was specifically run by well organised environmental groups. This is not an argument against democratic protest (and Tasmania has, as the case indicates a rich history of these), but a suggestion that the primary reason behind a numerically initiated EGM should be genuine (and representative) shareholder concern. These may be environmental performance, CEO remuneration, social protest or any number of other matters. Essentially however, it must have a representative shareholder base, and the sources of concern should be those of *shareholders* (who may or may not be activists) rather than those of *activists* who assemble as a group of shareholders, or become shareholders in order to take governance action. It is essentially a matter of balance: on the one hand the legitimate interests of small shareholder, on the other the interests of the company and, by extension, larger share holders.

The Gunns case indicates an urgency to get the balance between large block and small shareholder governance measures ‘right’. It is not only that the EGM costs the company time and money that could have been invested elsewhere (and the Gunns EGM was always unlikely to provide a result for the greens), it is also that it cost the environmental groups’ money and time. The promise offered by a weakly drafted provision was far better than the result. Additionally, while there is no way of knowing for certain, it is plausible to suggest that this use of 249D, an aggressive legal move, was the catalyst for Gunns moves against the Gunns 20, also using aggressive legal means. The ‘Gunns 20’ matter has inflamed what was already a bitter debate.

What is the best way of ensuring the required balance whilst still keeping a governance avenue open for small shareholder protest? The simple ‘100 person shareholder numerical rule’ is too easily achieved by activists who assume the role of shareholders. The Gunns case illustrates this situation accurately. An alternative idea that has been put forward is to find the square root of total number of company shareholders and make this the number required to call an EGM (see Murray, 2007). To see how such a system might work, we can consider three companies: Telstra, (Australia’s biggest telecommunications company), Wesfarmers (an Australian conglomerate) and Gunns. In 2007, Telstra had 1.4 million shareholders, the square root of which would require 1,183 shareholders to make a request for an EGM. Wesfarmers’ 163,586 shareholders would require some 403, and Gunns (with 7,054 shareholders) would require 84. For companies as large as Telstra and Wesfarmers, the ‘square root formula’ works quite well because a considerable number of shareholders are involved, and in both cases, assembling that many would provide a good indication of a serious small shareholder issue.

For Gunns the ‘square root formula’ does not work quite as well, with the current calculation of 84 being less than the 100 shareholders required under current legislation. Specifying a minimum (for example: ‘200 shareholders’) adds a necessary rigour to the test will ensure that a ‘substantial number’ of shareholders agree that an issue is sufficiently important to the group. Such requirement will make it harder for the provision to be used for ‘social protests’ rather than legitimate shareholder concerns. Such a provision would be necessary given the costs of running an EGM and the need to meet the goal of representing an important cohort of shareholders.

A ‘square root/minimum of 200 Rule’ is a useful starting point in the development of a robust test of seriousness; but it is not the end of the best measure to protect small shareholders’ interests. Having just one approach might still fail the test of representing *serious* shareholders, that is, those to whom the specific shareholding is an important part of life. Assuming a proxy measure of this is number of shares held by the individual (and it is admittedly a rough measure) the

added prescription is that there be a minimum holding of a \$2000 parcel (a reasonable proportion of the average Australian income of \$55,000 annual income). Certainly, the degree of importance of the shares will vary with the wealth of every individual, but any specific consideration of that would make the ‘minimum holding rule’ too complex to implement.

## Conclusion

Increases in the number of small shareholders in Australia (and throughout the OECD generally) means that the need for a ‘numerical rule’ in asserting small shareholder interests at an EGM is greater than ever before. A ‘percentage of shares rule’ (such as the 5 percent requirement operating in Australia and with variations throughout the OECD) is not enough by itself as it marginalises all but large block shareholders. In order to ensure that the corporate governance mechanisms are accessible, and accessed justly by all, the rules suggested here are a ‘square root of total shareholder numbers/minimum of 200 rule’ together with a ‘minimum worth/bundle provision’. This would underpin a required balance between small shareholder concerns and the imperatives of running a company. Australia’s s249D of the Corporations Law Act currently satisfies the need for small shareholder representation but has come under attack because it is currently poorly drafted and that the cases that underpin its abolition tend to be based on non-representative activism. Our suggestions amount to a fine-tuning that provide a defence for the a numerical rule in Australia and provides ideas for other jurisdictions.

## References

- 1) ABC News Online (2004) Gunns writ is not about free speech: Abetz. 19 December. <http://abc.net.au/cgi-bin/common/printfriendly.pl?/news/australia/tas/northtas/200412/s1268545.htm> Access June 8, 2007.
- 2) ABC News Online (2005) Lennon rejects latest British MP’s motion on Tas forests. <http://www.abc.net.au/news/newsitems/200507/s1423070.htm>. Accessed June 11.
- 3) Age, The (2003a) Greenies force Gunns forests debate. *The Age Newspaper*. February 25.
- 4) Age, The (2003b) Gunns fires up as it readies for EGM showdown. *The Age*. August 28.
- 5) Altman C (2003) Gunns staring down barrel of a Green coup. *The Australian*. August 8.
- 6) Australian Business Intelligence (2003) Minority shareholders force Gunns to meeting. <http://www.highbeam.com/doc/1G1-98013715.html>. Accessed June 11.
- 7) Charron DC (2007) Shareholders and Stakeholders: The battle for control of the Corporation. *Cato Journal*. 27(1): 1-22.
- 8) ComSec Securities Web-site (2004) *Gunns Ltd Share-price Graph*. <http://www.comsec.com.au>. (Accessed May 16, 2004).
- 9) Gee H (2001) *For the Forests*. Hobart: The Wilderness Society.

- 10) Graeme-Evans A (1995) *Against the Odds: Risbys - Tasmanian Timber Pioneers 1826-1995*, Tasbook Publishers, Hobart.
- 11) Grigg A (2007) No guns blazing in pulp mill dispute. *The Australian Financial Review*. May 10, 2007: 6.
- 12) Hanson D & White R (2004) Regimes of Risk management in corporate annual reports: A case study of one globalising Australian company. *Journal of Risk Research*. 7(4): 445-460.
- 13) Hanson, D, Dowling, P, Hitt, M, Ireland, D and Hoskisson, R. 2008. *Strategic Management: Competitiveness and Globalisation*. Thomson, Melbourne.
- 14) Investor Daily Web-site (2003). <http://www2InvestorDaily.com>. Accessed 27 August, 2003.
- 15) Kelle, U. 1995. *Computer-aided qualitative data analysis: Theory, methods, and practice*. London: Sage Publications.
- 16) Kelle, U. 1995. *Computer-aided qualitative data analysis: Theory, methods, and practice*, London: Sage Publications.
- 17) Konkes C (2005) Gunns in strife in court. *Australian Business Intelligence*. <http://www.highbeam.com/doc/1G1-128149040.html>. Accessed June 8, 2007.
- 18) Lyons B (1998) *All Gunns Blazing: J. & T. Gunn and the Development of Launceston, 1871-1997*, Launceston, Self-Published. [The background material in this Case Study owes much to this source, quite apart from the attributions in specific references.]
- 19) Maurer M & Sachs S (2005) Implementing the Stakeholder View: Learning Processes for a Changed Stakeholder Orientation. *The Journal of Corporate Citizenship*. 3: 93-107.
- 20) Murray, A 2007 Minority Report to *Inquiry into the Exposure Draft of the Corporations Amendment (No 2) Bill 2005*. Australian Government, Canberra.
- 21) McIlroy J (2005) National tour against guns lawsuit launched. *Green Left Weekly*. 641(7). <http://www.greenleft.org.au/2005/641/33841>. Accessed June 7, 2007.
- 22) Morton A (2004) Logging giant sues activists for 6.3 million. *The Age Newspaper*. December 15. <http://www.theage.com.au/news/National/Logging-giant-sues-activists-for-63m/2004/12/14/1102787083124.html>. Accessed to June 8, 2007.
- 23) Perrin GS (1898) *Forests of Tasmania: Their Conservation and Future Management*. PP 48/1898. (An earlier report by Perrin on "The Systematic Conservation of the Woods and Forests of Tasmania").
- 24) Pritchett S (2001) Environmentalism, Politicians, Gunns and Money. <http://www.aushomepage.com.au/Article/349>. Accessed 1 September 2003. Tasmania Together 2002. *Annual Report*. Hobart. Tasmanian Government Printers.
- 25) Richards, T., and Richards, L. 1995. Using computers in qualitative research. In Denzin, N. and Lincoln, Y. (editors). *Handbook of qualitative research*. California: Sage Publishers.
- 26) Walsh M (2003) AMP to Vote No at Gunns EGM; <http://www.ethicalinvestor.com.au>. (Accessed 27 August, 2003).
- 27) Weitzman E. & Miles, M. 1995. *Computer Programs for Qualitative Data Analysis*. California: Sage.
- 28) Wilderness Society Website, The (2004) *History of the Franklin River Campaign 1976-83*. <http://www.wilderness.org.au/campaigns/wildrivers/franklin/franklin/> Accessed 22 November 2004.
- 29) Wilderness Society Website, The (2007) Shareholders call an Extraordinary General Meeting on Australia's Largest Woodchipper.
- 30) [http://www.wilderness.org.au/campaigns/corporate/gunns/20030224\\_gunns\\_egm/](http://www.wilderness.org.au/campaigns/corporate/gunns/20030224_gunns_egm/) Accessed June 11 2007.