



OWNERSHIP MATTERS

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HAPPY SHAREHOLDERS – MOST OF THE TIME

Voting results in 2014 for recurring resolutions – director elections and remuneration reports – showed a steady trend in favour of management. In 2014, the median vote against management on a director resolution was 0.7%, the lowest result since OM began collecting data in 2011 and the median vote against a remuneration report was 2.9%, again the lowest recorded since OM began collecting data in 2011. The number of S&P/ASX 300 companies that received a 'strike' on their remuneration report also fell, from 22 in 2013 to 16 in 2014.¹

Generally low levels of dissent across the S&P/ASX 300 however disguised several hotly contested meetings. At Cabcharge, a director who was appointed in 2014, Rod Gilmour, resigned from the board shortly before the AGM in the face of significant investor opposition joining the very short list of board-backed candidates who have been defeated outside of a proxy contest or a dispute with a strategic shareholder. The company also suffered the indignity of incurring a fourth consecutive strike on its remuneration report despite restructuring executive remuneration during FY14 following the death of its long-serving executive chairperson, Reg Kermodie, in April 2014.

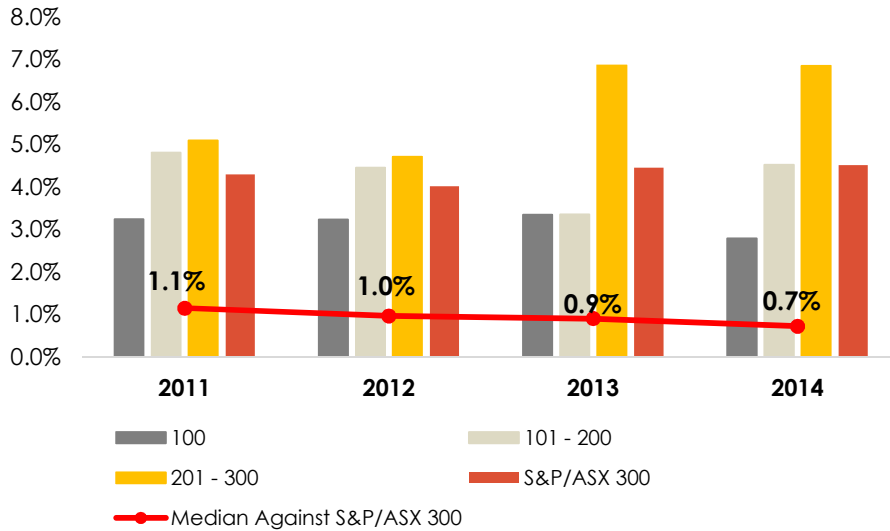
The most notable investor revolt of 2014 however occurred at Westfield Retail Trust (WRT) as Westfield Group, the parent of WRT's external manager and co-owner of WRT's portfolio, attempted to merge its Australian business with WRT. This internalisation of management and merger was opposed by a significant minority of investors and the transaction was set to be narrowly defeated on 29 May before WRT chairperson Dick Warburton adjourned the meeting until 20 June. At the adjourned meeting the transaction was narrowly approved. Shareholders also showed themselves willing to oppose management on other investment related resolutions, with Woodside's proposed selective buy-back of a substantial proportion of Shell's stake using excess franking credits defeated at an August general meeting.

Incumbency & boards: It's good to be king

Serving on an S&P/ASX 300 company board remained one of the world's safest electoral offices in 2014. As shown in graph 1 below the average vote against management on a director resolution remained well below 5% at 4.5%, unchanged from 2013, and the median vote against management actually fell, to 0.7%. This shows the distorting impact of several proxy contests on overall averages. In 2013 and 2014, proxy contests at Intrepid Mines saw high votes against management and in favour of dissidents with the dissidents eventually obtaining board representation in 2014.

¹ The 2013 'strikes' include that at Greencross where the proxies disclosed a vote 'against' the remuneration report of more than 30%. Greencross however did not put a 'spill' resolution on its 2014 proxy form and did not acknowledge that it had received a strike – see below.

Graph 1: Average votes against management on directors 2011 – 2014²



Absent these proxy contests the data shows a pattern of consistent support for directors as a whole. Across the 790 director resolutions in 2014, there were only 16 – 2% - where votes against management were above 40% and eight of these occurred at Intrepid (these figures exclude Cabcharge where the votes cast on Gilmour's election were not disclosed after he resigned). In 2014 two other directors also appear to have resigned ahead of the AGM rather than be voted from the board, Sundance Resources' Michael Blakiston and Buru Energy's Graham Riley. Other candidates also received significant votes against their election at Sundance with former takeover suitor Hanlong reportedly voting against resolutions.

Among the other eight director resolutions the most interesting was at Primary Health Care where long serving director Brian Ball was defeated on the proxies but elected on a poll with the results indicating a late change after proxies were lodged of a number of votes from against to for: On proxies Ball received 216.5 million votes against out of 392.8 million lodged and on the poll the against vote fell to 183.5 million out of 393.1 million.

At its first AGM since demerger in 2013, News Corporation had more than 25% of eligible votes cast against the election of all 12 of its directors. Of the 12 directors, 11 had votes against of more than 30% and would have had a majority of votes cast against their elections without the support of the Murdoch family's voting stake. A similar story occurred at Leighton Holdings where both directors associated with major shareholder ACS/Hochtief would have been defeated without the votes of the 70% controlling shareholder.

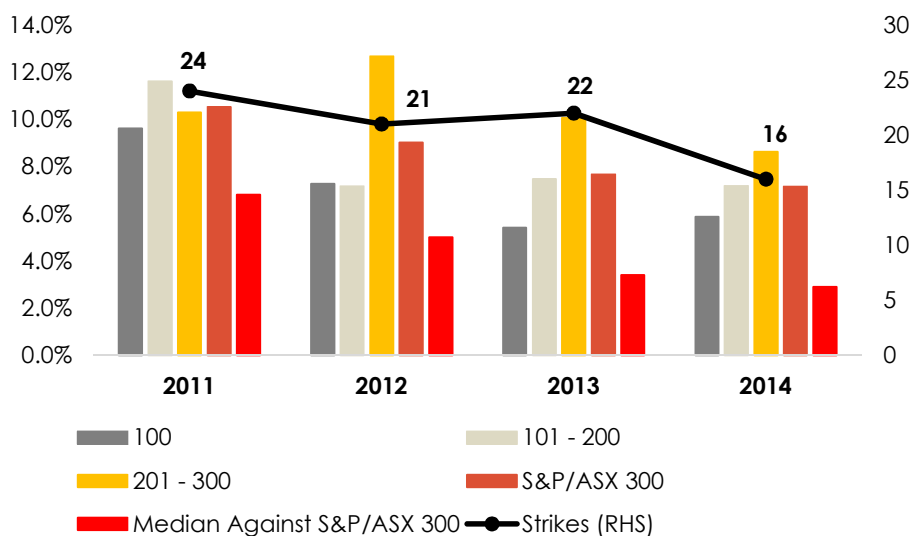
A strike by any other name ...

In 2014, there were generally lower levels of dissent on remuneration reports. The number of strikes in the S&P/ASX 300 fell from 22 to 16, the lowest recorded since the introduction of the

² All aggregate vote result data for 2011 is from 1 July 2011 unless otherwise stated.

'strike regime' in 2011.³ Votes against remuneration reports generally were also lower, as shown in graph 2 below.

Graph 2: Average votes against on remuneration reports 2011 – 2014 in the S&P/ASX 300⁴



In 2014, half of all S&P/ASX 300 remuneration report resolutions received votes against of less than 2.9%, with the median having fallen every year from 2011 when it was 6.8%. In this case the decline in the median was matched by a decline in average votes against across the market. The average no vote in 2014 was 7.2% across the S&P/ASX 300, having fallen every year from the average of 10.5% recorded in 2011.

Table 1 below outlines all S&P/ASX 300 companies to record a strike in 2014 and shows that despite the general decline in dissent there were a number of very large votes against. A total of four remuneration reports were defeated in 2014, a record for the S&P/ASX 300 since the introduction of the two strikes regime in July 2011 (all told, 10 have been defeated from July 2011 to the end of 2014), and the 49.7% vote against FlexiGroup's remuneration report was the 11th largest since the strikes regime was introduced.

³ Under the two strikes regime, applicable to Australian listed companies since July 2011, a company that incurs a vote against a remuneration of 25% or greater (a first strike) must, the following year, include as part of its notice of annual meeting a conditional resolution. If put to the meeting and passed this resolution (the 'spill resolution') would require all directors (other than the CEO) in office at the time of the second remuneration report to resign and seek reelection at a separate general meeting. This conditional resolution is only put to the second AGM if the remuneration report at the second AGM incurs a vote against of 25% or more (a second strike). The spill resolution requires a majority to pass; key management – those whose remuneration is disclosed – may not vote on the remuneration report or spill resolutions.

⁴ The aggregate vote data includes vote results on resolutions similar to remuneration reports required in other jurisdictions eg. the US 'say on pay' votes and the UK remuneration report, remuneration policy and remuneration implementation reports. Strikes include only those at Australian companies (and Dexu Property Group in 2011 which voluntarily submits to the governance regime of a listed Australian company).

Table 1: Strikes in the S&P/ASX 300 for 2014⁵

| Company | Against vote (%) | Company | Against vote (%) |
|--------------------------------|------------------|---------------------------------------|--------------------|
| Harvey Norman Holdings Limited | 75.6 | Primary Health Care Limited | 37.8 |
| Buru Energy Limited | 71.8 | Mortgage Choice Limited | 34.8 |
| Cabcharge Limited | 57.4 | Reckon Limited | 33.6 |
| Sundance Resources Limited | 55.7 | Seven Group Holdings Limited | 32.6 |
| FlexiGroup Limited | 49.7 | Paladin Energy Limited | 30.4 |
| Newcrest Mining Limited | 44.9 | Sino Gas & Energy Holdings Limited | 30.2 |
| Boart Longyear Limited | 43.1 | <u>Cash Converters Limited</u> | <u>29.9</u> |
| McMillan Shakespeare Limited | 40.7 | UGL Limited | 28.4 |

Note: Companies in bold incurred a second strike; companies in bold and underlined incurred a third consecutive strike.

The table also shows that a number of companies continue to incur strikes: As noted above, Cabcharge incurred its fourth consecutive strike becoming the only S&P/ASX 300 company to have incurred a strike every year the regime has been in operation while Cash Converters incurred a third consecutive strike.⁶ UGL also incurred its second strike in the past four years.

Also apparent from the list of strike companies is the impact of the exclusion of key management personnel from voting. At Harvey Norman, Gerry Harvey and the estate of Ian Norman – between them holding almost half of shares on issue – were barred from voting while at Seven Group Holdings, executive chairperson & controlling shareholder Kerry Stokes was also barred from voting, as was FlexiGroup's founder and largest shareholder Andrew Abercrombie. At Cash Converters & Reckon on the other hand the presence on the register of a major shareholder reduced the impact of other shareholders voting against (the exclusion on voting does not apply to KMP who are representatives of a substantial shareholder but who are not beneficial owners of the shareholder).

⁵ The vote against of 27.8% on the Henderson Group remuneration report is excluded; Henderson is listed in the UK as well as on ASX, is domiciled in Jersey and voluntarily submits to the UK's remuneration report requirements.

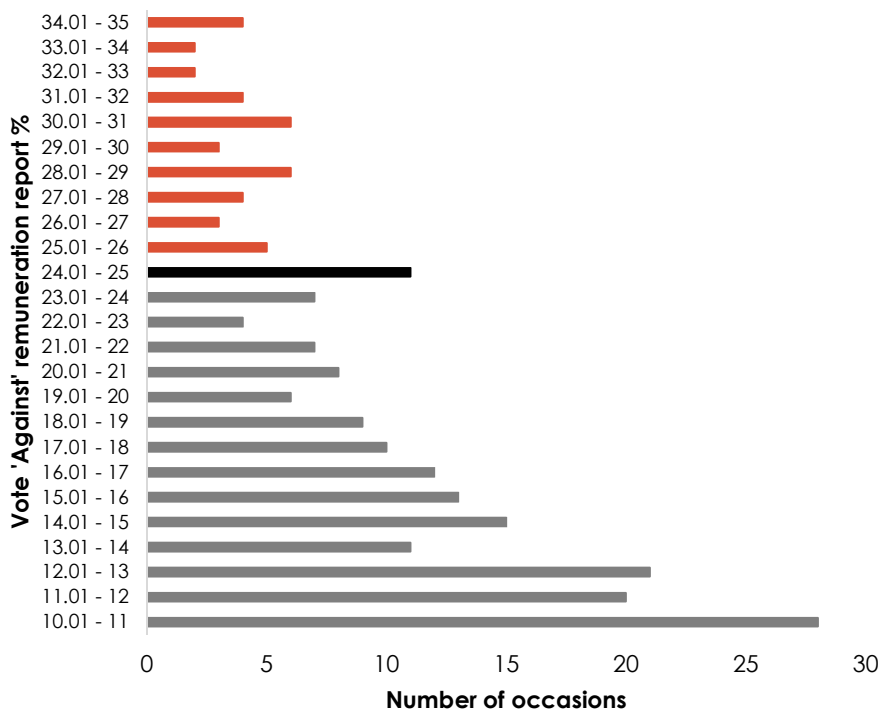
⁶ Under the two strikes regime a company that has incurred two consecutive strikes has its strike count reset to zero. Cash Converters therefore will only be forced to put a spill resolution to shareholders should its 2015 remuneration report incur a strike.

Rem oddities

A number of strange outcomes were again apparent on remuneration report votes in 2014 with the most prominent being the issue of companies refusing to acknowledge a 'strike'. OM's 2013 voting outcomes report noted that Elemental Minerals received a vote against its 2012 remuneration report of 25.2% on the proxies (no poll was declared) but did include a spill resolution on its 2013 proxy form. In 2014 Greencross, a member of the S&P/ASX 300 in 2013 when it incurred a first strike based on disclosed proxy voting results, and InfoMedia, which was not a member of the S&P/ASX 300 in 2013 when it also apparently incurred a first strike, both failed to include spill resolutions in their 2014 annual meeting agendas.⁷

At both companies it appears the chairperson at the 2013 AGM relied on a 'show of hands' – where those shareholders physically represented at the AGM have one vote per shareholder and votes cast by proxy are not counted – to declare the remuneration report passed rather than putting the resolution to a poll where all votes are counted. Neither company appears to have suffered any adverse regulatory consequences as a result of the failure to, at the very least, put their 2013 remuneration reports to a poll.

Graph 3: Incidence of votes 'Against' remuneration reports 2011 - 2014



The graph above highlights the ability of management to narrowly avoid a strike – that is a vote against of 25% - on remuneration reports since the introduction of two strikes. As noted

⁷ See Greencross Limited, 'Results of Meeting', ASX announcement, 14 November 2013 & '2014 Annual General Meeting & explanatory Memorandum', ASX announcement, 22 September 2014. For InfoMedia Limited see 'Results of Meeting', ASX announcement, 30 October 2013 & 'Notice of Annual General Meeting', ASX announcement, 30 September 2014.

last year there were a number of resolutions where management narrowly prevailed, and this again occurred in 2014. On remuneration reports alone there were five occasions where the vote against was between 23.5% and 25% and the lowest vote against for a strike company was at UGL, at more than 28%.

The ability of management to avoid strikes in close votes is presumably due to their information advantage: Management are aware of the level of opposition as votes are lodged and through the tracing provisions of the Corporations Act are able to discover those shareholders voting against and lobby them directly to change their votes. Anecdotal evidence also suggests greater use by management of 'proxy solicitors' in recent years – third party firms, paid for by management using shareholder funds to assist with securing shareholder support for management-backed proposals.

Table 2 below shows the five companies where the vote against the remuneration report was between 23.5% and 25%.

Table 2: Close rem report votes in the S&P/ASX 300 in 2014

| Company | Margin (%) | Poll called | Margin in votes (effective votes) |
|--------------------------------|-------------------|--------------------|--|
| Karoon Gas Australia Limited | 0.49 | Yes | 780,127 (158,570,713) |
| Cedar Woods Properties Limited | 0.7 | Yes | 266,157 (37,970,450) |
| IMF Bentham Limited | 0.96 | Yes | 580,719 (60,509,703) |
| Village Roadshow Limited | 1.12 | No | 1,394,578 (124,436,059) |
| AGL Energy Limited | 1.16 | Yes | 3,689,713 (316,842,587) |

The result at Village Roadshow highlights another recurring oddity in how the vote exclusion provisions for KMP are interpreted. At Village, as in 2013 (and as noted by OM last year), the remuneration report would have been heavily defeated but for the votes cast in favour by Village Roadshow Corporation (VRC), which holds 43.7% of shares on issue. This entity is able to vote on the remuneration report as it is jointly controlled by three directors – Robert Kirby, John Kirby & Graham Burke, none of whom individually "control" VRC.

Close votes in 2014 also occurred on resolutions far more material to shareholders than a remuneration report. The high profile and heavily scrutinised WRT transaction, referred to above, was eventually passed by a margin of 26.2 million votes out of 2.407 billion cast.

Defeated resolutions

The risk of management suffering defeat on non-remuneration report resolutions was as ever, minor in 2014. Of the 1,494 resolutions put to shareholders of S&P/ASX 300 entities (excluding remuneration reports and spill resolutions), management was defeated on nine occasions (four in 2013) and there were another four resolutions withdrawn seemingly to avoid formal defeat (in 2013 the total withdrawn in similar circumstances was six). Resolutions where management were defeated or withdrew resolutions to avoid defeat are shown in table 3.

Table 3: Defeated resolutions

| Resolution | Vote against management (%) | Vote to defeat management (%) | Withdrawn? |
|---|-----------------------------|-------------------------------|------------|
| Intrepid Mines – remove Laurence Curtis | 62.5 | 50.1 | No |
| Intrepid Mines – remove Colin Jackson | 62.5 | 50.1 | No |
| Intrepid Mines – elect Clifford Sanderson | 62.5 | 50.1 | No |
| Intrepid Mines – elect Lim Yu Neng Paul | 59.2 | 50.1 | No |
| Intrepid Mines – elect Greg Mazur | 59.1 | 50.1 | No |
| Intrepid Mines – remove Robert McDonald | 58.6 | 50.1 | No |
| Cooper Energy – amend equity plan | 51.5 | 50.1 | No |
| Intrepid Mines – capital return | 45.5 | 25.1 | No |
| Woodside Petroleum – approve selective buy-back | 28.1 | 25.1 | No |
| Buru Energy – elect Graham Riley | N/A | 50.1 | Yes |
| Cabcharge – elect Rod Gilmour | N/A | 50.1 | Yes |
| Sundance Resources – elect Michael Blakiston | N/A | 50.1 | Yes |
| Kingsgate Consolidated - constitution | N/A | 25.1 | Yes |

The tumultuous year for Intrepid is apparent from the above table. The company had four meetings in 2014, including a shareholder convened meeting in May which saw three incumbent directors removed and three new directors nominated by dissident shareholders elected. The defeat of the proposed capital return at the AGM came after the original board put it on the agenda but recommended shareholders vote against the resolution; following the changes to the board at the May general meeting, the new board changed its recommendation to support the capital return.

At Buru Energy chairperson Graham Riley was comfortably elected on the proxy results but that resolution was withdrawn prior to the meeting whereas the other resolution put to the May AGM, the remuneration report, was heavily defeated when more than 50 million shares

were voted from the floor against the resolution. If those shares were also voted against Riley's election he would have been defeated and the resolution seeking his reelection was withdrawn without comment at the meeting.⁸ He was replaced as chairperson by Buru founder Eric Streitberg, who had been an executive director until January 2014 and on becoming chairperson became executive chair with the CEO leaving shortly after the AGM. Outside of Intrepid no director was formally defeated; as noted above, in addition to Riley, Cabcharge's Gilmour and Sundance's Blakiston appeared to resign from the board rather than face defeat.

The only remuneration resolution included in the list of management defeats for 2014 was a plan by Cooper Energy to amend the terms of their performance rights plan to permit greater dilution of shareholders. Not included in the above table were a number of resolutions withdrawn which appear to have been withdrawn due to changing circumstances such as board or management changes; also not included was a resolution withdrawn from CuDeco's AGM seeking ratification of 20,000 shares issued to a supplier of the company.

⁸ Buru Energy Limited, 'Results of General Meeting', ASX announcement, 23 May 2014.