
Australia

Minority Shareholder Rights

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SOURCES OF PROTECTION AND ENFORCEMENT

Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?

The *Corporations Act 2001 (Cth)* (Corporations Act) provides for certain minority shareholder rights and protections. These rights and protections may be modified by the constitution of a company (although this power is subject to limitations). Therefore, the Corporations Act must be considered alongside the statutes of the relevant company. All references to sections in this guide are to sections of the Corporations Act.

Minority shareholders also derive protection from common law rules, which operate in the absence of statutory powers. Nevertheless, it is rare that they form the primary source of protection. Additionally, the utility of many common law doctrines has been reduced due to the introduction of various statutory mechanisms in the Corporations Act.

More generally, public companies (and listed companies in particular) are subject to stricter requirements under the Listing Rules of the Australian Securities Exchange (ASX) in areas such as disclosure of information to the market. The Takeovers Panel may also act as a source of protection for all shareholders in the context of company acquisitions. Yet, it is in unlisted proprietary companies that minority shareholder disputes frequently arise, due to the absence of a market exit option.

The appropriate person or body to enforce such rights will depend on the right in question. Some protections under the Corporations Act are enforceable by the shareholders personally or on behalf of the company. Other protections are enforceable by the court, the Takeovers Panel, or the Australian Securities and Investments Commission (ASIC). However, this is usually at the request of a (minority) shareholder.

PROTECTION AGAINST DILUTION

Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?

The constitution of a company (or a shareholders' agreement) may provide shareholders with pre-emptive rights, allowing shareholders to participate in an issuance of shares in proportion to their current shareholding in the company. Thus, if present in a company's constitution (or a shareholders' agreement), minority shareholders – indeed, any shareholder – may avoid the dilution of their shareholdings.

In addition, under section 232, a shareholder can apply to the court for a range of orders if the conduct of the company's affairs, an actual or proposed act or omission by the company, or a resolution, including a proposed resolution, of members of the company is 'oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members'. These elements are merely 'different aspects of the essential criterion, namely commercial unfairness' (*Morgan v 45 Flers Avenue Pty Ltd* (1986) 10 ACLR 692, 704). If the issuance of shares has an effect of diluting the shareholdings of the minority where there is no legitimate need for the company to raise equity capital, then a court may find that the conduct falls within the scope of this provision (*Corbett v Corbett Court Pty Ltd* (2015) 109 ACSR 296; *Strategic Management Australia AFL Pty Ltd v Precision Sports & Entertainment Group Pty Ltd* (2016) 114 ACSR 1). Such a finding is, however, dependent on an 'an objective assessment of whether the impugned conduct is so unfair that reasonable directors who consider the matter would not have thought it fair to make the decision having balanced the importance of furthering the corporate object on one hand and the disadvantage, disability or burden which would be imposed on the member or members on the other' (*Wayde v New South Wales Rugby League Ltd* (1985) 61 ALR 225, 234-5). Notably, this section is not restricted to minority shareholders.

Under section 233, a court may make a broad range of orders pursuant to a finding of oppression under section 232, including, but not limited to, the winding up of the company, modification or repealing of the company's constitution, regulation of the company's future conduct, an order for the purchase of shares, or compensation. The order is made to end the oppression (*Campbell v Backoffice Investments Pty Ltd* (2008) 66 ACSR 359).

While not exactly pertaining to the dilution of a minority shareholding, the rights attached to shares in a class of shares may be varied or cancelled in accordance with the procedure set out in a company's constitution. In the absence of such a procedure, variation or cancellation may take effect by special resolution of the company itself along with either a special resolution passed at a meeting of members of the relevant class or with the written consent of members with at least 75 per cent of the votes in the class (section 246B).

However, section 246D provides that if members in a class do not all agree (whether by resolution or written consent) to a variation or cancellation of their rights, or a modification of the company's constitution to allow their rights to be varied or cancelled, members with at least 10 per cent of the votes in the class may apply to the court to have the variation, cancellation or modification set aside. The court may then set aside the variation, cancellation or modification if satisfied that it would be unfairly prejudicial to the applicants. Thus, minority shareholders are granted protection, albeit limited, with respect to the variation of rights attached to shares.

RIGHTS TO APPOINT DIRECTORS

Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?

The appointment of directors depends on either the replaceable rules in the Corporations Act or the terms of the company's constitution, which act to displace or modify the replaceable rules (section 135). Unless provided for in the constitution of a company (or an associated shareholders' agreement), minority shareholders have no special rights to appoint directors to safeguard their interests.

The replaceable rules stipulate that directors may be appointed by the company in a general meeting (section 201G) or by the directors themselves (section 201H(1)). For a public company, the appointment by this means requires confirmation of the appointment at the next annual general meeting (section 201H(3)). For a proprietary company, the confirmation must be made within 2 months (section 201H(2)). Generally, whether under the replaceable rules or a constitution, those with a simple majority of voting shares will have the power to elect the directors.

Proprietary companies have very few restrictions with respect to director appointments and the arrangements vary considerably. For example, some constitutions may provide for the indefinite appointment of a director while another may give the power of appointment to key employees or shareholders (*British Murac Syndicate v Alperston Rubber Co* [1915] 2 Ch 186).

While public companies are more limited under the Corporations Act, constitutions are often based on Table A provisions, now known as the 'Model Articles' in the UK, which provide for directors to be elected by ordinary resolution in a general meeting. Additionally, constitutions typically provide for one third of directors to retire at each annual general meeting and be eligible for re-election. It is often the board who nominates new directors and fills casual vacancies (pursuant to which, as above, the directors will hold office until confirmation at the next general meeting). For listed companies in particular, the Listing Rules provide for regular elections of directors by the general meeting (Listing Rules 14.4, 14.5).

Directors have fiduciary and statutory duties requiring them to act in good faith in the best interests of the company, for a proper purpose, and with a reasonable degree of care and diligence (sections 180-4). Although duties are owed to the company as a whole and not to individual shareholders, 'it is almost axiomatic to say that the content of the duty may (and usually will) include a consideration of the interests of shareholders' (*The Bell Group Ltd (in liq) v Westpac Banking Corporation (No 9)* (2008) 70 ACSR 1, [4395]). Thus, these duties provide a form of protection to shareholders in this (and other) context(s).

Injunctive relief and possibly damages pursuant to section 1324 could be sought for breach of director duties if the minority shareholder believes that the director is not acting in good faith or for a proper purpose or if there is a conflict of interest. In particular, section 1324 allows ASIC and a 'person whose interests have been, are or would be affected by' conduct in contravention of the Corporations Act to apply to the court for an injunction.

PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?

Minority shareholders do not have specific protections where the company is the subject of a takeover bid. There are, however, indirect protections that they can rely on.

The Takeovers Panel may declare circumstances in relation to affairs of the company to be unacceptable circumstances (section 657A). The Panel must consider the effect that the circumstances have had, are having, will have, or are likely to have on the control (or potential control) of the company or the acquisition (or proposed acquisition) of a substantial interest in the company. The Panel may also find the circumstances to be otherwise unacceptable having regard to the purposes of section 602. Such purposes include, but are not limited to, ensuring that holders of a class of voting shares or interests 'all have a reasonable and equal opportunity to participate in any benefits accruing to the holders through any proposal under which a person would acquire a substantial interest in the company' and ensuring 'an appropriate procedure is followed as a preliminary to compulsory acquisition of voting shares or interests' (section 602).

An application for a declaration under section 657A may be made by ASIC or 'any other person whose interests are affected by the relevant circumstances' (section 657C). Following a declaration, the Panel may make any order it thinks appropriate to protect the rights of persons whose interests have been or will be affected by the unacceptable circumstances or to ensure the bid proceeds in a way that it would have proceeded had the circumstances not occurred (section 657D).

For listed companies and unlisted companies with more than 50 members, following a takeover bid, section 661A(1) provides that a bidder may compulsorily acquire any securities in the bid class if the bidder has relevant interests in at least 90 per cent (by number) of the securities in the bid class and has acquired at least 75 per cent (by number) of the securities that the bidder offered to acquire under the bid. This compulsory acquisition may be effected without reaching this threshold if the bidder obtains the approval of the court (section 661A(3)). Notably, for all companies, including proprietary companies, section 664A(1) provides for a more general compulsory acquisition power, regardless of whether there is a takeover bid, also with a 90 per cent threshold.

Minority shareholders still retain some protection, as the bidder must acquire the securities only on the terms that apply to the acquisition of securities under the takeover bid (section 661C). Additionally, minority shareholders may apply to the court for an order that the securities not be compulsorily acquired, although the court must be satisfied that the consideration for the securities is not fair value (section 661E; *Teh v Ramsay Centauri Pty Ltd* (2002) 42 ACSR 354).

Conversely, if the bidder has an interest in at least 90 per cent of the securities (by number) in a bid class at the end of the offer period, the bidder is required to offer to buy out the remaining holders of the bid class securities if the minority shareholders so choose. The bidder must give notice to each shareholder within one month of the end of the offer period stating its relevant interests and informing the shareholder of their right to be bought out (section 662B). Within one month of this notice, the shareholder may give written notice requiring the acquisition (section 662C).

Oppression under section 232 could also be argued by a minority shareholder if the minority shareholder believes that the takeover is contrary to the interests of the members as a whole or is oppressive to, unfairly prejudicial to, or unfairly discriminatory against a member or members.

More generally, compliance by listed companies with disclosure obligations should help to keep minority

shareholders informed of significant changes in other shareholdings in the company. In particular, a person must disclose to the listed company when they begin to have or cease to have a substantial holding in the company, a substantial holding being 5 per cent, and when their substantial holding changes by at least 1 per cent (section 671B).

ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?

Individual shareholders can commence proceedings on behalf of the company through a statutory derivative action where the company is unwilling or unable to litigate itself.

Part 2F.1A of the Corporations Act allows the court to permit a member to bring proceedings on behalf of a company or intervene in any proceedings to which the company is a party. Under section 236, any member, former member, person entitled to be registered as a member of the company or a related body corporate can apply to the court for leave to bring a derivative action. Such proceedings may involve an action against a director for the breach of a duty owed to the company.

The court must grant leave if it is probable that the company will not commence the proceedings, or properly take responsibility for them, the applicant is acting in good faith, it is in the best interests of the company for leave to be granted, and, if the applicant is applying for leave to bring proceedings, there is a serious question to be tried (section 237). The applicant must satisfy these factors on the balance of probabilities (*Cassegrain v Gerard Cassegrain & Co Pty Ltd* [2008] NSWSC 976).

In examining the good faith factor, a court will assess whether the applicant 'honestly believes that a good cause of action exists and has a reasonable prospect of success' and 'whether the applicant is seeking to bring the derivative suit for such a collateral purpose as would amount to an abuse of process' (*Swansson v Pratt* (2002) 42 ACSR 313, [36]). Seeking a derivative action to restore value to a shareholder's shares would not be an abuse of process. Moreover, if a wrong appears to be done to the company and the directors refuse to act, the court 'should permit a derivative action to be instituted only by those...who would suffer a real and substantive injury if the action were not permitted' connected with the applicant's status as a current or former shareholder or director. (*Swansson v Pratt* (2002) 42 ACSR 313, [41]-[42]).

The best interests factor sets a relatively high threshold and requires the applicant to produce evidence on matters such as the character and business of the company and evidence enabling the court to decide whether the sought redress is available by other means (*Swansson v Pratt* (2002) 42 ACSR 313, [56]-[60]). Moreover, there is a presumption that leave is not in the best interests of the company if the proceedings involve a third party and the company's decision not to bring or defend the proceedings (or to discontinue, settle or compromise the proceedings) is based on the directors acting in good faith for a proper purpose with a rational belief that the decision was in the best interests of the company (section 237(3)).

Ratification of the company's conduct by members of the company does not rule out a statutory derivative action, but the court may take it into account when deciding what order or judgment to make in statutory derivative proceedings or in relation to an application for leave under section 237.

In practice, due to the difficulties in establishing the section 237 criteria, seeking an order under section 232 may be more desirable for minority shareholders, given that there is no need to first obtain the leave of the court.

RIGHTS TO PARTICIPATE IN DECISION-MAKING

To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?

The Corporations Act sets out several mechanisms for minority shareholders to convene a general meeting in order to pass resolutions. First, minority shareholders with at least 5 per cent of the votes that may be cast at a general meeting may convene a meeting at their own expense (section 249F). Second, minority shareholders with at least 5 per cent of votes that can be cast at meetings, or at least 100 members who are entitled to vote at meetings, may request that a director calls a general meeting under section 249D. The directors must call the meeting within 21 days of the request. If the directors fail to do so, members who hold more than 50 per cent of the votes of members who made the request may call and arrange a general meeting themselves under section 249E. The company must pay the members their reasonable expenses in convening the meeting. Third, a member who would be entitled to vote at a meeting may apply for a court order to convene a meeting, if it is impracticable to call the meeting in any other way (section 249G). In any case, the meeting (and indeed all meetings of a company's members) must be held for a proper purpose (section 249Q) and any proposed resolution must be within the constitutional power of the meeting (*Humes Ltd v Unity APA Ltd* (1987) 11 ACLR 641).

Notably, there has been a rise in recent years in shareholders relying on section 249D (or 249F) and section 203D of the Corporations Act to request that public companies convene meetings to remove members of the board of directors. Section 203D (which applies to public companies only) generally allows shareholders by ordinary resolution at a general meeting to remove one or more directors of the company. Further, section 203D section applies regardless of any provision of the company's constitution, any agreement between the director and the company or any agreement between any shareholder and the director. To rely on section 203D, shareholders must give their notice of intention to move the resolution at least two months before the meeting is to be held. The director who is subject to the removal resolution is entitled to receive a copy of the notice and put their case to members (section 203D(3)-(6)). The decision in *NRMA Ltd v Scandrett* (2002) 43 ACSR 401 has confirmed that pursuant to section 203D, it is possible for shareholders to remove more than one director by means of a single resolution.

Minority shareholders with at least 5 per cent of votes that can be cast on the resolution, or at least 100 members entitled to vote at a general meeting, may give the company notice that they are to propose a resolution at a general meeting (section 249N). The shareholders may require the company to circulate a statement on the resolution to other members, as long as the statement is less than 1,000 words long and is not defamatory (section 249P). If given notice, the resolution must be considered at the next general meeting that occurs more than two months after the notice is given (section 249O(1)). Moreover, the company is responsible for the costs of the distribution of the statement, provided it is received in time to circulate it with the notice of meeting (sections 249O(3), 249P(7)).

Furthermore, unless modified by a company's constitution, each shareholder has one vote on a show of hands, and each member has one vote for each share they hold on a poll (section 250E). Notably, for listed companies, this rule cannot be varied by a company's constitution (ASX Listing Rules 6.8, 6.9). Shareholders with at least 5 per cent of the votes, or five voting members (or the chair of the meeting), may demand a poll, although a company's constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll (sections 250L(1), 250L(2)).

A minority shareholder's right to participate in the decision-making of the company is enhanced by the right to inspect the company's minute books for the meetings of its members and for resolutions of members passed without meetings (section 251B). This does not include a right to access the minute

books of board meetings. Nevertheless, the directors, or the company by resolution, may authorise a member to inspect the books, which includes a register, financial reports, any other record of information, and a document, of the company (section 247D) and a member may apply for a court order for inspection, provided the member is acting in good faith and for a proper purpose (section 247A). There may be a proper purpose if, for example, there is an irregularity in the company's administration.

The ability to participate in the decision-making of the company is also bolstered by the requirement that all members entitled to vote at a general meeting be given at least 21 days' notice, or 28 days in the case of a listed company, of such a meeting (sections 249H(1), 249HA(1)). This protection is limited, however, by the stipulation that members with at least 95 per cent of the votes that may be cast may agree for a shorter notice period, unless the meeting involves a resolution regarding the removal or appointment of a director (sections 249H(2), 249H(3)). Section 249L(1) provides that the notice must set out the time and location of the meeting, the general nature of the meeting's business, and the intention and text of any special resolution to be proposed.

The common law supplements these notice requirements by mandating that, in framing notices, there is a sufficient statement of the objects and the general nature of the meeting. This entails 'a fair and reasonable intimation of what is actually proposed to be done at the meeting and to place full and reliable information before the shareholders and to make full disclosure of all relevant facts so as to enable shareholders to make an informed decision' (*Devereaux Holdings Pty Ltd v Parry Corp Ltd* (1985) 9 ACLR 837, 842). Directors also have a fiduciary duty to provide members with information material to the decisions before shareholders at a meeting, particularly where directors are recommending shareholders to vote in a specific manner (*Bulfin v Bebarfield's Ltd* (1938) 38 SR (NSW) 424, 440) and where directors stand to benefit from, or have an interest in, a proposed resolution (*Chequepoint Securities Ltd v Claremont Petroleum NL* (1987) 11 ACLR 94, 96).

Minority shareholders have more power with respect to certain significant decisions. These decisions may have to be made by special resolution – that is, with the approval of at least 75 per cent of eligible shareholders – and include such decisions as changes to the company's constitution (section 136) and variations or cancellations of class rights (section 246B). Moreover, while minority shareholders do not have a specific power or right to alter the company's share capital structure or to prevent changes to it, the rules regarding selective share buybacks and share capital reductions under the Corporations Act could provide minority shareholders with the ability to vote to prevent changes to the company's capital structure. These actions require a special resolution of members who can vote or the unanimous agreement of all ordinary shareholders to pass (sections 256C, 257D). Effectively, minority shareholders could block such changes to the company's share capital structure due to the higher threshold of shareholder approval required by the Corporations Act.

RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?

Under section 462(2)(c), a holder of fully paid shares in the company and any person liable as a member or past member to contribute property to the company if it is wound up has standing to apply for an order to wind up the company. Such standing may allow a minority shareholder to realise their investment before it is diminished. The court may then order the winding up of a company on a number of grounds, including, but not limited to, where:

- 'directors have acted in affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever that appears to be unfair or unjust to other members' (section 461(1)(e));
- 'affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole' (section 461(1)(f));
- 'an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members of the company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole' (section 461(1)(g));
- ASIC has stated in a report that 'the company cannot pay its debts and should be wound up' or that 'it is in the interests of the public, of the members, or of the creditors, that the company should be wound up' (section 461(1)(h)); or
- 'the court is of opinion that it is just and equitable that the company be wound up' (s 461(1)(k)).

Whether it is 'just and equitable' to wind up a company will be determined on a case-by-case basis. A well-recognised scenario enlivening the provision is where 'the company engages in acts which are entirely outside...the general intention and common understanding of the members when they became members' (*Re Tivoli Freeholds Ltd* [1972] VR 445, [468]). An example is provided by *Re City Meat Co Pty Ltd* (1984) 8 ACLR 673, where a company's shares were held by a single family. The majority shareholder was a managing director, who ignored the rights and expectations of the applicant's part of the family, which held 36 per cent of the capital. This justified a winding up order.

The provision relating to directors acting 'in affairs of the company in their own interests' has been interpreted to apply where the directors have 'preferred their own interests to the interests of one or more or perhaps some significant section of the members' and where 'the conduct is unfair or unjust at least to any significant body of other members, and perhaps to any member' (*Re Cumberland Holdings Ltd* (1976) 1 ACLR 361, [374]). Therefore, it may apply even where the majority of shareholders, but not the minority, benefit from the directors' actions.

Notably, an action for winding up under section 461 will usually be sought in tandem with an action for oppression under section 232. This is unsurprising given the similarity in language between section 232 and sections 461(1)(f) and (g).

RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?

While a shareholder is entitled to exercise their vote attached to a share in self-interest (*Peters' American Delicacy Co Ltd v Heath* (1939) 61 CLR 457, 504), the courts have found such power to be limited in certain categories of cases. In particular, the courts have invoked a 'fraud on the minority' doctrine for an abuse of the majority shareholder voting power in cases concerning:

- the appropriation of a company's property;
- the release of directors from breaches of duties; and
- the alteration of a company's articles of association.

These categories are not clearly defined and while they provide a degree of protection to minority shareholders, their utility has been subsumed by the previously discussed legislative provisions.

In the first category, the Supreme Court of New South Wales in *Houghton v Immer (No 155) Pty Ltd* (1997) 44 NSWLR 46, applying the principles set out in Privy Council's decision in *Cook v Deeks* [1916] 1 AC 554, held that a resolution effectively approving a transfer of a body corporate's common property to the majority members voting in favour of the resolution for \$1 a fraud on the minority which 'deprived the [minority] of valuable rights, and... which was only for the benefit of the [majority members]'.

Several Australian courts have also reinforced that 'shareholders might vote as individuals in general meetings and can usually exercise their votes for their own benefit, there [is] nevertheless a limit to that right which required the voting powers of shareholders to be used bona fide for the benefit of the company as a whole' (for example, see *Litigation Capital Partners LLP Pte Ltd (Registration No 200922518M) v ACN 117 641 004 Pty Ltd (in Liquidation)* [2021] WASC 161, 156 *Kirwan v Cresvale Far East Ltd (In liq)* [2002] NSWCA 395, [115], [121] and *Heydon v NRMA Ltd* [2000] NSWCA 374, 489. Both cited *Ngurli Ltd v McCann* (1953) 90 CLR 425, 439 as applicable authority).

In the second category, the courts have intervened with respect to resolutions absolving directors from breaches of good faith to the company. This category largely overlaps with the first category. Thus, in *Forge v ASIC* (2004) 52 ACSR 1 where funds were appropriated to make payments of management and consulting fees and unsecured loans to company directors, the New South Wales Court of Appeal held that 'the ratification resolutions were ineffective because they sought to cure the appellants' wrongful taking of [company] resources' (at [376]), that 'even if the shareholders could...ratify the private law breaches of the directors' duties, the ratification resolutions were ineffective to cure the breaches of statutory duty' (at [384]), and that the shareholders were not 'fully informed' of the effect of the resolutions (at [402]). Nevertheless, the utility of this category has been largely overtaken by the statutory derivative action introduced in 2000.

In the third category, the doctrine may be enlivened to challenge resolutions to change the company's constitution. The traditional formulation of this category requires that the majority voting power to make such changes 'be exercised, not only in the manner required by law, but also bona fide for the benefit of the company as a whole' (*Allen v Gold Reefs of West Africa Ltd* [1900] 1 Ch 656, 671). The 'company as a whole' was held to entail 'a very general expression negating purposes foreign to the company's operations, affairs and organisation' (*Peters' American Delicacy Co Ltd v Heath* (1939) 61 CLR 457, 512). Thus, a resolution 'must not be simply [for] the enrichment of the majority at the expense of the

minority' (*Peters' American Delicacy Co Ltd v Heath* (1939) 61 CLR 457, 495). However, the High Court in *Gambotto v WCP Ltd* (1995) 16 ACSR 1, 8-9 found the aforementioned test to be inappropriate. Rather, a special resolution to alter the articles 'regularly passed will be valid unless it is ultra vires, beyond any purpose contemplated by the articles or oppressive'. Furthermore, in the case of an alteration to allow expropriation by the majority of the minority's shares, such a power must be exercised for a proper purpose and not operate oppressively against the minority (these criteria possibly being satisfied where the minority's shareholding is detrimental to the company). Again, the utility of this has been overtaken to an extent by the statutory compulsory acquisition powers and the oppression provision in section 232.

Finally, the constitution of a company has effect as a contract between the company and each member, between the company and each director, and, importantly, between a member and each other member, 'under which each person agrees to observe and perform the constitution' to the extent it applies to that person (section 140(1)). Breaches may, therefore, give rise to a personal action (see, eg, *Rayfield v Hands* [1960] Ch 1). Similarly, where a shareholders' agreement is in place, personal actions may also be brought for a breach of such agreement.

SUMMARY OF RIGHTS

Below is a table providing a brief summary of the rights of minority shareholders in Australia, organised according to the percentage threshold at which the various protections become available.

Shareholding (per cent)	Description	Reference
25	Shareholders with at least 25 per cent of the company's voting rights may block special resolutions on certain significant decisions, including (but not limited to) decisions relating to the variation or cancellation of rights attached to classes of shares, amendments to the company's constitution, selective share buybacks and selective capital reductions.	Sections 246B, 136, 256C, 257D.
10	If members in a class do not all agree (whether by resolution or written consent) to a variation or cancellation of their rights, or a modification of the company's constitution to allow their rights to be varied or cancelled, members with at least 10 per cent of the votes in the class may apply to the court to have the variation, cancellation or modification set aside. The court may then set it aside if satisfied it would unfairly prejudice the applicant(s).	Section 246D
	Shareholders with at least 10 per cent of a class of securities (by number) may prevent the compulsory acquisition of the securities, in both the context of a takeover and more generally.	Sections 661A(1), 664A(1)
5	Minority shareholders with at least 5 per cent of the votes that may be cast at a general meeting may convene a meeting at their own expense.	Section 249F
	Minority shareholders with at least 5 per cent of votes that can be cast at meetings (or at least 100 members who are entitled to vote at meetings) may request that a director calls a general meeting. If the directors fail to do so, members who hold more than 50 per cent of the votes of members who made the call can arrange a general meeting themselves.	Sections 249D, 249E

	Minority shareholders with at least 5 per cent of votes that can be cast on the resolution, or at least 100 members entitled to vote at a general meeting, may give the company notice that they are to propose a resolution at a general meeting. They may require the circulation of a statement on the resolution to other members.	Sections 249N, 249P
	Shareholders with at least 5 per cent of the votes (or 5 voting members or the chair of the meeting) may demand voting by a poll. These thresholds may be reduced by a company's constitution.	Section 250L
	Shareholders with at least 5 per cent of the votes that may be cast at a general meeting may prevent any reduction of the notice period for a general meeting.	Section 249H
	A shareholder can apply to the court for a range of orders if the conduct of the company's affairs, an actual or proposed act or omission by the company, or a resolution, including a proposed resolution, of members of the company is 'oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members'.	Sections 232-3, Section 250L, Section 249H
One share	A shareholder 'whose interests have been, are or would be affected by' conduct in contravention of the Corporations Act, such as a breach of director's duties, can apply to the court for injunctive relief and possibly damages.	Section 1324
	<p>A shareholder, 'whose interests are affected by the relevant circumstances', may apply for a declaration of unacceptable circumstances by the Takeovers Panel, having regard to the effect of the circumstances on the control or acquisition of the company, or having regard to the purposes of section 602.</p> <p>Such purposes include, but are not limited to, ensuring that holders of a class of voting shares or interests 'all have a reasonable and equal opportunity to participate in any benefits accruing to the holders through any proposal under which a person would acquire a substantial interest in the company' and ensuring 'an appropriate procedure is followed as a preliminary to compulsory acquisition of voting shares or interests'</p>	Sections 602, 657A, 657C