

AUSTRALIAN SHAREHOLDERS ASSOCIATION

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ARE AGM'S REALLY NECESSARY?

1. **Introduction:**

When I was the chairman of the Art Gallery of NSW each year I had the honor of announcing the winner of the Archibald prize. I did it ten times and became quite adept at delaying the actual announcement in my speech to the very, very end for I knew that as soon as I announced the winner, no-one was interested in listening or looking at me – my speech was done.

Today's topic asks the question "Are AGMs really necessary?" I feel I need to make my position very clear at the beginning and I sincerely hope that unlike the Archibald prize you will then hang about for the rest of the speech.

My answer to the question is simply "yes". I strongly believe that the AGM is really necessary in relation to listed public companies.

As I will mention later there is some support against the need for AGMs in non-listed public companies such as not-for-profits etc although I have to say I am not convinced.

Having made my great disclosure, and noting that you are all still here, let me firstly take you back in history.

A need to hold an annual general meeting has, from my research, been an integral part of company law more or less from its inception.

But in those days

- (a) There were no large institutional shareholders who had their own briefing and who had procedures to follow which often meant they had to determine their vote for the meeting well in advance of it.
- (b) There were no wide holdings in those days by retail shareholders. As many of you would know that is a product of the last 10 – 25 years.
- (c) There were no rules on continuous disclosure and the legislature were clearly concerned that without an annual get together shareholders may never be told of what was going on in the company.
- (d) There were few cases, if any, of companies with wide geographic spreads of shareholders and also of activities. Obviously there were trading companies but in general their headquarters and operations were in one place. Of course, this should be contrasted to the multi-nationals that operate today.

(e) There was no technology other than the mail service, which permitted dissemination of a company's message. This meant that the best way of disseminating news was to get together in the one place – votes were best done by a show of hands with a new innovation of allowing people to send in by post the appointment of a person to vote on their behalf.

2. The above history led to the law, which applies today.

Our corporations' law states that:

(a) Section 250m – every public company must have an annual general meeting within five months of the end of its financial year and at least once in every calendar year.

(b) Section 250r – states that these meetings must look at five items in addition to any other business prescribed by the company's constitution.

These areas are:

- (1) Consideration of financial reports
- (2) Election of directors
- (3) Appointment of auditors
- (4) Fixing auditors remuneration

(5) Consideration of the remuneration report (a non-binding plebiscite).

Interestingly historically financial reports were not just to be considered but approved. This led, in modern times, to some difficulty. Financial reports had already been widely disseminated, acted upon and approved by the auditors. The concept of a meeting some five months after the end of the financial year, not approving those accounts, was too horrible to contemplate and that need has been removed.

3. The above history and legislation brings us to the situation today. All companies, which are public in nature, have AGMs. These are generally well scripted, well advertised, and very badly attended.

In this regard, I note:

(a) 92% of company secretaries have been reported as wanting an overhaul of annual general meetings.

(b) Shareholder attendances have fallen from 36% in votes cast in 2001 to 28% in 2007.

Actually attendance in terms of number of shareholders has become extremely poor with very few companies having more than 200 people attend the meetings and these companies generally have more than 150,000 shareholders. In terms of the voting power of the actual

attendees it is rare that this would add up (excluding proxies) to more than one half to one percent of the voting power in the company.

- (c) Large shareholders seldom if ever attend. They have their own briefings by senior executives with any matters not already within the market dealt with on those occasions being released to the stock exchange.
- (d) As a result most of the shares voted at AGMs are voted by proxy. This generally means that the shareholder has made up his mind on how to vote prior to the meeting and in the case of some institutional shareholders, who have procedures that take up to seven days or more to go through, that they made up their minds more than a week before.
- (e) The requirement to state what proxies have been received often makes voting at the meeting irrelevant in any event.
- (f) Over the last few years AGMs have become dominated by some. To begin with this was a welcome step as AGMs often were without question. However, the domination of some have moved more to entertainment quality and self- aggrandisement.

I should add that the questioning by the ASA have continued, and in my view become an extremely important part of the AGM, and without exception, I can certainly say that, based on my experience, I am not

referring to the ASA representative in my thoughts on those who dominate.

(g) The meetings have, as a result, of the above become extremely formal in nature and indeed almost choreographed. Spontaneity is rare, new news is also rare – the value of the meeting definitely affected.

(h) In fairness, the lack of announcements at AGM is because of the continuous disclosure requirements. I believe in these, but one of the side effects of them undoubtedly is that revelations at AGMs are, and indeed should be, rare.

(i) The location of AGMs has often become quite difficult. Larger companies correctly seek to move around the country but in doing so regularly prevent many from attending. If the meeting be in Melbourne, the Sydney shareholders find it difficult to attend etc.

It is also noted that the timing of AGMs mean that there is a season (or perhaps two seasons) in each year when they occur and we often find, for example with the banks, that there are at least two, if not three trading banks, having their meetings at the same time on the same day.

The actual timing of them has not changed i.e.: 10 or 2 o'clock. Often these are difficult times for shareholders to attend. Those involved in the market can't leave their desk; those who are retail shareholders

may not have the right to leave their jobs or the mobility to get to the meeting.

4. **So should we have AGMs?** As I revealed earlier, I strongly believe yes and my reasoning is as follows:

(a) The AGM in my view is, and has always been, an excellent forum for shareholders; particularly retail shareholders, to meet their directors and senior management.

(b) There is something just, and indeed psychologically correct, for chairmen and directors to front formally the owners of the company – without it the divide between the shareholders and management and directors would become even larger than sadly it is today.

(c) The AGM allows for debate – in good times as we have had in the last 10-15 years this may not be necessary, but in bad times may be essential

(d) The formality and regularity in the calendar of when the meeting will occur is, and should become even more, part of the communication of the company with its shareholders.

My thinking can be likened to a situation where you own a theatre and attendances are dropping. That does not mean you should close the theatre; the more logical thing to do is to change the entertainment. The fact that people aren't coming to the theatre doesn't mean the theatre is bad, it may mean that what goes on within the theatre is not up to scratch.

The fact that both shareholders and management are not happy with AGMs suggests, in my view, we have to improve them, not get rid of them.

5. I should say here that most of my thinking (as mentioned above) is based upon public listed companies.

There is definite need for a review to take place in respect of not-for-profit companies, the bulk of which are companies limited by guarantee, and therefore public companies under the law and therefore having all of the requirements under the law that I have referred to above. I am not sure whether they should have AGMs - the argument in favour being that often they get special tax treatment and take donations and therefore should be responsible to the public and have meetings annually. The other argument is that they are not set up to report in the way of other public companies and can't afford it etc. For the purposes of today's discussion I prefer to just leave that as a matter for others to consider.

However, I do believe that other companies i.e.: for profit public companies, whether listed or otherwise, should have to have an AGM. And I would suggest that often it is the smaller companies that need the AGM even more than the bigger. I do not subscribe to the view that smaller companies, which are public in nature, should be excused from AGMs. If you have the right to take monies from the public you must account to them and this should include an AGM.

6. **So how should we improve AGMs?**

First let me note that there has already been some improvement in very recent time. These include:

- (1) Discussion with major shareholders including the ASA before the meeting to focus on governance issues and matters that are to be discussed at the AGM. I publicly note that receiving a letter from the ASA (or telephone call) on the matters that concern them before the meeting allows the company to focus on those matters and to ensure that they are answered in a way that is thoughtful and hopefully useful.
- (2) The establishment of other mechanisms to allow shareholders to meet the management etc and to put their questions forward have already occurred. Many companies establish booths in the

foyer outside the AGM to allow members of staff to chat to shareholders etc

- (3) Questions are invited through websites etc prior to the AGM and can be answered at the AGM and also in electronic form as well.
- (4) The use of web casting, which most large companies use, overcomes the problem of geography referred to above.

Second the above only being a few small amendments and clearly not having the effect of substantially improving attendances; others need to be looked at to greatly improve the AGM namely:

- a. De coupling the voting from the meeting. This would mean that voting could be opened at the meeting but not be completed for say, seven days from the close of the meeting.

This would assist in:

- i. Removing antagonism from the meeting and I predict changing the whole environment of the meeting from an “examination” to an “information session.” It would also prevent rallying of the troops etc. This does not mean that the resolutions should not be discussed but driving to an outcome may well be removed.

- ii. The proxy problems being fixed –
 - (aa) It would allow people to hear what is said at the AGM and then vote rather than visa versa.

 - (bb) This would mean that the proxies would not dominate and complete the meeting before it even starts.

 - (cc) It would allow those who have seven day requirements to make a vote to vote after the meeting has concluded and

 - (dd) It would allow people to vote whether they attend the meeting or not.

- iii. Allowing smaller shareholders the opportunity to think, in the comfort of their own home if they wish about their vote, having seen the debate either at the AGM itself or on the web cast or having read about it in the newspaper.

- (b) The meeting should be changed to become an update. Management should be encouraged to try and provide something of interest to all shareholders at the meeting without breaching continuous disclosure. For example that could be a presentation on a part of the business. It could be an introduction of part of the management team to the shareholders. It could allow some directors to make a presentation on how they go about their business. Perhaps even experts could address the meeting on aspects affecting the company. Maybe environmental and sustainability presentations could be made etc.
- (c) Questions should be continued to be through the chair, but the chairs of the various committees of the board should be encouraged to give insights into what worries them and what doesn't worry them. This could allow shareholders to see how the committee structure is working and how others, who may well be the chairman one day, are carrying out their obligations.
- (d) Much of what is put at the institutional meetings could be put at the AGMs so that it is, in part, an information meeting for retail shareholders.
- (e) All meetings should be simulcast. It has been said that this could cost smaller public companies a lot, and I am not aware of the total cost. But my instincts are that the cost is small and probably not nearly as expensive as printing of annual reports in years gone by.

- (f) Questions should, as they are being already, be sought in advance and answered.

- (g) Companies should be encouraged to seek involvement in the AGM. For example: in a trading bank which has branches all over Australia for the date of the AGM, they should open part of their branch to their customers and shareholders to come and watch by simulcast, some or all, of the proceedings. There are many other ways of making more involvement.

Conclusions:

There is no doubt that there were good reasons why the AGM was required of companies when corporation laws were first promulgated. Many of the reasons for AGMs have fallen away. However, the need for the AGM continues. Like everything else in life it must change to meet what is required of it and there are many ways in which it can be improved and I would suggest made more relevant to the 21st century.