

## ASA Submission: Rethinking the AGM

The ASA would like to thank Chartered Secretaries Australia and Blake Dawson for providing this discussion paper (the Paper) on the future role of the AGM. The AGM is the cornerstone of a listed company's communication with its owners. It is the only opportunity for retail shareholders to directly communicate with those entrusted to manage the company<sup>1</sup>. Despite this, attendance at AGMs is in decline.

The ASA acknowledges the AGM has not kept pace with the fundamental changes to society brought largely by technology in the past 20 to 30 years, as well as a shift in the identity of shareholders. If the AGM is to be invigorated it is clear it must evolve. The ASA acknowledges that many companies have taken the initiative and despite there being no legal requirement to do so, have evolved the AGM into a forum for forward discussion.

### 1. The ASA

The Australian Shareholders' Association (ASA) is a not-for-profit organisation formed to represent, protect and promote the interests of investors in shares, managed investments, superannuation and other financial investments.

### 2. Submission

The view of the ASA is that the necessary changes to improve AGMs are largely not matters which can be mandated through legislative change. Instead these changes require a considerable shift in the approach of companies to the AGM. Part 2.3 of this response outlines what the ASA sees as an entrenched culture which defines relations between shareholders and listed companies.

#### 2.1. The AGM's Reporting Function and Accountability of Directors

The ASA supports the statements made in the Paper with regard to the limited role which the AGM now plays in reporting financial information. The ASA also strongly supports the comments made in the Paper with regard to the need for Directors to be accountable to the shareholders, particularly retail shareholders.

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<sup>1</sup> The remit of the ASA is to represent the views of shareholders in listed companies. Accordingly any reference to "company" or "companies" in this document is to be taken as a reference to listed companies

The ASA through its company monitoring program is able to maintain a high level of access to the boards and executives in the majority of ASX/S&P 200 companies. However without the mechanism provided by the AGM to call the board and management to account it is unlikely that the Association would enjoy its current level of access. The AGM allows a level of cohesion amongst diverse and disparate shareholders and goes some way to addressing the imbalanced relationship between management and ownership.

The ASA believes that accountability of directors includes (see Part 2.4 herein):

- Director candidates speaking to their election; and
- All directors being present at the meeting and answering questions where they are best placed to do so, for instance where they are the chair of a particular committee.

The ASA does not support an increase in the window for the holding of the AGM. The ASA cannot see how such an increase would provide for better quality engagement of shareholders. The National Australia Bank has for some years applied for and received an extension of time for the holding of its AGM. The reasoning cited by NAB is that the AGM would otherwise fall at Christmas time and would for this reason not be well attended. There has not been a noticeable difference in the AGM turnout, engagement or participation as a result of the extension.

## 2.2. Voting

The ASA note that subsequent to the paper being published, the Parliamentary Joint Committee on Financial Services (PJC) has reported on its inquiry into Shareholder Engagement and Participation<sup>2</sup>. The PJC cites the Paper and refers to it in its recommendations. Recommendation 18 of the report states "4.50 The Government should consult with industry on the implementation of postponed voting after the close of company AGM's"<sup>3</sup>.

The PJC in reaching this recommendation had reference to the submissions before the inquiry, which included the Paper and a submission by Mr. Stephen Mayne, a private shareholder activist, recommending the postponing of voting until after the AGM on the grounds that it would allow more informed decision making. It did not have access to any research either quantitative or qualitative as to whether:

- Shareholders would actually value this change; or
- A change would encourage more shareholders to attend meetings.

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<sup>2</sup>The report can be viewed at:

[http://www.aph.gov.au/senate/committee/corporations\\_ctte/sharehold/report/report.pdf](http://www.aph.gov.au/senate/committee/corporations_ctte/sharehold/report/report.pdf)

<sup>3</sup> Ibid, page 40

The ASA whilst not dismissing the prospect of decoupling the voting on resolutions from the AGM, believes that the current debate is almost completely uninformed. Decoupling the voting process gives rise to a number of very significant risks:

- Attendance at AGM's will decrease;
- The ability for shareholders to register their dissatisfaction in a public voting process will be expunged. This will lead to a loss in public accountability of boards;
- Those companies which currently take a purely compliance driven approach to the AGM would be able to further minimise the event.

Proposing to make this very significant change without first undertaking a proper study underestimates the risks inherent in the change. Whilst this Paper and the roundtable are helpful in defining the issues, the views of those providing submissions can not take the place of research.

The ASA would suggest a study be carried out into the possible benefits and pitfalls of this change. Such a study would need to include quantitative analysis of retail shareholders likely response to the change.

Appendix A of the paper puts a series of questions. It is not possible to answer question 1 on the information currently available.

### **2.3. Rethinking the approach to the AGM**

The most effective way to improve the AGM is for individual companies to take the initiative to make meetings more engaging and relevant. However there appears to be a culture which has developed where meetings are frequently either highly stage-managed, or reduced to the minimum required for compliance. Neither approach provides a valuable forum for shareholders or indeed for the company.

Considering and adopting many of the suggestions set out at part 2.5 herein would go a long way towards improving an individual companies approach to an AGM. The ASA does not believe that there is a legislative solution which can be imposed to ensure that AGMs provide greater value to shareholders. However it is possible that a voluntary set of guidelines, or possibly the inclusion of a principle and recommendations with regard to the conduct of an AGM within the ASX Corporate Governance Council Principles, could assist to change the approach to the AGM.

## 2.4. ASA Recommendations for improvement and revitalisation of the AGM

The ASA was recently asked to contribute an article to CSA's "Keeping Good Companies Magazine". The Association took this opportunity to consider what retail shareholders would like to see in an AGM. The result was the following recommendations:

- **The primary focus of the meetings should be on communication of past performance and future strategy.** Most companies provide briefings for institutional investors and analysts that provide more detailed explanation of financial performance and strategy. Similar briefings for investors could easily become part of the format of the AGM. Current lengthy speeches, which are often highly stage managed, could be replaced instead by information and discussion.
- **All of the board, the CEO, CFO and senior management as appropriate attend the AGM.** One of the most valuable functions of the AGM in the view of retail shareholders is that it provides an opportunity for their views to be heard by the company. There is no legal requirement for all of the board to attend. Whilst directors and executives are obviously busy, it is hoped that at least one day per year they would be able to place as their highest priority the owners of the company. If only the chairman, or a very limited number of directors attend the AGM, then obviously this opportunity for them to hear the views of retail shareholders is lost. Additionally there should be opportunities for retail shareholders, who might not feel it necessary to raise their query in the meeting to do so informally outside the meeting.
- **Companies to provide full and frank answers to questions put on notice, rather than using the time provided to create answers which avoid the issues.** Retail shareholders are reluctant to provide their questions to companies prior to meetings, fearing that the time will not be used to gather information, but rather to find ways of concealing unattractive answers. As a result questions which need consideration and investigation can go unanswered at the AGM, with the many attendees missing the opportunity to garner important information and insight. The resolution to this issue is simple. Companies should ask groups such as the ASA, to provide notice of the questions, and then to address those questions in a full and frank manner as part of their presentation to the meeting.
- **Companies should consider ways to allow greater access by shareholders to the meetings.** Whilst retail shareholders are spread throughout the country, meetings tend to be held in the capital cities. For most companies the city the AGM is held in is static. Technology and creativity however could allow a greater number of shareholders to attend the meetings. It's possible to rotate the location of the meeting on a yearly basis. Meetings can be, and some already are, webcast. This approach could be extended to allow remote attendees to ask questions in real time. Mr Gonski suggests that a greater number of retail

shareholders could be reached by companies using their branches, retail outlets and other facilities to broadcast the event.

- **Direct voting should be available, but should not replace voting by proxy.** Direct voting would allow a greater number of shareholders to engage directly in the AGM, without attending. This should not replace the ability to nominate a proxy such as the ASA. For many retail shareholders, the process of digesting the necessary information and determining their vote is complex and time consuming and they prefer the ability to nominate an independent proxy.
- **The AGM should complement the information already provided by the company.** This would include explaining complex financial information which is of interest to shareholders. Much of the information provided by companies to shareholders is complex and difficult to understand without professional qualifications. The inaccessibility of this information can make retail shareholders feel distanced and marginalised from the company they own. The AGM is an ideal opportunity to provide retail shareholders with verbal and visual aids to complement the financial statements. It is also an opportunity to explain complex future strategy. Such real time explanations with the opportunity to ask further questions provide not only clarity in relation to a specific set of accounts, but also have a role in educating shareholders.
- **AGMs should be complemented by shareholder briefings.** Retail shareholders frequently feel marginalised from the companies they own, because of the relationships which those companies nurture with the largest investors and analysts. Companies should consider holding shareholder briefings on a number of occasions during the year to provide shareholders with information in the same way that analysts and institutional shareholders are briefed. These meetings could be held at little cost to the company using a web-cast.
- **The media should not be given preferential access to the board at AGMs.** The practice of many companies to close the meeting and then provide a separate media briefing which is closed to shareholders should not occur. The AGM is currently the only annual opportunity for retail shareholders to access the company's board. The media on the other hand have good and frequent access to both the board and executive. The AGM should not be used as a public relations or media exercise, and ceasing these briefings would be an indication that a company is embracing the correct approach to the AGM.
- **Chairmen to prevent meetings from being dominated by one or two shareholders.** The ability of shareholders to question the board, should remain a key part of an AGM. However one or two shareholders should not be allowed to dominate a meeting. Likewise questions which are either irrelevant, about consumer or special interest group, rather than shareholder issues, or strictly individual, waste valuable time during meetings. Whilst it is difficult to introduce a mechanism to control such questioning without the risk of infringing on appropriate questions, it is necessary that Chairmen take a firm hand and control such questions.

- **Voting should be initially on a show of hands.** This is one of the few opportunities retail shareholders have to show the company how they feel. Whilst in many cases the vote may be decided and the vote at the meeting largely symbolic, it does provide a very visible indication of the feelings of retail shareholders.
- **Directors standing for re-election should briefly address the meeting.** For many retail shareholders their relationship with the company goes beyond a simple financial arrangement and they feel strongly about the stewardship provided by the board of directors. Resumes provide general information about directors, but speaking to their election focuses candidates on illustrating what he or she can offer as a director.
- **Address issues which are topical.** Shareholders shouldn't have to waste a question on issues which are topical and can easily be anticipated to be a concern. The company should be proactive in releasing information or addressing this issue at the AGM. An example is the provision of assurance to shareholders about director/ executive margin lending. Given the level of attention this issue has drawn in the press in recent months one would expect that it would automatically warrant a mention.
- **Chairman should not avoid the difficult issues.** This may seem obvious, however retail shareholders frequently complain that their questions drew no real or intelligible answer. Providing an answer which is more spin than substance might avoid the issue, but it creates an atmosphere of mistrust and leaves retail shareholders questioning why the company would need to obscure the answer.
- **Provide useful concise information about the issues on the AGM agenda prior to the meeting.** Many companies already do this by providing information which accompanies the notice of meeting in order to assist shareholders. Those who don't could follow the example. It assists retail shareholders who might not have an in depth understanding of the company, but want to be active shareholders.

## 2.5. Summary

The ASA believe that the decline in the relevance of the AGM as signified by declining attendance does not require significant intervention. It does not require legislative change. It does require a number of relatively simple improvements many of which are outlined above. It is possible that more significant change, such as de-coupling the voting process could theoretically improve the meetings. However it is not possible to move the debate beyond the merely theoretical without further research.