
The Integration of Electronic Regulatory Manuals in Health Services Must Be More Reality than Rhetoric

coordinates and controls the accuracy of health information. Staff should have also been aware of the particular codes, guidelines and procedures that they should comply with to provide appropriate health services. If these governance processes had been in place, then an adverse patient outcome may not have eventuated. Integration of regulatory processes needs to be undertaken by individual health professionals and entire health organisations. Regulatory Manuals are designed to be a reference tool for the practitioner to create awareness of the requirement and to provide practical methods of complying with the myriad of regulations. The following part of this article identifies and outlines the approach taken by Plenty Valley Community Health.

Clinical Development

Plenty Valley Community Health ('PVCH') identified that the development of regulatory manuals differs in rigour, quality and standing within professions. For this reason, PVCH sought to comply with the English National Health Service's ('NHS') *Good Practice Booklet on Clinical Guidelines* and the Australian NHMRC's *Guide to the Development, Implementation and Evaluation of Clinical Practice Guidelines*. The NHS standards and NHMRC frameworks are often referred to as the benchmark in quality design. Both these documents have constituted a useful means of evaluating the authoritativeness of any given association guidelines, codes of practice and other relevant standards.

PVCH also took into account all relevant legislative requirements and assessed clinical governance obligations. Subsequently, the scope of PVCH's Regulatory Manual was extended to include the following elements and criteria.

1. Validity - the regulatory manual was based on all current available evidence, which should be correctly interpreted and reported.
2. Reproducibility - given the same evidence and methods of guideline development, other clinicians should arrive at the

same recommendations and results.

3. Reliability - given the same clinical circumstances, different clinicians should interpret and apply the directions of the regulatory manual in the same way.
4. Cost effectiveness - the regulatory manual should lead to the delivery of health services that do not impose burdensome economic costs to the PVCH.
5. Representativeness - representatives of relevant interests groups should have participated in the development of the regulatory manual.
6. Clinical applicability - patient populations or services affected should be clearly delineated, as well as those not covered.
7. Flexibility - the regulatory manual should enable options to be appreciated as well as individual circumstances of patients.
8. Clarity - unambiguous language will be used so that it can be readily understood by clinicians and other staff.
9. Reviewability - regulatory manual should be reviewed and updated at predetermined intervals or to ensure legislative compliance to enable new research and changing clinical perspectives to be taken into account.
10. Documentation - the procedures used in developing the regulatory manual will be clearly described and thereby the processes which generated the regulatory manual should be transparent.
11. Amenability - the regulatory manual should include clinical audit information on ways in which adherence to them may be monitored

Theory in to Clinical Practice

PVCH therefore decided to create an Electronic Regulatory Manual ('ERM'). This ensured integration of regulatory processes across sites,

services and staffing hierarchies as well as enabling seamless introduction of revisions as required. This was reviewed by the Physiotherapy team and introduced electronically. By using existing and new software applications, PVCH created a 'virtual hub' that can be accessed by all staff at anytime.

As detailed in Figure 1, PVCH has developed an ERM for the Physiotherapy team. This was the first pilot group to test such a product. As detailed, Quality Assurance Group receives corporate governance updates from a range of sources. These include ASIC, Health Regulation Boards, State Health Departments, law firms and a range of other sources. These updates are inputted into the ERM system. The PVCH Quality Assurance Group is then able to identify which specific PVCH policies and procedures are affected by these notifications and which health teams need to be notified. The ERM system has enabled efficiencies in clinical and administrative operations and enhanced service delivery. The most significant adaptation is legislative compliance. Using the PVCH ERM system has enabled the organisation to review legislation as it is passing through parliament. Using the ERM system, PVCH is able to review the impact that proposed legislation has on any and all service areas. Furthermore, business processes and change management planning can be undertaken at least 6 months in advance of the legislation coming in to effect. This means that PVCH is compliant from the commencement date of any governing legislation. The ERM system ensures all staff receive the most up to date information in relation to their service area. Regulatory processes are delivered and implemented directly into the clinical room. In this way, the legal and non-compliance problems experienced by the medical staff in the *Harvey* case are avoided.

Commentary

There appears to be great angst felt by health practitioners when they consider integrating or introducing regulatory and corporate governance systems in their health services. The

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Harvey case was not viewed by the courts as simply a breach of privacy and confidentiality by medical practitioners. Rather, for the first time the courts actually assessed the appropriateness of, and compliance with, regulatory management processes. As a result, the *Harvey* case should be viewed as a 'wake up call' for all health professionals to review their current corporate governance processes and ensure staff are aware of their compliance obligations. If integrated and implemented systematically, ERM

can improve not only compliance with regulatory obligations, but also the quality of patient care by improving the effectiveness, appropriateness, acceptability, accessibility, efficiency and safety of health services delivered. As a result, integration of ERMs in health services must be more reality than rhetoric.

<http://www.health.qld.gov.au/nathlthrpt/framework.asp>

² Sanford J. Grossman and Oliver D. **The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration**, *The Journal of Political Economy*, Vol. 94, No. 4 (Aug., 1986), pp. 691-719.

³ Queensland Health, Health Service Integration in Queensland, Position Statement June 2000

<http://www.health.qld.gov.au/hssb/hou/intpolicy.pdf>

⁴ *Harvey v PD* [2004] NSWSCA 97 Unreported.

⁵ *Ibid* at [16]

¹ Queensland Government, National Health Performance Framework Paper 2001.

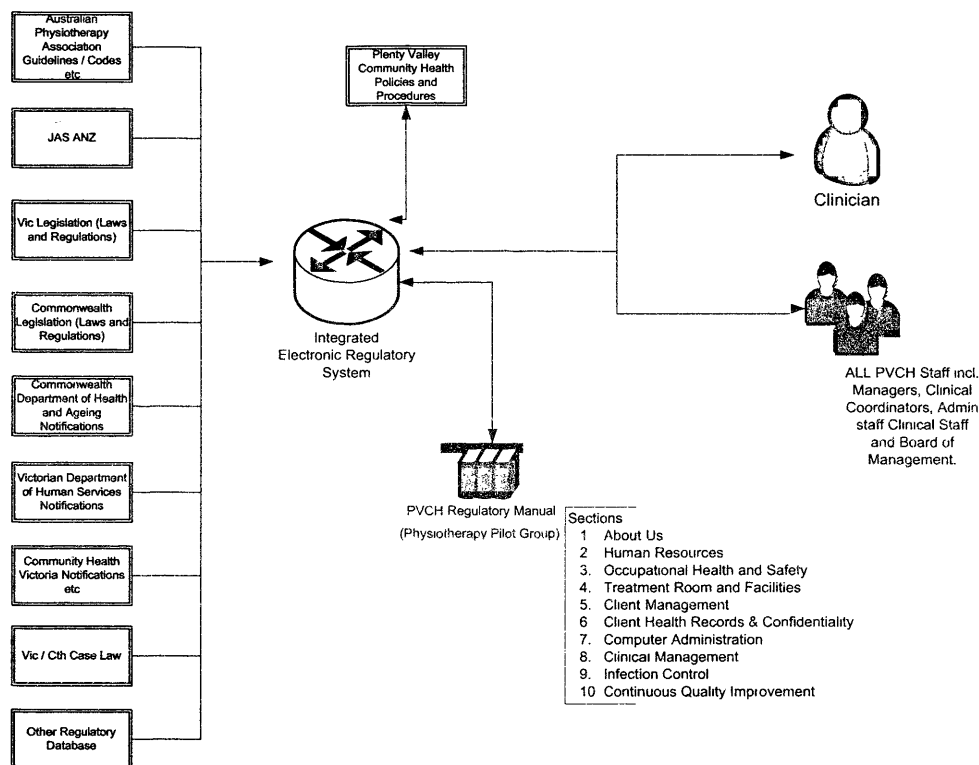


Figure 1. Regulatory Manual (Physiotherapy) Pilot Group

Internet Proxy Voting and the Australian Shareholder: Is there a need to take the technology further?

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Introduction

It has been suggested that the Internet will help to overcome the problem of shareholder passivity towards the contemporary corporation. Recent data supports this hypothesis: internet-

proxy voting has steadily increased the participation of both retail and institutional shareholders at Annual General Meetings (AGMs) in Australia. This success has been taken as a cue for corporations to implement more advanced forms of technology,

such as web-casts or bulletin boards, to further increase shareholder participation. However, evidence from the United States demonstrates that practical and psychological barriers make virtual meetings an unlikely replacement for the physical

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AGM. To date, Internet proxy voting is the upper limit of shareholders' willingness to allow technology to facilitate its relationship with the corporation. The problem with these more advanced forms of technology is that both web-casts and bulletin boards eliminate face-to-face accountability of directors, while web-casts are financially and technologically inaccessible to most investors. Thus, while Internet proxies have increased shareholder participation in AGMs and should be maintained, there is no compelling reason to take the use of technology further to implement web-casts of corporate meetings.¹

The shareholder

The importance of shareholder participation in the AGM was asserted in *Re Compaction Systems Pty Ltd.*² Lord Justice Bowen held that the right to attend and to be heard is not insubstantial, as it is here that the ability to advance arguments, influence the course of discussion, and if necessary replace existing directors/executives, is exercised. The effect is to provide a check and balance in favour of the citizen capitalist against managerial despotism.³

The shareholder's role has improved substantially over this century. The early shareholder was relegated to a secondary role characterised by Berle as a *cestui que* trust, rather than principal in an agency relationship.⁴ This lasted well into the 1980s: in *LC O'Neil Enterprises Pty Ltd v Toxic Treatments Ltd*⁵ the court severely limited circumstances in which shareholders could convene a general meeting, thus depriving them of any means of self-help. In *NRMA v Parker*⁶ shareholders had no power to communicate opinions on managerial matters to the board. Thus, no matter how well organised or motivated, ancillary powers of small shareholders were attenuated by management superiority, agenda control and a strong entity conception of the corporation.⁷

The latter part of the century saw a reversal of this role. The shareholder as *cestui que* trust was expressly

rejected in *Daniels v Anderson*⁸ as an outdated and inaccurate reflection of commercial reality.⁹ Revisions to the *Corporations Act* 2001 (Cth) ('*Corporations Act*') furthered this: s 249F reversed *LC O'Neil Enterprises Pty Ltd v Toxic Treatments Ltd*¹⁰ by allowing members with 5% of voting rights absolute power to convene a general meeting. Section 250S reverses *NRMA v Parker*¹¹; it offers a statutory right to question and comment on company management. The eminence of the Australian shareholder was finally established in *Gambotto v WCP Ltd*¹² when the High Court imposed an onerous test on the power of the majority to amend a company's articles of association in order to expropriate minority shareholders.¹³

Despite this, participation at AGMs is low: barely 10 percent of potential votes are typically cast.¹⁴ Retail shareholders, who may wish to participate, are unlikely to attend because of distance or scheduling conflicts. When they do wish to attend, they are discouraged by the comparative 'weight' of the institutional shareholder. By the late 1990s, 50 percent of Australian listed company shares were owned by institutional shareholders.¹⁵

Consequently, the outcome of the AGM is usually decided in advance by their proxy votes. Thus, the rise of the institutional shareholder has "devalued the currency of the general meeting"¹⁶ for the retail shareholder, whose votes are effectively rendered irrelevant.¹⁷

The role of the retail shareholder nevertheless remains important, particularly in the contemporary Australian corporation. While the contractarian view relies on market forces to discipline management, the communitarian theory holds that shareholder participation legitimates the corporation by addressing wider political matters. These include social justice, recognition of the dignity of work and basic human rights.¹⁸ This theory is borne out in reality: high profile corporate policies have been reversed by activist shareholders, including the clean-up operation following the Exxon-Valdez oil spill off the coast of Alaska in the 1980s.¹⁹

In Australia, the proposal of North Limited to develop a uranium-mining site in Kakadu National Park was curtailed as a result of retail shareholder votes.²⁰

Social considerations are not the sole interest of the retail shareholders. They typically lack the diversity of investments available to institutional shareholders, and thus have more to lose financially by the corporation's failure. For this reason, they are well suited to hold management to account. Directors in a publicly listed company have a level of autonomy which gives them scope to act in their own interests and ignore their fiduciary duties to the company. The AGM provides discipline for directors by keeping their collective eye focused on the goal of profit for the company and the broader political and social concerns of shareholders. Therefore, if the general meeting is to be a legitimate forum for minority shareholders to voice their financial and social concerns about the operation of the corporation, it needs to attract their participation, either in-person or by proxy. Internet proxy voting is the best way to achieve it.

Proxy voting²¹ and shareholder passivity

Presently, most shareholders buy, sell and review their stocks online, but all other activities remain in the physical world.²² However, this is a changing trend. Data indicates that in companies with a widely held shareholder base, Internet-proxies represented an average of 35 percent of total voting capital in 1999, an increase from 32 percent in 1998. Similar trends are apparent for companies including major shareholder proxy instructions for director-election resolutions. These represented on average 41 percent of total voting capital, compared with 39 percent the year before.²³ These figures, viewed in light of amendments to the *Corporations Act* and *Gambotto*, demonstrate that not only do shareholders accept that they are an integral part of corporate functioning, they are willing to exercise their powers when technology overcomes distance or scheduling conflicts.

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Advantages of Internet proxies

Proxies balance the interests of certainty in the regulatory environment with the need for flexibility and responsiveness to changing technology. They offer simplicity, directness and integrity compared to standard proxy voting. For institutional investors, Internet proxy voting eliminates the requirement that notices and forms pass through a custodian, whose efforts prolong the process and increase the possibility of error.²⁴ For retail investors, it prevents complications such as shareholders who attend and vote *even after* appointing a proxy.²⁵ Thus, if the shareholder's job is facilitated by the availability of Internet proxies, the likelihood that they will take part in meetings increases.

Many of the complications thought to accompany Internet proxy voting, including availability, security, and signature requirements, are no longer at issue. The Australian Bureau of Statistics reported in May 1999 that 22 percent of all households had Internet access, a figure that grew to 44 percent when other means – work, friends or commercial enterprises offering Internet access for a fee – were considered. One year earlier, the figure was 3.6 million, or 26 percent of the population. If this statistic holds true, the majority of Australian investors have direct access to the Internet today.

Security is no longer a concern. The issue for most shareholders was the fact their information can be disseminated more quickly and cheaply than in print. As well, it is possible to falsely mislead investors through professional looking sites. However, the Australian Securities and Investment Commission (ASIC) addressed this concern through implementation of the Economic Enforcement Unit (EEU), whose goal is to take action against unlawful Internet behaviour and to date, it appears to be working. For instance, an injunction was enforced against Stephen Matthews, publisher of 'The Chimes Index', a site that disseminated false investment advice.²⁶ In addition, advancements

in data encryption prevent investors' personal data from falling into the wrong hands.

Voting electronically no longer poses the risk of spoiled or invalid ballots because of the requirement of a signature pursuant to s 250A(1A) of the *Corporations Act*. One's signature is rendered legally effective when issued electronically under s10 of the *Electronic Transactions Act* 1999 (Cth). It should be noted that Australian legislation promoting e-commerce is facultative rather than prescriptive in approach.²⁷ Thus, if technological developments outpace legislation, statutory protection of privacy or electronic signatures are not redundant. This means that the legislation does not simply cover technology as it stands at the time of enactment. However, even in the absence of this mode of legislative enactment, computer-based votes can be validated through other means. For instance, Coles Myer Ltd established a web page for its 1999 Annual General Meeting a Personal Identification Number (PIN) was used for verification of shareholders entering votes. Entry of the PIN was a condition of using the website considered equivalent to signing a paper proxy form.²⁸

In addition to overcoming these early hurdles, Internet-proxy voting offers several advantages to paper-based proxy voting. The shareholder benefits from the assurance that instructions inherent in the vote will be acted on because s/he receives immediate confirmation of receipt. It could also become convenient for the shareholder who has investments in several corporations if third parties offer an interface for proxy voting; this would provide shareholders with a single control number that would allow them to vote for all proxies on one website. The corporation also benefits from this process, since electronic documents take up less space, are quick, and costs are minimal. It is also possible to monitor where votes are coming from in order to conduct follow up solicitation if necessary. If Internet proxies continue to grow in popularity, the company's

overall costs will be reduced and the shareholder will benefit indirectly.

Disadvantages of Internet proxies

There are few disadvantages to electronic proxy voting. For example, shareholders may encounter busy telephone signals or slow web-responses at either end of the communication chain. However, this is only a concern if it occurs when voting is about to close. Moreover, one needs to bear in mind that other means of voting – either through the post, via web-cast or voting in person – are also fallible.²⁹ Another example is the additional cost offloaded to the shareholder. This arises from automatic notification of voting and backup procedures specific to computer-based voting. However, such costs rarely run as high as other tech-heavy means of holding meetings, and the cost to the shareholder is certainly balanced by the advantages it offers.

The greatest disadvantage is the fact that shareholders lose the ability to attend and voice concerns directly to the directors. It should be noted that lodging an Internet proxy is a convenient *alternative* to in person or paper-based proxy voting. It remains open to the shareholder to attend in person if he wishes. Thus, Internet proxy voting offers a 'best of both worlds' approach to the problem of shareholder passivity at Australian AGMs. On the whole, Internet proxy voting is a viable, cost-effective and shareholder-friendly means of facilitating participation at the AGM.

Improving on Internet Proxy Voting

It has been suggested electronic annual meetings will supplement and eventually replace physical ones, and that on-line voting will lead to more voting and energise shareholder activism.³⁰ This is endorsed by the ASX Corporate Governance Council, which recommends that companies take advantage of technology which provides for communication with shareholders and improves access for those unable to physically attend meetings.³¹ While there is no question that on-line voting has increased voting response, there is little evidence that physical annual

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meetings can or should be replaced by virtual meetings. Neither live web-casts nor bulletin boards offer a greater advantage to the shareholder or to the corporation than Internet proxies. For this reason, there is no need to expand implement further technology.

Live web-casts

Live web-casts allow investors to hear proceedings in real time through the company's website. Interaction takes place primarily through email; questions are submitted, read aloud and answered by the chairperson. While some Australian issuers have offered real-time, audio-visual broadcasts of their AGMs to locations other than those where the meeting is held, it has never been done on a two-way basis.³² They have been employed, although mostly on an experimental basis, in Canada and the US.

Web-casts promote deliberation and debate and allow distant investors to 'attend.' They are, however, complicated by time-zone differences and the risk of very lengthy meetings. The company must incur time and cost expenses tracking members' attendance and verifying their identities.³³ The cost of the technology required to hold a meeting online is high: the corporation must invest in cameras, microphones, encoders, streaming servers, and a heavy-duty Internet connection. Encoders are particularly expensive, ranging from \$20 000 USD for modest setups to millions of dollars for larger applications.³⁴ As an alternative, companies can pay specialists to assemble the requisite technological infrastructure. For instance, Shareholder.com broadcasts meetings starting at \$12 000 USD. Such costs are ultimately borne by the shareholder, even if minimised by outsourcing. Moreover, while the shareholder may not have to bear the costs of such technology directly, s/he will have to obtain audio and video devices that are unlikely to be part of one's typical computer package. These will obviously place unnecessary and not contemplated demands on the finances of the shareholder.

Aside from cost, the greatest problem with web-casts, even if out-sourced, is the demand on computer bandwidth.³⁵ High use of web-casts – exactly the goal of the corporation hoping to increase shareholder participation – can deplete the quality of information transmitted and ultimately impair the success of the meeting. This is because to create simultaneous streams, additional encoders must be installed. However, when multiple parties access online content, encoders must compress the media resulting in a smaller file. This, in turn, decreases audio and visual quality. Also, large web-casts can overload servers and network connections, resulting in unintended denial-of-service attacks. These problems are compounded for individual shareholders, who lack the financial capacity to upgrade their systems to accommodate such technological demands.³⁶

There are also legal challenges in Australia, as there is no express legislative provision or common law precedent that allows a meeting to be held in 'no place'. However, this is less of an obstacle than the practical considerations, as s 249S of the *Corporations Act* expressly provides for a meeting to be held in *more* than one place. It is therefore possible to read the section broadly and accommodate live web-casts.³⁷

There is little empirical evidence of the viability of live web-casts. To date, only two US-based corporations, Inforte Corp³⁸ and Ciber Inc,³⁹ have used them. There is no report on Ciber Inc's meeting, although if available it may prove informative since the CEO complained "never more than 10 people who were not either employees or accounting or legal advisors attended physical meetings". The hope was its in-house meeting site would involve more of its 28 000-plus widespread shareholders.⁴⁰

There is some information available on Inforte Corp's meeting. Both shareholders and non-shareholders emailed questions before and during the meeting, listened to live audio, and viewed PowerPoint slides. The company answered all inquiries received. One point in favour of the

web-cast was the fact that there is no evidence that emailing questions impaired the flow of the meeting in any way, or added excessively to its length. Another positive sign is Inforte Corp's decision to repeat the process in April 2002. While this evidence is promising, it is not prudent to assess the utility of web-casts on the basis of only one company's experience. Moreover, standard conditions were not met as no voting took place and unregistered members participated in the question and answer session.⁴¹ The experimental nature of Inforte Corp's AGM makes it difficult to gauge the viability of web-casts as a means of conducting meetings.

The greatest opposition to live-web casts emerges from shareholders fearing the loss of face-to-face accountability of directors. This is illustrated by attempts in Massachusetts⁴² to implement legislation for web-cast meetings akin to that available in Delaware.⁴³ Senator David P Magnani claimed the measure would simply give shareholders the *option* of online meetings, while still allowing them to have traditional in-person meetings.⁴⁴ Several local businesses, including State Street Corporation, Analog Devices Inc, Associated Industries of Massachusetts and Reebok, supported the Bill. In line with researchers promoting the use of this virtual technology in the AGM, all of these businesses believed web-casts would increase participation and be more engaging than traditional ballroom or conference centre gatherings, particularly for out-of-state shareholders.⁴⁵

However, the Bill was rejected on the grounds that eliminating face-to-face meetings would reduce corporate accountability. One activist group claimed that one of the fundamental rights of the shareholder created after the Great Depression was the ability to hold management accountable. "This includes the ability to go to an annual meeting, to hear them speak and to raise questions from the floor such as "how much do you pay yourself?" and "why are you moving your headquarters?"⁴⁶ While such

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questions can still be legitimately raised from the floor of a virtual meeting, the ability to do so depends on one's access to the technology, which maybe out of the reach of shareholders who are most concerned and willing to ask those questions. Others opponents condemned the Bill as a backdoor effort to insulate company executives from unhappy shareholders. Bruce Marks, Chief Executive of the Neighbourhood Assistance Corporation of America, called the Bill "as undemocratic as it gets", arguing that it "institutionalised a lack of corporate accountability."⁴⁷

There is merit to this view. Behind the rhetoric is a feeling that the directors' need to prepare for the meeting, to be ready to answer unpredictable questions, is an essential component of the overall system of checks and balances that makes up modern corporate governance. The simple human factor of sensitivity of management about the nature of the 'grade' that it receives, as well as to other events that transpire at the meeting, cannot be overlooked. By forcing directors to prepare for questions on a variety of subjects and justify their actions amid confrontation, shareholders act as a check against poor corporate governance.

This gives the individual shareholder a means of registering his concerns by means other than selling his shares and thus avoids the unnecessary transaction costs and undue volatility in the price of shares.⁴⁸ Sometimes, questions raised by shareholders at general meetings influence company policy *without any vote being taken on the issue*.⁴⁹ Thus, the direction that companies are willing to take can be determined by means other than straight voting procedures. This information, gleaned only through face-to-face interaction, is clearly lost when expensive, unstable and inaccessible technology becomes the sole means through which discussion takes place.

It is interesting to note that web-cast meetings held solely among directors are much less controversial. Section 248D of the *Corporations Act* provides that a directors' meeting may

be called or held using any technology consented to by all the directors. This provision emerged from case law relating to telephone conferences, where each participant is able to hear and speak to others, and all the information available to one is available to the others, even though there is no physical gathering. Justice Barlow of the Western Australian District Court observed in *Pax Holdings Pty Ltd v Bamboo Creek Holdings Ltd*:⁵⁰

It is probably not necessary that they be in visual as well as audio contact, [but]...for the essential requirements of a meeting to be met, ordinarily all persons participating in the meeting should be able to *talk to and hear one another* and that all information available to one is available to the other, so that persons whose concurrence is necessary to give validity to the matter for decision give that concurrence, with the full knowledge of what they are doing.

However, it must be noted that a directors' meeting is one 'amongst equals.' Directors share access to the same technological and financial resources, while retail shareholders are generally not equivalent to the directors, or even other shareholders, when accessing these resources is an issue. There may still be a need to hold other directors to account for their actions, even though no fiduciary obligations exist between directors, only to the company. but the ability to do so is unlikely to be impaired by poor-quality of audio-visual streaming. This is because there will undoubtedly be fewer directors than shareholders making demands on the technology. While the principle established by Barlow J in *Pax* is applicable to both directors-only meetings and AGMs, the logistical and cost considerations are not.

Bulletin boards

These too provide little improvement on Internet proxy voting as a means to increase shareholder participation at the AGM. As with web-casts, all 'interaction' takes place in cyberspace. However, *unlike* web-casts, it does not

take place in real-time. The meeting is held in no fixed location and directors' presentations are posted on an electronic bulletin board. Shareholders' interventions and directors' responses are also posted on the board. One advantage over web-casts is the fact that a bulletin-board meeting remains open for several days to accommodate differing schedules and time zones. This procedure offers wider access than a live web-cast because the technology is less demanding on the individual shareholder's computer system.⁵¹ It also makes dissemination of information easier, particularly for parties located overseas or those unable to afford the location where the meeting takes place.

There are also costs with bulletin boards, including to the time consuming task of sorting through the masses of material posted on the board.. However, the greatest criticism is the impact on the shareholder's ability to voice an opinion about corporate governance. Here, the shareholder may have access to the technology, which allows 'entry' to the meeting in a way that the financial and bandwidth demands of web-casts do not. Despite this, there is no evidence directors will 'attend'; a complication peculiar to bulletin boards is the fact that senior directors might delegate their responsibility to reply. Staff assigned with this responsibility may not necessarily read the correspondence, and will almost certainly lack the authority and expertise to respond in the matter that a senior director might. As a result, any attempts to make directors accountable for their actions are lost altogether.

Even if the directors do not delegate their responsibilities, the human sensitivity to the demands of the shareholder and the grade s/he gives to governance is removed by the very nature of bulletin boards. For instance, bulletin boards allow the director to contemplate an answer that may appear to be in the best interests of the company, but which in reality is crafted to conceal real problems that may be occurring. Bulletin boards also lack the infrastructure that

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currently exists for Internet proxy voting. There is no legislation governing it (although arguably s 249S of the *Corporations Act* may suffice) and it has not been tested in the way that web-casts have. Thus, there is little incentive for corporations to implement bulletin boards either as a means to facilitate shareholder participation, as it seems to offer nothing more than what the combination of Internet proxy voting and physical AGMs already offer.

Conclusion

Both retail and institutional shareholders occupy an essential place in the contemporary Australian corporation. Allowing for means through which they can voice opinions, either directly or through a vote, is essential to the proper administration of corporate action. Evidence clearly indicates that the wide availability and legislative support for Internet proxy voting has helped temper the problem of shareholder passivity in Australia. Most importantly, it carries the option for the shareholder to attend the physical meeting if the issue is one the shareholder feels he must address personally. Web-casts and bulletin boards, which relegate AGMs entirely to the virtual realm, are costly, inconvenient and highly fallible. Most importantly, they eliminate the possibility of real time interaction with the directors and the potential for impromptu ideas that can guide the corporation by suggestions and ideas that arise outside what has been contemplated by the voting programme. Thus, it is unnecessary to take the use of technology in AGMs further.

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¹ Widely held public companies are the focus of this paper, since they have the financial means to take advantage of electronic communication.

² (1976) 2 ACLR 135, 142, per Bowen CJ.

³ Ralph Simmonds, 'Why must we meet? Thinking about why shareholder meetings are required.' (2001) 19(8) *Company and Securities Law Journal* 506.

⁴ A Berle, 'Corporate Powers as Powers in Trust' (1931) 44 *Harvard Law Review* 1049, 1073.

⁵ (1986) 4 ACLC 178.

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⁷ Michael E Levine and Charles R Plott, 'Agenda Influence and Its Implications' (1977) 63 *Virginia Law Review* 561.

⁸ (1995) 16 ACSR 607.

⁹ *Ibid.*, 656-58, per Clarke and Sheller JJA.

¹⁰ Above n 5.

¹¹ Above n 6.

¹² (1995) 69 ALJR 266.

¹³ Roger Walton, 'Gambotto v WCP Ltd: A justified reassertion of minority shareholder rights or unwelcome step back in time?' (2000) 12 *Australian Journal of Corporate Law* 20.

¹⁴ Gabrielle Costa 'Investor Activism on the Rise' *The Age*, 16 December 2003.

¹⁵ Robin Lane, 'The future of the general meeting in the modern listed company' (2003) *Keeping Good Companies* 268.

¹⁶ Elizabeth Boros, 'Virtual shareholder meetings: who decides how companies make decisions?' (in press) 28(2) *Melbourne University Law Review* 265, 26-8.

¹⁷ *John Shaw & Sons (Salford) Ltd v Shaw* [1935] 2 KB 113 says the shareholder cannot interfere in the management of the company.

¹⁸ Above n 3.

¹⁹ Above n 15.

²⁰ *Ibid.*

²¹ 'Electronic proxy voting' describes electronic transmission of votes from the member to the company.

²² Margaret Kane, 'Virtual shareholder meetings flop' at <http://news.cnet.com/news/0-1005-200-7083108.html> at 4 November 2004.

²³ Boros, *The Online Corporation: Electronic Corporate Communications*, Discussion Paper 1999 at <http://cclsr.law.unimelb.edu.au/research-papers/online-corporation.html> at 4 November 2004.

²⁴ Newbold Committee 1999, paras 1.8, 2.13. Given the similarity between institutional investors and corporate law in the UK and Australia, practical difficulties are likely to be similar in both regions.

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²⁶ *ASIC v Matthews* (1999) 17 ACLC 528.

²⁷ Above n 23.

²⁸ Above n 25.

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³⁰ Jacqueline Cook, 'Information and communication technology: the internet and company law', *Literature Survey on Factual, Empirical and Legal Issues*, The ERSC Centre for Business Research, University of Cambridge, Ch 4, para [4.3.2.4] at <http://www.dti.gov.uk/cld/esrc4.pdf> at 31 October 2004.

³¹ ASX Corporate Governance Council 2003, *Principles of good corporate governance and best practice recommendations*.

³² Above n 22.

³³ *Ibid.*

³⁴ CNN, Fox News and FoxSports.com use Agility Enterprise software to encode video for their websites; the application costs a minimum of \$50 000 USD.

³⁵ Daniel Adam Birnhak, 'Online shareholder meetings: corporate law anomalies or the future of governance?' (2003) 29 *Rutgers Computer and Technology Law Journal* 423.

³⁶ *Ibid.*

³⁷ *Corporations Act* s 249S.

³⁸ Inforte Corp is an Illinois-based and Delaware-registered corporation.

³⁹ Ciber is a Delaware corporation with its principal place of business in Greenwood Village, Colorado.

⁴⁰ Janet Forgrieve, 'Ciber to Hold Virtual Shareholder Meeting; Greenwood Village Company Looks to Cyberspace to Draw Interest in Meeting', *Rocky Mountain News*, 5 April 2002 at 5B.

⁴¹ Above n 15.

⁴² <http://www.siliconvalley.com/docs/news/tech/025819.htm> at 29 October 2004.

⁴³ *Delaware General Corporations Law* (s 211(a)2(b)(ii))

⁴⁴ Ralph Ranalli & Peter J. Howe, 'OK Is Near for Online Shareholder Meetings', *Boston Globe* 23 August 2001, at A1.

⁴⁵ *Ibid.*

⁴⁶ Amy Domini, president of the Domini Social Equity Fund: www.news.com.com/2100-1023-272745.html?legacy=cnet at 28 October 2004.

⁴⁷ Submission of Babcock International Group PLC (Company Secretarial Department) to question 1.

⁴⁸ Carol Goforth, 'Proxy Reform as a Means of Increasing Shareholder Participation in Corporate Governance: Too Little, But Not Too Late' (1994) 43 *American University Law Review* 379.

⁴⁹ Above n 47.

⁵⁰ (1989) 6 SR (WA) 131 ('Pax')

⁵¹ The Company Law Review Steering Group, Modern Company Law for a Competitive Economy: Company General Meetings and Shareholder Communication (URN 99/1144, DTI, October 1999) question 52.