

## Article Information

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## Making the most of your AGM and Annual Report

### Keeping things in perspective

**This time of year is particularly busy for organisations with a June year end, many of whom are issuing annual reports and laying the groundwork for their AGM.**

**In addition to these mandated points of engagement and disclosure, there is a broader context – other channels of communication, and other opportunities to connect with key stakeholders.**

**This update focuses on key considerations for ASX-listed companies in reporting and AGM season.**

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### PREPARING YOUR ANNUAL REPORT

An annual report may very much be a recap on “the year that has been”, particularly in light of the regular stream of continuous disclosure updates and (for early stage resource and biotech companies) quarterly reporting. However, a listed company is also required to include an “operating and financial review” that has a forward-looking element, because it must provide information that enables shareholders to make an informed assessment of the company’s “business strategies and prospects for future financial years”. This means that Boards need to give themselves time to reconsider the risk landscape, rather than simply recycling information from previous updates.

In ASIC’s media release for 30 June 2023 reporting, ASIC highlighted the need for boards and management to weigh up how the current and future performance may be affected by various risks, including:

- Climate change;
- Technological disruption;
- Inflationary and interest rate trends;
- Skills shortages; and
- Geopolitical risk.

As shareholders are expecting more of companies in the area of ESG reporting, Boards also need to give themselves time to consider and report on how their operations and strategies take into account environmental and social impact, in addition to their normal governance reporting.

### PREPARING FOR YOUR AGM

#### Have you announced the date?

A listed entity must announce the date of its AGM via ASX at least 5 business days before the closing date for receipt of nominations for election of directors. An entity must normally accept those nominations up to 35 business days before the AGM.

#### Are you communicating with key stakeholders ahead of time?

Allow time to ‘check in’ with key shareholders and proxy advisers, particularly to sound them out on sensitive issues such as remuneration, any proposed changes to the capital structure, issues of shares or options to directors and Board composition.

Plan these conversations so you ensure that anything “market sensitive” has already been announced.

Make sure you understand the timeline on which proxy advisers operate, otherwise they may already have decided on their approach to your items of business before you've made time to talk with them.

### **What is in the agenda?**

Consider all possible items of business, to allow time to draft explanatory notes and consult with ASX if necessary. For example:

- If there was a 'strike' against your remuneration report last year, you need to comment on how you responded to any questions on remuneration from last AGM, as well as allow for a spill resolution if there is a second strike this year.
- You may want to 'refresh' your placement capacity by seeking ratification of share issues conducted during the year.
- You may require shareholder approval to implement proposed share or option issues to directors,
- You may need to increase the pool of remuneration available to pay your Non-Executive Directors
- It may be time to refresh an approval that runs on a 3-year cycle:
  - Confirming that issues under an employee share, option or performance rights plan are an exception to the 15% placement limit in Listing Rule 7.1;
  - Renewal of a proportional takeovers provision in your Constitution if there is one

### **How are you planning?**

As with any project planning exercise, keep track of key dates and time periods, including:

- Allowing at least 5 business days for ASX to review your Notice of Meeting, if your agenda includes particular Listing Rule approvals or changes to the Constitution; and
- Lead time for printing and despatch of notices and reports

### **How many Board vacancies are there?**

The Board of a public company cannot set the number of directors below the maximum board size in the Constitution without member approval. For example, if the incumbent board is five directors but the Constitution allows for a maximum of ten, the Board will need an ordinary resolution to implement any Board recommendation that the size of the Board be limited to five directors.

### **How are you managing Board renewal?**

Board composition is a key topic for Boards year-round. It's critical to plan ahead on:

- which directors must retire by rotation,
- if the Board supports that retiring directors seek re-election; and
- changes or additions to the Board to deliver better diversity in gender, background and skills.

To ensure that Boards can be proactive, or respond thoughtfully to pressure from shareholders or proxy advisers to change the Board line-up, the Board, or relevant Board committee, needs to have a list of possible additions whom they could approach, who are regarded as potentially a good fit.

### **Are you prepared to run polls?**

Regardless of whether you're meeting physically, virtually or in hybrid format, if you're a listed company you must conduct a poll for all resolutions on the Notice of Meeting.

Make sure you give your members clear guidance before and during the meeting about the different ways in which they can vote.

### **On the day...**

You must lodge with ASX no later than the start of the meeting a copy of the contents of any prepared announcement that will be delivered, such as the Chair's and CEO's address.

Also, remember to report the votes on all items of business to ASX immediately after the AGM has concluded.

### **Pulling everything together**

While you cannot control every aspect of your annual reporting process and your AGM, a good plan will help maximise the opportunities for engagement with key stakeholders through these annual processes, and leave you with the mental reserves to handle last minute surprises.