

Article Information

Authors: Michael Coker, Sarah Johnson

Service: Corporate & Commercial, Corporate Governance

Sector: Not-for-Profit

Members' meetings in the Age of COVID-19 - Can members' meetings of charities that are public companies limited by guarantee be held using technology?

As the Federal Government imposes increasingly tighter restrictions on public gatherings, can charities that are public companies limited by guarantee hold members' meetings using teleconference and videoconference technology?

As the new social distancing rules have been implemented by the Federal Government and public gatherings are becoming subject to tighter restrictions, we have fielded a number of queries from our clients regarding whether they can hold members' meetings using teleconference and/or video conference.

Under section 111L of the Corporations Act 2001 (Cth) (**Corporations Act**), public companies limited by guarantee that are registered with the Australian Charities and Not-for-profit Commission (**ACNC**) are not required to hold an annual general meeting.

Instead, registered charities must comply with ACNC Governance Standard 2 which requires charities to take reasonable steps to be accountable to members and allow their members adequate opportunities to raise concerns about how the charity is run.

The Governance Standard provides that a common way for a charity to meet this standard is to organise a meeting at least annually with its members with opportunities to ask questions and vote on resolutions. In addition, a company limited by guarantee may be required by the Corporations Act or its constitution to hold a special general meeting, for example, to approve a particular transaction or a change to its constitution.

For companies that either wish to hold an AGM to comply with the requirements of ACNC Governance Standard 2 or are required to hold a special general meeting, the key question is whether the resolutions passed at such meeting are valid.

The Australian Securities and Investments Commission (**ASIC**) recently published a media statement in relation to AGMs of listed and unlisted public companies and advised that it would take a "no action" position in relation to "virtual" AGMs of those companies. Whilst the media statement and "no action" position are not directly applicable to public companies limited by guarantee that are charities as they are not required to hold AGMs, the guidance provided by ASIC is instructive, as the test under the Corporations Act for a valid meeting of a public company held by using technology, is similar to the wording of ACNC Governance Standard 2.

The ASIC media statement notes that "hybrid" members' meetings, that is, meetings held at a physical location and using online facilities, are permitted under the Corporations Act but that there is doubt as to the validity of resolution passed at a virtual AGM which is conducted solely online.

As a threshold question, in considering whether a members' meeting is validly held, ASIC states that entities should consider whether they can hold a hybrid or virtual meeting under their constitution.

The media statement specifies that ASIC's "no-action" position on virtual AGMs is conditional on the providing members as a whole a reasonable opportunity to participate in the meeting and goes on to state that a "reasonable opportunity to participate in the meeting" would include:

- members being able to ask questions of the auditor and about management; and
- voting occurring by a poll rather than a show of hands, and
- that entities should make an assessment of the technology facilitating their AGM in advance of holding the meeting and consider whether it adequately addresses these conditions.

If you would like advice regarding holding your members' meeting, please contact [Sarah Johnson](#).