

## Article Information

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Service: Corporate & Commercial, Corporate Governance

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## Virtual meeting guide for companies and incorporated associations

**With the AGM season almost upon us (and significant parts of Victoria still in lockdown), many companies and incorporated associations are preparing their notices of meeting needing to hold the meeting either virtually or partially virtually for the first time. This guide provides a brief update on some of the key issues to keep in mind when preparing to hold a virtual meeting.**

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### Companies

In response to the impact of the physical distancing restrictions imposed due to the COVID-19 pandemic, on 5 May 2020 the Treasurer made the *Corporations (Coronavirus Economic Response) Determination (No 1) 2020* (Cth) (the **Original Determination**), which (among other things) amended the *Corporations Act 2001* (Cth) in order to better enable companies to:

1. hold meetings virtually using electronic means; and
2. provide notices of meetings to its members electronically.

The Original Determination was due to expire on 5 November 2020, but has now been repealed on 23 September 2020 and replaced with the *Corporations (Coronavirus Economic Response) Determination (No 3) 2020* (Cth) (the **Determination**), which expires on 21 March 2021..

Please note that the Determination is still subject to requirements in an individual company's constitution, so the first thing to check is that your company's constitution permits holding meetings by telephone or other electronic means.

### Holding a virtual meeting

Provided the notice of meeting contains information about how those entitled to attend can participate in the meeting (including how they can participate in a vote taken at the meeting, and speak at the meeting, to the extent they are entitled to do so), the Determination provides that:

- A meeting may be held using technology that gives all persons who attend a reasonable opportunity to participate without being physically present.
- All persons participating are taken to be present (satisfying quorum requirements).
- Votes must be taken on a poll, using any one or more technologies as appropriate.
- Requirements to allow persons to speak or ask questions may be satisfied using technology that facilitates that opportunity.

It is important to check whether your notice of meeting clearly explains how the meeting is to be held, how members can participate and how they may use the technology to participate either in speaking at the meeting, submitting or asking questions at the meeting and voting at the meeting. Don't forget to inform shareholders how they can cast their votes online and/or appoint a proxy ahead of the meeting.

## Providing notice electronically

The Determination also provides that notice may be given electronically, even where a shareholder has not opted to receive notice electronically, by posting a shareholder details of how to access the notice.

The example provided by the Determination is that notice may be given by the company posting the shareholder a 1 page letter or postcard that contains details of how to access or download meeting materials online. This is likely to significantly reduce printing and postage costs for the duration of the Determination.

Companies should ensure that the notice contains all necessary web addresses, virtual meeting IDs, and individual investor numbers to ensure that shareholders can access the meeting and voting is secure. The third item to check is that your website and meeting ID work to permit access to the AGM and the instructions are straightforward. Companies may need to anticipate higher than usual AGM attendances given the convenience for shareholders to be able to dial in from their workplace or home.

## Further Assistance

The major share registrars all offer tailored virtual meeting packages for their clients. For smaller companies with limited membership, hosting a meeting using the company's own platforms may be more cost effective.

Please contact one of our team members below if you require further assistance with preparing your notice of meeting, or determining if your meeting is able to be held electronically.

## Incorporated associations

As each state and territory has its own legislation in relation to incorporated associations we have summarised the key requirements in the Eastern States and South Australia below. If you have a query relating to an incorporated association in another state or territory, please contact us for specific advice.

### Victoria

The *Associations Incorporation Reform Act 2012* (Vic) (the **VIC Act**) already allows a Victorian incorporated association to hold a general meeting using any technology that allows members to clearly and simultaneously communicate with each other: section 62(1). This is permitted regardless of the individual association's rules.

Unfortunately there is no specific provision of the VIC Act that also allows for a notice of general meeting to be provided, or proxies appointed, electronically. The manner in which notice is provided or a proxy appointed for a general meeting will depend on the governing rules of the individual incorporated association. Therefore the first thing to check is what your governing rules say about holding meetings of members.

Given the Stage 4 restrictions in operation in Melbourne, holding or attending an AGM is not a permitted reason to leave home or be more than 5km from your home. Accordingly incorporated associations in Melbourne have been sending notices and reminders to members by email (and advertising the AGM on the website), making the notice of meeting and documents referred to in that notice available on their website and using technology such as Microsoft Teams or Zoom to conduct the AGM in much the same way a meeting is conducted via such platforms.

The Registrar of Consumer Affairs Victoria is currently granting three-month extensions to incorporated associations to hold their AGM, on application, and waiving the usual fee.

### New South Wales

Part 6 of Schedule 4 to the *Associations Incorporation Act 2009* (NSW) (the **NSW Act**) sets out the rules in relation to meetings and voting during COVID-19. These provisions are due to end on 26 September 2020, unless extended by the regulations to a later date, which date must not be later than 26 March 2021.

Committee meetings and general meetings may be held at two or more venues using any technology that gives the members of the committee or the association (as the case may be) a reasonable opportunity to participate even if the association's constitution does not provide for the meeting to be held in that way: sections 18(1); 19(1). Voting on ordinary and special resolutions may occur by postal or electronic ballot, even if the association's constitution does not permit the resolution to be voted on in that way: section 20(1); 21(1). However, voting must still be conducted in accordance with the *Associations Incorporation Regulation 2016* (NSW) (the **NSW Regulation**). Schedule 3 to the NSW Regulation sets out the requirements for conducting an electronic ballot, including the appointment of an external returning officer, the

preparation of ballot papers, the mechanism for casting of votes and the retention of records of the electronic voting.

## **Queensland**

Incorporated associations in Queensland are regulated by the *Associations Incorporation Act 1981* (Qld) (**QLD Act**). Section 55 of the QLD Act requires an incorporated association to hold an annual general meeting within six months after the end of the association's financial year. As part of the Queensland Government's COVID-19 response, all incorporated associations have been granted an extension by the Office of Fair Trading until 31 December 2020 to hold outstanding annual general meetings. Associations do not need to contact the Office of Fair Trading to take advantage of this extension.

The QLD Act was recently amended to allow all incorporated associations to hold meetings using any technology provided that members can hear and take part in discussions as they happen at the meeting (sections 56 and 63A of the QLD Act). Previously, the use of technology had to be expressly permitted by the association's rules.

The QLD Act is otherwise silent on general procedural matters relevant to the conduct of meetings, therefore you should carefully review the association's rules to confirm the specific procedures for calling an annual general meeting (including how the notice of meeting can be provided to members).

## **South Australia**

Incorporated associations in South Australia are regulated by the *Associations Incorporation Act 1985* (SA) (the **SA Act**).

The SA Act does not specifically provide for virtual AGMs, but rather provides that the rules of individual associations must provide for the calling of and procedure at general meetings: section 23(c)(v).

If your association's rules do not allow for a virtual AGM to be held, it is possible to apply to the Corporate Affairs Commission (currently administered by Consumer and Business Services South Australia (**CBS**)) for an exemption from the requirement to hold an AGM.

CBS is currently granting a 6 month extension for incorporated associations in South Australia to lodge periodic returns or hold an AGM.

Further, CBS has published a 'no-action position', where it will not take action where an association holds a virtual AGM (whether its rules allow it to or not), provided members can participate, including being able to ask questions or raise concerns about the way a meeting is run: see <https://www.cbs.sa.gov.au/news/information-associations>.

CBS has advised that if members are unable to access appropriate technology to participate in a virtual AGM, it may instead be appropriate to defer the meeting.

If you need any assistance in interpreting the rules of your association, or in making an application to defer your association's AGM, please contact our office.

## **Other jurisdictions**

If your incorporated association is incorporated in a state or territory other than those set out above, please contact one of our team members below if you require further assistance.