

## Article Information

Service: Corporate & Commercial, Corporate Governance

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# Members' meetings in the Age of COVID-19 - Can members' meetings of charities that are incorporated associations be held using technology?

## As the Federal Government imposes increasingly tighter restrictions on public gatherings, can charities that are incorporated associations hold members' meetings using teleconference and videoconference technology?

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This article follows on from an [insight published on 27 March 2020](#) which considered whether charities that are public companies limited by guarantee can hold meetings using technology.

As the new social distancing rules have been implemented by the Federal Government and public gatherings have now effectively been prohibited by the imposition of the "two person rule", we have fielded a number of queries from our clients regarding whether they can hold members' meetings using teleconference and/or video conference.

In the case of incorporated associations, the answer depends on two factors: the jurisdiction in which the association is incorporated and the wording of its constitution.

In New South Wales, the *Associations Incorporation Act 2009* (**NSW Act**) is silent as to whether meetings can be held using technology, which means that an association incorporated in this jurisdiction will only be able to hold a meeting using technology if it is permitted by the association's constitution. With respect to voting, the NSW Act provides that both ordinary and special resolutions can be passed by postal or electronic ballot conducted by the association, if the association's constitution permits these voting methods.

In Victoria, the *Associations Incorporation Act 2012* (**VIC Act**) provides that an incorporated association may hold its general meetings using any technology that allows members to clearly and simultaneously communicate with each other and further provides that a member that votes at a meeting held using technology is taken to have voted in person in respect of the relevant resolution. The VIC Act also permits voting on special resolutions by proxy, if permitted by the constitution of the association. Associations in this jurisdiction should check their constitutions to ensure that the requirements for passage of resolutions, and particularly, special resolutions (if required), will be met if the meeting is held using technology.

The Queensland *Associations Incorporation Act 1981* (**Qld Act**) provides that meetings of an incorporated association may only be held using technology if permitted by the rules of the organisation, and where permitted, a member who participates in such a meeting is taken to be present at the meeting. The Qld Act is silent as to whether a resolution can be passed electronically and does not permit voting on resolutions by proxy. The constitution of an association incorporated in Queensland would therefore need to be checked to ascertain whether it permits meetings to be held by using technology and if so, whether electronic voting and/or voting by proxy is permitted.

By contrast, the South Australian *Associations Incorporation Act 1985* (Cth) (**SA Act**) doesn't make any provision for holding meetings using technology. In addition, the definition of special resolution in the SA Act specifically requires that a resolution of this type must be passed at a duly convened meeting of the members of the association or by proxy if permitted by the rules of the association. Accordingly, even if an association's constitution permits the holding of meetings using technology, if a special resolution is proposed, the organisation will need to hold a physical meeting for such resolution to be passed.

The Australian Capital Territory *Associations Incorporation Act 1991* (**ACT Act**), the Western Australian *Associations Incorporation Act 2015* (**WA Act**) and the *Associations Incorporation Act 1964* of Tasmania have similar provisions to the SA

Act, although the WA Act does permit a special resolution to be passed by a postal ballot and for voting by proxy, and the ACT Act permits voting by proxy, provided the association's constitution permits the relevant voting method.

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