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AGMs in a time of social isolation

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Today's Session

- **Do we have to hold an annual general meeting (AGM)?**
- **Can we postpone our AGM, and the varying requirements between different states on holding AGMs**
- **Can we hold our AGM remotely using technology, and the varying requirements between different states on holding AGMs electronically**
- **How to organise successful online meetings**
- **Software tools that can be used for online meetings**
- **What to do about those people who don't have Internet access?**



The requirement to hold annual general meetings

- We understand that we need to hold an AGM this month.....
- However, meetings of more than two people are currently not allowed in Australia, due to Coronavirus (COVID19) precautions.....
- So what should we do?

Where does it say we need to hold an AGM?

Depending on the structure of your organisation this might be written in the rules for you:

- State or Territory regulatory bodies for incorporated associations and co-operatives (this is different in each State or Territory)
- The Australian Charities and Not-For-Profits Commission (ACNC)
- The Australian Security and Investments Commission (ASIC)
- Office of the Registrar of Indigenous Corporations (ORIC)

.... it should also be in your Constitution

State and Territory Bodies - Authorising Authorities

State/territory	Authority	Website
Australian Capital Territory	Access Canberra	https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1504/~incorporated-associations
New South Wales	Fair Trading NSW	https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/running-an-association/meetings
Northern Territory	Licensing NT	https://nt.gov.au/industry/licences/licensing-nt-contacts
Queensland	Office of Fair Trading QLD	https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/fair-trading-services-programs-and-resources/fair-trading-latest-news/disaster-assistance/covid-19#fakecharities
South Australia	Consumer & Business Services	https://www.cbs.sa.gov.au/news/information-associations
Tasmania	Consumer, Building & Occupational Services	https://www.cbos.tas.gov.au/topics/clubs-fundraising
Victoria	Consumer Affairs	https://www.consumer.vic.gov.au/clubs-and-fundraising/incorporated-associations/running-an-incorporated-association/meetings
Western Australia	Consumer protection WA	https://www.commerce.wa.gov.au/consumer-protection/covid-19-coronavirus-advice-incorporated-associations-and-clubs

State and Territory Bodies - Authorising Authorities

State/territory	Authority	Regulator's Advice for COVID19 AGM Provisions
Australian Capital Territory	Access Canberra	Automatic 3-month extension until 20 June 2020
New South Wales	Fair Trading NSW	May apply for an extension of time, with fee waived
Northern Territory	Licencing NT	Associations can apply for an extension of time if it cannot hold its AGM within 5 months after the end of of its financial year. To do this contact Licencing NT
Queensland	Office of Fair Trading QLD	Automatic extension of 6 months
South Australia	Consumer & Business Services	If Associations are unable to hold an AGM within the legislated timeframe, CBS will take no action where AGMs are postponed for up to 6 months
Tasmania	Consumer, Building & Occupational Services	Associations can apply for an extension of time if it cannot hold its AGM within 3 months after the end of its financial yes. This can be done by using the enquiry form
Victoria	Consumer Affairs	In exceptional circumstances an organisation can apply for an extension of time

Western Australia



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If an Association needs to delay its AGM more than 6 months the organisation should apply for an extension
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Australian Charities and Not-for-Profit Commission

- [Blanket extension to Annual Information Statement submissions](#)
- As a result of the impacts of COVID-19, many charities are likely to experience issues with submitting their 2019 Annual Information Statement (and, if required, their annual financial report) by their due date.
- Some of the reasons for this may include (but are not limited to):
- the inability to hold Annual General Meetings
- the inability for charities to have their financial accounts audited or reviewed
- charity Responsible Persons who are unwell due to COVID-19.
- **ACNC Commissioner the Hon Dr Gary Johns has approved a recommendation that charities with AIS due dates between 12 March 2020 and 30 August 2020 now have an extension until 31 August 2020.**
- This latest extension also includes bushfire-affected charities that had previously been granted an AIS submission extension to May.
- This blanket extension to AIS submission does not automatically include any obligations to other regulators - for example, charities that are incorporated associations and who report to state or territory regulators.
- <https://www.acnc.gov.au/node/5781959>

Australian Securities and Investments Commission

- The Australian Security and Investments Commission (ASIC), which regulates not-for-profits registered as companies – has taken a “no actions position” on non-compliance, and has given an extension to companies limited by guarantee until the end of July 2020
- It is expected ASIC will also provide further updates in coming months

<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-068mr-guidelines-for-meeting-upcoming-agm-and-financial-reporting-requirements/>

Indigenous Corporations (regulated under ORIC)

- The Registrar has determined that all new corporations registered from January 2020 will be granted an extension of 6 months to hold the corporation's first meeting
- If you think you'll need more time to hold your AGM, please contact ORIC before 31 May.
- ORIC has also developed a set of special rules that will read into existing rule books for a dedicated period of time upon request to ORIC, which relate to using technology to hold general meetings and director's meetings, available here:

https://www.oric.gov.au/sites/default/files/RESOURCE_Special%20rules%20for%20COVID-19_2020-03-26.docx

So what about electronic meetings?

- If you feel you really need to hold an AGM soon – and can't postpone it - the electronic option is the only possibility at present
- You'll first need to check that your governing document (usually your Constitution) allows electronic meetings, or if it is silent* on this matter....



Are we allowed to hold electronic meetings?

- **YES:** Incorporated associations using the model rules which allow remote AGMs: NSW, Vic, Qld, and WA, as well as Companies Limited by guarantee on the ACNC's model rules
- **MAYBE:** Rules are unclear for incorporated associations using the model rules in SA, NT, TAS and ACT
- **NO:** you will **have** to postpone your meeting!
- In either of the MAYBE or NO cases, you should only hold electronic meetings if you really, REALLY have to – as any decisions you make under such circumstances could later be challenged (and this includes even if you vote during this meeting to **allow** electronic voting.....!) Legal advice may help here....



How do I organise an online meeting?

1. **Create a timeline**
2. **Build your agenda carefully**
3. **Send your members** (electronically or through the post)
 - your annual report (including the financial report)
 - a message from the Chair
 - voting papers

What tools can I use to hold the meeting?

- **Free video conferencing tools:**

Zoom – up to 100 individuals for up to 40 mins

Skype – up to 50 individuals

- **Video & voice calling with instant text communication**

Slack

Microsoft teams

- **GoToWebinar**

For larger groups and more control over participation, as well as more record keeping, chat recording and data collection tools (we are using this here!)





What about people who don't have Internet access?

- If your membership is not online or really isn't technology literate, you may offer the alternative of proxy voting by mail. Make sure you allow a decent amount of time for people to receive their papers and respond to them.



In summary...

- In general - regulators are not going to come down heavily on those who put the health of their members first by delaying an AGM or shifting it online - as long as you're acting in good faith.
- However, keep yourself and your organisation safe by keeping **meticulous notes** about what you decided to do, and how you came to that decision*
- If you do hold an electronic AGM, keep meticulous records of that as well. Circulate the minutes to all members to give them the chance to amend the record and be prepared to ratify any decisions at a properly constituted AGM sometime in the future.
- Remember - safety trumps all. Some of the rules were made for different times. Right now, do what's safe and what's right.



Any questions?

