

Effective AGMs

Your step-by-step guide to running
an in-person, hybrid or online meeting



Contents

Foreword	1
Introduction	2
Chapter 1 Purpose of the AGM	4
Chapter 2 Before the AGM	6
Chapter 3 At the AGM	16
Chapter 4 After the AGM	29
Appendix 1 AGM regulatory timeline	31
Appendix 2 Checklist — AGM logistics	32



A national membership association, Governance Institute of Australia advocates for a community of more than 43,000 governance and risk management professionals, equipping our members with the tools to drive better governance within their organisation. We tailor our resources for members in the listed, unlisted and not-for-profit sectors, and ensure our member's voice is heard loudly. As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study to help further the knowledge and education of the fast-growing governance and risk management profession. We run a strong program of thought leadership, research projects and news publications and draw upon our membership of the Chartered Governance Institute to monitor emerging global trends and challenges to ensure our members are prepared. Our members know that governance is at the core of every organisation — and in these tumultuous times, that good governance is more important than ever before.

Foreword

The nature of the annual general meeting (AGM) has changed significantly in recent years. This change has been precipitated by a widespread uptake in the use of technology due to COVID-19 followed by permanent legislative reform in 2022 to facilitate meetings being held using technology. The changes have also been driven greater shareholder and member interest in governance issues and organisational recognition of the need for stakeholder engagement. For listed companies, shareholder activism has continued to increase, with institutional and retail shareholders alike keen to review performance and participate in the governance of the companies in which they invest. The ongoing interest in board and executive remuneration and increased focus on environmental, social and governance (ESG) risks has spread beyond shareholders to the media, regulators and special interest groups, all of whom have become more demanding in pursuit of their agendas. Many unlisted companies, superannuation funds, charities and other not-for-profits experienced much greater levels of member engagement through technology and plan to continue using these tools to hold AGMs.

Interestingly, while the landscape within which companies operate continues to evolve, the matters being considered at AGMs have not, for the most part, changed substantially. The AGM is still the main forum for shareholders or members and directors of companies to interact, and the place where shareholders or members have the ability to elect directors, to hold them accountable for the company's financial and general performance and to approve proposed amendments to the constitution. However, ESG matters continue to receive significant airtime at listed company AGMs, particularly in relation to requisitioned resolutions, shareholder questions and say on climate votes.

In this context, there are certain statutory and procedural meeting requirements. *Effective AGMs* not only provide an invaluable guide to ensure that meeting essentials are carried out, it also shows how to make a company's engagement with shareholders, members and other stakeholders mutually beneficial. Advances in technology alone will not guarantee shareholder or member participation. It is up to companies, and in particular the individuals responsible for organising AGMs, to take up the challenge to better facilitate shareholder and member engagement. We encourage you to use this guide when planning your next AGM to help you to achieve greater shareholder and member engagement.

This publication has been updated by Governance Institute's members with assistance from Priscilla Bryans FGIA FCG, Partner and Stephanie Vizard and Anna Coroneo, Senior Associates of Herbert Smith Freehills. We would like to particularly thank them all for their efforts.



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Introduction

The Annual General Meeting (AGM) of members of companies remains a key milestone in the calendar of a company and the preparation for the AGM, particularly for listed companies, is often a costly and time-consuming exercise.

To help companies safely meet their legal obligations in the COVID-19 environment, temporary regulatory relief was introduced in 2020 to allow companies and incorporated associations (in most Australian states) to hold AGMs virtually or as a hybrid meeting (with a physical and virtual component).¹

After a series of temporary measures, the *Corporations Amendment (Meetings and Documents) Act 2022 (Cth)* (CAB) amended the *Corporations Act* permanently to facilitate hybrid and, where the company's constitution expressly provides for it, virtual, general meetings. CAB also introduced new provisions regarding electronic shareholder communications (including the permitted methods of sending a notice of a general meeting) and electronic signing of documents.

At some listed company AGMs, particularly in hard to abate sectors, requisitioned resolutions continued to be proposed at AGMs, typically involving a two-limbed approach with a constitutional amendment resolution proposed to enable advisory resolutions to be put as well as one or more contingent advisory resolutions. ESG related issues, including climate change, continue to be the key focus of shareholder requisitioned resolutions as shareholders seek annual reporting from their companies on emissions targets, commitment to the Task Force on Climate-related Financial Disclosures and companies' commitment to the Paris Agreement climate goals.

Since 2021, some listed company boards have opted to seek a voluntary non-binding advisory vote on climate-related matters. These 'say on climate' resolutions typically seek shareholder approval for the company's climate strategy or the sustainability report published by the company. Most companies have not yet committed to how frequently they will propose 'say on climate' resolutions at their AGMs but we may see a variety of approaches

including triennial resolutions or a triennial strategy resolution with a more general vote in the subsequent two years. While the trend for 'say on climate' votes has started in the energy, resources and mining industries, if Australia follows the trend in the UK, we may expect to see 'say on climate' votes more broadly (for example, from listed financial services institutions).

Other ESG issues including engagement with Traditional Owners, indigenous rights and heritage, supply chain, workplace diversity and harassment and human rights issues also continue to be a focus of both requisitioned resolutions and shareholder questions at listed company AGMs.

In this guide we will look at the AGM in its current regulatory form. We will look at what the rights of members are, what the obligations of the company are, and how those rights and obligations should be met. We will also, however, consider a broader dimension than that of pure regulatory compliance. An AGM cannot be said to be truly effective unless it is focused on, and delivers, member engagement.

In both meeting the regulatory requirements and maximising the value-adding engagement of members, the role of the company secretary is critical. The delivery of a successful and effective AGM is a prime responsibility of the company secretary and boards rely heavily on their knowledge and guidance to assist them in meeting their obligations to the company at this meeting.

This guide is intended to be a broad yet comprehensive guideline for the conduct of AGMs, for companies and organisations of all sizes. It is also intended to assist readers with the situations and issues frequently encountered in relation to AGMs. There will be some entities with atypical constitutions, requirements under other constituent documents such as shareholders' agreements or which are subject to particular legislation, these factors will also need to be taken into account in relation to the conduct of their AGMs. The principles apply to most entities. Where provisions apply only to listed companies, this is made clear in the text.

¹ The details about the differing requirements for incorporated associations in the various Australian states and territories are outside the scope of this Guide. For further information see the resources at [NFP Law](#). There are also specific requirements for members' meetings of companies that are 'registered organisations' under the Fair Work (Registered Organisations) Act 2009.

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Some companies, typically companies limited by guarantee, are subject to other laws with requirements that impact on the nature and scope of the AGM and other general meetings. For example some may be registered organisations under the *Fair Work (Registered Organisations) Act 2009* (Cth) or be subject to the *Registered Clubs Act 1976* (NSW). The detailed variations under these laws are out of the scope of this guide.

Because of the nature and subject matter of this guide, it contains a number of references to legislation. In each case, the *Corporations Act 2001* (Corporations Act) is the relevant legislation. Any section references included should be interpreted as references to the Corporations Act, unless otherwise stated. The term 'members' is used throughout for the most part as this is the term used in the Corporations Act, although we recognise that in discussions of engagement with members of listed companies, the more frequently used term is shareholder engagement.

Further, while this guide attempts to give a broad outline of the responsibilities of those involved in AGMs, there may

be some matters which are beyond its scope. We have included details relating to the particularities of member engagement for not-for-profit companies and charities. For companies incorporated under the Corporations Act and registered as charities with the Australian Charities and Not-for-profits Commission (ACNC) S 111L of the Corporations Act provides that Part 2M of the Act does not apply, other than the following provisions:

- S 249R — how meetings may be held
- S 249RA — place and time and presence at meetings
- S 249S — reasonable opportunity to participate
- S 250PAA — ASIC's power to make Class Orders, and
- S 250PAB — individual externally administer companies.

Where further information or detail is required, we suggest readers refer to *Horsley's Meetings Procedures, Law and Practice*, 7th edition by AD Lang (2015), published by LexisNexis.

Chapter 1

Purpose of the AGM

In one leading case (*Re South British Insurance Co Ltd (1980)*) a senior judge described the AGM as:

the one occasion in the year when the shareholders have the right to meet the directors or their representatives, and to question them on the company's accounts, the directors' report and the company's position and prospects.

Member/shareholder engagement

For companies limited by shares, members are the owners of the company and directors are the stewards appointed by members to look after their interests. It is therefore important for members and directors to engage with each other (not a one-way street!).

Despite the fulsome regulatory regime that AGMs are required to operate under, companies that see value in engaging with members can go beyond seeing the AGM as a pure compliance exercise and use the AGM as an opportunity to build and enhance this engagement. In addition to addressing the regulatory requirements for AGMs, this guide also looks at ways in which companies may generate member engagement in conjunction with the AGM.

By and large, the institutional investors (for example, super funds) that typically hold the bulk of votes in listed companies, do not attend AGMs. Instead, they have traditionally engaged with the company throughout the year and before the AGM, and vote by lodging a proxy or direct vote prior to the meeting. Their voting is often informed by the reports prepared by proxy advisors, who set out recommendations for how their subscribers may wish to vote on the company's resolutions. As such, the outcome of each resolution is ordinarily known prior to the meeting being held. This highlights the importance of the process and engagement leading up to the AGM.

With the introduction of live voting during hybrid and virtual meetings, there is scope for institutional investors to vote live during the meeting. While this trend has not yet been observed in practice, if institutional investors move to live voting, this could mean the outcome of a resolution will not be known until voting takes place at the AGM or are counted at the end if a poll is called.

However, engagement ahead of the AGM continues to be important — while most public companies must hold an AGM annually, it is up to the company to ensure it engages with members routinely. This includes those members with whom the company may not communicate frequently (in many cases, retail shareholders). One benefit of engagement outside the formal AGM is that companies can become aware of (and if necessary, address) issues of concern from members before those issues may escalate and potentially adversely affect the company.

The *Corporate Governance Principles and Recommendations* recommend that a listed entity should disclose how it facilitates and encourages participation at meetings of members.² Listed entities with large or geographically diverse registers are encouraged to consider how technology can be used to facilitate the participation of members in meetings (for example, live webcasting of meetings and hybrid meetings) and encourages all listed entities to provide members with the opportunity to provide questions or comments ahead of the meeting. Unlisted entities also need to consider these issues particularly where there are contentious issues to be considered at the meeting.

² See *Corporate Governance Principles and Recommendations*, 4th edition, 2019, ASX Corporate Governance Council.

For unlisted companies, charities and not-for-profits AGMs can also provide a valuable opportunity to engage with members and supporters. Many of these organisations have found that using online meeting platforms over the last two years has increased attendance at AGMs significantly.

Essential business of the AGM

The purpose of the AGM has traditionally been to enable the transaction of business by the members on an annual basis.

Part of this business is historical — to consider and review the annual financial statements and the reports and statements of the directors and the auditor for the previous financial year. Members have an opportunity to make comments and ask questions of the board about the management of the company (section 250S).

Another part of the AGM's business is forward looking — to elect/re- elect directors; to set the maximum aggregate amount of remuneration (that is, the non-executive director fee pool) where applicable and to approve equity grants to the directors (for example, the Managing Director's annual Long Term Incentive (LTI) grant) where applicable.

The AGM is often also the most convenient forum (without having to undertake the additional effort and expense of convening an additional general meeting) for undertaking formal business which requires resolutions to be passed by the members, such as amending the company's constitution, or for listed companies renewing or reinserting proportional takeover provisions, appointing / replacing the external auditor, or transaction specific items (for example, capital reductions). See 'Other items of business' below for further discussion

There is a requirement for listed companies to put an advisory resolution to members each year asking them to adopt the company's remuneration report. While this is not a binding resolution, under the two strikes rule, having a 25 per cent or more against vote on the resolution two years running triggers the requirement for a conditional resolution to be put to members of whether all directors (other than the managing director and any other new director) should stand for re-election at a specially convened 'spill meeting'. Importantly, Key Management Personnel (KMP) and their closely related parties are prohibited from voting on the resolution to adopt the remuneration report and the conditional resolution to hold a spill meeting (although they are able to vote at the spill meeting if one is convened).

Other common remuneration resolutions include approving the participation and quantum of a director in an incentive plan (for ASX Listing Rule purposes) and approval of termination benefits in the next three years.

The extent to which companies can most effectively cover these elements, and take the opportunity to go beyond them, will be considered in this guide.

Who is required to hold an AGM?

Section 250N requires all public companies to hold AGMs, other than public companies with a single member.

There is no longer any requirement under corporations legislation for proprietary companies to hold AGMs (but some proprietary companies' constitutions may require it and it may also be a requirement under a shareholders' agreement applicable to the company).

Not-for-profit companies that are companies limited by guarantee (other than charities registered with the ACNC) and incorporated associations are also required to hold AGMs to meet the legislative requirements under the Corporations Act or the relevant state legislation under which the association is incorporated.³ There are also special provisions for indigenous corporations incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.⁴

Charities that have members are not required under the *Australian Charities and Not-for- profits Commission Act 2012* to hold AGMs (unless their constitution expressly requires them to), but they are required under the ACNC Governance Standards applicable to these organisations to be accountable to their members. For most of these entities the most practical and the easiest course is for the charity to organise a meeting at least annually with their members with opportunities to ask questions and vote on resolutions, and explore other means by which engagement with members can be enhanced.

³ See Note above.

⁴ For further information see the [Office of the Registrar of Indigenous Corporations](#).

Chapter 2

Before the AGM

Prerequisites to the AGM

There are a number of important prerequisites that the board has to ensure are completed prior to convening an AGM.

Annual report

As the annual financial report, the directors' report and the auditor's report are the foundation documents to be considered at the AGM, directors must have resolved as a board to:

- approve the annual financial report where required by s 295
- declare that the annual financial report complies with the accounting standards and gives a true and fair view of the company's financial position and performance, where required by ss 296, 297 and 298
- approve the directors' report where required by s 298, containing the material required by ss 299 and 300 (and for listed companies, the remuneration report required by s 300A) or for companies limited by guarantee only required by s 300B
- for listed companies, approve the remuneration report as required by s 250R(2).

There are detailed requirements for the material to be included in each of these components which are beyond the scope of this guide.

For listed companies, there are additional matters which need to be addressed in the directors' report, as prescribed by ss 299A, 300 and 300A. Listed companies must also have prepared the review of operations and activities for the reporting period, required by Listing Rule 4.10.17 and other information required by Listing Rule 4.10.

Listed companies must also obtain the declaration by the chief executive officer (CEO) and chief financial officer (CFO) required by s 295A (and Recommendation 4.2 of the Corporate Governance Principles and Recommendations).

The company must also have obtained the auditor's report where required by s 301.

The company secretary has a vital role in ensuring that these documents are properly prepared in accordance with statutory requirements, and in the case of the financial report and the directors' report, passed by way of valid resolutions by the board.

Election and re-election of directors

Subject to its constitution (and where listed the Listing Rules require), the company must work through which directors are required to retire at the AGM and who will stand for election or re-election at the AGM. There are a number of reasons why a director may be required to retire at the AGM, including:

- they were appointed by the board since the last AGM
- ASX Listing Rule requirements (Listing Rule 14.4) — each director (excluding the managing director) must stand for re-election at least every three years (or three AGMs, whichever is longer), directors appointed since the last AGM must stand for election and there must be an election of directors every year (Listing Rule 14.5)
- any rotational requirements in a company's constitution. If cumbersome companies may consider amending their constitutions to remove these requirements, or
- any other specific regulation applicable to the company. For example, companies that have a UK dual-listing and seek to comply with the recommendations of the UK Corporate Governance Code may hold annual elections of all company directors, including the managing director.

In most cases, directors who retire will be automatically eligible for re-election.

For orderly board succession and renewal planning, if a large number of directors are due to retire in a particular year (due to a constitutional / Listing Rule requirement for directors to seek re-election every three years), companies may consider bringing forward elections for certain directors earlier than when they are due to 'smooth' the director rotations.

⁵ Detailed consideration of the requirements can be found in *Australian Corporations Practice* published by LexisNexis.

Subject to its constitution, the company must be prepared to receive nominations of external board candidates other than those retiring as above and ensure such nominations have been made validly in accordance with the constitution (and if applicable, the ASX Listing Rules). To facilitate this, listed companies must ensure they comply with the ASX Listing Rules and announce the date of the AGM and the cut-off date for such nominations, to allow external candidates to be nominated. If any external candidates are nominated for election to the board, this will also need to be considered by the board (for example, the company will need to conduct background checks and the board will need to consider if it will support the person's election). Where they have not already done so directors will also need to have a Director ID. This requirement can be problematic for registered clubs which are also registered as companies under the Corporations Act where there are frequently appointments from the floor. Some organisations do not permit nominations from the floor. It may be prudent to obtain a declaration from those nominating that, among other things, they have applied for a director ID.⁶

Other constitutional requirements

A further prerequisite is to review whether there are provisions of the constitution which may need periodic approval, such as those which may be included under s 648D dealing with the requirements which would need to be met if offers are made under a proportional takeover bid for shares in the company, as after three years such provisions are deemed to be deleted from the constitution unless they are renewed or reinserted.

Other items of business

Finally, the company secretary should review whether there are any other items of business which could be dealt with at the AGM and recommend them to the board for inclusion in the notice of meeting. While these items have traditionally been referred to as 'special' business, the distinction between ordinary and special business has generally fallen away. These may include:

- any necessary amendments to the company's constitution to cover the possible need to establish or increase the amount available for non-executive directors' remuneration (the 'NED fee pool')
- appointment or replacement of auditor
- any structural changes to the company's capital, such as an increase or reduction, or the refreshing of the company's ability to raise capital exceeding 15 per cent of the shares currently on issue, under Listing Rule 7.1

⁶ From 5 April 2022, newly appointed first-time directors must apply for their director ID before appointment. A director ID is a unique 15-digit number that directors keep for life, regardless of the organisation they belong to. For new Australian based directors this process is usually relatively straightforward and can be carried out online. For new overseas directors this process can take time and this time should be factored into any appointment process. Directors who are unable to obtain a director ID in time can apply for an extension. From 30 November 2022 all directors must have a director ID.

- additional placement capacity under Listing Rule 7.2
- the need to approve any issues of equity-based remuneration to directors (or in limited circumstances, other employees) — for example, the CEO's long term incentive award or non-executive director participation in a NED share plan — Listing Rules 10.11 and 10.14
- the approval of an employee incentive scheme or the periodic renewal under Exception 13 of Listing Rule 7.2 for share issues under employee incentive schemes
- approval of any termination benefits to KMP or subsidiary directors in accordance with s 200B, or
- the disposal of major assets

Of the above items, the appointment of the auditor and the establishment of a non-executive director fee pool may be particularly applicable if this is the company's first AGM as a listed entity.

Timelines

Under s 250N, a public company must hold an AGM once in every calendar year and within five months of the end of its financial year. A newly registered company must hold its first AGM within 18 months of its registration.

Apart from this requirement, there will be other practical factors driving the timing of the AGM. The first one will be the notice required. Section 249H provides for a minimum of 21 days' notice to members, or any longer period provided by the company's constitution. For listed companies, s 249HA requires at least 28 days' notice for a members' meeting.

Company secretaries should also take care to include the notice provisions under the company's constitution when calculating the required notice period. The number of days' notice required is referred to as 'clear' days, and excludes the day of service, deemed day of distribution and the day of the meeting. For example the days required for service by post may need to be included which can be up to three days, thus giving a total of up to 31 days. Some constitutions provide for longer notice periods.

While the CAB amendments to the Corporations Act permit the notice of meeting to be sent electronically, companies will still need to send either a hard copy notice of access or the notice of meeting in hard copy to some members so these timing considerations will continue to need to be factored in.

Section 249H also contains provisions for shorter notice for the AGM, where the consent of all members entitled to attend and vote at the AGM is obtained beforehand. This provision will obviously have limited practical usefulness for a company secretary of a company with more than a handful of members (for example, listed companies where it is highly unlikely to be used).

For the company secretary, there is a delicate balancing act in choosing the timing and the date for the AGM. Apart from the statutory and contractual provisions, there will be a number of practical issues to be faced, including such things as:

- the time required for the completion of the prerequisites — the financial report, notice of meeting and supporting material
- board approval to convene the meeting, and to approve the notice of meeting, explanatory documents and proxy form (which may depend on the board's scheduled meeting dates)
- for listed companies, the time required where drafts of relevant documents must be given to the Australian Securities Exchange (ASX) for its consideration under Listing Rule 15.1 (and the period of five business days which ASX has to advise the company whether it objects to the notice, or requires more time to examine the documents)
- the designing and printing or preparation of electronic versions of the necessary documentation, including the notice of meeting and explanatory documents, the proxy form and the notice of access
- the production of hard and electronic copies of the annual report
- the logistical issues relating to the meeting itself, discussed below, and
- the requirements for the collation and mailing/sending of the meeting documentation, including liaison with the mailing house if one is being used.

In addition, under Listing Rule 3.13.1, listed companies must advise ASX of the date of the AGM and the closing date for the receipt of director nominations at least five business days before the closing date for the receipt of such nominations.

Extension of time for holding the AGM

The Australian Securities & Investments Commission (ASIC) has the power under s 250P to extend the time for holding the AGM beyond the limits specified in s 250N. If an extension is to be sought, it is crucial that the application for extension be made to ASIC before the end of the period in which the AGM is legally required to be held. If ASIC agrees to the extension, it must specify the period of the extension, and may impose conditions on the extension with which the company must comply.

Company secretaries seeking an extension of time to hold the AGM should note the requirement in s 250P(3) that a company granted an extension '*must hold its AGM within the extended period*'. The section does not contemplate any further extensions.

The business of the meeting

Section 250R specifies certain items of business which may be transacted at the AGM even if not referred to in the notice of meeting:

- the consideration of the annual financial report, the directors' report and the auditor's report
- the election of directors
- the appointment of the auditor
- the fixing of the auditor's remuneration, and
- at a listed company's AGM, a resolution that the remuneration report be adopted must be put to the vote — for listed companies see also the discussion on advisory climate resolutions at page 1 above.

There are other sources of direction as to the business which may need to be transacted at the AGM. The company's constitution will normally have its own requirements dealing with the election of directors, including the processes for retirement by rotation and nomination for election.

It is vital for a company secretary to be fully aware of the provisions of the company's constitution, or any shareholders' agreement, relating to the AGM, as there may be hurdles additional to those in the Corporations Act which need to be jumped. This may particularly be the case, for example, for joint venture companies where a shareholders' agreement may include provisions affecting the AGM.

For listed companies, the Listing Rules also contain a number of matters required to be dealt with at a general meeting of the company, set out in Chapter 14 of the Listing Rules. If it is intended to deal with these matters at an AGM, there may be particular requirements to be met: see under 'Notice of meeting'.

Calling the meeting



The AGM, being part of the regular business of the company, is called by way of a resolution of the directors. The company's constitution will usually require the board to convene the meeting. The usual and most convenient way to convene the AGM is by passing the appropriate resolution at the board meeting where the annual financial report and the directors' report are approved.

In a practical sense, the board will pass a resolution convening the meeting, at a nominated time and place, and increasingly the electronic connection process, and approving the business to be considered at the meeting.

It is advisable for the board to approve the specific form of the notice of meeting, including explanatory notes and proxy form (and any other supporting material), and to authorise the notice be distributed to those entitled to receive it. This is usually done at the board meeting following the approval to convene the AGM (or a subsequent board meeting). Alternatively, it could be done by a circular resolution of the board.

Notice of meeting

Section 249L specifies that the notice of meeting must:

- if there is only one location at which the members who are entitled to physically attend the meeting may do so, set out the date, time and place for the meeting
- if there are two or more locations at which the members who are entitled to physically attend the meeting may do so, set out the date and time for the meeting at each location, and the main location for the meeting
- if virtual meeting technology is to be used in holding the meeting, set out sufficient information to allow the members to participate in the meeting by means of the technology
- state the general nature of the meeting's business
- set out the intention to propose any special resolution and state the resolution

- contain the specified information relating to appointment of proxies, and
- for listed companies, inform members that the resolution on the remuneration report will be put to the meeting, and if at the previous AGM at least 25 per cent of the votes cast on the approval of the remuneration report were against its adoption (but the same was not the case at the AGM before that), explain the application of s 250V(1) leading to a spill resolution.

Governance Institute has developed 'Guidelines for notices of meeting'. While the guidelines are specifically directed to listed companies, they can be taken to represent recommended practice in relation to notices of meeting and supporting materials, and company secretaries should be aware of the recommended practices. They can be found in the Resources section of the Governance Institute website.

Ordinary and special resolutions

Formal resolutions at AGMs and general meetings are either:

- ordinary resolutions that are passed by a majority of votes cast by members entitled to vote, or ⁷
- special resolutions that require specific notice to be given (s 249L(1)(c)) and are passed by at least 75 per cent of votes cast by members entitled to vote.

Companies should also review their constitutions and any shareholders' agreement to confirm if they require any other voting requirements for particular items of business.

Members' resolutions

In certain circumstances, members may have resolutions included in the agenda for the AGM. Section 249N gives members a general right to propose resolutions at a general meeting of the company if the request is made by:

- members with at least five per cent of the votes that may be cast on the resolution, or
- at least 100 members who are entitled to vote at the meeting.

Under s 249N(2), the notice must:

- be in writing
- set out the wording of the proposed resolution, and

⁷ For listed companies there is also the advisory resolution on the remuneration report – see page 7 above and page 18 below.

- be signed by the members proposing to move the resolution.

If the company receives a valid request under s 249N, the resolution must be considered at the next general meeting of the company that occurs more than two months after the notice is given: s 249O. In most cases this will probably be the company's AGM (as requisitioners usually align their requisitions with the company's AGM timetable). Section 249O provides that:

- the company must give all members notice of the resolution in the same way it gives notice of general meetings of the company, and
- the company is responsible for the cost of giving notice of the resolution to members if it receives notice of the resolution in time to send it out with the notice of meeting.

There is an exception under Section 249O to the requirement if the resolution is more than 1,000 words long or is defamatory.

While there may be many legitimate reasons for members to seek to include resolutions on the AGM agenda, in recent times shareholder activists in particular have used this mechanism in support of their particular issues. Company secretaries will, in conjunction with the board, need to develop appropriate strategies well ahead of the AGM to deal fairly, equitably and effectively with any valid resolutions proposed by members.

Where a listed company receives a valid requisitioned resolution, it must disclose this on the ASX market announcements platform with two business days of receipt (Listing Rule 3.17A).

Members' statements

Members have a right under s 249P to request the company to give to all members a statement provided by those members about a resolution to be moved at the AGM, or any other matter which may properly be considered at the AGM. For example, this might include matters covered in the annual financial report.

For the request to be valid, it must be made by members with at least five per cent of the votes that may be cast on the resolution, or at least 100 members who are entitled to vote at the meeting. The company must, after receiving the statement and subject to a number of conditions set out in s 249P, distribute the statement to all members in the same way it gives notice of a general meeting.

In practice, requisitioning members ordinarily include a members' statement with the requisitioned resolution so that it can be distributed with the notice of meeting.

Lodgment with ASIC before notice is sent

If the opportunity is being taken to include items on the AGM agenda in relation to the structure or size of the company's share capital, there are a number of provisions requiring lodgment with ASIC of a copy of the notice of meeting, and any documentation relating to the matter that will accompany the notice of meeting. These provisions include:

- s 256C(5) relating to reduction of share capital
- s 257C(3) relating to share buybacks exceeding the '10/12 limit', and
- s 260B(5) relating to financial assistance for the purchase of the company's shares.

The company must lodge the material with ASIC before the notice of meeting is sent to members. The Corporations Act does not refer to a specific time for lodgment before the notice is sent, but the ASIC form specifies that it must be lodged at least one day prior to the notice of meeting being sent.

Listing Rule provisions regarding the notice of meeting

Listed companies have additional notice requirements for a number of matters that may be included on the agenda of the AGM. These are summarised in Chapter 14 of the Listing Rules.

Where a Listing Rule approval is sought, the notice of meeting must summarise the relevant rule and what will happen if members do or do not give approval. Some Listing Rule approvals also require the notice of meeting to contain a 'voting exclusion statement', which specifies that the company must disregard any votes cast by certain named parties on the resolutions dealing with those matters. The form of the voting exclusion statement is set out in Listing Rule 14.11, and a summary of the individual listing rules requiring voting exclusion statements is set out in Listing Rule 14.11.1.

For remuneration-related resolutions that may attract both ASX Listing Rules voting exclusions and Corporations Act voting exclusions (including the resolution to adopt the remuneration report), Governance Institute's Guidelines on managing voting exclusions on remuneration-related resolutions should be consulted for more detail.

Listed companies must also, under s 250BA, specify in



the notice of meeting a place for the purposes of receipt of proxy appointments and proxy appointment authorities or sufficient information to allow members to provide their proxy appointment documents to the company by means of an electronic communication. The *Corporate Governance Principles and Recommendations* also recommend that listed companies report on whether they have provided members with all material information relevant to a decision on whether to elect or re-elect a director. The commentary to this Recommendation 1.2 also includes a suggested list of further information to be included in the notice of meeting about a candidate standing for election or re-election. Listed company notices of meeting should be drafted in accordance with this.

Service of the notice

The provisions relating to sending the notice of meeting (as well as a range of other documents) have been updated under the amendments to the Corporations Act introduced by CAB in 2022.

Under s 249J(3), a number of methods of giving the notice of meeting to members are permitted. The notice may be given:

- personally
- by post to the member's address in the register of members or any other address nominated by the member
- by sending it electronically in accordance with ss110D(1) (b), (c) or (d) (which are described below), or
- by sending it by any other electronic means of notification or access nominated by the member, or by any other means permitted under the company's constitution.

Section 110D permits the notice of meeting to be sent electronically in one of the following ways:

- by sending the member sufficient information in physical or electronic form to allow them to access the document electronically (i.e. a physical or electronic 'notice of access'); or
- by sending the notice of meeting in electronic form by means of an electronic communication,

provided that in each case, it is reasonable to expect that the notice of meeting would be readily accessible so as to be usable for subsequent reference.

Elections to receive documents

Under s 110E, members may make an election to receive certain documents (including the notice of meeting and meeting-related documents) in physical form (i.e. hard copies) or electronic form and may specify what documents their election relates to. Members may make standing elections which can be withdrawn, and can also make ad hoc requests for specific documents to be sent in a particular form. The election does not need to be made in writing and there is a requirement for companies to inform members of their right to make an election at least once in each financial year under s110K (although this can be done by publishing a notice under s110K on the company's website or the company's registry's website, rather than sending a separate notice to each individual member annually).

In practice, this means that:

- Members who elect to receive a hard copy, ahead of the prescribed cut-off date, must be sent a full hard copy notice of meeting.
- Members that have not given an election to receive a hard copy, by the prescribed cut-off date and who have not provided an electronic address, must be sent a hard copy notice of access or full hard copy notice of meeting.
- Members who have not made an election to receive a hard copy, by the prescribed cut-off date, and for whom the company has an electronic address, may be sent an electronic notice of meeting or an electronic notice of access (with a URL link to the notice of meeting).
- Members who have elected to receive meeting materials electronically should be sent an electronic notice of access or email attaching the documents related to the meeting.
- The prescribed cut-off date is the date that is 30 days immediately before the statutory deadline for the notice of meeting to be received.
- Where a notice of access is used to give the notice of meeting, the notice of access must contain sufficient information to allow the recipient to access the documents electronically.

Logistics

There are a number of practical and logistical issues which need to be addressed before the AGM, and in some cases before the convening of the meeting. The most pressing and important of these is venue.

The factors affecting the choice of venue are most importantly the size required to hold the expected number of members (in both the physical and hybrid meeting scenarios), whether any contentious issues are anticipated, and the type of facilities needed for the kind of presentations (if any) to be given. In the last few years the health restrictions prevailing have also influenced the location and format of meeting.

Availability of suitable venues can be limited, and company secretaries will need to ensure that the venue is chosen, and locked in, well ahead of the meeting.

Under the CAB amendments the following types of applications can be held at the following places:

Manner (s 249R)	Place of meeting (s 249RA)
Physical	Physical venue/s
Hybrid (physical + using virtual meeting technology)	Physical venue/s
Fully virtual only if expressly permitted by the company's constitution	Registered office of the company

In selecting a venue for the meeting, it is also important to ensure the physical venue selected and the time of the meeting are reasonable (s249S(3)-(6)).

Another important logistical issue may arise from the geographical spread of members which the directors wish to reach. The directors may wish to make use of ways to reach a wider range of members, such as:

- rotation of the geographical location of the AGM
- the use of suitable technology to webcast the meeting to those who cannot attend the AGM
- providing an online written question facility in addition to the webcast so shareholders can ask questions during the meeting
- holding a hybrid meeting where shareholders can vote and ask verbal and written questions live during the meeting, or
- holding a fully virtual meeting (if this is constitutionally available to the company).

Company secretaries will have to factor in sufficient lead time to make the necessary arrangements to put those methods in place.



Finally, for listed companies, the company secretary will need to ensure that a copy of any prepared announcement (including the contents of any prepared addresses by the chair or CEO to be delivered to the AGM) are given to ASX no later than the start of the meeting: see Listing Rule 3.13.3.

Using technology to conduct the meeting

While webcasting AGMs has been common for many years, the COVID-19 pandemic prompted the transition of many companies to hybrid and virtual AGMs, at least temporarily, but in some cases, permanently. The Corporations Act now also expressly permits hybrid meetings to be held and where expressly permitted by the company's constitution, virtual meetings.

If the meeting is held using virtual meeting technology (whether or not it is held at one or more physical venues), the technology must be reasonable and allow members who are entitled to attend the meeting, and do attend the meeting using the technology, to exercise orally and in writing any rights they have to ask questions and make comments (s249S(7)).

There are many logistical aspects that need to be worked through in advance of an AGM to ensure the use of technology during the meeting is seamless, particularly in relation to how questions will be conducted. It is important to make arrangements for this in advance of the meeting.

Tip — using technology

Larger companies usually have access to the services of a registry and other service providers as well as in house technology teams to assist with ensuring the technology runs smoothly and will factor testing and rehearsals into their processes. For smaller companies it is important to consider and test any technology to be used to hold the meeting. It is also important for the company secretary to have assistance with the technology during the meeting so that they can focus on the meeting.

Script for the chair

The AGM must be recognised in two important respects:

- the occasion for the passing of important formal business, mandated either by law or the company's constitution, and
- an opportunity to engage with members, see above comments about a presentation which should be embedded in the script.

These two aims mean, first, that there is a requirement that the particular provisions of relevant regulations are properly dealt with and, second, that the presenters at the meeting should smoothly and confidently deliver their presentations, and deal with the proceedings accurately and effectively. An effective way that company secretaries have found to deal with these needs is to prepare a full script of the whole of the meeting for the chair, and for any other directors or executives taking part. The script should include all relevant formal matters — discussed in 'At the AGM' (starting on page 16) — such as quorum, introductions, voting procedures, resolutions to be passed, questions mandated by law, for example on the annual report, and proxy results of each resolution.

It is also common to prepare separate documents (like a 'runbook') that set out the chair's powers under the law and the constitution and guide the chair on procedural issues (for example, dealing with difficult shareholders and technical difficulties).

Unlisted companies, charities and not-for-profits which are required to hold AGMs may also find it useful to prepare a chair's script and runbook in advance of their AGMs. These materials will be less complex than for a listed company but will help ensure that the meeting runs smoothly on the day.

The chair will also find it helpful for the script or chair's runbook to include responses to the following:

- what will happen if there is a failure of technology or a need to adjourn the meeting for some other reason
- questions that the Australian Shareholders' Association (ASA) or other key stakeholders have indicated prior to the meeting that they will raise
- issues that proxy advisory firms have raised with their clients
- questions that the company has received from members in advance of the meeting
- questions that have been raised with the company following on from the announcement of the annual financial results, and
- possible questions which company secretaries anticipate could be raised by members arising out of any current issues which the company is facing, that have received recent media coverage or that are common themes at other peer company AGMs.

These questions and responses should also be supplied to all directors, in particular the chairs of board subcommittees and the CEO in the event that a question is directed to them.

Optional scripting can be included to cover potential issues such as the calling of a poll, the possibility of amendments being sought to be moved to an item of business or contingencies in relation to difficulties with technology, which can be placed at the end of the script for reference by the chair if needed.

Company secretaries should encourage their chair to follow the script, from the start of the meeting. Liaising with the chair can help in this process, by including in the script whatever opening remarks the chair may wish to make. It is recommended that company secretaries supply the chair with a draft of the script well before the meeting so it can be customised in any way that is required and the formal process of the meeting is understood. It is also ideal if the chair and CEO are each able to participate in a rehearsal of their speech, particularly if it will involve using a teleprompter machine and/or there are likely to be controversial issues raised at the AGM or technology is being used to hold the meeting. For meetings involving technology one or more rehearsals for all who will participate in the meeting are strongly recommended, including practicing responding to members' questions.

For hard copy scripts it is useful to use large fonts with relatively narrow columns to aid the reading of the script. Liaising with the chair can help settle on a size and style that meets their requirements.

Accurate and assured delivery of the AGM's business and other content can be a major factor in engaging members who are present at the meeting, and instilling confidence in the board and management.

Contingency planning including COVID-19 arrangements

There should always be a contingency plan for an AGM covering a range of scenarios and the actions to take if these scenarios arise should be documented and all involved in the meeting should be aware of the alternative arrangements.

In some instances, COVID-19 has meant that directors may not always be physically present for the AGM. It is important to have contingency plans in place for the chair of the meeting in case the chair of the board is unwell (for example, a video link so the chair of the board can chair the meeting remotely or a back-up chair, consistent with the company's constitution, who is prepared to chair the meeting). Directors who are standing for election or re-election may also need to pre-record their addresses if they propose to speak at the meeting in case they cannot be present.

If a company holds a hybrid or virtual AGM they could consider pre-recording the Chair and CEO speeches to ensure the smooth use of technology at the meeting.

While the levels of COVID-19 continue to fluctuate, some companies may wish to include wording in the notice of meeting to take into account the need for an alternative format or location for the AGM. This is so that companies can take any necessary measures to protect the health and safety of employees and attendees. If this eventuates companies should include a notification on their websites and for listed companies an announcement on ASX.

Written questions for the auditor of a listed company



Under s 250PA, members of listed companies are entitled to submit written questions to the auditor on the content of the auditor's report or the conduct of the audit of the annual financial report. This is a smaller subset of topics that the questions that may be asked of the auditor on the floor of the meeting under s 250T.

Members must give the question to the company not less than five days before the meeting. The company in turn must, as soon as practicable after it receives the question, pass it on to the auditor, even if it believes the question does not relate to a matter about which a member is permitted to question the auditor. Copies of the questions must be made available to members attending the AGM.

Other issues to be aware of

There are a number of areas where company secretaries need to be alert to ensure that all the appropriate steps are taken before the AGM. These can include:

- additional requirements in the constitution which go beyond the statutory requirements — this may cover who is entitled to the notice of the meeting, or what may be required for the nomination or re-election of directors
- additional steps such as giving notice of the AGM to the auditor under s 249K
- allowing sufficient time for liaison with external parties, such as the company's lawyers in the case of complex business to be transacted at the AGM, and ASX where the company is required to provide draft documents for review or approval prior to dispatch to members. It can also be prudent to ensure that legal advice will be available during the meeting to assist in dealing with any contentious or difficult issues
- early liaison with the share registry for the drafting of the proxy voting form and logistical issues involved in printing and sending of the meeting materials
- an increasing issue to be aware of for listed companies is the need to engage early with proxy advisers to respond to any issues that they may have
- reviewing the content of any statements directors intend to make in support of their election or re-election
- ensuring that a statement that members have a right to make an election about whether they would like to receive documents either physically or electronically is readily available on the website or sending members each financial year a notice setting out these rights (s 110K), and
- for listed companies if any continuously disclosable information is inadvertently disclosed at the meeting an ASX announcement to comply with Listing Rule 3.1 will be required.

Before the AGM, it is also important that the proxy results are monitored as this will determine if further member engagement is required. Unlisted companies may also need to monitor proxy results.

Opportunities for member engagement



Inviting questions before the AGM

An important way in which companies can build engagement with members is to invite members to submit written questions of the company ahead of the AGM. Calling for questions can help identify common themes of member interest and concern, which can be dealt with individually or by the chair and CEO in their addresses at the AGM. It also obviously helps in preparing suitably informative answers for members. It is useful to include in the invitation for questions a disclaimer that individual responses may not be given for every question, especially where questions are similar. This can help maintain flexibility in the process.

Company secretaries, and their colleagues in investor relations in listed companies where appropriate, should allow for the considerable amount of effort which may be involved in collecting, reviewing and preparing answers to the questions received. Before taking up the process of calling for questions from members ahead of the meeting company secretaries should ensure that there is high-level management and board buy-in to the process, and agreement on the provision of information and resources to answer them.

The Notice of Meeting should also avoid giving the impression that individual answers will be given in response to each member question submitted, if companies do not intend to provide individual responses.

Give clear explanations in documents

Section 249L(3) requires information in the notice of meeting to be 'worded and presented in a clear, concise and effective manner'. Members will appreciate the same effort in the other documentation which may accompany the notice. The contents of special resolutions, particularly for listed companies, are likely to be specialised and complex, such as approval of long-term equity-based incentive schemes, or partial takeover provisions.

By simply and clearly explaining this sort of material, members will be able to assess better its implications and cast more informed votes. Where detailed information is set out in supporting documents, company secretaries should also ensure that copies are available at the company's registered office and on the company's website.

Liaise with institutional members and proxy advisers

Where there are significant agenda items additional to the usual formal resolutions, it is useful to discuss the issues with institutional members and proxy advisers, to ensure that they are aware of the basis of and reasons for the resolutions proposed, and to encourage their support for the passing of the resolutions.

Plan to engage as wide a spread of members as possible

There are a number of ways to engage members who may have difficulty participating at a meeting venue. These include:

- rotation of the location of the AGM
- webcasting
- allowing direct voting ahead of the meeting (if the company's constitution permits)
- holding a hybrid meeting, or a virtual meeting (if permitted under the company's constitution), or
- some listed companies also hold retail investor days where members have an opportunity to engage with directors and the senior executive team.

Unlisted companies, charities and not-for-profits may also need to take additional steps to engage with members, where for example, constitutional amendments are part of the business of the meeting.

Chapter 3

At the AGM



Who should attend the meeting?

No AGM can be held without a chair. The company's constitution is most likely to provide that the chair of the board of directors is the chair of the AGM and also how the chair of the meeting will be selected in the event that the chair of the board is unable to attend the AGM. The company secretary should ensure that any issues concerning who will chair the AGM are resolved ahead of the meeting, as otherwise this may also have an impact on how undirected proxies granted to the chair of the meeting are voted.

Under s 250RA, the auditor of a listed company, or someone suitably qualified to represent them and able to answer questions about the audit, must attend the AGM. With the increasing use of technology at meetings it is more common for non-Australian based directors not to attend the AGM in person.



Opportunities for shareholder engagement

Attendance of directors and senior management

There are no *Corporations Act* provisions requiring the attendance of any other directors or senior management at the AGM. Who else attends from the company is a matter for the board to decide. Given that the AGM is the one annually required, direct meeting with members, there is a prime opportunity to promote member engagement.

The attendance of all directors where possible is encouraged as it is one way by which members can be assured that the board as a whole is committed to the company's success. Where the meeting takes place in person directors should also be encouraged to meet informally with members at the close of the meeting, subject to health considerations.

The attendance of management, particularly the CEO, CFO and other key senior executives, can give members the opportunity to develop confidence in management. It can also give the chair the opportunity to refer questions on matters of detail to people who can give appropriate and effective answers. If the chair wishes to do this, the relevant executive should be informed before the meeting of any subject matters they may be called upon to answer, to enable proper preparation. In practice, the chair of the meeting typically only refers questions to the CEO and occasionally the CFO.

Positioning at the meeting

The chair and the company secretary should discuss and decide who will sit on the podium at the AGM. The company secretary is ordinarily present on the podium to be able to provide advice on the administration of the meeting to the

chair as necessary. Should the chair wish to invite members of management or others (for example, external board candidates) not present on the podium to address the meeting, a decision should also be made in advance of the meeting as to how this is to be achieved (either using a microphone from the floor or from a lectern on stage).

Tip — smooth running of the meeting

Some companies, particularly larger listed companies have an employee or registry representative act as a 'master of ceremonies' for the meeting to assist with 'housekeeping' matters such as the procedure to be followed if there is a technology failure or reading questions received by telephone or online during the meeting.

Opening the meeting

Most companies open their meeting with an Acknowledgement of Country. Some may also show a short corporate video highlighting the activities of the company.

As with any company meeting, the chair should be careful to note for the record that a quorum is present and officially declare the meeting open. The company secretary will have taken the necessary steps to advise the chair of the situation regarding the quorum. For those companies that struggle to attract members to the meeting, they must ensure that the meeting stays quorate for the entire meeting, and should consider the impact of any resolutions that may have voting exclusions.

For those companies where the number of members likely to attend is unpredictable or where an event occurs which means that a much higher number of attendees than normal is expected to be present after the venue for the meeting has been booked, using an overflow room at the same venue may be a reasonable risk management measure. The overflow room should have sufficient technology for members present in that room to see the chair of the meeting and have the opportunity to fully participate in the meeting by being able to hear and ask questions at the relevant time (a communications link with the company secretary and the technician in the overflow room is essential here) and to vote (because of the location difficulties it is recommended that voting is done via a poll on all resolutions where an overflow room is used). This may be particularly relevant if hybrid meetings become mainstream as smaller physical venues may be reserved and it may be hard to predict actual attendances.

There is no need at an AGM to seek approval of the minutes of the previous AGM. The provisions of s 251A regarding entry of minutes in the minute book and signature by the

chair will meet all necessary requirements regarding the minutes of the previous year's AGM. Depending on the company, it can be helpful to the meeting if the chair's script addresses the matter of minutes, including that copies may be available for members who wish to see them.

The chair will most likely, after the opening formalities have been completed, introduce those of the directors, senior management and the auditor who are in attendance. The notice of meeting is commonly noted as being taken as read.

Tip — quorum

Some smaller organisations using technology to hold meetings may find members drop in and out during the meeting. It is important to ensure that there is a quorum present for the whole meeting, subject to any wording of the quorum requirements in the constitution — to that end when changing the constitution consider correcting this so that the quorum is only required to be present at the start of the meeting.

The annual financial report, directors' report and auditors' report

The consideration of the annual financial report, directors' report and, where required, auditor's report (or review as appropriate) by the members, and the opportunity for them to question the board and comment on the reports, is historically the primary item of business of the AGM. It is usually the first item of business on the AGM agenda, after any necessary preliminary formalities, but is sometimes deferred until the formal resolutions have been dealt with to allow for more time for discussion of the company's operations. Section 250S specifically provides that the chair of the AGM must allow a reasonable opportunity for members at the meeting to ask questions about, or make comments on, the management of the company. That questioning is generally part of the discussion of the annual financial report, unless it relates to management's role in other particular agenda items.

Questions for the auditor

The provisions of s 250T require the chair to allow the members a reasonable opportunity to ask questions of the auditor or their representative relevant to the:

- conduct of the audit
- preparation and content of the auditor's report
- accounting policies adopted by the company in the preparation of the financial statements and
- independence of the auditor in relation to the conduct of the audit.

The chair of a listed company must also allow the auditor a reasonable opportunity to answer any written questions which may have been submitted to the auditor under s 250PA. There has recently been an increase in questions to the auditor at AGMs.

Vote on the annual financial report

There is no requirement for the annual financial report to be put to a member vote and it is not usual practice.

Opportunities for shareholder engagement

By law, companies are only required to allow comment and questions on the annual financial report and management of the company. Given the historical nature of this data, companies are encouraged to provide more up-to-date information on the company in the formal chair and CEO presentations and to allow and encourage questions on the current financial position and performance and prospects of the company going forward.

The conduct of the formal question and answer session on the annual financial report is one of the most important ways in which the tone of the AGM is set. Factors such as the following can afford opportunities for better connection with the members who are present.

Questions raised by members before the meeting

If the company has invited questions from members ahead of the meeting, responses to those questions, or to the broad themes raised by the questions, can indicate to members the company's willingness to listen, and respond to, the matters they are interested in. It can be useful for the chair to address the questions which are most frequently asked before taking any questions from the floor, as the answers may be sufficient to cover issues which might otherwise be raised.

Questions raised by members during the meeting

A company must give the members entitled to attend the AGM, as a whole, a reasonable opportunity to participate in the meeting (s249S).

In addition, companies which hold a hybrid or fully virtual meeting must allow members to ask questions online both verbally and in writing (s

249S(7)(b)). Online questions are typically arranged via an online platform (and sometimes, a phone line for verbal questions).

Where shareholders are asking questions at the physical meeting and online, it is important to develop an appropriate procedure for questions and for this to be communicated to the meeting.

Written questions submitted by members via an online platform will typically be moderated by the company before they are passed to the chair. Some companies prepare moderator guidelines to ensure that the moderation is conducted in a manner which is consistent with the requirement to allow a reasonable opportunity for members at the meeting, as a whole, to participate in the meeting and to ask questions about particular items of business.

Tips — questions at hybrid meetings

- When holding a hybrid meeting consider how to conduct Q&A so that the meeting flows well — some companies alternate between answering questions received from the floor and questions received online or by telephone.
- Consider opening voting and questions at the beginning of the meeting which enables members to lodge their questions during the speeches and ensures that Q&A can proceed when the meeting reaches this point.
- The Q&A session should form part of the rehearsals for the meeting to ensure all parts of the process flow smoothly.



Dealing effectively with special interest groups

These can include:

- proxy advisory firms
- institutional investors
- retail shareholder bodies
- Individuals or groups such as employees/ former employees with particular industrial relations issues to pursue or members or customers with grievances, or
- any relevant environmental or social activist groups.

Communication with special interest groups ahead of the meeting, and reasonable treatment of their contribution at the meeting, can increase the prospects of their involvement in the meeting being productive. However, even where special interest groups raise questions before the meeting, they are still likely to raise the issues at the meeting, to obtain publicity for their views. Company secretaries should ensure that there is a strategy in place for the chair to deal reasonably but firmly with special interest groups to ensure that all members present have the opportunity to participate in the AGM.

Presentations

It is standard practice at AGMs for the chair and the CEO to give presentations to the AGM on the company's performance in the last financial year, and to outline strategies for the current year and beyond and progress to date. The quality and content of these presentations have the ability to improve the tone of the AGM. It must be noted here for listed companies that, regardless of whether prepared presentations/ speeches include market sensitive information, they are required to be released to the market **PRIOR** to the AGM.

Election and re-election of directors⁸



Director candidate presentations at the AGM

One way companies can consider increasing the involvement of members at the meeting is for the chair to invite directors and any others standing for re-election or election to give a short address to the meeting in support of the nomination. It is usual practice for the company to adopt a general approach to board-supported candidates in advance so that candidates are aware of how long they are expected to speak and the matters they should cover. In a COVID-19 world, it may also be appropriate to pre-record addresses in case a director cannot attend on the day.

Where an external candidate has nominated themselves for election, the company should agree in advance of the meeting for how long that candidate should be permitted to address the meeting and all other procedural arrangements regarding the external candidate's participation in the meeting.

In all cases, the chair should insist that any questions from members relating to these resolutions be addressed to the chair of the meeting. The chair can then determine whether to answer the question or direct it to the relevant candidate.

⁸ See also page 6 above.

The remuneration report (for listed companies)

The resolution to adopt the remuneration report must be a separate item on the AGM agenda. The remuneration report itself also forms part of the directors' report (s 300A) and so is also considered by the meeting as part of the agenda regarding the annual financial report. Members therefore have two opportunities to comment on it or ask questions about it, although in most cases the chair will, and in the interests of avoiding repetition should, request all questions on the remuneration report to be asked at the specific agenda item.

The nature of the material covered in the report has the potential to generate a high degree of interest among members, and not all of it positive. It is essential to canvas the views of institutional members on the remuneration report not only prior to the meeting, but also prior to the notice of meeting being finalised. Retail members are more likely to wish to take the opportunity at the AGM to express their views on the remuneration report.

Discussion of the remuneration report has the potential to affect the whole tone of the AGM. Company secretaries should ensure that the chair has an appropriate strategy in place to make the discussion as productive as possible and to minimise disruption.

Opportunities for shareholder engagement

The effect of the non-binding vote to adopt the remuneration report is now well established, even with the advent of the two strikes legislation. Any explanation of the effect of this resolution should be reserved for the written meeting materials rather than in the prepared speech for the AGM.

Liaise with institutional members and their advisers

Given that the views of institutional members are likely to substantially affect the result of the non-binding vote, and whether the company receives a 'strike', discussion well in advance of the meeting with both institutional investors and the proxy advisory firms that advise them can assist with achieving balance in the consideration of the report.

Should the chair of the remuneration committee present the report?

Given that the remuneration committee (if the company has one) will have overseen the development and the implementation of the company's remuneration strategy, the chair of the committee may be able to give important insight to the matters outlined in the report. The report is likely to be very complex, due to the detailed nature of the Corporations Act requirements in relation to its preparation and content. It is essential that anyone presenting to members on the report should be fluent in the detail of the report and be able to articulate key measures and the board's reasons for adopting them, clearly and concisely.

It is common practice, particularly among larger companies, for this section to be rehearsed and for difficult questions to be put to the person that will be addressing the meeting at the rehearsal.

Consider the position on the agenda of the remuneration report vote

The company secretary should discuss with the chair the order in which the remuneration report vote will appear on the agenda. There are differing views on the agenda order:

- conducting the vote on the report after the financial report and before director elections would ensure that all historical matters are dealt with together
- conducting the vote last would ensure that all binding business is conducted first, while interest in the meeting is still fresh and attendance is assured.



Listed companies that have received a 'first strike' on the adoption of the remuneration report are faced with significant procedural issues at their next AGM. It is recommended that they consult Governance Institute's *Guidelines for managing the requirements of a second strike* which go into those issues in greater detail. This is available in the Resources section of Governance Institute's website.

Other agenda items

There may be a number of other items of business on the AGM agenda. Depending on the nature of these items, specific action may need to be taken:

- If the matter is one in respect of which the ASX Listing Rules require the inclusion of a voting exclusion statement, the chair may wish to highlight the parties to whom the voting exclusion applies when putting the matter to a vote.
- If the matter is one which requires a special resolution, the chair should reiterate that requirement, including the majority required.

Opportunities for member engagement

There may be additional opportunities to engage members in other items of business.

Proposed amendment to constitution

Where there is a proposed amendment to the company's constitution, the chair of the meeting will typically give a simple explanation of the broad nature of the proposed amendments. Alternatively, which is less common, the chair of the relevant board committee which oversaw the development of the amending provisions can give a presentation.

Share issues to directors and executives

Where there are share issues to individual directors and senior executives which require member approval, there may be an opportunity for the chair of the meeting or the chair of the remuneration committee (if the company has one) to explain the reasons for the issues and the reasons why they need to go to members for approval (for dilution reasons).

Voting at the AGM

There are a number of important formal items of business which are dealt with at the AGM, in respect of which there need to be effective resolutions. The company secretary must ensure that voting is conducted in a correct way.

There are two primary ways of voting at the AGM (and other company meetings).

Show of hands

Voting by show of hands was historically the primary method used where the outcome of the resolution before the meeting is predictable or the resolution is a formal one whose success is not in doubt. A show of hands may also be useful in assessing the temperament of the meeting, even if the outcome is not in doubt.

It is a replaceable rule that voting may be decided on a show of hands unless a poll is demanded (however a poll is required for particular resolutions of a listed company) (s250J(1) and s250JA) and the Corporate Governance Principles and Recommendations (Recommendation 6.4) recommend listed companies decide all substantive resolutions on a poll.

After discussion of the agenda item to be voted on, the chair will formally put the resolution to the meeting, and if the vote is to be conducted on a show of hands, will ask those in favour to raise their hands (or voting cards if used). The chair will then ask for those against the resolution to raise their hands. Where the resolutions being put are essentially formalities, the hands raised in favour are likely to far exceed the hands raised against, and there will be no need to physically count the hands.

Where the agenda item may be more contentious, the company secretary should be alert to count the hands for and against. The chair may ask for the hands for and against to be raised again where there appears to be a close vote. A way to assist the counting is to provide all attendees with different coloured cards one colour for in favour and another against as that ensures that where one member is slow to put up or put down their hands they can be correctly counted. It is acceptable to ask the chair to request a repeat of the voting if the result is not clear. Alternatively, it may be appropriate to conduct a poll instead.⁹

Issues relating to voting by show of hands include the following:

- On a show of hands, each person has one vote (s 250E(1)(a)), rather than one vote for each share. This can have obvious outcomes where the bulk of the meeting is made up of members with small parcels of shares who could exercise a disproportionate influence on a resolution before the meeting.

- As only members and proxy holders are entitled to vote, it is useful in large meetings for distinctive voting cards to be issued to members and proxy holders as they enter the meeting. The chair can ask members and proxy holders when the resolution is put to the meeting to 'raise your voting cards', thus ensuring that there are no non-member attendees at the meeting who are purporting to vote.¹⁰
- It is a replaceable rule for the chair to inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast before voting takes place (250J(1A)). Usual practice is to show the proxy numbers after discussion on the resolution has taken place but before the show of hands is held. It is also a replaceable rule that on a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands the votes of the proxies received (s250J(2)).
- For some companies, typically smaller companies, holding technology to hold a virtual or hybrid meeting it will be important to ensure that votes on a show of hands can be observed — some meeting platforms have a 'hands up' or similar function which can be used for this purpose.

Voting by poll

Voting by poll on all resolutions is the preferred method of voting for institutional investors (who generally do not attend AGMs¹¹) and the majority of major listed companies now put all resolutions automatically to a poll.

For listed companies certain resolutions must be decided on a poll — when:

- the notice of the meeting sets out an intention to propose the resolution and stated the resolution; or
- the company has given notice of the resolution in accordance with section 2490 (members' resolutions); or
- a poll is demanded (section 250JA(1)).

⁹ Note under section 250JA of the Corporations Act requires certain resolutions of listed companies to be decided on a poll.

¹⁰ Note some company constitutions exclude proxy holders from voting on a show of hands.

¹¹ See also Recommendation 6.4 Corporate Governance Principles and Recommendations.

When voting is undertaken through a poll, members who are shareholders have one vote for each share they hold: s 250E(1)(b). Voting on a poll allows members to exercise the full entitlement which is proportionate to the number of shares they hold. If a poll is demanded, the appointment, receipt and counting of proxies will be crucial to the outcome of the vote: see 'Proxies' on page 24. Members of companies limited by guarantee commonly only have one vote, but the constitution may give some members more than one vote.¹²

Under s 250K(1), a poll may be demanded on any resolution. The section reserves a right of the company to provide in its constitution that a poll cannot be demanded on a resolution concerning the election of the chair or the adjournment of the meeting.

A poll may be demanded, under s 250L, by:

- at least five members entitled to vote on the resolution
- members with at least five per cent of the votes that may be cast on the resolution (the effect of voting exclusions under the ASX Listing Rules and the Corporations Act should be taken into account here), or
- the chair.

Section 250L reserves the right for the company to provide in its constitution for fewer members, or members holding a lesser percentage of votes, to demand a poll. Company secretaries, as always, should check the company's constitution to ascertain whether it contains any provisions about voting on a poll.

For non-listed companies, the chair is likely to call a poll when they are aware from the proxies received that there may be a different result from voting on a show of hands, including when they are aware that there is a significant negative vote. Actions by ASIC against some companies have indicated that it considers that a chair would have a duty to call a poll in those circumstances. Members with significant shareholdings would also be likely to call a poll where the combined effect of voting by members with smaller shareholdings on a resolution on a show of hands would outweigh the number of members with larger shareholdings present and voting.

Conducting a poll

Under s 250L(3) a poll may be demanded:

- before a vote is taken
- before the result on a show of hands is declared, and
- immediately after the result on a show of hands is declared.

The poll can be conducted in the manner directed by the chair, and either at the time it is demanded, or at the end of the meeting. The poll is generally conducted as follows.

- 1) The chair may appoint a returning officer to tally the results of the poll (often the share registry; alternatively the external auditor or the company secretary).
- 2) In addition, a scrutineer may be appointed to oversee the conduct of the poll (typically the external auditor). This may be helpful where a vote is potentially contentious.
- 3) The company secretary, prior to the meeting, will have prepared voting papers to be used for the poll, allowing members to indicate whether they wish to vote for or against the resolution. It is common for the voting card held up on a show of hands also to have provision included on it for voting on a poll.
- 4) The poll is typically opened at the start of the meeting and closed at or shortly after the conclusion of the meeting to allow members sufficient time to vote. The chair will allow an appropriate time for the members to cast their votes, and then declare the poll closed. While it is most common for the poll to be closed at the end of or shortly after the end of the meeting (with the results to be announced on the ASX for a listed company), the poll on each item could be closed earlier to allow time for tallying of votes during the meeting, as is commonly the case with companies limited by guarantee.
- 5) The returning officer will tally the votes and advise the company secretary of the result. The results will be announced as soon as possible, which can be after the conclusion of the meeting.

For listed companies, ASX has a right under Listing Rule 14.8 to require the appointment of the company's auditor, or some other person agreed with ASX as scrutineer. There are also rights for members with 5 per cent to request an independent person to be appointed to observe the conduct of the poll (s253UB) or scrutinise the outcome of the poll (s253UC). In practice this can be the share registry.

Hand-held electronic polling systems are available, which give automatic and immediate results (and also double as microphones for use during question time). However, these are typically quite expensive so are not widely used.

¹² The Corporations Act does not require Managed Investment Schemes to hold AGMs although some do for governance reasons. Section 252F governs the notice required — 21 days' notice is required, although a Scheme's constitution may provide for a longer period. Section 253C governs voting at scheme meetings — on a show of hands each member has one vote and, on a poll, each member has one vote for each dollar of the value of the total interests they have in the Scheme. Section 253F sets out how to determine the value of an interest.

Voting by poll can also be conducted in real time on online platforms for hybrid or fully virtual meetings (live voting). For listed companies most share registries provide this service. Smaller companies, charities and not-for-profits frequently use online platforms for meetings which generally have an inbuilt polling function that can be used and provide an instant result.¹³



Tips — voting for smaller companies, charities and not-for-profits at meeting using technology

- Understand any meeting technology from a user perspective.
- Many meeting technology platforms have a 'hands up' or similar function which can be used for voting on a show of hands.
- Encourage members to log in early to familiarise themselves with the platform and how to vote.
- Consider conducting a test vote for members so they can understand how the voting function or the hands up function works. Consider preparing a slide with voting instructions.
- Many online platforms enable the meeting host to view both percentages of votes cast and raw numbers of votes.
- Where the constitution provides the first vote at a meeting should be on a show of hands it is possible to include a statement in the Notice of Meeting that the chair intends to conduct all votes on a poll.
- Display resolutions on a slide or word document if the character limit of the platform is not sufficient for the resolution.

Proxies

The appointment of a proxy allows a member to exercise the right to vote at the AGM when they are unable to, or choose not to, attend. The right of a member to appoint a proxy is enshrined in s 249X. Under that section, the member may:

- Appoint either an individual or a body corporate as proxy.
- Specify the proportion or number of votes the proxy may exercise when two proxies are appointed.
- Apportion the number of votes between two proxies if they are entitled to cast two or more votes.

Validly appointed proxies have the same rights at the AGM as the member, under s 249Y, to:

- speak at the meeting, and
- vote to the extent allowed by the appointment on a show of hands (unless the company's constitution provides that a proxy may not vote on a show of hands), and
- join in a demand for a poll.

The company secretary should check the constitution to ascertain whether proxy holders can be counted as part of a quorum (which is typically the case), as in some constitutions they may not be permitted to be counted and it will be necessary to have the required number of members personally present.

It is good practice to forward proxy appointment forms to members with the notice of meeting and other documentation for the AGM. Section 249Z requires that if a proxy form is requested by a member, the company must send proxy forms to all other members who request it.

If the company on its own motion sends out proxy forms, it must send them to all members. A form of proxy appointment is often specified in the company's constitution or it states that the directors may determine the form of proxy from time to time. Completed proxy forms may be returned to the company or in the manner set out in the notice of meeting (which usually instructs members to return the form to the share registry).

Unless the company's constitution provides otherwise, the proxy's right to speak and vote at the meeting is suspended while the member appointing them is present at the meeting. Company secretaries should make themselves well aware of any provisions in the constitution and the Corporations Act regarding the appointment of proxies.

Note that while public companies cannot restrict proxies to being other members, public companies registered with ACNC are not subject to this requirement so can so can include this restriction in their constitutions.

¹³ Some companies' constitutions allow direct voting, where this method is used it is important to have processes in place to ensure that a member does not vote twice.

Body corporate representative

Rather than appointing a proxy, a member that is a body corporate may appoint an individual to exercise any of its powers at the AGM. This appointment is made under s 250D, and may be a standing one. Company secretaries should ensure that any purported appointment under s 250D is in a suitable form which evidences the proper corporate authority from the appointor.

Voting restrictions on members of the KMP

Certain voting restrictions apply to members of the KMP.

In particular, section 250BD requires that in relation to remuneration-related resolutions members of the KMP and their closely related parties must not vote as proxies unless they are directed how to vote on the proxy form or they are the chair of the meeting and the proxy form expressly authorises them to vote on the resolution even if the resolution is connected directly or indirectly with the remuneration of a member of the KMP of the company.

Voting by the chair

The company's constitution may determine whether the chair has a casting vote on any resolution. Section 250E(3) sets out a replaceable rule granting the chair a casting vote, and provides that the chair may also cast any votes they may have in their capacity as a member.

Company secretaries should check the constitution to be clear on the chair's right to a casting vote.

A proxy form will typically include a box to appoint the chair of the meeting as proxy as well as a named proxy. However, if the named proxy does not attend the meeting or does not vote on a poll where the member has specified how the proxy is to vote, the proxy defaults to the chair of the meeting.

Governance Institute recommends that companies should also make clear in both the notice of meeting and proxy/voting form how the chair proposes to vote any undirected proxies they have been given to them on each resolution.

Any statement about how the chair intends to vote undirected proxies should be framed as a statement of intention rather than as a definitive statement.

For listed companies if the proxy form specifies that the chair of the meeting is appointed as proxy if the member does not appoint another person to act as the member's proxy or the chair is appointed proxy by default, the proxy form must also include a statement as to how the chair of the meeting intends to vote undirected proxies, to comply with Listing Rule 14.2.2. Note that if there is a change to how the chair intends to vote undirected proxies, ASX would expect a listed entity to make an immediate announcement to the market stating that fact and explaining the reasons for the change (note to Listing Rule 14.2.2).

As noted above, the chair of the meeting, as a member of the KMP, may also be subject to voting restrictions, however where permitted, the proxy form may expressly authorize the chair to vote undirected proxies.

Direct voting

There are a number of specific concerns with proxy voting:

- It interposes the law of agency between the member and the company and is therefore by its nature indirect.
- ASX Listing Rules and the Corporations Act have very detailed provisions relating to voting exclusions on certain agenda items. These provisions can run parallel to each other and must be explained on the form can be of proxy. Proxy forms are complex documents with the fine print in a lot of cases not easy to understand.

One way of addressing this is by using direct voting where the company's constitution permits this.

Under a direct voting system, members can lodge their votes on resolutions to be considered at the AGM with the company before the meeting, and this constitutes a binding instruction to the company as to how the vote is cast. Direct voting avoids the potential concerns with proxy voting. However, it does not remove the ability to appoint a proxy, which is enshrined in the Corporations Act. Rather, it gives members another method to have their votes taken into account when they are unable to physically attend the meeting. Where direct voting is used, it is usual practice that a single combined proxy/direct voting form is prepared. Most constitutions allow companies to set guidelines for directors and these guidelines should address whether or not a proxy appointment can override a direct vote.

There is no legislative obstacle to a company introducing direct voting. There may, however, be a need to amend the company's constitution to insert the necessary provisions to facilitate direct voting.

Procedural issues

Where there is no specific provision in the Corporations Act, the common law of meetings is the point of reference. The Corporations Act goes into detail on procedural issues only in relation to a few specific items, such as voting on a show of hands and on a poll. There is therefore a large body of meeting practice applicable to AGMs and other company meetings which relies on common law.

The consideration of most procedural issues is beyond the scope of this guide. Horsley's Meetings: Procedure, Law and Practice published by LexisNexis sets out the procedural issues in detail.

It is also important to consider the impact on procedural motions when offering direct voting as an alternative to appointing a proxy. Most proxy forms state that the proxy is appointed to act as the appointing member directs and to act 'generally' at the meeting. This being the case, the proxy is authorised to act as they see fit on any procedural motion (regardless of how they have been directed to vote on any given formal resolution). The chair of the meeting is usually the default proxy appointment for any AGM and so has the majority of proxy appointments. Such an appointment is not automatic upon direct voting and companies should consider the implications of this when drafting the forms of proxy appointment and direct vote.

This is particularly so in times of increased shareholder activism, when procedural motions have the potential to be used to disrupt the meeting by special interest groups or other activists, or may be required by the chair to maintain order.

The important procedural issues for AGMs are likely to be the following matters.

General rights and duties of the chair

These include ensuring the meeting is conducted properly, allowing appropriate debate on resolutions, maintaining order, and controlling the voting process.

General conduct of the meeting

The chair of the meeting is responsible for the general conduct of the meeting and the constitution typically acknowledges this and provides powers for the chair to make rules relating to the conduct of the meeting.

Tip — respectful behaviour during the meeting

Given the chair's responsibility for the conduct of the meeting they may wish to remind attendees at the opening of the meeting about the need for all present to behave respectfully, as well as the importance of ensuring all members have a reasonable opportunity to participate in the meeting. This can include limiting the number of questions from particular attendees to prevent them from dominating question time.

In some charities and not-for-profits feelings can run high and it is important to remind the chair about the importance of chairing the meeting effectively and maintaining control of the meeting. One suggestion is to remind attendees about the need to comply with the Code of Conduct, if there is one, at the opening of the meeting and for the chair to identify members not complying with the code during the meeting by name.

Conduct of the debate

This will include scope of the discussion on the resolution before the meeting, and points of order. There is no need for the chair to seek movers and seconders for any resolutions presented at the AGM, unless required by the constitution. The fact that the matter is on the agenda indicates that it has support from the board or a sufficient number of members to warrant consideration at the meeting.

The chair of the meeting may also look to impose restrictions on questions for example 'Two questions per item of business' in the interests of fairness and to give as many members as possible an opportunity to ask questions. This is common for large listed company AGMs that can be quite lengthy.

Formal motions

Various motions may be used to bring a resolution to a vote, or to prevent it from being voted on, although they are uncommon. These motions have a number of technical legal points which need to be understood to ensure their correct use. Please refer to Horsley for further details.

Adjournment

This may be important to allow a quorum to assemble, to maintain order and control, or to fix any technological issues.

Disclosure of proxy votes

Disclosing the proxy votes after discussion but before the vote is taken is the most common and accepted practice. This is because it provides members with the opportunity to discuss the proposed resolution without being unduly influenced by prior disclosure of the proxies where proxies will clearly determine the outcome of the vote. Some members may view disclosure of the proxy votes at this point of time as intimidatory, but others may view it as essential information that needs to be known before voting takes place. Some stakeholders specifically request proxy votes be disclosed in advance of discussion (or even earlier i.e. before the meeting). Some companies display a slide showing the number of proxy votes cast on each resolution prior to the vote on that resolution.

The details shown on screen could be as follows:

Votes for	xx,xxx,xxx (x.xx%)
Votes against	xx,xxx (x.xx%)
Discretionary votes*	x,xxx,xxx (x.xx%)
Abstentions	x,xxx (x.xx%)

* Discretionary/open votes held by the chair of the meeting x,xxx,xxx (x.xx%)

Points of order

A 'point of order' is not a motion, rather an acceptable interjection, the intention of which is to alert the chair to an apparent or alleged breach of proceedings. The chair or a speaker can be interrupted by the point of order at any time. The chair must rule on the matter immediately (does not need to put it to a vote) and may need the advice of the company secretary or lawyer on the appropriate action to take.

Examples of points of order may be:

- the absence of a quorum
- breaches of requirements of the constitution or any standing orders adopted by the company

- a speaker's subject matter not being relevant to, or beyond the scope of, the business being considered, or
- offensive or abusive language or unwarranted accusations about a person's behaviour or intentions.

Amendments to resolutions

As s 249L requires a specific period of notice to shareholders for special resolutions together with the content of the resolution, no amendments can be accepted other than the rectification of typographical or grammatical errors which do not change the intention of the resolution, or amendments which do not alter the resolution's nature and which fall within the notice give.

Proposed amendments to ordinary resolutions should not be accepted by the chair of the meeting if the amendment has the effect of increasing a benefit to a person at the expense of shareholders.

Proposed amendments which have the effect of reducing the benefit to a person, where it is absolutely clear that such an amendment would be to the benefit of the company, may be accepted by the chair, (if no contradictory regulatory rules apply). However, caution needs to be exercised and all potential consequences of such an amendment assessed. Importantly, if there is uncertainty regarding how shareholders who submitted proxies would vote on such an amendment, the chair needs to carefully consider the position.

Withdrawal of a motion

If the mover of a resolution wishes to withdraw a motion before the motion is voted on, the chair may in their discretion seek agreement of the meeting to the withdrawal, after explaining the situation and obtaining the seconder's consent (if there is a seconder). This would be done by the chair advising members/shareholders that, if there were no objections, the motion would be withdrawn. If there were significant objections, the chair may have to put a withdrawal motion to the vote. However, this would depend on the nature of the business. It would be pointless putting a motion to withdraw a resolution which related to the appointment of a director who had since advised that they did not wish to be appointed. This decision is with the chair.

Depending on the nature of the motion being withdrawn, it may be appropriate for a formal procedural motion to withdraw to be put to the meeting. If a listed company withdraws a motion prior to the AGM, it should announce this to the market via ASX in order to keep the market informed.

Closing the meeting

It is extremely important for the chair to formally close the meeting and the time of the closure to be noted to ensure there can be no question the meeting has finished.

Opportunities for member engagement

As noted earlier, the AGM can be seen as an opportunity to raise the profile of special interest groups. This can mean that the AGM is dominated by a single issue, leaving other members feeling disenfranchised and unable or disinclined to ask their own questions.

The chair will often have to walk a fine line between affording members a reasonable opportunity to question and comment on resolutions before the meeting, and maintaining sufficient order so that all members can feel that the meeting is being conducted fairly, is not being hijacked by particular people or groups, and is not wasting people's time. Steps which can be taken to assist the chair in this delicate task can include:

- recognising who may be disruptive at the meeting (for example, from previous meetings), and developing clear strategies with the chair to deal with any such people
- meeting ahead of the AGM with special interest groups who have given some notice of their likely involvement, and establishing whether there can be agreed guidelines for their participation which will not adversely affect the rights of other members, and
- engaging suitable security personnel and facilitators of any online platforms where disruption may reasonably be expected.

There are other ways to deal with concerns raised by members with special interests. These include:

- calling for issues before the meeting: see page 15
- structuring the agenda to place other non-contested formal resolutions first, so that members are able to exercise their rights on those items in a more timely fashion, or
- ensuring that customer issues do not become meshed with member issues by having information booths or telephone assistance available at the meeting where member customers can discuss their issues directly with company representatives.

While member engagement is encouraged, the chair and executives of ASX listed entities involved in such engagement always need to be mindful that they are careful to only discuss material which is publicly available in the market and thereby avoid the risk of potentially selectively disclosing market sensitive information in breach of their continuous disclosure obligations under the ASX Listing Rules and the Corporations Act.

Tip — member engagement for charities and not-for-profits

There are technology applications available which can assist in increasing member engagement during the AGM. Quizzes, live polls and Q&A can all increase members' sense that they are giving feedback to the company in real time. It is important to test any applications before using them in a meeting.

Chapter 4

After the AGM

The planning and holding of the AGM is a significant and time-consuming exercise. It requires a lot of skill and effort from the company secretary to meet both legislative and regulatory compliance requirements and member expectations. The effort does not, however, end with the closure of the meeting. There are a number of mandatory steps, together with potential opportunities for further engagement with members, to be taken after the meeting.

There are a series of procedural steps to be taken immediately after the meeting, including preparation of the minutes of meeting and filing of copies of resolutions with ASIC (where required for companies incorporated under the Corporations Act) and preparation of notices to ASX (for listed companies).

Importantly, there are opportunities for further engagement with members and other stakeholders that need to be considered after the AGM, including communicating the outcomes of the meeting, either in writing or by posting relevant information on the company's website.

A review should be undertaken after the AGM has been held to identify any issues that arose in the meeting, discuss any matters that were raised by members and complete an appraisal of the success of the meeting and what worked well and what did not, including assessment of the meeting venue and its suitability for future meetings.

Minutes

One of the most important post-meeting tasks for the company secretary is the preparation of the minutes of the AGM. The minutes should set out the 'proceedings and resolutions of meetings of the company's members' s 251A(1).

Section 251AA requires listed companies to record in the minutes of the meeting certain details relating to votes cast by proxy, for resolutions decided both by show of hands and on a poll.

It is not usual to prepare minutes of an AGM in narrative or transcript form. For instance, there is no need to include the text of any presentations, or the details of any questions or comments by members.

The following information should be recorded in the minutes:

- the date of the meeting and where it was held
- the time that the meeting was officially opened by the chair and the time the meeting was officially closed or adjourned as the case may be
- the names of the directors and executives who were present at the meeting
- noting of apologies received from directors and executives who were unable to attend the meeting
- the name of the auditor or their representative who was present at the meeting
- the names of members present at the meeting, or if there is a large attendance, the number of members who attended
- confirmation that a quorum of members was present and that the meeting was validly constituted
- the exact wording of all resolutions passed and the manner in which they were passed, that is, by show of hands or on a poll
- where the resolutions have been passed on a poll, the number of votes cast for and against the resolution and any declared abstentions, and
- details on valid proxies and proxy voting outcomes, including numbers of proxies, who the proxies were directed to and how many proxy votes were cast for or against each resolution.

Company secretaries must, however, be aware of the compliance obligations of listed public companies in regards to member approval of the remuneration report and the requirements of the two strikes rule which has been discussed in detail in Chapter 3. Where 25 per cent of the members have voted against approving the remuneration report this should be recorded in the minutes.

Under s 251A(1), the minutes must be placed in the company's minute book within one month of the meeting. Section 251A(2) requires the minutes to be signed 'within a reasonable time by the chair of the meeting or the chair of the next meeting'. Given the lengthy delay between AGMs, the usual practice is for the chair of the AGM to sign the minutes of that meeting as soon as is practicable.

A common practice is for the board to endorse the signing of the minutes as a comfort for the chair.

Members have, of course, a right to inspect the minute book for general meetings of the company. Section 251B takes this right further, enabling members to ask the company for a copy of any minutes of a meeting of members, or an extract of minutes. The section deals with time limits and payment for the provision of such copies.

Advise ASIC of resolutions

The Corporations Act contains a specific provision which must be complied with if the business of the AGM includes resolutions relating to the company's constitution. Section 136(5) requires lodgment by a public company with ASIC of a copy of any special resolution adopting, modifying or repealing its constitution. The copy must be lodged within 14 days of the meeting at which it is passed.

The company is also required to lodge with ASIC:

- a copy of any new constitution adopted, and
- a copy of any modification to the constitution.

There are a number of other instances where the company is required to advise ASIC of resolutions passed at company meetings. If the opportunity has been taken to deal with any additional business at the AGM, the company secretary should ensure compliance with any particular requirements relating to lodgment with ASIC. Some of the more common ones include:

- change of the company's name: s 157(2)
- increase or reduction in share capital: s 254H(1), and
- approval of financial assistance for acquisition of the company's shares: s 260B(7).

Advise ASX of outcome of resolutions and proxy results

Listed companies must advise ASX, under s 251AA and Listing Rule 3.13.2, of the outcome in respect of each resolution put to members at the AGM 'immediately after the meeting is held' and certain proxy voting details. This includes details of proxies received and votes cast for resolutions passed both on a show of hands and on a poll. The Listing Rule also requires advice to ASX of any adjournment of the meeting and the outcome of each resolution dealt with before the adjournment.

Opportunities for member engagement



Some of the ways in which companies can seek to increase engagement with their members after the meeting can include:

- posting the text of any presentations by the chair, CEO and any other relevant presenters (for example, the chair of the remuneration or audit committees if they have taken a specific part in the meeting) on the company's website
- posting a webcast recording of the AGM on the company's website
- posting a summary of the business transacted at the AGM on the website as well, including the results of voting on the resolutions considered on the agenda
- posting any video content shown at the meeting on the website
- mailing the text of the AGM presentations to all members, possibly with a summary of the business transacted at the meeting
- where companies have sought questions from members in advance of the AGM, posting the company's responses to those questions on their website, and
- Some listed companies also hold 'investor days' which are separate to the AGM and provide an opportunity for retail investors to meet directors and senior executives.

Appendix 1

AGM regulatory timeline

Time	Event/requirement	Relevant regulation
Upon confirmation of meeting date and time	Ensure auditors are advised and are able to attend	<ul style="list-style-type: none"> • s 250RA
ASX to use reasonable endeavors to tell the entity within five business days whether it objects to the document, or to advise that it needs more time to examine the document	Provision of documents to ASX where required	Listing Rule 15.1
One day before dispatch of notice	Provision of notice to ASIC where required	<ul style="list-style-type: none"> • s 256C(5) relating to reduction of share capital • s 257C(3) relating to share buybacks exceeding the '10/12 limit' • s 260B(5) relating to financial assistance for the purchase of the company's shares
Up to 3 days depending on constitution / application of s249J	Deemed period for service by post	<ul style="list-style-type: none"> • Company's constitution • S249J(4)
21 clear days before meeting 28 clear days for listed companies	Dispatch notice of meeting	<ul style="list-style-type: none"> • s 249H • s 249HA for listed companies
Within 5 months of end of financial year* (except where it is to be a company's first AGM — this must be held within 18 months of the company's registration)	Hold the AGM	s 250N
Immediately after the meeting	Advise ASX of the outcome in respect of each resolution put to members at the AGM	s 251AA and Listing Rule 3.13.2
Within 14 days of special resolution being passed	Advise ASIC of certain resolutions passed at AGM	Various sections — checklist on ASIC Form 205
Within one month of the AGM	Enter minutes of AGM in minute book	s 251A(1)
Within a reasonable time	Minutes to be signed by the chair of the meeting or the chair of the next meeting	s 251A(2)

* A public company may apply to ASIC for an extension of time to hold the AGM. The procedural requirements to be followed for this application are set out in ASIC RG 44 (s 250P).

Appendix 2

Checklist — AGM logistics

Due date	Action
No later than 6 months prior	<ul style="list-style-type: none"> • Check venue room booking. Ideally provisionally book for future years' AGMs • Determine if constitutional changes required and seek advice on drafting • Determine if AGM will be physical, hybrid or virtual (if constitutionally available) and arrange for online platforms (if applicable)
No later than 3 months prior	<ul style="list-style-type: none"> • Determine and, if necessary, seek advice on all resolutions to be put to meeting • Check which directors due for retirement or re-election • Review current law concerning meetings/proposed resolutions and any recent relevant changes to Corporations Act and ASX Listing Rules • Advise share registry* • Engage with proxy advisers (if applicable), major shareholders and other stakeholders (note that some proxy advisers have a blackout period for engagement with a company after its notice of meeting is issued)
2½ months prior	<ul style="list-style-type: none"> • Submit outline of draft AGM agenda to directors' meeting for review and all necessary approvals to finalise notice of meeting and explanatory memorandum • Draft or instruct external lawyers to prepare notice of meeting and explanatory memorandum: <ul style="list-style-type: none"> — consider voting exclusions — consider two strikes rule • If necessary, appoint board subcommittee to review and sign-off notice of meeting and explanatory memorandum
2 months prior	<ul style="list-style-type: none"> • Ongoing review of draft notice of meeting, proxy form and other materials (for example, online meeting guide) with external lawyers and other experts or advisers • Draft proxy/voting form in conjunction with share registry • Instruct share registry of notice of meeting printing and mailing and electronic distribution requirements and timetable* • If applicable, announce AGM date and date for close of director nominations via ASX Release at least 5 business days before the close of external board nominations
About 7 weeks prior	<ul style="list-style-type: none"> • If required, lodge draft notice of meeting and other meeting documents with ASX for review (allow at least 5 business days for ASX review) • Board (or if applicable, board subcommittee) to approve notice of meeting, explanatory memorandum and proxy/voting form • Send draft notice of meeting and other meeting documents to printer to prepare proofs • Finalise details and procedures for any proxy solicitation program

* For smaller companies actions attributed to the share registry will usually be the responsibility of the company secretary.

Appendix 2:

Checklist — AGM logistics

Due date	Action
About 6 weeks prior	<ul style="list-style-type: none"> Finalise approval of notice of meeting from ASX (see also Appendix 1) Sign-off for printing Approve wording for online user guide, notice of access, electronic dispatch of notice of meeting and explanatory material Prepare voting exclusion register for share registry*
At least 30 days before the AGM (or potentially longer depending on constitution notice provisions)	<ul style="list-style-type: none"> Sending notice of meeting or notice of access (in physical or electronic form) to members in accordance with any member elections. If required, lodge notice of meeting and proxy form with ASX at the same time as sending notice of meeting to members commences. Post notice of meeting, proxy form, online user guide and any other materials to company website.
2-3 weeks prior	<ul style="list-style-type: none"> Confirm AGM venue set-up, including: <ul style="list-style-type: none"> — audio visual requirements — food and drink — registration tables — shareholder seating — board of directors and company secretary seating — poll counting area in event of poll — arrangements for any product displays or samples Prepare draft chair's address and meeting procedure script and send to chair for review Prepare any additional audio visual presentations to meeting including CEO or other presentation — include resolution wording and proxy result slides in meeting presentation Test online platform if the meeting will be hybrid or fully virtual
2 weeks prior	<ul style="list-style-type: none"> Ongoing review of draft chair's address, including any special voting requirements and proxy details Contact major shareholders and institutions to obtain comments or questions on proposed AGM resolutions
2 weeks prior	<ul style="list-style-type: none"> Finalise design of shareholder voting and visitor cards with share registry Meet with share registry to discuss AGM arrangements and any special voting conditions and any outstanding issues with the online platform if the meeting will be hybrid or fully virtual
2 weeks prior	<ul style="list-style-type: none"> Confirm that auditors, lawyers, tax advisers and other key people have been notified and are attending the AGM
1 week prior	<ul style="list-style-type: none"> Obtain progressive voting by proxy reports from share registry and provide feedback to chair/whole board on voting trends for key resolutions Agree with chair/board the voting procedures, ie by show of hands and/or poll (note for a listed company a poll will be required)
1 week prior	<ul style="list-style-type: none"> Confirm that proxy forms have been lodged by: <ul style="list-style-type: none"> — substantial shareholders — directors (if applicable) — staff (if applicable) Provide to the auditor any questions received from members addressed to the auditor Consider and draft answers to questions received from members addressed to the board and/or management. 'Conduct dress rehearsal of AGM including involvement of Chair, CEO and test use of technology and process to deal with questions.' Use Chair run sheet to ensure meeting flows as required.

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Appendix 2

Checklist — AGM logistics

Due date	Action
1 week prior	<ul style="list-style-type: none"> • Prepare script, including draft questions and answers for chair/CEO at AGM
48 hours prior	<ul style="list-style-type: none"> • Deadline for lodgment of proxy forms
1 day prior	<ul style="list-style-type: none"> • Circulate preliminary proxy report from share registry to chair/whole board*
1 day prior	<ul style="list-style-type: none"> • Finalise chair/CEO address/presentation • Check guidance notes on all resolutions and any special meeting procedures • Review poll procedure and constitution/trust deed • Insert final proxy results in slide presentation
1 day prior	<ul style="list-style-type: none"> • Finalise AGM venue set-up, including: <ul style="list-style-type: none"> — informing venue of any changes to directors and company secretary seating plan — delivering any banners, other displays and name plaques to venue — delivering annual reports and any other company handouts to venue — delivering copies of notices of meeting to venue
1 day prior	<ul style="list-style-type: none"> • Phone proxy advisory services (eg ASA) and any relevant shareholders to find out if they have any questions they intend to ask at AGM
Day of AGM	<ul style="list-style-type: none"> • Brief chair on any final changes/issues/final proxy results and review poll procedures • Brief chair/committee chairs on any questions received that may be relevant to them, and review responses • Pre-register all directors who hold shares and put their voting cards on their table (before start) • Lodge ASX release of chair's address and press release (before start of meeting) • Lodge ASX release of the results of all resolutions (as soon as possible after the conclusion of meeting — see Appendix 1) • Obtain attendance schedules from share registry
1 day after	<ul style="list-style-type: none"> • Ensure website is updated with any prepared AGM presentation and a choice of webcast (if applicable)
1 day — 5 business days after	<ul style="list-style-type: none"> • Lodge any other required documentation with ASX, eg director appointments/resignations and Director Interest Notices. Prepare draft minutes for chair review
Within 14 days / 28 days	<ul style="list-style-type: none"> • Lodge any other required ASIC forms, eg Form 484 for changes in officers, Form 205 for change in constitution or other special resolutions

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