

1. **If an AGM is held electronically, despite the Model Rules in my state being “silent” on the legality of this - does this mean that decisions made in monthly committee meetings can also be challenged?**

If the meeting is invalid, the election of the board is invalid, and the acts of the board are invalid. However, the only way to establish this would be for some malcontent to take you to court - that is, to spend their own actual and personal money. 'Challenging' isn't just putting a matter of your hand up, it involves spending several thousand dollars for a chance in the lottery, and that isn't going to happen unless someone in the organisation hates you for other reasons. Myself, I think the court would probably uphold the meeting as valid, on the general grounds that courts don't like enforcing trivial quibbles unless there's a chance they'd produce different outcomes, but if you're determined not to proceed unless you can be absolutely certain that every aspect of what you do is absolutely beyond reproach in a situation where laws arguably conflict then you are indeed on the horns of a diabolical dilemma.

2. **We applied for an extension of time for our AGM to CAV twice now and are still waiting for a response. What should we do?**

Document all interactions with CAV in case of issues later. Try to call them to check that your extension request has been received, and ask what they recommend doing. The bottom line is that you are unlikely to be penalised for delaying your AGM if you can establish that you have done the right thing....

3. **If we decide to postpone the AGM, what does that mean for next year?**

You should try to have your 2020 AGM as soon as practicable after the social distancing rules have been relaxed, and then your 2021 AGM in the usual month, before your 2021 reporting is due to the regulator

4. **How do you manage voting in an electronic meeting?**

As per the webinar – we advise that you keep decisions that need to be made to an absolute minimum! Seriously consider having all voting undertaken by proxy/ surface mail. Try to avoid voting on special resolutions, as for some organisational structures this is ONLY allowed by proxy at this time (check on the links for the different regulators provided on the PowerPoint). For small meetings, voting on something like Zoom – a show of hands would suffice. For large meetings using GoToWebinar – members could vote in the text box – much like was used in the Our Community AGM webinar for people asking questions.

5. **Do you have suggestions for an electronic platform to use that allows secret voting?**

There are many ways you can conduct electronic voting where the **organiser** is the only one who knows how people voted – GoToMeeting has a polling functionality, and this article suggests that ZOOM has the option of anonymous polling for meetings: <https://support.zoom.us/hc/en-us/articles/213756303-Polling-for-Meetings>

6. **You gave us the contents of the model rules for Incorporated Associations in each state regarding extending the timing of our AGM, and using electronic methods for holding it. Does this mean that this advice supersedes whatever is in our organisation's constitution?**

No. If when you originally drew up your constitution you altered the model rules, or wrote your own rules, and provided they still adhere to the Act, and have been approved by your Regulator – your Constitution stands. The model rules are only suggestions, designed to make it easier for not-for-profits - non-binding guidelines.

7. **Do electronic meetings need to be hosted by anyone in particular i.e. secretary, chair etc.?**

No. We would recommend that the person who is the most proficient at using technology is the “host” of the meeting – remembering of course that if there is voting, they will be the one who sees the results. Otherwise you may want the office bearers to be the ones who can be seen on the screen by default, with anyone who is talking to be “unmuted” and then shown as they speak (remember this will all take longer than usual as people get used to the technology).

8. So, if our current constitution doesn't have a clause for electronic meetings can an amendment be made prior to the meeting?

No. Changing the Constitution can usually only be done through approving the changes at a properly convened general meeting, through a special resolution – which usually has to be passed by a super-majority of members, and then reported to your regulator...

9. If a director of a company limited by guarantee has a term that expires at the end of the year and we say we couldn't hold an AGM to reappoint them by thencould they continue?

This is an instance where the regulator has taken prompt action to say that it doesn't know. ASIC has said that it's not going to bash you for anything like this, but...

"An ASIC 'no-action' letter does not necessarily preclude third parties (including the Office of Director of Public Prosecutions) from taking legal action in relation to the same conduct or conduct of that kind. Nor does it prevent a court from holding that particular conduct infringes the relevant legislation. ASIC does not represent that the conduct covered by the 'no-action' letter will not be held to contravene the relevant legislation. Nor does ASIC undertake to intervene in an action brought by third parties in respect of such conduct."

We'd all like to have a definite hard-and-fast answer that will cover all circumstances, but in the present emergency nobody's offering them. Our advice, under the circumstances, is to do the safe thing, hold an online meeting, and defy anybody to sue. You'll be in good company.

10. Until we can reschedule an electronic AGM (and adequate process of electing the new committee . . . problem being there are NEVER enough willing people) can we just ask that the existing Committee stay in place? (Our preschool board is completely re-elected each AGM). How might we formalise that process? Document it? The Committee aren't sure if they should just vote on it themselves? (or if that looks dodgy) Can the Public Officer be used to help validate the temporary extension or process? (to add integrity) Our Constitution is 'silent' on anything to do with these types of matters.

Hi! I happen to know that your organisation is in NSW, which means that you may apply for an extension of time for an AGM. An entry in your minutes (from the AGM when it is finally held electronically) should just note that as the AGM was delayed, so was the re-election of committee members. You don't need to vote on this.

11. Does a Sports Club at a University have to hold an AGM, or can we postpone for 6 months without requesting any permission? If permission is required, where does it need to be obtained from?

This depends on who your regulator is. You need to ask your Secretary/Treasurer who they lodge their annual statement with, and then use the links on the PowerPoint to ascertain if you need to apply for an extension, or whether this happens automatically.

- 12. Our demographic is not very computer literate and we do not have the provision for Proxy voting in our current Constitution. How do we get a clause regarding the ability to vote by Proxy when we don't actually have an AGM in which to put this forward for voting upon? We are going to just delay our AGM and bring this up at that point, however I would like to have an alternative solution.**

Unfortunately, if you cannot hold a meeting electronically, and you don't want to risk using proxies where it is not explicitly included in your Constitution – delay is the only solution at present.

- 13. Our constitution does not mention any authorising authorities by name, other than compliance with the Corporations Act. We are a charity (registered with and reporting to the ACNC) and also a company limited by guarantee (we provide limited reporting to ASIC). Given we are not an incorporated association, the Western Australian Department of Consumer Protection's requirements are not applicable to us. Do you know of any other authorising authorities to whom we should be referring for matters of corporate and constitutional governance?**

Your organisation should report to ASIC and the ACNC

- 14. I am the chair of a small not-for-profit and we elected to hold our AGM on 7th April as originally planned, but via Zoom (our Constitution is silent on remote attendance). We have kept a complete record of all communications to our members; 1 attended at venue (host); 8 via Zoom; 11 proxy votes (quorum = 15; total membership = +-40); The only decisions made were acceptance of previous minutes, Chair and Treasurer's reports and financials; There was no need to vote on board positions as the number of nominations did not exceed the number of vacancies. Board members were all therefore duly elected; Minutes in draft, pending circulation to members. Is it likely our AGM will be considered void or will our claim to have acted in good faith likely be accepted?**

It seems you have done everything by the letter and should feel pretty confident that you will be OK. You have identified the key idea – that you “have acted in good faith”.