

AGM TOOLKIT



MNO

**A Practical Guide for
Charities and Not-for-
Profits**

This toolkit outlines the key requirements for organisations with respect to holding AGMs. These requirements manifest themselves in the *Corporations Act 2001*, State legislation and in organisations' governing documents. The toolkit reflects our experience and key legislation in the area, and has been developed into tables and diagrams for ease of use.

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1 What is an AGM?

An annual general meeting (**AGM**) is a meeting held once a year that all members of a charity or not-for-profit are invited to attend. An AGM is the primary opportunity for members of the organisation to receive information and ask questions, including:

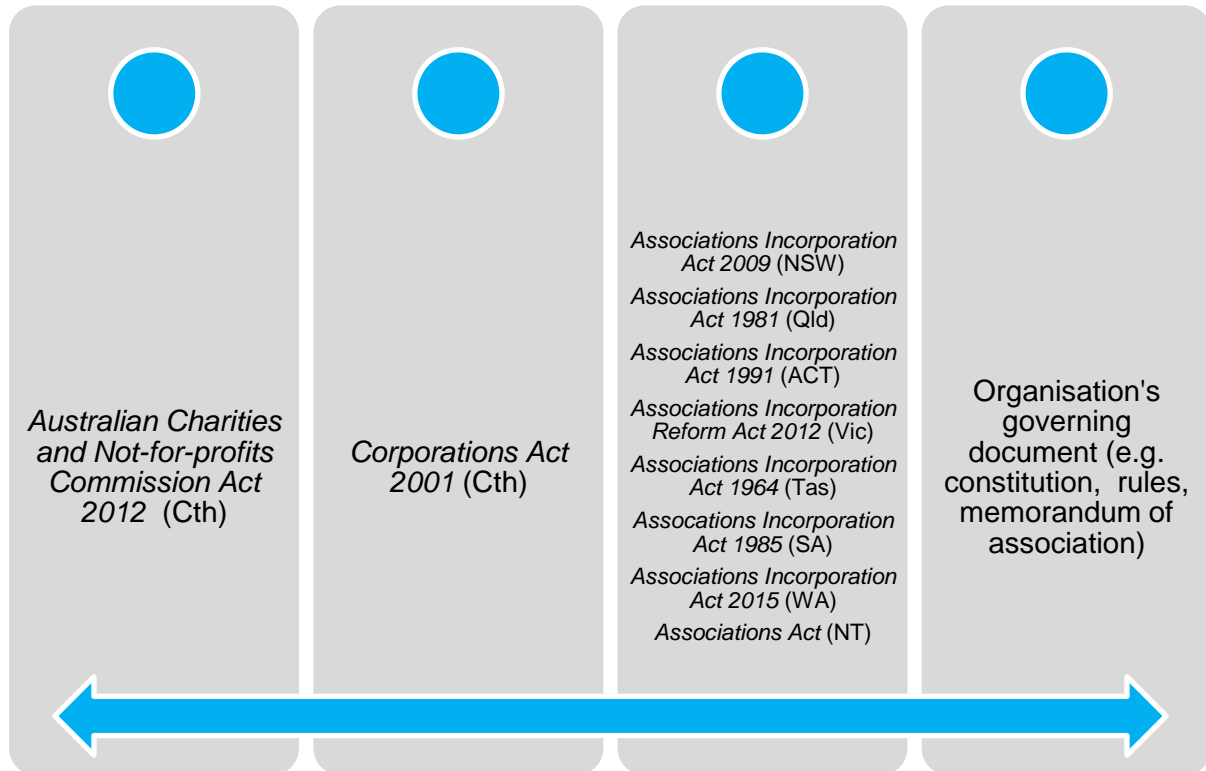
- (a) receiving reports on the organisation’s activities and finances for the previous year;
- (b) electing new directors or committee members for the coming year; and
- (c) making other important decisions.

2 Who needs to hold an AGM?

The requirements for holding an AGM, including whether an AGM is legally required, will depend upon the legal structure of the organisation and whether or not it is registered with the Australian Charities and Not-for-profits Commission (ACNC) as a charity.



That being said, organisations need to consider the requirements of the ACNC (if applicable) as well as their governing document and the applicable legislation.



2.1 Charities and the ACNC

Whilst the ACNC does not specifically require charities to hold an AGM, the ACNC has various requirements that charities must comply with, including in relation to charities being accountable to their members.

Governance standard 2 requires charities to:

- take reasonable steps to be accountable to their members; and
- allow their members adequate opportunities to raise concerns about how the charity is run.

Accountability includes keeping members informed regarding the activities of the charity, as well as allowing an opportunity for members to ask questions and raise any concerns. One way of meeting these requirements is through an AGM.

In addition to the ACNC's requirements, charities should also be aware of any requirements in their governing document and any applicable legislation.

2.2 Public companies limited by guarantee

Certain provisions of the *Corporations Act 2001* (Cth) have been 'switched off' for public companies limited by guarantee that are also charities. This includes the requirement to hold an AGM. However, it is recommended that organisations in this situation still hold an AGM to ensure compliance with Governance standard 2.

Public companies limited by guarantee that only have one member are also exempt from holding an AGM.

For all other public companies limited by guarantee, the provisions of the *Corporations Act 2001* (Cth) apply regarding the holding of an AGM. Details of these requirements are set out below.

In addition, organisations should also be aware of any requirements in their governing document in relation to holding an AGM, which may override legislative requirements.

2.3 Incorporated associations

The AGM requirements for incorporated associations vary depending on the State or Territory in which the organisation is incorporated.

The table below sets out the standard requirements under the applicable State or Territory law, and model rules. Organisations should always consult their governing document to see if these requirements have been varied, or whether they have any additional requirements.

2.4 Unincorporated associations

Unincorporated associations may have rules which require them to hold an AGM.

State / Territory	AGM Timing	AGM Notice		Business to be Conducted
		Timing	Contents	
New South Wales	<ul style="list-style-type: none"> • Within six months of the end of the association's financial year. • A new association must hold its first AGM within 18 months of incorporation. 	<ul style="list-style-type: none"> • If model rules adopted, not less than 14 days before AGM. • Notice of special resolutions must be given not less than 21 days before AGM. 	<ul style="list-style-type: none"> • If a special resolution is to be proposed: <ul style="list-style-type: none"> ○ terms of the resolution; and ○ a statement to the effect that the resolution is intended to be passed as a special resolution. 	<ul style="list-style-type: none"> • Confirm the minutes of the last meeting. • Receive from the committee reports on the activities of the association during the last financial year. • Elect office bearers and ordinary members of the committee. • Receive the association's financial statements. • Conduct other business of which notice has been given to the members.
Victoria	<ul style="list-style-type: none"> • Within five months of the end of the association's financial year. • A new association must hold its first AGM within 18 months of incorporation. 	<ul style="list-style-type: none"> • If model rules adopted, not less than 14 days before AGM. • Notice of special resolutions must be given not less than 21 days before AGM. 	<ul style="list-style-type: none"> • Specify the date, time and place of the AGM. • If a special resolution is to be proposed: <ul style="list-style-type: none"> ○ state in full the proposed resolution; and ○ state the intention to propose the resolution as a special resolution. 	<ul style="list-style-type: none"> • Confirm the minutes of the last meeting. • Receive and consider the committee's annual report on the activities of the association during the preceding financial year. • Receive and consider the financial statements of the association for the preceding financial year. • Elect the members of the management committee. • Conduct other business of which notice has been given to the members.
Queensland	<ul style="list-style-type: none"> • Within six months of the end of the association's financial year. 	<ul style="list-style-type: none"> • If model rules adopted, not less than 14 days before AGM. 	<ul style="list-style-type: none"> • If a special resolution is proposed: <ul style="list-style-type: none"> ○ the time and place of the meeting; and ○ terms of the proposed special resolution. 	<ul style="list-style-type: none"> • Receive the financial statement for the last financial year. • Present and adopt the audited or verified financial statements. • Elect members of the management committee. • Appoint an auditor, an accountant or an approved person for the present financial year. • Conduct other business of which notice has been given to the members.

State / Territory	AGM Timing	AGM Notice		Business to be Conducted
		Timing	Contents	
South Australia	<ul style="list-style-type: none"> • Within five months of the end of the association's financial year. • If a prescribed association, within six months of the end of the association's financial year. • A new association must hold its first AGM within 18 months of incorporation. 	<ul style="list-style-type: none"> • If model rules adopted, not less than 14 days before AGM. • Notice of special resolutions must be given not less than 21 days before AGM. 	<ul style="list-style-type: none"> • If a special resolution is proposed the notice must express the intention to propose the resolution as a special resolution. 	<ul style="list-style-type: none"> • Present financial report and auditor's report. • Receive report of a committee of the association. • Elect members of the management committee. • Appoint an auditor. • Confirm minutes of the last meeting. • Conduct other business of which notice has been given to the members.
Western Australia	<ul style="list-style-type: none"> • Within six months of the end of the association's financial year. • A new association must hold its first AGM within 18 months of incorporation. 	<ul style="list-style-type: none"> • If model rules adopted, not less than 14 days before AGM. • If model rules adopted, not less than 21 days before AGM. 	<ul style="list-style-type: none"> • If a special resolution is proposed: <ul style="list-style-type: none"> ○ the proposed special resolution; and ○ the time and place of the general meeting at which it is proposed to move the resolution, 	<ul style="list-style-type: none"> • Confirm the minutes of the last meeting. • Present the committee's annual report on the association's activities during the preceding financial year. • Present financial statements and auditor's report. • Elect members of the management committee and office bearers. • Appoint or remove a reviewer or auditor of the association Conduct other business of which notice has been given to the members.
Tasmania	<p>If model rules adopted, within three months of the end of the association's financial year.</p>	<ul style="list-style-type: none"> • If model rules adopted, not less than 14 days before AGM. 	<ul style="list-style-type: none"> • If a special resolution is proposed the notice must express the intention to propose the resolution as a special resolution. 	<ul style="list-style-type: none"> • Confirm the minutes of the last meeting. • Receive the association's reports on the transactions of the association during the last financial year. • Elect the officers of the association and the ordinary committee members.

State / Territory	AGM Timing	AGM Notice		Business to be Conducted
		Timing	Contents	
				<ul style="list-style-type: none"> • Appoint the auditor and determine his or her remuneration. • Determine the remuneration of officers of the association.
Australian Capital Territory	<ul style="list-style-type: none"> • Within five months of the end of the associaton's financial year. • A new association must hold its first AGM within 18 months of incorporation. 	<ul style="list-style-type: none"> • If model rules adopted, not less than 14 days before AGM. • Notice of special resolutions must be given not less than 21 days before the AGM. 		<ul style="list-style-type: none"> • Confirm the minutes of the last meeting. • Receive from the committee reports on the activities of the association during the last financial year. • Elect members of the committee, including office-bearers. • Receive and consider the statement of accounts and the reports. • Conduct other business of which notice has been given to the members.
Northern Territory	<ul style="list-style-type: none"> • Within five months of the end of the associaton's financial year. • A new association must hold its first AGM within 18 months of incorporation. 	<ul style="list-style-type: none"> • If model rules adopted, not less than 30 days before AGM. • Notice of special resolutions must be given not less than 21 days before the AGM. 	<ul style="list-style-type: none"> • If a special resolution is proposed the notice must express the intention to propose the resolution as a special resolution. 	<ul style="list-style-type: none"> • Present financial statements and auditor's report. • Elect members to the management committee and office bearers. Conduct other business of which notice has been given to the members.

3 General Requirements under the *Corporations Act 2001* (Cth)

3.1 Before the AGM

3.1.1 Timing

An AGM must be held once every year, within five months of the end of the organisation's financial year.¹

The organisation's very first AGM must be held within eighteen months after the registration of the company.²

The board has an obligation to convene an AGM at a time and place that is accessible to members.³ Challenges in ensuring the meeting is accessible to members can be overcome by the use of proxies and/or holding the meeting in more than one location by technology.

The decision to hold an AGM is usually resolved by the directors at a board meeting. Once an AGM has been convened, the directors have no power to postpone it, unless there is express authority in the organisation's governing document for them to do so.⁴

3.1.2 Notice

A minimum of 21 days' notice must be given for the convening of an AGM,⁵ or any other longer period provided by the organisation's governing document. In calculating the required notice period, care should be taken to include the days required for service by post under the governing document, which can be up to three (or more) days. There is also provision for a shorter notice period for AGMs, where the consent of all members entitled to attend and vote is obtained beforehand.

¹ *Corporations Act 2001* (Cth) s 250N.

² *Corporations Act 2001* (Cth) s 250N (1).

³ *Smith v Sadler* (1997) 15 ACLC 1, 683.

⁴ *Smith v Paringa Mines Ltd* [1906] 2 Ch 193; *Bell Resources Ltd v Turnbridge Pty Ltd & Ors* (1988) 6 ACLC 842; *McPherson & Ors v Mansell & Ors* (1995) 13 ACLC 767.

⁵ *Corporations Act 2001* (Cth) s 249H.

Notice of an AGM must:

- set out the place, date and time of meeting (and if it is to be held in two or more places, the technology to be used to facilitate this);
- state the general nature of the meeting's business, including that the meeting is an AGM;
- set out the intention to propose any special resolution and state the resolution; and
- contain specific information regarding the appointment of proxies.⁶

After a notice of meeting has been validly issued, the meeting is not legally able to be cancelled or even postponed unless the rules permit this.⁷

There is no legal requirement that the AGM notice specifically mention items of ordinary business, including:

- consideration of the annual financial report, directors' report and auditor's report (if any);
- election of directors; or
- appointment of an auditor (if any).

It is our recommendation that companies notify members of all resolutions to be put at the AGM, not just special resolutions.

A sample notice of an AGM is set out below.⁸

3.1.3 Board responsibilities

Prior to the AGM the board must:

- approve the annual financial report;⁹
- 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;¹⁰ and
- approve the directors' report.¹¹

⁶ *Corporations Act 2001* (Cth) s 249L.

⁷ *Bell Resources Ltd v Turnbridge Pty Ltd* (1988) 13 ACLR 429.

⁸ CCH International, *Australian Corporate Practice Manual*, vol 1 at ¶13-200.

⁹ See *Corporations Act 2001* (Cth) s 295.

¹⁰ *Corporations Act 2001* (Cth) ss 297-8.

¹¹ *Corporations Act 2001* (Cth) ss 298-300.

The organisation must also ensure it has obtained the auditor's report, if required.¹²

The Board should also determine which directors must retire at the AGM, and how elections will be conducted in accordance with the governing document. Any casual directors may also need to retire, subject to the governing document.

Notice of Annual General Meeting
[Name of company]
ACN [insert]

Notice is given that the annual general meeting of members of will be held at the company's registered office at on 20.....at am/pm.

Business

1. To receive and consider the reports of the directors and of the auditors, the income statement, balance sheet and cash flow statement for the year ended 20.....
2. To consider any other business that may be brought before the meeting in accordance with the company's constitution.

Dated:.....

By Order of the Board

.....

Company Secretary

Appointment of proxies

Please note that:

1. A member entitled to attend and vote is entitled to appoint not more than two proxies.
2. Where more than one proxy is appointed, each proxy may be appointed to represent a specified proportion of the member's voting rights.
3. A proxy need not be a member.

Forms of proxy must be lodged at at least 48 hours prior to the meeting.

¹² Corporations Act 2001 (Cth) s 301.

3.2 During the AGM

3.2.1 Attendees

Those entitled to attend an AGM include:

- members;
- directors;
- proxy holders or attorneys;
- body corporate representatives;
- the auditor; and
- any other person permitted by the chair of the AGM.

3.2.2 Chair

The organisation's governing document should specify who will be chair of the AGM. This will generally be the president / chair of the board. It is advisable for the chair of the meeting to have a pre-prepared script, to ensure that all business is conducted accurately and appropriately.

The chair has various responsibilities at the AGM, including:

- determination of a quorum;
- opening the meeting;
- disclosure of proxies;
- procedural control of the meeting;
- ensuring the business of the AGM is conducted;
- preservation of order;
- provision of reasonable opportunity for debate and questions;
- adjournments; and
- declaration that the AGM is closed.

3.2.3 Quorum

Before the meeting can be officially convened and any business conducted, a quorum must be present.

The quorum requirements are generally set out in the organisation's governing document. The board should also determine whether the governing document allows proxy holders to be counted as part of the quorum. The governing document may also state whether the quorum is required to be present at all relevant times during the AGM, or only at its commencement.

Where the governing document does not set out quorum requirements, and the replaceable rules apply, two members present will constitute a quorum, and the members must be present at all times during the meeting.¹³ In addition, proxy holders and body corporate representatives may generally be counted as part of the quorum.¹⁴

3.2.4 Voting

Voting on resolutions is one of the key ways in which members are able to participate in the AGM and the activities of the organisation generally.

Voting at an AGM can generally be done:

- on a show of hands;
- by way of a poll; or
- electronically before the AGM.

Organisations should consult their governing document for any specific requirements regarding voting.

3.3 After the AGM

3.3.1 Minutes

After the AGM the secretary should prepare the minutes, which set out the 'proceedings and resolutions of meetings of the company's members' in a minute book within one month of the AGM.¹⁵ The minutes of the AGM should include:

- the date, time and location of the meeting;
- members, directors, executives and auditor (or their representative) present;

¹³ *Corporations Act 2001* (Cth) s 249T.

¹⁴ *Corporations Act 2001* (Cth) s 249T (2).

¹⁵ *Corporations Act 2001* (Cth) s 251A (1).

- the exact wording of all resolutions passed, and the manner in which they were passed (i.e. by show of hands or on a poll); and
- where a resolution was passed on a poll, the number of votes cast for and against, and any abstentions.

The minute book of the company should be kept at:¹⁶

- the registered office; or
- the principal place of business in Australia; or
- another place in Australia approved by ASIC.

3.3.2 Notification regarding resolutions

Where certain resolutions have been passed at the AGM, the organisation may have requirements to notify ASIC and / or other regulatory bodies, including the ACNC and the Australian Business Register.

Where a company has passed a special resolution adopting, modifying or repealing its constitution, if the company is not a charity, the resolution must be lodged with ASIC within 14 days of the AGM along with a copy of any new constitution or a copy of any modification to the constitution.¹⁷

Where the company is a charity, it must instead notify the ACNC regarding the constitution change. Small charities (those with annual revenue less than \$250,000.00) must notify the ACNC of any such changes within 60 days after becoming aware of the change. Medium charities (those with annual revenue of \$250,000.00 to \$1,000,000.00) and large charities (those with an annual revenue of \$1,000,000.00 or more) must notify ACNC within 28 days of becoming aware of the change.

Where the company deals with additional business at an AGM, the secretary should determine whether there are any requirements to notify ASIC or any other regulatory body.

¹⁶ *Corporations Act 2001* (Cth) s 251A (2).

¹⁷ *Corporations Act 2001* (Cth) s 251A (1).

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