associations forum Pty Ltd

#AFNC17

7C Governance Scenario: The Beleaguered Chairman at a Tough AGM

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ASSOCIATION ANNUAL GENERAL MEETINGS

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Disclaimer: This is practical advice based on our work with associations and charities. The contents of this presentation do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek specialist advice in relation to any particular matters you or your organisation may have.

About Associations Forum

Facilitator's Career as Association CEO and Volunteer Director

1. 20's – BCom (UNSW), large corporates; Boards of professional association
2. 30's – Association manager and CEO of small association; Board of professional association and Chair of local community association
3. 40's – Established Associations Forum: providing education and advice to associations
4. 50's – Consolidation of Associations Forum and training of associations in Australasia and Asia

Overview: Companies Limited by Guarantee 1

1. Associations have members who appoint a Board of Directors to make decisions on the running of the association
2. AGMs involve reporting processes and approval of substantive changes such as constitutions, not operational matters.
3. Most associations must have an AGM once per year, and occasionally Special GMs. The Board must report to the members on specific matters.
4. It is good governance for Directors to report to others. Associations that have only the Board as members are only reporting to themselves have less than ideal governance.

Overview: Companies Limited by Guarantee 2

1. As well as the relevant law, the key document regarding the governance of the association is the constitution
2. The role of members is generally limited to changing the constitution, receiving reports and appointing the Directors
3. However, as the Board of Directors is accountable to the members of the association, if the members of the association are not satisfied with the Board of Directors, the members can include on the Notice of Meeting a motion to remove one or more of the Directors.

Notice of an AGM 1

1. The Board sets the time and date of the AGM and the business to be considered - often set many months in advance.
2. Closer to the time of the AGM and more than 21 days beforehand, but not more than 4 months after the end of the financial year, the Board should approve the Directors Report and Financial Statements and receive the Auditors Report prior to their circulation to members.
3. At least 21 clear days notice of a General Meeting must be given except in certain circumstances.
4. The law allows the AGM to deal with the reports, electing Directors and appointing the auditor even if it is not included in the Notice of Meeting

Notice of an AGM 2

- Notices of Meeting will state the date, time, place and business for the General Meeting and be accompanied by a proxy form customised to the items on the Notice of Meeting.
- Subject to the size of the company limited by guarantee, the following documents must be circulated to voting members with the Notice of Meeting 21 clear days prior to the AGM:
  - Directors Report
  - Auditors Report
  - Financial Statements
  - Election material for Directors (if separate election is conducted outside the AGM)
  - Proxy form.
- The Directors Report, Auditors Report and Financial Statements are often included in an overall annual report.

Notice of an AGM 3

1. Whilst they are limited in scope, member resolutions can be proposed if the proposing members follow the correct procedure and the resolutions are for a proper purpose, as determined by the Board in accordance with the constitution
2. For example, members may propose a resolution to remove a Director with a two-month notice period and other requirements.
3. Matters that can be addressed at a General Meeting normally include
   - changes to the constitution
   - changes to the name of the entity
   - removal of Directors
   - rare matters that the Board is prohibited from deciding for various reasons.
4. Subject to the constitution, members generally cannot propose resolutions relating the management of the association.

Proxies 1

1. Proxies allow a member to appoint a person as their agent to vote on their behalf and participate in the General Meeting without the member needing to be physically present at the General Meeting.
2. As the Notice of Meeting will state what motions are to be voted on, members filling in a proxy form can direct their proxy to vote in a certain way on each motion. These are called directed proxies
3. If the proxy is not a directed proxy, the proxy holder can vote as they wish or abstain at the General Meeting.
4. The likelihood that proxies will be submitted by members increases if it is easy for a member to submit a directed proxy.

Proxies 2

1. As the Chair is the only person at the meeting who must exercise a directed proxy if a poll is called, constitutions that by default direct proxies to the Chair simplify the administration of any poll.
2. This is because directed proxies held by others at the meeting that are not exercised do not then need to be checked and transferred to the Chair prior to the poll closing.
3. Subject to the constitution, a General Meeting can be held with as few as two individuals physically present, including electronically, if quorum requirements are met.

Minutes

1. Minutes of the General Meeting should state when and where the it was held, who was present, who chaired, the proceedings and the resolutions passed, how the vote was taken, and whether the vote met any specific requirements.
2. Corporations Act requires minutes be in the minute book within 1 month of the meeting and signed by the Chair or Chair of a subsequent meeting within a reasonable time and to be available to members.
3. Therefore, contrary to common practice, minutes of the previous General Meeting are not normally approved at the GM
4. As minutes for a company do not need to be confirmed at the General Meeting unless the constitution requires it, the acceptance of minutes should not be on the Notice of Meeting.
5. It is good practice to support minutes with an attendance register as proof of who attended the meeting

Resolutions & Special Resolutions

1. A resolution is a decision made at a General Meeting requiring a simple majority of greater than 50% of the votes cast.
2. Special resolutions are required for changes to the constitution, to the entity's name, to the status such as legislation under which the association is incorporated and other matters specifically referred to in the constitution that require a special resolution.
3. In order to pass a special resolution, 21 days notice must be given and at least 75% of the votes cast must be in favour provided the number attending the meeting meet the quorum requirements.
4. Special resolutions carried need to be notified to ASIC.

Before the General Meeting

1. Chairs script (related to the resulting minutes)
2. Check that audio-visual equipment works and seating is adequate.
3. Have a process in place to register attendees
4. If not all attendees have a right to vote, have a process for identifying the voters, e.g. a coloured card or such needs to be issued to voters.
5. Have spare copies of the Notice of Meeting, reports, finances and minutes of last GM available and have a copy of the constitution available in addition to the one held by the CEO or Chair.
6. The Chair should review the schedule for the GM including any planned activities prior to or following the General Meeting.
7. The Chair should review to the attendees the voting rights and the process to be followed in voting.

Quorum and proceedings

1. Quorum
2. Chair’s Procedural Remarks
3. Chair’s Opening Address – overview of the year
4. Contrary to common practice, reports are not normally approved at the General Meeting
5. Reports can be noted as being received, but are not normally adopted unless required in the constitution.

No General Business or Random Substantive Remarks

1. The AGM is a strict and formal process covering only substantive matters on the matters on the Notice of Meeting
2. 'General business' should not be an agenda item on the Notice of Meeting.
3. Putting forward and voting on substantive motions randomly proposed by attendees at the General Meeting is unfair to members who chose not to attend following their reading of the Notice of Meeting.
4. However, as associations are mutual organisations that often exist to serve the interests of their members, consider a 'members' open forum' or similarly named event to follow the closure of the AGM
5. A members' open forum is conducted in a less formal manner
6. Motions should not be proposed or formally voted on as they would have no validity to the governance of the association but many Chairs may seek an indication of support as a guide for future decision.

Amendments, Elections, Signing, Auditors

1. Amendments to resolutions
2. Hold elections before the AGM and announce results
3. Chair to sign copy of approved new Constitution
4. Independent external auditors, often a Chartered Accountant or CPA, report to the members on the financial reports, not to the Board.
5. In most years, appointment of auditors will not arise as the auditors will continue in office.
6. Removal of auditors is not common and must follow procedures in the Corporations Act. Calling for tenders to do the audit facilitates this process.
7. When needed, a resolution will be required to appoint the auditor or to confirm their appointment by the Board and rarely to fix their remuneration.

Advanced topics for future discussion

1. Voting on motions and calls for a poll
2. Voting on a show of hands
3. Holding an AGM using technology
4. Direct voting
5. Closing the AGM

Attendance at AGMs

1. The strict and formal nature of AGMs mean that they are not particularly appealing meetings, although they are crucial to the governance processes of an association.
2. Therefore, it is common for associations to report that their physical or proxy attendance at an AGM is poor. Whilst having high attendance at an AGM is positive, poor attendance should not necessarily indicate low engagement or dissatisfaction by members.
3. In some instances, high attendance is an indication of dissatisfaction as AGMs are seen as an opportunity to change the constitution or the current Board.
4. Ways to increase positive attendance at an AGM include having a subsequent members’ open forum, holding the AGM at the annual conference or connecting it to an appealing social gathering or prominent speaker function.

Conclusion

1. AGM's are only held once per year and may be very brief, hence they are not often considered
2. AGMs are often not properly run as associations don't seek professional legal or governance advice
3. Chairing a Board meeting has less processes and is more flexible than running a General Meeting of members
4. The co-operative culture of associations often means everyone is allowed to have their say, although this is not the purpose of AGMs.

Thank you!

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Special thanks to Jonathan Casson, Holman Webb Lawyers

Membership Summit, 9 October 2017

Melbourne

Asian Federations Roundtable, 16 October 2017

Singapore

CEO & Chair Symposium, 1-2 February 2018

Hobart

Associations Forum National Conference 16-17 July 2018

Gold Coast

AF documents available

1. Sample Board Charter
2. Board and Board Director evaluation
3. Finance, Audit and Risk Committee terms of reference
4. AGM Guide

Associations Forum
Bronze member benefits

1. Associations magazine, eNews and online Jobs Board
2. Free Member Meetings and Event Discounts
3. Association Benchmarking Surveys
4. Policy and Advocacy
5. Member Advice Helpline and Resources
6. Local Networks and International Connections

Extra member benefits

Silver any one extra; **Gold** any two extra

7. Constitution review: service
8. Financial benchmarking: comparative project
9. Board roles & responsibilities training: 90 minute presentation
10. Board/CEO relationships: 90 minute presentation
11. Association structures: 90 minute presentation
12. Financial fundamentals: 90 minute presentation
13. Membership essentials: 90 minute presentation
14. Events and sponsorship: 90 minute presentation
15. State of the sector: 90 minute presentation
16. Ad hoc governance advice