

Annual General Meeting – Notice of Meeting Practice Guideline



Purpose:

The purpose of this practice guideline is to ensure our members display and maintain a professional, efficient and ethical standard when issuing a notice of an Annual General Meeting (AGM). Use of this guideline will ensure compliance with the obligations imposed on an owners corporation (OC) and its manager, by the Owners Corporations Act 2006 (the Act), the Owners Corporations Regulations 2007 (the regs) and other relevant legislation. It provides reference to all matters that must be addressed at each AGM, and consideration to be given to other matters to be included as the need arises.

Background:

The Owners Corporations Act 2006 identifies all particulars of an AGM; from convening the meeting, identifying what must be discussed, issuing the notice, making decisions, through to recording and distributing the minutes of the meeting. This SCA (Vic) practice guideline has therefore been prepared to provide an overview of the process for preparing and distributing a notice of meeting, and must be used in consultation to and compliance with the requirements of the Act.

SCA (Vic) confirms for multiple owners corporations, notices must be prepared separately for each of the multiple owners corporations (OC) and distributed only to those members affected by each OC respectively, meetings must be conducted separately per OC and minutes of meetings prepared for each OC and issued only to those lot owners who are affected by that particular OC, ie a lot owner should not receive minutes of meetings for a limited OC of which they are not a member.

Specific requirements of the Act are clarified as follows:

s69	Section 69	identifies the obligation for owners corporations to have annual general meetings and stipulates the time between these meetings must not exceed 15 months.
s70	Section 70	identifies who may convene an annual general meeting
s71	Section 71	identifies matters that must be dealt with at the annual general meeting
s72	Section 72	identifies what must be included in the notice and the requirement the notice of the meeting be given in writing to each lot owner at least 14 days before the meeting. It also clarifies the notice may be given electronically.
s80	Section 80	identifies the procedure at a general meeting; confirming a lot owner may participate in person, by teleconference in accordance with the regulations, by proxy or in another manner provided for by the regulations.
s80(2)	Section 80(2)	identifies the procedure at a general meeting is subject to the Act and the regulations, in the discretion of the owners corporation.

s81(2)(e) Section 81(2)(e) advises the minutes must record the voting on any resolutions.

SCA (Vic) recognises different practices amongst members in regard to passing resolutions and provides the following as the preferred practice guideline;

Where resolutions are sought for standard statutory obligations imposed on an owners corporation, a motion should be put to the vote, and the minutes record how many voted in favour of the motion, how many against and how many abstained. Include text to confirm if the resolution was successful (passed) or failed (lost).

It is recommended however, where a motion is amended from the text of the notice, and the motion is contentious, a special or unanimous resolution is sought, a more formal approach be taken to move a motion. In accordance with meeting law the motion should be moved and seconded. Ensure the minutes record who moved the motion, who seconded the motion, if any members then voted in favour and/or against the motion, and whether the motion was successful or lost.

For example Section 72(2)(h) of the OC Act provides that the minutes of the previous AGM must be included in the notice of the AGM. Members at the AGM will therefore resolve to accept the minutes of the previous AGM as true and accurate record by simply casting a majority vote in favour of this resolution. If however an inaccuracy exists within the previous minutes, the motion to accept the previous minutes with corrections should be moved and seconded. Minutes should include any amended resolution.

Upon consideration SCA (Vic) recommends the following procedure:

An owners corporation manager should*

1. minute the resolution;
2. identify how many voted in favour of the motion;
3. how many voted against the motion;
4. how many abstained; and
5. include advice that the motion passed and became a resolution of the meeting or was lost (ie insufficient votes for motion to be successful).

*There is an exception however; where a motion is moved to extend or amend the subject or intent of the original motion.

In such instances the owners corporation manager should

1. seek and minute a mover and a seconder
2. include advice on whether the motion was passed or failed.

Re-capping, a mover and seconder is not necessary for statutory resolutions or where the intent of the resolution is stated on the agenda and not changed.

Procedure:

1. Prepare your agenda by creating agenda headings, and where necessary include text of proposed resolutions (special or unanimous) and/or information to enable informed decisions to be made at the time of the meeting.

- A notice of meeting is not a prescribed or approved form. The format may take the form of your firm's preferred style.
- The checklist may be used to ensure a comprehensive notice of an annual general meeting is prepared.
- Ensure you include all obligations of an OC that 'must' be included under the Act.
- Review all other optional matters and include those relevant to the circumstances of the OC at the time.
- Pay particular attention to wording used within the notice itself. Insufficient or ambiguous information may invalidate subsequent decisions made at the meeting. Similarly, the decisions at the meeting must be clearly and thoroughly recorded with the minutes.
- The notice should contain all items to be discussed at the meeting with items placed in an order to maximise the efficiency and effectiveness of the meeting's progress and decision making.

AGM –
Checklist

s72(2)(c)

- The text of all proposed special or unanimous resolutions must be included.

s72(2)(f)

- You must include a statement that the lot owner has the right to appoint a proxy.

2. Prepare or obtain reports and/or all other information necessary to be sent with the notice. This will ensure owners are able to make informed decisions at the meeting.

The Regs -
Schedule 1

- When attaching a prescribed form to the notice, such as Schedule 1 of the Regulations 'Proxy Form', do not affect any changes to the Form that may change the intent of the existing text. Changes, other than formatting to accommodate software applications can invalidate the prescribed form.

s72(2)(g)

- With reference to reports that must be considered at the annual general meeting, ensure details are as per requirements of Act.

3. Ensure date and day are correctly stated on the notice, venue is booked, time of meeting is correctly recorded and all attachments are included with each notice.

4. Send the notice of the annual general meeting, with its attachments, to each lot owner affected by that OC; ensuring 14 clear days notice is provided.

5. Keep a copy of the notice for the owners corporation's records. (You may wish to keep a couple of extra copies to take to the meeting with you.)
6. Maintain a register of apologies, proxies and/or nominations to the committee, as you receive them.
- occ 7. Update the OC's and your office records to ensure you identify and include advice of proposed changes to be dealt with at the upcoming annual general meeting on any owners corporations certificates to be prepared in the time prior to the AGM.

Issues:

If a notice is posted so that 14 days prior notice of the meeting has not been given, the meeting is invalid and will need to be reconvened.

If a notice does not comply with the Act, the meeting may be invalid and a further meeting may be required.

If an item is brought up for discussion at the annual general meeting and is not on the agenda, a resolution in that regard should not be made. It may however be noted with the intent of decisions to be made at committee level, by ballot or at a further meeting etc.

When an issue/topic of discussion is controversial it is recommended that any related motions be moved and seconded, with this information being detailed within the minutes. Minutes should also clearly identify if motion was successful and resolution passed or if motion failed.

Resources:

- Owners Corporations Act 2006 Sections 69, 70, 71, 72, 72(2)(c), 72(2)(f), 72(2)(g), 80, 80(2) & 81(2)(e)
- Owners Corporations Regulations 2007 Schedule 1 – Proxy Form (the Regs – Schedule 1)
- SCA (Vic) Practice Guideline - Annual General Meeting Checklist (AGM – Checklist)
- SCA (Vic) Practice Guideline – Annual General Meeting – Notice of Meeting Standing Orders
- SCA (Vic) Practice Guideline – Owners Corporations Certificates (OCC)

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