

Part 6

Special General Meetings

This part of the guide covers preparing for, conducting and minuting special general meetings (SGMs) of a Victorian incorporated association.

Summary of key points

<p>What is a special general meeting?</p>	<p>A special general meeting (SGM) is a general meeting that is not an AGM or a disciplinary appeal meeting. Division 4 of Part 5 of the AIR Act sets out laws for SGMs and your rules will also set out procedures.</p>
<p>What is a notice of meeting (and notice of motion)?</p>	<p>A notice of meeting is a written notice to members of the organisation that a meeting is to take place at a specified time.</p>
<p>What are the legal requirements for notices of special general meetings?</p>	<p>A notice of motion is a notice, given by a member of the organisation, that proposes some decision or action be discussed and voted on at the next meeting.</p>
<p>What are the legal requirements for notices of special general meetings?</p>	<p>Laws regulate the content of the notice, the time and method of giving it, who the notice is to be given to, and what to do if the SGM (or motion) is adjourned to another time and place. SGMs are referred to in this part of the guide as any general meeting of members that is not an AGM. For information on AGMs see part 5 of this guide: Annual General Meetings.</p>
<p>Notice of a special general meeting</p>	<p>This part of the guide sets out the requirements for notices of SGMs of the organisation's members. A sample notice and checklist tools are provided in part 9 of this guide.</p>
<p>Procedures for a special general meeting</p>	<p>At a SGM, matters must be considered by members in a certain way. A sample agenda, with guidance for the secretary, is provided in part 9 of this guide.</p>
<p>Voting methods</p>	<p>There is a range of ways in which people who are entitled to vote at a meeting can do so. A variety of voting methods are set out in a tool in part 9 of this guide.</p>
<p>What are 'minutes'?</p>	<p>Minutes are a written record of what was discussed and decided at a meeting. One of the key legal tasks of the secretary of an incorporated association is to make sure that accurate minutes are made of the organisation's SGMs, and that these are kept in a safe place.</p>
	<p>Both the AIR Act and an organisation's rules set out legal requirements for the minutes of the organisation. Those requirements are discussed in this part of the guide.</p>



Preparing and keeping minutes This part of the guide sets out what should be included in the minutes and how they should be kept. It also contains tips and tools for drafting minutes, including 'action lists' which summarise people's responsibilities arising from a SGM.

Confirming and verifying minutes The secretary should ensure at each SGM that the members pass a resolution confirming the minutes of the previous meeting, and the chairperson signs a copy of the confirmed minutes.

This part of the guide explains this procedure, and, in part 9 of this guide, there is a tool to help you.

What is a special general meeting?

A SGM is a meeting of the members of an incorporated association. A SGM is any general meeting that is not an AGM or a disciplinary appeal meeting.

SGMs are used to address matters that are not dealt with at an AGM, and are normally convened to address one or more particular matters. All voting members of an association must be provided notice of a SGM and can vote on any resolutions of a SGM.

A SGM must be convened in accordance with the AIR Act and the procedures provided in an association's rules.

Model rule 24 provides for an extra kind of meeting of members – a 'disciplinary appeal meeting'. Members who have been subjected to disciplinary action by the committee can call a meeting of members to appeal the committee decision. The process for calling and running these meetings is different to SGMs, and is covered by model rules 23 and 24.

What is a notice of meeting (and notice of motion)?

What is a notice of meeting?

A 'notice of meeting' is a written notice to the members of an organisation that a meeting is to take place at a specified time.

A notice of meeting should set out information (such as the date, time, place, and what is proposed to be done) so that those invited to the meeting know what it's about and can decide whether to attend.

The contents of a notice of meeting may vary significantly from organisation to organisation, depending on the type of organisation and how formal the SGM is. However, there are some matters that must be addressed in a notice of meeting.

In some cases, there are particular notice requirements under the AIR Act before certain resolutions can be passed at a meeting (see below, '[Notice of a special general meeting of members](#)').



Caution

In this guide, special general meetings are any general meeting of members that is not an AGM. For information on AGMs see part 5 of this guide: Annual General Meetings.

The AIR Act makes it an offence for an organisation to hold a SGM unless notice has been given to every member eligible to vote at that meeting (section 60).

What is a notice of motion?

A 'notice of motion' is a notice, given by a member of the organisation, which proposes that a decision or action be discussed and voted on at the next meeting. Commonly the member gives a notice of motion to the secretary, either at the previous meeting (usually at the end) or at a specified time before the next

meeting. The motion is then included as an item of business for the next meeting (usually under a heading such as 'motions on notice').

A notice of motion gives the other members an opportunity to consider the member's motion before the meeting takes place and is generally only given if the matter proposed by the member is an important decision for the organisation. A notice of motion may also be required by your organisation's rules or policies. You should check these.



Note

The secretary of an incorporated association is usually responsible for preparing and giving notice of meetings under the organisation's rules.

This is an important job. If a notice of meeting is not correctly prepared and given, the meeting may be invalid and decisions made at it may be void (of no legal effect) See further information below at 'what if a notice of a special general meeting might be invalid?'

There are special rules for giving notice to remove an auditor. If the SGM will include a motion to remove an auditor, notice of the SGM needs to be sent earlier, to every member, and needs to include extra information. See further information below at 'Notice of proposal to remove an auditor'.

When to give notice of a proposal to remove an auditor

Written notice of a proposal to remove an auditor must be given to members of the association at least two months before the SGM at which the resolution is proposed to be passed (section 106(2) of the AIR Act). There are other steps which must be taken before a meeting proposing to remove an auditor can be held (sections 106 and 107):

- a notice proposing a resolution to remove an auditor must state the proposed resolution in full, and
- if an auditor decides to make a written representation, a notice must be given to members of the organisation personally, by post or in any other way that is allowed under the organisation's rules

Who should be given notice?

Notice of a proposal to remove an auditor must be given to every member of the incorporated association (section 106(2)). In addition, as soon as possible after the notice is given to members, the secretary of the organisation must give a copy of the notice to:

- the auditor, and
- CAV (section 106(4)). CAV has advised that this can be done in person, by post, or email (attaching the notice as a PDF)

The auditor may write to the secretary of the organisation about the proposed resolution.

Giving notice of a special general meeting

What are the legal requirements for giving notice of a SGM?

For SGMs, there are legal requirements about:

- when the notice must be given
- the content of the notice
- how notice must be given
- who the notice must be given to, and
- what to do if the meeting is adjourned



Terminology

The words '**service**' and '**servng**' are used to describe the legal requirements for giving notice of a meeting.

'Service' simply means the process of giving a notice to someone who is invited to a meeting. For example, your rules may state that a notice must be 'served on' (given to) a person by post, email or in person.

You need to consider any requirements imposed by:

- the AIR Act
- the Regulations
- your organisation's rules, and
- any policies your organisation has about this issue



Remember

Make sure you have the most up-to-date version of your rules, including any changes that the organisation's members and CAV have approved.

If you are confused about which rules apply to you and whether the copy you have is up-to-date, the best thing to do is to contact CAV and request a copy of your organisation's rules and purposes.

Your rules may not reflect all the requirements of new laws for incorporated associations. See [our Transitional Guide and Rules Checklist](#) for more information.



Tool 21

The checklist in Tool 21: Checklist for notice of special general meeting, will help you to prepare a notice for a SGM.



Note

There are special requirements under the AIR Act for giving notice of particular types of SGMs. These are:

- a meeting proposing a special resolution, and
- a meeting proposing to remove an auditor

The requirements for these are discussed below.

When to give notice of a special general meeting

The rules of an incorporated association must set out the notice period, being the number of days' notice an organisation must provide its members of for an upcoming SGM. Many organisations have a rule (similar to



model rule 33) that members should receive notice of a SGM at least 14 days before the meeting date (or 21 days if a special resolution is proposed – see more information below) before the meeting.

Also, many organisations have rules (similar to the model rules 31) that:

- the committee may decide the specific date, time and place to hold a SGM, and
- the committee must call a SGM where a certain percentage of members (eg. 10%) have requested that a meeting be held

Your organisation may have also supplemented its rules with policies about the time for giving notice of a SGM. You should check whether any such policies exist and if so, whether they specify extra requirements.



Caution

Check your rules to see what they say — your organisation may have adopted the model rules or it may have changed the model rules to suit its own particular circumstances.

How to measure time for giving notice

Calculating the number of days' notice can be confusing. First, check whether your organisation has its own rules about measuring time. The model rules don't have any provisions about measuring time.

If your rules don't address measuring time, it's good practice when counting days to exclude both:

- the day on which the notice is given, which is the date on which the relevant person will receive the notice, and
- the day on which the meeting is to be held



Example

Most organisations have a rule that a notice of general meeting should be sent to members at least 14 days before the meeting is held.

If a notice is personally delivered to a member on 1 January, you would count 14 days from 2 January. That makes 16 January the earliest date for holding the meeting.

If the notice is sent to members by post, the commonly accepted rule is that the notice period begins the day after the letter would have been delivered 'in the ordinary course of post'.

Due to changes to Australia Post's delivery times for ordinary mail, it now takes three business days for a letter to reach an address in the state in which it was posted (including metropolitan areas), and five business days for interstate addresses.



Tip

When calculating the number of days' notice that needs to be given, to be safe, you should allow at least five extra business days if the notice is sent by ordinary post.



What information should be in a notice of a special general meeting?

A notice of a SGM should:

- be sufficiently clear and detailed so that any ordinary person who receives the notice and scans it quickly can know what is proposed to be done at the meeting and can then decide whether to attend
- be a full and fair disclosure of the matters to be discussed at the meeting, and
- not mislead any member of the organisation

These legal requirements have been developed by the courts to help establish good and fair procedures. To meet these requirements, it is desirable that an organisation's rules specify what details must be included in a notice of SGM, but as a minimum the notice must include the date, time and place of the SGM (section 60 of the AIR Act).



Tool 22

For an example of a notice of special general meeting (under the model rules, this is any general meeting which is not an annual general meeting) see Tool 22: Sample notice for special general meeting.



Remember

If your organisation uses the model rules, or has a rule similar to model rule 31(3), the only matters that can be discussed and voted on at a SGM are the ones set out in the notice of meeting. This means that the secretary must be very careful to include in the notice of SGM all items of business to be dealt with. Extra things can't be addressed at the meeting.

Remember to check your organisation's own rules and procedures, as they may have different requirements.



Tip

Commonly, agendas for SGMs include a catch-all item such as 'any other business' or 'general business'. This allows members to discuss any additional matters which arise at the meeting (such as setting a time and place for the next meeting).

However, the SGM should not pass resolutions on important matters which have not been previously notified to members. If additional matters of business are attempted to be raised at the meeting, it is best for the organisation to convene a further meeting (with sufficient notice to members) to consider the issues properly, and vote on any resolutions.

Your organisation may also have policies about the content of notices of SGMs. For example, it may be your organisation's policy to specify who authorised the notice.

The notice is usually sent together with documents which provide background information on the matters to be discussed at the meeting, such as:

- the minutes of the last meeting
- reports prepared by the management committee, staff or volunteers, and
- financial reports



Tools 21 and 22

See Tool 21: Checklist for notice of special general meeting and Tool 22: Sample notice for a special general meeting.

How to give notice of a special general meeting

The rules of an incorporated association must set out the way in which notices of SGMs (and notices of motion) are to be given, published or circulated (item 19 of Schedule 1 of the AIR Act).

Many organisations have a rule that a notice of a SGM may be:

- provided in person
- sent by post to each member's address, or
- sent by fax, email or other form of electronic transmission

Check your own organisation's rules. The way in which notice must be given varies greatly, depending on the type of organisation and the formality of meetings. Some organisations' rules require a notice to be posted to each paid-up member; others require notice by an advertisement in a local newspaper; others may place a notice in their regular newsletter or on a club notice board.

Extra requirements apply if there will be a motion put at your SGM that requires a special resolution to pass (see further discussion below).

Your organisation may also have supplemented its rules with policies about how to give notice of a SGM.



Tip

When giving notice of a SGM, it's good practice to give each member of the association an individual notice (rather than, for example, only putting up a notice on the club notice board). This prevents a claim by a member that they were unaware of a SGM.

With large organisations this may be expensive. Therefore, some organisations' rules may allow for other methods of providing notice to members (for example, by email).

Who should be given notice of a special general meeting?

Unless your organisation's rules say otherwise, you should give notice of a SGM to all members listed on the organisation's register of members. (The secretary usually has responsibility for maintaining the register of members – see part 4 of this guide: Registers, Records and Official Documents).

The AIR Act requires that notice be given to 'each member of the association entitled to vote at general meetings' (section 60 of the AIR Act). This is the minimum requirement. Some organisations may specify in their rules that only paid-up (financial) members or some other special membership class are required to receive notice of a SGM. Your organisation may also have 'life members', who may (or may not) need to be notified. Check your organisation's rules and policies about who should be given notice of a SGM.

What if a special general meeting (or a motion) is adjourned to a later date?

Sometimes, a SGM may be adjourned to a later date – for example, if there are not enough members at the meeting to make decisions for the organisation (see 'How many people need to be at a special general meeting?' below).

And sometimes, even though the meeting goes ahead, a motion – of which notice has been given – may need to be adjourned to a future SGM.

In such cases, you will need to consider whether a new notice of SGM (or notice of motion) is required. For example, model rule 37(4) states that if a meeting is adjourned for 14 days or more, notice of the adjournment of a meeting must be served. Check your organisation's rules for any specific provisions about this.

Notice of SGM where motion requiring special resolution will be put to members – extra requirements

There are extra notice requirements if particular types of decisions are proposed to be made at a SGM. One of these situations is where a motion requiring a 'special resolution' will be put to members.



Why have extra requirements for special resolutions?

The policy reason for having extra requirements for a notice of a meeting proposing a special resolution is that special resolutions are used to make important decisions under the AIR Act. It's important to give members more time and information about the matter so that they can consider it carefully before the meeting.

Notice of a proposed special resolution

Special resolutions are required under the AIR Act for an organisation to make certain decisions (such as changing the organisation's name, rules, removing a committee member from office or winding up the organisation).

See 'Procedures for a special general meeting' below for information about passing a special resolution at a SGM (and then seeking approval from CAV, where applicable).

When to give notice of a proposed special resolution

A notice of a meeting that will include a motion requiring a special resolution to pass must be given to all members who are entitled to vote at least 21 days before the meeting (section 64(2) of the AIR Act).

Otherwise, the resolution cannot be passed as a special resolution at the meeting.

What information should be included in the notice?

To pass a special resolution at a SGM, the AIR Act (section 64(3)) requires the notice to:

- specify the date, time and place of the SGM
- set out the actual wording of the proposed special resolution in full, and
- state that it is intended to propose the resolution as a 'special resolution'

Check your organisation's rules carefully for any extra requirements about notices of proposed special resolutions.



Tool 22

For an example of a notice with a proposed special resolution, see Tool 22: Sample notice for special general meeting.

How should notice be given?

See discussion above, 'How to give notice of a special general meeting'.

Who should be given notice?

The AIR Act requires a notice of a SGM proposing a special resolution to be given to all members of the organisation who are entitled under the organisation's rules to vote on the resolution (section 64(2) of the



AIR Act). Check whether your organisation has particular classes of members who are, or are not, eligible to vote on the matter.

Notice of proposal to amalgamate the association with another organisation

If the motion requiring special resolution is proposing to amalgamate (or, 'join') an organisation with other organisations (one or more), the notice should:

- nominate the first secretary of the amalgamated organisation
- include the terms of the amalgamation, and
- attach a copy of the proposed rules of the amalgamated organisation

An application to amalgamate can only be approved by CAV (sections 17 and 18 of the AIR Act) if the application includes the relevant details about the amalgamated organisation (name, first secretary's details) and is accompanied by evidence of the passing of the special resolution approving the proposed terms of the amalgamation as well as the rules of the amalgamated organisation.



Caution

If a special resolution is proposed for a SGM, your organisation must comply with the notice requirements in sections 64(2) and 64(3) of the AIR Act. Otherwise, the resolution can't be passed as a special resolution at the SGM.

Check whether your organisation has particular classes of members who are, or are not, eligible to vote on the matter.

Notice of proposal to remove an auditor

There are special rules for giving notice to remove an auditor. If your SGM will include a motion to remove an auditor, notice of the SGM needs to be sent earlier, to every member, and needs to include extra information.

When to give notice of a proposal to remove an auditor

Written notice of a proposal to remove an auditor must be given to members of the association at least two months before the SGM at which the resolution is proposed to be passed (section 106(2) of the AIR Act). This means that the SGM notice will need to be prepared earlier than usual.

Other steps must be taken before a meeting proposing to remove an auditor can be held (sections 106 and 107):

- a notice proposing a resolution to remove an auditor must state the proposed resolution in full, and
- if an auditor decides to make a written representation, a notice must be given to members of the organisation personally, by post or in any other way that is allowed under the organisation's rules



Why have a longer notice period?

This long notice period is designed to make sure that the organisation's members, the auditor and CAV have time to consider the proposal, and the auditor has time to prepare any response before the AGM at which the decision is to be made.

Who should be given notice?

Written notice of a proposal to remove an auditor must be given to every member of the incorporated association (section 106(2)). In addition, as soon as possible after the notice is given to members, the secretary of the organisation must give a copy of the notice to:

- the auditor, and
- CAV (section 106(4)). CAV has advised that this can be done in person, by post, or email (attaching the notice as a PDF)

The auditor may write to the secretary of the organisation about the proposed resolution (section 107(1)). Unless CAV orders otherwise:

- the secretary of the organisation must provide a copy of the auditor's letter to all members of the organisation before the SGM, and
- the auditor must be allowed to attend and talk to the meeting before a vote on the resolution is taken (section 107(2))

What if a notice of a special general meeting might be invalid (defective)?

If there is a defect with a notice of SGM (for example, it didn't contain the details required by the AIR Act or was sent without providing sufficient notice), the notice may be 'invalid'. If this happens, any actions taken and decisions made at the subsequent meeting may be void (that is, of no legal effect).

If a member of your organisation alleges that a notice of a SGM is invalid, it can be difficult to work out whether the alleged defect is something that would make the meeting void. The answer will depend on the seriousness of the alleged defect.



Caution

If there is ever any concern about the validity of any notice, you should seek legal advice.

Is it possible to waive any defects in a notice?

If you have realised that your notice of SGM was defective, there are steps you can take to fix the defect. If all the members entitled to attend the SGM (not just those who actually attend) agree to 'waive' a defect in the notice (that is, essentially to ignore it), the invalidity may be overcome. The courts have long recognised this as a way of 'curing' defects in a notice. However, waiving a defect can prove difficult for a SGM that is large or more formal.

A defective notice of a SGM that includes a proposed special resolution is unlikely to be cured by a waiver. If 21 clear days' notice has not been given, you should seek legal advice. You may need to hold the meeting again or confirm the resolution at a future special general meeting (see below).

Is it possible to overcome alleged defects in any other way?

One method of overcoming any alleged defects in a notice is to continue to hold the (possibly) invalid SGM (if those present agree) and to keep records of the decisions made at the meeting. At the next validly convened general meeting, a motion can be put adopting the decisions made at that earlier (possibly) invalid SGM.

Of course, until that subsequent meeting validates the decisions of the previous (invalid) SGM, the decisions of that previous meeting will have no legal standing or effect. This approach is therefore usually taken only if there is likely to be no dispute about the previous decisions.

Procedures for a special general meeting

Procedures for SGMs of incorporated associations in Victoria can vary considerably, depending on the type of organisation, who is attending and what is being discussed. A SGM of a large organisation is usually very formal.

Generally, the larger the group, the more formal the SGM procedures (so that order is maintained and the meeting can deal with its business efficiently).

The person who chairs the SGM (usually called the chairperson or president) guides the style. As long as the legal requirements are met, the chairperson may run the SGM in as relaxed or formal a style as the particular situation allows.

You need to take into account any requirements imposed by the AIR Act, the Regulations and your organisation's rules when establishing meeting procedures,

Each organisation also develops its own customs, practices and 'culture' over time. These may not be formally reflected in the Rules of the organisation. So it's important to ask about your organisation's policies and procedures (written and unwritten), as well as the rules, to find out how your organisation usually conducts meetings.



Tip

Some customs and practices are intentionally designed to promote efficiency of time and effort, to focus on certain key meeting issues, or for other strategic purposes.

For example, an organisation may table certain reports and take them as read (that is, the SGM does not deal in detail with the report, but members may ask questions).

What is the role of the secretary at special general meetings?

The role of the secretary is discussed in detail in part 3 of this guide: Secretary's Legal Role, Powers and Duties.

For SGMs, the secretary is usually responsible for the following tasks:

- preparing and distributing any reports or documents to people who are invited to the meeting dealing with any correspondence
- assisting in and recording the outcome of any votes taken, and
- taking minutes of the meeting (or arranging for someone else to take them)

Rules and special general meetings

Check your organisation's rules for the requirements (if any) about SGMs including:

- the agenda for the meeting
- the 'quorum' for the meeting (that is, the minimum number of members who must be present)
- how resolutions are passed
- voting methods, and
- how meetings can be adjourned

Each of these matters is discussed in more detail below.

Agenda for a special general meeting

The agenda for any general meeting including a SGM, should include all business to be considered at the meeting (this should be included in the notice of meeting – see 'What information should be in the notice of special general meeting?' in this guide).

Some items of business are usually listed on the meeting agenda and dealt with at every general meeting, such as:

- attendance and apologies, and
- confirming the minutes of the last meeting

As the meeting will usually be convened to consider and decide a particular matter, the agenda should clearly set out the issues to be determined.



How many people need to be at a special general meeting?

Before you can deal with any business at a SGM, there must be a minimum number of the organisation's members present. This number is called the 'quorum'.

Your organisation's rules must specify the quorum for SGMs and other general meetings (item 18 of Schedule 1 of the AIR Act). Model rule 36 says that the quorum is 10% of members entitled to vote present physically or by proxy. Check your own organisation's rules for the quorum number and whether they may be present by proxy.

What happens if there is no quorum?

If there is no quorum at a SGM, your organisation's rules should set out what will happen. For example, model rule 36 provides that:

- no item of business may be conducted at the meeting unless a quorum of members entitled to vote is present when the meeting is considering that item, or
- if, within half an hour after the time set for the start of the meeting, a quorum is not present, then either:
 - if the meeting has been convened at the request of members — the chairperson must cancel the meeting, or
 - in any other case — the chairperson must adjourn (reschedule) the meeting

Model rule 36 also says that if a quorum is not present by the end of the first half hour of the rescheduled meeting, then, if there are at least three members present, those members may proceed as if a quorum were present. This means that the rescheduled SGM will be able to deal with the items of business, so long as at least three members are personally present. Remember the AIR Act allows attendance at meeting via technology (such as phone conferencing or video conferencing).

You should check your organisation's own rules.

Motions and resolutions

The words 'motion' and 'resolution' are often (incorrectly) used as if they mean the same thing. They don't – they have separate, but related, meanings.



What is a motion?

A motion is a proposal that a member puts at a meeting in order that some action be done or decision made about an issue (see discussion of a 'notice of motion' above in this part of the guide).

The technical procedure is that:

- a member moves the motion, and
- another member seconds that motion

If members want to change the wording of the motion:

- a member moves an amendment to the motion, and
- another member seconds that amendment



Example

The XYZ Club calls a general meeting at which a motion is put forward by a member 'that this meeting approve the lodgement of a zoning application for the association's Club House with the Melbourne City Council'. Another member seconds the motion.

Then the meeting can vote to approve or pass the motion (or not).



What is a resolution?

A resolution is a motion that the meeting has approved or passed. A resolution is therefore the result of a motion (or an amended motion) put before, and approved by, the meeting. Once the resolution is passed, the meeting has made a binding decision.

There are two main types of resolutions:

- ordinary resolutions (often simply called a 'resolution'), and
- special resolutions

The requirements for passing ordinary and special resolutions are different, and are discussed in more detail below. For information about drafting motions and resolutions, see 'Preparing and keeping minutes' below.



Example

The XYZ Club meeting votes to approve the motion 'that this meeting approve the lodgement of a zoning application for the association's Club House with the Melbourne City Council'. The motion then becomes a resolution that legally binds the XYZ Club and its members.

But, if necessary, the organisation can change or cancel its decision by passing another resolution to override the previous one.

How is an ordinary resolution passed?

Unless your rules say otherwise, an ordinary resolution is passed by a 'simple majority' of members who vote at a SGM. A simple majority is when more than half of the members present and voting at the meeting, vote 'in favour of' (for) the resolution.

For example, if there were 20 members voting on a motion, you would need 11 (or more) members voting in favour to pass an ordinary resolution.

Check your organisation's rules for any particular requirements for passing resolutions (either ordinary or otherwise).



Example

For example, your rules may require a majority of all members entitled to vote (rather than a majority of members who actually vote) to pass a resolution.

This means that – if you have 50 members, and 30 turn up to your meeting, you will still need 26 votes (that is, more than half the 50 members eligible to vote) to pass a resolution. This is sometimes known as a resolution by ‘absolute majority’.

How is a special resolution passed?

A special resolution must be passed in accordance with the requirements in section 64 of the AIR Act. As discussed above, special resolutions are required under the AIR Act for certain important decisions, such as changing the organisation’s name or rules. Your organisation’s rules may specify other situations, or types of decisions, which require a special resolution.

To pass a special resolution at a SGM, the AIR Act requires:

- not less than 21 days’ notice of the special resolution be given to members (section 64(2)), and the notice must contain the complete wording of the proposed resolution (see ‘Notice of a proposed special resolution’ above)
- not less than three quarters (75% or more) of members who are both:
 - entitled to vote, and
 - who actually do vote at the meeting, either in person, or by proxy if allowed (see below, ‘[Proxy voting](#)’)
 vote ‘in favour of’ (for) the special resolution (section 64(4)(a)(i)), and
- any additional requirements in the organisation’s rules about passing special resolutions be met (section 64(4)(a)(ii))

Your organisation’s rules can impose additional requirements (for example, a requirement to include certain extra information about the proposed special resolution in the notice of meeting), but can’t reduce or increase the 75% provision.

If it would be too difficult (impracticable) for your organisation to pass a special resolution in the way required by section 64(4)(a), you can ask CAV for approval to pass a special resolution in another way (section 66). CAV has advised that an organisation may get approval if, for example, it needs to pass a motion to wind up (end) the organisation but there is a problem with the organisation’s records and it is difficult to identify all the members of the organisation.



Remember

Some decisions passed by special resolution (for example, changing the organisation’s rules) are not official under the AIR Act until they have been approved by CAV. Depending on the type of decision, you may need to notify CAV of the special resolution and seek approval for the change.

Proposal to remove an auditor – extra requirements

There are special requirements if a resolution to remove an auditor is proposed to be passed at a SGM (section 106 of the AIR Act and see ‘Notice of proposal to remove an auditor’ above). One of these requirements (section 107(2)(b)) is that, unless CAV orders otherwise, the auditor must be allowed to:

- attend the SGM at which resolution to remove them is to be considered, and
- talk to the meeting before the vote on the proposed resolution is taken



Voting at special general meetings

If members at a SGM want to make a decision about a matter, a motion or an amendment, it's usual for each member to cast a vote — generally 'in favour' (for) or 'against.'

Check your organisation's rules for any requirements about voting procedures. Model rule 38 provides that:

- each member has only one vote
- all votes must be given personally or by proxy (see below, '[Proxy voting](#)'), and
- if there is a tied vote (that is, an equal number of votes 'for' and 'against'), the chairperson may vote again to decide the matter (sometimes called the 'casting vote')

For information about voting methods see below, '[Voting methods](#)'.

Adjourning special general meetings

Check your organisation's rules for any provisions about adjourning (rescheduling) SGMs.

As discussed above, the rules of an incorporated association will usually require the chairperson to adjourn a SGM if there is no quorum present after a specified time. For example, model rule 37 also provides that:

- if a majority of the members present consent, the chairperson may adjourn the meeting to another time and place
- at the rescheduled meeting, the only business that may be dealt with is the unfinished business from the meeting that was adjourned, and
- if a meeting is adjourned for 14 days or more, then a notice of the rescheduled meeting must be given in accordance with the rules for notices of general meetings

Some organisations' rules allow for a SGM to be adjourned in other circumstances as well. You need to check what your rules say.

Voting methods

There are various ways in which votes can be taken at a SGM. The most common methods are voting by show of hands or by poll (that is, a vote in writing).



Tool 23

Voting by show of hands, by poll and by other methods (such as voting by voices) are discussed in more detail in Tool 23: Table of voting methods.

Check your own organisation's rules and policies about voting methods. Your rules may require certain methods and not allow others. They may also require different methods of voting at different types of meetings.

How to vote on a special resolution

Voting on a special resolution should be conducted as required or permitted by your organisation's rules.

The AIR Act says that a special resolution is passed if the chairperson declares it has been passed, unless a member of the organisation demands that the votes be counted (section 65(3)) (See below about polls).



Tip

The usual procedure for voting at a SGM is that the chairperson will:

- clearly state the motion to be put to the meeting
- take a vote from those present and entitled to vote
- determine the result, and
- announce the result of the vote

Polls and ballots

A 'poll' is a method of voting in writing on a motion (and any amendments) at a meeting. It's usually the role of the chairperson to determine whether a poll is required, to direct the conduct of the poll and to supervise the counting of the written votes. The way in which individual members voted in the poll is not usually disclosed.

In many organisations the rules allow a member to request a poll. Commonly, a poll may be requested by:

- a member who questions the result of a particular vote count (for example, if the SGM is large and there is a close vote on a show of hands), or
- a member who believes that any proxies held may alter the outcome of the vote (because a holder of several proxies has only one vote in a show of hands)

Sometimes a poll must be conducted, if a certain number of members request it. For example, model rule 40(2) requires a poll if three or more members demand one on a question.

A 'ballot' is a method of voting for elections of office bearers and management committee members. A ballot is usually confidential, in which case it is referred to a 'secret ballot'. In a secret ballot, the name of the voter is not disclosed, compared to a poll where the voter's name is usually written on the voting paper so the voter's right to vote can be checked (for example, that they are a paid up member).

Contested elections at a SGM (that is, if there is more than one person nominated for a position) are often conducted by secret ballot.

For more information about how to conduct a poll and ballot, see Tool 23: Table of voting methods.

Abstaining from voting and opposing

Some members may decide not to vote at all (that is, 'abstain from voting') and they may wish to have the secretary record their names in the minutes as having abstained.

Other members may oppose the motion and request that their opposition be noted.

What if a vote is tied?

If a vote is tied, most organisations' rules say that the chairperson has a second (or 'casting') vote to decide the matter. Commonly, the chairperson will exercise this vote to maintain the existing situation (so that a controversial resolution will not be passed).

What if a member is unable to attend a special general meeting and vote in person?

If a member of an organisation is unable to attend a SGM to cast their vote in person, that member may, depending on the rules of their organisation, vote by 'proxy'. See '[Proxy voting](#)' below.

As an alternative, an organisation may allow direct voting so that members who will be absent from a SGM can cast their own vote. The vote can be cast by completing and lodging a voting form prior to that meeting. More information about direct voting, including how an organisation can amend its rules to implement a system of direct voting is provided below.

Proxy voting



What is proxy voting?

If a member of an organisation is unable to attend a SGM and vote on an issue personally, that member may be able to appoint another person to cast a vote on their behalf (that is, 'vote by proxy') at the meeting.



Terminology

When talking about proxies, it's important to know the following definitions:

- the 'donor' is the member of the organisation who appoints another person to vote on their behalf
- the 'proxy holder' or 'proxy' is the person who is appointed to vote on behalf of the absent member, and
- the 'proxy form' is the document by which the donor appoints the proxy

What are the legal requirements for proxy voting?

A member of an incorporated association has no general legal right to appoint a proxy (but see below, '[powers of attorney](#)'). The power or right to appoint a proxy can be given only by the organisation's rules, so you should check if your rules allow for proxy voting.

The AIR Act requires the rules of an incorporated association to specify whether absent members are allowed to vote by proxy (item 18 of Schedule 1 of the AIR Act). Check your organisation's rules carefully for any provisions about proxy voting.

The rules of some organisations specify a deadline for receiving proxy forms before the AGM. The model rules do not contain a time limit for proxy forms provided in person, however model rule 34(7) requires that forms sent by post or electronically be received 24 hours before the meeting to have effect. Having a deadline in your rules avoids the secretary having to receive many proxy forms at the meeting, which can slow the progress of the meeting.

The rules of some organisations may also allow:

- non-members to act as proxies
- a general proxy (which gives a member the right to appoint another to vote as they see fit on all aspects of the organisation's business for a certain period of time)
- a specific proxy (which allows a person to cast a vote only at a particular meeting in a particular way), or
- the chairperson to hold the general proxies of many absent members (and therefore enable the chairperson to exercise the proxy in any manner they see fit)



Tool 16

See Tool 16: Flowchart for reviewing proxies in this guide. Be sure to check the flowchart against your organisation's rules and policies before relying on it. If your rules are different, adapt the tool to suit your own circumstances.

What if the donor attends the annual general meeting themselves?

If the donor attends a SGM for which they have appointed a proxy then, if the donor votes on an issue, the proxy holder may not vote on their behalf. The proxy holder may continue to act in accordance with the proxy form to vote on subsequent matters (so long as the donor does not vote).

Is the chairperson required to exercise the proxies they may hold?

If the chairperson has been appointed a proxy holder by a number of absent members, there is no broadly applicable rule about whether the chairperson must vote on behalf of these donors. It will depend on the wording of the document that appoints them as proxy.

It's good practice for the proxy form to set out whether the chairperson must vote in a particular way or whether the chairperson may (or may not) vote in a particular way on the resolution. If the chairperson may vote but does not have to, this means they have a 'discretion' about exercising the proxy. If a donor appoints the chairperson as their proxy to vote on a resolution in a particular way, the chairperson must vote in that way.

Cancelling a proxy

Generally, a donor may cancel (or 'revoke') a proxy before it is exercised by:

- giving both the proxy holder and the organisation a written notice of revocation (which becomes effective as soon as it is received and which, strictly, must be received by the organisation before the SGM at which the proxy was to be used)
- granting a subsequent and superseding (overriding) proxy to the same or another person, or
- resigning from the organisation

If a donor dies, the proxy automatically ends.

Check your organisation's rules carefully for any provisions about revoking proxies. For example, some organisations' rules require a donor wishing to cancel a proxy to give notice to the organisation by a certain deadline before the meeting.

If the donor has appointed a proxy for a specific SGM (see discussion of 'specific proxies' above), the appointment will only be valid for that meeting.

Powers of attorney



What is a 'power of attorney'?

A person can appoint another person (or more than one) to have 'power of attorney' for them — that is, to make decisions on their behalf, either indefinitely or for a specified period of time. This must be done in writing, signed and dated. This is another way to enable a person to vote on behalf of a member who is not attending a SGM.



More information

For more detailed information on powers of attorney, and sample forms, see [the Office of the Public Advocate website](#).



Terminology

When talking about powers of attorney, note:

- the 'donor' is the person who appoints another person to make decisions on their behalf
- the 'attorney' is the person who is appointed by the donor, and
- the 'power of attorney' is both the document by which the attorney is appointed, and the actual grant of power

The attorney may exercise the powers of the donor, and vote on their behalf at a SGM.

A donor may cancel (revoke) a power of attorney at any time in writing.

If a person says they have power of attorney to act on behalf of a member of your organisation, it's good practice to:

- ask that person for a written declaration that they have the powers they claim, and
- request to see, and then carefully read, the original copy of the power of attorney to:
 - confirm that the power exists
 - make a note of the extent of the power granted to the attorney, and
 - make a note of the period of time (if any is specified) that the power operates

The attorney may sometimes appoint a proxy or be a proxy holder. Sometimes a power of attorney gives a person the power to act on the donor's behalf on all matters (this is a 'general' power of attorney). In this situation, the attorney would have the authority to appoint a proxy, or to be a proxy holder.

Direct voting



What is 'direct voting'?

Direct voting is a method of voting which enables members to exercise their voting rights without having to either attend the SGM, or give their right to vote to someone else (ie. a proxy or attorney).

With direct voting, members exercise their vote by submitting a binding voting form to the organisation before the SGM, in an approved manner.

Why is direct voting beneficial?

Direct voting makes it easier for a member to vote (and have their vote counted) when they cannot attend a SGM. In contrast to proxy voting (whereby a person gives the proxy their power to vote at a SGM – but does not necessarily oblige that person to attend the meeting and vote on their behalf), with direct voting an absent member can simply lodge their vote in writing before the SGM. Direct voting can therefore foster greater member participation in decision-making – and also avoids a situation where, for example, a proxy holder falls ill on the day of a SGM and can't attend.

Direct voting does not necessarily replace the proxy system. It can sit alongside it. Direct voting simply provides an additional voting option to members who know they can't attend a SGM.

Implementing direct voting

Direct voting is not available to members unless your organisation's rules provide for it.

If your organisation's rules do not currently allow for direct voting, and you would like to adopt a direct voting system, you will need to change the rules to implement direct voting. You will need to consider how you want the procedure to work. For example, do you want your rules to outline the form and process for



direct voting, or leave it to the committee of management to determine this form and process in the future as it sees fit?



Remember

Check the voting provisions in your organisation's rules. If your organisation uses rules that do not allow for direct voting (such as the model rules), you will need to change your organisation's rules to implement direct voting procedures.



Tool 17

For sample wording of a new rule to allow direct voting, see Tool 17 of this guide.



Remember

In order to change your rules, a special resolution must be passed in accordance with the requirements of section 64 of the AIR Act and CAV must approve any changes before they take effect. See above for more information on the specific requirements for passing a special resolution.

Minutes



What are 'minutes'?

The word 'minutes' has been used for centuries to mean a summary of the proceedings of an assembly or committee.

Today, minutes are a formal written record of the matters discussed and decisions made at a meeting.

One of the main legal tasks of the secretary of an incorporated association is to make sure that:

- minutes are taken of each meeting (including the SGM) of the organisation
- minutes are confirmed by the organisation as an accurate record of the meeting, and
- the minutes of all meetings are kept safely by the organisation for future reference

The legal requirements for preparing and keeping minutes of SGMs come from the AIR Act and the organisation's rules.

Your organisation may also have particular policies and practices for taking and keeping minutes.

There are other laws which you should be aware of when preparing and distributing minutes, including defamation and privacy laws. These are discussed briefly in this part of the guide.

AIR Act requirements

The AIR Act requires the rules of incorporated associations in Victoria to include provisions about keeping accurate minutes of SGMs and allowing members access to such minutes of the organisation (items 14 and



15 of Schedule 1). If your organisation's rules do not cover any of the matters in Schedule 1 of the AIR Act, the provisions of the model rules that address those matters will apply to your organisation automatically.



Note

The AIR Act requires an organisation's rules to cover all the matters listed in Schedule 1, either by adopting the model rules, or having a provision in their own rules that covers the same point but is different to the model rules. See [our Rules Checklist](#) for more information.

In addition, an inspector from CAV may, with a Magistrates' Court order, require the organisation, or any person who is involved in the organisation's activities (which includes the secretary to give the inspector specified relevant documents of the organisation (sections 158 and 159). CAV may choose to use these powers to make sure that the organisation has complied with the AIR Act and the Regulations.

It is therefore extremely important that the secretary makes sure that accurate minutes are taken of the organisation's SGMs, and that they are kept in a safe place.

Your organisation's rules

Many organisations have a rule, similar to model rule 41, which require the secretary to keep minutes of resolutions and proceedings of each SGM.

Model rule 41 also requires a secretary to keep as part of SGM minutes:

- the names of members attending the meeting, and
- proxy forms given to the Chairperson

Check your organisation's rules.

SGM minutes are 'relevant documents' of an association, and members can inspect and make copies of the minutes. See part 3 of this guide: [Secretary's Legal Role, Powers and Duties](#) for more information about a secretary's responsibility to store and provide access to minutes.

Your organisation's policies

Check your organisation's policies and practices about taking and keeping minutes. If you don't have any, your organisation may choose to create policies, using this guide for assistance.

Preparing and keeping minutes

The form of minutes varies depending on the type of organisation and the type of activities it undertakes.

Content of the minutes



Tool 18

For detailed information about the usual matters to include in the minutes of meetings, see Tool 18: [Checklist for contents of minutes](#).

Importantly, the minutes should record the motions moved and resolutions made at the SGM.

Drafting the content – generally

The format and style of minutes vary considerably among organisations. Some minutes are very brief and precise, and record the bare minimum of information. Other minutes include 'blow by blow' summaries of the debate (which is unnecessary and we recommend avoiding).

It's only necessary to include a transcript of everything that was said at an AGM in the minutes in exceptional circumstances. Check your organisation's rules, policies and practices.



Tool 19

Despite variety in the form of minutes, there are some commonly accepted drafting conventions – see Tool 19: Conventions for drafting minutes.



Tip

The minutes are an official historical record of the organisation, so it's good practice to record in the minutes the name and position of office bearers (chairperson, secretary, treasurer) as well as names of members and any other people present (such as observers).

Drafting motions and resolutions

The exact wording of the motion should appear in the minutes. If there is a problem with the wording of a resolution (that is, a motion which is passed at the SGM), this will have to be corrected at a later meeting. Once the minutes have been confirmed, the secretary has no power to alter the motion in order to correct the mistake.



Tip

If a motion is proposed verbally at a meeting, the secretary may find it helpful to:

- write the motion down on a board or flip chart and show it to the meeting during the debate, or
- require the motion to be given to them in writing by the member proposing it

This way, any corrections to the wording of the motion can be made before voting on the matter. It also gives the secretary a chance to draft the motion in a way which can be suitably recorded in the minutes.

The wording of the motion must comply with your organisation's rules, including its purposes — it can't recommend any action outside the scope of your organisation's powers and activities. The motion must also be allowed to be made by the SGM, especially if the meeting has been called for a specific purpose.



Tip

It's useful for the secretary to circulate draft minutes with an 'action list' to the people or sub-committees who have been given specific tasks at the SGM.

For each motion, the minutes should record:

- the names of people who move and second the original motion and any amendments
- the method of voting (for information about voting methods, see 'Voting methods' in this guide), and
- whether the motion was passed (in which case it becomes a resolution), rejected or was adjourned (that is, put off until another meeting)

See Tool 19: conventions for drafting minutes.



Drafting minutes of difficult meetings

Sometimes SGMs get heated and the participants resort to personal attacks, walk-outs, threats and inappropriate remarks. In many instances, the chairperson may require such remarks to be withdrawn (therefore the remarks are not recorded). In other cases, it is sufficient to record that 'a vigorous discussion ensued' rather than a blow-by-blow account in the minutes (which is unnecessary and we recommend avoiding). See Tool 19: conventions for drafting minutes.



Tip

For difficult meetings, the secretary could consider:

- asking the chairperson for specific help to draft the minutes (in any case, it's good practice for the secretary to always check the minutes they have drafted with the chairperson before distributing them to others), and
- unless a motion was made or resolution passed, not including the controversial material altogether. The minutes will have to be approved at the next meeting and, if it's considered necessary to include more detail, it can be agreed then

Defamation

Sometimes a secretary will have to deal with potentially defamatory matters in the minutes of SGMs. A chairperson should challenge any defamatory statements at the time they are made in a SGM and have them withdrawn. The statements will then not be recorded in the minutes.

If an organisation has published defamatory statements in the minutes of a SGM, the defence of 'qualified privilege' may be available, however the organisation should seek specific legal advice. In most cases, potentially defamatory statements do not need to be included in the minutes.

Generally a 'defamatory statement' about a person is one that:

- exposes the person to hatred, contempt or ridicule
- tends to lower them in the opinion of other people
- harms their reputation (for example in their profession), or
- causes them to be shunned or avoided by others



Remember

The law of defamation is complex. If a secretary is concerned about any potential defamatory matters when drafting minutes, they should seek legal advice before finalising and distributing the minutes to anyone.

Storing minutes

Minute books

Finalised minutes are often entered into a 'minute book'. Minute books were originally a securely bound book with sequentially numbered pages. The minutes were handwritten into the book to guard against fraud or tampering. While some small organisations still use handwritten minute books, many organisations create and store minutes electronically and distribute them by email.

However, it can be difficult to keep track of the 'official' version of the minutes when they are created and stored electronically. It is also relatively easy for someone to tamper with the minutes (or replace them with substitute minutes) if they are stored in a loose-leaf binder. For these reasons you should take precautions to make sure the official minutes of meetings are secure, and easily identifiable.



Tip

Experience shows that it is best to write up the first draft of minutes as soon as possible after the SGM. Memory is fresh and the task can be done more quickly and efficiently than leaving it until just before the next meeting.

Confirming and verifying minutes

It's good practice for the secretary of an incorporated association to:

- make sure the accuracy of the minutes is 'confirmed' at the next meeting, and
- make sure the chairperson of the SGM (or the chairperson of the next meeting) has 'verified' the accuracy of the confirmed minutes, for example by signing them



Tool 24

See Tool 24: Flowchart for confirming and verifying minutes.

Check the rules of your organisation for any special provisions about confirming and verifying minutes.



Tip

Your organisation can take the following steps to keep the minutes more secure:

- lock the minutes document from editing or add a password to the document
- distribute the minutes electronically in PDF form rather than in an editable form
- print the minutes out and paste them into an official minute book (and number each page of the minute book consecutively)
- get the chairperson to sign each page of the minute book to confirm official minutes, and
- number each meeting sequentially (for example, 'The Minutes of 2022 Annual General Meeting of XYZ Club Inc')