

Part 5

Annual General Meetings

This part of the guide covers preparing for, conducting and minuting annual general meetings (AGMs) of an incorporated association in New South Wales.



Note

New laws for NSW incorporated associations

On 1 September 2016, changes to the laws regulating NSW incorporated associations took effect. The *Associations Incorporation Regulation 2010* was replaced with the *Associations Incorporation Regulation 2016* and changes were made to the existing *Associations Incorporated Act 2009*. This guide reflects these changes.

Summary of key points

What is an Annual General Meeting?

An annual general meeting (**AGM**) is a meeting of the members of an incorporated association required to be held within 18 months after the association is registered (section 37(1) of the AI Act). In subsequent years, an association's committee must ensure that an AGM is held within six months after the close of the association's financial year or within such further time as may be allowed by NSW Fair Trading (section 37(2) of the AI Act).

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

A **notice of meeting** is a written notice that a meeting is going to take place at a specified time.

A **notice of motion** is a notice given by a member of the association that proposes some decision or action be discussed and voted on at the meeting.

Giving notice of an annual general meeting

This part of the guide sets out the special requirements for notices of AGMs.

A sample notice and checklist tools are provided at the end of this part of the guide.

Schedule 1 of the AI Act provides that an association's constitution is required to outline the time within which, and the manner in which, notices of an AGM and notices of motion are to be given, published and circulated.

Procedures for an annual general meeting

At an AGM, certain matters must be considered by members and elections of the committee may be held.

A sample agenda, with guidance for the secretary, is provided at the end of this part of the guide.

Schedule 1 of the AI Act provides that an association's constitution is required to outline the procedure at general meetings, including the quorum and whether voting by proxy is



permitted. For further information about what needs to be considered by members at an AGM refer to your association's constitution.

Voting methods

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 at the end of this part of the guide. Schedule 1 of the AI Act provides that an association's constitution is required to outline the kinds of resolution that may be voted on by means of postal or electronic ballot.

What are 'minutes'?

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 association's AGMs, and of any special general meetings, and that these minutes are kept in a safe place.

Section 50 of the AI Act sets out the legal requirements for the minutes of the association. Those requirements are discussed in this part of the guide.

Preparing and keeping minutes

This part of the guide sets out what should be included in meeting 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 the AGM.

Confirming and verifying minutes

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

This part of the guide explains this procedure and includes a tool to help you.

Special general meetings

In addition to AGMs, an incorporated association may hold other general meetings - usually these are called 'special' general meetings (**SGMs**) and they are specially convened to deal with a particular matter that has arisen, or which has been proposed by a member or members. For information, see part 6: Special General Meetings in this guide.

What is an Annual General Meeting?

An AGM is a meeting of the members of an incorporated association required to be held:

- within six months after the close of the association's financial year (section 37(2)(a) of the AI Act), or
- within such further time as may be allowed by NSW Fair Trading or prescribed by the AI Regulation (section 37(2)(b) of the AI Act)

An association's constitution must specify the financial year for the association.

An AGM is a particular type of 'general meeting' of the association (a meeting which all members of the association are entitled to attend, and that is convened in a formal way). The business of an AGM is normally to:

- confirm the minutes of the last AGM and of any special general meeting held since that 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 (this must be done at the AGM and may not be done at any other general meeting), and
- conduct other business of which notice has been given to the members

An AGM must be convened using the procedures set out in the association's constitution.

An association will have its own rules and procedures for giving members notice of an AGM (see for example rule 26 of the Model Constitution).



An AGM must:

- if required, elect new committee members (or board members) and possibly new office-bearers (that is, the president or chairperson, treasurer and secretary – if no secretary is appointed the public officer will hold the position) for the following 12 months, and
- report to members on the year's activities, including financial performance and events

AGMs will also usually:

- decide on any proposed changes to the association's constitution, and
- discuss any significant issues relevant to members

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

What is a notice of meeting?

A 'notice of meeting' is a written notice 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 considered at the meeting) so that those entitled to attend the meeting know what it's about and can decide whether to attend.

The contents of a notice of meeting may vary significantly from association to association, depending on the type of association and how formal the AGM is.

In some cases, there are particular notice requirements under the AI Act before certain resolutions can be passed at a meeting – for example, there may be a requirement as to which members must be sent the notice before the meeting is valid (see below).

What is a notice of motion?

A notice of meeting may include a 'notice of motion'. This is a notice, given by a member of the association, 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 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').



Caution

The secretary of an incorporated association is usually responsible for preparing and giving notice of meetings under the association's constitution (see for example rule 26 and 28 of the Model Constitution).

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 below.

Giving notice of an annual general meeting

What are the legal requirements for giving notice of an AGM?

The constitution of an association is required to specify:

- the interval between annual general meetings (**AGMs**)
- the manner of calling AGMs, and
- the time within which and the manner in which notices of general meetings, and notices of motion, are to be given, published or circulated

The notice convening the AGM should specify that the meeting is an AGM.



If the Model Constitution applies, the secretary must give a notice to each member specifying the place, date and time of the meeting and the nature of the business, including the fact that it is the AGM.

However, the association's constitution may impose different or additional requirements (to the ones in the Model Constitution) 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

You need to consider any requirements imposed by:

- the AI Act
- the AI Regulation
- the Model Constitution, if it applies and if it does not apply, the association's own constitution
- the law developed by the courts (that is, 'judge-made law')
- your association's constitution, and
- any policies your association has about this issue

The checklist for notice of annual general meeting at the end of this part of guide will help you to prepare a notice for an AGM.



Tip

Check your association's constitution for requirements about notices of AGMs.

Make sure you have the most up-to-date version of your constitution, including any changes that the association's members and NSW Fair Trading have approved.

If you are confused about which rules in the constitution apply to you and whether the copy you have is up to date, contact NSW Fair Trading and request a copy of your association's constitution and purposes.

When to give notice of an annual general meeting

The AI Act requires an incorporated association to hold its first AGM within 18 months of being registered (section 37(1) of the AI Act).

After that, your association must hold an AGM within six months after the close of the association's financial year (section 37(2)(a) of the AI Act) or as otherwise specified by your association's constitution in accordance with any such time allowed by the NSW Fair Trading or prescribed by the AI Regulation.

The constitution of an incorporated association should set out the time within which notices of AGMs (and notices of motion) are to be given, published or circulated. If the Model Constitution applies, notice of an annual general meeting must be given:

- at least 14 days before the date fixed for holding the meeting, or
- at least 21 days before the date fixed for holding the meeting, if the nature of any of the business proposed to be dealt with at the meeting requires a special resolution of the association



Example

If your association operates on a calendar financial year (1 January to 31 December), your annual general meeting must be held by **30 June** in the following year.

If your association operates on a business financial year (1 July to 30 June), your annual general meeting must be held by **31 December** in the following year.

Also, associations will usually have a rule (similar to rule 26(1) of the Model Constitution) that the committee decides the specific date, time and place to hold a general meeting, including the AGM.

The association's financial statements for the previous financial year must be submitted to members at the AGM (see sections 44 and 48 of the AI Act, as applicable). For more information about the financial statements, see part 8: Reporting to NSW Fair Trading in this guide.

How to measure time for giving notice

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

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

- the day on which the notice is sent, and
- the day on which the meeting is to be held



Example

Most associations 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.

The Model Constitution contains rules relating to the service of notices, including provisions about the permitted methods of giving notice, and when notice is taken to have been given for each permitted method (see rule 46 of the Model Constitution).

Check your association's constitution for requirements about the service of notices.



Tip

When calculating the number of days' notice that needs to be given, to be safe, you should allow a couple of extra days, especially if the notice is sent by post.

What information should be in a notice of an annual general meeting?

A notice of an AGM should:

- be sufficiently clear and detailed so that members understand what is proposed to be discussed 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 association



To meet these requirements, it is best that an association's constitution specifies what details must be included in a notice of AGM. As a minimum, the notice should include the date, time and place of the AGM and a list (agenda) of the matters to be considered at the meeting.

An association's constitution may also specify the 'ordinary business' which must be dealt with at an AGM. If your association's constitution specifies items of ordinary business for an AGM, these should be included on the notice of meeting, as well as any other (or 'special') business to be dealt with at the meeting.



Tip

Agendas for AGMs often 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 AGM should not pass resolutions on important matters which have not been previously notified to members. If additional matters of business are raised at the meeting, it's best for the association to convene a *special general* meeting (with at least 21 days' notice to members) to consider the issues properly, and vote on any resolutions. For information on special general meetings, see part 6: Special General Meetings in this guide.

Your association may also have additional policies about the content of notices of AGMs. For example, it may be your association's policy to specify who authorised the notice, usually the secretary or the president or chairman.

The notice is usually sent to members together with any relevant 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 committee, staff or volunteers, and
- financial statements and the auditor's report

See the Checklist for notice of annual general meeting and Sample notice for annual general meeting at the end of this part of the guide.

How to give notice of an annual general meeting

The constitution of an incorporated association must set out the manner in which notices of AGMs (and notices of motion) are to be given, published or circulated (item 9 of Schedule 1 of the AI Act). This might include that a notice of an AGM 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 association's constitution. The way in which a notice must be given varies depending on the type of association and the formality of meetings.

Some associations' constitutions require a notice to be posted to each member; others may require notice by an advertisement in a local newspaper; and 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 AGM that requires a special resolution to pass. (See below).

Your association may also have supplemented its constitution with policies about how to give notice of an AGM. Refer to your constitution for further information.



Tip

When giving a notice of an AGM, 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 an AGM.

With large associations this may be expensive. Therefore, some associations' constitutions may allow for electronic methods of providing notice to members (for example, the constitution may allow for notices to be sent by email).

Who should be given notice of an annual general meeting?

Unless your constitution provides otherwise, the Model Constitution requires the secretary to give notice of an AGM to all members listed on the association's register of members (the secretary usually has responsibility for maintaining the members register).

Some associations elect not to use the Model Constitution and instead specify in their constitution that only paid-up (financial) members or some other special membership class are required to receive notice of any general meeting, including an SGM. Your association may also have 'life members', who may or may not need to be notified.

Check your association's constitution and policies about who should be given notice of a general meeting, including an SGM.

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

Sometimes, an AGM may be adjourned to a later date – for example, if there are not enough members at the meeting to make decisions for the association (see below).

In such cases, you will need to consider whether a new notice of meeting (or notice of motion) is required. Check your association's constitution for any specific provisions about this. The Model Constitution provides, for example, that when a general meeting is adjourned to a date that is 14 days or more from the date of the original meeting, the secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting (see rule 31 of the Model Constitution).

Sometimes, even though the AGM goes ahead, a motion (of which notice has been given) may need to be adjourned - for example, if you run out of time at the AGM to address all motions proposed, or if the meeting has to be adjourned as there is no quorum. If the motion concerns an item that must be addressed at the AGM, then the AGM should be adjourned and remaining essential motions addressed at the adjourned AGM. If a motion relates to ordinary business, the AGM can be concluded, and a future special general meeting can be held to address the remaining motions.



Note – arrangements during the COVID-19 pandemic

Check NSW Fair Trading's website for regulatory concessions that may apply due to the COVID-19 pandemic.

Notice of AGM 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 an AGM. One of these situations is when a motion requiring a 'special resolution' is proposed.



Special resolutions are required under the AI Act for an association to make certain decisions (such as changing the association's name, its constitution or its objects (purposes), applying for registration by an unincorporated group, transferring the association's registration to combine it with another registered association, or voluntarily winding up or cancelling the registered association and dealing with the subsequent distribution of the association's assets).



Note – 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 AI Act.

It's important to give members more time and information about the matter so that they can consider it carefully before the meeting.

See 'Procedures for an annual general meeting' below for information about passing a special resolution at an AGM (and then seeking approval from NSW Fair Trading, where applicable).

You need to check whether your constitution permits these types of 'special' business to be dealt with at an AGM. Depending on these rules, you may need to hold a special general meeting to deal with special motions.

When to give notice of a proposed special resolution

A notice of a meeting that will include a motion requiring a special resolution for the resolution to pass must be given to all members who are entitled to vote at least 21 days before the date the meeting is proposed to be held (section 39(1)(a)) of the AI Act). Otherwise, the resolution can't be passed as a special resolution at the meeting.

What information should be included in the notice?

To pass a special resolution at any general meeting, including at an AGM, the AI Act (section 39(2)) requires the notice of the meeting to:

- set out the terms of the proposed special resolution, and
- include a statement to the effect that the resolution is intended to be passed as a special resolution

Check your association's constitution carefully for any additional requirements regarding notices of proposed special resolutions.



Note

If a special resolution is proposed for an AGM, your association must comply with the notice requirements in section 39 of the AI Act. Otherwise, the resolution can't be passed as a special resolution at the AGM.

See also part 6: Special General Meetings and part 7: Committee Meetings of this guide.

Is it a special resolution to **amalgamate** the association with another association?

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

- include the terms of the proposed amalgamation, and
- attach a copy of the proposed constitution of the amalgamated association

An amalgamation must be passed by members of each of the associations that propose to amalgamate (in other words, the members of **both** association 1 and association 2 must separately vote to amalgamate).



An application to amalgamate can only be approved by NSW Fair Trading (section 6 of the AI Act) if the application includes the relevant details about the amalgamated association (proposed name, first public officer's details) and is accompanied by evidence of the passing of the special resolutions approving the proposed terms of the amalgamation as well as the constitution of the amalgamated association.

Who should notice be given to?

A notice of general meeting proposing a special resolution should be given to all members of the association who are entitled under the association's constitution to vote on the resolution.

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

What if a notice of an AGM might be invalid (defective)?

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

If a member of your association alleges that a notice of an AGM 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.

Is it possible to waive any defects in a notice?

If you have realised that your notice of AGM was defective, there are steps you can take to fix the defect. If all the members entitled to attend the AGM (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 an association that has a large number of eligible voters (not all of whom attend the AGM) or where the AGM is more formal.

A defective notice of an AGM that includes a proposed special resolution is unlikely to be cured by a waiver. If 21 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 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 AGM (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 AGM.

Of course, until that subsequent meeting validates the decisions of the previous (invalid) AGM, 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.



Tip

If there is ever any concern about the validity of any notice, you should either re-issue the notice with a new meeting date or seek legal advice.

Procedures for an annual general meeting

Procedures for general meetings, including AGMs, of incorporated associations in New South Wales can vary considerably, depending on the type of association, who is attending and what is being discussed. Generally, the larger the group, the more formal the meeting procedures (so that order is maintained, and the meeting can deal with its business efficiently).



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

You need to take into account any requirements imposed by the AI Act, the AI Regulation and your association's constitution when establishing meeting procedures.

Each association also develops its own customs, practices and 'culture' over time. These may not be formally reflected in the constitution of the association, but they can't be inconsistent with the constitution. So, it's important to ask about your association's policies and procedures (written and unwritten), as well as the constitution, to find out how your association usually conducts meetings, and the AGM in particular.



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 association may table certain reports and take them as read (that is, the AGM does not deal in detail with the report, but members may ask questions).



Note – arrangements during the COVID-19 pandemic

Check NSW Fair Trading's website for regulatory concessions that may apply due to the COVID-19 pandemic.

What is the role of the secretary?

For general meetings, including AGMs, 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)

The constitution and annual general meetings

Check your association's constitution and follow the requirements about your AGM, 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 are discussed in more detail below.

Agenda for the annual general meeting

The agenda for the AGM is different to the agenda for other general meetings because the business dealt with at the AGM is different to the business of other types of meetings.

Your association's constitution may specify the ordinary business to be conducted at the AGM. For example, rule 26 of the Model Constitution provides that in addition to any other business, the business of the AGM is to include:



- confirming the minutes of the previous AGM, and of any special general meeting held since that meeting
- receiving reports from the committee on the activities of the association during the last financial year
- electing office-bearers of the association and the ordinary committee members, and
- receiving and considering any annual financial statement or report required to be submitted to members of the association under the AI Act

Check your own association's constitution to find out whether any other business can be conducted at an AGM, and the type of notice required.

A sample agenda for an annual general meeting (with explanatory notes for the secretary (or public officer acting as a secretary) is provided at the end of this part of the guide. **Note** – the sample agenda is a guide only. You must adapt the document to suit your association's own constitution and requirements.

How many people need to be at an annual general meeting?

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

Your association's constitution must specify the quorum for AGMs and other general meetings (item 10 of Schedule 1 of the AI Act). Rule 29 of the Model Constitution provides that the quorum is five members present and entitled to vote, however, in larger associations, it is more common for the constitution to stipulate a minimum percentage of the total membership and not an actual number of members.

So long as an association's constitution so provides, a general meeting may be held at two or more venues using any technology that gives each member a reasonable opportunity to participate. (see section 37(3) of the AI Act). If this is the case, members present at any such location would count towards a quorum.

Check your own association's constitution for the quorum number, and as to whether members may vote by proxy.

What happens if there is no quorum?

If there is no quorum at an AGM, your association's constitution should set out what will happen. For example, rule 29 of the Model Constitution provides that:

- no item of business is to be transacted at a general meeting unless a quorum of members entitled to vote is present during the time the meeting is considering that item
- if within half an hour after the appointed time for the commencement of the general meeting a quorum is not present, then either:
 - if the meeting has been convened at the requisition of members — the chairperson must cancel the meeting, and
 - in any other case — the chairperson must adjourn (reschedule) the meeting to the same day in the following week at the same time and at the same place, (unless the chairperson specifies a different venue when adjourning the meeting, or unless written notice of a change of venue is given to members prior to the new date for the meeting).
 - Rule 29 of the Model Constitution also provides that if, at the adjourned meeting, a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least three) are to constitute a quorum. In that situation, the rescheduled AGM will be able to deal with the items of business, so long as that amended minimum number of members (three members under rule 27 of the Model Constitution) are present.

You must check your association's own constitution for information relating to what happens if there is no quorum for a general meeting.

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 'What is a notice of motion?' above).

The technical procedure for a motion is that:

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

Sometimes, members may wish to change the wording of the motion, and if so then:

- a member moves an amendment to the motion, and then
- another member seconds the 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 City Council'. Another member seconds the motion.

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

A motion typically relates to a procedural aspect of the meeting: for example, someone may move a motion that the minutes of the last meeting be confirmed or that a ballot be conducted in order to decide a question.

You should refer to your association's constitution for any additional requirements (but see, for example, rule 32(1)(b) of the Model Constitution).

What is a resolution?

A resolution is a decision of the meeting to approve or 'pass' a resolution and is 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.

How is an ordinary resolution passed?

Section 38 of the AI Act provides that an ordinary resolution will be passed by an association at a general meeting (or in a postal or electronic ballot conducted by the association) if it is supported by more than 50% of the votes cast by the members of the association who, under the association's constitution, are entitled to vote on the proposed resolution. For example, if there were 20 members voting on a resolution, you would need 11 (or more) members voting in favour to pass the resolution.

Check your association's constitution for any particular requirements for passing resolutions (either ordinary or otherwise), in particular, as to whether voting by proxy is permitted and the type of resolution that may be voted on by means of a postal or electronic ballot.

How is a special resolution passed?

A special resolution must be passed in accordance with the requirements in section 39 of the AI Act. As discussed above, special resolutions are required under the AI Act for certain important decisions, including:

- registering the association
- changing the association's name
- changing the association's constitution or objects (purposes)
- transferring the association's registration, or
- winding up an association and distributing its assets

Your association's constitution may specify other situations, or types of decisions, which require a special resolution.

To pass a special resolution at an AGM, the AI Act requires that:

- notice of the proposed special resolution must be given in the proper way (see 'Notice of AGM where motion requiring special resolution will be put to members - extra requirements' above), and
- at least three quarters (that is, 75% or more) of the votes cast by members of the association who are entitled to vote on the proposed resolution, are cast 'in favour of' (for) the special resolution (section 39).

Your association's constitution 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 contradict the requirements of the AI Act.

If it would be too difficult (impracticable) for your association to pass a special resolution in the way required by section 39, you can ask NSW Fair Trading for approval to pass a special resolution in another way (section 39(4)).



Note

Some decisions passed by special resolution (for example, changing the association's rules) are not valid under the AI Act until they have been approved by NSW Fair Trading.

Depending on the type of decision, you may need to notify NSW Fair Trading that the special resolution was passed at the meeting and seek approval of the change.

Voting at annual general meetings

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

Check your association's constitution for any requirements about voting procedures. For example, rule 34 of the Model Constitution provides that:

- each member has one vote only, and
- if there is a tied vote (that is, an equal number of votes 'for' and 'against'), the chairperson of the meeting is entitled to exercise a second vote (sometimes called the 'casting vote')

Note that the Model Constitution also provides that a member can't vote unless they have paid all amounts that are due to be paid by that member to the association. Underage members, (those under the age of 18) are also not generally permitted to vote (see rule 34 of the Model Constitution).

For information about voting methods see 'voting methods' below.

Adjourning annual general meetings

Check your association's constitution for any special requirements about adjourning (rescheduling) AGMs.

The constitution of an incorporated association will usually require the chairperson to adjourn an AGM if there is no quorum present after a specified time. Rule 31 of the Model Constitution also provides that:

- if a majority of the members present at the meeting in which a quorum has been reached 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 associations' constitutions allow for an AGM to be adjourned in other circumstances as well. You need to check what your constitution says.

Voting methods

There are various ways in which votes can be taken at an AGM. The most common methods are voting by show of hands or by ballot (that is, a vote in writing). These and other methods (such as voting by voices) are discussed in more detail in a table of voting methods at the end of this part of the guide.

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



Tip

The usual procedure for voting at an AGM is that the chairperson will:

- clearly state the motion or resolution 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

How to vote on a special resolution

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

Ballots

A 'ballot' is a method of voting in writing (rather than by a show of hands) on a motion and any amendments (including the election of an official) at a meeting. It's usually the role of the chairperson to determine whether a ballot is required, to direct the conduct of the ballot and to supervise the counting of the written votes. The way in which individual members voted in the ballot is not usually disclosed. In many associations the constitution may allow a member to request a ballot.

Commonly, a ballot may be requested by:

- a member who questions the result of a particular vote count (for example, if the AGM is large and there is a close vote on a show of hands), or
- (where voting by proxy is permitted under the constitution), 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 ballot must be conducted if a certain number of members request it (see for example clause 32(1)(b) of the Model Constitution provides that a ballot shall be held if five members present at a meeting may request a ballot).

A ballot is usually confidential, in which case it is referred to as a 'secret ballot'. In a secret ballot, the name of the voter is not disclosed, compared to a normal ballot 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 do not have any outstanding debts owing to the association).

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

Regulation 13 and Schedule 3 of the AI Regulation set out the requirements for conducting a postal or electronic ballot.



For more information about how to conduct a ballot the table of voting methods at the end of this part of the guide.

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, some associations' constitutions provide that the chairperson has a second (or 'casting') vote to decide the matter. In this case, the chairperson will exercise this vote to maintain the existing situation (so that a controversial resolution will not be passed). Refer to your association's constitution for further information.

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

If a member of an association is unable to attend an AGM to cast their vote in person, that member may, depending on the constitution of their association, be able to vote by 'proxy'. See 'proxy voting' below.

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

Alternatively, a postal or electronic ballot can be conducted if an association's constitution permits a ballot to be conducted by post or electronic means. A postal or electronic ballot can only be conducted in relation to resolutions of a kind that the association's constitution permits to be voted on by means of a postal or electronic ballot and, if conducted, must be conducted in accordance with the AI Regulation (see regulation 13 and Schedule 3 of the AI Regulation).

Proxy voting

What is proxy voting?

If a member of an association is unable to attend an AGM 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.

Check your constitution to determine whether proxy voting is permitted. Although the Model Constitution expressly prohibits proxy voting at a general meeting, (rule 35 of the Model Constitution), it's quite common for proxy voting to be permitted. Care needs to be taken in managing the process of proxy voting to ensure proxies are properly completed and counted.

Schedule 1 of the AI Act provides that an association's constitution is to address whether proxy voting is permitted at general meetings.



Note

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

- the 'donor' is the member of the association 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, 'proxy voting' and 'powers of attorney'). The power or right to appoint a proxy can be given only by the association's constitution, so you should check if your constitution allows for proxy voting.

The AI Act requires the constitution of an incorporated association to specify whether or not members are allowed to vote by proxy (item 10 of Schedule 1 of the AI Act). Check your association's constitution carefully for any provisions about proxy voting.

The constitutions of some associations may specify a deadline for receiving proxy forms before the AGM. Having a deadline in your constitution ensures that the secretary does not have to receive and process multiple proxy forms at the meeting, which can slow the progress of the meeting.

The constitutions of some associations may also allow for one or more of the following:

- 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 association'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), and
- the chairperson to hold the general proxies of multiple members (and therefore enable the chairperson to exercise the proxy in any manner they see fit)



Tip

See the flowchart for reviewing proxies at the end of this part of the guide.

Check the flowchart against your association's constitution 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 an AGM and they have appointed a proxy for that meeting, 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 at the meeting (so long as the donor doesn't vote on those matters).

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

If the chairperson has been appointed a proxy holder by multiple members, the chairperson may be under no obligation to exercise those proxies unless specifically asked by the individual donors. It will depend on the wording of the document that appoints the Chairperson as the proxy.

It is 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 association a written notice of revocation (which becomes effective as soon as it is received and which, strictly, must be received by the association before the AGM at which the proxy was to be used)
- granting a subsequent and superseding (overriding) proxy to the same or another person, or
- resigning from or otherwise ceasing to be a member of the association

If a donor dies, the proxy automatically ends.

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

If the donor has appointed a proxy for a specific AGM (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 and be properly signed and dated. This is another way to enable a person to vote on behalf of a member who is not attending an AGM or does not wish to vote in person.



Note

When talking about powers of attorney, it's important to know that:

- 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 an AGM.

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 association, it is 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 or a certified 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). So, in this situation, the attorney would have the authority to appoint a proxy, or to be a proxy holder, if proxies are permitted under an association's constitution.

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 AGM or give their right to vote to someone else (ie. a proxy or attorney).

With direct voting, if it is permitted under the association's constitution, members exercise their vote by submitting a binding voting form to the association before the AGM, in the approved manner provided for in the constitution.

Implementing direct voting

Direct voting is not available to members unless your association's constitution provides for it.

If your association's constitution doesn't allow for direct voting, and you would like to adopt a direct voting system, the association will need to change the constitution to allow for direct voting. You will need to consider how you want the procedure to work. For example, do you want your constitution 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?

Why may direct voting be considered beneficial?

Direct voting may make it easier for members to vote (and have their vote counted) when they can't attend an AGM. In contrast to proxy voting (where a person gives another person their power to vote at an AGM – but does not necessarily *oblige* that person to attend the meeting and vote on their behalf), with direct voting a member can lodge their vote in writing before the AGM. Direct voting can therefore foster greater member participation in decision-making, may speed up the voting process at the AGM and may also avoid the situation where a proxy holder falls ill on the day of an AGM and cannot 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 cannot attend an AGM.

We have provided sample wording for allowing direct voting in your constitution at the end of this part of the guide.



Note

Check the voting provisions in your association's constitution. If your association's constitution *does not* allow direct voting (as in the Model Constitution), your association's constitution will need to be amended and approval will need to be obtained from NSW Fair Trading, to adopt direct voting procedures.

The Governance Institute of Australia (**GIA**) has released a guide to implementing direct voting. Although the guide is designed for companies (and refers to shareholders rather than members), it contains some useful information about direct voting.

For sample wording of a new rule to allow direct voting, see the table of voting methods at the end of this part of the guide.



Note

To change your constitution, a special resolution must be passed in accordance with the requirements of section 39 of the AI Act.

See above for more information on the specific requirements for passing a special

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 AGM) of the association
- minutes are confirmed by the association as an accurate record of the meeting, and
- the minutes of all meetings are kept safely by the association for future reference



The legal requirements for preparing and keeping minutes of AGMs arise under section 50 of the AI Act, regulation 14 of the AI Regulation and the association's constitution. Your association 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.

AI Act and Regulation requirements

Section 50 of the AI Act requires the association to keep minutes of all committee meetings and general meetings. Regulation 14 of the AI Regulation requires that minutes and records are kept for no less than five years and provides for records and minutes to be kept in written or electronic format. If records and minutes are kept in electronic format, they must be convertible into hard copy so that they can be made available within a reasonable time to a person who is entitled to inspect them.

Your association's constitution may also make provision for the keeping and inspection of minutes. Refer to your association's constitution for further information, however, remember that failure to keep minutes can incur a penalty under the AI Act.

In addition, an inspector from NSW Fair Trading may, by issuing a notice in writing, require the association, or any person who is involved in the association's activities (which includes the public officer) to give the inspector specified relevant documents or information of the association or to grant the inspector access to premises of the association (section 85 and 86 of the AI Act). NSW Fair Trading may also apply for a search warrant (section 87 of the AI Act). NSW Fair Trading may choose to use these powers to make sure that the association has complied with the AI Act and Regulations. It is therefore extremely important that the secretary makes sure that accurate minutes are taken of the association's meetings, and that they are recorded and kept in a safe place.

Your association's constitution

Many associations have a rule in their constitution which requires the secretary to keep minutes of resolutions and proceedings of each AGM and of other general and committee meetings (see for example rule 16 of the Model Constitution).

Good practice is that the secretary records, in the minutes of the AGM:

- the names of members attending the meeting
- details of any proxy forms to be used at the meeting and given to the Chairperson
- the financial statements submitted to members
- the certificate signed by two members certifying the financial statements are true and fair view of the financial position of the associations, and
- any audited accounts and auditor's report required under the AI Act

Refer to your association's constitution for further details.

Your association's policies

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

Preparing and keeping minutes

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

Content of the minutes

For detailed information about the usual matters to include in the minutes of meetings, see the checklist for content of minutes at the end of this part of the guide.

Importantly, the minutes should record the motions moved and resolutions made at the AGM. For information about 'motions' and 'resolutions' see 'motions and resolutions'.



Drafting the content - generally

The format and style of minutes vary considerably among associations. Some minutes are very brief and precise and record the bare minimum of information. Other minutes include 'blow by blow' summaries of the debate. In exceptional circumstances, the minutes will include a transcript of everything that was said at an AGM. Check your own association's constitution, policies and practices. It's good practice to ensure that a consistent approach is adopted at all meetings.

Despite variety in the form of minutes, there are some commonly accepted drafting conventions – see 'conventions for drafting minutes' at the end of this part of the guide. Minutes don't need to include everything that was said but must include adequate details of all formal business (such as motions and voting).



Tip

The minutes are an official historical record of the association, 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 AGM), 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.

The wording of the motion must comply with your association's constitution, including its purposes — it can't recommend any action outside the scope of your association's powers and activities.



Tip

If a motion is proposed verbally at a meeting, the secretary (or public officer if acting as a 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 motion must also be allowed to be made by the AGM, especially if the meeting has been called for a specific purpose.

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'), 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 'conventions for drafting minutes' at the end of this part of the guide.

**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 AGM.

Drafting minutes of difficult meetings

Sometimes meetings can 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 (so the remarks are not recorded). In other cases, it is sufficient to record that 'a robust discussion ensued' rather than a blow-by-blow account in the minutes. See 'conventions for drafting minutes' at the end of this part of the guide.

**Tip**

For difficult meetings, the secretary could consider:

- asking the chairperson for specific help to draft the minutes (in any case, it is 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 is considered necessary to include more detail, it can be agreed on then

Defamation

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

If an association has published defamatory statements in the minutes of an AGM, the defence of 'qualified privilege' may be available, however the association should seek specific legal advice.

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

**Related Not-for-profit Law resources**

For more information, read our fact sheet on defamation.

**Note**

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

Storing minutes**Tip**

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

Minute books

Finalised minutes are often entered into a 'minute book'. Until recently a minute book was a securely bound book with sequentially numbered pages. The minutes were handwritten into the book to guard against fraud or tampering. While some small associations still use handwritten minute books, many associations 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**

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

- lock the minutes document from editing and 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
- number each meeting sequentially (for example, 'The Minutes of 2012 Annual General Meeting of XYZ Club Inc')

**Note**

Some types of proposed resolutions require written notice to be given before the meeting – see 'giving notice of an annual general meeting' in this guide.



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 AGM (or the chairperson of the next meeting) has 'verified' the accuracy of the confirmed minutes, for example by signing them

See the flowchart for confirming and verifying minutes at the end of this part of the guide. Check the constitution of your own association for any special provisions about confirming and verifying minutes.

Further information



Not-for-profit Law resources

- See Holding meetings for information about holding meetings and an annual general meeting
- See Rules or constitution for information about changing your association's constitution, and
- See Changing or ending your organisation for information about changing legal structure and winding up



Related resources

Legislation

- The *Associations Incorporation Act 2009* (NSW) is the legislation that regulates incorporated associations in New South Wales
- The *Associations Incorporation Regulation 2016* (NSW) contain additional requirements for incorporated associations in New South Wales, including the Model Constitution

Government

- The NSW Fair Trading website contains a variety of online resources, including online access for incorporated associations

Other links

- See Part 1: The Association in a Nutshell in this guide for links to other associations and online resources to assist you and your association.



Tools

Checklist for notice of annual general meeting

Order	Description	Done
1.	Check your association's constitution, resolutions and policies for specific requirements, such as how much notice to give, what information should be included, and who it should be given to.	<input type="checkbox"/>
2.	Content of notice:	
	as its heading, the word 'notice of annual general meeting'	<input type="checkbox"/>
	name and registration number of the association	<input type="checkbox"/>
	date, time and place of meeting	<input type="checkbox"/>
	nature of business to be discussed at meeting, including:	<input type="checkbox"/>
	confirming minutes of the previous annual general meeting and any other general meetings held since then	<input type="checkbox"/>
	receiving the financial statements and other reports on activities of the association in the last financial year	<input type="checkbox"/>
	electing the members of the committee	<input type="checkbox"/>
	if applicable, receiving the auditor's report on the financial affairs of the association for the last financial year	<input type="checkbox"/>
	if applicable, presenting the audited financial report to the meeting for adoption	<input type="checkbox"/>
	if applicable, appointing an auditor	<input type="checkbox"/>
	date of notice	<input type="checkbox"/>
	directions to the meeting venue and disability access (optional)	<input type="checkbox"/>
	secretary's contact details (optional)	<input type="checkbox"/>
	notice 'authorised by xx' (optional)	<input type="checkbox"/>
3.	If relevant, the notice of annual general meeting may also include:	
	the wording of motions or resolutions to be considered at meeting (if a special resolution is proposed, include the <i>exact</i> wording of the special resolution)	<input type="checkbox"/>
	disclosure of interest of any committee member in the business to be dealt with at meeting (for example, a conflict of interest – see part 3: Public Officer's legal role, powers and duties in this guide)	<input type="checkbox"/>
	if the constitution allows proxy voting, an explanation of how / when to appoint a proxy, and attach a proxy form	<input type="checkbox"/>



if the constitution allows direct voting, an explanation of how / when to vote directly before the meeting, and attach a direct voting form

4. The notice should also attach background information and documents, such as:

minutes of the last annual general meeting (and any other general meetings held since then, if required)

reports from staff, committees or volunteers

financial reports (for example, the financial statement)

where appropriate, relevant background correspondence

5. Time for giving notice

annual general meeting must be held within six months after the end of your association's financial year

check your association's constitution, resolutions and policies for specific requirements (for example, 14 days before the meeting date).

if a special resolution is proposed, you must give 21 days' notice before the meeting date (section 39(1)(a) of the AI Act)

6. How to give notice

usually by post, but can be in person or by email or fax – check your association's constitution, resolutions and policies for specific requirements (for example some constitutions may require notice to be included in a local paper)

7. Who to give notice to

all members of the association (check the members register)

Sample notice for annual general meeting



Note

This notice of annual general meeting is for associations that have their financial accounts audited by an independent auditor.

Not all incorporated associations are required to have their accounts audited – for more information see part 8: Reporting to NSW Fair Trading in this guide.

XYZ Club Inc (Registration No A00003333)

Notice of Annual General Meeting

Notice is given that the Annual General Meeting of the XYZ Club Inc will be held on *[date]*, at *[time]* at *[address]*.

The ordinary business of the meeting will be:

1. To confirm the minutes of the previous annual general meeting and of any special general meeting held since that meeting;
2. To receive from the Committee reports upon the activities (including significant transactions) of the Association during the last preceding financial year;
3. To elect officers of the Association and the ordinary members of the committee; and
4. To receive and consider the financial statements submitted by the Association to members in accordance with section 43(1) or section 47(1) (as applicable) of the *Associations Incorporation Act 2009* (NSW).

The special business of the meeting will be:

5. To receive and consider the Auditor's Report and Audited Accounts on the financial affairs of the association for the last financial year.
6. To consider any other business.

I.N. Order, Secretary, *[date of notice]*

by authority of the Committee

Proxies (if applicable)

A member entitled to attend and vote at the annual general meeting may appoint a person to attend and vote at the meeting as the member's proxy. A proxy must be a member of XYZ Club Inc.

A proxy may be appointed by returning the completed proxy form (attached) to the secretary at the club's registered office at *[address]*, at least 24 hours before the commencement of the meeting.

Inquiries

All inquiries should be directed to the Secretary, Ms I.N. Order, XYZ Club Inc, 123 Frank Street, Sydney, telephone (02) 3333 0000, fax (02) 3300 3300, email in.order@xyz.org.au

Attached

- Minutes of Previous Annual General Meeting held on *[date]*
- Chairperson's Report



- Treasurer's Report
- Auditor's Report and Accounts
- Audited Financial Statements
- List of Nominees for Positions on the Committee
- Proxy Form

Sample agenda for annual general meeting (with explanatory notes for the secretary)



Note

The agenda and notes here relate to formal requirements and procedures for an annual general meeting. However, for some associations, the annual general meeting is also a time to celebrate the association's achievements, and may include, for example:

- a guest speaker
- awards for volunteers or staff, or
- an audio-visual presentation of the association's activities

Annual General Meeting to be held in the XYZ clubhouse, at 123 Frank Street, Sydney, 1 November 2012 at 7.00pm

Agenda summary

- Chairperson's welcome
- Apologies & attendance
- Minutes of previous meeting
- Report from committee on transactions in previous year
- Election of committee members
- Annual Financial Statement (submitted to members under either section 43 or 47 (as applicable) of the *Associations Incorporation Act 2009* (NSW))
- Special business
- General business
- Close

1. Business

The secretary (or public officer acting as a secretary) is responsible for either taking, or ensuring that another person (for example, an employee of the association) takes, accurate minutes of what is discussed and decided on at the meeting.

2. Chairperson's welcome

The chairperson, who normally acts as chair of the meeting, calls the meeting to order and welcomes any new members and guests.

3. Apologies & attendance

The chairperson asks the secretary whether any apologies (that is, the name of any person who is unable to attend and has asked that this be noted) have been received, then asks if any member has an apology to record. These apologies are recorded in the minutes. The secretary also records the names of the people present or circulates a book for them to record their own names (ask them to print their name clearly).

4. Minutes of the previous meeting

The secretary should have already prepared the minutes of the previous meeting. If the minutes have been distributed with the notice of meeting, the chairperson may ask the meeting if there is any objection to taking the minutes as read. Otherwise, the secretary may read the minutes to the meeting.

The meeting should confirm that the minutes are an accurate record of the previous meeting. It is usual for a member who was at the previous meeting to propose this motion and for another to 'second' the motion. The motion is simply, '*I move that the minutes be confirmed as a true and accurate record of the last meeting*'. All present may vote on the resolution, whether or not they were present at the last meeting.



However, if the minutes are not correct in some aspect, a member may propose a motion to correct them. The members may vote on whether the minutes should be changed. This procedure is to agree on what was said at the previous meeting, not to re-open the debate or reverse previous decisions. The chairperson may sign a copy of the minutes (with any changes marked) and these are kept in the association's records.

5. Report from the committee on activities in the previous year

The committee (or office bearers, such as the chairperson or the treasurer) present reports on the association's activities in the previous financial year. For example, the chairperson may report on matters that the committee has dealt with in the previous year, as well as the association's significant achievements or milestones.

The treasurer's report usually includes details of receipts and expenditure for the previous financial year. This report may also show a comparison against a budget to date and other comments. If the financial affairs of the association are substantial, the treasurer should arrange for the report to be printed and distributed at the meeting (or, preferably, the report will already have been distributed with the notice of annual general meeting). The treasurer moves the adoption of the report. Then the members can discuss the report.

In large associations where complex activities are taking place, the detailed study of the budget and other financial matters has usually been delegated (by the committee) to a finance sub-committee. The treasurer will have presented a summary report to that sub-committee, and the report from that sub-committee is presented to the annual general meeting. The treasurer and members of the sub-committee should be prepared to answer questions at the meeting.

6. Election of committee members

If nominations for positions on the committee have been received by the secretary before the meeting, the chairperson (or secretary) reads the nominations aloud. If there are fewer nominations than there are positions available on the committee, the chairperson may call for any additional nominations at the meeting.

If there is only one candidate for a position, the chairperson will state that the candidate has been elected (without a vote being taken). However, if there are more nominations than there are positions available on the committee, or if there is any opposition to a nomination (or if the association's constitution requires), a ballot is taken (usually, a secret ballot). For further information about ballots and other voting methods, see the table of voting methods below).

7. Annual Financial Statements (submitted to members under either section 43 or 47 of the *Associations Incorporation Act 2009 (NSW)*)

The committee will have already prepared the financial statements of the association containing the details required under either section 43 or 47 of the *Associations Incorporation Act 2009 (NSW)* (**AI Act**) with the treasurer (or others with financial reporting skills). The section of the AI Act applicable to the association will depend on whether it is a 'tier one' or 'tier two' association, based on their total annual revenue or total current assets. For more information about which tier your association falls into, see part 8: Reporting to NSW Fair Trading in this guide.

If the association is a 'tier one' association, its committee must submit the financial statements for that financial year to members at the first AGM. The financial statements must be a true and fair view of the association's affairs (see section 43 and 44 of the AI Act and associated Australian Accounting Standards). The committee must also submit an auditor's report for those statements.

If the association is a 'tier two' association, its committee must submit the financial statements for that financial year to members at the first AGM (see section 47 and 48 of the AI Act). The financial statements must be a true and fair view of the financial position and performance of the association. However, the committee is not required to submit an auditor's report in relation to those statements.

If the financial statements have been distributed with the notice of meeting, the chairperson may ask the meeting if there is any objection to taking the financial statements as read. Otherwise, the secretary may distribute copies of the statements to the meeting, allow time for reading, and then the treasurer will usually summarise the key points.



It is good practice for the meeting to pass a resolution approving the financial statements as an accurate record of the association's financial position in its last financial year (and authorising the public officer to lodge the association's annual statement with NSW Fair Trading after the meeting). It is common for a member of the committee to propose this motion and for another to second the motion. The motion can be: 'I move that the financial statements be confirmed as a true and fair record of the financial position of the incorporated association during and at the end of its last financial year, and that the public officer submit the annual statement to NSW Fair Trading within one month of the date of this meeting.' Then a vote may be taken. However, if a member has any concerns about the financial statements or considers that its details are not correct in some aspect, a member may propose a motion to correct them. The members may vote on whether the financial statements should be changed.

The chairperson (or other committee member) must sign a copy of the financial statements considered by members at the meeting (with any changes marked).

8. Special business

Special business consists of matters placed on the agenda by the committee. Special business may also be a proposed special resolution or some other important matter to be discussed. Note: there may be particular procedures for giving members notice of special business under your association's constitution, and there are special notice requirements under the AI Act for some matters (such as proposed special resolutions (see for example rule 28 (2) of the Model Constitution.)).

9. General business

At this stage of the meeting, any member may raise a question or an issue which has not yet been dealt with. These are usually minor matters, such as setting the date of the next meeting (which may be a regular yearly date, such as the first Monday in May, or another agreed date) or votes of congratulations, appreciation or farewells.

However, if a new resolution is proposed by a member, it should not be considered at that meeting because proper notice has not been given to all members. If additional matters of important business are raised at the meeting, it is best for the association to convene a further meeting (with sufficient notice to members) to consider the issues properly and vote on any resolutions. This is to avoid a situation where a member who didn't attend the meeting complains that they would have attended (and voted on the resolution) if they were aware, it would be proposed.

Members who wish to raise complex issues should advise the chairperson of their intentions before the meeting and provide a written copy of the motion they intend to move.

10. Close

It is usual for the chairperson to close the meeting and thank members for attending. The chairperson may invite everyone to stay for refreshments after the close of the meeting.



Table of voting methods

This table sets out a number of methods for voting. However, the most common methods are:

- voting by show of hands
- voting by voice, and
- voting by ballot (in person, postal or electronic)

Method	How to conduct vote	How to count vote	Comments
Voting by show of hands	Chairperson requests those voting in favour of the motion to raise a hand. The procedure is repeated for those voting against the motion.	<p>Chairperson requests those voting in favour of the motion to raise a hand. The procedure is repeated for those voting against the motion.</p> <p>If the outcome of the vote is clear, it's unnecessary to count the hands. However, it's good practice to count the hands if the result of the vote will be close, or the result is likely to be challenged. It may also be necessary to count the hands if:</p> <ul style="list-style-type: none"> • the association's constitution requires a specific percentage majority for a motion to be carried, or • an issue must be determined by a certain minimum proportion of the members (for example, a special resolution) 	<p>Voting by show of hands is difficult to administer if there are a large number of people voting at the meeting. In these circumstances, the chairperson may ask for help (usually from the secretary) to count the votes. The chairperson may also appoint 'tellers' (usually one from each voting 'side' or perspective) and use those people (independently of each other) to determine the count on each vote. The tellers will help the chairperson ensure that no person raises two hands or votes for both 'sides' of the motion.</p> <p>If necessary (that is, if a record is required), the chairperson can make a list of the names of people voting.</p>
Voting by standing	A similar method to voting by show of hands. The members stand for the motion that they favour.	Usually, chairperson (perhaps with help of secretary) counts the people standing. Chairperson states whether or not the motion has been passed. Secretary records the result in the minutes.	<p>Voting by standing can make the counting process easier and reduces the possibility of a vote being counted twice.</p> <p>If necessary, the chairperson can make a list of the names of people voting.</p>
Voting by voice (or by applause)	<p>Chairperson says, 'All those in favour of the motion say 'Aye'' (or 'Yes'). After noting the volume of sound, chairperson continues, 'Those against say 'No'.'</p> <p>Voting by applause is similar, except that members clap instead of saying 'Aye' or 'No.'</p> <p>Voting by applause is usually for a vote of thanks.</p>	Chairperson determines which of the 'Ayes' or the 'Nos' (or claps) made the more noise and states the conclusion by saying, 'The 'Ayes' (or the 'Nos') have it'. Secretary records the result in the minutes.	<p>A problem with voting by voice or applause is a lack of documentation of individual votes. A written record of votes is useful if the decision is later disputed or if (as in the case of a special resolution) a three-quarters majority is required.</p> <p>So, if the particular matter to be voted on is contentious or if a special resolution is required, it is</p>



Voting by division	<p>Chairperson places the motion before the meeting, saying 'All those in favour, the 'Ayes', will pass to the right of the chairperson; those against, the 'No's', will pass to the left of the chairperson.'</p>	<p>To record votes, members stand and walk past one side or other of chairperson, depending upon their vote. As each person passes, chairperson (or secretary) records their name.</p>	<p>better to conduct a vote by show of hands, by standing, or better still, by division or a ballot (see below).</p>
Voting by ballot (in person)	<p>Secretary prepares voting paper containing all relevant details of the matter being voted on (for example, if the ballot is to change the constitution of the association, the text of the proposed special resolution). Secretary distributes the papers to all the people at the meeting who are entitled to vote.</p> <p>Secretary keeps a written record of:</p> <ul style="list-style-type: none"> • names of the people to whom they distributed the voting papers, and • how many voting papers were distributed to each person (this is because, for example, a proxy holder may vote on behalf of several people) <p>Chairperson explains to those voting the manner of voting required by the voting paper (for example, the ballot may call for a 'Yes' or 'No' vote).</p> <p>People who are entitled to vote record their votes in writing on the voting paper. They usually also record their name on the paper.</p> <p>Tellers (people who count the votes) collect the papers. Scrutineers (people who examine the papers) generally supervise the process (tellers and scrutineers can be the same people and may be appointed by resolution at the meeting or by the secretary).</p> <p>If any votes are doubtful the scrutineer consults with the</p>	<p>Chairperson checks that all voting papers distributed have now been collected.</p> <p>Tellers and scrutineers count votes and inform chairperson of the result (usually in writing) as soon as it has been determined. Chairperson announces the result to the meeting.</p> <p>If a large number of people are voting (and therefore the counting could take some time), chairperson can usually adjourn the business to after voting papers have been collected and checked.</p>	<p>Voting by division takes longer than the methods discussed above. However, it has the advantage of being accurate and straightforward to administer, as well as involving a more objective written record.</p> <p>Voting by ballot takes longer to administer than other methods, but the precautions that form part of the procedure are necessary to ensure a correct count.</p> <p>The advantages of ballot voting are that:</p> <ul style="list-style-type: none"> • the votes are made in writing • all people entitled to vote have an opportunity to do so, (because, if the constitution allows for proxies, proxies are issued additional ballot voting papers), and • members with more than one vote each (that is, differential voting rights) have a say in proportion to their voting entitlement (which may help prevent an overbearing or noisy minority from influencing the vote)



chairperson, who makes a ruling.

Voting by postal or electronic ballot

Note: Regulation 13 and Schedule 3 of the AI Regulation set out the full requirements for conducting a postal or electronic ballot.

The committee:

- decides on the wording of the matter to be voted on
- fixes the dates for sending or giving access to ballot papers and for closing the ballot, and
- appoints a returning officer (who need not be a member of the association but must not be a committee member).
- The returning officer prepares:
 - the roll of name and addresses for those entitled to vote, and
 - the ballot paper containing instructions for completing and returning the paper, the closing date of the ballot and the question to be determined (for example, if the ballot is to change the constitution of the association, the text of the proposed special resolution)
- The returning officer distributes the ballot paper to those on the voting roll within the required notice period (14 days before the closing date of the ballot, or 21 day before if a special resolution is proposed, or a longer period as determined by the association's constitution).
- A clear record should be kept of names of the people to whom they distributed the voting papers, and how many voting papers were distributed to each person (this is because, for example, a proxy holder may vote on behalf of several people).

Once the ballot is closed, the returning officer counts the valid votes (rejecting any 'informal' votes) and prepares and signs a statement of the results of the ballot to be provided to the committee.

The committee enters the results of the ballot in the minute book and the chairperson announces the results of the ballot at the next general meeting of members.

If the ballot was for a special resolution, the committee must notify the members of the ballot results in writing as soon as possible.

The returning officer is to keep all ballot papers, rolls and other records relating to the ballot for at least 8 weeks, or for a longer period as determined by the committee or the association's constitution.

Electronic voting includes voting by email, accessing a voting website or other electronic means.

A returning officer may appoint a person (who would also be eligible to be a returning officer) to assist them in their duties.

If a ballot paper is not completed in accordance with the instructions set out in the paper, the vote may be 'informal' and may be rejected by the returning officer.

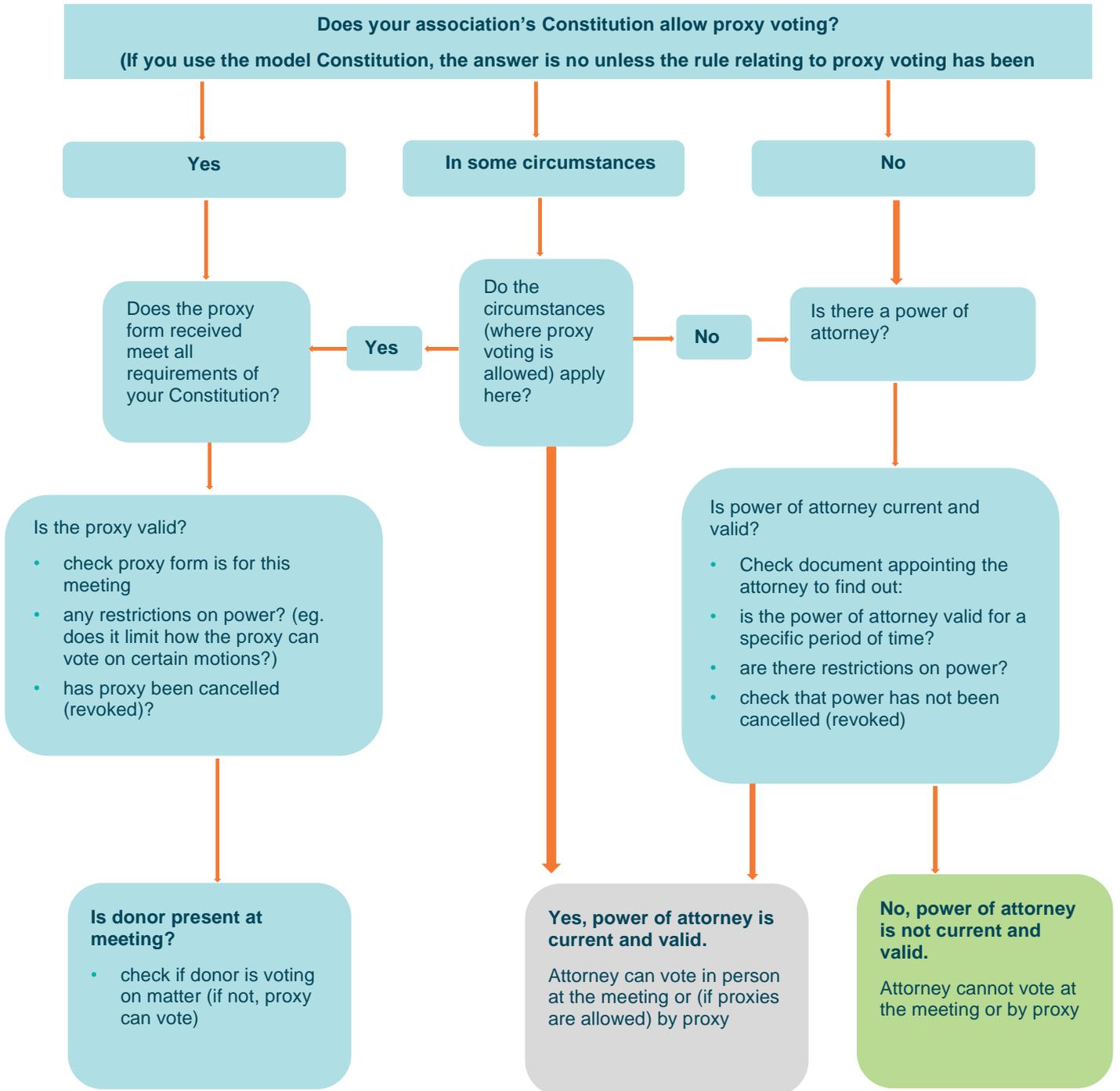
Voting by ballot takes longer to administer than other methods, but the precautions that form part of the procedure are necessary to ensure a correct count.

The advantages of ballot voting are that:

- the votes are made in writing
- all people entitled to vote have an opportunity to do so, (because, if the constitution allows for proxies or direct, postal or electronic voting, proxies are issued additional ballot voting papers and 'direct, postal or electronic votes' are counted), and
- members with more than one vote each (that is, differential voting rights) have a say in proportion to their voting entitlement (which may help prevent an overbearing or noisy minority from influencing the vote)



Flowchart for reviewing proxies





Sample wording for allowing direct voting in your constitution

Below is a sample clause which could be included in an association's constitution to allow 'direct voting' by members of the association. Read the wording carefully. Consider whether this procedure is suitable for your association. **Note** that the wording gives the committee of management a *discretion* to allow direct voting at a general meeting – in other words, members do not have an *automatic* right to direct voting at every meeting.

You may like this wording, or you may need to adapt the clause or use different wording altogether. This will depend on your association's needs. If necessary, seek legal advice about changes to your constitution.

'The committee may determine that at any general meeting of the Association, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution.

If the committee determines that votes may be cast by direct vote, the committee may specify the form, method and manner of casting a direct vote and the time by which a direct vote must be received by the Association in order for the vote to be valid.'



Checklist for content of minutes

It's good practice to include the following in the minutes of a meeting:

Order	Description	Done
1.	Name of your association and heading, for example, 'Annual General Meeting'	<input type="checkbox"/>
2.	Date, place and opening time	<input type="checkbox"/>
3.	Name of chairperson	<input type="checkbox"/>
4.	Names of members present (and their status if office holders) and other people present, such as observers (or reference to separate attendance register)	<input type="checkbox"/>
5.	Names of non-members who are attending (if any)	<input type="checkbox"/>
6.	Names of those people who have sent apologies (for not attending)	<input type="checkbox"/>
7.	Confirmation of previous meeting's minutes	<input type="checkbox"/>
8.	Record of motions, resolutions and amendments	<input type="checkbox"/>
9.	Names of the people who move and second motions	<input type="checkbox"/>
10.	Short summaries of the debates on motions	<input type="checkbox"/>
11.	The method of voting on motions etc. (for example, show of hands, ballot) and the numbers of votes for, against and abstaining	<input type="checkbox"/>
12.	The details of any proxy voting or direct voting	<input type="checkbox"/>
13.	Results of voting (for example, passed, rejected or adjourned, etc.)	<input type="checkbox"/>
14.	Titles (and any relevant details) of documents or reports tabled	<input type="checkbox"/>
15.	(If relevant) cross reference to previous minutes or policies of the association	<input type="checkbox"/>
16.	Committee minutes should approve or ratify all the association's expenditure	<input type="checkbox"/>
17.	Details of next meeting	<input type="checkbox"/>
18.	Closing time	<input type="checkbox"/>
19.	List of tasks arising from the minutes and name of person responsible for each	<input type="checkbox"/>
20.	After minutes have been confirmed at the next meeting, signature of chairperson	<input type="checkbox"/>



Conventions for drafting minutes



Note

The table below is in two parts:

- the first part deals with drafting minutes of *discussion* at meetings,
- the second part deals with drafting *motions* discussed at meetings.

Drafting minutes of discussions in meetings

Convention	Explanation	Example
Use simple sentences and simple words	This helps people understand what was discussed (especially if they were not at the meeting).	Do not write: 'Mr UB Sporty extrapolated that this fine sporting institution's solar watt 500 water heating appliance with the white duco slimline control panel was performing consistently below its engineered benchmarks.' Do write: 'Mr UB Sporty reported that the club's hot water system needed urgent repairs.'
Use active, rather than passive, voice	In the 'active' voice, the subject of the sentence performs the action stated by the verb. In the 'passive' voice, the subject of the sentence is acted upon. Generally, the passive voice can be more difficult for a reader to understand. However, it is acceptable to use the passive voice if: <ul style="list-style-type: none"> • you want to soften an unpleasant message • you don't know who did a particular thing recorded in the minutes, or • you want to shift the reader's attention away from the person who did something to other information. 	Do not write (passive voice): 'A computer was used by the secretary to write these minutes.' Do write (active voice): 'The secretary used a computer to write the minutes.' Do write (passive voice) in some circumstances: 'Complaints were put in the suggestion box.' (That is, you do not want to specify who actually made the complaints.)
Use only one tense	It is usually best to use the past tense in minutes.	Do write: 'Ms L Little reported that she had' The committee considered that the hot water system was'
Avoid terms such as 'he said' or 'she stated' unless you quote their actual words	This is to avoid 'putting words into a person's mouth.'	Do not write: 'Mr S Fry said: 'I got a letter from the Council about this. I reckon the Council is being stupid.' Do write: 'Mr S Fry reported that he had received a letter from the Council. He spoke critically of the Council's position on this issue.'



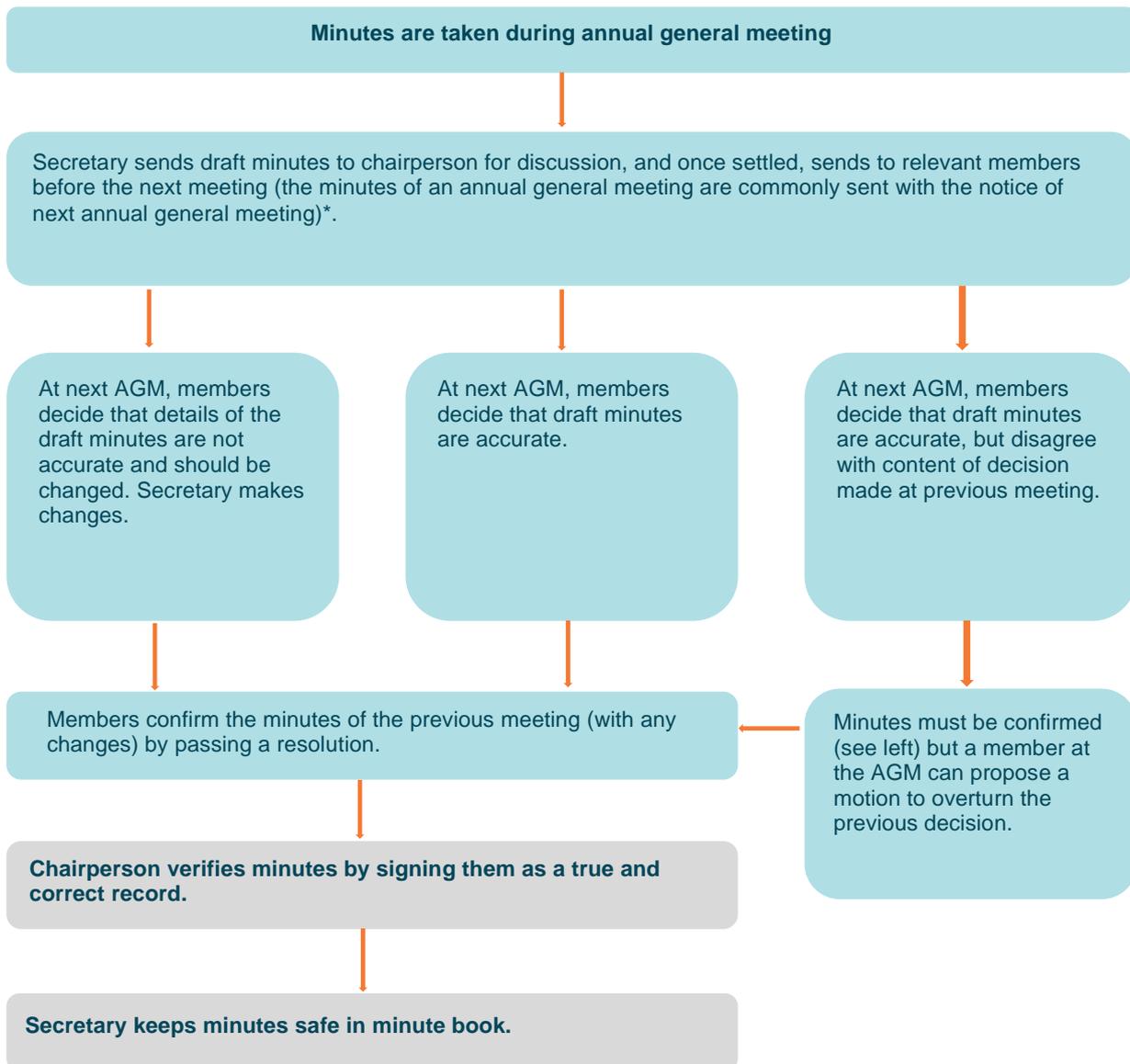
Avoid personal descriptions or attributes	This is to make sure that the minutes are as 'objective' or 'impartial' as possible – the minutes should not include the minute-writer's own personal opinions or reflections.	Do not write: 'The chairman announced <i>happily</i> ...' 'The treasurer <i>meanly</i> said...' 'The club representative <i>slammed</i> the report.'
Be very careful:	See discussion of 'Defamation' and 'Confidential matters' in this part of the guide.	Do not write: 'Ms L Little reported that the builder engaged to renovate the club house has a history of stealing from associations and said he was a disgrace to his profession.'
Not to defame anyone when recording matters that include confidential details		Do write: 'Concern was expressed about the suitability of the builder for the task of renovating the club house.'

Drafting motions discussed at meetings

Convention	Explanation	Example
Start the motion with the word 'that'	This is so all resolutions of the meeting are in the same format. Before the word 'that', imagine inserting the words, 'The meeting passed a resolution...'	Do write: ' <i>That</i> the treasurer's recommendation be adopted.'
Use the verb 'be' rather than the word 'is'	This is to be grammatically correct when the motion commences with the word 'that' (see above).	Do not write: 'That the newspaper release <i>is</i> adopted.' Do write: 'That the newspaper release <i>be</i> adopted.'
Express the motion in the positive	This means that a 'yes' vote from the members results in the proposal being approved or supported.	Do not write: 'That the doors <i>be not shut</i> during the meeting.' Do write: 'That the doors <i>be open</i> during the meeting.'
If you can't express the motion in one sentence, split it up into carefully written parts	Carefully construct a composite motion (one with a number of separate parts) so that the chairperson can split it up to enable the meeting to deal with each of its parts separately.	Do not write: 'That in addition to any other motions proposed this meeting resolve to thank the members of the Town Hall including Ms T Bag for providing the refreshments and Mr B Room for making the accommodation available and instruct the secretary to send letters of thanks to Ms T Bag and Mr B Room with a copy to Mr S Visor.' Do write: 'That the meeting register its appreciation for Town Hall members generally, and specifically ask the secretary to: (a) send a letter of thanks to: (i) Ms T Bag for providing the refreshments, and (ii) Mr B Room for making the accommodation available, and (b) send a copy of these letters to Mr S Visor.'



Flowchart for confirming and verifying minutes



Note

If the minutes weren't sent out before the next meeting, allow time for people to read them or the secretary should read them aloud at the meeting.