

AGM Roadmap 2020

An interactive tool to assist in delivering your annual general meeting.

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AGM Roadmap 2020: An interactive tool to assist in delivering your annual general meeting

Our AGM roadmap has been updated to reflect the significant rule changes that have recently been made for virtual meetings. It remains a user-friendly tool that can be adapted to your entity's specific needs. In addition to a clear list of deliverables, the roadmap provides you with a regulatory background for each step and prompts you to take action within automatically-generated deadlines.

The Australian federal government's response to the spread of coronavirus (COVID-19) has restricted ASX-listed entities from holding an AGM in person. In response to these concerns, the federal treasurer has temporarily modified the Corporations Act to allow ASX-listed entities to host their AGM using virtual technology.

The AGM may be hosted entirely online or in a hybrid format allowing for a combination of online and in person participation. ASX-listed entities must ensure that:

- those attending and participating are able to follow the AGM uninterrupted;
- members are given a reasonable opportunity to ask questions live during the course of the meeting, including directing questions to the auditor, making comments on the remuneration report and raising questions about the management of the entity;
- members are able to raise questions, comment and debate on resolutions; and
- members are given the opportunity to vote prior to and/or during the course of the AGM.

The AGM must be held prior to the expiry of the temporary modifications on 21 March 2021.

Another development has been that ASIC has indicated that it will take no enforcement action for some entities that are late in holding their AGM. ASIC's no action position allows public entities with financial years ending from 31 December 2019 to 7 July 2020 an extra 2 months to hold their AGMs. Those entities may do so within 7 months after the end of their financial year, rather than the usual 5 months.

For more information about holding a virtual AGM and ASIC's no action position, or to find out more about your obligations, contact one of our experts.



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A Roadmap for

Set AGM date and notify the ASX

Prepare and send AGM notice

Lodge AGM materials with the ASX

Hold AGM and lodge results with the ASX

Prepare minutes and lodge forms with ASIC and the ASX

Proposed date* for AGM:

8 WEEKS PRIOR TO AGM: Week commencing

1. Consider agenda items and resolutions to be put to shareholders at AGM*
2. Notify ASX of date of AGM - at least 5 business days before the closing date for receipt of director nominations (LR 3.13.1)¹
3. Liaise with share registry regarding proposed timing for printing and dispatch of AGM materials (Annual Report, Notice of Meeting, proxy form/shareholder voting form, etc) and
4. If not already done, book venue, IT facilities, catering, third party suppliers (eg share registry)
5. Set date for determining shareholder eligibility to vote at AGM (Reg 7.11.37)³ - generally 7pm on the day that is 2 days before the date of the meeting;
6. Prepare initial draft of Notice of Meeting and explanatory statement (s 249L sets out requirements for Notice of Meeting)⁴

Virtual AGM

7. Consider the special virtual meeting requirements for the Notice of Meeting**
8. Arrange for and test the suitability of virtual technology (if holding virtual or hybrid AGM) – including any webcasting, chat functions or online polling

Notes

* One each calendar year and within 5 months after the end of the Company's financial year (s 250N(2))²⁰

** The Notice of Meeting must include an explanation of 1) how to use the technology to observe, vote, and make comments and 2) how the reasonable opportunity to vote, comment and ask questions will be provided to those participating virtually

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7 WEEKS PRIOR TO AGM: Week commencing

1. Director nominations to be received - 35 business days prior to AGM (unless Constitution states otherwise) (LR 14.3)⁵
2. Request draft proxy form or, if using direct voting, shareholder voting form from share registry (LR 14.2 sets out requirements for proxy forms)⁶
3. If required, ASIC review of Notice of Meeting, explanatory statement and other documents to be put to members (eg approval of related party benefits under s 218)⁷
4. If required, ASX review of Notice of Meeting, explanatory statement and other documents to be put to members (LR 15.1) – 14 days prior to sending a Notice of Meeting^{8***}

Notes

6 WEEKS PRIOR TO AGM: Week commencing

1. Finalise AGM materials (Notice of Meeting, explanatory statement and proxy form/shareholder voting form)
2. Board approval of Notice of Meeting & proxy form/shareholder voting form^{****}
3. Printing of AGM materials (Annual Report, Notice of Meeting, proxy form/shareholder voting form, etc).

Virtual AGM

4. If holding a virtual or hybrid AGM, AGM materials (Notice of Meeting, Annual Report, proxy form/shareholder voting form, etc) may be provided electronically^{*****}

Notes

*** In some circumstances, it may be necessary to include with the Notice of Meeting and explanatory statement a valuation from an independent expert – refer to ASIC Regulatory Guide 76 (RG 76.104) in relation to related party transactions

**** Some entities will approve agenda items and resolutions at a prior Board Meeting

***** Notice of Meeting may be given using one or more technologies to communicate to those entitled to receive notice of the meeting 1) the contents of the notice and other information or 2) details of an online location where the Notice of Meeting and other materials can be viewed or where they can be downloaded

5 WEEKS PRIOR TO AGM: Week commencing

1. Mailing/emailing of AGM materials to shareholders (s 249J)⁹
2. Shareholder notice period for AGM commences – 28 ‘clear’ days prior + typically 1 to 3 days for deemed service under Constitution (s 249HA and s 249J)¹⁰
3. AGM materials to be lodged on ASX Market Announcements Platform (LR 3.171)¹¹
4. Provide auditor with Notice of Meeting (s 249K)¹²
5. Implement protocols to ensure auditor is provided with details of any questions received from shareholders and addressed to auditor (s 250PA)¹³

Notes

4 WEEKS PRIOR TO AGM: Week commencing

1. Request share registry to provide weekly updates on proxy votes and, if applicable, direct votes received
2. Notify share registry of identity of shareholders excluded from voting on each item of business to be considered at AGM
3. Brief key shareholders/investor groups and other stakeholders on items of business to be considered at AGM

Notes

3 WEEKS PRIOR TO AGM: Week commencing

1. Prepare Q&A packs for Directors and Senior Management

Notes

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2 WEEKS PRIOR TO AGM: Week commencing

1. Prepare draft AGM run-sheet, Chairman's script and, if applicable, CEO's address (consider addressing shareholder/investor questions/feedback received during notice period)
2. Prepare presentation slides for details of proxy and, if applicable, direct votes received on each item of business to be considered at AGM
3. Prepare presentation slides for Chairman's/CEO's address
4. Request draft voting/attendance cards from share registry

Notes

1 WEEK PRIOR TO AGM: Week commencing

1. Finalise AGM run-sheet, Chairman's script, CEO's address and AGM presentation materials
2. Ensure auditor has been provided with details of any questions received from shareholders and addressed to the auditor (s 250PA(3))¹⁴
3. Finalise voting/attendance cards with share registry
4. Final date for receipt by share registry of proxy forms - consider requirements in Constitution and Corporations Act
5. Request share registry to provide final details of proxy votes and, if applicable, direct votes received

Notes

DAY OF AGM:

1. Facilitate setting up of venue, including registration desk for share registry
2. Ensure additional copies of AGM materials to shareholders (Annual Report, Notice of Meeting, Proxy Form, etc) are available at the venue (s 250N(3); Note 1, s 317)¹⁵
3. Make available to AGM attendees list of questions by members to auditor (s 250PA(9))¹⁶
4. Lodge CEO and other addresses to the AGM with ASX (LR 3.13.3) no later than start of meeting¹⁷
5. Lodge AGM results with ASX, including details of proxy and any poll votes - immediately after AGM (s 251AA; LR 3.13.2)¹⁸

Virtual AGM

6. Set up virtual technology, including testing technology before the start of the meeting
7. Communicate with participants in real-time how technical issues will be dealt with and what backup solutions are available if potential complications arise
8. Ensure AGM materials (Annual Report, Notice of Meeting, Proxy Form, etc) are available electronically for shareholders

Notes

WEEK FOLLOWING AGM: Week commencing

1. Prepare minutes of AGM - to be entered into the Company's minute book within 1 month after AGM (s 251A)¹⁹
2. Lodge any other required forms with ASIC or ASX, eg Appendices 3X, 3Y and/or 3Z, Form 484, new Constitution, Form 205, etc

Notes

† References to "LR" are to the ASX Listing Rules. References to "Reg" are to the Corporations Regulations 2001 (Cth).

†† All legislative references are to the Corporations Act 2001 (Cth), unless otherwise specified.



Notes

1 ASX Listing Rule 3.13.1

ASX must be notified of the date of the AGM

ASX-listed entities must notify the ASX of the date of the AGM and the closing date for the receipt of director nominations. The notification must be provided **at least 5 business days** before the closing date for the receipt of director nominations.

We recommend providing the ASX with a calendar of key dates which highlights the date of the AGM and the closing date for receiving director nominations.

2 s 250RA Corporations Act

Auditor required to attend ASX-listed entity's AGM

ASX-listed entities must ensure that the auditor attends the AGM.

If the auditor is unable to attend, they must be represented at the AGM by a person who is qualified member of the audit team who conducted the audit and is able to answer questions about the audit at the AGM.

3 Reg 7.11.37 Corporations Regulations

Shareholder eligibility to vote not to be determined more than 48 hours before AGM

ASX-listed entities must specify a time for determining member eligibility to vote that is not more than 48 hours before the scheduled AGM.

4 s 249L Corporations Act

Notice of Meeting

Content

The Notice of Meeting for a company's AGM must be worded and presented in a clear, concise and effective manner, and:

- set out the place, date and time of the AGM;
- state the general nature of the AGM's business; and
- if a special resolution is to be proposed at the AGM, set out an intention to propose the special resolution and state the resolution.

Proxies

If a member is entitled to appoint a proxy, companies must include the following information in the proxy form or in the

Notice of Meeting:

- that the member has a right to appoint a proxy;
- whether or not the proxy needs to be a member of the company; and
- that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

Remuneration Report

The Notice of Meeting of ASX-listed entities must also inform members that a resolution to adopt a remuneration report will be put to the vote at the AGM.

If at the previous AGM at least 25% of the votes cast on a resolution adopting the remuneration report were against the adoption of the report (but the same was not the case at the AGM before that), the Notice of Meeting must explain the circumstances in which section 250V(1) apply and inform members that a spill resolution will be put at the AGM if section 250V(1) applies.

5 ASX Listing Rule 14.3

Director nominations must be accepted up to 35 business days before the date of the AGM

ASX-listed entities must continue to accept nominations for election of directors up to 35 business days before the date of the AGM, unless the constitution provides otherwise.

Existing directors do not need to provide a nomination if standing for re-election.

6 ASX Listing Rule 14.2

Proxy Forms must be included with the Notice of Meeting

ASX-listed entities must include a proxy form with the Notice of Meeting. It must, in respect of each resolution, allow a member to direct the proxy to vote for, against or abstain from voting on the resolution.

Undirected Proxies

If the proxy form specifies that the Chair of the AGM will be appointed as proxy if a member does not appoint a person to act as proxy, the form must include a statement outlining how the Chair intends to vote on undirected proxies. If the Chair later

changes its mind on how they intend to vote, ASX-listed entities should make an immediate announcement to the market explaining the change and the reasons for the change.

Undirected Proxies – Remuneration Reports

Section 250R of the Corporations Act provides that the Chair of the AGM may only cast a vote in relation to an undirected proxy on the resolution to adopt the company's remuneration report if the proxy form expressly authorises the chair to exercise the proxy even if the resolution is connected directly or indirectly with the remuneration of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity.

Similarly, Section 250BD of the Corporations Act provides that member of the key management personnel or a closely related person must not vote as proxy on a resolution connected directly or indirectly with the remuneration of a member of the key management personnel if the appointment does not specify the way the proxy is to vote on the resolution. This rule does not apply to a Chair if the appointment expressly authorises the Chair to exercise the proxy even if the resolution is connected directly or indirectly with the remuneration of a member of the key management personnel.

Key management personnel is defined in the accounting standard AASB124 as those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity. The Chair of the AGM will typically be a member of the key management personnel by virtue of being a director.

7 s 218 Corporations Act

ASX-listed entities must lodge materials that will be put to members with ASIC

At least 14 days before the Notice of Meeting is given, ASX-listed entities must lodge with ASIC:

- a proposed notice of meeting;
- a proposed explanatory statement;
- any other documents accompanying the Notice of Meeting that relate to the proposed resolution(s); and
- any other documents that the company, a related party of the company, or an associate of the company or related party intends to give to members before or at the meeting and can reasonably be expected to be material to a member deciding how to vote on the proposed resolution(s).

ASIC may approve in writing a deadline of less than 14 days to provide drafts of the Notice of Meeting, explanatory statement and other relevant documents.

8 ASX Listing Rule 15.1

Draft copies of documents must be provided to the ASX for examination

ASX-listed entities must provide the ASX with a draft of the following documents:

- proposed amendments to the constitution;
- proposed amendments to the terms of any securities, including debt securities or convertible debt securities;
- a document to be sent to persons who are entitled to participate in a new issue under an arrangement or reconstruction;
- a notice of meeting which contains a resolution seeking an approval under the listing rules;
- a document to be sent to the holders of quoted partly paid securities concerning a call to be made or an instalment due on the securities;
- a document to be sent to the holders of quoted convertible securities concerning the conversion or expiry of the securities; and
- any other documents to be sent to holders of securities in connection with seeking an approval under the listing rules.

Documents must not be finalised until the ASX provides notice that it has no objections to the documents. The ASX will use its reasonable endeavours to provide notice of its objection or non-objection and/or request more time within 5 business days.

9 s 249J Corporations Act

Delivery of Notice of Meeting to members and directors

A Notice of Meeting must be given individually to each member entitled to vote at the AGM and to each director. If a joint membership exists, a Notice of Meeting is only required to be given to 1 member.

How notice is given?

ASX-listed entities must give the Notice of Meeting to a member:

- personally;
- by sending it by post to the address for the member in the register or alternative address nominated by the member. It is taken to have been given 3 days after it is posted;
- by sending it to the fax number or electronic address nominated by the member. It is taken to have been given one business day after it is sent;
- by sending it to the member by other electronic means

nominated by the member. It is taken to have been given one business day after it is sent;

- if nominated - by notifying the member that the Notice of Meeting is available and how the member may access the notice of meeting. It is taken to have been given one business day after the day the member is notified that the Notice of Meeting is available; or
- by other means that the constitution permits.

10 s 249HA Corporations Act

28 days' notice

ASX-listed entities must provide at least 28 days' notice of an AGM to members. The constitution does not prevail.

s 249J Corporations Act:

Refer to comment in line item [9](#) above.

11 ASX Listing Rule 3.17.1

Copies of documents to be provided to the ASX

ASX-listed entities must immediately provide the ASX with a copy of any documents it sends to members generally or of a particular class.

12 s 249K Corporations Act

Auditor is entitled to notice and other communications

ASX-listed entities must provide the auditor with notice of an AGM and all other communications that security holders are entitled to receive. The notice and other communications must be provided in the same way that a member is entitled to receive notice.

13 s 250PA Corporations Act

Members may submit questions to the auditor

Members of ASX-listed entities (who are entitled to vote at the AGM) may submit written questions to the auditor if the questions are relevant to the content of the auditor's report or the conduct of the audit to be considered at the AGM.

The ASX-listed entity may examine and make copies of the questions, and must pass the questions on to the auditor.

Obligations of the auditor

The lead auditor or audit firm must prepare and give the ASX-listed entity a document (question list) that sets out answers to questions that members have submitted and matters the lead auditor or audit firm considers to be highly relevant.

This document must be provided as soon as practicable after the end of the time for submitting questions by members and a reasonable time before the AGM.

Copies of the document (question list) must be made available at or before the start of the AGM for all members attending.

14 s 250PA(3) Corporations Act

Refer to item [13](#) above.

15 s 250N(3) and s 317 Corporations Act;

Reports must be considered at the AGM

ASX-listed entities must hold an AGM each calendar year.

Copies of the annual financial report, directors' report and auditor's report for the last financial year must be provided before the AGM.

16 s 250PA(9) Corporations Act

Refer to item [13](#) above.

17 ASX Listing Rule 3.13.3

Copies of announcements to be delivered at the AGM must be provided to the ASX

By no later than the start of the AGM, ASX-listed entities must provide a copy to the ASX of any prepared announcements (such as a prepared address by the Chair or CEO) that will be delivered at the AGM.

18 s 251AA Corporations Act and ASX Listing

Rule 3.13.2

Must inform the ASX of AGM results

ASX-listed entities must, immediately after the AGM is held, inform the ASX of:

- both the number and a short description of the resolution;
- whether the resolution was passed or not;
- whether the resolution was decided on a show of hands or poll;
- regardless of how the resolution was decided – the total number of proxy appointments that specified that the proxy is to vote in favour of the resolution, against the resolution, abstain from the resolution and vote according to the proxy's discretion;
- if the vote is a poll - the total number of votes cast on the poll in favour of the resolution, against the resolution or abstaining from the resolution;
- whether the resolution relates to the adoption of the remuneration report and the outcome constitutes a "first strike" or "second strike" under section 250U of the Corporations Act; and

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- if the resolution was proposed in the Notice of Meeting but was not put to the meeting, the number and a short description of the resolution, the fact that it was not put to the meeting and an explanation of why it was not put to the meeting.

19 s 251A Corporations Act

Must retain minute books

ASX-listed entities must keep a minute book which records the proceedings and resolutions of the AGM within one month.

The minutes must be signed within a reasonable time after the meeting by either the Chair of the meeting or the Chair of the next meeting.

20 s 250N Corporations Act

ASX-listed entities must hold an AGM

ASX-listed entities must hold an AGM within 18 months after registration, at least once each calendar year and within 5 months after the end of its financial year.

Section 250P of the Corporation Act provides that an application may be made to ASIC to extend the date to hold the AGM, but such application must be made before the last date on which the company must hold its AGM.



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