

Charting a strategic path to AGM success

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*At this time of year, public companies with a June year end are preparing for AGMs. Here is a checklist of key actions to lay the foundation for a successful event. Some of these tips apply to **both not-for-profit and ASX listed companies**. Some apply to **ASX-listed companies only**.*

Have you announced the date?

A listed entity must announce the date of its AGM via ASX at least 5 business days before the closing date for receipt of nominations for election of directors. An entity must normally accept those nominations up to 35 business days before the AGM.

This is a brief announcement which precedes the formal Notice of Meeting.

For not-for-profit entities, if your constitution provides for nominations to be received ahead of the AGM, you will need to call for nominations. You may also wish to give extra notice of the AGM to encourage attendance, particularly if you are holding special events to coincide with the AGM.

Are you communicating with key stakeholders ahead of time?

Allow time to 'check in' with key shareholders and proxy advisers, particularly to sound them out on sensitive issues such as remuneration, any proposed changes to the capital structure, issues of shares or options to directors and Board composition.

Plan these conversations so you ensure that anything "market sensitive" has already been announced.

For not-for-profit entities, consider what early engagement might be required e.g. circulating draft changes to the constitution for member feedback.

What is in the agenda?

Consider all possible items of business, to allow time to draft explanatory notes and consult with ASX if necessary. For example:

- If there was a 'strike' against your remuneration report last year, you need to comment on how you responded to any questions on remuneration from last AGM, as well as allow for a spill resolution if there is a second strike this year.
- You may need ratification of share issues not previously approved by shareholders (in order to 'refresh' your placement capacity).
- You may require shareholder approval to implement proposed share or option issues to directors, or implement changes to the capital structure (such as a consolidation of shares)

How many Board vacancies are there?

The Board of a public company cannot set the number of directors below the maximum board size in the Constitution without member approval. For example, if the incumbent board is five directors but the Constitution allows for a maximum of ten directors, the Board will need an ordinary resolution to support any Board recommendation that the size of the Board be limited to five directors.

In addition, the Board will need to give early consideration to:

- which directors must retire by rotation under the constitution,
- if such directors will put themselves forward for re-election; and
- changes or additions to the Board to deliver better diversity in gender, age, background and skills.

Do you need to increase your NED remuneration pool?

An increase to the maximum aggregate remuneration of non-executive directors requires shareholder approval by ordinary resolution. Assess your current cap on the remuneration of the NED pool before the AGM, particularly if the Board is growing. The Remuneration Committee may wish to seek external validation of the new cap, and it may be a topic of conversation with key stakeholders, before including it in the AGM's business.

Are any 3-yearly approvals needed?

Some matters have a three year approval cycle; they must be approved every third AGM in order to remain effective. The matters that operate on this three year cycle are:

- Confirming that issues under an employee share, option or performance rights plan are an exception to the 15% placement limit in Listing Rule 7.1.
- Renewal of a proportional takeovers provision in the Constitution if there is one.

Check whether the time has come for either of these to be approved, and if so, include them in this year's Notice of Meeting.

Do you need to consult with ASX?

Where the agenda includes particular Listing Rule approvals or changes to the Constitution, a draft Notice of Meeting must be submitted to ASX for review before sending to members. ASX has up to five business days (commencing on the day after lodgement) to review the documents and confirm any objections, unless it requires more time to examine the documents.

Is your technology ready?

If you plan to hold a hybrid or virtual meeting^[11], ensure that your chosen technology platform is the right “fit” for you and that it will facilitate members’ fair participation through voting and asking questions, as well as helping your team present the meeting’s content smoothly and professionally. Take time to reflect on learnings from last year and whether the technology used was up to the task.

Give yourself plenty of time to test the technology you’ll use, for example by having team members try out the platforms for voting and asking questions, in order to check “the user experience”.

Are you prepared to run polls?

Regardless of whether you’re meeting physically or through technology, if you’re a listed company you must conduct a poll for all resolutions on the Notice of Meeting.

Make sure you give your members clear guidance before and during the meeting about the different ways in which they can vote.

On the day...

A copy of the contents of any prepared announcement that will be delivered at an AGM, such as the Chair’s and CEO’s address must be given to ASX no later than the start of the meeting.

Also, remember to report the votes on all items of business to ASX immediately after the AGM has concluded.

^[11] Give yourself plenty of time to clarify what is permitted by your constitution.