

An aerial photograph of a large, paved city square. The square is filled with numerous people walking in various directions. The pavement is made of light-colored, rectangular tiles. A prominent dark grey diagonal line runs across the square from the bottom left towards the top right. The overall scene depicts a busy public space.

Incorporated associations with upcoming AGMs in a COVID-19 environment

6 May 2020

Positions taken by State and Territory regulators

Most incorporated associations are required to hold an annual general meeting (**AGM**) in accordance with the provisions of their rules / constitution and relevant state and territory legislation. However, the current social distancing restrictions imposed by Australian governments in response to COVID-19 may restrict the ability of incorporated associations to hold an AGM whilst also complying with the COVID-19 restrictions.

Below is a summary of the different positions taken by State and Territory regulators to extending AGM deadlines or holding virtual AGMs.

STATE/TERRITORY	SOURCE	POSITION RELATING TO UPCOMING AGMS FOR ASSOCIATIONS
Queensland	Office of Fair Trading, Queensland.	Until further notice, a grace period of six months has been granted to all incorporated associations for the holding of an AGM. The association does not need to make a written application for extension of time.
New South Wales	Fair Trading, New South Wales. Website: https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/running-an-association	If the association is unable to hold its AGM for any particular year within six months of the end of its financial year, the association must apply for an extension of time to hold an AGM with the Fair Trading NSW. Where the inability results from COVID-19, the application fee will be waived. Application form: https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0011/483662/Form-A11-Application-for-extension-of-time-for-holding-AGM-or-lodging-annual-summary-of-financial-affairs.pdf
Australian Capital Territory	Access Canberra. Website: https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1504/~/incorporated-associations	A three month extension has been applied to all associations who are due to hold an AGM. There is no need to make an application, the extension has automatically been applied. Should restrictions extend beyond 30 June 2020, it is indicated that a further extension will be provided.
Victoria	Consumer Affairs Victoria. Website: https://www.consumer.vic.gov.au/clubs-and-fundraising/incorporated-associations/running-an-incorporated-association/meetings	If the association is unable to hold its AGM, the association may apply for an extension of time to hold an AGM with Consumer Affairs Victoria. Where the inability results from COVID-19, the Registrar is currently granting three month extensions and the application fee will be waived. Application form: https://www.consumer.vic.gov.au/clubs-and-fundraising/incorporated-associations/running-an-incorporated-association/meetings
Tasmania	Confirmation from Consumer, Building and Occupational Services, Tasmania.	No statutory requirement for the association to hold an AGM. Instead the provisions of the association's constitution apply.

STATE/TERRITORY	SOURCE	POSITION RELATING TO UPCOMING AGMS FOR ASSOCIATIONS
South Australia	Consumer and Business Services, South Australia. Website: https://www.cbs.sa.gov.au/news/information-associations	If associations are unable to hold an AGM, Consumer and Business Services will take no action where AGMs are postponed for up to six months. Additionally, no action will be taken where a virtual AGM is held which does not comply with the association's rules requiring that meetings are held in person.
Northern Territory	Licensing NT.	Associations are to contact Licensing NT directly to discuss options for extending the AGM or holding a virtual AGM. Contact details: (T) +61 8 8999 1800 (E) adg.licensing@nt.gov.au
Western Australia	Consumer Protection, Western Australia. Website: https://www.commerce.wa.gov.au/consumer-protection/covid-19-coronavirus-advice-incorporated-associations-and-clubs	If the association is unable to hold its AGM for any particular year within six months of the end of its financial year, the incorporated association must apply for an extension of time to hold an AGM with Consumer Protection, Western Australia. Where the inability results from COVID-19, the application fee will be waived. Application form: https://www.commerce.wa.gov.au/sites/default/files/atoms/files/appliqueqtim_eagm.pdf

Caveats to these positions

Regardless of the position taken by State and Territory regulators, associations should still bear in mind:

- The regulators' responses do not necessarily amend the relevant State and Territory legislation which will continue to apply, for example, in relation to the quorum of the AGM.
- The regulators' response is only an indication of the approach which those regulators will take. Associations should be mindful that relief from regulators does not preclude action being taken by third parties in relation to an association delaying an AGM or holding a hybrid / virtual AGM.
- Associations should consider whether their rules / constitution provide the flexibility to hold hybrid or virtual AGMs.
- Virtual AGMs will necessitate the need for voting at AGMs to occur by a poll rather than a show of hands.

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