SPORT I Issue No. 9 I *Notice of AGM*

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There is now the right for sporting organisations, both at state and national levels, to convert their organisation from an Incorporated Association (**Association**) under the relevant State or Territory regime to a Public Company Limited by Guarantee (**CLG**) under the *Corporations Act 2001 (Cth)* (**Corporations Act**).

One practical aspect of this change is the notice requirements to members when holding General Meetings (including AGMs). We will briefly review the notice requirements under the *Associations Incorporation Act 1981 (Qld)* (**AI Act**) and how they are different to those set out in the Corporations Act.

The primary difference between the two is the greater flexibility that is allowed for Associations under the AI Act. The AI Act simply states that the members of the management committee of an Association must ensure that the organisation complies with its rules about the calling and holding of meetings. Unlike the Corporations Act, there is no specific notice requirements set out in the AI Act.

The Model Rules set out in the regulations state that the management committee of an Association may decide the way in which notices must be given. An Association can then set out its own Rules as to how notices are to be given to members. This allows an Association to effectively decide, in its own Rules, the method by which it must provide notice of a General Meeting to its members. The only exceptions are that the following will apply regardless of what is stated in an Association's Rules:

- if a meeting is being held to pass a special resolution or to hear and decide on an appeal of a person against a decision of the management committee regarding that person's membership, then the notice of the meeting is required to be in writing; and
- at least fourteen (14) days notice must be given of the General Meeting.

There is nothing in the AI Act preventing an Association from using electronic means (say via email or placing a notice on the Association's website) or placing an advertisement in the newspaper to issue a notice of General Meeting to its members provided the Rules cater for this.

The Corporations Act, on the other hand, provides much more stringent requirements in relation to notices of General Meetings to members.

Firstly, the amount of notice required to be given is twenty-one days unless shorter notice is agreed by all members entitled to vote at the meeting (if an AGM) or at least 95% of the members entitled to vote agree (if other General Meeting). This notice period cannot be shortened if a resolution to remove a director or auditor is being put forward at the meeting.

In relation to how the notice of meeting is to be sent, the Corporations Act requires that the notice be given to each member and each director individually. This limits the number of options available to the organisation as publication in a newspaper or online (as may be allowable as an Association) may not comply with the requirement to give the notice to each member individually under the Corporations Act.

The interplay between a CLG's Constitution and the Corporations Act is quite different to that of an Association's Rules and the AI Act regarding notices. A CLG's constitution can only displace or modify Replaceable Rules within the Corporations Act. The provisions around the giving of notices for General Meetings and AGM's are not Replaceable Rules and therefore, to the extent a clause of the Constitution is inconsistent with these provisions, the Corporations Act will prevail. So whilst a Constitution can introduce additional provisions around the giving of a notice to members, it cannot be inconsistent with the provision of the Corporations Act.

This means that under the Corporations Act, a notice of meeting needs to be given to a member individually either:

- by personal service;
- by sending it to a postal address, fax number or electronic address nominated by the member; or
- if nominated by the member, by notifying the member via electronic means that the member can electronically access the notice of meeting and setting out how the notice may be accessed by those electronic means.

In the third instance, this will only be a valid means of giving notice to a member who has nominated that it wishes to receive notices in such a way. Where such nomination has not been given by the member, then the method of giving notice must be via personal service or post/fax or email. Similarly, if a member does not provide an email address and a fax number to the CLG, then notices must be given either personally or by post.

It is important to understand these distinctions when transitioning from an Association to a CLG and to educate your members so they are aware of the manner by which notices of General Meetings must be given for the organisation to comply with the relevant law.

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