Meetings of Incorporated Associations

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This article discusses corporate meeting procedure in Australia under the six State and two Territories' Associations Incorporation legislation[1] with comparisons to the current Corporations Law. Meeting procedures may be found from several sources; legislation, the constitution and by-laws of the corporation, the general law and secondary sources such as text writers. The article addresses the concept of 'meeting', the adoption by corporations of precedent or default articles or rules and, finally, corporate meetings are considered in general chronological order, from the convening of the meeting, the formal requirements, to the deliberative and voting process.

The constitution under the Corporations Law is termed the articles of association and in the eight Associations Incorporation statutes is termed the rules. Seven of these nine statutes provide for precedent or default articles or rules, consisting of Table A and B for the Corporations Law[2] and Model Rules for Victoria, Queensland, New South Wales, Tasmania and the ACT associations. Most jurisdictions also provide for minimum content of the rules in the event that the Model Rules are not adopted. Requirements of the statutes are generally mandatory, whereas many provisions of the articles and model rules may be altered to suit individual corporations.

National non-profit associations must work through a labyrinth of inconsistencies and omissions in prescribed rules to manage its organisations and advise its members which have incorporated on a local basis. The plight of non-profit associations and the increased use and accountability scream out for uniform legislation. The Corporations Law and the Consumer Credit Code are examples of such uniformity.

Non profit associations have only recently had the benefit of incorporation pursuant to specialised legislation in all Australian States.[3] Utilisation of such legislation is increasing. However the jurisdictions have taken varying approaches to such aspects as the eligibility and method of incorporation, members' rights, constitutional requirements and winding up procedure. There is often little certainty in the administration of these bodies. Proposals for national uniform model rules, in relation to meetings for incorporated associations, are included throughout the article.[4]

I. Meetings

The principal agency through which a corporation reaches its decisions is the resolutions of the members in a general meeting. The members commonly delegate powers of management to a board of directors or a management committee, whose decisions are made at meetings. A properly constituted meeting normally has two or more persons, with

1 Associations Incorporation Acts of Tasmania 1964; Queensland 1981; Victoria 1981; New South Wales 1984; South Australia 1985; Western Australia 1987; Northern Territory 1963; and Australian Capital Territory 1991.

2 The Exposure Draft of the Second Simplification Bill proposes inter alia that the Table A and B rules be transferred into the body of the Corporations Law; Table B is only available for No Liability companies.

3 The last State to legislate was New South Wales in 1984. The first such legislation was the Institutions Incorporation Act 1858 in South Australia.

4 The writer has reproduced the proposed uniform model rules in full on the internet at: *http://www.uq.edu.au/laadavid/associations.html*

a sufficient number to form a quorum, of which adequate notice has been given, and from which no person who is entitled to be present has been excluded.

With the passing of the First Corporate Law Simplification Act 1995 proprietary companies may now comprise a single shareholder or have a single director. The Corporations Law now permits single shareholder and single director proprietary companies and, by necessity, dispenses with meetings and deems the recording of a decision to be a resolution. The recording must be in writing and 'counts as' a minute of the passing of the resolution.[5]

As to the position regarding the holding of a meeting by one person in *Sharp v Dawes* Lord Coleridge said:

> The word 'meeting' prima facie means a coming together of more than one person.[6]

Lord Justice Mellish said in agreement:

> a meeting could no more be constituted by one person than a meeting could have been constituted if no [person] at all had attended.[7]

In that case a meeting had been convened for the purpose of making a call. One shareholder attended with proxies for other shareholders and passed a resolution. The Court held that there was no meeting. The Full Court of the Supreme Court of Victoria in *R v Cogdon; ex parte Hasker*[8] and *R v Leech; ex parte Tolstrup*[9] declined to follow *Sharp v Dawes*. In each of these cases one individual attended with two valid proxies. The only distinction was that the English case was a proposed meeting of shareholders while the Victorian cases involved proposed meetings of creditors. Both Victorian cases held that the meetings and the resolutions were valid.

In *East v Bennett Bros Ltd*[10] the Court held that the word 'meeting' as used in the memorandum of association was to be interpreted 'not in the strict sense in which it is usually used, but as including the case of one single shareholder holding all the shares in a particular class. Where all shares are held by a holding company a meeting of the company must be of one person with a quorum of one.[11] The Corporations Law empowers the court to order a meeting of one person.[12] In limited circumstances the Corporations Regulations provide for a meeting of one.[13] In *Daimler Co Ltd v Continental Tyre & Rubber Co*[14] Lord Parmoor did not find any objection to the articles providing for a quorum of one for a meeting of directors.

It is not necessary that all members are at the same location provided there are adequate audio-visual or audio communication links between all members.[15]

II. Model articles and rules

For the purposes of determining the effect of the model articles and rules on meeting procedure it is necessary to examine how each jurisdiction imposes the regulations on the corporations. The articles of association of a company under the Corporations Law are provisions which regulate the internal management and operation of the company. Section 175(1) of the Corporations Law provides that a company may adopt as its articles all or

5 Corporations Law, ss 114, 221 and 255A.
6 [1876] 2 QBD 26 at 29.
7 Ibid.
8 [1877] 3 VLR 88.
9 [1879] 5 VLR 494.
10 [1911] 1 Ch 163 at 170.
11 Corporations Law, s 249.
12 Sections 251(1) and 411. For an example of a s 411 order see *Re Hastings Deering Pty Ltd* (1985) 3 ACLC 474.
13 Regulation 5.6.16(3).
14 [1916] 2 AC 307 at 356.
15 See infra under heading 'Audio-visual and audio communications links'.

any of the Regulations contained in Table A, or Table B for a no liability company.[16] For a company limited by shares the Regulations in Table A shall, so far as is applicable and unless excluded or modified, be the company's articles as if contained in its registered articles.[17] If a no liability company does not register articles or the registered articles do not exclude or modify the Table B Regulations, then those Regulations shall, so far as applicable, be the articles of the company as if contained in the registered articles.[18] Companies limited by guarantee, shares and guarantee and unlimited companies must register their own articles.[19]

The Model Rules of the Associations Incorporation Acts of New South Wales, Victoria, the ACT and Tasmania apply in a similar fashion to the Tables for companies. In Tasmania the Model Rules form part of the association's rules unless expressly excluded or where they are inconsistent with other written rules of the association.[20] In New South Wales, Victoria, Queensland and the ACT where the Model Rules make provision, but the rules of the association do not, the Model Rules are deemed to be included in the rules of the association.[21] In South Australia, Regulations until recently set out a set of model rules as a guide only. South Australia has now withdrawn its Model Rules although the Act retains the right for the implementation of model rules.[22]

III. Convening of meetings

Meetings are generally called by notices served on members setting out the time, date and place of the meeting and the business to be transacted. Annual general meetings are to be convened by the management committee or directors. The time requirements for the calling of the first and subsequent annual general meetings are compared in Table 1.

For the time period for the calling of the annual general meeting there is little difference between the jurisdictions. For uniform model rules it is suggested that the Corporations Law requirement be adopted. It is proposed that the ordinary business of the annual general meeting shall be:

(1) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;

(2) to receive from the committee reports upon the activities of the association during the last preceding year;

(3) to elect members of the committee, including office-bearers; and

(4) to receive and consider the statement of accounts and the reports that are required to be submitted to members pursuant to the Act.

The requirement for the appointing of a compulsory auditor is omitted, preferring the New South Wales position over the Queensland view.

A single director of a company may convene a general meetings provided the articles or rules so provide.[23] However there is no model rule permitting a single management committee person to convene a meeting. In the absence of any provision for the convening of general meetings by directors, or management committee, the Court held in the English case of *Browne v La Trinidad*[24] that a resolution of the board, or by extension the management committee, is required. There are provisions in the model rules that a general meeting may be convened by a resolution of the management committee.[25] General

16 See note 2.
17 Corporations Law, s 175(2).
18 Corporations Law, s 175(4).
19 Corporations Law, s 125(1).
20 Section 16 (Tas).
21 Section 19(3) (NSW); s 47 (Qld); s 21(3) (Vic); s 31 (ACT).
22 Section 67 (SA).
25 The specific provisions are r 24(1)(a) (Qld); r 10(1) (Vic); r 24(1) (NSW); r 12(1) (Tas); r 23(1) (ACT); and r 16(1) (SA)

Table 1
Calling Of Annual General Meetings

	*Provision**	*Requirement*
Qld	21 and 22	1st: Within 18 months of incorporation Other: Within 3 months of end of financial year
NSW	22	1st: Within 18 months of incorporation and 2 months of end of financial year Other: within 6 months of end of financial year
Vic	8	In each calender year
Tas	11	Within 3 months of end of financial year
ACT	21	1st: Within 18 months of incorporation and 5 months of end of financial year Other: within 5 months of end of financial year
SA**	16	1st: Within 18 months of incorporation and 5 months of end of financial year Other: no provision in model rules
Corp Law	S 245	1st: within 18 months of incorporation and 5 months of end of financial year Other: Within 5 months of end of the financial year

* Reference is to the Model Rules, except for the Corporations Law.
** Provision prior to repeal.

meetings may be convened by requisition of the members.[26] The Corporations Law further makes provision for the convening of meetings by order of the court,[27] liquidators and administrators.[28]

The board or management committee is not compelled to call a general meeting when requisitioned if the resolution which is proposed to be dealt with is beyond the powers of the corporation to implement, if the notice is too vague and does not express the object of the meeting, or is defamatory. In *Isle of Wight Railway Co v Tahourdin*,[29] Fry LJ stated

> If the object of the requisition to call a meeting were such, that in no manner and by no machinery could it be legally carried into effect, the directors would be justified in refusing to act upon it.

This statement was approved by Ryan J in *Queensland Press Ltd v Academy Investments No.3 Pty Ltd.*[30]

Generally the contents of the requisition must include the objects or purpose for the meeting, be signed by the requisitioning members and depending upon the jurisdiction, be sent to the secretary, the committee or deposited with the office of the association or registered office.[31] The sole exception is Queensland which only requires the reasons to be stated clearly and the nature of the business.[32]

26 See Table 2.
27 Section 251, impracticable to convene a meeting or conduct business; s 411 scheme of compromise or arrangement; s 547 ascertain wishes of creditors or contributories.
28 Sections 508 and 439A.
29 (1883) 25 Ch D 320 at 334.
30 [1988] 2 Qd R 575 at 578; (1987) 5 ACLC 175 at 178.
31 Corporations Law, s 246(2) and r 10(3) (Vic); r 24(3) (NSW); r 16(4) (SA); r 12(3) (Tas); and r 23(3) (ACT)
32 Rule 24(2) (Qld).

For a comparison of the provisions under the Corporations Law and the Associations Incorporation statutes for convening a meeting by requisition see Table 2.

Queensland provides no recourse for failure by the management committee to convene the meeting. In other jurisdictions if no meeting is convened within one month (21 days for the Corporations Law and Tasmania) the requisitioning members may convene the meeting within 3 months, except South Australia which has no limit.[33]

For uniform model rules it is suggested that 'the committee may, whenever it thinks fit, convene a special general meeting of the association'. This is a simpler version than, for example, the Victorian Model Rules and leaves to concerned members to requisition a meeting. For simplicity it is suggested that the New South Wales, Victorian and ACT approaches granting the right to 5 per cent of the total number of members to convene a special general meeting of the association. The requisition for a special general meeting should state the objects of the meeting; be signed by the members making the requisition; be sent to the address of the secretary; and may consist of several documents in a like form, each signed by one or more of the members making the requisition. If the committee does not cause a special general meeting to be held within one month after the date on which the requisition is sent to the secretary, the members making the requisition, or at least 50 per cent of their number may convene a special general meeting to be held not later than three months after that date.

Table 2
Convening of General Meeting on Requisition

	*Provision**	*Requirement*
Qld	24(1)(b)	1/3 of committee; or a number equal to double the committee plus 1
NSW	24(2)	5% of total number of members
Vic	10(2)	5% of total number of members
Tas	12(2)	Not less than 10 members
ACT	23(2)	5% of total number of members
SA**	16(3)	(Number to be filled in by corporation)
Corp Law	S 246***	Shares — 100 members; No shares — 200 members; or 5% of total voting rights.
	S 247***	Shares — 2 or more members holding at least 5% of share capital; or No shares — 5% of membership

* Reference is to the Model Rules, except for the Corporations Law.
** Provision prior to repeal.
*** S 246 applies notwithstanding the articles, and S 247 applies so far as the articles do not make other provision.

33 Corporations Law, ss 246(3) and (5) and rr 10(4) (Vic); 24(4) (NSW); 16(5) (SA); 12(4) (Tas); and 23(4) (ACT)

A special general meeting convened by members in pursuance of these provisions must be convened in the same manner as nearly as practicable as that in which those meetings are convened by the committee and all reasonable expenses incurred in convening the meeting shall be refunded by the association to the persons incurring the expenses. The word 'practicable' as used in the New South Wales and ACT Model Rules is preferred over 'possible' as used in Victoria and Tasmania. The former South Australian provision was unsatisfactory as it required that the meeting must be held in 'the same manner'.

IV. Notice

Each member of the corporation must be given notice of meetings to allow an appropriate opportunity to participate in the meeting and vote accordingly. Notice is one of the requisites for a meeting to be validly constituted.[34] At common law, where there is no prescribed procedure for giving notice, meetings need to be convened in a way which will bring notice of the meeting to every member.[35] Where the requirements for notice are set out in the articles, rules, standing orders or relevant statutes, they must be complied with precisely.[36] Notice may consist of personal service, pre-paid post or an advertisement in the appropriate newspaper.

For uniform model rules it is suggested that the New South Wales and ACT Model Rules as to notice be preferred. The rules should provide that except where the nature of the business proposed to be dealt with requires a special resolution, the secretary must, at least 14 days before the date fixed for holding a general meeting, cause to be sent to each member at the member's address appearing in the register of members, a notice by prepaid post stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.

The sexist language of the Victorian version is to be avoided and the Tasmanian requirement to advertise could prove onerous for many associations. The Victorian provision that no business other than that set out in the notice convening the meeting should be transacted at the meeting is preferred. For members desirous of bringing business before a meeting, the New South Wales provision is preferred to the ambiguous Victorian and ACT versions. The provision is that notice may be given in writing to the secretary who shall include that business in the notice calling the next general meeting given after the receipt of the notice from the member.

V. Quorum

Unless a quorum is present the meeting and all resolutions may be invalid. For the default quorum requirements see Table 3.

If the rules do not specify a quorum for a general meeting, the common law rule applies that a majority of the membership constitutes a quorum.[37] Similarly for a directors' meeting, in the absence of a provision for a quorum, the common law rule is that a majority of directors constitutes a quorum.[38] However where a reduced number usually acted in conducting the business of the company, an earlier authority allowed two of six directors to constitute a quorum.[39] The presumption is that these common law rules would equally apply to all types of corporations.

Whether the quorums need to be present merely at the commencement of business or throughout the transaction of business depends upon the governing regulation or rule.

34 *Barron v Potter* [1914] 1 Ch 895.
35 *Campbell v Higgins* (1957) 3 FLR 317.
36 *King v Fulton* (1876) 2 VLR (Eq) 100.
37 *Merchants of the Staple of England v Bank of England* (1887) 21 QBD 160 at 165.
38 *York Tramways Co Ltd v Williams* (1882) 8 QBD 685.
39 *Re Tavistock Ironworks Co; Lyster's case* (1867) LR 4 Eq 233 at 237.

Table 3
Quorum

	Corp Law	*Qld*	*NSW*	*Vic*	*Tas*	*ACT*	*SA**
General meetings	Pty Co with a single member — that member Other Pty Co — 2 Public Co — 3	Double committee plus 1	5	5	15	5	**
Board or management committee meetings	Single dir co — that director Other — 2	Simple majority of committee	3	4	6	3	5

* Provision prior to repeal.
** Number to be filled in by applicant on incorporation.

In the first category are the Model Rules of the Associations Incorporation Act of Queensland and Table A and B of the Corporations Law, which provide:

> No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting *proceeds to business.*[40]

Despite some contrary authority[41] Wynn-Parry J, in considering an article in similar terms in *Re Hartley Baird Ltd*,[42] held that, provided a quorum was present when the meeting commenced, it was not necessary that a quorum should continue to be present throughout the meeting. In that case ten members were required for a quorum and ten were present at the commencement of the meeting. One member objected to a proposed resolution and left the meeting. The Court held that the adoption of the resolution by the remaining nine members was valid. As the article was reproduced in Table A UCA and the current Corporations Law it can be presumed that the Legislature intended the interpretation ascribed by Wynn-Parry J.

In the second category are the Model Rules of New South Wales, Tasmania, Victoria and the ACT. The first two require a quorum to be present 'during the time the meeting is considering that item';[43] whereas the Victorian and ACT Model Rules require a quorum 'for the transaction of the business'.[44]

The former South Australian Model Rules required 'a quorum at any general meeting'[45] with no aid as to whether this should continue throughout the meeting. In the absence of a provision in the constitution and without the aid of the courts in this regard, the texts of Renton, Joske and Horsley state that a quorum is required throughout the meeting.[46]

40 Regulation 42(1) Table A; r 26(1) Table B; and r 25(2) (Qld); emphasis added.
41 The First Division of the Court of Session in *Henderson v James Louttit & Co Ltd* (1894) 21 R 674.
42 [1955] Ch 143.
43 Rule 26(1) (NSW) and r 14(2) (Tas).
44 Rule 12(3) (Vic) and r 18(5) (ACT).
45 Rule 17(1) (SA).
46 N E Renton, *Guide to Meetings*, (5th ed), Law Book Co, Sydney, 1990; E S Magner, *Joske's Law and Procedure at Meetings in Australia*, (8th ed), Law Book Co, Sydney, 1994; W J Taggart, *Horsley's Meetings Procedure Law and Practice*, (3rd ed), Butterworths, Sydney, 1989.

For uniform model rules it is suggested that the New South Wales, ACT, Tasmanian and Victorian approach be adopted. This is consistent with the leading texts and contains a modicum of common sense.

VI. Audio-visual and audio communication links

Discussion on the use of technology for the purpose of holding meetings has in large been limited to companies, but may be extended as applying to all meetings.

Sir Nicholas Browne-Wilkinson VC stated in *Byng v London Life Association Ltd:*[47]

> Given modern technological advances, the same result can now be achieved without all the members coming face to face; without being physically in the same room they can be electronically in each other's presence so as to hear and be heard and to see and be seen.

Perry J made the following obiter statement in *Magnecrete Ltd v Robert Douglas-Hill*[48] regarding electronic communication:

> It may be that a meeting . . . could be held on a conference telephone.

Referring to this comment in the later case of *Residues Treatment & Trading Co Ltd v Southern Resources Ltd,*[49] Perry J indicated that for the companies to hold meetings by telephone, whether separately or by use of a conference telephone, provision must be made in the articles of association. In March 1989 the Companies and Securities Law Review Committee recommended that legislation authorise all companies to conduct meetings 'of directors' by telephone or other communication facilities that allow simultaneous and instantaneous transmission. Reform for companies is on the horizon. The Exposure Draft to the Second Simplification Bill proposes that a company may hold a members' meeting at two or more venues using any technology that gives members a reasonable opportunity to participate.

This does not solve the problem for other bodies. In the interim, other corporations and associations desirous of using technology are advised to make specific provisions in their rules or constitution along the lines of the proposed amendment to the Corporations Law.

VII. Chairperson

According to Street J (as he then was) in *Colorado Constructions Pty Ltd v Platus:*[50]

> It is an indispensable part of any meeting that a chairman should be appointed and should occupy the chair. In the absence of some person . . . exercising procedural control over the meeting, the meeting is unable to proceed to business.

The selection of a chairperson is crucial as the conduct of the meeting and procedural control of debate is largely in the chairperson's hands. If a member's rights are affected where the debate is terminated early the court will give the resolution close scrutiny.[51] The duty of the chairperson is to carry out the duties and exercise powers with fairness and impartiality to all members.[52] A declaration that a resolution has been carried or lost is 'evidence of the fact, without proof of the number or proportion of the votes recorded'.[53] Ultimately the control of the meeting falls in the hands of the meeting by the device of a motion of dissent. The overriding principle should always be that *the meeting has control*

47 (1989) 5 BCC 227 at 233; [1989] 1 All ER 560 at 565.
48 (1988) 48 SASR 565 at 603.
49 (1989) 7 ACLC 1130.
50 (1966) 2 NSWR 598 at 600.
51 *Re Direct Acceptance Corporation Ltd* (1987) 5 ACLC 1037 at 1042.
52 *Dickason v Edwards* (1910) 10 CLR 243.
53 Regulation 46(2), Table A and r 30(2), Table B; r 17(7) (SA); r 17 (Tas); r 15 (Vic); r 29(1) (NSW); r 28(1) (ACT). Queensland has no such provision.

of itself. Although the various Acts do not deal with this important procedural point, the general law applies to all such meetings.[54]

With the exception of the former South Australia model, the Model Articles and Model Rules provide for a second or casting vote to the chairperson.[55] The South Australian provision simply stated that each member shall be entitled to one vote.[56] The common law position is that in the absence of a provision to the contrary there is no second or casting vote.[57] Each of the Model Rules and Articles provide for the appointment of a chairperson to general meetings, see Table 4.

For uniform model rules it is suggested that the New South Wales and Victorian Model Rules be preferred for simplicity and ease.

Table 4
Selection of Chairperson of General Meeting

	*Provision**	*Requirement*
Qld	27(1)(a)	President, if not present within 15 minutes the Vice-president, if not present or unwilling, members present to elect one from their number
NSW	27	President, if absent the Vice-president, if both absent, members present to elect one from their number
Vic	13	President, if absent the Vice-president, if both absent, members present to elect one from their number
Tas	15	President, if absent the Senior Vice-president, if absent, the other Vice-president, if absent, members present to elect one from their number
ACT	26	President, if absent the Vice-president, if both absent, members present to elect one from their number
SA**	17(3)(4)	Chairperson of committee, if no chairperson the v. chairperson, but if absent, declines or retires from the chair one of the committee, if none within 5 minutes members present to elect one from their own number
Corp Law	Table A, r 44; and Table B, r 28	If Board has elected a chairman, that person shall chair GM, if not or if that person is not present within 15 minutes, or is unwilling to act, members present shall elect one from their number

* Reference is to the Model Rules, except for the Corporations Law.
** Provision prior to repeal.

54 For example Re *Canberra Labour Club Ltd* (1987) 5 ACLC 84 and *Corpique (No 20) Pty Ltd v Eastcourt Ltd* (1989) 7 ACLC 794.
55 Regulation 48, Table A; r 32, Table B; r 16(3) (Vic); r 31(3) (NSW); r 18(3) (Tas); r 29(3) (ACT); and r 27(1)(d); (Qld).
56 Rule 19(1) (SA).
57 *Bishop of Chichester v Harward & Webber* (1787) 1 Term Rep 650 at 651; 99 ER 1300 at 1301; *Nell v Longbottom* [1894] 1 QB 767 at 771.

VIII. Motions and amendments

The essentials of a motion are that it is:

(1) certain and unambiguous;

(2) in accordance with the memorandum of association or rules;

(3) in accordance with the legislation; and

(4) within the scope of any notice which is required to be given.

The acceptability of a motion is ultimately in the hands of the meeting. Action taken by a member on the grounds of illegality must be taken without delay.[58]

Provisions for the formal procedure of motions to reach a resolution by the meeting are made only indirectly. Tables A and B and all six sets of Model Rules contain the underlying presumption that questions will need to be determined and resolutions will need to be made. However the procedural stages up to voting are left unstated. Rules headed 'Determination of Questions' deal with the method of voting and not the determination and debating process. Similarly there are no provisions dealing with amendments to motions.

The decisions of a corporation are usually reached as a result of motions being proposed, discussed and voted upon. The conclusion reached is the resolution of the meeting. However motion is not necessary — the chairperson may require a meeting to vote on a proposal which has not been the subject of a motion. In *Re Horbury Bridge, Coal Iron & Waggon Co*[59] James LJ said:

> In my opinion if the chairman puts the question without its having been either proposed or seconded by anybody, that would be perfectly good.

However a contrary view was held by Young J in *Re Adams International Food Traders Pty Ltd.*[60] He stated that a motion should be moved and seconded, especially if the meeting normally transacted business in a formal manner. A seconder is usually required because if the motion does not have the support of a seconder it is unlikely to be adopted and any ensuing discussion would be to no avail.[61]

An amendment to an ordinary resolution may be accepted if it is not a direct negative of the motion. It must come within the scope of the motion and must not stray too from the motion.[62] The amendment must be 'of a nature akin to that contained in the notice'[63] and in no way 'alter the character of the original resolution'.[64]

The Corporations Law and the Associations Incorporation Acts provide that a special resolution is required for particular motions, such as the alteration of rules and a motion to proceed to winding up. The formalities vary slightly, however generally 21 days notice is required and a 75 per cent majority of those voting.

IX. Meeting procedure

Scant treatment is given in relation to the proceedings of the actual meeting of a corporation by the Corporations Law and the Associations Incorporation Acts. Each deals with the basics to convene a valid meeting and how members may cast their vote, but procedure for the decision making process is largely absent.

Texts by authors such as Joske, Renton and Horsley[65] are often used as the reference

58 *Palazzo Corp Pty Ltd v Hooper Bailie Industries Ltd* (1989) 7 ACLC 266.
59 (1879) 11 Ch D 109 at 118.
60 (1988) 6 ACLC 759 at 765; (1988) 13 NSWLR 282 at 284.
61 Unless the mover was a majority shareholder.
62 *Henderson v Bank of Australasia* (1890) 45 Ch D 330.
63 *James v Amott* (1918) 14 Tas SR 99 at 107.
64 *Re Picturesque Atlas & Publishing Co Ltd* (1892) 13 LR (NSW) Eq 44 at 50.
65 See note 46.

and authority for procedural matters not covered in the legislation, the constitution, the by-laws or standing orders of the body. The effect is that these texts become the 'law' for such organisations. A procedural rule as used by all clubs of the Australian service organisation Apex International states:

> Where any matter is not provided for in the rules, 'Guide to Meetings' by N.E. Renton shall be followed.

A common procedure is to require that a member formally raise a motion and allow no discussion until it is seconded. Discussion is often strictly controlled. One procedure requires alternative speakers for the affirmative and opposing views, and if that chain of debate is broken the motion must be put immediately. Often no speaker, with the exception of the mover who is allowed a right of reply, is allowed to speak twice. The mover is not allowed to introduce new material during the reply. Time limits often control the length of debates. To facilitate the smooth running of a meeting, and often to curtail debates, procedural motions form part of the corporation's by-laws requiring, 'that the question be now put'; 'that the meeting proceed to the next business'; 'that the question lie on the table' and so forth.

At one extreme an organisation's meeting procedure, after the proper convening and quorum requirements, might consist of the sole rule that 'the chairperson is dictator subject only to a motion of dissent'. The effect is that the chairperson controls the agenda and business, permits and directs discussion, decides whether the meeting is best served by an open forum or a formal motion, or whether a mover and a seconder are required, limits times, and so forth. If the chairperson proceeds in a manner unsatisfactory to the meeting, a member is at liberty to move a motion of dissent to reverse only that particular aspect of the chairperson's ruling or procedure that is objectionable. In this way the meeting ultimately can maintain control of itself and its destiny. However most members would feel best served with a regulatory procedure with a less dictatorial approach. Members would have more control if their rights included the ability to raise points of order for non-adherence to set procedure, whilst always maintaining a motion of dissent as the ultimate backstop.

Procedure at meetings is extremely varied among organisations and text authors have differing and sometimes opposing views. Informality suits many organisations whilst the size and nature of others require strict procedure.

The golden rule of all meeting procedure is that the meeting must have control of itself. The procedural rules must assist the smooth running of the meeting and not tie it down with unnecessary procedure and futile points of order. It is this writer's opinion that the procedure for the running of a meeting is correctly left outside of the statutes and their model constitutions and rest with the individual corporation.

X. Voting

For incorporated associations, members are entitled to one vote, whereas for companies it is generally dependent upon shareholding. Voting by a show of hands and a poll are the only methods prescribed by the models, but an alteration may be made to include other methods; for example by voices, by a personal attendance ballot or by postal ballot. Generally the models provide for voting by a show of hands and allow a poll to be demanded by at least three members.[66] Queensland requires the minimum to be one fifth and Tasmania has no minimum.[67] Tables A and B also permit the demand to be by the chairperson and make provision for dependency upon voting rights and share holding.[68]

66 Rule 28 (ACT); r 17(7)(8) (SA); rr 15 & 17 (Vic); r 29 (NSW)
67 Rule 27(1)(f) (Qld) and rr 17, 19 & 20 (Tas).
68 Regulation 46(1), Table A and r 30(1), Table B.

For uniform model rules it is suggested that the New South Wales, Victorian, Tasmanian and ACT approach be adopted. That is, that a question arising at a general meeting shall be determined on a show of hands and unless before or on the declaration of the show of hands a poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book is evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution. It would be undesirable to use the expression 'conclusive evidence' as in the former South Australian Model as appropriately corrections and challenges ought to be permitted. The words 'or an entry' is preferred to 'and an entry' which appear in the Victorian and Tasmanian Models because each element should be evidence in their own right. The extent may be determined late as appropriate.

A poll should be permitted on demand by the chairperson or by not less than three members present in person or by proxy at the meeting and should be taken at that meeting in such manner as the chairperson may direct and the resolution of the poll shall be deemed to be a resolution of the meeting on that question. This approach is a combination of the New South Wales Model with the Victorian one.

The uniform model rules should include a provision that upon any question arising at a general meeting of the association, a member has one vote only and that all votes must be given in person or by proxy. A provision included in the New South Wales and ACT Models that limit proxies to five is not preferred. Astute associations may make their own change as considered appropriate. In the case of an equality of voting on a question, the chairperson of the meeting should be entitled to exercise a second or casting vote.

XI. Proxies

The term proxy is used to describe both the agent of the member and the instrument appointing. All Model provisions with the exception of Tasmania allow proxies. At common law voting must be in person. The authority to appoint another to attend and vote depends upon agreement (articles or rules) or upon statutory authority.[69] For a comparison of the provisions under the Corporations Law and the Associations Incorporation statutes for the regarding proxies see Table 5.

For uniform model rules it is suggested that each member be entitled to appoint another member as proxy by notice given to the secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed. The notice appointing the proxy should be in a form set out in an appendix to the rules. This approach adopts the majority of the States' approaches. The Queensland Model Rules also made provision for the appointment of an attorneys, while the Tasmanian Model Rules fail to deal with proxies altogether.

XII. Rescission of resolution and motion of dissent

A resolution adopted at a meeting may be rescinded at that meeting, at an adjournment of that meeting, or at any subsequent meeting[70] provided that the resolution has not been acted upon. The control of the meeting must always ultimately be in the hands of the meeting. The device of a motion of dissent guarantees such control. The meeting must have control of itself. Neither the Acts nor the Model Articles and Rules deal with this procedural point, however the general law gives the control of the meeting to the meeting

69 *Re Huon Valley Springs Pty Ltd* [1986] Tas R 112 at 115; (1986) 4 ACLC 575 at 579.
70 *Ex parte Renouf* (1924) 24 SR 463.

Table 5
Proxies

	*Provision**	*Requirement*
Qld	27(h)–(m)	Proxy or attorney permitted, need not be a member, one vote only on show of hands, all proxies counted on secret ballot
NSW	32	May appoint another member as proxy
Vic	19	May appoint another member as proxy
Tas	18 (2)	No proxies
ACT	29 & 30	May appoint another member as proxy, maximum of 5 proxies may be held
SA**	20	May appoint another member as proxy
Corp Law	S.250 (R.54 Table A & R.38 Table B)	Proxy permitted, need not be a member if provided by articles; may vote only on poll unless articles provide

* Reference is to the Model Rules, except for the Corporations Law.
** Provision prior to repeal.

by this device.[71] Ultimately the meeting must proceed in the direction of the collective mind and corporate will.

XIII. Jurisdictions without model rules

The Northern Territory is unique in its approach to the incorporation of associations. The legislation adds a second category of incorporated association termed the 'trading association'. Little attention is paid by the legislation to the ordinary incorporated association. Amendments to its legislation relate almost exclusively to the trading corporation. The Ordinance is silent on rules for ordinary associations, however sub-s 25T(1) provides for the minimum content of the rules of trading associations. para 25T(1)(e) provides that the rules must include 'the procedure for the conduct of meetings of the committee of the association'.

Apparently, procedure for other situations is not considered important enough for treatment. There are no model rules and no mandatory or minimum content for the rules other than s 25T.

Western Australia replaced its 1895 Associations Incorporation Act in 1987.[72] As with the other Associations Incorporation Acts, it does not deal directly with an association's meeting procedure. Like the Northern Territory, no provision is made for model rules. However, s 16 provides that to conform with the Act the rules must include provisions in respect of each of the matters that are specified in its Schedule 1 and must otherwise be consistent with the Act.

South Australia recently removed its Model Rules in favour of requiring the body to form its own rules. This is singularly undesirable and for many associations an additional and unnecessary stumbling block.

71 *Re Canberra Labour Club Ltd* (1987) 5 ACLC 84; *Corpique (No.20) Pty Ltd v Eastcourt Ltd* (1989) 7 ACLC 794.
72 Act No 59 of 1987.

XIV. Proposal

Every State and Territory has enacted legislation to incorporate associations. If the intended purposes are similar, then the question arises, why is there such a divergence in approaches? If all jurisdictions have concluded that it is desirable to permit the incorporation of associations, then uniform legislation is the next step. Australian community service organisations such as Apex International, Lions, Rotary and Women's Apex require their member clubs to incorporate under the local Associations Incorporation legislation, notwithstanding the local variances. Apex International has 7,000 members in 500 incorporated clubs in all States and Territories. The central body is obligated to make itself aware of the differing legislative requirements.

A proposal in relation to aspects of meeting procedure for general meetings suitable for inclusion in uniform model rules has been suggested throughout this article.[73] An attempt has been made to bring together the better aspects of the statutes.

Non-profit associations have had to toil through a maze of rules and procedures, primary and secondary legislation and the opinions of texts. The concerns of non-profit associations, their members and the public should be resolved by the implementation of uniform legislation.

73 The writer has reproduced the proposed uniform model rules in full on the internet at: *http://www.uq.edu.au/laadavid/associations.html*