

Summary of Chairman's powers and duties

1 Role of the Chairman

- (a) The primary roles of the chairman of a meeting are to:
- ensure the orderly conduct of the business of the meeting;
 - ascertain the will of the meeting on the business of the meeting; and
 - determine and enforce the procedures to be followed at the meeting.

2 Source of power

This paper outlines the powers of the chairperson under Australian law.

Your constitution may also provide powers and duties of the chairman in relation to the regulation of general meetings.

In most instances where there is not an express power in the Constitution, there will be recognised meeting procedure derived from common law that will allow a power to be exercised.

3 Admission to the meeting

3.1 Who is entitled to attend?

- (a) The following people are entitled to attend the meeting are:
- (1) a member;
 - (2) a proxy for a member;
 - (3) an attorney for a member;
 - (4) a representative of a member;
 - (5) the board; and
 - (6) an auditor.
- (b) A person who is not in one of these categories is technically a 'trespasser' and can be refused entry to the meeting by the chairman. However, this would be an unusual approach for an entity to take.

3.2 What is the position with observers or visitors?

- (a) The chairman has the discretion to permit observers or visitors to be present at the meeting.
- (b) If a member wishes to bring an observer or visitor to the meeting, the chairman has the discretion to accept or refuse the admission of that person. The chairman should be consistent between the treatment of different members in this regard. However, allowing the attendance of your association's own advisers does not mean the chairman must allow members' advisers to be present.

3.3 What can be done with suspected troublemakers?

- (a) There is a general power to control the meeting including the power to refuse admission to, or require a person to leave and remain out, of the meeting if that person:
 - (1) in the chairman's opinion, is not complying with his reasonable directions;
 - (2) has any audio or visual recording device;
 - (3) has a placard or banner;
 - (4) has an article the chairman considers to be dangerous, offensive or liable to cause disruption;
 - (5) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession; or
 - (6) behaves or threatens to behave in a dangerous, offensive or disruptive manner.
- (b) This power extends to observers and visitors present at the meeting.
- (c) In our view, this general power should not be used against a mere suspected troublemaker in instances where that person has not yet shown any apparent signs of causing trouble, and therefore has not "behaved" or "threatened to behave" in an unacceptable manner. However, if the person was carrying a placard or banner, or was in possession of an article considered by the chairman or his delegate to be dangerous, offensive or liable to cause disruption, that person could be refused entry.
- (d) The chairman can delegate this power.
- (e) In our view, the power of the chairman should be regarded as extending to the foyer and registration areas attached to the meeting venue, but not areas outside the complex.

4 Discussion during the meeting

4.1 What if the meeting is too crowded for proper discussion?

If the chairman considers that there is not enough room for the members who wish to attend the meeting, he may arrange for any person whom he considers cannot be seated in the main meeting room to observe the meeting from a separate room (via video link). Even if the members present in the separate room are not then able to participate in the conduct of the meeting, the meeting is still taken as validly held in the main room.

Some constitutions will provide that if the members present in the separate room are not able to participate in the conduct of the meeting, the meeting will nevertheless be treated as validly held in the main room. In addition, some constitutions also informally provide for members in the separate room to ask questions via the ushers.

However, we consider such provisions aren't strictly necessary and wont prevent you from hiring 'overflow' facilities in which members turned away from the main room can

observe proceedings. The legal position remains that 'observers' are in the separate room and are not present at the meeting. Therefore, the 'observers' do not have rights to participate in the meeting.

This arrangement (with a main room holding the meeting, and a separate room observing it) is different to holding the meeting in two rooms. Holding the meeting in two rooms simultaneously is not advisable because of the legal difficulties that can arise from technological failures, etc.

4.2 Can the chairman impose time limits on discussion?

- (a) Yes. The chairman may:
- suggest guideline limits on the time each speaker is permitted to speak; and
 - curtail discussion of a type which amounts to obstruction, causing unnecessary delay in bringing a motion to a vote.
- (b) The chairman should exercise caution before enforcing time limits. Time limits should be exercised only after giving a speaker a fair opportunity to exercise his or her rights to speak and to put before the meeting the details that the speaker considers relevant to the motion. If there are any time limits laid down, a person should have the right at the end of the allotted time (if there is any) to ask for a reasonable extension to finish what was being put.

4.3 When can the chairman require a speaker to stop talking?

- (a) The chairman can request a speaker to resume his or her seat where the speaker:
- (1) is engaging in irrelevant discussion;
 - (2) is offensive or makes provocative statements;
 - (3) is unduly longwinded;
 - (4) does not keep to the point under discussion; or
 - (5) makes imputations of improper motives or personal reflections on another person.
- (b) Where a speaker is offensive or makes provocative statements, or makes imputations of improper motives or personal reflections on another person, in addition to requesting the speaker to desist and resume his or her seat, the chairman will often warn the speaker that if he continues the chairman will his microphone turned off as the comments are inappropriate. However, the chairman should not request a speaker's microphone be turned off without strong reason.

4.4 Can the chairman terminate discussion at the meeting?

- (a) Subject to allowing members a reasonable opportunity "as a whole" to ask questions or make comments, the chairman may demand the cessation of debate or discussion on any business or resolution being considered and require that the resolution be put to a vote.

4.5 What can be done with a person dominating discussion?

- (a) The chairman must ensure that sufficient opportunity to speak has been given to those present so that opposing views are presented to the meeting. The chairman has the ability to regulate the time given to each speaker and may interrupt a speaker who is attempting to dominate the floor.

Freehills

- (b) Generally, persons present and wishing to speak upon a motion before the meeting should be allowed to speak. However, a single member should not be allowed to dominate the floor and should allow other members to have an opportunity to speak before asking additional questions regarding a motion before the meeting.

If a member asks repeated questions and attempts to dominate the floor, the chairman should say:
*"Thankyou Mr/Mrs ... for your questions.
I am obliged to give members as a whole an opportunity to ask questions or comment on the item of business before the meeting.
There are many members present today who wish to comment on the motion. In order to allow adequate opportunity for members to ask questions, I must limit the number of questions asked by any one member and am unable to respond to all your questions. As you have already asked several questions, I must ask you to allow others to have their say. You can however, ask further questions once other member have had an opportunity to speak."*

4.6 What about repetitive questions?

- (a) As noted above, generally all persons present and wishing to speak upon a motion before the meeting should be allowed to speak. However, if the question has already been asked by another member and answered by the chairman, the chairman – as part of his duty to regulate the discussion – is entitled to decline to answer the question on the basis that it has already been dealt with.

If a member asks a question that has already been asked and answered, the chairman could say:
*"Thankyou Mr/Mrs ... for your question.
I have already discussed that matter [in response to an earlier question and/or during my address] and I have nothing further to add."*

4.7 When should the chairman require that a motion be put?

- (a) The chairman must fairly ascertain the will of the meeting on an item of business. The chairman has the discretion to determine when it is appropriate to put a motion to the vote.

If the chairman wishes himself to terminate the debate and put the motion, the chairman should say:
"Thankyou for your comments on the motion. We have now heard various speakers on this motion and I believe benefited from a healthy debate. In the interests of proceeding with the business of the meeting, I propose to exercise my powers under the constitution to put the motion for a vote at this stage."

- (b) The chairman has the discretion to accept a procedural motion that the resolution be put – refer to section 7 below. However, if the chairman is of the opinion that valid points regarding the motion are still being made by other members, the chairman may decline the motion.

4.8 Can the chairman request that another person (such as the MD/CEO or the auditor) respond to a question?

- (a) According to the rules of debate, all motions, comments and questions should be directed at/through the chairman and the chairman should determine the most appropriate manner to deal with a matter raised by a speaker. For example, the chairman may invite the MD/CEO to respond to particular questions regarding the proposed transaction or issues directly related to management.

5 Disorderly and disruptive conduct

The chairman has a general power to determine the procedures to be adopted at the meeting for proper and orderly debate or discussion. This extends to procedures to deal with disorderly or disruptive members, as the circumstances require.

5.1 What can the chairman do in the event that a person at the meeting is being disorderly or disruptive (short of ejecting the person)?

- (a) The chairman has a duty to ensure that members are given a reasonable opportunity to express their views and opinions.
- (b) If a speaker is being heckled, the chairman should ask the offenders to desist, exercise his discretion to deal with such interruptions and to intervene where such interruptions are becoming abusive or seriously disrupting the flow of business of the meeting.
- (c) If the conduct of a person or persons is such that the business of the meeting is **seriously interfered** with and, if, after repeated requests from the chairman, the offender persists in obstructive and disruptive behaviour, the chairman can request that person voluntarily leave the meeting and if the offender refuses, reasonable force may be used to expel the person from the meeting.

In dealing with serious interference of other speakers, the chairman could say:
"Can I ask the meeting to come to order and to allow the speaker to continue?"
...
"As chairman, I am responsible for the conduct of this meeting, for ensuring that the proceedings are not unduly disrupted and that all speakers are given an opportunity to be heard. I have asked you to desist on a number of occasions and you have not complied. I am now warning you that if you continue to disrupt this meeting, I will ask you to leave the meeting."

- (d) If a police officer is present, the police officer should expel the person from the meeting (proceeding under the Summary Offences Act). If there is no police officer present, it will be necessary to rely on contracted security, in which case you should ensure that they are aware of any procedures and limitations on their powers existing under applicable law (this should have been a component of their professional training).

5.2 What power does the meeting or the chairman have to eject a person?

- (a) Where a person wilfully fails to obey a ruling or direction in good faith by the chairman for the preservation of order at the meeting, such person may be removed from the meeting:
 - (1) if the meeting so resolves; or
 - (2) where, because the meeting has been so disrupted that it is not practicable to put such a resolution to the meeting, the chairman so directs (refer section 17(3) of the Summary Offences Act 1966 (Vic)).
- (b) Where a person is liable to be removed from a meeting, the chairman may verbally direct any member of the police force who is present to remove such person from the hall, room or building in which the meeting is being held or the neighbourhood thereof and the member of the police force shall remove such person accordingly (Section 17(4) of the Summary Offences Act 1966 (Vic)).
- (c) The power to remove a person from a meeting should only be used in instances where the offender has been given prior warning of the consequences of his or her actions and persists with their behaviour.
- (d) Unless it is practically impossible, we recommend that the chairman also obtain the support of the meeting for the removal of the offender.

5.3 What if the meeting will not come to order?

- (a) At common law the chairman has the power, as a last resort in situations where a meeting will not come to order, to adjourn the meeting.

If the meeting becomes so unruly that it becomes necessary to adjourn the meeting, the chairman could say:

*“As everyone can see, it is no longer constructive to continue with this meeting today. It is my duty as chairman to ensure the orderly conduct of the meeting and to ensure that all members can participate in a meaningful fashion. Since this is no longer possible, I have no option but to adjourn the meeting to a time and place that will be notified to members by way of [an announcement to the ASX].
I now declare the meeting adjourned.*

6 Voting procedures

6.1 What power does the chairman have to determine the voting procedures?

- (a) The chairman may adopt any procedures for casting or recording votes at the meeting, including the appointment of scrutineers under the general power of the chairman regarding the conduct of the meeting. A decision by the chairman on those procedures is final.

7 Procedural motions

- (a) The chairman is responsible for the general conduct of the meeting and procedures adopted. Accordingly, a procedural motion “That the question now be put” or “That the speaker no longer be heard” can be determined by the chairman without reference to the meeting.
- (b) The chairman has the power to adjourn the meeting. Accordingly, a procedural motion “That the debate be adjourned” or “That the meeting be adjourned” can be determined by the chairman without reference to the meeting.
- (c) The chairman is invested with power over the conduct of the meeting and his rulings are final. If a member objects to a ruling made by the chairman in relation to a matter, the chairman is not required to put the motion of objection to the meeting.
- (d) A vote of “no confidence” is not a relevant concept and has no legal effect. The proper juncture for discussion of confidence in the directors is in relation to motions for their election. As such, any motion for a vote of “no confidence” should be refused.
- (e) If a member moves a motion of no confidence in the chairman similar principles apply.

To dispose of a motion of no confidence, the chairman should say:

“Thank you Mr/Mrs

A vote of “no confidence” is not a recognised motion for corporations or trusts, as opposed to Governments. I can assure you that your comments have been heard and in that sense your message has already been delivered.

However, I do not intend putting new motions to the meeting, particularly where the motion has no legal effect.”

- (f) Typically, under the Constitution, the chair will have been appointed by the association. Any motion to appoint a different chairman can be dismissed.

To dispose of a motion to appoint a different chairman, the chairman should say:
*"Thank you Mr/Mrs
The Constitution provides that the association may appoint a person to chair a meeting. As the appointed chair under the constitution, I will not be standing aside as chairman as I have no conflict of interest in the matters being considered at today's meeting."
If the member persists, the chairman could say:
"As I stated, the constitution provides that I am the chairman on this meeting. I do not have to accept your motion and I will rule your motion out of order."*

- (g) Where a member objects to the chairman's ruling and wishes their objection to be recorded in the minutes, the company secretary should record the objection in the minutes of the meeting.

8 Dealing with members proposing new items of business or amendments to existing items of business

8.1 Dealing with "new" items of business proposed from the floor

- (a) Except for "formal motions" (for example, the closure) or purely informal motions, (such as a vote of thanks), no new business should be accepted.

To dispose of a motion proposing new business, the chairman should say:
*"Thank you Mr/Mrs
At law, only certain matters can be dealt with at a meeting of members without prior notice having been given to all members. This is so that members know what business is to be dealt with at the meeting and can decide whether to attend or not, or, if they attend by proxy, they can instruct their proxy how to vote.
Your motion does not relate to one of these matters and I am therefore unable to accept it."*

8.2 Dealing with motions to amend ordinary resolutions

- (a) The legal position is that any proposal to amend an ordinary resolution may (and usually should) be ruled out of order by the chairman unless it is an amendment merely of a technical nature (for example, correcting grammatical or typographical errors). The substance of the resolution should be identical to the resolution specified in the notice of meeting.
- (b) The chairman should rule any amendment proposed as out of order (without putting it to the vote) unless such amendment is clearly within the scope of the resolution.

To dispose of such a motion, the chairman should say:
*"Thank you Mr/Mrs
In accordance with the law, because detailed notice and disclosure in respect of each resolution has been set out in the Notice of Meeting sent to all members, it would not be appropriate for me to accept proposed amendments other than those of a merely technical nature. I therefore regret that I cannot accept your proposal. You may, of course, vote against the motion if you wish."*

To accept a motion to amend a resolution, the chairman should say:
"Thank you Mr/Mrs"

*I consider that your amendment does not alter the fundamental character of the resolution detailed in the Notice of Meeting and Explanatory Notes. I will therefore accept your proposal to amend the resolution. With your amendment, the resolution will now read **[read out the amended resolution]**. I will now put the motion that your amendment be accepted*

Are there any questions as to the effect of the amendment?

All those in favour, please raise your [voting cards].

All those against, please raise your [voting cards].

*I declare the motion **passed/defeated**"*

If the motion to amend is defeated, the chairman should proceed directly to the original motion:

"As the motion has been defeated, the amendment cannot be made to the resolution. I now put the original motion ..."

If the motion to amend is passed, the amendment should be noted and the revised motion put to members:

*"As the motion has been passed, the amendment is accepted and I have made the changes to the resolution. The motion now reads **[read amended resolution in full]**. I now put the amended motion to the meeting..."*

8.3 Dealing with motions to amend special resolutions

- (a) The legal position is that any proposal to amend a special resolution may (and usually should) be ruled out of order by the chairman unless it is an amendment merely of a technical nature (for example, correcting grammatical or typographical errors). The substance of the resolution should be identical to the resolution specified in the notice of meeting.
- (b) The ability to amend an ordinary resolution, provided it is within the scope of the resolution, does not apply to special resolutions.