

## GOT ANOTHER MINUTE?

Many Clubs in Australia are companies limited by guarantee and principally regulated by the *Corporations Act 2001 (Cwth)* (the “Act”). The Act sets out requirements for the recording and keeping of minutes and minute books. Accordingly, the keeping of company minutes is not only a mandatory statutory requirement but a general good governance principle.

Section 251A of the Act requires that a company must keep minute books in which it records within **1 month**:-

1. Proceedings and resolutions of meetings of the company’s members;
2. Proceedings and resolutions of Director’s meetings (including meetings of a committee of Directors);
3. Resolutions passed by members without a meeting; and
4. Resolutions passed by Directors without a meeting.

The company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:-

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

Further, minutes of the passing of a resolution without a meeting must be signed by a Director within a reasonable time after the Resolution is passed.

The minute books must be kept at the company’s registered office, or its principal place of business or such other place approved by ASIC.

The Act states:-

*“A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates unless the contrary intention is proved.”*

In the celebrated High Court decision in James Hardie it was held that the Directors could not subsequently prove that the minutes were incorrect. For a further discussion of this case see “Got a Minute? The importance of minutes according to the High Court of Australia” published in Club Connect August 2012 and reproduced on our website in August 2012.

Previous court decisions have held that typed Minutes pasted into a bound book and duly signed, whether before or after pasting will satisfy the requirements for keeping minute books. Similarly a loose leaf folder between two covers has been held to constitute a minute book. However, Clubs should ensure that minute books are safely and securely maintained to satisfy the statutory requirements and to avoid fraud. Legislation in each Australian jurisdiction permits minutes to be maintained in an electronic file.

Accordingly, minutes signed and entered in the minute books are evidence that:-

- the meeting was duly convened and held;
- the proceedings as recorded actually took place; and
- appointments (e.g. officers and auditors) are valid.

Further, those seeking to disprove the minutes must establish that the minutes are incorrect which may not be a simple matter (see James Hardie case referred to above).

The company must ensure that the minute books for the meetings of its members and for resolutions of members passed without meetings are open for inspection by members free of charge pursuant to the Act.

The Act does not require the minute books of Directors meetings to be made available for inspection. However some Club constitutions do give such rights to members albeit generally of a qualified or limited nature.

### **Implications for Clubs:**

The practical implications for Clubs would appear to be:-

- Ensure there is an appointed minute taker at each board meeting and meeting of members (generally, but not necessarily a staff member);
- Ensure that discussions are directed to the matter at hand;
- Ensure that decisions and actions are clear to all to ensure accurate recording;
- Ensure minutes are presented clearly, precisely and in a readily readable format;

- Ensure that minutes are produced in a timely manner;
- All Directors have an obligation to review and consider the minutes before adopting them as a “true and correct record”;
- Ensure that there is compliance with statute and the Club’s constitution regarding minutes and minute books.

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