

familiar with many of the sites and usages listed and capable of finding those with which they are not.

*Chris Groves\**

## **Company Meetings: What You Need to Know**

**Greg Bateman**

**Butterworths, 2001, pp 362, \$83.00**

*Company Meetings: What You Need to Know* provides a plain English account of the law governing annual general meetings and directors' meetings for both small and large companies. Those wanting information in relation to management meetings, creditors' meetings, court ordered meetings of companies or meetings of members of a registered managed investment scheme, meetings of members of a strata title body corporate, or meetings of members of a statutory corporation will need to look elsewhere. With extensive experience in the practice of company and corporate law and advice to company secretaries and chairpersons, Greg Bateman has specifically confined the contents of the book to the law and relevant legal and practical issues that arise in relation to AGMs and directors' meetings. As such, the book is aimed at providing company secretaries, chairpersons, directors and, where appropriate, members, with a practical manual of the law in these areas, with additional practical guidance being offered through the provision of relevant samples or precedents.

The book is based on the law and information available as at 1 February 2001. Incorporated are the changes made to the now *Corporations Act 2001* (Cth)<sup>1</sup> in relation to company meetings by the *Company Law Review Act 1998* (Cth) and the *Corporate Law Economic Reform Program Act 1999* (Cth). Although publication of the book preceded the Parliamentary Joint Statutory Committee on Corporations and Securities, which reviewed some aspects of the *Company Law Review Act 1998*, and the Companies and Securities Advisory Committee's Final Report, *Shareholder Participation in the Modern Listed Company*, no significant changes have as yet been made in relation to company meetings. In the event of such changes being adopted, supplements for the book are available on the Butterworths website within a reasonable time of any such change to the law coming into force.<sup>2</sup> No such supplement has as yet (02/03) been placed on the Butterworths website.

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<sup>1</sup> Although the text refers to the Corporations Law.

<sup>2</sup> <[www.butterworths.com.au](http://www.butterworths.com.au)> and link to 'Online Update for Books'.

Each chapter of the book is divided into at least two sections, each section beginning with an outline of its contents. Each chapter has at least one sample or precedent relating to its contents. Each sample refers the reader to the sections of the book which relate to the relevant sample. Throughout each chapter reference is made to other sections of the book which relate to or elucidate the law being discussed and citation of the applicable source of law is provided.

An overview of the scope of the book is followed by preliminary points relating to the law governing company meetings, including the relevance of and interaction between the replaceable rules, listing rules, the Corporations Law and the general law. This is followed by an outline of the preliminaries relating to different types of meetings, the law relating to the powers of directors and members at meetings, the matters reserved by the Corporations Law to a general meeting, and the business of an AGM. The first chapter concludes with sample clauses for the AGM of a proprietary company.

The second chapter of the book begins with the fundamental first step in starting the process for a valid general meeting – proper notice – and the requirements of such notice. Included are the relevant requirements in relation to proxy rights, if there is to be a special resolution or ‘special business’, who the convening authority is, and when ASX or ASIC require a notice to be reviewed by each agency respectively. This section ends with a sample notice for an AGM. In addition, the timeframes that the notice must adhere to is covered, as well as the relevant people to whom the notice must be delivered.

The subsequent chapter is devoted to proxies. The right to appoint a proxy and the rights of proxies are outlined, with additional information about the appropriate content of proxy forms (two samples being provided), as well as details relating to the lodgment and publication of such forms being included.

Chapters 4, 5 and 6 outline the law relating to the appointment of corporate representatives, the right of a power of attorney to vote at a general meeting and the holding of a small AGM respectively. Chapters 7 and 8 are concerned with the planning for and procedures at a large AGM. The former begins with a practical non-legal guide to the logistics of a large AGM, including recommendations on how to decide on an appropriate venue, the necessity of liaison with Australia Post and the use of technology at the AGM. The chapter appears to cover all the practical legal and non-legal issues that will need to be covered in preparation of a large AGM. The latter reverts back to the legal requirements for procedures to be followed at a large AGM, including the duties of the Chair and a sample narrative

agenda for an AGM and sample constitutional clauses that will assist a Chair in dealing with situations that may arise during an AGM. The methods of voting at general meetings and the procedures for conducting a poll and preparation for a poll are covered in chapter 9.

Members who are dissatisfied with the performance of the board will be interested to read chapter 10, entitled 'Shareholder Activism', which gives practical advice to such members on gathering information on the company from the company, ASIC and the ASX, as well as rights to access to company records including financial information. Also covered are the steps that can be taken by members to convene a general meeting or to add business to an AGM with the aim of either removing a director or to instigate debate concerning the performance of the board.

A detailed outline of the procedural requirements of the minutes coming out of general meetings is taken up in chapter 11. The subsequent chapter outlines the limited 'legal short cuts' for the holding of general meetings, directors' meetings, and the passing of members' and directors' resolutions without meetings being held. These short-cuts discussed are the doctrine of unanimous consent, for members; consent to short notice for general meetings; and 'paper meetings' or circulating resolutions for members' and directors' resolutions.

Chapter 13 covers the procedural forms necessary for the holding of directors' meetings as contrasted with general meetings, as discussed in chapter 2. Related to this is the discussion in chapter 14 of the requirements of ss 191-195 of the *Corporations Act 2001* (Cth) apropos the duty of directors to disclose any material personal interests. Chapter 15 carries on from this, relating, as it does, to some of the issues in relation to directors' meetings of large listed companies. Primarily, this section focuses on the composition and function of the board, the mechanics of the boardroom, the usual conduct at directors' meetings, removal of managing directors, and a brief outline of the issues arising in relation to 'rolled up' meetings of corporate groups.

The power to appoint alternative directors and their role is clarified in chapter 16. Chapter 17 brings the section on directors' meetings to an end with an outline of the procedural requirements pertinent to the minutes of directors' meetings. The same format for chapter 11 is followed here.

The penultimate chapter covers board committees – how to establish them, for what purposes they can be established, and the procedural requirements of such meetings which are pointed out to be the same as the requirements for directors' meetings in relation to 'proper no-

tice'. The book concludes with a brief chapter outlining the ways in which irregularities in meetings can be cured. Half a page of cases is cited directing the reader to explore the area further.

Bateman has managed to succinctly and instructively relate the interaction of the *Corporations Act 2001* (Cth), the company constitution and the general law while offering practical guidance to those involved in the organisation of company meetings. Although directed primarily at practitioners, company officers and members, the book may also aid students interested in exploring this specific area and its practical workings which may not have been covered in any great detail in courses undertaken on company law.

*Liz Sharp\**

### **Mediation – Skills and Techniques**

**Laurence Boulle**

**Butterworths, 2001, pp 331, \$59.00**

Mediation is a process that can be characterised as facilitative. The mediator's role is not determinative in the sense that s/he will not make a direct determination in relation to a dispute that is subsequently capable of enforcement. As a result, and according to Boulle, a mediator's role 'apart from establishing the physical environment, is to change their own behaviour and language in expectation of the parties doing the same'.<sup>1</sup> The author flags a number of limitations in the coverage of the book from the outset. These include the dynamic nature of mediation and the book's focus on cognitive, rather than observational or active/practical, learning techniques. Similarly, it is recognised that the skills element of mediation is covered in the book but that this element cannot, in practice, be divorced from knowledge and ethics that are also required for the formal practice of mediation, neither of the latter two elements being covered in any detail in the book. The author describes *Mediation – Skills and Techniques* as deliberately pragmatic, therefore explaining its focus and also its avoidance of dealing with major theoretical and critical issues in mediation, as well as the policy questions which the practice of mediation raises. Likewise, the 'serendipitous nature of mediation' is recognised as being reflected in the organisation of the book.

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<sup>1</sup> At xiii.

Despite these acknowledgments and the obvious limitations that the purpose of these acknowledgments serves to reflect, Boulle has craftily engineered the contents of the book to ensure that practical guidance and his 10 years of experience as a mediator and Chair of the National Alternative Dispute Resolution Advisory Council, as well as others' experience, is well reflected throughout. In keeping with the approach adopted by the Butterworths Skills Series, this book is written in plain English and incorporates diagrams, tables, lists, precedents and short case studies to aid in explanatory value, as well as to indicate options and alternative strategies for mediators. In addition to this, appendices are attached which contain, inter alia, standard forms for mediation practice, formal mediated agreements, mediated agreements, guidelines for lawyers representing clients in mediation, mediator's self-assessment form, and the Ethical Standards for Mediators developed by the Law Council of Australia.

In the author's own words, 'the book assumes no or little experience in mediation practice or prior mediation training and education, although some of its suggestions are a little beyond what might be expected in a "beginners only" manual'.<sup>2</sup> The primary focus of its content is with most of the accepted aspects of the mediator's role, such as creating a good environment for resolution of disputes or improving communication between the parties which overlap with other texts on mediation.<sup>3</sup> Inasmuch the book focuses on the core, as opposed to situational, skills and techniques of mediation.

In addition, emphasis is given to three particular features of the mediator's role which reflect the author's own practical experiences and academic interests: understanding, diagnosing, explaining and normalising the predictable features of conflict; the importance of creating the best possible climate for parties to resolve disputes; and being a facilitator of the parties' negotiations.

The second chapter of the book establishes an outline of the preliminary and preparatory procedures to be undertaken before formal mediation takes place. The author familiarises the reader with mediation terminology along the way, and provides instructive suggestions of ways of dealing with common situations that arise, such as where a negative response to the suggestion of mediation by one party is given. The importance of pre-empting problems, such as a party

<sup>2</sup> At 5.

<sup>3</sup> An example given is R Charlton and M Dewdney, *The Mediator's Handbook* (1995).

present at mediation having no authority to settle on behalf of their client, is also highlighted.

The following chapter canvasses the role of mediators to maintain a favourable climate throughout the process of mediation. The approach taken on this issue is to combine counselling and psychological concepts eclectically with a recommendation that reference be had to more specialised books on these topics. Initially, exploration is had of the possible reasons for individual parties' negative feelings pre-mediation and the negative feelings that relate to the mediation process itself. The rest of the chapter deals with ways in which mediators can bring positive feeling into the process through the creation of trust in them and the process and managing expectations.

Diagnosis, definition and design are considered in the following chapter as contributing factors in sound conflict resolution. Flagged as central to appropriate intervention is the development of a hypothesis or theoretical framework for understanding the dispute and the disputants. The activities contained in the chapter focus on the development of such hypotheses and inasmuch relate to the mediator's role before commencement of the actual mediation.

Chapter 5 discusses the stages of mediation and the mediator's role in managing the mediation process both during the mediation process and also in relation to post-mediation activities. Highlighted is the logic in the stages of the mediation and the mediator's role to guide the parties through the stages with adequate explanation, while keeping in mind the discretions of mediators which allow consultation with the parties on the process. For examples of possible variations to the mediation process that the mediator has a discretion to adopt, the reader is directed to chapter 9.

The crucial role of mediators in assisting the communication process is covered in the subsequent chapter. Three broad responsibilities are highlighted as being essential to serve this function: the mediator being a good communicator him/herself; intervention in the parties' communications, making them more explicit and comprehensible; and education of the parties in good communication techniques. The author highlights the need of the mediator to adapt their communication styles to the particular parties to the dispute while continually using positive language in order to not only 'reframe' the parties' needs, but also as a model language for the parties. Managing the non-verbal communications of the parties, as well as the mediator's own body language, is covered, as well as the importance of effective listening techniques. The chapter concludes with a section on appropriate questioning. Included is a table of examples of questioning

techniques highlighting the objectives different techniques can achieve.

Chapter 7 discusses the mediator's role in assisting the negotiation processes of the parties and the balance that needs to be achieved between strong intervention and 'benign neglect'. A brief outline of the stages of negotiation and the general strategies and styles of negotiation is undertaken. Specifically addressed are the features of positional bargaining, which is a style of negotiation that arises in mediations that involve 'who gets what' in relation to money or property. Also, the mediator's role in promoting interest-based bargaining is canvassed, which can be useful in disputes relating to business or partnership disputes. Practical advice is also given on dealing with impasses. As with the previous two chapters, the mediator is encouraged to begin by developing a hypothesis on a negotiation issue, to plan an intervention and carry out the intervention which may induce the revision of the original hypothesis.

The following chapter examines the assumption that a mediator does not 'coerce', 'pressure' or otherwise 'influence' the parties to reach their decision, and yet the way in which a mediator can 'encourage' settlement of disputes. Strategies outlined include the provision of information that establishes the objective truth about matters; by expressing an opinion on a particular matter; by advising one or both parties on an issue; by being critical of one or both parties on a particular issue or course of action; and by acting as the 'agent of reality'. Examples are offered to elucidate styles of encouragement, and the potential dangers in encouraging settlement are also averted to.

Chapter 10 is concerned with situational factors that can affect the process of mediation and which will not be peculiar to the majority of mediations undertaken. Issues include dealing with violence, absent parties, experts, professional advisers, using interpreters, and dealing with the situation where one party is more powerful than the other. Chapter 11 is concerned with the potential dangers in mediation that result from the mediator, rather than those covered in the preceding chapter that can be attributable to the parties or external factors. Each potential 'trap' a mediator can fall into is demonstrated by case illustrations, or advice is given on how to avoid falling into the trap.

The final chapter begins by recognising that the 'need' for mediation does not translate into a demand for the services of mediation and that mediation is particularly in high demand where it is connected to

agencies, courts or tribunals. As a result, the author concludes by dealing with ways of establishing a private mediation practice.

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### **Annotated Consumer Credit Code and Regulations**

**Andrea Beatty, Andrew Smith and Andrew Barclay**  
**Second Edition, Butterworths, 2000, pp 400, \$103.00**

The Consumer Credit Code now has application in all Australian States and Territories, making it of particular importance to understand this Code's application. The Code commenced operation on 1 November 1996, attempting to implement a consistent approach to credit transactions throughout Australia. The first edition of the *Annotated Consumer Credit Code* was published in 1997, considering the Code within its first few years of universal application. The legislation affects all financial institutions and all other credit providers. For this Code to apply, the credit providers must provide credit in the course of, or incidental to, its business, and in the course of the transaction there must be a charge made for providing the credit. In this new edition, the authors have been able to expand and highlight areas that have evolved, with an emphasis on a practical and systematic approach to understanding this legislation.

The three authors, Beatty, Smith and Barclay, have impressive credentials within this area. Andrea Beatty specialises in consumer credit, privacy, electronic banking and retail banking, and payment systems. Andrew Smith acts for numerous banks and financial institutions in connection with their Consumer Credit Code compliance projects. Andrew Barclay has presented several papers on the Consumer Credit Code and on issues relating to enforcement of securities, guarantees and unconscionability. Barclay also provides advice to banks and financial institutions on a wide range of financial, commercial and property matters. All the authors are authoritative experts in the field of the Consumer Credit Code and Credit Act litigation.

The *Annotated Consumer Credit Code* is designed to provide practitioners and students with comprehensive commentary and source materials of relevant interest on the fundamentals of the Consumer Credit Code and its Regulations. This particularly well laid out and precise text consists of the full Consumer Credit Code and its Regulations,

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