



Lewis Holdway
L A W Y E R S

Conducting Church Meetings under COVID-19 restrictions

*This is general advice intended for Baptist Churches in Victoria.
It is not a substitute for advice tailored to your organisation's individual
circumstances.*

Read your Constitution

Your Constitution (sometimes called Rules) is important. Read it first and see what it says. It will apply.

This advice is based on general legal principles taken from cases (sometimes known as the 'common law'), but it will not override what is stated in your Constitution.

Also, if your Church is incorporated, you should be aware that there may be legislation governing your Church's meetings that is not discussed here.

Can I hold meetings electronically?

Yes. People can 'meet' through technology. It must be a 'meeting' though. For that to happen, everyone needs to be able to participate; that is, to contribute and to hear the contributions made by others, without significant impediment.

There is a general rule that it is okay to hold a meeting electronically even if your Constitution does not specifically authorise it (though if your Constitution prohibits it, then you will need individual advice).

However, you will need to make sure that you still comply with all the other rules in your Constitution about voting, notice of meetings, quorum and so forth.

When a meeting is held electronically, “personally present” includes people that are not physically in the same room as the Chair but are “present through the use of technology”. This is relevant for quorum and voting.

How do we conduct voting electronically?

Voting has to be conducted in accordance with your organisation's Constitution or Rules, so read them first to see what they say. Any procedure that is set out there must be followed. (Tip: see later in this advice for the meaning of “poll” and “ballot”.)

Beyond that, there is a lot of scope for your Church to be creative and utilise technology in any way that suits your members and your Church's situation.

Some examples that we are aware of (but not necessarily recommending or endorsing) are:

- Chat functionality on zoom meetings
- Creating a unique code (PIN) for each member, and then have members text that code with “Yes” or “No” to a mobile phone designated for the purpose. The mobile phone can be purchased specifically for the purpose, and provided to the returning officer with no contacts added, so voting is anonymous, and PINs can be checked against a list by the returning officer.
- Email
- Survey monkey
- E-voting software

There are commonly 5 different ways of voting in Church meetings:

1. Show of hands
2. Voices
3. Poll (that is – vote in writing)

4. Secret Ballot
5. Acclamation (clapping)

In theory, any of these could be used when holding a meeting through technology.

Who chooses?

Who chooses the method? Check what your Constitution says. See if there is discretion given to the Chair or the governing body (sometimes called Council of Elders, Deacons or Leadership Team) to determine the method of voting. If so, then that person or body can authorise a particular electronic method.

If the Constitution is silent, then:

- Ideally, it is the meeting itself that can vote on whether to adopt a particular procedure. Though, this creates a chicken-and-egg situation in COVID-19 circumstances when people cannot be in the same room together.
- It may be then that the best option would be for the Chair (ideally with the support of the governing body) to determine the method. However, if any matter being considered is contentious or significant, you should consider legal advice tailored specifically to your organisation on this issue.

In any case, you should be aware of the following information regarding polls and ballots.

Polls

Even if there is not a specified method of voting set out in the Constitution, any person entitled to vote can demand a "poll".

A poll is a vote cast in writing (as opposed to a show of hands or voices, for example). A vote can be done in writing electronically.

A poll can start during the meeting and then end at a later time (such as several hours or several days later). So it is a useful process to allow a

lot more time for the voting to be done. The Chair can declare when the voting commences and ends.

Ballot

A ballot is a type of poll usually used for elections. Legal issues in relation to ballots can be complex. The general rules are set out below, but their application in an electronic context is not always clear and so it may be an area where your Church should consider obtaining legal advice on its specific circumstances.

In a “ballot”, the general rules are:

- The voter identity should remain secret (that is, not contained on the ballot paper).
- A ballot paper (or electronic equivalent) is issued to each voter.
- There needs to be a procedure to make sure that the only persons who get a ballot paper are those entitled to vote (because once it is cast, as the name is not contained on the ballot paper, there is no way of verifying who cast the vote).
- A ballot can only be conducted by post if the Constitution allows for this.

Circular resolution

Be aware, there is a difference between a circular resolution (where resolutions are circulated by email and passed by people stating that they agree), and a “meeting”.

As mentioned above, a “meeting” requires members to be able to participate. So simply emailing material around and asking for approval of it will not suffice to meet the requirements for a meeting.

So, if your Church chooses to use a method of voting such as email, then take care to ensure that voting is done by way of poll rather than circular resolution.

Practical things to think about when choosing a voting method

Here are some things you should think about when choosing a voting system for a meeting held via technology:

- Every person entitled to vote must be given a reasonable opportunity to do so. Make sure enough time is given for the voting process.
- Make sure you give really clear instructions to every voter.
- Think about the possibility of technology failures and plan for contingencies. You want to avoid any situation where someone who wants to participate and vote is prevented from doing so.
- Is anonymity necessary or desirable? An email is not anonymous, but if emails were only received or viewable by the returning officer, the information could be kept private.
- Make sure that only people who are entitled to vote can vote, and that each person entitled to vote can only vote once (unless the Constitution provides otherwise).
- If there are multiple resolutions that must be passed, they should each be put to a vote individually.
- Make sure you consider the security and privacy of members' information, including checking that any procedures are consistent with your Church's privacy policy.

Schedule B

Constituent Churches of the Baptist Union of Victoria are required to hold Special Church Meetings in accordance with Schedule B for specific purposes, such as appointing pastors or selling property, where the BUV

This is general advice.

It is not a substitute for advice tailored to your organisation's individual circumstances.

holds property on trust under the terms of Schedule B to *The Baptist Union Incorporation Act 1930* (Vic).

A Schedule B meeting can be held using technology. However, the requirements of Schedule B meetings must be adhered to. They are:

- At least 14 clear days' public notice must be given of each Special Church Meeting.
- Notice must be given by informing the members during the usual time of giving notices in each Church service on the two Sundays that precede the meeting. If your Church's services are being conducted via livestream or podcast then this is straight forward; if you are not conducting these services, then we suggest:
 - o that the technical requirements of Schedule B are met by posting an obvious written notice on or inside the Church building; and
 - o that some other method is used to ensure that every member is given and has received effective notice of the meeting (such as phone calls).
- Only the following people are able to vote:
 - o people over 18 years of age; and
 - o people who have been members of the Church for at least 6 months; and
 - o people who have participated in communion at the Church at least once in the preceding 6 months. (Some Churches are conducting communion during a live-stream service and encouraging people to partake in their home. The purpose of the provision is to ensure that only active Church members are participating in the voting, and this should be borne in mind).

*This is general advice.
It is not a substitute for advice tailored to your organisation's individual circumstances.*

- At a Special Church Meeting, a two-thirds majority vote is required. That is – two thirds of the members who attend and who cast a valid vote.

This advice has been provided on the basis of Schedule B terms provided by the Baptist Union of Victoria.

Ratification

If there is any doubt over any aspect of the electronic meeting or voting process, your Church may wish to convene a meeting to ratify the decisions once COVID-19 restrictions are lifted. Ratification is a formal confirmation and acceptance of a previous act.