

Subject: Request for SGM did not follow correct procedures - Legal advice to members
From: "Melb PC President" <president@melbpc.org.au>
Date: 2016-09-06 18:06
To: John Bade <johnb@melbpc.org.au>

To all members, the attached pdf document is the legal advice received today. There will not be an SGM.

The request to committee on 7th September 2016 did not follow the procedural requirements of Rule 34(2) to include the names of members requesting the SGM meeting be in writing and signatures.

Therefore, Wednesday 7th September will proceed as scheduled as the normal monthly meeting at Moorabbin. Please note that we have 2 excellent speakers.

Note to members calling for an SGM. You are invited to submit the request following the procedural requirements at our next committee meeting on 13th September.

Regards,
John Bade
President
Melbourne PC User Group Inc.
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— Attachments: —

Melbourne PC User Group Inc 2016-09-06.pdf

919 KB

6 September 2016

Mr J Bade
Melbourne PC User Group Inc
Unit 26, 479 Warrigal Road
MOORABBIN VIC 3189

Our Ref: JMK:023542

By Email: jb@oc.com.au

Dear John

Advice on Melbourne PC User Group Incorporated ("the Association")

We refer to previous correspondence and formally thank you for the instructions.

You have provided us with a copy of the "Rules of Melbourne PC User Group Incorporated" (edition revised at AGM on 4 November 2015) ("the Rules").

We have reviewed the Rules and other related communications, including emails from John Hollow.

In regards to correct procedure for calling a Special General Meeting ("SGM") we now advise as follows:

1. There is a clear procedure set out in Rule 34(2) which must be followed in order for members to call a SGM. The request for a SGM by a member must:
 - (a) be in writing;
 - (b) state the business to be considered at the meeting and any resolutions to be proposed;
 - (c) include the names and signatures of the members requesting the meeting; and
 - (d) be given to the Secretary.

Such a request must be made by at least 10% of the total number of members or 100 members, whichever is lesser.

2. The Secretary must have been provided this request and the necessary documents as per Rule 34(2)(d). If he was not provided with this request, along with the necessary documents (including the resolutions) then there are no valid grounds for a SGM to be called in response the request (although the Committee can call a SGM at any time at its own election, pursuant to Rule 33(2)).
3. In the event that the Secretary did receive such a request, we note that it is the responsibility of the Committee to convene a SGM under Rule 34(1), not the Secretary. However, there is no actual requirement for the Secretary to bring the request to the attention of the Committee. It is merely implied that this would happen. It is our opinion that the Committee is entitled to review the request and the documents provided under Rule 34(2) to ensure that the members have validly called a SGM. It would be reckless for the Committee to convene such a meeting without having reviewed the request and documents.
4. We further note that under Rule 46, it is the Committee that is collectively responsible for ensuring that individual members comply

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with the Rules. It would therefore be necessary for the Committee to review the request received by the Secretary to ensure that the members have complied with Rule 34(2).

5. Technically, on a plain reading of Rule 34, members are entitled to convene a SGM if the Committee does not convene a SGM within one month after the date on which the request was made. The Rules do not distinguish any difference between the Committee refusing to call a meeting, or not receiving the request. Either way, members can arguably call a SGM if they complied with Rule 34(2).
6. However, members are not entitled to do so if the request does not comply with the Rules. As President, you are entitled to make all necessary enquiries to determine whether the request was validly made pursuant to the Rules.
7. In the event that a SGM was called, it is a requirement under Rule 31 that the Secretary is obligated to provide the following notice in relation to the notice of a general meeting:

The notice must:

- (a) specify the date, time and place of the meeting;
 - (b) indicate the general nature of each item of business to be considered at the meeting;
 - (c) if a special resolution is to be proposed—
 - (i) state in full the proposed resolution;
 - (ii) state the intention to propose the resolution as a special resolution;
 - (d) comply with rule 35(5); and
 - (e) if the meeting is an annual general meeting, the notice must give details of the proposed election of committee members including officers and include nomination forms that specify a closing date of not less than 28 days before the meeting.
8. Under Rule 31(1), notice of a SGM must be given 'to each member of the Association'. The notice requirements which must be complied with are contained in Rule 74 which includes providing notices personally, by post at the address recorded for the member on the register of members or by email or facsimile. If a member does not receive a notice under Rule 74, the notice is invalid.
 9. While "Family Members" are only entitled to receive a single copy of correspondence from the Association, it does not specifically state that they are only entitled to receive a single copy of notices. In our view, and to err on the side of caution, we recommend that each family member receive a copy of each notice provided under the Rules. Otherwise the Association risks invalidly serving notices.

In summary, the Secretary does owe an obligation to act in good faith and in the best interests of the Association under Rule 46. If the Secretary did receive a request from members to convene an SGM, then in the interests of the Association, this information should be provided to the Committee so that informed decisions can be made.

As President, you are entitled to make enquiries to ensure that the members request for an SGM was compliant with the Rules. If the request does not comply with the Rules, then the members have no right to convene an SGM.

If you have any queries, please contact the writer.

Yours sincerely



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