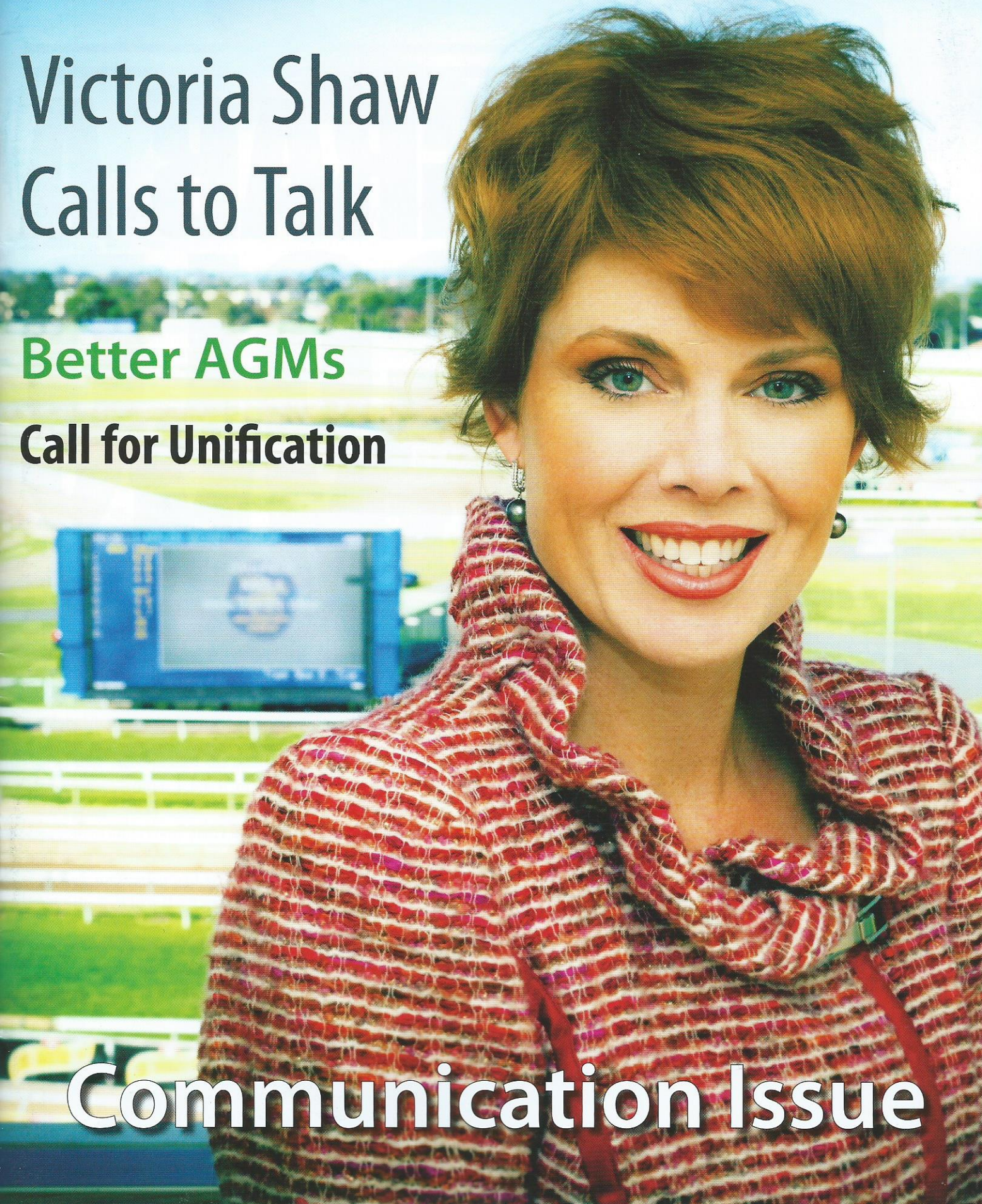


# Victoria Shaw Calls to Talk

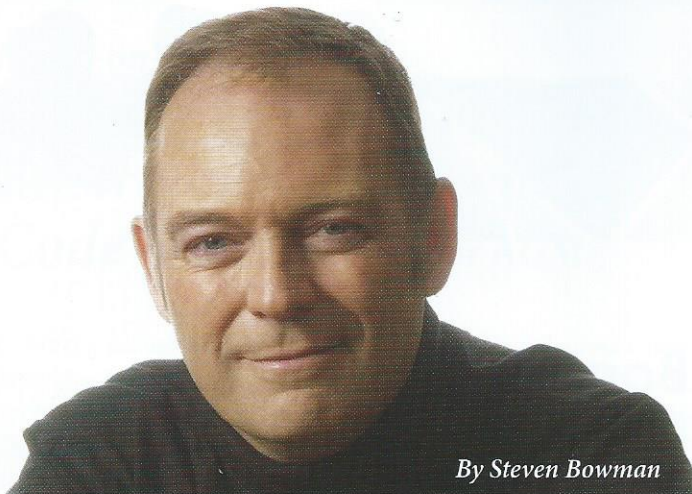
**Better AGMs**

**Call for Unification**

**Communication Issue**







By Steven Bowman

One of the most common topics that I am asked (particularly just before or just after AGM season) is regarding exactly what powers members have. We have talked with many club managers, where they have been involved in AGMs (not necessarily theirs) that have dissolved into farce and acrimony, leaving the club in confusion and Board and staff unsure what to do next.

This topic of member powers has even some of the legal experts baffled (evidenced by conflicting advice given to nonprofits), but is actually very simple both legally and in terms of governance.

This is a must read for any nonprofit Club Manager or Chairman that has had “interesting” experiences at their AGM, and for any Board member or Club Manager who is involved in AGMs.

Member’s powers are found at both the formal legislative and the individual constitutional level.

At the formal legislative level (primarily, the Corporations Law and Associations Incorporations Act), members in general have three rights at law.

- They have the power to appoint or remove directors to the Not for Profit Board, in a manner specified in the Constitution through the Annual General Meeting. (In my view, members should not have the right to elect officer positions, as this should be the right of the Board collectively, based on personal skills and the requirements of the Board. Many nonprofits, however, have this officer election written in to their constitution.)
- They have the power to appoint or remove auditors (with due notice), and
- They have the power to vote for or against changes to the Constitution at a General Meeting (Annual or Extraordinary).

Members also have the right to bring special resolutions to the AGM in the manner specified in their constitution; BUT... Members cannot direct the Board to act in a particular administrative, management or contractual manner. This means that, whilst members have the right to let their wishes be known via special resolutions, as per their constitution, the Board is under no obligation to act on these.

The law states that Board directors are responsible at law for the

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decisions of the club, not the members. Members cannot direct the Board other than through the AGM or an Extraordinary General Meeting; and then, only in the manner of constitutional changes, appointment to, or removal from the Board; and, auditor appointment and remuneration. Any other relevant matter can be raised via a proper resolution that meets the requirements in the constitution, and the Board should certainly take note of members’ views and discuss the matter; but, the Board is not required to act on this.

The nonprofit Club Board has the power to conduct any business not otherwise specified as General Meeting business, which only members can approve. The Board has the legal power to conduct the business of the nonprofit club, on behalf of members. If the members do not agree with the direction or management of the nonprofit club, they can vote new Directors in at the AGM.

## **The Business to be conducted by members at the Annual General Meeting includes :**

1. Receiving of minutes
2. Consideration of financial statements (sometimes “To Receive” is used instead of “Consideration”. They do not need to be approved.)
3. Consideration of Reports of the Board and Auditors (sometimes “To Receive” is used instead of “Consideration”. They do not need to be approved.)
4. Election of Board members
5. Election or continuation of the auditor, and auditor remuneration
6. Any changes to the constitution
7. Any special resolutions with appropriate notice
8. Any General Discussion

At the constitutional level, members have the power to view the member register and minutes of meetings of members, and to call meetings as per the relevant law. They are sometimes, however, also given the power to elect officer positions (I advise against this for reasons given above). I have even seen constitutions that give members the power to set fees and approve contracts.

This sets up the condition where the Board, fully legally liable for the conduct of the club, is being told what and how by members, who have no legal liability. As a Director, I would not accept these constraints.

Please note that the comments in this article are not legal advice, and I encourage you to seek specific legal advice if required.