

# Members' rights

Legal information for Tasmanian incorporated associations



## This fact sheet covers:

- what are a member's rights?
- what are the sources of members' rights?
- what happens if a member is denied their rights? and
- how can a member be expelled from an association?

**Members of Tasmanian (TAS) incorporated associations have certain rights. This fact sheet provides an overview of the main rights that members generally have.**

There are some minimum rights set out in the *Associations Incorporation Act 1964* (Tas) (**the Act**) but you should also always check your association's rules – as these may give you extra rights or set out procedures that need to be followed in addition to those under the Act.

Some associations have different classes of members, and some classes may not be entitled to all of the rights (for example, associations can have non-voting members for whom member rights relating to voting will not apply). You will need to consider your association's rules closely to determine the rights that apply to you.

An association's rules may allow it to take disciplinary action against a member and suspend or terminate the member's rights. In these circumstances, the association's rules should set out the procedures that the association and the member must follow. The rules may also provide certain processes to resolve any internal disputes that may arise between members, or members and the association.

### NOTE

In this fact sheet, we refer to the 'rules' of an incorporated association. Your incorporated association's rules may be called the 'constitution.' In this fact sheet, the term 'rules' is interchangeable with 'constitution.'



## Members' rights

The minimum rights of members are set out in the Act and derived from the common law (judge made law).

The Act provides for the following rights of members:

- the right to vote on resolutions (for voting members) including:

- a special resolution to change the association's rules (which can only occur when at least 75% of members voting agree to the change and any extra requirements in the association's rules have been met), and
- a resolution to appoint or remove a Public Officer
- the right to attend general meetings
- at least 10% of the members entitled to vote at a general meeting can call a general meeting
- the right to receive notice of any general meetings where the association intends to propose a special resolution, accompanied by a notice of intention to propose the resolution
- a member can inspect, or request a copy of, the records held by the Commissioner for Corporate Affairs (**CCA**) relating to the association following payment of the prescribed fee, and
- the right to receive prior notice in the daily press of any proposed changes which will affect a member's financial obligations to contribute to an association's liabilities or winding up costs.

The common law also requires an association to give notice to its members of all general meetings to allow an opportunity for members to participate in the meetings and vote. Often, the correct procedure for giving notice of a meeting will be set out either in the Act or the association's rules. If there is no set procedure for giving members notice of a meeting, the association must convene the meeting in a way that will ensure that every member is made aware of the meeting.

The rules of your association may provide additional rights for members or set out certain procedures that must be followed for a member to exercise a right provided by the Act. An association incorporated in Tasmania may, by special resolution, adopt as its rules all or any of the model rules (or a modified version of the model rules) set out in the *Associations Incorporation (Model Rules) Regulations 2007 (Model Rules)*. You should also be aware that the Model Rules may be deemed part of the rules of your association if its rules are not inconsistent with, or do not expressly exclude or modify, the Model Rules.

The Model Rules provide the following rights to members:

- the right to receive notice of the approval of their membership nomination
- the right to inspect the accounts of the association at any reasonable time determined by the committee
- the right to participate in dispute resolution processes
- the right to be given notice of their expulsion from the association and to appeal a decision to expel them from the association
- the right to vote to elect office holders
- the right to receive notice (through an advertisement in a newspaper circulating in TAS) of annual general meetings and the business to be conducted at the meeting at least 14 days before the meeting
- the right to vote to appoint or remove an auditor and determine the auditor's remuneration
- the right to vote to determine the remuneration of employees of the association
- the right to vote to alter the annual subscription fee payable by members by special resolution
- the right to request a special general meeting be held (if at least 10 members agree)

- if no meeting is convened by the association within 21 days after at least 10% of the members entitled to vote have requested the meeting, the members seeking the meeting have the right to convene the meeting within 3 months, and
- the right to resign from membership of the association.

Some associations have different classes of members, and some classes may not be entitled to all rights (for example, associations can have non-voting members). You should check your organisation's rules to confirm which rights are provided to members, and any processes involved in exercising rights.

You and your incorporated association should comply with both the Act and the association's rules. Where the rules go further than, or provide more detail than the legislation, you will need to comply with the higher standard set out in the rules.

#### TIP

Consumer Affairs and Fair Trading provides an online service where people can see information relating to the committee members of incorporated associations and a list of documents lodged by the association. To obtain a copy of these documents, you will need to lodge a request with Consumer Affairs and Fair Trading. However, you should first check your rules to see if you are entitled to inspect or receive a copy of them from the association.

If your association is a charity, you can find their rules on the Australian Charities and Not-for-profit's Commission's online charity register, although it is still a good idea to check with the secretary that the rules available on the register are current.

## Suspension or denial of rights

### What happens if a member is denied their rights?

If you are a member of an incorporated association and consider that your rights have not been met, there may be some steps you can take, which will depend on the rules of your association.

The Act does not require an incorporated association to have a dispute resolution procedure under its rules, but you should check your association's rules to see whether there are any provisions that apply in your circumstances. If your association has adopted the Model Rules, Rule 34 of the Model Rules will apply, and requires a dispute between a member and the association to be determined by arbitration in accordance with the provisions of the *Commercial Arbitration Act 1986* (TAS).

Subject to the procedures set out under your association's rules, you may be able to:

- put your concerns in writing to the committee or attempt to resolve the dispute by calling a special or general meeting
- if you cannot resolve the issue internally, you can contact an independent third party dispute resolution specialist to assist you to mediate the dispute (with agreement from the association) or take the incorporated association to court. Court action should be viewed as a last resort as it can be high risk, expensive, and time consuming.

Consumer Affairs and Fair Trading does not have the authority to investigate a breach of an association's rules, or any dispute that may arise between members or members and the association. However, if you feel that the association has breached a provision of the Act you can lodge a complaint with Consumer Affairs and Fair Trading. The complaint should be made in writing and include:

- the name of the association and its incorporation number
- the names of the persons suspected of wrongdoing
- full details of the misconduct including the actions, dates and places in sequential order
- the provisions of the Act that are relevant, if known
- the names and addresses of any persons who have witnessed or have information concerning the suspected breach or activity, and
- the details of any other authority that you have approached (eg. The Police).

## When can a member be expelled from an association?

Action taken by an association in relation to misconduct by members is considered disciplinary action and associations need to follow any requirements under their rules about disciplinary processes (if any). Under the Act, an incorporated association is not required to have a disciplinary procedure or a process for appealing a disciplinary decision. You should check your rules to see whether there are any provisions that apply in your circumstances.

The Model Rules provide for the expulsion of a member in circumstances where the committee of the association considers the member is guilty of conduct detrimental to the interests of the association. Rule 32 of the Model Rules requires:

- a member to be notified of the intended expulsion, and
- allows the member the right to appeal the decision.

### RELATED RESOURCES

For more information on disciplinary procedures, go to the Information Hub page on internal disputes at [www.nfplaw.org.au/internalconflict](http://www.nfplaw.org.au/internalconflict).



# Resources

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## Related Not-for-profit Law resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has information on the following related topics:

➤ The people involved - [www.nfplaw.org.au/people](http://www.nfplaw.org.au/people)

This page outlines the different people involved in not-for-profit organisations.

➤ Disputes - [www.nfplaw.org.au/disputes](http://www.nfplaw.org.au/disputes)

This page outlines the methods for managing disputes within an organisation.

## Legislation

➤ [Associations Incorporation Act 1964 \(TAS\)](#)

➤ [Associations Incorporation \(Model Rules\) Regulations 2007 \(TAS\)](#)

➤ [Commercial Arbitration Act 1986 \(TAS\)](#).

## Other related resources

➤ [Consumer Affairs and Fair Trading](#)

Incorporated associations in TAS are regulated by Consumer Affairs and Fair Trading. Its website contains some useful information about resolving disputes.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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