

# Members' rights

Legal information for Australian Capital Territory incorporated associations

## This fact sheet covers:

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

**Members of incorporated associations in the Australian Capital Territory (ACT) 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 1991* (ACT) (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.

There are instances where an association may be able to undertake disciplinary action against a member and suspend or terminate the member's rights. The association's rules should set out the procedures that the association and the member must follow in those instances, and 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.'



## What is the source of members' rights?

The minimum rights of members are set out in the Act and derived from the common law (judge made law). Your association's rules will also contain provisions relating to the rights of members.

The Act requires that an association's rules address the following matters in relation to its members:

- the criteria for membership
- the procedure for disciplining members (if any)
- the way in which a member may appeal any disciplinary action (if any)
- the way in which a member may make representations to, or appear before, the association in relation to any charge made against the member (if any)
- the process for the election or appointment of the committee of the association (which could be from the pool of existing members)
- provisions in relation to general meetings of the association, such as:
  - the frequency of general meetings
  - the way in which general meetings and special general meetings are to be convened
  - the procedure to be followed at the meetings
  - the voting rights of members including whether or not a member is entitled to vote by proxy, and
  - how a member is to be given notices of general meetings,

An association's rules must address the matters identified above. The rules of an association may make provisions in relation to other matters affecting members, so long as those provisions are not contrary to law. The rules may, for example, 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.

Some incorporated associations may adopt the model rules set out in Schedule 1 of the *Associations Incorporation Regulations* (ACT) (**Model Rules**), which provide a number of rights for members. You should also be aware that where the Model Rules make provision in relation to any matters not provided for in your association's rules, the rules of your association will be taken to include those relevant provisions in the Model Rules.

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

If you don't have a copy of the rules of your association, you can write to the secretary of your association and request a copy of the rules. You may be required to pay a reasonable fee to obtain a copy of the rules. The secretary must give you a complete copy of the association's rules as soon as practicable after you pay any fee.

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.

# Members' rights

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The Act gives members of an incorporated association the right to:

- vote on resolutions (for voting members) including:
  - a special resolution to amend the rules of the association, and
  - a resolution to remove the Public Officer
- attend general meetings
- call a general meeting if at least 5% of the total number of members agree
- be given at least 21 days' notice of any general meetings where the association intends to propose a special resolution, accompanied by a notice of intention to propose the resolution
- have access to inspect the register of members at reasonable times, or at any times stated in the rules
- receive a copy of the association's current statement of objects, rules and deeds of any trust relevant to the association, upon request by the member and following their payment of any reasonable fee charged by the association
- make a request to the Registrar-General for their address to be kept confidential if their address is disclosed on any documents lodged with the Registrar-General relating to the association
- be given access to a copy of the statement of accounts for the previous financial year required by the Act immediately before and during the annual general meeting
- have the rules of natural justice applied to the resolution of any internal dispute, and
- apply to the court for an order to vary or set aside a decision of the association to deprive a member of a right conferred on them by law or by the rules of the association.

## TIP

'Natural justice' is a legal term. Essentially, where the adjudicator of a dispute is required to apply natural justice, it means that they are required to act fairly and adopt a fair process for resolving the dispute. This will include giving each party to the dispute a right to be heard, and to consider the issues and making their decision without bias.

The common law (judge made 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 and has fair notice of the business that will be dealt with at the meeting.

Many associations also provide the following rights to their members in their rules (including if your organisation has adopted the Model Rules):

- to inspect the records, books and other documents of the association at a place in the ACT, free of charge
- to receive notification of the approval of their membership application
- to resign from membership of the association, if certain criteria is first met

- to submit items of business for consideration at general meetings and to be heard at general meetings
- to be given notice before disciplinary action is taken against them by the association and to make representations in respect to the concerns raised by the committee
- to be given notice of a decision by the committee in respect to their membership following disciplinary action and to appeal that decision
- to appoint proxies to vote and speak on their behalf at meetings
- to vote to elect and remove office holders, and
- to call a general meeting of members (if a minimum number of other members agree).

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.

## Suspension or denial of rights

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### 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, you may be able to:

- if the rules contain a grievance resolution procedure, make a complaint in accordance with that procedure
- if the rules do not have a formal grievance procedure, 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, consider contacting 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.

While the Act contains no express provision requiring an incorporated association to have a dispute resolution procedure, it does require an association to apply the rules of natural justice when resolving internal disputes:

- between members
- between a member and the association
- in relation to rights of members under the association's rules, or
- about a decision made by the association.

It is likely, therefore, that the rules of your association will contain some provisions regarding the resolution of disputes.

## RELATED RESOURCES

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



## When can a member's rights be suspended?

The rules of your association may provide circumstances when the rights of members can be suspended or terminated, such as when a member has failed to pay the annual subscription fee.

Action taken in relation to misconduct is considered disciplinary action and associations need to follow any requirements under law or in their rules about disciplinary processes. The Act contains no express provision requiring an incorporated association to have a disciplinary procedure or a process for appealing a disciplinary decision, but the Act does require an association to apply the rules of natural justice when disciplining members. This can include:

- following reasonable timeframes
- giving notice of the nature of the conduct giving rise to the disciplinary action
- allowing a member to provide responses to allegations, and
- avoiding bias in the process (such as by providing a neutral decision-maker).

### TIP

Rules 9 and 10 of the Model Rules outline a 'model' process for disciplining members and the 'model' rights of appeal of a disciplined member. Rule 9 provides that members who:

- have persistently refused or neglected to comply with a provision of the rules, or
- have persistently and wilfully acted in a manner prejudicial to the interests of the association

may, by resolution of the committee, be either expelled from the membership or have their membership suspended.

In order for a resolution disciplining a member to take effect:

- the secretary of the association must serve a written notice on the member setting out the resolution and the grounds on which it is based, and stating that the member may address the committee at a further meeting (either in person, or through written representations)
- the committee must hold the further meeting not earlier than 14 days and not later than 28 days after serving the notice on the member and give the member an opportunity to make oral or written representations, after which the committee will consider whether to confirm the resolution, and
- if the resolution is confirmed the secretary must, within 7 days after the confirmation, provide the member with written notice of the confirmation and advise the member of their right to appeal under rule 10 of the Model Rules.



## Going to court about an internal dispute

The Act allows a member who is deprived of their rights due to a decision of the association to apply to the court for an order to vary or set aside the decision. On the application of a member, the court may make orders:

- to give directions for the performance and observance of the rules of the association, and
- declare and enforce the rights of members between themselves, or the rights between the association and its members.

The Act also confirms that the rules of an incorporated association are deemed to be a contract between the members and the association, so members of associations may also have a right to pursue an action for breach of contract. There may be other types of court actions available to members in certain circumstances (e.g. discrimination, negligence). Members should seek legal advice to determine what remedies may be available to them.

Generally speaking, the courts are reluctant to intervene in the internal affair of associations. Where the members of an association have considered and approved particular action taken by their association in respect to its members or otherwise, a court is unlikely to examine the merits of the decision unless there is a question of fraud or if proper procedures were not followed.

Note that Not-for-profit law is not able to provide assistance to individuals or organisations involved in internal disputes.

### RELATED RESOURCES

For more information on going to court to resolve internal disputes, go to Not-for-profit Law's Information Hub page on internal disputes at <http://www.nfplaw.org.au/internalconflict>



## When the Registrar-General can investigate

If you are concerned about a serious breach of the Act by your incorporated association, you can make a complaint to the Registrar-General through Access Canberra.

Under the Act, the Registrar-General is given the power to investigate an incorporated association's affairs if it has reasonable grounds for believing that an offence against the Act involving fraud or dishonesty or concerning the management of the affairs of the association has been, is being or will be committed.

Complaints should be provided in writing and include any evidence that you have to support your allegations. Complaints will generally not be investigated where:

- the complaint is frivolous or vexatious
- there is insufficient information provided
- the matter would be more appropriately investigated by another body such as the Police, or
- there is no evidence to support the allegation.

Legal proceedings for an offence against the Act may be instituted by the Registrar-General or delegate of the Registrar-General. Offences against the Act may attract fines or imprisonment.

## REMEMBER

The Registrar-General does not have the power to intervene in internal matters or mediate disputes for breaches of the association's constitution that do not result in a breach of the Act. The Registrar-General's role is to ensure financial and legal accountability, and good governance of incorporated associations.



# 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 1991 \(ACT\)](#)

✔ [Associations Incorporation Regulations 1991 \(ACT\)](#)

## Other related resources

✔ [Access Canberra](#)

This is the page for Access Canberra, who is the regulator of incorporated associations in the ACT.

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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