

Members' rights

Legal information for Northern 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 can a member's rights be suspended?

Members of Northern Territory (NT) incorporated associations have certain rights. This fact sheet provides an overview of the main rights that members generally have.

There are some minimum rights of members set out in the *Associations Act* (NT) (**the Act**) but you should also always check your association's constitution – as this 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 constitution 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 constitution should set out the procedures that the association and the member must follow in those instances, and 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 'constitution' of an incorporated association. Your incorporated association's constitution may be called 'rules.' In this fact sheet, the term 'constitution' is interchangeable with 'rules.'



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 constitution will also contain provisions relating to the rights of members.

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

- the criteria for membership
- the creation of the executive offices of the association and the procedure for filling those offices (which could be from the pool of existing members)
- the method of altering the rules of the association including the objects or purposes of the association, and
- the procedure for settling disputes between the association and its members.

An association's constitution must address the matters identified above. The rules of an association may make provisions in relation to other matters 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 adopt the model constitution set out in the *Associations (Model Constitutions) Regulations* (NT) (**Model Constitution**), which provides a number of rights for members. The Act also allows an association's constitution to be based on the customs and traditions of the ethnic community to which its members belong.

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

TIP

If you don't have a copy of the constitution of your association, you can ask the secretary of your association for a copy of the constitution. You may be required to pay a reasonable fee if you have requested 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 reasonable costs required.

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 constitution available on the register is current.

Members' rights

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

- vote on resolutions (for voting members)
- attend general meetings
- inspect certain records and documents of the association, including the register of members and the general meeting minutes
- be given access to, or in some cases receive notice of, the statement of accounts for the previous financial year required by the Act at least 14 days before an annual general meeting, and have access to a copy of these documents immediately before and during the annual general meeting
- 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

- raise any concerns about the minutes of a previous meeting of members if present during the next meeting of members held by the association
- not be defrauded or deceived by an officer of the incorporated association, and
- access a dispute resolution procedure as set out in the association's rules and the right to natural justice in respect to the resolution of internal disputes.

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 constitution. 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 (including if your organisation has adopted the Model Constitution):

- the right to resign from membership of the association
- the right to be given notice of expulsion from the association
- the right to appeal against suspension or expulsion from the association
- the right to vote to elect office holders
- the right to be nominated for, and be elected to, the association's committee in certain circumstances
- the right to request a special general meeting be held (if enough members agree), and
- the right to appoint a proxy to attend and vote on their behalf at a general meeting.

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 constitution to confirm which rights are provided to members, and any processes involved in exercising rights.

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, you may be able to:

- make a complaint in accordance with your organisation's dispute resolution procedure set out in its rules, and
- if the dispute resolution procedure does not resolve the issue, members can take the incorporated association to court. However, court action should be viewed as a last resort as it can be high risk, expensive and time consuming.

RELATED RESOURCES

For more information on grievance procedures, go to the Information Hub page on internal disputes at <http://www.nfplaw.org.au/internalconflict>



When can a member's rights be suspended?

The constitution 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 an association's constitution about disciplinary processes, and need to also apply the principles 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).

If your organisation has adopted the Model Constitution, there are a number of limitations on how the committee of the organisation can take disciplinary action against a member. For example, the Model Constitution provides that:

- suspension or expulsion of a member can only occur once the committee has given the member notice in writing of the proposed suspension or expulsion, along with a description of the conduct that has given rise to the disciplinary action
- the member must be given the opportunity to be heard at a meeting of the committee members or to respond to the proposed suspension or expulsion in writing before a final decision is made by the committee
- the member must also be given notice of the decision to suspend or expel them and reasons for that decision by the committee
- the suspension or expulsion cannot take effect until 14 days after the notice of the decision is given to the member, and
- the member who has been subject to a suspension or expulsion has a right to appeal the action within 14 days of the decision being made by giving notice to the secretary of the organisation.

You should check your organisation's constitution to see what requirements apply in relation to disciplinary action.

Dispute resolution procedure

Incorporated associations in the NT are designed to be self-regulating entities in relation to internal matters and disputes. Under the Act, an association's constitution must include a procedure for the settling of disputes between the organisation and its members. The Act also requires that the principles of natural justice be applied to the adjudication of disputes between either:

- members of the organisation, or
- the organisation and its members.

For example, a member might complain that the annual general meeting was not properly held, tensions may arise about the use of funds, or a member may dispute whether a member of the committee was validly elected.

If the Model Constitution applies to your organisation, the process for resolving disputes either:

- between members of the organisation, or
- between a member and the committee of the organisation is as follows:

1. Within 14 days after the dispute comes to the attention of the parties to the dispute, they must meet and discuss the dispute, and if possible resolve it.
2. If they are unable to resolve the dispute at the meeting (or if one party fails to attend the meeting), within 10 days after the meeting, they must hold another meeting in the presence of a mediator (the Model Constitution sets out some conditions about who the mediator can be).
3. If the mediation process does not result in the dispute being resolved, the parties may seek to "resolve the dispute in accordance with the Act or otherwise at law" (this means you should consult a lawyer, as you may be able to commence court proceedings).

Your association's constitution may require an internal dispute to be referred to the NT Community Justice Centre to attempt resolution by mediation before permitting the parties to the dispute to commence any court proceedings. There may be other avenues available under the association's constitution that could assist a member to address its concerns such as:

- through a special general meeting, if the members have been given the right to request that such a meeting be convened by the association, or
- through the right of members to collectively vote to remove committee members or amend the association's rules.

Where appropriate, you should give your association the opportunity to address or remedy any internal matter by notifying the management committee of your concerns in writing before taking further action.

Generally speaking, the courts are reluctant to intervene in the internal affairs of associations. Where the members of an association have considered and approved particular action taken by their

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.

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.

RELATED RESOURCES

For more information on grievance procedures, go to the Information Hub page on internal disputes at <http://www.nfplaw.org.au/internalconflict>



Going to court about an internal dispute

The Act allows an application to the Local or Supreme Court to be made by a member of an incorporated association, or former member expelled from the association (provided the application is made within 6 months after the expulsion), who believes that:

- the association has acted in a way that is oppressive or unfairly prejudicial or discriminatory against them, or in a way that is contrary to the interests of the members as a whole
- the association's constitution contains provisions that are oppressive or unreasonable, or
- their expulsion from the association was oppressive or unreasonable.

There may be other types of court actions available to members in certain circumstances (eg. breach of contract, discrimination, or negligence). You should seek legal advice to determine which remedies may be available to you.

When the Commissioner can investigate

If a member is concerned about a serious breach of the Act by the incorporated association, it can draw this issue to the attention of the Commissioner of Consumer Affairs (**Commissioner**). Under the Act, the Commissioner is given the power to investigate an incorporated association's affairs if it is satisfied it is appropriate having regard to the information in its possession.

If, on application by the Commissioner, the Supreme Court is satisfied that:

- a person is guilty of fraud, negligence, default, breach of trust or a breach of duty in relation to an incorporated association, and
- the association has suffered, or is likely to suffer loss or damage as a result

the Court may make an order directing that person to pay money or transfer property to the association and/or directing the person to pay to the association the amount of loss or damage.

An officer of the association that has not complied with a provision of the Act can also be guilty of an offence under the Act and may be required to pay a fine in an amount up to \$15,300, or may be subject to a term of imprisonment for up to 6 months (as at February 2016).

REMEMBER

The Commissioner 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 Commissioner's role is to ensure financial and legal accountability, and good governance of incorporated associations.



Resources

Related Not-for-profit Law resources

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

✔ The people involved - www.nfplaw.org.au/people

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

✔ Disputes - www.nfplaw.org.au/disputes

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

Legislation

✔ [Associations Act \(NT\)](#)

✔ [Associations Regulations \(NT\)](#)

✔ [Associations \(Model Constitutions\) Regulations \(NT\)](#)

Other related resources

✔ [Northern Territory Government Department of Business](#)

This is the government department of which Licencing NT is part of and which is responsible for regulating incorporated associations in the NT. Its website contains helpful information about resolving internal disputes and the legal requirements relating to the content of an association's rules.

✔ [Northern Territory Government Community Justice Centre](#)

The Community Justice Centre has been established by the NT Government to provide mediation services to the community to help people resolve their own disputes without legal action.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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