

Members' rights

Legal information for South Australian 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 South Australian 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 Incorporation Act 1985 (SA)* (**the Act**) and *Associations Incorporation Regulations 2008 (SA)* (**Regulations**) 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 legislation.

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). You will need to consider your association's rules closely to determine the rights that apply to you or your members.

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 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 the Regulations, 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:

- membership (for example, this may include the classes of membership within the association, and when a person becomes and ceases to be a member)
- the calling of, and procedure at, general meetings, and
- the manner in which the rules of the association can be altered.

An association's rules 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.

Consumer and Business Services (**CBS**) is the department responsible for regulating incorporated associations in South Australia. CBS has prepared example rules that incorporations may choose to use, or they can write their own (so long as they comply with the Act). You and your incorporated association should comply with the Act, the Regulations 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 or Public Officer of your association and request to inspect or be provided with a copy of the rules. You may be required to pay a reasonable fee to obtain a copy of the rules.

If your association is a charity, you can find its 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

The Act provides for the following rights of members:

- to inspect or obtain copies of any documents held by the Corporate Affairs Commission (**CAC**) including the register of incorporated associations or any other registers kept by CAC, or the certificate of incorporation of an association
- to request that their address not be publicly disclosed by the CAC if it is disclosed on any documents held by the CAC relating to the association
- to vote (for voting members) including to vote on special resolutions to alter the association's rules
- to 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
- to apply to the court for an order varying the rules of the association in circumstances where it is impossible for the members to consider and pass a special resolution in the normal way

- to inspect their association's minutes of meetings
- in respect of a prescribed association (see right), the right to see, ask questions about and vote on the association's annual returns at each annual general meeting
- to apply to the District Court for an order authorising an inspection of the association's books on behalf of the member by a person authorised under the Act or a legal practitioner to be provided with natural justice in respect to any internal disputes adjudicated by the committee of the association, and
- to apply to the Supreme or Magistrates Court to make orders if the member considers that the association has, or proposes to, engaged in oppressive conduct.

NOTE

A prescribed organisation under the Act is an incorporated associations with gross receipts in its previous financial year in excess of \$500,000 (as at February 2016)

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.

CBS has prepared example rules which incorporated associations in South Australia can choose to adopt (or use as a template for the creation of their own rules). The example rules suggested by CBS provide the following additional rights to members:

- to 14 days' notice of general meetings including a description of the nature of the business to be considered at the meeting and the place and time of the meeting
- to be given notice of meetings in person or by post
- to vote on the election of office holders and the auditor
- the right to appoint proxies to vote and speak on the member's behalf
- to be given notice before disciplinary action is taken by the association and to make submissions relating to the allegations made against them
- to appeal against suspension or expulsion from the association
- the right to participate in a dispute resolution procedure for internal disputes between members or members and the association, and
- the right to call a general meeting of members (if a minimum number of other members agree).

If your association has not used the example rules (or has modified the example rules to suit the needs of the organisation), you should check what rights the rules provide to members.

FURTHER READING

A copy of the South Australian example rules can be found on CBS's website here:

http://www.cbs.sa.gov.au/assets/files/02_association_rules.pdf

If you are considering using the example rules for your organisation, you should consider if the rules are appropriate for your organisation and make any modifications or amendments necessary. The example rules also contain some rules that require your organisation to insert further information.

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

What happens if a member is denied their rights?

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.

Rule 10 of the example rules put forward by CBS provides a procedure for the settling of internal disputes. It requires that the disputing parties first meet to see if they can resolve the dispute and, if this is not successful, for them to attempt to resolve the dispute with the assistance of an independent third party. Subject to the procedures prescribed under your association's rules, if you are a member of an incorporated association and consider that your rights have not been met, 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.

If a member is concerned about a serious breach of the Act by the incorporated association, they can report this to the CAC, however, the CAC will not investigate a breach of the association's rules and cannot resolve a dispute between its members or the members and the association.

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 rules of your association may provide circumstances when the rights of members are suspended or terminated. The circumstances in which members rights may be suspended may include:

- when a member has failed to pay the annual subscription fee, or
- where there has been member misconduct.

Action taken in relation to misconduct is considered disciplinary action and associations need to follow any requirements under law or in an association's rules about disciplinary process, and need to also meet natural justice principles when disciplining members. This can include:

- following reasonable timeframes
- allowing a member to respond to allegations, and
- avoiding bias in the process (such as by providing a neutral decision maker).

TIP

'Natural justice' is a legal term. Essentially, where the adjudicator of a dispute is required to apply natural justice, it means that 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.

Rule 5.4 of the example rules put forward by CBS allow the association to expel a member from the association if it is found that that member has engaged in misconduct detrimental to the interests of the association. The rule requires the association to give the member notice of the charge and the chance to respond to the allegations. It also provides the member with a right to appeal a decision by the committee to expel them. You should check your organisation's rules to see what requirements apply in relation to disciplinary action.

Dispute resolution procedure

The Act does not require an association's rules to include a procedure for the settling of disputes between the organisation and its members or between members, however, it does require that the association apply the principles of natural justice to the adjudication of disputes.

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.

As mentioned above, rule 10 of the example rules put forward by CBS provides a useful example of the procedure that could be followed for the settling of internal disputes.

Your association's rules may require an internal dispute to be referred to the Southern 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 rules 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 a right of members to collectively vote to remove committee members or amend the association's rules.

Where appropriate, members should first try to solve internal matters by notifying the management committee of their concerns in writing.

Going to court about an internal dispute

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 had not been followed.

The Act does allow a member, or a former member (provided the application is made within 6 months from the date they ceased to be a member), to make an application to the Supreme or Magistrates Court for an order on the ground that the association has engaged, or proposes to engage in conduct that is oppressive.

The court's powers are extensive. The Act allows the court to make one or more of the following orders if it is satisfied that the member's application has been made out:

- an order regulating the conduct of the association's affairs in the future
- an order directing the association to institute, prosecute, defend or discontinue specified proceedings, or authorising a member to do so on behalf of the association
- an order restraining a person from engaging in certain conduct
- an order requiring someone to do a specified act
- an order that alters the rules of the association
- an order reinstating a former member, and
- any other order that is necessary to remedy any default or resolve any dispute.

The Act confirms that the rules of an incorporated association are binding on 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 (eg. discrimination, negligence). You should seek legal advice to determine what remedies may be available to you.

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](#)

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

▀ [Disputes](#)

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

Legislation

▀ [Associations Incorporation Act 1985 \(SA\)](#)

▀ [Associations Incorporation Regulations 2008 \(SA\)](#)

Other related resources

▀ [Consumer and Business Services \(CBS\)](#)

The government agency responsible for regulating South Australian Incorporated Associations.

▀ [CBS Example Rules](#)

This page contains a copy of the example rules prepared by CBS, which may be adopted by incorporated associations, or used to assist them in preparing their own rules.

▀ [Southern Community Justice Centre](#)

The Southern Community Justice Centre offers free legal services to the community, as well as dispute resolution services.

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

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