

# Members' rights

Legal information for Western 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
- when can a member's rights be suspended?

Members of Western Australian incorporated associations have certain rights. This fact sheet provides an overview of the main rights that members generally have.

## What are the sources of members' rights?

### 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.'

Some minimum rights for members of incorporated associations are set out in the *Associations Incorporation Act 1987 (WA)* (**the Act**), as well as deriving from common law (judge made law).

All incorporated associations must have a set of rules. An incorporated association's rules may go beyond the Act by:

- providing additional rights for members, and
- setting out procedures to be followed when a member exercises a right provided by the Act.

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

### NEW LAWS FOR INCORPORATED ASSOCIATIONS

New laws for Western Australian incorporated associations are expected to commence in July 2016. These changes are likely to affect the rights of members, including new requirements about grievance procedures. For more information about the changes, see below and go to the [Consumer Protection website](#).

## 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 to inspect the rules. The Secretary must make the rules available to you for inspection, and must allow you to make a copy of the rules. However, the Secretary does not have to allow you to remove the rules for the purpose of copying them.



# Members' rights

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Members' rights generally include the right to:

- inspect certain records and documents of the association, and get copies of these documents, including the association's rules, the members register and the details of office holders
- attend the annual general meeting
- have financial accounts showing the association's financial position submitted to members at the annual general meeting
- be given notice of, and attend and vote at, any general meetings where proposals to alter the association's rules or wind up the association will be put to members, and
- apply to the Supreme Court to wind up the association if, for example, the association has fewer than six members, has been inoperative for 12 months or longer, or has treated its members oppressively.

Many associations also provide the following rights to their members:

- to vote at general meetings
- to have disputes resolved in accordance with a grievance procedure, including the right to mediation if the parties cannot resolve the dispute on their own
- to be provided with natural justice in grievance procedures, including by being given the opportunity to be heard
- to be given notice before being suspended or expelled from the association, and the opportunity to be heard or make written submissions regarding the proposed suspension or expulsion
- to appeal against suspension or expulsion from the association
- to appoint proxies to vote on the member's behalf, and
- to call a general meeting (if a minimum number of other members agree).

## TIP

The WA parliament has passed the *Associations Incorporation Act 2015* (**the 2015 Act**), which is expected to commence in July 2016. The 2015 Act makes some relevant changes to the current Act. For example, the 2015 Act includes further matters that will need to be addressed by an organisation, including:

- an association will be required by law to have a grievance procedure for resolving disputes between members or between a member and the organisation, if the dispute arises "under or relating to the rules." The current Act does not require an association to have a grievance procedure, although many

associations have them anyway, and

- an association's rules will have to describe the classes of members and their rights to attend and vote at meetings.

The 2015 Act also aims to better protect members' privacy. It requires that people only use the information on the members register for purposes connected to the association, and not for purposes like advertising.

## 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 procedure, make a complaint in accordance with that grievance procedure and if the rules do not have a formal grievance procedure, put concerns in writing to the board or committee, and
- if the grievance procedure or other approach taken with the organisation directly 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 [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 are suspended or terminated. The circumstances in which members rights may be suspended or terminated may include:

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

# 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 1987 \(WA\)](#)

➤ [Associations Incorporation Regulations 1988 \(WA\)](#)

➤ [Associations Incorporation Act 2015 \(WA\)](#)

## Department of Commerce WA resources

➤ [Department of Commerce's incorporated associations information](#)

This section of Department of Commerce's website has information about incorporated associations.

➤ [The INC Guide](#)

This is an online manual to assist in setting up and running the operations of an incorporated association in WA.

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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