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One of the most contentious aspects of any corporation, particularly a sporting organisation, is voting rights. There are as many different structures, methods and formulas to determine members' voting rights as you can imagine. Indeed the variables are only limited by your imagination.

In some organisations individual members have voting rights and in other organisations the voting rights belong to other legal structures, regions or clubs within the organisation.

Probably the issue that gets most focus is the right to appoint a proxy. There is a good deal of confusion as to whether proxies are lawful, unlawful, mandatory or optional. The simple fact is that for a Company Limited by Guarantee proxies are mandatory. *The Corporations Act* proxy rule is not a replaceable rule and for Companies Limited by Guarantee the constitution should provide for proxy voting.

For Incorporated Associations under the *Associations Incorporation Act*, whether there is a right to proxies or not, depends on what is said in the constitution. If the constitution says there are proxies, then there are. If the constitution says there are not proxies, then there are no proxies.

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Where this becomes even more murky is in section 47 of the *Associations Incorporation Act* which says:

“If a matter is not provided for under an incorporated association’s own rules but the matter is provided for under a provision of the model rules, the association’s own rules are taken to include the additional provision.”

It is possible to provide in your constitution that section 47 does not apply.

If the constitution is silent on proxies and you have not specifically excluded the application of section 47 then pursuant to clause 40 of the Model Rules, proxies are permitted in your association.

We see numerous examples in Companies Limited by Guarantee where proxies are prohibited and other examples of where Incorporated Associations who should, by virtue of the application of the Model Rules above, allow proxies but don't.

If you wish to fix the issue or discuss what your organisation should have in its constitution or should be doing, please send me an email or call me.



John Mullins

Partner

Mullins Lawyers

t +61 7 3224 0210

jmullins@mullinslaw.com.au