



FOUNDATIONS

Members: Definition, Classes and the Freedom Not to Associate

Why membership is a relationship of consent, not a status your constitution can assign

Every constitution in this series so far has assumed a working definition of who a member is. It is worth stopping to examine that definition directly, because it is more specific, and more protective of individual choice, than most boards appreciate, and because getting membership classes wrong creates exactly the kind of dispute we saw play out in the Carlingford Bowling Club case in the previous article.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Statutory Definition](#)
2. [Why You Cannot Deem Someone A Member](#)
3. [Designing Membership Classes Deliberately](#)
4. [The Governance Takeaway](#)

The Statutory Definition

Section 231 of the Corporations Act 2001 (Cth) defines who counts as a member of a company. A person is a member if they were a member on the company's registration, or if they agree to become a member after registration and their name is entered on the register of members. There is a third, narrower pathway under section 167 relating to membership arising from a company converting from limited by guarantee to limited by shares, which is not relevant to most associations.

The word doing the real work in that definition is agree. Membership of a CLG under the Corporations Act is not something that can be imposed on a person from outside. Incorporated associations should check the admission and register provisions in their state or territory Act and rules, which generally also require an application or consent. It requires their agreement, and only then does registration on the members' register complete the process. This is not an incidental drafting choice. It reflects a basic principle of company law: membership is a voluntary relationship, formed by consent, not a status that can be assigned to someone without their participation.

Why You Cannot Deem Someone A Member

This has a direct and sometimes overlooked practical consequence: an organisation cannot use its own constitution to automatically enrol people as members without their consent, even where doing so would be administratively convenient. A professional body cannot deem every registered practitioner in its field to be a member. An umbrella association cannot deem every member of its constituent branches to be a member of the parent body, without each of those individuals actually agreeing to join. A constitutional clause that attempts this is not merely bad practice, it sits in tension with the statutory definition of membership itself.

The same logic protects the other end of the relationship. A member's agreement to join does not become a permanent commitment enforceable against their will. Ordinary principles of voluntary association mean a member can generally resign, subject to whatever reasonable notice or process the constitution specifies, and a constitution that made resignation practically impossible, or subjected it to another party's discretionary approval, would sit uneasily against the voluntary character the statutory definition establishes.

A membership base built on consent, at both entry and exit, is not just good practice. It is closer to what the law actually contemplates than the automatic, deemed, or locked-in membership structures some organisations still carry from an earlier era.

Designing Membership Classes Deliberately

Most associations of any scale need more than one class of member: ordinary or full members, associate members, student or provisional members, life members, corporate or organisational members, and sometimes honorary members with no voting rights at all. The Corporations Act does not prescribe these categories. They are a matter for the constitution to define, and this is where the earlier articles in this series converge: membership classes are exactly the kind of matter that belongs in the constitution rather than a by-law, because they determine voting rights, and voting rights determine who can pass a special resolution, elect the board, or move a motion under the thresholds set out in the Corporations Act or your state or territory Act.

- Define each class with precision: eligibility criteria, rights attached (voting, standing for election, access to member resources), and any obligations (fees, ongoing eligibility requirements).
- State voting rights explicitly for every class, rather than leaving a class silent and assuming it carries no vote. Silence invites dispute. Carlingford also shows that where the constitution grants a voting right, a by-law cannot later restrict it.
- Keep the classes themselves in the constitution, since they affect the statutory contract and voting architecture, but push the administrative detail of applying for and processing each class into a by-law.
- Check your own records: confirm the members' register matches the classes in the constitution, and that each member's application or consent and class are documented.
- Review membership classes periodically against how the organisation actually operates today. A class created for a category of practitioner or member that no longer meaningfully exists is a common source of constitutional clutter.

The Governance Takeaway

Membership architecture is not paperwork sitting beneath the more interesting governance questions of board composition and strategy. It is the foundation those questions are built on. Every voting threshold discussed elsewhere in this series, for a CLG, the 5 per cent or 100-member threshold to give notice of a resolution, the 75 per cent special resolution threshold to change the constitution, only means what your organisation intends it to mean if your membership classes and voting rights are defined with precision in the first place. A board that treats membership definition as a foundational governance decision, not an administrative one, avoids a great deal of downstream dispute.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

Founder and CEO, Nexus Leadership

BOARDROOM ACTION WORKSHEET

Members: Definition, Classes and the Freedom Not to Associate

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

CONTINUE YOUR LEARNING

Turn governance principles into practical board action.

Self-paced courses, editable resources and practical support for association boards and CEOs at nexusleadership.com.au.