



FOUNDATIONS

Voting Rights: Getting the Architecture Right

What your constitution can design, and the one right the Corporations Act will not let you remove

Voting architecture is one of the few areas of governance where the Corporations Act 2001 (Cth) gives boards drafting freedom, and one specific area where it deliberately does not. This article is written for companies limited by guarantee; incorporated associations should read it alongside their state or territory Act and rules. Knowing which is which before you draft saves a great deal of wasted effort, and one surprising limit in particular catches boards who assume their constitution can restrict member participation more tightly than the law actually allows.

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.

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What Your Constitution Can Decide

How many votes each member has is governed by section 250E of the Corporations Act, and it is a replaceable rule, meaning your constitution can adopt a different approach to the default. This is important for associations with multiple membership classes: a constitution can validly give ordinary members one vote each, associate members no vote, corporate members a single vote regardless of size, or any other weighting the organisation's governance model calls for, provided it is drafted with the clarity discussed in the previous article on membership classes.

This flexibility is where most of the design work in voting architecture happens. Get it wrong and you either dilute the influence of the members most invested in the organisation's mission, or concentrate power in a way that looks defensible on paper and generates resentment in practice. Get it right and the voting structure reinforces exactly who the organisation is meant to be accountable to.

What Your Constitution Cannot Remove

Here is the limit boards miss. Section 249X of the Corporations Act, which governs a member's right to appoint a proxy to attend and vote on their behalf, is a replaceable rule for proprietary companies, but a mandatory rule for public companies. A company limited by guarantee is a public company. That means, for associations structured as CLGs, the right of an eligible member to appoint a proxy cannot be removed by the constitution. Incorporated associations are not covered by section 249X; their proxy rules come from the state or territory Act and their own rules, and some model rules restrict or condition proxies. It is not a default that can be switched off through clever drafting. It is a baseline protection the Act imposes regardless of what your constitution says.

A constitution attempting to prevent proxy voting altogether, or to make it so restrictive it functions as a de facto prohibition, is working against a mandatory provision of the Act, not exercising a legitimate drafting choice. Boards frustrated by proxy-driven voting blocs at general meetings sometimes look first to restricting proxies. That is generally the wrong lever to pull. The right levers sit elsewhere: how proxy forms are structured, how voting instructions are validated, and how the vote is conducted, all areas with flexibility, rather than the proxy right itself.

- A member entitled to attend and vote may appoint another person, an individual or a body corporate, as their proxy.
- A member entitled to cast two or more votes may appoint two proxies, and if the appointment does not specify how the votes split between them, each proxy exercises half.
- These proxy rights sit outside the constitution's control for a public company. Any drafting energy spent trying to restrict them is better redirected to process design instead.

Know which parts of your voting architecture are yours to design, and which are set by the Act regardless of what you draft. Confusing the two wastes governance effort on a fight the constitution cannot win.

Designing The Parts You Do Control

Within the flexibility the Act leaves you, a few design questions deserve deliberate answers rather than default settings inherited from a template.

- Show of hands versus poll: most matters can default to a show of hands, but constitutions should specify clearly when a poll can be demanded and by whom, since a poll better reflects true voting weight where classes carry different vote counts.
- Proxy form design: a proxy form that clearly explains how to direct a vote on each resolution reduces disputes far more effectively than restricting who can hold a proxy.
- Quorum interaction with voting classes: if some classes carry no vote, make sure your quorum requirement is defined in a way that cannot be gamed by a bloc of non-voting attendees.
- Electronic and hybrid meetings: a CLG can hold a hybrid meeting under the Corporations Act without specific constitutional authority, but a fully virtual meeting needs express permission in the constitution. Incorporated associations should check their state or territory Act and rules. Many older constitutions never anticipated online meetings at all.

Voting architecture rewards precision far more than most boards expect from what looks like a procedural section of the constitution. The Act gives you real freedom to design a voting structure that reflects your organisation's actual governance philosophy, member classes, weighting, quorum design, but it also draws a firm line around proxy rights that no amount of clever drafting will move. Knowing exactly where that line sits is what separates a constitution that holds up under pressure from one that invites a challenge the moment a contested election arrives.

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

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BOARDROOM ACTION WORKSHEET

Voting Rights: Getting the Architecture Right

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.

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