



GOVERNANCE RISK & OPERATIONS

Proxy Voting: The Structural Invitation to Concentrate Power No One Notices

Without a cap, one person collecting many proxies can quietly control a vote the membership never actually endorsed

Whether members can vote by proxy depends on your entity type and your rules. Members of a company limited by guarantee have a statutory right to appoint a proxy, while for an incorporated association it depends on the state or territory Act and the rules. Where proxies are available without safeguards, they can become a mechanism for concentrating voting power in ways an ordinary member meeting was never designed to allow.

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. [Proxy Voting Depends On Your Entity Type](#)
2. [The Block-Voting Risk Worth Actively Preventing](#)
3. [The Technical Rule Most Associations Do Not Know](#)

Proxy Voting Depends On Your Entity Type

Whether members can appoint someone else to vote on their behalf depends on your entity type. Members of a company limited by guarantee have a statutory right to appoint a proxy under section 249X of the Corporations Act, whatever the constitution says. For an incorporated association, check both the state or territory Act and your rules, since some model rules provide for proxies and others do not. If neither provides for them, proxies are generally not available, regardless of what members might assume based on how other organisations operate. This connects directly to the constitutional discipline discussed throughout this series: an incorporated association's board wanting flexibility for members unable to attend in person needs to confirm this provision actually exists, in writing, rather than assuming it does.

The Block-Voting Risk Worth Actively Preventing

A known risk in any proxy system without a cap is concentration: one person collecting a large number of individual members' proxies and effectively controlling a disproportionate share of the vote. Some other Australian laws, such as certain state strata schemes legislation, cap the number of proxies one person may hold. These do not apply to associations, but they show the type of safeguard available. An association can consider a similar cap in its constitution or rules, after checking that it is lawful for its entity type, specifically to prevent a small group from quietly accumulating outsized control through proxy collection rather than member support. A proxy system without any cap on how many appointments a single person can hold is not a neutral administrative convenience. It is a structural invitation to concentrate voting power in ways the ordinary meeting process was specifically designed to distribute.

The Technical Rule Most Associations Do Not Know

Where a proxy form directs how the appointed proxy must vote on a specific matter, the proxy must vote as directed. A proxy who votes against the member's direction may breach the law or the rules, and the vote may be open to challenge. This is an important, technical point: a directed proxy is not simply a suggestion the proxy holder can override at their own discretion. Associations running any contested vote should scrutinise directed proxies carefully against how they were cast, since a mismatch can be challenged and, in a close result, may change the outcome. Take advice if a close result depends on it.

- Confirm whether proxy voting is available to your members: under the Corporations Act for a company limited by guarantee, or under your state or territory Act and rules for an incorporated association.
- Consider whether a cap on the number of proxies one person can hold is appropriate and lawful for your entity type, connecting directly to the block-voting risk this article has identified, and get legal advice before amending the constitution, particularly for a company limited by guarantee.
- Check every relevant document, state or territory legislation, your constitution, and any supplementary rules, since proxy rules differ between the Corporations Act, each state and territory Act, and individual constitutions, and a conflict between documents creates ambiguity.
- Verify directed proxies were cast in accordance with the member's explicit instructions, since a vote cast contrary to a direction may be open to challenge and can affect a close result.
- Set and enforce a deadline for proxy form receipt before the meeting, avoiding late or disputed submissions that create exactly the kind of eligibility ambiguity this series has already identified as the root of election disputes.

Proxy voting exists to make participation more accessible, not to create a quiet pathway for a small number of people to control an outcome the broader membership never actually endorsed. An association that builds appropriate safeguards and verification into its proxy process protects the integrity of every vote it relies on that process to produce. 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

Proxy Voting: The Structural Invitation to Concentrate Power No One Notices

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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