



Register of Members

2022 GUIDE FOR
ASSOCIATIONS



INTRODUCTION

The importance of understanding the rights of members relating to the Register of Members ('Register') was once again emphasised in the legal dispute between Mr Lawrence and Melbourne Football Club ('the Club') in 2022.¹

Mr Lawrence, a member of the Club, sought a copy of their register for the purposes of sending an email to all voting members of the Club. While providing Mr Lawrence with the register, they refused to provide the email addresses of members. The Club claimed that the addresses did not comprise part of the register and are not required to be maintained under the *Corporations Act 2001* (Cth).

Several critical questions are commonly raised, and in light of this case, understandings of the relevant laws should be clarified. For example, must a company limited by guarantee (like the Club) be required to disclose all details contained on the Register? If so, does this breach any privacy concerns of members? Members often request a copy of the Register for the purposes of contacting other members, such as in the case of Mr Lawrence and the Club.

These issues and others will be discussed but some background is first needed.

WHAT IS THE REGISTER OF MEMBERS?

The *Corporations Act 2001* (Cth) requires that all companies establish and maintain a register that contains each member's name and address and the date the member's name was entered on the Register.²

Companies must maintain a Register of Members. The Register must contain each member's name, address and date of entry. While not previously required, the decision in *Lawrence v Melbourne Football Club* in 2022 indicates that email and telephone details (and any other nominated means of contacting members) should also be recorded and made accessible per s 173 of the Act (discussed below).

While the Corporations Act does not provide an obligation to record the email and telephone addresses of members, corporations may choose to record this if nominated by the member. However, the central issue in the case of Mr Lawrence and the Club was whether corporations are required to record 'other' addresses nominated by members beyond simply residential addresses, particularly electronic addresses.

¹ *Lawrence v Melbourne Football Club Ltd* [2022] VSC 658.

² *Ibid*, s 169(1).

Justice Riordan in the Supreme Court of Victoria found that the relevant subsection does in fact create ‘an obligation to contain any address nominated by the member for the purposes of communications’.³ These relevantly including electronic addresses.

Justice Riordan’s consideration for the term ‘address’ in the Act emphasised that it is not just limited to a place where a person resides. Rather, it more accurately refers to how a person may be contacted or reached to establish communication. It was recognised that applying limitations to the term’s scope of meaning, would in some cases ‘substantially interfere with the legislative intention of permitting a person, who has inspected the Register, to communicate with the members for an approved purpose’.⁴

WHAT ARE THE LEGAL REQUIREMENTS REGARDING THE REGISTER?

Per s 169 of the Corporations Act, companies are required to record the member’s name and address and the date on which the entry of the member’s name in the register is made.

For companies with more than 50 members, they are required to include on the register, a current index of member’s names that is convenient to use and allows entries (of members) to be easily found.⁵

In relation to former members (only within the last 7 years), their names and details must be retained.⁶ Companies are also required to record the date on which the person ceased to be a member. Entries pertaining to former members may be kept separately from the rest of the register.⁷

WHO IS ENTITLED TO INSPECT AND/OR OBTAIN A COPY OF THE REGISTER?

Rights to inspect and obtain copies of the Register are covered by s 173 of the Act. Foremost, companies must allow anyone to inspect a register irrespective of whether it is contained online or as a physical copy.⁸ In relation to inspecting the

³ *Lawrence v Melbourne Football Club Ltd* [2022] VSC 658.

⁴ *Ibid*, [50] (Riordan J).

⁵ *Corporations Act 2001* (Cth) s 169(2).

⁶ *Ibid*, s 169(7)(a).

⁷ *Ibid*, s 169(7)(b).

⁸ *Ibid*, s 173(1).

Register, details concerning the place and time for inspection,⁹ the location of documents that are kept on computers¹⁰ and the form and evidentiary value¹¹ are also considered under the Act and are discussed below.

Members of a company may inspect the Register without charge, however, others i.e. non-members may inspect the register only upon payment of a fee (which is prescribed by the company).¹²

IF A MEMBER REQUESTS ACCESS TO THE REGISTER, WHAT SHOULD AN ASSOCIATION THAT IS A COMPANY LIMITED BY GUARANTEE DO?

Where a member seeks to access the Register, subsection (1) of the Corporations Act indicates that a company must provide them with a copy of it (or part of it) within 7 days provided that:

1. The member's application to obtain a copy is in accordance with subsection (3A)
2. Pays any fee as prescribed and required by the company.

Associations that are companies limited by guarantee should ensure that the application is in accordance with the relevant legislative provisions. The Act provides that an application (a) states each purpose for which the person is accessing the copy, (b) none of those purposes is a prescribed purpose and, (c) the application is in the prescribed form.¹³

It is important to note that ASIC may allow a longer period for a company to comply with the request.¹⁴

Issues and penalties relating to the use of the Register by members are discussed further below.

RECENT ISSUES AND PENALTIES

Foremost, the Act offers guidance for using information on registers. Individuals must not use or disclose information from the Register that is inconsistent with the stated purpose or as prescribed by the company.¹⁵

⁹ Ibid, s 1300.

¹⁰ Ibid, s 1301.

¹¹ Ibid, s 1306.

¹² Ibid, s 173(2)

¹³ Ibid, s 173(3A)(c)

¹⁴ Ibid, s 173(3)(b)

¹⁵ Ibid, s 173(3A)(b)

Individuals who contravene these provisions will be liable to compensate anyone that suffers loss or damage because of the contravention. Additionally, an individual who makes a profit from a contravention of these provisions is indebted to the company to the value of the profit they made.¹⁶

Sections 137.1 and 137.2 of the Criminal Code also provide offences in instances where a member provides false or misleading information or documents.

In addition to these statutory provisions, turning to the recent case of Mr Lawrence and the Melbourne Football Club provides relevant insights.

The key issue considered in the case was whether a corporation's obligation under s 169(1) of the Act to record the member's address is limited to the member's residential address or whether it extends to other addresses, which are nominated by the member, in particular electronic addresses. The case was heard in the Supreme Court of Victoria by Justice Riordan.

Ultimately, the court ordered the Club to hand over the details of email addresses, however, this was limited by agreements concerning when and for how long Mr Lawrence would be provided access before being required to destroy the information.

Justice Riordan notes that the statutory requirement for the Register to contain the member's address includes an obligation to contain 'any address nominated by the member for the purposes of communications'.¹⁷ Alternative addresses relevantly include electronic addresses.

Specifically, the term 'address' in the Act was interpreted as encompassing more than just a place where a person resides. Rather, it includes how a person may be contacted or reached to establish communication.

Finally, in considering the intention of the Act, Riordan J stated that limiting the meaning of 'address' to residential rather than requiring the Register to contain details of physical, electronic or otherwise as nominated would greatly interfere with the purpose of enabling an individual to communicate with members.¹⁸

Privacy Considerations

Section 177 of the Act protects the privacy of members whose information is recorded on the Register. While privacy is a significant issue, a company does not breach the Australian Privacy Principles if it discloses details in the Register if access is given for a proper purpose.¹⁹

¹⁶ Ibid, s 177(1B).

¹⁷ *Lawrence v Melbourne Football Club Ltd* [2022] VSC 658, [50] (Riordan J).

¹⁸ Ibid.

¹⁹ Ibid, [53].

Members are often cautious as to how their information on the Register is used and whether consent must be provided prior to it being accessed.

When it comes to privacy consents, the leading decision is the *IMF (Australia) Ltd v Sons of Gwalia Ltd*.²⁰ This case emphasised that the objective of s 177 is to 'protect the privacy of people whose particulars...can be ascertained from a register to which any member of the public can have access'.²¹ By limiting how the information may be used, including through creating exceptions and prohibitions as to its use, the privacy of members is upheld. However, it was emphasised that applying these limitations is not intended to preclude using the information to contact individuals on the Register should that be the intended and approved purpose.²²

This position was reiterated in *Lawrence v Melbourne Football Club*. While the Club in the case of Mr Lawrence raised the issue of privacy concerns relating to the disclosure of email addresses, it was found that this was not an issue – privacy issues 'do not militate against requiring an electronic address nominated by the members to be recorded in the register'.²³

SUMMARY

Fundamentally, companies are obligated to provide members access to the Register. The recent case of Mr Lawrence highlighted that companies should maintain a Register that includes any nominated addresses by members, including electronic (email) addresses.

²⁰ *IMF (Australia) Ltd v Sons of Gwalia Ltd* (2005) 143 FCR 274.

²¹ *Ibid*, [9] (Moore J).

²² *Lawrence v Melbourne Football Club Ltd* [2022] VSC 658, [51] (Riordan J).

²³ *Ibid*, [53] (Riordan J).



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