

# Removing or disciplining a member

Legal information for New South Wales community organisations

## This fact sheet covers:

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- what does 'disciplining' a member mean?
  - how do we discipline a member who is causing trouble?
  - can we remove, suspend or fine a member of our organisation?
  - is disciplinary action the only option? and
  - is there a different process for removing a member?
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**Sometimes an organisation's ability to function is disrupted because a member behaves inappropriately.**

This fact sheet explains the options that your organisation has to deal with disruptive members. If there is violence or concern about criminal activity, call the police. This fact sheet provides general information. Depending on the circumstances, your organisation may need to seek specific legal advice.

### *Associations Incorporations Act 2009 (NSW)*

The *Associations Incorporations Act 2009 (NSW)* (**AI Act**) provides that an association's rules should address the procedure (if any) for disciplining the association's members including the mechanism (if any) for appeals by members to disciplinary action taken against them. The rules would also usually detail the powers of the management committee to remove, suspend or discipline a member.

Many associations adopt the model constitution set out in the *Associations Incorporations Regulation 2010 (NSW)*. The model constitution provides some example provisions regarding the procedure to be followed by an incorporated association when disciplining a member.

## What does 'disciplining' a member mean?

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When disciplining members, incorporated associations need to both follow their rules, and also meet requirements in the AI Act.

Disciplinary action an association can take can includes:

- suspending a member's membership
- expelling a member from an association
- reprimanding a member, or
- fining a member (if this is provided for by the rules of an association).

# How do we discipline a member who is causing trouble?

If your rules allow for disciplining a member, follow the procedure set out in your rules. The law also requires that an association ensure that:

- the member who is the subject of the disciplinary procedure is informed of the grounds for taking the proposed disciplinary action
- the member is given the opportunity to be heard
- the disciplinary decision maker/s is/are unbiased, and
- the disciplinary procedure is completed as soon as reasonably practicable.

## NOTE

It is best practice that your rules contain disciplinary procedures.

# Can we remove, suspend or fine a member of our organisation who is causing trouble?

Many New South Wales incorporated associations have a process in their rules or constitution to remove, suspend or fine ('discipline') a member who is causing trouble. You'll need to check what your own organisation's rules say.

## TIP

If you are not sure what your association's rules are, you can request a copy of your current rules from [NSW Fair Trading](#).



It is not compulsory to have procedures in your rules about disciplining a member, however, if your organisation does wish to have an option open to discipline members, it must outline the disciplinary procedure in its rules.

If your incorporated association uses the model constitution provisions, clauses 12-13 contain the disciplinary procedures. Under clause 12, disciplinary action can be taken against a member if a complaint has been made that the member has:

- refused or neglected to comply with a provision or provisions of the constitution of the association, or
- wilfully acted in a manner prejudicial to the interests of the association.

If your association does not use the model constitution it can create its own disciplinary procedure and write this into its rules. It is important that the procedure and the way the complaint is practically dealt with by your association affords natural justice to the member meaning that:

- the member must be notified of the grounds on which proposed action will be taken

- the member should have an opportunity to be heard, and
- the disciplinary outcome should be reached by an unbiased decision-maker.

You must make every attempt to follow the steps in your disciplinary procedures so that the principles of natural justice will be complied with.

The model constitution in the AI Act provides that a member should have the ability to appeal to the association in a general meeting against a decision to discipline a member – this opportunity to appeal is important. Your disciplinary procedure should set out how to appeal and that the decision of the general meeting is final.

### WHAT IS AN UNBIASED DECISION MAKER?

An unbiased decision-maker is someone who is not biased in the disciplinary matter. This means the outcome of the disciplinary action should not help or hinder the decision-maker.

They should not have a relationship with the member who is the subject of the action. They should also not have an interest or relationship to the issue that forms the grounds for the disciplinary action, or have an interest or relationship to any other parties to the dispute (for example someone who has made allegation against the member).

An unbiased decision maker can be a member, a non-member, or a group of people or members. It can be a good idea to try and find a decision-maker that everyone involved in the disciplinary procedure is happy with.

If you do not follow the procedures in your rules about disciplining a member, the outcome reached might not be legal and/or your organisation could be taken to court.

### CAUTION

Your organisation, and those it appoints, should make sure the disciplinary process is fair and proper, or the disciplinary action could be challenged by the member.

For information on types of disputes involving members of an incorporated association which can go to court, go to our fact sheet: 'Going to court about an internal dispute' at [www.nfplaw.org.au/internalconflict](http://www.nfplaw.org.au/internalconflict).

## Is disciplinary action the only way to address problematic behaviour by a member?

No. Your organisation could first try a softer approach, such as by discussing the issue with the member concerned. Sometimes, a discussion will be all that is required to get a member to change their behaviour.

Your organisation can also ask the member if they are interested in participating in mediation. Community Justice Centres offer free mediation in New South Wales (see the Resources section at the end of this fact sheet).

Mediation can sometimes resolve issues without needing to resort to formal disciplinary measures, and can help ensure that all parties involved feel heard.

If mediation is not appropriate in the circumstances, or is undertaken and fails, then disciplinary action may be an appropriate path for your association to take against a member.

For more information on mediation go to [www.nfplaw.org.au/mediation](http://www.nfplaw.org.au/mediation).

## Is there a different process for removing a committee member from the organisation?

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A disciplinary procedure can be taken against any member of your organisation – regardless of whether they are on the committee of management or not.

So, if a committee member is also a member of your incorporated association, the disciplinary procedure can be used to remove them from the whole organisation. If being a member of the association is a requirement to hold a position on the committee, removing the committee member from the association will also mean they no longer hold a position on the committee.

Most organisations have a different procedure under their rules for removing a committee member from the committee of management (in other words, a person can be removed from their role on the committee, but still retain their membership of the overall organisation). See 'Removing a committee member from the committee' at [www.nfplaw.org.au/internalconflict](http://www.nfplaw.org.au/internalconflict).

### CAUTION

If you want to remove a committee (or board) member from the committee, and not from the organisation entirely, there is likely to be a different process to follow. Check your organisation's rules.



# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) features related information resources on the following topics:

- ✔ [Disputes](#)
- ✔ [Secretary's Guide](#)

## Legislation

- ✔ [Associations Incorporation Act 2009 \(NSW\)](#)

This legislation regulates all New South Wales incorporated associations.

- ✔ [Associations Incorporation Regulations Act 2010 \(NSW\)](#)

## New South Wales Government

- ✔ [NSW Fair Trading](#)

The government agency responsible for regulating New South Wales incorporated associations.

- ✔ [NSW Community Justice Centres](#)

A free dispute resolution service funded by the New South Wales Government.

## Related Resources

- ✔ [Queensland University of Technology, Australian Centre for Philanthropy and Nonprofit Studies - When Things Go Wrong](#)

This is part of QUT's Developing Your Organisation Manual which provides directions to help not-for-profits meet their governance, organisational and service delivery responsibilities.

- ✔ [The Law Society of NSW – Solicitor Referral Service](#)

The Law Society of NSW has a Solicitor Referral Service if you need legal help and are looking for a law firm.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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