

Removing a committee member from the committee

Legal information for NSW community organisations

This fact sheet covers:

- things to think about before removing a member from the committee (or board) of your NSW incorporated association
 - how a committee member can be removed from the committee of management
 - what happens once a committee member is removed from the committee
 - how closely the law requires your organisation to follow its procedures on removal of a committee member, and
 - some other ideas if these haven't worked.
-

This fact sheet is relevant to NSW incorporated associations only. If your community organisation has some other legal structure, this fact sheet does not cover your circumstances.

The committee of management of a NSW not-for-profit incorporated association controls and manages the business and affairs of the organisation.

Given that vital role, it is important that the committee of management functions well, so it can steer your organisation in the right direction.

Sometimes an organisation's ability to achieve its aims is disrupted because a committee member is behaving inappropriately, so your organisation needs to know what can be done.

Who is involved in this dispute?

Knowing who your dispute involves is important, because there are different laws and procedures that apply to different conflict situations.

This fact sheet deals with **disputes with a committee member of a NSW incorporated association**.

There are legal requirements when trying to resolve these kinds of disputes under the *Associations Incorporation Act 2009* (NSW) (**AI Act**) and in your organisation's constitution (also known as the organisation's rules).

NOTE

This information sheet does not cover:

- how to remove a committee member from the organisation entirely – for information go to www.nfplaw.org.au/internalconflict
- how to handle conflict and disputes within your organisation – for information go to www.nfplaw.org.au/internalconflict
- disciplinary issues with volunteers – for information go to www.nfplaw.org.au/volunteers
- disciplinary issues with employees – for information go to www.nfplaw.org.au/employees
- situations that may endanger the health and safety of people in the workplace (eg. bullying) – for information go to www.nfplaw.org.au/OHS, or
- violence – the police may need to get involved, and criminal laws may apply. Contact NSW Police (www.police.nsw.gov.au).



Are there steps to take before trying to remove a committee member?

Removing a committee member from the committee of management (or governing body) of your organisation is not a decision that should be taken lightly. The process can be divisive and controversial, so think carefully about other options to deal with a committee member who is causing trouble, before trying to remove them.

Talk to the committee member

You (or an appropriate representative) could talk with the committee member about your concerns and try to reach an agreement about how these can be addressed.

Resolving the problem might be as simple as explaining to the committee member what their role is, and the performance standards expected.

TIP

You may wish to ask the committee member whether they think they should be in a governing role within the organisation. Even if they leave their role on the committee, they may still be a member of the organisation (depending on what your constitution says). Perhaps they could contribute to the organisation in another way?



Use your organisation's dispute resolution procedure

Use your organisation's dispute resolution procedures to try to resolve conflicts and disputes under the constitution.

Go to our fact sheet: 'Dealing with disputes and grievances with members' at www.nfplaw.org.au/internalconflict.

Mediation

Ask the committee member to attend mediation with representatives of the organisation. With the help of a mediator, you may be able to reach a solution that everyone can live with.

Go to our fact sheet: 'Using mediation to resolve conflict and disputes' at www.nfplaw.org.au/internalconflict.

Wait for the committee member's term to end

Usually the members of a committee of management of an incorporated association are elected to serve for a specific 'term' (period of time). If your organisation uses the model constitution, clauses 14 and 15 state that committee members are elected at the Annual General Meeting (AGM) and hold office until the next AGM. They are eligible for re-election at that next AGM.

If a problem arises close to the end of a committee member's term, the easiest thing to do might be to let the committee member stay on until the next election, and make sure they're not re-elected!

NOTE

The AI Act says that that a committee of management position becomes 'vacant' where the person:

- resigns by written notice addressed to the committee
- is removed by resolution at a general meeting
- dies
- becomes bankrupt
- becomes a 'mentally incapacitated person' for the purposes of the *Interpretation Act 1987* (NSW)
- ceases to reside in NSW, or
- in other circumstances provided for in the constitution.

Your organisation's constitution may contain other circumstances in which a committee member is taken to have automatically vacated their position. For example, if your organisation is using NSW Fair Trading's model constitution, clause 18 contains additional circumstances when a committee of management position becomes vacant.



How can a committee member be removed?

Check your organisation's constitution to find out the procedure (if any) for removing a committee member from the committee of management. It is not compulsory for incorporated associations to have rules for the removal of a committee member, but if your constitution is silent on this issue, the model provision will automatically apply.

NOTE

If your organisation uses NSW Fair Trading's model constitution, clause 19 provides that an association may, by resolution in a general meeting of members, remove a member of the committee before the end of their term.



Does there have to be a general meeting to remove a committee member?

If your organisation is using the model constitution, yes – there will need to be a general meeting of the members of the association to remove a committee member.

A general meeting is a meeting of the members of the incorporated association. It can be a 'special' general meeting or an annual general meeting (usually, a general meeting to remove a committee member would be a special general meeting.)

EXAMPLE

If your constitution requires a general meeting, check for requirements about convening that type of meeting. Under clause 25 of the model constitution, for example, the committee of management:

- can convene a special general meeting 'whenever it thinks fit', and
- must convene a special general meeting if 5% or more of the members of the association request one.

Your constitution will contain requirements for giving notice of the meeting to members. Make sure you follow these carefully.

If your organisation doesn't use the model constitution, check what your own constitution says.

What happens at the meeting?

If your organisation uses the model constitution (or has a procedure similar to model clause 25), the members of the organisation will need to vote on a proposed 'resolution' to remove the committee member.

Your organisation's rules may have specific requirements to give the committee member a chance to put their side of the story. If your organisation uses the model constitution, the committee member who is the subject of a proposed resolution for removal may:

- write down why they think they should keep their position as a member of the committee
- give this document to the secretary or president, and
- request that it be provided to the members of the organisation.

The secretary may then provide a copy to each member – or if this does not happen, the committee member may require that it be read out at the meeting.

NOTE

Removing a committee member *from the committee of management* is different to removing them *from the whole organisation*. If the committee member is also a member of the organisation, their removal from the committee of management will not affect their status as a member of the organisation – their membership will continue unaffected.



If members vote to remove a committee member, what happens next?

If your organisation uses the model constitution (or has a procedure similar to clause 19) and members pass a resolution to remove the committee member, then he or she ceases to be on the committee.

Check your constitution about the next step for your organisation.

Your constitution may have requirements about how many people must be on your committee. This will determine if it is necessary to replace the committee member before your next AGM.

For example, under NSW Fair Trading's model constitution, clause 18 says the committee can appoint a member of the association to fill a 'casual vacancy'. That member stays on the committee, subject to the constitution, until the next AGM.

Can a committee member be removed from the whole organisation (not just the committee of management)?

If your organisation wants to remove a committee member from the whole organisation (not just from the committee of management) you will need to follow the disciplinary procedures (if any) in your organisation's constitution.

Go to our fact sheet: 'Removing or disciplining a member' at www.nfplaw.org.au/disputes - it explains how an incorporated association can remove a member (committee member or not) from the organisation entirely.

How closely does the law require our organisation to follow its procedures on removal of committee members?

You should follow your organisation's procedures on removal of a committee member very closely - otherwise the outcome reached might not be legal and/or your organisation could be taken to court.

Go to our Information sheet: 'Going to court about an internal dispute' at www.nfplaw.org.au/disputes to find out about court actions that can arise from escalated disputes with members of an incorporated association.

NOTE

Your organisation, and those it appoints, should make sure the process for removing a committee member is fair and proper. Otherwise, the committee member's removal might be challenged by that committee member.

We're still concerned. What else can we do?

Depending on the circumstances, your organisation may wish to consider the following options:

1. Use your constitution

As mentioned above, you can:

- use your organisation's dispute resolution (grievance) procedures - go to our fact sheet: 'Dealing with disputes and grievances with members' dispute' at www.nfplaw.org.au/disputes, and
- ask the committee member to attend mediation - go to our fact sheet: 'Using mediation to resolve conflict and disputes' at www.nfplaw.org.au/disputes.

2. Ask NSW Fair Trading to become involved

NSW Fair Trading is the regulator for NSW incorporated associations and it can take action if there is evidence that there has been a breach of the *Associations Incorporation Act 2009* (NSW) or the *Associations Incorporation Regulation 2010* (NSW).

For example NSW Fair Trading has powers to:

- investigate an incorporated association, and
- fine or prosecute an association (or an individual) for offences under the Act.

3. Take legal action against the committee member

Taking legal action should only be contemplated in serious situations and you should seek legal advice before doing so. For general information on some of the court actions available to members of a Victorian incorporated association, go to our fact sheet: 'Going to court about an internal dispute' at www.nfplaw.org.au/disputes.

4. Leave the organisation

An individual or individuals can decide to leave the organisation and start a new one, or join another group. Sometimes a decision to 'walk away' can be hard, but ultimately the best option.

Resources

Related Not-for-profit Law Resources

✔ [Disputes](#)

This section features information on internal conflict, mediation, going to court, external conflict and criminal conduct.

Legislation

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

This legislation regulates all NSW incorporated associations.

NSW Government

✔ [NSW Fair Trading](#)

The government agency is responsible for regulating NSW incorporated associations.

✔ [Community Justice Centres NSW](#)

A free dispute resolution service funded by the NSW Government.

✔ [LawAccess NSW](#)

LawAccess is a free government telephone service that provides legal information and referrals for people in NSW.

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's referral service allows you to locate a lawyer that can provide legal advice on various topics.

✔ [Commonwealth Attorney-General's Department – Alternative Dispute Resolution](#)

The Attorney-General's Department provides advice on dispute resolution and has published a guide to help understand alternative dispute resolution and resolving disputes generally.

✔ [Office for the Community Sector \(OCS\) – Developing Conflict Resilient Workplaces.](#)

This guide is published by the Victorian Office for the Community Sector and can be used by community organisations to assess the conflict resilience of their organisation.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

© 2015 Justice Connect. You may download, display, print and reproduce this material for your personal use, or non-commercial use within your not-for-profit organisation, so long as you attribute Justice Connect as author and

retain this and other copyright notices. You may not modify this resource. Apart from any use permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request permission from Justice Connect to use this material, contact Justice Connect at PO Box 16013, Collins Street West, Melbourne 8007, or email nfplaw@justiceconnect.org.au