

Removing or disciplining a member

Legal information for Victorian community organisations

This fact sheet covers:

- when a Victorian incorporated association can remove, suspend or fine a member
 - how an incorporated association can remove, suspend or fine a member, and
 - how closely the law requires an incorporated association to follow its disciplinary procedures.
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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.

Who is involved in this issue?

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

This fact sheet deals with disciplining a member of a Victorian incorporated association (eg. by removing, suspending or fining them).

There are legal requirements for disciplining members, and associations are also legally required to follow procedures in their rules when disciplining members (so long as their rules are not inconsistent with new laws about disputes, discussed further below).

NOTE



This resource does not cover:

- how to remove a committee member from the committee (or board) – for information go to www.nfplaw.org.au/internalconflict
- how to handle conflict and disputes with members under the rules – 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 Victoria Police (www.police.vic.gov.au).

What does 'disciplining' a member mean?

The law allows Victorian incorporated associations to 'discipline' members in certain circumstances. When disciplining members, incorporated associations need to follow their rules and also meet requirements in the *Associations Incorporation Reform Act 2012* (Vic) (**AIR Act**).

The disciplinary action an association can take 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 – the AIR Act allows associations to include a provision to fine members up to 5 penalty units).

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

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

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 it to discipline members, it must outline the disciplinary procedure in its rules. If your organisation does not have a disciplinary procedure and needs to discipline a member, the requirements in the AIR Act will apply.

If your incorporated association uses the new model rules provisions, rules 19-24 contain the disciplinary procedures. Under



TIP

If you are unsure about what your association's rules are, you can request a copy of your current rules from Consumer Affairs Victoria (CAV). Go to www.consumer.vic.gov.au for more information.

rules 19-24, disciplinary action can be taken against a member if the committee of management considers that the member has:

- not complied with the rules of the association
- refused to support the purposes of the association, or
- engaged in conduct prejudicial to the association.

TIP

The disciplinary procedure in the new model rules is quite complex, and many groups may find following the procedure tricky (eg. it includes a disciplinary sub-committee, and a right to appeal to a general meeting of members). We recommend your organisation review its rules to make sure that it has a disciplinary procedure that complies with the requirements of the AIR Act, and suits the needs of your organisation. For more information and help reviewing and updating rules, go to www.nfplaw.org.au/constitution.

Your association can create its own disciplinary procedure and write this into its rules, so long as the procedure aligns with the new requirements of the AIR Act, including that the procedure affords natural justice to the member:

- 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 long as they are consistent with the new requirements in the AIR Act. See below 'How closely does the law require our organisation to follow its disciplinary procedures?'

NOTE

A member who is the subject of a disciplinary procedure cannot initiate a grievance procedure about the same subject matter until the disciplinary procedure has been completed.

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. The Disputes Settlement Centre of Victoria offers free mediation to incorporated associations (see the Resources section at the end of this fact sheet). They can also talk to your organisation about options available to assist in resolving issues with members.

Mediation can sometimes resolve issues without having to resort to formal disciplinary action, and ensures 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 the Information Hub at www.nfplaw.org.au/mediation.

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

A disciplinary procedure can be applied to 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' on the Information Hub at www.nfplaw.org.au/internalconflict.

! CAUTION

If you want to remove a committee 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.

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.

If your organisation uses the new model rules the flowchart below sets out the disciplinary procedure in rules 19-24.

NOTE

If your rules are silent as to disciplinary procedures and a disciplinary action against a member arises you must follow requirements of the law outlined above. It is best practice that your rules contain disciplinary procedures.

Disciplinary procedure under rules 19-24 of new model rules

This flowchart is for Victorian incorporated associations that use the new model rules and is an overview only. Check your rules for details of the procedure and seek legal advice if necessary.

The committee decides to suspend, expel (remove), reprimand or fine a member, because the member has: failed to comply with the association's rules; refused to support the purposes of the association; or engaged in conduct prejudicial to the association.



Committee sets date for disciplinary hearing to be held by disciplinary sub-committee. The Secretary gives written notice to the member between 14-28 days before that date, explaining the committee's intention to take disciplinary action, the grounds for the proposed disciplinary action, and the member's right to attend the disciplinary meeting and address the sub-committee at that meeting and/or at any time before the disciplinary meeting provide a written statement. The notice must also set out the members appeal rights under rule 23.



OR



The member does not exercise his/her right to be heard or provide a written statement or attend the meeting.

The meeting is held, and the member (or representative) has an opportunity to be heard (or provide written statement).



OR



OR



The sub-committee votes to take no disciplinary action.
The member continues with normal rights and activities.

The sub-committee votes to expel, suspend or reprimand the member.

The sub-committee votes to take no disciplinary action.
The member continues with normal rights and activities.



OR

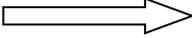


The member gives written notice to appeal to the Committee immediately after the vote or to the Secretary within 48 hrs after the vote.

The member does not appeal the committee's decision within 48 hrs. The committee's decision stands.
The member is expelled, suspended or reprimanded.

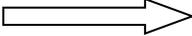


Within 21 days, a disciplinary appeal meeting is held after appropriate notice given. The member (or representative) has an opportunity to be heard.



In a secret ballot three quarters of members vote that the member should not be suspended, expelled or reprimanded.
The member resumes normal rights and activities.

OR



In a secret ballot three quarters of the members vote to confirm the decision to suspend, expel or fine the member.
The member is expelled, suspended or reprimanded.

How closely does the law require our organisation to follow its disciplinary procedures?

You should follow your disciplinary procedures very closely – so long as they are consistent with the new natural justice requirements in the AIR Act. If there is any inconsistency, your organisation should follow the requirements of the AIR Act, rather than the procedure in your rules. For example, the AIR Act requires the disciplinary decision be made by an ‘unbiased decision-maker’. If your rules do not provide for this, you will need to provide an unbiased decision-maker.

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 (eg. 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 process, the outcome reached might not be legal and/or your organisation could be taken to court.

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’ on the Information Hub at www.nfplaw.org.au/internalconflict.

NOTE

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

If your rules include model rules 19-24 and you follow the process in the flowchart above, a court would most likely consider that the process your organisation followed was fair.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub at www.nfplaw.org.au has a range of related resources on the following topics:

- ✔ Disputes – www.nfplaw.org.au/disputes

This section of the Information Hub deals with both internal and external disputes and conflicts that your organisation may face.

- ✔ The Secretary's Satchel – www.nfplaw.org.au/secretaryguide

The Secretary's Satchel is a comprehensive resource about running an incorporated association in Victoria.

Legislation

- ✔ [Associations Incorporation Reform Act 2012 \(Vic\)](#)

This legislation regulates all Victorian incorporated associations.

Victorian Government

- ✔ [Consumer Affairs Victoria](#)

The government agency responsible for regulating Victorian Incorporated Associations.

- ✔ [Dispute Settlement Centre of Victoria \(DSCV\)](#)

A free dispute resolution service funded by the Victorian Government.

- ✔ [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.

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.

- ✔ [Law Institute of Victoria \(LIV\) - Legal Referral Service](#)

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

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au. Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at www.nfplaw.org.au

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