

Removing a committee member from the committee

Legal information for Victorian community organisations

This fact sheet covers:

- things to think about before removing a member from the committee (or board) of your Victorian 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, and
 - how closely the law requires your organisation to follow its procedures on removal of a committee member.
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This fact sheet is relevant to Victorian 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 Victorian 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 Victorian incorporated association.

There are legal requirements when trying to resolve these kinds of disputes under the *Associations Incorporation Reform Act 2012* (Vic) (**AIR Act**) and in your organisation's rules.

NOTE

This resource 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 Victoria Police (www.police.vic.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 rules say). Perhaps they could contribute to the organisation in another way?



Use your organisation's grievance procedure

Use your organisation's grievance procedures to try to resolve conflicts and disputes under the rules.

For more information read our fact sheet 'Dealing with disputes and grievances with members' on the Information Hub 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.

For more information read our fact sheet 'Using mediation to resolve conflict and disputes' on the Information Hub at www.nfplaw.org.au/mediation.

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 new model rules, rules 50 and 55 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 AIR Act says that a committee of management position becomes 'vacant' where the person:

- resigns by written notice addressed to the committee
- is removed by special resolution at a general meeting
- dies
- becomes insolvent under administration (bankrupt)
- becomes a 'represented person' for the purposes of the Guardianship and Administration Act 1986 (Vic)
- is the secretary and ceases to reside in Australia, or
- a statutory manager is appointed to conduct the affairs of the association.

Your organisation's rules may contain other circumstances in which a committee member is taken to have automatically vacated their position. For example, if your organisation uses Consumer Affairs Victoria's (CAV) new model rules, rule 56 contains additional circumstances when a committee of management position becomes vacant.

How can a committee member be removed?

Check your organisation's rules 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 rules are silent on this issue, the model rules provision will automatically apply.

NOTE

If your organisation uses CAV's new model rules, rule 55 provides that an association may, by 'special 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 uses the model rules, 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 AGM (usually, a general meeting to remove a committee member would be a special general meeting).

EXAMPLE

If your rules require a general meeting, check for requirements about convening that type of meeting. Under rules 31 and 32 of the model rules, for example, the committee of management:

- can convene a special general meeting 'whenever it thinks fit', and
- must convene a special general meeting if 10% or more of the members of the association request one.

Your rules 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 rules, check what your own rules say.

What happens at the meeting?

If your organisation uses the model rules (or has a procedure similar to model rule 32), 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 rules, 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.

RELATED RESOURCES



For more information on meetings, go to our Secretary's Guide for Victorian incorporated association's on the Information Hub at www.nfplaw.org.au/secretaryguide and see especially:

- Secretary Satchel Part 5 - Annual General Meetings,
- Secretary Satchel Part 6 - Special General Meetings, and
- Secretary Satchel Part 7 - Management Committee Meetings.

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 rules (or has a procedure similar to model rule 55) and members pass a resolution to remove the committee member, then he or she ceases to be on the committee.

Check your rules about the next step for your organisation.

Your rules 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 CAV's new model rules, model rule 57 says the committee can appoint a member of the association to fill a 'casual vacancy'. That member stays on the committee, subject to the rules, 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 rules.

For more information, go to our fact sheet 'Removing or disciplining a member' on the Information Hub at www.nfplaw.org.au/internalconflict – 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.

For more information on what to do if your organisation is taken to court, read our fact sheet 'Being taken to court' on the Information Hub at www.nfplaw.org.au/externalconflict.

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 rules

As mentioned above, you can:

- use your organisation's grievance (dispute resolution) procedures – go to our fact sheet 'Dealing with disputes and grievances with members' dispute' on the Information Hub 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' dispute' on the Information Hub at www.nfplaw.org.au/mediation.

2. Ask Consumer Affairs Victoria (CAV) to become involved

CAV is the regulator for Victorian incorporated associations and it can take action if there is evidence that there has been a breach of the AIR Act.

CAV has the power to:

- investigate an incorporated association
- fine or prosecute an association (or an individual) for offences under the AIR Act, and
- apply to the Magistrates' Court to appoint a 'statutory manager' to take over the affairs of the association until it is stable enough to manage its own affairs again.

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

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

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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