Removing a committee member from the committee

This fact sheet covers:

- things to think about before removing a member from the committee (sometimes referred to as the "committee of management" or "board") of your NSW incorporated association
- how a committee member can be removed from the committee
- 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 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 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).
Are there steps to take before trying to remove a committee member?

Removing a committee member from the committee (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.

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.


Wait for the committee member’s term to end

Usually committee members 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. There is also, under the model constitution, no maximum number of consecutive terms that a committee member may serve for.

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

Your organisation’s constitution is required to address the grounds on which, or reasons for which, a committee member is taken to have automatically vacated their position (a ‘casual vacancy’). If your constitution is silent on this issue, the model provision will automatically apply. Clause 18 of the NSW Fair Trading’s model constitution states that a ‘casual vacancy’ in a committee member position occurs where the person:

- resigns by written notice addressed to the secretary
- is removed by resolution at a general meeting
- dies
- becomes bankrupt (an ‘insolvent under administration’ for the purposes of the Corporations Act 2001 (Cth))
- becomes a ‘mentally incapacitated person’ for the purposes of the Interpretation Act 1987 (NSW)
- is absent without the consent of the committee from 3 consecutive meetings of the committee
- is convicted of an offence involving fraud or dishonesty for which the maximum penalty is not less than 3 months’ imprisonment
- is prohibited from being a director of a company (under Pt 2D.6 of the Corporations Act 2001 (Cth)), or
- ceases to be a member of the association.

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 its own rules for the removal of a committee member. If your constitution is silent on this issue, the model provision will automatically apply.
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.).

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 32), the members of the organisation will need to vote on a proposed ‘resolution’ to remove the committee member. It is important to ensure that the meeting complies with all other ordinary requirements for a general meeting (such as the appropriate quorum, voting, and notice requirements) that are contained in your constitution. The model constitution provisions for general meetings are at clauses 25-37.

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, clause 19 provides that 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.
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. When this occurs, that committee member is considered to have 'vacated' their office.

The IA Act requires your organisation to take certain actions after this occurs:

- Within 14 days, your organisation should ensure that the removed committee member has returned (to your public officer) all documents in their possession that belong to your organisation.
- Within one month, your organisation's register of committee members must be updated to record the date on which the committee member vacated their office. If the committee member held the position of president, vice-president, secretary or treasurer then you must also record the date on which they ceased to hold that position.

Your organisation may also be required to take steps to immediately replace the removed committee member. The IA Act requires your organisation to have at least 3 committee members overall. It also requires that, within your committee, there are at least 3 committee members who ordinarily reside in Australia. Your organisation's constitution may have additional requirements about how many people must be on your committee and it is important to check what these are.

It may be possible for your committee to appoint someone to fill a ‘casual vacancy’. For example, under the model constitution, clause 18 says that 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.

You should check your organisation's constitution for any other important next steps.

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) you will need to follow the disciplinary procedures (if any) in your organisation’s constitution or as apply under the model 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.

Note: if you remove a member from the organisation as a whole this may, depending on your organisation’s constitution, have the automatic effect that they are also removed from the committee (for example, under clause 18 of the model constitution).

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.

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 NSW 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**
  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**
  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 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.
- **Victorian Public Sector Commission – Developing Conflict Resilient Workplaces**
  This guide can be used to assess conflict resilience of your organisation.

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

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