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.

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 its 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 the Associations Incorporation Reform Regulations 2012 (VIC) (AIR Regulations). Your organisation’s rules (i.e. the written document that sets out how the organisation is governed) might also have particular requirements.

This fact sheet refers to Consumer Affairs Victoria’s new model rules (called ‘model rules’ throughout the fact sheet), which you can download here. Your organisation can choose to use the model rules or
to create its own rules, but note that if your own rules are silent on certain matters the model rules will automatically apply for those matters.

**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](http://www.nfplaw.org.au/internalconflict)
- how to handle conflict and disputes within your organisation – for information go to [www.nfplaw.org.au/internalconflict](http://www.nfplaw.org.au/internalconflict)
- disciplinary issues with employees – for information go to [www.nfplaw.org.au/employees](http://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](http://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](http://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 of your organisation is not a decision that should be taken lightly. The process can be divisive and controversial, and may even cause reputational damage to your organisation, so think carefully and dispassionately about what has happened and other options before trying to remove the committee member. Of course, damage can also result when there are serious concerns and no action is taken. It can be tricky to navigate, and you may need to seek legal advice.

**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. To avoid these kind of problems in advance it is advisable to make sure committee members are clear about their responsibilities when they first take on the role. It can be helpful to have a formal induction procedure for new committee members. Relevant resources are available on our website at [https://www.nfplaw.org.au/governance](https://www.nfplaw.org.au/governance).

**TIP**

You may wish to ask the committee member whether they think they would be better suited to a different role within the organisation. Even if they leave their role on the committee, perhaps they could contribute to the organisation in some other way. They may also still be a member of the organisation (depending on what your rules say) even if they are no longer on the committee of management.
Use your organisation’s procedures

Your organisation might have procedures to try to resolve conflicts and disputes amongst committee members. These might be set out in the rules or in a separate policy. If so, make sure you are familiar with the process and follow it properly.

Mediation

Ask the committee member to attend mediation with representatives of the organisation. With the help of a mediator, an unbiased and independent person, you may be able to reach a solution that everyone can live with. There are free mediation services available in Victoria (see Resources, below).

For more information read our fact sheet ‘Using mediation to resolve conflict and disputes’ on our website 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. If your organisation uses the 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 the model rules, rule 56 contains additional circumstances when a committee of management position becomes vacant. These include where the person:
- ceases to be a member of the Association, or
- fails to attend three consecutive committee meetings without leave of absence (see rule 67).
How can a committee member be removed?

If none of the above routes succeed in resolving the problem, the only course of action might be to remove the committee member in question. 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 to cover this point.

NOTE

Rule 55 of the model rules 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.

What rule do we need to follow?

**DOES YOUR ORGANISATION USE THE MODEL RULES?**

**YES**

You must follow the model rules for this procedure. See model rule 55.

**NO**

**DO YOUR RULES INCLUDE A PROCEDURE FOR REMOVING A COMMITTEE MEMBER?**

**YES**

You must follow the procedure set out in your rules.

**NO**

You must follow the model rules for this procedure. See model rule 55.

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

If model rule 55 applies 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).

If this model rule does not apply, check what your own rules say.

**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.

**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 is bound by the model rules on this point, under rule 55 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**


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 a member of the organisation 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 is bound by the model rules on this point (or has a procedure similar to model rule 55) and members pass a resolution to remove the committee member, then they cease to be on the committee. When this occurs, that committee member is considered to have 'vacated' their office.

Within 28 days, the removed committee member must return to the committee all documents in their possession that belong to your organisation.

Check your rules about the next steps 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 the model rules, 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?

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 our website at www.nfplaw.org.au/internalconflict – it explains how an incorporated association can remove a member (committee member or not) from the organisation entirely.

CAUTION

It is important that you follow your organisation’s procedures on the removal of a committee member very closely, otherwise the outcome might not be lawful and your organisation could be taken to court. Your organisation should also make sure that the process for removing a committee member is fair and proper, otherwise a removal might be challenged.

For more information on what to do if your organisation is taken to court, read our fact sheet ‘Being taken to court’ on our website at www.nfplaw.org.au/externalconflict.

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

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

1. 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. Note however that CAV will not generally intervene in internal matters such as breaches of the organisation’s rules or alleged improper management – they would need evidence of very serious misconduct or fraud. Its role is primarily to ensure incorporated associations comply with their regulatory obligations.

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.

2. Take legal action against the committee member

Taking legal action should only be contemplated in very 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 our website at www.nfplaw.org.au/internalconflict.

3. Leave the organisation

As a last resort, 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 - http://www.nfplaw.org.au/toolkits

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 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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