

Removing or disciplining a member

Legal information for Victorian community organisations

This fact sheet covers:

- ▶ when a Victorian incorporated association can remove or discipline a member
 - ▶ the process that must be followed when an incorporated association removes or disciplines 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 (for example, by removing, suspending or fining them). This is **not** the same as the removal of a committee member (a person who sits on the committee or board of the organisation).



Related Not-for-profit Law resource

If you would like to know about the removal of a committee member, see [our fact sheet 'removing a committee member from the committee'](#).

Associations are legally required to follow procedures in their rules when disciplining members (so long as their rules are not inconsistent with the requirements of the *Associations Incorporation Reform Act 2012* (VIC) (**AIR Act**), discussed further below).

This fact sheet refers to Consumer Affairs Victoria's model rules (called 'model rules' throughout the fact sheet), which you can download from the [Consumer Affairs website](#). Your organisation can choose to use the model rules or to create its own rules.



Note

This resources does not cover:

- how to remove a committee member from the committee (or board) – as above, for information go to [our webpage on internal conflict](#)
- how to handle conflict and disputes with members under the rules – for information go to [our webpage on internal conflict](#)
- disciplinary issues with volunteers – for information go to [our webpage on volunteers](#)
- disciplinary issues with employees – for information go to [our webpage on employees](#)
- situations that may endanger the health and safety of people in the workplace (for example, bullying) – for information go to [our webpage on Work Health & Safety](#), or
- violence – the police may need to get involved, and criminal laws may apply. Contact Victoria Police (www.police.vic.gov.au) or call 000

When can we ‘discipline’ a member?

The AIR Act allows Victorian incorporated associations to discipline a member for breaches relating to that person’s status as a member. These breaches could include, for example, harming the reputation of the association or breaking the association’s rules. The AIR Act also states that when disciplining members, incorporated associations need to follow the disciplinary procedure (if any) set out in their rules.

There are legal requirements for disciplining members under the AIR Act and the *Associations Incorporation Reform Regulations 2012 (Vic) (AIR Regulations)*. For example, the AIR Act provides that an association’s rules (the written document that sets out how the organisation is governed) must contain the procedure, if any, for disciplining members. So, to be clear, there does not have to be a disciplinary procedure in place, but if there is one, it must be set out in the rules.

If your organisation does not have a disciplinary procedure and needs to discipline a member, you must follow the process in the AIR Act (see further below, ‘What process must we follow when disciplining a member?’)

The model rules

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

What disciplinary action can we take against a member who is causing you trouble?

The disciplinary action an incorporated association can take depends on the rules of that association. Many associations have a process in their rules to remove, suspend or fine a member who is causing trouble. You’ll need to check what your own organisation’s rules say.

Under the model rules (rule 22), a member can be:

- reprimanded
- suspended for a period of time, or
- expelled (ie. removed) from the association



Note

The model rules explicitly forbid imposing a fine on a member, but it's open to your organisation to allow for this in its own rules.

But – under the AIR Regulations the fine must be no more than \$500.



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 \(CAV\)](#).

What process must we follow when disciplining a member?

It's important that a fair and proper process is followed if a member is disciplined. Your association can choose to:

- adopt the disciplinary procedure set out in the model rules (see below)
- create its own disciplinary procedure and write this into its rules, so long as the procedure aligns with the requirements of the AIR Act, which ensure that the procedure affords natural justice to the member, or
- not include a disciplinary procedure at all. However, if your rules do not set out a disciplinary procedure and a disciplinary matter against a member arises, you must still follow the requirements of the AIR Act

Under the AIR Act:

- the member must be notified of the grounds on which proposed action will be taken
- the member must have an opportunity to be heard
- the disciplinary outcome must be reached by an unbiased decision-maker (see below for more detail), and
- the process must be completed as soon as is reasonably practicable



Note

If there is any inconsistency between the AIR Act and your rules, your organisation should follow the requirements of the AIR Act rather than the procedure in your rules.

For example, if your rules do not provide for an unbiased decision-maker, you will still need to comply with this.

You must make every attempt to follow the steps in your organisation's own disciplinary procedures (if any), as long as they are consistent with the requirements of the AIR Act.

If your organisation uses the model rules, see the flowchart in the next section which sets out the disciplinary procedure in rules 19-24.



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 (For example, 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 to find a decision-maker that everyone involved in the disciplinary procedure is happy with. They don't need to be a qualified mediator (or lawyer), but that can be a helpful background.

Disciplining compared with grievances

The AIR Act also requires incorporated associations to have a grievance procedure for disputes with, or between, members (ie. a procedure through which members can have their complaints addressed).

For grievances, each party must have an opportunity to be heard and the outcome must be determined by an unbiased decision-maker. However, note that a member who is the subject of a disciplinary procedure cannot initiate a grievance procedure about the same matter until the disciplinary procedure has been completed. The main reason for this rule is to stop a person effectively avoiding or unduly delaying a disciplinary action by using the grievance procedure.



Tip

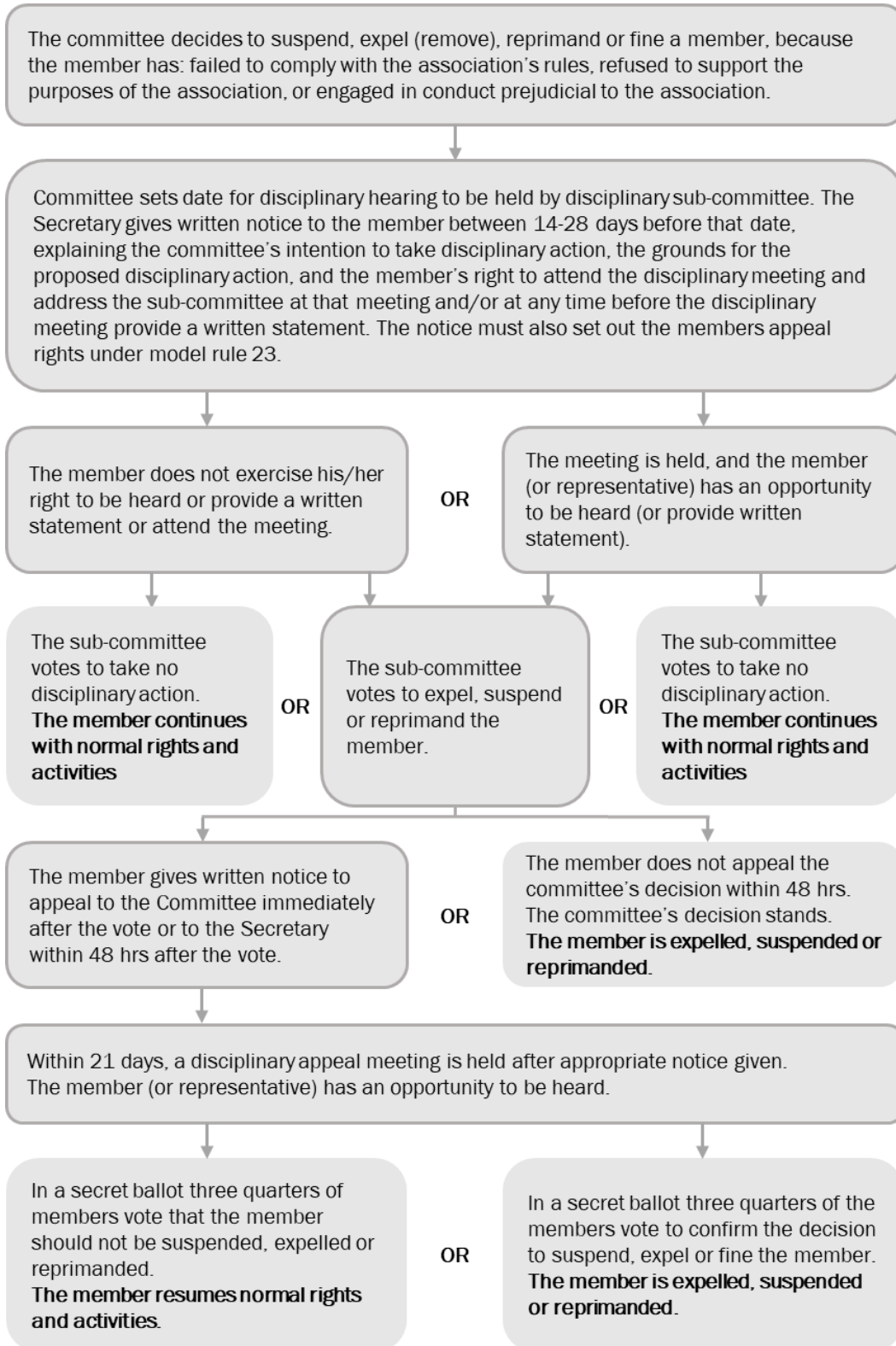
A **grievance** procedure applies to disputes between members, or between the association and a member. By contrast, a **disciplinary** procedure applies in circumstances where a member has breached the rules or otherwise acted improperly.



Disciplinary procedure under rules 19-24 of the model rules

This flowchart is for Victorian incorporated associations that use the model rules and is an overview only.

Check your rules for details of the procedure and seek legal advice if necessary.





Caution

You should follow your organisation's disciplinary procedures very closely and ensure that the procedures are fair and proper (and are consistent with the AIR Act). Otherwise the outcome might not be lawful and your organisation could be taken to court. 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.



Related Not-for-profit Law resource

For information on types of disputes involving members of an incorporated association which can go to court, see [our fact sheet on 'Going to court about an internal dispute'](#).

Is disciplinary action the only way to address problematic behaviour by a member?

No. Your organisation could first try a softer approach, such as 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 links below). They can also talk to your organisation about options available to assist in resolving issues with members. The Dispute Settlement Centre has a set of criteria for deciding whether the matter is something they can assist with, so whether mediation will be offered will depend on the particular circumstances

Mediation can sometimes resolve issues without having to resort to formal disciplinary action, and ensures that all parties involved feel that they have been heard

If the issue concerning the member is a dispute between members (in their capacity as members), or between a member or members and the association, your rules may require you to take steps such as mediation before taking any other action. Under the model rules' grievance procedure (rules 25-29) such disputes must first be referred to mediation and, if not resolved, to arbitration. Note that this is a separate process to disciplinary action. A member dispute does not necessarily mean any particular member is also liable to be disciplined. This will depend on the particular situation.



Related Not-for-profit Law resource

For more information see our [webpage on 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.

So, if a committee member is also a member of your incorporated association, the disciplinary procedures outlined above can be used to remove them from the whole organisation – that is, to remove them as a member. A different process is likely to apply if you want to remove them from the committee. However, 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).



Related Not-for-profit law resource

For more information, see [our fact sheet 'Removing a committee member from the committee'](#).



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.



Resources

Related Not-for-profit Law Resources

The [Not-for-profit Law website](#) has a range of related resources on the following topics:

- ▶ [Disputes](#)
This webpage deals with both internal and external disputes and conflicts that your organisation may face.
- ▶ [Secretary's guide](#)
This guide is designed to help secretaries understand their legal obligations for running an incorporated association in Victoria.
- ▶ [The people involved](#)
This section contains resources on clients, employees, volunteers, members and privacy.

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
- ▶ [Victorian Public Sector Commission – Developing Conflict Resilient Workplaces](#)
This guide is published by the Victorian Public Sector Commission 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.