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.

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). This is not the same as the removal of a committee member, i.e. a person who sits on the committee or board of the organisation. If you would like to know about this, see the separate fact sheet ‘Removing a committee member from the committee’ at www.nfplaw.org.au/internalconflict.

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 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.
NOTE
This resource does not cover:

- how to remove a committee member from the committee (or board) – as above, 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).

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 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 (i.e. removed) from the association.

Note that the model rules explicitly forbid imposing a fine on a member, but it is open to your organisation to allow for this in its own rules. However, under the AIR Regulations the fine must be no more than $500.

What process must we follow when disciplining a member?

It is 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 the next section of this fact sheet),
- 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.

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.

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), so 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 (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 to find a decision-maker that everyone involved in the disciplinary procedure is happy with. They do not need to be a qualified mediator (or lawyer), but that can be helpful background.

**Disciplining compared with grievances**

The AIR Act also requires incorporated associations to have a grievance procedure for disputes with, or between, members (i.e. a procedure via 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.

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

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 model rule 23.

The member does not exercise his/her right to be heard or provide a written statement or attend the meeting. OR The meeting is held, and the member (or representative) has an opportunity to be heard (or provide written statement).

The sub-committee votes to take no disciplinary action. The member continues with normal rights and activities. OR The sub-committee votes to expel, suspend or reprimand the member. OR The sub-committee votes to take no disciplinary action. The member continues with normal rights and activities.

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

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 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). See ‘Removing a committee member from the committee’ on our website at [www.nfplaw.org.au/internalconflict](http://www.nfplaw.org.au/internalconflict).
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 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.

- **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.