

Removing or disciplining a member

Information for Victorian incorporated associations

Sometimes an organisation's ability to function is disrupted because a member behaves inappropriately. If this happens in your organisation, you need to know what can be done.

This information sheet covers:

- ▶ when a Victorian incorporated association can remove, suspend or fine a member who is causing trouble
- ▶ how an incorporated association can remove, suspend or fine a member, and
- ▶ how closely the law requires an incorporated association to follow its disciplinary procedures.

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 information sheet deals with **disciplining a member of a Victorian incorporated association** (eg by removing, suspending or fining them). There are legal requirements when trying to resolve these disputes under the *Associations Incorporation Act 1981* (Vic) and in an association's rules.

Note:

This information sheet does **not** cover:

- ▶ how to remove a committee member from the committee (or board) – for information go to www.pilch.org.au/handlingconflict/
- ▶ how to handle conflict and disputes with members under the rules – for information go to www.pilch.org.au/handlingconflict/
- ▶ disciplinary issues with volunteers – for information go to www.pilch.org.au/volunteers/
- ▶ disciplinary issues with employees – for information go to www.pilch.org.au/employees/
- ▶ situations that may endanger the health and safety of people in the workplace (eg bullying) – for information go to www.pilch.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).

Can we remove, suspend or fine a member of our organisation who is causing trouble?

Many Victorian incorporated associations have a process in their rules to remove, suspend or fine ('discipline') a member who is causing trouble. You'll need to check what your own organisation's rules say.

Tip:

If you are not sure what your association's rules are, you can request a copy of your current rules from [Consumer Affairs Victoria \(CAV\)](#).

It is not compulsory to have procedures in your rules for the removal of a member, but if your rules are silent on this issue, the model rules provision (rule 7) will automatically apply.

If your incorporated association uses the model rules provision, rule 7 contains the disciplinary procedures. Under rule 7, disciplinary action can be taken against a member if the committee of management considers the member has:

- ▶ refused or neglected to comply with the association's rules
- ▶ been guilty of conduct unbecoming a member, or
- ▶ acted in a manner prejudicial to the interests of the association.

You must make every attempt to follow the steps in your disciplinary procedures. See below 'How closely does the law require our organisation to follow its disciplinary procedures?.'

Changes to the law:

The Victorian Government plans changes to the laws governing incorporated associations, including to disciplinary procedures. These changes are expected to become law on 1 July 2012.

To keep up to date with changes to the law, [sign up to PilchConnect's e-bulletin](#) and we'll tell you when the law changes and how it affects you.

Is there a different process for removing a committee member from the organisation?

The 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 procedure can be used to remove them *from the whole organisation* (not just from the committee).

Think about whether this is what you want to achieve.

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).

Go to our Information sheet: 'Removing a committee member from the committee' at www.pilch.org.au/handlingconflict.

Beware!

If you want to remove a committee (or board) member from the **committee of management**, and not from the organisation entirely, there is likely to be a different process to follow. Check your organisation's rules.

How do we remove, suspend or fine a member who is causing trouble?

If your rules allow for disciplining a member, follow the procedure set out in your rules.

If your organisation uses the model rules (or is silent as to a disciplinary procedure), the flowchart below sets out the procedure in rule 7.

The disciplinary procedure under rule 7 of the model rules

Note: **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) or fine a member, because the member has:

- ▶ refused or neglected to comply with the association's rules;
- ▶ been guilty of conduct unbecoming a member; or
- ▶ acted in a manner prejudicial to the interests of the association.



The committee gives written notice to the member asap, explaining the committee's decision and the grounds and giving the member (or representative) an opportunity to be heard and details of the meeting.



The meeting is held, and the member (or representative) has an opportunity to be heard, including by written submission.



The member does not exercise his/her right to be heard or provide a written statement or attend the meeting.

The member is expelled, suspended or fined.



The committee affirms its earlier decision to expel, suspend or fine the member.



The committee revokes its decision to expel, suspend or fine the member.

The member resumes normal rights and activities.



Within 48 hrs, the member appeals by notice to the Secretary.

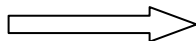


The member does not appeal the committee's decision within 48 hrs. The committee's decision stands.

The member is expelled, suspended or fined.

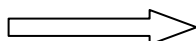


Within 21 days, a general meeting of the association is held. The member (or representative) has an opportunity to be heard.



Two thirds of members vote that the member should not be suspended, expelled or fined.

The member resumes normal rights and activities.



Two thirds of members vote to confirm the decision to suspend, expel or fine the member.

The member is expelled, suspended or fined.

How closely does the law require our organisation to follow its disciplinary procedures?

You should follow your disciplinary procedures very closely. If you do not follow the right process, the outcome reached might not be legal and/or your organisation could be taken to court.

Note:

Your organisation, and those it appoints, should make sure the process is fair and proper, or the disciplinary action might be challenged by the member.

If your rules include model rule 7 and you follow the process in the flowchart above, a court would most likely consider that the process your organisation followed was fair.

For information on types of disputes involving members of an incorporated association which can go to court, go to our Information sheet: 'Going to court about an internal dispute' at www.pilch.org.au/handlingconflict.

Resources

PILCHConnect information sheets for Victorian incorporated associations

- ▶ [Removing a committee member from the committee](#)
- ▶ [Dealing with disputes and grievances with members](#)
- ▶ [Using mediation to resolve conflict and disputes](#)
- ▶ [Going to court about an internal dispute](#)
- ▶ [Guide for Public Officers and Secretaries of Victorian Incorporated Associations](#)

Legislation

Associations Incorporation Act 1981 (Vic)

Victorian Government

- ▶ [Consumer Affairs Victoria \(CAV\)](#)
The government agency responsible for regulating Victorian Incorporated Associations - 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.

Other

- ▶ [QUT, 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 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.