

Removing or disciplining a member (Vic)

Legal information for Victorian incorporated associations

This fact sheet covers:

- ▶ disciplinary action an incorporated association can take against a member
- ▶ the process to follow when an incorporated association removes or disciplines a member, and
- ▶ other options to resolve issues with members

This fact sheet is relevant to Victorian incorporated associations. If your community organisation has another legal structure, this fact sheet does not cover your circumstances.

Sometimes an incorporated association's ability to function is disrupted because a member behaves inappropriately.

This fact sheet sets out your association's options to deal with disruptive members. If there is violence or concern about criminal activity, call the police.



Disclaimer

This fact sheet provides general information about disciplinary action a Victorian incorporated association can take against a member. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

Who is involved in the dispute?

Knowing who your dispute involves is important, because different laws and procedures apply to different conflict situations.

This fact sheet deals with disciplining a member of a Victorian incorporated association (for example, by removing, suspending or reprimanding 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).



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



Note

This fact sheet doesn't cover:

- how to remove a committee member from the committee (or board) – for information see [our webpage on handling disputes and conflict](#)
- how to handle conflict and disputes with members under the rules – for information see [our webpage on handling disputes and conflict](#)
- disciplinary issues with volunteers – for information go to [our webpage on managing volunteers](#)
- disciplinary issues with employees – for information go to [our webpage on disputes with 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 and safety](#), or
- violence – the police may need to get involved, and criminal laws may apply. Contact [Victoria Police](#) or call 000

When can your association discipline a member?

The *Associations Incorporation Reform Act 2012 (Vic)* (**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 association's reputation or breaking the association's rules.

If your incorporated association uses the [model rules](#), rules 19-24 contain the relevant disciplinary procedures.

Under rule 19, 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



Model rules

The [model rules](#) are set out in Schedule 4 of the *Association Incorporation Reform Regulations 2023 (Vic)* (**AIR Regulations**) and published on the [Consumer Affairs website](#). Your association can choose to use the model rules or write its own rules.

What disciplinary action can your association take?

The disciplinary action an incorporated association can take depends on the association's rules.

Many associations have a process in their rules to remove, suspend or reprimand a member who is causing trouble. You will need to check what is set out in your association's rules.

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

While the model rules explicitly forbid imposing a fine on a member, your organisation can allow for this in its own rules.

However, 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 your organisation follow when disciplining a member?

Under the AIR Act, incorporated associations must follow the disciplinary procedure (if any) set out in their rules (the written document that sets out how the organisation is governed) when disciplining members.

The association doesn't have to have a disciplinary procedure in place, but if there is one, the association must follow it.

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 the flowchart below)
- create its own disciplinary procedure and write this into its rules (the procedure must align 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 don't 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 that the association proposes to take disciplinary action against them and the grounds on which proposed action will be taken
- the member must have an opportunity to be heard at a disciplinary meeting
- 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 association should follow the requirements of the AIR Act rather than the procedure in your rules.

For example, if your rules don't provide for an unbiased decision-maker, you will still need to comply with this requirement.



What is an unbiased decision-maker?

The decision maker should not be biased in favour of or against the member the subject of the disciplinary action.

This means the outcome of the disciplinary action should not help or hinder the decision-maker.

The decision-maker should not have:

- a relationship with the member who is the subject of the action
- an interest in or relationship with the issue that forms the grounds for the disciplinary action, or
- an interest in or relationship with any other parties to the dispute (for example, someone who has made an 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. The decision-maker doesn't need to be a qualified mediator (or lawyer), but that can be a helpful starting point.

Disciplinary procedure compared with grievance procedure

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 example, a dispute may occur over the distribution of funds or the appointment of a committee member.

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 can't 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.



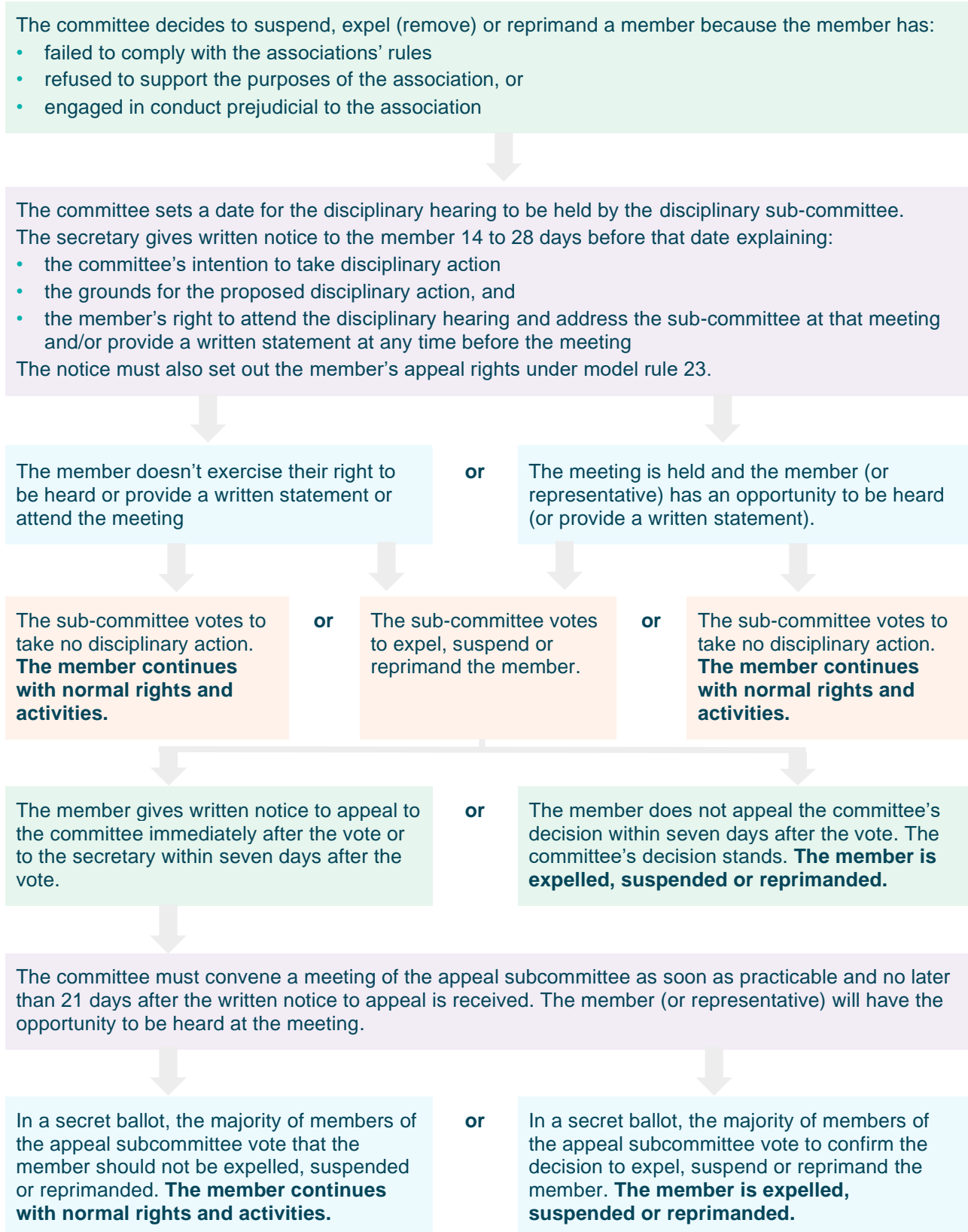
Tip

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 has 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

Follow your association's disciplinary procedures very closely and ensure that the procedures are fair and proper (and are consistent with the AIR Act).

If you don't, the outcome might not be lawful and your association could be taken to court.

If your rules include model rules 19-24 and you follow the process in the flowchart above, a court will most likely consider that the process your association followed was fair.



Case example – disciplinary action

In *Goodwin v Vietnam Veterans Motor Cycle Club Australia NSW Chapter Inc (2008) 72 NSWLR 224*, a member had been dismissed by a unanimous vote by the members of the association at a special general meeting.

However, the association's constitution set out a two-stage disciplinary procedure involving a determination by the committee and then a right of appeal in a general meeting of members. It also required that the member be given proper notice of the complaint and an opportunity to make any submissions.

The court found:

- the procedures for dismissal were not complied with and strict compliance with an association's rules is required, and
- the rules of natural justice were not complied with (ie. the process adopted was not fair and proper) because the member was not given
 - notice of any charge of improper conduct, or
 - a proper opportunity to respond to the Committee or members before the decision was made

The court decided that the dismissal was invalid and the member remained a member of the association. The association was also required to pay the member \$1,000 in damages to compensate for the loss and benefits of membership and also his legal costs of the proceedings.



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 association could first try a softer approach, such as discussing the issue with the member concerned. Sometimes, a discussion is all that is required to get a member to change their behaviour.

Your association could also ask the member if they are interested in participating in mediation. 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.

[The Disputes Settlement Centre of Victoria](#) offers free mediation to incorporated associations. They can also talk to your association 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 circumstances.

If the issue concerns a grievance, (ie. 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. For example, under the model rules (rules 25-29) such disputes must first be referred to mediation. Note that this is a separate process to disciplinary action. A grievance dispute does not necessarily mean any particular member is also liable to be disciplined. Each dispute will be different and should be assessed on a case-by-case basis.



For more information see our [webpage on mediation](#).

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

The above disciplinary procedure can be applied to any member of your organisation – regardless of whether or not they are on the committee of management.

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 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 associations have a different procedure under their rules for removing a committee member from the committee (in other words, a person can be removed from their role on the committee, but still retain their membership in the association). The model rules prescribe a process for removing committee members (see below).



Model rules – removing a committee member

Under model rule 55, a committee member may be removed from office by a 'special resolution', at a general meeting of the association.

A member who is the subject of a special resolution may make a representation in writing to the association and request that the representations be provided to the members of the association.



For information about removing a committee member, 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 association entirely, there is likely to be a different process to follow. Check your association's rules.