

Removing a committee member from the committee (NSW)

Legal information for NSW incorporated associations

This fact sheet covers:

- ▶ possible action before removing a member from the committee
- ▶ the process to follow when an incorporated association removes a committee member from the committee
- ▶ other options to resolve issues with a committee member

This fact sheet is relevant to NSW 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 NSW incorporated association controls and manages the business and affairs of the association. The committee is responsible for managing the association's financial affairs, ensuring the association acts in line with the association's objects and complies with legal requirements.

It's important that the committee functions well, so it can steer your association in the right direction.

Sometimes an organisation's ability to achieve its aims is disrupted because a committee member is behaving inappropriately or in a way that is adverse to the association's objects. This fact sheet sets out your association's options to deal with disruptive committee members. If there is violence or concern about criminal activity, call the police.



Disclaimer

This fact sheet provides general information about removing a member from the committee of a NSW incorporated association. 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 this dispute?

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

This fact sheet deals with disputes with a committee member of a NSW incorporated association.

There are legal requirements when trying to resolve these kinds of disputes under the [Associations Incorporation Act 2009 \(NSW\) \(AI Act\)](#) and in your association's constitution (also known as rules).



Note

This fact sheet doesn't cover:

- how to remove a committee member from the association – for information see [our webpage on handling disputes and conflict](#)
- how to handle conflict and disputes in your association – for information see [our webpage on handling disputes and conflict](#)
- disciplinary issues with volunteers – for information see [our webpage on volunteers](#)
- disciplinary issues with employees – for information see [our webpage on employees](#)
- situations that may endanger the health and safety of people in the workplace (for example, bullying) – for information see [our WHS webpage](#), or
- violence – the police may need to get involved, and criminal laws may apply. Contact [NSW Police](#)

Are there steps to take before trying to remove a committee member?

Before any issues arise, committee members should be informed about their expected role, responsibilities and conduct as a committee member. Removing a committee member from the committee is not a decision that should be taken lightly.

The process can be divisive and controversial, and may even cause reputational damage to the individual concerned or your association, 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

If a committee member is behaving inappropriately, before engaging the formal dispute resolution or removal procedure, 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, what they are responsible for, and the performance standards expected.



Tip

You may wish to ask the committee member whether they think they should be in a governing role in the association. Even if they leave their role on the committee, they may still be a member of the association (depending on what your constitution says). Perhaps they could contribute to the association in another way?



Tip

To avoid these kind of problems in advance, make sure committee members are clear about their roles, responsibilities and expectations about conduct when they first take on the role. It can be helpful to have a formal induction procedure for new committee members.



For more information, see [our webpage on responsibilities of the board and committee members](#).

Use your association's dispute resolution procedure

You can use your association's dispute resolution procedures to try to resolve conflicts and disputes with a misbehaving committee member. Your association's constitution should provide for a procedure to resolve disputes with committee members and if it doesn't, the procedure outlined in the model constitution will apply by default.



Model constitution

The model constitution is set out in Schedule 3 of the [Associations Incorporation Regulation 2022 \(NSW\) \(AI Regulation\)](#) and published on the [NSW Fair Trading website](#). Your association can choose to use the model constitution or write its own constitution.

Note that there are certain matters that are required by law to be covered in constitutions irrespective of whether the model constitution is used.

Mediation

With the help of a mediator, you may be able to reach a solution that everyone can live with.

Under the model constitution (clause 9) disputes must be referred to a [Community Justice Centre](#) (as defined under *Community Justice Centres Act 1983*) for mediation first. Ask the committee member to attend mediation with representatives of the association. If the mediation fails to resolve the dispute within three months, the dispute is to be referred to arbitration.



For more information, see [our webpage on using mediation to resolve conflicts and disputes](#).

Wait for the committee member's term to end

Usually committee members of an incorporated association are elected to serve for a specific term.

If your association uses the model constitution, clauses 15 and 16 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. There is also, under the model constitution, no maximum number of consecutive terms that a committee member may serve for.

If a problem arises close to the end of a committee member's term, it may be easiest to discuss the issue with the committee member and let the committee member stay on until the next election (and for them not to seek re-election).



Note – grounds to vacate position

Your association's constitution must address the grounds on which a committee member is taken to have automatically vacated their position ('casual vacancy').

If your constitution is silent on this issue, the model provision (clause 17) will automatically apply – this states that a 'casual vacancy' in a committee member position occurs where the person:

- is no longer a member of the association
- is removed by resolution at a general meeting
- dies
- becomes bankrupt (an 'insolvent under administration' for the purposes of the *Corporations Act 2001* (Cth))
- becomes a 'mentally incapacitated person' for the purposes of the *Interpretation Act 1987* (NSW)
- is absent without the consent of the committee from three consecutive meetings of the committee
- is convicted of an offence involving fraud or dishonesty for which the maximum penalty is at least three months' imprisonment, or
- is prohibited from being a director of a company (under Pt 2D.6 of the *Corporations Act 2001* (Cth))

How can a committee member be removed?

Check your association's constitution to find out the procedure (if any) for removing a committee member from the committee of management.

It's not compulsory for an incorporated association to have its own rules for the removal of a committee member. If your constitution is silent on this issue, the provision in the model constitution will automatically apply.



Note

If your organisation uses the model constitution, clause 17 provides that an association may, by resolution in a general meeting of members, remove a member of the committee before the end of their term.

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

If your association is using the model constitution, yes – 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 annual general meeting (usually, a general meeting to remove a committee member would be a special general meeting.)

If your association doesn't use the model constitution, check the specific terms of your association's constitution.



Example

If your constitution requires a general meeting, check for requirements about convening that type of meeting.

Under clause 28 of the model constitution, for example, the committee must convene an annual general meeting 'within six months after the close of the association's financial year'.

Also, under clause 29 of the model constitution, the committee:

- can convene a special general meeting 'whenever it thinks fit'; and
- must convene a special general meeting if 5% or more of the members of the association request one.

Your constitution will contain requirements for giving notice of the meeting to members (the model constitution requirements are contained at clause 30). Make sure you follow these requirements.

What happens at the meeting?

If your association uses the model constitution (or has a procedure similar to model clause 34), the members of the association will need to vote on a proposed 'resolution' to remove the committee member. It's important to ensure that the meeting complies with all other ordinary requirements for a general meeting (such as the appropriate quorum, voting, and notice requirements) that are contained in your constitution. The model constitution provisions for general meetings are at clauses 28 to 36.

Your association's rules may have specific requirements to give the committee member a chance to put their side of the story. If your association uses the model constitution, clause 17(3) provides that the committee member who is the subject of a proposed resolution for removal may:

- prepare a written statement
- give this document to the secretary or president, and
- request that it be provided to the members of the association

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.



For more information on meetings, see [our guide to running an incorporated association in NSW](#), especially:

- Part 4 – annual general meetings
- Part 5 – special general meetings, and
- Part 6 – committee meetings



Note

Removing a committee member from the **committee** is different to removing a **member** from the whole association.

If the committee member is also a member of the association, their removal from the committee will not affect their status as a member of the association.

If members vote to remove a committee member, what happens next?

If your association uses the model constitution (or has a procedure similar to clause 17 of the model constitution) and members pass a resolution to remove the committee member, they cease to be on the committee. When this occurs, that committee member is considered to have 'vacated' their office.

After this occurs, under sections 28 and 29 of the IA Act, an association is required to take certain actions:

- Within 14 days, your association should ensure the removed committee member has returned all documents in their possession which belong to your association. They must be returned to the association's public officer.
- Within one month, your association's register of committee members must be updated to record the date on which the committee member vacated their office. If the committee member held the position of president, vice-president, secretary or treasurer then you must also record the date on which they ceased to hold that position.

Your association may also be required to take steps to immediately replace the removed committee member. Under section 28 of the IA Act:

- your association must have at least three committee members overall, and
- the committee must have at least three committee members who ordinarily reside in Australia

Check your rules about the next steps for your association. Your rules may have requirements about how many people must be on your committee.

It may be possible for your committee to appoint someone to fill a 'casual vacancy'. For example, under the model constitution, clause 17 says that the committee can appoint a member of the association to fill a 'casual vacancy'. That member stays on the committee, subject to the constitution, until the next AGM.

Can a committee member be removed from the whole association (not just the committee of management?)

If your association wants to remove a committee member from the whole organisation (not just from the committee) follow the disciplinary procedures (if any) in your association's constitution or that apply under the model constitution.



For more information, go to [our fact sheet on removing or disciplining a member](#).

This fact sheet explains how an incorporated association can remove a member (committee member or not) from the organisation entirely. There may be legal, including WHS concerns, if procedures are not correctly followed.



Note

If you remove a member from the association as a whole, this may, depending on your association's constitution, have the automatic effect that they are also removed from the committee.

How closely does the law require our association to follow its procedures on removal of committee members?

You should follow your association's procedures on removal of a committee member very closely – otherwise the outcome reached might not be legal or your association could be taken to court.

Be aware that legal proceedings in relation to associations ordinarily follow the same court rules as if the association were a company or individual, and disputes can be costly.

Associations should consult their insurance broker in relation to insurance in the event of a dispute in relation to the association. Associations should consult their legal adviser in relation to compliance with the legislation and association rules as well as potential WHS or defamation issues.



For more information about court actions that can arise from escalated disputes with members of an incorporated association refer to our fact sheet 'Going to court about an internal dispute' on [our webpage on handling disputes and conflicts](#).



Note

Your association, and those it appoints, should make sure the process for removing a committee member is fair and proper. Otherwise, the committee member's removal might be challenged by that committee member. A challenge may raise issues of improper conduct, failure to afford due process or failure to comply with the legislation or rules of the association.

If you're still concerned, what else can you do?

Depending on the circumstances, your association can consider the following options:

Ask NSW Fair Trading to become involved

NSW Fair Trading is the regulator for NSW incorporated associations and it can act if there is evidence that there has been a breach of the AI Act or the AI Regulation.

For example NSW Fair Trading has powers to:

- investigate an incorporated association, and
- fine or prosecute an association (or a person) for offences under the AI Act

Take legal action against the committee member

Taking legal action should only be contemplated in serious situations and you should seek legal advice before doing so.



For more information, see [our fact sheet going to court about an internal dispute](#).

Leave the association

As a last resort, people can decide to leave the association and start a new one, or join another group. A decision to 'walk away' can be hard, but sometimes it's ultimately the best option.