

# Removing or disciplining a member (NSW)

## Legal information for New South Wales 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

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**This fact sheet is relevant to NSW 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 often occurs when a member contravenes the association's constitution or acts against the interests of the association.

This fact sheet sets out some option your association has to deal with disruptive members. If there is violence or concern about criminal activity, contact the police.



### Disclaimer

This fact sheet provides general information about disciplinary action a NSW 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 NSW 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 association).



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 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 [NSW Police](#)

## When can your association discipline a member?

The *Associations Incorporation Act 2009 (NSW)* (**AI Act**) provides that an association's rules should set out the procedure (if any) for addressing association member discipline including a mechanism for appeals by members to disciplinary action taken against them. The rules should also usually detail the powers of the committee to remove, suspend, or discipline a member.



## 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.

The model constitution provides a structure for how associations should operate, including a procedure for how to discipline a member (see clauses 7 to 9 of the model constitution).

If your association has adopted its own constitution, but has failed to include provisions relating to the disciplining of members and internal disputes, then the model constitution provisions apply by default.

## What does 'disciplining' a member mean?

When disciplining members, incorporated associations need to follow their rules and meet requirements in the AI Act.

Disciplinary action an association can take can include:

- suspending a member's membership
- expelling a member from an association
- suspending a member's rights such as voting on resolutions at general meetings, voting to change the association's rules or to appoint or a remove a committee member, but only if the rules provide for these options (they are not contained in the model constitution), or
- reprimanding or fining a member, but only if the rules provide for these options (they are not contained in the model constitution)



## What disciplinary action can your association take?

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

If your association has adopted the model constitution or if your rules are silent on the procedure for disciplining a member, **the procedure for disciplining a member** is:

A complaint is made to the committee against the member by any other member of the association.

As long as the complaint is not trivial or vexatious, the committee must deal with the complaint and serve a notice to the member against whom the complaint is made.

The member against whom the complaint is made then has at least 14 days from the date of the notice to make submissions to the committee which the committee must take into consideration.

The committee decides by resolution the relevant disciplinary measures to take and whether to suspend or expel the member or dismiss the complaint.

If the committee decides to expel or suspend the member, the secretary must within seven days of that decision notify the member concerned of the action taken, the reasons given by the committee for the action and of the member's right to appeal.



### Note

If your association hasn't adopted the model constitution, it's good practice to include disciplinary procedures in your constitution.

## Can you remove, suspend or fine a member of your association who is causing trouble?

Many New South Wales incorporated associations have a process in their rules or constitution to remove, suspend or fine a member who is causing trouble. You'll need to check what your own association's rules say (and if they don't say anything, the model constitution will apply).



### Tip

If you are not sure what your association's rules are, you can request a copy of your current constitution from [NSW Fair Trading](#).

If your incorporated association uses the **model constitution** provisions, clauses 7 to 9 contain the disciplinary procedures. Under clause 7, disciplinary action can be taken against a member if a complaint has been made that the member has:



- refused or neglected to comply with a provision or provisions of the constitution of the association, or
- wilfully acted in a manner prejudicial to the interests of the association

The model constitution also provides that a member must have the ability to appeal against a decision to discipline a member (clause 8) – **this opportunity to appeal is important.**

If the member exercises this right to appeal, then the committee must convene a general meeting of the association within 28 days to allow the members to determine whether to confirm or revoke the committee resolution.

If your association doesn't use the model constitution it can create its own disciplinary procedure and write this into its constitution. It's important that the procedure and the way the complaint is practically dealt with by your association affords natural justice to the member, meaning that:

- the member must be notified of the grounds on which proposed action will be taken
- the member should have an opportunity to be heard, and
- the disciplinary outcome should be reached by an unbiased decision-maker

You must make every attempt to follow the steps in your disciplinary procedures so that the principles of natural justice will be complied with. Your disciplinary procedure should also set out how to appeal and that the decision of the general meeting is final.



### What is an unbiased decision maker?

An unbiased decision-maker is someone who is not prejudiced 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).

Depending on your association's constitution, 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 and find a decision-maker that everyone involved in the disciplinary procedure is happy with.

If your association uses the model constitution, then the decision maker is the committee (clause 7) or, on appeal, the general meeting (clause 8).

If you don't follow the procedures in your rules about disciplining a member, the outcome reached might not be legal and your association could be taken to court. There may be legal, including WHS issues, if the member is incorrectly suspended or expelled.



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 more informal approach, such as by 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 association can also ask the member if they are interested in participating in mediation. [Community Justice Centres](#) offer free mediation in New South Wales.

Mediation can sometimes resolve issues without needing to resort to formal disciplinary measures, and can help ensure that all parties involved feel heard.



### Note

If the issue concerning the member is related to a dispute between members (in their capacity as members), or between members and the association, your rules may also require you to first take steps such as mediation.

Under the model constitution (clause 9) such disputes must first be referred to mediation and, if not resolved, to arbitration.

If mediation is not appropriate in the circumstances, or is undertaken and fails, then disciplinary action may be an appropriate path for your association to take against a member.



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

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

A disciplinary procedure can be taken against any member of your association – regardless of whether they are on the committee.

If a committee member is also a member of your incorporated association, the disciplinary procedure may contain mechanisms to remove a member (including a committee member) from the association. 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 of the overall 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.