



STEWARDSHIP & RISK

Code of Conduct and Disciplinary Procedures: Procedural Fairness Done Right

A justified finding, reached the wrong way, is a frequent and avoidable reason disciplinary decisions get unwound

A board disciplining a member, whether a reprimand, a suspension, or an expulsion, is exercising power over someone's rights and standing. Courts have consistently held that this power, even inside a private membership organisation, is not exercised in a legal vacuum. It is subject to the same principles of natural justice that apply far more broadly across Australian law, and procedural errors are a frequent and avoidable reason disciplinary decisions are set aside, regardless of how justified the underlying conduct finding was.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [Why Private Organisations Are Not Exempt](#)
2. [The Three Elements That Actually Matter](#)
3. [A Particular Risk For Smaller Associations](#)

Why Private Organisations Are Not Exempt

A leading NSW authority, *McClelland v Burning Palms Surf Life Saving Club* [2002] NSWSC 470, reflects the prevailing view across Australian courts: the duty to afford natural justice arises from the organisation's own rules, read as requiring a fair procedure unless the rules clearly exclude it. Where the rules are silent, courts generally presume natural justice applies. Incorporated associations should also check their state or territory Act and any model rules, which may prescribe notice periods, a right of appeal or a grievance procedure that must be followed. This closes off a shortcut some boards assume exists, that because the organisation is a private membership body rather than a public authority, procedural fairness is somehow optional. It generally is not.

The Three Elements That Actually Matter

Sector legal guidance on association disciplinary process consistently converges on the same core requirements, and they are worth stating precisely rather than generally. The member must be given notice of the specific allegation against them, with sufficient particulars that they can understand and respond to what is being alleged, not a vague reference to unspecified misconduct. The member must have a real, meaningful opportunity to be heard, to respond, to present their own account and evidence, before a decision is made, not after. And the decision-maker must be free of actual or reasonably perceived bias, a requirement that becomes difficult in smaller associations where the available pool of decision-makers may already have a view on the matter or a relationship with those involved.

A related and often overlooked principle, confirmed in *South Melbourne Football Club Ltd v Football Federation Victoria Inc* [2010] VSC 355, is the right to be heard separately on the question of penalty,

once a finding on the substantive allegation has been made, rather than having guilt and consequence decided in the same breath.

A disciplinary process that gets the outcome right but the procedure wrong does not produce a defensible decision. It produces one that is now vulnerable to being unwound entirely, regardless of how deserved the original finding was.

A Particular Risk For Smaller Associations

Bias is the element that catches smaller organisations hardest. In an association where the board is a small, tight-knit group, finding decision-makers with no prior relationship to the member facing discipline can be difficult. This is why some associations build a provision into their constitution for appointing independent panel members from outside the organisation for serious matters, and why, at minimum, any director with a personal connection to the matter or the member involved should stand aside from the decision entirely, consistent with the conflict of interest discipline this quarter will address directly in the next article.

- Ensure your Code of Conduct and Disciplinary Procedure set out the specific grounds for action, the notice requirements, and the process with precision, rather than relying on a brief, generic clause.
- Give the member facing action a written notice containing particulars of the allegation, not a general reference to unspecified conduct.
- Provide a real opportunity to respond before any decision is made, including the ability to bring evidence or a support person where appropriate. Check first whether the member is also an employee, contractor or volunteer, or whether children are involved, as other legal obligations may apply, and seek legal advice before suspending or expelling a member in a contested matter.
- Separate the finding on the allegation from the decision on consequence, giving the member an opportunity to be heard on penalty specifically.
- Actively manage bias risk in smaller organisations, including a standing-aside requirement for any decision-maker with a personal connection to the matter, and consider an external panel option for serious matters.

Procedural fairness is not a technicality that protects members who are guilty of real misconduct. It is what protects the organisation's own decision from being unwound, and what gives a difficult disciplinary outcome the legitimacy it needs to actually hold.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

Founder and CEO, Nexus Leadership

BOARDROOM ACTION WORKSHEET

Code of Conduct and Disciplinary Procedures: Procedural Fairness Done Right

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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