

Being taken to court

Legal information for community organisations

This fact sheet covers:

- finding out that legal action is being taken against your organisation
- what you should do if legal action is being taken against your organisation
- costs of going to court, and
- court documents that your organisation may receive.

This fact sheet aims to provide not-for-profit community organisations with a basic overview of what to expect and do if your organisation is being taken to court.

It is very important to get the right advice and respond in a timely way to any threatened or actual court action taken against your organisation.

How will we know if someone is trying to take our organisation to court?

There are a number of ways your organisation may find out about legal action.

1. Letter

Your organisation might receive a letter demanding that you do something (like pay money) or stop doing something (like holding a meeting).

The letter may threaten legal action if your organisation does not comply with the demand. Similar threats may be made in person or over the phone.

A letter (or call) threatening legal action does not mean that the person who wrote the letter will actually take legal action.

You should:

- check that your insurance policies (if you have insurance), cover the threatened action and, where applicable tell your insurer about the threat, and
- seek legal advice about the likelihood of the legal action occurring and what defences your organisation may have.

2. Court form

If a person wants to take legal action against your organisation, they commence the action by issuing one of the forms listed below in the appropriate court. They are usually known as the 'plaintiff'.

! CAUTION

The information in this fact sheet is intended as a guide only, and is not legal advice. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do.

The person or organisation who they are taking the legal action against is usually known as the ‘defendant’.

The plaintiff takes the relevant form to court to be stamped and a copy is then ‘served on’ (officially delivered to) the defendant.

Your organisation should take a statement of claim or summons very seriously.

The forms used to commence legal action differ between the states and territories:

NOTE

To lodge these forms payment of fees will be required. Refer to the links under Resources at the end of this fact sheet to find links to the courts, where you will be able to find further information about lodging fees and processes.

	Courts	Name of forms
Victoria	Magistrates’ Court County Court Supreme Court	Complaint Writ (accompanied by Statement of Claim) Originating Motion
New South Wales	Local Court District Court Supreme Court	Statement of claim Summons
Queensland	Magistrates’ Court District Court Supreme Court	Claim Statement of Claim
Western Australia	Magistrates’ Court District Court Supreme Court	Writ of Summons Statement of Claim Memorandum of Appearance Originating Motion
South Australia	Magistrates’ Court District Court Supreme Court	Summons (accompanied by Statement of Claim or Originating Process)
Northern Territory	Local Court Supreme Court	Writ or Originating Motion (accompanied by Endorsement of Claim or Statement of Claim) In the Local Court: Practice Direction 6 (PD6)
Australian Capital Territory	Magistrates’ Court Supreme Court	Originating Claim Statement of Claim
Tasmania	Magistrates’ Court Supreme Court	Writ Originating Application

CAUTION

If your organisation receives court documents, it is important to act immediately. If your organisation intends to defend the proceedings, very short time frames apply for you to notify the court.



3. Notice from a tribunal or commission

Across Australia there are a number of tribunals (like the Administrative Appeals Tribunal) and commissions (like the Fair Work Commission, and the Australian Securities and Investments Commission) which deal with certain legal issues.

If your organisation receives a 'notice of hearing' it means that someone has named your organisation as the respondent (or the defendant) in an application to a tribunal or commission and has commenced legal action against your organisation. Even if you think there is no validity to the claim, it is highly recommended that your organisation seek legal advice. You may need to lodge certain documents before the hearing date.

Not all applications made to tribunals or commissions proceed to a stage where there is a hearing. Many disputes are resolved prior to a formal decision by the tribunal through mediation, directions hearing or compulsory conference. For more information on mediation go to www.nfplaw.org.au/mediation.

	Administrative Tribunal	Examples of other Tribunals or Commissions
Commonwealth	Administrative Appeals Tribunal (AAT)	National Native Title Tribunal Copyright Tribunal of Australia Fair Work Commission
Victoria	Victorian Civil and Administrative Tribunal (VCAT)	Victims of Crime Assistance Tribunal Mental Health Tribunal
New South Wales	NSW Civil and Administrative Tribunal (NCAT)	Mental Health Review Tribunal Workers Compensation Commission NSW Industrial Relations Commission
Queensland	Queensland Civil and Administrative Tribunal (QCAT)	Land and Resources Tribunal Land Tribunal
Western Australia	State Administrative Tribunal (SAT)	Equal Opportunity Commission
South Australia	South Australian Civil and Administrative Tribunal (SACAT)	South Australia Employment Tribunal South Australia Health Practitioners' Tribunal
Northern Territory	Northern Territory Civil and Administrative Tribunal (NTCAT)	Mental Health Review Tribunal Alcohol Mandatory Treatment Tribunal
Australian Capital Territory	ACT Civil and Administrative Tribunal	ACT Remuneration Tribunal ACT Human Rights Commission
Tasmania	No single civil and administrative tribunal, matters heard in this tribunal in other states are heard in the Tasmanian Magistrates' Court	Workers Compensation Tribunal Resource Management and Planning Appeals Tribunal Industrial Tribunal

4. Prosecution

Your organisation may also receive notice that it is being prosecuted for an offence. This may occur if a prosecuting authority thinks your organisation has not complied with the law. The prosecuting authority may be the State or Federal Police or a regulator (like Worksafe Tasmania or the Queensland Office of Fair Trading).

A prosecuting authority has to prosecute in accordance with the law. Your organisation may have a valid defence.

What should we do if someone takes legal action against us?

Seek immediate legal advice

If your organisation receives a letter or court document about a 'legal action' or prosecution, it should seek legal advice immediately because sometimes time limits apply in relation to defending legal actions.

As different rules apply to each kind of community organisation, you should seek specific advice from a lawyer.

Read the documents carefully

Your organisation should read the documents carefully. In particular, look at who is named as a party to the legal action. Also look for information in the accompanying material about timeframes that apply.

Make sure the right people know - but be careful who you tell

Your board or committee of management should be informed.

There may be reasons that you should not inform all staff or volunteers about a legal action. For example, you could open yourself to a defamation claim or you might be in breach of your legal obligations with respect to privacy. Check this with your lawyer.

Notify your insurer

As soon as your organisation receives any indication that a claim could be made against it, it should notify its insurer/s immediately (if your organisation has insurance).

Can legal costs be awarded against our organisation?

Yes. Not-for-profit community organisations are treated in the same way as any other potential plaintiff or defendant in legal proceedings.

Generally, in court proceedings, costs are awarded against the party who loses the case. This means that if you are advised by your lawyer that losing the case is a likely outcome, your organisation carefully should consider agreeing to a pre-trial settlement.

We are an incorporated association – can we be taken to court?

Yes. Just because your organisation is incorporated doesn't mean people can't take legal action against your organisation. The benefit of 'limited liability' that comes with incorporation is that members of the organisation are not personally liable for debts of the organisation (including legal costs). Generally, however, limited liability does not mean that legal action cannot be taken against your organisation. If your organisation is found to be legally responsible and is ordered by a court to pay costs, then all of the assets of the organisation (including any unpaid membership fees, money in bank accounts, assets etc.) must be made available to meet those costs.

Also, in limited circumstances, members of a committee of management or board of an organisation may be personally liable to pay costs (from their own savings and assets). This is uncommon.

We are an unincorporated group – can we be taken to court?

The members of your group, separately or together, can be taken to court. If you receive an indication that court action may be taken, your group should seek immediate legal advice.

It may be necessary for the committee of management or other members of your group who exercise control over its affairs to seek separate, personal, legal advice.

RELATED RESOURCES

For more information about Incorporating your organisation see the Incorporation decision page on the Not-for-profit Law [website](#).

Will our insurance cover the costs of the legal action?

Maybe. This will depend on the terms and conditions of any insurance your organisation has and the circumstances of the legal action. You should check with your insurer(s) and seek legal advice if you do not agree with your insurer's decision.

Other court documents your organisation might receive

Subpoena

A subpoena is a document issued by a court requiring the person or organisation named in the document to:

- attend at the court to give oral evidence, and/or
- produce documents or other things to the court.

The person or organisation named in the subpoena must comply with the requirements of a subpoena, as failure to do so, without lawful excuse, can result in charges of being in contempt of court. Fines and/or imprisonment apply for contempt of court offences.

A subpoena does not necessarily mean that someone is taking legal action against your organisation. It could be that two other parties are involved in litigation and as part of that litigation, have applied to the court for a subpoena for documents relevant to their action, which may include documents held by your organisation. If your organisation receives a subpoena to attend court or produce documents, seek legal advice immediately. Failure to comply with a subpoena within the specified time can constitute contempt of court. You may be able to apply to the court to have the subpoena set aside. Subpoenas can be set aside on a number of grounds such as when:

- the subpoena is too wide in its terms, is oppressive and amounts to a ‘fishing expedition’, or
- the documents covered by the subpoena are not relevant for the purposes of disposing fairly of the proceedings.

You may also need to seek advice about your organisation's privacy and confidentiality obligations. Privacy and confidentiality obligations may not be sufficient to refuse to provide information requested by the court. It may be possible to provide documents with certain parts (such as personal information) removed (‘redacted’).

Warrant or order for entry, inspection, search, seizure

Across the states and territories, various laws give government authorities the power to enter on property and inspect, search, and take away certain materials. For example, under NSW Work Health and Safety legislation (**NSW WHS**), the NSW WorkCover Authority has powers to enter a workplace to undertake investigations. Similar powers exist for each work and healthy safety authorities in each state or territory. There are laws that the authorities must comply with when they undertake these searches. If the search isn't exercised in accordance with the law, your organisation may have a legal right to challenge it. However, it is usually an offence (with quite significant penalties) not to comply with, or to obstruct, such investigations. You should read any documentation provided to you carefully, and seek legal advice as soon as possible.

RELATED RESOURCES

For more information about work, health and safety laws go to the Not-for-profit Law website at www.nfplaw.org.au/OHS.

Being taken to court in another jurisdiction

If your organisation is involved in legal proceedings in another Australian State or Territory you may be able to transfer the proceedings to a more appropriate jurisdiction. When deciding whether to transfer the proceedings the court will consider:

- where the parties to a proceeding live
- where the dispute arose
- whether any contracts between the parties specify a jurisdiction
- what is in the interest of justice, ultimately facilitating the most timely and efficient resolution

It is also possible to transfer a proceeding within a state if you feel there is a more relevant court to hear the proceedings. This may happen if there is a related matter already being heard in a court, or a particular court has special expertise.

Resources

Related Not-for-Profit Law Resources

✔ [Mediation](#)

Not-for-profit Law's Mediation page of the Information Hub has information on when mediation would be appropriate for your organisation, how to choose a mediator and what is involved when you attend mediation.

✔ [Insurance](#)

Not-for-profit Law's Risk and Insurance page of the Information Hub has information on background checks, occupational health and safety, negligence and incidents and accidents.

✔ [Internal Conflict](#)

Not-for-profit Law's Internal Disputes page has information on dealing with conflict and disputes involving members of a community organisation, and covers particular requirements for incorporated associations.

Related Resources

These links are to websites that provides details of many Australian courts and tribunals. It does not include details of federal courts and tribunals (such as the Family Court, Federal Court, Fair Work Commission etc.)

✔ www.courts.lawlink.nsw.gov.au

✔ www.courts.vic.gov.au

✔ www.courts.sa.gov.au

✔ www.supremecourt.nt.gov.au

✔ www.localcourt.nt.gov.au

✔ www.courts.tas.gov.au

✔ www.courts.dotag.wa.gov.au

✔ www.courts.act.gov.au

✔ www.courts.qld.gov.au

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