

Dealing with disputes and grievances with members

Legal information for Australian Capital Territory incorporated associations

This fact sheet covers:

- what is an 'internal dispute' within an Australian Capital Territory (ACT) incorporated association
- what to do when there is an internal dispute in your organisation
- how mediation can help resolve a dispute
- other options if your organisation is in disarray, and
- what kinds of internal disputes can be taken to court

This fact sheet is designed to help ACT incorporated associations handle disputes or grievances within their organisations effectively and legally.

All organisations face disputes and grievances at some point. When conflict starts disrupting your activities, you need to resolve it, properly and quickly.

This fact sheet provides general legal information. Your group may need to seek specific legal advice depending on the situation.

There are rules and procedures for resolving internal disputes within Incorporated Associations. These rules and procedures are contained in the *Associations Incorporation Act 1991* (ACT) (**the Act**), the *Associations Incorporation Regulation 1991* (ACT) (**AIA Regulation**) and the association's rules (sometimes also termed the constitution) of the organisation. Some incorporated associations have drafted their own rules, and others use the model rules as set out in the AIA Regulation (**model rules**).



TIP

If you are not sure what your association's rules are, you can request a copy of your current rules from the association or from Access Canberra.

What kind of issue is this? Who is involved?

Knowing the issue – and who it involves – is important. This is important because there are different procedures that will apply.

The questions to ask are:

- 1. Is the organisation dealing with conflict? Often this conflict (commonly called 'internal disputes') will be between:**
 - member(s) of the association and the rest of the organisation
 - member(s) and the committee of management, and

- committee of management (board) members
2. Is the organisation dealing with an issue involving a member where they have breached the rules or engaged in other improper behaviour (such as harassing other members, or acting in a way that harms the associations)?

RELATED RESOURCES

This fact sheet relates to the kind of disputes mentioned above. It does not cover disputes or conflicts involving, employees, volunteers, situations that endanger the health and safety of people in the workplace or situations involving violence. For further information about these kinds of disputes or conflicts, see the following related Not-for-profit Law resources:

- employees (e.g. an issue with their superannuation) - for information, go to www.nfplaw.org.au/employees
- volunteers (e.g. a complaint of sexual harassment) - for information, go to www.nfplaw.org.au/volunteers
- situations that may endanger the health and safety of people in the workplace (e.g. bullying) – for information, go to www.nfplaw.org.au/OHS, and
- violence – in these situations the police may need to get involved, and criminal laws may apply. Contact ACT Police (www.police.act.gov.au) or in an emergency call 000.



What should we do if there is an internal dispute?

The first thing to do is to check the rules (or constitution) of your incorporated association. If your rules do not deal with matters that are required to be included in the rules then some provisions of the model rules may apply to your association.

You should follow your rules very closely and make sure your processes are fair and proper (see below).

What is a dispute resolution procedure?

A dispute resolution procedure is used where there is an internal dispute in an incorporated association. Your association's rules may set out a dispute resolution procedure however there is no requirement for them to do so. The model rules do not include a dispute resolution procedure.

What is a disciplinary procedure?

Groups are allowed, under law, to discipline members. Disciplinary action is taken when a member has breached the rules or engaged in other improper behaviour (such as harassing other members, or acting in a way that harms the association), and could include a sanction, a fine, or suspension or cancellation of membership, depending on your rule.

Many groups have a disciplinary procedure in their rules, but they do not have to. If there is a procedure in the rules, it should be followed. If your rules do not say anything about a disciplinary procedure, then model rules 9 and 10 will automatically apply to your association.

Under model rule 9 disciplinary action can be when the committee is of the opinion that a member:

- has persistently refused or neglected to comply with the rules, or
- has persistently and wilfully acted in a manner prejudicial to the association.

If this is the case, the committee can either expel the member or suspend the member's rights and privileges of membership for a certain period. Rule 10 contains a procedure for a disciplined member to appeal the decision through a general meeting.

It is important to note that 'disciplinary procedures' are different from dispute resolution (grievance) procedures under an organisation's rules. Disciplinary procedures involve steps to remove, suspend or fine a member of an incorporated association in specified circumstances.

Procedures and procedural fairness

You should follow your organisations constitution (and procedures) very closely – otherwise the outcome reached might not be legal and/your organisation could be taken to court.

NOTE

Although your organisation must follow the procedures in the constitution, your organisation, and those it appoints, must also make sure the processes it follows are fair and proper. Otherwise, any outcome might be challenged by the member involved.



The common law (judge-made law) duty of natural justice can apply to community organisations when making decisions affecting its members. Natural justice is sometimes called 'procedural fairness'. It means that the processes used by a decision maker must be fair and proper (for example, following appropriate timeframes, giving appropriate notice, allowing allegations to be responded to and avoiding bias in the process. If you are uncertain about processes to follow you may need to seek specific legal advice.

What is mediation – and how can it help?

Mediation is a voluntary, confidential process used to resolve disputes. Your association should consider adding provisions into its rules allowing for mediation to resolve disputes.

In mediation, the people in dispute meet in the presence of an unbiased, independent person (the mediator) to try to resolve their problems in a confidential, safe atmosphere. The mediator controls the process, but the people in dispute control the outcomes (if any) that are agreed on.

Mediation is cheaper and simpler than going to court, and it is much more likely to get everyone an outcome they can live with, quickly.

Mediation is appropriate in most disputes, but if you are in a situation where you fear for your safety, call the police and get some legal advice, too.

Check what your constitution says (if anything) about choosing a mediator.

Is going to court an option?

The law provides some options for going to court about an 'internal dispute' or disciplinary action against a member. This is particularly where an association has either not followed its constitution, or has not provided natural justice.

However, the courts have been reluctant to interfere in the internal affairs of community organisations – and going to court is very stressful and time consuming. It should be considered only as a last resort or where there are complex matters that are critical to resolve or cannot be resolved without the intervention of a court.

The organisation is in disarray. Are there other options?

Sometimes even when you follow your organisation's grievance procedures, the situation doesn't resolve.

There are some other options, depending on the circumstances, which may be able to break a 'deadlock' situation and/or avoid the organisation ending up in court. Some are set out briefly below:

1. Hold a special general meeting

It can be helpful to call a special general meeting of all the members of the incorporated association, to try and sort out what should be done about the organisation's problems.

Check your rules to find out how to call a general meeting. Under rule 23(1) of the model rules, the committee of management can convene a general meeting 'whenever it considers appropriate'. Also, under rule 23(2) of the model rules the committee must convene a general meeting if 5% or more of members make a request.

TIP

Some types of decisions must be made by 'special resolution' of members at a general meeting (e.g. changing your rules or purposes, amalgamating with another group, or winding up the association). There are specific legal requirements for giving notice of and passing a special resolution. For more information, go to www.nfplaw.org.au/meetings

If you think the meeting may be difficult to control, consider getting an independent person to oversee the running of the meeting to help it run as smoothly as possible.

2. Access Canberra cannot investigate and/or intervene

While Access Canberra is the regulator for ACT incorporated associations it does not have any authority under the Act investigate or get involved in any disputes between members and another member, or a member and the association, or in relation to any disciplinary procedures. Access Canberra has limited powers to take action only in relation to a breach of the Act where an offence has been committed. In all other instances your association will need to resolve the dispute or disciplinary issue itself.

3. Leave the group

If you are personally involved in a dispute, you could consider non-legal options. On many occasions the time, energy and stress associated with an internal dispute will not be worth it, particularly where your involvement with the organisation is voluntary.

Often the best option may be to simply leave the group.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub at www.nfplaw.org.au features a range of resources on the following related topics:

✔ Disputes – www.nfplaw.org.au/disputes

This section features information on internal conflict, mediation, going to court, external conflict and criminal conduct.

✔ The people involved – www.nfplaw.org.au/people

This section contains resources on clients, employees, volunteers, members and privacy.

Legislation

✔ [Associations Incorporation Act 1991 \(ACT\)](#)

This legislation regulates all ACT incorporated associations.

ACT Government

✔ Access Canberra – www.accesscanberra.act.gov.au

The government agency is responsible for regulating ACT incorporated associations.

✔ Conflict Resolution Services – www.crs.org.au

A not-for-profit community organisation which provides dispute advice, mediation, community education and training to assist in managing conflict within the wider ACT community. .

Related Resources

✔ [Queensland University of Technology, Australian Centre for Philanthropy and Nonprofit Studies - When Things Go Wrong.](#)

This is part of QUT's Developing Your Organisation Manual which provides directions to help not-for-profits meet their governance, organisational and service delivery responsibilities.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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