

# Dealing with disputes and grievances with members

Legal information for NSW community organisations

## This fact sheet covers:

- what is an 'internal dispute' within a NSW 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 NSW 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 an Incorporated Association. These rules and procedures are contained in the *Associations Incorporation Act 2009* (NSW) and the association's rules or constitution. Some associations use the model rules found in the Act, and others have drafted their own rules.



### 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.

## 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](http://www.nfplaw.org.au/employees)
- volunteers (e.g. a complaint of sexual harassment) – for information, go to [www.nfplaw.org.au/volunteers](http://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](http://www.nfplaw.org.au/OHS)
- violence – in these situations the police may need to get involved, and criminal laws may apply. Contact NSW Police ([www.police.nsw.gov.au](http://www.police.nsw.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 constitution (or rules) of your incorporated association. Your constitution is required by law to set out a procedure for dealing with grievances (or disputes) and some constitutions also set out a procedure for disciplining members. Grievances and disciplinary procedures are explained further below.

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. All incorporated associations must have a dispute resolution procedure in their rules or constitution. The 'resolution of disputes' section in your rules provides your organisation with a process to follow to try to settle conflict between:

- members (including committee members), or
- a member (including committee member) and the organisation.

An association's dispute resolution procedure should:

- give each party to a dispute an opportunity to be heard, and
- be determined by an unbiased decision maker.

If your organisation uses NSW Fair Trading's model constitution, clause 10 contains the dispute resolution procedure. If your constitution doesn't say anything about grievance or dispute resolution procedures (this is rare), then the law says that clause 10 of the model constitution will automatically apply to your organisation.

#### RELATED RESOURCES

Information on resolving disputes in incorporated associations can be found at [NSW Fair Trading - Resolving Disputes](#).

The model constitution contains a two-step procedure. You need to read your constitution for details of the procedure, but in short, if the people involved in the dispute cannot resolve the dispute between them:

- the dispute will be referred to a community justice centre for mediation, and
- if the dispute isn't resolved by mediation, the dispute must be referred to arbitration.

## 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 rules.

#### RELATED RESOURCES

Not-for-profit Law has a more detailed fact sheet on disciplinary procedures available at [www.nfplaw.org.au/internalconflict](http://www.nfplaw.org.au/internalconflict).

Many groups have a disciplinary procedure in their constitution, but they do not have to. If there is a procedure in the constitution, it should be followed. If your organisation uses the model constitution, clauses 11 and 12 contain the disciplinary procedure. The grounds where disciplinary action can be taken are where a member:

- has refused or neglected to comply with the constitution, or
- has acted in a manner prejudicial to the interests of the association.

It is important to note that 'disciplinary procedures' are different from dispute resolution (grievance) procedures under an organisation's constitution. 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/or 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.

#### RELATED RESOURCES

For more information about updating your NSW incorporated associations rules go to the Not-for-profit Law Information Hub page at [www.nfplaw.org.au/constitution](http://www.nfplaw.org.au/constitution).

## What is mediation and how can it help?

Mediation is a voluntary, confidential process that can be used to help 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, simpler and quicker than going to court, and it is much more likely to get everyone an outcome they can live with.

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.

If your organisation uses the model constitution, the dispute will be referred to a NSW community justice centre for mediation.

#### TIP

For more information on mediation, go to the Not-for-profit Law’s Information Hub at [www.nfplaw.org.au/mediation](http://www.nfplaw.org.au/mediation).

#### RELATED RESOURCES

NSW Community Justice Centres provide free mediation to help people resolve disputes. The mediation is run by impartial, trained mediators who do not have a history or any relationship with the people in dispute or the organisation.

More information about mediation at NSW Community Justice Centres can be found at [NSW Justice – Mediation at CJC](#).



## 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.

## RELATED RESOURCES

For general information on disputes involving members of a NSW incorporated association which can go to court, see Not-for-profit Law's fact sheet: 'Going to court about an internal dispute' at [www.nfplaw.org.au/internalconflict](http://www.nfplaw.org.au/internalconflict).



# The organisation is in disarray. Are there other options?

Sometimes even when you follow your organisation's dispute resolution 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 constitution to find out how to call a special general meeting. Under NSW Fair Trading's model constitution, the committee of management can convene a special general meeting 'whenever it thinks fit'. The model constitution also provides that the committee must convene a special general meeting if 5% or more of members request one.

## TIP

Some types of decisions must be made by 'special resolution' of members at a general meeting (eg. 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](http://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. Ask NSW Fair Trading to investigate and/or intervene

NSW Fair Trading is the regulator for NSW incorporated associations and has wide-ranging powers to take action if there is evidence that the dispute involves a breach of the *Associations Incorporation Act 2009* (NSW) or the *Associations Incorporation Regulation 2016* (NSW).

For example NSW Fair Trading has powers to:

- investigate an incorporated association, and
- fine or prosecute an association (or an individual) for offences under the Act.

Examples of breaches of the Act and Regulation that NSW Fair Trading can investigate include:

- failure to conduct annual general meetings within the prescribed time
- failure to keep proper financial records
- failure to fill a vacant position of public officer, and
- dishonest use of information or position by a committee member.

It is important to note that NSW Fair Trading cannot intervene in matters relating to the internal administration of an association that do not involve a breach of the Act, which is often the situation for internal disputes.

#### NOTE

If you are considering asking for help from NSW Fair Trading, you will need to provide clear documentation and history of the dispute, the processes which have been attempted to resolve the issue, and the ways in which the dispute involves breaches of the *Associations Incorporation Act 2009* (NSW).



### 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

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## Related Resources

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

✔ Disputes – [www.nfplaw.org.au/disputes](http://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](http://www.nfplaw.org.au/people)

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

## Legislation

✔ [Associations Incorporation Act 2009 \(NSW\)](#)

This legislation regulates all NSW incorporated associations.

## NSW Government

✔ [NSW Fair Trading](#)

This government agency is responsible for regulating NSW incorporated associations.

✔ [Community Justice Centres NSW](#)

A free dispute resolution service funded by the NSW Government.

✔ [LawAccess NSW](#)

LawAccess is a free government telephone service that provides legal information and referrals for people in NSW.

## 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.

✔ [The Law Society of NSW - Solicitor Referral Service](#)

The Law Society of NSW's referral service allows you to locate a lawyer that can provide legal advice on various topics

✔ [Commonwealth Attorney-General's Department – Alternative Dispute Resolution](#)

The Attorney-General's Department provides advice on dispute resolution and has published a guide to help understand alternative dispute resolution and resolving disputes generally.

✔ [Office for the Community Sector \(OCS\) – Developing Conflict Resilient Workplaces.](#)

This guide is published by the Victorian Office for the Community Sector and can be used by community organisations to assess the conflict resilience of their organisation.

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