

Dealing with disputes and grievances with members

Legal information for Northern Territory community organisations

This fact sheet covers:

- what is an 'internal dispute' within a Northern Territory 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 Northern Territory 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 Act (NT)* and the association's rules or constitution. Some associations use the model rules provided in the *Associations (Model Constitution) Regulations (NT)*, 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 rules from the Territory Business Centre. You will need to put this request in writing via email to: territory.businesscentre@nt.gov.au.



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 <https://www.nfplaw.org.au/employeedisputes>
- volunteers (e.g. a complaint of sexual harassment) - for information, go to <https://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 <https://www.nfplaw.org.au/OHS>
- violence – in these situations the police may need to get involved, and criminal laws may apply. Contact Northern Territory police (<http://www.pfes.nt.gov.au/police.aspx>) 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 the model rules, rule 56 contains the grievance procedure. The grievance procedure in the model rules contains two steps. You need to read your rules for details of the procedure that applies to you, but in short the model rules require the following:

- within 14 days of the dispute coming to the attention of the parties to the dispute, the parties must meet and discuss the matter in dispute and try to resolve this, or
- if the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days after the meeting, hold another meeting in the presence of a mediator.

RELATED RESOURCES

Information on resolving disputes in incorporated associations can be found at the [Northern Territory Government website](#).



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 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 rules, rule 21 contains the disciplinary procedure. Disciplinary action can be taken where a member engages in conduct that is detrimental to the interests of the association. If the committee considers that a member should be suspended or expelled they will be required to:

- provide the member 30 days' notice of a meeting the member will be required to attend where they will have the opportunity to respond to the reasons the committee is considering suspension or expulsion, and
- provide the member written notice of the decision of the committee and the reasons for that decision.

If the Committee decides to suspend or expel the member under the model rules, that suspension will take effect 14 days after the day on which the notice is given to the member. The model rules allow a member to call a disciplinary appeal meeting of the whole association when they wish to challenge the disciplinary action taken against them.

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 organisation's constitution (and procedures) very closely – otherwise the outcome reached might not be legal and/or your organisation could be taken to court.

The law *Associations Act 2003* says that an association's dispute resolution procedures must allow 'for natural justice' to be applied. 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 your constitution says anything to the contrary, that contrary rule should be considered 'struck out'. If you are uncertain you may need to seek specific legal advice.

RELATED RESOURCES

For more information about updating your Northern Territory incorporated association's rules go to www.nfplaw.org.au/constitution.

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.



What is mediation – and how can it help?

Mediation is a voluntary, confidential process used 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.

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.

If your organisation uses the model rules and engages in mediation, there are specific requirements about how mediation must be conducted. Under the model rules, the mediator must:

- give the people in dispute (who are at the mediation) every opportunity to be heard
- make sure that any written statement by a person in the dispute is properly considered by everyone involved, and
- ensure that natural justice is given to the people in dispute throughout the mediation process.

Your rules may have additional requirements about who can initiate certain steps of the process and how, required timeframes and whether notices must be in writing etc. Check these carefully.

Check what your rules say (if anything) about choosing a mediator.

If your organisation uses the model rules, the mediator should be chosen and agreed on by the people who are in dispute. If they can't agree, then:

- if the dispute is between a member and another member – the mediator must be appointed by the committee of management of the organisation, or
- if the dispute is between a member and the organisation – the mediator must be a person appointed or employed by Licensing NT.

The model rules allow for a member or a former member of the incorporated association to act as mediator in a dispute. However, this is not best practice – it is better if the mediator does not have a history of any relationship with the people in dispute or the organisation. If a member of your organisation is going to be the mediator, make sure that person can do so in an impartial and independent way.

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 special general meeting. Under the model rules, the committee may at any time convene a special meeting and **must** call a meeting if:

- a member who is suspended or expelled has given notice to the Secretary within 14 days of being suspended and the member wishes to appeal this decision, or
- half of the number of members have made a written request to the committee for a special general meeting. In this instance a meeting must be called within 30 days of receiving the 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 sit in or oversee the running of the meeting to help it run as smoothly as possible.

2. Ask Licensing NT to investigate and/or intervene

Licensing NT is the regulator for Northern Territory incorporated associations and has wide-ranging powers to take action if there is evidence that the dispute involves a breach of the *Associations Act* (NT). For example Licensing NT has powers to:

- investigate an incorporated association, and
- inspect records.

If, after preliminary inquiries are conducted, the activities of the association do not meet the requirements of the Act, Licensing NT may carry out a more comprehensive investigation.

Licensing NT does not investigate fraud matters or breaches in an association's constitution unless it is also a breach of the law, however Licensing NT does have the power to also:

- appoint a statutory manager
- declare an organisation defunct, permitting the Supreme court to wind up the association
- dissolve the association, or
- refer the matter to the police where breaches of the Criminal Code are concerned.

NOTE

If you are considering asking for help from Licensing NT, 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 Act* (NT).

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.

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 Act \(NT\)](#)

✔ [Associations Regulations](#)

✔ [Associations \(Model Constitution\) Regulations](#)

This legislation and corresponding regulations applying to Northern Territory incorporated associations.

Northern Territory Government

✔ [Northern Territory Government website](#)

Provides information about important considerations when establishing and running an incorporated association.

Related Resources

✔ [Law Society NT](#)

Provides community legal education and engages in activities designed to improve access to justice.

✔ [Our Community](#)

Designed to help not-for-profits, Our Community provides information and tools helping to build stronger communities for organisations and the people who run them.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au. Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at www.nfplaw.org.au

© 2017 Justice Connect. You may download, display, print and reproduce this material for your personal use, or non-commercial use within your not-for-profit organisation, so long as you attribute Justice Connect as author and retain this and other copyright notices. You may not modify this resource. Apart from any use permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request permission from Justice Connect to use this material, contact Justice Connect at PO Box 16013, Collins Street West, Melbourne 8007, or email nfplaw@justiceconnect.org.au.