

Dealing with disputes and grievances with members

Legal information for Queensland community organisations

This fact sheet covers:

- what is an 'internal dispute' within a Queensland 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 Queensland 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 1981* (QLD) 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 [QLD Office of Fair Trading \(OFT\)](#).

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/employeeissues
- 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
- violence – in these situations the police may need to get involved, and criminal laws may apply. Contact Queensland Police (www.police.qld.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. Having a dispute resolution procedure is not a requirement under the legislation; however it is recommended by the OFT.

Dispute resolution procedures generally provide 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.

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 associations), and can include a sanction, a fine, or suspension or cancellation of membership.

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.

Model rules 10 contains a procedure for the management committee to terminate the membership of a member who:

- is convicted of certain offences
- does not comply with the organisation's rules
- has membership fees in arrears for at least 2 months, and
- acts in a way considered "injurious or prejudicial" to the associations interests or characters.

Rule 10 also requires that the committee give the member an opportunity to show why their membership should be kept. Members can appeal a termination under model rule 11 through a general meeting of all members.

If your rules do not mention how membership of the organisation ends, then the model rules might automatically apply. Seek legal advice on whether this is the case.

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.

The law *Associations Incorporation Act 1981* 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 so seek specific legal advice.



RELATED RESOURCES

For more information about updating your QLD incorporated associations 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 usually 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.

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

As a general rule, the mediator should be chosen and agreed on by both parties. If both parties cannot agree, then:

- if the dispute is between a member and another member – the mediator could appointed by the committee of management of the organisation, or
- if the dispute is between a member and the organisation (including disputes involving the committee or board) – the mediator could be a person appointed by a third party such as Queensland Law Society or the Office of Fair Trading.

While a current member or a former member of the incorporated association could act as mediator in a dispute under the organisation's rules, 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 to ensure the principles of natural justice are observed.

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 rules, 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 secretary must call a special general meeting if so directed by the management committee or if:

- at least 33% of the members of the management committee requests a special general meeting in writing, or
- a certain number of members of the association (being double the number of members on the management committee, plus one) request a special general meeting in writing, or
- the secretary has been given written notice of an intention to appeal against a decision of the management committee to reject an application for membership or terminate a person's membership.

The management committee also can direct for a special general meeting to be called if it deems such a meeting is necessary.

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.

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 <https://www.nfplaw.org.au/meetings>.



2. Ask the Office of Fair Trading to investigate and/or intervene

The Queensland Office of Fair Trading is the regulator for Queensland incorporated associations and has wide-ranging powers to take action if there is evidence that the dispute involves a breach of the Act.

While the Office of Fair Trading can conduct an investigation into the affairs of your association, if it is suspected the association is acting in a manner inconsistent with the Act or in breach of its rules, the

association may be referred to the Supreme Court. Only the Supreme Court can make orders about how you run your association.

NOTE

If you are considering asking for help from the Office of Fair Trading, you should 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 Act.



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 1981 \(Old\)](#)

✔ [Associations Incorporation Regulation 1999 \(Old\)](#)

This legislation regulates all Queensland incorporated associations.

✔ [Queensland government model rules](#)

Queensland Government

✔ [Fair Trading](#)

The government agency is responsible for regulating Queensland incorporated associations.

✔ [Fair Trading incorporated associations forms and guides](#)

A series of useful tools and guides produced by the Office of Fair Trading to assist the operation of Incorporated Associations and explain legal compliance requirements.

Related Resources

✔ [Queensland Law Society](#)

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

✔ [Queensland University of Technology, Australian Centre for Philanthropy and Non-profit 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. 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.