

# Dealing with disputes and grievances with members

Legal information for South Australian community organisations

## This fact sheet covers:

- what is an 'internal dispute' within a South Australian 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 South Australian 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 1985 (SA)* (**the Act**), and the association's rules or constitution. Some associations use the model rules provided in the Act (**example rules**), 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 Consumer and Business Services South Australia.

## What kind of dispute 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)?

Where the issue is one that the association as a whole has with the conduct of member (or group of members), the action the association can take would be taken under a disciplinary procedure.

### 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 - for information, go to <https://www.nfplaw.org.au/employeeissues>
- 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>, and
- violence - in these situations the police may need to get involved and criminal laws may apply. Contact South Australia Police (<https://www.police.sa.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 procedure?

A dispute procedure is used where there is an internal dispute in an incorporated association. It is not a requirement of the South Australian legislation to have a dispute resolution clause or grievance procedure in the rules of your association, however, section 40 of the Act does require the committee to observe the rules of 'natural justice' when exercising any power of adjudication in relation to a dispute between its members, or a dispute between itself and its members.

Rule 10 of the South Australian Consumer and Business Services (CBS) example rules provides a mechanism to settle disputes between:

- members (including former members if no more than six months has passed since the end of their membership), or
- a member (including former members if no more than six months has passed since the end of their membership) and the organisation.

CBS' example rules say that:

- parties to a dispute must meet and discuss the matter in dispute and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of the parties, and
- if the parties are unable to resolve the dispute at the meeting the parties may choose to meet and discuss the dispute before an independent third person agreed to by the parties.

You should check your association's rules in case they are different. If your rules don't say anything about grievance or dispute resolution procedures, you may wish to amend them to include a procedure.

## What is a disciplinary procedure?

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Groups are allowed, under law, to discipline members. 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.

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.

It is important to note that 'disciplinary procedures' are different from grievance (or dispute resolution) procedures.

## Procedures and procedural fairness

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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 1985* 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 South Australia incorporated associations rules go to [www.nfplaw.org.au/constitution](http://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?

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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 rules say (if anything) about choosing a mediator. If the parties to mediation can't agree on a suitable mediator you could consider:

- if the dispute is between a member and another member – the mediator could be 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 appointed by a third party, such as the Law Society of South Australia.

While a member or a former member of the incorporated association could act as mediator in a dispute 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?

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The law provides some options for going to court about an 'internal dispute' or disciplinary action against a member. The Act allows a member or a former member (provided that the application is made within six months of the cessation of their membership) to lodge an application to the Supreme Court or the Magistrates Court if they believe the affairs of the organisation are being conducted in a manner that is oppressive or unreasonable.

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?

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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.

The Act requires associations to have rules regarding the calling of and procedure at general meetings. Check your rules to find out how to call a special general meeting.

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 [www.nfplaw.org.au/meetings](http://www.nfplaw.org.au/meetings).



## 2. Ask CBS to investigate and/or intervene

CBS is the regulator for South Australian incorporated associations and has wide-ranging powers to take action if there is evidence that the dispute involves a breach of the the Act.. The Commissioner (an individual appointed under the Act to oversee charities and not-for-profits established under the Act) can:

- investigate an incorporated association
- fine or prosecute an association (or an individual) for offences under the Act, and
- apply to the Magistrates' Court to appoint a 'statutory manager' to take over the affairs of the association (until the association is stable enough to manage its own affairs again).

A statutory manager can only be appointed if the Commissioner decides to apply to the Magistrates' Court for an order. The court can order that a statutory manager be appointed if it can be demonstrated that the association has been investigated in accordance with the Act and that the appointment would be in the best interests of the members, the association's creditors or the public.

## NOTE

If you are considering asking for help from CBS, 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 1985 (SA)*.



## 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 Not-for-profit Law 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 1985 \(SA\)](#)

✔ [Associations Incorporation Regulations 2008 \(SA\)](#)

This legislation regulates all South Australian incorporated associations.

## South Australian Government

✔ [Consumer and Business Services example rules](#)

A booklet of example rules.

✔ [Law Society of South Australia](#)

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

✔ [Legal Services Commission of South Australia](#)

Provides information about different types of community organisations and processes involved with setting up and running an Incorporated Association.

✔ [A guide to the Associations Incorporation Act 1985](#)

Guidance material to the *Associations Incorporation Act 1985* (SA) produced by Consumer and Business Services South Australia.

## Related Resources

✔ [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](http://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](http://www.nfplaw.org.au)

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