

Dealing with disputes and grievances with members

Legal information for Tasmanian community organisations

This fact sheet covers:

- what is an 'internal dispute' within a Tasmanian 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 Tasmanian 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 dealing with disputes. These rules and procedures are contained in the *Associations Incorporation Act 1964* (Tas) (**the Act**) 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 *Associations Incorporation (Model Rules) Regulations 2007* (Tas) (**model rules**).



TIP

If you are not sure what your association's rules are, you can request a copy of your current constitution from [Consumer Affairs and Fair Trading Tasmania](#).

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 - 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 Tasmania Police (www.police.tas.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. It is likely that your association's rules set out a dispute resolution procedure. If your rules do not say anything about a dispute resolution procedure then rule 34 of the model rules will automatically apply to your organisation. Rule 34 contains a general obligation for internal disputes between a member of an association and the association to be determined by arbitration.

Check your rules to see whether they contain a disputes procedure (sometimes called a grievance or 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 disciplining members then rules 32 and 33 of the model rules apply. These rules deal with expelling members.

Rule 32 sets out a very broad ability to expel a member where the member is 'guilty of conduct detrimental to the interests of the association' which could include action where a member:

- has failed to comply with the rules
- refuses to support the purposes of the association, or
- has engaged in conduct prejudicial to the association.

Rule 33 allows the member to call a meeting of the whole of the association to appeal any proposed expulsion if they wish to challenge the disciplinary action taken against them. At the meeting the committee needs to outline its reasons for the proposed expulsion and the member must be given an opportunity to be heard. The members of the association can then vote to decide to either lift or confirm the expulsion.

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.

Overlap

Rule 34 of the model rules provides that the obligation to arbitrate internal disputes does not affect the expulsion procedure. This means that if an association is taking disciplinary action against a member, that member can start a dispute in relation to the discipline while the procedure is underway. Check your rules to see if there is an overlap on dispute and disciplinary procedures.

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 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

RELATED RESOURCES

For more information about updating your Tasmania incorporated associations rules go to www.nfplaw.org.au/constitution.

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.

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. 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.

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.

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 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 rules to find out how to call a special general meeting. If your rules do not say anything about special general meetings, then Rule 12 of the model rules will automatically apply to your organisation. Rule 12 states that the committee of management can convene a special general meeting 'at any time'. and must convene a special general meeting if at least 10 members make a request.

The Act says that regardless of an organisations rules, a general meeting can be called by 10 per cent or more of the members of an association entitled to vote at the 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.



2. Consumer Affairs and Fair Trading cannot investigate and/or intervene

While Consumer Affairs and Fair Trading is the regulator for Tasmanian incorporated associations it does not have any authority under the *Associations Incorporation Act* to 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. Consumer Affairs and Fair Trading has limited powers to take action only in relation to a breach of the *Associations Incorporation 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 1964 \(Tas\)](#)

This legislation regulates all Victorian incorporated associations.

Tasmanian Government

✔ Consumer Affairs and Fair Trading
www.consumer.tas.gov.au/registrations/incorporated_associations

The government agency is responsible for regulating Tasmanian incorporated associations.

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 Tasmania <http://lst.org.au/>

The Law Society of Tasmania may be able to assist you to locate a lawyer that can provide legal advice

✔ Tasmanian Government Consumer Affairs and Trading
http://www.consumer.tas.gov.au/registrations/incorporated_associations

This is the regulator of incorporated associations in Tasmania.

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

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