

# Dealing with disputes and grievances with members

Legal information for Victorian community organisations

## This fact sheet covers:

- what is an 'internal dispute' within a Victorian 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 Victorian 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 Reform Act 2012* (VIC) (**AIR Act**) and the association's rules or constitution. Some associations use the model rules provided in the AIR Act, and others have drafted their own rules.



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

## 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)?**

If a group is taking disciplinary action against, a member, that member cannot start a grievance in relation to the discipline until the disciplinary procedure has concluded. Similarly, there are laws proposed currently that will prevent an association from starting a disciplinary action when a grievance dispute is being undertaken at the same time.

### 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](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), and
- violence – in these situations the police may need to get involved, and criminal laws may apply. Contact Victoria Police ([www.police.vic.gov.au](http://www.police.vic.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 the model rules, rules 25-29 contain the grievance procedure. If your rules don't say anything about grievance or dispute resolution procedures (this is rare), then the law says that rules 25-29 of the model rules will automatically apply to your organisation.

The model rules contain a two-step procedure. You need to read your rules for details of the procedure, but in short:

- the people involved in the grievance dispute must try to resolve the dispute between themselves, and
- if the dispute isn't resolved the people in dispute must inform the Committee and go to mediation.

## What is a disciplinary procedure?

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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, rules 19-24 contain the disciplinary procedure. The grounds where disciplinary action can be taken are where a member:

- has failed to comply with these Rules
- refuses to support the purposes of the Association, or
- has engaged in conduct prejudicial to 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.

## Overlap

A member who is the subject of a disciplinary procedure cannot initiate a grievance procedure about the same subject matter until the disciplinary procedure has been completed.

# 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 Incorporation Reform Act 2012* 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 Victorian incorporated association's 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?

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 and simpler than going to court, and it is much more likely to get everyone an outcome they can live with, quickly.

If your organisation uses the model rules, they require the people in dispute to go to mediation and mediate 'in good faith'. This means you have to turn up and genuinely try to resolve the dispute, but no one can force you to agree to an outcome at mediation.

The model rules have specific requirements about how a 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

## TIP

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

- 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 (including disputes involving the committee or board) – the mediator must be a person appointed or employed by the Dispute Settlement Centre of Victoria (see the 'Resources' section).

The model rules allow for a member or a former member of the incorporated association to act as mediator in a dispute under the organisation's rules and the model rules require that a member or former member not have bias or personal interest in the 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.

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?

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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.

### RELATED RESOURCES

For general information on disputes involving members of a Victorian 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?

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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. Under the model rules, the committee of management can convene a special general meeting 'whenever it thinks fit'. Also, under the model rules the committee must convene a special general meeting if 10% or more of members make a request.

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.

### 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 CAV to investigate and/or intervene

CAV is the regulator for Victorian incorporated associations and has wide-ranging powers to take action if there is evidence that the dispute involves a breach of the *Associations Incorporation Reform Act*.

For example CAV has powers to:

- 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 CAV decides to apply to the Magistrates' Court for an order. The court can order that a statutory manager be appointed if CAV shows that the association has been investigated in accordance with the *Associations Incorporation Reform Act*, and that appointing a statutory manager is in the best interests of the members, the association's creditors or the public.

## NOTE

If you are considering asking for help from CAV, 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 Reform 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

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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.

- ✔ Secretary's Guide – [www.nfplaw.org.au/secretaryguide](http://www.nfplaw.org.au/secretaryguide)

This guide is designed to help secretaries understand their legal obligations for running an incorporated association in Victoria.

- ✔ 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 Reform Act 2012 \(Vic\)](#)

This legislation regulates all Victorian incorporated associations.

## Victorian Government

- ✔ [Consumer Affairs Victoria](#)

The government agency is responsible for regulating Victorian incorporated associations.

- ✔ [Dispute Settlement Centre of Victoria \(DSCV\)](#)

A free dispute resolution service funded by the Victorian Government.

- ✔ [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.

## 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 Institute of Victoria \(LIV\) - Legal Referral Service](#)

LIV's referral service allows you to locate a lawyer that can provide legal advice on various topics.



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