

# Dealing with disputes and grievances with members

Legal information for Western Australian incorporated associations

## This fact sheet covers:

- what is an 'internal disciplinary action or dispute' within a Western 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 Western 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 2015* (WA) (the Act) 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

On 1 July 2016 the *Associations Incorporation Act 2015* (WA) came into effect. The new law requires a number of matters to be included in association's rules. Associations have until 1 July 2019 to change their own rules to meet the new law requirements, or adopt the new prescribed model rules.

If you are not sure what your association's rules are, you can request a copy of your current constitution from Consumer Protection Division of the Department of Commerce (**Consumer Protection**).

## 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. a complaint about their entitlements) - for information, go to [www.nfplaw.org.au/employeeentitlements](http://www.nfplaw.org.au/employeeentitlements)
- 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)
- violence – in these situations the police may need to get involved and criminal laws may apply. Contact Western Australia police ([www.police.wa.gov.au](http://www.police.wa.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' in your rules 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.

If your organisation uses the model rules found in Schedule 2 of the *Associations Incorporation Regulations 2016*, rules 17-25 contain the dispute resolution procedure. If your rules don't say anything about grievance or dispute resolution procedures (this is rare), then the law says that rules 17-25 of the model rules will automatically apply to your organisation.

The process outlined in the model rules involves the following:

- the people involved in the dispute must try to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party involved
- if the dispute isn't resolved any party to the dispute may start the dispute resolution procedure by notifying the secretary in writing of the parties to the dispute and the matters that are the subject of the dispute
- the committee must meet to consider and determine the dispute, and notify each party to the dispute (in the form prescribed by the rules) of the proposed committee meeting at least 7 days before the meeting is held, and
- there is an opportunity for a mediator to be appointed to assist in the matter.

## 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, depending on your rules.

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 organisation uses the model rules, rules 14-16 contain the disciplinary procedure. Under these rules, the grounds where disciplinary action can be taken are where a member:

- has failed to comply with the rules, or
- acts in a manner contrary to the interests of the association.

The model rules allow a member whose membership is suspended or who is expelled from the association written notice to the secretary requesting the appointment of a mediator. This must be done within 14 days of receiving notice of the committee's decision.

## 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 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 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.

#### RELATED RESOURCES

For more information about updating your Tasmania 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?

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 says (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 the mediator must be appointed by the committee.

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 to 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.

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
- allow each party to the mediation to give due consideration to the written statement required to be given by the other party under the rules, and
- ensure that natural justice is given to the people in dispute throughout the mediation process.

## Is going to court an option?

---

An individual or an incorporated association can have court proceedings brought against it if there are allegations that the rules of the association or the act have been breached. These proceedings must be commenced within 3 years after the day on which the offence is alleged to have been committed.

If a dispute cannot be resolved as per the rules of the association, either the incorporated association concerned or a member of the association involved in the dispute, may make an application to the State Administrative Tribunal to have the dispute determined by the tribunal. The State Administrative Tribunal may also refer the matter, or any aspect of it, to mediation.

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 a last resort.

## 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

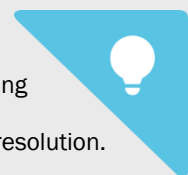
It can be helpful to call a special general meeting of all the members of the incorporated association, to try and sort out what should be done about the organisation's problems.

Check your rules to find out how to call a special general meeting. Under the model rules, the committee of management can convene a special general meeting if the committee believes this is necessary or convenient for the proper management of the association.

Also, under the model rules the committee must convene a special general meeting if 20% or more of members make a 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 about changing legal structure or ending an organisation go to [www.nfplaw.org.au/meetings](http://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 the Consumer Protection to investigate and/or intervene

Consumer Protection is the regulator for Western Australian incorporated associations and can take action if there is evidence of non-compliance with the Act.

For example Consumer Protection has powers to:

- investigate an incorporated association, and
- educate, warn, fine or prosecute an association (or an individual) for offences under the Act.

The executive officer also has the power to apply to the State Administrative Tribunal 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 SAT is of the opinion the incorporated association is not functioning effectively in accordance with the Act, and the appointment is both likely to improve the functioning of the association and is in the best interests of the association.

### NOTE

If you are considering asking for help from Consumer Protection, 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 *Associations Incorporation Act 2015* (WA).



## 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](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 2015 \(WA\)](#)

✔ [Associations Incorporation Regulations 2016 \(WA\)](#)

This legislation regulates all Western Australian incorporated associations.

## Western Australian Government

✔ [Department of Commerce](#)

The government agency is responsible for regulating Western Australian incorporated associations. The website now contains useful guidance on the legislation.

✔ [State Administrative Tribunal](#)

The tribunal can assist with an internal dispute with the website providing useful information for how to apply and the types of matters they can assist with.

✔ [Government of Western Australia Department of Commerce- A guide for incorporated associations in Western Australia](#)

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)

© 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](mailto:nfplaw@justiceconnect.org.au).