

Going to court about an internal dispute

Legal information for NSW community organisations

This fact sheet covers:

- the kinds of internal disputes a New South Wales incorporated association may go to court about, and
- a brief summary of what happens if someone takes legal action against your incorporated association.

As a last resort, there is an option for incorporated associations to go to court to resolve an internal dispute.

Taking court action is stressful, time consuming, and is often very expensive. Going to court should only be considered when all other efforts to resolve a dispute have failed.

Courts have also shown that they are generally reluctant to interfere in the internal affairs of community organisations.

NOTE

An incorporated association has a separate legal identity from its members. In NSW, 'association' means an association registered under the *Associations Incorporation Act 2009 (NSW) (AI Act)*.

What is an 'internal' dispute?

An 'internal dispute' is essentially a dispute or conflict between the people who are bound by the rules of the incorporated association (ie. members and the committee). Examples of common internal disputes are between:

- a member of the organisation and the rest of the organisation
- a member and the committee of management, and
- a committee member and the rest of the committee of management.

The AI Act requires a dispute resolution procedure to be included in the constitution of every incorporated association. Your incorporated association is able to determine its own dispute resolution process. However, if your incorporated association does not include a dispute resolution procedure, then the dispute resolution provision in the Model Rules (detailed in the *Associations Incorporation Regulation 2016 (NSW)*) will apply.

If your dispute is an 'external' dispute (for example between your organisation and a client or a member of the public), go to www.nfplaw.org.au/externalconflict.

CAUTION

Applying to court may exacerbate tension and adversely affect relationships within your incorporated association. If you are in a position to choose, don't go to court unless you have considered the risks very carefully and sought legal advice.



Before going to court, you should try to resolve the dispute using:

- your organisation's grievance (dispute resolution) procedures
- your organisation's disciplinary procedures (if any) to remove a member or committee member, and/or
- mediation – Community Justice Centres offer free mediation services in New South Wales. For more information about the free mediation service, go to www.cjc.justice.nsw.gov.au.

RELATED RESOURCES

Fact sheets on using your organisation's grievance procedure, disciplinary procedure and mediation procedure are available on the Information Hub at www.nfplaw.org.au/disputes. Read them first!

Which internal disputes can be taken to court?

There is no provision in the AI Act for court action arising from escalated internal disputes.

NSW Fair Trading (the entity that regulates incorporated associations in New South Wales) does not have jurisdiction to intervene in internal affairs or resolve disputes of incorporated associations.

It is possible to bring an action in the NSW Supreme Court. This should be considered as a last resort and in many cases, will only be possible after the dispute resolution process set out in the constitution has been completed.

This fact sheet does not cover other types of court actions that may be available in certain circumstances (eg. breach of contract, discrimination and negligence).

CAUTION

Your community organisation should seek legal advice before going to court.

Compliance with the association's rules and purposes

It is important that:

- an incorporated association does not contravene its rules, or act outside its purposes, and
- the management committee of an association must not be knowingly concerned in a contravention by an incorporated association of its rules or purposes.

An incorporated association or a member of an incorporated association can commence proceedings in the NSW Supreme Court in relation to claims that the association:

- has exercised a power that is not allowed under the its constitution
- has exercised a power that the constitution restricts it from exercising, or
- acts outside the scope of the association's statement of purposes.

For example, a member may challenge the validity of a special resolution passed by the committee to expel that member on the basis that the special resolution was not passed in strict accordance with the rules set out in the constitution. What can the court do?

If it finds that one of these things has happened, the court can:

- order that the rules have to be performed or followed by anyone under a duty to perform or follow them
- order the incorporated association to stop acting outside the scope of its statement of purposes
- declare what the rights or obligations of members of the incorporated association are, or what the rights or obligations of the incorporated association are, or
- declare that any act, matter or thing purported to have been done is invalid.

Winding up orders

A member may also seek a winding up order for the incorporated association if the incorporated association has:

- conducted its affairs (including its affairs as trustee of any trust) so as to provide pecuniary gain for its members
- engaged in activities inconsistent with its objects
- acted in the interests of the committee or its members, rather than in accordance with the incorporated association's objects
- acted in any manner that appears to the court to be unfair or unjust to the incorporated association's members, or
- the court is otherwise of the opinion that it is just and equitable for the incorporated association to be wound up.

FURTHER READING

For more information on winding up, see Not-for-profit Law's Ending an Organisation page on the Information Hub at www.nfplaw.org.au/windingup.

REMEMBER

Even court applications that seem simple or straightforward can become expensive and lengthy. If you lose your court action, the court may order you to pay the successful party's costs (eg. cost of their lawyers). However, the court may order a successful party to pay the legal costs of the application if the court thinks that:

- the application was trivial or unreasonable, or
- the unreasonable or improper conduct of a party has caused the application or added to the cost of proceedings.



What if someone takes our association to court?

If your organisation receives a letter or court document about a 'legal action', you should seek legal advice immediately because sometimes time limits apply in relation to defending legal actions. Similarly, if you are considering taking action in court, time limits for bringing an action can apply to you (usually 6 years).

For further information, go to www.nfplaw.org.au/disputes.

How do we know if court action is being taken about an internal dispute?

There are a number of ways your incorporated association may find out about legal action arising from an internal dispute.

Your incorporated association might receive a letter demanding that you do something (like pay money) or stop doing something (like holding a meeting).

The letter may threaten legal action if your organisation does not comply with the demand. Similar threats may be made in person or over the phone.

A letter (or call) threatening legal action does not mean that the person who wrote the letter will actually take legal action.

However, whenever court action is threatened, you should:

- check that your insurance policies cover the threatened action
- tell your insurer about the threat, and
- seek legal advice about the likelihood of the legal action occurring and what defences your organisation may have, and the options available to you.

What should we do if someone takes legal action against us over an internal dispute?

1. Make sure the right people know

Your board or committee of management should be informed of threatened legal action, but there may be reasons (for example, privacy reasons) why you should not inform all staff or volunteers about a legal action. Seek legal advice about who should be informed of the legal action.

2. Notify your insurer

Notify your insurer immediately.

Can our incorporated association be required to pay legal costs?

Yes. Incorporated associations are treated in the same way as any other potential plaintiff or defendant in legal proceedings.

Generally, costs are awarded against the party who loses the case (which means the losing party needs to pay their own court costs as well as some of the costs of the party that won).

Doesn't being an incorporated association mean people can't take us to court?

No. Just because your organisation is an incorporated association doesn't mean people can't take legal action against your organisation.

The benefit of 'limited liability' that comes with incorporation, is that members of the organisation are not personally liable for debts and liabilities of the organisation (including legal costs).

However, limited liability does not mean that legal action cannot be taken against your organisation. If your organisation is found to be legally responsible and is ordered by a court to pay costs, then all of the assets of the organisation (including membership fees, money in bank accounts, assets etc.) must be made available to meet those costs.

Also, in very limited circumstances, members of a committee of management or board of an organisation may be personally liable to pay costs (from their own savings and assets). This usually only occurs where there are cases of very serious breaches of the law.

FURTHER READING

For more information on limited liability and responsibility of board members, go to Not-for-profit Law's Information Hub page on Governance at www.nfplaw.org.au/governance.

Resources

Related Not-for-profit Law Resources

The following Not-for-profit Law Information Hub (www.nfplaw.org.au) resources are relevant to this topic:

- ✔ Disputes – www.nfplaw.org.au/disputes
- ✔ Secretary's Satchel – www.nfplaw.org.au/secretaryguide
- ✔ Governance – www.nfplaw.org.au/governance

Legislation

- ✔ [Associations Incorporation Act 2009 \(NSW\)](#)
- ✔ [Associations Incorporation Regulation 2016 \(NSW\)](#)

This legislation regulates all incorporated associations in NSW.

New South Wales Government

- ✔ [NSW Fair Trading](#)

The government agency responsible for regulating incorporated associations in New South Wales.

- ✔ [NSW Community Justice Centres](#)

A free dispute resolution service funded by the New South Wales Government.

Extra 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.

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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