

Dealing with disputes and grievances with members (QLD)

Legal information for Queensland incorporated associations

This fact sheet covers:

- ▶ what is an 'internal dispute' within a Queensland incorporated association?
 - ▶ what to do when there is an internal dispute in your association
 - ▶ how mediation can help resolve a dispute
 - ▶ other options if your association is in disarray, and
 - ▶ what kinds of internal disputes can be taken to court?
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This fact sheet is designed to help Queensland incorporated associations handle disputes or grievances within their associations effectively and legally.

All associations face disputes and grievances at some point. When conflict starts disrupting your activities, you need to resolve it, properly and quickly.

Note

This fact sheet provides general legal information. This information is intended as a guide only and is not legal advice. If you or your association has a specific legal issue, you should seek specific legal advice before deciding what to do.

Refer to [the full disclaimer](#) that applies to this fact sheet.

There are rules and procedures for resolving internal disputes in incorporated associations.

These rules and procedures are contained in:

- the [Associations Incorporation Act 1981 \(QLD\) \(Act\)](#), and
- the association's rules or constitution

Some associations use the [model rules](#) found in the Act, while others have drafted their own rules.



Tip

While your rules can refer to procedures and provide guidance for resolving internal disputes, they don't need to cover the whole process.

It's a good idea to set out further dispute resolution details and processes in organisational policies. This can give members greater guidance and confidence about the processes that must be followed.



Tip

If you're not sure what your association's rules are, you can request a copy of your current constitution from [QLD Office of Fair Trading \(OFT\)](#).

What kind of dispute is this? Who is involved?

Knowing the issue and who it involves is important because different procedures will apply.

Questions to ask are

1. Is the association dealing with conflict?

Often this conflict (commonly called an 'internal dispute') will be between:

- members of the association and the rest of the association
- members and the committee of management, or
- committee of management (board) members

2. Is the association 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 association)?



More information

This fact sheet relates to the kind of disputes mentioned above. It doesn't 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 our resources on:

- [Employees](#) (for example, an issue with their superannuation)
- [Volunteers](#) (for example, a complaint of sexual harassment)
- [Work Health and Safety](#) (situations that may endanger the health and safety of people in the workplace like bullying)



Note

In situations of violence, the police may need to get involved, and criminal laws may apply. Contact [Queensland Police](#), or in an emergency call 000.

What should you do if there is an internal dispute?

First, check the rules (or constitution) of your incorporated association.

Under changes made to the Act by the *Associations Incorporation and Other Legislation Amendment Act 2020 (QLD)*, incorporated associations are required to have an internal grievance procedure or dispute resolution process in place by 22 June 2022.

If an association doesn't have a grievance procedure in place by 22 June 2022, it will need to follow the grievance procedure set out in the model rules. The model rules grievance procedure has not yet been published.

It is understood that under the grievance procedure:

- a member may appoint any person to act on their behalf,
- each party involved will be given an opportunity to be heard, and
- if the dispute can't be resolved among the parties, the parties must participate in mediation

If an incorporated association wants to use their own dispute resolution process, they will need to include it in their rules by passing a special resolution.

What is a dispute resolution procedure?

A dispute resolution procedure is used where there is an internal dispute in an incorporated association.

Dispute resolution procedures generally provide your association with a process to follow to try to settle conflict between:

- members (including committee members), or
- a member (including committee member) and the association

What is a disciplinary procedure?

Incorporated associations 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). Depending on your rule, disciplinary action can include a sanction, a fine, or suspension or cancellation of membership.

Many associations have a disciplinary procedure in their rules, but they don't have to. If there is a procedure in the rules, it should be followed.

Model rule 10 allows the management committee to terminate the membership of a member who:

- is convicted of certain offences
- does not comply with the association's rules
- has membership fees in arrears for at least two months, and
- acts in a way considered 'injurious or prejudicial' to the associations interests or characters

Rule 10 also requires that the committee give the member an opportunity to show why their membership should be kept. Members can appeal a termination under model rule 11 through a general meeting of all members.

If your rules don't mention how membership of the association ends, the model rules might automatically apply. If you are unsure, seek legal advice.



Note

'Disciplinary procedures' are different from dispute resolution (grievance) procedures under an association's rules. Disciplinary procedures involve steps to remove, suspend or fine a member of an incorporated association in specified circumstances.

Procedures and procedural fairness

You should follow your association's rules (and procedures) closely – otherwise the outcome might not be legal, and your association could be taken to court.



Note

Although your association must follow the procedures in its rules, the association (and those it appoints), must also make sure the processes it follows are fair and proper. Otherwise, any outcome could be challenged by the member involved.

The Act 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 rules say anything to the contrary, that rule would be considered 'struck out'. If you are unsure, seek legal advice.



More information

For more information about updating your Queensland incorporated associations rules, see our webpage on [rules and constitutions](#).

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's more likely to reach an agreed outcome quickly.

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.

As a general rule, the mediator should be chosen and agreed on by both parties.

If both parties can't agree:

- if the dispute is between a member and another member – the mediator could be appointed by the committee of management of the association, or



- if the dispute is between a member and the association (including disputes involving the committee or board) – the mediator could be a person appointed by a third party such as the Queensland Law Society or the Office of Fair Trading

While a current member or a former member of the incorporated association could act as mediator in a dispute under the association's rules, this is not best practice.

It's better if the mediator doesn't have a history of any relationship with the people in dispute or the association. If a member of your association is going to be the mediator, make sure that person can do so in an impartial and independent way to ensure the principles of natural justice are observed.



More information

For more information see our [webpage on mediation](#).

Is going to court an option?

The law provides options for going to court about an 'internal dispute' or disciplinary action against a member. This is particularly where an association has 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 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 can't be resolved without the intervention of a court.

The association is in disarray. Are there other options?

Sometimes even when you follow your association's grievance procedures, the situation doesn't resolve.

There are other options, depending on the circumstances, which may be able to break a 'deadlock' situation or avoid the association ending up in court.

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 resolve the association's problems.

Check your rules to find out how to call a special general meeting. Under the model rules, the secretary must call a special general meeting if directed by the management committee or if:

- at least 33% of the members of the management committee requests a special general meeting in writing
- a certain number of members of the association (being double the number of members on the management committee, plus one) request a special general meeting in writing, or
- the secretary has been given written notice of an intention to appeal against a decision of the management committee to reject an application for membership or terminate a person's membership

The management committee also can direct for a special general meeting to be called if it agrees a meeting is necessary.

If you think the meeting may be difficult to control, consider getting an independent person to sit in or oversee running 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 (for example, 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 [our webpage on meetings](#).

Ask the Office of Fair Trading to investigate or intervene

The [Queensland Office of Fair Trading](#) (the regulator for Queensland incorporated associations) has wide-ranging powers to take action if there is evidence that the dispute involves a breach of the Act.

While the Office of Fair Trading can investigate the affairs of your association, if it's suspected the association is acting in a manner inconsistent with the Act or in breach of its rules, the association may be referred to the Supreme Court. Only the Supreme Court can make orders about how you run your association.



Note

If you are considering asking for help from the Office of Fair Trading, you should provide clear documentation and history of the dispute, the attempts to resolve the issue, and the ways in which the dispute involves breaches of the Act.

Leave the association

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 association is voluntary. Often the best option may be to simply leave the association.



More information

- [Queensland Law Society](#)
Provides community legal education and engages in activities designed to improve access to justice
- [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