

# Going to court about an internal dispute (Vic)

Legal information for Victorian incorporated associations

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## This fact sheet covers:

- ▶ following a dispute resolution procedure
  - ▶ the kinds of internal disputes a Victorian incorporated association can go to court about, and
  - ▶ what happens if legal action is taken against your association
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**This fact sheet is relevant to Victorian incorporated associations. If your community organisation has another legal structure, this fact sheet does not cover your circumstances.**

**For some types of internal disputes, a Victorian incorporated association may go to court to resolve the dispute as a last resort.**

Taking court action is stressful, time consuming, and is often very expensive. Court action 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

This fact sheet provides general information for Victorian incorporated associations about going to court about an internal dispute. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

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

## 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 of management).

Examples of common internal disputes are between:

- a member of the association and the rest of the association
- a member and the committee, and
- a committee member and the rest of the committee



## Which dispute resolution procedure applies?

When trying to resolve an internal dispute, your association must observe:

- the legal requirements under the *Associations Incorporation Reform Act 2012 (Vic)* (**AIR Act**), and
- your association's rules or 'constitution' (the written document that sets out how the association is governed)

Under the AIR Act, an incorporated association's rule must contain a grievance procedure (a dispute resolution procedure) for disputes between members and disputes between a member and the association itself (note – this does not apply to disputes between a member and the committee or disputes among committee members).

Your association can set out its own grievance procedure in its rules, but if it doesn't, the grievance procedure in the model rules (see below) will automatically apply.



### Model rules

The model rules are set out in Schedule 4 of the *Association Incorporation Reform Regulations 2012 (Vic)* (**AIR Regulations**) and published on the [Consumer Affairs website](#). Your association can choose to use the model rules or write its own rules.



### More information

If your dispute is an external dispute (for example between your association and a client or a member of the public), see [our webpage on handling disputes and conflicts](#).



### Caution

Applying to court may exacerbate tension and adversely affect relationships in your incorporated association. It should be avoided if you have any alternatives. Don't go to court unless you have considered the risks very carefully and sought legal advice.

**Before going to court, try to resolve the dispute using:**

- your association's grievance (dispute resolution) procedures
- your association's disciplinary procedures (if any) to remove a troublesome member or committee member, or
- mediation

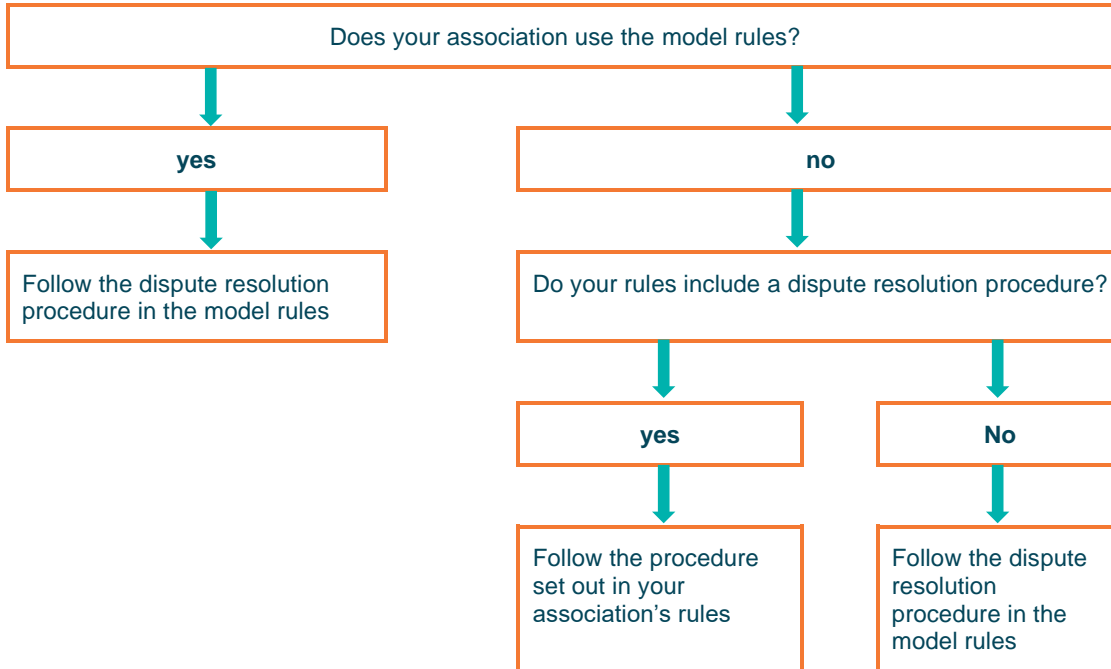


### More information

For more information, see [our webpage on disputes with members](#) and [our webpage on using mediation to resolve conflicts and disputes](#).



Use this flow chart to work out which dispute resolution procedure applies:



If the model rules apply, the process is as follows:

- the parties to the dispute must attempt to resolve it between themselves within 14 days
- if the parties are unable to resolve the dispute within 14 days, within 10 days they must notify the committee, agree to or request the appointment of a mediator, and attempt to settle the dispute via mediation, and
- if the mediation process does not resolve the dispute the parties may then use other legal processes to attempt to resolve the dispute (for example, court action)

## Which internal disputes can be taken to court?

The AIR Act provides for two main types of court actions that stem from escalated internal dispute situations:

- non-compliance with the association's rules, and
- oppressive conduct

This fact sheet does not cover other types of court actions that may be available in certain circumstances (for example, breach of contract, discrimination, or negligence), nor the criminal repercussions of certain actions such as fraud or dishonest use of position.



### Caution

Applying to court may exacerbate tension and adversely affect relationships in your incorporated association. It should be avoided if you have any other alternatives. Don't go to court unless you have considered the risks very carefully and sought legal advice.



## Non-compliance with the association's rules and purposes

### What is non-compliance with the association's rules and purposes?

An incorporated association must not:

- exercise a power that is not allowed under its rules
- exercise a power that its rules restrict it from exercising, or
- act outside the scope of its purposes (the activities it was established to perform – these are set out in the rules and are sometimes called 'objects')

If an incorporated association does any of these things, the association, a member of the association, or the Registrar (if it's in the public interest) can apply to the Magistrates' Court to enforce an incorporated association's rules.

### What can the court do?

If the court finds that incorporated association has done any of these things, it can make an order to:

- direct that the rules must be performed or followed by anyone under a duty to perform or follow them
- restrain the incorporated association from acting outside the scope of its statement of purposes, or
- declare what the rights or obligations of members of the incorporated association are, or what the rights or obligations of the incorporated association are

Even if a party proves that the rules or purposes have been contravened, the magistrate can refuse to make an order in the case if they think:

- the issue is trivial
- given the circumstances, it is unreasonable to go to court, or
- the unreasonable or improper conduct of a party has resulted in court action, or has added to the cost of the proceedings

## Treating a member unfairly or acting against the interests of members (oppressive conduct)

A member (or former member) of an incorporated association can apply to the Magistrates' Court for an order that the association has engaged in, or proposes to engage in, 'oppressive conduct'.



### Note

If a former member is taking an association to court, the application must be made within six months of the person no longer being a member, unless the court gives leave for that time to be extended (but only if there is sufficient public interest to do so).

### What is 'oppressive conduct'?

Oppressive conduct means acting, or refusing or failing to take action that is:

- unfairly prejudicial to, or unfairly discriminatory against, a member (including in the member's capacity as a member of the committee), or
- against the interests of the members of the association as a whole

### What can the court do?

If the court finds there is or has been oppressive conduct, it can make an order that:

- regulates the conduct of the incorporated association's affairs in the future
- directs the incorporated association to start, defend or discontinue a court action, or authorises a member of the association to do so on behalf of the association
- stops a person from doing a specific act or thing
- requires a person to do a specific act or thing
- the rules of the association be altered



- a former member be reinstated, or
- a person's membership of the association be terminated

The court may also make any other order needed to remedy the oppressive conduct, except an order that the incorporated association must be wound up.

If the court considers winding up is required, then the case must be transferred to the Supreme Court.



### Case example – oppressive conduct

In *Christine Moala and Others v Free Wesleyan Church of Tonga in Australia (Victoria) Inc* [2022] VSC 335, an association's committee had rejected a number of applications for membership of the association.

A group of members argued that the rejected applicants met the eligibility criteria under the association's rules. They applied to the court for an order to direct the association observe its rules as well as orders in relation to oppressive conduct. The association argued that it was in its discretion to reject or accept applications.

The court found that the committee:

- wasn't bound to accept the applications for membership, even if they met the eligibility requirements, but
- must exercise its discretion in good faith and having regard to the purposes of the association

In the circumstances, the court decided the committee had exercised this power appropriately and it was not oppressive conduct to reject the applications.

The court also considered what may be oppressive conduct in assessing membership applications and said a committee can't:

- make enquiries of applicants, or impose requirements, that have no rational connection to whether they satisfy the eligibility criteria
- make the application process harder on some groups of applicants
- reject people it doesn't like or who were unsuccessful candidates for the committee, or
- reject people because they have different views about certain procedures or operations of the association



### Remember

Even court applications that seem simple or straightforward can become expensive and lengthy.

The court may order a party (including a successful one) to pay the legal costs of the other party 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 your association to court?

If your association receives a letter or court document about a 'legal action', seek legal advice immediately because time limits are likely to apply in relation to defending legal actions.



### More information

For more information, go to [our webpage on handling disputes and conflicts](#), which includes fact sheets on being taken to court and responding to a subpoena.

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

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

### Letter

Your association may receive a letter demanding that you do something (for example, pay money) or stop doing something (for example, holding a meeting).

The letter may threaten legal action if your association doesn't 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 take legal action. However, you should seek legal advice about the likelihood of the legal action occurring and what defences your association may have.

Also see the comments below regarding steps to take if someone takes action.

### Complaint

A complaint form (Form 5A) is used to start legal action in the Magistrates' Court in Victoria.

If a person decides to take your association to court about an internal dispute, they 'commence proceedings' and will be known as the 'plaintiff'. If they commence proceedings against your association, your association will be known as the 'defendant'.

The plaintiff takes their complaint form to the court to be stamped and a copy is then 'served on' (officially delivered to) the defendant.

The document gives the basic details of the claim (the plaintiff's side of the case).

Read all of the documents carefully and seek legal advice if your association receives these documents.

It's important to seek advice and take action as soon as possible. If your association intends to defend the proceedings, very short time frames can apply for you to notify the court.



### More information

For more information, go to [the Magistrates' Court webpage on starting a civil matter](#).

## What should you do if someone takes legal action against your association over an internal dispute?

### Seek legal advice

Seek legal advice on the most appropriate course of action for your association and what defences it may have.

### Make sure the right people know

Your committee should be informed, but there may be reasons (for example, privacy reasons) why you should not inform all staff or volunteers about a legal action. Check this with your lawyer.

**Notify your insurer**

Check your insurance policies cover legal action and notify your insurer immediately, if you have one.

**Can your incorporated association be required to pay legal costs?**

Yes. Incorporated associations are treated in the same way as any other 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). So an incorporated association may be required to pay legal costs (if ordered by the court).

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

No. Just because your association is incorporated 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 association are not personally liable for debts of the association (including legal costs).

Limited liability does **not** mean that your association is immune to legal action. If your association is found to be legally responsible and is ordered by a court to pay costs, all the assets of the association (including any unpaid 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 (sometimes referred to as a 'board') 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.

**More information**

For more information on limited liability and the responsibilities of board members, see [our webpage on responsibilities of the board and committee members](#).