

Being taken to court

Legal information for community organisations

This fact sheet covers:

- ▶ finding out that legal action is being taken against your organisation
 - ▶ what you should do if legal action is being taken against your organisation
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This fact sheet provides a basic overview of what to expect and do if your organisation is being taken to court.

It is very important to get the right advice and respond in a timely way to any threatened or actual court action taken against your organisation.



Note

This fact sheet provides general information about going to court. 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.

How will you know if someone is trying to take your organisation to court?

There are a number of ways your organisation may find out about legal action.

Letter Your organisation 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.

Take the following action:

- seek legal advice about the likelihood of the legal action occurring and what defences your organisation may have, and



- check that your insurance policies (if you have insurance), cover the threatened action and, where applicable tell your insurer about the threat

Court form

If a person wants to take legal action against your organisation, they start the action by issuing one of the forms listed below in the relevant court. They are usually known as the 'plaintiff' or 'applicant'.

The person or organisation who they are taking the legal action against is usually known as the 'defendant' or 'respondent'.

The plaintiff or applicant takes the relevant form to court to be stamped and a copy is then 'served on' (officially delivered to) the defendant or respondent.

Your organisation should take a statement of claim or summons very seriously and seek legal advice promptly.



Note

To lodge these forms, payment of fees will be required.

The forms used to start legal action differ between the states and territories:

| State or territory | Courts | Name of forms |
|--------------------|--------------------|--|
| Victoria | Magistrates' Court | Complaint |
| | County Court | Writ (accompanied by statement of claim) or originating motion, depending on the claim |
| | Supreme Court | Writ (accompanied by statement of claim) or originating motion, depending on the claim |
| New South Wales | Local Court | Statement of claim |
| | District Court | Statement of claim or summons, depending on the claim |
| | Supreme Court | Statement of claim or summons, depending on the claim |
| Queensland | Magistrates' Court | Claim and statement of claim (filed together) (applies to Magistrates' Court, District Court and Supreme Court) |
| | District Court | |
| | Supreme Court | |
| Western Australia | Magistrates' Court | General procedure claim (but dependent on the nature of claim) |
| | District Court | Writ accompanied by statement of claim or indorsement of claim, depending on the claim |
| | Supreme Court | Writ accompanied by statement of claim or indorsement of claim, depending on the claim |
| South Australia | Magistrates' Court | Application accompanied by supporting affidavit depending on claim (applies to Magistrates' Court, District Court and Supreme Court) |
| | District Court | |
| | Supreme Court | |
| Northern Territory | Local Court | Statement of claim or originating application, depending on the claim |
| | Supreme Court | Writ accompanied by a statement of claim or other sufficient statement or originating motion accompanied by a supporting affidavit, depending on the claim |



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| Australian Capital Territory | Magistrates' Court Supreme Court | Originating claim accompanied by a statement of claim or originating application, depending on the claim (applies to Magistrates' Court and Supreme Court) |
| Tasmania | Magistrates' Court Supreme Court | Claim Writ accompanied by a statement of claim or other sufficient statement, or originating application, depending on the claim |



Caution

If your organisation receives court documents, it's important to act immediately.

If your organisation intends to defend the proceedings, very short time frames apply for you to notify the court.

Notice from a tribunal or commission

Across Australia there are a number of tribunals (like the Administrative Appeals Tribunal) and commissions (like the Fair Work Commission, and the Australian Securities and Investments Commission) which deal with certain legal issues.

If your organisation receives a '**notice of hearing**' it means that someone has named your organisation as a defendant or respondent in an application to a tribunal or commission and has started legal action against your organisation.

Even if you think there is no validity to the claim, your organisation should seek legal advice. You may need to lodge certain documents before the hearing date.

Not all applications made to tribunals or commissions proceed to a stage where there is a hearing. Many disputes are resolved before a formal decision by the tribunal through mediation, directions hearing or compulsory conference.



More information

For more information on mediation, go to [our webpage on mediation](#).

| Commonwealth, state or territory | Administrative tribunal | Examples of other tribunals or commissions |
|----------------------------------|--|---|
| Commonwealth | Administrative Appeals Tribunal (AAT) | National Native Title Tribunal Copyright Tribunal of Australia Fair Work Commission |
| Victoria | Victorian Civil and Administrative Tribunal (VCAT) | Victims of Crime Assistance Tribunal Mental Health Tribunal |
| New South Wales | NSW Civil and Administrative Tribunal (NCAT) | Mental Health Review Tribunal The Personal Injury Commission Industrial Relations Commission of NSW |
| Queensland | Queensland Civil and Administrative Tribunal (QCAT) | Land and Resources Tribunal Anti-Discrimination Commission |



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|-------------------------------------|---|---|
| Western Australia | State Administrative Tribunal (SAT) | Western Australian Industrial Relations Commission National Native Title Tribunal |
| South Australia | South Australian Civil and Administrative Tribunal (SACAT) | South Australia Employment Tribunal |
| Northern Territory | Northern Territory Civil and Administrative Tribunal (NTCAT) | Mental Health Review Tribunal Lands, Planning and Mining Tribunal |
| Australian Capital Territory | ACT Civil and Administrative Tribunal | ACT Remuneration Tribunal ACT Human Rights Commission Office of the Commissioner for Sustainability and the Environment |
| Tasmania | Tasmanian Civil and Administrative Tribunal (TASCAT) | Tasmanian Industrial Commission |



More information – Australian courts and tribunals

- [NSW courts and tribunals](#)
- [Court Services Victoria](#)
- [The Courts Administration Authority of South Australia](#)
- [Supreme Court of the Northern Territory](#)
- [The Northern Territory Local Court](#)
- [Courts and Tribunals Tasmania](#)
- [Court and Tribunal Services Western Australia](#)
- [ACT courts](#)
- [Queensland courts](#)

Prosecution Your organisation may also receive notice that it is being prosecuted for an offence.

This may happen if a prosecuting authority thinks your organisation has not complied with the law. The prosecuting authority may be the State or Federal Police or a regulator (like Worksafe Tasmania or the Queensland Office of Fair Trading).

A prosecuting authority must prosecute in accordance with the law. Your organisation may have a valid defence.

What should you do if someone takes legal action against your organisation?

Seek immediate legal advice

If your organisation receives a letter or court document about a 'legal action' or prosecution, seek legal advice immediately because time limits may apply to defending legal actions.

As different rules apply to each kind of community organisation, seek specific advice from a lawyer.



Read the documents carefully

Read the documents carefully. Look at who is named as a party to the legal action. Also look for information in the accompanying material about timeframes that apply.

Make sure the right people know - but be careful who you tell

Inform your board or committee of management.

There may be reasons not to inform all staff or volunteers about a legal action. For example, you could open yourself to a defamation claim or you might be in breach of your legal obligations with respect to privacy. Check this with your lawyer.

Notify your insurer

As soon as your organisation receives any indication that a claim could be made against it, notify your insurer immediately (if your organisation has insurance).

Can legal costs be awarded against your organisation?

Yes. Not-for-profit community organisations are treated in the same way as any other potential plaintiff or defendant in legal proceedings.

Generally, in court proceedings, costs are awarded against the party who loses the case. This means that if you are advised by your lawyer that losing the case is a likely outcome, your organisation carefully should consider agreeing to a pre-trial settlement.

Can an incorporated association be taken to court?

Yes. Just because your organisation 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 organisation are not personally liable for debts of the organisation (including legal costs). Generally, 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 the assets of the organisation (including any unpaid membership fees, money in bank accounts, assets etc.) must be made available to meet those costs.

Also, in 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 is uncommon.

Can an unincorporated group be taken to court?

The members of your group, separately or together, can be taken to court. If you receive an indication that court action may be taken, your group should seek immediate legal advice.

It may be necessary for the committee of management or other members of your group who exercise control over its affairs to seek separate, personal, legal advice.



More information

For more information about incorporating your organisation see our webpage on [the incorporation decision](#).

Will your insurance cover the costs of the legal action?

Maybe. This will depend on the terms and conditions of any insurance your organisation has and the circumstances of the legal action. Check with your insurer and seek legal advice if you don't agree with your insurer's decision.

Other court documents your organisation might receive

Subpoena A subpoena is an order issued by a court or tribunal in response to a request by a party to a civil or criminal proceeding requiring another person to attend that court or tribunal to give evidence, or to produce a document or thing within that other person's possession, or both. The other person is not a party to the proceeding.

Failing to comply with a subpoena without a lawful excuse is a contempt of court and the person can be punished, including by being fined or (in rare cases) imprisoned.

A subpoena does not necessarily mean that someone is taking legal action against your organisation. It could be that two other parties are involved in litigation and as part of that litigation, have applied to the court for a subpoena for documents relevant to their action, which may include documents held by your organisation.

If your organisation receives a subpoena to attend court or produce documents, seek legal advice immediately.

You may be able to apply to the court to have the subpoena set aside, including on grounds such as:

- complying with the subpoena is onerous and burdensome
- the subpoena is too wide in its terms, is oppressive and amounts to a 'fishing expedition', or
- the documents covered by the subpoena are not relevant for the purposes of disposing fairly of the proceedings

You may also need to seek advice about your organisation's privacy and confidentiality obligations. Privacy and confidentiality obligations may not be sufficient to refuse to provide information requested by the court. It may be possible to provide documents with certain parts (such as personal information) removed ('redacted').



More information

For more information, see [our fact sheet on subpoenas](#).

Warrant or order for entry, inspection, search, seizure

Across Australian states and territories, various laws give government authorities the power to enter property and inspect, search, and take away certain materials.

For example, under NSW Work Health and Safety legislation, SafeWork NSW has powers to enter a workplace to undertake investigations. Similar powers exist for each work and healthy safety authorities in each state or territory.

There are laws that the authorities must comply with when they undertake these searches. If the search isn't exercised in accordance with the law, your organisation may have a legal right to challenge it.

However, it's usually an offence (with quite significant penalties) not to comply with, or to obstruct, such investigations. Read any documentation provided to you carefully, and seek legal advice as soon as possible.



More information

For more information about work, health and safety laws, see our [WHS webpage](#).

Being taken to court in another jurisdiction

If your organisation is involved in legal proceedings in another Australian state or territory you may be able to transfer the proceedings to a more appropriate jurisdiction. When deciding whether to transfer the proceedings the court will consider:

- where the parties to a proceeding live
- where the dispute arose
- whether any contracts between the parties specify a jurisdiction
- what is in the interest of justice, ultimately facilitating the most timely and efficient resolution

It's also possible to transfer a proceeding within a state if you feel there is a more relevant court to hear the proceedings. This may happen if there is a related matter already being heard in a court, or a particular court has special expertise.