

Disputes with members (NSW)

Legal information for NSW incorporated associations

This fact sheet covers:

- ▶ what is an 'internal dispute' in an NSW incorporated association?
- ▶ what to do when there is an internal dispute in your association
- ▶ how mediation can help resolve a dispute
- ▶ other options, and
- ▶ what kinds of internal disputes can be taken to court?

This fact sheet is designed to help NSW 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.



Disclaimer

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 2009 \(NSW\) \(Act\)](#), and
- the association's constitution (or rules)

Some associations use [the model constitution](#) set out in the [Associations Incorporation Regulation 2022 \(NSW\)](#), and others draft their own constitution.



Rules or constitution

The 'rules' of an incorporated association may also be called a 'constitution'.

In this fact sheet, we've used the word 'constitution'.

**Tip**

While your constitution can refer to procedures and provide guidance for resolving internal disputes, it doesn'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 are not sure what your association's constitution is, you can write to the secretary of your association and request to inspect or be provided with a copy of the association's constitution. You may be required to pay a fee for a hard copy of the constitution.

If your association is a charity, you can find its constitution on the Australian Charities and Not-for-profits Commission's [online charity register](#), although it's still a good idea to check with the association that the constitution on the register is current.

You can also request a copy of your current constitution from [NSW Fair Trading](#).

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:

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 constitution or engaged in other improper behaviour?

For example, harassing other members, or acting in a way that harms the association



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 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 [NSW Police](#), or in an emergency call 000.

What should you do if there is an internal dispute?

First, check the constitution of your incorporated association.

In NSW, an incorporated association's constitution is required to set out:

- a procedure for dealing with grievances (or disputes), and
- a procedure for disciplining members

Grievances and disciplinary procedures are explained further below.

Follow your rules 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 constitution.

The 'resolution of disputes' section in your constitution provides 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

An association's dispute resolution procedure should:

- give each party to a dispute an opportunity to be heard, and
- be determined by an unbiased decision maker

If your association uses the [model constitution](#), clause 10 contains the dispute resolution procedure.

If your constitution doesn't say anything about grievance or dispute resolution procedures (this is rare), clause 10 of the [model constitution](#) will automatically apply to your association.

Some older constitutions might not contain all the provisions of the current model constitution – it's a good idea to amend your rules to ensure they contain all the provisions required.



See [our webpage on constitutions](#) for more information about updating your NSW incorporated association's rules.

The [model constitution](#) contains a two-step procedure – if the people involved in the dispute can't resolve the dispute between them:

- the dispute will be referred to a community justice centre for mediation, and
- if the dispute isn't resolved by mediation, the dispute must be referred to arbitration

Read your constitution for details of the procedure.



NSW Fair Trading has published information on [resolving disputes in incorporated associations](#).

What is a disciplinary procedure?

Incorporated associations are allowed, under law, to discipline members.

Disciplinary action is taken when a member has breached the constitution or engaged in other improper behaviour (such as harassing other members or acting in a way that harms the association). Depending on your constitution, disciplinary action could include a sanction, a fine, or suspension or cancellation of membership.

Many associations have a disciplinary procedure in their constitution, but they don't have to.

If your constitution includes a disciplinary procedure, it should be followed. If your association uses the model constitution, clauses 11 and 12 contain the disciplinary procedure.

Disciplinary action can be taken if a member has:

- refused or neglected to comply with the constitution, or
- acted in a manner prejudicial to the interests of the association



Note

'Disciplinary procedures' are different from dispute resolution procedures under an association's constitution. 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 constitution (and procedures) very closely – otherwise the outcome might not be legal, or your association could be taken to court.



Note

Although your association must follow the procedures in the constitution, 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 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).



Note

If you are uncertain about processes to follow, you may need to seek specific legal advice.

What is mediation and how can it help?

Mediation is a voluntary, confidential process that can be used to help resolve disputes. Consider including provisions in your association's constitution that allow for mediation 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, simpler and quicker 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 seek legal advice.

Check what your constitution says (if anything) about choosing a mediator.

If your association uses the [model constitution](#), the dispute will be referred to a NSW Community Justice Centre for mediation.



- See [our webpage on mediation](#) for more information on mediation.
- NSW Community Justice Centres provide free mediation to help people resolve disputes. The mediation is run by impartial, trained mediators who don't have a history or any relationship with the people in dispute or the association.

More information about mediation at NSW Community Justice Centres can be found at [NSW Justice – Mediation at CJC](#).

Is going to court an option?

There are 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 constitution or 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.



For general information on disputes involving members of a NSW incorporated association which can go to court, see our fact sheet: '[Going to court about an internal dispute](#)'.

The association is in disarray. Are there other options?

Sometimes, even when you follow your association'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 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 constitution to find out how to call a special general meeting. Under the [model constitution](#), the committee of management can convene a special general meeting 'whenever it thinks fit'. The model constitution also provides that the committee must convene a special general meeting if 5% or more of members request one.



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 holding meetings](#).

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.

Ask NSW Fair Trading to investigate or intervene

NSW Fair Trading (the regulator for NSW incorporated associations) has wide-ranging powers to take action if there is evidence that the dispute involves a breach of the Associations Incorporation Act 2009 (NSW) (Act) or the Associations Incorporation Regulation 2022 (NSW) (Regulation).

For example, NSW Fair Trading has powers to:

- investigate an incorporated association, and
- fine or prosecute an association (or a person) for offences under the Act

Examples of breaches of the Act and Regulation that NSW Fair Trading can investigate include:

- failure to conduct annual general meetings within the prescribed time
- failure to keep proper financial records
- failure to fill a vacant position of public officer, and
- dishonest use of information or position by a committee member



Note

Generally, NSW Fair Trading will only act on concerns where there is a serious risk to public trust and confidence, and they relate to an association's compliance with requirements of the Act.

NSW Fair Trading also can't intervene in matters relating to the internal administration of an association that don't involve a breach of the Act, which is often the situation for internal disputes.

If you are considering asking for help from NSW Fair Trading, you will need to:

- 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 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.



For more information:

- [NSW Fair Trading](#)

The government agency responsible for regulating NSW incorporated associations.

- [LawAccess NSW](#)

LawAccess is a free government telephone service that provides legal information and referrals for people in NSW.

- [The Law Society of NSW - Solicitor Referral Service](#)

The Law Society of NSW's referral service allows you to locate a lawyer that can provide legal advice on various topics

- [Commonwealth Attorney-General's Department – Alternative Dispute Resolution](#)

The Attorney-General's Department provides advice on dispute resolution and has published a guide to help understand alternative dispute resolution and resolving disputes generally.