

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

This fact sheet explains what to do if someone threatens legal action against your organisation or starts court, tribunal or other legal proceedings.

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



Disclaimer

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. A person may threaten legal action to encourage your organisation to comply with a demand. Taking legal action involves a significant investment of time and cost, so threats could be made with no intention of following through.

However, that is not always the case, particularly if the letter has come from a lawyer (as lawyers are not permitted to threaten the start of legal action without instructions to do so). As

such, it is always important to take the following actions if you are threatened with a demand or legal action:

- seek legal advice about the likelihood of proceedings being started and any 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. If you have an insurance broker, they can help you to identify any insurance policies that might provide cover.

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 court documents very seriously and seek legal advice promptly.

Time periods

Be mindful that there are specific time limits for responding to court documents.

For example, in NSW courts, after a plaintiff serves a statement of claim (a legal notice and document that sets out their allegations), the defendant has 28 days from the date they received the statement of claim to submit a defence (a response either admitting or denying the allegations and explaining the defendant's case). In other instances, a defendant or respondent may need to file an appearance within a certain timeframe, which subsequently sets the timeframe to file a defence.

Ignoring these deadlines can have significant negative consequences. For instance, the plaintiff or applicant might ask the court for a default judgment in their favour because the defendant or respondent failed to respond in time. Default judgments can sometimes be set aside but the process is costly and uncertain.

Your organisation should consult with a legal professional to avoid missing any important deadlines.



Note

To lodge these forms, payment of fees will be required. These fees are published on the relevant court or tribunal websites.

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

State or territory	Court	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
	Local Court	Statement of claim

New South Wales	District Court	Statement of 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 or minor case claim (dependent on the nature of claim)
	District Court	Writ of summons accompanied by statement of claim or indorsement of claim, depending on the claim
	Supreme Court	Writ of summons accompanied by statement of claim or indorsement of claim, originating summons or origination motion, depending on the claim
South Australia	Magistrates' Court	Claim and statement of claim, or originating, 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
Australian Capital Territory	Magistrates' Court	Originating claim accompanied by a statement of claim or originating application, depending on the claim (applies to Magistrates' Court and Supreme Court)
	Supreme Court	
Tasmania	Magistrates' Court	Claim
	Supreme Court	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

A tribunal or commission is a specialised body that handles specific disputes outside the traditional court system. Tribunals generally deal with specific types of disputes and often use less formal procedures than courts. They are intended to be more accessible and easier for individuals and organisations to navigate.

Across Australia there are a number of tribunals (such as the [Administrative Review Tribunal](#)) and specialist bodies (such as the [Fair Work Commission](#)) that deal with particular 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 or

complaint to a tribunal or commission and has started a form of legal action against your organisation. Your organisation may receive the application itself, ahead of a notice of hearing.

Even if you think there is no validity to the claim or complaint, 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, compulsory conference, or informally between the parties themselves.



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 Review Tribunal (ART)	National Native Title Tribunal Copyright Tribunal of Australia Fair Work Commission
Victoria	Victorian Civil and Administrative Tribunal (VCAT)	Mental Health Tribunal
New South Wales	NSW Civil and Administrative Tribunal (NCAT)	Mental Health Review Tribunal Personal Injury Commission Industrial Relations Commission of NSW Dust Diseases Tribunal
Queensland	Queensland Civil and Administrative Tribunal (QCAT)	Queensland Industrial Relations Commission
Western Australia	State Administrative Tribunal (SAT)	Western Australian Industrial Relations Commission
South Australia	South Australian Civil and Administrative Tribunal (SACAT)	South Australian Employment Tribunal
Northern Territory	Northern Territory Civil and Administrative Tribunal (NTCAT)	Mental Health Review Tribunal
Australian Capital Territory	ACT Civil and Administrative Tribunal	ACT Human Rights Commission Office of the Commissioner for Sustainability and the Environment
Tasmania	Tasmanian Civil and Administrative Tribunal (TASCAT)	Tasmanian Industrial Commission Mining Tribunal



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, a regulator (like Worksafe Tasmania or the Queensland Office of Fair Trading) or Local Council.

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, you should seek legal advice immediately because time limits may apply to defending legal actions and prosecutions.

Legal advice is particularly important as different rules apply to each court and jurisdiction and different prosecuting authorities.

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 and any legislation that applies.

Tell the right people, 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 or prosecution. For example, you could open yourself to a defamation claim or you might be in breach of your legal obligations with respect to privacy. Your lawyer can advise you who you should, and should not, tell about the legal action or prosecution.

Notify your insurer

As soon as your organisation receives any indication that a legal action or prosecution could be brought against it, notify your insurer immediately (if your organisation has insurance). If you have an insurance broker, they can help you identify any policies that might provide cover.

Retain all documents

It is important to retain all documents relating to the claim, as your organisation may be ordered to produce relevant documents as part of the proceeding and they may need to be relied on as evidence.

Can legal costs be awarded against your organisation?

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

In many court proceedings, the unsuccessful party may be ordered to pay some of the successful party's legal costs. However, courts have discretion and different costs rules apply in some courts, tribunals and types of proceedings. If your lawyer advises that losing the case is a realistic possibility, your organisation should carefully consider whether settlement is appropriate.

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 it.

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 to pay costs, the organisation's assets may be used to satisfy that liability. This can include money held in bank accounts and other assets owned by the organisation.

In limited circumstances, committee members, directors or other office holders may also be personally liable. This is uncommon and generally arises only where legislation imposes personal liability or where wrongdoing has occurred.

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 – for instance, if there is a conflict of interest. Your lawyer can help you work out if anyone needs separate, personal representation.



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. Begin by reviewing your insurance policy to understand what cover is provided, who is covered (which may include your organisation's members), and whether the policy would respond to the current situation. Then check with your insurer and seek legal advice if you don't agree with your insurer's decision. Your insurance broker can help, if you have one.

You should let your insurer know about any legal action as soon as possible – if your insurance covers you for legal costs, your insurer might want to choose the lawyer to represent you and refuse to pay your chosen lawyer's costs.

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 person who receives the subpoena 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, one of them has applied to the court for access to documents relevant to their action, which may include documents held by your organisation.

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

The party who issued the subpoena must pay your reasonable compliance costs. They will usually provide a nominal amount of money when they serve you with the subpoena, but if your compliance costs will be more than that, you may be able to reach an agreement with them or seek a court order for a larger payment. Your lawyer can advise you about the best approach.

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. If a document contains sensitive or privileged information, it may be possible to provide it with certain parts (such as personal information) removed ('redacted'). In some cases, the parties or the court/tribunal may also put arrangements in place to limit who is allowed to see the document or on what terms.



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, inspectors appointed by SafeWork NSW have powers to enter a workplace to monitor compliance with, and investigate possible breaches of, work health and safety laws. Similar inspector powers exist under work health and safety legislation in Queensland, the ACT, the NT, South Australia, Tasmania and Western Australia, as well as under separate occupational health and safety legislation in Victoria.

Authorities must comply with legal requirements when exercising these powers. 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.



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 or conduct business
- 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, or the parties or likely witnesses are located in a different area (for instance, regional).