

# Going to court about an internal dispute (NSW)

Legal information for NSW incorporated association

## This fact sheet covers:

- ▶ following a dispute resolution procedure
- ▶ the kinds of internal disputes a NSW incorporated association may go to court about, and
- ▶ what happens if legal action is taken against your incorporated association

**This fact sheet is relevant to NSW 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 NSW 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, particularly where the members have the power to resolve the matter themselves.



## Note

This fact sheet provides general information for NSW 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.



## 'association'

An incorporated association has a separate legal identity from its members. In NSW, 'association' means an association registered under the *Associations Incorporation Act 2009* (NSW).



## What is an internal dispute?

An internal dispute is 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 of management, and
- a committee member and the rest of the committee of management

## Which dispute resolution procedure applies?

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

- the legal requirements under the *Associations Incorporation Act 2009 (NSW)* (**AI Act**), and
- your association's constitution (the written document that sets out how the association is governed)

Under the AI Act, a dispute resolution procedure must be included in the constitution of every incorporated association.

The dispute resolution procedure must cover 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).



### Model constitution

The model constitution is set out in Schedule 3 of the *Associations Incorporation Regulation 2022 (NSW)* (**AI Regulation**) and published on the [NSW Fair Trading website](#). Your association can choose to use the model constitution or write its own constitution.

An incorporated association may not adopt a dispute resolution process that expressly removes the jurisdiction of the court. Such a rule will be deemed invalid as contrary to public policy.



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



- mediation

Community Justice Centres offer free mediation services in New South Wales. For more information about the free mediation service, go to the [NSW Community Justice Centres website](#)

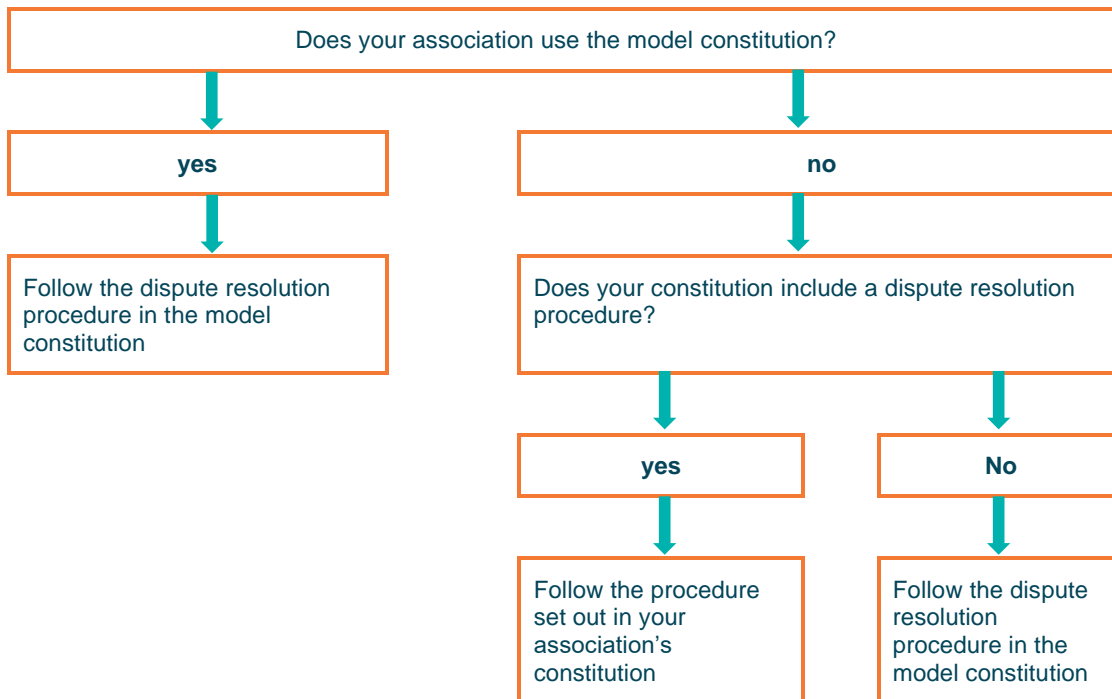
If the model constitution applies, the dispute must be referred to a Community Justice Centre for mediation. If the dispute is not resolved within three months, the dispute must then be referred to arbitration. There are particular legal requirements for arbitration. Depending on the state or territory your dispute arises in, the rules for arbitration and conciliation may differ, so you should seek legal advice if your organisation finds itself in this situation.



### 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:



## Which internal disputes can be taken to court?

The AI Act does not provide for court action arising from escalated internal disputes and NSW Fair Trading doesn't have jurisdiction to intervene in internal affairs or resolve disputes of incorporated associations.

It's possible to bring an action in the NSW Supreme Court. However, this should be considered as a last resort and in many cases, will only be possible after the dispute resolution process set out in the association's constitution has been completed.



### 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.



### Note

This fact sheet provides information about internal disputes and does not cover:

- other types of court actions that may be available in certain circumstances such as breach of contract, discrimination and negligence, or
- potential criminal and civil consequences of a community organisation breaching the IA Act, for example by way of fraud or dishonest use of position

## Compliance with the association's constitution and purpose

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

An incorporated association must not:

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

If an incorporated association does any of these things, the association or a member of the association can start proceedings in the NSW Supreme Court to enforce an incorporated association's constitution.

### 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 constitution 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
- declare what the rights or obligations of members of the incorporated association are, or what the rights or obligations of the incorporated association are, or
- declare that any act, matter or thing purported to have been done is invalid



### Example – acting outside purposes

If an association's purposes are to provide respite care for elderly people and it enters into a contract for the delivery of counselling services to teenagers, this may be open to challenge on the basis that the association has acted outside its purposes.



## Winding up orders

A member may also seek a winding up order for the incorporated association if the association has:

- conducted its affairs (including its affairs as trustee of any trust) to inappropriately provide pecuniary gain for its members
- engaged in activities inconsistent with its purposes
- acted in the interests of the committee or its members, rather than in accordance with the incorporated association's purposes
- acted in any manner that appears to the court to be unfair or unjust to the incorporated association's members, or
- the court is otherwise of the opinion that it is just and equitable for the incorporated association to be wound up



### Remember

Even court applications that seem simple or straightforward can become expensive and lengthy. If you lose your court action, the court may order you to pay the successful party's costs.

However, the court may order a successful party to pay the legal costs of the application 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 organisation receives a letter or court document about a 'legal action', seek legal advice immediately because sometimes time limits 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.



### Statement of claim or summons

Your association may receive a legal document, generally by way of a Statement of Claim or Summons, when legal proceedings have been formally started. The document must be served on you within six months after it was filed in the Court, although this is reduced to one month if the proceedings have been started in the District Court (unless the defendant is outside New South Wales).

## 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. If you don't have an insurer, you may wish to speak with your insurance broker or a legal expert about your insurance needs.

## 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 who won). The amount of costs payable to the other side depends on several factors, which your legal team should explain at the beginning of any dispute.

## Doesn't being an incorporated association mean people can't take us 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 generally not personally liable for debts and liabilities 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 membership fees, money in bank accounts, assets) 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](#).