

Being taken to court

Information for Victorian not-for-profit organisations

This information sheet aims to provide Victorian not-for-profit community organisations with a basic overview of what to expect and do if your organisation is being taken to court.

This information sheet covers:

- ▶ how your organisation might find out that legal action has been taken against it
- ▶ what you should do if you find that legal action has been taken against your organisation
- ▶ costs of going to court and
- ▶ other court documents that your organisation may receive.

How will we know if someone is trying to take our 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.

You should:

- ▶ check that your insurance policies cover the threatened action
- ▶ tell your insurer about the threat, and
- ▶ seek legal advice about the likelihood of the legal action occurring and what defences your organisation may have.

Court form

'Complaint', 'Writ' or 'Originating Motion' (and 'Statement of Claim') are the names of the forms used to commence legal action in the Magistrates, County or Supreme Courts in Victoria.

If a person wants to take legal action against your organisation, they commence the action by issuing one of these forms in the appropriate court and they will usually be known as the 'plaintiff'.

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

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

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

Note:

It is 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

In Victoria there are tribunals (like the Victorian Civil and Administrative Tribunal (VCAT)) and commissions (like the Australian Industrial Relations Commission (AIRC)) which deal with different legal issues.

If your organisation receives a 'notice of hearing' it means that someone has named your organisation as the respondent (or the defendant) in an application to a tribunal or commission and has commenced legal action against your organisation. Even if you think there is no validity to the claim, it is highly recommended that your organisation seek legal advice. You may need to lodge certain documents before the hearing date.

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

For more information on mediation go to our Information sheet: 'Using mediation to resolve conflicts and disputes' at www.pilch.org.au/ifthingsgowrong.

Prosecution

Your organisation also may receive notice that it is being prosecuted for an offence. This may occur if a prosecuting authority thinks your organisation has not complied with the law. The prosecuting authority may be the Victorian Police or a regulator (like the Victorian WorkSafe Authority or Consumer Affairs Victoria).

A prosecuting authority has to prosecute in accordance with the law. Your organisation may have a valid defence. Your organisation should seek immediate legal advice as time frames may apply to be able to contest certain prosecutions.

What should we do if someone takes legal action against?

Seek immediate legal advice

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.

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

Read the documents carefully

Your organisation should read the documents carefully. In particular, look at who is named as a party to the legal action. Also look for information in the accompanying material about when your organisation must respond.

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

Your board or committee of management should be informed.

There may be reasons that you should not 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

Notify your insurer immediately.

Can legal costs be awarded against our organisation?

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

Generally, costs are awarded against the party who loses the case.

We are an incorporated association – can we 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).

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 of 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).

We are an unincorporated group – can we be taken to court?

The members of your group, separately or together, can be taken to court.

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 legal advice.

Will our insurance cover the costs of the legal action?

Maybe. This will depend entirely on the terms and conditions of any insurance your organization has and the circumstances of the legal action. You should check with your insurer(s) and seek legal advice.

Other court documents your organisation might receive

Subpoena

A subpoena is a document issued by a court requiring the person or organisation named in the document to:

- ▶ attend at the court to give oral evidence, and/or
- ▶ produce documents or other things to the court.

The person or organisation named in the subpoena must comply with the requirements of a subpoena, as failure to do so, without lawful excuse, mean that you may be held in contempt of court. Fines and/or imprisonment apply for contempt of court offences.

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.

If your organisation is reluctant to provide the information, seek legal advice about applying to the court to have the subpoena set aside. Subpoenas can be set aside on a number of grounds such as when:

- ▶ 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. However, these privacy and confidentiality obligations may not be sufficient to refuse to provide information requested by the court.

Warrant or order for entry, inspection, search, seizure

In Victoria, various laws give government authorities the power to enter on to property and inspect, search, and take away certain materials. For example, under Victoria's occupational health and safety (OHS) legislation, the Victorian WorkSafe Authority has powers to enter on to a workplace to undertake investigations. For more information go to <http://www.pilch.org.au/runningtheorg/>.

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 is usually an offence (with quite significant penalties) not to comply with, or to obstruct, such investigations. You should read any documentation provided to you carefully, and seek legal advice as soon as possible.

Resources

PILCHConnect resources

[Using mediation to resolve conflict and disputes](#)

Victorian courts and tribunals

► [Victorian Courts and Tribunals](#)

This link is to a website that provides details of many Victorian courts and tribunals. It does not include details of federal courts and tribunals (such as the Family Court, Federal Court, AIRC etc.)