

Dealing with disputes and grievances with members

Information for Victorian incorporated associations

All organisations face disputes and grievances at some point. When conflict starts disrupting your activities, you need to resolve it, properly and quickly.

This information sheet is designed to help Victorian incorporated associations handle disputes or grievances within their organisations effectively and legally.

This information sheet covers:

- ▶ what is an 'internal dispute' within a Victorian incorporated association
- ▶ what to do when there is an internal dispute in your organisation
- ▶ how mediation can help resolve a dispute
- ▶ how closely you need to follow your organisation's dispute resolution procedures
- ▶ other options if your organisation is in disarray
- ▶ what kinds of internal disputes can be taken to court.

What kind of dispute is this? Who is involved?

Knowing what your dispute is about – and who it involves – is important, because there are different laws and procedures that apply to different conflict situations.

This information sheet deals with disputes involving members of a Victorian incorporated association.

These are often called 'internal disputes' because they involve the people who are bound by the rules of the incorporated association (ie, members).

Examples of common internal disputes are disputes between:

- ▶ member(s) of the association and the rest of the organisation

- ▶ member(s) and the committee of management, and
- ▶ committee of management (board) members.

There are legal requirements when trying to resolve these kinds of disputes under the *Associations Incorporation Act 1981* (Vic) and in your organisation's rules.

Note:

This information sheet does not cover disputes or conflicts involving:

- ▶ employees. For information, go to www.pilch.org/employees
- ▶ volunteers (eg. a complaint of sexual harassment). For information, go to www.pilch.org.au/volunteers/
- ▶ situations that may endanger the health and safety of people in the workplace (eg. bullying). For information, go to www.pilch.org.au/OHS
- ▶ violence – in these situations the police may need to get involved, and criminal laws may apply. Contact Victoria Police (www.police.vic.gov.au).

What should we do if there is a dispute between members of our organisation?

The first thing to do is to check the rules (or constitution) of your incorporated association.

Your rules are required by law to set out a procedure for dealing with grievances (or disputes) under the rules.

The 'grievance procedures' in your rules provide your organisation with a process to follow to try to settle conflict between:

- ▶ members (including committee members), or
- ▶ a member (including committee member) and the organisation.

If you are not sure what your association's rules are, you can request a copy of your current rules from [Consumer Affairs Victoria](http://www.consumeraffairs.vic.gov.au) (CAV).

If your organisation uses the model rules, rule 8 contains the grievance procedure. If your rules don't say anything about grievance or dispute resolution procedures (this is rare), then the law says that rule 8 of the model rules will automatically apply to your organisation.

Tip:

If your association uses the model rules, you can download a copy from [Consumer Affairs Victoria](#) – click on “Becoming an incorporated association”, then scroll down to the link to the model rules.

Rule 8 of the model rules contains a two step procedure. You need to read rule 8, but in short:

- ▶ within 14 days, the people in dispute must meet, discuss the matter and try to resolve the dispute; and
- ▶ if the dispute isn't resolved, or if someone does not attend the meeting, then within 10 days, the people in dispute must go to mediation.

What is mediation – and how can it help?

Mediation is a voluntary, confidential process used 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 and simpler than going to court, and it is much more likely to get everyone an outcome they can live with, quickly.

If your organisation uses the model rules, rule 8 requires the people in dispute to go to mediation and mediate 'in good faith'. This means you have to turn up and genuinely try to resolve the dispute. No one can force you to agree to an outcome at mediation.

Mediation is appropriate in most disputes, but if you are in a situation where you feel afraid, call the police and get some legal advice, too.

Tip:

There is much more information on mediation available in our Information sheet: 'Using mediation to resolve conflict and disputes' at www.pilch.org.au/ifthingsgowrong.

How do we choose a mediator?

Check what your rules say (if anything) about choosing a mediator.

If your organisation uses the model rules, the mediator should be chosen and agreed on by the people who are in dispute. If they can't agree, then:

- ▶ if the dispute is between a member and another member – the mediator must be appointed by the committee of management of the organisation; or
- ▶ if the dispute is between a member and the organisation (including disputes involving the committee or board) – the mediator must be a person appointed or employed by the Dispute Settlement Centre of Victoria (see 'Resources' below).

The model rules allow for a member of the incorporated association to act as mediator in a dispute under the organisation's rules. However, this is not best practice – it is better if the mediator does not have a history of any relationship with the people in dispute or the organisation. If a member of your organisation is going to be the mediator, make sure that person can do so in an impartial and independent way.

Are there legal requirements about how closely we should follow our grievance procedures?

You should follow your organisation's procedures very closely - otherwise the outcome reached might not be legal and/or your organisation could be taken to court.

Note:

Your organisation, and those it appoints, should make sure the process the procedures it follows are fair and proper. Otherwise, any outcome might be challenged by the member involved.

The law says that an association's grievance procedures must allow for 'natural justice' to be applied. Natural justice is sometimes called 'procedural fairness'. It means that the processes used by a decision maker must be fair and proper.

If your organisation uses the model rules and engages in mediation, there are specific requirements about how a mediation must be conducted. Under the model rules, the mediator must:

- ▶ give the people in dispute (who are at the mediation) every opportunity to be heard

- ▶ make sure that any written statement by a person in the dispute is properly considered by everyone involved, and
- ▶ ensure that natural justice is given to the people in dispute throughout the mediation process.

Your rules may have additional requirements about who can initiate certain steps of the process and how, required timeframes and whether notices must be in writing etc. Check these carefully.

Changes to the law:

The Victorian Government is changing the laws about incorporated associations' grievance procedures. These changes are expected to become law on 1 July 2012.

The new laws require that each party to a dispute has an opportunity to be heard before a decision is made, and that the dispute must be resolved by an unbiased decision maker.

To keep up to date with these changes, [sign up to PilchConnect's e-bulletin](#) and you'll know when the law changes and how it affects you.

Can we remove (or discipline) a member or committee member who is causing trouble?

Some organisations can. It depends on what your organisation's rules say.

It is important to note that 'disciplinary procedures' are different from dispute resolution (grievance) procedures under an organisation's rules. Disciplinary procedures involve steps to remove, suspend or fine a member of an incorporated association in specified circumstances.

For more information on the procedures for removing a member or committee member, see PilchConnect's Information sheets for Victorian incorporated associations on these topics at www.pilch.org.au/handlingconflict.

The organisation is in disarray. Are there other options?

Sometimes even when you follow your organisation's grievance procedures, the situation doesn't resolve.

There are some other options, depending on the circumstances, which may be able to break a 'deadlock' situation and/or avoid the organisation ending up in court. Some are set out briefly below:

1. 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 sort out what should be done about the organisation's problems.

Check your rules to find out how to call a special general meeting. Under rule 10 of the model rules, for example:

- ▶ the committee of management can convene a special general meeting 'whenever it thinks fit'; and
- ▶ the committee of management **must** convene a special general meeting if 5% or more of the members of the association request one.

Tip:

Some types of decisions must be made by 'special resolution' of members at a general meeting (eg. 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 www.pilch.org.au/whenthingschange.

If you think the meeting may be difficult to control, consider getting an independent person to sit in or oversee the running of the meeting to help it run as smoothly as possible.

2. Ask CAV to investigate and/or intervene

Consumer Affairs Victoria (**CAV**) is the regulator for Victorian incorporated associations and has wide-ranging powers to take action if there is evidence that the dispute involves a breach of the Associations Incorporation Act.

For example CAV has powers to:

- ▶ investigate an incorporated association;
- ▶ fine or prosecute an association (or an individual) for offences under the Act; and
- ▶ apply to the Magistrates' Court to appoint a 'statutory manager' to take over the affairs of the association (until the association is stable enough to manage its own affairs again).

A statutory manager can only be appointed if CAV decides to apply to the Magistrates' Court for an order. The court can order that a statutory manager be appointed if CAV shows that the association has been investigated in accordance with the Associations Incorporation Act, and that appointing a statutory manager is in the best interests of the members, the association's creditors or the public.

Note:

If you are considering asking for help from CAV, 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.

3. Leave the group

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 the organisation is voluntary.

Often the best option may be to simply leave the group and join another one, or start up another organisation.

Which internal disputes can be taken to a court?

The law provides some options for going to court about an 'internal dispute' within an incorporated association. However, the courts have been reluctant to interfere in the internal affairs of community organisations – and going to court is very stressful and time consuming. It should be a last resort.

For general information on disputes involving members of a Victorian incorporated association which can go to court, go to PilchConnect's Information sheet: 'Going to court about an internal dispute' at www.pilch.org.au/handlingconflict.

Resources

PILCHConnect information sheets for Victorian incorporated associations

- ▶ [Using mediation to resolve conflict and disputes](#)
- ▶ [Removing or disciplining a member](#)
- ▶ [Removing a committee member from the committee](#)
- ▶ [Going to court about an internal dispute](#)
- ▶ [Guide for Public Officers and Secretaries of Victorian Incorporated Associations](#)

Legislation

Associations Incorporation Act 1981 (Vic)

Victorian Government

- ▶ [Consumer Affairs Victoria \(CAV\)](#)
The government agency responsible for regulating Victorian Incorporated Associations - Associations.
- ▶ [Dispute Settlement Centre of Victoria \(DSCV\)](#)
A free dispute resolution service funded by the Victorian Government.
- ▶ [Office for the Community Sector \(OCS\) – Developing Conflict Resilient Workplaces.](#)
This guide is published by the Victorian Office for the Community Sector and can be used by community organisations to assess the conflict resilience of their organisation.

Other

- ▶ [QUT, Australian Centre for Philanthropy and Nonprofit Studies - When Things Go Wrong.](#)
This is part of QUT's Developing Your Organisation Manual which provides directions to help not-for-profits meet their governance, organisational and service delivery responsibilities.
- ▶ [The Law Institute of Victoria \(LIV\) - Legal Referral Service](#)
LIV's referral service allows you to locate a lawyer that can provide legal advice on various topics.