

Going to court about an internal dispute

Information for Victorian incorporated associations

The law provides some options for going to court about an 'internal dispute' within a Victorian incorporated association.

However, courts have been reluctant to interfere in the internal affairs of community organisations – and taking court action is stressful, time consuming, and gets expensive fast. It is a last resort.

This information sheet covers:

- ▶ What kinds of internal disputes in a Victorian incorporated association can go to court:
 - ▶ non-compliance with the association's rules and purposes
 - ▶ oppressive conduct, and
- ▶ a brief summary of what happens if someone takes legal action against your organisation.

What is an 'internal' dispute?

An 'internal dispute' is essentially a dispute or conflict between the people who are bound by the rules of the incorporated association (ie, members). Examples of common internal disputes are between:

- ▶ a member of the organisation and the rest of the organisation
- ▶ a member and the committee of management, and
- ▶ a committee member and the rest of the committee of management.

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.

Beware!

Applying to court may exacerbate tension and adversely affect relationships within your incorporated association.

If you are in a position to choose, don't go to court unless you have considered the risks very carefully and sought legal advice.

If your dispute is an 'external' dispute (for example between your organisation and a client or a member of the public), go to www.pilch.org.au/court.

Note:

Before going to court, you should try to resolve the dispute using:

- ▶ your organisation's grievance (dispute resolution) procedures
- ▶ your organisation's disciplinary procedures (if any) to remove a member or committee member, or
- ▶ mediation.

Information sheets on these topics are at www.pilch.org.au/handlingconflict. Read them first!

Which internal disputes can be taken to court?

Beware!

Seek legal advice before going to court.

Part IV the Associations Incorporation Act provides for two main types of court actions that stem from escalated internal dispute situations – each is discussed briefly below.

These court actions can be commenced by an incorporated association, or a member (and sometimes a former member).

This information sheet does not cover other types of court actions that may be available in certain circumstances (eg, breach of contract, discrimination law, negligence).

1. Non-compliance with the association's rules and purposes

The law says that:

- ▶ an incorporated association must not contravene its rules, or act outside its purposes.
- ▶ a public officer and committee of management of an association must not in any way, directly or indirectly, be knowingly concerned in (or party to) a contravention by an incorporated association of its rules or purposes.

An association, a member of an association, or Consumer Affairs Victoria (the regulator of Victorian incorporated associations) can apply to the Magistrates' Court if an association:

- ▶ has exercised a power that is not allowed under the rules;
- ▶ has exercised a power that the rules restrict it from exercising; or
- ▶ acts outside the scope of the association's statement of purposes.

What can the court do?

If it finds that one of these things has happened, the court can:

- ▶ order that the rules have to be performed or followed by anyone under a duty to perform or follow them;
- ▶ order the association to stop acting outside the scope of its statement of purposes; or
- ▶ declare what the rights or obligations of members of the association are, or what the rights or obligations of the association are.

Even if a party proves that the rules or purposes have been contravened, the magistrate can refuse to make an order in the case if s/he thinks that:

- ▶ the issue is trivial;
- ▶ there is another way of resolving it;
- ▶ given the circumstances, it was unreasonable to go to court; or
- ▶ the unreasonable or improper conduct of a party has resulted in court action, or has added to the cost of the proceedings.

2. Treating a member unfairly or acting against the interests of members

The law says that an incorporated association can be taken to court if a member (or former member) claims that they have been treated unfairly, or the organisation has acted against the interests of members as a whole. This type of legal action is called 'oppressive conduct'.

What is oppressive conduct?

Oppressive conduct means acting, or refusing or failing to take action that is:

- ▶ unfairly prejudicial to, or unfairly discriminatory against, a member; or

- ▶ against the interests of the members of the association as a whole.

Who can apply to the court to claim there has been 'oppressive conduct'?

A member or former member of an incorporated association can apply to the Magistrates' Court for an order that the incorporated association has engaged, or proposes to engage, in oppressive conduct.

If a former member is taking an association to court, the application must be made within 6 months of the person ceasing to be a member, unless the court gives leave for that time to be extended.

What can the court do?

If the court finds there is or has been oppressive conduct, it can make an order that:

- ▶ regulates the conduct of the incorporated association's affairs in the future;
- ▶ directs the incorporated association to start, defend or discontinue a court action, or authorises a member of the association to do that on behalf of the association;
- ▶ stops a person from doing a specific act or thing;
- ▶ requires a person to do a specific act or thing;
- ▶ the rules of the association be altered;
- ▶ a former member be reinstated;
- ▶ terminates a person's membership of the incorporated association; or
- ▶ appoints a statutory manager of the incorporated association.

The court may also make any other order needed to fix the oppressive conduct *except* an order that the association must be wound up. If the court thinks winding up is required, then the case has to be transferred to the Supreme Court.

Remember:

Even court applications that seem simple or straightforward become expensive and lengthy.

The court may order a party (including a successful one) 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 our 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.

For further information, go to www.pilch.org.au/court.

How will we know if someone is trying to take our organisation to court over an internal dispute?

There are a number of ways your organisation may find out about legal action arising from an internal dispute.

Letter

Your association 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.

Complaint

A complaint form is used to commence legal action in the Magistrates' Court in Victoria.

If a person decides to take your organisation to court about an internal dispute they 'commence proceedings' and will be known as the 'plaintiff'.

If they commence proceedings against your association, your association will be known as the 'defendant'.

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

The document gives the basic details of the claim (the plaintiff's side of the case).

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

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.

What should we do if someone takes legal action against us over an internal dispute?

Make sure the right people know

Your board or committee of management 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

Notify your insurer immediately.

Can legal costs be awarded against our incorporated association?

Yes. Incorporated associations 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.

Doesn't being an incorporated association mean people can't take us to court?

No. 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).

Resources

PILCHConnect information sheets for Victorian incorporated associations

- ▶ [Dealing with disputes and grievances with members](#)
- ▶ [Using mediation to resolve conflict and disputes](#)
- ▶ [Removing or disciplining a member](#)
- ▶ [Removing a committee member from the committee](#)

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.