

Welcome

Thank you for your attendance

The webinar will be starting shortly.
 Please note that all webinar participants will be on 'mute'. This will be the case for the whole of the webinar, to minimise background noise for other attendees.
 Questions can be typed in the Question Pane of your Go-to-Webinar panel.

Click to expand Q&A pane



Managing member disputes and conflicts on the committee

27 October 2020

Mae Tanner
 Lawyer, Not-for-profit Law



justice connect

© Justice Connect 2020

We would like to acknowledge the traditional owners of the lands we are all meeting on today, and pay our respects to elders past, present and emerging





justice connect

www.nfplaw.org.au


Resources


Enquiries


Referrals


Advocacy


Training

Introduction

What we'll cover

- Conflicts within community groups
- Disputes and grievances involving members
- Disputes involving committee members
- Who can help us resolve our internal dispute or conflict?
- Tips on avoiding and minimising disputes

Eligible for
Volunteering
Victoria CPD
points



Legal information only and not legal advice



Introduction

What we will *not* cover

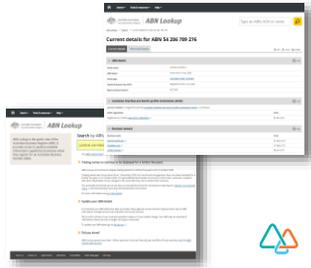
- Grievances involving employees
NFP Law: www.nfplaw.org.au/employees
Fair Work Ombudsman: www.fairwork.gov.au
- Grievances involving volunteers (other than as members)
NFP Law: www.nfplaw.org.au/volunteers
- Situations that may endanger the health and safety of people in the workplace
NFP Law: www.nfplaw.org.au/OHS
- Conflicts with other groups or third parties
NFP Law: www.nfplaw.org.au/externalconflict
- Criminal activity
NFP Law: www.nfplaw.org.au/criminalconduct



Introduction

Which legal structure is your group?

- Incorporated Association ('Inc') → state regulators
 - Company Limited by Guarantee ('Ltd') → ASIC
- www.abr.business.gov.au:

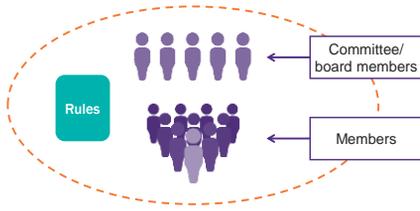


Conflicts *within* community groups

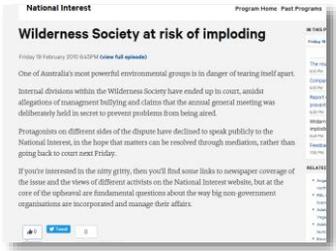


Conflicts *within* community groups

A refresher: who's who in a NFP community group



Conflicts *within* community groups



Conflicts *within* community groups

"Given the extent of an emotional, rather than financial investment, it is not surprising that internal disputes in [NFPs] have a reputation for producing very personal and spiteful conflicts."

Myles McGregor-Lowndes, *The Visitor – Facilitation of Internal Dispute Resolution in Nonprofit Organisations*, Working Paper No. PONC82, p. 3



Conflicts *within* community groups

Some common features of internal disputes:

"intensely personal"

"longstanding"

"involving mistrust of the association's office bearers"

"a chronic breakdown in communication"

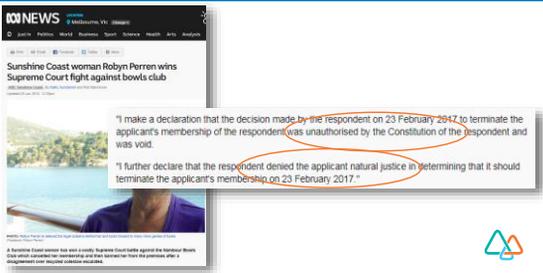
Myles McGregor-Lowndes, *The Visitor – Facilitation of Internal Dispute Resolution in Nonprofit Organisations*, Working Paper No. PONC82, p.15



Disputes and grievances involving members



Disputes and grievances involving members




Disputes and grievances involving members

Disputes and grievances involving members

Grievance/dispute resolution procedure
Used when there is conflict or dispute between:

- Member/s and the group
- Members/s and committee
- Members of the committee

Disciplinary procedure
Used when a member has breached rules or engaged in other improper behaviour



Disputes and grievances involving members

Grievance/dispute resolution procedure – when is it used?



Examples:

- A member complains the AGM was not properly held
- Members are unhappy with how funds are being used
- A committee member disputes whether a fellow committee member was validly elected



Disputes and grievances involving members

Dispute resolution in Incorporated Associations

	DR rule required?	Legislation reference	Model rule reference
ACT	Yes	S 65B + Sch 1, Associations Incorporation Act	-
NSW	Yes	Schedule 1, Associations Incorporation Act	Rule 10
NT	Yes	Section 21, Associations Act	Rule 56
Qld	No	-	-
Tas	No	-	Section 36
Vic	Yes	S 55, Associations Incorporation Reform Act	Rules 25–29
WA	Yes	S 22 + Sch 1, Associations Incorporation Act	Rules 22–25

Disputes and grievances involving members

Dispute resolution in Companies Limited by Guarantee

- Non-charities: no legal requirement under the *Corporations Act 2001*
- Charitable CLGs:
 - **Governance Standard 2:** requires charities to allow members opportunities to raise concerns about how the charity is run



ACNC Model Constitution for charitable CLG, rule 16

- Individuals must try and resolve disputes within 14 days
- If not resolved within 14 days, then within then next 10 days:
 - inform directors in writing
 - agree on/request appointment of mediator
 - attempt in good faith to settle by mediation



Disputes and grievances involving members

Natural justice in dispute resolution

- Natural justice required by law for incorporated associations in most states/territories
- Natural justice requires processes used by a decision maker to be **fair** and **proper**:
 - Notification of complaint
 - Opportunity to be heard
 - Unbiased decision maker
 - Completion of process as soon as practicable



Disputes and grievances involving members

Disciplinary procedure – when it is used?

When a member behaves inappropriately. For example (depending on rules):

- breach of the organisation's rules
- harassing other members
- disruptive at meetings
- conduct prejudicial to the organisation



If there is criminal activity, contact the police



Disputes and grievances involving members

Disciplinary procedure – powers

An incorporated association **may** have the power to:

- Give a warning
- Suspend a member's membership
- Expel a member
- Reprimand a member
- Fine a member



Check your rules and incorporation law



Disputes and grievances involving members

Disciplinary procedure – process



Case example: disqualification of an unknowing jockey
Michael Christie v Agricultural Societies Council of NSW Ltd
 [2015] NSWSC 1118



Disputes involving committee members

Disputes involving committee members



Disputes involving committee members

Avoid/manage committee disputes through:

- ✓ Ensuring alignment of committee members with purposes
- ✓ Induction/training on legal duties
- ✓ Culture of clear and respectful communication
- ✓ Clearly allocated roles & responsibilities
- ✓ Clear processes for dealing with disputes
- ✓ Use of Committee Charter & Confidentiality Policy
- ✓ Chair/President alert to any issues



Disputes involving committee members

Steps to take to resolve a committee dispute

- Have a conversation
- Use your grievance procedure
- Try mediation
- Wait for the committee member's term to end!
- If all else fails, consider removing the committee member...



Disputes involving committee members

Removing a committee member

- Check your rules: generally a member-driven process
- Disciplinary procedure may be available to remove member entirely
- Follow your rules strictly – the matter could end in court!



Case example: expulsion of the Secretary
Young v NSW Radio Yachting Association [2013] NSWSC 383





Who can help us resolve our internal dispute?

Mediators

- Mediation is a confidential process used to resolve disputes
- The mediator must be unbiased and independent
- The mediator controls the process but **not** the decision
- The people in dispute control the outcomes (if any) that are agreed on

Why mediate?

- May be required in your organisation's rules/constitution
- Cheaper and simpler than going to court
- More likely to achieve an outcome both parties can live with



Who can help us resolve our internal dispute?

How to engage in mediation

- Check if there are requirements about how to choose a mediator
- Give the people in dispute every opportunity to be heard
- Make sure any written statement by a person in the dispute is properly considered by everyone involved
- Ensure procedural fairness (natural justice) is given to the people in dispute throughout the mediation process
- Comply with any additional requirements in your rules/constitution
- Attempt in good faith to settle the matter



Who can help us resolve our internal dispute?

Mediation – practical tips for success



- Allow adequate time to prepare
- Respect the other party – don't interrupt
- Understand mediation requires flexibility & compromise
- Emphasise and respect confidentiality
- Be patient!



Who can help us resolve our internal dispute?

Mediation services

	Mediation service	Website
ACT	The Conflict Resolution Service	www.crs.org.au
NSW	Community Justice Centres	www.cjc.justice.nsw.gov.au
NT	Community Justice Centre	www.nt.gov.au/law/processes/resolving-disputes-without-going-to-court
QLD	The Dispute Resolution Branch (DRB) of the Queensland Department of Justice	www.qld.gov.au



Who can help us resolve our internal dispute?

Mediation services

	Mediation service	Website
SA	The Southern Community Justice Centre	www.communityjusticesa.org.au
TAS	The Legal Aid Commission of Tasmania	www.legalaid.tas.gov.au
VIC	Dispute Settlement Centre of Victoria	www.disputes.vic.gov.au
WA	The Citizen Advice Bureau	www.cabwa.com.au



Who can help us resolve our internal dispute?

Arbitrators

- Constitution may require arbitration if mediation fails
- A formal process where the decision of the arbitrator is final



Who can help us resolve our internal dispute?

Regulators – incorporated associations

- Generally will not get involved in internal disputes
- Will investigate and ensure compliance with the law, but investigation may not resolve the internal dispute
- More information:
 - ❖ Consumer Affairs Victoria
 - ❖ NSW Fair Trading
 - ❖ Consumer & Business Services (SA)
 - ❖ QLD Office of Fair Trading
 - ❖ Access Canberra (ACT)
 - ❖ Consumer Affairs and Fair Trading (TAS)
 - ❖ Department of Commerce (WA)



Who can help us resolve our internal dispute?

Regulators – companies limited by guarantee

- Australian Securities and Investments Commission (ASIC)
- Generally ASIC does not get involved in disputes involving members of CLGs, unless the dispute is likely to **impact broader public, creditors** or **involve a serious breach of director duties**.

 Further information: ASIC fact sheet 'Companies limited by guarantee - Disputes about members' rights': www.asic.gov.au



Who can help us resolve our internal dispute?

Regulators – charities

Australian Charities and Not-for-profits Commission (ACNC)

- Does not deal with or mediate internal disputes in charities, unless there is a **serious risk to public trust and confidence**
- May get involved if dispute develops into **breaches of the regulatory obligations**



Further information: ACNC page on Internal Disputes, at www.acnc.gov.au



Who can help us resolve our internal dispute?

Courts



Who can help us resolve our internal dispute?

Courts

- Review by administrative tribunal in some jurisdictions
- Going to court is a last resort
- It can be stressful, time consuming and expensive
- Court reluctant to interfere
- May refer parties to mediation
- Seek legal advice first





Tips on avoiding and minimising disputes



Induct & train committee/board members about governance obligations

- Ensure they understand their roles and responsibilities
- Have sound policies and procedures – and follow them
- Consider appointing a disputes officer trained in dispute management



Tips on avoiding and minimising disputes



Communicate clearly and create a positive culture

- Ensure communication is open and respectful
- Ensure members can give feedback before conflicts are escalated
- Remain open, ask questions and listen
- Don't ignore an issue



Tips on avoiding and minimising disputes



Follow your rules/constitution

- Pay very close attention to rules in the event of a dispute
- Ensure that you have an up-to-date copy of the rules
- Also make sure your rules are consistent with legal requirements



Tips on avoiding and minimising disputes



Implement decisions

- If an outcome is agreed (informally or through mediation) make sure it is implemented
- Monitor the situation – dispute resolution is ongoing



Tips on avoiding and minimising disputes



Beware of bullying

- Have and follow policies
- Address inappropriate behaviour early



Case example: bullying in the boardroom
Trever Yawiriki Adamson [2017] FWC 1976







Not-for-profit Law resources

www.nfplaw.org/disputes

- Dealing with disputes and grievances with members (fact sheets for each state and territory)
- Using mediation to resolve conflicts and disputes
- Extra resources for Vic/NSW IAs





Thanks for joining us.

 Tag us @justiceconnect

 Mention #justiceconnect

 Tweet @nfp_law

 Follow us @justiceconnect