

Making a complaint about an incorporated association

Contact the association first

Before making a complaint with Fair Trading about an incorporated association, you might be able to resolve it through speaking directly with the association. Most associations welcome feedback and are prepared to consider issues raised without Fair Trading becoming involved.

Fair Trading's powers to enquire and investigate

Fair Trading's authority as the regulator is limited to those matters stipulated in the *Associations Incorporation Act 2009* (the Act). These include where an association:

- is not entitled to be registered as an incorporated association because its activities are not small-scale, are for profit and/or commercial;
- is providing a pecuniary gain to its members;
- does not have a public officer;
- does not have 3 or more committee members;
- does not have 5 or more members;
- has not complied with the requirements to keep appropriate records: section 50 of the Act; or where
- a committee member;
 - has not disclosed an interest in a matter being considered by the committee in which appears to raise a conflict of interest with their duty as a committee member: section 31 of the Act;
 - has dishonestly used information obtained as a committee member to advantage themselves or another;
 - has dishonestly used their position to advantage themselves or another, or where there is:
- fraud or criminal activity (the person raising the concern will be asked if they have contacted the police);
- failure to ensure its officers have complied with their duty to act in good faith, with a reasonable degree of care and diligence, in the association's best interests and pursuing its purpose.

Fair Trading will assess the level of risk when deciding what action to take.

When Fair Trading will consider action

Generally, Fair Trading will only act on concerns where:

- there is a **serious risk to public trust and confidence** in the sector, **AND**
- they relate to **an association's compliance** with requirements of the Act.

Areas for which Fair Trading does not have responsibility

Fair Trading does not have the power to review or investigate every complaint raised, particularly where it falls outside Fair Trading jurisdiction in administering the Act.

Examples of some of these include:

- **Matters governed by an association's constitution**
The constitution is a contract between the association and its members, subject to civil law. Enforcement of any alleged breach of the constitution is a private legal matter.
- **Internal disputes**
This includes disagreements between committee members within an association, which do not breach the Act. If a dispute cannot be resolved using the dispute resolution procedure set out in the constitution, then legal action may be the only option.
- **Contracts an association has with other organisations or individuals [including members]**
This includes funding, tenders and purchases. Other government departments and agencies may have responsibility with such an issue.
- **Quality of services an association may provide**
The agency you need to contact to raise a concern will be different, depending on the services being provided. For example, if you have concerns about how an association provides health services you can contact the Department of Health or the Health Services Commission.
- **Employment issues such as employment contracts and unfair dismissal**
Often you can raise these kinds of concerns with the Fair Work Commission.

How to lodge

- **Website** at www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations
- **Post** to Registry Services, PO Box 22, Bathurst NSW 2795

Please note that there is no specific protection for whistleblowers under the Associations Incorporation Act. However, if you wish to make a complaint, you are entitled to do this anonymously or using a pseudonym, where reasonable. Find out more about this in our privacy policy.

Your complaint will be acknowledged within 5 days of it being received. Your complaint will be reviewed and you will be informed of the action Fair Trading intends to take within 28 days of receiving your complaint.