

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



GOFUR V BANGLADESH ISLAMIC CENTRE OF NSW (BIC) [2020] NSWSC 652

Supreme Court of New South Wales, Sackar J, 29 May 2020

Validity of an AGM of an incorporated association having alleged procedural irregularities.

Key words: Incorporated Associations, New South Wales, Annual General Meeting, Notice, Irregularities, Section 1322 Corporations Act 2001

1. Bangladesh Islamic Centre of NSW (BIC) is an incorporated association. Members of BIC sought orders that the AGM and election of the executive council were invalid, and a new AGM and elections should be held. BIC claimed that the alleged matters could be cured by an application of section 1322 of the *Corporations Act 2001*.
2. The plaintiffs alleged that:
 - a. Notice of the AGM was not served in accordance with the constitution but instead published online on the website of BIC.
 - b. A further notice of the AGM altering the date was not arranged by the General Secretary as required by the constitution as it was unsigned, undated and sent by another member on behalf of the General Secretary.
 - c. The financial statement was not presented at the AGM in contravention of the constitution.
 - d. Of the 13 persons who contested the Executive Council elections, ten did not provide a membership number on the nomination form.
 - e. When the meeting was held, a quorum could not be achieved, and the meeting was adjourned to a date that was outside the specified period in the constitution of two months after the end of the financial year. It was alleged that this meeting was not convened in accordance with the constitution.
3. BIC argued that in certain instances, the constitution had been complied with. Further, when it had not complied, pursuant to r 18 of the *Associations Incorporation Regulations 2016* (NSW), subsections 1322(1)-(3A) and (4)-(6) of the *Corporations Act* applied automatically to cure “procedural irregularities”. Unless the Court formed the opinion that the irregularity had “caused or may cause substantial injustice that cannot be remedied by any order of the Court”, and declared that proceeding to be invalid, the proceeding stood.
4. The court decided that (at [78]):

I am satisfied that none of the Plaintiffs' various complaints have any substance and in so far as there is any irregularity each is procedural only and therefore none of the activities complained of is, by reason of s 1322 of the *Corporations Act*, invalidated. Further, I am satisfied that there was no dishonesty on the part of any of the Defendants, nor did any of them act in bad faith. To that end, I am not satisfied if I need to go so far that there has been any substantial injustice as a result of the particular conduct complained of.

5. Further the court noted that each of the plaintiffs and their faction was apprised of everything that was happening at the BIC, including the May 2019 AGM and Election. Therefore, the plaintiffs were entirely unsuccessful.

IMPLICATIONS



The judge noted that (at [7]): "It is a pity that such an organisation clearly desired by the relevant community is riven by such deep and long standing divisions."

This entity has been involved in several rounds of litigation in the recent past, refer *Ahmed v Chowdhury* [2012] NSWSC 1452; *Ahmed v Chowdhury* [2011] NSWSC 893; *Ahmed v Chowdhury* [2011] NSWSC 954; *Ahmed v Chowdhury* [2012] NSWSC 348), in

https://eprints.qut.edu.au/61386/1/Australian_Nonprofit_Sector_Legal_and_Accounting_Almanac_2012.pdf

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWSC/2020/652.html>

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: June 2020

Number of case: 2020-60

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Commons licence: 

[This work is licenced under a Creative Attribution 4.0 International Non Commercial and No Derivatives licence \(CC BY-NC-ND 4.0\).](#)



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.

RESEARCH

COURSES

RESOURCES

EVENTS

QUT Business School
The Australian Centre for Philanthropy
and Nonprofit Studies

qut.edu.au/business/acpns