

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.



NEW ACLAND COAL PTY LTD V OAKLEY COAL ACTION ALLIANCE INC [2020] QSC 212

Supreme Court of Queensland, Davis J, 22 July 2020

Whether an incorporated association owing debt from litigation cost awards and awaiting a High Court appeal determination should be wound up as insolvent.

Key words: Incorporated Association, Queensland, Winding Up, Insolvency

1. Oakey Coal Action Alliance Inc. (the Association) was incorporated for the purpose of opposing New Acland Coal Pty Ltd's (New Acland) proposed development of a coal mine on environmental grounds. There were a number of hearings and appeals about the issue incurring litigation costs. New Acland sought to recover its costs, and the Association made an application for special leave to appeal to the High Court.
2. New Acland applied to wind up the Association in accordance with section 90 of the *Associations Incorporation Act 1981* (Qld) as a creditor. The Association raised two arguments in resistance to the application, namely:
 - (a) that New Acland was not a creditor for the sum claimed by way of costs to which there was no objection, as it was only a creditor of the Association once the costs assessment process was finalised; and
 - (b) New Acland had not shown the respondent to be insolvent.
3. Whilst the Court was considering its decision, New Acland finalised its cost assessment at \$736,823.41 and the High Court set a hearing date for special leave to appeal.
4. The Court found that New Acland was prima facie entitled to a winding-up order, but the Court could use its discretion to stay the order (at [35]). The Court considered that on the evidence, there was no indication that the controllers of the Association were dissipating assets, as it had no assets. Further, a delay in the winding-up would not reduce any dividend ultimately paid to creditors. Public interest considerations that insolvent companies should not be allowed to continue trading did not arise, and there was no suggestion of it incurring trading debts. The Association existed for a limited purpose, and in pursuing its objectives, it had caused New Acland to incur legal costs, and that was a consideration. There was no realistic prospect of disturbing the costs order in the High Court.

- The matter was complicated by appeal grounds alleging bias in previous proceedings and costs orders relying on those decisions that could be disturbed by the High Court. If a liquidator was appointed, they would be unlikely to pursue the High Court appeal if granted.
- In all the circumstances, the Court decided to adjourn the application to a date to be fixed after determination of the special leave to appeal hearing in the High Court.

IMPLICATIONS



The case illustrated the high cost of pursuing public interest litigation for both parties. Further, the case showed the difficulties in weighing up how a court should exercise its discretion in such matters.

VIEW THE CASE



This case may be viewed at <https://www.queenslandjudgments.com.au/case-download/id/344978>

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

Email: acpns@qut.edu.au

Date of creation: August 2020

Number of case: 2020-104

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