

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.



KNOX v NILE [2021] NSWSC 538

Supreme Court of New South Wales, Henry J, 12 May 2021

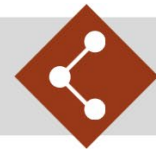
Competing applications to appoint an administrator to call a fresh AGM and appoint a receiver and manager.

Key words: Incorporated Associations, New South Wales, Receiver and Manager, AGM, Internal Dispute, Political Party, Section 1322(4) Corporations Act

1. The Christian Democratic Party (Fred Nile Group) Incorporated (CDP) is an association governed by the Associations Incorporation Act 2009 (NSW).
2. K commenced proceedings in September 2020 as he took issue with the outcome of an Annual General Meeting (AGM) of the CDP held in December 2019. He sought various relief relating to the governance of the CDP or, in the alternative, the appointment of a receiver for the purposes of winding-up the CDP.
3. Three individual defendants sought to validate the December 2019 AGM.
4. In November 2020 a mediation occurred where there was an agreement for the appointment of a caretaker board of the CDP, and the calling of an AGM at the end of November 2020. However, after the November 2020 AGM K claimed that the management committee was not validly elected and appointed according to the CDP's constitution.
5. The new management committee received advice that the costs associated with these proceedings would be significant and have the effect of placing the CDP into insolvency. The advice stated that the most appropriate solution was the appointment of a voluntary administrator pursuant to s 54 of the *Associations Incorporation Act 2009* (NSW). Accordingly, C was appointed as an administrator.
6. C then approached the Court to seek an order to validate his appointment as administrator under s 1322(4) of the *Corporations Act 2001* (Cth). Further, or in the alternative, C sought an order appointing him as receiver and manager of the CDP for the purposes of convening an AGM of the CDP with the intent of electing a new management committee and providing a report to the Court as to the affairs and governance of the CDP, or an order appointing him as liquidator of the CDP.

7. K also approached the Court seeking M to be appointed as the receiver of the CPD. During the court proceedings K withdrew his opposition and indicated he would consent to orders proposed by C relating to the validation of C's appointment as administrator.
8. The Court exercised its wide powers under section 1322(4) of the Corporations Act to validate C as administrator of the CPD. It was just and equitable that an order under s 1322(4)(a) be made and the Court was satisfied that no substantial injustice had been or was likely to be caused to K or other members of the CDP by making such an order.
9. The Court was satisfied that given the history of disputes and the current impasse that the circumstances warranted the appointment of a receiver and manager to the CDP. The Court acknowledged that it was a finely balanced decision whether to continue C as receiver and manager or appoint M (at [32]). Given that the hourly costs of M and C were similar, that C already had knowledge of the CPD and no issues had been raised about the conduct of C, C was appointed as receiver and manager.

IMPLICATIONS



It is not clear, but part of the issue here may have been that the CDP's constitution required all office bearers to be endorsed by at least 75% of the members of the Annual State Council, rather than by a simple majority. This is an unusual provision for the election of office bearers.

VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/538.html>

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