

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 & Ors [2022] NSWSC 195

Supreme Court of New South Wales, Black J, 1 March 2022

An application to have an incorporated association, which was a political party, wound up on just and equitable grounds.

Key words: Incorporated Association, New South Wales, Winding Up, Just and Equitable, Branches, Electoral Funding, 75% Majority

1. The Christian Democratic Party (Fred Nile Group) Incorporated (CDP) is a political organisation incorporated under the Associations Incorporation Act 2009 (NSW).
2. The CDP's aims and objectives include:
 - a) To endorse, nominate and support the election of Christian candidates into Local, State, and Federal Government, in both the Upper and Lower Houses of Parliament, and Legislative Assemblies in all States and Territories of Australia, as applicable.
 - b) To uphold our Christian Constitutional Monarchy and Christian Westminster System of Government through the policies of [the Association] as a Christian Democratic Political Movement, respecting the sovereignty of Australia.
3. The CDP's constitution provided for the Annual State Council to elect the office bearers or management committee. The constitution further provided that each person nominated to be one of the Office Bearers must be elected by a vote of 75% of the "members at the Annual State Council".
4. The term "Annual State Council" was defined to comprise two delegates from each electorate branch and all state electorate co-ordinators, and that body then endorsed candidates for positions on the State Board.
5. Evidence was that for at least a decade, the 75% vote had not been achieved.

6. This hearing was brought by a party member seeking for the CDP to be wound up in insolvency or on the just and equitable ground because of the ongoing disputes and the costs incurred in the proceedings.
7. The party member had previously brought proceedings in 2020 that Reverend Nile and others did not properly hold office in the CDP after the 2019 elections. A mediation between the parties occurred and there was an agreement to form a caretaker board and for new elections to be held.
8. In [Knox v Nile](#) [2021] NSWSC 538 the Court was satisfied that, given the history of disputes and the current impasse, the circumstances warranted the appointment of a receiver and manager to the CDP in order to hold an election.
9. It became apparent that an intractable impasse between the various party factions and an inability to determine the details of branches and their members existed causing the receiver to approach the court several times for further orders. The future solvency of the CDP due to the mounting costs of administration and litigation costs was also raised by parties.
10. The receiver's evidence as to the CDP's solvency was that it was solvent provided it could have recourse to the funds received from the Electoral Commission to pay for the costs of the receivership and the receiver's costs of these proceedings, subject to the question of other parties' costs of the proceedings.
11. There was a question for the Court as to whether CPD's use of electoral funds towards litigation and other irregular administrative costs was allowed under the payment conditions, and also if it was consistent with CDP's rules, objects and aims.
12. After examining extensive evidence and arguments by the parties, the Court found:
 - That CDP was solvent by applying the relatively narrow cashflow test for solvency under s 95A of the Corporations Act, because the substantial financial claims against it that were accruing as a result of the receivership and the proceedings were not yet debts that were due and payable.
 - There was no legal impediment, so far as electoral legislation was concerned, to the use of the Association's funds for the purpose of the receivership and litigation costs.
 - That a winding-up order was appropriate as:
 - i. the hostilities between the parties, failure of mediation, multiple court proceedings, and the parties' differences appeared to be widening, not narrowing;
 - ii. the actual and potential claims for costs of these proceedings would likely dissipate CDP's assets before the proceedings were resolved so that its political purposes could not then be achieved.
13. The Court acknowledged that a winding up order would also disrupt any continuing political activities of the CDP. However, the costs of the receivership and litigation meant that there would be little remaining for political activity in the end. This was not a case where all parties acknowledged that a receiver could supervise an election for a newly constituted management committee.

14. The Court did not express a view on whether the use of CPD's funds for receivership and litigation expenses was a proper use of those funds, when more funds were used for that purpose over time and less for any electoral purposes.
15. The Court stayed the winding up order for a relatively short period to allow the parties a further opportunity to resolve their differences as to what could be achieved by any meeting of delegates of branches of the CDP, or members generally, and how it could be conducted.

IMPLICATIONS



An example of a complete breakdown in internal relationships within an incorporated association that could not be resolved by the Court, and that led to the dissipation of all of the funds of the association on litigation and administration costs.

Usually such matters can be resolved by the Court ordering a general meeting to be held to properly elect a new committee. However, the Court concluded in this case that (at [97]):

...holding such a meeting does not assist here, unless the parties can resolve their differences as to who can vote and how it is to be held. As matters stand, such a meeting would prolong and expand, rather than resolve, the internal disputes within the Association; those disputes as to the conduct of that meeting are also now so many and so fundamental that the Court could not resolve them before the remaining assets of the Association are dissipated by costs; and these matters support a winding up order on the just and equitable ground.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC//2022/195.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: March 2022

Number of case: 2022-29

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 licence \(CC BY 4.0\).](#)