

# 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.



## United Muslims New South Wales Inc v Australian Federation of Islamic Councils Inc (No 2); Islamic Council of Victoria Inc v Australian Federation of Islamic Councils Inc [2022] NSWSC 868

Supreme Court of New South Wales, Kirk J, 30 June 2022

Whether expulsion decisions made by AFIC concerning two constituent associations were valid.

**Key words:** Incorporated Associations, New South Wales, Expulsion of Members, Procedural Fairness

1. These proceedings concerned a dispute between the Australian Federation of Islamic Councils (AFIC) and two of its constituent State Councils. All parties involved are incorporated associations.
2. The matter was previously litigated in [United Muslims New South Wales Incorporated v Australian Federation of Islamic Councils and Ors](#) [2021] NSWSC 382 and [Australian Federation of Islamic Councils Inc v United Muslims of New South Wales Inc](#) [2021] NSWCA 311.
3. AFIC is an association set up as a national peak body for Islamic societies. Its membership consists of State Councils for each State, Territory and Christmas Island, along with Islamic societies from around Australia.
4. The plaintiff in the first dispute, United Muslims New South Wales (UMNSW), has been the State Council of AFIC for NSW, and the plaintiff in the second dispute, Islamic Council for Victoria (ICV), has been the State Council of AFIC for Victoria.
5. In correspondence dated 11 March 2022 the Executive Committee of AFIC sought to expel the plaintiffs from AFIC. Each expulsion decision was then appealed by the respective plaintiffs. The appeals were heard and purportedly determined by special general meetings, which confirmed each of the expulsions.
6. Each plaintiff challenged the validity of the expulsion decisions. The two proceedings were heard together. Orders were made by consent that evidence in one proceeding was to be evidence in the other proceeding.
7. In the 2021 litigation, AFIC sought to replace UMNSW with a new body or group of individuals in a meeting convened on 16 January 2021. The meeting was attended by AFIC member societies in NSW. AFIC claimed that its power to displace UMNSW as a State Council was found in the AFIC [Constitution](#). UMNSW disputed that claim, and initiated proceedings against AFIC.
8. At first instance Black J found in favour of UMNSW, finding that the AFIC constitution did not contain this power.

9. AFIC then appealed, again claiming that the AFIC constitution permitted AFIC's member societies in a state to remove the relevant State Council. On 15 December 2021 in the Court of Appeal, Bathurst CJ, with whom Bell P and Meagher JA agreed, dismissed the appeal.
10. Subsequent to the Court of Appeal's decision the executive committee of AFIC sought to invoke the expulsion provisions in its Model Rules, as the Court of Appeal had indicated was possible at [87] of that decision.
11. The proceedings brought by UMNSW in this case therefore represented a continuation of the prior proceedings determined by Black J and the Court of Appeal. ICV, having also been previously expelled, joined with UMNSW.
12. AFIC was incorporated in Tasmania in 1999 pursuant to the [Associations Incorporation Act 1964](#) (Tas). It was agreed that the Model Rules contained in the [Associations Incorporation \(Model Rules\) Regulations 1997](#) (Tas) applied as there had been no changes made to date within the association. These Regulations have now been rescinded and replaced with the [Associations Incorporation \(Model Rules\) Regulations 2017](#)(Tas).
13. Although it was open to AFIC under the 1997 Model Rules to expel State Councils, and this power was not limited to expulsion for matters connected to their capacity as member societies, as opposed to being constitutive State Councils of AFIC, the Court found that the attempt by the executive committee to expel the constituent associations was invalid because the executive council meeting where it purported to do so was inquorate.
14. Therefore, the subsequent decisions of the special general meetings to refuse the constituent associations' appeals were also invalid. Specifically, the special general meeting provided for in rule 34 of the Model Rules had to be constituted by a special meeting of the Federal Congress, as provided for under the AFIC [Constitution](#).
15. In this case, no such meetings had yet been held with respect to either plaintiff. As a result, the appeal rights provided to the plaintiffs by rule 34 remained unfulfilled. As a further consequence, that meant the plaintiffs currently remained as members of AFIC, pursuant to rule 33(2)(b) of the Model Rules.
16. Although there was no finding of procedural unfairness with respect to UMNSW, the ICV was not given the requisite 14 days' notice of the holding of the special general meeting affecting it. This invalidated the AFIC decision on its appeal.
17. The overall outcome was that the plaintiffs were not expelled from AFIC, and remain members of the State Councils within that body. Liberty to appeal was given.

## IMPLICATIONS



As the Court pointed out in this case (at [13]):

Questions about AFIC's ability to expel State Councils, to remove office-bearers of State Councils, and issues relating to membership more broadly, have been agitated before this Court with a surprising degree of regularity.

There have now been at least eight cases involving AFIC membership and attempted expulsion of member associations since 2000. These appear to be grounded in factional disputes within AFIC.

The Court of Appeal in its 2021 decision in this matter said that in light of the UMNSW and AFIC constitutions, it was “plainly intended that each should operate harmoniously with the other and that member societies in New South Wales were to be members of each of AFIC and UMNSW” (at [74] of that decision). There appears to be some work yet to do to achieve that objective.

## VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2022/868.html>

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