

# 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.



## Moala v Free Wesleyan Church of Tonga in Australia (Vic) Inc (No 7) [2022] VSC 599

Supreme Court of Victoria, Ginnane J, 30 September 2022

An application for an interlocutory injunction to delay an annual general meeting while membership applications were outstanding.

**Key words:** Incorporated Association, Victoria, Church, Annual General Meeting, Member's Register, Interlocutory Injunction, Special Resolution, Existing Membership Applications, Oppressive Conduct

1. This case is part of a long-running internal dispute in a church: see [Moala v Free Wesleyan Church of Tonga in Australia \(Victoria\) Inc \(No 3\)](#) [2019] VSC 831, [Moala v Free Wesleyan Church Of Tonga In Australia \(Victoria\) Inc \(No 4\)](#) [2020] VSC 50 and [Moala v Free Wesleyan Church of Tonga in Australia \(Victoria\) Inc \(No 5\)](#) [2020] VSC 134.
2. The Free Wesleyan Church of Tonga in Australia (Victoria) Inc (the Association) exists to assist people, mainly people who were born in Tonga or people who are of Tongan descent, to worship God following Christian principles.
3. The Association has existed since the early 1980s, and was incorporated in 1991. It owns three church properties in Victoria. The initial proceeding arose from a dispute in 2014 between two groups in the Church, and about the control of one Church property to which dissenters gravitated to worship.
4. A mediation agreement was made between the parties as a result of previous litigation and included provisions for the Association's committee to consider applications for membership in accordance with the Association's rules.
5. The annual general meeting (AGM) of the Association was to be held on 1 October 2022.
6. After notice of meeting was given, 75 member applications were lodged and not dealt with prior to the AGM.
7. The notice of the AGM included a proposed constitution with a new elaborate membership clause reintroducing 'Lotu Fehu'' as a requirement of membership.

8. 'Lotu Fehu'i' is a term that translates to 'prayer requester', which is a reference to the fact that Lotu Fehu'i are people who have begun their spiritual journey and require the help of prayers. Such persons submit to the spiritual authority of the church/minister and are allotted to local groups.
9. The dissenting group within the church opposed this membership criterion and sought an interlocutory injunction to delay the AGM until the member applications had been properly considered, claiming that the Act would be breached at the AGM and oppressive conduct engaged in.
10. Further, the dissenters sought an order pursuant to s 67 of the [Associations Incorporation Reform Act 2012](#) (the 'Act'), and Section 4 of Part I of the Rules, compelling the defendant to provide access to the register of members.
11. The Court considered the correct approach was that the already made membership applications would be determined under the existing rules of the Association, although it noted this was a provisional view given the matter was interlocutory.
12. The Court noted that it had jurisdiction under s 68(1) of the Act to restrain situations where an association proposed to engage in oppressive conduct, but generally, courts are very reluctant to stop a meeting, or a vote at a meeting, occurring on the basis that invalid decisions can always be challenged later.
13. The Court found that the evidence did not establish a serious question to be tried and the balance of convenience did not favour an injunction as:
  - any invalid amendment could be later challenged;
  - the AGM was organised before the current membership applications were made, and the recipients of the notice of the meeting were entitled to expect that it would proceed and that they could vote on the resolutions;
  - the Court should not lightly prevent an annual general meeting from proceeding according to the notice of matters that had been circulated; and
  - the model rules (rule 13(2)(b)) whereby any person who might have been determined to be a member since 19 September (when the 75 applications were lodged) would not be entitled to vote until more than 10 business days had passed since becoming members, which would fall on a date after the proposed annual general meeting.
14. As to the inspection of the member's register, the Court found that the evidence did not reveal any refusal by the association for inspection of the register.
15. The matter was dismissed.

## IMPLICATIONS



The Court clearly indicated that it regarded the litigation as "unfortunate" (at [1], [30].)

Unlike Victorian legislation, which is silent on the matter, the [Northern Territory](#) (s 25), [Queensland](#) (s 50) and [Tasmanian](#) (s 19) associations incorporation statutes declare that an effective rule alteration does not affect rights, liabilities or obligations of the association or another person, or legal proceedings, existing or pending immediately before the alteration took effect.

The Court noted that (at [31]):

[T]he Court should not postpone an annual general meeting on the basis that people may later be admitted as members and their votes, if they had been able to cast them at the time, may have changed the outcome of the vote on the resolution. In any organisation containing factions, even in a church which is an incorporated association, the faction that carries the majority of votes, in this case, a 75 per cent majority, is entitled to amend the rules.

## VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC//2022/599.html>

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