

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.



Lawrence v Melbourne Football Club Ltd [2022] VSC 658

Supreme Court of Victoria, Riordan J, 21 October 2022

An application for a Company Limited by Guarantee to provide member e-mail addresses for a proper purpose to a member.

Key words: Company Limited by Guarantee, Victoria, AFL, Company Register, Electronic Addresses

1. The board of the Club announced its intention to review the Club's constitution, appointed a committee to carry out the task, and held a number of surveys and member forums on the proposals.
2. Lawrence (the member) and four other members of the Club formed an informal group styled as 'Deemocracy' and prepared a draft constitution incorporating their views on the Club's governance arrangements. They placed a full-page advertisement in the Herald Sun newspaper 'CALLING ON ALL OUR MFC MEMBERS' to read the Deemocracy submission.
3. The member later requested a copy of the members register to provide all members with a copy of the draft constitution, together with a summary and explanatory notes.
4. Despite the Club's initial reluctance, a members' list was provided to the member under certain conditions, but it did not contain member e-mail addresses.
5. The register was maintained through data request and extraction from the Australian Football League electronic Ticketmaster's membership and customer relationship management platform (Archtics).
6. The member then filed an application with the Court for a declaration that, pursuant to s 173 of the [Corporations Act 2001](#) (Cth) (the Act), the Club was to provide the member with a copy of the Club's register in order to send an e-mail to all voting members of the Club.
7. The Court identified the following issues for determination:
 - Does the word 'address' in s 169(1) of the Act include any electronic addresses nominated by the member?
 - Are the e-mail addresses maintained by the Club on the Archtics system part of the Club's register?

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8. The Court found that the requirement under s 169(1)(a) of the Act for the register to contain the member's address includes an obligation to contain, not only the residential address, but any address nominated by the member for the purposes of communications relevantly including electronic addresses.

9. The Court's reasons were that:

- More than one address can be placed on the register;
- The principal purpose for a member nominating an address, or more specifically an electronic address, is to permit communications and receipt of notices relevant to the company's affairs;
- To limit address to a residential address would be to thwart the intention of the Act for a member to be able to communicate with members for an approved purpose and some members rely on an electronic address for receiving communications.
- It would be incongruous for the Act to permit a company to record one address in the official register, but then record a second address on another register, particularly when it is the latter address that the company uses for the purpose of communications with its members.

10. The Court rejected the Club's concerns about member privacy (at [53]):

The legislature has permitted access to addresses of members of a corporation for proper purposes and prescribed penalties for unauthorised use. One may expect that there would be greater concerns about disclosure of residential addresses than e-mail addresses.

11. The second issue was not dealt with by the Court as the Club conceded that an order for inspection should be made if it is required by s 169(1) of the Act to record electronic addresses nominated by its members.

IMPLICATIONS



Public companies limited by guarantee must keep a register of members pursuant to the Corporations Act. Under section 169 of the Act, the register must include the name and address of all members, as well as the date on which each member was entered onto the register.

Anyone (including non-members) is allowed to inspect the register without providing reasons, but the requirements surrounding obtaining copies of the register are more restrictive.

[Clarke v Australian Computer Society Incorporated](#) [2019] FCA 2175 involved a member challenge to the validity of a general meeting and special resolution for an incorporated association to convert into a company limited by guarantee. There was a detailed discussion about service of notices by e-mail in that case.

VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2022/658.html>

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