

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.



Re Yeronga Bowls Club Inc [2023] QSC 275

Supreme Court of Queensland, Hindman J, 1 December 2023

Whether a bowling club should be wound up on just and equitable grounds.

Key words: Incorporated Association, Queensland, Winding Up, Just and Equitable Grounds, Failure of Substratum, Solvency, Member Rights

1. This was an application to wind up the Yeronga Bowls Club Inc (the Club) on just and equitable grounds under [s 90\(1\)\(e\)](#) of the [Associations Incorporation Act 1981](#) (Qld) and [s 583](#) of the [Corporations Act 2001](#) (Cth). Consequential orders including for the appointment of liquidators and the distribution of surplus assets were also sought.
2. The application was brought with the support of the Club's current management committee (the Management Committee). In their view, the Club's dilapidated state, both physically and financially, made it necessary to wind up the Club.
3. The application was opposed by a long-standing member of the Club, who informally represented about 9 other club members.
4. The Club is situated at 171 School Road, Yeronga, in Brisbane. The Club's premises include a playing lawn green (the green), a brick storage building, a small garden maintenance shed, and a two-storey timber and brick building (the clubhouse).
5. The clubhouse is the primary building used by the Club for its operations. On the lower floor of the clubhouse there is a bar, a keg room, a dining area, offices, and a reception area. There is also a veranda along the front of the clubhouse, leading to the green. The upper floor of the clubhouse mainly consists of a function area and two kitchens.
6. All the facilities are in disrepair. Substantial work would need to be completed before the Club could be operational again.
7. Therefore, the applicant's primary submission, was that it was just and equitable to wind up the Club because it could no longer meet its objects as a bowling club, and the substratum of the Club had failed.
8. The Club opened in 1912, but has had steadily declining membership since 1998. It currently has 37 members.

9. The Club had two primary sources of income, the bar and the green, but both are now closed.
10. Since at least the 2016/17 financial year, the Club has had deteriorating financial losses. This was despite the sale of one its playing greens for \$1,091,413.15, and the sale of its gaming machine licenses for \$30,000. Both sales were in 2016.
11. The sale proceeds of the green have been funding the Club's losses to date. It was agreed that if the Club continued in existence and did not begin turning a profit, the sale proceeds of the green would eventually be used up.
12. A health and safety report dated July 2023 showed the Club's premises and facilities to be in great disrepair, with safety issues such as lead paint and asbestos containing materials to be considered.
13. The Court accepted evidence that the Management Committee had tried to improve the position of the Club and its membership in a 'tentative' way, but not that it had exhausted all avenues of possibility (at [35]).
14. In addition, there was no clear evidence (quotations etc) of attempts at rectification works that would overcome the health and safety issues (at [40]).
15. An AGM had not been held for the year ending March 2023, though one had previously been ordered to be held. No explanation emerged as to why. Thus, the Management Committee had not properly canvassed the views of the whole membership as to the substance of this application.
16. Since the dissenting member had the backing of approximately 9 members of the Club, it was not completely clear if a 75% vote to voluntarily wind up could be achieved, though it was possible, which would make this application redundant.
17. As to the failure of the substratum, again the Court was of the view that this was not clear on the evidence. Although the Club was not meeting its objects, since the green and bar were closed, and its state of repair was 'dire', there was insufficient evidence before the Court to determine the extent and likely cost of the works necessary to reopen the green and the bar (at [103]).
18. Thus, the Court could not conclude that the cost of reopening would be an amount close to, or in excess of, the liquid assets available to the Club. It was therefore possible that the Club could reopen (at [104]):

In addition...the fact that the entity is going to trade at a loss is not sufficient for the substratum of the entity to have failed. The purposes of the Club include providing facility for bowls and promoting bowls. The Club's purposes are not the making of profit.
19. Even if very little money were left after reopening, such that the Club could only survive for a limited time, it would still be meeting its objects during that time, particularly if members were willing to expend time and effort in that regard (at [108]).
20. Therefore, the application to wind up on just and equitable grounds was dismissed.

COMMENT



Winding up on just and equitable grounds is an alternative to a court-ordered winding up in insolvency. The entity will be solvent, as in this case, but apparently unable to function for other reasons. The entity will need to persuade the Court that it is in such a state that a winding up is the only possible outcome. Since the entity will be solvent, this is regarded as an extreme step.

The Court's power to wind up an entity on just and equitable grounds is broad, and the categories of cases in which it will be appropriate to do so are not closed. The Court must assess the whole of the circumstances. Each case will turn on its own facts.

However, two common reasons for winding up on just and equitable grounds are deadlock in management and failure of the substratum. Deadlock was also tentatively raised in this case, but was clearly not present, since the management committee was in agreement.

Thus, this application, based on failure of the substratum, appeared to be seeking a compulsory winding up from the Court, bypassing a vote to wind up voluntarily at an AGM. This amounted to not giving the members their full rights to decide on a voluntary winding up and dissolution of the association (at [87])

VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/2023/275.html>

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