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Navigating Church Disputes

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Schools & Education | Not for Profit & Charity | Commercial | Employment & Discrimination | Compensation Law | Family Law | Estate & Elder Law
Litigation | Criminal & Traffic | Institutional Abuse | Personal Injury & Compensation

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Topics Covered:

- The legal framework for incorporated associations and public companies in the Australian context.
- Understanding the roles of various stakeholders
- The Importance of your Members' Register
- Avoiding Member Oppression Claims
- Removing Troublesome Members



- Most churches are structured either as a Public Company (Company Limited by Guarantee) or an Incorporated Associations. These are the two structures most common structures and the ones we will be looking at today.
- Proprietary (or for profit) companies, Trusts, and Unincorporated Associations are outside the scope for this webinar. Likewise, some denominations (Presbyterian, Uniting, Lutheran) have unique corporate structures and are also out of scope.
- What unifies Public Companies and Incorporated Associations is that they are ultimately controlled by members.



How do I find out my church's Legal Structure?

<https://abr.business.gov.au/>

- How do I find our church's Constitution?

Most churches will be registered with ACNC which requires the company to provide its updated Constitution. Additionally, if your Incorporated Associations varies from the model rules, they will be held by the regulator for each state.



Disputes in Churches

- Proverbs 14:4 – “Where no oxen are, the trough is clean; but increase comes by the strength of an ox.”
- With church growth comes mess. Sometimes that mess looks like a dispute.
- Understanding your legal structure means that you are better equipped to deal with disputes efficiently and determinatively without needing outside intervention.



Preparing for disputes means putting dispute resolution structures in place that minimise the risk of needing outside intervention.



Legislation

For Public Companies:

- Corporations Act 2001 (Cth) (companies limited by guarantee)—plus Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act), where relevant

For Associations:

- Associations Incorporation Act 1991 (ACT)
- Associations Incorporation Act 1984 (NSW)
- Associations Act 2003 (NT)
- Associations Incorporation Act 1981 (Qld)
- Associations Incorporation Act 1985 (SA)
- Associations Incorporation Act 1964 (TAS)
- Associations Incorporation Act 1981 (VIC)
- Associations Incorporation Act 1987 (WA)

In a dispute, it pays to have read the rulebook!

Understanding Various Roles

One of the principal areas of confusion is in relation to the various roles individuals hold under Church Constitutions.

1. Company Members or Association Members are the ultimate controllers of the entity, determining either the board or the management committee, voting at the AGM, and who will be recorded on the members register.
2. Congregation “members” are simply attendees. They have no rights of control unless they are appointed as members of the entity.



Members in Incorporated Associations and Companies Limited by Guarantee





- In some cases, Churches will opt for the Member-Director model with membership stapled to the office of director.
- This certainly minimises a level of the complexity associated with a potentially large group of members maintaining control of the entity.



Disputes with Employees/Contract workers/Volunteers/Spiritual Appointees

- Employees → Disputes are governed by the employment agreement & National employment standards
- Contract workers → Contract Agreement
- Volunteers → Volunteer Agreement
- Spiritual Appointments → Spiritual Appointee Agreement (or Letter of Call)

The key feature of a Spiritual Appointment is that it straddles the line between volunteering and employing and provides a mechanism for stipends (or living allowances) without enlivening the obligations of an employment relationship.

Rev. Hedley Wycliff 'Atunaisa Fihaki v Uniting Church In Australia, Qld Synod - [2023] FWC 1650



Disputes with Congregation Attendees

- These can sometimes be referred to as Church member. This should not be confused with Company members.
- The principle is that Church leadership holds the over-riding power to determine who attends services and ministry events.
- Depending on the nature of the dispute, Churches will exercise a range of tolerance levels for attendee behavior.
- Generally, if there is a dispute that relates to the risk or safety of other attendees, you should seek legal advice.
- If the dispute relates internally to attendees, you should encourage the attendees to seek to attend mediation.

Common Areas of Dispute

- The PRIMARY area of dispute that churches experience is a member dispute:
 1. Not properly maintaining a members register.
 - → Unable to assess who has the right to vote.
 - → Not providing notice of meetings or failing to allow a member to vote
 - → Not recognizing members rights under the law or constitution
 2. Taking steps that might oppress members.
 - → Making significant decisions without putting it to a vote
 - → Making choices about
 - → excluding members from votes
 3. Removing members without following procedure.



The Members' Register

Both the Corporations Act and the State Incorporated Associations Act require entities to maintain a members register.

This register should include:

- Full Name
- Date of Entry
- Address
- Phone and/or email address

The members have a right to inspect the register.

Recommendation: If you have a large membership base, we recommend a clause in your Constitution or Rules that requires a nominal yearly membership fee or a renewal process. This is not for revenue raising but to ensure that there is a mechanism to automatically remove disengaged members.

Reconstructing the Members Register



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- With alarming frequency, we advise churches that have not been updating their Members register. In these cases we recommend that churches forensically reconstruct the register.
- The risk is that a historic member will assert alleged rights which have not been properly recognised.

Members rights – Public Company

The principle right that the Member of a Company has is the right to vote in relation to key resolutions in the AGM.

A member of a Company has rights to access company information and may take the following actions:

- I. Request a copy of the Company's constitution. The Company must provide a copy within seven days of the member's request, and can't charge more than \$10 for providing the copy;
- II. Apply to a court for an order allowing them to inspect the books of the Company;
- III. Inspect the Company's minutes of members' meetings free of charge;
- IV. Receive copies of the Company's minutes of members' meetings. The Company may not charge more than \$0.50 per page or per 100 words;
- V. Inspect the Register of Members of the Company free of charge; and
- VI. Request a copy of the Company's Register of Members. The Company must provide the member with the copy within seven days of the member's request and cannot charge more than \$250 unless the Company has more than 5,000 members.

Members Rights – Incorporated Associations



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Members' rights generally include:

- voting rights
- rights to notice of meetings and to attend certain meetings
- rights to access certain documents
- right to nominate to hold formal roles in the organisation
- right to not be oppressed, and
- in some cases, access to certain benefits



Members Oppression claims

- Both the Corporations Act and the Incorporated Associations Acts provide grounds for an aggrieved member to bring a claim against the entity on the basis that they have been oppressed.
- There is considerable risk with these claims as the remedies vary from specific orders to wind up orders.

Member Oppression – Public Companies

- Section 232 of the Corporations Act provides that the Court may make an order if:

The conduct of a company's affairs; or

An actual or proposed act or omission by or on behalf of a company; or

A resolution or proposed resolution, of members or a class of members of a company;

Is either:

Contrary to the interests of the members as a whole; or

Oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.

- This is a very broad ground and may capture a range of actions.

Member Oppression – Incorporated Associations



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Section 91 of the Associations Incorporation Act 1981 (Qld) provides:

The Supreme Court may order the winding up of an incorporated association if—... (f) the affairs of the association are conducted in a way that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, 1 or more members or in a way that is contrary to the interests of the members as a whole; or (g) an act or omission, or proposed act or omission, by or on behalf of the association was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, 1 or more members or in a way that is contrary to the interests of the members as a whole; or

Dispute Resolution Processes for Churches that are Incorporated Associations



Most states and territories now require the Association to include Dispute resolution processes in their rules (or rely on the dispute resolution clauses in the state model rules). This will usually involve:

1. Informal Resolution
2. Investigation
3. Mediation
4. Special Resolution by the Members
5. Application to the various state oversight body.

Dispute Resolution Processes for Churches that are Public Companies:

There are often no dispute resolution clauses in Company constitutions.

Ideal Dispute resolution process:

1. Mediation → This is an informal, nonbinding process that is suitable for legal and relational disputes.
2. Referral to Denominational Leader or External Oversight for non-binding recommendation → This is an informal, nonbinding process that is best suited for relational disputes.
3. Referral to senior Christian Barrister for optional binding or non-binding arbitration → This is a formal process that is best suited for strict legal disputes

These clauses can be mandatory or at the least, can be made mandatory by the leadership team.

Clauses of these kinds can save significant time, money and reputational damage by providing mechanisms for resolution without recourse to the Courts or Tribunals.

Director or Management Committee Disputes

In the first instance, good drafting in the rules or constitution should avoid deadlocks by providing casting votes or uneven numbers.

Ultimately, the members can vote to resolve any deadlocks that do arise at a Special General Meeting.

Section 203D provides a provision for the members to remove a director despite any other agreement or rule in the Constitution.

Section 64(1) of the *Associations Incorporation Act 1987 (Qld)* states that a Committee Member may be removed from office as prescribed by the rules. The model rules provide specific grounds.



Removing a Member

From time to time, you will need to remove a member.

Generally:

1. Consider whether there is any procedural rule that may provide good grounds; and
2. Consider nonlegal/relational approaches.

Broadly speaking, you should seek legal advice before you seek to remove a Member.



Removing a Member of a Public Company

- Very difficult to remove a Member if a procedure is not stated in the Company's Constitution.
- Effectively only by their consent.
- Potentially by Special Resolution in a Special General meeting.

Removing a member of an Incorporated Association



- Incorporated associations are allowed, under law, to discipline members.
- Disciplinary action is taken when a member has breached the rules or engaged in other improper behavior (such as harassing other members or acting in a way that harms the associations). Depending on your rule, disciplinary action can include a sanction, a fine, or suspension or cancellation of membership.
- Many associations have a disciplinary procedure in their rules, but they don't have to. If there is a procedure in the rules, it should be followed.



Model rule 10 allows the management committee to terminate the membership of a member who:

- is convicted of certain offences
- does not comply with the association's rules
- has membership fees in arrears for at least two months, and
- acts in a way considered 'injurious or prejudicial' to the associations interests or characters

Rule 10 also requires that the committee give the member an opportunity to show why their membership should be kept. Members can appeal a termination under model rule 11 through a general meeting of all members.

If your rules don't mention how membership of the association ends, the model rules might automatically apply.

Procedural Fairness is critical.



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QUESTIONS?



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