

Near enough is *not* good enough when it comes to procedural irregularity

A decision-makers duty to provide procedural fairness must be strictly adhered to, or else failure to comply with procedural requirements will result in that decision being declared a nullity.

THE CASE OF ICV

Brand Partners represented the Islamic Council of Victoria (**ICV**) in its action against the Australian Federation of Islamic Councils Inc (**AFIC**) where it sought to overturn AFIC's decision to expel the ICV as the State Council of Victoria and sought a declaration that it is in fact the legitimate representative of Victoria within AFIC.

One of the complaints made by the ICV was that AFIC had failed to provide the requisite notice period under its Constitution. At 1:47am on 27 March 2022, AFIC issued the ICV with a Notice of Special General Meeting scheduling a meeting for 11:10am on 9 April 2022. A provision in the AFIC's Constitution required for such meetings to be given at 14 days' notice. A quick calculation showed that there was only 13 days 9 hours 23 minutes between the notice and the meeting.

THE LEGAL PRINCIPLES

ICV relied on the authority *Hanlon v Brookes* (1997) 15 ACLC 1 where the Court of Appeal of the Supreme Court of Victoria held that "if 14 days' notice in writing is required, 13 days' notice in writing or 15 days' oral notice is insufficient; and that the requirements are usually mandatory in character and not directory. ... It means that a purported expulsion without compliance or waiver is invalid." ICV made submissions that the constitution requirement to give 2 weeks' notice had not been complied with, and the notice was indisputably null and void insofar as it gave the ICV less than 2 weeks' notice.

AFIC did not dispute that it had to have complied with the 14-day notification requirement however it argued that the breach was *de minimis*, only short by 1 hour and forty-eight minutes.

THE DECISION

The Honourable Justice Kirk of the Supreme Court of New South Wales held that a "near enough is good enough" approach should not be accepted. His Honour applied *Hanlon* and pointed out that In circumstances where such notices or decisions lead to expulsion of members within associations, it has been held that a "power to expel from an incorporated club is one where the procedures laid down by the club's constituent documents must be strictly complied with, if the expulsion is to be valid": *McClelland v Burning Palms Surf Life Saving Club* (2002) 191 ALR 759; [2002] NSWSC 470 at [74].

THE LESSON

Decision-makers must strictly adhere to notice periods, or time limits, be it rules laid down by statute or man-made rules that govern that organisation including not-for-profits. Failing which, these decisions will be considered null and void on the basis of procedural irregularity.

You can read the full judgment [here](#).

FURTHER INFORMATION

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