

DEFECT IN PROCEDURAL FAIRNESS CURED BY APPEAL TO MEMBERS IN GENERAL MEETING

The South Australian District Court decision, [Kenny v Sturt Pistol & Shooting Club Inc. \[2017\] SADC 67](#), dismissed an appeal by Mr Kenny from a Magistrates Court decision, where he claimed his expulsion as a Club member was oppressive or unreasonable and a breach of natural justice (procedural fairness).

Mr Kenny was a member of the Sturt Pistol & Shooting Club Inc. (“the Club”) and alleged a security breach by the Club causing the release of personal information of approximately 1,000 members of the South Australian Revolver and Pistol Association Inc. (“SARPA”).

Mr Kenny then undertook a campaign of letter writing to SARPA and other pistol shooting clubs with his allegations and concerns. The decision notes Mr Kenny did not write nor communicate his concerns to the Club directly. However, some of the organisations that received correspondence from Mr Kenny expressed their concern about Mr Kenny’s conduct to the Club.

After several delays requested by Mr Kenny, the Management Committee of the Club met and determined to expel Mr Kenny as a Member of the Club. Under the Club’s Constitution an expelled Member has a right of appeal to a General Meeting of Members. Mr Kenny appealed to a General Meeting of Members. Such a right of appeal is an approach in many Club Constitutions.

The General Meeting of Members of the Club rejected Mr Kenny’s appeal and re-enforced the expulsion.

Mr Kenny then exercised his right to appeal to a South Australian Magistrates Court under Section 61 of the [Associations Incorporation Act 1985 \(SA\)](#). Each Australian State jurisdiction has similar legislation and provisions.

The Magistrates Court, in a detailed decision, dismissed Mr Kenny’s appeal. Mr Kenny then appealed the Magistrates Court decision to the South Australian District Court which also, in a detailed review of the Magistrates Court decision, dismissed Mr Kenny’s appeal. The effect being that Mr Kenny’s expulsion by the Club was valid.

An interesting observation in both the Magistrates Court and District Court judgements was that the original Management Committee decision did not afford procedural fairness to Mr Kenny. The reasons for making that finding are outlined in both the Magistrates Court and District Court judgements:-

“The plaintiff was given notice that there would be a hearing on 17 July 2014. The plaintiff was not given adequate notice that that date would be cancelled and the issue brought forward to 14 July 2014. The plaintiff was informed by email at 8.38pm and by phone at 8.45pm on that day and told he needed to appear that night. That was not adequate notice.”

However, the Magistrates Court decision, which was affirmed by the District Court, was that the flaw in procedural fairness was cured by the appeal to the General Meeting of Members of the Club.

Accordingly, assuring proper process and procedural fairness remains paramount. However, in some cases, defects may be cured where there is an appeal process to the Members in General Meeting.

Date Published: 5 July 2017

Victor Hamit
Wentworth Lawyers Pty Ltd
Level 40
140 William Street
MELBOURNE VIC 3000

Tel: +61 3 9607 8380
Mobile +61 408 590 706

Email: vhamit@wentworthlawyers.com.au
Website: www.wentworthlawyers.com.au

Disclaimer:

These materials are provided as a general guide on the subject only, not as specific advice on any particular matter or to any particular person. Please seek specific advice on your own particular circumstances as situations and facts vary.

Liability limited by a scheme approved under the Professional Standards Legislation