



Charity Law Association of
Australia and New Zealand

Webinar Key Cases Series 20 April 2026

Welcome

- Speaker 1 **Caleb Simmons** (Prolegis)
 - Speaker 2 **Rebecca Lambert-Smith** (Moores)
 - Speaker 3 **Professor Myles McGregor-Lowndes OAM** (QUT)
 - 1.50-2.00 - Q&A and conclude
-
- Chair – **Sari Baird**, CLAAANZ Board Member



CLAANZ KEY CASES SERIES

20 APRIL 2026

Caleb Simmons, Associate

w. prolegis.com.au

e. csimmons@prolegis.com.au

In the matter of James Brown Memorial Trust



- Applicant established as a trust under the will of Jessie Brown, in honour of her late husband.
- *James Brown Memorial Trust Incorporation Act 1894 (SA).*
- *James Brown Incorporation Act 1990 (SA).*



In the matter of James Brown Memorial Trust



1. Did the Trust have power to remunerate its trustees?
2. If so, was the remuneration scheme proposed to the Court reasonable?



In the matter of James Brown Memorial Trust



Did the Trust have power to remunerate its trustees?

[19] In my view, the application of Trust property to pay remuneration to trustees constitutes an exercise of powers contemplated by the Declaration of Trust because it contemplates the entry into contracts and arrangements with the potential that associated payments will be made from Trust property. I also consider the payment of remuneration to trustees is expedient for the fulfillment of the purposes of the Trust taking into account the complexity of the Trust's operations, the nature of the services it delivers, the legal duties and responsibilities upon trustees, the regulatory environment in which the Trust operates and the need to attract candidates for trusteeship that possess sufficient skill and acumen to administer such complex operations.

In the matter of James Brown Memorial Trust



Was the proposed remuneration reasonable?

- \$30,000 for the chair per annum
\$22,000 for the deputy chair per annum
- \$18,000 for trustees per annum
- 3,000 additional for sub-committee members per annum
- Benchmarked to FWC Annual Wage Review Decision / market reviews



2023

Australian Board Remuneration Survey





Was the proposed remuneration reasonable?

Given the assets of the Trust, the complexity of Trust operations and their size, I accept that the Trust's position on remuneration of trustees is reasonable and consistent with the best interests of the Trust. Taking into account the information published in the McGuirk report and the filed material, I consider the proposed remuneration is reasonable. (at [22])



Two observations:

- 1. Justifying the basis for remuneration**
- 2. Role of the Attorney-General**

Section 10, James Brown Memorial Trust 1990 (SA)

The Trust may, with the approval of the Attorney-General, by a resolution supported by an absolute majority of the trustees, amend the provisions of the Declaration of Trust.

Gary Mond v The Charity Commission (UK)



- Mr Mond was trustee of 5 charities which promoted Jewish thought and relations with others.
- Between 2014 and 2021, liked or commented on 5 posts which the Commission considered were Islamophobic.
- Fifth interaction led to public reporting and Commission investigation.





Section 181A – Charities Act 2011 (UK)

(6) The Commission may make an order disqualifying a person under this section only if it is satisfied that—

- (a) one or more of the conditions listed in subsection (7) are met in relation to the person [including: past or continuing conduct is **damaging or likely to be damaging to public trust and confidence** in charities...]
- (b) the person is **unfit to be a charity trustee** or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order), **and**
- (c) making the order is desirable in **the public interest in order to protect public trust and confidence in charities generally** or in the charities or classes of charity specified or described in the order.

Gary Mond v The Charity Commission (UK)



“Individuals who are fit to be charity trustees must be capable of operating within the constraints of charity law and the law generally, but these constraints must permit people with different personalities and attributes to become trustees.” (at [89])

“If such conduct is found to be a basis for a disqualification order, and is applied more generally in the charity sector, it risks setting too high a bar for charity trustees and adversely affecting public trust and confidence in the charity sector by putting off individuals who may be effective trustees in pursuing some part of the full range of charitable objectives permitted by charity law.” (at [92])



Application to Australia?

- Improper social media use is a relevant issue in Australian charity law.
- ACNC's powers and practices more constrained than UK counterparts.
- There is a way to think about 'public trust and confidence' in charities which is not overly burdensome.



Questions and thank you



**Caleb Simmons, Associate
Prolegis Lawyers**

Sydney

Level 4, 107 Mount Street
North Sydney NSW 2060
t. +61 2 9466 5222

Melbourne

Level 12, 500 Collins Street
Melbourne VIC 3000
t. +61 3 8672 2920



CLAANZ Webinar



Key Cases Series

20 April 2026



Rebecca Lambert-Smith

Practice Leader



The Montessori case

Commissioner of State Revenue v Montessori Children's Foundation [2025] QCA 153

- **Montessori Children's Foundation** (corporate Trustee and CLG)
- Trustee of **Masterman Montessori Indigenous Children's Trust**
- Trustee is an ACNC registered charity (PBI subtype)
- **Primary object of Trust** to further the education of indigenous children in Cape York area
- **Activities** included direct provision of Montessori services and development of a Montessori curriculum.
- Purchased three properties in Cairns to generate business income and signed transfers on 24 November 2020 (the Relevant Date) → stamp duty



Montessori case

- Trustee applied for registration as a **charitable institution** under s149A of the *Taxation Administration Act 2001* (Qld)
 - public benevolent institution 149C(2)(b)
 - governing document 149C(5) and (6)
- Application refused by Commissioner of State Revenue:
 - *“Although the Trust is charitable and, by its trustee, may distribute all or part of the income or capital of the Trust, the Trust lacks the essential feature of an ‘institution’ as there is no body or organisation (independent of the trustee) that has been set up to carry on activities or provide services relevant to the purposes of the Trust*
- Trustee succeeded on appeal to QCAT:
 - *...the Trust was more than just a ‘mere trust’ as at 24 November 2020. It was, I am satisfied, a body existing to translate the purpose ... into its living and active principle....[the level of activity undertaken by the Trust] satisfied me that it took the Trust beyond simply being something that could be properly described as a ‘mere trust’ and to the level of being an ‘institution’*



Montessori case

- On appeal to QSC (Bond, Boddice and Bradley JJA)

Grounds of appeal:

1. Error of law - failing to interpret and apply statutory term 'institution', in accordance with technical, legal meaning in s149C.
2. Error of law - failing to take into account considerations including Trust structure and conditions of membership and activities
3. Alternative to ground 2 – Error of law and fact - misapplying the legal meaning of 'institution' to the Trust
4. Error of law – inappropriate regard to matters ... that occurred after the Relevant Date.



Montessori case

Bond, Boddice and Bradley JJA

Ground 1 No technical meaning to the term ‘institution’

- In the context of the *Taxation Administration Act 2001* (Qld) takes its ordinary meaning (*Stratton v Simpson*, Gibbs J):
- ‘*an establishment, organization, or association, instituted for the promotion of some object, especially one of public utility, religious, charitable, educational etc.*’ (*The Shorter Oxford English Dictionary*).
- Authorities did not support submission that “institution” denotes more than seven members, or a meaningful number of members

Ground 2 and 3 Trustee was an ‘institution’ - ins capacity as Trustee it was required to apply trust property to charitable objects and did so through substantial activities from 2019 onwards. Developing curriculum was preparatory to and consistent with direct provision of services.

Ground 4 - Activities after Relevant Date properly considered only to understand activities prior

(**Obiter** – ‘**constitution**’ properly included both the constitution and the trust deed s149(6))



Montessor i case

Characterisation as an institution turns upon the facts.
Merely holding trust assets for charitable purposes
contrasted with 'living and active' entity engaged in direct
provision of services

Don't forget the Trust is not a separate entity

Examples of the institution requirement

- 'Public benevolent institution' – ACNC charity subtype
- Health Promotion Charity ('must be a charitable institution') – ACNC charity subtype
- HPC, PBI, 'religious institution' – *Fringe Benefits Tax Assessment Act 1986* (Cth) – note ATO will make own determination for HPC and religious institution
- Also State duties, land tax and payroll tax (in each State) may include an institution requirement



Barristers' Benevolent Association

- [Re Application of the Members of the Management Committee of the Barristers' Benevolent Association of New South Wales](#) [2025] NSWSC 644.
- **Unincorporated association**, ACNC registered charity (PBI subtype)
- Committee are **trustees of a fund** for the following **objects** :
 - *The object of the Association is to afford assistance in **necessitous and deserving cases** to [current and former members of NSW Bar and their dependants]*
- Application for judicial advice – could the Fund be used to pay for:
 - Consultations with counselling professionals
 - Other administrative costs reasonably necessary and incidental to BarCare
 - Employment of BarCare Director



Barristers' Benevolent Association

- Is a person in need of mental health care 'necessitous'?
- 'Necessitous' is an ordinary word with no special legal meaning
- Court prefers a construction that preserves the validity of a charitable trust
- To be charitable, purposes must fall within 'spirit and intendment' of the Statute of Elizabeth (in this case, the fourth head 'other purposes beneficial to the community')
- Fourth head includes relief of the aged, **impotent** and poor....'
- 'necessitous and deserving' to be read conjunctively
- 'necessitous' may denote an occasional (rather than permanent) want
- No reason to think it is limited to financial need – may be necessitous of medical care, food or shelter



Barristers' Benevolent Association

- *Ballarat Trustees* considered s8(5) of the *Estate Duty Assessment Act 1914*, which had been amended in response to *Chesterman* to replace the word 'charitable' with a reference to 'necessitous circumstances' – in that case found 'necessitous' had a narrow meaning (poor, needy, hard up)
- *Ballarat Trustees* Kitto J also said "The expression 'necessitous circumstances does not admit of definition in terms so precise as to provide a yardstick for...every case'".
- In this case, the BBA objects admitted a wider construction
- 'necessitous circumstances' are those characterised by **necessity or poverty**.
- 'necessity' means being in a situation of hardship or difficulty, or being in need of care, comfort and maintenance (*Union Trustee Co v Commr of Taxation* (1962))
- Not a term of art and not confined to relief of poverty (*Trustees of the Indigenous Barristers' Trust v Cmmr of Taxation* [2002])



Barristers' Benevolent Association

- ‘necessitous’ incorporates relief of the ‘impotent’ (*Statute of Elizabeth*) which is akin to advancement of health (*Dal Pont*)
- **To be in need of mental health care is to be ‘necessitous and deserving’.**
- Under the fourth head, must also be for the benefit of the public
- Barristers and their dependents are properly described as a section of the public
- Noted distinction between a club or association that exists for benefit of its own members and a section of the public that adheres to a common calling
- Noted also the central role of barristers in the administration of justice and advocating for the community – potential for wider benefit



Barristers' Benevolent Association

- **TR 2009/6 Income tax: necessitous circumstances funds**
- The expression 'necessitous circumstances' refers to financial necessity. It involves some degree of poverty, though it may be less than abject poverty or destitution. (para 8)
- Necessitous circumstances do not extend to needs generally. Accordingly, the needs of the sick, incapacitated, aged, etc., do not, on their own, constitute necessitous circumstances. (para 12)
- In *Trustees of the Indigenous Barristers' Trust v. FC of T* 2002 ATC 5055; (2002) 51 ATR 495, some comments made by the Federal Court could be taken to imply that necessitous circumstances are not limited to financial necessity, and that they extend to the same range of needs addressed by public benevolent institutions. **In so far as those comments could be taken to imply that needs - such as suffering, helplessness, misfortune or disability - constitute necessitous circumstances independently of financial necessity, they are considered to be inconsistent with the approach of the High Court in *Ballarat Trustees*. *Ballarat Trustees* will therefore continue to be followed in the administration of the law.** (para 32A)

Myles McGregor-Lowndes

CLAANZ Key Cases Series

Monday 20 April 2026

Time: 1-2pm AEST / 11am-12pm AWST / 3-4pm NZST

Cases to discuss

- Centore & Anor v The Charity Commission for England and Wales [2026] UKFTT 00077.
- Jeater and Swan Unit Western Australia State Emergency Service Incorporated [2026] WASAT 3.
- Carmody v Roseville Golf Club Ltd [2026] NSWSC 45.

Centore & Anor v The Charity Commission for England and Wales [2026] UKFTT 00077.

3.1 To advance the education of the public in general (and particularly amongst academics) on the subject of Esotericism by (but without prejudice to the generality of the foregoing):

- Funding and supporting academic research projects. Promoting and publishing accessible educational material.
- Organising and promoting academic conferences, seminars and courses.
- Archiving and digitising records that serve to aid and support the academic research of Esotericism.

- Doubt as to a charitable purpose of education
- Providing a private benefit, support of persons engaged in private ritual
- a review of registration decisions for other institutions, notwithstanding that the details of which are not before the Tribunal, are not relevant
- The Tribunal was not satisfied that the purposes of RENSEP were not only exclusively, and unambiguously, charitable but, in addition, were for the public benefit.

Jeater and Swan Unit Western Australia State Emergency Service Incorporated [2026] WASAT 3.

- Long-term member/volunteer given a temporary sanction.
- Discovered that the rules were not current.
- Fresh proceedings with the only option being expulsion.
- During proceedings, an oral resignation, confirmed in writing in response to an email inquiry.
- Later argued that:
 - Rules required writing
 - Emotional state thus it was not voluntary
 - Needed to be formally accepted

- Found under the Rules that oral resignation is effective immediately
- Relied on common law statement in *Faamate & Ors v Congregational Christian Church in Samoa-Australia (Ipswich Congregation)* ABN 90 103 392 182 [2019] QSC 194 that could be modified by the rules or statute.
 - a question of fact based on a member's expression of intention.
 - Rules providing for resignation by way of notice to the secretary or to a general meeting does not preclude resignation on any other basis
 - No right to withdraw a resignation
- The Proceedings were recorded and used in Court with consent.
- The importance of having the correct set of Rules.
- Importance of Rules meeting the needs of the members.

Carmody v Roseville Golf Club Ltd [2026] NSWSC 45

- Club was a company limited by guarantee
- Member found to have engaged in conduct unbecoming of a member
- Did not attend the Disciplinary Committee hearing but did attend the Appeal Committee hearing
 - No need for reasons to be given (not required by the constitution, de novo appeal and thus not required), nor identity of evidence relied upon
 - Claimed Insufficient particulars in the Notice – dismissed
 - Identity of complainant unknown – not necessary in circumstances
 - Not so unreasonable that no reasonable Appeals Committee could not have imposed that penalty.
 - Bias – inferences of guilt from reserved legal rights & no remorse - dismissed

Learnings

- At para 43, statement of the law in relation to club member expulsions
 - Samuel v St George Leagues Club Ltd (NSWSC, 20 October 1992, Powell J, unreported), followed in Hornby v Narrandera Ex-Servicemen 's Club Ltd [2001] NSWSC 235 per Hamilton J
- Courts in this country do not engage in merits review of the decisions of domestic tribunals. This latter consideration points against the implication of an obligation to give reasons, because it is where the merits are in issue that there is an obvious case for reasons.

Cases Discussed

Caleb Simmons

- [Gary Mond v The Charity Commission for England and Wales](#) [2025] UKFTT 103.
- [In the Matter of James Brown Memorial Trust](#) [2025] SASC 176.

Rebecca Lambert-Smith

- [Commissioner of State Revenue v Montessori Children's Foundation](#) [2025] QCA 153
- [Re Application of the Members of the Management Committee of the Barristers' Benevolent Association of New South Wales](#) [2025] NSWSC 644.

Myles McGregor-Lowndes

- [Jeater and Swan Unit Western Australia State Emergency Service Incorporated](#) [2026] WASAT 3.
- [Carmody v Roseville Golf Club Ltd](#) [2026] NSWSC 45.
- [Centore & Anor v The Charity Commission for England and Wales](#) [2026] UKFTT 00077.

ACPNS Case Summaries

- ACPNS researchers scan Australia and the world constantly for legal cases that involve important issues concerning charities, nonprofit organisations, Churches, philanthropy, gifts and bequests.
- Quarterly Case Note Summaries capture key legal cases in an easy-to-digest format for nonprofit sector managers.
- Freely available at:

<https://research.qut.edu.au/australian-centre-for-philanthropy-and-nonprofit-studies/resources/5947-2/>

Or scan the
QR Code

