



THOMSON REUTERS

Update Summary

PLEASE CIRCULATE IMMEDIATELY!

UPDATE 23

APRIL 2025

NOT-FOR-PROFIT BEST PRACTICE MANUAL

Material Code 43006073

Print Post Approved PP255003/07575

© Thomson Reuters (Professional) Australia Limited 2025

Looseleaf Support Service

You can now access the current list of page numbers at:

<http://www.thomsonreuters.com.au/support/product-support.aspx?id=/mediaTree/58599>. If you have any questions or comments, or to order missing pages, please contact Customer Care LTA ANZ on 1300 304 195 Fax: 1300 304 196 Email: Care.ANZ@thomsonreuters.com

UPDATED COMMENTARY

Author Derek Mortimer has reviewed the commentary and made the following additions to the work.

Types of charitable trusts: testamentary

Whilst the expediency rule might be applied widely, courts are limited by the terms of trust instruments: *Re Royal Freemasons' Homes of Victoria* [2024] VSC 238. See [1.1.703].

Interventions to restore governance – independent chairs and experts

Parties may be able to agree to appoint an independent person without the need for a court order. Appointment of a “visitor” allied to the purposes of the NFP is one such possibility. Further, the question of whether an independent expert’s performance can itself be reviewed by a court was considered in: *Khmer Buddhist Temple Association Inc v Chhet (No 4)* [2024] VSC 572. See [55.1.113].

Use of s 1322 of the Corporations Act to cure defects

For a discussion on how s 1322 applies to incorporated associations in NSW, see *Re Bulahdelah Tennis Club Inc* [2024] NSWSC 1103, at [55.1.230].

Australian Charities and Not-for-Profits Commission (ACNC)

Section 90-10 of the ACNC Act permits the Commissioner to issue “enforceable undertakings” to registered charities. The undertakings may be published by the ACNC. See [55.1.725].

Trustees standing to vary trust terms or seek judicial approval for a transaction and cy-pres schemes

In one recent case the court gave directions that the plaintiff “was justified” in entering into a deed of settlement: *Equity Trustees Wealth Services Ltd v The Attorney General of Western Australia* [2024] WASC 324. See [55.1.815].

Standing – common law

The test of “special interest” may be lower for an interlocutory application: *Snowy Mountain Bush Users Group Inc v Minister for the Environment* (2024) 261 LGERA 210; [2024] NSWSC 711. See [55.1.1010].

Costs – departure from the ordinary rule

Costs may be awarded in part against an NFP to the particular extent its claims lacked merit: *Tarkine National Coalition Inc v Director, Environment Protection Authority (No 2)* [2024] TASSC 1. See [55.1.1020].

Statutory demands – Overview

An example of a statutory demand being conditionally set aside is *Re Platypus Impact Housing Australia Ltd* [2024] NSWSC 753. See [55.1.1305].

Winding up – Introduction - General

A threshold question is whether the NFP is solvent: *Re University Co-Operative Bookshop Ltd (in liq)* [2024] NSWSC 1034. An NFP board is required to form a view of

solvency: *Re Cyprus Community of NSW Ltd* [2024] NSWSC 1629. Courts have powers to grant administrators extensions of time and other orders but must take the interests of creditors into account: *Re Cocos Islands Co-operative Society Ltd (Administrators Appointed)*; *Ex parte Nipps* [2024] WASC 407. See [75.1.101].

Voluntary administration

As to an administrator or liquidator's power to seek judicial advice, see *Re Roxby Downs Club Incorporated (In Liq): Club Management Services (SA) Pty Ltd v Roxby Downs Club Incorporated (In Liq)* [2024] SASC 120. See [75.1.404].

