



*From Frontierland to Tomorrowland: A Magical Journey
Through the Four Enchanted Realms of Unincorporated
Associations*

Associations

The classical definition of an association is an organised group of persons:

- (1) that is formed to further some common interest of its members;
- (2) in which membership is voluntary in the sense that it is neither mandatory nor acquired through birth; and
- (3) that exists independent from the state. (Sills, 1968: 363)



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1948 Universal Declaration of Human Rights, transcending cultures, religions, legal systems, and political ideologies.

- Article 19 of the Declaration states that “[e]veryone has the right to freedom of opinion and expression.”
- Article 20 protects the right of individuals to “peaceful assembly and association.”

The subsequent **International Covenant on Civil and Political Rights (ICCPR)** creates direct binding obligations for over 150 countries.

- Articles 19, 21, and 22 of the Covenant guarantee the rights of expression, peaceful assembly, and association.



Hogan v Cameron Vic 1934 VLR 88

The Court's response was [at 94]:

There are, obviously, voluntary associations of which one would unhesitatingly say that the members never did intend, in associating, to acquire legal rights or incur legal duties, but in my opinion this is not one of them.

And [at 91]:

The objects of the association and the pledge required may be vague or incapable of having an exact definition, but I think the general body of rules is quite explicit enough.

Cameron v Hogan (1934) 51 CLR 358 - Majority

One reason which must contribute in a great degree to produce the result is the general character of the **voluntary associations which are likely to be formed without property and without giving to their members any civil right of a proprietary nature**. They are for the most part bodies of persons who have combined to further some common end or interest, which is social, sporting, political, scientific, religious, artistic or humanitarian in character, or otherwise stands apart from private gain and material advantage. **Such associations are established upon a consensual basis**, but, unless there were some clear positive indication that the members contemplated the creation of legal relations inter se, the rules adopted for their governance would not be treated as amounting to an enforceable contract. (*emphasis added*)

Baldwin v Everingham [1993] 1 Qd R 10

On general principles, where an albeit voluntary association fulfils a substantial public function in our society, it may appear indefensible that questions of construction concerning its constitution should be beyond judicial resolution. **It is one thing to say that a small, voluntary association with limited assets, existing solely to serve the personal needs of members should be treated as beyond such supervision; it is another thing to say that a major national organisation with substantial assets, playing a critical role in the determination of the affairs of the country should be so immune.** (emphasis added)

Asmar & Ors v Albanese & Ors [2022] HCASL 71

Giving due weight to the context of Pt XIV of the Commonwealth Electoral Act 1918 (Cth), we are not persuaded that there are sufficient prospects of departing from the view of the construction and interrelationship of the Australian Labor Party National Constitution and the Australian Labor Party Victorian Branch rules adopted by the Court of Appeal to warrant the grant of special leave to appeal.

Camenzuli v Morrison [2022] HCATrans 060

The Court of Appeal of the Supreme Court of New South Wales held, in effect, that the provisions of the Commonwealth Electoral Act did not affect the decision in *Cameron v Hogan* and the matter was not justiciable. On the substantive question, which the Court of Appeal determined in the interest of finality, the court held that the Federal Constitution gives the committee appointed the requisite power. In our view there are insufficient prospects of success on an appeal from that decision in relation to either proposed ground to warrant the grant of special leave.

- Will the ouster of a 'binding in honour only agreement' used in commercial non-agreements now found in the ALP constitution be respected?
- How is turning up to the High Court with a pre-selection matter, days out from an election being called, conducive to a considered judicial response?
- Is the current lack of justiciability the only reason preventing the major political parties from joining One Nation and the Greens as incorporated entities?
- Would Pauline Hanson have spent time in jail if her party had remained unincorporated?
- Will the major unincorporated religious denominations shift to being incorporated if the High Court allows their internal decisions to be reviewed?



Evangelou v McNicol [2016] EWCA Civ 817

- The nature of the relationship between an unincorporated association and its individual members is governed by the law of contract;
- The contract is found in the rules to which each member adheres when he or she joins the association;
- Whether or not they have seen them and irrespective of whether they are actually aware of particular provisions; and
- The constitution and rules of an unincorporated association can only be altered in accordance with the constitution and rules themselves.
- Actions are brought either in the names of the individual members on the basis of their personal rights (where they exist) or in the name of one or more members as representing all or some relevant part of the membership such as the managing committee.

Lord Denning in Lee v Showmen's Guild of Great Britain [1952] 2 QB 329

The jurisdiction of a domestic tribunal, such as the committee of the Showmen's Guild, must be founded on a contract, express or implied. Outside the regular courts of this country, no set of men can sit in judgment on their fellows except so far as Parliament authorizes it or the parties agree to it. The jurisdiction of the committee of the Showmen's Guild is contained in a written set of rules to which all the members subscribe. **This set of rules contains the contract between the members and is just as much subject to the jurisdiction of these courts as any other contract.**

- And what's more ...

Although the jurisdiction of a domestic tribunal is founded on contract, express or implied, nevertheless the parties are not free to make any contract they like. There are important limitations imposed by public policy. **The tribunal must, for instance, observe the principles of natural justice.** They must give the man notice of the charge and a reasonable opportunity of meeting it. Any stipulation to the contrary would be invalid.

Scottish Law Commission in 2008

It made essentially four alternative proposals:

- (1) optional acquisition of legal personality by registration;
- (2) optional acquisition of legal personality by expression of intention;
- (3) automatic attribution of legal personality;
- (4) attribution of legal personality where a minimum threshold is fulfilled.

Canada

Karahalios v. Conservative Party of Canada, 2020 ONSC 3145

In the circumstances of the immediate case, where the Conservative Party condemns Mr. Karahalios for contravening the principles of the Conservative Party Constitution, **it is perverse and hypocritical argument for the Conservative Party to even make the argument that it can contract out of the rule of law. In the immediate case, it is an ironical argument because among the Conservative Party's expressed principles and values is that Canada be governed in accordance with the rule of law. (emphasis added)**

And,

Very significant private law rights or interest are involved, and the court has the jurisdiction to determine whether Mr. Karahalios' disqualification as a leadership candidate was carried out according to the applicable rules of the Conservative Party and with the procedural fairness and without bad faith and *mala fides*. [at 192]

Fantasy Land



The Free the Beagles and Camp Beagle Facebook Pages are **simply examples of modern campaigning platforms ...** The existence of the Facebook groups in this case no more demonstrates the existence of an underlying organisation or association than any other **coagulation of people around a political cause.** The fact that there have been recent fundraising efforts does not significantly alter the position, not least because **the fundraising appears to have been to defend these proceedings.**

MBR Acres Ltd v Free the MBR Beagles [2021] EWHC 2996 (QB)

Mouseketeers Facebook Club

- Voluntary combination of identified persons;
 - *Mouseketeers and their friends could join.*
- Organisation and continuity of purpose;
 - *The purpose is clearly set out on the Facebook site and is ongoing rather than episodic.*
- Written Constitution;
 - *Set out in the “about tag” with appropriate ATO nonprofit and tax exemption clauses.*
- Agreement and mutuality between the members;
 - *Mouseketeers and their friends are required to agree to uphold the constitution.*
- Officers and/or a committee;
 - *Head of the Mouseketeers and cast members.*
- Meetings;
 - *Held via a third-party provider platform.*
- Bank account;
 - *Perhaps a digital coin account.*
- Not for profit;
 - *Included in the constitution.*

Some Definitions

- **Blockchain** (or distributed ledger technology) is a distributed, shared, encrypted database or ledger synchronised and updated in real time that serves as an irreversible and incorruptible information storage platform without the need for a controlling authority. Blockchain is the tech that makes digital coins possible, but there are lots more useful applications that it can facilitate.
- **Non-fungible tokens** (NFTs) are tokens with unique data attached to them, which renders each NFT itself unique and so non-fungible. This is recorded on the blockchain and might be an intellectual property right, digital art, or right to be a member of a virtual group.
- **Smart contracts** are not smart, and they are not necessarily contracts, although they can be. They are self-executing computer programmes, placed on a blockchain that automatically and securely executes obligations when certain conditions are met, without the ability of either party to interfere with it.

DAOs are virtual communities that use **smart contracts** and **distributed ledger technology** to administer decisions. DAOs are an adaption of **blockchain technology**, in which interactions between users are recorded, verified and distributed. Users can purchase **non-fungible tokens**, usually in exchange for cryptocurrency, which allows them to participate and form a central asset pool, capitalising the DAO. Token-holders then vote to make decisions, usually involving the application of the DAO's capital, and these decisions are administered and executed automatically by the blockchain. As decisions are made, and transactions are executed autonomously and immediately, DAOs are without management and directors – code and members rule – OK!

Giving Circles



Kimbal Musk and Big Green

The first non-profit led philanthropic DAO

Big Green is a USA 501c3 non-profit that believes growing food changes lives. We created a DAO (Decentralized Autonomous Organization) to democratize and decentralize grantmaking for food and gardening organizations in the US.



The Foundation for National Parks & Wildlife invites you to mint an NFT and plant a (real) tree

[The Foundation for National Parks & Wildlife](#) (FNPW) has teamed up with renowned blockchain charity, [Tokens for Humanity](#) (TFH) and Australian cryptocurrency exchange [Independent Reserve](#), to offer the [Ethereum](#) community the ability to mint non-fungible tokens (NFTs) and plant real trees in flood-damaged areas.



Unincorporated associations as a matter of balance between reform and facilitation?

Myles McGregor-Lowndes and Frances Hannah

Small non-profit organisations play a vital role in the creation and the resilience of civil society in Australia. A number of inquiries have recently been commissioned to propose reform, enterprise and it is timely to examine the suitability of legal structures available for small non-profit organisations and the legal treatment of similar associations in New Zealand, the United Kingdom, Europe, Canada and the United States to inform possible reform strategies. Reforms are proposed for small Australian unincorporated organisations which will allow them access to the benefits of separate legal entity status, but with regulation proportionate to the risks posed to the broader community.

Should Australians Have a Revised Uniform Unincorporated Nonprofit Associations Act?

Dr Matthew Turnour*

This article argues that revelations of the extent of sexual and other abuse occurring within unincorporated associations, coupled with the challenges facing both plaintiff victims and management committee (or equivalent) defendants, obliges Australian Governments to consider enacting legislation akin to the Revised Uniform Unincorporated Nonprofit Association Act (RUUNAA) adopted in many jurisdictions of the United States. The challenges facing Australian plaintiffs and defendants caused by the lack of legal recognition of unincorporated associations are common to Commonwealth countries. The article further considers both foreseeable advantages and challenges that arise if RUUNAA-like legislation was introduced into Australia.

Andrew Godwin, Pey Woan Lee and Rosemary Teele Langford, *Introduction to Technology and Corporate Law*

... a critical issue is the extent to which advances in technology could or should **be accommodated within the existing legal and regulatory framework**. A related issue is ‘technological exceptionalism’; namely, whether and to what extent **new technologies generate such fundamental social change as to transform legal rules and frameworks**, and whether law and technology are in fact intertwined such that each is a factor in the construction and development of the other.

Some Issues for consideration ...

1. An association **without a committee**, but with a membership that has the opportunity **to vote on all transactions**;
2. An association with permanent, incorruptible **records as to who was a member** and their financial status at any micro-second;
3. A **constitution** not as a contract of adhesion, but a bespoke infinitely variable, networked smart contract, between members;
4. When can a **smart contract** be terminated or varied, and what happens with loopholes or unintended consequences;
5. **Property** held by an arrangement between numerous members in differing proportions recorded on the distributed ledger;
6. **Liability**, where it can be identified who was or was not supportive of the contributing misfeasance;
7. How do regulators and courts have **jurisdiction** over DAOs;
8. How does a DAO **convert** to another legal form;
9. Could a member leave an association with their contribution token valued at the time of departure; and
10. How all this syncs with **associational freedoms and promoting civil society**.

