

SUPREME COURT OF QUEENSLAND

CITATION: *Pine Rivers, Caboolture and Redcliffe Group Training Scheme Inc & Ors v Group Training Association Queensland & Northern Territory Inc* [2013] QCA 358

PARTIES: **PINE RIVERS, CABOOLTURE AND REDCLIFFE GROUP TRAINING SCHEME INCORPORATED**
trading as **EAST COAST APPRENTICESHIPS**
(first appellant)
GOLDEN WEST GROUP TRAINING SCHEME INCORPORATED
(second appellant)
ALAN SPARKS
(third appellant)
ROBERT FULTON
(fourth appellant)
v
GROUP TRAINING ASSOCIATION QUEENSLAND AND NORTHERN TERRITORY INCORPORATED
(respondent)

FILE NO/S: Appeal No 2718 of 2013
SC No 5363 of 2012

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 3 December 2013

DELIVERED AT: Brisbane

HEARING DATE: 30 July 2013

JUDGES: Margaret McMurdo P and Fraser JA and Atkinson J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. Allow the appeal with costs.**
2. Set aside the orders made in the Trial Division on 28 February 2013 and 5 April 2013 and instead,
a. Direct pursuant to section 72 of the *Associations Incorporation Act 1981 (Qld)* that:
i. The respondent perform and observe its rules by producing the documents identified in subparagraphs a, b, c, e, g, h, i, k, l and u of paragraph 1 of the application for the inspection

of and taking of copies by the third and fourth applicants and by any other member of the management committee who seeks inspection of those documents, and

- ii. The respondent produce those documents for inspection by the third and fourth applicants at a time and place to be agreed between the parties or, in default of agreement, to be fixed by order of a judge.**

Provided that these directions do not oblige the respondent to produce documents to a person who is not a member of the respondent's management committee at the time for production of the documents.

- b. Order that the respondent pay the applicants' costs of the proceeding.**

CATCHWORDS: ASSOCIATIONS AND CLUBS – INCORPORATED ASSOCIATIONS – OTHER MATTERS – where the first and second appellants were members of the respondent association – where the third and fourth appellants were appointed to the management committee of the respondent – where the respondent received funding from government grants to support its members in providing apprenticeships and group training programs – where the appellants sought a direction under s 72(1)(a) of the *Associations Incorporation Act 1981 (Qld)* (“the Act”) that the third and fourth appellants in their capacity as management committee members be allowed to inspect and take copies of business documents of the respondent – where the primary judge dismissed the application at first instance – where, on appeal, the appellants also sought a declaration under s 73 of the Act – whether members of the management committee of an incorporated association owe fiduciary or other duties to the association – whether members of the management committee of an incorporated association have a legally enforceable right under the rules of the association to inspect and take copies of documents for the purposes of fulfilling their duties to the association – whether a declaration should be granted

Associations Incorporation Act 1981 (Qld), s 4, s 5, s 71, s 72, s 73

Allen v Townsend (1977) 16 ALR 301; [1977] FCA 10, considered

Burn v London and South Wales Coal Co (1890) 7 TLR 118, considered

Cameron v Hogan (1934) 51 CLR 358; [1934] HCA 24, considered

Edman v Ross (1922) 22 SR (NSW) 351; [1922] NSWStRp 15, considered

Kovacic v Australian Karting Association (Qld) Inc [2008] QSC 344, considered
Oswal v Burrup Fertilisers Pty Ltd (2013) 295 ALR 708; [2013] FCAFC 9, cited
Pine Rivers, Caboolture & Redcliffe Group Training Scheme Inc & Ors v Group Training Assoc Qld & Northern Territory Inc [2013] QSC 31, related
R v Commonwealth Court of Conciliation and Arbitration; Ex parte Barrett (1945) 70 CLR 141; [1945] HCA 50, considered
Re Maggacis [1994] 1 Qd R 59, considered
Re Vassallo [2001] 1 Qd R 91; [1999] QSC 52, considered
Scott v Jess (1984) 3 FCR 263; (1984) 56 ALR 379; [1984] FCA 289, considered

COUNSEL: M P Amerena, with C D Coulsen, for the appellants
V G Brennan, with A L Wheatley, for the respondent

SOLICITORS: Hall Payne Lawyers for the appellants
McCullough Robertson for the respondent

- [1] **MARGARET McMURDO P:** I agree with Fraser JA’s reasons for allowing this appeal and with the orders he proposes.
- [2] **FRASER JA:** The respondent (“the Association”) is a not for profit association incorporated under the *Associations Incorporation Act* 1981 (Qld) (“the Act”). Its 35 members, including the first appellant (“East Coast”) and the second appellant (“Golden West”), are “Group Training Organisations” (“GTOs”) which compete with each other to provide apprentice and trainee services to third parties. The third appellant, Mr Sparks, and the fourth appellant, Mr Fulton, are the chief executive officers of East Coast and Golden West respectively. Under the Association’s Rules, each of them was nominated by his GTO as its representative for election as a member of the Association’s management committee and was duly elected to that office at a meeting of the members of the Association.
- [3] Pursuant to s 71 of the Act, the rules of an association constitute a contract between the members and the association, and the Supreme Court has jurisdiction to adjudicate upon the validity of a decision under the rules which deprives a member of a right conferred on the member by the rules as a member. East Coast and Golden West, as members of the Association, sought a direction under s 72(1)(a) of the Act to enforce a claimed right under the Association’s rules of Mr Sparks and Mr Fulton, in their capacity as management committee members, to inspect and take copies of identified business documents of the Association.
- [4] Section 72 provides:
- “72 Enforcement of rights and obligations
- (1) The Supreme Court may, on the application of an incorporated association, or of a member thereof, make orders, including interim orders—
- (a) giving directions for the performance and observance of the rules of such incorporated association by any person who is under an obligation to perform or observe those rules; or

- (b) declaring and enforcing the rights and obligations of members of such incorporated association between themselves, and the rights and obligations between such incorporated association and any member or members thereof.
 - (2) An order may be made under this section notwithstanding that no right of a proprietary nature is involved, or that the applicant has no interest in the property of the incorporated association.”
- [5] Section 73(1) empowers the Supreme Court on an application under s 72 to grant relief considered to be appropriate. Section 73(2) provides:
- “(2) The Supreme Court may refuse to entertain such an application, or to make an order on such application, or may refuse an order for costs, or may make an order for costs against a party, whether successful or not, if it is of the opinion that—
 - (a) the issue raised in the application is trivial; or
 - (b) having regard to the importance of the issue, the nature of the incorporated association, any other available method of resolving the issue, the costs involved, lapse of time, acquiescence or any other relevant circumstance, it was unreasonable to make the application; or
 - (c) the unreasonable or improper conduct of a party has been responsible for the making of an application, or has added to the cost of the proceedings.”
- [6] The primary judge dismissed the application, holding that the rules did not confer the claimed right upon Mr Sparks or Mr Fulton and that the application should be dismissed for discretionary reasons.
- [7] This appeal raises the question whether a member of an incorporated association has a legally enforceable right under rules of the association which vest management of the association in a management committee to insist that the association permit management committee members to inspect and make copies of the association’s documents for the purpose of fulfilling their duties to the association.

Facts

- [8] The nature and functions of the Association are described in the following passage of the primary judge’s reasons:
- “Apart from membership fees, the Association mainly receives funding from Queensland State Government grants, Commonwealth Government and Queensland State Government jointly funded programs, Commonwealth funded programs, as well as joint industry and government funded programs. Those moneys are used by the Association to support its members in providing apprenticeships and group training programs throughout Queensland. Essentially, the Association is the vehicle for the provision of funding from the State and Federal Government for projects which involve apprentices and trainees.

The process which has been adopted in relation to access to the grants involves the relevant GTO developing a proposal for funding the supply of apprentices or trainees to a third party. That proposal is submitted to the Association for approval. The particular project is then vetted to ascertain if it comes within the particular government guidelines and requirements for that particular program. If the proposal is approved, an agreement is entered into between that particular GTO and the third party for the provision of apprentices or trainees and the Executive Officer of the Association then project manages that project. The Association then provides monthly reports and invoices to government. At the end of each project there is a requirement that an audit must be conducted. That audit must then be lodged for approval by the government agency which provided the funding for the program.”¹

- [9] Mr Sparks and Mr Fulton were the only members of the seven member management committee who were not associated with a particular company. The Association had distributed to GTOs very substantial amounts of money which it had received under two government funded programs, the “Apprentices’ Intervention Program” (“AIP”) and the “Apprentices’ Work Team Program” (“AWT”). The primary judge found that Mr Sparks and Mr Fulton became concerned that the Association had made preferential allocations to those GTOs.² The AIP commenced in February 2010 and was completed in October 2011, the Association’s final audited report to the Federal Government in respect of the AIP was accepted by the Commonwealth on 2 December 2011, and the Association’s secretary and executive officer, Mr Mitchell, provided a briefing about it to the management committee on 13 October 2011. The AWT was completed on 30 June 2012 and the Association’s final audit report in respect of it was due by 30 September 2012.
- [10] Mr Sparks and Mr Fulton were elected as members of the management committee at the Association’s annual general meeting on 10 November 2011. Before then Mr Sparks had lodged a Freedom of Information application seeking access to documents relating to the funding allocation and disbursements to members of the Association. Between the election on 10 November 2011 and 5 April 2012, Mr Sparks and his solicitor sought from the management committee access to a number of documents held by the Association, including documents relating to AIP and AWT. The Association supplied some documents but declined to supply others. On 15 June 2012 the appellants filed an application in the Trial Division seeking orders including directions requiring the Association to provide to all members of the management committee 21 different categories of documents. Some documents were supplied and the applicants subsequently narrowed the categories of documents which they sought.
- [11] The appellants’ notice of appeal sought the documents which had been sought in the Trial Division, but the appellants’ outline of argument further narrowed the claim. The appellants claimed “[a] direction pursuant to section 72 of the *Associations Incorporation Act 1981* (Qld) that the Management Committee perform and observe the rules of [the Association] by providing to all members of the Management Committee the following documents ...”. With reference to subparagraphs of

¹ [2013] QSC 31 at [3]-[4].

² [2013] QSC 31 at [31], [33] and [36].

paragraph 1 of the application in the Trial Division, the documents ultimately sought on appeal were described as follows:

(u): “copy of the ‘Accounts Payable’ for [the Association’s] accounts since August 2011”.

In relation to each of AIP and AWT:

(a) and (g): “contracts between [the Association] and [the Department] in relation to” the program;

(b) and (h): “all agreements providing for funding from [the program] in relation to a member of [the Association]”;

(c) and (i): “all written and electronic materials which disclose the nature of each [Group Training Organisation (‘GTO’) project], the number of apprentices engaged in each project and the arrangements for supervision and building licences in satisfaction of the Building Services Queensland and legislative requirements”;

(e) and (k): “documentation evidencing the funds allocated to individual GTOs engaged in the ... program administered by [the Association]”.

In relation to AWT only:

(l): “documentation evidencing the required approval of any variations to original GTO project guidelines and evidence that the variations were provided to all Queensland GTOs”.

[12] At a special general meeting of the Association on 24 July 2012 the members considered resolutions that the management committee provide to all of its members some of those documents, namely, all contracts between the Association and the Department relating to the AIP and the AWT and all agreements providing for funding from AIP and AWT in relation to a member of the Association. The resolutions were defeated.

[13] The Association relied upon evidence given by Mr Mitchell. He was independent of the Association’s members. He deposed that each GTO’s application was tested by reference to the relevant project requirements and guidelines before approving or declining funding. Mr Mitchell gave evidence that in the period between June 2011 and June 2012 the only application for funding by a member of the Association which was rejected was an application by East Coast; it was rejected because it did not meet the guidelines for eligibility for funding and no review of that decision was ever sought by East Coast. Mr Mitchell deposed that no member of the management committee had looked at the documents in issue. The Association also relied upon evidence given by the Chair of the Management Committee, Mr Handyside, that he had not seen copies of the documents sought in paras 1(b) and (h), and (e) and (k), of the application and that, to his knowledge, no other committee member had seen them because they contained information considered to be “commercial in confidence”. Mr Handyside deposed that he did not consider that he needed to see the documents to discharge his functions as Chair of the Management Committee.

Reasons of the primary judge

[14] The primary judge described the real issue as being whether Mr Sparks and Mr Fulton as members of the management committee were entitled to the documents to examine the position of the Association in respect of allocations under

the funding programs.³ The primary judge recorded that the appellants submitted that: the appellants were entitled to the documents, including documents said to be “commercial in confidence”, in order to discharge their statutory and fiduciary duties, there being no allegation against them of bad faith and no evidence that they would use the information for some ulterior purpose;⁴ that the proper governance of the Association required that the documents be made available to members of the management committee;⁵ and that the 24 July 2012 resolution was ineffective and beyond the power of the management committee to the extent that it attempted to fetter a member of the management committee in the performance of the members’ duties.⁶

- [15] The primary judge observed that the appellants relied only upon s 72 of the Act and held that the rules of the Association did not confer upon them any entitlement to the production of the documents which they sought; East Coast and Golden West “failed to identify which of the Association’s rules require an order of the Court for their performance or observation; or identify which of their rights and obligations they are entitled to enforce other than in vague and general terms.”⁷
- [16] The primary judge referred to s 16 (which obliges the chief executive of the department to keep a register of incorporated associations including specified particulars about each incorporated association and including copies of the association’s financial documents given to the chief executive under another part of the Act), s 53 (which obliges the secretary of an incorporated association to give a copy of the association’s rules to a member who has asked for it, after a member has paid the reasonable costs of providing the copy), and s 59C (which obliges the secretary to make available for inspection by and give copies of the association’s financial documents to a member who has sought inspection and copies of the documents). The definition of “financial document” in the schedule of the Act referred only to “the association’s financial statement”, “the audit report mentioned in section 59(2)(c)”, “the statement of an auditor, an accountant or approved person mentioned in section 59A(2)(b)(ii)”, and “a statement of the association’s president or treasurer mentioned in section 59B(2)(b)(ii)”. The documents sought by the appellants did not fall within that definition. For that reason the primary judge held that the appellants had not been denied access to any financial documents to which they were entitled under the Act.
- [17] The primary judge referred to *Cameron v Hogan*⁸ and *Re Maggacis*,⁹ endorsed “Wilson J’s view in *Kovacic*¹⁰ that the mere fact that a respondent may be an Incorporated Association under the Act does not necessarily make the validity of a resolution justiciable”, and quoted Wilson J’s statement that “[i]ncorporation under that legislation is not indicative of significance in public affairs such as that accorded by legislation to trade unions and political parties.”
- [18] The primary judge held that:

³ [2013] QSC 31 at [37].

⁴ [2013] QSC 31 at [39].

⁵ [2013] QSC 31 at [39].

⁶ [2013] QSC 31 at [40].

⁷ [2013] QSC 31 at [49], [50].

⁸ (1934) 51 CLR 358 at 383-384.

⁹ [1994] 1 Qd R 59.

¹⁰ *Kovacic v Australian Karting Association (Qld) Inc* [2008] QSC 344 at [28].

- (a) There was no evidence to substantiate the “vague allegations which are made” and no evidence “that there has been any preferential allocation of funding to some members of the Association ...”.¹¹
- (b) The appellants did not claim that there was a breach of any duty which the appellants owed to the Association and the appellants failed to identify the exact nature of the fiduciary duty which they were attempting to perform which had been thwarted.¹²
- (c) “... the members of the Association have very clearly voted on the issue of the production of documents”.¹³
- (d) Documents sought by the appellants “clearly go beyond a period which could be considered to be relevant and certainly beyond the term of the appointment of the Third and Fourth Applicants”.¹⁴

[19] The primary judge was not satisfied that the requirements of s 72 had been met and in any event considered that, pursuant to s 73 of the Act, there were “other available methods for resolving the dispute and the application was brought at a time well after the issue had arisen.” The primary judge held that it was not reasonable to make the application and dismissed it accordingly.¹⁵

The arguments

[20] The appellants’ arguments may be summarised as follows. A member of the management committee of an association incorporated under the Act owes to the association a fiduciary duty and a duty to take care in the management committee member’s performance of his or her functions. A correlative legal effect of the Association’s rules, construed in the context of relevant provisions of the Act, is that a member of the management committee of an association incorporated under the Act has a legally enforceable right to inspect the Association’s business records in aid of the proper execution of the management committee member’s fiduciary duties. That such a right exists finds support by analogy with the rights of a director of a company, a member of the management body of an incorporated trade union, and a member of a statutory corporation. The right may be displaced by proof that the management committee member is not acting in the execution of his or her duty to the association in applying to inspect documents, but the primary judge did not find, and the Association did not allege or prove, that Mr Sparks or Mr Fulton had any improper purpose. Section 71 of the Act conferred jurisdiction upon the Supreme Court to adjudicate upon the validity of the Association’s decision to refuse to permit Mr Sparks and Mr Fulton to inspect the documents. The court was empowered to give directions under s 72(1)(a) of the Act for the performance and observance by the Association of its obligation to permit Mr Sparks and Mr Fulton to inspect the documents.

[21] The appellants contended that, insofar as the primary judge exercised a discretion under s 73(2) of the Act to refuse to make the orders sought by the appellants, the exercise of the discretion miscarried for the following reasons: the primary judge was mistaken in fact in finding that there was any other available method of resolving the dispute; the primary judge was mistaken in fact in finding that the

¹¹ [2013] QSC 31 at [52].

¹² [2013] QSC 31 at [53].

¹³ [2013] QSC 31 at [53].

¹⁴ [2013] QSC 31 at [53].

¹⁵ [2013] QSC 31 at [56].

application was brought too late; the observations in *Cameron v Hogan* and in *Re Maggacis* upon which the primary judge relied were irrelevant considerations; and the exercise of the discretion was so unreasonable and unjust that it should be presumed that there was a failure properly to exercise the discretion.

- [22] The respondent’s arguments may be summarised as follows. Members of the management committee of the Association did not owe the Association fiduciary duties. A committee member of an incorporated association did not have a common law or statutory right analogous to the common law and statutory right of a company director to inspect certain company documents. There was no error in the primary judge’s conclusion that the appellants failed to prove “preferential treatment” of members or any other basis for thinking that inspection of the documents was required to enable Mr Sparks or Mr Fulton to discharge their alleged fiduciary duties. If the alleged right of inspection by committee members of certain documents for the Association did exist, it was a personal right in the committee members and it was not enforceable under s 72 of the Act; that section permitted applications only by an association or a member of an association. The primary judge’s exercise of the discretion to refuse the claimed orders did not miscarry.

Consideration

- [23] In *Burn v London and South Wales Coal Co*¹⁶ North J decided that a director of a company had the right to see and take copies of documents belonging to the company in order to perform his duties as a director. That decision was followed by Street CJ in Eq in *Edman v Ross*.¹⁷ Street CJ in Eq referred to a director as “an agent entrusted by the regulations of the company with the control of its business”¹⁸ and as a “manager”,¹⁹ and said:

“The right to inspect documents and, if necessary, to take copies of them is essential to the proper performance of a director’s duties, and, though I am not prepared to say that the Court might not restrain him in the exercise of this right if satisfied affirmatively that his intention was to abuse the confidence reposed in him and materially to injure the company, it is true nevertheless, that its exercise is, generally speaking, not a matter of discretion with the Court and that he cannot be called upon to furnish his reasons before being allowed to exercise it. In the absence of clear proof to the contrary the Court must assume that he will exercise it for the benefit of his company.”²⁰

- [24] Those decisions, which found the right in the general law rather than in any statutory provision, have been followed on numerous occasions²¹ and they have been applied by analogy in favour of persons charged by or under a statute with the

¹⁶ (1890) 7 TLR 118 at 119.

¹⁷ (1922) 22 SR (NSW) 351.

¹⁸ (1922) 22 SR (NSW) 351 at 359.

¹⁹ (1922) 22 SR (NSW) 351 at 360.

²⁰ (1922) 22 SR (NSW) 351 at 361.

²¹ See, for example, *Conway v Petronious Clothing Co Ltd* [1978] 1 WLR 72 (Slade J), *Re South Queensland Broadcasting Holdings Pty Ltd* [1976] Qd R 69 at 71 (Matthews J, Wanstall SPJ and Dunn J agreeing), *Kriewaldt v Independent Direction Ltd* (1996) 14 ACLC 73 at 75 (de Jersey J, as the Chief Justice then was), and *Oswal v Burrup Fertilisers Pty Ltd* (2013) 295 ALR 708 at [32], [68], [69], [78] (Full Court of the Federal Court).

management of statutory corporations,²² statutory boards,²³ trade unions,²⁴ and local government authorities.²⁵

- [25] For the following reasons, I would hold that the management committee members of the Association should be regarded as having the same right under its rules, the right being enforceable by members of the Association under s 72(1)(a) of the Act subject to the Supreme Court refusing to entertain the application or refusing to make an order in the exercise of the discretion conferred by s 73 of the Act.
- [26] In order to explain this conclusion it is necessary first to refer to provisions of the Act which supply important context for the construction of the Association's rules.
- [27] The "essential purpose" of the Act was described in the 1980 Queensland Law Reform Commission Report which preceded its enactment²⁶ as being:
 "... to provide a simple system of registration allowing unincorporated associations to incorporate. In substance the system is not a reform of the law relating to unincorporated associations but the provision of machinery to allow such associations to avoid that law."²⁷
- [28] A very wide range of associations is eligible for incorporation under the Act. Any "association, society, body or other entity formed, or carried on, for a lawful purpose"²⁸ may incorporate under the Act²⁹ unless, in terms of s 5(1) of the Act, it:
 "...
 (a) has less than 7 members; or
 (b) is—
 (i) a corporation; or
 (ii) a partnership under the *Partnership Act 1891*;
 or
 (iii) an organisation under the *Industrial Relations Act 1999* that is incorporated because of the application of section 423 of that Act; or
 (iv) a school council or parents and citizens association under the *Education (General Provisions) Act 2006*; or
 (c) is formed or carried on for the purpose of providing financial gain for its members; or
 ...
 (d) is provided for in a special Act that—

²² See, for example, *Molomby v Whitehead* (1985) 7 FCR 541 at 550-552 (concerning a director of the Australian Broadcasting Corporation).

²³ See, for example, *Bennetts v Board of Fire Commissioners of New South Wales* (1967) 87 WN (Pt 1) (NSW) 307 at 312-313.

²⁴ See, for example, *McGee v Sanders* (1991) 30 FCR 565 at 573 and *McGee v Sanders (No 2)* (1991) 32 FCR 397 at 404-406 (concerning the elected governing body of a registered organisation of employees under the *Industrial Relations Act 1988* (Cth)).

²⁵ See *R v Birmingham City District Council; Ex parte O* [1983] 1 AC 578. (The decision suggests that a councillor who is not a member of a committee might need to establish a "good reason" to obtain access to documents of that committee.)

²⁶ "A draft *Association Incorporation Act*", Report No 30, Queensland Law Reform Commission, February 1980.

²⁷ QLRC Report No 30 at p 9.

²⁸ Definition of "association" in the schedule.

²⁹ Act, s 6.

- (i) incorporates—
 - (A) the association’s governing body; or
 - (B) the trustees holding property for the association; or
- (ii) provides the association may sue or be sued, or hold property, in the name of the association or an officer of the association; or
- (iii) specially regulates its affairs; or
- (e) has as its main purpose the holding of property—
 - (i) in which its members have a disposable interest; or
 - (ii) that the members have a right to divide between all or some of them; or
 - (iii) for use by some or all of its members or among persons claiming through, or nominated by, some or all of its members; or
 - (iv) for distribution of the property, or income from the property, among some or all of its members or among persons claiming through, or nominated by, some or all of its members,³⁰ or
- (f) has an object of raising a fund by subscription of its members to make loans to them.”

[29] Section 4 provides:

- “(1) An association is not formed or carried on for the purpose of financial gain for its members merely because 1 or more of the following circumstances apply to it—
- (a) the association makes a financial gain, but no part of the gain is divided among, or received by, any of the association’s members;
 - (b) the association is established to protect or regulate a trade, business, industry or calling (the *pursuit*) engaged in by its members, or in which they are interested, but the association does not itself engage or take part in the pursuit;
 - (c) the association provides its members with facilities or services;
 - (d) the association trades with its members, but the trade is ancillary to its principal purpose;
 - (e) the association trades with the public, but the trade is ancillary to the association’s principal purpose and is not substantial when compared with its other activities;
 - (f) the association makes a financial gain from—
 - (i) trading to which paragraph (d) or (e) applies;
 - or

³⁰ This provision “does not make an association ineligible for incorporation if the chief executive is satisfied the association has as its main purpose the holding of property for meeting the medical, hospital, nursing and rehabilitation costs ... and similar and related costs, of an individual who is suffering from a serious medical condition or injury”: Act, s 5(2).

- (ii) charging admission fees to displays, exhibitions, contests, sporting fixtures or other occasions conducted to promote its objects; or
- (iii) charging subscriptions to further its objects; or
- (iv) receiving donations to further its objects;
- (g) the members of the association are entitled to divide the property of the association between them on its dissolution;
- (h) a member of the association—
 - (i) receives a salary as an employee or officer of the association; or
 - (ii) makes a financial gain from the association to which a non-member, acting instead of the member, would equally be entitled; or
 - (iii) receives a trophy or prize (other than money) from the association because of a competition; or
 - (iv) receives temporary assistance because of illness, injury or bereavement or other financial hardship suffered by the member.”

[30] Many incorporated associations may have few members, hold little or no property, and carry on business only in a small way, if at all. For such associations the lack of a legally enforceable right in management committee members to inspect the association’s business documents may be of no moment. But it is apparent from s 5, particularly in light of the amplification in s 4, that there may also be incorporated associations – of which the Association is an example – which carry out substantial financial transactions and in respect of which a right in management committee members to have access to the business documents may be essential for the proper performance of their management functions. The characteristic of associations incorporated under the Act that they may not be formed or carried on for the purpose of providing financial gain for their members therefore does not justify the rejection of a prima facie right in persons charged with their management to inspect and take copies of the Association’s documents. The power conferred upon the Supreme Court by s 73(2) of the Act to refuse to entertain or make an order on an application under s 72 where the issue is trivial or the making of the application is unreasonable tends to dispose of any objection that the implication of such a right would open the floodgates for trivial applications to enforce the right.

[31] In most other respects incorporated associations have striking similarities with companies. An incorporated association is a body corporate with perpetual succession, has a seal, and may sue or be sued in its corporate name.³¹ It has, in the exercise of its affairs, all the powers of an individual and may enter into contracts, acquire, hold, deal with and dispose of property, make charges for services and facilities it supplies, and “do other things necessary or convenient to be done in carrying out its affairs.”³² No act of, or conveyance or transfer of property by, an incorporated association is invalid by reason only of the fact that it lacked capacity

³¹ Act, s 21.

³² Act, s 25.

or power to do the act or execute or take the conveyance or transfer.³³ The secretary, management committee member or association member “as such” is not personally liable, except as provided in the association’s rules, to contribute to the payment of the association’s debts and liabilities or costs, charges and expenses of a winding-up beyond the association’s property in the person’s hands.³⁴ The word “incorporated” or “inc” must be included as part of the association’s name, unless the chief executive grants an exemption.³⁵ The incorporated association must have rules.³⁶ It may amend its rules by special resolution.³⁷ A member of the incorporated association is entitled to obtain a copy of the rules from the association’s secretary, upon payment of reasonable costs of providing the copy if demanded.³⁸ Provision is made for incorporated associations to hold annual general meetings³⁹ and for incorporated associations to prepare, present for adoption at the annual general meeting, and lodge with the chief executive a financial statement for each financial year.⁴⁰ Part 10 of the Act includes provisions for the voluntary winding-up by special resolution, and winding-up by the Supreme Court in various circumstances (including where the incorporated association is unable to pay its debts); those winding-up provisions are declared to be “an applied Corporations legislation matter for the *Corporations (Ancillary Provisions) Act 2001*, part 3” in relation to relevant provisions of the *Corporations Act*.⁴¹ Provision is made for the distribution of the surplus assets of an incorporated association upon winding-up, which pass according to a special resolution passed by the association’s members in accordance with its rules or, in the absence of such a resolution, may by regulation be vested in the Public Trustee to be held upon the trust and for the purposes upon or for which they were held before being so vested.⁴² Provisions are also made for the cancellation of incorporation of the association and the vesting of its property on cancellation.⁴³

- [32] After an association passes the resolutions necessary for incorporation, it may elect interim officers for the incorporated association, including a president, treasurer, secretary, and other officers, who are then taken to hold those offices for which they are elected upon the association becoming incorporated until other officeholders are elected or appointed.⁴⁴ Where an interim officer was not elected as secretary before incorporation, the members of the incorporated association’s management committee must ensure that a secretary is appointed or elected for the association within one month after incorporation.⁴⁵ In the event of a vacancy in the office of secretary, the members of the management committee must ensure that a secretary is appointed or elected within one month after the vacancy happens.⁴⁶ The secretary must be an individual who is either a member of the incorporated association elected by the association as secretary, or a member of the management committee

³³ Act, s 26(1).

³⁴ Act, s 27.

³⁵ Act, ss 29-33.

³⁶ Act, s 46.

³⁷ Act, s 48.

³⁸ Act, s 53.

³⁹ Act, Pt 6, Div 1.

⁴⁰ Act, Pt 6, Div 2.

⁴¹ Act, s 91, with reference to ss 89 and 90.

⁴² Act, s 92.

⁴³ Act, ss 93, 93A and 94.

⁴⁴ Act, s 8.

⁴⁵ Act, s 65(2).

⁴⁶ Act, s 65(3).

appointed by the committee as secretary, or appointed by the management committee as secretary whether or not a member of the incorporated association.⁴⁷ The functions of the secretary are defined in s 69A:

- “69A Functions of secretary
- (1) The secretary’s functions include—
 - (a) calling meetings of the incorporated association, including preparing notices of a meeting and of the business to be conducted at the meeting in consultation with the president of the association; and
 - (b) keeping minutes of each meeting; and
 - (c) keeping copies of all correspondence and other documents relating to the association; and
 - (d) maintaining the association’s register of members.
 - (2) Subsection (1)—
 - (a) does not limit any other function the secretary has under any other provision of this Act; and
 - (b) does not prevent an association’s rules from stating other functions for the secretary.”

[33] The secretary’s function of keeping an association’s documents does not imply a power to exclude access to those documents by members of the management committee. The secretary is not given any general management function. Rather, the Act vests the management of an incorporated association in the management committee. An incorporated association “must have a management committee”, all members of the management committee must be adults, and the management committee must have at least three members of whom one holds office as president and another holds office as treasurer.⁴⁸ A person is ineligible to be elected as a member of the management committee if the person has been convicted on indictment, or convicted summarily and sentenced to imprisonment other than in default of payment of a fine, and the rehabilitation period in relation to conviction has not expired; or if the person is an undischarged bankrupt, has executed a deed of arrangement, or the person’s creditors have accepted a composition, under identified legislation of the Commonwealth or under the law of an external territory or another country, and in the latter two cases the terms of the deed have not been satisfied or the final payment has not been made.⁴⁹ Members of the management committee are elected at annual general meetings, or at a general meeting in accordance with the rules of incorporated association, save that the rules may permit casual vacancies to be filled by the management committee.⁵⁰ Meetings of the management committee “shall be held as often as may be necessary for properly conducting the business and operations of the incorporated association, but shall be held at least once in every 4 calendar months ...”.⁵¹ Management committee members hold office and retire and may be removed from office as prescribed by the rules.⁵²

⁴⁷ Act, s 66.

⁴⁸ Act, s 61.

⁴⁹ Act, s 61A.

⁵⁰ Act, s 62.

⁵¹ Act, s 63.

⁵² Act, s 64.

[34] Section 60 is critical for present purposes:

- “(1) Subject to this Act, the business and operations of an incorporated association shall be controlled by a management committee.
- (2) Every member of the management committee and any manager duly appointed by the management committee acting in the business or operations of the incorporated association shall be deemed to be the agent of the incorporated association for all purposes within its objects.
- (3) The acts of a member of the management committee shall be valid notwithstanding any defect that may afterwards be discovered in the member’s appointment or qualifications.”

[35] That section is in the same form as cl 29 of the draft Act in the 1980 Queensland Law Reform Commission Report, which described the clause as providing for “legislative recognition of a Management Committee which is akin to the Board of Directors of a company.”⁵³ The Report continued:

“The clause has two significant features which are not found in the Companies Act or in the similar legislation of other jurisdictions. They are adopted from the Co-operative and Other Societies Act 1967 as amended Part VI. Both features are introduced to avoid the inconvenience to which reference has been made. Firstly, it makes it mandatory for the Management Committee to control the business and operation of the incorporate[d] association and invests it with power to do so. Secondly, it deems every member of the Management Committee acting in the business or operations of the association, to be the agent of the association for all purposes within the objects of the association. Objection may be taken that the clause is too broad in that it ‘compulsorily’ removes authority from the members in general meeting and places it in the hands of a powerful committee and ‘compulsorily’ deems committee members to have a general power to bind the association. The objection is more theoretical than real because it is a very common feature of the rules of associations that the power to manage its business and operations is vested in a committee and in that instance a committee member arguably has apparent authority to bind the then members of the association in matters relating to the business and operations of the association.”

[36] The “inconvenience” sought to be avoided by the two novel features mentioned in the Report was the necessity, before a transaction could safely be made with an incorporated association, to examine in detail the rules of the association and its compliance with those rules in the transaction in order to ensure that the transaction was binding upon the association.⁵⁴ The introduction of those features tends to strengthen the analogy with the management and agency functions of a board of directors which lie at the heart of the rule that they have a prima facie right to inspect company documents. As Chesterman J observed in *Re Vassallo*⁵⁵ the legislation regards “the existence, functions and mode of composition of the

⁵³ QLRC Report No 30 at p 17.

⁵⁴ QLRC Report No 30 at pp 16-17.

⁵⁵ [2001] 1 Qd R 91 at [29].

management committee as something fundamental to the operation of associations incorporated pursuant to the Act” and:

“To obtain those benefits the legislation requires certain standards to ensure that the affairs of an association are responsibly conducted by those who have the confidence of the membership so that, in turn, outsiders dealing with the association know that they may safely transact business with it. To achieve this result the Act insists upon the management structure described in Part 7. A departure from that structure is, in my view, prohibited by the statute and is invalid.”

[37] Aspects of the arguments at the hearing of the appeal assumed that the prima facie right of a director to have access to the company’s documents depended upon the director owing fiduciary duties or duties of care to the company. This seems to involve some circularity. The postulated duty would presumably not be imposed, or it could not be regarded as having been breached, if the director was not entitled to access to such of the company’s documents as were required for the fulfilment of the postulated duty. Rather, the right and the duty both arise from the duty of a director to act as “a manager” and “agent” of the company, as described in *Edman v Ross*. That is not relevantly distinguishable from the function of a member of the management committee charged by the Act with the control of the association’s business and operations who is “deemed to be the agent of the incorporated association for all purposes within its objects.”⁵⁶

[38] In this respect there is no substantial point of distinction between management committee members of incorporated associations and members of the governing bodies of other non-profit organisations who have been held to owe fiduciary duties to their organisations. In *Allen v Townsend*⁵⁷ Evatt and Northrop JJ referred to the similarities between industrial organisations of employees and companies in terms which might equally be applied in relation to associations incorporated under the Act:

“There are many similarities between organizations and legal persons incorporated under the Companies Acts. Each is a creature of statute. Their essential similarity is that each has a legal personality separate and distinct from its members. Each has an independent existence as a legal person. Each is given a personality which is distinct from that of all or any of its members and which continues to subsist unchanged, notwithstanding the changes which are bound to occur from time to time in its membership. Each has perpetual succession. Each maintains its identity and its personality notwithstanding changes in its membership, which may occur from day to day. The property of each does not belong to its members from time to time: compare *Williams v Hursey* (1959) 103 CLR 30 per Fullagar J at 52 to 54. Each must act at the direction of individuals who manage its activities. The powers of these individuals depend upon the rules which regulate the affairs of the incorporated body. The rules may be included in the memorandum and articles of association of companies incorporated under the Companies Acts or in the rules of organizations made pursuant to the Act. The rules include not only the objects to be pursued by the incorporated body but also the

⁵⁶ Act, ss 60(1) and (2).

⁵⁷ (1977) 16 ALR 301 at 349.

powers by which those objects are to be pursued. The rules also contain provisions regulating the affairs of the members as between themselves. Normally the rules provide for a small group of natural persons to be the appropriate group to manage the affairs of the incorporated body subject to eventual control by all the members. Though in theory the ultimate control is conferred upon and retained by the members of the incorporated body, in practice, the group managing the affairs of the incorporated body has a very substantial control over the affairs of that body, the affairs of its members, and the privileges and obligations affecting different groups of members within that body. Within organizations, the committees of management constitute the managing group. The duty imposed upon directors of a company incorporated under the Companies Acts and the duty imposed upon members of a committee of management are but aspects of the application of a wider principle of law applicable where persons have a discretion in the exercise of powers.”

- [39] There are also decisions in other jurisdictions in which it has been found or assumed that members of governing committees owe fiduciary duties to incorporated associations.⁵⁸ If the existence of some such duty is necessary to sustain a management committee member’s prima facie right of access to an association’s documents it can be found in the duty of a management committee member to fulfil his or her management functions at least in a way which he or she believes to be in the interests of the association. It is not necessary in this appeal to consider the nature and extent of any other duties owed by management committee members.
- [40] The implication that management committee members have a prima facie right of access to an association’s documents is not inconsistent with omission from the Act of a provision specifically conferring the right. That was also the case in relation to company directors when *Burn v London and South Wales Coal Co* and *Edman v Ross* were decided. And the right is also consistent with the provisions in the Act conferring more limited rights upon members of an association to obtain copies of some of the association’s documents.⁵⁹
- [41] As required by the Act, the Association’s rules provide for a management committee. There are detailed provisions for the composition of the committee and the election, resignation, and discharge of management committee members. Rule 15(1) requires the management committee to meet “as often as may be necessary for properly conducting the business and operation of the association” and at least once every two calendar months. The critical rule is r 14(1)(a):
- “14(1) Except as otherwise provided by these Rules and subject to resolutions of the Members of the Association carried at any general meeting, the Management Committee:-
- (a) shall have the general control and management of the administration of the affairs, property and funds of the Association...”.

⁵⁸ See, *Lai v Tiao (No 2)* [2009] WASC 22 at [84], *Cabaret Holdings Ltd v Meeanee Sports and Rodeo Club Inc* [1982] 1 NZLR 673 (NZCA) and *Stratford Racing Club Inc v Adlam* [2008] NZAR 329 at [58] (NZCA). See also, in relation to a building society not regulated by the companies legislation, *Haselhurst v Wright* (1991) 4 ACSR 527, in which Owen J held, at 531, that the directors owed a fiduciary duty to act in the interests of that corporate body.

⁵⁹ See [16] of these reasons.

- [42] The Association did not argue that any other rule relevantly qualified the effect of r 14. It did rely upon the defeat of resolutions at a general meeting directing the committee to release some of the documents to management committee members, but the defeat of those resolutions does not constitute “resolutions ... carried at any general meeting” that the documents should not be provided to the management committee members. In any event, since s 60 of the Act imposes the right and obligation of managing an association upon the management committee rather than upon the members in general meeting, a resolution by a majority of members of an association could not deprive a management committee member of access to documents which that person considered was necessary to fulfil his or her duty in managing the association.
- [43] The absence of a rule expressly conferring upon management committee members a right to inspect and take copies of the Association’s business documents appears to have been strongly influential in the primary judge’s decision, but s 72(1)(a) of the Act allows for the enforcement of members’ rights which are implicit in the rules. That provision was copied from provisions of industrial legislation. Section 58E of the *Commonwealth Conciliation and Arbitration Act* 1904-1934 provided in subsection (1) that the Commonwealth Court of Conciliation and Arbitration “... may, upon complaint by any member of an organization and after giving any person against whom an order is sought an opportunity of being heard, make an order giving directions for the performance or observance of any of the rules of an organization by any person who is under an obligation to perform or observe those rules.” In *R v Commonwealth Court of Conciliation and Arbitration; Ex parte Barrett*,⁶⁰ Latham CJ said of a contention that “the only power given by the section is a power to direct the performance or observance of a particular rule without specifying the manner in which it is to be performed” that:
- “There might be more to be said for it if the section provided merely that the Court might ‘make an order for the performance or observance’ of the rules. But the words of the section are ‘make an order giving directions for the performance or observance’ of the rules. In my opinion, these words contemplate the giving of detailed directions for the doing of acts or observance or forbearances which will constitute performance or observance of the rules.”⁶¹
- [44] In *Scott v Jess*,⁶² the Full Court of the Federal Court referred to *Barrett* and held that duties owed by members of the governing body of a registered organisation which are implicit in the rules of the organisation may be enforced under an indistinguishable statutory provision. If such duties may be enforced, then rights conferred upon the members of the governing body to enable them to fulfil those duties must also be enforceable by the members. Bearing in mind that some incorporated associations, like the Association, may control substantial property and sums of money, including public money, s 72(1)(a) should not be given a narrower construction in the context of the Act.
- [45] *Cameron v Hogan* does not stand in the appellants’ way. In that case a member of a political party was denied court orders on the ground that he lacked “some civil right of a proprietary nature proper”.⁶³ The decision was not followed, ignored, or

⁶⁰ (1945) 70 CLR 141 at 156-157.

⁶¹ See also the observations to similar effect by Stark J at 160, Dixon J at 170, and McTiernan J at 174.

⁶² *Scott v Jess* (1984) 56 ALR 379 at 386-388 (Evatt and Northrop JJ), 401 (Gray J).

⁶³ (1934) 51 CLR 358 at 377.

distinguished in many later cases. The resulting uncertainty in the law relating to the enforcement by members of unincorporated associations of their rights as members was discussed in detail in the 1980 Queensland Law Reform Commission Report which led to the Act.⁶⁴ That topic is now regulated by ss 71-73 of the Act, which have overcome the difficulties about enforcement of members' rights under the rules of an association, as they were designed to do.⁶⁵ It follows that *Cameron v Hogan* has no enduring relevance in relation to applications by members of incorporated associations to enforce rights given to members by the association's rules. *Re Maggacis*, to which the primary judge referred, also makes that plain.⁶⁶ The remarks made by Wilson J in *Kovacic v Australian Karting Association (Qld) Inc* to which the primary judge also referred are not applicable because that case did not involve a member of an association seeking to enforce rights conferred upon the member by the rules.

- [46] East Coast and Golden West were entitled to seek directions under s 72(1)(a) of the Act to enforce their rights as members of the Association to insist that Mr Sparks and Mr Fulton, in their capacity as members of the management committee, be permitted to inspect and take copies of the Association's documents for the purpose of fulfilling their duties to the Association. I respectfully conclude that the primary judge erred in deciding that this right was not given by the rules. It is therefore necessary to exercise the discretion afresh.
- [47] The Association did not allege or prove that Mr Sparks or Mr Fulton sought to exercise the right of access to the Association's documents for any purpose other than fulfilling duties to the Association. The Association merely did not admit the allegation pleaded by Mr Sparks and Mr Fulton that they "formed the view that they were only able to comply with their obligations if they had full access to the documents of the Respondent",⁶⁷ and the Association's counsel did not submit to the primary judge, or put to Mr Sparks or Mr Fulton in cross-examination, they did not in truth seek access to the documents for the purpose of fulfilling their duties to the Association. It is therefore not to the point that the primary judge was not satisfied that there was any basis for thinking that inspection or copying of the documents was necessary to enable Mr Sparks or Mr Fulton to discharge their duties. What was important was their decision about what documents they needed to see to fulfil their duties to the Association, not the decision of a judge after a trial. Consistently with the authorities cited in [23] and [24] of these reasons, Mr Sparks and Mr Fulton had a prima facie right to inspect and take copies of the Association's documents without having to give any reason or to establish any "need to know".⁶⁸
- [48] The primary judge considered that the documents were irrelevant because they pre-dated Mr Sparks' and Mr Fulton's elections to the management committee. The primary judge referred also to the possibility that Mr Sparks and Mr Fulton might have obtained access to the documents by some other means and to their delay in applying. The primary judge was not asked to infer and did not infer from these

⁶⁴ QLRC Report No 30 at pp 6-9.

⁶⁵ QLRC Report No 30 at p 18, referring to clauses 37-39 of the attached draft Act.

⁶⁶ [1994] 1 Qd R 59 at 67: "There is now no difficulty ... when the breach of the rule infringes the right of a member...".

⁶⁷ Points of Claim paragraph 14, Points of Defence paragraph 7(d).

⁶⁸ *Re Geneva Finance Ltd: Quigley (Receiver and Manager Appointed) v Cook* (1992) 7 WAR 496 at 507 (Owen J), quoted in *Oswal v Burrup Fertilisers Pty Ltd* (2013) 295 ALR 708 at [32].

matters that the documents were not sought by Mr Sparks and Mr Fulton in good faith for a proper purpose. Such an inference could not properly have been drawn in circumstances in which the AWT was yet to be completed and the AIP had been completed only in the month before Mr Sparks and Mr Fulton were elected, no alternative method by which they could obtain access to the documents was identified, and any delay in applying was not very lengthy.⁶⁹ That no other member of the management committee had looked at the documents also does not justify an inference, which was not advocated for by the Association, that Mr Sparks and Mr Fulton did not honestly hold a different view of what their duty to the Association required of them.

- [49] It is also no answer to the application to say that the documents include contracts made by the Association which it and the other parties to the contracts agreed should be kept confidential. Because the management of incorporated associations is vested by the Act in the management committee, an agreement by the Association to keep a contract between it and another party confidential could not of itself preclude inspection of the contract by a member of the management committee acting in good faith in fulfilling his or her duty to the Association.⁷⁰ Of course management committee members who do inspect or take copies of the Association's confidential documents are obliged to keep the documents confidential and use them only for the purpose of fulfilling their duties to the Association.⁷¹ If the Association does not trust a member of the management committee to act in that way the remedy is in the Association's hands. Rule 12 of the Association's rules empowers a general meeting by resolution to remove a management committee member from office after that person is given an opportunity to oppose such a resolution. In *Edman v Ross*,⁷² Street CJ in Eq referred with approval to North J's observation in *Burn v London and South Wales Coal Co* that "it was necessary that confidence should be reposed in a director, that he would use his knowledge for the benefit of the company, and that if a company had not confidence in its directors its proper course was to remove them."
- [50] For the reasons I have given, I also conclude that none of the grounds for refusing relief in s 73(2)(a), (b), or (c) is made out.

Claim for a declaration?

- [51] In addition to contending that East Coast and Golden West, acting in their capacity as members of the Association, were entitled to a direction under s 72(1)(a) of the Act to enforce the claimed right under the Association's rules of Mr Sparks and Mr Fulton, acting in their capacity as management committee members, to inspect and take copies of the Association's business records, the appellants contended in the Trial Division that Mr Sparks and Mr Fulton themselves had a legally enforceable right, acting in their capacity as management committee members, to seek orders in terms of the application.⁷³ At the hearing of the appeal the appellants' counsel submitted that, instead of the relief claimed in the application, a declaration might be made if that was thought to be more appropriate in the

⁶⁹ See [10] of these reasons.

⁷⁰ The same conclusion was reached by Beaumont J in *Molomby v Whitehead* at 553.

⁷¹ See *Molomby v Whitehead* at 553 and *Bennetts v Board of Fire Commissioners of NSW* at 310-311. (1922) 22 SR NSW 351 at 359-361.

⁷³ Further Submissions as to Law on Behalf of the applicants dated 11 September 2012, especially paras 10 and 16.

circumstances.⁷⁴ The respondent argued that a declaration should not be granted because one was not sought at first instance and such a claim was disavowed by the manner in which the appellants ran their case.⁷⁵

- [52] If such a declaration might be made, a question would arise whether it is appropriate to take into account the discretionary considerations for refusing relief under s 73 of the Act which are applicable in relation to association members' applications under s 72 of the Act. It is not necessary to express any concluded view about this in light of my conclusion that relief should be given under s 72 of the Act on the application of members of the Association.

Proposed orders

- [53] The substance of the orders sought by the appellants is appropriate, but it should be made clear that, consistently with the rationale for the orders, only current members of the management committee are entitled to see the documents.

- [54] I would make the following orders:

1. Allow the appeal with costs.
2. Set aside the orders made in the Trial Division on 28 February 2013 and 5 April 2013 and instead,
 - (a) Direct pursuant to section 72 of the *Associations Incorporation Act* 1981 (Qld) that:
 - (i) The respondent perform and observe its rules by producing the documents identified in subparagraphs a, b, c, e, g, h, i, k, l and u of paragraph 1 of the application for the inspection of and taking of copies by the third and fourth applicants and by any other member of the management committee who seeks inspection of those documents, and
 - (ii) The respondent produce those documents for inspection by the third and fourth applicants at a time and place to be agreed between the parties or, in default of agreement, to be fixed by order of a judge.

Provided that these directions do not oblige the respondent to produce documents to a person who is not a member of the respondent's management committee at the time for production of the documents.

- (b) Order that the respondent pay the applicants' costs of the proceeding.
- [55] **ATKINSON J:** I agree with the reasons for judgment of Fraser JA and the orders proposed by his Honour.

⁷⁴ Transcript 30/7/2013 at p 1-20.

⁷⁵ Transcript 30/7/2013 at p 1-32.