



Dear Members,

## DAVIS VS MCLAREN VALE HOSPITAL – JUDGMENT

I am writing to advise you that the Hon. Auxiliary Justice Bochner has today delivered judgment finding that the Association contravened section 61 of the *Associations Incorporation Act 1985* (SA) as follows:

- members should have been given more notice of the 5 July 2023 SGM;
- in its communications to members on 26 May and 2 June 2023, the Board should not have said that opponents of the merger with James Brown Memorial Trust (Kalyra) wanted to give the hospital to a private developer and overstated the risks to existing tenants and heritage;
- for the July 2023 SGM, the Board should have made clear that the Association would be wound up as part of the proposed merger (as it had done at the May 2023 SGM).

The Court also found that the Board was not properly constituted and its decisions invalid in the period from December 2022 to 5 May 2023 because it had seven (rather than eight) members.

However, the Court rejected the other parts of the case against the Association, in particular, the Court:

- found that JBMT (Kalyra) is a valid recipient of the assets of the Association as an organisation with objects sufficiently similar to the Association, and that people can become members of the Association to vote in favour of the transfer of its assets to Kalyra;
- rejected the argument that the Board's decision to close the hospital was oppressive or unreasonable;
- rejected the argument that the Board behaved in an oppressive or unreasonable manner at or in the lead up to the 5 May 2023 SGM;
- rejected any criticism of Dr Lawlor-Smith and Wellbeing.

The Court made the following overarching comments about the Board's conduct:

*"I should also say at this point that I do not intend this judgment to be a criticism of the actions of the Board members. I accept that, at all times, they acted in good faith and in what they considered to be in the best interests of the Association and its members. I accept that, with the benefit of a combination of hindsight, and the fact that I was not enmeshed in the day to day running of the Association, it is perhaps easy to criticise actions of well-meaning volunteers who are doing their best to promote the best interests of the Association and its members."*

The full judgement will be available on the hospital's website in the very near future and, while it is a long document, I urge interested members to read it and so gain a full understanding of how and why Her Honour reached the conclusions that she did. This update is not intended to be a substitute for the judgment.

The matter will return to Court on 6 November 2024 for the Court to consider what orders to make. The Board is taking advice on the decision and considering its implications. The Board will provide a further update on the case in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Overland'.

**Chris Overland**  
**Chair**

14 October 2024