



Australian Carriage Driving Society

ABN: 28 794 114 302 – Incorporation No: A01028

ACDS FEDERAL COUNCIL FORUM – 30 March 2023

Statement Regarding Supreme Court Action CIV 2431 Of 2022: Smith v Australian Carriage Driving Society Inc

Read by the Vice President at the opening of the Forum.

A number of members have submitted questions and comments relating to the legal proceedings in the WA Supreme Court between Ms Janet Smith and the ACDS Inc. Given the restrictions placed on both the ACDS and Ms Smith by the Supreme Court about what can be said about the legal proceedings and particularly the Mediation, the Federal Council has prepared a statement to address some of the questions that have been raised by members.

This statement is issued for and on behalf of the Federal Council of the ACDS Inc.

Ms Smith and the ACDS both attended the Mediation in good faith and had productive discussions that ultimately resolved the proceedings. Both Ms Smith and the ACDS are bound by the confidential nature of the Court Ordered Mediation Proceedings. The Mediation is conducted totally confidentially and all discussions that take place during the process are prevented BY LAW from being communicated to parties that were not in attendance at the Mediation. Only the agreed outcome of the Mediation can be disclosed.

The negotiated outcome of the Mediation was communicated, as agreed, via social media, the ACDS website and in time the ACDS journal.

Federal Council therefore advise that no discussion of actions and events surrounding the dispute between Ms Smith and the ACDS will be entered into either during this Forum or otherwise.

However, some questions raised can be dealt with now.

Individual questions will not be addressed specifically; the issues raised have been consolidated and Federal Council provides answers as follows.

1. What legal representatives did the ACDS engage to address the dispute?

Initially, the national firm, Armstrong Legal, was used to provide advice and guidance to the ACDS.

Immediately prior to the Mediation, Armstrong Legal, without notice, determined to close their WA offices. This meant that they no longer were able to work for the ACDS. Ryan & Co Solicitors, another national firm, were then engaged to support the ACDS.

Venetia Bennett, a Barrister of the WA Bar and past President of the Australian and New Zealand Sports Law Association, was briefed to appear for the ACDS at the Supreme Court hearing and Mediation.

2. Who represented the ACDS at the Mediation and what costs were incurred?

The ACDS was represented at the Mediation by the Vice President, Peter Smith. No other Federal Council members travelled to WA for the mediation or at any other time in relation to the dispute. Total cost charged to the ACDS by the VP was \$1,655.17.



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This was for return airfare, 3 nights' accommodation and taxi travel. No re-imbusement was sought for meals or motor vehicle expenses. It should be noted that the VP conducted additional ACDS business whilst in Perth that was not related to the Mediation.

3. What legal costs have been incurred?

The ACDS has incurred costs for Solicitors and a Barrister. To date the costs are as follows:

Armstrong Legal	\$8,377.66
Ryan & Co	\$3,012.61
Venetia Bennett	<u>\$9,650.00</u>
TOTAL	\$21,040.27

4. What amount is payable to Ms Smith as part of the settlement and why is it so high?

Ms Smith's costs fixed in the amount of \$34,000 will be paid. This amount is payable in 2 instalments - \$15,000 was paid on 8 March 2023 and the balance of \$19,000 will be paid on 30 September 2023.

Note that the payment to Ms Smith is for legal costs incurred and is not a damages payment.

The quantum of the costs reflects the fact that it is expensive to take action for injunctive relief in the Supreme Court.

5. Why did the dispute go to the Supreme Court?

The ACDS constitution is based on the ACT model rules. For reasons unknown to the ACDS, the ACT Govt had not released an updated set of model rules with a dispute resolution process (which would otherwise have been incorporated into the ACDS' constitution). There was no dispute resolution clause specified in the ACDS constitution and in the circumstances in which the dispute arose, Ms Smith had no alternative avenue to pursue dispute resolution other than commencing proceedings in the Supreme Court.

The ACDS is currently taking steps to prepare proposed amendments to the Constitution that will address this issue (and other issues) and will communicate with members about this at the appropriate time.

6. How has this outcome affected the financial position of the ACDS. Is there any impact on the ACDS insurance policies?

The ACDS remains solvent and able to continue its normal operations.

It is anticipated there will be no increase in membership fees for the next membership period.

There will be no impact on the level of cover for any insurance policies held by the ACDS resulting from the outcome of this dispute. Renewal costs for policies will be driven by insurance market movements.



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7. Are there any other legal disputes that the ACDS is currently a party to?

No.

8. Are there any outstanding issues relating to members that may involve the incurrence of additional legal expenses?

Yes. There is an ongoing issue in WA that may result in additional legal expenses being incurred. The ACDS is working closely with that person to achieve a mutually acceptable outcome.

9. What actions does the ACDS propose to take as a result of any lessons to be learnt from this matter?

- a. The Constitution has been found to be deficient particularly in relation to disciplinary matters. Our legal advisors in the case have strongly suggested that the existing Constitution requires amendment. A full review of the Constitution has already been initiated with the engagement of Adam Levine from K&L Gates; a legal firm that has significant experience in the law affecting Incorporated Associations (including not for profit and sporting associations like ACDS). The anticipated cost of this review and preparation of a new legal document is expected to be between \$4,000 and \$6,000. This review will also include all By-laws.
- b. The ACDS is considering its options with respect to the legal advice that it received in relation to the proceedings.
- c. In formulating its Strategic Plan, the Federal Council will address the suitability of the current administration structures to adequately carry out the functions of the Council. The creation of a position of CEO or similar may form part of that review. Any such re-structuring would clearly need to take account of the financial implications of such a re-structure.

In closing:

Federal Council stands by the decisions taken by it in this matter as it progressed. At all times your Council acted in what it saw as the best interests of the ACDS and its members in accordance with the powers given to the Council under Section 14 of the Constitution.

There is no doubt that this has been a testing time for all members and a financial set-back for the ACDS.

By working together, the Council looks forward to a better future for all members.