

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



TAPP V AUSTRALIAN BUSHMEN'S CAMPDRAFT & RODEO ASSOCIATION LTD [2019] NSWSC 1506

NSW Supreme Court, Lonergan J, 4 November 2019

Damages claim by a participant in a horse event claiming negligence met by various defences including waiver and protection afforded community work done by volunteers.

Key words: Negligence, New South Wales, Tort, Civil Liability Act, Waiver, Volunteers

1. Emily Tapp fell from her horse while competing in a campdraft event in New South Wales organised by The Australian Bushmen's Campdraft and Rodeo Association Ltd (the association). She suffered a significant spinal injury in the form of incomplete quadriplegia. The association, run mainly by volunteers, is a nonprofit corporation with overall control of the sport of campdrafting.
2. Ms Tapp alleged that her fall from her horse was caused by the negligence of the association. She also alleged that there was an agreement between her and the association, which was breached, entitling damages. The association denied it was negligent or had a contract with Ms Tapp. It also raised defences under the *Civil Liability Act 2002* (NSW) (the CL Act) such as the absence of a duty to warn of obvious risks and also in regard to dangerous recreational activities. It further relied on a signed waiver of liability and immunity under the volunteer provisions of the CL Act.

Waiver

3. Ms Tapp signed a waiver that included a risk warning. The association's waiver was a general precondition to becoming a member of the association and the member engaging in any of the relevant activities organised by the association. The court found that the terms of the waiver were comprehensive and extensive. The full waiver is attached at the end of this case report.
4. Section 5M of the CL Act is to the effect that a person (the defendant) does not owe a duty of care to another person who engages in a recreational activity (the plaintiff) to take care in respect of a risk of the activity if the risk was the subject of a risk warning to the plaintiff. The court found that section 5M of the CL Act makes it clear that (at [160]):

...a risk warning for recreational activities can be given full force and effect so that there is no duty of care where a risk warning such as that set out in the waiver form has been given. The terms of the waiver are clear

and require the signatory to acknowledge campdraft is a recreational activity, that there are risks, that there is a risk of personal injury or death and that by signing the waiver the plaintiff understands she is waiving her rights to sue “whether caused by the negligence of the provider, its employees or agents, however caused or otherwise”.

Contract under the Australian Consumer Law

5. Ms Tapp argued that there was an agreement with the association for her to compete, the Australian Consumer Law (section 60) applied, and in particular that the campdrafting event would be organised, managed and provided with due care and skill. The court found that there was insufficient evidence to find that there was a contract. The evidence consisted of emails for nomination and the payment of a fee, but these were with a different body, not the association. This ground failed for lack of a contract.

Common law Duty of Care

6. The claim was that the association had failed in its duty to prepare a proper surface for the competition and take account of significant rainfall which made the surface slippery, which indicated that the competition should be called off.
7. The court noted that (at [205]):

The question of what are reasonable precautions to take must be determined in the context of the events in issue. The plaintiff’s case, that one person complains and the event must be stopped, even against a background of other competitors falling is not an assertion that can underpin what comprises a reasonable standard of care. What was required taking reasonable care is for an informed consideration to be made as to whether it is safe to continue with the competition. Hindsight must not inform this decision.

8. Therefore, the breach of duty was not established.

Volunteers defence pursuant to section 60 of CL Act

9. The association fell within the definition of “community organisation” in section 60 of the CL Act. Section 61 of the CL Act protects a volunteer of a community organisation from personal civil liability for any act or omission done by the volunteer in good faith when doing community work organised by the community association, or as an officeholder. That protection also extends to the association for any vicarious liability.
10. It was found that the volunteers were acting within the scope of activities and within instructions given to them.
11. Therefore, the plaintiff failed in her claims.

IMPLICATIONS



This was a tragic accident, but the association was not found to be liable. Note should be taken of the waiver which was upheld as well as the reliance on the CL Act volunteer immunity provisions.

ANNEXURE

Liability Waiver Form:

AUSTRALIAN BUSHMEN'S CAMPDRAFT AND RODEO ASSOCIATION

PO Box 964
TAMWORTH
NSW 2340

Ph: (02) 6766 5863
Fax: (02) 6766 1232
Email: general@abcra.com.au

ABN: 82 002 967 142

Website: www.abcra.com.au



LIABILITY WAIVER FORM

EXCLUSION OF CERTAIN RIGHTS TO SUE

The purpose of this agreement is to exclude the liability of the Provider for any personal injury or death to the Participant and other people in the care and control of the Participant howsoever caused, who signed this form as acknowledgment of the terms and conditions of this agreement. By signing this form you are waiving your rights to sue the Provider for losses relating to personal injury or death arising from the provision of Recreational Services to you and your participation in the event, activity or competition (hereinafter referred to as "the recreational activity"). Under the provisions of the Trade Practices Act and Various State Laws conditions are implied into contracts that mean that the Provider of Recreational Services, noted below, is required to ensure that the Recreational Services it provides to you are rendered with due care and skill, are fit for the purpose for which they are commonly bought as it is reasonable to expect in the circumstances or might reasonably be expected to achieve the result you have made known to the Provider.

Name and address of Provider

Australian Bushmen's Campdraft & Rodeo Association and its affiliated organisations, PO Box 964, Tamworth NSW 2340

The Participant acknowledges that the recreational activity being undertaken is an activity being undertaken for the purposes of recreation, enjoyment or leisure that involves a significant degree of physical risk. The Provider acknowledges that they are providing the Recreational Services detailed below. This may entail providing facilities for participation in a recreational activity, or training a person to participate in a recreational activity, or supervising, adjudicating, guiding or otherwise assisting a person's participation in a recreational activity.

The Participant hereby acknowledges that in participating in the recreational activity that there are risks involved to him or her or other people in his or her care and control. The Participant also acknowledges that the purpose of the recreational activity is for the benefit of the Participant and for the benefit of those people in the care and control of the Participant and that at all times the Participant is responsible for his or her own actions and the actions of those other people in his or her care and control.

Description of Recreational Services

Campdraft, Rodeo and other sanctioned events.

Steps taken by Provider to avoid the danger of personal injury or death (NOTE: This list is not intended to be exhaustive). The Provider may have taken other steps not listed, herein, to avoid the danger of personal injury or death.

For example: daily/weekly/monthly equipment inspections, qualified staff used, staff/participant ratio compliant with Industry Standard, adherence to industry code of practice, code of conduct or accreditation scheme; emergency procedures in place; contingency plans in place for emergencies; qualified first aid personnel available, communication procedures in place etc.

The Participant acknowledges that during all times while he or she is participating in the recreational activity he or she does so at his or her own risk. The Participant and other people in the care and control of the Participant will not hold the Provider or any of its employees or agents liable for any personal injury or breach of contract whether caused by the negligence of the Provider its employees or agents howsoever caused or otherwise. The Participant acknowledges that in the event that he or she or any of the other people in his or her care and control find either or any of them is in difficulty during participation in the recreational activity, that he or she are to stop the activity or request that the activity be stopped if appropriate, and seek help and/or assistance and advice.


Declaration and signature

By signing this agreement I understand that the Recreational Services about to be sold to me as set out in this form may result in personal injury or death to me or the persons in my care and control. By signing this agreement I understand that I am waiving my rights and the rights of the persons in my care and control, to sue the Provider for losses relating to personal injury or death to me or to the persons in my care and control, which are sustained as a result of my participation in the recreational activity, whether caused by the negligence of the Provider its employees or agents howsoever caused or otherwise.

I agree not to drink alcohol or take drugs prohibited by law before an event.

Signature of Participant / Parent / Guardian

Name of Participant



Emily Tapp

Printed Name.....

Address.....

.....

Manfield stn
PMB 132

Date..... 27.1.12 120.110

State..... N.T..... Postcode..... 0851

This case was appealed, *Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd* [2020] NSWCA 263 and a case note is available at <https://eprints.qut.edu.au/207178/>

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWSC/2019/1506.html>

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: January 2020

Number of case: 2019-91

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Commons licence: CC BY-NC-ND

[This work is licenced under a Creative Attribution 4.0 International Non Commercial and No Derivatives licence \(CC BY-NC-ND 4.0\).](#)



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.

RESEARCH

COURSES

RESOURCES

EVENTS

QUT Business School
The Australian Centre for Philanthropy
and Nonprofit Studies

qut.edu.au/business/acpns