



Queensland University of Technology
Brisbane Australia

This may be the author's version of a work that was submitted/accepted for publication in the following source:

[McGregor-Lowndes, Myles & Hannah, Frances](#)

(2020)

ACPNS Legal Case Notes Series:2020-134 George Cross Falcons Community Centre Inc v Wymark Insurance Brokers Pty Ltd.

[Working Paper]

(Unpublished)

This file was downloaded from: <https://eprints.qut.edu.au/205127/>

© The Australian Centre for Philanthropy and Nonprofit Studies (ACPNS)

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.

License: Creative Commons: Attribution 4.0

Notice: *Please note that this document may not be the Version of Record (i.e. published version) of the work. Author manuscript versions (as Submitted for peer review or as Accepted for publication after peer review) can be identified by an absence of publisher branding and/or typeset appearance. If there is any doubt, please refer to the published source.*

<http://www.austlii.edu.au/au/cases/nsw/NSWCATAP/2020/195.html>

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.



GEORGE CROSS FALCONS COMMUNITY CENTRE INC V WYMARK INSURANCE BROKERS PTY LTD [2020] NSWCATAP 195

New South Wales Civil and Administrative Tribunal, P Durack SC, Senior Member, D Robertson, Senior Member, 23 September 2020

Proceeding to allow extension of time to file appeal notice in an insurance dispute

Key words: Insurance, New South Wales, Appeal, Extension of Time to Bring Proceedings, Incorporated Association

1. George Cross Falcons Community Centre Inc (Community Centre) is an incorporated association run by volunteers. There was a daytime robbery at the community centre during which cash stored in a safe at the premises was stolen. Between \$10,000-\$11,500 cash was stolen. The Community Centre's insurance broker advised that the community centre's business insurance policy with Zurich Australian Insurance Ltd (Zurich) did not cover the risk.
2. Zurich confirmed that it refused indemnity. This was because no cover had been taken out (at additional premiums) for "Burglary" or "Money", as described in the policy wording. Only cover for "Fire" and "Liability" had been arranged.
3. The Community Centre's claim against the broker was a professional negligence or breach of contract claim for failing to take reasonable steps to arrange adequate insurance cover for the appellant in respect of the community centre.
4. The reasons of the original Tribunal did not address any of these issues. Rather, the reasons appear to be more directed at the question whether, in the events which had occurred, the respondent should be treated as having arranged relevant cover. The broker argued that indicated that the coverage for burglary and theft was included by mistake as the underwriter did not cover this and the claim had been refused by Zurich on this basis. The Appeal Tribunal regarded the approach taken by the Tribunal meant that it failed to address the elements of the appellant's claim, thus being an error of law.
5. There was a delay of about 2 ½ months beyond the time prescribed for lodging this appeal. The delay was explained by a lost postal filing and COVID closure of the Tribunal.

6. The Appeal Tribunal found that because of the strong merits of the appeal and the absence of any additional prejudice to the broker beyond its important interest in the expeditious conclusion of the litigation, the interests of justice meant that the necessary extension of time for lodging the appeal should be granted.
7. The proceedings were remitted to the Tribunal for rehearing and the making of a new determination as to whether the community centre's claim succeeds or fails.

IMPLICATIONS



Insurance brokers owe their clients a duty of care in carrying out their role. In the circumstances, where a large amount of cash was kept on the premises, brokers need to take reasonable steps to assess the risks and advise on the appropriate cover.

Nonprofit organisations need to check their coverage and make sure that they understand what is actually the coverage and to what limits.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWCATAP/2020/195.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: October 2020

Number of case: 2020-134

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: 

[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