

# 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.



## Australian Islamic Society of Bosnia Herzegovina Incorporated v Muhamed Kumalic [2023] NSWSC 1505

Supreme Court of New South Wales, Kunc J, 30 November 2023

An application to vest property held by trustees on behalf of the members of an unincorporated association to a new incorporated association.

**Key words:** Incorporated Association, New South Wales, Trustee, Vesting of Property

1. Islamic Society Hurstville (ISH) was an unincorporated association formed in the late 1970s and early 1980s by a group of Bosnian Muslims.
2. Properties were purchased by member donations and fundraising, and transferred into several individual member's names as trustees for ISH.
3. ISH later became known as 'Bosnian Cultural Growth (sic) Centre, Australian-Bosnia' and Herzegovina Islamic Society 'Gazi Husrev Beg'.
4. The association was incorporated in 2005 and, since that time, has had five name changes.
5. The properties continued to be used by ISH, and ISH was recognised as the owner by authorities for rates, utility and valuation purposes.
6. There were three persons on the property titles.
7. Two entered into a settlement deed with ISH whereby they would transfer the title to that of the incorporated association with indemnities for taxes, costs and other expenses.
8. The third, K, disagreed. He claimed that 'Islamic Society, Hurstville' and ISH were two different organizations.
9. The incorporated association sought relief to perfect its registration as the registered proprietor of the properties purchased for the benefit of ISH.
10. K did not participate further in the matter after filing a defence and was never legally represented.

11. The Court noted that there was no contradictor, but on the authority of [Church of the Foursquare Gospel \(Australia\) Ltd v New Hope Church Swansea Inc](#) [2019] NSWSC 519 that the presence of a proper contradictor goes to the Court's discretion to make a declaration, rather than being an essential pre-condition, and the comprehensive evidence allowed it to proceed.
12. The Court noted Section 2 of Schedule 2 of the [Associations Incorporation Act 1984](#) (NSW) meant that on incorporation, that property's beneficial ownership was vested in ISH, and the trustees held their interests on trust for ISH, and subject to the association's right as beneficial owner to call for the legal title (subject to appropriate indemnification of the trustees).
13. As the trustees had not complied with the request to transfer ownership, ISH was entitled to invoke section 71 of the [Trustee Act 1925](#) (NSW) and seek vesting orders.
14. The Court perfected the registration of ISH to the two properties originally purchased for its benefit.

## COMMENT



These proceedings concerned a common issue among faith-based groups. While some religious denominations benefit from specific legislation creating statutory trustees to hold property, others at least began with what, in law, were trustees holding land and other property for the benefit of the congregation as an unincorporated body. Members of the congregation would donate funds to acquire the property for a place of worship, school, or community centre, which would then be purchased by some of the congregants as trustees.

Upon incorporation, the new legal body will often take full ownership of the property.

There is no uniform treatment of the transfer of property to the newly incorporated association under state and territory incorporated association legislation.

## VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2023/1505.html>

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