

## **Stairway to Liability? A Road Authority's duty in relation to stairs.**

With the Christmas season upon us, public places become crowded and foot traffic increases. As a result, local authorities must be aware of the liabilities concerning both recognised roadways and unformed roadways.

### **The Case Study**

A recent decision by the New South Wales Court of Appeal, concerned stairs constructed upon an unformed road reserve, which formed part of a carpark. The plaintiff was injured when she fell while ascending a flight of stairs, after she misjudged the location of the landing in the darkness. The concrete stairs led from the carpark adjacent to a shopping centre to an unformed laneway linking the shopping centre to a public park.

As a Roads Authority with responsibility for the road reserve, the Council was obliged if the state of the stairs posed a risk to road users (whether from design, construction, works or non-repair) to take reasonable steps to address the risk within a reasonable time. It was obliged to exercise reasonable care to make the road (in this case, the stairs) safe for users exercising reasonable care for their own safety. In this case, it was alleged that a failure to properly light the stairs constituted a breach of the duty. There had in fact been a prior safety audit letter that alerted the Council and the shopping centre owner to the risk posed by the lack of illumination over the stairs.

### **The Result**

The Court found that a reasonable person in the position of the Council and Shopping Centre owner should have ensured that the stairs were properly illuminated and that anything that posed a risk to that illumination should be removed.

For local authorities, this means that there needs to be proper and broad consideration of what might not appear at first glance, to be a roadway. These unusual circumstances might occur as in this case, with stairs, thoroughfares or footpaths constructed upon unformed roadways linking one location facility or destination with another, over which vehicles or pedestrians travel from time to time.

### **Practical Tips:**

- Carefully consider what the public is using as a road, thoroughfare or footpath;
- Properly light all roads, thoroughfares and footpaths; and
- Follow all safety audit recommendations.



**Karen van den Brand** is a Director and head of the firm's Local Government, Environment and Planning Law department. She has represented and provided advice to a number of local governments, developers, companies and individuals.

Whilst her interests are varied, she has recently spent the bulk of her time assisting local water authorities, particularly in the area of wastewater infrastructure. Given the current scarcity of water resources, this growing area requires specialist knowledge, and Karen is able to advise on all facets of the operation of local water authorities, from managing investigations into compliance by other government

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**Michael Sing**, Managing Director of **msl**, has over 25 years of extensive experience in commercial and construction litigation, insurance matters, property and business transactions representing both plaintiff and defendant clients in all jurisdictions in Queensland. He has represented local government in public liability and contractual dispute resolution work for over 15 years. He has advised in and conducted many leading cases involving public and beach safety issues.

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