

Duty of Care and Lighting of Carparks

Carparks can be a hazardous place at the best of times. However, when coupled with broken branches and no lighting at night, injuries can occur. In the following case study, find out what duty of care is owed to people in carparks and how to minimise or avoid damages altogether.

Case Study

The recent decision of *Penrith Rugby Leagues Club v. Elliott* 2009 NSWCA 247 concerned the duty of an occupier of land to light its carpark. The facts were that Elliott was a patron of the Penrith Rugby Leagues Club ("the club") and on 4 September, 2004, after finishing lunch, exited the rear entrance at approximately 6.30 p.m. Upon entering the carpark, which did not have any lane markings to guide pedestrians, Elliott fell and injured herself, breaking both wrists.

Elliott claimed that the carpark was inadequately lit and that the presence of twigs on the ground caused her fall and were a significant hazard. The Trial Judge found that there was a failure by the club to ensure that the floodlights were functioning after dark.

On appeal, the Trial Judge's decision was reversed. The club had submitted that the Trial Judge had found that the fall was caused by her stepping on twigs and the Judge's finding that the lighting was inadequate was supported by evidence at the Trial.

However, The Appeal Court considered that there was no evidence or finding as to the reason why the floodlights were inoperative at the time of the accident and evidence of the club showed that there had been no previous incident in which floodlights had failed to operate at the same time. Further, there was no evidence as to the precise risk of failure of the floodlights against which the club might reasonably take precautions. There was also no expert evidence cited as to the likelihood of a malfunction in the automatic sensor that triggered the operation of the floodlights.

Finally, there was no evidence as to what measures the club could reasonably have taken to remedy the failure of the floodlights once the failure was detected. It was noted by the Court that even in the exercise of reasonable care, where a failure was detected, a significant delay in repairing the default might occur.

The Result

The Court found in this case that the club had discharged its duty to take reasonable care and allowed the Appeal. Elliott failed to show that the club's compliance with the appropriate level of duty of care would have prevented her injuries.

The case shows the difficulties for injured parties in suing an occupier who has a system in place. It also highlights the difficulties for a local authority, or occupier of premises that have high public traffic, to have proper maintenance systems in place for lighting of carparks and other areas where parties might fall and injure themselves. In addition, one would expect that this duty would be higher in areas where people may be affected by alcohol upon their exit from the premises.

Practical Tips for Local Government and Other Landlords and Occupiers

- Ensure you have adequate lighting and safety signage in carparks and high traffic areas.
- Ensure you have proper maintenance systems in place for these areas, and maintenance is carried out regularly.
- If you are in an area where people may be affected by alcohol upon their exit from the premises, your duty of care is higher than normal.



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 departments, to the preparation, negotiation and submission of Environmental Management Plans.



Emily Weir has been involved in the conduct of complex litigation in the Planning and Environment Court, the District Court and the Court of Appeal on a variety of planning and development issues. Her experience in these matters means that she has a ready working knowledge of the technical aspects inherent in development approvals, particularly in specialist areas of expertise such as geotechnical engineering, flood mitigation and so forth.

She has provided advice to both government and non-government areas in respect of the enforceability of conditions in building and development approvals, and has worked with stakeholders to ensure the amendment of conditions where applicable, to ensure the early and cost-effective settlement of matters.



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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