



Liability of public authorities

By Tracey Carver

The general immunity once claimed by the Crown, or government, from common law liability, has long since been abolished.¹ The blanket immunity from liability traditionally claimed by road authorities for omissions, or nonfeasance,² has also been overruled,³ and it is now generally accepted that the normal principles of negligence apply to public bodies. Accordingly, in the context of the liability of public authorities, it is now 'the extent of liability rather than the issue of justiciability that has proved problematic'.⁴ This edition of *Precedent* focuses on this complex area of liability.

Charles Wilson considers the meaning of 'public or other authority' for the purpose of the legislative provisions enacted across Australia in response to the Ipp Report,⁵ to confine the liability of such bodies, and the causes of action to which these provisions apply. Grant Watson addresses the circumstances that determine the existence and content of a public authority's duty of care – focusing on how the nature and responsibilities of such authorities may limit liability in their favour under relevant legislation and case law. He considers the operation of s42 (principles concerning resources, responsibilities, etc, of public or other authorities); s43 (proceedings against

public or other authorities based on breach of statutory duty); s43A (proceedings against public or other authorities for the exercise of special statutory powers); s44 (when public or other authority not liable for failure to exercise regulatory functions); and s46 (exercise of function or decision to exercise does not create duty), of the *Civil Liability Act 2002* (NSW) and the relevant provisions in other jurisdictions.

Michal Horvath also considers s43A, and its use in private law of the public, or administrative, law principle of *Wednesbury* unreasonableness,⁶ in his case note on *Richard & Ors v Allianz & Ors*. Richard Douglas SC examines the features and elements of the statutory reintroduction of a modified nonfeasance immunity for road authorities, referring to s45 of the *Civil Liability Act 2002* (NSW) and recent judicial consideration. Hugh Marshall SC analyses various *Civil Liability Act* provisions, and provides tips for lawyers in negligence cases against public authorities.

Other specific areas of potential liability for public authorities are considered in articles by Travis Schultz and Ross Abbs. Although not peculiar to the liability of public bodies, Travis reviews the problem of establishing causation in slip-and-fall cases, whether occurring in a private or public place or premises. The article examines the High Court's decision in *Strong v Woolworths Limited*, the implications of that decision, and the case law pre- and post-*Strong*. The factual features and arguments relevant to a prison authority's breach of duty to take reasonable care for the safety of inmates are considered by Ross with reference to three case studies. He also covers the effect on the viability of a prisoner's negligence claim of legislation

regulating 'offender damages'.

The distinction between public and private law is revisited by Professor Prue Vines in her article 'Private Rights and Public Wrongs: The Tort of Misfeasance in Public Office'. The relevant elements of the tort are examined and the issue of the Crown's vicarious liability considered. In light of a recent review, the issue of public rights and the extent to which public authorities should be civilly liable for breaching the *Charter of Human Rights and Responsibilities Act 2006* (Vic) are examined by Sophie Ellis.

Finally, at both a practical and procedural level, Phillipa Alexander discusses a law practice's obligation to disclose details relevant to costs to public authority clients under the *Legal Profession Act 2004* (NSW). Special consideration is given to the implications of a practice's failure to update disclosures in circumstances where, although public authority clients are exempt from disclosure under the Act, a voluntary disclosure has nevertheless been made to them. ■

Notes: 1 See, for example, *Crown Proceedings Act 1980* (Qld), s8; *Crown Proceedings Act 1988* (NSW), s5. 2 *Buckle v Bayswater Road Board* (1936) 57 CLR 259. 3 *Brodie v Singleton Shire Council* (2001) 206 CLR 512. 4 Carolyn Sappideen and Prue Vines (eds), *Fleming's The Law of Torts* (Lawbook Co, 10th ed, 2011) 215. 5 Commonwealth, *Review of the Law of Negligence: Final Report* (September 2002) Ch 10. 6 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 AC 223.

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