



Risk, liability and roadside management

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Liability of Local Governments in WA

- Pendulum swings – background and context to liability
- Duty of Care
 - Civil Liability Act 2002, s 5B
 - Risk was foreseeable
 - Risk was not insignificant
 - A reasonable LG in that LG's position would have taken precautions

What does “reasonable precautions” mean?

You need to ask yourself these questions:

1. the **probability** that the harm would occur if care is not taken;
2. the **likely seriousness** of the harm;
3. the **burden of taking precautions** to avoid the risk of harm;
4. the **social utility** of the activity that creates the risk of harm.

So what about Roads? *Brodie v Singleton Shire Council*

"Where the state of a roadway, whether from design, construction, works or non-repair, poses a risk to that class of persons, then, **to discharge its duty of care, an authority** with power to remedy the risk is obliged to **take reasonable steps** by the exercise of its powers within a **reasonable time to address the risk**.

"Such **a risk of harm** may arise from a **failure to repair a road or its surface, from the creation of conditions during or as a result of repairs or works, from a failure to remove unsafe items in or near a road, or from the placing of items upon a road which create a danger, or the removal of items which protect against danger.**"

Local governments: duty of care

Civil Liability Act 2002, Section 5Z

(2) A roads authority is not liable in proceedings to which this Part applies for harm arising from a failure of the authority to carry out road work, or to consider carrying out road work, **unless** at the time of the failure the authority had actual knowledge of the particular risk that caused the harm.

(3) This section does not operate –

(a) to create a duty of care in respect of a risk merely because a road authority had actual knowledge of the risk; or

(b) to affect any standard of care that would otherwise be applicable in respect of the risk.

What about 'Standards' and Guidelines

- Not mandatory
- Relevant
 - Benchmark of quality
 - Established by experts
 - Provide guidance (including court decision)





CASE STUDIES, WA - Liability Risk

- Did the curve constitute a danger to road users?
- If the curve was dangerous:
 - Did the Shire create the danger?
 - Was the Shire aware of the danger?
 - Did the exercise of reasonable care require the Shire to take some action in relation to the danger?
 - Did the Shire's failure cause or contribute to the accident?
- Looking at this curve could we say it may have posed a danger?
What would we be looking at?

**Thank you for
your time**

