

# Supreme Court of Victoria not led up the Garden Path

*VWA v Monash University* [2016] VSC 178 (22 April 2016)

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## Summary

The Supreme Court of Victoria has recently dismissed a claim for indemnity by the VWA against Monash University, finding that the University was not required to take precautions against all risks found on the premises of the University.

The decision is further evidence of the Victorian Courts' recent tendency to take a common sense approach to occupier's liability in circumstances where the risk of injury is so obvious that it ought to have been apparent to the injured party.

## Facts

The injured worker was employed by Gryph Inn Bar & Bistro at the Caulfield campus of Monash University. The worker was injured on 6 October 2010 when she slipped and fell on an unformed pathway through a garden bed whilst walking from her place of employment to her car.

As part of her employment the worker was provided a car park on Queens Road, an internal road on the Caulfield Campus. A concrete ramp and concrete stairway provided access to Queens Road from the Gryph Inn. However, the unformed pathway through the garden bed on which the worker fell was often used by students and others who attended the university as a 'shortcut'.

The worker gave evidence that she used the pathway through the garden bed whenever walking between her car and Gryph Inn.

On the day of the incident it had rained in the morning. The worker had worked during the morning and then driven home for a shower and to change clothes. She

returned to the Gryph Inn in the evening and worked until around midnight. When she fell returning to her car it was the fourth time the worker had used the path that day.

## The Court's Findings

The indemnity claimed by the VWA, pursuant to section 138(3) of the *Accident Compensation Act 1985* (Vic) ('the Accident Compensation Act') required it to establish that Monash breached its duty to the worker either at common law or pursuant to the *Wrongs Act 1958* (Vic) ('the Wrongs Act').

His Honour Justice McDonald found that as the occupier of the Caulfield campus, Monash owed the worker a duty pursuant to section 14B(3) of the *Wrongs Act* to take such care as was reasonable in all the circumstances to see that she would not be injured by reason of the state of the premises.

His Honour found that Monash provided access to the worker's place of employment from Queens Road, by way of concrete ramp and concrete stairs and that Monash did not make the path through the garden bed. Importantly, his Honour also found that the unformed path was not the obvious option to access the Gryph Inn from Queens Road.

While Monash knew that persons including employees of the Gryph Inn were using the unformed garden path, his Honour found that the risks associated with using the path were low and ought to have been well known to an entrant who was familiar with the options and chose to use the alternative path.

The VWA's claim for indemnity against Monash University pursuant to section 138 of the *Accident Compensation Act* therefore failed.

## The interaction between section 14B and section 48 and 49 of the Wrongs Act

In making his decision, his Honour reviewed section's 48 and 49 of the *Wrongs Act* and made comment on how they interact with the occupier's duty found in section 14B of that Act.

Sections 48 and 49 of the *Wrongs Act* give guidance as to what factors are to be taken into account when assessing whether a person has acted negligently and are liable to pay damages. These sections state that it must be considered whether or not a risk was foreseeable, not insignificant and whether in the circumstances, a reasonable person in the tortfeasor's position ought to have taken precautions against the risk.

His Honour found that while the risk posed by the unformed path was foreseeable and was not insignificant, Monash had provided safe means of ingress and egress from the worker's place of employment and the risk associated with the path was not concealed. His Honour found that Monash was not required to take steps to prevent people from accessing the unformed garden path.

### Implications

This case continues a developing trend of Victorian Courts of adopting a common sense approach when assessing what precautions a reasonable person in the position of the occupier should have taken.

The decision is also a reminder that while occupiers have a duty to entrants, they are not required to guard against all risks. There may be no finding of a breach of duty where the risk encountered by the entrant is obvious and encountered by choice.

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