

Greater Taree City Council ats Donna Tisdell

CLAIM DETAILS

- Date of incident: 29 August 2010
- Location of incident: Timber Footbridge over Browns Creek, Taree
- Claimant: Donna Tisdell – aged 45 at the date of accident, employed as a meat boner and slicer at an abattoir

INCIDENT DETAILS

- At approximately 7am on 29 August 2010, the Claimant was walking along a path near Browns Creek.
- As the Claimant walked over a timber footbridge, one of the timber planks gave way, causing the Claimant's left foot to fall through the timber. The Claimant sustained an injury to her left ankle ultimately result in 3-4 surgical procedures being performed.
- The bridge was opened in 1860 although as the date of the incident, the decking had likely been replaced on 3 occasions.
- The bridge ceased carrying traffic in 1979/1980 when it became a pedestrian bridge.
- On 4 March 2010, 5 months prior to the Claimant's accident, Council received a complaint from another resident that the bridge had a broken piece of timber. The bridge was inspected by Council and the broken piece was replaced on 24 March 2010. No further inspections were carried out by Council between that date and the Claimant's accident.

WHAT EVIDENCE WAS PRESENT – COUNCIL RECORDS, STATEMENTS, PHOTOS

- Council had a policy in place whereby if it is notified of damage to a footbridge, it carries out a Level 1 Bridge Inspection which requires the inspector to be externally qualified. The inspector decides whether a number of other actions are necessary such as repairs, increased inspections or a Level 2 Bridge inspection to assess the structural integrity of the bridge.
- When the repairs were carried out to the Bridge on 24 March 2010, no Level 1 Bridge Inspection was carried out. Only the damaged planks were replaced.
- Council and the Claimant served expert liability reports. Both experts agreed at the time of the Claimant's accident, the bridge had evidence of brown rot. Both experts also agreed the brown rot would have been present when the repairs were carried out in March 2010. The only dispute between the experts was whether the brown rot would have been easily identifiable.

WAS COUNCIL LIABLE AND WHY?

- Was the hazard obvious? No. The timber boards broke underneath the Claimant as she stepped on it opposed to being broken prior.
- Did Council know about the hazard? No
- Did Council warn of the hazard? No
- Did Council inspect the area? No

- Based on the expert evidence, it was open for the Court to find that had Council complied with its policy to carry out a Level 1 Bridge Inspection following receipt of

the March 2010 complaint, the decay in the timber planks could have been identified, thereby potentially avoiding the Claimant's accident which occurred five months later.

- Further, the repairs which were eventually undertaken were at a cost of only \$343 so Council did not have s 42 resources argument.
- Whilst Council did not know about the hazard, had Council complied with its own policy, it potentially would have known of the hazard.

WHAT WAS THE CLAIMANT SEEKING?

- The Claimant was seeking compensation for the injuries sustained in the accident. She had had a significant period of time off work (68 weeks in total over 4 periods) as a result of the injuries and surgical procedures, particularly given her job required her to stand on her feet all day.
- The medical evidence was unanimous in that the Claimant would not be able to continue working in the abattoirs until retirement age given the nature of the injuries. The Claimant would need to retire early.
- The Claimant was claiming non-economic loss, out of pocket expenses, domestic assistance and economic loss.
- She was claiming approximately \$800,000 plus costs. The bulk of that was future economic loss and future care.

HOW MUCH DID SHE GET?

- Given our views on liability, we resolved the matter prior to hearing for \$565,000 inclusive of costs.

SUMMARY OF THE DECISION

- This case is a good example of Councils needing to follow its own policies and procedures. Had Council followed its own policy, either the accident could have been avoided or we could have tried to argue the brown rot was not readily identifiable as at March 2010.
- As Council did not follow its own policy, those arguments could not be made. We could not argue Council was not liable because it did know of the condition of the bridge. The only reason Council did not know was because it did not following its policy.
- There is no point in having a policy if it is not being followed through.