Councils' liability for negligence to the public for injury from dog attack in the administration of dangerous dog powers

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INTRODUCTION

Most if not all jurisdictions in Australia make provision for the control of what may be called dangerous dogs. Without exception the responsibility for this task falls on local government. Each piece of legislation is concerned with the safety of the public. This is an important point to identify - this legislation does not create a charter for canine rights but in fact the reverse. The legislation invariably creates a regime whereby the public is to be protected by local government exercising given powers to restrain or contain or destroy dogs identified as threatening public safety.

The question of negligence is only likely to arise where a member of the public is mauled by a dog and consequently suffers physical injuries. In these circumstances plaintiffs' lawyers are likely to cast their eyes around for potential defendants and a local council is always an attractive defendant if a case can be made out.

This paper re-visits the question of liability of Councils for negligence in the administration of their dangerous dog policies. I will look at situations where the Council does nothing and also where its does do something and try to draw some conclusions.

In many cases concerning liability of councils there is an issue of pure economic loss, that is, the injury the plaintiff suffers is purely financial and not accompanied by any physical harm to person or property. Care should be taken in ready these cases as they differ from cases that involve personal or physical injury.

I thought we would look at 4 areas of possible liability :

- an attack by a dog previously unknown to the council,
- an attack by a dog known to the council (for example a second attack by the dog in the first area),
- an attack by a declared dangerous dog,
- on and off lead areas.

COUNCIL'S DUTY OF CARE IN THE HIGH COURT

PYRENEES SHIRE COUNCIL v DAY

Once again our starting point is a consideration of the High Court decision in *Pyrenees Shire Council v Day*. This was a case not of pure economic loss but one that involved physical damage.

In Beaufort, a small Victorian country town, there was a fire that destroyed a shop and the shop next door (owned by the Days). It had been caused by fire escaping from a faulty fireplace. The fault was not known to the current occupier of the property but it was known to the Pyrenees Shire Council because two years before, as a result of an earlier fire caused by the same fireplace, the fire brigade had informed the Council who then wrote to the then occupiers as follows:

> "At the request of the Shire of Ripon, [which became the Pyrenees Shire Council…ed] Beaufort, I inspected two open fire places at the above location on 11th August, 1988 at 10.15 p.m. (sic).
>
> During the inspection the following items were notes (sic) and are of some concern.
>
> 1. A possible fire hazard and unsafe structural condition has occurred on both fire places that are constructed back to back.
>
>   (a) The near (sic) fireplace brickwork wall of both the rear habitable room and the shop and (sic) damaged and have partially collapsed into the front disused fireplace.
>
>   (b) The side walls of brickwork in the recently used fireplace located in the habitable room, have broken and there is missing brickwork, damaged mortar jointing and pargetting.
>
> 2. The products of combustion can now enter the front fire place in the shop as well as enter into the wall cavity that is part of the dividing partition wall. This cavity could act as a flue for the smoke and fire to enter into the ceiling of the shop.
>
> 3. Smoke can now enter the main shop area and the possibility of fire and health risk is great.
>
> It is therefore imperative that the abovementioned fireplaces be <u>not</u> used under any circumstances unless:-
>
>   (a) Structurally sound repairs are made to make the chimneys and fireplaces safe.
>
>   (b) General repairs are made to mortar and brickwork to make the walls heat resistant and prevent smoke leakage.
>
>   (c) Alternatively repair the fireplaces structurally and seal both fireplace openings permanently and discontinue use.
>
> Yours faithfully,
> (Sgd)"

This letter pre-dated the later fire by some 2 years. In the meantime there was a new occupant who knew nothing of this and used the fireplace in ignorance of the danger.

The question for determination was whether the Council was under a duty to the owners of the shop where the faulty fireplace was and to Mr and Mrs Day who owned next door, to take some step which it unreasonably failed to take which, if taken, would have avoided the property damage which those parties respectively suffered as the result of the fire.

The council had significant statutory powers to remedy this situation and ultimately could undertake the work itself: s694(1) of the then Local Government Act provided:

> "The council of any municipality may carry out or cause to be carried out any works or take any other measures for the prevention of fires."

Brennan CJ at 14 said:

> "No further inspection of the premises was made. Nothing was done to check whether the directions contained in [the Council's] letter were carried out. No attempt was made, whether by threatening prosecution or otherwise, to enforce compliance with those directions. No work on the premises for the prevention of fire was carried out or authorised to be carried out by the Council. These were steps which the Council could have taken to prevent the risk to life and property posed by the defective fireplace. It was a serious risk which, if it eventuated, might have seen the destruction of a large part of the township. If the Council was under any statutory or common law duty to take these steps, it was guilty of negligence; if it was not under any such duty, its carelessness does not expose it to liability in damages."

You can see that there are two possible heads of liability – breach of a statutory duty and breach of a common law duty.

Brennan CJ at 17 said

> "Yet, as the escape of fire frequently exposes neighbouring persons and their property to the risk of damage or destruction, the provision of a measure of protection for those individuals is at least one of the purposes, if not the chief purpose, of arming a council with fire-prevention powers. Consistently with that purpose, a council that knows of a risk by fire to persons or property cannot refuse to exercise its fire-prevention powers where an exercise of those powers would protect those persons or property unless the council has some good reason for not exercising those powers so far as they are needed to prevent the risk from eventuating."

These sensible words are equally appropriate when talking of powers to control dangerous dogs. You can substitute 'dangerous dogs' for 'fire'.

Brennan CJ held that the Council was liable to everyone because at 28

> "In the present case, although there was no public expectation that the Council would exercise its powers to enforce compliance with the requirements set out in [the council's] letter, nor was any reliance placed by the respective plaintiffs on the Council's doing so, the Council was under a public law duty to enforce compliance with the requirements in [the council's] letter. The risk of non-compliance was extreme for lives and property in the neighbourhood of the defective chimney and there was no reason which could have justified the Council's failure to follow up the letter, even to the extent of prosecuting for any default."

This approach rejects both compliance and control as a ground for liability and is based on an interpretation of the legislation imposing a duty to act rather than a discretion to protect a definable class of persons.

Toohey J based his judgment on the concept of general reliance. He said at 83

> "The steps which led the Court of Appeal to hold the Shire liable in respect of the damage sustained by Mr and Mrs Day are, broadly speaking, the steps I take in arriving at the same result. The Shire had statutory power to deal with the danger constituted by the defective chimney. Through the exercise of that power it could have ensured that the danger was removed. It was a danger, not only to 70 Neill Street but also to adjoining buildings. Indeed, if a fire broke out, it was almost certain to extend beyond 70 Neill Street, having regard to the age and construction of the buildings. The danger was necessarily unknown to adjoining owners and occupiers. In any event, had they known, the remedies available to them were, as Brooking JA said[1], "slow and expensive". In those circumstances it is but a short step to hold that there was a general reliance by neighbours, such as the Days, that the Shire would take steps to remove the danger of which the Shire was aware and which it had the power to remove. Because the Shire did nothing further after the letter of 12 August 1988, there was a breach of the duty of care which the Shire owed to Mr and Mrs Day. No issue of causation arose on the arguments presented to the Court."

This has the interesting result that the next door can succeed against the Council but the property where the fire started cannot. This is because they cannot be said to be relying on the Council in the relevant legal sense because they had rights of inspection and entry themselves. They were able to look after themselves. McHugh J agreed with the applicability of the general reliance doctrine.

Gummow J rejected the doctrine of general reliance as unsound. He regarded the situation as a negligent exercise of power that is of the exercise of the power in relation to the first fire and not following it up was an omission occurring during the positive exercise of a power. He was also influenced by the control and knowledge of the Council.

"Such a situation of control is indicative of a duty of care[2]. The Shire had statutory powers, exercisable from time to time, to pursue the prevention of fire at No 70. This statutory enablement of the Shire "facilitate[d] the existence of a common law duty of care"[3], but the touchstone of what I would hold to be its duty was the Shire's measure of control of the situation including its knowledge, not shared by Mr and Mrs Stamatopoulos or by the Days, that, if the situation were not remedied, the possibility of fire was great and damage to the whole row of shops might ensue[4]. The Shire had a duty of care 'to safeguard others from a grave danger of serious harm', in circumstances where it was 'responsible for its continued existence and [was] aware of the likelihood of others coming into proximity of the danger and [had] the means of preventing it or of averting the danger or of bringing it to their knowledge'[5]."

He further said there were no control mechanisms to deny liability such as misfeasance, core policy areas and the like. Therefore the Council was liable to everyone.

Kirby J rejected reliance as a separate doctrine. He favoured a 3 step approach.(at 244)

> "I would therefore adopt as the approach to be taken in Australia the three-stage test expressed by the House of Lords in *Caparo*[6]. To decide whether a legal duty of care exists the decision-maker must ask three questions:
>
> 1. Was it reasonably foreseeable to the alleged wrong-doer that particular conduct or an omission on its part would be likely to cause harm to the person who has suffered damage or a person in the same position?[7]
> 2. Does there exist between the alleged wrong-doer and such person a relationship characterised by the law as one of 'proximity' or 'neighbourhood'?[8]
> 3. If so, is it fair, just and reasonable that the law should impose a duty of a given scope upon the alleged wrong-doer for the benefit of such person?[9]"

Again, Kirby J did not see this case as an omission but rather an incompetent exercise of power and had the power been competently exercised no damage would be likely to have occurred. Most saliently His Honour said

> "Whilst the promotion of individual choice and the efficient use of resources is a proper concern for public authorities, so is the adoption of good administration and procedures for the proper use of statutory powers. It cannot be conducive to good public administration if serious dangers do not enliven an effective exercise of available powers; if the response is wholly inadequate and then if it is not followed up at all."

It is these words which give us a guide in how we should exercise powers in relation to dangerous dogs.

Kirby J then listed a number of factors that may result in it being not "fair just and reasonable" to impose liability including limited resources, allowing recovery from the public purse when not appropriate, courts making budgetary decisions for public authorities, intruding on areas of policy, the extent of the risk and the opportunity to know and understand the risk.

Kirby J found the Council liable to everyone but a consideration of the "fair just and reasonable" exemption caused him to consider the opportunity of the occupants to inspect the fireplace but concluded there was no real reason for them to do so. For the neighbours no such consideration existed and they were clearly entitled to recover.

We have spent some time on this case as it is an important case in this area. However, you will note that it unsatisfactory in a number of ways not the least being that no clear ruling emerges as the majority came to their conclusion by different reasoning. However, this case is regarded as killing the doctrine of general reliance. [see eg *Frost v Warner* [2002] HCA *1*[10]]

OTHER CASES

Frost v Warner [2002] HCA 1, a very recent case, concerned the sinking of a vessel in Port Stephens near Newcastle resulting in the loss of life of 5 children. The cause was the gross overcrowding on the boat and negligent navigation. The skipper was liable but the question turned on the liability of the 'licensed controller'. The majority in saying there was no liability decided the question a narrow interpretation of the relevant marine legislation. Kirby J disagreed. At 73 he said

> "But title (in the sense of ownership) and possession, represent only two bases for affixing legal responsibility to a person for a civil wrong done to another. The issue presented by the duty of care question is not the ownership or possession of the vessel, as such. It is the issue of power and responsibility. Did the respondent have the power and responsibility in the circumstances to prevent the damage and loss that occurred?"

at 83 relevant to our dog legislation he said

> "One reason why, in Australian domestic waters, there have been fewer reported instances of vessels sinking because of overcrowding, with loss of life and much suffering, is that Australian waterways and vessels navigated upon them are subject to rigorous legal regulation. Such regulation is designed, amongst other things, to promote the safety of those who travel on our waterways. The Regulations are part of this fabric of legal regulation. They should not be construed as toothless provisions such as exist in other countries and help to explain the repeated instances of serious shipping mishaps that are reported, with grave loss of life. The Australian Regulations should be interpreted as having, and being intended to have, a real impact, relevantly, on passenger safety. The construction of the Regulations by the primary judge helps achieve that end. That adopted by the Court of Appeal defeats the attainment of safety. It rewards legal fictions, complacency and indifference. I am with the primary judge."

This case suggests that control is not the primary factor in giving rise to a duty.

The last case we shall consider is *Brodie v Singleton Shire Council* [2001] HCA 29. This case concerned the loss of a truck and serious injury to the driver when a wooden bridge under the control of the council collapsed under the load of the truck that had driven over it many times in the past. The bridge immediately before the one that collapsed was subject to a weight limit of 15 tonne and the truck weighed 22 tonne. The bridge that collapsed had, unknown to the council, had its main load bearing girders tunnelled out by white ant or dry rot and could only take a load of a max of 9.3 - 11.9 tonne maximum (and only up to 13.5 tonne if sound). No load limit was applicable to the bridge. While the council did not know of the tunnelling in the girders the Council inspected its bridges 4 times a year and a proper inspection of this bridge should have revealed the problem.

The Council had undertaking repairs of the decking planks giving the bridge the impression of safety but had not repaired or warned about the tunnelling in the girders. It was also found that the driver did not unreasonably see the earlier load limit sign due to negotiating oncoming traffic. These circumstances were sufficient to allow the injured parties to make out a case of negligence and the case was remitted to the Court of Appeal for further consideration.

This case is famous for abolishing the immunity councils had as highway authorities under the highway rule which stated that a highway authority was not liable in negligence for non-feasance in relation to roads i.e. if it did nothing in relation to a poor road.

Gaudron, McHugh and Gummow JJ at 85 said "the essential issue concerned a failure by the defendant further to act where action was called for. The same was true of the appellant council in *Pyrenees Shire Council v Day*[11]."

At102 they said:

> "The decisions of this Court in *Sutherland Shire Council v Heyman*[12], *Pyrenees Shire Council v Day*[13], *Romeo v Conservation Commission (NT)* [14] and *Crimmins v Stevedoring Industry Finance Committee*[15] are important for this litigation. Whatever may be the general significance today in tort law of the distinction between misfeasance and non-feasance, it has become more clearly understood that, on occasions, the powers vested by statute in a public authority may give it such a significant and special measure of control over the safety of the person or property of citizens as to impose upon the authority a duty of care. This may oblige the particular authority to exercise those powers to avert a danger to safety or to bring the danger to the knowledge of citizens otherwise at hazard from the danger. In this regard, the factor of control is of fundamental importance[16].
>
> It is often the case that statutory bodies which are alleged to have been negligent because they failed to exercise statutory powers have no control over the source of the risk of harm to those who suffer injury. Authorities having the control of highways are in a different position. They have physical control over the object or structure which is the source of the risk of harm. This places highway authorities in a category apart from other recipients of statutory powers."

Gaudron J in *Crimmins v Stevedoring Industry Finance Committee*[17] said

"It is not in issue that a statutory body, such as the Authority, may come under a common law duty of care both in relation to the exercise[18] and the failure to exercise[19] its powers and functions. Liability will arise in negligence in relation to the failure to exercise a power or function only if there is, in the circumstances, a duty to act[20]. What is in question is not a statutory duty of the kind enforceable by public law remedy. Rather, it is a duty called into existence by the common law by reason that the relationship between the statutory body and some member or members of the public is such as to give rise to a duty to take some positive step or steps to avoid a foreseeable risk of harm to the person or persons concerned[21]."

SOME CONCLUSIONS

An unsatisfactory state of affairs

The end result is less than satisfactory. It is clear that there can arise a duty on the local authority to act positively but a statement of principle as to when this might be is elusive. Hayne J in *Brodie* recognised this as have many judges in the past, and he put it succinctly as follows:

> "There can be no duty to act in a particular way unless there is authority to do so. Power is a necessary, but not a sufficient, condition of liability. But the *power* to act in a particular way, and the fact that, if action is not taken, it is reasonably foreseeable that damage will ensue, have hitherto not been held sufficient to give rise to a duty to take that action. It is, however, far from clear what more must be added to power and foresight to found a conclusion that a statutory authority owes a duty of care, the satisfaction of which requires it to take positive action."

In the end we do not have a statement of principle of when a duty of care arises. Duty of care is a threshhold issue that controls the reach of the tort of negligence. It is important to distinguish this from a breach of duty of care which answers the question of whether the defendant who owes a duty of care failed to fulfil it. We are left with a rag bag of concepts.

Some relevant factors?

What do we have? Clearly there must the power to act given in the legislation to the council. There must also be the foresight of harm caused by either the exercise of the power or the non exercise of the power. More is required but what is it? As you can see even the High Court of Australia has not found this an easy question and has not come up with an answer. As practical people doing a job on a day to day basis I think it not useful to try to come at a reasoned academic solution that may or may not be correct. I think as practical people in the field we need some guidelines that will probably serve us well in our day to day tasks. This is fortunately an easier thing to do.

Things that are likely to be important are knowledge of the problem: that is do we know of the problem or ought we reasonably to know of the problem? How vulnerable the defendant is and how likely they are to be dependant on the exercise of the power; the degree of control over the situation the Council has; the degree of proximity between the defendant and the exercise of the power; the convenience of the exercise of the power compared to other remedies; whether the exercise of the power involves policy; the magnitude of the risk; the resources available to exercise the power; the wording of the legislation concerned; the power being given for a public safety purpose. The more positive answers we give to these issues the more likely it is that there is a duty of care. It will be then for the Council through its officers to act reasonably in the exercise of these powers.

What elements are present in dangerous dog control?

It is obvious council have the power to control dangerous dogs.

It is equally obvious that if the power is not exercised properly harm can occur in particular people especially children and the elderly can be injured and even killed by savage dogs.

Not all savage dogs will be known to the Council but some will be.

Victims are obviously dependant on the exercise of savage dog controls to protect them as no other body has the power to do it.

The council and the victim are not proximate in the legal sense and do not belong to a specific class merely the general public.

It is very convenient that the power be exercised – there is no other readily available remedy available to the public.

The exercise of the power is largely operational and not policy.

The risk is potentially very great and at its greatest involves death.

It is clear that many victims will be vulnerably particularly the elderly, children and the disabled. Further many able bodied adults cannot physically fend off a powerful dog or dogs.

Finally the legislation is public safety legislation and there is an expectation on both the parliament and the public that the powers given be used to protect the public.

As you can see, with the exception of proximity (which the High Court has rejected anyway) all factors point to a council owing to a victim a duty of care in relation to the exercise or non-exercise of its powers under relevant dog legislation.

BREACH OF DUTY.

The question is therefore likely to be whether the council and its officers have breached that duty of care. Whether there has been a breach will clearly depend on the circumstances of each case. However, good administration can substantially reduce the risk of legal liability. Not only that good administration can substantially reduce the risk to the public which, after all, is what it should be all about.

Ask yourselves these questions.

1 Do you have savage or dangerous dog guidelines or protocols?

2 Do you have guidelines or protocols for the seizing and declaring of savage dogs?

3 Do you have guidelines or protocols for the destruction of dogs?

4 Do you have guidelines or protocols for the monitoring of compliance with the legislation by dangerous dog owners?

5 If so are all the guidelines and protocols effectively carried out? Are your rangers aware of them?

6 What training do your officers have in relation to the legislation and the protocols and guidelines?

7 Do they receive ongoing training?

ANY ANSWER OF 'NO' TO ANY ONE OF THESE QUESTIONS COULD LEAD TO A BREACH OF DUTY.

EARLIER AREAS DISCUSSED

An attack by a dog previously unknown to the Council

Clearly, if an attack takes place by a dog not previously known to the Council and there is no basis for saying that the Council ought to have known of its existence then it is difficult to see any liability for the Council as Brennan CJ at 16 said in *Pyrenees Shire Council v Day* "If nothing had occurred prior to 22 May 1990 to alert the Council to the defect in the fireplace of the residence occupied by the Stamatopoulos family, the escape of fire from the fireplace on that night would not have exposed the Council to liability for failing to discover the defect and taking action to prevent the fire of that night occurring."

However, once the first attack comes to the notice of the Council (just as the first fire came to the notice of the Pyrenees Shire Council) then poor administration and poor performance can lead to tragedy and legal liability. The point that is important to make is that once the Council knows about the first attack it has to consider its response. The Council will be subsequently judged (and with the benefit of hindsight) by the response that it makes.

An attack by a dog known to the Council (for example a second known attack by a dog)

In this case the Council has knowledge of the dog and its propensity to attack. The liability of Council will depend on the response it has made to this knowledge. Its answers to the 7 questions I posed earlier will be decisive in the outcome. It is not the Council's job to guarantee a dog never ever attacks again – it is not an insurer. Otherwise it would need to put down every dog that came to its attention. However, it is the Council's job to consider what steps, if any, need to be taken to ensure that the public is reasonably protected from further attack. Provided there are proper procedures in place and the Council has acted reasonably in arriving at its decision be it, for example, to declare the dog dangerous, declare it menacing or do nothing at all, the Council and its officers should not have anything to fear from the law of negligence.

An attack by a declared dangerous dog

My concern here is that many Councils act responsibly and thoughtfully in declaring a dog dangerous but thereafter do nothing to follow up to see if the rules are being complied with. My view is this failure is very dangerous and exposes the Council to risk. A reasonable follow up of compliance is necessary.

As you can see – it is not good enough merely to declare the dog dangerous and then do nothing about it. This is as useful as sending a letter about a dangerous fireplace and not following it up.

Imagine that the owners had never complied and a simple inspection would have revealed this. The fact is those jurisdictions that have the power to declare dogs dangerous invoke a regime where compliance is easy to establish by an inspection regime that could not be said to be onerous. What is required is a question of fact but careful thought should be given *in advance* as to what is required

On and off lead areas

Many councils have the power to declare public areas in their municipality on lead and off lead areas. From the discussion in this paper it can be seen that the courts are most likely to treat this as a policy decision by the public authority and not giving rise to a duty of care.

As a matter of practice it is most unlikely that the declaring an off lead area could be said to cause an injury. It is not the fact that it is an off lead area that causes the injury or indeed the attack. It might be that if the dog was on a lead the attack would not have occurred and that it is known attacks are less likely if dogs are not off leads but that is an entirely different proposition.

Similarly, if an off lead attack occurred in an on lead area it could not be successfully said that the Council is liable for not enforcing the on lead area for again, it is unlikely that a duty to enforce arises, and secondly the injury is not caused by lack of enforcement even if enforcement may have prevented the attack.

Having said that it is prudent to consider not having off lead areas next to kindergartens, schools, hospitals, retirement villages and such places and for adequate signage to be provided. This not because of any perceived liability for so doing – it arises more out of common sense.

TAILPIECE

The conclusion of the discussion in this paper is that Councils most likely do owe a duty of care to the public arising out of the exercise or non-exercise of the powers vested in them by parliament to control dogs. It is unlikely that the reasonable administration of those powers will place any excessive budgetary demand on the Councils[22]. It therefore follows that every council should have in place proper administrative procedures. Councils should also have adequate answers to the 7 questions I asked earlier. If so the courts are very understanding of the problems confronting public authorities.

If I was acting for a little girl that had been mauled by a dog known to the Council, and the Council's performance was no better than that of the Shire of Pyrenees in relation to the fireplace I would be confident of obtaining full compensation for her. That is as it should be – the public and the parliament expect better and are entitled to it. Compensation is only the second best option. The best option and the one we would all prefer is that the little girl not be mauled in the first place.

NOTES

1 [1997] VR 218 at 237.

2 See *Howard v Jarvis* (1988) 164 CLR 539 at 553; *Bennett v Minister of Community Welfare* (1992) 176 CLR 408 at 427; *Burnie Port Authority v General Jones Pty Ltd* (1994) 179 CLR 520 at 556-557; *Hill v Van Erp* (1997) 188 CLR 159 at 198-199, 234.

3 *Sutherland Shire Council v Heyman* (1985) 157 CLR 424 at 460.

4 cf *Parramatta City Council v Lutz* (1988) 12 NSWLR 293 at 328

5 *Commissioner for Railways (NSW) v Cardy* (1960) 104 CLR 274 at 286 per Dixon CJ.

6 [1990] 2 AC 605 at 617-618 per Lord Bridge of Harwich.

7 *Australian Safeway Stores Pty Ltd v Zaluzna* (1987) 162 CLR 479 at 488 applying *Hackshaw v Shaw* (1984) 155 CLR 614 at 662-663 per Deane J.

8 Whereas some authorities treat proximity and foreseeability as substantially synonymous, the differentiation reflects the long history of the common law in which foreseeability of the risk of harm to another is insufficient of itself to impose a legal duty to act to avoid consequences to that other; cf McHugh, "Neighbourhood, Proximity and Reliance"in Finn (ed) *Essays on Torts,* (1989) 5 at 17.

9 This tripartite test is to be preferred to simplistic tests which impose undue work to be done by the notions of proximity and foreseeability; cf Dugdale, "Public Authority Liability: To What Standard"(1994) 2 *Tort Law Review* 143 at 156

10 At 40 We should add that the appellants did not seek to rely upon any 'holding out'by Mrs Warner of her husband. Such a submission would turn on their head the facts, and their appearance to those who boarded the vessel. Nor was the doctrine of 'general reliance'pressed. The existence of such a doctrine was denied by a majority of this Court in *Pyrenees Shire Council v Day* and in any event, appears to have been concerned only with the liability of public authorities.

11 (1998) 192 CLR 330.

12 (1985) 157 CLR 424. See also *Northern Territory v Mengel* (1995) 185 CLR 307 at 352-353, 359-360, 373

13 (1998) 192 CLR 330.

14 (1998) 192 CLR 431.

15 (1999) 200 CLR 1.

16 *Burnie Port Authority v General Jones Pty Ltd* (1994) 179 CLR 520 at 551-552.

17 (1999) 200 CLR 1 at 18 [25]

18 *Caledonian Collieries Ltd v Speirs* (1957) CLR 202 at 220 per Dixon CJ, McTiernan, Kitto and Taylor JJ; *Sutherland Shire Council v Heyman (*1985) 157 CLR 424 at 436 per Gibbs CJ (Wilson J agreeing), 458 per Mason J, 484 per Brennan J, 501 per Deane J; *Stovin v Wise* [1996] AC 923 at 943-944 per Lord Hoffmann; *Pyrenees Shire Council v Day* (1998) 192 CLR 330 at 391-392 per Gummow J.

19 *Sutherland Shire Council v Heyman* (1985) 157 CLR 424 at 443-445 per Gibbs CJ (Wilson J agreeing), 460-461 per Mason J, 479 per Brennan J; 501-502 per Deane J; *Parramatta City Council v Lutz* (1988) 12 NSWLR 293 at 302 per Kirby P, 328 per McHugh JA; *Pyrenees Shire Council v Day* (1988) 192 CLR 330.

20 *Sutherland Shire Council v Heyman* (1985) 157 CLR 424 at 443-445 per Gibbs CJ (Wilson J agreeing), 460-461 per Mason J, 478 per Brennan J; *Pyrenees Shire Council v Day* (1988) 192 CLR 330 at 368-369 per McHugh J.

21 *Pyrenees Shire Council v Day* (1998) 192 CLR 330 at 368-369 per McHugh J. See also *Sutherland Shire Council v Heyman* (1985) 157 CLR 424 at 460-461 per Mason J and the cases there cited.

22 The evidence does not show that, at least stopping short of a proxecution, the further pursuit by the Shire of a course of action with respect to its letter of 12 August would have interfered with the budgetary priorities of the Shire, or distorted its priorities in the discharge of its statutory functions. *(Pyrenees Shire Council v Day)*

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