

## Slippery when wet

→ The New South Wales Court of Appeal assessed whether a reasonable person in the position of Venues NSW would have taken precautions to reduce a particular risk.

# Kane v Venues NSW: The Handrail Tale



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**The case of Venues NSW v Kane [2023] NSWCA 192, involving a patron's fall within the lower concourse of the western grandstand of the McDonald Jones Stadium in Newcastle, Australia, looks at a fundamental legal question surrounding the duty of care owed by occupiers to patrons.**

### Introduction

The central issue, both at the trial level and on appeal, revolved around whether Venues NSW, a government agent responsible for the site, should have installed handrails along the stepped aisles. The question revolved around whether a reasonable person would have installed a handrail in their position.

The District Court initially ruled in Ms Kane's favour, awarding

her \$91,117, but the Court of Appeal, allowed the appeal and dismissed the claim.

### Background – slippers and trippers

On 6 July 2019, Ms Kane fell while descending steps within the lower concourse of the western grandstand of the McDonald Jones Stadium whilst attending an NRL match. There was heavy rainfall and, much like many other stadiums, there was no handrail in place in certain areas of the concourse where the spectators sit to watch the match.

There was no dispute that Ms Kane fell (the accident was caught on video). Ms Kane brought proceedings against Venues NSW, suing for accident-related damages.

The District Court ruled in favour of Ms Kane, awarding her \$91,117 in damages and finding that Venues NSW breached its duty of care in that there should have been a handrail to mitigate against the risk of harm.

Venues NSW appealed the decision.

### **The Court of Appeal decision**

The Court of Appeal, comprising Leeming JA, Adamson JA, and Simpson AJA, allowed the appeal and overturned the decision, finding that a reasonable occupier would not have installed a handrail.

The Court's analysis is grounded in the Civil Liability Act 2002 (NSW), specifically sections 5B and 5C, which establish the criteria for determining liability in cases of personal injury. Section 5B(1)(c) focuses on whether a reasonable person in the defendant's position would have taken precautions against the identified risk.

The Court of Appeal identified multiple reasons for overturning the initial judgment.

Firstly, the District Court's finding of breach was deemed flawed due to an erroneous interpretation of section 5B and an inadequate consideration of the familiarity of the risk and the obvious nature of the danger presented by the steps. The Court of Appeal also held that the stadium's building standards were compliant with what was common practice, as the use of stepped aisles without handrails in similar stadiums was considered commonplace.

Further, the stadium was certified as compliant eight years earlier. There was also a total absence of a history of falls, (millions of spectators over eight years without documented evidence of similar accidents or injury), which also weighed against the need to install handrails. The Court also considered the impracticality of handrails in crowded situations and the potential ineffectiveness of a handrail for patrons with hands full.

The Court briefly addressed the issue of causation, suggesting that the lack of a handrail might have contributed to Ms Kane's fall but acknowledged the speculative nature of this conclusion.

### **Analysis of the Building Code of Australia**

The Court also discussed the relevance of the Building Code of Australia in determining whether handrails were mandated. While the District Court accepted that

handrails were required, the Court of Appeal questioned this conclusion, pointing out that the Code might not consider the aisles in question as staircases. The uneven width of the steps was discussed but deemed non-detrimental to the overall reasoning.

### **Conclusion**

In conclusion, this case underscores the principle that an occupier's obligation to address risks is limited to those that are reasonably foreseeable, especially when the risk is apparent or familiar to a reasonable person taking care for their own safety. This is particularly evident in the examination of whether precautions are necessary for hazards that are easily recognisable and apparent to a reasonable individual. Stadium owners across Australia will no doubt breathe a sigh of relief with the decision.

### **About the author:**

Sam Dorne works as a Knowledge Manager in The ADR Centre's Knowledge Management Team, working with BDT. He recently returned to NZ after nearly 19 years of living in the UK where he spent the last several years working as a civil litigation solicitor mainly dealing with the recoverability of legal costs and consumer claim cases. He has experience in advocacy, case management and legal drafting and had several cases go to the Court of Appeal in England.