Romeo v Conservation Commission of the Northern Territory
(1998) 151 ALR 263

Introduction

The recent case of *Romeo v Conservation Commission of the Northern Territory*[1] re-engaged the High Court of Australia in the difficult question of the common law liability of a public authority: an area of the law which, as Kirby J notes in his judgment, has been described as unsatisfactory, unsettled, lacking foreseeable and practical outcomes and as operating ineffectively and inefficiently. *Romeo* constitutes another successor to the landmark *Nagle v Rottnest Island Authority*,[2] a decision which appeared to place a heavy onus on statutory authorities to avoid liability in negligence. In *Romeo*, it was never disputed that the respondent authority owed the appellant a duty of care. However, the origin, nature and content of that duty and the application of the relevant authorities were issues dealt with differently in six separate judgments of the Court.

The Facts

The appellant, Nadia Romeo, was just under sixteen years old when she was rendered paraplegic in an accident that occurred late one clear, dark night in April 1987. The accident occurred in the Casuarina Coastal Reserve near Darwin, a 1361 hectare expanse of natural beauty open for public recreation, which includes eight kilometres of coastline and adjacent land and offshore areas. The respondent Commission was established under the *Conservation Commission Act* 1980 (NT), and under s19 of the Act, one of its functions was the management of nature reserves such as the Casuarina Coastal Reserve.

The appellant and her friend went to the Reserve that night to meet

1 (1998) 151 ALR 263 ("*Romeo*").
2 (1993) 177 CLR 423 ("*Nagle*").

some other friends. The appellant knew the Reserve, having been there at least half a dozen times before. She and her friend drank a quantity of alcohol and were certainly adversely affected by it, although it is impossible to say to what extent. The girls were seen sitting on a low log fence bordering the Dripstone Cliffs car park, which was situated on a cliff-top overlooking Casuarina Beach. At some point, both girls fell over the edge of the cliff onto the beach below. It was a 6.5 metre drop and both friends were injured, the appellant very seriously. Such an accident had never before occurred at the Reserve. Neither girl ever remembered the circumstances of the fall, and there were no witnesses.

It is rather important to have an image of the physical environment of the accident. Some parts of Casuarina Coastal Reserve were intensively used, and the Commission maintained a range of public amenities there - Dripstone Park, for example, had facilities such as barbecues, showers and toilets, car parking facilities, lighting, play equipment, shade and grassed areas. However, the car park was the only facility that was provided at the top of the Dripstone Cliffs - it was mostly used by members of the public in the early evening to view the tropical sunset. The wooden post and log fence around the perimeter of the car park, upon which the girls had been sitting, was three metres from the cliff's edge. Between the log fence and the edge of the cliff, some vegetation was growing, but it was quite low (about a metre high), and did not obstruct the view of the beach and the sea beyond. There was a gap in this vegetation, and an area of light coloured, bare earth leading to the gap. The girls were found on the area of beach directly below this gap in the vegetation. It was for this reason that the trial judge, Angel J, inferred from the evidence that the girls did not slip or jump from the cliff, but that they mistakenly walked over the edge of it, having seen the gap in the vegetation and wrongly believed that the bare earth was a pathway leading somewhere. However, in the Northern Territory Court of Appeal, Mildren J criticised this conclusion, thinking it equally plausible that they jumped over the edge, having misjudged the distance of the drop. It was not necessary for the High Court to consider this factual question of exactly how the girls went over. What is clear in either scenario is that darkness and drunkenness were important factors in the accident.

Earlier Proceedings

It was the appellant's case that the Commission was in breach of its duty of care to her in failing, *inter alia*, to install adequate lighting, to give warning of the presence of the cliff or to erect a fence or barrier at its edge. Despite the replacement of the old categories of occupiers' liability with general negligence principles in *Australian Safeway Stores v Zaluzna*,[3] the

[3] (1987) 162 CLR 479 ("*Zaluzna*").

appellant's statement of claim appeared to be framed in the terms of this outdated class of liability.

In argument, though, the appellant relied heavily on *Nagle* to claim the Commission should have taken positive steps to prevent cliff falls, arguing that all that was necessary to impose such a duty was the foreseeability of the risk that someone could fall over the cliff, especially given the youthfulness and exuberance of many of the visitors and the possibility of their consumption of alcohol. The respondent, on the other hand, argued that *Nagle* was distinguishable, and even if it was not, that it should be overruled as having spawned too great a duty upon public authorities controlling land in public use. In *Nagle*, the statutory authority controlling the island, which had encouraged the public to swim there, was found to have breached its duty of care to swimmers when it failed to warn of the danger of diving into the water and striking a submerged rock. The majority in *Nagle* set down the standard of care as:

> "... the action that a reasonable person in the respondent's situation would have taken to guard against the foreseeable risk of injury which existed ..."

taking into account:

> "... the possibility that one or more of the persons to whom the duty is owed might fail to take proper care for his or her own safety ..."[4]

The trial judge, Angel J, refused the appellant's claim. He distinguished *Nagle* on the basis that it involved failure to warn of a *hidden* danger where a warning sign would have been an effective deterrent. Angel J appeared to rely on the judgment of Dixon J in *Aiken v Kingborough Corp*,[5] in which the duty owed by a public authority was described as follows:

> "... [t]he member of the public, entering as of common right, is entitled to expect care for his safety measured *according to the nature of the premises* ... [T]he public authority in control of such premises is under an obligation to take reasonable care to prevent injury to such a person through *dangers arising from the state or condition of the premises which are not apparent and are not to be avoided by the exercise of ordinary care* ..."

Applying this test, firstly, since the danger of the cliffs was apparent and known, and secondly, since the danger could have been avoided if the appellant had taken reasonable care, Angel J found the Commission was not in breach of its duty when it failed to take precautions against falls. Moreover, even if there *had* been a duty to erect a fence or warning sign, Angel J's finding of fact that neither of these things would have

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4 *Nagle*, above n 2, at 431.
5 (1939) 62 CLR 179 at 209 ("*Aiken*").

stopped the appellant from proceeding precluded the requisite element of causation.

Angel J also invoked the policy/ operational distinction explained in cases such as *Sutherland Shire Council v Heyman*,[6] maintaining that the court should not decide policy questions which the legislature had entrusted to a statutory authority. A decision by the Commission about whether or not to take positive steps to fence or sign the area would have involved questions of budget and resource allocation which by statute were the responsibility of the Commission, and not for the courts to adjudge.

On appeal, Martin CJ (with whom Thomas J agreed) and Mildren J delivered separate judgments, but all judges agreed that the Commission was not liable, and the appellant's claim was again dismissed. Martin CJ noted that Angel J at trial in focussing on *Aiken* had overlooked *Nagle*, but this did not amount to error, because he had not used *Aiken* to define the duty but to provide an example of a similar case used to demonstrate the now generalised notion of negligence. Examining the circumstances of the case, Martin CJ went so far as to suggest that the risk of such an event as occurred was so far fetched or fanciful as to be not reasonably foreseeable. On the other hand, Mildren J did find the event was reasonably foreseeable, but that the Commission had not breached its duty because on the appellant's argument, it would have been necessary to fence the whole two kilometre cliff top - an impracticable duty.

The High Court Judgments

Brennan CJ

In his judgment, Brennan CJ was at pains to identify the basis of the duty of care. His Honour turned to the *Conservation Commission Act* and concluded that since it granted power to the Commission to "... occupy, use, manage and control ..." the land, but specifically precluded "... any estate or interest in real property ...", the Commission's authority over the reserve was purely statutory and not proprietary or possessory. Brennan CJ then followed Barwick CJ in *Schiller v Mulgrave Shire Council*,[7] who stated that the source of the liability in these types of cases is "... the statutory power and duty of care, control and management and not merely the occupation of land ...". Brennan CJ admitted that occupation would usually accompany a statutory power of management and control, but such occupation did not necessarily found a common law duty of care. Rather, it was the statutory duty alone which established an action:

[6] (1985) 157 CLR 424, at 468-469, per Mason J.
[7] (1972) 129 CLR 116, at 120 ("*Schiller*").

> "... [w]hen the sole basis of liability of a public authority is its statutory power of management and control of premises, its liability for injury suffered by a danger in the premises is not founded in the common law of negligence but in a breach of a statutory duty to exercise its power and to do so reasonably having regard to the purpose to be served by an exercise of the power ..."[8]

It would be different, according to Brennan CJ, if the statute had left the authority with a discretion whether to exercise its power or not; but where the authority had been charged with the management and control of land which may be entered by the public as of right, the authority is obliged to exercise those powers and exercise them reasonably to fulfil that purpose.

Preferring it to *Nagle*, Brennan CJ adopted the *Aiken* test used by Angel J at trial, namely that the duty only applies to dangers which are not apparent and are not to be avoided by reasonable care on the visitor's part, and "reasonable care" was to be assessed by reference to the nature of the premises, the extent of their use by entrants and any particular characteristics of the class who enter. Brennan CJ did not see any reason why the duty should be extended to cover the consequences of visitors' failure to protect themselves.

The Chief Justice noted that if the appellant's interpretation of *Nagle* was correct, the Commission's statutory powers would expose it to liability for failing to exercise reasonable care to protect any visitor against his or her failure to avoid what was a manifest risk, a standard much higher than the legislature could be taken to have intended. Brennan CJ had dissented in *Nagle*, and would have happily acceded to the respondent's request that it be overruled in this case.

Toohey and Gummow JJ

In a joint judgment, Toohey and Gummow JJ too dismissed Romeo's appeal, although they did so without endorsing in all respects the approaches of the courts below. Their Honours did not agree with the trial judge that lack of causation was an alternative reason for dismissing the appellant's claim. Toohey and Gummow JJ *did* think it was true that a warning sign would probably not have stopped the appellant from going further, because the appellant was already familiar with the area. However, unlike Angel J, they thought that a fence at the edge of the cliff *would* have stopped the appellant, because their Honours envisaged a fence specifically designed to keep people back, whereas Angel J had been thinking merely of a low log fence such as the one which already existed to mark the perimeter of the car park.

Neither did Toohey and Gummow JJ wholly endorse the *Aiken* test.

[8] *Romeo*, above n 1, at 270-271.

Their Honours thought that the statement of Dixon J in *Aiken* had to be read in the light of the *Nagle* decision, although this would still result in dismissal of the appellant's claim. That was because the *Nagle* principle did not include an obligation to ensure that those coming onto the Reserve would not suffer injury by ignoring an *obvious* danger.

Toohey and Gummow JJ stressed the conspicuous nature of the cliff - even finding (rather surprisingly) that there was no evidence to support a conclusion that there appeared to be a path to the edge of the cliff. Taking a cue from Brennan J's dissent in *Nagle* (which attempted to reconcile *Aiken* with *Zaluzna*), their Honours thought the cliff's obviousness ought to be factored into the standard of care issue rather than contributory negligence, so that it had to be noted that the relevant risk existed only in the case of someone ignoring the obvious. As such, they found no breach:

> "...[t]here was a duty of care on the respondent to take any steps that were reasonable to prevent the foreseeable risk becoming an actuality. But reasonable steps did not extend to fencing off or illuminating the edge of a cliff which was about two kilometres in length ... [They] did not extend to fencing off an area of natural beauty where the presence of the cliff was obvious ..."[9]

Their Honours refused to comment on the policy/operational distinction pertaining to statutory bodies, since they had dispensed with the negligence suit without reference to it.

Gaudron J

Like Brennan CJ, Gaudron J also noted that Barwick CJ in *Schiller* had identified the source of liability as the statutory power and not the common law occupation of the land, and had thought a public authority's obligation to the public would be more extensive than the duty owed by an occupier to an invitee. However, her Honour found that the law had moved on considerably since *Schiller*, because now the old occupier's liability rules have been subsumed in the law of negligence, and the notion of "proximity" has, in recent times, come to the fore.

According to Gaudron J, the mere existence of a statutory power and duty to control public land did not create "proximity" with a member of the public who might be injured there. However, proximity could be made out if one applied *Nagle*, in which it was said by the majority that the basis of the duty of care in that case was that the public authority:

> "... by encouraging the public to swim in the Basin, brought itself under a duty of care to those members of the public who swam in the Basin"[10]

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[9] *Romeo*, above n 1, at 281.
[10] *Nagle*, above n 2, at 430.

The source of liability was thus narrower than had previously been suggested in *Schiller*. Gaudron J likened the "encouragement" factor in the *Nagle* case with the present by suggesting that the actions of the Commission in constructing the road up to Dripstone Cliffs and providing a car park there were "... calculated to encourage people to visit... " that area. Since it was foreseeable that some of those visitors would leave their cars and approach the cliff's edge, and since it was also foreseeable that some would be careless, Gaudron J found the Commission had a duty to fence along the cliff-top - although only the areas readily accessible from the car park, not the entire two kilometres of cliffs.

However, Gaudron J accepted that although the Commission's breach of its duty was a cause of the appellant's injuries, so too was the appellant's own failure to exercise proper care for her safety, and would thus have reduced the award for contributory negligence.

McHugh J

McHugh J was the only other judge who would have allowed the appeal. His Honour maintained that *Nagle* was the relevant authority to be applied, finding that Dixon J's statement in *Aiken* was no longer authoritative. To the extent that *Aiken* set out an approach contrary to *Nagle*, the former did not survive the reform of occupier's liability in *Zaluzna*. According to McHugh J, the duty since *Zaluzna* was simply one to take reasonable care in all the circumstances of the case. If the relevant risk was foreseeable, the approach to be taken was that set out in *Wyong Shire Council v Shirt*,[11] namely to balance:

> "... the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the [authority] may have ..."

Applying that approach to the instant case, it was reasonably foreseeable that a person such as the appellant, affected by alcohol, might go beyond the area marked out by low posts and logs, as was the possibility that she might by inadvertence or inattention be injured. Further, the Commission ought to have known about the gap in vegetation and the bare earth in front of it, and a mistake such as was made by the appellant, and the resultant injuries, were therefore reasonably foreseeable. In McHugh J's opinion, once foreseeability was made out, measuring the profound gravity of the risk (consequences included death and quadriplegia) and its probability (low, but not negligible), reasonable care

[11] (1980) 146 CLR 40, at 47-48 ("*Wyong Shire Council*").

required some sort of barrier to stop people falling. McHugh J suggested that was not too much to ask of the Commission because a three-strand wire fence, which would almost certainly have prevented the fall, would not have been prohibitively expensive, inconvenient, or conflict with other duties. Such a fence would not have been necessary along all the cliffs - just the areas, such as that adjacent to Dripstone Cliffs car park, where a fall was more likely to occur.

Like Gaudron J, McHugh J also contemplated the possibility of contributory negligence, and would have remitted the matter to the Supreme Court for determination of the damages and any possible reduction for contributory negligence.

Kirby J

Kirby J's was perhaps the most refined judgment. His Honour put the question of the duties of public authorities into context by noting that commentators, particularly since *Nagle*, had documented a great deal of uncertainty and dissatisfaction in public authorities and insurers, reflective of a general trend in Australia and overseas of a growing appreciation of the limitations of modern government.

According to Kirby J, given the abrogation of the old classifications of occupiers' liability in *Zaluzna, Aiken* should be entirely abandoned and the *Nagle* tests prevail. Kirby J described the proper approach of a trial judge applying *Nagle* as asking six successive questions. Firstly, was a *duty* of care owed? If so, what was its *scope*? Did the defendant *breach* the duty so defined? Was that breach the *cause* of the damage? Would the default fall into the *"policy"* class when making the policy/ operational distinction? Finally, was there any *contributory negligence*? His Honour then considered these questions.

On the first question of existence of duty, Kirby J restated his preference for three considerations: reasonable foreseeability that conduct would be likely to cause harm to a person in the plaintiff's position, a relationship of "proximity", and the fact that it be fair, just and reasonable to impose the duty. These elements of the duty were all satisfied in this case because of obvious and/or foreseeable characteristics of the Reserve and its visitors. Unlike Gaudron J, Kirby J did not think the Commission's road up to the Dripstone Cliffs was necessarily an allurement or encouragement to visit the area, but it did facilitate access, and so it was foreseeable that people would sit on the log fences, and obvious that visitors of different states of sobriety, visual capacity and advertence to their surroundings would visit the Reserve.

The second question, the scope of that duty, was a critical one. According to Kirby J, the ordinary formulation (reasonable care to avoid reasonable risk) had to be elaborated upon if it was to serve as practical

guidance. In what seemed a hauntingly familiar echo of the *Aiken* principle, his Honour said:

> "... the entrant is only entitled to expect the measure of care appropriate to the nature of the land or premises entered and to the relationship which exists between the entrant and the occupier ... Where a risk is obvious to a person exercising reasonable care for his or her own safety, the notion that the occupier must warn the entrant about that risk is neither reasonable nor just ..."[12]

Further, Kirby J stressed that the projected scope of any duty had to be tested, not solely with the benefit of hindsight and knowledge acquired by virtue of the plaintiff's accident, but by reference to what it was reasonable to have expected the Commission to have done to respond to foreseeable risks to members of the public coming on any part of the land under the Commission's control which presented similar risks arising out of equivalent conduct. As such, when contemplating whether fencing and the like would have been appropriate, it had to be acknowledged that such an accident could have happened at any other elevated promontory in every similar reserve under the Commission's control.

In addressing his third question, Kirby J endorsed the *Wyong Shire Council* balancing test for ascertaining whether the duty of care had been breached. His Honour noted that when considering the likelihood of the risk, while it was not conclusive, it was not wrong to take into account the fact of years of experience without accidents. As for the expense involved, it was also acceptable to consider the fact that resources available to the public services are limited and that any expenditure necessarily diverts resources from other areas of equal or possibly greater priority. When contemplating "other conflicting responsibilities", the preservation of the aesthetics of the natural environment were a consideration. Thus, when the factors set out in *Wyong Shire Council* were given their full measure, there could be no breach of the duty, the most important factor differentiating this case from *Nagle* being the obviousness of the danger. The Commission, in Kirby J's opinion, had acted reasonably:

> "... [g]iven the prominence of the danger, past usage of the site and accident experience it was not reasonable to expect the defendant to anticipate the inadvertence of the plaintiff in this case ... The proposition that such precautions [ie the fencing of the cliff-top and all equivalent sites] were necessary to arrest the passage of an inattentive young woman affected by alcohol is simply not reasonable ..."[13]

Because there had been no breach, it was not necessary to deal with the final three questions of the six Kirby J had identified as constituting the proper approach. However, his Honour did pass brief comment about

[12] *Romeo*, above n 1, at 299.
[13] *Romeo*, above n 1, at 302.

two of them without feeling the need to come to any definite conclusion.

With regard to applying the principle of causation, at best a hypothetical second-guess of what might have been, the need for caution was expressed. However, Kirby J thought that in this case, had breach of duty been made out, causation would probably not have been a problem: while a log fence, signs or lighting would not have been effective, a wire fence may have prevented the accident.

On the policy / operational distinction, Kirby J noted the relative underdevelopment of the principle in Australia. However, His Honour was ultimately of the opinion that the determination of preventative measures such as fencing of the cliff-top would properly have been classified as operational decision rather than a discretionary policy decision, even though it did have some financial, economic, social and possible political implications.

Hayne J

Although he was ultimately in favour of dismissing the appellant's claim, Hayne J did not accept the respondent's submission that the High Court should overturn *Nagle* and reinstate *Aiken* as the leading authority. His Honour proffered a number of reasons against overruling *Nagle*. Firstly, Hayne J did not think that *Nagle* established any new principle, since the majority in that case had formulated a general duty of care to avoid foreseeable risks of injury to visitors, in line with the authorities of *Hackshaw v Shaw*[14] and *Zaluzna*, and had merely defined "foreseeable risk" according to the *Wyong Shire Council* case. Further, to overturn *Nagle* would run contrary to the interests of stability and predictability. Besides, the liability of public authorities under *Nagle*, according to Hayne J, had not been "taken too far": the duty was simply a duty to take reasonable care. His Honour thought that the position of a statutory authority, such as the Commission, was broadly analogous to that of an occupier of private land. Unlike Gaudron J though, Hayne J thought the management of that land itself provided the necessary proximity with members of the public.

Hayne J thought that the usual test for what amounts to reasonable steps to avoid risk (that is, the *Wyong Shire Council* test of measuring the gravity and likelihood against cost, difficulty and conflicting duties) had to be tempered with an unlimited range of other relevant factors in order to judge what is reasonable in all the circumstances of the case. These would include factors specific to the situation of a statutory authority managing public lands, such as taking into account the fact that the authority might have little control over who enters the land, that the land might be far removed wilderness, or that the land might be encouraged

[14] (1984) 155 CLR 614

to be used only by the fit or adventurous. There were also more general factors like the obviousness of the danger, whether it could be avoided by the exercise of ordinary care on the citizen's part, or whether the danger was naturally occurring. Thus, Dixon J's restrictive statement in *Aiken* should no longer be taken to be an exhaustive test of the liability of a public authority, especially in light of *Nagle*. The reasonableness of measures of protection, His Honour said, were not "... frozen for all time ..." and had to be judged according to the prevailing standards of the day.

Hayne J rejected the idea, argued by the Commission, that his approach disadvantages the defendant because some cheap solution (such as a wire fence) can always be thought up after the event, and that a finding of liability is then inevitable once the foreseeability of the risk is accepted. His Honour proved that this was not the case by finding that despite the fact that it was foreseeable that visitors to the reserve might be inattentive, careless and affected by alcohol, the Commission was not necessarily being unreasonable in failing to erect fencing. This was because it was wrong to assume (as the minority judges had) that it was *only* the area of cliff near the car park which needed fencing - after all, this was not the only point in the whole coastline where a mistake of the kind made by the appellant might be made, so would it really have been reasonable for the Commission to be required to fence *all* areas from which a drunken person might fall? Hayne J thought not, and saw no reason to disturb the lower courts' decisions.

As for the policy / operational distinction, Hayne J acknowledged the contention that certain "policy decisions" are non-justiciable, noting that it may be extremely difficult to distinguish between policy and operational decisions, but did not think that the issue had to be decided in this case.

Conclusion

While *Romeo* furnishes an interesting examination from a number of different perspectives of the negligence liability of a public authority exercising control over land, precedentially it is rather perplexing. Owing to the diversity of judicial opinion expressed, even amongst the judges forming the majority, the *Romeo* case is not entirely satisfying on the question of the proper application of the authorities.

The case of *Nagle* is the obvious example. On the one hand the Chief Justice laments the fact that the *Nagle* principle placed an inordinate burden on public authorities, yet on the other hand, Hayne J insists the *Nagle* case established "no new principle"; and all judges but the Chief Justice appear to have applied it - even Kirby J, who acknowledged that the decision has been subject to considerable criticism. The case of *Aiken*, too, was given differing weight by majority judges - from Brennan CJ, who was certain that it completely defined the relevant standard of care;

to Hayne, Toohey and Gummow JJ , who all thought it should be read in light of *Nagle*; to Kirby J, who insisted it should be rejected and forgotten. This is quite intriguing when it is considered that for all the majority judges (except perhaps for Hayne J), much seemed to turn on the obviousness of the danger and the appellant's lack of care for herself - precisely the limiting factors enunciated in *Aiken*.

On the central issue in the case, that of the standard of care owed and whether it had been breached, a critical point separating most of the majority from the minority was just how much of the cliffs would have had to have been fenced according to the appellant's case. In the minority, Gaudron J thought only the area near the car park, to which McHugh J added any other areas where a fall was likely to occur. But in the majority, Toohey, Gummow, Hayne and Kirby JJ believed it would have been necessary for the Commission to fence all two kilometres of cliffs, had the appellant's argument been made out.

Interestingly though, causation was an issue which could not be divided along majority / minority lines. Obviously, the minority judges thought causation proved (although they agreed there may also have been contributory negligence), but Toohey, Gummow and Kirby J from the majority also agreed causation would have been made out, had there been a breach of duty to erect a wire fence. Perhaps the differences of opinion are not so surprising given that the issue of causation always involves a great deal of speculation - after all, who can really say whether a light, a sign, a log fence or a wire fence would have impeded the girls, in their drunken state, from going over the edge? Further, the problem in this case was of course compounded by the fact that the mystery of how the girls went over had never been conclusively resolved.

What of the policy / operational distinction? Among those who even mentioned the issue, none of the judges of the High Court were really prepared to commit themselves to a full examination or definitive statement on the matter. The idea that certain types of decisions made by a governmental authority are non-justiciable does appear to exist as a recognisable principle, but the only certain conclusion that can be drawn about it from this case is that it will not come into play where a matter can be dispensed with on substantive grounds such as no breach of duty.

Public authorities charged with the control and management of public land (not to mention their insurers) might feel a sense of relief at the outcome of *Romeo*, for it does appear that *Nagle* can yield results in their favour and that a foreseeable risk does not equal a foregone conclusion that the authority was liable, as has been feared. However, there is no cause for complacency - this area of law is not clearly settled, and *Romeo* provides a number of interpretations of the liability of public authorities since *Nagle*.

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