

MEMORANDUM

LEGAL ISSUES RAISED IN “FATHER AND PINT-SIZED SON GET THE FESTIVAL COLD SHOULDER” – PUBLISHED ON 10 JANUARY 2011

Powers of privately contracted security personnel employed by Recreational Service Providers (RSP)

1. The legal authority, rights and powers of private security providers is determined more by a piecemeal array of legal privileges and assumptions than by clear law.
2. Whilst there has been legislation passed in all Australian jurisdictions concerning the registration, licensing, identification and training of private legal personnel, especially in the past decade, the main aim of this legislation is to regulate those who operate within the industry, and to check those who wish to enter it against certain criteria and minimum training standards.
3. Unless there is specific legislation that empowers specialised staff to undertake certain tasks for some particular event, such as the Olympic Games, the law confers no powers upon security personnel beyond the powers given to the ordinary citizen.
4. That having been said, the powers of the private citizen are considerable. The law of property, for example, grants to the owner of private property the power to require visitors to leave the premises (using reasonable force if necessary), or to subject visitors to stipulations (such as a search) prescribed and advertised by the property owner.
5. Security guards also have power, vested in them by the owners of the private property, to use reasonable force to protect that property. In order to determine whether the security guards at the Sydney festival acted beyond their powers, the licences and security contract entered into by the RSP would need to be examined.
6. Whilst the licence and security contract provide the basis for security guard powers, their ultimate role is to protect property and people by deterring illegal and inappropriate behaviour and to keep a look out for any potential unsafe or illegal behaviour before it occurs.
7. As the question as to whether it is unsafe to have a child on the shoulders at a festival is subjective, it could reasonably be argued that the security guards were acting within their position as security personnel, whose roles are to ensure the safety of patrons and protect the owner's property, whether it be from physical damage or economic loss through a litigious claim.

Consequences of what may have happened had the security personnel not intervened

8. In today's highly litigious climate, had the child been knocked off the shoulders of the father, by an unruly patron, the father could initiate civil action against the RSP for not providing adequate security to ensure that the situation had not occurred.

9. Whilst directions from security guards and having the child taken down from the shoulders of the father prevented any incident, the father has gone to media claiming that "*his individual rights,*" were impeded.
10. It therefore appears that RSP are left in a hard predicament. Whether to intervene and encroach on patrons "alleged" individual rights, or run the risk of an injury and having negligence claims brought against them.

Duty of care owed by RSP / security personnel and the likely outcome if a negligence claim had been brought against RSP

11. Negligence claims arise when there is a duty of care owed to a person, that duty is breached, and the person who is owed the duty suffers damages occasioned as a result of that breach.
12. Simply, a duty of care can be defined as "an obligation, recognised by law, to avoid conduct fraught with unreasonable risk of danger to others."
13. In this instance, if the party (the security guard) knows, or should have known, that his or her acts or omissions may cause injury or impairment of legal rights of another person who is not in a position to protect his or her own interests, there is a relationship giving rise to a duty of care.
14. If a negligence claim was initiated and the courts were to find that the RSP / security guards were negligent, a contribution action could be brought against the father as it was he who put the child in the situation that led to the injury sustained.
15. Whilst parents do not owe a duty of care to take positive steps to protect their children, parents, like everyone else, owe a duty of care to their children when performing acts which expose them to a situation where the risk of injury is reasonably foreseeable.

What this means for RSP

16. RSP should inspect the security licenses held by contracted parties and ensure that their security contracts clearly state what additional powers should be conferred on the security personnel before entering into an agreement with a security provider.
17. In relation to a possible negligence action, it appears highly likely that the RSP / security guards owed the child on the father's shoulder, as they did all of the patrons at the festival, a duty of care. Had the child not been removed and had been caused to fall due to the actions of an unruly patron, a negligence action could have been initiated against the RSP for not providing adequate security measures.
18. Ultimately, the portion of liability that may be attributed to the RSP/ the security guards and any contribution of the father, if an injury and claim had manifested, would be left to the discretion of the courts.
19. By having in place effective security provisions within security contracts and by employing security personnel who are vigilant of all potential harm to patrons, RSP's are able to minimise the possibility of a litigious claim arising from the actions of patrons at public events.

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