

Vairy v Wyong Shire Council (2005) 223 CLR 422

<https://lawcasesummaries.com/knowledge-base/vairy-v-wyong-shire-council-2005-223-clr-422/>

Facts

- Mr Vairy suffered a serious injury to his head after diving from a cliff into some water.
- Mr Vairy argued that the Wyong Shire Council ("**the Council**") should have provided warning signs about the risk of injury.
- Incidentally, a similar injury had occurred approximately 15 years prior in the same location. The Council was aware that this had occurred.
- Mr Vairy sued the Council for a breach of duty of care. Mr Vairy was successful at first instance, but appealed the judgment to the High Court to increase the awarded damages.

Issues

- Should the Council have erected signs warning of the dangers of diving?
- Would a reasonable person from the Council have determined that his conduct would have increased the chance of an injury from diving?
- Was it reasonably foreseeable due to an earlier similar injury occurring?

Held

- The High Court dismissed Vairy's appeal.
- It was reasonably foreseeable that a man could injure themselves diving from the cliff, but it was certainly not reasonable for the Council to place signage on every point in its district wherever a person could possibly dive from and sustain injury.
- The concept of "obvious risk" can mislead and should not be used to determine questions of breach of duty.
- The foreseeability of harm must be assessed prospectively in the sense of as circumstances were at or before the time of injury.

Full Text

The full text is available here:

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2005/62.html?stem=0&synonyms=0&query=vairy%20wyong%20shire>