

Legal liability for injured children

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Organisations providing advice or instruction to children will now be legally liable if a child is injured whilst under their care or control, even if the organisation engages a subcontractor to conduct the activity.

The Queensland Court of Appeal expanded the legal boundaries when it held the owner of a martial arts academy had a non-delegable duty of care to the children attending its classes.

In *Fitzgerald v Hill* [2008] an eightyear-old child participating in a tae kwon do class conducted by an instructor, was struck by a vehicle as he and other class members were running beside a road at 7.30pm.

The owner and operator of the martial arts academy was held to be responsible for the conduct of the class and was held liable because the instructor was negligent in failing to exercise proper care for the child, even though the instructor was not an employee. Previously, if an organisation engaged a qualified contractor to conduct the activity, the organisation would have escaped liability.

The Court of Appeal adopted comments of the High Court in *New South Wales v Lepore* [2003] when it stated: "In cases where the care of children, or other vulnerable people, is involved, it is difficult to see what kind of relationship would not give rise to a non-delegable duty of care. It is clearly not limited to the relationship between school authority and pupil.

A day care centre for children whose parents work outside the home would be another obvious example."

The decision potentially affects sporting clubs, adventure clubs and organisations that provide instruction to children in the conduct of some activity.

Organisations such as church groups organising recreational activities will not be exempt.

Parents can be confident that those people in control of an organised activity outside the home will be responsible if the child suffers injury because of negligence. Organisations conducting an activity involving care and supervision of children should ensure they are covered by personal liability insurance designed to indemnify against injury to participants in the activity.