



## Compensation claims if injured by falling trees or branches

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In February 2024, violent storms left many areas of Victoria riddled with fallen or weak trees and branches. Serious injuries could result if a tree or branch were to fall on you. While [public liability claims](#) (slip-and-fall claims) in controlled environments are straightforward, tree-related injuries present unique legal challenges for those seeking compensation. This blog delves into how courts evaluate compensation claims in these scenarios, where unpredictable forces of nature can add complexity.

### The burden of proving negligence due to falling trees

While the severity of injuries caused by falling branches can be life-changing and, in fact, can result in death, the significance of the injury alone is not enough to be able to claim compensation. To access compensation, you must be able to establish negligence against the responsible party. This could be a council, homeowner or government agency such as Parks Victoria, depending on the location of the incident.

To be successful in a public liability claim, you must demonstrate that the responsible party either **acted wrongly** (such as failing to remove a visibly dead tree) or **failed to act** (such as neglecting to inspect trees in a high-traffic area), which directly caused your injury.

Unlike the controlled environment of a [supermarket or shopping centre](#) where slips, trips and falls are likely to occur, outdoor spaces such as parks and sidewalks involve inherent risks from nature as forces such as strong winds are beyond a person's control.

This complexity was highlighted in the case of [The Secretary to the Department of Natural Resources & Energy v Harper \[2000\]](#) 1 VR 133 where it was held that:

*“To enter a forest or its immediate surrounds, like entering the surf, is to take a risk of injury albeit a remote risk. The risk is “endemic” or part and parcel of the recreation of camping, walking and indeed living outdoors in the Australian bush and in particular in forest reserves.”*

## Did negligence cause your injury from a falling tree or branch?

The owner or occupier of the location where a tree or branch has fallen will be responsible for ensuring that people within the vicinity of the trees on their property are safe.

Consider the following in determining whether the responsible party acted negligently or was negligent in failing to act:

- Did the owner plant a tree unsuitable for the location's climate, traffic patterns, or potential hazards? For example, planting a fast-growing species near power lines or walkways could raise red flags.
- Did the owner fail to conduct professional inspections that could have identified signs of disease, structural issues, or root damage impacting stability?
- Were there obvious hazards like dead branches or leaning trees, yet no warnings posted to alert the public?
- Did the owner neglect to address known threats like insect infestations, fungal diseases, or drought stress, which could weaken the tree?
- Did the owner fail to assess the tree's health after severe weather events that could have compromised its stability?
- Did the owner neglect regular trimming, allowing for overgrown branches that could break or dead branches posing a falling hazard?

## How the Courts determine whether there has been negligence

In making a determination as to whether the responsible party is negligent for the falling of a branch or tree which causes injury, the Courts will look to the following:

### Location of the tree

Where was the tree located? Was it on a frequently used bushwalking track, a secluded campsite, or near a public road?

The level of public access and potential exposure to harm play a significant role.

Who had control and responsibility for the tree?

Who had control over the area where the tree stood? Was it a council-managed reserve, private property, or a national park?

The responsible party's duty of care and actions (or inaction) regarding tree maintenance and inspections need to be carefully considered in making a determination as to negligence.

## Case review: High Court finds in favour of walker injured by falling tree

In [Schiller v Council of the Shire of Mulgrave \[1972\] HCA 60](#), the Court recognised the council's responsibility for an entire rainforest area, including a walking track, where a dead tree toppled onto Mr Schiller, causing severe injuries.

In 1964, Mr Schiller, while enjoying a bushwalk in a North Queensland rainforest, had a dead tree fall on him. Mr Schiller sought compensation from the council, claiming negligence. Initially, the Supreme Court of Queensland sided with the council, stating they weren't obligated to patrol every inch of the vast wilderness.

Mr Schiller then appealed the decision to the High Court. As the fallen tree showed signs of illness, the Court held that the council was accountable for failing to conduct proper inspections and address the existing danger of dead trees. Warning signs alone weren't enough; the council's inaction in rectifying the source of danger held that they were negligent.

The Court also emphasised the significance of the location of the dead tree and that, unlike extensive open bushland, the reserve and walking track demanded increased attention due to the frequency of visitors. Balancing the practicality of risk elimination with available resources, the Court concluded:

*"The nature of the area, the extent to which the public resort to it and the practicability of eliminating the risk, having regard to the expense, the funds available and the difficulty of the operation, have all to be considered."*

This case established a crucial principle: authorities have a duty to maintain not just immediate paths but also surrounding areas where danger lurks, especially in frequented locations. While inherent risks exist in nature, negligence in identifying and addressing them can have severe consequences.

You can read more about public liability compensation options in outdoor settings in our earlier blog, ["Compensation if injured on walking tracks or other outdoor environments"](#).

## How a personal injury lawyer can help

While courts apply similar principles in assessing negligence, the final decision rests on the specific facts of each case. The responsible party's control, the tree's location, public use frequency, and any prior knowledge of potential hazards are all crucial considerations. While inherent risks exist in the outdoors, if there are unique circumstances suggesting negligence, like a visibly unhealthy tree in a frequented area, compensation might be available.

Guardian Injury Law can advise you on the prospects of a successful public liability claim and ensure that any compensation you obtain is maximised. We take a no-nonsense approach and provide advice in plain English so that you can make informed decisions every step of the way.

## Contacting Guardian Injury Law

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