

LEX LOCI'S TRAVELS

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An ad-hoc one-pager from The Public Land Consultancy

Lex falls off his Trailbike

Lex often falls off his trail bike. Our lad may be bit of a hoon, but he pays careful attention to where his accidents occur. If he gets it right, he's eligible for TAC compensation; if he gets it wrong, he's not.



Lex's trailbike is unregistered and uninsured. That by itself does not jeopardise his entitlement to compo – unless his accident is on 'private land.'

What is 'private land?' As with so much place-law, words and phrases do not take their meaning from ordinary English usage, but from definitions embedded in Acts of Parliament, or interpretations hidden away in case-law.

Private Land for the purpose of the *Transport Accident Act 1986* is land which is not a 'highway' and which the public can't enter without permission. Which leads to the next question: what is a 'highway?'

This is a word which has three meanings.

The first meaning comes from day-to-day usage: a major arterial road such as the Princes Highway, or the Nepean Highway... But that's not the meaning that Lex needs to know.

The second meaning is from the common law. A 'public highway' (often just called a 'highway') is land over which the public has a legal right to come and go – regardless of whether it is physically trafficable. Again, this isn't the meaning that Lex needs to know.

The third meaning of the word highway is the meaning we find in the *Transport Accident Act 1986* and the *Road Safety Act 1996*. Here a highway is defined to be a 'road' or a road-related area. So (guess what?) now we need to figure out the meaning of the word 'road.'

This (you'll be glad to hear) is the final link in the chain. A 'road' as defined by the Road Safety Act is '*an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.*' A definition related only to the physical form and usage of the land, totally independent of its ownership or legal status.

Lex fell off his trail bike on his mate's driveway. Can he get compo? Fortunately, this driveway is open to *and* used by the public. Lex's mate's mum runs a coffee shop, and passing traffic is welcome to come up the driveway to her car-park.

Therefore the driveway is a 'road,' therefore it's a 'highway,' therefore it's not 'private land,' and therefore Lex is eligible for compo. Whew!

For more detail see Transport Accident Act 1986 sections 41A and 41B

See you there! Lex Loci