



## Kmart shopper awarded compensation for injuries sustained in self-service queue

**Date: Sunday December 8, 2024**

On 26 March 2024, the New South Wales District Court delivered a decision in the [personal injury claim](#) of [Marmara v Kmart Australia Limited \[2024\] NSWDC 89](#) and awarded damages to a Kmart shopper who was injured while in the self-service queue at the Woy Woy Kmart store. The plaintiff lodged a [public liability claim](#), suing Kmart for injuries she sustained in a self-serve queue at a Kmart store in NSW.

### How was the shopper injured?

The Plaintiff (the injured person) was injured on 29 September 2018. She was standing in the queue for the self-service registers at Kmart when another customer behind her lost control of their trolley. Relevantly, the trolley contained two mountain bikes, and that customer lost control when trying to manoeuvre the trolley with these two large items.

The events leading to the injury were captured by CCTV footage, and therefore it was not an issue at trial as to how or whether the events occurred.

### What did the injured person have to prove to win their public liability claim?

To be successful in a public liability claim, the Plaintiff (the injured person) is required to prove that the defendant negligently caused the public liability incident and the resulting injuries. For negligence to be established (among other things), it must be shown that:

the Defendant owed a Plaintiff duty of care; and

the Defendant breached that duty of care, e.g., by acting or failing to act, resulting in damage or injury to the Plaintiff.

## Kmart's responsibility for the injuries in one of their stores

Kmart, in their defence, submitted that there was no responsibility for them to pay the Plaintiff damages (compensation) because the risk a customer might overload their trolley with large items that could fall on and injure another person was "relatively insignificant".

However, the court did not accept this assessment of the situation. The court said:

*"The risk of customers emptying out the contents of their trolleys in a self-checkout area was that large or heavy items could result in injuries in a variety of scenarios. The self-checkout area in the Kmart store was thronged with customers concerned with their own transactions, rather than the safety of others, and who were putting their goods through the scanner at a great rate but without the benefit of the expertise of a trained check-out cashier. The possibility of items of 20kg or more being mishandled by an untrained member of the public was not one that could or should have been treated as relatively insignificant."*

The Defendant (Kmart Australia) lead evidence that there was a process that the store followed so that customers were not required to maneuver large items, like mountain bikes, through the store. The process they had in place was that a member of staff could be alerted, and the staff member could arrange for the item to be made available to the customer from the loading dock to be loaded directly into their vehicle.

However, a staff member giving evidence for Kmart accepted that there were no signs near the large items to advise that this service was available to customers. Similarly, the staff member did not notify the customer of this service despite noticing the customer struggle with the large items.

The court highlighted that the nature of the risk was, in fact, known and recognized by the store by the fact that they had a system in place to deal with the risk (albeit that the system was not properly used by the store or its staff).

Furthermore, in that scenario it was not at all burdensome for Kmart or its staff to take precautions against the risk, as it only required the display of signs in appropriate areas or the actual reliance by the staff on the already existing precaution.

The court also highlighted that there were further precautions that were also not burdensome on the store such as the availability of a flatbed trolley that could be used for customers to more safely transport bulky items like mountain bikes around the store.

## The court's decision

Given the above, the court considered that Kmart was responsible for the incident. The court awarded the Plaintiff compensation which it assessed as likely in excess of \$600,000. This amount covered pain and suffering, economic loss (past and future earning

capacity, including superannuation), medical expenses and domestic assistance.

## What does this mean for other personal injury claimants?

This matter highlights the importance of careful consideration of liability factors when [commencing and pursuing a personal injury claim](#). It also highlights the importance of investigation and review of all applicable documents like policy and procedure documents.

This win serves as a reminder to people who have been injured in similar circumstances that they may be able to pursue damages to compensate for their injuries and that they should speak to an experienced personal injury lawyer to investigate their rights. We provide initial free advice and will run your case on a 'no win, no fee' basis, so it costs you nothing to find out where you stand.

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