



# Death on the highway

David Evans

## UK

Early on the morning of 10 November 2016, Elizabeth Stear was driving along Arrowe Park Road in the Wirral. A branch from a horse chestnut failed at the very moment she was passing and it hit the front of her car. Part of the branch smashed the windscreen and landed on her stomach, trapping her. Elizabeth Stear was 36 weeks pregnant at the time. Once she'd been released from the car and taken to hospital, the impact of the branch resulted in an emergency caesarean section. Tragically, her baby Lucia didn't survive and died from multiple organ failure.

## Australia

On the afternoon of 9 February 2014, 'wild weather' from an intense low-pressure system ripped into Hobart, Tasmania. A cold front brought 'ferocious' wind gusts above 130kph, which tore off roofs, downed power lines, and caused the Hobart Cup to be called off. In the teeth of the gale, at the very moment a stem from a group of black gum trees failed and toppled onto the Channel Highway, Brendan Smith was driving past. Tragically, the tree hit the cab of his utility vehicle and killed him instantly.

## New Zealand

Around mid-morning on 5 January 2018, Rotorua was in the grip of its worst storm for 15 years. The weather was reported as 'wild', and winds were 'howling' at 90kph. At that time, Trisha Butterworth was driving along Amohia Street when a historic tree called Spencer's Oak split in two. Tragically, half of the tree fell and crushed Trisha Butterworth's car, killing her.

Each of these tragic events from around the world resulted in a Coroner's Inquest.

## What the coroners said

There's a common thread that runs through all of the coroners' verdicts. To their collective consternation, the duty holder had no clear and coherent tree risk management strategy.

*'There was a complete failure to have a policy in place for tree management in Parks and Countryside, and a complete lack of risk management for trees at risk of falling onto highways.'* Andre Rebello, Senior Coroner for Liverpool and Wirral, UK

*'The death of Mr Smith highlighted the need for a targeted and systematic process of assessing risks associated with roadside vegetation, especially trees.'* Olivia McTaggart, Coroner, Tasmania, Australia

*'This Court, therefore, recommends that Rotorua Lakes Council adopt a policy setting out how it manages the maintenance, management and risk assessment of trees.'* Wallace Bain, Designated Coroner, Rotorua Area, New Zealand

## The defence

Whether you're a government agency, landowner, or a homeowner, if you own trees you're responsible for managing the risk from them. You have a duty of care. Perhaps the most important lesson from the coroners' findings is just how critical it is to have a robust tree risk-benefit management strategy. Though we know the overall risk from tree failure is extremely low. That your risk of dying in a traffic accident during the next year

is over one thousand times more likely than being killed by a tree anywhere. Even so, if you're a duty holder and don't have a tree risk-benefit management strategy, you're vulnerable to legal claims and enforcement action, whether the risk was acceptable or not.

## Reasonable, proportionate, and reasonably practicable

The key document in any tree risk-benefit management strategy is the policy. Here are the headlines of a sound tree risk-benefit management policy.

- Trees provide many important benefits that we need.
- The overall risk from tree failure is extremely low.
- You can't completely remove the risk, and some trees may fail during severe weather.
- You have a duty of care, which says you should be *reasonable, proportionate, and reasonably practicable*. (What those italicised words mean is, there's a balance you should look to strike between the many benefits trees provide, the overall risk from them, and the costs of managing the risk.)
- Finally, you're going to manage the risk from your trees to a tolerable or acceptable level. You're not trying to minimise the risk or reduce it below a tolerable or acceptable level. You can't make trees 'safe'.

Why is the policy such a key document? It's because the policy is a position statement that explains the 'why' of your approach to managing the risk from your trees. In the extremely unlikely event of a tree causing injury or death and a claim being made, it sets out the grounds on which a solid defence could be mounted. Everything flows from this linchpin document because it establishes the



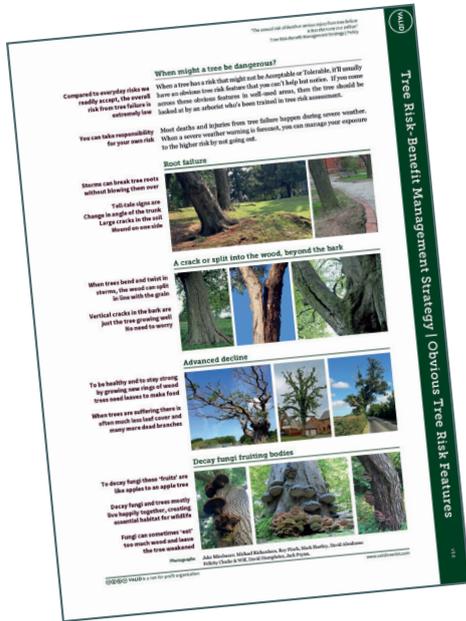
with managing all the other highway risks. They've risen to the challenge. Last year, having seen VALID's pioneering work in the field of tree risk, I was invited to join their team to help develop a reasonable, proportionate and reasonably practicable tree risk-benefit management strategy. It's due for release this June. The Tasmanian Government has agreed to share their approach to tree risk-benefit management with other Australian states' highway authorities, who have been following developments with keen interest. There's an exciting opportunity here to have duty holders singing from the same hymn sheet.

## Working hard behind the scenes – Passive Assessment

Importantly, Active Assessment is continually topped up by Passive Assessment, which simply means employees (non-arborists) keep an eye out for obvious tree risk features they can't help but notice as they go about their day-to-day routine. It's a relatively new concept but is a particularly valuable asset because it's happening all of the time, at no additional cost, and is likely to mop up the 'red' risks. To add further to the value of Passive Assessment, it also encourages citizen science tree risk assessment. The public can be encouraged to highlight trees they think need a closer look because they have obvious tree risk features that they can't help but notice. There's an Obvious Tree Risk Features guide they can download, and public bodies can also upload to their website.

## Help yourself

As a not-for-profit organisation, part of VALID's mission is to share its publications. So, copyright has been waived and they're all released under a creative commons licence. Whether you're a government agency with thousands of trees, a landowner with hundreds, or a homeowner with just one tree, you can get help with the practical application of common sense tree risk-benefit management. On the 'Risk Management' page of the VALID's website, you'll find there are basic tree risk-benefit management strategies for each duty holder that you're welcome to download: [www.validtreerisk.com/tree-risk-management-strategy-policy-&-plan](http://www.validtreerisk.com/tree-risk-management-strategy-policy-&-plan).



Obvious tree risk features ([www.validtreerisk.com/](http://www.validtreerisk.com/)).

context as one of reasonable, proportionate, and reasonably practicable risk-benefit management. It leaves little room for the likes of *inspection, hazard, defect, or foreseeability* to be singled out and fashioned into a yardstick that can be used to beat a duty holder. As we've seen with these Coroner's Inquests and some Judgments, without such a policy, if someone is seriously injured or killed by a tree then the duty holder is already on the back foot.

## What's the plan?

The rest of the strategy explains how you're going to carry out the policy. This is refreshingly straightforward, using a combination of Active and Passive Assessment. You carry out an Active Assessment in high-use zones at a specified frequency, focusing on your mature tree population first. Every five years, or one-fifth of the trees every year, is a reasonable starting point. A five-year assessment frequency is widely accepted by a diverse range of duty holders like the Tasmanian Government, Birmingham City Council, and Kent County Council. Of course, individual trees might be looked at more frequently if a detailed assessment has recommended it because a tree risk feature needs monitoring. Or because an outbreak of a disease is affecting a population of trees. Despite recent headlines, there's no reasonable, proportionate, or reasonably practicable risk-benefit management basis for an 18-month or two-year assessment frequency to be the starting point (to be analysed in a later article).

## The devil in the Tasmanian detail

The Tasmanian Government's Department of State Growth found themselves under the cosh after the coroner's verdict into Brendan Smith's death, even though the tree that killed him had no obvious tree risk features. They're responsible for over 3700km of Tasmania's busiest roads and millions of trees, along



**David Evans** is the Director of VALID, a not-for-profit organisation dedicated to providing tree risk-benefit training and guidance.

**VALID** Tree Risk-Benefit Assessment & Management

*"VALID will replace current methods because it's much smarter, a lot easier to use, and it's more efficient!"*

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*"An innovative, intuitive, and refreshingly clear approach to tree risk decision-making"*

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*"Love the App! A joy to use Simultaneously comprehensive and uncomplicated"*

*"A revelation - going through VALID, you get to see what's really happening with tree risk"*

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