

MOTOR VEHICLE REPORTS
81 PART 4
TABLE OF CASES REPORTED

Director of Public Prosecutions (on behalf of Senior Constable Seath) v Burns

(VSC — Riordan J) (2017) 81.399

[LexisNexis AU](#) | [Lexis Advance](#)

Donovan v Western Australia

(WASCA — Full Court) (2017) 81.381

[LexisNexis AU](#) | [Lexis Advance](#)

Muto-Henderson v Police

(SASC — Blue J) (2017) 81.407

[LexisNexis AU](#) | [Lexis Advance](#)

QBE Insurance (Australia) Ltd v Polorotov

(NSWSC — Harrison AsJ) (2017) 81.496

[LexisNexis AU](#) | [Lexis Advance](#)

R v Currey

(QCA — Full Court) (2017) 81.416

[LexisNexis AU](#) | [Lexis Advance](#)

R v Manok

(NSWCCA — Full Court) (2017) 81.427

[LexisNexis AU](#) | [Lexis Advance](#)

Villanti v All Staff Australia NSW Pty Ltd (t/as Allstaff Australia) (2015/39590)

(NSWSC — Harrison AsJ) (2017) 81.445

[LexisNexis AU](#) | [Lexis Advance](#)

Villanti v Coles Group Supply Chain Pty Ltd (2012/104536)

(NSWSC — Harrison AsJ) (2017) 81.445

[LexisNexis AU](#) | [Lexis Advance](#)

CUMULATIVE TABLE OF CASES REPORTED

Motor Vehicle Reports

- Beattie-Lester v Motor Accidents Insurance Board (FCA 340/2016) (TASFC — Full Court) (2017) **81.182**
- Brumby v Police (SASC — Lovell J) (2017) **81.284**
- Bugeja v Jarrett (NSWCA — Full Court) (2017) **81.290**
- Circular Head Fencing Pty Ltd v Motor Accidents Insurance Board (FCA 339/2016) (TASFC — Full Court) (2017) **81.182**
- Copeland v Watson (WASC — Jenkins J) (2017) **81.309**
- Davies v Nilsen (VSCA — Full Court) (2017) **81.75**
- Director of Public Prosecutions (on behalf of Senior Constable Seath) v Burns** (VSC — Riordan J) (2017) **81.399**
- Director of Public Prosecutions (on behalf of Steven Emil Kokas) v Stanojlovic (VSC — Dixon J) (2017) **81.352**
- Dominice v Allianz Australia Insurance Ltd (NSWCA — Full Court) (2017) **81.249**
- Donovan v Western Australia** (WASCA — Full Court) (2017) **81.381**
- Ferguson v Smorhun (ACTSC — Penfold J) (2017) **81.1**
- Ireland v Watson (WASC — Martino J) (2017) **81.208**
- Langley v Lyons (TASSC — Brett J) (2017) **81.164**
- Little v Allianz Australia Insurance Ltd (NSWSC — Campbell J) (2017) **81.41**
- Martin v Insurance Australia Ltd (t/as NRMA Insurance) (NSWSC — Harrison AsJ) (2017) **81.233**

(Continues on p ii of cover)

CUMULATIVE TABLE OF CASES REPORTED — *continued*

- McCurley v Beath (ACTSC — Mossop J) (2017) **81.55**
Motor Accidents Insurance Board v Bricknell (TASFC — Full Court) (2017) **81.331**
Muto-Henderson v Police (SASC — Blue J) (2017) **81.407**
- Nankivell v Insurance Commission of Western Australia (WASCA — Full Court) (2017) **81.24**
- QBE Insurance (Australia) Ltd v Polorotov** (NSWSC — Harrison AsJ) (2017) **81.496**
- R v Burnett-Greenland (QCA — Full Court) (2017) **81.16**
R v Currey (QCA — Full Court) (2017) **81.416**
R v Gazzara (QCA — Full Court) (2017) **81.128**
R v Hill (QCA — Full Court) (2017) **81.172**
R v Manok (NSWCCA — Full Court) (2017) **81.427**
Registrar of Motor Vehicles v Lawson (SASCFC — Full Court) (2017) **81.270**
- Sutcliffe v Brown (TASSC — Blow CJ) (2017) **81.324**
- Transport Accident Commission v Katanas (HCA — Full Court) (2017) **81.152**
- Villanti v All Staff Australia NSW Pty Ltd (t/as Allstaff Australia) (2015/39590)** (NSWSC — Harrison AsJ) (2017) **81.445**
Villanti v Coles Group Supply Chain Pty Ltd (2012/104536) (NSWSC — Harrison AsJ) (2017) **81.445**
- White v Police (SASC — Nicholson J) (2017) **81.11**
- Zeait v Insurance Australia Ltd (t/as NRMA) (NSWSC — Adamson J) (2017) **81.217**

CASES JUDICIALLY CONSIDERED IN THIS PART

- Bon McArthur Transport Pty Ltd (in liq) v Caruana (2013) 63 MVR 417; [2013] NSWCA 101, considered 81.445
- CMB v Attorney-General (NSW) (2015) 256 CLR 346; 317 ALR 308; 151 ALD 8; [2015] HCA 9, applied 81.427
- Day v Ocean Beach Hotel Shellharbour Pty Ltd (2013) 85 NSWLR 335; [2013] NSWCA 250, considered 81.445
- Green v R (2011) 244 CLR 462; 283 ALR 1; [2011] HCA 49, applied 81.427
- Hill v Baxter [1958] 1 All ER 193; [1958] 1 QB 277, considered 81.381
- Jiminez v R (1992) 173 CLR 572; 106 ALR 162; 15 MVR 289, distinguished 81.381
- Laugher v Pointer (1826) 5 B & C 547; 108 ER 204, considered 81.445
- Lodge v Magorian (2012) 42 WAR 270; 60 MVR 408; [2012] WASCA 90, considered 81.381
- McBride v R (1966) 115 CLR 44, considered 81.381
- McPherson v Lucas (2008) 49 MVR 429; [2008] WASCA 56, applied 81.381; considered 81.381
- Oceanic Crest Shipping Company v Pilbara Harbour Services Pty Ltd (1986) 160 CLR 626; 66 ALR 29, considered 81.445
- R v Falconer (1990) 171 CLR 30; 96 ALR 545, considered 81.381
- v Staines [2011] QCA 321, considered 81.416
- v Vogt [1995] QCA 183, considered 81.416
- v Wing [2007] QCA 138, considered 81.416
- Ralston v Bell and Smith (t/as Xentex Patch and Grout) (2010) 55 MVR 300; [2010] NSWSC 245, considered 81.445
- Scott v Davis (2000) 204 CLR 333; 175 ALR 2017; 32 MVR 1; [2001] HCA 52, considered 81.445
- Soblusky v Egan (1960) 103 CLR 215; [1960] ALR 310, considered 81.445

STATUTES, RULES, ETC CITED IN THIS PART

NEW SOUTH WALES

Civil Liability Act 2002	
s 5	81.445
s 5B	81.445
s 5C	81.445
s 5D	81.445
Crimes (Sentencing Procedure) Act 1999	
s 5	81.427
s 7	81.427
s 53A	81.427
Crimes Act 1900	
s 52A(1)(c)	81.427
s 52A(3)(c)	81.427
Criminal Appeal Act 1912	
s 5D	81.427
Employees Liability Act 1991	
s 3	81.445
Motor Accidents Compensation Act 1999	
s 3A	81.445
s 3B	81.445
s 112	81.445
Workers Compensation Act 1987	
s 150	81.445
s 151	81.445
SOUTH AUSTRALIA	
Motor Vehicle Regulations 2010	
r 67	81.407
Sch 4	81.407

Motor Vehicles Act 1959	
s 98B	81.407
s 98BC	81.407
s 98BE	81.407

VICTORIA

Accident Compensation Act 1985	
s 272	81.399
Criminal Procedure Act 2009	
s 272	81.399
Road Safety Act 1986	
s 64(1)	81.399
Road Safety Road Rules 2009	
r 20.	81.399

WESTERN AUSTRALIA

Criminal Code	
s 23A	81.381
s 26	81.381
s 27	81.381
Road Traffic Act 1974	
s 54	81.381
s 56	81.381
s 59	81.381

INDEX OF CASES IN THIS PART

ADMINISTRATIVE LAW

Judicial review — Challenge to the assessment of damages by a claims assessor — Whether the claims assessor erred in law in finding there was no exercisable residual earning capacity — Whether the claims assessor failed to explain the actual path of reasoning by which he reached his conclusion — Whether the claims assessor failed to engage with submissions made to him — Whether there was a denial of procedural fairness: *QBE Insurance (Australia) Ltd v Polorotov* 81 MVR 496

Judicial review — Practice and procedure — Requirement to give reasons — Where the decision maker was required to provide a “brief statement” of reasons — Content of reasons — Task to be undertaken by the court when a party asserts that reasons are inadequate: *QBE Insurance (Australia) Ltd v Polorotov* 81 MVR 496

CRIMINAL PROCEDURE

Offences — Sentence — Appeal — Where applicant was convicted on his pleas of guilty for counts of (inter alia) dangerous operation of a vehicle with a circumstance of aggravation — Where circumstance of aggravation was that he was adversely affected by an intoxicating substance — Where a period of 267 days of pre-sentence custody was declared as time served — Where the sentencing judge fixed a parole eligibility date after the applicant would have served 2 years’ imprisonment — Whether the sentence was manifestly excessive: *R v Currey* 81 MVR 416

Offences — Sentence — Appeal — Where applicant was convicted on his pleas of guilty for counts of (inter alia) dangerous operation of a vehicle with a circumstance of aggravation — Where the sentencing judge accepted submissions that credit for the applicant’s pleas of guilty should be reflected by a reduction of the head sentence rather than by the usual approach of early parole eligibility — Where the sentencing judge reduced, by 18 months, the notional term of imprisonment of 5 years in respect of one of the counts, resulting in the imposition of an effective sentence of 3 years and 6 months’ imprisonment — Whether the sentencing judge committed a procedural error in failing to invite submissions concerning the proportion of the sentence to be served before parole eligibility: *R v Currey* 81 MVR 416

NEGLIGENCE

Agency — Breach of duty — Contributory negligence — Workplace accident involving vehicle — Whether employer vicariously liable for the negligence of the driver of the vehicle — Whether owner of the vehicle was liable under statutory agency: *Villant v Coles Group Supply Chain Pty Ltd (2012/104536)* 81 MVR 445

OFFENCES

Dangerous driving — Sentence — Appeal — Crown appeal — Dangerous driving causing death and dangerous driving causing grievous bodily harm — Fatigue — Where sentence of imprisonment which was imposed was ordered to be served by way of intensive correction order in the community — Whether sentencing judge erred in his assessment of moral culpability — Whether sentence manifestly inadequate: *R v Manok* 81 MVR 427

Dangerous driving — Failing to ensure assistance — Failing to report an incident — Criminal responsibility — Where driver suffered an epileptic seizure — Where accident ensued resulting in death — Whether driver was “driving” — Whether driving could be categorised as “dangerous”: *Donovan v Western Australia* 81 MVR 381

Dangerous driving — Appeal — Question of law — Where respondent charged with dangerous driving and exceeding the speed limit — Where magistrate dismissed both charges — Where an appeal was brought on the basis that the magistrate gave “undue weight” to particular evidence — Whether this amounted to a question of law — Whether open to magistrate to dismiss the charges: *Director of Public Prosecutions (on behalf of Senior Constable Seath) v Burns* 81 MVR 399

Dangerous driving — Exceeding prescribed speed limit — Scheme of demerit points — Whether demerit points should have been reduced given the circumstances of the offending: *Muto-Henderson v Police* 81 MVR 407

WORDS AND PHRASES

“control”: *Donovan v Western Australia* 81 MVR 381

“dangerous”: *Donovan v Western Australia* 81 MVR 381

“drive”: *Donovan v Western Australia* 81 MVR 381

“driving”: *Donovan v Western Australia* 81 MVR 381

“other proper cause”: *Muto-Henderson v Police* 81 MVR 407

(Continues on p vi of cover)

INDEX — *continued*

WORDS AND PHRASES — *continued*

“trifling”: *Muto-Henderson v Police* 81 MVR 407