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# Update Summary

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## **MOTOR VEHICLE LAW QUEENSLAND**

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## Motor Vehicle Law Qld

### U256 SUMMARY

Commentary has been reviewed and updated at:

#### ***Civil Liability Act 2003 (Annotated)***

- See new paragraph **Section 11(3)(b) does not apply to the assessment of damages** at [CLA.11.80].
- In *Brockhurst v Rawlings* [2021] QSC 217, an historical sexual abuse case which predated the CLA, damages were awarded at common law without any fetters imposed by the *Civil Liability Act 2003* (Qld) (CLA). See [CLA.5.20] and [CLA.51.20].
- *Allen v Chadwick* [2015] HCA 47 is discussed at [CLA.23.50] and [CLA.48.60].
- *Green v Hanson Construction Materials Pty Ltd* [2007] QCA 260 is discussed at [CLA.47.20].
- In *Allianz Australia Insurance Ltd v Swainson* [2011] QCA 136 it was accepted that the plaintiff was intoxicated although there was no strict proof of the plaintiff's BAC. See [CLA.47.40].
- For analysis of the defendant's onus of proving contributory negligence and manner of proof of intoxication, see s 47 commentary at [CLA.47.20] – [CLA.47.40].
- S 48(5) provides that the common law defence of voluntary assumption of risk does not apply to a matter to which this section applies. Therefore, in a case where the elements of s 48 are not made out (for example the plaintiff is under 16 years of age), the common law defence may be invoked in an appropriate case. See [CLA.48.80].
- *Hawira v Connolly* [2008] QSC 4 is discussed at [CLA.49.20].
- A court is precluded from awarding exemplary, punitive or aggravated damages in a claim for personal injuries, except where the act which caused the injury was an unlawful intentional act done with the intent to cause personal injury, an unlawful sexual assault or any other unlawful sexual conduct (s 52). S 52 does not preclude a claim for aggravated damages consequent upon a claim where there is no "injury" such as where a plaintiff is entitled to compensation for his or her humiliation, indignity, distress, discomfort, and the like. See [CLA.50.20].
- The definition of "general damages" pertains to those awarded for non-economic loss. Such damages include physical and psychological injury. This

amount is assessable as a single lump sum. Ordinarily, in a motor vehicle accident claim pursuant to the *Motor Accident Insurance Act 1994*, or personal injuries claim pursuant to the *Personal Injuries Proceedings Act 2002*, pertaining to an award of General Damages, the *Civil Liability Act 2003* and the subordinate Regulation will apply. However, where there is a multiple defendant claim involving an employer, the assessment against the non-employer defendants will be governed by the common law. See [CLA.51.20].

- It should be noted that s 55 of the *Motor Accident Insurance Act 1994* provides for exemplary, punitive or aggravated damages to be awarded, despite s 52 of the CLA. See commentary at [CLA.52.20] – [CLA.52.60].
- NISQ is required to provide treatment, care and support for a person if they have been accepted into the NISQ scheme as a participant. A relevant case is *Walters v Roche & QBE* [2020] QSC 319. See [CLA.52C.20].
- See overhauled commentary for CLA s 54 at [CLA.54.20], [CLA.54.40], [CLA.54.60], [CLA.54.80] and [CLA.54.100].
- Some recent awards for future loss of earning capacity made by Crow J, where plaintiffs retain a substantial residual earning capacity, are noted as follows: *Dance v Jemeas Pty Ltd (No 2)* [2019] QSC 303; *Schokman v CCIG Investments Pty Ltd* [2021] QSC 120. See [CLA.55.20].
- While there are cases which adopt average weekly earnings (AWE) as the yardstick (*Ren v Mukerjee* (ACT SC, unreported, 8 October 1996); *Rosniak v Government Insurance Office* [1997] 41 NSWLR 608), every case must consider the background of the family and other relevant circumstances. AWE was not adopted in *Goode v Thompson* [2001] QSC 287. The Public Service Award – State (Pay levels) for “administrative stream” was adopted in that case. See [CLA.55.40].
- In most cases, the rates prescribed by the *Superannuation Guarantee Charge Act 1992* (Cth) are used to calculate loss of superannuation. In Queensland, by convention, the calculation is made according to the relevant statutory rate multiplied by the net past economic loss. See [CLA.56.20].
- Section 61 of the *Civil Proceedings Act 2011* provides for a prescribed discount rate of 5%. The 3% rate will apply in a claim for damages for future gratuitous services where there is a multiple defendant claim involving an employer, as the assessment against the non-employer defendants will be governed by the common law. See [CLA.57.20].
- In *Taylor v Stratford* [2004] 2 Qd R 224 it was held that the *Personal Injuries Proceedings Act 2002* applied to a claim for damages for loss of consortium and servitium. Practitioners must consider giving a notice of claim for the spouse of

the injured person when giving notice of claim for the injured person. See [CLA.58.20].

- Section 59(1) has three criteria that must be met for gratuitous services to be awarded. See further commentary at [CLA.59.20].
- A lack of a care diary is not necessarily fatal: *Hooper v King* [2011] QSC 324; *McAndrew v AAI Ltd* [2013] QSC 290; *Good v Czulowski* [2013] QDC 68; *McQuitty v Midgley* [2016] QSC 36. See [CLA.59.60].

### ***Transport Operations (Road Use Management) Act 1995***

- The decision whether to record a conviction or not involves balancing the seriousness of the offending against the effect of the recording of the conviction on the offenders economic or social well-being: see *Harvey v Queensland Police Service* [2022] QDC 11 at [TORUMA.79.60], [TORUMA.80.260] and [TORUMA.93.100].
- *Commissioner of Police v Keating-Jones* [2022] QDC 56 is discussed at [TORUMA.80.500].
- The case of *Chmieluk v Commissioner of Police* [2022] QDC 46 is discussed at [TORUMA.131.20].

### **Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2021**

- *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (Qld) has replaced the legislation *Transport Operations (Road Use Management— Vehicle Standards and Safety) Regulation 2010* (Qld).

### **Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021**

- *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* (Qld) has replaced the legislation *Transport Operations (Road Use Management— Vehicle Registration) Regulation 2010* (Qld).

### ***Transport Operations (Road Use Management – Road Rules) Regulation 2009***

- *Francese v Commissioner of Police* [2022] QDC 91 is discussed at [RR.56.60].

### **Transport Operations (Road Use Management—Driver Licensing) Regulation 2021 (Annotated)**

- *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (Qld) has replaced the legislation *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* (Qld).
- See commentary to this new legislation:
  - **Suspension of licence – notice to choose** at [DLR.264.20].
  - **No appeal** at [DLR.309.20].
  - **Interlock exemption – severe hardship** at [DLR.346.20].
  - **Change of name, address or postal address** at [DLR.363.20].

### **The Criminal Code (Annotated Extracts)**

- For a case in which a summary conviction on a charge of dangerous operation of a motor vehicle was set aside, see *Byers v The Commissioner of Police* [2022] QDC 098. See [CC.328A.100].

### **Police Powers and Responsibilities Act 2000 (Annotated Extracts)**

- For a case in which a reckless, if not deliberate disregard for the requirements of s 418 and s 23 of the *Police Responsibilities Code 2012* with respect to the warnings to be given in relation to an interview which is to be recorded resulted in the interview being excluded, see *Byers v The Commissioner of Police* [2022] QDC 098. See [PPRA.418.20].

