

NAVIGATION

*Unfortunately, the product's efficient navigation system with the index to the left of screen cannot be contained in this preview. Just use the scroll mechanism to the right and make sure you see the incredible depth of this publication by perusing the index from p. 3.

KIDD'S TRAFFIC LAW

Australian Principles & Precedents (Criminal)

October 2014

This national traffic law publication contains case summaries and quotations of legal principle from High Court, Supreme Court and District Court decisions. The Australian Road Rules (ARRs) are also indexed and annotated.

Note: Victoria is not covered.

This guide is copyright. Except as permitted under the Copyright Act, no part of this publication may be reproduced or copied by any process, electronic or otherwise (including photocopying, recording, taping) without specific written permission of Kidd LRS Pty Ltd. Neither may information be stored electronically in any form whatsoever without such permission. Text of included judgments reproduced courtesy of the various courts quoted from. Copyright for this material remains in those bodies.

Whilst every care has been taken in the preparation of this Guide, Kidd LRS Pty Ltd and David Kidd accept no responsibility for any inaccuracy, error or omission contained in this Guide or for any damage or loss arising from any such inaccuracy error or omission.

© October 2014 Kidd LRS Pty Ltd.

Preface

David Kidd (LLB Hons, BA, GDLP), director of Kidd LRS, was admitted to the Supreme Court of South Australia as a barrister and solicitor in 1994. Since that date he has specialised in providing legal research services to the legal profession. This experience has enabled him to create law publications specifically tailored to meet the practical day to day research needs of legal practitioners.

Tips For Users

. **For annotations to your own State/Territory civil and criminal legislation go to the relevant alphabetical heading** e.g. South Australia or Western Australia.

. There are direct links to legislation and road rules throughout this publication.

. Use the extensive cross-references to fully research an issue.

. For keyword searches use ctrl F or Search Document.

Other loose-leaf & electronic publications produced by Kidd LRS Pty Ltd include:

Kidd & Darge's Traffic Law - *Principles & Precedents (Civil & Criminal)*

CTH & SA Industrial & OHS Law (*FW Act annotated*)

Kidd's Damages Australia (P.I. & Defamation) - *Australian Principles & Precedents*

SA Workers Compensation Law

Damages SA

Table of Subject and Keyword headings

Presentation note

Aborigines

Articles

Sentencing

Accumulation of

sentence

'A consequence of' the driving of the vehicle'

Acts endangering life or creating risk of serious harm

Adjacent land

Entering road from

Aiding & abetting

dangerous driving

Alcohol

Articles

Accustomed to heavy drinking

Effect of consumables on alcohol testing results

Breath analysis principles

Drinking after ceases

driving and before

breath test

Effects of (on

motorcyclist)

Elimination rates

Evidence

Intervention orders

Leading animals while

driving/riding

Mouth wash

Passengers (articles)

Post-accident use of

Reaction time (expert evidence)

Lighting passengers

Ambulances

Animal drawn vehicles

Lights on

Animals

ARRs

Arising out of use of

motor vehicle

Arrows

Assumptions

Driving of others (re)

Law being observed

Australian Capital

Territory

Annotations and/or links to relevant legislation

Crimes Act 1900

s29(2) – Culpable driving of motor vehicle

s29(4)

Crime (Sentencing) Act 2005

s17 – Non-conviction order

s33(1) – Sentencing – Relevant considerations

Criminal Code 2002

Road Transport

(Alcohol and Drugs)

Act 1977

s15AA – Taking blood samples from people in hospital

s17 – Exemptions from requirements to take blood samples ...

s19 – Prescribed blood alcohol concentration exceeded

s22 – Refusing to provide breath sample

s23 – Refusing blood test etc

Road Transport (Driver Licensing) Act 1999

s32(1)(a) - Offences committed by disqualified drivers

s32(2) – Offences committed by disqualified drivers

Road Transport

(General) Act 1999

s44 – Suspension for non payment of infringement notice penalties

s61B – Immediate suspension of licence

s61C – Drive while suspension notice in effect

Road Transport (Safety and Traffic

Management) Act 1999

s5B(2)(b) – Burnouts

s6 – Negligent driving

s10B – Impounding or forfeiture of vehicles

Australian Road Rules 1999 (ARRs)

Applicability of

Definitions in

List of rules indexed

Governor's power to

make regs beyond

ARRs

List of rules judicially considered

NSW

Whether ARR's validly enacted

Authority

Whether driving with owner's

Automatism

Autopsy

Bicycle crossing

Lights

Stopping at or near

Bicycle lanes

Bicycle –

Motorised/power-assisted

Bicycle parking sign

Stopping where

Bicycle path

Pedestrians

Riding on

Stopping on

Bicycle 'riding'

Bicycle trailer

Blood samples – Issues with

Body parts outside vehicle

Boomgate

Brakes/braking

Bicycles

Expert evidence

Failure to brake

Breast feeding (offender)

Bridge

Giving way

Overtaking on

Stopping on

Burnouts/Doughnuts

Buses

Braking sharply

Doors

Giving way to

No buses sign

Pulling out from stop

Special traffic light

signals

Warning lights

Bus lane

Bus stop

Stopping at or near

Bus zone

Stopping in

Car doors

[Carjacking](#)
[CB radio](#)
[Changing lanes](#)
 [Continuous lines \(when\)](#)
 [Giving way](#)
 [No indication](#)
[Children's crossings](#)
[Clearance signs](#)
[Clearway](#)
 [Stopping on](#)
[Continuous lines](#)
 [Changing lanes when](#)
 [White edge line](#)
[Control of vehicle](#)
['Contumacious' conduct](#)
['Convicts'/'Conviction'](#)
[Conviction of non-drivers](#)
[Convoy](#)
[Councils/authorities](#)
 [Criminal actions \(duty to
 \[guard against\\)\]\(#\)
\[Criminal injuries\]\(#\)
 \[compensation\]\(#\)
\[Criminality\]\(#\)
 \[P's violence toward D\]\(#\)
\[Cyclists\]\(#\)
 \[ARRs\]\(#\)
 \[Car doors \\(collisions
 \\[with\\\)\\]\\(#\\)
 \\[Crossings\\]\\(#\\)
 \\[Cycles \\\(brakes & warning
 \\\[devices\\\\)\\\]\\\(#\\\)
 \\\[Hand signals\\\]\\\(#\\\)
 \\\[Helmets\\\]\\\(#\\\)
 \\\[Hook turns\\\]\\\(#\\\)
 \\\[Motorised/power-\\\]\\\(#\\\)
 \\\[assisted bike\\\]\\\(#\\\)
 \\\[Night riding\\\]\\\(#\\\)
 \\\[No bicycles signs and
 \\\\[markings\\\\]\\\\(#\\\\)
 \\\\[Overtaking vehicles\\\\]\\\\(#\\\\)
 \\\\['Riding'\\\\]\\\\(#\\\\)
 \\\\[Sudden moves into
 \\\\\[vehicle's path\\\\\]\\\\\(#\\\\\)
 \\\\\[Towing of\\\\\]\\\\\(#\\\\\)
 \\\\\[Traffic hazard \\\\\\(must not
 \\\\\\[cause\\\\\\\)\\\\\\]\\\\\\(#\\\\\\)
 \\\\\\[Travelling too close\\\\\\]\\\\\\(#\\\\\\)
 \\\\\\[Two or more abreast\\\\\\]\\\\\\(#\\\\\\)
\\\\\\[Dangerous conduct\\\\\\]\\\\\\(#\\\\\\)
\\\\\\[Dangerous driving\\\\\\]\\\\\\(#\\\\\\)
\\\\\\[Date of offence\\\\\\]\\\\\\(#\\\\\\)
 \\\\\\[\\\\\\\(incorrectly specified\\\\\\\)\\\\\\]\\\\\\(#\\\\\\)
\\\\\\['Decision'\\\\\\]\\\\\\(#\\\\\\)
\\\\\\['Defect in the vehicle'\\\\\\]\\\\\\(#\\\\\\)
\\\\\\[Defensive driving\\\\\\]\\\\\\(#\\\\\\)
\\\\\\[Delegated powers\\\\\\]\\\\\\(#\\\\\\)\\\\\]\\\\\(#\\\\\)\\\\]\\\\(#\\\\)\\\]\\\(#\\\)\\]\\(#\\)\]\(#\)](#)

[Demerit points](#)
[Disabilities](#)
 [Stopping in parking area
 \[for people with\]\(#\)
\[Disqualification from
driving\]\(#\)
\[Distances\]\(#\)
 \[Perceiving\]\(#\)
\[Dividing strip\]\(#\)
 \[Giving way at\]\(#\)
 \[Keeping off\]\(#\)
 \[Stopping on\]\(#\)
\[Door-to-door
delivery/collection\]\(#\)
 \[Vehicles travelling for\]\(#\)
\[Double parking\]\(#\)
\[Drag racing\]\(#\)
\[Drink driving\]\(#\)
\['Driver'\]\(#\)
\[Driver disqualification\]\(#\)
 \[Lengthy periods of\]\(#\)
\[Driveways\]\(#\)
 \[Obstructing access to\]\(#\)
\[Driving \\(whether\\)\]\(#\)
 \[ARRS – Definitions\]\(#\)
 \[General\]\(#\)
 \[Interference with steering
 \\[by another\\]\\(#\\)
 \\[Passenger\\]\\(#\\)
 \\[Short distances\\]\\(#\\)
 \\[Whether driving with
 \\\[owner's authority\\\]\\\(#\\\)
\\\[Drugs\\\]\\\(#\\\)
 \\\[Post-accident use of\\\]\\\(#\\\)
 \\\[Reaction time \\\\(expert
 \\\\[evidence\\\\\)\\\\]\\\\(#\\\\)
\\\\[Dusty conditions\\\\]\\\\(#\\\\)
\\\\[Duties of driver involved
in crash\\\\]\\\\(#\\\\)
\\\\[Duty of Care\\\\]\\\\(#\\\\)
 \\\\[Driver \\\\\(after accident\\\\\)\\\\]\\\\(#\\\\)
\\\\[Edging out into path of
traffic\\\\]\\\\(#\\\\)
\\\\['Effective' or 'proper'
control of vehicle\\\\]\\\\(#\\\\)
\\\\[Emergency vehicles\\\\]\\\\(#\\\\)
\\\\[Emergency situations\\\\]\\\\(#\\\\)
 \\\\[General\\\\]\\\\(#\\\\)
 \\\\[Indicators of degree of\\\\]\\\\(#\\\\)
\\\\[Emergency stopping lane\\\\]\\\\(#\\\\)
 \\\\[Signs\\\\]\\\\(#\\\\)
 \\\\[Stopping in\\\\]\\\\(#\\\\)
\\\\[Entering road
dangerously\\\\]\\\\(#\\\\)
\\\\[Epileptic seizure\\\\]\\\\(#\\\\)
\\\\[Evidence\\\\]\\\\(#\\\\)\\\]\\\(#\\\)\\]\\(#\\)\]\(#\)](#)

[Breath analysis
certificate](#)
[Character as a driver](#)
[Diagram of police officer](#)
[Guide to driving test](#)
[Improper conduct
 \[\\(evidence excluded
 \\[because of\\\)\\]\\(#\\)
\\[Photographic\\]\\(#\\)
\\[Reaction times\\]\\(#\\)
\\[Res gestae\\]\\(#\\)
\\[Tendency/propensity
 \\\[evidence\\\]\\\(#\\\)
\\\[Video footage\\\]\\\(#\\\)
\\\[View\\\]\\\(#\\\)
\\\[Wikipedia\\\]\\\(#\\\)
\\\[Exempt vehicles\\\]\\\(#\\\)
 \\\[Duties of\\\]\\\(#\\\)
\\\[Expert evidence\\\]\\\(#\\\)
 \\\[Accident reconstruction\\\]\\\(#\\\)
 \\\[Calculations\\\]\\\(#\\\)
 \\\[Distances \\\\(perceiving\\\\)\\\]\\\(#\\\)
 \\\[Evidence Act 1995 \\\\(s79\\\\)\\\]\\\(#\\\)
 \\\[Evidence Act 1995
 \\\\[\\\\\(s135\\\\\)\\\\]\\\\(#\\\\)
 \\\\[Experts \\\\\(qualifying as\\\\\)\\\\]\\\\(#\\\\)
 \\\\[Tyres\\\\]\\\\(#\\\\)
\\\\[Failure to stop \\\\\(offence
of\\\\\)\\\\]\\\\(#\\\\)
\\\\[Fatigue – Driving with
Fire fighting\\\\]\\\\(#\\\\)
\\\\[Fire hydrant\\\\]\\\\(#\\\\)
 \\\\[Stopping near\\\\]\\\\(#\\\\)
\\\\[First or second offence?\\\\]\\\\(#\\\\)
\\\\[Foggy conditions\\\\]\\\\(#\\\\)
 \\\\[Fog lights\\\\]\\\\(#\\\\)
\\\\[Following
drivers/vehicles\\\\]\\\\(#\\\\)
 \\\\[Safe distances\\\\]\\\\(#\\\\)
\\\\[Footpath\\\\]\\\\(#\\\\)
 \\\\[Cyclists\\\\]\\\\(#\\\\)
 \\\\[Definition of\\\\]\\\\(#\\\\)
 \\\\[Driving on\\\\]\\\\(#\\\\)
 \\\\[Obstructing access to
 \\\\\[Pedestrians\\\\\]\\\\\(#\\\\\)
\\\\\[Forgiveness of victim\\\\\]\\\\\(#\\\\\)
\\\\\[Freedom of information\\\\\]\\\\\(#\\\\\)
\\\\\[Freeway\\\\\]\\\\\(#\\\\\)
 \\\\\[Stopping on\\\\\]\\\\\(#\\\\\)
\\\\\[Gears\\\\\]\\\\\(#\\\\\)
\\\\\[Give way signs\\\\\]\\\\\(#\\\\\)
\\\\\[Giving way\\\\\]\\\\\(#\\\\\)
\\\\\[Habitual traffic offenders\\\\\]\\\\\(#\\\\\)
\\\\\[Hazards\\\\\]\\\\\(#\\\\\)
 \\\\\[Dust\\\\\]\\\\\(#\\\\\)
 \\\\\[Objects on road\\\\\]\\\\\(#\\\\\)
\\\\\[Hazard warning lights\\\\\]\\\\\(#\\\\\)\\\\]\\\\(#\\\\)\\\]\\\(#\\\)\\]\\(#\\)\]\(#\)](#)

Head lights

Dazzling
Head lights not on when
poor visibility
High beam

Heavy vehicles

Definitions
Gears
Speed limits
Stopping on roads

Hit & run

Honest & reasonable mistake of fact

Hook turns

Horn

Illegal enterprise

Illegality

Swerving deliberately at
pedestrians

Inattention

'In' a vehicle

Incapable of exercising 'effective' or 'proper' control of vehicle

'In charge of motor vehicle'

Incorrect side of road (driving on)

Indication

ARRs
Changing lanes
'Changing direction'
Hand signals
Stopping

Indicators

Judicial notice

Inexperienced drivers

Intersection controlled by traffic lights

Intersections

Blocked

Joy-riding

Articles

Judicial notice

Alcohol
Indicators

Juvenile traffic offenders

Immaturity

Keep clear markings

Keep left/keep right signs

Keeping to the left

Lane

Special use
Stopping in
Travelling in

Learner drivers

Instructor regarded as
driver

Left turns

Left turn signs

Level crossings

Pedestrians
Stopping on or near

Licence disqualification

Licence disqualification –

Back-dating

Licence disqualification

and employment

Licensing

Lights

Dazzling
Hazardous weather
conditions
Night driving
Spotlights
Stopped vehicles

Loading zone

Stopping in

Load limit signs

Load(s)

ARRs

Long vehicles

Safe distances
Stopping on roads

Mail zone

Stopping in

Manslaughter - Motor

Median strip parking area

Median turning bay

Mental impairment

Elements of offence
(mental impairment and)
Sentencing the mentally
impaired

Mistake of fact or law

Mitigation in criminal cases

Victim's conduct

Mobile phones

Articles
ARRs ('use' of)
General
Offences
Texting while driving

Motorcycle parking signs

Stopping where

Motorcyclists

ARRs
Car doors (collisions
with)
Defensive driving
Helmets
Two or more abreast

Motor vehicle (whether) Motor Vehicles Act (SA) Moving vehicles

Entering or getting on

Narrow

roads/spaces/streets

National Measurement

Act 1960

Nature strip

Driving on
Stopping on

Necessity

New South Wales

Annotations and/or links
to relevant legislation

Civil Liability Act 2002

s54 – Criminals not to be
awarded damages

Crimes Act 1900

s33 – Wounding or
grievous bodily harm with
intent

s52A(1) - Dangerous
driving occasioning death

s52A(1)(c) – Dangerous
driving occasioning death

s52A(2) – Aggravated
dangerous driving
occasioning death

s52A(3) - Dangerous
driving causing grievous
bodily harm

s52A(4) – Aggravated
dangerous driving
causing GBH

See also Manslaughter (motor)

s52AB – Failing to stop
and assist

s59 – Assault occasioning
actual bodily harm

s154A(1)(b) – Taking a
conveyance without
consent of owner

Road Obstructions (Special Provisions)

Act 1979

Road Obstructions (Special Provisions)

Regulation 1990

Road Rules 2008

Road Transport Act 2013

Road Transport (Driver Licensing) Act 1998

*now repealed

s16 – Suspension of
licence

[s25\(2\)&\(3\) – Driver must be licensed](#)
[s25A\(1\)\(a\) – Offences committed by disqualified drivers](#)
[s25A\(2\)\(a\)](#)
[s25A\(6\)\(b\) & \(10\)\(b\)](#)
[s25A\(7\) – Offences committed by disqualified drivers etc](#)
[s33 – Cancellation or suspension of licence](#)

Road Transport (General) Act 2005

***now repealed**

[s3 - Definitions](#)
[s21\(1\) - Operators](#)
[s53 – Liability of consignor](#)
[s56 – Liability of operator](#)
[s57 – Liability of driver](#)
[s58\(3\) – Liability of consignee](#)
[s60 – Matters to be taken into consideration by courts \(breach of mass, load etc\)](#)
[s87 – Reasonable steps defence](#)
[s92 – Special defence for all owners or operators](#)
[s136 – Direction to stop vehicle](#)
[s173 – Requirement to disclose identity](#)
[s179\(7\) – False nomination of person in charge of vehicle](#)
[s187\(1\) – Licence disqualification](#)
[s188\(2\)\(d\)\(i\) & \(ii\) – Disqualification for major offences](#)
[s198\(1\)\(a\)\(iii\) – Habitual traffic offenders](#)
[s199 – Habitual traffic offenders](#)
[s202 – Quashing of declaration and bar against appeals](#)

Road Transport (General) Regulation 2005 *now repealed

[cl. 44 – Impaired with fatigue](#)
[cl. 68 – BFM hours solo drivers](#)

Road Transport (Safety and Traffic Management) Act 1999 *now repealed

[s9 – Prescribed concentrations of alcohol](#)

[s27\(1\) – Procedure for taking samples following arrest](#)
[s29\(2\)\(a\) – Offences re sobriety assessments and testing for drugs](#)
[s42 – Negligent, furious or reckless driving](#)
[s44 – Approved speed measuring devices](#)
[s46 – Certificates concerning approved speed measuring devices](#)
[s47 – Photographic evidence of speeding offences](#)
[s73A\(2\) – Rebuttal of evidence of matters of specialised knowledge](#)

Roads Regulation 2008

Night driving

[Lights](#)

No entry sign

Noise

No-stopping zone

[Stopping in](#)

Northern Territory

[Annotations and/or links to relevant legislation](#)

Criminal Code

[Schedule One](#)

[s174D – Recklessly endangering serious harm](#)

[s174F\(1\) – Death](#)
[s174F\(2\) – Serious harm](#)
[s174FA – Hit & run](#)

Motor Accidents (Compensation) Act

Motor Accidents (Compensation) Regulations 2007

Motor Vehicles Act

Motor Vehicles Regulations

[Sentencing decisions generally](#)

Traffic Act

[s21 – High range breath or blood alcohol content](#)
[s22\(1\) – Driving under influence](#)
[s22\(3\)\(b\)\(ii\)](#)
[s29AAC\(1\)\(b\)\(ii\)](#)
[s29AAD\(2\) – Further breath analyses](#)
[s29AAE – Failing to submit to breath analysis](#)
[s31 – Driving disqualified](#)
[s32 – Driving unlicensed](#)

[s33 – Driving unregistered vehicle](#)
[s46 – Liability at common law and by statute](#)
Traffic Regulations
[r9 – Persons to give particulars](#)
[r19 – Duties of driver after crash](#)
[r58 – Conduct of breath analysis](#)

No turn signs

Number plates

Obstructing drivers or pedestrians

Obstructing police

Obstructions on the road

[Keeping to the left](#)

[Stopping near](#)

One-way streets

[Service roads](#)

[Signs](#)

Overhead lane control devices

Oversized vehicles

Overtaking

[ARRs](#)

[Illegally](#)

[Turning vehicles \(right\)](#)

[Signs](#)

Overtaking lanes

[Head-on collision](#)

Ownership of vehicle

[Proof of](#)

Painted island

Parked vehicles

[No parking sign](#)

Parking

[Angle](#)

[Double](#)

[Median strip area](#)

[Owner deemed to have](#)

[committed offence](#)

[\(where\)](#)

[Parallel](#)

[Parking bays \(in\)](#)

Parole

Passengers

[Alighting](#)

[Duty of driver towards](#)

[\(when displaced\)](#)

[Interfering/obstructing](#)

[drivers](#)

Path

[Driving on](#)

Pedestrian crossing

[Crossing near](#)

[Duties re approaching](#)

[Giving way at Lights \(controlled by\)](#)
[Lights malfunctioning](#)
[Passing or overtaking](#)
[Stopping on or near](#)
[Pedestrians](#)
[ARRs \(crossing road\)](#)
[ARRs \(definition of pedestrians\)](#)
[Definition of](#)
[Hit from behind](#)
[Traffic lights \(disobeying\)](#)
[Traffic hazard or obstruction \(not to cause\)](#)
[Walking along road \(facing oncoming traffic\)](#)
[Permit zone](#)
[Stopping in](#)
[Police officers](#)
[ARRs](#)
[Duties of drivers towards](#)
[Duties of re driving](#)
[Emergency situation](#)
[Escort](#)
[Exempt vehicles](#)
[Police chase/pursuit](#)
[Roadblock](#)
[Roadblock \(negligence in not maintaining\)](#)
[Stopping traffic](#)
[Taking control](#)
[Traffic lights \(going through red light\)](#)
[Warnings of](#)
[Police vehicles](#)
[Post-accident](#)
[Driver's responsibilities](#)
[Post box](#)
[Stopping near](#)
[Precedents](#)
[Relevance of](#)
[Public road/street](#)
[Pulling out](#)
[Queensland](#)
[Annotations and/or links to relevant legislation](#)
[Civil Liability Act 2003](#)
[s45 – Criminals not to be awarded damages](#)
[Criminal Code 1899](#)
[s24 – Mistake of fact](#)
[s317 – Acts intended to cause grievous bodily harm etc](#)
[s328A\(3\) – Dangerous operation of a vehicle](#)

[s328A\(4\) – Dangerous operation of a vehicle causing grievous bodily harm](#)
[s328A\(4\) – Dangerous operation of a vehicle ... causing death](#)
[s575 – Offences involving circumstances of aggravation](#)
[Justices Act 1886](#)
[s47 – What is sufficient description of offence](#)
[s222\(2\)\(c\) – Appeal to single judge where sole ground that penalty excessive](#)
[Traffic Regulation 1962](#)
[r210](#)
[Transport Operations \(Road Use Management\) Act 1995](#)
[s67 – Obligation to stop at intersection](#)
[s78 – Driving without a licence/driving disqualified](#)
[s79\(1\) – Vehicle offences involving liquor or other drugs](#)
[s79\(1\)\(c\)](#)
[s79\(2A\) – Over no alcohol limit, but not general limit](#)
[s79\(6\)\(a\)\(ii\)](#)
[s80\(2\) – Breath and saliva tests, and analysis and laboratory tests](#)
[s80\(15G\) – Evidence from breath analysing instrument](#)
[s83 - Driving without due care and attention](#)
[s86 – Disqualification of drivers of motor vehicles for certain offences](#)
[s87 – Issue of a restricted licence to a disqualified person](#)
[s106 – Paid parking offences](#)
[s112 – Use of speed detection devices](#)
[s118 – Photographic evidence – inspections and challenges](#)
[s120 – Evidentiary provisions](#)
[s124 – Facilitation of proof](#)
[s124\(1\)\(r\)\(ii\) & \(1\)\(t\) – Facilitation of proof](#)
[s124\(4\)](#)

[s131\(2\) – Appeals with respect to issue of licences etc](#)
[Schedule 4](#)
[Transport Operations \(Road Use Management – Road Rules\) Regulation 1999](#)
[r132\(3\)](#)
[r138\(1\)](#)
[r287\(2\)\(c\)](#)
[Transport Operations \(Road Use Management – Road Rules\) Regulation 2009](#)
[s57\(2\)\(a\)\(i\) – Stopping for a yellow traffic light or arrow](#)
[Transport Operations \(Road Use Management - Vehicle Registration\) Regulation 2010](#)
[s64\(5\) – Use of dealer plates](#)
[Radar detectors](#)
[Rear end collisions](#)
[100% responsibility](#)
[Removing objects from road](#)
[Reversing vehicle](#)
[ARRs](#)
['Rider'](#)
['Riding'](#)
[Right hand rule](#)
[Right-turns](#)
[ARRs](#)
[Right turn signs](#)
[Road](#)
[Definition of](#)
[Road access signs](#)
['Road-related area'](#)
[Road rules](#)
[Breach of](#)
['Road user'](#)
[Roundabouts](#)
[ARRs](#)
[General](#)
[Rubbish collection/recycling](#)
[Safety zone](#)
[Driving past](#)
[Stopping in or near](#)
[Speed limits](#)
[School bus warning sign](#)
[School zone](#)
[Speed limits](#)
[Seat belts](#)

[ARRs](#)
[Child restraints](#)
[Exemptions from wearing](#)
[Judicial notice](#)
[Properly adjusted & fastened \(whether\)](#)
[Securing motor vehicle](#)
[Sentencing for traffic offences](#)
[Antecedents \(relevance of\)](#)
[Assertions from bar table](#)
[Comparative sentences](#)
[‘Mathematical’ approach to sentencing](#)
[Post-offence convictions \(relevance of\)](#)
[Service road](#)
[Shared path](#)
[Riding on](#)
[Shared zone](#)
[Giving way to pedestrians in](#)
[Speed limits in](#)
[Stopping in](#)
[Signage](#)
[Advisory speed limits](#)
[Sleeping/sleepy \(Driving when\)](#)
[At wheel \(did P consent?\)](#)
[Criminal sentencing cases](#)
[Employees who are sleep-deprived](#)
[Intoxicated driver found sleeping in car](#)
[Proof of Whether](#)
[Slip lane](#)
[Slow moving vehicles](#)
[Smoke](#)
[South Australia](#)
[Annotations and/or links to relevant legislation](#)
[Criminal Law](#)
[\(Clamping, Impounding and Forfeiture of Vehicles\) Act 2007](#)
[s9 – Payment of clamping or impounding fees](#)
[s10 - Interpretation](#)
[s12 &13 - Court order for impounding ...](#)
[s13\(1\) - Court may decline to make order in certain circumstances](#)

[Criminal Law](#)
[Consolidation Act](#)
[s19A\(1\) – Causing death by dangerous use of vehicle or vessel](#)
[s19A\(3\) – Causing harm by dangerous use of vehicle or vessel](#)
[s19AB – Leaving accident scene causing death or harm after careless use ...](#)
[s19AC – Dangerous driving to escape police pursuit etc](#)
[s29\(3\) – Acts endangering life or creating risk of serious harm](#)
[s86A – Using motor vehicle without consent](#)
[Criminal Law \(Sentencing\) Act 1988](#)
[s15 – Discharge without penalty](#)
[s16 – Imposition of penalty without conviction](#)
[s32A\(3\) – Mandatory minimum non-parole periods and proportionality](#)
[s39 – Discharge without sentence on D entering into bond](#)
[s70E\(5\) – Suspension of driver’s licence](#)
[Expiation of offences Act 1966](#)
[s6 – Expiation notices](#)
[Motor Vehicles Act 1959](#)
[s5 – Definition of road](#)
[s9 – Driving unregistered](#)
[s47A – Numbers and number plates](#)
[s74\(1\) – Duty to hold licence or learner’s permit](#)
[s74\(2\)](#)
[s74\(5\)](#)
[s74\(6\)](#)
[s80\(1\) – Ability or fitness to hold licence or permit](#)
[s81A\(5\) – Provisional licences](#)
[s81B – Consequences of contravening provisions of learner’s permit etc](#)
[s81BB \(4\)\(a\) & \(b\) – Appeals to Magistrate’s Court](#)
[s81BB\(8\) – Offences by holders of provisional](#)

[and probationary licences](#)
[s82 – Vehicle offences and unsuitability to hold licence or permit](#)
[s91 – Driving disqualified](#)
[s98B\(4\)- Demerit points](#)
[s98D – Certain towtruck drivers required to hold certificates](#)
[s99\(3\)](#)
[s102 – Duty to insure against third party risks](#)
[s125 & s125A\(3\) – Power of insurer to deal with claims & joinder of insurer as D](#)
[s139BD – Service and commencement of notices of disqualification](#)
[s140 - Evidence](#)
[s141 - Evidence](#)
[s148 – Duty of health professionals](#)
[Motor Vehicles Regs 1996 \(repealed\)](#)
[Reg. 22 – Offences re number plates](#)
[Road Traffic Act \(SA\) 1961](#)
[s40H\(5\) – Direction to stop vehicle to enable exercise of other powers](#)
[s42\(1\)\(b\)](#)
[s43 - Duty to stop, give assistance and present to police where person killed or injured](#)
[s43\(3\)](#)
[s45 – Careless driving](#)
[s45\(2\) & \(3\) – Driving without due care \(aggravated\)](#)
[s46 – Reckless and dangerous driving](#)
[s46\(3\)\(b\) – \(whether offence ‘trifling’\)](#)
[s47\(1\)\(a\) – Driving under influence](#)
[s47\(3\)\(a\) – Driving under the influence \(disqualification\)](#)
[s47\(4\) – First or subsequent offence](#)
[s47B – Driving whilst having prescribed concentration...](#)
[s47B\(3\)\(b\) – Whether offence ‘trifling’](#)
[s47E\(3\) – Police may require alcohol test or breath analysis](#)

[s47E\(4\)\(ab\) – Prescribed oral advice](#)
[s47E\(4\)\(b\) – Good cause for refusal or failure to comply with direction](#)
[s47EA – Exercise of random breath testing powers](#)
[s47IAA – Power of police to impose immediate licence disqualification ...](#)
[s47J – Recurrent offenders](#)
[s47K – Evidence](#)
[s47K\(1\) – Breath analysing instrument operated by a person authorised.](#)
[s47K\(2a\)\(a\) – Prescribed oral advice](#)
[s47K\(3\)\(a\) – Authorisation to operate breath analysing instruments](#)
[s47K\(3\)\(b\) – Certification of breath analysing instrument and its use](#)
[s79B\(10\) – Photographic detection devices](#)
[s114 \(repealed\) – Mass and loading requirements \(offences related to\)](#)
[s120 – Meaning of minor, substantial or severe risk breaches](#)
[s123 – Breaches of mass, dimension or load restraint requirements](#)
[s130 – Sanctions \(matters to be taken into consideration by courts\)](#)
[s165 – False statements](#)
[s168 – Orders relating to licences or registration](#)
[s175\(3\) – Evidence re speed detection devices](#)
[s175\(3\)\(b\) – Evidence re speedometer](#)
[s175\(3\)\(ba\) - Evidence](#)
[Summary Procedure Act 1921](#)
[s52 – Limitation on time in which proceedings can be commenced](#)
[s189A\(2\) – Costs payable by D in certain criminal proceedings](#)
[Road Traffic \(Heavy Vehicle Driver Fatigue\) Regulations 2008 \(repealed\)](#)
[Reg 40 – False entry](#)

[Road Traffic \(Mass and Loading Requirements\) Regulations 1999 \(repealed\)](#)
[Sched. 1 clause 4\(1\) – Mass limit for combinations](#)
[Road Traffic \(Miscellaneous\) Regs 1999](#)
[Reg 8A – Conduct of breath analysis](#)
[Reg 9 – Prescribed oral advice on recording of positive breath reading](#)
[Reg 11\(c\) – Procedures for voluntary blood test \(sufficient quantity\)](#)
[Reg 17\(2\)\(a\) – Cameras at intersections with traffic lights \(photographic evidence\)](#)
[Reg 17 \(2\)\(f\)\(i\) – Operation and testing of photographic detection devices](#)
[SCHEDULE 1 – Prescribed oral advice and written notice](#)
[Road Traffic \(Road Rules – Ancillary and Miscellaneous Provisions\) Regs 1999](#)
[Speed](#)
[Below speed limit \(travelling\)](#)
[Estimating](#)
[Proof of](#)
[State of speedometer post-accident](#)
[Speeding](#)
[Australian Road Rules](#)
[Corporate offenders](#)
[Mistake of law](#)
[Speed limits](#)
[Speed detection devices](#)
[Articles](#)
[Authorisation to use](#)
[Challenges to](#)
[Common law considerations](#)
[Delegation](#)
[Evidentiary discrepancies](#)
[Not lawfully approved or lack of evidence of such](#)
[Positioning of](#)
[Where multiple vehicles/marksmanship](#)

[Speed limit sign](#)
[Application of](#)
[Default](#)
[Legally effective \(whether\)](#)
[No sign](#)
[Temporary](#)
[Speedometer](#)
[Steering/Steeringwheel](#)
[Interference with](#)
[Stopped vehicles](#)
[Lighting of](#)
[Stopping](#)
[After accident \(failure to stop\)](#)
[Crest or curve \(outside built-up area\)](#)
[Emergency](#)
[In compliance with road rule](#)
[Intersection \(in or near\)](#)
[No stopping sign](#)
[Paths or strips \(on\)](#)
[Restricted places](#)
[Yellow edge line \(road with\)](#)
[Stop lines/signs](#)
[ARRs](#)
[General](#)
[Street racing](#)
[Talking while driving](#)
[Tasmania](#)
[Annotations and/or links to relevant legislation](#)
[Criminal Code](#)
[s167A – Causing death by dangerous driving](#)
[s167B – Causing grievous harm by dangerous driving](#)
[Monetary Penalties Enforcement Act 2005](#)
[s56\(2A\) – Registrar to suspend driver licence](#)
[Road Safety \(Alcohol and Drugs\) Act 1970](#)
[s2\(4\) – Meaning of ‘driving’](#)
[s4 – Driving while under influence ...](#)
[s6\(1\) – Driving while excessive concentration](#)
[...](#)
[s8\(1\) – Liability for breath test as a result of conduct](#)
[s8\(3\) – Liability for breath test where reasonable belief that vehicle involved in accident](#)

[s10\(4A\) – Right to elect to have blood sample taken](#)
[s10\(4B\) – Enforcement of obligations](#)
[s10\(6\)\(c\)](#)
[s10A\(2\)](#)
[s11\(3\) – Rights and obligations on completion of breath analysis](#)
[s13 – Duties of medical practitioners and nurses re taking of blood samples](#)
[s13B – Analysis of blood and urine samples by approved analyst](#)
[s14\(1A\) – Offences under Div. 2](#)
[s14\(2\) – Failing to submit to breath analysis](#)
[s17 – Penalties for drink driving](#)
[s17\(5\)](#)
[s18B\(6\) – Immediate disqualification](#)
[s19A\(1\) – Driving disqualified](#)
[s23\(1\) & \(4\) – Statutory presumptions](#)
[s23\(4\)](#)
[s23A – Statutory presumptions re prescribed illicit drugs](#)
[s27 – Certificates in relation to taking of blood or urine samples](#)
[s28 – Certificates of analysis of blood or urine samples](#)
[s29 – Limitation on tendering of certificates](#)
...

Traffic Act 1925

[s32\(1\)\(a\) – Reckless driving](#)
[s32\(2A\) – Reckless driving](#)
[s54 – Proceedings in relation to certain offences](#)

Vehicle & Traffic Act 1999

[s8 – Requirement to hold a driver's licence](#)
[s9 – Driving while subject to licence suspension](#)
[s13\(1\) – Driving while disqualified](#)
[s18 – Restricted driver licences](#)
[s27 – Requirements for registration](#)

Traffic (Road Rules)

Regs 1999

Vehicle and Traffic

(Driver Licensing and Vehicle Registration)

Regulations 2010

[r19 – Issue of driver licence – eligibility](#)
[r33\(2\)\(a\) – Variation, suspension, cancellation](#)
...

Vehicle and Traffic

(Offence Detection

Devices) Regulations 2002

Wrongs Act 1954

[s3\(6\) – Proceedings against and contribution](#)
...

Taxis

Taxi zone

[Stopping in](#)

Television/visual display units in/on vehicles

T-junction/intersection

Totality

Towing

'Towtruck'

Trade Plates

Traffic control devices

Traffic island

Traffic lane arrows

Traffic Lights

[Give way rules](#)
[Not operating](#)
[Red light \(accidents when entering against\)](#)
[Stopping at](#)
[Twin red lights](#)
[U-turns](#)
[Yellow/amber](#)

Traffic regs/laws

Trailers

[Detaching](#)

Trains

Trams

[Driving past rear of stopped tram](#)
[Giving way to pedestrians crossing road near](#)
[Keeping clear of trams travelling in tram lanes](#)
[Passing](#)
[Pedestrian crossing road to or from](#)
[Special traffic light signals](#)

[Stopping on tram tracks.](#)

Tram lanes

Tram stop

[Stopping at or near](#)

Transit lanes

Travelling in or on vehicle inappropriately

Travelling too close

[Cyclists](#)

[To vehicle in front](#)

'Trifling' offence

Truck lanes

Trucks

[No trucks sign](#)

[Uneven loads](#)

Trucks must enter signs

Truck zone

[Stopping in](#)

Tunnel

[Stopping in](#)

Tyres

[Blow out](#)

[Expert evidence](#)

[Judicial notice](#)

[Roadworthiness](#)

Under the influence of alcohol (whether)

Unlicensed drivers

Unmanned vehicles

Unregistered &/or

Unlicensed drivers

[Generally](#)

Unwilled act

'Use or operation of motor vehicle'

Utilities

U-turns

[ARRs](#)

[Illegal](#)

[Inadvertance](#)

'Vehicle'

[Weight of \(destabilising\)](#)

Visibility

[Driving when none](#)

Warning devices

[ARRs](#)

Warning lights

Warning triangles

Western Australia

[Annotations and/or links to relevant legislation](#)

Criminal Code Act 1913

[s32 - Duress](#)

[s304 – Unlawful endangerment](#)

Road Traffic Act 1974

[Multiple offences](#)

[s15\(3\) – Vehicle licence, when required; offence](#)
[s49\(1\) – Driving while unlicensed or disqualified](#)
[s49\(3\)](#)
[s49\(8\)](#)
[s50 – Consequences of breaching a condition](#)
[s51 – Provisional driver’s licences](#)
[s54 – Bodily harm: duty to stop and give information and assistance](#)
[s59 – Dangerous driving causing death, injury etc](#)
[s59\(2\)\(b\)](#)
[s59\(3\)](#)
[s59A\(1\)\(a\) – Dangerous driving causing bodily harm](#)
[s59A\(1\)\(b\) – Driving in a ‘dangerous’ manner](#)
[s59B – Ancillary matters and defence](#)
[s60 – Reckless driving](#)
[s63\(1\) – Driving under the influence of alcohol etc](#)
[s64AB – Driving while impaired by drugs](#)
[s64AC – Driving with prescribed illicit drug in oral fluid or blood](#)
[s66 – Requirement to submit sample of breath or blood](#)

[s67A – Failure to comply with other requirements made by member of Police Force](#)
[s68\(9\) & \(10\) – Statement in writing of analysis result](#)
[s71 – Determination of blood alcohol content at material time](#)
[s76 – Extraordinary licences](#)
[s98 – Proof of certain matters](#)
[s98A – Certain measuring equipment](#)
[s104J\(4\) – Election to avoid disqualification](#)
[s106A – Mandatory disqualification](#)

Road Traffic (Animal Drawn Vehicles) Regulations 2002

Road Traffic (Authorisation to Drive) Regulations 2008

Road Traffic (Bicycles) Regulations 2002

Road Traffic (Vehicle Standards) Regulations 2002

[r62 – Police inspection powers](#)
Road Traffic Code 2000
[r3 – Meaning of ‘heavy vehicle’, ‘heavy vehicle speed zone’ and ‘heavy vehicle speed zone sign’](#)
[r11\(6\) – Speeding in school zone](#)
[r14 – Speed in heavy vehicle speed zone](#)
[r32\(2\) – U turns generally](#)
[r40\(1\) – Stopping for red signal](#)
[r232\(1\) – Driver to wear seat belt](#)
[r232\(2\)\(c\) – Defences re failing to wear seatbelt](#)
[r272 – Obedience to police or authorised persons](#)
[r297 - Power to erect traffic-control signals and road signs](#)

Wheelchairs

[Driving on path](#)

Wheeled recreational devices

Wheeled toys

Works zone

[Stopping in](#)

Yellow edge line

[Road with](#)

Young traffic offenders

Presentation note

Throughout this publication you will notice **a lot of material is in bold type**, including in quotations. Please be aware that we have not adopted the usual practice of stating 'my/our emphasis' due to the sheer volume of such bolding. Instead we have indicated when it is not my/our emphasis by stating 'Court's emphasis'.

The material in green font comprises direct quotations.

Queensland

Please note that all Qld Supreme and District Court references **from August 2008** to relevant criminal legislation regarding traffic law issues will be briefly noted here.

Annotations and/or links to relevant legislation

The full and up-to-date text of Qld Acts and Regulations can be found at -
<http://www.legislation.qld.gov.au/OQPChome.htm>

Civil Liability Act 2003

Stickley A, 'Apportionment under the Civil Liability Act' (2008) 28(6) Queensland Lawyer 292

See Civil Liability Acts of other states/territories for cases on comparable provisions. These are indexed in this book under each state/territory heading e.g. 'New South Wales'.

s45 – Criminals not to be awarded damages

In *Corliss v Gibbings-Johns* 31/8/10 [2010] QCA 233 the COA considered this section in circumstances where **R wilfully damaged the window of A's hotel** and where A responded by throwing glass at R causing him injury. There was about 9 seconds between R breaking the window and A throwing the glass. R's conduct not considered sufficient to entitle A to rely on s45. Applegarth J stated: "It is sufficient to conclude that if [s 45](#) can apply in a claim for assault and if the conduct that is relied upon as an indictable offence is the wilful damage caused to the window, then the breach of duty from which civil liability would arise, apart from [s 45](#), did not happen while the [R] was engaged in that conduct. It occurred afterwards ... In addition, had the [A] attempted to rely upon [s 45\(1\)](#) then the [R] would have sought to satisfy the Court that in the circumstances of the case, subsection 45(1) 'would operate harshly and unjustly'" @47.

Criminal Code 1899

s24 – Mistake of fact

See *R v Wilson* 5/11/08 [2008] QCA 349 [(2008) 51 MVR 344] where COA discussed the **direction to the jury re fault and the issue of mistake of fact in circumstances where the D pulled out to overtake believing the road ahead was clear and that it was safe to overtake**. Section 24 of Criminal Code considered. Appeal re conviction was successful. McMurdo P nevertheless also made comment on the sentence of 4 years with parole being after 18 months being excessive stating at paragraph 26 that "**comparable decisions of this Court ... do not support a sentence higher than about three years imprisonment for an offence of this kind, involving a serious error of judgment over a short period by someone with a concerning traffic history but without prior convictions and without the exacerbating factor of intoxication**".

See *Cook v Commissioner of Police* 5/5/12 [2012] QCA 118 [60 MVR 436] where the A was convicted of **driving without a licence because of disqualification due to accrual of demerit points**. Demerit points were allocated automatically on the day offences were committed. "The only mistakes adverted to by the applicant at first instance were a general belief that his licence was not suspended, because he did not appreciate that he had

accrued sufficient demerit points for that to occur, and a more specific notion that renewal of his licence meant that his demerit points would be expunged ... **The notion that renewal of a licence meant the removal of accrued demerit points was, on any view, a mistake of law.** The applicant's failure to appreciate that his demerit points had reached a point at which his licence could be suspended falls short of a positive mistake. In any event, it turns on a lack of understanding of the legal consequences of the successive offences, of which he was aware, in resulting in an accumulation of points beyond the permitted limit" @18. No mistake of fact. Leave to appeal refused.

s317 – Acts intended to cause grievous bodily harm etc

The nature and requirements of this offence and the appropriate sentence in the case of a D with priors and on bail discussed by Court of Appeal in *R v Saebar* 16/12/08 [\[2008\] QCA 407](#).

s328A(3) – Dangerous operation of a vehicle

In *R v Pearce* 7/12/10 [\[2010\] QCA 338](#) [57 MVR 75] the A failed in his appeal from his conviction for one count of dangerous driving and his sentence of **18 months imprisonment with a parole release date of nine months**. The A out of animosity had **harassed and threatened to kill a scooter rider with his car and then followed him on to the kerb and rammed him three or four times**. The A was 50 y.o., did not make appropriate guilty plea and had prior traffic offences, but none were particularly relevant. Comparable cases considered.

In *R v Forsythe* 15/4/11 [\[2011\] QCA 71](#) the COA upheld a sentence of two years imprisonment with immediate parole and license disqualification for three years where A **deliberately, but spontaneously drove onto the footpath to hit the complainant causing him minor injuries**. A was 35 at the time of the offence and 36 at sentencing. He pleaded guilty. The trial judge paid little regard to A's criminal record. A had a five year old in the car and held ill-feeling towards the victim believing he had split up his family. A attended to the injured complainant.

In *R v Hawdon* 2/9/11 [\[2011\] QCA 219](#) D's concurrent sentence of **two years imprisonment** (concurrent with sentence of six years for burglary) for **dangerous driving while being chased by police** was confirmed. He reached **speeds of 180 kph whilst driving on the wrong side** of the road. D is 35, has apparently never held a driver's licence and has an extensive criminal history for various offences including traffic offences. D was described as a 'career criminal'.

s328A(4) – Dangerous operation of a vehicle causing grievous bodily harm

See *R v Wakefield* 5/9/08 [\[2008\] QCA 269](#) re **sentencing for dangerous driving causing grievous bodily harm**. D's sentence of 3 years imprisonment with parole release date to be fixed after 15 months confirmed.

See *R v Wakefield* 5/9/08 [\[2008\] QCA 269](#) re **sentencing for dangerous driving causing grievous bodily harm**. D's sentence of 3 years imprisonment with parole release date to be fixed after 15 months confirmed.

In *R v Towers* 12/6/09 [\[2009\] QCA 159](#) [52 MVR 438] COA allowed appeal against sentence in the case of a 35 y.o. D convicted of **dangerous operation of a vehicle causing grievous bodily harm**. D **spontaneously and recklessly turned across a double white line (disobeying a sign on a major road) into the path of a motorcyclist** knocking the rider off. D stopped to help and cooperated with the police. He had a substantial criminal history and traffic history and was sentenced to 18 months imprisonment with parole after six months. D disqualified from driving absolutely. **Many analogous cases compared.**

In *R v Iaria* 9/12/08 [\[2008\] QCA 396](#) the applicant [A] unsuccessfully challenged his sentence of two years imprisonment suspended after three months and 18 month licence disqualification for **recklessly intercepting with his van some youths who were riding trail bikes** on grounds he was taking care of. One youth came off his bike when A tried to intercept him and suffered a broken arm, lacerations and bruises. A had previous drink driving offences, but alcohol was not involved on this occasion. Some cases where a short period of custody imposed for **dangerous driving causing grievous bodily harm compared at paragraph 12.**

In *R v TX* 15/4/11 [\[2011\] QCA 68](#) a **16 year old's conviction was set aside.** "The offences occurred after the [A] took his mother's car, without her permission, and picked up three young girls (one at least of whom was previously known to him). He drove at times at speed, and on a number of occasions in a way described as doing 'burnouts', ultimately losing control of the vehicle and crashing into a power pole" @8. One of the passengers suffered a leg injury and A fled the scene, possibly due to intoxication. A had no priors.

In *R v Johnson* 21/4/11 [\[2011\] QCA 78](#) A "was sentenced [by the trial judge] on his plea of guilty to a charge of **dangerously operating a motor vehicle, causing grievous bodily harm to two persons, at a time when he was intoxicated.** He was sentenced to a term of imprisonment of five years, suspended after 18 months for an operational period of five years, and was disqualified from holding a driver's licence for a period of two years ... At the same time, he was sentenced on his plea of guilty to a charge of driving a motor vehicle whilst his blood alcohol reading was over the general alcohol limit, but not over the high alcohol limit. For this offence he was sentenced to a term of imprisonment of six months" @3-4. **A was almost 18** at the time of the offences. One passenger suffered an 'extremely severe' brain injury. "A few weeks before these offences, the [A] had driven a motor vehicle when he had a blood alcohol concentration of 0.07 per cent (for which he was subsequently fined \$300). **He was on bail** for this offence at the time of the present offences" @17. Various **comparable cases were reviewed.** A's 5 year suspended sentence varied to "a sentence of four years imprisonment, suspended after 12 months to reflect in particular the [A's] youth, his personal circumstances, his co-operation including his plea of guilty, and his efforts at rehabilitation prior to sentence" @42.

In *R v Grimaldi* 3/6/11 [\[2011\] QCA 114](#) the D breached s328A(4) causing grievous bodily harm to his passenger when he was speeding in wet conditions and lost control of his vehicle hitting a telegraph pole and ending up in someone's yard. The **circumstance of aggravation was his intoxication of 0.125%.** D sentenced to **three years imprisonment suspended after 15 months. D disqualified from driving for five years.**

In *R v Tresize* 24/6/11 [\[2011\] QCA 139](#) the COA refused A's appeal against his sentence of **five years imprisonment with parole after 18 months and five years disqualification for this aggravated offence.** A had a blood alcohol concentration of 0.190 per cent and 12mg/kg of the active ingredient of cannabis in his blood. The A, who was 33 y.o. had a serious traffic history, but pleaded guilty. "The learned sentencing judge described the case as 'a **very serious example of this type of offence,** because ... [A] drove at high speed, ... recklessly accelerated and decelerated the vehicle, ... deliberately drove on the incorrect side of the road, it was a protracted driving event over more than seven kilometres, ... had a high blood-alcohol concentration and ... had illicit drugs in ... [his] system'" @26.

In *R v You* 11/10/11 [\[2011\] QCA 279](#) the COA upheld D's sentence of **four years imprisonment (suspended after 12 months) for dangerous driving causing grievous bodily harm aggravated by his intoxication (0.171%).** Two passengers were seriously injured when D failed to negotiate a roundabout. D was travelling too fast in the circumstances. D's concurrent sentence of three months for driving under the influence and

his 4 year licence disqualification also upheld. D was 26 with seven speeding convictions since 2004 including one committed while on bail for the current offences.

In *R v Grabovica* 29/6/12 [\[2012\] QCA 180](#) [61 MVR 318] the A's sentence of five years imprisonment with parole after 20 months and absolute licence disqualification confirmed. A **attempted to evade police near a school zone**. A went onto the wrong side of the road, travelled over 110 kph and collided with another vehicle causing **serious injury to four people**, two of whom suffered extremely severe injuries. A was **17** and already had a few speeding offences. At the time of offending his licence was disqualified. A pleaded guilty. Comparable cases considered.

In *R v Allison* 18/9/12 [\[2012\] QSC 249](#) the D, who was 20 at the time, **attempted to run into a person**. D was acting under serious provocation and he pleaded guilty, but his sentence of 12 months imprisonment with an immediate parole release date and a compensation order of \$6,400 (for damaging another's car) confirmed.

s328A(4) – Dangerous operation of a vehicle ... causing death

See also [Manslaughter \(motor\)](#)

See *R v Bains* 22/8/08 [\[2008\] QCA 247](#) and *R v Blanch* 29/8/08 [\[2008\] QCA 253](#) re sentencing for **causing death by dangerous driving while adversely affected by an intoxicating substance**.

In *R v Hodges; ex parte A-G (Qld)* 27/10/08 [\[2008\] QCA 335](#) the COA upheld R's sentence for **dangerous operation of a motor vehicle when adversely affected by alcohol causing death of four and a half years imprisonment, suspended after 18 months for an operational period of five years and a five year license disqualification**. R had no criminal history and a one traffic offence for disobeying a red light 11 years previously. Comparable sentences canvassed. **Sentence at lower end of range**, but not so low to justify appellate intervention.

See *Rv Hijazi* 29/8/08 [\[2008\] QCA 254](#) re **sentencing for causing death by dangerous driving when D deliberately drove vehicle at deceased**.

In *R v Ross* 10/2/09 [\[2009\] QCA 7](#) a 25y.o. D was sentenced to **8 years imprisonment**. No parole recommendation was made. Such was to be left to parole board. D, over a distance of about 1km in a residential area, did burnouts and travelled **130kph in a 70kph zone**. His **blood/alcohol reading was 0.163** and some cannabis was detected too. His car hit a tree **killing his two infants**. His defacto partner was also in the car. D **fled the scene**. His **licence was suspended at the time** and he had **several prior drink-driving and driving unlicensed offences**.

See *R v Barrett* 12/3/09 [\[2009\] QDC 22](#) where M W Forde DCJ imposed a sentence of 18 months imprisonment suspended after three months with an operational period of two years in a case where the D pleaded guilty to the offence of dangerous operation of a motor vehicle **causing death. D was sleep deprived and veered onto the incorrect side of the road** thus causing the collision. Such behaviour **not considered to be momentary inattention**. D was 19 with limited antecedents and good character references.

“On 23 December 2008 the [A, a 48y.o.] was convicted on his plea of guilty of an offence against [s 328A](#) of the [Criminal Code 1899](#) (Qld) of **dangerous operation of a motor vehicle causing death, with the circumstances of aggravation** that the [A] was adversely affected by an intoxicating substance and had twice previously been convicted of the prescribed offences of driving under the influence of liquor or drugs and dangerous operation of a motor vehicle. The [A] was sentenced to seven years imprisonment, that sentence to run concurrently with sentences that the [A] was already serving. The sentencing judge fixed

the [A's] parole eligibility date as 23 April 2011, which was two years and four months after the date of sentence. ... [A] was disqualified from holding or obtaining a driver's licence absolutely. He was convicted but not further punished for the summary offences of disqualified driving and driving whilst under the influence of liquor or a drug." A's Father was killed and he was injured as a result of his illegal driving. Sentencing judges decision confirmed in *R v Hallett* 21/4/09 [\[2009\] QCA 96](#) [52 MVR 564] by COA.

In *R v Murphy* 21/4/09 [\[2009\] QCA 93](#) the COA upheld a sentence of three and a half years imprisonment, suspended after 12 months, in the case of a 21y.o. learner (A) who drove at 90kph (the speed limit), but without his L-plates and without a licensed driver next to him. A's speed was excessive in the circumstances and after drifting out of his lane on a corner he oversteered in the process of correction and hit oncoming traffic **killing 2 people and seriously maiming another.**

In *R v Ruka* 5/5/09 [\[2009\] QCA 113](#) [(2009) 53 MVR 304] a **37y.o. who was overtired after the tenth consecutive day of working a 12 hour shift fell asleep at the wheel** and drifted onto the wrong side of the road hitting an oncoming vehicle killing the driver. The A had no criminal history and only a few speeding offences. The COA upheld the sentence of 2 years imprisonment with parole after six months and six months licence suspension for breaching s328A. Various similar authorities were discussed.

In *R v Damrow* 28/8/09 [\[2009\] QCA 245](#) the COA upheld the trial judge's sentence of **18 months imprisonment suspended after 8 months with a 2 year licence disqualification** in the case of an **18 y.o.** (20 at sentencing) who **drove through an intersection killing a passenger** in her car after colliding with a truck. D was driving unlicensed and had 'tunnel vision' (i.e. D was **not keeping a proper lookout** in an area she was unfamiliar with), but there were no other aggravating factors and D was of good character. There was, however, no stop sign in place and the stop line was faded. Court satisfied, however, there were sufficient other indicators of the D's need to stop at the intersection. It was not a case of momentary inattention and not a rare case which justified the sentence being wholly suspended.

In *R v Blackaby* 16/4/10 [\[2010\] QCA 84](#) the indigenous applicant sought leave to appeal her head sentence of **seven years with an 18 month non-parole period** when she drove with an alcohol **reading of 0.227** causing the death of a friend. A's family and relationship history had been extremely traumatic contributing to her unfortunate lifestyle of drugs and alcohol and multiple traffic offending. Leave to appeal refused after the consideration of various comparable cases.

In *R v Hopper* 21/10/11 [\[2011\] QCA 296](#) [59 MVR 471] the A's sentence of **eight years imprisonment with parole after three years** was not considered excessive, despite A's guilty plea and his age. **A was only 21** when sentenced but he had a poor traffic history and caused the death of one of his passengers through driving dangerously at high speed whilst heavily intoxicated (0.144%) and whilst continuing to drink as he was driving. A friend's offer to drive was refused by A and he had been asked more than once to slow down. A was **driving in breach of a court order** that he was not to drive between 11pm and 5am. Various cases compared.

In *R v Maher* 10/2/12 [\[2012\] QCA 7](#) appeal against sentence was dismissed. The A was "44 at the time the offence was committed and 46 at sentence. He had limited criminal and traffic histories ... **Neither alcohol nor speed were involved in the collision which occurred at night in a well-lit street in the course of the [A] undertaking a right-hand turn into the path of an oncoming motorcycle ridden by the deceased**" @6. White JA stated that "[i]t was for that characterisation of culpability – a **prolonged period of inattention likely brought about by fatigue** – that his Honour concluded that the appropriate sentence was

not one of 18 months which would have been the case on the basis of momentary inattention but three to four years imprisonment. His Honour referred to the applicant's favourable circumstances of a hard working man who was a good provider for his family; that imprisonment would in effect punish other members of the family who would be deprived of his support; that he himself had suffered significantly (emotionally) since the accident; his remorse; the plea of guilty; and the significant delay in having the case brought to court. His Honour observed that the delay allowed the [A] to demonstrate his usefulness to the community and to his family and that he was unlikely to re-offend. Advantageously for the [A] his Honour did not regard his traffic and criminal histories as relevant to sentence" @27. Sentence of **three years imprisonment, suspended after nine months and four years disqualification** confirmed.

In *R v Allen* 25/9/12 [\[2012\] QCA 259](#) the A was 24 in 2009 when he **inexplicably thought he had a green arrow and turned across the path of a motorcyclist**, killing the rider. He had first stopped at the lights prior to turning. The A was sentenced at trial to **18 months imprisonment with a release date on parole after nine months**, and two and a half years licence disqualification. He did not plead guilty and had prior traffic offences (speeding and DUI), but no criminal history. There were no aggravating factors. Appeal dismissed.

In *R v Henderson; Ex parte Attorney-General* 28/3/13 [\[2013\] QCA 63](#) an appeal against sentence was allowed. **As a result of D's aggressive and dangerous driving whilst he was on bail he killed three people in one vehicle and caused grievous bodily harm to another.** Prior to the collision, he had deliberately used his vehicle as a weapon against another vehicle and ran two red lights whilst aggressively chasing the vehicle he had previously rammed. D also fled the scene. D was not affected by alcohol. His plea of guilty was timely but not early. D's traffic history was appalling. He was 33 in 2011 when the offending occurred. D was also sentenced for an assault which had occurred a year before. He was sentenced to **10 years imprisonment** for the driving offence which was declared a 'serious violent offence'.

See *R v Hopper; Ex Parte AttorneyGeneral (Qld)* 16/5/14 [\[2014\] QCA 108](#) where the full suspension of R's two and a half year sentence for **causing death and grievous bodily harm** was overturned. **R was 17** and on a provisional licence when she committed this driving offence due to **checking a map on her mobile phone whilst driving**. R caught doing a similar thing months after the accident. Personal and general deterrence should have been given more importance. Appeal allowed. R to serve five months in prison.

See *R v Nikora* 12/8/14 [\[2014\] QCA 192](#) involving an application for leave to appeal against sentence for an offence in 2013 when A was nearly 19. "That sentence was in respect of a conviction recorded ... [after A's] plea of guilty. The charge was that, contrary to s 328A(4) ... the applicant dangerously operated a vehicle **causing the death of two persons**, and that at the time the applicant was: adversely affected by an intoxicating substance, namely alcohol, with a concentration of alcohol in his blood **exceeding 150 mg of alcohol per 100 ml of blood**; and **excessively speeding**. ... [A] sentenced to seven years imprisonment, with parole eligibility after two and a half years" @1. Appeal dismissed. Morrison JA, with whom other judges agreed, stated "this is an occasion where the strong need for deterrence outweighs the aspects of youth and prospects of rehabilitation. This was a very serious example of dangerous driving causing two deaths. The applicant **drove dangerously at speeds more than twice the speed limit, through a residential area, whilst significantly intoxicated as revealed by the blood alcohol concentration of 0.171 per cent**. His driving included the failure to negotiate a roundabout, travelling on the wrong side of the road and across another intersection, and then crashing through the front yards of at least two houses. The **driving was prolonged, involving excessive speed for over 15 minutes prior to the collision**, and in circumstances where the applicant was only too well aware of his highly intoxicated state, having admitted himself some hours earlier that he was too

intoxicated to even write his own contact details. That places this particular case towards the upper end of such offences" @76. A's early plea and good driving history adequately considered.

In *R v Boubaris* 22/8/14 [2014] QCA 199 "The applicant pleaded guilty to one count of dangerous operation of a motor vehicle causing death. ... The applicant was sentenced on 19 June 2014 to **18 months imprisonment, to be suspended after serving a period of three months**, for an operational period of 30 months. In addition, the applicant was disqualified from holding or obtaining a driver's licence for a period of 18 months, from 19 June 2014" @3. The **A drove off the road in good weather conditions due to brief inattention**. His truck rolled, killing his passenger friend. A had several prior driving-related offences and offences of other types and was 29 at date of sentence. A had 0.54 milligrams per kilogram of methylamphetamine in his system, although this was not an aggravating factor and it did not impact upon his driving.

See *R v Huxtable* 3/10/14 [2014] QCA 249 where **A killed one and seriously injured another when he ran into their vehicle with his truck**. Appeal against five year imprisonment suspended after 15 months allowed. The A's "dangerous driving was more than momentary but it was not as serious as those cases where the dangerous driving involved alcohol or drugs, speed, fatigue or a lengthy period of reckless driving. It was, however, an **aggravating feature that the applicant was a professional driver of a large truck** with the commensurate heavy responsibility to take proper care and to keep a careful lookout for other more vulnerable road users. His criminal conduct was reprehensible. ... [H]e should have seen Ms Calder's Commodore turning almost seven seconds before impact. He did not brake until about three seconds before impact and did not steer around the Commodore. His **inattention was more than momentary but it could not be described as prolonged**. ... [H]ead sentence of **three and a half years imprisonment** ... The many mitigating features, including the applicant's plea of guilty, cooperation with the authorities, genuine remorse, good work history including three and a half years military service, his present ill health and sound rehabilitative prospects, warrant suspension after about one-third of the sentence. I would **suspend the sentence after 14 months, with an operational period of three and a half years.**" @27-28.

[CAN] "[25] In this court the main complaint made by the application was that the sentencing judge did not make a parole eligibility date to recognise the factors going in mitigation of penalty particularly his plea of guilty and his mental impairment which would make his time in custody more difficult.

[26] What the sentencing judge did in this case was to ameliorate the sentences imposed on the application not by making a parole eligibility date under [s 160C\(5\) of the Penalties and Sentences Act 1992](#) (Qld), as is commonly done, but by making the sentences concurrent rather than cumulative as he could have done under [s 156\(1\) of the Penalties and Sentences Act](#).

[27] As the Court held in *R v Wilde; ex parte A-G*[1] with regard to occasions on which the imposition of cumulative sentences is warranted:

'These were discrete instances of serious offending, separated in time and nature, therefore warranting penalties imposed successively. Where cumulative treatment is appropriate, then absent any so-called "crushing" effect, there should not be any...substantial reduction...'

[28] This was a very real benefit given the difficulties that might be faced by the [A] in being granted parole even if he were to be given a parole eligibility date and also given that a cumulative sentence may well have been imposed particularly as he was **on bail on dangerous driving whilst intoxicated when, while again intoxicated, he caused the death of another through his dangerous driving**.

[29] The authorities referred to by ... provide ample support for the sentence imposed.

[30] In *R v Conquest*[2] McPherson JA and Thomas J discussed the aspects which are to be considered in arriving at sentence in these types of matters:

'The factors that would take a sentence further towards the maximum level would include the seriousness of the driving, callousness or attitude that falls in the murky area between recklessness and deliberate harm, the period for which the dangerous driving was sustained, the seriousness of the consequences to the victims, the seriousness of the offender's criminal record (with particular emphasis upon his driving history and his attitude to fellow citizens), and whether the offender has little prospect of rehabilitation.'

[31] In *R v McKinnon*^[3] a plea of guilty was entered to the offence of dangerous driving causing death whilst adversely affected with a blood alcohol concentration of 0.219 per cent. In *McKinnon* the [A] fell asleep at the wheel, ran into a parked car and killed the occupant of the parked car. He pleaded guilty and was extremely remorseful. A sentence of six years imprisonment with a recommendation that he be considered eligible for parole after two-and-a-half years was not disturbed on appeal.

[32] *R v Lennon*^[4] also involved a case attracting the 14 year maximum. The applicant's blood alcohol concentration was 0.275 per cent. The [A] in that matter caused [gbh] to the victim and did not cause the death of anyone. The [A] had been warned not to drive and was warned by another driver that he had travelled onto the wrong side of the road. The dangerous driving was held to be the result of excessive intoxication and not deliberately dangerous. The offence was out of character and the [A] had no criminal convictions. An early plea of guilty had been entered and the [A] was remorseful. A sentence of eight years imprisonment with parole after three-and-a-half years was reduced on appeal to a sentence of six years imprisonment. No recommendation for parole was made.

[33] The case of *R v Wilde; ex parte Attorney-General*^[5] involved an example of dangerous driving with aspects of reckless inattention, or criminally negligent or careless driving. The maximum sentence available in that case for the offence of dangerous driving causing death was seven years. Because the [R] left the scene, she could not be tested for any intoxicating substance. ... [T]he Court considered that a sentence of six years imprisonment was an appropriate sentence.^[6] The [R] ... was on bail for other offences when she committed the offence of dangerous driving. The Court regarded the callous flight of the [R] as an aggravating feature. That case however, did not involve the higher maximum sentence of fourteen years applicable in the present case.

[34] This court has recognised that the decision in *Wilde* suggested a 'marked upward trend in the penalties to be imposed in these cases'.^[7]

[35] In the matter of *R v Dingle*^[8] the [A] was convicted after a trial of an offence of dangerous driving causing death whilst adversely affected by alcohol; the level of alcohol was 0.19 per cent and the offence attracted a maximum sentence of 14 years. A sentence of six years was imposed and was not disturbed on appeal. The circumstances of the driving could be regarded as less serious than the present case. That case involved the [A] failing to keep a proper lookout and being incapable of reacting to an emergency. The [A] collided with and killed a cyclist.

[36] As was submitted by the [R] **a sentence of two to three years imprisonment for the dangerous driving whilst intoxicated would have been within range, as would a cumulative sentence of seven years for the offence of dangerous driving causing death.** Making the two sentences concurrent gave adequate discount for the plea of guilty in the unusual circumstances of this case whereas protection of the community is of more than ordinary importance." **R v CAN** 20/3/09 [\[2009\] QCA 59](#) Atkinson J (Full Court)

s575 – Offences involving circumstances of aggravation

See *R v Stevens* 2/5/13 [\[2013\] QDC 102](#) where Rackemann DCJ considered the meaning of 'circumstances of aggravation' in s575 and decided that the offence of dangerous driving simpliciter should be left to the jury as an alternative to the offence charged of dangerous driving causing death.

Justices Act 1886

s47 – What is sufficient description of offence

See *Wylie v Rich* 12/11/10 [\[2010\] QDC 433](#) and *Payard v Lawn* 12/11/10 [\[2010\] QDC 434](#) per Baulch SC DCJ

s222(2)(c) – Appeal to single judge where sole ground that penalty excessive

See *Berner v MacGregor* 1/3/13 [\[2013\] QDC 33](#) where Dorney SC DCJ considered this provision in a case where the A had been sentenced for driving disqualified after he made guilty plea. Appeal dismissed even though appeal judge would have given less severe sentence. Correct principles applied appropriately.

Traffic Regulation 1962

r210

In *Hamilton v Bennett* 3/3/11 [\[2011\] QDC 16](#) McGill DCJ considered the issue of **whether a camera had been positioned correctly**.

Transport Operations (Road Use Management) Act 1995

s67 – Obligation to stop at intersection

See [Stop lines/signs - General](#)

s78 – Driving without a licence/driving disqualified

See *Sebille v Dempsey* 18/3/09 [\[2009\] QDC 58](#) where Judge Robin Q.C. reviewed the sentence for offences against s78(1) & s79(1) in the case of a man with a **terrible record of similar offending**.

See *Lythgoe v Queensland Police Service* 6/5/09 [\[2009\] QDC 108](#) which also involved sentencing for driving without a licence and while disqualified from obtaining one in the case of a 21y.o. with a **terrible history** of traffic offences (including similar offences) and other offences. A was also **on probation** at the time of commission of the offence. Dodds DCJ upheld the magistrate's sentence of one month imprisonment followed by two years probation and licence disqualification (which was the minimum sentence). A was employed and supported his family.

In *Dempsey v Queensland Police Service* 23/7/09 [\[2009\] QDC 218](#) D was convicted of **2 counts of driving disqualified** under s78. No alcohol or drugs were involved and no one was put at risk of injury, but D had **eight prior convictions for driving disqualified and two for driving unlicensed**. Extenuating circumstances included D being a **young father with dependants** and the absence of traffic convictions for three years. Everson DCJ on appeal amended the sentence which had been imposed to **12 months imprisonment on each count to be served concurrently with a parole release date after four months and two years licence suspension for each count to be served concurrently**. The magistrate had failed to consider D's plea.

See *R v Hannigan* 3/3/09 [\[2009\] QCA 40](#) where the A "was charged on indictment with dangerously operating a motor vehicle ... on 8 April 2008 at a time when he was **adversely affected by an intoxicating substance**. ... [H]e pleaded guilty to that charge and also to a **number of summary offences all committed on the same day** ... They were: Driving under the influence of liquor; Driving when he was not the holder of a driver's licence; Failing to provide a specimen of breath for a breath test when directed to do so by a police officer; Obstructing a police officer in the performance of his duties; Driving an unregistered motor vehicle; Failing to stop his motor vehicle when directed by a police officer to stop; Driving an uninsured motor vehicle; and Driving a motor vehicle with a dealer plate attached to it ...". D had a **bad traffic offending history**. The sentence of **18 months imprisonment suspended after 2 months with an operational period of 2 years** upheld on appeal.

See *Kumar v Garvey* 18/6/10 [\[2010\] QDC 249](#) where McGill DCJ reduced D's fine of \$500 to \$100 and his period of suspension from 12 to 9 months given D's **financial circumstances and need to use his car to help his sick wife**. D was convicted of driving unlicensed while his licence was suspended. He was also convicted of a drink driving offence and sentenced for this.

In *Souvlis v Commissioner of Police* 21/11/11 [\[2011\] QDC 274](#) RS Jones DCJ considered **various cases where drivers with significant antecedents were sentenced for driving without a licence while disqualified**. Nine months imprisonment for the A was at the high end of the range, but it was not manifestly excessive. It was A's third conviction for this type of offence and he had shown no regard for the law.

In *Prew v Commissioner of Police* 9/3/12 [\[2012\] QDC 178](#) the A's sentence for **driving disqualified and breaching a community service order (CSO)** was set aside. She was 23 at sentence, had made an early plea, was in stable employment, but had a terrible history of traffic offences for one so young, including previous driving disqualified offences. A re-sentenced to **four months imprisonment for driving disqualified and one month for breach of the CSO** to be served concurrently. A had served one week in prison already. Sentence otherwise **suspended**.

In *Olver v Commissioner of Police; Manz v Commissioner of Police* 18/1/13 [\[2013\] QDC 9](#) Koppenol DCJ stated that **"if no penalty is imposed upon a person, a licence disqualification should not be imposed under section 78(3) of the TORUM Act"** @12. See *Klupfel* commentary below.

See *Lutz and Newbury* 12/2/13 [\[2013\] QDC 144](#) where A appealed R's sentence of **three months' imprisonment suspended for two years**. R was a **27 y.o. aboriginal with schizophrenia and several previous driving disqualified offences**. None of the offences involved untoward driving and it had been about three years since his last offence. Appeal dismissed by Harrison J who was **concerned about a 'mathematical approach to sentencing' that suggested that penalties should always get higher with each subsequent offence**.

See *Queensland Police Service v Klupfel* 13/12/13 [\[2013\] QDC 210](#) where Robertson DCJ discussed the **inconsistency in decisions dealing with s78(3)**. See commentary below.

See *Huckel v The Commissioner of Police (No 1)* 7/4/14 [\[2014\] QDC 85](#) where Samios DCJ varied magistrate's decision by **deleting the recording of a conviction in the case of a 60 year old woman of good character with a limited traffic offence history**. "It was not the case that she was a person trying to avoid her responsibilities by not applying for a licence. ... [T]he material before the learned Magistrate clearly showed that the Appellant was someone who simply overlooked renewing their licence. The recording of a conviction could have a serious effect, as it clearly has, on her standing with her insurer. It also appears that the learned Magistrate did not give notice of his intention to record a conviction" @5. See also *Huckel v The Commissioner of Police (No 2)* 15/4/14 [\[2014\] QDC 86](#) where Samios DCJ deleted the disqualification of the Appellant from holding or obtaining a drivers licence for three months.

"[32] I respectfully agree with Judge Farr SC's opinion. I agree that the wording of s 78(3) is clear and unambiguous. [33] The word 'must' qualifies the word 'disqualify', and not the phrase 'in addition to imposing a penalty'. Section 32CA(2) of the Acts Interpretation Act 1954 provides:

'... the word must, used in relation to a power indicates that the power is required to be exercised.'

[34] The draftsman has not used the word 'may' which indicates 'that the power may be exercised or not exercised at discretion': section 32CA(1) Acts Interpretation Act 1954.

[35] The learned author of the annotations to this section, in an implied criticism of Kirby and Manz, points out that the word 'may' is used to describe other discretionary powers to disqualify given to a Court in other sections of the TORUM, such as s 89 and s 90, and also in s 187 of the Penalties and Sentences Act 1992. The annotations also refer to a decision of Judge Samios in *Drivas v Bobbermen* [2011] QDC 36 to which no reference is made in Manz. That case was factually different, but nevertheless his Honour favoured the construction of s 78(3) that I favour and that was favoured by his Honour Judge Farr SC. [36] The use of the word 'must' evinces a clear legislative intention that, whether a Court imposes a penalty or not, when a person is convicted of unlicensed driving pursuant to s 78(1), and any of the circumstances set out in s 78(3)(a)-(j) apply, the Court must disqualify for at least the minimum period set out in the relevant subsection. This meaning is confirmed by the terms of the offence creating provision itself in s 78(1), which provides for a maximum penalty which does not include any requirement to disqualify from holding or obtaining a Queensland drivers licence. **Queensland Police Service v Klupfel** 13/12/13 [2013] QDC 210 Robertson DCJ

s79(1) – Vehicle offences involving liquor or other drugs

See *Sebille v Dempsey* 18/3/09 [2009] QDC 58 where Judge Robin Q.C. reviewed the sentence for offences against s78(1) & s79(1) in the case of a man with a terrible record of similar offending.

See *R v Hannigan* 3/3/09 [2009] QCA 40 where the A “was charged on indictment with dangerously operating a motor vehicle ... on 8 April 2008 at a time when he was **adversely affected by an intoxicating substance**. ... [H]e pleaded guilty to that charge and also to a **number of summary offences all committed on the same day** ... They were: Driving under the influence of liquor; Driving when he was not the holder of a driver's licence; Failing to provide a specimen of breath for a breath test when directed to do so by a police officer; Obstructing a police officer in the performance of his duties; Driving an unregistered motor vehicle; Failing to stop his motor vehicle when directed by a police officer to stop; Driving an uninsured motor vehicle; and Driving a motor vehicle with a dealer plate attached to it ...”. D had a **bad traffic offending history**. The sentence of **18 months imprisonment suspended after 2 months with an operational period of 2 years** upheld on appeal.

See *Kumar v Garvey* 18/6/10 [2010] QDC 249 where McGill DCJ reduced D's fine of \$500 to \$100 and his period of suspension from 12 to 9 months given D's **financial circumstances and need to use his car to help his sick wife**. D's alcohol reading was 0.159. D had one prior offence.

See *Bridge v Queensland Police Service* 2/8/12 [2012] QDC 267 where Rackemann J held that the sentence imposed on A for driving with a reading of **0.152** was excessive where there was **no untoward driving and where A had no previous alcohol related offences**. Magistrate placed too much weight on a very old, but serious driving offence, of A's. **A chose to drive when his taxi did not arrive after a New Year's party**. Magistrate also should have given more weight to the impact on A of licence disqualification given that driving was an important part of his work as a broker and licensed real estate agent. Sentence varied to a **fine of \$1500 and disqualification for eight months**.

In *Schwarz & Queensland Police Service* 9/5/13 [2013] QDC 105 Smith DCJ confirmed A's sentence of a **\$2,000 fine and 14 months disqualification for driving with a reading of .244%**. A pleaded guilty, was 41 and had one prior drink driving offence 21 years before. The cost of an interlock device also considered.

“11. It is convenient to note authorities, some of which her Honour mentioned by name, which establish **principles relevant in applying s 79(1)**. It is not necessary for the

prosecution to prove that the [D] was so influenced by liquor that his driving capacity was impaired – it merely has to prove that he was at the relevant time in fact in some observable degree influenced by liquor, as set out in the headnote to the report of *O'Connor v Shaw* [1958] Qd R 384; evidence of erratic driving is not necessary to establish the offence nor does affirmative evidence of competent driving establish that a driver was not under the influence: *Powell v Battle* [1963] WAR 32. There is no justification for adding to the elements of the offence in s 79(1) the demonstration that a [D] is incapable of properly driving. ...
 12. Her Honour was justified on the evidence before her in finding the elements of the charge proved beyond a reasonable doubt, those elements being the [D] being the driver and at the time of the driving being under the influence of liquor or a drug. That it was open to the Magistrate, correctly instructing herself, to find the elements of the offence charged proved beyond reasonable doubt (which I am satisfied is the case) does not, as appears from the discussion elsewhere in these reasons, protect the conviction from being set aside on appeal.” *Leach v Commissioner of Police* 27/3/09 [2009] QDC 66 Robin QC DCJ

s79(1)(c)

See *Eggmohlesse* precis at s124 below.

s79(2A) – Over no alcohol limit, but not general limit

In *Moman v Middleton* 22/3/13 [2013] QCA 53 Fraser JA stated that “the natural meaning of the text of s 79(2A) is that each licence mentioned in it is one which confers, or would confer, authority in relation to the kind of motor vehicle driven by, attempted to be put in motion by, or in the charge of, the person committing the offence” @9. The A held an open licence for a car, but no licence for a motorbike and was caught driving with an alcohol reading below the limit. A’s conviction for breaching s79(2A)(a) confirmed. He should not have had any alcohol in his system.

s79(6)(a)(ii)

See *Eggmohlesse* precis at s124 below.

s80(2) – Breath and saliva tests, and analysis and laboratory tests

In *Jovanovic v Lucas* 27/5/09 [2009] QDC 138 Samios DCJ held it was appropriate for police to breath test driver in his driveway.

s80(15G) – Evidence from breath analysing instrument

See discussion of this section in *Leach v Commissioner of Police* 27/3/09 [2009] QDC 66 by Robin QC DCJ form para. 6.

s83 - Driving without due care and attention

See *Leach v Commissioner of Police* 27/3/09 [2009] QDC 66 Robin QC DCJ where fine imposed when driver turning left did not give way to pedestrians crossing legitimately at pedestrian crossing and where the driver hit the wheel of a bike one of the pedestrians was wheeling and came into contact with the pedestrian. No serious harm was caused.

s86 – Disqualification of drivers of motor vehicles for certain offences

In *R v Towers* 12/6/09 [2009] QCA 159 COA upheld order for absolute disqualification in the case of a D convicted of dangerous operation of a vehicle causing grievous bodily harm.

s87 – Issue of a restricted licence to a disqualified person

In *Schulze v Commissioner of Police* 2/11/11 [2011] QDC 275 Devereaux SC DCJ found that the **appeal was not competent** because the refusal of the application for a restricted licence is not an order within section 222 of the *Justices Act*, and [section 4](#) of that Act.

Section **87(5)(d)(i)** considered. Driving oneself to work not considered to be 'an **activity directly connected with the applicant's means of earning the applicant's livelihood**'.

s106 – Paid parking offences

See *Townsville City Council v McIntyre* 9/7/13 [\[2013\] QCA 173](#) where it was concluded there was **insufficient evidence to prove that R had failed to comply with the requirements of the authorised pay and display parking system**. The evidence was deficient as to the requirements of the authorised system. "It may well be that signage on the ticket machine specified what parking fee was to be paid and that it did so by reference to periods of time but there was no evidence led of any such sign ... The roadside official traffic sign ... through its reference to 'pay and display', indicated in effect that the system required some payment of a parking fee. However it did not indicate what parking fee was required to be paid for any particular period of time." @54-55.

s112 – Use of speed detection devices

See *Kolanowski v Commissioner of Police* 9/5/14 [\[2014\] QDC 118](#) where Butler SC DCJ considered s112 and s120(4) as they were pre-February 2014.

s114 – Offences detected by photographic detection device

See *Berry* at [Conviction of non-drivers](#)

s116 – Notice accompanying summons

In *Berry v Commissioner of Police* 23/9/14 [\[2014\] QCA 328](#) the A contended for the invalidity of the notice, as "when she was served with the traffic infringement notice it was not accompanied, as it should have been under [s 116\(1\)\(b\)](#) with 'written information about ... the provisions of [section 114](#)'" @42. Contention rejected.

s118 – Photographic evidence – inspections and challenges

In *Amies v Dixon* 8/5/09 [\[2009\] QDC 110](#) McGill considered **challenges to the positioning of a speed detection device** "on the basis that it was **located on a downhill section of road**, and because **there were various metal items in the beam which could have reflected the beam**, and the manual indicated that the device should be set up in such a way that such items were avoided: p 15. At p 16 he identified the relevant metal items as an electricity pole, a centre island sign, railings, metal roofs, and metal window frames"@4. The challenges failed.

s120 – Evidentiary provisions

In *Hill v Lette* 23/6/10 [\[2010\] QDC 136](#) no evidence of the R's delegation was put into evidence. This meant that the certificates of the R on behalf of the Commissioner of Police could not be used to verify that A was travelling at 142 kph. Irwin DCJ therefore concluded that they could not be effective as certificates pursuant to s120 of the TORUM Act 1995.

In *Embleton v Buck* 9/8/13 [\[2013\] QDC 180](#) the A appealed the dismissal of R's speeding charge due to key evidence being excluded. "The basis for the learned magistrate refusing to accept the photographs and certificates into evidence was that **the data blocks in the relevant photographs referred to a 'model RS-GS2-P', whereas the certification by Senior Sergeant Embleton referred to a 'model RS-GS2'**" @25. Dearden DCJ stated that "It is clear ... that, in addition to relying upon the combination of a photograph and certificate, the **prosecution was entitled to lead (and in fact did so), additional evidence explaining and clarifying the information contained in the data block**, as well as technical aspects of the system that was utilised to obtain that relevant information" @43.

See *Kolanowski v Commissioner of Police* 9/5/14 [\[2014\] QDC 118](#) where Butler SC DCJ considered **s120(4) and s112 as they were pre-February 2014**.

s124 – Facilitation of proof

In *Day v Grice* 29/7/11 [\[2011\] QCA 178](#) the COA allowed an appeal from a District Court judge's decision overturning R's conviction for exceeding the speed limit. "[T]he focus of the learned District Court Judge on the question of authorisation was misdirected. The basis for the respondent's conviction in the Magistrates Court was the evidence of his admissions of driving at a speed in excess of the speed limit, not the evidence relating to the recording of the speed by the radar device" @59. "In addition, there has been a **failure to recognise and give effect to the provisions of s 124 and s 124A of the TORUM Act**" @61.

s124(1)(r)(ii) & (1)(t) – Facilitation of proof

See *Eggmosses v Bruce* 9/9/08 [\[2008\] QCA 393](#) where it was considered whether a vehicle that was not working, or a non-operational vehicle, could be defined as a 'motor vehicle' under the [Transport Operations \(Road Use Management\) Act 1995](#) (Qld) (the 'Act'). Authorities referred to at paragraph 17, but issue not decided. The applicant [A] was intoxicated, and whilst helping to get his sister's car started, which had broken down and was off the road, he reached his hand into the car to turn on the engine. However there was no key in the ignition. He subsequently closed the bonnet and then the police arrested him and a magistrate later found him guilty under s79(1)(c) of the Act for being in charge of a motor vehicle whilst under the influence of liquor. A was not considered to be 'in' the vehicle by reason of putting his hand in it and s79(6) obliged the magistrate to refrain from convicting him. There was a substantial question as to whether he was 'in charge' of the vehicle pursuant to s79(1)(c).

s124(4)

The effect of a failure to give notice under this sub-section considered by Samios DCJ in *Bevacqua v Wykes* 27/5/09 [\[2009\] QDC 137](#). The A was not entitled to cross examine a Senior Constable about the way he 'used' a speed detection device.

See *Alshakarji v Mulhern* 8/12/10 [\[2010\] QDC 476](#) per McGill DCJ who stated at para. 48 "In circumstances where the police officer said that he measured the [A's] vehicle at a particular speed, and the [A] said, at least inferentially, that his speed was not in excess of 40 kilometres per hour [the speed limit], that raised an issue of credit which was to be resolved not by reference to any statutory presumptions as to the use of the speed detection device, or for that matter its accuracy, [but] sic by the resolution of an issue of credit as to whether the police officer had correctly identified the [A's] vehicle as the vehicle the speed of which had been measured by the device."

s131(2) – Appeals with respect to issue of licences etc

In *Tabakovic v Commissioner of Police* 24/6/09 [\[2009\] QDC 191](#) Judge Robin Q.C. **allowed an application for removal of A's 5 year disqualification** early. A had pleaded guilty to dangerous operation of a vehicle causing grievous bodily harm whilst affected by alcohol. Various other authorities on the section considered.

In *Nolan v The Queen* 24/7/09 [\[2009\] QDC 216](#) Tutt DCJ **allowed the application for the removal of the A's licence disqualification**. Although A had previously committed a very serious offence under the influence of alcohol resulting in death, since then he has behaved very well, was released from prison at the earliest opportunity, successfully completed his lengthy parole, has not re-offended and has found permanent employment.

In *Frost v The Commissioner of Police, Qld* 11/3/10 [\[2010\] QDC 73](#) Dorney DCJ **allowed an application** for removal of license disqualification in the case of a 31 y.o. who had been sentenced to nine years imprisonment for a very serious case of causing death by dangerous driving whilst heavily intoxicated. The **A, whilst out on parole had established a business and employed two people**. To keep his business viable he needed his license. The power to order that A only be able to use vehicle for work purposes discussed.

In *Kirby v DPP* 23/11/12 [\[2012\] QDC 357](#) Samios DCJ **removed A's licence disqualification**. The onus of **s131(2C)** was made out by A. A was 28 and had committed two serious offences when he was 23, including dangerously operating a motor vehicle whilst adversely affected by alcohol and a summary offence of driving over the general alcohol limit. In the former offence A went through a red traffic light at speed and hit a taxi. A number of people were injured. Subsequent to these offences for which he was convicted, A drove disqualified because it was raining heavily and he wanted to get to the bank. Not having a licence adversely affects A's ability to provide for his family. A found to be of good character.

See *Gonsalves v Commissioner of Police* 20/2/14 [\[2014\] QDC 36](#) where Reid DCJ allowed A's application for "removal of orders, made pursuant to s. 187 of the *Penalties and Sentences Act 1992*, relating to his being absolutely disqualified from holding or obtaining a drivers licence" @1. A had an **appalling criminal record for a man in his 20s, especially for driving offences**, and he had served a lengthy prison term. His **efforts at rehabilitation were however very commendable**. Application allowed.

Schedule 4

See *Eggmohlesse* précis at s124 above.

[Transport Operations \(Road Use Management – Road Rules\) Regulation 1999](#)

r132(3)

See *Mbuzi v Torcetti* 8/8/08 [\[2008\] QCA 231](#) Full Court

r138(1)

See *Mbuzi v Torcetti* 8/8/08 [\[2008\] QCA 231](#) Full Court

r287(2)(c)

In *Wilshire v Dowd* 3/9/09 [\[2009\] QDC 285](#) Tutt DCJ confirmed a sentence of **70 hours community service, disqualification for a minimum of 6 months, and a \$300 fine** in the case of an A who drove a vehicle dangerously and failed to meet her post-accident obligations pursuant to Reg. 287(2)(c) of the TORUM regs 1999. A lost control of her vehicle on a right hand turn hitting a house while being followed by her ex-partner after an argument. "The [A] had no prior criminal history but only [a] minor traffic history; ... She was the sole provider for her two children and relied on part-time work to supplement her sole parent's benefit" @36. The lower court's **decision to record a conviction was however overturned**.

[Transport Operations \(Road Use Management – Road Rules\) Regulation 2009](#)

s57(2)(a)(i) – Stopping for a yellow traffic light or arrow

In *Kennedy v Reimers* 29/10/10 [\[2010\] QDC 411](#) Bradley DCJ confirmed A's conviction for failing to stop for a yellow traffic arrow. The magistrate was correct in applying an objective test.

[Transport Operations \(Road Use Management - Vehicle Registration\) Regulation 2010](#)

s64(5) – Use of dealer plates

See *Saba v Department of Transport and Main Roads* 24/5/13 [\[2013\] QDC 118](#) where the question was "If a person drives a motor vehicle with a dealer plate attached to it for the general purpose of driving that vehicle to a workshop for repairs and, on the way, attends at a McDonald's drive-in takeaway to obtain a bacon and egg 'McMuffin', is the person in breach of a provision which states that the vehicle is not to be used unless used in the conduct of (relevantly, here) the business of workshop repairs?" @2. The magistrate decided there was a breach. Dorney QC DCJ did not think there was, but did not allow appeal as no relevant error of law was demonstrated.

Radar detectors

See [ARR 225](#). Rule also deals with similar devices. See also [Speed detection devices](#).

...

Speed detection devices

See State & Territory headings for further cases involving speeding.

Articles

Brown R, 'So You Think Traffic Offences are Simple? Camera-detected Offences in NSW' (2006) 30(5) Criminal Law Journal 302.

Authorisation to use

In *Toomer v Winston* 17/2/11 [\[2011\] QDC 8](#) Samios DCJ found that the **prosecution's failure to tender the constable's authorisation to use the speed detection device as an exhibit** did not hinder prosecution.

Challenges to

In *Amies v Dixon* 8/5/09 [\[2009\] QDC 110](#) McGill considered **challenges to the positioning of a speed detection device** "on the basis that it was **located on a downhill section of road**, and because **there were various metal items in the beam which could have reflected the beam**, and the manual indicated that the device should be set up in such a way that such items were avoided: p 15. At p 16 he identified the relevant metal items as an electricity pole, a centre island sign, railings, metal roofs, and metal window frames"@4. The challenges failed.

In *DPP v Gramelis* 21/7/10 [\[2010\] NSWSC 787](#) Price J stated that "a **discrepancy between the police officer's evidence and the time displayed on the in-car video** could not impact upon the accuracy and reliability of the speed measuring device. As was said by Spigelman CJ in *RTA (NSW) v Baldock* [\[2007\] NSWCCA 35](#) at [\[49\]](#): "evidence that the device was not accurate or not reliable", within the meaning of s46(2) must be evidence relating to the device as such, not to the product of the application of the device in the form of one or more measurements of speed" @39.

See *Grover v Scott* 6/8/10 [\[2010\] WASCA 164](#) and other cases at [s98A](#) RTA, WA.

In *Moran v Police* 27/8/10 [\[2010\] SASC 269](#) [56 MVR 232] the A argued that "the speed device and the method of testing it by the police did not comply with [s 10](#) of the [National Measurement Act 1960](#) (Cth). [Justice Kelly stated that] [Section 10](#) of that Act operates only when it is necessary to ascertain whether or not a measurement of a physical quantity has been made in the terms of Australian legal units of measurement. It does not in its terms set out a method of determining whether an Australian legal unit has been measured correctly in a particular instance. Nor does it displace the common law presumption of the accuracy of scientific instruments where the scientific instrument is notoriously accurate; see *Jenkins v WMC Resources Ltd* (1999) 21 WAR 393. **Speedometers fall within the category of scientific instruments to which the presumption of accuracy applies**; see Gray J in *Pinkerton v Police* [\[2006\] SASC 341](#), *Redman v Klun* (1979) 20 SASR 343 at 344 – 345. Here in proof of the charge the respondent submitted a certificate under the provisions of [s 175\(3\)\(b\)](#) of the [Road Traffic Act 1961](#) (SA). The [A] did not present any credible proof to the contrary and accordingly that presumption was not displaced" @15-16.

In *Osgood v Queensland Police Service* 7/9/10 [\[2010\] QCA 242](#) [56 MVR 266] A **challenged the accuracy of the reading of a mobile Decatur speed detection device (a typical Doppler radar)** which recorded him doing 93 kph in an 80 kph zone. A argued that “because the **police vehicle was coming over the crest of a hill and around a bend**, and because the police vehicle was not therefore parallel to his, the accuracy of the reading taken by Senior Constable Ridgeway must be in doubt” @31. Evidence established that the device had been tested and operated according to Australian standards and that it was likely to have given an accurate reading in the circumstances.

See *Anastasiou v Police* 10/7/13 [\[2013\] SASC 112](#) where Justice Vanstone considered a challenge to the speed detection device on the basis of r17(2)(f)(i) & (iii) of the SA regulations. A argued “that the combination of the certificates P5 and P14 showed that the device was ‘over-reading’ speed by one kilometre per hour. That should have led to corrective action and repetition of the test. The absence of proof of effective correction, the [A] argued, meant that the Certificate of Accuracy, P5, lacked efficacy, since the discrepancy amounted to ‘proof to the contrary’: s 175(3)(ba)” @17. Held that the certificate showed that the operation and testing requirements had been complied with and that a discrepancy of this order could not be characterised as a ‘fault’. A argued that “certificates P13 and P15 proved that, upon testing, the speedometer of the test car was inaccurate to the extent of 3 kilometres per hour, but the traffic speed analyser itself was correctly reading speed” @21. Such provided no valid basis for complaint. A also argued that there was no proof of compliance with the Cth National Measurements Act. There was “no indication that traffic speed analysers used by South Australian police on South Australian roads required certification under the *National Measurements Act*” @22. A’s arguments based on measurements he took at the scene, calculations he made of speed and photographs also rejected.

Common law considerations

“18. ... [R]esults from radar devices have not yet be held by the authorities to attract the presumption of judicial notice; see *Hijazi v Orr* [\[1997\] ACTSC 72](#) at p6 per Higgins J.

Therefore, **absent statutory provisions facilitating proof, the three matters that must be established for admitting and proving the results from radar speed detections devices at common law** are as follows:

- A. The type of apparatus purporting to be constructed on scientific principles must be accepted as dependable for the proposed purpose by the profession concerned in that branch of science or its related art. This may be evidenced by a qualified expert.
- B. The particular apparatus used by the witness must be one constructed according to an accepted type and must be in good condition for accurate work. This may be evidenced by a qualified expert.
- C. The witness using the apparatus as the source of his testimony must be one qualified for its use by training and experience. This may be evidenced by the police officer using the device.” **Collins v Markham** 18/12/12 [\[2012\] TASMC 37](#) Mag. McTaggart

Delegation

In *Hill v Lette* 23/6/10 [\[2010\] QDC 136](#) no evidence of the R’s delegation was put into evidence. This meant that the certificates of the R on behalf of the Commissioner of Police could not be used to verify that A was travelling at 142 kph. Irwin DCJ therefore concluded that they could not be effective as certificates pursuant to s120 of the TORUM Act 1995.

Evidentiary discrepancies

In *Heward and Commissioner of Police* 5/3/13 [\[2013\] QDC 35](#) Judge Rackemann allowed an appeal against a speeding conviction where “there was a discrepancy between the

evidentiary certificate with respect to the model number of the camera and the model number as disclosed on the data block of the photograph. In particular, the model number as disclosed on the photograph had a “- P” appearing after the balance of the model number” @10. This “raised a **question on the evidence as to whether the camera which was used was, in fact, a camera of a model number which was authorised to be used**” @20.

In *Embleton v Buck* 9/8/13 [\[2013\] QDC 180](#) the A appealed the dismissal of R's speeding charge due to key evidence being excluded. “The basis for the learned magistrate refusing to accept the photographs and certificates into evidence was that **the data blocks in the relevant photographs referred to a ‘model RS-GS2-P’, whereas the certification by Senior Sergeant Embleton referred to a ‘model RS-GS2’**” @25. Dearden DCJ stated that “It is clear ... that, in addition to relying upon the combination of a photograph and certificate, the **prosecution was entitled to lead (and in fact did so), additional evidence explaining and clarifying the information contained in the data block**, as well as technical aspects of the system that was utilised to obtain that relevant information” @43.

Not lawfully approved or lack of evidence of such

In *Hands v Baker* 27/2/09 [\[2009\] WASC 46](#) [(2009) 52 MVR 156] per Blaxell J, a motorist who was allegedly speeding was not convicted because the speed detection apparatus that was used was not considered to have been lawfully approved.

See *Police v Webber* 23/5/14 [\[2014\] SASC 66](#) where Justice David confirmed magistrate's decision that there was “no case to answer because there was **no evidence that the instrument used by Constable Roberts was an approved traffic speed analyser**” @4. It was agreed though that “the Magistrate erred in her finding that it was necessary for there to be a case to answer to produce an appropriate copy of the Government Gazette. It is agreed that proof can be provided by reference to [s 35](#) of the [Evidence Act 1929](#) which provides that the Magistrate can take judicial notice of a legislative instrument. It is agreed that the [Road Traffic \(Miscellaneous\) Regulations 1999](#) are such a legislative instrument. In particular, [section 13B](#) of those regulations contains a list of approved traffic speed analysers, including: ‘Laser Technology Inc. LTI 20/20 TruSpeed Laser’” @5.

Positioning of

In *Hamilton v Bennett* 3/3/11 [\[2011\] QDC 16](#) McGill DCJ considered the issue of **whether a camera had been positioned correctly**.

Where multiple vehicles/marksmanship

See “*Bendels v Lilley* [\[2001\] QDC 79](#), where the matter in issue was whether the speed detected by the detection device applied to one vehicle shown in the image rather than another vehicle shown in the image”@13. *Lekich v Dixon* 8/5/09 [\[2009\] QDC 111](#) McGill DCJ

In *Toomer v Winston* 17/2/11 [\[2011\] QDC 8](#) Samios DCJ allowed A's appeal against a speeding conviction, finding that “the **substantial distance involved between the laser held by the police officer and the [A's] vehicle and the presence of other vehicles made it possible Senior Constable Brindell locked onto another vehicle**. The ... laser was an aim reliant device ... [which made] it possible a mistake occurred in the present matter” @27. Magistrate therefore ought to have had a reasonable doubt. See also *Cooper v Queensland Police Service* 1/7/11 [\[2011\] QDC 129](#) from paragraph para. 12.

See *Brosnan and Embleton* 4/3/13 [\[2013\] QDC 34](#) where Rackemann J allowed appeal in a case where **two vehicles including A's were photographed by a speed camera**. A's vehicle appeared slightly further away from the camera. **R at trial led evidence from a**

policeman, who had not taken the photograph, showing how the camera was set up, matters of geometry and expressing an opinion about the detection zone and which vehicle was being focused on in the photo. A had not been afforded procedural fairness, as this evidence had not been reduced to writing and disclosed to A before the trial.