The Authorised Reports of the Decisions of the Supreme Court of Tasmania

THE TASMANIAN REPORTS 2020-2021

EDITOR L W MAHER

REPORTERS

BENEDICT BARTL CHRISTOPHER GROVES ANTON HUGHES JENNIFER O'FARRELL

VOL 33 — PART 2

PAGES 127-243

PUBLISHED FOR THE COUNCIL OF LAW REPORTING OF TASMANIA BY THOMSON REUTERS (PROFESSIONAL) AUSTRALIA LTD.

The mode of citation of this part will be: $33\ Tas\ R$

TABLE OF CASES REPORTED

Part 2 — Pages 127-243

AB and CD; Tasmania v	1
Ashrafi v Director of Public Prosecutions (Cth)	34
Barnes; Hefny v	38
Barnes; Johnston v) 4
Bell v Tasmania) 5
Burrows; TT Line Company Pty Ltd v	53
Churchman; Motor Accidents Insurance Board v	27
Elnami v Tasmania 6	50
Gamble v Kingborough Council	43
Gutwein v Tasmanian Industrial Commission)7
Hefny v Barnes	38
Hopkinson v Wilkie	53
Horan; Turner v	13
Johnston v Barnes) 4
Jordan v Rutland	31
Judges; Mrgic v)3
Kingborough Council; Gamble v	13
McTaggart; Triffitt v	
MFC; State of Tasmania v	12
MFC; State of Tasmania v	21
Motor Accidents Insurance Board v Churchman	27
Mrgic v Judges)3
Public Prosecutions (Cth), Director of; Ashrafi v	
Rattigan; State of Tasmania v	24
(Cases in bold reported in this part)	



Lawbook Co.

© 2022 Thomson Reuters (Professional) Australia Limited
ABN 64 058 914 668
Published in Sydney

ISSN 0085-7106

TABLE OF CASES REPORTED

Rutland; Jordan v	81
Tasmania v AB and CD	1
Tasmania, State of v MFC	12
Tasmania, State of v MFC	21
Tasmania, State of v Rattigan	224
Tasmania; Bell v	95
Tasmania; Elnami v	60
Tasmanian Industrial Commission; Gutwein v	107
Triffitt v McTaggart	220
TT Line Company Pty Ltd v Burrows	163
Turner v Horan	213
Wilkie: Hopkinson v	153

Part 2 — Pages 127-243

CRIMINAL LAW	
Animals — Infliction of pain and suffering — Transport of group of horses from Melbourne to Devonport by Bass Strait ferry — Inappropriate management of horses — Horses travelling in the same truck trailer — Failure to place horses in individual stalls — Animal Welfare Act 1993 (Tas), ss 7, 8. TT Line Company Pty Ltd v Burrows	163
Indictable Commonwealth offences — Possessing a slave — Trafficking in persons — Procedure — Costs — Power to award — Two defendants charged on separate complaints — Commonwealth deciding not to file indictment — Charges dismissed — Defendants applying for costs orders — Applications refused — Criminal Code (Cth), s 270.3(1)(a) — Costs in Criminal Cases Act 1976 (Tas), s 4(1)(b).	22/
Ashrafi v Director of Public Prosecutions (Cth)	234
Turner v Horan2	213
Particular offences — Assault — Consent — Applicability — Assault in domestic setting — Argument between domestic partners — Evidence of use of violence by parties — Magistrate expressed the view that consent was not a defence to assaults upon victims of family violence — Open on evidence for magistrate to find that no consent was given by the complainant — Police Offences Act 1935, (Tas), s 35 — Criminal Code (Tas), s 182(4). Hopkinson v Wilkie	153
Procedure — Information, indictment or presentment — Averments — Uncertainty, duplicity and ambiguity — Duplicity — Management of animals — Offence to manage animals by method reasonably likely to result in unreasonable and unjustifiable pain or suffering — Transport of horses in truck trailer unit on Bass Strait ferry — Particulars — Alleged deficiencies in inspection of horses before and during voyage and failures in relation to the manner, positioning or circumstances of transportation — Further particulars alleged non-compliance with regulations — Essence of offence was using a method of management reasonably likely to bring about the prohibited result — Method of management almost inevitably comprised of a number of aspects — Charge related to a single course of conduct and not duplicitous — Animal Welfare (Land Transport of Livestock) Regulations 2013 (Tas), r 34(6) — Animal Welfare Act 1993 (Tas), ss 3A 4 6	

CRIMINAL LAW — continued	
Sentence — Sentencing procedure — Approach to sentencing process — Procedural fairness — Obligation of court to raise important possibility of actual term of imprisonment — Obligation did not arise in this case.	
Mrgic v Judges	203
EVIDENCE	
Relevance — Test — Limited value of transcript of ex tempore remarks made in busy magistrates court — Identification evidence — Evidence Act 2001 (Tas), ss 55(1), 165(1)(a).	
Johnston v Barnes	194
HIGH COURT AND FEDERAL COURT	
The federal judicature — Application of State laws — Generally — Tasmanian legislation allowing an award of costs in criminal cases — State legislation inapplicable to federal offences — Costs in Criminal Cases Act 1976 (Tas), s 4(1)(b).	
Ashrafi v Director of Public Prosecutions (Cth)	234
MAGISTRATES	
Appeal and review — Tasmania — Jurisdiction — Motion to review — Availability — Summary criminal charges — Determination and adjudication — Complaint alleging two charges — Duplicity — First charge relating to single event — Second charge alleging multiple instances of criminal conduct arising from single event — Magistrate ruling against duplicity submission — Defendant aggrieved by ruling — Magistrate's ruling upheld on review by Supreme Court — Whether decision on judicial review amenable to appeal — Justices Act 1959 (Tas), ss 31, 107, 116.	
TT Line Company Pty Ltd v Burrows	163
Appeal and review — Tasmania — Motion to review — Other matters — Appeal against finding of guilt on one count of common assault which was also a breach of a family violence order — Finding of guilt reasonably open to the magistrate. <i>Turner v Horan</i>	
Appeal and review — Tasmania — Motion to review — Other matters — Plea of guilty to three counts of common assault — Serious public violence against strangers — Applicant with no prior convictions for violence — Sentence of imprisonment for 12 weeks with half suspended not manifestly excessive. Mrgic v Judges	

MAGISTRATES — continued
Appeal and review — Tasmania — Motion to review — When remedy available — Driving charges — Operating or controlling a motor vehicle in unnecessary execution of sustained loss of traction ("burn-out") — Evading police — Identification of driver of vehicle — Alibi defence — Charges found proved — Whether error in finding — Whether inadequate reasons for rejecting alibi defence — Police Offences Act 1935 (Tas), s 37J(1) — Police Powers (Vehicle Interception) Act 2000 (Tas), s 11A(1). Johnston v Barnes
Coroners — Powers — Autopsy or post mortem — Power to order autopsy if coroner believes it was reasonably necessary — Statutory requirement that unexpected or accidental deaths be reported — Coroner ordering that autopsy be performed — Body of elderly woman found near river close to her home — Apparent drowning — Application by daughter that autopsy not be performed on mother's body — Balancing of competing interests — Strongly held religious beliefs of the deceased and her daughter in opposition to autopsy as a medical procedure — Opposing public interest in excluding foul play — Risk of foul play highly unlikely — Risk that any offender might reoffend — Balance of interests in favour of autopsy — Daughter's application dismissed — Coroners Act 1995 (Tas), ss 19, 28, 36, 37. **Triffitt v McTaggart** 220
STATUTORY INTERPRETATION
Basic principles — Literal approach — Beneficial approach — Ascertainment — Competing legislative purposes — Time limits — Time as reference to moment or instant of an event rather merely a date — General rule that law takes no account of fractions of a day — Contextual considerations — Exceptions — Creation of criminal offence — Statute providing for expiry of motor vehicle registration at midnight — Properly interpreted as reference to date of expiry. Motor Accidents Insurance Board v Churchman
Text, context and purpose — General provision concerning defence to specific criminal offence — Consent — No warrant for introducing words by reason of Family Violence Act 2004 (Tas). Hopkinson v Wilkie
•
TRAFFIC LAW
Statutory restrictions on compensation in respect of motor vehicle accidents — Tasmania — Generally — Motor Accidents Insurance Board — Board exercising discretion to pursue recovery of scheduled benefits arising from motor accident — Insurance premium paid and vehicle registration renewed after accident but on same day — Whether premium paid "at the time of accident" — Whether payment retrospectively effective — Effect of subordinate regulations and related legislation — Motor Accidents (Liabilities and Compensation) Act 1973 (Tas), ss 15, 28B(2)(b), 33. Motor Accidents Insurance Board v Churchman

WORDS AND PHRASES
"At the time of the motor accident". Motor Accidents Insurance Board v Churchman
"Burn-out" — Vernacular. Johnston v Barnes
"Consent". Hopkinson v Wilkie
"Grab". Turner v Horan
"Order". TT Line Company Pty Ltd v Burrows
"Recurrence, aggravation, acceleration, exacerbation or deterioration". State of Tasmania v Rattigan
WORKERS COMPENSATION
Proceedings to obtain compensation — Preliminary requirements — Liability of employer to pay compensation — Interim payments — Reasonably arguable case for employer — Referral of claim to Workers Compensation and Rehabilitation Tribunal — Error in point of law to find arguable case not established — Appeal by employer allowed — Workers Rehabilitation and
Compensation Act 1988 (Tas), ss 3(1), 81A. State of Tasmania v Rattigan