

SEPTEMBER 2023

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

THE
TASMANIAN
REPORTS
2021-2023

EDITOR

L W MAHER

REPORTERS

BENEDICT BARTL
ROLAND BROWNE

CHRISTOPHER GROVES
NINA HUDSON

VOL 34 — PART 4

PAGES 341-448

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

The mode of citation of this part will be:
34 Tas R

TABLE OF CASES REPORTED

Part 4 — Pages 341-448

Alasi-Jones v State of Tasmania	385
Anti-Discrimination Tribunal (No 2); Von Stalheim v	25
Anti-Discrimination Tribunal; Tasmanian Health Service v	298
Attorney-General (No 2); Cambria Green Agriculture & Tourism Management Pty Ltd v	294
Attorney-General; Cambria Green Agriculture & Tourism Management Pty Ltd v	278
Barclay; Legal Profession Board of Tasmania v	312
Boarder; Smith v	333
Bond v Lamprey	305
Bonde (No 2); Jones v	161
Bonde; Jones v	153
Brown v Jones	87
Burke; Franklin v	441
Burns v Robinson	197
Cambria Green Agriculture & Tourism Management Pty Ltd v Attorney-General (No 2)	294
Cambria Green Agriculture & Tourism Management Pty Ltd v Attorney-General	278
Casimaty v Hazell Bros Group Pty Ltd	43
Causon v Tasmania	408
Coad v State of Tasmania	227
Cox and Phillips v Tasmania	179

(Cases in **bold** reported in this part)



THOMSON REUTERS

© 2023 Thomson Reuters (Professional) Australia Limited
ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0085-7106

TABLE OF CASES REPORTED

Ellis; Gutwein v	138
Franklin v Burke	441
Girmay v Green	64
Green; Girmay v	64
Greenham Tasmania Pty Ltd v Director of Public Prosecutions	49
Gunn v Reardon and Rogers	120
Gutwein v Ellis	138
Hazell Bros Group Pty Ltd; Casimaty v	43
Hodges; Tasmania v	204
JAGD v Tasmania	250
Johnson & Johnson; State of Washington v	110
Jones v Bonde (No 2)	161
Jones v Bonde	153
Jones; Brown v	87
Jones; Tasmania v	168
Lamprey; Bond v	305
Lang; Tasmania v	219
Launceston City Council; Smart v	319
Legal Profession Board of Tasmania v Barclay	312
Liu; Tasmania v	1
Milligan (No 2); Tasmania v	106
Milligan; Tasmania v	101
Murray v Tasmania Police	424
Phillips v Wilkie	188
Police, Commissioner of; Woods v	403
Prosser; Roman Catholic Church Trust v	75
Public Prosecutions, Director of; Greenham Tasmania Pty Ltd v	49
Reardon and Rogers; Gunn v	120
Robinson; Burns v	197
Roman Catholic Church Trust v Prosser	75
Smart v Launceston City Council	319
Smith v Boarder	333
Tasmania Police; Murray v	424
Tasmania v Hodges	204
Tasmania v Jones	168
Tasmania v Lang	219
Tasmania v Liu	1
Tasmania v Milligan (No 2)	106
Tasmania v Milligan	101

(Cases in **bold** reported in this part)

TABLE OF CASES REPORTED

Tasmania v Whitton-Lowe	15
Tasmania, State of; Alasi-Jones v	385
Tasmania, State of; Coad v	227
Tasmania; Causon v	408
Tasmania; Cox and Phillips v	179
Tasmania; JAGD v	250
Tasmanian Health Service v Anti-Discrimination Tribunal	298
Von Stalheim v Anti-Discrimination Tribunal (No 2)	25
Washington, State of v Johnson & Johnson	110
Whitton-Lowe; Tasmania v	15
Wild Drake Pty Ltd; Wilderness Society (Tasmania) Inc v	341
Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd	341
Wilkie; Phillips v	188
Woods v Commissioner of Police	403

(Cases in **bold** reported in this part)

INDEX

Part 4 — Pages 341-448

ADMINISTRATIVE LAW

- Grounds of review — Procedural fairness — Whether magistrate refused to exercise jurisdiction according to law in refusing to grant interim family violence order — Bias — Apprehension of bias — Whether magistrate was affected by apprehended bias in refusing to grant interim family violence order — Magistrate did not refuse to exercise jurisdiction — Magistrate not affected by apprehended bias — Appeal dismissed — Family Violence Act 2004 (Tas) s 15. *Franklin v Burke* 441

CRIMINAL LAW

- Appeal and new trial — Appeal against sentence — Grounds for interference — Co-offenders — Parity principle — Fundamental to principle of equal justice — Partially suspended sentence not giving rise to appearance of injustice — Totality — Youth offenders — Rehabilitation — Material difference in importance in sentencing co-offender in his mid-20s — General deterrence — Parole — Corrections Act 1997 (Tas), s 78(1) — Criminal Code (Tas), s 234A(1). *Causon v Tasmania* 408
- Appeal and new trial — Appeal against sentence — Grounds for interference — Sentence manifestly excessive or inadequate — Sentence of four months' imprisonment with two months suspended on conditions for aggravated evading police — Offender drove away from random breath test site at speed and disobeyed two red lights before colliding with another vehicle — Forceful collision — Sentenced on same day for previous offence of evading police — Totality of penalties not manifestly excessive. *Murray v Tasmania Police* 424
- Appeal and new trial — Appeal against sentence — Indictable offences — Firearms offences — Co-offenders charged on indictment including counts for summary offences — Prosecution of indictable offences discontinued — Continuing jurisdiction of Supreme Court to sentence offenders pleading guilty to summary offences. *Causon v Tasmania* 408
- Appeal and new trial — Appeal against sentence — Sentence manifestly excessive or inadequate — Prosecution of four offenders whose ages ranged from 18 to 24 years — Aggravated burglary and stealing — Alleged joint criminal enterprise — Offender not present during burglary but arriving at scene soon after — Sentence of 18 months' imprisonment with partial suspension not manifestly excessive — Justices Act 1959 (Tas), s 71. *Causon v Tasmania* 408

INDEX

CRIMINAL LAW — *continued*

- Sentence — Sentencing procedure — Sentences on two or more counts — Other particular cases — Double punishment — Offence of aggravated evading police — Driving recklessly at time of evasion an element of aggravation but not particularised in charge — Reckless driving separately charged — Particulars and facts of that charge related to driving away from initial point of evasion to a collision a distance away — Magistrate had not erred in treating reckless driving charge as subsumed within charge of aggravated evading police — Amendment available in any event — Police Powers (Vehicle Interception) Act 2000 (Tas), s 11A — Justices Act 1959 (Tas) s 110(2) — Road Safety (Alcohol and Drugs) Act 1970 (Tas), s 6(3).
Murray v Tasmania Police 424

ENVIRONMENT AND PLANNING

- Environmental planning — General matters — Operation and effect of controls — Validity of legislation and regulations — Proposed development on reserved land under national parks legislation and under exclusive management of Director of National Parks and Wildlife — Reserve management plan — Planning scheme provided for grant of permit if use undertaken in accordance with National Parks and Wildlife reserve management plan.
Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd 341
- Environmental planning — Planning schemes and instruments — Tasmania — Other matters — Interpretation of planning scheme — Performance based scheme — Use standard complied with where acceptable solution met — Acceptable solution that “use is undertaken in accordance with a reserve management plan” — Compliance.
Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd 341

JUDICIAL REVIEW

- Judicial Review Act 2000 (Tas) — Firearms Act 1996 (Tas) — Decision — Classification of firearms — Decision under an enactment — Spent decision — Certificate evidencing characterisation of firearm — Tender of certificate in criminal prosecution — Defendant seeking to rely on certificate in separate subsequent proceeding — Application dismissed — Further civil proceeding seeking judicial review — No decision having continuing effect — Judicial Review Act 2000 (Tas), s 17 — Firearms Act 1996 (Tas), ss 149, 158(ha).
Woods v Commissioner of Police 403

STATUTES

- Interpretation — Whether planning legislation authorised making of scheme enabling planning authority to assess proposal for reserved land — Whether national parks legislation overrides or repeals provisions of planning legislation that enable the making of the scheme.
Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd 341

INDEX

WORDS AND PHRASES

- “Decision”.
Woods v Commissioner of Police 403
- “In accordance with”.
Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd 341
- “Liability to pay compensation”.
Alasi-Jones v State of Tasmania 385

WORKERS COMPENSATION

- Liability — Assessment and amount of compensation — Discontinuation of payments — Procedural matters — Generally — Tasmania — Employer asserting incapacity ceased within 84 days after claim for compensation — Appropriate procedure — Determination of Workers Rehabilitation and Compensation Tribunal — Jurisdiction — Appeal to Supreme Court — Referral of appeal to Full Court — Right of worker limited to disputes concerning commencement but not continuation of employer’s liability to make payments — Distinction between legislative provision for inchoate foundational liability to pay compensation and provision for employer to dispute liability — Workers Rehabilitation and Compensation Act 1988 (Tas), ss 3(2A), 25(1), 49(2)(b), 69(13), 81A(1), (3)(d), 86(5) — Supreme Court Rules 2000 (Tas), r 703(4).
Alasi-Jones v State of Tasmania 385