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Update Summary

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**MOTOR VEHICLE LAW
NEW SOUTH WALES**

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COMMENTARY

Graeme Pollard has reviewed and updated commentary on civil aspects of motor vehicle law. Highlights include the following.

Liability

The rule in *Searle v Wallbank* [1947] AC 341 is discussed at [150.6880].

The scienter rule is considered in regard to *Aleksoski v State Rail Authority of NSW* [2000] NSWCA 19. See [150.7040].

Motor Accidents Compensation Act 1999 – (Annotated)

Fault is discussed in regard to *Axiak v Ingram* [2012] NSWCA 311. See [MAC.3.200].

A vehicle running out of control is considered with reference to cases including *Zotti v Australian Associated Motor Insurers Ltd* [2009] NSWCA 323 and *Adlawan v Recochem Inc* [2021] NSWSC 223. See [MAC.3.300].

Motor Accident Injuries Act 2017 – (Annotated)

Fault is discussed in regard to *QBE Insurance (Australia) Limited v Lay* [2023] NSWSC 1433. See [MAI.1.4.10].

New commentary on threshold injuries is provided at [MAI.1.6.10]–[MAI.1.6.20].

A claim against the Nominal Defendant where a vehicle is not insured is discussed at [MAI.2.29.20].

The commentary on trespassers has been updated with reference to *Lutton v Willingham* [2012] NSWDC 92. See [MAI.2.29.160].

New commentary on a claim against the Nominal Defendant where a vehicle is not identified is provided in regard to cases including *Zaya v Damirdjian* [2022] NSWCA 203 and *Clancy v Nominal Defendant* [2023] NSWDC 186. See [MAI.2.30.10].

New commentary on the meaning of “cannot be established” is provided at [MAI.2.30.50].

New commentary is provided on the rejection of a claim for failure to make due inquiry and search to establish the identity of a vehicle, with reference to cases including *Nominal Defendant v Browne* [2013] NSWCA 197. See [MAI.2.31.20].

New commentary is provided on the general operation of Pt 3 Statutory benefits at [MAI.3.0.10].

New commentary on deemed liability not establishing fault is provided in regard to *AAI Ltd (t/as GIO) v Singh* [2019] NSWSC 1300. See [MAI.3.1.10].

New commentary on a pending “claim” for damages having to be legitimate is provided with reference to *QBE Insurance (Australia) Limited v Lay* [2022] NSWSC 1433. See [MAI.3.12.20].

New commentary on the general application of Pt 4 Award of damages is provided at [MAI.4.1.20].

No damages for threshold injuries is discussed with reference to *Briggs v IAG Ltd (t/as NRMA Insurance)* [2022] NSWSC 372, *Momand v Allianz Australia Insurance Ltd* [2023] NSWSC 1014 and *Mandoukos v Allianz Australia Insurance Ltd* [2023] NSWSC 1023. See [MAI.4.4.20].

New commentary on limits on economic loss is provided at [MAI.4.5.10]–[MAI.4.5.40].

Future economic loss is discussed in regard to cases including *AAI Ltd (t/as AAMI) v Pearce* [2024] NSWSC 357, *Fletcher v Neal* [2022] NSWDC 595 and *BSA v QBE Insurance (Australia) Limited* [2023] NSWPIA 84. See [MAI.4.7.40].

Mitigation of damages is considered at [MAI.4.15.20]–[MAI.4.15.40].

New commentary on contributory negligence is provided at [MAI.4.17.10].

New commentary on the general operation of Pt 5 Recovery for no-fault motor accidents at [MAI.5.1.10] and the right of recovery under s 5.6 “illusory” at [MAI.5.6.10] is looked at with reference to *AAI Ltd (t/as GIO) v Singh* [2019] NSWSC 1300.

Failure to report an accident is discussed in regard to *Flanaghan v Allianz Australia Insurance Ltd* [2022] NSWSC 1374. See [MAI.6.8.40].

The consequences of failure to provide relevant particulars of a claim for damages are considered with reference to *Wahhab v Insurance Australia Ltd* [2021] NSWSC 521. See [MAI.6.26.20].

The 25% threshold and damages “likely” to be awarded are discussed at [MAI.6.32.60] and [MAI.6.32.65].

The review of a medical assessment by a review panel is considered with reference to cases including *Insurance Australia Group Ltd (t/as NRMA Insurance) v Keen* [2021] NSWCA 287 and *Insurance Australia Ltd v Marsh* [2022] NSWCA 31. See [MAI.7.26.10].