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Update Summary

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**PERSONAL INJURY
LAW MANUAL NSW**

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Update Summary

Motor Accidents Injuries Act 2017 (NSW)

Section 1.6

In *Allianz Australia Insurance Ltd v The Estate of the Late Summer Abawi* [2024] NSWSC 1245, the plaintiff suffered injuries including lacerations to her skin on both wrists which were certified by a medical assessor as “minor injuries” in accordance with s 1.6(1) of the MAI Act. See [MAIA.1.6.20].

In *Allianz Australia Insurance Ltd v Susak* [2024] NSWSC 1359, the claimant alleged various injuries suffered as a back seat passenger in a car struck from behind. A medical assessor and Review Panel found some injuries as non-threshold. See [MAIA.1.6.20].

Motor Accident Injuries Scheme

Non-economic loss

In *Yangzom v Allianz Australia Insurance Ltd* [2024] NSWSC 870, the plaintiff suffered injury in a motor vehicle accident. A medical dispute was referred to a medical assessor who despite complaints of substantial pain found no substantial WPI. See [MAIA.980] and [ASD.240].

Evidence

Legal professional privilege and public interest immunity

In *Hoe v Kode* [2024] TASSC 51, the plaintiff sued in medical negligence. The plaintiff also complained to the Australian Health Practitioner Regulation Agency about her treatment. See [EVD.60].

Expert evidence

In *Nguyen v Northern Sydney Local Health District* [2024] NSWSC 1299, the plaintiff who was a research scientist who had been employed by NSW Health was in dispute over an issue of intellectual property on a scientific study. See [EVD.660].

Aviation Claims

General

In *Air Canada v Evans* [2024] NSWCA 153, passengers on an Air Canada flight were injured by turbulence and sued under the *Civil Aviation (Carriers) Liability Act 1959* (Cth) and the Montreal Convention 1999, Schedule 1A. See [AC.20].

Sporting Injuries

Supervision

In *Cook v Riding for the Disabled Association (NSW) & Anor* [2024] NSWSC 1332 the 10-year-old severely disabled rider suffered a neck fracture when she fell from a horse at a

complex run by the defendant. The plaintiff sued the Association and the State of NSW in negligence. See [SI.180].

Occupiers Liability

Supermarkets

In *Kmart Australia Limited v Marmara* [2024] NSWCA 249, the plaintiff customer was injured by the fall of a heavy oversized mountain bike being transported by another customer on a shopping trolley. The issue was whether there should have been a system preventing such use of trolleys. See [OCU.800].

Limitation Periods

Limitation periods for child sex abuse/significant physical abuse

In *Vonhoff v Hillier* [2024] NSWSC 1285, the long stop limitation period was lifted in respect of alleged medical negligence. See [LP.60] and [MED.120].

Workers Compensation Act 1987

In *Lynch v VLI Drilling Pty Ltd* [2024] NSWSC 1370, the plaintiff was granted leave to commence proceedings out of time for workers' compensation against the defendant under s 151D of the *Workers' Compensation Act 1987* (NSW). See [LP.100] and [COM.460].

Liability of educational institutions

Outside school hours

In *T2 v State of NSW* [2024] NSWSC 1347 (Harrison AJ), breach of duty of care extended to assault outside school grounds and outside school hours. See [EDU.40] and [EDU.140].

Camps and outings

In *Carusi v St Mary's Anglican Girls School Inc* [2024] WASCA 137, the appellant attended a performing arts centre activity and fell on a step between levels of an aisle whilst the theatre lights were dimmed. See [EDU.100] and [OCU.820].

General Principles

Conclusions to be drawn from an observed sequence of events

In *Resolution Life Australasia Ltd v Teagle* [2024] FCA 1607, the Full Court of the Federal Court of Australia upheld findings that an insurer's refusal of a personal disability benefit from a superannuation fund was not fair and reasonable. See [GP.780].

Strict liability/Vicarious liability/Non-delegable duty of care

In *Bird v DP (a pseudonym)* [2024] HCA 41, the High Court unanimously upheld the defendant's appeal so that the plaintiff's claim was dismissed with costs. See [GP.1020].

Setting settlements aside and stay applications

In *Willmot v State of Queensland* [2024] HCA 42, the High Court in part overturned the permanent stay of proceedings in the plaintiff's claim. See [GP.1030].

In *RC v Salvation Army (Western Australia) Property Trust* [2024] HCA 43, the majority in the High Court upheld the plaintiff's appeal from the WACA which had upheld a permanent stay in an action for sexual abuse against the defendant. See [GP.1030].

Negligence by police

In *Tindall & Anor v Chief Constable of Thames Valley Police* [2024] UKSC 33, the local police took away the "police slow" sign that was erected when a driver skidded on black ice and rolled into a ditch. About 20 minutes later another driver lost control on the black ice and collided head on with another car. Both drivers were killed and the widow of the other car driver sued the police in negligence. See [GP.520].

Deliberate or reckless acts: exemplary damages

In *Bishop of the Roman Catholic Diocese of Wagga Wagga, Mark Edwards v TJ (a pseudonym)* [2024] VSCA 262, the plaintiff had obtained a substantial award by a civil jury for general damages, economic loss and exemplary damages. The defendant appealed on quantum. See [GP.800].

Medical Negligence

Causes of action other than in negligence

In *Director of Proceedings on behalf of the Health Ombudsman v XD* [2024] QCA 215, the respondent dermatologist with more than 30 years practice had been the subject of multiple complaints of molesting boys and young men from the 1980s to the late 2010s. All but one of the complaints were raised long after the abuse ended. See [MED.280].

Common Law Rights

Liability of an employer for the acts of others

In *Lamichhane v Plumbcorp Solutions Pty Ltd* [2024] NSWSC 1402, the plaintiff was working on a building site when he fell in a trench and suffered injury. He sued the labour hire company that employed him, the plumbing company and head contractor in negligence. See [COM.120].