

# CULPABLE DRIVING

PREPARING AND RUNNING CULPABLE DRIVING MATTERS

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➤ **Introduction – overview of topics:**

➤ Practical tips on how to prepare and run these cases.

➤ Introduction of baseline sentencing.

➤ How it works in relation to culpable driving.

➤ Likely to have the effect of more trials running.

➤ Need to identify cases which can settle to alternative charges.

- Consideration of the different types of culpable driving.
- The applicability of honest and reasonable mistake of fact.
- Fatigue cases – how to combat ‘fatigue’ reconstructions.

## ➤ Practical tips for running culpable driving cases.

### ***Brief of evidence:***

- Get the brief and read it – BASIC but critical at an early stage.
- Consider the charges – which category of culpable driving charge has been laid.
- Do you want a committal? Not always an automatic decision.
  - To prepare for trial or to aid the resolution of the matter on an appropriate basis.

- Which witnesses required for a committal?
- Is the matter capable of settling to charges other than culpable driving?

### ***Prosecution Experts***

- How many experts have made statements in the brief?
- What type of expert?
- Additional information / subpoenas / disclosure / notes.

## ➤ *Defence Experts*

- Should you engage an expert / if so when - EARLY.
- Usefulness of having input from an expert prior to committal.
- Expert report / confer with an expert – advantage in cross examining an expert witness.
- Type of expert – accident reconstruction, medical, fatigue, toxicology, mechanical etc.

➤ ***Research before cross-examining experts***

- Do some reading – find out as much as you can about an area.
- Help you understand the evidence better – cannot undermine it if you don't understand it.
- Number of useful text books and services – keep copies of work done for future cases.
- Build a database to assist you now and in the future.

➤ *Same experts called for prosecution*

- Same experts are called again and again.
- Keep copies of statements and transcript of evidence given if you think it will be useful.
- May be able to use it in the future if a witness changes their opinion on a certain topic.
- Cross-examine one expert about the views of another – useful with reconstruction and fatigue experts.

## ➤ *View of the accident scene*

- Key part of preparation – especially prior to trial.
- Attend the scene – have a look, drive and walk around.
  - Go there with your client.
- Get a feel for the area that will be central to any contest.
- Take photos / video – assist with your preparation.





➤ ***Evidence of prior driving leading up to collision.***

➤ Often very significant part of either defence or prosecution case.

➤ If important witnesses have not been spoken to – defence should do it ASAP.

## ➤ **Baseline Sentencing**

- *The Sentencing Amendment (Baseline Sentences) Act 2014*
- Culpable driving is a baseline offence
- The baseline sentence for culpable driving is 9 years (section 318(1A))
- The commencement date for the legislation is 2 November 2014

➤ **Different forms of culpable driving:**

➤ Section 318(2) provides:

- (2) For the purposes of subsection (1) a person drives a motor vehicle culpably if he drives the motor vehicle—
  - (a) recklessly, that is to say, if he consciously and unjustifiably disregards a substantial risk that the death of another person or the infliction of grievous bodily harm upon another person may result from his driving; or
  - (b) negligently, that is to say, if he fails unjustifiably and to a gross degree to observe the standard of care which a reasonable man would have observed in all the circumstances of the case; or
  - (c) whilst under the influence of alcohol to such an extent as to be incapable of having proper control of the motor vehicle; or
  - (d) whilst under the influence of a drug to such an extent as to be incapable of having proper control of the motor vehicle.

➤ Is one limb of culpable driving more serious than another?

➤ *Pasznyk v R* [2014] VSCA 87

## ➤ Culpable Driving by Gross Negligence – Current Issues

- There is an unresolved issue concerning how juries should be instructed in relation to this issue
- Should the jury be instructed in accordance with the Court of Appeal's decision in *R v De Zilwa* (2002) 5 VR 408 that deviating from the standard of care to a gross degree means such a great falling short of the standard of care which a reasonable person would have exercised in the circumstances, and which involved such a high risk that death or serious injury would follow, that the driving causing death merited criminal punishment?
- See *King v R* (2012) 245 CLR 588

## Culpable Driving by Gross Negligence – Different forms of Offence

- Cases where the driving at the time of the accident is conscious and voluntary
- Cases where the driving at the time of the accident is not conscious and voluntary
  - Cases based on fatigue and medical illness
  - *Jiminez v R* (1992) 173 CLR 572
  - Section 318(2A).
- Honest and Reasonable mistake of fact – does it apply?
  - *Jiminez, R v Franks* [1998] VSCA 100

➤ **Fatigue cases:**

➤ Importance of reconstructions.

➤ Significant work needs to be done to check the reconstruction.

➤ Time consuming, boring and no great intellectual challenge.

➤ Grunt work – critical that it is checked.

			0345-0400	
			0400-0415	
	0415	Harkaway (Awake)	0415-0430	
			0430-0445	
	0447	Harkaway	0445-0500	
	0505	Harkaway	0500-0515	
	0518 / 0523	Harkaway (P) / Harkaway (P)	0515-0530	
			0530-0545	
			0545-0600	
			0600-0615	
		Departs home 0630	0615-0630	
	0634	Mt.Moriac	0630-0645	
			0645-0700	
			0700-0715	
0718	0729	Monash Fwy Toorak Rd (CL) / Footscray East (P)	0715-0730	Vic Market Footscray
0727		Exit Footscray Road	0730-0745	Vic Market Footscray
0756 / 0759		Dynon Footscray Rd (CL) / Tullamarine Fwy (CL)	0745-0800	Vic Market Footscray
			0800-0815	
			0815-0830	
	0838	Broadmeadows	0830-0845	Pronto Broadmeadows
			0845-0900	
0914		Tullamarine Fwy	0900-0915	
0921		Dynon Footscray Rd	0915-0930	
			0930-0945	
			0945-1000	
			1000-1015	
			1015-1030	

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Time Zone:

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## RECONSTRUCTION OF