

The logo for McCabes, featuring the name in a white, bold, sans-serif font. The letter 'C' is stylized with a teal-colored dot above it. The background is a dark, blue-tinted photograph of a modern building's interior with large glass windows and a curved walkway.

McCabes

PIC Decision Summary 2020 to 2022

Mostly at Fault Decisions

Passenger Injuries – NOT Wholly or Mostly at Fault

<p>AIJ v Allianz <i>Member Cassidy</i></p>	<p>The Claimant was a passenger in a taxi who forgot her wallet upon arriving at her house. The taxi driver would not let the Claimant out of the car without payment and refused to take her friend's credit card details over the phone. The Taxi Driver said he was driving to the Police station. The Claimant tried to exit vehicle at an intersection but fell from the vehicle as the taxi drove off.</p> <p>The Assessor found the Claimant was not at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/11.html</p>
<p>Whitby v NRMA <i>Member Nolan</i></p>	<p>The Claimant, a voluntary front seat passenger, in a vehicle driven by the Insured, whom she knew had used methylamphetamine the night before and therefore knew the Insured was under the influence of drugs, was found not mostly at fault as her contributory negligence was assessed at 60%.</p>	<p>Whitby v Insurance Australia Limited t/as NRMA [2022] NSWPIC 437 (18 July 2022) (austlii.edu.au)</p>

Passenger Injuries – Wholly or Mostly at Fault

<p>AJX v Allianz <i>Member Harris</i></p>	<p>The Claimant was standing on a bus and alleged that she fell because the driver accelerated suddenly and braked harshly. The Assessor accepted that the CCTV footage revealed no negligence by the driver and that the accident was wholly caused by the Claimant releasing her grip from an available handrail.</p> <p>The Assessor found the Claimant was wholly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/51.html</p>
<p>Saleh v Allianz <i>Member Cassidy</i></p>	<p>The Claimant was a passenger travelling on a public bus. She fell as she moved down the aisle to alight from the bus. The Member accepted after reviewing the CCTV footage there was no evidence of the Insured driver braking sharply or suddenly as alleged by the Claimant. The Member determined the Claimant was wholly at fault because the cause of the accident was due to the Claimant's failure to hold onto anything as she stood up and moved through the bus.</p>	<p>Saleh v Allianz Australia Insurance Limited [2022] NSWPIC 97 (9 March 2022) (austlii.edu.au)</p>

Pedestrian Accidents – NOT Wholly or Mostly at Fault

<p>AIR v QBE <i>Member Nolan</i></p>	<p>The Claimant, the Insured, and a third party, were engaged in an altercation at a service station, culminating in the Insured running the Claimant down.</p> <p>The Assessor found the Claimant was not at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/19.html</p>
---	---	--

<p>AJE v QBE <i>Member Jaglic</i></p>	<p>The Claimant was struck by a reversing forklift in Paddy's Market. The Assessor found 30% contributory negligence and that the Claimant was, therefore, not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/32.html</p>
<p>AJD v QBE <i>Member Harris</i></p>	<p>The Claimant was struck by the Insured vehicle when entering the fourth lane of a four-lane highway, whilst intoxicated. The Claimant's BAC reading at the time of the accident was 0.128g/ml. The Assessor found that the Insured failed to keep a proper lookout and that the Claimant exposed himself to risk by crossing away from a controlled intersection, which the Member noted was "probably due to his alcohol consumption". The Assessor found 25% contributory negligence and that the Claimant was, therefore, not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/31.html</p>
<p>AOO v QBE <i>Member Nolan</i></p>	<p>The elderly Claimant was knocked over by a tractor collecting shopping trolleys. The Assessor found that the Insured drove the tractor at an injudicious speed and in a reckless manner. The Assessor found that the Claimant was not wholly or mostly at fault on the basis that the Insured should bear " a much higher proportion of the blame".</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/182.html</p>
<p>ALF v NRMA <i>Member Cassidy</i></p>	<p>The Claimant attempted to cross the road and was struck by the Insured vehicle before she made it to the median strip. The Assessor found that the sightlines were good for both parties and that they each failed to keep a proper lookout. The Assessor found that the parties were both 50% responsible and, therefore, that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/88.html</p>
<p>ALX v NRMA <i>Member Ceballos</i></p>	<p>The Claimant entered a pedestrian crossing with a green light for pedestrians, but the light started to flash whilst still on the crossing. The Insured had an opportunity to see the Claimant but failed to avoid a collision. The Assessor found 20% contributory negligence and that the Claimant was, therefore, not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/107.html</p>
<p>ANC v Allianz <i>Member Broomfield</i></p>	<p>The Claimant was crossing Kent Street and paused on the raised concrete divide between the bicycle lane and the vehicle lane when the Insured taxi made a left-hand turn. The side mirror of the Insured vehicle hit the Claimant's right elbow, causing a fracture. The Assessor found 40% contributory negligence and that the Claimant was, therefore, not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/139.html</p>
<p>AJP v NRMA <i>Member Watson</i></p>	<p>The Claimant was crossing a road away from any marked pedestrian crossing. He initially ran but then walked. The Insured driver saw the Claimant enter the roadway and had 5 seconds to react but failed to avoid a collision.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/153.html</p>

	The Assessor found that the Claimant was not wholly or mostly at fault .	
AOK v NRMA <i>Member Nolan</i>	The Claimant jogged across an intersection when struck by the Insured vehicle. The Insured saw the Claimant jogging on the footpath and had a clear view. The Assessor found 55% contributory negligence and that the Claimant was, therefore, not wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/178.html
AOM v NRMA <i>Member Harris</i>	The Deceased suffered from dementia and `escaped' from his home without the knowledge of his family. CCTV showed him wait for several cars to pass before he attempted to cross the road. When he saw the Insured vehicle, he increased his pace. The Insured had a clear view of the Claimant and failed to avoid a collision. The Assessor found that the Claimant was not wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/180.html
AOT v NRMA <i>Member Stephen Boyd-Boland</i>	The Claimant started crossing a major road under the protection of a green light, but a don't walk sign appeared as he was crossing. He was ultimately struck by the Insured vehicle whilst traversing the bus lane. The Assessor assessed contributory negligence at 33.3% and concluded, therefore, that the Claimant was not wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/188.html
AOZ v NRMA <i>Member Watson</i>	The Claimant commenced crossing the road at a pedestrian crossing, on her bicycle, whilst the red pedestrian lights were flashing. The Insured made a right hand turn, colliding with the Claimant. The Assessor accepted that the Insured would have seen the Claimant if a proper lookout were maintained. The Assessor assessed contributory negligence at 50% and concluded, therefore, that the Claimant was not wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/194.html
Le v NRMA <i>Member Medland</i>	As the Claimant was crossing the road, he was looking right for oncoming traffic, when a parked car on his left reversed into him. The Member accepted the Claimant failed to observe the Insured in the driver's seat and that the vehicle had been put in reverse. The Member assessed contributory negligence at 25%, therefore finding the Claimant was not wholly or mostly at fault .	Le v NRMA [2022] NSWPICT 76 (15 February 2022) (austlii.edu.au)
Muscat v Allianz <i>Member Castagnet</i>	The Claimant, a pedestrian, attempted to cross four lanes of heavy traffic on the Hume Highway. The Claimant crossed between two stationary vehicles, not running, and was struck by the Insured vehicle between the third and fourth lanes. The Claimant saw the Insured driver move her arm in a way that the Claimant mis-interpreted as beckoning her to cross in front. The Member accepted the Claimant was not mostly at fault because the Claimant crossed two lanes of traffic safely and then waited for a signal to proceed from the Insured	Muscat v Allianz Australia Insurance Limited [2022] NSWPICT 337 (29 June 2022) (austlii.edu.au)

	driver, she received the signal and started to proceed to cross but the Insured driver drove into her.	
Moon v GIO <i>Member Stern</i>	As the Claimant was attempting to cross the road, she looked to the right and left but did not see any oncoming vehicles. She did observe the Insured vehicle which was parked to her right. The Claimant stepped into a vacant car space and at the same time, the Insured vehicle reversed over her right foot. The Member found both parties failed to keep a proper lookout and that the insured driver also travelled too close to the parked vehicles. The Member determined the Claimant not mostly at fault as her contributory negligence was less than 50%.	Moon v AAI Limited t/as GIO [2022] NSWPIC 516 (19 September 2022) (austlii.edu.au)
Dabal v QBE <i>Member Ford</i>	The Claimant was riding his bicycle and attempted to make a left hand turn at a t-intersection controlled by traffic lights when the Insured driver struck the Claimant with the front passenger side of their car. Both parties had an unobstructed view available to them and the t-intersection was wide. Both alleged the other was distracted and did not keep a proper lookout. The Insurer alleged 75% contributory negligence on the part of the Claimant. The Member ruled that both the Claimant and Insurer did not look to their respective left and right before turning/driving through the intersection, because if they did, they would have seen each other. The Member also found the Insured could have taken evasive action. The Claimant's contributory negligence was assessed at 50% and she was therefore not wholly or mostly at fault .	Dahal v QBE Insurance (Australia) Limited [2021] NSWPIC 308 (16 August 2021) (austlii.edu.au)
Al-Kes-Butrus v NRMA <i>Member Castagnet</i>	The Insured was making a righthand turn at 50 km/hr and turned onto the incorrect side of the road, colliding with the Claimant pedestrian. The Claimant was wearing earbuds and the Insurer alleged this constituted failing to keep a proper lookout. The Member held this was of no causal consequence in the accident. The Insured driver failed to keep a proper lookout, saw the Claimant before she commenced the turn and the Claimant could not have seen the Insured driver until they made the turn. The Claimant was not wholly or mostly at fault .	Al-Kes-Butrus v NRMA [2021] NSWPIC 510 (19 October 2021) (austlii.edu.au)

Pedestrian Accidents – Wholly or Most at Fault

AAH v QBE <i>Member Scarcella</i>	The Claimant was injured when she crossed into 3 lanes of traffic pushing an electric bike, in an area where there were no traffic lights or marked pedestrian crossing. The Assessor found the Claimant ought to have known the road was a busy roadway during morning hour peak	AAH v QBE Insurance (Australia) Ltd [2021] NSWPIC 58 (29 March 2021) (austlii.edu.au)
---	---	---

	<p>yet she crossed the roadway without keeping a proper lookout and observing the vehicles approaching her.</p> <p>The Assessor found that the Claimant was mostly at fault.</p>	
<p>AJJ v Allianz <i>Member Harris</i></p>	<p>The Insured was travelling at 45 kph when the Claimant pedestrian stepped into the Insured's path. The Assessor found that the Claimant gave the Insured no time to stop.</p> <p>The Assessor found that the Claimant wholly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/37.html</p>
<p>AJO v Allianz <i>Member Canceri</i></p>	<p>The Claimant pedestrian zig-zagged between traffic on Parramatta Road before being struck by a taxi in the bus lane. The Assessor found that the Insured taxi driver did not breach the duty he owed the Claimant, and that contributory negligence must, therefore, be assessed on the basis of an evaluative judgment (see <i>Axiak v Ingram</i>).</p> <p>The Assessor found 70% contributory negligence and that the Claimant was, therefore, wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/42.html</p>
<p>AKC v QBE <i>Member Stoten</i></p>	<p>The Claimant was injured when a vehicle owned by her brother rolled backwards down a driveway and she was struck by an open door. The Claimant asserted that her brother was at fault for failing to properly park the vehicle, but the Assessor found that the Claimant was the last driver of the vehicle.</p> <p>The Assessor found the Claimant was wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/57.html</p>
<p>AJU v NRMA <i>Member Holz</i></p>	<p>The Claimant ran across New South Head Road. He crossed two east-bound lanes, paused at the median strip, crossed two west-bound lanes and was struck in the third west-bound lane after emerging from behind a bus.</p> <p>The Assessor found that the Insured was driving at a reasonable speed and was maintaining a proper lookout.</p> <p>The Assessor found that the Claimant was wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/48.html</p>
<p>AKE v AAI <i>Member Cassidy</i></p>	<p>The Claimant had just parked her car and walked on the roadway, where she was struck by the Insured vehicle. The Assessor found some fault on the Insured's part because the Insured's speed of 50 kph was too fast in the circumstances. The Assessor found, however, that the Claimant failed to look before stepping onto the road.</p> <p>Contributory negligence was assessed at 70% and the Claimant was, therefore, mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/59.html</p>
<p>AKX v NRMA <i>Member McTegg</i></p>	<p>The Claimant was struck by the Insured's motorcycle whilst crossing the road. The Assessor found that the Insured was travelling at a reasonable speed and maintaining a proper lookout, but that the Claimant failed to look in the Insured's direction before crossing.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/81.html</p>

	Contributory negligence was assessed at "at least 61%" and the Claimant was, therefore, mostly at fault .	
AMA v NRMA <i>Member Medland</i>	The Claimant jogged across a pedestrian crossing against a red light for pedestrians. The Insured was travelling at a reasonable speed and maintained a proper lookout. The Assessor concluded that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/110.html
AMS v Allianz <i>Member Stoten</i>	The Deceased pedestrian entered a dark section of the Hume Highway, at night-time, in dark clothing and was struck by the Insured's truck. The Assessor concluded that the Deceased was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/129.html
AOQ v Allianz <i>Member Scarcella</i>	The Claimant ran across the road, against a don't walk sign, when he was struck by a bus. It was raining at the time of the accident and the Claimant was carrying an umbrella. The Claimant did not look before crossing. The Assessor concluded that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/184.html
APW v Allianz <i>Member Scarcella</i>	The Claimant got on the wrong bus, so he exited at the next bus stop and attempted to cross the road to head in the right direction. Whilst doing so, he listened to directions on his smart phone. He was legally blind in one eye. The Claimant was run down whilst crossing the road. The Insured was travelling at a reasonable speed and had little opportunity to avoid the accident. The Assessor concluded that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/219.html
AQC v NRMA <i>Member Scarcella</i>	The Claimant rode his bike across a pedestrian crossing whilst the red pedestrian lights were flashing. He collided with the Insured truck, which passed through a green light. The Assessor concluded that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/227.html
Leow v Allianz <i>Member Radnan</i>	The Claimant ran in front of two vehicles stopped at a red light and was subsequently hit by the Insured vehicle who was lawfully travelling in the third lane, in the opposite direction. The Member found the Claimant walked/ran out in front of the Insured without warning when the Insured driver had a green light. The Member found the Claimant was mostly at fault for entering the path of an oncoming vehicle and agreed with the Insurer's assessment of 80% contributory negligence.	Leow v Allianz Australia Insurance Limited [2022] NSWPICT 166 (15 April 2022) (austlii.edu.au)
Lin v GIO <i>Member Williams</i>	The Claimant, wearing dark clothing, ran across the road in a mixed commercial, residential, industrial area and tripped prior to the collision. The Member accepted the Insured driver did not fail to keep a proper lookout because the Insured took immediate steps to avoid the accident. The Member found the accident was wholly caused by the fault of the Claimant.	Lin v AAI Limited t/as GIO [2022] NSWPICT 408 (26 July 2022) (austlii.edu.au)

<p>Hlaihel v GIO <i>Member Ford</i></p>	<p>The Claimant was attempting to cross a road when she was struck by the Insured vehicle. The Insured's evidence was that they had no opportunity to notice her before she stepped out onto the roadway. The Member determined the Claimant was mostly at fault because the Insured had no opportunity to brake or swerve or avoid a collision with the Claimant and because the Claimant did not keep a proper lookout.</p>	<p>Hlaihel v AAI Limited t/as GIO [2022] NSWPIC 510 (13 September 2022) (austlii.edu.au)</p>
<p>Lee v QBE <i>Member Medland</i></p>	<p>Whilst attempting to cross a roadway in the evening during heavy rainfall, the Claimant emerged from behind a stationary vehicle at an intersection and a collision occurred between the Claimant and the Insured vehicle who had turned left onto the roadway. The Member determined the Claimant to be mostly at fault (70% contributory negligence) because the Claimant ran into the Insured vehicle from behind the stationary vehicle and the Insured had no opportunity to avoid the accident.</p>	<p>Lee v QBE Insurance (Australia) Limited [2022] NSWPIC 508 (15 August 2022) (austlii.edu.au)</p>
<p>Sarcasmo v AAI Limited <i>Member Williams</i></p>	<p>The Claimant was crossing the road at an intersection on his electric scooter when the Insured vehicle was travelling toward the intersection, and the two collided. The Claimant had a red 'don't walk' pedestrian sign at all times he was crossing the road. The Insured driver was travelling below the speed limit and was faced with a green light. The Insured driver did not see the Claimant at any time before the collision. It was found that she kept a proper lookout and did not breach her duty of care. There was nothing that should have put the Insured driver on notice that a scooter was likely to emerge from her right against a don't walk signal. The Claimant was wholly at fault for the accident.</p>	<p>Sarcasmo v AAI Limited t/as GIO [2021] NSWPIC 337 (7 September 2021) (austlii.edu.au)</p>
<p>Weber v IAG <i>Member McTegg</i></p>	<p>The Claimant was riding his bicycle at 15km/hour along a footpath when the Insured vehicle pulled out of a driveway and collided with the Claimant. The Member determined that the Insured should have considered the possibility of a bicyclist riding across their driveway, and so the Claimant was not wholly at fault. However, the Claimant was wearing earbuds which impeded his ability to hear the approaching vehicle, was not wearing a helmet, was riding on the footpath in breach of the Road Rules, was riding at excessive speed and was not riding with sufficient care given his view was obstructed by trees and a fence. The Claimant was found mostly at fault for the accident.</p>	<p>Weber v IAG Limited trading as NRMA Insurance [2021] NSWPIC 347 (14 September 2021) (austlii.edu.au)</p>
<p>Suleiman v AAMI <i>Member Medland</i></p>	<p>The Claimant was riding a motorised scooter through a roundabout when the Insured entered the roundabout to his left and collided with the Claimant. There was an inconsistent version of events and the Claimant's version of events was not accepted. The Claimant was riding in the incorrect direction of the roundabout. The Member found the Claimant entered the</p>	<p>Suleiman v AAMI [2021] NSWPIC 366 (16 June 2021) (austlii.edu.au)</p>

	roundabout in an unsafe manner, without due regard to his safety and in the incorrect direction of the roundabout and did not keep a proper lookout. The Claimant was found wholly at fault for the accident.	
Howell v QBE <i>Member Medland</i>	The Claimant was crossing a four-lane roadway and had crossed three lanes of heavy traffic when she stepped into the path of the Insured vehicle. The Claimant alleged she was more than halfway across the Insured's lane when the collision occurred. The Insured pulled out from behind a truck and changed lanes into the lane the Claimant was crossing. The Member found that a reasonable person in the position of the Claimant would not have chosen to cross at the point she did in heavy traffic, and with a pedestrian crossing within a reasonable distance. It was not unreasonable for the Insured to change lanes and their view was obscured by the truck. The Claimant was found at fault for the accident.	Howell v QBE [2021] NSWPIC 386 (13 September 2021) (austlii.edu.au)
Desmond v GIO <i>Member Medland</i>	The Claimant was riding his motorcycle on a highway and lost control. The Claimant allegedly struck a pothole. There was no other evidence that such a pothole existed, and the Member determined the cause of the accident was the Claimants failure to keep a proper lookout and drive his motorcycle on a smooth surface. The Claimant was found at fault for the accident and if it were the case that the road was the sole cause of the accident the Member considered that MAIA would not apply.	Desmond v GIO [2021] NSWPIC 437 (26 October 2021) (austlii.edu.au)

Single Vehicle Accidents – NOT Wholly or Mostly at Fault

ABE v AAI LTD <i>Member McTegg</i>	The Claimant was riding a motorcycle when he noticed a small piece of gyprock on the road. Although the Claimant attempted to avoid riding over the gyprock, his back wheel travelled over it and he was catapulted off his motorbike. The Assessor concluded the Claimant was not wholly or mostly at fault .	ABE v AAI Ltd t/as GIO [2021] NSWPIC 164 (28 May 2021) (austlii.edu.au)
ABL v NRMA <i>Member Radnan</i>	The Claimant was driving his vehicle when he contends that an unknown vehicle in the left lane merged into his lane, causing him to lose control of his vehicle and collide with a tree. The evidence was supportive of a finding that the Claimant attempted to brake before the collision but was unsuccessful due a mechanical failure. The Assessor found the accident was caused in part by the Claimant's momentary loss of concentration and a mechanical failure in his brakes. It was, however, predominantly caused by the other vehicle. The Assessor therefore concluded the Claimant was not wholly or mostly at fault .	ABL v NRMA Ltd [2021] NSWPIC 188 (15 June 2021) (austlii.edu.au)

<p>AIY v AAI <i>Member Harris</i></p>	<p>The Claimant lost control of his motorbike whilst negotiating the Kiama Bends. The Assessor found no actual fault by the Claimant and, applying <i>Singh</i>, also found no deemed fault. The cause of the loss of control, was found to be the presence of gravel on the road.</p> <p>The Assessor therefore concluded that the Claimant was not at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIR/ADRS/2020/26.html</p>
<p>AKW v GIO <i>Member Ford</i></p>	<p>The Claimant lost control of his motorcycle while attempting to veer around loose gravel on the Kiama Bends, hitting a concrete barrier. The Assessor found that there was no evidence of excessive speed or other negligence by the Claimant. The cause of the loss of control was found to be the Claimant's evasive action taken to avoid a concentration of gravel, which the Assessor deemed reasonable and appropriate.</p> <p>The Assessor therefore concluded that the Claimant was not at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIR/ADRS/2020/78.html</p>
<p>ALE v NRMA <i>Member Watson</i></p>	<p>The Claimant collided with a parked car. The Assessor accepted that the accident was caused by the Claimant having a 'micro-sleep'. The Assessor found that the Insurer failed to discharge its onus of proving that the Claimant had some warning that a micro-sleep may occur.</p> <p>The Assessor therefore concluded that the Claimant was not at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIR/ADRS/2020/87.html</p>
<p>AMW v AAI <i>Member Buckley</i></p>	<p>The Claimant was riding a motorcycle on a country road when he lost control and collided with some trees. The Assessor found that that the Insurer failed to discharge the onus of proving how the accident occurred and that it occurred as a consequence of the Claimant's fault.</p> <p>The Assessor concluded that the Claimant was not at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIR/ADRS/2020/134.html</p>
<p>AOD v AAMI <i>Member Radnan</i></p>	<p>The Claimant was driving when his vehicle aquaplaned. He tried to brake, to no effect, and the vehicle hit a tree. The Assessor found that the condition of the road was the major contributor to the accident and that any want of care by the Claimant amounted to no more than 10%.</p> <p>The Assessor concluded that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIR/ADRS/2020/171.html</p>
<p>APU v GIO <i>Member Stoten</i></p>	<p>The Claimant was riding her motorcycle into an intersection with a green light in her favour. Some pedestrians, however, entered the pedestrian crossing against a red 'don't walk' signal and the Claimant hit them. She was injured when she fell from her motorcycle.</p> <p>The Assessor concluded that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIR/ADRS/2020/216.html</p>
<p>Williams v NRMA <i>Member Stern</i></p>	<p>The Claimant was injured after he swerved to avoid deer that suddenly ran onto a freeway. The Member found the deer were spooked and ran into the claimant's path unexpectedly. The Member found the Claimant was not wholly at fault.</p>	<p>Williams v Insurance Australia Limited t/as NRMA Insurance [2022] NSWPIC 243 (29 March 2022) (austlii.edu.au)</p>

<p>Pham v GIO <i>Member Radnan</i></p>	<p>The Claimant swerved to avoid a dog, lost control of his vehicle and collided with a tree. The Member accepted the Claimant exercised reasonable care for his own safety and therefore was not wholly or mostly at fault.</p>	<p>Pham v AAI Limited t/as GIO [2022] NSWPIC 304 (17 June 2022) (austlii.edu.au)</p>
<p>Wilson v Allianz <i>Member McTegg</i></p>	<p>The Claimant was riding their motorcycle on a powerline track when the wheel got caught in a rut and the Claimant was thrown from their bike. The Claimant was riding cautiously, was an experienced rider, the track had been good up until the point of injury, and the rut was not clearly visible. Contributory negligence was assessed at 20%. Claimant was therefore not wholly or mostly at fault.</p>	<p>Wilson v Allianz Australia Insurance Limited [2021] NSWPIC 396 (23 July 2021) (austlii.edu.au)</p>
<p>MacMahon v NRMA <i>Member Cassidy</i></p>	<p>The Claimant was riding a motorcycle on a semi-rural road when he lost control on a bend and drove into a gully and was thrown from his bike. The Claimant failed to see a speed advisory curve warning sign. The Claimant was going 70km/hour and should have been going, at most, 58km/hour to negotiate the turn. The Member found there were deficiencies in road design (unexpected tightening of the road) and signage (the warning sign to lower speed was placed too far away from the bend) which did not comply with current standards, causing the Claimant to drive too fast into the bend and causing the accident. The Member also noted two prior accidents had occurred where a driver and motorcycle rider lost control on the same bend 4-5 years prior to the subject accident. The Claimant was not wholly or mostly at fault for the accident.</p>	<p>MacMahon v Insurance Australia Limited t/as NRMA Insurance [2021] NSWPIC 427 (19 October 2021) (austlii.edu.au)</p>
<p>Peel v AAMI <i>Member Medland</i></p>	<p>The Claimant was riding a bicycle within a bike lane on a road when the Insured emerged from a T intersection and collided with the Claimant. There was no signage or lines to indicate that cyclists must give way to vehicles or that the bike lane ended. The Claimant said she saw the Insurer look to his left but not his right before turning left (in which case he would have seen the Claimant). The Insured breached their duty of care to the Claimant by not keeping a proper lookout and the Claimant was not wholly or mostly at fault for the accident.</p>	<p>Peel v AAMI [2021] NSWPIC 495 (25 November 2021) (austlii.edu.au)</p>
<p>Maggar v NRMA <i>Member Castagnet</i></p>	<p>The Claimant was riding a scooter through a roundabout and proceeded to make a right-hand turn. As he did so, his scooter slid on gravel/sand on a rough, uneven patch of roadway causing the Claimant to dislodge and hit the bitumen with force. The Police inspected the road the next day and did not notice anything about the road of major relevance. The Claimant submitted the Insurer set the bar too high with respect to Claimant's duties and overlooked the duty of Councils to maintain roads. The road conditions were not immediately</p>	<p>Maggar v NRMA [2022] NSWPIC 59 (24 January 2022) (austlii.edu.au)</p>

	visible to the Claimant as he made the turn, the Claimant approached the roundabout as a prudent rider, and the severity of the injuries indicated the dislodgment was sudden, making it likely the Claimant did not have a reasonable opportunity to see what lay ahead. The Claimant was found not at fault for the accident.	
--	--	--

Single Vehicle Accidents – Wholly or Mostly at Fault

ALB v QBE <i>Member Macken</i>	The Claimant alleged he was knocked from his motorcycle by an unidentified vehicle. The Assessor found that no other vehicle was involved, and that the Claimant lost control of his motorcycle through his own fault. The Assessor concluded that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/83.html
ALG v GIO <i>Member Medland</i>	The Claimant was riding a motorcycle on a dirt road. His vision was obscured by dust from another motorcycle and the setting sun. He hit an uneven patch of road and lost control. The Assessor accepted that the accident was caused by the Claimant not driving to the conditions. The Assessor concluded that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/100.html
ALT v QBE <i>Member Radnan</i>	The Claimant was injured after a stolen vehicle was involved in a crash. Whilst the Claimant asserted that he was a passenger in the vehicle, the Assessor accepted that the Claimant was the driver given evidence in the Ambulance Report that his legs were positioned in the well of the driver's seat. The Assessor concluded that, as the driver, the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/103.html
Yankovich v GIO <i>Member Cassidy</i>	The Claimant was a learner motorcyclist riding on an unfamiliar road which was difficult to navigate due to bends in the road and alternating sunshine and shade. The Claimant continually adjusted the sun visor attached to her motorcycle helmet. The Claimant lost control on a bend in the road and collided with a tree sustaining serious injury. The Member determined the Claimant wholly at fault because the sun and the trees were part of the landscape and did not cause the accident. The Member determined the only cause of the accident was the Claimant's inexperience in riding to the conditions of sun and shadows on a difficult stretch of unfamiliar roadway.	Yankovich v AAI Limited t/as GIO [2022] NSWPIC 137 (22 March 2022) (austlii.edu.au)
Hourani v GIO	The Claimant was riding his motorbike and lost control whilst negotiating an "S" bend.	Hourani v AAI Limited t/as GIO [2022] NSWPIC 244 (3 May 2022) (austlii.edu.au)

<i>Member Medland</i>	The Member found the Claimant failed to drive to the prevailing conditions by failing to drive at an appropriate speed and failing to observe the gravel on the roadway and drive his vehicle accordingly. The Member determined the Claimant was mostly or wholly at fault .	
Douglas v AAMI <i>Member Stern</i>	Whilst approaching a right-hand curve in the road, the Claimant experienced what felt like the rear of her vehicle lose traction on the road. It began to slide before it veered off the road and collide with a tree. The Member found the Claimant lost traction on the road, inappropriately applied the brakes and the vehicle left the road and collided with a tree. The Member determined the Claimant wholly at fault .	Douglas v AAI Limited t/as AAMI [2022] NSWPIIC 246 (24 May 2022) (austlii.edu.au)
ABR v AAMI <i>Member Macken</i>	The Claimant was driving down a hill, on a wet road with a left-hand bend. In doing so, his rear wheels lost traction and the Claimant was unable to correct the vehicle's steering, causing the vehicle to roll onto its left-hand side. The Member found the accident occurred because the Claimant was travelling too quickly. The Member determined the Claimant was wholly at fault .	ABR v AAMI [2021] NSWPIIC 204 (23 June 2021) (austlii.edu.au)
Kriske v QBE <i>Member O'Rain</i>	The Claimant was riding her motorbike on the Great Western Highway. The vehicle travelling in front of her braked due to slowed traffic in the area from an earlier accident. The Claimant also braked, and her motorbike fell on its right side and skidded with her right leg underneath. The Member found the Claimant failed to keep a proper lookout, failed to keep a safe distance from the vehicle in front and rode her motorcycle at excessive speed. The Member determined the Claimant was wholly or mostly at fault .	Kriske v QBE (Insurance) Australia Limited [2021] NSWPIIC 247 (16 July 2021) (austlii.edu.au)
Harris v NRMA <i>Member Scarcella</i>	The Claimant was a motorcyclist who applied his brakes heavily because an unidentified vehicle travelling in front of him braked suddenly. The Claimant was thrown off his motorcycle and did not hit the unidentified vehicle. The Claimant was travelling 10-15 metres behind the unidentified vehicle. It was found that the Claimant should have kept a reasonable distance behind the vehicle ahead; kept an alert and proper lookout; and should have proceeded at a speed which was reasonable relative to the speed of the other vehicle. The Driver of the unidentified vehicle was not at fault. The Claimant was found wholly at fault .	Harris v NRMA Insurance [2021] NSWPIIC 352 (13 September 2021) (austlii.edu.au)
Gazal v QBE <i>Member McTegg</i>	The Claimant collided with a pole when blinded by the sun in a shopping centre car park. The Claimant had a sun guard down and still could not see. The Claimant was driving between 15-20 km/hr, in excess of the 10 km/hr speed limit. The Member held it was not a no-fault accident and the accident occurred as a result of the sun shining into the eyes and the negligence of the Claimant. The Member found that the act of steering to avoid the pole was either an act or omission by the claimant which, whilst not the sole or primary cause of the injury, undoubtedly contributed to the injury. The Claimant failed to stop or slow her vehicle when she knew she had impaired vision. The Claimant was found to be mostly at fault for the accident.	Gazal v QBE Insurance (Australia) Limited [2021] NSWPIIC 492 (1 December 2021) (austlii.edu.au)

Multi-Vehicle Accidents – NOT Wholly or Mostly at Fault

<p>AAV v QBE <i>Member Scarcella</i></p>	<p>The Claimant merged into the lane of the Insured. The Insured failed to break or slow down to allow the Claimant to merge. The Assessor found that each driver had some responsibility for the accident. The Assessor found the Claimant was not wholly or mostly at fault.</p>	<p>AAV v QBE Insurance (Australia) Limited [2021] NSWPIC 142 (24 May 2021) (austlii.edu.au)</p>
<p>ABA v NRMA <i>Member Castagnet</i></p>	<p>The Claimant alleged he lost control of his vehicle and collided with some trees on the median strip as a result of an unidentified vehicle swerving into his lane. The Assessor found the Claimant was not wholly or mostly at fault.</p>	<p>ABA v NRMA Insurance Ltd [2021] NSWPIC 143 (27 May 2021) (austlii.edu.au)</p>
<p>ABB v AAI t/as AAMI <i>Member Ford</i></p>	<p>The Claimant was sitting on his bicycle stationary at a concrete barrier at the roundabout when he was struck by the motor vehicle being driven by the Insured. The Assessor found the Claimant was not mostly at fault.</p>	<p>ABB v AAI t/as AAMI [2021] NSWPIC 145 (27 May 2021) (austlii.edu.au)</p>
<p>ABC v CIC ALLIANZ <i>Member Nolan</i></p>	<p>The Claimant was attempting to make a U-turn and, despite being in the bus driver's line of vision, the bus driver kept driving and did not attempt to brake. The Assessor found the Claimant was not mostly at fault.</p>	<p>ABC v CIC-Allianz Ltd [2021] NSWPIC 147 (27 May 2021) (austlii.edu.au)</p>
<p>AIO v NRMA <i>Member Cassidy</i></p>	<p>The Claimant was travelling behind the Insured on a motorcycle. The Assessor found that the Insured merged to the left and the Insured continued down the centre of the lane to overtake. The Insured then made a right-hand turn, without indicating and collided with the Claimant's motorbike. The Assessor found the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/16.html</p>
<p>AJG v Allianz <i>Member Holz</i></p>	<p>The Assessor found that the Insured merged into a parking bay on the left and re-emerged into the Claimant's lane as the Claimant was passing on his motorcycle. The Assessor found that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/34.html</p>
<p>AJI v NRMA <i>Member Stern</i></p>	<p>The Claimant was riding his motorcycle behind the Insured who was also riding a motorcycle. The Insured lost control on an S-bend. The Claimant braked but could not avoid a collision. The Assessor found that the Claimant was travelling at a safe speed and distance. The Assessor found that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/36.html</p>
<p>AJK v QBE <i>Member Warren</i></p>	<p>The Claimant merged into the Insured's lane and the Insured ran into the rear of his vehicle. The Assessor found that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/38.html</p>

<p>AJM v NRMA <i>Member Castagnet</i></p>	<p>The Claimant and the Insured collided at a roundabout. The Assessor found that the Insured should have given way to the Claimant. The Assessor found that the Claimant not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/40.html</p>
<p>AJS v AAI <i>Member Warren</i></p>	<p>The Insured was turning right across stationary traffic, and across oncoming traffic, in order to take a side street when the Claimant was travelling in the correct direction, albeit not in the designated lane, in order to travel around stationary backed up traffic. The Assessor found that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/46.html</p>
<p>AKQ v Allianz <i>Member Holz</i></p>	<p>The Assessor found that the Claimant was lawfully overtaking the Insured's stationary vehicle when the Insured made a sudden U-turn without indicating. The Assessor found that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/71.html</p>
<p>ALD v QBE <i>Member Holz</i></p>	<p>The Assessor found that the Insured entered the New England Highway, from a side street, into the path of the Claimant's motorcycle, causing the accident. The Assessor found that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/86.html</p>
<p>ANB v Allianz <i>Member McTegg</i></p>	<p>The Claimant was involved a four car pile-up on the Newell Highway whilst driving in a dust storm. The Assessor found that slowed his vehicle but collided with a vehicle which was stationary on the road. The Assessor concluded that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/139.html</p>
<p>ANJ v Allianz <i>Member Holz</i></p>	<p>The Claimant was riding his motorcycle when he struck a van travelling in the lane to his right. The evidence, however, failed to demonstrate how the accident occurred and which party left their lane. Given that the Insurer bore the onus of proof, the Assessor concluded that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/147.html</p>
<p>ANK v Allianz <i>Member Holz</i></p>	<p>The Claimant rode his motorcycle through an intersection whilst the Insured made a right hand turn across his path. Both parties alleged they had the benefit of a green light. In the absence of reliable evidence, the Assessor was unable to determine which party at the green light. Given that the Insurer bore the onus of proof, the Assessor concluded that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/148.html</p>

<p>AOF v QBE <i>Member Watson</i></p>	<p>The Claimant stopped at a give way sign and then proceeded through the intersection, where she collided with the Insured vehicle. The Assessor found that both parties had the opportunity to see the other vehicle but failed to do so. The Assessor concluded that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/173.html</p>
<p>APM v QBE <i>Member Scarcella</i></p>	<p>The Claimant and the Insured were travelling in opposite directions when they collided on a bend. The Assessor found that there was insufficient evidence to demonstrate which party crossed onto the wrong side of the road. Given that the Insurer bore the onus of proof, the Assessor concluded that the Claimant was not wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/208.html</p>
<p>Chit v Allianz <i>Member Castagnet</i></p>	<p>The Claimant cyclist was struck by the Insured bus in the bus lane. The Member found the Insured bus driver solely caused the accident because they overtook the Claimant when there was no room or space to do so. The Member concluded the Claimant was not wholly or mostly at fault.</p>	<p>Chit v Allianz Australia Insurance Limited [2022] NSWPIC 139 (4 April 2022) (austlii.edu.au)</p>
<p>Taylor v NRMA <i>Member Ford</i></p>	<p>The Claimant was riding his motorcycle on a road with sign posted speed of 100km. As he approached the Insured vehicle which was stationary, but with no brake lights or indicators activated, the Insured vehicle then attempted to make a right hand turn across the roadway into a driveway across the path of the Claimant. The Member accepted the Claimant had to take evasive action to avoid a collision and by doing so, sustained injuries. The Member accepted the Claimant was not wholly or mostly at fault.</p>	<p>Taylor v Insurance Australia Limited t/as NRMA Insurance [2022] NSWPIC 182 (14 April 2022) (austlii.edu.au)</p>
<p>Murphy v QBE <i>Member Castagnet</i></p>	<p>The Claimant was commencing to change lanes when the Insured vehicle, a Police car at speed under flashing lights and siren, collided with the rear of the Claimant. The Member accepted the Insured Police vehicle failed to pay reasonable attention to the movements of the Claimant's vehicle, failed to heed the Claimant's activation of the right indicator and failed to exercise reasonable care by not controlling the speed of the vehicle. The Member assessed contributory negligence at 50% and determined the Claimant not wholly or mostly at fault.</p>	<p>Murphy v QBE Insurance (Australia) Limited [2022] NSWPIC 183 (29 April 2022) (austlii.edu.au)</p>
<p>NRMA v Wang <i>Member Ford</i></p>	<p>The Claimant was attempting to make a right hand turn at an intersection when his vehicle was struck by the Insured vehicle which was travelling in the opposite direction. The Member found the Claimant was attempting to make the right hand turn with all due care and caution and was travelling at a very low speed when the Insured driver was travelling at an excessive speed in the circumstances. The Member found the Claimant not wholly or mostly at fault.</p>	<p>Insurance Australia Limited t/as NRMA Insurance v Wang [2022] NSWPIC 211 (11 May 2022) (austlii.edu.au)</p>

<p>Patel v NRMA <i>Member Castagnet</i></p>	<p>The Claimant was making a left-hand turn and the Insured was making a right hand turn. Both vehicles arrived at the corner at the same time. The Member found the Claimant was negotiating a tight corner at a slow speed. His scooter had not crossed over the other side of the road, and when the Claimant observed the Insured vehicle, he attempted to brake to avoid a collision. The Member found the Insured driver had a better opportunity to observe the road ahead and to avoid the accident because the Insured driver was negotiating a wider turn.</p> <p>The Member found the Claimant not at fault.</p>	<p>Patel v Insurance Australia Limited t/as NRMA Insurance [2022] NSWPIC 254 (27 May 2022) (austlii.edu.au)</p>
<p>Kong v QBE <i>Member Nolan</i></p>	<p>The Claimant was making a left hand turn on an inside lane at the same time the Insured truck was turning from the outside lane. The Member reviewed the dash cam footage from the Insured truck and accepted the Claimant did not see the Insured truck prior to the accident but the truck driver did see the Claimant's vehicle at all times and observed the Claimant's left indicator flashing prior to the incident. The Member accepted the Claimant was not at fault.</p>	<p>Kong v QBE Insurance (Australia) Limited [2022] NSWPIC 278 (25 May 2022) (austlii.edu.au)</p>
<p>Mitchell v GIO <i>Member Medland</i></p>	<p>The Claimant was travelling on a highway at 100km per hour in the right lane when the Insured vehicle stopped suddenly due to mechanical failure. The Member reviewed the dash cam footage of the Insured vehicle and accepted the mechanical malfunction extended to the brake lights not being illuminated, the Claimant was not adequately observing the roadway leading up to the accident because the Claimant looked down as he was approaching the rear of the Insured vehicle. The Member accepted the Claimant failed to keep a proper lookout but there were no further reasonable steps to avoid the collision. The Member assessed contributory negligence at 20% and therefore, the Claimant was found not wholly or mostly at fault.</p>	<p>Mitchell v GIO [2022] NSWPIC 306 (20 June 2022) (austlii.edu.au)</p>
<p>Stuparu v GIO <i>Member Stern</i></p>	<p>The Claimant was riding his motorcycle and as he approached a T-intersection, the Insured failed to give way and proceeded to make a right-hand turn into the Claimant's path of travel. As a result, the Claimant slammed on his emergency brakes causing his bike to tilt right and slide. The Assessor found a significant contributing factor was the Insured's failure to enter when it safe to do so and failure to give way.</p> <p>The Assessor found the Claimant was not mostly at fault.</p>	<p>Stuparu v GIO [2021] NSWPIC 189 (23 June 2021) (austlii.edu.au)</p>
<p>Hui v NRMA <i>Member McTegg</i></p>	<p>The Claimant was making a right hand turn at an intersection on a green light. As she made the turn, the Claimant's vehicle was hit by the Insured who had failed to stop. The Assessor found the Insured driver drove through a red light.</p> <p>The Assessor found the Claimant was 10% negligent and therefore, not mostly at fault.</p>	<p>Hui v NRMA Insurance Limited [2021] NSWPIC 277 (4 August 2021) (austlii.edu.au)</p>

<p>ACF v NRMA <i>Member Williams</i></p>	<p>The Claimant was stationary in the right lane at a set of lights at an intersection, waiting on a red right turn arrow. Weather conditions were fine and clear. Traffic in both directions was light. The Claimant proceeded to turn right, which he alleged was on a green arrow light. As the Claimant turned, the Insured travelled north through the intersection and collided with the left side of the Claimant's car. The Claimant saw the Insured's car just before it collided with him. The Insured did not see the Claimant's vehicle before the collision.</p> <p>The Insured alleged that he had a green light. The Claimant alleged he had a green right turn arrow. The Insurer submitted it was more likely both vehicles had a solid green light, and that the burden of proof of fault lies with Claimant (relied on <i>Vines v Djordjevitch [1955] HCA 19</i>). The Member found the onus lies with the Insurer to establish, on balance of probabilities, the accident caused wholly by fault of the Claimant. The Member found the Claimant was more consistent in his recount of events throughout the evidence, and found the Claimant was not wholly or mostly at fault for the accident.</p>	<p>ACF v Insurance Australia Limited t/as NRMA [2021] NSWPIC 290 (13 August 2021) (austlii.edu.au)</p>
<p>Camilleri v QBE <i>Member Cassidy</i></p>	<p>The Claimant was riding his motorcycle when he collided with the Insured's vehicle at or near an intersection. The Claimant alleged that the Insurer pulled out into his lane causing him to collide with the Insured's vehicle. The Insured alleged she was stationary at a set of lights when the Claimant collided with the rear of her vehicle. The Claimant's evidence was accepted over the Insured's as it was more consistent, the Claimant was co-operative with the Insurer's investigator, gave evidence in a straightforward manner even by video, the travel route he took on the day was more logical than the Insured's version, and his version of where the accident happened was corroborated by his two children present. The Insured moved into the Claimant's lane suddenly and the Claimant did not have a reasonable opportunity to avoid collision. The Claimant was found not wholly or mostly at fault for the accident.</p>	<p>Camilleri v QBE Insurance (Australia) Limited [2021] NSWPIC 309 (17 August 2021) (austlii.edu.au)</p>
<p>O'Connor v QBE <i>Member McTegg</i></p>	<p>The Claimant was moving into a left-hand lane and alleged an unidentified vehicle pushed her vehicle into collision with the Insured's vehicle as she did so. The Insurer denied the presence of the unidentified vehicle and alleged the Claimant was wholly at fault. The evidence was supportive of a finding that an unidentified vehicle did exist and pushed the Claimant's vehicle into the Insured. It was found that the Claimant failed to exercise reasonable care for her own safety and failed to keep a proper lookout for the unidentified speeding vehicle, changing lanes when it was unsafe to do so. The Member would have found the Claimant wholly at fault if it were not for the presence of the unidentified vehicle. The Claimant was not found wholly or mostly at fault, however her contributory negligence was assessed at 50%.</p>	<p>O'Connor v QBE Insurance (Australia) Limited [2021] NSWPIC 324 (27 August 2021) (austlii.edu.au)</p>

<p>Stufano v Allianz <i>Member Nolan</i></p>	<p>The Claimant intended to turn right into a driveway of a hospital when she was hit from the rear by a bus travelling in the same direction. The Claimant had veered into the unmarked left lane in order to make a 'hook' right turn into the hospital. The Insured vehicle misconstrued this as an intention to pull over. The Insured vehicle failed to keep a safe distance when attempting to overtake the Claimant's vehicle from the right side, causing collision with the driver side of the Claimant's vehicle. The Claimant had indicated her intention to turn right for 7 seconds before turning and acted with reasonable care by slowing down. The Insured was consistently driving "unnecessarily close" to the Claimant. The Claimant was not wholly or mostly at fault for the accident.</p>	<p>Stufano v Allianz Australia Insurance Limited [2021] NSWPIC 397 (29 September 2021) (austlii.edu.au)</p>
<p>Carulli v Allianz <i>Member Stern</i></p>	<p>The Claimant was riding a motorcycle in heavy traffic in clear conditions when he came into collision with the Insured's vehicle. Traffic was moving at about 20-30 km/hour and the Claimant had been lane filtering for about 300 metres before first merging behind the Insured vehicle and did so at a speed of not more than 30 km/hour. The Insured was driving too close to the vehicle in front causing him to brake suddenly, and the Claimant got caught between the two vehicles. The Insured failed to keep a proper lookout for the Claimant. The Claimant was not wholly or mostly at fault for the accident. It was not determinative that the Claimant was issued with a traffic infringement notice for negligent driving.</p>	<p>Carulli v Allianz [2021] NSWPIC 425 (29 September 2021) (austlii.edu.au)</p>
<p>Radford v QBE <i>Member McTegg</i></p>	<p>The Claimant was riding a motor scooter and moved into the left-hand lane. A truck turned in the path of the scooter, and a dispute arose as to whether the truck indicated before moving into the left-hand lane. The Claimant alleged the truck moved abruptly before changing lanes. The Member was not satisfied the Insurer discharged their onus of proof and the Claimant was found not wholly or mostly at fault for the accident.</p>	<p>Radford v QBE Insurance (Australia) Limited [2021] NSWPIC 477 (22 November 2021) (austlii.edu.au)</p>
<p>Koster v NRMA <i>Member Stern</i></p>	<p>The Claimant was riding a motorcycle on a winding, unmarked, steep road. The Insured was driving out of an exit at a blind corner with a view that was obstructed by a rock wall. The Claimant alleged the Insured was not on her side of the road and was well away from the rock wall, and the Insured alleged she was 'hugging' the rock wall and was driving slowly when the collision occurred. The Insurer failed to prove the Claimant was wholly or mostly at fault for the accident and contributory negligence was assessed at most likely under 50%.</p>	<p>Koster v NRMA [2021] NSWPIC 484 (26 November 2021) (austlii.edu.au)</p>
<p>Nasr v TAG and QBE <i>Member Plibersek</i></p>	<p>The Claimant was parking her car in a carpark when she was hit by another vehicle. The Claimant's car then accelerated and collided with a fence and a tree. There was a factual dispute about whether the Claimant had a medical episode after being struck by the other vehicle, or if she mistakenly pressed the accelerator of her vehicle instead of the brake before the second collision. There was no evidence the Claimant was unfit to drive at the time. The Member found there was insufficient evidence to determine she had a medical episode or accelerated by accident. The Member found the Claimant acted as a reasonable person and</p>	<p>Nasr v IAG Limited t/as NRMA Insurance and QBE Insurance (Australia) Ltd [2022] NSWPIC 34 (25 January 2022) (austlii.edu.au)</p>

	there were no precautions she could have taken while parking her car in a car park. The Claimant was found not wholly or mostly at fault for the accident.	
--	---	--

Multi-Vehicle Accidents – Wholly or Mostly at Fault

AAU v GIO <i>Member Boyd-Boland</i>	The Claimant was riding her bicycle and attempted to change lanes. In doing so, she was hit from behind by the Insured's vehicle. The Assessor found the Claimant changed lanes without giving way to the Insured's vehicle. The Assessor found the Claimant wholly at fault .	AAU v GIO Ltd [2021] NSWPIC 127 (14 May 2021) (austlii.edu.au)
ABD v NRMA <i>Member Scarcella</i>	The Claimant was riding his bicycle at excessive speed and failed to give way at an intersection, colliding with the Claimant's vehicle. The Insured failed to keep a proper look out and apply his breaks in time to avoid a collision. The Assessor found the Claimant was mostly at fault .	ABD v NRMA Insurance [2021] NSWPIC 163 (27 May 2021) (austlii.edu.au)
AIV v NRMA <i>Member Ceballos</i>	The Assessor found that the Claimant changed lanes without giving way to the Insured's vehicle. The Assessor found the Claimant wholly or most at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/23.html
AIZ v AAI <i>Member Scarcella</i>	The Assessor accepted evidence from the Insured and the Police that the Claimant's motorcycle travelled onto the incorrect side of the road, when attempting to negotiate the bend in the roadway, and collided with the Insured Driver's caravan. The Assessor found that the Claimant was wholly or mostly at fault	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/27.html
AKX v Allianz <i>Member Warren</i>	The Assessor found that the Claimant's vehicle veered onto the wrong side of the road, causing a head-on collision. The Assessor found that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/79.html
AJT v GIO <i>Member Radnan</i>	The Claimant rode her bicycle too close to a truck and, ultimately, into the path of the truck whilst changing lanes. The Assessor found that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/47.html
AJY v NRMA <i>Member Harris</i>	The Claimant made a dangerous right-hand turn, across traffic heading in the opposite direction, and collided with the Insured vehicle. The Assessor found that the Claimant was wholly or mostly at fault .	http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/52.html

<p>AMI v AAMI <i>Member Holz</i></p>	<p>The Claimant attempted to overtake the Insured's vehicle on the left whilst that vehicle was stationary at an intersection. The Insured's passenger opened the door as the Claimant passed, causing an accident.</p> <p>The Assessor found that the Claimant was at least 80% responsible for the accident and, therefore, mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/118.html</p>
<p>AMH v Allianz <i>Member Cassidy</i></p>	<p>The Assessor found that the Claimant reversed from a parking spot in a shopping centre into the side of the Insured's stationary vehicle.</p> <p>The Assessor found that the Claimant was wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/117.html</p>
<p>APQ v AAI <i>Member Harris</i></p>	<p>The Claimant collided with the rear of the Insured vehicle, which had been involved in a prior impact approximately one second earlier. The Assessor found that the Claimant was not travelling at a safe distance.</p> <p>The Assessor found that the Claimant was wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/212.html</p>
<p>AQH v QBE <i>Member Cassidy</i></p>	<p>The Assessor found that the Insured entered the intersection on a green light and the Claimant entered the intersection on a red light.</p> <p>The Assessor found that the Claimant was wholly or mostly at fault.</p>	<p>http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSIRA/DRS/2020/232.html</p>
<p>Oudicho v CIC Allianz <i>Member Ford</i></p>	<p>The Claimant was travelling in heavy traffic and the vehicles in front immediately came to a halt. The Claimant was unable to bring his own vehicle to a halt and collided with the Insured's vehicle. The Member found the Claimant was wholly at fault.</p>	<p>Oudicho v CIC Allianz Insurance Limited [2022] NSWPIC 152 (11 April 2022) (austlii.edu.au)</p>
<p>Rehman v Allianz <i>Member Castagnet</i></p>	<p>The Claimant struck the rear of the Insured vehicle who was parked kerb side.</p> <p>The Member accepted the Claimant was wholly at fault because the Claimant failed to take reasonable precautions to avoid the presence of parked vehicles.</p>	<p>Rehman v Allianz Australia Insurance Ltd [2022] NSWPIC 171 (12 April 2022) (austlii.edu.au)</p>
<p>McGrath v AAMI <i>Member Castagnet</i></p>	<p>The Claimant was attempting to make a U-turn across three lanes of traffic. The Claimant did not see the Insured vehicle prior to the accident because of limited visibility due to a bend in the roadway. The Member accepted there was no direct evidence the Claimant firstly looked for traffic travelling in the opposite direction, looked either again in her two side mirrors and then again traffic in the opposite direction prior to proceeding with the U-turn. The Member determined the Claimant was wholly at fault for the accident.</p>	<p>McGrath v AAMI [2022] NSWPIC 296 (14 June 2022) (austlii.edu.au)</p>

<p>Araujo-Perez v Allianz <i>Member Medland</i></p>	<p>The Insured vehicle was stationary in the right lane of M5 motorway with hazard lights activated, following a mechanical failure. The Claimant collided with the rear of the stationary truck at speed. The Member accepted the Claimant was mostly or wholly at fault because the video footage of the accident depicted the Insured vehicle as stationary with the hazard lights illuminated. The Member assessed the Claimant's contributory negligence at 70%.</p>	<p>Araujo-Perez v Allianz Australia Insurance Limited [2022] NSWPIC 310 (21 June 2022) (austlii.edu.au)</p>
<p>Elomari v Allianz <i>Member Boyd-Boland</i></p>	<p>The Insured vehicle and a maroon vehicle were both travelling in lane 2 of 3. The Claimant overtook the maroon vehicle without using an indicator and was then situated between the maroon vehicle and the Insured vehicle. The Claimant then steered back into lane 3 of 3, swerving erratically to regain control of the vehicle before colliding into the centre barrier before swerving back into lane 2 of 3 and collided with the Insured vehicle. The Member reviewed the CCTV footage accepted at no time did the Insured vehicle clip the Claimant's vehicle as alleged or crossed over to the Claimant's lane. The Member determined the Claimant was wholly at fault.</p>	<p>Elomari v Allianz Australia Insurance Limited [2022] NSWPIC 277 (13 April 2022) (austlii.edu.au)</p>
<p>Zaina v QBE <i>Member Medland</i></p>	<p>The accident occurred at an intersection. The Claimant entered the intersection. There was a dispute as to who had right of way. The Member accepted the Claimant was mostly at fault for the accident because the version of events obtained by Police, drivers of the other vehicles involved, and an independent witness confirmed the Claimant entered Parramatta Road without giving way to oncoming traffic.</p>	<p>Zaina v QBE Insurance (Australia) Limited [2022] NSWPIC 319 (15 June 2022) (austlii.edu.au)</p>
<p>Mansour v QBE <i>Member Medland</i></p>	<p>The Claimant was travelling along a street with an intention to turn right at a T-intersection. After review of expert evidence the Member found that the Claimant failed to give way and entered the intersection into the path of the Insured vehicle. The Claimant was, therefore, mostly at fault.</p>	<p>Mansour v QBE Insurance (Australia) Limited [2022] NSWPIC 336 (28 June 2022) (austlii.edu.au)</p>
<p>Luck v QBE <i>Member McTegg</i></p>	<p>The Claimant lost control of his vehicle, veered over the median strip, collided with an oncoming vehicle before colliding with another vehicle. The Claimant asserts there was an unidentified vehicle which collided with his rear causing him to lose control. The Member accepted two independent witnesses' evidence that there was no unidentified vehicle within the presence of the Claimant's vehicle and determined the cause of the accident was due to</p>	<p>Luck v QBE Insurance (Australia) Limited [2022] NSWPIC 364 (4 July 2022) (austlii.edu.au)</p>

	the Claimant losing control after accelerating too fast out of a sweeping bend on a wet road. The Claimant was found wholly or mostly at fault .	
Muratovic v QBE <i>Member Castagnet</i>	The accident occurred when the Claimant's vehicle entered a roundabout and collided with the Insured vehicle. The Member accepted the Claimant did not bring his vehicle to a complete stop when he reached the roundabout and if the Claimant had come to a complete stop, he would have seen the Insured's vehicle approaching on his right. The Member found the Claimant wholly at fault for the accident.	Muratovic v QBE Insurance (Australia) Limited [2022] NSWPIC 429 (2 August 2022) (austlii.edu.au)
Paton v NRMA <i>Member Boyd-Boland</i>	The Claimant was riding his motorbike and upon noticing an insect on his front instrument, he looked down and checked his speed. The Claimant then looked back up and realised the vehicle in front reducing speed at a rapid pace. He braked heavily, his brakes locked, and he lost control of his vehicle. The Member accepted the Claimant was momentarily distracted and not looking at the road ahead. As such, the Claimant wholly caused the accident .	Paton v Insurance Australia Limited t/as NRMA Insurance [2022] NSWPIC 460 (15 August 2022) (austlii.edu.au)
AJK v GIO <i>Member Medland</i>	The Claimant changed lanes on the M4 Motorway into the path of the Insured prime mover truck. The Claimant alleged that she at all times was in the same lane as the truck and the Insured collided with her rear. An expert report was obtained by the Insurer that confirmed the location of damage was consistent with the Insured's version of events. The Member accepted the Insured's evidence as it was consistent, honest and accurate. The Insured had kept a safe distance behind the Claimant. The Claimant changed lanes suddenly and without indication, and at a point where there was no reasonable opportunity to avoid a collision. The Claimant was found wholly at fault for the accident.	AJK v GIO [2021] NSWPIC 321 (28 July 2021) (austlii.edu.au)
Marzifar v Allianz <i>Member Williams</i>	The Insured was making a right-hand turn and the Claimant, approaching from the opposite direction, was proceeding straight. There was a dispute about the colour of the traffic lights. A light phasing report was provided but of limited value as it was not conclusive of what the colour of the lights were but did confirm that one driver's light would be red and the other green. The Member found the Claimant and his wife's evidence was reconstructed events and the Insured's evidence was consistent. The Member found the Claimant entered an intersection on a red traffic light and breached his duty of care to other road users. The Claimant was found wholly at fault for the accident.	Marzifar v Allianz Australia Insurance Limited [2021] NSWPIC 323 (27 August 2021) (austlii.edu.au)

<p>Brown v The Nominal Defendant</p> <p><i>Member Cassidy</i></p>	<p>The Claimant was driving in lane two of two when he attempted to merge into lane one and a truck collided with his rear. It was raining lightly, traffic was heavy and it was dark. The Claimant's evidence was considered unreliable. The Claimant was found to have moved from the fast lane to the slow lane with insufficient time and room to complete the manoeuvre safely. He did not keep a proper lookout and check carefully before changing lanes. The accident was caused wholly by the fault of the Claimant.</p>	<p>Brown v The Nominal Defendant [2022] NSWPIC 65 (14 February 2022) (austlii.edu.au)</p>
--	---	---

Further Information

For further details about the content in this publication please contact:



Peter Hunt **Principal**

peter.hunt@mccabes.com.au

+61 2 8231 6284

+61 414 425 879



Helen Huang **Special Counsel**

helen.huang@mccabes.com.au

+61 2 8231 6267



Raissa Galang **Lawyer**

raissa.galang@mccabes.com.au

+61 2 9265 3232