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Deputy Chief Parliamentary Counsel
Dated 7 May 2020



TASMANIA

CIVIL LIABILITY ACT 2002

No. 54 of 2002

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CIVIL LIABILITY ACT 2002

No. 54 of 2002

An Act to effect civil liability reforms

[Royal Assent 19 December 2002]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Civil Liability Act 2002*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Interpretation

In this Act, unless the contrary intention appears –

adult average weekly earnings means the dollar figure for full-time adult ordinary time earnings for persons set out under the heading “AVERAGE WEEKLY EARNINGS, Australia: Original” in catalogue number 6302.0 published by the Australian Bureau of Statistics, as amended from time to time;

court includes tribunal and, in relation to a claim for damages, means any court or tribunal by or before which the claim falls to be determined;

damages includes any form of monetary compensation;

duty means –

- (a) a duty of care in tort; or
- (b) a duty of care under contract that is co-extensive with a duty of care in tort; or
- (c) another duty under statute or otherwise that is co-extensive with a duty of care referred to in paragraph (a) or (b);

future loss means all or any of the following:

- (a) future economic loss;

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- (b) future general expenses;
- (c) future medical expenses;
- (d) future gratuitous services;

gratuitous services means services of a domestic nature or services relating to nursing or attendance provided to a person for which that person does not pay or is not liable to pay;

non-economic loss means any one or more of the following:

- (a) pain or suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of life expectancy;
- (e) bodily or mental harm;

personal injury includes –

- (a) pre-natal injury; and
- (b) impairment of a person's physical or mental condition; and
- (c) disease.

3A. Provisions relating to operation of Act

- (1) This Act does not create or confer any cause of civil action for the recovery of damages.

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- (2) A provision of this Act that gives protection from civil liability does not limit the protection from liability given by another provision of this Act or by another Act or law.
- (3) This Act, other than Part 7, does not prevent the parties to a contract from making express provision for their rights, obligations and liabilities under the contract in relation to any matter to which this Act applies and does not limit or otherwise affect the operation of such an express provision.
- (4) Subsection (3) extends to any provision of this Act even if the provision applies to liability in contract.
- (5) This Act is not a codification of the law relating to civil claims for damages for harm.

3B. Civil liability excluded from Act

- (1) This Act does not apply to or in respect of civil liability –
 - (a) in respect of an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct; or
 - (b) relating to an award of damages for personal injury or death where the injury or death concerned resulted from smoking or other use of tobacco products.

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- (1A) Despite subsection (1), Part 10C applies in respect of an intentional act that is child abuse, within the meaning of section 49J(3).
- (2) This Act, except Parts 2, 3, 5 and 5A, Divisions 1, 2, 3, 4 and 7 of Part 6 and Parts 7 and 8, does not apply to or in respect of civil liability relating to an injury to which Part III of the *Motor Accidents (Liabilities and Compensation) Act 1973* applies.
- (3) This Act does not apply to civil liability relating to an injury to which Division 2 of Part X of the *Workers Rehabilitation and Compensation Act 1988* applies.
- (4) This Act does not apply to liability for compensation under the *Workers Rehabilitation and Compensation Act 1988*, the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*, the *Criminal Injuries Compensation Act 1976* or the *Anti-Discrimination Act 1998* or a scheduled benefit under the *Motor Accidents (Liabilities and Compensation) Act 1973*.
- (5) The regulations may exclude a specified class or classes of civil liability from the operation of all or any provisions of this Act.
- (6) Regulations referred to in subsection (5) may make transitional provision with respect to claims relating to acts or omissions which occurred before the commencement of the regulations.

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3C. Application of Act to non-delegable duty

This Act applies to a claim for damages for breach of a non-delegable duty.

4. Application of Act

- (1) Parts 2, 3 and 4 do not apply to a cause of action accrued before the commencement of this Act.
- (2) Part 5 and section 12 apply to a cause of action accrued whether before or after the commencement of this Act.
- (2A) Part 5A applies to a cause of action accrued, and an action commenced, whether before or after the commencement of section 7 of the *Civil Liability Amendment Act 2013*.
- (2B) However, Part 5A does not apply to an action commenced before the commencement of section 7 of the *Civil Liability Amendment Act 2013* if –
 - (a) the hearing of the action had commenced before that commencement; or
 - (b) damages had been awarded in that action before that commencement; or
 - (c) a settlement had been reached in that action before that commencement, other than a settlement that only relates to damages that, if they had been awarded by a court, would be provisional damages within the meaning of section 8B(1).

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- (3) Part 6, other than section 12, and Parts 7, 8, 9, 10 and 11 do not apply to a cause of action accrued before 4 July 2003.
 - (3A) Sections 28A, 28B, 28C and 28D do not apply to a cause of action accrued before the commencement of the *Civil Liability Amendment Act 2005*.
 - (3B) Section 28BA does not apply to a cause of action accrued before the commencement of section 9 of the *Civil Liability Amendment Act 2013*.
 - (3C) The amendment to section 28C effected by section 10 of the *Civil Liability Amendment Act 2013* does not apply to a cause of action accrued before the commencement of section 10 of that Act.
 - (4) Part 9A does not apply to a cause of action accrued before the commencement of the *Civil Liability Amendment (Proportionate Liability) Act 2005*.
 - (5) Parts 8A and 8B do not apply in relation to a cause of action accrued before the commencement of the *Civil Liability Amendment Act 2008*.
 - (6) Part 10B applies to a cause of action accrued after the commencement of that Part .
 - (7) Section 49H applies only in respect of child abuse perpetrated after the commencement of that section.

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- (8) Section 49J applies only in respect of child abuse perpetrated after the commencement of that section.
- (9) Division 4 of Part 10C extends to child abuse proceedings in respect of child abuse perpetrated before the commencement of that Division.
- (10) In this section –
- child abuse* has the same meaning as in section 49J(3);
- child abuse proceedings* has the same meaning as in section 49L.

4AA. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 – INTOXICATION

4A. Application of Part 2

This Part applies to civil liability of any kind for damages for personal injury or death or damage to property, except civil liability that is excluded from the operation of this Part by section 3B.

5. Presumption of contributory negligence where person intoxicated

- (1) If it is established that the person whose death, injury or damage is the subject of proceedings for the recovery of damages was, at the time of the act or omission that caused the death, injury or damage, intoxicated to the extent that the person's capacity to exercise due care and skill was impaired, it is to be presumed that the person was contributorily negligent unless the court is satisfied that the person's intoxication did not contribute in any way to the cause of the death, injury or damage.
- (2) If there is a presumption of contributory negligence, the court is to assess damages on the basis that the damages to which the person would be entitled in the absence of contributory negligence are to be reduced on account of contributory negligence by 25% or a greater or lesser percentage determined by the court to be appropriate in the circumstances of the case.

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Part 2 – Intoxication

- (3) The onus of satisfying the court that damages ought to be reduced on account of contributory negligence by a percentage of less than 25% is on the person whose death, injury or damage is the subject of the proceedings for the recovery of damages.
- (4) This section does not apply in a case where the court is satisfied that the intoxication was not self-induced.
- (5) Subject to subsection (6), a reference in this section to a person being “intoxicated” is a reference to a person being under the influence of alcohol or a drug (whether or not taken for a medicinal purpose and whether or not lawfully taken).
- (6) A person who has taken a drug for a medicinal purpose is not to be taken to be intoxicated for the purposes of this section if the person satisfies the court that he or she was not aware of the effect of the drug taken.

PART 3 – RECOVERY BY CRIMINALS

5A. Application of Part 3

This Part applies to civil liability of any kind for damages for personal injury or death or damage to property, except civil liability that is excluded from the operation of this Part by section 3B.

6. Criminals not to be awarded damages

- (1) A court is not to award damages if the court is satisfied that –
 - (a) the person whose death, injury or damage is the subject of the proceedings was, at the time of the incident that resulted in the death, injury or damage, engaged in conduct that (on the balance of probabilities) constitutes a serious offence; and
 - (b) the conduct contributed materially to the risk of the death, injury or damage that was suffered.
- (2) This section operates whether or not a person whose conduct is alleged to constitute an offence has been, will be or is capable of being proceeded against or convicted of any offence relating to the conduct.
- (3) In this section,

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Part 3 – Recovery by criminals

serious offence means an offence punishable by imprisonment for a term greater than 6 months.

PART 4 – APOLOGIES

6A. Application of Part 4

This Part applies to civil liability of any kind, except civil liability that is excluded from the operation of this Part by section 3B.

7. Effect of apology on liability

- (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person –
 - (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and
 - (b) is not relevant to the determination of fault or liability in connection with that matter.
- (2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.
- (3) In this section,

apology means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, which does

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Part 4 – Apologies

not contain an admission of fault in connection with the matter.

PART 5 – STRUCTURED SETTLEMENTS

7A. Application of Part 5

This Part applies to civil liability of any kind for damages for personal injury or death, except civil liability that is excluded from the operation of this Part by section 3B.

8. Court may make consent order for structured settlement

(1) A court may, on the application of the parties to a claim for damages for personal injury or death of a person, make an order approving of, or in the terms of, a structured settlement even though the payment of damages is not in the form of a lump sum award of damages.

(2) For the purposes of this section, a

structured settlement is an agreement that provides for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.

PART 5A – PROVISIONAL DAMAGES

8A. Application of Part 5A

This Part applies to civil liability of any kind for damages for personal injury or death, except civil liability that is excluded from the operation of this Part by section 3B.

8B. Provisional damages for asbestos-related conditions

(1) If it is proved or admitted in an action for damages in respect of a dust-related disease (*the first disease*) of a person that the person may, at some definite or indefinite time in the future, develop another dust-related disease wholly or partly as a result of the act or omission giving rise to the cause of action, the court may –

(a) award, in the first instance, damages (*provisional damages*) for the first disease, assessed on the assumption that the person will not develop another dust-related disease; and

(b) award damages at a future date if the person does develop another dust-related disease.

(2) In this section –

dust-related disease means –

(a) any of the following diseases:

(i) aluminosis;

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- (ii) asbestosis;
 - (iii) asbestos-induced carcinoma;
 - (iv) asbestos-related pleural diseases;
 - (v) bagassosis;
 - (vi) berylliosis;
 - (vii) byssinosis;
 - (viii) coal dust pneumoconiosis;
 - (ix) farmers' lung;
 - (x) hard metal pneumoconiosis;
 - (xi) mesothelioma;
 - (xii) silicosis;
 - (xiii) silico-tuberculosis;
 - (xiv) talcosis; or
- (b) any other pathological condition of the lung, pleura or peritoneum that is attributable to dust.

PART 6 – BREACH OF DUTY

Division 1 – Preliminary

9. Interpretation

In this Part,

harm means harm of any kind, including the following:

- (a) personal injury or death;
- (b) damage to property;
- (c) pure economic loss.

10. Application of Part 6

This Part applies to civil liability of any kind for damages for harm resulting from breach of duty, except civil liability that is excluded from the operation of this Part by section 3B.

Division 2 – Standard of care

11. General principles

- (1) A person does not breach a duty to take reasonable care unless –
 - (a) there was a foreseeable risk of harm (that is, a risk of harm of which the person knew or ought reasonably to have known); and

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- (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the position of the person would have taken precautions to avoid the risk.
- (2) In deciding whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (among other relevant things):
- (a) the probability that the harm would occur if care were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;
 - (d) the potential net benefit of the activity that exposes others to the risk of harm.
- (3) For the purpose of subsection (2)(c), the court is to consider the burden of taking precautions to avoid similar risks of harm for which the person may be responsible.

12. Other principles

In a proceeding relating to liability for breach of duty –

- (a) the fact that a risk of harm could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done; and

- (b) the subsequent taking of action that (had the action been taken earlier) would have avoided a risk of harm does not of itself give rise to or affect liability in relation to the risk and does not of itself constitute evidence of liability in connection with the risk.

Division 3 – Causation

13. General principles

- (1) Prerequisites for a decision that a breach of duty caused particular harm are as follows:
 - (a) the breach of duty was a necessary element of the occurrence of the harm (“factual causation”);
 - (b) it is appropriate for the scope of the liability of the person in breach to extend to the harm so caused (“scope of liability”).
- (2) In deciding in an exceptional case, in accordance with established principles, whether a breach of duty, being a breach of duty that is established but which can not be established as satisfying subsection (1)(a), should be taken as satisfying subsection (1)(a), the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party in breach.
- (3) If it is relevant to deciding factual causation to decide what the person who suffered harm

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would have done if the person who was in breach of the duty had not been so in breach –

- (a) the matter is to be decided subjectively in the light of all relevant circumstances, subject to paragraph (b); and
 - (b) any statement made by the person after suffering the harm about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest.
- (4) For the purpose of deciding the scope of liability, the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party who was in breach of the duty.

14. Onus of proof

In deciding liability for breach of a duty, the plaintiff always bears the onus of proving, on the balance of probabilities, any fact on which the plaintiff wishes to rely relevant to the issue of causation.

Division 4 – Obvious risks

15. Meaning of “obvious risk”

- (1) For the purpose of this Division, an *obvious risk* to a person who suffers harm is a risk that, in the circumstances, would

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Part 6 – Breach of Duty

have been obvious to a reasonable person in the position of that person.

- (2) Obvious risks include risks that are patent or a matter of common knowledge.
- (3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.
- (4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.
- (5) A risk is not an obvious risk merely because a warning about the risk has been given.

16. Persons suffering harm presumed to be aware of obvious risks

- (1) If, in an action for damages for breach of duty causing harm, a defence of voluntary assumption of risk is raised by the defendant and the risk is an obvious risk, the plaintiff is taken to have been aware of the existence of the risk unless the plaintiff proves, on the balance of probabilities, that he or she was not aware of the existence of the risk.
- (2) For the purpose of this section, a person is aware of the existence of a risk if the person is aware of the existence of the type or kind of risk, even if the person is not aware of the precise nature, extent or manner of occurrence of the risk.

17. No proactive duty to warn of obvious risk

- (1) A person (“the defendant”) does not owe a duty to another person (“the plaintiff”) to warn of an obvious risk to the plaintiff.
- (2) Subsection (1) does not apply if –
 - (a) the plaintiff has requested advice or information about the risk from the defendant; or
 - (b) the defendant is required by a written law to warn the plaintiff of the risk; or
 - (c) the defendant is a professional, other than a medical practitioner, and the risk is a risk of the death of or personal injury to the plaintiff from the provision of a professional service to the plaintiff by the defendant in the defendant’s professional capacity.
- (3) Subsection (2) does not give rise to a presumption of a duty to warn of a risk in the circumstances referred to in that subsection.

Division 5 – Dangerous recreational activities

18. Application of Division

- (1) This Division applies only in respect of liability for breach of duty resulting in harm to a person from a dangerous recreational activity engaged in by that person.

- (2) This Division does not limit the operation of Division 4 in respect of a recreational activity.

19. Interpretation

In this Division –

dangerous recreational activity means a recreational activity that involves a significant degree of risk of physical harm to a person;

obvious risk has the same meaning as it has in Division 4;

recreational activity includes any pursuit or activity engaged in for enjoyment, relaxation or leisure.

20. No liability for harm suffered from obvious risks of dangerous recreational activities

- (1) A person is not liable for a breach of duty for harm suffered by another person (“the plaintiff”) as a result of the materialisation of an obvious risk of a dangerous recreational activity engaged in by the plaintiff.
- (2) This section applies whether or not the plaintiff was aware of the risk.

Division 6 – Professional negligence

21. Proactive and reactive duty of registered medical practitioner to warn of risk

- (1) A medical practitioner does not breach a duty owed to a patient to warn of risk, before the patient undergoes any medical treatment (or at the time of the patient being given medical advice) that will involve or give rise to a risk of personal injury to the patient, unless the medical practitioner at that time fails to give or arrange to be given to the patient the following information about the risk (whether or not the patient asks for the information):
 - (a) information that a reasonable person in the patient's position would, in the circumstances, require to enable the person to make a reasonably informed decision about whether to undergo the treatment or follow the advice;
 - (b) information that the medical practitioner knows or ought reasonably to know the patient wants to be given before making the decision about whether to undergo the treatment or follow the advice.
- (2) This section does not apply where a medical practitioner has to act promptly to avoid serious risk to the life or health of the patient and –
 - (a) the patient is not able to hear or respond to a warning about the risk to the patient; and

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Part 6 – Breach of Duty

(b) there is not sufficient time for the medical practitioner to contact a person responsible for making a decision for the patient.

(3) In this section,

patient, when used in a context of asking for or being given information, includes a person who has the responsibility for making a decision about the medical treatment to be undergone by a patient if the patient is under a legal disability.

22. Standard of care for professionals

- (1) A person practising a profession (“a professional”) does not breach a duty arising from the provision of a professional service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by peer professional opinion as competent professional practice.
- (2) Peer professional opinion cannot be relied on for the purpose of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purpose of subsection (1).

- (4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.
- (5) This section does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in relation to the risk of harm associated with the provision by a professional of a professional service to a person.

Division 7 – Contributory negligence

23. Standard of contributory negligence

- (1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether the person who suffered harm has been contributorily negligent for the purpose of apportioning liability under section 4 of the *Wrongs Act 1954*.
- (2) For the purpose of apportioning liability under section 4 of the *Wrongs Act 1954* –
 - (a) the standard of care required of the person who suffered harm is that required of a reasonable person in the position of that person; and
 - (b) the matter is to be determined on the basis of what that person knew or ought to have known at the time.

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Part 7 – Assessment of Damages for Personal Injury or Death

**PART 7 – ASSESSMENT OF DAMAGES FOR
PERSONAL INJURY OR DEATH**

24. Application of Part 7

This Part applies in relation to an award of damages for personal injury or death resulting from a breach of duty, except civil liability that is excluded from the operation of this Part by section 3B.

25. Damages for loss of superannuation entitlements

(1) The maximum amount of damages that may be awarded for economic loss due to the loss of employer superannuation contributions is the relevant percentage of damages payable for the deprivation or impairment of the earning capacity on which the entitlement to those contributions is based.

(2) In this section,

relevant percentage means the percentage of earnings that is the minimum percentage required by law to be paid as employer superannuation contributions.

26. Damages for loss of earning capacity

(1) Where a person is entitled to damages in respect of loss of earning capacity or where a claim for damages is made pursuant to the *Fatal Accidents Act 1934*, a court must not award those damages on the basis the person was, or may have been

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capable of, earning income at greater than 3 times the adult average weekly earnings as last published by the Australian Bureau of Statistics before damages are awarded.

(2)

27. Restrictions on damages for non-economic loss (general damages)

Note Amounts A and B are varied by notice published in the *Gazette*. See subsection (6).

- (1) If the amount of non-economic loss is assessed to be not more than Amount A, no damages are to be awarded for non-economic loss.
- (2) If the amount of non-economic loss is assessed to be more than Amount A but not more than Amount B, damages awarded for non-economic loss are calculated as follows:

Amount awarded = 1.25 x (amount assessed minus Amount A)

- (3) If the amount of non-economic loss is assessed to be more than Amount B, damages awarded for non-economic loss are an amount equal to the amount assessed.
- (4) For the purpose of this section –
 - (a) “**Amount A**” is –
 - (i) for the financial year ending on 30 June 2004, \$4 000; and

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- (ii) for the financial year commencing on 1 July 2004 and for each subsequent financial year, calculated in accordance with the following formula and rounded off in accordance with subsection (5):

$$A = A_0 \times \frac{C}{D}$$

where –

A is the value in dollars of Amount A for the relevant financial year;

*A*₀ is \$4 000;

C is the value of the CPI figure for Hobart for the March quarter immediately preceding the financial year in which the threshold amount is to apply;

D is the value of the CPI figure for Hobart for the March quarter 2003; and

(b) “**Amount B**” is five times Amount A.

- (5) If the value of Amount A, calculated in accordance with the formula specified in subsection (4)(a), is not a multiple of \$500, the amount is to be rounded off to the nearest

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multiple of \$500, with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500.

- (6) On or before 1 July 2004 and on or before 1 July in each subsequent year, the Minister is to publish a notice in the *Gazette* specifying the amounts that are Amount A and Amount B for the financial year commencing on that 1 July.
- (7) Publication under subsection (6) is for public information only and a failure to publish or a delay or error in publication does not affect what is Amount A or Amount B for the year concerned.
- (8) In this section,

CPI figure for Hobart means the Consumer Price Index: All Groups Index Number for Hobart published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth.

28. Tariffs for damages for non-economic loss (general damages)

- (1) In determining damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.
- (2) For that purpose, the parties to the proceedings or their counsel may bring the court's attention

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to awards of damages for non-economic loss in those earlier decisions.

(3) In this section –

other courts includes a court of any jurisdiction within Australia, including Tasmania.

28A. Discount rate applicable to certain damages

If an award of damages is to include any component assessed as a lump sum for future loss, the present value of that future loss is to be qualified by adopting –

- (a) a discount rate of 5 per cent; or
- (b) if another discount rate is prescribed, that other discount rate.

28B. Damages for gratuitous services

- (1) Damages for gratuitous services may be awarded in respect of gratuitous services required by the person as a result of injuries to that person caused by the negligence of another person.
- (2) A person may not recover damages for gratuitous services unless the services have been provided, or are likely to be provided, to that person for more than 6 hours per week and for more than 6 consecutive months.
- (3) In calculating damages for gratuitous services –

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- (a) the hourly rate is not to exceed one-fortieth of adult average weekly earnings; and
 - (b) the weekly rate is not to exceed adult average weekly earnings.
- (4) Nothing in this section prevents the award of damages under the *Fatal Accidents Act 1934* for the loss of gratuitous services provided by a person whose death is caused by a wrongful act, neglect or default, within the meaning of that Act.

28BA. Damages for loss of capacity to provide gratuitous services to another

- (1) A person may recover, in relation to a personal injury, damages for the loss of capacity to provide gratuitous services to another person.
- (2) A person (the *claimant*) may recover under subsection (1), in relation to a personal injury, damages for the loss of capacity to provide gratuitous services to another person only if –
 - (a) either –
 - (i) the claimant was, before the loss of capacity occurred, providing the services to the other person for more than 6 hours per week and more than 6 consecutive months and it was necessary for the services to be provided to the other person; or

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- (ii) the other person was, before the injury occurred, an unborn child of the person; and
 - (b) the other person –
 - (i) is a person who would have been entitled to recover for loss of the claimant's services if the claimant had been killed rather than injured; or
 - (ii) would have been, if he or she had been born before the injury occurred, entitled to recover for loss of the claimant's services if the claimant had been killed rather than injured; and
 - (c) there is a reasonable expectation that, but for the loss of capacity, the claimant would have provided those services to the other person, after the injury, for more than 6 hours per week and more than 6 consecutive months; and
 - (d) the other person will need the services for more than 6 hours per week and more than 6 consecutive months and the need is reasonable in all the circumstances.
- (3) In calculating damages for the loss of capacity to provide gratuitous services –
- (a) the hourly rate is not to exceed one-fortieth of adult average weekly earnings; and

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- (b) the weekly rate is not to exceed adult average weekly earnings.

28C. Abolition of awards for gratuitous services in respect of claims under *Motor Accidents (Liabilities and Compensation) Act 1973*

An award of damages relating to personal injury to which Part III of the *Motor Accidents (Liabilities and Compensation) Act 1973* applies is not to include compensation for gratuitous services required by a person as a result of injuries to that person caused by the negligence of another person or damages for the loss by the injured person of the capacity to provide gratuitous services to another person.

28D. Abolition of action for loss of consortium

A person is not liable for damages in tort on the ground that the negligence, or other act or omission, of the person caused loss or impairment of the consortium of spouses or of persons in a significant relationship within the meaning of the *Relationships Act 2003*.

28E. Abolition of certain actions

The following actions at common law are abolished:

- (a) seduction;
(b) enticement;

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- (ba) maintenance;
- (bb) champerty;
- (c) harbouring.

PART 8 – MENTAL HARM

29. Interpretation

In this Part –

consequential mental harm means mental harm that is a consequence of a personal injury of any other kind;

mental harm means impairment of a person’s mental condition;

pure mental harm means mental harm other than consequential mental harm.

30. Application of Part 8

This Part (except section 31) applies to any claim for damages for mental harm resulting from a breach of duty, except civil liability that is excluded from the operation of this Part by section 3B.

31. Personal injury arising from mental or nervous shock

In any civil proceedings for damages, the plaintiff is not prevented from recovering damages merely because the personal injury arose wholly or in part from mental or nervous shock.

32. Limitation on recovery for pure mental harm arising from shock

- (1) This section applies to the liability of a person (“the defendant”) for pure mental harm to a person (“the plaintiff”) arising wholly or partly from mental or nervous shock in connection with another person (“the victim”) being killed, injured or put in peril by the act or omission of the defendant.
- (2) The plaintiff is not entitled to recover damages for pure mental harm unless –
 - (a) the plaintiff witnessed, at the scene, the victim being killed, injured or put in peril or the immediate aftermath of the victim being killed or injured; or
 - (b) the plaintiff is a close member of the family of the victim.
- (3) In this section –

close member of the family of a victim means –

 - (a) a parent of the victim or other person with parental responsibility for the victim; or
 - (b) the spouse of the victim; or
 - (c) a child or stepchild of the victim or any other person for whom the victim has parental responsibility; or

- (d) a brother, sister, half-brother or half-sister, or stepbrother or stepsister of the victim;

spouse means –

- (a) a husband or wife; or
- (b) a de facto spouse –

but where more than one person would so qualify as a spouse, means only the last person to so qualify.

33. Pure mental harm – liability only for recognised psychiatric illness

There is no liability to pay damages for pure mental harm resulting from breach of duty unless the harm consists of a recognised psychiatric illness.

34. Mental harm – duty of care

- (1) A person (“the defendant”) does not owe a duty to another person (“the plaintiff”) to take care not to cause the plaintiff mental harm unless a reasonable person in the position of the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- (2) For the purpose of the application of this section in respect of pure mental harm, the circumstances of the case include the following:

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- (a) whether or not the mental harm was suffered as the result of a sudden shock;
 - (b) whether or not there was a pre-existing relationship between the plaintiff and the defendant.
- (3) For the purpose of the application of this section in respect of consequential mental harm, the circumstances of the case include the nature and extent of personal injury suffered by the plaintiff.
- (4) This section does not require the court to disregard what the defendant knew or ought to have known about the fortitude of the plaintiff.

35. Liability for economic loss for consequential mental harm

A court cannot make an award of damages for economic loss for consequential mental harm resulting from breach of duty unless the harm consists of a recognised psychiatric illness.

PART 8A – GOOD SAMARITANS

35A. Application of Part

- (1) This Part applies to civil liability of any kind.
- (2) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.

35B. Protection of good samaritans

- (1) A good samaritan is an individual who provides assistance, advice or care to another person in relation to an emergency or accident in circumstances in which –
 - (a) he or she expects no money or other financial reward for providing the assistance, advice or care; and
 - (b) as a result of the emergency or accident the person to whom, or in relation to whom, the assistance, advice or care is provided is ill, is at risk of death or injury, is injured, is apparently ill, is apparently at risk of death or injury or is apparently injured.
- (2) A good samaritan is not liable in any civil proceeding for anything done, or not done, by him or her in good faith and without recklessness –

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- (a) in providing assistance, advice or care at the scene of the emergency or accident; or
 - (b) in providing advice by telephone or by another means of communication to a person at the scene of the emergency or accident.
- (3) Subsection (2) applies even if the emergency or accident was caused by an act or omission of the good samaritan.
- (4) Subsection (2) does not apply to any act or omission of a good samaritan that occurs before the assistance, advice or care is provided by the good samaritan.

35C. Exclusion from protection

- (1) The protection from personal liability conferred by this Part in respect of an act or omission does not apply if –
- (a) the ability of the good samaritan to exercise reasonable care and skill was significantly impaired by reason of the good samaritan being under the influence of alcohol or a drug voluntarily consumed (whether or not it was consumed for medication); and
 - (b) the good samaritan failed to exercise reasonable care and skill in connection with the act or omission.

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- (2) This Part does not confer protection from personal liability on a person in respect of any act or omission done or made while the person is impersonating a health care or emergency services worker or a police officer or is otherwise falsely representing that the person has skills or expertise in connection with the rendering of emergency assistance.

PART 8B – FOOD DONORS

35D. Interpretation

In this Part –

donate food includes distribute, without payment or other reward, food donated by others;

food has the same meaning as in the *Food Act 2003*;

handling has the same meaning as in the *Food Act 2003*.

35E. Application of Part

- (1) This Part applies to civil liability of any kind.
- (2) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.

35F. Protection of food donors

- (1) A person who donates food (the “**food donor**”) does not incur any civil liability in respect of any death or personal injury that results from the consumption of the food if –
 - (a) the food donor donated the food –
 - (i) in good faith for a charitable or benevolent purpose; and

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- (ii) with the intention that the consumer of the food would not have to pay for the food; and
 - (b) the food was safe to consume at the time it left the possession or control of the food donor; and
 - (c) where the food was of a nature that required it to be handled in a particular way to ensure that it remained safe to consume after it left the possession or control of the food donor, the food donor informed the person to whom the food donor gave the food of those handling requirements; and
 - (d) where the food would only have remained safe to consume for a particular period of time after it left the possession or control of the food donor, the food donor informed the person to whom the food donor gave the food of that time limit.
- (2) For the purposes of this section, food is safe to consume if it is not unsafe, within the meaning of the *Food Act 2003*.

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Part 9 – Liability of Public and Other Authorities

**PART 9 – LIABILITY OF PUBLIC AND OTHER
AUTHORITIES**

36. Application of Part 9

This Part applies to a claim of any kind for damages for personal injury or death or damage to property resulting from breach of duty, except civil liability that is excluded from the operation of this Part by section 3B.

37. Interpretation

In this Part –

exercise a function includes perform a duty;

function includes a power, authority or duty;

public or other authority means –

- (a) the Crown (within the meaning of the *Crown Proceedings Act 1993*); or
- (b) a council; or
- (c) a single authority, controlling authority or joint authority established under Part 3 of the *Local Government Act 1993*; or
- (d) a statutory authority; or
- (e) a State-owned company; or

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- (ea) a Regional Corporation, or a Common Services Corporation, within the meaning of the *Water and Sewerage Corporations Act 2008*; or
- (eb) a regulated entity within the meaning of the *Water and Sewerage Industry Act 2008*; or
- (f) a person or body prescribed (or of a class prescribed) by the regulations as an authority to which this Part applies (in respect of all or specified functions); or
- (g) any person or body undertaking the exercise of public or other functions of a class prescribed by the regulations for the purpose of this Part;

State-owned company means a company incorporated under the Corporations Act that is controlled –

- (a) by the Crown, a Minister of the Crown, a Government Business Enterprise or a statutory authority; or
- (b) by another company that is so controlled;

statutory authority means a body or authority, whether incorporated or not, that is established or constituted by or under an

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Act or under the Royal Prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority.

38. Principles concerning resources, responsibilities, &c., of public or other authorities

The following principles apply in determining whether a public or other authority has a duty or has breached a duty in proceedings to which this Part applies:

- (a) the functions required to be exercised by the authority are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising those functions;
- (b) the reasonableness of the allocation of those resources by the authority is not open to challenge;
- (c) the functions required to be exercised by the authority are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which the proceedings relate);
- (d) the authority may rely on evidence of its compliance with its general procedures and any relevant standards for the exercise of its functions as evidence of

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the proper exercise of its functions in the matter to which the proceedings relate.

39. No duty of care for recreational activity where risk warning

- (1) A public or other authority (“the authority”) does not owe a duty to a person who engages in a recreational activity to take care in respect of a risk of the activity if the risk was the subject of a risk warning to that person.
- (2) If the person who engages in the recreational activity is an incapable person, the authority may rely on a risk warning only if –
 - (a) the incapable person was under the care of or accompanied by another person (who is not an incapable person and not the authority) and the risk was the subject of a risk warning to that other person; or
 - (b) the risk was the subject of a risk warning to a parent of the incapable person (whether or not the incapable person was under the care of or accompanied by the parent).
- (3) For the purpose of subsections (1) and (2), a risk warning to a person in relation to a recreational activity is a warning that is given in a manner that is reasonably likely to result in people being warned of the risk before engaging in the recreational activity.

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- (4) The authority is not required to establish that the person received or understood the warning or was capable of receiving or understanding the warning.
- (5) A risk warning can be given orally or in writing (including by means of a sign or otherwise).
- (6) A risk warning need not be specific to the particular risk and can be a general warning of risks that include the particular risk concerned (so long as the risk warning warns of the general nature of the particular risk).
- (7) An authority is not entitled to rely on a risk warning unless it is given by or on behalf of the authority or has been adopted by the authority.
- (8) An authority is not entitled to rely on a risk warning if it is established (on the balance of probabilities) that the harm concerned resulted from a contravention of a provision of a written law of the State or Commonwealth that establishes specific practices or procedures for the protection of personal safety.
- (9) An authority is not entitled to rely on a risk warning to a person to the extent that the warning was contradicted by any representation as to risk made by or on behalf of the authority to the person.
- (10) An authority is not entitled to rely on a risk warning to a person if the person was required to engage in the recreational activity by the authority.

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- (11) An authority is not entitled to rely on a risk warning if it is established (on the balance of probabilities) that the harm suffered resulted from an act done or omission made with reckless disregard for the consequences of the act or omission.
- (12) The fact that a risk is the subject of a risk warning does not of itself mean –
- (a) that the risk is not an obvious or inherent risk of an activity; or
 - (b) that an authority who gives the risk warning owes a duty of care to a person who engages in an activity to take precautions to avoid the risk of harm from the activity.
- (13) This section does not limit or otherwise affect the effect of a risk warning in respect of a risk of an activity that is not a recreational activity.
- (14) In this section –
- incapable person*** means a person who, because of the person’s young age or a physical or mental disability, lacks the capacity to understand the risk warning;
- parent*** of an incapable person means any person (not being an incapable person) having parental responsibility for the incapable person;
- recreational activity*** has the same meaning as in Division 5 of Part 6.

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Part 9 – Liability of Public and Other Authorities

40. Proceedings against public or other authorities based on breach of statutory duty

- (1) This section applies to proceedings in respect of a claim to which this Part applies that are based on an alleged breach of a statutory duty by a public or other authority in connection with the exercise of or a failure to exercise a function of the authority.
- (2) For the purpose of any such proceedings in respect of a claim, an act or omission of the authority does not constitute a breach of statutory duty unless the act or omission was in the circumstances so unreasonable that no authority having the functions of the authority in question could properly consider the act or omission to be a reasonable exercise of its functions.
- (3) In the case of a function of a public or other authority to prohibit or regulate an activity, this section applies in addition to section 41.

41. When public or other authority not liable for failure to exercise regulatory functions

- (1) A public or other authority is not liable in proceedings in respect of a claim to which this Part applies to the extent that the claim is based on the failure of the authority to exercise or to consider exercising any function of the authority to prohibit or regulate an activity if the authority could not have been required to exercise the function in proceedings instituted by the claimant.

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- (2) Without limiting what constitutes a function to regulate an activity for the purpose of this section, a function to issue a licence, permit or other authority in respect of an activity, or to register or otherwise authorise a person in connection with an activity, constitutes a function to regulate the activity.

42. Special non-feasance protection for failure to carry out road work

- (1) A public or other authority responsible for carrying out road work is not liable in proceedings in respect of a claim to which this Part applies for harm arising from a failure of the authority to carry out road work, or to consider carrying out road work, unless at the time of the alleged failure the authority had actual knowledge of the facts creating the particular risk the materialisation of which resulted in the harm.
- (2) This section does not operate –
- (a) to create a duty of care in respect of a risk merely because the public or other authority referred to in subsection (1) has actual knowledge of the risk; or
 - (b) to affect any standard of care that would otherwise be applicable in respect of a risk.
- (3) In this section –

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carry out road work means carry out any activity in connection with the construction, erection, installation, maintenance, inspection, repair, removal or replacement of a road;

road means any street, road, lane, thoroughfare, footpath, bridge, or place open to or used by the public, or to which the public have or are permitted to have access, whether on payment of a fee or otherwise.

43. Exercise of function or decision to exercise does not create duty

In proceedings in respect of a claim to which this Part applies, the fact that a public or other authority exercises or decides to exercise a function does not of itself indicate that the authority is under a duty to exercise the function or that the function should be exercised in particular circumstances or in a particular way.

PART 9A – PROPORTIONATE LIABILITY

43A. Application of Part 9A

(1) This Part applies to the following claims (“apportionable claims”):

(a) a claim for economic loss or damage to property in an action for damages (whether in contract, tort or otherwise) arising from a failure to take reasonable care (but not including any claim arising out of personal injury);

(b) a claim for economic loss or damage to property in an action for damages under the *Australian Consumer Law (Tasmania)* for a contravention of section 236 of that Act.

(2) In this Part –

concurrent wrongdoer, in relation to a claim, means a person who is one of two or more persons whose act or omission caused, independently of each other or jointly, the damage or loss that is the subject of the claim;

excluded concurrent wrongdoer means a concurrent wrongdoer referred to in subsection (5)(a) or (b).

(3) For the purpose of this Part, apportionable claims are limited to those claims specified in subsection (1).

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- (4) For the purpose of this Part it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.
- (5) Nothing in this Part operates to limit the liability of a concurrent wrongdoer in proceedings involving an apportionable claim if –
 - (a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or
 - (b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim.
- (6) The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.
- (7) The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Part.
- (8) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.
- (9) For the purpose of this Part, there is a single apportionable claim in proceedings in respect of the same loss or damage even if the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

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43B. Proportionate liability for apportionable claims

- (1) In any proceedings involving an apportionable claim –
 - (a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just, having regard to the extent of the defendant’s responsibility for the damage or loss; and
 - (b) the court is not to give judgment against the defendant for more than that amount.
- (2) If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim –
 - (a) liability for the apportionable claim is to be determined in accordance with the provisions of this Part; and
 - (b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.
- (3) In apportioning responsibility between defendants in the proceedings –
 - (a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

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- (b) the court is to have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.
- (4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.
- (5) A reference in this Part to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Part, under rules of court or otherwise.

43C. Contribution not recoverable from defendant

- (1) A defendant against whom judgment is given under this Part as a concurrent wrongdoer in relation to an apportionable claim –
 - (a) cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and
 - (b) cannot be required to indemnify any such wrongdoer.
- (2) Subsection (1) does not affect an agreement by a defendant to contribute to the damages

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recoverable from, or to indemnify, another concurrent wrongdoer in relation to an apportionable claim.

43D. Duty of defendant to inform plaintiff about concurrent wrongdoers

(1) If –

- (a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the “other person”) may be a concurrent wrongdoer in relation to the claim; and
- (b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about –
 - (i) the identity of the other person; and
 - (ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and
- (c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim –

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the court hearing the proceedings may order that the defendant pay all or any of those costs to the plaintiff.

- (2) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

43E. Subsequent actions

- (1) In relation to an apportionable claim, nothing in this Part or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.
- (2) However, in any proceedings in respect of any such action the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

43F. Joining non-party concurrent wrongdoer in action

- (1) The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.
- (2) The court is not to give leave for the joinder of any person who was a party to any previously

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concluded proceedings in respect of the apportionable claim.

43G. This Part does not prevent certain liability, &c.

(1) Nothing in this Part –

- (a) prevents a person from being held vicariously liable for a proportion of any apportionable claim for which another person is liable; or
- (b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or
- (c) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

(2) In subsection (1)(b) –

partner means a person who has entered into a partnership, within the meaning of the *Partnership Act 1891*, with another person.

PART 10 – VOLUNTEERS

44. Interpretation

(1) In this Part –

community organisation means –

- (a) a State Service Agency or statutory authority; or
- (b) an incorporated association under the *Associations Incorporation Act 1964*, a council or a body corporate –

that organises the doing of community work by volunteers;

community work means work organised by a community organisation to be done –

- (a) for a religious, educational, charitable or benevolent purpose; or
- (b) for the purpose of promoting or encouraging literature, science or the arts; or
- (c) for the purpose of sport, recreation or amusement; or
- (d) for the purpose of caring for, treating or otherwise assisting people who need assistance

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because of a physical or mental disability or condition; or

- (e) for the purpose of conserving or protecting the environment; or
- (f) for the purpose of promoting or preserving historical or cultural heritage; or
- (g) for the purpose of establishing, carrying on or improving a community, social or cultural centre; or
- (h) for the purpose of promoting the interests of a local community; or
- (i) for a political purpose; or
- (j) for a purpose prescribed by the regulations –

but does not include work of a kind that is prescribed by the regulations as work that is not to be regarded as community work for the purposes of this Act;

organised includes directed and supervised;

statutory authority has the meaning given by section 37;

volunteer has the meaning given by section 45.

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- (2) A reference in this Part to the doing of anything by a volunteer includes a reference to the omission by a volunteer to do anything.

45. Meaning of “volunteer”

- (1) In this Part,

volunteer means a person who does community work on a voluntary basis but does not include a person who is –

- (a) taken to be a worker for the purposes of the *Workers Rehabilitation and Compensation Act 1988* or the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; or
- (b) performing a function prescribed by the regulations.
- (2) For the purpose of subsection (1), a person does community work on a voluntary basis if the person –
- (a) receives no remuneration for doing that work other than –
- (i) remuneration that the person would receive whether or not the person did that work; or
- (ii) the reimbursement of reasonable expenses incurred by the person in doing that work; or

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- (b) receives remuneration that is not greater than the amount, if any, prescribed by the regulations.
- (3) A person is not to be regarded as doing community work on a voluntary basis if the person is doing that work under an order imposed by a court.

46. Application of Part 10

- (1) This Part applies to civil liability for a thing done by a volunteer after the commencement of this Part.
- (2) This Part does not limit the protection from liability given by another written law.

47. Protection of volunteers from liability

- (1) Subject to subsections (2) and (3), a volunteer does not incur civil liability for anything that the volunteer has done in good faith when doing community work.
- (2) Subsection (1) does not affect any right to recover damages in respect of defamation or in respect of the death of, or personal injury to, any person directly caused by, or by the driving of, a motor vehicle if, at the time of the death or personal injury –
 - (a) the vehicle was owned or being driven by a person who, but for the operation of subsection (1), would incur liability in

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respect of the death or personal injury;
and

(b) the vehicle –

(i) was a vehicle in respect of which a premium had been paid, or had been required to be paid, in accordance with Part V of the *Motor Accidents (Liabilities and Compensation) Act 1973*; or

(ii) was a “permitted out-of-State vehicle”, as referred to in section 2 of that Act, in respect of which a third party insurance policy was in force as required by section 19 of that Act.

(3) The protection given by subsection (1) does not apply to a volunteer –

(a) who knew or ought reasonably to have known that at the relevant time he or she was acting –

(i) outside the scope of the community work organised by the community organisation; or

(ii) contrary to instructions given by the community organisation; or

(b) whose ability to do the community work in a proper manner was, at the relevant time, significantly impaired by alcohol or drugs.

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(4) In this section –

drugs means drugs that are taken voluntarily otherwise than for therapeutic purposes;

motor vehicle has the meaning given in section 2 of the *Motor Accidents (Liabilities and Compensation) Act 1973*.

48. Liability of community organisations

- (1) A community organisation incurs the civil liability that, but for the operation of section 47(1), a volunteer would incur for a thing done by the volunteer when doing community work organised by the community organisation.
- (2) The operation of subsection (1) is subject to any protection from liability that would have applied to the community organisation if the thing done by the volunteer had been done by the community organisation.
- (3) If more than one community organisation is involved in organising the community work referred to in subsection (1), that subsection applies to the community organisation that principally organises, or the community organisations that principally organise, that work.

49. Certain indemnities, &c., have no effect

An agreement, undertaking or arrangement has no effect to the extent that it provides for a volunteer to give a community organisation an

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indemnity against, or to make a contribution to a community organisation in relation to, a civil liability that –

- (a) the volunteer would incur but for the operation of section 47(1); and
- (b) the community organisation incurs under section 48(1).

PART 10A – ACCOMMODATION PROVIDER

49A. Liability of accommodation provider for lost, destroyed or damaged property

(1) In this section, unless the contrary intention appears –

accommodation provider means a person who provides tourist accommodation premises;

employee means a person employed at tourist accommodation premises;

guest means a person –

- (a) who is temporarily absent from his or her usual residence; and
- (b) who has engaged sleeping accommodation, or on whose behalf sleeping accommodation has been engaged, at tourist accommodation premises;

premises includes –

- (a) land, whether or not covered by buildings; and
- (b) any structure, whether or not attached to land; and
- (c) a means of transport; and
- (d) a part of premises;

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tourist accommodation premises means premises that are set up for the purpose of providing overnight lodging facilities for tourists or travellers for a consideration.

- (2) An accommodation provider is not liable to make compensation in relation to the loss, destruction or damage of or to property brought to tourist accommodation premises by or on behalf of a guest except as provided in subsection (3).
- (3) An accommodation provider is liable to make compensation in relation to the loss, destruction or damage of or to property brought to tourist accommodation premises by or on behalf of a guest if –
 - (a) the loss, destruction or damage is attributable to some negligence or deliberate or reckless act or default of the accommodation provider or an employee of the accommodation provider; or
 - (b) the property –
 - (i) has been deposited expressly for safe custody with the accommodation provider or an employee of the accommodation provider authorised to accept guest's property for safe custody; and
 - (ii) if the accommodation provider or that employee requires it, has

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been placed in a container and fastened or sealed by the person depositing the property for safe custody; and

- (iii) has been lost, destroyed or damaged while so deposited; or
- (c) a notice that relates to the liability of an accommodation provider to pay compensation under this section is not conspicuously displayed in, at or near the reception office, reception desk or principal entrance of the tourist accommodation premises.

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Part 10B – Rights between employer and employee

**PART 10B – RIGHTS BETWEEN EMPLOYER AND
EMPLOYEE**

49B. Employee not liable where employer also liable

- (1) If an employee commits a tort for which his or her employer is also liable –
 - (a) the employee is not liable to indemnify, or to pay any contribution to, the employer in respect of the liability incurred by the employer; and
 - (b) the employer is liable to indemnify the employee in respect of liability incurred by the employee for the tort (unless the employee is otherwise entitled to an indemnity in respect of that liability).
- (2) Contribution under this section includes contribution as joint tortfeasor or otherwise.
- (3) This section does not apply to a tort committed by an employee if the conduct constituting the tort –
 - (a) was serious and wilful misconduct; or
 - (b) did not occur in the course of, and did not arise out of, the employment of the employee.

PART 10C – CHILD ABUSE – LIABILITY OF ORGANISATIONS

Division 1 – Preliminary

49C. Interpretation of Part 10C

In this Part –

child means a person who has not attained the age of 18 years;

exercise includes perform;

function includes a power, authority or duty;

organisation means any organisation, whether incorporated or not, and includes a public sector body but does not include the State;

public sector body means –

- (a) an Agency within the meaning of the *State Service Act 2000*; and
- (b) a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*; and
- (c) a State-owned company; and
- (d) a statutory authority; and
- (e) a council; and

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- (f) a single authority, controlling authority or joint authority established under Part 3 of the *Local Government Act 1993*; and
- (g) a body (however described) that has been superseded by a body referred to in paragraph (a), (b), (c), (d), (e) or (f); and
- (h) a body (however described) that is referred to in another paragraph of this definition and that has been abolished;

State-owned company means a company that is incorporated under the Corporations Act and that is controlled –

- (a) by the Crown, a Minister of the Crown, a Government Business Enterprise or a statutory authority; or
- (b) by another company that is so controlled;

statutory authority means a body or authority, whether incorporated or not, that is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority.

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49D. Application of Part

- (1) Nothing in Part 9 protects a person from civil liability arising under this Part or places any restriction or limitation on an award of damages made in pursuance of this Part.
- (2) A person is not prevented from seeking compensation under Divisions 2 and 3 in respect of the same child abuse, within the meaning of section 49J(3), but, in such a case, an award of damages under either of those Divisions must take into account any award already made under the other Division.

49E. Successor organisations

An organisation and any successor of that organisation are, for the purposes of this Part, taken to be the same organisation.

Division 2 – Duty of organisations to prevent child abuse

49F. Organisations responsible for children

In this Division –

- (a) an organisation is responsible for a child if it (including any part of it) exercises care, supervision or authority in respect of the child, or purports to do so or is obliged by law to do so; and
- (b) if an organisation (including any part of it) delegates the exercise of care, supervision or authority in respect of the

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child to another organisation (in whole or in part), each organisation is responsible for the child.

49G. Individuals associated with organisations

- (1) In this Division, a reference to an individual associated with an organisation includes, but is not limited to including, an individual who is an office holder, officer, employee, owner, volunteer, or contractor, of the organisation and also includes –
 - (a) if the organisation is a religious organisation – a religious leader (such as a priest or minister) or member of the personnel of the organisation; and
 - (b) an individual who is prescribed or who is a member of a class of organisations that is prescribed.
- (2) An individual is not associated with an organisation solely because the organisation wholly or partly funds or regulates another organisation.
- (3) An individual associated with an organisation to which the exercise of care, supervision or authority in respect of a child has been delegated, in whole or in part, is also taken to be an individual associated with the organisation from which the exercise of care, supervision or authority was delegated.

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49H. Liability of organisation for child abuse by associated individuals

- (1) This section imposes a duty of care that forms part of a cause of action in negligence.
- (2) An organisation that has responsibility for a child must take reasonable precautions to prevent an individual associated with the organisation who, by virtue of being associated with the organisation, has –
 - (a) authority, power or control over the child; or
 - (b) the trust of the child; or
 - (c) the ability to achieve intimacy with the child –

from being able, by virtue of that authority, power, control, trust or ability, to perpetrate child abuse on the child.
- (3) In proceedings against an organisation involving a breach of the duty of care imposed by this section, the organisation is presumed to have breached its duty of care if the plaintiff establishes that an individual associated with the organisation –
 - (a) perpetrated child abuse on a child; and
 - (b) had, by virtue of being associated with the organisation –
 - (i) authority, power or control over the child; or

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- (ii) the trust of the child; or
 - (iii) the ability to achieve intimacy with the child; and
 - (c) was able, by virtue of that authority, power, control, trust or ability, to perpetrate the child abuse on the child –

unless the organisation establishes that it took reasonable precautions to prevent the child abuse.
- (4) In determining for the purposes of this section whether an organisation took reasonable precautions to prevent child abuse, a court may take into account any of the following:
- (a) the nature of the organisation;
 - (b) the resources reasonably available to the organisation;
 - (c) the relationship between the organisation and the child;
 - (d) whether the organisation delegated in whole or in part the exercise of care, supervision or authority in respect of the child to another organisation;
 - (e) the role in the organisation of the individual who perpetrated the child abuse;
 - (f) the level of control that the organisation had in respect of the individual who perpetrated the child abuse;

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- (g) whether the organisation complied with any applicable standards (however described) in respect of child safety;
- (h) any matter prescribed by the regulations;
- (i) any other matter that the court considers relevant.

(5) In this section –

child abuse, in relation to a child, means –

- (a) sexual abuse, or physical abuse, of the child; and
- (b) any psychological abuse of the child that arises from the sexual abuse or physical abuse –

but does not include an act that is lawful at the time at which it occurs.

Division 3 – Vicarious liability of organisations

49I. Employees include persons exercising functions akin to employees

(1) In this Division –

employee, in relation to an organisation, includes an individual who is akin to an employee of the organisation.

(2) An individual is akin to an employee of an organisation if the individual's role within the organisation –

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- (a) is for the aims or purposes of the organisation; and
 - (b) gives the individual authority, power or control over a child or enables the individual to achieve intimacy with, or the trust of, a child.
- (3) Despite subsection (2), an individual is not akin to an employee if the individual's role within the organisation is carried out for a recognisably independent business of the individual or of another person or organisation.
- (4) The regulations may, despite subsections (2) and (3) but without limiting the application of those subsections, prescribe additional circumstances in which an individual will be akin to an employee or not akin to an employee.

49J. Organisations vicariously liable for child abuse perpetrated by employees

- (1) An organisation is vicariously liable for child abuse perpetrated against a child by a person who is an employee of the organisation if, at the time at which the abuse was perpetrated –
- (a) the person, by virtue of being such an employee, had –
 - (i) authority, power or control over the child; or
 - (ii) the trust of the child; or

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- (iii) the ability to achieve intimacy with the child; and
 - (b) the person was able, by virtue of that authority, power, control, trust or ability, to perpetrate the child abuse on the child.
- (2) This section does not affect, and is in addition to, the common law as it applies with respect to vicarious liability.
- (3) In this section –

child abuse, in relation to a child, means –

- (a) sexual abuse, or physical abuse, of the child; and
- (b) any psychological abuse of the child that arises from the sexual abuse or physical abuse –

but does not include an act that is lawful at the time at which it occurs.

Division 4 – Proceedings against unincorporated organisations

49K. Objects of Division

The objects of this Division are –

- (a) to enable child abuse proceedings to be brought against unincorporated organisations; and

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- (b) to enable an organisation to pay liabilities arising from child abuse proceedings from the assets of an associated trust in certain circumstances.

49L. Definitions

In this Division –

associated trust – see section 49P(3);

child abuse, in relation to a child, means –

- (a) sexual abuse, or physical abuse, of the child; and
- (b) any psychological abuse of the child that arises from the sexual abuse or physical abuse –

but does not include an act that is lawful at the time at which it occurs;

child abuse proceedings means proceedings for a civil claim arising from child abuse, whether the claim arises under this Part or the common law;

entity includes the trustees of a trust;

legal personality, in respect of an organisation, means that the organisation is incorporated and capable of being sued and found liable;

management member, in relation to an unincorporated organisation, means –

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- (a) a member of any management committee of the organisation; or
- (b) if the organisation does not have a management committee – a person who is concerned with, or takes part in, the management of the organisation, regardless of the person's title or position;

proper defendant means a person appointed as a proper defendant under this Division;

suitable proper defendant means an entity that is, in accordance with section 49O, an entity that is suitable to be appointed as a proper defendant;

unincorporated organisation means an organisation that is not incorporated.

49M. Child abuse proceedings may be commenced against unincorporated organisation

- (1) Child abuse proceedings may be commenced or continue against an unincorporated organisation in the name of the organisation, or in a name reasonably sufficient to identify the organisation, as if the organisation had legal personality.
- (2) For the purposes of this Division, a function that may be exercised by an unincorporated organisation may be exercised by a management member of the organisation.

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- (3) A court may make the orders and directions that it thinks fit for the purposes of this Division, in particular to further the objects of this Division.
- (4) Without limiting subsection (3), a court may direct one or more management members of an unincorporated organisation to exercise a specified function of the organisation under this Division.

49N. Unincorporated organisation may appoint proper defendant

- (1) An unincorporated organisation may, with the consent of an entity, appoint the entity as a proper defendant for the organisation at any time.
- (2) An appointment of a defendant as a proper defendant for an unincorporated organisation is to be made in accordance with the *Supreme Court Rules 2000* or, if other rules of the Supreme Court are prescribed for the purposes of this subsection, those other rules.
- (3) If the unincorporated organisation is a Government department established under section 11 of the *State Service Act 2000* –
 - (a) the State is taken to be appointed as the proper defendant in relation to the organisation; and
 - (b) subsection (1) does not apply in relation to the organisation.

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49O. Entities suitable to be appointed as proper defendant

For the purposes of this Division, an entity is suitable to be appointed as a proper defendant for an organisation if –

- (a) the entity is able to be sued in this State; and
- (b) the entity, or, if the entity is a trustee of a trust, the trust, has sufficient assets in Australia to satisfy any judgment or order that may arise out of child abuse proceedings against the unincorporated organisation.

49P. Court may appoint proper defendant

(1) This section applies if –

- (a) child abuse proceedings are commenced against an unincorporated organisation and no suitable proper defendant is appointed as a proper defendant for the organisation by the end of the period of 60 days after the unincorporated organisation (or a management member of the unincorporated organisation) is served with notice of the commencement of the proceedings; or
- (b) after the end of that period, the proper defendant that is appointed ceases to be a suitable proper defendant.

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- (2) The court in which the child abuse proceedings are commenced may, on the application of the plaintiff, appoint the trustees of one or more of the following trusts to be a proper defendant of an organisation if the trustees are a suitable proper defendant for the organisation:
- (a) an associated trust of the organisation;
 - (b) a trust that was formerly an associated trust of the organisation, if the court considers that –
 - (i) the trust ceased to be an associated trust in an attempt to avoid trust property being applied to satisfy any liability that may be incurred in child abuse proceedings; and
 - (ii) it would be unjust not to appoint the trustees of the trust.
- (3) A trust is an associated trust of an unincorporated organisation for the purposes of this Division if one or more of the following apply:
- (a) the organisation has, either directly or indirectly, the power to control the application of the income, or the distribution of the property, of the trust;
 - (b) the organisation has the power to obtain the beneficial enjoyment of the property, or income, of the trust, with or without the consent of another entity;

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- (c) the organisation has, either directly or indirectly, the power to appoint or remove the trustee or trustees of the trust;
 - (d) the organisation has, either directly or indirectly, the power to appoint or remove beneficiaries of the trust;
 - (e) the trustee or trustees of the trust are accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the organisation;
 - (f) the organisation has, either directly or indirectly, the power to determine the outcome of any other decisions about the trust's operations;
 - (g) a member of the organisation, or a management member of the organisation, has, under the trust deed in relation to the trust, a power of a kind referred to in paragraph (a), (b), (c), (d), (e) or (f), but only if the trust has been established or used for the activities of the organisation or for the benefit of the organisation.
- (4) Within 28 days after the making of an application by a plaintiff under this section, the unincorporated organisation must identify to the court any associated trusts of the organisation, including by identifying the financial capacity of those trusts.

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49Q. Effect of appointment of proper defendant

On the appointment of a proper defendant for an unincorporated organisation –

- (a) the proper defendant is taken to be the defendant, in the child abuse proceedings against the organisation, on behalf of the organisation and is responsible for conducting the proceedings as the defendant; and
- (b) anything done by the unincorporated organisation is taken to have been done by the proper defendant and a duty or obligation of the unincorporated organisation in relation to the proceedings is a duty or obligation owed by the proper defendant; and
- (c) the unincorporated organisation must continue to participate in the child abuse proceedings and a court may make orders or directions in respect of the organisation as if the organisation had legal personality; and
- (d) a court may make substantive findings in the child abuse proceedings against an unincorporated organisation as if the organisation had legal personality; and
- (e) the proper defendant incurs any liability, from the claim in the proceedings on behalf of the organisation, that the organisation would have incurred if the

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organisation had legal personality, including any costs awarded; and

- (f) the proper defendant may rely on any defence or immunity that would be available to the organisation as a defendant in the proceedings if the organisation had legal personality; and
- (g) any right of the unincorporated organisation to be indemnified (including under a policy of insurance) in respect of damages awarded in a claim in child abuse proceedings extends to, and indemnifies, the proper defendant; and
- (h) if more than one proper defendant is appointed, the proper defendants must file a single defence and proceed as a single defendant.

49R. Special provisions applying when trustees of associated trust appointed

- (1) Despite any Act or other law or instrument (including any trust deed), the trustees of an associated trust of an unincorporated organisation may do one or more of the following:
 - (a) consent to be appointed by the organisation as a proper defendant;
 - (b) supply any information about the trust that may be required under this Division,

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including identifying the financial position of the trust;

- (c) apply trust property to satisfy any liability incurred by the trustee as a proper defendant in child abuse proceedings.
- (2) Any liability of a trustee incurred by the trustee as a proper defendant in child abuse proceedings is limited to the value of the trust property.
- (3) The satisfaction of any liability incurred by a trustee of an associated trust as a proper defendant in child abuse proceedings is a proper expense for which the trustee may be indemnified out of the trust property, irrespective of any limitation on any right of indemnity that a trustee may have.
- (4) A trustee of an associated trust is not liable for a breach of trust only because of doing anything authorised by this section.
- (5) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.
- (6) In this section –
- liability* incurred by a trustee as a proper defendant in child abuse proceedings includes any unpaid judgment debt arising from the proceedings, any amount paid in settlement of the proceedings and

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any costs associated with the proceedings.

49S. Rules of court

- (1) The Supreme Court may make rules, not inconsistent with this Part, for or with respect to any matter that, by this Part, is required, or permitted, to be prescribed by rules or that is necessary, or convenient, to be prescribed by rules for carrying out or giving effect to this Part.
- (2) Without limiting the generality of subsection (1), the rules may make provision for or in respect of the following matters:
 - (a) the practice and procedure to be followed in respect of proceedings under this Part and any matters incidental to or relating to that practice and procedure;
 - (b) the protection of the privacy of the plaintiffs;
 - (c) the duties of registrars and other officers of court in relation to, or for the purposes of, the operation of this Part;
 - (d) the forms to be used in connection with the operation of this Part.

PART 11 – MISCELLANEOUS

50. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.
- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.
- (5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (6) Regulations under subsection (5) may take effect on the day on which this Act commences or a later day as specified in the regulations, whether

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the day so specified is before, on or after the day
on which the regulations are made.

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NOTES

The foregoing text of the *Civil Liability Act 2002* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 May 2020 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Civil Liability Act 2002</i>	No. 54 of 2002	1.1.2003
<i>Civil Liability Amendment Act 2003</i>	No. 41 of 2003	4.7.2003
<i>Civil Liability Amendment Act 2004</i>	No. 8 of 2004	4.7.2003
<i>Liquor and Accommodation Amendment Act 2004</i>	No. 24 of 2004	1.1.2005
<i>Civil Liability Amendment (Proportionate Liability) Act 2005</i>	No. 2 of 2005	1.6.2005
<i>Civil Liability Amendment Act 2005</i>	No. 69 of 2005	15.12.2005
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2008</i>	No. 18 of 2008	15.12.2005
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006</i>	No. 43 of 2006	18.12.2006
<i>Civil Liability Amendment Act 2008</i>	No. 39 of 2008	22.10.2008
<i>Water and Sewerage Industry (Consequential and Transitional) Act 2008</i>	No. 52 of 2008	1.7.2009
<i>Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010</i>	No. 3 of 2010	1.7.2010
<i>Australian Consumer Law (Tasmania) (Consequential Amendments) Act 2010</i>	No. 41 of 2010	1.1.2011
<i>Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Act 2011</i>	No. 28 of 2011	31.10.2011
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	30.5.2012
<i>Civil Liability Amendment Act 2013</i>	No. 47 of 2013	1.3.2014

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Act	Number and year	Date of commencement
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2015</i>	No. 38 of 2015	13.10.2015
<i>Justice and Related Legislation (Marriage and Gender Amendments) Act 2019</i>	No. 7 of 2019	8.5.2019
<i>Civil Liability Amendment Act 2019</i>	No. 33 of 2019	8.10.2019
<i>Justice Legislation Amendment (Organisational Liability for Child Abuse) Act 2019</i>	No. 48 of 2019	1.5.2020

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Substituted by No. 41 of 2003, s. 4 Amended by No. 69 of 2005, s. 4
Section 3A	Inserted by No. 41 of 2003, s. 4
Section 3B	Inserted by No. 41 of 2003, s. 4 Amended by No. 28 of 2011, s. 8, No. 47 of 2013, s. 4 and No. 48 of 2019, s. 4
Section 3C	Inserted by No. 41 of 2003, s. 4
Section 4	Amended by No. 8 of 2004, s. 4, No. 2 of 2005, s. 4, No. 69 of 2005, s. 5, No. 39 of 2008, s. 4, No. 13 of 2012, s. 16, No. 47 of 2013, s. 5 and No. 48 of 2019, s. 5
Section 4AA	Inserted by No. 47 of 2013, s. 6
Section 4A	Inserted by No. 41 of 2003, s. 5
Section 5A	Inserted by No. 41 of 2003, s. 6
Section 6A	Inserted by No. 41 of 2003, s. 7
Section 7A	Inserted by No. 41 of 2003, s. 8
Section 8A	Inserted by No. 47 of 2013, s. 7
Section 8B	Inserted by No. 47 of 2013, s. 7
Part 6	Substituted by No. 41 of 2003, s. 9
Division 1 of Part 6	Inserted by No. 41 of 2003, s. 9
Section 9	Substituted by No. 41 of 2003, s. 9
Section 10	Substituted by No. 41 of 2003, s. 9
Division 2 of Part 6	Inserted by No. 41 of 2003, s. 9
Section 11	Inserted by No. 41 of 2003, s. 9
Section 12	Inserted by No. 41 of 2003, s. 9
Division 3 of Part 6	Inserted by No. 41 of 2003, s. 9
Section 13	Inserted by No. 41 of 2003, s. 9
Section 14	Inserted by No. 41 of 2003, s. 9
Division 4 of Part 6	Inserted by No. 41 of 2003, s. 9

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Provision affected	How affected
6	
Section 15	Inserted by No. 41 of 2003, s. 9
Section 16	Inserted by No. 41 of 2003, s. 9
Section 17	Inserted by No. 41 of 2003, s. 9
	Amended by No. 3 of 2010, Sched. 1
Division 5 of Part 6	Inserted by No. 41 of 2003, s. 9
Section 18	Inserted by No. 41 of 2003, s. 9
Section 19	Inserted by No. 41 of 2003, s. 9
	Amended by No. 33 of 2019, s. 4
Section 20	Inserted by No. 41 of 2003, s. 9
Division 6 of Part 6	Inserted by No. 41 of 2003, s. 9
Section 21	Inserted by No. 41 of 2003, s. 9
	Amended by No. 8 of 2004, s. 5 and No. 3 of 2010, Sched. 1
Section 22	Inserted by No. 41 of 2003, s. 9
Division 7 of Part 6	Inserted by No. 41 of 2003, s. 9
Section 23	Inserted by No. 41 of 2003, s. 9
Part 7	Inserted by No. 41 of 2003, s. 9
Section 24	Inserted by No. 41 of 2003, s. 9
Section 25	Inserted by No. 41 of 2003, s. 9
Section 26	Inserted by No. 41 of 2003, s. 9
	Amended by No. 69 of 2005, s. 6 and No. 13 of 2012, s. 17
Section 27	Inserted by No. 41 of 2003, s. 9
Section 28	Inserted by No. 41 of 2003, s. 9
	Amended by No. 47 of 2013, s. 8
Section 28A	Inserted by No. 69 of 2005, s. 7
Section 28B	Inserted by No. 69 of 2005, s. 7
	Amended by No. 18 of 2008, s. 11
Section 28BA	Inserted by No. 47 of 2013, s. 9
Section 28C	Inserted by No. 69 of 2005, s. 7
	Amended by No. 47 of 2013, s. 10
Section 28D	Inserted by No. 69 of 2005, s. 7
	Amended by No. 7 of 2019, s. 27
Section 28E	Inserted by No. 43 of 2006, s. 8
	Amended by No. 38 of 2015, s. 24
Part 8	Inserted by No. 41 of 2003, s. 9
Section 29	Inserted by No. 41 of 2003, s. 9
Section 30	Inserted by No. 41 of 2003, s. 9
Section 31	Inserted by No. 41 of 2003, s. 9
Section 32	Inserted by No. 41 of 2003, s. 9
Section 33	Inserted by No. 41 of 2003, s. 9
Section 34	Inserted by No. 41 of 2003, s. 9
Section 35	Inserted by No. 41 of 2003, s. 9
Section 35A	Inserted by No. 39 of 2008, s. 5
Section 35B	Inserted by No. 39 of 2008, s. 5

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Provision affected	How affected
Section 35C	Inserted by No. 39 of 2008, s. 5
Section 35D	Inserted by No. 39 of 2008, s. 5
Section 35E	Inserted by No. 39 of 2008, s. 5
Section 35F	Inserted by No. 39 of 2008, s. 5
Part 9	Inserted by No. 41 of 2003, s. 9
Section 36	Inserted by No. 41 of 2003, s. 9
Section 37	Inserted by No. 41 of 2003, s. 9
	Amended by No. 52 of 2008, Sched. 1
Section 38	Inserted by No. 41 of 2003, s. 9
Section 39	Inserted by No. 41 of 2003, s. 9
Section 40	Inserted by No. 41 of 2003, s. 9
Section 41	Inserted by No. 41 of 2003, s. 9
Section 42	Inserted by No. 41 of 2003, s. 9
Section 43	Inserted by No. 41 of 2003, s. 9
Section 43A	Inserted by No. 2 of 2005, s. 5
	Amended by No. 41 of 2010, s. 4 and No. 28 of 2011, s. 9
Section 43B	Inserted by No. 2 of 2005, s. 5
Section 43C	Inserted by No. 2 of 2005, s. 5
Section 43D	Inserted by No. 2 of 2005, s. 5
Section 43E	Inserted by No. 2 of 2005, s. 5
Section 43F	Inserted by No. 2 of 2005, s. 5
Section 43G	Inserted by No. 2 of 2005, s. 5
Part 10	Inserted by No. 41 of 2003, s. 9
Section 44	Inserted by No. 41 of 2003, s. 9
Section 45	Inserted by No. 41 of 2003, s. 9
	Amended by No. 28 of 2011, s. 10
Section 46	Inserted by No. 41 of 2003, s. 9
Section 47	Inserted by No. 41 of 2003, s. 9
Section 48	Inserted by No. 41 of 2003, s. 9
Section 49	Inserted by No. 41 of 2003, s. 9
Section 49A	Inserted by No. 24 of 2004, s. 27
Section 49B	Inserted by No. 13 of 2012, s. 18
Division 1	Inserted by No. 48 of 2019, s. 6
Division 2	Inserted by No. 48 of 2019, s. 6
Division 3	Inserted by No. 48 of 2019, s. 6
Division 4	Inserted by No. 48 of 2019, s. 6
Part 11	Inserted by No. 41 of 2003, s. 9
Section 50	Inserted by No. 41 of 2003, s. 9
