



Australian Capital Territory

# **Civil Law (Wrongs) Act 2002      No 40**

## **Republication No 1**

**Effective: 1 November 2002**

Republication date: 1 November 2002

Act not amended up to this date

Not all provisions are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Civil Law (Wrongs) Act 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 November 2002. It also includes any amendment, repeal or expiry affecting the republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Civil Law (Wrongs) Act 2002

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Australian Capital Territory

## Civil Law (Wrongs) Act 2002

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An Act to consolidate and reform the statute law relating to wrongs, and for other purposes

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## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Civil Law (Wrongs) Act 2002*.

### 2 Commencement

- (1) Part 7.1 (Traveller accommodation providers liability) commences at 12 noon on 1 July 2003.
- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

#### 4 Notes

(1) A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

(2) In this section:

***note*** includes material enclosed in brackets in section headings.

*Note* For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

- CCA: *Common Carriers Act 1902*
- C(FI)A: *Compensation (Fatal Injuries) Act 1968*
- CL(A)A: *Civil Liability (Animals) Act 1984*
- DA: *Defamation Act 2001*
- ILA: *Innkeepers Liability Act 1902*
- LR(MP)A: *Law Reform (Miscellaneous Provisions) Act 1955*
- LR(Mis)A: *Law Reform (Misrepresentation) Act 1977*
- MP(T)A: *Married Persons (Torts) Act 1968*

(3) Subsection (2), the notes mentioned in subsection (2), and this subsection expire 1 year after this section commences.

## **Chapter 2**                    **Provisions applying to wrongs generally**

### **Part 2.1**                    **Good samaritans**

#### **5**                    **Protection of good samaritans from liability**

- (1) A good samaritan does not incur personal civil liability for an act done or omission made honestly and without recklessness in assisting, or giving advice about the assistance to be given to, a person who is apparently—
  - (a) injured or at risk of being injured; or
  - (b) in need of emergency medical assistance.
- (2) However, the protection does not apply if—
  - (a) the liability falls within the ambit of a scheme of compulsory third party motor vehicle insurance; or
  - (b) the good samaritan's capacity to exercise appropriate care and skill was, at the relevant time, significantly impaired by a recreational drug.

**Example of scheme of compulsory third party motor vehicle insurance**

*Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance)

*Note*                    An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

- (3) In this section:



***good samaritan*** means—

- (a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently—
  - (i) injured or at risk of being injured; or
  - (ii) in need of emergency medical assistance; or
- (b) a medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or another form of telecommunication about the treatment of a person who is apparently—
  - (i) injured or at risk of being injured; or
  - (ii) in need of emergency medical assistance.

***medically qualified***—a person is ***medically qualified*** if the person—

- (a) is a doctor; or
- (b) has professional qualifications in a field of health care that are recognised under an Act; or
- (c) works, or has worked, as an ambulance officer or in another paramedical capacity.

## Part 2.2                      Volunteers

### 6        Definitions for pt 2.2

In this part:

*community organisation* means a corporation that directs or coordinates the carrying out of community work by volunteers.

*voluntary basis*—a person works on a *voluntary basis* if the person—

- (a) receives no remuneration for the work; or
- (b) is remunerated for the work but within limits prescribed under the regulations for this definition.

*volunteer* means a person who carries out community work on a voluntary basis.

### 7        Meaning of *community work*

(1) In this part:

*community work* means—

- (a) work for any 1 or more of the following purposes:
  - (i) a religious, educational, charitable or benevolent purpose;
  - (ii) promoting or encouraging literature, science or the arts;
  - (iii) looking after, or giving attention to, people who need care because of a physical or mental disability or condition;
  - (iv) sport, recreation or amusement;
  - (v) conserving resources or protecting the natural environment from harm;

- (vi) preserving historical or cultural heritage;
  - (vii) a political purpose;
  - (viii) protecting or promoting the common interests of the community generally or a particular section of the community; or
- (b) work declared under the regulations to be community work.
- (2) However, work is not *community work* if it—
- (a) involves acts or threats of violence; or
  - (b) creates a serious risk to the health or safety of the public or a section of the public; or
  - (c) is declared under the regulations not to be community work.

## **8 Protection of volunteers from liability**

- (1) A volunteer does not incur personal civil liability for an act done or omission made honestly and without recklessness while carrying out community work for a community organisation on a voluntary basis.
- (2) However, the protection does not apply if—
- (a) the liability falls within the ambit of a scheme of compulsory third party motor vehicle insurance; or
  - (b) the liability is for defamation; or
  - (c) the volunteer's capacity to carry out the work properly was, at the relevant time, significantly impaired by a recreational drug; or
  - (d) the volunteer was acting, and knew or ought to have known that he or she was acting—
    - (i) outside the scope of the activities authorised by the community organisation; or

- (ii) contrary to instructions given by the community organisation.

## **9 Liability of community organisations for volunteers**

- (1) A liability that would, apart from this part, attach to a volunteer, attaches instead to the community organisation for which the volunteer was carrying out the relevant community work.
- (2) A person (the *injured person*) who suffers death, injury, loss or damage because of the act or omission of a volunteer may sue the volunteer personally only if—
  - (a) it is clear from the circumstances of the case that the protection given under section 8 does not apply to the case; or
  - (b) the injured person brings an action against the community organisation and the community organisation disputes, in a defence filed to the action, that it is liable for the act or omission of the volunteer.

## **10 Territory may assume liability of community organisations for volunteers**

- (1) This section applies if a community organisation carries out a function that is a recognised government responsibility.
- (2) The Minister may, by agreement with the community organisation, assume on behalf of the Territory liabilities of the organisation that arise under section 9 in carrying out the function.
- (3) The agreement may be subject to the conditions and limitations the Minister considers appropriate.
- (4) While the agreement is in force, a liability that would, apart from this section, attach to the community organisation in relation to the function, attaches instead (subject to the conditions and limitations of the agreement) to the Territory.

(5) In this section:

*recognised government responsibility* means a responsibility prescribed under the regulations as a recognised government responsibility.

## **11 Directions to community organisations about insurance etc**

- (1) The Minister may give written directions to community organisations about the taking out of insurance, or the adoption of risk management plans, in relation to liabilities to which this part applies.
- (2) A direction is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **Part 2.3                      Survival of actions on death**

### **12      Effect of death on certain causes of action (LR(MP)A s 4)**

- (1) When a person dies—
  - (a) all causes of action vested in the person survive for the benefit of the person's estate; and
  - (b) all causes of action existing against the person survive against the person's estate.
- (2) This section does not apply to causes of action for defamation.

### **13      Damages in surviving cause of action (LR(MP)A s 5)**

- (1) This section applies to a cause of action that survives under this part for the benefit of a dead person's estate.
- (2) The damages recoverable do not include exemplary damages.
- (3) If the act or omission that gave rise to the cause of action caused the person's death, the damages recoverable—
  - (a) must be calculated without regard to any loss or gain to the estate resulting from the death; and
  - (b) do not include damages for—
    - (i) the person's pain or suffering or for any bodily or mental harm suffered by the person or for the loss of the person's expectation of life; or
    - (ii) the person's loss of capacity to earn or loss of future probable earnings; and
  - (c) do not include damages of the kind mentioned in section 39 (Damages for loss of capacity to perform domestic services).

- (4) The damages may include an amount to compensate for any reasonable funeral expenses paid or payable by the estate.
- (5) An amount to compensate for any reasonable funeral expenses may be reduced to the extent (if any) that the court considers just and equitable having regard to the age and health of the dead person immediately before the act or omission that gave rise to the cause of action.
- (6) In deciding whether an expense is reasonable for subsection (4), regard must be had to the religious and cultural circumstances of the dead person and the members of the dead person's family.
- (7) In this section:  
*member*, of a dead person's family—see section 20.

**14 If person liable dies before or at time of damage**  
(LR(MP)A s 7)

- (1) This section applies if—
  - (a) damage was suffered because of an act or omission; and
  - (b) a person against whom there would have been a cause of action for the act or omission died before or at the same time as the damage was suffered.
- (2) For this part, the cause of action is taken to have existed against the person before his or her death.

**15 Saving of rights additional to pt 2.3** (LR(MP)A s 8)

- (1) The rights given by this part for the benefit of estates of dead people are additional to, and do not limit, rights given by part 3.1 (Wrongful act or omission causing death).

- (2) This part as it relates to causes of action against estates of dead people applies in relation to causes of action under part 3.1 in the same way as it applies in relation to other causes of action that survive under this part.
- (3) The rights given by this part for the benefit of estates of dead people, and the obligations under this part against estates of dead people, are additional to, and do not limit, rights or obligations under the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance).



## Part 2.4 Proceedings against and contributions between wrongdoers

### 16 Definitions for pt 2.4 (LR(MP)A s 10)

In this part:

*court* includes arbitrator.

*damage* means loss of any kind (including loss of life, personal injury, damage to property and economic loss).

*wrong* means an act or omission (whether or not an offence)—

- (a) that gives rise to a liability in tort in relation to which a defence of contributory negligence is available at common law; or
- (b) that amounts to a breach of a contractual duty of care that is concurrent and coextensive with a duty of care in tort.

### 17 Each of several wrongdoers can be sued (LR(MP)A s 11)

- (1) A judgment or decision against a person for damage caused by a wrong does not bar an action against someone else who is also liable for the same damage.
- (2) However, if separate actions are brought in relation to the same damage—
  - (a) the total amount recovered in the actions cannot exceed the amount of damages awarded in the judgment or decision given first or, if that amount is amended on appeal, the amount as amended; and

- (b) the plaintiff is only entitled to costs in the action for which judgment or decision is given first (including costs on appeal from the judgment or decision), unless the court considers there were reasonable grounds for bringing the actions separately.

**18 Right of contribution (LR(MP)A s 12)**

- (1) A person (the *first person*) who is liable for damage caused by a wrong can recover contribution from someone else (a *contributory*) who is also liable for the same damage.
- (2) The contribution must be an amount that the court considers just and equitable having regard to the extent of the contributory's responsibility for the damage.
- (3) However, the first person is not entitled to contribution under this section if—
  - (a) the first person is liable to indemnify the contributory against the contributory's liability for the damage; or
  - (b) the court exempts the contributory from liability to make contribution; or
  - (c) the court has directed that contribution to be recovered from a person for the damage is a complete indemnity for the damage.

**19 Effect of pt 2.4 (LR(MP)A s 13)**

- (1) This part does not—
  - (a) affect any criminal proceeding against a person in relation to an act or omission; or
  - (b) make enforceable an agreement for indemnity that would not have been enforceable if this part had not been enacted.
- (2) This part has effect subject to the *Construction Practitioners Registration Act 1998*, part 4 (Limitation of liability).

## **Chapter 3            Liability for death or injury**

### **Part 3.1            Wrongful act or omission                          causing death**

#### **Division 3.1.1      Preliminary—liability for death**

##### **20    Definitions for pt 3.1 (C(FI)A s 2, s 3)**

In this part:

*child* includes a grandchild and a stepchild.

*member*, of a dead person's family—each of the following people is a *member* of a dead person's family:

- (a) a spouse of the person;
- (b) a person (whether of the same sex or a different sex) who, immediately before the death, was living in a de facto marriage relationship with the person;
- (c) a child of the person (including a child born alive after the death);
- (d) a person to whom the dead person acted, immediately before his or her death, in place of a parent;
- (e) a parent of the person;
- (f) a person who acted, immediately before the dead person's death, in place of a parent to the dead person;
- (g) a brother, a sister, a half-brother and a half-sister of the person;
- (h) a former spouse of the person.

*parent* includes a stepfather, a stepmother, a grandfather and a grandmother.

## **Division 3.1.2            Liability and damages for death**

### **21    Liability for a person's death (C(FI)A s 7)**

If—

- (a) a person's death is caused by a wrongful act or omission (whether or not an offence); and
- (b) the act or omission would, if death had not resulted, have entitled the person to recover damages in an action for personal injury;

the person who would have been liable if the death had not resulted is liable to an action for damages despite the death and whether or not the death was caused by circumstances that were an offence.

### **22    Damages for a person's death (C(FI)A s 10)**

- (1) In an action under this part, the court may award, to the people for whose benefit the action is brought (the *beneficiaries*), the damages that it considers to be proportional to the damage to them resulting from the death.
- (2) Subsection (1) has effect subject to part 4.1 (General exclusions and limitations about damages).
- (3) The amount of damages awarded must, after deducting the costs not recovered from the defendant, be divided between the beneficiaries in the shares the court decides.
- (4) The damages may include an amount to compensate for any of the following expenses paid or payable by a beneficiary:
  - (a) reasonable funeral expenses;

- (b) reasonable medical or hospital expenses related to the injury that resulted in the death.
- (5) An amount to compensate for any reasonable funeral expenses may be reduced to the extent (if any) that the court considers just and equitable having regard to the age or health of the dead person immediately before the wrongful act or omission that caused the death.
- (6) In deciding whether an expense is reasonable for subsection (4) (a), regard must be had to the religious and cultural circumstances of the dead person and the members of the dead person's family.

**23 Amounts not to be taken into account in assessing damages for death (C(FI)A s 10)**

In assessing damages in relation to liability under this part, the following must not be taken into account to reduce the damages:

- (a) an amount paid or payable on the death of, or personal injury to, the dead person under a contract of insurance;
- (b) an amount paid or payable out of a superannuation, provident or similar fund, or as a benefit from a friendly society, benefit society, lodge or trade union;
- (c) an amount paid or payable because of the death or injury of the dead person that is—
  - (i) a payment instead of leave; or
  - (ii) a payment of a pension or another social security or veterans benefit;
- (d) an amount paid or payable as a gratuity on the death of the dead person;
- (e) an amount in relation to the acquisition by a member of the dead person's family, after the death, of—

- (i) a house, or an interest in a house, used at any time as the member's home; or
- (ii) the household contents, or an interest in the household contents, of the house;
- (f) a premium that would have become payable under a contract of insurance on the life of the dead person if the person had lived beyond the time when he or she died.

**24    Contributory negligence not defence in relation to death**  
(C(FI)A s 11)

- (1) If a person has died partly because of the person's failure to take reasonable care (*contributory negligence*) and partly because of someone else's wrong, the damages recoverable in an action under this part for the wrong must not be reduced because of the contributory negligence.
- (2) Subsection (1) has effect subject to part 4.1 (General exclusions and limitations about damages).
- (3) In this section:
  - wrong* means an act or omission (whether or not an offence)—
  - (a) that gives rise to a liability in tort; or
  - (b) that amounts to a breach of a contractual duty of care that is concurrent and coextensive with a duty of care in tort.

**Division 3.1.3            Procedural matters—action for death**

**25    One action for benefit of members of dead person's family** (C(FI)A s 8, s 13)

- (1) Not more than 1 action under this part may be brought against a person in relation to a death.

- (2) The action must be brought by the personal representative of the dead person for the benefit of the members of the person's family (the *beneficiaries*) who suffered damage because of the death.
- (3) However, if the action has not been begun by the personal representative within 6 months after the day of the death, any 1 or more of the beneficiaries may bring the action.
- (4) The action must be for the benefit of the same people and subject to the same provisions and procedures (with the necessary changes) as if it were brought by the personal representative of the dead person on behalf of the beneficiaries.

## **26 Payment into court (C(FI)A s 12)**

- (1) If an action is brought in the Magistrates Court under this part, the defendant may pay an amount into the Magistrates Court as compensation for the benefit of the people for whose benefit the action is brought, and who are entitled to compensation under this part, without stating the shares into which the amount is to be divided by the court.
- (2) If an amount is paid into the Magistrates Court under subsection (1), no part of the amount can be paid out of court except under an order of the court.

## **27 Special endorsement on originating process (C(FI)A s 14)**

The originating process by which an action under this part is begun in the Magistrates Court must, in addition to any other endorsements required or permitted to be made, be endorsed with a statement of the names of each of the people for whose benefit the action is brought and the relationship of each of them to the dead person.

**28 Powers of court to make orders in relation to actions**  
(C(FI)A s 15)

- (1) If—
- (a) an action under this part is begun in a court; and
  - (b) the court is satisfied that a person whose name is not included in the names of the people for whose benefit the action is stated to have been brought is a person whose name should have been included;

the court may (on its own initiative or on application by or on behalf of that person) order that the action must proceed as if the name of that person had been included.

- (2) In an action under this part, the court may order that any 1 or more of the people for whose benefit the action has been brought must be separately represented by a lawyer.
- (3) If the court makes an order under this section, the court may, at the same time or later, make the orders about procedure in the action that it considers appropriate.
- (4) The powers of the court under this section are additional to any other powers of the court.



## Part 3.2 Injury arising from mental or nervous shock

### 29 Definitions for pt 3.2 (LR(MP)A s 22)

In this part:

*child*, of a person, means the son, daughter, grandson, granddaughter, stepson or stepdaughter of the person, or someone to whom the person is acting in place of a parent.

*family member*, of a person, means—

- (a) a spouse of the person; or
- (b) a person (whether of the same sex or a different sex) who is living in a de facto marriage relationship with the person; or
- (c) a parent or child of the person; or
- (d) a brother, sister, half-brother or half-sister of the person.

*parent*, of a person, means the father, mother, grandfather, grandmother, stepfather or stepmother of the person, or someone acting in place of a parent to the person.

### 30 Personal injury arising from mental or nervous shock (LR(MP)A s 23)

In an action for personal injury, the plaintiff is not prevented from recovering damages only because the injury arose completely or partly from mental or nervous shock.

**31 Extensions of liability under pt 3.2 in certain cases**  
(LR(MP)A s 24)

- (1) A person's liability in relation to an injury caused by a wrongful act or omission by which someone else (*A*) is killed, injured or put in danger includes liability for injury arising completely or partly from mental or nervous shock received by—
  - (a) a parent of *A*; or
  - (b) a spouse of *A*; or
  - (c) a person (whether of the same sex or a different sex) who is living in a de facto marriage relationship with *A*; or
  - (d) another family member of *A*, if *A* was killed, injured or put in danger within the sight or hearing of the other family member.
- (2) If 2 or more family members bring, or may bring, actions in relation to liability arising under subsection (1) out of the same act or omission, the court may proceed in the way the court considers appropriate and may make the orders the court considers appropriate about—
  - (a) which family members are parties to the action; and
  - (b) who is to have the conduct of the action.
- (3) The action is for the benefit of all family members who are parties to the action.
- (4) The court may award the damages that it considers to be proportional to the damage to the plaintiffs resulting from the wrongful act or omission.
- (5) Subsection (4) has effect subject to part 4.1 (General exclusions and limitations about damages).

- (6) The amount of damages awarded must, after deducting the costs not recovered from the defendant, be divided between the plaintiffs in the shares the court decides.

## Chapter 4 Damages

### Part 4.1 General exclusions and limitations about damages

#### 32 Definitions for pt 4.1

In this part:

**accident** means an incident out of which personal injury arises, and includes a motor accident.

**claim** means a claim (however described) for damages based on a liability for personal injury, whether the liability is based in tort or contract or on another form of action (including breach of statutory duty), and, for a fatal injury, includes a claim for the dead person's dependants or estate.

**court** includes arbitrator.

**intoxicated**—a person is **intoxicated** if under the influence of alcohol or a drug to the extent that the person's capacity to exercise appropriate care and skill is impaired.

**motor accident** means an accident caused by, or arising out of the use of, a motor vehicle.

**motor vehicle** means—

- (a) a motor vehicle under the *Road Transport (General Act) 1999*;  
or
- (b) a vehicle operated on a railway or other fixed track.

*personal injury* means bodily injury, and includes—

- (a) mental or nervous shock; and
- (b) death.

### **33 Application of pt 4.1**

- (1) This part applies to all claims for damages for personal injury, including claims to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies.
- (2) However, this part does not apply to claims under the *Workers Compensation Act 1951*.

### **34 Exclusion of liability if conduct an offence**

- (1) Liability for damages is excluded if the court—
  - (a) is satisfied on the balance of probabilities that the accident happened while the injured person was engaged in conduct that is an indictable offence; and
  - (b) is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.
- (2) Despite this exclusion, the court may award damages in a particular case if satisfied that—
  - (a) the circumstances of the case are exceptional; and
  - (b) in the circumstances of the case, the exclusion would operate harshly and unjustly.

### **35 Presumption of contributory negligence—injured person intoxicated**

- (1) Contributory negligence must be presumed if the injured person was intoxicated at the time of the accident and the defendant claims contributory negligence.

- (2) The presumption can be rebutted only if the injured person establishes, on the balance of probabilities, that—
  - (a) the intoxication did not contribute to the accident; or
  - (b) the intoxication was not self-induced.
- (3) If the presumption is not rebutted, the damages the injured person would be entitled to, apart from the contributory negligence, must be reduced to the extent that the court considers just and equitable having regard to the injured person's share in the responsibility for the injury.

**36 Presumption of contributory negligence—injured person relying on intoxicated person**

- (1) Contributory negligence must be presumed if—
  - (a) the injured person—
    - (i) was at least 16 years old at the time of the accident; and
    - (ii) relied on the care and skill of a person (A) who was intoxicated at the time of the accident; and
    - (iii) knew, or ought to have known, that A was intoxicated; and
  - (b) the accident was caused by A's negligence; and
  - (c) the defendant claims contributory negligence by the injured person.
- (2) The presumption can be rebutted only if the injured person establishes, on the balance of probabilities, that—
  - (a) the intoxication did not contribute to the accident; or
  - (b) the injured person could not reasonably be expected to have avoided the risk.

- (3) If the presumption is not rebutted, the damages the injured person would be entitled to, apart from the contributory negligence, must be reduced to the extent that the court considers just and equitable having regard to the injured person's share in the responsibility for the injury.
- (4) For this section, a passenger in a motor vehicle is taken to rely on the care and skill of the driver.
- (5) The common law defence of voluntary assumption of risk does not apply to a matter to which this section applies.

**37 Presumption of contributory negligence—injured person not wearing seatbelt etc**

- (1) Contributory negligence must be presumed if the injured person was injured in a motor accident and was at least 16 years old at the time of the accident and—
  - (a) was not wearing a seatbelt at the time of the accident as required under the *Road Transport (Safety and Traffic Management) Act 1999*; or
  - (b) 1 of the following factors contributed to the accident or the extent of the injury:
    - (i) the injured person was not wearing a helmet at the time of the accident as required under the *Road Transport (Safety and Traffic Management) Act 1999*;
    - (ii) the injured person was a passenger in or on a motor vehicle with a passenger compartment but was not in the compartment at the time of the accident.
- (2) The presumption can be rebutted only as provided in subsections (3) and (4).

- (3) For subsection (1) (a), the presumption can be rebutted if the injured person establishes, on the balance of probabilities, that the injury suffered by the injured person was less serious than it would have been if the injured person had been wearing a seatbelt at the time of the accident.
- (4) For subsection (1) (b) (ii), the presumption can be rebutted if the injured person establishes, on the balance of probabilities, that the injured person could not reasonably be expected to have avoided the risk.
- (5) If the presumption is not rebutted, the damages the injured person would be entitled to, apart from the contributory negligence, must be reduced to the extent that the court considers just and equitable having regard to the injured person's share in the responsibility for the injury.

### **38 Damages for loss of earnings**

- (1) In assessing damages for loss of earnings in relation to a claim, the court must disregard earnings above the limit mentioned in subsection (2).
- (2) The limit is 3 times average weekly earnings a week.
- (3) In this section:

*ABS* means the Australian Bureau of Statistics established under the *Australian Bureau of Statistics Act 1975* (Cwlth).

*average weekly earnings* means the *Average weekly earnings*, States and Territories, seasonally adjusted for the ACT (all males total earnings) issued by the ABS.



*loss of earnings* means—

- (a) past economic loss because of loss of earnings or the deprivation or impairment of earning capacity; and
- (b) future economic loss because of loss of prospective earnings or the deprivation or impairment of prospective earning capacity.

## Part 4.2                      Loss of capacity to perform domestic services

### 39      Damages for loss of capacity to perform domestic services (LR(MP)A s 31, s 33)

- (1) A person's liability for an injury suffered by someone else because of a wrong includes liability for damages for any resulting impairment or loss of the injured person's capacity to perform domestic services that the injured person might reasonably have been expected to perform for his or her household if he or she had not been injured.
- (2) In an action for the recovery of damages mentioned in subsection (1), it does not matter—
  - (a) whether the injured person performed the domestic services for the benefit of other members of the household or solely for his or her own benefit; or
  - (b) that the injured person was not paid to perform the services; or
  - (c) that the injured person has not been, and will not be, obliged to pay someone else to perform the services; or
  - (d) that the services have been, or are likely to be, performed (gratuitously or otherwise) by other people (whether members of the household or not).
- (3) In this section:  
**wrong** means an act or omission (whether or not an offence)—
  - (a) that gives rise to a liability in tort; or
  - (b) that amounts to a breach of a contractual duty of care that is concurrent and coextensive with a duty of care in tort.

## Part 4.3                      Contributory negligence

### 40     Definitions for pt 4.3 (LR(MP)A s 14)

In this part:

*court* includes arbitrator.

*damage* means loss of any kind (including loss of life, personal injury, damage to property and economic loss).

*wrong* means an act or omission (whether or not an offence)—

- (a) that gives rise to a liability in tort in relation to which a defence of contributory negligence is available at common law; or
- (b) that amounts to a breach of a contractual duty of care that is concurrent and coextensive with a duty of care in tort.

### 41     Apportionment of liability—contributory negligence (LR(MP)A s 15)

- (1) If a person (the *claimant*) suffers damage partly because of the claimant's failure to take reasonable care (*contributory negligence*) and partly because of someone else's wrong—
  - (a) a claim for the damage is not defeated because of the claimant's contributory negligence; and
  - (b) the damages recoverable for the wrong are to be reduced to the extent the court deciding the claim considers just and equitable having regard to the claimant's share in the responsibility for the damage.
- (2) However, if the claimant suffered personal injury and the wrong was a breach of statutory duty, the damages recoverable by the claimant for the personal injury must not be reduced because of the claimant's contributory negligence.

- (3) If an Act or contract providing for the limitation of liability applies to the claim, the amount of damages awarded to the claimant because of subsection (1) must not exceed the maximum limit applying to the claim.
- (4) This section does not defeat any defence arising under a contract.
- (5) This section has effect subject to part 4.1 (General exclusions and limitations about damages).

#### **42 Joint wrongdoers (LR(MP)A s 16)**

Part 2.4 (Proceedings against and contributions between wrongdoers) applies if 2 or more people are liable (or, if they had all been sued, would have been liable) under section 41 for the damage suffered by a person.

#### **43 Claims by third parties—contributory negligence (LR(MP)A s 17)**

- (1) This section applies if—
  - (a) a person (the *first person*) suffers damage partly because of the first person's failure to take reasonable care (*contributory negligence*) and partly because of someone else's wrong; and
  - (b) because of the damage to the first person a third person suffers damage.
- (2) In an action by the third person, the contributory negligence of the first person must be taken into account under section 41 (Apportionment of liability—contributory negligence) in reducing the damages recoverable by the third person for the damage as if the contributory negligence were a failure by the third person to take reasonable care.

**44 Pleading of statutory limitation period—contributory negligence (LR(MP)A s 18)**

- (1) This section applies to a case to which section 41 (Apportionment of liability—contributory negligence) applies if—
  - (a) the claimant suffered damage partly because of the wrong of 2 or more people; and
  - (b) 1 of those people avoids liability to another of those people (or his or her personal representative) by pleading a statutory limitation period on the time within which proceedings can be taken.
- (2) The person who avoids liability is not entitled to recover damages or contribution from the other person (or his or her personal representative) because of section 41.

## Part 4.4 Other provisions—damages

### 45 Court may make consent order for structured settlement

- (1) This section applies if the parties to an action for personal injury damages agree to settle the action by making a structured settlement and apply to the court for an order approving of, or in the terms of, the structured settlement.
- (2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.
- (3) In this section:

*personal injury damages* means damages that relate to the death of, or injury to, a person caused by someone else's wrongful act or omission (whether or not an offence).

*structured settlement* means an agreement providing 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.

### 46 Independent finding of liability and award of damages

To remove any doubt—

- (a) a court may make a finding of liability on any claim for damages independently of making an award or interim award of damages on the claim; and
- (b) a court may make an award or interim award of damages on any claim independently, but after, making a finding of liability on the claim.

## Chapter 5 Defamation

### Part 5.1 Preliminary—defamation

#### 47 Definitions for ch 5

In this chapter:

*action* means an action for defamation.

*aggrieved person*, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 48.

*amends agreement*, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 51 (1).

*country* includes a federation, and a state, territory, province or other part of a federation.

*court*, in relation to an action for defamation, means a court of competent jurisdiction.

*defamation* means libel or slander.

*matter in question*, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 48.

*offer to make amends* means an offer under section 49.

*parliamentary body* means any of the following:

- (a) a parliament or legislature of any country;
- (b) a house of a parliament or legislature of any country;
- (c) a committee of a parliament or legislature of any country;
- (d) a committee of a house or houses of a parliament or legislature of any country.

*published matter*, for part 5.3 (Rules governing litigation of civil claims—defamation)—see section 56.

*publisher*, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 48.

*qualified offer*, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 49 (2).

*tribunal* means a tribunal of any country.



## Part 5.2                      Resolution of disputes without litigation—defamation

### 48      Application of pt 5.2

This part applies if a person (the *publisher*) publishes matter (the *matter in question*) that is or may be defamatory of someone else (the *aggrieved person*).

### 49      Offer to make amends—defamation (DA s 6)

- (1) The publisher may offer to make amends to the aggrieved person.
- (2) The offer may be in relation to—
  - (a) the matter in question generally; or
  - (b) a particular defamatory meaning that the publisher accepts that the matter in question has (a *qualified offer*).
- (3) The offer to make amends—
  - (a) must be in writing; and
  - (b) must be readily identifiable as an offer to make amends under this part; and
  - (c) must include an offer to publish, or join in publishing, a reasonable correction (if any) of the matter in question; and
  - (d) must include an offer to publish, or join in publishing, a reasonable apology (if any) in relation to the matter; and
  - (e) if material containing the matter has been given to someone else by the publisher or with the publisher's knowledge—must include an offer to take, or join in taking, reasonable steps to tell the other person that the matter is or may be defamatory of the aggrieved person; and

- (f) must state whether it is a qualified offer and, if so, set out the defamatory meaning in relation to which it is made; and
  - (g) must include an offer to pay the expenses incurred by the aggrieved person; and
  - (h) may include particulars of any correction or apology made, or action taken, before the date of offer; and
  - (i) may include an offer to pay compensation for any economic loss of the aggrieved person; and
  - (j) may include an offer to pay compensation for the harm to the aggrieved person's reputation only if the matter in question imputes criminal behaviour by the aggrieved person.
- (4) For subsection (3) (i) or (j), an offer to pay compensation may be in any of the following forms:
- (a) an offer to pay a stated amount;
  - (b) an offer to pay an amount to be agreed between the publisher and the aggrieved person or, if an agreement is not made, the amount decided by a court;
  - (c) an offer to pay the amount decided by a court;
  - (d) an offer to—
    - (i) enter into an arbitration agreement within the meaning of the *Commercial Arbitration Act 1986*; and
    - (ii) pay the amount decided by the arbitrator or, if an arbitration agreement is not made, the amount decided by a court.
- (5) The publisher may not make an offer to make amends after the earlier of—

- (a) the end of 14 days after the day the aggrieved person tells the publisher that the matter in question is or may be defamatory of the person; and
  - (b) the service by the publisher of a defence in an action brought against the publisher by the aggrieved person in relation to the matter in question.
- (6) If 2 or more people published the matter in question, an offer to make amends by 1 or more of them does not affect the liability of the other or others.
- (7) An offer to make amends may be withdrawn before it is accepted and the renewal of a withdrawn offer is to be regarded as a new offer.

**50 Reasonable offer to make amends—defamation (DA s 7)**

- (1) In deciding whether an offer to make amends is reasonable, a court must have regard to any correction or apology published before any trial arising out of the matter in question, including the extent to which the correction or apology is brought to the attention of the audience of the matter in question having regard to—
- (a) the prominence given to the correction or apology as published in comparison to the prominence given to the matter in question as published; and
  - (b) the period between publication of the matter in question and publication of the correction or apology.
- (2) However, subsection (1) does not limit the matters that the court may take into account in deciding whether an offer to make amends is reasonable.

**51 Acceptance of offer to make amends—defamation**  
(DA s 8)

- (1) If an offer to make amends is accepted, a court may—
  - (a) order the publisher to pay the aggrieved person the expenses incurred by the aggrieved person in accepting and performing the agreement made by acceptance of the offer (the *amends agreement*); and
  - (b) on the application of a party to the amends agreement, decide the amount of compensation mentioned in section 49 (4) (b), (c) or (d).
- (2) If a question arises about what must be done to perform the amends agreement, the court may decide the question on the application of either party.
- (3) If the publisher performs the amends agreement (including paying any compensation under the agreement), the aggrieved person must not begin or continue an action against the publisher in relation to the matter in question.

**52 False or misleading statement in correction** (DA s 9)

The publisher must not knowingly make a statement in a correction published in purported compliance with the amends agreement that is false or misleading in a material particular.

Maximum penalty: 200 penalty units.

**53 Offer to make amends not accepted—defamation**  
(DA s 10)

If an offer to make amends is not accepted, it is a defence to an action against the publisher in relation to the matter if—

- (a) the publisher made the offer as soon as practicable after becoming aware that the matter is or may be defamatory; and

- (b) at any time before the trial the publisher was ready and willing, on acceptance of the offer by the aggrieved person, to perform the terms of the offer; and
- (c) in all the circumstances the offer was reasonable.

**54 Order to vindicate reputation if offer not made (DA s 11)**

- (1) If an offer to make amends is not made, or no reasonable offer of amends is made, the aggrieved person may apply to the Supreme Court for an order to vindicate his or her reputation.
- (2) The order may only be sought if the aggrieved person has given the publisher at least 7 days written notice of intention to apply to the Supreme Court for an order to vindicate his or her reputation.
- (3) The notice must contain sufficient information to identify the matter in question.
- (4) An order under subsection (1) does not prevent the aggrieved person bringing an action.

## Part 5.3                      Rules governing litigation of civil claims—defamation

### 55      Application of pt 5.3 (DA s 12)

This part applies in relation to an action for defamation.

### 56      Meaning of *published matter* in pt 5.3 (DA s 13)

In this part:

*published matter*, in relation to an action against a defendant for the publication of matter that is or may be defamatory, means the matter so published.

### 57      Slander actionable without special damage (DA s 14)

Slander is actionable without special damage in the same way and to the same extent as libel is actionable without special damage.

### 58      Plaintiff's character not likely to be injured (DA s 15)

It is a defence if the defendant establishes that the circumstances of publication were such that the plaintiff was unlikely to suffer harm.

### 59      Defence of truth and public benefit (DA s 16)

It is a defence if the defendant establishes—

- (a) the truth of the published matter in accordance with the common law; and
- (b) that it was for the public benefit that the matter should be published.

**60 Publication of a proceeding of public concern (DA s 17)**

- (1) It is a defence if the defendant establishes that the published matter was, or was contained in, a fair report of a proceeding of public concern.
- (2) It is a defence if the defendant establishes that—
  - (a) the published matter was, or was contained in, an earlier published report of a proceeding of public concern; and
  - (b) the published matter was, or was contained in, a copy of, a fair summary of, or a fair extract from, the earlier published report; and
  - (c) the defendant had no knowledge that would reasonably make him or her aware that the earlier published report was not fair.
- (3) A defence established under subsection (1) or (2) is excluded if, and only if, the plaintiff satisfies the court that the published matter was not published honestly for the information of the public or the advancement of education.
- (4) In this section, a *proceeding of public concern* is any of the following:
  - (a) a proceeding in public of a parliamentary body;
  - (b) a proceeding in public of an international organisation of any countries or of governments of any countries;
  - (c) a proceeding in public of an international conference at which governments of any countries are represented;
  - (d) a proceeding in public of—
    - (i) the International Court of Justice, or any other judicial or arbitral tribunal, for the decision of any matter in dispute between nations; or
    - (ii) any other international judicial or arbitral tribunal;

- (e) a proceeding in public of—
  - (i) a court of any country; or
  - (ii) an arbitral tribunal;
- (f) a proceeding in public of an inquiry held under the law of any country or under the authority of the government of any country;
- (g) a proceeding of a learned society, or of a committee or governing body of the society, under its principal objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
  - (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the society;
- (h) a proceeding of a sport or recreation association, or of a committee or governing body of the association, under its major objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
  - (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the association;
- (i) a proceeding of a trade association, or of a committee or governing body of the association, under its relevant objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
  - (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the association;



- (j) a proceeding of a public meeting (with or without restriction on the people attending) held anywhere in Australia if the proceeding relates to a matter of public interest, including the advocacy or candidature of a person for public office;
  - (k) a proceeding of an ombudsman of any country if the proceeding relates to a report of the ombudsman;
  - (l) a proceeding in public of a law reform body of any country, or a proceeding in public at an inquiry conducted by a law reform body of any country.
- (5) In this section:

**law reform body** means a body (however described and whether or not permanent or full-time) whose functions in relation to the law of a country are similar to those of the Australian Law Reform Commission in relation to the law of the Commonwealth.

**learned society** means a body, wherever formed—

- (a) the objects of which include the advancement of any art, science or religion or the advancement of learning in any field (the **principal objects**); and
- (b) authorised by its constitution—
  - (i) to exercise control over, or adjudicate on, matters connected with its principal objects; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

**ombudsman** includes an officer (however described) whose duties are similar to those of the Territory ombudsman.

***sport or recreation association*** means a body, wherever formed—

- (a) the objects of which include the promotion of any game, sport, or pastime to the playing of which or exercise of which the public is admitted as spectators or otherwise and the promotion or protection of the interests of people connected with the game, sport, or pastime (the ***major objects***); and
- (b) authorised by its constitution—
  - (i) to exercise control over, or adjudicate on, matters connected with the game, sport, or pastime; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

***trade association*** means a body, wherever formed—

- (a) the objects of which include the promotion of any calling, that is to say, a trade, business, industry or profession and the promotion or protection of the interests of people engaged in any calling (the ***relevant objects***); and
- (b) authorised by its constitution—
  - (i) to exercise control over, or adjudicate on, matters connected with a calling or the conduct of people engaged in the calling; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

## **61 Publication of public document (DA s 18)**

- (1) It is a defence if the defendant establishes that the published matter was contained in—
  - (a) a public document or a fair copy of a public document; or
  - (b) a fair summary of, or a fair extract from, a public document.

- (2) For subsection (1), if a report or other document under the law of a country would be a public document except for compliance with a provision of that law about—
- (a) the form of the report or document; or
  - (b) the content of the report or document; or
  - (c) the time within which the report or document is prepared, or presented, submitted, tabled or laid to or before an entity;
- the report or document is a public document despite that noncompliance.
- (3) A defence established under subsection (1) is excluded if, and only if, the plaintiff satisfies the court that the published matter was not published honestly for the information of the public or the advancement of education.

- (4) In this section:

***Australian jurisdiction*** means the Territory, the Commonwealth or a State or another Territory.

***Australian record or document*** means a record or document kept—

- (a) by an Australian jurisdiction; or
- (b) by a statutory authority of an Australian jurisdiction; or
- (c) by a court of an Australian jurisdiction; or
- (d) under legislation of an Australian jurisdiction.

***entity*** includes a parliamentary body.

***judgment*** includes a decree, order or sentence.

***publication***, of matter, includes publication in a way that the matter will become accessible or will be broadcast or sent to other people through a computer network.

***public document*** means any of the following:

- (a) a report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a parliamentary body published under the authority of the body;
- (b) a judgment of a court of any country in a civil proceeding, or a record of the court relating to the judgment or to its enforcement or satisfaction;
- (c) a report, or other document, that under the law of any country—
  - (i) is authorised to be published; or
  - (ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body;
- (d) a document issued by the government or a local government of a country, or by an officer, employee or agency of the country or local government, for the information of the public;
- (e) an Australian record or document that is open to inspection by the public;
- (f) a report of a tribunal about its decision and the reasons for its decision.

**62 Publication under contract (DA s 19)**

- (1) It is a defence if the defendant establishes that the publication of the published matter was a reasonable publication under a contract.
- (2) For subsection (1), a publication is reasonable if—
  - (a) the publication was in answer to an inquiry made under the contract; and
  - (b) the published matter was relevant to the subject of the inquiry; and

- (c) the manner and extent of the publication were reasonable; and
- (d) the defendant was not motivated by ill will to the plaintiff, or by any other improper motive; and
- (e) the defendant had, at the time of publication, reasonable grounds to believe the published matter to be true.

**63 Evidence of apology admissible in mitigation—defamation (DA s 20)**

- (1) If an offer to make amends has not been made, the defendant may mitigate damages by giving evidence of any apology made or offered by the defendant to the plaintiff before the beginning of the action or as soon as practicable afterwards.
- (2) The defendant may give the evidence only if the defendant gave written notice to the plaintiff of his or her intention to do so when filing or delivering his or her defence in the action.

**64 Payment into court—defamation (DA s 21)**

The defendant, or 1 or more of several defendants, may pay into court an amount by way of compensation, satisfaction and amends.

**65 Defence of apology and payment into court—defamation (DA s 22)**

- (1) The defendant may plead that the published matter that is or may be a libel was published without actual malice and without gross negligence, and that before the action was begun or as soon as practicable afterwards, the defendant published a full apology for the libel or, if this was not possible, had offered to publish an apology in a way to be selected by the plaintiff.
- (2) After filing a defence under subsection (1), the defendant may pay into court an amount by way of amends for the libel.

**66 Defence for defamation—defendant not negligent**  
(DA s 23)

- (1) It is a defence if the defendant establishes that the published matter (other than any published matter imputing criminal behaviour) was not published negligently.
- (2) For subsection (1), it is sufficient if—
  - (a) the defendant establishes that the defendant took reasonable steps to ensure the accuracy of the published matter; and
  - (b) the defendant gave the plaintiff a reasonable opportunity to comment on the published matter before it was published.

**67 Compensation etc provable in mitigation—defamation**  
(DA s 24)

At the trial, the defendant may give evidence, in mitigation of damages, that the plaintiff has already recovered, or has brought an action for damages, or has received or agreed to receive compensation in relation to the published matter.

**68 Damages—defamation (DA s 25)**

In deciding the amount of damages to be awarded, a court must—

- (a) ensure that there is an appropriate and rational relationship between the relevant harm and the amount of damages awarded; and
- (b) take into account the ordinary level of general damages component in personal injury awards in the ACT.

**69 Disclosure of name of contributor (DA s 26)**

- (1) If the published matter is an article, letter, report, or writing published in a newspaper, the plaintiff may ask the editor of the newspaper to give to the plaintiff the name and address of the person who supplied the article, letter, report, or writing to the newspaper.
- (2) The editor may comply with the request.
- (3) If the editor does not comply with the request within 14 days, the plaintiff may apply to a court.
- (4) After hearing the proprietor, the court may direct that the name and address be given to the person.
- (5) In this section:

*newspaper* includes any newspaper, review, magazine, or other writing or print, published periodically.

## **Part 5.4 Other provisions—defamation**

### **70 Scope of defences not limited (DA s 40)**

A defence under this chapter is additional to any other defence available to the defendant and does not limit any other defence.

### **71 Time not to be extended except by leave (DA s 41)**

The time for delivering, amending, or filing any pleading or document in an action for defamation in a court may be extended only with the leave of the court.

### **72 Review of certain provisions of ch 5 (DA s 42)**

- (1) The Minister must review the operation of part 5.2 (Resolution of disputes without litigation—defamation) and section 66 (Defence for defamation—defendant not negligent) as soon as practicable after 1 July 2004.
- (2) The Minister must present to the Legislative Assembly the report of the review within 6 months after the review begins.
- (3) This section expires on 1 January 2005.



## Chapter 6      Trespass

### 73      Defence to action for trespass to land

It is a defence to an action for trespass to land if the defendant establishes that—

- (a) the defendant does not claim any interest in the land; and
- (b) the trespass was because of negligence or was not intentional; and
- (c) the defendant made a reasonable offer to make amends to the plaintiff before the action was brought.

*Note*      This section is based on the Actions for Trespass Act 1623 21 Jas 1 c 16, s 5 (After judgment or nonsuit in a *quare clausum fregit*, plaintiff barred).

### 74      Action for use and occupation of land—amount of damages (LR(MP)A s 58)

- (1) This section applies to an action for damages for use and occupation of land.
- (2) Evidence may be given of a lease of the land (whether by deed, orally or otherwise) and of the rent payable under the lease.
- (3) The evidence must be received by the court as evidence of the amount of damages for the use and occupation of the land.
- (4) Proof of a lease of the land is not a defence to the action.

*Note*      This section is based on the *Law Reform (Miscellaneous Provisions) Act 1955*, division 12.9 which was substituted for 11 Geo. 2 c 19 (1737), s 14.

## Chapter 7 Mitigation of strict liability

### **U** Part 7.1 Traveller accommodation providers liability

#### **U** Division 7.1.1 Preliminary

#### **U** 75 Purpose of pt 7.1

*The purpose of this part is to mitigate some of the harsh consequences of innkeeper's liability at common law.*

#### **U** 76 Definitions for pt 7.1

*In this part:*

**accommodation unit** means an area of traveller accommodation that is designed to be used by a guest of the accommodation provider for sleeping.

**agent**, of an accommodation provider, includes—

- (a) an employee of the accommodation provider; and
- (b) an apparent agent or employee of the accommodation provider.

**fault** means negligence or another act or omission giving rise to a liability.

**limitation amount** means the amount prescribed under the regulations.

**loss**, of property, includes damage to, or destruction of, the property.

*motor vehicle* includes a boat, caravan and trailer attached to a motor vehicle.

*provide traveller accommodation* includes offering to provide the traveller accommodation.

*safe custody facilities*—see section 85 (1).

## **U** 77 **Meaning of traveller accommodation**

- (1) *Traveller accommodation* is accommodation provided for use by members of the travelling public as part of a commercial transaction.
- (2) Without limiting subsection (1), traveller accommodation includes the following types of accommodation:
  - (a) backpacker;
  - (b) bed and breakfast;
  - (c) hotel;
  - (d) motel;
  - (e) resort;
  - (f) serviced apartment.
- (3) Accommodation is traveller accommodation even if the accommodation is provided without charge as long as the accommodation is provided as part of a commercial transaction.

### **Examples of accommodation supplied as part of commercial transaction**

- 1 resort holidays supplied to purchasers of electrical goods from retail outlets
- 2 accommodation supplied to members of the travel industry or the public generally for promoting the accommodation

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act 2001, s 126 and s 132).

- (4) *Despite subsections (1) to (3)—*
- (a) *accommodation is traveller accommodation only if it includes an accommodation unit; and*
  - (b) *accommodation in or on something, that is a means of transport, is not traveller accommodation if the particular thing is being used, or is ordinarily used, for transport.*

**U 78 Meaning of accommodation provider**

- (1) *An **accommodation provider** is the person who operates a business that includes providing traveller accommodation.*
- (2) *To remove any doubt, the owner of traveller accommodation is not necessarily the accommodation provider.*

**Example of accommodation provider**

*The letting agent for, or the manager of, serviced apartments is the accommodation provider and not the owner of the apartments.*

*Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act 2001, s 126 and s 132).*

**U 79 Meaning of innkeeper's liability**

- (1) *For this part, **innkeeper's liability** is innkeeper's liability under the common law but only in relation to the strict liability imposed on an innkeeper for failing to safeguard property of the innkeeper's guests that is brought to the innkeeper's inn.*
- (2) *To remove any doubt, for innkeeper's liability, loss of a guest's property includes damage to, or destruction of, the property.*
- (3) *For innkeeper's liability—*
  - (a) *an accommodation provider, and only an accommodation provider, is an innkeeper; and*

(b) *traveller accommodation, and only traveller accommodation, is an inn.*

**U 80 Meaning of guest**

- (1) *A **guest** is a person to whom, or for whom, traveller accommodation is provided by an accommodation provider.*
- (2) *However, the person is a guest only on a day when the person is provided with the use of an accommodation unit at the traveller accommodation.*
- (3) *A guest does not include a person—*
  - (a) *who is at the traveller accommodation only to obtain beverages or food or to visit someone else; or*
  - (b) *who usually lives at the traveller accommodation.*

**U 81 Meaning of property of guest**

- (1) ***Property** of a guest is the property brought to the traveller accommodation or its precincts by or for the guest.*
- (2) *However, **property** of a guest does not include—*
  - (a) *a motor vehicle brought to the traveller accommodation or its surrounds by or for the guest, or other things owned by the guest left in or on the motor vehicle; or*
  - (b) *property taken from the traveller accommodation or its surrounds by or for the guest.*

**U** **Division 7.1.2 Liability of accommodation providers**

**U** **82 Application of div 7.1.2**

*This division applies to the property of a guest after the accommodation provider, or the provider's agent, knows or is told about the arrival of the guest or the guest's property at the traveller accommodation or its surrounds.*

**U** **83 Limitation on strict liability under innkeeper's liability (ILA s 4)**

- (1) *This section applies to an accommodation provider's liability under innkeeper's liability for a loss of the guest's property.*
- (2) *The liability for the loss is limited to the limitation amount for each accommodation unit provided for the use of the guest on the day of the loss, despite—*
  - (a) *the amount of the loss on the day; or*
  - (b) *the number of guests who, on the day, are provided with the use of the accommodation unit and suffer a loss of property.*
- (3) *Despite the limitation on the liability to the limitation amount, the accommodation provider's liability is subject to the defences available at common law for an innkeeper, including the perils of travel defences.*

**U** **84 Circumstances when limitation does not apply (ILA s 4)**

- (1) *The limitation on the accommodation provider's liability under section 83 (2) does not apply if the loss of a guest's property—*
  - (a) *is caused by the fault of the accommodation provider or the provider's agent; or*

- (b) happens after the accommodation provider, or the provider's agent, accepts the property for depositing in safe custody facilities; or*
  - (c) happens while the property is left, at the invitation of the accommodation provider or the provider's agent, at a particular place outside of the accommodation unit provided to the guest.*
- (2) Also, the limitation on the accommodation provider's liability under section 83 (2) does not apply if—*
- (a) at the time the guest is provided with the use of an accommodation unit, the accommodation provider did not comply with section 86 (1) (a) (Notice about pt 7.1); or*
  - (b) during all of the period the guest is provided with the use of an accommodation unit, the accommodation provider did not do 1 of the following:*
    - (i) comply with section 86 (1) (b) in relation to the accommodation unit;*
    - (ii) have a system in operation as mentioned in section 86 (2).*

**U 85 Safe custody facilities (ILA s 4, 5)**

- (1) This section applies if an accommodation provider, or the provider's agent, accepts a guest's property for safekeeping in facilities controlled by the accommodation provider or the provider's agent (**safe custody facilities**), other than facilities located in an accommodation unit for the safekeeping of property.*
- (2) The accommodation provider is liable for the loss of the guest's property if it happens after the accommodation provider, or the provider's agent, accepts the property for deposit in the safe custody facilities.*

- (3) *An accommodation provider, or the provider's agent, may require a guest who asks to use safe custody facilities for the guest's property to place the property in a container and fasten or seal the container.*
- (4) *If the accommodation provider provides safe custody facilities, the accommodation provider must accept a guest's property for deposit in the safe custody facilities unless—*
- (a) *the guest does not place the property in a container and fasten or seal it, in response to a requirement under subsection (3); or*
  - (b) *the accommodation provider reasonably considers that depositing the property in the safe custody facilities would be unreasonable having regard to the property's nature, size or value and the type of accommodation and tariff charged for the accommodation unit.*
- (5) *This section does not require an accommodation provider to provide safe custody facilities.*

**U 86 Notice about pt 7.1 (ILA s 6)**

- (1) *An accommodation provider must ensure that the notice set out in schedule 1 is conspicuously displayed so it can be easily read by a person when the person is—*
- (a) *in the reception area for, or main entrance to, the traveller accommodation; and*
  - (b) *in an accommodation unit.*
- (2) *However, subsection (1) (b) does not apply if the accommodation provider has a system in operation under which—*
- (a) *for each accommodation unit provided for the use of a guest—the guest is given a copy of the notice, including, for example, as part of the key tag or access card for, or in the compendium in, the accommodation unit; and*



(b) *the guest is told about the notice and where it is located at the time the guest checks in to the traveller accommodation.*

**U 87    *Repeal of Innkeepers Liability Act 1902***

*The Innkeepers Liability Act 1902 No 64 is repealed.*

## **Part 7.2 Common carriers**

### **Division 7.2.1 Preliminary—common carriers**

#### **88 Purpose of pt 7.2**

The purpose of this part is to mitigate some of the harsh consequences of common carriers' liability at common law.

#### **89 Definitions for pt 7.2 (CCA s 3)**

In this part:

*common carrier* means a common carrier by land.

*schedule 2 packaged goods*—see section 92 (1) (Liability of carriers for certain goods worth more than \$20).

*transport* means carriage—

- (a) under a contract of carriage; or
- (b) incidental to the carriage of a person for reward.

### **Division 7.2.2 When common law liability of carriers not affected**

#### **90 Certain things not protected by pt 7.2 (CCA s 10)**

- (1) This part does not protect a common carrier from liability under the common law if the loss of, or damage to, goods or an animal given to the carrier for transport results from the criminal or fraudulent act of the carrier or an employee or agent of the carrier.

- (2) This part does not protect an employee or agent of a common carrier from liability under the common law if the loss of, or damage to, goods or an animal given to the carrier for transport results from the employee's or agent's personal neglect or misconduct.

**91 Public notices by carrier not to affect liability (CCA s 7)**

A public notice (other than a notice mentioned in section 93 (1) (Notice of increased charge for transport of certain goods) or section 98 (1) (Notice of increased charge for transport of certain animals)) or declaration does not limit or otherwise affect a common carrier's liability under the common law.

**Division 7.2.3 Liability of common carriers for certain goods worth more than \$20**

**92 Liability of carriers for certain goods worth more than \$20 (CCA s 4)**

- (1) This section applies if goods mentioned in schedule 2 that are contained in a parcel or package and worth more than \$20 (*schedule 2 packaged goods*) are given to a common carrier for transport.
- (2) The common carrier is not liable for more than \$20 for the loss of, or damage to, the goods.
- (3) However, subsection (2) does not apply if—
- (a) at or before the time the goods are given to the carrier for transport, the person giving the goods declares the nature and value of the goods in the parcel or package; and
  - (b) the person giving the goods pays, or agrees to pay, any increased charge mentioned in section 93 (1) that is asked for by the carrier for the transport of the goods; and
  - (c) the carrier receives the goods for transport.

**93 Notice of increased charge for transport of certain goods**  
(CCA s 5 (2) and (3), s 6 (2))

- (1) If a common carrier sets an increased charge for the transport of schedule 2 packaged goods, the common carrier must clearly display, in a public part of the place where goods are received for transport, a legible notice setting out the increased charge for the transport of the goods.
- (2) A person is bound by the notice even if the person does not have actual knowledge of it.
- (3) If a common carrier receives schedule 2 packaged goods from a person for transport in the circumstances mentioned in section 92 (3) (Liability of carriers for certain goods worth more than \$20), but does not comply with subsection (1)—
  - (a) the carrier is liable under the common law for the loss of, or damage to, the goods; and
  - (b) if the person has paid an increased charge for the transport—the carrier must refund the increased charge.

**94 Receipt of carrier for increased charge (CCA s 6)**

- (1) If a person pays or agrees to pay a common carrier an increased charge for transport of schedule 2 packaged goods, and the person asks for a receipt, the carrier must give the person a receipt stating that the goods are insured.
- (2) If the carrier does not give the person the receipt—
  - (a) section 92 (2) (Liability of carriers for certain goods worth more than \$20) does not apply to the carrier; and
  - (b) the carrier is liable under the common law for the loss of, or damage to, the goods; and
  - (c) if the person has paid an increased charge for the transport—the carrier must refund the increased charge.

**95 Carrier only liable for proven amount for certain goods**  
(CCA s 11)

- (1) If—
- (a) a person gives schedule 2 packaged goods to a common carrier for transport; and
  - (b) the person declares the nature and value of the goods in accordance with this division; and
  - (c) the person pays, or agrees to pay, any increased charge mentioned in section 93 (1) that is asked for by the carrier for the transport of the goods; and
  - (d) the carrier receives the goods for transport, but the goods are lost or damaged;

the carrier is liable for not more than the proven amount for the goods.

- (2) Subsection (1) has effect despite the declaration of the value of the schedule 2 packaged goods or the acceptance of the declared value by the common carrier before or at the time the goods were accepted for transport.

- (3) In this section:

*proven amount*, for goods, means the lesser of the actual or declared value of the goods.

**Division 7.2.4 Liability of common carriers for certain animals**

**96 Definitions for div 7.2.4**

In this division:

*animal* means a horse, cattle, sheep or pig.

*default value*, for an animal, means the amount mentioned in section 97, table 1, column 3 for the animal.

**97 Liability of carriers for certain animals (CCA s 9 (b))**

- (1) This section applies if—
  - (a) an animal is given to a common carrier for transport; and
  - (b) the animal is worth more than the default value.
- (2) The common carrier is not liable for more than the default value for the loss of, or damage to, the animal.
- (3) However, subsection (2) does not apply if—
  - (a) at or before the time the animal is given to the carrier for transport, the person giving the animal declares the value of the animal; and
  - (b) the person giving the animal pays, or agrees to pay, any increased charge mentioned in section 98 (1) that is asked for by the carrier for the transport of the animal; and
  - (c) the carrier receives the animal for transport.

**Table 1 Default value for certain animals**

column 1 item	column 2 animal	column 3 amount per animal
1	horse	\$100
2	cattle	\$30
3	sheep	\$4
4	pig	\$4

**98 Notice of increased charge for transport of certain animals (CCA s 9 (b))**

- (1) If a common carrier sets an increased charge for the transport of animals, the carrier must clearly display, in a public part of the place where an animal is received for transport, a legible notice setting out any increased charge for the transport of the animal if the animal's value is more than the default value.
- (2) A person is bound by the notice even if the person does not have actual knowledge of it.

**99 Carrier only liable for proven amount for certain animals (CCA s 11)**

- (1) If—
  - (a) a person gives an animal to a common carrier for transport; and
  - (b) the person declares the value of the animal in accordance with this division; and
  - (c) the person pays, or agrees to pay, any increased charge mentioned in section 98 (1) that is asked for by the carrier for the transport of the animal; and
  - (d) the carrier receives the animal for transport, but the animal is lost or damaged;

the carrier is liable for not more than the proven amount for the animal.

- (2) Subsection (1) has effect despite the declaration of the value of the animal or the acceptance of the declared value by the common carrier before or at the time the animal was accepted for transport.
- (3) In this section:

*proven amount*, for an animal, means the lesser of the actual or declared value of the animal.

## **Division 7.2.5 Notice, condition or declaration of carrier**

### **100 Carrier liable for neglect or default despite notice etc (CCA s 9 , 9 (a), (c))**

- (1) A common carrier is liable for the loss of, or damage to, goods or animals given to the carrier for transport if the loss or damage results from the carrier's neglect or default despite any notice condition or declaration made by the carrier that excludes or limits the carrier's liability.
- (2) A notice, condition or declaration mentioned in subsection (1) is void.
- (3) But, a contract of carriage may contain conditions about the transport of goods or animals that are just and reasonable.
- (4) Also, a special contract between a common carrier and someone else for the transport of goods or animals is binding on the other person if, but only if, it is signed by the other person or the person giving the carrier the goods or animals for transport.
- (5) This section does not affect a common carrier's rights or liabilities under division 7.2.3 (Certain goods worth more than \$20).
- (6) In this section:  
*notice* does not include a notice mentioned in section 93 (1) (Notice of increased charge for transport of certain goods) or section 98 (1) (Notice of increased charge for transport of certain animals).



## **Chapter 8            Other liability provisions**

### **Part 8.1            Occupiers liability**

#### **101    Liability of occupiers**

- (1) An occupier of premises owes a duty to take all care that is reasonable in the circumstances to ensure that anyone on the premises does not suffer injury or damage because of—
  - (a) the state of the premises; or
  - (b) things done or omitted to be done about the state of the premises.
- (2) Without limiting subsection (1), in deciding whether the duty of care has been discharged consideration must be given to the following:
  - (a) the gravity and likelihood of the probable injury;
  - (b) the circumstances of the entry onto the premises;
  - (c) the nature of the premises;
  - (d) the knowledge the occupier has or should have about the likelihood of people or property being on the premises;
  - (e) the age of the person entering the premises;
  - (f) the ability of the person entering the premises to appreciate the danger;
  - (g) the burden on the occupier of removing the danger or protecting the person entering the premises from the danger as compared to the risk of the danger to the person.

- (3) Part 4.1 (General exclusions and limitations about damages) and part 4.3 (Contributory negligence), other than section 41 (2), apply in relation to a claim brought by a person against an occupier of premises in relation to injury or damage.
- (4) This section replaces the common law rules about the standard of care an occupier of premises must show to people entering on the premises in relation to any dangers to them.
- (5) This section does not affect—
- (a) other common law rules about the liability of occupiers to people entering on their premises; or
  - (b) any obligation an occupier of premises has under another Act or any statutory instrument or contract.
- (6) In this section:
- occupier*, of premises, includes the lessor of premises let under a tenancy who—
- (a) is under an obligation to the tenant to maintain or repair the premises; or
  - (b) could exercise a right to enter the premises to carry out maintenance or repairs.

## Part 8.2                      Liability for damage caused by animals

### 102 Evidence of breach of duty for animals (CL(A)A s 8)

- (1) This section applies if an animal (other than a dog or cat) was on premises and—
  - (a) the occupier of the premises—
    - (i) could not lawfully prevent the animal from being on the premises; or
    - (ii) had not consented to the animal being on the premises; and
  - (b) someone other than the occupier of the premises was, when the animal was on the premises, under a duty to another person to take reasonable care that the other person would not be subjected to the danger of the animal causing damage to the other person; and
  - (c) the animal caused damage to the other person.
- (2) The fact that the animal was on the premises when the damage was caused is evidence of breach of the duty.
- (3) In this section:  
*on* includes in.  
*premises* does not include a place that is open to or used by the public as a road.

## **Part 8.3**                      **Liability for fires accidentally begun**

*Note*        This part is based on the *Law Reform (Miscellaneous Provisions) Act 1955*, division 12.10 which was substituted for 24 Geo. 3 c 78 (1774), s 86.

### **103    Actions do not lie for damage caused by accidental fires** (LR(MP)A s 59)

- (1) An action does not lie against a person in whose house, room or other building, or on whose property, a fire accidentally starts for injury or damage caused by the fire to someone else, or for damage caused by the fire to the property of someone else.
- (2) Subsection (1) applies despite any other Territory law or any usage or custom in force in the ACT.
- (3) For subsection (1), a fire must not be taken to have started accidentally if it was started deliberately or negligently.

### **104    Contract between landlord and tenant not affected** (LR(MP)A s 60)

Section 103 does not affect, or make void, any term of a contract or agreement made between a landlord and tenant about the leasing or letting of premises, or a part of premises, by the landlord to the tenant.

## Chapter 9 Misrepresentation

### 105 Definitions for ch 9 (LR(Mis)A s 2)

In this chapter:

*court* includes an arbitrator.

*non-fraudulent misrepresentation* means a misrepresentation that was not made fraudulently.

### 106 Removal of certain bars to rescission for misrepresentation (LR(Mis)A s 3)

- (1) This section applies if—
  - (a) a person enters into a contract after a misrepresentation is made to the person; and
  - (b) the person would be entitled to rescind the contract without claiming fraud if 1 or more of the following matters (*former bars*) did not apply:
    - (i) the misrepresentation has become a term of the contract;
    - (ii) the contract has been performed;
    - (iii) a conveyance, transfer or other document has been registered under a Territory law or a law of the Commonwealth, a State or another Territory because of the contract.
- (2) The person may rescind the contract even though 1 or more of the former bars apply.

- (3) This section is subject to the following sections:
- section 108 (Damages instead of rescission for misrepresentation)
  - section 109 (3) (Exclusion clauses—misrepresentation).

**107 Damages for misrepresentation (LR(Mis)A s 4)**

- (1) This section applies if a person (the *first person*) enters into a contract after a non-fraudulent misrepresentation is made to the first person by—
- (a) another party to the contract; or
  - (b) a person acting for another party to the contract; or
  - (c) a person who receives any direct or indirect material advantage because of the formation of the contract.
- (2) If the first person suffers loss because of entering into the contract, anyone (whether or not that person made the misrepresentation) who would be liable for damages in tort for the loss, if the misrepresentation had been made fraudulently, is liable for damages for the loss.
- (3) It is a defence to an action under subsection (2) that—
- (a) if the representation was made by the defendant—the defendant had reasonable grounds for believing, and did believe up to the time the contract was made, that the representation was true; or
  - (b) if the representation was made by a person acting for the defendant—both the defendant and that person had reasonable grounds for believing, and did believe up to the time the contract was made, that the representation was true.

**108 Damages instead of rescission for misrepresentation**  
(LR(Mis)A s 5)

- (1) This section applies if, in an action arising out of a contract, a person has rescinded, or may rescind, the contract on the ground of non-fraudulent misrepresentation.
- (2) The court may declare the contract to be existing and award damages, or award damages instead of ordering rescission, if the court considers that—
  - (a) the consequences of a declaration are preferable to the consequences of rescission in the circumstances of the case; and
  - (b) it is just and equitable to do so.
- (3) Damages may be awarded against a person under subsection (2) even if the person is not liable for damages under section 107.
- (4) However, a court must take into account—
  - (a) in assessing damages under section 107 or this section—any award of damages under section 107 or this section, or damages or compensation under any other law; or
  - (b) in assessing damages or compensation under any other law relating to a contract—any award of damages under this chapter.

**109 Exclusion clauses—misrepresentation** (LR(Mis)A s 6)

- (1) This section applies if an agreement contains a provision that would, apart from this section, exclude or restrict—
  - (a) any liability of a party to a contract because of a misrepresentation made by the party before the contract was made; or

- (b) any remedy available to another party to the contract because of a misrepresentation mentioned in paragraph (a).
- (2) The provision is of no effect.
- (3) However, in an action arising out of the contract, the court may allow the provision to be relied on if the court considers it fair and reasonable in the circumstances to rely on it.

**110 Misrepresentation in trade or commerce an offence**  
(LR(Mis)A s 7)

- (1) A person must not make a misrepresentation, in the course of trade or commerce—
  - (a) to make or induce someone else to enter into a contract; or
  - (b) to make or induce someone else to pay an amount, or to transfer real or personal property, to the person or to someone else.

Maximum penalty: 200 penalty units

- (2) It is a defence to a prosecution for an offence against this section that the person who made the representation believed on reasonable grounds that the representation was true.

**111 Employer etc liable for misrepresentation** (LR(Mis)A s 8)

- (1) If the misrepresentation mentioned in section 110 (1) is made by a person acting in the course of his or her employment, the person's employer commits an offence.

Maximum penalty: 200 penalty units.

- (2) If the misrepresentation mentioned in section 110 (1) is made by a person authorised to act for someone else, the other person commits an offence.

Maximum penalty: 200 penalty units.



- (3) It is a defence to a prosecution for an offence against this section—
- (a) that the defendant took reasonable precautions to prevent misrepresentations being made by the defendant's employees or people acting for the defendant; or
  - (b) that the defendant did not know, and could not reasonably be expected to have known, that the representation was made or that it was untrue.

### **112 Prosecutions for misrepresentation (LR(Mis)A s 9)**

- (1) This section applies if in a prosecution for an offence against section 110 or 111, it is proved that—
- (a) a misrepresentation was in fact a material inducement to a person—
    - (i) to enter into a contract; or
    - (ii) to pay an amount, or to transfer real or personal property, to the person who made the misrepresentation or someone else; and
  - (b) the person who made the misrepresentation received a direct or indirect material advantage because of the contract, payment or transfer.
- (2) It must be assumed, unless the contrary is proven, that the misrepresentation was made to induce the person to whom it was made to enter into the contract, make the payment or transfer the property.

**U Chapter 10 Limitations on legal costs**

**U 113 Definitions for ch 10**

*In this part:*

*costs do not include—*

- (a) disbursements that are charges for services other than legal services; or*
- (b) disbursements that are counsel's fees on a brief to appear in an action; or*
- (c) any other disbursements.*

*court includes a tribunal or arbitrator.*

*personal injury damages means damages that relate to the death of, or injury to, a person caused by someone else's wrongful act or omission (whether or not an offence).*

**U 114 Maximum costs for claims of \$50 000 or less**

- (1) This section applies if the amount recovered on a claim for personal injury damages is \$50 000 or less.*
- (2) If this section applies—*
  - (a) a lawyer is not entitled to be paid; and*
  - (b) a court (or a taxing officer) must not decide that a lawyer is entitled to be paid; and*
  - (c) a court must not order anyone to pay to a lawyer;*

*an amount for legal services in relation to the claim that (or that together with other amounts) is more than the maximum costs allowable under this section.*

- (3) *Subsection (2) is subject to the following sections:*
- *section 115 (Costs incurred after offer of compromise not accepted)*
  - *section 116 (Exclusion of costs unnecessarily incurred etc)*
  - *section 117 (Court discretion to allow additional costs).*
- (4) *The **maximum costs** allowable for legal services provided to the plaintiff in relation to the claim are the greater of—*
- (a) *the relevant percentage of the amount recovered; and*
  - (b) *the relevant amount.*
- (5) *The **maximum costs** allowable for legal services provided to the defendant in relation to the claim are the greater of—*
- (a) *the relevant percentage of the amount sought to be recovered by the plaintiff; and*
  - (b) *the relevant amount.*
- (6) *In this section:*
- amount recovered, on a claim—**
- (a) *includes an amount paid under a compromise or settlement of the claim, whether or not an action has been begun; but*
  - (b) *does not include an amount attributable to costs or to the addition of interest.*
- amount sought to be recovered by a plaintiff means, if an action is begun—**
- (a) *the amount sought to be proved by the plaintiff at the hearing of the claim; or*
  - (b) *if the claim is for unliquidated damages—the amount that the court (or a taxing officer) decides is, for this section, the amount sought to be recovered by the plaintiff on the claim.*

*relevant amount* means \$10 000 or, if another amount is prescribed under the regulations for this definition, the prescribed amount.

*relevant percentage* means 20% or, if another percentage is prescribed under the regulations for this definition, the prescribed percentage.

**U 115 Costs incurred after offer of compromise not accepted**

- (1) *This section applies if—*
  - (a) *a party to a claim for personal injury damages makes an offer of compromise on the claim; and*
  - (b) *the offer is expressed to be made for this section; and*
  - (c) *the offer is not accepted; and*
  - (d) *the court decides or makes an order or award on the claim that is no less favourable to the party than the terms of the offer.*
- (2) *Section 114 (Maximum costs for claims of \$50 000 or more) does not prevent the awarding of costs against another party, to be assessed on an indemnity basis, for legal services provided after the offer is made.*
- (3) *The regulations may—*
  - (a) *require lawyers to give their clients information about the effect of this section if an offer of compromise is not accepted; and*
  - (b) *make provision in relation to the requirement, including, for example, what information must be given and how and when it must be given.*

*Note* *An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act 2001, s 126 and s 132).*

- (4) *If the court considers that—*
- (a) *a lawyer has contravened regulations made for this section; and*
  - (b) *the lawyer's client has incurred an increased liability for costs for not accepting an offer of compromise;*
- the court may (on its own initiative or on application by the client) make either or both of the orders mentioned in subsection (5).*
- (5) *The orders are—*
- (a) *an order directing the lawyer to repay to the client (or to pay) all or part of the increased costs that the client has been ordered to pay to another party; and*
  - (b) *an order directing the lawyer to indemnify a party other than the client against all or part of the costs payable by the party for legal services provided after the offer was made.*
- (6) *The regulations may prohibit or restrict the making of offers of compromise otherwise than under this section.*

**U** **116 Exclusion of costs unnecessarily incurred etc**

- (1) *This section applies to legal services provided to a party to a claim for personal injury damages if a court is satisfied that—*
- (a) *the legal services were provided in response to action on the claim by or on behalf of the other party to the claim; and*
  - (b) *in the circumstances, the action was not necessary or reasonable for the advancement of the party's case or was intended, or was reasonably likely, to unnecessarily delay or complicate determination of the claim.*
- (2) *The court may order that the costs for the legal services are to be excluded from the operation of section 114 (Maximum costs for claims of \$50 000 or less).*

**U 117 Court discretion to allow additional costs**

- (1) *This section applies if a court, or a taxing officer, decides (on the court's or taxing officer's own initiative or on the application of a party to the claim) that the maximum costs for legal services allowable under this part in relation to a claim for personal injury damages should be increased because of—*
  - (a) *the complexity of the claim; or*
  - (b) *the behaviour of 1 or more of the parties to the claim.*
- (2) *The court or taxing officer may order that the lawyer who provided the services is entitled to stated additional costs.*
- (3) *If the court or taxing officer makes an order under subsection (2), the court or taxing officer may state who is to pay the additional costs.*
- (4) *The regulations may make provision in relation to the making of orders under this section.*

**U 118 Apportionment of costs between lawyers**

*If more than 1 lawyer provides legal services to a party in relation to a claim for personal injury damages, the maximum costs allowable under this part (including any additional amount allowed under section 117) are to be apportioned between them as agreed by them or, if they do not agree, as ordered by the court (or a taxing officer).*

## Chapter 11      Miscellaneous

### **U** Part 11.1      Neutral evaluation

#### **U** 119 Purpose of pt 11.1 etc

- (1) *The purpose of this part is to enable a court or tribunal to refer matters for neutral evaluation.*
- (2) *This part does not prevent the parties to a proceeding from agreeing to, and arranging for, neutral evaluation of any matter otherwise than under this part.*
- (3) *This part does not apply to criminal proceedings.*

#### **U** 120 Meaning of neutral evaluation and neutral evaluation session

- (1) *For this part, **neutral evaluation** is a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute.*
- (2) *The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion about the likely outcome of the proceeding, including any likely findings of liability or the award of damages.*
- (3) *For this part, **neutral evaluation session** means a meeting arranged for the neutral evaluation of a matter under this part.*

#### **U** 121 Who can be an evaluator

*The following people can be an evaluator:*

- (a) *a registrar of a court or tribunal;*
- (b) *a deputy registrar of a court or tribunal;*

(c) *someone else that a court or tribunal considers has the skills and qualifications to be an evaluator and appoints as an evaluator.*

**U 122 Referral by court or tribunal for neutral evaluation**

- (1) *A court or tribunal may, by order, refer any proceeding, or any part of a proceeding, before it for neutral evaluation, and may do so either with or without the consent of the parties to the proceeding.*
- (2) *The neutral evaluation is to be undertaken by an evaluator appointed by the court or tribunal.*

**U 123 Duty of parties to take part in neutral evaluations**

*It is the duty of each party to a proceeding referred for neutral evaluation under section 122 to take part, genuinely and sincerely, in the neutral evaluation.*

**U 124 Costs of neutral evaluation**

*The costs of a neutral evaluation are payable—*

- (a) *by the parties to the proceeding, in the proportions they agree among themselves; or*
- (b) *if a court or tribunal makes an order about the payment of the costs—by 1 or more of the parties, in the way stated in the order.*

**U 125 Privilege for neutral evaluations**

- (1) *The same privilege in relation to defamation that exists for a judicial proceeding, and a document produced in a judicial proceeding, exists for—*
  - (a) *a neutral evaluation session; or*



- (b) *a document or other material sent to or produced to an evaluator, or sent to or produced at a court or tribunal or the registry of a court or tribunal, for the purpose of enabling a neutral evaluation session to be arranged.*
- (2) *However, the privilege under subsection (1) only extends to a publication made—*
- (a) *at a neutral evaluation session; or*
  - (b) *as provided by subsection (1) (b); or*
  - (c) *as provided in section 126.*
- (3) *Evidence of anything said, or of any admission made, in a neutral evaluation session is not admissible in a proceeding before a court, tribunal or other entity.*
- (4) *A document prepared for, in the course of, or because of, a neutral evaluation session, or any copy of the document, is not admissible in evidence in any civil proceeding before a court, tribunal or other entity.*
- (5) *Subsections (3) and (4) do not apply to any evidence or document—*
- (a) *for evidence—if the people in attendance at, or identified during, the neutral evaluation session consent to the admission of the evidence; or*
  - (b) *for a document—if the people in attendance at, or identified during, the neutral evaluation session and all people identified in the document, consent to the admission of the document; or*
  - (c) *in a proceeding (including a criminal proceeding) brought in relation to an act or omission in relation to which a disclosure has been made under section 126 (c).*

(6) *In this section:*

*neutral evaluation session* includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

**U 126 Secrecy by evaluators**

*An evaluator may disclose information obtained in relation to the administration or execution of this part only in the following circumstances:*

- (a) *with the consent of the person from whom the information was obtained;*
- (b) *for the administration or execution of this part;*
- (c) *if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of death or injury to anyone or damage to any property;*
- (d) *if the disclosure is reasonably required for the purpose of referring any party to a neutral evaluation session to any entity and the disclosure is made with the consent of the parties to the neutral evaluation session for the purpose of aiding in the resolution of a dispute between the parties or assisting the parties in any other way;*
- (e) *in accordance with a requirement imposed under a Territory or Commonwealth law (other than a requirement imposed by a subpoena or other compulsory process).*

**U 127 Protection from liability for evaluators**

*An evaluator is not subject to civil liability for anything done or omitted to be done honestly for a neutral evaluation session under this part.*



### **130 Confidentiality of general reports of insurers**

- (1) Information in a report under this part by an insurer is commercially sensitive and confidential.
- (2) A person must not use any confidential information obtained in carrying out the person's functions under this part to obtain, directly or indirectly, a financial or other advantage for himself or herself or anyone else.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) A person must not disclose any confidential information obtained in carrying out the person's functions under this part, except in accordance with subsection (4).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) A person may disclose confidential information if—
  - (a) the disclosure does not identify the insurer that supplied the information; or
  - (b) the disclosure is made in the exercise of a function under this Act or any other Territory law permitting the disclosure; or
  - (c) the disclosure is made with the agreement of the insurer that supplied the information; or
  - (d) the disclosure is made in a legal proceeding at the direction of a court; or
  - (e) the information is already in the public domain; or
  - (f) the disclosure is to a person, or for a purpose, prescribed under the regulations.

### **131 Report to Legislative Assembly**

On or before 31 October in each year, the Minister must present to the Legislative Assembly a report about the key findings arising from the reports given to the Minister under section 129 in the financial year ending on the previous 30 June.

## Part 11.3                      Attachment of insurance money

### 132 Amount of liability charge on insurance money payable against liability (LR(MP)A s 25)

- (1) This section applies if—
  - (a) a person (the *insured*) has entered into a contract of insurance by which the insured is indemnified against liability to pay damages or compensation; and
  - (b) an event happens that gives rise to a claim against the insured for damages or compensation
- (2) On the happening of the event, the amount of the insured's liability in relation to the event becomes a charge on all insurance money that is or may become payable in relation to the liability.
- (3) If, when the event happens, the insured is a corporation that is being wound up, or if any subsequent winding-up of the insured is taken to have begun on or before the happening of the event, subsection (2) applies despite the winding-up.
- (4) A charge under this section has priority over all other charges affecting the insurance money.
- (5) However, if the insurance money is subject to 2 or more charges under this section—
  - (a) the charges have priority between themselves in the order of the happening of the events out of which the liabilities arose; and
  - (b) charges that arise out of events happening on the same day rank equally between themselves.

**133 Enforcement of charge on insurance money (LR(MP)As 26)**

- (1) A charge under section 132 is enforceable by an action against the insurer in the same way and in the same court as if the action were an action to recover damages or compensation from the insured.
- (2) The parties have, to the extent of the charge, the same rights and liabilities in relation to the action, and the judgment given in the action, as if the action were against the insured.
- (3) The court has the same powers in relation to the action, and the judgment given in the action, as if the action were against the insured.
- (4) Unless section 132 (3) applies, the action cannot be begun without the leave of the court.
- (5) Leave must not be given if the court is satisfied that—
  - (a) the insurer is entitled under the terms of the contract of insurance to disclaim liability; and
  - (b) any proceeding, including any arbitration proceeding, necessary to establish that entitlement have been taken.
- (6) The action can be brought although judgment has already been recovered against the insured for damages or compensation in relation to the same matter.

**134 Protection of insurer for pt 11.3 charge (LR(MP)As 27)**

- (1) Despite anything in this part, a payment made by an insurer under the contract of insurance without actual notice of the existence of a charge under this part is, to the extent of that payment, a valid discharge to the insurer.
- (2) An insurer is not liable under this part for any greater amount than is fixed by the contract of insurance between the insurer and the insured.

**135 Certain other provisions not affected by pt 11.3 (LR(MP)As 28)**

This part does not affect the operation of the *Workers Compensation Act 1951* or the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance).



## Part 11.4                      **Abolition of certain common law actions, rules and remedies**

### **136 Abolition of seduction, enticement and harbouring**

The following actions at common law are abolished:

- (a) seduction;
- (b) enticement;
- (c) harbouring.

### **137 Abolition of rule about unity of spouses (MP(T)A s 4, s 5)**

The rights of action that a person has in tort against someone are not affected by the fact that they are or were married to each other.

### **138 Abolition of action of cattle-trespass (CL(A)A s 4)**

- (1) The common law action of cattle-trespass is abolished.
- (2) This section does not affect—
  - (a) the common law action for trespass committed by a person by means of cattle; or
  - (b) the law relating to liability of an occupier of land for damages for tort for the death of, or injury to, cattle trespassing on the land.

### **139 Abolition of distress damage feasant (CL(A)A s 5)**

The common law remedy of distress of an animal damage feasant is abolished.

**140 Abolition of rules relating exclusively to liability for damage by animals (CL(A)A s 6)**

The common law rule known as the rule in *Searle v Wallbank* and all other common law rules relating exclusively to liability for damages for tort for damage caused by an animal (including any rule relating to the nature or propensity of an animal, or a class of animals, or knowledge of that nature or propensity) are abolished.

**141 Partial abolition of rule in *Rylands v Fletcher* (CL(A)A s 7)**

The common law rule known as the rule in *Rylands v Fletcher* is abolished to the extent to which the rule applies in relation to damage caused by the escape of animals.

**142 Abolition of rule of common employment (LR(MP)A s 21)**

An employer is liable in damages for the death of, or injury or damage to, an employee caused by the wrongful act or omission of another employee in the same way and in the same cases as if the employees had not been engaged in common employment.

**143 Abolition of husband's liability for wife's torts and premarital obligations (LR(MP)A s 9)**

A husband is not, only because of being the husband, liable—

- (a) in relation to a tort committed by his wife, whether before or after the marriage, or in relation to a contract entered into, or a debt or obligation incurred, by his wife before the marriage; or
- (b) to be sued, or made a party to a legal proceeding brought, in relation to the tort, contract, debt or obligation.

**144 Abolition of action for loss of consortium (LR(MP)A s 32)**

If a wife has been injured because of the negligence of a person other than her husband, the person is not liable to the husband for any resulting impairment or loss of consortium.

**145 Abolition of rule in *Cavalier v Pope* (LR(MP)A s 29)**

A lessor of premises is not exempt from owing a duty of care to people on the premises only because the lessor is not the occupier of the premises.

**146 Partial abolition of *Mocambique* rule (LR(MP)A s 34, s 35)**

- (1) The jurisdiction of a court in any proceeding is not excluded or limited only because the proceeding relates to land or other immovable property outside the ACT.
- (2) Subsection (1) does not authorise a court to adjudicate on title to, or the right to the possession of, land or other immovable property outside the ACT.
- (3) A court is not required to exercise jurisdiction in a proceeding relating to land or other immovable property outside the ACT if the court considers that it is an inappropriate forum in relation to the proceeding.

*Note* The *Law Reform (Abolitions and Repeals) Act 1996* abolished the following:

- the estate pur autre vie
- the common law misdemeanours of criminal libel, blasphemous libel, seditious libel and obscene libel
- the right to levy or make distress for rent.

## **Part 11.5**                      **Other provisions**

### **147**    **Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*     For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

*Note*     A notifiable instrument must be notified under the *Legislation Act 2001*.

### **148**    **Regulation-making power**

The Executive may make regulations for this Act.

*Note*     Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **149**    **Repealed and amended Acts**

Schedule 3 repeals or amends the Acts mentioned in it.

## Chapter 12 Transitional provisions

### 150 Application provisions—for certain new measures

- (1) Part 2.1 (Good samaritans) does not apply in relation to an act or omission that happened before the commencement of the part.
- (2) Part 4.1 (General exclusions and limitations about damages) does not apply to a claim arising out of an accident that happened before the commencement of the part.
- (3) Chapter 10 (Limitations on legal costs) does not apply to a plaintiff or defendant's legal costs in relation to a claim if—
  - (a) the costs for the claim are covered by an agreement or arrangement about costs between the plaintiff or defendant and his or her lawyer; and
  - (b) the agreement or arrangement was entered into before the commencement of the part.
- (4) This section expires 3 years after it commences.
- (5) Subsections (1) to (3) are declared to be provisions to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

### 151 Application provisions—for certain existing measures

- (1) Part 2.4 (Proceedings against and contributions between wrongdoers) does not apply in relation to a wrong committed before 31 March 1955.
- (2) Part 3.1 (Wrongful act or omission causing death) applies to the death of a person after 12 June 1968, even if the act or omission that caused the person's death happened on or before that date.

- (3) Section 24 (Contributory negligence not defence) does not apply to a cause of action under part 3.1 (Wrongful act or omission causing death) that arose before 6 December 1991.
- (4) Part 4.2 (Loss of capacity to perform domestic services) and section 144 (Abolition of action for loss of consortium) do not apply in relation to a cause of action that arose before 6 December 1991.
- (5) Section 41 (1) (Apportionment of liability—contributory negligence) does not apply to a cause of action that arose before 31 March 1955.
- (6) Section 41 (2) (Apportionment of liability—contributory negligence) does not apply to a cause of action that arose before 6 December 1991.
- (7) Chapter 9 (Misrepresentation) does not apply in relation to a misrepresentation, or an agreement, made before 30 May 1977.
- (8) Section 137 (Abolition of rule about unity of spouses) does not apply to a cause of action that arose, or would, apart from the existence of a marriage, have arisen, before 22 August 1968.
- (9) Section 142 (Abolition of rule of common employment) applies to death, injury or damage arising from a wrongful act or omission committed after 30 March 1955, even if the contract of employment was made on or before that date.
- (10) Section 143 (Abolition of husband's liability for wife's torts and premarital obligations) does not affect a legal proceeding in relation to a tort if the proceeding was begun before 31 March 1955.
- (11) This section expires 1 year after it commences.
- (12) Subsections (1) to (10) are declared to be provisions to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

**152 Application of pts 2.4 and 4.3 (LR(MP)A s 13A, s 19)**

- (1) Part 2.4 (Proceedings against and contributions between wrongdoers) and part 4.3 (Contributory negligence) apply to a wrong that happened before 5 April 2001 as if the parts had been in force when the wrong happened.
- (2) However, the *Law Reform (Miscellaneous Provision) Act 1955*, part 4 (Proceedings against and contributions between tortfeasors) and part 5 (Contributory negligence), continue to apply, despite the repeal of those parts, to a wrong about which—
  - (a) a court has given judgment or made a decision (including a judgment or decision about liability only), whether or not an appeal has been made against the judgment or decision; or
  - (b) the parties have entered into an agreement to settle claims arising from the wrong (including an agreement about liability only).
- (3) This section expires on 1 January 2003.
- (4) Subsections (1) and (2) are declared to be provisions to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

**153 Application of provisions of Civil Liability (Animals) Act 1984 (repealed) (CL(A)A s 9)**

- (1) Section 138 (Abolition of action of cattle-trespass) does not apply to a case of cattle-trespass if the cause of action accrued before 23 July 1984.
- (2) Section 139 (Abolition of distress damage feasant) does not apply to the distraint of an animal damage feasant before 23 July 1984.

- (3) The following provisions do not apply in relation to any question of liability if the acts or omissions giving rise to the question happened before 23 July 1984:
  - (a) section 102 (Evidence of breach of duty for animals);
  - (b) section 140 (Abolition of rules relating exclusively to liability for damage by animals);
  - (c) section 141 (Partial abolition of rule in *Rylands v Fletcher*).
- (4) This section expires 1 year after it commences.
- (5) Subsections (1) to (3) are declared to be provisions to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

**154 Application of s 30 and s 31 (LR(MP)A s 23, s 24)**

- (1) Section 30 (Personal injury arising from mental or nervous shock) and section 31 (Extensions of liability under pt 3.2 in certain cases) do not apply in relation to an injury caused before 31 March 1955.
- (2) In deciding a question of liability for personal injury caused before 31 March 1955, no regard must be paid to the fact that section 30 has (or the *Law Reform (Miscellaneous Provisions) Act 1955*, section 23 had) been enacted or to the provisions of section 30 (or section 23).
- (3) This section expires 1 year after it commences.
- (4) Subsections (1) and (2) are declared to be provisions to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.



**155 Transitional regulations**

- (1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) Regulations made for this section must not be taken to be inconsistent with this Act (or any Act amended by this Act) so far as they can operate concurrently with this Act (or that Act).
- (3) This section is additional to, and does not limit, section 156.
- (4) This section expires 1 year after it commences.

**156 Modification of ch 12's operation**

- (1) The regulations may modify this part to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this chapter.
- (2) This section expires 1 year after it commences.

## Schedule 1 Traveller accommodation providers notice

(see s 86)

### Notice about loss of guest's property

The *Civil Law (Wrongs) Act 2002*, part 7.1 changes the common law about innkeeper's liability.

Under the Act, an **accommodation provider** may be liable to make good any **loss** of a **guest's property** in certain circumstances even though the loss is not caused by the **fault** of the accommodation provider, or the provider's **agent**.

The strict liability of the accommodation provider under the Act—

- applies only to a guest of the accommodation provider on a day when an **accommodation unit** is **provided** for the use of the guest
- is limited to the **limitation amount** for each accommodation unit provided for the use of the guest on the day, unless the guest's property was placed in **safe custody facilities**
- does not cover **motor vehicles** and things owned by the guest left in or on motor vehicles.

*Note* Words appearing in bold italics have a special meaning under the *Civil Law (Wrongs) Act 2002*.

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## Schedule 2      Common carriers—goods subject to special limited liability

(see s 92 (1))

column 1 item	column 2 goods
1	gold or silver coin of Australia or a foreign country
2	gold or silver in a manufactured or unmanufactured state
3	precious stones, jewellery, watches, clocks or time-pieces of any description
4	trinkets, gold or silver ores, bills, notes of any bank, orders, notes or securities for the payment of money
5	Australian stamps or a foreign country's stamps
6	maps, writings or title-deeds
7	paintings, engravings or pictures
8	gold or silver plate or plated articles, glass or china
9	silk in a manufactured or unmanufactured state (including silk ornamented with other materials), furs or lace

## Dictionary

(see s 3)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- doctor
- entity
- foreign country
- indictable offence (see s 190 (1))
- lawyer
- Minister (see s 162)
- proceeding
- property
- (the) Territory

***accident***, for part 4.1 (General exclusions and limitations about damages)—see section 32.

***accommodation provider***—see section 78.

***accommodation unit***—see section 76.

***action***, for chapter 5 (Defamation)—see section 47.

***agent***, of an accommodation provider—see section 76.

***aggrieved person*** for part 5.2 (Resolution of disputes without litigation—defamation)—see section 48.

***amends agreement***, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 51 (1).

***animal***, for division 7.2.4 (Liability of common carriers for certain animals)—see section 96.

***child***—

- (a) for part 3.1 (Wrongful act or omission causing death)—see section 20; and
- (b) for part 3.2 (Injury arising from mental or nervous shock)—see section 29.

***claim***, for part 4.1 (General exclusions and limitations about damages)—see section 32.

***common carrier***—see section 89.

***community organisation***—see section 6.

***community work***—see section 7.

***costs***, for chapter 10 (Limitations on legal costs) —see section 113.

***country***, for chapter 5 (Defamation)—see section 47.

***court***—

- (a) for part 2.4 (Proceedings against and contributions between wrongdoers)—see section 16; and
- (b) for part 4.1 (General exclusions and limitations about damages)—see section 32.
- (c) for part 4.3 (Contributory negligence)—see section 40; and
- (d) for chapter 5 (Defamation)—see section 47; and
- (e) for chapter 9 (Misrepresentation)—see section 105; and
- (f) for chapter 10 (Limitations on legal costs)—see section 113; and

***damage***—

- (a) for part 2.4 (Proceedings against and contributions between wrongdoers)—see section 16; and
- (b) for part 4.3 (Contributory negligence)—see section 40.

**defamation**—see section 47.

**default value**, for division 7.2.4 (Liability of common carriers for certain animals)—see section 96.

**family member**, of a person, for part 3.2 (Injury arising from mental or nervous shock)—see section 29.

**fault**, for part 7.1 (Traveller accommodation providers liability)—see section 76.

**funeral expenses** includes costs related to any of the following:

- (a) the publication of death and funeral notices;
- (b) the services of an undertaker, including the supply of vehicles;
- (c) wreaths or floral tributes;
- (d) a funeral service;
- (e) a service at the burial or cremation site;
- (f) burial or cremation;
- (g) a headstone, plaque, tablet or other memorial.

**guest**—see section 80.

**innkeeper's liability**—see section 79.

**insured**, for part 11.3 (Attachment of insurance money)—see section 132 (1).

**insurer**, for part 11.2 (General reporting requirements of insurers)—see section 128.

**intoxicated**—see section 32.

**legal services** means legal services provided by a lawyer or the lawyer's agent or employee.

**limitation amount**, for part 7.1 (Traveller accommodation providers liability)—see section 76.

**loss**, of property, for part 7.1 (Traveller accommodation providers liability)—see section 76.

**matter in question**, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 48.

**member**, of a dead person's family, for part 3.1 (Wrongful act or omission causing death)—see section 20.

**motor accident**—see section 32.

**motor vehicle**—

- (a) for part 4.1 (General exclusions and limitations about damages)—see section 32; and
- (b) for part 7.1 (Traveller accommodation providers liability)—see section 76.

**neutral evaluation**—see section 120.

**neutral evaluation session**—see section 120.

**non-fraudulent misrepresentation**, for chapter 9 (Misrepresentation)—see section 105.

**offer to make amends**, for chapter 5 (Defamation)—see section 47.

**parent**—

- (a) for part 3.1 (Wrongful act or omission causing death)—see section 20; and
- (b) for part 3.2 (Injury arising from mental or nervous shock)—see section 29.

**parliamentary body**—see section 47.

**personal injury damages**, for chapter 10 (Limitations on legal costs) see section 113.

**personal injury**, for part 4.1 (General exclusions and limitations about damages)—see section 32.

***personal representative***, of a dead person, means the person to whom any grant of probate of the will or administration of the estate of the dead person has been made in the ACT, a State or another Territory, and includes an executor by representation or the public trustee.

***premises*** includes any land or building, any fixed or moveable structure erected on any land, and any vehicle, vessel or aircraft.

***property***, of a guest—see section 81.

***provide*** traveller accommodation—see section 76.

***published matter***, for part 5.3 (Rules governing litigation of civil claims—defamation)—see section 56.

***publisher***, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 48.

***qualified offer***, for part 5.2 (Resolution of disputes without litigation—defamation)—see section 49 (2).

***recreational drug*** means a drug consumed voluntarily for non-medicinal purposes, and includes alcohol.

***safe custody facilities***, for part 7.1 (Traveller accommodation providers liability)—see section 85 (1).

***schedule 2 packaged goods***, for part 7.2 (Common carriers)—see section 92 (1) (Liability of carriers for certain goods worth more than \$20).

***transport***, for part 7.2 (Common carriers)—see section 89.

***traveller accommodation***—see section 77.

***tribunal***, for chapter 5 (Defamation)—see section 47.

***voluntary basis***—see section 6.

***volunteer***—see section 6.



**wrong—**

- (a) for part 2.4 (Proceedings against and contributions between wrongdoers)—see section 16; and
- (b) for part 4.3 (Contributory negligence)—see section 40.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Civil Law (Wrongs) Act 2002 No 40**

notified LR 10 October 2002

s 1, s 2 commenced 10 October 2002 (LA s 75 (1))

pt 7.1 commences at 12 noon on 1 July 2003 (s 2 (1))

ch 10 commences 1 January 2003 (s 2 (2) and CN2002-13)

pt 11.1 commences 30 April 2003 (s 2 (2) and CN2002-13)

remainder commenced 1 November 2002 (s 2 (2) and CN2002-13)

### 4 Amendment history

#### **Notes**

s 4 (2), (3) exp 1 November 2003 (s 4 (3))

#### **Effect of death on certain causes of action**

s 12 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Damages in surviving cause of action**

s 13 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **If person liable dies before or at time of damage**

s 14 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Saving of rights additional to pt 2.3**

s 15 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Definitions for pt 2.4**

s 16 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Each of several wrongdoers can be sued**

s 17 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Right of contribution**

s 18 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Effect of pt 2.4**

s 19 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Definitions for pt 3.1**

s 20 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Liability for a person's death**

s 21 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Damages for a person's death**

s 22 hdg bracketed note exp 1 November 2003 (s 4 (3))

#### **Amounts not to be taken into account in assessing damages for death**

s 23 hdg bracketed note exp 1 November 2003 (s 4 (3))

## Endnotes

4 Amendment history

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**Contributory negligence not defence in relation to death**

s 24 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**One action for benefit of members of dead person's family**

s 25 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Payment into court**

s 26 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Special endorsement on originating process**

s 27 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Powers of court to make orders in relation to actions**

s 28 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Definitions for pt 3.2**

s 29 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Personal injury arising from mental or nervous shock**

s 30 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Extensions of liability under pt 3.2 in certain cases**

s 31 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Damages for loss of capacity to perform domestic services**

s 39 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Definitions for pt 4.3**

s 40 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Apportionment of liability—contributory negligence**

s 41 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Joint wrongdoers**

s 42 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Claims by third parties—contributory negligence**

s 43 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Pleading of statutory limitation period—contributory negligence**

s 44 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Reasonable offer to make amends—defamation**

s 50 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Acceptance of offer to make amends—defamation**

s 51 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**False or misleading statement in correction**

s 52 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Offer to make amends not accepted—defamation**

s 53 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Order to vindicate reputation if offer not made**

s 54 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Application of pt 5.3**

s 55 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Meaning of *published matter* in pt 5.3**

s 56 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Slander actionable without special damage**

s 57 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Plaintiff's character not likely to be injured**

s 58 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Defence of truth and public benefit**

s 59 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Publication of a proceeding of public concern**

s 60 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Publication of public document**

s 61 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Publication under contract**

s 62 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Evidence of apology admissible in mitigation—defamation**

s 63 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Payment into court—defamation**

s 64 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Defence of apology and payment into court—defamation**

s 65 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Defence for defamation—defendant not negligent**

s 66 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Compensation etc provable in mitigation—defamation**

s 67 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Damages—defamation**

s 68 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Disclosure of name of contributor**

s 69 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Scope of defences not limited**

s 70 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Time not to be extended except by leave**

s 71 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

## Endnotes

4 Amendment history

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### **Review of certain provisions of ch 5**

s 72 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)  
s 72 [exp 1 January 2005 \(s 72 \(3\)\)](#)

### **Action for use and occupation of land—amount of damages**

s 74 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Limitation on strict liability under innkeeper's liability**

s 83 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Circumstances when limitation does not apply**

s 84 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Safe custody facilities**

s 85 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Notice about pt 7.1**

s 86 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Definitions for pt 7.2**

s 89 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Certain things not *protected* by pt 7.2**

s 90 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Public notices by carrier not to affect liability**

s 91 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Liability of carriers for certain goods worth more than \$20**

s 92 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Notice of increased charge for transport of certain goods**

s 93 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Receipt of carrier for *increased* charge**

s 94 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Carrier only liable for proven amount for certain goods**

s 95 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Liability of carriers for *certain* animals**

s 97 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Notice of increased *charge* for transport of certain animals**

s 98 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Carrier only liable for *proven* amount for certain animals**

s 99 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Carrier liable for neglect or default despite notice etc**

s 100 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

### **Evidence of breach of duty for animals**

s 102 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Actions do not lie for damage caused by accidental fires**

s 103 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Contract between landlord and tenant not affected**

s 104 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Definitions for ch 9**

s 105 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Removal of certain bars to rescission for misrepresentation**

s 106 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Damages for misrepresentation**

s 107 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Damages instead of rescission for misrepresentation**

s 108 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Exclusion clauses—misrepresentation**

s 109 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Misrepresentation in trade or commerce an offence**

s 110 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Employer etc liable for misrepresentation**

s 111 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Prosecutions for misrepresentation**

s 112 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Amount of liability charge on insurance money payable against liability**

s 132 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Enforcement of charge on insurance money**

s 133 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Protection of insurer for pt 11.3 charge**

s 134 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Certain other provisions not affected by pt 11.3**

s 135 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Abolition of rule about unity of spouses**

s 137 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Abolition of action of cattle-trespass**

s 138 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Abolition of distress damage feasant**

s 139 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Abolition of rules relating exclusively to liability for damage by animals**

s 140 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

## Endnotes

4 Amendment history

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**Partial abolition of rule in Rylands v Fletcher**

s 141 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Abolition of rule of common employment**

s 142 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Abolition of husband's liability for wife's torts and premarital obligations**

s 143 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Abolition of action for loss of consortium**

s 144 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Abolition of rule in Cavalier v Pope**

s 145 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Partial abolition of Mocambique rule**

s 146 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

**Application provisions—for certain new measures**

s 150 [exp 1 November 2005 \(s 150 \(4\)\)](#)

**Application provisions—for certain existing measures**

s 151 [exp 1 November 2003 \(s 151 \(11\)\)](#)

**Application of pts 2.4 and 4.3**

s 152 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

s 152 [exp 1 January 2003 \(s 152 \(3\)\)](#)

**Application of provisions of Civil Liability (Animals) Act 1984 (repealed)**

s 153 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

s 153 [exp 1 November 2003 \(s 153 \(4\)\)](#)

**Application of s 30 and s 31**

s 154 hdg [bracketed note exp 1 November 2003 \(s 4 \(3\)\)](#)

s 154 [exp 1 November 2003 \(s 154 \(3\)\)](#)

**Transitional regulations**

s 155 [exp 1 November 2003 \(s 155 \(4\)\)](#)

**Modification of ch 12's operation**

s 156 [exp 1 November 2003 \(s 156 \(2\)\)](#)

**Repeals and amendments**

sch 3 om LA s 89 (3)



## 5 Uncommenced provisions

The following provisions have been included in this republication in italics because they were uncommenced at the republication date:

### Part 7.1 Traveller accommodation providers liability

#### Division 7.1.1 Preliminary

##### 75 Purpose of pt 7.1

The purpose of this part is to mitigate some of the harsh consequences of innkeeper's liability at common law.

##### 76 Definitions for pt 7.1

In this part:

*accommodation unit* means an area of traveller accommodation that is designed to be used by a guest of the accommodation provider for sleeping.

*agent*, of an accommodation provider, includes—

- (a) an employee of the accommodation provider; and
- (b) an apparent agent or employee of the accommodation provider.

*fault* means negligence or another act or omission giving rise to a liability.

*limitation amount* means the amount prescribed under the regulations.

*loss*, of property, includes damage to, or destruction of, the property.

*motor vehicle* includes a boat, caravan and trailer attached to a motor vehicle.

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*provide* traveller accommodation includes offering to provide the traveller accommodation.

*safe custody facilities*—see section 85 (1).

### 77 Meaning of *traveller accommodation*

- (1) *Traveller accommodation* is accommodation provided for use by members of the travelling public as part of a commercial transaction.
- (2) Without limiting subsection (1), traveller accommodation includes the following types of accommodation:
  - (a) backpacker;
  - (b) bed and breakfast;
  - (c) hotel;
  - (d) motel;
  - (e) resort;
  - (f) serviced apartment.
- (3) Accommodation is traveller accommodation even if the accommodation is provided without charge as long as the accommodation is provided as part of a commercial transaction.

#### **Examples of accommodation supplied as part of commercial transaction**

- 1 resort holidays supplied to purchasers of electrical goods from retail outlets
- 2 accommodation supplied to members of the travel industry or the public generally for promoting the accommodation

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

- (4) Despite subsections (1) to (3)—
  - (a) accommodation is traveller accommodation only if it includes an accommodation unit; and

- (b) accommodation in or on something, that is a means of transport, is not traveller accommodation if the particular thing is being used, or is ordinarily used, for transport.

## **78 Meaning of *accommodation provider***

- (1) An *accommodation provider* is the person who operates a business that includes providing traveller accommodation.
- (2) To remove any doubt, the owner of traveller accommodation is not necessarily the accommodation provider.

### **Example of accommodation provider**

The letting agent for, or the manager of, serviced apartments is the accommodation provider and not the owner of the apartments.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

## **79 Meaning of *innkeeper's liability***

- (1) For this part, *innkeeper's liability* is innkeeper's liability under the common law but only in relation to the strict liability imposed on an innkeeper for failing to safeguard property of the innkeeper's guests that is brought to the innkeeper's inn.
- (2) To remove any doubt, for innkeeper's liability, loss of a guest's property includes damage to, or destruction of, the property.
- (3) For innkeeper's liability—
  - (a) an accommodation provider, and only an accommodation provider, is an innkeeper; and
  - (b) traveller accommodation, and only traveller accommodation, is an inn.

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### 80 Meaning of *guest*

- (1) A *guest* is a person to whom, or for whom, traveller accommodation is provided by an accommodation provider.
- (2) However, the person is a guest only on a day when the person is provided with the use of an accommodation unit at the traveller accommodation.
- (3) A guest does not include a person—
  - (a) who is at the traveller accommodation only to obtain beverages or food or to visit someone else; or
  - (b) who usually lives at the traveller accommodation.

### 81 Meaning of *property of guest*

- (1) *Property* of a guest is the property brought to the traveller accommodation or its precincts by or for the guest.
- (2) However, *property* of a guest does not include—
  - (a) a motor vehicle brought to the traveller accommodation or its surrounds by or for the guest, or other things owned by the guest left in or on the motor vehicle; or
  - (b) property taken from the traveller accommodation or its surrounds by or for the guest.

## Division 7.1.2 Liability of accommodation providers

### 82 Application of div 7.1.2

This division applies to the property of a guest after the accommodation provider, or the provider's agent, knows or is told about the arrival of the guest or the guest's property at the traveller accommodation or its surrounds.

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**83 Limitation on strict liability under innkeeper's liability**  
(ILA s 4)

- (1) This section applies to an accommodation provider's liability under innkeeper's liability for a loss of the guest's property.
- (2) The liability for the loss is limited to the limitation amount for each accommodation unit provided for the use of the guest on the day of the loss, despite—
  - (a) the amount of the loss on the day; or
  - (b) the number of guests who, on the day, are provided with the use of the accommodation unit and suffer a loss of property.
- (3) Despite the limitation on the liability to the limitation amount, the accommodation provider's liability is subject to the defences available at common law for an innkeeper, including the perils of travel defences.

**84 Circumstances when limitation does not apply** (ILA s 4)

- (1) The limitation on the accommodation provider's liability under section 83 (2) does not apply if the loss of a guest's property—
  - (a) is caused by the fault of the accommodation provider or the provider's agent; or
  - (b) happens after the accommodation provider, or the provider's agent, accepts the property for depositing in safe custody facilities; or
  - (c) happens while the property is left, at the invitation of the accommodation provider or the provider's agent, at a particular place outside of the accommodation unit provided to the guest.
- (2) Also, the limitation on the accommodation provider's liability under section 83 (2) does not apply if—

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- (a) at the time the guest is provided with the use of an accommodation unit, the accommodation provider did not comply with section 86 (1) (a) (Notice about pt 7.1); or
- (b) during all of the period the guest is provided with the use of an accommodation unit, the accommodation provider did not do 1 of the following:
  - (i) comply with section 86 (1) (b) in relation to the accommodation unit;
  - (ii) have a system in operation as mentioned in section 86 (2).

### **85 Safe custody facilities (ILA s 4, 5)**

- (1) This section applies if an accommodation provider, or the provider's agent, accepts a guest's property for safekeeping in facilities controlled by the accommodation provider or the provider's agent (*safe custody facilities*), other than facilities located in an accommodation unit for the safekeeping of property.
- (2) The accommodation provider is liable for the loss of the guest's property if it happens after the accommodation provider, or the provider's agent, accepts the property for deposit in the safe custody facilities.
- (3) An accommodation provider, or the provider's agent, may require a guest who asks to use safe custody facilities for the guest's property to place the property in a container and fasten or seal the container.
- (4) If the accommodation provider provides safe custody facilities, the accommodation provider must accept a guest's property for deposit in the safe custody facilities unless—
  - (a) the guest does not place the property in a container and fasten or seal it, in response to a requirement under subsection (3); or

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- (b) the accommodation provider reasonably considers that depositing the property in the safe custody facilities would be unreasonable having regard to the property's nature, size or value and the type of accommodation and tariff charged for the accommodation unit.
  - (5) This section does not require an accommodation provider to provide safe custody facilities.

## **86 Notice about pt 7.1 (ILA s 6)**

- (1) An accommodation provider must ensure that the notice set out in schedule 1 is conspicuously displayed so it can be easily read by a person when the person is—
  - (a) in the reception area for, or main entrance to, the traveller accommodation; and
  - (b) in an accommodation unit.
- (2) However, subsection (1) (b) does not apply if the accommodation provider has a system in operation under which—
  - (a) for each accommodation unit provided for the use of a guest—the guest is given a copy of the notice, including, for example, as part of the key tag or access card for, or in the compendium in, the accommodation unit; and
  - (b) the guest is told about the notice and where it is located at the time the guest checks in to the traveller accommodation.

## **87 Repeal of Innkeepers Liability Act 1902**

The *Innkeepers Liability Act 1902* No 64 is repealed.

## Chapter 10 Limitations on legal costs

### 113 Definitions for ch 10

In this part:

*costs* do not include—

- (a) disbursements that are charges for services other than legal services; or
- (b) disbursements that are counsel's fees on a brief to appear in an action; or
- (c) any other disbursements.

*court* includes a tribunal or arbitrator.

*personal injury damages* means damages that relate to the death of, or injury to, a person caused by someone else's wrongful act or omission (whether or not an offence).

### 114 Maximum costs for claims of \$50 000 or less

- (1) This section applies if the amount recovered on a claim for personal injury damages is \$50 000 or less.
- (2) If this section applies—
  - (a) a lawyer is not entitled to be paid; and
  - (b) a court (or a taxing officer) must not decide that a lawyer is entitled to be paid; and
  - (c) a court must not order anyone to pay to a lawyer;

an amount for legal services in relation to the claim that (or that together with other amounts) is more than the maximum costs allowable under this section.



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- (3) Subsection (2) is subject to the following sections:
- section 115 (Costs incurred after offer of compromise not accepted)
  - section 116 (Exclusion of costs unnecessarily incurred etc)
  - section 117 (Court discretion to allow additional costs).
- (4) The *maximum costs* allowable for legal services provided to the plaintiff in relation to the claim are the greater of—
- (a) the relevant percentage of the amount recovered; and
  - (b) the relevant amount.
- (5) The *maximum costs* allowable for legal services provided to the defendant in relation to the claim are the greater of—
- (a) the relevant percentage of the amount sought to be recovered by the plaintiff; and
  - (b) the relevant amount.
- (6) In this section:
- amount recovered*, on a claim—
- (a) includes an amount paid under a compromise or settlement of the claim, whether or not an action has been begun; but
  - (b) does not include an amount attributable to costs or to the addition of interest.
- amount sought to be recovered* by a plaintiff means, if an action is begun—
- (a) the amount sought to be proved by the plaintiff at the hearing of the claim; or
  - (b) if the claim is for unliquidated damages—the amount that the court (or a taxing officer) decides is, for this section, the amount sought to be recovered by the plaintiff on the claim.

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*relevant amount* means \$10 000 or, if another amount is prescribed under the regulations for this definition, the prescribed amount.

*relevant percentage* means 20% or, if another percentage is prescribed under the regulations for this definition, the prescribed percentage.

### **115 Costs incurred after offer of compromise not accepted**

- (1) This section applies if—
  - (a) a party to a claim for personal injury damages makes an offer of compromise on the claim; and
  - (b) the offer is expressed to be made for this section; and
  - (c) the offer is not accepted; and
  - (d) the court decides or makes an order or award on the claim that is no less favourable to the party than the terms of the offer.
- (2) Section 114 (Maximum costs for claims of \$50 000 or more) does not prevent the awarding of costs against another party, to be assessed on an indemnity basis, for legal services provided after the offer is made.
- (3) The regulations may—
  - (a) require lawyers to give their clients information about the effect of this section if an offer of compromise is not accepted; and
  - (b) make provision in relation to the requirement, including, for example, what information must be given and how and when it must be given.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

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- (4) If the court considers that—
- (a) a lawyer has contravened regulations made for this section; and
  - (b) the lawyer's client has incurred an increased liability for costs for not accepting an offer of compromise;
- the court may (on its own initiative or on application by the client) make either or both of the orders mentioned in subsection (5).
- (5) The orders are—
- (a) an order directing the lawyer to repay to the client (or to pay) all or part of the increased costs that the client has been ordered to pay to another party; and
  - (b) an order directing the lawyer to indemnify a party other than the client against all or part of the costs payable by the party for legal services provided after the offer was made.
- (6) The regulations may prohibit or restrict the making of offers of compromise otherwise than under this section.

#### **116 Exclusion of costs unnecessarily incurred etc**

- (1) This section applies to legal services provided to a party to a claim for personal injury damages if a court is satisfied that—
- (a) the legal services were provided in response to action on the claim by or on behalf of the other party to the claim; and
  - (b) in the circumstances, the action was not necessary or reasonable for the advancement of the party's case or was intended, or was reasonably likely, to unnecessarily delay or complicate determination of the claim.
- (2) The court may order that the costs for the legal services are to be excluded from the operation of section 114 (Maximum costs for claims of \$50 000 or less).

### **117 Court discretion to allow additional costs**

- (1) This section applies if a court, or a taxing officer, decides (on the court's or taxing officer's own initiative or on the application of a party to the claim) that the maximum costs for legal services allowable under this part in relation to a claim for personal injury damages should be increased because of—
  - (a) the complexity of the claim; or
  - (b) the behaviour of 1 or more of the parties to the claim.
- (2) The court or taxing officer may order that the lawyer who provided the services is entitled to stated additional costs.
- (3) If the court or taxing officer makes an order under subsection (2), the court or taxing officer may state who is to pay the additional costs.
- (4) The regulations may make provision in relation to the making of orders under this section.

### **118 Apportionment of costs between lawyers**

If more than 1 lawyer provides legal services to a party in relation to a claim for personal injury damages, the maximum costs allowable under this part (including any additional amount allowed under section 117) are to be apportioned between them as agreed by them or, if they do not agree, as ordered by the court (or a taxing officer).

## **Part 11.1 Neutral evaluation**

### **119 Purpose of pt 11.1 etc**

- (1) The purpose of this part is to enable a court or tribunal to refer matters for neutral evaluation.

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- (2) This part does not prevent the parties to a proceeding from agreeing to, and arranging for, neutral evaluation of any matter otherwise than under this part.
  - (3) This part does not apply to criminal proceedings.

### **120 Meaning of *neutral evaluation* and *neutral evaluation session***

- (1) For this part, *neutral evaluation* is a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute.
- (2) The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion about the likely outcome of the proceeding, including any likely findings of liability or the award of damages.
- (3) For this part, *neutral evaluation session* means a meeting arranged for the neutral evaluation of a matter under this part.

### **121 Who can be an evaluator**

The following people can be an evaluator:

- (a) a registrar of a court or tribunal;
- (b) a deputy registrar of a court or tribunal;
- (c) someone else that a court or tribunal considers has the skills and qualifications to be an evaluator and appoints as an evaluator.

### **122 Referral by court or tribunal for neutral evaluation**

- (1) A court or tribunal may, by order, refer any proceeding, or any part of a proceeding, before it for neutral evaluation, and may do so either with or without the consent of the parties to the proceeding.
- (2) The neutral evaluation is to be undertaken by an evaluator appointed by the court or tribunal.

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### **123 Duty of parties to take part in neutral evaluations**

It is the duty of each party to a proceeding referred for neutral evaluation under section 122 to take part, genuinely and sincerely, in the neutral evaluation.

### **124 Costs of neutral evaluation**

The costs of a neutral evaluation are payable—

- (a) by the parties to the proceeding, in the proportions they agree among themselves; or
- (b) if a court or tribunal makes an order about the payment of the costs—by 1 or more of the parties, in the way stated in the order.

### **125 Privilege for neutral evaluations**

- (1) The same privilege in relation to defamation that exists for a judicial proceeding, and a document produced in a judicial proceeding, exists for—
  - (a) a neutral evaluation session; or
  - (b) a document or other material sent to or produced to an evaluator, or sent to or produced at a court or tribunal or the registry of a court or tribunal, for the purpose of enabling a neutral evaluation session to be arranged.
- (2) However, the privilege under subsection (1) only extends to a publication made—
  - (a) at a neutral evaluation session; or
  - (b) as provided by subsection (1) (b); or
  - (c) as provided in section 126.

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- (3) Evidence of anything said, or of any admission made, in a neutral evaluation session is not admissible in a proceeding before a court, tribunal or other entity.
- (4) A document prepared for, in the course of, or because of, a neutral evaluation session, or any copy of the document, is not admissible in evidence in any civil proceeding before a court, tribunal or other entity.
- (5) Subsections (3) and (4) do not apply to any evidence or document—
- (a) for evidence—if the people in attendance at, or identified during, the neutral evaluation session consent to the admission of the evidence; or
  - (b) for a document—if the people in attendance at, or identified during, the neutral evaluation session and all people identified in the document, consent to the admission of the document; or
  - (c) in a proceeding (including a criminal proceeding) brought in relation to an act or omission in relation to which a disclosure has been made under section 126 (c).
- (6) In this section:

*neutral evaluation session* includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

## **126 Secrecy by evaluators**

An evaluator may disclose information obtained in relation to the administration or execution of this part only in the following circumstances:

- (a) with the consent of the person from whom the information was obtained;
- (b) for the administration or execution of this part;

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- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of death or injury to anyone or damage to any property;
- (d) if the disclosure is reasonably required for the purpose of referring any party to a neutral evaluation session to any entity and the disclosure is made with the consent of the parties to the neutral evaluation session for the purpose of aiding in the resolution of a dispute between the parties or assisting the parties in any other way;
- (e) in accordance with a requirement imposed under a Territory or Commonwealth law (other than a requirement imposed by a subpoena or other compulsory process).

### **127 Protection from liability for evaluators**

An evaluator is not subject to civil liability for anything done or omitted to be done honestly for a neutral evaluation session under this part.

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