

Australian Capital Territory

# **Civil Law (Wrongs) Act 2002**

**A2002-40**

**Republication No 20**

**Effective: 24 February 2005 – 7 March 2005**

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Last amendment made by A2005-5

Not all amendments 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 24 February 2005. It also includes any amendment, repeal or expiry affecting the republished law to 24 February 2005.

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

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

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### 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.



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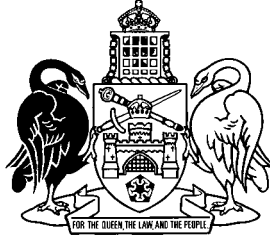
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Australian Capital Territory

## 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 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 terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*accommodation provider*—see section 146.’ means that the term ‘accommodation provider’ is defined in that section.

*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, s 155 and s 156 (1)).

### 3 Notes

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

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

### 4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- section 74 (Offence not to disclose particular material)
- section 80 (False or misleading statements)

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 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, 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 a member of the ambulance service 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 by regulation 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 by regulation 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 by regulation 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 by regulation 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.

## Part 2.3 Apologies

### 12 Application of pt 2.3

- (1) This part applies to civil liability of any kind.
- (2) However, this part does not apply to civil liability for an award of damages or compensation—
  - (a) for defamation; or
  - (b) under any of the following:
    - (i) the *Discrimination Act 1991*;
    - (ii) the *Victims of Crime (Financial Assistance) Act 1983*;
    - (iii) the *Workers Compensation Act 1951*.

### 13 Meaning of *apology* in pt 2.3

In this part:

***apology*** means an oral or written expression of sympathy or regret, or of a general sense of benevolence or compassion, in relation to an incident, whether or not the expression admits or implies fault or liability in relation to the incident.

### 14 Effect of apology on liability etc

- (1) An apology made by or on behalf of a person in relation to an incident claimed to have been caused by the person—
  - (a) is not (and must not be taken to be) an express or implied admission of fault or liability by the person in relation to the incident; and
  - (b) is not relevant to deciding fault or liability in relation to the incident.

- (2) Evidence of an apology made by or on behalf of a person in relation to an incident claimed to have been caused by the person is not admissible in any civil proceeding as evidence of the fault or liability of the person in relation to the incident.

## **Part 2.4                      Survival of actions on death**

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

- (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.

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

- (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 100 (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 23.

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

- (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.

**18 Saving of rights additional to pt 2.4**

- (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 2.5 Proceedings against and contributions between wrongdoers

### 19 Definitions for pt 2.5

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.

### 20 Each of several wrongdoers can be sued

- (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.

## 21 Right of contribution

- (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.

## 22 Effect of pt 2.5

- (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 *Building Act 2004*, part 9 (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**

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

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 domestic partner; or
- (b) a child of the person (including a child born alive after the death);
- (c) a person to whom the dead person acted, immediately before his or her death, in place of a parent;
- (d) a parent of the person;
- (e) a person who acted, immediately before the dead person's death, in place of a parent to the dead person;
- (f) a brother, a sister, a half-brother and a half-sister of the person;
- (g) 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

### 24 Liability for a person's death

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.

### 25 Damages for a person's death

- (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 7.1 (Damages for personal injuries—exclusions and limitations).
- (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.

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

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.

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

- (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 7.1 (Damages for personal injuries—exclusions and limitations).
- (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**

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

- (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.

## **29 Payment into court**

- (1) If an action is brought in the Magistrates Court under this part, the defendant may pay an amount into 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.

## **30 Special endorsement on originating process**

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.

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

- (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                      Mental harm

### 32                      Definitions for pt 3.2

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.

*consequential mental harm*, to a person, means mental harm to the person that is a consequence of bodily injury to the person.

*family member*, of a person, means—

- (a) a domestic partner;
- (b) a parent or child of the person; or
- (c) a brother, sister, half-brother or half-sister of the person.

*mental harm*, to a person, means impairment of the person's mental condition.

*negligence* means failure to exercise reasonable care and skill.

*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.

*pure mental harm*, to a person, means mental harm to the person other than consequential mental harm.

### 33                      Personal injury arising from mental or nervous shock

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.

### 34 Mental harm—duty of care

- (1) A person (the *defendant*) does not owe a duty to another person (the *plaintiff*) to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- (2) For the application of this section in relation to pure mental harm to a person, the circumstances of the case to which the court must have regard include—
  - (a) whether or not the mental harm was suffered as the result of a sudden shock; and
  - (b) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in danger; and
  - (c) the nature of the relationship between the plaintiff and anyone killed, injured or put in danger; and
  - (d) whether or not there was a pre-existing relationship between the plaintiff and the defendant.
- (3) For the application of this section in relation to consequential mental harm to a person, the circumstances of the case to which the court must have regard include the nature of the bodily injury out of which the mental harm arose.
- (4) This section does not affect the duty of care a person (the *defendant*) has to another person (the *plaintiff*) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.



**35 Mental harm—damages**

- (1) Damages must not be awarded for pure mental harm to a person resulting from negligence unless the harm consists of a recognised psychiatric illness.
- (2) Damages must not be awarded for economic loss for consequential mental harm to a person resulting from negligence unless the harm consists of a recognised psychiatric illness.

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

- (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 domestic partner of *A*; or
  - (c) 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 7.1 (Damages for personal injuries—exclusions and limitations).
- (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.

## Part 3.3 Temporary exclusion of liability for terrorism-associated risks

### 37 Meaning of *act of terrorism* for pt 3.3

- (1) In this part:
- act of terrorism* means the use or threat of action if—
- (a) the action falls within subsection (2); and
  - (b) the use or threat is designed to influence a government or to intimidate the public or a section of the public; and
  - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this subsection if it—
- (a) involves serious violence against a person; or
  - (b) involves serious damage to property; or
  - (c) endangers a person's life, other than that of the person committing the action; or
  - (d) creates a serious risk to the health or safety of the public or a section of the public; or
  - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) that involves the use of firearms or explosives is terrorism whether or not subsection (1) (b) is satisfied.
- (4) In this section:
- action* includes action outside the ACT or Australia.

**government** includes the government of another Australian jurisdiction or a foreign country.

**person** means a person anywhere, whether in or outside the ACT or Australia.

**property** means property located anywhere, whether in or outside the ACT or Australia.

**public** includes the public of a place outside the ACT or Australia.

### **38 Limitation of liability for acts of terrorism**

- (1) There is no right of action for death or injury (or both) arising out of the use of a motor vehicle if the death or injury (or both) are caused by an act of terrorism.
- (2) Subsection (1) does not remove the liability—
  - (a) of someone who commits or promotes the act of terrorism; or
  - (b) of an employer to pay compensation under the *Workers Compensation Act 1951* (or any corresponding law of the Commonwealth, a State or another Territory) to a worker.
- (3) This section applies despite the *Road Transport (General) Act 1999*, section 169 (1) (Indemnification of insured people).

## **Chapter 4            Negligence**

### **Part 4.1            Preliminary**

#### **40            Definitions for ch 4**

In this chapter:

*harm* means harm of any kind, and includes—

- (a) personal injury; and
- (b) damage to property; and
- (c) economic loss.

*negligence* means failure to exercise reasonable care and skill.

#### **41            Application of ch 4**

- (1) This chapter applies to all claims for damages for harm resulting from negligence, whether the claim is brought in tort, in contract, under statute or otherwise.
- (2) However, this chapter does not apply to a claim under the *Workers Compensation Act 1951*.

## Part 4.2                      Duty of care

### 42                      Standard of care

For deciding whether a person (the *defendant*) was negligent, the standard of care required of the defendant is that of a reasonable person in the defendant's position who was in possession of all the information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.

### 43                      Precautions against risk—general principles

- (1) A person is not negligent in failing to take precautions against a risk of harm unless—
  - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
  - (b) the risk was not insignificant; and
  - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.
- (2) In deciding whether a reasonable person would have taken precautions against a risk of harm, the court must consider the following (among other relevant things):
  - (a) the probability that the harm would happen if precautions were not taken;
  - (b) the likely seriousness of the harm;
  - (c) the burden of taking precautions to avoid the risk of harm;
  - (d) the social utility of the activity creating the risk of harm.

**44        Precautions against risk—other principles**

In a proceeding in relation to liability for negligence—

- (a) the burden of taking precautions to avoid a risk of harm includes the burden of taking precautions to avoid similar risks of harm for which the person may be responsible; and
- (b) the fact that a risk of harm could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which it was done; and
- (c) the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of harm does not of itself give rise to or affect liability in relation to the risk and is not of itself an admission of liability in relation to the risk.

## Part 4.3 Causation

### 45 General principles

- (1) A decision that negligence caused particular harm comprises the following elements:
  - (a) that the negligence was a necessary condition of the happening of the harm ('factual causation');
  - (b) that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (the *scope of liability*).
- (2) However, if a person (the *plaintiff*) has been negligently exposed to a similar risk of harm by a number of different people (the *defendants*) and it is not possible to assign responsibility for causing the harm to any 1 or more of them—
  - (a) the court may continue to apply the established common law principle under which responsibility may be assigned to the defendants for causing the harm; but
  - (b) the court must consider the position of each defendant individually and state the reasons for bringing the defendant within the scope of liability.
- (3) In deciding the scope of liability, the court must consider (among other relevant things) whether or not, and why, responsibility for the harm should be imposed on the negligent party.

### 46 Burden of proof

In deciding liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation.



## Part 4.4 Other provisions—negligence

### 47 Contributory negligence can defeat claim

In deciding the extent of a reduction of damages because of contributory negligence, a court may decide on a reduction of 100% if the court considers it is just and equitable to do so, with the result that the claim for damages is defeated.

### 48 Remedy available if claim fraudulent

- (1) This section applies to a person if—
  - (a) the person did, or omitted to do, something in relation to a claim; and
  - (b) the person did, or omitted to do, the thing—
    - (i) for the purpose of obtaining a financial benefit; or
    - (ii) knowing that the thing (or something else resulting from doing or omitting to do the thing) is false or misleading.

**Example of something done in relation to claim**

the making of a statement

**Example of something resulting from the doing of the thing**

the statement

*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, s 126 and s 132).

- (2) If this section applies to a claimant in relation to a claim—
  - (a) a person who has a liability in relation to a payment, settlement, compromise or judgment relating to the claim is relieved from the liability to the extent of the financial benefit obtained by the claimant; and

- (b) a person who has paid an amount to the claimant in relation to the claim (whether under a settlement, compromise, judgment or otherwise) is entitled to recover from the claimant the amount of the financial benefit obtained by the claimant and any costs incurred in relation to the claim.
- (3) If this section applies to a person other than a claimant in relation to a claim, the claimant is entitled to recover from the person as a debt the amount of the financial benefit obtained by the person and any costs incurred by the claimant in relation to the claim.

## Chapter 5      Personal injuries claims—pre-court procedures

### Part 5.1      Preliminary

#### 49      Definitions for ch 5

In this chapter:

*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.

*claimant* means a person by whom, or on whose behalf, a claim is made.

*complying notice of claim* means a notice of claim under section 51 (Notice of claim) or section 55 (Claimant may add later respondents) that is given as required under this chapter.

*contribution notice*—see section 57 (Respondent may add someone else as contributor).

*contributor* means a person added as a contributor under section 57 (Respondent may add someone else as contributor).

*court*, in relation to a claim, means—

- (a) if a proceeding based on a claim has been begun—the court hearing the proceeding; or
- (b) if no proceeding based on the claim has been begun—a court with jurisdiction to hear the claim.

*insurer*, of a person in relation to a claim, means the insurer or other entity providing, or purportedly providing, the person cover or an indemnity against the claim.

*party* means claimant, respondent or contributor.

*respondent* means a person who—

- (a) is a respondent under section 51 (Notice of claim); or
- (b) is a later respondent under section 55 (Claimant may add later respondents).

## **50 Application of ch 5**

- (1) This chapter 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 chapter does not apply to—
  - (a) a claim under the *Workers Compensation Act 1951*; or
  - (b) a claim for which—
    - (i) notice has been given by or for the claimant under the *Limitation Act 1985*, section 30A (2) (Special provision for injuries to children); and
    - (ii) notice has been given by a respondent under that Act, section 30A (6).

## Part 5.2 Claims procedures

### 51 Notice of claim

- (1) Before a claimant brings a proceeding against someone else (a *respondent*) based on a claim in relation to a personal injury, the claimant must give the respondent written notice of the claim.

*Note 1* A proceeding must be brought before the end of the relevant limitation period under the *Limitation Act 1985*.

*Note 2* If a form is approved under s 222 for a notice of claim, the form must be used.

- (2) The notice must—
- (a) contain a statement of the information required under the regulations; and
  - (b) authorise each of the following to have access to the records and sources of information relevant to the claim that are required under the regulations:
    - (i) the respondent;
    - (ii) if the respondent is insured against the claim—the respondent’s insurer for the claim; and
  - (c) be accompanied by the documents required under the regulations.
- (3) The notice must be given within the period that ends on the earlier of the following days:
- (a) the day that is 9 months after—
    - (i) the day the accident giving rise to the personal injury happened; or

- (ii) if symptoms of the injury are not immediately apparent—the day symptoms of the injury first appear;
- (b) the day that is 1 month after the later of the following days:
  - (i) the day the claimant first instructs a lawyer to provide advice about seeking damages for the personal injury;
  - (ii) the day the respondent is identified.
- (4) If the claimant is a child, the claimant's parent or legal guardian may give the notice for the claimant.

*Note* For another procedure for a claim in relation to a personal injury suffered by a child, see the *Limitation Act 1985*, s 30A (Special provision for injuries to children).
- (5) If the notice is not given within the period required under subsection (3), a reasonable excuse for the delay must be given in the notice or by separate written notice to the respondent.

*Note* If the notice is not given as required under s (3), the obligation to give the notice continues until it is given (see Legislation Act, s 152).
- (6) If the respondent knows of anyone else (a **relevant person**) against whom a proceeding based on the claim may be begun by the claimant, the respondent must, within the period prescribed by regulation (or, if no period is prescribed, within 1 month after the day the respondent receives the notice)—
  - (a) give a copy of the notice to each relevant person; and
  - (b) tell the claimant in writing about each relevant person and give the claimant a short written statement explaining why each of them may be a relevant person.
- (7) If the respondent is a child, the respondent's parent or legal guardian may comply with subsection (6) for the respondent.

**52 Preliminary response to claimant**

- (1) A respondent must, in writing and within the required period—
  - (a) give notice to the claimant under section 54 (Respondent's response to notice of claim); or
  - (b) if the respondent cannot decide on the information in the notice whether or not the respondent is properly a respondent to the claim—tell the claimant, in writing, about the further information the respondent reasonably needs to decide whether the respondent is properly a respondent to the claim; or
  - (c) if the respondent considers that the respondent is not properly a respondent to the claim, tell the claimant, in writing, that the respondent considers the respondent is not properly a respondent to the claim and give the claimant, in writing—
    - (i) reasons why the respondent considers the respondent is not properly a respondent to the claim; and
    - (ii) any information the respondent has that may help the claimant identify someone who should be a respondent to the claim.
- (2) If the claimant is told that further information is needed under subsection (1) (b), the claimant must, within the required period—
  - (a) give the respondent the further information; or
  - (b) tell the respondent, in writing, that the claimant considers the respondent to be properly a respondent to the claim and requires the respondent to give notice to the claimant under section 54.
- (3) Within the required period after being given information under subsection (2) (a), the respondent must, having regard to that information—
  - (a) give notice to the claimant under section 54; or

- (b) if the respondent considers that the respondent is not properly a respondent to the claim, tell the claimant, in writing, that the respondent considers the respondent is not properly a respondent to the claim and give the claimant, in writing—
  - (i) reasons why the respondent considers the respondent is not properly a respondent to the claim; and
  - (ii) any information the respondent has that may help the claimant identify someone who should be a respondent to the claim.
- (4) If the claimant is told under subsection (1) (c) or subsection (3) (b) that the respondent is not properly a respondent to the claim, the claimant must, within the required period, tell the respondent, in writing, that—
  - (a) the claimant accepts that the respondent is not properly a respondent to the claim; or
  - (b) the claimant considers the respondent to be properly a respondent to the claim and requires the respondent to give notice to the claimant under section 54.
- (5) Advice given to the respondent under subsection (4) (a) does not prevent the claimant from giving the respondent another notice of claim under section 51 at a later time.
- (6) In this section:
  - required period*** means—
    - (a) the period prescribed under the regulations; or
    - (b) if no period is prescribed, the following:
      - (i) for subsection (1)—1 month after the day the respondent receives a notice of claim under section 51;



- (ii) for subsection (2)—1 month after the day the claimant is told under subsection (1) (b) that further information is needed;
- (iii) for subsection (3)—1 month after the day the respondent is given the information;
- (iv) for subsection (4)—1 month after the day the claimant is told under subsection (1) (c) or subsection (3) (b) that the respondent is not properly a respondent to claim.

**53 Acknowledgment that proper respondent not admission of liability**

Advice by a respondent that the respondent considers that the respondent is properly a respondent to a claim is not an admission of liability by the respondent in relation to the claim.

**54 Respondent's response to notice of claim**

- (1) This section applies if a respondent—
  - (a) considers the respondent to be properly a respondent to a claim; or
  - (b) is told under section 52 (2) (b) or (4) (b) (Preliminary response to claimant) that the claimant considers the respondent to be properly a respondent to a claim.
- (2) The respondent must, within the required period, give the claimant written notice (a *response*)—
  - (a) stating whether the respondent is satisfied that the notice is a complying notice of claim; and
  - (b) if the respondent is not satisfied—identifying the noncompliance and stating whether the respondent waives compliance with the requirements; and

- (c) if the respondent does not waive compliance with the requirements—allowing the claimant a reasonable period, of at least 1 month, stated in the response to—
  - (i) satisfy the respondent that the claimant has complied with the requirements; or
  - (ii) take reasonable action stated in the response to remedy the noncompliance.
- (3) If the respondent does not give a response within the required period, the respondent is conclusively presumed to be satisfied that the notice is a complying notice of claim.
- (4) If subsection (2) (c) applies, the respondent must, within 1 month after the day the period stated in the response ends, give the claimant a written notice—
  - (a) stating that the respondent is satisfied the claimant has complied with the relevant requirements, is satisfied with the action taken by the claimant to remedy the noncompliance, or waives the noncompliance; or
  - (b) stating that the respondent is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, and giving full particulars of the noncompliance and the claimant's failure to remedy it.
- (5) In this section:
  - required period*** means—
    - (a) if the respondent responds directly to the claimant under this section as mentioned in section 52 (1) (a)—the period applying under section 52 (1); and
    - (b) in any other case—
      - (i) the period prescribed by regulation; or

- (ii) if no period is prescribed, the later of the following:
  - (A) if the respondent gives notice to the claimant under section 52 (3) (a)—1 month after the day the respondent is given the further information under section 52 (2) (a);
  - (B) if the claimant tells the respondent under section 52 (2) (b) or (4) (b) that the claimant considers the respondent to be properly a respondent to the claim—1 month after the day the claimant tells the respondent under that paragraph.

## **55 Claimant may add later respondents**

- (1) After a claimant has given notice of a claim to a respondent under section 51, the claimant may add someone else as a respondent (a *later respondent*) to the claim by giving the later respondent—
  - (a) a notice of a claim complying with section 51 (2); and
  - (b) copies of other documents given to or received from any other respondent under this chapter.
- (2) However, the claimant may add a later respondent only—
  - (a) within the time prescribed by regulation; or
  - (b) if the later respondent and all parties to the claim agree; or
  - (c) if the court gives leave.
- (3) If the claimant adds a later respondent under this section—
  - (a) the later respondent must respond to the notice as if it were a notice of a claim given under section 51; and
  - (b) the claimant must, in writing, tell each other respondent of the addition within the time prescribed by regulation.

## 56 Multiple respondents

- (1) If there are 2 or more respondents to a claim, one of the respondents (the *respondents' claim manager*) may act for 1 or more of the other respondents under this chapter with the agreement of the other respondents.
- (2) The respondents' claim manager—
  - (a) may exercise the functions given under this chapter in relation to the claim and the claimant for all respondents for whom the respondents' claim manager acts; and
  - (b) must act as far as practicable with the agreement of the other respondents for whom the manager acts.
- (3) Action taken, or an agreement made, by the respondents' claim manager in relation to the claim is binding on each respondent for whom the respondents' claim manager acts so far as it affects the claimant.
- (4) However, if the respondents' claim manager acts beyond the scope of the manager's authority under the agreement under subsection (1), the manager is liable to each other respondent who is a party to the agreement for any loss suffered by the other respondent.

## 57 Respondent may add someone else as contributor

- (1) A respondent who receives a complying notice of claim may, within the time prescribed by regulation, add someone else as a contributor for this chapter by giving the person a written notice (a *contribution notice*)—
  - (a) claiming an indemnity from, or contribution towards, the respondent's liability; and
  - (b) stating the grounds on which the respondent holds the person liable; and

- (c) stating any other information prescribed by regulation; and
  - (d) accompanied by copies of documents about the claim given to or received from any other party under this chapter.
- (2) If the time prescribed under subsection (1) for adding a contributor has ended, the respondent may add someone else as a contributor only if—
- (a) the contributor and all parties to the claim agree; or
  - (b) the court gives leave.
- (3) If the respondent adds someone else as a contributor under this section, the respondent must give a copy of the contribution notice to each other party within the time prescribed by regulation.

## **58 Contributor's response**

- (1) A contributor must, within the period prescribed by regulation (or, if no period is prescribed, within 1 month after the day the contributor receives a contribution notice), give the respondent who gave the contribution notice a written response (the *contributor's response*)—
- (a) containing a statement of information prescribed by regulation; and
  - (b) accompanied by the documents (if any) prescribed by regulation.
- (2) The contributor's response must also state—
- (a) whether the claim for the contribution or indemnity claimed in the contribution notice is admitted, denied or admitted in part; and
  - (b) if the claim for the contribution or indemnity is admitted in part—the extent to which it is admitted.
- (3) An admission of liability in the contributor's response—

- (a) is not binding on the contributor in relation to any other claim;  
and
  - (b) is not binding on the contributor at all if it later appears the admission was induced by fraud.
- (4) If the respondent requires information provided by a contributor under this section to be verified by statutory declaration, the contributor must verify the information by statutory declaration.

**59 Claimant's failure to give complying notice of claim**

- (1) If a claimant does not give a complying notice of claim, the claimant cannot proceed further with the claim unless—
- (a) the respondent to whom notice of the claim was purportedly given—
    - (i) has given the claimant a written notice to the effect that the respondent is satisfied the notice is a complying notice of claim or the claimant has taken reasonable action to remedy the noncompliance; or
    - (ii) is presumed, under section 54 (3) (Respondent's response to notice of claim), to be satisfied the notice is a complying notice of claim; or
  - (b) the respondent has waived any noncompliance; or
  - (c) the court, on application by the claimant—
    - (i) declares that the claimant has remedied the noncompliance; or
    - (ii) authorises the claimant to proceed further with the claim despite the noncompliance.
- (2) An order of the court under subsection (1) (c) may be made on conditions the court considers necessary or appropriate to minimise prejudice to a respondent from the claimant's noncompliance.

## 60 Legal disabilities

- (1) A claimant is not required to comply with an obligation under this chapter while the claimant is under a legal disability.

*Note* If the claimant is a child, under s 51 (4) a parent or guardian of the child may give the notice of claim for the child.

- (2) The period within which the obligation must be complied with begins when the claimant's legal disability ends.
- (3) This chapter applies to the claimant as if—
  - (a) a reference to the day the accident giving rise to the personal injury happened were a reference to the day the claimant's legal disability ends; and
  - (b) all other changes were made to give effect to this section.
- (4) This section does not prevent a claimant, or a person acting for a claimant, from complying with an obligation under this chapter while the claimant is under a legal disability.
- (5) In this section:

***legal disability***—a claimant is under a ***legal disability*** in the circumstances in which a person is under a disability for the *Limitation Act 1985*.

## 61 Respondent must attempt to resolve claim

- (1) A respondent must, within the period prescribed by regulation (or, if no period is prescribed, within 6 months after the day the respondent receives a complying notice of claim)—
  - (a) take any reasonable steps necessary to find out about the accident claimed to have given rise to the personal injury to which the claim relates; and
  - (b) give the claimant written notice stating—

- (i) whether liability is admitted or denied; and
  - (ii) if contributory negligence is claimed—the degree of the contributory negligence expressed as a percentage; and
  - (c) if the claimant made an offer of settlement in the notice of claim—tell the claimant whether the respondent accepts or rejects the offer; and
  - (d) if the claimant did not make an offer of settlement in the notice of claim—invite the claimant to make a written offer of settlement; and
  - (e) make a fair and reasonable estimate of the damages to which the claimant would be entitled in a proceeding against the respondent; and
  - (f) either—
    - (i) make a written offer, or counteroffer, of settlement to the claimant setting out in detail the basis on which the offer is made; or
    - (ii) settle the claim by accepting an offer made by the claimant.
- (2) If a notice of claim is not a complying notice of claim, a respondent is taken to have been given a complying notice of claim when—
- (a) the respondent gives the claimant written notice that the respondent waives compliance with the requirement that has not been complied with or is satisfied the claimant has taken reasonable action to remedy the noncompliance; or
  - (b) the court makes a declaration that the claimant has remedied the noncompliance, or authorises the claimant to proceed further with the claim despite the noncompliance.
- (3) An offer, or counteroffer, of settlement must be accompanied by a copy of medical reports, assessments of cognitive, functional or



vocational capacity and all other material, including documents relevant to assessing economic loss, in the offerer's possession or control that may help the person to whom the offer is made make a proper assessment of the offer.

- (4) A respondent or claimant to whom a written offer, or counteroffer, of settlement is made must, unless a response to the offer is to be made under subsection (1) (c), respond in writing to the offer within the period prescribed by regulation after the day the respondent or claimant receives it (or, if no period is prescribed, within 3 months), indicating acceptance or rejection of the offer.
- (5) An admission of liability by a respondent under this section—
  - (a) is not binding on the respondent in relation to any other claim; and
  - (b) is not binding on the respondent at all if it later appears the admission was induced by fraud.

## **62 Consequences of noncompliance with pt 5.2**

- (1) If a claimant does not comply with the requirements of this part, a court in which the claimant begins a proceeding based on the claim—
  - (a) may, on a respondent's application in the proceeding, award in the respondent's favour costs (including legal and investigation costs) reasonably incurred by the respondent because of the claimant's noncompliance; and
  - (b) may only award interest in the claimant's favour for a period for which the claimant was in noncompliance if the court is satisfied there is a reasonable excuse for the noncompliance.

- (2) If a respondent does not comply with the requirements of this part, a court in which the respondent defends a proceeding based on the claim may, on a claimant's application in the proceeding, award in the claimant's favour costs (including legal and investigation costs) reasonably incurred by the claimant because of the respondent's noncompliance.

## **Part 5.3**                      **Obligations of parties to give documents and information**

### **63**                      **Purpose of pt 5.3**

The purpose of this part is to put the parties in a position where they have enough information to assess liability and quantum in relation to a claim.

### **64**                      **Claimant to give documents etc to respondent**

- (1) A claimant must give a respondent—
  - (a) copies of the following in the claimant's possession:
    - (i) reports and other documents about the accident claimed to have given rise to the personal injury to which the claim relates;
    - (ii) reports about the claimant's medical condition or prospects of rehabilitation;
    - (iii) reports about the claimant's cognitive, functional or vocational capacity; and
  - (b) information reasonably requested by the respondent about any of the following:
    - (i) the accident;
    - (ii) the nature of the personal injury and of any consequent disabilities;
    - (iii) if applicable, the medical treatment and rehabilitation services the claimant has sought or obtained;

- (iv) the claimant's medical history, as far as it is relevant to the claim, and any other claims for damages for personal injury made by the claimant;
  - (v) the claimant's claim for past and future economic loss;
  - (vi) any claim known to the claimant for gratuitous services consequent on the claimant's personal injury.
- (2) The claimant must give the copies mentioned in subsection (1) (a)—
- (a) within the period prescribed by regulation (or, if no period is prescribed, within 1 month after the day the claimant gives notice of the claim under part 5.2, or purportedly under part 5.2); and
  - (b) to the extent that a report or other document mentioned in subsection (1) (a) comes into the claimant's possession later, within 7 days after the day it comes into the claimant's possession.
- (3) The claimant must respond to a request under subsection (1) (b) within the period prescribed by regulation (or, if no period is prescribed, within 1 month after the day the request is received).
- (4) If a respondent requires information given by a claimant under this section to be verified by statutory declaration, the claimant must verify the information by statutory declaration.
- (5) If a claimant fails, without proper reason, to comply fully with this section, the claimant is liable for costs to the respondent resulting from the failure.

**65 Respondent and claimant may jointly arrange for expert report**

- (1) A respondent and a claimant may jointly arrange for an expert report about 1 or more of the following:
  - (a) the cause, or probable cause, of the accident claimed to have given rise to the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more people (who may be named) are responsible for, or contributed to, the accident;
  - (b) the cause, or probable cause, of the personal injury and whether, in the expert's opinion, 1 or more people (who may be named) are responsible for, or contributed to, the accident;
  - (c) the claimant's medical condition or prospects of rehabilitation;
  - (d) the claimant's cognitive, functional or vocational capacity.
- (2) Neither the respondent nor the claimant is under an obligation to agree to a proposal to obtain a report under this section.
- (3) The person from whom an expert report is obtained must be a person, agreed to by both parties, with appropriate qualifications and experience in the relevant field.
- (4) The person preparing the expert report must give both parties a copy of the report.

**66 Cost of expert report obtained by agreement**

- (1) If an expert report is obtained by agreement between a respondent and a claimant and the claimant is liable for the cost of obtaining the report, the respondent must, at the claimant's request, reimburse the claimant for the reasonable cost of obtaining the report.
- (2) However, a claimant's right to reimbursement under this section is subject to any agreement between the claimant and the respondent.

**67 Examination by expert if no agreement**

- (1) This section applies if a respondent wants to obtain an expert report about 1 or more of the matters mentioned in section 65 (1) but fails to obtain the claimant's agreement.
- (2) The claimant must comply with a request by the respondent to undergo, at the respondent's expense, either or both of the following:
  - (a) a medical examination by a doctor to be selected by the claimant from a panel of at least 3 doctors with appropriate qualifications and experience in the relevant field nominated by the respondent in the request;
  - (b) an assessment of cognitive, functional or vocational capacity by an expert to be selected by the claimant from a panel of at least 3 experts with appropriate qualifications and experience in the relevant field nominated by the respondent in the request.
- (3) However, a claimant is not obliged to undergo an examination or assessment under this section if it is unreasonable or unnecessarily repetitious.
- (4) If 3 doctors or experts with appropriate qualifications and experience in the relevant field are not available for inclusion on a panel under subsection (2), the number on the panel may be reduced to 2.

**68 Respondent to give documents etc to claimant**

- (1) A respondent must give a claimant—

- (a) copies of the following in the respondent's possession that are directly relevant to a matter in issue in the claim:
    - (i) reports and other documents about the accident claimed to have given rise to the personal injury to which the claim relates;
    - (ii) reports about the claimant's medical condition or prospects of rehabilitation;
    - (iii) reports about the claimant's cognitive, functional or vocational capacity; and
  - (b) if asked by the claimant—
    - (i) information that is in the respondent's possession about the circumstances of, or the reasons for, the accident; or
    - (ii) if the respondent is an insurer of a person for the claim—information that can be found out from the insured person for the claim about the circumstances of, or the reasons for, the accident.
- (2) The respondent must give the copies mentioned in subsection (1) (a)—
- (a) within the period prescribed by regulation (or, if no period is prescribed, within 1 month after the day the respondent receives a complying notice of claim); and
  - (b) to the extent that a report or other document mentioned in subsection (1) (a) comes into the respondent's possession later, within 7 days after the day it comes into the respondent's possession.
- (3) The respondent must respond to a request under subsection (1) (b) within the period prescribed by regulation (or, if no period is prescribed, within 1 month after the day the request is received).

- (4) If a claimant requires information given by a respondent under this section to be verified by statutory declaration, the respondent must verify the information by statutory declaration.
- (5) If a respondent fails, without proper reason, to comply fully with this section, the respondent is liable for costs to the claimant resulting from the failure.

**69 Respondent to give documents etc to contributor**

- (1) A respondent must give a contributor added by the respondent copies of the following that are in the respondent's possession:
  - (a) reports and other documents about the accident claimed to have given rise to the personal injury to which the claim relates;
  - (b) reports about the claimant's medical condition or prospects of rehabilitation;
  - (c) reports about the claimant's cognitive, functional or vocational capacity;
  - (d) reports about the claimant's person injury and of any consequent disabilities;
  - (e) if applicable, information about the medical treatment and rehabilitation services the claimant has sought or obtained;
  - (f) information about the claimant's medical history, as far as it is relevant to the claim, and any other claims for damages for personal injury made by the claimant;
  - (g) information about the claimant's claim for past and future economic loss;
  - (h) information about any claim known to the respondent for gratuitous services consequent on the claimant's personal injury.



- (2) The respondent must give the copies—
- (a) within the period prescribed by regulation (or, if no period is prescribed, within 1 month after the day the respondent gives a contribution notice to the contributor); and
  - (b) to the extent that a report or other document or information mentioned in subsection (1) comes into the respondent's possession later, within 7 days after the day it comes into the respondent's possession.

## 70 Contributor to give documents to respondent

- (1) A contributor must give the respondent who added the contributor copies of reports and other documents about the accident claimed to have given rise to the personal injury to which the claim relates that are in the contributor's possession.
- (2) The contributor must give the copies—
- (a) within the period prescribed by regulation (or, if no period is prescribed, within 1 month after the day the contributor is added as a contributor); and
  - (b) to the extent that a report or other document mentioned in subsection (1) comes into the respondent's possession later, within 7 days after the day it comes into the respondent's possession.

## 71 Alternative provision if more than 200 pages

- (1) In this section:
- relevant section* means any of the following sections:
- section 68 (Respondent to give documents etc to claimant)
  - section 69 (Respondent to give documents etc to contributor)
  - section 70 (Contributor to give documents to respondent).

- (2) This section applies to the extent that a relevant section requires a person (the *disclosing person*) to give copies of reports or other documents or information (*relevant material*) to someone else and the total number of pages of the copies exceeds 200 pages.
- (3) Within the time the disclosing person would, apart from this section, be required to give relevant material to someone else under the relevant section, the disclosing person need only offer the other person a reasonable opportunity to inspect the material.
- (4) If the other person, whether on inspection or otherwise, by written notice given to the disclosing person, requires the disclosing person to give the other person copies of some or all of the relevant material, the disclosing person must comply with the requirement within—
  - (a) if the total number of pages does not exceed 200—1 month after the day the requirement is made; or
  - (b) in any other case—1 month after the day the other person pays 50 cents for each page by which the total number of pages exceeds 200 pages.

*Note* If, under a provision of an Act or statutory instrument, an act is required to be done, the obligation to do the act continues until it is done (see Legislation Act, s 152).

## Part 5.4                      Other provisions—pre-court procedures

### 72                      Nondisclosure of documents etc—client legal privilege

- (1) A party is not obliged to disclose a document or information under this chapter if the document or information is protected by client legal privilege.
- (2) However, an investigative report, medical report or report relevant to the claimant's rehabilitation must be disclosed even though otherwise protected by client legal privilege.
- (3) A regulation may prescribe exceptions to subsection (2).
- (4) If a report mentioned in subsection (2) is required to be disclosed, it may be disclosed with the omission of passages containing only statements of opinion.
- (5) In this section:  
*investigative reports* does not include a document prepared in relation to an application for, an opinion on or a decision about indemnity against the claim from the Territory.

### 73                      Nondisclosure of documents etc—suspected fraud

- (1) If a respondent has reasonable grounds to suspect a claimant of fraud, the respondent may apply to the court for approval to withhold from disclosure under this chapter documents or information that—
  - (a) would alert the claimant to the suspicion; or
  - (b) could help further the fraud.
- (2) The application may be made without notice to the claimant.

- (3) If the court gives approval on application under subsection (1), the respondent may withhold from disclosure the documents or information in accordance with the approval.

**74 Offence not to disclose particular material**

A respondent must not withhold information or documents from disclosure under this chapter if the withholding is not—

- (a) permitted under this chapter; or  
(b) approved by the court.

Maximum penalty: 100 penalty units.

**75 Consequences of failure to give document**

- (1) This section applies if a party fails to comply with a provision of this chapter requiring the party to disclose a document to another party.
- (2) The document cannot be used by the party in a later court proceeding based on the claim, or the deciding of the claim, unless the court orders otherwise.
- (3) If the document comes to the other party's knowledge, the document may be used by the other party.

**76 Privilege generally for documents etc**

The information, reports and other documents given or disclosed under this chapter are protected by the same privileges as if disclosed in a proceeding in the Supreme Court.

**77 No requirement to give documents etc if already in other party's possession**

This chapter does not require a party to give a document or other information to another party if the document or information is already in the possession of the other party.

**78 Court's power to enforce compliance with pt 5.2 and pt 5.3**

- (1) If a party (the *first party*) fails to comply with a duty imposed under part 5.2 or part 5.3, the court may, on the application of a party to whom the duty is owed, order the first party to take stated action to remedy the noncompliance within a time stated by the court.
- (2) The court may make consequential or ancillary orders, including orders about costs.

**79 Need for urgent proceeding**

- (1) The court, on application by a claimant, may give leave to the claimant to begin a proceeding in the court for damages based on a liability for personal injury despite noncompliance with this chapter if the court is satisfied there is an urgent need to begin the proceeding.
- (2) The order giving leave may be made on conditions the court considers appropriate having regard to the circumstances of the case.
- (3) If leave is given, the proceeding begun by leave is stayed until the claimant complies with this chapter or the proceeding is discontinued or otherwise ends.
- (4) However, the proceeding is not stayed if—
  - (a) the court is satisfied that—
    - (i) the claimant is suffering from a terminal condition; and

- (ii) the trial of the proceeding should be expedited; and
  - (b) the court orders the proceeding be given priority in the allocation of a trial date.
- (5) If, under subsection (4), the proceeding is not stayed, this chapter (other than this section) does not apply in relation to the personal injury.

## **80 False or misleading statements**

- (1) A person commits an offence if—
  - (a) the person makes a statement in a notice, response or other document given under this chapter; and
  - (b) the person does so knowing that the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is misleading.

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

- (2) Subsection (1) (b) (i) does not apply if the statement is not false or misleading in a material particular.
- (3) Subsection (1) (b) (ii) does not apply if the omission does not make the statement misleading in a material particular.
- (4) A person commits an offence if—
  - (a) the person makes a statement in a notice, response or other document given under this chapter; and
  - (b) the person is reckless about whether the statement—
    - (i) is false or misleading; or

(ii) omits anything without which the statement is misleading.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (5) Subsection (4) (b) (i) does not apply if the statement is not false or misleading in a material particular.
- (6) Subsection (4) (b) (ii) does not apply if the omission does not make the statement misleading in a material particular.

## Chapter 6      Expert medical evidence

### 81      Purpose of ch 6

The purpose of this chapter is to define the role, and limit the number, of witnesses who may give expert medical evidence in a proceeding based on a claim.

### 82      Definitions for ch 6

In this chapter:

*agreed expert*—see section 84.

*appointed expert*—see section 84.

*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.

*evidence* means evidence given orally or in writing.

*expert*, in relation to an issue, means a person who has specialised knowledge about matters relevant to the issue based on the person's training, study or experience.

*expert medical evidence* means opinion evidence on a medical issue given by an expert in relation to the issue.

*medical issue*—an issue is a *medical issue* if it relates to—

- (a) the medical condition or prospects of rehabilitation of a person;  
or
- (b) the cognitive, functional or vocational capacity of a person; or



- (c) the question whether particular medical treatment amounts to professional negligence.

**83 Application of ch 6**

- (1) This chapter 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 chapter does not apply to a claim under the *Workers Compensation Act 1951*.

**84 Limitation on expert medical evidence**

Expert medical evidence may be given in a proceeding in a court based on a claim only by—

- (a) an expert appointed by the parties under section 85 or section 89 (1) (an *agreed expert*); or
- (b) an expert appointed by the court under section 86 or section 89 (2) (an *appointed expert*).

**85 Agreed expert**

- (1) The parties to the proceeding may agree, in writing, to appoint 1 stated person to give expert medical evidence in the proceeding.
- (2) The agreed expert may be (but need not be)—
- (a) a person who prepared an expert report for the parties under section 65 (Respondent and claimant may jointly arrange for expert report); or
- (b) a person on a panel mentioned in section 67 (Examination by expert if no agreement).
- (3) The agreed expert may give evidence in the proceeding as an expert on any issue on which the expert is qualified to give evidence based on the expert's specialised knowledge.

**86 Appointed expert**

- (1) If the parties do not appoint an agreed expert, the court may, on application by 1 or more of the parties or on its own initiative, appoint a stated person to give expert medical evidence in the proceeding.
- (2) The court may appoint an additional expert, or additional experts, to give expert medical evidence in the proceeding if—
  - (a) expert medical evidence is required on 2 or more issues in the proceeding and the agreed or appointed expert is not qualified to give evidence on all the issues based on the expert's specialised knowledge; or
  - (b) the court considers that the interests of justice otherwise require it.
- (3) The court must not appoint more than 1 expert to give expert medical evidence on any particular issue unless the court considers that the interests of justice require it.
- (4) The court must not appoint a person to give expert medical evidence on an issue unless the court is satisfied the person is an expert in relation to the issue.
- (5) An appointed expert may be (but need not be)—
  - (a) a person who prepared an expert report for the parties under section 65 (Respondent and claimant may jointly arrange for expert report); or
  - (b) a person on a panel mentioned in section 67 (Examination by expert if no agreement).
- (6) An appointed expert may give evidence in the proceeding as an expert on any issue on which the expert is qualified to give evidence based on the expert's specialised knowledge.

**87 Role of expert**

- (1) The role of an agreed or appointed expert is to assist the court impartially on the issue or issues on which the expert is giving expert medical evidence.
- (2) The expert's primary duty is to the court.
- (3) The expert is not an advocate for a party to the proceeding.
- (4) In giving evidence in relation to the question whether particular medical treatment amounts to professional negligence, the expert must have regard to whether the treatment was in accordance with an opinion widely held by a significant number of respected practitioners in Australia in the relevant field.

**88 Documents etc to be given to expert**

The parties to a proceeding must ensure that—

- (a) all reports and other documents or information relevant to the issue or issues on which an agreed or appointed expert is to give evidence are made available to the expert; and
- (b) the expert is jointly briefed by the parties or the parties have equal opportunity to brief the expert.

**89 If agreed or appointed expert unavailable**

- (1) If an agreed expert is not available to give evidence on an issue when required, the court may, on application by the parties, allow the parties to appoint another agreed expert to give evidence on the issue.
- (2) If an appointed expert is not available to give evidence on an issue when required the court may appoint another expert to give evidence on the issue.

**90**      **Costs of experts**

The costs and expenses of an agreed or appointed expert must be paid by the parties in equal shares or as otherwise agreed by them or ordered by the court.

## Chapter 7 Damages

### Part 7.1 Damages for personal injuries— exclusions and limitations

#### 92 Definitions for pt 7.1

In this part:

*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.

#### 93 Application of pt 7.1

- (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*.

#### 94 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.

**95 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.

**96 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.

**97 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.



**98 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:

*average weekly earnings* means—

- (a) the average weekly earnings, States and Territories, seasonally adjusted for the ACT (all males total earnings) contained in *Average Weekly Earnings, Australia* issued by the Australian Statistician; or
- (b) if the Australian Statistician issues a publication (however described) containing average weekly earnings in substitution for, or instead of, the average weekly earnings mentioned in paragraph (a)—the substituted average weekly earnings.

*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.

**99 Tariffs for damages for non-economic loss**

- (1) In deciding damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceeding.
- (2) For that purpose, the parties to the proceeding or their lawyers may bring the court's attention to awards of damages for non-economic loss in those earlier decisions.
- (3) This section does not change the rules for deciding other damages.

(4) In this section:

*non-economic loss* includes the following:

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) disfigurement.

## Part 7.2                      Loss of capacity to perform domestic services

### 100                      Damages for loss of capacity to perform domestic services

- (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 7.3                      Contributory negligence

### 101                      Definitions for pt 7.3

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.

### 102                      Apportionment of liability—contributory negligence

- (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 7.1 (Damages for personal injuries—exclusions and limitations).

### **103 Joint wrongdoers**

Part 2.5 (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 102 for the damage suffered by a person.

### **104 Claims by third parties—contributory negligence**

- (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 102 (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.

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

- (1) This section applies to a case to which section 102 (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 102.

## Part 7.4 Other provisions—damages

### 106 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.

### 107 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.

## **U Chapter 7A Proportionate liability**

### **Chapter 8 Liability of public and other authorities**

#### **108 Application of ch 8**

- (1) This chapter applies in relation to civil liability in tort.
- (2) This chapter extends to any such liability even if the damages are sought in an action for breach of contract or any other action.
- (3) However, this chapter does not apply to—
  - (a) a claim to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies; or
  - (b) a claim under the *Workers Compensation Act 1951*.

#### **109 Definitions for ch 8**

In this chapter:

***duty of care*** means a duty to take reasonable care or to exercise reasonable skill (or both).

***public or other authority*** means any of the following:

- (a) the Territory;
- (b) an administrative unit;
- (c) a territory authority;
- (d) an entity prescribed by regulation for this paragraph;
- (e) any entity so far as the entity exercises a function prescribed by regulation for this paragraph.



**110 Principles about resources, responsibilities etc of public or other authorities**

The following principles apply in deciding in a proceeding whether a public or other authority has a duty of care or has breached a duty of care:

- (a) the functions required to be exercised by the authority are limited by the financial and other resources reasonably available to the authority for exercising the functions;
- (b) the general allocation of the resources by the authority is not open to challenge;
- (c) the functions required to be exercised by the authority are to be decided by reference to the broad range of its activities (and not only by reference to the matter to which the proceeding relates);
- (d) the authority may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceeding relates.

**111 Proceedings against public or other authorities based on breach of statutory duty**

- (1) This section applies to a proceeding based on a claimed breach of a statutory duty by a public or other authority (the *defendant authority*) in relation to the exercise of, or a failure to exercise, a function of the defendant authority.
- (2) For the proceeding, an act or omission of the defendant authority is a breach of statutory duty only if the act or omission was in the circumstances so unreasonable that no authority having the functions of the defendant authority could properly consider the act or omission to be a reasonable exercise of its functions.

- (3) For a function of a public or other authority to prohibit or regulate an activity, this section applies in addition to section 112.

**112 When public or other authority not liable for failure to exercise regulatory functions**

- (1) A public or other authority is not liable in a proceeding so far as the claim in the proceeding is based on the failure of the authority to exercise, or to consider exercising, a function of the authority to prohibit or regulate an activity if the authority could not have been required to exercise the function in a proceeding begun by the claimant.
- (2) Without limiting what is a function to regulate an activity for this section, a function to issue a licence, permit or other authority in relation to an activity, or to register or otherwise authorise a person in relation to an activity, is a function to regulate the activity.

**113 Special nonfeasance protection in relation to roads etc**

- (1) A public or other authority is not liable in a proceeding for harm arising from a failure of the authority to maintain, repair or renew a road, or to consider maintaining, repairing or renewing a road, unless at the time of the claimed failure the authority knew, or ought reasonably to have had known, of the particular risk the materialisation of which resulted in the harm.
- (2) This section does not operate—
- (a) to create a duty of care in relation to a risk only because the authority has actual knowledge of the risk; or
  - (b) to affect any standard of care that would otherwise apply in relation to a risk.

- (3) In this section:

*road* means a street, road, lane, cyclepath, footpath or paved area that is open to, or used by, the public.

**114 Exercise of function or decision to exercise does not create duty**

The fact that a public or other authority exercises or decides to exercise a function does not of itself indicate that the authority is under a duty to exercise the function or that the function should be exercised in particular circumstances or in a particular way.

## Chapter 9 Defamation

### Part 9.1 Preliminary—defamation

#### 115 Definitions for ch 9

In this chapter:

*action* means an action for defamation.

*aggrieved person*, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 116.

*amends agreement*, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 119 (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 9.2 (Resolution of disputes without litigation—defamation)—see section 116.

*offer to make amends* means an offer under section 117.

*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 9.3 (Rules governing litigation of civil claims—defamation)—see section 124.

*publisher*, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 116.

*qualified offer*, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 117 (2).

*tribunal* means a tribunal of any country.

## Part 9.2 Resolution of disputes without litigation—defamation

### 116 Application of pt 9.2

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*).

### 117 Offer to make amends—defamation

- (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.

**118 Reasonable offer to make amends—defamation**

- (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.



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

- (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 117 (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.

**120 False or misleading statement in correction**

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.

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

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.

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

- (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 9.3**                      **Rules governing litigation of civil claims—defamation**

### **123**            **Application of pt 9.3**

This part applies in relation to an action for defamation.

### **124**            **Meaning of *published matter* in pt 9.3**

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.

### **125**            **Slander actionable without special damage**

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

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

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

### **127**            **Defence of truth and public benefit**

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.

**128 Publication of a proceeding of public concern**

- (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 ACT 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.

## **129 Publication of public document**

- (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.

**130 Publication under contract**

- (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.

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

- (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.

**132 Payment into court—defamation**

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

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

- (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.

**134 Defence for defamation—defendant not negligent**

- (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.

**135 Compensation etc provable in mitigation—defamation**

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.

**136 Damages—defamation**

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.

**137 Disclosure of name of contributor**

- (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 9.4                      Other provisions—defamation**

### **138                      Scope of defences not limited**

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

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

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.

## Chapter 10 Trespass

### 141 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.

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

- (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.

## **Chapter 11      Mitigation of strict liability**

### **Part 11.1      Traveller accommodation providers liability**

#### **Division 11.1.1      Preliminary**

##### **143      Purpose of pt 11.1**

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

##### **144      Definitions for pt 11.1**

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.

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

*safe custody facilities*—see section 153 (1).

## 145 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, 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.

**146 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, s 126 and s 132).

**147 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.

**148 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.

**149 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 11.1.2 Liability of accommodation providers**

**150 Application of div 11.1.2**

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.

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

- (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.

**152      Circumstances when limitation does not apply**

- (1) The limitation on the accommodation provider's liability under section 151 (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 151 (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 154 (1) (a) (Notice about pt 11.1); 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 154 (1) (b) in relation to the accommodation unit;
  - (ii) have a system in operation as mentioned in section 154 (2).

### **153 Safe custody facilities**

- (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.

**154 Notice about pt 11.1**

- (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.

*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, s 126 and s 132).

## Part 11.2 Common carriers

### Division 11.2.1 Preliminary—common carriers

#### 155 Purpose of pt 11.2

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

#### 156 Definitions for pt 11.2

In this part:

*common carrier* means a common carrier by land.

*schedule 2 packaged goods*—see section 159 (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 11.2.2 When common law liability of carriers not affected

#### 157 Certain things not protected by pt 11.2

- (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.

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

A public notice (other than a notice mentioned in section 160 (1) (Notice of increased charge for transport of certain goods) or section 165 (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 11.2.3 Liability of common carriers for certain goods worth more than \$20**

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

- (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 160 (1) that is asked for by the carrier for the transport of the goods; and
  - (c) the carrier receives the goods for transport.

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

- (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 159 (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.

**161 Receipt of carrier for increased charge**

- (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 159 (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.



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

- (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 160 (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 11.2.4 Liability of common carriers for certain animals**

**163 Definitions for div 11.2.4**

In this division:

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

*default value*, for an animal, means the amount mentioned in table 164, column 3 for the animal.

## 164 Liability of carriers for certain animals

- (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 165 (1) that is asked for by the carrier for the transport of the animal; and
  - (c) the carrier receives the animal for transport.

**Table 164** 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

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

- (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.

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

- (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 165 (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 11.2.5 Notice, condition or declaration of carrier

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

- (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 11.2.3 (Liability of common carriers for certain goods worth more than \$20).
- (6) In this section:  
*notice* does not include a notice mentioned in section 160 (1) (Notice of increased charge for transport of certain goods) or section 165 (1) (Notice of increased charge for transport of certain animals).

## **Chapter 12      Other liability provisions**

### **Part 12.1      Occupiers liability**

#### **168      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 7.1 (Damages for personal injuries—exclusions and limitations) and part 7.3 (Contributory negligence), other than section 102 (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 12.2                      Liability for damage caused by animals

### 169                      Evidence of breach of duty for animals

- (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 12.3**                      **Liability for fires accidentally begun**

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

- (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.

### **171**                      **Contract between landlord and tenant not affected**

Section 170 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 13 Misrepresentation

### 172 Definitions for ch 13

In this chapter:

*court* includes an arbitrator.

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

### 173 Removal of certain bars to rescission for misrepresentation

- (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 175 (Damages instead of rescission for misrepresentation)

- section 176 (3) (Exclusion clauses—misrepresentation).

#### **174 Damages for misrepresentation**

- (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.

#### **175 Damages instead of rescission for misrepresentation**

- (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 174.
- (4) However, a court must take into account—
  - (a) in assessing damages under section 174 or this section—any award of damages under section 174 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.

## **176 Exclusion clauses—misrepresentation**

- (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.

**177 Misrepresentation in trade or commerce an offence**

- (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.

**178 Employer etc liable for misrepresentation**

- (1) If the misrepresentation mentioned in section 177 (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 177 (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.

**179 Prosecutions for misrepresentation**

- (1) This section applies if in a prosecution for an offence against section 177 or section 178, 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.

## Chapter 14      Limitations on legal costs

### Part 14.1      Maximum costs for certain personal injury damages claims

#### 180      Definitions for ch 14

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).

#### 181      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 182 (Costs incurred after offer of compromise not accepted)
  - section 183 (Exclusion of costs unnecessarily incurred etc)
  - section 184 (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 by regulation for this definition, the prescribed amount.

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

## **182 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 181 (Maximum costs for claims of \$50 000 or less) 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) A regulation 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, s 126 and s 132).

- (4) If the court considers that—
- (a) a lawyer has contravened a regulation 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) A regulation may prohibit or restrict the making of offers of compromise otherwise than under this section.

### **183 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 181 (Maximum costs for claims of \$50 000 or less).

**184 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) A regulation may make provision in relation to the making of orders under this section.

**185 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 184) 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 14.2                      Costs in damages claims if no reasonable prospects of success

### 186                      Definitions for pt 14.2

In this part:

*court* includes a tribunal or arbitrator.

*provable* facts, in relation to a lawyer—a fact is *provable* in relation to a lawyer only if the lawyer believes on reasonable grounds that the material then available to the lawyer provides a proper basis for claiming the fact.

*reasonable prospects of success*—

- (a) a claim has *reasonable prospects of success* if there are reasonable prospects of damages being recovered on the claim; and
- (b) a defence has *reasonable prospects of success* if there are reasonable prospects of the defence defeating the claim or leading to a reduction in the damages recovered on the claim.

### 187                      Application of pt 14.2

- (1) This part applies despite any obligation of the lawyer to act in accordance with the instructions or wishes of the client.
- (2) This part does not apply to legal services provided by a lawyer in relation to a claim for damages at any time before the lawyer gives the certification required under section 188 for the claim.
- (3) Also, this part does not apply to a claim for damages if the court considers that it is in the interests of justice for the claim to be continued and makes an order to that effect.

**188 Certificate that claim or defence has reasonable prospects of success**

- (1) This section applies to a lawyer who is providing legal services on a claim for damages, or in defence of a claim for damages.
- (2) The lawyer must not lodge a pleading in a court for filing, or file a pleading in a court, in relation to the claim unless the lawyer has lodged for filing or filed in the court, or the pleading is accompanied by, a certificate stating that the lawyer believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.
- (3) Contravention of subsection (2) by a lawyer is not an offence but can be professional misconduct or unsatisfactory professional conduct under the *Legal Practitioners Act 1970*, part 8 (Discipline).
- (4) The regulations may make provision in relation to the certificate mentioned in subsection (2), including, for example, about the form of the certificate.

*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, s 126 and s 132).

**189 Costs order against lawyer acting without reasonable prospects of success**

- (1) If the court in which a pleading has been signed in relation to a claim for damages considers that legal services were provided by a lawyer for a client on the claim, or in defence of the claim, without the claim or defence having reasonable prospects of success, the court may (on its own initiative or on the application of a party to the proceeding) make either or both of the following orders:
  - (a) an order directing the lawyer to repay to the client (or to pay) all or part of the costs that the client has been ordered to pay to another party;

- (b) an order directing the lawyer to indemnify a party other than the client against all or part of the costs payable by that party.
- (2) The Supreme Court may, on its own initiative or on the application of a party to the action, make any order that the court considers necessary for this section.
- (3) An application for an order under this section cannot be made after the court concerned (or a taxing officer) has made a final decision about the costs payable in the action.
- (4) A lawyer is not entitled to demand, recover or accept from a client any part of the costs for which the lawyer is directed to indemnify a party under an order under this section.

**190 Onus on lawyer to show facts provided reasonable prospects of success**

- (1) For this part, it must be presumed that legal services were provided for a client by a lawyer on a claim for damages, or in defence of a claim for damages, without the claim or defence having reasonable prospects of success if—
  - (a) the trial court hearing the action finds that the facts established by the evidence before the court do not form the basis for a belief on reasonable grounds that the claim or defence had reasonable prospects of success; or
  - (b) the Supreme Court (if it is not the trial court) is satisfied, because of a finding, or the judgment, of the trial court, that the facts established by the evidence before the trial court do not form the basis for a belief on reasonable grounds that the claim or defence had reasonable prospects of success.
- (2) The lawyer can rebut the presumption by establishing that, when the legal services were provided, there were provable facts that provided a basis for a belief on reasonable grounds that the claim or defence had reasonable prospects of success.

- (3) For the purpose of rebutting the presumption, a lawyer may disclose information or a document despite client legal privilege (including any duty of confidentiality to a client) if—
- (a) the client is the client for whom the legal services were provided; or
  - (b) the client consents to the disclosure; or
  - (c) the court is satisfied that the disclosure is necessary for the lawyer to rebut the presumption.

## **Chapter 15      Miscellaneous**

### **Part 15.1      Mediation and neutral evaluation**

#### **191      Purpose of pt 15.1 etc**

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

#### **192      Meaning of *mediation*, *neutral evaluation* etc**

- (1) For this part, *mediation* is a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.
- (2) For this part, *mediation session* means a meeting arranged for the mediation of a matter under this part.
- (3) 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.
- (4) 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.
- (5) For this part, *neutral evaluation session* means a meeting arranged for the neutral evaluation of a matter under this part.

**193 Who can be a mediator**

A person can be a mediator if the person—

- (a) is a registered mediator under the *Mediation Act 1997*; and
- (b) is appointed by a court or tribunal as a mediator.

**194 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.

**195 Referral by court or tribunal for mediation or neutral evaluation**

- (1) A court or tribunal may, by order, refer any proceeding, or any part of a proceeding, before it for mediation or neutral evaluation, and may do so either with or without the consent of the parties to the proceeding.
- (2) Mediation is to be undertaken by a mediator appointed by the court or tribunal, and neutral evaluation is to be undertaken by an evaluator appointed by the court or tribunal.
- (3) For a proceeding before the Supreme Court, an order under subsection (1), and an appointment under subsection (2), may be made by—
  - (a) the master of the court; or
  - (b) if the rules of court allow—the registrar of the court.



**196 Duty of parties to take part in neutral evaluations**

It is the duty of each party to a proceeding referred for mediation or neutral evaluation under section 195 to take part, genuinely and sincerely, in the mediation or neutral evaluation.

**197 Costs of neutral evaluation**

The costs of a mediation or 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.

**198 Agreements and arrangements arising from mediation sessions**

- (1) The court or tribunal may make orders to give effect to an agreement or arrangement arising out of a mediation session.
- (2) This part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters that are the subject of the mediation session.

*Note* For provisions about privilege, secrecy and protection in relation to mediators, see the *Mediation Act 1997*.

**199 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 200.
  - (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 200 (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.

## **200 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 law of the Territory or the Commonwealth (other than a requirement imposed by a subpoena or other compulsory process).

## **201 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.

## Part 15.2                      General reporting requirements of insurers

### 202                      Who is an *insurer* for pt 15.2

In this part, an *insurer* is a person who carries on the business of insurance, or an activity declared by regulation to be the business of insurance, in relation to—

- (a) property located in the ACT; or
- (b) an act or omission happening in the ACT.

### 203                      Insurers reporting requirements

- (1) On or before 31 July in each year, an insurer must, in accordance with this section, give a report to the Minister about insurance policies held by the insurer at any time in the financial year ending on the previous 30 June in relation to—

- (a) property located in the ACT; or
- (b) an act or omission happening in the ACT.

Maximum penalty: 100 penalty units.

- (2) The report must state for each class of policy prescribed by regulation—
  - (a) the premium paid to the insurer; and
  - (b) the number of claims; and
  - (c) the number of claims that were paid; and
  - (d) the number of claims that were refused; and
  - (e) anything else required under the regulations.
- (3) The report must be given in the way required by regulation.

**204 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 by regulation.

**205 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 203 in the financial year ending on the previous 30 June.

## Part 15.3 Attachment of insurance money

### 206 Amount of liability charge on insurance money payable against liability

- (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.

**207 Enforcement of charge on insurance money**

- (1) A charge under section 206 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 206 (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.

**208 Protection of insurer for pt 15.3 charge**

- (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.



**209      Certain other provisions not affected by pt 15.3**

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 15.4                      Abolition of certain common law actions, rules and remedies**

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

The following actions at common law are abolished:

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

### **211                      Abolition of rule about unity of spouses**

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.

### **212                      Abolition of action of cattle-trespass**

- (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.

### **213                      Abolition of distress damage feasant**

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

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

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.

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

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.

**216 Abolition of rule of common employment**

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.

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

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.

**218 Abolition of action for loss of consortium**

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.

**219 Abolition of rule in Cavalier v Pope**

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.

**220 Partial abolition of Mocambique rule**

- (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.

**221 Abolition of torts of maintenance and champerty**

- (1) The torts of maintenance and champerty are abolished.

*Note* For the abolition of the common law offences of maintenance, champerty and being a common barrator, see the *Law Reform (Miscellaneous Provisions) Act 1955*, s 68.

- (2) Subsection (1) does not affect any rule of law about—
  - (a) the illegality or avoidance of contracts that are tainted with maintenance or are champertous; or

- (b) the misconduct of a lawyer who—
  - (i) engages in conduct that would have been maintenance at common law; or
  - (ii) is a party to a champertous agreement.

## Part 15.5 Other provisions

### 222 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 the Legislation Act, s 255.

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

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

### **U** 222A Determination of fees

### **U** 223 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.

## Chapter 16 Transitional provisions

### 224 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 7.1 (Damages for personal injuries—exclusions and limitations), other than section 99 (Tariffs for damages for non-economic loss), does not apply to a claim arising out of an accident that happened before the commencement of the part.
- (3) Part 14.1 (Maximum costs for certain personal injury damages claims) 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) Also, part 14.1 does not apply to a claim based on a cause of action that arose before the commencement of the part.
- (5) This section expires on 1 November 2005.
- (6) 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.

**225 Application provisions—for Civil Law (Wrongs) Amendment Act 2003**

- (1) The following provisions do not apply to a claim based on a cause of action that arose before the commencement of the provision:
  - (a) part 2.3 (Apologies);
  - (b) section 34 (Mental harm—duty of care);
  - (c) section 35 (Mental harm—damages);
  - (d) chapter 4 (Negligence);
  - (e) chapter 6 (Expert medical evidence);
  - (f) section 99 (Tariffs for damages for non-economic loss);
  - (g) chapter 8 (Liability of public and other authorities);
  - (h) part 14.2 (Costs in damages claims if no reasonable prospects of success);
  - (i) schedule 3 (Equine activities).
- (2) Chapter 5 (Personal injuries claims—pre-court procedures) does not apply to a claim if, before the commencement of the chapter, the claimant had consulted a lawyer to obtain advice about seeking damages for the personal injury.
- (3) Chapter 5 applies to a claim based on a cause of action that arose before 8 March 2004 and in relation to which the claimant had not consulted a lawyer as mentioned in subsection (2) as if section 51 (3) (a) (i) and (ii) read as follows:
  - ‘(i) 8 March 2004; or
  - (ii) if symptoms of the injury were not immediately apparent and did not appear before 8 March 2004—the day the symptoms of the injury first appear;’
- (4) This section expires on 9 September 2006.



- (5) Subsections (1) and (2) are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**229 Abolition of torts of maintenance and champerty—saving of existing rights and liabilities**

- (1) The Legislation Act, section 84 (Saving of operation of repealed and amended laws) applies to the abolition of a tort under section 221 as if the section repealed a law.
- (2) This section expires on 1 November 2005.
- (3) Subsection (1) is declared to be a provision to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

## Schedule 1 Traveller accommodation providers notice

(see s 154)

### 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 159 (1))

<b>column 1 item</b>	<b>column 2 goods</b>
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

## Schedule 3 Equine activities

### 3.1 Definitions for sch 3

In this schedule:

*equine* means a horse, donkey, mule or hinny.

*equine activity* means any of the following:

- (a) an equine show, fair, competition, performance or parade that involves 1 or more equines and 1 or more equine disciplines;
- (b) equine teaching or training activities;
- (c) agisting or boarding equines;
- (d) riding, inspecting or evaluating an equine belonging to someone else, whether or not the owner—
  - (i) receives any reward for use of the equine; or
  - (ii) is permitting a prospective buyer to ride, inspect or evaluate the equine;
- (e) a ride, trip, hunt or other activity (however informal or impromptu) that is sponsored by an equine activity sponsor;
- (f) placing or replacing horseshoes on an equine.

#### Examples for par (a)

- 1 dressage
- 2 3-day events
- 3 performance riding
- 4 polo
- 5 showjumping
- 6 steeplechasing

*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, s 126 and s 132).

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***equine activity sponsor*** means—

- (a) an entity that (whether or not it operates for profit) sponsors, organises or provides a facility for an equine activity; or
- (b) an operator, instructor or promoter of an equine facility.

**Examples for par (a)**

- 1 pony clubs
- 2 riding clubs or schools
- 3 equestrian centres
- 4 school-sponsored classes

***equine facility*** includes an equestrian centre, riding school, stable, clubhouse, fair or arena where an equine activity is held.

***equine professional*** means a person engaged for reward in—

- (a) instructing a participant or renting an equine to a participant to—
  - (i) ride or be a passenger on the equine; or
  - (ii) drive the equine; or
- (b) renting equipment or tack to a participant.

***inherent risks of equine activities*** means the dangers or conditions that are an integral part of equine activities, including, for example—

- (a) the propensity of an equine to behave in ways that may result in injury, harm or death to people on or around them; and
- (b) the unpredictability of an equine's reactions including to sounds, sudden movement and unfamiliar objects, people or animals; and
- (c) hazards such as surface and subsurface conditions; and
- (d) collisions with other equines or objects; and

- (e) the potential of a participant to act negligently that may contribute to injury to the participant or others.

**Examples for par (e)**

- 1 failing to maintain control over an equine
- 2 not acting within the participant's ability

**participant** means a person who participates in an equine activity (whether or not a fee is paid for the participation).

**participate** in an equine activity—

- (a) means—
- (i) ride or be a passenger on an equine; or
  - (ii) drive or train an equine, whether mounted or unmounted; or
  - (iii) assist in medical treatment of an equine, whether mounted or unmounted; or
  - (iv) assist a participant or show management; but
- (b) does not include be a spectator at an equine activity (unless the spectator is in an unauthorised area and in immediate proximity to the equine activity).

**3.2 Application of sch 3**

This schedule does not prevent or limit the liability of an equine activity sponsor, an equine professional or anyone else in relation to—

- (a) activities engaged in as part of the horseracing industry; or
- (b) any action for breach of the *Trade Practices Act 1974* (Cwlth) or the *Fair Trading Act 1992*; or
- (c) a claim under the *Workers Compensation Act 1951*.

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**3.3 Limitation on liability for injury or death of participant**

- (1) An equine activity sponsor, an equine professional or anyone else is not liable for personal injury to a participant resulting from the inherent risks of equine activities.
- (2) However, this section does not prevent or limit the liability of a person (the *defendant*) if—
  - (a) the injury was caused by faulty equipment or tack and the defendant—
    - (i) provided the equipment or tack; and
    - (ii) knew or ought reasonably to have known that the equipment or tack was faulty; or
  - (b) the defendant provided the equine and failed to make reasonable and prudent efforts to assess, based on the participant's representations, the participant's ability to—
    - (i) engage safely in the equine activity; and
    - (ii) safely manage the particular equine; or
  - (c) the injury was caused by a dangerous latent condition of the land or facility used for the equine activity and—
    - (i) the defendant owned, leased or was otherwise in lawful possession of the land or facility; and
    - (ii) the defendant knew, or ought reasonably to have known, of the dangerous latent condition; and
    - (iii) a sign warning about the dangerous latent condition had not been conspicuously displayed on the land or at the facility; or
  - (d) the defendant acted, or omitted to act, in a way that showed intentional or reckless disregard for the safety of the participant and the act or omission caused the injury; or

(e) the defendant intentionally injured the participant.

- (3) Also, this section does not prevent or limit an equine professional's liability to a participant in relation to an equine facility if, before the injury happened, the equine professional had not complied with clause 4 in relation to the facility.

### 3.4 Warning notice

- (1) An equine professional must ensure that a warning notice is displayed—
- (a) on or near an equine facility that is owned, managed or controlled by the equine professional; and
  - (b) so that it can be clearly seen by participants before participating in equine activities at the facility.
- (2) The warning notice must be to the following effect:

#### WARNING

Under the *Civil Law (Wrongs) Act 2002*, an equine professional is not liable for injury to, or the death of, a participant in an equine activity that results from an inherent risk of the activity. This is subject to limitations set out in the Act.

- (3) The warning notice must be in black letters with each letter at least 2cm high.
- (4) The warning notice must also be included in clearly visible print in each written contract the equine professional enters into for the provision of professional services, instruction or rental of equipment or tack to a participant.



**U** Schedule 4 Professional standards

**U** Schedule 5 Occupational associations—  
model code

## **U** Dictionary

(see s 2)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- doctor
- domestic partner (see s 169)
- entity
- foreign country
- indictable offence (see s 190)
- lawyer
- Minister (see s 162)
- proceeding
- property
- (the) Territory.

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

***accommodation provider***—see section 146.

***accommodation unit***—see section 144.

***action***, for chapter 9 (Defamation)—see section 115.

***agent***, of an accommodation provider—see section 144.

***aggrieved person***, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 116.

***agreed expert***, for chapter 6 (Expert medical evidence)—see section 84.

***amends agreement***, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 119 (1).

***animal***, for division 11.2.4 (Liability of common carriers for certain animals)—see section 163.

**apology**, for part 2.3 (Apologies)—see section 13.

**appointed expert**, for chapter 6 (Expert medical evidence)—see section 84.

**child**—

- (a) for part 3.1 (Wrongful act or omission causing death)—see section 23; and
- (b) for part 3.2 (Mental harm)—see section 32.

**claim**—

- (a) for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and
- (b) for chapter 6 (Expert medical evidence)—see section 82; and
- (c) for part 7.1 (Damages for personal injuries—exclusions and limitations)—see section 92.

**claimant**, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49.

**common carrier**—see section 156.

**community organisation**—see section 6.

**community work**—see section 7.

**complying notice of claim**, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49.

**consequential mental harm**, for part 3.2 (Mental harm)—see section 32.

**contribution notice**, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 57 (Respondent may add someone else as contributor).

**contributor**, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49.

**costs**, for chapter 14 (Limitations on legal costs)—see section 180.

**country**, for chapter 9 (Defamation)—see section 115.

**court**—

- (a) for part 2.5 (Proceedings against and contributions between wrongdoers)—see section 19; and
- (b) for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and
- (c) for part 7.1 (Damages for personal injuries—exclusions and limitations)—see section 92; and
- (d) for part 7.3 (Contributory negligence)—see section 101; and
- (e) for chapter 9 (Defamation)—see section 115; and
- (f) for chapter 13 (Misrepresentation)—see section 172; and
- (g) for part 14.1 (Maximum costs for certain personal injury damages claims)—see section 180; and
- (h) for part 14.2 (Costs in damages claims if no reasonable prospects of success)—see section 186.

**damage**—

- (a) for part 2.5 (Proceedings against and contributions between wrongdoers)—see section 19; and
- (b) for part 7.3 (Contributory negligence)—see section 101.

**defamation**—see section 115.

**default value**, for division 11.2.4 (Liability of common carriers for certain animals)—see section 163.

**duty of care**, for chapter 8 (Liability of public and other authorities)—see section 109.

**equine**, for schedule 3 (Equine activities)—see schedule 3, section 3.1.

**equine activity**, for schedule 3 (Equine activities)—see schedule 3, section 3.1.

**equine activity sponsor**, for schedule 3 (Equine activities)—see schedule 3, section 3.1.

**equine facility**, for schedule 3 (Equine activities)—see schedule 3, section 3.1.

**equine professional**, for schedule 3 (Equine activities)—see schedule 3, section 3.1.

**evidence**, for chapter 6 (Expert medical evidence)—see section 82.

**expert**, for chapter 6 (Expert medical evidence)—see section 82.

**expert medical evidence**, for chapter 6 (Expert medical evidence)—see section 82.

**family member**, of a person, for part 3.2 (Mental harm)—see section 32.

**fault**, for part 11.1 (Traveller accommodation providers liability)—see section 144.

**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 148.

**harm**, for chapter 4 (Negligence)—see section 40.

***inherent risks of equine activities***, for schedule 3 (Equine activities)—see schedule 3, section 3.1.

***innkeeper's liability***—see section 147.

***insured***, for part 15.3 (Attachment of insurance money)—see section 206 (1).

***insurer***—

- (a) of a person in relation to a claim, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and
- (b) for part 15.2 (General reporting requirements of insurers)—see section 202.

***intoxicated***—see section 92.

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

***limitation amount***, for part 11.1 (Traveller accommodation providers liability)—see section 144.

***loss***, of property, for part 11.1 (Traveller accommodation providers liability)—see section 144.

***matter in question***, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 116.

***mediation***—see section 192.

***mediation session***—see section 192.

***medical issue***, for chapter 6 (Expert medical evidence)—see section 82.

***member***, of a dead person's family, for part 3.1 (Wrongful act or omission causing death)—see section 23.

***mental harm***, for part 3.2 (Mental harm)—see section 32.

***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;

and, for part 11.1 (Traveller accommodation providers liability), includes a boat, caravan and trailer attached to a motor vehicle.

**negligence**—

(a) for part 3.2 (Mental harm)—see section 32; and

(b) for chapter 4 (Negligence)—see section 40.

**neutral evaluation**—see section 192.

**neutral evaluation session**—see section 192.

**non-fraudulent misrepresentation**, for chapter 13 (Misrepresentation)—see section 172.

**offer to make amends**, for chapter 9 (Defamation)—see section 115.

**parent**—

(a) for part 3.1 (Wrongful act or omission causing death)—see section 23; and

(b) for part 3.2 (Mental harm)—see section 32.

**parliamentary body**—see section 115.

**participant**, for schedule 3 (Equine activities)—see schedule 3, section 3.1.

**participate**, for schedule 3 (Equine activities)—see schedule 3, section 3.1.

**party**, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49.

***personal injury*** means bodily injury, and includes—

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

***personal injury damages***, for chapter 14 (Limitations on legal costs) see section 180.

***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 149.

***provable*** facts, in relation to a lawyer, for part 14.2 (Costs in damages claims if no reasonable prospects of success)—see section 186.

***provide*** traveller accommodation—see section 144.

***public or other authority***, for chapter 8 (Liability of public and other authorities)—see section 109.

***published matter***, for part 9.3 (Rules governing litigation of civil claims—defamation)—see section 124.

***publisher***, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 116.

***pure mental harm***, for part 3.2 (Mental harm)—see section 32.

***qualified offer***, for part 9.2 (Resolution of disputes without litigation—defamation)—see section 117 (2).

***reasonable prospects of success***, for part 14.2 (Costs in damages claims if no reasonable prospects of success)—see section 186.



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

**respondent**, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49.

**safe custody facilities**, for part 11.1 (Traveller accommodation providers liability)—see section 153 (1).

**schedule 2 packaged goods**, for part 11.2 (Common carriers)—see section 159 (1) (Liability of carriers for certain goods worth more than \$20).

**transport**, for part 11.2 (Common carriers)—see section 156.

**traveller accommodation**—see section 145.

**tribunal**, for chapter 9 (Defamation)—see section 115.

**voluntary basis**—see section 6.

**volunteer**—see section 6.

**wrong**—

- (a) for part 2.5 (Proceedings against and contributions between wrongdoers)—see section 19; and
- (b) for part 7.3 (Contributory negligence)—see section 101.

## 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.

### 2 Abbreviation key

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

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### 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 (now pt 11.1) commenced 12 noon 1 July 2003 (s 2 (1))

ch 10 (now ch 14) commenced 1 January 2003 (s 2 (2) and CN2002-13)

pt 11.1 (now pt 15.1) commenced 30 April 2003 (s 2 (2) and CN2002-13)

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

as modified by

**Civil Law (Wrongs) Regulation 2002 SL2002-41**

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

remainder commenced 21 December 2002 (s 2)

as amended by

**Statute Law Amendment Act 2002 (No 2) No 49 pt 3.2**

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

pt 3.2 commenced 17 January 2002 (s 2 (1))

**Civil Law (Wrongs) Amendment Act 2003 A2003-6**

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

remainder commenced 28 March 2003 (s 2)

**Legislation (Gay, Lesbian and Transgender) Amendment Act 2003****A2003-14 sch 1 pt 1.5**

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

sch 1 pt 1.5 commenced 28 March 2003 (s 2)

## Endnotes

3 Legislation history

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**Civil Law (Wrongs) Amendment Act 2003 (No 2) A2003-35 pt 2**

notified LR 8 September 2003

s 1, s 2 commenced 8 September 2003 (LA s 75 (1))

s 13, s 23 commenced 8 March 2004 (s 2 (2) and LA s 79)

pt 2 remainder commenced 9 September 2003 (s 2 (1))

**Statute Law Amendment Act 2003 A2003-41 sch 3 pt 3.5**

notified LR 11 September 2003

s 1, s 2 commenced 11 September 2003 (LA s 75 (1))

sch 3 pt 3.5 commenced 9 October 2003 (s 2 (1))

as modified by

**Civil Law (Wrongs) Amendment Regulations 2004 (No 1) SL2004-8**

notified LR 2 March 2004

reg 1, reg 2 commenced 2 March 2004 (LA s 75 (1))

remainder commenced 3 March 2004 (reg 2)

as amended by

**Construction Occupations Legislation Amendment Act 2004  
A2004-13 sch 2 pt 2.4**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.4 commenced 1 September 2004 (s 2 and see Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

**Emergencies Act 2004 A2004-28 sch 3 pt 3.5**

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

sch 3 pt 3.5 commenced 1 July 2004 (s 2 (1) and CN2004-11)

**Justice and Community Safety Legislation Amendment Act 2004  
(No 2) A2004-32 pt 5**

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

pt 5 commenced 13 July 2004 (s 2 (3))

**Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.8**

notified LR 2 September 2004  
 s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
 sch 1 pt 1.8 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Civil Law (Wrongs) (Proportionate Liability and Professional Standards) Amendment Act 2004 A2004-68**

notified LR 8 September 2004  
 s 1, s 2 commenced 8 September 2004 (LA s 75 (1))  
remainder awaiting commencement (s 2)

*Note* default commencement under LA s 79: 8 March 2005

**Justice and Community Safety Legislation Amendment Act 2005 A2005-5 pt 4**

notified LR 23 February 2005  
 s 1, s 2 commenced 23 February 2005 (LA s 75 (1))  
 pt 4 commenced 24 February 2005 (s 2 (2))

**4 Amendment history****Dictionary**

s 2 orig s 2 om LA s 89 (4)  
 (prev s 3) renum R9 LA (see A2003-35 s 55)

**Notes**

s 3 orig s 3 renum as s 2  
 (prev s 4) renum R9 LA (see A2003-35 s 55)  
 (2), (3) exp 1 November 2003 (s 3 (3))

**Offences against Act—application of Criminal Code etc**

s 4 orig s 4 renum as s 3  
 (prev s 4A) ins A2003-35 s 4  
 renum R9 LA (see A2003-35 s 55)

**Offences against Act—application of Criminal Code etc**

s 4A renum as s 4

**Protection of good samaritans from liability**

s 5 am A2004-28 amdt 3.9

**Apologies**

pt 2.2A hdg renum as pt 2.3 hdg

## Endnotes

### 4 Amendment history

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#### **Apologies**

pt 2.3 hdg orig pt 2.3 hdg renum as pt 2.4 hdg  
(prev pt 2.2A hdg) ins A2003-35 s 5  
renum R9 LA (see A2003-35 s 55)

#### **Application of pt 2.2A**

s 11A renum as s 12

#### **Meaning of *apology* in pt 2.2A**

s 11B renum as s 13

#### **Effect of apology on liability etc**

s 11C renum as s 14

#### **Application of pt 2.3**

s 12 orig s 12 renum as s 15  
(prev s 11A) ins A2003-35 s 5  
renum R9 LA (see A2003-35 s 55)

#### **Meaning of *apology* in pt 2.3**

s 13 orig s 13 renum as s 16  
(prev s 11B) ins A2003-35 s 5  
renum R9 LA (see A2003-35 s 55)

#### **Effect of apology on liability etc**

s 14 orig s 14 renum as s 17  
(prev s 11C) ins A2003-35 s 5  
renum R9 LA (see A2003-35 s 55)

#### **Survival of actions on death**

pt 2.4 hdg orig pt 2.4 hdg renum as pt 2.5 hdg  
(prev pt 2.3 hdg) renum R9 LA (see A2003-35 s 55)

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

s 15 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 15 orig s 15 renum as s 18  
(prev s 12) renum R9 LA (see A2003-35 s 55)

**Damages in surviving cause of action**

s 16 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 16 orig s 16 renum as s 19  
(prev s 13) renum R9 LA (see A2003-35 s 55)

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

s 17 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 17 orig s 17 renum as s 20  
(prev s 14) renum R9 LA (see A2003-35 s 55)

**Saving of rights additional to pt 2.4**

s 18 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 18 orig s 18 renum as s 21  
(prev s 15) renum R9 LA (see A2003-35 s 55)

**Proceedings against and contributions between wrongdoers**

pt 2.5 hdg (prev pt 2.4 hdg) renum R9 LA (see A2003-35 s 55)

**Definitions for pt 2.5**

s 19 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 19 orig s 19 renum as s 22  
(prev s 16) renum R9 LA (see A2003-35 s 55)

**Each of several wrongdoers can be sued**

s 20 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 20 orig s 20 renum as s 23  
(prev s 17) renum R9 LA (see A2003-35 s 55)

**Right of contribution**

s 21 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 21 orig s 21 renum as s 24  
(prev s 18) renum R9 LA (see A2003-35 s 55)

**Effect of pt 2.5**

s 22 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 22 orig s 22 renum as s 25  
(prev s 19) renum R9 LA (see A2003-35 s 55)  
am A2004-13 amdt 2.15

**Definitions for pt 3.1**

s 23 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 23 orig s 23 renum as s 26  
(prev s 20) def **member** am A2003-14 amdt 1.12; pars renum  
R6 LA (see A2003-14 amdt 1.13)  
renum R9 LA (see A2003-35 s 55)

## Endnotes

### 4 Amendment history

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

s 24 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 24 orig s 24 renum as s 27  
(prev s 21) renum R9 LA (see A2003-35 s 55)

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

s 25 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 25 orig s 25 renum as s 28  
(prev s 22) renum R9 LA (see A2003-35 s 55)

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

s 26 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 26 orig s 26 renum as s 29  
(prev s 23) renum R9 LA (see A2003-35 s 55)

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

s 27 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 27 orig s 27 renum as s 30  
(prev s 24) renum R9 LA (see A2003-35 s 55)

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

s 28 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 28 orig s 28 renum as s 31  
(prev s 25) renum R9 LA (see A2003-35 s 55)

#### **Payment into court**

s 29 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 29 orig s 29 renum as s 32  
(prev s 26) renum R9 LA (see A2003-35 s 55)

#### **Special endorsement on originating process**

s 30 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 30 orig s 30 renum as s 33  
(prev s 27) renum R9 LA (see A2003-35 s 55)

#### **Mental harm—duty of care**

s 30A renum as s 34

#### **Mental harm—damages**

s 30B renum as s 35

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

s 31 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 31 orig s 31 renum as s 36  
(prev s 28) renum R9 LA (see A2003-35 s 55)

#### **Meaning of *act of terrorism* for pt 3.3**

s 31A renum as s 37

#### **Limitation of liability for acts of terrorism**

s 31B renum as s 38



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<b>Expiry of pt 3.3</b>	
s 31C	renum as s 39
<b>Negligence</b>	
ch 3A hdg	renum as ch 4 hdg
<b>Preliminary</b>	
pt 3A.1 hdg	renum as pt 4.1 hdg
<b>Definitions for ch 3A</b>	
s 31D	renum as s 40
<b>Application of ch 3A</b>	
s 31DA	renum as s 41
<b>Duty of care</b>	
pt 3A.2 hdg	renum as pt 4.2 hdg
<b>Standard of care</b>	
s 31E	renum as s 42
<b>Precautions against risk—general principles</b>	
s 31F	renum as s 43
<b>Precautions against risk—other principles</b>	
s 31G	renum as s 44
<b>Causation</b>	
pt 3A.3 hdg	renum as pt 4.3 hdg
<b>General principles</b>	
s 31H	renum as s 45
<b>Burden of proof</b>	
s 31I	renum as s 46
<b>Other provisions—negligence</b>	
pt 3A.4 hdg	renum as pt 4.4 hdg
<b>Contributory negligence can defeat claim</b>	
s 31J	renum as s 47
<b>Remedy available if claim fraudulent</b>	
s 31K	renum as s 48
<b>Personal injuries claims—pre-court procedures</b>	
ch 3B hdg	renum as ch 5 hdg
<b>Preliminary</b>	
pt 3B.1 hdg	renum as pt 5.1 hdg
<b>Definitions for ch 3B</b>	
s 31N	renum as s 49

## Endnotes

### 4 Amendment history

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#### **Application of ch 3B**

s 31NA renum as s 50

#### **Claims procedures**

pt 3B.2 hdg renum as pt 5.2 hdg

#### **Notice of claim**

s 31O renum as s 51

#### **Preliminary response to claimant**

s 31P renum as s 52

#### **Acknowledgment that proper respondent not admission of liability**

s 31Q renum as s 53

#### **Respondent's response to notice of claim**

s 31R renum as s 54

#### **Claimant may add later respondents**

s 31S renum as s 55

#### **Multiple respondents**

s 31T renum as s 56

#### **Respondent may add someone else as contributor**

s 31U renum as s 57

#### **Contributor's response**

s 31V renum as s 58

#### **Claimant's failure to give complying notice of claim**

s 31W renum as s 59

#### **Legal disabilities**

s 31X renum as s 60

#### **Respondent must attempt to resolve claim**

s 31Y renum as s 61

#### **Consequences of non-compliance with pt 3B.2**

s 31Z renum as s 62

#### **Obligations of parties to give documents and information**

pt 3B.3 hdg renum as pt 5.3 hdg

#### **Purpose of pt 3B.3**

s 31ZA renum as s 63

#### **Claimant to give documents etc to respondent**

s 31ZB renum as s 64

#### **Respondent and claimant may jointly arrange for expert report**

s 31ZC renum as s 65

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<b>Cost of expert report obtained by agreement</b>	
s 31ZD	renum as s 66
<b>Examination by expert if no agreement</b>	
s 31ZE	renum as s 67
<b>Respondent to give documents etc to claimant</b>	
s 31ZF	renum as s 68
<b>Respondent to give documents etc to contributor</b>	
s 31ZG	renum as s 69
<b>Contributor to give documents to respondent</b>	
s 31ZH	renum as s 70
<b>Alternative provision if more than 200 pages</b>	
s 31ZI	renum as s 71
<b>Other provisions—pre-court procedures</b>	
pt 3B.4 hdg	renum as pt 5.4 hdg
<b>Nondisclosure of documents etc—client legal privilege</b>	
s 31ZJ	renum as s 72
<b>Nondisclosure of documents etc—suspected fraud</b>	
s 31ZK	renum as s 73
<b>Offence not to disclose particular material</b>	
s 31ZL	renum as s 74
<b>Consequences of failure to give document</b>	
s 31ZM	renum as s 75
<b>Privilege generally for documents etc</b>	
s 31ZN	renum as s 76
<b>No requirement to give documents etc if already in other party's possession</b>	
s 31ZO	renum as s 77
<b>Court's power to enforce compliance with pt 3B.2 and pt 3B.3</b>	
s 31ZP	renum as s 78
<b>Need for urgent proceeding</b>	
s 31ZQ	renum as s 79
<b>False or misleading statements</b>	
s 31ZR	renum as s 80
<b>Expert medical evidence</b>	
ch 3C hdg	renum as ch 6 hdg
<b>Purpose of ch 3C</b>	
s 31ZT	renum as s 81

## Endnotes

### 4 Amendment history

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#### **Definitions for ch 3C**

s 31ZU renum as s 82

#### **Application of ch 3C**

s 31ZV renum as s 83

#### **Limitation on expert medical evidence**

s 31ZW renum as s 84

#### **Agreed expert**

s 31ZX renum as s 85

#### **Appointed expert**

s 31ZY renum as s 86

#### **Role of expert**

s 31ZYA renum as s 87

#### **Documents etc to be given to expert**

s 31ZZ renum as s 88

#### **If agreed or appointed expert unavailable**

s 31ZZA renum as s 89

#### **Costs of experts**

s 31ZZB renum as s 90

#### **Rules etc to make further provision**

s 31ZZC renum as s 91

#### **Mental harm**

pt 3.2 hdg sub A2003-35 s 8

**Definitions for pt 3.2**

s 32 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 32 orig s 32 renum as s 92  
(prev s 29) def **consequential mental harm** ins A2003-35 s 9  
def **family member** am A2003-14 amdt 1.14; pars renum R6  
LA (see A2003-14 amdt 1.15)  
def **mental harm** ins A2003-35 s 9  
def **negligence** ins A2003-35 s 9  
def **pure mental harm** ins A2003-35 s 9  
renum R9 LA (see A2003-35 s 55)

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

s 33 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 33 orig s 33 renum as s 93  
(prev s 30) renum R9 LA (see A2003-35 s 55)

**Mental harm—duty of care**

s 34 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 34 orig s 34 renum as s 94  
(prev s 30A) ins A2003-35 s 10  
renum R9 LA (see A2003-35 s 55)

**Mental harm—damages**

s 35 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 35 orig s 35 renum as s 95  
(prev s 30B) ins A2003-35 s 10  
renum R9 LA (see A2003-35 s 55)

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

s 36 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 36 orig s 36 renum as s 96  
(prev s 31) am A2003-14 amdt 1.16; A2003-35 s 11  
renum R9 LA (see A2003-35 s 55)

**Temporary exclusion of liability for terrorism-associated risks**

pt 3.3 hdg ins A2003-6 s 4

**Meaning of act of terrorism for pt 3.3**

s 37 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 37 orig s 37 renum as s 97  
(prev s 31A) ins A2003-6 s 4  
renum R9 LA (see A2003-35 s 55)

**Limitation of liability for acts of terrorism**

s 38 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 38 orig s 38 renum as s 98  
(prev s 31B) ins A2003-6 s 4  
renum R9 LA (see A2003-35 s 55)  
am A2004-32 s 62

## Endnotes

### 4 Amendment history

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#### **Tariffs for damages for non-economic loss**

s 38A renum as s 99

#### **Expiry of pt 3.3**

s 39 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 39 orig s 39 renum as s 100  
(prev s 31C) ins A2003-6 s 4  
renum R9 LA (see A2003-35 s 55)  
om A2004-32 s 63

#### **Negligence**

ch 4 hdg orig ch 4 hdg renum as ch 7 hdg  
(prev ch 3A hdg) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

#### **Preliminary**

pt 4.1 hdg orig pt 4.1 hdg renum as pt 7.1 hdg  
(prev pt 3A.1 hdg) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

#### **Definitions for ch 4**

s 40 orig s 40 renum as s 101  
(prev s 31D) ins A2003-35 s 12  
def **harm** ins A2003-35 s 12  
def **negligence** ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

#### **Application of ch 4**

s 41 orig s 41 renum as s 102  
(prev s 31DA) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

#### **Duty of care**

pt 4.2 hdg orig pt 4.2 hdg renum as pt 7.2 hdg  
(prev pt 3A.2 hdg) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

#### **Standard of care**

s 42 orig s 42 renum as s 103  
(prev s 31E) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

#### **Precautions against risk—general principles**

s 43 orig s 43 renum as s 104  
(prev s 31F) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

#### **Precautions against risk—other principles**

s 44 orig s 44 renum as s 105  
(prev s 31G) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

**Causation**

pt 4.3 hdg orig pt 4.3 hdg renum as pt 7.3 hdg  
(prev pt 3A.3 hdg) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

**General principles**

s 45 orig s 45 renum as s 106  
(prev s 31H) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

**Burden of proof**

s 46 orig s 46 renum as s 107  
(prev s 31I) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

**Liability of public and other authorities**

ch 4A hdg renum as ch 8 hdg

**Application of ch 4A**

s 46A renum as s 108

**Definitions for ch 4A**

s 46B renum as s 109

**Principles about resources, responsibilities etc of public or other authorities**

s 46C renum as s 110

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

s 46D renum as s 111

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

s 46E renum as s 112

**Special nonfeasance protection in relation to roads etc**

s 46F renum as s 113

**Exercise of function or decision to exercise does not create duty**

s 46G renum as s 114

**Other provisions—negligence**

pt 4.4 hdg orig pt 4.4 hdg renum as pt 7.4 hdg  
(prev pt 3A.4 hdg) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

**Contributory negligence can defeat claim**

s 47 orig s 47 renum as s 115  
(prev s 31J) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

## Endnotes

### 4 Amendment history

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#### **Remedy available if claim fraudulent**

s 48 orig s 48 renum as s 116  
(prev s 31K) ins A2003-35 s 12  
renum R9 LA (see A2003-35 s 55)

#### **Personal injuries claims—pre-court procedures**

ch 5 hdg orig ch 5 hdg renum as ch 9 hdg  
(prev ch 3B hdg) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

#### **Preliminary**

pt 5.1 hdg orig pt 5.1 hdg renum as pt 9.1 hdg  
(prev pt 3B.1 hdg) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

#### **Definitions for ch 5**

s 49 orig s 49 renum as s 117  
(prev s 31N) ins A2003-35 s 13  
def **claim** ins A2003-35 s 13  
def **claimant** ins A2003-35 s 13  
def **complying notice of claim** ins A2003-35 s 13  
def **contribution notice** ins A2003-35 s 13  
def **contributor** ins A2003-35 s 13  
def **court** ins A2003-35 s 13  
def **insurer** ins A2003-35 s 13  
def **party** ins A2003-35 s 13  
def **respondent** ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

#### **Application of ch 5**

s 50 orig s 50 renum as s 118  
(prev s 31NA) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

#### **Claims procedures**

pt 5.2 hdg orig pt 5.2 hdg renum as ch 9.2 hdg  
(prev pt 3B.2 hdg) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

#### **Notice of claim**

s 51 orig s 51 renum as s 119  
(prev s 31O) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)  
am A2005-5 s 10

#### **Preliminary response to claimant**

s 52 orig s 52 renum as s 120  
(prev s 31P) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)



**Acknowledgment that proper respondent not admission of liability**

s 53 orig s 53 renum as s 121  
(prev s 31Q) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Respondent's response to notice of claim**

s 54 orig s 54 renum as s 122  
(prev s 31R) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Claimant may add later respondents**

s 55 orig s 55 renum as s 123  
(prev s 31S) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Multiple respondents**

s 56 orig s 56 renum as s 124  
(prev s 31T) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Respondent may add someone else as contributor**

s 57 orig s 57 renum as s 125  
(prev s 31U) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Contributor's response**

s 58 orig s 58 renum as s 126  
(prev s 31V) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Claimant's failure to give complying notice of claim**

s 59 orig s 59 renum as s 127  
(prev s 31W) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Legal disabilities**

s 60 orig s 60 renum as s 128  
(prev s 31X) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Respondent must attempt to resolve claim**

s 61 orig s 61 renum as s 129  
(prev s 31Y) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Consequences of  non-compliance with pt 3B.2**

s 62 orig s 62 renum as s 130  
(prev s 31Z) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

## Endnotes

### 4 Amendment history

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**Obligations of parties to give documents and information**

pt 5.3 hdg orig pt 5.3 hdg renum as pt 9.3 hdg  
(prev pt 3B.3 hdg) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Purpose of pt 5.3**

s 63 orig s 63 renum as s 131  
(prev s 31ZA) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Claimant to give documents etc to respondent**

s 64 orig s 64 renum as s 132  
(prev s 31ZB) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Respondent and claimant may jointly arrange for expert report**

s 65 orig s 65 renum as s 133  
(prev s 31ZC) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Cost of expert report obtained by agreement**

s 66 orig s 66 renum as s 134  
(prev s 31ZD) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Examination by expert if no agreement**

s 67 orig s 67 renum as s 135  
(prev s 31ZE) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Respondent to give documents etc to claimant**

s 68 orig s 68 renum as s 136  
(prev s 31ZF) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)  
am A2004-32 s 64

**Respondent to give documents etc to contributor**

s 69 orig s 69 renum as s 137  
(prev s 31ZG) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Contributor to give documents to respondent**

s 70 orig s 70 renum as s 138  
(prev s 31ZH) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Alternative provision if more than 200 pages**

s 71 orig s 71 renum as s 139  
(prev s 31ZI) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Other provisions—pre-court procedures**

pt 5.4 hdg orig pt 5.4 hdg renum as pt 9.4 hdg  
(prev pt 3B.4 hdg) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Nondisclosure of documents etc—client legal privilege**

s 72 orig s 72 renum as s 140  
(prev s 31ZJ) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Nondisclosure of documents etc—suspected fraud**

s 73 orig s 73 renum as s 141  
(prev s 31ZK) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Offence not to disclose particular material**

s 74 orig s 74 renum as s 142  
(prev s 31ZL) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Consequences of failure to give document**

s 75 orig s 75 renum as s 143  
(prev s 31ZM) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Privilege generally for documents etc**

s 76 orig s 76 renum as s 144  
(prev s 31ZN) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**No requirement to give documents etc if already in other party's possession**

s 77 orig s 77 renum as s 145  
(prev s 31ZO) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Court's power to enforce compliance with pt 5.2 and pt 5.3**

s 78 orig s 78 renum as s 146  
(prev s 31ZP) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**Need for urgent proceeding**

s 79 orig s 79 renum as s 147  
(prev s 31ZQ) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

**False or misleading statements**

s 80 orig s 80 renum as s 148  
(prev s 31ZR) ins A2003-35 s 13  
renum R9 LA (see A2003-35 s 55)

## Endnotes

### 4 Amendment history

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#### **Expert medical evidence**

ch 6 hdg orig ch 6 hdg renum as ch 10 hdg  
(prev ch 3C hdg) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

#### **Purpose of ch 6**

s 81 orig s 81 renum as s 149  
(prev s 31ZT) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

#### **Definitions for ch 6**

s 82 orig s 82 renum as s 150  
(prev s 31ZU) ins A2003-35 s 14  
def **agreed expert** ins A2003-35 s 14  
def **appointed expert** ins A2003-35 s 14  
def **claim** ins A2003-35 s 14  
def **evidence** ins A2003-35 s 14  
def **expert** ins A2003-35 s 14  
def **expert medical evidence** ins A2003-35 s 14  
def **medical issue** ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

#### **Application of ch 6**

s 83 orig s 83 renum as s 151  
(prev s 31ZV) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

#### **Limitation on expert medical evidence**

s 84 orig s 84 renum as s 152  
(prev s 31ZW) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

#### **Agreed expert**

s 85 orig s 85 renum as s 153  
(prev s 31ZX) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

#### **Appointed expert**

s 86 orig s 86 renum as s 154  
(prev s 31ZY) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

#### **Role of expert**

s 87 orig s 87 om LA s 89 (3)  
(prev s 31ZYA) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

**Documents etc to be given to expert**

s 88 orig s 88 renum as s 155  
(prev s 31ZZ) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

**If agreed or appointed expert unavailable**

s 89 orig s 89 renum as s 156  
(prev s 31ZZA) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

**Costs of experts**

s 90 orig s 90 renum as s 157  
(prev s 31ZZB) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)

**Rules etc to make further provision**

s 91 orig s 91 renum as s 158  
(prev s 31ZZC) ins A2003-35 s 14  
renum R9 LA (see A2003-35 s 55)  
om A2004-60 amdt 1.32

**Damages**

ch 7 hdg orig ch 7 hdg renum as ch 11 hdg  
(prev ch 4 hdg) renum R9 LA (see A2003-35 s 55)

**Damages for personal injuries—exclusions and limitations**

pt 7.1 hdg orig pt 7.1 hdg renum as pt 11.1 hdg  
(prev pt 4.1 hdg) sub A2003-35 s 15  
renum R9 LA (see A2003-35 s 55)

**Definitions for pt 7.1**

s 92 orig s 92 renum as s 159  
(prev s 32) def **accident** om A2003-35 s 16  
def **motor accident** om A2003-35 s 16  
def **motor vehicle** om A2003-35 s 16  
def **personal injury** om A2003-35 s 16  
renum R9 LA (see A2003-35 s 55)

**Application of pt 7.1**

s 93 orig s 93 renum as s 160  
(prev s 33) renum R9 LA (see A2003-35 s 55)

**Exclusion of liability if conduct an offence**

s 94 orig s 94 renum as s 161  
(prev s 34) renum R9 LA (see A2003-35 s 55)

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

s 95 orig s 95 renum as s 162  
(prev s 35) renum R9 LA (see A2003-35 s 55)

## Endnotes

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

s 96 orig s 96 renum as s 163  
(prev s 36) renum R9 LA (see A2003-35 s 55)

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

s 97 orig s 97 renum as s 164  
(prev s 37) renum R9 LA (see A2003-35 s 55)

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

s 98 orig s 98 renum as s 165  
(prev s 38) renum R9 LA (see A2003-35 s 55)  
am A2003-41 amdt 3.19, amdt 3.20

### **Tariffs for damages for non-economic loss**

s 99 orig s 99 renum as s 166  
(prev s 38A) ins A2003-35 s 17  
renum R9 LA (see A2003-35 s 55)

### **Loss of capacity to perform domestic services**

pt 7.2 hdg orig pt 7.2 hdg renum as pt 11.2 hdg  
(prev pt 4.2 hdg) renum R9 LA (see A2003-35 s 55)

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

s 100 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 100 orig s 100 renum as s 167  
(prev s 39) renum R9 LA (see A2003-35 s 55)

### **Contributory negligence**

pt 7.3 hdg orig pt 7.3 hdg renum as pt 11.3 hdg  
(prev pt 4.3 hdg) renum R9 LA (see A2003-35 s 55)

### **Definitions for pt 7.3**

s 101 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 101 orig s 101 renum as s 168  
(prev s 40) renum R9 LA (see A2003-35 s 55)

### **Apportionment of liability—contributory negligence**

s 102 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 102 orig s 102 renum as s 169  
(prev s 41) renum R9 LA (see A2003-35 s 55)

### **Joint wrongdoers**

s 103 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 103 orig s 103 renum as s 170  
(prev s 42) renum R9 LA (see A2003-35 s 55)

**Claims by third parties—contributory negligence**

s 104 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 104 orig s 104 renum as s 171  
(prev s 43) renum R9 LA (see A2003-35 s 55)

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

s 105 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 105 orig s 105 renum as s 172  
(prev s 44) renum R9 LA (see A2003-35 s 55)

**Other provisions—damages**

pt 7.4 hdg orig pt 7.4 hdg renum as pt 11.4 hdg  
(prev pt 4.4 hdg) renum R9 LA (see A2003-35 s 55)

**Court may make consent order for structured settlement**

s 106 orig s 106 renum as s 173  
(prev s 45) renum R9 LA (see A2003-35 s 55)

**Independent finding of liability and award of damages**

s 107 orig s 107 renum as s 174  
(prev s 46) renum R9 LA (see A2003-35 s 55)

**Proportionate liability**

ch 7A hdg ins A2004-68 s 4

**Definitions for ch 7A**

s 107A ins A2004-68 s 4  
def **apportionable** ins A2004-68 s 4  
def **concurrent wrongdoer** ins A2004-68 s 4  
def **defendant** ins A2004-68 s 4

**Application of ch 7A—apportionable claims**

s 107B ins A2004-68 s 4

**Meaning of consumer claim for pt 7A**

s 107C ins A2004-68 s 4

**Concurrent wrongdoers**

s 107D ins A2004-68 s 4

**Certain wrongdoers not to have benefit of apportionment**

s 107E ins A2004-68 s 4

**Proportionate liability for apportionable claims**

s 107F ins A2004-68 s 4

**Defendant to tell claimant about concurrent wrongdoers**

s 107G ins A2004-68 s 4

**Contribution not recoverable from defendant**

s 107H ins A2004-68 s 4

## Endnotes

4 Amendment history

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### **Subsequent proceeding by claimant**

s 107I ins A2004-68 s 4

### **Joining non-party concurrent wrongdoer**

s 107J ins A2004-68 s 4

### **Ch 7A does not affect certain other liability**

s 107K ins A2004-68 s 4

### **Liability of public and other authorities**

ch 8 hdg orig ch 8 hdg renum as ch 12 hdg  
(prev ch 4A hdg) ins A2003-35 s 19  
renum R9 LA (see A2003-35 s 55)

### **Application of ch 8**

s 108 orig s 108 renum as s 175  
(prev s 46A) ins A2003-35 s 19  
renum R9 LA (see A2003-35 s 55)

### **Definitions for ch 8**

s 109 orig s 109 renum as s 176  
(prev s 46B) ins A2003-35 s 19  
def **duty of care** ins A2003-35 s 19  
def **public or other authority** ins A2003-35 s 19  
renum R9 LA (see A2003-35 s 55)

### **Principles about resources, responsibilities etc of public or other authorities**

s 110 orig s 110 renum as s 177  
(prev s 46C) ins A2003-35 s 19  
renum R9 LA (see A2003-35 s 55)

### **Proceedings against public or other authorities based on breach of statutory duty**

s 111 orig s 111 renum as s 178  
(prev s 46D) ins A2003-35 s 19  
renum R9 LA (see A2003-35 s 55)

### **When public or other authority not liable for failure to exercise regulatory functions**

s 112 orig s 112 renum as s 179  
(prev s 46E) ins A2003-35 s 19  
renum R9 LA (see A2003-35 s 55)

### **Special nonfeasance protection in relation to roads etc**

s 113 orig s 113 renum as s 180  
(prev s 46F) ins A2003-35 s 19  
renum R9 LA (see A2003-35 s 55)



**Exercise of function or decision to exercise does not create duty**

s 114 orig s 114 renum as s 181  
(prev s 46G) ins A2003-35 s 19  
renum R9 LA (see A2003-35 s 55)

**Defamation**

ch 9 hdg orig ch 9 hdg renum as ch 13 hdg  
(prev ch 5 hdg) renum R9 LA (see A2003-35 s 55)

**Preliminary—defamation**

pt 9.1 hdg (prev pt 5.1 hdg) renum R9 LA (see A2003-35 s 55)

**Definitions for ch 9**

s 115 orig s 115 renum as s 182  
(prev s 47) renum R9 LA (see A2003-35 s 55)

**Resolution of disputes without litigation—defamation**

pt 9.2 hdg (prev pt 5.2 hdg) renum R9 LA (see A2003-35 s 55)

**Application of pt 9.2**

s 116 orig s 116 renum as s 183  
(prev s 48) renum R9 LA (see A2003-35 s 55)

**Offer to make amends—defamation**

s 117 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 117 orig s 117 renum as s 184  
(prev s 49) renum R9 LA (see A2003-35 s 55)

**Reasonable offer to make amends—defamation**

s 118 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 118 orig s 118 renum as s 185  
(prev s 50) renum R9 LA (see A2003-35 s 55)

**Definitions for pt 10.2**

s 118A renum as s 186

**Application of pt 10.2**

s 118B renum as s 187

**Certificate that claim or defence has reasonable prospects of success**

s 118C renum as s 188

**Costs order against lawyer acting without reasonable prospects of success**

s 118D renum as s 189

**Onus on lawyer to show facts provided reasonable prospects of success**

s 118E renum as s 190

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

s 119 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 119 orig s 119 renum as s 191  
(prev s 51) renum R9 LA (see A2003-35 s 55)

## Endnotes

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#### **False or misleading statement in correction**

s 120 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 120 orig s 120 renum as s 192  
(prev s 52) renum R9 LA (see A2003-35 s 55)

#### **Who can be a mediator**

s 120A renum as s 193

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

s 121 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 121 orig s 121 renum as s 194  
(prev s 53) renum R9 LA (see A2003-35 s 55)

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

s 122 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 122 orig s 122 renum as s 195  
(prev s 54) renum R9 LA (see A2003-35 s 55)

#### **Rules governing litigation of civil claims—defamation**

pt 9.3 hdg (prev pt 5.3 hdg) renum R9 LA (see A2003-35 s 55)

#### **Application of pt 9.3**

s 123 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 123 orig s 123 renum as s 196  
(prev s 55) renum R9 LA (see A2003-35 s 55)

#### **Meaning of *published matter* in pt 9.3**

s 124 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 124 orig s 124 renum as s 197  
(prev s 56) renum R9 LA (see A2003-35 s 55)

#### **Agreements and arrangements arising from mediation sessions**

s 124A renum as s 198

#### **Slander actionable without special damage**

s 125 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 125 orig s 125 renum as s 199  
(prev s 57) renum R9 LA (see A2003-35 s 55)

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

s 126 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 126 orig s 126 renum as s 200  
(prev s 58) renum R9 LA (see A2003-35 s 55)

#### **Defence of truth and public benefit**

s 127 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 127 orig s 127 renum as s 201  
(prev s 59) renum R9 LA (see A2003-35 s 55)

**Publication of a proceeding of public concern**

s 128 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 128 orig s 128 renum as s 202  
(prev s 60) renum R9 LA (see A2003-35 s 55)

**Publication of public document**

s 129 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 129 orig s 129 renum as s 203  
(prev s 61) renum R9 LA (see A2003-35 s 55)

**Publication under contract**

s 130 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 130 orig s 130 renum as s 204  
(prev s 62) renum R9 LA (see A2003-35 s 55)

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

s 131 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 131 orig s 131 renum as s 205  
(prev s 63) renum R9 LA (see A2003-35 s 55)

**Payment into court—defamation**

s 132 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 132 orig s 132 renum as s 206  
(prev s 64) renum R9 LA (see A2003-35 s 55)

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

s 133 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 133 orig s 133 renum as s 207  
(prev s 65) renum R9 LA (see A2003-35 s 55)

**Defence for defamation—defendant not negligent**

s 134 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 134 orig s 134 renum as s 208  
(prev s 66) renum R9 LA (see A2003-35 s 55)

**Compensation etc provable in mitigation—defamation**

s 135 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 135 orig s 135 renum as s 209  
(prev s 67) renum R9 LA (see A2003-35 s 55)

**Damages—defamation**

s 136 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 136 orig s 136 renum as s 210  
(prev s 68) renum R9 LA (see A2003-35 s 55)

**Disclosure of name of contributor**

s 137 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 137 orig s 137 renum as s 211  
(prev s 69) renum R9 LA (see A2003-35 s 55)

## Endnotes

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#### **Other provisions—defamation**

pt 9.4 hdg (prev pt 5.4 hdg) renum R9 LA (see A2003-35 s 55)

#### **Scope of defences not limited**

s 138 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 138 orig s 138 renum as s 212  
(prev s 70) renum R9 LA (see A2003-35 s 55)

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

s 139 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 139 orig s 139 renum as s 213  
(prev s 71) renum R9 LA (see A2003-35 s 55)

#### **Review of certain provisions of ch 9**

s 140 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 140 orig s 140 renum as s 214  
(prev s 72) renum R9 LA (see A2003-35 s 55)  
exp 1 January 2005 (s 140 (3))

#### **Trespass**

ch 10 hdg orig ch 10 hdg renum as ch 14 hdg  
(prev ch 6 hdg) renum R9 LA (see A2003-35 s 55)

#### **Defence to action for trespass to land**

s 141 orig s 141 renum as s 215  
(prev s 73) renum R9 LA (see A2003-35 s 55)

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

s 142 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 142 orig s 142 renum as s 216  
(prev s 74) renum R9 LA (see A2003-35 s 55)

#### **Mitigation of strict liability**

ch 11 hdg orig ch 11 hdg renum as ch 15 hdg  
(prev ch 7 hdg) renum R9 LA (see A2003-35 s 55)

#### **Traveller accommodation providers liability**

pt 11.1 hdg orig pt 11.1 renum as pt 15.1 hdg  
(prev pt 7.1 hdg) renum R9 LA (see A2003-35 s 55)

#### **Preliminary**

div 11.1.1 hdg (prev div 7.1.1 hdg) renum R9 LA (see A2003-35 s 55)

#### **Purpose of pt 11.1**

s 143 orig s 143 renum as s 217  
(prev s 75) renum R9 LA (see A2003-35 s 55)

#### **Definitions for pt 11.1**

s 144 orig s 144 renum as s 218  
(prev s 76) def **motor vehicle** om A2003-35 s 20  
renum R9 LA (see A2003-35 s 55)

**Meaning of *traveller accommodation***

s 145 orig s 145 renum as s 219  
(prev s 77) renum R9 LA (see A2003-35 s 55)

**Meaning of *accommodation provider***

s 146 orig s 146 renum as s 220  
(prev s 78) renum R9 LA (see A2003-35 s 55)

**Abolition of torts of maintenance and champerty**

s 146A renum as s 221

**Meaning of *innkeeper's liability***

s 147 orig s 147 renum as s 222  
(prev s 79) renum R9 LA (see A2003-35 s 55)

**Meaning of *guest***

s 148 orig s 148 renum as s 223  
(prev s 80) renum R9 LA (see A2003-35 s 55)

**Meaning of *property of guest***

s 149 orig s 149 om LA s 89 (3)  
(prev s 81) renum R9 LA (see A2003-35 s 55)

**Liability of accommodation providers**

div 11.1.2 hdg (prev div 7.1.2 hdg) renum R9 LA (see A2003-35 s 55)

**Application of div 11.1.2**

s 150 orig s 150 renum as s 224  
(prev s 82) renum R9 LA (see A2003-35 s 55)

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

s 151 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 151 orig s 151 renum as s 226  
(prev s 83) renum R9 LA (see A2003-35 s 55)

**Circumstances when limitation does not apply**

s 152 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 152 orig s 152 exp 1 January 2003 (s 152 (3))  
(prev s 84) renum R9 LA (see A2003-35 s 55)

**Safe custody facilities**

s 153 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 153 orig s 153 renum as s 216  
(prev s 85) renum R9 LA (see A2003-35 s 55)

**Notice about pt 11.1**

s 154 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 154 orig s 154 renum as s 216  
(prev s 86) renum R9 LA (see A2003-35 s 55)

## Endnotes

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### **Common carriers**

pt 11.2 hdg orig pt 11.2 hdg renum as pt 15.2 hdg  
(prev pt 7.2 hdg) renum R9 LA (see A2003-35 s 55)

### **Preliminary—common carriers**

div 11.2.1 hdg (prev div 7.2.1 hdg) renum R9 LA (see A2003-35 s 55)

### **Abolition of torts of maintenance and champerty—saving of existing rights and liabilities**

s 154A renum as s 229

### **Purpose of pt 11.2**

s 155 orig s 155 renum as s 231  
(prev s 88) renum R9 LA (see A2003-35 s 55)

### **Definitions for pt 11.2**

s 156 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 156 orig s 156 renum as s 231  
(prev s 89) renum R9 LA (see A2003-35 s 55)

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

div 11.2.2 hdg (prev div 7.2.2 hdg) renum R9 LA (see A2003-35 s 55)

### **Certain things not protected by pt 11.2**

s 157 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 157 (prev s 90) renum R9 LA (see A2003-35 s 55)

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

s 158 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 158 (prev s 91) renum R9 LA (see A2003-35 s 55)

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

div 11.2.3 hdg (prev div 7.2.3 hdg) renum R9 LA (see A2003-35 s 55)

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

s 159 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 159 (prev s 92) renum R9 LA (see A2003-35 s 55)

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

s 160 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 160 (prev s 93) renum R9 LA (see A2003-35 s 55)

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

s 161 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 161 (prev s 94) renum R9 LA (see A2003-35 s 55)

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

s 162 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 162 (prev s 95) renum R9 LA (see A2003-35 s 55)

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

div 11.2.4 hdg (prev div 7.2.4 hdg) renum R9 LA (see A2003-35 s 55)

**Definitions for div 11.2.4**

s 163 (prev s 96) renum R9 LA (see A2003-35 s 55)

**Liability of carriers for certain animals**

s 164 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 164 (prev s 97) renum R9 LA (see A2003-35 s 55)  
table renum R12 LA

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

s 165 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 165 (prev s 98) renum R9 LA (see A2003-35 s 55)

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

s 166 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 166 (prev s 99) renum R9 LA (see A2003-35 s 55)

**Notice, condition or declaration of carrier**

div 11.2.5 hdg (prev div 7.2.5 hdg) renum R9 LA (see A2003-35 s 55)

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

s 167 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 167 (prev s 100) renum R9 LA (see A2003-35 s 55)

**Other liability provisions**

ch 12 hdg orig ch 12 hdg renum as ch 16 hdg

(prev ch 8 hdg) renum R9 LA (see A2003-35 s 55)

**Occupiers liability**

pt 12.1 hdg (prev pt 8.1 hdg) renum R9 LA (see A2003-35 s 55)

**Liability of occupiers**

s 168 (prev s 101) am A2003-35 s 21

renum R9 LA (see A2003-35 s 55)

**Liability for damage caused by animals**

pt 12.2 hdg (prev pt 8.2 hdg) renum R9 LA (see A2003-35 s 55)

**Evidence of breach of duty for animals**

s 169 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 169 (prev s 102) renum R9 LA (see A2003-35 s 55)

**Liability for fires accidentally begun**

pt 12.3 hdg (prev pt 8.3 hdg) renum R9 LA (see A2003-35 s 55)

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

s 170 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 170 (prev s 103) renum R9 LA (see A2003-35 s 55)

**Contract between landlord and tenant not affected**

s 171 hdg bracketed note exp 1 November 2003 (s 3 (3))

s 171 (prev s 104) renum R9 LA (see A2003-35 s 55)

## Endnotes

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#### **Misrepresentation**

ch 13 hdg (prev ch 9 hdg) renum R9 LA (see A2003-35 s 55)

#### **Definitions for ch 13**

s 172 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 172 (prev s 105) renum R9 LA (see A2003-35 s 55)

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

s 173 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 173 (prev s 106) renum R9 LA (see A2003-35 s 55)

#### **Damages for misrepresentation**

s 174 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 174 (prev s 107) renum R9 LA (see A2003-35 s 55)

#### **Damages instead of rescission for misrepresentation**

s 175 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 175 (prev s 108) renum R9 LA (see A2003-35 s 55)

#### **Exclusion clauses—misrepresentation**

s 176 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 176 (prev s 109) renum R9 LA (see A2003-35 s 55)

#### **Misrepresentation in trade or commerce an offence**

s 177 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 177 (prev s 110) renum R9 LA (see A2003-35 s 55)

#### **Employer etc liable for misrepresentation**

s 178 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 178 (prev s 111) renum R9 LA (see A2003-35 s 55)

#### **Prosecutions for misrepresentation**

s 179 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 179 (prev s 112) renum R9 LA (see A2003-35 s 55)

#### **Limitations on legal costs**

ch 14 hdg (prev ch 10 hdg) renum R9 LA (see A2003-35 s 55)

#### **Maximum costs for certain personal injury damages claims**

pt 14.1 hdg (prev pt 10.1 hdg) ins A2003-35 s 22  
renum R9 LA (see A2003-35 s 55)

#### **Definitions for ch 14**

s 180 (prev s 113) renum R9 LA (see A2003-35 s 55)

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

s 181 (prev s 114) renum R9 LA (see A2003-35 s 55)

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

s 182 (prev s 115) renum R9 LA (see A2003-35 s 55)

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

s 183 (prev s 116) renum R9 LA (see A2003-35 s 55)



**Court discretion to allow additional costs**

s 184 (prev s 117) renum R9 LA (see A2003-35 s 55)

**Apportionment of costs between lawyers**

s 185 (prev s 118) renum R9 LA (see A2003-35 s 55)

**Costs in damages claims if no reasonable prospects of success**

pt 14.2 hdg (prev pt 10.2 hdg) ins A2003-35 s 23  
renum R9 LA (see A2003-35 s 55)

**Definitions for pt 14.2**

s 186 (prev s 118A) ins A2003-35 s 23  
def **court** ins A2003-35 s 23  
def **provable** ins A2003-35 s 23  
def **reasonable prospects of success** ins A2003-35 s 23  
renum R9 LA (see A2003-35 s 55)

**Application of pt 14.2**

s 187 (prev s 118B) ins A2003-35 s 23  
renum R9 LA (see A2003-35 s 55)

**Certificate that claim or defence has reasonable prospects of success**

s 188 (prev s 118C) ins A2003-35 s 23  
renum R9 LA (see A2003-35 s 55)  
am A2005-5 s 11

**Costs order against lawyer acting without reasonable prospects of success**

s 189 (prev s 118D) ins A2003-35 s 23  
renum R9 LA (see A2003-35 s 55)

**Onus on lawyer to show facts provided reasonable prospects of success**

s 190 (prev s 118E) ins A2003-35 s 23  
renum R9 LA (see A2003-35 s 55)

**Miscellaneous**

ch 15 hdg (prev ch 11 hdg) renum R9 LA (see A2003-35 s 55)

**Mediation and neutral evaluation**

pt 15.1 hdg (prev pt 11.1 hdg) sub A2003-35 s 24  
renum R9 LA (see A2003-35 s 55)

**Purpose of pt 15.1 etc**

s 191 (prev s 119) renum R9 LA (see A2003-35 s 55)

**Meaning of mediation, neutral evaluation etc**

s 192 hdg (prev s 120 hdg) sub A2003-35 s 26  
s 192 (prev s 120) am A2003-35 s 27; ss renum R9 LA (see A2003-35 s 28)  
renum R9 LA (see A2003-35 s 55)

## Endnotes

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#### **Who can be a mediator**

s 193 (prev s 120A) ins A2003-35 s 29  
renum R9 LA (see A2003-35 s 55)

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

s 194 (prev s 121) renum R9 LA (see A2003-35 s 55)

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

s 195 hdg (prev s 122 hdg) sub A2003-35 s 30  
s 195 (prev s 122) am A2003-35 s 31, s 32  
renum R9 LA (see A2003-35 s 55)

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

s 196 (prev s 123) am A2003-35 s 33  
renum R9 LA (see A2003-35 s 55)

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

s 197 (prev s 124) am A2003-35 s 34  
renum R9 LA (see A2003-35 s 55)

#### **Agreements and arrangements arising from mediation sessions**

s 198 (prev s 124A) ins A2003-35 s 35  
renum R9 LA (see A2003-35 s 55)

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

s 199 (prev s 125) renum R9 LA (see A2003-35 s 55)

#### **Secrecy by evaluators**

s 200 (prev s 126) renum R9 LA (see A2003-35 s 55)

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

s 201 (prev s 127) renum R9 LA (see A2003-35 s 55)

#### **General reporting requirements of insurers**

pt 15.2 hdg (prev pt 11.2 hdg) renum R9 LA (see A2003-35 s 55)

#### **Who is an insurer for pt 15.2**

s 202 (prev s 128) renum R9 LA (see A2003-35 s 55)

#### **Insurers reporting requirements**

s 203 (prev s 129) renum R9 LA (see A2003-35 s 55)

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

s 204 (prev s 130) renum R9 LA (see A2003-35 s 55)

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

s 205 (prev s 131) renum R9 LA (see A2003-35 s 55)

#### **Attachment of insurance money**

pt 15.3 hdg (prev pt 11.3 hdg) renum R9 LA (see A2003-35 s 55)

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

s 206 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 206 (prev s 132) renum R9 LA (see A2003-35 s 55)

**Enforcement of charge on insurance money**

s 207 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 207 (prev s 133) renum R9 LA (see A2003-35 s 55)

**Protection of insurer for pt 15.3 charge**

s 208 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 208 (prev s 134) renum R9 LA (see A2003-35 s 55)

**Certain other provisions not affected by pt 15.3**

s 209 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 209 (prev s 135) renum R9 LA (see A2003-35 s 55)

**Abolition of certain common law actions, rules and remedies**

pt 15.4 hdg (prev pt 11.4 hdg) renum R9 LA (see A2003-35 s 55)

**Abolition of seduction, enticement and harbouring**

s 210 (prev s 136) renum R9 LA (see A2003-35 s 55)

**Abolition of rule about unity of spouses**

s 211 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 211 (prev s 137) renum R9 LA (see A2003-35 s 55)

**Abolition of action of cattle-trespass**

s 212 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 212 (prev s 138) renum R9 LA (see A2003-35 s 55)

**Abolition of distress damage feasant**

s 213 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 213 (prev s 139) renum R9 LA (see A2003-35 s 55)

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

s 214 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 214 (prev s 140) renum R9 LA (see A2003-35 s 55)

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

s 215 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 215 (prev s 141) renum R9 LA (see A2003-35 s 55)

**Abolition of rule of common employment**

s 216 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 216 (prev s 142) renum R9 LA (see A2003-35 s 55)

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

s 217 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 217 (prev s 143) renum R9 LA (see A2003-35 s 55)

**Abolition of action for loss of consortium**

s 218 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 218 (prev s 144) renum R9 LA (see A2003-35 s 55)

**Abolition of rule in Cavalier v Pope**

s 219 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 219 (prev s 145) renum R9 LA (see A2003-35 s 55)

## Endnotes

### 4 Amendment history

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#### **Partial abolition of Mocambique rule**

s 220 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 220 (prev s 146) renum R9 LA (see A2003-35 s 55)

#### **Abolition of torts of maintenance and champerty**

s 221 (prev s 146A) ins 2002 No 49 amdt 3.2  
renum R9 LA (see A2003-35 s 55)

#### **Other provisions**

pt 15.5 hdg (prev pt 11.5 hdg) renum R9 LA (see A2003-35 s 55)

#### **Approved forms**

s 222 (prev s 147) renum R9 LA (see A2003-35 s 55)

#### **Determination of fees**

s 222A ins A2004-68 s 5

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

s 223 (prev s 148) renum R9 LA (see A2003-35 s 55)  
am A2004-68 s 6, s 7

#### **Transitional provisions**

ch 16 hdg (prev ch 12 hdg) renum R9 LA (see A2003-35 s 55)

#### **Application provisions—for certain new measures**

s 224 (prev s 150) mod SL2002-41 reg 3 (mod exp 9 September  
2003 see A2003-35 s 56)  
am A2003-35 ss 36-38  
renum R9 LA (see A2003-35 s 55)  
exp 1 November 2005 (s 224 (5))

#### **Application provisions—for Civil Law (Wrongs) Amendment Act 2003**

s 225 (prev s 150A) ins A2003-35 s 39  
renum R9 LA (see A2003-35 s 55)  
mod SL2003-20 reg 7 (as am SL2004-8 reg 8, om A2004-32  
s 68)  
am A2004-32 s 65; ss renum R15 LA (see A2004-32 s 66)  
exp 9 September 2006 (s 225 (4))

#### **Application provisions—for certain existing measures**

s 226 (prev s 151) renum R9 LA (see A2003-35 s 55)  
exp 1 November 2003 (s 226 (11))

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

s 227 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 227 (prev s 153) renum R9 LA (see A2003-35 s 55)  
exp 1 November 2003 (s 227 (4))

#### **Application of s 33 and s 36**

s 228 hdg bracketed note exp 1 November 2003 (s 3 (3))  
s 228 (prev s 154) renum R9 LA (see A2003-35 s 55)  
exp 1 November 2003 (s 228 (3))

**Abolition of torts of maintenance and champerty—saving of existing rights and liabilities**

s 229 (prev s 154A) ins 2002 No 49 amdt 3.3  
renum R9 LA (see A2003-35 s 55)  
exp 1 November 2005 (s 229 (2) and see s 224 (5))

**Transitional regulations**

s 230 (prev s 155) am A2003-35 s 40  
renum R9 LA (see A2003-35 s 55)  
exp 1 November 2004 (s 230 (4))

**Modification of ch 12's operation**

s 231 (prev s 156) am A2003-35 s 41  
renum R9 LA (see A2003-35 s 55)  
exp 1 November 2004 (s 231 (2))

**Equine activities**

sch 3 om LA s 89 (3)  
ins A2003-35 s 42  
ss renum R18 LA

**Professional standards**

sch 4 hdg ins A2004-68 s 8

**Preliminary**

pt 4.1 hdg ins A2004-68 s 8

**Objects of sch 4**

s 4.1 (prev s 1) ins A2004-68 s 8  
renum R18 LA

**Definitions for sch 4**

s 4.2 (prev s 2) ins A2004-68 s 8  
renum R18 LA  
def **business assets** ins A2004-68 s 8  
def **council** ins A2004-68 s 8  
def **court** ins A2004-68 s 8  
def **damages** ins A2004-68 s 8  
def **judgment** ins A2004-68 s 8  
def **occupational association** ins A2004-68 s 8  
def **occupational group** ins A2004-68 s 8  
def **occupational liability** ins A2004-68 s 8  
def **scheme** ins A2004-68 s 8

**Application of sch 4**

s 4.3 (prev s 3) ins A2004-68 s 8  
renum R18 LA

**Limitation of liability**

pt 4.2 hdg ins A2004-68 s 8

## Endnotes

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### **Making, amendment and revocation of schemes**

div 4.2.1 hdg      ins A2004-68 s 8

### **Preparation of schemes and recommendation by council**

s 4.4      (prev s 4) ins A2004-68 s 8  
renum R18 LA

### **Public notification of schemes**

s 4.5      (prev s 5) ins A2004-68 s 8  
renum R18 LA

### **Making of comments and submissions about schemes**

s 4.6      (prev s 6) ins A2004-68 s 8  
renum R18 LA

### **Consideration of comments, submissions etc**

s 4.7      (prev s 7) ins A2004-68 s 8  
renum R18 LA

### **Public hearings**

s 4.8      (prev s 8) ins A2004-68 s 8  
renum R18 LA

### **Submission of schemes to Minister**

s 4.9      (prev s 9) ins A2004-68 s 8  
renum R18 LA

### **Approval of schemes by Minister**

s 4.10      (prev s 10) ins A2004-68 s 8  
renum R18 LA

### **Commencement of schemes**

s 4.11      (prev s 11) ins A2004-68 s 8  
renum R18 LA

### **Challenges to scheme**

s 4.12      (prev s 12) ins A2004-68 s 8  
renum R18 LA

### **Review of schemes**

s 4.13      (prev s 13) ins A2004-68 s 8  
renum R18 LA

### **Amendment and revocation of schemes**

s 4.14      (prev s 14) ins A2004-68 s 8  
renum R18 LA

### **Content of schemes**

div 4.2.2 hdg      ins A2004-68 s 8

### **People to whom scheme applies**

s 4.15      (prev s 15) ins A2004-68 s 8  
renum R18 LA

**Other people to whom scheme applies**

s 4.16 (prev s 16) ins A2004-68 s 8  
renum R18 LA

**Limitation of liability by insurance arrangements**

s 4.17 (prev s 17) ins A2004-68 s 8  
renum R18 LA

**Limitation of liability by reference to amount of business assets**

s 4.18 (prev s 18) ins A2004-68 s 8  
renum R18 LA

**Limitation of liability by multiple of charges**

s 4.19 (prev s 19) ins A2004-68 s 8  
renum R18 LA

**Statement of different limits of liability**

s 4.20 (prev s 20) ins A2004-68 s 8  
renum R18 LA

**Combination of provisions under s 17, s 18 and s 19**

s 4.21 (prev s 21) ins A2004-68 s 8  
renum R18 LA

**Amount below which liability may not be limited**

s 4.22 (prev s 22) ins A2004-68 s 8  
renum R18 LA

**Insurance to be of required standard**

s 4.23 (prev s 23) ins A2004-68 s 8  
renum R18 LA

**Effect of schemes**

div 4.2.3 hdg ins A2004-68 s 8

**Limit of occupational liability by schemes**

s 4.24 (prev s 24) ins A2004-68 s 8  
renum R18 LA

**Limitation of amount of damages**

s 4.25 (prev s 25) ins A2004-68 s 8  
renum R18 LA

**Effect of scheme on other parties to proceedings**

s 4.26 (prev s 26) ins A2004-68 s 8  
renum R18 LA

**Proceedings to which a scheme applies**

s 4.27 (prev s 27) ins A2004-68 s 8  
renum R18 LA

## Endnotes

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#### **Duration of scheme**

s 4.28 (prev s 28) ins A2004-68 s 8  
renum R18 LA

#### **Notification of limitation of liability**

s 4.29 (prev s 29) ins A2004-68 s 8  
renum R18 LA

#### **Compulsory insurance**

pt 4.3 hdg ins A2004-68 s 8

#### **Occupational association may require members to insure**

s 4.30 (prev s 30) ins A2004-68 s 8  
renum R18 LA

#### **Monitoring claims by occupational associations**

s 4.31 (prev s 31) ins A2004-68 s 8  
renum R18 LA

#### **Risk management**

pt 4.4 ins A2004-68 s 8

#### **Risk management strategies by occupational associations**

s 4.32 (prev s 32) ins A2004-68 s 8  
renum R18 LA

#### **Reporting by occupational associations**

s 4.33 (prev s 33) ins A2004-68 s 8  
renum R18 LA

#### **Compliance audits**

s 4.34 (prev s 34) ins A2004-68 s 8  
renum R18 LA

#### **Complaints and disciplinary matters**

s 4.35 (prev s 35) ins A2004-68 s 8  
renum R18 LA

#### **Professional standards council**

pt 4.6 hdg ins A2004-68 s 8

#### **Establishment and functions of council**

div 4.6.1 ins A2004-68 s 8

#### **The council**

s 4.36 (prev s 36) ins A2004-68 s 8  
renum R18 LA

#### **Functions of council**

s 4.37 (prev s 37) ins A2004-68 s 8  
renum R18 LA



**Membership of council**

div 4.6.2 ins A2004-68 s 8

**Membership of council**

s 4.38 (prev s 38) ins A2004-68 s 8  
renum R18 LA

**Chairperson and deputy chairperson of council**

s 4.39 (prev s 39) ins A2004-68 s 8  
renum R18 LA

**Deputies of members**

s 4.40 (prev s 40) ins A2004-68 s 8  
renum R18 LA

**Term of appointment**

s 4.41 (prev s 41) ins A2004-68 s 8  
renum R18 LA

**Allowances of members**

s 4.42 (prev s 42) ins A2004-68 s 8  
renum R18 LA

**Vacancy in office of member**

s 4.43 (prev s 43) ins A2004-68 s 8  
renum R18 LA

**Filling of vacancy in office of member**

s 4.44 (prev s 44) ins A2004-68 s 8  
renum R18 LA

**Personal liability of members etc**

s 4.45 (prev s 45) ins A2004-68 s 8  
renum R18 LA

**Procedure of council**

div 4.6.3 hdg ins A2004-68 s 8

**General procedure for council**

s 4.46 (prev s 46) ins A2004-68 s 8  
renum R18 LA  
(2), (3) exp 6 months after the day it commences (s 46 (3))

**Quorum at council meetings**

s 4.47 (prev s 47) ins A2004-68 s 8  
renum R18 LA

**Presiding member at council meetings**

s 4.48 (prev s 48) ins A2004-68 s 8  
renum R18 LA

**Voting at council meetings**

s 4.49 (prev s 49) ins A2004-68 s 8

## Endnotes

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renum R18 LA

### **Miscellaneous**

div 4.6.4 hdg ins A2004-68 s 8

### **Requirement to provide information**

s 4.50 (prev s 50) ins A2004-68 s 8  
renum R18 LA

### **Referral of complaints**

s 4.51 (prev s 51) ins A2004-68 s 8  
renum R18 LA

### **Council committees**

s 4.52 (prev s 52) ins A2004-68 s 8  
renum R18 LA

### **Use of government staff or facilities**

s 4.53 (prev s 53) ins A2004-68 s 8  
renum R18 LA

### **Engagement of consultants by council**

s 4.54 (prev s 54) ins A2004-68 s 8  
renum R18 LA

### **Accountability of council to Minister**

s 4.55 (prev s 55) ins A2004-68 s 8  
renum R18 LA

### **Annual report of council**

s 4.56 (prev s 56) ins A2004-68 s 8  
renum R18 LA

### **Miscellaneous**

pt 4.7 hdg ins A2004-68 s 8

### **Characterisation of sch 4**

s 4.57 (prev s 57) ins A2004-68 s 8  
renum R18 LA

### **No contracting out of sch 4**

s 4.58 (prev s 58) ins A2004-68 s 8  
renum R18 LA

### **No limitation on other insurance**

s 4.59 (prev s 59) ins A2004-68 s 8  
renum R18 LA

### **Review of sch 4**

s 4.60 (prev s 60) ins A2004-68 s 8  
renum R18 LA  
exp 7 years after the day it commences (s 60 (4))

**Occupational associations—model code**

sch 5 ins A2004-68 s 9  
 ss renum R18 LA

**Dictionary**

dict

am A2003-14 amdt 1.17  
 def **accident** sub A2003-35 s 43  
 def **agreed expert** ins A2003-35 s 44  
 def **apology** ins A2003-35 s 44  
 def **appointed expert** ins A2003-35 s 44  
 def **apportionable claim** ins A2004-68 s 10  
 def **business assets** ins A2004-68 s 10  
 def **claim** sub A2003-35 s 45  
 def **claimant** ins A2003-35 s 46  
 sub A2004-68 s 11  
 def **complying notice of claim** ins A2003-35 s 46  
 def **concurrent wrongdoer** ins A2004-68 s 12  
 def **consequential mental harm** ins A2003-35 s 46  
 def **consumer claim** ins A2004-68 s 12  
 def **contribution notice** ins A2003-35 s 46  
 def **contributor** ins A2003-35 s 46  
 def **council** ins A2004-68 s 12  
 def **court** sub A2003-35 s 47  
 am A2004-68 s 13  
 def **damages** ins A2004-68 s 14  
 def **defendant** ins A2004-68 s 14  
 def **duty of care** ins A2003-35 s 48  
 def **equine** ins A2003-35 s 48  
 def **equine activity** ins A2003-35 s 48  
 def **equine activity sponsor** ins A2003-35 s 48  
 def **equine facility** ins A2003-35 s 48  
 def **equine professional** ins A2003-35 s 48  
 def **evidence** ins A2003-35 s 48  
 def **expert** ins A2003-35 s 48  
 def **expert medical evidence** ins A2003-35 s 48  
 def **harm** ins A2003-35 s 48  
 def **inherent risks of equine activities** ins A2003-35 s 48  
 def **insurer** sub A2003-35 s 49  
 def **judgment** ins A2004-68 s 14  
 def **mediation** ins A2003-35 s 50  
 def **mediation session** ins A2003-35 s 50  
 def **medical issue** ins A2003-35 s 50  
 def **mental harm** ins A2003-35 s 50  
 def **motor accident** sub A2003-35 s 51  
 def **motor vehicle** sub A2003-35 s 51  
 def **negligence** ins A2003-35 s 52  
 def **occupational association** ins A2004-68 s 14  
 def **occupational group** ins A2004-68 s 14

## Endnotes

### 5 Earlier republications

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def **occupational liability** ins A2004-68 s 14  
def **participant** ins A2003-35 s 52  
def **participate** ins A2003-35 s 52  
def **party** ins A2003-35 s 52  
def **personal injury** sub A2003-35 s 53  
def **provable** ins A2003-35 s 54  
def **public or other authority** ins A2003-35 s 54  
def **pure mental harm** ins A2003-35 s 54  
def **reasonable prospects of success** ins A2003-35 s 54  
def **respondent** ins A2003-35 s 54  
def **scheme** ins A2004-68 s 14

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 1 Nov 2002	1 Nov 2002– 20 Dec 2002	not amended	new Act
R2 21 Dec 2002	21 Dec 2002– 31 Dec 2002	A2002-49	modification by SL2002-41
R3 1 Jan 2003	1 Jan 2003– 1 Jan 2003	A2002-49	commenced provisions
R4 2 Jan 2003	2 Jan 2003– 16 Jan 2003	A2002-49	expired provision
R5 17 Jan 2003	17 Jan 2003– 27 Mar 2003	A2002-49	amendments by A2002-49
R6 28 Mar 2003	28 Mar 2003– 29 Apr 2003	A2003-14	amendments by A2003-6 and A2003-14

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R7 30 Apr 2003	30 Apr 2003– 30 June 2003	A2003-14	commenced provisions
R8 1 July 2003	noon 1 July 2003– 8 Sept 2003	A2003-14	commenced provisions about traveller accommodation providers liability
R9 9 Sept 2003	9 Sept 2003– 8 Oct 2003	<u>A2003-35</u>	amendments by A2003-35 and general renumbering
R10 9 Oct 2003	9 Oct 2003– 1 Nov 2003	A2003-41	amendments by A2003-41
R11* 2 Nov 2003	2 Nov 2003– 2 Mar 2004	A2003-41	commenced expiries
R12 3 Mar 2004	3 Mar 2004– 7 Mar 2004	A2003-41	modification by SL2004-8
R13 8 Mar 2004	8 Mar 2004– 30 June 2004	A2003-41	amendments by A2003-35
R14 1 July 2004	1 July 2004– 12 July 2004	A2004-28	amendments by A2004-28
R15 13 July 2004	13 July 2004– 31 August 2004	A2004-32	amendments by A2004-32
R16 1 Sept 2004	1 Sept 2004– 1 Nov 2004	A2004-32	amendments by A2004-13
R17 2 Nov 2004	2 Nov 2004– 1 Jan 2005	<u>A2004-68</u>	commenced expiry
R18 2 Jan 2004	2 Jan 2004– 9 Jan 2005	<u>A2004-68</u>	commenced expiry
R19 10 Jan 2005	10 Jan 2005– 23 Feb 2005	<u>A2004-68</u>	amendments by A2004-60

## Endnotes

6 Renumbered provisions

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### 6 Renumbered provisions

as made by *Civil Law (Wrongs) Amendment Act 2003 (No 2)* A2003-35 and under the *Legislation Act 2001*

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<b>Chapter 2</b>	<b>Provisions applying to wrongs generally</b>	<b>Chapter 2</b>
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11B	Meaning of <i>apology</i> in pt 2.3	13
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12	Effect of death on certain causes of action	15

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## 7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Civil Law (Wrongs) (Proportionate Liability and Professional Standards) Amendment Act 2004 A2004-68**

### 4 New chapter 7A

*insert*

## Chapter 7A Proportionate liability

### 107A Definitions for ch 7A

In this chapter:

*apportionable claim*—see section 107B.

*concurrent wrongdoer*—see section 107D.

*defendant*, in a proceeding, includes anyone joined as a defendant or other party in the proceeding (other than as a claimant), whether joined under this chapter, under rules of court or otherwise.

### 107B Application of ch 7A—apportionable claims

- (1) This chapter applies to apportionable claims.

- (2) An *apportionable claim* is—
- (a) a claim for economic loss or damage to property in an action for damages (whether in tort, under contract or otherwise) arising from a failure to take reasonable care; or
  - (b) a claim for economic loss or damage to property in an action for damages under the *Fair Trading Act 1992*, section 46 for a contravention of that Act, part 2 (Unfair practices).
- (3) However, none of the following is an *apportionable claim*:
- (a) a claim arising out of personal injury;
  - (b) a consumer claim;
  - (c) a claim prescribed by regulation for this paragraph.
- (4) Also, without limiting subsection (3), none of the following is an *apportionable claim*:
- (a) a claim under the *Discrimination Act 1991*;
  - (b) a claim to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies;
  - (c) a claim under the *Workers Compensation Act 1951*.
- (5) A regulation made for subsection (3) (c) may make provision in relation to their application to claims arising from acts or omissions that happened before the regulation was notified.
- (6) For this chapter, there is a single apportionable claim in a proceeding in relation to the same loss or damage even if the claim for the loss or damage is based on more than 1 cause of action (whether or not of the same or a different kind).

**107C Meaning of consumer claim for pt 7A**

- (1) A *consumer claim* is a claim by an individual (the *claimant*) relating to—

- (a) goods or services acquired by the claimant from a defendant, or the supply of goods or services to the claimant by a defendant, for the claimant's personal, domestic or household use or consumption; or
  - (b) personal financial advice supplied to the claimant by a defendant.
- (2) However, a claim relating to goods or services is not a consumer claim if, in the course of business, the claimant holds himself or herself out as acquiring the goods or services from the defendant for the purpose of—
- (a) resupplying them; or
  - (b) using them up or transforming them in or in relation to a process of manufacture or production; or
  - (c) repairing or treating other goods or fixtures on land.
- (3) In this section:
- acquire*—see the *Fair Trading Act 1992*, section 5 (1) and section 7.
- business*—see the *Fair Trading Act 1992*, section 5 (1).
- goods*—see the *Fair Trading Act 1992*, section 5 (1).
- resupply*—see the *Fair Trading Act 1992*, section 7 (1).
- services*—see the *Fair Trading Act 1992*, section 5 (1).
- supply*—see the *Fair Trading Act 1992*, section 5 (1) and section 7 (1).

## 107D Concurrent wrongdoers

- (1) For this chapter, a *concurrent wrongdoer*, for a claim, is 1 of 2 or more people whose acts or omissions (or act or omission) caused, independently of each other or jointly, the loss or damage the subject of the claim.

- (2) For this chapter, it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

**107E Certain wrongdoers not to have benefit of apportionment**

- (1) This chapter does not limit the liability of a concurrent wrongdoer (an *excluded concurrent wrongdoer*) in a proceeding involving an apportionable claim if the concurrent wrongdoer intended to cause, or fraudulently caused, the economic loss or damage to property the subject of the claim.
- (2) The liability of an excluded concurrent wrongdoer must be decided in accordance with the legal rules (if any) that, apart from this chapter, are relevant.
- (3) The liability of any other concurrent wrongdoer is to be decided in accordance with this chapter.

**107F Proportionate liability for apportionable claims**

- (1) In a proceeding involving an apportionable claim—
- (a) the liability of a defendant who is a concurrent wrongdoer for the claim is limited to an amount reflecting the proportion of the loss or damage claimed that the court considers just, having regard to the extent of the defendant's responsibility for the loss or damage; and
- (b) the court must not give judgment against the defendant for more than that amount.
- (2) In apportioning responsibility between defendants in the proceeding—
- (a) the court must exclude the proportion of the loss or damage in relation to which the claimant is contributorily negligent under any relevant law; and
- (b) the court may consider the comparative responsibility of any concurrent wrongdoer who is not a party to the proceeding.

- (3) If the proceeding involves an apportionable claim and a claim that is not an apportionable claim—
  - (a) liability for the apportionable claim must be decided in accordance with this chapter; and
  - (b) liability for the other claim must be decided in accordance with the legal rules (if any) that, apart from this chapter, are relevant.
- (4) This chapter applies in a proceeding involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceeding.

#### **107G Defendant to tell claimant about concurrent wrongdoers**

- (1) This section applies if—
  - (a) a defendant in a proceeding involving an apportionable claim has reasonable grounds to believe that a particular person (the *other person*) may be a concurrent wrongdoer for the claim; and
  - (b) the defendant does not give the claimant, as soon as practicable, written notice of the information the defendant has about—
    - (i) the identity of the other person; and
    - (ii) the circumstances that may make the other person a concurrent wrongdoer for the claim; and
  - (c) the claimant unnecessarily incurs costs in the proceeding because the claimant did not know that the other person may be a concurrent wrongdoer for the claim.
- (2) The court hearing the proceeding may order that the defendant pay all or any of the claimant's costs.
- (3) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

**107H Contribution not recoverable from defendant**

A defendant against whom judgment is given under this chapter as a concurrent wrongdoer for an apportionable claim cannot be required to—

- (a) contribute to any damages or contribution recovered from another concurrent wrongdoer for the claim (whether or not the damages or contribution are recovered in the same proceeding in which judgment is given against the defendant); or
- (b) indemnify another concurrent wrongdoer for the claim.

**107I Subsequent proceeding by claimant**

- (1) This chapter (or any other law) does not prevent a claimant for an apportionable claim who has recovered judgment against a concurrent wrongdoer for an apportionable part of any loss or damage from bringing a subsequent proceeding against any other concurrent wrongdoer for the loss or damage.
- (2) However, in any subsequent proceeding the claimant cannot recover an amount of damages that, having regard to any damages previously recovered by the claimant for the loss or damage, would result in the claimant receiving compensation for loss or damage that is more than the loss or damage actually sustained by the claimant.

**107J Joining non-party concurrent wrongdoer**

- (1) In a proceeding involving an apportionable claim, the court may give leave for any number of people to be joined as defendants.
- (2) However, the court must not give leave for the joinder of anyone who was a party to a previously concluded proceeding in relation to the claim.

**107K Ch 7A does not affect certain other liability**

This chapter does not—



- (a) prevent a person from being held vicariously liable for a proportion of an apportionable claim for which someone else is liable; or
- (b) prevent a person from being held jointly and severally liable for the damages awarded against someone else as agent of the person; or
- (c) prevent a partner from being held severally liable with another partner for the proportion of an apportionable claim for which the other partner is liable; or
- (d) affect the operation of any other Act to the extent that the other Act imposes several liability on anyone for what would otherwise be an apportionable claim.

## **5 New section 222A**

*insert*

### **222A Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

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

## **6 Regulation-making power Section 223**

*omit*

The Executive

*substitute*

- (1) The Executive

## Endnotes

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### **7 New section 223 (2)**

*insert*

- (2) A regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 20 penalty units for offences against a regulation.

### **8 New schedule 4**

*insert*

## **Schedule 4 Professional standards**

### **Part 4.1 Preliminary**

#### **4.1 Objects of sch 4**

The objects of this schedule are—

- (a) to enable the creation of schemes to limit the civil liability of professionals and others; and
- (b) to facilitate the improvement of occupational standards of professionals and others; and
- (c) to protect consumers of the services provided by professionals and others; and
- (d) to establish a council to supervise the preparation and application of schemes and to assist in the improvement of occupational standards and protection of consumers.

#### **4.2 Definitions for sch 4**

In this schedule:

***business assets***, of a person, means the property of the person that is used to perform the person's occupation and that can be taken in proceedings to enforce a judgment of a court.

**council**—see section 4.36.

**court** includes a tribunal and an arbitrator.

**damages** means damages awarded in relation to a claim or counterclaim or by way of set-off, and includes—

- (a) interest payable on an amount awarded as damages; and
- (b) legal costs and expenses ordered to be paid in relation to an award of damages (other than legal costs and expenses incurred in enforcing a judgment or incurred on an appeal made by a defendant).

**judgment** includes—

- (a) a judgment given by consent; and
- (b) a decision of a tribunal; and
- (c) an award of an arbitrator.

**occupational association** means a corporation—

- (a) that represents the interests of people who are members of the same occupational group; and
- (b) the membership of which is limited mainly to members of the occupational group.

**occupational group** includes a professional group and a trade group.

**occupational liability** means civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted to be done by a member of an occupational association acting in the performance of the member's occupation.

**scheme** means a scheme for limiting the occupational liability of members of an occupational association.

### **4.3 Application of sch 4**

- (1) This schedule does not apply to liability for damages arising from any of the following:
  - (a) personal injury to a person;
  - (b) anything done or omitted to be done by a lawyer in acting for a client in a personal injury claim;
  - (c) a breach of trust;
  - (d) fraud or dishonesty.
- (2) This schedule does not apply to liability that may be the subject of a proceeding under the *Land Titles Act 1925*, part 16 (Civil rights and remedies).

## **Part 4.2 Limitation of liability**

### **Division 4.2.1 Making, amendment and revocation of schemes**

#### **4.4 Preparation of schemes and recommendation by council**

- (1) An occupational association may prepare a scheme.
- (2) The council may, on the application of an occupational association, prepare a scheme.
- (3) The council may, on the application of an occupational association, recommend a scheme prepared under this section to the Minister for approval.

#### **4.5 Public notification of schemes**

Before recommending a scheme, the council must publish a notice in a daily newspaper circulating in the ACT—

- (a) explaining the nature and significance of the scheme; and

- (b) stating where a copy of the scheme can be obtained or inspected; and
- (c) inviting comments and submissions within a stated time, but at least 21 days after the day the notice is published.

#### **4.6 Making of comments and submissions about schemes**

- (1) Anyone may make a comment or submission to the council about a scheme for which notice has been published under section 4.5.
- (2) A comment or submission must be made within the period stated in the notice or within any longer time the council allows.

#### **4.7 Consideration of comments, submissions etc**

- (1) Before recommending a scheme in relation to an occupational association, the council must consider the following:
  - (a) all comments and submissions made to it in accordance with section 4.6;
  - (b) the position of people who may be affected by limiting the occupational liability of members of the occupational association;
  - (c) the nature and level of claims relating to occupational liability made against members of the occupational association;
  - (d) the risk management strategies of the occupational association;
  - (e) how those strategies are intended to be implemented;
  - (f) the cost and availability of insurance against occupational liability for members of the occupational association;
  - (g) the standards (mentioned in section 4.23) decided by the occupational association in relation to insurance policies.

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(h) the provisions in the proposed scheme for making and deciding complaints, and imposing and enforcing disciplinary measures against members of the occupational association.

(2) Subsection (1) does not limit the matters the council may consider.

### 4.8 Public hearings

(1) The council may conduct a public hearing about a scheme if the council considers it appropriate.

(2) A public hearing may be conducted in the way the council decides.

### 4.9 Submission of schemes to Minister

The council may submit a scheme it recommends to the Minister for approval.

### 4.10 Approval of schemes by Minister

(1) The Minister may, in writing, approve a scheme submitted by the council.

(2) An approved scheme is a disallowable instrument.

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

### 4.11 Commencement of schemes

(1) A scheme approved by the Minister commences—

(a) on the date or time (after its notification day) provided for in the approval; or

(b) if a date or time is not provided for in the approval— 2 months after its notification day.

(2) This section is subject to any order of the Supreme Court under section 4.12 (2).

#### **4.12 Challenges to scheme**

- (1) A person who is, or is reasonably likely to be, affected by a scheme approved by the Minister, may, at any time before the scheme commences, apply to the Supreme Court for an order that the scheme is void for noncompliance with this schedule.
- (2) The Supreme Court may, on the making of the application or at any time before the scheme commences, order that the commencement of the scheme is stayed until further order of the court.
- (3) The Supreme Court may, in relation to the application—
  - (a) make or decline to make an order that the scheme is void for noncompliance with this schedule; or
  - (b) if the court has stayed the commencement of the scheme—give directions about the things that must be done so that the scheme may commence; or
  - (c) make any other order it considers appropriate.

#### **4.13 Review of schemes**

- (1) The Minister may direct the council to review the operation of a scheme.
- (2) The council must comply with a direction under subsection (1), but may on its own initiative review the operation of a scheme at any time (whether before or after the scheme ceases to have effect).
- (3) A review may, but need not, be conducted to decide whether a scheme should be amended or revoked or whether a new scheme should be made.

#### **4.14 Amendment and revocation of schemes**

- (1) An occupational association may prepare an amendment or revocation of a scheme that relates to its members.

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- (2) The council may, on the application of an occupational association, prepare an amendment or revocation of a scheme that relates to the members of the association.
- (3) The Minister may direct the council to prepare an amendment or revocation of a scheme.
- (4) The council must comply with a direction but may on its own initiative prepare an amendment or revocation of a scheme at any time while the scheme remains in force.
- (5) Sections 4.4 to 4.12 apply, with any necessary changes, to the amendment or revocation of a scheme.

## Division 4.2.2 Content of schemes

### 4.15 People to whom scheme applies

- (1) A scheme may provide that it applies to—
  - (a) everyone within an occupational association; or
  - (b) a stated class or classes of people within an occupational association.
- (2) A scheme applying in relation to an occupational association may provide that the occupational association may, on application by a person, exempt the person from the scheme.
- (3) A scheme ceases to apply to a person exempted under subsection (2)—
  - (a) on the date the exemption is granted; or
  - (b) if the exemption provides for a later date—the later date.
- (4) Subsection (2) does not apply to a person to whom a scheme applies because of section 4.16.



#### 4.16 Other people to whom scheme applies

- (1) If a scheme applies to a person, the scheme also applies to—
  - (a) each partner of the person; and
  - (b) each employee of the person; and
  - (c) if the person is a corporation, each officer of the corporation; and
  - (d) each person who is, under a regulation made for section 4.25 (Limitation of amount of damages), associated with the person.
- (2) If the partner, employee or officer of the person is entitled to be a member of the same occupational association as the person but is not a member, the scheme does not apply to the partner, employee or officer.
- (3) In this section:  
*officer*—
  - (a) in relation to a corporation within the meaning of the Corporations Act—see the Corporations Act, section 82A (Officers of bodies corporate and other entities); and
  - (b) in relation to any other corporation—means anyone (by whatever name called) who is concerned in or takes part in the management of the corporation.

#### 4.17 Limitation of liability by insurance arrangements

A person to whom a scheme applies, and against whom a proceeding relating to occupational liability is brought, is not liable in damages in relation to the cause of action above the monetary ceiling if the person can satisfy the court that the person has the benefit of an insurance policy—

- (a) insuring the person against the occupational liability; and

- (b) under which the amount payable in relation to the occupational liability relating to the cause of action (including any amount payable by the person as an excess under or in relation to the policy) is at least the monetary ceiling stated in the scheme in relation to the class of person and the kind of work to which the cause of action relates when the act or omission giving rise to the cause of action happened.

**4.18 Limitation of liability by reference to amount of business assets**

A person to whom a scheme applies, and against whom a proceeding relating to occupational liability is brought, is not liable in damages for the cause of action above the monetary ceiling if the person can satisfy the court—

- (a) that the person has business assets with a net current market value of at least the monetary ceiling stated in the scheme in relation to the class of person and the kind of work to which the cause of action relates when the act or omission giving rise to the cause of action happened; or
- (b) that—
  - (i) the person has business assets and the benefit of an insurance policy insuring the person against the occupational liability; and
  - (ii) the net current market value of the assets and the amount payable under the insurance policy in relation to the occupational liability relating to the cause of action (including any amount payable by the person as an excess under or in relation to the policy), if combined, would total an amount that is at least the monetary ceiling stated in the scheme in relation to the class of person and the kind of work to which the cause of action relates when the act or omission giving rise to the cause of action happened.

#### 4.19 Limitation of liability by multiple of charges

- (1) A person to whom a scheme applies, and against whom a proceeding relating to occupational liability is brought, is not liable in damages in relation to the cause of action above the limitation amount if the person can satisfy the court—
- (a) that the person has the benefit of an insurance policy—
    - (i) insuring the person against that occupational liability; and
    - (ii) under which the amount payable in relation to the occupational liability relating to the cause of action (including any amount payable by the person as an excess under or in relation to the policy) is at least an amount (the *limitation amount*), that is a reasonable charge for the services provided by the person, or that the person failed to provide, and to which the cause of action relates, multiplied by the multiple stated in the scheme in relation to the cause of action and the kind of work to which the cause of action relates when the act or omission giving rise to the cause of action happened; or
  - (b) that the person has business assets with a net current market value of at least the limitation amount; or
  - (c) that—
    - (i) the person has business assets and the benefit of an insurance policy insuring the person against the occupational liability; and
    - (ii) the net current market value of the assets and the amount payable under the insurance policy in relation to the occupational liability relating to the cause of action (including any amount payable by the person as an excess under or in relation to the policy), if combined, would total an amount that is at least the limitation amount.

- (2) In deciding what is a reasonable charge for a provision mentioned in subsection (1), the court must consider—
  - (a) the amount charged; and
  - (b) the amount that would ordinarily be charged in accordance with a scale of charges (*a relevant scale*) accepted by the occupational association of which the person is a member; or
  - (c) if there is not a relevant scale—the amount that a competent person with the same qualifications and experience as the person would be likely to charge in the same circumstances.
- (3) This section does not limit an amount of damages for which a person is liable if the amount is less than the amount stated for the purpose in the scheme in relation to the class of person and the kind of work concerned.

#### **4.20 Statement of different limits of liability**

- (1) A scheme may provide for—
  - (a) the same maximum amount of liability for all cases to which the scheme applies; or
  - (b) different maximum amounts of liability for different cases or classes of case to which the scheme applies; or
  - (c) different maximum amounts of liability for the same class of case to which the scheme applies for different purposes.
- (2) A scheme may give an occupational association a discretionary authority, on application by a person to whom the scheme applies, to state in relation to the person a higher maximum amount of liability than would otherwise apply under the scheme in relation to the person, either in all cases, in any stated case or class of case, or for different purposes.

**4.21 Combination of provisions under s 14.7, s 4.18 and s 4.19**

- (1) This section applies if, in a scheme, provisions of the kind mentioned in section 4.19, and provisions (the *additional provisions*) of the kind mentioned in section 4.17 or section 4.18 (or both), apply to a person at the same time in relation to the same occupation.
- (2) The scheme must provide that the damages awarded against the person are to be decided under section 4.19 but must not exceed the monetary ceiling provided in relation to the person under the additional provisions.

**4.22 Amount below which liability may not be limited**

- (1) A scheme may affect the liability for damages arising from a single cause of action only to the extent that the liability results in damages exceeding an amount (at least \$500 000) decided by the council and stated in the scheme.
- (2) In making a decision, the council must consider—
  - (a) the number and amounts of claims made against people within the occupational association concerned; and
  - (b) the need to adequately protect consumers.
- (3) A council decision—
  - (a) takes effect when an amendment of the scheme giving effect to the decision takes effect; and
  - (b) applies only to a cause of action that arises after the decision takes effect.

**4.23 Insurance to be of required standard**

For a scheme, an insurance policy must comply with standards decided by the occupational association whose members may be insured under the policy.

## **Division 4.2.3 Effect of schemes**

### **4.24 Limit of occupational liability by schemes**

- (1) To the extent provided under this schedule and the provisions of the scheme, a scheme limits the occupational liability of a person in relation to a cause of action based on an act or omission if the scheme applied to the person when the act or omission happened.
- (2) The limitation of liability applying to the cause of action is the limitation provided under the scheme when the act or omission happened.
- (3) A limitation of liability that, under this section, applies in relation to an act or omission applies to every cause of action based on the act or omission, irrespective of when the cause of action arises or proceedings are begun in relation to it, even if the scheme has been amended or, under section 4.28 (Duration of scheme), has ceased to be in force.
- (4) A person to whom a scheme applies cannot choose not to be subject to the scheme unless exempt under provisions included in the scheme under section 4.15 (2) (People to whom scheme applies).

### **4.25 Limitation of amount of damages**

- (1) A limitation under a scheme of an amount of damages is a limitation of the amount of damages that may be awarded for a single claim and is not a limitation of the amount of damages that may be awarded for all claims arising out of the same act or omission.
- (2) Separate claims by 2 or more people who have a joint interest in a cause of action based on the same act or omission are to be treated as a single claim for this schedule.
- (3) Two or more claims by the same person arising out of the same act or omission against people who are associated are to be treated as a single claim for this schedule.

- (4) People are associated if they are—
- (a) officers of the same corporation (within the meaning of section 4.16); or
  - (b) partners, employees of the same employer or in the relationship of employer and employee; or
  - (c) prescribed by regulation for this subsection.

#### **4.26 Effect of scheme on other parties to proceedings**

A scheme does not limit the liability of a person who is a party to a proceeding if the scheme does not apply to the person.

#### **4.27 Proceedings to which a scheme applies**

A scheme in force under this schedule applies to proceedings relating to acts or omissions that happened after the commencement of the scheme.

#### **4.28 Duration of scheme**

- (1) A scheme remains in force for the period (not longer than 5 years) decided by the council unless, before the end of the period decided—
- (a) it is revoked; or
  - (b) its operation is extended by notice under this section; or
  - (c) its operation ceases because of the operation of another Act.
- (2) The Minister may, in writing, extend the period for which the scheme is in force.
- (3) An instrument under subsection (2) is a notifiable instrument.

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

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- (4) An instrument under subsection (2) is effective to extend the period for which a scheme is in force only if it is notified under the Legislation Act before the day the period ends.
- (5) The period for which a scheme is in force may be extended only once, and for not longer than 12 months.

### **4.29 Notification of limitation of liability**

- (1) A person commits an offence if—
  - (a) the person's occupational liability is limited under this schedule; and
  - (b) the person gives a document to a client or prospective client; and
  - (c) the document promotes or advertises the person or the person's occupation; and
  - (d) the document does not carry a statement that the person's liability is limited.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
  - (a) the person's occupational liability is limited under this schedule; and
  - (b) a client, or a prospective client, requests a copy of the scheme limiting the person's occupational liability; and
  - (c) the person fails to give a copy of the scheme to the client or prospective client.

Maximum penalty: 50 penalty units.

- (3) A regulation may prescribe a form of statement for this section.



- (4) A person does not commit an offence against subsection (1) in relation to a document if the document carries a statement in the prescribed form.
- (5) In this section:
- document* includes an item of official correspondence ordinarily used by the person in the performance of the person's occupation and a similar document, but does not include a business card.

## Part 4.3 Compulsory insurance

### 4.30 Occupational association may require members to insure

- (1) An occupational association may require its members to hold insurance against occupational liability.
- (2) A requirement under subsection (1) may be imposed as a condition of membership or otherwise.
- (3) The occupational association may set the standards with which the insurance must comply.

#### Example

The occupational association may set the amount of the 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, s 126 and s 132).

- (4) The occupational association may set different standards of insurance for different classes of members.
- (5) The standards are in addition to other statutory requirements and must not be inconsistent with them.

### 4.31 Monitoring claims by occupational associations

- (1) An occupational association may establish a committee, or 2 or more occupational associations may establish a common committee,

for monitoring and analysing claims made against members for occupational liability.

- (2) Not all committee members need to be members of the occupational association or associations concerned.

**Example**

An insurer representative may be a committee member.

*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, s 126 and s 132).

- (3) An occupational association may, through the committee or otherwise, issue practice advice to its members to minimise claims for occupational liability.
- (4) A committee may ask an insurer to give it any information or a copy of any document that the committee considers will assist it in carrying out its function.

## Part 4.4 Risk management

### 4.32 Risk management strategies by occupational associations

- (1) If an occupational association seeks the council's recommendation for a scheme under section 4.4 (Preparation of schemes and recommendation by council), it must give the council—
- (a) a detailed list of the risk management strategies it intends to implement for its members; and
- (b) information about how it intends to implement the strategies.
- (2) The method of implementation may be imposed as a condition of membership or otherwise.
- (3) The strategies are to apply in addition to, and must not be inconsistent with, other statutory requirements.

#### **4.33 Reporting by occupational associations**

- (1) An occupational association must give the council the information the council asks for about the association's risk management strategies.
- (2) An occupational association must give an annual report to the council about the implementation and monitoring of its risk management strategies, the effect of the strategies and any changes made or proposed to be made to them.
- (3) The occupational association's annual report must include details of any findings made, or conclusions drawn, by a committee established by it (whether solely or jointly with other associations) under section 4.31 (Monitoring claims by occupational associations).
- (4) The occupational association's annual report must be incorporated into the council's annual report in a form decided by the council.

#### **4.34 Compliance audits**

- (1) An audit of the compliance of members (a *compliance audit*), or of specified members or a specified class or classes of members, of an occupational association with the association's risk management strategies—
  - (a) may be conducted at any time by the council or the association; or
  - (b) must be conducted by the association if the council requests it.
- (2) If a compliance audit is conducted by the council—
  - (a) the occupational association must give, and ensure that its members give, the council any information or a copy of any document that the council reasonably asks for, relating to the conduct of the audit; and

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- (b) the council must give a copy of a report of the audit to the association.
- (3) If the occupational association conducts a compliance audit, it must give a copy of a report of the audit to the council.

## Part 4.5 Complaints and disciplinary matters

### 4.35 Complaints and Discipline Code

- (1) A scheme may adopt the provisions of the model code set out in schedule 5 with any changes recommended by the council.
- (2) The changes may include provisions for the making and deciding of complaints and the imposition and enforcement of disciplinary measures against members of an occupational association, including (but not limited to) the following:
  - (a) the establishment of committees for implementing the model code or any of its provisions;
  - (b) the procedure at committee meetings;
  - (c) whether a committee may administer an oath;
  - (d) the application or exclusion of the rules of, and practice relating to, evidence;
  - (e) the grounds on which a complaint may be made;
  - (f) the verification of complaints by statutory declaration;
  - (g) the suspension of members from membership or from practice;
  - (h) the imposition of fines;
  - (i) the making of appeals;
  - (j) the exchange of information with other occupational associations (within or outside the ACT).

- (3) The provisions are in addition to other relevant statutory schemes and must not be inconsistent with them.

## **Part 4.6 Professional standards council**

### **Division 4.6.1 Establishment and functions of council**

#### **4.36 The council**

- (1) The Professional Standards Council (the *council*) is established.
- (2) The council—
- (a) is a corporation; and
  - (b) must have a seal.

#### **4.37 Functions of council**

- (1) The council has the following functions:
- (a) to give advice to the Minister about—
    - (i) the approval of schemes, and their amendment and revocation, by the Minister; and
    - (ii) the operation of this schedule; and
    - (iii) anything else relating to the occupational liability of members of occupational associations;
  - (b) to give advice to occupational associations about policies of insurance for part 4.2 (Limitation of liability);
  - (c) to encourage and assist in the improvement of occupational standards of members of occupational associations;
  - (d) to encourage and assist in the development of self-regulation of occupational associations, including giving advice and assistance about the following:

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- (i) codes of ethics;
  - (ii) codes of practice;
  - (iii) quality management;
  - (iv) risk management;
  - (v) resolution of complaints by clients;
  - (vi) voluntary mediation services;
  - (vii) membership requirements;
  - (viii) discipline of members;
  - (ix) continuing occupational education;
- (e) to monitor the occupational standards of members of occupational groups;
  - (f) to monitor the compliance by an occupational association with its risk management strategies;
  - (g) to publish advice and information about the matters mentioned in this subsection;
  - (h) to conduct forums, approved by the Minister, on issues of interest to members of occupational groups;
  - (i) to collect, analyse and provide the Minister with information on issues and policies about the standards of occupational groups;
  - (j) any other functions given to it under this schedule or any other territory law.
- (2) The council is not authorised to give advice about occupational standards prescribed under another Act or statutory instrument.
  - (3) Any advice given to the Minister by the council may be given with or without a request of the Minister.

## Division 4.6.2 Membership of council

### 4.38 Membership of council

The council is to consist of 11 people appointed by the Minister who have the experience, skills and qualifications the Minister considers appropriate to enable them to make a contribution to the work of the council.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

### 4.39 Chairperson and deputy chairperson of council

- (1) Two of the members of the council are to be appointed as chairperson and deputy chairperson of the council, respectively.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The Minister may remove a member from the office of chairperson or deputy chairperson of the council at any time.
- (3) A person holding office as chairperson or deputy chairperson of the council vacates the office if the person—
  - (a) is removed from the office by the Minister; or
  - (b) ceases to be a member.

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*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

#### **4.40 Deputies of members**

- (1) The Minister may appoint a person to be the deputy of a member.
- (2) In the absence of a member, the member's deputy—
  - (a) is, if available, to act in the place of the member; and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of a member who is chairperson or deputy chairperson of the council does not (because of this section) have the member's functions as chairperson or deputy chairperson.
- (4) A person acting in the place of a member is entitled to be paid the allowances decided by the Minister.

#### **4.41 Term of appointment**

A member is to be appointed for not longer than 3 years.

#### **4.42 Allowances of members**

A member is entitled to be paid the allowances decided by the Minister.

#### **4.43 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) is removed from office by the Minister; or
  - (d) is absent from 4 consecutive meetings of the council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the council or unless, before the end of 4 weeks after the day of the



last of those meetings, the member is excused by the council for having been absent from those meetings; or

- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors; or
- (f) is convicted in the ACT of an offence punishable by imprisonment for 12 months or more or is convicted elsewhere of an offence that, if committed in the ACT, would be an offence so punishable.

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

- (2) The Minister may remove a member from office for—
  - (a) incompetence or misbehaviour; or
  - (b) mental or physical incapacity to carry out the duties of office satisfactorily.

#### **4.44 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person may be appointed to fill the vacancy.

#### **4.45 Personal liability of members etc**

- (1) A member, a deputy of a member, or anyone acting under the direction of the council, a member or a deputy member, is not personally liable for anything done or omitted to be done honestly—
  - (a) in the exercise of a function under this schedule; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this schedule.
- (2) Any liability that, apart from subsection (1), would attach to a person attaches instead to the council.

### **Division 4.6.3 Procedure of council**

#### **4.46 General procedure for council**

- (1) The procedure for the calling of meetings of the council and for the conduct of business at those meetings is, subject to this schedule and the regulations, to be as decided by the council.
- (2) However, the chairperson of the council is to call the first meeting of the council in the way the chairperson considers appropriate.
- (3) Subsection (2) and this subsection expire 6 months after the day this section commences.

#### **4.47 Quorum at council meetings**

The quorum for a meeting of the council is a majority of its members for the time being.

#### **4.48 Presiding member at council meetings**

- (1) The chairperson of the council or, in the absence of the chairperson, the deputy chairperson of the council or, in the absence of both, another member elected to chair the meeting by the members present is to preside at a meeting of the council.
- (2) The person presiding at any meeting of the council has a deliberative vote and, if the votes are equal, has a second or casting vote.

#### **4.49 Voting at council meetings**

A decision supported by a majority of the votes cast at a meeting of the council at which a quorum is present is the decision of the council.

## **Division 4.6.4      Miscellaneous**

### **4.50      Requirement to provide information**

- (1) The council may, by written notice, require an occupational association—
  - (a) whose members are subject to a scheme in force under this schedule; or
  - (b) that seeks the council's recommendation under section 4.4 for a scheme, or an amendment or revocation of a scheme;to give it the information it reasonably requires to exercise its functions.
- (2) An occupational association commits an offence if it does not comply with a notice under this section.

Maximum penalty: 5 penalty units.

### **4.51      Referral of complaints**

- (1) An occupational association may refer to the council any complaint or other evidence received by it that a member or former member of the association has committed an offence against section 4.29 (Notification of limitation of liability) or an offence against a regulation.
- (2) An occupational association must give information to the council about—
  - (a) any complaint or other evidence covered by subsection (1) that it did not refer to the council; and
  - (b) particulars of any action taken by it on the complaint or other evidence and of the outcome of the action.
- (3) An occupational association, member of an association's executive body, or anyone acting under the direction of an association or its

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executive body, is not personally liable for anything done or omitted to be done honestly—

- (a) in the exercise of a function under this section; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this section.
- (4) Any liability that, apart from subsection (3), would attach to a person attaches instead to the occupational association.

### **4.52 Council committees**

- (1) The council may, with the Minister's approval, establish committees to assist in the exercise of its functions.
- (2) Committee members need not be members of the council.
- (3) The procedure for calling committee meetings and for the conduct of business at those meetings is to be decided by the council or (subject to any decision of the council) by the committee.

### **4.53 Use of government staff or facilities**

The council may, with the approval of the Minister, arrange for the use of government staff or facilities.

### **4.54 Engagement of consultants by council**

The council, or a committee established under section 4.52, may engage consultants with suitable qualifications and experience, either in an honorary capacity or for remuneration.

### **4.55 Accountability of council to Minister**

- (1) The council must exercise its functions subject to—
  - (a) the general direction and control of the Minister; and
  - (b) any specific written directions given by the Minister.

- (2) Without limiting subsection (1) (b), a direction may require the council to give the Minister information, or give access to information, in its possession or control about anything stated in the direction.

#### **4.56 Annual report of council**

- (1) The council must prepare a report on the council's work and activities during each financial year.
- (2) The council must give the report for a financial year to the Minister before 1 October in the next financial year.
- (3) The Minister must present a copy of the annual report to the Legislative Assembly within 6 sitting days after the day the Minister receives it.

### **Part 4.7 Miscellaneous**

#### **4.57 Characterisation of sch 4**

The provisions of this schedule are to be regarded as part of the substantive law of the ACT.

#### **4.58 No contracting out of sch 4**

This schedule applies to a person to whom a scheme in force under this schedule applies despite any contract to the contrary, whether the contract was made before, on or after the day the person became a person to whom the scheme applies.

#### **4.59 No limitation on other insurance**

This schedule does not limit the insurance arrangements a person may make apart from those made for this schedule.

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### 4.60 Review of sch 4

- (1) The Minister must review this schedule as soon as possible after the end of its 5th year of operation.
- (2) The review must examine whether the policy objectives of this schedule remain valid and whether the terms of the schedule remain appropriate for securing those objectives.
- (3) A report of the outcome of the review is to be presented to the Legislative Assembly within 12 months after the end of the 5 years.
- (4) This section expires 7 years after the day it commences.

## 9 New schedule 5

# Schedule 5 Occupational associations— model code

## Model code

### 5.1 Name of code

This code is the Occupational Associations (Complaints and Discipline) Code.

### 5.2 Meaning of *council*

In this code:

*council* means the Professional Standards Council established under the *Civil Law (Wrongs) Act 2002*, schedule 4.

### 5.3 What actions may be the subject of a complaint?

- (1) A complaint may be made that a member of the occupational association has acted (or has failed to act) in such a way as to justify the taking of disciplinary action against the member under this code.

- (2) A complaint may be made and dealt with even though the person about whom it is made has ceased to be a member.

#### **5.4 Who may make a complaint?**

Any person may make a complaint (including the occupational association and the council).

#### **5.5 How is a complaint made?**

- (1) A complaint may be made to the occupational association.
- (2) The complaint must be in writing and contain the particulars of the allegations on which it is founded.
- (3) The occupational association must notify the council of each complaint made to it (other than a complaint made by the council).

#### **5.6 What happens after a complaint is made?**

- (1) The occupational association must consider a complaint as soon as practicable after the complaint is made to it or notified to it by the council.
- (2) The association may do any 1 or more of the following:
- (a) require the complainant to provide further particulars of the complaint;
  - (b) carry out an investigation into the complaint;
  - (c) attempt to resolve the complaint by conciliation;
  - (d) decline to consider the complaint (because, for example, the complaint is frivolous, vexatious, misconceived or lacking in substance);
  - (e) conduct a hearing into the complaint.

*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, s 126 and s 132).

- (3) The occupational association is bound by the rules of natural justice in conducting a hearing into the complaint.

**5.7 What action may be taken after a hearing into a complaint?**

- (1) After an occupational association has conducted a hearing into a complaint against a person, it may, if it finds the complaint substantiated, do any 1 or more of the following:
  - (a) caution or reprimand the person;
  - (b) impose conditions relating to the carrying out of the person's occupation;
  - (c) require the person to complete specified courses of training or instruction;
  - (d) require the person to report about the carrying out of the person's occupation at the times, in the way and to the people specified by the association;
  - (e) order the person to obtain advice about the carrying out of the person's occupation from the people specified by the association;
  - (f) expel the person from membership of the association.
- (2) If the association does not find the complaint substantiated, it must dismiss the complaint.
- (3) The association is not entitled to make an award of compensation.

**5.8 Notices of decisions**

- (1) Within 30 days after the day a decision is made by an occupational association about a complaint, the complainant and the person against whom the complaint is made must be given a written statement of the decision.
- (2) The statement must include the reasons for the decision.



**5.9 What rights of representation do parties to a complaint have?**

The complainant and the person about whom the complaint is made are not entitled to legal representation during attempts to resolve the complaint by conciliation but are entitled to legal representation during a hearing into the complaint.

**5.10 How may occupational association's functions under code be exercised?**

A function of an occupational association under this code may, in accordance with a resolution of the association, be exercised by the executive body of the association or by a person or people appointed for the purpose by the executive body.

**5.11 Protection from liability**

- (1) A member of the executive body of an occupational association, or anyone acting in accordance with a resolution of the association, is not personally liable for anything done or omitted to be done honestly—
  - (a) in the exercise of a function under this schedule; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this schedule.
- (2) Any liability that, apart from subsection (1), would attach to a person attaches instead to the council.

**10 Dictionary, new definitions**

*insert*

***apportionable claim***, for chapter 7A (Proportionate liability)—see section 107B.

***business assets***, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

**11 Dictionary, definition of *claimant***

*substitute*

*claimant*—

- (a) for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and
- (b) for chapter 7A (Proportionate liability)—see section 107C.

**12 Dictionary, new definitions**

*concurrent wrongdoer*, for chapter 7A (Proportionate liability)—see section 107D.

*consumer claim*, for chapter 7A (Proportionate liability)—see section 107C.

*council*—

- (a) for schedule 4 (Professional standards)—see schedule 4, section 4.36; and
- (b) for schedule 5 (Occupational associations—model code)—see schedule 5, section 5.2.

**13 Dictionary, definition of *court*, paragraph (h)**

*substitute*

- (h) for part 14.2 (Costs in damages claims if no reasonable prospects of success)—see section 186; and
- (i) for schedule 4 (Professional standards)—see schedule 4, section 4.2.

**14 Dictionary, new definitions**

*damages*, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

*defendant*, for chapter 7A (Proportionate liability)—see section 107A.

***judgment***, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

***occupational association***, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

***occupational group***, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

***occupational liability***, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

***scheme***, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

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