Australian Capital Territory

Civil Law (Wrongs) Act 2002

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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 16 May 2026. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 16 May 2026.

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

Kinds of republications

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

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

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

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).

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Australian Capital Territory

Civil Law (Wrongs) Act 2002

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.

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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—failure to give document, film or information)
- section 80 (False or misleading statements)
- sch 4, s 4.29 (Notification of limitation of liability)
- sch 4, s 4.50 (Requirement to provide information).

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.

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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—scheme of compulsory third-party motor vehicle insurance
the scheme under the *Motor Accident Injuries Act 2019*

(3) Despite subsection (2) (b), if a good samaritan administers the drug known as naloxone, honestly and without recklessness, to a person apparently suffering from an overdose of an opioid drug for the purpose of resuscitating the person, the protection under subsection (1) applies even if the good samaritan's capacity to exercise appropriate care and skill was, at the time of administering the drug, impaired by a recreational drug.

Examples—opioid drugs
- heroin
- methadone
- morphine

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(4) 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.

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Part 2.2 Volunteers

6 Definitions—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 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;

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(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.

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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.

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11 Directions to community organisations about insurance etc

(1) The Minister may give 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.

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Part 2.2A Food donors

11A Definitions—pt 2.2A

In this part:

donor—

(a) means a person who donates food—

(i) in good faith for a charitable or benevolent purpose; and

(ii) with the intention that the consumer of the food would not have to pay for it; but

(b) does not include a person who distributes food donated by another person for human consumption.

fit for human consumption, in relation to food, means food that is not unsafe or unsuitable.

food—see the *Food Act 2001*, section 8.

unsafe, in relation to food—see the *Food Act 2001*, section 12.

unsuitable, in relation to food—see the *Food Act 2001*, section 13.

11B Protection of food donors from liability

A donor does not incur civil liability for any personal injury that results from the consumption of food donated by the donor if—

(a) the food was fit for human consumption when it left the possession or control of the donor; and

(b) for food that is required to be handled in a particular way to ensure it remains fit for human consumption—the donor told the person to whom the donor gave the food about the handling requirements for the food; and

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(c) for food that would remain fit for human consumption for only a limited amount of time after it leaves the possession or control of the donor—the donor told the person to whom the donor gave the food about the time limit on the consumption of the food.

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Part 2.3 Apologies

12 Application—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 *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.

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(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.

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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).

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(4) However, damages mentioned in subsection (3) (b) (i) may be recovered if—

(a) the cause of action related to a personal injury resulting from an asbestos-related disease; and

(b) the person gave notice under section 51 (Notice of claim) before the person's death; and

(c) the person died either—

(i) as a result of the asbestos-related disease; or

(ii) the asbestos-related disease was a contributing factor to the person's death.

(5) The damages may include an amount to compensate for any reasonable funeral expenses paid or payable by the estate.

(6) 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.

(7) In deciding whether an expense is reasonable for subsection (5), regard must be had to the religious and cultural circumstances of the dead person and the members of the dead person's family.

(8) In this section:

asbestos-related disease means any of the following diseases:

(a) asbestosis;

(b) asbestos induced carcinoma;

(c) asbestos-related pleural diseases;

(d) mesothelioma;

(e) a disease prescribed by regulation.

member, of a dead person's family—see section 23.

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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 *Motor Accident Injuries Act 2019*.

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Part 2.5 Proceedings against and contributions between wrongdoers

19 Definitions—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.

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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).

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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—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, civil union partner or civil partner of the person.

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

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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.

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(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;

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(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.

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Part 3.2 Mental harm

32 Definitions—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.

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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.

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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.

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(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.

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Part 3.3 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.

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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 *Motor Accident Injuries Act 2019*, section 295 (MAI insurer to indemnify MAI insured people).

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Chapter 4 Negligence

Part 4.1 Preliminary—negligence

40 Definitions—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—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*.

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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.

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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.

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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 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.

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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.

Note The *Motor Accident Injuries Act 2019*, s 256 provides that, for making a motor accident claim for a no-fault motor accident—

(a) in the case of a single vehicle accident, the driver of the motor vehicle is taken to be the driver at fault and to have breached their duty of care to an injured person; and

(b) in the case of a multiple vehicle accident, the driver of the motor vehicle whose act or omission caused the accident is taken to be the driver at fault and to have breached their duty of care to an injured person.

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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

(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.

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(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.

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Chapter 5 Personal injuries claims—pre-court procedures

Part 5.1 Preliminary—ch 5

49 Definitions—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.

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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—ch 5

(1) This chapter applies to all claims for damages for personal injury, including claims to which the *Motor Accident Injuries Act 2019*, chapter 5 (Motor accident injuries—common law damages) applies.

(2) However, this chapter does not apply to—

(a) a claim for compensation 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).

(3) Also, this chapter does not apply to a claim for damages for personal injury if a claim for compensation has been made under the *Workers Compensation Act 1951* in relation to the injury.

(4) Despite subsection (3), part 5.2 (Claims procedures) applies to a claim for damages for personal injury, even though a claim for compensation may have been made under the *Workers Compensation Act 1951* in relation to the injury, if—

(a) the *Motor Accident Injuries Act 2019*, chapter 5 applies to the claim; or

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(b) the claim is made against a person who is not an employer or insurer in relation to the injury under the *Workers Compensation Act 1951*, chapter 6 (Claims) even though it is also made against such a person.

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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 (if any) under the *Limitation Act 1985*.

Note 2 The *Limitation Act 1985* does not apply a limitation period to child abuse claims (see that Act, s 21C).

(2) The notice must—

(a) contain a statement of the information required by regulation; and

(b) authorise each of the following to have access to the records and sources of information relevant to the claim that are required by regulation:

(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 by regulation.

(3) For a proceeding not based on a motor accident claim or child abuse claim, 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;

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(b) the day that is 4 months 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) For a proceeding based on a motor accident claim, the notice must be given within 3 months after the latest of the following days:

(a) if the claimant is taken, under the *Motor Accident Injuries Act 2019*, section 133 (WPI taken to be 10% in certain circumstances), to have a WPI of 10% as a result of the motor accident—the day the claimant receives information under the *Motor Accident Injuries Act 2019* stating that the claimant is taken to have a WPI of 10%;

(b) if the claimant receives a notice under the *Motor Accident Injuries Act 2019*, section 141 (5) (WPI assessment 4 years 6 months after motor accident)—the date that is 26 weeks after the date of the notice;

(c) if the claimant receives a notice under the *Motor Accident Injuries Act 2019*, section 157 (2) (WPI 10% or more—injured person entitled to make motor accident claim)—the due date stated in the notice;

(d) if the claimant receives a notice under the *Motor Accident Injuries Act 2019*, section 164 (2) (Final offer WPI 10% or more—injured person entitled to make motor accident claim)—the due date stated in the notice;

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(e) if the claimant applies to the ACAT for review of a final offer WPI decision under the *Motor Accident Injuries Act 2019*, section 162 (1) (Final offer WPI 5% to 9%), section 163 (1) (Final offer WPI 10% or more—injured person not entitled to make motor accident claim) or section 164 (1) and the ACAT makes an order under that Act, section 197 (External review—decision) to the effect that the claimant has a WPI of at least 10% and is entitled to make a motor accident claim—

(i) if no appeal from the order is made—the date the appeal period for the order ends; or

(ii) if an appeal from the order is made—the date the appeal is finally decided;

(f) if the claimant receives a notice under the *Motor Accident Injuries Act 2019*, section 213 (4) (SOI report—injury has significant occupational impact) stating that the claimant is taken to have a WPI of 10% for this Act—the date of the notice;

(g) if the claimant applies to the ACAT for review of an SOI report under the *Motor Accident Injuries Act 2019*, section 214 (SOI report—no significant occupational impact) and the ACAT makes an order under that Act, section 218 (1) (b) (ACAT review—decision)—

(i) if no appeal from the order is made—the date the appeal period for the order ends; or

(ii) if an appeal from the order is made—the date the appeal is finally decided.

Note This chapter does not apply to a claim for which a notice has been given by or for the claimant under the *Limitation Act 1985*, s 30A (2) (see s 50).

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(5) For a proceeding based on a child abuse claim, the notice must be given within a reasonable time before the claimant brings the proceeding against the respondent.

Note If the notice is not given as required under s (5), the obligation to give the notice continues until it is given (see Legislation Act, s 152).

(6) 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).

(7) 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).

(8) Without limiting subsection (7), an excuse is reasonable if it is prescribed by regulation for this section.

(9) 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.

(10) If the respondent is a child, the respondent's parent or legal guardian may comply with subsection (9) for the respondent.

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51A Motor accident claims—respondent to identify and notify others

(1) If a respondent to a motor accident claim knows of anyone else (a ***relevant person***) against whom the claimant may be able to begin a proceeding based on the claim, the respondent must, not later than 7 days after the day the respondent receives the notice of claim—

(a) give a copy of the notice of claim to the relevant person; and

(b) tell the claimant, in writing, about the relevant person, including a short written explanation of why the respondent believes that the person may be a relevant person.

(2) If the respondent is a child, the respondent's parent or legal guardian may comply with subsection (1) 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

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(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

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(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 by regulation; 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 (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.

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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.

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(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.

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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 period (if any) 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 period prescribed by regulation.

56 Multiple respondents

(1) If there are 2 or more respondents to a claim, other than a motor accident claim, 1 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) If there are 2 or more respondents to a motor accident claim, 1 of the respondents (the ***respondents' claim manager***) must act for all of the respondents under this chapter.

(3) For subsection (2)—

(a) the respondents' claim manager must be decided—

(i) by agreement between the respondents; or

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(ii) if the respondents cannot agree within 2 months after the day the claimant first gave, or is taken to have given, a respondent for the motor accident claim a complying notice of claim—under the insurance industry deed; and

(b) until the respondents' claim manager is decided under paragraph (a), the respondent to which the notice of claim is first given under section 51 is the respondents' claim manager.

(4) 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.

(5) 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.

(6) However, if the respondents' claim manager acts beyond the scope of the manager's authority under the agreement under subsection (1) or (3) (a) (i), 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 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

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(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) However, the respondent may add someone else as a contributor only—

(a) within the period (if any) prescribed by regulation; or

(b) if the contributor and all parties to the claim agree; or

(c) if the court gives leave.

(3) Also, if the claim is a motor accident claim and the respondent proposes to add the nominal defendant as a contributor because the motor accident involved an unidentified motor vehicle, the respondent may add the nominal defendant only if the respondent has made reasonable inquiry and search for the identity of the motor vehicle.

(4) The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.

(5) 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 period 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.

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(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 given by a contributor under this section to be verified, the contributor must give the respondent a statement verifying the information.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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

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(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 (6) 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*.

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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.

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(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.

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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.

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Part 5.3 Obligations of parties to give documents and information

63 Purpose—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 or surveillance film about the claimant's medical condition or prospects of rehabilitation;

(iii) reports or surveillance film 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;

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(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.

Note Damages may not be awarded in a motor accident claim for gratuitous care (see *Motor Accident Injuries Act 2019*, s 249).

(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, film 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, the claimant must give the respondent a statement verifying the information.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(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.

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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.

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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 or surveillance film about the claimant's medical condition or prospects of rehabilitation;

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(iii) reports or surveillance film 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, film 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, the respondent must give the claimant a statement verifying the information.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(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.

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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 or surveillance film about the claimant's medical condition or prospects of rehabilitation;

(c) reports or surveillance film about the claimant's cognitive, functional or vocational capacity;

(d) reports or surveillance film about the claimant's personal 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.

Note Damages may not be awarded in a motor accident claim for gratuitous care (see *Motor Accident Injuries Act 2019*, s 249).

(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

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(b) to the extent that a report, film 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, surveillance film 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, film 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.

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(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).

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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.

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74 Offence—failure to give document, film or information

A person commits an offence if the person—

(a) is a party for a motor accident claim; and

(b) is obliged to give a document, surveillance film or information under this chapter; and

(c) does not give the document, film or information in the way required under this chapter.

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.

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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.

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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.

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Chapter 7 Damages

Part 7.1 Damages for personal injuries—exclusions and limitations

92 Definitions—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—pt 7.1

(1) This part applies to all claims for damages for personal injury, including claims to which the *Motor Accident Injuries Act 2019*, chapter 5 (Motor accident injuries—common law damages) 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

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(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—

(a) the injured person was—

(i) at least 16 years old at the time of the accident; and

(ii) intoxicated at the time of the accident; and

(b) 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.

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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.

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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—

(a) 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; or

(b) the injured person was not capable of fastening a seatbelt without assistance from someone else.

(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.

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(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 seasonally adjusted for the ACT (all males total earnings) in *Average Weekly Earnings, Australia* (State and Territory Earnings) issued by the Australian statistician; or

Note *Average Weekly Earnings, Australia* is issued in May and November and is available at www.abs.gov.au.

(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.

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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.

Note Under the *Motor Accident Injuries Act 2019*, the only damages that may be awarded for non-economic loss are damages for loss of quality of life (see that Act, s 242).

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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 the injured person 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.

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Part 7.3 Contributory negligence

101 Definitions—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.

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(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.

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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.

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Chapter 7A Proportionate liability

107A Definitions—ch 7A

In this chapter:

apportionable claim—see section 107B.

claimant—see section 107C.

concurrent wrongdoer—see section 107D.

consumer claim—see section 107C.

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 *Australian Consumer Law (ACT)*, section 236 for a contravention of that law, part 3.1 (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.

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(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 *Motor Accident Injuries Act 2019*, chapter 5 (Motor accident injuries—common law damages) 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*—ch 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

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(c) repairing or treating other goods or fixtures on land.

(3) In this section:

acquire—see the *Australian Consumer Law (ACT)*, section 2 (1).

business—see the *Australian Consumer Law (ACT)*, section 2 (1).

goods—see the *Australian Consumer Law (ACT)*, section 2 (1).

resupply, of goods acquired from a person, includes—

(a) a supply of the goods (the ***first goods***) to another person in an altered form or condition; and

(b) a supply to another person of goods in which the first goods have been incorporated.

services—see the *Australian Consumer Law (ACT)*, section 2 (1).

supply—see the *Australian Consumer Law (ACT)*, section 2 (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.

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(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.

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(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 part 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.

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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 Including non-party concurrent wrongdoer

(1) In a proceeding in a court involving an apportionable claim, any number of people may be included as defendants.

(2) However, a person may be included as a defendant only with the court's leave.

(3) The court must not give leave for a person to be included as a defendant if the person was a party to a previously concluded proceeding in relation to the claim.

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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.

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Chapter 8 Liability of public and other authorities

108 Application—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 *Motor Accident Injuries Act 2019*, chapter 5 (Motor accident injuries—common law damages) applies; or

(b) a claim under the *Workers Compensation Act 1951*.

109 Definitions—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.

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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.

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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.

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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.

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Chapter 8A Institutional child abuse

Part 8A.1 Definitions and application—ch 8A

114A Meaning of *child abuse claim*

In this Act:

child abuse claim, by or on behalf of a person, means a claim in relation to a personal injury that arises from child abuse to which the person was subjected when the person was a child.

114AA Meaning of *child abuse*—ch 8A

(1) In this chapter:

child abuse means physical abuse or sexual abuse of a child.

(2) In this section:

physical abuse does not include conduct that is justified or excused under a law applying in the Territory.

sexual abuse, of a child, includes any of the following involving the child:

(a) an offence of a sexual nature;

(b) misconduct of a sexual nature.

114B Meaning of *related trust*—ch 8A

(1) In this chapter:

related trust, in relation to an unincorporated body, means a trust controlled by the unincorporated body which the body uses to conduct the body's activities.

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(2) For this section, a related trust is ***controlled*** by an unincorporated body if—

(a) the body has direct or indirect power to control the application of income, or the distribution of the property, of the trust; or

(b) the body has direct or indirect power to obtain the beneficial enjoyment of the property or income of the trust, with or without the consent of any other entity; or

(c) the body has direct or indirect power to appoint or remove a trustee of the trust; or

(d) the body has direct or indirect power to appoint or remove beneficiaries of the trust; or

(e) the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the body; or

(f) the body has direct or indirect power to decide the outcome of any other decision about the trust's operations; or

(g) a member of the body has, under the trust deed for the trust, a power mentioned in paragraphs (a) to (f).

114BA Time when child abuse etc happens

This chapter, other than division 8A.1A.2 (Duty of organisations to prevent child abuse), applies in relation to child abuse or alleged child abuse of a person who is the subject of a child abuse claim, regardless of when the abuse or alleged abuse happened.

Note Division 8A.1A.2 applies in relation to child abuse that happens, or is alleged to happen, on or after the day the division commences (see s 114BBB).

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Part 8A.1A Liability of organisations

Division 8A.1A.1 Preliminary—pt 8A.1A

114BB Definitions—pt 8A.1A

In this part:

organisation includes the following:

(a) an administrative unit;

(b) a territory authority;

(c) an unincorporated body.

responsible, for a child—see section 114BBA.

114BBA Organisations that are responsible for child

(1) An organisation is ***responsible*** for a child if it, including any part of it, exercises care, supervision or authority over the child.

(2) If an organisation, including any part of it, delegates the exercise of care, supervision or authority over the child to another organisation, in whole or in part, each organisation is ***responsible*** for the child.

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Division 8A.1A.2 Duty of organisations to prevent child abuse

114BBB Application—div 8A.1A.2

This division applies in relation to child abuse that happens, or is alleged to happen, on or after the day this division commences.

114BBC Meaning of individual *associated* with organisation—div 8A.1A.2

(1) For this division, an individual ***associated*** with an organisation includes—

(a) an office holder, officer, owner, employee, agent, volunteer or contractor of the organisation; and

(b) if the organisation is a religious organisation—a religious leader, such as a priest or minister, or other member of the personnel of the organisation, whether or not the individual is ordained; and

(c) an individual prescribed by regulation.

(2) A regulation may prescribe circumstances in which an individual is not associated with an organisation.

(3) If an organisation (the ***principal organisation***) delegates, in whole or in part, its responsibility for a child to another organisation (the ***delegate organisation***), an individual associated with the delegate organisation is also taken to be associated with the principal organisation.

114BBD Duty of organisations to prevent child abuse

(1) This section imposes a duty of care that forms part of a cause of action in negligence.

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(2) An organisation that is responsible for a child must take reasonable precautions to prevent an individual associated with the organisation from perpetrating child abuse against the child in connection with the organisation's responsibility for the child.

(3) If an individual associated with the organisation perpetrates child abuse against a child in connection with the organisation's responsibility for the child, the organisation is taken to have breached the duty of care unless the organisation establishes that it took reasonable precautions to prevent the child abuse.

(4) In deciding whether an organisation took reasonable precautions to prevent the child abuse, a court may consider the following:

(a) the nature of the organisation;

(b) the resources available to the organisation;

(c) the relationship between the organisation and the child;

(d) the position in which the organisation placed the individual, including the extent to which the position gave the individual any of the following:

(i) authority, power or control over the child;

(ii) the ability to gain the trust of the child;

(iii) the ability to achieve intimacy with the child;

(e) whether the organisation complied with any applicable standards in relation to child safety;

(f) any other matters prescribed by regulation;

(g) any other matters the court considers relevant.

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Division 8A.1A.3 Vicarious liability of organisations

114BC Meaning of *employee*—div 8A.1A.3

(1) In this division:

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

(2) For this section, an individual is ***akin to an employee*** of an organisation if—

(a) the individual carries out activities that are—

(i) a part of the ordinary activities carried out by the organisation; and

(ii) for the benefit of the organisation; or

(b) a circumstance prescribed by regulation applies to the individual.

(3) A regulation under subsection (2) (b) may also prescribe a circumstance in which an individual is not akin to an employee if the circumstance applies to the individual.

114BE Organisations vicariously liable for child abuse perpetrated by employees

(1) An organisation that is responsible for a child is vicariously liable for child abuse perpetrated against the child by an employee of the organisation if—

(a) the apparent performance by the employee of a role in which the organisation placed the employee supplies the occasion for the perpetration of the child abuse by the employee; and

(b) the employee takes advantage of the occasion to perpetrate the child abuse.

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(2) In determining whether the apparent performance by the employee of a role in which the organisation placed the employee supplied the occasion for the perpetration of child abuse against a child, a court must take into account whether the organisation placed the employee in a position in which the employee has one or more of the following:

(a) authority, power or control over the child;

(b) the trust of the child;

(c) the ability to achieve intimacy with the child.

(3) This section does not affect, and is in addition to, the common law in relation to vicarious liability.

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Part 8A.2 Institutional child abuse—proceedings against unincorporated bodies

114C Unincorporated bodies

(1) This part applies to an unincorporated body regardless of whether the body has—

(a) a written constitution or fixed membership; or

(b) any other particular attribute.

(2) Anything an unincorporated body may do, or is required to do, under this part may be done by any management member of the body.

(3) In this section:

management member, of an unincorporated body, means—

(a) a member of the body's management committee (however described); or

(b) if the body does not have a management committee—a person who takes part in, or who could take part in or exercise control over, the management of the body, regardless of the person's title or position.

114D Unincorporated body may nominate defendant

(1) This section applies if—

(a) a person brings, or wishes to bring, a child abuse claim against an unincorporated body; and

(b) but for being unincorporated, the unincorporated body would be capable of being sued.

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(2) The unincorporated body may, with the nominee's consent, nominate an entity that is capable of being sued to act as the defendant for the unincorporated body in a proceeding for the child abuse claim.

(3) If a proceeding for the child abuse claim has started before the unincorporated body has made a nomination, unless the court otherwise orders, a nomination may be made no later than 120 days after the day the proceeding started.

(4) If an unincorporated body makes a nomination under subsection (2)—

(a) the child abuse claim may be brought against the nominee; and

(b) the nominee is taken to be the defendant for the body in the proceeding for the claim for all purposes; and

(c) the court may find the nominee liable, on behalf of the body, for any amount that the body would have been liable for if the body were incorporated and capable of being sued.

114E Court may appoint related trust as defendant

(1) This section applies if—

(a) a proceeding for a child abuse claim against an unincorporated body has started and the body has not made a nomination under section 114D (2) within 120 days after the day the proceeding started; or

(b) an unincorporated body nominates an entity under section 114D (2) in relation to a child abuse claim and the nominated entity—

(i) is not capable of being sued; or

(ii) does not have sufficient assets or property to meet any judgment or order that may be made against it in relation to the claim.

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(2) The plaintiff in a proceeding for the child abuse claim may apply to the court for an order that a related trust be appointed as the defendant for the unincorporated body in the proceeding.

(3) If the plaintiff makes an application under subsection (2), the unincorporated body must, within 28 days of the application being made, notify the court about—

(a) any related trusts in relation to the body; and

(b) the financial capacity of each trust.

(4) The court may appoint 1 or more related trusts notified under subsection (3), or other related trusts in relation to the unincorporated body, as the defendant for the body in the proceeding.

(5) If the court makes an appointment under subsection (4)—

(a) the child abuse claim may be brought or continued against the appointee; and

(b) the appointee is taken to be the defendant for the unincorporated body in the proceeding for the claim for all purposes; and

(c) anything done by the unincorporated body is taken to have been done by the appointee; and

(d) any duty or obligation of the unincorporated body in relation to the proceeding is a duty or obligation owed by the appointee; and

(e) the court may find the appointee liable, on behalf of the unincorporated body, for any amount that the body would have been liable for if the body were incorporated and capable of being sued.

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114F Proceedings may be commenced before nomination or appointment

(1) A proceeding for a child abuse claim may be commenced or continued against an unincorporated body in the name of the body before—

(a) a nomination under section 114D (2) is made; or

(b) an appointment is made under section 114E (4).

(2) If a proceeding is commenced or continued under subsection (1) against the unincorporated body, the court may make any interlocutory orders it considers appropriate against the body as if it were incorporated and capable of being sued.

(3) The nomination or appointment of an entity as a defendant for the unincorporated body in a proceeding for a child abuse claim does not relieve the body, or any member of the body, from any obligation under an order under subsection (2).

114G Liability of trustee if nominated or appointed as defendant

(1) This section applies if a related trust is nominated or appointed under this part as the defendant for an unincorporated body in a proceeding for a child abuse claim.

(2) Despite any territory law or anything in the trust deed, the trustee of the related trust may—

(a) accept liability in relation to the child abuse claim; and

(b) if nominated as defendant—consent to the nomination; and

(c) give the court any information about the trust that may be required for this part including information about the trust's financial capacity; and

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(d) if the trust is found liable, or the trustee accepts liability, in relation to the claim—

(i) apply trust property to pay the liability; and

(ii) be indemnified out of the trust property of the trust in relation to the payment of the liability regardless of any limitation on any right of indemnity the trustee may have.

(3) A trustee of a related trust is not liable under this part—

(a) for an amount more than the total value of the trust property; or

(b) for breach of trust only because of exercising a power under this part or complying with this part.

(4) This section is declared to be a corporations legislation displacement provision for the Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws).

Note Subsection (4) ensures that any provision of the Corporations Act or the *Australian Securities and Investments Commission Act 2001* (Cwlth) with which this section would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

(5) In this section:

liability, in relation to a child abuse claim, includes—

(a) any unpaid judgment debt arising from the proceeding for the claim; and

(b) any amount paid in settlement of the proceeding; and

(c) any costs associated with the proceeding.

trustee, of a related trust, if the trustee is a corporation, includes any corporator, member or director of the corporation.

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114H Defendant may rely on defences and immunities etc

(1) In a proceeding for a child abuse claim, a defendant for an unincorporated body nominated under section 114D (2), or appointed under section 114E (4)—

(a) may rely on any defence or immunity the body would have been able to rely on had the body been incorporated and capable of being sued; and

(b) is entitled to be indemnified under any policy of insurance in relation to the claim that the body would have been indemnified under had the body been incorporated and capable of being sued.

(2) Nothing in subsection (1) (b) excludes an unincorporated body from any coverage or indemnity of the body under an insurance policy in relation to a child abuse claim.

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Part 8A.3 Institutional child abuse—setting aside abuse settlement agreements

114I Object—pt 8A.3

The object of this part is to provide a way, for a person who is the subject of a child abuse claim because the person suffered child abuse, to seek to have an abuse settlement agreement set aside if—

(a) when the agreement was made there were legal barriers to the person being fully compensated through a legal cause of action; or

(b) when the agreement is sought to be set aside the agreement is, in all the circumstances, not a just and reasonable agreement.

114J Definitions—pt 8A.3

(1) In this part:

abuse settlement agreement means an agreement—

(a) that settles a child abuse claim and prevents the exercise of an action on a cause of action to which the *Limitation Act 1985*, section 21C (Personal injury resulting from child abuse) applies; and

(b) that—

(i) happened before the commencement of the *Limitation Act 1985*, section 21C, and at a time when a limitation period applying to the cause of action had ended; or

(ii) happened before the commencement of this part, and the agreement is not just and reasonable in the circumstances; or

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(iii) happened before the commencement of part 8A.1A, and the child abuse claim involved child abuse by a person who would have been an employee of an organisation if that part had been in force when the agreement was made.

applicant—see section 114K (1).

(2) For the definition of ***abuse settlement agreement***, a limitation period that ended at a particular time is taken to have ended even if it were possible to seek the leave of a court to extend the period at the time the period ended.

114K Court may set aside abuse settlement agreement

(1) This section applies if a person (the ***applicant***) is prevented from exercising an action on a cause of action because of an abuse settlement agreement.

(2) The applicant may—

(a) begin a proceeding on the cause of action in a court with jurisdiction to hear the proceeding; and

(b) apply to the court to set aside the agreement.

(3) The court may set aside the agreement if the court is satisfied that—

(a) when the agreement was made there were legal barriers to the person being fully compensated through a legal cause of action; or

(b) when the application is made to set aside the agreement, the agreement is, in all the circumstances, not a just and reasonable agreement.

(4) The court may consider the following in deciding whether to set aside the agreement:

(a) the amount paid to the applicant under the agreement;

(b) the bargaining position of the parties to the agreement;

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(c) the conduct of the following people in relation to the agreement:

(i) a party other than the applicant;

(ii) a legal representative of a party other than the applicant;

(d) any other matter the court considers relevant.

(5) The *Evidence Act 2011*, section 131 (1) (Exclusion of evidence of settlement negotiations) does not prevent evidence being adduced in a proceeding begun under this section, even if the evidence is of a communication made, or a document prepared, in connection with an attempt to negotiate a settlement of the dispute to which the agreement relates.

114L Court may also set aside other things

(1) If the court decides to set aside an abuse settlement agreement under this part, it may also set aside any of the following that gives effect to the agreement:

(a) a contract, deed or other agreement;

(b) an order or judgment of the court or of a lower court.

(2) However, the court must not set aside the following:

(a) a deed of release signed by or on behalf of the applicant in acceptance of an offer under the national redress scheme and an agreement relating to a relevant prior payment that has been taken into account in the offer;

(b) an agreement to the extent to which—

(i) the agreement settled a cross-claim between 2 or more defendants; or

(ii) one defendant indemnified another;

(c) a contract of insurance.

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(3) In this section:

national redress scheme means the National Redress Scheme for Institutional Child Sexual Abuse established under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cwlth), section 8.

114M Effect of setting aside abuse settlement agreement

(1) A court may set aside an abuse settlement agreement or anything else in accordance with this part only to the extent that it relates to the applicant.

(2) An agreement and anything else set aside in accordance with this part is void but only to the extent that it relates to the applicant.

(3) An amount paid, including legal costs or disbursements, or other consideration given under the agreement—

(a) is not recoverable despite the agreement being void; and

(b) may be taken into account by a court in deciding damages in a proceeding on a cause of action to which the agreement relates.

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Chapter 9 Defamation

Part 9.1 Preliminary—defamation

115 Objects—ch 9

The objects of this chapter are—

(a) to enact provisions to promote uniform laws of defamation in Australia; and

(b) to ensure that the law of defamation does not place unreasonable limits on freedom of expression and, in particular, on the publication and discussion of matters of public interest and importance; and

(c) to provide effective and fair remedies for persons whose reputations are harmed by the publication of defamatory matter; and

(d) to promote speedy and non-litigious methods of resolving disputes about the publication of defamatory matter.

Note The *Human Rights Act 2004* provides for the following human rights that are particularly relevant to this chapter:

- privacy and reputation (see s 12)
- freedom of expression (see s 16).

Under the *Human Rights Act 2004*, s 28 human rights may be subject only to reasonable limits set by territory laws that can be demonstrably justified in a free and democratic society.

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116 Definitions—ch 9

In this chapter:

access prevention step, in relation to the publication of digital matter, means a step—

(a) to remove the matter; or

(b) to block, disable or otherwise prevent access, whether by some or all people, to the matter.

aggrieved person, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124 (1).

applicable period, for an offer to make amends, for division 9.3.1 (Concerns notices and offers to make amends)—see section 126 (2).

associated entity—see the Corporations Act, section 50AAA.

Australian court means any court established by or under a law of an Australian jurisdiction (including a court conducting committal proceedings for an indictable offence).

Australian jurisdiction means—

(a) a State; or

(b) a Territory; or

(c) the Commonwealth.

Australian tribunal means any tribunal (other than a court) established by or under a law of an Australian jurisdiction that has the power to take evidence from witnesses before it on oath (including a royal commission or other special commission of inquiry).

Note ***Oath*** includes affirmation and ***take*** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

caching service, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

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concerns notice, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124A (1).

conduit service, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

country includes—

(a) a federation and a state, territory, province or other part of a federation; and

(b) an Australian jurisdiction.

digital intermediary, in relation to the publication of digital matter, means a person, other than an author, originator or poster of the matter, who provides or administers the online service by means of which the matter is published.

Note There may be more than 1 digital intermediary in relation to the publication of the same digital matter.

digital matter means matter published in electronic form by means of an online service.

document means any record of information, and includes—

(a) anything on which there is writing; and

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and

(d) a map, plan, drawing or photograph.

electronic communication includes a communication of information in the form of data, text, images or sound (or any combination of these) by means of guided or unguided electromagnetic energy, or both.

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excluded corporation—see section 121 (2).

further particulars notice, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124A (3).

general law means the common law and equity.

matter includes—

(a) an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical; and

(b) a program, report, advertisement or other thing communicated by means of television, radio, the internet or any other form of electronic communication; and

(c) a letter, note or other writing; and

(d) a picture, gesture or oral utterance; and

(e) any other thing by means of which something may be communicated to a person.

matter in question, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124.

offer to make amends means an offer to make amends under division 9.3.1.

online service means a service provided to a person, whether or not it is requested or it is for a fee or reward, to enable the person to use the internet, including, without limitation, a service enabling a person—

(a) to access or connect to the internet; or

(b) to use the internet to do 1 or more of the following:

(i) send or receive content;

(ii) store content;

(iii) index content;

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(iv) search for content;

(v) share content;

(vi) interact with other people.

Examples

1 an internet-based social media platform

2 a forum created or administered by a person using a facility provided by an internet-based social media platform that enables users to share content or interact with other users about a topic

3 a website or other internet-based platform that enables knowledge to be shared by or with its users

parliamentary body means—

(a) a parliament or legislature of any country; or

(b) a house of a parliament or legislature of any country; or

(c) a committee of a parliament or legislature of any country; or

(d) a committee of a house or houses of a parliament or legislature of any country.

poster, in relation to the publication of digital matter, means a person who uses the online service by means of which the matter is published for the purpose of communicating the matter to 1 or more other people.

publisher, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124.

search engine, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

search engine provider, for a search engine, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

search result, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

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storage service, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

substantially true means true in substance or not materially different from the truth.

this jurisdiction means the Territory.

117 Ch 9 binds Crown

Note The Legislation Act, s 121 deals with the binding effect of Acts.

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Part 9.2 General principles

Division 9.2.1 Defamation and the general law

118 Tort of defamation

(1) This chapter relates to the tort of defamation at general law.

(2) This chapter does not affect the operation of the general law in relation to the tort of defamation except to the extent that this Act provides otherwise (whether expressly or by necessary implication).

(3) Without limiting subsection (2), the general law as it is from time to time applies for the purposes of this Act as if this chapter as in force immediately before the commencement of this section had never been enacted.

119 Distinction between slander and libel abolished

(1) The distinction at general law between slander and libel remains abolished.

(2) Accordingly, the publication of defamatory matter of any kind is actionable without proof of special damage.

Division 9.2.2 Causes of action for defamation

120 Single cause of action for multiple defamatory imputations in same matter

A person has a single cause of action for defamation in relation to the publication of defamatory matter about the person even if more than 1 defamatory imputation about the person is carried by the matter.

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121 Certain corporations do not have cause of action for defamation

(1) A corporation has no cause of action for defamation in relation to the publication of defamatory matter about the corporation unless it was an excluded corporation at the time of the publication.

(2) A corporation is an ***excluded corporation*** if—

(a) the objects for which it is formed do not include obtaining financial gain for its members or corporators; or

(b) it has fewer than 10 employees and is not an associated entity of another corporation;

and the corporation is not a public body.

(3) In counting employees for the purposes of subsection (2) (b), part-time employees are to be taken into account as an appropriate fraction of a full-time equivalent.

(5) Subsection (1) does not affect any cause of action for defamation that an individual associated with a corporation has in relation to the publication of defamatory matter about the individual even if the publication of the same matter also defames the corporation.

(6) In this section:

corporation includes any body corporate or corporation constituted by or under a law of any country (including by exercise of a prerogative right), whether or not a public body.

employee, in relation to a corporation, includes any individual (whether or not an independent contractor) who is—

(a) engaged in the day-to-day operations of the corporation other than as a volunteer; and

(b) subject to the control and direction of the corporation.

public body means a local government body or other governmental or public authority constituted by or under a law of any country.

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122 No cause of action for defamation of, or against, deceased persons

(1) A person (including a personal representative of a deceased person) cannot assert, continue or enforce a cause of action for defamation in relation to—

(a) the publication of defamatory matter about a deceased person (whether published before or after his or her death); or

(b) the publication of defamatory matter by a person who has died since publishing the matter.

(2) Subsection (1) does not prevent a court, if it considers it in the interests of justice to do so, from determining the question of costs for proceedings discontinued because of the subsection.

122A Serious harm element of cause of action for defamation

(1) It is an element (the ***serious harm element***) of a cause of action for defamation that the publication of defamatory matter about a person has caused, or is likely to cause, serious harm to the reputation of the person.

(2) For subsection (1), harm to the reputation of an excluded corporation is not serious harm unless it has caused, or is likely to cause, the corporation serious financial loss.

(3) The judicial officer in defamation proceedings is to determine whether the serious harm element is established.

(4) Without limiting subsection (3), the judicial officer may (whether on the application of a party or on the judicial officer's own motion)—

(a) determine whether the serious harm element is established at any time before the trial for the proceedings commences or during the trial; and

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(b) make any orders the judicial officer considers appropriate concerning the determination of the issue (including dismissing the proceedings if satisfied the element is not established).

(5) If a party applies for the serious harm element to be determined before the trial for the proceedings commences, the judicial officer must determine the issue as soon as practicable before the trial commences unless satisfied that there are special circumstances justifying the postponement of the determination to a later stage of the proceedings (including during the trial).

(6) The matters a judicial officer may take into account in deciding whether there are special circumstances for subsection (5) include (but are not limited to) the following:

(a) the cost implications for the parties;

(b) the resources available to the court at the time;

(c) the extent to which establishing the serious harm element is linked to other issues for determination during the trial for the proceedings.

(7) Without limiting subsection (5), the judicial officer may determine the serious harm element is not established on the pleadings without the need for further evidence if satisfied that the pleaded particulars are insufficient to establish the element.

(8) Nothing in this section limits the powers that a judicial officer may have apart from this section to dismiss defamation proceedings (whether before or after the trial commences).

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Division 9.2.2A Exemptions from liability for digital intermediaries

122B Definitions—div 9.2.2A

In this division:

caching service means an online service whose principal function is to provide automatic, intermediate and temporary storage of content for the purpose of making the onward electronic transmission of the content more efficient for its users.

Example

a service for temporarily and automatically storing files that are most frequently downloaded by users of a website to speed up the download time for the files

conduit service means an online service whose principal function is to enable its users to access or use networks or other infrastructure to connect to, or send or receive data by means of, the internet.

Examples

1 a service provided by an internet service provider enabling its users to connect to the internet

2 an internet-based service enabling its users to send emails or send text messages to other people

search engine means a software application or system designed to enable its users to search for content on the internet.

search engine provider, for a search engine, means a person who maintains, or provides users with access to the search functions of, the search engine.

search result means a result generated by a search engine that is limited to identifying a webpage on which content is located by reference to 1 or more of the following:

(a) the title of the webpage;

(b) a hyperlink to the webpage;

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(c) an extract from the webpage;

(d) an image from the webpage.

storage service means an online service, other than a caching service, whose principal function is to enable its users to store content remotely.

Example

an internet-based cloud service enabling its users to store documents, videos or photographs for later retrieval

122C Exemption for digital intermediaries providing caching, conduit or storage services

(1) A digital intermediary is not liable for defamation for the publication of digital matter if the intermediary proves—

(a) the matter was published using 1 or more of the following services provided by the intermediary:

(i) a caching service;

(ii) a conduit service;

(iii) a storage service; and

(b) the intermediary's role in the publication was limited to providing 1 or more of the services mentioned in paragraph (a); and

(c) the intermediary did not do any of the following:

(i) initiate the steps required to publish the matter;

(ii) select any of the recipients of the matter;

(iii) encourage the poster of the matter to publish the matter;

(iv) edit the content of the matter, whether before or after it was published;

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(v) promote the matter, whether before or after it was published.

(2) Subsection (1) (c) does not apply in relation to action taken because it is required by or under a law of an Australian jurisdiction or an order of an Australian court or Australian tribunal.

Example

action taken to comply with a code of conduct or other document regulating conduct that a digital intermediary is required to comply with by a law of an Australian jurisdiction

(3) Subsection (1) applies regardless of whether the digital intermediary knew, or ought reasonably to have known, the digital matter was defamatory.

122D Exemption for search engine providers

(1) A search engine provider for a search engine is not liable for defamation for—

(a) the publication of digital matter comprised of search results if the provider's role was limited to providing an automated process for the user of the search engine to generate the results; or

(b) the publication of digital matter to which the search results provide a hyperlink if the provider's role in the publication of the matter is limited to the role mentioned in paragraph (a).

(2) Subsection (1) does not apply in relation to search results, or to digital matter to which the search results provide hyperlinks, to the extent the results are promoted or prioritised by the search engine provider because of a payment or other benefit given to the provider by or on behalf of a third party.

(3) Subsection (1) applies regardless of whether the search engine provider knew, or ought reasonably to have known, the digital matter was defamatory.

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122E Early determination of digital intermediary exemptions

(1) The judicial officer in defamation proceedings—

(a) is to determine whether a defendant has a digital intermediary exemption; and

(b) is to determine whether a digital intermediary exemption is established as soon as practicable before the trial for the proceedings commences unless satisfied that there are good reasons to postpone the determination to a later stage of the proceedings; and

(c) may make any orders the judicial officer considers appropriate concerning the determination of the issue, including dismissing the proceedings if satisfied the digital intermediary exemption is established.

(2) Without limiting subsection (1)—

(a) the following matters are relevant in deciding whether there are good reasons to postpone the determination of whether a digital intermediary exemption is established to a later stage of the proceedings:

(i) the cost implications for the parties;

(ii) the resources available to the court at the time;

(iii) the extent to which technical or scientific issues are raised in the proceedings;

(iv) the extent to which establishing the digital intermediary exemption is linked to other issues for determination during the trial for the proceedings; and

(b) the judicial officer may determine a digital intermediary exemption is established on the pleadings without the need for further evidence if satisfied that the pleaded particulars are sufficient to establish the exemption.

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(3) Nothing in this section limits the powers that a judicial officer may have apart from this section to dismiss defamation proceedings, whether before or after the trial for the proceedings commences.

(4) In this section:

digital intermediary exemption means an exemption from liability for defamation mentioned in section 122C or 122D.

Division 9.2.3 Choice of law

123 Choice of law for defamation proceedings

(1) If a matter is published wholly within a particular Australian jurisdictional area, the substantive law that is applicable in that area must be applied in this jurisdiction to determine any cause of action for defamation based on the publication.

(2) If there is a multiple publication of matter in more than 1 Australian jurisdictional area, the substantive law applicable in the Australian jurisdictional area with which the harm occasioned by the publication as a whole has its closest connection must be applied in this jurisdiction to determine each cause of action for defamation based on the publication.

(3) In determining the Australian jurisdictional area with which the harm occasioned by a publication of matter has its closest connection, a court may take into account—

(a) the place at the time of publication where the plaintiff was ordinarily resident or, in the case of a corporation that may assert a cause of action for defamation, the place where the corporation had its principal place of business at that time; and

(b) the extent of publication in each relevant Australian jurisdictional area; and

(c) the extent of harm sustained by the plaintiff in each relevant Australian jurisdictional area; and

(d) any other matter that the court considers relevant.

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(4) For the purposes of this section, the ***substantive law*** applicable in an Australian jurisdictional area does not include any law prescribing rules for choice of law that differ from the rules prescribed by this section.

(5) In this section:

Australian jurisdictional area means—

(a) the geographical area of Australia that lies within the territorial limits of a particular State (including its coastal waters), but not including any territory, place or other area referred to in paragraph (c); or

(b) the geographical area of Australia that lies within the territorial limits of a particular Territory (including its coastal waters), but not including any territory, place or other area referred to in paragraph (c); or

(c) any territory, place or other geographical area of Australia over which the Commonwealth has legislative competence but over which no State or Territory has legislative competence.

geographical area of Australia includes—

(a) the territorial sea of Australia; and

(b) the external territories.

multiple publication means publication by a particular person of the same, or substantially the same, matter in substantially the same form to 2 or more persons.

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Part 9.3 Resolution of civil disputes without litigation

Division 9.3.1 Concerns notices and offers to make amends

124 Application—div 9.3.1

(1) This division applies if a person (the ***publisher***) publishes matter (the ***matter in question***) that is, or may be, defamatory of another person (the ***aggrieved person***).

(2) The provisions of this division may be used instead of the provisions of any rules of court or any other law in relation to payment into court or offers of compromise.

(3) Nothing in this division prevents a publisher or aggrieved person from making or accepting a settlement offer in relation to the publication of the matter in question otherwise than in accordance with the provisions of this division.

124A Concerns notices

(1) For this division, a notice is a ***concerns notice*** if—

(a) the notice—

(i) is in writing; and

(ii) states the location where the matter in question can be accessed; and

Example—location
a webpage address

(iii) informs the publisher of the defamatory imputations that the aggrieved person considers are or may be carried about the aggrieved person by the matter in question (the ***imputations of concern***); and

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(iv) informs the publisher of the harm that the person considers to be serious harm to the person's reputation caused, or likely to be caused, by the publication of the matter in question; and

(v) for an aggrieved person that is an excluded corporation—also informs the publisher of the financial loss that the corporation considers to be serious financial loss caused, or likely to be caused, by the publication of the matter in question; and

(b) a copy of the matter in question is, if practicable, provided to the publisher together with the notice.

Note Section 124B requires a concerns notice to be given before proceedings for defamation can be commenced.

(2) To remove any doubt, a document that is required to be filed or lodged to commence defamation proceedings cannot be used as a concerns notice.

(3) If a concerns notice fails to particularise adequately any of the information required by subsection (1) (a) (ii), (iii), (iv) or (v), the publisher may give the aggrieved person a written notice (a ***further particulars notice***) requesting that the aggrieved person provide reasonable further particulars as stated in the further particulars notice about the information concerned.

(4) An aggrieved person to whom a further particulars notice is given must provide the reasonable further particulars stated in the notice within 14 days (or any further period agreed by the publisher and aggrieved person) after being given the notice.

(5) An aggrieved person who fails to provide the reasonable further particulars stated in a further particulars notice within the applicable period is taken not to have given the publisher a concerns notice for this section.

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124B Defamation proceedings cannot be commenced without concerns notice

(1) An aggrieved person cannot commence defamation proceedings unless—

(a) the person has given the proposed defendant a concerns notice in relation to the matter concerned; and

(b) the imputations to be relied on by the person in the proposed proceedings were particularised in the concerns notice; and

(c) the applicable period for an offer to make amends has elapsed.

(2) Subsection (1) (b) does not prevent reliance on—

(a) some, but not all, of the imputations particularised in a concerns notice; or

(b) imputations that are substantially the same as those particularised in a concerns notice.

(3) The court may grant leave for proceedings to be commenced despite non-compliance with subsection (1) (c), but only if the proposed plaintiff satisfies the court—

(a) the commencement of proceedings after the end of the applicable period for an offer to make amends contravenes the limitation law; or

(b) it is just and reasonable to grant leave.

(4) The commencement of proceedings contravenes the limitation law for subsection (3) (a) if the proceedings could not be commenced after the end of the applicable period for an offer to make amends because the court will have ceased to have power to extend the limitation period.

(5) In this section:

limitation law means the *Limitation Act 1985*.

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125 Publisher may make offer to make amends

(1) The publisher may make an offer to make amends to the aggrieved person.

(2) The offer may be—

(a) in relation to the matter in question generally; or

(b) limited to any particular defamatory imputations that the publisher accepts that the matter in question carries or may carry.

(3) If 2 or more persons 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.

(4) An offer to make amends is taken to have been made without prejudice, unless the offer provides otherwise.

126 When offer to make amends may be made

(1) An offer to make amends cannot be made if—

(a) the applicable period for an offer to make amends has expired; or

(b) a defence has been served in an action brought by the aggrieved person against the publisher in relation to the matter in question.

(2) For this division, the ***applicable period*** for an offer to make amends is—

(a) if the aggrieved person has provided further particulars in response to a further particulars notice about a concerns notice after 14 days have elapsed since the concerns notice was given—14 days since the publisher was given the further particulars; or

(b) in any other case—28 days since the publisher was given a concerns notice by the aggrieved person.

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(3) If a publisher gives more than 1 further particulars notice, subsection (2) (a) applies only in relation to the first notice.

127 Content of offer to make amends

(1) An offer to make amends—

(a) must be in writing; and

(b) must be readily identifiable as an offer to make amends under this division; and

(ba) must provide for the offer to be open for acceptance for at least 28 days commencing on the day the offer is made; and

(c) if the offer is limited to any particular defamatory imputations—must state that the offer is so limited and particularise the imputations to which the offer is limited; and

(d) must include an offer to publish, or join in publishing, a reasonable correction of, or a clarification of or additional information about, the matter in question or, if the offer is limited to any particular defamatory imputations, the imputations to which the offer is limited; 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 include an offer to pay the expenses reasonably incurred by the aggrieved person before the offer was made and the expenses reasonably incurred by the aggrieved person in considering the offer.

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(1A) In addition to the matters mentioned in subsection (1), an offer to make amends may include any other kind of offer, or particulars of any other action taken by the publisher, to redress the harm sustained by the aggrieved person because of the matter in question, including (but not limited to)—

(a) an offer to publish, or join in publishing, an apology in relation to the matter in question or, if the offer is limited to any particular defamatory imputations, the imputations to which the offer is limited; or

(b) if the matter is digital matter—an offer to take access prevention steps in relation to the matter; or

(c) an offer to pay compensation for any economic or non-economic loss of the aggrieved person; or

(d) the particulars of any correction or apology made, or action taken, before the date of the offer.

(1B) If the matter in question is digital matter, an offer to take access prevention steps may be made instead of, or in addition to, either or both of the offers mentioned in subsection (1) (d) and (e).

(2) Without limiting subsection (1A) (c), an offer to pay compensation may comprise or include 1 or more of the following:

(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;

(c) an offer to pay an amount determined by an arbitrator appointed, or agreed on, by the publisher and the aggrieved person;

(d) an offer to pay an amount determined by a court.

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(3) If an offer to make amends is accepted, a court may, on the application of the aggrieved person or publisher, determine—

(a) if the offer provides for a court to determine the amount of compensation payable under the offer—the amount of compensation to be paid under the offer; and

(b) any other question that arises about what must be done to carry out the terms of the offer.

(4) The powers conferred on a court by subsection (3) are exercisable—

(a) if the aggrieved person has brought proceedings against the publisher in any court for defamation in relation to the matter in question—by that court in those proceedings; and

(b) except as provided in paragraph (a)—by the Supreme Court.

128 Withdrawal of offer to make amends

(1) An offer to make amends may be withdrawn before it is accepted by notice in writing given to the aggrieved person.

(2) A publisher who has withdrawn an offer to make amends may make a renewed offer.

(3) A renewed offer may (but need not) be in the same terms as the withdrawn offer.

(4) A renewed offer is to be treated as a new offer (including for the purposes of section 126).

(5) However, the time limit specified in section 126 for the making of offers to make amends does not prevent the making of a renewed offer that is not in the same terms as the withdrawn offer if—

(a) the renewed offer represents a genuine attempt by the publisher to address matters of concern raised by the aggrieved person about the withdrawn offer; and

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(b) the renewed offer is made within 14 days after the withdrawal of the withdrawn offer or any other period agreed by the publisher and the aggrieved person.

129 Effect of acceptance of offer to make amends

(1) If the publisher carries out the terms of an offer to make amends (including payment of any compensation under the offer) that is accepted, the aggrieved person cannot assert, continue or enforce an action for defamation against the publisher in relation to the matter in question even if the offer was limited to any particular defamatory imputations.

(2) A court may (but need not)—

(a) order the publisher to pay the aggrieved person the expenses reasonably incurred by the aggrieved person as a result of accepting the offer; and

(b) order any costs incurred by the aggrieved person that form part of those expenses to be assessed on an indemnity basis.

(3) The powers conferred on a court by subsection (2) are exercisable—

(a) if the aggrieved person has brought proceedings against the publisher in any court for defamation in relation to the matter in question—by that court in those proceedings, and

(b) except as provided in paragraph (a)—by the Supreme Court.

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130 Effect of failure to accept reasonable offer to make amends

(1) If an offer to make amends is made in relation to the matter in question but is not accepted, it is a defence to an action for defamation against the publisher in relation to the matter if—

(a) the publisher made the offer as soon as reasonably practicable after the publisher was given a concerns notice in relation to the matter (and, in any event, within the applicable period for an offer to make amends); and

(b) the publisher was ready and willing, on acceptance of the offer by the aggrieved person, to carry out the terms of the offer; and

(c) in all the circumstances the offer was reasonable.

(2) In determining whether an offer to make amends is reasonable, a court—

(a) 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 taking into account—

(i) the prominence given to the correction or apology as published in comparison to the prominence given to the matter in question as published; and

(ii) the period that elapses between publication of the matter in question and publication of the correction or apology; and

(b) may have regard to—

(i) whether the aggrieved person refused to accept an offer that was limited to any particular defamatory imputations because the aggrieved person did not agree with the publisher about the imputations that the matter in question carried; and

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(ii) any other matter that the court considers relevant.

131 Inadmissibility of evidence of certain statements and admissions

(1) Evidence of any statement or admission made in connection with the making or acceptance of an offer to make amends is not admissible as evidence in any legal proceedings (whether criminal or civil).

(2) Subsection (1) does not prevent the admission of evidence in any legal proceedings in order to determine—

(a) any issue arising under, or relating to the application of, a provision of this division; or

(b) costs in defamation proceedings.

Division 9.3.2 Apologies

132 Effect of apology on liability for defamation

(1) An apology made by or on behalf of a person in connection with any defamatory matter alleged to have been published by the person—

(a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and

(b) is not relevant to the determination of fault or liability in connection with that matter.

(2) Evidence of an apology made by or on behalf of a person in connection with any defamatory matter alleged to have been published by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

(3) Nothing in this section limits the operation of section 139G (State of mind of defendant generally not relevant to awarding damages).

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Part 9.4 Litigation of civil disputes

Division 9.4.1 General

133 Leave required for multiple proceedings in relation to publication of same defamatory matter

(1) This section applies to a person who has brought defamation proceedings for damages, whether in this jurisdiction or elsewhere, against a person (a ***previous defendant***) in relation to the publication of a matter.

(2) The person may not bring further defamation proceedings for damages against a previous defendant or an associate of a previous defendant in relation to the same or any other publication of the same or like matter, except with the leave of the court in which the further proceedings are to be brought.

(3) A person is an ***associate of a previous defendant*** if, at the time of the publication to which the previous defamation proceedings related, the person was—

(a) an employee of the defendant; or

(b) a person publishing matter as a contractor of the defendant; or

(c) an associated entity of the defendant (or an employee or contractor of the associated entity).

133A Orders for preliminary discovery about posters of digital matter

(1) This section applies if the court procedure law for a court allows a person seeking to bring defamation proceedings for the publication of digital matter to obtain an order for, or in the nature of, preliminary discovery for either or both of the following purposes:

(a) to obtain information to assist in identifying the posters of the matter;

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(b) to obtain information to assist in locating physical or digital addresses for the posters of the matter to allow concerns notices to be given to them or defamation proceedings against them to be commenced.

(2) Despite anything to the contrary in the court procedure law for a court, the court must take the following matters into account before making an order mentioned in subsection (1):

(a) the objects of this chapter;

(b) privacy, safety or other public interest considerations that may arise if the order is made.

Example—par (b)

evidence suggesting the poster of digital matter is in fear of family violence from the person seeking an order to obtain the poster's address

(3) This section does not limit the matters the court may take into account before making an order mentioned in subsection (1).

(4) In this section:

court procedure law for a court means—

(a) rules of court for the court; or

(b) an Act or other legislation that regulates the practice or procedure of the court; or

(c) the general law concerning the inherent or implied jurisdiction or powers of the court.

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Division 9.4.2 Defences

134 Scope of defences under general law and other law not limited

(1) A defence under this division is additional to any other defence or exclusion of liability available to the defendant apart from this Act (including under the general law) and does not of itself vitiate, limit or abrogate any other defence or exclusion of liability.

(2) If a defence under this division to the publication of defamatory matter may be defeated by proof that the publication was actuated by malice, the general law applies in defamation proceedings in which the defence is raised to determine whether a particular publication of matter was actuated by malice.

135 Defence of justification

It is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true.

136 Defence of contextual truth

(1) It is a defence to the publication of defamatory matter if the defendant proves that—

(a) the matter carried 1 or more imputations that are substantially true (***contextual imputations***); and

(b) any defamatory imputations of which the plaintiff complains that are not contextual imputations and are also carried by the matter do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.

(2) The contextual imputations on which the defendant may rely to establish the defence include imputations of which the plaintiff complains.

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137 Defence of absolute privilege

(1) It is a defence to the publication of defamatory matter if the defendant proves that it was published on an occasion of absolute privilege.

(2) Without limiting subsection (1), matter is published on an occasion of absolute privilege if—

(a) the matter is published in the course of the proceedings of a parliamentary body, including (but not limited to)—

(i) the publication of a document by order, or under the authority, of the body; and

(ii) the publication of the debates and proceedings of the body by or under the authority of the body or any law; and

(iii) the publication of matter while giving evidence before the body; and

(iv) the publication of matter while presenting or submitting a document to the body; or

(b) the matter is published in the course of the proceedings of an Australian court or Australian tribunal, including (but not limited to)—

(i) the publication of matter in any document filed or lodged with, or otherwise submitted to, the court or tribunal (including any originating process); and

(ii) the publication of matter while giving evidence before the court or tribunal; and

(iii) the publication of matter in any judgment, order or other determination of the court or tribunal; or

(ba) the matter is published to a person who, at the time of the publication, is an official of a police force or service of an Australian jurisdiction and it is published to the official while the official is acting in an official capacity; or

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(c) the matter is published on an occasion that, if published in another Australian jurisdiction, would be an occasion of absolute privilege in that jurisdiction under a provision of a law of the jurisdiction corresponding to this section; or

(d) the matter is published by a person or body in any circumstances specified in schedule 1A.

(3) In this section:

official, of a police force or service of an Australian jurisdiction, means—

(a) an officer, employee or member of staff of the police force or service; or

(b) another person engaged to act for or on behalf of the police force or service.

138 Defence for publication of public documents

(1) It is a defence to the publication of defamatory matter if the defendant proves that the 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 the purposes of subsection (1), if a report or other document under the law of a country would be a public document except for noncompliance with a provision of that law about—

(a) the formal requirements for the content or layout of the report or document; or

(b) the time within which the report or document is prepared, or presented, submitted, tabled or laid to or before a person or body;

the report or document is a public document despite that noncompliance.

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(3) A defence established under subsection (1) is defeated if, and only if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.

(4) In this section:

public document means—

(a) any report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a parliamentary body published by or under the authority of the body or any law; or

(b) any judgment, order or other determination of a court or arbitral tribunal of any country in civil proceedings and including—

(i) any record of the court or tribunal relating to the judgment, order or determination or to its enforcement or satisfaction; and

(ii) any report of the court or tribunal about its judgment, order or determination and the reasons for its judgment, order or determination; or

(c) any 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; or

(d) any document issued by the government (including a local government) of a country, or by an officer, employee or agency of the government, for the information of the public; or

(e) any record or other document open to inspection by the public that is kept—

(i) by an Australian jurisdiction; or

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(ii) by a statutory authority of an Australian jurisdiction; or

(iii) by an Australian court; or

(iv) under legislation of an Australian jurisdiction; or

(f) any other document issued, kept or published by a person, body or organisation of another Australian jurisdiction that is treated in that jurisdiction as a public document under a provision of a law of the jurisdiction corresponding to this section.

139 Defences of fair report of proceedings of public concern

(1) It is a defence to the publication of defamatory matter if the defendant proves that the matter was, or was contained in, a fair report of any proceedings of public concern.

(2) It is a defence to the publication of defamatory matter if the defendant proves that—

(a) the matter was, or was contained in, an earlier published report of proceedings of public concern; and

(b) the matter was, or was contained in, a fair 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 the defendant aware that the earlier published report was not fair.

(3) A defence established under subsection (1) or (2) is defeated if, and only if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.

(4) In this section:

proceedings of public concern means—

(a) any proceedings in public of a parliamentary body; or

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(b) any proceedings in public of an international organisation of any countries or of the governments of any countries; or

(c) any proceedings in public of an international conference at which the governments of any countries are represented; or

(d) any proceedings 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; or

(e) any proceedings in public of a court or arbitral tribunal of any country; or

(f) any proceedings in public of an inquiry held under the law of any country or under the authority of the government of any country; or

(g) any proceedings in public of a local government body of any Australian jurisdiction; or

(h) proceedings of a learned society, or of a committee or governing body of the society, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Australia about—

(i) a member or members of the society; or

(ii) a person subject by contract or otherwise by law to control by the society; or

(i) proceedings of a sport or recreation association, or of a committee or governing body of the association, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Australia about—

(i) a member or members of the association; or

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(ii) a person subject by contract or otherwise by law to control by the association; or

(j) proceedings of a trade association, or of a committee or governing body of the association, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Australia about—

(i) a member or members of the association; or

(ii) a person subject by contract or otherwise by law to control by the association; or

(k) any proceedings of a public meeting (with or without restriction on the people attending) of shareholders of a public company under the Corporations Act held anywhere in Australia; or

Note ***Corporations Act*** is defined in the Legislation Act, dict, pt 1.

(l) any proceedings of a public meeting (with or without restriction on the people attending) held anywhere in Australia if the proceedings relate to a matter of public interest, including the advocacy or candidature of a person for public office; or

(m) any proceedings of an ombudsman of any country if the proceedings relate to a report of the ombudsman; or

(n) any proceedings in public of a law reform body of any country; or

(o) any other proceedings conducted by, or proceedings of, a person, body or organisation of another Australian jurisdiction that are treated in that jurisdiction as proceedings of public concern under a provision of a law of the jurisdiction corresponding to this section.

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(5) In this section:

law reform body, of a country, means a body (however described and whether or not permanent or full-time) established by law to conduct inquiries into, and to make recommendations on, reforming the laws of that country.

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; and

(b) authorised by its constitution—

(i) to exercise control over, or adjudicate on, matters connected with those objects; and

(ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

ombudsman, of a country, means a person (however described and whether or not permanent or full-time) authorised by law to investigate complaints about the actions or other conduct of any public officials or public bodies of that country.

relevant objects, of a learned society, sport or recreation association or trade association, means—

(a) in relation to a learned society—objects of the kind referred to in this subsection, definition of ***learned society***, paragraph (a); or

(b) in relation to a sport or recreation association—objects of the kind referred to in this subsection, definition of ***sport or recreation association***, paragraph (a); or

(c) in relation to a trade association—objects of the kind referred to in this subsection, definition of ***trade association***, paragraph (a).

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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; 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; 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.

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139AA Defence of publication of matter concerning issue of public interest

(1) It is a defence to the publication of defamatory matter if the defendant proves that—

(a) the matter concerns an issue of public interest; and

(b) the defendant reasonably believed that the publication of the matter was in the public interest.

(2) In determining whether the defence is established, a court must take into account all of the circumstances of the case.

(3) Without limiting subsection (2), the court may take into account the following factors to the extent the court considers them applicable in the circumstances:

(a) the seriousness of any defamatory imputation carried by the matter published;

(b) the extent to which the matter published distinguishes between suspicions, allegations and proven facts;

(c) the extent to which the matter published relates to the performance of the public functions or activities of the person;

(d) whether it was in the public interest in the circumstances for the matter to be published expeditiously;

(e) the sources of the information in the matter published, including the integrity of the sources;

(f) if a source of the information in the matter published is a person whose identity is being kept confidential, whether there is good reason for the person's identity to be kept confidential;

Example—good reason

to comply with an applicable professional code or standard

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(g) whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable attempt was made by the defendant to obtain and publish a response from the person;

(h) any other steps taken to verify the information in the matter published;

(i) the importance of freedom of expression in the discussion of issues of public interest.

(4) Subsection (3) does not—

(a) require each factor mentioned in the subsection to be taken into account; or

(b) limit the matters that the court may take into account.

139A Defence of qualified privilege for provision of certain information

(1) There is a defence of qualified privilege for the publication of defamatory matter to a person (the ***recipient***) if the defendant proves that—

(a) the recipient has an interest or apparent interest in having information on some subject; and

(b) the matter is published to the recipient in the course of giving to the recipient information on that subject; and

(c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.

(2) For the purposes of subsection (1), a recipient has an apparent interest in having information on some subject if, and only if, at the time of the publication in question, the defendant believes, on reasonable grounds, that the recipient has that interest.

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(3) In determining for the purposes of subsection (1) whether the conduct of the defendant in publishing matter about a person is reasonable in the circumstances, a court may take into account the following factors to the extent the court considers them applicable in the circumstances:

(a) the seriousness of any defamatory imputation carried by the matter published;

(b) the extent to which the matter published distinguishes between suspicions, allegations and proven facts;

(c) the nature of the business environment in which the defendant operates;

(d) whether it was appropriate in the circumstances for the matter to be published expeditiously;

(e) any other steps taken to verify the information in the matter published.

(3A) Subsection (3) does not—

(a) require each factor mentioned in the subsection to be taken into account; or

(b) limit the matters that the court may take into account.

(3B) It is not necessary to prove that the matter published concerned an issue of public interest to establish the defence of qualified privilege under subsection (1).

(4) For the avoidance of doubt, a defence of qualified privilege under subsection (1) is defeated if the plaintiff proves that the publication of the defamatory matter was actuated by malice.

(5) However, a defence of qualified privilege under subsection (1) is not defeated merely because the defamatory matter was published for reward.

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139AB Defence of scientific or academic peer review

(1) It is a defence to the publication of defamatory matter if the defendant proves that—

(a) the matter was published in a scientific or academic journal (whether published in electronic form or otherwise); and

(b) the matter relates to a scientific or academic issue; and

(c) an independent review of the matter's scientific or academic merit was carried out before the matter was published in the journal by—

(i) the editor of the journal if the editor has expertise in the scientific or academic issue concerned; or

(ii) 1 or more people with expertise in the scientific or academic issue concerned.

(2) If there is a defence to the publication of defamatory matter in a scientific or academic journal because of subsection (1), there is also a defence to the publication of any assessment of the matter in the same journal if the defendant proves that—

(a) the assessment was written by 1 or more of the people who carried out the independent review of the matter; and

(b) the assessment was written in the course of that review.

(3) It is a defence to the publication of defamatory matter if the defendant proves that the matter was contained in a fair summary of, or fair extract from, a matter or assessment for which there is a defence because of subsection (1) or (2).

(4) If a journal has more than 1 editor, a reference in this section to the editor of the journal is to be read as a reference to the editor or editors who were responsible for deciding to publish the matter concerned.

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(5) A defence established under this section is defeated if, and only if, the plaintiff proves that the defamatory matter or assessment was not published honestly for the information of the public or the advancement of education.

139B Defences of honest opinion

(1) It is a defence to the publication of defamatory matter if the defendant proves that—

(a) the matter was an expression of opinion of the defendant rather than a statement of fact; and

(b) the opinion related to a matter of public interest; and

(c) the opinion is based on proper material.

(2) It is a defence to the publication of defamatory matter if the defendant proves that—

(a) the matter was an expression of opinion of an employee or agent of the defendant rather than a statement of fact; and

(b) the opinion related to a matter of public interest; and

(c) the opinion is based on proper material.

(3) It is a defence to the publication of defamatory matter if the defendant proves that—

(a) the matter was an expression of opinion of a person (the ***commentator***), other than the defendant or an employee or agent of the defendant, rather than a statement of fact; and

(b) the opinion related to a matter of public interest; and

(c) the opinion is based on proper material.

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(4) A defence established under this section is defeated if, and only if, the plaintiff proves that—

(a) in the case of a defence under subsection (1)—the opinion was not honestly held by the defendant at the time the defamatory matter was published; or

(b) in the case of a defence under subsection (2)—the defendant did not believe that the opinion was honestly held by the employee or agent at the time the defamatory matter was published; or

(c) in the case of a defence under subsection (3)—the defendant had reasonable grounds to believe that the opinion was not honestly held by the commentator at the time the defamatory matter was published.

(5) For this section, an opinion is ***based on proper material*** if—

(a) the material on which it is based is—

(i) set out in specific or general terms in the published matter; or

(ii) notorious; or

(iii) accessible from a reference, link or other access point included in the matter; or

Example—other access point
a hyperlink on a webpage

(iv) otherwise apparent from the context in which the matter is published; and

(b) the material—

(i) is substantially true; or

(ii) was published on an occasion of absolute or qualified privilege (whether under this Act or at general law); or

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(iii) was published on an occasion that attracted the protection of a defence under this section, section 138 (Defence for publication of public documents) or section 139 (Defences of fair report of proceedings of public concern).

(6) An opinion does not cease to be based on proper material only because some of the material on which it is based is not proper matter if the opinion might reasonably be based on such of the material as is proper material.

139BA Defence for publications involving digital intermediaries

(1) It is a defence to the publication of defamatory digital matter if the defendant proves—

(a) the defendant was a digital intermediary in relation to the publication; and

(b) the defendant had, at the time of the publication, an accessible complaints mechanism for the plaintiff to use; and

(c) if the plaintiff gave the defendant a written complaint under this section about the publication—reasonable access prevention steps, if steps were available, were taken in relation to the publication, whether before the complaint was given or within 7 days after the complaint was given.

Note 1 The defendant is not required to prove par (c) to establish the defence if the plaintiff has not given the defendant a complaint about the publication under this section. Subsection (3) sets out requirements for giving complaints.

Note 2 Subsection (6) defines ***accessible complaints mechanism***.

(2) For subsection (1) (c), reasonable access prevention steps were taken in relation to the publication of digital matter if—

(a) for access prevention steps taken by the defendant—the steps taken were reasonable for the defendant to take in the circumstances; or

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(b) for access prevention steps taken by another person—it was reasonable for the defendant not to take steps because of the steps already taken.

(3) A written complaint is given under this section about the publication of defamatory digital matter if—

(a) the complaint contained information sufficient to enable a reasonable person in the defendant's circumstances to be made aware of the following:

(i) the name of the plaintiff;

(ii) the matter and where it could be located;

(iii) that the plaintiff considered the matter to be defamatory; and

(b) the complaint was given using an accessible complaints mechanism for the plaintiff to use or given to the defendant in another way permitted by this Act, section 139O or the Legislation Act, part 19.5.

(4) A defence under this section is defeated only if the plaintiff proves the defendant was actuated by malice in establishing or providing the online service by means of which the digital matter was published.

(5) A defendant who would otherwise be a digital intermediary in relation to the publication of digital matter does not cease to be a digital intermediary for this section merely because the defendant took steps to detect or identify, or steps to remove, block, disable or otherwise prevent access by people to, the following:

(a) defamatory or other unlawful content published, or sought to be published, by a person using the online service provided by the defendant;

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(b) other content published, or sought to be published, by a person using the online service provided by the defendant that was incompatible with the terms or conditions under which the service was provided.

Note Subsection (5) allows a defendant to rely on the defence despite the definition of ***digital intermediary*** in s 116 excluding authors, originators or posters of digital matter if the defendant's editorial or moderating role over content published using the online service was limited to the steps mentioned in the subsection.

(6) In this section:

accessible complaints mechanism, for a plaintiff to use, means an easily accessible address, location or other mechanism available for the plaintiff to use to complain to the defendant about the publication of the digital matter concerned.

Examples

1 an email address or direct messaging address to which a complaint may be sent

2 a webpage, or a part of a webpage, enabling details about a complaint to be uploaded or inputted

139C Defence of innocent dissemination

(1) It is a defence to the publication of defamatory matter if the defendant proves that—

(a) the defendant published the matter merely in the capacity, or as an employee or agent, of a subordinate distributor; and

(b) the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory; and

(c) the defendant's lack of knowledge was not due to any negligence on the part of the defendant.

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(2) For the purposes of subsection (1), a person is a ***subordinate distributor*** of defamatory matter if the person—

(a) was not the first or primary distributor of the matter; and

(b) was not the author or originator of the matter; and

(c) did not have any capacity to exercise editorial control over the content of the matter (or over the publication of the matter) before it was first published.

(3) Without limiting subsection (2) (a), a person is not the first or primary distributor of matter merely because the person was involved in the publication of the matter in the capacity of—

(a) a bookseller, newsagent or newsvendor; or

(b) a librarian; or

(c) a wholesaler or retailer of the matter; or

(d) a provider of postal or similar services by means of which the matter is published; or

(e) a broadcaster of a live program (whether on television, radio or otherwise) containing the matter in circumstances in which the broadcaster has no effective control over the person who makes the statements that comprise the matter; or

(f) a provider of services consisting of—

(i) the processing, copying, distributing or selling of any electronic medium in or on which the matter is recorded; or

(ii) the operation of, or the provision of any equipment, system or service, by means of which the matter is retrieved, copied, distributed or made available in electronic form; or

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(g) an operator of, or a provider of access to, a communications system by means of which the matter is transmitted, or made available, by another person over whom the operator or provider has no effective control; or

(h) a person who, on the instructions or at the direction of another person, prints or produces, reprints or reproduces or distributes the matter for or on behalf of that other person.

Division 9.4.3 Remedies

139E Damages to bear rational relationship to harm

In determining the amount of damages to be awarded in any defamation proceedings, the court is to ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded.

139F Damages for non-economic loss limited

(1) The maximum amount of damages for non-economic loss that may be awarded in defamation proceedings is $250 000 or any other amount adjusted in accordance with this section from time to time (the ***maximum damages amount***) that is applicable at the time damages are awarded.

(2) The maximum damages amount is to be awarded only in a most serious case.

(2A) Subsection (1) does not limit the court's power to award aggravated damages if an award of aggravated damages is warranted in the circumstances.

(2B) An award of aggravated damages is to be made separately to any award of damages for non-economic loss to which subsection (1) applies.

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(3) The Minister is, on or before 1 July 2006 and on or before 1 July in each succeeding year, to declare the amount that is to apply, as from the date specified in the order, for the purposes of subsection (1).

(4) The amount declared is to be the amount applicable under subsection (1) (or that amount as last adjusted under this section) adjusted by the percentage change in the amount estimated by the Australian statistician of the average weekly total earnings of full-time adults in Australia over the 4 quarters preceding the date of the declaration for which those estimates are, at that date, available.

(5) A declaration under subsection (3) is a notifiable instrument.

(6) An amount declared for the time being under this section applies to the exclusion of the amount of $250 000 or an amount previously adjusted under this section.

(7) If the Australian statistician fails or ceases to estimate the amount referred to in subsection (4), the amount declared is to be determined in accordance with the regulations.

(8) In adjusting an amount to be declared for the purposes of subsection (1), the amount determined in accordance with subsection (4) is to be rounded to the nearest $500.

(9) A declaration may provide that it commences retrospectively.

139G State of mind of defendant generally not relevant to awarding damages

In awarding damages for defamation, the court is to disregard the malice or other state of mind of the defendant at the time of the publication of the defamatory matter to which the proceedings relate or at any other time except to the extent that the malice or other state of mind affects the harm sustained by the plaintiff.

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139H Exemplary or punitive damages cannot be awarded

A plaintiff cannot be awarded exemplary or punitive damages for defamation.

139I Factors in mitigation of damages

(1) Evidence is admissible on behalf of the defendant, in mitigation of damages for the publication of defamatory matter, that—

(a) the defendant has made an apology to the plaintiff about the publication of the defamatory matter; or

(b) the defendant has published a correction of the defamatory matter; or

(c) the plaintiff has already recovered damages for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter; or

(d) the plaintiff has brought proceedings for damages for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter; or

(e) the plaintiff has received or agreed to receive compensation for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter.

(2) Nothing in subsection (1) operates to limit the matters that can be taken into account by a court in mitigation of damages.

139J Damages for multiple causes of action may be assessed as single sum

If the court in defamation proceedings finds for the plaintiff as to more than 1 cause of action, the judicial officer may assess damages in a single sum.

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139JA Orders against non-party digital intermediaries concerning defamatory digital matter

(1) This section applies in relation to defamation proceedings for the publication of digital matter if—

(a) the plaintiff has obtained judgment for defamation against the defendant in the proceedings; or

(b) a court has granted a temporary injunction or makes another temporary order preventing the defendant from continuing to publish, or from republishing, the matter pending the determination of the proceedings; or

(c) a court has granted a final injunction or makes another final order preventing the defendant from continuing to publish, or from republishing, the matter.

(2) In defamation proceedings to which this section applies, the court may order a digital intermediary who is not a party to the proceedings (a ***non-party digital intermediary***) to take access prevention steps or other steps the court considers necessary in the circumstances—

(a) to prevent or limit the continued publication or republication of the matter; or

(b) to comply with, or otherwise give effect to, the judgment, injunction or other order mentioned in subsection (1).

(3) Without limiting subsection (2), an order under this section may—

(a) require 1 or more steps to be taken; or

(b) require a step to be taken in relation to all, or only some, of the users of an online service.

(4) The court may not make an order under this section against a non-party digital intermediary unless the intermediary has been given an opportunity to be heard about whether it is appropriate for the order to be made.

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(5) Despite subsection (4), the court may make a temporary order without giving the non-party digital intermediary an opportunity to be heard about whether it is appropriate to make the order if the court considers it necessary in the circumstances for the order to be made expeditiously pending a subsequent hearing concerning whether a further temporary order or a final order should be made.

(6) An order may be made under this section even if the non-party digital intermediary is not, or may not be, liable for defamation, including because of a defence, for the publication of the digital matter to which the defamation proceedings relate.

(7) This section does not limit other powers the court may have apart from this section to grant injunctions or make other orders requiring a non-party digital intermediary to take access prevention steps or other steps.

Division 9.4.4 Costs

139K Costs in defamation proceedings

(1) In awarding costs in defamation proceedings, the court may have regard to—

(a) the way in which the parties to the proceedings conducted their cases (including any misuse of a party's superior financial position to hinder the early resolution of the proceedings); and

(b) any other matters that the court considers relevant.

(2) Without limiting subsection (1), a court must (unless the interests of justice require otherwise)—

(a) if defamation proceedings are successfully brought by a plaintiff and costs in the proceedings are to be awarded to the plaintiff—order costs of and incidental to the proceedings to be assessed on an indemnity basis if the court is satisfied that the defendant unreasonably failed to make a settlement offer or agree to a settlement offer proposed by the plaintiff; or

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(b) if defamation proceedings are unsuccessfully brought by a plaintiff and costs in the proceedings are to be awarded to the defendant—order costs of and incidental to the proceedings to be assessed on an indemnity basis if the court is satisfied that the plaintiff unreasonably failed to accept a settlement offer made by the defendant.

(3) In this section:

settlement offer means any offer to settle the proceedings made before the proceedings are determined, and includes an offer to make amends (whether made before or after the proceedings are commenced), that was a reasonable offer at the time it was made.

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Part 9.5 Miscellaneous—ch 9

139L Proof of publication

(1) If a document appears to be printed or otherwise produced by means adapted for the production of numerous copies and there is in the document a statement to the effect that the document is printed, produced, published or distributed by or for a particular person, the statement is evidence in defamation proceedings that the document was so printed, produced, published or distributed.

(2) Evidence that a number or part of a document appearing to be a periodical is printed, produced, published or distributed by or for a particular person is evidence in defamation proceedings that a document appearing to be another number or part of the periodical was so printed, produced, published or distributed.

(3) In this section:

periodical includes any newspaper, review, magazine or other printed document of which numbers or parts are published periodically.

139M Proof of convictions for offences

(1) If the question whether or not a person committed an offence is in question in defamation proceedings—

(a) proof that the person was convicted of the offence by an Australian court is conclusive evidence that the person committed the offence; and

(b) proof that the person was convicted of the offence by a court of any country (other than an Australian court) or a court martial of any country is evidence that the person committed the offence.

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(2) For the purposes of this section, the contents of a document that is evidence of conviction of an offence, and the contents of an information, complaint, indictment, charge sheet or similar document on which a person is convicted of an offence, are admissible in evidence to identify the facts on which the conviction is based.

(3) Subsection (2) does not affect the admissibility of other evidence to identify the facts on which the conviction is based.

(4) In this section:

conviction, for an offence, includes a finding of guilt, but does not include—

(a) a conviction that has been set aside or quashed; or

(b) a conviction for an offence for which a person has received a pardon.

139N Incriminating answers, documents or things

(1) A person who is required to answer a question, or to discover or produce a document or thing, in defamation proceedings is not excused from answering the question or discovering or producing the document or thing on the ground that the answer to the question or the discovery or production of the document or thing might tend to incriminate the person of an offence of criminal defamation.

(2) However, any answer given to a question, or document or thing discovered or produced, by an individual in compliance with the requirement is not admissible in evidence against the individual in proceedings for criminal defamation.

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139O Giving of notices and other documents

For this chapter, a notice or other document may be given to or served on a person by sending it by messaging or other electronic communication to an electronic address or location indicated by the person for giving documents to, or serving documents on, the person.

Examples

1 a direct messaging address set out on an internet-based social media forum for contacting the administrator of the forum about content on the forum

2 a direct messaging address provided by the poster of digital matter on an internet-based social media forum for contacting the poster about the content of the matter

3 a form on a website provided by a digital intermediary enabling a user to contact the intermediary by filling in the form or uploading documents

Note For other ways documents may be given, see the Legislation Act, pt 19.5.

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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.

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Chapter 11 Mitigation of strict liability

Part 11.1 Traveller accommodation providers liability

Division 11.1.1 Preliminary—pt 11.1

143 Purpose—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—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.

innkeeper's liability—see section 147.

limitation amount means the amount prescribed by regulation.

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).

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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

(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.

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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.

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.

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(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—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

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(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).

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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.

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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.

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Part 11.2 Common carriers

Division 11.2.1 Preliminary—common carriers

155 Purpose—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—pt 11.2

In this part:

common carrier means a common carrier by land.

schedule 2 packaged goods—see section 159 (1).

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.

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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.

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(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

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(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—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.

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(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.

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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.

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(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).

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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.

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(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.

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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.

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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.

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Chapter 13 Misrepresentation

172 Definitions—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).

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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.

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(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.

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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.

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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.

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Chapter 14 Limitations on legal costs

Part 14.1 Maximum costs for certain personal injury damages claims

180 Definitions—pt 14.1

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

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(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.

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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.

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(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).

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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).

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Part 14.2 Costs in damages claims if no reasonable prospects of success

186 Definitions—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—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.

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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 Profession Act 2006*, chapter 4 (Complaints and discipline).

(4) A regulation may make provision in relation to the certificate mentioned in subsection (2), including, for example, about the form of the certificate.

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.

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(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.

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(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.

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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 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.

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.

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193 Who can be a mediator

(1) A person can be a mediator if the person is—

(a) an accredited mediator; and

(b) appointed by a tribunal as a mediator.

(2) In this section:

accredited mediator means a person who is entered as a mediator in the register of nationally accredited mediators maintained by the Mediator Standards Board.

Mediator Standards Board means the incorporated body registered under the Corporations Act as the Mediator Standards Board Limited (ACN 145 829 812).

194 Who can be an evaluator

The following people can be an evaluator:

(a) a registrar of a tribunal;

(b) a deputy registrar of a tribunal;

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

195 Referral by tribunal for mediation or neutral evaluation

(1) A 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 tribunal, and neutral evaluation is to be undertaken by an evaluator appointed by the tribunal.

Note The *Court Procedures Act 2004*, pt 5A (Mediation) applies to a mediation in relation to an application to the ACAT.

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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 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 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.

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 tribunal or the registry of a tribunal, for the purpose of enabling a neutral evaluation session to be arranged.

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(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.

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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.

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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.

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(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 *Motor Accident Injuries Act 2019*.

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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.

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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.

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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* (rep), s 68 and the *Civil Law (Property) Act 2006*, s 507 (2) (rep, LA s 89 (3)).

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(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.

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Part 15.4A Prohibition on claim farming

221A Definitions—pt 15.4A

In this part:

associate, of a law practice—see the *Legal Profession Act 2006*, dictionary.

claim—

(a) 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; and

(b) includes a claim for redress under the National Redress Scheme for Institutional Child Sexual Abuse established under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cwlth), section 8; but

(c) does not include a motor accident claim within the meaning of the *Motor Accident Injuries Act 2019*.

claimant means a person who has or may have a claim.

law practice—see the *Legal Profession Act 2006*, dictionary.

service means a service relating to a claim.

221B Contacting claimants about claims

(1) A person commits an offence if—

(a) the person contacts a claimant for the purposes of—

(i) soliciting or inducing the claimant to make a claim; or

(ii) referring the claimant to another person (a ***third party***) for the purposes of the third party providing a service to the claimant; and

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(b) the person—

(i) receives, or agrees or expects to receive, a fee or other benefit from any person because of the contact; or

(ii) asks for someone else to receive, or agrees to someone else receiving, a fee or other benefit from any person because of the contact.

Maximum penalty: 300 penalty units.

(2) This section does not apply in any of the following circumstances:

(a) the claimant is contacted in relation to representative proceedings (however described);

(b) the claimant is contacted by an associate of a law practice if—

(i) the law practice has previously provided legal services to the claimant; and

(ii) the associate reasonably believes the claimant will not object to the contact;

(c) the claimant is contacted by an associate of a law practice if—

(i) a complying community legal centre or an industrial organisation has asked the law practice to contact the claimant; and

(ii) the complying community legal centre or industrial organisation reasonably believes the claimant will not object to the contact;

(d) any other circumstances prescribed by regulation.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

(3) In this section:

complying community legal centre—see the *Legal Profession Act 2006*, section 208.

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contact a claimant includes contact or approach the claimant—

(a) in person or by post, telephone, email or another form of electronic communication; and

(b) individually or as a member of a class of people.

industrial organisation means an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cwlth) or under a law of a State providing for the registration of industrial organisations.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

legal services—see the *Legal Profession Act 2006*, dictionary.

221C Giving or receiving fee or benefit for claim referrals

(1) A person commits an offence if the person—

(a) gives, or agrees to give, a fee or other benefit to someone else for a claim referral; or

(b) arranges for someone else to give a fee or other benefit to another person for a claim referral.

Maximum penalty: 300 penalty units.

(2) A person commits an offence if the person—

(a) receives, or agrees to receive, a fee or other benefit from someone else for a claim referral; or

(b) arranges for someone else to receive a fee or other benefit from another person for a claim referral.

Maximum penalty: 300 penalty units.

(3) This section does not apply—

(a) to a claim referral by a law practice acting for the claimant to another person (a ***third party***) for the purposes of the third party providing a service to the claimant; or

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(b) in any other circumstances prescribed by regulation.

(4) This section does not apply if—

(a) all or part of a law practice (the ***current practice***) is sold to another law practice (the ***new practice***); and

(b) the new practice gives or agrees to give, or arranges for someone else to give, a fee to the current practice for the claim referral of the claimant to the new practice; and

(c) the amount of the fee is not more than the claimant's current legal costs; and

(d) the claimant consents to the claim referral.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see Criminal Code, s 58).

(5) In this section:

claim referral—

(a) means the referral of a claimant to a person for the purposes of—

(i) the person providing a service to the claimant; or

(ii) someone else providing a service to the claimant; and

(b) includes the disclosure of a claimant's personal information.

current legal costs, for a claimant, means the legal costs that—

(a) were incurred by the claimant before the sale of the law practice; but

(b) have not been included in a bill given to the claimant before the sale.

legal costs—see the *Legal Profession Act 2006*, dictionary.

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221D Exception for advertising law practices

This part does not apply to—

(a) the advertising, marketing or promotion of a law practice to the public or a group of people; or

(b) the giving or receiving of a fee or other benefit relating to advertising, marketing or promotion of a law practice to the public or a group of people.

Note The defendant has an evidential burden in relation to the matters mentioned in this section (see Criminal Code, s 58).

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Part 15.5 Other provisions

222 Approved forms

(1) The Minister may 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.

(3) An approved form is a notifiable instrument.

222A Determination of fees

(1) The Minister may determine fees for this Act.

(2) A determination is a disallowable instrument.

223 Regulation-making power

(1) The Executive may make regulations for this Act.

(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.

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Chapter 19 Transitional—Civil Law (Wrongs) Amendment Act 2024—absolute privilege

254 Absolute privilege amendments

(1) This section applies to the amendments made to this Act by the *Civil Law (Wrongs) Amendment Act 2024* about the defence of absolute privilege (the ***absolute privilege amendments***) in its application to—

(a) publications to officials of police forces or services of Australian jurisdictions; or

(b) publications in circumstances specified in schedule 1A.

(2) The absolute privilege amendments apply to a post-commencement action.

(3) The existing law continues to apply despite the absolute privilege amendments to a pre-commencement action.

(4) In this section:

commencement day means the day the *Civil Law (Wrongs) Amendment Act 2024*, section 15 commences.

existing law, in relation to the absolute privilege amendments, means the law that would have applied if the amendments had not been enacted.

post-commencement action, in relation to the absolute privilege amendments, means a cause of action for the publication of defamatory matter accruing on or after the commencement day.

pre-commencement action, in relation to the absolute privilege amendments, means a cause of action for the publication of defamatory matter accruing before the commencement day.

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255 Expiry—ch 19

This chapter expires 3 years after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

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Chapter 20 Transitional—Civil Law (Wrongs) Amendment Act 2024

256 Definitions—ch 20

In this chapter:

commencement day means the day the *Civil Law (Wrongs) Amendment Act 2024*, section 16 commences.

existing law, in relation to amendments made to this Act by the *Civil Law (Wrongs) Amendment Act 2024* about a subject, means the law that would have applied if the amendments had not been enacted.

post-commencement action, in relation to amendments made to this Act by the *Civil Law (Wrongs) Amendment Act 2024* about a subject, means a cause of action for the publication of defamatory matter accruing on or after the commencement day.

pre-commencement action, in relation to amendments made to this Act by the *Civil Law (Wrongs) Amendment Act 2024* about a subject, means a cause of action for the publication of defamatory matter accruing before the commencement day.

257 Digital intermediary amendments

(1) This section applies to the amendments made to this Act by the *Civil Law (Wrongs) Amendment Act 2024* about (the ***digital intermediary amendments***)—

(a) exempting digital intermediaries from liability for defamation; or

(b) providing a defence for publications of defamatory digital matter involving digital intermediaries.

(2) Except as provided by subsection (3) (b), the digital intermediary amendments apply to a post-commencement action.

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(3) The existing law continues to apply, despite the digital intermediary amendments—

(a) to a pre-commencement action; and

(b) to a post-commencement action, but only if—

(i) the post-commencement action is 1 of 2 or more causes of action in proceedings commenced by a plaintiff; and

(ii) each cause of action in the proceedings accrues because of the publication of the same, or substantially the same, matter on separate occasions, whether by the same defendant or another defendant; and

(iii) 1 or more of the other causes of action in the proceedings are pre-commencement actions; and

(iv) the post-commencement action accrued no later than 12 months after the date on which the earliest pre-commencement action in the proceedings accrued.

258 Offer amendments

(1) This section applies to the amendments made to this Act by the *Civil Law (Wrongs) Amendment Act 2024* about offers to make amends (the ***offer amendments***).

(2) The offer amendments apply to offers to make amends made on or after the commencement day, regardless of whether the offers relate to publications occurring before, on or after that day.

(3) The existing law continues to apply, despite the offer amendments, to offers to make amends made before the commencement day.

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259 Preliminary discovery or non-party digital intermediary order amendments

(1) This section applies to the amendments made to this Act by the *Civil Law (Wrongs) Amendment Act 2024* about courts making orders (the ***preliminary discovery or non-party digital intermediary order amendments***)—

(a) for, or in the nature of, preliminary discovery; or

(b) to take steps—

(i) to prevent or limit the continued publication or republication of defamatory matter; or

(ii) to comply with, or otherwise give effect to, judgments, injunctions or other court orders.

(2) Except as provided by subsection (3) (b), the preliminary discovery or non-party digital intermediary order amendments apply to the making of an order on or after the commencement day, regardless of whether the proceedings in which they are made—

(a) involve a pre-commencement action or post-commencement action; or

(b) were commenced before, on or after the commencement day.

(3) The existing law continues to apply, despite the preliminary discovery or non-party digital intermediary order amendments—

(a) to an order made before the commencement day; or

(b) to the variation or revocation of an order made before the commencement day.

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260 Document giving or service amendments

(1) This section applies to the amendments made to this Act by the *Civil Law (Wrongs) Amendment Act 2024* about the ways in which notices or other documents for the purposes of chapter 9 must or may be given to, or served on, people (the ***document giving or service amendments***).

(2) The document giving or service amendments apply to the giving or service of notices or other documents on or after the commencement day, regardless of whether the notices or other documents relate—

(a) to pre-commencement actions or post-commencement actions; or

(b) to proceedings commenced before, on or after the commencement day.

(3) The existing law continues to apply, despite the document giving or service amendments, to the giving or service of notices or other documents before the commencement day.

261 Expiry—ch 20

This chapter expires 3 years after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

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Chapter 21 Transitional—Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Act 2025

262 Application of div 8A.1A.3

Division 8A.1A.3 applies to proceedings commenced but not finally decided before the day the *Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Act 2025*, section 4, commences.

263 Expiry—ch 21

This chapter expires 3 years after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

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Chapter 22 Transitional—Civil Law (Wrongs) Amendment Act 2026

264 Application of claim farming amendments

(1) Part 15.4A applies in relation to anything done or omitted to be done on or after the commencement day.

(2) However, section 221C (Giving or receiving fee or benefit for claim referrals) does not apply to a fee or benefit given or received on or after the commencement day if—

(a) the fee or benefit was given or received under an existing claim referral agreement; and

(b) the claim referral was finalised before the commencement day.

(3) In this section:

commencement day means the day the *Civil Law (Wrongs) Amendment Act 2026*, section 3 commences.

existing claim referral agreement means a written agreement relating to a claim referral that was entered into before the commencement day.

265 Expiry—ch 22

This chapter expires 12 months after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

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Schedule 1A Additional publications to which absolute privilege applies

(see s 137 (2) (d))

1A.1 Definitions—sch 1A

In this schedule:

matter—see section 116.

official, of an entity mentioned in this schedule, means—

(a) an officer, employee or member of staff of the entity; or

(b) a person who is authorised to exercise a function of the entity under a territory law; or

(c) another person engaged to act for or on behalf of the entity.

1A.2 Matter published to bar association etc

(1) Without limiting section 137 (2) (a) to (c), matter that is published—

(a) to any of the following:

(i) the bar association;

(ii) the bar council;

(iii) a person in their capacity as—

(A) a member of the bar council; or

(B) a member of staff of the bar association; or

(C) any other official of the bar association; and

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(b) for any of the following purposes:

(i) making a complaint under the *Legal Profession Act 2006* (whether or not the complaint may be dealt with under that Act);

(ii) an investigation of the complaint under that Act;

(iii) anything else that may be done under that Act in relation to the complaint.

(2) In this section:

bar association—see the *Legal Profession Act 2006*, dictionary.

bar council—see the *Legal Profession Act 2006*, dictionary.

1A.3 Matter published to human rights commission etc

Without limiting section 137 (2) (a) to (c), matter that is published to—

(a) the human rights commission; or

(b) a person in their capacity as—

(i) a member of the human rights commission; or

(ii) a member of staff of the human rights commission; or

(iii) any other official of the human rights commission.

1A.4 Matter published to integrity commission etc

(1) Without limiting section 137 (2) (a) to (c), matter that is published to—

(a) the integrity commission; or

(b) a person in their capacity as—

(i) the integrity commissioner; or

(ii) a member of staff of the integrity commission; or

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(iii) any other official of the integrity commission; or

(iv) the inspector of the integrity commission; or

(v) a member of staff of the inspector of the integrity commission; or

(vi) any other official of the inspector of the integrity commission.

(2) In this section:

inspector of the integrity commission means the inspector of the integrity commission under the *Integrity Commission Act 2018*.

staff, of the inspector of the integrity commission—see the *Integrity Commission Act 2018*, section 248, definition of ***staff of the inspector***.

staff, of the integrity commission—see the *Integrity Commission Act 2018*, section 47, definition of ***staff of the commission***.

1A.5 Matter published to inspector of correctional services

(1) Without limiting section 137 (2) (a) to (c), matter that is published to a person in their capacity as—

(a) the inspector of correctional services; or

(b) a member of staff of the inspector of correctional services; or

(c) any other official of the inspector of correctional services.

(2) In this section:

inspector of correctional services means the inspector of correctional services under the *Inspector of Correctional Services Act 2017*.

staff, of the inspector of correctional services, means the staff employed by the inspector under the *Inspector of Correctional Services Act 2017*, section 13.

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1A.6 Matter published to law society etc

(1) Without limiting section 137 (2) (a) to (c), matter that is published—

(a) to any of the following:

(i) the law society;

(ii) the law society council;

(iii) a person in their capacity as—

(A) a member of the law society council; or

(B) a member of staff of the law society; or

(C) any other official of the law society; and

(b) for any of the following purposes:

(i) making a complaint under the *Legal Profession Act 2006* (whether or not the complaint may be dealt with under that Act);

(ii) an investigation of the complaint under that Act;

(iii) anything else that may be done under that Act in relation to the complaint.

(2) In this section:

law society—see the *Legal Profession Act 2006*, dictionary.

law society council—see the *Legal Profession Act 2006*, dictionary.

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1A.7 Matter published to office of the work health and safety commissioner etc

(1) Without limiting section 137 (2) (a) to (c), matter that is published to—

(a) the Office of the Work Health and Safety Commissioner; or

(b) a person in their capacity as—

(i) the work health and safety commissioner; or

(ii) a member of staff of the Office of the Work Health and Safety Commissioner; or

(iii) any other official of the Office of the Work Health and Safety Commissioner.

(2) In this section:

staff, of the Office of the Work Health and Safety Commissioner—see the *Work Health and Safety Act 2011*, schedule 2, section 2.30, definition of ***staff of the office***.

Office of the Work Health and Safety Commissioner means the Office of the Work Health and Safety Commissioner established under the *Work Health and Safety Act 2011*, schedule 2, section 2.18.

1A.8 Matter published to official visitor etc

(1) Without limiting section 137 (2) (a) to (c), matter that is published to—

(a) the official visitors board; or

(b) a person in their capacity as—

(i) an official visitor; or

(ii) a member of the official visitors board; or

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(iii) the official visitors executive officer; or

(iv) any other official of the official visitors board.

(2) In this section:

official visitors board means the official visitors board established under the *Official Visitor Act 2012*, section 23A.

official visitors executive officer—see the *Official Visitor Act 2012*, section 23C (2).

1A.9 Matter published to public trustee and guardian etc

(1) Without limiting section 137 (2) (a) to (c), matter that is published to a person in their capacity as—

(a) the public trustee and guardian; or

(b) a deputy public trustee and guardian; or

(c) a member of staff of the public trustee and guardian; or

(d) any other official of the public trustee and guardian.

(2) In this section:

deputy public trustee and guardian means a deputy public trustee and guardian under the *Public Trustee and Guardian Act 1985*, section 6.

1A.10 Matter published to sentence administration board etc

(1) Without limiting section 137 (2) (a) to (c), matter that is published to—

(a) the sentence administration board; or

(b) a person in their capacity as—

(i) a member of the sentence administration board; or

(ii) the secretary of the sentence administration board; or

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(iii) any other official of the sentence administration board.

(2) In this section:

secretary, of the sentence administration board, means the secretary of the board under the *Crimes (Sentence Administration) Act 2005*, section 191.

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Schedule 1 Traveller accommodation providers notice

(see s 154)

Notice about loss of guest's property

The *Civil Law (Wrongs) Act 2002*, part 11.1 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))

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

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Schedule 3 Equine activities

3.1 Definitions—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

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

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(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

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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—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) an action for breach of the *Competition and Consumer Act 2010* (Cwlth) or the *Australian Consumer Law (ACT)*; or

(c) a claim under the *Workers Compensation Act 1951*.

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.

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(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.

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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.

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Schedule 4 Professional standards

Part 4.1 Preliminary—professional standards

4.1 Objects—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—sch 4

In this schedule:

amount payable, under an insurance policy in relation to an occupational liability—see section 4.2A.

another jurisdiction means a State or Territory other than this jurisdiction.

appropriate council, in relation to another jurisdiction, means the authority that, under the corresponding law of the jurisdiction, has functions that are substantially the same as the council's functions under this schedule.

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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.

corresponding law means a law of another jurisdiction that corresponds to this schedule, and includes a law of another jurisdiction that is declared by regulation to be a corresponding law of the jurisdiction for this Act.

costs includes fees, charges, disbursements and expenses.

council—see section 4.36.

court includes a tribunal and an arbitrator.

damages means—

(a) damages awarded in relation to a claim or counter-claim or claim by way of set-off; or

(b) costs in relation to the proceedings ordered to be paid in relation to such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant); or

(c) any interest payable on the amount of the damages or costs.

interstate scheme means a scheme that—

(a) has been prepared under a corresponding law; and

(b) operates, or indicates an intention to operate, as a scheme of this jurisdiction.

judgment includes—

(a) a judgment given by consent; and

(b) a decision of a tribunal; and

(c) an award of an arbitrator.

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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, and includes an interstate scheme.

this jurisdiction means the ACT.

4.2A Amount payable under an insurance policy—sch 4

In this schedule:

amount payable, under an insurance policy in relation to an occupational liability, includes—

(a) defence costs payable in relation to a claim, or notification that may lead to a claim (other than reimbursement of the defendant for time spent in relation to the claim), but only if the costs are payable out of the one sum insured under the policy in relation to the occupational liability; and

(b) the amount payable under or in relation to the policy by way of excess.

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4.3 Application—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).

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Part 4.2 Limitation of liability

Division 4.2.1 Making, amendment and revocation of schemes

4.4 Preparation and approval of schemes

(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, approve a scheme prepared under this section.

(4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.

4.5 Public notification of schemes

(1) Before approving a scheme, the council must give public notice—

(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 at least 21 days after the day the notice is published.

Note ***Public notice*** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1).

(2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the council must also publish a similar notice in the other jurisdiction in accordance with the requirements of the corresponding law of that jurisdiction that relates to the approval of a scheme prepared in that jurisdiction.

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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 approving a scheme, 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.

(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.

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(3) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction—

(a) the council must also consider any matter that the appropriate council for the other jurisdiction would have to consider under the corresponding law of that jurisdiction that relates to the approval of a scheme prepared in that jurisdiction; and

(b) the matters to be considered by the council, whether under subsection (1) or paragraph (a), are to be considered in the context of each of the jurisdictions concerned.

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

(1) The council must submit a scheme approved by it to the Minister.

(2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the council must also submit the scheme to the Minister administering the corresponding law of the other jurisdiction.

4.10 Schemes are subject to disallowance

(1) The Minister must—

(a) give notice of—

(i) the council's approval of the scheme; or

(ii) for an interstate scheme—the approval of the scheme by the appropriate council for the jurisdiction in which the scheme was prepared; and

(b) include the approved scheme in the notice.

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(2) A notice is a disallowable instrument.

(3) In this section, a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.

Note Subsection (3) applies s (1) and s (2) to instruments that amend an interstate scheme. Those subsections already apply, by virtue of s 4.14 (5), to instruments that amend a scheme that is not an interstate scheme.

4.11 Commencement of schemes

(1) If the Minister gives notice under section 4.10 of the approval of a scheme, the scheme commences—

(a) on the date or time (after the notice's notification day) provided for in the notice; or

(b) if a date or time is not provided for in the notice—2 months after the notice's notification day.

(2) This section is subject to any order of—

(a) the Supreme Court under section 4.12; and

(b) the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction.

(3) In this section, a reference to a scheme includes, for an interstate scheme, a reference to an instrument amending that scheme.

4.12 Challenges to schemes

(1) This section applies to a person who is, or is reasonably likely to be, affected by a scheme included in a notice under section 4.10 (including a person who is, or is reasonably likely to be, affected by a scheme that operates as a scheme of another jurisdiction).

(2) For subsection (1), a person 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.

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(3) 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.

(4) 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.

(5) The Supreme Court may make an order that an interstate scheme is void for failure to comply with this schedule because the scheme fails to comply with the provisions of the corresponding law of the jurisdiction in which it was prepared that relate to the contents of schemes prepared in that jurisdiction.

(6) The Supreme Court may not make an order that an interstate scheme is void for failure to comply with this schedule because the scheme fails to comply with division 4.2.2 (Content of schemes).

(7) This section does not prevent a scheme from being challenged other than under this section.

(8) In this section, a reference to a scheme includes, for an interstate scheme, a reference to an instrument amending that scheme.

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).

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(3) A review may, but need not, be conducted to decide—

(a) for a scheme prepared under this schedule—whether the scheme should be amended or revoked or whether a new scheme should be made; or

(b) for an interstate scheme—whether the operation of the scheme should be ended in relation to this jurisdiction.

4.14 Amendment and revocation of schemes

(1) An occupational association may prepare an instrument amending or revoking a scheme that relates to its members.

(2) The council may, on the application of an occupational association, prepare an instrument amending or revoking a scheme that relates to the members of the association.

(3) The Minister may direct the council to prepare an instrument amending or revoking a scheme.

(4) The council must comply with a direction but may on its own initiative prepare an instrument amending or revoking 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 of a scheme by an instrument under this section.

(6) Sections 4.4 to 4.11 (other than section 4.9 (2)) apply, with any necessary changes, to the revocation of a scheme by an instrument under this section.

(7) This section does not apply to an interstate scheme.

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4.14A Notification of revocation of schemes

(1) If the Minister gives notice under section 4.10 in relation to an instrument revoking a scheme (other than an interstate scheme) that operates as a scheme of another jurisdiction, the Minister must notify the Minister administering the corresponding law of that jurisdiction of the revocation.

(2) A notice that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which it was prepared is a notifiable instrument.

Note Under s 4.28 (1B) (c), an interstate scheme will cease to have effect in this jurisdiction when it ceases to have effect in the other jurisdiction.

4.14B Ending of operation of interstate schemes

(1) On application by an occupational association, the council may prepare an instrument ending, in relation to this jurisdiction, the operation of an interstate scheme that relates to members of the association.

(2) The Minister may direct the council to prepare an instrument ending the operation of an interstate scheme in relation to this jurisdiction.

(3) The council must comply with any direction under subsection (2).

(4) The council may, on its own initiative, at any time while an interstate scheme remains in force, prepare an instrument ending the operation of the scheme in relation to this jurisdiction.

(5) Sections 4.5 to 4.10 (other than section 4.9 (2)) extend, with any necessary modifications, to the ending of the operation of an interstate scheme under an instrument under that section.

(6) The operation of an interstate scheme is ended, in relation to this jurisdiction, on—

(a) the day after the day of its publication as stated in the instrument; or

(b) if no day is stated—2 months after the day of its publication.

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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.

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(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—

(a) the person has the benefit of an insurance policy insuring the person against the occupational liability to which the cause of action relates; and

(b) the amount payable under the policy for the occupational liability is at least the amount of 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.

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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; 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 business assets and the amount payable under the policy for the occupational liability, if combined, would total an amount that is at least the amount of 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.

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

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(ii) under which the amount payable for the occupational liability is at least an amount (the ***limitation amount***) that is a reasonable charge for the services provided by the person or which 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 class of person and the kind of work to which the cause of action relates; 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 policy for the occupational liability, 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.

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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 4.17, 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.

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(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.

4.22A Liability in damages not reduced to below relevant limit

The liability in damages of a person to whom a scheme applies is not reduced below the relevant limitation imposed by a scheme in force under this schedule because the amount available to be paid to the claimant under the insurance policy required for this schedule for the liability is less than the relevant limitation.

Note Section 4.2A allows a defence costs inclusive policy for this schedule, which may reduce the amount available to be paid to a client for occupational liability covered by the policy. Section 4.22A makes it clear that this does not reduce the cap on the liability of the scheme participant to the client, and accordingly the scheme participant will continue to be liable to the client for any difference between the amount payable to the client under the policy and the amount of the cap.

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.

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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 giving rise to the cause of action concerned 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.

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(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 must state a period of not longer than 5 years that it is to remain in force after its commencement.

(2) Subject to subsection (4), a scheme (other than an interstate scheme) remains in force until—

(a) the period stated under subsection (1) ends; or

(b) the scheme is revoked; or

(c) the scheme ceases to operate because of the operation of this schedule or another territory law; or

(d) the scheme is declared void by an order made by—

(i) the Supreme Court under section 4.12; or

(ii) the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction; or

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(e) the scheme is disallowed under the Legislation Act, section 65 (Disallowance by resolution of Assembly).

(3) Subject to subsection (4), an interstate scheme remains in force in this jurisdiction until—

(a) the period stated under subsection (1) ends; or

(b) the scheme's operation in relation to this jurisdiction is ended under section 4.14B (Ending of operation of interstate schemes); or

(c) the scheme ceases to have effect in the jurisdiction in which it was prepared; or

(d) the scheme is disallowed under the Legislation Act, section 65 (Disallowance by resolution of Assembly).

(4) The Minister may extend the period for which the scheme is in force.

(5) An instrument under subsection (4) is a notifiable instrument.

(6) To remove any doubt, an instrument under subsection (4) is effective to extend the period for which a scheme is in force even if the instrument is notified after the day the scheme ends.

(7) 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

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(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.

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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.

(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.

(3) An occupational association may, through the committee or otherwise, issue practice advice to its members to minimise claims for occupational liability.

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(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.

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Part 4.4 Risk management

4.32 Risk management strategies by occupational associations

(1) If an occupational association seeks the council's approval of 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.

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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

(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.

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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 statement;

(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.

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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) giving notice of the approval of schemes, and their amendment and revocation; 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:

(i) codes of ethics;

(ii) codes of practice;

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(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, under any other territory law, or under the law of another jurisdiction.

(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.

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4.37A Cooperation with authorities in other jurisdictions

If a scheme operates, or indicates an intention to operate, as a scheme of both this jurisdiction and another jurisdiction, the council may—

(a) in the exercise of its functions under this schedule, act in conjunction with the appropriate council for the other jurisdiction; and

(b) act in conjunction with the appropriate council for the other jurisdiction in the exercise of that council's functions under the corresponding law of that jurisdiction.

Division 4.6.2 Membership of council

4.38 Membership of council

(1) 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).

(2) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of a person who is a member of an appropriate council in another jurisdiction.

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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).

(1A) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of a person who is a member of an appropriate council in another jurisdiction.

(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.

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.

(1A) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of a person who is a member of an appropriate council in another jurisdiction.

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(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 or personally insolvent; or

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(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

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.

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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—council

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 approval 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.

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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 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.

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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.

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Part 4.7 Miscellaneous—sch 4

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.

4.59A Validation of schemes etc

(1) A scheme approved under this schedule before the commencement of the *Justice and Community Safety Legislation Amendment Act 2007* (the ***amending Act***) is taken to be, and always to have been, a valid scheme if it would have been valid had the amendments made by the amending Act been in force when the scheme was approved.

(2) Anything done or omitted to be done in relation to such a scheme is taken to be, and always to have been, validly done or omitted.

(3) In particular, an insurance policy required by this schedule before a limitation on liability in damages of a person to whom such a scheme applies is reduced is taken to comply, and always to have complied, with this schedule if it would have complied had the amendments made by the amending Act been in force when the policy was issued.

(4) This section extends to proceedings pending in a court on the commencement of this section.

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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.

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(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 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.

(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 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;

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(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.

Note The Legislation Act, s 179 deals with the information that must be included in a statement of reasons.

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.

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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.

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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:

- Australian Consumer Law (ACT)
- Australian statistician
- bankrupt or personally insolvent
- body
- child
- civil partner
- civil union partner
- corporation
- Corporations Act
- doctor
- domestic partner (see s 169)
- entity
- foreign country
- human rights commission
- indictable offence (see s 190)
- integrity commission
- integrity commissioner
- lawyer
- Minister (see s 162)
- official visitor
- proceeding
- property
- public trustee and guardian
- sentence administration board
- (the) Territory
- work health and safety commissioner.

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abuse settlement agreement, for part 8A.3 (Institutional child abuse—setting aside abuse settlement agreements)—see section 114J.

access prevention step, in relation to the publication of digital matter, for chapter 9 (Defamation)—see section 116.

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

accommodation provider—see section 146.

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

act of terrorism, for part 3.3 (Exclusion of liability for terrorism-associated risks)—see section 37.

agent, of an accommodation provider, for part 11.1 (Traveller accommodation providers liability)—see section 144.

aggrieved person, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124 (1).

amount payable, under an insurance policy in relation to an occupational liability, for schedule 4 (Professional standards)—see schedule 4, section 4.2A.

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

another jurisdiction, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

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

applicable period, for an offer to make amends, for division 9.3.1 (Concerns notices and offers to make amends)—see section 126 (2).

applicant, for part 8A.3 (Institutional child abuse—setting aside abuse settlement agreements)—see section 114K (1).

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apportionable claim, for chapter 7A (Proportionate liability)—see section 107B.

appropriate council, in relation to another jurisdiction, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

associate, of a law practice, for part 15.4A (Prohibition on claim farming)—see the *Legal Profession Act 2006*, dictionary.

associated, for an individual, for division 8A.1A.2 (Duty of organisations to prevent child abuse)—see section 114BBC.

associated entity, for chapter 9 (Defamation)—see the Corporations Act, section 50AAA.

Australian court, for chapter 9 (Defamation)—see section 116.

Australian jurisdiction, for chapter 9 (Defamation)—see section 116.

Australian tribunal, for chapter 9 (Defamation)—see section 116.

business assets, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

caching service, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

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.

child abuse, for chapter 8A (Institutional child abuse)—see section 114AA.

child abuse claim—see section 114A.

claim—

(a) for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and

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(b) for part 7.1 (Damages for personal injuries—exclusions and limitations)—see section 92; and

(c) for part 15.4A (Prohibition on claim farming)—see section 221A.

claimant—

(a) for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and

(b) for chapter 7A (Proportionate liability)—see section 107C; and

(c) for part 15.4A (Prohibition on claim farming)—see section 221A.

common carrier, for part 11.2 (Common carriers)—see section 156.

community organisation, for part 2.2 (Volunteers)—see section 6.

community work, for part 2.2 (Volunteers)—see section 7.

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

concerns notice, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124A (1).

concurrent wrongdoer, for chapter 7A (Proportionate liability)—see section 107D.

conduit service, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

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

consumer claim, for chapter 7A (Proportionate liability)—see section 107C.

contribution notice, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 57.

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

corresponding law, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

costs—

(a) for part 14.1 (Maximum costs for certain personal injury damages claims)—see section 180; and

(b) for schedule 4 (Professional standards)—see schedule 4, section 4.2.

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.

country, for chapter 9 (Defamation)—see section 116.

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 13 (Misrepresentation)—see section 172; and

(f) for part 14.1 (Maximum costs for certain personal injury damages claims)—see section 180; and

(g) for part 14.2 (Costs in damages claims if no reasonable prospects of success)—see section 186; and

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(h) for schedule 4 (Professional standards)—see schedule 4, section 4.2.

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.

damages, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

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

defendant, for chapter 7A (Proportionate liability)—see section 107A.

digital intermediary, in relation to the publication of digital matter, for chapter 9 (Defamation)—see section 116.

digital matter, for chapter 9 (Defamation)—see section 116.

document, for chapter 9 (Defamation)—see section 116.

donor, for part 2.2A (Food donors)—see section 11A.

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

electronic communication, for chapter 9 (Defamation)—see section 116.

employee, of an organisation, for division 8A.1A.3 (Vicarious liability of organisations)—see section 114BC.

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.

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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.

excluded corporation, for chapter 9 (Defamation)—see section 121 (2).

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.

fit for human consumption, in relation to food, for part 2.2A (Food donors)—see section 11A.

food, for part 2.2A (Food donors)—see the *Food Act 2001*, section 8.

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.

further particulars notice, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124A (3).

general law, for chapter 9 (Defamation)—see section 116.

guest—see section 148.

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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, for part 11.1 (Traveller accommodation providers liability)—see section 147.

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

insurer, of a person in relation to a claim, for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49.

interstate scheme, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

intoxicated, for part 7.1 (Damages for personal injuries—exclusions and limitations)—see section 92.

judgment, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

law practice, for part 15.4A (Prohibition on claim farming)—see the *Legal Profession Act 2006*, dictionary.

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, for chapter 9 (Defamation)—see section 116.

matter in question, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124.

mediation, for part 15.1 (Mediation and neutral evaluation)—see section 192 (1).

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mediation session, for part 15.1 (Mediation and neutral evaluation)—see section 192 (2).

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 accident claim—

(a) means a claim for damages for personal injury caused by a motor accident; and

(b) includes, for a fatal injury, a claim by the dead person's dependants or estate.

motor vehicle—

(a) means—

(i) a motor vehicle under the *Road Transport (General) Act 1999*; or

Note A light rail vehicle is a motor vehicle under the *Road Transport (General) Act 1999*.

(ii) another vehicle operated on a railway or other fixed track; and

(b) for part 11.1 (Traveller accommodation providers liability), includes a boat, caravan or 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, for part 15.1 (Mediation and neutral evaluation)—see section 192 (3).

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neutral evaluation session, for part 15.1 (Mediation and neutral evaluation)—see section 192 (5).

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

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.

offer to make amends, for chapter 9 (Defamation)—see section 116.

online service, for chapter 9 (Defamation)—see section 116.

organisation, for part 8A.1A (Liability of organisations)—see section 114BB.

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, for chapter 9 (Defamation)—see section 116.

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.

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personal injury damages, for part 14.1 (Maximum costs for certain personal injury damages claims)—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 and guardian.

poster, in relation to the publication of digital matter, for chapter 9 (Defamation)—see section 116.

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

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

publisher, for division 9.3.1 (Concerns notices and offers to make amends)—see section 124.

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

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.

related trust, in relation to an unincorporated body, for chapter 8A (Institutional child abuse)—see section 114B.

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

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responsible, for a child, for part 8A.1A (Liability of organisations)—see section 114BBA.

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).

scheme, for schedule 4 (Professional standards)—see schedule 4, section 4.2.

search engine, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

search engine provider, for a search engine, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

search result, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

service, for part 15.4A (Prohibition on claim farming)—see section 221A.

storage service, for division 9.2.2A (Exemptions from liability for digital intermediaries)—see section 122B.

substantially true, for chapter 9 (Defamation)—see section 116.

this jurisdiction—

(a) for chapter 9 (Defamation)—see section 116; and

(b) for schedule 4 (Professional standards)—see schedule 4, section 4.2.

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

traveller accommodation—see section 145.

unsafe, in relation to food, for part 2.2A (Food donors)—see the *Food Act 2001*, section 12.

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unsuitable, in relation to food, for part 2.2A (Food donors)—see the *Food Act 2001*, section 13.

voluntary basis, for part 2.2 (Volunteers)—see section 6.

volunteer, for part 2.2 (Volunteers)—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.

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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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

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

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3 Legislation history

Civil Law (Wrongs) Act 2002 A2002-40
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 10 April 2003 (s 2 (2) and LA s 79)
remainder commenced 1 November 2002 (s 2 (2) and CN2002-13)

as modified by

Civil Law (Wrongs) Regulations 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) A2002-49 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 2003 (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)

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as modified by

Civil Law (Wrongs) Regulation 2003 SL2003-20 (as am by SL2004-8 s 8, A2004-32 pt 6)
notified LR 30 June 2003
s 1, s 2 commenced 30 June 2003 (LA s 75 (1))
remainder commenced 1 July 2003 (s 2)

as amended by

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))

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)

Note This regulation only amends the Civil Law (Wrongs) Regulation 2003 SL2003-20.

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)

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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))

Note This Act also amends the Civil Law (Wrongs) Regulation 2003 SL2003-20.

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 commenced 8 March 2005 (s 2 and LA s 79)

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))

Justice and Community Safety Legislation Amendment Act 2005 (No 3) A2005-43 sch 1 pt 1.2

notified LR 30 August 2005

s 1, s 2 commenced 30 August 2005 (LA s 75 (1))

sch 1 pt 1.2 commenced 1 October 2005 (s 2 (3) and CN2005-18)

Justice and Community Safety Legislation Amendment Act 2005 (No 4) A2005-60 sch 1 pt 1.4

notified LR 1 December 2005

s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))

sch 1 pt 1.4 commenced 22 December 2005 (s 2 (4))

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Civil Law (Wrongs) Amendment Act 2006 A2006-1
notified LR 22 February 2006
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))
remainder commenced 23 February 2006 (s 2)

Civil Unions Act 2006 A2006-22 sch 1 pt 1.6
notified LR 19 May 2006
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))
sch 1 pt 1.6 never commenced

Note Act repealed by disallowance 14 June 2006 (see Cwlth Gaz 2006 No S93)

Legal Profession Act 2006 A2006-25 sch 2 pt 2.1
notified LR 21 June 2006
s 1, s 2 commenced 21 June 2006 (LA s 75 (1))
sch 2 pt 2.1 commenced 1 July 2006 (s 2)

Civil Law (Property) Act 2006 A2006-38 sch 1 pt 1.2
notified LR 28 September 2006
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))
sch 1 pt 1.2 commenced 28 March 2007 (s 2 and LA s 79)

Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 1 pt 1.1, sch 2 pt 2.8
notified LR 28 September 2006
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))
sch 1 pt 1.1 commenced 19 October 2006 (s 2 (3))
sch 2 pt 2.8 commenced 29 September 2006 (s 2 (1))

Justice and Community Safety Legislation Amendment Act 2007 A2007-22 sch 1 pt 1.2
notified LR 5 September 2007
s 1, s 2 commenced 5 September 2007 (LA s 75 (1))
sch 1 pt 1.2 commenced 6 September 2007 (s 2)

Road Transport (Third-Party Insurance) Act 2008 A2008-1 sch 1 pt 1.1 (as am by A2008-39 s 4)
notified LR 26 February 2008
s 1, s 2 commenced 26 February 2008 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 October 2008 (s 2 as am by A2008-39 s 4)

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Justice and Community Safety Legislation Amendment Act 2008 A2008-7 sch 1 pt 1.5

notified LR 16 April 2008
s 1, s 2 commenced 16 April 2008 (LA s 75 (1))
sch 1 pt 1.5 commenced 7 May 2008 (s 2)

Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.5

notified LR 15 May 2008
s 1, s 2 commenced 15 May 2008 (LA s 75 (1))
sch 1 pt 1.5 commenced 19 May 2008 (s 2 and CN2008-8)

Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.12

notified LR 12 August 2008
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))
sch 3 pt 3.12 commenced 26 August 2008 (s 2)

Justice and Community Safety Legislation Amendment Act 2008 (No 3) A2008-29 sch 1 pt 1.4

notified LR 13 August 2008
s 1, s 2 commenced 13 August 2008 (LA s 75 (1))
sch 1 pt 1.4 commenced 27 August 2008 (s 2)

Road Transport (Third-Party Insurance) Amendment Act 2008 A2008-39

notified LR 22 August 2008
s 1, s 2 commenced 22 August 2008 (LA s 75 (1))
remainder commenced 23 August 2008 (s 2)

Note This Act only amends the Road Transport (Third-Party Insurance) Act 2008 A2008-1.

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.13

notified LR 1 September 2009
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
sch 3 pt 3.13 commenced 22 September 2009 (s 2)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.9

notified LR 26 November 2009
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
sch 3 pt 3.9 commenced 17 December 2009 (s 2)

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Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10 sch 2 pt 2.3

notified LR 31 March 2010
s 1, s 2 commenced 31 March 2010 (LA s 75 (1))
sch 2 pt 2.3 commenced 1 July 2010 (s 2 (1) (a))

Fair Trading (Australian Consumer Law) Amendment Act 2010 A2010-54 sch 3 pt 3.4

notified LR 16 December 2010
s 1, s 2 commenced 16 December 2010 (LA s 75 (1))
sch 3 pt 3.4 commenced 1 January 2011 (s 2 (1))

Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.9

notified LR 22 November 2011
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))
sch 1 pt 1.9 commenced 22 November 2012 (s 2 (3))

Justice and Community Safety Legislation Amendment Act 2012 (No 2) A2012-30 sch 1 pt 1.1

notified LR 13 June 2012
s 1, s 2 commenced 13 June 2012 (LA s 75 (1))
sch 1 pt 1.1 commenced 14 June 2012 (s 2)

Civil Unions Act 2012 A2012-40 sch 3 pt 3.6

notified LR 4 September 2012
s 1, s 2 commenced 4 September 2012 (LA s 75 (1))
sch 3 pt 3.6 commenced 11 September 2012 (s 2)

Road Transport (Third-Party Insurance) Amendment Act 2012 A2012-48 sch 1 pt 1.1

notified LR 5 September 2012
s 1, s 2 commenced 5 September 2012 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 January 2013 (s 2)

Marriage Equality (Same Sex) Act 2013 A2013-39 sch 2 pt 2.5

notified LR 4 November 2013
s 1, s 2 commenced 4 November 2013 (LA s 75 (1))
sch 2 pt 2.5 commenced 7 November 2013 (s 2 and CN2013-11)

Note The High Court held this Act to be of no effect (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)

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Statute Law Amendment Act 2013 (No 2) A2013-44 sch 3 pt 3.3
notified LR 11 November 2013
s 1, s 2 commenced 11 November 2013 (LA s 75 (1))
sch 3 pt 3.3 commenced 25 November 2013 (s 2)

Justice and Community Safety Legislation Amendment Act 2014 A2014-17 sch 1 pt 1.3
notified LR 13 May 2014
s 1, s 2 taken to have commenced 25 November 2013 (LA s 75 (2))
sch 1 pt 1.3 taken to have commenced 25 November 2013 (s 2 (4) and see Statute Law Amendment Act 2013 (No 2) A2013-44 s 2)

Courts Legislation Amendment Act 2015 A2015-10 pt 3
notified LR 7 April 2015
s 1, s 2 commenced 7 April 2015 (LA s 75 (1))
pt 3 commenced 21 April 2015 (s 2 (2))

Red Tape Reduction Legislation Amendment Act 2015 A2015-33 sch 1 pt 1.11
notified LR 30 September 2015
s 1, s 2 commenced 30 September 2015 (LA s 75 (1))
sch 1 pt 1.11 commenced 14 October 2015 (s 2)

Courts Legislation Amendment Act 2015 (No 2) A2015-52 pt 3
notified LR 26 November 2015
s 1, s 2 commenced 26 November 2015 (LA s 75 (1))
pt 3 commenced 10 December 2015 (s 2 (2))

Health Legislation Amendment Act 2016 A2016-11 pt 2
notified LR 1 March 2016
s 1, s 2 commenced 1 March 2016 (LA s 75 (1))
pt 2 commenced 2 March 2016 (s 2)

Victims of Crime (Financial Assistance) Act 2016 A2016-12 sch 3 pt 3.1
notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 3 pt 3.1 commenced 1 July 2016 (s 2 (1) (a))

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Protection of Rights (Services) Legislation Amendment Act 2016 (No 2) A2016-13 sch 1 pt 1.9

notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 1 pt 1.9 commenced 1 April 2016 (s 2 and see Protection of Rights (Services) Legislation Amendment Act 2016 A2016-1 s 2)

Red Tape Reduction Legislation Amendment Act 2016 A2016-18 sch 3 pt 3.12

notified LR 13 April 2016
s 1, s 2 commenced 13 April 2016 (LA s 75 (1))
sch 3 pt 3.12 commenced 27 April 2016 (s 2)

Justice and Community Safety Legislation Amendment Act 2016 A2016-37 sch 1 pt 1.4

notified LR 22 June 2016
s 1, s 2 commenced 22 June 2016 (LA s 75 (1))
sch 1 pt 1.4 commenced 29 June 2016 (s 2)

Justice and Community Safety Legislation Amendment Act 2016 (No 2) A2016-53 pt 2

notified LR 25 August 2016
s 1, s 2 taken to have commenced 23 June 2016 (LA s 75 (2))
pt 2 commenced 26 August 2016 (s 2 (1))

Statute Law Amendment Act 2017 A2017-4 sch 3 pt 3.6

notified LR 23 February 2017
s 1, s 2 commenced 23 February 2017 (LA s 75 (1))
sch 3 pt 3.6 commenced 9 March 2017 (s 2)

Justice and Community Safety Legislation Amendment Act 2017 (No 2) A2017-14 pt 2

notified LR 17 May 2017
s 1, s 2 commenced 17 May 2017 (LA s 75 (1))
pt 2 commenced 24 May 2017 (s 2 (1))

Road Transport Reform (Light Rail) Legislation Amendment Act 2017 A2017-21 sch 1 pt 1.3

notified LR 8 August 2017
s 1, s 2 commenced 8 August 2017 (LA s 75 (1))
sch 1 pt 1.3 commenced 15 August 2017 (s 2)

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Justice and Community Safety Legislation Amendment Act 2018 A2018-12 pt 2

notified LR 18 April 2018
s 1, s 2 commenced 18 April 2018 (LA s 75 (1))
pt 2 commenced 25 April 2018 (s 2)

Civil Law (Wrongs) (Child Abuse Claims Against Unincorporated Bodies) Amendment Act 2018 A2018-38

notified LR 27 September 2018
s 1, s 2 commenced 27 September 2018 (LA s 75 (1))
remainder commenced 28 September 2018 (s 2)

Statute Law Amendment Act 2018 A2018-42 sch 3 pt 3.7

notified LR 8 November 2018
s 1, s 2 taken to have commenced 1 July 2018 (LA s 75 (2))
sch 3 pt 3.7 commenced 22 November 2018 (s 2 (1))

Motor Accident Injuries Act 2019 A2019-12 sch 3 pt 3.2

notified LR 31 May 2019
s 1, s 2 commenced 31 May 2019 (LA s 75 (1))
sch 3 pt 3.2 commenced 1 February 2020 (s 2 (1) and CN2019-13)

Justice and Community Safety Legislation Amendment Act 2021 A2021-3 pt 6

notified LR 19 February 2021
s 1, s 2 commenced 19 February 2021 (LA s 75 (1))
pt 6 commenced 26 February 2021 (s 2 (1))

Civil Law (Wrongs) Amendment Act 2021 A2021-15

notified LR 30 June 2021
s 1, s 2 commenced 30 June 2021 (LA s 75 (1))
remainder commenced 1 July 2021 (s 2)

Justice and Community Safety Legislation Amendment Act 2022 A2022-21 pt 3

notified LR 9 December 2022
s 1, s 2 commenced 9 December 2022 (LA s 75 (1))
pt 3 commenced 10 December 2022 (s 2)

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Civil Law (Wrongs) Amendment Act 2024 A2024-19
notified LR 24 May 2024
s 1, s 2 commenced 24 May 2024 (LA s 75 (1))
remainder commenced 1 July 2024 (s 2 (1) and CN2024-3)

Justice and Community Safety Legislation Amendment Act 2024 A2024-49 pt 2
notified LR 17 September 2024
s 1, s 2 taken to have commenced 11 June 2024 (LA s 75 (2))
pt 2 commenced 18 September 2024 (s 2 (4))

Statute Law Amendment Act 2025 A2025-29 sch 4 pt 4.29
notified LR 6 November 2025
s 1, s 2 commenced 6 November 2025 (LA s 75 (1))
sch 4 pt 4.29 commenced 6 December 2025 (s 2 (5))

Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Act 2025 A2025-32
notified LR 12 November 2025
s 1, s 2 commenced 12 November 2025 (LA s 75 (1))
remainder commenced 13 November 2025 (s 2)

Civil Law (Wrongs) Amendment Act 2026 A2026-7
notified LR 15 May 2026
s 1, s 2 commenced 15 May 2026 (LA s 75 (1))
remainder commenced 16 May 2026 (s 2)

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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)
am A2006-40 amdt 1.1; A2016-37 amdt 1.12; A2017-4 amdt 3.15; A2019-12 amdt 3.5

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; A2008-1 amdt 1.1; A2016-11 s 4; ss renum R55 LA; A2019-12 amdt 3.6

Meaning of *community work*

s 7 — am A2017-4 amdt 3.25

Directions to community organisations about insurance etc

s 11 — am A2017-4 amdt 3.16; A2025-29 amdt 4.29

Food donors

pt 2.2A hdg — orig pt 2.2A hdg renum as pt 2.3 hdg
ins A2008-29 amdt 1.10

Definitions—pt 2.2A

s 11A — orig s 11A renum as s 12
ins A2008-29 amdt 1.10
def ***donor*** ins A2008-29 amdt 1.10
def ***fit for human consumption*** ins A2008-29 amdt 1.10
def ***food*** ins A2008-29 amdt 1.10
def ***unsafe*** ins A2008-29 amdt 1.10
def ***unsuitable*** ins A2008-29 amdt 1.10

Protection of food donors from liability

s 11B — orig s 11B renum as s 13
ins A2008-29 amdt 1.10

Effect of apology on liability etc

s 11C — renum as s 14

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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—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) am A2016-12 amdt 3.1; pars renum R60 LA

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) am A2007-22 amdt 1.3, amdt 1.4; ss renum R33 LA

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) am A2008-1 amdt 1.2; A2019-12 amdt 3.7

Proceedings against and contributions between wrongdoers

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

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Definitions—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—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)
def ***member*** am A2006-22 amdt 1.24 (A2006-22 rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); A2008-14 amdt 1.15; A2012-40 amdt 3.23

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)

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Procedural matters—action for death

div 3.1.3 hdg	om A2006-40 amdt 2.61

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) om A2006-40 amdt 2.61

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) om A2006-40 amdt 2.61

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) om A2006-40 amdt 2.61

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) om A2006-40 amdt 2.61

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

Expiry of pt 3.3

s 31C	renum as s 39

Negligence

ch 3A hdg	renum as ch 4 hdg

Preliminary

pt 3A.1 hdg	renum as pt 4.1 hdg

Definitions—ch 3A

s 31D	renum as s 40

Application—ch 3A

s 31DA	renum as s 41

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Duty of care
pt 3A.2 hdg renum as pt 4.2 hdg

Standard of care
s 31E renum as s 42

Precautions against risk—general principles
s 31F renum as s 43

Precautions against risk—other principles
s 31G renum as s 44

Causation
pt 3A.3 hdg renum as pt 4.3 hdg

General principles
s 31H renum as s 45

Burden of proof
s 31I renum as s 46

Other provisions—negligence
pt 3A.4 hdg renum as pt 4.4 hdg

Contributory negligence can defeat claim
s 31J renum as s 47

Remedy available if claim fraudulent
s 31K renum as s 48

Personal injuries claims—pre-court procedures
ch 3B hdg renum as ch 5 hdg

Preliminary
pt 3B.1 hdg renum as pt 5.1 hdg

Definitions—ch 3B
s 31N renum as s 49

Application—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

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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—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

Cost of expert report obtained by agreement
s 31ZD renum as s 66

Examination by expert if no agreement
s 31ZE renum as s 67

Respondent to give documents etc to claimant
s 31ZF renum as s 68

Respondent to give documents etc to contributor
s 31ZG renum as s 69

Contributor to give documents to respondent
s 31ZH renum as s 70

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Alternative provision if more than 200 pages
s 31ZI renum as s 71

Other provisions—pre-court procedures
pt 3B.4 hdg renum as pt 5.4 hdg

Nondisclosure of documents etc—client legal privilege
s 31ZJ renum as s 72

Nondisclosure of documents etc—suspected fraud
s 31ZK renum as s 73

Offence not to disclose particular material
s 31ZL renum as s 74

Consequences of failure to give document
s 31ZM renum as s 75

Privilege generally for documents etc
s 31ZN renum as s 76

No requirement to give documents etc if already in other party's possession
s 31ZO renum as s 77

Court's power to enforce compliance with pt 3B.2 and pt 3B.3
s 31ZP renum as s 78

Need for urgent proceeding
s 31ZQ renum as s 79

False or misleading statements
s 31ZR renum as s 80

Expert medical evidence
ch 3C hdg renum as ch 6 hdg

Purpose of ch 3C
s 31ZT renum as s 81

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

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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—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) renum R9 LA (see A2003-35 s 55)
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

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)

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Exclusion of liability for terrorism-associated risks

pt 3.3 hdg	ins A2003-6 s 4 sub A2018-42 amdt 3.30

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; A2008-1 amdt 1.3; A2019-12 amdt 3.8

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—negligence

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—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—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)

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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)
am A2017-4 amdt 3.25

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); A2019-12 amdt 3.9

Liability of public and other authorities

ch 4A hdg — renum as ch 8 hdg

Application—ch 4A

s 46A — renum as s 108

Definitions—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

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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)

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—ch 5

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—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)

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Application—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)
am A2005-43 amdt 1.2, amdt 1.3; A2005-60 amdt 1.11; A2008-1 amdt 1.4, amdt 1.5, A2019-12 amdt 3.10, amdt 3.11

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; A2005-43 amdts 1.4-1.8; A2016-53 ss 4-7; ss renum R61 LA; A2017-14 ss 5-8; A2019-12 amdt 3.12, amdt 3.13; ss renum R68 LA; A2022-21 s 5; A2025-29 amdt 4.29

Motor accident claims—respondent to identify and notify others

s 51A ins A2019-12 amdt 3.14

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)
am A2024-49 s 4, s 5

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)
am A2019-12 amdt 3.15, amdt 3.16; ss renum R68 LA

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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)
am A2019-12 amdt 3.17; ss renum R68 LA; A2024-49 ss 6-9

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)
am A2013-44 amdt 3.27; A2016-18 amdt 3.43

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)

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—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)
am A2013-44 amdt 3.27; A2016-18 amdt 3.44; A2019-12 amdts 3.18-3.20

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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; A2013-44 amdt 3.27; A2016-18 amdt 3.45; A2019-12 amdt 3.21, amdt 3.22

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)
am A2019-12 amdts 3.23-3.26

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)
am A2019-12 amdt 3.27, amdt 3.28

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)

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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—failure to give document, film or information

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)
sub A2019-12 amdt 3.29

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)

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)
om A2011-48 amdt 1.10

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Purpose—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)
om A2011-48 amdt 1.10

Definitions—ch 6

s 82 orig s 82 renum as s 150
(prev s 31ZU) ins A2003-35 s 14
renum R9 LA (see A2003-35 s 55)
om A2011-48 amdt 1.10
def ***agreed expert*** ins A2003-35 s 14
om A2011-48 amdt 1.10
def ***appointed expert*** ins A2003-35 s 14
om A2011-48 amdt 1.10
def ***claim*** ins A2003-35 s 14
om A2011-48 amdt 1.10
def ***evidence*** ins A2003-35 s 14
om A2011-48 amdt 1.10
def ***expert*** ins A2003-35 s 14
om A2011-48 amdt 1.10
def ***expert medical evidence*** ins A2003-35 s 14
om A2011-48 amdt 1.10
def ***medical issue*** ins A2003-35 s 14
om A2011-48 amdt 1.10

Application—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)
am A2008-1 amdt 1.6
om A2011-48 amdt 1.10

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)
am A2007-22 amdt 1.5; A2010-10 amdt 2.14
om A2011-48 amdt 1.10

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)
om A2011-48 amdt 1.10

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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)
om A2011-48 amdt 1.10

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)
om A2011-48 amdt 1.10

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)
om A2011-48 amdt 1.10

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)
om A2011-48 amdt 1.10

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)
om A2011-48 amdt 1.10

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)

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Definitions—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—pt 7.1

s 93 orig s 93 renum as s 160
(prev s 33) renum R9 LA (see A2003-35 s 55)
am A2008-1 amdt 1.7; A2019-12 amdt 3.30

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)
am A2019-12 amdt 3.31

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)
am A2007-22 amdt 1.6

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; A2013-44 amdt 3.28; A2014-17 amdt 1.20

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)
am A2012-48 amdt 1.1; A2019-12 amdt 3.32

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)

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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—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)
om A2006-40 amdt 2.62

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)
om A2006-40 amdt 2.62

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)
om A2006-40 amdt 2.62

Proportionate liability

ch 7A hdg ins A2004-68 s 4

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Definitions—ch 7A

s 107A ins A2004-68 s 4
def ***apportionable*** ins A2004-68 s 4
def ***claimant*** ins A2026-7 s 4
def ***concurrent wrongdoer*** ins A2004-68 s 4
def ***consumer claim*** ins A2026-7 s 4
def ***defendant*** ins A2004-68 s 4

Application of ch 7A—apportionable claims

s 107B ins A2004-68 s 4
am A2008-1 amdt 1.8; A2010-54 amdt 3.8; A2019-12 amdt 3.33

Meaning of *consumer claim*—ch 7A

s 107C sub A2017-4 amdt 3.17
s 107C ins A2004-68 s 4
am A2010-54 amdt 3.9

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
am A2013-44 amdt 3.29

Contribution not recoverable from defendant

s 107H ins A2004-68 s 4

Subsequent proceeding by claimant

s 107I ins A2004-68 s 4

Including non-party concurrent wrongdoer

s 107J ins A2004-68 s 4
sub A2006-40 amdt 2.63

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)

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Application—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)
am A2008-1 amdt 1.9; A2019-12 amdt 3.33

Definitions—ch 8

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

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)

Institutional child abuse

ch 8A hdg ins A2018-38 s 4

Definitions and application—ch 8A

pt 8A.1 hdg ins A2022-21 s 6

Meaning of *child abuse claim*

s 114A ins A2018-38 s 4
sub A2022-21 s 6

Meaning of *child abuse*—ch 8A

s 114AA ins A2022-21 s 6

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Meaning of *related trust*—ch 8A
s 114B ins A2018-38 s 4

Time when child abuse etc happens
s 114BA ins A2022-21 s 7
am A2026-7 s 5, s 6

Liability of organisations
pt 8A.1A hdg ins A2025-32 s 4

Preliminary—pt 8A.1A
div 8A.1A.1 hdg ins A2026-7 s 7

Definitions—pt 8A.1A
s 114BB ins A2025-32 s 4
def ***employee*** ins A2025-32 s 4
om A2026-7 s 8
def ***organisation*** ins A2025-32 s 4
def ***responsible*** ins A2025-32 s 4
am A2026-7 s 9

Organisations that are responsible for child
s 114BBA (prev s 114BD) ins A2025-32 s 4
reloc and renum as s 114BBA A2026-7 s 13

Duty of organisations to prevent child abuse
div 8A.1A.2 hdg ins A2026-7 s 10

Application—div 8A.1A.2
s 114BBB ins A2026-7 s 10

Meaning of individual *associated* with organisation—div 8A.1A.2
s 114BBC ins A2026-7 s 10

Duty of organisations to prevent child abuse
s 114BBD ins A2026-7 s 10

Vicarious liability of organisations
div 8A.1A.3 hdg ins A2026-7 s 10

Meaning of *employee*—div 8A.1A.3
s 114BC hdg sub A2026-7 s 11
s 114BC ins A2025-32 s 4
am A2026-7 s 12

Organisations that are responsible for child
s 114BD reloc and renum as s 114BBA

Organisations vicariously liable for child abuse perpetrated by employees
s 114BE ins A2025-32 s 4

Institutional child abuse—proceedings against unincorporated bodies
pt 8A.2 hdg ins A2022-21 s 7

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Unincorporated bodies
s 114C ins A2018-38 s 4
am A2022-21 s 8

Unincorporated body may nominate defendant
s 114D ins A2018-38 s 4

Court may appoint related trust as defendant
s 114E ins A2018-38 s 4

Proceedings may be commenced before nomination or appointment
s 114F ins A2018-38 s 4

Liability of trustee if nominated or appointed as defendant
s 114G ins A2018-38 s 4
am A2022-21 s 8

Defendant may rely on defences and immunities etc
s 114H ins A2018-38 s 4

Institutional child abuse—setting aside abuse settlement agreements
pt 8A.3 hdg ins A2022-21 s 9

Object—pt 8A.3
s 114I ins A2022-21 s 9

Definitions—pt 8A.3
s 114J ins A2022-21 s 9
def ***abuse settlement agreement*** ins A2022-21 s 9
am A2025-32 s 5
def ***applicant*** ins A2022-21 s 9

Court may set aside abuse settlement agreement
s 114K ins A2022-21 s 9

Court may also set aside other things
s 114L ins A2022-21 s 9

Effect of setting aside abuse settlement agreement
s 114M ins A2022-21 s 9

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)
sub A2006-1 s 4

Preliminary—defamation
pt 9.1 hdg (prev pt 5.1 hdg) renum R9 LA (see A2003-35 s 55)
sub A2006-1 s 4

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Objects—ch 9

s 115 orig s 115 renum as s 182
(prev s 47) renum R9 LA (see A2003-35 s 55)
sub A2006-1 s 4
def ***action*** om A2006-1 s 4
def ***aggrieved person*** om A2006-1 s 4
def ***amends agreement*** om A2006-1 s 4
def ***country*** om A2006-1 s 4
def ***court*** om A2006-1 s 4
def ***defamation*** om A2006-1 s 4
def ***matter in question*** om A2006-1 s 4
def ***offer to make amends*** om A2006-1 s 4
def ***parliamentary body*** om A2006-1 s 4
def ***published matter*** om A2006-1 s 4
def ***publisher*** om A2006-1 s 4
def ***qualified offer*** om A2006-1 s 4
def ***tribunal*** om A2006-1 s 4

Definitions—ch 9

s 116 orig s 116 renum as s 183
(prev s 48) renum R9 LA (see A2003-35 s 55)
sub A2006-1 s 4
def ***access prevention step*** ins A2024-19 s 4
def ***aggrieved person*** ins A2006-1 s 4
sub A2021-15 s 4
def ***applicable period*** ins A2021-15 s 5
def ***associated entity*** ins A2021-15 s 5
def ***Australian court*** ins A2006-1 s 4
def ***Australian jurisdiction*** ins A2006-1 s 4
sub A2006-40 amdt 1.2
def ***Australian tribunal*** ins A2006-1 s 4
def ***caching service*** ins A2024-19 s 4
def ***concerns notice*** ins A2021-15 s 5
def ***conduit service*** ins A2024-19 s 4
def ***country*** ins A2006-1 s 4
def ***digital intermediary*** ins A2024-19 s 4
def ***digital matter*** ins A2024-19 s 4
def ***document*** ins A2006-1 s 4
def ***electronic communication*** ins A2006-1 s 4
def ***excluded corporation*** ins A2021-15 s 5
def ***further particulars notice*** ins A2021-15 s 5
def ***general law*** ins A2006-1 s 4
def ***matter*** ins A2006-1 s 4
def ***matter in question*** ins A2006-1 s 4
sub A2021-15 s 6
def ***offer to make amends*** ins A2006-1 s 4
def ***online service*** ins A2024-19 s 4
def ***parliamentary body*** ins A2006-1 s 4

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def ***poster*** ins A2024-19 s 4
def ***publisher*** ins A2006-1 s 4
sub A2021-15 s 6
def ***search engine*** ins A2024-19 s 4
def ***search engine provider*** ins A2024-19 s 4
def ***search result*** ins A2024-19 s 4
def ***storage service*** ins A2024-19 s 4
def ***substantially true*** ins A2006-1 s 4
def ***this jurisdiction*** ins A2006-1 s 4

Ch 9 binds Crown

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)
sub A2006-1 s 4

General principles

pt 9.2 hdg (prev pt 5.2 hdg) renum R9 LA (see A2003-35 s 55)
sub A2006-1 s 4

Defamation and the general law

div 9.2.1 hdg ins A2006-1 s 4

Tort of 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)
sub A2006-1 s 4

Definitions—pt 10.2

s 118A renum as s 186

Application—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

Distinction between slander and libel abolished

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)
sub A2006-1 s 4

Causes of action for defamation

div 9.2.2 hdg ins A2006-1 s 4

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Single cause of action for multiple defamatory imputations in same matter

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)
sub A2006-1 s 4

Who can be a mediator

s 120A renum as s 193

Certain corporations do not have cause of action for 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)
sub A2006-1 s 4
am A2021-15 ss 7-9

No cause of action for defamation of, or against, deceased persons

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)
sub A2006-1 s 4
am A2021-15 s 10

Serious harm element of cause of action for defamation

s 122A ins A2021-15 s 11

Exemptions from liability for digital intermediaries

div 9.2.2A hdg ins A2024-19 s 5

Definitions—div 9.2.2A

s 122B ins A2024-19 s 5
def ***caching service*** ins A2024-19 s 5
def ***conduit service*** ins A2024-19 s 5
def ***search engine*** ins A2024-19 s 5
def ***search engine provider*** ins A2024-19 s 5
def ***search result*** ins A2024-19 s 5
def ***storage service*** ins A2024-19 s 5

Exemption for digital intermediaries providing caching, conduit or storage services

s 122C ins A2024-19 s 5

Exemption for search engine providers

s 122D ins A2024-19 s 5

Early determination of digital intermediary exemptions

s 122E ins A2024-19 s 5

Choice of law

div 9.2.3 hdg ins A2006-1 s 4

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Choice of law for defamation proceedings

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)
sub A2006-1 s 4
am A2006-40 amdt 1.3

Resolution of civil disputes without litigation

pt 9.3 hdg (prev pt 5.3 hdg) renum R9 LA (see A2003-35 s 55)
sub A2006-1 s 4

Concerns notices and offers to make amends

div 9.3.1 hdg ins A2006-1 s 4
sub A2021-15 s 12

Application—div 9.3.1

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)
sub A2006-1 s 4

Concerns notices

s 124A orig s 124A renum as s 198
pres s 124A ins A2021-15 s 13

Defamation proceedings cannot be commenced without concerns notice

s 124B ins A2021-15 s 13

Publisher may make offer to make amends

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)
sub A2006-1 s 4

When offer to make amends may be made

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)
sub A2006-1 s 4; A2021-15 s 14

Content of offer to make amends

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)
sub A2006-1 s 4
am A2017-4 amdt 3.25; A2021-15 ss 15-19; A2024-19 s 6, s 7

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Withdrawal of offer to make amends

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) sub A2006-1 s 4

Effect of acceptance of offer to make amends

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) sub A2006-1 s 4

Effect of failure to accept reasonable offer to make amends

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) sub A2006-1 s 4 am A2021-15 s 20, s 21

Inadmissibility of evidence of certain statements and admissions

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) sub A2006-1 s 4

Apologies

div 9.3.2 hdg	ins A2006-1 s 4

Effect of apology on liability for 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) sub A2006-1 s 4

Litigation of civil disputes

pt 9.4 hdg	(prev pt 5.4 hdg) renum R9 LA (see A2003-35 s 55) sub A2006-1 s 4

General

div 9.4.1 hdg	ins A2006-1 s 4

Leave required for multiple proceedings in relation to publication of same defamatory matter

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) sub A2006-1 s 4; A2021-15 s 22

Orders for preliminary discovery about posters of digital matter

s 133A	ins A2024-19 s 8

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Defences
div 9.4.2 hdg ins A2006-1 s 4

Scope of defences under general law and other law not limited
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)
sub A2006-1 s 4

Defence of justification
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)
sub A2006-1 s 4

Defence of contextual truth
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)
sub A2006-1 s 4; A2021-15 s 23

Defence of absolute privilege
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)
sub A2006-1 s 4
am A2024-19 ss 9-11

Defence for publication of public documents
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)
sub A2006-1 s 4

Defences of fair report of proceedings of public concern
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)
sub A2006-1 s 4

Defence of publication of matter concerning issue of public interest
s 139AA ins A2021-15 s 24

Defence of qualified privilege for provision of certain information
s 139A ins A2006-1 s 4
am A2021-15 s 25

Defence of scientific or academic peer review
s 139AB ins A2021-15 s 26

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Defences of honest opinion
s 139B ins A2006-1 s 4
am A2021-15 s 27

Defence for publications involving digital intermediaries
s 139BA ins A2024-19 s 12

Defence of innocent dissemination
s 139C ins A2006-1 s 4

Defence of triviality
s 139D ins A2006-1 s 4
om A2021-15 s 28

Remedies
div 9.4.3 hdg ins A2006-1 s 4

Damages to bear rational relationship to harm
s 139E ins A2006-1 s 4

Damages for non-economic loss limited
s 139F ins A2006-1 s 4
am A2013-44 amdt 3.30; A2021-15 s 29, s 30; A2025-29 amdt 4.29

State of mind of defendant generally not relevant to awarding damages
s 139G ins A2006-1 s 4

Exemplary or punitive damages cannot be awarded
s 139H ins A2006-1 s 4

Factors in mitigation of damages
s 139I ins A2006-1 s 4

Damages for multiple causes of action may be assessed as single sum
s 139J ins A2006-1 s 4

Orders against non-party digital intermediaries concerning defamatory digital matter
s 139JA ins A2024-19 s 13

Costs
div 9.4.4 hdg ins A2006-1 s 4

Costs in defamation proceedings
s 139K ins A2006-1 s 4

Miscellaneous—ch 9
pt 9.5 hdg ins A2006-1 s 4

Proof of publication
s 139L ins A2006-1 s 4

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Proof of convictions for offences
s 139M ins A2006-1 s 4

Incriminating answers, documents or things
s 139N ins A2006-1 s 4
am A2013-44 amdt 3.31, amdt 3.32

Giving of notices and other documents
s 139O ins A2024-19 s 14

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—pt 11.1
div 11.1.1 hdg (prev div 7.1.1 hdg) renum R9 LA (see A2003-35 s 55)

Purpose—pt 11.1
s 143 orig s 143 renum as s 217
(prev s 75) renum R9 LA (see A2003-35 s 55)

Definitions—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)
def ***innkeeper's liability*** ins A2017-4 amdt 3.18

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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—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) (LA s 88 declaration applies))
(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)

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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—pt 11.2

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

Definitions—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) def ***schedule 2 packaged goods*** am A2017-4 amdt 3.19

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)

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Definitions—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)

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

Definitions—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—pt 14.1
s 180 hdg sub A2013-44 amdt 3.33
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)

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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—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—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; A2006-25 amdt 2.1

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)
am A2006-40 amdt 2.64, amdt 2.65

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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)

Who can be a mediator

s 193 (prev s 120A) ins A2003-35 s 29
renum R9 LA (see A2003-35 s 55)
am A2006-40 amdt 2.66
sub A2015-10 s 12

Who can be an evaluator

s 194 (prev s 121) renum R9 LA (see A2003-35 s 55)
am A2006-40 amdt 2.66

Referral by tribunal for mediation or neutral evaluation

s 195 hdg (prev s 122 hdg) sub A2003-35 s 30
sub A2006-40 amdt 2.67
s 195 (prev s 122) am A2003-35 s 31, s 32
renum R9 LA (see A2003-35 s 55)
am A2006-40 amdt 2.68, amdt 2.69; A2015-52 s 8

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)
am A2006-40 amdt 2.70

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)
am A2006-40 amdt 2.70; A2015-10 s 13

Privilege for neutral evaluations

s 199 (prev s 125) renum R9 LA (see A2003-35 s 55)
am A2006-40 amdt 2.70

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)
om A2016-37 amdt 1.13

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Who is an *insurer* for pt 15.2

s 202 (prev s 128) renum R9 LA (see A2003-35 s 55)
om A2016-37 amdt 1.13

Insurers reporting requirements

s 203 (prev s 129) renum R9 LA (see A2003-35 s 55)
am A2006-40 amdt 1.4
om A2016-37 amdt 1.13

Directions to insurers about reporting requirements

s 203A ins A2006-40 amdt 1.5
om A2016-37 amdt 1.13

Further reports by insurers

s 203B ins A2006-40 amdt 1.5
om A2016-37 amdt 1.13

Confidentiality of general reports of insurers

s 204 (prev s 130) renum R9 LA (see A2003-35 s 55)
om A2016-37 amdt 1.13

Report to Legislative Assembly

s 205 (prev s 131) renum R9 LA (see A2003-35 s 55)
am A2005-60 amdt 1.12
om A2016-37 amdt 1.13

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)
am A2008-1 amdt 1.10; A2019-12 amdt 3.34

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)

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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)

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 A2002-49 amdt 3.2
renum R9 LA (see A2003-35 s 55)
am A2006-38 amdt 1.2

Prohibition on claim farming
pt 15.4A hdg ins A2026-7 s 14

Definitions—pt 15.4A
s 221A ins A2026-7 s 14
def ***associate*** ins A2026-7 s 14
def ***claim*** ins A2026-7 s 14

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def ***claimant*** ins A2026-7 s 14
def ***law practice*** ins A2026-7 s 14
def ***service*** ins A2026-7 s 14

Contacting claimants about claims
s 221B ins A2026-7 s 14

Giving or receiving fee or benefit for claim referrals
s 221C ins A2026-7 s 14

Exception for advertising law practices
s 221D ins A2026-7 s 14

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)
am A2013-44 amdt 3.34; A2025-29 amdt 4.29

Determination of fees
s 222A ins A2004-68 s 5
am A2013-44 amdt 3.34; A2025-29 amdt 4.29

Regulation-making power
s 223 (prev s 148) renum R9 LA (see A2003-35 s 55)
am A2004-68 s 6, s 7; A2025-29 amdt 4.29

Transitional provisions
ch 16 hdg (prev ch 12 hdg) renum R9 LA (see A2003-35 s 55)
om R40 LA

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) (LA s 88 declaration applies))

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Application provisions—notices under s 51

s 226 (prev s 151) renum R9 LA (see A2003-35 s 55)
exp 1 November 2003 (s 226 (11))
ins A2005-43 amdt 1.9
exp 1 October 2006 (s 226 (3) (LA s 88 declaration applies))

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) (LA s 88 declaration applies))

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) (LA s 88 declaration applies))

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

s 229 (prev s 154A) ins A2002-49 amdt 3.3
renum R9 LA (see A2003-35 s 55)
exp 1 November 2005 (s 229 (2) and see s 224 (5))

Application of Civil Law (Wrongs) Amendment Act 2005

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))
ins A2006-1 s 5
exp 23 February 2009 (s 230 (6) (LA s 88 declaration applies))

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))

Transitional—Justice and Community Safety Legislation Amendment Act 2016

ch 17 hdg ins A2016-37 amdt 1.14
exp 29 June 2016 (s 251)

Ongoing confidentiality of general reports of insurers

s 250 ins A2016-37 amdt 1.14
exp 29 June 2016 (s 251)

Expiry—ch 17

s 251 ins A2016-37 amdt 1.14
exp 29 June 2016 (s 251)

Transitional—Civil Law (Wrongs) Amendment Act 2021

ch 18 hdg ins A2021-15 s 31
exp 1 July 2024 (s 253)

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Application of Civil Law (Wrongs) Amendment Act 2021

s 252 ins A2021-15 s 31
exp 1 July 2024 (s 253)

Expiry—ch 18

s 253 ins A2021-15 s 31
exp 1 July 2024 (s 253)

Transitional—Civil Law (Wrongs) Amendment Act 2024—absolute privilege

ch 19 hdg ins A2024-19 s 15
exp 1 July 2027 (s 255)

Absolute privilege amendments

s 254 ins A2024-19 s 15
exp 1 July 2027 (s 255)

Expiry—ch 19

s 255 ins A2024-19 s 15
exp 1 July 2027 (s 255)

Transitional—Civil Law (Wrongs) Amendment Act 2024

ch 20 hdg ins A2024-19 s 16
exp 1 July 2027 (s 261)

Definitions—ch 20

s 256 ins A2024-19 s 16
exp 1 July 2027 (s 261)

Digital intermediary amendments

s 257 ins A2024-19 s 16
exp 1 July 2027 (s 261)

Offer amendments

s 258 ins A2024-19 s 16
exp 1 July 2027 (s 261)

Preliminary discovery or non-party digital intermediary order amendments

s 259 ins A2024-19 s 16
exp 1 July 2027 (s 261)

Document giving or service amendments

s 260 ins A2024-19 s 16
exp 1 July 2027 (s 261)

Expiry—ch 20

s 261 ins A2024-19 s 16
exp 1 July 2027 (s 261)

Transitional—Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Act 2025

ch 21 hdg ins A2025-32 s 6
exp 13 November 2028 (s 263)

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Application of div 8A.1A.3
s 262 hdg sub A2026-7 s 15
s 262 ins A2025-32 s 6
am A2026-7 s 16
exp 13 November 2028 (s 263)

Expiry—ch 21
s 263 ins A2025-32 s 6
exp 13 November 2028 (s 263)

Transitional—Civil Law (Wrongs) Amendment Act 2026
ch 22 hdg ins A2026-7 s 17
exp 16 May 2027 (s 265)

Application of claim farming amendments
s 264 ins A2026-7 s 17
exp 16 May 2027 (s 265)

Expiry—ch 22
s 265 ins A2026-7 s 17
exp 16 May 2027 (s 265)

Additional publications to which absolute privilege applies
sch 1A hdg ins A2024-19 s 17

Definitions—sch 1A
s 1A.1 ins A2024-19 s 17
def ***matter*** ins A2024-19 s 17
def ***official*** ins A2024-19 s 17

Matter published to bar association etc
s 1A.2 ins A2024-19 s 17

Matter published to human rights commission etc
s 1A.3 ins A2024-19 s 17

Matter published to integrity commission etc
s 1A.4 ins A2024-19 s 17

Matter published to inspector of correctional services
s 1A.5 ins A2024-19 s 17

Matter published to law society etc
s 1A.6 ins A2024-19 s 17

Matter published to office of the work health and safety commissioner etc
s 1A.7 ins A2024-19 s 17

Matter published to official visitor etc
s 1A.8 ins A2024-19 s 17

Matter published to public trustee and guardian etc
s 1A.9 ins A2024-19 s 17

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Matter published to sentence administration board etc
s 1A.10 ins A2024-19 s 17

Equine activities
sch 3 om LA s 89 (3)
ins A2003-35 s 42
ss renum R18 LA
am A2010-54 amdt 3.10

Professional standards
sch 4 hdg ins A2004-68 s 8

Preliminary—professional standards
pt 4.1 hdg ins A2004-68 s 8

Objects—sch 4
s 4.1 (prev s 1) ins A2004-68 s 8
renum R18 LA

Definitions—sch 4
s 4.2 (prev s 2) ins A2004-68 s 8
renum R18 LA
def ***amount payable*** ins A2007-22 amdt 1.7
def ***another jurisdiction*** ins A2008-7 amdt 1.24
def ***appropriate council*** ins A2008-7 amdt 1.24
def ***business assets*** ins A2004-68 s 8
def ***corresponding law*** ins A2008-7 amdt 1.24
def ***costs*** ins A2007-22 amdt 1.7
def ***council*** ins A2004-68 s 8
def ***court*** ins A2004-68 s 8
def ***damages*** ins A2004-68 s 8
sub A2007-22 amdt 1.8
def ***interstate scheme*** ins A2008-7 amdt 1.24
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 ***costs*** ins A2007-22 amdt 1.7
def ***scheme*** ins A2004-68 s 8
am A2008-7 amdt 1.25
def ***this jurisdiction*** ins A2008-7 amdt 1.26

***Amount payable* under an insurance policy—sch 4**
s 4.2A ins A2007-22 amdt 1.9

Application—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

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Making, amendment and revocation of schemes
div 4.2.1 hdg ins A2004-68 s 8

Preparation and approval of schemes
s 4.4 hdg sub A2012-30 amdt 1.1
s 4.4 (prev s 4) ins A2004-68 s 8
renum R18 LA
am A2008-7 amdt 1.27; A2012-30 amdt 1.2

Public notification of schemes
s 4.5 (prev s 5) ins A2004-68 s 8
renum R18 LA
am A2008-7 amdt 1.28; A2009-20 amdt 3.31; A2012-30 amdt 1.3; A2015-33 amdt 1.27

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
am A2008-7 amdt 1.29; A2012-30 amdt 1.4

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
am A2008-7 amdt 1.30; A2012-30 amdt 1.5, amdt 1.6

Schemes are subject to disallowance
s 4.10 hdg sub A2012-30 amdt 1.7
s 4.10 (prev s 10) ins A2004-68 s 8
renum R18 LA
am A2008-7 amdt 1.31, amdt 1.32; A2012-30 amdt 1.8; A2025-29 amdt 4.29

Commencement of schemes
s 4.11 (prev s 11) ins A2004-68 s 8
renum R18 LA
am A2008-7 amdt 1.33; A2012-30 amdt 1.9

Challenges to schemes
s 4.12 (prev s 12) ins A2004-68 s 8
renum R18 LA
sub A2008-7 amdt 1.34
am A2012-30 amdt 1.10

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Review of schemes
s 4.13 (prev s 13) ins A2004-68 s 8
renum R18 LA
am A2008-7 amdt 1.35

Amendment and revocation of schemes
s 4.14 (prev s 14) ins A2004-68 s 8
renum R18 LA
am A2008-7 amdt 1.36, amdt 1.37; A2012-30 amdt 1.11

Notification of revocation of schemes
s 4.14A ins A2008-7 amdt 1.38
am A2012-30 amdt 1.12; A2025-29 amdt 4.29

Ending of operation of interstate schemes
s 4.14B ins A2008-7 amdt 1.38
am A2012-30 amdt 1.13

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
sub A2007-22 amdt 1.10

Limitation of liability by reference to amount of business assets
s 4.18 (prev s 18) ins A2004-68 s 8
renum R18 LA
am A2007-22 amdt 1.11, amdt 1.12

Limitation of liability by multiple of charges
s 4.19 (prev s 19) ins A2004-68 s 8
renum R18 LA
am A2007-22 amdt 1.13, amdt 1.14

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 4.17, s 4.18 and s 4.19
s 4.21 (prev s 21) ins A2004-68 s 8
renum R18 LA

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Amount below which liability may not be limited
s 4.22 (prev s 22) ins A2004-68 s 8
renum R18 LA

Liability in damages not reduced to below relevant limit
s 4.22A ins A2007-22 amdt 1.15

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
am A2007-22 amdt 1.16

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

Duration of scheme
s 4.28 (prev s 28) ins A2004-68 s 8
renum R18 LA
am A2008-7 amdt 1.39; ss renum R34 LA; A2013-44 amdt 3.34; A2018-12 s 4; A2025-29 amdt 4.29

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

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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
am A2012-30 amdt 1.14

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
am A2016-18 amdt 3.46

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
am A2008-7 amdt 1.40; A2012-30 amdt 1.15

Cooperation with authorities in other jurisdictions
s 4.37A ins A2008-7 amdt 1.41

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
am A2021-3 s 9

Chairperson and deputy chairperson of council
s 4.39 (prev s 39) ins A2004-68 s 8
renum R18 LA
am A2021-3 s 10

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Deputies of members
s 4.40 (prev s 40) ins A2004-68 s 8
renum R18 LA
am A2021-3 s 11

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
am A2008-28 amdt 3.42; A2009-49 amdt 3.20

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 8 September 2005 (s 4.46 (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
renum R18 LA

Miscellaneous
div 4.6.4 hdg ins A2004-68 s 8

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Requirement to provide information
s 4.50 (prev s 50) ins A2004-68 s 8
renum R18 LA
am A2012-30 amdt 1.16

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—sch 4
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

Validation of schemes etc
s 4.59A ins A2007-22 amdt 1.17

Review of sch 4
s 4.60 (prev s 60) ins A2004-68 s 8
renum R18 LA
exp 8 March 2012 (s 4.60 (4))

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Occupational associations—model code
sch 5 ins A2004-68 s 9
ss renum R18 LA

What happens after a complaint is made?
s 5.6 am A2017-4 amdt 3.25

What action may be taken after a hearing into a complaint?
s 5.7 am A2017-4 amdt 3.25

Notices of decisions
s 5.8 am A2017-4 amdt 3.20

Dictionary
dict am A2003-14 amdt 1.17; A2008-14 amdt 1.16; A2009-20 amdt 3.32; A2009-49 amdt 3.21; A2010-54 amdt 3.11; A2012-40 amdt 3.24; A2013-39 amdt 2.10 (A2013-39 never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)); A2013-44 amdt 3.35; A2015-10 s 14; A2015-33 amdt 1.28; A2016-13 amdt 1.34; A2017-4 amdt 3.21; A2018-38 s 5; A2024-19 s 18
def ***abuse settlement agreement*** ins A2022-21 s 10
def ***access prevention step*** ins A2024-19 s 19
def ***accident*** sub A2003-35 s 43
def ***accommodation unit*** sub A2013-44 amdt 3.37
def ***action*** om A2006-1 s 6
def ***act of terrorism*** ins A2013-44 amdt 3.36
sub A2018-42 amdt 3.31
def ***agent*** sub A2013-44 amdt 3.37
def ***aggrieved person*** sub A2006-1 s 7; A2021-15 s 32
def ***agreed expert*** ins A2003-35 s 44
om A2011-48 amdt 1.11
def ***amends agreement*** om A2006-1 s 8
def ***amount payable*** ins A2007-22 amdt 1.18
def ***another jurisdiction*** ins A2008-7 amdt 1.42
def ***apology*** ins A2003-35 s 44
def ***applicable period*** ins A2021-15 s 33
def ***applicant*** A2022-21 s 10
def ***appointed expert*** ins A2003-35 s 44
om A2011-48 amdt 1.11
def ***apportionable claim*** ins A2004-68 s 10
def ***appropriate council*** ins A2008-7 amdt 1.42
def ***associate*** ins A2026-7 s 18
def ***associated*** ins A2026-7 s 18
def ***associated entity*** ins A2021-15 s 33
def ***Australian court*** ins A2006-1 s 9
def ***Australian jurisdiction*** ins A2006-1 s 9
def ***Australian tribunal*** ins A2006-1 s 9
def ***business assets*** ins A2004-68 s 10

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def ***caching service*** ins A2024-19 s 19
def ***child abuse*** ins A2018-38 s 6
sub A2022-21 s 11
def ***child abuse claim*** ins A2018-38 s 6
sub A2022-21 s 11
def ***claim*** sub A2003-35 s 45
am A2011-48 amdt 1.12; pars renum R48 LA; A2026-7 s 19
def ***claimant*** ins A2003-35 s 46
sub A2004-68 s 11
am A2026-7 s 20
def ***common carrier*** sub A2013-44 amdt 3.37
def ***community organisation*** sub A2013-44 amdt 3.37
def ***community work*** sub A2013-44 amdt 3.37
def ***complying notice of claim*** ins A2003-35 s 46
def ***concerns notice*** ins A2021-15 s 33
def ***concurrent wrongdoer*** ins A2004-68 s 12
def ***conduit service*** ins A2024-19 s 19
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
am A2017-4 amdt 3.22
def ***contributor*** ins A2003-35 s 46
def ***corresponding law*** ins A2008-7 amdt 1.42
def ***costs*** sub A2007-22 amdt 1.19
am A2013-44 amdt 3.38
def ***council*** ins A2004-68 s 12
def ***country*** sub A2006-1 s 10
def ***court*** sub A2003-35 s 47
am A2004-68 s 13; A2006-1 s 11; pars renum A2006-1 s 12
def ***damages*** ins A2004-68 s 14
def ***defamation*** om A2006-1 s 13
def ***defendant*** ins A2004-68 s 14
def ***digital intermediary*** ins A2024-19 s 19
def ***digital matter*** ins A2024-19 s 19
def ***document*** ins A2006-1 s 14
def ***donor*** ins A2013-44 amdt 3.39
def ***duty of care*** ins A2003-35 s 48
def ***electronic communication*** ins A2006-1 s 14
def ***employee*** ins A2025-32 s 7
am A2026-7 s 21
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

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def ***evidence*** ins A2003-35 s 48
om A2011-48 amdt 1.13
def ***excluded corporation*** ins A2021-15 s 33
def ***expert*** ins A2003-35 s 48
om A2011-48 amdt 1.13
def ***expert medical evidence*** ins A2003-35 s 48
om A2011-48 amdt 1.13
def ***fit for human consumption*** ins A2013-44 amdt 3.39
def ***food*** ins A2013-44 amdt 3.39
def ***further particulars notice*** ins A2021-15 s 33
def ***general law*** ins A2006-1 s 14
def ***harm*** ins A2003-35 s 48
def ***inherent risks of equine activities*** ins A2003-35 s 48
def ***innkeeper's liability*** sub A2013-44 amdt 3.40
def ***insurer*** sub A2003-35 s 49; A2016-37 amdt 1.15
def ***interstate scheme*** ins A2008-7 amdt 1.42
def ***intoxicated*** sub A2013-44 amdt 3.40
def ***judgment*** ins A2004-68 s 14
def ***law practice*** ins A2026-7 s 22
def ***matter*** ins A2006-1 s 14
def ***matter in question*** sub A2006-1 s 15; A2021-15 s 34
def ***mediation*** ins A2003-35 s 50
sub A2013-44 amdt 3.40
def ***mediation session*** ins A2003-35 s 50
sub A2013-44 amdt 3.40
def ***medical issue*** ins A2003-35 s 50
om A2011-48 amdt 1.13
def ***mental harm*** ins A2003-35 s 50
def ***motor accident*** sub A2003-35 s 51
def ***motor accident claim*** ins A2019-12 amdt 3.35
def ***motor vehicle*** sub A2003-35 s 51; A2017-4 amdt 3.23
am A2017-21 amdt 1.5, amdt 1.6
def ***negligence*** ins A2003-35 s 52
def ***neutral evaluation*** sub A2013-44 amdt 3.40
def ***neutral evaluation session*** sub A2013-44 amdt 3.40
def ***occupational association*** ins A2004-68 s 14
def ***occupational group*** ins A2004-68 s 14
def ***occupational liability*** ins A2004-68 s 14
def ***offer to make amends*** sub A2006-1 s 16
def ***online service*** ins A2024-19 s 19
def ***organisation*** ins A2025-32 s 7
def ***parliamentary body*** sub A2006-1 s 17
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 ***personal injury damages*** am A2013-44 amdt 3.41

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def ***personal representative*** am A2016-13 amdt 1.35
def ***poster*** ins A2024-19 s 19
def ***provable*** ins A2003-35 s 54
def ***provide*** sub A2013-44 amdt 3.42
def ***public or other authority*** ins A2003-35 s 54
def ***published matter*** om A2006-1 s 18
def ***publisher*** sub A2006-1 s 19; A2021-15 s 34
def ***pure mental harm*** ins A2003-35 s 54
def ***qualified offer*** om A2006-1 s 20
def ***reasonable prospects of success*** ins A2003-35 s 54
def ***related trust*** ins A2018-38 s 6
def ***respondent*** ins A2003-35 s 54
def ***responsible*** ins A2025-32 s 7
am A2026-7 s 23
def ***schedule 2 packaged goods*** am A2017-4 amdt 3.24
def ***scheme*** ins A2004-68 s 14
def ***search engine*** ins A2024-19 s 19
def ***search engine provider*** ins A2024-19 s 19
def ***search result*** ins A2024-19 s 19
def ***service*** ins A2026-7 s 24
def ***storage service*** ins A2024-19 s 19
def ***substantially true*** ins A2006-1 s 21
def ***this jurisdiction*** ins A2006-1 s 21
sub A2008-7 amdt 1.43
def ***tribunal*** om A2006-1 s 22
def ***unsafe*** ins A2013-44 amdt 3.43
def ***unsuitable*** ins A2013-44 amdt 3.43
def ***voluntary basis*** sub A2013-44 amdt 3.44
def ***volunteer*** sub A2013-44 amdt 3.44

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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. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
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– 9 Apr 2003	A2003-14	amendments by A2003-6 and A2003-14
R7 10 Apr 2003	10 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	A2003-35	amendments by A2003-35 and general renumbering
R10 9 Oct 2003	9 Oct 2003– 1 Nov 2003	A2003-41	amendments by A2003-41

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Republication No and date	Effective	Last amendment made by	Republication for
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	A2004-68	commenced expiry
R18 2 Jan 2004	2 Jan 2004– 9 Jan 2005	A2004-68	commenced expiry
R19 10 Jan 2005	10 Jan 2005– 23 Feb 2005	A2004-68	amendments by A2004-60
R20 24 Feb 2005	24 Feb 2005– 7 Mar 2005	A2005-5	amendments by A2005-5
R21* 8 Mar 2005	8 Mar 2005– 8 Sept 2005	A2005-5	amendments by A2004-68
R22 9 Sept 2005	9 Sept 2005– 30 Sept 2005	A2005-43	commenced expiry
R23 1 Oct 2005	1 Oct 2005– 1 Nov 2005	A2005-43	amendments by A2005-43
R24 2 Nov 2005	2 Nov 2005- 21 Dec 2005	A2005-43	commenced expiry
R25 22 Dec 2005	22 Dec 2005- 22 Feb 2006	A2005-60	amendments by A2005-60
R26 23 Feb 2006	23 Feb 2006– 30 June 2006	A2006-1	amendments by A2016-12

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R27 1 July 2006	1 July 2006– 9 Sept 2006	A2006-25	amendments by A2006-25
R28 10 Sept 2006	10 Sept 2006– 28 Sept 2006	A2006-25	commenced expiry
R29 29 Sept 2006	29 Sept 2006– 1 Oct 2006	A2006-40	amendments by A2006-40
R30 2 Oct 2006	2 Oct 2006– 18 Oct 2006	A2006-40	commenced expiry
R31 19 Oct 2006	19 Oct 2006– 27 Mar 2007	A2006-40	amendments by A2006-40
R32* 28 Mar 2007	28 Mar 2007– 5 Sept 2007	A2006-40	amendments by A2006-38
R33 6 Sept 2007	6 Sept 2007– 6 May 2008	A2007-22	amendments by A2007-22
R34 7 May 2008	7 May 2008– 18 May 2008	A2008-7	amendments by A2008-7
R35 19 May 2008	19 May 2008– 22 Aug 2008	A2008-14	amendments by A2008-14
R36 23 Aug 2008	23 Aug 2008– 25 Aug 2008	A2008-39	updated endnotes as amended by A2008-39
R37 26 Aug 2008	26 Aug 2008– 26 Aug 2008	A2008-39	amendments by A2008-28
R38 27 Aug 2008	27 Aug 2008– 30 Sept 2008	A2008-39	amendments by A2008-29
R39* 1 Oct 2008	1 Oct 2008– 23 Feb 2009	A2008-39	amendments by A2008-1 as amended by A2008-39
R40 24 Feb 2009	24 Feb 2009– 21 Sept 2009	A2008-39	commenced expiry
R41 22 Sept 2009	22 Sept 2009– 16 Dec 2009	A2009-20	amendments by A2009-20

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Republication No and date	Effective	Last amendment made by	Republication for
R42 17 Dec 2009	17 Dec 2009– 30 June 2010	A2009-49	amendments by A2009-49
R43 1 July 2010	1 July 2010– 31 Dec 2010	A2010-10	amendments by A2010-10
R44 1 Jan 2011	1 Jan 2011– 8 Mar 2012	A2010-54	amendments by A2010-54
R45 9 Mar 2012	9 Mar 2012– 13 June 2012	A2010-54	expiry of provision (sch 4 s 4.60)
R46 14 June 2012	14 June 2012– 10 Sept 2012	A2012-30	amendments by A2012-30
R47 11 Sept 2012	11 Sept 2012– 21 Nov 2012	A2012-40	amendments by A2012-40
R48 22 Nov 2012	22 Nov 2012– 31 Dec 2012	A2012-40	amendments by A2011-48
R49* 1 Jan 2013	1 Jan 2013– 6 Nov 2013	A2012-48	amendments by A2012-48
R50 7 Nov 2013	never effective	A2013-39 (never effective)	amendments by A2013-39
R50 (RI) 24 Feb 2014	7 Nov 2013– 24 Nov 2013	A2013-39 (never effective)	reissue because of High Court decision in relation to A2013-39
R51 25 Nov 2013	never effective	A2013-44	amendments by A2013-44
R51 (RI No 2) 13 May 2014	25 Nov 2013– 20 Apr 2015	A2013-44	reissue because of High Court decision in relation to A2013-39 further reissue for retrospective amendment made by A2014-17

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Republication No and date	Effective	Last amendment made by	Republication for
R52 21 Apr 2015	21 Apr 2015– 13 Oct 2015	A2015-10	amendments by A2015-10
R53 14 Oct 2015	14 Oct 2015– 9 Dec 2015	A2015-33	amendments by A2015-33
R54 10 Dec 2015	10 Dec 2015– 1 Mar 2016	A2015-52	amendments by A2015-52
R55 2 Mar 2016	2 Mar 2016– 31 Mar 2016	A2016-11	amendments by A2016-11
R56 1 Apr 2016	1 Apr 2016– 26 Apr 2016	A2016-13	amendments by A2016-13
R57 27 Apr 2016	27 Apr 2016– 28 June 2016	A2016-18	amendments by A2016-18
R58 29 June 2016	29 June 2016– 29 June 2016	A2016-37	amendments by A2016-37
R59 30 June 2016	30 June 2016– 30 June 2016	A2016-37	expiry of transitional provisions (ch 17)
R60 1 July 2016	1 July 2016– 25 Aug 2016	A2016-37	amendments by A2016-12
R61 26 Aug 2016	26 Aug 2016– 8 Mar 2017	A2016-53	amendments by A2016-53
R62 9 Mar 2017	9 Mar 2017– 23 May 2017	A2017-4	amendments by A2017-4
R63 24 May 2017	24 May 2017– 14 Aug 2017	A2017-14	amendments by A2017-14
R64 15 Aug 2017	15 Aug 2017– 24 Apr 2018	A2017-21	amendments by A2017-21
R65 25 Apr 2018	25 Apr 2018– 27 Sept 2018	A2018-12	amendments by A2018-12
R66 28 Sept 2018	28 Sept 2018– 21 Nov 2018	A2018-38	amendments by A2018-38

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Republication No and date	Effective	Last amendment made by	Republication for
R67 22 Nov 2018	22 Nov 2018– 31 Jan 2020	A2018-42	amendments by A2018-42
R68 1 Feb 2020	1 Feb 2020– 25 Feb 2021	A2019-12	amendments by A2019-12
R69 26 Feb 2021	26 Feb 2021– 30 June 2021	A2021-3	amendments by A2021-3
R70 1 July 2021	1 July 2021– 9 Dec 2022	A2021-15	amendments by A2021-15
R71 10 Dec 2022	10 Dec 2022– 30 June 2024	A2022-21	amendments by A2022-21
R72 1 July 2024	1 July 2024– 1 July 2024	A2024-19	amendments by A2024-19
R73 2 July 2024	2 July 2024– 17 Sept 2024	A2024-19	expiry of transitional provisions (ch 18)
R74 18 Sept 2024	18 Sept 2024– 12 Nov 2025	A2024-49	amendments by A2024-49
R75 13 Nov 2025	13 Nov 2025– 5 Dec 2025	A2025-32	amendments by A2025-32
R76 6 Dec 2025	6 Dec 2025– 15 May 2026	A2025-32	amendments by A2025-29

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6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

7 Renumbered provisions

This Act was renumbered under the *Legislation Act 2001*, in R9 (see *Civil Law (Wrongs) Amendment Act 2003 (No 2)* A2003-35 s 55). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R20.

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