

2000

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

**Law Reform (Miscellaneous Provisions)  
Amendment Bill 2000**

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*Law Reform (Miscellaneous Provisions) Amendment No , 2000*

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**A BILL**

FOR

**An Act to amend the *Law Reform (Miscellaneous Provisions)  
Act 1955*, and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

**PART 1—PRELIMINARY**

**1 Name of Act**

5 This Act is the *Law Reform (Miscellaneous Provisions) Amendment Act 2000*.

**2 Commencement**

This Act commences on the day it is notified in the Gazette.

**PART 2—AMENDMENT OF LAW REFORM  
(MISCELLANEOUS PROVISIONS) ACT 1955**

**3 Act amended by pt 2 and sch 1**

This Part and Schedule 1 amend the *Law Reform (Miscellaneous Provisions) Act 1955*.

**4 Substitution**

Part 5 is repealed and the following Part substituted:

**“PART 5—CONTRIBUTORY NEGLIGENCE**

**“14 Definitions for pt 5**

In this Part:

*court*, in relation to a claim, means the court or arbitrator deciding the claim.

*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.

**“15 Apportionment of liability**

“(1) If a person (the *claimant*) suffers damage as the result partly of the claimant’s failure to take reasonable care (*contributory negligence*) and partly the wrong of someone else—

(a) a claim in relation to 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 considers just and equitable having regard to the claimant's share in the responsibility for the damage.

5 “(2) However, if the claimant suffered personal injury and the wrong was a breach of statutory duty, the damages recoverable by the claimant in relation to the personal injury are not to be reduced because of the claimant's contributory negligence.

10 “(3) If a contract or enactment providing for the limitation of liability applies to the claim, the amount of damages awarded to the claimant because of subsection (1) is not to exceed the maximum limit applying to the claim.

“(4) This section does not operate to defeat any defence arising under a contract.

15 “(5) Subsection (1) does not apply to a cause of action that arose before 31 March 1955.

“(6) Subsection (2) does not apply to a cause of action that arose before 10 May 1991.

“16 **Application of pt 4**

20 Part 4 (Proceedings against and contributions between tortfeasors) applies if 2 or more persons are liable (or, if they had all been sued, would have been liable) under section 15 for the damage suffered by a person.

“17 **Claims by third parties**

“(1) This section applies if—

25 (a) a person (the *first person*) suffers damage as the result partly of the first person's failure to take reasonable care (*contributory negligence*) and partly the wrong of someone else; and

(b) as the result of the damage to the first person a third person suffers damage.

30 “(2) In a claim by the third person, the contributory negligence of the first person is to be taken into account under section 15 (Apportionment of liability) 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.

**“18 Pleading of statutory limitation period**

“**(1)** This section applies to a case to which section 15 (Apportionment of liability) applies if—

- 5 (a) the claimant suffered damages as the result partly of the wrong of 2 or more persons; and
- (b) 1 of those persons avoids liability to another of those persons (or his or her personal representative) by pleading an enactment limiting the time within which proceedings may be taken.

10 “**(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 15.

**“19 Application of pt 5 to existing wrongs**

15 “**(1)** This Part applies to a wrong that happened before the commencement of this section as if the Part had been in force when the wrong happened.

“**(2)** However, this Part, as in force before the commencement of this section, continues to apply to a wrong about which—

- 20 (a) a court has given judgment or made a decision (including a judgment or decision about liability only), whether or not an appeal has been made against the judgment or decision; or
- (b) the parties have entered into an agreement to settle claims arising from the wrong (including an agreement about liability only).

“**(3)** Subsections (2) and (4) and this subsection expire on 1 January 2003.

25 “**(4)** Subsection (2) is declared to be a provision to which the *Interpretation Act 1967*, section 42 applies.”.

**PART 3—AMENDMENT OF  
COMPENSATION (FATAL INJURIES) ACT 1968**

5 **Act amended by pt 3 and sch 2**

30 This Part and Schedule 2 amend the *Compensation (Fatal Injuries) Act 1968*.

**SCHEDULE 1**

(See s 3)

**CONSEQUENTIAL AND MINOR AMENDMENTS OF  
LAW REFORM (MISCELLANEOUS PROVISIONS) ACT**

**[1.1] Section 1—**

5 Repeal the section, substitute the following section:

**“1 Name of Act**

This Act is the *Law Reform (Miscellaneous Provisions) Act 1955*.”.

**[1.2] Subsection 4 (1)—**

10 Omit “after the commencement of this Act”, substitute “after  
30 March 1955”.

**[1.3] Paragraph 5 (1) (b)—**

Omit the paragraph.

**[1.4] Paragraph 5 (1) (c)—**

Renumber the paragraph as paragraph 5 (1) (b).

15 **[1.5] Subsection 5 (5)—**

Omit “In subsection (2)—”, substitute “In this section:”.

**[1.6] Section 7—**

Omit “shall be deemed”, substitute “is taken”.

**[1.7] Subsection 9 (2)—**

20 Omit “before the commencement of this Act”, substitute “before  
31 March 1955”.

**[1.8] Sections 10, 11 and 12—**

Repeal the sections, substitute the following sections:

**“10 Definitions for pt 4**

25 In this Part:

*court*, in relation to a proceeding, means the court or arbitrator dealing  
with the proceeding.

**SCHEDULE 1—continued**

**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)—

- 5
- (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.

**“11 Each of several wrongdoers may be sued**

10 “(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—

- 15
- (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 varied on appeal, the amount as varied; 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.
- 20

**“12 Right of contribution**

25 “(1) A person (the *first person*) who is liable for damage caused by a wrong may recover contribution from someone else (a *contributory*) who is also liable for the same damage.

“(2) The contribution is to be an amount that the court considers is just and equitable having regard to the extent of the contributory’s responsibility for the damage.

**SCHEDULE 1—continued**

“(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
- 5 (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.”.

**[1.9] Paragraph 13 (1) (a)—**

10 Omit “before the commencement of this Act”, substitute “before 31 March 1955”.

**[1.10] New section 13A—**

After section 13, insert the following section:

**“13A Application of pt 4 to existing wrongs**

15 “(1) This Part applies to a wrong that happened before the commencement of this section as if the Part had been in force when the wrong happened.

“(2) However, this Part, as in force before the commencement of this section, continues to apply to a wrong about which—

- 20 (a) a court has given judgment or made a decision (including a judgment or decision about liability only), whether or not an appeal has been made against the judgment or decision; or
- (b) the parties have entered into an agreement to settle claims arising from the wrong (including an agreement about liability only).

25 “(3) Subsections (2) and (4) and this subsection expire on 1 January 2003.

“(4) Subsection (2) is declared to be a provision to which the *Interpretation Act 1967*, section 42 applies.”.

**SCHEDULE 1—continued**

**[1.11] Section 21—**

Repeal the section, substitute the following section:

**“21 Abolition of rule of common employment**

5 **“(1) An employer is liable in damages for an 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.**

10 **“(2) This section applies to injury or damage arising from a wrongful act or omission committed after 30 March 1955, even if the contract of employment was made on or before that date.”.**

**[1.12] Subsection 21 (2)—**

Omit “after the date of commencement of this Act”, substitute “after 30 March 1955”.

**[1.13] Subsection 23 (1)—**

15 Omit “after the commencement of this Act”, substitute “after 30 March 1955”.

**[1.14] Subsection 23 (2)—**

Omit “before the commencement of this Act”, substitute “before 31 March 1955”.

20 **[1.15] Subsection 24 (1)—**

Omit “after the commencement of this Act by act, neglect or default”, substitute “after 30 March 1955 by act or omission”.

**[1.16] Subsections 24 (2) and (3)—**

Omit “act, neglect or default”, substitute “act or omission”.

25 **[1.17] Subsection 24 (4)—**

**(a) Omit “give”, substitute “award”.**

**(b) Omit “so recovered”, substitute “awarded”.**

**SCHEDULE 1—continued**

**[1.18] Subsection 24 (5) (paragraph (a) of the definition of *court*)—**

Omit “the amount for which the Magistrates Court has jurisdiction under the *Magistrates Court (Civil Jurisdiction) Act 1982*”, substitute “the jurisdiction of the Magistrates Court”.

5 **[1.19] Subsection 25 (1)—**

Omit “, whether before or after the commencement of this Act,”.

**[1.20] Subsection 25 (2)—**

Omit “deemed”, substitute “taken”.

**[1.21] Section 30—**

10 Omit “before the commencement of this Part”, substitute “before 6 December 1991”.

SCHEDULE 2

(See s 5)

CONSEQUENTIAL AND MINOR AMENDMENTS OF  
COMPENSATION (FATAL INJURIES) ACT

**[2.1] Sections 1 and 2—**

5 Repeal the sections, substitute the following section:

**“1 Name of Act**

This Act is the *Compensation (Fatal Injuries) Act 1968*.”.

**[2.2] Subsection 4 (1)—**

Renumber as section 2.

10 **[2.3] Section 4 (heading)—**

Omit the heading, substitute the following heading:

**“2 Definitions”.**

**[2.4] Subsection 4 (1) (definition of *personal representative*)—**

Omit the definition, substitute the following definition:

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

20 **[2.5] Subsection 4 (2)—**

Renumber as section 3.

**[2.6] Subsection 4 (2)—**

Insert the following heading:

**“3 Meaning of member of deceased person’s family”.**

25 **[2.7] Subsection 4 (3)—**

Renumber as section 4.

SCHEDULE 2—continued

[2.8] Subsection 4 (3)—

Insert the following heading:

“4 Application of Act to children”.

[2.9] Section 5—

5 Repeal the section, substitute the following section:

“5 Application of Act

This Act applies to the death of a person after 12 June 1968, even if the act or omission that caused the person’s death happened on or before that date.”.

10 [2.10] Section 7—

(a) Omit “act, neglect or default and the act, neglect or default”, substitute “act or omission and the act or omission”.

(b) Omit “amount in law to a crime”, substitute “were an offence”.

[2.11] Subsection 10 (5)—

15 Omit “In paragraph (3) (a)”, substitute “In this section”.

[2.12] Section 11—

Repeal the section, substitute the following section:

“11 Contributory negligence not a defence

20 “(1) If a person (the *deceased person*) has died as the result partly of the deceased person’s failure to take reasonable care (*contributory negligence*) and partly of the wrong of someone else, the damages recoverable in an action under this Act for the wrong are not to be reduced because of the deceased person’s contributory negligence.

25 “(2) This section does not apply to a cause of action that arose before 10 May 1991.

“(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

**SCHEDULE 2—continued**

- (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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**Endnotes**

**Acts amended**

- 1 For pt 2 and sch 1—Republished as in force on 1 March 2000. (Republication No 4).
- 2 For pt 3 and sch 2—Republished as in force on 1 May 2000. (Republication No 3).