

Queensland



**LAW REFORM  
(CONTRIBUTORY  
NEGLIGENCE) AMENDMENT  
ACT 2001**

**Act No. 65 of 2001**



**Queensland**



**LAW REFORM (CONTRIBUTORY NEGLIGENCE) AMENDMENT ACT 2001**

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**Law Reform (Contributory Negligence)  
Amendment Act 2001**

**Act No. 65 of 2001**

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*An Act to amend the Law Reform Act 1995*

*[Assented to 25 October 2001]*

## **The Parliament of Queensland enacts—**

### **1 Short title**

This Act may be cited as the *Law Reform (Contributory Negligence) Amendment Act 2001*.

### **2 Commencement**

This Act is taken to have commenced on 7 August 2001.

### **3 Act amended**

This Act amends the *Law Reform Act 1995*.

### **4 Amendment of s 5 (Definitions for pt 3)**

(1) Section 5, definition “**fault**”—

*omit.*

(2) Section 5—

*insert—*

‘“**wrong**” means an act or omission that—

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

### **5 Amendment of s 10 (Apportionment of liability in case of contributory negligence)**

(1) Section 10(1) and (2)—

*omit, insert—*

‘(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 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.

‘(2) Subsection (1) does not operate to defeat any defence arising under a contract.

‘(2A) If a contract or enactment providing for the limitation of liability applies to the claim, the amount of damages recoverable by the claimant because of subsection (1) is not to exceed the maximum limit applying to the claim.’.

(2) Section 10(3), ‘at fault’—

*omit, insert—*

‘guilty of contributory negligence’.

(3) Section 10(5), ‘fault and partly of the fault’—

*omit, insert—*

‘failure to take reasonable care and partly of the wrong’.

(4) Section 10(5), ‘*Common Law Practice Act 1867*, section 15D’—

*omit, insert—*

‘*Succession Act 1981*, section 66<sup>1</sup>’.

(5) Section 10(6), ‘at fault’—

*omit, insert—*

‘responsible for the damage’.

(6) Section 10(7), ‘at fault’—

*omit, insert—*

‘guilty of contributory negligence’.

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1 *Succession Act 1981*, section 66 (Survival of actions)

## **6 Insertion of new pt 10**

After section 20—

*insert—*

### **‘PART 10—TRANSITIONAL PROVISION FOR LAW REFORM (CONTRIBUTORY NEGLIGENCE) AMENDMENT ACT 2001**

#### **‘21 Amendments about contributory negligence to have retrospective effect**

‘(1) The provisions of part 3, divisions 1 and 3 apply to a wrong that happened before the commencement as if the provisions, in their form as amended by the amending Act, had been in force when the wrong happened.

‘(2) However, the provisions, as in force before the commencement, continue to apply to a wrong if any of the following apply—

- (a) the wrong relates to a WorkCover damages injury sustained before 1 July 2001 for which final relief has not been granted by a court before the commencement;
- (b) a proceeding about the wrong—
  - (i) was started before the commencement; and
  - (ii) final relief has not been granted by the court before the commencement;
- (c) a court has, before the commencement, granted final relief for the wrong;
- (d) the persons responsible for the damage have, before the commencement, entered into an agreement to settle claims arising from the wrong, including an agreement about liability only.

‘(3) Subsection (2)(a) applies whether or not a proceeding has been started about the wrong.

‘(4) For a proceeding for subsection (2)(a) or (b), any rule, regulation or other law that would have been applicable to the proceeding had the amending Act not been enacted continues to apply to the proceeding as if the amending Act had not been enacted.



**(5)** In this section—

**“amending Act”** means the *Law Reform (Contributory Negligence) Amendment Act 2001*.

**“commencement”** means the commencement of this section.

**“final relief”**, for a wrong, means a judgment or decision about the wrong, including a judgment or decision about liability only, whether or not an appeal has been made against the judgment or decision.

**“proceeding”** means a proceeding before a court.

**“WorkCover damages injury”** means an injury within the meaning of the *WorkCover Queensland Act 1996* for which the injured person has an entitlement to damages under that Act.’.