

Queensland



CIVIL LIABILITY ACT 2003

Act No. 16 of 2003

Queensland



CIVIL LIABILITY ACT 2003

TABLE OF PROVISIONS

Section		Page
CHAPTER 1—PRELIMINARY		
PART 1—INTRODUCTION		
1	Short title	8
2	Commencement	8
3	Notes in text	8
PART 2—APPLICATION OF ACT		
4	Application of Act	9
5	Civil liability excluded from Act	9
6	Act binds all persons	10
7	Provisions relating to operation of Act	10
PART 3—INTERPRETATION		
8	Definitions	10
CHAPTER 2—CIVIL LIABILITY FOR HARM		
PART 1—BREACH OF DUTY		
<i>Division 1—General standard of care</i>		
9	General principles	11
10	Other principles	11
<i>Division 2—Causation</i>		
11	General principles	12
12	Onus of proof	13
<i>Division 3—Assumption of risk</i>		
13	Meaning of “obvious risk”	13
14	Persons suffering harm presumed to be aware of obvious risks	14
15	No proactive duty to warn of obvious risk	14

16	No liability for materialisation of inherent risk	14
	<i>Division 4—Dangerous recreational activities</i>	
17	Application of div 4	15
18	Definitions for div 4	15
19	No liability for personal injury suffered from obvious risks of dangerous recreational activities	15
	<i>Division 5—Duty of professionals</i>	
20	Definition for div 5	16
21	Proactive and reactive duty of doctor to warn of risk	16
22	Standard of care for professionals	16
	<i>Division 6—Contributory negligence</i>	
23	Standard of care in relation to contributory negligence	17
24	Contributory negligence can defeat claim	17
	<i>Division 7—Enhancement of public safety</i>	
25	Definition for div 7	18
26	Protection of persons performing duties for entities to enhance public safety	18
27	Protection of prescribed entities performing duties to enhance public safety	18
	PART 2—PROPORTIONATE LIABILITY	
28	Application of pt 2	19
29	Definition for pt 2	19
30	Proportionate liability	19
31	Circumstances in which liability of defendants is enlarged	20
32	Defendant may seek contribution from person not a party to the original proceeding	21
33	Part does not prevent other liability or operation of other Acts.	21
	PART 3—LIABILITY OF PUBLIC AND OTHER AUTHORITIES AND VOLUNTEERS	
	<i>Division 1—Public and other authorities</i>	
34	Definitions for div 1	22
35	Principles concerning resources, responsibilities etc. of public or other authorities	22
36	Proceedings against public or other authorities based on breach of statutory duty	23

37	Restriction on liability of public or other authorities with functions of road authorities	23
	<i>Division 2—Volunteers</i>	
38	Interpretation	23
39	Protection of volunteers.	24
40	Liability not excluded for criminal acts	24
41	Liability of intoxicated volunteer not excluded.	25
42	Liability of volunteer not excluded if acting outside scope of activities or contrary to instructions	25
43	Liability not excluded if insurance required	25
44	Liability not excluded for motor accidents	25
	PART 4—EXCLUSION FROM CLAIMING DAMAGES BECAUSE OF PARTICULAR BEHAVIOUR	
	<i>Division 1—Criminal behaviour</i>	
45	Criminals not to be awarded damages.	26
	<i>Division 2—Intoxication</i>	
46	Effect of intoxication on duty and standard of care	26
47	Presumption of contributory negligence if person who suffers harm is intoxicated	27
48	Presumption of contributory negligence if person who suffers harm relies on care and skill of person known to be intoxicated	28
49	Additional presumption for motor vehicle accident	29
	CHAPTER 3—ASSESSMENT OF DAMAGES FOR PERSONAL INJURY	
	PART 1—PRELIMINARY	
50	Application of ch 3	30
51	Definitions for ch 3	30
	PART 2—EXEMPLARY AND SIMILAR DAMAGES	
52	Exemplary, punitive or aggravated damages can not be awarded	30
	PART 3—ASSESSMENT OF DAMAGES	
53	Notice requiring mitigation of damages	31
54	Damages for loss of earnings or earning capacity.	32
55	When earnings can not be precisely calculated.	32
56	Damages for loss of superannuation entitlements.	32

57	Discount rate to be applied in calculating the present value of future loss or gratuitous services	33
58	Damages for loss of consortium or loss of servitium	33
59	Damages for gratuitous services	33
60	Interest	34
61	Assessment by court of injury scale	35
62	Calculation of general damages	35
PART 4—STRUCTURED SETTLEMENTS		
63	Definition for pt 4	37
64	Court required to inform parties of proposed award	37
65	Court may make consent order for structured settlement	37
66	Obligation of legal practitioners to provide advice	38
67	Offer of structured settlement—legal costs	38
CHAPTER 4—MISCELLANEOUS		
PART 1—EXPRESSIONS OF REGRET		
68	Application of pt 1	38
69	Definition for pt 1	38
70	Purpose of pt 1	39
71	Meaning of “expression of regret”	39
72	Expressions of regret are inadmissible	39
PART 2—JURY TRIALS		
73	Exclusion of jury trial	40
PART 3—GENERAL		
74	Regulation-making power	40
75	Regulations may contain transitional provisions.	40
CHAPTER 5—TRANSITIONAL PROVISIONS		
76	Prescribed entities for ss 26 and 27	41
77	Jury trials	41
78	Amendment of regulation in sch 1 does not affect powers of Governor in Council	41

CHAPTER 6—AMENDMENT OF ACTS AND REGULATION**PART 1—AMENDMENT OF PERSONAL INJURIES
PROCEEDINGS ACT 2002**

79	Act amended in pt 1	42
80	Amendment of s 6 (Application of Act)	42
81	Amendment of s 7 (Provisions of this Act that are provisions of substantive law)	43
82	Amendment of s 9 (Notice of a claim)	43
83	Insertion of new s 9A	45
	9A Particular provision for notice of a claim procedure for medical negligence cases	45
84	Amendment of s 10 (Person to whom notice of a claim is given must give preliminary response to claimant)	48
85	Amendment of s 11 (Acknowledgement that a person is a proper respondent to a claim is not an admission of liability)	49
86	Amendment of s 12 (Respondent's response to the notice of a claim)	49
87	Replacement of s 13 (Consequences for respondent of failure to respond to notice of a claim)	50
	13 Consequences for respondent of failure to respond to part 1 of a notice of a claim	50
88	Amendment of s 14 (Claimant may add other respondents)	50
89	Amendment of s 16 (Respondent may add other person as contributor)	50
90	Amendment of s 18 (Claimant's failure to give notice of a claim)	51
	18 Claimant's failure to give part 1 of a notice of a claim?	51
91	Amendment of s 20 (Respondent must attempt to resolve claim)	51
92	Insertion of new ch 2, pt 1, div 1A	52
93	Omission of s 26 (Mitigation of damages)	55
94	Amendment of s 27 (Duty of respondent to give documents and information to claimant)	55
95	Insertion of new s 29A	55
	29A Alternative provision if number of pages exceeds 200	56
96	Replacement of s 34 (No requirement to give documents twice)	56
	34 No requirement to give documents or other information twice or if already in other party's possession	56
97	Amendment of s 36 (Compulsory conference)	57
98	Amendment of s 42 (Time for starting proceeding)	57

99	Amendment of s 43 (Need for urgent proceeding)	57
100	Omission of ch 2, pt 2 (Expressions of regret)	58
101	Omission of ss 49–55	58
102	Omission of s 58 (Exclusion of jury trial)	58
103	Amendment of s 59 (Alteration of period of limitation)	58
104	Omission of ch 2, pt 4 (Structured settlements)	58
105	Insertion of new s 67A	58
	67A Exemption from s 67(3) and (4)	58
106	Omission of ch 3, pt 2	59
107	Insertion of new s 73A	59
	73A Proceeding	59
108	Amendment of s 77D (Alteration of limitation period for personal injury arising out of an incident happening before 18 June 2002)	60
109	Insertion of new ch 4, pt 3	60
	PART 3—TRANSITIONAL PROVISIONS FOR CIVIL LIABILITY ACT 2003	
	78 Definitions for pt 3	60
	79 Notice of a claim given under the pre-amended Act	61
	80 Special provision for notification of claims in relation to injuries to children arising out of medical treatment	61
	81 Particular provisions having continuing effect	61
110	Amendment of schedule (Dictionary)	62
	PART 2—OTHER AMENDMENTS	
111	Acts and regulation amended in sch 1	62
	SCHEDULE 1	63
	AMENDMENT OF ACTS AND REGULATION	
	LAW REFORM ACT 1995	63
	MOTOR ACCIDENT INSURANCE ACT 1994	63
	PERSONAL INJURIES PROCEEDINGS REGULATION 2002	65
	SCHEDULE 2	67
	DICTIONARY	

Queensland



Civil Liability Act 2003

Act No. 16 of 2003

An Act to reform the law of civil liability for negligent acts, and for other purposes

[Assented to 9 April 2003]

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

1 Short title

This Act may be cited as the *Civil Liability Act 2003*.

2 Commencement

(1) Subject to subsections (2) and (3), this Act is taken to have commenced on 2 December 2002.

(2) The following provisions commence on assent—

- chapter 2, part 1, division 7, part 3, division 2 and part 4
- chapter 3, parts 2 and 4
- sections 53, 54 and 56 to 60
- chapter 4, parts 1 and 2
- chapter 5
- chapter 6 and schedule 1.

(3) Chapter 2, part 2 commences on a day to be fixed by proclamation.

3 Notes in text

A note in the text of this Act is part of this Act.

PART 2—APPLICATION OF ACT

4 Application of Act

(1) Subject to section 5, this Act applies to any civil claim for damages for harm.

(2) The following provisions apply only in relation to a breach of duty happening on or after 2 December 2002—

- chapter 2, part 1, divisions 1 to 6
- chapter 2, part 3, division 1
- section 55.

(3) The following provisions apply in relation to a breach of duty happening on or after the day this Act receives assent—

- chapter 2, part 4
- sections 52, 54, 56, 57, 58, 59, 60, 72.

(4) Sections 64, 65, 66, 67 and 73 apply in relation to personal injuries damages regardless of when the injury happened.

5 Civil liability excluded from Act

This Act does not apply in relation to any civil claim for damages for personal injury if the harm resulting from the breach of duty owed to the claimant is or includes—

- (a) an injury as defined under the *WorkCover Queensland Act 1996*, other than an injury to which section 36(1)(c) or 37¹ of that Act applies; or

Example for paragraph (a)—

A worker employed under a contract of service with a labour hire company is injured at the premises of a host employer while driving a defective machine. The worker pursues claims for damages for civil liability against the labour hire company, the host employer and the manufacturer of the machine. The worker suffers a number of injuries but only 1 of them is accepted as an injury under the *WorkCover Queensland Act 1996*, section 34. This Act does not apply to any of the claims for damages.

1 *WorkCover Queensland Act 1996*, section 36 (Injury while at or after worker attends place of employment) or 37 (Other circumstances)

- (b) an injury that is a dust-related condition; or
- (c) an injury resulting from smoking or other use of tobacco products or exposure to tobacco smoke.

6 Act binds all persons

This Act binds all persons including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.

7 Provisions relating to operation of Act

(1) This Act does not create or confer any cause of civil action for the recovery of damages.

(2) A provision of this Act that gives protection from civil liability does not limit the protection from liability given by another provision of this Act or by another Act or law.

(3) This Act, other than chapter 3,² does not prevent the parties to a contract from making express provision for their rights, obligations and liabilities under the contract (the “**express provision**”) in relation to any matter to which this Act applies and does not limit or otherwise affect the operation of the express provision.

(4) Subsection (3) extends to any provision of this Act even if the provision applies to liability in contract.

(5) This Act is not a codification of the law relating to civil claims for damages for harm.

PART 3—INTERPRETATION

8 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

2 Chapter 3 (Assessment of damages for personal injury)

CHAPTER 2—CIVIL LIABILITY FOR HARM

PART 1—BREACH OF DUTY

Division 1—General standard of care

9 General principles

(1) A person does not breach a duty 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 reasonably to have known); and
- (b) the risk was not insignificant; and
- (c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.

(2) In deciding whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (among other relevant things)—

- (a) the probability that the harm would occur if care 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 that creates the risk of harm.

10 Other principles

In a proceeding relating to liability for breach of duty happening on or after 2 December 2002—

- (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 the thing 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 does not of itself constitute an admission of liability in connection with the risk.

Division 2—Causation

11 General principles

(1) A decision that a breach of duty caused particular harm comprises the following elements—

- (a) the breach of duty was a necessary condition of the occurrence of the harm (“**factual causation**”);
- (b) it is appropriate for the scope of the liability of the person in breach to extend to the harm so caused (“**scope of liability**”).

(2) In deciding in an exceptional case, in accordance with established principles, whether a breach of duty—being a breach of duty that is established but which can not be established as satisfying subsection (1)(a)—should be accepted as satisfying subsection (1)(a), the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party in breach.

(3) If it is relevant to deciding factual causation to decide what the person who suffered harm would have done if the person who was in breach of the duty had not been so in breach—

- (a) the matter is to be decided subjectively in the light of all relevant circumstances, subject to paragraph (b); and
- (b) any statement made by the person after suffering the harm about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest.

(4) For the purpose of deciding the scope of liability, the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party who was in breach of the duty.

12 Onus of proof

In deciding liability for breach of a duty, the plaintiff always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

Division 3—Assumption of risk

13 Meaning of “obvious risk”

(1) For this division, an “**obvious risk**” to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.

(2) Obvious risks include risks that are patent or a matter of common knowledge.

(3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.

(4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

(5) To remove any doubt, it is declared that a risk from a thing, including a living thing, is not an obvious risk if the risk is created because of a failure on the part of a person to properly operate, maintain, replace, prepare or care for the thing, unless the failure itself is an obvious risk.

Examples for subsection (5)—

1. A motorised go-cart that appears to be in good condition may create a risk to a user of the go-cart that is not an obvious risk if its frame has been damaged or cracked in a way that is not obvious.
2. A bungee cord that appears to be in good condition may create a risk to a user of the bungee cord that is not an obvious risk if it is used after the time the manufacturer of the bungee cord recommends its replacement or it is used in circumstances contrary to the manufacturer’s recommendation.

14 Persons suffering harm presumed to be aware of obvious risks

(1) If, in an action for damages for breach of duty causing harm, a defence of voluntary assumption of risk³ is raised by the defendant and the risk is an obvious risk, the plaintiff is taken to have been aware of the risk unless the plaintiff proves, on the balance of probabilities, that he or she was not aware of the risk.

(2) For this section, a person is aware of a risk if the person is aware of the type or kind of risk, even if the person is not aware of the precise nature, extent or manner of occurrence of the risk.

15 No proactive duty to warn of obvious risk

(1) A person (“**defendant**”) does not owe a duty to another person (“**plaintiff**”) to warn of an obvious risk to the plaintiff.

(2) Subsection (1) does not apply if—

- (a) the plaintiff has requested advice or information about the risk from the defendant; or
- (b) the defendant is required by a written law to warn the plaintiff of the risk; or
- (c) the defendant is a professional, other than a doctor, and the risk is a risk of the death of or personal injury to the plaintiff from the provision of a professional service by the defendant.

Note—

In relation to paragraphs (a) and (b), see section 21 for the duty of a doctor to warn of risk.

(3) Subsection (2) does not give rise to a presumption of a duty to warn of a risk in the circumstances referred to in that subsection.

(4) In this section—

“**a professional**” has the same meaning as it has in division 5.

16 No liability for materialisation of inherent risk

(1) A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an inherent risk.

3 ‘Volenti non fit injuria’

(2) An inherent risk is a risk of something occurring that can not be avoided by the exercise of reasonable care and skill.

(3) This section does not operate to exclude liability in connection with a duty to warn of a risk.

Division 4—Dangerous recreational activities

17 Application of div 4

(1) This division applies only in relation to liability in negligence for harm to a person resulting from a dangerous recreational activity engaged in by the plaintiff.

(2) This division does not limit the operation of division 3⁴ in relation to a recreational activity.

18 Definitions for div 4

In this division—

“dangerous recreational activity” means an activity engaged in for enjoyment, relaxation or leisure that involves a significant degree of risk of physical harm to a person.

“obvious risk” has the same meaning as it has in division 3.

19 No liability for personal injury suffered from obvious risks of dangerous recreational activities

(1) A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an obvious risk of a dangerous recreational activity engaged in by the person suffering harm.

(2) This section applies whether or not the person suffering harm was aware of the risk.

4 Division 3 (Assumption of risk)

Division 5—Duty of professionals

20 Definition for div 5

In this division—

“a professional” means a person practising a profession.

21 Proactive and reactive duty of doctor to warn of risk

(1) A doctor does not breach a duty owed to a patient to warn of risk, before the patient undergoes any medical treatment (or at the time of being given medical advice) that will involve a risk of personal injury to the patient, unless the doctor at that time fails to give or arrange to be given to the patient the information about the risk—

- (a) that a reasonable person in the patient’s position would, in the circumstances, require to enable the person to make a reasonably informed decision about whether to undergo the treatment or follow the advice; and
- (b) that the doctor knows or ought reasonably to know the patient wants to be given before making the decision about whether to undergo the treatment or follow the advice.

(2) In this section—

“patient”, when used in a context of giving or being given information, includes a person who has the responsibility for making a decision about the medical treatment to be undergone by a patient if the patient is under a legal disability.

Example—

The responsibility a parent has for an infant child.

22 Standard of care for professionals

(1) A professional does not breach a duty arising from the provision of a professional service if it is established that the professional acted in a way that (at the time the service was provided) was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice.

(2) However, peer professional opinion can not be relied on for the purposes of this section if the court considers that the opinion is irrational or contrary to a written law.

(3) The fact that there are differing peer professional opinions widely accepted by a significant number of respected practitioners in the field concerning a matter does not prevent any 1 or more (or all) of the opinions being relied on for the purposes of this section.

(4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.

(5) This section does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information, in relation to the risk of harm to a person, that is associated with the provision by a professional of a professional service.

Division 6—Contributory negligence

23 Standard of care in relation to contributory negligence

(1) The principles that are applicable in deciding whether a person has breached a duty also apply in deciding whether the person who suffered harm has been guilty of contributory negligence in failing to take precautions against the risk of that harm.

(2) For that purpose—

- (a) the standard of care required of the person who suffered harm is that of a reasonable person in the position of that person; and
- (b) the matter is to be decided on the basis of what that person knew or ought reasonably to have known at the time.

24 Contributory negligence can defeat claim

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

Division 7—Enhancement of public safety**25 Definition for div 7**

In this division—

“**person in distress**” includes—

- (a) a person who is injured, apparently injured or at risk of injury; and
- (b) a person who is suffering, or apparently suffering, from an illness.

26 Protection of persons performing duties for entities to enhance public safety

(1) Civil liability does not attach to a person in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress if—

- (a) the first aid or other aid or assistance is given by the person while performing duties to enhance public safety for an entity prescribed under a regulation that provides services to enhance public safety; and
- (b) the first aid or other aid or assistance is given in circumstances of emergency; and
- (c) the act is done or omitted in good faith and without reckless disregard for the safety of the person in distress or someone else.

(2) Subsection (1) does not limit or affect the *Law Reform Act 1995*, part 5.⁵

27 Protection of prescribed entities performing duties to enhance public safety

(1) Civil liability does not attach to an entity, prescribed under a regulation, that provides services to enhance public safety in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress if—

5 *Law Reform Act 1995*, part 5 (Voluntary aid in emergency)

- (a) the first aid or other aid or assistance is given by the entity while performing duties to enhance public safety; and
 - (b) the first aid or other aid or assistance is given in circumstances of emergency; and
 - (c) the act is done or omitted in good faith and without reckless disregard for the safety of the person in distress or someone else.
- (2) Subsection (1) does not limit or affect the *Law Reform Act 1995*, part 5.

PART 2—PROPORTIONATE LIABILITY

28 Application of pt 2

This part does not apply to a claim for a breach of duty resulting in—

- (a) personal injury; or
- (b) damages for an amount less than \$500 000.

29 Definition for pt 2

In this part—

“**defendant**” includes any person joined as a defendant or other party in the proceeding (except as a plaintiff) whether joined under this part, under rules of court or otherwise.

30 Proportionate liability

(1) If there is more than 1 defendant in a proceeding, each defendant is liable only for the amount of damages decided by the court.

(2) The liability of each defendant is the amount decided by the court to be just and equitable having regard to the extent of the defendant’s responsibility for the harm.

(3) In apportioning responsibility as between the defendants—

- (a) the court is to exclude the proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and
- (b) the court must not have regard to the comparative responsibility of any other person who is not a party to the proceeding.

(4) Despite subsection (3)(b), the court may have regard to the comparative responsibility of another person who is not a party to the proceeding if the person is not a party to the proceeding because the person is dead or, if the person is a corporation, the corporation has been wound-up.

(5) The liability of each defendant is several only and not joint except as otherwise provided under this part.

(6) This section is subject to section 31.

31 Circumstances in which liability of defendants is enlarged

(1) Defendants in a proceeding are jointly and severally liable for the total of the damages for loss awarded against the defendants if the defendants formed a common intention to commit an intentional tort and actively took part in the commission of the tort.

(2) A defendant in a proceeding is also jointly and severally liable for the damages awarded against another defendant in the proceeding as agent of the defendant.

(3) A defendant in a proceeding (the “**first defendant**”) is also jointly and severally liable for the damages awarded against another defendant in the proceeding if—

- (a) because of the other defendant’s action, the plaintiff suffered loss; and
- (b) the plaintiff engaged the first defendant to provide professional advice to prevent the loss; and
- (c) the plaintiff relied on the advice.

Example for subsection (3)—

P sues D and R for damages. R misrepresented the income of a business P was considering purchasing. P sought professional advice from D, an accountant, about the income generated by the business. D negligently failed to identify the misrepresentation and confirmed the income of the business as claimed by R. P, relying on D’s professional advice, purchased the business and suffered loss. P may recover the entire amount of P’s loss from D.

(4) A defendant in a proceeding against whom a finding of fraud is made or who contravenes a prescribed provision is also jointly and severally liable for the damages awarded against any other defendant in the proceeding.

(5) The operation of subsection (1), (2), (3) or (4) does not necessarily exclude the operation of another 1 or more of those subsections.

(6) In this section—

“**prescribed provision**” means—

- (a) the *Fair Trading Act 1989*, section 38;⁶ or
- (b) the *Trade Practices Act 1974* (Cwlth), section 52.⁷

32 Defendant may seek contribution from person not a party to the original proceeding

Nothing in this part prevents a defendant from seeking, in another proceeding, contribution from someone else in relation to the claim.

33 Part does not prevent other liability or operation of other Acts

Nothing in this part—

- (a) prevents a person from being held vicariously liable for a proportion of any claim for which another person is liable; or
- (b) prevents a partner from being held severally liable with another partner for that proportion of a claim for which the other partner is liable; or
- (c) affects a defendant’s right relating to contributory negligence by a person who suffered harm.

⁶ *Fair Trading Act 1989*, section 38 (Misleading or deceptive conduct—TPA s 52)

⁷ *Trade Practices Act 1974* (Cwlth), section 52 (Misleading or deceptive conduct)

PART 3—LIABILITY OF PUBLIC AND OTHER AUTHORITIES AND VOLUNTEERS

Division 1—Public and other authorities

34 Definitions for div 1

In this division—

“**function**” includes power.

“**public or other authority**” means—

- (a) the Crown (within the meaning of the *Crown Proceedings Act 1980*); or
- (b) a local government; or
- (c) any public authority constituted under an Act.

35 Principles concerning resources, responsibilities etc. of public or other authorities

The following principles apply to a proceeding in deciding whether a public or other authority has a duty or has breached a duty—

- (a) the functions required to be exercised by the authority are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising the functions;
- (b) the general allocation of financial or other 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 merely by reference to the matter to which the proceeding relates);
- (d) the authority may rely on evidence of its compliance with its general procedures and any 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.

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

(1) This section applies to a proceeding that is based on an alleged wrongful exercise of or failure to exercise a function of a public or other authority.

(2) For the purposes of the proceeding, an act or omission of the authority does not constitute a wrongful exercise or failure unless the act or omission was in the circumstances so unreasonable that no public or other authority having the functions of the authority in question could properly consider the act or omission to be a reasonable exercise of its functions.

37 Restriction on liability of public or other authorities with functions of road authorities

(1) A public or other authority is not liable in any legal proceeding for any failure by the authority in relation to any function it has as a road authority—

- (a) to repair a road or to keep a road in repair; or
- (b) to inspect a road for the purpose of deciding the need to repair the road or to keep the road in repair.

(2) Subsection (1) does not apply if at the time of the alleged failure the authority had actual knowledge of the particular risk the materialisation of which resulted in the harm.

(3) In this section—

“**road**” see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

“**road authority**” means the entity responsible for carrying out any road work.

Division 2—Volunteers

38 Interpretation

(1) In this division—

“**community organisation**” means any of the following that organises the doing of community work by volunteers—

- (a) a corporation;
- (b) a trustee acting in the capacity of trustee;
- (c) a church or other religious group;
- (d) a registered political party as defined under the *Electoral Act 1992* or the *Commonwealth Electoral Act 1918* (Cwlth);
- (e) a public or other authority as defined under section 34.

“**community work**” means work that is not for private financial gain and that is done for a charitable, benevolent, philanthropic, sporting, recreational, political, educational or cultural purpose.

“**organised**” includes directed or supervised.

“**volunteer**” means a person who does community work on a voluntary basis.

“**work**” includes any activity.

(2) For the purposes of this division—

- (a) community work done by a person under an order of a court is not to be regarded as work done on a voluntary basis; and
- (b) community work for which a person receives remuneration by way of reimbursement of the person’s reasonable expenses in doing the work is to be regarded as work done on a voluntary basis.

39 Protection of volunteers

A volunteer does not incur any personal civil liability in relation to any act or omission done or made by the volunteer in good faith when doing community work—

- (a) organised by a community organisation; or
- (b) as an office holder of a community organisation.

40 Liability not excluded for criminal acts

This division does not confer protection from personal liability on a volunteer in relation to an act or omission of the volunteer if it is established (on the balance of probabilities) that at the time of the act or omission the volunteer was engaged in conduct that constitutes an offence.

41 Liability of intoxicated volunteer not excluded

The protection from personal liability conferred on a volunteer by this division in connection with any community work does not apply if the volunteer—

- (a) was intoxicated when doing the work; and
- (b) failed to exercise due care and skill when doing the work.

42 Liability of volunteer not excluded if acting outside scope of activities or contrary to instructions

This division does not confer protection on a volunteer from personal liability in relation to an act or omission of a volunteer if the volunteer knew or ought reasonably to have known that he or she was acting—

- (a) outside the scope of the activities authorised by the community organisation concerned; or
- (b) contrary to instructions given by the community organisation.

43 Liability not excluded if insurance required

This division does not confer protection from personal liability on a volunteer if the liability is a liability that is required under a written law of the State to be insured against.

44 Liability not excluded for motor accidents

The protection from personal liability conferred on a volunteer by this division does not apply if the liability would, apart from this division, be covered by a CTP insurance policy under the *Motor Accident Insurance Act 1994*, or be recoverable from the Nominal Defendant under that Act.

PART 4—EXCLUSION FROM CLAIMING DAMAGES BECAUSE OF PARTICULAR BEHAVIOUR

Division 1—Criminal behaviour

45 Criminals not to be awarded damages

(1) A person does not incur civil liability if the court is satisfied on the balance of probabilities that—

- (a) the breach of duty from which civil liability would arise, apart from this section, happened while the person who suffered harm was engaged in conduct that is an indictable offence; and
- (b) the person's conduct contributed materially to the risk of the harm.

(2) Despite subsection (1), the court may award damages in a particular case if satisfied that in the circumstances of the case, subsection (1) would operate harshly and unjustly.

(3) If the court decides to award damages under subsection (2), the court must assess damages on the basis that the damages to which the injured person would be entitled, apart from this section, are to be reduced, on account of the injured person's conduct, by 25% or a greater percentage decided by the court to be appropriate in the circumstances of the case.

(4) It does not matter whether the person whose conduct is alleged to constitute an indictable offence has been, will be or is or was capable of being proceeded against or convicted of an indictable offence.

(5) If the person has been dealt with for the offence, it does not matter whether the person was dealt with on indictment or summarily.

Division 2—Intoxication

46 Effect of intoxication on duty and standard of care

(1) The following principles apply in relation to the effect that a person's intoxication has on the duty and standard of care that the person is owed—

- (a) in deciding whether a duty of care arises, it is not relevant to consider the possibility or likelihood that a person may be

intoxicated or that a person who is intoxicated may be exposed to increased risk because the person's capacity to exercise reasonable care and skill is impaired as a result of being intoxicated;

- (b) a person is not owed a duty of care merely because the person is intoxicated;
- (c) the fact that a person is or may be intoxicated does not of itself increase or otherwise affect the standard of care owed to the person.

(2) Subsection (1) does not affect a liability arising out of conduct happening on licensed premises.

(3) In this section—

“**licensed premises**” see the *Liquor Act 1992*, section 4.

47 Presumption of contributory negligence if person who suffers harm is intoxicated

(1) This section applies if a person who suffered harm was intoxicated at the time of the breach of duty giving rise to a claim for damages and contributory negligence is alleged by the defendant.

(2) Contributory negligence will, subject to this section, be presumed.

(3) The person may only rebut the presumption by establishing on the balance of probabilities—

- (a) that the intoxication did not contribute to the breach of duty; or
- (b) that the intoxication was not self-induced.

(4) Unless the person rebuts the presumption of contributory negligence, the court must assess damages on the basis that the damages to which the person would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by 25% or a greater percentage decided by the court to be appropriate in the circumstances of the case.

(5) If, in the case of a motor vehicle accident, the person who suffered harm was the driver of a motor vehicle involved in the accident and the evidence establishes—

- (a) that the concentration of alcohol in the driver's blood was 150 mg or more of alcohol in 100 mL of blood; or

- (b) that the driver was so much under the influence of alcohol or a drug as to be incapable of exercising effective control of the vehicle;

the minimum reduction prescribed by subsection (4) is increased to 50%.

48 Presumption of contributory negligence if person who suffers harm relies on care and skill of person known to be intoxicated

(1) This section applies to a person who suffered harm (“**plaintiff**”) who—

- (a) was at least 16 years at the time of the breach of duty giving rise to the harm; and
- (b) relied on the care and skill of a person who was intoxicated at the time of the breach of duty (“**defendant**”); and
- (c) was aware, or ought reasonably to have been aware, that the defendant was intoxicated.

(2) If the harm suffered by the plaintiff was caused through the negligence of the defendant and the defendant alleges contributory negligence on the part of the plaintiff, contributory negligence will, subject to this section, be presumed.

(3) The plaintiff may only rebut the presumption if the plaintiff establishes, on the balance of probabilities, that—

- (a) the defendant’s intoxication did not contribute to the breach of duty; or
- (b) the plaintiff could not reasonably be expected to have avoided relying on the defendant’s care and skill.

(4) Unless the plaintiff rebuts the presumption of contributory negligence, the court must assess damages on the basis that the damages to which the plaintiff would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by 25% or a greater percentage decided by the court to be appropriate in the circumstances of the case.

(5) The common law defence of voluntary assumption of risk⁸ does not apply to a matter to which this section applies.

49 Additional presumption for motor vehicle accident

(1) This section applies to a plaintiff and defendant mentioned in section 48.

(2) If—

- (a) the breach of duty giving rise to the harm suffered by the plaintiff was a motor vehicle accident; and
- (b) the plaintiff was a passenger in the motor vehicle; and
- (c) the motor vehicle was driven by the defendant; and
- (d) either—
 - (i) the concentration of alcohol in the defendant's blood was 150 mg or more of alcohol in 100 mL of blood; or
 - (ii) the defendant was so much under the influence of alcohol or a drug as to be incapable of exercising effective control of the vehicle;

the minimum reduction prescribed by section 48(4) is increased to 50%.

(3) The plaintiff is taken, for this section, to rely on the care and skill of the defendant.

8 'Volenti non fit injuria'

CHAPTER 3—ASSESSMENT OF DAMAGES FOR PERSONAL INJURY

PART 1—PRELIMINARY

50 Application of ch 3

Subject to section 5,⁹ this chapter applies only in relation to an award of personal injury damages.

51 Definitions for ch 3

In this chapter—

“**general damages**” means damages for—

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

“**injury**” means personal injury.

PART 2—EXEMPLARY AND SIMILAR DAMAGES

52 Exemplary, punitive or aggravated damages can not be awarded

(1) A court can not award exemplary, punitive or aggravated damages in relation to a claim for personal injury damages.

(2) Subsection (1) does not apply to a claim for personal injury damages if the act that caused the personal injury was—

9 Section 5 (Civil liability excluded from Act)

- (a) an unlawful intentional act done with intent to cause personal injury; or
- (b) an unlawful sexual assault or other unlawful sexual misconduct.

PART 3—ASSESSMENT OF DAMAGES

53 Notice requiring mitigation of damages

(1) If a defendant is not satisfied with the action taken by a plaintiff to mitigate damages, the defendant may give the plaintiff written notice suggesting specified action the plaintiff should take to mitigate damages.

(2) The notice may, for example, suggest that—

- (a) the plaintiff should undergo medical treatment of a specified kind; or
- (b) the plaintiff should return to work or take specified steps to obtain employment; or
- (c) the plaintiff should undergo rehabilitation therapy of a specified kind, or undertake specified programs of rehabilitation and training.

(3) Subsection (1) does not limit the plaintiff's duty to mitigate damages.

(4) In assessing damages for personal injury, the court must—

- (a) consider whether the plaintiff has failed to take reasonable steps to mitigate damages by not following suggestions made under this section or a written notice given under the *Personal Injuries Proceedings Act 2002*, section 26; and
- (b) if the notice suggested that the plaintiff undergo medical treatment or rehabilitation therapy of a specified kind—consider whether the notice was accompanied by an offer by the defendant to pay for the cost of the treatment or therapy; and
- (c) if it appears the plaintiff has failed to take steps to mitigate damages by not following the suggestions—reduce the plaintiff's damages to an appropriate extent reflecting the failure if, in all the circumstances, the court considers that the plaintiff's failure to follow the suggestions was not reasonable.

(5) Subsection (4) does not apply in assessing damages for personal injury if leave to start the proceeding was given under the *Personal Injuries Proceedings Act 2002*, section 43(1) and was not stayed under section 43(3) of that Act because section 43(4) of that Act applied.

(6) In this section—

“**defendant**” means a person against whom a claim for personal injury damages is made whether or not a proceeding for the claim has been started.

“**plaintiff**” means an injured person making a claim for personal injury damages whether or not a proceeding for the claim has been started.

54 Damages for loss of earnings or earning capacity

(1) In assessing damages for loss of earnings, including in a dependency claim, a court must disregard earnings above the limit fixed by subsection (2).

(2) The limit is 3 times average weekly earnings per week.

55 When earnings can not be precisely calculated

(1) This section applies if a court is considering making an award of damages for loss of earnings that are unable to be precisely calculated by reference to a defined weekly loss.

(2) The court may only award damages if it is satisfied that the person has suffered or will suffer loss having regard to the person’s age, work history, actual loss of earnings, any permanent impairment and any other relevant matters.

(3) If the court awards damages, the court must state the assumptions on which the award is based and the methodology it used to arrive at the award.

(4) The limitation mentioned in section 54(2) applies to an award of damages under this section.

56 Damages for loss of superannuation entitlements

(1) The maximum amount of damages that may be awarded to an employee for economic loss due to the loss of employer superannuation contributions is the relevant percentage of damages payable (in accordance

with this part) for the deprivation or impairment of the earning capacity on which the entitlement to the contributions is based.

(2) The relevant percentage is the percentage of earnings that is the minimum percentage required by a written law to be paid on the employee's behalf as employer superannuation contributions.

57 Discount rate to be applied in calculating the present value of future loss or gratuitous services

(1) This section applies if—

- (a) a person is to be compensated for future loss; or
- (b) damages are to be awarded for gratuitous services;

and an actuarial multiplier is to be used to calculate the present value of future loss or gratuitous services.

(2) A discount rate of 5% is to be applied in deciding the actuarial multiplier.

58 Damages for loss of consortium or loss of servitium

(1) A court must not award damages for loss of consortium or loss of servitium unless—

- (a) the injured person died as a result of injuries suffered; or
- (b) general damages for the injured person are assessed (before allowing for contributory negligence) at \$30 000 or more.

(2) The court must not assess damages for loss of servitium above the limit fixed by subsection (3).

(3) The limit is 3 times average weekly earnings per week.

59 Damages for gratuitous services

(1) Damages for gratuitous services are not to be awarded unless—

- (a) the services are necessary; and
- (b) the need for the services arises solely out of the injury in relation to which damages are awarded; and
- (c) the services are provided, or are to be provided—

- (i) for at least 6 hours per week; and
- (ii) for at least 6 months.

(2) Damages are not to be awarded for gratuitous services if gratuitous services of the same kind were being provided for the injured person before the breach of duty happened.

(3) Damages are not to be awarded for gratuitous services replacing services provided by an injured person, or that would have been provided by the injured person if the injury had not been suffered, for others outside the injured person's household.

(4) In assessing damages for gratuitous services, a court must take into account—

- (a) any offsetting benefit the service provider obtains through providing the services; and
- (b) periods for which the injured person has not required or is not likely to require the services because the injured person has been or is likely to be cared for in a hospital or other institution.

60 Interest

(1) A court can not order the payment of interest on awards for general damages.

(2) Interest awarded on damages compensating past monetary loss—

- (a) must not be more than interest at the appropriate rate; and
- (b) must be related in an appropriate way to the period over which the loss was incurred.

(3) The appropriate rate is the rate for 10 year Treasury bonds published by the Reserve Bank of Australia under 'Interest rates and yields—capital market' as at the beginning of the quarter in which the award of interest is made.

Example of calculation of interest for this section—

Suppose that past monetary loss consists of medical expenses that have been incurred at a uniform rate over a particular period. The interest to be awarded would be calculated under the following formula—

$$A = am/100 \times p \times 0.5$$

where—

“A” is the amount of the award of interest.

“a” is a percentage rate decided by the court subject to the limit fixed in subsection (2).

“m” is the aggregate of the medical expenses.

“p” is the period over which the medical expenses have been incurred (expressed in years).

61 Assessment by court of injury scale

(1) If general damages are to be awarded by a court in relation to an injury arising after 1 December 2002, the court must assess an injury scale value as follows—

- (a) the injured person’s total general damages must be assigned a numerical value (“**injury scale value**”) on a scale running from 0 to 100;
- (b) the scale reflects 100 equal gradations of general damages, from a case in which an injury is not severe enough to justify any award of general damages to a case in which an injury is of the gravest conceivable kind;
- (c) in assessing the injury scale value, the court is to consider—
 - (i) the range of injury scale values for similar injuries, prescribed under a regulation; and
 - (ii) the injury scale values attributed to similar injuries in prior proceedings.

(2) If a court assesses an injury scale value for a particular injury to be more or less than any injury scale value prescribed for or attributed to similar particular injuries under subsection (1)(c), the court must state the factors on which the assessment is based that justify the assessed injury scale value.

62 Calculation of general damages

The general damages must be calculated in relation to an injury arising after 1 December 2002 as follows—

- (a) if the scale value of the injury is assessed as 5 or less—by multiplying the scale value by \$1 000;
- (b) if the scale value of the injury is assessed as 10 or less but more than 5—by adding to \$5 000 an amount calculated by

multiplying the number by which the scale value exceeds 5 by \$1 200;

- (c) if the scale value of the injury is assessed as 15 or less but more than 10—by adding to \$11 000 an amount calculated by multiplying the number by which the scale value exceeds 10 by \$1 400;
- (d) if the scale value of the injury is assessed as 20 or less but more than 15—by adding to \$18 000 an amount calculated by multiplying the number by which the scale value exceeds 15 by \$1 600;
- (e) if the scale value of the injury is assessed as 25 or less but more than 20—by adding to \$26 000 an amount calculated by multiplying the number by which the scale value exceeds 20 by \$1 800;
- (f) if the scale value of the injury is assessed as 30 or less but more than 25—by adding to \$35 000 an amount calculated by multiplying the number by which the scale value exceeds 25 by \$2 000;
- (g) if the scale value of the injury is assessed as 35 or less but more than 30—by adding to \$45 000 an amount calculated by multiplying the number by which the scale value exceeds 30 by \$2 200;
- (h) if the scale value of the injury is assessed as 40 or less but more than 35—by adding to \$56 000 an amount calculated by multiplying the number by which the scale value exceeds 35 by \$2 400;
- (i) if the scale value of the injury is assessed as 50 or less but more than 40—by adding to \$68 000 an amount calculated by multiplying the number by which the scale value exceeds 40 by \$2 580;
- (j) if the scale value of the injury is assessed as 60 or less but more than 50—by adding to \$93 800 an amount calculated by multiplying the number by which the scale value exceeds 50 by \$2 760;
- (k) if the scale value of the injury is assessed as 70 or less but more than 60—by adding to \$121 400 an amount calculated by multiplying the number by which the scale value exceeds 60 by \$2 940;

- (l) if the scale value of the injury is assessed as 80 or less but more than 70—by adding to \$150 800 an amount calculated by multiplying the number by which the scale value exceeds 70 by \$3 120;
- (m) if the scale value of the injury is assessed as 90 or less but more than 80—by adding to \$182 000 an amount calculated by multiplying the number by which the scale value exceeds 80 by \$3 300;
- (n) if the scale value of the injury is assessed as 100 or less but more than 90—by adding to \$215 000 an amount calculated by multiplying the number by which the scale value exceeds 90 by \$3 500.

PART 4—STRUCTURED SETTLEMENTS

63 Definition for pt 4

In this part—

“**structured settlement**” means an agreement providing for the payment of all or part of an award of personal injury damages in the form of periodic payments funded by an annuity or other agreed means.

64 Court required to inform parties of proposed award

(1) The purpose of this section is to enable the court to give the parties to a proceeding a reasonable opportunity to negotiate a structured settlement.

(2) A court that decides to make an award for future loss (not including interest) of more than \$100 000 must first notify all the parties to the proceeding of the terms of the award it proposes to make.

65 Court may make consent order for structured settlement

A court may, on the application of the parties to a claim for personal injury damages, make an order approving of or in the terms of a structured settlement even though the payment of damages is not in the form of a lump sum award of damages.

66 Obligation of legal practitioners to provide advice

A lawyer engaged by a plaintiff must advise the plaintiff, in writing, about the following if the plaintiff proposes to negotiate a settlement of a claim for personal injury damages—

- (a) the availability of structured settlements;
- (b) the desirability of the plaintiff obtaining independent financial advice about structured settlements and lump sum settlements of the claim.

67 Offer of structured settlement—legal costs

(1) The *Uniform Civil Procedure Rules 1999*, chapter 11, part 5¹⁰ extends to an offer of compromise by way of a structured settlement on a claim for personal injury damages.

(2) In that case, the court is to have regard to the cost to the defendant of the proposed structured settlement as compared to the lump sum payment of damages when deciding whether a reasonable offer of compromise has been made.

CHAPTER 4—MISCELLANEOUS

PART 1—EXPRESSIONS OF REGRET

68 Application of pt 1

This part applies only in relation to a claim for personal injury damages.

69 Definition for pt 1

In this part—

“**liability**” includes the following—

10 *Uniform Civil Procedure Rules 1999*, chapter 11 (Evidence), part 5 (Expert evidence)

- (a) fault;
- (b) negligence.

70 Purpose of pt 1

The purpose of this part is to allow an individual to express regret about an incident that may give rise to an action for personal injury damages without being concerned that the expression of regret may be construed or used as an admission of liability on a claim or in a proceeding based on a claim arising out of the incident.

71 Meaning of “expression of regret”

An “**expression of regret**” made by an individual in relation to an incident alleged to give rise to an action for damages is any oral or written statement expressing regret for the incident to the extent that it does not contain an admission of liability on the part of the individual or someone else.

72 Expressions of regret are inadmissible

An expression of regret made by an individual in relation to an incident alleged to give rise to an action for damages at any time before a civil proceeding is started in a court in relation to the incident is not admissible in the proceeding.

Example—

Suppose a patient attended a health service and was diagnosed as suffering from gall stones. Removal of the gall bladder was recommended for treatment of the condition. The procedure was attempted, but there was an adverse outcome.

A health care provider stated that the provider was sorry that there was an adverse outcome.

The statement is inadmissible in any future proceeding against the health care provider in relation to a personal injury allegedly arising out of the procedure.

PART 2—JURY TRIALS

73 Exclusion of jury trial

A proceeding in a court based on a claim for personal injury damages must be decided by the court sitting without a jury.

PART 3—GENERAL

74 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may do any of the following—

- (a) prescribe offences for a contravention of a regulation, and fix a maximum penalty of not more than 20 penalty units for a contravention;
- (b) prescribe fees payable under this Act.

75 Regulations may contain transitional provisions

(1) A regulation may make provision about any matter for which this Act does not make provision or sufficient provision and it is necessary or convenient to make provision to assist the transition from the operation of the law as in force immediately before the commencement of this section.

(2) A regulation under this section may have retrospective operation to a date not earlier than the commencement.

(3) A regulation under this section may have effect despite any provision of this Act other than this section.

(4) A regulation under this section—

- (a) may only be made within 2 years after the commencement; and
- (b) unless the regulation sooner expires or is repealed, expires 1 year after the regulation commences.

(5) This section expires 3 years after the commencement.

CHAPTER 5—TRANSITIONAL PROVISIONS

76 Prescribed entities for ss 26 and 27

(1) Subsection (2) applies until a regulation under this Act prescribes an entity for section 26(1)(a).

(2) The entities mentioned in the *Personal Injuries Proceedings Regulation 2002*, section 12, immediately before the commencement of this section are taken to be prescribed for section 26(1)(a) and 27(1).

77 Jury trials

Despite the omission of the *Personal Injuries Proceedings Act 2002*, section 58¹¹ by chapter 6, part 1, of this Act and despite section 73¹² of this Act, a jury trial may be started or continued if it could have been started or continued under the *Personal Injuries Proceedings Act 2002*, section 77,¹³ immediately before the commencement of this section.

78 Amendment of regulation in sch 1 does not affect powers of Governor in Council

The amendment of a regulation in schedule 1 does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

11 *Personal Injuries Proceedings Act 2002*, section 58 (Exclusion of jury trial)

12 Section 73 (Exclusion of jury trial)

13 *Personal Injuries Proceedings Act 2002*, section 77 (Jury trials)

CHAPTER 6—AMENDMENT OF ACTS AND REGULATION

PART 1—AMENDMENT OF PERSONAL INJURIES PROCEEDINGS ACT 2002

79 Act amended in pt 1

This part amends the *Personal Injuries Proceedings Act 2002*.

80 Amendment of s 6 (Application of Act)

(1) Section 6(2)(b)—

omit, insert—

‘(b) injury as defined under the *WorkCover Queensland Act 1996*, but only to the extent that an entitlement to seek damages, as defined under that Act, for the injury is regulated by chapter 5 of that Act.

Example for paragraph (b)—

W, a worker, sustains an injury in the course of employment. The injury is caused by a design fault in a machine. As a result of sustaining the injury, W seeks damages against both E, W’s employer, and X Company, the designer of the machine.

Before starting a proceeding in a court for damages against E, W must comply with the pre-court procedures under the *WorkCover Queensland Act 1996*. Similarly, before starting a proceeding in a court for damages against X Company, W must comply with the pre-court procedures under this Act.’

(2) Section 6(3), ‘, other than section 58,’—

omit.

(3) Section 6(4)—

omit, insert—

‘(4) In addition, sections 40(2) and 56 do not apply to personal injury if the act causing the personal injury is an unlawful intentional act done with intent to cause personal injury or is unlawful sexual assault or other unlawful sexual misconduct.’

81 Amendment of s 7 (Provisions of this Act that are provisions of substantive law)

(1) Section 7, after ‘divisions 1,’—

insert—

‘1A,’.

(2) Section 7—

insert—

‘(2) Despite subsection (1), notice of a claim is to be given in the form approved for a notice of a claim when the notice is given.

‘(3) Also, subsection (2) has effect for notice of a claim given before the commencement of this subsection.’.

82 Amendment of s 9 (Notice of a claim)

(1) Section 9—

insert—

‘(1A) The approved form must provide for the notice to be in 2 parts, namely part 1 and part 2.

‘(1B) The approved form may provide that some or all information included in the notice be verified by statutory declaration.’.

(2) Section 9—

insert—

‘(2A) A regulation may require information or other material to accompany a particular part of a notice of a claim.’.

(3) Section 9(3), ‘The notice’—

omit, insert—

‘Part 1 of the notice’.

(4) Section 9—

insert—

‘(3A) Part 2 of the notice must be given, to the person to whom part 1 of the notice was given, within 2 months after the earlier of the following to happen—

- (a) the person to whom part 1 of the notice was given complies with section 10(1);
- (b) the person to whom part 1 of the notice was given is, under section 13, conclusively presumed to be satisfied part 1 of the notice is a complying part 1 notice of claim.’.

(5) Section 9(5)—

omit, insert—

‘**(5)** If part 1 of the notice is not given within the period prescribed under subsection (3) or section 9A(9)(b), the obligation to give the notice under subsection (1) continues and a reasonable excuse for the delay must be given in part 1 of the notice or by separate notice to the person against whom the proceeding is proposed to be started.’.

(6) Section 9(6), ‘the notice’—

omit, insert—

‘part 1 of the notice’.

(7) Section 9(6), after ‘subsection (3)’—

insert—

‘or section 9A(9)(b)’.

(8) Section 9(6)(b), ‘notice of a claim under this section’—

omit, insert—

‘part 1 of the notice’.

(9) Section 9(7), ‘notice is given under subsection (1)’—

omit, insert—

‘part 1 of a notice of a claim is given’.

(10) Section 9(7), ‘the notice’—

omit, insert—

‘it’.

(11) Section 9—

insert—

‘**(7A)** Subsection (7)(a) does not require the person (the “**first person**”) to whom part 1 of the notice is given by a claimant to give a copy of it to

another person if the claimant has advised the first person in writing that the claimant has given, or will give, a copy of it to the other person.’.

(12) Section 9(8)—

omit, insert—

‘**(8)** If the person against whom a proceeding based on a claim is proposed to be started is the State or an entity with the privileges and immunities of the State, the giving of part 1 of a notice of a claim is effective only if it—

- (a) is given to the Crown solicitor; and
- (b) identifies the government department or entity the claimant considers responsible for the conduct that caused the injury.

‘**(8A)** If part 1 of a notice of a claim is given under subsection (8), the government department or entity identified under subsection (8)(b) is taken to be the person to whom part 1 of the notice of a claim is given.’.

(13) Section 9(9), ‘a notice’—

omit, insert—

‘part 1 of a notice’.

(14) Section 9—

insert—

‘**(9A)** For subsection (3)(b), consultation by a claimant with a community legal service as defined under section 67A(2), whether before or after the commencement of this subsection, is to be disregarded.

‘**(9B)** This section is subject to section 9A.’.

83 Insertion of new s 9A

After section 9—

insert—

‘9A Particular provision for notice of a claim procedure for medical negligence cases

‘**(1)** This section applies to a claim based on a medical incident happening on or after the commencement of this section that is alleged to have given rise to personal injury.

‘(2) Before giving part 1 of a notice of a claim under section 9, the claimant must give written notice (“**initial notice**”) of the claim to the person against whom a proceeding based on the claim is proposed to be started.

‘(3) The initial notice must state it is given under this section and contain the following information—

- (a) the claimant’s full name and address;
- (b) any other name by which the claimant is known or has been known;
- (c) if the initial notice is given by the claimant’s parent or legal guardian, the parent’s or guardian’s name;
- (d) the claimant’s date of birth;
- (e) a description of the medical services alleged to have given rise to the personal injury;
- (f) if known, the name of the doctor who provided the medical services;
- (g) the date or dates when the medical services were provided;
- (h) the place or places at which the medical services were provided; and
- (i) a description of the personal injury alleged to have been suffered.

‘(4) The initial notice must be given within the period ending on the earlier of the following days—

- (a) the day 9 months after the day the medical incident happened or, if symptoms of the personal injury arising out of the incident were not immediately apparent, the first appearance of symptoms of the injury;
- (b) the day 1 month after the day the claimant first consults a lawyer about the possibility of seeking damages for the personal injury and the person against whom the proceeding is proposed to be started is identified.

‘(5) If the claimant is a child, the child’s parent or legal guardian may give the initial notice for the child.

‘(6) If the initial notice is not given within the period prescribed under subsection (4), the obligation to give the initial notice continues and a

reasonable excuse for the delay must be given in the initial notice to the person against whom the proceeding is proposed to be started.

‘(7) If the person against whom the proceeding is proposed to be started is the State or an entity with the privileges and immunities of the State, the giving of the initial notice is effective for subsection (2) only if it is given to—

- (a) if the place at which the medical incident happened is a place under the control of a district manager—the district manager for the place; or
- (b) if paragraph (a) does not apply—the chief executive officer of the department or entity having control of the place at which the medical incident happened.

‘(8) A person to whom an initial notice is given must, within 1 month after receiving the initial notice, give the claimant—

- (a) a written response advising whether any documents are held in relation to the medical services mentioned in the notice; and
- (b) copies of all documents held by the person about the medical services.

‘(9) The claimant—

- (a) may give part 1 of the notice of the claim only after giving the initial notice; and
- (b) must give part 1 of the notice within 12 months after the respondent complies with subsection (8); and
- (c) is not required to comply with section 9(3); and
- (d) must, as part of giving a complying part 1 notice of claim, give a written report from a medical specialist, competent to assess the medical incident alleged to have given rise to the personal injury, stating, in the medical specialist’s opinion—
 - (i) that there was a failure to meet an appropriate standard of care in providing medical services; and
 - (ii) the reasons justifying the opinion; and
 - (iii) that as a result of the failure, the claimant suffered personal injury; and
- (e) must give the report mentioned in paragraph (d) when giving part 1 of the notice of claim.

‘(10) If the claim is based on, or includes, an allegation of a failure to warn of a risk in relation to the provision of medical services, it is not necessary for subsection (9) for the report to comment on, or address, the alleged failure.

‘(11) To remove any doubt, it is declared that subsection (4)(a), to the extent that it provides that a notice may be given after the first appearance of symptoms of the personal injury, does not determine or affect when a cause of action in relation to the injury arose for the purposes of the *Limitation of Actions Act 1974*.

‘(12) No obligation exists on a person to whom an initial notice is given to investigate, assess or respond to the initial notice other than as required by subsection (8).

‘(13) For subsection (4)(b), consultation by a claimant with a community legal service as defined under section 67A(2) is to be disregarded.

‘(14) In this section—

“**district manager**”, for a place, means the manager appointed under the *Health Services Act 1991*, section 22, for the district in which the place is located.

“**medical incident**” means an accident, or other act, omission or circumstance involving a doctor happening during the provision of medical services.

“**medical specialist**” means a person registered or eligible for registration as a specialist registrant under the *Medical Practitioners Registration Act 2001*.’.

84 Amendment of s 10 (Person to whom notice of a claim is given must give preliminary response to claimant)

(1) Section 10(1), ‘notice of a claim’—

omit, insert—

‘part 1 of a notice of a claim’.

(2) Section 10(1), ‘the notice’—

omit, insert—

‘part 1 of the notice’.

(3) Section 10(5), ‘another notice’—
omit, insert—
‘another part 1 of a notice’.

85 Amendment of s 11 (Acknowledgement that a person is a proper respondent to a claim is not an admission of liability)

Section 11—

insert—

‘(2) Also, a person does not breach a term or condition of any relevant insurance policy only because the person gives notice under subsection (1).

‘(3) Further, an insurer does not agree to indemnify a person under any relevant insurance policy only because the insurer gives notice on behalf of the person under subsection (1).

‘(4) Subsection (2) or (3) has effect whether the notice under the subsection was given before or after the commencement of the subsection.’.

86 Amendment of s 12 (Respondent’s response to the notice of a claim)

(1) Section 12, heading—

omit, insert—

‘12 Respondent’s response to part 1 of a notice of a claim’.

(2) Section 12(1), ‘whom a notice’—

omit, insert—

‘whom part 1 of a notice’.

(3) Section 12(2)(a)—

omit, insert—

‘(a) stating whether the respondent is satisfied that part 1 of the notice is a complying part 1 notice of claim; and’.

87 Replacement of s 13 (Consequences for respondent of failure to respond to notice of a claim)

Section 13—

omit, insert—

‘13 Consequences for respondent of failure to respond to part 1 of a notice of a claim

If a claimant gives part 1 of a notice of a claim under this division or purportedly under this division to a person against whom a proceeding is proposed to be started, and the person does not respond to it under section 10 or 12¹⁴ within the prescribed period under the section, the person is conclusively presumed to be satisfied it is a complying part 1 notice of claim.’.

88 Amendment of s 14 (Claimant may add other respondents)

(1) Section 14(1)(a)—

omit, insert—

‘(a) part 1 of a notice of a claim mentioned in section 9; and’.

(2) Section 14(3)(a)—

omit, insert—

‘(a) the person must respond to part 1 of the notice as if it were given under section 9; and’.

89 Amendment of s 16 (Respondent may add other person as contributor)

Section 16(1), ‘complying notice’—

omit, insert—

‘complying part 1 notice’.

14 Section 10 (Person to whom notice of a claim is given must give preliminary response to claimant) or 12 (Respondent’s response to part 1 of a notice of a claim)

90 Amendment of s 18 (Claimant's failure to give notice of a claim)

(1) Section 18, heading—

omit, insert—

'18 Claimant's failure to give part 1 of a notice of a claim'.

(2) Section 18(1), 'complying notice'—

omit, insert—

'complying part 1 notice'.

(3) Section 18(1)(a), 'whom notice'—

omit, insert—

'whom part 1 of a notice'.

(4) Section 18(1)(a)(i), 'the notice'—

omit, insert—

'part 1 of the notice'.

(5) Section 18(1)(a)(ii)—

omit, insert—

'(ii) is conclusively presumed to be satisfied it is a complying part 1 notice of claim under section 13; or'.

91 Amendment of s 20 (Respondent must attempt to resolve claim)

(1) Section 20(1), 'complying notice'—

omit, insert—

'complying part 1 notice'.

(2) Section 20(1)(c), 'the notice'—

omit, insert—

'part 2 of the notice'.

(3) Section 20(2), from 'If a' to 'when—'—

omit, insert—

'If part 1 of a notice of a claim is not a complying part 1 notice of claim, a respondent is taken to have been given a complying part 1 notice of claim when—'.

92 Insertion of new ch 2, pt 1, div 1A

Chapter 2, part 1—

insert—

‘Division 1A—Special provisions for notification of claims in relation to injuries to children arising out of medical treatment

‘20A Limitation of actions not affected

‘This division does not limit or affect the *Limitation of Actions Act 1974*.

‘20B Application of div 1A

‘(1) This division applies if the claimant is, or at the time of the cause of action arose was, a child and the personal injury to which the claim relates arises or arose out of the provision of medical treatment to the claimant.

‘(2) This division applies regardless of when the personal injury to which the claim relates arose.

‘20C Notice of claim for damages for child

‘(1) A parent or legal guardian of the claimant must give part 1 of a notice of a claim under section 9 for the claimant before the earlier of the following days—

- (a) the day 6 years after the day when the parent or legal guardian knew or ought reasonably to have known that the personal injury had occurred;
- (b) the day 18 months after the day the parent or legal guardian first consults a lawyer about the possibility of seeking damages for the personal injury.

‘(2) A lawyer acting for a parent or legal guardian required by subsection (1) to give part 1 of a notice of a claim for a child must, as soon as practicable after being instructed by the parent or legal guardian to give part 1 of the notice to the person against whom the proceeding is proposed to be started, give part 1 of the notice to that person.

‘(3) A failure by a lawyer to comply with subsection (2) is unprofessional conduct or practice.

‘(4) For subsection (1)(b), consultation by a claimant with a community legal service as defined under section 67A(2), whether before or after the commencement of this subsection, is to be disregarded.

‘20D Respondent may apply for late claim not to proceed

‘If part 1 of the notice is given after the time mentioned in section 20C, the person to whom part 1 of the notice is given may apply to the court for an order that the claim not proceed further.

‘20E To what the court must have regard in deciding application

‘In deciding an application under section 20D, the court must consider the justice of the case having regard to the following—

- (a) the extent of the injuries;
- (b) the reason for the delay in giving part 1 of the notice;
- (c) any prejudice suffered by the applicant as a result of the delay;
- (d) the nature of the parties’ conduct;
- (e) any other relevant matter.

‘20F Court may order that certain costs not be recovered

‘(1) This section applies if an application under section 20D is dismissed.

‘(2) The claimant is not entitled to recover any of the following amounts in relation to any period before the giving of part 1 of the notice, unless the court orders otherwise—

- (a) an amount for costs incurred by the claimant’s parent or legal guardian for medical or other expenses, or legal costs paid or incurred;
- (b) an amount for gratuitous services provided by the parent or legal guardian.

‘20G Notice of adverse incidents

‘(1) A person who provides medical treatment to a child may give a parent or legal guardian of the child a written notice of an adverse event arising out of the treatment.

‘(2) The notice may be accompanied by an expression of regret under the *Civil Liability Act 2003*, chapter 4, part 1¹⁵ or an offer to remedy any harm suffered as a result of the incident, or both an expression of regret and offer.

‘(3) A notice of an adverse event is not an admission of liability and is inadmissible in any subsequent proceeding in relation to the event, other than a proceeding mentioned in section 20H.

‘(4) A person who gives a notice of an adverse event must as soon as practicable after giving the notice give to the public trustee a copy of the notice and any document provided to a parent or legal guardian with the notice.

‘20H Time by which claim must be made after notice of adverse incident

‘(1) If a notice of an adverse event is given, and part 1 of a notice of a claim under section 9 is not given within the time prescribed under section 20C, notice of a claim under section 9 can be given only with the leave of the court.

‘(2) The onus of showing why the claim should proceed is with the claimant.

‘20I Matters to which the court must have regard in deciding application

‘In deciding whether leave should be granted under section 20H to give a notice of a claim, the court must consider the justice of the case having regard to the following—

- (a) the extent of the injuries;
- (b) the reason for the delay in giving part 1 of the notice;
- (c) any prejudice suffered by the respondent as a result of the delay;

15 *Civil Liability Act 2003*, chapter 4 (Miscellaneous), part 1 (Expressions of regret)

- (d) the nature of the parties' conduct;
- (e) any other relevant matter.

'20J Court may order that certain costs not be recovered

'(1) This section applies if the court grants leave to give notice of a claim under section 20H.

'(2) The claimant is not entitled to recover any of the following amounts in relation to any period before giving part 1 of the notice of a claim, unless the court orders otherwise—

- (a) an amount for costs incurred by the claimant's parent or legal guardian for medical or other expenses, or legal costs paid or incurred;
- (b) an amount for gratuitous services provided by the parent or legal guardian.'

93 Omission of s 26 (Mitigation of damages)

Section 26—

omit.

94 Amendment of s 27 (Duty of respondent to give documents and information to claimant)

(1) Section 27(1)(a), after 'possession'—

insert—

'that are directly relevant to a matter in issue in the claim'.

(2) Section 27(2)(a), 'complying notice'—

omit, insert—

'complying part 1 notice'.

95 Insertion of new s 29A

After section 29—

insert—

‘29A Alternative provision if number of pages exceeds 200

‘(1) This section applies despite section 9A(9), 27, 28 or 29 (a “**relevant section**”).

‘(2) This section applies to the extent a relevant section requires a person (a “**relevant person**”) to give copies of documents or other things to someone else and the total number of pages of the copies exceeds 200 pages.

‘(3) Within the time a relevant person would, apart from this section, be required to give copies of documents or other things to someone else under a relevant section, the relevant person need only offer the other person a reasonable opportunity to inspect the documents or other things.

‘(4) If the other person, whether on inspection or otherwise, by written notice given to the relevant person, requires the relevant person to give the other person copies of some or all of the documents or other things, the relevant person must comply with the requirement in the time mentioned in subsection (5).

‘(5) For subsection (4), the time is—

- (a) if the total number of pages does not exceed 200 pages—1 month after the requirement is made under the subsection; or
- (b) otherwise—1 month after payment by the other person of an amount of 50c for each page the total number of pages exceeds 200 pages.

‘(6) If a relevant person does not act under subsection (3), the relevant section concerned continues to apply.’.

96 Replacement of s 34 (No requirement to give documents twice)

Section 34—

omit, insert—

‘34 No requirement to give documents or other information twice or if already in other party’s possession

‘No provision of this Act requires a party to give a document or other information to another party if the document or information has already been given to the other party under another provision or is otherwise already in the possession of the other party.’.

97 Amendment of s 36 (Compulsory conference)

(1) Section 36(3)(a), ‘complying notice’—

omit, insert—

‘complying part 1 notice’.

(2) Section 36(3)(a), ‘a notice’—

omit, insert—

‘part 1 of a notice’.

(3) Section 36(3)(b)—

omit, insert—

‘(b) if, under section 12,¹⁶ a person to whom part 1 of a notice of a claim is given gives notice to the claimant that the person is a proper respondent to the claim—the day 6 months after the person gives notice or, if there is more than 1 person to whom part 1 of a notice of a claim is given, the day 6 months after the day after the last person gives notice to the claimant.’.

98 Amendment of s 42 (Time for starting proceeding)

(1) Section 42(2)(a), ‘complying notice’—

omit, insert—

‘complying part 1 notice’.

(2) Section 42(2)(a), ‘a notice’—

omit, insert—

‘part 1 of a notice’.

99 Amendment of s 43 (Need for urgent proceeding)

Section 43(5(b), ‘49,’—

omit.

16 Section 12 (Respondent’s response to part 1 of a notice of a claim)

100 Omission of ch 2, pt 2 (Expressions of regret)

Chapter 2, part 2—

omit.

101 Omission of ss 49–55

Sections 49 to 55—

omit.

102 Omission of s 58 (Exclusion of jury trial)

Section 58—

omit.

103 Amendment of s 59 (Alteration of period of limitation)

(1) Section 59(1), ‘notice’—

omit, insert—

‘part 1 notice’.

(2) Section 59(2)(a), ‘the notice’—

omit, insert—

‘the complying part 1 notice’.

104 Omission of ch 2, pt 4 (Structured settlements)

Chapter 2, part 4—

omit.

105 Insertion of new s 67A

After section 67—

insert—

‘67A Exemption from s 67(3) and (4)

‘(1) A person does not commit an offence against section 67(3)(a) or (4)(a) if—

- (a) the person gives the potential claimant, or someone on the potential claimant's behalf, the name, address or telephone number of a particular lawyer or firm of lawyers (the **“information”**); and
- (b) the person, in giving the information, is acting on behalf of a community legal service or industrial organisation; and
- (c) the community legal service or industrial organisation approved of the giving of that information by the person.

‘(2) In this section—

“community legal service” means an entity, prescribed under a regulation, that provides free legal services to the community or a section of the community.

“industrial organisation” means a federal organisation, or an organisation, as defined under the *Industrial Relations Act 1999*, section 409.’.

106 Omission of ch 3, pt 2

Chapter 3, part 2—

omit.

107 Insertion of new s 73A

After section 73—

insert—

‘73A Proceeding

‘(1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886* before a magistrate on the complaint of—

- (a) the Attorney-General; or
- (b) a person authorised by the Attorney-General to take the proceeding.

‘(2) The proceeding must start—

- (a) within 1 year after the commission of the offence; or

- (b) within 6 months after the commission of the offence comes to the knowledge of the complainant, but not later than 2 years after the commission of the offence.

‘(3) A statement in a complaint that—

- (a) the complainant is authorised by the Attorney-General to take the proceeding; or
- (b) the commission of the alleged offence came to the knowledge of the complainant on a particular date;

is evidence of the authorisation or when the offence came to the knowledge of the complainant.’.

108 Amendment of s 77D (Alteration of limitation period for personal injury arising out of an incident happening before 18 June 2002)

Section 77D(2)(a), after ‘2003’—

insert—

‘—before or on 18 June 2003’.

109 Insertion of new ch 4, pt 3

After section 77E—

insert—

‘PART 3—TRANSITIONAL PROVISIONS FOR CIVIL LIABILITY ACT 2003

‘78 Definitions for pt 3

In this part—

“**commencement**” means the commencement of the provision in which the term is used.

“**pre-amended Act**” means this Act as in force before the commencement of the *Civil Liability Act 2003*, chapter 6, part 1.¹⁷

¹⁷ *Civil Liability Act 2003*, chapter 6 (Amendment of Acts and regulation), part 1 (Amendment of Personal Injuries Proceedings Act 2002)

‘79 Notice of a claim given under the pre-amended Act

‘(1) This section applies if a notice of a claim has been given under section 9 or 14 of the pre-amended Act.

‘(2) The prescribed sections of the pre-amended Act continue to apply to the notice as if the *Civil Liability Act 2003*, chapter 6, part 1, had not commenced.

‘(3) For subsection (2), the definition “complying notice of claim” in the schedule of the pre-amended Act also continues to apply.

‘(4) In this section—

“**prescribed sections**” means sections 9, 10, 12, 13, 14, 16, 18, 20, 27(2)(a), 36, 42 and 59.

‘80 Special provision for notification of claims in relation to injuries to children arising out of medical treatment

‘(1) This section applies if the day mentioned for a claim in section 20C(1)(a) or (b) occurred before the commencement and a period of limitation has not ended in relation to the claim.

‘(2) For section 20C(1)(a), the day when the parent or legal guardian knew or ought reasonably to have known that the personal injury had occurred, is taken to be the date of commencement.

‘(3) For section 20C(1)(b), the day the parent or legal guardian first consults a lawyer about the possibility of seeking damages for the personal injury, is taken to be the day 18 months after the date of commencement.

‘81 Particular provisions having continuing effect

The following provisions as in force immediately before the commencement of this section continue to have effect in relation to personal injury arising out of an incident happening before the day the *Civil Liability Act 2003* received assent as if that Act had not been enacted—

- chapter 2 (Claims), part 2 (Expressions of regret)
- section 51 (Damages for loss of earnings or earning capacity)
- section 52 (Discount rate to be applied in calculating the present value of future loss or gratuitous services)

- section 53 (Damages for loss of consortium or loss of servitium)
- section 54 (Damages for gratuitous services)
- section 55 (Interest)
- chapter 3 (Other matters), part 2 (Protection of persons performing duties to enhance public safety).’.

110 Amendment of schedule (Dictionary)

(1) Schedule, definitions “complying notice of claim” and “expression of regret”—

omit.

(2) Schedule—

insert—

‘ **“complying part 1 notice of claim”** means part 1 of a notice of a claim complying with section 9 and, if a respondent is added under section 14, section 14 that is given as required under chapter 2, part 1, division 1.’.

PART 2—OTHER AMENDMENTS

111 Acts and regulation amended in sch 1

Schedule 1 amends the Acts and regulation it mentions.

SCHEDULE 1**AMENDMENT OF ACTS AND REGULATION**

section 111

LAW REFORM ACT 1995**1 Part 3, division 1, heading—***omit, insert—**‘Division 1—Preliminary***‘4A Application of part**This part applies subject to the *Civil Liability Act 2003*.’.**MOTOR ACCIDENT INSURANCE ACT 1994****1 Section 4, definition “expression of regret”—***omit.***2 Part 4, division 3A—***omit.***3 Section 54—***omit.*

SCHEDULE 1 (continued)

4 Section 55—

omit, insert—

‘55 Exemplary, punitive or aggravated damages

‘(1) Despite the *Civil Liability Act 2003*, section 52,¹⁸ if the court is of the opinion that the conduct of an insured person is so reprehensible that an award of exemplary, punitive or aggravated damage is justified, the court may give a separate judgment against the insured person for the payment of exemplary, punitive or aggravated damages.

‘(2) An insured person is not entitled, under a CTP insurance policy, to an indemnity against an award of exemplary, punitive or aggravated damages.’.

5 Sections 55A to 55E—

omit.

6 Section 56—

omit.

7 Part 4, division 6B—

omit.

¹⁸ *Civil Liability Act 2003*, section 52 (Exemplary, punitive or aggravated damages can not be awarded)

SCHEDULE 1 (continued)

**PERSONAL INJURIES PROCEEDINGS REGULATION
2002****1 Section 5—**

omit, insert—

‘5 Notice of claim—documents for Act, s 9(2)(c)

‘(1) For section 9(2)(c) of the Act, part 1 of the notice of a claim must be accompanied by the following documents—

- (a) for a claim, other than a health care claim, a copy of any certificate signed by a doctor relevant to the personal injury to which the claim relates that is in the claimant’s possession;
- (b) for a dependency claim, a copy of the injured person’s death certificate;
- (c) for a health care claim, a copy of any advice or warnings provided to the injured person by a health care provider about the treatment alleged to have given rise to the personal injury that is in the claimant’s possession;
- (d) for a health care claim, a copy of any consent provided to the health care provider by the injured person about the treatment alleged to have given rise to the personal injury that is in the claimant’s possession.

(2) For section 9(2)(c) of the Act, part 2 of the notice of a claim must be accompanied by a copy of any other document relevant to the personal injury, economic loss, treatment or rehabilitation that is in the claimant’s possession.’.

2 Section 6(a), ‘the notice’—

omit, insert—

‘part 1 of the notice’.

SCHEDULE 1 (continued)

3 Section 7(1)(a), ‘a notice’—*omit, insert—*

‘part 1 of a notice’.

4 Section 8(1)(a), ‘the notice’—*omit, insert—*

‘part 1 of the notice’.

SCHEDULE 2

DICTIONARY

section 8

“**a professional**”, for chapter 2, part 1, division 5, see section 20.

“**average weekly earnings**” means the seasonally adjusted amount of Queensland full-time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician’s report on average weekly earnings, averaged over the last 4 quarters for which the statistician’s report is available.

“**claim**” means a claim, however described, for damages based on a liability for personal injury, damage to property or economic loss, whether that liability is based in tort or contract or in or on another form of action, including breach of statutory duty and, for a fatal injury, includes a claim for the deceased’s dependants or estate.

“**community organisation**”, for chapter 2, part 3, division 2, see section 38.

“**community work**”, for chapter 2, part 3, division 2, see section 38.

“**contributory negligence**” see the *Law Reform Act 1995*, section 10.

“**damages**” includes any form of monetary compensation.

“**dangerous recreational activity**”, for chapter 2, part 1, division 4, see section 18.

“**defendant**”, for chapter 2, part 2, see section 29.

“**dependency claim**” means a claim in relation to a fatal injury brought on behalf of a deceased’s dependants or estate.

“**dust-related condition**” means—

- (a) any of the following diseases—
- aluminosis
 - asbestosis
 - asbestos induced carcinoma

SCHEDULE 2 (continued)

- asbestos related pleural diseases
 - bagassosis
 - berylliosis
 - byssinosis
 - coal dust pneumoconiosis
 - farmers' lung
 - hard metal pneumoconiosis
 - mesothelioma
 - silicosis
 - silico-tuberculosis
 - talcosis; or
- (b) any other pathological condition of the lung, pleura or peritoneum that is attributable to dust.

“duty” means—

- (a) a duty of care in tort; or
- (b) a duty of care under contract that is concurrent and coextensive with a duty of care in tort; or
- (c) another duty under statute or otherwise that is concurrent with a duty of care mentioned in paragraph (a) or (b).

“duty of care” means a duty to take reasonable care or to exercise reasonable skill (or both duties).

“expression of regret” see section 71.

“function”, for chapter 2, part 3, division 1, see section 34.

“future loss” means all or any of the following—

- (a) future economic loss;
- (b) future general expenses;
- (c) future medical expenses.

“general damages”, for chapter 3, see section 51.

“harm” means harm of any kind, including the following—

SCHEDULE 2 (continued)

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

“intoxicated”, in relation to a person, means that the person is under the influence of alcohol or a drug to the extent that the person’s capacity to exercise proper care and skill is impaired.

“injury”, for chapter 3, see section 51.

“liability”, for chapter 4, part 1, see section 69.

“loss of earnings” means—

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

“motor vehicle” means a vehicle for which registration is required under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999* and includes a trailer.

“obvious risk”—

- (a) for chapter 2, part 1, division 3, see section 13; and
- (b) chapter 2, part 1, division 4, see section 18.

“organised”, for chapter 2, part 3, division 2, see section 38.

“personal injury” includes—

- (a) fatal injury; and
- (b) pre-natal injury; and
- (c) psychological or psychiatric injury; and
- (d) disease.

“personal injury damages” means damages that relate to the death of or injury to a person.

“person in distress”, for chapter 2, part 1, division 7, see section 25.

“public or other authority”, for chapter 2, part 3, division 1, see section 34.

SCHEDULE 2 (continued)

“structured settlement”, for chapter 3, part 4, see section 63.

“volunteer”, for chapter 2, part 3, division 2, see section 38.

“work”, for chapter 2, part 3, division 2, see section 38.