

Queensland



CIVIL LIABILITY ACT 2003

**Reprinted as in force on 9 April 2003
(Act not amended up to this date)**

Reprint No. 1

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- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

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Queensland



CIVIL LIABILITY ACT 2003

TABLE OF PROVISIONS

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

16	No liability for materialisation of inherent risk	13
	<i>Division 4—Dangerous recreational activities</i>	
17	Application of div 4	14
18	Definitions for div 4	14
19	No liability for personal injury suffered from obvious risks of dangerous recreational activities	14
	<i>Division 5—Duty of professionals</i>	
20	Definition for div 5	14
21	Proactive and reactive duty of doctor to warn of risk	15
22	Standard of care for professionals	15
	<i>Division 6—Contributory negligence</i>	
23	Standard of care in relation to contributory negligence	16
24	Contributory negligence can defeat claim	16
	<i>Division 7—Enhancement of public safety</i>	
25	Definition for div 7	16
26	Protection of persons performing duties for entities to enhance public safety	17
27	Protection of prescribed entities performing duties to enhance public safety	17
	PART 2—PROPORTIONATE LIABILITY	
28	Application of pt 2	18
29	Definition for pt 2	18
30	Proportionate liability	18
31	Circumstances in which liability of defendants is enlarged	19
32	Defendant may seek contribution from person not a party to the original proceeding	20
33	Part does not prevent other liability or operation of other Acts.	20
	PART 3—LIABILITY OF PUBLIC AND OTHER AUTHORITIES AND VOLUNTEERS	
	<i>Division 1—Public and other authorities</i>	
34	Definitions for div 1	20
35	Principles concerning resources, responsibilities etc. of public or other authorities	21
36	Proceedings against public or other authorities based on breach of statutory duty	21

37	Restriction on liability of public or other authorities with functions of road authorities	22
	<i>Division 2—Volunteers</i>	
38	Interpretation	22
39	Protection of volunteers.	23
40	Liability not excluded for criminal acts	23
41	Liability of intoxicated volunteer not excluded.	23
42	Liability of volunteer not excluded if acting outside scope of activities or contrary to instructions	24
43	Liability not excluded if insurance required	24
44	Liability not excluded for motor accidents	24
	PART 4—EXCLUSION FROM CLAIMING DAMAGES BECAUSE OF PARTICULAR BEHAVIOUR	
	<i>Division 1—Criminal behaviour</i>	
45	Criminals not to be awarded damages.	24
	<i>Division 2—Intoxication</i>	
46	Effect of intoxication on duty and standard of care	25
47	Presumption of contributory negligence if person who suffers harm is intoxicated	26
48	Presumption of contributory negligence if person who suffers harm relies on care and skill of person known to be intoxicated	26
49	Additional presumption for motor vehicle accident	27
	CHAPTER 3—ASSESSMENT OF DAMAGES FOR PERSONAL INJURY	
	PART 1—PRELIMINARY	
50	Application of ch 3	28
51	Definitions for ch 3	28
	PART 2—EXEMPLARY AND SIMILAR DAMAGES	
52	Exemplary, punitive or aggravated damages can not be awarded	29
	PART 3—ASSESSMENT OF DAMAGES	
53	Notice requiring mitigation of damages	29
54	Damages for loss of earnings or earning capacity.	30
55	When earnings can not be precisely calculated.	30
56	Damages for loss of superannuation entitlements.	31

57	Discount rate to be applied in calculating the present value of future loss or gratuitous services	31
58	Damages for loss of consortium or loss of servitium	31
59	Damages for gratuitous services	32
60	Interest	32
61	Assessment by court of injury scale	33
62	Calculation of general damages	34
PART 4—STRUCTURED SETTLEMENTS		
63	Definition for pt 4	35
64	Court required to inform parties of proposed award	36
65	Court may make consent order for structured settlement	36
66	Obligation of legal practitioners to provide advice	36
67	Offer of structured settlement—legal costs	36
CHAPTER 4—MISCELLANEOUS		
PART 1—EXPRESSIONS OF REGRET		
68	Application of pt 1	37
69	Definition for pt 1	37
70	Purpose of pt 1	37
71	Meaning of “expression of regret”	37
72	Expressions of regret are inadmissible	37
PART 2—JURY TRIALS		
73	Exclusion of jury trial	38
PART 3—GENERAL		
74	Regulation-making power	38
75	Regulations may contain transitional provisions.	38
CHAPTER 5—TRANSITIONAL PROVISIONS		
76	Prescribed entities for ss 26 and 27	39
77	Jury trials	39
78	Amendment of regulation in sch 1 does not affect powers of Governor in Council	40
SCHEDULE 2		41
DICTIONARY		

ENDNOTES

1	Index to endnotes	45
2	Date to which amendments incorporated.	45
3	Key	45
4	Table of reprints	46
5	List of legislation	46
6	List of annotations	46

CIVIL LIABILITY ACT 2003

[reprinted as in force on 9 April 2003]

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

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 37 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 3², 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

3 ‘Volenti non fit injuria’

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.

(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 3 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.

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—

- (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.

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

PART 2—PROPORTIONATE LIABILITY⁶**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.

⁶ Chapter 2, part 2 (sections 28–33) had not commenced on or before the reprint date.

(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;*⁷ or
- (b) *the Trade Practices Act 1974 (Cwlth), section 52.*⁸

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.*

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—

⁷ *Fair Trading Act 1989, section 38 (Misleading or deceptive conduct—TPA s 52)*

⁸ *Trade Practices Act 1974 (Cwlth), section 52 (Misleading or deceptive conduct)*

- (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 risk⁹ 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

9 ‘Volenti non fit injuria’

(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.

CHAPTER 3—ASSESSMENT OF DAMAGES FOR PERSONAL INJURY

PART 1—PRELIMINARY

50 Application of ch 3

Subject to section 5,¹⁰ 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.

¹⁰ Section 5 (Civil liability excluded from Act)

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—

- (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 5¹ 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.

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

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—

- (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 58¹² by chapter 6, part 1, of this Act and despite section 73¹³ 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 77,¹⁴ immediately before the commencement of this section.

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

13 Section 73 (Exclusion of jury trial)

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

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.

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.

ENDNOTES

1 Index to endnotes

		Page
2	Date to which amendments incorporated	45
3	Key	45
4	Table of reprints	46
5	List of legislation	46
6	List of annotations	46

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Civil Liability Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Notes
0A	none	2 December 2002	
1	none	9 April 2003	

5 List of legislation

Civil Liability Act 2003 No. 16

date of assent 9 April 2003

ss 1–2, ch 2 pt 1 div 7, pt 3 div 2, pt 4, ch 3 pts 2, 4, ss 53–54, 56–60, ch 4 pts 1–2, ch 5, ch 6, sch 1 commenced on date of assent (see s 2(2))

ch 2 pt 2 not yet proclaimed into force (see s 2(3))

remaining provisions commenced 2 December 2002 (see s 2(1))

6 List of annotations

Regulations may contain transitional provisions

s 75 exp 2 December 2005 (see s 75(5))

CHAPTER 6—AMENDMENT OF ACTS AND REGULATION

ch 6 (ss 79–111) om R1 (see RA ss 7(1)(k) and 40)

SCHEDULE 1—AMENDMENT OF ACTS AND REGULATION

om R1 (see RA s 40)