

South Australia

Civil Liability Act 1936

An Act to consolidate certain Acts relating to wrongs.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Act to bind the Crown
- 3 Interpretation
- 4 Application of Act

Part 3—Liability for animals

- 18 Liability for animals

Part 4—Occupiers liability

- 19 Interpretation
- 20 Occupier's duty of care
- 21 Landlord's liability limited to breach of duty to repair
- 22 Exclusion of conflicting common law principles

Part 5—Wrongful acts or neglect causing death

- 23 Liability for death caused wrongfully
- 24 How to bring action etc
- 25 Restriction of actions and time of commencement
- 26 Particulars of person for whom damages claimed
- 27 Provision where no executor or administrator or action not commenced within 6 months
- 28 Liability to parents of person wrongfully killed
- 29 Liability to surviving spouse or domestic partner of person wrongfully killed
- 30 Further provisions as to *solatium* etc

Part 6—Negligence

Division 1—Duty of care

- 31 Standard of care
- 32 Precautions against risk
- 33 Mental harm—duty of care

Division 2—Causation

- 34 General principles
- 35 Burden of proof

Division 3—Assumption of risk

- 36 Meaning of obvious risk
- 37 Injured persons presumed to be aware of obvious risks
- 38 No duty to warn of obvious risk
- 39 No liability for materialisation of inherent risk

Division 4—Negligence on the part of persons professing to have a particular skill

- 40 Standard of care to be expected of persons professing to have a particular skill
- 41 Standard of care for professionals

Division 5—Liability of road authorities

- 42 Liability of road authorities

Division 6—Exclusion of liability for criminal conduct

- 43 Exclusion of liability for criminal conduct

Part 7—Contributory negligence

- 44 Standard of contributory negligence
- 45 Contributory negligence in cases brought on behalf of dependants of deceased person
- 46 Presumption of contributory negligence where injured person intoxicated
- 47 Presumption of contributory negligence where injured person relies on care and skill of person known to be intoxicated
- 48 Evidentiary provision relating to intoxication
- 49 Non-wearing of seatbelt etc
- 50 How case is dealt with where damages are liable to reduction on account of contributory negligence

Part 7A—Child abuse—liability of institutions

Division 1—Preliminary

- 50A Interpretation
- 50B Meaning of associated trust
- 50C When persons are associated with institution
- 50D Application of Part

Division 2—Duty of institutions to prevent child abuse

- 50E Duty to prevent child abuse
- 50F Proof of whether duty was breached

Division 3—Vicarious liability of institutions

- 50G Institutions vicariously liable for abuse of child by employee

Division 4—Liability of particular institutions and office holders

- 50H Liability of incorporated institution that was unincorporated at time of abuse
- 50I Liability of current office holder of unincorporated institution
- 50J Claim against unincorporated institution and nomination of appropriate defendant
- 50K Proceeding against nominee of unincorporated institution

Division 5—Satisfaction of liability

- 50L Assets available to satisfy liability of institution

-
- 50M Assets available to satisfy liability of nominee
 - 50N Assets available to satisfy liability of current office holder
 - 50O Satisfaction of liability by trustee of associated trust
 - 50P References to liability

Division 6—Miscellaneous

- 50Q Entities may act despite other laws and duties
- 50R Continuity of institutions
- 50S Continuity of offices
- 50T Corporations Act displacement
- 50U Proceedings despite previous judgment

Part 7B—Child abuse—setting aside settlements

- 50V Meaning of affected agreement
- 50W Court may set aside affected agreement
- 50X Effect of setting aside affected agreement

Part 8—Damages for personal injury

- 51 Application of this Part
- 52 Damages for non-economic loss
- 53 Damages for mental harm
- 54 Damages for loss of earning capacity
- 55 Lump sum compensation for future losses
- 56 Exclusion of interest on damages compensating non-economic loss or future loss
- 56A Additional provisions relating to motor vehicle injuries (economic loss)
- 57 Exclusion of damages for cost of management or investment
- 58 Damages in respect of gratuitous services
- 58A Limitations on damages for participants in lifetime support scheme
- 58B Additional provisions relating to death on account of a motor vehicle injury

Part 9—Miscellaneous

Division 1—Rights as between employer and employee

- 59 Rights as between employer and employee

Division 2—Remedies against certain shipowners

- 60 Remedy against shipowners and others for injuries

Division 3—Damage by aircraft

- 61 Damage by aircraft
- 62 Exclusion of liability for trespass or nuisance

Division 4—Abolition of rule of common employment

- 63 Abolition of rule of common employment

Division 5—Actions in tort relating to spouses and domestic partners

- 64 Abolition of rule as to unity of spouses
- 65 Spouse or domestic partner may claim for loss or impairment of consortium
- 66 Damages where injured spouse or domestic partner participated in business

Division 6—Limitation on the award of damages for the costs of raising a child

67 Limitation on the award of damages for the costs of raising a child

Division 7—Abolition of actions of seduction, enticement and harbouring

68 Abolition of actions for enticement, seduction and harbouring

Division 8—Unreasonable delay in resolution of claim

69 Definitions

70 Damages for unreasonable delay in resolution of a claim

71 Regulations

Division 9—Liability for perjury in civil actions

72 Liability for perjury in civil actions

Division 10—Racial victimisation

73 Racial victimisation

Division 11—Good samaritans

74 Good samaritans

Division 11A—Food donors and distributors

74A Food donors and distributors

Division 11B—Supply of food in customers' containers

74B Supplying food in customers' own containers

Division 12—Effect of apology on liability

75 Effect of apology on liability

Division 12A—Exclusion of civil liability where Crown publishes certain information

75A Exclusion of civil liability where Crown publishes certain information

Division 13—Regulations

76 Assessment of motor vehicle injuries

77 Regulations—general provisions

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Civil Liability Act 1936*.

2—Act to bind the Crown

This Act binds the Crown in right of South Australia and, so far as the legislative power of the Parliament of South Australia permits, the Crown in all its other capacities.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

accident means an incident out of which personal injury arises and includes a motor accident;

brother includes half-brother and step-brother;

child includes son, daughter, grandson, granddaughter, step-son and step-daughter;

consequential mental harm means mental harm that is a consequence of bodily injury to the person suffering the mental harm;

Consumer Price Index means the Consumer Price Index (all groups index for Adelaide) published by the Australian Statistician under the *Census and Statistics Act 1905* (Cwth);

contributory negligence means a failure by a person who suffers harm to exercise reasonable care and skill for his or her own protection or for the protection of his or her own interests;

damages means compensation or damages for harm and includes solatium but does not include—

- (a) workers compensation; or
- (b) compensation under a statutory scheme for compensating victims of crime;

domestic partner, in relation to any cause of action arising under this Act, means—

- (a) a person declared under the *Family Relationships Act 1975* to have been a domestic partner on the day on which the cause of action arose; or
- (b) a person who was in a registered relationship on the day on which the cause of action arose;

drive includes ride, and **driver** and **rider** have corresponding meanings;

duty of care means a duty to take reasonable care or to exercise reasonable skill (or both);

harm includes loss of life, personal injury, damage to property, economic loss and loss of any other kind;

health care service includes—

- (a) a diagnostic service;
- (b) a therapeutic service;
- (c) any other service directed at maintaining or restoring health;

intoxicated—a person is intoxicated if under the influence of alcohol or a drug to the extent that the person's capacity to exercise due care and skill is impaired;

medical expenses includes—

- (a) the fees of medical practitioners and other professional medical advisers and therapists; and
- (b) the cost of hospitalisation; and
- (c) the cost of medicines and therapeutic appliances;

mental harm means impairment of a person's mental condition;

motor accident means an incident in which personal injury is caused by or arises out of the use of a motor vehicle;

motor vehicle means—

- (a) a motor vehicle as defined in the *Motor Vehicles Act 1959*; or
- (b) a vehicle operated on a railway, tramway or other fixed track or path by—
 - (i) a person who holds a contract, licence or authority under the *Passenger Transport Act 1994*; or
 - (ii) a person who holds an accreditation under the *Rail Safety Act 1996*;

MVA motor accident means a motor accident where the motor vehicle is a motor vehicle as defined in the *Motor Vehicles Act 1959*;

negligence means failure to exercise reasonable care and skill, and includes a breach of a tortious, contractual or statutory duty of care;

non-economic loss means—

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

obvious risk—see section 36;

parent includes father, mother, grandfather, grandmother, step-father and step-mother;

passenger compartment of a motor vehicle means a part of the vehicle designed for the carriage of passengers;

personal injury or **injury** means bodily injury and includes—

- (a) mental harm;
- (b) death;

precaution includes any action to avoid or reduce the risk of harm;

prescribed discount rate means—

- (a) if no percentage is fixed by regulation for the purposes of this definition—5 per cent; or
- (b) if such a percentage is fixed by regulation—the percentage so fixed;

prescribed maximum means—

- (a) in relation to an injury arising from an accident that occurred during 2002—\$2.2 million; or
- (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2.2 million the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;

prescribed minimum means—

- (a) in relation to an injury arising from an accident that occurred during 2002—\$2 750; or
- (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2 750 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;

pure mental harm means mental harm other than consequential mental harm;

registered relationship means a relationship that is registered under the *Relationships Register Act 2016*, and includes a corresponding law registered relationship under that Act;

sister includes half-sister and step-sister;

spouse, in relation to any cause of action arising under this Act, means a person who was legally married to another on the day on which the cause of action arose;

State average weekly earnings means the amount determined in accordance with the regulations by reference to publications of the Australian Statistician.

- (2) For the purposes of this Act, personal injury will arise from a motor accident if the personal injury is caused by or arises out of the use of a motor vehicle.

4—Application of Act

- (1) This Act is intended to apply to the exclusion of inconsistent laws of any other place to the determination of liability and the assessment of damages for harm arising from an accident occurring in this State.
- (2) Subsection (1) is intended to extend, and not to limit in any way, the application of this Act in accordance with its terms.
- (4) This Act does not affect a right to compensation under Part 4 of the *Return to Work Act 2014*.

Part 3—Liability for animals

18—Liability for animals

- (1) Subject to this section, liability for injury, damage or loss caused by an animal shall be determined in accordance with the principles of the law of negligence.

- (2) In determining the standard of care to be exercised in relation to the keeping, management and control of an animal, a court shall take into account—
 - (a) the nature and disposition of the animal (which shall be determined according to the facts of the particular case and not according to any legal categorisation); and
 - (b) any other relevant matters.
- (3) It is not necessary for a person seeking damages for injury, damage or loss caused by an animal to establish prior knowledge on the part of any other person of a vicious, dangerous or mischievous propensity of the animal.
- (4) In any proceedings relating to injury, damage or loss caused by an animal, it shall not be a circumstance of excuse, mitigation or justification that the injury, damage or loss was caused by reason of the animal straying onto a public street or road.
- (5) In an action arising from injury, damage or loss caused by an animal to an employee, it shall not be presumed that the employee voluntarily assumed risks attendant upon his employment that may have arisen from working in proximity to animals.
- (6) A court in determining whether a reasonable standard of care was exercised in a particular case shall take into account measures taken—
 - (a) for the custody and control of the animal; and
 - (b) to warn against any vicious, dangerous or mischievous propensity that it might exhibit.
- (7) Notwithstanding subsection (6), the fact that in a particular case no measures were taken for the custody and control of an animal, or to warn against any vicious, dangerous or mischievous propensity that it might exhibit, does not necessarily show that a reasonable standard of care was not exercised.
- (8) Where a person incites, or knowingly permits, an animal to cause injury, damage or loss to another, he shall be liable in trespass for that injury, damage or loss.
- (9) Subject to subsection (10), this section operates to the exclusion of any other principles upon which liability for injury, damage or loss caused by an animal would, but for this subsection, be determined in tort.
- (10) This section—
 - (a) does not affect an action in nuisance where an animal is the cause of, or involved in, the nuisance; and
 - (b) does not derogate from any other statutory right or remedy; and
 - (c) does not affect any cause of action that arose before the commencement of the *Wrongs Act Amendment Act 1983*.

Part 4—Occupiers liability

19—Interpretation

In this Part, unless the contrary intention appears—

dangerous includes unsafe;

landlord includes a landlord under a statutory tenancy;

occupier of premises means a person in occupation or control of the premises, and includes a landlord;

premises means—

- (a) land; or
- (b) a building or structure (including a moveable building or structure); or
- (c) a vehicle (including an aircraft or a ship, boat or vessel).

20—Occupier's duty of care

- (1) Subject to this Part, the liability of the occupier of premises for injury, damage or loss attributable to the dangerous state or condition of the premises shall be determined in accordance with the principles of the law of negligence.
- (2) In determining the standard of care to be exercised by the occupier of premises, a court shall take into account—
 - (a) the nature and extent of the premises; and
 - (b) the nature and extent of the danger arising from the state or condition of the premises; and
 - (c) the circumstances in which the person alleged to have suffered injury, damage or loss, or the property of that person, became exposed to that danger; and
 - (d) the age of the person alleged to have suffered injury, damage or loss, and the ability of that person to appreciate the danger; and
 - (e) the extent (if at all) to which the occupier was aware, or ought to have been aware, of—
 - (i) the danger; and
 - (ii) the entry of persons onto the premises; and
 - (f) the measures (if any) taken to eliminate, reduce or warn against the danger; and
 - (g) the extent (if at all) to which it would have been reasonable and practicable for the occupier to take measures to eliminate, reduce or warn against the danger; and
 - (h) any other matter that the court thinks relevant.
- (3) The fact that an occupier has not taken any measures to eliminate, reduce or warn against a danger arising from the state or condition of premises does not necessarily show that the occupier has failed to exercise a reasonable standard of care.
- (4) Subject to any Act or law to the contrary, an occupier's duty of care may be reduced or excluded by contract but no contractual reduction or exclusion of the duty affects the rights of any person who is a stranger to the contract.
- (5) Where an occupier is, by contract or by reason of some other Act or law, subject to a higher standard of care than would be applicable apart from this subsection, the question of whether the occupier is liable for injury, damage or loss shall be determined by reference to that higher standard of care.

- (6) An occupier owes no duty of care to a trespasser unless—
- (a) the presence of trespassers on the premises, and their consequent exposure to danger, were reasonably foreseeable; and
 - (b) the nature or extent of the danger was such that measures which were not in fact taken should have been taken for their protection.

21—Landlord's liability limited to breach of duty to repair

The liability under this Part of a landlord who is not in occupation of premises is limited to injury, damage or loss arising from—

- (a) an act or omission on the part of the landlord in carrying out an obligation to maintain or repair the premises; or
- (b) a failure on the part of the landlord to carry out an obligation to maintain or repair the premises.

22—Exclusion of conflicting common law principles

- (1) Subject to subsection (2), this Part operates to the exclusion of any other principles on which liability for injury, damage or loss attributable to the state or condition of premises would, but for this Part, be determined in tort.
- (2) This Part does not apply to a case where an occupier causes a dangerous state or condition of premises, or allows premises to fall into a dangerous state or condition, intending to cause injury, damage or loss to another.

Part 5—Wrongful acts or neglect causing death

23—Liability for death caused wrongfully

Whenever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to an indictable offence.

24—How to bring action etc

- (1) Every such action shall be for the benefit of the spouse, domestic partner, parent, brother, sister and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.
- (2) In every such action, the court may, subject to this Act, give such damages as it thinks proportioned to the harm resulting from the death to the parties respectively for whom and for whose benefit the action is brought.
- (2a) In any such action in respect of the death of any person after the passing of the *Wrongs Act Amendment Act 1939* damages may be awarded in respect of any medical expenses incurred as a result of the injury causing the death and the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

- (2aa) In assessing damages under this section in any action based on a death occurring after the passing of the *Wrongs Act Amendment Act 1956* there shall not be taken into account—
- (a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of the said Act;
 - (b) any sum paid or payable consequent on the death of the deceased person as a gratuity to any person for whose benefit the action is brought;
 - (c) any superannuation payments or benefits consequent upon the death of the deceased person;
 - (d) any sum paid or payable consequent upon the death of the deceased person under any contributory medical hospital death or funeral benefit scheme;
 - (e) any sum paid or payable as a social service benefit or pension by the Governments of the Commonwealth of Australia, or the United Kingdom, or the State of South Australia to or in respect of any person for whose benefit the action is brought;
 - (f) any sum recovered or recoverable for the benefit of the estate of the deceased under section 3(2) of the *Survival of Causes of Action Act 1940* (which permits the recovery of damages for certain kinds of non-economic loss where the deceased dies of a dust-related condition).
- (3) The amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the court finds and directs.
- (4) Where a deceased person is survived by a spouse and a domestic partner, the action shall, subject to this section, be brought for the benefit of both.
- (5) An action need not be brought under this section for the benefit of a person who has, by notice in writing served upon the executor or administrator of the deceased, renounced the benefit of this section.
- (6) Where the court considers it appropriate that any person for whose benefit an action lies under this section should present an independent claim for the benefit of an action under this section, it may permit or require that person to appear or be represented in the proceedings in all respects as if he were a separate party to the proceedings.
- (7) No action lies against the executor or administrator for failing to bring an action for the benefit of a domestic partner if he brings the action without notice of the claim of the domestic partner under this section, but the interest of any such domestic partner in the action shall be recognised by the court if application for recognition is made to the court before the proceedings are finally determined.

25—Restriction of actions and time of commencement

Not more than one action shall lie under this Part for and in respect of the same subject matter of complaint; and every such action shall be commenced within three years after the death of the deceased person.

26—Particulars of person for whom damages claimed

In every such action the plaintiff shall be required to deliver to the defendant or his solicitor, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

27—Provision where no executor or administrator or action not commenced within 6 months

- (1) In any case falling under section 23, if there is no executor or administrator of the deceased person or, there being such an executor or administrator, no action is commenced under this Part within six months after the death of the deceased person, then an action may be brought by and in the name or names of the person or all or any of the persons for whose benefit an action could have been brought under this Part by an executor or administrator of the deceased person.
- (2) Every action brought under this section shall be for the benefit of the same persons and shall be subject to the same regulations and procedure as nearly as may be as if brought by or in the name of an executor or administrator of the deceased person.

28—Liability to parents of person wrongfully killed

- (1) Whenever the death of an infant is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the infant to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving parents or parent of the child such sum—
 - (a) where the death occurred before the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding one thousand dollars; or
 - (b) where the death occurred after the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding \$10 000,

as the court thinks just by way of *solatium* for the suffering caused to the parents or parent by the death of the child.

- (2) Where both parents bring an action to recover any sum of money payable under this section, the amount recovered after deducting the costs not recovered from the defendant, shall be divided between the parents in such shares as the court directs.
- (3) Where both parents survive the child and either of them does not join in bringing an action under this section, the other may bring an action for such amount as he claims to be due to him or her.
- (4) In this section—

parent means the father or mother of a child.

29—Liability to surviving spouse or domestic partner of person wrongfully killed

- (1) Whenever the death of a person is caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled that person to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving spouse or domestic partner of the deceased person such sum—
 - (a) where the death occurred before the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding one thousand four hundred dollars; or
 - (b) where the death occurred after the commencement of the *Wrongs Act Amendment Act 1974*—not exceeding \$10 000,as the court thinks just by way of *solatium* for the suffering caused to the spouse or domestic partner by that death.
- (2) Where the deceased person is survived by a spouse and a domestic partner, they may both claim *solatium* under this section, but the total amount awarded by way of *solatium* in any such case shall not exceed the amount that could have been awarded if the deceased had been survived by a single spouse or domestic partner.
- (3) Where, in any proceedings under this section, a spouse and a domestic partner both claim *solatium* under this section, any *solatium* awarded by the court shall be apportioned between the claimants in such manner as the court thinks just.
- (4) In proceedings for *solatium* by a spouse, it is not necessary for the court to inquire if the deceased was also survived by a domestic partner (but a domestic partner may, at any time before the proceedings are finally determined, apply to the court to be joined as a party to the proceedings).

30—Further provisions as to *solatium* etc

- (1) The rights conferred by sections 28 and 29 shall be in addition to and not in derogation of any rights conferred on the parent, spouse or domestic partner by any other provision of this Act.
- (2) In an action brought to enforce any right given under section 28 or 29 the court may in its discretion refuse to order the payment of any sum by way of *solatium* if, having regard to the conduct of the plaintiff in relation to the deceased person, or to the relations which existed between the plaintiff and the deceased person, or for any other sufficient reason, it considers that no such payment should be made.
- (3) Any cause of action conferred on any person by section 28 or 29 shall not, on the death of that person, survive for the benefit of his estate.
- (4) A cause of action conferred on a person by section 28 or 29 is exercisable notwithstanding that the death of the person injured by the wrongful act, neglect or default was caused in circumstances which in law amount to an indictable offence.

Part 6—Negligence

Division 1—Duty of care

31—Standard of care

- (1) For determining whether a person (the *defendant*) was negligent, the standard of care required of the defendant is that of a reasonable person in the defendant's position who was in possession of all information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.
- (2) The reasonable person in the defendant's position will be taken to be sober unless—
 - (a) the defendant was intoxicated; and
 - (b) the intoxication was wholly attributable to the use of drugs in accordance with the prescription or instructions of a medical practitioner; and
 - (c) the defendant was complying with the instructions and recommendations of the medical practitioner and the manufacturer of the drugs as to what he or she should do, or avoid doing, while under the influence of the drugs,and, in that event, the reasonable person will be taken to be intoxicated to the same extent as the defendant.

32—Precautions against risk

- (1) A person is not negligent in failing to take precautions against a risk of harm unless—
 - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.
- (2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things):
 - (a) the probability that the harm would occur if precautions were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;
 - (d) the social utility of the activity that creates the risk of harm.

33—Mental harm—duty of care

- (1) A person (the *defendant*) does not owe a duty to another person (the *plaintiff*) to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness.
- (2) For the purposes of this section—
 - (a) in a case of pure mental harm, the circumstances of the case to which the court is to have regard include the following:

- (i) whether or not the mental harm was suffered as the result of a sudden shock;
 - (ii) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;
 - (iii) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;
 - (iv) whether or not there was a pre-existing relationship between the plaintiff and the defendant;
- (b) in a case of consequential mental harm, the circumstances of the case include the nature of the bodily injury out of which the mental harm arose.
- (3) This section does not affect the duty of care of a person (the *defendant*) to another (the *plaintiff*) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

Division 2—Causation

34—General principles

- (1) A determination that negligence caused particular harm comprises the following elements:
 - (a) that the negligence was a necessary condition of the occurrence of the harm (*factual causation*); and
 - (b) that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (*scope of liability*).
- (2) Where, however, a person (the *plaintiff*) has been negligently exposed to a similar risk of harm by a number of different persons (the *defendants*) and it is not possible to assign responsibility for causing the harm to any one or more of them—
 - (a) the court may continue to apply the principle under which responsibility may be assigned to the defendants for causing the harm¹; but
 - (b) the court should consider the position of each defendant individually and state the reasons for bringing the defendant within the scope of liability.
- (3) For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.

Note—

¹ See *Fairchild v Glenhaven Funeral Services Ltd* [2002] 3 WLR 89.

35—Burden of proof

In determining liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation.

Division 3—Assumption of risk

36—Meaning of obvious risk

- (1) For the purposes of 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 matters of common knowledge.
- (3) A risk may be obvious even though it is of low probability.

37—Injured persons presumed to be aware of obvious risks

- (1) If, in an action for damages for negligence, a defence of voluntary assumption of risk (*volenti non fit injuria*) 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 actually aware of the risk.
- (2) For the purposes of 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.
- (3) However, in order to establish a defence of voluntary assumption of risk, it is necessary to establish that the risk was such that a reasonable person in the plaintiff's position would have taken steps (which the plaintiff did not in fact take) to avoid it.

38—No duty to warn of obvious risk

- (1) A person (the **defendant**) does not owe a duty of care to another person (the **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 to warn the plaintiff of the risk by a written law; or
 - (c) the risk is a risk of death or of personal injury to the plaintiff from the provision of a health care service by the defendant.
- (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.

39—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 cannot 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—Negligence on the part of persons professing to have a particular skill

40—Standard of care to be expected of persons professing to have a particular skill

In a case involving an allegation of negligence against a person (the *defendant*) who holds himself or herself out as possessing a particular skill, the standard to be applied by a court in determining whether the defendant acted with due care and skill is, subject to this Division, to be determined by reference to—

- (a) what could reasonably be expected of a person professing that skill; and
- (b) the relevant circumstances as at the date of the alleged negligence and not a later date.

41—Standard of care for professionals

- (1) A person who provides a professional service incurs no liability in negligence arising from the service if it is established that the provider acted in a manner that (at the time the service was provided) was widely accepted in Australia by members of the same profession as competent professional practice.
- (2) However, professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing professional opinions widely accepted in Australia by members of the same profession does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) 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 respect of a risk of death of or injury associated with the provision of a health care service.

Division 5—Liability of road authorities

42—Liability of road authorities

- (1) A road authority is not liable in tort for a failure—
 - (a) to maintain, repair or renew a road; or
 - (b) to take other action to avoid or reduce the risk of harm that results from a failure to maintain, repair or renew a road.

- (2) In this section—

road means a street, road or thoroughfare to which public access is available to vehicles or pedestrians (or both), and includes—

- (a) a bridge, viaduct, busway (including the O-Bahn) or subway;
- (b) an alley, laneway or walkway;
- (c) a carpark;

- (d) a footpath;
- (e) a structure associated with a road;

road authority means—

- (a) a body or person in which the ownership of a road is vested by statute, or to which the care, control and management of a road is assigned by statute; or
- (b) if the road is on land of the Crown—the Crown or the Minister responsible for the care, control and management of the land; or
- (c) any other public authority or public body that is in fact responsible for the care, control and management of a road;

vehicle includes—

- (a) a motor vehicle;
- (b) a bicycle;
- (c) an animal that is being ridden;
- (d) an animal that is being used to draw a vehicle,

but does not include a tram or other vehicle (except an O-Bahn bus) that is driven on a fixed track.

Division 6—Exclusion of liability for criminal conduct

43—Exclusion of liability for criminal conduct

- (1) Liability for damages is excluded if the court—
 - (a) is satisfied beyond reasonable doubt that the accident occurred while the injured person was engaged in conduct constituting an indictable offence; and
 - (b) is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.
- (2) However, the court may award damages despite this exclusionary principle if satisfied that—
 - (a) the circumstances of the particular case are exceptional; and
 - (b) the principle would, in the circumstances of the particular case, operate harshly and unjustly.
- (3) For the purposes of subsection (1)(a), a relevant conviction or acquittal is to be accepted as conclusive evidence of guilt or innocence of the offence to which it relates.
- (4) This section—
 - (a) applies where damages are claimed for personal injury—
 - (i) arising from a motor accident (whether caused intentionally or unintentionally); or
 - (ii) arising from an accident caused wholly or in part—
 - (A) by negligence; or

- (B) by some other unintentional tort on the part of a person other than the injured person; or
- (C) by breach of a contractual duty of care; and
- (b) if an injured person dies as a result of injury arising in the manner described in paragraph (a)—applies where damages for harm resulting from the death are claimed under Part 5; and
- (c) does not affect the operation of a rule of law relating to joint illegal enterprises.

Part 7—Contributory negligence

44—Standard of contributory negligence

- (1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether a person who suffered harm (the *plaintiff*) has been contributorily negligent.
- (2) This section is not to derogate from any provision of this Act for reduction of damages on account of contributory negligence.

45—Contributory negligence in cases brought on behalf of dependants of deceased person

In a claim for damages brought on behalf of the dependants of a deceased person, the court is to have regard to any contributory negligence on the part of the deceased person.

46—Presumption of contributory negligence where injured person intoxicated

- (1) If the injured person was intoxicated at the time of the accident, and contributory negligence is alleged by the defendant, contributory negligence will, subject to this section, be presumed.
- (2) The injured person may, however, rebut the presumption by establishing on the balance of probabilities—
 - (a) that the intoxication did not contribute to the accident; or
 - (b) that the intoxication was not self-induced; or
 - (c) —
 - (i) the intoxication is wholly attributable to the use of drugs in accordance with the prescription or instructions of a medical practitioner; and
 - (ii) the injured person was complying with the instructions and recommendations of the medical practitioner and the manufacturer of the drugs as to what he or she should do, or avoid doing, while under the influence of the drugs.

- (3) Unless the presumption of contributory negligence is rebutted, the court must assess damages on the basis that the damages to which the injured person would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by 25 per cent or a greater percentage determined by the court to be appropriate in the circumstances of the case.
- (4) If, in the case of a motor accident, the injured person was the driver of a motor vehicle involved in the accident and the evidence establishes—
 - (a) that the concentration of alcohol in the injured person's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,the minimum reduction prescribed by subsection (3) is to be increased to 50 per cent.

47—Presumption of contributory negligence where injured person relies on care and skill of person known to be intoxicated

- (1) If—
 - (a) the injured person—
 - (i) was of or above the age of 16 years at the time of the accident; and
 - (ii) relied on the care and skill of a person who was intoxicated at the time of the accident; and
 - (iii) was aware, or ought to have been aware, that the other person was intoxicated; and
 - (b) the accident was caused through the negligence of the other person; and
 - (c) the defendant alleges contributory negligence on the part of the injured person,

contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebuttable.

Exception—

The injured person may rebut the presumption by establishing, on the balance of probabilities, that—

- (a) the intoxication did not contribute to the accident; or
 - (b) the injured person could not reasonably be expected to have avoided the risk.
- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.
- (4) A passenger in a motor vehicle is taken, for the purposes of this section, to rely on the care and skill of the driver.
- (5) If, in the case of a motor accident, the evidence establishes—
 - (a) that the concentration of alcohol in the driver's blood was .15 grams or more in 100 millilitres of blood; or

- (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,
the fixed statutory reduction prescribed by subsection (3) is increased to 50 per cent.
- (6) This section operates to the exclusion of the defence of *volenti non fit injuria* insofar as it relates to the voluntary assumption of a risk arising from the intoxication of another.

48—Evidentiary provision relating to intoxication

- (1) A finding by a court that there was present in the blood of a person, at or about the time of an accident, a concentration of alcohol of .08 or more grams in 100 millilitres of blood is to be accepted, for the purposes of this Part, as conclusive evidence of the facts so found and that the person was intoxicated at the time of the accident.
- (2) A finding by a court that a person was at or about the time of an accident so much under the influence of alcohol or a drug as to be unable to exercise effective control of a motor vehicle is to be accepted, for the purposes of this Part, as conclusive evidence that the person was, at the time of the accident, so much under the influence of alcohol or a drug as to be unable to exercise effective control of the motor vehicle.

49—Non-wearing of seatbelt etc

- (1) If the injured person was injured in a motor accident, was of or above the age of 16 years at the time of the accident and—
 - (a) the injured person was not, at the time of the accident, wearing a seatbelt as required under the *Road Traffic Act 1961*; or
 - (b) one of the following factors contributed to the accident or the extent of the injury:
 - (i) the injured person was not wearing a safety helmet as required under the *Road Traffic Act 1961*;
 - (ii) the injured person was a passenger in or on a motor vehicle with a passenger compartment but was not in the passenger compartment at the time of the accident,

contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebuttable.

Exception—

In the case mentioned in subsection (1)(b)(ii)—the injured person may rebut the presumption by establishing, on the balance of probabilities, that the injured person could not reasonably be expected to have avoided the risk.

- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.

50—How case is dealt with where damages are liable to reduction on account of contributory negligence

- (1) If damages are liable to reduction on account of actual or presumed contributory negligence, the court is to proceed in accordance with this section.

- (2) First, the court is to assess the damages to which the injured person would be entitled if there were no reduction for contributory negligence.
- (3) Secondly, the court is to—
 - (a) determine the extent of the injured person's contributory negligence, leaving out of the account factors for which a fixed statutory reduction is prescribed by this Part but taking into account the injured person's intoxication (if relevant) and factors that would, apart from this Part, amount to contributory negligence; and
 - (b) determine a percentage reduction to be made on account of these forms of contributory negligence (which cannot be less in a case involving intoxication than the relevant minimum prescribed by this Part); and
 - (c) then reduce the amount assessed under subsection (2) by the percentage determined under this subsection.
- (4) Thirdly, the court is to apply any applicable fixed statutory reduction to the amount assessed under subsection (2) and reduced, if required, under subsection (3), and, if 2 or more fixed statutory reductions are required, the court is to make them in series.

Example—

Suppose that an amount of \$100 000 is subject to 2 fixed statutory reductions of 25 per cent. In this case, the amount is first reduced to \$75 000 and then reduced to \$56 250.

- (5) There is no necessary correlation between a finding of contributory negligence in relation to a cause of action under this Part and an apportionment of liability in relation to a different cause of action arising from the same facts.

Example—

Suppose that A and B are both drivers of motor vehicles that come into collision as a result of the negligence of both with resultant personal injuries to each other and also to C, a passenger in B's vehicle. Suppose that B's damages are reduced by 60 per cent under this Part as a result of actual or presumptive contributory negligence causally related to the occurrence of the accident. This is not to imply that, in A's action against B, no reduction beyond 40 per cent can be made on a similar basis. In C's action against A and B, responsibility will be apportioned between A and B without regard to the provisions of this Part.

Part 7A—Child abuse—liability of institutions

Division 1—Preliminary

50A—Interpretation

- (1) In this Part—

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

- (a) sexual abuse of the child;
- (b) serious physical abuse of the child;
- (c) psychological abuse of the child related to sexual abuse or serious physical abuse of the child;

abuse claim means a claim arising from the abuse of a child by a person associated with an institution while the child was under the care, supervision, control or authority of the institution;

akin to an employee—see subsections (2) and (3);

associated trust, of an institution—see section 50B;

associated with, an institution—see section 50C;

child means a person under 18 years of age;

current office holder—see section 50I;

designated carer means a person in whose care a child is placed under the *Children and Young People (Safety) Act 2017* but excludes a person who provides care at or on behalf of—

- (a) a children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*); or
- (b) a residential facility established or licensed under the *Family and Community Services Act 1972*; or
- (c) any other facility that provides non-family based care to children or young people;

employee, of an institution, includes a person who is akin to an employee of the institution;

function includes a power, authority or duty;

head, of an institution, means the person who—

- (a) is acknowledged by the institution as its head; or
- (b) if paragraph (a) does not apply—has overall responsibility for the institution;

institution—

- (a) means an entity (whether private or public) that is responsible for a child and provides an activity, program or service of a kind that gives an opportunity for a person to have contact with a child; and
- (b) does not include a family;

nominee, for an institution, means a person who is the institution's nominee because of a nomination or court order under section 50J;

office of authority, in an institution, includes—

- (a) a position as a member of a management committee of the institution; and
- (b) a position in which the holder is concerned with, or takes part in, the management of the institution.

- (2) For the purposes of the definition of **employee**, a person is **akin to an employee** of an institution if the person carries out activities as an integral part of the activities carried on by the institution and does so for the benefit of the institution, but a person is not **akin to an employee** if—

- (a) the activities are carried out for a recognisably independent business of the person or of another person or institution; or

- (b) the activities carried on by the person are the activities of a designated carer carried on in the person's capacity as a designated carer.
- (3) The regulations may, despite subsection (2), prescribe circumstances in which a person will be akin to an employee or not akin to an employee.

50B—Meaning of associated trust

- (1) For the purposes of this Part, a trust is an *associated trust* of an institution if the institution uses the trust to carry out its functions or activities and—
 - (a) the institution has, directly or indirectly, any of the following powers:
 - (i) a power to control the application of income of the trust or the distribution of property of the trust;
 - (ii) a power to obtain the beneficial enjoyment of the property or income of the trust, with or without the consent of another entity;
 - (iii) a power to appoint or remove a trustee or beneficiary of the trust;
 - (iv) a power to determine the outcome of any other decision about the trust's operations; or
 - (b) a member or manager of the institution has, under the trust deed for the trust, a power mentioned in paragraph (a); or
 - (c) a trustee is accustomed to acting, or is under a formal or informal obligation to act, according to the directions, instructions or wishes of the institution or a member or manager of the institution.
- (2) A reference in Division 5 or Division 6 to an associated trust of an institution includes a trust in relation to which an order is in force under section 50J(5) (in relation to any abuse claim against the institution).

50C—When persons are associated with institution

- (1) For the purposes of this Part, the persons *associated with* an institution include—
 - (a) an officer, office holder, representative, leader, owner, employee, agent, volunteer or contractor of the institution; and
 - (b) for an institution that is a religious organisation—a minister of religion, religious leader or member of the personnel of the organisation; and
 - (c) if the institution has delegated the care, supervision, control or authority over a child to another entity (the *delegate*)—
 - (i) if the delegate is an individual—the delegate; and
 - (ii) a person who would be a person mentioned in paragraph (a) or (b) if the delegate were the delegating institution; and
 - (d) a designated carer (other than a designated carer who is the parent or guardian of the child (within the meaning of the *Children and Young People (Safety) Act 2017*)); and
 - (e) a person, or person of a class, prescribed by regulation.
- (2) A person is not associated with an institution only because the person is associated with an entity that is funded or regulated by the institution.

50D—Application of Part

- (1) This Part, other than Division 2 and Division 3, applies in relation to a cause of action whether it arose before or after the commencement of this Part.
- (2) This Part binds the Crown not only in right of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Division 2—Duty of institutions to prevent child abuse

50E—Duty to prevent child abuse

- (1) An institution has a duty to take all reasonable steps to prevent the abuse of a child by a person associated with the institution while the child is under the care, supervision, control or authority of the institution.
- (2) Subsection (1) does not apply to abuse of a child by a person associated with an institution in circumstances wholly unrelated to that person's association with the institution.
- (3) If an institution has delegated, by means of contract or otherwise, the care, supervision, control or authority over a child to whom the claim relates to another institution, subsection (1) does not apply to abuse of the child by a person associated with the delegate institution in circumstances wholly unrelated to that person's association with the delegator institution or the delegate institution.

50F—Proof of whether duty was breached

- (1) This section applies if a person associated with an institution abuses a child while the child is under the care, supervision, control or authority of the institution.
- (2) The institution is taken to have breached its duty under section 50E unless the institution proves it took all reasonable steps to prevent the abuse.
- (3) In deciding whether the institution took all reasonable steps to prevent the abuse, the matters that are relevant include—
 - (a) the nature of the institution; and
 - (b) the resources that were reasonably available to the institution; and
 - (c) the relationship between the institution and the child; and
 - (d) the position in which the institution placed the person in relation to the child, including the extent to which the position gave the person—
 - (i) authority, power or control over the child; or
 - (ii) an ability to achieve intimacy with the child or gain the child's trust; and
 - (e) the probability that the abuse would occur if precautions against a risk of abuse were not taken; and
 - (f) the burden of taking precautions to avoid the risk of abuse; and
 - (g) the social utility of the activity that creates the risk of abuse; and
 - (h) whether the institution complied with any applicable standard (however described) in respect of child safety; and

- (i) any matter prescribed by the regulations; and
- (j) any other matter a court considers relevant.

Division 3—Vicarious liability of institutions

50G—Institutions vicariously liable for abuse of child by employee

- (1) An institution is vicariously liable for abuse of a child by an employee of the institution if—
 - (a) the apparent performance by the employee of a role in which the institution placed the employee supplies the occasion for the abuse of the child by the employee; and
 - (b) the employee takes advantage of that occasion to abuse the child; and
 - (c) the abuse occurred while the child was under the care, supervision, control or authority of the institution.
- (2) In determining if the apparent performance by the employee of a role in which the institution placed the employee supplied the occasion for the abuse of a child, a court is to take into account whether the institution placed the employee in a position in which the employee has 1 or more of the following:
 - (a) authority, power or control over the child;
 - (b) the trust of the child;
 - (c) the ability to achieve intimacy with the child.
- (3) This section does not affect, and is in addition to, the common law as it applies with respect to vicarious liability.

Division 4—Liability of particular institutions and office holders

50H—Liability of incorporated institution that was unincorporated at time of abuse

- (1) This section applies if—
 - (a) a person (the *claimant*) suffered abuse as a child by a person associated with an institution (the *associated person*) while the claimant was under the care, supervision, control or authority of the institution; and
 - (b) the claimant has or had a cause of action against—
 - (i) a person (the *former office holder*) who held an office of authority in the institution (the *relevant office*) when the cause of action accrued, founded on the former office holder's responsibility for the institution or for the associated person; or
 - (ii) the institution, in accordance with section 50J; and
 - (c) the institution was an unincorporated body when the cause of action accrued; and
 - (d) the institution is an incorporated body; and
 - (e) —

- (i) if the cause of action is against the former office holder—the claimant is able to maintain proceedings on the cause of action, or would be able to maintain proceedings on the cause of action if the former office holder still held the relevant office; or
 - (ii) if the cause of action is against the institution—the claimant is able to maintain proceedings on the cause of action, or would be able to maintain proceedings on the cause of action if the institution was still an unincorporated body.
- (2) A proceeding for the claimant's cause of action may be commenced or continued against the institution.
- (3) The following apply for the purposes of a proceeding commenced or continued under subsection (2) if the cause of action is against the former office holder:
 - (a) any liability that the former office holder has or would have had in relation to the cause of action is taken to be a liability of the institution;
 - (b) anything done by the former office holder is taken to have been done by the institution;
 - (c) a duty or obligation that the former office holder would have had in relation to the proceeding is a duty or obligation of the institution;
 - (d) the institution may rely on any defence or immunity that would have been available to the former office holder as a defendant in the proceeding;
 - (e) any right of the former office holder to be indemnified (including under an insurance policy) in respect of damages awarded in an abuse claim extends to, and indemnifies, the institution.

50I—Liability of current office holder of unincorporated institution

- (1) This section applies if—
 - (a) a person (the *claimant*) suffered abuse as a child by a person associated with an institution (the *associated person*) while the claimant was under the care, supervision, control or authority of the institution; and
 - (b) the claimant has or had a cause of action against a person (the *former office holder*) who held an office of authority in the institution (the *relevant office*) when the cause of action accrued, founded on the former office holder's responsibility for the institution or for the associated person; and
 - (c) the institution was an unincorporated body when the cause of action accrued; and
 - (d) the institution is an unincorporated body; and
 - (e) the former office holder no longer holds the relevant office; and
 - (f) the claimant would be able to maintain an action on the cause of action if the former office holder still held the relevant office.
- (2) A proceeding for the claimant's cause of action may be commenced or continued against the current holder of the relevant office (the *current office holder*) in the name of the office.

- (3) The following apply for the purposes of a proceeding commenced or continued under subsection (2):
- (a) any liability that the former office holder has or would have had in relation to the cause of action is taken to be a liability of the current office holder;
 - (b) anything done by the former office holder is taken to have been done by the current office holder;
 - (c) a duty or obligation that the former office holder would have had in relation to the proceeding is a duty or obligation of the current office holder;
 - (d) the current office holder may rely on any defence or immunity that would have been available to the former office holder as a defendant in the proceeding;
 - (e) any right of the former office holder to be indemnified (including under an insurance policy) in respect of damages awarded in an abuse claim extends to, and indemnifies, the current office holder.

50J—Claim against unincorporated institution and nomination of appropriate defendant

- (1) This section applies in relation to an institution that is an unincorporated body.
- (2) A proceeding for an abuse claim may be commenced against the institution.
- (3) A notice of a claim must be given to the head of the institution in accordance with any requirements prescribed by the regulations.
- (4) The institution may nominate a person, with the person's consent, to be the appropriate defendant for the purposes of an abuse claim against the institution.
- (5) On application by the claimant, a court may order that the trustee of a trust is the institution's nominee if the court is satisfied—
 - (a) the trust is, or used to be, an associated trust of the institution; and
 - (b) for a trust that is no longer an associated trust of the institution—a reason for causing the trust to cease to be an associated trust was to try to avoid trust property being applied to satisfy a liability that may be found under a decision on an abuse claim; and
 - (c) the order would be appropriate.
- (6) Subsection (5) applies if—
 - (a) at least 120 days have passed since a proceeding for an abuse claim was commenced against the institution; and
 - (b) either—
 - (i) there is no nominee for the institution; or
 - (ii) a court is satisfied the institution's nominee does not have sufficient assets to satisfy a liability that may be found under a decision on the abuse claim.

- (7) A court may—
- (a) order the institution to do the following within 28 days or any other period the court considers appropriate:
 - (i) identify to the court any trusts that are, or used to be, associated trusts of the institution;
 - (ii) provide particular information about the financial capacity of the trusts; and
 - (b) make any other orders, and give the directions, it considers appropriate for the purposes of establishing—
 - (i) whether a trust is, or used to be, an associated trust of the institution; or
 - (ii) the financial capacity of a trust mentioned in subparagraph (i); or
 - (iii) whether a nominee of the institution has sufficient assets to satisfy a liability that may be found under a decision on the abuse claim; or
 - (iv) whether it would be appropriate to make an order in relation to a trustee under subsection (5).

50K—Proceeding against nominee of unincorporated institution

Despite any Act or other law or instrument (including any trust deed), the following apply if, under section 50J, there is a nominee for an institution:

- (a) a proceeding for an abuse claim may be commenced or continued against the nominee;
- (b) any liability of the institution under the court's decision on the abuse claim is incurred by the nominee;
- (c) anything done by the institution is taken to have been done by the nominee;
- (d) a duty or obligation of the institution in relation to the proceeding is a duty or obligation of the nominee;
- (e) the institution must continue to participate in the proceeding and a court may make an order or give a direction relating to the institution as if it were a person;
- (f) a court may make a substantive finding in the proceeding against the institution as if it were a person;
- (g) the nominee may rely on any defence or immunity that would be available to the institution as a defendant in the proceeding if the institution were a person;
- (h) any right of the institution to be indemnified (including under an insurance policy) in respect of damages awarded in an abuse claim extends to, and indemnifies, the nominee;
- (i) if there is more than 1 nominee, the nominees must file a single defence and proceed as a single defendant.

Division 5—Satisfaction of liability

50L—Assets available to satisfy liability of institution

- (1) This section applies if an institution has a liability under a judgment in, or settlement of, an abuse claim.
- (2) The institution may satisfy the liability out of the assets of the institution and the assets of an associated trust of the institution.

50M—Assets available to satisfy liability of nominee

- (1) This section applies if an institution's nominee has a liability under a judgment in, or settlement of, an abuse claim.
- (2) If the nominee is the trustee of an associated trust of the institution, the nominee may satisfy the liability out of the assets of the trust and the assets of the institution.
- (3) Otherwise, the nominee may satisfy the liability out of its assets and the assets of the institution.

50N—Assets available to satisfy liability of current office holder

- (1) This section applies if, under section 50I(3), a current office holder has a liability under a judgment in, or settlement of, an abuse claim.
- (2) The current office holder is not personally liable but may satisfy the liability out of the assets of the institution and the assets of an associated trust of the institution.

50O—Satisfaction of liability by trustee of associated trust

- (1) This section applies in relation to a liability that, under section 50L, 50M or 50N, may be satisfied out of the assets of an associated trust of an institution.
- (2) The trustee of the associated trust may pay an amount in satisfaction of the liability and, for that purpose, may realise assets of the trust.
- (3) The satisfaction of the liability is a proper expense for which the trustee may be indemnified out of the trust property, irrespective of any limitation on any right of indemnity the trustee may have.
- (4) The liability of the trustee of the associated trust as the institution's nominee is limited to the value of the trust property.
- (5) The trustee is not liable for a breach of trust only because of doing anything authorised by this section.

50P—References to liability

A reference in this Division to a liability under a judgment in, or settlement of, an abuse claim includes any costs associated with a proceeding for the claim.

Division 6—Miscellaneous

50Q—Entities may act despite other laws and duties

An institution, an institution's nominee, a current office holder or the trustee of an associated trust of an institution may act under Division 5, and the trustee of an associated trust of an institution may consent to being the institution's nominee, despite—

- (a) another law; or
- (b) the terms of the associated trust (including a trust for a charitable purpose); or
- (c) a duty, whether as the current holder of an office in the institution or as trustee or otherwise.

50R—Continuity of institutions

- (1) For the purposes of Division 4, it is sufficient that an institution (the **current institution**) is substantially the same as it was at the time when the cause of action accrued (the **relevant time**).
- (2) Without limiting the generality of subsection (1), the current institution is substantially the same as it was at the relevant time if the class or type of member and the primary purposes or work of the current institution are substantially the same as they were at the relevant time.
- (3) Subsections (1) and (2) have effect regardless of whether, after the relevant time—
 - (a) the name of the institution changed; or
 - (b) the organisational structure of the institution changed; or
 - (c) the institution became incorporated; or
 - (d) the geographic area in which the members of the institution carried out the purposes or work of the institution changed.
- (4) If there is no institution that is the same institution, or substantially the same institution, as the institution at the relevant time (the **old institution**), a relevant successor of the old institution is taken to be the same institution as the old institution.
- (5) For the purposes of subsection (4), an institution (also the **current institution**) is a relevant successor of the old institution if—
 - (a) all or part of the old institution merged into the current institution; or
 - (b) all or part of the old institution merged with 1 or more other entities to form the current institution; or
 - (c) the current institution is the remainder of the old institution after part of the old institution ceased to be part of the old institution; or
 - (d) in a case in which there is at least 1 institution interposed, over time, between the old institution and the current institution—at least 1 of the following circumstances applies to each link in the chain between the old institution and the current institution:
 - (i) all or part of an earlier institution merged into another institution;

- (ii) all or part of an earlier institution merged with 1 or more other entities to form another institution;
 - (iii) an institution is the remainder of an earlier institution after part of the earlier institution ceased to be part of the earlier institution;
 - (iv) an institution as it is at a particular time is substantially the same as it was at an earlier time.
- (6) If more than 1 institution (a **current institution**) is a relevant successor of the old institution the following applies:
 - (a) each current institution is jointly and severally liable for the abuse of a child by a person associated with the old institution while the child was under the care, supervision, control or authority of the old institution;
 - (b) a current institution which is a relevant successor of the old institution may recover contribution from another current institution which is also a relevant successor of the old institution;
 - (c) an action for contribution may be brought—
 - (i) by way of third party proceedings, or proceedings between the parties, in an action in which damages are sought from the institution entitled to contribution; or
 - (ii) by way of a separate action brought against the institution from which contribution is sought;
 - (d) if it is fair and equitable to do so, a court may exempt an institution from liability to make contribution or order that the contribution to be recovered is to amount to a complete indemnity;
 - (e) an action for contribution may be brought even though—
 - (i) judgment in an action in which damages are sought for the relevant abuse has not yet been given; or
 - (ii) the person who suffered the abuse has released the institution from which contribution is sought from liability or has obtained judgment against that institution; or
 - (iii) a notice that would be required if the person who suffered the abuse were to obtain a judgment against the institution from which contribution is sought has not been given; or
 - (iv) the time within which the person who suffered the abuse could have commenced an action against the contributory has expired;
 - (f) despite paragraph (e)—
 - (i) if an institution is liable to indemnify another institution against that other institution's liability, the institution is (to the extent of the liability to indemnify) not entitled to contribution from the other institution under this section; and
 - (ii) a contractual limitation or exclusion of liability operates to limit or exclude an entitlement to contribution under this section if—

- (A) it arises from a contract made before the occurrence of the act or omission that gave rise to the liability; and
 - (B) it would, assuming the institution who suffered primary harm had brought an action for damages against the institution from which contribution is sought, have limited or excluded that institution's right to recover damages;
- (g) a court may determine any action for contribution according to what is fair and equitable in all of the circumstances.

(7) In this section—

contributory means the institution (or institutions) seeking contribution under this section and the institution (or institutions) from which contribution is sought.

50S—Continuity of offices

- (1) This section applies for the purposes of section 50I.
- (2) It is sufficient that an office in the institution is substantially the same as it was when the relevant cause of action accrued.
- (3) If there is no current office in the institution that is the same or substantially the same as the relevant office mentioned in section 50I(1)(b), the current head of the institution is taken to be the current office holder.

50T—Corporations Act displacement

Sections 50K to 50Q are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the Corporations legislation generally.

50U—Proceedings despite previous judgment

- (1) Subject to subsection (2), proceedings on a cause of action may be commenced against a person or institution in accordance with this Part even though a judgment was given in relation to the cause of action before the commencement of this Part on the ground that the person or institution was not an appropriate defendant.
- (2) Proceedings on a cause of action in circumstances contemplated by subsection (1) may only be commenced if a court, being satisfied that it is just and reasonable to do so, grants leave for the action to be commenced.
- (3) In granting leave under subsection (2) for proceedings on a cause of action to be commenced, a court may make any order the court considers to be necessary for the proceedings to proceed or otherwise appropriate in the circumstances.

Part 7B—Child abuse—setting aside settlements

50V—Meaning of affected agreement

- (1) In this Part, **affected agreement** means an agreement—
 - (a) that prevents the commencement or maintenance of proceedings on a cause of action to which section 3A of the *Limitation of Actions Act 1936* applies if—
 - (i) the agreement occurred before the commencement of that section;
- and

- (ii) at the time of the agreement, a limitation period applying to the cause of action had expired; or
- (b) that prevents the commencement or maintenance of proceedings on a cause of action in respect of an abuse claim (within the meaning of Part 7A) if—
 - (i) the agreement occurred before the commencement of Part 7A; and
 - (ii) at the time of the agreement, proceedings on the cause of action could not be commenced or maintained against a person or institution that would have been liable under Part 7A for child abuse had the Part been in force.
- (2) For the purposes of this section, a limitation period is taken to have expired even if it were possible at the time to seek the leave of a court to extend the period.

50W—Court may set aside affected agreement

- (1) A person (the *applicant*) who, because of an affected agreement, is prevented from commencing or maintaining proceedings on a cause of action to which section 3A of the *Limitation of Actions Act 1936* applies, or in respect of an abuse claim (within the meaning of Part 7A), may—
 - (a) commence proceedings on the cause of action in a court with sufficient jurisdiction to hear the cause of action; and
 - (b) apply to the court to set aside the affected agreement.
- (2) The court may set aside an affected agreement if it is just and reasonable to do so.
- (3) The court may consider the following in making its decision to set aside the affected agreement:
 - (a) the extent to which the existence of the limitation period or barriers to identifying an appropriate defendant materially contributed to the applicant's decision to enter into the agreement;
 - (b) the circumstances in which the agreement was negotiated and entered into, including—
 - (i) whether negotiations were affected by an imbalance of power; and
 - (ii) whether the applicant was legally represented; and
 - (iii) whether the defendant (or other parties) engaged in unfair or oppressive conduct;
 - (c) any other matter the court considers relevant.
- (4) Section 67C(1) of the *Evidence Act 1929* does not prevent evidence being adduced in proceedings under this section, even if the evidence is of a communication made, or a document prepared, in connection with an attempt to negotiate a settlement of the dispute to which the affected agreement relates.
- (5) If the court decides to set aside an affected agreement it may also set aside any of the following that gives effect to the agreement:
 - (a) a contract, deed or other agreement;
 - (b) an order or judgment of the court or of a lower court.

- (6) However, the court must not set aside the following:
- (a) a deed of release signed by or on behalf of the applicant in acceptance of an offer under the National Redress Scheme and an agreement relating to a relevant prior payment that has been taken into account in the offer;
 - (b) a contract of insurance.

- (7) In this section—

National Redress Scheme means the National Redress Scheme for Institutional Child Sexual Abuse established under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* of the Commonwealth.

50X—Effect of setting aside affected agreement

- (1) An affected agreement and anything else set aside under this Part is void.
- (2) An amount paid or other consideration given under the affected agreement—
 - (a) is not recoverable despite the agreement being void; and
 - (b) may be taken into account by the court in determining damages in proceedings for a cause of action to which the affected agreement related.

Part 8—Damages for personal injury

51—Application of this Part

This Part applies—

- (a) where damages are claimed for personal injury arising from—
 - (i) a motor accident (whether caused intentionally or unintentionally); or
 - (ii) an accident caused wholly or in part by—
 - (A) negligence; or
 - (B) some other unintentional tort on the part of a person other than the injured person; or
 - (C) a breach of a contractual duty of care; or
- (b) where personal injury arising in the manner described in paragraph (a) results in death and damages are claimed under Part 5 for harm resulting from the death.

52—Damages for non-economic loss

- (1) Damages may only be awarded for non-economic loss if—
 - (a) the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days; or
 - (b) medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.

- (2) If damages are to be awarded for non-economic loss, other than in relation to personal injury arising from an MVA motor accident, they must be assessed as follows:
- (a) the injured person's total non-economic loss is to be assigned a numerical value (the *scale value*) on a scale running from 0 to 60 (the scale reflecting 60 equal gradations of non-economic loss, from a case in which the non-economic loss is not severe enough to justify any award of damages to a case in which the injured person suffers non-economic loss of the gravest conceivable kind);
 - (b) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2002 by multiplying the scale value by \$1 710;
 - (c) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2003 as follows:
 - (i) if the scale value is 10 or less—by multiplying the scale value by \$1 150;
 - (ii) if the scale value is 20 or less but more than 10—by adding to \$11 500 an amount calculated by multiplying the number by which the scale value exceeds 10 by \$2 300;
 - (iii) if the scale value is 30 or less but more than 20—by adding to \$34 500 an amount calculated by multiplying the number by which the scale value exceeds 20 by \$3 450;
 - (iv) if the scale value is 40 or less but more than 30—by adding to \$69 000 an amount calculated by multiplying the number by which the scale value exceeds 30 by \$4 600;
 - (v) if the scale value is 50 or less but more than 40—by adding to \$115 000 an amount calculated by multiplying the number by which the scale value exceeds 40 by \$5 750;
 - (vi) if the scale value is 60 or less but more than 50—by adding to \$172 500 an amount calculated by multiplying the number by which the scale value exceeds 50 by \$6 900;
 - (d) the damages for non-economic loss in relation to an injury arising from an accident that occurred in a subsequent calendar year are to be calculated in accordance with paragraph (c) but the amount arrived at is to be adjusted (to the nearest multiple of \$10) by multiplying it by a proportion obtained by dividing the Consumer Price Index for the September quarter of the previous calendar year by the Consumer Price Index for the September quarter 2002.

Example—

Suppose that A is injured in an accident that occurred in 2003 and claims damages for personal injury. The case is one in which the criteria under which damages for non-economic loss may be awarded are satisfied. In assessing those damages, A's total non-economic loss is assigned by the court a scale value of 23. The damages for non-economic loss will, therefore, be \$44 850, calculated as follows:

$$\$34500 + (3 \times \$3450) = \$44850$$

-
- (3) Subject to subsection (4), if damages are to be awarded for non-economic loss in relation to personal injury arising from an MVA motor accident, they must be assessed as follows:
- (a) the injured person's total non-economic loss is to be assigned a numerical value (an *injury scale value*) on a scale running from 0 to 100;
 - (b) in assessing the injury scale value, the court must apply any rules prescribed by the regulations;
 - (c) the damages for non-economic loss are to be calculated as follows:
 - (i) if the injury scale value is assessed as 31 or less but more than 10 (see subsection (4))—by adding to \$2 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 10 by \$1 000 (indexed);
 - (ii) if the injury scale value is assessed as 45 or less but more than 31—by adding to \$23 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 31 by \$3 000 (indexed);
 - (iii) if the injury scale value is assessed as 66 or less but more than 45—by adding to \$65 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 45 by \$5 000 (indexed);
 - (iv) if the injury scale value is assessed as 78 or less but more than 66—by adding to \$170 000 (indexed) an amount calculated by multiplying the number by which the injury scale value exceeds 66 by \$10 000 (indexed);
 - (v) if the injury scale value is assessed as 79 or more—\$300 000 (indexed).
- (4) A person who suffers personal injury arising from an MVA motor accident may only be awarded damages for non-economic loss if the injury scale value that applies under subsection (3)(a) in relation to the injury exceeds 10.
- (5) However, a court may award damages for non-economic loss in a case that would otherwise be excluded by operation of subsection (4) if satisfied—
- (a) that the consequences of the personal injury with respect to non-economic loss are exceptional when judged by comparison with other cases involving the same injury; and
 - (b) that the application of the threshold set by that subsection would, in the circumstances of the particular case, be harsh and unjust.
- (6) An assessment of damages for non-economic loss under subsection (5) must be based on an injury scale value that should rarely be more than 25% higher than the injury scale value that applies under subsection (3)(a) in relation to the injury.
- (7) An amount applying under subsection (3) (and followed by the word "(indexed)") is to be adjusted on 1 July of each year, beginning on 1 July 2014, by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index for the March quarter of that year by the Consumer Price Index for the March quarter 2013 (with the amount so adjusted being calculated to the nearest multiple of \$10).

- (8) In connection with the operation of subsection (7), the amount to be applied with respect to a particular injury is the amount applying under subsection (3) at the time of occurrence of that injury.

53—Damages for mental harm

- (1) Damages may only be awarded for mental harm if the injured person—
- (a) was physically injured in the accident or was present at the scene of the accident when the accident occurred; or
 - (b) is a parent, spouse, domestic partner or child of a person killed, injured or endangered in the accident.
- (2) Damages may only be awarded for pure mental harm if the harm consists of a recognised psychiatric illness.
- (3) Damages may only be awarded for economic loss resulting from consequential mental harm if the harm consists of a recognised psychiatric illness.

54—Damages for loss of earning capacity

- (1) If the injured person was incapacitated for work, damages for loss of earning capacity are not to be awarded in respect of the first week of the incapacity.
- (2) Total damages for loss of earning capacity (excluding interest awarded on damages for any past loss) are not to exceed the prescribed maximum.
- (3) In a case in which an action is brought for the benefit of the dependants of a deceased person, the total amount awarded to compensate economic loss resulting from the death of the deceased person (apart from expenses—such as funeral expenses—actually incurred as a result of the death) cannot exceed the prescribed maximum and if before the date of death the deceased person received damages to compensate loss of earning capacity, the limit is to be reduced by the amount of those damages.

55—Lump sum compensation for future losses

If—

- (a) an injured person is to be compensated by way of lump sum for loss of future earnings or other future losses; and
- (b) an actuarial multiplier is used for the purpose of calculating the present value of the future losses,

then, in determining the actuarial multiplier, a prescribed discount rate is to be applied.

56—Exclusion of interest on damages compensating non-economic loss or future loss

Interest is not to be awarded on damages compensating non-economic or future loss.

56A—Additional provisions relating to motor vehicle injuries (economic loss)

- (1) Any entitlement to damages for economic loss in relation to personal injury arising from an MVA motor accident applies subject to the provisions of this section.

-
- (2) A person who suffers personal injury arising from an MVA motor accident may only be awarded damages for loss or impairment of future earning capacity if the injury scale value that applies under the regulations in relation to the injury exceeds 7.
- (3) However, a court may award damages in a case that would otherwise be excluded by operation of subsection (2) if satisfied—
- (a) that the consequences of the personal injury with respect to loss or impairment of future earning capacity are exceptional; and
 - (b) that the application of the threshold set by that subsection would, in the circumstances of the particular case, be harsh and unjust.
- (4) In assessing damages for loss or impairment of future earning capacity in relation to personal injury arising from an MVA motor accident (other than with respect to a discount that would, apart from this section, be made for the usual vicissitudes of life)—
- (a) a court must not take into account—
 - (i) any inference as to a circumstance in respect of which the court is unable to evaluate the chance of it occurring; or
 - (ii) any inference as to a circumstance that the court evaluates as having less than a 20% chance of occurring; and
 - (b) an award of damages must be arrived at by taking into account the several circumstances on which a court may rely, the chance of each occurring, and the combination of those chances; and
 - (c) a court must, when making an award of damages, state—
 - (i) the circumstances that have been taken into account for the purposes of the award; and
 - (ii) the inferences that the court has drawn from those circumstances; and
 - (iii) the court's evaluation of the chances of each circumstance relied on occurring; and
 - (iv) its determination of the resultant award of damages.
- (5) Damages awarded for any form of loss or impairment of earning capacity (whether past or future) in relation to personal injury arising from an MVA motor accident must, after applying a discount rate (if any), and any other principle arising under this Act or at common law, including so as to take into account any actual or presumed contributory negligence, be discounted by a further 20%.
- (6) The maximum amount of damages that may be awarded to an employed person for loss in relation to personal injury arising from an MVA motor accident due to the loss of employer superannuation contributions is the relevant percentage of damages payable for the loss or impairment of the earning capacity on which the entitlement to those contributions is based.
- (7) In subsection (6)—
- relevant percentage** means the percentage of earnings that is the minimum percentage required by law to be paid as employer superannuation contributions.

- (8) The maximum amount of damages that may be awarded to a self-employed person for economic loss in relation to personal injury arising from an MVA motor accident due to the loss of superannuation contributions made by or on behalf of the person is the relevant percentage of damages payable for the loss or impairment of the earning capacity on which the entitlement to those contributions is based (but nothing in this subsection gives rise to an entitlement to damages beyond damages awarded for loss or impairment of earning capacity).

- (9) In subsection (8)—

relevant percentage means the percentage of earnings that is the minimum percentage required by law to be paid as employer superannuation contributions for the benefit of an employee who earns the same amount as the self-employed person.

57—Exclusion of damages for cost of management or investment

Damages are not to be awarded to compensate for the cost of the investment or management of the amount awarded.

58—Damages in respect of gratuitous services

- (1) Damages are not to be awarded—

- (a) to allow for the recompense of gratuitous services except services of a parent, spouse, domestic partner or child of the injured person; or
- (b) to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person.

- (2) Damages awarded to allow for the recompense of gratuitous services of a parent, spouse, domestic partner or child are not to exceed an amount equivalent to 4 times State average weekly earnings.

- (3) However, the court may make an award in excess of the limit prescribed by subsection (2) if satisfied that—

- (a) the gratuitous services are reasonably required by the injured person; and
- (b) it would be necessary, if the services were not provided gratuitously by a parent, spouse, domestic partner or child of the injured person to engage another person to provide the services for remuneration,

but, in that event, the damages awarded are not to reflect a rate of remuneration for the person providing the services in excess of State average weekly earnings.

- (4) Despite the preceding subsections, in a case involving an injured person who has suffered personal injury arising from an MVA motor accident—

- (a) damages referred to in subsection (1) are not to be awarded unless—
 - (i) the injury scale value that applies under the regulations in relation to the injury exceeds 10; and
 - (ii) the services are provided or to be provided—
 - (A) for at least 6 hours per week; and
 - (B) for a period of at least 6 consecutive months; and

- (b) any hourly rate used for the purposes of determining any damages awarded to allow for the recompense of gratuitous services of a parent, spouse, domestic partner or child is not to exceed a rate prescribed by the regulations for the purposes of this paragraph.
- (5) Furthermore, in a case involving a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, subsection (1) operates subject to the qualification that damages are not to be awarded for the recompense of gratuitous services of a parent, spouse, domestic partner or child of the participant in respect of any assessed treatment, care and support needs, as defined or determined under that Act (whether being past or future needs), that relate to the motor vehicle injury (as defined by that Act) in respect of which the person is a participant in that Scheme.
- (6) A reference in subsection (5) to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* will be taken to include a reference to a person who has been an interim participant in that Scheme (and who has received any treatment, care and support needs under that Act).

58A—Limitations on damages for participants in lifetime support scheme

- (1) No damages may be awarded to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* in respect of any of the treatment, care and support needs of the person, or any excluded treatment, care and support needs, as defined or determined under that Act (whether being past or future needs), that relate to the motor vehicle injury (as defined by that Act) in respect of which the person is a participant in that Scheme and that arise (or will arise) during the period in respect of which the person is a participant in the Scheme.
- (2) Subsection (1) applies—
 - (a) whether or not the treatment, care and support needs are assessed treatment, care and support needs under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*; and
 - (b) whether or not the Lifetime Support Authority is required to make a payment in respect of the treatment, care and support needs concerned; and
 - (c) whether or not any treatment, care, support or service is provided on a gratuitous basis.
- (3) A reference in subsection (1) to a person who is a participant in the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* will be taken to include a reference to a person who has been an interim participant in that Scheme (and who has received any treatment, care and support needs under that Act).

58B—Additional provisions relating to death on account of a motor vehicle injury

- (1) Any entitlement to damages for loss of financial support in respect of the death of a person arising from an MVA motor accident (a ***relevant loss of financial support claim***) applies subject to the provisions of this section.

- (2) In making an award in relation to a relevant loss of financial support claim that will provide for the future (other than with respect to a discount that would, apart from this section, be made for the usual vicissitudes of life)—
- (a) a court must not take into account—
 - (i) any inference as to a circumstance in respect of which the court is unable to evaluate the chance of it occurring; or
 - (ii) any inference as to a circumstance that the court evaluates as having less than a 20% chance of occurring; and
 - (b) an award of damages must be arrived at by taking into account the several circumstances on which a court may rely, and the combination of those chances; and
 - (c) a court must, when making an award of damages, state—
 - (i) the circumstances that have been taken into account for the purposes of the award; and
 - (ii) the inferences that the court has drawn from those circumstances; and
 - (iii) the court's evaluation of the chances of each circumstance occurring; and
 - (iv) its determination of the resultant award of damages.
- (3) Damages awarded in relation to a relevant loss of financial support claim must, after applying a discount rate (if any), and any other principle arising under this Act or at common law, including so as to take into account any actual or presumed contributory negligence, be discounted by a further 20%.

Part 9—Miscellaneous

Division 1—Rights as between employer and employee

59—Rights as between employer and employee

- (1) Notwithstanding any Act or law, or the provisions express or implied of any contract or agreement, where an employee commits a tort for which his employer is vicariously liable—
- (a) the employee shall not be liable to indemnify the employer in respect of the vicarious liability incurred by the employer; and
 - (b) unless the employee is otherwise entitled to indemnity in respect of his liability, the employer shall be liable to indemnify the employee in respect of liability incurred by the employee in respect of the tort.
- (2) Where an employer is proceeded against for the tort of his employee, and the employee is entitled pursuant to a policy of insurance or contract of indemnity to be indemnified in respect of liability that he may incur in respect of the tort, the employer shall be subrogated to the rights of the employee under that policy or contract in respect of the liability incurred by him (the employer), arising from the commission of the tort.

- (3) Where a person commits serious and wilful misconduct in the course of his employment and that misconduct constitutes a tort, the provisions of this section shall not apply in respect of that tort.

Division 2—Remedies against certain shipowners

60—Remedy against shipowners and others for injuries

- (1) If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries, including fatal injuries, caused by the ship or sustained on, in, or about the ship, in any port or harbour in the State, in consequence of the wrongful act, neglect, or default of the owners of the ship, or the master or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river in the State or in any water within three miles of the coast of the State, the Supreme Court or the local court of full jurisdiction nearest to the ship may, upon its being shown to the court by any person applying in accordance with rules of court that the owners are probably liable to pay damages in respect of such injuries and that none of the owners resides in the State, issue an order directed to any officer of the Supreme Court or of the said local court, or of the Minister of Marine, or of any authority exercising the powers vested in the said Minister named in the order, requiring such officer to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by a Judge of the Supreme Court, or as the case may be, by a judge or magistrate of the said local court, to abide the event of any proceedings that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon.
- (2) The officer to whom the order is directed may detain the ship in accordance with the order.
- (3) In any legal proceedings in relation to such injuries as aforesaid, the person giving security may be made the defendant, and shall be stated to be the owner of the ship which has caused the injuries, and the production of the order of the judge or magistrate made in relation to the security shall in the said proceedings be conclusive evidence that the defendant is the owner of the ship.
- (4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State if it has an office in the State at which service of process can be effected.
- (5) If a ship after detention in pursuance of this section or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by the officer detaining it, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be guilty of an offence and liable on summary conviction to a penalty not exceeding four hundred dollars.
- (6) If the master proceeds to sea with the ship in contravention of subsection (5) of this section, and takes to sea any person authorised to detain the ship or any person assisting any person so authorised, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the taking to sea of any such person, in addition to any penalty imposable under subsection (5).

- (7) The words *person applying* in this section shall include an employer who has paid compensation, or against whom a claim for compensation has been made, under the *Workmen's Compensation Act 1932* or under any corresponding subsequent enactment, if he shows the court that he probably is or will become entitled to be indemnified under that Act or enactment, and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.
- (8) The jurisdiction of the Supreme Court under this section may be exercised by a single judge of that court sitting in chambers.

Division 3—Damage by aircraft

61—Damage by aircraft

- (1) In this section—

aircraft damage means personal injury, loss of life, material loss, damage or destruction in South Australia that is not covered by the Commonwealth Act but would, assuming the aircraft had been engaged in trade and commerce among the States, have been covered by the Commonwealth Act;

Commonwealth Act means the *Damage by Aircraft Act 1999* (Cwth).
- (2) Words and expressions used in this section that are defined in the Commonwealth Act have the same respective meanings as in the Commonwealth Act.
- (3) Subject to the following qualifications, liability for aircraft damage is to be determined on the same principles as under the Commonwealth Act.
- (4) The following qualifications apply:
 - (a) a person who uses an aircraft as a passenger or for the transportation of passengers or goods is not to be regarded as an operator of the aircraft if the person reasonably relies on the skill of another (not being an employee) to operate the aircraft;
 - (b) if aircraft damage results from the unauthorised use of an aircraft, a person (other than the unauthorised user) who is liable for damage as owner or operator of the aircraft is entitled to be indemnified against that liability by the person (not being an employee) who used the aircraft without proper authority;
 - (c) if aircraft damage results from an impact between an aircraft or part of an aircraft and a person or object (other than a person or object in the aircraft), liability is to be determined according to principles of negligence unless—
 - (i) the impact occurs while the aircraft is in flight; or
 - (ii) the impact is caused by the aircraft or part of the aircraft crashing or falling to the ground;
 - (d) exemplary damages are not to be awarded for aircraft damage unless the defendant is shown to have caused the damage intentionally or recklessly.
- (5) This section does not apply to damage arising from operations of any of the following kinds carried out from an aircraft:
 - (a) seeding;

- (b) the spreading of fertiliser, weedicide, pesticide or other agricultural chemicals;
- (c) firefighting;
- (d) the dispersal of pollutants;
- (e) any similar operations,

unless the damage is caused by an impact between the aircraft or part of the aircraft and the ground or an impact between a substantial thing dropping or falling from the aircraft and the ground.

62—Exclusion of liability for trespass or nuisance

- (1) In this section—

Commonwealth Acts means the *Air Navigation Act 1920* (Cwth) and the *Civil Aviation Act 1988* (Cwth);

land includes a building, structure or other property on land (whether affixed to the land or not);

relevant air navigation regulations means the regulations governing air navigation under the Commonwealth Acts including those regulations as they apply to air navigation in South Australia under the *Air Navigation Act 1937*.

- (2) No action for trespass or nuisance arises by reason only of the flight of an aircraft over land, or the ordinary incidents of such a flight, if—
- (a) the aircraft flies at a height that is reasonable having regard to prevailing weather conditions and other relevant circumstances; and
 - (b) the aircraft is operated in accordance with the relevant air navigation regulations.

Division 4—Abolition of rule of common employment

63—Abolition of rule of common employment

- (1) Where any injury or damage is suffered by a servant by reason of the wrongful act, neglect or default of a fellow servant, the employer of those servants shall be liable in damages in respect of that injury or damage in the same manner and in the same cases as if those servants had not been engaged in a common employment.
- (2) This section applies to any injury or damage arising from a wrongful act, neglect or default committed after the enactment of this section, whether the contract of employment was made before or is made after the enactment of this section.
- (3) **Employer** in this section includes the Crown and instrumentalities of the Crown.

Division 5—Actions in tort relating to spouses and domestic partners

64—Abolition of rule as to unity of spouses

- (1) Subject to this section, where any injury or damage is suffered by any person by reason of the wrongful act, neglect or default of his spouse, the spouse shall be liable in respect of that injury or damage in all respects as if the injured person and the person by reason of whose wrongful act neglect or default the injury or damage is suffered were not married.
- (2) This section shall not be construed as entitling any person to maintain an action in trespass or ejectment against his spouse in respect of a matrimonial home.
- (3) Where proceedings are brought pursuant to this section, the court may dismiss the proceedings if it appears to the court—
 - (a) that no substantial benefit would accrue to either party from the continuation of the proceedings; or
 - (b) that the question or questions in issue could be more conveniently disposed of on an application under section 105 of the *Law of Property Act 1936*.

65—Spouse or domestic partner may claim for loss or impairment of consortium

- (1) If a person causes injury to another by wrongful act, neglect or default, the person will (whether or not the injury results in death) be liable in damages to the spouse or domestic partner of the injured person for loss or injury suffered by the spouse or domestic partner as a result of the loss or impairment of consortium.
- (2) Damages for the loss or impairment of consortium suffered by the spouse or domestic partner of an injured person on account of personal injury arising from an MVA motor accident will not be awarded unless the injury scale value that applies under the regulations in relation to the injury exceeds 10.

66—Damages where injured spouse or domestic partner participated in business

- (1) Where spouses or domestic partners are jointly engaged in the conduct of a business, and either of them suffers an injury as a result of which his or her participation in the conduct of the business ceases or is impaired, the other spouse or domestic partner (as the case may be) shall be entitled to recover from a person whose wrongful act, neglect or default caused the injury compensation for loss that he or she has suffered or continues to suffer by reason of the fact that the participation of his or her spouse or domestic partner (as the case may be) in the conduct of the business has ceased or has been impaired.
- (2) In this section—

business includes any professional or commercial undertaking;

injury includes an injury that results in death.

Division 6—Limitation on the award of damages for the costs of raising a child

67—Limitation on the award of damages for the costs of raising a child

- (1) In an action to which this section applies, no damages are to be awarded to cover the ordinary costs of raising a child.
- (2) The *ordinary costs of raising a child* include all costs associated with the child's care, upbringing, education and advancement in life except, in the case of a child who is mentally or physically disabled, any amount by which those costs would reasonably exceed what would be incurred if the child were not disabled.
- (3) This section applies to—
 - (a) an action for negligence resulting in the unintended conception of a child; or
 - (b) an action for negligence resulting in the failure of an attempted abortion; or
 - (c) an action for negligence resulting in the birth of a child from a pregnancy that would have been aborted but for the negligence; or
 - (d) an action for innocent misrepresentation resulting in—
 - (i) the unintended conception of a child; or
 - (ii) the birth of a child from a pregnancy that would have been aborted but for the misrepresentation; or
 - (e) an action for damages for breach of a statutory or implied warranty of merchantable quality, or fitness for purpose, in a case where a child is conceived as a result of the failure of a contraceptive device.

- (4) In this section—

contraceptive device includes any medicine or substance used to prevent conception;

innocent misrepresentation means any misrepresentation by words or conduct made without an intention to deceive.

Division 7—Abolition of actions of seduction, enticement and harbouring

68—Abolition of actions for enticement, seduction and harbouring

The following actions at common law are abolished—

- (a) the action for seduction; and
- (b) the action for enticement; and
- (c) the action for harbouring.

Division 8—Unreasonable delay in resolution of claim

69—Definitions

In this Division—

dependant of a deceased person means any person on whose behalf an action could (assuming that he or she had been financially dependent on the deceased person) be brought under Part 5;

personal injury includes—

- (a) a disease;
- (b) any impairment of a physical or mental condition.

70—Damages for unreasonable delay in resolution of a claim

- (1) Damages in the nature of exemplary damages may be awarded, on a claim by the personal representative of a deceased person, against another person (the person in default) if the conditions prescribed by subsection (2) are satisfied.
- (2) The conditions for an award of damages under this section are as follows:
 - (a) the deceased person suffered personal injury giving rise to a right to compensation or damages; and
 - (b) the deceased person made a claim in writing (giving a reasonable indication of the grounds of the claim) for compensation or damages for the personal injury; and
 - (c) a person (the ***person in default***) unreasonably delayed the resolution of the claim knowing, or in circumstances in which he or she ought to have known, that the deceased person was, because of advanced age, illness or injury, at risk of dying before the resolution of the claim; and
 - (d) the person in default is—
 - (i) the person against whom the deceased person's claim lay; or
 - (ii) some other person who controlled or had an interest in the defence of the claim; and
 - (e) the deceased person died before compensation or damages for non-economic loss were finally determined by agreement between the parties or by judgment or decision of a court or tribunal; and
 - (f) damages have not been recovered and are not recoverable under section 3(2) of the *Survival of Causes of Action Act 1940*.
- (3) For the purposes of subsection (2)—
 - (a) the question whether a person has unreasonably delayed resolution of a claim is to be determined in the context of the proceedings as a whole (including negotiations and other non-curial proceedings) and the conduct of the deceased person and any other parties to the proceedings;
 - (b) a lawful fee agreement between a legal practitioner and client does not give the legal practitioner an interest in the defence of the claim;

- (c) if a judgment or decision of a court or tribunal is liable to appeal, then—
 - (i) if there is no appeal—the judgment or decision finally determines compensation or damages on the date it is given; but
 - (ii) if there is an appeal—there is no final determination of compensation or damages until the appeal is determined.
- (4) A court or tribunal that has, or would have had, jurisdiction in an action for damages, workers compensation or other monetary compensation for the personal injury has jurisdiction to award damages on a claim under this section but such a claim must be brought before the court or tribunal within 3 years after the deceased person's death (either as a separate proceeding or by introducing it as an additional claim in existing proceedings for damages or compensation for the personal injury).
- (5) In determining the amount of the damages to be awarded under this section, the court or tribunal is to have regard to—
 - (a) the need to ensure that the person in default does not benefit from the unreasonable delay in the resolution of the deceased person's claim; and
 - (b) the need to punish the person in default for the unreasonable delay; and
 - (c) any other relevant factor.
- (6) Damages may be awarded under this section despite any statutory restriction on the award of exemplary or punitive damages but, if the deceased person's claim was for worker's compensation, the damages cannot exceed the total amount of the compensation for non-economic loss to which the deceased person would have been entitled if the claim had been resolved immediately before his or her death.
- (7) Damages awarded under this section are to be paid, at the direction of the court or tribunal—
 - (a) to the dependants of the deceased person in proportions determined by the court or tribunal; or
 - (b) to the estate of the deceased person.
- (8) In exercising its discretion under subsection (7), the court or tribunal—
 - (a) is to make an award to dependants rather than to the estate unless there are no dependants or there is some other good reason to the contrary; and
 - (b) in apportioning between dependants is to have regard to other relevant statutory entitlements (if any) that arise on the death of the deceased person.
- (9) This section applies if the deceased person died on or after the commencement of this section (whether the circumstances out of which the personal injury claim arose occurred before or after that date).

71—Regulations

- (1) The Governor may make regulations for the purposes of this Division.
- (2) The regulations may (for example) deal with any aspect of the procedure to be followed in proceedings under this Division.

Division 9—Liability for perjury in civil actions

72—Liability for perjury in civil actions

- (1) Subject to this section, a person who gives perjured evidence in civil proceedings is liable for damage suffered by any other person in consequence of the perjury.
- (2) In proceedings under this section, the plaintiff must establish—
 - (a) that the defendant—
 - (i) has been convicted of perjury; or
 - (ii) has been found guilty of contempt of court on the ground of having committed perjury; or
 - (iii) has been committed for trial on a charge of perjury but by reason of the fact that no indictment has been preferred, or a *nolle prosequi* has been entered, has not been tried on that charge; and
 - (b) that the perjured evidence was material to the outcome of the proceedings in which it was given.
- (3) Where the defendant has not been convicted of perjury, or been found guilty of contempt of court on the ground of having committed perjury, the evidence upon which a liability is alleged to arise under this section must be corroborated in a material particular.
- (4) It is no defence to an action under this section that the perjured evidence was accepted as true by the court before which it was given.
- (5) In proceedings under this section, an apparently genuine document that appears to be a transcript of evidence given in the proceedings in which the perjured evidence is alleged to have been given shall be accepted as evidence—
 - (a) of the evidence given in those proceedings; and
 - (b) where evidence appears from the transcript to have been given by a particular person—that it was in fact given by that person.

Division 10—Racial victimisation

73—Racial victimisation

- (1) In this section—

act of racial victimisation means a public act inciting hatred, serious contempt or severe ridicule of a person or group of persons on the ground of their race but does not include—

 - (a) publication of a fair report of the act of another person; or
 - (b) publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or
 - (c) a reasonable act, done in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest (including reasonable public discussion, debate or expositions);

detriment means—

- (a) injury, damage or loss; or
- (b) distress in the nature of intimidation, harassment or humiliation;

public act means—

- (a) any form of communication with the public; or
- (b) conduct in a public place;

race of a person means the nationality, country of origin, colour or ethnic origin of the person or of another person with whom the person resides or associates.

- (2) An act of racial victimisation that results in detriment is actionable as a tort by the person who suffers the detriment.
- (3) In an action for damages for racial victimisation, damages may be awarded to compensate any form of detriment.
- (4) The total amount of the damages that may be awarded for the same act or series of acts cannot exceed \$40 000.
- (5) In applying the limit fixed by subsection (4), the court must take into account damages awarded by a court in criminal proceedings on convicting the defendant, in respect of the same act or series of acts, of the offence or a series of offences of racial vilification¹.
- (6) Before a court awards damages for an act of racial victimisation, the court must—
 - (a) take reasonable steps to ensure that all persons who may have been harmed by the act are given a reasonable opportunity to claim damages in the proceedings; or
 - (b) take other action that appears reasonable and necessary in the circumstances to protect the interests of possible claimants who are not before the court.

Note—

- 1 See section 6 of the *Racial Vilification Act 1996*.

Division 11—Good samaritans

74—Good samaritans

- (1) In this section—

emergency assistance means—

- (a) emergency medical assistance; or
- (b) any other form of assistance to a person whose life or safety is endangered in a situation of emergency;

good samaritan means—

- (a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently in need of emergency assistance; or

- (b) a medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or some other form of telecommunication about the treatment of a person who is apparently in need of emergency medical assistance;

medically qualified—a person is to be regarded as medically qualified if the person—

- (a) is a registered medical practitioner; or
 - (b) has professional qualifications in some field of health care that are statutorily recognised; or
 - (c) works or has worked as an ambulance officer or in some other recognised paramedical capacity.
- (2) A good samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance.
 - (3) A medically qualified good samaritan incurs no personal civil liability for advice given about the assistance to be given to a person in apparent need of emergency medical assistance.
 - (4) However—
 - (a) the immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third party motor vehicle insurance; and
 - (b) the immunity does not operate if the good samaritan's capacity to exercise due care and skill was, at the relevant time, significantly impaired by alcohol or another recreational drug.

Division 11A—Food donors and distributors

74A—Food donors and distributors

- (1) In this section, a reference to a **food donor or distributor** is a reference to a person who, acting without expectation of payment or other consideration and for a charitable or benevolent purpose, donates or distributes food with the intention that the consumer of the food would not have to pay for the food and to the agents or employees of such a person.
- (2) A food donor or distributor incurs no civil liability for loss of life or personal injury arising from consumption of the food donated or distributed.
- (3) However, the immunity does not operate if the food donor or distributor knew or was recklessly indifferent to the fact that when the food left the possession or control of the food donor or distributor it was unsafe within the meaning of the *Food Act 2001*.
- (4) The Minister must, as soon as practicable after the second anniversary of the commencement of this section—
 - (a) cause a report to be prepared on the operation of this section; and
 - (b) cause a copy of the report to be laid before each House of Parliament.

Division 11B—Supply of food in customers' containers

74B—Supplying food in customers' own containers

- (1) A person who sells food to a customer in a container supplied by the customer incurs no civil liability for any personal injury caused by the use of the container.
- (2) The immunity under subsection (1) extends to the agents and employees of the person selling the food.
- (3) However, the immunity does not operate—
 - (a) if the use of the container by the person selling the food was negligent; or
 - (b) if use of the container was unlawful under any Act; or
 - (c) if the food was subject to a recall order at the time it was sold.
- (4) In this section, the terms *food* and *recall order* have the same meaning as in the *Food Act 2001*.

Division 12—Effect of apology on liability

75—Effect of apology on liability

- (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person—
 - (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and
 - (b) is not relevant to the determination of fault or liability in connection with that matter.
- (2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.
- (3) This section does not apply in relation to—
 - (a) liability in respect of the tort of defamation; and
 - (b) civil liability of a kind that is excluded from the operation of this section by regulation.
- (4) In this section—

apology means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not the apology admits or implies an admission of fault in connection with the matter.

Division 12A—Exclusion of civil liability where Crown publishes certain information

75A—Exclusion of civil liability where Crown publishes certain information

- (1) Subject to this section, no civil liability (whether in tort, contract, equity or otherwise) arises out of the publication by, or on behalf of, the Crown of information of a kind, or in circumstances, prescribed by the regulations for the purposes of this section.
- (2) Nothing in subsection (1) affects the civil liability of—
 - (a) the person who was the author or originator of the information; or
 - (b) a person who publishes the information other than on behalf of the Crown.
- (3) For the purposes of this section, the Crown, and any person acting on behalf of the Crown, will be taken not to be the author or originator of information where the information published consists of an extract of information provided to, or otherwise in the possession of, the Crown.
- (4) Except as contemplated by subsections (1) and (3), this section is in addition to, and does not derogate from, the *Defamation Act 2005*.

Division 13—Regulations

76—Assessment of motor vehicle injuries

- (1) The regulations may, in relation to any claim, entitlement or award of damages in respect of personal injury arising from an MVA motor accident—
 - (a) authorise an insurer or the nominal defendant under Part 4 of the *Motor Vehicles Act 1959* to require a claimant to submit to an assessment or examination of a prescribed kind; and
 - (b) require that an examination or assessment be undertaken by an accredited health professional (see subsection (2)) in order to obtain advice and evidence in relation to any relevant matter; and
 - (c) specify procedures to be followed in connection with any examination or assessment, including as to the determination or selection of an accredited health professional who is to undertake the examination or assessment; and
 - (d) specify the maximum number of examinations or assessments that may be made in a particular case; and
 - (e) prescribe rules that are to be applied with respect to the determination of any injury scale value under this Act; and
 - (f) without limiting a preceding paragraph, make provision for the provision of advice or evidence about diagnosis, causation, prognosis, future requirements for treatment, care or support, or other matters that are relevant to any assessment of damages or liability in respect of the injury; and

- (g) make provision for the preparation and furnishing of reports and other information or material, including as to the procedures or processes associated with requesting any report, document or other material, the form of any report, document or other material, and the persons to whom any report, document or other material is to be provided or made available; and
 - (h) provide for any other matter that may be relevant to assessing or determining a claim or entitlement, or making an award of damages.
- (2) The designated Minister may establish an accreditation scheme with respect to health professionals in connection with regulations under this section.
- (3) The accreditation scheme—
 - (a) may provide for a term or a period of accreditation, and for the suspension or cancellation of accreditation on specified grounds; and
 - (b) may specify terms or conditions of accreditation; and
 - (c) may provide for any aspect of the scheme to be administered or managed by a person or body specified by the designated Minister; and
 - (d) may provide that a person holding an accreditation, registration or other form of authorisation or status under another scheme recognised by the designated Minister will be taken to hold an accreditation under this section; and
 - (e) may be amended or substituted by the designated Minister from time to time.
- (4) The rules that are to apply for the purpose of assessing injury scale values (*ISVs*) for multiple injuries must include 1 or more provisions that adopt the following principles:
 - (a) a court must consider the range of ISVs for the dominant injury of the multiple injuries;
 - (b) in order to reflect the level of adverse impact of multiple injuries on an injured person, a court may assess the ISV for the multiple injuries as being higher in the range of ISVs for the dominant injury of the multiple injuries than the ISV that the court would assess for the dominant injury only;
 - (c) if a court considers that the level of impact of multiple injuries on an injured person is so severe that the maximum ISV for the dominant injury is inadequate to reflect the level of impact, the court may make an assessment of the ISV for the multiple injuries that is higher than the maximum ISV for the dominant injury, subject to the following qualifications:
 - (i) the ISV for multiple injuries cannot exceed 100;
 - (ii) the ISV for multiple injuries should rarely be more than 25% higher than the maximum ISV for the dominant injury.
- (5) In connection with the operation of subsection (4), a dominant injury, in relation to multiple injuries, is—
 - (a) subject to paragraph (b)—the injury of the multiple injuries having the highest range; or
 - (b) if the highest range for 2 or more of the injuries of the multiple injuries is the same—the injury of those injuries selected as the dominant injury by a court assessing an ISV.

- (6) Subsections (4) and (5) do not limit any other principle or provision that may apply under the regulations in relation to the assessment and determination of an ISV for a particular injury.
- (7) For the purposes of the rules that are to apply for the purpose of assessing any injury scale value under a designated section (being rules that determine a substantive matter rather than prescribe a procedural matter), the relevant regulations are the regulations applying at the time of the occurrence of the relevant injury.
- (8) If a person fails to comply with a requirement prescribed under subsection (1) in respect of a claim or proceedings made or commenced by the person—
 - (a) in the case of a claim—a person or body to which the claim has been made may decline to consider or deal with the claim while the failure continues; and
 - (b) the person is not entitled, until he or she complies with the requirement, to commence proceedings or to continue proceedings that have been commenced in respect of the personal injury.
- (9) In addition, the regulations may—
 - (a) require an insurer or the nominal defendant under Part 4 of the *Motor Vehicles Act 1959* to pay for the costs of examinations and assessments, and for the preparation and furnishing of reports, documents or other material, in prescribed circumstances (subject to any limits specified in the regulations); and
 - (b) limit the liability of an insurer or the nominal defendant under Part 4 of the *Motor Vehicles Act 1959* to pay for the costs of examinations and assessments, and for the preparation and furnishing of reports, documents or other material, in connection with a claim (and any such regulation may provide that prescribed costs (if any) be borne by a claimant and will have effect according to its terms and despite a liability that would otherwise arise under Part 4 of the *Motor Vehicles Act 1959* or any other Act or law); and
 - (c) require an insurer or the nominal defendant under Part 4 of the *Motor Vehicles Act 1959* to make a contribution (determined in accordance with the regulations) towards the costs of the accreditation scheme established by the Minister under this section (including so that the scheme is fully-funded through the making of those contributions).
- (10) A regulation under subsection (1)(e) may only be made on the recommendation of the designated Minister.
- (11) Before the designated Minister makes a recommendation under subsection (10), the designated Minister must consult with—
 - (a) the Attorney-General; and
 - (b) The South Australian Branch of the Australian Medical Association Incorporated; and
 - (c) The Law Society of South Australia.

- (12) If an association referred to in subsection (11) objects to any matter contained in a regulation under subsection (10), the designated Minister must, at the request of that association, prepare a report that—
- (a) provides information about the consultation that has been undertaken; and
 - (b) sets out the objection that has been made (including the reasons put forward by the association for its objection).
- (13) The Minister must cause a copy of a report under subsection (12) to be laid before both Houses of Parliament as soon as is reasonably practicable after the request is made.
- (14) In addition, a regulation that would have the effect of changing the injury scale value applying with respect to a particular injury so that a person who suffers that injury (and no other injury) would, on account of that change, no longer have a right to damages for non-economic loss under section 52(3) and (4) cannot come into operation until the time for disallowance of the regulation has passed.
- (15) Nothing in this section is intended to prevent or restrict a court from exercising any judicial power or from determining a matter according to law.
- (16) In this section—

designated Minister means the Minister from time to time designated by the Governor by proclamation to be the designated Minister for the purposes of this section;

designated section means any of the following sections:

- (a) section 52;
- (b) section 56A;
- (c) section 58;
- (d) section 65;

health professional means—

- (a) a registered health practitioner under the *Health Practitioner Regulation National Law* (other than a student); or
- (b) a person who is within a class brought within the ambit of this definition by the regulations.

77—Regulations—general provisions

- (1) Without limiting section 76, the Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) A regulation under this Act may—
 - (a) refer to or incorporate, wholly or partially and with or without modification, a document prepared or published by a specified body, either as in force at the time the regulation is made or as in force from time to time; and
 - (b) be of general or limited application; and
 - (c) make different provision according to the persons or circumstances to which it is expressed to apply; and

- (d) provide that a matter is to be determined according to the discretion of a prescribed person or body.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

Wrongs Act 1936

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1936	2267	<i>Wrongs Act 1936</i>	13.8.1936	13.8.1936
1939	18	<i>Wrongs Act Amendment Act 1939</i>	22.11.1939	22.11.1939
1940	48	<i>Wrongs Act Amendment Act 1940</i>	28.11.1940	28.11.1940
1944	14	<i>Wrongs Act Amendment Act 1944</i>	23.11.1944	23.11.1944
1951	50	<i>Wrongs Act Amendment Act 1951</i>	13.12.1951	13.12.1951
1952	42	<i>Statute Law Revision Act 1952</i>	4.12.1952	4.12.1952
1956	17	<i>Limitation of Actions and Wrongs Acts Amendment Act 1956</i>	8.11.1956	8.11.1956
1956	49	<i>Wrongs Act Amendment Act 1956</i>	22.11.1956	22.11.1956
1958	58	<i>Wrongs Act Amendment Act 1958</i>	27.11.1958	27.11.1958
1959	38	<i>Wrongs Act Amendment Act 1959</i>	10.12.1959	10.12.1959
1972	19	<i>Statutes Amendment (Law of Property and Wrongs) Act 1972</i>	30.3.1972	18.5.1972 (<i>Gazette</i> 18.5.1972 p1926)
1972	58	<i>Statutes Amendment (Miscellaneous Provisions) Act 1972</i>	27.4.1972	18.5.1972 (<i>Gazette</i> 18.5.1972 p1926)
1974	70	<i>Wrongs Act Amendment Act 1974</i>	17.10.1974	28.11.1974 (<i>Gazette</i> 28.11.1974 p3373)
1975	118	<i>Statute Law Revision Act (No. 2) 1975</i>	4.12.1975	4.12.1975
1975	119	<i>Wrongs Act Amendment Act 1975</i>	4.12.1975	29.1.1976 (<i>Gazette</i> 29.1.1976 p356)
1983	87	<i>Wrongs Act Amendment Act 1983</i>	1.12.1983	1.12.1983
1983	116	<i>Wrongs Act Amendment Act (No. 2) 1983</i>	22.12.1983	22.12.1983
1986	126	<i>Wrongs Act Amendment Act 1986</i>	24.12.1986	8.2.1987 (<i>Gazette</i> 5.2.1987 p250)
1987	45	<i>Wrongs Act Amendment Act 1987</i>	30.4.1987	5.7.1987 (<i>Gazette</i> 28.5.1987 p1384)

Civil Liability Act 1936—1.8.2022 to 21.6.2023

Legislative history

1988	41	<i>Wrongs Act Amendment Act 1988</i>	5.5.1988	8.2.1987: s 2
1991	38	<i>Wrongs Amendment Act 1991</i>	31.10.1991	31.10.1991
1993	5	<i>Statutes Amendment (Motor Vehicles and Wrongs) Act 1993</i>	4.3.1993	3.5.1993 (<i>Gazette</i> 29.4.1993 p1476)
1993	62	<i>Statutes Amendment (Courts) Act 1993</i>	27.5.1993	s 42—28.10.1993 (<i>Gazette</i> 27.10.1993 p1892)
1994	21	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1994</i>	26.5.1994	7.7.1994 (<i>Gazette</i> 7.7.1994 p4)
1994	30	<i>Passenger Transport Act 1994</i>	26.5.1994	Sch 4—1.7.1994 (<i>Gazette</i> 30.6.1994 p1843)
1994	59	<i>Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994</i>	27.10.1994	1.1.1995 (<i>Gazette</i> 8.12.1994 p1942)
1996	92	<i>Racial Vilification Act 1996</i>	12.12.1996	6.7.1998 (<i>Gazette</i> 2.7.1998 p9)
1997	30	<i>Statutes Amendment (References to Banks) Act 1997</i>	12.6.1997	Pt 13 (s 19)—3.7.1997 (<i>Gazette</i> 3.7.1997 p4)
1997	53	<i>Non-Metropolitan Railways (Transfer) Act 1997</i>	31.7.1997	11.9.1997 (<i>Gazette</i> 11.9.1997 p703)
1998	67	<i>Statutes Amendment (Motor Accidents) Act 1998</i>	17.9.1998	Pt 3 (s 13) and Pt 4 (s 14)—29.10.1998 (<i>Gazette</i> 17.9.1998 p902)
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 64)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2000	8	<i>Wrongs (Damage by Aircraft) Amendment Act 2000</i>	20.4.2000	9.11.2000 (<i>Gazette</i> 9.11.2000 p3004)
2001	41	<i>Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001</i>	3.8.2001	s 9(1)—16.8.2001 (<i>Gazette</i> 16.8.2001 p3046)
2002	21	<i>Wrongs (Liability and Damages for Personal Injury) Amendment Act 2002</i>	12.9.2002	1.12.2002 (<i>Gazette</i> 28.11.2002 p4293)
2002	38	<i>Law Reform (Delay in Resolution of Personal Injury Claims) Act 2002</i>	28.11.2002	s 4—10.3.2003 (<i>Gazette</i> 13.2.2003 p581)
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 (<i>Gazette</i> 13.11.2003 p4048)
2004	9	<i>Law Reform (Ipp Recommendations) Act 2004</i>	8.4.2004	Pt 2 (ss 4—72)—1.5.2004 (<i>Gazette</i> 29.4.2004 p1172)
2005	50	<i>Defamation Act 2005</i>	27.10.2005	Sch 1 (cll 2 & 3)—1.1.2006: s 2
2005	78	<i>Dust Diseases Act 2005</i>	8.12.2005	Sch 1 (cl 1)—8.2.2006: s 2
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 15 (ss 42—51)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 6 (ss 8—10)—18.1.2007 (<i>Gazette</i> 18.1.2007 p234)
2008	51	<i>Civil Liability (Food Donors and Distributors) Amendment Act 2008</i>	11.12.2008	12.12.2008 (<i>Gazette</i> 11.12.2008 p5474)

2009	39	<i>Statutes Amendment and Repeal (Fair Trading) Act 2009</i>	23.7.2009	Pt 3 (ss 7 & 8)—1.1.2011 (<i>Gazette</i> 9.12.2010 p5580)
2013	15	<i>Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013</i>	23.5.2013	Sch 2 (c1l 2—8, 21 & 23)—1.7.2013 (<i>Gazette</i> 20.6.2013 p2629)
2014	16	<i>Return to Work Act 2014</i>	6.11.2014	Sch 9 (cl 3)—1.7.2015 (<i>Gazette</i> 4.12.2014 p6610)
2014	19	<i>Civil Liability (Disclosure of Information) Amendment Act 2014</i>	27.11.2014	2.10.2015 (<i>Gazette</i> 10.9.2015 p4221)
2016	28	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2016</i>	16.6.2016	Pt 3 (s 5)—16.6.2016: s 2(1)
2017	13	<i>Statutes Amendment (Registered Relationships) Act 2017</i>	26.4.2017	Pt 4 (s 8)—1.8.2017 (<i>Gazette</i> 1.8.2017 p3039)
2021	52	<i>Civil Liability (Institutional Child Abuse Liability) Amendment Act 2021</i>	9.12.2021	1.8.2022 (<i>Gazette</i> 28.7.2022 p2373)
2022	6	<i>Civil Liability (BYO Containers) Amendment Act 2022</i>	14.7.2022	14.7.2022
2023	4	<i>Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Act 2023</i>	23.2.2023	Pt 4 (s 7)—22.6.2023 (<i>Gazette</i> 15.6.2023 p1774)

Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 11 of The Public General Acts of South Australia 1837-1975 at page 642.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
Pt 1 heading	Pt A1 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
	Pt 1 heading inserted by 9/2004 s 4	1.5.2004
	Pt A1 heading renumbered Pt 1 heading under <i>Legislation Revision and Publication Act 2002</i>	1.5.2004
s 1	substituted by 9/2004 s 5	1.5.2004
s 2	substituted by 9/2004 s 6	1.5.2004
s 3	<i>substituted by 116/1983 s 2</i>	22.12.1983
	<i>deleted by 9/2004 s 7</i>	1.5.2004
s 3	s 3A redesignated as s 3 by 9/2004 s 8(6)	1.5.2004
s 3(1)	s 3 redesignated as s 3(1) by 15/2013 Sch 2(3)	1.7.2013
accident	inserted by 9/2004 s 8(1)	1.5.2004
consequential mental harm	inserted by 9/2004 s 8(2)	1.5.2004
Consumer Price Index	inserted by 9/2004 s 8(2)	1.5.2004

Civil Liability Act 1936—1.8.2022 to 21.6.2023

Legislative history

contributory negligence	inserted by 9/2004 s 8(2)	1.5.2004
damages	inserted by 9/2004 s 8(2)	1.5.2004
domestic partner	inserted by 43/2006 s 42(1)	1.6.2007
	substituted by 13/2017 s 8(1)	1.8.2017
drive	inserted by 9/2004 s 8(2)	1.5.2004
duty of care	inserted by 9/2004 s 8(2)	1.5.2004
harm	inserted by 9/2004 s 8(2)	1.5.2004
health care service	inserted by 9/2004 s 8(2)	1.5.2004
intoxicated	inserted by 9/2004 s 8(2)	1.5.2004
<i>the judgment first given</i>	<i>deleted by 9/2004 s 8(2)</i>	<i>1.5.2004</i>
medical expenses	inserted by 9/2004 s 8(2)	1.5.2004
mental harm	inserted by 9/2004 s 8(2)	1.5.2004
motor accident	inserted by 9/2004 s 8(2)	1.5.2004
	amended by 15/2013 Sch 2 cl 2(1)	1.7.2013
motor vehicle	inserted by 9/2004 s 8(2)	1.5.2004
MVA motor accident	inserted by 15/2013 Sch 2 cl 2(2)	1.7.2013
negligence	inserted by 9/2004 s 8(2)	1.5.2004
<i>newspaper</i>	<i>deleted by 50/2005 Sch 1 cl 2</i>	<i>1.1.2006</i>
non-economic loss	inserted by 9/2004 s 8(3)	1.5.2004
obvious risk	inserted by 9/2004 s 8(3)	1.5.2004
passenger compartment	inserted by 9/2004 s 8(4)	1.5.2004
personal injury or injury	inserted by 9/2004 s 8(4)	1.5.2004
precaution	inserted by 9/2004 s 8(4)	1.5.2004
prescribed discount rate	inserted by 9/2004 s 8(4)	1.5.2004
prescribed maximum	inserted by 9/2004 s 8(4)	1.5.2004
prescribed minimum	inserted by 9/2004 s 8(4)	1.5.2004
pure mental harm	inserted by 9/2004 s 8(4)	1.5.2004
<i>putative spouse</i>	<i>deleted by 43/2006 s 42(2)</i>	<i>1.6.2007</i>
registered relationship	inserted by 13/2017 s 8(2)	1.8.2017
spouse	substituted by 43/2006 s 42(3)	1.6.2007
State average weekly earnings	inserted by 9/2004 s 8(5)	1.5.2004
s 3(2)	inserted by 15/2013 Sch 2 cl 2(3)	1.7.2013
s 3B	<i>inserted by 116/1983 s 3</i>	<i>22.12.1983</i>
	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>10.3.2003</i>
s 4	inserted by 9/2004 s 9	1.5.2004

s 4(3)	deleted by 39/2009 s 7	1.1.2011
s 4(4)	amended by 16/2014 Sch 9 cl 3	1.7.2015
<i>Pt 2 before deletion by 50/2005</i>		
<i>Pt 2 heading</i>	<i>Pt 1 heading deleted and Pt 2 heading inserted by 9/2004 s 10</i>	1.5.2004
s 6	amended by 116/1983 s 4	22.12.1983
s 7		
s 7(1)	amended by 116/1983 s 5	22.12.1983
	amended by 30/1997 s 19	3.7.1997
	amended by 33/1999 Sch (item 64)	1.7.1999
s 8	amended by 116/1983 s 6	22.12.1983
s 10		
s 10(1)	amended by 116/1983 s 7	22.12.1983
s 11	amended by 116/1983 s 8	22.12.1983
s 14	amended by 116/1983 s 9	22.12.1983
<i>Pt 2</i>	deleted by 50/2005 Sch 1 cl 3	1.1.2006
<i>Pt 3</i>	Pt 1A comprising s 17A and heading inserted by 116/1983 s 10	22.12.1983
<i>Pt 3 heading</i>	Pt 1A heading deleted and Pt 3 heading inserted by 9/2004 s 11	1.5.2004
s 18	s 17A redesignated as s 18 by 9/2004 s 12	1.5.2004
<i>Pt 4</i>	Pt 1B comprising s 17B—17E and heading inserted by 45/1987 s 3	5.7.1987
<i>Pt 4 heading</i>	Pt 1B heading deleted and Pt 4 heading inserted by 9/2004 s 13	1.5.2004
s 19	s 17B redesignated as s 19 by 9/2004 s 14	1.5.2004
s 20	s 17C redesignated as s 20 by 9/2004 s 15	1.5.2004
s 21	s 17D redesignated as s 21 by 9/2004 s 16	1.5.2004
s 22	s 17E redesignated as s 22 by 9/2004 s 17	1.5.2004
<i>Pt 5</i>		
<i>Pt 5 heading</i>	Pt 2 heading deleted and Pt 5 heading inserted by 9/2004 s 18	1.5.2004
s 23	s 19 amended by 59/1994 Sch 2	1.1.1995
	s 19 redesignated as s 23 by 9/2004 s 19	1.5.2004
s 24	s 20 redesignated as s 24 by 9/2004 s 20(2)	1.5.2004
s 24(1)	amended by 43/2006 s 43(1)	1.6.2007
s 24(2)	s 20(2) substituted by 9/2004 s 20(1)	1.5.2004
s 24(2aa)	s 20(2aa)(i)—(v) redesignated as s 20(2aa)(a)—(e) by 44/2003 s 3(1) (Sch 1)	24.11.2003
	amended by 78/2005 Sch 1 cl 1	8.2.2006
s 24(4)	amended by 43/2006 s 43(2)	1.6.2007
s 24(7)	amended by 43/2006 s 43(3), (4)	1.6.2007
s 25	s 21 redesignated as s 25 by 9/2004 s 21	1.5.2004
s 26	s 22 redesignated as s 26 by 9/2004 s 22	1.5.2004

Civil Liability Act 1936—1.8.2022 to 21.6.2023

Legislative history

s 27	s 23 redesignated as s 27 by 9/2004 s 23(2)	1.5.2004
s 27(1)	s 23(1) amended by 9/2004 s 23(1)	1.5.2004
s 28	s 23A redesignated as s 28 by 9/2004 s 24	1.5.2004
s 28(1)	amended by 44/2006 s 8	18.1.2007
s 29	s 23B redesignated as s 29 by 9/2004 s 25	1.5.2004
s 29(1)	amended by 44/2006 s 9	18.1.2007
	amended by 43/2006 s 44(1)	1.6.2007
s 29(2)	amended by 43/2006 s 44(2)—(4)	1.6.2007
s 29(3)	amended by 43/2006 s 44(5)	1.6.2007
s 29(4)	substituted by 43/2006 s 44(6)	1.6.2007
s 30	s 23C redesignated as s 30 by 9/2004 s 26(5)	1.5.2004
s 30(1)	s 23C(1) amended by 9/2004 s 26(1)	1.5.2004
	amended by 43/2006 s 45	1.6.2007
s 30(2)	s 23C(2) amended by 9/2004 s 26(2)	1.5.2004
s 30(3)	s 23C(3) amended by 9/2004 s 26(3)	1.5.2004
s 30(4)	s 23C(4) amended by 59/1994 Sch 2	1.1.1995
	s 23C(4) amended by 9/2004 s 26(4)	1.5.2004
Pt 6	inserted by 9/2004 s 27	1.5.2004
s 38		
s 38(2)	amended by 39/2009 s 8	1.1.2011
Pt 7	inserted by 9/2004 s 27	1.5.2004
s 46	s 24J redesignated as s 46 by 9/2004 s 40(2)	1.5.2004
s 46(2)	s 24J(2) amended by 9/2004 s 40(1)	1.5.2004
s 47	s 24K redesignated as s 47 by 9/2004 s 41	1.5.2004
s 48	s 24L redesignated as s 48 by 9/2004 s 41	1.5.2004
s 49	s 24M redesignated as s 49 by 9/2004 s 41	1.5.2004
s 50	s 24N redesignated as s 50 by 9/2004 s 41	1.5.2004
Pts 7A and 7B	inserted by 52/2021 s 4	1.8.2022
Pt 8	Pt 2A comprising ss 24—24O and headings inserted by 21/2002 s 3	1.12.2002
Pt 8 heading	Pt 2A heading deleted and Pt 8 heading inserted by 9/2004 s 28	1.5.2004
<i>Pt 8 Div 1</i>	<i>Pt 2A Div 1 deleted by 9/2004 s 29</i>	<i>1.5.2004</i>
s 51	inserted by 9/2004 s 29	1.5.2004
<i>Pt 8 Div 2 heading</i>	<i>Pt 2A Div 2 heading deleted by 9/2004 s 30</i>	<i>1.5.2004</i>
s 52	s 24B redesignated as s 52 by 9/2004 s 31	1.5.2004
s 52(2)	amended by 15/2013 Sch 2 cl 3(1)	1.7.2013
s 52(3)—(8)	inserted by 15/2013 Sch 2 cl 3(2)	1.7.2013
<i>s 24C</i>	<i>deleted by 9/2004 s 32</i>	<i>1.5.2004</i>
s 53	inserted by 9/2004 s 32	1.5.2004
s 53(1)	amended by 43/2006 s 46	1.6.2007
s 54	s 24D redesignated as s 54 by 9/2004 s 33(2)	1.5.2004
s 54(3)	inserted by 9/2004 s 33(1)	1.5.2004

s 55	s 24E redesignated as s 55 by 9/2004 s 34	1.5.2004
s 56	s 24F redesignated as s 56 by 9/2004 s 35	1.5.2004
s 56A	inserted by 15/2013 Sch 2 cl 4	1.7.2013
s 57	s 24G redesignated as s 57 by 9/2004 s 36	1.5.2004
s 58	s 24H redesignated as s 58 by 9/2004 s 37	1.5.2004
s 58(1)—(3)	amended by 43/2006 s 47	1.6.2007
s 58(4)—(6)	inserted by 15/2013 Sch 2 cl 5	1.7.2013
ss 58A and 58B	inserted by 15/2013 Sch 2 cl 6	1.7.2013
<i>Pt 8 Div 3 heading</i>	<i>Pt 2A Div 3 heading deleted by 9/2004 s 38</i>	1.5.2004
<i>s 24I</i>	<i>deleted by 9/2004 s 39</i>	1.5.2004
ss 24J—24N—see ss 46—50		
<i>Pt 8 Div 4</i>	<i>Pt 2A Div 4 deleted by 9/2004 s 42</i>	1.5.2004
Pt 9		
Pt 9 heading	Pt 3 heading deleted and Pt 9 heading inserted by 9/2004 s 43	1.5.2004
<i>Pt 3 Div 1 heading</i>	<i>heading preceding s 24 deleted and Pt 3 Div 1 heading inserted by 8/2000 s 4 (Sch)</i>	9.11.2000
	<i>deleted by 41/2001 s 9(1)</i>	16.8.2001
<i>s 24</i>	<i>amended by 8/2000 s 4 (Sch)</i>	9.11.2000
	<i>deleted by 41/2001 s 9(1)</i>	16.8.2001
<i>ss 25—27</i>	<i>deleted by 41/2001 s 9(1)</i>	16.8.2001
<i>Pt 3 Div 2 heading</i>	<i>heading preceding s 27A deleted and Pt 3 Div 2 heading inserted by 8/2000 s 4 (Sch)</i>	9.11.2000
	<i>deleted by 41/2001 s 9(1)</i>	16.8.2001
<i>s 27A</i>	<i>amended by 8/2000 s 4 (Sch)</i>	9.11.2000
	<i>deleted by 41/2001 s 9(1)</i>	16.8.2001
<i>s 27B</i>	<i>deleted by 41/2001 s 9(1)</i>	16.8.2001
Pt 9 Div 1		
Pt 9 Div 1 heading	heading preceding s 27C and Pt 3 Div 3 heading inserted by 8/2000 s 4 (Sch)	9.11.2000
	Pt 3 Div 3 heading deleted and Pt 9 Div 1 heading inserted by 9/2004 s 44	1.5.2004
<i>s 59</i>	<i>s 27C redesignated as s 59 by 9/2004 s 45</i>	1.5.2004
<i>Pt 3 Div 4</i>	<i>deleted by 9/2004 s 46</i>	1.5.2004
<i>Pt 3 Div 4 heading</i>	<i>heading preceding s 28 deleted and Pt 3 Div 4 heading inserted by 8/2000 s 4 (Sch)</i>	9.11.2000
Pt 9 Div 2		
Pt 9 Div 2 heading	heading preceding s 29 deleted and Pt 3 Div 5 heading inserted by 8/2000 s 4 (Sch)	9.11.2000
	Pt 3 Div 5 heading redesignated as Pt 9 Div 2 heading by 9/2004 s 47	1.5.2004
<i>s 60</i>	<i>s 29 redesignated as s 60 by 9/2004 s 48</i>	1.5.2004
Pt 9 Div 3	Pt 3 Div 6 inserted by 8/2000 s 3	9.11.2000

Civil Liability Act 1936—1.8.2022 to 21.6.2023

Legislative history

	Pt 3 Div 6 redesignated as Pt 9 Div 3 by 9/2004 s 49	1.5.2004
s 61	s 29A redesignated as s 61 by 9/2004 s 50	1.5.2004
s 62	s 29B redesignated as s 62 by 9/2004 s 51	1.5.2004
Pt 9 Div 4		
Pt 9 Div 4 heading	heading preceding s 30 deleted and Pt 3 Div 7 heading inserted by 8/2000 s 4 (Sch)	9.11.2000
	Pt 3 Div 7 heading redesignated as Pt 9 Div 4 heading by 9/2004 s 52	1.5.2004
s 63	s 30 redesignated as s 63 by 9/2004 s 53	1.5.2004
s 31 and heading	deleted by 116/1983 s 11	22.12.1983
Pt 9 Div 5		
Pt 9 Div 5 heading	heading preceding s 32 deleted and Pt 3 Div 8 heading inserted by 8/2000 s 4 (Sch)	9.11.2000
	Pt 3 Div 8 heading redesignated as Pt 9 Div 5 heading by 9/2004 s 54	1.5.2004
	amended by 43/2006 s 48	1.6.2007
s 64	s 32 redesignated as s 64 by 9/2004 s 55	1.5.2004
s 65	s 33 redesignated as s 65 by 9/2004 s 56	1.5.2004
	substituted by 43/2006 s 49	1.6.2007
s 65(1)	s 65 redesignated as s 65(1) by 15/2013 Sch 2 cl 7	1.7.2013
s 65(2)	inserted by 15/2013 Sch 2 cl 7	1.7.2013
s 66	s 34 redesignated as s 66 by 9/2004 s 57	1.5.2004
s 66(1)	amended by 43/2006 s 50(1), (2)	1.6.2007
s 66(2)		
injury	amended by 43/2006 s 50(3)	1.6.2007
Pt 9 Div 6	inserted by 9/2004 s 58	1.5.2004
Pt 9 Div 7		
Pt 9 Div 7 heading	heading preceding s 35 deleted and Pt 3 Div 9 heading inserted by 8/2000 s 4 (Sch)	9.11.2000
	Pt 3 Div 9 heading redesignated as Pt 3 Div 7 heading by 9/2004 s 59	1.5.2004
s 68	s 35 redesignated as s 68 by 9/2004 s 60	1.5.2004
Pt 3 Div 10	inserted by 126/1986 s 3	8.2.1987
	amended by 41/1988 s 3	8.2.1987
	amended by 38/1991 s 2	31.10.1991
	amended by 5/1993 s 18	3.5.1993
	amended by 62/1993 s 42	28.10.1993
	amended by 21/1994 s 31	7.7.1994
	amended by 30/1994 Sch 4 cl 2(e)	1.7.1994
	amended by 53/1997 s 12	11.9.1997
	amended by 67/1998 s 13	29.10.1998
	amended by 8/2000 s 4 (Sch)	9.11.2000
	deleted by 21/2002 s 4	1.12.2002

Pt 9 Div 8	Pt 3 Div 10A inserted by 38/2002 s 4	10.3.2003
	Pt 3 Div 10A redesignated as Pt 9 Div 8 by 9/2004 s 61	1.5.2004
s 69	s 35B redesignated as s 69 by 9/2004 s 62	1.5.2004
dependant	amended by 44/2006 s 10	18.1.2007
s 70	s 35C redesignated as s 70 by 9/2004 s 63	1.5.2004
s 71	s 35D redesignated as s 71 by 9/2004 s 64	1.5.2004
Pt 9 Div 9		
<i>Heading preceding s 36</i>	<i>inserted by 87/1983 s 2</i>	<i>1.12.1983</i>
	<i>deleted by 8/2000 s 4 (Sch)</i>	<i>9.11.2000</i>
Pt 9 Div 9 heading	Pt 3 Div 11 heading inserted by 8/2000 s 4 (Sch)	9.11.2000
	Pt 3 Div 11 heading redesignated as Pt 9 Div 9 heading by 9/2004 s 65	1.5.2004
s 72	s 36 inserted by 87/1983 s 2	1.12.1983
	s 36 redesignated as s 72 by 9/2004 s 66	1.5.2004
Pt 9 Div 10		
<i>Heading preceding s 37</i>	<i>inserted by 92/1996 s 7</i>	<i>6.7.1998</i>
	<i>deleted by 8/2000 s 4 (Sch)</i>	<i>9.11.2000</i>
Pt 9 Div 10 heading	Pt 3 Div 12 heading inserted by 8/2000 s 4 (Sch)	9.11.2000
	Pt 3 Div 12 heading redesignated as Pt 9 Div 10 heading by 9/2004 s 67	1.5.2004
s 73	s 37 inserted by 92/1996 s 7	6.7.1998
	s 37 redesignated as s 73 by 9/2004 s 68	1.5.2004
Pt 9 Div 11	Pt 3 Div 13 inserted by 21/2002 s 5	1.12.2002
	Pt 3 Div 13 redesignated as Pt 9 Div 11 by 9/2004 s 69	1.5.2004
s 74	s 38 redesignated as s 74 by 9/2004 s 70	1.5.2004
Pt 9 Div 11A	inserted by 51/2008 s 4	12.12.2008
Pt 9 Div 11B	inserted by 6/2022 s 2	14.7.2022
<i>Pt 9 Div 12 before substitution by 28/2016</i>	<i>Pt 3 Div 14 inserted by 21/2002 s 5</i>	<i>1.12.2002</i>
	<i>Pt 3 Div 14 redesignated as Pt 9 Div 12 by 9/2004 s 71</i>	<i>1.5.2004</i>
s 75	s 39 redesignated as s 75 by 9/2004 s 72	1.5.2004
Pt 9 Div 12	substituted by 28/2016 s 5	16.6.2016
Pt 9 Div 12A	inserted by 19/2014 s 4	2.10.2015
Pt 9 Div 13	inserted by 15/2013 Sch 2 cl 8	1.7.2013

Transitional etc provisions associated with Act or amendments

Wrongs Act Amendment Act 1986

4—Transitional provision

The amendments made by this Act do not affect a cause of action that arose before the commencement of this Act.

Wrongs Act Amendment Act 1987

4—Operation of this Act

This Act does not affect a cause of action that arose before its commencement and does not give rise to a cause of action in relation to an event that occurred before its commencement.

Statutes Amendment (Motor Vehicles and Wrongs) Act 1993

19—Transitional provision

The amendments made by this Act do not affect a cause of action, right or liability that arose before the commencement of this Act.

Statutes Amendment (Motor Accidents) Act 1998

14—Transitional provision

- (1) An amendment made by this Act does not affect a cause of action, right or liability that arose before the commencement of the amendment.
- (2) However, subsection (1) does not derogate from the operation of section 105 of the *Motor Vehicles Act 1959*.

Wrongs (Liability and Damages for Personal Injury) Amendment Act 2002

6—Transitional provision

- (1) The amendments made by sections 3 and 4 of this Act are applicable to an action in which damages are claimed for personal injury if the accident out of which the action arises occurs on or after the commencement of those sections.
- (2) If the accident out of which the action arises occurred before the commencement of sections 3 and 4 of this Act, the principal Act (if relevant to the action) applies as if the amendments made by those sections had not been made.

Example—

Suppose that A was exposed to asbestos in 1986 but is not diagnosed with asbestosis until 2004. The assessment of A's damages for personal injury would be determined in accordance with the law that applied before the commencement of sections 3 and 4 of the *Wrongs Act (Liability and Assessment of Damages for Personal Injury) Amendment Act 2002*.

7—Report on implications of these amendments

As soon as practicable after the expiration of 2 years from the commencement of this Act, the Economic and Finance Committee must investigate and report to the Parliament on the effect of the amendments on the availability and cost of public liability insurance.

Law Reform (Ipp Recommendations) Act 2004, Sch 1**1—Transitional provision**

- (1) The amendments made by the *Law Reform (Ipp Recommendations) Act 2004* (the ***Ipp Recommendations Act***) are intended to apply only prospectively.
- (2) If a cause of action that is based wholly or partly on an event that occurred before the commencement of the Ipp Recommendations Act arises after the commencement of the Ipp Recommendations Act, it will be determined as if the amendments had not been enacted.

Example—

Suppose that A was exposed to asbestos in 1990 but a resultant illness is not diagnosed until after the commencement of the Ipp Recommendations Act. An action is then brought in negligence in which damages are claimed for personal injury. The amendments made by the Ipp Recommendations Act would not affect the determination of liability or the assessment of damages.

- (3) As soon as practicable after the expiration of 3 years from the commencement of this Schedule, the Economic and Finance Committee must investigate and report to the Parliament on the effect of the Ipp Recommendations Act on the availability and cost of insurance to persons.

Statutes Amendment (Domestic Partners) Act 2006**51—Transitional provision**

An amendment made by this Act to the *Civil Liability Act 1936* applies only in relation to a cause of action that arises after the commencement of this section.

Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013, Sch 2**21—Civil Liability Act—transitional provisions**

- (1) In this clause—
principal Act means the *Civil Liability Act 1936*.
- (2) An amendment made by this Act—
 - (a) that amends section 52, 58 or 65 of the principal Act; or
 - (b) that inserts section 56A, 58A or 58B into the principal Act,
 does not affect a cause of action, right or liability that arose before the commencement of the amendment.
- (3) Section 58A of the principal Act (as inserted by this Act) applies in relation to a person who is a participant in the Scheme under this Act in respect of a motor vehicle injury that results from an MVA motor accident (as defined by the principal Act) occurring on or after the commencement of section 5 of this Act.
- (4) Subclauses (2) and (3) do not derogate from the operation of section 105 of the *Motor Vehicles Act 1959*.
- (5) To avoid doubt, section 76(14) of the principal Act (as enacted by this Act) does not apply in relation to a regulation that prescribes the injury scale values that are to apply on the commencement of section 52(3) of the principal Act (as enacted by this Act).

23—Contribution to liabilities of Authority—transitional provisions

- (1) The Treasurer may, after consultation with MAC and the Authority, determine an amount that (in the opinion of the Treasurer) represents the amount derived by MAC from premiums in respect of policies of insurance under Part 4 of the *Motor Vehicles Act 1959* in respect of any treatment, care and support needs of persons who become participants in the Scheme under this Act after the commencement of the Scheme and the commencement of section 58A of the *Civil Liability Act 1936* (as inserted by this Act), including so as to provide an amount with respect to unexpended risk reserves held by MAC that are attributable to road accidents for which provision is made but for which liability does not eventually arise.
- (2) The Treasurer may make a determination under subclause (1)—
 - (a) in respect of past and future premiums payable under Part 4 of the *Motor Vehicles Act 1959* (applying such estimates as the Treasurer thinks fit); and
 - (b) on the basis of—
 - (i) estimates with respect to reductions in the liability and financial requirements of MAC in the future; and
 - (ii) estimates with respect to the liabilities and financial requirements of the Authority under this Act in the future,and after taking into account such other matters as the Treasurer thinks fit.
- (3) An amount determined by the Treasurer under subclause (1) will be payable by MAC (from out of the Compulsory Third Party Fund established under Part 4 of the *Motor Accident Commission Act 1992*) to the Authority (for payment into the Lifetime Support Scheme Fund established under Part 7 of this Act) at a time determined by the Treasurer after consultation with MAC and the Authority.
- (4) This clause operates despite any provision in the *Motor Accident Commission Act 1992* about payments into or out of the Compulsory Third Party Fund.
- (5) In this clause—

MAC means the Motor Accident Commission.

Historical versions

Reprint No 1—31.10.1991
Reprint No 2—3.5.1993
Reprint No 3—28.10.1993
Reprint No 4—7.7.1994
Reprint No 5—1.1.1995
Reprint No 6—3.7.1997
Reprint No 7—11.9.1997
Reprint No 8—6.7.1998
Reprint No 9—29.10.1998
Reprint No 10—1.7.1999
Reprint No 11—9.11.2000
Reprint No 12—16.8.2001

Reprint No 13—1.12.2002
Reprint No 14—10.3.2003
Reprint No 15—24.11.2003
1.5.2004
1.1.2006
8.2.2006
18.1.2007
1.6.2007
12.12.2008
1.1.2011
1.7.2013
1.7.2015
2.10.2015
16.6.2016
1.8.2017
14.7.2022