

South Australia

RECREATIONAL SERVICES (LIMITATION OF LIABILITY) ACT 2002

An Act to provide for limitation of liability of providers of recreational services; and for other purposes.

RECREATIONAL SERVICES (LIMITATION OF LIABILITY) ACT 2002

being

Recreational Services (Limitation of Liability) Act 2002 No. 20 of 2002
[Assented to 12 September 2002]¹

¹ Act not yet in operation.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Interpretation
4. Registration of code of practice
5. Registration of providers
6. Duty of care may be modified by registered code
7. Modification of duty of care
8. Application of this Act
9. Other modification or exclusion of duty of care not permitted
10. Regulations
11. Report on implications of these amendments

The Parliament of South Australia enacts as follows:**Short title**

1. This Act may be cited as the *Recreational Services (Limitation of Liability) Act 2002*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act—

"**code**" includes an amendment to a code;

"**consumer**" means a person (other than a person who is not of full age and capacity) for whom a recreational service is, or is to be, provided;

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

"**negative**"—a motion before the House of Assembly or the Legislative Council is, for the purposes of this Act, taken to have been negated if the motion is defeated or the notice of motion lapses;

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

- (a) mental and nervous shock; and
- (b) death;

"**provider**" in relation to a recreational service means a person who provides the service either on a commercial or a non-commercial basis;

"**recreational services**" means services that consist of participation in—

- (a) a sporting activity or a similar leisure-time pursuit; or
- (b) any other activity that—
 - (i) involves a significant degree of physical exertion or physical risk; and
 - (ii) is undertaken for the purposes of recreation, enjoyment or leisure;

"**registered code**"—*see* section 4;

"**registered provider**"—*see* section 5.

(2) It is Parliament's intention that **recreational services** should be interpreted in the same way as the corresponding definition in the *Trade Practices Act 1974* (Cwth)¹.

¹ The Second Reading Speech given in the House of Representatives on the introduction of the *Trade Practices Amendment (Liability for Recreational Services) Bill 2002* implies that "activities such as horse riding, bungee jumping and other similar activities" would fall within the definition of **recreational services**.

Registration of code of practice

4. (1) A person (the **proponent**) may apply to the Minister for registration of a code of practice governing the provision of recreational services of a particular kind (defined in the code).

(2) Such a code must set out measures that a provider of recreational services of the relevant kind should (in the opinion of the proponent) take in order to ensure a reasonable level of protection for consumers.

(3) A code submitted for registration under this section must comply with the requirements of the regulations as to its form and content.

(4) Before registering a code, the Minister—

(a) may require a proponent to obtain a report on the code's adequacy from a nominated person or association; and

(b) must publish an advertisement in a newspaper circulating generally throughout the State—

(i) giving notice of the application; and

(ii) identifying the recreational services to which the code relates; and

(iii) stating a place (which may be a website) at which the code may be inspected or from which a copy of the code may be obtained; and

(iv) inviting interested persons to make submissions on the adequacy of the code within a period specified in the advertisement (being a period not less than 21 days from the date of publication of the advertisement); and

(c) must consider any responses received to the advertisement within the time allowed in the advertisement.

(5) Unless the Minister refuses to register a code (which the Minister may only do for good reason) the Minister must—

(a) register the code by entering it on a website determined by the Minister and publishing notice of its registration in the *Gazette*; and

(b) ensure that a copy of the code is laid before both Houses of Parliament (together with copies of any reports on its adequacy submitted by the proponent).

(6) A registered code takes effect as follows:

(a) if no notice of a motion to disallow the code is given in either House within 14 sitting days after the code was laid before the House, the code will take effect at the expiration of that period (or if the period is different for each House, on the expiration of the later of those periods);

- (b) if notice of a motion to disallow the code is given in either or both Houses during that period, the code will take effect when the motion is negated (or if notice is given in both Houses, when the motion is last negated),

(unless the code itself fixes a later day for its commencement).

(7) The Minister must ensure—

- (a) that the register of codes can be inspected at a website determined by the Minister; and
- (b) that the register differentiates clearly between the codes that are in force and those that are not.

(8) The Minister—

- (a) may cancel the registration of a code if satisfied that there is good reason to do so; and
- (b) must cancel the registration of a code if—
- (i) either House of Parliament passes a resolution disallowing the code; or
- (ii) either House of Parliament at some later stage passes a resolution to the effect that registration of the code should be cancelled.

(9) On cancellation of the registration of a code, the Minister must—

- (a) publish notice of the cancellation in the *Gazette*; and
- (b) remove the code from the relevant website.

(10) The Minister does not incur any liability for or in respect of a code in consequence of its initial or continued registration.

Registration of providers

5. (1) A provider may apply to the Minister to register an undertaking to comply with a registered code.

(2) An application for registration of an undertaking must be accompanied by the information required by regulation.

(3) The Minister may, by notice in the *Gazette*—

- (a) register—
- (i) the name of a provider giving the undertaking (a **registered provider**); and
- (ii) the name or names in which the provider carries on business; and
- (b) identify the code or codes to which the undertaking relates that govern the recreational services provided by the provider and, if there are more than one, the services to which each code applies.

(4) A registered provider may apply to the Minister—

- (a) to vary the details of the registration; or
- (b) to cancel the provider's registration.

(5) An application for variation or cancellation of an undertaking by a registered provider must be accompanied by the information required by regulation.

(6) The Minister may, by notice in the *Gazette*—

- (a) vary the details of a provider's registration; or
- (b) cancel a provider's registration.

(7) The Minister must ensure that the register of providers who have undertaken to comply with registered codes can be inspected at a website determined by the Minister.

(8) The Minister does not incur any liability for or in respect of a provider's initial or continued registration.

Duty of care may be modified by registered code

6. (1) A registered provider may enter into a contract with a consumer modifying the duty of care owed by the provider to the consumer so that the duty of care is governed by the registered code.

(2) Before entering into a contract under subsection (1), the registered provider must give the consumer the notice required by the regulations of the effect of the agreement.

(3) If a registered provider—

- (a) provides recreational services gratuitously; and
- (b) displays notices prominently, in a manner and form required by the regulations, notifying consumers that the registered provider's duty of care is governed by the registered code,

a consumer who avails himself or herself of the services is taken to have agreed to a modification of the provider's duty of care so that it is governed by the registered code.

(4) A registered provider must have a copy of the registered code available for inspection at any place of business at which the registered provider carries on business.

Maximum penalty: \$5 000.

Expiation fee: \$315.

Modification of duty of care

7. (1) If a consumer to whom this section applies suffers personal injury, the provider is only liable in damages if the consumer establishes that a failure to comply with the registered code caused or contributed to the injury.

(2) This section applies to a consumer—

- (a) who has entered into an agreement with a registered provider modifying the provider's duty of care to the consumer; or
- (b) who is taken to have agreed to a modification of the provider's duty of care under section 6(3).

(3) The duty to comply with a registered code is a relevant statutory duty of care within the meaning, and for the purposes of, the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001*.

Application of this Act

8. (1) This Act operates to modify a duty of care under any other Act or law in relation to liability for personal injury.

(2) However, this Act does not affect—

- (a) a liability of a manufacturer of goods; or
- (b) a liability in respect of the sale of goods; or
- (c) criminal liability.

Other modification or exclusion of duty of care not permitted

9. A duty of care owed by a provider of recreational services to a consumer may not be modified or excluded in relation to liability for damages for personal injury except as provided by this Act.

Regulations

10. (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may fix fees in respect of any matter under this Act and provide for their payment, recovery or waiver.

Report on implications of these amendments

11. 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 this Act on the availability and cost of insurance for providers of recreational services.