

South Australia

Law Reform (Ipp Recommendations) Act 2004

An Act to reform the law as it relates to torts; to amend the *Wrongs Act 1936*, the *Limitation of Actions Act 1936* and the *Motor Vehicles Act 1959*.

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- 1 Transitional provision
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Law Reform (Ipp Recommendations) Act 2004*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Wrongs Act 1936*

4—Insertion of heading

Before section 1 insert:

Part 1—Preliminary

5—Substitution of section 1

Section 1—delete the section and substitute:

1—Short title

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

6—Substitution of section 2

Section 2—delete the section and substitute:

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.

7—Repeal of section 3

Section 3—delete the section

8—Amendment and redesignation of section 3A—Interpretation

(1) Section 3A—before the definition of *brother* insert:

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

(2) Section 3A, definition of *the judgment first given*—delete the definition and substitute:

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;

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 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*;

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

- (3) Section 3A—after the definition of **newspaper** insert:

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;

- (4) Section 3A—after the definition of **parent** insert:

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;

- (5) Section 3A—after the definition of *spouse* insert:

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

- (6) Redesignate the section as amended by this section as section 3

9—Insertion of section 4

After section 3A (now designated as section 3—see section 8 of this Act) insert:

4—Application of this 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.
- (3) This Act does not derogate from the *Recreational Services (Limitation of Liability) Act 2002*.
- (4) This Act does not affect a right to compensation under the *Workers Rehabilitation and Compensation Act 1986*.

10—Substitution of heading to Part 1

Heading to Part 1—delete the heading to Part 1 and substitute:

Part 2—Defamation

11—Substitution of heading to Part 1A

Heading to Part 1A—delete the heading to Part 1A and substitute:

Part 3—Liability for animals

12—Redesignation of section 17A—Liability for animals

Section 17A—redesignate the section as section 18

13—Substitution of heading to Part 1B

Heading to Part 1B—delete the heading to Part 1B and substitute:

Part 4—Occupiers liability

14—Redesignation of section 17B—Interpretation

Section 17B—redesignate the section as section 19

15—Redesignation of section 17C—Occupier's duty of care

Section 17C—redesignate the section as section 20

16—Redesignation of section 17D—Landlord's liability limited to breach of duty to repair

Section 17D—redesignate the section as section 21

17—Redesignation of section 17E—Exclusion of conflicting common law principles

Section 17E—re designate the section as section 22

18—Substitution of heading to Part 2

Heading to Part 2—delete the heading and substitute:

Part 5—Wrongful acts or neglect causing death

19—Redesignation of section 19—Liability for death caused wrongfully

Section 19—re designate the section as section 23

20—Amendment and redesignation of section 20—Effect and mode of bringing action, awarding of damages for funeral expenses etc

- (1) Section 20(2)—delete subsection (2) and substitute:
 - (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.

- (2) Section 20—re designate the section as amended by this section as section 24

21—Redesignation of section 21—Restriction of actions and time of commencement

Section 21—re designate the section as section 25

22—Redesignation of section 22—Particulars of person for whom damages claimed

Section 22—re designate the section as section 26

23—Amendment and redesignation of section 23—Provision where no executor or administrator or action not commenced within 6 months

- (1) Section 23(1)—delete "section 19 of this Act" and substitute:

section 23
- (2) Section 23—re designate the section as amended by this section as section 27

24—Redesignation of section 23A—Liability to parents of person wrongfully killed

Section 23A—re designate the section as section 28

25—Redesignation of section 23B—Liability to surviving spouse of person wrongfully killed

Section 23B—re designate the section as section 29

26—Amendment and redesignation of section 23C—Further provision as to solatium etc

- (1) Section 23C(1)—delete "sections 23A and 23B" and substitute:
sections 28 and 29
- (2) Section 23C(2)—delete section 23A or 23B of this Act" and substitute:
section 28 or 29
- (3) Section 23C(3)—delete "section 23A or 23B of this Act" and substitute:
section 28 or 29
- (4) Section 23C(4)—delete "section 23A or section 23B of this Act" and substitute:
section 28 or 29
- (5) Section 23C—redesignate the section as amended by this section as section 30

27—Insertion of Part 6

After section 23C (now designated as section 30—see section 26 of this Act) insert:

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.

Note—

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

- (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.

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—
 - (i) by a written law; or
 - (ii) by an applicable code of practice in force under the *Recreational Services (Limitation of Liability) Act 2002*; 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.

28—Substitution of heading to Part 2A

Heading to Part 2A—delete the heading and substitute:

Part 8—Damages for personal injury

29—Substitution of Part 2A Division 1

Part 2A Division 1—delete Division 1 and substitute:

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.

30—Repeal of heading to Part 2A Division 2

Heading to Part 2A Division 2—delete the heading

31—Redesignation of section 24B—Damages for non-economic loss

Section 24B—redesignate the section as section 52

32—Substitution of section 24C

Section 24C—delete the section and substitute:

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 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.

33—Amendment and redesignation of section 24D—Damages for loss of earning capacity

(1) Section 24D—after subsection (2) insert:

- (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.

(2) Section 24D—redesignate the section as amended by this section as section 54

34—Redesignation of section 24E—Lump sum compensation for future losses

Section 24E—redesignate the section as section 55

35—Redesignation of section 24F—Exclusion of interest on damages compensating non-economic loss or future loss

Section 24F—redesignate the section as section 56

36—Redesignation of section 24G—Exclusion of damages for cost of management or investment

Section 24G—redesignate the section as section 57

37—Redesignation of section 24H—Damages in respect of gratuitous services

Section 24H—redesignate the section as section 58

38—Repeal of heading to Part 2A Division 3

Heading to Part 2A Division 3—delete the heading to Division 3

39—Repeal of section 24I

Section 24I—delete the section

40—Amendment and redesignation of section 24J—Presumption of contributory negligence where injured person intoxicated

(1) Section 24J(2)—after paragraph (b) insert:

- (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.

(2) Section 24J—redesignate the section as amended by this section as section 46

41—Relocation of sections 24K to 24N

Sections 24K to 24N—re designate the sections as sections 47 to 50 respectively and relocate the sections so that they follow section 46 in Part 7 (see sections 27 and 40 of this Act)

42—Repeal of Part 2A Division 4

Part 2A Division 4—delete Division 4

43—Substitution of heading to Part 3

Heading to Part 3—delete the heading to Part 3 and substitute:

Part 9—Miscellaneous

44—Substitution of heading to Part 3 Division 3

Heading to Part 3 Division 3—delete the heading to Division 3 and substitute:

Division 1—Rights as between employer and employee

45—Redesignation of section 27C—Rights as between employer and employee

Section 27C—re designate the section as section 59

46—Repeal of Part 3 Division 4

Part 3 Division 4—delete Division 4

47—Redesignation of heading to Part 3 Division 5—Remedies against certain shipowners

Heading to Part 3 Division 5—re designate the Division as Division 2

48—Redesignation of section 29—Remedy against shipowners and others for injuries

Section 29—re designate the section as section 60

49—Redesignation of heading to Part 3 Division 6—Damage by aircraft

Heading to Part 3 Division 6—re designate the Division as Division 3

50—Redesignation of section 29A—Damage by aircraft

Section 29A—re designate the section as section 61

51—Redesignation of section 29B—Exclusion of liability for trespass or nuisance

Section 29B—re designate the section as section 62

52—Redesignation of heading to Part 3 Division 7—Abolition of rule of common employment

Heading to Part 3 Division 7—re designate the Division as Division 4

53—Redesignation of section 30—Abolition of rule of common employment

Section 30—re designate the section as section 63

54—Redesignation of heading to Part 3 Division 8—Actions in tort relating to husband and wife

Heading to Part 3 Division 8—re designate the Division as Division 5

55—Redesignation of section 32—Abolition of rule as to unity of spouses

Section 32—re designate the section as section 64

56—Redesignation of section 33—Wife may claim for loss or impairment of consortium

Section 33—re designate the section as section 65

57—Redesignation of section 34—Damages where injured spouse participated in a business

Section 34—re designate the section as section 66

58—Insertion of new Division

After section 34 (now designated as section 66—see section 57 of this Act) insert:

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.

59—Redesignation of heading to Part 3 Division 9—Abolition of actions of seduction, enticement and harbouring

Heading to Part 3 Division 9—re designate the Division as Division 7

60—Redesignation of section 35—Abolition of actions for enticement, seduction and harbouring

Section 35—re designate the section as section 68

61—Redesignation of heading to Part 3 Division 10A—Unreasonable delay in resolution of claim

Heading to Part 3 Division 10A—re designate the Division as Division 8

62—Redesignation of section 35B—Definitions

Section 35B—re designate the section as section 69

63—Redesignation of section 35C—Damages for unreasonable delay in resolution of a claim

Section 35C—re designate the section as section 70

64—Redesignation of section 35D—Regulations

Section 35D—re designate the section as section 71

65—Redesignation of heading to Part 3 Division 11—Liability for perjury in civil actions

Heading to Part 3 Division 11—re designate the Division as Division 9

66—Redesignation of section 36—Liability for perjury in civil actions

Section 36—re designate the section as section 72

67—Redesignation of heading to Part 3 Division 12—Racial victimisation

Heading to Part 3 Division 12—re designate the Division as Division 10

68—Redesignation of section 37—Racial victimisation

Section 37—re designate the section as section 73

69—Redesignation of heading to Part 3 Division 13—Good samaritans

Heading to Part 3 Division 13—re designate the Division as Division 11

70—Redesignation of section 38—Good samaritans

Section 38—re designate the section as section 74

71—Redesignation of heading to Part 3 Division 14—Expressions of regret

Heading to Part 3 Division 14—re designate the Division as Division 12

72—Redesignation of section 39—Expressions of regret

Section 39—re designate the section as section 75

Part 3—Amendment of *Limitation of Actions Act 1936*

73—Amendment of section 3—Interpretation

Section 3—after the definition of *action* insert:

child means a person under the age of 18 years;

74—Amendment of section 45—Persons under legal disability

Section 45(2)—delete "an infant" and substitute:

a child

75—Insertion of section 45A

After section 45 insert:

45A—Special provision regarding children

(1) If—

- (a) a child (the *plaintiff*) suffers personal injury; and
- (b) the time for bringing an action for damages is extended by this Act to more than 6 years from the date of the incident out of which the injury arose (the *relevant date*),

notice of an intended action must be given within 6 years after the relevant date by, or on behalf of, the child to the person or persons alleged to be liable in damages (the *defendant*).

Exception—

If the injury arises from an intentional tort and the action is to be brought against the person who actually committed the tort, notice of the action need not be given to that person, but if any other person is alleged to be liable for the tort, notice must be given to that other person.

- (2) If the injury is alleged to have arisen out of a motor accident, the notice must be given to the relevant third-party insurer.
- (3) The notice is to contain the information required by regulation.

- (4) The plaintiff (or, if the plaintiff is still a child, the plaintiff's parent or guardian) must comply with a reasonable request by the defendant—
 - (a) to provide copies of medical and other records and reports in the possession or power of the plaintiff (or the plaintiff's parent or guardian) relevant to the nature and extent of the plaintiff's injury and any consequent disability; or
 - (b) to undergo examination, at the expense of the defendant, by a medical expert for the purpose of ascertaining the nature and extent of the plaintiff's injury and any consequent disability.
- (5) The defendant may, by written notice to the plaintiff (or, if the plaintiff is still a child, the plaintiff's parent or guardian) require the plaintiff, within 6 months after the date of the notice, to bring an action so that the claim may be judicially determined.
- (6) In any such action, the court may, if it thinks it appropriate, exercise its power to make a determination of liability and adjourn final assessment of damages until a later date.
- (7) Non-compliance with a requirement of this section on the part of a plaintiff does not prevent the plaintiff from bringing an action for damages but unless the court is satisfied that there is good reason to excuse the non-compliance—
 - (a) no damages will be allowed in such an action to compensate or allow for medical or gratuitous services provided before the date the action was commenced; and
 - (b) no legal or other costs incurred in contemplation of the action or a possible action will be allowed.

76—Amendment of section 48—General power to extend periods of limitation

Section 48—after subsection (3) insert:

- (3a) A fact is not to be regarded as material to the plaintiff's case for the purposes of subsection (3)(b)(i) unless—
 - (a) it forms an essential element of the plaintiff's cause of action; or
 - (b) it would have major significance on an assessment of the plaintiff's loss.

Example—

In a case involving personal injury, a fact might qualify as a fact material to the plaintiff's case if it establishes—

- (a) a substantial reduction of the plaintiff's capacity to work; or
- (b) that the plaintiff will require substantially more medical care than previously expected; or
- (c) a significant loss of expectation of life.

- (3b) In determining whether it is, in all the circumstances of a case, just to grant an extension of time, the court should have regard to—
- (a) the period of extension sought and, in particular, whether the passage of time has prejudiced a fair trial; and
 - (b) the desirability of bringing litigation to an end within a reasonable period and thus promoting a more certain basis for the calculation of insurance premiums; and
 - (c) the nature and extent of the plaintiff's loss and the conduct of the parties generally; and
 - (d) any other relevant factor.

Part 4—Amendment of *Motor Vehicles Act 1959*

77—Amendment of section 99—Interpretation

- (1) Section 99(1)—after the definition of *owner* insert:

participant in a road race includes a driver or navigator of, or passenger in, a motor vehicle that takes part in the road race;

- (2) Section 99(1)—after the definition of *policy of insurance* insert:

road race means any contest—

- (a) that tests the speed or reliability of motor vehicles or the skill or endurance of their drivers or navigators; and
- (b) that—
 - (i) is declared to be an event to which section 33 of the *Road Traffic Act 1961* applies; or
 - (ii) takes place on a race track established or adapted for the purpose of such contests;

78—Amendment of section 104—Requirements if policy is to comply with this Part

Section 104—after its present contents (now to be designated as subsection (1)) insert:

- (2) However, a policy of insurance complies with this Part even though it contains an exclusion of liability of the nature and extent prescribed by clause 4 of Schedule 4.

79—Amendment of section 124A—Recovery by insurer

Section 124A—after subsection (2) insert:

- (3) Where an insured person incurs, as a participant in a road race, a liability against which he or she is insured under this Part, the insurer may, by action in a court of competent jurisdiction, recover from the organiser of the road race the amount of the liability and the reasonable costs incurred by the insurer in respect of that liability.

80—Amendment of Schedule 4—Policy of insurance

Schedule 4—after clause 3 insert:

- 4 This policy of insurance does not extend to liability arising from death of, or bodily injury to, a participant in a road race caused by the act or omission of another participant in the road race.

Schedule 1—Transitional provision

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.