

Version No. 103
Wrongs Act 1958
No. 6420 of 1958

Version incorporating amendments as at 20 October 2010

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Version No. 103
Wrongs Act 1958
No. 6420 of 1958

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An Act to consolidate the Law relating to Wrongs.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title and commencement

This Act may be cited as the **Wrongs Act 1958**, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

S. 1
amended by
Nos 7884
s. 4(1), 9353
s. 2(a), 9995
s. 2(1), 10078
s. 4, 10227
s. 8(a),
25/1989 s. 38.

2 Repeals and savings

- (1) The Acts mentioned in the Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;

s. 2A

(b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any order notice information liability or right made given laid accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act.

S. 2A
inserted by
No. 51/1989
s. 148.

2A Offences under this Act deemed to be indictable offences

Offences under this Act are, unless the contrary intention appears, deemed to be indictable offences.

PART I—CRIMINAL DEFAMATION

Pt 1 (Heading)
amended by
No. 75/2005
s. 49(Sch. 4
item 3.1).

* * * * *

S. 3
amended by
Nos 9292 s. 2,
9576 s. 11(1),
9708 s. 2,
12/1989
s. 4(1)(Sch. 2
item 136.1),
75/2005
s. 49(Sch. 4
item 3.2),
repealed by
No. 68/2009
s. 97(Sch.
item 137.1).

* * * * *

S. 3A
inserted by
No. 9292 s. 2,
amended by
No. 9708 s. 2,
repealed by
No. 75/2005
s. 49(Sch. 4
item 3.2).

4 No action maintainable against a person for faithfully reporting

No. 3807 s. 4.

S. 4
amended by
Nos 7876
s. 2(3), 9576
s. 11(1), 10257
s. 93, 57/1989
s. 3(Sch.
item 223.1),
77/2008
s. 129(Sch. 2
item 26),
68/2009
s. 97(Sch.
item 137.2).

No action or indictment shall be maintainable against any person for publishing a faithful and accurate report of proceedings in any court of justice, or other legally constituted court or in any inquest or investigation under the **Coroners Act 1985** or the **Coroners Act 2008**: Provided always that it shall not be lawful to publish any matter of an obscene or blasphemous nature nor any proceedings in any court which are not concluded and which the judge magistrate coroner or other presiding officer may pronounce it improper to publish at their then stage.

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s. 9

S. 5 repealed by No. 75/2005 s. 49(Sch. 4 item 3.2).	*	*	*	*	*
S. 5A inserted by No. 25/1989 s. 39, repealed by No. 75/2005 s. 49(Sch. 4 item 3.2).	*	*	*	*	*
Ss 6–8 repealed by No. 75/2005 s. 49(Sch. 4 item 3.2).	*	*	*	*	*

No. 3807 s. 9.
S. 9
amended by
No. 9945
s. 3(3)(Sch. 2
item 42).

9 Publishing any libel with intent to extort money

Every person who publishes or threatens to publish any libel upon any other person, or directly or indirectly prints or publishes, or directly or indirectly proposes to abstain from printing or publishing, or directly or indirectly offers to prevent the printing or publishing of any matter or thing touching any other person with intent to extort any money or security for money or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, shall be liable to imprisonment for a term of not more than three years:

Provided always that nothing herein contained shall in any manner alter or affect any law now or hereafter to be in force in respect of the sending or delivery of threatening letters or writings.

10 Publisher of false defamatory libel

(1) Every person who maliciously publishes any defamatory libel knowing the same to be false shall be liable to imprisonment for a term of not more than two years and to pay such fine as the court awards.

No. 3807 s. 10.
S. 10(1)
amended by
No. 9945
s. 3(3)(Sch. 2
item 42).

(2) Every person who maliciously publishes any defamatory libel shall be liable to fine or imprisonment or both as the court may award such imprisonment not to exceed the term of one year.

S. 10(2)
amended by
No. 9945
s. 3(3)(Sch. 2
item 42).

(3) An offence against subsection (1) or (2) is a summary offence.

S. 10(3)
inserted by
No. 7/2009
s. 435(2) (as
amended by
No. 68/2009
s. 54(u)).

11 Trial for defamatory libel

(1) On the trial of any charge for a defamatory libel, the accused having pleaded such plea as is hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters charged should be published; and to entitle the accused to give evidence of the truth of such matters charged as a defence to such charge it shall be necessary for the accused in pleading to the said charge to allege the truth of the said matters charged in the same manner as in pleading a justification to an action of defamation, and further to allege that it was for the public benefit that the said matters charged should be published and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published; to which plea the prosecutor shall be at liberty to reply generally denying the whole thereof; and if after such plea the accused is convicted on such charge it shall be competent to the court in

No. 3807 s. 11.

S. 11(1)
amended by
Nos 57/1989
s. 3(Sch.
item 223.2),
68/2009
s. 97(Sch.
item 137.3).

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Part I—Criminal Defamation

s. 11

pronouncing sentence to consider whether the guilt of the accused is aggravated or mitigated by the said plea or by the evidence given to prove or disprove the same:

Provided always that the truth of the matters charged in the alleged libel complained of by such charge shall in no case be inquired into without such plea of justification:

Provided also that in addition to such plea it shall be competent to the accused to plead a plea of not guilty:

Provided also that nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty which it is now competent to the accused to make under such plea to any charge for defamatory words or libel.

S. 11(2)
amended by
Nos 57/1989
s. 3(Sch. item
223.2),
68/2009
s. 97(Sch.
item 137.3).

- (2) Whensoever upon the trial of any charge for the publication of a libel under the plea of not guilty evidence has been given which establishes a presumptive case of publication against the accused by the act of any other person by his authority, it shall be competent to such accused to prove that such publication was made without his authority consent or knowledge and that the said publication did not arise from want of due care or caution on his part.

S. 12
repealed by
No. 75/2005
s. 49(Sch. 4
item 3.2).

* * * * *

13 Costs

In case of any charge by a private prosecutor for the publication of any defamatory libel if judgment is given for the accused, he shall be entitled to recover from the prosecutor the costs sustained by the said accused by reason of such charge; and upon a special plea of justification to such charge if the issue is found for the prosecutor, he shall be entitled to recover from the accused the costs sustained by the prosecutor by reason of such plea, such costs so to be recovered by the accused or prosecutor respectively to be assessed by the proper officer of the court before which the said charge is tried.

No. 3807 s. 12.
S. 13
amended by
Nos 57/1989
s. 3(Sch.
item 223.3),
35/1996
s. 453(Sch. 1
item 90.1),
68/2009
s. 97(Sch.
item 137.4).

13AA Transitional

- (1) Section 10 as amended by section 435(2) of the **Criminal Procedure Act 2009** applies to an offence alleged to have been committed on or after the commencement of section 435(2) of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement of section 435(2) of the **Criminal Procedure Act 2009**, the offence is alleged to have been committed before that commencement.

S. 13AA
inserted by
No. 68/2009
s. 97(Sch.
item 137.5).

Pt 1A
(Heading and
ss 13A–13D)
inserted by
No. 56/1998
s. 4.

PART IA—PUBLISHERS

S. 13A
inserted by
No. 56/1998
s. 4.

13A Application of Part

This Part applies to a document published after the commencement of section 4 of the **Printers and Newspapers (Repeal) Act 1998**.

S. 13B
inserted by
No. 56/1998
s. 4.

13B Definitions

(1) In this Part—

document means a document in paper form and includes a book, newspaper, pamphlet, leaflet, circular, advertisement, poster, magazine and other periodical publication but does not include a document consisting only of a representation of a work of art;

publish, in relation to a document, means sell or distribute (whether to the public generally or to a restricted class or number of persons) or publicly display.

(2) A person who, on behalf of another person, sells or distributes (whether to the public generally or to a restricted class or number of persons) or publicly displays a document does not publish the document for the purposes of this Part.

13C Identification of publisher

S. 13C
inserted by
No. 56/1998
s. 4.

- (1) A person who publishes a document intended for sale or distribution (whether to the public generally or to a restricted class or number of persons) or for public display must print on the document sufficient information to enable a person to reasonably identify the person who published the document.

Penalty: 120 penalty units.

- (2) A person who publishes a document is to be taken to have satisfied the requirement in subsection (1) if the person prints on the document in a conspicuous place and in durable, legible characters the name of that person, or if that person carries on business under a name registered under the **Business Names Act 1962**, that name, and the address of that person or the place at which that person carries on business.
- (3) It is a defence if a person charged with an offence against subsection (1) proves that the document was not published in Victoria.
- (4) An offence against subsection (1) is a summary offence.

13D Transitional provisions

S. 13D
inserted by
No. 56/1998
s. 4.

Despite the repeal of the **Printers and Newspapers Act 1958**, any recognisance entered into under section 21 of that Act ceases to have effect except in relation to any conviction referred to in that section in proceedings that had been commenced but not completed before the repeal of that Act.

PART II—SEDUCTION

No. 3807 s. 13.

14 Proof of loss of service in actions of seduction unnecessary

In any action of seduction brought by a parent or person in loco parentis it shall not be necessary for the plaintiff to allege or give evidence of loss of service to the plaintiff by the woman or girl seduced or that between them there was the relation of master and servant but such loss of service and relation shall be conclusively presumed in favour of the plaintiff.

PART IIA—OCCUPIERS' LIABILITY

Pt 2A
(Heading and
ss 14A–14D)
inserted by
No. 9995
s. 2(2).

14A Definitions

S. 14A
inserted by
No. 9995
s. 2(2).

In this Part—

- (a) a reference to the occupier of premises includes a reference to the landlord of premises let under a tenancy (including a statutory tenancy not amounting in law to a tenancy) who—
 - (i) is under an obligation to the tenant to maintain or repair the premises; or
 - (ii) is, or could have put himself in, a position to exercise a right to enter on the premises to carry out maintenance or repairs; and
- (b) a reference to premises includes a reference to any fixed or moveable structure, including any vessel, vehicle or aircraft.

14B Liability of occupiers

S. 14B
inserted by
No. 9995
s. 2(2).

- (1) The provisions of this Part apply in place of the rules of the common law which before the commencement of the **Occupiers' Liability Act 1983** determined the standard of care that an occupier was required to show towards persons entering on his premises in respect of dangers to them.
- (2) Except as is provided by subsection (1) the rules of common law are not affected by this Part with respect to the liability of occupiers to persons entering on their premises.

s. 14B

-
- (3) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that any person on the premises will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the state of the premises.
- (4) Without restricting the generality of subsection (3), in determining whether the duty of care under subsection (3) has been discharged consideration shall be given to—
- (a) the gravity and likelihood of the probable injury;
 - (b) the circumstances of the entry onto the premises;
 - (c) the nature of the premises;
 - (d) the knowledge which the occupier has or ought to have of the likelihood of persons or property being on the premises;
 - (e) the age of the person entering the premises;
 - (f) the ability of the person entering the premises to appreciate the danger;
 - (fa) whether the person entering the premises is intoxicated by alcohol or drugs voluntarily consumed and the level of intoxication;
 - (fb) whether the person entering the premises is engaged in an illegal activity;
 - (g) the burden on the occupier of eliminating the danger or protecting the person entering the premises from the danger as compared to the risk of the danger to the person.

S. 14B(4)(fa)
inserted by
No. 49/2002
s. 3.

S. 14B(4)(fb)
inserted by
No. 49/2002
s. 3.

- (5) Nothing in this section affects any obligation to which an occupier of premises is subject by reason of any other Act or any statutory rule or any contract.

14C Liability of Crown

Where the Crown is an occupier or landlord of premises, the Crown shall, in its capacity as occupier or landlord of premises, owe the same duty to persons and property on the premises as it would owe if it were a subject, and shall be liable accordingly.

S. 14C
inserted by
No. 9995
s. 2(2).

14D Application of Part V

Part V shall apply in relation to any claim brought under this Part by a person against an occupier of premises in respect of injury or damage.

S. 14D
inserted by
No. 9995
s. 2(2).

14E Transitional

The amendment of section 14B by section 3 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002** applies to claims brought under this Part in which the statement of claim or complaint is issued on or after the commencement of section 3 of that Act.

S. 14E
inserted by
No. 49/2002
s. 4.

s. 14F

Pt 2B
(Heading and
ss 14F–14H)
inserted by
No. 49/2002
s. 5.

**PART IIB—NEGLIGENCE—INTOXICATION AND ILLEGAL
ACTIVITY**

S. 14F
inserted by
No. 49/2002
s. 5.

14F Common law

Except as provided by section 14G, this Part is not intended to affect the rules of common law applicable to negligence.

S. 14G
inserted by
No. 49/2002
s. 5.

14G Consideration of intoxication and illegal activity

- (1) This section applies to a claim for damages in respect of death or personal injury brought by a person (**the plaintiff**) against another person (**the defendant**) alleging negligence.
- (2) In determining whether the plaintiff has established a breach of the duty of care owed by the defendant, the court must consider, among other things—
 - (a) whether the plaintiff was intoxicated by alcohol or drugs voluntarily consumed and the level of intoxication;
 - (b) whether the plaintiff was engaged in an illegal activity.

S. 14H
inserted by
No. 49/2002
s. 5.

14H Application

This Part applies to claims in which the statement of claim or complaint is issued on or after the commencement of section 5 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

PART IIC—APOLOGIES

Pt 2C
(Heading and
ss 14I–14L)
inserted by
No. 49/2002
s. 6.

14I Definitions

S. 14I
inserted by
No. 49/2002
s. 6.

In this Part—

apology means an expression of sorrow, regret or sympathy but does not include a clear acknowledgment of fault;

civil proceeding includes—

S. 14I def. of
*civil
proceeding*
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 59).

- (a) a proceeding before a tribunal; and
- (b) a proceeding under an Act regulating the practice or conduct of a profession or occupation; and
- (c) an inquiry by a board appointed or by a commission of inquiry issued under Division 5 of Part I of the **Evidence (Miscellaneous Provisions) Act 1958**;

injury means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease.

14J Apology not admission of liability

S. 14J
inserted by
No. 49/2002
s. 6.

- (1) In a civil proceeding where the death or injury of a person is in issue or is relevant to an issue of fact or law, an apology does not constitute—
 - (a) an admission of liability for the death or injury; or

s. 14K

- (b) an admission of unprofessional conduct, carelessness, incompetence or unsatisfactory professional performance, however expressed, for the purposes of any Act regulating the practice or conduct of a profession or occupation.
- (2) Subsection (1) applies whether the apology—
 - (a) is made orally or in writing; or
 - (b) is made before or after the civil proceeding was in contemplation or commenced.
- (3) Nothing in this section affects the admissibility of a statement with respect to a fact in issue or tending to establish a fact in issue.

S. 14K
inserted by
No. 49/2002
s. 6.

14K Reduction or waiver of fees

- (1) In a civil proceeding where the death or injury of a person is in issue or is relevant to an issue of fact or law and it is alleged that the death or injury occurred as a consequence of the provision of a service, a reduction or waiver of the fees payable for the service or a related service does not constitute—
 - (a) an admission of liability for the death or injury; or
 - (b) an admission of unprofessional conduct, carelessness, incompetence or unsatisfactory professional performance, however expressed, for the purposes of any Act regulating the practice or conduct of a profession or occupation.
- (2) Subsection (1) applies whether the reduction or waiver of fees—
 - (a) is made orally or in writing; or
 - (b) is made before or after the civil proceeding was in contemplation or commenced.

-
- (3) Nothing in this section affects the admissibility of a statement with respect to a fact in issue or tending to establish a fact in issue.

14L Application

This Part applies to an apology or reduction or waiver of fees made on or after the commencement of section 6 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

S. 14L
inserted by
No. 49/2002
s. 6.

s. 16

**PART III—WRONGFUL ACT OR NEGLIGENCE CAUSING
DEATH**

S. 15
amended by
No. 8602 s. 12,
repealed by
No. 9856 s. 2.¹

* * * * *

No. 3807 s. 15.
S. 16
amended by
No. 9576
s. 11(1).

16 Liability for death caused wrongfully

Whensoever 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, then and in every such case 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.

No. 3807 s. 16.
S. 17
amended by
No. 9856
s. 3(a)(b).

17 Action for death caused wrongfully²

- (1) Every such action shall be for the benefit of the dependants 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; and in every such action the jury or the court if the trial is without a jury may give such damages as they or it think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought; and 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 jury or court by their or its verdict find and direct.

- (2) In subsection (1) the word *dependants* means such persons as were wholly mainly or in part dependent on the person deceased at the time of his death or who would but for the incapacity due to the injury which led to the death have been so dependent.

S. 17(2)
inserted by
No. 9856 s. 4.

18 Action for damages by persons interested

No. 3807 s. 17.

Where in any of the cases provided for by this Part there is no executor or administrator of the person deceased, or where no action as in this Part mentioned has within six months after the death of the deceased person been brought by his executor or administrator, then and in every such case such action may be brought by all or any of the persons (if more than one) for whose benefit such action would have been if it had been brought by such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons and shall be subject to the same procedure as nearly as may be if it were brought by such an executor or administrator.

19 Assessment of damages

S. 19
substituted by
No. 7496 s. 2,
amended by
No. 6/2004 s. 3
(ILA s. 39B(1)).

- (1) In assessing damages in any action under this Part, whether commenced before or after the passing of the **Wrongs (Assessment of Damages) Act 1966**, there shall not be taken into account—
- (a) a sum paid or payable on the death of the deceased person under any contract of assurance or insurance (including a contract made with a friendly or other benefit society or association or trade union);
 - (b) a sum paid or payable out of any superannuation provident or like fund;

s. 19

(c) a sum paid or payable by way of pension benefit or allowance under any law of the Commonwealth or the State or under the law of any other State territory or country; or

(d) a sum paid or payable as a gratuity—

whether any such sum is paid or payable to the estate of the deceased person or to any person for whose benefit the action is brought.

S. 19(1A)
inserted by
No. 69/2008
s. 12.

(1A) In assessing damages in any action under this Part, there shall not be taken into account—

(a) any damages under section 29(2A) of the **Administration and Probate Act 1958** recovered or recoverable for the benefit of the estate of the deceased person; or

(b) any share of those damages paid or likely to be paid to any person for whose benefit the action under this Part is brought.

S. 19(2)
inserted by
No. 6/2004
s. 3.

(2) In assessing damages in an action under this Part, that is commenced on or after the commencement of the **Wrongs (Remarriage Discount) Act 2004**, no separate reduction may be made on account of—

(a) the remarriage or formation of a domestic partnership; or

(b) the prospects of remarriage or formation of a domestic partnership—

of the surviving spouse or domestic partner, or a surviving former spouse or former domestic partner, of the deceased person.

(3) In subsection (2)—

S. 19(3)
inserted by
No. 6/2004
s. 3.

domestic partner of a person who dies means—

S. 19(3) def. of
*domestic
partner*
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 68.1),
amended by
No. 4/2009
s. 37(Sch. 1
item 30.1).

- (a) a person who was, at the time of death, in a registered domestic relationship with the person; or
- (b) an adult person to whom the person was not married at the time of death but with whom the person was in a relationship as a couple where one or each of them provided personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they were living under the same roof, but does not include a person who provided domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

spouse of a person who dies means a person who was married to the person at the time of the person's death.

s. 19A

S. 19(4)
inserted by
No. 6/2004
s. 3,
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 68.2).

(4) For the purposes of the definition of *domestic partner* in subsection (3)—

S. 19(4)(a)
amended by
No. 4/2009
s. 37(Sch. 1
item 30.2(a)).

(a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and

S. 19(4)(b)
amended by
No. 4/2009
s. 37(Sch. 1
item 30.2(b)).

(b) in determining whether persons who were not in a registered domestic relationship were domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and

(c) a person is not a domestic partner of another person only because they are co-tenants.

S. 19(5)
inserted by
No. 6/2004
s. 3.

(5) Except as provided in this section, nothing in this section affects any other law relating to damages in an action under this Part.

S. 19A
inserted by
No. 102/2003
s. 4.

19A Limitation on damages for loss of gratuitous care

In an action under this Part, no damages may be awarded for a loss of gratuitous care provided or to be provided by the deceased to his or her dependants unless the court is satisfied that—

(a) the care—

(i) was provided to the dependants; and

(ii) was being provided for at least 6 hours per week; and

- (iii) had been provided for at least 6 consecutive months before the death, or the injury that caused the death, to which the damages relate; or
- (b) there is a reasonable expectation that, but for the death, or the injury that caused the death, of the deceased, the gratuitous care would have been provided to the dependants—
 - (i) for at least 6 hours per week; and
 - (ii) for a period of at least 6 consecutive months.

19B Calculation of damages for gratuitous care

S. 19B
inserted by
No. 102/2003
s. 4.

- (1) If, in an action under this Part, the court is satisfied that the deceased would (if death, or the injury that caused the death, had not ensued) have provided gratuitous care to his or her dependants for not less than 40 hours per week, the amount of damages that may be awarded for the loss of that care must not exceed—
 - (a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Victoria for—
 - (i) in respect of the whole or any part of a quarter occurring between the date of the death in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter; or
 - (ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has

been estimated by the Australian Statistician and is, at that date, available to the court making the award; or

- (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

- (2) If, in an action under this Part, the court is satisfied that the deceased would have provided gratuitous care to his or her dependants for less than 40 hours per week, the amount of damages that may be awarded for the loss of that care must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (1)(a) or (b), as the case requires.

S. 19C
inserted by
No. 102/2003
s. 4.

19C Application of sections 19A and 19B

- (1) Except as provided by sections 19A and 19B, nothing in those sections affects any other law relating to damages arising from loss of gratuitous care.
- (2) Sections 19A and 19B do not apply to the following actions for damages—
- (a) subject to subsection (3), an action for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
- (b) subject to subsection (3), an action for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.

- (3) An action for damages referred to in subsection (2)(a) or (2)(b) does not include an action for damages that relates to the provision of or the failure to provide a health service.

20 Application to court as to cause of action under this Part

S. 20 substituted by No. 8330 s. 2.

- (1) Not more than one action shall lie for and in respect of the same subject-matter of complaint, and (subject to subsection (1A)) every such action shall be commenced within six years after the death of such deceased person or, where an application is made to a court under subsection (2), within the period referred to in the order of the court.

S. 20(1) amended by No. 9884 s. 6(a)(b).

- (1A) Where the death of a deceased person was caused by an injury consisting of a disease or disorder contracted by a person and the person did not know before he died—

S. 20(1A) inserted by No. 9884 s. 7.

- (a) that he had suffered the injury; or
(b) that the injury was caused by the act or omission of some person—

an action in respect of the injury shall be commenced within six years after the date when the person claiming to have a cause of action under this Part first knows—

- (c) that the death was caused by the injury; and
(d) that the injury was caused by the act or omission of some person—

or, where an application is made to a court under subsection (2), within the period referred to in the order of the court.

- (2) Where on an application to a court by a person claiming to have a cause of action under this Part, it appears to the court that—

S. 20(2) amended by No. 9884 s. 8.

- (a) the death of the deceased person was caused by a wrongful act, neglect or default; and
- (b) the deceased did not before his death bring an action in respect of the wrongful act neglect or default—

the court subject to subsection (3) and after hearing such of the persons likely to be affected by that application as it sees fit, may, if it decides that it is just and reasonable so to do, order that the period within which an action on the cause of action may be brought be extended for such period as it determines.

S. 20(3)
substituted by
No. 9884 s. 9.

- (3) In exercising the powers conferred on it by subsection (2) a court shall have regard to all the circumstances of the case including (without derogating from the generality of the foregoing) the following—
 - (a) the length of and reasons for the delay on the part of the deceased or the claimant or each of them (as the case may be);
 - (b) the extent to which, having regard to the delay, there is or is likely to be prejudice to the defendant;
 - (c) the extent, if any, to which the defendant had taken steps to make available to the deceased or the claimant or each of them (as the case may be) means of ascertaining facts which were or might be relevant to the cause of action of the deceased or the claimant or each of them (as the case may be) against the defendant;
 - (d) the duration of any disability of the deceased arising on or after the date of the accrual of the cause of action;

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- (e) the extent to which the deceased or the claimant or each of them (as the case may be) acted promptly and reasonably once he knew in relation to the injury that caused the death that the act or omission to which that injury was attributable might be capable at that time of giving rise to an action for damages;
- (f) the steps, if any, taken by the deceased or the claimant or each of them (as the case may be) to obtain medical legal or other expert advice and the nature of any such advice he may have received.
- (3A) The powers conferred on a court by subsection (2) may be exercised at any time notwithstanding—
- (a) that more than six years has expired since the cause of action accrued; or
 - (b) that an action in respect of such personal injuries has been commenced by the claimant.
- (4) Where under this section a question arises as to the knowledge of a deceased person the court may have regard to the conduct and statements oral or in writing of the deceased person.
- (5) A copy of an application under this section must be served on each person against whom the applicant claims to have the cause of action.
- (6) This section applies in respect of a cause of action whether or not the cause of action accrued before the commencement of the **Wrongs Act 1972**.
- (7) This section does not apply in respect of a cause of action to which Part IIA of the **Limitation of Actions Act 1958** applies.
- S. 20(3A)**
inserted by
No. 9884 s. 9.
- S. 20(5)**
substituted by
No. 57/1989
s. 3(Sch.
item 223.4).
- S. 20(7)**
inserted by
No. 60/2003
s. 10.

No. 3807 s. 20.
S. 21
amended by
Nos 9153 s. 2,
35/1996
s. 453(Sch. 1
item 90.2).

21 Particulars of demand

In every such action the plaintiff on the record shall be required together with the statement of claim to deliver to the defendant or his legal practitioner full particulars—

- (a) of the person or persons for whom and on whose behalf such action is brought;
- (b) of the nature of the claim in respect of which damages are sought to be recovered;
- (c) of the date of birth of each such person and of the deceased person;
- (d) of the name and address of each person by whom the deceased person was employed at any time within the period of twelve months preceding the day on which he suffered the injury which caused his death;
- (e) of the date of commencement of each such employment and the duration thereof;
- (f) of the total net sum (after deducting instalments of tax deductible therefrom) that the deceased earned in the period of twelve months referred to in paragraph (d).

No. 4070 s. 3.

22 Payment into court

- (1) In any action as in this Part mentioned the defendant may pay money into court as a compensation in one sum to all persons entitled under this Part for the wrongful act neglect or default without specifying the shares into which the sum is to be divided by the jury or the court if the trial is without a jury.
- (2) No portion of the sum paid in shall be paid out of court except under the order of a judge but otherwise the rules of the court for the time being in force relating to payment into and out of court

and tender and matters associated therewith shall with any necessary modifications apply.

23 Mental or nervous shock

No. 4070 s. 4.

In any action for injury to the person the plaintiff shall not be debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.

23AA Regulations

S. 23AA
inserted by
No. 102/2003
s. 5.

- (1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.
- (2) The regulations—
 - (a) may leave any matter to be determined by the Minister; and
 - (b) may apply, adopt or incorporate, wholly or partially or as amended by the regulations, any matter contained in any document as existing or in force—
 - (i) from time to time; or
 - (ii) at a particular time.

23AB Supreme Court—limitation of jurisdiction

S. 23AB
inserted by
No. 102/2003
s. 5.

It is the intention of sections 19A and 19B to alter or vary section 85 of the **Constitution Act 1975**.

23AC Transitional for gratuitous care

S. 23AC
inserted by
No. 102/2003
s. 5.

- (1) Sections 19A and 19B extend to an award of damages that relates to a death occurring before, on or after the commencement of section 4 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**.

s. 23AD

-
- (2) Despite subsection (1), sections 19A and 19B do not apply to an award of damages in proceedings commenced in a court before the commencement of section 4 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**.

S. 23AD
inserted by
No. 6/2004
s. 4.

23AD Supreme Court—limitation of jurisdiction

It is the intention of section 19(2) to alter or vary section 85 of the **Constitution Act 1975**.

S. 23AE
inserted by
No. 69/2008
s. 13.

23AE Transitional for assessment of damages

- (1) Section 19(1A) as inserted by section 12 of the **Asbestos Diseases Compensation Act 2008** applies in respect of any action brought under this Part before or after the commencement of that section 12.
- (2) However subsection (1) does not apply to an action if damages were awarded or a settlement was reached in that action before the commencement of section 12 of the **Asbestos Diseases Compensation Act 2008**.
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PART IV—CONTRIBUTION

Pt 4 (Heading)
substituted by
No. 10227
s. 8(b).

S. 23A
inserted by
No. 10227 s. 4.

23A Definitions

(1) For the purposes of this Part a person is liable in respect of any damage if the person who suffered that damage, or anyone representing the estate or dependents of that person, is entitled to recover compensation from the first-mentioned person in respect of that damage whatever the legal basis of liability, whether tort, breach of contract, breach of trust or otherwise.

(2) References in this Part to an action brought by or on behalf of the person who suffered any damage includes references to an action brought for the benefit of the estate or dependants of that person.

(3) In this Part—

action includes a proceeding commenced by way of counter-claim;

dependants means those persons for whose benefit an action could be brought under Part III;

judgment first given means, in a case where that judgment is reversed on appeal, the judgment first given which is not so reversed and, in a case where that judgment is varied on appeal, that judgment as so varied;

writ includes—

- (a) summons;
- (b) in relation to a proceeding commenced by way of counter-claim, the notice or other document by which the proceeding is first notified to the defendant; and

- (c) in relation to proceedings for contribution under section 23B, the notice or other document by which the proceedings may be originated.

S. 23B
inserted by
No. 10227 s. 4.

23B Entitlement to contribution

- (1) Subject to the following provisions of this section, a person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with the first-mentioned person or otherwise).
- (2) A person shall be entitled to recover contribution by virtue of subsection (1) notwithstanding that that person has ceased to be liable in respect of the damage in question since the time when the damage occurred provided that that person was so liable immediately before that person made or was ordered or agreed to make the payment in respect of which the contribution is sought.
- (3) A person shall be liable to make contribution by virtue of subsection (1) notwithstanding that that person has ceased to be liable in respect of the damage in question since the time when the damage occurred unless that person ceased to be liable by virtue of the expiry of a period of limitation or prescription which extinguished the right on which the claim against that person in respect of the damage was based.
- (4) Subject to section 24(2B), a person who in good faith has made or agreed to make any payment in settlement or compromise of a claim made against that person in respect of any damage (including a payment into court which has been accepted) shall be entitled to recover contribution in accordance with this section without regard to whether or not the person who has made or agreed to make the payment is or ever was liable in respect of the

damage provided that that person would have been liable assuming that the factual basis of the claim against that person could be established.

- (5) Subject to section 24(2B), a judgment given in an action brought by or on behalf of the person who suffered the damage in question against any person from whom contribution is sought under this section shall be conclusive in the proceedings for contribution as to any issue determined by that judgment in favour of the person from whom the contribution is sought.
- (6) References in this section to a person's liability in respect of any damage are references to any such liability which has been or could be established in an action brought against that person in Victoria by or on behalf of the person who suffered the damage and it is immaterial whether any issue arising in any such action was or would be determined (in accordance with the rules of private international law) by reference to the law of a place outside Victoria.

24 Recovery of contribution³

No. 5382 s. 2.

* * * * *

S. 24(1)
amended by
No. 9856
s. 5(a),
repealed by
No. 10227
s. 8(c)(i).

- (2) Subject to subsections (2A) and (2B), in any proceedings for contribution under section 23B the amount of the contribution recoverable from any person shall be such as may be found by the jury or by the court if the trial is without a jury to be just and equitable having regard to the extent of that person's responsibility for the damage; and the jury or the court if the trial is without a jury shall have power to exempt any person from liability to make contribution, or to direct that the

S. 24(2)
amended by
No. 10227
s. 5(a).

contribution to be recovered from any person shall amount to a complete indemnity.

S. 24(2A)
inserted by
No. 10227
s. 5(b).

(2A) Where the amount of the damages which have or might have been awarded in respect of the damage in question in an action brought in Victoria by or on behalf of the person who suffered it against the person from whom the contribution is sought was or would have been subject to—

- (a) any limit imposed by or under any enactment or by any agreement made before the damage occurred;
- (b) any reduction by virtue of section 26; or
- (c) any corresponding limit or reduction under the law of a place outside Victoria—

the person from whom the contribution is sought shall not by virtue of any contribution awarded under section 23B be required to pay in respect of the damage a greater amount than the amount of those damages as so limited or reduced.

S. 24(2B)
inserted by
No. 10227
s. 5(b).

(2B) If in any proceedings for contribution under section 23B the jury or the court, if the trial is without a jury, finds that the amount of any payment made or agreed to be made in settlement or compromise of a claim was excessive the jury or the court (as the case requires) in assessing the amount of the contribution recoverable from any person shall disregard any part of the payment which appears to it to have been excessive.

S. 24(2C)
inserted by
No. 10227
s. 5(b).

(2C) Nothing in subsection (2B) applies to a settlement or compromise of a claim of a minor or person of unsound mind that has been approved by the court.

- (3) No execution for the recovery of contribution under section 23B shall issue without the leave of the court. Upon application for such leave the court may direct that payment to the original plaintiff shall be sufficient satisfaction of the order for contribution.
- (4) Notwithstanding any provision in any statute requiring a notice to be given before action or prescribing the period within which an action may be brought, where under section 23B any person becomes entitled to a right to recover contribution in respect of any damage from any other person, proceedings to recover contribution by virtue of that right may be commenced by the first-mentioned person—
- (a) at any time within the period—
- (i) within which the action against the first-mentioned person might have been commenced; or
- (ii) within the period of twelve months after the writ in the action against the first-mentioned person was served on him—
- whichever is the longer; or
- (b) where another person liable in respect of that damage, within the period within which the action against him might have been commenced or within twelve months after the writ in the action was served on him, serves a writ on the first-mentioned person seeking to recover contribution in respect of that damage from the first-mentioned person—at any time within the period of six months after that writ is so served.

S. 24(3)
amended by
Nos 10227
s. 8(c)(ii),
57/1989
s. 3(Sch. item
223.5(a)(b)).

S. 24(4)
substituted by
No. 8330
s. 3(1)(a),
amended by
No. 10227
s. 6(a).

S. 24(4)(a)(i)
amended by
No. 10227
s. 6(b).

S. 24(4)(a)(ii)
amended by
No. 10227
s. 6(b).

S. 24(4)(b)
amended by
No. 10227
s. 6(c)(d).

* * * * * S. 24(4A)
repealed.⁴

s. 24AAA

S. 24(5)
repealed by
No. 10227
s. 8(c)(i),
new s. 24(5)
inserted by
No. 102/2003
s. 6.

(5) For the removal of doubt, if an action (the **existing action**) was commenced in a court against the first-mentioned person referred to in subsection (4) before 1 October 2003, the period referred to in subsection (4)(a)(i) is to be taken to be the period within which the existing action might have been brought at the time the existing action was brought.

S. 24(6)
repealed.⁵

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S. 24AAA
inserted by
No. 80/2010
s. 160.

24AAA When employer not liable to indemnify third party in relation to an injury

A term of a contract that requires, or has the effect of requiring, an employer within the meaning of the **Accident Compensation Act 1985** to indemnify a third party, or make contribution, in respect of the third party's liability to pay damages for an injury to, or death of, a worker within the meaning of that Act arising in the course of the worker's employment with the employer is void.

S. 24AA
inserted by
No. 10227 s. 7.

24AA Proceedings against persons jointly liable for the same debt or damage

Judgment recovered against any person liable in respect of any debt or damage shall not be a bar to an action, or to the continuance of an action, against any other person who is (apart from any such bar) jointly liable with the first-mentioned person in respect of the same debt or damage.

S. 24AB
inserted by
No. 10227 s. 7.

24AB Successive actions against persons liable (jointly or otherwise) for the same damage

If more than one action is brought in respect of any damage by or on behalf of the person by whom it was suffered against persons liable in respect of the damage (whether jointly or otherwise) the plaintiff shall not be entitled to costs in any of those actions, other than that in

which judgment is first given, unless the court is of the opinion that there was reasonable ground for bringing the action.

24AC Application to the Crown

S. 24AC
inserted by
No. 10227 s. 7.

Where the Crown is subject to any liability by virtue of the **Crown Proceedings Act 1958**, this Part shall bind the Crown in respect of the liability to which it is so subject in the same manner and to the same extent as if the Crown were a subject.

24AD Savings

S. 24AD
inserted by
No. 10227 s. 7.

- (1) This Part as amended by the **Wrongs (Contribution) Act 1985** shall not affect any case where the debt in question became due or (as the case requires) the damage in question occurred before the commencement of that Act.
- (2) A person shall not be entitled to recover contribution or liable to make contribution in accordance with section 23B by reference to any liability based on breach of any obligation assumed by that person before the commencement of the **Wrongs (Contribution) Act 1985**.
- (3) This Part as in force immediately before the commencement of the **Wrongs (Contribution) Act 1985** shall continue to apply with respect to torts committed before the commencement of that Act.
- (4) The right to recover contribution in accordance with section 23B supersedes any right, other than an express contractual right, to recover contribution (as distinct from indemnity) otherwise than under this Part in corresponding circumstances but nothing in this Part shall affect—
 - (a) any express or implied contractual or other right to indemnity; or

Wrongs Act 1958
No. 6420 of 1958
Part IV—Contribution

s. 24AD

(b) any express contractual provision regulating or excluding contribution—

which would be enforceable apart from this Part or render enforceable any agreement for indemnity or contribution which would not be enforceable apart from this Part.

(5) Nothing in this Part shall—

(a) affect any criminal proceedings against any person in respect of any wrongful act; or

(b) affect the operation of sections 45 to 47 of the **Supreme Court Act 1986**.

S. 24AD(5)(b)
amended by
No. 57/1989
s. 3(Sch.
item 223.6).

PART IVAA—PROPORTIONATE LIABILITY

Pt IVAA
(Heading and
ss 24AE–
24AS)
inserted by
No. 60/2003
s. 3.

24AE Definitions

S. 24AE
inserted by
No. 60/2003
s. 3 (as
amended by
No. 102/2003
s. 36).

In this Part—

apportionable claim means a claim to which this Part applies;

court includes tribunal and, in relation to a claim for damages, means any court or tribunal by or before which the claim falls to be determined;

damages includes any form of monetary compensation;

defendant includes any person joined as a defendant or other party in the proceeding (except as a plaintiff) whether joined under this Part, under rules of court or otherwise;

injury means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease.

s. 24AF

S. 24AF
inserted by
No. 60/2003
s. 3 (as
amended by
No. 102/2003
s. 37).

24AF Application of Part

- (1) This Part applies to—
 - (a) a claim for economic loss or damage to property in an action for damages (whether in tort, in contract, under statute or otherwise) arising from a failure to take reasonable care; and
 - (b) a claim for damages for a contravention of section 9 of the **Fair Trading Act 1999**.
- (2) If a proceeding involves 2 or more apportionable claims arising out of different causes of action, liability for the apportionable claims is to be determined in accordance with this Part as if the claims were a single claim.
- (3) A provision of this Part that gives protection from civil liability does not limit or otherwise affect any protection from liability given by any other provision of this Act or by another Act or law.

S. 24AG
inserted by
No. 60/2003
s. 3.

24AG What claims are excluded from this Part?

- (1) This Part does not apply to claims arising out of an injury.
- (2) Without limiting subsection (1), this Part does not apply to the following—
 - (a) a claim to which Part 3, 6 or 10 of the **Transport Accident Act 1986** applies;
 - (b) a claim to which Part IV of the **Accident Compensation Act 1985** applies;
 - (c) a claim in respect of an injury which entitles, or may entitle, a worker, or a dependant of a worker, within the meaning of the **Workers Compensation Act 1958** to compensation under that Act;

- (d) a claim for compensation under Part V of the **Country Fire Authority Act 1958** or a claim for compensation under a compensation scheme established under the regulations made under that Act;
- (e) an application for compensation under Part 4 of the **Victoria State Emergency Service Act 2005**;
- (f) a claim for compensation under Part 6 of the **Emergency Management Act 1986**;
- (g) an application for compensation under the **Police Assistance Compensation Act 1968**;
- (h) an application for assistance under the **Victims of Crime Assistance Act 1996**;
- (i) a complaint under the **Equal Opportunity Act 1995**;
- (j) a claim for compensation under Part 8 of the **Juries Act 2000** or Part VII of the **Juries Act 1967**;
- (k) a claim for compensation under Part 5.6 of the **Education and Training Reform Act 2006**.

S. 24AG(2)(e) substituted by No. 51/2005 s. 58(10).

S. 24AG(2)(k) amended by No. 24/2006 s. 6.1.2(Sch. 7 item 49).

- (3) This Part does not apply to claims in proceedings of a class that is excluded by the regulations from the operation of this Part.

24AH Who is a concurrent wrongdoer?

- (1) A concurrent wrongdoer, in relation to a claim, is a person who is one of 2 or more persons whose acts or omissions caused, independently of each other or jointly, the loss or damage that is the subject of the claim.

S. 24AH inserted by No. 60/2003 s. 3.

- (2) For the purposes of this Part it does not matter that a concurrent wrongdoer is insolvent, is being wound up, has ceased to exist or has died.

S. 24AI
inserted by
No. 60/2003
s. 3.

24AI Proportionate liability for apportionable claims

- (1) In any proceeding involving an apportionable claim—
- (a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the loss or damage claimed that the court considers just having regard to the extent of the defendant's responsibility for the loss or damage; and
 - (b) judgment must not be given against the defendant for more than that amount in relation to that claim.
- (2) If the proceeding involves both an apportionable claim and a claim that is not an apportionable claim—
- (a) liability for the apportionable claim is to be determined in accordance with this Part; and
 - (b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.
- (3) In apportioning responsibility between defendants in the proceeding the court must not have regard to the comparative responsibility of any person who is not a party to the proceeding unless the person is not a party to the proceeding because the person is dead or, if the person is a corporation, the corporation has been wound-up.

24AJ Contribution not recoverable from defendant

S. 24AJ
inserted by
No. 60/2003
s. 3.

Despite anything to the contrary in Part IV, a defendant against whom judgment is given under this Part as a concurrent wrongdoer in relation to an apportionable claim—

- (a) cannot be required to contribute to the damages recovered or recoverable from another concurrent wrongdoer in the same proceeding for the apportionable claim; and
- (b) cannot be required to indemnify any such wrongdoer.

24AK Subsequent actions

S. 24AK
inserted by
No. 60/2003
s. 3.

- (1) In relation to an apportionable claim, nothing in this Part or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any loss or damage from bringing another action against any other concurrent wrongdoer for that loss or damage.
- (2) However, in any proceeding in respect of any such action the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the loss or damage, would result in the plaintiff receiving compensation for loss or damage that is greater than the loss or damage actually suffered by the plaintiff.

24AL Joining non-party concurrent wrongdoer in the action

S. 24AL
inserted by
No. 60/2003
s. 3.

- (1) Subject to subsection (2), the court may give leave for any one or more persons who are concurrent wrongdoers in relation to an apportionable claim to be joined as defendants in a proceeding in relation to that claim.

s. 24AM

- (2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceeding in relation to the apportionable claim.

S. 24AM
inserted by
No. 60/2003
s. 3.

24AM What if a defendant is fraudulent?

Despite sections 24AI and 24AJ, a defendant in a proceeding in relation to an apportionable claim who is found liable for damages and against whom a finding of fraud is made is jointly and severally liable for the damages awarded against any other defendant in the proceeding.

S. 24AN
inserted by
No. 60/2003
s. 3 (as
amended by
No. 102/2003
s. 38).

24AN Liability for contributory negligence not affected

Nothing in this Part affects the operation of Part V or Division 7 of Part X.

S. 24AO
inserted by
No. 60/2003
s. 3.

24AO Effect of Part IV

Except as provided in section 24AJ, nothing in this Part affects the operation of Part IV.

S. 24AP
inserted by
No. 60/2003
s. 3.

24AP Part not to affect other liability

Nothing in this Part—

- (a) prevents a person from being held vicariously liable for a proportion of any apportionable claim for which another person is liable; or
- (b) prevents a person from being held jointly and severally liable for the damages awarded against another person as agent of the person; or
- (c) prevents a partner from being held jointly and severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or

- (d) prevents a court from awarding exemplary or punitive damages against a defendant in a proceeding; or
- (e) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

24AQ Supreme Court—limitation of jurisdiction

It is the intention of sections 24AI and 24AL to alter or vary section 85 of the **Constitution Act 1975**.

S. 24AQ
inserted by
No. 60/2003
s. 3.

24AR Regulations

- (1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.
- (2) The regulations—
 - (a) may leave any matter to be determined by the Minister; and
 - (b) may apply, adopt or incorporate, wholly or partially or as amended by the regulations, any matter contained in any document as existing or in force—
 - (i) from time to time; or
 - (ii) at a particular time.

S. 24AR
inserted by
No. 60/2003
s. 3.

24AS Transitional

This Part applies to proceedings that are commenced in a court on or after the commencement of section 3 of the **Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003**.

S. 24AS
inserted by
No. 60/2003
s. 3.

s. 24A

Pt 4A
(Heading)
inserted by
No. 10227
s. 8(e).

**PART IVA—ABOLITION OF DOCTRINE OF COMMON
EMPLOYMENT**

S. 24A
inserted by
No. 8915 s. 4.

24A Abolition of doctrine of common employment

S. 24A(1)
amended by
No. 6/2004
s. 5(a)(b).

(1) Where any injury or damage is suffered by an employee by reason of the negligence of a fellow employee the employer of those employees shall be liable for damages in respect of that injury or damage in the same manner and in the same cases as if those employees had not been engaged in a common employment.

S. 24A(2)
amended by
No. 6/2004
s. 5(a).

(2) This section applies to every case in which the relation of employer and employee exists whether the contract of employment is made before or after the commencement of this Act.

PART V—CONTRIBUTORY NEGLIGENCE

25 Definitions

No. 5594 s. 2.

In this Part unless inconsistent with the context or subject-matter—

court means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined;

damage includes loss of life and personal injury;

dependant means any person for whose benefit an action could be brought under Part III of this Act;

* * * * * S. 25 def. of
*employer and
worker*
repealed by
No. 10191
s. 276.

* * * * * S. 25 def. of
fault
repealed by
No. 75/2000
s. 4.

wrong means an act or omission that—

- (a) gives rise to a liability in tort in respect of which a defence of contributory negligence is available at common law; or
- (b) amounts to a breach of a contractual duty of care that is concurrent and co-extensive with a duty of care in tort.

S. 25 def. of
wrong
inserted by
No. 75/2000
s. 4.

No. 5594 s. 3.

26 Liability for contributory negligence⁶

S. 26(1)
substituted by
No. 75/2000
s. 5.

(1) If a person (**the claimant**) suffers damage as the result partly of the claimant's failure to take reasonable care (**contributory negligence**) and partly of the wrong of any other person or persons—

S. 26(1)(a)
amended by
No. 102/2003
s. 7(1).

- (a) except as provided in section 63, a claim in respect of the damage is not defeated by reason of the contributory negligence of the claimant; and
- (b) the damages recoverable in respect of the wrong must be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

S. 26(1A)
inserted by
No. 75/2000
s. 5.

(1A) Subsection (1) does not operate to defeat any defence arising under a contract.

S. 26(1B)
inserted by
No. 75/2000
s. 5.

(1B) If any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages awarded to the claimant by virtue of subsection (1) is not to exceed the maximum limit so applicable.

S. 26(1C)
inserted by
No. 75/2000
s. 5.

(1C) If a claim is brought in a court of limited jurisdiction, the court may award damages up to the limit of its jurisdiction even though the amount of damages has first been reduced under subsection (1) or (1B).

S. 26(2)
amended by
No. 75/2000
s. 6(1)(a)–(c).

(2) Where damages are recoverable by any person by virtue of subsection (1) subject to such reduction as is therein mentioned, the court shall find and record the total damages which, apart from any limitation referred to in subsections (1B) and (1C), would have been awarded, if the claimant had not been guilty of contributory negligence.

Wrongs Act 1958
No. 6420 of 1958
Part V—Contributory Negligence

s. 27

* * * * *

(4) Where any person dies as a result partly of his or her failure to take reasonable care (**contributory negligence**) and partly of the wrong of any other person or persons an action brought by the dependants of the first-mentioned person under Part III of this Act shall not be defeated nor shall any damages recoverable by those dependants under that action be reduced by reason of that first-mentioned person's contributory negligence.

S. 26(3)
repealed by
No. 10227
s. 8(d)(i).

S. 26(4)
substituted by
No. 9856 s. 6,
amended by
No. 75/2000
s. 6(2)(a)(b).

(5) Where, in any case to which subsection (1) of this section applies, one of the persons responsible for the damage avoids liability to any other such person or his personal representative by pleading any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages from that other person or representative by virtue of the said subsection.

S. 26(5)
amended by
Nos 10227
s. 8(d)(ii),
75/2000
s. 6(3).

(6) Where any case to which subsection (1) of this section applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been guilty of contributory negligence and the extent to which those damages are to be reduced.

S. 26(6)
amended by
No. 75/2000
s. 6(4).

Note

Division 7 of Part X also contains provisions relating to contributory negligence.

Note to s. 26
inserted by
No. 102/2003
s. 7(2).

27 Supreme Court—limitation of jurisdiction

It is the intention of section 26, as amended by the **Wrongs (Amendment) Act 2000**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 27
repealed by
No. 9683 s. 8,
new s. 27
inserted by
No. 75/2000
s. 7.

No. 5594 s. 5.

28 Non-application of this Part

S. 28(1)
amended by
No. 57/1989
s. 3(Sch.
item 223.7).

- (1) This Part shall not apply to any claim to which section 45 of the **Supreme Court Act 1986** applies and that Act shall have effect with respect to any such claim as if this Act had not passed.
- (2) This Part shall not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of the **Wrongs (Contributory Negligence) Act 1951**.

S. 28AA
inserted by
No. 75/2000
s. 8.

28AA Transitional provision

- (1) Subject to subsection (2), the amendments to this Part made by sections 4, 5 and 6 of the **Wrongs (Amendment) Act 2000** must be taken to apply to wrongs that occurred before the commencement of that Act as if those amendments had been in force when the wrong occurred.
- (2) This Part, as in force before the commencement of the **Wrongs (Amendment) Act 2000**, continues to apply to a wrong about which—
 - (a) a court has, before that commencement, given judgment or made a decision (including a judgment or decision about liability only), whether or not an appeal has been made against that judgment or decision before that commencement or is made on or after that commencement; or
 - (b) the persons responsible for the damage have, before that commencement, entered into an agreement to settle claims arising from the wrong (including an agreement about liability only).

PART VA—ASSESSMENT OF DAMAGES

Pt 5A
(Heading and
s. 28A)
inserted by
No. 9353
s. 2(b).

28A Damages for deprivation or impairment of earning capacity

S. 28A
inserted by
No. 9353
s. 2(b).

Where in relation to a claim for damages for deprivation or impairment of earning capacity or for other personal injury it becomes material to assess such damages having regard to loss of earnings or of future probable earnings, there shall be taken into account in reduction of the sum assessed such amount as is reasonably considered to be the amount that would have been payable as income tax by reason of the receipt of such earnings by the person who has suffered loss of them had he received them.

s. 28B

Pt 5B
(Heading and
ss 28B–28L)
inserted by
No. 49/2002
s. 7.

PART VB—PERSONAL INJURY DAMAGES

S. 28B
inserted by
No. 49/2002
s. 7.

28B Definitions

In this Part—

S. 28B def. of
attendant care services
inserted by
No. 60/2003
s. 5.

attendant care services means any of the following—

- (a) services of a domestic nature;
- (b) services relating to nursing;
- (c) services that aim to alleviate the consequences of an injury;

claimant means a person who makes or is entitled to make a claim for personal injury damages;

court includes tribunal, and, in relation to a claim for damages, means any court or tribunal by or before which the claim falls to be determined;

damages includes any form of monetary compensation;

S. 28B def. of
dependants
inserted by
No. 102/2003
s. 8.

dependants in relation to a claimant, means any persons who are wholly, mainly or in part dependent on the claimant at the time of the injury;

fault includes act or omission;

S. 28B def. of
gratuitous attendant care services
inserted by
No. 60/2003
s. 5.

gratuitous attendant care services means attendant care services—

- (a) that have or are to be provided by another person to a claimant; and
- (b) for which the claimant has not paid or is not liable to pay;

injury means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease;

non-economic loss means any one or more of the following—

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;

personal injury damages means damages that relate to the death of or injury to a person caused by the fault of another person.

28C Application of Part

- (1) This Part applies to an award of personal injury damages, except an award that is excluded by subsection (2).
- (2) The following awards of damages are excluded from the operation of this Part—
 - (a) an award where the fault concerned is an intentional act that is done with intent to cause death or injury or that is sexual assault or other sexual misconduct;
 - (b) an award to which Part 3, 6 or 10 of the **Transport Accident Act 1986** applies;
 - (c) an award to which Part 4 of the **Accident Compensation Act 1985** applies;
 - (d) an award to which the **Workers Compensation Act 1958** applies;

S. 28C
inserted by
No. 49/2002
s. 7.

s. 28C

S. 28C(2)(f)
substituted by
No. 51/2005
s. 58(11).

S. 28C(2)(l)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 49).

- (e) an award of compensation under Part V of the **Country Fire Authority Act 1958** or an award of compensation under a compensation scheme established under the regulations made under that Act;
 - (f) an award of compensation under Part 4 of the **Victoria State Emergency Service Act 2005**;
 - (g) an award of compensation under Part 6 of the **Emergency Management Act 1986**;
 - (h) an award of compensation under the **Police Assistance Compensation Act 1968**;
 - (i) an award of assistance under the **Victims of Crime Assistance Act 1996**;
 - (j) an award of compensation under the **Equal Opportunity Act 1995**;
 - (k) an award of compensation under Part 8 of the **Juries Act 2000** or Part VII of the **Juries Act 1967**;
 - (l) an award of compensation under Part 5.6 of the **Education and Training Reform Act 2006**;
 - (m) a sum payable under a superannuation scheme or any life or other insurance policy;
 - (n) an award of damages of a class that is excluded by the regulations from the operation of this Part.
- (3) This Part extends to an award of personal injury damages even if the damages are recovered in an action for breach of contract or in any other action.

28D General regulation of court awards

A court cannot award damages to a claimant contrary to this Part.

S. 28D
inserted by
No. 49/2002
s. 7.

28E Part does not give rise to any cause of action

This Part does not create or confer any cause of civil action for the recovery of damages in respect of a death or injury caused by the fault of a person.

S. 28E
inserted by
No. 49/2002
s. 7.

**28F Damages for past or future economic loss—
maximum for loss of earnings etc.**

S. 28F
inserted by
No. 49/2002
s. 7.

- (1) This section applies to an award of damages—
 - (a) for past economic loss due to loss of earnings or the deprivation or impairment of earning capacity; or
 - (b) for future economic loss due to the deprivation or impairment of earning capacity; or
 - (c) for the loss of expectation of financial support.
- (2) In the case of any award to which this section applies, the court is to disregard the amount (if any) by which the claimant's gross weekly earnings would (but for the death or injury) have exceeded an amount that is 3 times the amount of average weekly earnings at the date of the award.
- (3) For the purposes of this section, the amount of average weekly earnings at the date of the award is—
 - (a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Victoria for the most recent quarter occurring before the date of the award for which such an amount has been

s. 28G

estimated by the Australian Statistician and that is, at that date, available to the court making the award; or

- (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

S. 28G
inserted by
No. 49/2002
s. 7.

28G Fixing damages for non-economic loss

The maximum amount of damages that may be awarded to a claimant for non-economic loss is \$371 380.

S. 28H
inserted by
No. 49/2002
s. 7.

28H Indexation of maximum amount for non-economic loss

- (1) The amount that is to apply for the purposes of section 28G is to be varied, in respect of the financial year beginning on 1 July 2003 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount referred to in section 28G.

E is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year.

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

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- (2) If it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole number, the amount is deemed to have been calculated in accordance with this section if the calculation is made—
 - (a) if the amount is less than \$1000, to the nearest whole \$1; or
 - (b) if the amount is \$1000 or more, to the nearest whole \$10.
 - (3) If an amount is varied in accordance with this section, section 28G and this section have effect as if a reference to the amount were a reference to the amount as so varied.
 - (4) If the variation of an amount to which this section applies by operation of this section has the effect of reducing the amount—
 - (a) the variation is deemed not to have taken effect, except for the purposes of the application of this subsection; and
 - (b) when the amount is varied and increased by operation of this section in respect of the next or a subsequent financial year that variation has effect as an increase only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of a preceding financial year, or that part of such a reduction that has not been set off against a previous increase.

28HA Tariffs for damages for non-economic loss

- (1) In determining damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.

S. 28HA
inserted by
No. 102/2003
s. 9.

s. 28I

- (2) For that purpose, the parties to the proceedings or their counsel may bring the court's attention to awards for damages for non-economic loss in those earlier proceedings.
- (3) This section does not alter the rules for the determination of other damages.

S. 28I
inserted by
No. 49/2002
s. 7.

28I Damages for future economic loss—discount rate

- (1) If an award of damages is to include any component, assessed as a lump sum, for economic loss that is referable to the future, the present value of that future economic loss is to be determined by adopting the prescribed discount rate.
- (2) The prescribed discount rate is—
 - (a) a discount rate of the percentage prescribed by the regulations; or
 - (b) if no percentage is so prescribed—a discount rate of 5%.
- (3) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

S. 28IA
inserted by
No. 60/2003
s. 6.

28IA Limitation on damages for gratuitous attendant care

- (1) No damages may be awarded to a claimant for gratuitous attendant care services unless the court is satisfied that—
 - (a) there is (or was) a reasonable need for the services to be provided; and
 - (b) the need has arisen (or arose) solely because of the injury to which the damages relate; and
 - (c) the services would not be (or would not have been) provided to the claimant but for the injury.

-
- (2) Further, no damages may be awarded to a claimant for gratuitous attendant care services if the services are provided, or are to be provided—
- (a) for less than 6 hours per week; and
 - (b) for less than 6 months.

281B Calculation of damages

S. 281B
inserted by
No. 60/2003
s. 6.

- (1) If gratuitous attendant care services are provided or are to be provided for not less than 40 hours per week, the amount of damages that may be awarded for the services must not exceed—
- (a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Victoria for—
 - (i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter; or
 - (ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or
 - (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

s. 281C

- (2) If gratuitous attendant care services are provided or are to be provided for less than 40 hours per week, the amount of damages that may be awarded for the services must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (1)(a) or (b), as the case requires.

S. 281C
inserted by
No. 60/2003
s. 6.

281C Other laws not to be affected

Except as provided by sections 281A and 281B, nothing in those sections affects any other law relating to the value of attendant care services.

S. 281D
inserted by
No. 102/2003
s. 10.

281D Limitation on damages for loss of capacity to provide care for others

No damages may be awarded to a claimant for any loss of the claimant's capacity to provide gratuitous care for others unless the court is satisfied that—

- (a) the care—
- (i) was provided to the claimant's dependants; and
 - (ii) was being provided for at least 6 hours per week; and
 - (iii) had been provided for at least 6 consecutive months before the injury to which the damages relate; or
- (b) there is a reasonable expectation that, but for the injury to which the damages relate, the gratuitous care would have been provided to the claimant's dependants—
- (i) for at least 6 hours per week; and
 - (ii) for a period of at least 6 consecutive months.

281E Calculation of damages for gratuitous care

S. 281E
inserted by
No. 102/2003
s. 10.

- (1) If the court is satisfied that a claimant would have provided gratuitous care to his or her dependants for not less than 40 hours per week, the amount of damages that may be awarded to the claimant for any loss of the claimant's capacity to provide that care must not exceed—
- (a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Victoria for—
- (i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter; or
- (ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or
- (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

s. 281F

- (2) If the court is satisfied that a claimant would have provided gratuitous care to his or her dependants for less than 40 hours per week, the amount of damages that may be awarded to a claimant for the loss of the claimant's capacity to provide that care must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with subsection (1)(a) or (b), as the case requires.

S. 281F
inserted by
No. 102/2003
s. 10.

281F Application of sections 28ID and 28IE

- (1) Except as provided by sections 28ID and 28IE, nothing in those sections affects any other law relating to damages arising from a loss of capacity to provide gratuitous care.
- (2) Sections 28ID and 28IE do not apply to the following actions for damages—
 - (a) subject to subsection (3), an action for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
 - (b) subject to subsection (3), an action for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.
- (3) An action for damages referred to in subsection (2)(a) or (2)(b) does not include an action for damages that relates to the provision of or the failure to provide a health service.

S. 28J
inserted by
No. 49/2002
s. 7,
amended by
No. 60/2003
s. 7 (ILA
s. 39B(1)).

28J Supreme Court—limitation of jurisdiction

- (1) It is the intention of section 28D to alter or vary section 85 of the **Constitution Act 1975**.

(2) It is the intention of section 28D (as affected by the amendments made to this Part by the **Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003**) to alter or vary section 85 of the **Constitution Act 1975**.

S. 28J(2)
inserted by
No. 60/2003
s. 7.

(3) It is the intention of section 28D (as affected by the amendments made to this Part by section 10 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**) to alter or vary section 85 of the **Constitution Act 1975**.

S. 28J(3)
inserted by
No. 102/2003
s. 11.

28K Regulations

S. 28K
inserted by
No. 49/2002
s. 7.

(1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed to give effect to this Part.

(2) The regulations—

(a) may leave any matter to be determined by the Minister; and

(b) may apply, adopt or incorporate, wholly or partially or as amended by the regulations, any matter contained in any document as existing or in force—

(i) from time to time; or

(ii) at a particular time.

28L Transitional

S. 28L
inserted by
No. 49/2002
s. 7.

(1) This Part (except sections 28IA, 28IB, 28IC and 28J(2)) extends to an award of personal injury damages that relates to an injury received, or to a death resulting from an injury received, whether before, on or after the commencement day.

S. 28L(1)
amended by
No. 60/2003
s. 9.

s. 28LA

- (2) Despite subsection (1)—
- (a) sections 28F, 28G and 28H do not apply to an award of damages in proceedings commenced in a court before the commencement day;
 - (b) section 28I does not apply to an award of damages made before the commencement day.
- (3) In this section *commencement day* means the day on which section 7 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002** comes into operation.

S. 28LA
inserted by
No. 60/2003
s. 9.

28LA Transitional for gratuitous attendant care services

- (1) Sections 28IA, 28IB, 28IC and 28J(2) apply to an award of damages for gratuitous attendant care services that relates to an injury received on or after 21 May 2003.
- (2) On and from 1 October 2003, sections 28IA, 28IB, 28IC and 28J(2) apply to an award of damages for gratuitous attendant care services that relates to an injury received before 21 May 2003.
- (3) Despite subsection (2), sections 28IA, 28IB, 28IC and 28J(2) do not apply to an award of damages for gratuitous attendant care services that relates to an injury received before 21 May 2003 if the award is made in a proceeding commenced in a court before 1 October 2003.

S. 28LAB
inserted by
No. 102/2003
s. 12.

28LAB Transitional for tariffs for damages for non-economic loss

Despite section 28L(1), section 28HA does not apply to an award of damages in proceedings commenced in a court before the commencement of section 9 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**.

28LAC Transitional for gratuitous care

Despite section 28L(1), sections 28ID and 28IE do not apply to an award of damages in proceedings commenced in a court before the commencement of section 10 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**.

S. 28LAC
inserted by
No. 102/2003
s. 12.

Pt 5BA
(Heading and
ss 28LB–
28LZQ)
inserted by
No. 60/2003
s. 4.

**PART VBA—THRESHOLDS IN RELATION TO RECOVERY
OF DAMAGES FOR NON-ECONOMIC LOSS**

Division 1—Introductory

S. 28LB
inserted by
No. 60/2003
s. 4.

28LB Definitions

In this Part—

A.M.A. Guides means the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fourth Edition) (other than Chapter 15) as modified by or under this Part;

approved medical practitioner means—

- (a) if a training course has been approved under section 91(1)(b) of the **Accident Compensation Act 1985**, a medical practitioner who has successfully completed the course; or
- (b) if a training course has not been so approved, a medical practitioner;

certificate of assessment means a certificate provided under section 28LN or 28LNA;

claimant means a person who makes or is entitled to make a claim for damages that relate to the injury to a person caused by the fault of another person;

Convenor means the Convenor or Deputy Convenor appointed under section 63 of the **Accident Compensation Act 1985**;

S. 28LB def. of
*certificate of
assessment*
amended by
No. 102/2003
s. 13(1).

court includes tribunal and, in relation to a claim for damages, means any court or tribunal by or before which the claim falls to be determined;

fault includes act or omission;

impairment means permanent impairment;

S. 28LB def. of *impairment* inserted by No. 102/2003 s. 13(2).

injury means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease;

Medical Panel means a Medical Panel under the **Accident Compensation Act 1985**;

medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student) and, in relation to anything done for the purposes of this Act in a place outside Victoria, includes a medical practitioner who is lawfully qualified under a law in force in that place to do that thing;

S. 28LB def. of *medical practitioner* amended by Nos 97/2005 s. 182(Sch. 4 item 55(a)), 13/2010 s. 51(Sch. item 62.1).

medical question in relation to a claim for damages, means a question as to whether the degree of impairment resulting from injury to the claimant alleged in the claim satisfies the threshold level;

S. 28LB def. of *medical question* substituted by No. 102/2003 s. 13(3).

non-economic loss means any one or more of the following—

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;

registered health practitioner means—

- (a) a medical practitioner; or
- (b) a person registered under the Health Practitioner Regulation National Law—
 - (i) to practise in the dental profession as a dentist (other than as a student); and
 - (ii) in the dentists division of that profession; or
- (c) a person registered under the Health Practitioner Regulation National Law to practise in the chiropractic profession (other than as a student); or
- (d) a person registered under the Health Practitioner Regulation National Law to practise in the optometry profession (other than as a student); or
- (e) a person registered under the Health Practitioner Regulation National Law to practise in the osteopathy profession (other than as a student); or
- (f) a person registered under the Health Practitioner Regulation National Law to practise in the physiotherapy profession (other than as a student); or

S. 28LB def. of *registered health practitioner* substituted by Nos 97/2005 s. 182(Sch. 4 item 55(b)), 13/2010 s. 51(Sch. item 62.2).

- (g) a person registered under the Health Practitioner Regulation National Law to practise in the podiatry profession (other than as a student); or
- (h) a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student); or
- (i) a Chinese medicine practitioner registered under the **Health Professions Registration Act 2005**;

respondent, in relation to a claim, means the person against whom the claim is made;

threshold level means—

- (a) in the case of injury (other than psychiatric injury), impairment of more than 5 per cent;
- (b) in the case of psychiatric injury, impairment of more than 10 per cent.

28LC Application of Part

- (1) This Part applies to claims for the recovery of damages for non-economic loss, except claims that are excluded by subsection (2) or (3).
- (2) This Part does not apply to the following claims for the recovery of damages for non-economic loss—
 - (a) a claim where the fault concerned is, or relates to, an intentional act that is done with intent to cause death or injury or that is sexual assault or other sexual misconduct;
 - (b) a claim to which Part 3, 6 or 10 of the **Transport Accident Act 1986** applies;
 - (c) a claim to which Part IV of the **Accident Compensation Act 1985** applies;

S. 28LC
inserted by
No. 60/2003
s. 4.

s. 28LD

(d) a claim in respect of an injury or death which entitles, or may entitle, a worker, or a dependant of a worker, within the meaning of the **Workers Compensation Act 1958** to compensation under that Act.

(3) This Part does not apply to claims in proceedings of a class that is excluded by the regulations from the operation of this Part.

(4) This Part extends to a claim for damages for non-economic loss even if the claim is founded on breach of contract or any other cause of action.

S. 28LD
inserted by
No. 60/2003
s. 4.

28LD This Part is substantive law

For the avoidance of doubt it is declared that all the provisions of this Part contain matters that are substantive law and are not procedural in nature.

Division 2—Restriction on recovery of damages for non-economic loss

S. 28LE
inserted by
No. 60/2003
s. 4.

28LE Restriction on recovery of damages for non-economic loss

A person is not entitled to recover damages for non-economic loss in any proceeding in a court in respect of an injury to a person caused by the fault of another person unless the person injured has suffered significant injury.

S. 28LF
inserted by
No. 60/2003
s. 4.

28LF What is significant injury?

(1) For the purposes of this Part injury to a person (other than a psychiatric injury) is significant injury if—

(a) the degree of impairment of the whole person resulting from the injury has been assessed by an approved medical practitioner in accordance with this Part as satisfying the threshold level, unless a Medical Panel has

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- made a determination as to the threshold level under Division 5; or
- (aa) a certificate of assessment has been issued under section 28LNA in respect of the injury, unless a Medical Panel has made a determination as to the threshold level under Division 5; or
- (b) a Medical Panel has determined under Division 5 that the degree of impairment of the whole person resulting from the injury satisfies the threshold level; or
- (c) the injury is loss of a foetus; or
- (ca) the injury is psychological or psychiatric injury arising from the loss of a child due to an injury to the mother or the foetus or the child before, during or immediately after the birth; or
- (d) the injury is loss of a breast.
- (2) For the purposes of this Part psychiatric injury to a person is significant injury if—
- (a) the degree of impairment resulting from the injury has been assessed by an approved medical practitioner in accordance with this Part as satisfying the threshold level, unless a Medical Panel has made a determination as to the threshold level under Division 5; or
- (aa) a certificate of assessment has been issued under section 28LNA in respect of the injury, unless a Medical Panel has made a determination as to the threshold level under Division 5; or
- (b) a Medical Panel has determined under Division 5 that the degree of impairment resulting from the injury satisfies the threshold level.
- S. 28LF(1)(aa) inserted by No. 102/2003 s. 14(1).**
- S. 28LF(1)(ca) inserted by No. 102/2003 s. 14(2).**
- S. 28LF(2)(aa) inserted by No. 102/2003 s. 14(3).**

s. 28LG

(3) For the purposes of this Part injury to a person is deemed to be significant injury if—

(a) an agreement is given under Division 4 to waive the requirement for assessment in respect of the injury; or

S. 28LF(3)(aa)
inserted by
No. 102/2003
s. 14(4).

(aa) the injury is deemed under section 28LZG(10) or 28LZGA(4) to be significant injury; or

(b) the court makes a determination in respect of that person under section 28LZN.

Division 3—Assessment of impairment

S. 28LG
inserted by
No. 60/2003
s. 4.

28LG Who can assess impairment?

The assessment of degree of impairment must be made by an approved medical practitioner.

S. 28LH
inserted by
No. 60/2003
s. 4,
amended by
No. 102/2003
s. 15(1)(2)
(LA s. 39B(1)).

28LH How is the degree of impairment to be assessed?

(1) Subject to this Division, an approved medical practitioner must make an assessment of degree of impairment under this Part—

(a) in accordance with—

(i) the A.M.A. Guides; or

(ii) the methods prescribed for the purposes of this Part; and

(b) in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister.

S. 28LH(2)
inserted by
No. 102/2003
s. 15(2).

(2) Nothing in subsection (1) prevents an assessment being made in respect of a degree of impairment of a person even if not all of the injuries to the person have stabilised.

28LI Assessment of certain impairments

S. 28LI
inserted by
No. 60/2003
s. 4,
substituted by
No. 41/2006
s. 48.

- (1) For the purposes of assessing the degree of psychiatric impairment the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 14 there were substituted the guidelines entitled "The Guide to the Evaluation of Psychiatric Impairment for Clinicians".
- (2) For the purposes of assessing the degree of asthma impairment—
 - (a) the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 5, Tables 8 and 10, there were substituted the guidelines entitled "Impairment Assessment in Workers with Occupational Asthma"; and
 - (b) a reference in the guidelines entitled "Impairment Assessment in Workers with Occupational Asthma" to "occupational asthma" is to be construed as a reference to "asthma".
- (3) For the purposes of assessing the degree of infectious disease impairment—
 - (a) the A.M.A Guides apply, subject to any regulations made for the purposes of this section and subject to the guidelines entitled "Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases"; and
 - (b) a reference in the guidelines entitled "Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases" to "infectious occupational diseases" is to be construed as a reference to "infectious diseases".

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- (4) Unless subsection (5) applies, the guidelines referred to in subsections (1), (2) and (3) are the guidelines referred to in sections 91(6), 91(6A) and 91(6B) of the **Accident Compensation Act 1985** as in effect in accordance with section 91(6C) of that Act or as amended, varied or substituted in accordance with section 91(6C) of that Act.
- (5) The guidelines referred to in subsections (1), (2) and (3) may be amended, varied or substituted by a subsequent edition of the guidelines published by the Minister in the Government Gazette.
- (6) If a subsequent edition of the guidelines is published by the Minister in the Government Gazette under subsection (5), the guidelines have effect from the day after the day on which the Government Gazette is published.
- (7) Subject to subsection (8)—
- (a) this section as in force before the commencement of section 48 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** continues to apply if before that commencement a person has had at least one impairment examination for the purposes of assessing the degree of psychiatric impairment, the degree of asthma impairment or the degree of infectious disease impairment;
- (b) if paragraph (a) does not apply, this section as amended by section 48 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies for the purposes of assessing the degree of psychiatric impairment, the degree of asthma impairment or the degree of infectious disease impairment in an impairment
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examination made on or after the commencement of section 48 of the **Accident Compensation and Other Legislation (Amendment) Act 2006**.

- (8) Despite subsection (7)(b), if the first guidelines under section 91 of the **Accident Compensation Act 1985** as amended by section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** are not in force on the commencement of section 48 of the **Accident Compensation and Other Legislation (Amendment) Act 2006**, this section as in force before that commencement continues to apply for the purposes of assessing the degree of psychiatric impairment in an impairment examination made on or after that commencement until the first guidelines are in force.

28LJ Regard not to be had to secondary psychiatric or psychological impairment

S. 28LJ
inserted by
No. 60/2003
s. 4.

In assessing a degree of impairment of a person under this Part, regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.

28LK Assessment of hearing impairment

S. 28LK
inserted by
No. 60/2003
s. 4.

- (1) For the purposes of assessing the degree of impairment of the whole person resulting from binaural hearing impairment, the percentage of the diminution of hearing determined in accordance with subsection (2) is to be converted as follows—
- (a) if the binaural loss of hearing is 5 per cent NAL or less, the degree of impairment is to be assessed as zero;

- (b) if the binaural loss of hearing is a percentage that is more than 5 per cent NAL, the degree of impairment is to be assessed at that percentage.
- (2) For the purposes of this section, the percentage of diminution of hearing—
 - (a) must be determined—
 - (i) by a person or class of persons approved; and
 - (ii) in the manner approved—
under section 91(4) of the **Accident Compensation Act 1985**; and
 - (b) must be determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory.

S. 28LL
inserted by
No. 60/2003
s. 4.

28LL Assessment in relation to injuries arising out of the same incident

- (1) If a person has more than one impairment resulting from injuries which arose out of the same incident, all of those impairments must be included in the one assessment.
- (2) For the purposes of this Part, impairments, other than psychiatric impairments, resulting from injuries which arose out of the same incident are to be assessed together using the combination tables in the A.M.A. Guides or the methods prescribed for the purposes of this Part.
- (3) For the purposes of this Part, impairments from unrelated injuries or causes are to be disregarded in making an assessment.

28LM Prescribed methods for assessment

If methods are prescribed for the purposes of this Part and apply to an assessment of impairment, the assessment must be made in accordance with those methods rather than in accordance with the A.M.A. Guides.

S. 28LM
inserted by
No. 60/2003
s. 4.

28LN Certificate of assessment

S. 28LN
inserted by
No. 60/2003
s. 4.

- (1) Subject to section 28LNA and this section, an approved medical practitioner who makes an assessment of degree of impairment under this Part must provide to the person seeking the assessment a certificate of assessment.
- (2) The certificate of assessment must state whether the degree of impairment resulting from the injury satisfies the threshold level but must not state the specific degree of impairment.
- (3) If not all the injuries to a person have stabilised, a certificate of assessment can only be provided under this section in respect of the person if the injuries that have stabilised are sufficient to determine a degree of impairment that satisfies the threshold level.

S. 28LN(1)
amended by
No. 102/2003
s. 16(1).

S. 28LN(3)
inserted by
No. 102/2003
s. 16(2).

28LNA Certificate where injury not stabilised

S. 28LNA
inserted by
No. 102/2003
s. 17.

- (1) This section applies if, after making an assessment of degree of impairment under this Part, an approved medical practitioner is unable to determine the degree of impairment because the injury has not stabilised.
- (2) If, at the end of 6 months after that first assessment, an approved medical practitioner is unable to determine the degree of impairment but is satisfied that the degree of impairment resulting from the injury will satisfy the threshold level

s. 28LO

once the injury has stabilised, that approved medical practitioner may issue a certificate of assessment under this section.

- (3) The certificate of assessment must state that the approved medical practitioner is unable to determine the degree of impairment but is satisfied that the degree of impairment resulting from the injury will satisfy the threshold level once the injury has stabilised.

Division 4—Procedure for claim for non-economic loss

S. 28LO
inserted by
No. 60/2003
s. 4.

28LO Agreement to waive assessment of impairment

- (1) A claimant may, in writing, ask the respondent to waive the requirement for an assessment of degree of impairment under this Part.

S. 28LO(1A)
inserted by
No. 102/2003
s. 18(1).

- (1A) A request under subsection (1) must be in the prescribed form (if any) and include the prescribed information (if any).

S. 28LO(2)
amended by
No. 102/2003
s. 18(2).

- (2) A respondent to whom a request under subsection (1) is made must respond in writing to the request within 60 days after receiving it.

- (3) The response must—

- (a) state that the respondent is a proper respondent to the claim and state that the respondent agrees to waive the requirement for the assessment of degree of impairment under this Part because the injury is significant injury; or

- (b) state that the respondent is a proper respondent to the claim and request that the claimant obtain an assessment of degree of impairment under this Part; or

S. 28LO(3)(c)
amended by
No. 102/2003
s. 18(3).

- (c) if the respondent is unable to decide, on the information contained in the request, whether the respondent is a proper

respondent to the claim, advise the claimant of the further information the respondent reasonably needs to decide whether the respondent is a proper respondent to the claim; or

- (d) state that the respondent believes that the respondent is not a proper respondent to the claim, give the reasons for the belief and give any information that may help the claimant to identify the proper respondent.
- (4) If the respondent fails to respond within the 60 days, the requirement for the assessment of degree of impairment cannot be waived by the respondent.
- (5) Information prescribed for the purposes of subsection (1A) may include information relating to—
- (a) the identity of the claimant;
 - (b) the nature of the claim;
 - (c) the injury;
 - (d) the incident out of which the alleged injury arose;
 - (e) any medical practitioner who has treated the injury.

S. 28LO(4)
amended by
No. 102/2003
s. 18(2).

S. 28LO(5)
inserted by
No. 102/2003
s. 18(4).

28LP What if the respondent asks for more information?

S. 28LP
inserted by
No. 60/2003
s. 4.

- (1) If under section 28LO(3)(c) a respondent advises a claimant that specified further information is needed, the claimant must give the respondent the information the respondent reasonably needs to decide whether the respondent is a proper respondent to the claim.
- (2) The respondent must respond in the manner set out in section 28LO(3)(a), (b) or (d) within 60 days after receiving the information.

S. 28LP(2)
amended by
No. 102/2003
s. 19.

s. 28LQ

S. 28LP(3)
amended by
No. 102/2003
s. 19.

- (3) If the respondent fails to respond within the 60 days, the requirement for the assessment of degree of impairment cannot be waived by the respondent.

S. 28LQ
inserted by
No. 60/2003
s. 4.

28LQ What if the respondent disputes responsibility?

- (1) If a respondent responds in accordance with section 28LO(3)(d), the claimant must give written notice to the respondent, within 14 days after receiving the response, that either—
- (a) on the information available to the claimant, the claimant accepts that the respondent is not a proper respondent to the claim; or
 - (b) the claimant considers that the respondent is a proper respondent to the claim and requires the respondent to respond to the notice.
- (2) The respondent must respond in writing to a notice under subsection (1)(b) within 14 days after receiving the notice.
- (3) The response under this section must—
- (a) state that the respondent agrees to waive the requirement for the assessment of degree of impairment under this Part because the injury is significant injury; or
 - (b) request that the claimant obtain an assessment of degree of impairment under this Part.
- (4) If the respondent fails to respond within the 14 days, the requirement for the assessment of degree of impairment cannot be waived by the respondent.

28LR Can a respondent bind any other respondent?

An agreement under this Division by a respondent to a claim that the assessment is not required because the injury is significant injury does not bind any other respondent.

S. 28LR inserted by No. 60/2003 s. 4.

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S. 28LS inserted by No. 60/2003 s. 4, repealed by No. 102/2003 s. 20.

28LT Copy of certificate of assessment to be served on respondent

- (1) A claimant must serve on the respondent a copy of a certificate of assessment (if any) obtained under this Part on which the claimant intends to rely.
- (2) The copy of the certificate of assessment must be accompanied by the prescribed information (if any) in the prescribed form (if any) unless the information has already been provided to the respondent under section 28LO.
- (3) The information prescribed for the purposes of subsection (2) may include information relating to—
 - (a) the identity of the claimant;
 - (b) the nature of the claim;
 - (c) the injury;
 - (d) the incident out of which the alleged injury arose;
 - (e) any medical practitioner who has treated the injury.

S. 28LT inserted by No. 60/2003 s. 4, amended by No. 102/2003 s. 21 (ILA s. 39B(1)).

S. 28LT(2) inserted by No. 102/2003 s. 21.

S. 28LT(3) inserted by No. 102/2003 s. 21.

s. 28LU

S. 28LU
inserted by
No. 60/2003
s. 4.

28LU Multiple respondents

- (1) If there are 2 or more respondents to a claim, one of the respondents (the **respondents' claim manager**) may act for one or more of the other respondents, with the agreement of those other respondents, for the purposes of the claim.
- (2) The respondents' claim manager—
 - (a) may exercise the powers and perform the duties conferred by this Part in relation to the claim and the claimant for all respondents for whom the respondents' claim manager acts; and
 - (b) must act as far as practicable with the agreement of the other respondents for whom the respondents' claim manager acts.
- (3) Action taken or an agreement made by the respondents' claim manager in relation to the claim is binding on each respondent for whom the respondents' claim manager acts so far as it affects the claimant.
- (4) If the respondents' claim manager acts beyond the scope of the respondents' claim manager's authority under the agreement referred to in subsection (1), the respondents' claim manager is liable to each other respondent who is a party to the agreement for any loss suffered by the other respondent.

S. 28LV
inserted by
No. 60/2003
s. 4.

28LV Limitation period suspended

Service of a copy of a certificate of assessment on a respondent suspends the relevant period of limitation under the **Limitation of Actions Act 1958** or this Act in respect of the claim until the expiry of 3 months after whichever of the following first occurs—

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- | | |
|--|---|
| (a) the respondent accepts in writing under section 28LW, 28LWA or 28LWB the assessment in the certificate of assessment; | S. 28LV(a)
amended by
No. 102/2003
s. 22(a). |
| (b) the respondent is deemed under section 28LW, 28LWA, 28LWB, 28LZA or 28LZGA to have accepted the assessment; | S. 28LV(b)
amended by
No. 102/2003
s. 22(b). |
| (c) if the respondent refers a medical question in relation to the assessment to a Medical Panel for determination under this Part, the expiry of any period for bringing an application for any relief or remedy in relation to the determination of the Medical Panel, unless such an application is brought within that period; | S. 28LV(c)
amended by
No. 102/2003
s. 22(c). |
| (d) if the respondent brings an application for any relief or remedy in relation to the determination of a Medical Panel, the final determination of that application. | S. 28LV(d)
amended by
No. 102/2003
s. 22(c). |

28LW Response to medical assessment

- | | |
|--|--|
| (1) The respondent on whom a copy of a certificate of assessment is served must respond in writing to the claimant within 60 days after receiving the certificate and the required information under section 28LT. | S. 28LW
inserted by
No. 60/2003
s. 4,
substituted by
No. 102/2003
s. 23. |
| (2) The response to the claimant must— | |
| (a) state that the respondent is a proper respondent to the claim and state that the respondent accepts the assessment for the purposes of this Part; or | |
| (b) state that the respondent is a proper respondent to the claim and advise the claimant that the respondent intends to refer or has referred a medical question in relation to the assessment to a Medical Panel for determination under this Part; or | |
-

s. 28LWA

- (c) if the respondent is unable to decide, on the information provided with the certificate of assessment, whether the respondent is a proper respondent to the claim, advise the claimant of the further information the respondent reasonably needs to decide whether the respondent is a proper respondent to the claim; or
 - (d) state that the respondent believes that the respondent is not a proper respondent to the claim, give the reasons for the belief and give any information that may help the claimant to identify the proper respondent.
- (3) The respondent must state that the respondent is a proper respondent to a claim if the respondent has already stated under section 28LO or 28LP that the respondent is a proper respondent to the claim.
- (4) If the respondent fails to respond in writing under this section within the 60 days, the respondent is deemed to have accepted the assessment.

S. 28LWA
inserted by
No. 102/2003
s. 23.

28LWA What if the respondent asks for more information?

- (1) If, under section 28LW(2)(c), a respondent advises a claimant that specified further information is needed, the claimant must give the respondent the information the respondent reasonably needs to decide whether the respondent is a proper respondent to the claim.
- (2) The respondent must respond in the manner set out in section 28LW(2)(a), (b) or (d) within 60 days after receiving the information.
- (3) If the respondent fails to respond in writing under this section within the 60 days, the respondent is deemed to have accepted the assessment.

28LWB What if the respondent disputes responsibility?

**S. 28LWB
inserted by
No. 102/2003
s. 23.**

- (1) If a respondent responds in accordance with section 28LW(2)(d), the claimant must give written notice to the respondent, within 14 days after receiving the response, that either—
 - (a) on the information available to the claimant, the claimant accepts that the respondent is not a proper respondent to the claim; or
 - (b) the claimant considers that the respondent is a proper respondent to the claim and requires the respondent to respond to the notice.
- (2) The respondent must respond in writing to a notice under subsection (1)(b) within 14 days after receiving the notice.
- (3) The response under this section must—
 - (a) state that the respondent is a proper respondent to the claim and state that the respondent accepts the assessment for the purposes of this Part; or
 - (b) state that the respondent is a proper respondent to the claim and advise the claimant that the respondent has referred or intends to refer a medical question in relation to the assessment to a Medical Panel for determination under this Part.
- (4) If the respondent fails to respond within the 14 days, the respondent is deemed to have accepted the assessment.

28LWC Can a respondent bind any other respondent?

**S. 28LWC
inserted by
No. 102/2003
s. 23.**

An acceptance under this Division by a respondent to a claim of an assessment does not bind any other respondent.

s. 28LWD

S. 28LWD
inserted by
No. 102/2003
s. 23.

28LWD Statement not admission of liability

A statement under this Division that a respondent is a proper respondent to a claim is not an admission of liability in respect of the claim.

S. 28LWE
inserted by
No. 102/2003
s. 23.

28LWE Referral of medical question to Medical Panel

- (1) The respondent on whom a copy of the certificate of assessment is served may refer a medical question in relation to the assessment to a Medical Panel for determination under this Part—
 - (a) within 60 days after receiving the certificate and the required information under section 28LT; or
 - (b) within 60 days after receiving the information provided under section 28LWA; or
 - (c) within 14 days after receiving the notice under section 28LWB.
- (2) The respondent may not refer a medical question in relation to the assessment to a Medical Panel if the respondent has accepted the assessment or is deemed to have accepted the assessment under this Division.
- (3) If the respondent advises the claimant under section 28LW, 28LWA or 28LWB that the respondent intends to refer a medical question in relation to the assessment to a Medical Panel and does not refer the question within the required time under this section, the respondent is deemed to have accepted the assessment under this Division at the expiration of that required time.

S. 28LX
inserted by
No. 60/2003
s. 4,
amended by
No. 102/2003
ss 24, 25.

28LX Respondent to pay costs of referral

The respondent is liable for the fees and costs payable in accordance with section 28LXA for a referral of a medical question to a Medical Panel

for determination under this Part including the costs of—

- (a) any attendance before the Medical Panel under section 28LZE of a registered health practitioner; and
- (b) copying documents to be provided under section 28LZC or 28LZE; and
- (c) reasonable transport arrangements for persons attending the Medical Panel.

28LXA Administration

- (1) The Minister, on the recommendation of the Convenor, may, by notice published in the Government Gazette, fix scales of fees and costs for referrals of medical questions under this Part.
- (2) All fees and costs payable by the respondent in respect of a referral to a Medical Panel under section 28LX must be paid to the Convenor.
- (3) The Convenor may recover any fees or costs payable under section 28LX in any court of competent jurisdiction as a debt due to the Crown.
- (4) The Convenor may establish a bank account or bank accounts for the purposes of this Part.
- (5) The Convenor must pay any amount paid to the Convenor under this section into the bank account or accounts established under subsection (4).
- (6) The Convenor may pay out of a bank account established under subsection (4) any amount necessary—
 - (a) to reimburse the Victorian WorkCover Authority for the remuneration (including allowances) of members of Medical Panels to the extent that is applicable to their functions under this Part;

S. 28LXA
inserted by
No. 102/2003
s. 26.

- (b) to pay the Victorian WorkCover Authority or any other person for the provision of administrative services under this Part;
 - (c) to pay any other costs (including administrative costs) relating to a referral of a medical question for determination under this Part.
- (7) The Convenor may engage any person to assist the Convenor in carrying out any function under this Part.
 - (8) The Convenor may enter into arrangements with the Victorian WorkCover Authority or with any other person or body for the provision of administrative services to the Convenor for the purposes of this Part.
 - (9) The Minister must cause a notice under subsection (1) to be laid before each House of Parliament within 5 sitting days of that House after it is published in the Government Gazette.
 - (10) Sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply to a notice under subsection (1) as if it were a statutory rule within the meaning of that Act.
 - (11) A notice under subsection (1) may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.

Division 5—Procedure of Medical Panel

28LY Application

This Division sets out the powers and procedures of a Medical Panel in relation to a medical question referred to it under Division 4.

28LZ Procedure of Medical Panel

- (1) A Medical Panel is not bound by rules or practices as to evidence, but may inform itself on any matter relating to a reference in any manner it thinks fit.
- (2) A Medical Panel must act informally, without regard to technicalities or legal forms and as speedily as a proper consideration of the reference allows.
- (3) The Minister, after consultation with the Minister administering Part III of the **Accident Compensation Act 1985**, may for the purposes of—
 - (a) ensuring procedural fairness in the procedures of Medical Panels under this Part; and
 - (b) facilitating the proper administration of the Medical Panels under this Part—issue guidelines as to the procedures of Medical Panels under this Part.
- (4) The Convenor may give directions as to the procedures of Medical Panels under this Part but must not give directions inconsistent with any guidelines issued by the Minister under this Part.
- (5) A Medical Panel must comply with—
 - (a) any relevant guidelines as to the procedures of Medical Panels issued under subsection (3); and
 - (b) any directions given by the Convenor under subsection (4).

S. 28LZ
inserted by
No. 60/2003
s. 4.

S. 28LZ(3)
substituted by
No. 102/2003
s. 27.

S. 28LZ(4)
substituted by
No. 102/2003
s. 27.

S. 28LZ(5)
inserted by
No. 102/2003
s. 27.

s. 28LZA

28LZA Respondent must provide information to Medical Panel

S. 28LZA
inserted by
No. 60/2003
s. 4.

(1) A respondent referring a medical question to a Medical Panel must submit to the Medical Panel—

S. 28LZA(1)(a)
amended by
No. 102/2003
s. 28(1).

(a) a notice in writing and in the prescribed form (if any) setting out—

(i) the medical question; and

(ii) any other prescribed information; and

(b) a copy of any relevant certificate of assessment served on the respondent by the claimant under section 28LT.

S. 28LZA(2)
substituted by
No. 102/2003
s. 28(2).

(2) The Convenor may, in writing, request the respondent to provide to the Medical Panel any specified document or documents of a specified class in the respondent's possession.

S. 28LZA(2A)
inserted by
No. 102/2003
s. 28(2).

(2A) More than one request may be made under subsection (2).

S. 28LZA(2B)
inserted by
No. 102/2003
s. 28(2).

(2B) The respondent must comply with any request under subsection (2).

S. 28LZA(3)
amended by
No. 102/2003
s. 28(3).

(3) The Medical Panel may refuse to proceed to consider a medical question if it is not provided with the documents required under subsection (1) or requested under subsection (2).

S. 28LZA(4)
substituted by
No. 102/2003
s. 28(4).

(4) A respondent is deemed to have accepted the assessment in the certificate of assessment if the respondent—

(a) fails to provide the Medical Panel with the information and documents required under subsection (1) within 30 days after being

requested in writing to do so by the
Convenor; or

- (b) fails to provide any documents requested
under subsection (2) within 30 days after that
request.
- (5) The Convenor must notify the claimant in writing
within 7 days of a deemed acceptance under
subsection (4).

**28LZB What if there is more than one referral in relation to
an assessment?**

S. 28LZB
inserted by
No. 60/2003
s. 4.

The Convenor may direct that referrals by 2 or
more respondents to the Medical Panel that
concern the same assessment be consolidated.

28LZC What can a Medical Panel ask a claimant to do?

S. 28LZC
inserted by
No. 60/2003
s. 4,
amended by
No. 102/2003
s. 29 (ILA
s. 39B(1)).

- (1) A Medical Panel may ask a claimant—
 - (a) to meet with the Panel and answer questions;
 - (b) to supply to the Panel copies of all
documents in the possession of the claimant
that relate to the medical question;
 - (c) to submit to a medical examination by the
Panel or by a member of the Panel.
- (2) A request under this section must be made within
30 days after the medical question is referred to
the Medical Panel.

S. 28LZC(2)
inserted by
No. 102/2003
s. 29.

28LZD Attendance before Medical Panel to be private

S. 28LZD
inserted by
No. 60/2003
s. 4.

- (1) Any attendance of a claimant before a Medical
Panel must be in private, unless the Medical Panel
considers that it is necessary for another person to
be present.
- (2) If the claimant is a person under disability, the
Medical Panel must permit a representative of the
claimant to be present.

s. 28LZE

- (3) In this section *person under disability* means a person who is—
- (a) a minor; or
 - (b) incapable by reason of injury, disease, senility, illness or physical or mental infirmity of managing his or her affairs in relation to the matter before the Medical Panel.

S. 28LZE
inserted by
No. 60/2003
s. 4,
amended by
No. 102/2003
s. 30 (ILA
s. 39B(1)).

28LZE Medical Panel can ask a registered health practitioner to attend

- (1) If a Medical Panel so requests and the claimant consents, a registered health practitioner who has examined the claimant must—
- (a) meet with the Panel and answer questions; and
 - (b) supply relevant documents to the Panel.
- (2) A request under this section must be made within 30 days after the last of the following to occur—
- (a) the date on which the medical question is referred to the Medical Panel;
 - (b) the date on which the claimant meets with the Medical Panel under section 28LZC;
 - (c) the date on which the claimant is given a medical examination by the Medical Panel or a member of the Panel under section 28LZC;
 - (d) the last date on which the Medical Panel receives any documents requested under section 28LZC(1)(b).

S. 28LZE(2)
inserted by
No. 102/2003
s. 30.

28LZF Protection of information given to Medical Panel

Information given to a Medical Panel cannot be used in any civil or criminal proceeding in any court, other than a proceeding—

S. 28LZF
inserted by
No. 60/2003
s. 4.

(a) relating to the claim for which the determination is sought; or

S. 28LZF(a)
amended by
No. 102/2003
s. 24.

(b) for an offence against the **Crimes Act 1958** which arises in connection with the claim.

28LZG Determination of Panel

S. 28LZG
inserted by
No. 60/2003
s. 4,
substituted by
No. 102/2003
s. 31.

- (1) A Medical Panel must not determine the degree of impairment of a person unless it has made an assessment of the degree of impairment in accordance with Division 3.
- (2) After making the assessment, the Medical Panel must give the claimant and the respondent—
 - (a) its determination of the medical question in accordance with subsection (4); or
 - (b) its certificate, in accordance with subsection (5), that it is unable to determine the medical question but that it is satisfied that the degree of impairment will satisfy the threshold level when the injury has stabilised; or
 - (c) its certificate that it is unable to determine the medical question and a statement of the time fixed for further assessment of the person under subsection (6).
- (3) The Medical Panel must give the determination or certificate—
 - (a) within 30 days after the last of the following to occur—
 - (i) the last date on which the claimant complies with a request under section 28LZC;
 - (ii) the last date on which a registered health practitioner complies with a request under section 28LZE or if a

request is made to more than one registered health practitioner, the last date on which the last of the registered health practitioners to comply, complies with the request; or

- (b) within such longer period as is agreed by the claimant and the respondent.
- (4) If, after making the assessment, the Medical Panel determines the degree of impairment, the determination of the medical question must state whether the degree of impairment resulting from the injury satisfies the threshold level but must not state the specific degree of impairment.
- (5) If, after making an assessment, the Medical Panel is unable to determine the medical question because an injury has not stabilised, but the Medical Panel is satisfied that the degree of impairment resulting from injury will satisfy the threshold level once the injury has stabilised, the Medical Panel may certify in writing to that effect.
- (6) If, after making an assessment, the Medical Panel is unable to determine the medical question because an injury has not stabilised and subsection (5) does not apply, the Medical Panel must in writing—
- (a) certify that it is unable to determine the medical question; and
- (b) fix a time (not being later than 12 months after the first assessment) for a further assessment of the degree of impairment of the person to be made under this section.
- (7) The time fixed under subsection (6) must be the earliest time by which the Medical Panel considers that the injury will have stabilised.

- (8) More than one further assessment may be made under this section but each further assessment must be made within the period of 12 months following the first assessment.
- (9) A determination of the Medical Panel under subsection (4) must be given in writing and be certified by the Medical Panel.
- (10) If the Medical Panel gives a certificate under subsection (5) in relation to an injury, the injury is deemed to be significant injury.

28LZGA Further assessment

S. 28LZGA
inserted by
No. 102/2003
s. 31.

- (1) If a Medical Panel fixes a time for further assessment under section 28LZG, the respondent may by notice in writing to the Medical Panel and the claimant waive the requirement for a further assessment.
- (2) The notice must be given within 14 days after the respondent receives the statement of the Medical Panel.
- (3) If the respondent waives the requirement for a further assessment under section 28LZG, the respondent is deemed to have accepted, for the purposes of this Part, the assessment in the certificate of assessment served under section 28LT.
- (4) If a Medical Panel fixes a time for further assessment under section 28LZG, and at the end of 12 months after the first assessment, the Medical Panel certifies in writing that it is still unable to determine the medical question because an injury has not stabilised, the injury to the person is deemed to be significant injury.

s. 28LZH

S. 28LZH
inserted by
No. 60/2003
s. 4.

28LZH Effect of determination as to threshold level

- (1) A determination by the Medical Panel under this Division that the degree of impairment resulting from an injury satisfies the threshold level must be accepted by a court in any proceeding on the claim as a determination of significant injury for the purposes of this Part.
- (2) A determination by the Medical Panel under this Division that the degree of impairment resulting from an injury does not satisfy the threshold level must be accepted by a court in any proceeding on the claim as a determination that the injury is not significant injury for the purposes of this Part.

S. 28LZI
inserted by
No. 60/2003
s. 4.

28LZI Limitations on appeal in relation to assessments and determinations

- (1) No appeal on the merits may be made to a court from an assessment or determination of a Medical Panel under this Division.
- (2) Nothing in subsection (1) affects any right of a court to grant any other relief or remedy in relation to an assessment or determination of a Medical Panel under this Division.

S. 28LZJ
inserted by
No. 60/2003
s. 4.

28LZJ Treating medical practitioner not to be on Medical Panel

If a medical practitioner has treated or examined or has been engaged to treat or examine the claimant (otherwise than in his or her capacity as a member of a Medical Panel), he or she must not be a member of a Medical Panel considering a medical question relating to the claimant.

S. 28LZK
inserted by
No. 60/2003
s. 4.

28LZK Validity of acts or decisions

An act or decision of a Medical Panel under this Division is not invalid by reason only of any defect or irregularity in or in connection with the appointment of a member.

**28LZL Operation of Panel provisions of the Accident
Compensation Act**

S. 28LZL
inserted by
No. 60/2003
s. 4.

- (1) Sections 65(1) to (6B), 65(8), 65(9), 66, 67 and 68 of the **Accident Compensation Act 1985** do not apply to or in relation to—
- (a) the procedure of a Medical Panel under this Part; or
 - (b) a matter referred to a Medical Panel under this Part.
- (2) Except as provided in subsection (1), and subject to any inconsistency of context or subject-matter, Division 3 of Part III of the **Accident Compensation Act 1985** applies to a Medical Panel appointed for the purposes of this Part.

S. 28LZL(1)
amended by
No. 102/2003
s. 32.

Division 6—Proceedings on claim

28LZM Provision of assessment information to court

S. 28LZM
inserted by
No. 60/2003
s. 4.

- (1) This section applies to a claimant who brings a proceeding in a court in respect of a claim for damages for non-economic loss to which this Part applies in respect of injury to a person caused by the fault of another person.
- (2) The claimant must file in the court before the determination of the claim—
- (a) if the claimant intends to rely on a certificate of assessment under this Part, a copy of that certificate; or
 - (b) if the claimant intends to rely on the written agreement of any respondent under Division 4 to waive the requirement for assessment in respect of the injury, a copy of that agreement.

s. 28LZN

S. 28LZM(3)
amended by
No. 102/2003
s. 24.

- (3) If a Medical Panel has made a determination as to the threshold level under Division 5, the claimant must also file in the court a copy of the certificate of determination of the Medical Panel.
- (4) If the respondent is deemed to have accepted an assessment under this Part, the claimant must also file in the court a statement to that effect.

S. 28LZM(5)
inserted by
No. 102/2003
s. 33.

- (5) If the injury is deemed under section 28LZG(10) to be significant injury, the claimant must also file in the court a statement to that effect, together with the certificate of the Medical Panel under section 28LZG(5).

S. 28LZM(6)
inserted by
No. 102/2003
s. 33.

- (6) If the injury is deemed under section 28LZGA(4) to be significant injury, the claimant must also file in the court a statement to that effect, together with the certificate of the Medical Panel under that subsection.

S. 28LZN
inserted by
No. 60/2003
s. 4.

28LZN Alternative procedure for special cases

- (1) A claimant may apply to a court for a determination of significant injury for the purposes of this Part.
- (2) The court may make a determination of significant injury in respect of a claimant if the court is satisfied that—
 - (a) the claim should be dealt with urgently because of the imminent death of the claimant; and
 - (b) the injury, if assessed under Division 3, would be significant injury.
- (3) The court may make a determination of significant injury in respect of a claimant if the court is satisfied that—

- (a) the claim relates to a cause of action that survives for the benefit of the estate of a deceased person under section 29(1) of the **Administration and Probate Act 1958**; and
- (b) the deceased person died from a cause other than the injury to which the claim relates; and
- (c) the injury to which the claim relates, if it had been assessed under Division 3, would be significant injury.

Division 7—General

28LZO Supreme Court—limitation of jurisdiction

It is the intention of sections 28LE, 28LZH, 28LZI and 28LZL to alter or vary section 85 of the **Constitution Act 1975**.

S. 28LZO
inserted by
No. 60/2003
s. 4.

28LZP Regulations

- (1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.
- (2) The regulations—
 - (a) may leave any matter to be determined by the Minister; and
 - (ab) may prescribe forms for use under this Part; and
 - (b) may apply, adopt or incorporate, wholly or partially or as amended by the regulations, any matter contained in any document as existing or in force at the time the regulations are made.

S. 28LZP
inserted by
No. 60/2003
s. 4.

S. 28LZP
(2)(ab)
inserted by
No. 102/2003
s. 34.

- (3) Without limiting subsections (1) and (2), the regulations may modify the A.M.A. Guides.
- (4) Without limiting subsections (1) and (2), the regulations may fix the methods to be used for the purpose of assessing the degree of impairment in respect of injury to a person.
- (5) Regulations made under subsection (4)—
 - (a) must specify the methods to be used and any modifications of those methods that are to apply; and
 - (b) can only apply for the purpose of assessing the degree of impairment of a person who receives an injury on or after the date that the regulations are made or on or after a later date specified in the regulations.

S. 28LZQ
inserted by
No. 60/2003
s. 4.

28LZQ Transitional

- (1) This Part applies to an award of damages for non-economic loss that relates to an injury received on or after 21 May 2003.
- (2) On and from 1 October 2003, this Part applies to an award of damages for non-economic loss that relates to an injury received before 21 May 2003.
- (3) Subsection (2) does not apply to an award of damages in a proceeding commenced in a court before 1 October 2003.
- (4) Despite the amendment of section 28LF by section 14(2) of the **Wrongs and Other Acts (Law of Negligence) Act 2003**, section 28LF continues to apply to any proceedings in which damages were awarded before the date on which that Act received the Royal Assent as if section 28LF had not been amended by section 14(2) of that Act.

S. 28LZQ(4)
inserted by
No. 102/2003
s. 35.

PART VC—STRUCTURED SETTLEMENTS

Part VC
(Heading and
ss 28M, 28N)
inserted by
No. 49/2002
s. 8.

28M Definitions

S. 28M
inserted by
No. 49/2002
s. 8.

In this Part—

claim does not include a claim under the **Accident Compensation Act 1985**;

court, in relation to a claim, means—

- (a) if a proceeding based on the claim has been commenced in the Supreme Court or the County Court—the court hearing the proceeding; or
- (b) if no proceeding based on the claim has been commenced—the Supreme Court or the County Court;

damages includes any form of monetary compensation;

fault includes an act or omission;

injury means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease;

structured settlement means an agreement that provides for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.

s. 28N

S. 28N
inserted by
No. 49/2002
s. 8.

28N Court may make order for structured settlement

- (1) If the parties to a claim for damages that relate to injury to a person caused by the fault of another person agree to settle the claim by making a structured settlement, one or more parties may apply to the court for an order approving of, or in the terms of, the structured settlement.
 - (2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.
-

PART VI—DAMAGE BY AIRCRAFT

29 Definitions

No. 5704 s. 2.

In this Part unless inconsistent with the context or subject-matter—

Air Navigation Regulations means the Air Navigation Regulations made and as in force from time to time under the Commonwealth Act and includes such of the provisions of those Regulations as apply to and in relation to air navigation within Victoria by virtue of the **Air Navigation Act 1958**;

article includes mail and postal articles and animals;

loss or damage includes, in relation to persons, loss of life and personal injury;

the Commonwealth Act means the Air Navigation Act 1920–1950 of the Commonwealth of Australia and if that Act is amended includes that Act as amended from time to time.

30 Limitation of liability for trespass or nuisance by flying over property

No. 5704 s. 3.

No action shall lie in respect of trespass or nuisance by reason only of the flight of an aircraft over any property at a height above the ground which having regard to the wind the weather and all the circumstances is reasonable, or the ordinary incidents of such flight, so long as the provisions of the Air Navigation Regulations are duly complied with.

31 Liability for damage by aircraft or articles falling therefrom

- (1) Where material loss or damage is caused to any person or property on land or water by or by a person in or by an article or person falling from an aircraft while in flight taking off or landing then, unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable from the owner of the aircraft without proof of negligence or intention or other cause of action as if the loss or damage had been caused by the wilful act neglect or default of the owner:

Provided that where material loss or damage is caused as aforesaid in circumstances in which—

- (a) damages in respect of the said loss or damage are recoverable from the owner by virtue only of the foregoing provisions of this subsection; and
- (b) a legal liability is created in some person other than the owner to pay damages in respect of the said loss or damage—

the owner shall be entitled to be indemnified by that other person against any claim in respect of the said loss or damage.

- (2) Where the aircraft concerned has been bona fide demised chartered let or hired out for a period exceeding fourteen days to any other person by the owner thereof and no pilot commander navigator or operative member of the crew of the aircraft is in the employment of the owner the last preceding subsection shall have effect as if for references therein to the owner there were substituted references to the person to whom the

aircraft has been so demised chartered let or hired
out.

s. 31A

Pt 6A
(Heading and
ss 31A–31D)
inserted by
No. 49/2002
s. 9.

PART VIA—GOOD SAMARITAN PROTECTION

S. 31A
inserted by
No. 49/2002
s. 9.

31A Definition

In this Part, *injury* means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease.

S. 31B
inserted by
No. 49/2002
s. 9.

31B Protection of good samaritans

- (1) A good samaritan is an individual who provides assistance, advice or care to another person in relation to an emergency or accident in circumstances in which—
 - (a) he or she expects no money or other financial reward for providing the assistance, advice or care; and
 - (b) as a result of the emergency or accident the person to whom, or in relation to whom, the assistance, advice or care is provided is at risk of death or injury, is injured, is apparently at risk of death or injury, or is apparently injured.
- (2) A good samaritan is not liable in any civil proceeding for anything done, or not done, by him or her in good faith—
 - (a) in providing assistance, advice or care at the scene of the emergency or accident; or

-
- (b) in providing advice by telephone or by another means of communication to a person at the scene of the emergency or accident.
- (3) Subsection (2) applies even if the emergency or accident was caused by an act or omission of the good samaritan.
- (4) Subsection (2) does not apply to any act or omission of a good samaritan that occurs before the assistance, advice or care is provided by the good samaritan.

31C Application of section 31B

Section 31B applies in relation to assistance, advice or care provided on or after the commencement of section 9 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

S. 31C
inserted by
No. 49/2002
s. 9.

31D Supreme Court—limitation of jurisdiction

It is the intention of section 31B to alter or vary section 85 of the **Constitution Act 1975**.

S. 31D
inserted by
No. 49/2002
s. 9.

s. 31E

Pt 6B
(Heading and
ss 31E–31H)
inserted by
No. 49/2002
s. 10.

PART VIB—FOOD DONOR PROTECTION

S. 31E
inserted by
No. 49/2002
s. 10.

31E Interpretation

- (1) In this Part, *injury* means personal or bodily injury and includes—
 - (a) pre-natal injury; and
 - (b) psychological or psychiatric injury; and
 - (c) disease; and
 - (d) aggravation, acceleration or recurrence of an injury or disease.
- (2) Words and expressions used in this Part have the same meanings as they have in the **Food Act 1984**.

S. 31F
inserted by
No. 49/2002
s. 10.

31F Protection of food donors

- (1) A person who donates food (**the food donor**) in the circumstances listed in subsection (2) is not liable in any civil proceeding for any death or injury that results from the consumption of the food.
- (2) The circumstances are—
 - (a) that the food donor donated the food—
 - (i) in good faith for a charitable or benevolent purpose; and
 - (ii) with the intention that the consumer of the food would not have to pay for the food; and
 - (b) that the food was safe to consume at the time it left the possession or control of the food donor; and

-
- (c) if the food was of a nature that required it to be handled in a particular way to ensure that it remained safe to consume after it left the possession or control of the food donor, that the food donor informed the person to whom the food donor gave the food of those handling requirements; and
- (d) if the food only remained safe to consume for a particular period of time after it left the possession or control of the food donor, that the food donor informed the person to whom the food donor gave the food of that time limit.
- (3) For the purposes of this section, food is safe to consume if it is not unsafe food.

31G Application of section 31F

Section 31F applies in relation to food donated on or after the commencement of section 10 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

S. 31G
inserted by
No. 49/2002
s. 10.

31H Supreme Court—limitation of jurisdiction

It is the intention of section 31F to alter or vary section 85 of the **Constitution Act 1975**.

S. 31H
inserted by
No. 49/2002
s. 10.

Pt 7
(Heading and
s. 32)
inserted by
No. 7884
s. 4(2).

**PART VII—ABOLITION OF LIABILITY IN TORT FOR
MAINTENANCE OR CHAMPERTY**

S. 32
inserted by
No. 7884
s. 4(2).

32 Abolition of liability in maintenance or champerty

- (1) No person shall be liable in tort for any conduct on account of its being maintenance or champerty as known to the common law except in the case of a cause of action accruing before the commencement of the **Abolition of Obsolete Offences Act 1969**.
- (2) The abolition of criminal and civil liability for maintenance and champerty shall not affect any rule of law as to the cases in which a contract is to be treated as contrary to public policy or as being otherwise illegal and any contract which would have been illegal and void before the commencement of the **Abolition of Obsolete Offences Act 1969** on the ground that its making or performance involved or was in aid of maintenance or champerty shall continue to be illegal and void after the said commencement.

PART VIII—ANIMALS STRAYING ON TO A HIGHWAY

Pt 8
(Heading and
s. 33)
inserted by
No. 10078 s. 5.

33 Liability for negligence for animals on highway

S. 33
inserted by
No. 10078 s. 5.

- (1) So much of the common law relating to liability for negligence as excludes or restricts the duty which a person might owe to others to take reasonable care to see that damage is not caused by animals straying on to a highway is hereby abolished.
 - (2) The common law as amended by subsection (1) applies in respect of damage caused on or after the commencement of the **Wrongs (Animals Straying on Highways) Act 1984**.
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Part IX
(Heading and
ss 34–42)
inserted by
No. 49/2002
s. 11.

PART IX—VOLUNTEER PROTECTION

S. 34
inserted by
No. 49/2002
s. 11.

34 Definitions

In this Part—

S. 34 def. of
*community
organisation*
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 237.1).

community organisation means—

- (a) an incorporated association under the **Associations Incorporation Act 1981**;
- (b) a municipal council or other incorporated local government body;
- (c) any other body corporate;
- (d) any public entity or public service body within the meaning of the **Public Administration Act 2004** or other person or body acting on behalf of the State—

that organises the doing of community work by volunteers;

community work has the meaning set out in section 36;

organise includes to direct and to supervise;

volunteer has the meaning set out in section 35.

S. 35
inserted by
No. 49/2002
s. 11.

35 Meaning of *volunteer*

- (1) A volunteer is an individual who provides a service in relation to community work on a voluntary basis.

-
- (2) A person is still a volunteer even if, in providing a service, he or she receives—
- (a) remuneration that he or she would receive whether or not he or she provided that service; or
 - (b) out-of-pocket expenses incurred in relation to providing that service; or
 - (c) remuneration that is not more than the amount (if any) specified in the regulations for the purposes of this section.
- (3) For the purposes of this Part, the following people are not volunteers—
- (a) a volunteer officer or member within the meaning of the **Country Fire Authority Act 1958** while exercising any power conferred, or performing any duty imposed, on him or her by or under that Act or the **Dangerous Goods Act 1985**;
 - (b) an officer or member of an industry brigade within the meaning of the **Country Fire Authority Act 1958** while exercising any power conferred, or performing any duty imposed, on him or her by or under that Act or the **Dangerous Goods Act 1985**;
 - (c) a volunteer auxiliary worker within the meaning of the **Country Fire Authority Act 1958** engaged in an authorized activity under that Act;
 - (d) a person complying with a direction given to him or her under the **Country Fire Authority Act 1958**;
 - (e) a volunteer emergency worker within the meaning of the **Emergency Management Act 1986** engaged in an emergency activity within the meaning of that Act;
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s. 36

S. 35(3)(f)
amended by
No. 51/2005
s. 58(12).

- (f) a volunteer emergency worker within the meaning of the **Emergency Management Act 1986** exercising any power conferred, or performing any duty imposed, by or under the **Victoria State Emergency Service Act 2005**;
- (g) any person who would otherwise be a volunteer under this Part while he or she is engaged in any activity in respect of which an Act absolves him or her from civil liability for anything done, or not done, while he or she is so engaged;
- (h) a person who does community work under an order imposed by a court.

S. 36
inserted by
No. 49/2002
s. 11.

36 Meaning of *community work*

- (1) Community work is any work that is done, or to be done—
 - (a) for a religious, educational, charitable or benevolent purpose;
 - (b) for the purpose of promoting or encouraging literature, science or the arts;
 - (c) for the purpose of sport, recreation, tourism or amusement;
 - (d) for the purpose of conserving or protecting the environment;
 - (e) for the purpose of establishing, carrying on or improving a community, social or cultural centre;
 - (f) for a political purpose;
 - (g) for the purpose of promoting the common interests of the community generally or of a particular section of the community;

(h) for any other purpose specified in the regulations for the purposes of this section.

(2) For the purposes of this Part, community work does not include any work of a kind that is specified in the regulations as work that is not community work for the purposes of this Part.

37 Protection of volunteers from liability

S. 37
inserted by
No. 49/2002
s. 11.

(1) A volunteer is not liable in any civil proceeding for anything done, or not done, in good faith by him or her in providing a service in relation to community work organised by a community organisation.

(2) Any liability resulting from an act or omission that would but for subsection (1) attach to the volunteer attaches instead to the community organisation.

38 Exceptions to section 37(1)

S. 38
inserted by
No. 49/2002
s. 11.

(1) Section 37(1) does not apply to a volunteer—

(a) who knew, or who ought reasonably to have known, that at the relevant time he or she was acting—

(i) outside the scope of the community work organised by the community organisation; or

(ii) contrary to any instructions given by the community organisation in relation to the providing of the service; or

(b) whose ability to provide the service in a proper manner was, at the relevant time, significantly impaired by alcohol or drugs.

- (2) Section 37(1) also does not apply to a volunteer—
 - (a) in respect of any claim to recover damages in respect of defamation; or
 - (b) in respect of any proceedings that are brought under the **Transport Accident Act 1986**.
- (3) A reference to drugs in subsection (1)(b) does not include a reference to drugs that were taken for a therapeutic purpose or that were not taken voluntarily.
- (4) A reference to alcohol in subsection (1)(b) does not include a reference to alcohol that was not consumed voluntarily.

S. 39
inserted by
No. 49/2002
s. 11.

39 Provisions concerning the liability of community organisations

- (1) Section 37(2) does not override any protection from liability that would have applied to a community organisation if the thing done, or not done, by the volunteer had been done, or not done, by the community organisation.
- (2) If more than one community organisation is involved in organising particular community work, section 37(2) applies to the community organisation or organisations that principally organised that work.
- (3) In the case of a community organisation that is a public entity or public service body within the meaning of the **Public Administration Act 2004** or another person or body acting on behalf of the State, any liability incurred by the community organisation under section 37(2) is incurred by the State.

S. 39(3)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 237.2).

40 Certain indemnities etc. have no effect

An agreement, undertaking or arrangement has no effect to the extent that it provides for a volunteer to give a community organisation an indemnity against, or to make a contribution to a community organisation in relation to, a liability—

- (a) that the volunteer would incur but for the operation of section 37(1); and
- (b) that the community organisation incurs under section 37(2).

S. 40
inserted by
No. 49/2002
s. 11.

41 Application of section 37

Section 37 applies in relation to a service provided on or after the commencement of section 11 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

S. 41
inserted by
No. 49/2002
s. 11.

42 Regulations

- (1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed to give effect to this Part.
- (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may apply, adopt or incorporate any matter contained in any document as in force at a particular time either wholly, or partially, or as amended by the regulations.

S. 42
inserted by
No. 49/2002
s. 11.

Pt 10
(Heading and
ss 43–66)
inserted by
No. 102/2003
s. 3.

PART X—NEGLIGENCE

Division 1—Preliminary

S. 43
inserted by
No. 102/2003
s. 3.

43 Definitions

In this Part—

court includes tribunal, and, in relation to a claim for damages, means any court or tribunal by or before which the claim falls to be determined;

damages includes any form of monetary compensation;

harm means harm of any kind and includes—

- (a) injury or death; and
- (b) damage to property; and
- (c) economic loss;

injury means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease;

negligence means failure to exercise reasonable care.

S. 44
inserted by
No. 102/2003
s. 3.

44 Application of Part

This Part applies to any claim for damages resulting from negligence, regardless of whether the claim is brought in tort, in contract, under statute or otherwise.

45 Exclusions from Part

(1) This Part does not apply to the following claims for damages—

S. 45
inserted by
No. 102/2003
s. 3.

- (a) a claim to which Part 3, 6 or 10 of the **Transport Accident Act 1986** applies;
- (b) a claim to which Part IV of the **Accident Compensation Act 1985** applies;
- (c) a claim in respect of an injury which entitles, or may entitle, a worker, or a dependant of a worker, within the meaning of the **Workers Compensation Act 1958** to compensation under that Act;
- (d) a claim in respect of an injury which entitles, or may entitle, a person or a dependant of a person to compensation under any of the following—
 - (i) Part V of the **Country Fire Authority Act 1958** or the regulations made under that Act;
 - (ii) Part 4 of the **Victoria State Emergency Service Act 2005**;
 - (iii) Part 6 of the **Emergency Management Act 1986**;
 - (iv) the **Police Assistance Compensation Act 1968**;
 - (v) Part 8 of the **Juries Act 2000** or Part VII of the **Juries Act 1967**;
 - (vi) Part 5.6 of the **Education and Training Reform Act 2006**;

S. 45(1)(d)(ii)
substituted by
No. 51/2005
s. 58(13).

S. 45(1)(d)(vi)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 49).

- (e) subject to subsection (2), a claim for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
 - (f) subject to subsection (2), a claim for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.
- (2) A claim for damages referred to in subsection (1)(e) or (1)(f) does not include a claim for damages that relates to the provision of or the failure to provide a health service.
 - (3) This Part does not apply to claims in proceedings of a class that is excluded by the regulations from the operation of this Part.

S. 46
inserted by
No. 102/2003
s. 3.

46 Application to contract

- (1) This Part does not prevent the parties to a contract from making express provision for their rights, obligations and liabilities under the contract (the **express provision**) in relation to any matter to which this Part applies and does not limit or otherwise affect the operation of the express provision.
- (2) Subsection (1) extends to any provision of this Part even if the provision applies to liability in contract.

S. 47
inserted by
No. 102/2003
s. 3.

47 Effect of this Part on the common law

Except as provided by this Part, this Part is not intended to affect the common law.

Division 2—Duty of care

48 General principles

S. 48
inserted by
No. 102/2003
s. 3.

- (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 care were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;
 - (d) the social utility of the activity that creates the risk of harm.
- (3) For the purposes of subsection (1)(b)—
 - (a) **insignificant risks** include, but are not limited to, risks that are far-fetched or fanciful; and
 - (b) risks that are **not insignificant** are all risks other than insignificant risks and include, but are not limited to, significant risks.

s. 49

S. 49
inserted by
No. 102/2003
s. 3.

49 Other principles

In a proceeding relating to liability for negligence—

- (a) the burden of taking precautions to avoid a risk of harm includes the burden of taking precautions to avoid similar risks of harm for which the person may be responsible; and
- (b) the fact that a risk of harm could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done; and
- (c) the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of harm does not of itself give rise to or affect liability in respect of the risk and does not of itself constitute an admission of liability in connection with the risk.

S. 50
inserted by
No. 102/2003
s. 3.

50 Duty to warn of risk—reasonable care

A person (the **defendant**) who owes a duty of care to another person (the **plaintiff**) to give a warning or other information to the plaintiff in respect of a risk or other matter, satisfies that duty of care if the defendant takes reasonable care in giving that warning or other information.

Division 3—Causation

S. 51
inserted by
No. 102/2003
s. 3.

51 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) In determining in an appropriate case, in accordance with established principles, whether negligence that cannot be established as a necessary condition of the occurrence of harm should be taken to establish factual causation, 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.
- (3) If it is relevant to the determination of factual causation to determine what the person who suffered harm (the **injured person**) would have done if the negligent person had not been negligent, the matter is to be determined subjectively in the light of all relevant circumstances.
- (4) 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.

52 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.

S. 52
inserted by
No. 102/2003
s. 3.

Division 4—Awareness of risk

53 Meaning of obvious risk

- (1) For the purposes of section 54, 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.

S. 53
inserted by
No. 102/2003
s. 3.

- (2) Obvious risks include risks that are patent or a matter of common knowledge.
- (3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.
- (4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.
- (5) To remove any doubt, it is declared that a risk from a thing, including a living thing, is not an obvious risk if the risk is created because of a failure on the part of a person to properly operate, maintain, replace, prepare or care for the thing, unless the failure itself is an obvious risk.

S. 54
inserted by
No. 102/2003
s. 3.

54 Voluntary assumption of risk

- (1) If, in a proceeding on a claim for damages for negligence, a defence of voluntary assumption of risk (*volenti non fit injuria*) is raised and the risk of harm is an obvious risk, the person who suffered harm is presumed to have been aware of the risk, unless the person proves on the balance of probabilities that the person was not aware of the risk.
- (2) Subsection (1) does not apply to—
 - (a) a proceeding on a claim for damages relating to the provision of or the failure to provide a professional service or health service; or
 - (b) a proceeding on a claim for damages in respect of risks associated with work done by one person for another.
- (3) Without limiting section 47, the common law continues to apply, unaffected by subsection (1), to a proceeding referred to in subsection (2).

55 No liability for materialisation of inherent risk

S. 55
inserted by
No. 102/2003
s. 3.

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

56 Plaintiff to prove unawareness of risk

S. 56
inserted by
No. 102/2003
s. 3.

- (1) In any proceeding where, for the purpose of establishing that a person (the **defendant**) has breached a duty of care owed to a person who suffered harm (the **plaintiff**), the plaintiff alleges that the defendant has—
 - (a) failed to give a warning about a risk of harm to the plaintiff; or
 - (b) failed to give other information to the plaintiff—

the plaintiff bears the burden of proving, on the balance of probabilities, that the plaintiff was not aware of the risk or information.

- (2) Subsection (1) does not apply to a proceeding on a claim for damages in respect of risks associated with work done by one person for another.
- (3) Despite subsection (2), subsection (1) applies to a proceeding referred to in subsection (2) if the proceeding relates to the provision of or the failure to provide a health service.
- (4) Without limiting section 47, the common law continues to apply, unaffected by subsection (1), to a proceeding referred to in subsection (2) to which subsection (1) does not apply.

s. 57

- (5) Nothing in this section is intended to alter any duty of care to give a warning of a risk of harm or other information.

Division 5—Negligence of professionals and persons professing particular skills

S. 57
inserted by
No. 102/2003
s. 3.

57 Definition

In this Division *professional* means an individual practising a profession.

S. 58
inserted by
No. 102/2003
s. 3.

58 Standard of care to be expected of persons holding out as possessing 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 is, subject to this Division, to be determined by reference to—

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

S. 59
inserted by
No. 102/2003
s. 3.

59 Standard of care for professionals

- (1) A professional is not negligent in providing a professional service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by a significant number of respected practitioners in the field (**peer professional opinion**) as competent professional practice in the circumstances.
- (2) However, peer professional opinion cannot be relied on for the purposes of this section if the court determines that the opinion is unreasonable.

- (3) The fact that there are differing peer professional opinions widely accepted in Australia by a significant number of respected practitioners in the field concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.
- (5) If, under this section, a court determines peer professional opinion to be unreasonable, it must specify in writing the reasons for that determination.
- (6) Subsection (5) does not apply if a jury determines the matter.

60 Duty to warn of risk

Section 59 does not apply to a liability arising in connection with the giving of (or the failure to give) a warning or other information in respect of a risk or other matter to a person if the giving of the warning or information is associated with the provision by a professional of a professional service.

S. 60
inserted by
No. 102/2003
s. 3.

Division 6—Non-delegable duties and vicarious liability

61 Liability based on non-delegable duty

- (1) The extent of liability in tort of a person (the **defendant**) for breach of a non-delegable duty to ensure that reasonable care is taken by a person in the carrying out of any work or task delegated or otherwise entrusted to the person by the defendant is to be determined as if the defendant were vicariously liable for the negligence of the person in connection with the performance of the work or task.

S. 61
inserted by
No. 102/2003
s. 3.

s. 62

- (2) This section applies to a claim for damages in tort whether or not it is a claim for damages resulting from negligence, despite anything to the contrary in section 44.

Division 7—Contributory negligence

S. 62
inserted by
No. 102/2003
s. 3.

62 Standard of care for contributory negligence

- (1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether the person who suffered harm has been contributorily negligent in failing to take precautions against the risk of that harm.
- (2) For that purpose—
- (a) the standard of care required of the person who suffered harm is that of a reasonable person in the position of that person; and
 - (b) the matter is to be determined on the basis of what that person knew or ought to have known at the time.

S. 63
inserted by
No. 102/2003
s. 3.

63 Contributory negligence can defeat claim

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

Division 8—General

S. 64
inserted by
No. 102/2003
s. 3.

64 Regulations

The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.

65 Supreme Court—limitation of jurisdiction

It is the intention of sections 48(2), 51(2), 51(3), 51(4), 58, 59(5) and 62 to alter or vary section 85 of the **Constitution Act 1975**.

S. 65
inserted by
No. 102/2003
s. 3.

66 Transitional

- (1) This Part extends to negligence arising before, on or after the commencement day.
- (2) Section 61 extends to liability in tort arising before, on or after the commencement day.
- (3) Despite subsections (1) and (2), this Part does not apply to proceedings commenced in a court before the commencement day.
- (4) In this section *commencement day* means the day on which section 3 of the **Wrongs and Other Acts (Law of Negligence) Act 2003** comes into operation.

S. 66
inserted by
No. 102/2003
s. 3.

Pt 11
(Heading and
ss 67–78)
inserted by
No. 102/2003
s. 3.

S. 67
inserted by
No. 102/2003
s. 3.

PART XI—MENTAL HARM

67 Definitions

In this Part—

consequential mental harm means mental harm that is a consequence of an injury of any other kind;

court includes tribunal, and, in relation to a claim for damages, means any court or tribunal by or before which the claim falls to be determined;

damages includes any form of monetary compensation;

injury means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease;

mental harm means psychological or psychiatric injury;

negligence means failure to exercise reasonable care;

pure mental harm means mental harm other than consequential mental harm.

68 Application of Part

This Part applies to any claim for damages resulting from negligence, regardless of whether the claim is brought in tort, in contract, under statute or otherwise.

S. 68
inserted by
No. 102/2003
s. 3.

69 Exclusions from Part

- (1) This Part does not apply to the following claims for damages—
- (a) a claim to which Part 3, 6 or 10 of the **Transport Accident Act 1986** applies;
 - (b) a claim to which Part IV of the **Accident Compensation Act 1985** applies;
 - (c) a claim in respect of an injury which entitles, or may entitle, a worker, or a dependant of a worker, within the meaning of the **Workers Compensation Act 1958** to compensation under that Act;
 - (d) a claim in respect of an injury which entitles, or may entitle, a person or a dependant of a person to compensation under any of the following—
 - (i) Part V of the **Country Fire Authority Act 1958** or the regulations made under that Act;
 - (ii) Part 4 of the **Victoria State Emergency Service Act 2005**;
 - (iii) Part 6 of the **Emergency Management Act 1986**;
 - (iv) the **Police Assistance Compensation Act 1968**;
 - (v) Part 8 of the **Juries Act 2000** or Part VII of the **Juries Act 1967**;

S. 69
inserted by
No. 102/2003
s. 3.

S. 69(1)(d)(ii)
substituted by
No. 51/2005
s. 58(14).

S. 69(1)(d)(vi)
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 49).

(vi) Part 5.6 of the **Education and Training Reform Act 2006**;

- (e) subject to subsection (2), a claim for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
 - (f) subject to subsection (2), a claim for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.
- (2) A claim for damages referred to in subsection (1)(e) or (1)(f) does not include a claim for damages that relates to the provision of or the failure to provide a health service.
- (3) This Part does not apply to claims in proceedings of a class that is excluded by the regulations from the operation of this Part.

S. 70
inserted by
No. 102/2003
s. 3.

70 Application to contract

- (1) This Part does not prevent the parties to a contract from making express provision for their rights, obligations and liabilities under the contract (the **express provision**) in relation to any matter to which this Part applies and does not limit or otherwise affect the operation of the express provision.
- (2) Subsection (1) extends to any provision of this Part even if the provision applies to liability in contract.

S. 71
inserted by
No. 102/2003
s. 3.

71 Effect of this Part on the common law

Except as provided by this Part, this Part is not intended to affect the common law.

72 Mental harm—duty of care

S. 72
inserted by
No. 102/2003
s. 3.

- (1) A person (the **defendant**) does not owe a duty to another person (the **plaintiff**) to take care not to cause the plaintiff pure mental harm unless the defendant foresaw or ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- (2) For the purposes of the application of this section, the circumstances of the case include the following—
 - (a) whether or not the mental harm was suffered as the result of a sudden shock;
 - (b) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in danger;
 - (c) the nature of the relationship between the plaintiff and any person killed, injured or put in danger;
 - (d) whether or not there was a pre-existing relationship between the plaintiff and the defendant.
- (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 to know, that the plaintiff is a person of less than normal fortitude.

73 Limitation on recovery of damages for pure mental harm arising from shock

S. 73
inserted by
No. 102/2003
s. 3.

- (1) This section applies to the liability of a person (the **defendant**) for pure mental harm to a person (the **plaintiff**) arising wholly or partly from mental or nervous shock in connection with another person (the **victim**) being killed, injured or put in danger by the act or omission of the defendant.

-
- (2) The plaintiff is not entitled to recover damages for pure mental harm unless—
- (a) the plaintiff witnessed, at the scene, the victim being killed, injured or put in danger; or
 - (b) the plaintiff is or was in a close relationship with the victim.
- (3) No damages are to be awarded to the plaintiff for pure mental harm if the recovery of damages from the defendant by or through the victim in respect of the act or omission would be prevented by any provision of this Act or any other written or unwritten law.

S. 74
inserted by
No. 102/2003
s. 3.

74 Limitation on recovery of damages for consequential mental harm

- (1) A person (the **plaintiff**) is not entitled to recover damages from another person (the **defendant**) for consequential mental harm unless—
- (a) the defendant foresaw or ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken; or
 - (b) the defendant knew, or ought to have known, that the plaintiff is a person of less than normal fortitude and foresaw or ought to have foreseen that the plaintiff might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- (2) For the purposes of the application of this section, the circumstances of the case include the injury to the plaintiff out of which the mental harm arose.

75 Liability for economic loss for mental harm

A court cannot make an award of damages for economic loss for mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness.

S. 75
inserted by
No. 102/2003
s. 3.

76 Regulations

The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.

S. 76
inserted by
No. 102/2003
s. 3.

77 Supreme Court—limitation of jurisdiction

It is the intention of sections 73, 74 and 75 to alter or vary section 85 of the **Constitution Act 1975**.

S. 77
inserted by
No. 102/2003
s. 3.

78 Transitional

- (1) This Part extends to negligence arising before, on or after the commencement day.
- (2) Despite subsection (1), this Part does not apply to proceedings commenced in a court before the commencement day.
- (3) In this section *commencement day* means the day on which section 3 of the **Wrongs and Other Acts (Law of Negligence) Act 2003** comes into operation.

S. 78
inserted by
No. 102/2003
s. 3.

Pt 12
(Heading and
ss 79–87)
inserted by
No. 102/2003
s. 3.

PART XII—LIABILITY OF PUBLIC AUTHORITIES

S. 79
inserted by
No. 102/2003
s. 3.

79 Definitions

In this Part—

damages includes any form of monetary compensation;

exercise in relation to a function includes perform a duty;

function includes a power, authority or duty;

negligence means failure to exercise reasonable care;

public authority means—

- (a) the Crown;
- (b) a public service body within the meaning of the **Public Administration Act 2004**;
- (c) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose;
- (d) a Council within the meaning of the **Local Government Act 1989**;
- (e) a body established or appointed for a public purpose by the Governor in Council or by a Minister, otherwise than under an Act;
- (f) a person holding an office or position established by or under an Act;

S. 79 def. of
public authority
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 237.3).

- (g) a person holding an office or position to which he or she was appointed by the Governor in Council or a Minister otherwise than under an Act;
- (h) any other person or body prescribed (or of a class prescribed) as an authority to which this Part applies (in respect of all or specified functions);
- (i) any person or body in respect of the exercise of a public or other function of a class prescribed for the purpose of this Part.

80 Application of Part

S. 80
inserted by
No. 102/2003
s. 3.

- (1) This Part (except section 84) applies to any claim for damages resulting from negligence, regardless of whether the claim is brought in tort, in contract, under statute or otherwise.
- (2) Subsection (1) and section 84 do not apply if the relevant enactment contains express provision to the contrary.

81 Exclusions from Part

S. 81
inserted by
No. 102/2003
s. 3.

- (1) This Part does not apply to the following claims for damages—
 - (a) subject to subsection (2), a claim for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
 - (b) subject to subsection (2), a claim for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.

- (2) A claim for damages referred to in subsection (1)(a) or (1)(b) does not include a claim for damages that relates to the provision of or the failure to provide a health service.
- (3) This Part does not apply to a public authority or class of public authority—
 - (a) that is excluded by the regulations from the operation of this Part in respect of all of its functions; or
 - (b) in respect of specified functions or functions of a specified class, if the regulations exclude those functions or that class of functions from the operation of this Part in respect of that public authority or class of public authority.

S. 82
inserted by
No. 102/2003
s. 3.

82 Effect of this Part on the common law

Except as provided by sections 83, 84 and 85, this Part is not intended to affect the common law.

S. 83
inserted by
No. 102/2003
s. 3.

83 Principles concerning resources, responsibilities etc. of public authorities

In determining whether a public authority has a duty of care or has breached a duty of care, a court is to consider the following principles (amongst other relevant things)—

- (a) the functions required to be exercised by the authority are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising those functions;
- (b) the functions required to be exercised by the authority are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which the proceeding relates);

(c) the authority may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceeding relates.

84 Wrongful exercise of or failure to exercise function

S. 84
inserted by
No. 102/2003
s. 3.

- (1) This section applies to a proceeding for damages for an alleged breach of statutory duty by a public authority in connection with the exercise of or a failure to exercise a function of the authority.
- (2) For the purpose of the proceeding, an act or omission of the public authority relating to a function conferred on the public authority specifically in its capacity as a public authority does not constitute a breach of statutory duty unless the act or omission was in the circumstances so unreasonable that no public authority having the functions of the authority in question could properly consider the act or omission to be a reasonable exercise of its functions.
- (3) For the purpose of the proceeding the public authority is not liable for damages caused by the wrongful exercise of or failure to exercise a function of the authority unless the provisions and policy of the enactment in which the duty to exercise the function is created are compatible with the existence of that liability.
- (4) Despite subsection (1), subsection (2) does not apply to a statutory duty that is imposed as an absolute duty on the public authority to do or not to do a particular thing.

s. 85

S. 85
inserted by
No. 102/2003
s. 3.

85 Exercise of function or decision to exercise does not create duty

In a proceeding, the fact that a public authority exercises or decides to exercise a function does not of itself indicate that the authority is under a duty to exercise the function or that the function should be exercised in particular circumstances or in a particular way.

S. 86
inserted by
No. 102/2003
s. 3.

86 Supreme Court—limitation of jurisdiction

It is the intention of section 83 to alter or vary section 85 of the **Constitution Act 1975**.

S. 87
inserted by
No. 102/2003
s. 3.

87 Transitional

- (1) This Part extends to negligence arising before, on or after the commencement day.
- (2) Section 84 extends to an act or omission occurring before, on or after the commencement day.
- (3) Despite subsections (1) and (2), this Part does not apply to proceedings commenced in a court before the commencement day.
- (4) In this section *commencement day* means the day on which section 3 of the **Wrongs and Other Acts (Law of Negligence) Act 2003** comes into operation.

SCHEDULE

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>	Section 2.
3807	Wrongs Act 1928	The whole.	
4070	Wrongs Act 1932	The whole.	
4191	Statute Law Revision Act 1933	Item in Schedule referring to Wrongs Act 1928.	
4380	Wrongs Act 1936	The whole.	
5382	Wrong (Tort-feasors) Act 1949	The whole.	
5594	Wrongs (Contributory Negligence) Act 1951	The whole.	
5704	Wrongs (Damage by Aircraft) Act 1953	The whole.	
5757	Statutes Amendment Act 1953	Section 11.	
5914	Limitation of Actions Act 1955	Section 33(2).	

ENDNOTES

1. General Information

The **Wrongs Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 893.

2. Table of Amendments

This Version incorporates amendments made to the **Wrongs Act 1958** by Acts and subordinate instruments.

Wrongs (Assessment of Damages) Act 1966, No. 7496/1966

Assent Date: 20.12.66
Commencement Date: 20.2.67: Government Gazette 8.2.67 p. 288
Current State: All of Act in operation

Justices (Amendment) Act 1969, No. 7876/1969

Assent Date: 25.11.69
Commencement Date: S. 2(Sch.) on 1.4.70: Government Gazette 25.2.70 p. 463
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Abolition of Obsolete Offences Act 1969, No. 7884/1969

Assent Date: 2.12.69
Commencement Date: 2.12.69
Current State: All of Act in operation

Wrongs Act 1972, No. 8330/1972

Assent Date: 5.12.72
Commencement Date: 1.1.73: s. 1(3)
Current State: All of Act in operation

Status of Children Act 1974, No. 8602/1974

Assent Date: 26.11.74
Commencement Date: 1.3.75: Government Gazette 5.2.75 p. 228
Current State: All of Act in operation

Employers and Employés (Repeal) Act 1976, No. 8915/1976

Assent Date: 7.12.76
Commencement Date: 7.12.76: s. 1(2)
Current State: All of Act in operation

Wrongs (Action for Damages) Act 1978, No. 9153/1978

Assent Date: 30.5.78
Commencement Date: 1.9.78: Government Gazette 12.7.78 p. 2279
Current State: All of Act in operation

Wrongs (Defamation) Act 1979, No. 9292/1979

Assent Date: 23.10.79
Commencement Date: 23.10.79: s. 1(3)
Current State: All of Act in operation

Wrongs (Assessment of Damages) Act 1979, No. 9353/1979

Assent Date: 20.12.79
Commencement Date: 20.12.79
Current State: All of Act in operation

Endnotes

Crimes (Classification of Offences) Act 1981, No. 9576/1981

Assent Date: 26.5.81
Commencement Date: 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Workers Compensation (Actions) Act 1981, No. 9683/1981

Assent Date: 5.1.82
Commencement Date: 5.1.82
Current State: All of Act in operation

Wrongs (Defamation) Act 1981, No. 9708/1981

Assent Date: 5.1.82
Commencement Date: 5.1.82
Current State: All of Act in operation

Wrongs (Dependants) Act 1982, No. 9856/1982

Assent Date: 5.1.83
Commencement Date: 21.12.82: s. 1(3) (same day as **Administration and Probate (Survival of Actions) Act 1982**)
Current State: All of Act in operation

Limitation of Actions (Personal Injury Claims) Act 1983, No. 9884/1983

Assent Date: 10.5.83
Commencement Date: 11.5.83: Government Gazette 11.5.83 p. 1145
Current State: All of Act in operation

Penalties and Sentences (Amendment) Act 1983, No. 9945/1983

Assent Date: 20.9.83
Commencement Date: S. 3(3)(Sch. 2 item 42) on 20.12.83: Government Gazette 14.12.83 p. 4035
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Occupiers' Liability Act 1983, No. 9995/1983

Assent Date: 13.12.83
Commencement Date: 1.7.84: Government Gazette 27.6.84 p. 2120
Current State: All of Act in operation

Wrongs (Animals Straying on Highways) Act 1984, No. 10078/1984

Assent Date: 15.5.84
Commencement Date: 1.8.84: Government Gazette 11.7.84 p. 2381
Current State: All of Act in operation

Accident Compensation Act 1985, No. 10191/1985

Assent Date: 30.7.85
Commencement Date: S. 276(Sch. 2) on 31.8.85 (at 4 p.m.): Government Gazette 30.8.85 p. 3401
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Wrongs (Contribution) Act 1985, No. 10227/1985

Assent Date: 10.12.85
Commencement Date: 12.2.86: Government Gazette 12.2.86 p. 382
Current State: All of Act in operation

Coroners Act 1985, No. 10257/1985

Assent Date: 10.12.85
Commencement Date: S. 93 on 1.6.86: Government Gazette 30.4.86 p. 1115
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Local Government (Consequential Provisions) Act 1989, No. 12/1989

Assent Date: 9.5.89
Commencement Date: S. 4(Sch. 2 item 136.1) on 1.11.89: Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Crimes Legislation (Miscellaneous Amendments) Act 1989, No. 25/1989

Assent Date: 6.6.89
Commencement Date: Pt 7 (ss 38, 39) on 25.6.89: Special Gazette 20.6.89 p. 1
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Magistrates' Court Act 1989, No. 51/1989

Assent Date: 14.6.89
Commencement Date: S. 148 on 1.9.90: Government Gazette 25.7.90 p. 2216
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 3(Sch. items 223.1–223.7) on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 90) on 1.1.97: s. 2(4)
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Printers and Newspapers (Repeal) Act 1998, No. 56/1998

Assent Date: 13.10.98
Commencement Date: S. 4 on 19.11.98: Government Gazette 19.11.98 p. 2792
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Wrongs (Amendment) Act 2000, No. 75/2000

Assent Date: 21.11.00
Commencement Date: 21.11.00: s. 2
Current State: All of Act in operation

Endnotes

Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002, No. 49/2002

Assent Date: 22.10.02
Commencement Date: Ss 3–7, 9, 10 on 23.10.02: s. 2(1); s. 8 on 14.2.03: Government Gazette 13.2.03 p. 244; s. 11 on 15.3.03: Government Gazette 13.3.03 p. 419
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003, No. 60/2003 (as amended by No. 102/2003)

Assent Date: 16.6.03
Commencement Date: Ss 4–10 on 21.5.03: s. 2(1); s. 3 on 1.1.04: Government Gazette 18.12.03 p. 3208
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Wrongs and Other Acts (Law of Negligence) Act 2003, No. 102/2003

Assent Date: 2.12.03
Commencement Date: S. 14(2) on 21.5.03: s. 2(3); s. 6 on 1.10.03: s. 2(2); ss 3–5, 7–13, 14(1)(3)(4), 15–35 on 3.12.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Wrongs (Remarriage Discount) Act 2004, No. 6/2004

Assent Date: 27.4.04
Commencement Date: 28.4.04: s. 2
Current State: All of Act in operation

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 237) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Victoria State Emergency Service Act 2005, No. 51/2005

Assent Date: 24.8.05
Commencement Date: S. 58(10)–(14) on 1.11.05: Government Gazette 20.10.05 p. 2308
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Defamation Act 2005, No. 75/2005

Assent Date: 2.11.05
Commencement Date: S. 49(Sch. 4 item 3) on 1.1.06: s. 2
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 55) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 49) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Accident Compensation and Other Legislation (Amendment) Act 2006, No. 41/2006

Assent Date: 25.7.06
Commencement Date: S. 48 on 26.7.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 68) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Asbestos Diseases Compensation Act 2008, No. 69/2008

Assent Date: 25.11.08
Commencement Date: Ss 12, 13 on 26.11.08: s. 2
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Coroners Act 2008, No. 77/2008

Assent Date: 11.12.08
Commencement Date: S. 129(Sch. 2 item 26) on 1.11.09: s. 2
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 30) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Criminal Procedure Act 2009, No. 7/2009 (as amended by No. 68/2009)

Assent Date: 10.3.09
Commencement Date: S. 435(2) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 137) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Wrongs Act 1958**

Wrongs Act 1958
No. 6420 of 1958

Endnotes

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,
No. 69/2009**

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 59) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Wrongs Act 1958**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010,
No. 13/2010**

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 62) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Wrongs Act 1958**

**Transport Accident and Accident Compensation Legislation Amendment Act
2010, No. 80/2010**

Assent Date: 19.10.10
Commencement Date: S. 160 on 20.10.10: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Wrongs Act 1958**

3. Explanatory Details

¹ S. 15: Sections 7 and 8 of the **Wrongs (Dependants) Act 1982**, No. 9856/1982 reads as follows:

7 Transitional provisions

- (1) The Principal Act as amended by this Act shall apply only to causes of actions which accrue after the commencement of this Act.
- (2) The Principal Act as in force immediately before the commencement of this Act shall continue to apply to actions which accrued on or before the commencement of this Act.

8 Transitional provisions

Where a cause of action survives for the benefit of the estate of a deceased person by reason of the operation of section 29 of the **Administration and Probate Act 1958** and where proceedings in respect of that cause of action have been instituted at the date of the coming into operation of this Act whereby damages are being claimed for the loss of future probable earnings of the deceased person after the date of his death and where by reason of the coming into operation of the **Administration and Probate (Survival of Actions) Act 1982** the right to recover those damages is removed, a person—

- (a) who would have been entitled to share in those damages had that action been successful; and
- (b) who would, if the deceased person had died after the coming into operation of this Act, be entitled to bring an action under Part III of the **Wrongs Act 1958** but who would not have been entitled to bring such an action before the coming into operation of this Act—

shall be entitled to bring an action under that Part (notwithstanding section 20(1) of the **Wrongs Act 1958**) as if the deceased person had died on the day upon which this Act comes into operation.

² S. 17: See note 1.

³ S. 24: See note 1.

⁴ Ss 24(4A):

S. 24(4A) inserted by No. 8330 s. 3(1)(a), repealed by No. 10227 s. 8(c)(i).

⁵ Ss 24(6):

S. 24(6) substituted by No. 8330 s. 3(1)(b), amended by No. 9856 s. 5(b), repealed by No. 10227 s. 8(c)(i).

⁶ S. 26: See note 1.