

2002

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## Civil Law (Wrongs) Bill 2002

### Contents

---

	Page
<b>Chapter 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 3
<b>Chapter 2</b>	<b>Provisions applying to wrongs generally</b>
<b>Part 2.1</b>	<b>Good samaritans</b>
5	Protection of good samaritans from liability 4

---

	Page
<b>Part 2.2</b>	<b>Volunteers</b>
6	Definitions for pt 2.2 6
7	Meaning of <i>community work</i> 6
8	Protection of volunteers from liability 7
9	Liability of community organisations for volunteers 8
10	Territory may assume liability of community organisations for volunteers 8
11	Directions to community organisations about insurance etc 9
<b>Part 2.3</b>	<b>Survival of actions on death</b>
12	Effect of death on certain causes of action (LR(MP)A s 4) 10
13	Damages in surviving cause of action (LR(MP)A s 5) 10
14	If person liable dies before or at time of damage (LR(MP)A s 7) 11
15	Saving of rights additional to pt 2.3 (LR(MP)A s 8) 11
<b>Part 2.4</b>	<b>Proceedings against and contributions between wrongdoers</b>
16	Definitions for pt 2.4 (LR(MP)A s 10) 13
17	Each of several wrongdoers can be sued (LR(MP)A s 11) 13
18	Right of contribution (LR(MP)A s 12) 14
19	Effect of pt 2.4 (LR(MP)A s 13) 14
<b>Chapter 3</b>	<b>Liability for death or injury</b>
<b>Part 3.1</b>	<b>Wrongful act or omission causing death</b>
<b>Division 3.1.1</b>	<b>Preliminary—liability for death</b>
20	Definitions for pt 3.1 (C(FI)A s 2, s 3) 15
<b>Division 3.1.2</b>	<b>Liability and damages for death</b>
21	Liability for a person's death (C(FI)A s 7) 16
22	Damages for a person's death (C(FI)A s 10) 16
23	Amounts not to be taken into account in assessing damages for death (C(FI)A s 10) 17
24	Contributory negligence not defence in relation to death (C(FI)A s 11) 18

	Page
<b>Division 3.1.3</b>	<b>Procedural matters—action for death</b>
25	One action for benefit of members of dead person's family (C(FI)A s 8, s 13) 18
26	Payment into court (C(FI)A s 12) 19
27	Special endorsement on originating process (C(FI)A s 14) 19
28	Powers of court to make orders in relation to actions (C(FI)A s 15) 19
<b>Part 3.2</b>	<b>Injury arising from mental or nervous shock</b>
29	Definitions for pt 3.2 (LR(MP)A s 22) 21
30	Personal injury arising from mental or nervous shock (LR(MP)A s 23) 21
31	Extensions of liability under pt 3.2 in certain cases (LR(MP)A s 24) 22
<b>Chapter 4</b>	<b>Damages</b>
<b>Part 4.1</b>	<b>General exclusions and limitations about damages</b>
32	Definitions for pt 4.1 23
33	Application of pt 4.1 24
34	Exclusion of liability if conduct an offence 24
35	Presumption of contributory negligence—injured person intoxicated 24
36	Presumption of contributory negligence—injured person relying on intoxicated person 25
37	Presumption of contributory negligence—injured person not wearing seatbelt etc 26
38	Damages for loss of earnings 27
<b>Part 4.2</b>	<b>Loss of capacity to perform domestic services</b>
39	Damages for loss of capacity to perform domestic services (LR(MP)A s 31, s 33) 28

	Page
<b>Part 4.3</b>	<b>Contributory negligence</b>
40	Definitions for pt 4.3 (LR(MP)A s 14) 29
41	Apportionment of liability—contributory negligence (LR(MP)A s 15) 29
42	Joint wrongdoers (LR(MP)A s 16) 30
43	Claims by third parties—contributory negligence (LR(MP)A s 17) 30
44	Pleading of statutory limitation period—contributory negligence (LR(MP)A s 18) 31
<b>Part 4.4</b>	<b>Other provisions—damages</b>
45	Court may make consent order for structured settlement 32
46	Independent finding of liability and award of damages 32
<b>Chapter 5</b>	<b>Defamation</b>
<b>Part 5.1</b>	<b>Preliminary—defamation</b>
47	Definitions for ch 5 33
<b>Part 5.2</b>	<b>Resolution of disputes without litigation—defamation</b>
48	Application of pt 5.2 35
49	Offer to make amends—defamation (DA s 6) 35
50	Reasonable offer to make amends—defamation (DA s 7) 37
51	Acceptance of offer to make amends—defamation (DA s 8) 37
52	False or misleading statement in correction (DA s 9) 38
53	Offer to make amends not accepted—defamation (DA s 10) 38
54	Order to vindicate reputation if offer not made (DA s 11) 39
<b>Part 5.3</b>	<b>Rules governing litigation of civil claims—defamation</b>
55	Application of pt 5.3 (DA s 12) 40
56	Meaning of <i>published matter</i> in pt 5.3 (DA s 13) 40
57	Slander actionable without special damage (DA s 14) 40
58	Plaintiff's character not likely to be injured (DA s 15) 40
59	Defence of truth and public benefit (DA s 16) 40

	Page
60	Publication of a proceeding of public concern (DA s 17) 41
61	Publication of public document (DA s 18) 44
62	Publication under contract (DA s 19) 46
63	Evidence of apology admissible in mitigation—defamation (DA s 20) 47
64	Payment into court—defamation (DA s 21) 47
65	Defence of apology and payment into court—defamation (DA s 22) 47
66	Defence for defamation—defendant not negligent (DA s 23) 48
67	Compensation etc provable in mitigation—defamation (DA s 24) 48
68	Damages—defamation (DA s 25) 48
69	Disclosure of name of contributor (DA s 26) 48
<b>Part 5.4</b>	<b>Other provisions—defamation</b>
70	Scope of defences not limited (DA s 40) 50
71	Time not to be extended except by leave (DA s 41) 50
72	Review of certain provisions of ch 5 (DA s 42) 50
<b>Chapter 6</b>	<b>Trespass</b>
73	Defence to action for trespass to land 51
74	Action for use and occupation of land—amount of damages (LR(MP)A s 58) 51
<b>Chapter 7</b>	<b>Mitigation of strict liability</b>
<b>Part 7.1</b>	<b>Traveller accommodation providers liability</b>
<b>Division 7.1.1</b>	<b>Preliminary</b>
75	Purpose of pt 7.1 52
76	Definitions for pt 7.1 52
77	Meaning of <i>traveller accommodation</i> 53
78	Meaning of <i>accommodation provider</i> 54
79	Meaning of <i>innkeeper's liability</i> 54
80	Meaning of <i>guest</i> 54

## Contents

---

	Page
81	55
Meaning of <i>property</i> of guest	
<b>Division 7.1.2</b>	<b>Liability of accommodation providers</b>
82	55
Application of div 7.1.2	
83	55
Limitation on strict liability under innkeeper's liability (ILA s 4)	
84	56
Circumstances when limitation does not apply (ILA s 4)	
85	57
Safe custody facilities (ILA s 4, 5)	
86	58
Notice about pt 7.1 (ILA s 6)	
87	58
Repeal of Innkeepers Liability Act 1902	
<b>Part 7.2</b>	<b>Common carriers</b>
<b>Division 7.2.1</b>	<b>Preliminary—common carriers</b>
88	59
Purpose of pt 7.2	
89	59
Definitions for pt 7.2 (CCA s 3)	
<b>Division 7.2.2</b>	<b>When common law liability of carriers not affected</b>
90	59
Certain things not protected by pt 7.2 (CCA s 10)	
91	60
Public notices by carrier not to affect liability (CCA s 7)	
<b>Division 7.2.3</b>	<b>Liability of common carriers for certain goods worth more than \$20</b>
92	60
Liability of carriers for certain goods worth more than \$20 (CCA s 4)	
93	61
Notice of increased charge for transport of certain goods (CCA s 5 (2) and (3), s 6 (2))	
94	61
Receipt of carrier for increased charge (CCA s 6)	
95	62
Carrier only liable for proven amount for certain goods (CCA s 11)	
<b>Division 7.2.4</b>	<b>Liability of common carriers for certain animals</b>
96	62
Definitions for div 7.2.4	
97	63
Liability of carriers for certain animals (CCA s 9 (b))	
98	64
Notice of increased charge for transport of certain animals (CCA s 9 (b))	
99	64
Carrier only liable for proven amount for certain animals (CCA s 11)	

	Page
<b>Division 7.2.5      Notice, condition or declaration of carrier</b>	
100      Carrier liable for neglect or default despite notice etc (CCA s 9 , 9 (a), (c))	65
<b>Chapter 8            Other liability provisions</b>	
<b>Part 8.1            Occupiers liability</b>	
101      Liability of occupiers	66
<b>Part 8.2            Liability for damage caused by animals</b>	
102      Evidence of breach of duty for animals (CL(A)A s 8)	68
<b>Part 8.3            Liability for fires accidentally begun</b>	
103      Actions do not lie for damage caused by accidental fires (LR(MP)A s 59)	69
104      Contract between landlord and tenant not affected (LR(MP)A s 60)	69
<b>Chapter 9           Misrepresentation</b>	
105      Definitions for ch 9 (LR(Mis)A s 2)	70
106      Removal of certain bars to rescission for misrepresentation (LR(Mis)A s 3)	70
107      Damages for misrepresentation (LR(Mis)A s 4)	71
108      Damages instead of rescission for misrepresentation (LR(Mis)A s 5)	71
109      Exclusion clauses—misrepresentation (LR(Mis)A s 6)	72
110      Misrepresentation in trade or commerce an offence (LR(Mis)A s 7)	73
111      Employer etc liable for misrepresentation (LR(Mis)A s 8)	73
112      Prosecutions for misrepresentation (LR(Mis)A s 9)	74

	Page
<b>Chapter 10</b>	<b>Limitations on legal costs</b>
<b>Part 10.1</b>	<b>Maximum costs for certain personal injury damages claims</b>
113	Definitions for pt 10.1 75
114	Maximum costs for claims of \$100 000 or less 75
115	Costs incurred after offer of compromise not accepted 77
116	Exclusion of costs unnecessarily incurred etc 78
117	Court discretion to allow additional costs 79
118	Apportionment of costs between lawyers 79
<b>Part 10.2</b>	<b>Costs in damages claims if no reasonable prospects of success</b>
119	Definitions for pt 10.2 80
120	Application of pt 10.2 80
121	Lawyer not to act without reasonable prospects of success 81
122	Restriction on setting claims down for hearing 81
123	Costs order against lawyer acting without reasonable prospects of success 81
124	Onus on lawyer to show facts provided reasonable prospects of success 82
<b>Chapter 11</b>	<b>Miscellaneous</b>
<b>Part 11.1</b>	<b>Neutral evaluation</b>
125	Purpose of pt 11.1 etc 84
126	Meaning of <i>neutral evaluation</i> and <i>neutral evaluation session</i> 84
127	Who can be an evaluator 84
128	Referral by court or tribunal for neutral evaluation 85
129	Duty of parties to take part in neutral evaluations 85
130	Costs of neutral evaluation 85
131	Privilege for neutral evaluations 85
132	Secrecy by evaluators 87
133	Protection from liability for evaluators 87



	Page
<b>Part 11.2</b>	<b>General reporting requirements of insurers</b>
134	Who is an <i>insurer</i> for pt 11.2 88
135	Insurers reporting requirements 88
136	Confidentiality of general reports of insurers 89
<b>Part 11.3</b>	<b>Attachment of insurance money</b>
137	Amount of liability charge on insurance money payable against liability (LR(MP)A s 25) 90
138	Enforcement of charge on insurance money (LR(MP)A s 26) 91
139	Protection of insurer for pt 11.3 charge (LR(MP)A s 27) 91
140	Certain other provisions not affected by pt 11.3 (LR(MP)A s 28) 92
<b>Part 11.4</b>	<b>Abolition of certain common law actions, rules and remedies</b>
141	Abolition of seduction, enticement and harbouring 93
142	Abolition of rule about unity of spouses (MP(T)A s 4, s 5) 93
143	Abolition of action of cattle-trespass (CL(A)A s 4) 93
144	Abolition of distress damage feasant (CL(A)A s 5) 93
145	Abolition of rules relating exclusively to liability for damage by animals (CL(A)A s 6) 94
146	Partial abolition of rule in <i>Rylands v Fletcher</i> (CL(A)A s 7) 94
147	Abolition of rule of common employment (LR(MP)A s 21) 94
148	Abolition of husband's liability for wife's torts and premarital obligations (LR(MP)A s 9) 94
149	Abolition of action for loss of consortium (LR(MP)A s 32) 94
150	Abolition of rule in <i>Cavalier v Pope</i> (LR(MP)A s 29) 95
151	Partial abolition of <i>Mocambique</i> rule (LR(MP)A s 34, s 35) 95
<b>Part 11.5</b>	<b>Other provisions</b>
152	Approved forms 96
153	Regulation-making power 96
154	Repealed and amended Acts 96

	Page
<b>Chapter 12 Transitional provisions</b>	
155 Application provisions—for certain new measures	97
156 Application provisions—for certain existing measures	97
157 Application of pts 2.4 and 4.3 (LR(MP)A s 13A, s 19)	99
158 Application of provisions of Civil Liability (Animals) Act 1984 (repealed) (CL(A)A s 9)	99
159 Application of s 30 and s 31 (LR(MP)A s 23, s 24)	100
160 Transitional regulations	100
161 Modification of ch 12's operation	101
<b>Schedule 1 Traveller accommodation providers notice</b>	102
Notice about loss of guest's property	102
<b>Schedule 2 Common carriers—goods subject to special limited liability</b>	103
<b>Schedule 3 Repeals and amendments</b>	104
<b>Part 3.1 Repeals</b>	104
<b>Part 3.2 Amendments</b>	104
<b>Division 3.2.1 Administration and Probate Act 1929</b>	104
<b>Division 3.2.2 Building Act 1972</b>	105
<b>Division 3.2.3 Bushfire Act 1936</b>	105
<b>Division 3.2.4 Defamation Act 2001</b>	106
<b>Division 3.2.5 Juries Act 1967</b>	111
<b>Division 3.2.6 Land Titles Act 1925</b>	113
<b>Division 3.2.7 Law Reform (Miscellaneous Provisions) Act 1955</b>	114
<b>Division 3.2.8 Legislation Act 2001</b>	114
<b>Division 3.2.9 Limitation Act 1985</b>	114

---

		Contents
		Page
<b>Division 3.2.10</b>	<b>Public Health Act 1997</b>	115
<b>Division 3.2.11</b>	<b>Road Transport (General) Act 1999</b>	116
<b>Division 3.2.12</b>	<b>Supreme Court Act 1933</b>	117
<b>Dictionary</b>		118



2002

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## **Civil Law (Wrongs) Bill 2002**

---

### **A Bill for**

An Act to consolidate and reform the statute law relating to wrongs, and for other purposes

---

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Chapter 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Civil Law (Wrongs) Act 2002*.

4 **2 Commencement**

5 (1) Part 7.1 (Traveller accommodation providers liability) commences  
6 at 12 noon on 1 July 2003.

7 (2) The remaining provisions commence on a day fixed by the Minister  
8 by written notice.

9 *Note 1* The naming and commencement provisions automatically commence on  
10 the notification day (see *Legislation Act 2001*, s 75).

11 *Note 2* A single day or time may be fixed, or different days or times may be  
12 fixed, for the commencement of different provisions (see *Legislation*  
13 *Act 2001*, s 77 (1)).

14 *Note 3* If a provision has not commenced within 6 months beginning on the  
15 notification day, it automatically commences on the first day after that  
16 period (see *Legislation Act 2001*, s 79).

17 **3 Dictionary**

18 The dictionary at the end of this Act is part of this Act.

19 *Note 1* The dictionary at the end of this Act defines certain words and  
20 expressions used in this Act, and includes references (*signpost*  
21 *definitions*) to other words and expressions defined elsewhere in this  
22 Act.

23 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
24 the entire Act unless the definition, or another provision of the Act,  
25 provides otherwise or the contrary intention otherwise appears (see  
26 *Legislation Act 2001*, s 155 and s 156 (1)).

---

1 **4 Notes**

2 (1) A note included in this Act is explanatory and is not part of this Act.

3 *Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of  
4 notes.

5 (2) In this section:

6 *note* includes material enclosed in brackets in section headings.

7 *Note* For comparison, a number of sections of this Act contain bracketed  
8 notes in their headings drawing attention to equivalent or comparable  
9 (though not necessarily identical) provisions of other Acts.  
10 Abbreviations in the notes include the following:

- 11 • CCA: *Common Carriers Act 1902*
- 12 • C(FI)A: *Compensation (Fatal Injuries) Act 1968*
- 13 • CL(A)A: *Civil Liability (Animals) Act 1984*
- 14 • DA: *Defamation Act 2001*
- 15 • ILA: *Innkeepers Liability Act 1902*
- 16 • LR(MP)A: *Law Reform (Miscellaneous Provisions) Act 1955*
- 17 • LR(Mis)A: *Law Reform (Misrepresentation) Act 1977*
- 18 • MP(T)A: *Married Persons (Torts) Act 1968*

19 (3) Subsection (2), the notes mentioned in subsection (2), and this  
20 subsection expire 1 year after this section commences.

1 **Chapter 2**                    **Provisions applying to**  
2    **wrongs generally**

3 **Part 2.1**                    **Good samaritans**

4 **5**            **Protection of good samaritans from liability**

5 (1) A good samaritan does not incur personal civil liability for an act  
6 done or omission made honestly and without recklessness in  
7 assisting, or giving advice about the assistance to be given to, a  
8 person in apparent need of emergency medical assistance.

9 (2) However, the protection does not apply if—

10 (a) the liability falls within the ambit of a scheme of compulsory  
11 third party motor vehicle insurance; or

12 (b) the good samaritan's capacity to exercise appropriate care and  
13 skill was, at the relevant time, significantly impaired by a  
14 recreational drug.

15 **Example of scheme of compulsory third party motor vehicle insurance**

16 *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance)

17 *Note*        An example is part of the Act, is not exhaustive and may extend, but  
18 does not limit, the meaning of the provision in which it appears (see  
19 *Legislation Act 2001*, s 126 and s 132).

20 (3) In this section:

21 *good samaritan* means—

22 (a) a person who, acting without expectation of payment or other  
23 consideration, comes to the aid of a person who is in apparent  
24 need of emergency medical assistance; or

25 (b) a medically qualified person who, acting without expectation  
26 of payment or other consideration, gives advice by telephone



1                   or another form of telecommunication about the treatment of a  
2                   person who is in apparent need of emergency medical  
3                   assistance.

4                   ***medically qualified***—a person is ***medically qualified*** if the person—

5                   (a) is a doctor; or

6                   (b) has professional qualifications in a field of health care that are  
7                   recognised under an Act; or

8                   (c) works, or has worked, as an ambulance officer or in another  
9                   paramedical capacity.

1 **Part 2.2** **Volunteers**

2 **6** **Definitions for pt 2.2**

3 In this part:

4 *community organisation* means an entity that directs or coordinates  
5 the carrying out of community work by volunteers.

6 *voluntary basis*—a person works on a *voluntary basis* if the  
7 person—

- 8 (a) receives no remuneration for the work; or  
9 (b) is remunerated for the work but within limits prescribed under  
10 the regulations for this definition.

11 *volunteer* means a person who carries out community work on a  
12 voluntary basis.

13 **7** **Meaning of *community work***

14 (1) In this part:

15 *community work* means—

- 16 (a) work for any 1 or more of the following purposes:  
17 (i) a religious, educational, charitable or benevolent purpose;  
18 (ii) promoting or encouraging literature, science or the arts;  
19 (iii) looking after, or giving attention to, people who need  
20 care because of a physical or mental disability or  
21 condition;  
22 (iv) sport, recreation or amusement;  
23 (v) conserving resources or protecting the natural  
24 environment from harm;

- 1 (vi) preserving historical or cultural heritage;
- 2 (vii) a political purpose;
- 3 (viii) protecting or promoting the common interests of the  
4 community generally or a particular section of the  
5 community; or
- 6 (b) work declared under the regulations to be community work.
- 7 (2) However, work is not *community work* if it—
- 8 (a) involves acts or threats of violence; or
- 9 (b) creates a serious risk to the health or safety of the public or a  
10 section of the public; or
- 11 (c) is declared under the regulations not to be community work.

12 **8 Protection of volunteers from liability**

- 13 (1) A volunteer does not incur personal civil liability for an act done or  
14 omission made honestly and without recklessness while carrying out  
15 community work for a community organisation on a voluntary basis.
- 16 (2) However, the protection does not apply if—
- 17 (a) the liability falls within the ambit of a scheme of compulsory  
18 third party motor vehicle insurance; or
- 19 (b) the liability is for defamation; or
- 20 (c) the volunteer's capacity to carry out the work properly was, at  
21 the relevant time, significantly impaired by a recreational drug;  
22 or
- 23 (d) the volunteer was acting, and knew or ought to have known  
24 that he or she was acting, contrary to the instructions given by  
25 the community organisation.

- 1     **9     Liability of community organisations for volunteers**
- 2     (1) A liability that would, apart from this part, attach to a volunteer,  
3         attaches instead to the community organisation for which the  
4         volunteer was carrying out the relevant community work.
- 5     (2) A person (the *injured person*) who suffers death, injury, loss or  
6         damage because of the act or omission of a volunteer may sue the  
7         volunteer personally only if—
- 8         (a) it is clear from the circumstances of the case that the protection  
9             given under section 8 does not apply to the case; or
- 10        (b) the injured person brings an action against the community  
11           organisation and the community organisation disputes, in a  
12           defence filed to the action, that it is liable for the act or  
13           omission of the volunteer.
- 14     **10    Territory may assume liability of community**  
15         **organisations for volunteers**
- 16     (1) This section applies if a community organisation carries out a  
17         function that is a recognised government responsibility.
- 18     (2) The Minister may, by agreement with the community organisation,  
19         assume on behalf of the Territory liabilities of the organisation that  
20         arise under section 9 in carrying out the function.
- 21     (3) The agreement may be subject to the conditions and limitations the  
22         Minister considers appropriate.
- 23     (4) While the agreement is in force, a liability that would, apart from  
24         this section, attach to the community organisation in relation to the  
25         function, attaches instead (subject to the conditions and limitations  
26         of the agreement) to the Territory.

1 (5) In this section:

2 *recognised government responsibility* means a responsibility  
3 prescribed under the regulations as a recognised government  
4 responsibility.

5 **11 Directions to community organisations about insurance**  
6 **etc**

7 (1) The Minister may give written directions to community  
8 organisations about the taking out of insurance, or the adoption of  
9 risk management plans, in relation to liabilities to which this part  
10 applies.

11 (2) A direction is a disallowable instrument.

12 *Note* A disallowable instrument must be notified, and presented to the  
13 Legislative Assembly, under the *Legislation Act 2001*.

1 **Part 2.3** **Survival of actions on death**

2 **12 Effect of death on certain causes of action (LR(MP)A s 4)**

3 (1) When a person dies—

4 (a) all causes of action vested in the person survive for the benefit  
5 of the person's estate; and

6 (b) all causes of action existing against the person survive against  
7 the person's estate.

8 (2) This section does not apply to causes of action for defamation.

9 **13 Damages in surviving cause of action (LR(MP)A s 5)**

10 (1) This section applies to a cause of action that survives under this part  
11 for the benefit of a dead person's estate.

12 (2) The damages recoverable do not include exemplary damages.

13 (3) If the act or omission that gave rise to the cause of action caused the  
14 person's death, the damages recoverable—

15 (a) must be calculated without regard to any loss or gain to the  
16 estate resulting from the death; and

17 (b) do not include damages for—

18 (i) the person's pain or suffering or for any bodily or mental  
19 harm suffered by the person or for the loss of the person's  
20 expectation of life; or

21 (ii) the person's loss of capacity to earn or loss of future  
22 probable earnings; and

23 (c) do not include damages of the kind mentioned in  
24 section 39 (Damages for loss of capacity to perform domestic  
25 services).

- 1 (4) The damages may include an amount to compensate for any  
2 reasonable funeral expenses paid or payable by the estate.
- 3 (5) An amount to compensate for any reasonable funeral expenses may  
4 be reduced to the extent (if any) that the court considers just and  
5 equitable having regard to the age and health of the dead person  
6 immediately before the act or omission that gave rise to the cause of  
7 action.
- 8 (6) In deciding whether an expense is reasonable for subsection (4),  
9 regard must be had to the religious and cultural circumstances of the  
10 dead person and the members of the dead person's family.
- 11 (7) In this section:  
12 *member*, of a dead person's family—see section 20.

13 **14 If person liable dies before or at time of damage**  
14 (LR(MP)A s 7)

- 15 (1) This section applies if—  
16 (a) damage was suffered because of an act or omission; and  
17 (b) a person against whom there would have been a cause of action  
18 for the act or omission died before or at the same time as the  
19 damage was suffered.
- 20 (2) For this part, the cause of action is taken to have existed against the  
21 person before his or her death.

22 **15 Saving of rights additional to pt 2.3 (LR(MP)A s 8)**

- 23 (1) The rights given by this part for the benefit of estates of dead people  
24 are additional to, and do not limit, rights given by part 3.1  
25 (Wrongful act or omission causing death).
- 26 (2) This part as it relates to causes of action against estates of dead  
27 people applies in relation to causes of action under part 3.1 in the  
28 same way as it applies in relation to other causes of action that  
29 survive under this part.

**Chapter 2** Provisions applying to wrongs generally  
**Part 2.3** Survival of actions on death

Section 15

---

- 1 (3) The rights given by this part for the benefit of estates of dead  
2 people, and the obligations under this part against estates of dead  
3 people, are additional to, and do not limit, rights or obligations  
4 under the *Road Transport (General) Act 1999*, part 10 (Compulsory  
5 vehicle insurance).



1 **Part 2.4** **Proceedings against and**  
2 **contributions between**  
3 **wrongdoers**

4 **16 Definitions for pt 2.4 (LR(MP)A s 10)**

5 In this part:

6 *court* includes arbitrator.

7 *damage* means loss of any kind (including loss of life, personal  
8 injury, damage to property and economic loss).

9 *wrong* means an act or omission (whether or not an offence)—

- 10 (a) that gives rise to a liability in tort in relation to which a defence  
11 of contributory negligence is available at common law; or  
12 (b) that amounts to a breach of a contractual duty of care that is  
13 concurrent and coextensive with a duty of care in tort.

14 **17 Each of several wrongdoers can be sued (LR(MP)A s 11)**

15 (1) A judgment or decision against a person for damage caused by a  
16 wrong does not bar an action against someone else who is also liable  
17 for the same damage.

18 (2) However, if separate actions are brought in relation to the same  
19 damage—

- 20 (a) the total amount recovered in the actions cannot exceed the  
21 amount of damages awarded in the judgment or decision given  
22 first or, if that amount is amended on appeal, the amount as  
23 amended; and  
24 (b) the plaintiff is only entitled to costs in the action for which  
25 judgment or decision is given first (including costs on appeal  
26 from the judgment or decision), unless the court considers

1                   there were reasonable grounds for bringing the actions  
2                   separately.

3   **18   Right of contribution (LR(MP)A s 12)**

4   (1) A person (the *first person*) who is liable for damage caused by a  
5   wrong can recover contribution from someone else (a *contributory*)  
6   who is also liable for the same damage.

7   (2) The contribution must be an amount that the court considers just and  
8   equitable having regard to the extent of the contributory's  
9   responsibility for the damage.

10 (3) However, the first person is not entitled to contribution under this  
11 section if—

12       (a) the first person is liable to indemnify the contributory against  
13       the contributory's liability for the damage; or

14       (b) the court exempts the contributory from liability to make  
15       contribution; or

16       (c) the court has directed that contribution to be recovered from a  
17       person for the damage is a complete indemnity for the damage.

18   **19   Effect of pt 2.4 (LR(MP)A s 13)**

19   (1) This part does not—

20       (a) affect any criminal proceeding against a person in relation to  
21       an act or omission; or

22       (b) make enforceable an agreement for indemnity that would not  
23       have been enforceable if this part had not been enacted.

24   (2) This part has effect subject to the *Construction Practitioners*  
25   *Registration Act 1998*, part 4 (Limitation of liability).

1    **Chapter 3                   Liability for death or injury**

2    **Part 3.1                   Wrongful act or omission**  
3                                   **causing death**

4    **Division 3.1.1           Preliminary—liability for death**

5    **20    Definitions for pt 3.1 (C(FI)A s 2, s 3)**

6           In this part:

7           *child* includes a grandchild and a stepchild.

8           *member*, of a dead person's family—each of the following people is  
9           a *member* of a dead person's family:

- 10           (a) a spouse of the person;
- 11           (b) a person (whether of the same sex or a different sex) who,  
12                 immediately before the death, was living in a de facto marriage  
13                 relationship with the person;
- 14           (c) a child of the person (including a child born alive after the  
15                 death);
- 16           (d) a person to whom the dead person acted, immediately before  
17                 his or her death, in place of a parent;
- 18           (e) a parent of the person;
- 19           (f) a person who acted, immediately before the dead person's  
20                 death, in place of a parent to the dead person;
- 21           (g) a brother, a sister, a half-brother and a half-sister of the person;
- 22           (h) a former spouse of the person.

23           *parent* includes a stepfather, a stepmother, a grandfather and a  
24           grandmother.

1        **Division 3.1.2            Liability and damages for death**

2        **21        Liability for a person's death (C(FI)A s 7)**

3            If—

4            (a) a person's death is caused by a wrongful act or omission  
5            (whether or not an offence); and

6            (b) the act or omission would, if death had not resulted, have  
7            entitled the person to recover damages in an action for personal  
8            injury;

9            the person who would have been liable if the death had not resulted  
10            is liable to an action for damages despite the death and whether or  
11            not the death was caused by circumstances that were an offence.

12        **22        Damages for a person's death (C(FI)A s 10)**

13            (1) In an action under this part, the court may award, to the people for  
14            whose benefit the action is brought (the *beneficiaries*), the damages  
15            that it considers to be proportional to the damage to them resulting  
16            from the death.

17            (2) Subsection (1) has effect subject to part 4.1 (General exclusions and  
18            limitations about damages).

19            (3) The amount of damages awarded must, after deducting the costs not  
20            recovered from the defendant, be divided between the beneficiaries  
21            in the shares the court decides.

22            (4) The damages may include an amount to compensate for any of the  
23            following expenses paid or payable by a beneficiary:

24            (a) reasonable funeral expenses;

25            (b) reasonable medical or hospital expenses related to the injury  
26            that resulted in the death.

27            (5) An amount to compensate for any reasonable funeral expenses may  
28            be reduced to the extent (if any) that the court considers just and

1 equitable having regard to the age or health of the dead person  
2 immediately before the wrongful act or omission that caused the  
3 death.

4 (6) In deciding whether an expense is reasonable for subsection (4) (a),  
5 regard must be had to the religious and cultural circumstances of the  
6 dead person and the members of the dead person's family.

7 **23 Amounts not to be taken into account in assessing**  
8 **damages for death (C(FI)A s 10)**

9 In assessing damages in relation to liability under this part, the  
10 following must not be taken into account to reduce the damages:

11 (a) an amount paid or payable on the death of, or personal injury  
12 to, the dead person under a contract of insurance;

13 (b) an amount paid or payable out of a superannuation, provident  
14 or similar fund, or as a benefit from a friendly society, benefit  
15 society, lodge or trade union;

16 (c) an amount paid or payable because of the death or injury of the  
17 dead person that is—

18 (i) a payment instead of leave; or

19 (ii) a payment of a pension or another social security or  
20 veterans benefit;

21 (d) an amount paid or payable as a gratuity on the death of the  
22 dead person;

23 (e) an amount in relation to the acquisition by a member of the  
24 dead person's family, after the death, of—

25 (i) a house, or an interest in a house, used at any time as the  
26 member's home; or

27 (ii) the household contents, or an interest in the household  
28 contents, of the house;

- 1            (f) a premium that would have become payable under a contract of  
2            insurance on the life of the dead person if the person had lived  
3            beyond the time when he or she died.

4    **24    Contributory negligence not defence in relation to death**  
5    **(C(FI)A s 11)**

6    (1) If a person has died partly because of the person's failure to take  
7    reasonable care (*contributory negligence*) and partly because of  
8    someone else's wrong, the damages recoverable in an action under  
9    this part for the wrong must not be reduced because of the  
10    contributory negligence.

11    (2) Subsection (1) has effect subject to part 4.1 (General exclusions and  
12    limitations about damages).

13    (3) In this section:

14            *wrong* means an act or omission (whether or not an offence)—

15            (a) that gives rise to a liability in tort; or

16            (b) that amounts to a breach of a contractual duty of care that is  
17            concurrent and coextensive with a duty of care in tort.

18    **Division 3.1.3            Procedural matters—action for**  
19    **death**

20    **25    One action for benefit of members of dead person's**  
21    **family (C(FI)A s 8, s 13)**

22    (1) Not more than 1 action under this part may be brought against a  
23    person in relation to a death.

24    (2) The action must be brought by the personal representative of the  
25    dead person for the benefit of the members of the person's family  
26    (the *beneficiaries*) who suffered damage because of the death.

1 (3) However, if the action has not been begun by the personal  
2 representative within 6 months after the day of the death, any 1 or  
3 more of the beneficiaries may bring the action.

4 (4) The action must be for the benefit of the same people and subject to  
5 the same provisions and procedures (with the necessary changes) as  
6 if it were brought by the personal representative of the dead person  
7 on behalf of the beneficiaries.

8 **26 Payment into court (C(FI)A s 12)**

9 (1) If an action is brought in the Magistrates Court under this part, the  
10 defendant may pay an amount into the Magistrates Court as  
11 compensation for the benefit of the people for whose benefit the  
12 action is brought, and who are entitled to compensation under this  
13 part, without stating the shares into which the amount is to be  
14 divided by the court.

15 (2) If an amount is paid into the Magistrates Court under subsection (1),  
16 no part of the amount can be paid out of court except under an order  
17 of the court.

18 **27 Special endorsement on originating process (C(F)A s 14)**

19 The originating process by which an action under this part is begun  
20 in the Magistrates Court must, in addition to any other endorsements  
21 required or permitted to be made, be endorsed with a statement of  
22 the names of each of the people for whose benefit the action is  
23 brought and the relationship of each of them to the dead person.

24 **28 Powers of court to make orders in relation to actions**  
25 **(C(FI)A s 15)**

26 (1) If—

27 (a) an action under this part is begun in a court; and

28 (b) the court is satisfied that a person whose name is not included  
29 in the names of the people for whose benefit the action is stated

- 1                    to have been brought is a person whose name should have been  
2                    included;
- 3                    the court may (on its own initiative or on application by or on behalf  
4                    of that person) order that the action must proceed as if the name of  
5                    that person had been included.
- 6            (2) In an action under this part, the court may order that any 1 or more  
7                    of the people for whose benefit the action has been brought must be  
8                    separately represented by a lawyer.
- 9            (3) If the court makes an order under this section, the court may, at the  
10                    same time or later, make the orders about procedure in the action  
11                    that it considers appropriate.
- 12            (4) The powers of the court under this section are additional to any  
13                    other powers of the court.



1 **Part 3.2** **Injury arising from mental or**  
2 **nervous shock**  
3

4 **29 Definitions for pt 3.2 (LR(MP)A s 22)**

5 In this part:

6 *child*, of a person, means the son, daughter, grandson,  
7 granddaughter, stepson or stepdaughter of the person, or someone to  
8 whom the person is acting in place of a parent.

9 *family member*, of a person, means—

- 10 (a) a spouse of the person; or  
11 (b) a person (whether of the same sex or a different sex) who is  
12 living in a de facto marriage relationship with the person; or  
13 (c) a parent or child of the person; or  
14 (d) a brother, sister, half-brother or half-sister of the person.

15 *parent*, of a person, means the father, mother, grandfather,  
16 grandmother, stepfather or stepmother of the person, or someone  
17 acting in place of a parent to the person.

18 **30 Personal injury arising from mental or nervous shock**  
19 **(LR(MP)A s 23)**

20 In an action for personal injury, the plaintiff is not prevented from  
21 recovering damages only because the injury arose completely or  
22 partly from mental or nervous shock.

- 1 **31 Extensions of liability under pt 3.2 in certain cases**  
2 (LR(MP)A s 24)
- 3 (1) A person's liability in relation to an injury caused by a wrongful act  
4 or omission by which someone else (A) is killed, injured or put in  
5 danger includes liability for injury arising completely or partly from  
6 mental or nervous shock received by—
- 7 (a) a parent of A; or  
8 (b) a spouse of A; or  
9 (c) a person (whether of the same sex or a different sex) who is  
10 living in a de facto marriage relationship with A; or  
11 (d) another family member of A, if A was killed, injured or put in  
12 danger within the sight or hearing of the other family member.
- 13 (2) If 2 or more family members bring, or may bring, actions in relation  
14 to liability arising under subsection (1) out of the same act or  
15 omission, the court may proceed in the way the court considers  
16 appropriate and may make the orders the court considers appropriate  
17 about—
- 18 (a) which family members are parties to the action; and  
19 (b) who is to have the conduct of the action.
- 20 (3) The action is for the benefit of all family members who are parties  
21 to the action.
- 22 (4) The court may award the damages that it considers to be  
23 proportional to the damage to the plaintiffs resulting from the  
24 wrongful act or omission.
- 25 (5) Subsection (4) has effect subject to part 4.1 (General exclusions and  
26 limitations about damages).
- 27 (6) The amount of damages awarded must, after deducting the costs not  
28 recovered from the defendant, be divided between the plaintiffs in  
29 the shares the court decides.

1 **Chapter 4 Damages**

2 **Part 4.1 General exclusions and**  
3 **limitations about damages**

4 **32 Definitions for pt 4.1**

5 In this part:

6 *accident* means an incident out of which personal injury arises, and  
7 includes a motor accident.

8 *claim* means a claim (however described) for damages based on a  
9 liability for personal injury, whether the liability is based in tort or  
10 contract or on another form of action (including breach of statutory  
11 duty), and, for a fatal injury, includes a claim for the dead person's  
12 dependants or estate.

13 *court* includes arbitrator.

14 *intoxicated*—a person is *intoxicated* if under the influence of  
15 alcohol or a drug to the extent that the person's capacity to exercise  
16 appropriate care and skill is impaired.

17 *motor accident* means an accident caused by, or arising out of the  
18 use of, a motor vehicle.

19 *motor vehicle* means—

- 20 (a) a motor vehicle under the *Road Transport (General Act) 1999*;  
21 or  
22 (b) a vehicle operated on a railway or other fixed track.

1            *personal injury* means bodily injury, and includes—

2            (a) mental or nervous shock; and

3            (b) death.

4        **33    Application of pt 4.1**

5        (1) This part applies to all claims for damages for personal injury,  
6        including claims to which the *Road Transport (General) Act 1999*,  
7        part 10 (Compulsory vehicle insurance) applies.

8        (2) However, this part does not apply to claims under the *Workers*  
9        *Compensation Act 1951*.

10       **34    Exclusion of liability if conduct an offence**

11       (1) Liability for damages is excluded if the court—

12            (a) is satisfied beyond reasonable doubt that the accident happened  
13            while the injured person was engaged in conduct that is an  
14            indictable offence; and

15            (b) is satisfied on the balance of probabilities that the injured  
16            person's conduct contributed materially to the risk of injury.

17        (2) Despite this exclusion, the court may award damages in a particular  
18        case if satisfied that—

19            (a) the circumstances of the case are exceptional; and

20            (b) in the circumstances of the case, the exclusion would operate  
21            harshly and unjustly.

22       **35    Presumption of contributory negligence—injured person**  
23       **intoxicated**

24        (1) Contributory negligence must be presumed if the injured person was  
25        intoxicated at the time of the accident and the defendant claims  
26        contributory negligence.

- 1 (2) The presumption can be rebutted only if the injured person  
2 establishes, on the balance of probabilities, that—  
3 (a) the intoxication did not contribute to the accident; or  
4 (b) the intoxication was not self-induced.
- 5 (3) If the presumption is not rebutted, the damages the injured person  
6 would be entitled to, apart from the contributory negligence, must  
7 be reduced to the extent that the court considers just and equitable  
8 having regard to the injured person's share in the responsibility for  
9 the injury.

10 **36 Presumption of contributory negligence—injured person**  
11 **relying on intoxicated person**

- 12 (1) Contributory negligence must be presumed if—  
13 (a) the injured person—  
14 (i) was at least 16 years old at the time of the accident; and  
15 (ii) relied on the care and skill of a person (A) who was  
16 intoxicated at the time of the accident; and  
17 (iii) knew, or ought to have known, that A was intoxicated;  
18 and  
19 (b) the accident was caused by A's negligence; and  
20 (c) the defendant claims contributory negligence by the injured  
21 person.
- 22 (2) The presumption can be rebutted only if the injured person  
23 establishes, on the balance of probabilities, that—  
24 (a) the intoxication did not contribute to the accident; or  
25 (b) the injured person could not reasonably be expected to have  
26 avoided the risk.

Section 37

---

1 (3) If the presumption is not rebutted, the damages the injured person  
2 would be entitled to, apart from the contributory negligence, must  
3 be reduced to the extent that the court considers just and equitable  
4 having regard to the injured person's share in the responsibility for  
5 the injury.

6 (4) For this section, a passenger in a motor vehicle is taken to rely on  
7 the care and skill of the driver.

8 (5) The common law defence of voluntary assumption of risk does not  
9 apply to a matter to which this section applies.

10 **37 Presumption of contributory negligence—injured person**  
11 **not wearing seatbelt etc**

12 (1) Contributory negligence must be presumed if the injured person was  
13 injured in a motor accident and was at least 16 years old at the time  
14 of the accident and—

15 (a) was not wearing a seatbelt at the time of the accident as  
16 required under the *Road Transport (Safety and Traffic*  
17 *Management) Act 1999*; or

18 (b) 1 of the following factors contributed to the accident or the  
19 extent of the injury:

20 (i) the injured person was not wearing a helmet at the time  
21 of the accident as required under the *Road Transport*  
22 *(Safety and Traffic Management) Act 1999*;

23 (ii) the injured person was a passenger in or on a motor  
24 vehicle with a passenger compartment but was not in the  
25 compartment at the time of the accident.

26 (2) The presumption can be rebutted only as provided in subsections (3)  
27 and (4).

28 (3) For subsection (1) (a), the presumption can be rebutted if the injured  
29 person establishes, on the balance of probabilities, that the injury  
30 suffered by the injured person was less serious than it would have

- 1           been if the injured person had been wearing a seatbelt at the time of  
2           the accident.
- 3           (4) For subsection (1) (b) (ii), the presumption can be rebutted if the  
4           injured person establishes, on the balance of probabilities, that the  
5           injured person could not reasonably be expected to have avoided the  
6           risk.
- 7           (5) If the presumption is not rebutted, the damages the injured person  
8           would be entitled to, apart from the contributory negligence, must  
9           be reduced to the extent that the court considers just and equitable  
10          having regard to the injured person's share in the responsibility for  
11          the injury.

### 12   **38   Damages for loss of earnings**

- 13          (1) In assessing damages for loss of earnings in relation to a claim, the  
14          court must disregard earnings above the limit mentioned in  
15          subsection (2).
- 16          (2) The limit is 3 times average weekly earnings a week.
- 17          (3) In this section:
- 18                *ABS* means the Australian Bureau of Statistics established under the  
19                *Australian Bureau of Statistics Act 1975* (Cwlth).
- 20                *average weekly earnings* means the *Average weekly earnings*,  
21                States and Territories, seasonally adjusted for the ACT (all males  
22                total earnings) issued by the ABS.
- 23                *loss of earnings* means—
- 24                (a) past economic loss because of loss of earnings or the  
25                deprivation or impairment of earning capacity; and
- 26                (b) future economic loss because of loss of prospective earnings or  
27                the deprivation or impairment of prospective earning capacity.

1 **Part 4.2** **Loss of capacity to perform**  
2 **domestic services**

3 **39 Damages for loss of capacity to perform domestic**  
4 **services** (LR(MP)A s 31, s 33)

5 (1) A person's liability for an injury suffered by someone else because  
6 of a wrong includes liability for damages for any resulting  
7 impairment or loss of the injured person's capacity to perform  
8 domestic services that the injured person might reasonably have  
9 been expected to perform for his or her household if he or she had  
10 not been injured.

11 (2) In an action for the recovery of damages mentioned in  
12 subsection (1), it does not matter—

13 (a) whether the injured person performed the domestic services for  
14 the benefit of other members of the household or solely for his  
15 or her own benefit; or

16 (b) that the injured person was not paid to perform the services; or

17 (c) that the injured person has not been, and will not be, obliged to  
18 pay someone else to perform the services; or

19 (d) that the services have been, or are likely to be, performed  
20 (gratuitously or otherwise) by other people (whether members  
21 of the household or not).

22 (3) In this section:

23 **wrong** means an act or omission (whether or not an offence)—

24 (a) that gives rise to a liability in tort; or

25 (b) that amounts to a breach of a contractual duty of care that is  
26 concurrent and coextensive with a duty of care in tort.





- 1 (3) If an Act or contract providing for the limitation of liability applies  
2 to the claim, the amount of damages awarded to the claimant  
3 because of subsection (1) must not exceed the maximum limit  
4 applying to the claim.
- 5 (4) This section does not defeat any defence arising under a contract.
- 6 (5) This section has effect subject to part 4.1 (General exclusions and  
7 limitations about damages).

8 **42 Joint wrongdoers (LR(MP)A s 16)**

9 Part 2.4 (Proceedings against and contributions between  
10 wrongdoers) applies if 2 or more people are liable (or, if they had all  
11 been sued, would have been liable) under section 41 for the damage  
12 suffered by a person.

13 **43 Claims by third parties—contributory negligence**  
14 (LR(MP)A s 17)

- 15 (1) This section applies if—
- 16 (a) a person (the *first person*) suffers damage partly because of the  
17 first person's failure to take reasonable care (*contributory*  
18 *negligence*) and partly because of someone else's wrong; and
- 19 (b) because of the damage to the first person a third person suffers  
20 damage.
- 21 (2) In an action by the third person, the contributory negligence of the  
22 first person must be taken into account under section 41  
23 (Apportionment of liability—contributory negligence) in reducing  
24 the damages recoverable by the third person for the damage as if the  
25 contributory negligence were a failure by the third person to take  
26 reasonable care.

- 1 **44 Pleading of statutory limitation period—contributory**  
2 **negligence (LR(MP)A s 18)**
- 3 (1) This section applies to a case to which section 41 (Apportionment of  
4 liability—contributory negligence) applies if—
- 5 (a) the claimant suffered damage partly because of the wrong of  
6 2 or more people; and
- 7 (b) 1 of those people avoids liability to another of those people (or  
8 his or her personal representative) by pleading a statutory  
9 limitation period on the time within which proceedings can be  
10 taken.
- 11 (2) The person who avoids liability is not entitled to recover damages or  
12 contribution from the other person (or his or her personal  
13 representative) because of section 41.

## 1      **Part 4.4                      Other provisions—damages**

### 2      **45      Court may make consent order for structured settlement**

3      (1) This section applies if the parties to an action for personal injury  
4          damages agree to settle the action by making a structured settlement  
5          and apply to the court for an order approving of, or in the terms of,  
6          the structured settlement.

7      (2) The court may make the order even though the payment of damages  
8          is not in the form of a lump sum award of damages.

9      (3) In this section:

10          *personal injury damages* means damages that relate to the death of,  
11          or injury to, a person caused by someone else's wrongful act or  
12          omission (whether or not an offence).

13          *structured settlement* means an agreement providing for the  
14          payment of all or part of an award of damages in the form of  
15          periodic payments funded by an annuity or other agreed means.

### 16      **46      Independent finding of liability and award of damages**

17          To remove any doubt—

18          (a) a court may make a finding of liability on any claim for  
19          damages independently of making an award of damages on the  
20          claim; and

21          (b) a court may make an award of damages on any claim  
22          independently, but after, making a finding of liability on the  
23          claim.

1 **Chapter 5 Defamation**

2 **Part 5.1 Preliminary—defamation**

3 **47 Definitions for ch 5**

4 In this chapter:

5 *action* means an action for defamation.

6 *aggrieved person*, for part 5.2 (Resolution of disputes without  
7 litigation—defamation)—see section 48.

8 *amends agreement*, for part 5.2 (Resolution of disputes without  
9 litigation—defamation)—see section 51 (1).

10 *country* includes a federation, and a state, territory, province or  
11 other part of a federation.

12 *court*, in relation to an action for defamation, means a court of  
13 competent jurisdiction.

14 *defamation* means libel or slander.

15 *matter in question*, for part 5.2 (Resolution of disputes without  
16 litigation—defamation)—see section 48.

17 *offer to make amends* means an offer under section 49.

18 *parliamentary body* means any of the following:

- 19 (a) a parliament or legislature of any country;  
20 (b) a house of a parliament or legislature of any country;  
21 (c) a committee of a parliament or legislature of any country;  
22 (d) a committee of a house or houses of a parliament or legislature  
23 of any country.

1 *published matter*, for part 5.3 (Rules governing litigation of civil  
2 claims—defamation)—see section 56.

3 *publisher*, for part 5.2 (Resolution of disputes without  
4 litigation—defamation)—see section 48.

5 *qualified offer*, for part 5.2 (Resolution of disputes without  
6 litigation—defamation)—see section 49 (2).

7 *tribunal* means a tribunal of any country.

1 **Part 5.2** **Resolution of disputes without**  
2 **litigation—defamation**

3 **48 Application of pt 5.2**

4 This part applies if a person (the *publisher*) publishes matter (the  
5 *matter in question*) that is or may be defamatory of someone else  
6 (the *aggrieved person*).

7 **49 Offer to make amends—defamation (DA s 6)**

- 8 (1) The publisher may offer to make amends to the aggrieved person.
- 9 (2) The offer may be in relation to—
- 10 (a) the matter in question generally; or
- 11 (b) a particular defamatory meaning that the publisher accepts that  
12 the matter in question has (a *qualified offer*).
- 13 (3) The offer to make amends—
- 14 (a) must be in writing; and
- 15 (b) must be readily identifiable as an offer to make amends under  
16 this part; and
- 17 (c) must include an offer to publish, or join in publishing, a  
18 reasonable correction (if any) of the matter in question; and
- 19 (d) must include an offer to publish, or join in publishing, a  
20 reasonable apology (if any) in relation to the matter; and
- 21 (e) if material containing the matter has been given to someone  
22 else by the publisher or with the publisher's knowledge—must  
23 include an offer to take, or join in taking, reasonable steps to  
24 tell the other person that the matter is or may be defamatory of  
25 the aggrieved person; and

Section 49

---

- 1 (f) must state whether it is a qualified offer and, if so, set out the  
2 defamatory meaning in relation to which it is made; and
- 3 (g) must include an offer to pay the expenses incurred by the  
4 aggrieved person; and
- 5 (h) may include particulars of any correction or apology made, or  
6 action taken, before the date of offer; and
- 7 (i) may include an offer to pay compensation for any economic  
8 loss of the aggrieved person; and
- 9 (j) may include an offer to pay compensation for the harm to the  
10 aggrieved person's reputation only if the matter in question  
11 imputes criminal behaviour by the aggrieved person.
- 12 (4) For subsection (3) (i) or (j), an offer to pay compensation may be in  
13 any of the following forms:
- 14 (a) an offer to pay a stated amount;
- 15 (b) an offer to pay an amount to be agreed between the publisher  
16 and the aggrieved person or, if an agreement is not made, the  
17 amount decided by a court;
- 18 (c) an offer to pay the amount decided by a court;
- 19 (d) an offer to—
- 20 (i) enter into an arbitration agreement within the meaning of  
21 the *Commercial Arbitration Act 1986*; and
- 22 (ii) pay the amount decided by the arbitrator or, if an  
23 arbitration agreement is not made, the amount decided by  
24 a court.
- 25 (5) The publisher may not make an offer to make amends after the  
26 earlier of—
- 27 (a) the end of 14 days after the day the aggrieved person tells the  
28 publisher that the matter in question is or may be defamatory  
29 of the person; and



1 (b) the service by the publisher of a defence in an action brought  
2 against the publisher by the aggrieved person in relation to the  
3 matter in question.

4 (6) If 2 or more people published the matter in question, an offer to  
5 make amends by 1 or more of them does not affect the liability of  
6 the other or others.

7 (7) An offer to make amends may be withdrawn before it is accepted  
8 and the renewal of a withdrawn offer is to be regarded as a new  
9 offer.

#### 10 **50 Reasonable offer to make amends—defamation (DA s 7)**

11 (1) In deciding whether an offer to make amends is reasonable, a court  
12 must have regard to any correction or apology published before any  
13 trial arising out of the matter in question, including the extent to  
14 which the correction or apology is brought to the attention of the  
15 audience of the matter in question having regard to—

16 (a) the prominence given to the correction or apology as published  
17 in comparison to the prominence given to the matter in  
18 question as published; and

19 (b) the period between publication of the matter in question and  
20 publication of the correction or apology.

21 (2) However, subsection (1) does not limit the matters that the court  
22 may take into account in deciding whether an offer to make amends  
23 is reasonable.

#### 24 **51 Acceptance of offer to make amends—defamation** 25 **(DA s 8)**

26 (1) If an offer to make amends is accepted, a court may—

27 (a) order the publisher to pay the aggrieved person the expenses  
28 incurred by the aggrieved person in accepting and performing  
29 the agreement made by acceptance of the offer (the *amends*  
30 *agreement*); and

- 1 (b) on the application of a party to the amends agreement, decide  
2 the amount of compensation mentioned in section 49 (4) (b),  
3 (c) or (d).
- 4 (2) If a question arises about what must be done to perform the amends  
5 agreement, the court may decide the question on the application of  
6 either party.
- 7 (3) If the publisher performs the amends agreement (including paying  
8 any compensation under the agreement), the aggrieved person must  
9 not begin or continue an action against the publisher in relation to  
10 the matter in question.

11 **52 False or misleading statement in correction (DA s 9)**

12 The publisher must not knowingly make a statement in a correction  
13 published in purported compliance with the amends agreement that  
14 is false or misleading in a material particular.

15 Maximum penalty: 200 penalty units.

16 **53 Offer to make amends not accepted—defamation**  
17 **(DA s 10)**

18 If an offer to make amends is not accepted, it is a defence to an  
19 action against the publisher in relation to the matter if—

- 20 (a) the publisher made the offer as soon as practicable after  
21 becoming aware that the matter is or may be defamatory; and
- 22 (b) at any time before the trial the publisher was ready and willing,  
23 on acceptance of the offer by the aggrieved person, to perform  
24 the terms of the offer; and
- 25 (c) in all the circumstances the offer was reasonable.

- 1 **54 Order to vindicate reputation if offer not made (DA s 11)**
- 2 (1) If an offer to make amends is not made, or no reasonable offer of
- 3 amends is made, the aggrieved person may apply to the Supreme
- 4 Court for an order to vindicate his or her reputation.
- 5 (2) The order may only be sought if the aggrieved person has given the
- 6 publisher at least 7 days written notice of intention to apply to the
- 7 Supreme Court for an order to vindicate his or her reputation.
- 8 (3) The notice must contain sufficient information to identify the matter
- 9 in question.
- 10 (4) An order under subsection (1) does not prevent the aggrieved person
- 11 bringing an action.

1 **Part 5.3** **Rules governing litigation of**  
2 **civil claims—defamation**

3 **55 Application of pt 5.3 (DA s 12)**

4 This part applies in relation to an action for defamation.

5 **56 Meaning of *published matter* in pt 5.3 (DA s 13)**

6 In this part:

7 *published matter*, in relation to an action against a defendant for the  
8 publication of matter that is or may be defamatory, means the matter  
9 so published.

10 **57 Slander actionable without special damage (DA s 14)**

11 Slander is actionable without special damage in the same way and to  
12 the same extent as libel is actionable without special damage.

13 **58 Plaintiff's character not likely to be injured (DA s 15)**

14 It is a defence if the defendant establishes that the circumstances of  
15 publication were such that the plaintiff was unlikely to suffer harm.

16 **59 Defence of truth and public benefit (DA s 16)**

17 It is a defence if the defendant establishes—

- 18 (a) the truth of the published matter in accordance with the  
19 common law; and  
20 (b) that it was for the public benefit that the matter should be  
21 published.

- 1 **60 Publication of a proceeding of public concern (DA s 17)**
- 2 (1) It is a defence if the defendant establishes that the published matter  
3 was, or was contained in, a fair report of a proceeding of public  
4 concern.
- 5 (2) It is a defence if the defendant establishes that—
- 6 (a) the published matter was, or was contained in, an earlier  
7 published report of a proceeding of public concern; and
- 8 (b) the published matter was, or was contained in, a copy of, a fair  
9 summary of, or a fair extract from, the earlier published report;  
10 and
- 11 (c) the defendant had no knowledge that would reasonably make  
12 him or her aware that the earlier published report was not fair.
- 13 (3) A defence established under subsection (1) or (2) is excluded if, and  
14 only if, the plaintiff satisfies the court that the published matter was  
15 not published honestly for the information of the public or the  
16 advancement of education.
- 17 (4) In this section, a *proceeding of public concern* is any of the  
18 following:
- 19 (a) a proceeding in public of a parliamentary body;
- 20 (b) a proceeding in public of an international organisation of any  
21 countries or of governments of any countries;
- 22 (c) a proceeding in public of an international conference at which  
23 governments of any countries are represented;
- 24 (d) a proceeding in public of—
- 25 (i) the International Court of Justice, or any other judicial or  
26 arbitral tribunal, for the decision of any matter in dispute  
27 between nations; or
- 28 (ii) any other international judicial or arbitral tribunal;

Section 60

---

- 1 (e) a proceeding in public of—  
2 (i) a court of any country; or  
3 (ii) an arbitral tribunal;
- 4 (f) a proceeding in public of an inquiry held under the law of any  
5 country or under the authority of the government of any  
6 country;
- 7 (g) a proceeding of a learned society, or of a committee or  
8 governing body of the society, under its principal objects if the  
9 proceeding relates to a decision or adjudication made in  
10 Australia particularly concerning—  
11 (i) a member or members of the society; or  
12 (ii) a person subject by contract or otherwise by law to  
13 control by the society;
- 14 (h) a proceeding of a sport or recreation association, or of a  
15 committee or governing body of the association, under its  
16 major objects if the proceeding relates to a decision or  
17 adjudication made in Australia particularly concerning—  
18 (i) a member or members of the society; or  
19 (ii) a person subject by contract or otherwise by law to  
20 control by the association;
- 21 (i) a proceeding of a trade association, or of a committee or  
22 governing body of the association, under its relevant objects if  
23 the proceeding relates to a decision or adjudication made in  
24 Australia particularly concerning—  
25 (i) a member or members of the society; or  
26 (ii) a person subject by contract or otherwise by law to  
27 control by the association;

- 1 (j) a proceeding of a public meeting (with or without restriction on  
2 the people attending) held anywhere in Australia if the  
3 proceeding relates to a matter of public interest, including the  
4 advocacy or candidature of a person for public office;
- 5 (k) a proceeding of an ombudsman of any country if the  
6 proceeding relates to a report of the ombudsman;
- 7 (l) a proceeding in public of a law reform body of any country, or  
8 a proceeding in public at an inquiry conducted by a law reform  
9 body of any country.
- 10 (5) In this section:
- 11 **law reform body** means a body (however described and whether or  
12 not permanent or full-time) whose functions in relation to the law of  
13 a country are similar to those of the Australian Law Reform  
14 Commission in relation to the law of the Commonwealth.
- 15 **learned society** means a body, wherever formed—
- 16 (a) the objects of which include the advancement of any art,  
17 science or religion or the advancement of learning in any field  
18 (the **principal objects**); and
- 19 (b) authorised by its constitution—
- 20 (i) to exercise control over, or adjudicate on, matters  
21 connected with its principal objects; and
- 22 (ii) to make findings or decisions having effect, by law or  
23 custom, in any part of Australia.
- 24 **ombudsman** includes an officer (however described) whose duties  
25 are similar to those of the Territory ombudsman.

- 1            ***sport or recreation association*** means a body, wherever formed—
- 2            (a) the objects of which include the promotion of any game, sport,  
3            or pastime to the playing of which or exercise of which the  
4            public is admitted as spectators or otherwise and the promotion  
5            or protection of the interests of people connected with the  
6            game, sport, or pastime (the ***major objects***); and
- 7            (b) authorised by its constitution—
- 8                    (i) to exercise control over, or adjudicate on, matters  
9                    connected with the game, sport, or pastime; and
- 10                    (ii) to make findings or decisions having effect, by law or  
11                    custom, in any part of Australia.
- 12            ***trade association*** means a body, wherever formed—
- 13            (a) the objects of which include the promotion of any calling, that  
14            is to say, a trade, business, industry or profession and the  
15            promotion or protection of the interests of people engaged in  
16            any calling (the ***relevant objects***); and
- 17            (b) authorised by its constitution—
- 18                    (i) to exercise control over, or adjudicate on, matters  
19                    connected with a calling or the conduct of people  
20                    engaged in the calling; and
- 21                    (ii) to make findings or decisions having effect, by law or  
22                    custom, in any part of Australia.

23    **61    Publication of public document (DA s 18)**

- 24            (1) It is a defence if the defendant establishes that the published matter  
25            was contained in—
- 26                    (a) a public document or a fair copy of a public document; or
- 27                    (b) a fair summary of, or a fair extract from, a public document.



- 1 (2) For subsection (1), if a report or other document under the law of a  
2 country would be a public document except for compliance with a  
3 provision of that law about—
- 4 (a) the form of the report or document; or  
5 (b) the content of the report or document; or  
6 (c) the time within which the report or document is prepared, or  
7 presented, submitted, tabled or laid to or before an entity;  
8 the report or document is a public document despite that  
9 noncompliance.
- 10 (3) A defence established under subsection (1) is excluded if, and only  
11 if, the plaintiff satisfies the court that the published matter was not  
12 published honestly for the information of the public or the  
13 advancement of education.
- 14 (4) In this section:
- 15 *Australian jurisdiction* means the Territory, the Commonwealth or  
16 a State or another Territory.
- 17 *Australian record or document* means a record or document kept—
- 18 (a) by an Australian jurisdiction; or  
19 (b) by a statutory authority of an Australian jurisdiction; or  
20 (c) by a court of an Australian jurisdiction; or  
21 (d) under legislation of an Australian jurisdiction.
- 22 *entity* includes a parliamentary body.
- 23 *judgment* includes a decree, order or sentence.
- 24 *publication*, of matter, includes publication in a way that the matter  
25 will become accessible or will be broadcast or sent to other people  
26 through a computer network.

- 1            ***public document*** means any of the following:
- 2            (a) a report or paper published by a parliamentary body, or a  
3            record of votes, debates or other proceedings relating to a  
4            parliamentary body published under the authority of the body;
- 5            (b) a judgment of a court of any country in a civil proceeding, or a  
6            record of the court relating to the judgment or to its  
7            enforcement or satisfaction;
- 8            (c) a report, or other document, that under the law of any  
9            country—
- 10            (i) is authorised to be published; or
- 11            (ii) is required to be presented or submitted to, tabled in, or  
12            laid before, a parliamentary body;
- 13            (d) a document issued by the government or a local government of  
14            a country, or by an officer, employee or agency of the country  
15            or local government, for the information of the public;
- 16            (e) an Australian record or document that is open to inspection by  
17            the public;
- 18            (f) a report of a tribunal about its decision and the reasons for its  
19            decision.

20        **62    Publication under contract (DA s 19)**

- 21        (1) It is a defence if the defendant establishes that the publication of the  
22        published matter was a reasonable publication under a contract.
- 23        (2) For subsection (1), a publication is reasonable if—
- 24        (a) the publication was in answer to an inquiry made under the  
25        contract; and
- 26        (b) the published matter was relevant to the subject of the inquiry;  
27        and
- 28        (c) the manner and extent of the publication were reasonable; and

- 1 (d) the defendant was not motivated by ill will to the plaintiff, or  
2 by any other improper motive; and
- 3 (e) the defendant had, at the time of publication, reasonable  
4 grounds to believe the published matter to be true.

5 **63 Evidence of apology admissible in**  
6 **mitigation—defamation (DA s 20)**

- 7 (1) If an offer to make amends has not been made, the defendant may  
8 mitigate damages by giving evidence of any apology made or  
9 offered by the defendant to the plaintiff before the beginning of the  
10 action or as soon as practicable afterwards.
- 11 (2) The defendant may give the evidence only if the defendant gave  
12 written notice to the plaintiff of his or her intention to do so when  
13 filing or delivering his or her defence in the action.

14 **64 Payment into court—defamation (DA s 21)**

15 The defendant, or 1 or more of several defendants, may pay into  
16 court an amount by way of compensation, satisfaction and amends.

17 **65 Defence of apology and payment into court—defamation**  
18 **(DA s 22)**

- 19 (1) The defendant may plead that the published matter that is or may be  
20 a libel was published without actual malice and without gross  
21 negligence, and that before the action was begun or as soon as  
22 practicable afterwards, the defendant published a full apology for  
23 the libel or, if this was not possible, had offered to publish an  
24 apology in a way to be selected by the plaintiff.
- 25 (2) After filing a defence under subsection (1), the defendant may pay  
26 into court an amount by way of amends for the libel.

- 1 **66 Defence for defamation—defendant not negligent**  
2 (DA s 23)
- 3 (1) It is a defence if the defendant establishes that the published matter  
4 (other than any published matter imputing criminal behaviour) was  
5 not published negligently.
- 6 (2) For subsection (1), it is sufficient if—
- 7 (a) the defendant establishes that the defendant took reasonable  
8 steps to ensure the accuracy of the published matter; and
- 9 (b) the defendant gave the plaintiff a reasonable opportunity to  
10 comment on the published matter before it was published.
- 11 **67 Compensation etc provable in mitigation—defamation**  
12 (DA s 24)
- 13 At the trial, the defendant may give evidence, in mitigation of  
14 damages, that the plaintiff has already recovered, or has brought an  
15 action for damages, or has received or agreed to receive  
16 compensation in relation to the published matter.
- 17 **68 Damages—defamation (DA s 25)**
- 18 In deciding the amount of damages to be awarded, a court must—
- 19 (a) ensure that there is an appropriate and rational relationship  
20 between the relevant harm and the amount of damages  
21 awarded; and
- 22 (b) take into account the ordinary level of general damages  
23 component in personal injury awards in the ACT.
- 24 **69 Disclosure of name of contributor (DA s 26)**
- 25 (1) If the published matter is an article, letter, report, or writing  
26 published in a newspaper, the plaintiff may ask the editor of the  
27 newspaper to give to the plaintiff the name and address of the

- 1 person who supplied the article, letter, report, or writing to the  
2 newspaper.
- 3 (2) The editor may comply with the request.
- 4 (3) If the editor does not comply with the request within 14 days, the  
5 plaintiff may apply to a court.
- 6 (4) After hearing the proprietor, the court may direct that the name and  
7 address be given to the person.
- 8 (5) In this section:
- 9 *newspaper* includes any newspaper, review, magazine, or other  
10 writing or print, published periodically.

1 **Part 5.4** **Other provisions—defamation**

2 **70** **Scope of defences not limited** (DA s 40)

3 A defence under this chapter is additional to any other defence  
4 available to the defendant and does not limit any other defence.

5 **71** **Time not to be extended except by leave** (DA s 41)

6 The time for delivering, amending, or filing any pleading or  
7 document in an action for defamation in a court may be extended  
8 only with the leave of the court.

9 **72** **Review of certain provisions of ch 5** (DA s 42)

- 10 (1) The Minister must review the operation of part 5.2 (Resolution of  
11 disputes without litigation—defamation) and section 66 (Defence  
12 for defamation—defendant not negligent) as soon as practicable  
13 after 1 July 2004.
- 14 (2) The Minister must present to the Legislative Assembly the report of  
15 the review within 6 months after the review begins.
- 16 (3) This section expires on 1 January 2005.

---

## Chapter 6            Trespass

### 73    Defence to action for trespass to land

It is a defence to an action for trespass to land if the defendant establishes that—

- (a) the defendant does not claim any interest in the land; and
- (b) the trespass was because of negligence or was not intentional; and
- (c) the defendant made a reasonable offer to make amends to the plaintiff before the action was brought.

*Note*    This section is based on the Actions for Trespass Act 1623 21 Jas 1 c 16, s 5 (After judgment or nonsuit in a *quare clausum fregit*, plaintiff barred).

### 74    Action for use and occupation of land—amount of damages (LR(MP)A s 58)

- (1) This section applies to an action for damages for use and occupation of land.
- (2) Evidence may be given of a lease of the land (whether by deed, orally or otherwise) and of the rent payable under the lease.
- (3) The evidence must be received by the court as evidence of the amount of damages for the use and occupation of the land.
- (4) Proof of a lease of the land is not a defence to the action.

*Note*    This section is based on the *Law Reform (Miscellaneous Provisions) Act 1955*, division 12.9 which was substituted for 11 Geo. 2 c 19 (1737), s 14.

1 **Chapter 7 Mitigation of strict liability**

2 **Part 7.1 Traveller accommodation**  
3 **providers liability**

4 **Division 7.1.1 Preliminary**

5 **75 Purpose of pt 7.1**

6 The purpose of this part is to mitigate some of the harsh  
7 consequences of innkeeper's liability at common law.

8 **76 Definitions for pt 7.1**

9 In this part:

10 *accommodation unit* means an area of traveller accommodation that  
11 is designed to be used by a guest of the accommodation provider for  
12 sleeping.

13 *agent*, of an accommodation provider, includes—

- 14 (a) an employee of the accommodation provider; and  
15 (b) an apparent agent or employee of the accommodation provider.

16 *fault* means negligence or another act or omission giving rise to a  
17 liability.

18 *limitation amount* means the amount prescribed under the  
19 regulations.

20 *loss*, of property, includes damage to, or destruction of, the property.

21 *motor vehicle* includes a boat, caravan and trailer attached to a  
22 motor vehicle.



1        *provide* traveller accommodation includes offering to provide the  
2        traveller accommodation.

3        *safe custody facilities*—see section 85 (1).

4        **77    Meaning of *traveller accommodation***

5        (1) *Traveller accommodation* is accommodation provided for use by  
6        members of the travelling public as part of a commercial  
7        transaction.

8        (2) Without limiting subsection (1), traveller accommodation includes  
9        the following types of accommodation:

10        (a) backpacker;

11        (b) bed and breakfast;

12        (c) hotel;

13        (d) motel;

14        (e) resort;

15        (f) serviced apartment.

16        (3) Accommodation is traveller accommodation even if the  
17        accommodation is provided without charge as long as the  
18        accommodation is provided as part of a commercial transaction.

19        **Examples of accommodation supplied as part of commercial transaction**

20        1    resort holidays supplied to purchasers of electrical goods from retail outlets

21        2    accommodation supplied to members of the travel industry or the public  
22        generally for promoting the accommodation

23        *Note*    An example is part of the Act, is not exhaustive and may extend, but  
24        does not limit, the meaning of the provision in which it appears (see  
25        *Legislation Act 2001*, s 126 and s 132).

26        (4) Despite subsections (1) to (3)—

27        (a) accommodation is traveller accommodation only if it includes  
28        an accommodation unit; and

---

- 1 (b) accommodation in or on something, that is a means of  
2 transport, is not traveller accommodation if the particular thing  
3 is being used, or is ordinarily used, for transport.

4 **78 Meaning of *accommodation provider***

- 5 (1) An *accommodation provider* is the person who operates a business  
6 that includes providing traveller accommodation.
- 7 (2) To remove any doubt, the owner of traveller accommodation is not  
8 necessarily the accommodation provider.

9 **Example of accommodation provider**

10 The letting agent for, or the manager of, serviced apartments is the  
11 accommodation provider and not the owner of the apartments.

12 *Note* An example is part of the Act, is not exhaustive and may extend, but  
13 does not limit, the meaning of the provision in which it appears (see  
14 *Legislation Act 2001*, s 126 and s 132).

15 **79 Meaning of *innkeeper's liability***

- 16 (1) For this part, *innkeeper's liability* is innkeeper's liability under the  
17 common law but only in relation to the strict liability imposed on an  
18 innkeeper for failing to safeguard property of the innkeeper's guests  
19 that is brought to the innkeeper's inn.
- 20 (2) To remove any doubt, for innkeeper's liability, loss of a guest's  
21 property includes damage to, or destruction of, the property.
- 22 (3) For innkeeper's liability—
- 23 (a) an accommodation provider, and only an accommodation  
24 provider, is an innkeeper; and
- 25 (b) traveller accommodation, and only traveller accommodation, is  
26 an inn.

27 **80 Meaning of *guest***

- 28 (1) A *guest* is a person to whom, or for whom, traveller accommodation  
29 is provided by an accommodation provider.

1 (2) However, the person is a guest only on a day when the person is  
2 provided with the use of an accommodation unit at the traveller  
3 accommodation.

4 (3) A guest does not include a person—

5 (a) who is at the traveller accommodation only to obtain beverages  
6 or food or to visit someone else; or

7 (b) who usually lives at the traveller accommodation.

### 8 **81 Meaning of *property* of guest**

9 (1) *Property* of a guest is the property brought to the traveller  
10 accommodation or its precincts by or for the guest.

11 (2) However, *property* of a guest does not include—

12 (a) a motor vehicle brought to the traveller accommodation or its  
13 surrounds by or for the guest, or other things owned by the  
14 guest left in or on the motor vehicle; or

15 (b) property taken from the traveller accommodation or its  
16 surrounds by or for the guest.

## 17 **Division 7.1.2 Liability of accommodation** 18 **providers**

### 19 **82 Application of div 7.1.2**

20 This division applies to the property of a guest after the  
21 accommodation provider, or the provider's agent, knows or is told  
22 about the arrival of the guest or the guest's property at the traveller  
23 accommodation or its surrounds.

### 24 **83 Limitation on strict liability under innkeeper's liability** 25 **(ILA s 4)**

26 (1) This section applies to an accommodation provider's liability under  
27 innkeeper's liability for a loss of the guest's property.

- 1 (2) The liability for the loss is limited to the limitation amount for each  
2 accommodation unit provided for the use of the guest on the day of  
3 the loss, despite—
- 4 (a) the amount of the loss on the day; or
- 5 (b) the number of guests who, on the day, are provided with the  
6 use of the accommodation unit and suffer a loss of property.
- 7 (3) Despite the limitation on the liability to the limitation amount, the  
8 accommodation provider's liability is subject to the defences  
9 available at common law for an innkeeper, including the perils of  
10 travel defences.

11 **84 Circumstances when limitation does not apply (ILA s 4)**

- 12 (1) The limitation on the accommodation provider's liability under  
13 section 83 (2) does not apply if the loss of a guest's property—
- 14 (a) is caused by the fault of the accommodation provider or the  
15 provider's agent; or
- 16 (b) happens after the accommodation provider, or the provider's  
17 agent, accepts the property for depositing in safe custody  
18 facilities; or
- 19 (c) happens while the property is left, at the invitation of the  
20 accommodation provider or the provider's agent, at a particular  
21 place outside of the accommodation unit provided to the guest.
- 22 (2) Also, the limitation on the accommodation provider's liability under  
23 section 83 (2) does not apply if—
- 24 (a) at the time the guest is provided with the use of an  
25 accommodation unit, the accommodation provider did not  
26 comply with section 86 (1) (a) (Notice about pt 7.1); or
- 27 (b) during all of the period the guest is provided with the use of an  
28 accommodation unit, the accommodation provider did not do 1  
29 of the following:

- 1 (i) comply with section 86 (1) (b) in relation to the  
2 accommodation unit;
- 3 (ii) have a system in operation as mentioned in  
4 section 86 (2).

5 **85 Safe custody facilities (ILA s 4, 5)**

- 6 (1) This section applies if an accommodation provider, or the provider's  
7 agent, accepts a guest's property for safekeeping in facilities  
8 controlled by the accommodation provider or the provider's agent  
9 (*safe custody facilities*), other than facilities located in an  
10 accommodation unit for the safekeeping of property.
- 11 (2) The accommodation provider is liable for the loss of the guest's  
12 property if it happens after the accommodation provider, or the  
13 provider's agent, accepts the property for deposit in the safe custody  
14 facilities.
- 15 (3) An accommodation provider, or the provider's agent, may require a  
16 guest who asks to use safe custody facilities for the guest's property  
17 to place the property in a container and fasten or seal the container.
- 18 (4) If the accommodation provider provides safe custody facilities, the  
19 accommodation provider must accept a guest's property for deposit  
20 in the safe custody facilities unless—
- 21 (a) the guest does not place the property in a container and fasten  
22 or seal it, in response to a requirement under subsection (3); or
- 23 (b) the accommodation provider reasonably considers that  
24 depositing the property in the safe custody facilities would be  
25 unreasonable having regard to the property's nature, size or  
26 value and the type of accommodation and tariff charged for the  
27 accommodation unit.
- 28 (5) This section does not require an accommodation provider to provide  
29 safe custody facilities.

1 **86 Notice about pt 7.1 (ILA s 6)**

2 (1) An accommodation provider must ensure that the notice set out in  
3 schedule 1 is conspicuously displayed so it can be easily read by a  
4 person when the person is—

5 (a) in the reception area for, or main entrance to, the traveller  
6 accommodation; and

7 (b) in an accommodation unit.

8 (2) However, subsection (1) (b) does not apply if the accommodation  
9 provider has a system in operation under which—

10 (a) for each accommodation unit provided for the use of a  
11 guest—the guest is given a copy of the notice, including, for  
12 example, as part of the key tag or access card for, or in the  
13 compendium in, the accommodation unit; and

14 (b) the guest is told about the notice and where it is located at the  
15 time the guest checks in to the traveller accommodation.

16 **87 Repeal of Innkeepers Liability Act 1902**

17 The *Innkeepers Liability Act 1902* No 64 is repealed.

1 **Part 7.2 Common carriers**

2 **Division 7.2.1 Preliminary—common carriers**

3 **88 Purpose of pt 7.2**

4 The purpose of this part is to mitigate some of the harsh  
5 consequences of common carriers' liability at common law.

6 **89 Definitions for pt 7.2 (CCA s 3)**

7 In this part:

8 *common carrier* means a common carrier by land.

9 *schedule 2 packaged goods*—see section 92 (1) (Liability of carriers  
10 for certain goods worth more than \$20).

11 *transport* means carriage—

12 (a) under a contract of carriage; or

13 (b) incidental to the carriage of a person for reward.

14 **Division 7.2.2 When common law liability of**  
15 **carriers not affected**

16 **90 Certain things not protected by pt 7.2 (CCA s 10)**

17 (1) This part does not protect a common carrier from liability under the  
18 common law if the loss of, or damage to, goods or an animal given  
19 to the carrier for transport results from the criminal or fraudulent act  
20 of the carrier or an employee or agent of the carrier.

21 (2) This part does not protect an employee or agent of a common carrier  
22 from liability under the common law if the loss of, or damage to,  
23 goods or an animal given to the carrier for transport results from the  
24 employee's or agent's personal neglect or misconduct.

1 **91 Public notices by carrier not to affect liability (CCA s 7)**

2 A public notice (other than a notice mentioned in section 93 (1)  
3 (Notice of increased charge for transport of certain goods) or  
4 section 98 (1) (Notice of increased charge for transport of certain  
5 animals)) or declaration does not limit or otherwise affect a common  
6 carrier's liability under the common law.

7 **Division 7.2.3 Liability of common carriers for**  
8 **certain goods worth more than \$20**

9 **92 Liability of carriers for certain goods worth more than \$20**  
10 **(CCA s 4)**

- 11 (1) This section applies if goods mentioned in schedule 2 that are  
12 contained in a parcel or package and worth more than \$20  
13 (*schedule 2 packaged goods*) are given to a common carrier for  
14 transport.
- 15 (2) The common carrier is not liable for more than \$20 for the loss of,  
16 or damage to, the goods.
- 17 (3) However, subsection (2) does not apply if—
- 18 (a) at or before the time the goods are given to the carrier for  
19 transport, the person giving the goods declares the nature and  
20 value of the goods in the parcel or package; and
- 21 (b) the person giving the goods pays, or agrees to pay, any  
22 increased charge mentioned in section 93 (1) that is asked for  
23 by the carrier for the transport of the goods; and
- 24 (c) the carrier receives the goods for transport.



- 
- 1 **93 Notice of increased charge for transport of certain goods**  
2 (CCA s 5 (2) and (3), s 6 (2))
- 3 (1) If a common carrier sets an increased charge for the transport of  
4 schedule 2 packaged goods, the common carrier must clearly  
5 display, in a public part of the place where goods are received for  
6 transport, a legible notice setting out the increased charge for the  
7 transport of the goods.
- 8 (2) A person is bound by the notice even if the person does not have  
9 actual knowledge of it.
- 10 (3) If a common carrier receives schedule 2 packaged goods from a  
11 person for transport in the circumstances mentioned in  
12 section 92 (3) (Liability of carriers for certain goods worth more  
13 than \$20), but does not comply with subsection (1)—
- 14 (a) the carrier is liable under the common law for the loss of, or  
15 damage to, the goods; and
- 16 (b) if the person has paid an increased charge for the  
17 transport—the carrier must refund the increased charge.
- 18 **94 Receipt of carrier for increased charge (CCA s 6)**
- 19 (1) If a person pays or agrees to pay a common carrier an increased  
20 charge for transport of schedule 2 packaged goods, and the person  
21 asks for a receipt, the carrier must give the person a receipt stating  
22 that the goods are insured.
- 23 (2) If the carrier does not give the person the receipt—
- 24 (a) section 92 (2) (Liability of carriers for certain goods worth  
25 more than \$20) does not apply to the carrier; and
- 26 (b) the carrier is liable under the common law for the loss of, or  
27 damage to, the goods; and
- 28 (c) if the person has paid an increased charge for the  
29 transport—the carrier must refund the increased charge.

- 1 **95 Carrier only liable for proven amount for certain goods**  
2 (CCA s 11)
- 3 (1) If—
- 4 (a) a person gives schedule 2 packaged goods to a common carrier  
5 for transport; and
- 6 (b) the person declares the nature and value of the goods in  
7 accordance with this division; and
- 8 (c) the person pays, or agrees to pay, any increased charge  
9 mentioned in section 93 (1) that is asked for by the carrier for  
10 the transport of the goods; and
- 11 (d) the carrier receives the goods for transport, but the goods are  
12 lost or damaged;
- 13 the carrier is liable for not more than the proven amount for the  
14 goods.
- 15 (2) Subsection (1) has effect despite the declaration of the value of the  
16 schedule 2 packaged goods or the acceptance of the declared value  
17 by the common carrier before or at the time the goods were accepted  
18 for transport.
- 19 (3) In this section:
- 20 *proven amount*, for goods, means the lesser of the actual or declared  
21 value of the goods.

22 **Division 7.2.4 Liability of common carriers for**  
23 **certain animals**

24 **96 Definitions for div 7.2.4**

25 In this division:

26 *animal* means a horse, cattle, sheep or pig.

1        *default value*, for an animal, means the amount mentioned in  
2        section 97, table 1, column 3 for the animal.

3        **97 Liability of carriers for certain animals (CCA s 9 (b))**

4        (1) This section applies if—

5            (a) an animal is given to a common carrier for transport; and

6            (b) the animal is worth more than the default value.

7        (2) The common carrier is not liable for more than the default value for  
8        the loss of, or damage to, the animal.

9        (3) However, subsection (2) does not apply if—

10           (a) at or before the time the animal is given to the carrier for  
11           transport, the person giving the animal declares the value of the  
12           animal; and

13           (b) the person giving the animal pays, or agrees to pay, any  
14           increased charge mentioned in section 98 (1) that is asked for  
15           by the carrier for the transport of the animal; and

16           (c) the carrier receives the animal for transport.

17        **Table 1            Default value for certain animals**

column 1 item	column 2 animal	column 3 amount per animal
1	horse	\$100
2	cattle	\$30
3	sheep	\$4
4	pig	\$4

1 **98 Notice of increased charge for transport of certain**  
2 **animals (CCA s 9 (b))**

3 (1) If a common carrier sets an increased charge for the transport of  
4 animals, the carrier must clearly display, in a public part of the place  
5 where an animal is received for transport, a legible notice setting out  
6 any increased charge for the transport of the animal if the animal's  
7 value is more than the default value.

8 (2) A person is bound by the notice even if the person does not have  
9 actual knowledge of it.

10 **99 Carrier only liable for proven amount for certain animals**  
11 **(CCA s 11)**

12 (1) If—

13 (a) a person gives an animal to a common carrier for transport; and

14 (b) the person declares the value of the animal in accordance with  
15 this division; and

16 (c) the person pays, or agrees to pay, any increased charge  
17 mentioned in section 98 (1) that is asked for by the carrier for  
18 the transport of the animal; and

19 (d) the carrier receives the animal for transport, but the animal is  
20 lost or damaged;

21 the carrier is liable for not more than the proven amount for the  
22 animal.

23 (2) Subsection (1) has effect despite the declaration of the value of the  
24 animal or the acceptance of the declared value by the common  
25 carrier before or at the time the animal was accepted for transport.

26 (3) In this section:

27 ***proven amount***, for an animal, means the lesser of the actual or  
28 declared value of the animal.

1     **Division 7.2.5**             **Notice, condition or declaration of**  
2                                     **carrier**

3     **100**     **Carrier liable for neglect or default despite notice etc**  
4             **(CCA s 9 , 9 (a), (c))**

5         (1) A common carrier is liable for the loss of, or damage to, goods or  
6             animals given to the carrier for transport if the loss or damage  
7             results from the carrier's neglect or default despite any notice  
8             condition or declaration made by the carrier that excludes or limits  
9             the carrier's liability.

10        (2) A notice, condition or declaration mentioned in subsection (1) is  
11             void.

12        (3) But, a contract of carriage may contain conditions about the  
13             transport of goods or animals that are just and reasonable.

14        (4) Also, a special contract between a common carrier and someone else  
15             for the transport of goods or animals is binding on the other person  
16             if, but only if, it is signed by the other person or the person giving  
17             the carrier the goods or animals for transport.

18        (5) This section does not affect a common carrier's rights or liabilities  
19             under division 7.2.3 (Certain goods worth more than \$20).

20        (6) In this section:

21             ***notice*** does not include a notice mentioned in section 93 (1) (Notice  
22             of increased charge for transport of certain goods) or section 98 (1)  
23             (Notice of increased charge for transport of certain animals).

1 **Chapter 8 Other liability provisions**

2 **Part 8.1 Occupiers liability**  
3

4 **101 Liability of occupiers**

5 (1) An occupier of premises owes a duty to take all care that is  
6 reasonable in the circumstances to ensure that anyone on the  
7 premises does not suffer injury or damage because of—

8 (a) the state of the premises; or

9 (b) things done or omitted to be done about the state of the  
10 premises.

11 (2) Without limiting subsection (1), in deciding whether the duty of care  
12 has been discharged consideration must be given to the following:

13 (a) the gravity and likelihood of the probable injury;

14 (b) the circumstances of the entry onto the premises;

15 (c) the nature of the premises;

16 (d) the knowledge the occupier has or should have about the  
17 likelihood of people or property being on the premises;

18 (e) the age of the person entering the premises;

19 (f) the ability of the person entering the premises to appreciate the  
20 danger;

21 (g) the burden on the occupier of removing the danger or  
22 protecting the person entering the premises from the danger as  
23 compared to the risk of the danger to the person.

- 1 (3) Part 4.1 (General exclusions and limitations about damages) and  
2 part 4.3 (Contributory negligence) apply in relation to a claim  
3 brought by a person against an occupier of premises in relation to  
4 injury or damage.
- 5 (4) This section replaces the common law rules about the standard of  
6 care an occupier of premises must show to people entering on the  
7 premises in relation to any dangers to them.
- 8 (5) This section does not affect—
- 9 (a) other common law rules about the liability of occupiers to  
10 people entering on their premises; or
- 11 (b) any obligation an occupier of premises has under another Act  
12 or any statutory instrument or contract.
- 13 (6) In this section:
- 14 *occupier*, of premises, includes the lessor of premises let under a  
15 tenancy who—
- 16 (a) is under an obligation to the tenant to maintain or repair the  
17 premises; or
- 18 (b) could exercise a right to enter the premises to carry out  
19 maintenance or repairs.

1 **Part 8.2** **Liability for damage caused by**  
2 **animals**

3 **102 Evidence of breach of duty for animals (CL(A)A s 8)**

4 (1) This section applies if an animal (other than a dog or cat) was on  
5 premises and—

6 (a) the occupier of the premises—

7 (i) could not lawfully prevent the animal from being on the  
8 premises; or

9 (ii) had not consented to the animal being on the premises;  
10 and

11 (b) someone other than the occupier of the premises was, when the  
12 animal was on the premises, under a duty to another person to  
13 take reasonable care that the other person would not be  
14 subjected to the danger of the animal causing damage to the  
15 other person; and

16 (c) the animal caused damage to the other person.

17 (2) The fact that the animal was on the premises when the damage was  
18 caused is evidence of breach of the duty.

19 (3) In this section:

20 *on* includes in.

21 *premises* does not include a place that is open to or used by the  
22 public as a road.



1 **Part 8.3** **Liability for fires accidentally**  
2 **begun**

3 *Note* This part is based on the *Law Reform (Miscellaneous Provisions) Act*  
4 *1955*, division 12.10 which was substituted for 24 Geo. 3 c 78 (1774),  
5 s 86.

6 **103 Actions do not lie for damage caused by accidental fires**  
7 **(LR(MP)A s 59)**

- 8 (1) An action does not lie against a person in whose house, room or  
9 other building, or on whose property, a fire accidentally starts for  
10 injury or damage caused by the fire to someone else, or for damage  
11 caused by the fire to the property of someone else.
- 12 (2) Subsection (1) applies despite any other Territory law or any usage  
13 or custom in force in the ACT.
- 14 (3) For subsection (1), a fire must not be taken to have started  
15 accidentally if it was started deliberately or negligently.

16 **104 Contract between landlord and tenant not affected**  
17 **(LR(MP)A s 60)**

18 Section 103 does not affect, or make void, any term of a contract or  
19 agreement made between a landlord and tenant about the leasing or  
20 letting of premises, or a part of premises, by the landlord to the  
21 tenant.

1 **Chapter 9 Misrepresentation**  
2

3 **105 Definitions for ch 9 (LR(Mis)A s 2)**

4 In this chapter:

5 *court* includes an arbitrator.

6 *non-fraudulent misrepresentation* means a misrepresentation that  
7 was not made fraudulently.

8 **106 Removal of certain bars to rescission for**  
9 **misrepresentation (LR(Mis)A s 3)**

10 (1) This section applies if—

11 (a) a person enters into a contract after a misrepresentation is made  
12 to the person; and

13 (b) the person would be entitled to rescind the contract without  
14 claiming fraud if 1 or more of the following matters (*former*  
15 *bars*) did not apply:

16 (i) the misrepresentation has become a term of the contract;

17 (ii) the contract has been performed;

18 (iii) a conveyance, transfer or other document has been  
19 registered under a Territory law or a law of the  
20 Commonwealth, a State or another Territory because of  
21 the contract.

22 (2) The person may rescind the contract even though 1 or more of the  
23 former bars apply.

24 (3) This section is subject to the following sections:

25 • section 108 (Damages instead of rescission for  
26 misrepresentation)

27 • section 109 (3) (Exclusion clauses—misrepresentation).

1 **107 Damages for misrepresentation (LR(Mis)A s 4)**

2 (1) This section applies if a person (the *first person*) enters into a  
3 contract after a non-fraudulent misrepresentation is made to the first  
4 person by—

5 (a) another party to the contract; or

6 (b) a person acting for another party to the contract; or

7 (c) a person who receives any direct or indirect material advantage  
8 because of the formation of the contract.

9 (2) If the first person suffers loss because of entering into the contract,  
10 anyone (whether or not that person made the misrepresentation) who  
11 would be liable for damages in tort for the loss, if the  
12 misrepresentation had been made fraudulently, is liable for damages  
13 for the loss.

14 (3) It is a defence to an action under subsection (2) that—

15 (a) if the representation was made by the defendant—the  
16 defendant had reasonable grounds for believing, and did  
17 believe up to the time the contract was made, that the  
18 representation was true; or

19 (b) if the representation was made by a person acting for the  
20 defendant—both the defendant and that person had reasonable  
21 grounds for believing, and did believe up to the time the  
22 contract was made, that the representation was true.

23 **108 Damages instead of rescission for misrepresentation**  
24 **(LR(Mis)A s 5)**

25 (1) This section applies if, in an action arising out of a contract, a  
26 person has rescinded, or may rescind, the contract on the ground of  
27 non-fraudulent misrepresentation.

**Chapter 9**            Misrepresentation

Section (2)            The court may declare the contract to be existing and award damages, or award damages instead of ordering rescission, if the court considers that—

---

- 1            (2) The court may declare the contract to be existing and award  
2            damages, or award damages instead of ordering rescission, if the  
3            court considers that—
- 4            (a) the consequences of a declaration are preferable to the  
5            consequences of rescission in the circumstances of the case;  
6            and
- 7            (b) it is just and equitable to do so.
- 8            (3) Damages may be awarded against a person under subsection (2)  
9            even if the person is not liable for damages under section 107.
- 10          (4) However, a court must take into account—
- 11          (a) in assessing damages under section 107 or this section—any  
12          award of damages under section 107 or this section, or  
13          damages or compensation under any other law; or
- 14          (b) in assessing damages or compensation under any other law  
15          relating to a contract—any award of damages under this  
16          chapter.

17          **109 Exclusion clauses—misrepresentation (LR(Mis)A s 6)**

- 18          (1) This section applies if an agreement contains a provision that would,  
19          apart from this section, exclude or restrict—
- 20          (a) any liability of a party to a contract because of a  
21          misrepresentation made by the party before the contract was  
22          made; or
- 23          (b) any remedy available to another party to the contract because  
24          of a misrepresentation mentioned in paragraph (a).
- 25          (2) The provision is of no effect.
- 26          (3) However, in an action arising out of the contract, the court may  
27          allow the provision to be relied on if the court considers it fair and  
28          reasonable in the circumstances to rely on it.

- 1 **110 Misrepresentation in trade or commerce an offence**  
2 (LR(Mis)A s 7)
- 3 (1) A person must not make a misrepresentation, in the course of trade  
4 or commerce—
- 5 (a) to make or induce someone else to enter into a contract; or  
6 (b) to make or induce someone else to pay an amount, or to  
7 transfer real or personal property, to the person or to someone  
8 else.
- 9 Maximum penalty: 200 penalty units
- 10 (2) It is a defence to a prosecution for an offence against this section  
11 that the person who made the representation believed on reasonable  
12 grounds that the representation was true.
- 13 **111 Employer etc liable for misrepresentation (LR(Mis)A s 8)**
- 14 (1) If the misrepresentation mentioned in section 110 (1) is made by a  
15 person acting in the course of his or her employment, the person's  
16 employer commits an offence.
- 17 Maximum penalty: 200 penalty units.
- 18 (2) If the misrepresentation mentioned in section 110 (1) is made by a  
19 person authorised to act for someone else, the other person commits  
20 an offence.
- 21 Maximum penalty: 200 penalty units.
- 22 (3) It is a defence to a prosecution for an offence against this section—
- 23 (a) that the defendant took reasonable precautions to prevent  
24 misrepresentations being made by the defendant's employees  
25 or people acting for the defendant; or
- 26 (b) that the defendant did not know, and could not reasonably be  
27 expected to have known, that the representation was made or  
28 that it was untrue.

- 1 **112 Prosecutions for misrepresentation (LR(Mis)A s 9)**
- 2 (1) This section applies if in a prosecution for an offence against  
3 section 110 or 111, it is proved that—
- 4 (a) a misrepresentation was in fact a material inducement to a  
5 person—
- 6 (i) to enter into a contract; or
- 7 (ii) to pay an amount, or to transfer real or personal property,  
8 to the person who made the misrepresentation or  
9 someone else; and
- 10 (b) the person who made the misrepresentation received a direct or  
11 indirect material advantage because of the contract, payment or  
12 transfer.
- 13 (2) It must be assumed, unless the contrary is proven, that the  
14 misrepresentation was made to induce the person to whom it was  
15 made to enter into the contract, make the payment or transfer the  
16 property.

1 **Chapter 10**            **Limitations on legal costs**

2 **Part 10.1**            **Maximum costs for certain**  
3 **personal injury damages**  
4 **claims**

5 **113**    **Definitions for pt 10.1**

6        In this part:

7        *costs* do not include—

8        (a) disbursements that are charges for services other than legal  
9            services; or

10       (b) any other disbursements.

11       *court* includes a tribunal or arbitrator.

12       *personal injury damages* means damages that relate to the death of,  
13       or injury to, a person caused by someone else's wrongful act or  
14       omission (whether or not an offence).

15 **114**    **Maximum costs for claims of \$100 000 or less**

16       (1) This section applies if the amount recovered on a claim for personal  
17       injury damages is \$100 000 or less.

18       (2) If this section applies—

19       (a) a lawyer is not entitled to be paid; and

20       (b) a court (or a taxing officer) must not decide that a lawyer is  
21       entitled to be paid; and

22       (c) a court must not order anyone to pay to a lawyer;

Section 114

---

- 1 an amount for legal services in relation to the claim that (or that  
2 together with other amounts) is more than the maximum costs  
3 allowable under this section.
- 4 (3) Subsection (2) is subject to the following sections:
- 5 • section 115 (Costs incurred after offer of compromise not  
6 accepted)
  - 7 • section 116 (Exclusion of costs unnecessarily incurred etc)
  - 8 • section 117 (Court discretion to allow additional costs).
- 9 (4) The *maximum costs* allowable for legal services provided to the  
10 plaintiff in relation to the claim are the greater of—
- 11 (a) the relevant percentage of the amount recovered; and
  - 12 (b) the relevant amount.
- 13 (5) The *maximum costs* allowable for legal services provided to the  
14 defendant in relation to the claim are the greater of—
- 15 (a) the relevant percentage of the amount sought to be recovered  
16 by the plaintiff; and
  - 17 (b) the relevant amount.
- 18 (6) In this section:
- 19 *amount recovered*, on a claim—
- 20 (a) includes an amount paid under a compromise or settlement of  
21 the claim, whether or not an action has been begun; but
  - 22 (b) does not include an amount attributable to costs or to the  
23 addition of interest.



1        *amount sought to be recovered* by a plaintiff means, if an action is  
2        begun—

- 3        (a) the amount sought to be proved by the plaintiff at the hearing  
4            of the claim; or
- 5        (b) if the claim is for unliquidated damages—the amount that the  
6            court (or a taxing officer) decides is, for this section, the  
7            amount sought to be recovered by the plaintiff on the claim.

8        *relevant amount* means \$10 000 or, if another amount is prescribed  
9        under the regulations for this definition, the prescribed amount.

10       *relevant percentage* means 20% or, if another percentage is  
11       prescribed under the regulations for this definition, the prescribed  
12       percentage.

### 13    **115 Costs incurred after offer of compromise not accepted**

14       (1) This section applies if—

- 15            (a) a party to a claim for personal injury damages makes an offer  
16                of compromise on the claim; and
- 17            (b) the offer is expressed to be made for this section; and
- 18            (c) the offer is not accepted; and
- 19            (d) the court decides or makes an order or award on the claim that  
20                is no less favourable to the party than the terms of the offer.

21       (2) Section 114 (Maximum costs for claims of \$100 000 or more) does  
22       not prevent the awarding of costs against another party, to be  
23       assessed on an indemnity basis, for legal services provided after the  
24       offer is made.

25       (3) The regulations may—

- 26            (a) require lawyers to give their clients information about the  
27                effect of this section if an offer of compromise is not accepted;  
28                and

- 1 (b) make provision in relation to the requirement, including, for  
2 example, what information must be given and how and when it  
3 must be given.

4 *Note* An example is part of the Act, is not exhaustive and may extend, but  
5 does not limit, the meaning of the provision in which it appears (see  
6 *Legislation Act 2001*, s 126 and s 132).

- 7 (4) If the court considers that—

- 8 (a) a lawyer has contravened regulations made for this section; and  
9 (b) the lawyer's client has incurred an increased liability for costs  
10 for not accepting an offer of compromise;

11 the court may (on its own initiative or on application by the client)  
12 make either or both of the orders mentioned in subsection (5).

- 13 (5) The orders are—

- 14 (a) an order directing the lawyer to repay to the client (or to pay)  
15 all or part of the increased costs that the client has been ordered  
16 to pay to another party; and  
17 (b) an order directing the lawyer to indemnify a party other than  
18 the client against all or part of the costs payable by the party  
19 for legal services provided after the offer was made.

- 20 (6) The regulations may prohibit or restrict the making of offers of  
21 compromise otherwise than under this section.

22 **116 Exclusion of costs unnecessarily incurred etc**

- 23 (1) This section applies to legal services provided to a party to a claim  
24 for personal injury damages if a court is satisfied that—

- 25 (a) the legal services were provided in response to action on the  
26 claim by or on behalf of the other party to the claim; and  
27 (b) in the circumstances, the action was not necessary and  
28 reasonable for the advancement of the party's case or was

1 intended, or was reasonably likely, to unnecessarily delay or  
2 complicate determination of the claim.

3 (2) The court may order that the costs for the legal services are to be  
4 excluded from the operation of section 114 (Maximum costs for  
5 claims of \$100 000 or less).

### 6 **117 Court discretion to allow additional costs**

7 (1) This section applies if a court considers that the maximum costs for  
8 legal services allowable under this part in relation to a claim for  
9 personal injury damages should be increased because of—

10 (a) the complexity of the claim; or

11 (b) the behaviour of 1 or more of the parties to the claim.

12 (2) The court (or a taxing officer) may order that the lawyer who  
13 provided the services is entitled to stated additional costs.

14 (3) If the court (or a taxing officer) makes an order under  
15 subsection (2), the court (or taxing officer) must state who is to pay  
16 the additional costs.

17 (4) The regulations may make provision in relation to the making of  
18 orders under this section.

### 19 **118 Apportionment of costs between lawyers**

20 If more than 1 lawyer provides legal services to a party in relation to  
21 a claim for personal injury damages, the maximum costs allowable  
22 under this part (including any additional amount allowed under  
23 section 117) are to be apportioned between them as agreed by them  
24 or, if they do not agree, as ordered by the court (or a taxing officer).

1 **Part 10.2** **Costs in damages claims if no**  
2 **reasonable prospects of**  
3 **success**

4 **119 Definitions for pt 10.2**

5 In this part:

6 *court* includes a tribunal or arbitrator.

7 *provable* facts, in relation to a lawyer—a fact is *provable* in relation  
8 to a lawyer only if the lawyer believes on reasonable grounds that  
9 the material then available to the lawyer provides a proper basis for  
10 claiming the fact.

11 *reasonable prospects of success*—

- 12 (a) a claim has *reasonable prospects of success* if there are  
13 reasonable prospects of damages being recovered on the claim;  
14 and  
15 (b) a defence has *reasonable prospects of success* if there are  
16 reasonable prospects of the defence defeating the claim or  
17 leading to a reduction in the damages recovered on the claim.

18 **120 Application of pt 10.2**

- 19 (1) This part applies despite any obligation of the lawyer to act in  
20 accordance with the instructions or wishes of the client.  
21 (2) This part does not apply to legal services provided by a lawyer in  
22 relation to a claim for damages at any time before the lawyer gives  
23 the certification required under section 121 for the claim.  
24 (3) Also, this part does not apply to a claim for damages if the court  
25 considers that it is in the interests of justice for the claim to be  
26 continued and makes an order to that effect.

1 **121 Lawyer not to act without reasonable prospects of**  
2 **success**

- 3 (1) A lawyer must not provide legal services on a claim for damages, or  
4 in defence of a claim for damages, unless the lawyer believes on  
5 reasonable grounds, on the basis of provable facts and a reasonably  
6 arguable view of the law, that the claim or defence has reasonable  
7 prospects of success.
- 8 (2) The provision of legal services without reasonable prospects of  
9 success is not an offence but can be professional misconduct or  
10 unsatisfactory professional conduct under the *Legal Practitioners*  
11 *Act 1970*, part 8 (Discipline).

12 **122 Restriction on setting claims down for hearing**

- 13 (1) This section applies to a lawyer who is providing legal services on a  
14 claim for damages, or in defence of a claim for damages.
- 15 (2) The lawyer must not agree to, or allow a court to set, a hearing date  
16 for the claim unless the lawyer has filed in the court a certificate  
17 stating that the lawyer believes, on the basis of provable facts and a  
18 reasonably arguable view of the law, that the claim or defence has  
19 reasonable prospects of success.
- 20 (3) The regulations may make provision in relation to the certificate  
21 mentioned in subsection (2), including, for example, about the form  
22 of the certificate.

23 *Note* An example is part of the Act, is not exhaustive and may extend, but  
24 does not limit, the meaning of the provision in which it appears (see  
25 *Legislation Act 2001*, s 126 and s 132).

26 **123 Costs order against lawyer acting without reasonable**  
27 **prospects of success**

- 28 (1) If the court in which an action on a claim for damages is taken  
29 considers that legal services were provided by a lawyer for a client  
30 on the claim, or in defence of the claim, without the claim or  
31 defence having reasonable prospects of success, the court may (on

- 1           its own initiative or on the application of a party to the proceeding)  
2           make either or both of the following orders:
- 3           (a) an order directing the lawyer to repay to the client (or to pay)  
4           all or part of the costs that the client has been ordered to pay to  
5           another party;
- 6           (b) an order directing the lawyer to indemnify a party other than  
7           the client against all or part of the costs payable by that party.
- 8           (2) The Supreme Court may, on its own initiative or on the application  
9           of a party to the action, make any order that the Magistrates Court  
10          could make under this section.
- 11          (3) An application for an order under this section cannot be made after  
12          the court concerned (or a taxing officer) has made a final decision  
13          about the costs payable in the action.
- 14          (4) A lawyer is not entitled to demand, recover or accept from a client  
15          any part of the costs for which the lawyer is directed to indemnify a  
16          party under an order under this section.

17           **124 Onus on lawyer to show facts provided reasonable**  
18           **prospects of success**

- 19          (1) For this part, it must be presumed that legal services were provided  
20          for a client by a lawyer on a claim for damages, or in defence of a  
21          claim for damages, without the claim or defence having reasonable  
22          prospects of success if—
- 23          (a) the trial court hearing the action finds that the facts established  
24          by the evidence before the court do not form the basis for a  
25          belief on reasonable grounds that the claim or defence had  
26          reasonable prospects of success; or
- 27          (b) the Supreme Court (if it is not the trial court) is satisfied,  
28          because of a finding, or the judgment, of the trial court, that the  
29          facts established by the evidence before the trial court do not

- 1                   form the basis for a belief on reasonable grounds that the claim  
2                   or defence had reasonable prospects of success.
- 3       (2) The lawyer can rebut the presumption by establishing that, when the  
4       legal services were provided, there were provable facts that  
5       provided a basis for a belief on reasonable grounds that the claim or  
6       defence had reasonable prospects of success.
- 7       (3) For the purpose of rebutting the presumption, a lawyer may disclose  
8       information or a document despite any duty of confidentiality to a  
9       client if—
- 10       (a) the client is the client for whom the legal services were  
11       provided; or
- 12       (b) the client consents to the disclosure; or
- 13       (c) the court is satisfied that the disclosure is necessary for the  
14       lawyer to rebut the presumption.

1 **Chapter 11** **Miscellaneous**

2 **Part 11.1** **Neutral evaluation**

3 **125 Purpose of pt 11.1 etc**

- 4 (1) The purpose of this part is to enable a court or tribunal to refer  
5 matters for neutral evaluation.
- 6 (2) This part does not prevent the parties to a proceeding from agreeing  
7 to, and arranging for, neutral evaluation of any matter otherwise  
8 than under this part.
- 9 (3) This part does not apply to criminal proceedings.

10 **126 Meaning of *neutral evaluation* and *neutral evaluation***  
11 ***session***

- 12 (1) For this part, *neutral evaluation* is a process of evaluation of a  
13 dispute in which the evaluator seeks to identify and reduce the  
14 issues of fact and law that are in dispute.
- 15 (2) The evaluator's role includes assessing the relative strengths and  
16 weaknesses of each party's case and offering an opinion about the  
17 likely outcome of the proceeding, including any likely findings of  
18 liability or the award of damages.
- 19 (3) For this part, *neutral evaluation session* means a meeting arranged  
20 for the neutral evaluation of a matter under this part.

21 **127 Who can be an evaluator**

22 The following people can be an evaluator:

- 23 (a) a registrar of a court or tribunal;
- 24 (b) a deputy registrar of a court or tribunal.



1 **128 Referral by court or tribunal for neutral evaluation**

2 (1) A court or tribunal may, by order, refer any proceeding, or any part  
3 of a proceeding, before it for neutral evaluation, and may do so  
4 either with or without the consent of the parties to the proceeding.

5 (2) The neutral evaluation is to be undertaken by an evaluator appointed  
6 by the court or tribunal.

7 **129 Duty of parties to take part in neutral evaluations**

8 It is the duty of each party to a proceeding referred for neutral  
9 evaluation under section 128 to take part, genuinely and sincerely,  
10 in the neutral evaluation.

11 **130 Costs of neutral evaluation**

12 The costs of a neutral evaluation are payable—

13 (a) by the parties to the proceeding, in the proportions they agree  
14 among themselves; or

15 (b) if a court or tribunal makes an order about the payment of the  
16 costs—by 1 or more of the parties, in the way stated in the  
17 order.

18 **131 Privilege for neutral evaluations**

19 (1) The same privilege in relation to defamation that exists for a judicial  
20 proceeding, and a document produced in a judicial proceeding,  
21 exists for—

22 (a) a neutral evaluation session; or

23 (b) a document or other material sent to or produced to an  
24 evaluator, or sent to or produced at a court or tribunal or the  
25 registry of a court or tribunal, for the purpose of enabling a  
26 neutral evaluation session to be arranged.

Section 132

---

- 1 (2) However, the privilege under subsection (1) only extends to a  
2 publication made—
- 3 (a) at a neutral evaluation session; or
- 4 (b) as provided by subsection (1) (b); or
- 5 (c) as provided in section 132.
- 6 (3) Evidence of anything said, or of any admission made, in a neutral  
7 evaluation session is not admissible in a proceeding before a court,  
8 tribunal or other entity.
- 9 (4) A document prepared for, in the course of, or because of, a neutral  
10 evaluation session, or any copy of the document, is not admissible in  
11 evidence in any civil proceeding before a court, tribunal or other  
12 entity.
- 13 (5) Subsections (3) and (4) do not apply to any evidence or document—
- 14 (a) for evidence—if the people in attendance at, or identified  
15 during, the neutral evaluation session consent to the admission  
16 of the evidence; or
- 17 (b) for a document—if the people in attendance at, or identified  
18 during, the neutral evaluation session and all people identified  
19 in the document, consent to the admission of the document; or
- 20 (c) in a proceeding (including a criminal proceeding) brought in  
21 relation to an act or omission in relation to which a disclosure  
22 has been made under section 132 (c).
- 23 (6) In this section:
- 24 ***neutral evaluation session*** includes any steps taken in the course of  
25 making arrangements for the session or in the course of the  
26 follow-up of a session.

1 **132 Secrecy by evaluators**

2 An evaluator may disclose information obtained in relation to the  
3 administration or execution of this part only in the following  
4 circumstances:

- 5 (a) with the consent of the person from whom the information was  
6 obtained;
- 7 (b) for the administration or execution of this part;
- 8 (c) if there are reasonable grounds to believe that the disclosure is  
9 necessary to prevent or minimise the danger of death or injury  
10 to anyone or damage to any property;
- 11 (d) if the disclosure is reasonably required for the purpose of  
12 referring any party to a neutral evaluation session to any entity  
13 and the disclosure is made with the consent of the parties to the  
14 neutral evaluation session for the purpose of aiding in the  
15 resolution of a dispute between the parties or assisting the  
16 parties in any other way;
- 17 (e) in accordance with a requirement imposed under a Territory or  
18 Commonwealth law (other than a requirement imposed by a  
19 subpoena or other compulsory process).

20 **133 Protection from liability for evaluators**

21 An evaluator is not subject to civil liability for anything done or  
22 omitted to be done honestly for a neutral evaluation session under  
23 this part.

1 **Part 11.2** **General reporting**  
2 **requirements of insurers**

3 **134 Who is an *insurer* for pt 11.2**

4 In this part, an *insurer* is a person who carries on the business of  
5 insurance, or an activity declared under the regulations to be the  
6 business of insurance, in relation to—

- 7 (a) property located in the ACT; or  
8 (b) an act or omission happening in the ACT.

9 **135 Insurers reporting requirements**

10 (1) On or before 31 July in each year, an insurer must, in accordance  
11 with this section, give a report to the Minister about insurance  
12 policies held by the insurer at any time in the financial year ending  
13 on the previous 30 June in relation to—

- 14 (a) property located in the ACT; or  
15 (b) an act or omission happening in the ACT.

16 Maximum penalty: 100 penalty units.

17 (2) The report must state for each class of policy prescribed in the  
18 regulations—

- 19 (a) the premium paid to the insurer; and  
20 (b) the number of claims; and  
21 (c) the number of claims that were paid; and  
22 (d) the number of claims that were refused; and  
23 (e) anything else required under the regulations.

24 (3) The report must be given in the way required under the regulations.

1 **136 Confidentiality of general reports of insurers**

2 (1) Information in a report under this part by an insurer is commercially  
3 sensitive and confidential.

4 (2) A person must not use any confidential information obtained in  
5 carrying out the person's functions under this part to obtain, directly  
6 or indirectly, a financial or other advantage for himself or herself or  
7 anyone else.

8 Maximum penalty: 100 penalty units, imprisonment for 1 year or  
9 both.

10 (3) A person must not disclose any confidential information obtained in  
11 carrying out the person's functions under this part, except in  
12 accordance with subsection (4).

13 Maximum penalty: 100 penalty units, imprisonment for 1 year or  
14 both.

15 (4) A person may disclose confidential information if—

16 (a) the disclosure does not identify the insurer that supplied the  
17 information; or

18 (b) the disclosure is made in the exercise of a function under this  
19 Act or any other Territory law permitting the disclosure; or

20 (c) the disclosure is made with the agreement of the insurer that  
21 supplied the information; or

22 (d) the disclosure is made in a legal proceeding at the direction of  
23 a court; or

24 (e) the information is already in the public domain; or

25 (f) the disclosure is to a person, or for a purpose, prescribed under  
26 the regulations.

1 **Part 11.3** **Attachment of insurance**  
2 **money**

3 **137 Amount of liability charge on insurance money payable**  
4 **against liability (LR(MP)A s 25)**

5 (1) This section applies if—

6 (a) a person (the *insured*) has entered into a contract of insurance  
7 by which the insured is indemnified against liability to pay  
8 damages or compensation; and

9 (b) an event happens that gives rise to a claim against the insured  
10 for damages or compensation

11 (2) On the happening of the event, the amount of the insured's liability  
12 in relation to the event becomes a charge on all insurance money  
13 that is or may become payable in relation to the liability.

14 (3) If, when the event happens, the insured is a corporation that is being  
15 wound up, or if any subsequent winding-up of the insured is taken to  
16 have begun on or before the happening of the event, subsection (2)  
17 applies despite the winding-up.

18 (4) A charge under this section has priority over all other charges  
19 affecting the insurance money.

20 (5) However, if the insurance money is subject to 2 or more charges  
21 under this section—

22 (a) the charges have priority between themselves in the order of  
23 the happening of the events out of which the liabilities arose;  
24 and

25 (b) charges that arise out of events happening on the same day  
26 rank equally between themselves.

1 **138 Enforcement of charge on insurance money (LR(MP)A**  
2 **s 26)**

- 3 (1) A charge under section 137 is enforceable by an action against the  
4 insurer in the same way and in the same court as if the action were  
5 an action to recover damages or compensation from the insured.
- 6 (2) The parties have, to the extent of the charge, the same rights and  
7 liabilities in relation to the action, and the judgment given in the  
8 action, as if the action were against the insured.
- 9 (3) The court has the same powers in relation to the action, and the  
10 judgment given in the action, as if the action were against the  
11 insured.
- 12 (4) Unless section 137 (3) applies, the action cannot be begun without  
13 the leave of the court.
- 14 (5) Leave must not be given if the court is satisfied that—
- 15 (a) the insurer is entitled under the terms of the contract of  
16 insurance to disclaim liability; and
- 17 (b) any proceeding, including any arbitration proceeding,  
18 necessary to establish that entitlement have been taken.
- 19 (6) The action can be brought although judgment has already been  
20 recovered against the insured for damages or compensation in  
21 relation to the same matter.

22 **139 Protection of insurer for pt 11.3 charge (LR(MP)A s 27)**

- 23 (1) Despite anything in this part, a payment made by an insurer under  
24 the contract of insurance without actual notice of the existence of a  
25 charge under this part is, to the extent of that payment, a valid  
26 discharge to the insurer.
- 27 (2) An insurer is not liable under this part for any greater amount than is  
28 fixed by the contract of insurance between the insurer and the  
29 insured.

1 **140 Certain other provisions not affected by pt 11.3 (LR(MP)A**  
2 **s 28)**

3 This part does not affect the operation of the *Workers Compensation*  
4 *Act 1951* or the *Road Transport (General) Act 1999*, part 10  
5 (Compulsory vehicle insurance).



1 **Part 11.4** **Abolition of certain common**  
2 **law actions, rules and**  
3 **remedies**

4 **141 Abolition of seduction, enticement and harbouring**

5 The following actions at common law are abolished:

- 6 (a) seduction;  
7 (b) enticement;  
8 (c) harbouring.

9 **142 Abolition of rule about unity of spouses (MP(T)A s 4, s 5)**

10 The rights of action that a person has in tort against someone are not  
11 affected by the fact that they are or were married to each other.

12 **143 Abolition of action of cattle-trespass (CL(A)A s 4)**

- 13 (1) The common law action of cattle-trespass is abolished.  
14 (2) This section does not affect—  
15 (a) the common law action for trespass committed by a person by  
16 means of cattle; or  
17 (b) the law relating to liability of an occupier of land for damages  
18 for tort for the death of, or injury to, cattle trespassing on the  
19 land.

20 **144 Abolition of distress damage feasant (CL(A)A s 5)**

21 The common law remedy of distress of an animal damage feasant is  
22 abolished.

1 **145 Abolition of rules relating exclusively to liability for**  
2 **damage by animals (CL(A)A s 6)**

3 The common law rule known as the rule in *Searle v Wallbank* and  
4 all other common law rules relating exclusively to liability for  
5 damages for tort for damage caused by an animal (including any  
6 rule relating to the nature or propensity of an animal, or a class of  
7 animals, or knowledge of that nature or propensity) are abolished.

8 **146 Partial abolition of rule in Rylands v Fletcher (CL(A)A s 7)**

9 The common law rule known as the rule in *Rylands v Fletcher* is  
10 abolished to the extent to which the rule applies in relation to  
11 damage caused by the escape of animals.

12 **147 Abolition of rule of common employment (LR(MP)A s 21)**

13 An employer is liable in damages for the death of, or injury or  
14 damage to, an employee caused by the wrongful act or omission of  
15 another employee in the same way and in the same cases as if the  
16 employees had not been engaged in common employment.

17 **148 Abolition of husband's liability for wife's torts and**  
18 **premarital obligations (LR(MP)A s 9)**

19 A husband is not, only because of being the husband, liable—

20 (a) in relation to a tort committed by his wife, whether before or  
21 after the marriage, or in relation to a contract entered into, or a  
22 debt or obligation incurred, by his wife before the marriage; or

23 (b) to be sued, or made a party to a legal proceeding brought, in  
24 relation to the tort, contract, debt or obligation.

25 **149 Abolition of action for loss of consortium (LR(MP)A s 32)**

26 If a wife has been injured because of the negligence of a person  
27 other than her husband, the person is not liable to the husband for  
28 any resulting impairment or loss of consortium.

1 **150 Abolition of rule in Cavalier v Pope (LR(MP)A s 29)**

2 A lessor of premises is not exempt from owing a duty of care to  
3 people on the premises only because the lessor is not the occupier of  
4 the premises.

5 **151 Partial abolition of Mocambique rule (LR(MP)A s 34, s 35)**

6 (1) The jurisdiction of a court in any proceeding is not excluded or  
7 limited only because the proceeding relates to land or other  
8 immovable property outside the ACT.

9 (2) Subsection (1) does not authorise a court to adjudicate on title to, or  
10 the right to the possession of, land or other immovable property  
11 outside the ACT.

12 (3) A court is not required to exercise jurisdiction in a proceeding  
13 relating to land or other immovable property outside the ACT if the  
14 court considers that it is an inappropriate forum in relation to the  
15 proceeding.

16 *Note* The *Law Reform (Abolitions and Repeals) Act 1996* abolished the  
17 following:

- 18
- 19 • the estate pur autre vie
  - 20 • the common law misdemeanours of criminal libel, blasphemous  
libel, seditious libel and obscene libel
  - 21 • the right to levy or make distress for rent.

1 **Part 11.5** **Other provisions**

2 **152 Approved forms**

3 (1) The Minister may, in writing, approve forms for this Act.

4 (2) If the Minister approves a form for a particular purpose, the  
5 approved form must be used for that purpose.

6 *Note* For other provisions about forms, see *Legislation Act 2001*, s 255.

7 (3) An approved form is a notifiable instrument.

8 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

9 **153 Regulation-making power**

10 The Executive may make regulations for this Act.

11 *Note* Regulations must be notified, and presented to the Legislative  
12 Assembly, under the *Legislation Act 2001*.

13 **154 Repealed and amended Acts**

14 Schedule 3 repeals or amends the Acts mentioned in it.

## Chapter 12 Transitional provisions

### 155 Application provisions—for certain new measures

- (1) Part 2.1 (Good samaritans) does not apply in relation to an act or omission that happened before the commencement of the part.
- (2) Part 4.1 (General exclusions and limitations about damages) does not apply to a claim arising out of an accident that happened before the commencement of the part.
- (3) Part 10.1 (Maximum costs for certain personal injury damages claims) does not apply to a plaintiff or defendant's legal costs in relation to a claim if—
  - (a) the costs for the claim are covered by an agreement or arrangement about costs between the plaintiff or defendant and his or her lawyer; and
  - (b) the agreement or arrangement was entered into before the commencement of the part.
- (4) This section expires 3 years after it commences.
- (5) Subsections (1) to (3) are declared to be provisions to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

### 156 Application provisions—for certain existing measures

- (1) Part 2.4 (Proceedings against and contributions between wrongdoers) does not apply in relation to a wrong committed before 31 March 1955.
- (2) Part 3.1 (Wrongful act or omission causing death) applies to the death of a person after 12 June 1968, even if the act or omission that caused the person's death happened on or before that date.

- 1 (3) Section 24 (Contributory negligence not defence) does not apply to  
2 a cause of action under part 3.1 (Wrongful act or omission causing  
3 death) that arose before 6 December 1991.
- 4 (4) Part 4.2 (Loss of capacity to perform domestic services) and  
5 section 149 (Abolition of action for loss of consortium) do not apply  
6 in relation to a cause of action that arose before 6 December 1991.
- 7 (5) Section 41 (1) (Apportionment of liability—contributory  
8 negligence) does not apply to a cause of action that arose before  
9 31 March 1955.
- 10 (6) Section 41 (2) (Apportionment of liability—contributory  
11 negligence) does not apply to a cause of action that arose before  
12 6 December 1991.
- 13 (7) Chapter 9 (Misrepresentation) does not apply in relation to a  
14 misrepresentation, or an agreement, made before 30 May 1977.
- 15 (8) Section 142 (Abolition of rule about unity of spouses) does not  
16 apply to a cause of action that arose, or would, apart from the  
17 existence of a marriage, have arisen, before 22 August 1968.
- 18 (9) Section 147 (Abolition of rule of common employment) applies to  
19 death, injury or damage arising from a wrongful act or omission  
20 committed after 30 March 1955, even if the contract of employment  
21 was made on or before that date.
- 22 (10) Section 148 (Abolition of husband's liability for wife's torts and  
23 premarital obligations) does not affect a legal proceeding in relation  
24 to a tort if the proceeding was begun before 31 March 1955.
- 25 (11) This section expires 1 year after it commences.
- 26 (12) Subsections (1) to (10) are declared to be provisions to which the  
27 *Legislation Act 2001*, section 88 (Repeal does not end transitional or  
28 validating effect etc) applies.

- 
- 1 **157 Application of pts 2.4 and 4.3 (LR(MP)A s 13A, s 19)**
- 2 (1) Part 2.4 (Proceedings against and contributions between  
3 wrongdoers) and part 4.3 (Contributory negligence) apply to a  
4 wrong that happened before 5 April 2001 as if the parts had been in  
5 force when the wrong happened.
- 6 (2) However, the *Law Reform (Miscellaneous Provision) Act 1955*,  
7 part 4 (Proceedings against and contributions between tortfeasors)  
8 and part 5 (Contributory negligence), continue to apply, despite the  
9 repeal of those parts, to a wrong about which—
- 10 (a) a court has given judgment or made a decision (including a  
11 judgment or decision about liability only), whether or not an  
12 appeal has been made against the judgment or decision; or
- 13 (b) the parties have entered into an agreement to settle claims  
14 arising from the wrong (including an agreement about liability  
15 only).
- 16 (3) This section expires on 1 January 2003.
- 17 (4) Subsections (1) and (2) are declared to be provisions to which the  
18 *Legislation Act 2001*, section 88 (Repeal does not end transitional or  
19 validating effect etc) applies.
- 20 **158 Application of provisions of Civil Liability (Animals) Act**  
21 **1984 (repealed) (CL(A)A s 9)**
- 22 (1) Section 143 (Abolition of action of cattle-trespass) does not apply to  
23 a case of cattle-trespass if the cause of action accrued before  
24 23 July 1984.
- 25 (2) Section 144 (Abolition of distress damage feasant) does not apply to  
26 the distraint of an animal damage feasant before 23 July 1984.
- 27 (3) The following provisions do not apply in relation to any question of  
28 liability if the acts or omissions giving rise to the question happened  
29 before 23 July 1984:

- 1 (a) section 102 (Evidence of breach of duty for animals);  
2 (b) section 145 (Abolition of rules relating exclusively to liability  
3 for damage by animals);  
4 (c) section 146 (Partial abolition of rule in *Rylands v Fletcher*).  
5 (4) This section expires 1 year after it commences.  
6 (5) Subsections (1) to (3) are declared to be provisions to which the  
7 *Legislation Act 2001*, section 88 (Repeal does not end transitional or  
8 validating effect etc) applies.

9 **159 Application of s 30 and s 31** (LR(MP)A s 23, s 24)

- 10 (1) Section 30 (Personal injury arising from mental or nervous shock)  
11 and section 31 (Extensions of liability under pt 3.2 in certain cases)  
12 do not apply in relation to an injury caused before 31 March 1955.  
13 (2) In deciding a question of liability for personal injury caused before  
14 31 March 1955, no regard must be paid to the fact that section 30  
15 has (or the *Law Reform (Miscellaneous Provisions) Act 1955*,  
16 section 23 had) been enacted or to the provisions of section 30 (or  
17 section 23).  
18 (3) This section expires 1 year after it commences.  
19 (4) Subsections (1) and (2) are declared to be provisions to which the  
20 *Legislation Act 2001*, section 88 (Repeal does not end transitional or  
21 validating effect etc) applies.

22 **160 Transitional regulations**

- 23 (1) The regulations may prescribe savings or transitional matters  
24 necessary or convenient to be prescribed because of the enactment  
25 of this Act.  
26 (2) Regulations made for this section must not be taken to be  
27 inconsistent with this Act (or any Act amended by this Act) so far as  
28 they can operate concurrently with this Act (or that Act).



1 (3) This section is additional to, and does not limit, section 161.

2 (4) This section expires 1 year after it commences.

3 **161 Modification of ch 12's operation**

4 (1) The regulations may modify this part to make provision in relation  
5 to any matter that, in the Executive's opinion, is not, or is not  
6 adequately, dealt with in this chapter.

7 (2) This section expires 1 year after it commences.

## Schedule 1 Traveller accommodation providers notice

(see s 86)

### Notice about loss of guest's property

The *Civil Law (Wrongs) Act 2002*, part 7.1 changes the common law about innkeeper's liability.

Under the Act, an *accommodation provider* may be liable to make good any *loss* of a *guest's property* in certain circumstances even though the loss is not caused by the *fault* of the accommodation provider, or the provider's *agent*.

The strict liability of the accommodation provider under the Act—

- applies only to a guest of the accommodation provider on a day when an *accommodation unit* is *provided* for the use of the guest
- is limited to the *limitation amount* for each accommodation unit provided for the use of the guest on the day, unless the guest's property was placed in *safe custody facilities*
- does not cover *motor vehicles* and things owned by the guest left in or on motor vehicles.

*Note* Words appearing in bold italics have a special meaning under the *Civil Law (Wrongs) Act 2002*.

---

## Schedule 2      Common carriers—goods subject to special limited liability

(see s 92 (1))

<b>column 1 item</b>	<b>column 2 goods</b>
1	gold or silver coin of Australia or a foreign country
2	gold or silver in a manufactured or unmanufactured state
3	precious stones, jewellery, watches, clocks or time-pieces of any description
4	trinkets, gold or silver ores, bills, notes of any bank, orders, notes or securities for the payment of money
5	Australian stamps or a foreign country's stamps
6	maps, writings or title-deeds
7	paintings, engravings or pictures
8	gold or silver plate or plated articles, glass or china
9	silk in a manufactured or unmanufactured state (including silk ornamented with other materials), furs or lace

<b>Schedule 3</b>	Repeals and amendments
<b>Part 3.1</b>	Repeals
<b>Division 3.2.1</b>	Administration and Probate Act 1929

Amendment [3.1]

---

## Schedule 3 Repeals and amendments

(see s 154)

### Part 3.1 Repeals

#### [3.1] Repeal of Acts

- (1) The following Acts are repealed:
- *Actions for Trespass Act 1623* 21 Jas 1 c 16
  - *Civil Liability (Animals) Act 1984* No 36
  - *Common Carriers Act 1902* No 48
  - *Compensation (Fatal Injuries) Act 1968* No 9
  - *Law Reform (Misrepresentation) Act 1977* No 13
  - *Married Persons (Torts) Act 1968* No 15.
- (2) Each Act mentioned in subclause (1) is declared to be a law to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

### Part 3.2 Amendments

#### Division 3.2.1 Administration and Probate Act 1929

#### [3.2] Section 121 (1)

*omit*

, whether the trial or proceeding be with or without a jury

## **Division 3.2.2 Building Act 1972**

### **[3.3] Section 97**

*omit*

*Defamation Act 2001*

*insert*

*Defamation (Criminal Proceedings) Act 2001*

## **Division 3.2.3 Bushfire Act 1936**

### **[3.4] Section 5P**

*substitute*

#### **5P Protection from liability**

- (1) A person does not incur civil liability for damage, death or personal injury caused in the honest exercise, or purported exercise, of a function under this Act.
- (2) A liability that would, apart from subsection (1), attach to a person attaches instead to the Territory.

### **[3.5] New section 15A**

*insert*

#### **15A Compensation**

- (1) A person who suffers loss because of the exercise, or purported exercise, of a function under this Act in relation to a fire is entitled to be paid reasonable compensation by the Territory for the loss.
- (2) Compensation is not payable to a person for a loss to the extent—
  - (a) of any amount recovered or recoverable by the person under a policy of insurance; or
  - (b) that the conduct of the person contributed to the loss.

<b>Schedule 3</b>	Repeals and amendments
<b>Part 3.2</b>	Amendments
<b>Division 3.2.4</b>	Defamation Act 2001

Amendment [3.6]

---

- (3) Compensation is not payable to a person for a loss if the loss would have arisen despite the exercise, or purported exercise, of the function under this Act.

## **Division 3.2.4      Defamation Act 2001**

### **[3.6] Long title**

*substitute*

An Act about criminal proceedings for defamation, and for other purposes

### **[3.7] Section 1**

*substitute*

#### **1 Name of Act**

This Act is the *Defamation (Criminal Proceedings) Act 2001*.

### **[3.8] Section 3**

*substitute*

#### **3 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### **[3.9] Parts 2 and 3**

*omit*

---

**[3.10] Section 31 (3)**

*omit*

**[3.11] Sections 41 and 42**

*omit*

**[3.12] Dictionary**

*substitute*

## Dictionary

(see s 3)

***Australian jurisdiction*** means the Territory, the Commonwealth or a State or another Territory.

***Australian record or document*** means a record or document kept—

- (a) by an Australian jurisdiction; or
- (b) by a statutory authority of an Australian jurisdiction; or
- (c) by a court of an Australian jurisdiction; or
- (d) under legislation of an Australian jurisdiction.

***country*** includes a federation, and a state, territory, province or other part of a federation.

***entity*** includes a parliamentary body.

***judgment*** includes a decree, order or sentence.

***law reform body*** means a body (however described and whether or not permanent or full-time) whose functions in relation to the law of a country are similar to those of the Australian Law Reform Commission in relation to the law of the Commonwealth.

***learned society*** means a body, wherever formed—

- (a) the objects of which include the advancement of any art, science or religion or the advancement of learning in any field (the *principal objects*); and
- (b) authorised by its constitution—
  - (i) to exercise control over, or adjudicate on, matters connected with its principal objects; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

*ombudsman* includes an officer (however described) whose duties are similar to those of the Territory ombudsman.

*parliamentary body* means any of the following:

- (a) a parliament or legislature of any country;
- (b) a house of a parliament or legislature of any country;
- (c) a committee of a parliament or legislature of any country;
- (d) a committee of a house or houses of a parliament or legislature of any country.

*proceeding of public concern* means any of the following:

- (a) a proceeding in public of a parliamentary body;
- (b) a proceeding in public of an international organisation of any countries or of governments of any countries;
- (c) a proceeding in public of an international conference at which governments of any countries are represented;
- (d) a proceeding in public of—
  - (i) the International Court of Justice, or any other judicial or arbitral tribunal, for the decision of any matter in dispute between nations; or
  - (ii) any other international judicial or arbitral tribunal;



- (e) a proceeding in public of—
  - (i) a court of any country; or
  - (ii) an arbitral tribunal;
- (f) a proceeding in public of an inquiry held under the law of any country or under the authority of the government of any country;
- (g) a proceeding of a learned society, or of a committee or governing body of the society, under its principal objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
  - (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the society;
- (h) a proceeding of a sport or recreation association, or of a committee or governing body of the association, under its major objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
  - (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the association;
- (i) a proceeding of a trade association, or of a committee or governing body of the association, under its relevant objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
  - (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the association;
- (j) a proceeding of a public meeting (with or without restriction on the people attending) held anywhere in Australia if the

proceeding relates to a matter of public interest, including the advocacy or candidature of a person for public office;

- (k) a proceeding of an ombudsman of any country if the proceeding relates to a report of the ombudsman;
- (l) a proceeding in public of a law reform body of any country, or a proceeding in public at an inquiry conducted by a law reform body of any country.

**publication**, of matter, includes publication in a way that the matter will become accessible or will be broadcast or sent to other people through a computer network.

**public document** means any of the following:

- (a) a report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a parliamentary body published under the authority of the body;
- (b) a judgment of a court of any country in a civil proceeding, or a record of the court relating to the judgment or to its enforcement or satisfaction;
- (c) a report, or other document, that under the law of any country—
  - (i) is authorised to be published; or
  - (ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body;
- (d) a document issued by the government or a local government of a country, or by an officer, employee or agency of the country or local government, for the information of the public;
- (e) an Australian record or document that is open to inspection by the public;
- (f) a report of a tribunal about its decision and the reasons for its decision.

---

***sport or recreation association*** means a body, wherever formed—

- (a) the objects of which include the promotion of any game, sport, or pastime to the playing of which or exercise of which the public is admitted as spectators or otherwise and the promotion or protection of the interests of people connected with the game, sport, or pastime (the ***major objects***); and
- (b) authorised by its constitution—
  - (i) to exercise control over, or adjudicate on, matters connected with the game, sport, or pastime; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

***trade association*** means a body, wherever formed—

- (a) the objects of which include the promotion of any calling, that is to say, a trade, business, industry or profession and the promotion or protection of the interests of people engaged in any calling (the ***relevant objects***); and
- (b) authorised by its constitution—
  - (i) to exercise control over, or adjudicate on, matters connected with a calling or the conduct of people engaged in the calling; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

***tribunal*** means a tribunal of any country.

***victim***, for division 4.1 (Defamatory libel)—see section 28.

## **Division 3.2.5      Juries Act 1967**

### **[3.13] Section 6, definition of *civil trial***

*omit*

**[3.14] Section 7**

*substitute*

**7 Number of jurors**

At a criminal trial, a jury must consist of 12 jurors.

**[3.15] Section 8 (2)**

*omit*

, at a civil trial or at a criminal trial,

**[3.16] Section 8 (3)**

*omit*

in the case of a criminal trial or to 3 in the case of a civil trial

**[3.17] Section 8 (5)**

*omit*

**[3.18] Section 18A (2)**

*omit*

a civil trial or a criminal

*substitute*

a

**[3.19] Section 29 (1)**

*omit*

a criminal trial or a civil trial

*substitute*

a trial

**[3.20] Section 29 (2)**

*omit*

criminal

**[3.21] Section 29 (3)**

*omit*

**[3.22] Sections 32, 36 and 39**

*omit*

**[3.23] Section 40**

*omit*

or 39

**[3.24] Section 47 (1)**

*omit*

or a civil trial

**[3.25] Section 47 (3)**

*omit*

**Division 3.2.6 Land Titles Act 1925**

**[3.26] Section 153 (2)**

*substitute*

- (2) If the court finds for the plaintiff or the plaintiff's title is admitted, the court must assess the value of the claimed improvements, and must also separately assess the value that the land would have had if the improvements had not been made.

**Schedule 3** Repeals and amendments  
**Part 3.2** Amendments  
**Division 3.2.7** Law Reform (Miscellaneous Provisions) Act 1955

Amendment [3.27]

---

## **Division 3.2.7 Law Reform (Miscellaneous Provisions) Act 1955**

### **[3.27] Parts 2–11 and divisions 12.9 and 12.10**

*omit*

## **Division 3.2.8 Legislation Act 2001**

### **[3.28] Schedule 1, part 1.1, items 41 and 42**

*omit*

### **[3.29] Schedule 1, part 1.1**

*renumber items when Act next republished under the Legislation Act 2001*

## **Division 3.2.9 Limitation Act 1985**

### **[3.30] Section 8, definition of *personal representative***

*substitute*

*personal representative*—see the *Civil Law (Wrongs) Act 2002*, dictionary.

### **[3.31] Section 16**

*omit*

*Compensation (Fatal Injuries) Act 1968*

*substitute*

*Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death)

---

**[3.32] Section 21**

*omit*

*Law Reform (Miscellaneous Provisions) Act 1955*, section 11 (4)

*substitute*

*Civil Law (Wrongs) Act 2002*, section 18 (Right of contribution).

**[3.33] Section 36 (5)**

*substitute*

- (5) This section does not apply in relation to a cause of action to which the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death) applies.

**Division 3.2.10 Public Health Act 1997**

**[3.34] Section 122 (4)**

*substitute*

- (4) In this section:

***eligible person***, in relation to loss or damage mentioned in subsection (1), means—

- (a) the person who suffered the loss or damage; or
- (b) if the damage suffered by a person mentioned in paragraph (a) results in the person's death—a member of the dead person's family who has suffered loss or damage because of the death.

***member***, of a dead person's family—see the *Civil Law (Wrongs) Act 2002*, section 20.

## Division 3.2.11      Road Transport (General) Act 1999

### [3.35] Section 170 (1) (a) (i) and (ii)

*substitute*

- (i) liability arising under a cause of action that survives against the estate because of the *Civil Law (Wrongs) Act 2002*, section 12 (which is about the survival of certain vested or existing causes of action); and
- (ii) liability arising because of the *Civil Law (Wrongs) Act 2002*, section 14 (which is about the survival of certain causes of action if the person liable dies before or at the same time as the damage); and

### [3.36] Section 196 (4) (a)

*omit*

*Law Reform (Miscellaneous Provisions) Act 1955*, part 2

*substitute*

*Civil Law (Wrongs) Act 2002*, part 2.3 (Survival of actions on death)

### [3.37] Section 196 (4) (b) (ii) (C)

*omit*

*Law Reform (Miscellaneous Provisions) Act 1955*, part 4

*substitute*

*Civil Law (Wrongs) Act 2002*, part 2.4 (Proceedings against and contributions between wrongdoers)

### [3.38] Section 202

*omit*



## **Division 3.2.12      Supreme Court Act 1933**

### **[3.39] Section 22**

*substitute*

#### **22      No trial by jury in civil proceedings**

In every suit in the court, the trial must be by the court without a jury.

### **[3.40] Section 37O (1) (d)**

*omit*

### **[3.41] Section 37O (1)**

*renumber paragraphs when Act next republished under the Legislation Act 2001*

## 1 Dictionary

2 (see s 3)

3 *Note 1* The *Legislation Act 2001* contains definitions and other provisions  
4 relevant to this Act.

5 *Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following  
6 terms:

- 7 • doctor
- 8 • entity
- 9 • foreign country
- 10 • indictable offence (see s 190 (1))
- 11 • lawyer
- 12 • Minister (see s 162)
- 13 • proceeding
- 14 • property
- 15 • (the) Territory

16 ***accident***, for part 4.1 (General exclusions and limitations about  
17 damages)—see section 32.

18 ***accommodation provider***—see section 78.

19 ***accommodation unit***—see section 76.

20 ***action***, for chapter 5 (Defamation)—see section 47.

21 ***agent***, of an accommodation provider—see section 76.

22 ***aggrieved person*** for part 5.2 (Resolution of disputes without  
23 litigation—defamation)—see section 48.

24 ***amends agreement***, for part 5.2 (Resolution of disputes without  
25 litigation—defamation)—see section 51 (1).

26 ***animal***, for division 7.2.4 (Liability of common carriers for certain  
27 animals)—see section 96.

- 1           **child**—
- 2           (a) for part 3.1 (Wrongful act or omission causing death)—see
- 3           section 20; and
- 4           (b) for part 3.2 (Injury arising from mental or nervous shock)—see
- 5           section 29.
- 6           **claim**, for part 4.1 (General exclusions and limitations about
- 7           damages)—see section 32.
- 8           **common carrier**—see section 89.
- 9           **community organisation**—see section 6.
- 10          **community work**—see section 7.
- 11          **costs**, for part 10.1 (Maximum costs for certain personal injury
- 12          damages claims)—see section 113.
- 13          **country**, for chapter 5 (Defamation)—see section 47.
- 14          **court**—
- 15          (a) for part 2.4 (Proceedings against and contributions between
- 16          wrongdoers)—see section 16; and
- 17          (b) for part 4.1 (General exclusions and limitations about
- 18          damages)—see section 32.
- 19          (c) for part 4.3 (Contributory negligence)—see section 40; and
- 20          (d) for chapter 5 (Defamation)—see section 47; and
- 21          (e) for chapter 9 (Misrepresentation)—see section 105; and
- 22          (f) for part 10.1 (Maximum costs for certain personal injury
- 23          damages claims)—see section 113; and
- 24          (g) for part 10.2 (Costs in damages claims if no reasonable
- 25          prospects of success)—see section 119.

- 1           **damage**—
- 2           (a) for part 2.4 (Proceedings against and contributions between
- 3           wrongdoers)—see section 16; and
- 4           (b) for part 4.3 (Contributory negligence)—see section 40.
- 5           **defamation**—see section 47.
- 6           **default value**, for division 7.2.4 (Liability of common carriers for
- 7           certain animals)—see section 96.
- 8           **family member**, of a person, for part 3.2 (Injury arising from mental
- 9           or nervous shock)—see section 29.
- 10          **fault**, for part 7.1 (Traveller accommodation providers
- 11          liability)—see section 76.
- 12          **funeral expenses** includes costs related to any of the following:
- 13          (a) the publication of death and funeral notices;
- 14          (b) the services of an undertaker, including the supply of vehicles;
- 15          (c) wreaths or floral tributes;
- 16          (d) a funeral service;
- 17          (e) a service at the burial or cremation site;
- 18          (f) burial or cremation;
- 19          (g) a headstone, plaque, tablet or other memorial.
- 20          **guest**—see section 80.
- 21          **innkeeper's liability**—see section 79.
- 22          **insured**, for part 11.3 (Attachment of insurance money)—see
- 23          section 137 (1).
- 24          **insurer**, for part 11.2 (General reporting requirements of
- 25          insurers)—see section 134.
- 26          **intoxicated**—see section 32.

- 1        **legal services** means legal services provided by a lawyer or the  
2        lawyer’s agent or employee.
- 3        **limitation amount**, for part 7.1 (Traveller accommodation providers  
4        liability)—see section 76.
- 5        **loss**, of property, for part 7.1 (Traveller accommodation providers  
6        liability)—see section 76.
- 7        **matter in question**, for part 5.2 (Resolution of disputes without  
8        litigation—defamation)—see section 48.
- 9        **member**, of a dead person’s family, for part 3.1 (Wrongful act or  
10        omission causing death)—see section 20.
- 11       **motor accident**—see section 32.
- 12       **motor vehicle**—
- 13       (a) for part 4.1 (General exclusions and limitations about  
14       damages)—see section 32; and
- 15       (b) for part 7.1 (Traveller accommodation providers liability)—see  
16       section 76.
- 17       **neutral evaluation**—see section 126.
- 18       **neutral evaluation session**—see section 126.
- 19       **non-fraudulent misrepresentation**, for chapter 9  
20       (Misrepresentation)—see section 105.
- 21       **offer to make amends**, for chapter 5 (Defamation)—see section 47.
- 22       **parent**—
- 23       (a) for part 3.1 (Wrongful act or omission causing death)—see  
24       section 20; and
- 25       (b) for part 3.2 (Injury arising from mental or nervous shock)—  
26       see section 29.
- 27       **parliamentary body**—see section 47.

- 1        ***personal injury damages***, for part 10.1 (Maximum costs for certain  
2        personal injury damages claims)—see section 113.
- 3        ***personal injury***, for part 4.1 (General exclusions and limitations  
4        about damages)—see section 32.
- 5        ***personal representative***, of a dead person, means the person to  
6        whom any grant of probate of the will or administration of the estate  
7        of the dead person has been made in the ACT, a State or another  
8        Territory, and includes an executor by representation or the public  
9        trustee.
- 10       ***premises*** includes any land or building, any fixed or moveable  
11       structure erected on any land, and any vehicle, vessel or aircraft.
- 12       ***property***, of a guest—see section 81.
- 13       ***provable*** facts, for part 10.2 (Costs in damages claims if no  
14       reasonable prospects of success)—see section 119.
- 15       ***provide*** traveller accommodation—see section 76.
- 16       ***published matter***, for part 5.3 (Rules governing litigation of civil  
17       claims—defamation)—see section 56.
- 18       ***publisher***, for part 5.2 (Resolution of disputes without  
19       litigation—defamation)—see section 48.
- 20       ***qualified offer***, for part 5.2 (Resolution of disputes without  
21       litigation—defamation)—see section 49 (2).
- 22       ***reasonable prospects of success***, for part 10.2 (Costs in damages  
23       claims if no reasonable prospects of success)—see section 119.
- 24       ***recreational drug*** means a drug consumed voluntarily for  
25       non-medicinal purposes, and includes alcohol.
- 26       ***safe custody facilities***, for part 7.1 (Traveller accommodation  
27       providers liability)—see section 85 (1).
- 28       ***schedule 2 packaged goods***, for part 7.2 (Common carriers)—see  
29       section 92 (1) (Liability of carriers for certain goods worth more  
30       than \$20).

- 
- 1        ***transport***, for part 7.2 (Common carriers)—see section 89.
- 2        ***traveller accommodation***—see section 77.
- 3        ***tribunal***, for chapter 5 (Defamation)—see section 47.
- 4        ***voluntary basis***—see section 6.
- 5        ***volunteer***—see section 6.
- 6        ***wrong***—
- 7            (a) for part 2.4 (Proceedings against and contributions between
- 8            wrongdoers)—see section 16; and
- 9            (b) for part 4.3 (Contributory negligence)—see section 40.
- 

## Endnotes

### Republications of amended laws

- 1        For the latest republications of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### Penalty units

- 2        The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.