

Queensland



# LAW REFORM ACT 1995

**Reprinted as in force on 16 December 1997  
(includes amendments up to Act No. 82 of 1997)**

**Reprint No. 1B**

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 16 December 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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**LAW REFORM ACT 1995**

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# LAW REFORM ACT 1995

[as amended by all amendments that commenced on or before 16 December 1997]

**An Act to abolish the rule of common employment, to consolidate provisions reforming the law and to make provision for other reforms, and for other purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Law Reform Act 1995*.

### Act is, in part, a consolidation

2.(1) This Act, as in force at the commencement of this section, is, in part, a consolidation of provisions of the *Law Reform (Abolition of the Rule of Common Employment) Act 1951* (the “**existing provisions**”) and provisions relocated from the following Acts (the “**relocated provisions**”)—

- *Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952*
- *Law Reform (Husband and Wife) Act 1968*
- *Voluntary Aid in Emergency Act 1973*.

(2) The Act is also a consolidation of provisions of the law about the age of majority and the legal capacity of spouses.

(3) To remove any doubt, it is declared that the relocated provisions were not re-enacted by the *Statute Law Revision Act (No. 2) 1995*, but merely moved (without re-enactment) from the Acts in which they were enacted to this Act.

(4) Without limiting subsections (1) and (3) and to further remove any doubt, it is also declared that the relocation to this Act of the relocated provisions did not impliedly repeal or amend, or otherwise affect the operation of, the existing provisions, the relocated provisions or the provisions of any other law and, in particular, did not affect the meaning or effect that the existing or relocated provisions, or the provisions of the other law, had because of the respective times when they were enacted.

(5) In addition, it is declared that the relocation did not—

- (a) affect any jurisdiction or power of a court or judge; or
- (b) affect any principle or rule of law or equity; or
- (c) affect any right, privilege or liability; or
- (d) revive anything not existing or in force.

## **PART 2—ABOLITION OF RULE OF COMMON EMPLOYMENT**

### **Defence of common employment abolished**

**3.(1)** It shall not be a defence to an employer who is sued in respect of any injury or damage caused by the wrongful act, neglect, or default of a person employed by him or her, that that person was at the time the injury or damage was caused in common employment with the person suffering that injury or damage.

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this section), shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the wrongful act, neglect, or default of any persons in common employment with him or her.

**Application to Crown**

4. This part binds the Crown and instrumentalities of the Crown.

**PART 3—TORTFEASORS CONTRIBUTION AND CONTRIBUTORY NEGLIGENCE***Division 1—Interpretation***Definitions for pt 3**

5. In this part—

“**court**” means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined.

“**damage**” includes loss of life and personal injury.

“**dependant**” means any person for whose benefit an action could be brought under the *Supreme Court Act 1995*, section 17.

“**fault**” means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from this part, give rise to the defence of contributory negligence.

*Division 2—Proceedings against, and contribution between, tortfeasors***Proceedings against, and contribution between, joint and several tortfeasors**

6. Where damage is suffered by any person as a result of a tort (whether a crime or not)—

- (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;

- (b) if more than 1 action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the spouse, parent, or child of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise)—the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;
- (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by the person in respect of the liability in respect of which the contribution is sought.

### **Amount of contribution and power of the court**

7. In any proceedings for contribution under this division the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

### **Additional definitions for div 2**

8. In this division—

“child” see *Supreme Court Act 1995* (the “1995 Act”), part 4.<sup>1</sup>

“judgment first given” means—

- (a) for a judgment reversed on appeal—the first judgment given that

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<sup>1</sup> Part 4 (Provisions from Common Law Practice Act 1867)

is not later reversed on appeal; or

- (b) for a judgment varied on appeal—the judgment as varied.

“parent” see the 1995 Act, part 4.

“spouse” see the 1995 Act, part 4.

### **Application of division**

**9.(1)** This division does not—

- (a) apply to a tort committed before 12 January 1953<sup>2</sup>; or
- (b) affect a criminal prosecution against a person; or
- (c) render enforceable an agreement for indemnity that would not otherwise have been enforceable.

**(2)** However, subsection (1)(c) does not apply to a claim for contribution or any liability arising from that claim if—

- (a) the *Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952*, repealed section 7, would have applied to the claim apart from its repeal; and
- (b) the act or omission giving rise to the claim happened before 1 June 1968.<sup>3</sup>

### ***Division 3—Contributory negligence***

#### **Apportionment of liability in case of contributory negligence**

**10.(1)** Where any person suffers damage as the result partly of the person’s own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable

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<sup>2</sup> This is the commencement date of the *Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952*.

<sup>3</sup> This is the commencement date of the *Law Reform (Husband and Wife) Act 1968*.

having regard to the claimant's share in the responsibility for the damage.

(2) However—

- (a) subsection (1) shall not operate to defeat any defence arising under a contract;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim—the amount of damages recoverable by the claimant by virtue of subsection (1) shall not exceed the maximum limit so applicable.

(3) Where damages are recoverable by any person by virtue of subsection (1) subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(4) Division 2 shall apply in any case where 2 or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person.

(5) Where any person dies as the result partly of his or her own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the *Common Law Practice Act 1867*, section 15D the damages recoverable would be reduced under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under the *Supreme Court Act 1995*, section 17 shall be reduced to a proportionate extent.

(6) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person or the person's personal representative by pleading the *Limitation of Actions Act 1974* or another Act limiting the time within which proceedings may be taken, the person shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(7) Where any case to which subsection (1) applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

**Application of division**

**11.** This division does not apply to a case if the acts or omissions giving rise to the claim happened before 12 January 1953.<sup>4</sup>

**PART 4—CIVIL REMEDIES BETWEEN SPOUSES****Actions in tort between husband and wife**

**12.(1)** Subject to the provisions of this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married.

**(2)** Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage, the court may stay the action if it appears that no substantial benefit would accrue to either party from the continuation of the proceedings.

**(3)** In subsection (1)—

**“parties to a marriage”** includes reference to persons who were parties to a marriage that has been annulled or dissolved.

**Wife’s remedy for loss or impairment of consortium**

**13.(1)** Where a person causes injury to another by wrongful act, neglect or default, whether or not the injury results in death, the person shall be liable in damages to the wife of the injured person for loss or injury suffered by her as a result of the loss or impairment of the consortium of husband and wife.

**(2)** The damages shall be assessed in the same manner as upon a claim by a husband for damages in tort in respect of loss or impairment of consortium.

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<sup>4</sup> This is the commencement date of the *Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952*.

**Application of part**

**14.** This part shall not be construed to confer a right of action in respect of a wrongful act, neglect or default that occurred—

- (a) before 1 June 1968, where the application of section 12 is in question;
- (b) before 1 January 1985, where the application of section 13 is in question.

**PART 5—VOLUNTARY AID IN EMERGENCY****Definitions for pt 5**

**15.** In this part—

**“injured person”** includes a person suffering or apparently suffering from an illness.

**“medical practitioner”** means a person registered as a medical practitioner under the *Medical Act 1939* or a corresponding law of another State or of a Territory.

**“nurse”** means a person registered as a nurse under the *Nursing Act 1992* or a corresponding law of another State or a Territory.

**Protection of medical practitioners and nurses and other prescribed persons**

**16.** Liability at law shall not attach to a medical practitioner, nurse or other person prescribed under a regulation in respect of an act done or omitted in the course of rendering medical care, aid or assistance to an injured person in circumstances of emergency—

- (a) at or near the scene of the incident or other occurrence constituting the emergency;
- (b) while the injured person is being transported from the scene of the incident or other occurrence constituting the emergency to a hospital or other place at which adequate medical care is available;

if—

- (c) the act is done or omitted in good faith and without gross negligence; and
- (d) the services are performed without fee or reward or expectation of fee or reward.

## **PART 6—AGE OF MAJORITY**

### **What is age of majority**

17. The age of majority is 18 years.

## **PART 7—LEGAL CAPACITY OF SPOUSES**

### **Spousal capacity**

18.(1) A married person has a legal personality that is independent, separate and distinct from the legal personality of the person's spouse.

(2) A married person has the same legal capacity that the person would have if the person were unmarried.

## **PART 8—ATTACHMENT OF WAGES**

### **Wages of public service employees may be attached**

18A.(1) A court may, in a proceeding, order the attachment or charging of the salary or wages of a public service employee to satisfy a debt, liability, action or other amount ordered by the court to be paid.

- (2) Also, the registrar of a court may order the attachment or charging of

the salary or wages of a public service employee to satisfy a debt, liability, action or other amount ordered by the court to be paid.

(3) This section has effect despite any other Act or rule of law to the contrary.

## **PART 9—MISCELLANEOUS**

### **Regulation making power**

19. The Governor in Council may make regulations under this Act.

### **References to certain Acts and provisions**

20.(1) In an Act or document, a reference to any of the following Acts may, if the context permits, be taken to be a reference to this Act, and a reference (whether express or implied) to a provision of any of the following Acts that was located to this Act may, if the context permits, be taken to be a reference to the corresponding provision of this Act—

- *Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952*
- *Law Reform (Husband and Wife) Act 1968*
- *Voluntary Aid in Emergency Act 1973.*

(2) In an Act or document, a reference to the *Law Reform (Abolition of the Rule of Common Employment) Act 1951* is a reference to this Act.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 16 December 1997. Future amendments of the Law Reform Act 1995 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

**3 Law Reform Act 1995—historical context**

The Law Reform Act 1995 was not enacted in 1995. It is a consolidation (see s 2) of provisions of the Law Reform (Abolition of the Rule of Common Employment) Act 1951 and provisions relocated from the following Acts—

- Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952
- Law Reform (Husband and Wife) Act 1968
- Voluntary Aid in Emergency Act 1973.

## 4 Key

### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 5 Table of earlier reprints

### TABLE OF EARLIER REPRINTS BEFORE CONSOLIDATION

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

#### **Law Reform (Abolition of the Rule of Common Employment) Act 1951**

Reprint No.	Amendments included	Reprint date
1	none	22 May 1995

#### **Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952**

Reprint No.	Amendments included	Reprint date
1	to Act No. 85 of 1994	9 December 1994

#### **Voluntary Aid in Emergency Act 1973**

Reprint No.	Amendments included	Reprint date
1	none	16 December 1994

## TABLE OF EARLIER REPRINTS AFTER CONSOLIDATION

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

**Law Reform Act 1995**

Reprint No.	Amendments included	Reprint date
1	to Act No. 58 of 1995	8 December 1995
1A	to Act No. 79 of 1996	16 January 1997

**6 Tables in earlier reprints**

## TABLES IN EARLIER REPRINTS BEFORE CONSOLIDATION

**Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1951**

Name of table	Reprint No.
Changed citations and remade laws	1
Obsolete and redundant provisions	1
Renumbered provisions	1

**Voluntary Aid in Emergency Act 1973**

Name of table	Reprint No.
Changed citations and remade laws	1
Obsolete and redundant provisions	1

## TABLES IN EARLIER REPRINTS AFTER CONSOLIDATION

**Law Reform Act 1995**

Name of table	Reprint No.
Changed citations and remade laws	1
Corrected minor errors	1
Renumbered provisions	1

## **7 List of legislation**

### **Law Reform Act 1995 (prev Law Reform (Abolition of the Rule of Common Employment) Act 1951 15 Geo 6 No. 41)**

**Note**— This Act contains provisions that were relocated to this Act from other Acts (see endnote 3). A list of legislation for each of the relocated Acts appears below.

as amended by—

#### **Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

#### **Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1–3, sch**

date of assent 5 December 1997

commenced on date of assent

### **List of legislation to Law Reform (Abolition of the Rule of Common Employment) Act 1951 15 Geo 6 No. 41—before relocation to Law Reform Act 1995**

#### **Law Reform (Abolition of the Rule of Common Employment) Act 1951 15 Geo 6 No. 41**

date of assent 22 November 1951

commenced on date of assent

as amended by—

#### **Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

### **List of legislation to Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952 1 Eliz 2 No. 42—before relocation to Law Reform Act 1995**

#### **Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952 1 Eliz 2 No. 42**

date of assent 4 December 1952

commenced 12 January 1953 (proc pubd gaz 10 January 1953 p 223)

as amended by—

#### **Law Reform (Husband and Wife) Act 1968 No. 15 s 5 sch**

date of assent 19 April 1968

commenced 1 June 1968 (proc pubd gaz 25 May 1968 p 510)

**Property Law Act 1974 No. 76 s 3(2) sch 6 pt 3**

date of assent 1 November 1974

commenced 1 December 1975 (see s 1(2))

**Common Law Practice and Workers' Compensation Amendment Act 1994 No. 85 ss 1–2, 12 sch**

date of assent 2 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 17 October 1992 (see s 2)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Law Reform (Husband and Wife) Act 1968 No. 15—before relocation to Law Reform Act 1995****Law Reform (Husband and Wife) Act 1968 No. 15**

date of assent 19 April 1968

commenced 1 June 1968 (proc pubd gaz 25 May 1968 p 510)

as amended by—

**Law Reform (Husband and Wife) Act Amendment Act 1989 No. 81**

date of assent 18 September 1989

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Voluntary Aid in Emergency Act 1973 No. 56—before relocation to Law Reform Act 1995****Voluntary Aid in Emergency Act 1973 No. 56**

date of assent 25 October 1973

commenced on date of assent

as amended by—

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Law Reform Act 1995 (prev Law Reform (Abolition of the Rule of Common Employment) Act 1951)—after relocation of Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels Act 1952, Law Reform (Husband and Wife) Act 1968 and Voluntary Aid in Emergency Act 1973**

**Law Reform Act 1995 (prev Law Reform (Abolition of the Rule of Common Employment) Act 1951 15 Geo 6 No. 41)**

as amended by—

**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 20**

date of assent 12 December 1996

pt 1 commenced on date of assent

remaining provisions commenced 28 November 1995 (see s 64(2))

**8 List of annotations****Law Reform Act 1995 (prev Law Reform (Abolition of the Rule of Common Employment) Act 1951 15 Geo 6 No. 41)****Long title** amd 1995 No. 58 s 4 sch 1; 1996 No. 79 s 65**PART 1—PRELIMINARY****pt hdg** ins 1995 No. 58 s 4 sch 1**Short title****s 1** sub 1995 No. 58 s 4 sch 1**Act is, in part, a consolidation****prov hdg** amd 1996 No. 79 s 66(1)**s 2** ins 1995 No. 58 s 4 sch 1

amd 1996 No. 79 s 66(2)

**PART 2—ABOLITION OF RULE OF COMMON EMPLOYMENT****pt hdg** ins 1995 No. 58 s 4 sch 1**Defence of common employment abolished****s 3** amd 1995 No. 58 s 4 sch 1**Application to Crown****s 4** amd 1995 No. 58 s 4 sch 1**PART 3—TORTFEASORS CONTRIBUTION AND CONTRIBUTORY NEGLIGENCE****pt hdg** ins 1995 No. 58 s 4 sch 1**Division 1—Interpretation****div hdg** ins 1995 No. 58 s 4 sch 1**Definitions for pt 3****s 5** (prev 1952 1 Eliz 2 No. 42 s 4)def “**fault**” amd 1995 No. 58 s 4 sch 1

amd 1995 No. 58 s 4 sch 1

reloc 1995 No. 58 s 4 sch 1

**Division 2—Proceedings against, and contribution between, tortfeasors****div hdg** ins 1995 No. 58 s 4 sch 1**Proceedings against, and contribution between, joint and several tortfeasors****s 6** amd 1994 No. 85 s 12 sch**Amount of contribution and power of the court****s 7** (prev 1952 1 Eliz 2 No. 42 s 6)  
amd 1995 No. 58 s 4 sch 1  
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amd 1994 No. 85 s 12 sch  
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amd 1989 No. 81 s 4; 1995 No. 58 s 4 sch 1  
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om R1 (see RA s 37)

## 9 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS  
under the Reprints Act 1992 s 43 as required by the Law Reform Act 1995 s 14

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