



Law Reform Act 1995

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Queensland

Law Reform Act 1995

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Law Reform Act 1995

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

1 Short title

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

2 Act is, in part, a consolidation

- (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 persons whose relationship is husband and wife.
- (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 Application to Crown

This part binds the Crown and instrumentalities of the Crown.

Part 3 Tortfeasors contribution and contributory negligence

Division 1 Preliminary

4A Application of part

This part applies subject to the *Civil Liability Act 2003*.

5 Definitions for pt 3

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 *Civil Proceedings Act 2011*, part 10.

wrong means an act or omission that—

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

Division 2 Proceedings against, and contribution between, tortfeasors

6 Proceedings against, and contribution between, joint and several tortfeasors

Where damage is suffered by any person as a result of a tort (whether a crime or not) the following apply—

- (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 dependants 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.

7 Amount of contribution and power of the court

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.

8 Additional definitions for div 2

In this division—

judgment first given means—

- (a) for a judgment reversed on appeal—the first judgment given that is not later reversed on appeal; or
- (b) for a judgment varied on appeal—the judgment as varied.

9 Application of division

(1) This division does not—

- (a) apply to a tort committed before 12 January 1953; or

Editor's note—

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

- (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*,

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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.

Editor's note—

This is the commencement date of the *Law Reform (Husband and Wife) Act 1968*.

Division 3 Contributory negligence

10 Apportionment of liability in case of contributory negligence

- (1) If a person (the *claimant*) suffers damage partly because of the claimant's failure to take reasonable care (*contributory negligence*) and partly because of the wrong of someone else—
- (a) a claim in relation to the damage is not defeated because of the claimant's contributory negligence; and
- (b) the damages recoverable for the wrong are to be reduced to the extent the court considers just and equitable having regard to the claimant's share in the responsibility for the damage.
- (2) Subsection (1) does not operate to defeat any defence arising under a contract.
- (2A) If a contract or enactment providing for the limitation of liability applies to the claim, the amount of damages recoverable by the claimant because of subsection (1) is not to exceed the maximum limit applying to the claim.
- (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 guilty of contributory negligence.

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- (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 failure to take reasonable care and partly of the wrong of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the *Succession Act 1981*, section 66 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 *Civil Proceedings Act 2011*, part 10 must be reduced to a proportionate extent.

Editor's note—

Civil Proceedings Act 2011, part 10 (Wrongful death proceedings)

- (6) Where, in any case to which subsection (1) applies, one of the persons responsible for the damage 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 guilty of contributory negligence and the extent to which those damages are to be reduced.

11 Application of division

This division does not apply to a case if the acts or omissions giving rise to the claim happened before 12 January 1953.

Editor's note—

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

Part 4

Civil remedies between persons whose relationship is husband and wife

12 Actions in tort between husband and wife

- (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.

13 Spouse's remedy for loss or impairment of consortium

- (1) This section applies if a person causes injury to another by wrongful act, neglect or default, whether or not the injury results in death.
- (2) The person is liable in damages to the injured person's spouse for loss or injury suffered by the spouse because of the loss or impairment of consortium.
- (3) The damages must be assessed in the same way as in a claim by a husband for damages in tort for loss or impairment of consortium.
- (4) A husband can only recover the damages mentioned in this section under either the common law or this section but not both.

14 Application of part

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

Part 5 Voluntary aid in emergency

15 Definitions for pt 5

In this part—

injured person includes a person suffering or apparently suffering from an illness.

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession, other than as a student.

16 Protection of medical practitioners and nurses and other prescribed persons

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; or
- (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

17 What is age of majority

The age of majority is 18 years.

Part 7 Legal capacity of persons whose relationship is husband and wife

18 Capacity

- (1) A married person has a legal personality that is independent, separate and distinct from the legal personality of the person's husband or wife.
- (2) A married person has the same legal capacity that the person would have if the person were unmarried.

Part 8 Attachment of wages

18A Wages of public service employees may be attached

- (1) A court may, in a proceeding, order the attachment or charging of the salary or wages of a public service employee or other employee of the State 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 or other employee of the State 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

19 Regulation-making power

The Governor in Council may make regulations under this Act.

20 References to certain Acts and provisions

- (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.

Part 10 **Transitional provision for Law Reform (Contributory Negligence) Amendment Act 2001**

21 **Amendments about contributory negligence to have retrospective effect**

- (1) The provisions of part 3, divisions 1 and 3 apply to a wrong that happened before the commencement as if the provisions, in their form as amended by the amending Act, had been in force when the wrong happened.
- (2) However, the provisions, as in force before the commencement, continue to apply to a wrong if any of the following apply—
- (a) the wrong relates to a WorkCover damages injury sustained before 1 July 2001 for which final relief has not been granted by a court before the commencement;
 - (b) a proceeding about the wrong—
 - (i) was started before the commencement; and
 - (ii) final relief has not been granted by the court before the commencement;
 - (c) a court has, before the commencement, granted final relief for the wrong;
 - (d) the persons responsible for the damage have, before the commencement, entered into an agreement to settle

claims arising from the wrong, including an agreement about liability only.

- (3) Subsection (2)(a) applies whether or not a proceeding has been started about the wrong.
- (4) For a proceeding for subsection (2)(a) or (b), any rule, regulation or other law that would have been applicable to the proceeding had the amending Act not been enacted continues to apply to the proceeding as if the amending Act had not been enacted.
- (5) In this section—

amending Act means the *Law Reform (Contributory Negligence) Amendment Act 2001*.

commencement means the commencement of this section.

final relief, for a wrong, means a judgment or decision about the wrong, including a judgment or decision about liability only, whether or not an appeal has been made against the judgment or decision.

proceeding means a proceeding before a court.

WorkCover damages injury means an injury within the meaning of the *WorkCover Queensland Act 1996* for which the injured person has an entitlement to damages under that Act.