

Passed by both Houses



New South Wales

Law Reform (Miscellaneous Provisions) Amendment Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Law Reform (Miscellaneous Provisions) Amendment Bill 2000

Act No , 2000

An Act to amend the *Law Reform (Miscellaneous Provisions) Act 1965* to make provision for the application of the common law doctrine of contributory negligence to contractual liability in certain circumstances; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Law Reform (Miscellaneous Provisions) Amendment Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Law Reform (Miscellaneous Provisions) Act 1965 No 32

The *Law Reform (Miscellaneous Provisions) Act 1965* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Law Reform (Miscellaneous Provisions) Act 1965

(Section 3)

[1] Section 1 Name of Act

Omit section 1 (2).

[2] Section 2A

Insert after section 2:

2A Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

[3] Part 3

Omit the Part. Insert instead:

Part 3 Amendment of doctrine of contributory negligence

7 Application of Part to breach of statutory duty

- (1) This Part does not apply to any action for damages founded on a breach of statutory duty imposed on a defendant.
- (2) This Part does not affect the provisions and operation of the *Statutory Duties (Contributory Negligence) Act 1945*.

8 Definitions

In this Part:

claimant—see section 9 (1).

contributory negligence—see section 9 (1).

court, in relation to any claim, means the court by or before which the claim falls to be determined.

damage includes loss of life and personal injury.

wrong means an act or omission that:

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

9 Apportionment of liability in cases of contributory negligence

- (1) If a person (the *claimant*) suffers damage as the result partly of the claimant's failure to take reasonable care (*contributory negligence*) and partly of the wrong of any other person:
 - (a) a claim in respect of the damage is not defeated by reason of the contributory negligence of the claimant, and
 - (b) the damages recoverable in respect of the wrong are to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.
- (2) Subsection (1) does not operate to defeat any defence arising under a contract.
- (3) If 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) is not to exceed the maximum limit so applicable.

10 Workers compensation and contributory negligence

- (1) If any payments made to the claimant by way of compensation take effect under section 63 (5) of the *Workers' Compensation Act 1926* to any extent as a defence to the proceedings by the claimant against his or her employer, those payments are to be reduced to the same extent as the damages recoverable by the claimant are reduced under section 9, and are a defence to the reduced extent only.
- (2) If the claimant is liable to repay compensation to his or her employer under section 64 (1) (a) of the *Workers' Compensation Act 1926* or under section 151Z of the *Workers' Compensation Act 1987*, the amount of compensation so

repayable is to be reduced to the same extent as the damages recoverable by the claimant are reduced under section 9.

- (3) If the cost of any medical or hospital treatment or ambulance service for which the claimant's employer incurs liability under section 10 of the *Workers' Compensation Act 1926* or under Division 3 of Part 3 of the *Workers Compensation Act 1987* remains unpaid at the time the claimant recovers damages:
- (a) the claimant's liability in respect of that cost is, as between the claimant and the claimant's employer, to be reduced to the same extent as the claimant's damages are reduced under section 9, and
 - (b) the claimant's employer, despite the recovery of damages and the provisions of section 151Z of the *Workers Compensation Act 1987*, remains liable to pay to the claimant the balance of that cost under section 10 of the *Workers' Compensation Act 1926* or under Division 3 of Part 3 of the *Workers Compensation Act 1987* (whichever is applicable).

Note. The *Workers' Compensation Act 1926* has been repealed, but the Act is given ongoing effect by the transitional provisions contained in the *Workers Compensation Act 1987*.

11 Total damages to be recorded

If the damages recoverable by a claimant are subject to any reduction under this Part, the court is to find and record the total damages that would have been recoverable had there been no contributory negligence by the claimant.

12 Contribution between joint tortfeasors

Section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* applies in any proceedings where two or more persons are liable for damages in tort or would, if they had all been sued, be so liable by virtue of this Part in respect of the damage suffered by any person.

13 Compensation to relatives

- (1) No action for damages for the benefit of dependants of a deceased person under the *Compensation to Relatives Act 1897* is defeated by the contributory negligence or breach of statutory duty of the deceased person.

- (2) The damages recoverable in such an action are not reduced by reason of the contributory negligence or of the breach of statutory duty of the deceased person.

14 Application of limitations periods

- (1) This section applies to proceedings to which section 9 applies if:
- (a) the claimant suffered damage as the result partly of the wrong of two or more persons, and
 - (b) one of those persons avoids liability to another of those persons (or his or her personal representative) by pleading the *Limitation Act 1969* or any other enactment limiting the time within which proceedings may be taken.
- (2) The person who avoids liability is not entitled to recover damages or contribution from the other person or his or her personal representative by virtue of section 9.

15 Apportionment by judge or jury

- (1) If proceedings to which section 9 applies are tried by a judge sitting without a jury, the judge is to make the apportionment under section 9.
- (2) If proceedings to which section 9 applies are tried by a judge sitting with a jury, the jury is to determine the total damages that would have been recoverable had there been no contributory negligence by the claimant, and the extent to which those damages are to be reduced.

16 Savings and transitional provisions

Schedule 1 has effect.

[4] Schedule

Omit the Schedule. Insert instead:

Schedule 1 Savings and transitional provisions

(Section 16)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Law Reform (Miscellaneous Provisions) Amendment Act 2000

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on the Law Reform (Miscellaneous Provisions) Amendment Act 2000

2 Definitions

In this Part:

the amending Act means the *Law Reform (Miscellaneous Provisions) Amendment Act 2000*.

3 Amendments concerning contributory negligence to have retrospective application

- (1) Subject to subclause (2) and clause 4, the amendments to this Act made by the amending Act are taken to apply to wrongs that occurred before the commencement of those amendments as if those amendments had been in force when the wrong occurred.
- (2) This Act, as in force immediately before the commencement of the amendments made by the amending Act, continues to apply to a wrong about which:
 - (a) a court has, before that commencement, given judgment or made a decision (including a judgment or decision about liability only), whether or not an appeal has been made against that judgment or decision, or
 - (b) the persons responsible for the damage have, before that commencement, entered into an agreement to settle claims arising from the wrong (including an agreement about liability only).

4 Pending court proceedings

- (1) This clause applies to proceedings before a court concerning a wrong that:
 - (a) were instituted before the commencement of the amending Act, and
 - (b) have not been finally determined by the court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if the amending Act had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had the amending Act not been enacted continue to apply to the proceedings as if that Act had not been enacted.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Companion Animals Act 1998 No 87

Section 28 Contributory negligence

Omit “taken to have been suffered as the result partly of the fault of the owner of the dog and partly of the fault of the person suffering the damage” from section 28 (1).

Insert instead “taken to have been suffered as the result partly of a wrong by the owner of the dog and partly of the contributory negligence of the person who suffered the damage”.

2.2 District Court Act 1973 No 9

[1] Section 76 Amount recoverable

Omit “section 10” wherever occurring. Insert instead “Part 3”.

[2] Section 76

Omit “if the successful party had not been at fault” wherever occurring. Insert instead “if there had been no contributory negligence by the successful party”.

2.3 Motor Accidents Act 1988 No 102

Section 75 Contributory negligence—claims under the Compensation to Relatives Act 1897

Omit “Section 10 (4)”. Insert instead “Section 13”.

2.4 Motor Accidents Compensation Act 1999 No 41

Section 139 Contributory negligence—claims under the Compensation to Relatives Act 1897

Omit “Section 10 (4)”. Insert instead “Section 13”.

2.5 Workers Compensation Act 1987 No 70

Section 151N Contributory negligence—generally

Omit “section 10 (4)” from section 151N (5). Insert instead “section 13”.