

# CONCURRENCE COPY

## **EMPLOYEE'S LIABILITY (INDEMNIFICATION OF EMPLOYER) BILL, 1982**

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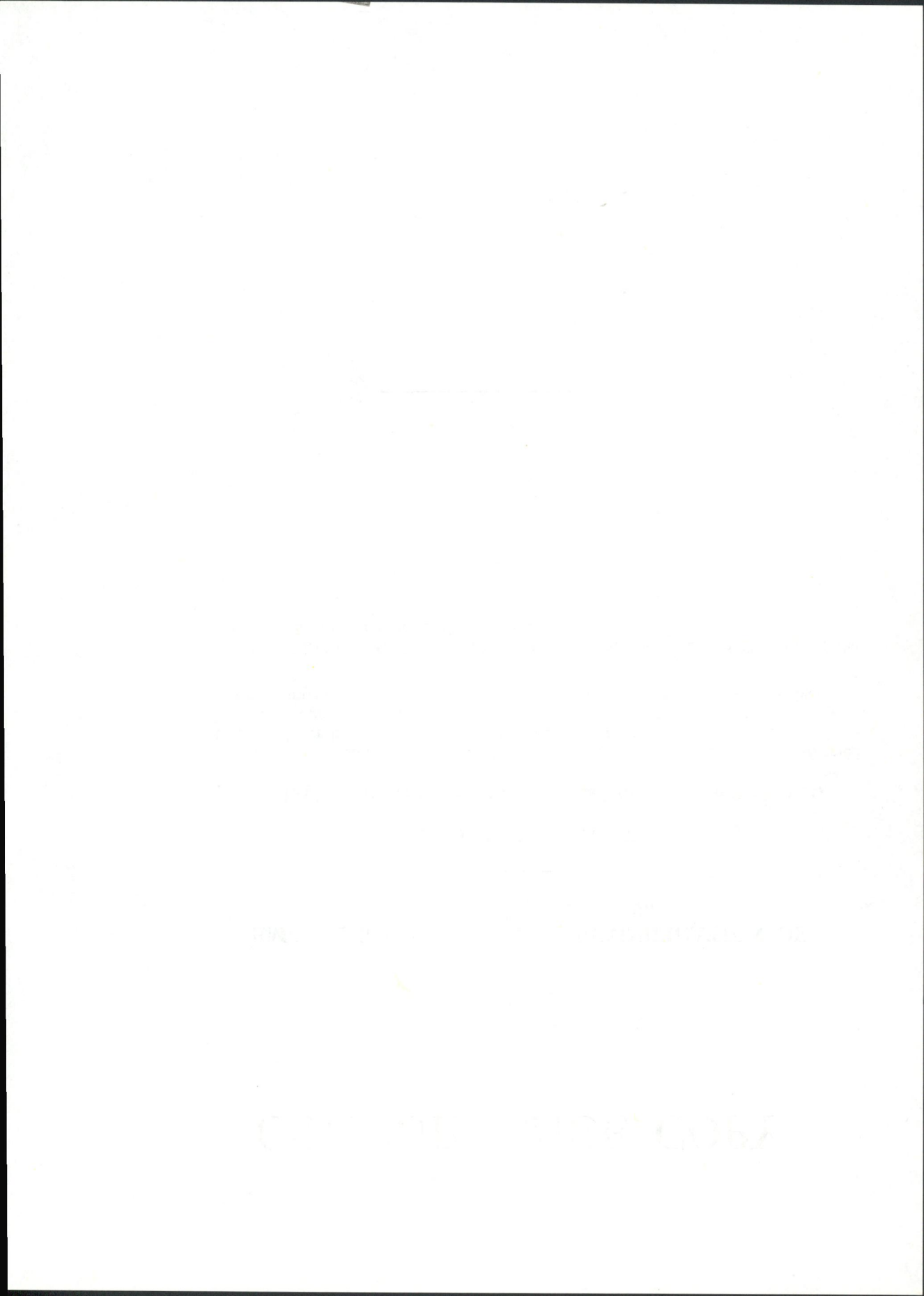
### **EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

In *Lister v. Romford Ice Co.*, (1957) A.C. 555, the House of Lords affirmed that an employer has a contractual right to be indemnified by an employee for whose default the employer has incurred vicarious liability and that this is so not only in the case of intentional and wanton misconduct but also in the case of "inadvertent" negligence.

The object of this Bill is to abolish this rule of law except in the case of the serious and wilful misconduct of the employee.

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**EMPLOYEE'S LIABILITY (INDEMNIFICATION  
OF EMPLOYER) BILL, 1982**

No. , 1982.

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**A BILL FOR**

**An Act with respect to the liability of an employee to indemnify his employer  
in respect of certain actions in tort against the employer.**

[MR WALKER—10 February, 1982.]

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*Employee's Liability (Indemnification of Employer).*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**5 Short title.**

1. This Act may be cited as the "Employee's Liability (Indemnification of Employer) Act, 1982".

**Partial abrogation of right to indemnity.****2. (1) In this section—**

10 "damage" includes loss of life and personal injury;

"fault", in relation to an employee, means negligence, or other act or omission, of the employee (not being negligence, or other act or omission, that is serious and wilful misconduct) as a result of which his employer is, as employer and not otherwise, liable in damages in tort.

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(2) This section has effect notwithstanding any other Act, any law or the provisions of any express or implied contract or agreement entered into before or after the commencement of this Act.

**(3) Where—**

20 (a) a person suffers damage as a result of the fault of an employee;  
and

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*Employee's Liability (Indemnification of Employer).*

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- (b) but for this Act, the employee would be liable to indemnify the employer against whom proceedings for damages may be taken as a result of the fault against any liability of the employer arising out of those proceedings,
- 5 the employee is not so liable, whether the cause of action against the employer arose before, or arises after, the commencement of this Act.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

(20c)

Administration of Justice Act

It is the policy of the State to provide for the prompt and efficient administration of the courts of justice. To this end, it is the intent of the Legislature to amend the provisions of the Constitution and the laws of this State relating to the administration of the courts of justice.

Section 1. The provisions of the Constitution and the laws of this State relating to the administration of the courts of justice are amended to read as follows:

SECTION 1. The provisions of the Constitution and the laws of this State relating to the administration of the courts of justice are amended to read as follows:







**EMPLOYEE'S LIABILITY (INDEMNIFICATION OF  
EMPLOYER) ACT 1982, No. 3**

**New South Wales**



ANNO TRICESIMO PRIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 3, 1982.**

An Act with respect to the liability of an employee to indemnify his employer in respect of certain actions in tort against the employer. [Assented to, 29th March, 1982.]

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*Employee's Liability (Indemnification of Employer).*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "Employee's Liability (Indemnification of Employer) Act, 1982".

**Partial abrogation of right to indemnity.**

2. (1) In this section—

"damage" includes loss of life and personal injury;

"fault", in relation to an employee, means negligence, or other act or omission, of the employee (not being negligence, or other act or omission, that is serious and wilful misconduct) as a result of which his employer is, as employer and not otherwise, liable in damages in tort.

(2) This section has effect notwithstanding any other Act, any law or the provisions of any express or implied contract or agreement entered into before or after the commencement of this Act.

(3) Where—

(a) a person suffers damage as a result of the fault of an employee;  
and

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*Employee's Liability (Indemnification of Employer).*

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(b) but for this Act, the employee would be liable to indemnify the employer against whom proceedings for damages may be taken as a result of the fault against any liability of the employer arising out of those proceedings,

the employee is not so liable, whether the cause of action against the employer arose before, or arises after, the commencement of this Act.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
*Governor.*

*Government House,  
Sydney, 29th March, 1982.*

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982



