

CONCURRENCE COPY

LAW REFORM (VICARIOUS LIABILITY) BILL, 1983

EXPLANATORY NOTE

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

The Law Reform (Miscellaneous Provisions) Amendment Bill, 1983, is cognate with this Bill.

The object of this Bill is to give effect to certain recommendations of the Law Reform Commission of New South Wales in its Report on Proceedings By and Against the Crown, namely—

- (a) that the vicarious liability of masters (including the Crown in right of New South Wales) for the torts of their servants be extended so as to include liability for torts committed by those servants in the performance of functions conferred or imposed by the common law or statute independently of the will of those masters (clause 7); and
- (b) that the Crown be vicariously liable for the torts of persons who are not servants of the Crown but who are in the service of the Crown (as are, for example, members of the police force), being torts committed by those persons in the performance of their functions (clause 8).

The Bill also includes certain provisions of a minor, consequential or ancillary nature.

LAW REFORM (VICARIOUS LIABILITY) BILL, 1983

No. , 1983.

A BILL FOR

An Act with respect to the vicarious liability of masters and of the Crown
in respect of the commission of certain torts.

[MR WALKER—17 *March*, 1983.]

See also Law Reform (Miscellaneous Provisions) Amendment Bill, 1983.

Law Reform (Vicarious Liability).

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 "Law Reform (Vicarious Liability) Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Application of Act.

15 **3.** This Act does not apply to or in respect of a tort committed by a person or arising out of a wrongful act or omission occurring before the day appointed and notified under section 2 (2).

Act to bind Crown.

4. This Act binds the Crown.

20 Interpretation.

5. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Crown" means the Crown in right of New South Wales;

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5 “independent function”, in relation to a servant or a person in the service of the Crown, means a function conferred or imposed upon the servant or person, whether or not as the holder of an office, by the common law or statute independently of the will of his master or the Crown, as the case may require;

“member of the police force” has the same meaning as in the Police Regulation Act, 1899;

“office” includes the office of special constable within the meaning of Part IV of the Police Offences Act, 1901;

10 “person in the service of the Crown” does not include a servant of the Crown.

(2) In this Act, a reference to—

- 15 (a) a function includes a reference to a power, authority and duty; and
(b) the performance of a function includes a reference to the exercise of the function and the failure to perform or exercise the function.

Members of the police force.

6. For the purposes of this Act, a member of the police force shall be deemed to be a person in the service of the Crown and not a servant of the Crown.

20 Vicarious liability of masters.

7. Notwithstanding any law to the contrary, a master is vicariously liable in respect of a tort committed by his servant in the performance or purported performance by the servant of an independent function where the performance or purported performance of the function—

- 25 (a) is in the course of his service for his master or is an incident of his service (whether or not it was a term of his contract of service that he perform the function); or

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- (b) is directed to or is incidental to the carrying on of any business, enterprise, undertaking or activity of his master.

Further vicarious liability of the Crown.

5 **8. (1)** Notwithstanding any law to the contrary, the Crown is vicariously liable in respect of a tort committed by a person in the service of the Crown in the performance or purported performance by the person of a function (including an independent function) where the performance or purported performance of the function—

10 (a) is in the course of his service with the Crown or is an incident of his service (whether or not it was a term of his appointment to the service of the Crown that he perform the function); or

(b) is directed to or is incidental to the carrying on of any business, enterprise, undertaking or activity of the Crown.

15 **(2)** Subsection (1) does not apply to or in respect of a tort committed by a person in the conduct of any business, enterprise, undertaking or activity which is—

(a) carried on by him on his own account; or

(b) carried on by any partnership, of which he is a member, on account of the partnership.

20 Contributory negligence.

9. Section 2 (1) of the Statutory Duties (Contributory Negligence) Act, 1945, and section 7 of the Law Reform (Miscellaneous Provisions) Act, 1965, apply with respect to an action under section 7 or 8 as if the references in those sections of those Acts to a statutory duty imposed on a defendant
25 include a reference to an action for breach of a statutory duty imposed upon—

(a) a servant in respect of whom the defendant is vicariously liable under section 7; or

30 (b) a person in the service of the Crown in respect of whom the defendant is vicariously liable under section 8.

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Effect of statutory limitations on liability.

- 5 **10.** Nothing in this Act derogates from or otherwise affects the provisions of any other Act, whether enacted before, on or after the day appointed and notified under section 2 (2), which exclude or limit the liability of any servant or person in the service of the Crown or which specify the circumstances in which an action or claim for damages shall or shall not lie against any such servant or person or which limit the amount of damages recoverable from any such servant or person.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

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