EMPLOYEES LIABILITY ACT 1991 No. 4

NEW SOUTH WALES

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Employee not liable where employer also liable
4. Abolition of action against employee for loss of services of fellow employee (per quod servitium amisit)
5. Act not to apply to serious misconduct of employee or to conduct not related to employment
6. Employer subrogated to rights of employee under insurance policy
7. Act to prevail
8. Act binds Crown
9. Act to apply to previous or future liability
10. Repeal of Employee's Liability (Indemnification of Employer) Act 1982 No. 3

EMPLOYEES LIABILITY ACT 1991 No. 4

NEW SOUTH WALES

Act No. 4, 1991

An Act relating to the liability of employees in respect of torts committed by them; and to repeal the Employee's Liability (Indemnification of Employer) Act 1982. [Assented to 22 April 1991]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Employees Liability Act 1991.

Commencement

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

Employee not liable where employer also liable

3. (1) If an employee commits a tort for which his or her employer is also liable:

(a) the employee is not liable to indemnify, or to pay any contribution to, the employer in respect of the liability incurred by the employer; and

(b) the employer is liable to indemnify the employee in respect of liability incurred by the employee for the tort (unless the employee is otherwise entitled to an indemnity in respect of that liability).

(2) Contribution under this section includes contribution as joint tortfeasor or otherwise.

Abolition of action against employee for loss of services of fellow employee (per quod servitium amisit)

4. An employee is not liable in tort to his or her employer merely because the employee has deprived the employer of the services of any other employee of the employer.

Act not to apply to serious misconduct of employee or to conduct not related to employment

5. This Act does not apply to a tort committed by an employee if the conduct constituting the tort:

(a) was serious and wilful misconduct; or

(b) did not occur in the course of, and did not arise out of, the employment of the employee.

Employer subrogated to rights of employee under insurance policy

6. (1) If:

(a) an employer is proceeded against for the tort of his or her employee; and

(b) the employee is entitled under a policy of insurance to be indemnified in respect of liability that the employee may incur in respect of that tort,

the employer is subrogated to the rights of the employee under that policy in respect of the liability incurred by the employer arising from the commission of the tort.

(2) In this section, "**insurance**" includes indemnity.

Act to prevail

7. This Act has effect despite:

(a) any other Act or law; or

(b) the provisions (express or implied) of any contract or agreement entered into before or after the commencement of this section.

Act binds Crown

8. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Act to apply to previous or future liability

9. This Act applies whether the cause of action concerned arose before, or arises after, the commencement of this section.

Repeal of Employee's Liability (Indemnification of Employer) Act 1982 No. 3

10. The Employee's Liability (Indemnification of Employer) Act 1982 is repealed.

[*Minister's second reading speech made in -*
Legislative Assembly on 6 September 1990
Legislative Council on 11 April 1991]