Western Australia

Civil Liability Act 2002

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Contents

Part 1 — Preliminary

1. Short title 2
2. Commencement 2
3. Terms used 2
3A. Damages excluded from Act 3
4. Varying amounts to reflect award rate changes 4
4A. Limited contracting out 5
5. Act binds Crown 6

Part 1A — Liability for harm caused by the fault of a person

Division 1 — Preliminary

5A. Application of Part 7

Division 2 — Duty of care

5B. General principles 8

Division 3 — Causation

5C. General principles 9
5D. Onus of proof 10

Division 4 — Recreational activities

5E. Terms used 10
5F. Term used: obvious risk 11
5G. Application of Division 11
5H. No liability for harm from obvious risks of dangerous recreational activities 11
5I. No liability for recreational activity where risk warning 12

5J. Waiver of contractual duty of care for recreational activities 14

Division 5 — Contributory negligence

5K. Standard of contributory negligence 15
5L. Presumption if person who suffers harm is intoxicated 16

Division 6 — Assumption of risk

5M. Term used: obvious risk 17
5N. Injured person presumed to be aware of obvious risk 17
5O. No duty to warn of obvious risk 17
5P. No liability for harm from inherent risk 18

Division 7 — Professional negligence

5PA. Term used: health professional 18
5PB. Standard of care for health professionals 19

Part 1B — Mental harm

5Q. Terms used 21
5R. Application of Part 21
5S. Mental harm: duty of care 22
5T. Liability for pecuniary loss for consequential mental harm 23

Part 1C — Liability relating to public function

5U. Terms used 24
5V. Application of Part 25
5W. Principles concerning resources, responsibilities etc. of public body or officer 25
5X. Policy defence 26
5Y. Proceedings against public body or officer based on breach of statutory duty 26
5Z. Special protection for road authorities 27
5AA. Exercise of function or decision to exercise does not create duty 27

Part 1CA — Liability relating to emergency medical assistance given to enrolled children

5AAA. Terms used 29
5AAB. Application of this Part 30
5AAC. Protection of staff members 31
5AAD. Exclusion from protection 31

Part 1D — Good samaritans

5AB. Terms used 32
5AC. Application of this Part 32
5AD. Protection of good samaritans 33
5AE. Exclusion from protection 34

Part 1E — Apologies

5AF. Term used: apology 35
5AG. Application of this Part 35
5AH. Effect of apology on liability 36

Part 1F — Proportionate liability

5AI. Terms used 37
5AJ. Application of Part 37
5AJA. Certain concurrent wrongdoers not to have benefit of apportionment 38
5AK. Proportionate liability for apportionable claims 39
5AKA. Duty of defendant to inform plaintiff about concurrent wrongdoers 40
5AL. Contribution not recoverable from defendant 41
5AM. Subsequent actions 41
5AN. Joining non-party concurrent wrongdoers in action 42
5AO. Part does not prevent other liability or operation of other Act 42

Part 2 — Awards of personal injury damages

Division 1 — Preliminary

6. Application of this Part 43
7. Court awards constrained 43
8. Act does not give rise to any cause of action 44

Division 2 — Damages for non-pecuniary loss (general damages)

9. Restrictions on damages for non-pecuniary loss (general damages) 44
10. Amount A and Amount C 45
10A. Tariffs for damages for non-pecuniary loss 45

Division 3 — Fixing damages for pecuniary loss

11. Damages for loss of earnings 46
12. Damages for provision of home care services 47
13. Amount B 48
13A. Restrictions on damages if payments received under CISS 48

Division 4 — Structured settlements

14. Term used: structured settlement 50
15. Consent order for structured settlement 51

Division 5 — Provisional and subsequent damages

Subdivision 1 — Preliminary

15AA. Terms used 51
15AB. Dust disease 52

Subdivision 2 — Provisional damages

15AC. Award of provisional damages 52
15AD. Amount of provisional damages 53
15AE. Settlement agreement in initial action 53
15AF. Consequence of settlement in initial action 54

Subdivision 3 — Subsequent damages

15AG. Award of subsequent damages 54
15AH. Court must give effect to terms of settlement agreements 55
15AI. Evidence to apply in subsequent actions 56
15AJ. One award of subsequent damages for each subsequent dust disease 57
15AK. Amount of subsequent damages 57
15AL. Settlement agreement in subsequent action 57
15AM. Consequence of settlement in subsequent action 58
15AN. Costs 58

Subdivision 4 — Transitional provisions

15AO. Transitional provision 59

Part 2A — Child sexual abuse actions

Division 1 — Preliminary

15A. Terms used 60

Division 2 — Liability of certain office holders and institutions, and availability of assets

15B. Liability of current office holder in unincorporated institution 61

15C. Assets available for judgments and settlements: office holders 62

15D. Liability of incorporated institution that was unincorporated at time of abuse 63

15E. Assets available for judgments and settlements: institutions 64

15F. Continuity of institutions: institution substantially the same 65

15G. Continuity of institutions: no institution the same or substantially the same 66

15H. Continuity of offices 68

15I. Accrual of certain child sexual abuse causes of action 68

15J. Displacement of Corporations legislation 69

Division 3 — Prior compensation payments

15K. Prior compensation payments taken into account 69

Division 4 — Caps on legal fees

15L. Caps on legal fees 70

Division 5 — Review of Part 2A

15M. Review of Part 71

Part 3 — Advertising legal services relating to personal injury and touting

16. Terms used 72

17. Restriction on advertising legal services relating to personal injury 73

18. Allowed publication 75

19. Prohibition on touting at scene of incidents or at any time 76

20. Prohibition against paying, or seeking payment, for touting 79
21. Consequences if person approved under an Act is convicted under s. 19 or 20 80

Part 4 — Other matters

22. Regulations 82

Notes

Compilation table 83

Defined terms

Western Australia

Civil Liability Act 2002

An Act relating to various aspects of civil liability, to restrict advertising legal services relating to personal injury, to restrict touting, and for related purposes.

[Long title inserted: No. 58 of 2003 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Civil Liability Act 2002* [1].

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation [1].

(2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

harm means harm of any kind, including the following —

(a) personal injury;

(b) damage to property;

(c) economic loss;

personal injury includes —

(a) death; and

(b) pre-natal injury; and

(c) impairment of a person's physical or mental condition; and

(d) disease;

personal injury damages means damages that relate to personal injury to a person caused by the fault of another person, but does not include a sum payable under a superannuation scheme or any life or other insurance policy.

[Section 3 amended: No. 58 of 2003 s. 5.]

3A. Damages excluded from Act

(1) The provisions of this Act specified in the third column of an item in the Table to this subsection do not apply to damages of a class specified in the second column of that item or to claims for, or awards of, such damages.

Table

Item	Damages	Provisions that do not apply
1.	Damages relating to personal injury caused by — (a) an unlawful intentional act that is done with an intention to cause personal injury to a person, whether or not a particular person; or (b) an intentional act the doing of which is a sexual offence as defined in the *Evidence Act 1906* section 36A or sexual conduct that is otherwise unlawful.	Parts 1A, 1C, 1CA, 1D, 1E and 2 (other than section 10A).
2.	Damages to which the *Motor Vehicle (Third Party Insurance) Act 1943* applies.	Parts 1C, 1E and 2 (other than section 10A and Division 4).
3.	Damages to which the *Workers Compensation and Injury Management Act 2023* Part 7 Division 2 applies and the class of damages referred to in section 416(a) of that Act.	Parts 1A, 1B, 1C, 1D, 1E and 2 (other than section 10A and Divisions 4 and 5).
4.	Damages relating to personal injury that resulted from smoking or other use of tobacco products.	Parts 1A (other than sections 5A, 5B, 5C and 5D), 1B, 1D, 1E and 2 (other than

Item	Damages	Provisions that do not apply
		section 10A and Division 4).
5.	Damages under the *Civil Aviation (Carriers' Liability) Act 1961* (including the applied provisions as defined in that Act).	Parts 1A, 1B, 1C, 1D, 1E, 1F and 2.
6.	Damages relating to personal injury that resulted from the inhalation of asbestos or silica.	Parts 1A (other than sections 5A, 5B, 5C and 5D), 1B, 1D, 1E and 2 (other than section 10A and Divisions 4 and 5).

(2) Regulations may amend the Table to subsection (1) by —

(a) adding an item comprising —

(i) in the second column — a class of damages; and

(ii) in the third column — provisions of this Act;

or

(b) adding a provision of this Act to the third column of an item.

[Section 3A inserted: No. 58 of 2003 s. 6; amended: No. 42 of 2004 s. 174; No. 1 of 2011 s. 4; No. 21 of 2023 s. 625; No. 32 of 2024 s. 4.]

4. Varying amounts to reflect award rate changes

(1) This section applies if a provision of this Act requires the amount that is relevant for a particular financial year (in this section called the ***relevant financial year***) to be obtained by varying the corresponding amount for the preceding financial year (in this section called the ***preceding financial year***) according to this section.

(2) The amount for the relevant financial year is obtained —

(a) by varying the amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Labour Price Index (formerly known as the Wage Cost Index), ordinary time hourly rates of pay (excluding bonuses) for Western Australia (in this subsection called the ***LPI***) varied between the last December quarter before the preceding financial year commenced and the last December quarter before the relevant financial year commenced; or

(b) if the calculation under paragraph (a) cannot be performed for a financial year because the LPI for a relevant quarter was not published, by varying the amount for the preceding financial year in accordance with the regulations,

and, if necessary, rounding the resulting amount off under subsection (3).

(3) If the amount resulting under subsection (2)(a) or (b) is not a multiple of $500 it is to be rounded off to the nearest multiple of $500 (with an amount that is $250 more than a multiple of $500 being rounded off to the next highest multiple of $500).

[Section 4 amended: No. 8 of 2009 s. 33.]

4A. Limited contracting out

(1) A written agreement signed by the parties to it may contain an express provision by which a provision of Part 1A, 1B, 1C, 1CA, 1D, 1E or 1F is excluded, modified or restricted and this Act does not limit or otherwise affect the operation of that express provision.

(2) Subsection (1) applies to any provision of this Act referred to in that subsection even if the provision applies to liability in contract.

[Section 4A inserted: No. 58 of 2003 s. 7; amended: No. 1 of 2011 s. 5.]

5. Act binds Crown

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

Part 1A — Liability for harm caused by the fault of a person

[Heading inserted: No. 58 of 2003 s. 8.]

Division 1 — Preliminary

[Heading inserted: No. 58 of 2003 s. 8.]

5A. Application of Part

(1) Subject to sections 3A and 4A, this Part applies to any claim for damages for harm caused by the fault of a person unless this section states otherwise.

(2) This Part extends to a claim for damages for harm caused by the fault of a person even if the damages are sought to be recovered in an action for breach of contract or any other action.

(3) Divisions 2, 3, 4, 5 and 6 do not apply unless the harm giving rise to the claim for damages arises out of an incident happening on or after 1 December 2003 (being the day on which the *Civil Liability Amendment Act 2003* section 8, which inserted those Divisions, came into operation).

(3a) Division 7 does not apply unless the harm giving rise to the claim for damages arises out of an incident happening on or after the day on which the *Civil Liability Amendment Act 2004* section 5 comes into operation [1].

(4) If in a claim for damages —

(a) it cannot be ascertained whether or not the incident out of which personal injury arises happened on or after the commencement day; and

(b) the symptoms of the injury first appeared on or after the commencement day,

the incident is to be taken, for the purpose of subsection (3), to have happened on or after the commencement day.

(5) In subsection (4) —

commencement day means the day referred to in subsection (3) or (3a), as is relevant to the case.

[Section 5A inserted: No. 58 of 2003 s. 8; amended: No. 43 of 2004 s. 4.]

Division 2 — Duty of care

[Heading inserted: No. 58 of 2003 s. 8.]

5B. General principles

(1) A person is not liable for harm caused by that person's fault in failing to take precautions against a risk of harm unless —

(a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and

(b) the risk was not insignificant; and

(c) in the circumstances, a reasonable person in the person's position would have taken those precautions.

(2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things) —

(a) the probability that the harm would occur if care were not taken;

(b) the likely seriousness of the harm;

(c) the burden of taking precautions to avoid the risk of harm;

(d) the social utility of the activity that creates the risk of harm.

[Section 5B inserted: No. 58 of 2003 s. 8.]

Division 3 — Causation

[Heading inserted: No. 58 of 2003 s. 8.]

5C. General principles

(1) A determination that the fault of a person (the ***tortfeasor***) caused particular harm comprises the following elements —

(a) that the fault was a necessary condition of the occurrence of the harm (***factual causation***); and

(b) that it is appropriate for the scope of the tortfeasor's liability to extend to the harm so caused (***scope of liability***).

(2) In determining in an appropriate case, in accordance with established principles, whether a fault that cannot be established as a necessary condition of the occurrence of harm should be taken to establish factual causation, the court is to consider (amongst other relevant things) —

(a) whether and why responsibility for the harm should, or should not, be imposed on the tortfeasor; and

(b) whether and why the harm should be left to lie where it fell.

(3) If it is relevant to the determination of factual causation to determine what the person who suffered harm (the ***injured person***) would have done if the tortfeasor had not been at fault —

(a) subject to paragraph (b), the matter is to be determined by considering what the injured person would have done if the tortfeasor had not been at fault; and

(b) evidence of the injured person as to what he or she would have done if the tortfeasor had not been at fault is inadmissible.

(4) For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether and why

responsibility for the harm should, or should not, be imposed on the tortfeasor.

[Section 5C inserted: No. 58 of 2003 s. 8.]

5D. Onus of proof

In determining liability for damages for harm caused by the fault of a person, the plaintiff always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

[Section 5D inserted: No. 58 of 2003 s. 8.]

Division 4 — Recreational activities

[Heading inserted: No. 58 of 2003 s. 8.]

5E. Terms used

In this Division —

dangerous recreational activity means a recreational activity that involves a significant risk of harm;

inherent risk means a risk of something occurring that cannot be avoided by the exercise of reasonable skill and care;

obvious risk has the meaning given by section 5F;

recreational activity includes —

(a) any sport (whether or not the sport is an organised activity); and

(b) any pursuit or activity engaged in for enjoyment, relaxation or leisure; and

(c) any pursuit or activity engaged in for enjoyment, relaxation or leisure at a place (such as a beach, park or other public open space) where people ordinarily engage in sport or in any pursuit or activity for enjoyment, relaxation or leisure.

[Section 5E inserted: No. 58 of 2003 s. 8.]

5F. Term used: obvious risk

(1) For the purposes of this Division, an obvious risk to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.

(2) Obvious risks include risks that are patent or a matter of common knowledge.

(3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.

(4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

[Section 5F inserted: No. 58 of 2003 s. 8.]

5G. Application of Division

(1) This Division applies only in respect of liability for harm resulting from a recreational activity.

(2) This Division does not limit the operation of Division 6 in respect of a recreational activity.

[Section 5G inserted: No. 58 of 2003 s. 8.]

5H. No liability for harm from obvious risks of dangerous recreational activities

(1) A person (the ***defendant***) is not liable for harm caused by the defendant's fault suffered by another person (the ***plaintiff***) while the plaintiff engaged in a dangerous recreational activity if the harm is the result of the occurrence of something that is an obvious risk of that activity.

(2) This section applies whether or not the plaintiff was aware of the risk.

(3) This section does not apply if —

(a) the plaintiff has requested advice or information about the risk from the defendant; or

(b) the defendant is required by a written law to warn the plaintiff of the risk.

(4) Subsection (3) does not give rise to a presumption of a duty to warn of a risk in the circumstances referred to in that subsection.

[Section 5H inserted: No. 58 of 2003 s. 8.]

5I. No liability for recreational activity where risk warning

(1) Subject to this section, a person (the ***defendant***) does not owe a duty of care to another person who engages in a recreational activity (the ***plaintiff***) to take care in respect of a risk of the activity if the risk was the subject of a risk warning to the plaintiff.

(2) If a child suffers harm, the defendant may rely on a risk warning to a parent of the child if the parent is not an incompetent person —

(a) whether or not the child was accompanied by the parent; and

(b) whether or not the child was under the control of the parent.

(3) If a child suffers harm, the defendant may rely on a risk warning to another person who is not a parent of the child if —

(a) the other person is not an incompetent person; and

(b) either —

(i) the child was accompanied by that other person; or

(ii) the child was under the control of that other person.

(4) For the purpose of subsections (1), (2) and (3), a risk warning to a person in relation to a recreational activity is a warning that is given in a manner that is reasonably likely to result in people being warned of the risk before engaging in the recreational activity.

(5) The defendant is not required to establish that the person received or understood the warning or was capable of receiving or understanding the warning.

(6) A risk warning can be given orally or in writing (including by means of a sign or otherwise).

(7) A risk warning need not be specific to the particular risk and can be a general warning of risks that include the particular risk concerned (so long as the risk warning warns of the general nature of the particular risk).

(8) A defendant is not entitled to rely on a risk warning unless it is given by or on behalf of the defendant or by or on behalf of the occupier of the place where the recreational activity is engaged in.

(9) A defendant is not entitled to rely on a risk warning if it is established (on the balance of probabilities) that the harm concerned resulted from a contravention of a written law, or a law of the Commonwealth, that establishes specific practices or procedures for the protection of personal safety.

(10) A defendant is not entitled to rely on a risk warning to a person to the extent that the warning was contradicted by any representation as to risk made by or on behalf of the defendant to the person.

(11) A defendant is not entitled to rely on a risk warning if the plaintiff was required to engage in the recreational activity by the defendant.

(12) A defendant is not entitled to rely on a risk warning if it is established (on the balance of probabilities) that the harm

concerned resulted from an act done or omission made with reckless disregard, with or without consciousness, for the consequences of the act or omission.

(13) A defendant is not entitled to rely on a risk warning to an incompetent person.

(14) The fact that a risk is the subject of a risk warning does not of itself mean —

(a) that the risk is not an obvious risk or inherent risk of an activity; or

(b) that a person who gives the risk warning owes a duty of care to a person who engages in an activity to take precautions to avoid the risk of harm from that activity.

(15) This section does not limit or otherwise affect the effect of a risk warning in respect of a risk of an activity that is not a recreational activity.

(16) In this section —

child means a person who has reached 16 years but is under 18 years of age;

incompetent person means a person who is under 18 years of age or who, because of a physical or mental disability, lacks the capacity to understand the risk warning.

[Section 5I inserted: No. 58 of 2003 s. 8.]

5J. Waiver of contractual duty of care for recreational activities

(1) Despite any written law or other law of the State, a term of a contract for the supply of recreational services may exclude, restrict or modify any liability to which this Division applies that results from breach of an express or implied warranty that the services will be rendered with reasonable care and skill.

(2) No written law renders such a term of a contract void or unenforceable or authorises any court to refuse to enforce the term, to declare the term void or to vary the term.

(3) A term of a contract for the supply of recreational services that is to the effect that a person to whom recreational services are supplied under the contract engages in any recreational activity concerned at his or her own risk operates to exclude any liability to which this Division applies that results from breach of an express or implied warranty that the services will be rendered with reasonable care and skill.

(4) This section applies in respect of a contract for the supply of services entered into before or after the commencement of this section but does not apply in respect of a breach of warranty that occurred before that commencement.

(5) This section does not apply if it is established (on the balance of probabilities) that the harm concerned resulted from a contravention of a written law, or a law of the Commonwealth, that establishes specific practices or procedures for the protection of personal safety.

(6) This section does not apply if it is established (on the balance of probabilities) that the harm concerned resulted from an act done or omission made with reckless disregard, with or without consciousness, for the consequences of the act or omission.

(7) In this section —

recreational services means services supplied to a person for the purposes of, in connection with or incidental to the pursuit by the person of a recreational activity.

[Section 5J inserted: No. 58 of 2003 s. 8.]

Division 5 — Contributory negligence

[Heading inserted: No. 58 of 2003 s. 8.]

5K. Standard of contributory negligence

(1) The principles that are applicable in determining whether a person is liable for harm caused by the fault of the person also apply in determining whether the person who suffered harm has

been contributorily negligent in failing to take precautions against the risk of that harm.

(2) For that purpose —

(a) the standard of care required of the person who suffered harm is that of a reasonable person in the position of that person; and

(b) the matter is to be determined on the basis of what that person knew or ought to have known at the time.

[Section 5K inserted: No. 58 of 2003 s. 8.]

5L. Presumption if person who suffers harm is intoxicated

(1) This section applies when it is established that the person whose harm is the subject of proceedings for the recovery of damages for that harm was intoxicated at the time of the act or omission that caused the harm.

(2) This section does not apply in a case where the court is satisfied that the intoxication was not self-induced.

(3) If this section applies, it is to be presumed that the person was contributorily negligent unless the plaintiff establishes, on the balance of probabilities, that the person's intoxication did not contribute in any way to the cause of the harm.

(4) In this section —

intoxicated means affected by alcohol or a drug or other substance capable of intoxicating a person to such an extent that the person's capacity to exercise reasonable care and skill is impaired.

[Section 5L inserted: No. 58 of 2003 s. 8.]

Division 6 — Assumption of risk

[Heading inserted: No. 58 of 2003 s. 8.]

5M. Term used: obvious risk

In this Division —

obvious risk has the meaning given by section 5E.

[Section 5M inserted: No. 58 of 2003 s. 8.]

5N. Injured person presumed to be aware of obvious risk

(1) In determining liability for damages for harm caused by the fault of a person, the person who suffers harm is presumed to have been aware of the risk of harm if it was an obvious risk, unless the person proves on the balance of probabilities that he or she was not aware of the risk.

(2) For the purpose of this section, a person is aware of a risk if the person is aware of the type or kind of risk, even if the person is not aware of the precise nature, extent or manner of occurrence of the risk.

[Section 5N inserted: No. 58 of 2003 s. 8.]

5O. No duty to warn of obvious risk

(1) A person (the ***defendant***) does not owe a duty of care to another person (the ***plaintiff***) to warn of an obvious risk to the plaintiff.

(2) This section does not apply if —

(a) the plaintiff has requested advice or information about the risk from the defendant; or

(b) the defendant is required by a written law to warn the plaintiff of the risk; or

(c) the defendant is a professional and the risk is a risk of harm to the plaintiff from the provision of a professional service by the defendant.

(3) Subsection (2) does not give rise to a presumption of a duty to warn of a risk in the circumstances referred to in that subsection.

[Section 5O inserted: No. 58 of 2003 s. 8.]

5P. No liability for harm from inherent risk

(1) A person (the ***defendant***) is not liable for harm caused by the fault of that person suffered by another person if the harm is the result of the occurrence of something that cannot be avoided by the exercise of reasonable skill and care by the defendant.

(2) This section does not operate to exclude liability in connection with a duty to warn of a risk.

[Section 5P inserted: No. 58 of 2003 s. 8.]

Division 7 — Professional negligence

[Heading inserted: No. 43 of 2004 s. 5.]

5PA. Term used: health professional

In this Division —

health professional means —

(a) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in any of the following health professions —

(i) Aboriginal and Torres Strait Islander health practice;

(ii) Chinese medicine;

(iii) chiropractic;

(iv) dental;

(v) medical;

(vi) medical radiation practice;

(vii) midwifery;

(viia) nursing;

(viii) occupational therapy;
(ix) optometry;
(x) osteopathy;
(xa) paramedicine;
(xi) pharmacy;
(xii) physiotherapy;
(xiii) podiatry;
(xiv) psychology;
or

(b) any other person who practises a discipline or profession in the health area that involves the application of a body of learning.

[Section 5PA inserted: No. 43 of 2004 s. 5; amended: No. 28 of 2005 Sch. 3 cl. 1; No. 29 of 2005 Sch. 3 cl. 1; No. 30 of 2005 Sch. 3 cl. 1; No. 31 of 2005 Sch. 3 cl. 1; No. 32 of 2005 Sch. 3 cl. 1; No. 33 of 2005 Sch. 3 cl. 1; No. 42 of 2005 Sch. 3 cl. 1; No. 21 of 2006 Sch. 3 cl. 1; No. 50 of 2006 Sch. 3 cl. 2; No. 22 of 2008 Sch. 3 cl. 8; No. 25 of 2008 s. 16; No. 35 of 2010 s. 41; No. 4 of 2018 s. 103(2).]

5PB. Standard of care for health professionals

(1) An act or omission of a health professional is not a negligent act or omission if it is in accordance with a practice that, at the time of the act or omission, is widely accepted by the health professional's peers as competent professional practice.

(2) Subsection (1) does not apply to an act or omission of a health professional in relation to informing a person of a risk of injury or death associated with —

(a) the treatment proposed for a patient or a foetus being carried by a pregnant patient; or

(b) a procedure proposed to be conducted for the purpose of diagnosing a condition of a patient or a foetus being carried by a pregnant patient.

(3) Subsection (1) applies even if another practice that is widely accepted by the health professional's peers as competent professional practice differs from or conflicts with the practice in accordance with which the health professional acted or omitted to do something.

(4) Nothing in subsection (1) prevents a health professional from being liable for negligence if the practice in accordance with which the health professional acted or omitted to do something is, in the circumstances of the particular case, so unreasonable that no reasonable health professional in the health professional's position could have acted or omitted to do something in accordance with that practice.

(5) A practice does not have to be universally accepted as competent professional practice to be considered widely accepted as competent professional practice.

(6) In determining liability for damages for harm caused by the fault of a health professional, the plaintiff always bears the onus of proving, on the balance of probabilities, that the applicable standard of care (whether under this section or any other law) was breached by the defendant.

[Section 5PB inserted: No. 43 of 2004 s. 5.]

Part 1B — Mental harm

[Heading inserted: No. 58 of 2003 s. 8.]

5Q. Terms used

In this Part —

consequential mental harm means mental harm that is a consequence of a personal injury of any kind;

mental harm means impairment of a person's mental condition;

pure mental harm means mental harm other than consequential mental harm.

[Section 5Q inserted: No. 58 of 2003 s. 8.]

5R. Application of Part

(1) Subject to sections 3A and 4A, this Part applies to any claim for personal injury damages for mental harm unless this section states otherwise.

(2) This Part extends to a claim for personal injury damages even if the damages are sought to be recovered in an action for breach of contract or any other action.

(3) This Part does not apply unless the personal injury giving rise to the claim for personal injury damages arises out of an incident happening on or after the commencement day.

(4) If —

(a) it cannot be ascertained whether or not the incident out of which the personal injury arises happened on or after the commencement day; and

(b) the symptoms of the injury first appeared on or after the commencement day,

the incident is to be taken, for the purpose of subsection (3), to have happened on or after the commencement day.

(5) In this section —

commencement day means the day on which the *Civil Liability Amendment Act 2003* section 8 comes into operation [1].

[Section 5R inserted: No. 58 of 2003 s. 8.]

5S. Mental harm: duty of care

(1) A person (the ***defendant***) does not owe a duty of care to another person (the ***plaintiff***) to take care not to cause the plaintiff mental harm unless the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.

(2) For the purpose of the application of this section in respect of pure mental harm, the circumstances of the case include the following —

(a) whether or not the mental harm was suffered as the result of a sudden shock;

(b) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;

(c) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;

(d) whether or not there was a pre-existing relationship between the plaintiff and the defendant.

(3) For the purpose of the application of this section in respect of consequential mental harm, the circumstances of the case include the personal injury suffered by the plaintiff.

(4) This section does not require the court to disregard what the defendant knew or ought to have known about the fortitude of the plaintiff.

[Section 5S inserted: No. 58 of 2003 s. 8.]

5T. Liability for pecuniary loss for consequential mental harm

A court cannot make an award of personal injury damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness.

[Section 5T inserted: No. 58 of 2003 s. 8.]

Part 1C — Liability relating to public function

[Heading inserted: No. 58 of 2003 s. 8.]

5U. Terms used

In this Part —

policy decision means a decision based substantially on financial, economic, political or social factors or constraints;

public body or officer means —

(a) the Crown (within the meaning of the *Crown Suits Act 1947*); or

(b) a department of the Public Service established under the *Public Sector Management Act 1994* section 35; or

(c) an entity specified in column 2 of Schedule 1 to the *Public Sector Management Act 1994*; or

(d) an organisation specified in column 2 of Schedule 2 to the *Public Sector Management Act 1994*; or

(e) a non-SES organisation within the meaning of that term in the *Public Sector Management Act 1994* section 3(1); or

(f) a local government, regional local government or regional subsidiary; or

(g) a body that is established or continued for a public purpose under a written law; or

(h) a body or officer prescribed (or of a class prescribed) by the regulations as a public body or officer to which this Part applies (in respect of all or specified functions); or

(i) any person or body in respect of the exercise of public or other functions of a class prescribed by the regulations for the purposes of this Part.

[Section 5U inserted: No. 58 of 2003 s. 8; amended: No. 26 of 2016 s. 42.]

5V. Application of Part

(1) Subject to sections 3A and 4A, this Part applies to any claim for damages for harm caused by the fault of a person unless this section states otherwise.

(2) This Part extends to a claim for harm caused by the fault of a person even if the damages are sought to be recovered in an action for breach of contract or any other action.

(3) This Part does not apply unless the harm giving rise to the claim for damages arises out of an incident happening on or after the commencement day.

(4) If in a claim for damages —

(a) it cannot be ascertained whether or not the incident out of which the personal injury arises happened on or after the commencement day; and

(b) the symptoms of the injury first appeared on or after the commencement day,

the incident is to be taken, for the purpose of subsection (3), to have happened on or after the commencement day.

(5) In this section —

commencement day means the day on which the *Civil Liability Amendment Act 2003* section 8 comes into operation [1].

[Section 5V inserted: No. 58 of 2003 s. 8.]

5W. Principles concerning resources, responsibilities etc. of public body or officer

The following principles apply in determining whether a public body or officer has a duty of care or has breached a duty of care in proceedings in relation to a claim to which this Part applies —

(a) the functions required to be exercised by the public body or officer are limited by the financial and other resources

that are reasonably available to the public body or officer for the purpose of exercising those functions;

(b) the general allocation of those resources by the public body or officer is not open to challenge;

(c) the functions required to be exercised by the public body or officer are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which the proceedings relate);

(d) the public body or officer may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceedings relate.

[Section 5W inserted: No. 58 of 2003 s. 8.]

5X. Policy defence

In a claim for damages for harm caused by the fault of a public body or officer arising out of fault in the performance or non-performance of a public function, a policy decision cannot be used to support a finding that the defendant was at fault unless the decision was so unreasonable that no reasonable public body or officer in the defendant's position could have made it.

[Section 5X inserted: No. 58 of 2003 s. 8.]

5Y. Proceedings against public body or officer based on breach of statutory duty

(1) This section applies to proceedings to which this Part applies that are based on an alleged breach of a statutory duty by a public body or officer in connection with the exercise of or a failure to exercise a public function of the body or officer.

(2) For the purpose of proceedings to which this section applies, the public body or officer cannot be liable for damages for harm caused by fault in the exercise of, or a failure to exercise, the

statutory duty unless the provisions and policy of the enactment in which the duty is created are compatible with the existence of that liability.

[Section 5Y inserted: No. 58 of 2003 s. 8.]

5Z. Special protection for road authorities

(1) In this section —

carry out road work means carry out any activity in connection with the construction, erection, installation, maintenance, inspection, repair, removal or replacement of a road;

road has the meaning given to that term in the *Main Roads Act 1930* section 6;

roads authority, in relation to a road, means a public body or officer whose functions include carrying out road work on that road.

(2) A roads authority is not liable in proceedings to which this Part applies for harm arising from a failure of the authority to carry out road work, or to consider carrying out road work, unless at the time of the failure the authority had actual knowledge of the particular risk that caused the harm.

(3) This section does not operate —

(a) to create a duty of care in respect of a risk merely because a road authority has actual knowledge of the risk; or

(b) to affect any standard of care that would otherwise be applicable in respect of the risk.

[Section 5Z inserted: No. 58 of 2003 s. 8.]

5AA. Exercise of function or decision to exercise does not create duty

In proceedings to which this Part applies, the fact that a public body or officer exercises or decides to exercise a function does

not of itself indicate that the body or officer is under a duty to exercise the function or that the function should be exercised in particular circumstances or in a particular way.

[Section 5AA inserted: No. 58 of 2003 s. 8.]

Part 1CA — Liability relating to emergency medical assistance given to enrolled children

[Heading inserted: No. 1 of 2011 s. 6.]

5AAA. Terms used

In this Part —

child care service means —

(a) an education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1); or

(b) a child care service as defined in the *Child Care Services Act 2007* section 4;

community kindergarten means a kindergarten registered under the *School Education Act 1999* Part 5;

emergency medical assistance means medical assistance of a type prescribed by the regulations as assistance to which this Part applies;

enrolled child means —

(a) a child enrolled at community kindergarten; or

(b) a child for whom a child care service is provided; or

(c) a student within the meaning given in the *School Education Act 1999* section 4;

staff member means a natural person who is —

(a) employed in the department of the Public Service referred to in the *School Education Act 1999* section 228; or

(b) employed in a school registered under the *School Education Act 1999* section 160; or

(c) a supervising officer as defined in the *Child Care Services Act 2007* section 3; or

(da) a nominated supervisor as defined in the *Education and Care Services National Law (Western Australia)* section 5(1); or

(d) a member of the staff of a child care service; or

(e) prescribed (or of a class prescribed) by the regulations as a person to whom this Part applies.

[Section 5AAA inserted: No. 1 of 2011 s. 6; amended: No. 11 of 2012 s. 29.]

5AAB. Application of this Part

(1) In this section —

commencement day means the day on which the *Health, Safety and Civil Liability (Children in Schools and Child Care Services) Act 2011* section 6 comes into operation.

(2) Subject to sections 3A and 4A, this Part applies to civil liability of any kind unless this section states otherwise.

(3) This Part extends to a claim even if the damages are sought to be recovered in an action for breach of contract or any other action.

(4) This Part does not apply unless the civil liability giving rise to the claim arises out of an incident happening on or after the commencement day.

(5) If in a claim for damages —

(a) it cannot be ascertained whether or not the incident out of which the personal injury arises happened on or after the commencement day; and

(b) the symptoms of the injury first appeared on or after the commencement day,

the incident is to be taken, for the purpose of subsection (4), to have happened on or after the commencement day.

(6) This Part does not limit the protection from liability given by another written law.

[Section 5AAB inserted: No. 1 of 2011 s. 6.]

5AAC. Protection of staff members

(1) A staff member does not incur any personal civil liability in respect of —

(a) an act or omission done or made by the staff member at the scene of an emergency in assisting an enrolled child in apparent need of emergency medical assistance; or

(b) advice given by the staff member about assistance to be given to an enrolled child in apparent need of emergency medical assistance,

if the act or omission is done or made, or the advice given, in good faith and without recklessness in the course of the staff member's employment as a staff member.

(2) This section does not affect the vicarious liability of any person for the acts or omissions of a staff member.

[Section 5AAC inserted: No. 1 of 2011 s. 6.]

5AAD. Exclusion from protection

The protection from personal civil liability conferred by this Part does not apply if the ability of the staff member to exercise reasonable care and skill, at the relevant time, was significantly impaired by reason of the staff member being intoxicated by alcohol or a drug or other substance capable of intoxicating a person and the intoxication was self-induced.

[Section 5AAD inserted: No. 1 of 2011 s. 6.]

Part 1D — Good samaritans

[Heading inserted: No. 58 of 2003 s. 8.]

5AB. Terms used

In this Part —

emergency assistance means —

(a) emergency medical assistance; or

(b) any other form of assistance to a person whose life or safety is endangered in a situation of emergency;

good samaritan means a natural person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently in need of emergency assistance;

medical qualifications means —

(a) registered under the *Health Practitioner Regulation National Law (Western Australia)* in a health profession; or

(b) licensed, registered or authorised under a written law to practise in some field of health care; or

(c) qualifications as an ambulance officer;

medically qualified good samaritan means a natural person with medical qualifications who, acting without expectation of payment or other consideration, gives advice by any means of communicating at a distance, including by telephone, fax, email and radio, about the treatment of a person who is apparently in need of emergency assistance.

[Section 5AB inserted: No. 58 of 2003 s. 8; amended: No. 22 of 2008 s. 162; No. 35 of 2010 s. 42; No. 4 of 2018 s. 103(3).]

5AC. Application of this Part

(1) Subject to sections 3A and 4A, this Part applies to civil liability of any kind unless this section states otherwise.

(2) This Part extends to a claim even if the damages are sought to be recovered in an action for breach of contract or any other action.

(3) This Part does not apply unless the civil liability giving rise to the claim arises out of an incident happening on or after the commencement day.

(4) If in a claim for damages —

(a) it cannot be ascertained whether or not the incident out of which the personal injury arises happened on or after the commencement day; and

(b) the symptoms of the injury first appeared on or after the commencement day,

the incident is to be taken, for the purpose of subsection (3), to have happened on or after the commencement day.

(5) This Part does not limit the protection from liability given by another written law.

(6) In this section —

commencement day means the day on which the *Civil Liability Amendment Act 2003* section 8 comes into operation [1].

[Section 5AC inserted: No. 58 of 2003 s. 8.]

5AD. Protection of good samaritans

(1) A good samaritan does not incur any personal civil liability in respect of an act or omission done or made by the good samaritan at the scene of an emergency in good faith and without recklessness in assisting a person in apparent need of emergency assistance.

(2) A medically qualified good samaritan does not incur any personal civil liability for advice given in good faith and without recklessness about the assistance to be given to a person in apparent need of emergency assistance.

(3) This section does not affect the vicarious liability of any person for the acts or omissions or advice of the good samaritan or medically qualified good samaritan.

[Section 5AD inserted: No. 58 of 2003 s. 8.]

5AE. Exclusion from protection

The protection from personal civil liability conferred by this Part does not apply if the ability of the good samaritan or medically qualified good samaritan to exercise reasonable care and skill, at the relevant time, was significantly impaired by reason of the good samaritan or medically qualified good samaritan being intoxicated by alcohol or a drug or other substance capable of intoxicating a person and the intoxication was self-induced.

[Section 5AE inserted: No. 58 of 2003 s. 8.]

Part 1E — Apologies

[Heading inserted: No. 58 of 2003 s. 8.]

5AF. Term used: apology

In this Part —

apology means an expression of sorrow, regret or sympathy by a person that does not contain an acknowledgment of fault by that person.

[Section 5AF inserted: No. 58 of 2003 s. 8.]

5AG. Application of this Part

(1) Subject to sections 3A and 4A, this Part applies to civil liability of any kind unless this section states otherwise.

(2) This Part extends to a claim even if the damages are sought to be recovered in an action for breach of contract or any other action.

(3) This Part does not apply unless the civil liability giving rise to the claim arises out of an incident happening on or after the commencement day.

(4) If in a claim for damages —

(a) it cannot be ascertained whether or not the incident out of which the personal injury arises happened on or after the commencement day; and

(b) the symptoms of the injury first appeared on or after the commencement day,

the incident is to be taken, for the purpose of subsection (3), to have happened on or after the commencement day.

(5) In this section —

commencement day means the day on which the *Civil Liability Amendment Act 2003* section 8 comes into operation [1].

[Section 5AG inserted: No. 58 of 2003 s. 8.]

5AH. Effect of apology on liability

(1) An apology made by or on behalf of a person in connection with any incident giving rise to a claim for damages —

(a) does not constitute an express or implied admission of fault or liability by the person in connection with that incident; and

(b) is not relevant to the determination of fault or liability in connection with that incident.

(2) Evidence of an apology made by or on behalf of a person in connection with any incident alleged to have been caused by the person is not admissible in any civil proceeding as evidence of the fault or liability of the person in connection with that incident.

[Section 5AH inserted: No. 58 of 2003 s. 8.]

Part 1F — Proportionate liability

[Heading inserted: No. 58 of 2003 s. 9.]

5AI. Terms used

In this Part —

apportionable claim means —

(a) a claim for economic loss or damage to property in an action for damages (whether in contract, tort or otherwise) arising from a failure to take reasonable care (but not including any claim arising out of personal injury); or

(b) a claim for economic loss or damage to property in an action for damages under the *Fair Trading Act 2010* based on misleading or deceptive conduct;

concurrent wrongdoer, in relation to a claim, means a person who is one of 2 or more persons whose act or omission caused, independently of each other or jointly, the damage or loss that is the subject of the claim.

[Section 5AI inserted: No. 58 of 2003 s. 9; amended: No. 43 of 2004 s. 6; No. 58 of 2010 s. 193.]

5AJ. Application of Part

(1) For the purpose of this Part it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

(2) This Part does not apply —

(a) to a claim for damages of a class that is excluded from the operation of this Part by section 3A; or

(b) to the extent that its operation is excluded, modified or restricted in accordance with section 4A.

(3) This Part applies only to causes of action that accrue after the commencement of the *Civil Liability Amendment Act 2003* section 9 [1].

(4) For the purposes of this Part, there is a single apportionable claim in proceedings in respect of the same loss or damage even if the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

[Section 5AJ inserted: No. 58 of 2003 s. 9; amended: No. 43 of 2004 s. 7.]

5AJA. Certain concurrent wrongdoers not to have benefit of apportionment

(1) Nothing in this Part operates to limit the liability of a concurrent wrongdoer (an ***excluded concurrent wrongdoer***) in proceedings involving an apportionable claim if —

(a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or

(b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim; or

(c) the civil liability of the concurrent wrongdoer was otherwise of a kind excluded from the operation of this Part by section 3A.

(2) The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.

(3) The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Part.

[Section 5AJA inserted: No. 43 of 2004 s. 8.]

5AK. Proportionate liability for apportionable claims

(1) In any proceedings involving an apportionable claim —

(a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of the defendant's responsibility for the damage or loss; and

(b) the court may give judgment against the defendant for not more than that amount.

(2) If proceedings involve both an apportionable claim and a claim that is not an apportionable claim —

(a) liability for the apportionable claim is to be determined in accordance with the provisions of this Part; and

(b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.

(3) In apportioning responsibility between defendants in the proceedings —

(a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(b) the court is to have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.

(4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.

(5) A reference in this Part to a defendant in proceedings includes any person joined as a defendant or other party in the

proceedings (except as a plaintiff) whether joined under this Part, under rules of court or otherwise.

[Section 5AK inserted: No. 58 of 2003 s. 9.]

5AKA. Duty of defendant to inform plaintiff about concurrent wrongdoers

(1) If —

(a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the ***other person***) may be a concurrent wrongdoer in relation to the claim; and

(b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about —

(i) the identity of the other person; and

(ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim;

and

(c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim,

the court hearing the proceedings may order that the defendant pay all or any of those costs to the plaintiff.

(2) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

[Section 5AKA inserted: No. 43 of 2004 s. 9.]

5AL. Contribution not recoverable from defendant

(1) A defendant against whom judgment is given under this Part as a concurrent wrongdoer in relation to an apportionable claim —

(a) cannot be required to contribute to the damages or contribution recovered from another concurrent wrongdoer in respect of an apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and

(b) cannot be required to indemnify any such wrongdoer.

(2) Subsection (1) does not affect an agreement by a defendant to contribute to the damages recoverable from or to indemnify another concurrent wrongdoer in relation to an apportionable claim.

[Section 5AL inserted: No. 58 of 2003 s. 9; amended: No. 43 of 2004 s. 10.]

5AM. Subsequent actions

(1) In relation to an apportionable claim, nothing in this Part or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.

(2) In any proceedings in respect of any action referred to in subsection (1) the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

[Section 5AM inserted: No. 58 of 2003 s. 9.]

5AN. Joining non-party concurrent wrongdoers in action

(1) The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.

(2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

[Section 5AN inserted: No. 58 of 2003 s. 9.]

5AO. Part does not prevent other liability or operation of other Act

Nothing in this Part —

(a) prevents a person from being held vicariously liable for a proportion of any apportionable claim for which another person is liable; or

(b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or

(c) affects the operation of any Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

[Section 5AO inserted: No. 58 of 2003 s. 9.]

Part 2 — Awards of personal injury damages

[Heading inserted: No. 58 of 2003 s. 10.]

Division 1 — Preliminary

6. Application of this Part

(1) Subject to section 3A, this Part applies to the awarding of personal injury damages unless this section states otherwise.

(2) This Part extends to an award of personal injury damages even if the damages are sought to be recovered in an action for breach of contract or any other action.

[(3) deleted]

(4) This Part applies only if the personal injury arises out of an incident happening after the commencement of this Part.

(5) If —

(a) it cannot be ascertained whether or not the incident out of which the personal injury arises happened after the commencement of this Part; and

(b) the symptoms of the injury first appeared after the commencement of this Part,

the incident is to be taken, for the purpose of subsection (4), to have happened after the commencement of this Part.

[Section 6 amended: No. 58 of 2003 s. 11.]

7. Court awards constrained

A court cannot award damages contrary to Division 2 or 3.

8. Act does not give rise to any cause of action

This Act, other than Part 2A, does not create or confer any cause of civil action for the recovery of damages in respect of an injury or death caused by the fault of a person.

[Section 8 amended: No. 3 of 2018 s. 4.]

Division 2 — Damages for non-pecuniary loss (general damages)

[Heading inserted: No. 58 of 2003 s. 12.]

9. Restrictions on damages for non-pecuniary loss (general damages)

(1) If the amount of non-pecuniary loss is assessed to be not more than Amount A for the year in which the amount is assessed, no damages are to be awarded for non-pecuniary loss.

(2) If the amount of non-pecuniary loss is assessed to be more than Amount A but not more than Amount C for the year in which the amount is assessed, damages for non-pecuniary loss are not to be awarded in an amount that is more than the excess of the amount assessed over Amount A.

(3) If the amount of non-pecuniary loss is assessed to be more than Amount C but less than the sum of Amount A and Amount C for the year in which the amount is assessed, damages for non-pecuniary loss are not to be awarded in an amount that is more than the excess of the amount assessed over the amount calculated as follows —

$$\text{Amount A} - (\text{Amount assessed} - \text{Amount C})$$

(4) In this section —

Amount A has the meaning given by section 10;

Amount C has the meaning given by section 10;

non-pecuniary loss means —

(a) pain and suffering; and

(b) loss of amenities of life; and

(c) loss of enjoyment of life; and

(d) curtailment of expectation of life; and

(e) bodily or mental harm.

10. Amount A and Amount C

(1) For the financial year ending on 30 June 2003 —

(a) Amount A is $12 000; and

(b) Amount C is $36 500.

(2) For any other financial year —

(a) Amount A is obtained by varying Amount A for the preceding financial year according to section 4; and

(b) Amount C is obtained by varying Amount C for the preceding financial year according to section 4.

(3) On or before each 1 July after this section commences, the Minister is to publish a notice in the *Gazette* specifying the amounts that are Amount A and Amount C for the financial year commencing on that 1 July.

(4) Publication under subsection (3) is for public information only and a failure to publish or a delay or error in publication does not affect what is Amount A or Amount C for the year concerned.

10A. Tariffs for damages for non-pecuniary loss

(1) In determining damages for non-pecuniary loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.

(2) For that purpose, the parties to the proceedings or their counsel may bring the court's attention to awards of damages for non-pecuniary loss in those earlier decisions.

(3) This section does not alter the rules for the determination of other damages.

[Section 10A inserted: No. 58 of 2003 s. 13.]

Division 3 — Fixing damages for pecuniary loss

11. Damages for loss of earnings

(1) In assessing damages for loss of earnings, including in an action under the *Fatal Accidents Act 1959*, the court is to disregard earnings lost to the extent that they would have accrued at a rate of more than 3 times the average weekly earnings at the date of the award.

(2) In subsection (1) —

loss of earnings means —

(a) past economic loss due to loss of earnings or the deprivation or impairment of earning capacity; or

(b) future economic loss due to loss of prospective earnings or the deprivation or impairment of prospective earning capacity.

(3) For the purpose of this section, the average weekly earnings at the date of the award is —

(a) the amount estimated by the Australian Statistician as the average weekly total earnings of full-time adult employees in Western Australia for the quarter ending most recently before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or

(b) if the Australian Statistician ceases to make the estimate of the amount referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations.

12. Damages for provision of home care services

(1) This section deals with the awarding of damages for gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance that have been or are to be provided to the person in whose favour the award is sought by a member of the same household or family as the person.

(2) No damages are to be awarded for the services if the services would have been, or would be, provided to the person even if the person had not suffered the personal injury.

(3) If the amount of damages that could, if this subsection did not apply, be awarded under subsection (5) or (7) is Amount B or less, no damages are to be awarded for the services.

(4) In subsection (3) —

Amount B has the meaning given by section 13.

(5) If the services are provided or to be provided for not less than 40 hours per week, the amount of damages awarded for them is not to exceed the amount calculated on a weekly basis at the rate of —

(a) the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Western Australia for the relevant quarter; or

(b) if the Australian Statistician ceases to make the estimate referred to in paragraph (a), the weekly amount fixed by, or determined in accordance with, the regulations.

(6) In subsection (5)(a) —

relevant quarter means —

(a) the quarter in which the services were provided; or

(b) if at the date of the award an estimate as referred to in subsection (5)(a) is not available to the court for that quarter or the services are yet to be provided, the most recent quarter for which such an estimate is available to the court at the date of the award.

(7) If the services are provided or to be provided for less than 40 hours per week, the amount of damages awarded for them is not to exceed the amount calculated on an hourly basis at an hourly rate that is one-fortieth of the weekly rate that would be applicable under subsection (5) if the services were provided or to be provided for not less than 40 hours per week.

13. Amount B

(1) Amount B for the financial year ending on 30 June 2003 is $5 000.

(2) For any other financial year, Amount B is obtained by varying Amount B for the preceding financial year according to section 4.

(3) On or before each 1 July after this section commences, the Minister is to publish a notice in the *Gazette* specifying the amount that is Amount B for the financial year commencing on that 1 July.

(4) Publication under subsection (3) is for public information only and a failure to publish or a delay or error in publication does not affect what is Amount B for the year concerned.

13A. Restrictions on damages if payments received under CISS

(1) In this Act —

CISS means the scheme provided for in the MVWA(CI) Act for the lifetime care and support of certain people catastrophically injured in motor vehicle accidents or workplace accidents;

interim participant means a person who under the MVWA(CI) Act is an interim participant in the CISS;

lifetime participant means a person who under the MVWA(CI) Act is a lifetime participant in the CISS;

MVWA(CI) Act means the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*;

treatment, care and support needs means —

(a) treatment, care and support needs, as defined in the MVWA(CI) Act section 3(1); and

(b) excluded treatment, care and support needs, as defined in that section.

(2) If a term used in this section (other than a term defined in subsection (1)) is given a meaning in the MVWA(CI) Act section 3(1), it has the same meaning in this section.

(3) Without limiting the definition of ***treatment, care and support needs*** in subsection (1), it includes gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance provided, or to be provided, to a person by a member of the same household or family as the person.

(4) Subsection (5) applies to the awarding of damages in respect of a motor vehicle injury or workplace injury suffered by a person if the person is a participant in the CISS in respect of the injury.

(5) No damages can be awarded to the person in respect of any treatment, care and support needs of the person that relate to the motor vehicle injury or workplace injury and that —

(a) have arisen during the period in respect of which the person is a participant in the CISS; or

(b) will or may arise in future.

(6) If the person is an interim participant, it must be assumed for the purposes of subsection (5) that the person will become a lifetime participant in respect of the injury.

(7) Subsection (8) applies to the awarding of damages in respect of a motor vehicle injury or workplace injury suffered by a person if the person —

(a) has ceased to be an interim participant in respect of the injury; and

(b) has not become a lifetime participant in respect of the injury.

(8) No damages can be awarded to the person in respect of any treatment, care and support needs of the person that relate to the motor vehicle injury or workplace injury and that arose during the period in respect of which the person was an interim participant.

(9) Subsections (5) and (8) apply —

(a) whether or not the treatment, care and support needs are assessed treatment, care and support needs, as defined in the MVWA(CI) Act section 3(1); and

(b) whether or not the Commission is required to make a payment in respect of the treatment, care and support needs; and

(c) whether or not any treatment, care, support or service is provided on a gratuitous basis.

(10) This section has effect despite section 12.

Division 4 — Structured settlements

14. Term used: structured settlement

In this Division —

structured settlement means an agreement that provides for all or part of the damages agreed or awarded to be paid in the form of periodic payments funded by an annuity or other agreed means.

15. Consent order for structured settlement

(1) This section applies if the parties to a claim for personal injury damages make a structured settlement and apply to the court hearing, or with jurisdiction to hear, the claim for an order approving of, or in the terms of, the structured settlement.

(2) The court may make the order even though the payment of damages is not in the form of a lump sum.

Division 5 — Provisional and subsequent damages

[Heading inserted: No. 32 of 2024 s. 5.]

Subdivision 1 — Preliminary

[Heading inserted: No. 32 of 2024 s. 5.]

15AA. Terms used

(1) In this Division —

Court means the Supreme Court;

dust disease has the meaning given in section 15AB(1);

initial action has the meaning given in section 15AC(1);

provisional damages has the meaning given in section 15AC(1);

settlement agreement —

(a) in relation to an initial action, has the meaning given in section 15AE;

(b) in relation to a subsequent action, has the meaning given in section 15AL;

subsequent action has the meaning given in section 15AG(1);

subsequent damages has the meaning given in section 15AG(1);

subsequent dust disease has the meaning given in section 15AC(2)(b).

[Section 15AA inserted: No. 32 of 2024 s. 5.]

15AB. Dust disease

A ***dust disease*** means a pathological condition that is either or both of the following —

(a) a pathological condition of the lungs, pleura or peritoneum that has resulted from the inhalation of asbestos or silica;

(b) a pathological condition specified in the Table (whether or not of the lungs, pleura or peritoneum) that has resulted from the inhalation of asbestos or silica.

Table

Item	Disease
1.	Asbestosis
2.	Asbestos-induced carcinoma
3.	Asbestos-related pleural disease
4.	Lung cancer
5.	Mesothelioma
6.	Pneumoconiosis or silicosis
7.	Silico-tuberculosis

[Section 15AB inserted: No. 32 of 2024 s. 5.]

Subdivision 2 — Provisional damages

[Heading inserted: No. 32 of 2024 s. 5.]

15AC. Award of provisional damages

(1) In an action (an ***initial action***) in respect of a dust disease suffered by a plaintiff for which personal injury damages are

claimed, the Court may award damages (***provisional damages***) on a provisional basis for that dust disease.

(2) Despite subsection (1), provisional damages can only be awarded if the initial action is commenced in the Court by an indorsed writ or a writ indorsed with a statement of claim (as the case may be) that —

(a) nominates provisional damages as the remedy required; and

(b) specifies another dust disease (a ***subsequent dust disease***) or more than 1 subsequent dust disease that the plaintiff may develop, wholly or partly as a result of the act or omission giving rise to the cause of action.

[Section 15AC inserted: No. 32 of 2024 s. 5.]

15AD. Amount of provisional damages

In determining the amount of provisional damages to award to a plaintiff the Court must not assume that the plaintiff will develop a subsequent dust disease.

[Section 15AD inserted: No. 32 of 2024 s. 5.]

15AE. Settlement agreement in initial action

An agreement (a ***settlement agreement***) effecting the settlement of an initial action must specify the following —

(a) any subsequent dust disease that the plaintiff claims they may develop, wholly or partly as a result of the act or omission giving rise to the cause of action;

(b) whether or not the defendant admits liability for —

(i) the dust disease; and

(ii) if a subsequent dust disease is specified in accordance with paragraph (a) — the subsequent dust disease;

(c) whether or not the plaintiff is barred from commencing a subsequent action in relation to a subsequent dust disease specified in accordance with paragraph (a).

[Section 15AE inserted: No. 32 of 2024 s. 5.]

15AF. Consequence of settlement in initial action

(1) If an initial action is disposed of in whole by a settlement agreement that specifies that the plaintiff is not barred from commencing a subsequent action in relation to at least 1 subsequent dust disease specified in the settlement agreement in accordance with section 15AE(a), the initial action must be discontinued.

(2) If an initial action is disposed of in whole by a settlement agreement that specifies that the plaintiff is barred from commencing a subsequent action in relation to all subsequent dust diseases identified in the indorsed writ or a writ indorsed with a statement of claim (as the case may be), the initial action may be dismissed.

[Section 15AF inserted: No. 32 of 2024 s. 5.]

Subdivision 3 — Subsequent damages

[Heading inserted: No. 32 of 2024 s. 5.]

15AG. Award of subsequent damages

(1) In an action (a ***subsequent action***) in respect of a subsequent dust disease for which personal injury damages are claimed, the Court may award damages (***subsequent damages***) for that subsequent dust disease.

(2) A subsequent action must be commenced in the Court.

(3) A subsequent action must be in respect of a subsequent dust disease specified in the indorsed writ or a writ indorsed with a statement of claim (as the case may be) that commenced the initial action.

(4) A plaintiff may commence more than 1 subsequent action, with each subsequent action relating to a subsequent dust disease or more than 1 subsequent dust disease.

(5) Despite subsection (4), a plaintiff cannot commence a subsequent action in relation to a subsequent dust disease that has already been the subject of a subsequent action.

(6) A plaintiff is barred from commencing a subsequent action if —

(a) the initial action was disposed of in whole by a settlement agreement that specifies that the plaintiff is barred from commencing a subsequent action; or

(b) any other subsequent action was disposed of in whole by a settlement agreement that specifies that the plaintiff is barred from commencing another subsequent action.

[Section 15AG inserted: No. 32 of 2024 s. 5.]

15AH. Court must give effect to terms of settlement agreements

(1) In this section —

information includes any document;

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information);

publication, in relation to information, means the dissemination of information to the public or a section of the public by any means, including —

(a) in a book, newspaper, magazine or other written publication; and

(b) by radio broadcast, television, a website, an online facility or other electronic means;

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

(2) In a subsequent action the Court must consider, and if relevant give effect to, the terms of any settlement agreement entered

into by the parties effecting the settlement, in whole or in part, of —

(a) the subsequent action; or

(b) the initial action; or

(c) any other subsequent action.

(3) The Court may, on its own initiative or on the application of a party to the proceedings, make a suppression order or non-publication order in relation to any terms of a settlement agreement considered under subsection (2).

(4) The Court may only make a suppression order or non-publication order under subsection (3) if the Court considers that making the order is necessary for the proper administration of justice.

(5) In deciding whether it is necessary to make a suppression order or non-publication order, the Court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

(6) A suppression order or non-publication order may be made subject to any exceptions or conditions as the Court thinks fit and specifies in the order.

(7) This section does not limit or otherwise affect any powers that the Court has apart from this section to regulate its proceedings or to deal with a contempt of the Court.

[Section 15AH inserted: No. 32 of 2024 s. 5.]

15AI. Evidence to apply in subsequent actions

In a subsequent action, the Court may —

(a) admit into evidence any evidence admitted in the initial action or any other subsequent action; and

(b) make a finding of fact that has been made in the initial action or any other subsequent action.

[Section 15AI inserted: No. 32 of 2024 s. 5.]

15AJ. One award of subsequent damages for each subsequent dust disease

Only 1 award of subsequent damages can be made for each subsequent dust disease that is claimed in a subsequent action.

[Section 15AJ inserted: No. 32 of 2024 s. 5.]

15AK. Amount of subsequent damages

In determining the amount of subsequent damages to award, the Court must take into account any amount —

(a) awarded to the plaintiff —

(i) in the initial action by way of provisional damages; and

(ii) in any other subsequent action by way of subsequent damages;

and

(b) received by the plaintiff in settlement of —

(i) the initial action; or

(ii) any other subsequent action.

[Section 15AK inserted: No. 32 of 2024 s. 5.]

15AL. Settlement agreement in subsequent action

An agreement (a ***settlement agreement***) effecting the settlement of a subsequent action must specify the following —

(a) any other subsequent dust disease that the plaintiff claims they may develop, wholly or partly as a result of the act or omission giving rise to the cause of action;

(b) whether or not the defendant admits liability for —

(i) the subsequent dust disease; and

(ii) if another subsequent dust disease is specified in accordance with paragraph (a) — that subsequent dust disease;

(c) whether or not the plaintiff is barred from commencing another subsequent action in relation to a subsequent dust disease specified in accordance with paragraph (a).

[Section 15AL inserted: No. 32 of 2024 s. 5.]

15AM. Consequence of settlement in subsequent action

(1) If a subsequent action is disposed of in whole by a settlement agreement that specifies that the plaintiff is not barred from commencing another subsequent action, the subsequent action must be discontinued.

(2) If a subsequent action is disposed of in whole by a settlement agreement that specifies that the plaintiff is barred from commencing another subsequent action, the subsequent action may be dismissed.

[Section 15AM inserted: No. 32 of 2024 s. 5.]

15AN. Costs

In determining costs in relation to a subsequent action, the Court must have regard to —

(a) any amount of costs awarded in relation to —

(i) the initial action; and

(ii) any other subsequent action;

and

(b) if costs were awarded under paragraph (a) — whether a basis for which costs were awarded is duplicated in a basis for which costs are subsequently claimed.

[Section 15AN inserted: No. 32 of 2024 s. 5.]

Subdivision 4 — Transitional provisions

[Heading inserted: No. 32 of 2024 s. 5.]

15AO. Transitional provision

(1) In this section —

proclamation day means the day on which the *Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024* Part 2 comes into operation.

(2) If an action in respect of a dust disease suffered by a plaintiff for which personal injury damages are claimed is commenced before proclamation day, the claim may be amended to specify —

(a) that provisional damages are the remedy required; and

(b) a subsequent dust disease or more than 1 subsequent dust disease that the plaintiff may develop, wholly or partly as a result of the act or omission giving rise to the cause of action.

(3) Despite subsection (2), this section does not apply if, before proclamation day —

(a) the hearing of the action has commenced; or

(b) damages have been awarded or a settlement reached in the action.

(4) If a claim is commenced in a court other than the Court and the claim is amended in accordance with subsection (2), a registrar of the court in which the action was commenced must transfer the action to the Court.

[Section 15AO inserted: No. 32 of 2024 s. 5.]

Part 2A — Child sexual abuse actions

[Heading inserted: No. 3 of 2018 s. 5.]

Division 1 — Preliminary

[Heading inserted: No. 3 of 2018 s. 5.]

15A. Terms used

In this Part —

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description, and includes money and securities, choses in action and documents;

child sexual abuse has the meaning given in the *Limitation Act 2005* section 6A(1);

child sexual abuse action has the meaning given in the *Limitation Act 2005* section 6A(1);

child sexual abuse cause of action has the meaning given in the *Limitation Act 2005* section 6A(1);

institution means an entity (other than the Crown), organised for some purpose or work, that exercises or exercised care, supervision or authority over children, whether as part of its primary functions or activities or otherwise.

[Section 15A inserted: No. 3 of 2018 s. 5.]

Division 2 — Liability of certain office holders and institutions, and availability of assets

[Heading inserted: No. 3 of 2018 s. 5.]

15B. Liability of current office holder in unincorporated institution

(1) Subsections (2) and (3) apply if —

(a) a person was subjected to child sexual abuse by a person associated with an institution; and

(b) the person has or had a child sexual abuse cause of action against the holder of an office of authority in the institution (the ***office holder***) founded on the responsibility of the office holder for the associated person and for the institution generally; and

(c) at the time of the accrual of the cause of action, the institution —

(i) exercised care, supervision or authority over children; and

(ii) was not incorporated;

and

(d) the institution is currently not incorporated; and

(e) the office holder no longer holds the office; and

(f) the person would be able to maintain an action on the cause of action if the office holder continued to hold the office.

(2) An action on the cause of action referred to in subsection (1)(b) may be commenced against the current holder of the office (the ***current office holder***) in the name of the office.

(3) Any liability that the office holder would have had in relation to the cause of action is taken to be held by the current office holder.

(4) This section applies —

(a) regardless of when the act or omission that constitutes the child sexual abuse occurred; and

(b) regardless of when the cause of action accrued.

(5) If the current office holder has a liability in relation to a cause of action in tort because of subsection (3), the current office holder is taken to be a tortfeasor, for the purposes of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* section 7, in respect of damage suffered as a result of the tort.

[Section 15B inserted: No. 3 of 2018 s. 5.]

15C. Assets available for judgments and settlements: office holders

(1) This section applies if a holder of an office of authority in an institution has a liability under a judgment in or settlement of an action on a child sexual abuse cause of action of the type described in section 15B(1)(b).

(2) The holder of the office may satisfy the liability out of assets held by or for the office or the institution, including assets of a trust (whether or not a charitable trust).

(3) However, personal assets of the holder of the office cannot be used to satisfy the liability.

(4) For the purposes of subsection (2) —

(a) the holder of the office may realise assets held by or for the office or the institution; and

(b) a trustee of a trust may pay an amount in satisfaction of the liability and, for that purpose, realise assets of the trust.

(5) The holder of the office and a trustee may take the actions referred to in subsections (2) and (4) despite —

(a) any written or other law (including any law concerning trusts or the holding of property by or for the office or the institution); or

(b) the terms of any trust; or

(c) any duty whether as member of the institution, office holder, trustee or otherwise.

(6) Subsection (3) has effect despite any written or other law, including the *Civil Judgments Enforcement Act 2004*.

(7) This section does not apply in relation to a judgment in or settlement of a child sexual abuse action given or reached before the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* section 5 came into operation.

[Section 15C inserted: No. 3 of 2018 s. 5.]

15D. Liability of incorporated institution that was unincorporated at time of abuse

(1) Subsections (2) and (3) apply if —

(a) a person was subjected to child sexual abuse by a person associated with an institution; and

(b) the person has or had a child sexual abuse cause of action against the holder of an office of authority in the institution (the ***office holder***) founded on the responsibility of the office holder for the associated person and for the institution generally; and

(c) at the time of the accrual of the cause of action, the institution —

(i) exercised care, supervision or authority over children; and

(ii) was not incorporated;

and

(d) the institution is currently incorporated; and

(e) the person is able to maintain an action on the cause of action or would be able to do so if the office holder continued to hold the office.

(2) An action on the cause of action referred to in subsection (1)(b) may be commenced against the institution.

(3) Any liability that the office holder would have had in relation to the cause of action is taken to be held by the institution.

(4) This section applies —

(a) regardless of when the act or omission that constitutes the child sexual abuse occurred; and

(b) regardless of when the cause of action accrued.

(5) If the institution has a liability in relation to a cause of action in tort because of subsection (3), the institution is taken to be a tortfeasor, for the purposes of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* section 7, in respect of damage suffered as a result of the tort.

[Section 15D inserted: No. 3 of 2018 s. 5.]

15E. Assets available for judgments and settlements: institutions

(1) This section applies if an institution has a liability under a judgment in or settlement of a child sexual abuse action.

(2) The institution may satisfy the liability out of assets held by or for the institution, including assets of a trust (whether or not a charitable trust).

(3) For the purposes of subsection (2) —

(a) the institution may realise assets held by or for the institution; and

(b) a trustee of a trust may pay an amount in satisfaction of the liability and, for that purpose, realise assets of the trust.

(4) The institution or a trustee may take the actions referred to in subsections (2) and (3) despite —

(a) any written or other law (including any law concerning trusts or the holding of property by or for the office or the institution); or

(b) the terms of any trust; or

(c) any duty whether as member of the institution, office holder, trustee or otherwise.

(5) This section does not apply in relation to a judgment in or settlement of a child sexual abuse action given or reached before the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* section 5 came into operation.

[Section 15E inserted: No. 3 of 2018 s. 5.]

15F. Continuity of institutions: institution substantially the same

(1) For the purposes of sections 15B, 15D and 15H(4)(a), it is sufficient that an institution (as it is currently) is substantially the same as it was at the time when the cause of action accrued (the ***relevant time***).

(2) Without limiting the generality of subsection (1), an institution (as it is currently) is substantially the same as it was at the relevant time if the class or type of member and the primary purposes or work of the institution (as it is currently) are substantially the same as they were at the relevant time.

(3) Subsections (1) and (2) have effect regardless of whether, after the relevant time —

(a) the name of the institution changed;

(b) the organisational structure of the institution changed;

(c) the institution became incorporated;

(d) the geographic area in which the members of the institution carried out the purposes or work of the institution changed.

[Section 15F inserted: No. 3 of 2018 s. 5.]

15G. Continuity of institutions: no institution the same or substantially the same

(1) If, for the purposes of section 15B or 15D, there is no current institution that is the same or substantially the same as the institution referred to in section 15B(1)(a) or 15D(1)(a) (the ***earlier institution***), the current institution that is, under this section, the relevant successor of the earlier institution is taken to be the same institution as the earlier institution for the purposes of this Division.

(2) A current institution is the relevant successor of an earlier institution if —

(a) 1 of the circumstances in subsection (3) applies to the institution and the earlier institution; or

(b) in the case where there is at least 1 institution interposed, over time, between the institution and the earlier institution — at least 1 of the circumstances in subsection (4) applies to each link in the chain between the institution and the earlier institution.

(3) For the purposes of subsection (2)(a), the circumstances are —

(a) some or all of the earlier institution merged into the institution;

(b) some or all of the earlier institution merged with 1 or more other entities to form the institution;

(c) the institution is the remainder of the earlier institution after some of the earlier institution ceased to be part of the earlier institution.

(4) For the purposes of subsection (2)(b), the circumstances are —

(a) some or all of an earlier institution merged into an institution;

(b) some or all of an earlier institution merged with 1 or more other entities to form an institution;

(c) an institution is the remainder of an earlier institution after some of the earlier institution ceased to be part of the earlier institution;

(d) an institution as it is at a particular time is substantially the same as it was at an earlier time (and section 15F(2) and (3) apply, with all necessary modifications, in determining what is substantially the same).

(5) The Governor may, on the recommendation of the Minister, make regulations providing that, for the purposes of subsection (1), a specified current institution is the relevant successor of a specified earlier institution.

(6) The Minister cannot make a recommendation for the purposes of subsection (5) unless satisfied that —

(a) the current institution has some relevant connection to the earlier institution; or

(b) the head of the current institution, as worked out under section 15H(3), has agreed to the current institution being the relevant successor of the earlier institution.

(7) Regulations made for the purposes of subsection (5) —

(a) prevail over subsections (2) to (4) to the extent of any inconsistency; and

(b) may have effect from a day that is before the day on which they are published in the *Gazette*, but not before the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* section 5 came into operation.

[Section 15G inserted: No. 3 of 2018 s. 5.]

15H. Continuity of offices

(1) For the purposes of section 15B, it is sufficient that an office (as it is currently) is substantially the same as it was at the time when the cause of action accrued.

(2) However, if there is no current office that is the same or substantially the same as the office referred to in section 15B(1)(b) but there is continuity of the institution, the current head of the institution is taken to be the current office holder for the purposes of this Division.

(3) The head of an institution is the individual or body who or which, as a member or part of the institution —

(a) is acknowledged by the institution as the head of the institution; or

(b) in the absence of such an individual, body or acknowledgment — has overall responsibility for the institution.

(4) For the purposes of subsection (2), there is continuity of the institution if the institution (as it is currently) —

(a) is the same as it was at the time when the cause of action accrued; or

(b) is the same institution, under section 15G, as the institution referred to in section 15B(1)(a).

[Section 15H inserted: No. 3 of 2018 s. 5.]

15I. Accrual of certain child sexual abuse causes of action

For the purposes of this Division, if a child sexual abuse cause of action does not accrue at the time of the act or omission giving rise to the cause of action, the cause of action is taken to have accrued at the time of the act or omission, despite any written or other law.

[Section 15I inserted: No. 3 of 2018 s. 5.]

15J. Displacement of Corporations legislation

Sections 15C and 15E are declared to be Corporations legislation displacement provisions for the purposes of the *Corporations Act 2001* (Commonwealth) section 5G in relation to the Corporations legislation generally.

[Section 15J inserted: No. 3 of 2018 s. 5.]

Division 3 — Prior compensation payments

[Heading inserted: No. 3 of 2018 s. 5.]

15K. Prior compensation payments taken into account

(1) In this section —

compensation payment, made in respect of a person —

(a) means a payment made in respect of the person by way of compensation or redress (including an ex gratia payment) for child sexual abuse of the person; but

(b) does not include an amount paid under a judgment in or settlement of a child sexual abuse action.

(2) A court, in making an award of damages in a child sexual abuse action in respect of a person, must deduct an amount equal to the amount of any compensation payment made in respect of the person for the child sexual abuse the subject of the action.

(3) The court must do so only to the extent to which the compensation payment is for that child sexual abuse.

(4) If the court is not satisfied as to the extent to which the compensation payment is for that child sexual abuse, the court must deduct an amount equal to 50% of the payment.

(5) This section does not limit a court's power, in making an award of damages in a child sexual abuse action in respect of a person, to take into account an amount paid under a judgment in or

settlement of a previous child sexual abuse action in respect of the person.

[Section 15K inserted: No. 3 of 2018 s. 5.]

Division 4 — Caps on legal fees

[Heading inserted: No. 3 of 2018 s. 5.]

15L. Caps on legal fees

(1) In this section —

costs determination means a legal costs determination made under the *Legal Profession Uniform Law Application Act 2022* section 133;

law practice has the meaning given in the *Legal Profession Uniform Law (WA)* section 6(1).

(2) An agreement must not be made for a law practice to receive, for appearing for or acting on behalf of a person in a child sexual abuse action, any greater reward than is provided for by any costs determination that is in force.

(3) An agreement is void, and any money paid under the agreement is recoverable by the person who paid the money, if the agreement —

(a) is made contrary to this section; or

(b) would have been contrary to this section if it had been made after the commencement of the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* section 5.

(4) Subsection (3) does not affect the operation of an agreement so far as it relates to services provided before the commencement of the *Civil Liability Legislation Amendment (Child Sexual*

Abuse Actions) Act 2018 section 5 and does not apply in relation to any money paid or payable in respect of services so provided.

[Section 15L inserted: No. 3 of 2018 s. 5; amended: No. 9 of 2022 s. 338.]

Division 5 — Review of Part 2A

[Heading inserted: No. 3 of 2018 s. 5.]

15M. Review of Part

(1) The Minister must carry out a review of the operation and effectiveness of this Part as soon as is practicable after the 3rd anniversary of the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* section 5 comes into operation.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

[Section 15M inserted: No. 3 of 2018 s. 5.]

Part 3 — Advertising legal services relating to personal injury and touting

16. Terms used

In this Part, unless the contrary intention appears —

client, of a lawyer, includes a person who makes a genuine inquiry of a lawyer about a personal injury;

hospital includes —

(a) any premises used for receiving, caring for, or treating, persons who are injured, sick, or mentally ill; and

(b) any premises used for providing a service for maintaining, improving, or restoring, a person's health and wellbeing; and

(c) any land or building occupied or used in connection with premises described in paragraph (a) or (b);

law practice has the meaning given in the *Legal Profession Uniform Law (WA)* section 6(1);

potential claimant means —

(a) a person who suffers, or may suffer, personal injury arising out of an incident; or

(b) another person who has, or may have, a claim arising out of that personal injury;

printed publication includes a newspaper, magazine, journal, periodical, or directory;

public place means a place or vehicle that —

(a) the public, or a section of the public, is entitled to use; or

(b) is open to, or is being used by, the public or a section of the public,

whether on payment of money, through membership of a club or other body, or otherwise;

publish means —

(a) to include in a printed publication; or

(b) to disseminate by the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purposes of receiving professional advice, treatment, or assistance; or

(c) to broadcast by radio or for television; or

(d) to include on an internet website or otherwise publicly disseminate by means of the internet; or

(e) to publicly exhibit in, on, over, or under, any building, vehicle, or place, or in the air, in view of persons in or on any street or public place; or

(f) to include in a document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or left on a vehicle; or

(g) to include in a document provided to a person as a receipt or record for a transaction.

[Section 16 amended: No. 65 of 2003 s. 19(2); No. 21 of 2008 s. 646(2); No. 9 of 2022 s. 339.]

17. Restriction on advertising legal services relating to personal injury

(1) A lawyer or a person acting for a lawyer must not publish or cause to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person —

(a) to make a claim under any Act or law for compensation or damages for a personal injury; or

(b) to use the services of the lawyer, or another named lawyer or a named law practice in connection with the making of a claim mentioned in paragraph (a),

except if section 18 allows publication of the statement.

Penalty: $10 000.

(2) A lawyer or a person acting for a lawyer does not contravene subsection (1) only because of —

(a) a statement made —

(i) to a person who is already a client of the lawyer or in a costs agreement made in accordance with the *Legal Profession Uniform Law (WA)* Part 4.3 Division 4; or

(ii) to a person at the lawyer's place of business; or

(iii) under an order by a court;

or

(b) a statement made on the lawyer's internet website that is limited to statements about —

(i) the operation of the law of negligence and a person's legal rights under that law; and

(ii) the conditions under which the lawyer is prepared to provide personal injury services.

(3) The liability of a lawyer who contravenes subsection (1) to the penalty provided under that subsection does not prevent the lawyer from being charged with, or found guilty of, unprofessional conduct because of the conduct involved in the contravention.

(4) Subsection (1) does not apply to a statement made in an edition published before the commencement of this section.

[Section 17 amended: No. 65 of 2003 s. 19(3); No. 21 of 2008 s. 646(3) and (4); No. 9 of 2022 s. 340 and 341.]

18. Allowed publication

(1) Except as stated in subsection (3), the publication of a statement that states only the name of a lawyer or a law practice and the contact details of the lawyer or law practice, with or without information as to any area of practice, speciality, or accreditation, of the lawyer or law practice, is allowed if it is —

(a) in a printed publication; or

(b) by publishing on an internet website an electronic version merely reproducing a statement in a printed publication that is published independently of a lawyer; or

(c) part of the publication on an internet website of the contents of a directory or database that is published or maintained independently of a lawyer; or

(d) by public exhibition in, on, over, or under, any building, vehicle, or place, or in the air, in view of persons in or on any street or public place; or

(e) in a printed document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or left on a vehicle; or

(f) in a printed document provided to a person as a receipt or record relating to a transaction.

(2) For the purposes of subsection (1)(b) or (c), a printed publication, directory, or database is published or maintained independently of a lawyer only if —

(a) it is not published or maintained by the lawyer or by a partner, employee or member of the lawyer's practice; and

(b) the person who publishes or maintains it does so in the ordinary course of the conduct of the person's business or affairs.

(3) Subsection (1) does not allow the publication of a statement —

(a) by public exhibition in or on a hospital; or

(b) in a printed document gratuitously sent or delivered to a hospital or left in a hospital or on a vehicle in the vicinity of a hospital.

[Section 18 amended: No. 21 of 2008 s. 646(5); No. 9 of 2022 s. 341.]

19. Prohibition on touting at scene of incidents or at any time

(1) At the scene of an incident from which a person allegedly suffered personal injury or at a hospital after an incident from which a person allegedly suffered personal injury —

(a) a person attending must not solicit or induce a potential claimant involved in the incident to make a claim; and

(b) a person, other than a person attending, must not solicit or induce, in a way that would be unreasonable in the circumstances, a potential claimant involved in the incident to make a claim.

Penalty: $10 000.

(2) In any circumstances after an incident from which a person allegedly suffered personal injury —

(a) a person attending; or

(b) a person obtaining information,

must not give a potential claimant involved in the incident, or someone on the potential claimant's behalf, any information described in subsection (4).

Penalty: $10 000.

(3) In any circumstances after an incident from which a person allegedly suffered personal injury, a person having contact whose contact directly involves —

(a) the treatment or management of the injury or its physical, psychiatric, or psychological consequences; or

(b) the provision of administrative or other support to a person whose contact directly involves anything referred to in paragraph (a),

must not give a potential claimant (whether or not the potential claimant involved in the incident) or someone on the potential claimant's behalf, any information described in subsection (4) except if subsection (5) allows the information to be given.

Penalty: $10 000.

(4) The information the giving of which may be an offence under subsection (2) or (3) is the name, address, or telephone number of —

(a) a particular lawyer or law practice; or

(b) an employee or agent of the lawyer or law practice.

(5) Information described in subsection (4) may be given as described in subsection (3) if —

(a) the information is given while simultaneously giving similar information about, or about an employee or agent of, each of at least 3 competing lawyers or law practices; or

(b) the information is given on behalf of an association in order to help a person to make use of an arrangement that the association has, as a service to its members, made with a particular lawyer or law practice.

(6) When counting how many competing lawyers or law practices there are for the purposes of subsection (5)(a), 2 or more lawyers who are members of the same law practice count as one.

(7) In any circumstances after an incident from which a person allegedly suffered personal injury —

(a) a person attending; or

(b) a person obtaining information; or

(c) a person having contact,

must not disclose the name or address of a person involved in the incident to anyone except if subsection (8), (9), or (10) allows the disclosure.

Penalty: $10 000.

(8) The name or address of a person involved in the incident may be disclosed to —

(a) a police officer; or

(b) a person to whom the disclosure is required under a law; or

(c) a potential claimant involved in the incident or the potential claimant's lawyer or agent; or

(d) the employer of the person making the disclosure, if that person is attending or attended at the scene of the incident for the purpose of the person's employment and the employer requires the person to disclose the information on grounds that are reasonable in the circumstances; or

(e) a person (***insurer***) who carries on the business of providing insurance for people or property, or someone who is acting as the insurer's lawyer or agent.

(9) The name or address of a person involved in the incident may be disclosed to a lawyer if —

(a) the person making the disclosure is a client of the lawyer for the purpose of making a claim or exercising a legal right, whatever its nature, arising out of the incident; and

(b) in the circumstances, it is reasonable for the person making the disclosure to think that the person may have a claim or a legal right; and

(c) the disclosure is made for the purpose of making the claim or exercising the legal right.

(10) The name or address of a person involved in the incident may be disclosed if the disclosure is not likely to result in a potential claimant involved in the incident being solicited or induced to make a claim.

(11) In this section —

person attending means a person who, for the purpose of the person's employment, is attending or attended —

(a) at the scene of the incident from which a person allegedly suffered personal injury; or

(b) at a hospital after an incident from which a person allegedly suffered personal injury;

person having contact means a person who, for the purpose of the person's employment, has contact with a potential claimant, whether or not the potential claimant involved in the incident, that substantially arises because of the incident from which a person allegedly suffered personal injury;

person obtaining information means a person who, for the purpose of the person's employment, obtains information about the incident from which a person allegedly suffered personal injury.

[Section 19 amended: No. 21 of 2008 s. 646(6)-(8); No. 9 of 2022 s. 341.]

20. Prohibition against paying, or seeking payment, for touting

(1) A person must not provide or offer to provide, or receive or seek to receive, a fee for the soliciting or inducing of a potential claimant to make a claim.

Penalty: $10 000.

(2) A person does not commit an offence against subsection (1) if the fee is for a person who is not a lawyer and is not acting for a lawyer, in the ordinary course of business as an advertiser or publisher, advertising legal services about claims.

(3) A person does not commit an offence against subsection (1) if the fee is for professional services provided by a person who is a lawyer or is acting for a lawyer to the potential claimant in the process of making a claim.

(4) In this section —

fee includes the following —

(a) a bonus, commission, cash payment, deduction, discount, rebate, remission or other valuable consideration;

(b) employment, or an agreement to give employment, in any capacity.

[Section 20 amended: No. 9 of 2022 s. 341.]

21. Consequences if person approved under an Act is convicted under s. 19 or 20

(1) This section applies to a person if —

(a) under an Act (the ***relevant Act***) —

(i) the person is approved for a profession or a kind of employment or calling; or

(ii) activities for the person's profession, employment, or calling are regulated;

and

(b) under the relevant Act, the person's approval may be suspended or cancelled for misconduct.

(2) If the person is convicted of an offence against section 19 or 20, the conduct resulting in the person's conviction is conduct because of which the person's approval may be suspended or cancelled under the relevant Act.

(3) In this section —

approved includes accredited, authorised, employed, licensed, registered or otherwise permitted to carry on activities;

convicted includes being found guilty, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded;

misconduct includes malpractice, professional misconduct and unprofessional conduct or practice.

Part 4 — Other matters

22. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Notes

This is a compilation of the *Civil Liability Act 2002* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Civil Liability Act 2002	35 of 2002	20 Nov 2002	s. 1 and 2: 20 Nov 2002; Act other than s. 1 and 2: 1 Jan 2003 (see s. 2 and *Gazette* 17 Dec 2002 p. 5905)
Civil Liability Amendment Act 2003	58 of 2003	30 Oct 2003	s. 1 and 2: 30 Oct 2003; Act other than s. 1, 2, 9 and 14: 1 Dec 2003 (see s. 2 and *Gazette* 28 Nov 2003 p. 4773); s. 9 and 14: 1 Dec 2004 (see s. 2 and *Gazette* 26 Nov 2004 p. 5309)
Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 19	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722)
Workers' Compensation Reform Act 2004 s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7131)
Civil Liability Amendment Act 2004	43 of 2004	9 Nov 2004	Act other than Pt. 3: 9 Nov 2004 (see s. 2(1)); Pt. 3: 1 Dec 2004 (see s. 2(2) and *Gazette* 26 Nov 2004 p. 5309)
Psychologists Act 2005 Sch. 3 cl. 1	28 of 2005	12 Dec 2005	4 May 2007 (see s. 2 and *Gazette* 4 May 2007 p. 1963)
Optometrists Act 2005 Sch. 3 cl. 1	29 of 2005	12 Dec 2005	20 Apr 2007 (see s. 2 and *Gazette* 30 Mar 2007 p. 1451)
Podiatrists Act 2005 Sch. 3 cl. 1	30 of 2005	12 Dec 2005	30 May 2007 (see s. 2 and *Gazette* 29 May 2007 p. 2486)
Chiropractors Act 2005 Sch. 3 cl. 1	31 of 2005	12 Dec 2005	1 Aug 2007 (see s. 2 and *Gazette* 31 Jul 2007 p. 3789)
Physiotherapists Act 2005 Sch. 3 cl. 1	32 of 2005	12 Dec 2005	23 Feb 2007 (see s. 2 and *Gazette* 20 Feb 2007 p. 505)

Short title	Number and year	Assent	Commencement
Osteopaths Act 2005 Sch. 3 cl. 1	33 of 2005	12 Dec 2005	30 May 2007 (see s. 2 and *Gazette* 29 May 2007 p. 2486)
Occupational Therapists Act 2005 Sch. 3 cl. 1	42 of 2005	19 Dec 2005	1 Aug 2007 (see s. 2 and *Gazette* 31 Jul 2007 p. 3789)
Reprint 1: The *Civil Liability Act 2002* as at 10 Feb 2006 (includes amendments listed above except those in the *Psychologists Act 2005*, the *Optometrists Act 2005*, the *Podiatrists Act 2005*, the *Chiropractors Act 2005*, the *Physiotherapists Act 2005*, the *Osteopaths Act 2005* and the *Occupational Therapists Act 2005*)			
Medical Radiation Technologists Act 2006 Sch. 3 cl. 1	21 of 2006	9 Jun 2006	1 Jul 2007 (see s. 2 and *Gazette* 26 Jun 2007 p. 3013)
Nurses and Midwives Act 2006 Sch. 3 cl. 2	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and *Gazette* 18 Sep 2007 p. 4711)
Reprint 2: The *Civil Liability Act 2002* as at 5 Oct 2007 (includes amendments listed above)			
Legal Profession Act 2008 s. 646	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Medical Practitioners Act 2008 Sch. 3 cl. 8	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989)
Acts Amendment (Consent to Medical Treatment) Act 2008 Pt. 3	25 of 2008	19 Jun 2008	27 Jun 2009 (see s. 2 and *Gazette* 26 Jun 2009 p. 2565)
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 33	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Reprint 3: The *Civil Liability Act 2002* as at 20 Aug 2010 (includes amendments listed above)			
Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 9	35 of 2010	30 Aug 2010	s. 40, 41(1) and 42: 18 Oct 2010 (see s. 2(b) and *Gazette* 1 Oct 2010 p. 5075-6); s. 41(2): 1 Jul 2012 (see s. 2(b) and *Gazette* 19 Jun 2012 p. 2631)
Acts Amendment (Fair Trading) Act 2010 s. 193	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and *Gazette* 24 Dec 2010 p. 6805)

Short title	Number and year	Assent	Commencement
Health, Safety and Civil Liability (Children in Schools and Child Care Services) Act 2011 Pt. 2	1 of 2011	1 Mar 2011	1 Jan 2013 (see s. 2(b) and *Gazette* 14 Dec 2012 p. 6195)
Education and Care Services National Law (WA) Act 2012 Pt. 4 Div. 3	11 of 2012	20 Jun 2012	1 Jan 2013 (see s. 2(b)(ii) and *Gazette* 14 Dec 2012 p. 6195)
Reprint 4: The *Civil Liability Act 2002* as at 13 Sep 2013 (includes amendments listed above)			
Motor Vehicle (Catastrophic Injuries) Act 2016 Pt. 7 Div. 1	8 of 2016	14 Apr 2016	14 May 2016 (see s. 2(b) and *Gazette* 13 May 2016 p. 1421)
Local Government Legislation Amendment Act 2016 Pt. 3 Div. 8	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648)
Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018 Pt. 2	3 of 2018	19 Apr 2018	1 Jul 2018 (see s. 2(b) and *Gazette* 29 Jun 2018 p. 2434)
Health Practitioner Regulation National Law (WA) Amendment Act 2018 s. 103	4 of 2018	19 Apr 2018	1 Dec 2018 (see s. 2(d) and *Gazette* 13 Nov 2018 p. 4427-8)
Legal Profession Uniform Law Application Act 2022 Pt. 17 Div. 4	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Workers Compensation and Injury Management Act 2023 Pt. 15 Div. 3 Subdiv. 1	21 of 2023	24 Oct 2023	1 Jul 2024 (see s. 2(d) and SL 2024/34 cl. 2)
Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024 Pt. 2	32 of 2024	26 Sep 2024	1 Dec 2024 (see s. 2(d) and SL 2024/238 cl. 2)

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
Amount A	9(4)
Amount B	12(4)
Amount C	9(4)
apology	5AF
apportionable claim	5AI
approved	21(3)
assets	15A
carry out road work	5Z(1)
child	5I(16)
child care service	5AAA
child sexual abuse	15A
child sexual abuse action	15A
child sexual abuse cause of action	15A
CISS	13A(1)
client	16
commencement day	5A(5), 5R(5), 5V(5), 5AAB(1), 5AC(6), 5AG(5)
community kindergarten	5AAA
compensation payment	15K(1)
concurrent wrongdoer	5AI
consequential mental harm	5Q
convicted	21(3)
costs determination	15L(1)
Court	15AA(1)
current office holder	15B(2)
dangerous recreational activity	5E
defendant	5H(1), 5I(1), 5O(1), 5P(1), 5S(1)
dust disease	15AA(1), 15AB
earlier institution	15G(1)
emergency assistance	5AB
emergency medical assistance	5AAA
enrolled child	5AAA
excluded concurrent wrongdoer	5AJA(1)
factual causation	5B(1)
fee	20(4)
good samaritan	5AB
harm	3
health professional	5PA
hospital	16
incompetent person	5I(16)

information ..... 15AH(1)
inherent risk 5E
initial action ..... 15AA(1), 15AC(1)
injured person ..... 5C(3)
institution 15A
insurer ..... 19(8)
interim participant ..... 13A(1)
intoxicated ..... 5L(4)
law practice ..... 15L(1), 16
lifetime participant ..... 13A(1)
loss of earnings ..... 11(2)
LPI ..... 4(2)
medically qualified good samaritan 5AB
medical qualifications 5AB
mental harm 5Q
misconduct ..... 21(3)
MVWA(CI) Act ..... 13A(1)
non-pecuniary loss ..... 9(4)
non-publication order ..... 15AH(1)
obvious risk 5E, 5M
office holder ..... 15B(1), 15D(1)
other person ..... 5AKA(1)
personal injury 3
personal injury damages 3
person attending ..... 19(11)
person having contact ..... 19(11)
person obtaining information ..... 19(11)
plaintiff ..... 5H(1), 5I(1), 5O(1), 5S(1)
policy decision 5U
potential claimant 16
preceding financial year ..... 4(1)
printed publication 16
proclamation day ..... 15AO(1)
provisional damages ..... 15AA(1), 15AC(1)
publication ..... 15AH(1)
public body or officer 5U
public place 16
publish 16
pure mental harm 5Q
recreational activity 5E
recreational services ..... 5J(7)
relevant financial year ..... 4(1)
relevant quarter ..... 12(6)
relevant time ..... 15F(1)

road ..... 5Z(1)
roads authority ..... 5Z(1)
scope of liability ..... 5C(1)
settlement agreement ..... 15AA(1), 15AE, 15AL
staff member 5AAA
structured settlement 14
subsequent action ..... 15AA(1), 15AG(1)
subsequent damages ..... 15AA(1), 15AG(1)
subsequent dust disease ..... 15AA(1), 15AC(2)
suppression order ..... 15AH(1)
the relevant Act ..... 21(1)
tortfeasor ..... 5C(1)
treatment, care and support needs ..... 13A(1)

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