

## OCCUPIERS' LIABILITY.

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No. 52 of 1985.

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**AN ACT prescribing the standard of care owed by occupiers and landlords of premises to persons and property on the premises.**

*[Assented to 28 October 1985.]*

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

1. This Act may be cited as the *Occupiers' Liability Act 1985*. Short title.

Interpreta-  
tion.

2. In this Act, unless the contrary intention appears—

“occupier of premises” means person occupying or having control of land or other premises;

“premises” includes any fixed or movable structure, including any vessel, vehicle or aircraft.

Act binds  
Crown.

3. This Act binds the Crown.

Application  
of sections  
5 to 7.

4. (1) Sections 5 to 7 shall have effect, in place of the rules of the common law, for the purpose of determining the care which an occupier of premises is required, by reason of the occupation or control of the premises, to show towards a person entering on the premises in respect of dangers—

(a) to that person; or

(b) to any property brought on to the premises by, and remaining on the premises in the possession and control of, that person, whether it is owned by that person or by any other person,

which are due to the state of the premises or to anything done or omitted to be done on the premises and for which the occupier of premises is by law responsible.

(2) Nothing in sections 5 to 7 shall be taken to alter the rules of the common law which determine the person on whom, in relation to any premises, a duty to show the care referred to in subsection (1) towards a person entering those premises is incumbent.

Duty of care  
of occupier.

5. (1) Subject to subsections (2) and (3) the care which an occupier of premises is required by reason of the occupation or control of the premises to show towards a person entering on the premises in respect of dangers which are due

to the state of the premises or to anything done or omitted to be done on the premises and for which the occupier is by law responsible shall, except in so far as he is entitled to and does extend, restrict, modify or exclude by agreement or otherwise, his obligations towards that person, be such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger.

(2) The duty of care referred to in subsection (1) does not apply in respect of risks willingly assumed by the person entering on the premises but in that case the occupier of premises owes a duty to the person not to create a danger with the deliberate intent of doing harm or damage to the person or his property and not to act with reckless disregard of the presence of the person or his property.

(3) A person who is on premises with the intention of committing, or in the commission of, an offence punishable by imprisonment is owed only the duty of care referred to in subsection (2).

(4) Without restricting the generality of subsection (1), in determining whether an occupier of premises has discharged his duty of care, consideration shall be given to—

- (a) the gravity and likelihood of the probable injury;
- (b) the circumstances of the entry onto the premises;
- (c) the nature of the premises;
- (d) the knowledge which the occupier of premises has or ought to have of the likelihood of persons or property being on the premises;
- (e) the age of the person entering the premises;
- (f) the ability of the person entering the premises to appreciate the danger; and

- (g) the burden on the occupier of eliminating the danger or protecting the person entering the premises from the danger as compared to the risk of the danger to the person.

Negligence  
of  
independent  
contractor.

6. (1) An occupier is not liable under this Act where the damage is due to the negligence of an independent contractor engaged by the occupier if—

- (a) the occupier exercised reasonable care in the selection and supervision of the independent contractor; and
- (b) it was reasonable in all the circumstances that the work that the independent contractor was engaged to do should have been undertaken.

(2) Subsection (1) does not operate to abrogate or restrict the liability of an occupier for the negligence of his independent contractor imposed by any other Act.

Duty not  
restricted  
or excluded  
by contract.

7. (1) The duty of an occupier of premises under this Act, or his liability for breach thereof, shall not be restricted or excluded by the provisions of any contract to which the person to whom the duty is owed is not a party, whether or not the occupier of premises is bound by the contract to permit such person to enter or use the premises.

(2) This section applies to contracts entered into before the commencement of this Act as well as to contracts entered into after its commencement.

Preservation  
of higher  
obligations.

8. (1) Nothing in this Act relieves an occupier of premises in any particular case from any duty to show a higher standard of care than in that case is incumbent on him by virtue of any enactment or rule of law imposing special liability or standards of care on particular classes of persons including, but without restricting the generality of the foregoing, the obligations of common carriers and bailees.

(2) Nothing in this Act shall be construed to affect the rights, duties and liabilities arising from an employer and employee relationship where it exists.

9. (1) Where premises are occupied or used by virtue of a tenancy under which the landlord is responsible for the maintenance or repair of the premises, it shall be the duty of the landlord to show towards any persons who may from time to time be on the premises the same care in respect of dangers arising from any failure on his part in carrying out his responsibilities of maintenance and repair of the premises as is required under this Act to be shown by an occupier of premises towards persons entering on those premises.

Duty of care  
of landlord.

(2) Where premises are occupied or used by virtue of a sub-tenancy, subsection (1) shall apply to any landlord who is responsible for the maintenance or repair of the premises comprised in the sub-tenancy.

(3) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.

(4) This section applies to tenancies created before the commencement of this Act as well as to tenancies created after its commencement.

10. The Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947 applies to claims under this Act.

Law Reform  
(Contributory Negligence and  
Tortfeasors'  
Contribution)  
Act 1947.

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