

NORFOLK



ISLAND

LAW REFORM (MISCELLANEOUS PROVISIONS) ACT 1971

Act No. 9 of 1971

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Law Reform (Miscellaneous Provisions) Act 1971

Act No. 9 of 1971

To effect certain Reforms in the Law.

I, the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Act under the *Norfolk Island Act 1957-1969*.

Dated 9 December 1971.

Paul Hasluck
Governor-General

By His Excellency's Command,
C.E. Barnes
Minister of State for External Territories

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Law Reform (Miscellaneous Provisions) Act 1971*.

Parts

2. This Act is divided into Parts, as follows —
Part 1 - Preliminary (Sections 1-3).
Part 2 - Survival of Causes of Action (Sections 4-8).
Part 3 - Torts and Ante-nuptial Obligations of Wives (Section 9).
Part 4 - Proceedings against and Contributions between Tortfeasors (Sections 10-13).
Part 5 - Contributory Negligence (Sections 14-20).
Part 6 - Common Employment (Section 21).
Part 7 - Injury arising from Mental or Nervous Shock (Sections 22-24).
Part 8 - Attachment of Insurance 25-27).

Act to bind Crown

3. This Act binds the Crown.

PART 2 - SURVIVAL OF CAUSES OF ACTION

4. (1) Subject to this Part, on the death of a person after the commencement of this Act all causes of action subsisting against or vested in him survive against his estate or, as the case may be, for the benefit of his estate.

(2) This section does not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

Damages in actions that survive under this Part

5. Where a cause of action survives under this Part for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person —

- (a) do not include exemplary damages;
- (b) in the case of a breach of promise to marry, are limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and
- (c) where the death of that person has been caused by the act or omission that gives rise to the cause of action —
 - (i) shall be calculated without reference to any loss or gain to his estate consequent upon his death, except that the reasonable expenses of burial or cremation may be included;
 - (ii) do not include damages for the pain or suffering of that person or for any bodily or mental harm suffered by him or for the curtailment of his expectation of life; and
 - (iii) do not include damages for the loss of the capacity of that person to earn, or for the loss of future probable earnings of that person, had he survived.

Conditions precedent to survival of causes of action

6. (1) No proceedings are maintainable in respect of a cause of action in tort which, by virtue of this Part, has survived against the estate of the deceased person unless —

- (a) proceedings against him in respect of that cause of action were pending on the date of his death;
- (b) proceedings are taken in respect of the cause of action not later than twelve months after his executor or administrator was granted probate or letters of administration or within such further period as the Supreme Court, on an application made, either before or after the expiration of that period allows; or
- (c) in the case of a cause of action referred to in the next succeeding section, the proceedings are commenced within the period of twelve months after the date upon which the damage was suffered or after the date on which the executor or administrator of the

deceased person was granted probate or letters of administration, whichever is the later.

(2) The last preceding subsection does not operate so as to permit the commencement of proceedings against the estate of a deceased person at any time after his death if the proceedings could not, by reason of any law relating to the limitation of actions, have been commenced against the deceased person at the time of his death.

(3) For the purposes of paragraph (c) of subsection (1) of this section, the damage to which an action in respect of the death of a person under the *Compensation (Fatal Injuries) Act 1971* relates shall be deemed to have been suffered on the day of the death of that person.

Provision for cases where person liable dies before or at time of damage

7. Where damage has been suffered by reason of an act or omission in respect of which a cause of action would have subsisted against a person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

Savings of other rights

8. The rights conferred by this Part for the benefit of the estates of deceased persons are in addition to, and not in derogation of, any rights conferred by the *Compensation (Fatal Injuries) Act 1971*, and so much of this Part as relates to causes of action against the estates of deceased persons applies in relation to causes of action under that Act as it applies in relation to other causes of action not expressly excepted from the operation of section 4 of this Act.

PART 3 - TORTS AND ANTENUPTIAL OBLIGATIONS OF WIVES

9. (1) The husband of a married woman is not, by reason only of his being her husband, liable —

- (a) in respect of a tort committed by her, whether before or after the marriage, or in respect of a contract entered into, or debt or obligation incurred, by her before the marriage; or
- (b) to be sued, or made a party to a legal proceeding brought, in respect of any such tort, contract, debt or obligation.

(2) The last preceding subsection does not affect a legal proceeding in respect of a tort if proceedings had been instituted in respect of the tort before the commencement of this Act.

PART 4 - PROCEEDINGS AGAINST AND CONTRIBUTIONS BETWEEN TORTFEASORS

Interpretation

10. In this Part, the reference to the judgment first given - shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given that is not so reversed, and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

Proceedings against and contribution between joint and several tortfeasors

11. (1) This section applies where damage is suffered by a person as a result of a tort (whether a crime or not).

(2) Judgment recovered against a tortfeasor liable in respect of the damage is not a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage.

(3) If more than one action is brought in respect of the damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate of that person, or for the benefit of the person or persons for whose benefit an action may be brought under the *Compensation (Fatal Injuries) Act 1971* in respect of the death of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) —

(a) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given ; and

(b) in any of those actions other than that in which judgment is first given, the plaintiff is not entitled to costs unless the court is of the opinion that there was reasonable ground for bringing the action.

(4) A tortfeasor liable in respect of the damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, but no person is entitled to recover contribution under this section from a person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(5) Where the tort causing the damage was, or the torts causing the damage were, committed by the husband or wife of the person suffering the damage and some other person, that other person may recover contribution as mentioned in the last preceding subsection from the husband or wife, as if the husband or wife had been liable to the person suffering the damage.

Extent of contribution

12. In proceedings for contribution under the last preceding section the amount of the contribution recoverable from a person is such as is found by the court to be just and equitable, having regard to the extent of that person's responsibility for the damage, and the court has power to exempt a person from liability to make contribution, or to direct that the contribution to be recovered from a person shall amount to a complete indemnity.

Exemption**13.** Nothing in this Part —

- (a) applies with respect to a tort committed before the commencement of this Act;
- (b) affects any criminal proceedings against a person in respect of a wrongful act; or
- (c) renders enforceable an agreement for indemnity that would not have been enforceable if this Part had not been enacted.

PART 5 - CONTRIBUTORY NEGLIGENCE**Interpretation****14. (1)** In this Part —

“court”, in relation to a claim, means the court or arbitrator by or before whom the claim falls to be determined;

“damage” includes loss of life and personal injury;

“fault” means negligence, breach of statutory duty or other act or omission that gives rise to a liability in tort or would, apart from this Part, give rise to the defence of contributory negligence.

(2) A reference in this Part to the fault of a person shall be deemed to include a reference to a fault for which that person is vicariously responsible.

Apportionment of liability

15. (1) Subject to this section, where a person suffers damage as the result partly of his own fault and partly of the fault of another person or other persons, a claim in respect of that damage is not liable to be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect of the damage shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

(2) This section does not operate to defeat any defence arising under a contract.

(3) Where damages are recoverable by a person by virtue of subsection (1) of this section subject to the reduction specified in that subsection, the court shall find and record the total damages which, apart from any limitation of liability provided by contract or enactment or any limitation of the jurisdiction of the court, would have been recoverable if the claimant had not been at fault.

(4) Where damages are recoverable by virtue of subsection (1) of this section subject to the reduction specified in that subsection, and a contract or enactment providing for a limitation of liability is applicable to the claim or the jurisdiction of the court is limited —

- (a) the total damages found in accordance with the last preceding subsection shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in responsibility for the damage, and the reduced amount is, except as provided by the next succeeding paragraph, the amount recoverable; and

- (b) if the amount of damages as reduced under the last preceding paragraph exceeds the limit provided for in the contract or enactment or the limit of the jurisdiction of the court, the court shall award the maximum amount of damages permitted by the contract or enactment, or by the limit of the court's jurisdiction.

Application of Part 4

16. The provisions of Part 4 apply in any case where two or more persons are liable, or would, if they had all been sued, be liable, by virtue of the last preceding section in respect of the damage suffered by a person.

Claims by third parties

17. Where —

- (a) a person (in this section called “the injured person”) suffers damage as a result partly of his own fault and partly of the fault of another person or other persons; and
- (b) by reason of the damage to the injured person a third person suffers damage (whether by way of the loss of the society or services of the injured person or otherwise),

the fault of the injured person shall, in a claim by the third person for the damage so suffered by him, be taken into account under section 15 of this Act for the purpose of reducing the damages recoverable by the third person as if the fault of the injured person were the fault of the third person.

Pleading of statute of limitations

18. Where, in a case to which section 15 of this Act applies, one of the persons at fault avoids liability to another such person or his personal representative by pleading an enactment limiting the time within which proceedings may be taken, he is not entitled to recover damages or contribution from that other person or representative by virtue of that section.

Where case is tried with jury

19. Where a case to which section 15 of this Act applies is tried with a jury, the jury shall determine the total damages which, apart from any limitation of liability provided by contract or enactment or any limitation of the jurisdiction of the court, would have been recoverable if the claimant had not been at fault, and the extent to which those damages are to be reduced.

Savings

20. (1) Section 15 of this Act does not apply to a claim to which section 259 of the *Navigation Act 1912-1970* applies.

(2) Section 15 of this Act does not apply to a case where the acts or omissions giving rise to the claim occurred before the commencement of this Act.

PART 6 - COMMON EMPLOYMENT

Abolition of rule of common employment

21. (1) Where injury or damage is suffered by a servant by reason of the wrongful act, neglect or default of a fellow servant, the employer of those servants is liable in damages in respect of that injury or damage in the same manner and in the same cases as if those servants had not been engaged in a common employment.

(2) This section applies to injury or damage arising from a wrongful act, neglect or default committed on or after the date of commencement of this Act, whether the contract of employment was made before, or is made on or after, that date.

PART 7 - INJURY ARISING FROM MENTAL OR NERVOUS SHOCK

22. In this Part —

“child”, in relation to a person, includes a grandchild and a stepchild of that person, and a person to whom that person stands *in loco parentis*;

“member of the family”, in relation to a person, means the husband, wife, parent, child, brother, sister, half-brother or half-sister of that person;

“parent”, in relation to a person, includes a grandparent and a stepparent of that person, and a person standing *in loco parentis* to that person.

Personal injury received from mental or nervous shock

23. (1) In an action for injury to the person caused after the commencement of this Act, the plaintiff is not debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.

(2) In determining a question of liability for injury to the person caused before the commencement of this Act, no regard shall be paid to the fact that this section has been enacted or to the provisions of this section.

Extension of liability in certain cases

24. (1) The liability of a person in respect of injury caused after the commencement of this Act by act, neglect or default by which another person is killed, injured or put in peril extends to include liability for injury arising wholly or in part from mental or nervous shock sustained by —

(a) a parent or the husband or wife of the person so killed, injured or put in peril; or

(b) another member of the family of the person so killed, injured or put in peril, where the person was killed, injured or put in peril within the sight or hearing of that other member of the family.

(2) Where an action is brought by a member of the family of a person so killed, injured or put in peril in respect of liability for injury arising wholly or in part from mental or nervous shock sustained by the plaintiff and claims have been made against or are apprehended by the defendant at the suit of other members of the family of that person in respect of liability arising by operation of subsection (1) of this section out of the same act, neglect or default,

the defendant may apply to the Court for the exercise of its powers under the next succeeding subsection.

(3) The Court may thereupon stay any proceedings pending at the suit of any such other member of the family arising out of the same act, neglect or default and may proceed in such manner and subject to such orders as to —

- (a) making members of the family of the person killed, injured or put in peril parties to the action;
- (b) who is to have the carriage of the action; and
- (c) the exclusion of any member of the family who does not come in within a time fixed by the Court,

as the Court thinks just.

(4) Where an application under subsection (2) of this section is made, the action shall be for the benefit of the original plaintiff and such members of the family of the person killed, injured or put in peril as are joined by the Court as plaintiffs in pursuance of the application, and the Court (or, if there is a jury, the jury) may give such damages as it thinks proportioned to the injury resulting to the plaintiffs respectively, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the plaintiffs in such shares as the Court (or, if there is a jury, the jury) decides.

(5) An action in respect of a liability arising by operation of subsection (1) of this section shall be brought in the Supreme Court.

PART 8 - ATTACHMENT OF INSURANCE MONEYS

Amount of liability to be charge on insurance moneys payable against that liability

25. (1) If a person (in this Part referred to as “the insured”) has, whether before or after the commencement of this Act, entered into a contract of insurance by which he is indemnified against liability to pay any damages or compensation, the amount of his liability is, on the happening of the event giving rise to the claim for damages or compensation, and notwithstanding that the amount of the liability may not then have been determined, a charge on all insurance moneys that are or may become payable in respect of that liability.

(2) If, on the happening of the event giving rise to the claim for damages or compensation, the insured (being a corporation) is being wound up, or if any subsequent winding-up of the insured (being a corporation) is deemed to have been commenced not later than the happening of that event, the provisions of subsection (1) of this section apply notwithstanding the winding-up.

(3) Every charge created by this section has priority over all other charges affecting the insurance moneys, and, where the same insurance moneys are subject to two or more charges by virtue of this section, those charges have priority between themselves in the order of the dates of the events out of which the liability arose, or, if the charges arise out of events happening on the same date, they rank equally between themselves.

Enforcement of charge

26. (1) Subject to the next succeeding subsection, a charge created by this Part is enforceable by way of an action against the insurer in the same way and in the same court as if the action were an action to recover damages or compensation from the insured.

(2) In respect of any such action and of the judgment given in any such action the parties have, to the extent of the charge, the same rights and liabilities, and the court has the same powers, as if the action were against the insured.

(3) Except where the provisions of subsection (2) of the last preceding section apply, no such action shall be commenced in any court except with the leave of that court, and leave shall not be granted where the court is satisfied that the insurer is entitled under the terms of the contract of insurance to disclaim liability, and that any proceedings, including arbitration proceedings, necessary to establish that the insurer is so entitled to disclaim have been taken.

(4) Such an action may be brought although judgment has been already recovered against the insured for damages or compensation in respect of the same matter.

Protection of insurer

27. (1) Notwithstanding anything in this Part, a payment made by an insurer under the contract of insurance without actual notice of the existence of a charge under this section is, to the extent of that payment, a valid discharge to the insurer.

(2) An insurer is not liable under this Part for any greater sum than that fixed by the contract of insurance between himself and the insured.

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