

TASMANIA

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**CIVIL LIABILITY AMENDMENT BILL 2008**

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# **CIVIL LIABILITY AMENDMENT BILL 2008**

*(Brought in by the Minister for Justice, the Honourable David Edward Llewellyn)*

## **A BILL FOR**

### **An Act to amend the *Civil Liability Act 2002***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Civil Liability Amendment Act 2008*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

#### **3. Principal Act**

In this Act, the *Civil Liability Act 2002*\* is referred to as the Principal Act.

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\*No. 54 of 2002

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**4. Section 4 amended (Application of Act)**

Section 4 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) Parts 8A and 8B do not apply in relation to a cause of action accrued before the commencement of the *Civil Liability Amendment Act 2008*.

**5. Parts 8A and 8B inserted**

After section 35 of the Principal Act, the following Parts are inserted:

**PART 8A – GOOD SAMARITANS**

**35A. Application of Part**

- (1) This Part applies to civil liability of any kind.
- (2) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.

**35B. Protection of good samaritans**

- (1) A good samaritan is an individual who provides assistance, advice or care to another person in relation to an emergency or accident in circumstances in which –

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- (a) he or she expects no money or other financial reward for providing the assistance, advice or care; and
  - (b) as a result of the emergency or accident the person to whom, or in relation to whom, the assistance, advice or care is provided is ill, is at risk of death or injury, is injured, is apparently ill, is apparently at risk of death or injury or is apparently injured.
- (2) A good samaritan is not liable in any civil proceeding for anything done, or not done, by him or her in good faith and without recklessness –
- (a) in providing assistance, advice or care at the scene of the emergency or accident; or
  - (b) in providing advice by telephone or by another means of communication to a person at the scene of the emergency or accident.
- (3) Subsection (2) applies even if the emergency or accident was caused by an act or omission of the good samaritan.
- (4) Subsection (2) does not apply to any act or omission of a good samaritan that occurs before the assistance, advice or care is provided by the good samaritan.

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**35C. Exclusion from protection**

- (1) The protection from personal liability conferred by this Part in respect of an act or omission does not apply if –
  - (a) the ability of the good samaritan to exercise reasonable care and skill was significantly impaired by reason of the good samaritan being under the influence of alcohol or a drug voluntarily consumed (whether or not it was consumed for medication); and
  - (b) the good samaritan failed to exercise reasonable care and skill in connection with the act or omission.
- (2) This Part does not confer protection from personal liability on a person in respect of any act or omission done or made while the person is impersonating a health care or emergency services worker or a police officer or is otherwise falsely representing that the person has skills or expertise in connection with the rendering of emergency assistance.

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**PART 8B – FOOD DONORS**

**35D. Interpretation**

In this Part –

“**donate**” food includes distribute, without payment or other reward, food donated by others;

“**food**” has the same meaning as in the *Food Act 2003*;

“**handling**” has the same meaning as in the *Food Act 2003*.

**35E. Application of Part**

- (1) This Part applies to civil liability of any kind.
- (2) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.

**35F. Protection of food donors**

- (1) A person who donates food (the “**food donor**”) does not incur any civil liability in respect of any death or personal injury that results from the consumption of the food if –
  - (a) the food donor donated the food –

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- (i) in good faith for a charitable or benevolent purpose; and
  - (ii) with the intention that the consumer of the food would not have to pay for the food; and
- (b) the food was safe to consume at the time it left the possession or control of the food donor; and
- (c) where the food was of a nature that required it to be handled in a particular way to ensure that it remained safe to consume after it left the possession or control of the food donor, the food donor informed the person to whom the food donor gave the food of those handling requirements; and
- (d) where the food would only have remained safe to consume for a particular period of time after it left the possession or control of the food donor, the food donor informed the person to whom the food donor gave the food of that time limit.
- (2) For the purposes of this section, food is safe to consume if it is not unsafe, within the meaning of the *Food Act 2003*.