

TASMANIA

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**CIVIL LIABILITY AMENDMENT BILL 2005**

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**CONTENTS**

**PART 1 – PRELIMINARY**

1. Short title
2. Commencement

**PART 2 – CIVIL LIABILITY ACT 2002 AMENDED**

3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 4 amended (Application of Act)
6. Section 26 amended (Damages for loss of earning capacity)
7. Sections 28A, 28B, 28C, 28D and 28E inserted
  - 28A. Discount rate applicable to certain damages
  - 28B. Damages for gratuitous services
  - 28C. Abolition of awards for gratuitous services in respect of claims under *Motor Accidents (Liabilities and Compensation) Act 1973*
  - 28D. Damages for loss of capacity to care for others
  - 28E. Abolition of action for loss of consortium

**PART 3 – MOTOR ACCIDENTS (LIABILITIES AND COMPENSATION) ACT 1973 AMENDED**

8. Principal Act
9. Section 22 amended (Actions for damages in respect of third party liabilities)

**PART 4 – LEGISLATION REPEALED**

10. Legislation repealed

**SCHEDULE 1 – LEGISLATION REPEALED**

# **CIVIL LIABILITY AMENDMENT BILL 2005**

*(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)*

## **A BILL FOR**

**An Act to amend the *Civil Liability Act 2002*, the *Motor Accidents (Liabilities and Compensation) Act 1973* and repeal the *Common Law (Miscellaneous Actions) Act 1986***

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:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Civil Liability Amendment Act 2005*.

### **2. Commencement**

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

**PART 2 – CIVIL LIABILITY ACT 2002 AMENDED****3. Principal Act**

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

**4. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of “court”:

**“adult average weekly earnings”**

means the dollar figure for full-time adult ordinary time earnings for persons set out under the heading “AVERAGE WEEKLY EARNINGS, Australia: Original” in catalogue number 6302.0 published by the Australian Bureau of Statistics, as amended from time to time;

- (b) by inserting the following definitions after the definition of “duty”:

**“future loss”** means all or any of the following:

- (a) future economic loss;  
(b) future general expenses;

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\*No. 54 of 2002

(c) future medical expenses;

(d) future gratuitous services;

**“gratuitous services”** means services of a domestic nature or services relating to nursing or attendance provided to a person for which that person does not pay or is not liable to pay;

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

Section 4 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) Sections 28A, 28B, 28C, 28D and 28E do not apply to a cause of action accrued before the commencement of the *Civil Liability Amendment Act 2005*.

**6. Section 26 amended (Damages for loss of earning capacity)**

Section 26 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “4.25” and substituting “3”;

(b) by omitting subsection (2).

**7. Sections 28A, 28B, 28C, 28D and 28E inserted**

After section 28 of the Principal Act, the following sections are inserted in Part 7:

**28A. Discount rate applicable to certain damages**

If an award of damages is to include any component assessed as a lump sum for future loss, the present value of that future loss is to be qualified by adopting –

- (a) a discount rate of 5 per cent; or
- (b) if another discount rate is prescribed, that other discount rate.

**28B. Damages for gratuitous services**

- (1) Damages for gratuitous services may be awarded only in respect of gratuitous services required by the person as a result of injuries to that person caused by the negligence of another person.
- (2) A person may not recover damages for gratuitous services unless the services have been provided, or are likely to be provided, to that person for more than 6 hours per week and for more than 6 consecutive months.
- (3) In calculating damages for gratuitous services –
  - (a) the hourly rate is not to exceed one-fortieth of adult average weekly earnings; and

- (b) the weekly rate is not to exceed adult average weekly earnings.

**28C. Abolition of awards for gratuitous services in respect of claims under *Motor Accidents (Liabilities and Compensation) Act 1973***

An award of damages relating to personal injury to which Part III of the *Motor Accidents (Liabilities and Compensation) Act 1973* applies is not to include compensation for gratuitous services required by a person as a result of injuries to that person caused by the negligence of another person.

**28D. Damages for loss of capacity to care for others**

- (1) A person who provides gratuitous services to another person may not recover damages for the loss of capacity to provide those services unless, prior to the loss of capacity, the person was providing those services for more than 6 hours per week and for more than 6 consecutive months.
- (2) A person may recover damages for the loss of capacity to provide gratuitous services only in relation to gratuitous services that are necessary and that were being provided to a person who, if the provider of the services had been killed rather than injured, would have been entitled to recover for loss of the deceased provider's services.

- (3) In calculating damages for the loss of capacity to provide gratuitous services to other persons –
- (a) the hourly rate is not to exceed one-fortieth of adult average weekly earnings; and
  - (b) the weekly rate is not to exceed adult average weekly earnings.

**28E. Abolition of action for loss of consortium**

A person is not liable for damages in tort on the ground that the negligence, or other act or omission, of the person caused loss or impairment of the consortium of persons in a significant relationship within the meaning of the *Relationships Act 2003*.



**PART 3 – MOTOR ACCIDENTS (LIABILITIES AND  
COMPENSATION) ACT 1973 AMENDED**

**8. Principal Act**

In this Part, the *Motor Accidents (Liabilities and Compensation) Act 1973\** is referred to as the Principal Act.

**9. Section 22 amended (Actions for damages in respect  
of third party liabilities)**

Section 22(5) of the Principal Act is amended by omitting “4.25” and substituting “3”.

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\*No. 71 of 1973

**s. 10**

No.

*Civil Liability Amendment*

2005

**PART 4 – LEGISLATION REPEALED**

**10. Legislation repealed**

The legislation specified in Schedule 1 is repealed.

2005

*Civil Liability Amendment*

No.

**sch. 1**

**SCHEDULE 1 – LEGISLATION REPEALED**

Section 10

*Common Law (Miscellaneous Actions) Act 1986* (No. 114 of  
1986)