

TASMANIA

CIVIL LIABILITY AMENDMENT BILL 2013

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3B amended (Civil liability excluded from Act)
5. Section 4 amended (Application of Act)
6. Section 4AA inserted
 - 4AA. Act binds Crown
7. Part 5A inserted
 - PART 5A – Provisional Damages
 - 8A. Application of Part 5A
 - 8B. Provisional damages for asbestos-related conditions
8. Section 28 amended (Tariffs for damages for non-economic loss (general damages))
9. Section 28BA inserted
 - 28BA. Damages for loss of capacity to provide gratuitous services to another
10. Section 28C amended (Abolition of awards for gratuitous services in respect of claims under *Motor Accidents (Liabilities and Compensation) Act 1973*)
11. Repeal of Act

CIVIL LIABILITY AMENDMENT BILL 2013

(Brought in by the Minister for Justice, the Honourable Brian Neal Wightman)

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 2013*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Principal Act

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

*No. 54 of 2002

THIS BILL IS COGNATE WITH THE *LIMITATION AMENDMENT BILL 2013*

Civil Liability Amendment Act 2013
Act No. of

s. 4

4. Section 3B amended (Civil liability excluded from Act)

Section 3B(2) of the Principal Act is amended by omitting “Parts 2, 3 and 5” and substituting “Parts 2, 3, 5 and 5A”.

5. Section 4 amended (Application of Act)

Section 4 of the Principal Act is amended as follows:

(a) by inserting the following subsections after subsection (2):

(2A) Part 5A applies to a cause of action accrued, and an action commenced, whether before or after the commencement of section 7 of the *Civil Liability Amendment Act 2013*.

(2B) However, Part 5A does not apply to an action commenced before the commencement of section 7 of the *Civil Liability Amendment Act 2013* if –

(a) the hearing of the action had commenced before that commencement; or

(b) damages had been awarded in that action before that commencement; or

Civil Liability Amendment Act 2013
Act No. of

s. 6

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- (c) a settlement had been reached in that action before that commencement, other than a settlement that only relates to damages that, if they had been awarded by a court, would be provisional damages within the meaning of section 8B(1).
- (b) by inserting the following subsections after subsection (3A):
- (3B) Section 28BA does not apply to a cause of action accrued before the commencement of section 9 of the *Civil Liability Amendment Act 2013*.
- (3C) The amendment to section 28C effected by section 10 of the *Civil Liability Amendment Act 2013* does not apply to a cause of action accrued before the commencement of section 10 of that Act.

6. Section 4AA inserted

After section 4 of the Principal Act, the following section is inserted in Part 1:

Civil Liability Amendment Act 2013
Act No. of

s. 7

4AA. Act binds Crown

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

7. Part 5A inserted

After section 8 of the Principal Act, the following Part is inserted:

PART 5A – PROVISIONAL DAMAGES

8A. Application of Part 5A

This Part applies to civil liability of any kind for damages for personal injury or death, except civil liability that is excluded from the operation of this Part by section 3B.

8B. Provisional damages for asbestos-related conditions

- (1) If it is proved or admitted in an action for damages in respect of an asbestos-related disease (*the first disease*) of a person that the person may, at some definite or indefinite time in the future, develop another asbestos-related disease wholly or partly as a result of the act or omission giving rise to the cause of action, the court may –

Civil Liability Amendment Act 2013
Act No. of

s. 8

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- (a) award, in the first instance, damages (*provisional damages*) for the first disease, assessed on the assumption that the person will not develop another asbestos-related disease; and
 - (b) award damages at a future date if the person does develop another asbestos-related disease.

(2) In this section –

asbestos-related disease has the same meaning as it has in the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*.

8. Section 28 amended (Tariffs for damages for non-economic loss (general damages))

Section 28 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) In this section –

other courts includes a court of any jurisdiction within Australia, including Tasmania.

9. Section 28BA inserted

After section 28B of the Principal Act, the following section is inserted in Part 7:

Civil Liability Amendment Act 2013
Act No. of

s. 9

28BA. Damages for loss of capacity to provide gratuitous services to another

- (1) A person may recover, in relation to a personal injury, damages for the loss of capacity to provide gratuitous services to another person.
- (2) A person (the *claimant*) may recover under subsection (1), in relation to a personal injury, damages for the loss of capacity to provide gratuitous services to another person only if –
 - (a) either –
 - (i) the claimant was, before the loss of capacity occurred, providing the services to the other person for more than 6 hours per week and more than 6 consecutive months and it was necessary for the services to be provided to the other person; or
 - (ii) the other person was, before the injury occurred, an unborn child of the person; and
 - (b) the other person –
 - (i) is a person who would have been entitled to

Civil Liability Amendment Act 2013
Act No. of

s. 9

recover for loss of the claimant's services if the claimant had been killed rather than injured; or

(ii) would have been, if he or she had been born before the injury occurred, entitled to recover for loss of the claimant's services if the claimant had been killed rather than injured; and

(c) there is a reasonable expectation that, but for the loss of capacity, the claimant would have provided those services to the other person, after the injury, for more than 6 hours per week and more than 6 consecutive months; and

(d) the other person will need the services for more than 6 hours per week and more than 6 consecutive months and the need is reasonable in all the circumstances.

(3) In calculating damages for the loss of capacity to provide gratuitous services –

(a) the hourly rate is not to exceed one-fortieth of adult average weekly earnings; and

Civil Liability Amendment Act 2013
Act No. of

s. 10

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

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

Section 28C of the Principal Act is amended by inserting “or damages for the loss by the injured person of the capacity to provide gratuitous services to another person” after “another person”.

11. Repeal of Act

This Act is repealed on the three hundredth and sixty fifth day from the day on which all of the provisions of this Act commence.