

TASMANIA

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**CIVIL LIABILITY AMENDMENT  
(PROPORTIONATE LIABILITY) BILL 2004**

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# **CIVIL LIABILITY AMENDMENT (PROPORTIONATE LIABILITY) BILL 2004**

*(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***

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:

#### **Short title**

1. This Act may be cited as the *Civil Liability Amendment (Proportionate Liability) Act 2004*.

#### **Commencement**

2. This Act commences on a day to be proclaimed.

#### **Principal Act**

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

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\*No. 54 of 2002

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

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

(4) Part 9A does not apply to a cause of action accrued before the commencement of the *Civil Liability Amendment (Proportionate Liability) Act 2004*.

**Part 9A inserted**

5. After section 43 of the Principal Act, the following Part is inserted:

**PART 9A – PROPORTIONATE LIABILITY****Application of Part 9**

**43A. (1)** This Part applies to the following claims (“apportionable claims”):

- (a) a claim for economic loss or damage to property in an action for damages (whether in contract, tort or otherwise) arising from a failure to take reasonable care (but not including any claim arising out of personal injury);
- (b) a claim for economic loss or damage to property in an action for damages under the *Fair Trading Act 1990* for a contravention of section 14 of that Act.

**(2)** In this Part –

“**concurrent wrongdoer**”, in relation to a claim, means a person who is one of two or more persons whose act or omission

caused, independently of each other or jointly, the damage or loss that is the subject of the claim;

**“excluded concurrent wrongdoer”** means a concurrent wrongdoer referred to in subsection (5)(a) or (b).

**(3)** For the purpose of this Part, apportionable claims are limited to those claims specified in subsection (1).

**(4)** For the purpose of this Part it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

**(5)** Nothing in this Part operates to limit the liability of a concurrent wrongdoer in proceedings involving an apportionable claim if –

- (a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or
- (b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim.

**(6)** The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.

**(7)** The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Part.

**(8)** This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.

**(9)** For the purpose of this Part, there is a single apportionable claim in proceedings in respect of the same loss or damage even if the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

**Proportionate liability for apportionable claims**

**43B. (1)** In any proceedings involving an apportionable claim –

- (a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just, having regard to the extent of the defendant's responsibility for the damage or loss; and
- (b) the court is not to give judgment against the defendant for more than that amount.

**(2)** If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim –

- (a) liability for the apportionable claim is to be determined in accordance with the provisions of this Part; and

- (b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.

**(3)** In apportioning responsibility between defendants in the proceedings –

- (a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and
- (b) the court is to have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.

**(4)** This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.

**(5)** A reference in this Part to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Part, under rules of court or otherwise.

### **Contribution not recoverable from defendant**

**43C. (1)** A defendant against whom judgment is given under this Part as a concurrent wrongdoer in relation to an apportionable claim –

- (a) cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or

not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and

- (b) cannot be required to indemnify any such wrongdoer.

(2) Subsection (1) does not affect an agreement by a defendant to contribute to the damages recoverable from, or to indemnify, another concurrent wrongdoer in relation to an apportionable claim.

**Duty of defendant to inform plaintiff about concurrent wrongdoers**

**43D. (1) If –**

- (a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the “other person”) may be a concurrent wrongdoer in relation to the claim; and
- (b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about –
  - (i) the identity of the other person; and
  - (ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and



- (c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim –

the court hearing the proceedings may order that the defendant pay all or any of those costs to the plaintiff.

**(2)** The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

### **Subsequent actions**

**43E. (1)** In relation to an apportionable claim, nothing in this Part or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.

**(2)** However, in any proceedings in respect of any such action the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

**Joining non-party concurrent wrongdoer in action**

**43F. (1)** The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.

**(2)** The court is not to give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

**This Part does not prevent certain liability, &c.**

**43G. (1)** Nothing in this Part –

- (a) prevents a person from being held vicariously liable for a proportion of any apportionable claim for which another person is liable; or
- (b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or
- (c) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

**(2)** In subsection (1)(b) –

**“partner”** means a person who has entered into a partnership, within the meaning of the *Partnership Act 1891*, with another person.