

FACT SHEET

Civil Liability Amendment Bill 2019

The *Civil Liability Act 2002* (the Tasmanian Act) was enacted following the recommendations of a national expert panel appointed to review the law of negligence. This panel released its Final Report (the Ipp Report) in September 2002.

One of the major reasons that a review of the law of negligence was undertaken was the fact that public liability insurance had become unavailable or unaffordable, in particular for not-for-profit organisations, following the collapse of HIH Insurance in 2001.

The Ipp Report recommended that recreational activities and recreational services be treated as a special category for the purposes of personal injury law. The Report goes on to say “people who participate in recreational activities in the course of their employment do not do so voluntarily in the relevant sense...Therefore any rule limiting liability in respect of recreational services should not apply to them”.

A December 2017 decision in the NSW Court of Appeal (NSWCA) concerned a public liability action brought by a jockey against another jockey for damages following an accident during a race allegedly caused by the Defendant’s negligent riding.

The NSWCA ruled that the NSW Act did not make any distinction between dangerous sports undertaken for leisure or as a profession, with the effect that the relevant sections were a ‘liability-defeating rule’ in respect of the Plaintiff’s claim.

The Tasmanian Act contains provisions that almost entirely mirror the provisions in question in the NSW Act. A Tasmanian Court would therefore follow the NSWCA’s decision.

The Ipp Report recommended a definition of ‘recreational activity’ as ‘an activity undertaken for the purposes of recreation, enjoyment or leisure’. ‘Any sport’ was not included in the definition. The NSW Court of Appeal identified that the inclusion of “any sport” in the legislation when it was not included in the Ipp Report recommendation was a key reason for their decision.

The Bill replaces the current definition of “recreational activity” to remove the reference to “sport”. This new definition is in line with the wording in the Ipp Report. This amendment will ensure that the *Civil Liability Act 2002* operates in the manner intended by Parliament.