

TASMANIA

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**CIVIL LIABILITY BILL 2002**

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# **CIVIL LIABILITY BILL 2002**

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

## **A BILL FOR**

### **An Act to effect civil liability reforms**

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**

### **Short title**

1. This Act may be cited as the *Civil Liability Act 2002*.

### **Commencement**

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

### **Interpretation**

3. In this Act, “**personal injury**” includes any disease and any impairment of the physical or mental condition of a person.

**Application of Act**

**4. (1)** Parts 2, 3 and 4 do not apply to a cause of action accrued before the commencement of this Act.

**(2)** Part 5 applies to a cause of action accrued before the commencement of this Act.

**PART 2 – INTOXICATION****Presumption of contributory negligence where person intoxicated**

**5. (1)** If it is established that the person whose death, injury or damage is the subject of proceedings for the recovery of damages was, at the time of the act or omission that caused the death, injury or damage, intoxicated to the extent that the person's capacity to exercise due care and skill was impaired, it is to be presumed that the person was contributorily negligent unless the court is satisfied that the person's intoxication did not contribute in any way to the cause of the death, injury or damage.

**(2)** If there is a presumption of contributory negligence, the court is to assess damages on the basis that the damages to which the person would be entitled in the absence of contributory negligence are to be reduced on account of contributory negligence by 25% or a greater percentage determined by the court to be appropriate in the circumstances of the case.

**(3)** This section does not apply in a case where the court is satisfied that the intoxication was not self-induced.

**(4)** A reference in this section to a person being "intoxicated" is a reference to a person being under the influence of alcohol or a drug (whether or not taken for a medicinal purpose and whether or not lawfully taken).

### **PART 3 – RECOVERY BY CRIMINALS**

#### **Criminals not to be awarded damages**

**6. (1)** A court is not to award damages if the court is satisfied that –

- (a) the person whose death, injury or damage is the subject of the proceedings was, at the time of the incident that resulted in the death, injury or damage, engaged in conduct that (on the balance of probabilities) constitutes a serious offence; and
- (b) the conduct contributed materially to the risk of death, injury or damage.

**(2)** This section operates whether or not a person whose conduct is alleged to constitute an offence has been, will be or is capable of being proceeded against or convicted of any offence relating to the conduct.

**(3)** In this section, “**serious offence**” means an offence punishable by imprisonment for a term of 6 months or more.

**PART 4 – APOLOGIES****Effect of apology on liability**

**7. (1)** An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person –

- (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and
- (b) is not relevant to the determination of fault or liability in connection with that matter.

**(2)** Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

**(3)** In this section, “**apology**” means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, which does not contain an admission of fault in connection with the matter.

**PART 5 – STRUCTURED SETTLEMENTS****Court may make consent order for structured settlement**

**8. (1)** A court may, on the application of the parties to a claim for damages for personal injury or death of a person, make an order approving of, or in the terms of, a structured settlement even though the payment of damages is not in the form of a lump sum award of damages.

**(2)** For the purposes of this section, a “**structured settlement**” is an agreement that provides for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.



## PART 6 – MISCELLANEOUS

### **Rights to certain compensation not affected**

**9.** Nothing in this Act affects a right to compensation under the *Workers Rehabilitation and Compensation Act 1988* or to scheduled benefits under the *Motor Accidents (Liabilities and Compensation) Act 1973*.

### **Administration of Act**

**10.** Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.