

# Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002

Act No. 49/2002

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Victoria

No. 49 of 2002

# Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002<sup>†</sup>

[Assented to 22 October 2002]

The Parliament of Victoria enacts as follows:

## PART 1—PRELIMINARY

### 1. *Purposes*

The purposes of this Act are—

- (a) to amend the **Wrongs Act 1958**—
  - (i) to provide that issues of intoxication and illegal activity must be taken into consideration in certain claims in respect of death or personal injury; and

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- (ii) to provide that an apology does not constitute an admission of liability in civil proceedings where the death or injury of a person is in issue; and
  - (iii) to limit the amounts that may be recovered as damages for death or personal injury caused by the fault of a person; and
  - (iv) to provide for the use of structured settlements as an alternative method for payment of personal injury compensation; and
  - (v) to protect good samaritans providing assistance, advice or care at emergencies or accidents from civil liability for their actions; and
  - (vi) to protect food donors from civil liability arising from the consumption of donated food; and
  - (vii) to protect volunteers providing services in relation to community work from civil liability for their actions; and
- (b) to amend the **Coroners Act 1985** to provide that an apology or waiver or reduction of fees does not constitute an admission for the purposes of coronial findings in an investigation of a death; and
  - (c) to amend the **Food Act 1984** in relation to food donors; and
  - (d) to amend the **Goods Act 1958** to extend the operation of Part IV of that Act to additional services and to provide for waivers permitting self-assumption of risk by people who choose to participate in inherently risky activities;
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- (e) to amend the **Essential Services Commission Act 2001** to confer functions on the Commission in relation to the insurance industry; and
- (f) to amend the **Country Fire Authority Act 1958**—
  - (i) to allow the Country Fire Authority to make adjustments in respect of contributions made under section 80A of that Act; and
  - (ii) to enable information about fire insurance levies under that Act to be obtained from insurers and made available; and
- (g) to amend the **Metropolitan Fire Brigades Act 1958**—
  - (i) to allow the Metropolitan Fire and Emergency Services Board to make adjustments in respect of contributions made under section 44A of that Act; and
  - (ii) to enable information about fire insurance levies under that Act to be obtained from insurers and made available.

**2. Commencement**

- (1) This Act (except sections 8 and 11 and Part 5) comes into operation on the day after the day on which it receives the Royal Assent.
- (2) Section 8 comes into operation on a day to be proclaimed.
- (3) Part 5 comes into operation on a day to be proclaimed.

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- (4) Subject to sub-section (5), section 11 comes into operation on a day to be proclaimed.
  - (5) If section 11 does not come into operation before 1 July 2003, it comes into operation on that day.
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**PART 2—WRONGS ACT 1958**

**3. *Occupiers' liability***

See:  
Act No.  
6420/1958.  
Reprint No. 7  
as at  
19 November  
1998 and  
amending  
Act No.  
75/2000.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

In section 14B(4) of the **Wrongs Act 1958**, after paragraph (f) **insert—**

- "(fa) whether the person entering the premises is intoxicated by alcohol or drugs voluntarily consumed and the level of intoxication;
- (fb) whether the person entering the premises is engaged in an illegal activity;"

**4. *New section 14E inserted***

After section 14D of the **Wrongs Act 1958** **insert—**

**"14E. *Transitional***

The amendment of section 14B by section 3 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002** applies to claims brought under this Part in which the statement of claim or complaint is issued on or after the commencement of section 3 of that Act."

**5. *Insertion of Part IIB***

After Part IIA of the **Wrongs Act 1958** **insert—**

**"PART IIB—NEGLIGENCE—INTOXICATION  
AND ILLEGAL ACTIVITY**

**14F. *Common law***

Except as provided by section 14G, this Part is not intended to affect the rules of common law applicable to negligence.

**14G. Consideration of intoxication and illegal activity**

- (1) This section applies to a claim for damages in respect of death or personal injury brought by a person (**the plaintiff**) against another person (**the defendant**) alleging negligence.
- (2) In determining whether the plaintiff has established a breach of the duty of care owed by the defendant, the court must consider, among other things—
  - (a) whether the plaintiff was intoxicated by alcohol or drugs voluntarily consumed and the level of intoxication;
  - (b) whether the plaintiff was engaged in an illegal activity.

**14H. Application**

This Part applies to claims in which the statement of claim or complaint is issued on or after the commencement of section 5 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

**6. Insertion of Part IIC**

Before Part III of the **Wrongs Act 1958** insert—

**'PART IIC—APOLOGIES**

**14I. Definitions**

In this Part—

**"apology"** means an expression of sorrow, regret or sympathy but does not include a clear acknowledgment of fault;

**"civil proceeding"** includes—

- (a) a proceeding before a tribunal;
- and

- (b) a proceeding under an Act regulating the practice or conduct of a profession or occupation; and
- (c) an inquiry by a board appointed or by a commission of inquiry issued under Division 5 of Part I of the **Evidence Act 1958**;

**"injury"** means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease.

**14J. *Apology not admission of liability***

- (1) In a civil proceeding where the death or injury of a person is in issue or is relevant to an issue of fact or law, an apology does not constitute—
  - (a) an admission of liability for the death or injury; or
  - (b) an admission of unprofessional conduct, carelessness, incompetence or unsatisfactory professional performance, however expressed, for the purposes of any Act regulating the practice or conduct of a profession or occupation.
- (2) Sub-section (1) applies whether the apology—
  - (a) is made orally or in writing; or

- (b) is made before or after the civil proceeding was in contemplation or commenced.
- (3) Nothing in this section affects the admissibility of a statement with respect to a fact in issue or tending to establish a fact in issue.

**14K. *Reduction or waiver of fees***

- (1) In a civil proceeding where the death or injury of a person is in issue or is relevant to an issue of fact or law and it is alleged that the death or injury occurred as a consequence of the provision of a service, a reduction or waiver of the fees payable for the service or a related service does not constitute—
  - (a) an admission of liability for the death or injury; or
  - (b) an admission of unprofessional conduct, carelessness, incompetence or unsatisfactory professional performance, however expressed, for the purposes of any Act regulating the practice or conduct of a profession or occupation.
- (2) Sub-section (1) applies whether the reduction or waiver of fees—
  - (a) is made orally or in writing; or
  - (b) is made before or after the civil proceeding was in contemplation or commenced.
- (3) Nothing in this section affects the admissibility of a statement with respect to a fact in issue or tending to establish a fact in issue.

**14L. Application**

This Part applies to an apology or reduction or waiver of fees made on or after the commencement of section 6 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

**7. Insertion of Part VB**

After Part VA of the **Wrongs Act 1958** insert—

**'PART VB—PERSONAL INJURY DAMAGES**

**28B. Definitions**

In this Part—

**"claimant"** means a person who makes or is entitled to make a claim for personal injury damages;

**"court"** includes tribunal, and, in relation to a claim for damages, means any court or tribunal by or before which the claim falls to be determined;

**"damages"** includes any form of monetary compensation;

**"fault"** includes act or omission;

**"injury"** means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease;

**"non-economic loss"** means any one or more of the following—

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;

**"personal injury damages"** means damages that relate to the death of or injury to a person caused by the fault of another person.

**28C. Application of Part**

- (1) This Part applies to an award of personal injury damages, except an award that is excluded by sub-section (2).
- (2) The following awards of damages are excluded from the operation of this Part—
  - (a) an award where the fault concerned is an intentional act that is done with intent to cause death or injury or that is sexual assault or other sexual misconduct;
  - (b) an award to which Part 3, 6 or 10 of the **Transport Accident Act 1986** applies;
  - (c) an award to which Part 4 of the **Accident Compensation Act 1985** applies;
  - (d) an award to which the **Workers Compensation Act 1958** applies;
  - (e) an award of compensation under Part V of the **Country Fire Authority Act 1958** or an award of compensation under a compensation scheme established under the regulations made under that Act;

- (f) an award of compensation under Part 3 of the **Victoria State Emergency Service Act 1987**;
  - (g) an award of compensation under Part 6 of the **Emergency Management Act 1986**;
  - (h) an award of compensation under the **Police Assistance Compensation Act 1968**;
  - (i) an award of assistance under the **Victims of Crime Assistance Act 1996**;
  - (j) an award of compensation under the **Equal Opportunity Act 1995**;
  - (k) an award of compensation under Part 8 of the **Juries Act 2000** or Part VII of the **Juries Act 1967**;
  - (l) an award of compensation under Division 6 of Part II of the **Education Act 1958**;
  - (m) a sum payable under a superannuation scheme or any life or other insurance policy;
  - (n) an award of damages of a class that is excluded by the regulations from the operation of this Part.
- (3) This Part extends to an award of personal injury damages even if the damages are recovered in an action for breach of contract or in any other action.

**28D. General regulation of court awards**

A court cannot award damages to a claimant contrary to this Part.

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**28E. *Part does not give rise to any cause of action***

This Part does not create or confer any cause of civil action for the recovery of damages in respect of a death or injury caused by the fault of a person.

**28F. *Damages for past or future economic loss—maximum for loss of earnings etc.***

- (1) This section applies to an award of damages—
  - (a) for past economic loss due to loss of earnings or the deprivation or impairment of earning capacity; or
  - (b) for future economic loss due to the deprivation or impairment of earning capacity; or
  - (c) for the loss of expectation of financial support.
- (2) In the case of any award to which this section applies, the court is to disregard the amount (if any) by which the claimant's gross weekly earnings would (but for the death or injury) have exceeded an amount that is 3 times the amount of average weekly earnings at the date of the award.
- (3) For the purposes of this section, the amount of average weekly earnings at the date of the award is—
  - (a) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Victoria for the most recent quarter occurring before the date of the award for which such an amount has been estimated by

the Australian Statistician and that is, at that date, available to the court making the award; or

- (b) if the Australian Statistician fails or ceases to estimate the amount referred to in paragraph (a), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

**28G. *Fixing damages for non-economic loss***

The maximum amount of damages that may be awarded to a claimant for non-economic loss is \$371 380.

**28H. *Indexation of maximum amount for non-economic loss***

- (1) The amount that is to apply for the purposes of section 28G is to be varied, in respect of the financial year beginning on 1 July 2003 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount referred to in section 28G.

E is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year.

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year

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published by the Australian Statistician  
in respect of the December quarter  
preceding that 15 June.

- (2) If it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole number, the amount is deemed to have been calculated in accordance with this section if the calculation is made—
  - (a) if the amount is less than \$1000, to the nearest whole \$1; or
  - (b) if the amount is \$1000 or more, to the nearest whole \$10.
- (3) If an amount is varied in accordance with this section, section 28G and this section have effect as if a reference to the amount were a reference to the amount as so varied.
- (4) If the variation of an amount to which this section applies by operation of this section has the effect of reducing the amount—
  - (a) the variation is deemed not to have taken effect, except for the purposes of the application of this sub-section; and
  - (b) when the amount is varied and increased by operation of this section in respect of the next or a subsequent financial year that variation has effect as an increase only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of a preceding financial year, or that part of such a reduction that has not been set off against a previous increase.

**28I. Damages for future economic loss—  
discount rate**

- (1) If an award of damages is to include any component, assessed as a lump sum, for economic loss that is referable to the future, the present value of that future economic loss is to be determined by adopting the prescribed discount rate.
- (2) The prescribed discount rate is—
  - (a) a discount rate of the percentage prescribed by the regulations; or
  - (b) if no percentage is so prescribed—a discount rate of 5%.
- (3) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

**28J. Supreme Court—limitation of jurisdiction**

It is the intention of section 28D to alter or vary section 85 of the **Constitution Act 1975**.

**28K. Regulations**

- (1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed to give effect to this Part.
  - (2) The regulations—
    - (a) may leave any matter to be determined by the Minister; and
    - (b) may apply, adopt or incorporate, wholly or partially or as amended by the regulations, any matter contained in any document as existing or in force—
-

- (i) from time to time; or
- (ii) at a particular time.

**28L. Transitional**

- (1) This Part extends to an award of personal injury damages that relates to an injury received, or to a death resulting from an injury received, whether before, on or after the commencement day.
- (2) Despite sub-section (1)—
  - (a) sections 28F, 28G and 28H do not apply to an award of damages in proceedings commenced in a court before the commencement day;
  - (b) section 28I does not apply to an award of damages made before the commencement day.
- (3) In this section "**commencement day**" means the day on which section 7 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002** comes into operation.'.

**8. Insertion of Part VC**

Before Part VI of the **Wrongs Act 1958** insert—

**'PART VC—STRUCTURED SETTLEMENTS**

**28M. Definitions**

In this Part—

**"claim"** does not include a claim under the **Accident Compensation Act 1985**;

**"court"**, in relation to a claim, means—

- (a) if a proceeding based on the claim has been commenced in the Supreme Court or the County

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Court—the court hearing the proceeding; or

- (b) if no proceeding based on the claim has been commenced—the Supreme Court or the County Court;

**"damages"** includes any form of monetary compensation;

**"fault"** includes an act or omission;

**"injury"** means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease;

**"structured settlement"** means 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.

**28N. *Court may make order for structured settlement***

- (1) If the parties to a claim for damages that relate to injury to a person caused by the fault of another person agree to settle the claim by making a structured settlement, one or more parties may apply to the court for an order approving of, or in the terms of, the structured settlement.

- (2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.'

**9. Insertion of Part VIA**

After Part VI of the **Wrongs Act 1958** insert—

**'PART VIA—GOOD SAMARITAN  
PROTECTION**

**31A. Definition**

In this Part, "**injury**" means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease.

**31B. Protection of good samaritans**

- (1) A good samaritan is an individual who provides assistance, advice or care to another person in relation to an emergency or accident in circumstances in which—
- (a) he or she expects no money or other financial reward for providing the assistance, advice or care; and
  - (b) as a result of the emergency or accident the person to whom, or in relation to whom, the assistance, advice or care is provided is at risk of death or injury, is injured, is apparently at risk of death or injury, or is apparently injured.
- (2) A good samaritan is not liable in any civil proceeding for anything done, or not done, by him or her in good faith—

- (a) in providing assistance, advice or care at the scene of the emergency or accident; or
  - (b) in providing advice by telephone or by another means of communication to a person at the scene of the emergency or accident.
- (3) Sub-section (2) applies even if the emergency or accident was caused by an act or omission of the good samaritan.
- (4) Sub-section (2) does not apply to any act or omission of a good samaritan that occurs before the assistance, advice or care is provided by the good samaritan.

**31C. *Application of section 31B***

Section 31B applies in relation to assistance, advice or care provided on or after the commencement of section 9 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

**31D. *Supreme Court—limitation of jurisdiction***

It is the intention of section 31B to alter or vary section 85 of the **Constitution Act 1975**.

**10. *Insertion of Part VIB***

Before Part VII of the **Wrongs Act 1958** insert—

**'PART VIB—FOOD DONOR PROTECTION**

**31E. *Interpretation***

- (1) In this Part, "**injury**" means personal or bodily injury and includes—
- (a) pre-natal injury; and
  - (b) psychological or psychiatric injury; and

- (c) disease; and
  - (d) aggravation, acceleration or recurrence of an injury or disease.
- (2) Words and expressions used in this Part have the same meanings as they have in the **Food Act 1984**.

**31F. Protection of food donors**

- (1) A person who donates food (**the food donor**) in the circumstances listed in subsection (2) is not liable in any civil proceeding for any death or injury that results from the consumption of the food.
- (2) The circumstances are—
- (a) that the food donor donated the food—
    - (i) in good faith for a charitable or benevolent purpose; and
    - (ii) with the intention that the consumer of the food would not have to pay for the food; and
  - (b) that the food was safe to consume at the time it left the possession or control of the food donor; and
  - (c) if the food was of a nature that required it to be handled in a particular way to ensure that it remained safe to consume after it left the possession or control of the food donor, that the food donor informed the person to whom the food donor gave the food of those handling requirements; and
  - (d) if the food only remained safe to consume for a particular period of time after it left the possession or control of the food donor, that the food donor

informed the person to whom the food donor gave the food of that time limit.

- (3) For the purposes of this section, food is safe to consume if it is not unsafe food.

**31G. Application of section 31F**

Section 31F applies in relation to food donated on or after the commencement of section 10 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

**31H. Supreme Court—limitation of jurisdiction**

It is the intention of section 31F to alter or vary section 85 of the **Constitution Act 1975**.

**11. Insertion of Part IX**

After Part VIII of the **Wrongs Act 1958** insert—

**'PART IX—VOLUNTEER PROTECTION**

**34. Definitions**

In this Part—

**"community organisation"** means—

- (a) an incorporated association under the **Associations Incorporation Act 1981**;
- (b) a municipal council or other incorporated local government body;
- (c) any other body corporate;
- (d) any public authority or Agency within the meaning of the **Public Sector Management and Employment Act 1998** or other

person or body acting on behalf of  
the State—

that organises the doing of community  
work by volunteers;

**"community work"** has the meaning set out  
in section 36;

**"organise"** includes to direct and to  
supervise;

**"volunteer"** has the meaning set out in  
section 35.

### **35. Meaning of "volunteer"**

- (1) A volunteer is an individual who provides a service in relation to community work on a voluntary basis.
- (2) A person is still a volunteer even if, in providing a service, he or she receives—
  - (a) remuneration that he or she would receive whether or not he or she provided that service; or
  - (b) out-of-pocket expenses incurred in relation to providing that service; or
  - (c) remuneration that is not more than the amount (if any) specified in the regulations for the purposes of this section.
- (3) For the purposes of this Part, the following people are not volunteers—
  - (a) a volunteer officer or member within the meaning of the **Country Fire Authority Act 1958** while exercising any power conferred, or performing any duty imposed, on him or her by or under that Act or the **Dangerous Goods Act 1985**;

- (b) an officer or member of an industry brigade within the meaning of the **Country Fire Authority Act 1958** while exercising any power conferred, or performing any duty imposed, on him or her by or under that Act or the **Dangerous Goods Act 1985**;
- (c) a volunteer auxiliary worker within the meaning of the **Country Fire Authority Act 1958** engaged in an authorized activity under that Act;
- (d) a person complying with a direction given to him or her under the **Country Fire Authority Act 1958**;
- (e) a volunteer emergency worker within the meaning of the **Emergency Management Act 1986** engaged in an emergency activity within the meaning of that Act;
- (f) a volunteer emergency worker within the meaning of the **Emergency Management Act 1986** exercising any power conferred, or performing any duty imposed, by or under the **Victoria State Emergency Service Act 1987**;
- (g) any person who would otherwise be a volunteer under this Part while he or she is engaged in any activity in respect of which an Act absolves him or her from civil liability for anything done, or not done, while he or she is so engaged;
- (h) a person who does community work under an order imposed by a court.

**36. *Meaning of "community work"***

- (1) Community work is any work that is done, or to be done—
  - (a) for a religious, educational, charitable or benevolent purpose;
  - (b) for the purpose of promoting or encouraging literature, science or the arts;
  - (c) for the purpose of sport, recreation, tourism or amusement;
  - (d) for the purpose of conserving or protecting the environment;
  - (e) for the purpose of establishing, carrying on or improving a community, social or cultural centre;
  - (f) for a political purpose;
  - (g) for the purpose of promoting the common interests of the community generally or of a particular section of the community;
  - (h) for any other purpose specified in the regulations for the purposes of this section.
- (2) For the purposes of this Part, community work does not include any work of a kind that is specified in the regulations as work that is not community work for the purposes of this Part.

**37. *Protection of volunteers from liability***

- (1) A volunteer is not liable in any civil proceeding for anything done, or not done, in good faith by him or her in providing a service in relation to community work organised by a community organisation.

- (2) Any liability resulting from an act or omission that would but for sub-section (1) attach to the volunteer attaches instead to the community organisation.

**38. *Exceptions to section 37(1)***

- (1) Section 37(1) does not apply to a volunteer—
- (a) who knew, or who ought reasonably to have known, that at the relevant time he or she was acting—
    - (i) outside the scope of the community work organised by the community organisation; or
    - (ii) contrary to any instructions given by the community organisation in relation to the providing of the service; or
  - (b) whose ability to provide the service in a proper manner was, at the relevant time, significantly impaired by alcohol or drugs.
- (2) Section 37(1) also does not apply to a volunteer—
- (a) in respect of any claim to recover damages in respect of defamation; or
  - (b) in respect of any proceedings that are brought under the **Transport Accident Act 1986**.
- (3) A reference to drugs in sub-section (1)(b) does not include a reference to drugs that were taken for a therapeutic purpose or that were not taken voluntarily.
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- (4) A reference to alcohol in sub-section (1)(b) does not include a reference to alcohol that was not consumed voluntarily.

**39. *Provisions concerning the liability of community organisations***

- (1) Section 37(2) does not override any protection from liability that would have applied to a community organisation if the thing done, or not done, by the volunteer had been done, or not done, by the community organisation.
- (2) If more than one community organisation is involved in organising particular community work, section 37(2) applies to the community organisation or organisations that principally organised that work.
- (3) In the case of a community organisation that is a public authority or Agency within the meaning of the **Public Sector Management and Employment Act 1998** or another person or body acting on behalf of the State, any liability incurred by the community organisation under section 37(2) is incurred by the State.

**40. *Certain indemnities etc. have no effect***

An agreement, undertaking or arrangement has no effect to the extent that it provides for a volunteer to give a community organisation an indemnity against, or to make a contribution to a community organisation in relation to, a liability—

- (a) that the volunteer would incur but for the operation of section 37(1); and
- (b) that the community organisation incurs under section 37(2).

**41. *Application of section 37***

Section 37 applies in relation to a service provided on or after the commencement of section 11 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

**42. *Regulations***

- (1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed to give effect to this Part.
  - (2) The regulations—
    - (a) may be of general or limited application; and
    - (b) may differ according to differences in time, place or circumstance; and
    - (c) may apply, adopt or incorporate any matter contained in any document as in force at a particular time either wholly, or partially, or as amended by the regulations.'
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**PART 3—CORONERS ACT 1985**

**12. New section 18A inserted**

After section 18 of the **Coroners Act 1985**  
**insert—**

**'18A. Apology or reduction or waiver of fees**

- (1) In this section, "**apology**" means an expression of sorrow, regret or sympathy but does not include a clear acknowledgment of fault.
- (2) In an investigation of a death—
  - (a) an apology; or
  - (b) a reduction or waiver of fees payable for a service provided to the person who died—

does not constitute an admission as to how death occurred or the cause of death, for the purposes of findings under section 19.

- (3) Sub-section (2) applies whether the apology or the reduction or waiver of fees—
  - (a) is made orally or in writing; or
  - (b) is made before or after the investigation commenced.
- (4) Nothing in this section affects the admissibility of a statement with respect to a fact in issue or tending to establish a fact in issue.
- (5) This section applies to an apology or reduction or waiver of fees made on or after the commencement of Part 3 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

See:  
Act No.  
10257/1985.  
Reprint No. 3  
as at  
1 October  
1998  
and  
amending  
Act Nos  
7/1999,  
27/2001,  
45/2001 and  
4/2002.  
LawToday:  
[www.dms.  
dpc.vic.  
gov.au](http://www.dms.dpc.vic.gov.au)

**PART 4—FOOD ACT 1984**

**13. *Amendment of Food Act 1984***

See:  
Act No.  
10082/1984.  
Reprint No. 6  
as at  
1 January  
2002.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

After section 4(3)(a) of the **Food Act 1984**  
**insert—**

"(b) food that is donated to a person who  
distributes food for a charitable or  
benevolent purpose is not to be taken to be  
food that was given away for the purpose of  
advertisement or in furtherance of trade or  
business;"

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**PART 5—GOODS ACT 1958**

**14. Definitions**

In section 84(1) of the **Goods Act 1958** for the definition of "services" **substitute—**

' "services" has the same meaning as it has in the **Fair Trading Act 1999;**'

See:  
Act No.  
6265/1958.  
Reprint No. 9  
as at  
8 October  
1998  
and  
amending  
Act Nos  
27/2001 and  
44/2001.  
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**15. Application of Part**

(1) In sections 85(1) and 85(5) of the **Goods Act 1958** for "\$15 000" (wherever occurring) **substitute** "\$40 000".

(2) In section 85 of the **Goods Act 1958** for sub-section (7) **substitute—**

"(7) If an amount greater than \$40 000 is prescribed by the regulations for the purposes of this section, a reference in this section to \$40 000 is a reference to the prescribed amount."

**16. New section 97A inserted**

After section 97 of the **Goods Act 1958** insert—

**'97A. Limitation of liability in relation to sale of recreational services**

(1) Subject to sub-section (2), a term of a sale of recreational services is not void under section 95 or 97 by reason only that the term excludes, restricts or modifies, or has the

effect of excluding, restricting or  
modifying—

- (a) the application in relation to that sale of recreational services of section 91 or 92; or
  - (b) the exercise of a right conferred by section 91 or 92 in relation to that sale of recreational services; or
  - (c) any liability of the seller for a breach of condition implied by section 91 or 92 in relation to that sale of recreational services.
- (2) Sub-section (1) only applies if—
- (a) the sale of recreational services was made on or after the commencement of Part 5 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**; and
  - (b) the exclusion, restriction or modification contained in the term is limited to liability for death or personal injury; and
  - (c) the term is in the prescribed form (if any) and contains the prescribed particulars (if any); and
  - (d) if there is a prescribed form for the term, the seller has not made a false or misleading statement as to a material particular in or in relation to the term; and
  - (e) the term was signed by the purchaser prior to the sale of the recreational services.
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- (3) Despite sub-section (1), a person is not entitled to rely on a term of a sale of recreational services which complies with sub-section (2) if—
- (a) the person has done or omitted to do something in relation to the sale of those recreational services that but for sub-section (1) would—
    - (i) be an act or omission to which section 91 or 92 would apply; or
    - (ii) give rise to the exercise of a right conferred by section 91 or 92; or
    - (iii) be a breach of a condition implied by section 91 or 92; and
  - (b) the act or omission was done or omitted to be done with reckless disregard, with or without consciousness, for the consequences of the act or omission.
- (4) In this section—
- "disease"** includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin;
- "injury"** means any physical or mental injury;
- "personal injury"** means—
- (a) an injury of an individual (including the aggravation, acceleration or recurrence of an injury of the individual); or
-

- (b) the contraction, aggravation, acceleration or recurrence of a disease of an individual; or
- (c) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual that is or may be harmful or disadvantageous to, or result in harm or disadvantage to—
  - (i) the individual; or
  - (ii) the community;

**"recreational services"** means services that consist of participation in—

- (a) a sporting activity or a similar leisure-time pursuit; or
- (b) any other activity that—
  - (i) involves a significant degree of physical exertion or physical risk; and
  - (ii) is undertaken for the purposes of recreation, enjoyment or leisure.'

**17. *New section 119A inserted***

After section 119 of the **Goods Act 1958** insert—

**"119A. *Transitional***

Despite the amendment of this Part by Part 5 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**, this Part, as in force immediately before the commencement of that Part 5, continues to

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apply to a sale of goods or services or lease  
of goods entered into before that  
commencement." .

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**PART 6—ESSENTIAL SERVICES COMMISSION ACT 2001**

**18. *Amendment of purpose provision***

Act No.  
62/2001  
and  
amending  
Act Nos  
11/2002 and  
32/2002  
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In section 1(1) of the **Essential Services  
Commission Act 2001**—

(a) in paragraph (b), for "industries." **substitute**  
"industries; and";

(b) after paragraph (b) **insert**—

"(c) to provide a mechanism for monitoring  
and providing advice to Government on  
matters relating to the insurance  
industry and the operations of certain  
statutory insurers in Victoria."

**19. *Definitions***

In section 3 of the **Essential Services  
Commission Act 2001** **insert** the following  
definitions—

' **"insurance"** does not include reinsurance;

**"insurance business"** means the business of  
undertaking liability, by way of insurance, in  
respect of any loss or damage, including  
liability to pay damages or compensation,  
contingent upon the happening of a specified  
event, and includes any business incidental  
to that business;

**"insurance industry"** means the industry  
comprising—

(a) persons or bodies carrying on insurance  
business in Victoria; and

- (b) bodies established for the purpose of providing discretionary indemnities in Victoria for liability for loss or damage arising from the conduct of a profession or occupation—

but does not include the statutory insurers or the Victorian Managed Insurance Authority established under the **Victorian Managed Insurance Authority Act 1996**;

**"statutory insurer"** means—

- (a) the Transport Accident Commission established under the **Transport Accident Act 1986**; or
- (b) the Victorian WorkCover Authority established under the **Accident Compensation Act 1985**;

**20. *New sections 10A and 10B inserted***

After section 10 of the **Essential Services Commission Act 2001** insert—

**"10A. *Functions of the Commission in relation to the insurance industry***

- (1) Without limiting section 10, the functions of the Commission include the function of advising the Minister (and any other Minister that the Minister specifies in writing) on any matter relating to the insurance industry that the Minister refers to it for advice.
- (2) The matters referred to the Commission under this section may include matters relating to the availability and affordability of insurance and indemnities.
- (3) Section 8 and Parts 5 and 6 do not apply to the functions of the Commission under this section.

- (4) The Commission may only exercise its powers under section 37 to require information in relation to insurance if the Commission is unable to obtain the information from another State regulatory body or from a regulatory body of another State or Territory or of the Commonwealth.

**10B. *Functions of the Commission in relation to the statutory insurers***

- (1) The Minister for the time being administering the **Transport Accident Act 1986** may request the Commission—
- (a) to review any charges order made or proposed to be made under section 110 of that Act; and
  - (b) to provide advice or make recommendations to the Minister in relation to that order or proposed order.
- (2) The Minister for the time being administering the **Accident Compensation (WorkCover Insurance) Act 1993** may request the Commission—
- (a) to review any premiums order made or proposed to be made under section 15 of that Act; and
  - (b) to provide advice or make recommendations to the Minister in relation to that order or proposed order.
- (3) The Commission may require a statutory insurer to give the Commission any information or a copy of any document that the Commission considers will assist it in carrying out a function under this section in relation to that statutory insurer.
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- (4) A statutory insurer must comply with a requirement of the Commission under this section despite anything to the contrary in any other Act or law.
- (5) Section 8 and Parts 3, 4, 5, 6 and 7 do not apply to the functions of the Commission under this section."

**21. Power to obtain information and documents**

After section 37(5) of the **Essential Services Commission Act 2001** insert—

- "(5A) Despite anything to the contrary in any other Act or law, a person who is a member or employee of a statutory body is not to be found guilty of an offence or to be in breach of a statutory duty by providing information or a copy of a document to the Commission if—
- (a) the person provides information or a copy of a document to the Commission in compliance with a requirement under this section; and
  - (b) the Commission made the requirement in the performance of its functions under section 10A; and
  - (c) nothing in the information or document provided could lead to the identification of an individual insurance policy holder or indemnified person."

**PART 7—COUNTRY FIRE AUTHORITY ACT 1958**

**22. Penalties in relation to returns**

See:  
Act No.  
6228/1958.  
Reprint No. 10  
as at  
24 May 2001  
and  
amending  
Act Nos  
50/1989,  
27/2001,  
32/2001 and  
9/2002.  
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In section 78(1) of the **Country Fire Authority Act 1958** for "10 penalty units and a further penalty of 1 penalty unit for each day after 15 August during which the return is not lodged" **substitute** "60 penalty units".

**23. Inspection of documents**

- (1) After section 79(1)(a) of the **Country Fire Authority Act 1958** insert—
- "(aa) reconciling amounts paid by a body to the Authority as contributions with amounts specified in invoices issued by that body for insurance of property against fire as being payable for a fire service contribution (however described); or".
- (2) In section 79(3) of the **Country Fire Authority Act 1958** for "5 penalty units and a further penalty of 1 penalty unit for each day that the failure to comply continues" **substitute** "60 penalty units".
- (3) After section 79(3) of the **Country Fire Authority Act 1958** insert—
- "(4) A person must not, without reasonable excuse, hinder or obstruct an officer appointed by the Authority who is exercising a power under sub-section (2).  
Penalty: 120 penalty units."
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**24. *Adjustment of contributions by owners and insurance intermediaries***

At the end of section 81 of the **Country Fire Authority Act 1958** insert—

- "(2) Despite anything in this Act, if the Authority is satisfied that, because of exceptional circumstances, the contribution to be paid by an insurance intermediary or the owner of a property calculated under section 80A exceeds an amount that the Authority determines to be equitable, the Authority may, at its absolute discretion, determine an amount of contribution for that insurance intermediary or owner that is less than the contribution calculated under section 80A.
- (3) If a new amount of contribution is determined under sub-section (2), the Authority may—
- (a) if the contribution under section 80A has not yet been paid, require the insurance intermediary or the owner to pay that new amount instead of the amount payable under section 80A; or
  - (b) if the contribution under section 80A has been paid to the Authority, refund to the insurance intermediary or owner the difference between the contribution paid under section 80A and the new amount.
- (4) It is sufficient compliance with section 80A(3)(b) if an insurance intermediary or the owner of a property pays an amount required under sub-section (3) to be paid by that insurance intermediary or owner."

**25. New section 81A inserted**

After section 81 of the **Country Fire Authority Act 1958** insert—

**"81A. Disclosure of information by Authority**

- (1) The Authority may disclose to the Secretary to the Department of Justice, the Secretary to the Department of Treasury and Finance or the Emergency Services Commissioner or otherwise publish in any manner the Authority thinks fit any information obtained by the Authority under section 77, 78, 79, 80A or 81.
- (2) The Secretary to the Department of Justice, the Secretary to the Department of Treasury and Finance or the Emergency Services Commissioner may publish in any manner the Secretary or Commissioner thinks fit any information disclosed to the Secretary or Commissioner by the Authority under sub-section (1).
- (3) Nothing in sub-section (1) or (2) permits the disclosure or publication of information that could lead to the identification of an individual.
- (4) The Authority may disclose to a member of the police force any information obtained by the Authority under section 77, 78, 79, 80A or 81 if the Authority is satisfied that the disclosure is reasonably necessary for the purpose of the investigation of an offence against this Act or any other Act or law."

**PART 8—METROPOLITAN FIRE BRIGADES ACT 1958**

**26. Penalties in relation to returns**

In section 41(1) of the **Metropolitan Fire Brigades Act 1958** for "10 penalty units and a further penalty of 1 penalty unit for each day after 15 August during which the return is not lodged" **substitute** "60 penalty units".

See:  
Act No.  
6315/1958.  
Reprint No. 8  
as at  
25 March  
1999  
and  
amending  
Act Nos  
50/1989,  
86/1998  
48/2000 and  
9/2002.  
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**27. Inspection of documents**

(1) After section 42(1)(a) of the **Metropolitan Fire Brigades Act 1958** insert—

"(aa) reconciling amounts paid by a body to the Board as contributions with amounts specified in invoices issued by that body for insurance of property against fire as being payable for a fire service contribution (however described); or".

(2) In section 42(3) of the **Metropolitan Fire Brigades Act 1958** for "5 penalty units and a further penalty of 1 penalty unit for each day that the failure to comply continues" **substitute** "60 penalty units".

- (3) After section 42(3) of the **Metropolitan Fire Brigades Act 1958** insert—

"(4) A person must not, without reasonable excuse, hinder or obstruct an officer appointed by the Board who is exercising a power under sub-section (2).

Penalty: 120 penalty units."

**28. Adjustment of contributions by owners and brokers**

At the end of section 45 of the **Metropolitan Fire Brigades Act 1958** insert—

"(2) Despite anything in this Act, if the Board is satisfied that, because of exceptional circumstances, the contribution to be paid by an insurance intermediary or the owner of a property calculated under section 44A exceeds an amount that the Board determines to be equitable, the Board may, at its absolute discretion, determine an amount of contribution for that insurance intermediary or owner that is less than the contribution calculated under section 44A.

- (3) If a new amount of contribution is determined under sub-section (2), the Board may—

- (a) if the contribution under section 44A has not yet been paid, require the insurance intermediary or the owner to pay that new amount instead of the amount payable under section 44A; or

- (b) if the contribution under section 44A has been paid to the Board, refund to the insurance intermediary or owner the difference between the contribution paid under section 44A and the new amount.
- (4) It is sufficient compliance with section 44A(3)(b) if an insurance intermediary or the owner of a property pays an amount required under sub-section (3) to be paid by that insurance intermediary or owner."

**29. *New section 45A inserted***

After section 45 of the **Metropolitan Fire Brigades Act 1958** insert—

**"45A. *Disclosure of information by Board***

- (1) The Board may disclose to the Secretary to the Department of Justice, the Secretary to the Department of Treasury and Finance or the Emergency Services Commissioner or otherwise publish in any manner the Board thinks fit any information obtained by the Board under section 38, 40, 41, 42, 44A or 45.
- (2) The Secretary to the Department of Justice, the Secretary to the Department of Treasury and Finance or the Emergency Services Commissioner may publish in any manner the Secretary or Commissioner thinks fit any information disclosed to the Secretary or Commissioner by the Board under sub-section (1).
- (3) Nothing in sub-section (1) or (2) permits the disclosure or publication of information that could lead to the identification of an individual.

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- (4) The Board may disclose to a member of the police force any information obtained by the Board under section 38, 40, 41, 42, 44A or 45 if the Board is satisfied that the disclosure is reasonably necessary for the purpose of the investigation of an offence against this Act or any other Act or law."
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**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 12 September 2002*

*Legislative Council: 10 October 2002*

The long title for the Bill for this Act was "to amend the **Wrongs Act 1958**, the **Coroners Act 1985**, the **Food Act 1984**, the **Goods Act 1958**, the **Essential Services Commission Act 2001**, the **Country Fire Authority Act 1958** and the **Metropolitan Fire Brigades Act 1958** and for other purposes."

**Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 12 September 2002*

*Legislative Council: 10 October 2002*

*Absolute majorities:*

*Legislative Assembly: 9 October 2002*

*Legislative Council: 16 October 2002*