

Wrongs and Other Acts (Law of Negligence) Act 2003

Act No. 102/2003

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Victoria

No. 102 of 2003

Wrongs and Other Acts (Law of Negligence) Act 2003[†]

[Assented to 2 December 2003]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

- (a) to amend the **Wrongs Act 1958** in relation to—
 - (i) negligence;
 - (ii) contributory negligence;

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- (iii) mental harm;
- (iv) the liability of public authorities;
- (v) damages for injury or death;
- (b) to amend the **Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003** in relation to proportionate liability;
- (c) to amend the **Victorian Managed Insurance Authority Act 1996** to empower the Authority to insure or indemnify other persons and bodies;
- (d) to amend the **Building Act 1993** in relation to insurance for domestic building work.

2. Commencement

- (1) This Act (except sections 6 and 14(2) and Part 5) comes into operation on the day after the day on which it receives the Royal Assent.
- (2) Section 6 is deemed to have come into operation on 1 October 2003.
- (3) Section 14(2) is deemed to have come into operation on 21 May 2003.
- (4) Subject to sub-section (5), Part 5 comes into operation on a day to be proclaimed.
- (5) If Part 5 does not come into operation before 1 January 2005, it comes into operation on that day.

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PART 2—AMENDMENTS TO WRONGS ACT 1958

3. New Parts X, XI and XII inserted

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

'PART X—NEGLIGENCE

Division 1—Preliminary

43. Definitions

In this Part—

"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;

"harm" means harm of any kind and includes—

- (a) injury or death; and
- (b) damage to property; and
- (c) economic loss;

"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;

"negligence" means failure to exercise reasonable care.

See:
Act No.
6420.
Reprint No. 8
as at
16 June 2003
and
amending
Act No.
60/2003.
LawToday:
www.dms.dpc.vic.gov.au

44. Application of Part

This Part applies to any claim for damages resulting from negligence, regardless of whether the claim is brought in tort, in contract, under statute or otherwise.

45. Exclusions from Part

- (1) This Part does not apply to the following claims for damages—
 - (a) a claim to which Part 3, 6 or 10 of the **Transport Accident Act 1986** applies;
 - (b) a claim to which Part IV of the **Accident Compensation Act 1985** applies;
 - (c) a claim in respect of an injury which entitles, or may entitle, a worker, or a dependant of a worker, within the meaning of the **Workers Compensation Act 1958** to compensation under that Act;
 - (d) a claim in respect of an injury which entitles, or may entitle, a person or a dependant of a person to compensation under any of the following—
 - (i) Part V of the **Country Fire Authority Act 1958** or the regulations made under that Act;
 - (ii) Part 3 of the **Victoria State Emergency Service Act 1987**;
 - (iii) Part 6 of the **Emergency Management Act 1986**;
 - (iv) the **Police Assistance Compensation Act 1968**;

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- (v) Part 8 of the **Juries Act 2000** or Part VII of the **Juries Act 1967**;
 - (vi) Division 6 of Part II of the **Education Act 1958**;
 - (e) subject to sub-section (2), a claim for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
 - (f) subject to sub-section (2), a claim for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.
- (2) A claim for damages referred to in sub-section (1)(e) or (1)(f) does not include a claim for damages that relates to the provision of or the failure to provide a health service.
- (3) This Part does not apply to claims in proceedings of a class that is excluded by the regulations from the operation of this Part.

46. Application to contract

- (1) This Part does not prevent the parties to a contract from making express provision for their rights, obligations and liabilities under the contract (the **express provision**) in relation to any matter to which this Part applies and does not limit or otherwise affect the operation of the express provision.
- (2) Sub-section (1) extends to any provision of this Part even if the provision applies to liability in contract.

47. Effect of this Part on the common law

Except as provided by this Part, this Part is not intended to affect the common law.

Division 2—Duty of Care

48. General principles

- (1) A person is not negligent in failing to take precautions against a risk of harm unless—
 - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.
- (2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things)—
 - (a) the probability that the harm would occur if care were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;
 - (d) the social utility of the activity that creates the risk of harm.
- (3) For the purposes of sub-section (1)(b)—
 - (a) **insignificant risks** include, but are not limited to, risks that are far-fetched or fanciful; and

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- (b) risks that are **not insignificant** are all risks other than insignificant risks and include, but are not limited to, significant risks.

49. Other principles

In a proceeding relating to liability for negligence—

- (a) the burden of taking precautions to avoid a risk of harm includes the burden of taking precautions to avoid similar risks of harm for which the person may be responsible; and
- (b) the fact that a risk of harm could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done; and
- (c) the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of harm does not of itself give rise to or affect liability in respect of the risk and does not of itself constitute an admission of liability in connection with the risk.

50. Duty to warn of risk—reasonable care

A person (the **defendant**) who owes a duty of care to another person (the **plaintiff**) to give a warning or other information to the plaintiff in respect of a risk or other matter, satisfies that duty of care if the defendant takes reasonable care in giving that warning or other information.

Division 3—Causation

51. General principles

- (1) A determination that negligence caused particular harm comprises the following elements—
 - (a) that the negligence was a necessary condition of the occurrence of the harm (**factual causation**); and
 - (b) that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (**scope of liability**).
- (2) In determining in an appropriate case, in accordance with established principles, whether negligence that cannot be established as a necessary condition of the occurrence of harm should be taken to establish factual causation, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.
- (3) If it is relevant to the determination of factual causation to determine what the person who suffered harm (the **injured person**) would have done if the negligent person had not been negligent, the matter is to be determined subjectively in the light of all relevant circumstances.
- (4) For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.

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52. Burden of proof

In determining liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation.

Division 4—Awareness of Risk

53. Meaning of obvious risk

- (1) For the purposes of section 54, an **obvious risk** to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.
- (2) Obvious risks include risks that are patent or a matter of common knowledge.
- (3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.
- (4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.
- (5) To remove any doubt, it is declared that a risk from a thing, including a living thing, is not an obvious risk if the risk is created because of a failure on the part of a person to properly operate, maintain, replace, prepare or care for the thing, unless the failure itself is an obvious risk.

54. Voluntary assumption of risk

- (1) If, in a proceeding on a claim for damages for negligence, a defence of voluntary assumption of risk (*volenti non fit injuria*) is raised and the risk of harm is an obvious risk, the person who suffered harm is

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presumed to have been aware of the risk, unless the person proves on the balance of probabilities that the person was not aware of the risk.

- (2) Sub-section (1) does not apply to—
- (a) a proceeding on a claim for damages relating to the provision of or the failure to provide a professional service or health service; or
 - (b) a proceeding on a claim for damages in respect of risks associated with work done by one person for another.
- (3) Without limiting section 47, the common law continues to apply, unaffected by sub-section (1), to a proceeding referred to in sub-section (2).

55. No liability for materialisation of inherent risk

- (1) A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an inherent risk.
- (2) An **inherent risk** is a risk of something occurring that cannot be avoided by the exercise of reasonable care.
- (3) This section does not operate to exclude liability in connection with a duty to warn of a risk.

56. Plaintiff to prove unawareness of risk

- (1) In any proceeding where, for the purpose of establishing that a person (the **defendant**) has breached a duty of care owed to a person who suffered harm (the **plaintiff**), the plaintiff alleges that the defendant has—

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- (a) failed to give a warning about a risk of harm to the plaintiff; or
- (b) failed to give other information to the plaintiff—
- the plaintiff bears the burden of proving, on the balance of probabilities, that the plaintiff was not aware of the risk or information.
- (2) Sub-section (1) does not apply to a proceeding on a claim for damages in respect of risks associated with work done by one person for another.
- (3) Despite sub-section (2), sub-section (1) applies to a proceeding referred to in sub-section (2) if the proceeding relates to the provision of or the failure to provide a health service.
- (4) Without limiting section 47, the common law continues to apply, unaffected by sub-section (1), to a proceeding referred to in sub-section (2) to which sub-section (1) does not apply.
- (5) Nothing in this section is intended to alter any duty of care to give a warning of a risk of harm or other information.

Division 5—Negligence of professionals and persons professing particular skills

57. Definition

In this Division "**professional**" means an individual practising a profession.

58. Standard of care to be expected of persons holding out as possessing a particular skill

In a case involving an allegation of negligence against a person (the **defendant**) who holds himself or herself out as possessing a particular skill, the standard to be applied by a court in determining whether the defendant acted with due care is, subject to this Division, to be determined by reference to—

- (a) what could reasonably be expected of a person possessing that skill; and
- (b) the relevant circumstances as at the date of the alleged negligence and not a later date.

59. Standard of care for professionals

- (1) A professional is not negligent in providing a professional service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by a significant number of respected practitioners in the field (**peer professional opinion**) as competent professional practice in the circumstances.
- (2) However, peer professional opinion cannot be relied on for the purposes of this section if the court determines that the opinion is unreasonable.
- (3) The fact that there are differing peer professional opinions widely accepted in Australia by a significant number of respected practitioners in the field concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.

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- (4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.
 - (5) If, under this section, a court determines peer professional opinion to be unreasonable, it must specify in writing the reasons for that determination.
 - (6) Sub-section (5) does not apply if a jury determines the matter.

60. Duty to warn of risk

Section 59 does not apply to a liability arising in connection with the giving of (or the failure to give) a warning or other information in respect of a risk or other matter to a person if the giving of the warning or information is associated with the provision by a professional of a professional service.

Division 6—Non-delegable duties and vicarious liability

61. Liability based on non-delegable duty

- (1) The extent of liability in tort of a person (the **defendant**) for breach of a non-delegable duty to ensure that reasonable care is taken by a person in the carrying out of any work or task delegated or otherwise entrusted to the person by the defendant is to be determined as if the defendant were vicariously liable for the negligence of the person in connection with the performance of the work or task.
 - (2) This section applies to a claim for damages in tort whether or not it is a claim for damages resulting from negligence, despite anything to the contrary in section 44.
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Division 7—Contributory Negligence

62. Standard of care for contributory negligence

- (1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether the person who suffered harm has been contributorily negligent in failing to take precautions against the risk of that harm.
- (2) For that purpose—
 - (a) the standard of care required of the person who suffered harm is that of a reasonable person in the position of that person; and
 - (b) the matter is to be determined on the basis of what that person knew or ought to have known at the time.

63. Contributory negligence can defeat claim

In determining the extent of a reduction in damages by reason of contributory negligence, a court may determine a reduction of 100% if the court thinks it just and equitable to do so, with the result that the claim for damages is defeated.

Division 8—General

64. Regulations

The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.

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65. Supreme Court—limitation of jurisdiction

It is the intention of sections 48(2), 51(2), 51(3), 51(4), 58, 59(5) and 62 to alter or vary section 85 of the **Constitution Act 1975**.

66. Transitional

- (1) This Part extends to negligence arising before, on or after the commencement day.
 - (2) Section 61 extends to liability in tort arising before, on or after the commencement day.
 - (3) Despite sub-sections (1) and (2), this Part does not apply to proceedings commenced in a court before the commencement day.
 - (4) In this section "**commencement day**" means the day on which section 3 of the **Wrongs and Other Acts (Law of Negligence) Act 2003** comes into operation.
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PART XI—MENTAL HARM

67. Definitions

In this Part—

"consequential mental harm" means mental harm that is a consequence of an injury of any other kind;

"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;

"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;

"mental harm" means psychological or psychiatric injury;

"negligence" means failure to exercise reasonable care;

"pure mental harm" means mental harm other than consequential mental harm.

68. Application of Part

This Part applies to any claim for damages resulting from negligence, regardless of whether the claim is brought in tort, in contract, under statute or otherwise.

69. Exclusions from Part

- (1) This Part does not apply to the following claims for damages—
- (a) a claim to which Part 3, 6 or 10 of the **Transport Accident Act 1986** applies;
 - (b) a claim to which Part IV of the **Accident Compensation Act 1985** applies;
 - (c) a claim in respect of an injury which entitles, or may entitle, a worker, or a dependant of a worker, within the meaning of the **Workers Compensation Act 1958** to compensation under that Act;
 - (d) a claim in respect of an injury which entitles, or may entitle, a person or a dependant of a person to compensation under any of the following—
 - (i) Part V of the **Country Fire Authority Act 1958** or the regulations made under that Act;
 - (ii) Part 3 of the **Victoria State Emergency Service Act 1987**;
 - (iii) Part 6 of the **Emergency Management Act 1986**;
 - (iv) the **Police Assistance Compensation Act 1968**;
 - (v) Part 8 of the **Juries Act 2000** or Part VII of the **Juries Act 1967**;
 - (vi) Division 6 of Part II of the **Education Act 1958**;

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- (e) subject to sub-section (2), a claim for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
 - (f) subject to sub-section (2), a claim for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.
- (2) A claim for damages referred to in sub-section (1)(e) or (1)(f) does not include a claim for damages that relates to the provision of or the failure to provide a health service.
 - (3) This Part does not apply to claims in proceedings of a class that is excluded by the regulations from the operation of this Part.

70. Application to contract

- (1) This Part does not prevent the parties to a contract from making express provision for their rights, obligations and liabilities under the contract (the **express provision**) in relation to any matter to which this Part applies and does not limit or otherwise affect the operation of the express provision.
- (2) Sub-section (1) extends to any provision of this Part even if the provision applies to liability in contract.

71. Effect of this Part on the common law

Except as provided by this Part, this Part is not intended to affect the common law.

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72. Mental harm—duty of care

- (1) A person (the **defendant**) does not owe a duty to another person (the **plaintiff**) to take care not to cause the plaintiff pure mental harm unless the defendant foresaw or ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- (2) For the purposes of the application of this section, the circumstances of the case include the following—
 - (a) whether or not the mental harm was suffered as the result of a sudden shock;
 - (b) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in danger;
 - (c) the nature of the relationship between the plaintiff and any person killed, injured or put in danger;
 - (d) whether or not there was a pre-existing relationship between the plaintiff and the defendant.
- (3) This section does not affect the duty of care of a person (the **defendant**) to another (the **plaintiff**) if the defendant knows, or ought to know, that the plaintiff is a person of less than normal fortitude.

73. Limitation on recovery of damages for pure mental harm arising from shock

- (1) This section applies to the liability of a person (the **defendant**) for pure mental harm to a person (the **plaintiff**) arising wholly or partly from mental or nervous shock in connection with another person (the **victim**)

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being killed, injured or put in danger by the act or omission of the defendant.

- (2) The plaintiff is not entitled to recover damages for pure mental harm unless—
 - (a) the plaintiff witnessed, at the scene, the victim being killed, injured or put in danger; or
 - (b) the plaintiff is or was in a close relationship with the victim.
- (3) No damages are to be awarded to the plaintiff for pure mental harm if the recovery of damages from the defendant by or through the victim in respect of the act or omission would be prevented by any provision of this Act or any other written or unwritten law.

74. Limitation on recovery of damages for consequential mental harm

- (1) A person (the **plaintiff**) is not entitled to recover damages from another person (the **defendant**) for consequential mental harm unless—
 - (a) the defendant foresaw or ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken; or
 - (b) the defendant knew, or ought to have known, that the plaintiff is a person of less than normal fortitude and foresaw or ought to have foreseen that the plaintiff might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.

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- (2) For the purposes of the application of this section, the circumstances of the case include the injury to the plaintiff out of which the mental harm arose.

75. Liability for economic loss for mental harm

A court cannot make an award of damages for economic loss for mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness.

76. Regulations

The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.

77. Supreme Court—limitation of jurisdiction

It is the intention of sections 73, 74 and 75 to alter or vary section 85 of the **Constitution Act 1975**.

78. Transitional

- (1) This Part extends to negligence arising before, on or after the commencement day.
- (2) Despite sub-section (1), this Part does not apply to proceedings commenced in a court before the commencement day.
- (3) In this section "**commencement day**" means the day on which section 3 of the **Wrongs and Other Acts (Law of Negligence) Act 2003** comes into operation.

**PART XII—LIABILITY OF PUBLIC
AUTHORITIES**

79. Definitions

In this Part—

"damages" includes any form of monetary compensation;

"exercise" in relation to a function includes perform a duty;

"function" includes a power, authority or duty;

"negligence" means failure to exercise reasonable care;

"public authority" means—

- (a) the Crown;
- (b) an Agency within the meaning of the **Public Sector Management and Employment Act 1998**;
- (c) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose;
- (d) a Council within the meaning of the **Local Government Act 1989**;
- (e) a body established or appointed for a public purpose by the Governor in Council or by a Minister, otherwise than under an Act;
- (f) a person holding an office or position established by or under an Act;

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- (g) a person holding an office or position to which he or she was appointed by the Governor in Council or a Minister otherwise than under an Act;
- (h) any other person or body prescribed (or of a class prescribed) as an authority to which this Part applies (in respect of all or specified functions);
- (i) any person or body in respect of the exercise of a public or other function of a class prescribed for the purpose of this Part.

80. Application of Part

- (1) This Part (except section 84) applies to any claim for damages resulting from negligence, regardless of whether the claim is brought in tort, in contract, under statute or otherwise.
- (2) Sub-section (1) and section 84 do not apply if the relevant enactment contains express provision to the contrary.

81. Exclusions from Part

- (1) This Part does not apply to the following claims for damages—
 - (a) subject to sub-section (2), a claim for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
 - (b) subject to sub-section (2), a claim for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning

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of the **Tobacco Act 1987**, or exposure to tobacco smoke.

- (2) A claim for damages referred to in subsection (1)(a) or (1)(b) does not include a claim for damages that relates to the provision of or the failure to provide a health service.
- (3) This Part does not apply to a public authority or class of public authority—
- (a) that is excluded by the regulations from the operation of this Part in respect of all of its functions; or
 - (b) in respect of specified functions or functions of a specified class, if the regulations exclude those functions or that class of functions from the operation of this Part in respect of that public authority or class of public authority.

82. Effect of this Part on the common law

Except as provided by sections 83, 84 and 85, this Part is not intended to affect the common law.

83. Principles concerning resources, responsibilities etc. of public authorities

In determining whether a public authority has a duty of care or has breached a duty of care, a court is to consider the following principles (amongst other relevant things)—

- (a) the functions required to be exercised by the authority are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising those functions;

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- (b) the functions required to be exercised by the authority are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which the proceeding relates);
- (c) the authority may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceeding relates.
- 84. Wrongful exercise of or failure to exercise function**
- (1) This section applies to a proceeding for damages for an alleged breach of statutory duty by a public authority in connection with the exercise of or a failure to exercise a function of the authority.
- (2) For the purpose of the proceeding, an act or omission of the public authority relating to a function conferred on the public authority specifically in its capacity as a public authority does not constitute a breach of statutory duty unless the act or omission was in the circumstances so unreasonable that no public authority having the functions of the authority in question could properly consider the act or omission to be a reasonable exercise of its functions.
- (3) For the purpose of the proceeding the public authority is not liable for damages caused by the wrongful exercise of or failure to exercise a function of the authority unless the provisions and policy of the enactment in which the duty to exercise the function is
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created are compatible with the existence of that liability.

- (4) Despite sub-section (1), sub-section (2) does not apply to a statutory duty that is imposed as an absolute duty on the public authority to do or not to do a particular thing.

85. Exercise of function or decision to exercise does not create duty

In a proceeding, the fact that a public authority exercises or decides to exercise a function does not of itself indicate that the authority is under a duty to exercise the function or that the function should be exercised in particular circumstances or in a particular way.

86. Supreme Court—limitation of jurisdiction

It is the intention of section 83 to alter or vary section 85 of the **Constitution Act 1975**.

87. Transitional

- (1) This Part extends to negligence arising before, on or after the commencement day.
- (2) Section 84 extends to an act or omission occurring before, on or after the commencement day.
- (3) Despite sub-sections (1) and (2), this Part does not apply to proceedings commenced in a court before the commencement day.
- (4) In this section "**commencement day**" means the day on which section 3 of the **Wrongs and Other Acts (Law of Negligence) Act 2003** comes into operation.'

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4. New sections 19A to 19C inserted

After section 19 of the **Wrongs Act 1958**
insert—

"19A. Limitation on damages for loss of gratuitous care

In an action under this Part, no damages may be awarded for a loss of gratuitous care provided or to be provided by the deceased to his or her dependants unless the court is satisfied that—

- (a) the care—
 - (i) was provided to the dependants;
and
 - (ii) was being provided for at least 6 hours per week; and
 - (iii) had been provided for at least 6 consecutive months before the death, or the injury that caused the death, to which the damages relate; or
- (b) there is a reasonable expectation that, but for the death, or the injury that caused the death, of the deceased, the gratuitous care would have been provided to the dependants—
 - (i) for at least 6 hours per week; and
 - (ii) for a period of at least 6 consecutive months.

19B. Calculation of damages for gratuitous care

- (1) If, in an action under this Part, the court is satisfied that the deceased would (if death, or the injury that caused the death, had not ensued) have provided gratuitous care to his or her dependants for not less than 40 hours per week, the amount of damages that may be awarded for the loss of that care must not exceed—
- (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—
 - (i) in respect of the whole or any part of a quarter occurring between the date of the death in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter; or
 - (ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and 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

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amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed.

- (2) If, in an action under this Part, the court is satisfied that the deceased would have provided gratuitous care to his or her dependants for less than 40 hours per week, the amount of damages that may be awarded for the loss of that care must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with sub-section (1)(a) or (b), as the case requires.

19C. Application of sections 19A and 19B

- (1) Except as provided by sections 19A and 19B, nothing in those sections affects any other law relating to damages arising from loss of gratuitous care.
- (2) Sections 19A and 19B do not apply to the following actions for damages—
- (a) subject to sub-section (3), an action for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**; or
 - (b) subject to sub-section (3), an action for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.
- (3) An action for damages referred to in sub-section (2)(a) or (2)(b) does not include an action for damages that relates to the provision of or the failure to provide a health service."

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5. New sections 23AA, 23AB and 23AC inserted

After section 23 of the **Wrongs Act 1958**
insert—

"23AA. 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 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.

23AB. Supreme Court—limitation of jurisdiction

It is the intention of sections 19A and 19B to alter or vary section 85 of the **Constitution Act 1975**.

23AC. Transitional for gratuitous care

- (1) Sections 19A and 19B extend to an award of damages that relates to a death occurring before, on or after the commencement of section 4 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**.

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- (2) Despite sub-section (1), sections 19A and 19B do not apply to an award of damages in proceedings commenced in a court before the commencement of section 4 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**."

6. Contribution—transitional

After section 24(4) of the **Wrongs Act 1958**
insert—

- "(5) For the removal of doubt, if an action (the **existing action**) was commenced in a court against the first-mentioned person referred to in sub-section (4) before 1 October 2003, the period referred to in sub-section (4)(a)(i) is to be taken to be the period within which the existing action might have been brought at the time the existing action was brought."

7. Contributory negligence

- (1) In section 26(1)(a) of the **Wrongs Act 1958** before "a claim" **insert** "except as provided in section 63,".
- (2) At the end of section 26 of the **Wrongs Act 1958**
insert—

"Note: Division 7 of Part X also contains provisions relating to contributory negligence."

8. Definition

In section 28B of the **Wrongs Act 1958** **insert** the following definition—

- ' "**dependants**" in relation to a claimant, means any persons who are wholly, mainly or in part dependent on the claimant at the time of the injury;'

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9. New section 28HA inserted

After section 28H of the **Wrongs Act 1958**
insert—

"28HA. Tariffs for damages for non-economic loss

- (1) In determining damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.
- (2) For that purpose, the parties to the proceedings or their counsel may bring the court's attention to awards for damages for non-economic loss in those earlier proceedings.
- (3) This section does not alter the rules for the determination of other damages."

10. New sections 28ID to 28IF inserted

After section 28IC of the **Wrongs Act 1958**
insert—

"28ID. Limitation on damages for loss of capacity to provide care for others

No damages may be awarded to a claimant for any loss of the claimant's capacity to provide gratuitous care for others unless the court is satisfied that—

- (a) the care—
 - (i) was provided to the claimant's dependants; and
 - (ii) was being provided for at least 6 hours per week; and

- (iii) had been provided for at least 6 consecutive months before the injury to which the damages relate; or
- (b) there is a reasonable expectation that, but for the injury to which the damages relate, the gratuitous care would have been provided to the claimant's dependants—
 - (i) for at least 6 hours per week; and
 - (ii) for a period of at least 6 consecutive months.

28IE. Calculation of damages for gratuitous care

- (1) If the court is satisfied that a claimant would have provided gratuitous care to his or her dependants for not less than 40 hours per week, the amount of damages that may be awarded to the claimant for any loss of the claimant's capacity to provide that care must not exceed—
 - (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—
 - (i) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court

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making the award—that quarter;
or

(ii) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and 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.

(2) If the court is satisfied that a claimant would have provided gratuitous care to his or her dependants for less than 40 hours per week, the amount of damages that may be awarded to a claimant for the loss of the claimant's capacity to provide that care must not exceed the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with sub-section (1)(a) or (b), as the case requires.

28IF. Application of sections 28ID and 28IE

(1) Except as provided by sections 28ID and 28IE, nothing in those sections affects any other law relating to damages arising from a loss of capacity to provide gratuitous care.

(2) Sections 28ID and 28IE do not apply to the following actions for damages—

(a) subject to sub-section (3), an action for damages in respect of an injury that is a dust-related condition within the

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meaning of the **Administration and Probate Act 1958**; or

- (b) subject to sub-section (3), an action for damages in respect of an injury resulting from smoking or other use of tobacco products, within the meaning of the **Tobacco Act 1987**, or exposure to tobacco smoke.
- (3) An action for damages referred to in sub-section (2)(a) or (2)(b) does not include an action for damages that relates to the provision of or the failure to provide a health service."

11. Supreme Court—limitation of jurisdiction

After section 28J(2) of the **Wrongs Act 1958**
insert—

"(3) It is the intention of section 28D (as affected by the amendments made to this Part by section 10 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**) to alter or vary section 85 of the **Constitution Act 1975**."

12. New sections 28LAB and 28LAC inserted

After section 28LA of the **Wrongs Act 1958**
insert—

"28LAB. Transitional for tariffs for damages for non-economic loss

Despite section 28L(1), section 28HA does not apply to an award of damages in proceedings commenced in a court before the commencement of section 9 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**.

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28LAC. Transitional for gratuitous care

Despite section 28L(1), sections 28ID and 28IE do not apply to an award of damages in proceedings commenced in a court before the commencement of section 10 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**."

13. Definitions

- (1) In section 28LB of the **Wrongs Act 1958** in the definition of "certificate of assessment" after "section 28LN" **insert** "or 28LNA".
- (2) In section 28LB of the **Wrongs Act 1958** **insert** the following definition—
' **"impairment"** means permanent impairment;'
- (3) In section 28LB of the **Wrongs Act 1958** for the definition of "medical question" **substitute**—
' **"medical question"** in relation to a claim for damages, means a question as to whether the degree of impairment resulting from injury to the claimant alleged in the claim satisfies the threshold level;'

14. What is significant injury?

- (1) After section 28LF(1)(a) of the **Wrongs Act 1958** **insert**—
"(aa) a certificate of assessment has been issued under section 28LNA in respect of the injury, unless a Medical Panel has made a determination as to the threshold level under Division 5; or".

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- (2) After section 28LF(1)(c) of the **Wrongs Act 1958** **insert—**

"(ca) the injury is psychological or psychiatric injury arising from the loss of a child due to an injury to the mother or the foetus or the child before, during or immediately after the birth; or".

- (3) After section 28LF(2)(a) of the **Wrongs Act 1958** **insert—**

"(aa) a certificate of assessment has been issued under section 28LNA in respect of the injury, unless a Medical Panel has made a determination as to the threshold level under Division 5; or".

- (4) After section 28LF(3)(a) of the **Wrongs Act 1958** **insert—**

"(aa) the injury is deemed under section 28LZG(10) or 28LZGA(4) to be significant injury; or".

15. How is the degree of impairment to be assessed?

- (1) In section 28LH of the **Wrongs Act 1958** before "impairment" **insert** "degree of".

- (2) At the end of section 28LH of the **Wrongs Act 1958** **insert—**

"(2) Nothing in sub-section (1) prevents an assessment being made in respect of a degree of impairment of a person even if not all of the injuries to the person have stabilised."

16. Certificate of assessment

- (1) In section 28LN(1) of the **Wrongs Act 1958** for "An approved" **substitute** "Subject to section 28LNA and this section, an approved".

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(2) After section 28LN(2) of the **Wrongs Act 1958**
insert—

"(3) If not all the injuries to a person have stabilised, a certificate of assessment can only be provided under this section in respect of the person if the injuries that have stabilised are sufficient to determine a degree of impairment that satisfies the threshold level."

17. New section 28LNA inserted

After section 28LN of the **Wrongs Act 1958**
insert—

"28LNA. Certificate where injury not stabilised

- (1) This section applies if, after making an assessment of degree of impairment under this Part, an approved medical practitioner is unable to determine the degree of impairment because the injury has not stabilised.
- (2) If, at the end of 6 months after that first assessment, an approved medical practitioner is unable to determine the degree of impairment but is satisfied that the degree of impairment resulting from the injury will satisfy the threshold level once the injury has stabilised, that approved medical practitioner may issue a certificate of assessment under this section.
- (3) The certificate of assessment must state that the approved medical practitioner is unable to determine the degree of impairment but is satisfied that the degree of impairment resulting from the injury will satisfy the threshold level once the injury has stabilised."

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18. Agreement to waive assessment

(1) After section 28LO(1) of the **Wrongs Act 1958** insert—

"(1A) A request under sub-section (1) must be in the prescribed form (if any) and include the prescribed information (if any)."

(2) In section 28LO(2) and 28LO(4) of the **Wrongs Act 1958** for "30 days" substitute "60 days".

(3) In section 28LO(3)(c) of the **Wrongs Act 1958** for "contained in the notice of claim" substitute "contained in the request".

(4) After section 28LO(4) of the **Wrongs Act 1958** insert—

"(5) Information prescribed for the purposes of sub-section (1A) may include information relating to—

- (a) the identity of the claimant;
- (b) the nature of the claim;
- (c) the injury;
- (d) the incident out of which the alleged injury arose;
- (e) any medical practitioner who has treated the injury."

19. What if the respondent asks for more information?

In sections 28LP(2) and 28LP(3) of the **Wrongs Act 1958** for "30 days" substitute "60 days".

20. Repeal of section 28LS

Section 28LS of the **Wrongs Act 1958** is repealed.

21. Information to be provided to respondent

At the end of section 28LT of the **Wrongs Act 1958 insert—**

- "(2) The copy of the certificate of assessment must be accompanied by the prescribed information (if any) in the prescribed form (if any) unless the information has already been provided to the respondent under section 28LO.
- (3) The information prescribed for the purposes of sub-section (2) may include information relating to—
- (a) the identity of the claimant;
 - (b) the nature of the claim;
 - (c) the injury;
 - (d) the incident out of which the alleged injury arose;
 - (e) any medical practitioner who has treated the injury."

22. Limitation period suspended

In section 28LV of the **Wrongs Act 1958—**

- (a) in paragraph (a) after "section 28LW" **insert** ", 28LWA or 28LWB";
- (b) in paragraph (b) for "or 28LZA" **substitute** ", 28LWA, 28LWB, 28LZA or 28LZGA";
- (c) in paragraphs (c) and (d) for "opinion" (wherever occurring) **substitute** "determination".

23. New section 28LW substituted and sections 28LWA to 28LWE inserted

For section 28LW of the **Wrongs Act 1958** substitute—

"28LW. Response to medical assessment

- (1) The respondent on whom a copy of a certificate of assessment is served must respond in writing to the claimant within 60 days after receiving the certificate and the required information under section 28LT.
- (2) The response to the claimant must—
 - (a) state that the respondent is a proper respondent to the claim and state that the respondent accepts the assessment for the purposes of this Part; or
 - (b) state that the respondent is a proper respondent to the claim and advise the claimant that the respondent intends to refer or has referred a medical question in relation to the assessment to a Medical Panel for determination under this Part; or
 - (c) if the respondent is unable to decide, on the information provided with the certificate of assessment, whether the respondent is a proper respondent to the claim, advise the claimant of the further information the respondent reasonably needs to decide whether the respondent is a proper respondent to the claim; or
 - (d) state that the respondent believes that the respondent is not a proper respondent to the claim, give the reasons for the belief and give any information that may help the claimant to identify the proper respondent.

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- (3) The respondent must state that the respondent is a proper respondent to a claim if the respondent has already stated under section 28LO or 28LP that the respondent is a proper respondent to the claim.
- (4) If the respondent fails to respond in writing under this section within the 60 days, the respondent is deemed to have accepted the assessment.

28LWA. What if the respondent asks for more information?

- (1) If, under section 28LW(2)(c), a respondent advises a claimant that specified further information is needed, the claimant must give the respondent the information the respondent reasonably needs to decide whether the respondent is a proper respondent to the claim.
- (2) The respondent must respond in the manner set out in section 28LW(2)(a), (b) or (d) within 60 days after receiving the information.
- (3) If the respondent fails to respond in writing under this section within the 60 days, the respondent is deemed to have accepted the assessment.

28LWB. What if the respondent disputes responsibility?

- (1) If a respondent responds in accordance with section 28LW(2)(d), the claimant must give written notice to the respondent, within 14 days after receiving the response, that either—

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- (a) on the information available to the claimant, the claimant accepts that the respondent is not a proper respondent to the claim; or
 - (b) the claimant considers that the respondent is a proper respondent to the claim and requires the respondent to respond to the notice.
- (2) The respondent must respond in writing to a notice under sub-section (1)(b) within 14 days after receiving the notice.
- (3) The response under this section must—
- (a) state that the respondent is a proper respondent to the claim and state that the respondent accepts the assessment for the purposes of this Part; or
 - (b) state that the respondent is a proper respondent to the claim and advise the claimant that the respondent has referred or intends to refer a medical question in relation to the assessment to a Medical Panel for determination under this Part.
- (4) If the respondent fails to respond within the 14 days, the respondent is deemed to have accepted the assessment.

28LWC. Can a respondent bind any other respondent?

An acceptance under this Division by a respondent to a claim of an assessment does not bind any other respondent.

28LWD. Statement not admission of liability

A statement under this Division that a respondent is a proper respondent to a claim is not an admission of liability in respect of the claim.

28LWE. Referral of medical question to Medical Panel

- (1) The respondent on whom a copy of the certificate of assessment is served may refer a medical question in relation to the assessment to a Medical Panel for determination under this Part—
 - (a) within 60 days after receiving the certificate and the required information under section 28LT; or
 - (b) within 60 days after receiving the information provided under section 28LWA; or
 - (c) within 14 days after receiving the notice under section 28LWB.
- (2) The respondent may not refer a medical question in relation to the assessment to a Medical Panel if the respondent has accepted the assessment or is deemed to have accepted the assessment under this Division.
- (3) If the respondent advises the claimant under section 28LW, 28LWA or 28LWB that the respondent intends to refer a medical question in relation to the assessment to a Medical Panel and does not refer the question within the required time under this section, the respondent is deemed to have accepted the assessment under this Division at the expiration of that required time."

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24. References to opinion

In sections 28LX, 28LZF(a) and 28LZM(3) of the **Wrongs Act 1958** for "opinion" (wherever occurring) **substitute** "determination".

25. Respondent to pay fees and costs of referral

In section 28LX of the **Wrongs Act 1958** for "costs of" (where first occurring) **substitute** "fees and costs payable in accordance with section 28LXA for".

26. New section 28LXA inserted

After section 28LX of the **Wrongs Act 1958** **insert—**

"28LXA. Administration

- (1) The Minister, on the recommendation of the Convenor, may, by notice published in the Government Gazette, fix scales of fees and costs for referrals of medical questions under this Part.
- (2) All fees and costs payable by the respondent in respect of a referral to a Medical Panel under section 28LX must be paid to the Convenor.
- (3) The Convenor may recover any fees or costs payable under section 28LX in any court of competent jurisdiction as a debt due to the Crown.
- (4) The Convenor may establish a bank account or bank accounts for the purposes of this Part.
- (5) The Convenor must pay any amount paid to the Convenor under this section into the bank account or accounts established under sub-section (4).

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- (6) The Convenor may pay out of a bank account established under sub-section (4) any amount necessary—
 - (a) to reimburse the Victorian WorkCover Authority for the remuneration (including allowances) of members of Medical Panels to the extent that is applicable to their functions under this Part;
 - (b) to pay the Victorian WorkCover Authority or any other person for the provision of administrative services under this Part;
 - (c) to pay any other costs (including administrative costs) relating to a referral of a medical question for determination under this Part.
- (7) The Convenor may engage any person to assist the Convenor in carrying out any function under this Part.
- (8) The Convenor may enter into arrangements with the Victorian WorkCover Authority or with any other person or body for the provision of administrative services to the Convenor for the purposes of this Part.
- (9) The Minister must cause a notice under sub-section (1) to be laid before each House of Parliament within 5 sitting days of that House after it is published in the Government Gazette.
- (10) Sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply to a notice under sub-section (1) as if it were a statutory rule within the meaning of that Act.

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- (11) A notice under sub-section (1) may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**."

27. Procedure of Medical Panel

For sections 28LZ(3) and 28LZ(4) of the **Wrongs Act 1958** substitute—

- "(3) The Minister, after consultation with the Minister administering Part III of the **Accident Compensation Act 1985**, may for the purposes of—
- (a) ensuring procedural fairness in the procedures of Medical Panels under this Part; and
 - (b) facilitating the proper administration of the Medical Panels under this Part—
- issue guidelines as to the procedures of Medical Panels under this Part.
- (4) The Convenor may give directions as to the procedures of Medical Panels under this Part but must not give directions inconsistent with any guidelines issued by the Minister under this Part.
- (5) A Medical Panel must comply with—
- (a) any relevant guidelines as to the procedures of Medical Panels issued under sub-section (3); and
 - (b) any directions given by the Convenor under sub-section (4)."

28. Respondent to provide information to Medical Panel

- (1) In section 28LZA(1)(a) of the **Wrongs Act 1958** after "in writing" **insert** "and in the prescribed form (if any)".
- (2) For section 28LZA(2) of the **Wrongs Act 1958** **substitute**—
 - "(2) The Convenor may, in writing, request the respondent to provide to the Medical Panel any specified document or documents of a specified class in the respondent's possession.
 - (2A) More than one request may be made under sub-section (2).
 - (2B) The respondent must comply with any request under sub-section (2)."
- (3) In section 28LZA(3) of the **Wrongs Act 1958** for "required documents under this section" **substitute** "documents required under sub-section (1) or requested under sub-section (2)".
- (4) For section 28LZA(4) of the **Wrongs Act 1958** **substitute**—
 - "(4) A respondent is deemed to have accepted the assessment in the certificate of assessment if the respondent—
 - (a) fails to provide the Medical Panel with the information and documents required under sub-section (1) within 30 days after being requested in writing to do so by the Convenor; or
 - (b) fails to provide any documents requested under sub-section (2) within 30 days after that request."

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29. Request to claimant

At the end of section 28LZC of the **Wrongs Act 1958 insert—**

"(2) A request under this section must be made within 30 days after the medical question is referred to the Medical Panel."

30. Request to registered health practitioner

At the end of section 28LZE of the **Wrongs Act 1958 insert—**

"(2) A request under this section must be made within 30 days after the last of the following to occur—

- (a) the date on which the medical question is referred to the Medical Panel;
- (b) the date on which the claimant meets with the Medical Panel under section 28LZC;
- (c) the date on which the claimant is given a medical examination by the Medical Panel or a member of the Panel under section 28LZC;
- (d) the last date on which the Medical Panel receives any documents requested under section 28LZC(1)(b)."

31. New section 28LZG substituted and section 28LZGA inserted

For section 28LZG of the **Wrongs Act 1958 substitute—**

"28LZG. Determination of Panel

- (1) A Medical Panel must not determine the degree of impairment of a person unless it has made an assessment of the degree of impairment in accordance with Division 3.

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- (2) After making the assessment, the Medical Panel must give the claimant and the respondent—
- (a) its determination of the medical question in accordance with subsection (4); or
 - (b) its certificate, in accordance with subsection (5), that it is unable to determine the medical question but that it is satisfied that the degree of impairment will satisfy the threshold level when the injury has stabilised; or
 - (c) its certificate that it is unable to determine the medical question and a statement of the time fixed for further assessment of the person under subsection (6).
- (3) The Medical Panel must give the determination or certificate—
- (a) within 30 days after the last of the following to occur—
 - (i) the last date on which the claimant complies with a request under section 28LZC;
 - (ii) the last date on which a registered health practitioner complies with a request under section 28LZE or if a request is made to more than one registered health practitioner, the last date on which the last of the registered health practitioners to comply, complies with the request; or
 - (b) within such longer period as is agreed by the claimant and the respondent.
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- (4) If, after making the assessment, the Medical Panel determines the degree of impairment, the determination of the medical question must state whether the degree of impairment resulting from the injury satisfies the threshold level but must not state the specific degree of impairment.
 - (5) If, after making an assessment, the Medical Panel is unable to determine the medical question because an injury has not stabilised, but the Medical Panel is satisfied that the degree of impairment resulting from injury will satisfy the threshold level once the injury has stabilised, the Medical Panel may certify in writing to that effect.
 - (6) If, after making an assessment, the Medical Panel is unable to determine the medical question because an injury has not stabilised and sub-section (5) does not apply, the Medical Panel must in writing—
 - (a) certify that it is unable to determine the medical question; and
 - (b) fix a time (not being later than 12 months after the first assessment) for a further assessment of the degree of impairment of the person to be made under this section.
 - (7) The time fixed under sub-section (6) must be the earliest time by which the Medical Panel considers that the injury will have stabilised.
 - (8) More than one further assessment may be made under this section but each further assessment must be made within the period of 12 months following the first assessment.
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Part 2—Amendments to Wrongs Act 1958

- (9) A determination of the Medical Panel under sub-section (4) must be given in writing and be certified by the Medical Panel.
- (10) If the Medical Panel gives a certificate under sub-section (5) in relation to an injury, the injury is deemed to be significant injury.

28LZGA. Further assessment

- (1) If a Medical Panel fixes a time for further assessment under section 28LZG, the respondent may by notice in writing to the Medical Panel and the claimant waive the requirement for a further assessment.
- (2) The notice must be given within 14 days after the respondent receives the statement of the Medical Panel.
- (3) If the respondent waives the requirement for a further assessment under section 28LZG, the respondent is deemed to have accepted, for the purposes of this Part, the assessment in the certificate of assessment served under section 28LT.
- (4) If a Medical Panel fixes a time for further assessment under section 28LZG, and at the end of 12 months after the first assessment, the Medical Panel certifies in writing that it is still unable to determine the medical question because an injury has not stabilised, the injury to the person is deemed to be significant injury."

32. Operation of Panel provisions of Accident Compensation Act 1985

In section 28LZL of the **Wrongs Act 1958** after "to (6B)," insert "65(8), 65(9),".

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s. 33

33. Provision of assessment information to court

After section 28LZM(4) of the **Wrongs Act 1958** insert—

- "(5) If the injury is deemed under section 28LZG(10) to be significant injury, the claimant must also file in the court a statement to that effect, together with the certificate of the Medical Panel under section 28LZG(5).
- (6) If the injury is deemed under section 28LZGA(4) to be significant injury, the claimant must also file in the court a statement to that effect, together with the certificate of the Medical Panel under that sub-section."

34. Regulations

After section 28LZP(2)(a) of the **Wrongs Act 1958** insert—

- "(ab) may prescribe forms for use under this Part; and".

35. Transitional

After section 28LZQ(3) of the **Wrongs Act 1958** insert—

- "(4) Despite the amendment of section 28LF by section 14(2) of the **Wrongs and Other Acts (Law of Negligence) Act 2003**, section 28LF continues to apply to any proceedings in which damages were awarded before the date on which that Act received the Royal Assent as if section 28LF had not been amended by section 14(2) of that Act."

Wrongs and Other Acts (Law of Negligence) Act 2003
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Part 3—Amendments to Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003

**PART 3—AMENDMENTS TO WRONGS AND LIMITATION
OF ACTIONS ACTS (INSURANCE REFORM) ACT 2003**

36. Definition

See:
Act No.
60/2003.
LawToday:
www.dms.
dpc.vic.
gov.au

In section 3 of the **Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003**, in proposed section 24AE, the definition of "economic loss" is **repealed**.

37. Application of Part

In section 3 of the **Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003**, in proposed section 24AF(1) for "in contract, tort" **substitute** "in tort, in contract, under statute".

38. Liability for contributory negligence

In section 3 of the **Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003**, in proposed section 24AN for "section 26" **substitute** "Part V or Division 7 of Part X".

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Act No. 102/2003

Part 4—Amendments to Victorian Managed Insurance Authority Act 1996

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**PART 4—AMENDMENTS TO VICTORIAN MANAGED
INSURANCE AUTHORITY ACT 1996**

39. Functions of Authority

After section 6(d) of the **Victorian Managed Insurance Authority Act 1996** insert—

"(da) to provide insurance or indemnities to persons or bodies in accordance with section 25A;"

See:
Act No.
11/1996.
Reprint No. 2
as at
20 September
2001.
LawToday:
www.dms.
dpc.vic.
gov.au

40. New section 25A inserted

After section 25 of the **Victorian Managed Insurance Authority Act 1996** insert—

"25A. Provision of insurance and indemnities for other persons or bodies

- (1) The Minister may direct the Authority to provide insurance or an indemnity to—
 - (a) a person or body specified in the direction; or
 - (b) persons or bodies in a class of person or body specified in the direction.
- (2) The Minister must consult with the Authority before giving a direction under this section.
- (3) A direction under this section must be in writing and may specify—
 - (a) the risks to be insured or indemnified;
 - (b) the maximum value of liability to be covered;
 - (c) the term (not exceeding one year) for which the insurance or indemnity is to be provided;

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Part 4—Amendments to Victorian Managed Insurance Authority Act 1996

- (d) any other terms and conditions for the provision of the insurance or indemnity that the Minister thinks fit.
 - (4) Subject to sub-section (6), the Authority must comply with a direction under this section.
 - (5) The Authority may by notice in writing require any person or body to whom or which insurance or an indemnity is to be provided under this section to pay a premium for that insurance or indemnity.
 - (6) The Authority may refuse to insure or indemnify a person or body under this section if the relevant premium is not paid within the time (being not less than 30 days) specified in the notice under sub-section (5).
 - (7) As soon as possible after giving a direction under this section to the Authority, the Minister must cause a copy of the direction to be published in the Government Gazette.
 - (8) The Authority must include in its annual report under the **Financial Management Act 1994** a copy of each direction given to it by the Minister under this section during the year to which the report relates."
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Wrongs and Other Acts (Law of Negligence) Act 2003
Act No. 102/2003

Part 5—Amendments to Building Act 1993

s. 41

PART 5—AMENDMENTS TO BUILDING ACT 1993

41. Definition of required insurance

In section 3(1) of the **Building Act 1993** for the definition of "required insurance" **substitute—**

' **"required insurance"** means the insurance required by order under section 135 and, in the case of insurance to which section 137AA applies, complying with section 137AA;'

See:
Act No.
126/1993.
Reprint No. 5
as at
31 May 2003
and
amending Act
Nos 26/2001
and 60/2003
LawToday:
[www.dms.
dpc.vic.
gov.au](http://www.dms.dpc.vic.gov.au)

42. New section 137AA inserted

After section 137 of the **Building Act 1993** **insert—**

'137AA. Insurance for domestic building work to be provided by designated insurers

- (1) If an order under section 135 requires a builder to be covered by insurance relating to the carrying out of domestic building work or managing or arranging the carrying out of domestic building work, the insurance required by the order must be provided by a designated insurer.
- (2) For the purposes of sub-section (1) a designated insurer is—
 - (a) a general insurer within the meaning of the Insurance Act 1973 of the Commonwealth; or
 - (b) a Lloyd's underwriter within the meaning of the Insurance Act 1973 of the Commonwealth authorised under that Act to carry on insurance business in Australia; or

Wrongs and Other Acts (Law of Negligence) Act 2003
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Part 5—Amendments to Building Act 1993

s. 42

- (c) an insurer specified by the Minister by notice under this section.
- (3) The Minister may by notice published in the Government Gazette specify an insurer for the purposes of this section.
- (4) The Minister must not specify an insurer under sub-section (3) unless the Minister is satisfied that the insurer has an acceptable international credit rating and that the insurer does not carry on insurance business in Australia.
- (5) For the purposes of this section an acceptable international credit rating is a rating that—
 - (a) is provided by a credit rating agency specified under sub-section (6); and
 - (b) is equal to or exceeds the rating specified in relation to that agency under sub-section (6).
- (6) The Minister may by notice published in the Government Gazette—
 - (a) specify a credit rating agency for the purposes of this section; and
 - (b) specify a rating in relation to that agency.
- (7) The Minister may by notice published in the Government Gazette amend or revoke any notice published under this section.
- (8) The Minister must consult with the Minister for the time being administering the **Victorian Managed Insurance Authority Act 1996** before publishing any notice under this section.
- (9) In this section "**insurance**" has the same meaning as it has in section 135.

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- (10) This section applies only to insurance taken out on or after the commencement of section 42 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**!.
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Endnotes

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 30 October 2003

Legislative Council: 25 November 2003

The long title for the Bill for this Act was "to amend the **Wrongs Act 1958**, the **Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003**, the **Victorian Managed Insurance Authority Act 1996** and the **Building Act 1993** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 30 October 2003

Legislative Council: 25 November 2003

Absolute majorities:

Legislative Assembly: 20 November 2003

Legislative Council: 26 November 2003