

**LEGISLATIVE ASSEMBLY**

**CIVIL LIABILITY AMENDMENT BILL, 2003**

**EXPLANATORY MEMORANDUM**

**HON MARK MCGOWAN, MLA**

## **EXPLANATORY MEMORANDUM**

### **CIVIL LIABILITY AMENDMENT BILL, 2003**

The purpose of this Bill is to amend the law in relation to civil liability, including various aspects of the law of negligence.

The Civil Liability Act 2002 currently deals with claims for damages for personal injuries (including death), and regulates advertising and touting for legal services relating to personal injury. The Act is currently also restricted in that it does not apply to tortious claims generally; for example it would not apply to torts causing solely economic loss such as claims for negligent misrepresentation.

This Bill will expand the scope of the Civil Liability Act 2002 by:

- Codifying, and in some cases varying, certain common law rules of negligence in relation to foreseeability, standard of care, causation and remoteness of damage, contributory negligence, assumption of risk and mental harm as they affect claims for damages for harm suffered by a person due to the fault of another. This includes a rebuttable presumption that a claimant who is injured while intoxicated by drugs or alcohol contributed to his or her own injury.
- Establishing new restrictions on, and processes to limit liability for, damages for harm suffered due to the fault of another as a result of engaging in sporting and other recreational activities;
- Introducing a new public policy defence and a statutory protection for public and other authorities that carry out public functions. This defence would apply to harm whether arising out of a breach of a common law duty, or based in contract or for breach of statutory duty;
- Replacing the concept of joint and several liability with proportionate liability as the basis for assessment of claims for damages for pure economic loss. Joint and several liability would remain the basis for assessment of damages for claims in respect to personal injury and death, and for certain other claims;
- Providing for protection from personal civil liability for a good samaritan who comes to the aid of another when that good samaritan is acting in good faith and without recklessness; and
- Permitting a person to give an apology without thereby exposing them self to personal civil liability;

The amendments give effect to key recommendations of the Review of the Law

of Negligence chaired by the Honourable Mr Justice David Ipp published in October 2002 (the 'Ipp report'). Not all the Review's recommendations are being implemented, and in some respects the Bill departs from the recommendations due to an incompatibility with existing legislation in Western Australia or because the recommendations are not adequately tailored to address the insurance problem as it is being experienced here.

Incorporation of the package of legislative measures into a single statute was the first recommendation of the Ipp report. The Bill is consistent with that approach.

The Bill does not establish a complete code, however it does in part codify the present law of negligence and in some areas fundamental changes are made. Aspects of the common law will continue to apply to negligence claims.

Clause 1:     **Short title**

This clause provides that the Act may be cited as the *Civil Liability Amendment Bill 2003*.

Clause 2:     **Commencement**

Clause 2 provides that the Act is to come into operation on the day or days fixed by proclamation.

Subclause (2) allows for different dates to be set for certain provisions to commence.

The Bill is not to have retrospective operation.

Clause 3:     **The Act amended**

The Civil Liability Act 2002 is amended by the Bill.

Clause 4:     **Long title replaced**

As the amended Act would deal with a wider range of matters than currently dealt with, the title to the principle Act is amended to reflect the range of matters that will be the subject of the amended Act.

Clause 5:     **Section 3 amended**

This clause inserts new definitions of the term 'harm' and 'personal injury' into the principle Act. The definition of 'harm' is required as provisions of the Act will now apply beyond personal injuries claims to cover any claims for damages based in the law of negligence. The definition of 'personal injury' is required in order to give certainty regarding the scope of the new provisions which will address, among other things, claims for damages for pure mental harm. The inserted definition accords with the use of

the term 'personal injury' in the Ipp report (in particular paragraph 2.3) except insofar as the term 'disease' is explicitly referred to.

The existing definition of 'personal injury damages' is also amended in consequence of the new definition of 'personal injury'.

Clause 6:     **Section 3A inserted**

This clause inserts a table into the Act which lists certain classes of civil liability to which particular parts of the Act are not to apply.

Currently, damages for personal injuries are generally governed by common law rules. However there are some specific types of personal injury that are the subject of State legislative controls. These are in relation to third party claims for personal injuries sustained in relation to motor vehicle accidents; workers compensation; and criminal injuries compensation. Those legislative schemes are not affected by the Bill except in limited respects as indicated in the table. In particular:

- Except for the provisions regarding mental harm (Part 1B) and tariffs for general damages (proposed S10A), none of the new operational provisions will apply to personal injury damages caused by certain criminal acts. It is considered that the existing law should continue to apply to criminal conduct.
- The public policy defence and the provisions relating to the effect of apologies, will not apply to personal injuries damages covered by the motor vehicle third party insurance scheme. The provisions relating to tariffs for general damages (proposed section 10A) and structured settlements will apply to this class of damages.
- Except for the provisions relating to tariffs for general damages (proposed section 10A) and structured settlements, none of the new operational provisions will apply to personal injuries damages covered by workers compensation legislation. The new provisions will also not apply to claims in respect of employees killed by the employer's tortious conduct (ie the class of damages referred to in section 93B(3a) of the *Workers Compensation and Rehabilitation Act 1981*).
- The provisions regarding recreational activities in Part 1A will not apply to personal injuries damages caused by tobacco or smoking as it is considered that the new provisions regarding inherent and obvious risks should not be able to be used to benefit producers of tobacco products. Procedural and evidentiary provisions that may help claimants overcome evidentiary problems will however

apply to these claims, as will the provisions regarding tariffs for general damages and structured settlements. A similar position will apply with respect to asbestos related damages.

- None of the new operational provisions will apply to claims covered by international agreements regulated under the *Civil Aviation (Carriers Liability) Act 1961*.

Provision is made for regulations that can add to the classes of damages or to the list of provisions that are excluded from application.

**Clause 7: Limited contracting out**

Clause 7 provides that the Bill will not restrict a person's right to make express provision for their rights under contract. Such contracting out will require agreement in writing.

**Clause 8: Parts 1A, 1B, 1C, 1D, and 1E inserted**

**Part 1A – Liability for harm caused by the fault of a person**

This Part addresses the key recommendations contained in chapters 7 and 8 of the Ipp report on the general principles of the law of negligence. The provisions deal with foreseeability, the standard of care, causation and remoteness of damage, contributory negligence and assumption of risk. There is agreement between the Commonwealth and the States, reached at the Ministerial meeting on public liability insurance held in Brisbane on 15 November 2002, on implementing the key Ipp report recommendations on a nationally consistent manner, so that the law of negligence which is currently based on the common law will continue to be consistent.

The purpose is to make a legislative statement that will reduce the element of uncertainty that the Ipp report found to have developed in the law of negligence, and to suggest to courts a suitable framework in which to resolve individual cases.

This part is made of an introductory division and four other divisions dealing respectively with duty of care, causation, recreational activities and contributory negligence. In relation to recreational activities, the provisions go beyond the scope of the recommendations made in the Ipp report regarding assumption of risk.

Although the Ipp report was limited by its terms of reference to addressing the law of negligence relating to personal injuries, this Part is not so limited, as it is considered that these fundamental

principles of negligence should apply to both personal injuries and to other kinds of loss.

### **Division 1 – Preliminary**

#### **Section 5A – Application of Part**

Section 5A provides that the Part will apply to any claim for personal injury damages whether arising at common law, contract or an action based on a breach of statutory duty (except as provided in Section 3A). This scope accords with recommendation 2 of the Ipp report.

The section provides that the Part is to take effect only in relation to incidents occurring after the date of proclamation. The Bill is not to have retrospective operation.

### **Division 2 – Duty of care**

#### **Section 5B – General principles**

This provision implements recommendation 28 of the Ipp report on the standard of care under the law of negligence. It codifies the present law as to which risks a defendant should have anticipated. The codification is intended to set a standard higher than ‘far-fetched or fanciful’ but not so high as to limit the duty of care to ‘significant’ risks. These general principles will apply not only to personal injury claims but will extend to all common law negligence claims.

Subsection (1) sets out the general principles that must be taken into account when assessing the appropriate standard of care to be taken by a person in precaution against a risk of harm to another.

Subsection (2) requires courts to consider certain factors in assessing the precautions that would have been taken by a reasonable person in a particular case. The factors are not exclusive of consideration by the court of other relevant circumstances of that case. The court must weigh up all these factors in each case to decide whether a defendant should have taken action to reduce or avoid a risk.

### **Division 3 – Causation**

#### **Section 5C – General principles**

This provision implements recommendation 29 of the Ipp report on causation under the law of negligence as it relates to personal injuries. The provision in part codifies the existing law, and in part goes further by making a distinction between ‘factual causation’ and ‘scope of liability’. This is intended to remove some of the confusion created by various formulations of the legal tests of

causation that have developed in negligence law, such as 'commonsense' causation and 'effective cause'. These general principles will apply not only to personal injury claims but will extend to all common law negligence claims.

Subsection (1) sets out the two elements to be taken into account by courts in assessing whether the conduct of a person has caused harm to another.

Subsection (2) provides that in those exceptional cases that require recourse to common law tests, the courts are required to consider along with those tests, why in all the circumstances the person who caused the harm should be held responsible, or why the loss should lie where it fell – ie on the plaintiff.

Subsection (3) provides that when determining factual causation, in those instances where the hypothetical conduct of the injured person in the absence of another's negligence is relevant, the conduct is to be assessed subjectively as opposed to the objective test of the conduct of a reasonable person. The injured person's own testimony about what they would have done in the absence of the defendant's negligence will be inadmissible.

Subclause (4) is intended to encourage courts to articulate the competing arguments and values in determining where responsibility for harm should lie.

### **Section 5D – Onus of proof**

This section contains a legislative restatement of the basic rule that the onus of proof of any fact relevant to causation always rests on the plaintiff. It provides that the plaintiff bears the onus of proving on the balance of probabilities, any fact relevant to the issue of causation.

This has the effect of reversing a change introduced in recent years by the courts which has had the effect of casting the onus on the issue of causation onto the defendant, once it has been established that the defendant owed a plaintiff a duty of care and breached that duty, and that the plaintiff had suffered a foreseeable injury.

### **Division 4 – Recreational activities**

This Division addresses the issue of assumption of risk for recreational services. The Ipp report recognised that there were principled reasons for treating recreational activities and recreational services as a special category for purposes of personal injuries law, regardless of whether those services were

provided as a business enterprise or on a not-for-profit basis. The reason is that people who participate in such activities do so voluntarily and wholly or predominantly for self-regarding reasons.

A two-tier framework is established, whereby there is no liability for harm from obvious risks of dangerous recreational activities, while in relation to other recreational activities, risk warnings and waivers will be effective in certain circumstances to limit liability.

### **Section 5E – Interpretation**

This section defines the terms ‘dangerous recreational activity’, ‘inherent risk’, ‘obvious risk’ and ‘recreational activity’.

The concept of obvious risk is taken from the Ipp report (chapters 4 and 8).

The definition of ‘recreational activity’ is wider than that proposed in the Ipp report. In particular, the definition will not be limited to those activities that involve a significant degree of physical risk. Rather the definition encompasses any recreational pursuit, whether risky or not, and whether active or passive.

Similarly the definition of ‘dangerous recreational activity’ is also a new concept not proposed in the Ipp report. This definition is applied by the provision in section 5H in conjunction with the definition of ‘obvious risks’ so that, in relation to dangerous recreational activities, a person will not be liable to another for harm suffered as a result of an obvious risk occurring.

### **Section 5F – Meaning of obvious risk**

This section defines the term ‘obvious risk’. The definition involves a blend of subjective and objective elements (that is, what would have been obvious to a reasonable person in the position of the person suffering harm).

The definition follows that recommended by the Ipp report (recommendations 14 and 32).

### **Section 5G – Application of Division**

This section provides that the Division only applies to claims for damages for harm resulting from a recreational activity as defined in Section 5E.

Consistently with recommendation 15 of the Ipp report, the Division will not, because of Section 3A, apply to work related injuries.

**Section 5H – No liability for harm from obvious risks of dangerous recreational activities**

Section 5H provides that no liability exists for any harm suffered during a dangerous recreational activity if that injury resulted from the occurrence of an obvious risk, whether or not the plaintiff actually knew of the risk.

Liability may however continue in circumstances where the plaintiff has requested advice or information from the defendant, or where a law requires the defendant to give a warning of the risk.

**Section 5I – No liability for harm from inherent risks of dangerous recreational activities**

Section 5I provides that there will be no liability in negligence for harm suffered as a result of the materialisation of an inherent risk (defined as a risk that cannot be avoided by the exercise of reasonable care).

If there is currently a common law duty to warn of a risk then this section will not affect that duty.

**Section 5J – No liability for recreational activity where risk warning**

This section provides that in relation to recreational activities, there will be no liability for harm resulting from a risk of a recreational activity that was the subject of a risk warning.

Warnings to parents and to other competent adults accompanying children aged 16 years or over will also be capable of extending to those children. Risk warnings will not be applicable to younger children nor to disabled persons lacking the capacity to understand the warning, who need and deserve special protection from risks of harm.

An objective test is prescribed for the courts to determine if a risk warning was effective. The specified standard is that a warning must be given in such manner that it is reasonably likely to result in people being warned before engaging in the activity.

It will not be necessary to establish that a plaintiff actually saw a warning sign or received or understood the risk warning for it to be effective.

It will be possible for a risk warning to be in writing, or oral, or given by clear symbols. The warning also need not nominate all

specific risks, so long as it warns of the general nature of particular risks.

Risk warnings will not be effective to override any specific statutory safety standards. In addition, a warning will be overridden by contrary representations or undertakings given by the defendant or on its behalf to the injured person. Risk warnings will only be effective where a person voluntarily engages in the activity.

A risk warning will not operate to relieve a person from responsibility for reckless acts or omissions.

The section also provides that the fact that a risk warning has been given will not of itself mean that the risk described in the warning is an obvious risk or an inherent risk.

### **Section 5K – Waiver of contractual duty of care for recreational activities**

This section provides that in, the case of recreational activities, a contract will be able to exclude restrict or modify liability for harm resulting from the failure to exercise reasonable care and skill.

In this way a person participating in a recreational activity and those attending as spectators or otherwise associated with the activity (eg referees and officials) will be able to agree to assume responsibility for harm sustained while involved in the activity by waiving the implied contractual warranty that services be provided with due care and skill.

The section does not change the law in relation to whether a contractual waiver given on by or on behalf of the child is valid.

A contractual waiver will not be effective to override any specific statutory safety standards.

A waiver will not operate to relieve a person from responsibility for reckless acts or omissions.

The section will enable waivers to be agreed in respect of contracts formed before or after the section commences, but it cannot be applied to cases of injuries sustained before the commencement date.

## **Division 5 – Contributory negligence**

### **Section 5L – Standard of contributory negligence**

Section 5L gives effect to recommendation 30 of the Ipp report. The Section provides that the same standard of care applicable to a determination of negligence also apply to the determination of contributory negligence.

### **Section 5M – Presumption if person who suffers harm is intoxicated**

Section 5M provides that if an injured person was intoxicated at the time of the accident then contributory negligence will be presumed unless rebutted. The effect is to shift the onus of proof to the injured person in circumstances where that person is shown to have been intoxicated when injured. The presumption will only apply where the claimant's intoxication was self-induced. There is no presumption of contributory negligence if the court is satisfied that the person's intoxication did not contribute in any way to cause the harm.

### **Part 1B – Mental harm**

This part deals with liability for mental harm, and implements recommendations 34 and 37 contained in Chapter 9 of the Ipp report concerning the duty of care and contributory negligence related to mental harm. The provisions in part codify the existing law, and in part go further by proposing that proof of psychiatric injury should be required in both cases of claims for bodily harm that involve consequential mental harm and claims for pure mental shock where no physical harm is suffered. At present, if a person suffers bodily injury and in consequence also suffers mental harm, damages may be payable for the effects of both, regardless of whether the mental harm amounts to a recognised psychiatric illness, or is merely mental distress not amounting to a psychiatric illness. On the other hand if the person suffers no physical harm, but only mental shock, there is no claim unless the shock can be diagnosed as a psychiatric illness.

### **Section 5N – Interpretation**

Section 5N defines terms used in Part 1B.

### **Section 5O – Application of Part**

Section 5O provides that the Part will apply to any claim for personal injury damages for mental harm whether arising at common law, contract or an action based on a breach of statutory duty (except as provided in sections 3A and 4A). This scope accords with recommendations 2 and 35 of the Ipp report.

The section provides that the Part is to take effect only in relation to incidents occurring after the date of proclamation. The Part is not to have retrospective operation.

### **Section 5P – Mental harm: duty of care**

Subsection 5P (1) provides that there will be no duty of care to avoid causing mental harm unless the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances, suffer a recognised psychiatric illness. This codifies the existing law as developed in recent High Court decisions. Furthermore, it must be foreseeable that the plaintiff would suffer a psychiatric illness and not merely mental distress

Subsection 5P (2) provides that the assessment of whether there is a duty of care relating to pure mental harm is to be made having regard to all the relevant circumstances including the suddenness of the incident, how closely the plaintiff was involved, and whether there was some relationship between the plaintiff and the victim.

Under subsection 5P (3) the test of foreseeability relating to consequential mental harm requires the court to take into account all the relevant circumstances including the physical injuries in fact suffered by the plaintiff.

Subsection 5P (4) makes allowances for a court to have regard to a situation in which a person might owe a duty of care to someone who was abnormally vulnerable, even if no duty would be owed to a normally vulnerable victim, if the person knew that the other was abnormally vulnerable.

### **Section 5Q – Liability for pecuniary loss for consequential mental harm**

Section 5P provides that a court will not be able to award damages for economic loss for consequential mental harm resulting from the negligence of another unless the harm consists of a recognised psychiatric illness.

### **Part 1C – Liability relating to public function**

This Part gives effect to recommendations 39 – 42 of the Ipp report, dealing with civil liability for harm caused by public and other authorities. A policy defence is introduced, so that when a public or other authority is sued for alleged negligence in the exercise or non-exercise of a public function, it can defend the claim by showing that the exercise or non-exercise of its powers was based on a policy decision made on economic, social or like policy grounds. As recommended in the Ipp report the defence will be capable of applying not only to a public authority but also to a contractor engaged by an authority to perform a public function. This gives effect to recommendation 40 of the Ipp report. A test of

'unreasonableness' is adopted from public law principles and applied as an element of the defence.

In addition, special provisions are made in relation to statutory public functions by giving statutory recognition to the 'compatibility principle'. This is similar to the existing law and was proposed in recommendation 41 of the lpp report.

The Part lists four principles to be applied by courts in determining if a public authority owes a duty of care. These principles are derived from the lpp report.

The term 'public function' is one that requires the authority to balance the interests of individuals against the wider public interest, or take account of competing demands on its resources. Because the term involves a value-judgement, it is not defined but rather left for common law development.

The same defence will apply to cases involving claims for personal injuries damages or for other harm.

#### **Section 5R – Interpretation**

Section 5R defines the term 'policy decision'. The definition is that proposed in recommendation 39 of the lpp report.

The term 'public body or officer' is defined so as to include state and local government authorities, and to enable the inclusion of both corporate bodies and natural persons that may carry out public functions.

#### **Section 5S – Application of Part**

Section 5S provides that the Part will apply to any claim for damages whether arising at common law, contract or an action based on a breach of statutory duty (except as provided in sections 3A and 4A). This application accords with recommendations 2 and 42 of the lpp report.

The section provides that the Part is to take effect only in relation to incidents occurring after the date of proclamation. The Part is not to have retrospective operation.

#### **Section 5T - Principles concerning resources, responsibilities etc. of a public body or officer**

Section 5T establishes general principles for determining liability of public functionaries, including a requirement for courts to consider the financial and other resources that are reasonably available to an authority, resource allocation decisions by an

authority, consideration of the broad range of an authority's activities, and evidence of compliance with general procedures and applicable standards.

### **Section 5U – Policy defence**

In an action against a public or other authority for personal injuries damages relating to the negligent exercise or non-exercise of a public function, a policy decision (ie a decision based substantially on financial, economic, social or like factors or constraints) cannot be used to support a finding that the authority was negligent unless it was so unreasonable that no reasonable public functionary in the authority's position could have made it.

The defence is only available where a policy decision is made. It would not be available in a case where the functionary did not consider whether or not to perform the function.

### **Section 5V – Proceedings against public body or officer based on breach of a statutory duty**

Section 5V provides that a public or other authority will not be liable for personal injuries damages relating to the negligent exercise or non-exercise of a statutory public function unless the provisions and policy of the relevant statute are compatible with the existence of such liability.

### **Part 1D – Good samaritans**

This Part provides for a qualified exemption from civil liability of good samaritans. It provides that a good samaritan who comes to the aid of a person in need of emergency assistance will be protected from civil liability for acts or omissions in good faith and without recklessness. A good samaritan will not enjoy the protection where he or she was significantly intoxicated by alcohol or another drug which was taken voluntarily when coming to the person's aid.

This Part is not based on recommendations made in the Ipp report, which did not support a complete exemption from liability for good samaritans (paragraphs 7.20 – 7.24).

### **Section 5W – Interpretation**

Section 5W defines the terms 'emergency assistance' 'good samaritan', 'medical qualifications' and 'medically qualified good samaritan' which are used in this Part.

### **Section 5X – Application of this Part**

Section 5X provides that the Part will apply to any claim for damages whether arising at common law, contract or an action

based on a breach of statutory duty (except as provided in sections 3A and 4A).

The section provides that the Part is to take effect only in relation to incidents occurring after the date of proclamation. The Bill is not to have retrospective operation.

### **Section 5Y – Protection of good Samaritans**

Section 5Y provides statutory protection of good samaritans from civil liability when coming to the aid of a person in an apparent emergency, so long as the good samaritan acts in good faith and without recklessness.

A good samaritan is a person who acts voluntarily ie without reward or expectation of payment.

The section will extend to also provide protection from civil liability to medically qualified persons (which term includes doctors, ambulance officers, nurses and other health professionals) who, though not at the scene of the emergency, provide advice to a person at the scene about the medical treatment of an injured person, where the medically qualified person is acting voluntarily.

The protection provided by this section will not extend to protect another who may lawfully be vicariously liable for the negligence of a good samaritan.

### **Section 5Z – Exclusion from protection**

Section 5Z provides that the protection afforded by this Part will not apply where a good samaritan was, at the time they came to the aid of another, under the influence of alcohol or another drug to a significant extent.

### **Part 1E – Apologies**

Part 1E provides that a mere expression of sorrow or regret by a person will not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with civil liability of any kind.

This Part is not based on recommendations made in the Ipp report.

### **Section 5AA - Interpretation**

Section 5Y defines the term apology where used in this Part. The term is defined so that if a person makes a statement that contains acknowledgement of fault then this will not constitute an apology.

### **Section 5AB – Application of this Part**

Section 5AB provides that the Part will apply to any claim for damages whether arising at common law, contract or an action based on a breach of statutory duty (except as provided in sections 3A and 4A).

The section provides that the Part is to take effect only in relation to incidents occurring after the date of proclamation. The Part is not to have retrospective operation

### **Section 5AC – Effect of apology on liability**

Section 5AC provides that an apology by or on behalf of a person will not constitute an admission of fault or liability, and will not be relevant to the determination of liability, in connection with civil liability of any kind.

## Clause 9

### **Part 1F inserted**

#### **Part 1F – Proportionate liability**

This Part replaces the concept of joint and several liability with proportionate liability as the basis for assessment of claims for damages for pure economic loss. Joint and several liability will remain the basis for assessment of damages for claims in respect to personal injury and death, and for certain other claims.

This Part is not based on recommendations made in the Ipp report, which in the case of liability for damages for personal injury and death recommended (recommendation 44) against the introduction of proportionate liability. This Part is consistent with that recommendation.

### **Section 5AD - Interpretation**

Section 5AD defines the terms ‘apportionable claim’ and ‘concurrent wrongdoer’ for the purposes of this Part, so that this Part will only apply to claims for damages for pure economic loss, not for personal injury or death.

Proportionate liability will also apply to a contravention of section 10 (misleading or deceptive conduct) of the *Fair Trading Act*.

### **Section 5AD – Application of Part**

Section 5AD provides that the Part will apply regardless of the insolvency, death, winding up or dissolution of a concurrent wrongdoer.

The section provides that the Part is to take effect only in relation to causes of action that arise after the date of proclamation. The Part is not to have retrospective operation.

**Section 5AF – Proportionate liability for apportionable claims**

Section 5AF provides that proportionate liability will apply for damages claims involving economic loss or property damage in non-personal injury matters, so that a person who is jointly responsible with some other person or persons will only be liable to the extent of their responsibility.

**Section 5AG – Contribution not recoverable from defendant**

Section 5AG provides that a defendant cannot use proceedings in which a claim has been made against that defendant to join in those proceedings and seek contribution from a concurrent wrongdoer.

This section will not prevent parties from entering into contracts to indemnify each other from liability in relation to apportionable claims.

**Section 5AH – Subsequent actions**

Section 5AH provides that a plaintiff is not prevented from taking separate actions or the same action against concurrent wrongdoers, so long as the total damages do not exceed the plaintiff's losses.

**Section 5AI – Joining non-party concurrent wrongdoers in the action**

Section 5AI makes provision for procedural matters, and ensures that a person who was previously a party to a concluded action cannot be joined in later actions.

**Section 5AJ – Part does not prevent other liability or operation of other Act**

Section 5AJ provides that proportionate liability also apply in cases involving the vicarious liability of another person. It also ensures that several liability of a partner for the liabilities of the partnership may still apply, and preserves the operation of any legislation that may impose several liability.

Clause 10

**Part 2 heading replaced**

This clause makes a consequential amendment.

Clause 11

**Part 2 – Awards of personal injury damages**

**Section 6 amended**

This clause makes a consequential amendment relating to the application of certain Parts of the Act.

Clause 12    **Part 2 Division 2 heading replaced**  
This clause makes a consequential amendment.

Clause 13    **Section 10A inserted**  
**Tariffs for damages for non-pecuniary loss**  
Clause 13 inserts a new Section 10A regarding tariffs for damages for non-pecuniary loss

This will give effect to recommendation 46 (a) of the Ipp report.

Proposed Section 10A provides that in determining damages for non-pecuniary (ie 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.

Clause 14    ***Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* amended**  
This clause makes a amendment to the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* consequent on the introduction of proportionate liability in Part 1F.