

NORTHERN TERRITORY OF AUSTRALIA

PERSONAL INJURIES (LIABILITIES AND DAMAGES) ACT 2003

As in force at 1 January 2023

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 January 2023

PERSONAL INJURIES (LIABILITIES AND DAMAGES) ACT 2003

An Act to modify the law relating to the entitlement to damages for personal injuries, to clarify principles of contributory negligence, to fix reasonable limits on certain awards of damages for personal injuries, to provide for periodic payments of damages for personal injuries, to introduce a scheme limiting payments to certain offenders, to clarify liability of institutions for child abuse, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Personal Injuries (Liabilities and Damages) Act 2003*.

2 Commencement

This Act comes into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

act includes omission.

associated trust, for Part 3A, see section 17K(4).

child means an individual who is under the age of 18 years.

child abuse means any of the following perpetrated against a child:

- (a) sexual abuse;
- (b) serious physical abuse;
- (c) psychological abuse that arises from abuse specified in paragraph (a) or (b) or both.

civil wrong, for Part 4A, see section 32A.

civil wrong settlement, for Part 4A, see section 32A.

claim means a claim for damages.

claimant means a person making a claim.

contract includes subcontract and any further contract made under the subcontract.

court means the court or tribunal in which a claim is made.

damages means damages for a personal injury.

delegation includes subdelegation and any further delegation made under the subdelegation.

incident means the incident, accident, circumstances or act alleged to have caused a personal injury.

individual associated with an institution, for Part 3A, see section 17C.

injured person means a person who suffers a personal injury.

intoxicated means under the influence of alcohol or a drug to the extent that the capacity to exercise proper care and skill is significantly impaired.

management member, for Part 3A, see section 17A.

offender, for Part 4A, see section 32A.

personal injury includes:

- (a) a fatal injury;
- (b) a prenatal injury;
- (c) a psychological or psychiatric injury;
- (d) a disease; and
- (e) the aggravation, exacerbation or acceleration of a pre-existing injury.

proceeding means a proceeding in respect of a claim.

proper respondent, for Part 3A, see section 17A.

public entity defendant, for Part 4A, see section 32C.

Public Trustee means the Public Trustee appointed under section 8 of the *Public Trustee Act 1979*.

respondent means a person from whom a claimant seeks damages.

unincorporated institution, for Part 3A, see section 17A.

victim claim, for Part 4A, see section 32A.

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

- (2) For subsection (1), definition **child abuse**, paragraph (b), conduct that was lawful at the time it occurred is not child abuse.

4 Application of Act

- (1) This Act, other than Part 4A, applies in relation to all civil claims for damages for personal injuries, other than those excluded by virtue of this section, whether the claims arise under the common law or a statute.
- (2) This Act, other than Part 4, Division 6 and Part 4A, applies only in relation to a personal injury alleged to have been caused by an incident that occurs after the commencement of this Act.
- (3) The following claims are excluded from the application of this Act other than Part 4, Division 6:
- (a) a claim for benefits in respect of a death or an injury as a result of an accident within the meaning of the *Motor Accidents (Compensation) Act 1979*;
 - (b) a claim for compensation as defined in the *Return to Work Act 1986*;
 - (c) a claim for damages for a personal injury that is a dust-related condition;
 - (e) a claim, in relation to the supply of certain goods, in relation to loss or damage in the nature of a personal injury that is mentioned in section 106, 107, 118, 127 or 136 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) applying as a law of the Commonwealth or a State or Territory.
- (4) The Regulations may exclude a claim or class of claim from the operation of this Act or a provision of this Act other than Part 4, Division 6.

(5) In this section:

dust-related condition means:

- (a) aluminosis, asbestosis, asbestos induced carcinoma, asbestos related pleural disease, bagassosis, berylliosis, byssinosis, coal dust pneumoconiosis, farmer's lung, hard metal pneumoconiosis, mesothelioma, silicosis, silico-tuberculosis or talcosis; or
- (b) any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust.

5 Relationship with *Compensation (Fatal Injuries) Act 1974*

- (1) This Act does not limit the operation of the *Compensation (Fatal Injuries) Act 1974*.
- (2) If an action is brought under the *Compensation (Fatal Injuries) Act 1974* in relation to a person's death:
 - (a) that occurs after the commencement of this Act; and
 - (b) that is caused by a negligent act,

Part 4 of this Act applies in addition to, and not in derogation of, section 10 of the *Compensation (Fatal Injuries) Act 1974* in relation to the assessment of damages and the making of orders for the payment of damages.

6 Act binds Crown

This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 2 Liabilities for personal injuries

Division 1 Exclusions and indemnities

7 Volunteers and community organisations

- (1) A volunteer does not incur personal civil liability for a personal injury caused by an act done in good faith and without recklessness while doing community work for a community organisation.

- (2) Subsection (1) does not apply if the volunteer:
- (a) knew, or ought reasonably to have known, that he or she was acting outside the scope of his or her authority or contrary to the instructions of the community organisation; or
 - (b) did the act while intoxicated.
- (3) A community organisation:
- (a) incurs the civil liability that would, but for subsection (1), have been incurred by the volunteer doing work for that organisation; and
 - (b) is liable for the personal injury caused by the act of the volunteer as if the volunteer were an employee of the community organisation.
- (4) Liability that would be incurred under subsection (3) by a community organisation that is an Agency or department of the Territory, if the Agency or department were a body corporate, is incurred by the Territory.
- (5) An agreement, undertaking or arrangement has no effect to the extent that it provides for a volunteer to give a community organisation an indemnity against, or to make a contribution to a community organisation in relation to:
- (a) a liability the volunteer would incur but for subsection (1); and
 - (b) a liability the community organisation incurs under subsection (3).
- (6) If under this section a community organisation incurs civil liability for a personal injury, a member of the organisation's management committee (however described) does not incur personal liability for that injury.
- (7) In this section:
- community organisation** means a religious body, a body corporate, or an Agency or department of the Territory, that organises, directs or supervises community work done by volunteers.
- community work** means work done for any of the following purposes:
- (a) for a religious, educational, charitable or benevolent purpose;

- (b) for promoting or encouraging literature, science or the arts;
- (c) for the purposes of sport, recreation or amusement;
- (d) for conserving or protecting the environment;
- (e) for establishing, carrying on or improving a community, social or cultural centre;
- (f) for promoting the interests of a local community;
- (g) for a political purpose;
- (h) for any purpose prescribed by the Regulations,

but does not include work done under a community work order made under the *Sentencing Act 1995*, *Youth Justice Act 2005* or *Fines and Penalties (Recovery) Act 2001*.

volunteer, in relation to a community organisation, means a person doing community work for that organisation:

- (a) who receives no remuneration for doing that work other than:
 - (i) remuneration that the person would receive whether or not he or she did that work; or
 - (ii) the reimbursement of reasonable expenses incurred by the person in doing that work; or
- (b) who receives remuneration that does not exceed the amount, if any, prescribed by the Regulations.

7A Donors of food and grocery products

- (1) A person who donates food or a grocery product (the **donor**) in the circumstances specified in subsection (2) does not incur civil liability for a personal injury caused by the consumption of the food or use of the grocery product.
- (2) The circumstances are:
 - (a) that the donor donated the food or grocery product:
 - (i) in good faith for a charitable or benevolent purpose; and
 - (ii) with the intention that the consumer of the food or user of the grocery product would not have to pay for it; and

- (b) that the food was fit for human consumption, or the grocery product was safe to use, at the time it left the possession or control of the donor; and
 - (c) if the food or grocery product was of a nature that required it to be handled in a particular way to ensure it remained fit for human consumption, or safe to use, after it left the possession or control of the donor – that the donor informed the person to whom the donor gave the food or grocery product of those handling requirements; and
 - (d) if the food or grocery product remained fit for human consumption, or safe to use, for only a limited time after it left the possession or control of the donor – that the donor informed the person to whom the donor gave the food or grocery product of that time limit.
- (3) For subsection (2), food is safe for consumption at a particular time if, at that time, it is not unsafe or unsuitable within the meaning of section 10 or 11 of the *Food Act 2004*.
- (4) In this section:

food, see section 7 of the *Food Act 2004*.

grocery product means any of the following:

- (a) a personal hygiene product;
- (b) a household cleaning product;
- (c) a medical product that may be sold or supplied without a written prescription authorising the sale or supply;
- (d) another product prescribed by regulation.

person who donates food or a grocery product does not include a person who distributes food or a grocery product donated by another person.

8 Good Samaritans

- (1) A good Samaritan does not incur personal civil liability for a personal injury caused by an act done in good faith and without recklessness while giving emergency assistance to a person.
- (2) A good Samaritan with medical qualifications does not incur personal civil liability for advice, given in good faith and without recklessness, about the treatment of a person being given emergency medical assistance.

(3) This section does not apply if the good Samaritan was intoxicated while giving the assistance or advice.

(4) In this section:

emergency assistance means:

- (a) emergency medical assistance; or
- (b) any other form of assistance to a person whose life or safety is endangered in a situation of emergency.

good Samaritan means:

- (a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently in need of emergency assistance; or
- (b) a person with medical qualifications who, acting without expectation of payment or other consideration, gives advice about the treatment of a person who is apparently in need of emergency medical assistance.

medical qualifications means:

- (a) qualifications as a medical practitioner;
- (b) professional qualifications in a category of health care recognised by statute; or
- (c) qualifications as an ambulance officer or in another recognised paramedical capacity.

9 Occupier or owner of dwelling house or commercial premises

(1) The occupier or owner of premises does not incur civil liability for a personal injury to a person who:

- (a) is entering or has entered the premises; and
- (b) has the intention of committing, is committing or has committed on those premises an offence punishable by imprisonment.

(2) In this section:

occupier means a person occupying or having control of the premises.

10 Criminal conduct of injured person

- (1) A person does not incur civil liability for a personal injury if the court is satisfied on the balance of probabilities:
- (a) that the injury occurred while the injured person was engaged in conduct constituting an offence punishable by imprisonment; and
 - (b) that the injured person's conduct contributed materially to the risk of that injury.
- (2) Subsection (1) does not apply if the court is satisfied:
- (a) that the circumstances of the particular case are exceptional; and
 - (b) that to exclude liability in the circumstances of that particular case would be harsh and unjust.

Division 2 Expressions of regret

11 Purpose of Division

The purpose of this Division is to enable a person to express regret about an incident that may have caused a personal injury without being concerned that the expression of regret may be construed or used in a proceeding as an admission of liability or negligence.

12 Meaning of expression of regret

An expression of regret is an oral or written statement by a person:

- (a) that expresses regret for an incident that is alleged to have caused a personal injury; and
- (b) that does not contain an acknowledgement of fault by that person.

13 Expression of regret not admissible as evidence

An expression of regret about a personal injury made at any time before the commencement of a proceeding in respect of that injury is not admissible as evidence in that proceeding.

Part 3 Contributory negligence

14 Presumption if injured person intoxicated

- (1) In a proceeding, there is a presumption of contributory negligence if:
 - (a) the injured person was intoxicated at the time of the incident alleged to have caused the personal injury to which the proceeding relates; and
 - (b) the respondent alleges contributory negligence.
- (2) The presumption of contributory negligence is rebutted if the claimant establishes on the balance of probabilities that the injured person's intoxication:
 - (a) did not materially contribute to the incident; or
 - (b) was involuntary.

15 Presumption if reliance on intoxicated person

- (1) In a proceeding, there is a presumption of contributory negligence if:
 - (a) at the time of the incident alleged to have caused the personal injury to which the proceeding relates, the injured person:
 - (i) had attained 16 years of age;
 - (ii) relied on the care and skill of another person who was intoxicated; and
 - (iii) was aware, or ought to have been aware, that the other person was intoxicated;
 - (b) the injury was caused by the negligence of the other person; and
 - (c) the respondent alleges the contributory negligence of the injured person.
- (2) The presumption of contributory negligence is rebutted only if the claimant establishes on the balance of probabilities:
 - (a) that the other person's intoxication did not materially contribute to the incident; or
 - (b) that the injured person could not reasonably be expected to have avoided the risk that caused the injury.

16 Evidentiary provisions

If a Court finds that at or about the time of an incident a person had:

- (a) in his or her breath a concentration of 0.08 or more grams of alcohol in 210 litres of exhaled breath; or
- (b) in his or her blood a concentration of 0.08 or more grams of alcohol in 100 millilitres of blood;

that finding is to be accepted for the purposes of this Division as conclusive evidence of those facts and that the person was intoxicated at the time of the incident.

17 Amount of reduction if contributory negligence established

If contributory negligence is established under this Division, the court must assess damages on the basis that the damages to which the claimant would be entitled in the absence of contributory negligence are to be reduced, because of contributory negligence, by 25% or a greater percentage determined by the court to be appropriate in the circumstances.

Part 3A Institutional liability for child abuse

Division 1 Preliminary matters

17A Definitions

In this Part:

management member of an institution means:

- (a) a member of any management committee of the institution; or
- (b) if the institution does not have a management committee – a person who is concerned with, or takes part in, the management of the institution, regardless of the person's title or position.

proper respondent means an institution appointed as the proper respondent in a proceeding by a court under section 17J(1) or 17L(1).

unincorporated institution means an institution that is not incorporated.

Example for definition unincorporated institution

An unincorporated association providing community services that has a name, ABN, membership and constitutional arrangement for meetings of members and appointment of officers.

17B Application of Part

- (1) This Part applies to the following institutions while exercising care, supervision or authority over a child:
 - (a) a body;
 - (b) an entity;
 - (c) a body corporate;
 - (d) a group of persons;
 - (e) an association;
 - (f) an organisation.
- (2) An institution does not include a family or an individual.
- (3) This Part applies to an institution whether it is incorporated or not incorporated.
- (4) For this Part, it is not necessary for an institution to have:
 - (a) a written constitution or fixed membership; or
 - (b) any prescribed attribute.
- (5) Despite section 4(2), this Division and Divisions 4, 5 and 6 apply in relation to a cause of action whether it arose before or after the commencement of this Part.

17C Meaning of *individual associated with an institution*

- (1) An ***individual associated with an institution*** includes:
 - (a) an office holder, officer, owner, trustee, employee, volunteer or contractor of the institution; and
 - (b) if the institution is a religious institution – a religious leader or a member of the religious institution; and

- (c) if the institution by any arrangement, contract or delegation made another institution responsible for exercising care, supervision or authority over a child – an individual specified in paragraph (a) or (b) in relation to that other institution; and
 - (d) if the institution by any arrangement, contract or delegation made an individual responsible for exercising care, supervision or authority over a child – that individual; and
 - (e) any other prescribed individual.
- (2) Despite subsection (1), an individual is not an individual associated with an institution solely because the institution wholly or partly funds or regulates another institution that the individual is associated with.

Division 2 Liability of institutions

17D Duty to prevent child abuse

- (1) An institution exercising care, supervision or authority over a child has a duty to take all reasonable steps to prevent child abuse of the child by any individual associated with the institution while the child is under the care, supervision or authority of the institution.
- (2) An institution exercising care, supervision or authority over a child has a duty to take all reasonable steps to prevent child abuse of the child by another child in the care or under the supervision or authority of the institution while the children are under the care, supervision or authority of the institution.

17E Liability of institutions for child abuse by individual associated with institution

- (1) This section applies to a proceeding against an institution for personal injury to an individual arising from child abuse of the individual.
- (2) If the plaintiff proves on the balance of probabilities an individual associated with the institution perpetrated the child abuse while the individual abused was under the care, supervision or authority of the institution, the institution is taken to have breached the duty of care under section 17D(1), unless the institution proves on the balance of probabilities that it took all reasonable steps to prevent the child abuse.

- (3) In determining whether an institution took all reasonable steps to prevent child abuse, a court may take into account the following:
- (a) the nature of the institution;
 - (b) the size and organisational capacity of the institution;
 - (c) the resources reasonably available to the institution to prevent child abuse;
 - (d) the relationship between the institution and the child;
 - (e) the role in the institution of the individual associated with the institution who perpetrated the child abuse;
 - (f) whether the institution placed the individual associated with the institution who perpetrated the child abuse in a position or situation where that individual had:
 - (i) authority, power or control over the child; or
 - (ii) the trust of the child; or
 - (iii) the ability to achieve intimacy with the child;
 - (g) whether the institution delegated the care, supervision or authority over the child to another institution or person;
 - (h) whether the institution knew or ought to have known of the child abuse by the individual associated with the institution;
 - (i) the level of control the institution had over the individual associated with the institution who perpetrated the child abuse at the time the child abuse occurred;
 - (j) whether the institution complied with any standards applicable to child safety at the time the child abuse occurred;
 - (k) any other matter prescribed by regulation;
 - (l) any other matter the court considers relevant.
- (4) In a proceeding against 2 or more institutions subsection (2) applies to each institution equally.
- (5) If a court awards damages to an individual in respect of liability of an institution that is established in accordance with this section, the court must take into account any award of damages to the individual in respect of liability of the institution established in accordance with section 17G in determining the amount of

damages the court awards for liability established under this section.

17F Liability of institutions for child abuse by another child under care, supervision or authority of institution

- (1) This section applies to a proceeding against an institution for personal injury to an individual arising from child abuse of the individual.
- (2) If the plaintiff proves on the balance of probabilities that another child in the care or under the supervision or authority of the institution perpetrated the child abuse while the individual abused was under the care, supervision or authority of the institution, the institution is taken to have breached the duty of care under section 17D(2), unless the institution proves on the balance of probabilities that it took all reasonable steps to prevent the child abuse.
- (3) In determining whether an institution took all reasonable steps to prevent child abuse by another child (the **second child**) in the care or under the supervision or authority of the institution, a court may take into account the following:
 - (a) the nature of the institution;
 - (b) the size and organisational capacity of the institution;
 - (c) the resources reasonably available to the institution to prevent child abuse;
 - (d) the relationship between the institution and the child;
 - (e) whether the institution delegated the care, supervision or authority over the child to another institution or person;
 - (f) whether the institution knew or ought to have known of the perpetration of child abuse by the second child;
 - (g) the level of control the institution had over the second child at the time the child abuse occurred;
 - (h) whether the institution took steps to identify and manage the risk of a child who is subject to child abuse, as a result of that child abuse, abusing other children in the care or under the supervision or authority of the institution;
 - (i) whether the institution complied with any standards applicable to child safety at the time the child abuse occurred;

- (j) any other matter prescribed by regulation;
 - (k) any other matter the court considers relevant.
- (4) In a proceeding against 2 or more institutions subsection (2) applies to each institution equally.
- (5) In a proceeding referred to in subsection (2):
- (a) the second child that perpetrated the child abuse must not be named in any pleadings; and
 - (b) if the second child that perpetrated the child abuse gives evidence – the court must be closed to the public while the evidence is given.
- (6) Despite subsection (5)(b), the court may grant leave for a person to attend the proceedings.
- (7) If a court awards damages to an individual in respect of liability of an institution that is established in accordance with this section, the court must take into account any award of damages to the individual in respect of liability of the institution established in accordance with section 17G in determining the amount of damages the court awards for liability established under this section.

Division 3 Vicarious liability of institutions for child abuse

17G Vicarious liability of institutions for child abuse

- (1) An institution is vicariously liable for personal injury arising from child abuse perpetrated by an employee of the institution or an individual akin to an employee if:
- (a) the institution places the employee or individual akin to an employee in a position or situation that gives occasion for child abuse of the child; and
 - (b) the employee or individual akin to an employee uses that occasion to perpetrate child abuse of the child.
- (2) In determining whether the institution placed the employee or individual akin to an employee in a position or situation that gives occasion for the child abuse of the child, a court must take into account whether the institution placed the employee or individual akin to an employee in a position or situation where the employee or individual akin to an employee has:

- (a) authority, power or control over the child; or
 - (b) the trust of the child; or
 - (c) the ability to achieve intimacy with the child.
- (3) This section does not affect, and is in addition to, the law of the Territory with respect to vicarious liability.
- (4) If a court awards damages to an individual in respect of liability of an institution that is established in accordance with this section, the court must take into account any award of damages to the individual in respect of liability of the institution established in accordance with section 17E or 17F in determining the amount of damages the court awards for liability established under this section.
- (5) In this section:
- individual akin to an employee***, in relation to an institution, is an individual who:
- (a) carries out an activity (whether a series of activities or a single act) that enables the institution to perform its functions, except for an activity:
 - (i) in accordance with a placement arrangement under section 78 of the *Care and Protection of Children Act 2007* in respect of a child; or
 - (ii) carried out under a contract for services by an individual or corporation that is independent from the institution; and
 - (b) carries out that activity with the intention to benefit the institution.

Division 4 Nomination of proper respondent

17H Nomination of proper respondent

- (1) An institution that is a respondent in a proceeding for personal injury to an individual arising from child abuse of the individual may nominate another person or entity as the proper respondent in the proceeding.

- (2) A person or entity may be nominated as the proper respondent if the person or entity:
- (a) has the financial capacity to pay the amount of damages that could reasonably be expected to be awarded if the proceeding were successful; and
 - (b) has the financial capacity to pay the amount of legal costs that could reasonably be expected to be awarded against the person or entity if the proceeding were successful; and
 - (c) consents to the nomination as the proper respondent; and
 - (d) is capable of being sued.

17J Appointment of nominated proper respondent

- (1) If a court is satisfied of the matters specified in section 17H(2), the court must appoint the nominated person or entity as the proper respondent in the proceeding.
- (2) A proper respondent appointed under subsection (1):
- (a) assumes any liability of the institution against which the claim is brought for the personal injury of the claimant arising from child abuse of the claimant; and
 - (b) is joined as respondent in the proceeding; and
 - (c) for the purposes of conducting the proceeding is:
 - (i) taken to be the institution against which the claim is brought; and
 - (ii) responsible for conducting the proceeding as respondent; and
 - (iii) taken to have done any act by the institution against which the claim is brought; and
 - (d) has any duty or obligation that the institution against which the claim is brought has in relation to the proceeding; and
 - (e) without limiting paragraph (a), assumes any liability of the institution against which the claim is brought that arises from the proceeding (including for costs, charges and expenses); and

- (f) may rely on any defence or immunity available to the institution against which the claim is brought in respect of the claim; and
 - (g) has any right the institution against which the claim is brought has to be indemnified in respect of the claim.
- (3) Despite subsection (2)(c), nothing in this section prevents the court making any order, direction or finding solely in respect of the institution against which the claim is brought.

17K Application to appoint institution's proper respondent

- (1) A claimant in a proceeding against an institution for personal injury of the claimant arising from child abuse of the claimant may apply to the court for the court to appoint an associated trust of the institution as the proper respondent in the proceeding if:
- (a) the institution:
 - (i) did not nominate another person or entity as the proper respondent in the proceeding; or
 - (ii) nominated another person or entity as the proper respondent in the proceeding and that person or entity was not appointed by the court as the proper respondent in the proceeding; and
 - (b) at least 120 days from the day the proceeding was commenced have passed.
- (2) An associated trust may be appointed as the proper respondent if the associated trust:
- (a) has the financial capacity to pay the amount of damages that could reasonably be expected to be awarded if the proceeding were successful; and
 - (b) has the financial capacity to pay the amount of legal costs that could reasonably be expected to be awarded against the person or entity if the proceeding were successful; and
 - (c) is capable of being sued.
- (3) Within 28 days from the day the application is made under subsection (1), the institution must identify for the court all associated trusts of the institution (if any) and provide information regarding the financial capacity of those associated trusts.

- (4) A trust is an **associated trust** of an institution in any of the following circumstances:
- (a) the institution has, either directly or indirectly, the power to control the application of the income, or the distribution of the property, of the trust;
 - (b) the institution has the power to obtain the beneficial enjoyment of the property or income of the trust, with or without the consent of another entity;
 - (c) the institution has, either directly or indirectly, the power to appoint or remove the trustee or trustees of the trust;
 - (d) the institution has, either directly or indirectly, the power to appoint or remove beneficiaries of the trust;
 - (e) the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the institution;
 - (f) the institution has, either directly or indirectly, the power to determine the outcome of any other decisions about the trust's operations;
 - (g) a member of the institution or a management member of the institution has, under the trust deed applicable to the trust, a power of a kind referred to in paragraph (a), (b), (c), (d) or (f).

17L Appointment of proper respondent on application

- (1) If a court is satisfied of the matters specified in section 17K(2), the court must appoint the associated trust as the proper respondent in the proceeding.
- (2) A proper respondent appointed under subsection (1):
- (a) assumes any liability of the institution against which the claim is brought for the personal injury of the claimant arising from child abuse of the claimant; and
 - (b) is joined as respondent in the proceeding; and
 - (c) for the purposes of conducting the proceeding is:
 - (i) taken to be the institution against which the claim is brought; and
 - (ii) responsible for conducting the proceeding as respondent; and

- (iii) taken to have done any act by the institution against which the claim is brought; and
 - (d) has any duty or obligation that the institution against which the claim is brought has in relation to the proceeding; and
 - (e) without limiting paragraph (a), assumes any liability of the institution against which the claim is brought that arises from the proceeding (including for costs, charges and expenses); and
 - (f) may rely on any defence or immunity available to the institution against which the claim is brought in respect of the claim; and
 - (g) has any right the institution against which the claim is brought has to be indemnified in respect of the claim.
- (3) Despite subsection (2)(c), nothing in this section prevents the court making any order, direction or finding solely in respect of the institution against which the claim is brought.

17M Decisions available to trustees when associated trust appointed as proper respondent

- (1) Despite any other law of the Territory or other instrument (including any trust deed), the trustee of a trust that is a proper respondent or is to be appointed as a proper respondent may do any of the following in a proceeding, or as a result of a proceeding, under this Part:
- (a) consent to a nomination as a proper respondent;
 - (b) provide any information in relation to the trust that is relevant to the operation of this Division;
 - (c) apply any trust property to satisfy any liability incurred in the proceeding, or as a result of the proceeding, because of being appointed as a proper respondent under this Part.
- (2) The satisfaction of any liability of a trust that is incurred in the proceeding, or as a result of the proceeding, because of being appointed as a proper respondent under this Part is an expense for which the trustee may be indemnified out of the trust property, irrespective of any limitation on any right of indemnity a trustee may have.
- (3) Any liability of a trust that is a proper respondent is limited to the value of the trust property.

- (4) A trustee of a trust that is a proper respondent is not liable for a breach of trust solely because of doing anything authorised by this section.

17N Corporations Act 2001 (Cth) displacement provision

Section 17M is declared to be a Corporations legislation displacement provision for the purpose of section 5G of the *Corporations Act 2001 (Cth)* in relation to the Corporations legislation.

Note for section 17N

Section 5G of the Corporations Act 2001 (Cth) allows a provision of a State or Territory Act to displace the operation of the provisions of the Corporations legislation of the Commonwealth if it is declared a Corporations legislation displacement provision. The declaration allows a State or Territory provision that would otherwise be inconsistent to have effect to the extent of the inconsistency.

Division 5 Continuity of institutions

17P Successor institutions

- (1) This section applies to a claim that:
- (a) an individual has against an institution, or had against an institution that no longer exists, for personal injury to the individual arising from child abuse of the individual; and
 - (b) the institution (the **former institution**) was succeeded by another institution (the **successor institution**).
- (2) A successor institution assumes the liability of the former institution for the claim if the successor institution is substantially the same as the former institution.
- (3) Without limiting subsection (2), a successor institution is substantially the same as the former institution in the following circumstances:
- (a) the former institution or part of the former institution merged into the successor institution;
 - (b) the former institution or part of the former institution merged with one or more other institutions to form the successor institution;
 - (c) the successor institution is the remainder of the former institution after the former institution ceased to include another part of the former institution;

- (d) if there is more than one other institution interposed in the relationship between the former institution and the successor institution by any of the circumstances of succession specified in paragraphs (a), (b) and (c) – at least one of the circumstances specified in any of those paragraphs applies to each interposing institution and the institution it succeeds.
- (4) For the purposes of subsection (2), the following are not relevant to whether an institution is a successor institution to a former institution:
- (a) whether the name of the former institution changed;
 - (b) whether the organisational structure of the former institution changed;
 - (c) whether the former institution was not incorporated and became incorporated;
 - (d) whether the geographic area where members of the former institution carried out the purposes or work of the former institution changed.

Division 6 Proceedings against unincorporated institutions

17Q Proceedings against unincorporated institutions

- (1) Without limiting Division 4, a proceeding for personal injury to an individual arising from child abuse of the individual may be commenced or continued against an unincorporated institution in the name of the institution as if the institution were a legal person capable of being sued.
- (2) For the purposes of this Part, a function that may be exercised by an unincorporated institution may be exercised by a management member of the institution.
- (3) A court may make any orders, directions and findings in relation to an unincorporated institution against which a proceeding is commenced under this section as if the unincorporated association were a person.
- (4) A court may make any orders and directions the court considers necessary for the purposes of this section, including directing any management member of an unincorporated institution to exercise a specified function of the institution.

17R Liability of office holder of unincorporated institution

- (1) This section applies to a claimant if:
 - (a) the claimant was subject to child abuse by an individual associated with an institution while the claimant was a child under the care, supervision or authority of the institution; and
 - (b) the claimant has or had an accrued cause of action for personal injury arising from the child abuse against a person who held office as a management member of the institution at the time the cause of action accrued (the **former office holder**); and
 - (c) at the time of the accrual of the cause of action against the former office holder the institution was not incorporated; and
 - (d) the institution is not incorporated; and
 - (e) the former office holder no longer holds office as a management member of the institution; and
 - (f) the claimant would be able to maintain an action on the cause of action if the former office holder continued to hold office.
- (2) A proceeding for the claimant's cause of action for personal injury arising from the child abuse of the claimant by the individual associated with the institution may be commenced or continued against a current office holder in the name of the office of the former office holder.
- (3) In a proceeding commenced or continued under subsection (2):
 - (a) any liability of a former office holder of the institution in relation to the child abuse of the child is taken to be liability of a current office holder; and
 - (b) any act of a former office holder of the institution in relation to the child abuse of the child is taken to be an act of the current office holder; and
 - (c) any duty or obligation of a former office holder of the institution in respect of the child abuse of the child is taken to be a duty or obligation of the current office holder, exercised by the current officer holder at all times; and
 - (d) any duty or obligation that a former office holder of the institution would have in relation to the proceeding, if it were commenced at the time of the former office holder holding

office, is taken to be a duty or obligation (as the case requires) of the current office holder, exercised by the current officer holder at all times during proceedings; and

- (e) any right of a former office holder of the institution to be indemnified in respect of damages extends to the current office holder; and
 - (f) the current office holder may rely on any defence or immunity that would have been available to a former office holder of the institution in a proceeding commenced at the time of the former office holder holding office.
- (4) If an institution does not have an equivalent office to the office of the former office holder, the head of the institution (however described) is taken to be the former office holder for the purposes of this section and in this section any reference to the former office holder includes the head of the institution.
- (5) In this section:

current office holder, in relation to an institution, means a person who holds office as a management member of the institution.

Division 7 Court rules

17S Court rules

- (1) Without limiting section 71 of the *Supreme Court Act 1979*, the Supreme Court may make rules and practice directions in respect of any of the following:
- (a) the practice and procedure of the Supreme Court under this Part;
 - (b) any other matter under this Part.
- (2) Without limiting section 48 of the *Local Court Act 2015*, the Local Court may make rules and practice directions in respect of any of the following:
- (a) the practice and procedure of the Local Court under this Part;
 - (b) any other matter under this Part.

Part 4 Damages

Division 1 Preliminary

18 Definitions

In this Part, unless the contrary intention appears:

attendant care services means any of the following that are required for the essential and regular care of an injured person:

- (a) services of a domestic nature;
- (b) services relating to nursing;
- (c) services that aim to alleviate the consequences of a personal injury.

average weekly earnings means the Average Weekly Earnings for Full Time Adult Persons, Weekly Ordinary Time Earnings for the Northern Territory as estimated and published by the Australian Statistician.

gratuitous services means attendant care services provided, or to be provided, to an injured person and for which payment is not required.

impairment means a loss, loss of use or derangement of any body part, organ system or organ function, or a combination of those impairments, but does not include a psychological or psychiatric injury prescribed by the Regulations.

non-pecuniary loss means permanent impairment suffered as a consequence of a personal injury.

permanent impairment means impairment that is assessed to be permanent impairment in accordance with the prescribed guides.

prescribed guides means:

- (a) the guides prescribed by the Regulations; or
- (b) if no guides are prescribed by the Regulations – the American Medical Association Guides to the Evaluation of Permanent Impairment (as modified by any regulation) as published from time to time.

Division 2 General

19 No award of aggravated or exemplary damages

A court must not award aggravated damages or exemplary damages in respect of a personal injury.

Division 3 Pecuniary loss

20 Damages for loss of earning capacity or financial support

In assessing damages to be awarded for:

- (a) past pecuniary loss due to loss of earnings or the deprivation or impairment of earning capacity;
- (b) future pecuniary loss due to the deprivation or impairment of earning capacity; or
- (c) the loss of expectation of financial support,

a court must disregard the amount (if any) by which the injured person's gross weekly earnings would, but for the personal injury, have exceeded an amount that is 3 times average weekly earnings as published before 1 January preceding the date on which the assessment is made.

21 Future pecuniary loss

- (1) A court may award damages for future pecuniary loss only if satisfied by the claimant that the assumptions about the injured person's future earning capacity, or the occurrence of other events on which the award is to be based, accord with the injured person's most likely future circumstances had the personal injury not occurred.
- (2) If a court is satisfied under subsection (1) about the claimant's assumptions, it must adjust the amount of damages for future pecuniary loss (as assessed on those assumptions) by reference to the percentage possibility that the events might have occurred regardless of the personal injury.
- (3) In awarding damages for future pecuniary loss, the court must state the assumptions on which the award is based and the relevant percentage by which damages have been adjusted.

22 Discount rate for future pecuniary loss

- (1) If a court awards damages that include a lump-sum component for future pecuniary loss, the amount of that component is to be assessed in accordance with discounted present values.
- (2) In this section:

discounted present values means the calculation at the prescribed discount rate of the present value of the future pecuniary loss by the use of an actuarial multiplier.

prescribed discount rate means:

- (a) the discount rate, expressed as a percentage, prescribed by the Regulations; or
- (b) if no discount rate is prescribed by the Regulations – the discount rate of 5%.

23 Gratuitous services

- (1) A court may award damages for the provision of gratuitous services only if the court is satisfied:
 - (a) that there is or was a reasonable need for the services;
 - (b) that the need for the services is or was solely because of the personal injury to which the damages relate; and
 - (c) that the services would not be provided, or would not have been provided, but for the personal injury to which the damages relate.
- (2) A court may award damages for gratuitous services only if the services are provided or are to be provided:
 - (a) for 6 hours or more per week; and
 - (b) for 6 months or more.
- (3) If gratuitous services are provided or are to be provided for 40 or more hours per week, damages for the provision of those services are not to exceed average weekly earnings:
 - (a) in respect of the whole or part of a quarter occurring between the date of the personal injury and the date of the award – for that quarter; or

- (b) in respect of the whole or part of any other quarter – for the most recent quarter occurring before the date of the award for which average weekly earnings have been published.
- (4) If gratuitous services are provided or are to be provided for less than 40 hours per week, damages for the provision of those services are not to exceed the amount calculated at an hourly rate of one-fortieth of the amount assessed in accordance with subsection (3)(a) or (b), as applicable.
- (5) In assessing damages for the provision of gratuitous services, the court must take into account:
 - (a) any offsetting benefit the service provider obtains as a result of providing the services; and
 - (b) periods for which the injured person has not required or is not likely to require the services because the injured person has been or is likely to be cared for in a hospital or other institution.
- (6) This section does not affect any other law relating to the value of attendant care services except as provided by this section.

Division 4 Non-pecuniary loss

24 Purpose of Division

The purpose of this Division is:

- (a) to abolish common law principles relating to the assessment and awarding of damages for pain and suffering, loss of amenities of life, loss of expectation of life or disfigurement; and
- (b) to provide for the assessment and awarding of damages other than for pecuniary loss on the basis of the degree of permanent impairment suffered by the injured person.

25 Damages other than for pecuniary loss

A court may award damages other than for pecuniary loss, or may refuse to award such damages, only in accordance with section 27 after determining the injured person's degree of permanent impairment in accordance with section 26.

26 Assessment of degree of impairment

- (1) A court, in determining the degree of permanent impairment suffered by an injured person, must do so on the basis of evidence adduced under this section.
- (2) The claimant and the respondent may each adduce evidence for the purposes of subsection (1).
- (3) Evidence of permanent impairment is to be given only by a medical practitioner who has assessed the degree of permanent impairment in accordance with the prescribed guides and any applicable regulation.
- (4) The Regulations may provide for any matters in relation to the assessment of permanent impairment suffered by an injured person, including the following:
 - (a) the content of prescribed guides, including by modification of the American Medical Association Guides to the Evaluation of Permanent Impairment;
 - (b) procedures relating to the assessment of permanent impairment;
 - (c) the qualifications of medical practitioners who may give evidence under this section;
 - (d) the costs in connection with the assessment of impairment.

27 Damages for non-pecuniary loss

- (1) The maximum amount of damages a court may award for non-pecuniary loss is 680 000 monetary units.
- (2) A court must not award damages for non-pecuniary loss if the court determines the degree of permanent impairment to be less than 5% of the whole person.
- (3) When awarding damages for non-pecuniary loss, a court must award the following amount:
 - (a) if the court determines the degree of permanent impairment to be 85% or more of the whole person – 680 000 monetary units;
 - (b) if the court determines the degree of permanent impairment to be not less than 15% and not more than 84% of the whole person – the relevant percentage of 680 000 monetary units;

- (c) if the court determines the degree of permanent impairment to be a percentage of the whole person specified in column 1 of the Table – the amount specified in column 2 opposite the relevant percentage.

TABLE

Column 1	Column 2
Degree of permanent impairment as percentage of whole person	Amount of damages to be awarded
not less than 5% but less than 10%	13 600 monetary units
10%	20 400 monetary units
11%	27 200 monetary units
12%	40 800 monetary units
13%	54 400 monetary units
14%	81 600 monetary units

Division 5 Interest

29 No interest on particular damages

A court must not order the payment of interest on damages awarded for:

- (a) non-pecuniary loss; or
- (b) gratuitous services.

30 Calculation of interest payable on damages

- (1) If a court is satisfied that interest is payable on damages, the amount of interest:
- (a) is payable in respect of the period from when the relevant loss was first incurred until the date on which the court assesses the damages; and
 - (b) is to be calculated, using the prescribed rate of interest, in accordance with the principles ordinarily applied by the court for that purpose.

- (2) In this section:

prescribed rate of interest means:

- (a) the interest rate prescribed by the Regulations; or

- (b) if no interest is prescribed by the Regulations – the relevant interest rate as at the date of assessment of the damages.

relevant interest rate means the rate representing the Commonwealth Government 10 year benchmark bond rate as published by the Reserve Bank of Australia in the *Reserve Bank of Australia Bulletin* (however described) as applying:

- (a) on the first business day of January of each year in respect of an assessment of damages during the period from 1 March until 31 August of that year; or
- (b) on the first business day of July of each year in respect of an assessment of damages made during the period from 1 September of that year until the last day of February of the following year.

Division 6 Orders for structured settlements

31 Meaning of *structured settlement*

For the purposes of this Division:

structured settlement means an order providing for the payment of all or part of an award of damages by one or both of the following means:

- (a) periodic payments funded by an annuity or other agreed means;
- (b) periodic payments in respect of future reasonable expenses for medical, hospital, pharmaceutical or attendant care services, payable as those expenses are incurred.

32 Court may make order for structured settlement

The court may, with the consent of the parties to a proceeding, make an order for a structured settlement.

Part 4A Damages awarded to offenders

Division 1 Preliminary matters

32A Definitions

In this Part:

civil wrong means a civil wrong to which section 32B applies.

civil wrong settlement means an agreement between an individual and one or more public entity defendants requiring the public entity defendant to make a payment of monies to the individual for a civil wrong sustained when the individual was an offender.

offender means an individual to which section 32B applies.

public entity defendant, see section 32C.

victim claim means a claim by an individual for personal injury against an offender that arises out of an injury to the individual or death of the individual caused by the offender and the conduct causing the injury or death, on the balance of probabilities, constitutes an offence.

32B Application of Part

- (1) This Part applies to an award of damages or payment of monies in accordance with a civil wrong settlement to an individual for a civil wrong the individual sustains when the individual is:
 - (a) an offender within the meaning of section 5 of the *Correctional Services Act 2014*; or
 - (b) a detainee as defined in section 5(1) of the *Youth Justice Act 2005*.
- (2) Despite subsection (1) and without limiting section 4(3)(b), this Part does not apply to any claim for compensation as defined in section 3(1) of the *Return to Work Act 1986*:
 - (a) arising out of an injury, within the meaning of section 3A of that Act, sustained by an offender, or a death of an offender; and
 - (b) the offender was a worker, within the meaning of section 3B of that Act, at the time of the injury or death.

Note for subsection (2)

Section 3B(12) of the Return to Work Act 1986 provides for the circumstances when a person found guilty of an offence who is performing work under a court order is to be treated as a worker.

- (3) Despite subsection (1), this Part does not apply to any claim for damages for a personal injury.
- (4) This Part applies to the following civil wrongs:
 - (a) the tort of assault;

- (b) the tort of battery;
 - (c) the tort of false imprisonment.
- (5) This Part does not apply in relation to a civil wrong alleged to have been caused by an incident that occurs before the commencement of this section.
- (6) This Part applies to a civil liability incurred by a public entity defendant because of a civil wrong sustained by an offender that was caused by a person the public entity defendant is vicariously liable for.

32C Public entity defendant

A **public entity defendant** is any of the following:

- (a) the Crown in right of the Territory;
- (b) an Agency;
- (c) a public sector employee;
- (d) a health service within the meaning of the *Health Service Act 2021*;
- (e) a Government owned corporation within the meaning of the *Government Owned Corporations Act 2001*;
- (f) an entity that is controlled, within the meaning of the *Corporations Act 2001* (Cth), by an Agency or otherwise by the Territory;
- (g) a person or entity that has functions or powers under an Act or Regulations and is performing those functions or exercising those powers;
- (h) a person or entity that is performing any function for or on behalf of an entity specified in paragraph (a), (b), (d), (e), (f) or (g).

32D No effect on claim arising from child abuse

Nothing in this Part affects a claim for a civil wrong arising from child abuse perpetrated against an offender.

Division 2 Limit to damages

32E Limit to liabilities for civil wrongs

- (1) Subject to subsection (2), the maximum amount of damages a court may award for a civil wrong to which this Part applies is the following amount for each civil wrong sustained by an offender:
 - (a) for a civil wrong constituted by the tort of assault:
 - (i) in the case of assault constituted by strip searching the offender without lawful reason – 5 000 monetary units; and
 - (ii) in any other case of assault – 2 500 monetary units;
 - (b) for a civil wrong constituted by the tort of battery – 5 000 monetary units;
 - (c) for a civil wrong constituted by the tort of false imprisonment:
 - (i) in the case of false imprisonment of the offender for a period of 1 day or less – 2 000 monetary units; and
 - (ii) in the case of false imprisonment of the offender for a period of more than 1 day and less than 30 days – 1000 monetary units for each day during which the false imprisonment continues; and
 - (iii) in the case of false imprisonment of the offender for a period of 30 days or more and less than 60 days – 500 monetary units for each day during which the false imprisonment continues; and
 - (iv) in the case of false imprisonment of the offender for a period of 60 days or more – 250 monetary units for each day during which the false imprisonment continues.
- (2) The maximum amount of damages a court may award to an offender for a civil wrong or series of related civil wrongs to which this Part applies is 15 000 monetary units.
- (3) To avoid doubt, this section does not apply to an individual in respect of a civil wrong if the individual sustains the civil wrong after the individual ceases to be an offender.

(4) In this section:

series of related civil wrongs means 2 or more civil wrongs committed against an offender that:

- (a) occur at approximately the same time; or
- (b) occur over a period of time and are committed by the same person or group of persons.

32F No award of aggravated or exemplary damages

A court must not award aggravated damages or exemplary damages in respect of a civil wrong to which this Part applies.

Division 3 Application of damages to certain payments

32G Public entity defendant may withhold damages for specified payments

- (1) A public entity defendant ordered by a court to pay damages to an offender for a civil wrong to which this Part applies may withhold an amount from the damages that the public entity defendant is required to pay to the offender for the satisfaction of the following amounts owed by the offender:
 - (a) an amount the Territory may recover in accordance with an order made under section 56 of the *Victims of Crime Assistance Act 2006*;
 - (b) an outstanding fine imposed by a court under Part 3 of the *Fines and Penalties (Recovery) Act 2001* and enforcement costs under that Act for the fine;
 - (c) a penalty under an infringement notice, within the meaning of the *Fines and Penalties (Recovery) Act 2001*, issued under a law that was not paid within the time specified in the infringement notice, or in accordance with the requirements of that Act for the recovery of the penalty, and enforcement costs under that Act for the penalty.
- (2) Despite anything to the contrary in a civil wrong settlement, a public entity defendant paying monies under the civil wrong settlement may withhold an amount from the monies that the public entity defendant is required to pay to the offender for the satisfaction of the following amounts owed by the offender:

- (a) an amount the Territory may recover in accordance with an order made under section 56 of the *Victims of Crime Assistance Act 2006*;
 - (b) an outstanding fine imposed by a court under Part 3 of the *Fines and Penalties (Recovery) Act 2001* and enforcement costs under that Act for the fine;
 - (c) a penalty under an infringement notice, within the meaning of the *Fines and Penalties (Recovery) Act 2001*, issued under a law that was not paid within the time specified in the infringement notice, or in accordance with the requirements of that Act for the recovery of the penalty, and enforcement costs under that Act for the penalty.
- (3) To avoid doubt, an amount, outstanding fine or penalty specified in subsection (1) or (2) does not include any amount, outstanding fine or penalty that is cancelled, withdrawn, annulled or in any other way made no longer recoverable by the Territory.

Division 4 Damages made available for victim payments

32H Offender damages to be held on trust

- (1) Damages that are awarded by a court to an offender for a civil wrong to which this Part applies or monies payable to an offender under a civil wrong settlement must be paid to the Public Trustee.
- (2) Damages or monies paid to the Public Trustee under subsection (1) are held on trust by the Public Trustee for a period beginning on the day the court awards the damages or the civil wrong settlement is agreed to (as the case requires) and ending on the later of:
 - (a) the day 12 months after the day the court awards the damages or the civil wrong settlement is agreed to; or
 - (b) the day a court finally determines any victim claim that is commenced against the offender:
 - (i) before the day the court awards the damages or the civil wrong settlement is agreed to; or
 - (ii) within 12 months after the day the court awards the damages or the civil wrong settlement is agreed to.
- (3) The Public Trustee holds the amount paid under subsection (1) for the satisfaction of an order under section 32K(2).

- (4) This section does not apply to an amount of damages or monies withheld by a public entity defendant under section 32G.
- (5) Despite subsection (1), this section does not affect any obligation of a public entity defendant under a law of the Territory or the Commonwealth to pay an amount to a person other than the offender.

32J Notification of money held on trust

- (1) As soon as practicable after the day a court orders a public entity defendant to pay damages to an offender for a civil wrong to which this Part applies or a civil wrong settlement is agreed to by a public entity defendant and an offender, the public entity defendant:
 - (a) must notify, in writing, each victim (if any) of the offender of the money held on trust in accordance with section 32H; and
 - (b) may give public notice of the money held on trust in accordance with section 32H.
- (2) The public entity defendant may determine the manner in which the public notice under subsection (1)(b) is to be given.
- (3) A notification under subsection (1) must include the following:
 - (a) the name of the offender;
 - (b) a statement that damages awarded by a court to the offender or monies to be paid to the offender under a civil wrong settlement are held on trust by the Public Trustee;
 - (c) the period during which damages or monies are held on trust;
 - (d) a statement that during the period the damages or monies are held on trust the court may make an order under section 32K(2) for damages to the victim to be satisfied out of damages or monies held on trust during that period.
- (4) A victim who is notified under subsection (1)(a) may, at any time during the period the damages or monies are held on trust, request the public entity defendant to provide:
 - (a) details of the amount of damages or monies held on trust and the offence for which the offender has been found guilty; and
 - (b) the number of other victims notified under this section and whether any orders to satisfy damages out of the damages or monies held on trust were made under section 32K(2).

- (5) On a request under subsection (4), the public entity defendant must provide to the victim, within a period of 28 days from the request, the details requested.
- (6) For the purposes of notifying any victims of an offender of the damages or monies held on trust:
 - (a) the Commissioner of Police may provide to a public entity defendant information identifying individuals who may be victims; and
 - (b) if a public entity defendant is party to an agreement that restricts disclosure of any of the information specified in subsection (3) – the public entity defendant may disclose the information despite anything to the contrary in the agreement.
- (7) In this section:

victim, of an offender, is an individual who appears based on information reasonably available to the public entity defendant (including information provided under subsection (6)(a)) to have a victim claim against the offender.

32K Offender damages available for victim claims

- (1) This section applies to a victim claim if:
 - (a) an individual:
 - (i) is successful in a victim claim against an offender; or
 - (ii) makes an agreement to settle a victim claim against an offender; and
 - (b) damages awarded or monies to be paid to the offender in respect of a civil wrong are held on trust in accordance with section 32H.
- (2) If an individual is successful in a victim claim against an offender or settles a victim claim against an offender, the court may order the damages for the victim claim or monies to be paid under the settlement to be satisfied out of the amount held on trust in accordance with section 32H and for that purpose order an amount not exceeding the amount held on trust to be paid to the individual.

- (3) An order under subsection (2) must not be made until all of the following are finally determined:
 - (a) proceedings against the offender for a victim claim commenced before the period specified in section 32H(2);
 - (b) proceedings against the offender for a victim claim commenced during the period specified in section 32H(2).
- (4) In making an order under subsection (2), the court must ensure that the amount paid to the individual is fair and reasonable having regard to:
 - (a) whether there are any proceedings against the offender for victim claims; and
 - (b) the amount of damages that is likely to be awarded in any other victim claim if the other victim claim is successful.
- (5) If the court orders an amount to be paid under subsection (2), the Public Trustee must release the amount specified in the order from the amount held on trust in accordance with section 32H.
- (6) The court must decide whether or not to make an order under subsection (2) without conducting a hearing, unless the court is satisfied that a hearing is necessary in the interest of justice.

32L Interest of money held on trust

- (1) Interest received by the Public Trustee for the investment of money held on trust in accordance with section 32H in respect of an offender is part of the amount of money held on trust in respect of that offender.
- (2) Fees and charges payable to the Public Trustee for the Public Trustee's functions under this Part of holding money on trust in accordance with section 32H in respect of an offender are payable out of the money held on trust in respect of that offender.

32M Release of money held on trust

On the expiry of the period during which damages or monies are held on trust in accordance with section 32H, the Public Trustee must release to the offender:

- (a) any remaining amount held on trust; or

- (b) if no order is made under section 32K(2) – all of the damages awarded to the offender in the claim or monies to be paid to the offender under the civil wrong settlement.

32N Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Division as any of the following:
- (a) an employee or agent of a public entity defendant;
- (b) the Public Trustee or an employee or agent of the Public Trustee.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

Division 5 Extension of limitation period for victims

32P Victim claims maintainable despite limitation period

- (1) Despite section 12(1) of the *Limitation Act 1981*, the limitation period under that section does not apply to an action founded on a tort that is a victim claim if there exists money held on trust in accordance with section 32H in respect of the defendant to the victim claim.
- (2) To avoid doubt, a cause of action that is not maintainable by operation of section 12(1) of the *Limitation Act 1981* is reinstated as maintainable for the purposes of:
- (a) commencing the victim claim; and
- (b) the court making an order under section 32K(2).

Part 5 Miscellaneous

33 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may apply, adopt, incorporate or apply by reference (either wholly or in part or with or without modification) an instrument as in force at a particular time or as in force from time to time prescribed or published by an authority or body, whether or not a Territory authority or body.
- (3) An instrument applied, adopted or incorporated by the Regulations may require anything referred to in that instrument to be in accordance with another instrument to which that instrument refers.
- (4) In this section:

instrument means a guide, standard, code, specification, method or other document.

34 Regulations may contain savings and transitional provisions

- (1) The Regulations may contain provisions of a transitional nature consequent on the enactment of this Act.
- (2) The Regulations may provide that a transitional provision takes effect from a date that is earlier than the date of its publication or notification in the *Gazette* but, if it does so, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the Territory), the rights of that person existing before the date of its publication or notification; or
 - (b) to impose liabilities on a person (other than the Territory) in respect of anything done or omitted to be done before the date of its publication or notification.

**Part 6 Transitional matters for Personal Injuries
(Liabilities and Damages) Act 2003**

35 Transitional provisions

- (1) Section 7(5) does not apply in relation to a policy of insurance entered into before the commencement of that section.
- (2) Section 13 applies in relation to an expression of regret whether made before or after the commencement of that section and whether made in respect of a personal injury caused or alleged to have been caused by an incident that occurred before or after the commencement of that section.
- (3) Section 32 applies in relation to the making of an order for a structured settlement whether the proceeding in which the order is made commenced before or after the commencement of that section.

**Part 7 Transitional matters for Personal Injuries
(Liabilities and Damages) Amendment Act 2010**

36 Application of section 7A

Section 7A applies only in relation to a person who donates food or a grocery product, as mentioned in that section, after the commencement of the *Personal Injuries (Liabilities and Damages) Amendment Act 2010*.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2**LIST OF LEGISLATION*****Personal Injuries (Liabilities and Damages) Act 2003 (Act No. 3, 2003)***

Assent date	18 March 2003
Commenced	1 May 2003 (<i>Gaz</i> G17, 30 April 2003, p 3)

Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)

Assent date	22 September 2005
Commenced	1 August 2006 (s 2, s 2 <i>Youth Justice Act 2005</i> (Act No. 32, 2005) and <i>Gaz</i> G30, 26 July 2006, p 3)

Justice legislation Amendment Act 2007 (Act No. 5, 2007)

Assent date	24 April 2007
Commenced	s 37 (except amd of Criminal Code and <i>Legal Profession Act 2006</i>): 1 May 2007 (s 2(1), s 2 <i>Victims of Crime Assistance Act 2006</i> (Act No. 15, 2006) and <i>Gaz</i> G17, 26 April 2007, p 7); rem: 24 April 2007

Law Reform (Work Health) Amendment Act 2007 (Act No. 30, 2007)

Assent date	12 December 2007
Commenced	1 July 2008 (<i>Gaz</i> S29, 25 June 2008)

Personal Injuries (Liabilities and Damages) Amendment Act 2010 (Act No. 36, 2010)

Assent date	18 November 2010
Commenced	15 December 2010 (<i>Gaz</i> G50, 15 December 2010)

Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010 (Act No. 41, 2010)

Assent date	8 December 2010
Commenced	1 January 2011 (<i>Gaz</i> S71, 20 December 2010)

Traffic and Other Legislation Amendment Act 2011 (Act No. 22, 2011)

Assent date	22 August 2011
Commenced	1 September 2011 (<i>Gaz</i> G35, 31 August 2011, p 9)

Workers Rehabilitation and Compensation Legislation Amendment Act 2015 (Act No. 9, 2015)

Assent date 23 April 2015
 Commenced ss 3, 4, 5, 24, 25 and pt 4: 22 May 2015; rem: 1 July 2015:
 (Gaz S50, 22 May 2015)

Personal Injuries (Liabilities and Damages) Amendment Act 2022 (Act No. 13, 2022)

Assent date 2 June 2022
 Commenced pt 2: 3 June 2022 (s 2(1)); pt 3: 30 September 2022 (s 2(2));
 rem: 1 January 2023 (Gaz G50, 21 December 2022, p 2)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4, 5, 7 and 7A.

4 LIST OF AMENDMENTS

It amd No. 13, 2022, ss 7 and 12
 s 3 amd No. 13, 2022, ss 4 and 10
 s 4 amd No. 5, 2007, s 37; No. 30, 2007, s 59; No. 41, 2010, s 29; No. 9, 2015,
 s 31; No. 13, 2022, s 5
 s 7 amd No. 33, 2005, s 5
 s 7A ins No. 36, 2010, s 4
 s 10 amd No. 5, 2007, s 37
 s 16 amd No. 22, 2011, s 40
 pt 3A hdg ins No. 13, 2022, s 11
 pt 3A
 div 1 hdg ins No. 13, 2022, s 11
 ss 17A – 17C ins No. 13, 2022, s 11
 pt 3A
 div 2 hdg ins No. 13, 2022, s 11
 ss 17D – 17F ins No. 13, 2022, s 11
 pt 3A
 div 3 hdg ins No. 13, 2022, s 11
 s 17G ins No. 13, 2022, s 11
 pt 3A
 div 4 hdg ins No. 13, 2022, s 11
 ss 17H – 17M ins No. 13, 2022, s 11
 pt 3A
 div 5 hdg ins No. 13, 2022, s 11
 s 17P ins No. 13, 2022, s 11
 pt 3A
 div 6 hdg ins No. 13, 2022, s 11
 ss 17Q – 17R ins No. 13, 2022, s 11
 pt 3A
 div 7 hdg ins No. 13, 2022, s 11
 s 17S ins No. 13, 2022, s 11
 s 27 amd No. 13, 2022, s 8
 s 28 rep No. 13, 2022, s 9
 pt 4A hdg ins No. 13, 2022, s 6
 pt 4A
 div 1 hdg ins No. 13, 2022, s 6
 ss 32A – 32D ins No. 13, 2022, s 6

ENDNOTES

pt 4A	
div 2 hdg	ins No. 13, 2022, s 6
ss 32E – 32F	ins No. 13, 2022, s 6
pt 4A	
div 3 hdg	ins No. 13, 2022, s 6
s 32G	ins No. 13, 2022, s 6
pt 4A	
div 4 hdg	ins No. 13, 2022, s 13
ss 32H – 32N	ins No. 13, 2022, s 13
pt 4A	
div 5 hdg	ins No. 13, 2022, s 13
s 32P	ins No. 13, 2022, s 13
pt 6 hdg	ins No. 36, 2010, s 5
pt 7 hdg	ins No. 36, 2010, s 6
s 36	ins No. 36, 2010, s 6