

Serial 108
Personal Injuries (Liabilities and Damages) Bill 2002
Dr Toyne

**A BILL
for
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, and for related purposes



NORTHERN TERRITORY OF AUSTRALIA
PERSONAL INJURIES (LIABILITIES AND DAMAGES) ACT 2002

No. of 2002

TABLE OF PROVISIONS

Section

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Application of Act
5. Relationship with *Compensation (Fatal Injuries) Act*
6. Act binds Crown

PART 2 – LIABILITIES FOR PERSONAL INJURIES

Division 1 – Exclusions and indemnities

7. Volunteers and community organisations
8. Good Samaritans
9. Occupier or owner of dwelling house or commercial premises
10. Criminal conduct of injured person

Division 2 – Expressions of regret

11. Purpose of Division
12. Meaning of "expression of regret"
13. Expression of regret not admissible as evidence

PART 3 – CONTRIBUTORY NEGLIGENCE

14. Presumption if injured person intoxicated
15. Presumption if reliance on intoxicated person
16. Evidentiary provisions
17. Amount of reduction if contributory negligence established

PART 4 – DAMAGES

Division 1 – Preliminary

18. Definitions

Division 2 – General

19. No award of aggravated or exemplary damages

Division 3 – Pecuniary loss

20. Damages for loss of earning capacity or financial support
21. Future pecuniary loss
22. Discount rate for future pecuniary loss
23. Gratuitous services

Division 4 – Non-pecuniary loss

24. Maximum amount of damages for non-pecuniary loss
25. No damages for non-pecuniary loss unless substantial loss
26. Indexation of maximum amount of damages for non-pecuniary loss

Division 5 – Interest

27. No interest on particular damages
28. Calculation of interest payable on damages

Division 6 – Orders for structured settlements

29. Meaning of "structured settlement"
30. Court may make order for structured settlement

PART 5 – MISCELLANEOUS

31. Regulations
32. Regulations may contain savings and transitional provisions
33. Transitional provisions



NORTHERN TERRITORY OF AUSTRALIA

No. of 2002

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, and for related purposes

[Assented to 2002]

[Second reading 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Personal Injuries (Liabilities and Damages) Act 2002*.

2. Commencement

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

3. Definitions

In this Act, unless the contrary intention appears –

"act" includes omission;

"claim" means a claim for damages;

Personal Injuries (Liabilities and Damages) Act 2002

"claimant" means a person making a claim;

"court" means the court or tribunal in which a claim is made;

"damages" means damages for a personal injury;

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

"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;

"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;

"respondent" means a person from whom a claimant seeks damages.

4. Application of Act

(1) This Act 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 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 Regulations may exclude a claim or class of claim from the operation of this Act or a provision of this Act.

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

(1) This Act does not limit the operation of the *Compensation (Fatal Injuries) Act*.

Personal Injuries (Liabilities and Damages) Act 2002

(2) If an action is brought under the *Compensation (Fatal Injuries) Act* 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* 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

Personal Injuries (Liabilities and Damages) Act 2002

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) In this section –

"community organisation" means 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*, *Juvenile Justice Act* or *Fines and Penalties (Recovery) Act*;

"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.

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 –

Personal Injuries (Liabilities and Damages) Act 2002

- (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 for 12 months or more.

(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 for 12 months or more; 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.

(3) This section does not affect the operation of section 12(f) of the *Crimes (Victims Assistance) Act*.

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, at or about the time of an incident, a person is found by a court to have present in his or her blood a concentration of alcohol of .08 or more grams 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 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;

"non-pecuniary loss" includes any of the following:

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) disfigurement.

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 –

Personal Injuries (Liabilities and Damages) Act 2002

- (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. Maximum amount of damages for non-pecuniary loss

The maximum amount of damages that a court may award for non-pecuniary loss is –

- (a) on the commencement of this Part until the Minister declares a maximum amount under section 26 – \$250 000; and
- (b) thereafter – the amount declared by the Minister under section 26 and in force at the time of the award.

25. No damages for non-pecuniary loss unless substantial loss

The court must not award damages for non-pecuniary loss unless that loss is assessed by the court –

- (a) on the commencement of this Part until the Minister declares an amount under section 26 – to be at least \$15 000; and
- (b) thereafter – to be at least the amount declared by the Minister under section 26 and in force at the time of the award.

26. Indexation of maximum amount of damages for non-pecuniary loss

(1) On or before 1 October in each year following the year in which this Act commences, the Minister must declare the amounts applicable for the purposes of sections 24(b) and 25(b).

(2) A declaration under this section is to be published in the *Gazette* and is to state the date on which the declaration takes effect.

(3) The amounts declared under this section are the amounts applicable under sections 24 and 25 immediately before making the declaration, adjusted by the percentage change in average weekly earnings over the 4 quarters preceding the date of the declaration for which average weekly earnings have been published.

(4) The amount declared under this section is to be rounded to the nearest \$500.

Division 5 – Interest

27. 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.

28. 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

29. 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.

30. 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 5 – MISCELLANEOUS

31. Regulations

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.

32. 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.

33. 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 30 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.