

CTP Handbook

Online edition

January 2011

hunt&hunt

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The information contained within the CTP Handbook is current to January 2011.

This handbook has been published as a service to Hunt & Hunt clients and should not be used or relied upon as a substitute for detailed legal advice.

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Evidence required for management of claims

Prompt provision of the following information will assist in early resolution.

- Accident Report Form
- Injury Claim Form
- Current Medical Reports
- Income Tax Returns for 3 years prior to accident and subsequent years
- Group certificates and / or pay slips
- Letter from employer certifying loss of wages on gross / net basis
- Detailed formulated claims with rationale.



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Government and Court contacts

Contact	Telephone	Website
Allianz	1300 137 331	www.allianz.com.au
Centrelink - Disability, Sickness and Carers	13 27 17	www.centrelink.gov.au
Health Insurance Commission – Compensation	(02) 6124 6333	www.hic.gov.au
Motor Accident Commission	(08) 8221 6377	www.mac.sa.gov.au
South Australian Police	(08) 8207 5000	www.sapolice.sa.gov.au
South Australian Police Information Services Branch	(08) 8204 2375	
Workcover	13 18 55	www.workcover.com
Supreme Court Civil Registry	(08) 8204 0476	www.courts.sa.gov.au
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Magistrates Court Registry	(08) 8204 2444	www.courts.sa.gov.au
State Coroner's Office	(08) 8204 0600	www.courts.sa.gov.au/courts/coroner
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Supreme Court Judgments		www.austlii.edu.au/au/cases/sa/SASC/
District Court Judgments		www.austlii.edu.au/au/cases/sa/SADC/
South Australian Legislation		www.legislation.sa.gov.au



Date of operation for key legislative amendments

Date of operation	Amended Act	Sections amended	Amending Act
29 October 1998	<i>Wrongs Act 1936</i>	<ul style="list-style-type: none"> Amendment of <i>Wrongs Act 1936</i>, s35a 	<i>Statutes Amendment (Motor Accidents) Act 1998</i> (Act No. 67 of 1998)
	<i>Motor Vehicles Act 1959</i>	<ul style="list-style-type: none"> Amendment of ss 5, 99, 113A, 118B, 124, 124A, 124AC, 125B, 127A 	
1 December 1999	<i>Road Traffic Act 1961</i>	<ul style="list-style-type: none"> Commencement of Australian Road Rules 	<i>Road Traffic (Road Rules) Amendment Act 1999</i> (Act No. 39 of 1999)
16 August 2001	<i>Wrongs Act 1936</i>	<ul style="list-style-type: none"> Repeal of <i>Wrongs Act 1936</i> ss 24, 25, 26, 26A, 27, 27A, 27B 	<i>Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001</i> (Act No. 41 of 2001)
1 December 2002	<i>Wrongs Act 1936</i>	<ul style="list-style-type: none"> Insert new Part 2A Damages for Personal Injury (ss 24, 24A – 24O) Repeal of Part 3, Division 10 comprising section 35A 	<i>Wrongs (Liability and Damages for Personal Injury) Amendment Act</i> (Act No. 21 of 2002)
10 March 2003	<i>Wrongs Act 1936</i>	<ul style="list-style-type: none"> Insert new Division 10A – Unreasonable delay in resolution of claim comprising ss 35B, 35C, 35D 	<i>Law Reform (Delay in Resolution of Personal Injury Claims) Act 2002</i> (Act No. 38 of 2002)
19 September 2003 – except for following. ss 5, 43, 47, 47B, 47FB, 47I, 47IA, 49, 79B, 79C, 110AAA, 175 - date of commencement - 15 December 2003	<i>Road Traffic Act 1961</i>	<ul style="list-style-type: none"> Amendment of ss 5, 43, 47, 47A, 47B, 47E, 47FB, 47I, 47IA, 49, 79B, 79C, 110AAA, 175 	<i>Statutes Amendment (Road Safety Reforms) Act 2003</i> (Act No. 8 of 2003)
15 December 2003	<i>Motor Vehicles Act 1959</i>	<ul style="list-style-type: none"> Amendment of ss 5, 74, 75A, 79, 79A, 81, 81A, 81AB, 81B, 81C, 98A, 98B, 145 	
1 May 2004	<i>Wrongs Act 1936</i> (Redesignated as <i>Civil Liability Act 1936</i>)	<ul style="list-style-type: none"> <i>Wrongs Act 1936</i> redesignated as <i>Civil Liability Act 1936</i> Section numbering redesignated Insert new Part 6 – Negligence Insert new sections in Part 7 – Contributory Negligence Substitute Part 8 – Damages for Personal Injury Insert new Division 6 – Limitation on the award of damages for the costs of raising a child 	<i>Law Reform (lpp Recommendations) Act 2004</i> (Act No. 9 of 2004)
	<i>Limitation of Actions Act 1936</i>	<ul style="list-style-type: none"> Amendment of ss 3, 45(2) Insert s 45A, 48 (3a) & 3(b) 	
	<i>Motor Vehicles Act 1959</i>	<ul style="list-style-type: none"> Amendment of s99 – interpretation Amendment of s104 – Requirements is policy is to comply with this Part Amendment of s124A – Recovery by insurer Amendment of Schedule 4 – Policy of insurance – insert Clause 4 	
2 December 2010	<i>Road Traffic Act 1961</i>	<ul style="list-style-type: none"> Amendment of Schedule 1—Oral fluid and blood sample processes 	<i>Road Traffic (Use of Test and Analysis Results) Amendment Act 2010</i> (Act No 26 of 2010)



Damages for non-economic loss for accidents occurring from 1987 – 2002

Prescribed amount multiplier (*Wrongs Act 1936, s35A*)

Calendar year	Multiplier
2002	1,710
2001	1,680
2000	1,580
1999	1,560
1998	1,530
1997	1,550
1996	1,520
1995	1,450
1994	1,430
1993	1,390
1992	1,370
1991	1,310
1990	1,240
1989	1,150
1988	1,070
1987	1,000



Damages for non-economic loss for accidents occurring from 2001 – 2011

			<i>Wrongs Act s24B</i>		<i>Civil Liability Act s52(2)(d)</i>							
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	
1	1,680	1,710	1,150	1,190	1,220	1,260	1,310	1,320	1,390	1,410	1,450	
2	3,360	3,420	2,300	2,380	2,440	2,510	2,610	2,650	2,780	2,820	2,900	
3	5,040	5,130	3,450	3,580	3,660	3,770	3,920	3,970	4,180	4,230	4,340	
4	6,720	6,840	4,600	4,770	4,890	5,030	5,220	5,300	5,570	5,640	5,790	
5	8,400	8,550	5,750	5,960	6,110	6,290	6,530	6,620	6,960	7,050	7,240	
6	10,080	10,260	6,900	7,150	7,330	7,540	7,830	7,940	8,350	8,460	8,690	
7	11,760	11,970	8,050	8,340	8,550	8,800	9,140	9,270	9,740	9,870	10,130	
8	13,440	13,680	9,200	9,530	9,770	10,060	10,450	10,590	11,130	11,290	11,580	
9	15,120	15,390	10,350	10,730	10,990	11,320	11,750	11,910	12,530	12,700	13,030	
10	16,800	17,100	11,500	11,920	12,210	12,570	13,060	13,240	13,920	14,110	14,480	
11	18,480	18,810	13,800	14,300	14,660	15,090	15,670	15,890	16,700	16,930	17,370	
12	20,160	20,520	16,100	16,690	17,100	17,600	18,280	18,530	19,490	19,750	20,270	
13	21,840	22,230	18,400	19,070	19,540	20,120	20,890	21,180	22,270	22,570	23,160	
14	23,520	23,940	20,700	21,450	21,980	22,630	23,500	23,830	25,050	25,390	26,060	
15	25,200	25,650	23,000	23,840	24,430	25,150	26,110	26,480	27,840	28,210	28,950	
16	26,880	27,360	25,300	26,220	26,870	27,660	28,730	29,120	30,620	31,030	31,850	
17	28,560	29,070	27,600	28,600	29,310	30,180	31,340	31,770	33,400	33,860	34,740	
18	30,240	30,780	29,900	30,990	31,750	32,690	33,950	34,420	36,190	36,680	37,640	
19	31,920	32,490	32,200	33,370	34,200	35,210	36,560	37,070	38,970	39,500	40,530	
20	33,600	34,200	34,500	35,750	36,640	37,720	39,170	39,710	41,750	42,320	43,430	
21	35,280	35,910	37,950	39,330	40,300	41,490	43,090	43,680	45,930	46,550	47,770	
22	36,960	37,620	41,400	42,900	43,970	45,270	47,010	47,660	50,100	50,780	52,110	
23	38,640	39,330	44,850	46,480	47,630	49,040	50,920	51,630	54,280	55,020	56,450	
24	40,320	41,040	48,300	50,060	51,300	52,810	54,840	55,600	58,460	59,250	60,800	
25	42,000	42,750	51,750	53,630	54,960	56,580	58,760	59,570	62,630	63,480	65,140	
26	43,680	44,460	55,200	57,210	58,620	60,350	62,680	63,540	66,810	67,710	69,480	
27	45,360	46,170	58,650	60,780	62,290	64,130	66,590	67,510	70,980	71,940	73,820	
28	47,040	47,880	62,100	64,360	65,950	67,900	70,510	71,480	75,160	76,180	78,170	
29	48,720	49,590	65,550	67,930	69,610	71,670	74,430	75,450	79,330	80,410	82,510	
30	50,400	51,300	69,000	71,510	73,280	75,440	78,340	79,430	83,510	84,640	86,850	



Damages for non-economic loss for accidents occurring from 2001 – 2011

	<i>Wrongs Act s24B</i>				<i>Civil Liability Act s52(2)(d)</i>						
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
31	52,080	53,010	73,600	76,280	78,160	80,470	83,570	84,720	89,080	90,280	92,640
32	53,760	54,720	78,200	81,040	83,050	85,500	88,790	90,020	94,640	95,920	98,430
33	55,440	56,430	82,800	85,810	87,930	90,530	94,010	95,310	100,210	101,570	104,220
34	57,120	58,140	87,400	90,580	92,820	95,560	99,240	100,610	105,780	107,210	110,010
35	58,800	59,850	92,000	95,340	97,700	100,590	104,460	105,900	111,340	112,850	115,800
36	60,480	61,560	96,600	100,110	102,590	105,620	109,680	111,200	116,910	118,500	121,590
37	62,160	63,270	101,200	104,880	107,480	110,650	114,900	116,490	122,480	124,140	127,380
38	63,840	64,980	105,800	109,650	112,360	115,680	120,130	121,790	128,050	129,780	133,170
39	65,520	66,690	110,400	114,410	117,250	120,710	125,350	127,080	133,610	135,420	138,960
40	67,200	68,400	115,000	119,180	122,130	125,740	130,570	132,380	139,180	141,070	144,750
41	68,880	70,110	120,750	125,140	128,240	132,020	137,100	139,000	146,140	148,120	151,990
42	70,560	71,820	126,500	131,100	134,340	138,310	143,630	145,610	153,100	155,170	159,230
43	72,240	73,530	132,250	137,060	140,450	144,600	150,160	152,230	160,060	162,230	166,470
44	73,920	75,240	138,000	143,020	146,560	150,890	156,690	158,850	167,020	169,280	173,700
45	75,600	76,950	143,750	148,980	152,660	157,170	163,220	165,470	173,980	176,330	180,940
46	77,280	78,660	149,500	154,930	158,770	163,460	169,750	172,090	180,930	183,390	188,180
47	78,960	80,370	155,250	160,890	164,880	169,750	176,270	178,710	187,890	190,440	195,420
48	80,640	82,080	161,000	166,850	170,980	176,030	182,800	185,330	194,850	197,490	202,660
49	82,320	83,790	166,750	172,810	177,090	182,320	189,330	191,950	201,810	204,550	209,890
50	84,000	85,500	172,500	178,770	183,200	188,610	195,860	198,570	208,770	211,600	217,130
51	85,680	87,210	179,400	185,920	190,520	196,150	203,700	206,510	217,120	220,060	225,820
52	87,360	88,920	186,300	193,070	197,850	203,700	211,530	214,450	225,470	228,530	234,500
53	89,040	90,630	193,200	200,220	205,180	211,240	219,360	222,390	233,820	236,990	243,190
54	90,720	92,340	200,100	207,370	212,510	218,780	227,200	230,340	242,170	245,450	251,870
55	92,400	94,050	207,000	214,520	219,840	226,330	235,030	238,280	250,520	253,920	260,560
56	94,080	95,760	213,900	221,680	227,160	233,870	242,870	246,220	258,880	262,380	269,240
57	95,760	97,470	220,800	228,830	234,490	241,420	250,700	254,160	267,230	270,850	277,930
58	97,440	99,180	227,700	235,980	241,820	248,960	258,540	262,110	275,580	279,310	286,610
59	99,120	100,890	234,600	243,130	249,150	256,500	266,370	270,050	283,930	287,770	295,300
60	100,800	102,600	241,500	250,280	256,480	264,050	274,200	277,990	292,280	296,240	303,980
Prescribed maximum	2,151,220	2,200,000	2,281,300	2,364,230	2,422,760	2,494,310	2,590,240	2,626,020	2,760,980	2,798,370	2,871,540
Prescribed minimum	2,690	2,750	2,850	2,960	3,030	3,120	3,240	3,280	3,450	3,500	3,590



Present Value of an Annuity of \$1 per Week as at 2010

Mortality Improvement Discount Rate 5% per annum, as at 2010
Based on Australian Life Tables 2005 – 2007

Age	Whole of Life		Annuity to age 65		Annuity to age 60	
	Male	Female	Male	Female	Male	Female
0	1,046	1,050	1,015	1,018	1,003	1,006
1	1,049	1,053	1,017	1,020	1,005	1,007
2	1,048	1,053	1,015	1,017	1,002	1,004
3	1,047	1,052	1,012	1,015	998	1,001
4	1,046	1,051	1,009	1,012	995	998
5	1,045	1,050	1,006	1,009	991	994
6	1,043	1,049	1,003	1,006	987	990
7	1,042	1,048	1,000	1,003	983	986
8	1,040	1,047	996	1,000	979	982
9	1,039	1,046	993	997	974	978
10	1,037	1,044	989	993	969	973
11	1,035	1,043	985	989	964	968
12	1,033	1,041	980	985	959	963
13	1,031	1,040	976	981	953	958
14	1,029	1,038	971	976	948	952
15	1,026	1,036	966	972	941	946
16	1,024	1,035	961	967	935	940
17	1,022	1,033	955	962	928	934
18	1,019	1,031	950	956	922	927
19	1,017	1,029	944	951	915	920
20	1,015	1,027	938	945	907	913
21	1,012	1,025	932	939	900	905
22	1,009	1,022	926	932	892	897
23	1,007	1,020	919	926	883	889
24	1,004	1,017	912	919	874	880
25	1,000	1,015	905	911	865	871
26	997	1,012	897	903	855	861
27	994	1,009	889	895	845	851
28	990	1,006	880	887	834	840
29	986	1,002	871	878	823	828
30	982	999	862	868	811	816
31	978	995	852	858	799	804
32	974	991	842	848	786	791
33	969	987	831	837	772	777
34	964	983	820	826	758	763
35	959	979	808	814	743	748
36	954	974	795	801	727	732

Actuarial calculations provided by Brett & Watson Pty Ltd, Consulting Actuaries.
Use this information as a guide only – refer to current actuarial certificate for claims estimate.



Present Value of an Annuity of \$1 per Week as at 2010 (cont)

Mortality Improvement Discount Rate 5% per annum, as at 2010
Based on Australian Life Tables 2005 – 2007.

Age	Whole of Life		Annuity to age 65		Annuity to age 60	
	Male	Female	Male	Female	Male	Female
37	948	969	782	788	711	715
38	942	964	768	774	694	698
39	936	958	754	760	675	680
40	929	953	739	745	656	660
41	922	947	723	729	636	640
42	915	940	706	712	615	619
43	907	934	689	695	594	597
44	899	927	671	676	571	574
45	891	920	652	657	546	550
46	882	913	632	637	521	524
47	873	905	611	616	494	497
48	863	897	589	594	467	469
49	853	888	566	571	437	440
50	843	879	542	547	407	409
51	832	870	517	522	375	377
52	821	861	490	495	341	343
53	810	851	463	467	306	307
54	798	840	434	438	268	270
55	785	829	404	407	229	230
56	772	818	372	375	188	189
57	758	806	338	341	145	145
58	744	794	303	306	99	99
59	730	781	266	268	51	51
60	715	768	228	229		
61	700	754	187	188		
62	684	740	144	145		
63	668	725	99	99		
64	651	710	51	51		
65	634	694				
66	617	678				
67	599	661				
68	582	644				
69	563	626				
70	532	607				
71	514	589				
72	496	570				

Actuarial calculations provided by Brett & Watson Pty Ltd, Consulting Actuaries.
Use this information as a guide only – refer to current actuarial certificate for claims estimate.



Present Value of an Annuity of \$1 per Week as at 2010 (cont)

Mortality Improvement Discount Rate 5% per annum, as at 2010
Based on Australian Life Tables 2005 – 2007

Age	Whole of Life		Annuity to age 65		Annuity to age 60	
	Male	Female	Male	Female	Male	Female
73	487	550				
74	467	530				
75	447	510				
76	428	489				
77	408	468				
78	389	447				
79	371	426				
80	352	405				
81	334	385				
82	316	364				
83	299	344				
84	282	324				
85	266	305				
86	251	286				
87	237	269				
88	223	252				
89	211	236				
90	200	222				
91	189	208				
92	180	196				
93	172	184				
94	164	174				
95	157	165				
96	151	156				
97	146	149				
98	141	142				
99	136	135				
100	132	130				

Actuarial calculations provided by Brett & Watson Pty Ltd, Consulting Actuaries.
Use this information as a guide only – refer to current actuarial certificate for claims estimate.



Life expectancy according to Australian Life Tables 2005-2007

Age	Male	Female	Age	Male	Female	Age	Male	Female
0	79.02	83.67	37	43.55	47.60	74	11.96	14.27
1	78.44	83.04	38	42.60	46.63	75	11.31	13.51
2	77.47	82.07	39	41.66	45.66	76	10.68	12.78
3	76.49	81.08	40	40.71	44.70	77	10.07	12.05
4	75.50	80.10	41	39.77	43.73	78	9.48	11.35
5	74.51	79.11	42	38.83	42.77	79	8.92	10.67
6	73.52	78.11	43	37.89	41.81	80	8.38	10.01
7	72.53	77.12	44	36.96	40.85	81	7.86	9.37
8	71.54	76.13	45	36.03	39.90	82	7.36	8.75
9	70.55	75.14	46	35.10	38.95	83	6.89	8.17
10	69.55	74.14	47	34.18	38.00	84	6.45	7.61
11	68.56	73.15	48	33.26	37.05	85	6.03	7.08
12	67.57	72.15	49	32.34	36.11	86	5.64	6.58
13	66.58	71.16	50	31.43	35.17	87	5.27	6.11
14	65.58	70.16	51	30.53	34.24	88	4.94	5.68
15	64.59	69.17	52	29.63	33.31	89	4.63	5.28
16	63.61	68.19	53	28.73	32.38	90	4.36	4.91
17	62.63	67.20	54	27.84	31.45	91	4.11	4.57
18	61.66	66.22	55	26.95	30.53	92	3.89	4.27
19	60.71	65.24	56	26.08	29.61	93	3.69	3.99
20	59.75	64.25	57	25.20	28.70	94	3.51	3.75
21	58.80	63.27	58	24.34	27.79	95	3.36	3.53
22	57.84	62.29	59	23.48	26.89	96	3.22	3.33
23	56.88	61.31	60	22.63	26.00	97	3.10	3.16
24	55.93	60.32	61	21.79	25.11	98	2.99	3.00
25	54.97	59.34	62	20.96	24.23	99	2.90	2.86
26	54.02	58.36	63	20.14	23.35	100	2.81	2.74
27	53.06	57.38	64	19.34	22.48	101	2.73	2.63
28	52.11	56.40	65	18.54	21.62	102	2.66	2.54
29	51.16	55.42	66	17.76	20.76	103	2.60	2.46
30	50.20	54.44	67	16.99	19.92	104	2.54	2.38
31	49.25	53.46	68	16.24	19.08	105	2.49	2.32
32	48.30	52.48	69	15.49	18.24	106	2.44	2.26
33	47.35	51.50	70	14.76	17.42	107	2.40	2.20
34	46.40	50.52	71	14.04	16.61	108	2.35	2.15
35	45.45	49.55	72	13.33	15.82	109	2.30	2.09
36	44.50	48.58	73	12.64	15.03			

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Lump Sum Equivalent

Lump sum equivalent to an income of \$1 deferred for periods from 1 To 50 Years

Calculated at interest rates of 3% and 5%

Period in Years	Lump Sum 3%	Lump Sum 5%	Period in Years	Lump Sum 3%	Lump Sum 5%
1	0.971	0.952	26	0.464	0.281
2	0.943	0.907	27	0.450	0.268
3	0.915	0.864	28	0.437	0.255
4	0.888	0.823	29	0.424	0.243
5	0.863	0.784	30	0.412	0.231
6	0.837	0.746	31	0.400	0.220
7	0.813	0.711	32	0.388	0.210
8	0.789	0.677	33	0.377	0.200
9	0.766	0.645	34	0.366	0.190
10	0.744	0.614	35	0.355	0.181
11	0.722	0.585	36	0.345	0.173
12	0.701	0.557	37	0.335	0.164
13	0.681	0.530	38	0.325	0.157
14	0.661	0.505	39	0.316	0.149
15	0.642	0.481	40	0.307	0.142
16	0.623	0.458	41	0.298	0.135
17	0.605	0.436	42	0.289	0.129
18	0.587	0.416	43	0.281	0.123
19	0.570	0.396	44	0.272	0.117
20	0.554	0.377	45	0.264	0.111
21	0.538	0.359	46	0.257	0.106
22	0.522	0.342	47	0.249	0.101
23	0.507	0.326	48	0.242	0.096
24	0.492	0.310	49	0.235	0.092
25	0.478	0.295	50	0.228	0.087

Actuarial calculations provided by Brett & Watson Pty Ltd, Consulting Actuaries.

Use this information as a guide only.



Banks Fixed Interest (12 Month Deposit Rate)

Calendar Year	Deposit Rate %
2009	4.1
2008	6.44
2007	5.9
2006	5.0
2005	4.6
2004	4.8
2003	3.9
2002	4.0
2001	4.1
2000	5.6

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South Australian Average Weekly Earnings

Males – Full-Time Adults (Average Weekly Ordinary Time Earnings) (Original)

Please note – following revisions to Average Weekly Earnings:

From the period August 2009, average weekly earnings industry series will only be produced for Australian & NZ standard industrial classification (ANZIC) industry divisions.

The historical series of average weekly earnings figures has been revised to reflect the implementation of ANZIC 2006.

Average Weekly Earnings estimates from August 1996 to May 2008 were revised to exclude salary sacrifice payments in line with ABS Information Paper: Revisions to AVE series (6302.055.001).

Average Weekly Earnings figures from Aug 1996 onwards exclude all amounts salary sacrificed.

Previously published AWE figures for Aug 1996 - May 2008 had included some salary sacrifice payments due to mis-reporting.

Date	Ave Weekly Earnings * Males – Full-Time Adults Ordinary time earnings Revised due to implementation of ANZIC 2006 \$	Ave Weekly Earnings * Males – Full-Time Adults Ordinary time earnings Revised due to AWE's excluding salary sacrifice payments \$	Ave Weekly Earnings Males – Full-Time Adults Ordinary time earnings AWE's including salary sacrifice payments due to mis-reporting \$
Aug 2010	1200.00		
May 2010	1190.80		
Feb 2010	1204.10		
Nov 2009	1193.70		
Aug 2009	1189.90		
May 2009	1180.40	1189.10	
Feb 2009	1157.80	1167.80	
Nov 2008	1159.10	1169.80	
Aug 2008	1125.60	1133.20	
May 2008	1100.10	1108.00	1111.70
Feb 2008	1086.60	1095.30	1100.40
Nov 2007	1086.70	1098.30	1103.10
Aug 2007	1060.30	1071.20	1079.60
May 2007	1041.40	1052.20	1059.80
Feb 2007	1025.70	1034.50	1038.90
Nov 2006	1024.80	1032.00	1037.40
Aug 2006	1012.00	1021.80	1028.40
May 2006	1003.80	1012.40	1019.40
Feb 2006	1012.20	1019.80	1026.20
Nov 2005	967.10	975.40	981.50
Aug 2005	959.20	965.80	971.70
May 2005	952.70	959.90	965.40
Feb 2005	948.10	955.70	960.70
Nov 2004	923.50	929.60	934.80
Aug 2004	911.40	916.00	921.00
May 2004	888.80	892.70	897.40
Feb 2004	886.80	892.30	897.00
Nov 2003	890.50	895.40	899.80

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Source: Australian Bureau of Statistics, 6302 Average Weekly Earnings Australia, Table 13D. Average Weekly Earnings, South Australia (Dollars) - Original



Individual Resident Income Tax Rates

Financial year	Taxable income \$	Tax rate %	Financial year	Taxable income \$	Tax rate %
2010 – 2011	0 – \$6,000	Nil	2005 – 2006	\$0 – \$6,000	Nil
	\$6,001 – \$37,000	15		\$6,001 – \$21,600	15
	\$37,001 – \$80,000	30		\$21,601 – \$63,000	30
	\$80,001 – \$180,000	37		\$63,001 – \$95,000	42
	\$180,001 and over	45c		Over \$95,000	47
2009 – 2010	\$1 – \$6,000	Nil	2004 – 2005	0-6,000	Nil
	\$6,001 – \$35,000	15		6,001-21,600	17
	\$35,001 – \$80,000	30		21,601-58,000	30
	\$80,001 – \$180,000	38		58,001-70,000	42
	\$180,001 and over	45		70,001 +	47
2008 – 2009	\$0 – \$6,000	Nil	2003 – 2004	0-6,000	Nil
	\$6,001 – \$34,000	15		6,001-21,600	17
	\$34,001 – \$80,000	30		21,601-52,000	30
	\$80,001 – \$180,000	40		52,001-62,500	42
	\$180,000 and over	45		62,501 +	47
2007 – 2008	\$0 – \$6,000	Nil	2002 – 2003	0-6,000	Nil
	\$6,001 – \$30,000	15	2001 – 2002	6,001-20,000	17
	\$30,001 – \$75,000	30	2000 – 2001	20,001-50,000	30
	\$75,001 – \$150,000	40		50,001-60,000	42
	Over \$150,000	45		60,001	47
2006 – 2007	\$0 – \$6,000	Nil	1999 – 2000	0-5,400	Nil
	\$6,001 – \$25,000	15	1998 – 1999	5,401-20,700	20
	\$25,001 – \$75,000	30	1997 – 1998	20,701-38,000	34
	\$75,001 – \$150,000	40	1996 – 1997	38,001-50,000	43
	Over \$150,000	45	1995 – 1996	50,001+	47
			1994 – 1995		

Tax rates are a guide only



Schedule 4 – Policy of insurance

Date of operation: Pre 1 May 2004

- (1) The insurer insures the owner of the motor vehicle and any other person who at any time drives or is a passenger in or on the vehicle, whether with or without the consent of the owner, in respect of all liability that may be incurred by the owner or other person in respect of the death of, or bodily injury to, any person caused by, or arising out of the use of, the vehicle in any part of the Commonwealth.

[cl 1 amended by 5/1993 s17(a), Commencement date 3.5.1993]

- (2) A person so insured warrants that he or she will not –
- (a) drive the vehicle, or do or omit to do anything in relation to the vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property or with reckless indifference as to whether such death, bodily injury or damage results; or
 - (b) drive the vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle; or
 - (c) drive the vehicle while there is present in his or her blood a concentration of .15 grams or more of alcohol in 100 millilitres of blood; or
 - (d) drive the vehicle while not duly licensed or otherwise permitted by law to drive the motor vehicle; or
 - (e) drive the vehicle while the vehicle is overloaded, or in an unsafe, unroadworthy or damaged condition; or
 - (f) use the vehicle otherwise than -
 - (i) for purposes stated in the application for registration, renewal of registration, exemption from registration or a permit, in respect of the vehicle; or
 - (ii) if trade plates are affixed to the vehicle - for purposes stated in the application for the issuing of those plates; or
 - (iii) for purposes agreed on between the insurer and the registered owner of the vehicle.

cl 2

amended by 127/1986 s7, Commencement date 8.2.1987

substituted by 5/1993 s17(b), Commencement date 3.5.1993

amended by 65/1996 s17, Commencement date 17.11.1997

- (3) The owner of the vehicle warrants that no other person will, with his or her knowledge or consent (which will be presumed in any proceedings in the absence of proof to the contrary), drive or use the vehicle, or do or omit to do anything in relation to the vehicle, contrary to any of the paragraphs of clause 2.

cl 3 inserted by 5/1993 s17(b) Commencement date 3.5.1993



Schedule 4 – Policy of insurance

Date of operation: 1 May 2004

- (1) The insurer insures the owner of the motor vehicle and any other person who at any time drives or is a passenger in or on the vehicle, whether with or without the consent of the owner, in respect of all liability that may be incurred by the owner or other person in respect of the death of, or bodily injury to, any person caused by, or arising out of the use of, the vehicle in any part of the Commonwealth.

[cl 1 amended by 5/1993 s17(a) Commencement date 3.5.1993]

- (2) A person so insured warrants that he or she will not –
- (a) drive the vehicle, or do or omit to do anything in relation to the vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property or with reckless indifference as to whether such death, bodily injury or damage results; or
 - (b) drive the vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle; or
 - (c) drive the vehicle while there is present in his or her blood a concentration of .15 grams or more of alcohol in 100 millilitres of blood; or
 - (d) drive the vehicle while not duly licensed or otherwise permitted by law to drive the motor vehicle; or
 - (e) drive the vehicle while the vehicle is overloaded, or in an unsafe, unroadworthy or damaged condition; or
 - (f) use the vehicle otherwise than -
 - (i) for purposes stated in the application for registration, renewal of registration, exemption from registration or a permit, in respect of the vehicle; or
 - (ii) if trade plates are affixed to the vehicle - for purposes stated in the application for the issuing of those plates; or
 - (iii) for purposes agreed on between the insurer and the registered owner of the vehicle.

[cl 2

amended by 127/1986 s7, Commencement date 8.2.1987

substituted by 5/1993 s17(b) Commencement date. 3.5.1993

amended by 65/1996 s17, Commencement date 17.11.1997]

- (3) The owner of the vehicle warrants that no other person will, with his or her knowledge or consent (which will be presumed in any proceedings in the absence of proof to the contrary), drive or use the vehicle, or do or omit to do anything in relation to the vehicle, contrary to any of the paragraphs of clause 2.

cl 3 inserted by 5/1993 s17(b) Commencement date. 3.5.1993

- (4) This policy of insurance does not extend to liability arising from death of, or bodily injury to, a participant in a road race caused by the act or omission of another participant in the road race.

[cl 4 inserted by 9/2004 s80 Commencement date. 1.5.2004]



Section 99(3) – Interpretation

Date of operation: Post 29 October 1998

- 99 (3)** Subject to subsection (3a), for the purposes of this Part and Schedule 4, death or bodily injury will be regarded as being caused by or as arising out of the use of a motor vehicle only if it is a consequence of –
- (a) the driving of the vehicle; or
 - (b) the vehicle running out of control; or
 - (c) a person travelling on a road colliding with the vehicle when the vehicle is stationary, or action taken to avoid such a collision.

[s99(3) substituted by 67/1998, s5 Commencement date. 29 October 1998]

[Amended by 16/2007 s3(2) Commencement date 5.4.2007]



Section 127 – Medical examination of claimants

Date of operation: Post 8 February 1987 except s6(a), 1 July 1996

- (1) In this section –
- claimant** means a person who has made a claim, or on whose behalf a claim has been made, for bodily injury caused by or arising out of the use of a motor vehicle.
- (2) A claimant must –
- (a) submit himself or herself to any medical examination by a legally qualified medical practitioner nominated by the insurer that the insurer may require; and
 - (b) within 21 days of consulting a legally qualified medical practitioner in relation to the injury to which the claim relates, or such longer period as may be reasonable in the circumstances of the case or as the insurer may allow, inform the insurer, by notice in writing, of –
 - (i) the name of the medical practitioner; and
 - (ii) the day on which the consultation occurred; and
 - (c) within 21 days of receiving (either personally or through a legal practitioner engaged by the claimant) a written report from a legally qualified medical practitioner consulted by the claimant in relation to the injury, or such longer period as may be reasonable in the circumstances of the case, send a copy of that report to the insurer.
- (3) A claimant cannot be required to submit to a medical examination under subsection (2)(a) more frequently than is permitted by the regulations.
- (4) The cost of a medical examination under subsection (2)(a) must be borne by the insurer.
- (5) If a claimant fails to comply with subsection (2)(a) –
- (a) the claimant is not entitled, until he or she complies with the subsection, to commence proceedings or to continue proceedings that have been commenced in respect of the injury; and
 - (b) if proceedings have been commenced, the court may award costs against the claimant; and
 - (c) the claimant is not entitled to damages or compensation for any period during which the failure continues.
- (6) If a claimant fails to comply with subsection (2)(b) or (c) and proceedings have been commenced before a court –
- (a) the court may award costs against the claimant; and
 - (b) the court may take that failure into account in assessing an award of compensation in favour of the claimant.
- (6a) Subsection (6) will not apply to any failure by a claimant to comply with subsection (2)(c) if the claimant has dealt with the medical report and taken other action in accordance with any rules of the court under which a party to proceedings may be relieved from the obligation to disclose to another party a medical report the disclosure of which would unfairly prejudice the party's case.
- [s 127(6a) inserted by 29/1996 s8 Commencement date 1.7.1996]
- (7) In deciding on an award of costs under subsection (6)(a) or a reduction in an award of compensation under subsection (6)(b), the court may take into account –
- (a) the effect that the non-compliance with subsection (2)(b) or (c) has had on the proper conduct of the case by any other party to the action; and
 - (b) the effect that that non-compliance may have had on the possibility of settling the case before trial.
- (8) Where a written report is obtained by the insurer on the findings made, or the opinions formed, by a legally qualified medical practitioner on the examination of a claimant under subsection (2)(a), the insurer must, within 21 days of receiving the report, send a copy of the report to the claimant (or a legal practitioner engaged by the claimant).



Section 127A – Control of medical services and charges for medical services to injured persons

Date of operation: Post 29 October 1998

(1) In this section –

injured person means a person who has suffered bodily injury caused by or arising out of the use of a motor vehicle;

prescribed limit, in relation to prescribed services, means the limit prescribed for the prescribed services for the purposes of section 32 of the *Workers Rehabilitation and Compensation Act 1986*;

prescribed scale, in relation to prescribed services, means the scale of charges prescribed for the prescribed services for the purposes of section 32 of the *Workers Rehabilitation and Compensation Act 1986*;

prescribed services means services of a kind referred to in section 32(2) of the *Workers Rehabilitation and Compensation Act 1986*, but does not include services of a kind excluded from the application of this section by notice made under subsection (2).

(2) The Minister may, by notice in the Gazette –

(a) require that, for the purposes of this section, the regulations made for the purposes of section 32 of the *Workers Rehabilitation and Compensation Act 1986* be read subject to modifications specified in the notice;

(b) exclude specified services from the application of this section;

(c) vary or revoke a notice under this subsection.

(3) The Minister must, before issuing a notice under subsection (2)(a) or a notice varying or revoking such a notice, consult with professional associations representing the providers of services to which the notice relates.

(4) For the purposes of this section, a reference in section 32 of the *Workers Rehabilitation and Compensation Act 1986* or the regulations made under that Act for the purposes of that section to a worker is to be taken to include a reference to an injured person.

(5) For the purposes of this section, a charge for prescribed services is excessive if –

(a) the charge exceeds the prescribed limit or the charge allowed for the prescribed services under the prescribed scale; or

(b) in the case of prescribed services for which there is not a prescribed limit and to which a prescribed scale does not apply – the charge exceeds an amount that the Magistrates Court considers reasonable for the provision of the services.

(6) The Magistrates Court may, on application by the insurer –

(a) where an injured person has been charged an excessive amount for prescribed services – reduce the charge by the amount of the excess and, if the charge has been paid to the service provider, order the service provider to pay the amount of the excess to the insurer; or

(b) where an injured person has received prescribed services that the Court considers were, in the circumstances of the case, inappropriate or unnecessary – disallow the charge for the services and, if the charge has been paid to the service provider, order the service provider to pay the amount of the charge to the insurer.

(7) Proceedings may not be commenced under subsection (6)(a) in relation to a charge for a prescribed service for which there is not a prescribed limit and to which a prescribed scale does not apply if, prior to the injured person being charged for the service, the insurer agreed to the amount of the charge.



Section 127A – Control of medical services and charges for medical services to injured persons (cont)

Date of operation: Post 29 October 1998

- (8) Proceedings may not be commenced under subsection (6) unless the insurer has –
- (a) first given the service provider notice that the insurer claims the charge to be excessive or the services to be inappropriate or unnecessary, as the case may be, and of the reasons for the claim; and
 - (b) allowed at least 30 days from the giving of the notice for the service provider and any professional association or other person acting on behalf of the service provider to respond to the claim and consult with the insurer; and
 - (c) given due consideration to any response to the claim and proposals for settlement of the matter made by or on behalf of the service provider; and
 - (d) given the service provider notice of the result of the insurer's consideration of the matter and allowed a further period of 30 days to elapse from the giving of that notice for any further consultations if requested by the service provider.
- (9) A person who provides prescribed services to an injured person, knowing that the person's injury has been caused by or arisen out of the use of a motor vehicle, must not, if a prescribed scale applies to the services, charge an amount for the services exceeding the amount allowed under the prescribed scale.
- Maximum penalty: \$1,250.
- (10) Proceedings may not be commenced under subsection (6) or for an offence against subsection (9) in respect of prescribed services provided in relation to bodily injury caused by or arising out of the use of a motor vehicle unless liability to damages (whether being the whole or part only of the amount claimed) in respect of that injury has been accepted by or established against an insured person or the insurer.
- (11) Proceedings for an offence against subsection (9) may be commenced at any time within 12 months after –
- (a) liability to damages (whether being the whole or part only of the amount claimed) has been accepted or established as referred to in subsection (10); or
 - (b) receipt by the insurer of an account for payment of the charge to which the proceedings relate, whichever is the later.
- (12) In proceedings for an offence against subsection (9) it is a defence if the defendant proves that, at the time the defendant charged for the services, the defendant, having made reasonable inquiries, had reason to believe that neither an insured person nor the insurer has or might have any liability to damages in respect of the injury.

[s127A inserted by 67/1998, s12. Commencement date 29 October 1998]



Section 35A – Motor Accidents

Date of operation: 29 October 1998 – 30 November 2002

Division 10 – Principles governing assessment of damages in relation to injuries arising from motor accidents

Motor accidents

35A. (1) Notwithstanding any other law, where damages are to be assessed for or in respect of an injury arising from a motor accident, the following provisions apply:

- (a) no damages shall be awarded for non-economic loss unless –
 - (i) the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least seven days; or
 - (ii) the injured person has reasonably incurred medical expenses of at least the prescribed minimum in connection with the injury; and
- (b) if damages are to be awarded for non-economic loss, they shall be assessed as follows:
 - (i) the injured person's total non-economic loss shall be assigned a numerical value on a scale running from 0 to 60 (the greater the severity of the non-economic loss, the higher the number); and
 - (ii) the damages to be awarded for non-economic loss shall then be calculated by multiplying the prescribed amount by the number assigned under subparagraph (i); and
- (c) no damages shall be awarded for mental or nervous shock except in favour of –
 - (i) a person who was physically injured in the accident, who was the driver of or a passenger in or on a motor vehicle involved in the accident or who was, when the accident occurred, present at the scene of the accident; or
 - (ii) a parent, spouse or child of a person killed, injured or endangered in the accident; and
- (d) if the injured person was incapacitated for work, no damages shall be awarded for loss of earning capacity in respect of the first week of the incapacity; and
- (da) the damages for loss of future earning capacity awarded to the injured person must not exceed the prescribed maximum; and
- (e) if –
 - (i) the injured person is to be compensated by way of a lump sum for loss of future earning capacity or other future losses; and
 - (ii) an actuarial multiplier is used for the purpose of calculating the present value of the future losses,then in determining the actuarial multiplier a prescribed discount rate shall be applied; and
- (f) no damages shall be awarded to compensate for the cost of the investment or management of the amount awarded; and
- (g) no damages shall be awarded –
 - (i) to allow for the recompense of gratuitous services except services of a parent, spouse or child of the injured person; or
 - (ii) to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person; and
- (h) damages awarded to allow for the recompense of gratuitous services of a parent, spouse or child shall not exceed four times State average weekly earnings; and



Section 35A – Motor Accidents (cont)

Date of operation: 29 October 1998 – 30 November 2002

- (i) if-
- (i) the injured person was the driver of a vehicle involved in the accident; and
 - (ii) the accident was attributable in part to the injured person's negligence; and
 - (iii) –
 - (A) a concentration of .08 grams or more of alcohol in 100 millilitres of blood was present in the injured person's blood at the time of the accident; or
 - (B) the injured person's ability to drive the motor vehicle was, at the time of the accident, impaired in consequence of the consumption of alcohol or a drug,
- the injured person is, because he or she drove in that condition, to be taken to have been negligent and the damages to be awarded must be reduced by the prescribed percentage or such greater percentage as the court thinks just and reasonable having regard to the extent to which the accident was attributable to the injured person's negligence; and
- (j) if the injured person (not being a person under the age of 16 years) was, contrary to the requirements of the *Road Traffic Act 1961*, at the time of the accident, not wearing a seat belt, the damages to be awarded must, on account of that contravention, be reduced by 25 per cent; and
- (ja) if-
- (i) the injured person (not being a person under the age of 16 years) was, contrary to the requirements of the *Road Traffic Act 1961*, at the time of the accident, not wearing a safety helmet; and
 - (ii) there is a causal connection between the injured person's failure to wear a safety helmet at the time of the accident and the extent of the person's injury,
- the damages to be awarded must, on account of that contravention, be reduced by 25 per cent; and
- (jb) if-
- (i) the injured person (not being a person under the age of 16 years) was, at the time of the accident, a passenger in or on a motor vehicle; and
 - (ii) the driver of the vehicle-
 - (A) had consumed alcohol in a quantity sufficient to result in a concentration of .08 grams or more of alcohol being present in 100 millilitres of his or her blood at the time of the accident; or
 - (B) had consumed alcohol or a drug in a quantity such that his or her ability to drive a motor vehicle was impaired at the time of the accident; and
 - (iii) the injured person was aware, or ought to have been aware, that the driver of the vehicle had consumed alcohol or a drug in such a quantity,
- the damages to be awarded must be reduced by the prescribed percentage; and
- (jc) if –
- (i) the injured person (not being a person under the age of 16 years) was a passenger in or on a motor vehicle with a passenger compartment but was not, at the time of the accident, within the compartment; and
 - (ii) there is a causal connection between the injured person's position in or on the vehicle at the time of the accident and the extent of the person's injury, the damages to be awarded must, on account of the injured person's position in or on the vehicle, be reduced by 25 per cent; and
- (k) no interest shall be awarded on damages compensating a non-economic or prospective loss; and



Section 35A – Motor Accidents (cont)

Date of operation: 29 October 1998 – 30 November 2002

- (2) Notwithstanding the limits fixed by subsection (1)(h), if the court is satisfied that by rendering gratuitous services a parent, spouse or child has saved or will save the injured person the cost of engaging another person to provide those services (those services being reasonably required by the injured person), the court may make an award of damages in excess of that limit but the damages awarded in that event must not reflect a rate of remuneration for the person providing the services in excess of State average weekly earnings.
- (3) If one or more of paragraphs (j), (ja), (jb) or (jc) of subsection (1) apply to the injured person, the reduction or reductions required to be made under that paragraph or those paragraphs in the damages to be awarded must be made after the court makes any other reduction that is based on the injured person's contributory negligence.
- (3a) A reduction in the damages to be awarded is not required to be made under subsection (1)(jb) or (jc) if, in the circumstances of the case, the injured person could not reasonably be expected to have avoided travelling as a passenger in or on the motor vehicle or as a passenger outside the passenger compartment of the motor vehicle, as the case may be.
- (4) The defence of *volenti non fit injuria* is not available against the injured person where –
 - (a) the injured person was, at the time of the accident, a voluntary passenger in or on a motor vehicle; and
 - (b) the driver's ability to drive the motor vehicle was impaired in consequence of the consumption of alcohol or a drug and the injured person was aware, or ought to have been aware, of the impairment.
- (5) For the purposes of this section, an injury will be regarded as being caused by or arising out of the use of a motor vehicle only if it is a consequence of –
 - (a) the driving of the vehicle; or
 - (b) the vehicle running out of control; or
 - (c) a person travelling on a road colliding with the vehicle when the vehicle is stationary, or action taken to avoid such a collision.
- (5a) A finding of a court in proceedings for an offence as to –
 - (a) a concentration of alcohol present in 100 millilitres of the blood of the driver of a motor vehicle; or
 - (b) incapacity of the driver of a motor vehicle to exercise effective control of the vehicle owing to the influence of intoxicating liquor or a drug,

will be treated as determinative of the issue for the purposes of the application of subsection (1)(i)(iii) or (jb)(ii) in proceedings for damages in respect of personal injury arising from a motor accident.

- (6) In this section –

"the Consumer Price Index" means the Consumer Price Index (all groups index for Adelaide) published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth;

"court" includes an authority with judicial or quasi-judicial powers;

"drive" includes ride, and **"driver"** and **"driving"** have corresponding meanings;

"injury" means bodily injury and includes –

- (a) mental and nervous shock; and
- (b) death;

and **"injured"** has a corresponding meaning;

"medical expenses" includes –

- (a) the fees of medical practitioners and other professional medical advisers and therapists;
- (b) the cost of hospitalisation;
- (c) the cost of medicines and therapeutic appliances;



Section 35A – Motor Accidents (cont)

Date of operation: 29 October 1998 – 30 November 2002

“motor accident” means an incident in which injury is caused by or arises out of the use of a motor vehicle;

“motor vehicle” means a motor vehicle as defined in the *Motor Vehicles Act 1959* and includes a vehicle that –

- (a) runs on a railway, tramway or other fixed track or path; and
- (b) is operated by –
 - (i) a person under or pursuant to a contract, licence or authority under the *Passenger Transport Act 1994*; or
 - (ii) the Australian National Railways Commission; or
 - (iii) a person who holds an accreditation under the *Rail Safety Act 1996*;

“non-economic loss” means –

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

“passenger compartment” of a motor vehicle means a part of the vehicle designed for the carriage of passengers;

“the prescribed amount” means –

- (a) in relation to an injury arising from a motor accident that occurred during 1987 – \$1,000;
- (b) in relation to an injury arising from a motor accident that occurred in a subsequent calendar year – a sum (calculated to the nearest multiple of \$10) that bears to \$1,000 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter, 1986;

“the prescribed discount rate” means –

- (a) if no percentage is fixed by regulation for the purposes of this definition – 5 per cent;
- (b) if such a percentage is fixed by regulation – the percentage so fixed;

“the prescribed maximum” means –

- (a) in relation to an injury arising from a motor accident that occurred during 1999 – \$2 million;
- (b) in relation to an injury arising from a motor accident that occurred in a subsequent calendar year – a sum (calculated to the nearest multiple of \$10) that bears to \$2 million the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 1998;

“the prescribed minimum” means –

- (a) in relation to an injury arising from a motor accident that occurred before 1 January 1999 – \$1,400;
- (b) in relation to an injury arising from a motor accident that occurred during 1999 – \$2,500;
- (c) in relation to an injury arising from a motor accident that occurred in a subsequent calendar year – a sum (calculated to the nearest multiple of \$10) that bears to \$2 500 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 1998;



Section 35A – Motor Accidents (cont)

Date of operation: 29 October 1998 – 30 November 2002

“the prescribed percentage” means –

- (a) if the concentration of alcohol in the blood of the driver at the time of the accident was .15 grams or more in 100 millilitres of blood or the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle – 50 per cent;
- (b) in any other case – 25 per cent;

“State average weekly earnings”, means the amount published by the Commonwealth Statistician as an estimate of Average Weekly Earnings for Ordinary Hours of Work for each Full-time Employed Male Unit in the State.

- (7) This section is intended to apply to the assessment of damages in respect of an injury arising from a motor accident that occurred in this State –
 - (a) irrespective of whether the assessment is made by a court of the State or by a court of some other state, territory or country; and
 - (b) notwithstanding that the court by which the assessment is made would not (but for this subsection) assess the damages in accordance with, or by reference to, South Australian law.
- (8) If –
 - (a) damages in respect of an injury arising from a motor accident that occurred in this State are assessed by a court that is not a court of the State; and
 - (b) notwithstanding subsection (7), the court does not assess damages in accordance with this section and the amount of the damages awarded exceeds the amount that would have been awarded in an action before a court of the State; and
 - (c) the State Government Insurance Commission or the Crown is liable to pay the damages awarded either under a policy of insurance or on the basis of vicarious liability,

the State Government Insurance Commission or the Crown is entitled to recover from the person to whom the damages were awarded any amount in excess of the damages that would have been awarded by a court of the State had the damages been assessed by such a court in accordance with this section.

- (9) In the course of proceedings under subsection (8) a court may –
 - (a) receive in evidence any transcript of evidence in proceedings before the court by which the damages were awarded and draw any conclusions of fact from the evidence that it considers proper; or
 - (b) adopt any of that court’s findings of fact

[S35A amended by 67/1998. Commencement date: 29 October 1998.
S35A Repealed by 21/2002, Commencement date: 1 December 2002]



Part 2A – Damages for personal injury

Date of operation: 1 December 2002 – 30 April 2004

Key legislative amendments to Part 2A:

- Insert new Part 2A Damages for Personal Injury (ss23, 24A-24O)
- Repeal of Part 3, Division 10 comprising section 35A.
- See Comparative table for redesignation of section numbers: Wrongs Act 1936, Part 2A – Damages for Personal Injury, comprising ss24-24O – Formerly Wrongs Act 1936, s 35A.

Division 1 – Preliminary

Interpretation

24. In this Part –

“accident” means an incident out of which personal injury arises and includes a motor accident;

“Consumer Price Index” means the Consumer Price Index (all groups index for Adelaide) published by the Australian Statistician under the *Census and Statistics Act 1905* (Cwth);

“drive” includes ride, and “driver” and “rider” have corresponding meanings;

“intoxicated” – a person is intoxicated if under the influence of alcohol or a drug to the extent that the person’s capacity to exercise due care and skill is impaired;

“medical expenses” includes –

- (a) the fees of medical practitioners and other professional medical advisers and therapists;
- (b) the cost of hospitalisation; and
- (c) the cost of medicines and therapeutic appliances;

“motor accident” means an accident caused by or arising out of the use of a motor vehicle;

“motor vehicle” means –

- (a) a motor vehicle as defined in the *Motor Vehicles Act 1959*; or
- (b) a vehicle operated on a railway, tramway or other fixed track or path by –
 - (i) a person who holds a contract, licence or authority under the *Passenger Transport Act 1994*; or
 - (ii) a person who holds an accreditation under the *Rail Safety Act 1996*;

“non-economic loss” means –

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



Part 2A – Damages for personal injury (cont)

Date of operation: 1 December 2002 – 30 April 2004

“passenger compartment” of a motor vehicle means a part of the vehicle designed for the carriage of passengers;

“personal injury” or **“injury”** means bodily injury and includes –

- (a) mental and nervous shock; and
- (b) death,

and **“injured”** has a corresponding meaning;

“prescribed discount rate” means-

- (a) if no percentage is fixed by regulation for the purposes of this definition – 5 per cent; or
- (b) if such a percentage is fixed by regulation-the percentage so fixed;

“prescribed maximum” means –

- (a) in relation to an injury arising from an accident that occurred during 2002 – \$2.2 million;
- (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year – a sum (calculated to the nearest multiple of \$10) that bears to \$2.2 million the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;

“prescribed minimum” means –

- (a) in relation to an injury arising from an accident that occurred during 2002 – \$2, 750;
- (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year – a sum (calculated to the nearest multiple of \$10) that bears to \$2,750 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;

“State average weekly earnings” means the amount determined in accordance with the regulations by reference to publications of the Australian Statistician.

Application of this Part

24A. This Part applies where damages are claimed for personal injury –

- (a) arising from a motor accident (whether caused intentionally or unintentionally); or
- (b) arising from an accident caused wholly or in part –
 - (i) by negligence; or
 - (ii) by some other unintentional tort on the part of a person other than the injured person; or
 - (iii) by a breach of a contractual duty of care.

Division 2 – Assessment of Damages

Damages for non-economic loss

24B. (1) Damages may only be awarded for non-economic loss if –

- (a) the injured person’s ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days; or
- (b) medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.



Part 2A – Damages for personal injury (cont)

Date of operation: 1 December 2002 – 30 April 2004

- (2) If damages are to be awarded for non-economic loss, they must be assessed as follows:
- (a) the injured person's total non-economic loss is to be assigned a numerical value (the **scale value**) on a scale running from 0 to 60 (the scale reflecting 60 equal gradations of non-economic loss, from a case in which the non-economic loss is not severe enough to justify any award of damages to a case in which the injured person suffers non-economic loss of the gravest conceivable kind);
 - (b) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2002 by multiplying the scale value by \$1 710;
 - (c) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2003 as follows:
 - (i) if the scale value is 10 or less – by multiplying the scale value by \$1,150;
 - (ii) if the scale value is 20 or less but more than 10 – by adding to \$11,500 an amount calculated by multiplying the number by which the scale value exceeds 10 by \$2,300;
 - (iii) if the scale value is 30 or less but more than 20 – by adding to \$34,500 an amount calculated by multiplying the number by which the scale value exceeds 20 by \$3,450;
 - (iv) if the scale value is 40 or less but more than 30 – by adding to \$69,000 an amount calculated by multiplying the number by which the scale value exceeds 30 by \$4,600;
 - (v) if the scale value is 50 or less but more than 40 – by adding to \$115,000 an amount calculated by multiplying the number by which the scale value exceeds 40 by \$5,750;
 - (vi) if the scale value is 60 or less but more than 50 – by adding to \$172,500 an amount calculated by multiplying the number by which the scale value exceeds 50 by \$6,900;
 - (d) the damages for non-economic loss in relation to an injury arising from an accident that occurred in a subsequent calendar year are to be calculated in accordance with paragraph (c) but the amount arrived at is to be adjusted (to the nearest multiple of \$10) by multiplying it by a proportion obtained by dividing the Consumer Price Index for the September quarter of the previous calendar year by the Consumer Price Index for the September quarter 2002.

Example –

Suppose that A is injured in an accident that occurred in 2003 and claims damages for personal injury. The case is one in which the criteria under which damages for non-economic loss may be awarded are satisfied. In assessing those damages, A's total non-economic loss is assigned by the court a scale value of 23. The damages for non-economic loss will, therefore, be \$44 850, calculated as follows:

$$\$34,500 + (3 \times \$3,450) = \$44,850.$$

Damages for mental or nervous shock

24C. Damages may only be awarded for mental or nervous shock if the injured person –

- (a) was physically injured in the accident or was present at the scene of the accident when the accident occurred; or
- (b) is a parent, spouse or child of a person killed, injured or endangered in the accident.

Damages for loss of earning capacity

24D. (1) If the injured person was incapacitated for work, damages for loss of earning capacity are not to be awarded in respect of the first week of the incapacity.

(2) Total damages for loss of earning capacity (excluding interest awarded on damages for any past loss) are not to exceed the prescribed maximum.



Part 2A – Damages for personal injury (cont)

Date of operation: 1 December 2002 – 30 April 2004

Lump sum compensation for future losses

24E. If –

- (a) an injured person is to be compensated by way of lump sum for loss of future earnings or other future losses; and
- (b) an actuarial multiplier is used for the purpose of calculating the present value of the future losses, then, in determining the actuarial multiplier, a prescribed discount rate is to be applied.

Exclusion of interest on damages compensating non-economic or future loss

24F. Interest is not to be awarded on damages compensating non-economic or future loss.

Exclusion of damages for cost of management or investment

24G. Damages are not to be awarded to compensate for the cost of the investment or management of the amount awarded.

Damages in respect of gratuitous services

24H. (1) Damages are not to be awarded –

- (a) to allow for the recompense of gratuitous services except services of a parent, spouse or child of the injured person; or
 - (b) to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person.
- (2) Damages awarded to allow for the recompense of gratuitous services of a parent, spouse or child are not to exceed an amount equivalent to 4 times State average weekly earnings.
- (3) However, the court may make an award in excess of the limit prescribed by subsection (2) if satisfied that –
- (a) the gratuitous services are reasonably required by the injured person; and
 - (b) it would be necessary, if the services were not provided gratuitously by a parent, spouse or child of the injured person to engage another person to provide the services for remuneration,

but, in that event, the damages awarded are not to reflect a rate of remuneration for the person providing the services in excess of State average weekly earnings.

Division 3 – Special provisions in regard to liability

Exclusion of liability in certain cases

24I. (1) Liability for damages is excluded if the court –

- (a) is satisfied beyond reasonable doubt that the accident occurred while the injured person was engaged in conduct constituting an indictable offence; and
 - (b) is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.
- (2) However, the court may award damages despite this exclusionary principle if satisfied that –
- (a) the circumstances of the particular case are exceptional; and
 - (b) the principle would, in the circumstances of the particular case, operate harshly and unjustly.
- (3) For the purposes of subsection (1)(a), a relevant conviction or acquittal is to be accepted as conclusive evidence of guilt or innocence of the offence to which it relates.
- (4) This section does not affect the operation of a rule of law relating to joint illegal enterprises.



Part 2A – Damages for personal injury (cont)

Date of operation: 1 December 2002 – 30 April 2004

Presumption of contributory negligence where injured person intoxicated

- 24J. (1)** If the injured person was intoxicated at the time of the accident, and contributory negligence is alleged by the defendant, contributory negligence will, subject to this section, be presumed.
- (2) The injured person may, however, rebut the presumption by establishing on the balance of probabilities –
- (a) that the intoxication did not contribute to the accident; or
 - (b) that the intoxication was not self-induced.
- (3) Unless the presumption of contributory negligence is rebutted, the court must assess damages on the basis that the damages to which the injured person would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by 25 per cent or a greater percentage determined by the court to be appropriate in the circumstances of the case.
- (4) If, in the case of a motor accident, the injured person was the driver of a motor vehicle involved in the accident and the evidence establishes –
- (a) that the concentration of alcohol in the injured person's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,

the minimum reduction prescribed by subsection (3) is to be increased to 50 per cent.

Presumption of contributory negligence where injured person relies on care and skill of person known to be intoxicated

- 24K. (1)** If –
- (a) the injured person –
 - (i) was of or above the age of 16 years at the time of the accident; and
 - (ii) relied on the care and skill of a person who was intoxicated at the time of the accident; and
 - (iii) was aware, or ought to have been aware, that the other person was intoxicated; and
 - (b) the accident was caused through the negligence of the other person; and
 - (c) the defendant alleges contributory negligence on the part of the injured person,

contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebutable.

Exception –

The injured person may rebut the presumption by establishing, on the balance of probabilities, that –

- (a) the intoxication did not contribute to the accident; or
 - (b) the injured person could not reasonably be expected to have avoided the risk.
- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.
- (4) A passenger in a motor vehicle is taken, for the purposes of this section, to rely on the care and skill of the driver.
- (5) If, in the case of a motor accident, the evidence establishes –
- (a) that the concentration of alcohol in the driver's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,



the fixed statutory reduction prescribed by subsection (3) is increased to 50 per cent.

Part 2A – Damages for personal injury (cont)

Date of operation: 1 December 2002 – 30 April 2004

- (6) This section operates to the exclusion of the defence of *volenti non fit injuria* insofar as it relates to the voluntary assumption of a risk arising from the intoxication of another.

Evidentiary provision relating to intoxication

- 24L. (1)** A finding by a court that there was present in the blood of a person, at or about the time of an accident, a concentration of alcohol of .08 or more grams in 100 millilitres of blood is to be accepted, for the purposes of this Part, as conclusive evidence of the facts so found and that the person was intoxicated at the time of the accident.
- (2) A finding by a court that a person was at or about the time of an accident so much under the influence of alcohol or a drug as to be unable to exercise effective control of a motor vehicle is to be accepted, for the purposes of this Part, as conclusive evidence that the person was, at the time of the accident, so much under the influence of alcohol or a drug as to be unable to exercise effective control of the motor vehicle.

Non-wearing of seatbelt, etc.

- 24M. (1)** If the injured person was injured in a motor accident, was of or above the age of 16 years at the time of the accident and –
- (a) the injured person was not, at the time of the accident, wearing a seatbelt as required under the *Road Traffic Act 1961*; or
 - (b) one of the following factors contributed to the accident or the extent of the injury:
 - (i) the injured person was not wearing a safety helmet as required under the *Road Traffic Act 1961*;
 - (ii) the injured person was a passenger in or on a motor vehicle with a passenger compartment but was not in the passenger compartment at the time of the accident,

contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebutable.

Exception –

In the case mentioned in subsection (1)(b)(ii) – the injured person may rebut the presumption by establishing, on the balance of probabilities, that the injured person could not reasonably be expected to have avoided the risk.

- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.

How case is dealt with where damages are liable to reduction on account of contributory negligence

- 24N. (1)** If damages are liable to reduction on account of actual or presumed contributory negligence, the court is to proceed in accordance with this section.
- (2) First, the court is to assess the damages to which the injured person would be entitled if there were no reduction for contributory negligence.
- (3) Secondly, the court is to –
- (a) determine the extent of the injured person's contributory negligence, leaving out of the account factors for which a fixed statutory reduction is prescribed by this Part but taking into account the injured person's intoxication (if relevant) and factors that would, apart from this Part, amount to contributory negligence; and
 - (b) determine a percentage reduction to be made on account of these forms of contributory negligence (which cannot be less in a case involving intoxication than the relevant minimum prescribed by this Part); and
 - (c) then reduce the amount assessed under subsection (2) by the percentage determined under this subsection.



Part 2A – Damages for personal injury (cont)

Date of operation: 1 December 2002 – 30 April 2004

- 4) Thirdly, the court is to apply any applicable fixed statutory reduction to the amount assessed under subsection (2) and reduced, if required, under subsection (3), and, if 2 or more fixed statutory reductions are required, the court is to make them in series.

Example –

Suppose that an amount of \$100,000 is subject to 2 fixed statutory reductions of 25 per cent. In this case, the amount is first reduced to \$75,000 and then reduced to \$56,250.

- 5) There is no necessary correlation between a finding of contributory negligence in relation to a cause of action under this Part and an apportionment of liability in relation to a different cause of action arising from the same facts.

Example –

Suppose that A and B are both drivers of motor vehicles that come into collision as a result of the negligence of both with resultant personal injuries to each other and also to C, a passenger in B's vehicle. Suppose that B's damages are reduced by 60 per cent under this Part as a result of actual or presumptive contributory negligence causally related to the occurrence of the accident. This is not to imply that, in A's action against B, no reduction beyond 40 per cent can be made on a similar basis. In C's action against A and B, responsibility will be apportioned between A and B without regard to the provisions of this Part.

Division 4 – Territorial application

Territorial application

240. This Part is intended to apply to the exclusion of inconsistent laws of any other place to the determination of liability and the assessment of damages for personal injury arising from an accident occurring in this State.

[Part 2A comprising ss24 – 240 inserted by 21, 2002 s3. Commencement date: 1 December 2002

Act 21, 2002 repealed Part 3, Division 10 comprising Section 35A]



Comparative table – *Wrongs Act 1936*

Wrongs Act 1936, Part 2A – Damages for Personal Injury, comprising ss24 – 24O – formerly *Wrongs Act 1936*, s 35A

<i>Wrongs Act 1936</i> , s35A Pre 1 December 2002	<i>Wrongs Act 1936</i> , ss24 – 24O Post 1 December 2002
Part 3 – General Provisions	Part 2A – Damages for personal injury
Division 10 – Principles governing assessment of damages in relation to injuries arising from motor accidents	Division 2– Assessment of damages
section 35A (1)(a) (in amended form)	Damages for non-economic loss section 24B(1)
section 35A (1)(b) (in amended form)	section 24B(1)
section 35A (1)(c) (in amended form)	Damages for mental or nervous shock section 24C
section 35A (1)(d) (in amended form)	Damages for loss of earning capacity section 24D(1)
section 35A (1)(da) (in amended form)	section 24D(2)
section 35A (1)(e)	Lump sum compensation for future losses section 24E
section 35A (1)(f) (in amended form)	Exclusion of damages for cost of management or investment section 24G
section 35A (1)(g)(i) (in amended form)	Damages in respect of gratuitous services section 24H(1)(a)
section 35A (1)(g)(ii)	section 24H(1)(b)
section 35A (1)(h)	section 24H(2)
	Division 3 – Special Provisions in Regard to Liability
– (new section)	Exclusion of liability in certain cases section 24I
section 35A (1)(i) (in amended form)	Presumption of contributory negligence where injured person intoxicated section 24J
section 35A (1)(j) (in amended form)	Non-wearing of seatbelt, etc. section 24M
section 35A (1)(ja) (in amended form)	section 24M
section 35A (1)(jb) (in amended form)	Presumption of contributory negligence where injured person relies on care and skill of person known to be intoxicated section 24K
section 35A (1)(jc) (in amended form)	section 24M
section 35A (1)(k) (in amended form)	Exclusion of interest on damages compensating non-economic or prospective loss section 24F
section 35A (2) (in amended form)	Damages in respect of gratuitous services section 24H(3)
section 35A (3) (in amended form)	How case is dealt with where damages are liable to reduction on account of contributory negligence section 24N
section 35A (3a) (deleted)	–



Comparative table (cont)

<i>Wrongs Act 1936, s35A</i> Pre 1 December 2002	<i>Wrongs Act 1936, ss24 – 24O</i> Post 1 December 2002
section 35A (4) (in amended form)	Presumption of contributory negligence where injured person relies on care and skill of person known to be intoxicated section 24K(6)
section 35A (5) (in amended form)	Application of this Part section 24A
section 35A (5a) (in amended form)	Evidentiary provision relating to intoxication section 24L
section 35A (6) (in amended form)	Interpretation section 24
section 35A (7) (in amended form)	Territorial application section 24O
section 35A (8) (in amended form)	section 24O
section 35A (8) (deleted)	–
– (new division)	Division 13 – Good samaritans
– (new section)	section 38
– (new division)	Division 14 – Expressions of regret
– (new section)	section 39



Division 10A – Unreasonable delay in resolution of claim

Date of operation: 10 March 2003 – 30 April 2004

Definitions

35B. In this Division –

“**dependant**” of a deceased person means any person on whose behalf an action could (assuming that he or she had been financially dependent on the deceased person) be brought under Part 2;

“**personal injury**” includes –

- (a) a disease;
- (b) any impairment of a physical or mental condition.

Damages for unreasonable delay in resolution of a claim

35C. (1) Damages in the nature of exemplary damages may be awarded, on a claim by the personal representative of a deceased person, against another person (the person in default) if the conditions prescribed by subsection (2) are satisfied.

(2) The conditions for an award of damages under this section are as follows:

- (a) the deceased person suffered personal injury giving rise to a right to compensation or damages; and
- (b) the deceased person made a claim in writing (giving a reasonable indication of the grounds of the claim) for compensation or damages for the personal injury; and
- (c) a person (the **person in default**) unreasonably delayed the resolution of the claim knowing, or in circumstances in which he or she ought to have known, that the deceased person was, because of advanced age, illness or injury, at risk of dying before the resolution of the claim; and
- (d) the person in default is –
 - (i) the person against whom the deceased person’s claim lay; or
 - (ii) some other person who controlled or had an interest in the defence of the claim; and
- (e) the deceased person died before compensation or damages for non-economic loss were finally determined by agreement between the parties or by judgment or decision of a court or tribunal; and
- (f) damages have not been recovered and are not recoverable under section 3(2) of the *Survival of Causes of Action Act 1940*.

(3) For the purposes of subsection (2) –

- (a) the question whether a person has unreasonably delayed resolution of a claim is to be determined in the context of the proceedings as a whole (including negotiations and other non-curial proceedings) and the conduct of the deceased person and any other parties to the proceedings;
- (b) a lawful fee agreement between a legal practitioner and client does not give the legal practitioner an interest in the defence of the claim;
- (c) if a judgment or decision of a court or tribunal is liable to appeal, then –
 - (i) if there is no appeal – the judgment or decision finally determines compensation or damages on the date it is given; but
 - (ii) if there is an appeal – there is no final determination of compensation or damages until the appeal is determined.



Division 10A – Unreasonable delay in resolution of claim (cont)

Date of operation: 10 March 2003 – 30 April 2004

- (4) A court or tribunal that has, or would have had, jurisdiction in an action for damages, workers compensation or other monetary compensation for the personal injury has jurisdiction to award damages on a claim under this section but such a claim must be brought before the court or tribunal within 3 years after the deceased person's death (either as a separate proceeding or by introducing it as an additional claim in existing proceedings for damages or compensation for the personal injury).
- (5) In determining the amount of the damages to be awarded under this section, the court or tribunal is to have regard to –
 - (a) the need to ensure that the person in default does not benefit from the unreasonable delay in the resolution of the deceased person's claim; and
 - (b) the need to punish the person in default for the unreasonable delay; and
 - (c) any other relevant factor.
- (6) Damages may be awarded under this section despite any statutory restriction on the award of exemplary or punitive damages but, if the deceased person's claim was for worker's compensation, the damages cannot exceed the total amount of the compensation for non-economic loss to which the deceased person would have been entitled if the claim had been resolved immediately before his or her death.
- (7) Damages awarded under this section are to be paid, at the direction of the court or tribunal –
 - (a) to the dependants of the deceased person in proportions determined by the court or tribunal; or
 - (b) to the estate of the deceased person.
- (8) In exercising its discretion under subsection (7), the court or tribunal –
 - (a) is to make an award to dependants rather than to the estate unless there are no dependants or there is some other good reason to the contrary; and
 - (b) in apportioning between dependants is to have regard to other relevant statutory entitlements (if any) that arise on the death of the deceased person.
- (9) This section applies if the deceased person died on or after the commencement of this section (whether the circumstances out of which the personal injury claim arose occurred before or after that date).

[Division 10 of Part 3 comprising ss 35B – 35D inserted by 38, 2002 s 4, Commencement date: 10 March 2003]



Section 3 – Interpretation

Date of operation: Post 1 May 2004

Key legislative amendments:

- *Wrongs Act 1936 redesignated as Civil Liability Act 1936*
 - *Section numbering redesignated*
 - *Insert new Part 6 – Negligence*
 - *Insert new Part 7 – Contributory Negligence*
 - *Substitute Part 8 – Damages for Personal Injury*
 - *Insert new Division 6 – Limitation on the award of damages for the cost of raising a child.*
- See *Comparative table of Civil Liability Act 1936 to Wrongs Act 1936 for redesignation of section numbers.*

3 – Interpretation

In this Act, unless the contrary intention appears –

accident means an incident out of which personal injury arises and includes a motor accident;

brother includes half-brother and step-brother;

child includes son, daughter, grandson, granddaughter, step-son and step-daughter;

consequential mental harm means mental harm that is a consequence of bodily injury to the person suffering the mental harm;

Consumer Price Index means the Consumer Price Index (all groups index for Adelaide) published by the Australian Statistician under the *Census and Statistics Act 1905* (Cwth);

contributory negligence means a failure by a person who suffers harm to exercise reasonable care and skill for his or her own protection or for the protection of his or her own interests;

damages means compensation or damages for harm and includes solatium but does not include –

- (a) workers compensation; or
- (b) compensation under a statutory scheme for compensating victims of crime;

drive includes ride, and **driver** and **rider** have corresponding meanings;

duty of care means a duty to take reasonable care or to exercise reasonable skill (or both);

harm includes loss of life, personal injury, damage to property, economic loss and loss of any other kind;

health care service includes –

- (a) a diagnostic service;
- (b) a therapeutic service;
- (c) any other service directed at maintaining or restoring health;

intoxicated – a person is intoxicated if under the influence of alcohol or a drug to the extent that the person's capacity to exercise due care and skill is impaired;

medical expenses includes –

- (a) the fees of medical practitioners and other professional medical advisers and therapists; and
- (b) the cost of hospitalisation; and
- (c) the cost of medicines and therapeutic appliances;

mental harm means impairment of a person's mental condition;

motor accident means an incident in which personal injury arises out of the use of a motor vehicle;

motor vehicle means –



Section 3 – Interpretation (cont)

Date of operation: Post 1 May 2004

- (a) a motor vehicle as defined in the *Motor Vehicles Act 1959*; or
- (b) a vehicle operated on a railway, tramway or other fixed track or path by –
 - (i) a person who holds a contract, licence or authority under the *Passenger Transport Act 1994*; or
 - (ii) a person who holds an accreditation under the *Rail Safety Act 1996*;

negligence means failure to exercise reasonable care and skill, and includes a breach of a tortious, contractual or statutory duty of care;

newspaper means any newspaper or journal printed for sale and published in the State periodically at intervals not exceeding thirty-one days;

non-economic loss means –

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

obvious risk – see section 36;

parent includes father, mother, grandfather, grandmother, step-father and step-mother;

passenger compartment of a motor vehicle means a part of the vehicle designed for the carriage of passengers;

personal injury or **injury** means bodily injury and includes –

- (a) mental harm;
- (b) death;

precaution includes any action to avoid or reduce the risk of harm;

prescribed discount rate means –

- (a) if no percentage is fixed by regulation for the purposes of this definition – 5 per cent; or
- (b) if such a percentage is fixed by regulation – the percentage so fixed;

prescribed maximum means –

- (a) in relation to an injury arising from an accident that occurred during 2002 – \$2.2 million; or
- (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year – a sum (calculated to the nearest multiple of \$10) that bears to \$2.2 million the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;

prescribed minimum means –

- (a) in relation to an injury arising from an accident that occurred during 2002 – \$2,750; or
- (b) in relation to an injury arising from an accident that occurred in a subsequent calendar year – a sum (calculated to the nearest multiple of \$10) that bears to \$2,750 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;

pure mental harm means mental harm other than consequential mental harm;

putative spouse in relation to any cause of action arising under this Act means a person adjudged under the *Family Relationships Act 1975* to have been a putative spouse on the day on which the cause of action arose;



Section 3 – Interpretation (cont)

Date of operation: Post 1 May 2004

sister includes half-sister and step-sister;

spouse in relation to any cause of action arising under this Act means a person –

- (a) who was a lawful spouse on the day on which the cause of action arose; or
- (b) who is adjudged to have been a putative spouse on the day on which the cause of action arose,

and husband and wife are to be construed accordingly;

State average weekly earnings means the amount determined in accordance with the regulations by reference to publications of the Australian Statistician.



Part 5 – Wrongful acts or neglect causing death (sections 23-30)

Date of operation: Post 1 May 2004

23 Liability for death caused wrongfully

Whenever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to an indictable offence.

24 How to bring action etc

- (1) Every such action shall be for the benefit of the wife, husband, parent, brother, sister and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.
- (2) In every such action, the court may, subject to this Act, give such damages as it thinks proportioned to the harm resulting from the death to the parties respectively for whom and for whose benefit the action is brought.
- (2a) In any such action in respect of the death of any person after the passing of the Wrongs Act Amendment Act 1939 damages may be awarded in respect of any medical expenses incurred as a result of the injury causing the death and the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.
- (2aa) In assessing damages under this section in any action based on a death occurring after the passing of the *Wrongs Act Amendment Act 1956* there shall not be taken into account –
 - (a) any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of the said Act;
 - (b) any sum paid or payable consequent on the death of the deceased person as a gratuity to any person for whose benefit the action is brought;
 - (c) any superannuation payments or benefits consequent upon the death of the deceased person;
 - (d) any sum paid or payable consequent upon the death of the deceased person under any contributory medical hospital death or funeral benefit scheme;
 - (e) any sum paid or payable as a social service benefit or pension by the Governments of the Commonwealth of Australia, or the United Kingdom, or the State of South Australia to or in respect of any person for whose benefit the action is brought;
 - (f) any sum recovered or recoverable for the benefit of the estate of the deceased under section 3(2) of the *Survival of Causes of Action Act 1940* (which permits the recovery of damages for certain kinds of non-economic loss where the deceased dies of a dust-related condition).
- (3) The amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the court finds and directs.
- (4) Where a deceased person is survived by a legal spouse and a putative spouse, the action shall, subject to this section, be brought for the benefit of both.
- (5) An action need not be brought under this section for the benefit of a person who has, by notice in writing served upon the executor or administrator of the deceased, renounced the benefit of this section.
- (6) Where the court considers it appropriate that any person for whose benefit an action lies under this section should present an independent claim for the benefit of an action under this section, it may permit or require that person to appear or be represented in the proceedings in all respects as if he were a separate party to the proceedings.



Civil Liability Act Part 5 – Wrongful acts or neglect causing death (sections 23-30) (cont)

Date of operation: Post 1 May 2004

- (7) No action lies against the executor or administrator for failing to bring an action for the benefit of a putative spouse if he brings the action without notice of the claim of the putative spouse under this section, but the interest of any such spouse in the action shall be recognised by the court if application for recognition is made to the court before the proceedings are finally determined.

25 Restriction of actions and time of commencement

Not more than one action shall lie under this Part for and in respect of the same subject matter of complaint; and every such action shall be commenced within three years after the death of the deceased person.

26 Particulars of person for whom damages claimed

In every such action the plaintiff shall be required to deliver to the defendant or his solicitor, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

27 Provision where no executor or administrator or action not commenced within 6 months

- (1) In any case falling under section 23, if there is no executor or administrator of the deceased person or, there being such an executor or administrator, no action is commenced under this Part within six months after the death of the deceased person, then an action may be brought by and in the name or names of the person or all or any of the persons for whose benefit an action could have been brought under this Part by an executor or administrator of the deceased person.
- (2) Every action brought under this section shall be for the benefit of the same persons and shall be subject to the same regulations and procedure as nearly as may be as if brought by or in the name of an executor or administrator of the deceased person.

28 Liability to parents of person wrongfully killed

- (1) Whenever the death of an infant is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the infant to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving parents or parent of the child such sum –
- (a) where the death occurred before the commencement of the *Wrongs Act Amendment Act 1974* – not exceeding one thousand dollars; or
 - (b) where the death occurred after the commencement of the *Wrongs Act Amendment Act 1974* – not exceeding \$10 000,
- as the court thinks just by way of solatium for the suffering caused to the parents or parent by the death of the child.
- (2) Where both parents bring an action to recover any sum of money payable under this section, the amount recovered after deducting the costs not recovered from the defendant, shall be divided between the parents in such shares as the court directs.
- (3) Where both parents survive the child and either of them does not join in bringing an action under this section, the other may bring an action for such amount as he claims to be due to him or her.
- (4) In this section –
- parent** means the father or mother of a child.



Civil Liability Act Part 5 – Wrongful acts or neglect causing death (sections 23-30) (cont)

Date of operation: Post 1 May 2004

29 Liability to surviving spouse of person wrongfully killed

- (1) Whenever the death of a person is caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled that person to maintain an action to recover damages, the person who would have been liable if death had not ensued shall be liable to pay to the surviving spouse of the deceased person such sum –
 - (a) where the death occurred before the commencement of the *Wrongs Act Amendment Act 1974* – not exceeding one thousand four hundred dollars; or
 - (b) where the death occurred after the commencement of the *Wrongs Act Amendment Act 1974* – not exceeding \$10,000,

as the court thinks just by way of solatium for the suffering caused to the spouse by that death.

- (2) Where the deceased person is survived by a lawful spouse and a putative spouse, they may both claim solatium under this section, but the total amount awarded by way of solatium in any such case shall not exceed the amount that could have been awarded if the deceased had been survived by a single spouse.
- (3) Where, in any proceedings under this section, a lawful spouse and a putative spouse both claim solatium under this section, any solatium awarded by the court shall be apportioned between the claimants in such manner as the court thinks just.
- (4) In any proceeding by a lawful spouse for solatium it is not necessary for the court to inquire if the deceased was also survived by a putative spouse, but any such spouse may, at any time before the proceedings are finally determined, apply to the court to be joined as a party to the proceedings.

30 Further provisions as to solatium etc

- (1) The rights conferred by sections 28 and 29 shall be in addition to and not in derogation of any rights conferred on the parent, husband or wife by any other provision of this Act.
- (2) In an action brought to enforce any right given under section 28 or 29 the court may in its discretion refuse to order the payment of any sum by way of solatium if, having regard to the conduct of the plaintiff in relation to the deceased person, or to the relations which existed between the plaintiff and the deceased person, or for any other sufficient reason, it considers that no such payment should be made.
- (3) Any cause of action conferred on any person by section 28 or 29 shall not, on the death of that person, survive for the benefit of his estate.
- (4) A cause of action conferred on a person by section 28 or 29 is exercisable notwithstanding that the death of the person injured by the wrongful act, neglect or default was caused in circumstances which in law amount to an indictable offence.



Part 6 – Negligence

Date of operation: Post 1 May 2004

Division 1 – Duty of care

31 – Standard of care

- (1) For determining whether a person (the defendant) was negligent, the standard of care required of the defendant is that of a reasonable person in the defendant's position who was in possession of all information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.
- (2) The reasonable person in the defendant's position will be taken to be sober unless –
 - (a) the defendant was intoxicated; and
 - (b) the intoxication was wholly attributable to the use of drugs in accordance with the prescription or instructions of a medical practitioner; and
 - (c) the defendant was complying with the instructions and recommendations of the medical practitioner and the manufacturer of the drugs as to what he or she should do, or avoid doing, while under the influence of the drugs,

and, in that event, the reasonable person will be taken to be intoxicated to the same extent as the defendant.

32 – Precautions against risk

- (1) A person is not negligent in failing to take precautions against a risk of harm unless –
 - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.
- (2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things):
 - (a) the probability that the harm would occur if precautions were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;
 - (d) the social utility of the activity that creates the risk of harm.

33 – Mental harm – duty of care

- (1) A person (the *defendant*) does not owe a duty to another person (the *plaintiff*) to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness.
- (2) For the purposes of this section –
 - (a) in a case of pure mental harm, the circumstances of the case to which the court is to have regard include the following:
 - (i) whether or not the mental harm was suffered as the result of a sudden shock;
 - (ii) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;
 - (iii) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;
 - (iv) whether or not there was a pre-existing relationship between the plaintiff and the defendant;



Part 6 – Negligence (cont)

Date of operation: Post 1 May 2004

- (b) in a case of consequential mental harm, the circumstances of the case include the nature of the bodily injury out of which the mental harm arose.
- (3) This section does not affect the duty of care of a person (the **defendant**) to another (the **plaintiff**) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

Division 2 – Causation

34 – General principles

- (1) A determination that negligence caused particular harm comprises the following elements:
 - (a) that the negligence was a necessary condition of the occurrence of the harm (**factual causation**); and
 - (b) that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (**scope of liability**).
- (2) Where, however, a person (the **plaintiff**) has been negligently exposed to a similar risk of harm by a number of different persons (the **defendants**) and it is not possible to assign responsibility for causing the harm to any one or more of them –
 - (a) the court may continue to apply the principle under which responsibility may be assigned to the defendants for causing the harm¹; but
 - (b) the court should consider the position of each defendant individually and state the reasons for bringing the defendant within the scope of liability.
- (3) For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.

35 – Burden of proof

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

Division 3 – Assumption of risk

36 – Meaning of obvious risk

- (1) For the purposes of this Division, an **obvious risk** to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.
- (2) Obvious risks include risks that are patent or matters of common knowledge.
- (3) A risk may be obvious even though it is of low probability.

37 – Injured persons presumed to be aware of obvious risks

- (1) If, in an action for damages for negligence, a defence of voluntary assumption of risk (*volenti non fit injuria*) is raised by the defendant and the risk is an obvious risk, the plaintiff is taken to have been aware of the risk unless the plaintiff proves, on the balance of probabilities, that he or she was not actually aware of the risk.
- (2) For the purposes of this section, a person is aware of a risk if the person is aware of the type or kind of risk, even if the person is not aware of the precise nature, extent or manner of occurrence of the risk.
- (3) However, in order to establish a defence of voluntary assumption of risk, it is necessary to establish that the risk was such that a reasonable person in the plaintiff's position would have taken steps (which the plaintiff did not in fact take) to avoid it.

38 – No duty to warn of obvious risk

Note –

1 See *Fairchild –v– Glenhaven Funeral Services Ltd* [2002] 3 WLR 89.



Part 6 – Negligence (cont)

Date of operation: Post 1 May 2004

- (1) A person (the **defendant**) does not owe a duty of care to another person (the **plaintiff**) to warn of an obvious risk to the plaintiff.
- (2) Subsection (1) does not apply if –
 - (a) the plaintiff has requested advice or information about the risk from the defendant; or
 - (b) the defendant is required to warn the plaintiff of the risk –
 - (i) by a written law; or
 - (ii) by an applicable code of practice in force under the *Recreational Services (Limitation of Liability) Act 2002*; or
 - (c) the risk is a risk of death or of personal injury to the plaintiff from the provision of a health care service by the defendant.
- (3) Subsection (2) does not give rise to a presumption of a duty to warn of a risk in the circumstances referred to in that subsection.

39 – No liability for materialisation of inherent risk

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

Division 4 – Negligence on the part of persons professing to have a particular skill

40 – Standard of care to be expected of persons professing to have a particular skill

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

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

41 – Standard of care for professionals

- (1) A person who provides a professional service incurs no liability in negligence arising from the service if it is established that the provider acted in a manner that (at the time the service was provided) was widely accepted in Australia by members of the same profession as competent professional practice.
- (2) However, professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing professional opinions widely accepted in Australia by members of the same profession does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) Professional opinion does not have to be universally accepted to be considered widely accepted.
- (5) This section does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in respect of a risk of death or of injury associated with the provision of a health care service



Part 6 – Negligence (cont)

Date of operation: Post 1 May 2004

Division 5 – Liability of road authorities

42 – Liability of road authorities

- (1) A road authority is not liable in tort for a failure –
- (a) to maintain, repair or renew a road; or
 - (b) to take other action to avoid or reduce the risk of harm that results from a failure to maintain, repair or renew a road.

- (2) In this section –

road means a street, road or thoroughfare to which public access is available to vehicles or pedestrians (or both), and includes –

- (a) a bridge, viaduct, busway (including the O-Bahn) or subway;
- (b) an alley, laneway or walkway;
- (c) a carpark;
- (d) a footpath;
- (e) a structure associated with a road;

road authority means –

- (a) a body or person in which the ownership of a road is vested by statute, or to which the care, control and management of a road is assigned by statute; or
- (b) if the road is on land of the Crown – the Crown or the Minister responsible for the care, control and management of the land; or
- (c) any other public authority or public body that is in fact responsible for the care, control and management of a road;

vehicle includes –

- (a) a motor vehicle;
- (b) a bicycle;
- (c) an animal that is being ridden;
- (d) an animal that is being used to draw a vehicle,

but does not include a tram or other vehicle (except an O-Bahn bus) that is driven on a fixed track.

Division 6 – Exclusion of liability for criminal conduct

43 – Exclusion of liability for criminal conduct

- (1) Liability for damages is excluded if the court –
- (a) is satisfied beyond reasonable doubt that the accident occurred while the injured person was engaged in conduct constituting an indictable offence; and
 - (b) is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.
- (2) However, the court may award damages despite this exclusionary principle if satisfied that –
- (a) the circumstances of the particular case are exceptional; and
 - (b) the principle would, in the circumstances of the particular case, operate harshly and unjustly.



Part 6 – Negligence (cont)

Date of operation: Post 1 May 2004

- (3) For the purposes of subsection (1)(a), a relevant conviction or acquittal is to be accepted as conclusive evidence of guilt or innocence of the offence to which it relates.
- (4) This section –
 - (a) applies where damages are claimed for personal injury –
 - (i) arising from a motor accident (whether caused intentionally or unintentionally); or
 - (ii) arising from an accident caused wholly or in part –
 - (A) by negligence; or
 - (B) by some other unintentional tort on the part of a person other than the injured person; or
 - (C) by breach of a contractual duty of care; and
 - (b) if an injured person dies as a result of injury arising in the manner described in paragraph (a) – applies where damages for harm resulting from the death are claimed under Part 5; and
 - (c) does not affect the operation of a rule of law relating to joint illegal enterprises.

Part 7 – Contributory negligence

44 – Standard of contributory negligence

- (1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether a person who suffered harm (the plaintiff) has been contributorily negligent.
- (2) This section is not to derogate from any provision of this Act for reduction of damages on account of contributory negligence.

45 – Contributory negligence in cases brought on behalf of dependants of deceased person

In a claim for damages brought on behalf of the dependants of a deceased person, the court is to have regard to any contributory negligence on the part of the deceased person.

46 – Presumption of contributory negligence where injured person intoxicated

- (1) If the injured person was intoxicated at the time of the accident, and contributory negligence is alleged by the defendant, contributory negligence will, subject to this section, be presumed.
- (2) The injured person may, however, rebut the presumption by establishing on the balance of probabilities –
 - (a) that the intoxication did not contribute to the accident; or
 - (b) that the intoxication was not self-induced; or
 - (c) –
 - (i) the intoxication is wholly attributable to the use of drugs in accordance with the prescription or instructions of a medical practitioner; and
 - (ii) the injured person was complying with the instructions and recommendations of the medical practitioner and the manufacturer of the drugs as to what he or she should do, or avoid doing, while under the influence of the drugs.
- (3) Unless the presumption of contributory negligence is rebutted, the court must assess damages on the basis that the damages to which the injured person would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by 25 per cent or a greater percentage determined by the court to be appropriate in the circumstances of the case.



Part 7 – Contributory negligence (cont)

Date of operation: Post 1 May 2004

- (4) If, in the case of a motor accident, the injured person was the driver of a motor vehicle involved in the accident and the evidence establishes –
- (a) that the concentration of alcohol in the injured person's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,

the minimum reduction prescribed by subsection (3) is to be increased to 50 per cent.

47 – Presumption of contributory negligence where injured person relies on care and skill of person known to be intoxicated

- (1) If –
- (a) the injured person –
 - (i) was of or above the age of 16 years at the time of the accident; and
 - (ii) relied on the care and skill of a person who was intoxicated at the time of the accident; and
 - (iii) was aware, or ought to have been aware, that the other person was intoxicated; and
 - (b) the accident was caused through the negligence of the other person; and
 - (c) the defendant alleges contributory negligence on the part of the injured person,

contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebuttable.

Exception –

The injured person may rebut the presumption by establishing, on the balance of probabilities, that –

- (a) the intoxication did not contribute to the accident; or
 - (b) the injured person could not reasonably be expected to have avoided the risk.
- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.
- (4) A passenger in a motor vehicle is taken, for the purposes of this section, to rely on the care and skill of the driver.
- (5) If, in the case of a motor accident, the evidence establishes –
- (a) that the concentration of alcohol in the driver's blood was .15 grams or more in 100 millilitres of blood; or
 - (b) that the driver was so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle,

the fixed statutory reduction prescribed by subsection (3) is increased to 50 per cent.

- (6) This section operates to the exclusion of the defence of *volenti non fit injuria* insofar as it relates to the voluntary assumption of a risk arising from the intoxication of another.

48 – Evidentiary provision relating to intoxication

- (1) A finding by a court that there was present in the blood of a person, at or about the time of an accident, a concentration of alcohol of .08 or more grams in 100 millilitres of blood is to be accepted, for the purposes of this Part, as conclusive evidence of the facts so found and that the person was intoxicated at the time of the accident.
- (2) A finding by a court that a person was at or about the time of an accident so much under the influence of alcohol or a drug as to be unable to exercise effective control of a motor vehicle is to be accepted, for the purposes of this Part, as conclusive evidence that the person was, at the time of the accident, so much under the influence of alcohol or a drug as to be unable to exercise effective control of the motor vehicle.



Part 7 – Contributory negligence (cont)

Date of operation: Post 1 May 2004

49 – Non-wearing of seatbelt etc

- (1) If the injured person was injured in a motor accident, was of or above the age of 16 years at the time of the accident and –
 - (a) the injured person was not, at the time of the accident, wearing a seatbelt as required under the Road Traffic Act 1961; or
 - (b) one of the following factors contributed to the accident or the extent of the injury:
 - (i) the injured person was not wearing a safety helmet as required under the Road Traffic Act 1961;
 - (ii) the injured person was a passenger in or on a motor vehicle with a passenger compartment but was not in the passenger compartment at the time of the accident,

contributory negligence will, subject to this section, be presumed.

- (2) Subject to the following exception, the presumption is irrebutable.

Exception –

In the case mentioned in subsection (1)(b)(ii) – the injured person may rebut the presumption by establishing, on the balance of probabilities, that the injured person could not reasonably be expected to have avoided the risk.

- (3) In a case in which contributory negligence is to be presumed under this section, the court must apply a fixed statutory reduction of 25 per cent in the assessment of damages.

50 – How case is dealt with where damages are liable to reduction on account of contributory negligence

- (1) If damages are liable to reduction on account of actual or presumed contributory negligence, the court is to proceed in accordance with this section.
- (2) First, the court is to assess the damages to which the injured person would be entitled if there were no reduction for contributory negligence.
- (3) Secondly, the court is to –
 - (a) determine the extent of the injured person's contributory negligence, leaving out of the account factors for which a fixed statutory reduction is prescribed by this Part but taking into account the injured person's intoxication (if relevant) and factors that would, apart from this Part, amount to contributory negligence; and
 - (b) determine a percentage reduction to be made on account of these forms of contributory negligence (which cannot be less in a case involving intoxication than the relevant minimum prescribed by this Part); and
 - (c) then reduce the amount assessed under subsection (2) by the percentage determined under this subsection.
- (4) Thirdly, the court is to apply any applicable fixed statutory reduction to the amount assessed under subsection (2) and reduced, if required, under subsection (3), and, if 2 or more fixed statutory reductions are required, the court is to make them in series.

Example –

Suppose that an amount of \$100 000 is subject to 2 fixed statutory reductions of 25 per cent. In this case, the amount is first reduced to \$75,000 and then reduced to \$56,250.

- (5) There is no necessary correlation between a finding of contributory negligence in relation to a cause of action under this Part and an apportionment of liability in relation to a different cause of action arising from the same facts.

Example –

Suppose that A and B are both drivers of motor vehicles that come into collision as a result of the negligence of both with resultant personal injuries to each other and also to C, a passenger in B's vehicle. Suppose that B's damages are reduced by 60 per cent under this Part as a result of actual or presumptive contributory negligence causally related to the occurrence of the accident. This is not to imply that, in A's action against B, no reduction beyond 40 per cent can be made on a similar basis. In C's action against A and B, responsibility will be apportioned between A and B without regard to the provisions of this Part.



Part 8 – Damages for personal injury

Date of operation: Post 1 May 2004

51 – Application of this Part

This Part applies –

- (a) where damages are claimed for personal injury arising from –
 - (i) a motor accident (whether caused intentionally or unintentionally); or
 - (ii) an accident caused wholly or in part by –
 - (A) negligence; or
 - (B) some other unintentional tort on the part of a person other than the injured person; or
 - (C) a breach of a contractual duty of care; or
- (b) where personal injury arising in the manner described in paragraph (a) results in death and damages are claimed under Part 5 for harm resulting from the death.

52 – Damages for non-economic loss

- (1) Damages may only be awarded for non-economic loss if –
 - (a) the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days; or
 - (b) medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.
- (2) If damages are to be awarded for non-economic loss, they must be assessed as follows:
 - (a) the injured person's total non-economic loss is to be assigned a numerical value (the scale value) on a scale running from 0 to 60 (the scale reflecting 60 equal gradations of non-economic loss, from a case in which the non-economic loss is not severe enough to justify any award of damages to a case in which the injured person suffers non-economic loss of the gravest conceivable kind);
 - (b) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2002 by multiplying the scale value by \$1 710;
 - (c) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2003 as follows:
 - (i) if the scale value is 10 or less – by multiplying the scale value by \$1 150;
 - (ii) if the scale value is 20 or less but more than 10 – by adding to \$11,500 an amount calculated by multiplying the number by which the scale value exceeds 10 by \$2,300;
 - (iii) if the scale value is 30 or less but more than 20 – by adding to \$34,500 an amount calculated by multiplying the number by which the scale value exceeds 20 by \$3,450;
 - (iv) if the scale value is 40 or less but more than 30 – by adding to \$69,000 an amount calculated by multiplying the number by which the scale value exceeds 30 by \$4,600;
 - (v) if the scale value is 50 or less but more than 40 – by adding to \$115,000 an amount calculated by multiplying the number by which the scale value exceeds 40 by \$5,750;
 - (vi) if the scale value is 60 or less but more than 50 – by adding to \$172,500 an amount calculated by multiplying the number by which the scale value exceeds 50 by \$6,900;



Part 8 – Damages for personal injury (cont)

Date of operation: Post 1 May 2004

- (d) the damages for non-economic loss in relation to an injury arising from an accident that occurred in a subsequent calendar year are to be calculated in accordance with paragraph (c) but the amount arrived at is to be adjusted (to the nearest multiple of \$10) by multiplying it by a proportion obtained by dividing the Consumer Price Index for the September quarter of the previous calendar year by the Consumer Price Index for the September quarter 2002.

Example –

Suppose that A is injured in an accident that occurred in 2003 and claims damages for personal injury. The case is one in which the criteria under which damages for non-economic loss may be awarded are satisfied. In assessing those damages, A's total non-economic loss is assigned by the court a scale value of 23. The damages for non-economic loss will, therefore, be \$44,850, calculated as follows:

$$\$34,500 + (3 \times \$3,450) = \$44,850$$

53 – Damages for mental harm

- (1) Damages may only be awarded for mental harm if the injured person –
 - (a) was physically injured in the accident or was present at the scene of the accident when the accident occurred; or
 - (b) is a parent, spouse or child of a person killed, injured or endangered in the accident.
- (2) Damages may only be awarded for pure mental harm if the harm consists of a recognised psychiatric illness.
- (3) Damages may only be awarded for economic loss resulting from consequential mental harm if the harm consists of a recognised psychiatric illness.

54 – Damages for loss of earning capacity

- (1) If the injured person was incapacitated for work, damages for loss of earning capacity are not to be awarded in respect of the first week of the incapacity.
- (2) Total damages for loss of earning capacity (excluding interest awarded on damages for any past loss) are not to exceed the prescribed maximum.
- (3) In a case in which an action is brought for the benefit of the dependants of a deceased person, the total amount awarded to compensate economic loss resulting from the death of the deceased person (apart from expenses – such as funeral expenses – actually incurred as a result of the death) cannot exceed the prescribed maximum and if before the date of death the deceased person received damages to compensate loss of earning capacity, the limit is to be reduced by the amount of those damages.

55 – Lump sum compensation for future losses

If –

- (a) an injured person is to be compensated by way of lump sum for loss of future earnings or other future losses; and
- (b) an actuarial multiplier is used for the purpose of calculating the present value of the future losses,

then, in determining the actuarial multiplier, a prescribed discount rate is to be applied.

56 – Exclusion of interest on damages compensating non-economic loss or future loss

Interest is not to be awarded on damages compensating non-economic or future loss.

57 – Exclusion of damages for cost of management or investment

Damages are not to be awarded to compensate for the cost of the investment or management of the amount awarded.



Part 8 – Damages for personal injury (cont)

Date of operation: Post 1 May 2004

58 – Damages in respect of gratuitous services

- (1) Damages are not to be awarded –
 - (a) to allow for the recompense of gratuitous services except services of a parent, spouse or child of the injured person; or
 - (b) to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person.
- (2) Damages awarded to allow for the recompense of gratuitous services of a parent, spouse or child are not to exceed an amount equivalent to 4 times State average weekly earnings.
- (3) However, the court may make an award in excess of the limit prescribed by subsection (2) if satisfied that –
 - (a) the gratuitous services are reasonably required by the injured person; and
 - (b) it would be necessary, if the services were not provided gratuitously by a parent, spouse or child of the injured person to engage another person to provide the services for remuneration,

but, in that event, the damages awarded are not to reflect a rate of remuneration for the person providing the services in excess of State average weekly earnings.

Part 9 – Miscellaneous

Date of Operation: Post 1 May 2004

Division 6 – Limitation on the award of damages for the costs of raising a child

67 – Limitation on the award of damages for the costs of raising a child

- (1) In an action to which this section applies, no damages are to be awarded to cover the ordinary costs of raising a child.
- (2) The *ordinary costs of raising a child* include all costs associated with the child's care, upbringing, education and advancement in life except, in the case of a child who is mentally or physically disabled, any amount by which those costs would reasonably exceed what would be incurred if the child were not disabled.
- (3) This section applies to –
 - (a) an action for negligence resulting in the unintended conception of a child; or
 - (b) an action for negligence resulting in the failure of an attempted abortion; or
 - (c) an action for negligence resulting in the birth of a child from a pregnancy that would have been aborted but for the negligence; or
 - (d) an action for innocent misrepresentation resulting in –
 - (i) the unintended conception of a child; or
 - (ii) the birth of a child from a pregnancy that would have been aborted but for the misrepresentation; or
 - (iii) an action for damages for breach of a statutory or implied warranty of merchantable quality, or fitness for purpose, in a case where a child is conceived as a result of the failure of a contraceptive device.
- (4) In this section –

contraceptive device includes any medicine or substance used to prevent conception;

innocent misrepresentation means any misrepresentation by words or conduct made without an intention to deceive.



Part 9 – Miscellaneous (cont)

Date of Operation: Post 1 May 2004

Division 8 – Unreasonable delay in resolution of claim

69 – Definitions

In this Division –

dependant of a deceased person means any person on whose behalf an action could (assuming that he or she had been financially dependent on the deceased person) be brought under Part 2;

personal injury includes –

- (a) a disease;
- (b) any impairment of a physical or mental condition.

70 – Damages for unreasonable delay in resolution of a claim

- (1) Damages in the nature of exemplary damages may be awarded, on a claim by the personal representative of a deceased person, against another person (the person in default) if the conditions prescribed by subsection (2) are satisfied.
- (2) The conditions for an award of damages under this section are as follows:
 - (a) the deceased person suffered personal injury giving rise to a right to compensation or damages; and
 - (b) the deceased person made a claim in writing (giving a reasonable indication of the grounds of the claim) for compensation or damages for the personal injury; and
 - (c) a person (the **person in default**) unreasonably delayed the resolution of the claim knowing, or in circumstances in which he or she ought to have known, that the deceased person was, because of advanced age, illness or injury, at risk of dying before the resolution of the claim; and
 - (d) the person in default is –
 - (i) the person against whom the deceased person's claim lay; or
 - (ii) some other person who controlled or had an interest in the defence of the claim; and
 - (e) the deceased person died before compensation or damages for non-economic loss were finally determined by agreement between the parties or by judgment or decision of a court or tribunal; and
 - (f) damages have not been recovered and are not recoverable under section 3(2) of the *Survival of Causes of Action Act* 1940.
- (3) For the purposes of subsection (2) –
 - (a) the question whether a person has unreasonably delayed resolution of a claim is to be determined in the context of the proceedings as a whole (including negotiations and other non-curial proceedings) and the conduct of the deceased person and any other parties to the proceedings;
 - (b) a lawful fee agreement between a legal practitioner and client does not give the legal practitioner an interest in the defence of the claim;
 - (c) if a judgment or decision of a court or tribunal is liable to appeal, then –
 - (i) if there is no appeal – the judgment or decision finally determines compensation or damages on the date it is given; but
 - (ii) if there is an appeal – there is no final determination of compensation or damages until the appeal is determined.
- (4) A court or tribunal that has, or would have had, jurisdiction in an action for damages, workers compensation or other monetary compensation for the personal injury has jurisdiction to award damages on a claim under this section but such a claim must be brought before the court or tribunal within 3 years after the deceased person's death (either as a separate proceeding or by introducing it as an additional claim in existing proceedings for damages or compensation for the personal injury).



Part 9 – Miscellaneous (cont)

Date of Operation: Post 1 May 2004

- (5) In determining the amount of the damages to be awarded under this section, the court or tribunal is to have regard to –
 - (a) the need to ensure that the person in default does not benefit from the unreasonable delay in the resolution of the deceased person's claim; and
 - (b) the need to punish the person in default for the unreasonable delay; and
 - (c) any other relevant factor.
- (6) Damages may be awarded under this section despite any statutory restriction on the award of exemplary or punitive damages but, if the deceased person's claim was for worker's compensation, the damages cannot exceed the total amount of the compensation for non-economic loss to which the deceased person would have been entitled if the claim had been resolved immediately before his or her death.
- (7) Damages awarded under this section are to be paid, at the direction of the court or tribunal –
 - (a) to the dependants of the deceased person in proportions determined by the court or tribunal; or
 - (b) to the estate of the deceased person.
- (8) In exercising its discretion under subsection (7), the court or tribunal –
 - (a) is to make an award to dependants rather than to the estate unless there are no dependants or there is some other good reason to the contrary; and
 - (b) in apportioning between dependants is to have regard to other relevant statutory entitlements (if any) that arise on the death of the deceased person.
- (9) This section applies if the deceased person died on or after the commencement of this section (whether the circumstances out of which the personal injury claim arose occurred before or after that date).

Division 11 – Good samaritans

74 – Good samaritans

- (1) 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 medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or some other form of telecommunication about the treatment of a person who is apparently in need of emergency medical assistance;

medically qualified – a person is to be regarded as medically qualified if the person –

- (a) is a registered medical practitioner; or
 - (b) has professional qualifications in some field of health care that are statutorily recognised; or
 - (c) works or has worked as an ambulance officer or in some other recognised paramedical capacity.
- (2) A good samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance.



Part 9 – Miscellaneous (cont)

Date of Operation: Post 1 May 2004

- (3) A medically qualified good samaritan incurs no personal civil liability for advice given about the assistance to be given to a person in apparent need of emergency medical assistance.
- (4) However –
 - (a) the immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third party motor vehicle insurance; and
 - (b) the immunity does not operate if the good samaritan's capacity to exercise due care and skill was, at the relevant time, significantly impaired by alcohol or another recreational drug.

Division 12 – Expressions of regret

75 – Expressions of regret

In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.



Comparative tables – Civil Liability Act 1936

Civil Liability Act 1936 compared to Wrongs Act 1936

Wrongs Act 1936	Civil Liability Act 1936
Part A1 – Preliminary	Part 1 – Preliminary (ss 1-4)
Section 1 (in amended form)	section 1
Section 2 (deleted)	
Section 3 (in amended form)	section 2
Section 3A (in amended form)	section 3
Part 1 – Defamation (ss 5-17)	Part 2 – Defamation (ss 5-17)
Part 1A Liability for animals	Part 3 – Liability for animals
section 17A	section 18
Part 1B – Occupiers liability	Part 4 – Occupiers liability
section 17B	section 19
section 17C	section 20
Section 17D	section 21
section 17E	section 22
Part 2 – Wrongful acts or neglect causing death	Part 5 – Wrongful acts or neglect causing death
section 19	section 23
section 20 (in amended form)	section 24
section 21	section 25
section 22	section 26
section 23	section 27
section 23A	section 28
section 23B	section 29
section 23C	section 30
Part 2A – Damages for personal injury	[See: Part 6-Negligence (ss 31-43) Part 7 – Contributory negligence (ss 44-50) Part 8 – Damages for personal injury (ss 5 1-58)]
Division 1 – Preliminary	
section 24 (in amended form)	definitions included in section 3
section 24A (in amended form)	section 51
Division 2 – Assessment of damages	
section 24B	section 52
section 24C (in amended form)	section 53
section 24D (in amended form)	section 54
section 24E	section 55
section 24F	section 56
section 24G	section 57
section 24H	section 58
Division 3 – Special provisions in regard to liability	
section 241 (in amended form)	section 43
section 24J (in amended form)	section 46
section 24K	section 47
section 24L	section 48
section 24M	section 49
section 24N	section 50
section 240 (in amended form)	included in section 4 –Application of Act



Comparative tables – Civil Liability Act 1936

Date of operation: Post 1 May 2004

Wrongs Act 1936	Civil Liability Act 1936
Part 3 – General provisions	Part 9 – Miscellaneous
Division 3 – Rights as between employer and employee in cases of vicarious liability	Division 1 Rights as between employer and employee
section 27C	section 59
Division 4 – Mental or nervous shock (section 28) (deleted) – -
Division 5 – - Remedies against certain shipowners	Division 2 – Remedies against certain shipowners
section 29	section 60
Division 6 – - Damage by aircraft	Division 3 – -Damage by aircraft
section 29A	section 61
section 29B	section 62
Division 7 – Abolition of rule of common employment	Division 4 – Abolition of rule of common employment
section 30	section 63
Division 8 – Actions in tort relating to husband and wife	Division 5 – Actions in tort relating to husband and wife
section 32	section 64
section 33	section 65
section 34	section 66
Division 9 – Abolition of actions of seduction, enticement and harbouring	Division 7 – Abolition of actions of seduction, enticement and harbouring
section 35	section 68
Division 10A – Unreasonable delay in resolution of claim	Division 8 – Unreasonable delay in resolution of claim
section 35B	section 69
section 35C	section 70
section 35D	section 71
Division 11 – Liability for perjury in civil actions	Division 9 – Liability for perjury in civil actions
section 36	section 72
Division 12 – Racial victimisation	Division 10 – Racial victimisation
section 37	section 73
Division 13 – Good samaritans	Division 11 – Good samaritans
section 38	section 74
Division 14 – Expressions of regret	Division 12 – Expressions of regret
section 39	section 75

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Comparative tables – Civil Liability Act 1936

Date of operation: Post 1 May 2004

Civil Liability Act 1936	Wrongs Act 1936
Part 1 – Preliminary (ss 1-4)	Part AI – Preliminary
.....section 1	section 1 (in amended form)
.....section 2	section 3 (in amended form)
.....section 3	see sections 3A and 24 (in amended form)
.....section 4	see section 240 (in amended form)
Part 2 – Defamation (ss 5-17)	Part 1 – Defamation (ss 5-17)
Part 3 – Liability for animals	Part 1A – Liability for animals
section 18	section 17A
Part 4 – Occupiers liability	Part 1B – Occupiers liability
section 19	section 17B
section 20	section 17C
section 21	section 17D
section 22	section 17E
Part 5 – Wrongful acts or neglect causing death	Part 2 – Wrongful acts or neglect causing death
section 23	section 19
section 24	section 20 (in amended form)
section 25	section 21
section 26	section 22
section 27	section 23
section 28	section 23A
section 29	section 23B
section 30	section 23C
Part 6 – Negligence (ss 31-43)	
section 31	–
section 32	–
section 33	–
section 34	–
section 35	–
section 36	–
section 37	–
section 38	–
section 39	–
section 40	–
section 41	–
section 42	–
section 43	section 24I (in amended form)
Part 7 – Contributory negligence (ss 44-50)	
section 44	–
section 45	–
section 46	section 24J (in amended form)
section 47	section 24K
section 48	section 24L
section 49	section 24M
section 50	section 24N



Comparative tables – Civil Liability Act 1936

Date of operation: Post 1 May 2004

Civil Liability Act 1936	Wrongs Act 1936
Part 8 – Damages for personal injury (ss 5 1-58)]	
section 51	section 24A (in amended form)
section 52	section 24B
section 53	section 24C (in amended form)
section 54	section 24D (in amended form)
section 55	section 24E
section 56	section 24F
section 57	section 24G
section 58	section 24H
Part 9 – Miscellaneous	Part 3 – General provisions
Division 1 – Rights as between employer and employee	Division 3 – Rights as between employer and employee in cases of vicarious liability
section 59	section 27C
Division 2 Remedies against certain shipowners	Division 5 – Remedies against certain shipowners
section 60	section 29
Division 3 – Damage by aircraft	Division 6 – – Damage by aircraft
section 61	section 29A
section 62	section 29B
Division 4 – Abolition of rule of common employment	Division 7 – Abolition of rule of common employment
section 63	section 30
Division 5 – Actions in tort relating to husband and wife	Division 8 – Actions in tort relating to husband and wife
section 64	section 32
section 65	section 33
section 66	section 34
Division 6 – Limitation on the award of damages for the costs of raising a child (section 67)	–
Division 7 – Abolition of actions of seduction, enticement and harbouring	Division 9 – Abolition of actions of seduction, enticement and harbouring
section 68	section 35
Division 8 – Unreasonable delay in resolution of claim	Division 10A – Unreasonable delay in resolution of claim
section 69	section 35B
section 70	section 35C
section 71	section 35D
Division 9 – Liability for perjury in civil actions	Division 11 – Liability for perjury in civil actions
section 72	section 36
Division 10 – Racial victimisation	Division 12 – Racial victimisation
section 73	section 37
Division 11 – Good samaritans	Division 13 – Good samaritans
section 74	section 38
Division 12 – Expressions of regret	Division 14 – Expressions of regret
section 75	section 39

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Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001

Part 1 – Preliminary

Section 3 – Interpretation

Date of operation: post 1 October 2005

(1) In this Act –

apportionable liability – see subsection (2);

claimant means a person who asserts, or is entitled to assert, a right to damages for harm;

contributories means the person (or persons) seeking contribution under this Act and the person (or persons) from whom contribution is sought;

contributory negligence means a failure by a person who suffers harm to take reasonable care for his or her own protection or the protection of his or her own interests;

damages means compensation or damages for harm and includes solatium but does not include workers compensation;

defendant includes a third party (that is, the defendant to a third party claim);

derivative harm means harm suffered as a result of injury to, or death of, another (but does not include nervous shock arising from injury to, or death of, another);

Examples –

- 1 The loss suffered by dependants as a result of the death of the person on whom they are dependent (See Part 2 of the *Wrongs Act 1936*).
- 2 Loss or impairment of consortium (See section 33 of the *Wrongs Act 1936*).
- 3 Business losses resulting from injury to or death of spouse who participated in the business (See section 34 of the *Wrongs Act 1936*).

derivative liability means –

- (a) a vicarious liability (including a partner's liability for the act or omission of another member of the partnership); or
- (b) a liability of a person who is subject to a non delegable duty of care for the act or omission of another that places the person in breach of the non-delegable duty; or
- (c) if an insurer or indemnifier is directly liable to a person who has suffered harm for the act or omission of a person who is insured or indemnified against the risk of causing the harm – the liability of the insurer or indemnifier; or
- (d) a liability as nominal defendant under a statutory scheme of third-party motor vehicle insurance;

duty of care means a duty to take reasonable care or to exercise reasonable skill (or both);

group – a group consists of a person who is directly liable for a particular act or omission and the person or persons (if any) who have a derivative liability for the person's act or omission;

harm includes loss of life, personal injury, damage to property, economic loss and loss of any other kind (whether the harm is primary or derivative);

innocent – wrongdoing is innocent if the wrongdoer whose act or omission actually caused the harm neither intended to cause harm nor was negligent in causing harm;

negligent wrongdoing means –

- (a) a breach of a duty of care that arises under the law of torts; or
- (b) a breach of a contractual duty of care; or
- (c) a breach of a statutory duty of care that is actionable in damages or innocent wrongdoing that gives rise to a statutory right to damages;



Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001

Section 3 – Interpretation (cont)

Date of operation: post 1 October 2005

notional damages – a plaintiff's notional damages is the amount of the damages (excluding exemplary damages) to which the plaintiff is, or would be, entitled assuming –

- (a) no contributory negligence; and
- (b) the defendant were fully liable for the plaintiff's harm and were not entitled to limitation of liability under –
 - (i) this Act; or
 - (ii) any other Act that limits the liability of defendants of a particular class (as distinct from one that imposes a general limitation of liability); or
 - (iii) a contract;

primary harm means harm other than derivative harm;

special limitation of liability means a limitation of liability to which a defendant is entitled under –

- (a) an Act (other than this Act) that limits the liability of defendants of a particular class (as distinct from one that imposes a general limitation of liability); or
- (b) a contract;

wrongdoer means –

- (a) a person who commits an act, or makes an omission, that causes or contributes to harm (including a person whose act or omission contributes to his or her own harm); or
- (b) a person who has a derivative liability for harm resulting from the act or omission of someone else;

Note –

A person may be considered a wrongdoer even though the person –

- has died; or
- has been wound up or has ceased to exist; or
- has become insolvent; or
- cannot be found.

wrongdoing means an act or omission that causes or contributes to harm (including such an act or omission on the part of the person who suffers the harm); and a reference to the **wrongdoing of a wrongdoer** (or a **defendant**) is to be understood as a reference to wrongdoing for which that person is directly liable or for which that person has a derivative liability.

(2) A liability is an **apportionable liability** if the following conditions are satisfied:

- (a) the liability is a liability for harm (but not derivative harm) consisting of –
 - (i) economic loss (but not economic loss consequent on personal injury); or
 - (ii) loss of, or damage to, property;
- (b) 2 or more wrongdoers (who were not acting jointly) committed wrongdoing from which the harm arose;
- (c) the liability is the liability of a wrongdoer whose wrongdoing was negligent or innocent.

Example –

A, who acts with intention to defraud, prepares a false and deceptive statement. B, who is not aware of the fraud, negligently publishes the statement to C, who relies on it and suffers financial loss in consequence. C brings an action against A and B under section 56 of the *Fair Trading Act 1987*. In this case, B's liability is an apportionable liability but A's is not.

(3) A liability to pay exemplary damages is not however to be regarded as an apportionable liability.



Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001

Section 4 – Application of Act

Date of operation: post 1 October 2005

- (1) This Act applies to liabilities of the following kinds –
 - (a) a liability in damages that arises under the law of torts;
 - (b) a liability in damages for breach of a contractual duty of care;
 - (c) a liability in damages that arises under statute.
- (2) This Act –
 - (a) has no effect on criminal proceedings; and
 - (b) does not make enforceable an agreement for an indemnity that would not have been enforceable apart from this Act; and
 - (c) does not apply to liability subject to apportionment under section 72 of the Development Act 1993.

Part 2 – Concurrent liability and contributory negligence

Section 6 – Right to contribution

- (1) A person who is liable in damages for harm suffered by another may recover contribution from a third person who is also liable in damages for the same harm.
- (2) The right to contribution –
 - (a) exists even though the act or omission that gave rise to the liability of the person seeking to recover contribution may amount to an offence; and
 - (b) extends to liabilities incidental to damages (such as a liability for interest),
(but the right is subject to Part 3 and any other statutory provision¹ that may operate to modify, exclude or limit it in a particular case).
- (3) An action for contribution may be brought –
 - (a) by way of third party proceedings, or proceedings between the parties, in an action in which damages are sought from the person entitled to contribution; or
 - (b) by way of a separate action brought within the relevant time limit against the person from whom contribution is sought.
- (4) The relevant time limit is the longer of the following –
 - (a) the period within which the person who suffered the harm could have brought an action against the person from whom contribution is sought;
 - (b) 2 years after the damages payable by the person entitled to contribution are finally determined.
- (5) The contribution is to be an amount that is fair and equitable having regard to the extent of each contributory's responsibility for the harm.
- (6) In determining the contribution to be made by a contributory whose liability for the harm is a derivative liability, the court is to have regard to the act or omission from which the liability arose.
- (7) If it is fair and equitable to do so, the court may exempt a person from liability to make contribution or order that the contribution to be recovered is to amount to a complete indemnity.
- (8) An action for contribution may be brought even though –
 - (a) judgment in an action in which damages are sought for the relevant harm has not yet been given; or
 - (b) the person who suffered the harm has released the person from whom contribution is sought from liability or has obtained judgment against that person; or



Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001

Section 6 – Right to contribution (cont)

Date of operation: post 1 October 2005

- (c) a notice that would be required if the person who suffered the harm were to obtain a judgment against the person from whom contribution is sought has not been given; or
 - (d) the time within which the person who suffered the harm could have commenced an action against the contributory has expired.
- (9) However –
- (a) if a person is liable to indemnify another against the other's liability, the person is (to the extent of the liability to indemnify) not entitled to contribution from the other person under this section;
 - (b) a contractual limitation or exclusion of liability operates to limit or exclude an entitlement to contribution under this section if –
 - (i) it arises from a contract made before the occurrence of the act or omission that gave rise to the liability; and
 - (ii) it would, assuming the person who suffered primary harm had brought an action for damages against the person from whom contribution is sought, have limited or excluded that person's right to recover damages;
 - (c) an employer is not entitled to contribution from an employee under this section unless the employee's wrongful act amounted to serious and wilful misconduct².

Notes –

- 1 See for example section 111 of the Supreme Court Act 1935 which deals with apportionment of liability in the case of a collision between ships at sea.
- 2 Compare section 27C of the Wrongs Act 1936.

Section 7 – Apportionment of liability in cases where the person who suffers primary harm is at fault

- (1) If contributory negligence contributes to (but is not the sole cause of) the harm for which a claimant seeks damages, the claim is not to be defeated on the ground of the contributory negligence.
- (2) If a claimant's harm is caused partly by another's negligent wrongdoing and partly by contributory negligence, the court must proceed as follows:
 - (a) the court must determine (and record) the amount of the damages to which the claimant would have been entitled assuming there had been no contributory negligence; and
 - (b) the court must then reduce the amount so determined to the extent the court thinks just and equitable having regard to the extent the contributory negligence contributed to the harm.
- (3) This section applies subject to –
 - (a) any contractual modification, exclusion or limitation binding on the claimant or, in the case of a claim for damages for derivative harm, on the person who suffered the primary harm; and
 - (b) any statutory modification, exclusion or limitation.
- (4) In this section, a reference to contributory negligence extends, in the case of a claim for derivative harm, to negligence on the part of the person who suffered the primary harm.



Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001

Part 3 – Apportionable liability

Section 8 – Limitation of defendant's liability in cases of apportionable liability

Date of operation: Post 1 October 2005

- (1) If a defendant's liability on a claim for damages is apportionable, the liability is limited under this section.
- (2) If the limitation applies, the defendant's liability is limited to a percentage of the plaintiff's notional damages that is fair and equitable having regard to –
 - (a) the extent of the defendant's responsibility for the harm; and
 - (b) the extent of the responsibility of other wrongdoers (including wrongdoers who are not party to the proceedings) whose acts or omissions caused or contributed to the harm.
- (3) For the purpose of subsection (2) –
 - (a) 2 or more wrongdoers who are members of the same group are to be treated as a single wrongdoer; and
 - (b) if the plaintiff was guilty of contributory negligence, that contributory negligence will be brought into account as wrongdoing and a percentage assigned to it; and
 - (c) if 2 or more wrongdoers are each entitled to the benefit of a limitation of liability under this section (for some reason other than that they are members of the same group), the aggregate percentage assigned to them cannot exceed –
 - (i) if there is no contributory negligence on the plaintiff's part – 100%; or
 - (ii) if there is contributory negligence on the plaintiff's part – 100% less a percentage representing the extent of the plaintiff's responsibility for his or her harm.
- (4) In a case involving apportionable liability, the court must proceed as follows:
 - (a) the court first determines the plaintiff's notional damages;
 - (b) the court gives judgment against any defendant whose liability is not subject to limitation under this section for damages calculated without regard to this Part;
 - (c) the court determines, in relation to each defendant whose liability is limited under this section, a proportion of the plaintiff's notional damages equivalent to the percentage representing the extent of that defendant's liability;
 - (d) the court then gives judgment against each such defendant based on the assessment made under paragraph (c) (but in doing so must give effect to any special limitation of liability to which any of them may be entitled).

Example –

A Ltd (which runs a forestry business) has engaged B (an independent contractor) to protect its forest from fire. C (an arsonist) sets the forest on fire. B is negligent in failing to detect and stop C's malicious act. A Ltd sues B and C for damages. In this case, B would be entitled to a limitation of liability under this section but C would not. In working out the amounts for which judgment should be given, the court would determine first the amount of damages necessary to cover the damage caused by the fire. Judgment for that amount would be given against C. In determining the amount for which judgment should be given against B, responsibility for the damage would be divided between B and C on essentially the same basis as would formerly have been applicable to an action for contribution between them. Judgment would be given against B for an amount reflecting the proportionate responsibility assigned to B on that basis.

- (5) The plaintiff is not entitled to recover, by way of damages under the judgment, more than the amount fixed as the plaintiff's notional damages.



Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001

Section 8 – Limitation of defendant's liability in cases of apportionable liability (cont)

Date of operation: Post 1 October 2005

Example –

Suppose that A has suffered a loss of \$1 000 for which B, C and D are liable. The liability of B and C is limited to 20% and 30% respectively, but D's liability is not limited. Judgment is therefore given against B for \$200, against C for \$300 and against D for \$1 000. In this case, the court would fix \$1 000 as the plaintiff's notional damages – thus limiting the damages that the plaintiff is entitled to recover under the judgment to that amount. If A proceeded first to recover in full against B and C, recovery against D would be limited to \$500. Conversely, recovery in full against D would preclude recovery against B and C. But rights of contribution may arise – see section 9.

- (6) However, this section does not affect the award of exemplary damages and, if such damages are awarded, they may be recovered in the ordinary way from a defendant against whom they were awarded.

Section 9 – Contribution

In a case in which the liability of one or more wrongdoers is limited under this Part, the provisions of Part 2 regarding contribution apply but subject to the following qualifications:

- (a) no order for contribution between wrongdoers whose liability is limited may be made;

Exception –

Contribution will be allowed between wrongdoers who are members of the same group, in respect of the liability of the group, in the same way (and subject to the same exceptions) as apply under Part 2.

- (b) no order for contribution may be made in favour of a wrongdoer whose liability is limited against a wrongdoer whose liability is not limited;
- (c) no order for contribution may be made in favour of a wrongdoer whose liability is not limited (A) against a wrongdoer (B) whose liability is limited unless A has fully satisfied the judgment debt, and, if such an order is made, the amount of contribution awarded against B cannot exceed the amount of B's liability for damages under the judgment.

Section 10 – Procedural provision

- (1) If a defendant entitled to a limitation of liability under this Part has reasonable grounds to believe that a person who is not a party to the action may be liable on the plaintiff's claim, the defendant must, as soon as practicable, provide the plaintiff with information that is in the defendant's possession, or reasonably available to the defendant (and not equally available to the plaintiff), about –
- (a) the other person's identity and whereabouts; and
- (b) the circumstances giving rise to the other person's liability.
- (2) If a defendant fails to comply with its obligation under this section, a court may order the defendant to pay costs incurred in proceedings that could have been avoided if the obligation had been carried out.
- (3) A court may order that costs payable under this section be assessed on the basis of an indemnity.



Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001

Section 11 – Separate proceedings

Date of operation: Post 1 October 2005

If a plaintiff brings separate actions for the same harm against wrongdoers who are entitled to a limitation of liability under this Part, the judgment first given (or that judgment as varied on appeal) determines for the purpose of all other actions –

- (a) the amount of the plaintiff's notional damages; and
- (b) the proportionate liability of each wrongdoer who was a party to the action in which the judgment was given; and
- (c) whether the plaintiff was guilty of contributory negligence and, if so, the extent of that negligence.

Part 4 – General provision

Section 12 – Judgment does not bar an action against person who is also liable for the same harm

- (1) A judgment for damages against one person does not bar an action against another person who is also liable for the same harm.
- (2) The general rule is that if separate actions are brought for damages for the same harm –
 - (a) the aggregate amount of damages recoverable in the actions cannot exceed the relevant amount; and
 - (b) the claimant is not entitled to costs in any action except the first.
- (3) However, if a court is satisfied that there were in the circumstances of a particular case reasonable grounds for bringing the actions separately, the court may depart from the general rule to the extent that it is fair and equitable to do so in the circumstances of that case.
- (4) The relevant amount is –
 - (a) in a case that does not involve apportionable liability – the amount of damages awarded in the judgment first given (or, if that amount is varied on appeal, the amount as varied);
 - (b) in a case involving apportionable liability – the amount fixed in the judgment first given as the plaintiff's notional damages¹ (or, if that amount is varied on appeal, the amount as varied).

Note –

- 1 See section 8.



Schedule 1—Oral fluid and blood sample processes

Date of operation: 2 December 2010

Key legislative amendments to Schedule 1:

- Amendment of Schedule 1—Oral fluid and blood sample processes

Transitional provision:

Road Traffic (Use of Test and Analysis Results) Amendment Act 2010, Sch 1

The amendments made by this Act to the *Road Traffic Act 1961* apply in respect of civil proceedings whether commenced before or after the commencement of this Act.

Part 4—Other provisions relating to oral fluid or blood samples under Part 3 Division 5

8—Oral fluid or blood sample or results of analysis etc not to be used for other purposes

- (1) A sample of oral fluid or blood taken under section 47E, 47EAA or 47I (and any other forensic material taken incidentally during a drug screening test, oral fluid analysis or blood test) must not be used for a purpose other than a purpose contemplated by this Act (including the purpose of civil proceedings of a kind referred to in subclause (2)(a)(ii)).
- (2) The results of a drug screening test, oral fluid analysis or blood test under Part 3 Division 5, an admission or statement made by a person relating to such a drug screening test, oral fluid analysis or blood test, or any evidence taken in proceedings relating to such a drug screening test, oral fluid analysis or blood test (or transcript of such evidence)—
 - (a) will not be admissible in evidence against the person who submitted to the drug screening test, oral fluid analysis or blood test in any proceedings, other than—
 - (i) proceedings for an offence against this Act or the *Motor Vehicles Act 1959* or a driving-related offence; or
 - (ii) if the test or analysis occurred in connection with the person's involvement in an accident—civil proceedings in connection with death or bodily injury caused by or arising out of the use of a motor vehicle involved in the accident (including proceedings under section 116 or 124A of the *Motor Vehicles Act 1959* for the recovery from the person of money paid or costs incurred by the nominal defendant or an insurer); and
 - (b) may not be relied on as grounds for the exercise of any search power or the obtaining of any search warrant.
- (3) In this clause—

death or bodily injury caused by or arising out of the use of a motor vehicle—death or bodily injury will be regarded as being caused by or arising out of the use of a motor vehicle if the death or bodily injury is regarded as being caused by or arising out of the use of a motor vehicle for the purposes of Part 4 and Schedule 4 of the *Motor Vehicles Act 1959*;

nominal defendant has the same meaning as in Part 4 of the *Motor Vehicles Act 1959*;

proceedings for a driving-related offence means proceedings for an offence where the conduct with which the defendant is charged involves driving a vehicle.



Section 54(7) – Limitation of employer’s liability

Date of operation: Post 30 September 1987, excepts s54(7)(g)(i), 3 June 1996

54(7) Where –

- (a) compensation is paid or payable to a person (“the *injured party*”) under this Act;
- (b) the injured party has received, or is entitled to, damages from another person (“the *wrongdoer*”) in pursuant of rights arising from the same trauma as gave rise to the rights to compensation under this Act;
- (c) the person by whom the compensation is paid or payable under this Act (“the *claimant*”) is entitled to recover the amount of the compensation by virtue of subsection (5) or (6),

then the following provisions apply:

- (d) the claimant is entitled to recover the amount of compensation paid or payable under this Act from the wrongdoer or the injured party but subject to the following qualifications:
 - (i) no amount may be recovered from the wrongdoer in excess of the wrongdoer’s unsatisfied liability to the injured party; and
 - (ii) the claimant must exhaust its rights against the wrongdoer before recovering against the injured party; and
 - (iii) no amount may be recovered from the injured party in excess of the amount of the damages received by the injured party;
- (e) the claimant shall, on giving notice to a wrongdoer of an entitlement to recover compensation under this section, have a first charge, to the extent of the entitlement, on damages payable by the wrongdoer to the injured party;
- (f) any amount recovered by the claimant against a wrongdoer under this subsection shall be deemed to be an amount paid in or towards satisfaction of the wrongdoer’s liability to the injured party;
- (g) an action for the recovery of compensation under this subsection -
 - (i) may be heard and determined by the Tribunal (constituted of a presidential member); and
 - (ii) must be commenced within 3 years after the date of the trauma referred to in paragraph (b).

[s54(7)(g)(i) substituted by Act 54, 1995. Date of commencement 3 June 1996]



Section 48 – General power to extend periods of limitation

Date of operation: Pre 1 May 2004

48. (1) Subject to this section, where an Act, regulation, rule or by-law prescribes or limits the time for -

- (a) instituting an action; or
- (b) doing any act, or taking any step in an action; or
- (c) doing any act or taking any step with a view to instituting an action,

a court may extend the time so prescribed or limited to such an extent, and upon such terms (if any) as the justice of the case may require.

(2) A court may exercise the powers conferred by this section in respect of any action that -

- (a) the court has jurisdiction to entertain; or
- (b) the court would, if the action were not out of time, have jurisdiction to entertain.

(3) This section does not -

- (a) apply to criminal proceedings; or
- (b) empower a court to extend a limitation of time prescribed by this Act unless it is satisfied -
 - (i) that facts material to the plaintiff's case were not ascertained by him until some point of time occurring within twelve months before the expiration of the period of limitation or occurring after the expiration of that period and that the action was instituted within twelve months after the ascertainment of those facts by the plaintiff; or
 - (ii) that the plaintiff's failure to institute the action within the period of the limitation resulted from representations or conduct of the defendant, or a person whom the plaintiff reasonably believed to be acting on behalf of the defendant, and was reasonable in view of those representations or that conduct and any other relevant circumstances,

and that in all the circumstances of the case it is just to grant the extension of time.

(4) Where an extension of time is sought pursuant to this section in respect of the commencement of an action, the action may be instituted in the normal manner, but the process by which it is instituted must be endorsed with a statement to the effect that the plaintiff seeks an extension of time pursuant to this section.

(5) Proceedings under this section may be determined by the court at any time before or after the close of pleadings.

(6) This section does not derogate from any other provision under which a court may extend or abridge time prescribed or limited by an Act, regulation, rule or by-law.



Section 45A – Special provision regarding children

Date of operation: Post 1 May 2004

(1) If –

- (a) a child (the plaintiff) suffers personal injury; and
- (b) the time for bringing an action for damages is extended by this Act to more than 6 years from the date of the incident out of which the injury arose (the relevant date),

notice of an intended action must be given within 6 years after the relevant date by, or on behalf of, the child to the person or persons alleged to be liable in damages (the defendant).

Exception –

If the injury arises from an intentional tort and the action is to be brought against the person who actually committed the tort, notice of the action need not be given to that person, but if any other person is alleged to be liable for the tort, notice must be given to that other person.

- (2) If the injury is alleged to have arisen out of a motor accident, the notice must be given to the relevant third-party insurer.
- (3) The notice is to contain the information required by regulation.
- (4) The plaintiff (or, if the plaintiff is still a child, the plaintiff's parent or guardian) must comply with a reasonable request by the defendant –
 - (a) to provide copies of medical and other records and reports in the possession or power of the plaintiff (or the plaintiff's parent or guardian) relevant to the nature and extent of the plaintiff's injury and any consequent disability; or
 - (b) to undergo examination, at the expense of the defendant, by a medical expert for the purpose of ascertaining the nature and extent of the plaintiff's injury and any consequent disability.
- (5) The defendant may, by written notice to the plaintiff (or, if the plaintiff is still a child, the plaintiff's parent or guardian) require the plaintiff, within 6 months after the date of the notice, to bring an action so that the claim may be judicially determined.
- (6) In any such action, the court may, if it thinks it appropriate, exercise its power to make a determination of liability and adjourn final assessment of damages until a later date.
- (7) Non-compliance with a requirement of this section on the part of a plaintiff does not prevent the plaintiff from bringing an action for damages but unless the court is satisfied that there is good reason to excuse the non-compliance –
 - (a) no damages will be allowed in such an action to compensate or allow for medical or gratuitous services provided before the date the action was commenced; and
 - (b) no legal or other costs incurred in contemplation of the action or a possible action will be allowed.



48 – General power to extend periods of limitation

Date of operation: Post 1 May 2004

- (1) Subject to this section, where an Act, regulation, rule or by-law prescribes or limits the time for –
- (a) instituting an action; or
 - (b) doing any act, or taking any step in an action; or
 - (c) doing any act or taking any step with a view to instituting an action,

a court may extend the time so prescribed or limited to such an extent, and upon such terms (if any) as the justice of the case may require.

- (2) A court may exercise the powers conferred by this section in respect of any action that –
- (a) the court has jurisdiction to entertain; or
 - (b) the court would, if the action were not out of time, have jurisdiction to entertain.
- (3) This section does not –
- (a) apply to criminal proceedings; or
 - (b) empower a court to extend a limitation of time prescribed by this Act unless it is satisfied –
 - (i) that facts material to the plaintiff's case were not ascertained by him until some point of time occurring within twelve months before the expiration of the period of limitation or occurring after the expiration of that period and that the action was instituted within twelve months after the ascertainment of those facts by the plaintiff; or
 - (ii) that the plaintiff's failure to institute the action within the period of the limitation resulted from representations or conduct of the defendant, or a person whom the plaintiff reasonably believed to be acting on behalf of the defendant, and was reasonable in view of those representations or that conduct and any other relevant circumstances,

and that in all the circumstances of the case it is just to grant the extension of time.

- (3a) A fact is not to be regarded as material to the plaintiff's case for the purposes of subsection (3)(b)(i) unless –
- (a) it forms an essential element of the plaintiff's cause of action; or
 - (b) it would have major significance on an assessment of the plaintiff's loss.

Example –

In a case involving personal injury, a fact might qualify as a fact material to the plaintiff's case if it establishes –

- (a) a substantial reduction of the plaintiff's capacity to work; or
- (b) that the plaintiff will require substantially more medical care than previously expected; or
- (c) a significant loss of expectation of life.

[s48 (3a) inserted by 9/2004. Date of commencement 1 May 2004]

- (3b) In determining whether it is, in all the circumstances of a case, just to grant an extension of time, the court should have regard to –
- (a) the period of extension sought and, in particular, whether the passage of time has prejudiced a fair trial; and
 - (b) the desirability of bringing litigation to an end within a reasonable period and thus promoting a more certain basis for the calculation of insurance premiums; and
 - (c) the nature and extent of the plaintiff's loss and the conduct of the parties generally; and
 - (d) any other relevant factor.



[s48 (3a) inserted by 9/2004. Date of commencement 1 May 2004]

- (4) Where an extension of time is sought pursuant to this section in respect of the commencement of an action, the action may be instituted in the normal manner, but the process by which it is instituted must be endorsed with a statement to the effect that the plaintiff seeks an extension of time pursuant to this section.
- (5) Proceedings under this section may be determined by the court at any time before or after the close of pleadings.
- (6) This section does not derogate from any other provision under which a court may extend or abridge time prescribed or limited by an Act, regulation, rule or by-law.



Experts' requirements

The information and documentation required by experts to provide opinions regarding accident reconstruction and seatbelt useage are as follows:–

Reconstruction

- Photographs of the exterior of all vehicles involved with emphasis on impact damage.
- Photograph all four sides of damaged vehicle to provide views of any undamaged areas.
- Photographs of the scene of the accident.
- Accurate plan including reference to the approximate point of impact, skid marks and other significant indicators (measured, not paced).
- Measurement of extent of deformation to all vehicles (depth of crush, length of damaged area).
- Details of make, model, and year of manufacture of each vehicle (this can be obtained from the compliance plate in the vehicle).

Seatbelt Usage

In addition to the above:-

- Photographs of the interior of the relevant vehicles showing seatbelt positions and possible occupant impact areas (eg dash area and back of front seats), and description of obvious interior impact points.
- Plan of occupant seating.
- Height and weight of each occupant.
- Description of injuries of each occupant (normally ambulance and hospital notes are required to achieve level of detail).
- Photograph all seatbelts in the “as first seen condition” in the first instance, do not move seatbelts from any trapped position or from under seats to get a better photograph since the first seen condition may be critical in showing that seatbelt was not worn.
- If a seatbelt has been cut or torn apart photograph and note the position of any separated component (e.g. the seatbelt tongue).
- Do not engage the seatbelt tongue into the buckle since this action may disturb a layer of dirt on the tongue which could show that the seatbelt was not worn.
- Do not unreel webbing from a retractor since this can allow glass fragments to move into a position which would suggest that the belt was worn.
- Do not tightly fold or wrap the seatbelts as this may generate creasing that could be claimed to indicate seatbelt use.
- Seatbelt components should be photographed with a close up lens using flash unit.
- After photographing remove all seatbelts from vehicle and package each belt separately preferably in resealable plastic bags.

Seats

- A record and photographs should be taken of the seat fore and aft adjustment position and the seat back angle.

Blood and Tissue

- Blood stained items, e.g. seat covers, seat trim material, sun visors should be taken for blood DNA matching.
- Hair and tissue trapped in a laminated windscreen or other tissue should be photographed with a close up lens and taken for hair and tissue matching.



Experts' requirements (cont)

Alcohol

To be in a position to obtain a reduction of damages in relation to driver useage of alcohol the following is required:-

- Blood or breath analysis documentation from the Police Department.
- Count back to the time of the accident, usually provided by Dr Ross James from the Forensic Science Centre, Divett Place, Adelaide.
- Details of the drinking pattern and consumption of the driver and, if relevant, the injured occupant.
- The height, weight and time of the first and the last drink of the subject, together with details of food consumption in the period of 12 hours preceding the reading.
- Time of accident.



Experts' requirements (cont)

Driver Brake Reaction Time

Car driver brake reaction time (daytime)

85% of driving population react with 1.5 seconds

50% of driving population react within 1 – 1.5 seconds

Typical distance to skid to halt

	Speed (KPH)	Bitumen Surface Metres to skid to halt	Dirt Surface Metres to skid to halt
Car	40	10	15
	60	20	30
	80	35	50
Truck	40	12	15
	60	25	30
	80	45	50
Motorcycle (Rear wheel locked, no front braking)	40	15	25
	60	35	55
	80	65	100

Approximate distance covered in 1 second

Speed (KPH)	Approx. distance covered In 1 Second (Metres)
40	11
50	14
60	17
70	19
80	22
90	25
100	28

Typical adult walking pace (age dependant)

1.2 – 1.6 metres per second

Speed conversion

KPH = metres per second x 3.6 eg. 36 kph = 10 metres per second

Mr Chris Hall from Hall Technical Services Pty Ltd, (telephone 8271 7521), and Mr Harry Aust from Vehicle Systems Engineering Pty Ltd, (telephone 8338 2382) are happy to provide immediate advice in relation to data collection and the information they require to provide opinions regarding accident reconstruction and seatbelt usage.



Supreme Court Scale of Costs summary

Supreme Court Scale of Costs summary

Work	Item	SCCR 2006 Schedule 1	SCCR 2006 Schedule 1 (Amendment No. 3) plus 1.8%	SCCR 2006 Schedule 1 plus 6.1% (ex GST)	SCCR 2006 Schedule 1 plus 9.7% (ex GST)	SCCR 2006 Schedule 1 plus 12.6% (ex GST)
		4 Sept 06 to 31 July 2007	from 1 Aug 07	from 1 Oct 08	from 1 Oct 09	from 1 Oct 10
Draw & engross per A4 page	1	\$65.00	\$66.17	\$68.97	\$71.31	\$73.19
Draw & print per A4 page	2	\$14.50	\$14.76	\$15.38	\$15.91	\$16.33
Engrossing per A4 page	3	\$14.50	\$14.76	\$15.38	\$15.91	\$16.33
Photocopying, printing sent or received e-mail per sheet	4(a)	\$1.00	\$1.02			
Photocopying, printing sent or received e-mail per sheet for up to 20 sheets printed at same time (subject to 4(c))	4(b)			\$1.00	\$1.10	\$1.13
Photocopying, printing sent or received e-mail per sheet - after the first 20 sheets	4(c)			\$0.40	\$0.44	\$0.45
Perusing per A4 page	5	\$7.20	\$7.33	\$7.64	\$7.90	\$8.11
Perusal of substance per A4 page	5	\$19.50	\$19.85	\$20.69	\$21.39	\$21.96
Scanning per A4 page	6	\$2.10	\$2.14	\$2.23	\$2.30	\$2.37
Solicitor attendance - skill - per hour	7	\$263.00	\$267.73	\$279.04	\$288.51	\$296.14
Solicitor attendance - non-skill - per hour	8	\$162.00	\$164.92	\$171.88	\$177.71	\$182.41
Court attendance - short	9(a)	\$95.00	\$96.71	\$100.80	\$104.22	\$106.97
Court attendance - ordinary	9(b)	\$163.00	\$165.93	\$172.94	\$178.81	\$183.54
Court attendance - protracted - per hour	9c	\$263.00	\$267.73	\$279.04	\$288.51	\$296.14
Clerk attendance per hour	10	\$127.00	\$129.29	\$134.75	\$139.32	\$143.00
File or lodge documents including electronically	11	\$21.00	\$21.38	\$22.28	\$23.04	\$23.65
Telephone - solicitor - per unit	12	\$27.00	\$27.49	\$28.65	\$29.62	\$30.40
Telephone - clerk - per unit	13(a)	\$13.50	\$13.74	\$14.32	\$14.81	\$15.20
Telephone - short leave message	13(b)	\$3.10	\$3.16	\$3.29	\$3.40	\$3.49
Affidavit - solicitor sworn to	14(a)	\$38.20	\$38.89	\$40.53	\$41.91	\$43.01
Affidavit - solicitor take where own firm has prepared affidavit	14(b)	\$20.60	\$20.97	\$21.86	\$22.60	\$23.20
Affidavit - clerk sworn to	14c	\$20.60	\$20.97	\$21.86	\$22.60	\$23.20
Affidavit - sworn to where no charge under 14b	14(d)	\$40.20	\$40.92	\$42.65	\$44.10	\$45.27
Letters per A4 page - letters <A4 and 1st page of letter to be charged proportionally	15(a)	\$65.00	\$66.17	\$68.97	\$71.31	\$73.19
Circular letter	15(b)	\$8.30	\$8.45	\$8.81	\$9.11	\$9.35



Supreme Court Scale of Costs summary

Supreme Court Scale of Costs summary (cont)

Work	Item	SCCR 2006 Schedule 1	SCCR 2006 Schedule 1 (Amendment No. 3) plus 1.8%	SCCR 2006 Schedule 1 plus 6.1% (ex GST)	SCCR 2006 Schedule 1 plus 9.7% (ex GST)	SCCR 2006 Schedule 1 plus 12.6% (ex GST)
		4 Sept 06 to 31 July 2007	from 1 Aug 07	from 1 Oct 08	from 1 Oct 09	from 1 Oct 10
receiving and sending fax and e-mails and electronic scanning: incoming fax per printed page	16(a)(i)	\$1.00	\$1.02			
receiving and sending fax and e-mails and electronic scanning: incoming fax per printed page for the first 20 pages	16(a)(ii)			\$1.00	\$1.10	\$1.13
Receiving and sending fax and e-mails and electronic scanning. Incoming fax per printed page after the first 20 pages"	16(a)(ii)			\$0.40	\$0.44	\$0.45
Outgoing fax - 1st page	16(b)	\$9.30	\$9.47	\$9.87	\$10.20	\$10.47
Outgoing fax - each subsequent page	16(b)	\$2.10	\$2.14	\$2.23	\$2.30	\$2.37
Outgoing e-mails not charged under 15	16c	\$7.30	\$7.43	\$7.75	\$8.01	\$8.22
Outgoing e-mails not charged under 15 - for each attachment	16c	\$7.30	\$7.43	\$7.75	\$8.01	\$8.22
Electronically scanning docs - 1st sheet	16(d)	\$7.30	\$7.43	\$7.75	\$8.01	\$8.22
Electronically scanning docs - each subsequent sheet	16(d)	\$2.10	\$2.14	\$2.23	\$2.30	\$2.37
Payment of account	17	\$8.30	\$8.45	\$8.81	\$9.11	\$9.35
Registration of Certificate of Judgment	18	\$363.00	\$369.53	\$385.14	\$398.21	\$408.74
Brief for use of trial Judge < 10 p	19(a)	\$9.30	\$9.47	\$9.87	\$10.20	\$10.47
Brief for use of trial Judge > 10 p	19(b)	\$17.50	\$17.82	\$18.57	\$19.20	\$19.71
Page, collate, bind brief <10p	20(a)	\$18.60	\$18.93	\$19.73	\$20.40	\$20.94
Page, collate, bind brief 11p to 50p	20(b)	\$74.30	\$75.64	\$78.83	\$81.51	\$83.66
Page, collate, bind brief 51p to 100p	20c	\$123.00	\$125.21	\$130.50	\$134.93	\$138.50
Page, collate, bind brief 101p to 200p	20(d)	\$195.00	\$198.51	\$206.90	\$213.92	\$219.57
Page, collate, bind brief > 200p	20(e)	\$285.00	\$290.13	\$302.39	\$312.65	\$320.91
Brief care and consideration	21	\$85.00	\$86.53	\$90.19	\$93.25	\$95.71
Prepare short form bill of costs per A4 pg	22	\$65.00	\$66.17	\$68.97	\$71.31	\$73.19
Draw & engross proof of witness	23(a)	\$32.00	\$32.58	\$33.95	\$35.10	\$36.03
Draw & engross indices	23(b)	\$32.00	\$32.58	\$33.95	\$35.10	\$36.03
Draw & engross formal lists	23c	\$32.00	\$32.58	\$33.95	\$35.10	\$36.03
Draw & engross copies of extracts from other docs per A4 pg	23(d)	\$32.00	\$32.58	\$33.95	\$35.10	\$36.03



Magistrates Court (Civil) Rules 1992 (SA)

Third schedule: Costs

Scale 1: Routine Actions

Date of operation: 1 July 2008

Item	\$1 - \$20,000	\$20,001 - \$80,000
1 Application in the nature of an application for an interim injunction.	70% of the Supreme Court scale	90% of the Supreme Court scale
2 Pre-action Application.	\$150	\$250
3 (a) deleted per Rule Amendment 20 (b) deleted per Rule Amendment 20		
4 Filing an action (other than under Rules 37 and 38) including where necessary attending the first Directions Hearing. A defence and counterclaim will only be allowed as one item on the higher scale applicable.	4.4% of the judgment sum	4.4% of the judgment sum up to a maximum of \$2,640
5 Filing an action under Rules 37 and 38.	As allowed by the Court.	
6 Any and all activity after the first directions hearing until the trial date is set or the last pre-trial conference or hearing whichever is the latter.	10%	10% up to a maximum of \$6,000
7 All aspects not otherwise specified of and incidental to preparing for trial including proofing witnesses, advice on evidence and law (solicitor and counsel) and delivering brief to counsel.	11% of the judgment sum	11% of the judgment sum up to a maximum of \$6,600
8 Arranging witnesses for trial - per witness (includes obtaining and filing and serving expert reports).	\$50	\$75
9 Issuing and serving summons to witness.	\$50	\$75
10 Filing request (Form 18) not otherwise provided for.	\$50	\$50
11 Request for Investigation or Examination Summons including attendance at the hearing.	\$90	\$100
12 Service of any document which is not in the usual course served by the Court and is not otherwise specified		
(a) Personal where required	\$100	\$100
(b) Other	\$50	\$50
13 Preparing bill for taxation (includes attendance).	\$250	\$330



Magistrates Court (Civil) Rules 1992 (SA)

Attendance and Counsel Fees

Item	\$1 - \$20,000	\$20,001 - \$80,000
14 To advise on compromise or settlement for a person under disability -		
(a) Where quantum only is in dispute;	\$250	\$500
(b) Where quantum and liability are in dispute;	\$350	\$700
14A Where no amount has been claimed under item 14, to provide an opinion (including to advice on evidence) -		
(a) Where quantum only is in dispute;	\$250	\$500
(b) Where quantum and liability are in dispute;	\$350	\$700
15 Attendance as counsel at trial (includes fee on brief and refreshers)		
first day	\$1,200	\$1,500
subsequent day(s)	\$800	\$1,000
attendance for judgment	\$150	\$200
16 Attendance on an application to set aside a warrant.	\$50	\$50
17 Any other attendance where the costs are not within items 4, 6 or 7	\$100	\$120

Notes

- A** The Court may allow any larger or lesser amount for any item and any amount in respect of any other matter that the Court allowed at the time of making any order.
- B** All the above items are all inclusive of all costs for all incidental and necessary activity and advice for each item to the intent that no costs will be allowed in addition to the costs set forth for each item nor for anything not itemised.
- C** For the purposes of items 4, 6 and 7 the costs calculated must be rounded to the nearest \$10.
- D** For the purpose of determining the applicable scale, any cents must be rounded up to the next dollar and unless the Court orders to the contrary any interest component in the judgment sum will be excluded.



Magistrates Court (Civil) Rules 1992 (SA)

Witness Fees And Disbursements

Professional scientific or other expert witnesses per day	\$600 or such amount ordered by the Court
Other adult person per day	\$300
Persons under 18 years of age per day	\$120
Travel expenses	Where the witness is normally resident more than 50 km from the trial Court at the rate of 70 cents per km or the least expensive return air fare whichever is the lesser or the cheapest combination of both.
Accommodation expenses	In the discretion of the taxing officer where the witness is required to be absent from his or her normal place of residence overnight for accommodation and sustenance per night \$240 or such larger amounts allowed by the Court at the time of or before judgment.
Photocopying	50 cents per page
STD calls	The actual cost.
Expert Reports	\$525 or such other amount ordered by the Court
Other	All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably incurred and paid; but excluding the usual and incidental expenses and overheads of a legal practice and in particular excluding postage, telephone charges (non STD) and courier expenses.

Notes

- A If a witness is released before or is required to first attend after the luncheon break on any day, half a day will be allowed.
- B Where a party intends to serve a claim by means other than post, e-mail or fax a disbursement equal to the amount a Sheriff is entitled to receive for serving a claim form is allowed, but if the process is returned to the Court unserved, or is served by post, e-mail or fax, the disbursement must be disallowed unless a Registrar is satisfied that the party made reasonable efforts to serve the claim by means other than post, e-mail or fax.

