



New South Wales

# Civil Liability Regulation 2024

under the

Civil Liability Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Civil Liability Act 2002*.

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Attorney General

## Explanatory note

The object of this regulation is to repeal and remake, with minor changes, the *Civil Liability Regulation 2019*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation provides that—

- (a) non-government schools and Water NSW are public authorities for the *Civil Liability Act 2002* (***the Act***), Part 5, and
- (b) certain persons who are authorised carers under the *Children and Young Persons (Care and Protection) Act 1998* for the purpose of providing residential care to children and young people in out-of-home care are taken to be employees for the purposes of the Act.

This regulation also makes a transitional provision relating to the application of proportionate liability provisions in the Act.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Civil Liability Regulation 2024

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### 1 Name of regulation

This regulation is the *Civil Liability Regulation 2024*.

### 2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

**Note**— This regulation repeals and replaces the *Civil Liability Regulation 2019*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

### 3 Definition

In this regulation—

**the Act** means the *Civil Liability Act 2002*.

**Note**— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

### 4 Liability of public authorities—the Act, s 41

(1) For the Act, section 41, definition of **public or other authority**, paragraph (f), the following are prescribed as authorities to which the Act, Part 5 applies—

- (a) in relation to a function exercised by or on behalf of a person or body in connection with the conduct of a non-government school—the person or body that conducts the non-government school,
- (b) in relation to a function exercised by or for Water NSW in the Sydney catchment area—Water NSW.

(2) In this section—

**non-government school** has the same meaning as in the *Education Act 1990*.

**Sydney catchment area** has the same meaning as in the *Water NSW Act 2014*.

### 5 Proportionate liability—the Act, s 3B(3)

(1) A civil liability that arose before 26 July 2004 and to which the Act, Part 4 would otherwise apply, is excluded from the operation of the following—

- (a) the Act, Part 4,
- (b) the Act, Schedule 1, clauses 6 and 13 in the application of the clauses to the Act, Part 4.

(2) Despite subsection (1), the Act, Part 4 applies to a civil liability in relation to the following actions commenced on or after 1 December 2004, even if the liability arose before 26 July 2004—

- (a) a building action,

- (b) a subdivision action,
- (c) a civil action for loss or damage arising out of, or in connection with, any of the following as referred to in the *Environmental Planning and Assessment Act 1979*, Division 6.6—
  - (i) defective building work,
  - (ii) defective subdivision work.

(3) In this section—

**building action** has the same meaning as in the *Environmental Planning and Assessment Act 1979*, Part 4C, as in force immediately before 1 March 2018.

**building work** has the same meaning as in the *Environmental Planning and Assessment Act 1979*, Division 6.6.

**subdivision action** has the same meaning as in the *Environmental Planning and Assessment Act 1979*, Part 4C, as in force immediately before 1 March 2018.

**subdivision work** has the same meaning as in the *Environmental Planning and Assessment Act 1979*, Division 6.6.

## 6 Individual akin to an employee—the Act, s 6G(4)

- (1) Despite the Act, section 6G(3)(b), an individual is akin to an employee if—
  - (a) the activities carried out by the individual are carried out in the individual's capacity as an authorised residential care worker, and
  - (b) the individual is otherwise akin to an employee for the Act, section 6G.

(2) In this section—

**authorised residential care worker** has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

## 7 Repeal and savings

- (1) The *Civil Liability Regulation 2019* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Civil Liability Regulation 2019*, had effect under that regulation continues to have effect under this regulation.