

# Law Reform (Vicarious Liability) Act 1983 No 38

[1983-38]



New South Wales

## Status Information

### Currency of version

Historical version for 3 March 1997 to 5 December 2002 (accessed 15 October 2024 at 6:12)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Civil Liability Amendment \(Personal Responsibility\) Act 2002 No 92](#) (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Law Reform (Vicarious Liability) Act 1983 No 38



New South Wales

An Act with respect to the vicarious liability of masters and of the Crown in respect of the commission of certain torts.

## 1 Name of Act

This Act may be cited as the *Law Reform (Vicarious Liability) Act 1983*.

## 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent of this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

## 3 Application of Act

This Act does not apply to or in respect of a tort committed by a person or arising out of a wrongful act or omission occurring before the day appointed and notified under section 2 (2).

## 4 Act to bind Crown

This Act binds the Crown.

## 5 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Crown** means the Crown in right of New South Wales.

**independent function**, in relation to a servant or a person in the service of the Crown, means a function conferred or imposed upon the servant or person, whether or not as the holder of an office, by the common law or statute independently of the will of the servant's master or the Crown, as the case may require.

**office** includes the office of special constable within the meaning of Part 4 of the *Police Offences Act 1901*.

**person in the service of the Crown** does not include a servant of the Crown.

(2) In this Act, a reference to:

- (a) a function includes a reference to a power, authority and duty, and
- (b) the performance of a function includes a reference to the exercise of the function and the failure to perform or exercise the function.

## **6 Police officer**

For the purposes of this Act, a police officer shall be deemed to be a person in the service of the Crown and not a servant of the Crown.

## **7 Vicarious liability of masters**

Notwithstanding any law to the contrary, a master is vicariously liable in respect of a tort committed by the master's servant in the performance or purported performance by the servant of an independent function where the performance or purported performance of the function:

- (a) is in the course of the servant's service for his or her master or is an incident of the servant's service (whether or not it was a term of his or her contract of service that the servant perform the function), or
- (b) is directed to or is incidental to the carrying on of any business, enterprise, undertaking or activity of the servant's master.

## **8 Further vicarious liability of the Crown**

(1) Notwithstanding any law to the contrary, the Crown is vicariously liable in respect of the tort committed by a person in the service of the Crown in the performance or purported performance by the person of a function (including an independent function) where the performance or purported performance of the function:

- (a) is in the course of the person's service with the Crown or is an incident of the person's service (whether or not it was a term of the person's appointment to the service of the Crown that the person perform the function), or
- (b) is directed to or is incidental to the carrying on of any business, enterprise, undertaking or activity of the Crown.

(2) Subsection (1) does not apply to or in respect of a tort committed by a person in the conduct of any business, enterprise, undertaking or activity which is:

- (a) carried on by the person on the person's own account, or
- (b) carried on by any partnership, of which the person is a member, on account of the partnership.

## 9 Contributory negligence

Section 2 (1) of the *Statutory Duties (Contributory Negligence) Act 1945* and section 7 of the *Law Reform (Miscellaneous Provisions) Act 1965* apply with respect to an action under section 7 or 8 as if the references in those sections of those Acts to a statutory duty imposed on a defendant include a reference to an action for breach of a statutory duty imposed upon:

- (a) a servant in respect of whom the defendant is vicariously liable under section 7, or
- (b) a person in the service of the Crown in respect of whom the defendant is vicariously liable under section 8.

## 10 Effect of statutory exemptions

(1) In this section:

**person** includes the Crown.

**statutory exemption** means a provision made by or under an Act which excludes or limits the liability of a person.

- (2) For the purposes of determining whether or not a person is vicariously liable in respect of a tort committed by another person, any statutory exemption conferred on that other person is to be disregarded.
- (3) Except as provided by this section, nothing in this Act affects a statutory exemption conferred on a person.