

Law Reform (Miscellaneous Provisions) Act 1946 No 33

[1946-33]



New South Wales

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Provisions in force

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

Notes—

- **Does not include amendments by**
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)

Authorisation

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Law Reform (Miscellaneous Provisions) Act 1946 No 33



New South Wales

An Act to make certain provisions in relation to actions of tort and in relation to rights against third parties; to amend the law with respect to proceedings against, and contributions between, tort-feasors; to make certain provisions in relation to charges upon insurance moneys payable as indemnity for liability to pay damages or compensation; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

- (1) This Act may be cited as the *Law Reform (Miscellaneous Provisions) Act 1946*.
- (2) (Repealed)

Part 2 Alternative defendants and third party procedure

1A Application

This Part applies to all courts of competent jurisdiction other than the Supreme Court and the District Court.

2 Special provisions in relation to certain actions of tort

- (1) In an action of tort in any court to which this Part applies the following provisions shall notwithstanding anything contained in any Act which regulates the procedure and practice of the court, have effect:
 - (a) All persons may be joined as defendants against whom the right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly or severally or in the alternative where if separate actions were brought against such persons any common question of law or fact would arise, and judgment or verdict and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

- (b) It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against the defendant; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which the defendant may have no interest.
 - (c) Where the plaintiff is in doubt as to the person from whom the plaintiff is entitled to redress, the plaintiff may join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.
 - (d) No action shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
 - (e) The plaintiff may unite in the same action several causes of action, but if it appear to the court that any such causes of action cannot be conveniently tried or disposed of together, the court may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.
- (2) The jurisdiction conferred on a court by paragraph (b) or paragraph (e) of subsection (1) may be exercised by a judge of the court sitting either in court or in chambers, or in the case of a Local Court exercising jurisdiction under the [Local Courts \(Civil Claims\) Act 1970](#), by a Magistrate sitting alone or by any two justices.

3 Third parties

- (1) Any court to which this Part applies shall have power to grant to any defendant in respect of any right claimed or alleged by the defendant all such relief relating to or connected with the original subject of the cause or matter, claimed in like manner against any other person, whether already a party to the cause or matter or not, who has been duly served with notice in writing of the claim pursuant to rules of court or any order of the court, as might properly have been granted against that person if the person had been made a defendant to an action duly instituted by the same defendant for the like purpose.
- (2) Every person served with any such notice as aforesaid shall thenceforth be deemed a party to the cause or matter with the same rights in respect of the person's defence against the claim as if the person had been duly sued in the ordinary way by the defendant.

4 Rules of court

- (1) Rules of court not inconsistent with this Part may be made prescribing all matters which are necessary or convenient to be prescribed for carrying out the objects and

intentions of this Part.

(2) (Repealed)

(3) The power to make rules of court conferred by this section may be exercised:

(a) (Repealed)

(b) in relation to proceedings in a Local Court exercising jurisdiction under the *Local Courts (Civil Claims) Act 1970*, by the Governor.

Part 3 Contribution between tort-feasors

5 Proceedings against and contribution between joint and several tort-feasors

(1) Where damage is suffered by any person as a result of a tort (whether a crime or not):

- (a) judgment recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage,
- (b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the spouse, brother, sister, half-brother, half-sister, parent or child, of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action,
- (c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by that person in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this section:

(a) the expressions "parent" and "child" have the same meanings as they have for

the purposes of the *Compensation to Relatives Act of 1897* as amended by subsequent Acts, and

(b) the reference in this section to “the judgment first given” shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied, and

(c) the expression **spouse** of a person includes a person with whom the person had a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) at the time of his or her death.

(3A) For the purposes of this section, where a person commits a tort and the Crown is vicariously liable under section 8 of the *Law Reform (Vicarious Liability) Act 1983* in respect of that tort, the Crown and the person are joint tort-feasors.

(4) Nothing in this section shall:

(a) apply with respect to any tort committed before the commencement of this Part, or

(a1) apply so as to cause the Crown and a person in the service of the Crown to be joint tort-feasors with respect to a tort to which section 8 of the *Law Reform (Vicarious Liability) Act 1983* applies committed before the day appointed and notified under section 2 (2) of the *Law Reform (Vicarious Liability) Act 1983*, or

(b) affect any criminal proceedings against any person in respect of any wrongful act, or

(c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

(5) An amendment made to this section by the *Miscellaneous Acts Amendment (Relationships) Act 2002* does not apply in respect of an action where the tort concerned occurred before the commencement of the amendment.

Part 4 Attachment of insurance moneys

6 Amount of liability to be charge on insurance moneys payable against that liability

(1) If any person (hereinafter in this Part referred to as the insured) has, whether before or after the commencement of this Act, entered into a contract of insurance by which the person is indemnified against liability to pay any damages or compensation, the amount of the person’s liability shall on the happening of the event giving rise to the claim for damages or compensation, and notwithstanding that the amount of such liability may not then have been determined, be a charge on all insurance moneys that are or may become payable in respect of that liability.

- (2) If, on the happening of the event giving rise to any claim for damages or compensation as aforesaid, the insured (being a corporation) is being wound up, or if any subsequent winding-up of the insured (being a corporation) is deemed to have commenced not later than the happening of that event, the provisions of subsection (1) shall apply notwithstanding the winding-up.
- (3) Every charge created by this section shall have priority over all other charges affecting the said insurance moneys, and where the same insurance moneys are subject to two or more charges by virtue of this Part those charges shall have priority between themselves in the order of the dates of the events out of which the liability arose, or, if such charges arise out of events happening on the same date, they shall rank equally between themselves.
- (4) Every such charge as aforesaid shall be enforceable by way of an action against the insurer in the same way and in the same court as if the action were an action to recover damages or compensation from the insured; and in respect of any such action and of the judgment given therein the parties shall, to the extent of the charge, have the same rights and liabilities, and the court shall have the same powers, as if the action were against the insured:

Provided that, except where the provisions of subsection (2) apply, no such action shall be commenced in any court except with the leave of that court. Leave shall not be granted in any case where the court is satisfied that the insurer is entitled under the terms of the contract of insurance to disclaim liability, and that any proceedings, including arbitration proceedings, necessary to establish that the insurer is so entitled to disclaim, have been taken.

- (5) Such an action may be brought although judgment has been already recovered against the insured for damages or compensation in respect of the same matter.
- (6) Any payment made by the insurer under the contract of insurance without actual notice of the existence of any such charge shall to the extent of that payment be a valid discharge to the insurer, notwithstanding anything in this Part contained.
- (7) No insurer shall be liable under this Part for any greater sum than that fixed by the contract of insurance between the insurer and the insured.
- (8) Nothing in this section shall affect the operation of any of the provisions of the [Workers Compensation Act 1987](#) or the [Motor Vehicles \(Third Party Insurance\) Act 1942](#).
- (9) Despite subsection (8), this section applies in relation to a policy of workers compensation insurance entered into by an employer (whether entered into before or after the commencement of this subsection), where the employer:
 - (a) being a natural person, has died, or is permanently resident outside the

Commonwealth and its Territories, or cannot after due inquiry and search be found, or

- (b) being a corporation (other than a company that has commenced to be wound up), has ceased to exist, or
- (c) being a company, corporation, society, association or other body (other than a company that has commenced to be wound up), was at the time when it commenced to employ workers to which the policy relates incorporated outside the Commonwealth and its Territories and registered as a foreign company under the laws of any State or Territory and is not so registered under any such law, or
- (d) being a company, is in the course of being wound up.