

Law Reform (Miscellaneous Provisions) Act 1965 No 32

[1965-32]



New South Wales

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
2A Notes	5
Part 2 Guarantees	5
3 Surety discharging liability to be entitled to securities (see Act No 43 1902, s 8A)	5
4–6 (Repealed)	5
Part 3 Amendment of doctrine of contributory negligence	5
7 (Repealed)	5
8 Definitions	5
9 Apportionment of liability in cases of contributory negligence	6
10 Workers compensation and contributory negligence	6
11 Total damages to be recorded	7
12 Contribution between joint tortfeasors	7
13 Compensation to relatives	7
14 Application of limitations periods	7
15 Apportionment by judge or jury	8
16 Savings and transitional provisions	8

Parts 4-11 (Repealed)	8
Schedule 1 Savings and transitional provisions	8

Law Reform (Miscellaneous Provisions) Act 1965 No 32



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An Act to make provision for and with respect to the mode of trial of certain classes of civil actions; to amend the common law doctrine of contributory negligence; to make further provision for and with respect to the payment or the provision of security for payment of moneys into court in civil actions; to confer on the Supreme Court a special jurisdiction exercisable as an extension of its equitable jurisdiction, to make general declarations of right; to enable the Supreme Court in its Commercial Causes jurisdiction to make declarations of right in addition to or in substitution for verdicts and judgments; to enable the Court of Appeal, in special circumstances, to substitute its assessment for the verdict of a jury; to extend the procedure relating to minor traffic offences; to make amendments of a procedural or administrative nature to various Acts; for these and other purposes to amend the *Common Law Procedure Act 1899-1962*, the *District Courts Act 1912-1965*, the *Equity Act 1901-1965*, the [Motor Traffic Act 1909](#) and certain other Acts in certain respects; 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 1965](#).
- (2) (Repealed)

2 Commencement

- (1) This Part shall commence on the day upon which the assent of Her Majesty to this Act is signified.
- (2) Subject to subsection (1) this Act shall commence upon such date or dates as may be appointed and notified pursuant to subsection (3).
- (3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the date upon which any Part or provision of this Act specified in the proclamation shall commence and may appoint different dates for different Parts or provisions (whether contained in the same Part or section or in different Parts or

sections) and the Part or provision so specified shall commence accordingly.

2A Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

Part 2 Guarantees

3 Surety discharging liability to be entitled to securities (see Act No 43 1902, s 8A)

- (1) A person who, being surety for the debt or duty of another, or being liable with another for a debt or duty, pays that debt, or performs that duty, is entitled:
 - (a) to have assigned to that person, or to a trustee for that person, every judgment, specialty or other security held by the creditor in respect of that debt or duty, whether or not that judgment, specialty or other security is taken at law to have been satisfied by the payment of the debt or the performance of the duty, and
 - (b) to stand in the place of the creditor and to use all the remedies, and, if necessary, and on a proper indemnity, to use the name of the creditor in any proceedings to obtain from the principal debtor or any co-surety, co-contractor or co-debtor (as the case requires) indemnity for the advances made and loss sustained by the person who paid the debt or performed the duty.
- (2) The payment of the debt or the performance of the duty by a surety is not a defence to any such proceedings referred to in subsection (1).
- (3) A co-surety, co-contractor or co-debtor is not entitled under this section to recover from another co-surety, co-contractor or co-debtor more than the proportion to which, as between those parties themselves, that person is justly liable.

4-6 (Repealed)

Part 3 Amendment of doctrine of contributory negligence

7 (Repealed)

8 Definitions

In this Part:

claimant—see section 9 (1).

contributory negligence—see section 9 (1).

court, in relation to any claim, means the court by or before which the claim falls to be determined.

damage includes loss of life and personal injury.

wrong means an act or omission that:

- (a) gives rise to a liability in tort in respect of which a defence of contributory negligence is available at common law, or
- (b) amounts to a breach of a contractual duty of care that is concurrent and co-extensive with a duty of care in tort.

9 Apportionment of liability in cases of contributory negligence

- (1) If a person (the **claimant**) suffers damage as the result partly of the claimant's failure to take reasonable care (**contributory negligence**) and partly of the wrong of any other person:
 - (a) a claim in respect of the damage is not defeated by reason of the contributory negligence of the claimant, and
 - (b) the damages recoverable in respect of the wrong are to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.
- (2) Subsection (1) does not operate to defeat any defence arising under a contract.
- (3) If any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of subsection (1) is not to exceed the maximum limit so applicable.

10 Workers compensation and contributory negligence

- (1) If any payments made to the claimant by way of compensation take effect under section 63 (5) of the *Workers' Compensation Act 1926* to any extent as a defence to the proceedings by the claimant against his or her employer, those payments are to be reduced to the same extent as the damages recoverable by the claimant are reduced under section 9, and are a defence to the reduced extent only.
- (2) If the claimant is liable to repay compensation to his or her employer under section 64 (1) (a) of the *Workers' Compensation Act 1926* or under section 151Z of the *Workers Compensation Act 1987*, the amount of compensation so repayable is to be reduced to the same extent as the damages recoverable by the claimant are reduced under section 9.
- (3) If the cost of any medical or hospital treatment or ambulance service for which the claimant's employer incurs liability under section 10 of the *Workers' Compensation Act 1926* or under Division 3 of Part 3 of the *Workers Compensation Act 1987* remains unpaid at the time the claimant recovers damages:
 - (a) the claimant's liability in respect of that cost is, as between the claimant and the claimant's employer, to be reduced to the same extent as the claimant's damages

are reduced under section 9, and

- (b) the claimant's employer, despite the recovery of damages and the provisions of section 151Z of the *Workers Compensation Act 1987*, remains liable to pay to the claimant the balance of that cost under section 10 of the *Workers' Compensation Act 1926* or under Division 3 of Part 3 of the *Workers Compensation Act 1987* (whichever is applicable).

Note—

The *Workers' Compensation Act 1926* has been repealed, but the Act is given ongoing effect by the transitional provisions contained in the *Workers Compensation Act 1987*.

11 Total damages to be recorded

If the damages recoverable by a claimant are subject to any reduction under this Part, the court is to find and record the total damages that would have been recoverable had there been no contributory negligence by the claimant.

12 Contribution between joint tortfeasors

Section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* applies in any proceedings where two or more persons are liable for damages in tort or would, if they had all been sued, be so liable by virtue of this Part in respect of the damage suffered by any person.

13 Compensation to relatives

- (1) No action for damages for the benefit of dependants of a deceased person under the *Compensation to Relatives Act 1897* is defeated by the contributory negligence or breach of statutory duty of the deceased person.
- (2) The damages recoverable in such an action are not reduced by reason of the contributory negligence or of the breach of statutory duty of the deceased person.

14 Application of limitations periods

- (1) This section applies to proceedings to which section 9 applies if:
 - (a) the claimant suffered damage as the result partly of the wrong of two or more persons, and
 - (b) one of those persons avoids liability to another of those persons (or his or her personal representative) by pleading the *Limitation Act 1969* or any other enactment limiting the time within which proceedings may be taken.
- (2) The person who avoids liability is not entitled to recover damages or contribution from the other person or his or her personal representative by virtue of section 9.

15 Apportionment by judge or jury

- (1) If proceedings to which section 9 applies are tried by a judge sitting without a jury, the judge is to make the apportionment under section 9.
- (2) If proceedings to which section 9 applies are tried by a judge sitting with a jury, the jury is to determine the total damages that would have been recoverable had there been no contributory negligence by the claimant, and the extent to which those damages are to be reduced.

16 Savings and transitional provisions

Schedule 1 has effect.

Parts 4-11

17-27 (Repealed)

Schedule 1 Savings and transitional provisions

(Section 16)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Law Reform (Miscellaneous Provisions) Amendment Act 2000

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on the [Law Reform \(Miscellaneous](#)

Provisions) Amendment Act 2000

2 Definitions

In this Part:

the amending Act means the *Law Reform (Miscellaneous Provisions) Amendment Act 2000*.

3 Amendments concerning contributory negligence to have retrospective application

- (1) Subject to subclause (2) and clause 4, the amendments to this Act made by the amending Act are taken to apply to wrongs that occurred before the commencement of those amendments as if those amendments had been in force when the wrong occurred.
- (2) This Act, as in force immediately before the commencement of the amendments made by the amending Act, continues to apply to a wrong about which:
 - (a) a court has, before that commencement, given judgment or made a decision (including a judgment or decision about liability only), whether or not an appeal has been made against that judgment or decision, or
 - (b) the persons responsible for the damage have, before that commencement, entered into an agreement to settle claims arising from the wrong (including an agreement about liability only).

4 Pending court proceedings

- (1) This clause applies to proceedings before a court concerning a wrong that:
 - (a) were instituted before the commencement of the amending Act, and
 - (b) have not been finally determined by the court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if the amending Act had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had the amending Act not been enacted continue to apply to the proceedings as if that Act had not been enacted.