**CIVIL LIABILITY LEGISLATION in the STATES and TERRITORIES**

**AUSTRALIAN CAPITOL TERRITORY- CIVIL LAW (WRONGS) ACT 2002 – http://www7.austlii.edu.au/cgi-bin/viewdb/au/legis/act/consol\_act/cla2002194/**

**SECT 5**

**Protection of good samaritans from liability**

    (1)     A [good samaritan](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s5.html#good_samaritan) does not incur personal civil liability for an act done or omission made honestly and without recklessness in assisting, or giving advice about the assistance to be given to, a person who is apparently—

        (a)     injured or at risk of being injured; or

        (b)     in need of emergency medical assistance.

    (2)     However, the protection does not apply if—

        (a)     the liability falls within the ambit of a scheme of compulsory third-party motor vehicle insurance; or

        (b)     the [good samaritan](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s5.html#good_samaritan)'s capacity to exercise appropriate care and skill was, at the relevant time, significantly impaired by a recreational drug.

**Example—scheme of compulsory third-party motor vehicle insurance**

the scheme under the Road Transport (Third-Party Insurance) Act 2008

*Note*     An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act

, s 126 and s 132).

    (3)     Despite subsection (2) (b), if a [good samaritan](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s5.html#good_samaritan) administers the drug known as naloxone, honestly and without recklessness, to a person apparently suffering from an overdose of an opioid drug for the purpose of resuscitating the person, the protection under subsection (1) applies even if the [good](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s5.html#good_samaritan) [samaritan](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s5.html#good_samaritan)'s capacity to exercise appropriate care and skill was, at the time of administering the drug, impaired by a recreational drug.

**Examples—opioid drugs**

              •     heroin

              •     methadone

              •     morphine

    (4)     In this section:

"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—

              (i)     injured or at risk of being injured; or

              (ii)     in need of emergency medical assistance; or

        (b)     a [medically qualified](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s5.html#medically_qualified) person who, acting without expectation of payment or other consideration, gives advice by telephone or another form of telecommunication about the treatment of a person who is apparently—

              (i)     injured or at risk of being injured; or

              (ii)     in need of emergency medical assistance.

"medically qualified"—a person is [***medically***](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s5.html#medically_qualified)[***qualified***](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s5.html#medically_qualified)if the person—

        (a)     is a doctor; or

        (b)     has professional qualifications in a field of health care that are recognised under an Act; or

        (c)     works, or has worked, as a member of the ambulance service or in another paramedical capacity.

**SECT 8**

**Protection of volunteers from liability**

    (1)     A volunteer does not incur personal civil liability for an act done or omission made honestly and without recklessness while carrying out [community](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s7.html#community_work) [work](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s7.html#community_work) for a community organisation on a voluntary basis.

    (2)     However, the protection does not apply if—

        (a)     the liability falls within the ambit of a scheme of compulsory third-party motor vehicle insurance; or

        (b)     the liability is for defamation; or

        (c)     the volunteer's capacity to carry out the work properly was, at the relevant time, significantly impaired by a recreational drug; or

        (d)     the volunteer was acting, and knew or ought to have known that he or she was acting—

              (i)     outside the scope of the activities authorised by the community organisation; or

              (ii)     contrary to instructions given by the community organisation.

**SECT 11B**

**Protection of food donors from liability**

A donor does not incur civil liability for any personal injury that results from the consumption of food donated by the donor if—

        (a)     the food was fit for human consumption when it left the possession or control of the donor; and

        (b)     for food that is required to be handled in a particular way to ensure it remains fit for human consumption—the donor told the person to whom the donor gave the food about the handling requirements for the food; and

        (c)     for food that would remain fit for human consumption for only a limited amount of time after it leaves the possession or control of the donor—the donor told the person to whom the donor gave the food about the time limit on the consumption of the food.

**SECT 14**

**Effect of apology on liability etc**

    (1)     An apology made by or on behalf of a person in relation to an incident claimed to have been caused by the person—

        (a)     is not (and must not be taken to be) an express or implied admission of fault or liability by the person in relation to the incident; and

        (b)     is not relevant to deciding fault or liability in relation to the incident.

    (2)     Evidence of an apology made by or on behalf of a person in relation to an incident claimed to have been caused by the person is not admissible in any civil proceeding as evidence of the fault or liability of the person in relation to the incident.

**Definitions—pt 3.2**

In this part:

"child", of a person, means the son, daughter, grandson, granddaughter, stepson or stepdaughter of the person, or someone to whom the person is acting in place of a [parent](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s32.html#parent).

"consequential mental harm", to a person, means [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s32.html#mental_harm) to the person that is a consequence of bodily injury to the person.

"family member", of a person, means—

        (a)     a domestic partner;

        (b)     a [parent](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s32.html#parent) or [child](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s32.html#child) of the person; or

        (c)     a brother, sister, half-brother or half-sister of the person.

"mental harm", to a person, means impairment of the person's mental condition.

"negligence" means failure to exercise reasonable care and skill.

"parent", of a person, means the father, mother, grandfather, grandmother, stepfather or stepmother of the person, or someone acting in place of a [parent](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s32.html#parent) to the person.

"pure mental harm", to a person, means [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s32.html#mental_harm) to the person other than [consequential mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s32.html#consequential_mental_harm).

**SECT 33**

**Personal injury arising from mental or nervous shock**

In an action for personal injury, the plaintiff is not prevented from recovering damages only because the injury arose completely or partly from mental or nervous shock.

**SECT 34**

**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 recognised psychiatric illness if reasonable care were not taken.

    (2)     For the application of this section in relation to pure mental harm to a person, the circumstances of the case to which the court must have regard include—

        (a)     whether or not the mental harm was suffered as the result of a sudden shock; and

        (b)     whether the plaintiff witnessed, at the scene, a person being killed, injured or put in danger; and

        (c)     the nature of the relationship between the plaintiff and anyone killed, injured or put in danger; and

        (d)     whether or not there was a pre-existing relationship between the plaintiff and the defendant.

    (3)     For the application of this section in relation to consequential mental harm to a person, the circumstances of the case to which the court must have regard include the nature of the bodily injury out of which the mental harm arose.

    (4)     This section does not affect the duty of care a person (the ***defendant*** ) has to another person (the ***plaintiff*** ) if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

**SECT 35**

**Mental harm—damages**

    (1)     Damages must not be awarded for pure mental harm to a person resulting from negligence unless the harm consists of a recognised psychiatric illness.

    (2)     Damages must not be awarded for economic loss for consequential mental harm to a person resulting from negligence unless the harm consists of a recognised psychiatric illness.

**SECT 40**

**Definitions—ch 4**

In this chapter:

"harm" means [harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s40.html#harm) of any kind, and includes—

        (a)     personal injury; and

        (b)     damage to property; and

        (c)     economic loss.

"negligence" means failure to exercise reasonable care and skill.

**SECT 42**

**Standard of care**

For deciding 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 the information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.

**SECT 43**

**Precautions against risk—general principles**

    (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 deciding whether a reasonable person would have taken precautions against a risk of harm, the [court](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s49.html#court) must consider the following (among other relevant things):

        (a)     the probability that the harm would happen 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 creating the risk of harm.

**SECT 45**

**General principles**

    (1)     A decision that negligence caused particular harm comprises the following elements:

        (a)     that the negligence was a necessary condition of the happening of the harm (‘factual causation');

        (b)     that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (the ***scope of liability*** ).

    (2)     However, if a person (the ***plaintiff*** ) has been negligently exposed to a similar risk of harm by a number of different people (the ***defendants*** ) and it is not possible to assign responsibility for causing the harm to 1 or more of them—

        (a)     the [court](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s49.html#court) may continue to apply the established common law principle under which responsibility may be assigned to the defendants for causing the harm; but

        (b)     the [court](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s49.html#court) must consider the position of each defendant individually and state the reasons for bringing the defendant within the scope of liability.

    (3)     In deciding the scope of liability, the [court](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s49.html#court) must consider (among other relevant things) whether or not, and why, responsibility for the harm should be imposed on the negligent [party](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/cla2002194/s49.html#party).

**SECT 46**

**Burden of proof**

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

# NSW CIVIL LIABILITY ACT 2002 – Selected extracts http://www7.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol\_act/cla2002161/

#### *16 Determination of damages for non-economic loss*

(1) No damages may be [awarded](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#award) for non-economic loss unless the severity of the non-economic loss is at least 15% of a most extreme case.

(2) The maximum amount of damages that may be [awarded](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#award) for non-economic loss is $350,000, but the maximum amount is to be [awarded](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#award) only in a most extreme case.

(3) If the severity of the non-economic loss is equal to or greater than 15% of a most extreme case, the damages for non-economic loss are to be determined in accordance with a Table:

#### *5D General principles*

(1) A determination that [negligence](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#negligence) caused particular [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) comprises the following elements:

(a) that the [negligence](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#negligence) was a necessary condition of the occurrence of the [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) ( **"factual causation"** ), and

(b) that it is appropriate for the scope of the negligent person's liability to extend to the [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) so caused ( **"scope of liability"** ).

(2) In determining in an exceptional case the court is to consider whether or not and why responsibility for the [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) should be imposed on the negligent party.

(3) If it is relevant to the determination of [factual causation](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5d.html#factual_causation) to determine what the person who suffered [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) would have done if the negligent person had not been negligent:

#### *5C Other principles*

In proceedings relating to liability for [negligence](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#negligence):

(a) the burden of taking precautions to avoid a risk of [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) includes the burden of taking precautions to avoid similar risks of [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) for which the person may be responsible, and

(b) the fact that a risk of [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done, and

(c) the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) does not of itself give rise to or affect liability in respect of the risk and does not of itself constitute an admission of liability in connection with the risk.

#### *5R Standard of contributory* [*negligence*](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#negligence)

(1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether the person who suffered [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) has been contributorily negligent in failing to take precautions against the risk of that [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm).

(2) For that purpose:

(a) the standard of care required of the person who suffered [harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#harm) is that of a reasonable person in the position of that person, and

(b) the matter is to be determined on the basis of what that person knew or ought to have known at the time.

#### *26D Assessment of permanent impairment*

(1) The degree of permanent impairment that results from an [injury](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26a.html#injury) is to be assessed as provided by this Part and Part 7 (Medical assessment) of Chapter 7 of the Workplace Injury Management and Workers Compensation Act 1998 (the **"1998 WC Act"** ).

 (3) If there is a dispute about the degree of permanent impairment of an injured [offender](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#offender), a court may not [award](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#award) damages unless the degree of permanent impairment has been assessed by an approved medical specialist in accordance with the 1998 WC Act.

(3A) A dispute about the degree of permanent impairment of an injured [offender](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#offender) cannot be referred for assessment unless the [offender](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#offender) has provided the [protected defendant](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26a.html#protected_defendant) with a medical report by a medical practitioner that assesses that the degree of permanent impairment of the injured [offender](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#offender) is at least 15% and sets out the medical practitioner's reasons for that assessment.

(4) A court may, at any stage in proceedings on a claim for damages, refer the matter for assessment of the degree of permanent impairment by an approved medical specialist in accordance with the 1998 WC Act.

(5) Section 151H (No damages unless permanent impairment of at least 15%) of the [Workers Compensation Act](http://www6.austlii.edu.au/au/legis/nsw/consol_act/wca1987255/) [1987](http://www6.austlii.edu.au/au/legis/nsw/consol_act/wca1987255/) applies for the purposes of an assessment under this Part of whether the degree of permanent impairment resulting from an [injury](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26a.html#injury) is at least 15%.

#### *27 Definitions*

**"consequential mental harm"** means [mental harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s27.html#mental_harm) that is a consequence of a [personal injury](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s27.html#personal_injury) of any other kind.
**"mental harm"** means impairment of a person's mental condition.
**"negligence"** means failure to [exercise](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s41.html#exercise) reasonable care and skill.
**"personal injury"** includes:

(a) pre-natal [injury](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26a.html#injury), and

(b) impairment of a person's physical or mental condition, and

(c) disease.

# "pure mental harm" means [mental harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s27.html#mental_harm) other than [consequential mental harm](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s27.html#consequential_mental_harm).

# SECT 5O Standard of care for professionals

 (1) A person practising a profession (
**"a professional"** ) does not incur a liability in [negligence](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5.html#negligence) arising from the provision of [a professional](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s5o.html#a_professional) service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by peer professional opinion as competent professional practice.

(2) However, peer 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 peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.

(4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.

#### *56 Who is a* [*Good Samaritan*](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s56.html#good_samaritan)

For the purposes of this Part, a
**"good samaritan"** is a person who, in good faith and without expectation of payment or other reward, comes to the assistance of a person who is apparently injured or at risk of being injured.

#### *57 Protection of good samaritans*

(1) A good samaritan does not incur any personal civil liability in respect of any act or omission done or made by the good samaritan in an emergency when assisting a person who is apparently injured or at risk of being injured.

#### *58 Exclusion from protection*

(1) The protection from personal liability conferred by this Part does not apply if it is the good samaritan's intentional or negligent act or omission that caused the [injury](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26a.html#injury) or risk of [injury](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26a.html#injury) in respect of which the good samaritan first comes to the assistance of the person.

(2) The protection from personal liability conferred by this Part in respect of an act or omission does not apply if:

(a) the ability of the good samaritan to [exercise](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s41.html#exercise) reasonable care and skill was significantly impaired by reason of the good samaritan being under the influence of alcohol or a drug voluntarily consumed (whether or not it was consumed for medication), and

(b) the good samaritan failed to [exercise](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s41.html#exercise) reasonable care and skill in connection with the act or omission.

(3) This Part does not confer protection from personal liability on a person in respect of any act or omission done or made while the person is impersonating a health care or emergency services [worker](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s60.html#work) or a police officer or is otherwise falsely representing that the person has skills or expertise in connection with the rendering of emergency assistance.

#### *68 Definition Apology*

**"apology"** means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter whether or not the [apology](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s68.html#apology) admits or implies an admission of fault in connection with the matter.

#### *69 Effect of* [*apology*](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s68.html#apology) *on liability*

(1) An [apology](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s68.html#apology) made by or on behalf of a person in connection with any matter alleged to have been caused by the person:

(a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and

(b) is not relevant to the determination of fault or liability in connection with that matter.

(2) Evidence of an [apology](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s68.html#apology) made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

### PART 2A - SPECIAL PROVISIONS FOR OFFENDERS IN CUSTODY

#### *26C No damages unless permanent impairment of at least 15%*

No damages may be [awarded](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#award) (whether for economic or non-economic loss) unless the [injury](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26a.html#injury) results in the death of the [offender](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#offender) or in a degree of permanent impairment of the [offender](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s26k.html#offender) that is at least 15%.

**NORTHERN TERRITORY PERSONAL INJURIES (LIABILITIES AND DAMAGES) ACT – http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nt/consol\_act/piada365/**

**SECT 7**

**Volunteers and community organisations**

    (1)     A [volunteer](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#volunteer) does not incur personal civil liability for a personal injury caused by an act done in good faith and without recklessness while doing [community work](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_work) for a [community](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) [organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation).

    (2)     Subsection (1) does not apply if the [volunteer](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#volunteer):

        (a)     knew, or ought reasonably to have known, that he or she was acting outside the scope of his or her authority or contrary to the instructions of the [community organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation); or

        (b)     did the act while intoxicated.

    (3)     A [community organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation):

        (a)     incurs the civil liability that would, but for subsection (1), have been incurred by the [volunteer](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#volunteer) doing work for that organisation; and

        (b)     is liable for the personal injury caused by the act of the [volunteer](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#volunteer) as if the [volunteer](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#volunteer) were an employee of the [community](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) [organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation).

    (4)     Liability that would be incurred under subsection (3) by a [community organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) that is an Agency or department of the Territory, if the Agency or department were a body corporate, is incurred by the Territory.

    (5)     An agreement, undertaking or arrangement has no effect to the extent that it provides for a [volunteer](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#volunteer) to give a [community](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) [organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) an indemnity against, or to make a contribution to a [community](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) [organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) in relation to:

        (a)     a liability the [volunteer](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#volunteer) would incur but for subsection (1); and

        (b)     a liability the [community organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) incurs under subsection (3).

    (6)     If under this section a [community organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) incurs civil liability for a personal injury, a member of the organisation's management committee (however described) does not incur personal liability for that injury.

    (7)     In this section:

"community organisation" means a religious body, a body corporate, or an Agency or department of the Territory, that organises, directs or supervises [community work](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_work) done by [volunteers](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#volunteer).

"community work" means work done for any of the following purposes:

        (a)     for a religious, educational, charitable or benevolent purpose;

        (b)     for promoting or encouraging literature, science or the arts;

        (c)     for the purposes of sport, recreation or amusement;

        (d)     for conserving or protecting the environment;

        (e)     for establishing, carrying on or improving a community, social or cultural centre;

        (f)     for promoting the interests of a local community;

        (g)     for a political purpose;

        (h)     for any purpose prescribed by the Regulations,

but does not include work done under a [community](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_work) [work](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_work) order made under the *Sentencing Act* , *Youth Justice Act* or *Fines and Penalties (Recovery) Act* .

"volunteer", in relation to a [community](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation) [organisation](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_organisation), means a person doing [community work](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s7.html#community_work) for that organisation:

        (a)     who receives no remuneration for doing that work other than:

            (i)     remuneration that the person would receive whether or not he or she did that work; or

            (ii)     the reimbursement of reasonable expenses incurred by the person in doing that work; or

        (b)     who receives remuneration that does not exceed the amount, if any, prescribed by the Regulations.

**SECT 8**

**Good Samaritans**

    (1)     A [good Samaritan](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s8.html#good_samaritan) does not incur personal civil liability for a personal injury caused by an act done in good faith and without recklessness while giving [emergency assistance](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s8.html#emergency_assistance) to a person.

    (2)     A [good Samaritan](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s8.html#good_samaritan) with [medical qualifications](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s8.html#medical_qualifications) does not incur personal civil liability for advice, given in good faith and without recklessness, about the treatment of a person being given emergency medical assistance.

    (3)     This section does not apply if the [good](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s8.html#good_samaritan) [Samaritan](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s8.html#good_samaritan) was intoxicated while giving the assistance or advice.

    (4)     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](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s8.html#emergency_assistance); or

        (b)     a person with [medical qualifications](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s8.html#medical_qualifications) who, acting without expectation of payment or other consideration, gives advice about the treatment of a person who is apparently in need of emergency medical assistance.

"medical qualifications" means:

        (a)     qualifications as a medical practitioner;

        (b)     professional qualifications in a category of health care recognised by statute; or

        (c)     qualifications as an ambulance officer or in another recognised paramedical capacity.

**SECT 13**

**Expression of regret not admissible as evidence**

An expression of regret about a personal injury made at any time before the commencement of a proceeding in respect of that injury is not admissible as evidence in that proceeding.

**SECT 25**

**Damages other than for pecuniary loss**

A court may award damages other than for pecuniary loss, or may refuse to award such damages, only in accordance with section 27 after determining the injured person's degree of permanent impairment in accordance with section 26.

**SECT 26**

**Assessment of degree of impairment**

    (1)     A court, in determining the degree of permanent impairment suffered by an injured person, must do so on the basis of evidence adduced under this section.

    (2)     The claimant and the respondent may each adduce evidence for the purposes of subsection (1).

    (3)     Evidence of permanent impairment is to be given only by a medical practitioner who has assessed the degree of permanent impairment in accordance with the prescribed guides and any applicable regulation.

    (4)     The Regulations may provide for any matters in relation to the assessment of permanent impairment suffered by an injured person, including the following:

        (a)     the content of prescribed guides, including by modification of the American Medical Association Guides to the Evaluation of Permanent Impairment;

        (b)     procedures relating to the assessment of permanent impairment;

        (c)     the qualifications of medical practitioners who may give evidence under this section;

        (d)     the costs in connection with the assessment of impairment.

**SECT 27**

**Damages for non-pecuniary loss**

    (1)     The [maximum amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount) of damages a court may award for non-pecuniary loss is:

        (a)     on the commencement of this Part until the first declaration under section 28 takes effect – $350 000; and

        (b)     at any time after the first declaration under section 28 takes effect – the amount declared and in force under section 28 at the time of the award.

    (2)     A court must not award damages for non-pecuniary loss if the court determines the degree of permanent impairment to be less than 5% of the whole person.

    (3)     When awarding damages for non-pecuniary loss, a court must award the following amount:

        (a)     if the court determines the degree of permanent impairment to be 85% or more of the whole person – the [maximum](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount) [amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount);

        (b)     if the court determines the degree of permanent impairment to be not less than 15% and not more than 84% of the whole person – the relevant percentage of the [maximum amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount);

        (c)     if the court determines the degree of permanent impairment to be a percentage of the whole person specified in column 1 of the Table – the amount specified in column 2 opposite the relevant percentage.

TABLE

|  |  |
| --- | --- |
| Column 1  | Column 2  |
| Degree of permanent impairment as percentage of whole person  | Amount of damages to be awarded  |
| not less than 5% but less than 10%  | 2% of the [maximum](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount) [amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount)  |
| 10%  | 3% of the [maximum](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount) [amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount)  |
| 11%  | 4% of the [maximum](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount) [amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount)  |
| 12%  | 6% of the [maximum](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount) [amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount)  |
| 13%  | 8% of the [maximum](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount) [amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount)  |
| 14%  | 12% of the [maximum](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount) [amount](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nt/consol_act/piada365/s27.html#maximum_amount)  |

**QUEENSLAND** **CIVIL LIABILITY ACT 2003 – http://www7.austlii.edu.au/cgi-bin/viewdb/au/legis/qld/consol\_act/cla2003161/**

**9 General principles**

(1) A person does not breach a duty 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 reasonably to have known); and

(b) the risk was not insignificant; and

(c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.

(2) In deciding whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (among other relevant things)—

(a) the probability that the harm would occur if care 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.

**10 Other principles**

In a proceeding relating to liability for breach of duty happening on or after 2 December 2002—

(a) the burden of taking precautions to avoid a risk of harm includes the burden of taking precautions to avoid similar risks of harm for which the person may be responsible; and

(b) the fact that a risk of harm could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done; and

(c) the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of harm does not of itself give rise to or affect liability in relation to the risk and does not of itself constitute an admission of liability in connection with the risk.

**11 General principles**

(1) A decision that a breach of duty caused particular harm comprises the following elements—

(a) the breach of duty was a necessary condition of the occurrence of the harm (
**"factual causation"** );

(b) it is appropriate for the scope of the liability of the person in breach to extend to the harm so caused (
**"scope of liability"** ).

(2) In deciding in an exceptional case, in accordance with established principles, whether a breach of duty—being a breach of duty that is established but which can not be established as satisfying *subsection (1) (a)* —should be accepted as satisfying *subsection (1) (a)* , the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party in breach.

(3) If it is relevant to deciding [factual causation](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s11.html#factual_causation) to decide what the person who suffered harm would have done if the person who was in breach of the duty had not been so in breach—

(a) the matter is to be decided subjectively in the light of all relevant circumstances, subject to paragraph (b); and

(b) any statement made by the person after suffering the harm about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest.

(4) For the purpose of deciding the [scope of liability](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s11.html#scope_of_liability), the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party who was in breach of the duty.

#### 12 Onus of proof

In deciding liability for breach of a duty, the [plaintiff](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s15.html#plaintiff) always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

**SECT 21 Proactive and reactive duty of doctor to warn of risk**

 (1) A doctor does not breach a duty owed to a [patient](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s21.html#patient) to warn of risk, before the [patient](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s21.html#patient) undergoes any medical treatment (or at the time of being given medical advice) that will involve a risk of personal injury to the [patient](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s21.html#patient), unless the doctor at that time fails to give or arrange to be given to the [patient](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s21.html#patient) the following information about the risk—

(a) information that a reasonable person in the [patient](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s21.html#patient)’s position would, in the circumstances, require to enable the person to make a reasonably informed decision about whether to undergo the treatment or follow the advice;

(b) information that the doctor knows or ought reasonably to know the [patient](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s21.html#patient) wants to be given before making the decision about whether to undergo the treatment or follow the advice.

(2) In this section—

**"patient"** , when used in a context of giving or being given information, includes a person who has the responsibility for making a decision about the medical treatment to be undergone by a [patient](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s21.html#patient) if the [patient](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s21.html#patient) is under a legal disability.

**Example:** the responsibility a parent has for an infant child

**22 Standard of care for professionals**

(1) A professional does not breach a duty arising from the provision of a professional service if it is established that the professional acted in a way that (at the time the service was provided) was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice.

(2) However, peer professional opinion can not be relied on for the purposes of this section if the [court](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cla2003161/s29.html#court) considers that the opinion is irrational or contrary to a written law.

(3) The fact that there are differing peer professional opinions widely accepted by a significant number of respected practitioners in the field concerning a matter does not prevent any 1 or more (or all) of the opinions being relied on for the purposes of this section.

(4) Peer 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 relation to the risk of harm to a person, that is associated with the provision by a professional of a professional service.

**WESTERN AUSTRALIA CIVIL LIABILITY ACT 2002** – http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/wa/consol\_act/cla2002161/

**SECT 3**

### 3 .         Terms used

                In this Act, unless the contrary intention appears —

***harm*** means harm of any kind, including the following —
            (a)         personal injury;
            (b)         damage to property;
            (c)         economic loss;
        ***personal injury*** includes —
            (a)         death; and
            (b)         pre-natal injury; and
            (c)         impairment of a person’s physical or mental condition; and
            (d)         disease;
        ***personal injury damages*** means damages that relate to personal injury to a person caused by the fault of another person, but does not include a sum payable under a superannuation scheme or any life or other insurance policy.

###

### 5B .         General principles

        (1)         A person is not liable for harm caused by that person’s fault 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 care 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.

###

### 5D .         Onus of proof

                In determining liability for damages for harm caused by the fault of a person, the plaintiff always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

###

### 5PB .         Standard of care for health professionals

        (1)         An act or omission of a health professional is not a negligent act or omission if it is in accordance with a practice that, at the time of the act or omission, is widely accepted by the health professional’s peers as competent professional practice.
        (2)         Subsection (1) does not apply to an act or omission of a health professional in relation to informing a person of a risk of injury or death associated with —
            (a)         the treatment proposed for a patient or a foetus being carried by a pregnant patient; or
            (b)         a procedure proposed to be conducted for the purpose of diagnosing a condition of a patient or a foetus being carried by a pregnant patient.
        (3)         Subsection (1) applies even if another practice that is widely accepted by the health professional’s peers as competent professional practice differs from or conflicts with the practice in accordance with which the health professional acted or omitted to do something.

        (4)         Nothing in subsection (1) prevents a health professional from being liable for negligence if the practice in accordance with which the health professional acted or omitted to do something is, in the circumstances of the particular case, so unreasonable that no reasonable health professional in the health professional’s position could have acted or omitted to do something in accordance with that practice.

        (5)         A practice does not have to be universally accepted as competent professional practice to be considered widely accepted as competent professional practice.

        (6)         In determining liability for damages for harm caused by the fault of a health professional, the plaintiff always bears the onus of proving, on the balance of probabilities, that the applicable standard of care (whether under this section or any other law) was breached by the defendant.

###

### 5Q .         Terms used

                In this Part —
***consequential mental harm*** means mental harm that is a consequence of a personal injury of any kind;
***mental harm*** means impairment of a person’s mental condition;
***pure mental harm*** means mental harm other than consequential mental harm.

###

### 5S .         Mental harm: duty of care

        (1)         A person (the ***defendant*** ) does not owe a duty of care to another person (the ***plaintiff*** ) to take care not to cause the plaintiff mental harm unless the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
        (2)         For the purpose of the application of this section in respect of pure mental harm, the circumstances of the case include the following —
            (a)         whether or not the mental harm was suffered as the result of a sudden shock;
            (b)         whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;
            (c)         the nature of the relationship between the plaintiff and any person killed, injured or put in peril;
            (d)         whether or not there was a pre-existing relationship between the plaintiff and the defendant.
        (3)         For the purpose of the application of this section in respect of consequential mental harm, the circumstances of the case include the personal injury suffered by the plaintiff.
        (4)         This section does not require the court to disregard what the defendant knew or ought to have known about the fortitude of the plaintiff.

###

### 5T .         Liability for pecuniary loss for consequential mental harm

                A court cannot make an award of personal injury damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness.

###

### 5AD .         Protection of good samaritans

        (1)         A good samaritan does not incur any personal civil liability in respect of an act or omission done or made by the good samaritan at the scene of an emergency in good faith and without recklessness in assisting a person in apparent need of emergency assistance.
        (2)         A medically qualified good samaritan does not incur any personal civil liability for advice given in good faith and without recklessness about the assistance to be given to a person in apparent need of emergency assistance.
        (3)         This section does not affect the vicarious liability of any person for the acts or omissions or advice of the good samaritan or medically qualified good samaritan.

###

### 5AH .         Effect of apology on liability

        (1)         An apology made by or on behalf of a person in connection with any incident giving rise to a claim for damages —
            (a)         does not constitute an express or implied admission of fault or liability by the person in connection with that incident; and
            (b)         is not relevant to the determination of fault or liability in connection with that incident.
        (2)         Evidence of an apology made by or on behalf of a person in connection with any incident alleged to have been caused by the person is not admissible in any civil proceeding as evidence of the fault or liability of the person in connection with that incident.

###

### 9 .         Restrictions on damages for non-pecuniary loss (general damages)

        (1)         If the amount of non-pecuniary loss is assessed to be not more than Amount A for the year in which the amount is assessed, no damages are to be awarded for non-pecuniary loss.
        (2)         If the amount of non-pecuniary loss is assessed to be more than Amount A but not more than Amount C for the year in which the amount is assessed, damages for non-pecuniary loss are not to be awarded in an amount that is more than the excess of the amount assessed over Amount A.
        (3)         If the amount of non-pecuniary loss is assessed to be more than Amount C but less than the sum of Amount A and Amount C for the year in which the amount is assessed, damages for non-pecuniary loss are not to be awarded in an amount that is more than the excess of the amount assessed over the amount calculated as follows —

                (4)         In this section —
        ***Amount A*** has the meaning given by section 10;
        ***Amount C*** has the meaning given by section 10;
        ***non-pecuniary loss*** means —
            (a)         pain and suffering; and
            (b)         loss of amenities of life; and
            (c)         loss of enjoyment of life; and
            (d)         curtailment of expectation of life; and
            (e)         bodily or mental harm.

**SOUTH AUSTRALIA CIVIL LIABILITY ACT 1936** <http://www7.austlii.edu.au/cgi-bin/viewdb/au/legis/sa/consol_act/cla1936161/>

**31—Standard of care**

        (1)         For determining whether a person (the "defendant") was negligent, the standard of care required of the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s40.html#defendant) is that of a reasonable person in the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s40.html#defendant)'s position who was in possession of all information that the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s40.html#defendant) either had, or ought reasonably to have had, at the time of the incident out of which the [harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#harm) arose.
        (2)         The reasonable person in the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s40.html#defendant)'s position will be taken to be sober unless—
            (a)         the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s40.html#defendant) was [intoxicated](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s40.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#intoxicated) to the same extent as the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s40.html#defendant).

**33—Mental** [**harm**](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#plaintiff) [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm) unless a reasonable person in the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#defendant)'s position would have foreseen that a person of normal fortitude in the [plaintiff](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm) was suffered as the result of a sudden shock;
                  (ii)         whether the [plaintiff](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#plaintiff) witnessed, at the scene, a person being killed, injured or put in peril;
                  (iii)         the nature of the relationship between the [plaintiff](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#plaintiff) and any person killed, injured or put in peril;
                  (iv)         whether or not there was a pre-existing relationship between the [plaintiff](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#plaintiff) and the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#defendant);
            (b)         in a case of [consequential mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consequential_mental_harm), the circumstances of the case include the nature of the bodily [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) out of which the [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm) arose.
        (3)         This section does not affect the [duty of care](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#duty_of_care) of a person (the "defendant") to another (the "plaintiff") if the [defendant](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#defendant) knows, or ought reasonably to know, that the [plaintiff](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s38.html#plaintiff) is a person of less than normal fortitude.

### 5Q .         Terms used

***consequential mental harm*** means mental harm that is a consequence of a personal injury of any kind;
***mental harm*** means impairment of a person’s mental condition;
***pure mental harm*** means mental harm other than consequential mental harm.

**41—Standard of care for professionals**
        (1)         A person who provides a professional service incurs no liability in [negligence](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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 of or [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) associated with the provision of a [health care service](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#health_care_service).

**52—Damages for** [**non-economic loss**](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#non-economic_loss)
        (1)         [Damages](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#damages) may only be awarded for [non-economic loss](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#non-economic_loss) if—
            (a)         the injured person's ability to lead a normal life was significantly impaired by the [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) for a period of at least 7 days; or
            (b)         [medical expenses](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#medical_expenses) of at least the [prescribed minimum](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#prescribed_minimum) have been reasonably incurred in connection with the [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury).
        (2)         If [damages](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#damages) are to be awarded for [non-economic loss](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#non-economic_loss), other than in relation to [personal injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#personal_injury) arising from an [MVA motor accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mva_motor_accident), they must be assessed as follows:
            (a)         the injured person's total [non-economic loss](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#non-economic_loss), from a case in which the [non-economic loss](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#non-economic_loss) is not severe enough to justify any award of [damages](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#damages) to a case in which the injured person suffers [non-economic loss](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#non-economic_loss) of the gravest conceivable kind);
            (b)         the [damages](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#damages) for [non-economic loss](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#non-economic_loss) are to be calculated in relation to an [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) arising from an [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#accident) that occurred during 2002 by multiplying the [scale value](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s52.html#scale_value) by $1 710;

**3—Interpretation**

        (1)         In this Act, unless the contrary intention appears—

"accident" means an incident out of which [personal injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#personal_injury) arises and includes a [motor accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm) that is a consequence of bodily [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) to the person suffering the [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm);

"Consumer Price Index" means the [Consumer Price Index](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consumer_price_index) (all groups index for Adelaide) published by the Australian Statistician under the [*Census and Statistics Act 1905*](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/casa1905241/)(Cwth);

"contributory negligence" means a failure by a person who suffers [harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#damages) for [harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#harm) and includes solatium but does not include—

            (a)         workers compensation; or

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

"domestic partner", in relation to any cause of action arising under this Act, means—

            (a)         a person declared under the [*Family Relationships Act 1975*](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/fra1975233/)to have been a [domestic partner](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#domestic_partner) on the day on which the cause of action arose; or

            (b)         a person who was in a [registered relationship](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#registered_relationship) on the day on which the cause of action arose;

"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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#personal_injury) is caused by or arises out of the use of a [motor vehicle](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_vehicle);

"motor vehicle" means—

            (a)         a [motor vehicle](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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*](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/pta1994248/); or

                  (ii)         a person who holds an accreditation under the [*Rail Safety Act 1996*](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/repealed_act/rsa1996127/) ;

"MVA motor accident" means a [motor accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_accident) where the [motor](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_vehicle) [vehicle](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_vehicle) is a [motor vehicle](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_vehicle) as defined in the *Motor Vehicles Act 1959* ;

"negligence" means failure to exercise reasonable care and skill, and includes a breach of a tortious, contractual or statutory [duty of](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#duty_of_care) [care](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#duty_of_care);

"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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_vehicle) means a part of the vehicle designed for the carriage of passengers;

"personal injury" or "injury" means bodily [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) and includes—

            (a)         [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm);

            (b)         death;

"precaution" includes any action to avoid or reduce the risk of [harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) arising from an [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#accident) that occurred during 2002—$2.2 million; or

            (b)         in relation to an [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) arising from an [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consumer_price_index) for the September quarter of the preceding year bears to the [Consumer Price Index](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consumer_price_index) for the September quarter 2001;

"prescribed minimum" means—

            (a)         in relation to an [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) arising from an [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#accident) that occurred during 2002—$2 750; or

            (b)         in relation to an [injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#injury) arising from an [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#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](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consumer_price_index) for the September quarter of the preceding year bears to the [Consumer Price Index](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consumer_price_index) for the September quarter 2001;

"pure mental harm" means [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm) other than [consequential](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consequential_mental_harm) [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consequential_mental_harm);

"registered relationship" means a relationship that is registered under the [*Relationships Register Act 2016*](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/rra2016266/), and includes a corresponding law [registered relationship](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#registered_relationship) under that Act;

"sister" includes half-sister and step-sister;

"spouse", in relation to any cause of action arising under this Act, means a person who was legally married to another on the day on which the cause of action arose;

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

        (2)         For the purposes of this Act, [personal injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#personal_injury) will arise from a [motor](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_accident) [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_accident) if the [personal injury](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#personal_injury) is caused by or arises out of the use of a [motor](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_vehicle) [vehicle](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#motor_vehicle).

**53—Damages for** [**mental harm**](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm)

        (1)         [Damages](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#damages) may only be awarded for [mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#mental_harm) if the injured person—

            (a)         was physically injured in the [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#accident) or was present at the scene of the [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#accident) when the [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#accident) occurred; or

            (b)         is a [parent](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#parent), [spouse](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#spouse), [domestic partner](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#domestic_partner) or [child](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#child) of a person killed, injured or endangered in the [accident](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#accident).

        (2)         [Damages](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#damages) may only be awarded for [pure mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#pure_mental_harm) if the [harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#harm) consists of a recognised psychiatric illness.

        (3)         [Damages](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#damages) may only be awarded for economic loss resulting from [consequential mental harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#consequential_mental_harm) if the [harm](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/cla1936161/s3.html#harm) consists of a recognised psychiatric illness.

### Tasmania CIVIL LIABILITY ACT 2002 http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/tas/consol\_act/cla2002161/

### SECT 7

**Effect of apology on liability**

(1)  An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person –

(a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and

(b) is not relevant to the determination of fault or liability in connection with that matter.

(2)  Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

(3)  In this section,

***apology*** means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, which does not contain an admission of fault in connection with the matter.

**Division 2 - Standard of care General principles**

(1)  A person does not breach a duty to take reasonable care unless –

(a) there was a foreseeable risk of harm (that is, a risk of harm of which the person knew or ought reasonably to have known); and

(b) the risk was not insignificant; and

(c) in the circumstances, a reasonable person in the position of the person would have taken precautions to avoid the risk.

(2)  In deciding whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (among other relevant things):

(a) the probability that the harm would occur if care were not taken;

(b) the likely seriousness of the harm;

(c) the burden of taking precautions to avoid the risk of harm;

(d) the potential net benefit of the activity that exposes others to the risk of harm.

(3)  For the purpose of subsection (2)(c) , the court is to consider the burden of taking precautions to avoid similar risks of harm for which the person may be responsible.

**Division 3 - Causation General principles**

(1)  Prerequisites for a decision that a breach of duty caused particular harm are as follows:

(a) the breach of duty was a necessary element of the occurrence of the harm ( "factual causation" );

(b) it is appropriate for the scope of the liability of the person in breach to extend to the harm so caused ( "scope of liability" ).

(2)  In deciding in an exceptional case, in accordance with established principles, whether a breach of duty, being a breach of duty that is established but which can not be established as satisfying subsection (1)(a) , should be taken as satisfying subsection (1)(a) , the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party in breach.

(3)  If it is relevant to deciding factual causation to decide what the person who suffered harm would have done if the person who was in breach of the duty had not been so in breach –

(a) the matter is to be decided subjectively in the light of all relevant circumstances, subject to paragraph (b) ; and

(b) any statement made by the person after suffering the harm about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest.

(4)  For the purpose of deciding the scope of liability, the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party who was in breach of the duty.

**SECT 14**

**Onus of proof**

In deciding liability for breach of a duty, the plaintiff always bears the onus of proving, on the balance of probabilities, any fact on which the plaintiff wishes to rely relevant to the issue of causation.

**SECT 21**

**Division 6 - Professional negligence Proactive and reactive duty of registered medical practitioner to warn of risk**

(1)  A medical practitioner does not breach a duty owed to a patient to warn of risk, before the patient undergoes any medical treatment (or at the time of the patient being given medical advice) that will involve or give rise to a risk of personal injury to the patient, unless the medical practitioner at that time fails to give or arrange to be given to the patient the following information about the risk (whether or not the patient asks for the information):

(a) information that a reasonable person in the patient's position would, in the circumstances, require to enable the person to make a reasonably informed decision about whether to undergo the treatment or follow the advice;

(b) information that the medical practitioner knows or ought reasonably to know the patient wants to be given before making the decision about whether to undergo the treatment or follow the advice.

(2)  This section does not apply where a medical practitioner has to act promptly to avoid serious risk to the life or health of the patient and –

(a) the patient is not able to hear or respond to a warning about the risk to the patient; and

(b) there is not sufficient time for the medical practitioner to contact a person responsible for making a decision for the patient.

(3)  In this section,

***patient*** , when used in a context of asking for or being given information, includes a person who has the responsibility for making a decision about the medical treatment to be undergone by a patient if the patient is under a legal disability.

**SECT 22**

**Standard of care for professionals**

(1)  A person practising a profession ( "a professional" ) does not breach a duty arising from the provision of a professional service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by peer professional opinion as competent professional practice.

(2)  Peer professional opinion cannot be relied on for the purpose of this section if the court considers that the opinion is irrational.

(3)  The fact that there are differing peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purpose of subsection (1) .

(4)  Peer 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 relation to the risk of harm associated with the provision by a professional of a professional service to a person.

**SECT 27**

**Restrictions on damages for non-economic loss (general damages)**

(1)  If the amount of non-economic loss is assessed to be not more than Amount A, no damages are to be awarded for non-economic loss.

(2)  If the amount of non-economic loss is assessed to be more than Amount A but not more than Amount B, damages awarded for non-economic loss are calculated as follows:

(3)  If the amount of non-economic loss is assessed to be more than Amount B, damages awarded for non-economic loss are an amount equal to the amount assessed.

(4)  For the purpose of this section –

(a) " **Amount A** " is –

(i) for the financial year ending on 30 June 2004, $4 000; and

(ii) for the financial year commencing on 1 July 2004 and for each subsequent financial year, calculated in accordance with the following formula and rounded off

**SECT 29**

**PART 8 - Mental Harm Interpretation**

In this Part –

***consequential mental harm*** means mental harm that is a consequence of a personal injury of any other kind;

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

***pure mental harm*** means mental harm other than consequential mental harm.

**SECT 31**

**Personal injury arising from mental or nervous shock**

In any civil proceedings for damages, the plaintiff is not prevented from recovering damages merely because the personal injury arose wholly or in part from mental or nervous shock.

**SECT 32**

**Limitation on recovery for pure mental harm arising from shock**

(1)  This section applies to the liability of a person ( "the defendant" ) for pure mental harm to a person ( "the plaintiff" ) arising wholly or partly from mental or nervous shock in connection with another person ( "the victim" ) being killed, injured or put in peril by the act or omission of the defendant.

(2)  The plaintiff is not entitled to recover damages for pure mental harm unless –

(a) the plaintiff witnessed, at the scene, the victim being killed, injured or put in peril or the immediate aftermath of the victim being killed or injured; or

(b) the plaintiff is a close member of the family of the victim.

(3)  In this section –

***close member of the family*** of a victim means –

(a) a parent of the victim or other person with parental responsibility for the victim; or

(b) the spouse of the victim; or

(c) a child or stepchild of the victim or any other person for whom the victim has parental responsibility; or

(d) a brother, sister, half-brother or half-sister, or stepbrother or stepsister of the victim;

***spouse*** means –

(a) a husband or wife; or

(b) a de facto spouse –

but where more than one person would so qualify as a spouse, means only the last person to so qualify.

**SECT 33**

**Pure mental harm – liability only for recognised psychiatric illness**

There is no liability to pay damages for pure mental harm resulting from breach of duty unless the harm consists of a recognised psychiatric illness.

**SECT 34**

**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 position of the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.

(2)  For the purpose of the application of this section in respect of pure mental harm, the circumstances of the case include the following:

(a) whether or not the mental harm was suffered as the result of a sudden shock;

(b) whether or not there was a pre-existing relationship between the plaintiff and the defendant.

(3)  For the purpose of the application of this section in respect of consequential mental harm, the circumstances of the case include the nature and extent of personal injury suffered by the plaintiff.

(4)  This section does not require the court to disregard what the defendant knew or ought to have known about the fortitude of the plaintiff.

**SECT 35**

**Liability for economic loss for consequential mental harm**

A court cannot make an award of damages for economic loss for consequential mental harm resulting from breach of duty unless the harm consists of a recognised psychiatric illness.

**SECT 35B**

**Protection of good samaritans**

(1)  A good samaritan is an individual who provides assistance, advice or care to another person in relation to an emergency or accident in circumstances in which –

(a) he or she expects no money or other financial reward for providing the assistance, advice or care; and

(b) as a result of the emergency or accident the person to whom, or in relation to whom, the assistance, advice or care is provided is ill, is at risk of death or injury, is injured, is apparently ill, is apparently at risk of death or injury or is apparently injured.

(2)  A good samaritan is not liable in any civil proceeding for anything done, or not done, by him or her in good faith and without recklessness –

(a) in providing assistance, advice or care at the scene of the emergency or accident; or

(b) in providing advice by telephone or by another means of communication to a person at the scene of the emergency or accident.

(3)  Subsection (2) applies even if the emergency or accident was caused by an act or omission of the good samaritan.

(4)  Subsection (2) does not apply to any act or omission of a good samaritan that occurs before the assistance, advice or care is provided by the good samaritan.

**SECT 47**

**Protection of volunteers from liability**

(1)  Subject to subsections (2) and (3) , a volunteer does not incur civil liability for anything that the volunteer has done in good faith when doing community work.

(2)  Subsection (1) does not affect any right to recover damages in respect of defamation or in respect of the death of, or personal injury to, any person directly caused by, or by the driving of, a motor vehicle if, at the time of the death or personal injury –

(a) the vehicle was owned or being driven by a person who, but for the operation of subsection (1) , would incur liability in respect of the death or personal injury; and

(b) the vehicle –

(i) was a vehicle in respect of which a premium had been paid, or had been required to be paid, in accordance with Part V of the Motor Accidents (Liabilities and Compensation) Act 1973 ; or

(ii) was a "permitted out-of-State vehicle" , as referred to in [section 2](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/cla2002161/s2.html) of that Act, in respect of which a third party insurance policy was in force as required by section 19 of that Act.

(3)  The protection given by subsection (1) does not apply to a volunteer –

(a) who knew or ought reasonably to have known that at the relevant time he or she was acting –

(i) outside the scope of the community work organised by the community organisation; or

(ii) contrary to instructions given by the community organisation; or

(b) whose ability to do the community work in a proper manner was, at the relevant time, significantly impaired by alcohol or drugs.

(4)  In this section –

***drugs*** means drugs that are taken voluntarily otherwise than for therapeutic purposes;

***motor vehicle*** has the meaning given in section 2 of the Motor Accidents (Liabilities and Compensation) Act 1973 .