

## Appendix 5

### **Commonwealth, State and Territory Legislative initiatives as at 30 September 2002**

#### **Commonwealth**

##### **Trade Practices Amendment (Liability for Recreational Services) Bill 2002**

This Bill permits companies who supply recreational services to consumers to exclude their implied contractual liability for death or personal injury where services are supplied without due care and skill.

##### **Taxation Laws Amendment (Structured Settlements) Bill 2002**

This Bill exempts from income tax monies received from certain annuity and lump sums that are received as part of a structured settlement for personal injury claims.

#### **New South Wales**

##### ***Civil Liability Act 2002***

This Act provides, among other matters:

- a limit on the amount of damages that may be awarded in respect of past and future economic loss and gratuitous attendant care services;
- a threshold and a cap on damages for non-economic loss;
- a limit on the amount of costs that can be awarded for legal services; and
- restrictions on solicitors and barristers acting for parties in unmeritorious claims.

##### ***Legal Profession Amendment (Advertising) Regulation 2002***

This regulation restricts the manner in which barristers and solicitors can advertise personal injury services.

##### **Civil Liability Amendment (Personal Responsibility) Bill 2002**

This draft Bill, which was recently released for discussion, deals with the following matters:

- the principles that are to be applied in determining what is reasonably foreseeable and the standard of care for risk avoidance. The principles will apply to liability in tort and contract;
- no civil liability for a failure to take reasonable care in respect of a risk, or to warn of a risk, that a reasonable person would consider to be an inherent or obvious risk;

- limited liability for damages for personal injury or damage to property arising from recreational activities;
- proportionate liability in respect of claims involving economic loss or property damage in non-personal injury matters;
- introduction of a peer acceptance defence in connection with civil liability of professionals in tort or contract;
- limited liability in tort of a public or other authority;
- limitation on damages for injuries suffered by a person while intoxicated;
- limited liability for injury or death or damage to property resulting from self-defence or arising from criminal conduct; and
- protection from liability for ‘Good Samaritans’ and volunteers who act in good faith.

## **Victoria**

### **Wrongs and Other Acts (Public Liability Insurance Reform) Bill**

This bill covers the following matters:

- caps on loss of earnings at three times average weekly earnings;
- caps non-economic loss at \$371,380, indexed to the CPI;
- sets a discount rate of 5% with the rate being adjusted from time to time to reflect actual real investment returns;
- provides for structured settlements;
- allows people who partake in risky activities to waive their right to sue;
- in determining whether a plaintiff has established a breach of the duty of care owed by a defendant, courts will be required to take account of the fact that a plaintiff may have been affected by alcohol or drugs or was engaged in a criminal activity;
- protection of volunteers and Good Samaritans;
- ensuring saying ‘sorry’ does not represent an admission of liability;
- protecting food donors from liability where they have donated food to charities in good faith;
- requiring insurers to account clearly for the collection and remission to the fire brigades of amounts the insurers collect from insurance policy as ‘fire services levies’; and
- the appointment of a special Insurance Commissioner to the Essential Services Commission, with responsibility for collecting insurance data to ensure transparency and fairness in the pricing of premiums.

## **Queensland**

### ***Personal Injuries Proceedings Act 2002***

This Act:

- provides procedures for speedy resolution of claims for damages for personal injury;
- establishes procedures which promote early settlement of claims;
- provides mechanisms to ensure that a person cannot start court proceedings unless they are fully prepared for resolution of the claim by way of settlement or trial;
- limits damages in respect of gratuitous services;
- limits the amount of legal costs that can be awarded in specified circumstances;
- excludes jury trials in personal injury claims;
- provides for structured settlements; and
- restricts advertising by lawyers of personal injury services and touting.

## **South Australia**

### ***Wrongs (Liability and Damages for Personal Injury) Amendment Act 2002***

### ***Recreational Services (Limitation of Liability) Act 2002***

### ***Statutes Amendment (Structured Settlements) Act 2002***

These Acts covers the following matters:

- capping damages for non-economic loss;
- capping damages for future economic loss;
- capping payments in respect of gratuitous services;
- reducing damages where the injured party was intoxicated and this contributed to the accident;
- excluding award of damages for injuries suffered by a person engaged in a criminal activity;
- providing protection for ‘Good Samaritans’;
- strengthening the protection to volunteers;
- protecting landowners from liability where they allow free access for recreational purposes;
- allowing people who partake in risky activities to waive their right to sue;
- providing for structured settlements.

## **Western Australia**

### **Civil Liability Bill 2002**

This Bill:

- imposes a threshold in respect of damages for non-economic loss;
- caps damages for economic loss;
- caps damages for gratuitous services;
- provides for structured settlements; and
- places restrictions on advertising by lawyers of personal injury services.

### **Insurance Commission of Western Australia Amendment Bill 2002**

This Bill amends the *Insurance Commission of Western Australia Act 1986*. It allows for the public liability insurance cover provided by RiskCover to be extended to not-for-profit organisations. Before cover can be granted an organisation must first be assessed and approved by the Treasurer.

### **Volunteers (Protection from Liability) Bill 2002**

This bill will give volunteers qualified immunity from personal liability and transfer that liability to the organisation for which the volunteer is working.

## **Tasmania**

Tasmania has implemented a range of measures including:

- a discount rate of 7 per cent;
- no provision for pre-judgment interest;
- no damages in respect of gratuitous attendant care;
- a three year statute of limitations for personal injury claims;
- the abolition of stamp duty on public liability insurance policies from 1 July 2002.

The second phase of reform, announced on 11 September, includes:

- restricting the level of damages for those injured where the use of recreational drugs, including alcohol, has contributed to the injury;
- restricting people from being able to claim damages if injured while engaging in criminal activities;
- the use of structured settlements; and
- ensuring that saying ‘sorry’ is not an admission of liability.

## **Australian Capital Territory**

### ***Civil Laws (Wrongs) Act 2002***

**Adventure Activities (Liability) Bill 2002** (private member's bill)

**Legal Practitioners Amendment Bill 2002** (private member's bill)

These deal with:

- regulating compensation in relation to the death or injury of people taking part in certain adventure activities;
- introducing a regulatory regime for adventure activity operators;
- providing for structured settlements;
- abolishing rules preventing a court from making a determination of liability separate from an order of damages;
- protecting 'Good Samaritans' and volunteers, including bushfire volunteers;
- establishing new presumptions in regard to contributory negligence;
- replacing the common law rules regarding standard of care an occupier of premises must show to people entering on the premises in relation to dangers to them;
- capping the legal costs in personal injury cases where the award of damages is \$100,000 or less;
- prohibiting lawyers from prosecuting a civil claim where there are no reasonable prospects of success;
- establishing a regime for neutral evaluation of cases, with a view to quicker and cheaper resolution of disputes;
- prohibiting lawyers advertising 'no win, no fee' services; and
- requiring market participants (whether offering insurance or insurance-like products such as mutuals) to provide, in relation to the ACT market, annual returns indicating the quantum of premium taken, claims made, claims paid and claims refused.

## **Northern Territory**

### **Personal Injuries (Liabilities and Damages) Bill 2002**

This draft bill has been released for public comment. It includes:

- an indexed cap of \$250,000 for general damages;
- a cap on damages for past and future loss of earnings of three times average weekly earnings;
- a threshold for non-economic loss of \$15,000;
- prohibiting recovery of damages for those engaged in criminal activity;

- providing that the use of recreational drugs and alcohol be taken into account when assessing contributory negligence;
- exempting volunteers from being sued when undertaking work for their volunteer organisations;
- protection for good samaritans;
- setting standard, commercially realistic interest rates for past damages and discount rates for future damages;
- tightening the provisions where compensation is payable for voluntary or family carers;
- allowing courts to make orders for structured settlements; and
- a provision allowing people to say ‘sorry’ without this being an admission of liability.

Proposed amendments to the *Legal Practitioners Act* will also limit legal fees in ‘no win, no fee’ cases.