



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 58 of 1972

An Act to amend the Legal Practitioners Act, 1936-1969; the Limitation of Actions Act, 1936-1959; the Local Government Act, 1934-1971; the Motor Vehicles Act, 1959-1971; and the Wrongs Act, 1936-1959.

[Assented to 27th April, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

<u>PART I</u>	PART I
	PRELIMINARY
Short title.	1. This Act may be cited as the "Statutes Amendment (Miscellaneous Provisions) Act, 1972".
Commencement.	2. This Act shall come into operation on a day to be fixed by proclamation.
Arrangement of Act.	3. This Act is arranged as follows:—
	PART I—PRELIMINARY
	PART II—AMENDMENT OF THE LEGAL PRACTITIONERS ACT, 1936-1969
	PART III—AMENDMENT OF THE LIMITATION OF ACTIONS ACT, 1936-1959
	PART IV—AMENDMENT OF THE LOCAL GOVERNMENT ACT, 1934-1971

PART V—AMENDMENT OF THE MOTOR VEHICLES
ACT, 1959-1971PART VI—AMENDMENT OF THE WRONGS ACT,
1936-1959

PART IIPART IIAMENDMENT OF THE LEGAL PRACTITIONERS
ACT, 1936-1969

4. (1) The Legal Practitioners Act, 1936-1969, as amended by this Part, may be cited as the "Legal Practitioners Act, 1936-1972".

Short titles.

(2) The Legal Practitioners Act, 1936-1969, is referred to in this Part as "the principal Act".

5. Section 3 of the principal Act is amended by inserting after the item "PART VI.—Public Notaries: sections 61-67" the item "PART VII.—General Provisions—s. 68".

Amendment of
principal Act,
s. 3—
Arrangement
of Act.

6. The following heading and section are enacted and inserted in the principal Act immediately after section 67:—

Enactment of
Part VII of
principal Act.

PART VII

GENERAL PROVISIONS

68. (1) The authority of a legal practitioner to act on behalf of any person is not abrogated by reason only of the fact that that person becomes of unsound mind.

Abrogation of
rule in *Yonge
v. Toynbee*
(1910) 1 K.B.
215.

(2) When the mental unsoundness of a person on behalf of whom a legal practitioner is acting comes to the knowledge of the legal practitioner, his authority to act on behalf of that person shall, subject to subsection (3) of this section, cease and determine.

(3) Where it is necessary for the purpose of protecting the interests of a person of unsound mind in any legal proceedings or other business, the authority of a legal practitioner shall, notwithstanding that he knows of the mental unsoundness of a person on behalf of whom he is acting, continue for the purpose of completing those proceedings or that business.

PART III

PART III

AMENDMENT OF THE LIMITATION OF ACTIONS
ACT, 1936-1959

Short titles.

7. (1) The Limitation of Actions Act, 1936-1959, as amended by this Part, may be cited as the "Limitation of Actions Act, 1936-1972".

(2) The Limitation of Actions Act, 1936-1959, is referred to in this Part as "the principal Act".

Repeal of
ss. 45 and 46
of principal
Act and
enactment of
sections in
their place—

8. Sections 45 and 46 of the principal Act are repealed and the following sections and headings are enacted and inserted in their place:—

Persons under
legal
disability.

45. (1) Where the time for bringing on action or proceeding is limited by this Act, or any other Act or law, and the person who is entitled to bring the action or proceeding is under a legal disability, the time for bringing that action or proceeding shall, subject to subsection (3) of this section, be extended by the period or periods for which the disability exists or continues after the time at which the right to bring the action or proceeding arose.

(2) For the purposes of this section a person is under a legal disability in relation to an action or proceeding while he remains an infant or while he is subject to a mental deficiency, disease or disorder by reason of which he is incapable of reasoning or acting rationally in relation to the action or proceeding that he is entitled to bring.

(3) No period of limitation shall be extended by this section to more than thirty years from the time at which the right to bring the action or proceeding arose.

Imprisonment
or absence of
persons
entitled to
action.

46. No person shall be entitled to any further time beyond the period fixed by this Act within which to bring any action or proceeding by reason of the fact that he has been absent from the State or imprisoned.

Actions pursuant to the survival of Causes of Action Act

Extension of
period of
limitation
where cause of
action survives.

46a. Where a cause of action survives for the benefit of the estate of a deceased person, the time limited for the commencement of the action shall be extended by a period equal to the period between the death of the deceased and the grant of probate or letters of administration to the executor or administrator of his estate, or by a period of twelve months, whichever is the lesser.

9. The following section is enacted and inserted in the principal Act immediately after section 47 thereof:—

Enactment of
s. 48 of
principal Act—

48. (1) Subject to this section, a court by which an action could, if it were not out of time, be entertained, may extend the time for bringing the action.

Extension of
period of
limitation.

(2) An extension of time shall not be granted by a court under subsection (1) of this section unless it is satisfied that facts material to the plaintiff's case were not ascertained by him until—

(a) after, or within twelve months before, the expiration of the period of limitation;

and

(b) within twelve months before the commencement of the action,

and that in all the circumstances of the case it is fair and equitable to grant the extension of time.

(3) Where an extension of time is sought pursuant to this section in respect of an action, the action may be initiated in the normal manner, but the process by which it is initiated must be endorsed with a statement to the effect that the plaintiff seeks an extension of time pursuant to this section.

(4) The proceedings relating to the extension of time may be determined by the court at any time before or after the close of pleadings.

PART IV

PART IV

AMENDMENT OF THE LOCAL GOVERNMENT ACT, 1934-1971

10. (1) The Local Government Act, 1934-1971, as amended by this Part, may be cited as the "Local Government Act, 1934-1972".

Short titles.

(2) The Local Government Act, 1934-1971, is referred to in this Part as "the principal Act".

11. Section 719 of the principal Act is repealed.

Repeal of
s. 719 of
principal Act.

PART V

PART V

AMENDMENT OF THE MOTOR VEHICLES
ACT, 1959-1971

Short titles.

12. (1) The Motor Vehicles Act, 1959-1971, as amended by this Part, may be cited as the "Motor Vehicles Act, 1959-1972".

(2) The Motor Vehicles Act, 1959-1971, is referred to in this Part as "the principal Act".

Amendment of
principal Act,
s. 115—Claims against
nominal
defendant
where vehicle
not identified.

13. Section 115 of the principal Act is amended—

(a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Where—

(a) the driver of a motor vehicle has caused death or bodily injury by negligence in the use of that vehicle;

and

(b) the identity of the driver and the vehicle has not after due inquiry and search been ascertained,

a person who could have obtained a judgment in respect of that death or bodily injury against the driver may recover by action against a nominal defendant named by the Minister the amount of the judgment that he could have recovered against the driver.;

and

(b) by inserting after subsection (2) the following subsections:—

(3) A person who proposes to proceed against the nominal defendant in pursuance of this section must as soon as reasonably practicable after it becomes apparent that the identity of the vehicle or the driver is not readily ascertainable give to the Minister notice in writing of his claim and a short statement of the grounds thereof.

(4) Where a claimant fails to give notice of his claim in accordance with the requirements of subsection (3) of this section, and the court before which the action is brought is satisfied on the balance of probabilities that the defendant has been prejudiced in the conduct of his defence by that failure, it may, if the justice of the case so requires, dismiss the action.

14. Section 116 of the principal Act is amended by striking out from subsection (2) the passage "within six months after the accident causing that death or bodily injury".

Amendment of
principal Act,
s. 116—
Claim against
nominal
defendant
where vehicle
uninsured.

PART VI

PART VI

AMENDMENT OF THE WRONGS ACT, 1936-1959

15. (1) The Wrongs Act, 1936-1959, as amended by this Part, may be cited as the "Wrongs Act, 1936-1972".

Short titles.

(2) The Wrongs Act, 1936-1959, is referred to in this Part as "the principal Act".

16. Section 25 of the principal Act is amended—

Amendment of
principal Act,
s. 25—
Contribution
between tort
feasors.

(a) by striking out subparagraphs (iii) and (iv) of paragraph (ca) of subsection (1) and inserting in lieu thereof the following subparagraphs:—

(iii) that the plaintiff has not duly given any notice that would be required if the plaintiff were to recover judgment against that person;

or

(iv) that the time within which the plaintiff may commence action against the third party has expired;;

(b) by striking out from subsection (2) the passage "subsection (1) of";

(c) by inserting after the definition of "plaintiff" in subsection (2) the following definition:—

"proceedings" means proceedings before a court.;

and

(d) by inserting after subsection (2) the following subsection:—

(3) Any proceedings by a tortfeasor for the recovery of contribution from a third-party under this section must be instituted before the expiration of two years from the day on which the amount of damages or other compensation payable by the tortfeasor to the plaintiff is determined by the judgment of a court of competent jurisdiction, or by agreement between the plaintiff and the tortfeasor.

Enactment of
s. 27c of
principal Act.

17. The following heading and section are enacted and inserted in the principal Act immediately after section 27b thereof:—

*Rights as between employer and employee in cases of
vicarious liability*

Rights as
between
employer and
employee.

27c. (1) Notwithstanding any Act or law, or the provisions express or implied of any contract or agreement, where an employee commits a tort for which his employer is vicariously liable—

(a) the employee shall not be liable to indemnify the employer in respect of the vicarious liability incurred by the employer;

and

(b) unless the employee is otherwise entitled to indemnity in respect of his liability, the employer shall be liable to indemnify the employee in respect of liability incurred by the employee in respect of the tort.

(2) Where an employer is proceeded against for the tort of his employee, and the employee is entitled pursuant to a policy of insurance or contract of indemnity to be indemnified in respect of liability that he may incur in respect of the tort, the employer shall be subrogated to the rights of the employee under that policy or contract in respect of the liability incurred by him (the employer), arising from the commission of the tort.

(3) Where a person commits serious and wilful misconduct in the course of his employment and that misconduct constitutes a tort, the provisions of this section shall not apply in respect of that tort.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Governor's Deputy