

# LEGISLATIVE COUNCIL

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Read 1° 4 June 1985

*(Brought in by the Honourable J. H. Kennan)*

## A BILL

To amend Part IV. of the *Wrongs Act* 1958 to make new provision for contribution between persons who are liable for the same damage and to amend the law relating to proceedings against persons liable for the same debt or damage and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

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### **Short title.**

1. This Act may be cited as the *Wrongs (Contribution) Act* 1985.

### **Commencement.**

10 2. This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

### **Principal Act.**

3. In this Act the *Wrongs Act* 1958 is referred to as the Principal Act.

Principal Act No.  
6420.  
Reprinted to No.  
10078.

**New sections 23A and 23B inserted in Part IV.**

**4.** In Part IV. of the Principal Act before section 24 there shall be inserted the following sections:

**Interpretation.**

“23A. (1) For the purposes of this Part a person is liable in respect of any damage if the person who suffered that damage, or anyone representing the estate or dependants of that person, is entitled to recover compensation from the first-mentioned person in respect of that damage whatever the legal basis of liability, whether tort, breach of contract, breach of trust or otherwise. 5 10

(2) References in this Part to an action brought by or on behalf of the person who suffered any damage include references to an action brought for the benefit of the estate or dependants of that person.

(3) In this Part—

“**Action**” includes a proceeding commenced by way of counter-claim. 15

“**Dependants**” means those persons for whose benefit an action could be brought under Part III.

“**Judgment first given**” means, in a case where that judgment is reversed on appeal, the judgment first given which is not so reversed and, in a case where that judgment is varied on appeal, that judgment as so varied. 20

“**Writ**” includes—

- (a) summons;
- (b) in relation to a proceeding commenced by way of counter-claim, the notice or other document by which the proceeding is first notified to the defendant; and 25
- (c) in relation to proceedings for contribution under section 23B, the notice or other document by which the proceedings may be originated.”. 30

**Entitlement to contribution.**

“23B. (1) Subject to the following provisions of this section, a person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with the first-mentioned person or otherwise). 35

(2) A person shall be entitled to recover contribution by virtue of sub-section (1) notwithstanding that that person has ceased to be liable in respect of the damage in question since the time when the damage occurred provided that that person was so liable immediately before that person made or was ordered or agreed to make the payment in respect of which the contribution is sought. 40

(3) A person shall be liable to make contribution by virtue of sub-section (1) notwithstanding that that person has ceased to be liable in respect of the damage in question since the time when the damage occurred unless that person ceased to be liable by virtue of the expiry of a period of limitation or prescription which extinguished the right on which the claim against that person in respect of the damage was based.

(4) Subject to section 24 (2B), a person who in good faith has made or agreed to make any payment in settlement or compromise of a claim made against that person in respect of any damage (including a payment into court which has been accepted) shall be entitled to recover contribution in accordance with this section without regard to whether or not the person who has made or agreed to make the payment is or ever was liable in respect of the damage provided that that person would have been liable assuming that the factual basis of the claim against that person could be established.

(5) A judgment given in an action brought by or on behalf of the person who suffered the damage in question against any person from whom contribution is sought under this section shall be conclusive in the proceedings for contribution as to any issue determined by that judgment in favour of the person from whom the contribution is sought.

(6) References in this section to a person's liability in respect of any damage are references to any such liability which has been or could be established in an action brought against that person in Victoria by or on behalf of the person who suffered the damage and it is immaterial whether any issue arising in any such action was or would be determined (in accordance with the rules of private international law) by reference to the law of a place outside Victoria.

#### **Assessment of contribution.**

5. Section 24 of the Principal Act shall be amended as follows:

(a) In sub-section (2) for the words "In any proceedings for contribution under this section" there shall be substituted the expression "Subject to sub-sections (2A) and (2B), in any proceedings for contribution under section 23B"; and

(b) After sub-section (2) there shall be inserted the following sub-sections:

"(2A) Where the amount of the damages which have or might have been awarded in respect of the damage in question in an action brought in Victoria by or on behalf of the person who suffered it against the person from whom the contribution is sought was or would have been subject to—

(a) any limit imposed by or under any enactment or by any agreement made before the damage occurred;

(b) any reduction by virtue of section 26; or

(c) any corresponding limit or reduction under the law of a place outside Victoria—

the person from whom the contribution is sought shall not by virtue of any contribution awarded under section 23B be required to pay in respect of the damage a greater amount than the amount of those damages as so limited or reduced.

(2B) If in any proceedings for contribution under section 23B the jury or the court, if the trial is without a jury, finds that the amount of any payment made or agreed to be made in settlement or compromise of a claim was excessive the jury or the court (as the case requires) in assessing the amount of the contribution recoverable from any person shall disregard any part of the payment which appears to it to have been excessive.”.

**Time-limit for claiming contribution.**

6. Section 24 (4) of the Principal Act shall be amended as follows:

(a) For the expression “proceedings for contribution under this section in respect of damage may be commenced by a tort-feasor” there shall be substituted the expression “where under section 23B any person becomes entitled to a right to recover contribution in respect of any damage from any other person, proceedings to recover contribution by virtue of that right may be commenced by the first-mentioned person”;

(b) In paragraph (a) for the expression “tort-feasor” (where twice occurring) there shall be substituted the expression “first-mentioned person”;

(c) In paragraph (b) for the expression “another tort-feasor” there shall be substituted the words “another person liable in respect of that damage”; and

(d) In paragraph (b) for the expression “first-mentioned tort-feasor” (where twice occurring) there shall be substituted the expression “first-mentioned person”.

**New sections 24AA to 24AD inserted in Part IV.**

7. After section 24 of the Principal Act there shall be inserted the following sections:

**Proceedings against persons jointly liable for the same debt or damage.**

“24AA. Judgment recovered against any person liable in respect of any debt or damage shall not be a bar to an action, or to the continuance of an action, against any other person who is (apart from any such bar) jointly liable with the first-mentioned person in respect of the same debt or damage.”.

**Successive actions against persons liable (jointly or otherwise) for the same damage.**

5 “24AB. If more than one action is brought in respect of any damage by or on behalf of the person by whom it was suffered against persons liable in respect of the damage (whether jointly or otherwise) the plaintiff shall not be entitled to costs in any of those actions, other than that in which judgment is first given, unless the court is of the opinion that there was reasonable ground for bringing the action.”.

**Application to the Crown.**

10 “24AC. Where the Crown is subject to any liability by virtue of the *Crown Proceedings Act 1958*, this Part shall bind the Crown in respect of the liability to which it is so subject in the same manner and to the same extent as if the Crown were a subject.”

**Savings.**

15 “24AD. (1) This Part as amended by the *Wrongs (Contribution) Act 1985* shall not affect any case where the debt in question became due or (as the case requires) the damage in question occurred before the commencement of that Act.

20 (2) A person shall not be entitled to recover contribution or liable to make contribution in accordance with section 23B by reference to any liability based on breach of any obligation assumed by that person before the commencement of the *Wrongs (Contribution) Act 1985*.

25 (3) This Part as in force immediately before the commencement of the *Wrongs (Contribution) Act 1985* shall continue to apply with respect to torts committed before the commencement of that Act.

30 (4) The right to recover contribution in accordance with section 23B supersedes any right, other than an express contractual right, to recover contribution (as distinct from indemnity) otherwise than under this Part in corresponding circumstances but nothing in this Part shall affect—

(a) any express or implied contractual or other right to indemnity; or

(b) any express contractual provision regulating or excluding contribution—

35 which would be enforceable apart from this Part or render enforceable any agreement for indemnity or contribution which would not be enforceable apart from this Part.

(5) Nothing in this Part shall—

40 (a) affect any criminal proceedings against any person in respect of any wrongful act; or

(b) affect the operation of sections 64 to 66 of the *Supreme Court Act 1958*.”.

**Consequential amendments and repeals.**

8. The Principal Act shall be amended as follows:

- (a) In section 1 in the Table of Parts for the expression “Part IV.—Tort-feasors s. 24.” there shall be substituted the expression— 5  
     “Part IV.—Contribution ss.23A—24AD.  
     Part IVA.—Abolition of doctrine of common employment s. 24A.”;
- (b) For the heading to Part IV. there shall be substituted the following heading: 10  
     “PART IV.—CONTRIBUTION”;
- (c) In section 24—  
     (i) sub-sections (1), (4A), (5) and (6) shall be repealed; and  
     (ii) in sub-section (3) for the words “this section” there shall be substituted the expression “section 23B”; 15
- (d) In section 26—  
     (i) sub-section (3) shall be repealed; and  
     (ii) in sub-section (5) the words “or contributions” shall be repealed; and
- (e) Before section 24A there shall be inserted the following heading: 20  
     “PART IVA.—ABOLITION OF DOCTRINE OF COMMON EMPLOYMENT”.