



ANNO TRICESIMO SEXTO

# ELIZABETHAE II REGINAE

A.D. 1987

\*\*\*\*\*

No. 45 of 1987

An Act to amend the Wrongs Act, 1936.

[Assented to 30 April 1987]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the "Wrongs Act Amendment Act, 1987". Short title.

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

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. The following Part is inserted after section 17a of the principal Act: Insertion of new Part IB.

## PART IB

### OCCUPIERS LIABILITY

17b. In this Part, unless the contrary intention appears— Interpretation.

"dangerous" includes unsafe:

"landlord" includes a landlord under a statutory tenancy:

"occupier" of premises means a person in occupation or control of the premises, and includes a landlord:

"premises" means—

(a) land;

(b) a building or structure (including a moveable building or structure);

or

(c) a vehicle (including an aircraft or a ship, boat or vessel).

17c. (1) Subject to this Part, the liability of the occupier of premises for injury, damage or loss attributable to the dangerous Occupier's duty of care.

state or condition of the premises shall be determined in accordance with the principles of the law of negligence.

(2) In determining the standard of care to be exercised by the occupier of premises, a court shall take into account—

- (a) the nature and extent of the premises;
  - (b) the nature and extent of the danger arising from the state or condition of the premises;
  - (c) the circumstances in which the person alleged to have suffered injury, damage or loss, or the property of that person, became exposed to that danger;
  - (d) the age of the person alleged to have suffered injury, damage or loss, and the ability of that person to appreciate the danger;
  - (e) the extent (if at all) to which the occupier was aware, or ought to have been aware, of—
    - (i) the danger;
    - and
    - (ii) the entry of persons onto the premises;
  - (f) the measures (if any) taken to eliminate, reduce or warn against the danger;
  - (g) the extent (if at all) to which it would have been reasonable and practicable for the occupier to take measures to eliminate, reduce or warn against the danger;
- and
- (h) any other matter that the court thinks relevant.

(3) The fact that an occupier has not taken any measures to eliminate, reduce or warn against a danger arising from the state or condition of premises does not necessarily show that the occupier has failed to exercise a reasonable standard of care.

(4) Subject to any Act or law to the contrary, an occupier's duty of care may be reduced or excluded by contract but no contractual reduction or exclusion of the duty affects the rights of any person who is a stranger to the contract.

(5) Where an occupier is, by contract or by reason of some other Act or law, subject to a higher standard of care than would be applicable apart from this subsection, the question of whether the occupier is liable for injury, damage or loss shall be determined by reference to that higher standard of care.

(6) An occupier owes no duty of care to a trespasser unless—

- (a) the presence of trespassers on the premises, and their consequent exposure to danger, were reasonably foreseeable;
- and
- (b) the nature or extent of the danger was such that measures which were not in fact taken should have been taken for their protection.

17d. The liability under this Part of a landlord who is not in occupation of premises is limited to injury, damage or loss arising from—

Landlord's liability limited to breach of duty to repair.

(a) an act or omission on the part of the landlord in carrying out an obligation to maintain or repair the premises;

or

(b) a failure on the part of the landlord to carry out an obligation to maintain or repair the premises.

17e. (1) Subject to subsection (2), this Part operates to the exclusion of any other principles on which liability for injury, damage or loss attributable to the state or condition of premises would, but for this Part, be determined in tort.

Exclusion of conflicting common law principles.

(2) This Part does not apply to a case where an occupier causes a dangerous state or condition of premises, or allows premises to fall into a dangerous state or condition, intending to cause injury, damage or loss to another.

4. This Act does not affect a cause of action that arose before its commencement and does not give rise to a cause of action in relation to an event that occurred before its commencement.

Operation of this Act.

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

D. B. DUNSTAN, Governor