



ANNO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1959

No. 38 of 1959

An Act to amend the Wrongs Act, 1936-1958.

[Assented to 10th December, 1959.]

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

1. (1) This Act may be cited as the "Wrongs Act Amendment Act, 1959". Short titles.

(2) The Wrongs Act, 1936-1958, as amended by this Act, may be cited as the "Wrongs Act, 1936-1959".

(3) The Wrongs Act, 1936-1958, is hereinafter referred to as "the principal Act".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

3. Section 25 of the principal Act is amended—

(a) by striking out the words "if sued" in paragraph (c) thereof and inserting in lieu thereof the words "at any time" ;

(b) by inserting after paragraph (c) thereof the following new paragraph :—

(ca) a tort-feasor who, on or after the coming into operation of the Wrongs Act Amendment Act, 1959, becomes liable in respect of that damage may recover contribution

Amendment of principal Act, s. 25—
Claim and recovery of contribution between tort-feasors.

from a third party as defined in subsection (2) of this section or commence proceedings for such recovery notwithstanding—

- (i) that judgment in an action founded on the tort has not been given determining the tort-feasor's liability in respect of that damage ; or
- (ii) that the plaintiff as defined in that subsection has released the third party from his liability to the plaintiff for that or any part of that damage ; or
- (iii) where such contribution is recoverable only if a notice relating to the plaintiff's claim or cause of action in respect of the damage has been given in accordance with any provision of law to such third party, that the plaintiff has not given such notice to the third party ; but in such case the tort-feasor shall not be entitled to recover contribution from the third party unless—

the tort-feasor has, as soon as reasonably practicable after receiving written notice of the plaintiff's claim in respect of the damage, given to the third party full particulars of that claim so far as are known to him including his own name and address and those of the plaintiff, the nature of the act, omission or circumstances alleged to have caused the damage and to have given rise to the cause of action and the date and place on and at which such act, omission or circumstances occurred ;

or, if the tort-feasor fails to give such particulars to the third party,

the court is satisfied that such failure was due to the tort-feasor's absence from the State, or illness, or to other reasonable cause or that the third party has not been prejudiced by such failure ; or

- (iv) that the time within which the plaintiff may commence action against the third party has expired : but in such case the tort-feasor shall not be entitled to recover contribution from the third party unless he commences proceedings for such contribution

within one year after receiving written notice of the plaintiff's claim against him in respect of the damage or within one year after settlement by him of that claim, whichever is the earlier event ;

or, if the court is satisfied that the tort-feasor was unable to commence the proceedings within one year after such event by reason of the tort-feasor's absence from the State, or illness or of other reasonable cause, or that the third party was not prejudiced by the tort-feasor's inability so to commence the proceedings,

within such further time as the court may allow ; or

- (v) that the third party is the Crown or an instrumentality of the Crown ;

(c) by striking out the words "of this section" in paragraph (d) thereof and inserting in lieu thereof the words "of this subsection" ;

(d) by adding at the end thereof the following new subsection (the preceding part of section 25 being designated as subsection (1) thereof) :—

(2) In subsection (1) of this section, so far as the context admits or requires,

“third party” means—

- (i) a tort-feasor from whom any other tort-feasor is entitled to recover contribution under paragraph (c) of that subsection; and
- (ii) the husband or wife of a person suffering the damage and from whom some other person is entitled to recover contribution under paragraph (d) of that subsection; and

“plaintiff” means the person suffering the damage referred to in that subsection whether or not that person has commenced an action for recovery of judgment in respect of the damage.

Amendment of principal Act, s. 26a—
Insurers and nominal defendants under Road Traffic Act.

4. Section 26a of the principal Act is amended by striking out the words “has been properly sued under” and inserting in lieu thereof the words “is referred to in”.

Enactment of s. 31 of principal Act.

5. The following heading and section are enacted and inserted in the principal Act after section 30 thereof :—

Application of Parts II and III to the Crown.

Application of Parts II and III to the Crown and Crown instrumentalities.

31. After the coming into operation of the Wrongs Act Amendment Act, 1959, Part II and Part III of this Act shall for all purposes be construed as applying to, and binding, the Crown and instrumentalities of the Crown.

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

R. A. GEORGE, Governor.