

Definitions

For the purposes of this Report, the following definitions apply:

Apportionment legislation

Legislation in all Australian jurisdictions that provides for the apportionment of damages when a person has been contributorily negligent.

Compatibility principle

According to this principle, a claim for breach of a common law duty of care committed by a public functionary in the performance or non-performance of a public function, will only be available if allowing such a claim is compatible with the provisions and policy of the relevant statute.

Consequential mental harm

Mental harm suffered as a consequence of physical injury.

Date of discoverability

The date on which the plaintiff knew, or ought to have known, that personal injury or death (a) had occurred, (b) was attributable to negligent conduct of the defendant, and (c) in the case of personal injury, was sufficiently significant to warrant bringing proceedings.

Foreseeable risk of harm

A risk of harm of which a person knows or ought to know.

FTOTE

Full-time adult ordinary time earnings.

Inherent risk

A risk that cannot be removed or avoided by the exercise of reasonable care.

Like-against-like principle

Under this principle, if the plaintiff has received or will receive a collateral benefit which has the same nature as a head of damage, the benefit may be set off, but not otherwise.

Negligence

Failure to exercise reasonable care and skill.

Negligence calculus

The negligence calculus has four components:

- (a) the probability that the harm would occur if care was not taken;
- (b) the likely seriousness of that harm;
- (c) the cost of taking precautions to avoid the harm; and
- (d) the social utility of the risk-creating activity.

The calculus involves weighing (a) and (b) against (c) and (d).

Not-for-profit organisation (NPO)

An organisation that is prohibited under its governing rules or documents from distributing profits to its members, owners or managers.

Obvious risk

Includes risks that are patent or matters of common knowledge. A risk may be obvious even though it is of low probability.

Personal injury

Includes (a) any disease, (b) any impairment of a person's physical or mental condition, and (c) pre-natal injury.

Personal injury law

The law governing liability and damages for personal injury and death resulting from negligence.

Policy decision

A policy decision is a decision based substantially on financial, economic, political or social factors or constraints.

Public functionary

A person or body performing a public function.

Proactive duty to inform

A duty to give information that a reasonable person in the circumstances would want to be told before making a decision.

Pure mental harm

Mental harm that is not a consequence of physical harm.

Reactive duty to inform

A duty to give the information that the information-giver knows or ought to know the person wants to be told before the person makes a decision.

Recreational activity

An activity undertaken for the purposes of recreation, enjoyment or leisure which involves a significant degree of physical risk.

Recreational services

Services of (a) providing facilities for participation in a recreational activity, (b) training a person to participate in a recreational activity, or (c) supervising, adjudicating, guiding or otherwise assisting a person's participation in a recreational activity.

Structured settlement

A settlement between a plaintiff and a defendant pursuant to which the defendant is required to pay at least part of the agreed damages periodically rather than in a single lump sum.

The close-relationship limitation period

A period of 3 years from the date the prospective plaintiff turns 25 years of age.

The limitation period

A period of 3 years from the date of discoverability.

The long-stop period

A period of 12 years from the date of the conduct or events on which the claim is based.

The Proposed Act

The Act referred to Recommendation 1.

Volunteer

A person who does community work on a voluntary basis.

Work risks

Risks associated with work done by one person for another.