

Terms of Reference: Principles-based Review of the Law of Negligence

The award of damages for personal injury has become unaffordable and unsustainable as the principal source of compensation for those injured through the fault of another. It is desirable to examine a method for the reform of the common law with the objective of limiting liability and quantum of damages arising from personal injury and death.

Accordingly, the Panel is requested to:

- 1 Inquire into the application, effectiveness and operation of common law principles applied in negligence to limit liability arising from personal injury or death, including:
 - (a) the formulation of duties and standards of care;
 - (b) causation;
 - (c) the foreseeability of harm;
 - (d) the remoteness of risk;
 - (e) contributory negligence; and
 - (f) allowing individuals to assume risk.
- 2 Develop and evaluate principled options to limit liability and quantum of awards for damages.
- 3 In conducting this inquiry, the Panel must:
 - (a) address the principles applied in negligence to limit the liability of public authorities;
 - (b) develop and evaluate proposals to allow self assumption of risk to override common law principles;
 - (c) consider proposals to restrict the circumstances in which a person must guard against the negligence of others;

- (d) develop and evaluate options for a requirement that the standard of care in professional negligence matters (including medical negligence) accords with the generally accepted practice of the relevant profession at the time of the negligent act or omission;
 - (e) develop proposals to replace joint and several liability with proportionate liability in relation to personal injury and death, so that if a defendant is only partially responsible for damage, they do not have to bear the whole loss; and
 - (f) develop and evaluate options for exempting or limiting the liability of eligible not-for-profit organisations¹ from damages claims for death or personal injury (other than for intentional torts).
- 4 Review the interaction of the *Trade Practices Act 1974* (as proposed to be amended by the Trade Practices Amendment (*Liability for Recreational Services*) *Bill 2002*) with the common law principles applied in negligence (particularly with respect to waivers and the voluntary assumption of risk). In conducting this inquiry, the Panel must:
- (a) develop and evaluate options for amendments to the Trade Practices Act to prevent individuals commencing actions in reliance on the Trade Practices Act, including actions for misleading and deceptive conduct, to recover compensation for personal injury and death; and
 - (b) evaluate whether there are appropriate consumer protection measures in place (under the Trade Practices Act, as proposed to be amended, or otherwise) and if necessary, develop and evaluate proposals for consumer protection consistent with the intent of the Government's proposed amendment to the Trade Practices Act.
- 5 Develop and evaluate options for a limitation period of 3 years for all persons, while ensuring appropriate protections are established for minors and disabled persons. In developing options the panel must consider:
- (a) the relationship with limitation periods for other forms of action, for example arising under contract or statute; and

1 A not-for-profit organisation in this context may include charities, community service and sporting organisations.

- (b) establishing the appropriate date when the limitation period commences.

Report Date

The Panel is required to report to Ministers on terms 3(d), 3(f), 4 and 5 by 30 August 2002 and on the remainder of terms by 30 September 2002.

