



Queensland Parliamentary Library

Protection for Good Samaritans under the Civil Liability (Good Samaritan) Amendment Bill 2007 (Qld)

On 7 March 2007, the Leader of the Opposition, Mr Jeff Seeney MP, introduced a Private Member's Bill into the Queensland Parliament to allow people to come to the assistance of persons in distress without the fear of being sued because something goes wrong. Currently, protection from civil liability exists in situations where a person rendering aid or assistance is acting for a prescribed entity which provides services to enhance public safety. Certain health workers will also be protected for providing voluntary aid in emergency situations.

The Civil Liability (Good Samaritan) Amendment Bill 2007 (Qld) seeks to amend the Civil Liability Act 2003 (Qld) by inserting a new provision aimed at protecting people who do not fall into the above categories – the so-called 'good Samaritans' – whose actions are performed in good faith and without reckless disregard for the safety of the person in distress or other persons.

Other Australian states and territories, apart from Tasmania, have legislation protecting good Samaritans from civil liability in coming to the assistance of a person in distress.

Nicolee Dixon

Research Brief No 2007/09

Queensland Parliamentary Library
Research Publications and Resources Section

Ms Karen Sampford, Director	(07) 3406 7116
Mrs Nicolee Dixon, Senior Parliamentary Research Officer	(07) 3406 7409
Mrs Renee Gastaldon, Parliamentary Research Officer	(07) 3406 7241

Research Publications are compiled for Members of the Queensland Parliament, for use in parliamentary debates and for related parliamentary purposes. Information in publications is current to the date of publication. Information on legislation, case law or legal policy issues does not constitute legal advice.

Research Publications on Bills reflect the legislation as introduced and should not be considered complete guides to the legislation. To determine whether a Bill has been enacted, or whether amendments have been made to a Bill during consideration in detail, the Queensland Legislation Annotations, prepared by the Office of the Queensland Parliamentary Counsel, or the Bills Update, produced by the Table Office of the Queensland Parliament, should be consulted. Readers should also refer to the relevant Alert Digest of the Scrutiny of Legislation Committee of the Queensland Parliament.

© Queensland Parliamentary Library, 2007

ISSN 1443-7902

ISBN 1 921056 49 5

APRIL 2007

Copyright protects this publication. Except for purposes permitted by the Copyright Act 1968, reproduction by whatever means is prohibited, other than by Members of the Queensland Parliament in the course of their official duties, without the prior written permission of the Clerk of the Parliament on behalf of the Parliament of Queensland.

Inquiries should be addressed to:

Director, Research Publications & Resources

Queensland Parliamentary Library

Parliament House

George Street, Brisbane QLD 4000

Ms Karen Sampford. (Tel: 07 3406 7116)

Email: Karen.Sampford@parliament.qld.gov.au

Information about Research Publications can be found on the Internet at:

www.parliament.qld.gov.au/publications

CONTENTS

EXECUTIVE SUMMARY
1 INTRODUCTION.....	1
2 BACKGROUND.....	1
2.1 POSITION OF ‘GOOD SAMARITANS’ AT COMMON LAW	2
2.2 REVIEW OF THE LAW OF NEGLIGENCE – THE ‘IPP REPORT’	4
2.2.1 Ipp Report Findings on Protection of ‘Good Samaritans’ and Emergency Service Workers	5
3 QUEENSLAND LAWS CONCERNING HELPING PERSONS IN DISTRESS	6
3.1 <i>CIVIL LIABILITY ACT 2003</i> – ENHANCEMENT OF PUBLIC SAFETY	6
3.2 <i>LAW REFORM ACT 1995</i> – VOLUNTARY AID IN EMERGENCY.....	7
3.3 ‘GOOD SAMARITANS’	7
4 CIVIL LIABILITY (GOOD SAMARITAN) AMENDMENT BILL 2007 (QLD).....	8
5 ‘GOOD SAMARITAN’ LEGISLATION IN OTHER STATES AND TERRITORIES.....	9
5.1 SOUTH AUSTRALIA.....	9
5.2 WESTERN AUSTRALIA	10
5.3 VICTORIA	11
5.4 NEW SOUTH WALES	12
5.5 AUSTRALIAN CAPITAL TERRITORY.....	13
5.6 NORTHERN TERRITORY	14
5.7 TASMANIA	15
APPENDIX A – NEWSPAPER ARTICLES.....	16
RECENT QPL RESEARCH PUBLICATIONS 2007	19

EXECUTIVE SUMMARY

On 7 March 2007, the Leader of the Opposition, Mr Jeff Seeney MP, introduced a Private Member's Bill, the **Civil Liability (Good Samaritan) Amendment Bill 2007 (Qld)** (the Bill), into the Queensland Parliament to allow people to come to the assistance of persons in distress without the fear of being sued because something goes wrong.

In the lead up to the 2006 State election, the Queensland Coalition adopted a policy of giving legislative protection for such people – often called ‘**good Samaritans.**’ Impetus was provided by the plight of Aunty Delmae Barton, an Indigenous elder, who, in March 2006, lay sick and helpless on a bus seat at the Griffith University bus stop while ignored by passers-by: **pages 1-2.**

The **common law position** of a mere passer-by or witness to an emergency – including an off-duty doctor or nurse – who attempts to help a person in distress but where something goes very wrong would appear to depend on all the circumstances of the case. The courts tend to adopt a generous attitude to good Samaritans and, in such a case, would take into account the emergency nature of the situation and attendant circumstances – including the skills of the good Samaritan – in determining whether the actions of the good Samaritan were reasonable: **pages 2-4.**

The ‘good Samaritan’ laws formed part of the national legislative reforms of the law of negligence in the wake of the findings in the *Review of the Law of Negligence Final Report* (the **Ipp Report**). As will be discussed on **pages 4-6**, the Ipp Report recommended against the enactment of laws to completely shield good Samaritans from civil liability. Nevertheless, due to the uncertainty regarding the liability of good Samaritans, many states and territories have passed legislation to encourage people to help others in emergency situations.

Existing Queensland laws do give some protection to people assisting persons in distress in certain situations. Immunity from civil liability is bestowed on prescribed entities performing duties to enhance public safety, or persons acting for them, under the *Civil Liability Act 2003 (Qld)* and on nurses, medical practitioners, and other prescribed persons for actions connected with an emergency scene under the *Law Reform Act 1995 (Qld)*: **pages 6-7.**

The Bill seeks to insert **proposed new s 27A** into the *Civil Liability Act 2003*. It intends to provide that civil liability does not attach to a person in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress if the assistance is given in circumstances of emergency and in good faith and without reckless disregard for the safety of the person in distress or someone else: **pages 8-9.**

‘Good Samaritan’ laws exist in all **jurisdictions** apart from Tasmania and the elements of these, and qualifications on the protection, are discussed on **pages 9-15.**

1 INTRODUCTION

On 7 March 2007, the Leader of the Opposition, Mr Jeff Seeney MP, introduced a Private Member's Bill into the Queensland Parliament to allow mere passers-by to come to the assistance of a person in distress without the fear of being sued because something goes wrong. **The Civil Liability (Good Samaritan) Amendment Bill 2007 (Qld)** seeks to amend the *Civil Liability Act 2003* (Qld) to protect these 'good Samaritans' whose actions are performed in good faith and without reckless disregard for the safety of the person in distress or someone else.

Other Australian states and territories, apart from Tasmania, have legislation protecting good Samaritans from civil liability in coming to the assistance of a person in distress.

2 BACKGROUND

It is regrettable that many of us are reluctant to go to the aid of someone in need of assistance in an urgent situation or an emergency. The examples range from arriving at the scene of a motor vehicle collision where drivers and passengers are badly injured to the recent plight of Aunty Delmae Barton, an Indigenous elder, who lay sick and helpless on a bus seat at the Griffith University bus stop ignored by the many passers-by.

Referring to the Aunty Delmae incident when raising a [Matter of Public Interest](#) in the Queensland Parliament, the then Opposition Leader, Lawrence Springborg MP said that the episode underlined the fears some members of the general public had about being sued if they caused further injury to the person they were trying to assist.¹ Mr Springborg said that the [Civil Liability Act 2003 \(Qld\)](#) should be amended to make it clear that if a person intervenes to assist another person, they will be protected against civil liability as long as their assistance was provided in good faith.²

Most other state and territory governments have passed legislation to protect people who come to the aid or assistance of another person in distress. The so-called 'good Samaritan' laws formed part of the national legislative reforms of the law of negligence in the wake of the findings of the [Review of the Law of](#)

¹ LJ Springborg MP, Leader of the Opposition, Matters of Public Interest, *Queensland Parliamentary Debates*, 7 March 2006, p 568.

² LJ Springborg MP, Leader of the Opposition, Matters of Public Interest.

[Negligence Final Report](#) (the [Ipp Report](#)). As discussed later, the [Ipp Report](#) recommended against the enactment of laws to completely shield good Samaritans from civil liability.

In line with the Queensland Coalition's [2006 State Election Policy](#) of protecting good Samaritans,³ the Leader of the Opposition, Mr Jeff Seeney MP, introduced a Private Member's Bill, the [Civil Liability \(Good Samaritan\) Amendment Bill 2007 \(Old\)](#), into the Queensland Parliament on 7 March 2007.

2.1 POSITION OF 'GOOD SAMARITANS' AT COMMON LAW

The concept of the 'good Samaritan' has Biblical origins in *Luke 10:25-37*.

The parable goes as follows: An expert in the law asked Jesus "*who is my neighbour?*" Jesus responded by telling the expert about a traveller falling into the hands of robbers who stripped and beat the traveller and left him half dead. A priest passed by, saw the man but crossed over the road, as did a Levite who passed by soon after. However, a Samaritan came to the man, went to him and bandaged his wounds. He took the man on his donkey to an inn and cared for him. Jesus then asked the expert who of the three people was a neighbour to the man in distress – the answer being the Samaritan who had mercy on the man.

Thus, Jesus saw the Samaritan who helped the man who was robbed and hurt as the man's neighbour. In the law of negligence, this can give rise to a duty of care to the neighbour. It has been said that a "*good Samaritan' who tries to help may find himself [or herself] mulcted in damages, while the priest and Levite who pass by on the other side go on their cheerful way.*"⁴ Despite the parable, the courts have hesitated to impose a duty to 'rescue' on people who merely stumble upon an emergency situation.

In the High Court case of *Sutherland Shire Council v Heyman*, Brennan J said that "[A] man on the beach is not legally bound to plunge into the sea when he can foresee that a swimmer might drown."⁵ His Honour referred to Windeyer J in *Hargrave v*

³ Queensland Coalition, 'Coalition to protect our good Samaritans', *Policy 037*, <http://www.qld.liberal.org.au/Data/PDF/1010.pdf>.

⁴ H Luntz & D Hambly, *Torts: Cases and Commentary*, 5th edition, Lexis-Nexis Butterworths, Australia, 2002, para 7.7.11, citing *Zadow v Scanlon* (1984) 2 MVR (South Australian Supreme Court), 43, 51 per Bollen J who referred to two textbooks from the United States and England.

⁵ (1985) 157 CLR 424, 477-481; 60 ALR 1, 41 and 43.

Goldman,⁶ who said that “the law casts no duty upon a man to go to the aid of another who is in peril or distress not caused by him” and Lord Reid in *Dorset Yacht Co v Home Office*⁷ who noted that “... when a person had done nothing to put himself in any relationship with another person in distress ... mere accidental propinquity does not require him to go to that person’s assistance. There may be a moral duty to do so, but it is not practicable to make it a legal duty.” Consequently, there is no common law duty on a mere passer-by or witness to an emergency to rush to the aid or assistance of a person in peril when the first person has done nothing to give rise to the peril.

However, there are some situations, such as where someone has a duty to protect a person under his or her control or because of a pre-existing relationship (e.g. employers, teachers), where a duty to act to protect from harm may arise.⁸

But what is the position of a person – including an off-duty doctor or nurse – who does attempt to help a person in distress but something goes very wrong? There has yet to be a successful lawsuit against such a person in Australia.

It appears that if a court had to consider whether a good Samaritan is negligent in providing the care or assistance it would take into account the emergency nature of the situation and attendant circumstances – including the skills of the good Samaritan – in determining whether the actions of the good Samaritan were reasonable.

In *Horsley v McLaren*⁹ the two plaintiffs were passengers on the defendant’s boat on a Canadian lake when the first plaintiff fell overboard. The defendant reversed the boat in his direction to attempt rescue but the first plaintiff drowned. There was some evidence that the defendant erred by backing in rather than turning the boat to proceed ‘bow on’. The Canadian Supreme Court held, by majority, that the defendant had not breached his duty of care to the first plaintiff (owed because the first plaintiff was the defendant’s passenger) because he had acted in an emergency situation even though his method of rescue was not a highly recommended one. The error was one of judgement, not negligence, and should be excused in the circumstances.¹⁰ The case was not a true example of a ‘good Samaritan’ situation in the sense of the defendant being a mere passer-by coming to the first plaintiff’s

⁶ (1963) 110 CLR 40, 66.

⁷ [1970] AC 1004, 1027.

⁸ H Luntz & D Hambly, para 7.7.12.

⁹ [1972] SCR 441 (Canadian Supreme Court).

¹⁰ *Horsley v McLaren* was provided as an example of the way in which the law has treated rescuers’ actions to assist persons in peril in S Blay, A Gibson & B Richards, *Torts Law in Principle*, 4th edition, Lawbook Co., Sydney, 2005, p 216.

rescue because there was a pre-existing relationship of boat owner and guest passenger between the two. This gave rise to a duty of care owed by the defendant to the first plaintiff. However, even though a duty arose, it extended only to the need to take reasonable care. A rescuer cannot be held liable just because the rescue attempt fails.¹¹

Medical practitioners, in particular, have been nervous about being sued for emergency assistance or aid rendered at the scene of an accident they come upon while off duty although there has not been any suggestion of doctors and nurses being liable for such actions. In the United Kingdom, the courts have held that a doctor's duty in acting in an emergency situation is to not make the situation worse.¹²

Because of the uncertainty regarding the liability of rescuers or good Samaritans at common law, particularly during the litigious phase that marked the early years of this decade, many states and territories passed legislation to encourage people to help others in distress rather than just 'look the other way' at an emergency scene.

2.2 REVIEW OF THE LAW OF NEGLIGENCE – THE 'IPP REPORT'

At the second meeting of Commonwealth, State and Territory senior Ministers in May 2002 concerning public liability insurance, it was proposed that a panel of experts should be established to review negligence law. The outcome of the review was intended to inform a nationally consistent legislative approach to tort reform by state and territory governments. The impetus for the review came from widespread concern by community organisations, the medical profession and the general public about the rising cost of insurance premiums. Escalating insurance costs were commonly believed to be fuelled by high damages payouts to plaintiffs in civil liability actions.¹³ Despite a focus on reforms aimed at limiting liability and quantum of damages, it was also envisaged that state and territory governments would consider laws to protect volunteers and good Samaritans from civil liability.

The Negligence Review Panel, chaired by The Hon Justice David Ipp of the New South Wales Supreme Court, was accordingly established in July 2002 with broad

¹¹ RP Balkins & JLR Davies, *Law of Torts*, 2nd edition, Butterworths, Australia, 1996, p 217.

¹² Law Council of Australia, 'Second Submission to the Negligence Review Panel on the Review of the Law of Negligence', 2 September 2002, p 19, citing *Capital and Counties plc v Hampshire County Council et al* [1997] 2 All ER 865.

¹³ The background to the rising cost of insurance issue and measures adopted to address the problem was discussed in the Queensland Parliamentary Library's Research Brief, '[Time for Tort Law Reform?](#)', *RBR 19/2002*, June 2002.

Terms of Reference that included a request to inquire into the elements of negligence law. The Panel consulted widely and considered reforms in other countries resulting in the publication of the [Review of the Law of Negligence Final Report](#) (the [Ipp Report](#)) in October 2002. It contained 61 recommendations. In a November 2002 [Meeting of senior Ministers on Public Liability Insurance](#) it was agreed that the key recommendations should be put in place by each state and territory as quickly as possible. It was envisaged that the measures would be implemented on a nationally consistent basis.¹⁴

The main recommendations of the [Ipp Report](#) cover a variety of issues regarding the law of negligence, particularly the principles to apply in determining whether the elements to establish negligence have been made out and revising the criteria to use in assessing certain heads of damage for personal injury.

Following the publication of the [Ipp Report](#) and endorsement by senior Ministers, most jurisdictions moved to pass legislation implementing reforms to the law of negligence.¹⁵

2.2.1 Ipp Report Findings on Protection of ‘Good Samaritans’ and Emergency Service Workers

The [Ipp Report](#) noted that the Panel’s research had not revealed any Australian cases in which a good Samaritan had been sued by a person claiming that the actions of the good Samaritan were negligent.¹⁶ It commented that, under current law, the fact that a person was acting in an emergency situation is relevant to deciding whether the person has been negligent. The emergency nature of the circumstances and the skills of the good Samaritan are taken into account in determining whether the good Samaritan has acted reasonably.¹⁷ Accordingly, the Panel took the view that because these matters were taken into account in determining the issue of negligence, it was unnecessary and undesirable to go further and exempt good Samaritans entirely from the possibility of being sued for negligence. It was believed that a complete exemption would “*tip the scales of*

¹⁴ Joint Communiqué of the Ministerial Meeting on Public Liability Insurance, Brisbane, 15 November 2002.

¹⁵ These reforms were discussed in the Queensland Parliamentary Library Research Brief ‘[Reform of Negligence Law – The Queensland Response: The Draft Civil Liability Bill 2002 \(Old\)](#)’, *RBR 2003/01*, February 2003.

¹⁶ Hon David Andrew Ipp (chairman), *Review of the Law of Negligence Final Report*, Commonwealth of Australia, September 2002, para 7.21 (Ipp Report).

¹⁷ Ipp Report, paras 7.22, 7.24.

*personal responsibility too heavily in favour of interveners and against the interests of those requiring assistance. In our view, there are no compelling arguments for such an exemption”.*¹⁸

Nevertheless, most jurisdictions (apart from Tasmania and Queensland) moved to introduce laws to clarify the position of good Samaritans and to provide them with protection from liability for acts or omissions done or made in good faith.

3 QUEENSLAND LAWS CONCERNING HELPING PERSONS IN DISTRESS

Queensland currently has legislation providing some protection for certain people rendering aid or assistance to persons in distress in the circumstances explained below. The relevant legislative provisions are found in sections 26-27 of the [Civil Liability Act 2003 \(Qld\)](#) and in Part 5 of the [Law Reform Act 1995 \(Qld\)](#).

Apart from persons falling into the categories mentioned in these pieces of legislation, there are no laws in Queensland that specifically shield other people – colloquially referred to as ‘good Samaritans’ – from civil liability if they come to the aid of someone in distress.

3.1 CIVIL LIABILITY ACT 2003 – ENHANCEMENT OF PUBLIC SAFETY

Section 26 of the [Civil Liability Act 2003](#) provides that civil liability will not attach to a **person** in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress while performing duties to enhance public safety for a **prescribed entity** that provides services to enhance public safety. The relevant ‘prescribed entities’ are listed in Schedule 2 of the [Civil Liability Regulation 2003 \(Qld\)](#) and include emergency service type bodies such as CareFlight Queensland, Surf Life Saving Queensland, the rural fire brigades, the Queensland Fire and Rescue Service, and the Queensland Ambulance Service.

Similarly, pursuant to **section 27** that civil liability does not attach to a **prescribed entity** that provides services to enhance public safety in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress. Those prescribed entities are set out in Schedule 1 of the Regulation (and appear to be the same as those entities set out in Sch 2).

However, for the protection to apply, there are three conditions –

¹⁸ Ipp Report, para 7.24.

- the first aid or other aid or assistance must be given while performing duties to enhance public safety; and
- it must be given in circumstances of emergency; and
- the act must be done or omitted in good faith and without reckless disregard for the safety of the person in distress or someone else.

A ‘**person in distress**’ is defined in **section 25** of the [Civil Liability Act](#) to include a person who is, or is apparently, injured or at risk of injury and a person who is, or is apparently, suffering from an illness.

3.2 LAW REFORM ACT 1995 – VOLUNTARY AID IN EMERGENCY

Part 5 of the [Law Reform Act 1995 \(Old\)](#) protects medical practitioners, nurses or other prescribed persons in respect of acts or omissions in the course of rendering medical care, aid or assistance to an injured person in circumstances of emergency at or near the scene of emergency, or while the injured person is being transported from the scene to a hospital or other adequate medical care. However, the act must be done or omitted in good faith and without gross negligence; and the services must be performed without fee or reward or an expectation of such.

These laws were the first in Australia to protect doctors and nurses and certain other persons from liability for voluntary actions in an emergency situation.¹⁹

3.3 ‘GOOD SAMARITANS’

As a result, it appears that immunity from civil liability is clearly bestowed on prescribed entities performing duties to enhance public safety, or persons acting for them, under the [Civil Liability Act 2003](#) and on certain health workers for actions connected with an emergency scene under the [Law Reform Act 1995](#). Apart from these situations, it is unclear whether a passer-by who happens to witness a motor vehicle accident, or sees a person having a heart attack in a shopping centre is at possible risk of liability for their well-meaning actions when attempting to help the person involved.

While there have been no successful civil actions against such good Samaritans in Queensland, the Queensland Coalition has, for some time, considered that legal

¹⁹ M Eburn, ‘Protecting Volunteers?’, *Australian Journal of Emergency Management*, 18(4), November 2003, pp 7-11, p 7.

certainty is necessary so that people feel more reassured if they come to the aid of someone in distress.²⁰

4 CIVIL LIABILITY (GOOD SAMARITAN) AMENDMENT BILL 2007 (QLD)

On 7 March 2007, the Leader of the Opposition, Mr Jeff Seeney MP, introduced the [Civil Liability \(Good Samaritan\) Amendment Bill 2007 \(Qld\)](#) (the Bill) into the Queensland Parliament as a Private Member's Bill. The Bill seeks to amend the [Civil Liability Act 2003](#) with the intention of ensuring that legal protection is extended to ordinary persons who, without the expectation of a fee or reward, assist people in emergency situations.²¹

A **proposed new s 27A** is sought to be inserted into Chapter 2, part 1, division 7 of the [Civil Liability Act 2003](#) (following ss 26 and 27, discussed earlier). It provides that civil liability does not attach to a person in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress.

However, for the protection to apply, the first aid or other aid or assistance must be given in circumstances of emergency and the act must be done or omitted in good faith and without reckless disregard for the safety of the person in distress or someone else. These qualifications match those attaching to ss 26 and 27 of the [Civil Liability Act 2003](#) regarding assisting or aiding others to enhance public safety._

The elements that appear to form the essence of the protection in the new provision are –

- that there be circumstances of **emergency** – while not defined, it appears to refer to an accident or illness that requires urgent treatment;²²
- that the act be done or omitted in **good faith** – which, in accordance with the intention of the amendment to afford legal protection to persons who assist others in distress, would seem to mean an act done with “[a] *state of*

²⁰ LJ Springborg MP, Leader of the Opposition, Matters of Public Interest.

²¹ JW Seeney MP, Leader of the Opposition, Second Reading Speech, Civil Liability (Good Samaritan) Amendment Bill 2007 (Qld), *Queensland Parliamentary Debates*, 7 March 2007, pp 690-691.

²² See M Eburn, p 8.

*mind denoting honesty of purpose”;*²³ or an act done “*without any indirect or improper motive*”.²⁴

Unlike good Samaritan legislation in most other jurisdictions, there is no express requirement that the person be acting without expectation of payment or other reward. The [Explanatory Notes](#) to the Bill do, however, state that the legislation intends to protect persons who offer well intended assistance without actual or contemplated financial reward.²⁵ Under Part 5 of the [Law Reform Act 1995](#), doctors, nurses and other prescribed persons rendering medical assistance in an emergency situation must be acting without expectation of fee or reward to be protected from liability.

5 ‘GOOD SAMARITAN’ LEGISLATION IN OTHER STATES AND TERRITORIES

Other Australian jurisdictions, apart from Tasmania, have legislation designed to protect ordinary ‘good Samaritans’. The qualifications and conditions on such immunity vary somewhat from place to place.

5.1 SOUTH AUSTRALIA

Laws to protect good Samaritans in South Australia were introduced during 2002, the State being one of the earliest to move to provide such immunity. Under **section 74** of the [Civil Liability Act 1936 \(SA\)](#), a good Samaritan incurs no personal civil liability for acts or omissions done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance. The same protection is provided to medically qualified good Samaritans – that is a registered medical practitioner, or a person with legally recognised professional health care qualifications, or a person who works or has worked, as an ambulance officer or paramedic.

A ‘**good Samaritan**’ is defined as a person acting without expectation of payment or other consideration who comes to the aid of another apparently in need of emergency assistance; or a medically qualified person who gives advice by

²³ M Eburn, p 8, citing a US case *Lowry v Mayo Newhall Hospital* 64 ALR 4th 1191, 1196 (Cal. 1986).

²⁴ M Eburn, p 8, citing McTiernan J in the Australian High Court decision in *Board of Fire Commissioners v Ardouin* (1961) 109 CLR 105, 115.

²⁵ Civil Liability (Good Samaritan) Amendment Bill 2007 (Qld), *Explanatory Notes*, p 1.

telephone or some other form of telecommunication about treatment in these circumstances. Thus, a good Samaritan at the scene of an accident might telephone his or her own doctor to ask how to best assist the injured person. That doctor will fall into the medically qualified good Samaritan category by providing the advice in such circumstances if the doctor has no expectation of payment.

‘Emergency assistance’ is defined to mean emergency medical assistance or any other form of assistance to a person whose life or safety is endangered in a situation of emergency.

Some qualifications operate so that the immunity **does not apply** –

- to a liability falling within a compulsory third party motor vehicle insurance scheme; or
- if the good Samaritan was significantly impaired by alcohol or other recreational drug.

5.2 WESTERN AUSTRALIA

Part 1D of the [Civil Liability Act 2002 \(WA\)](#) protects good Samaritans from personal civil liability of any kind (subject to certain other provisions) in respect of an act or omission done or made by the good Samaritan at the scene of an emergency in good faith and without recklessness in assisting a person in apparent need of emergency assistance.²⁶ Similarly, a medically qualified good Samaritan is protected for advice given in good faith and without recklessness in such circumstances: s 5AD. However, the section does not affect the vicarious liability of any person for the acts or omissions or advice of the good Samaritan or medically qualified good Samaritan: s 5AD(3).

A ‘**good Samaritan**’ is someone who comes to the aid of a person in apparent need of emergency assistance without expectation of payment or other consideration or a medically qualified²⁷ person who (without expectation of payment or other consideration) gives advice by any means of communicating at a distance (including by telephone or email) about treatment of the person apparently in need of emergency assistance.

However, the protection from liability **does not apply** –

²⁶ ‘Emergency assistance’ has the same meaning as in the South Australian legislation.

²⁷ Defined as being registered under the *Medical Act 1894 (WA)*; licensed, registered or authorised under law to practise in a field of health care; or qualified as an ambulance officer or paramedic: s 5AB.

- if the ability of the good Samaritan or medically qualified good Samaritan to exercise reasonable care and skill, at the relevant time, was significantly impaired by being intoxicated by alcohol or a drug or other substance capable of intoxicating a person and the intoxication was self-induced: s 5AE;
- to damages, or to claims for, or awards of, such damages –
 - under workers' compensation laws: s 3A(1) item 3;
 - relating to personal injury as a result of asbestos inhalation: s 3A(1) item 6;
 - relating to personal injury as a result of smoking etc: s 3A(1) item 4;
 - relating to personal injury caused by unlawful intentional acts done with intent to cause personal injury or that is a sexual offence or conduct: s 3A(1) item 1;
 - under civil aviation legislation; s 3A(1) item 5.

5.3 VICTORIA

Section 31B of the [Wrongs Act 1958 \(Vic\)](#) provides that a good Samaritan is not liable in any civil proceeding for anything done or not done in good faith in providing assistance, advice or care at the scene of an emergency or accident; or in providing advice by telephone or by another means of communication to a person at the scene. The protection applies even if the emergency or accident was *caused* by the good Samaritan.²⁸

A '**good Samaritan**' is someone who provides assistance, advice or care to another person in relation to an emergency or an accident in circumstances in which he or she expects no financial reward and, as a result of the emergency or accident, the other person is at risk of death or injury, is injured or apparently injured, or is apparently at risk of death or injury. Unlike a number of other jurisdictions, for the protection to be availed of, the 'advice' can be tendered by any person, not just by a medically qualified person.²⁹

However, the protection will **not apply** to an act or omission of the good Samaritan that occurs before the assistance etc. is provided by the good Samaritan.

When legislation comprising a new Part VIA (which includes s 31B) of the *Wrongs Act 1958* was introduced into the Legislative Assembly in September 2002, the Victorian Premier, the Hon SP Bracks MP, said that the new laws were intended to clarify issues of risk and indemnity so that members of the community will continue to act in a socially responsible manner without fear of litigation for

²⁸ Contrast with the position in New South Wales.

²⁹ M Eburn, p 8.

negligence if they make a mistake. The Premier said that well intentioned efforts voluntarily undertaken by would-be rescuers, including health care professionals, are protected and encouraged by his Government.³⁰ It was intended that the laws would also cover the actions of emergency workers, Country Fire Authority members or volunteers whose actions as a good Samaritan are outside the scope of the Acts that establish their duties and activities.³¹

The Premier commented that the ‘good faith’ requirement envisaged that the legislation would reflect the position of rescuers or good Samaritans at common law. Mr Bracks said that the flexibility of the common law would be retained in determining whether a person has acted in good faith in an emergency situation. It would also mean that a flexible standard of care would be used to accommodate the differing skills and competencies of good Samaritans, including professional health carers.³²

5.4 NEW SOUTH WALES

Part 8 of the [Civil Liability Act 2002 \(NSW\)](#) covers ‘good Samaritans’. A good Samaritan does not incur any personal civil liability in respect of any act or omission done or made in an emergency when assisting a person who is apparently injured or at risk of being injured. However, this does not affect the vicarious liability of any other person for acts or omissions of the good Samaritan: s 57.

A ‘**good Samaritan**’ is defined as a person who, in good faith and without expectation of payment or other reward, comes to the assistance of a person who is apparently injured or at risk of being injured: s 56.

However, there are a number of exclusions so the immunity **will not apply** –

- where the injury or risk of injury in respect of which the good Samaritan first comes to the person’s assistance was caused by the good Samaritan’s intentional or negligent act or omission (the opposite to the situation in Victoria): s 58(1);
- if the ability of the good Samaritan to exercise reasonable care and skill was significantly impaired by being under the influence of alcohol or a drug voluntarily consumed (whether or not it was consumed for medication) and the

³⁰ Hon SP Bracks MP, Premier of Victoria and Minister for Multicultural Affairs, Second Reading Speech, Wrongs and Other Acts (Public Liability Insurance Reform) Bill 2002 (Vic), *Victorian Legislative Assembly Hansard*, 12 September 2002, pp 140-145, p 143.

³¹ Hon SP Bracks MP, Second Reading Speech, p 143.

³² Hon SP Bracks MP, Second Reading Speech, p 143.

- good Samaritan failed to exercise reasonable care and skill in connection with the act or omission: s 58(2);
- if the good Samaritan is impersonating a health care or emergency services worker or a police officer or otherwise falsely representing that he or she has skills or expertise in connection with rendering the emergency assistance: s 58(3);
 - to or in respect of civil liability (see [s 3B](#)) –
 - regarding workers' compensation and claims for damages governed by workers' compensation;
 - in proceedings for dust disease injuries;
 - relating to an award of damages for injury or death from smoking etc.;
 - for compensation under the *Victims Support And Rehabilitation Act 1996*,
 - for benefits under sporting injuries insurance;
 - in respect of an intentional act with intent to cause injury or death or that is sexual assault or misconduct.

5.5 AUSTRALIAN CAPITAL TERRITORY

The [Civil Law \(Wrongs\) Act 2002 \(ACT\)](#) protects good Samaritans from personal civil liability for an act done or omission made honestly and without recklessness in assisting, or giving advice about the assistance to be given to, a person who is apparently injured or at risk of being injured or in need of emergency medical assistance: s 5.

A 'good Samaritan' means a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently injured or at risk of being injured or in need of emergency medical assistance. It also includes a medically qualified³³ individual who, acting without expectation of payment or other consideration, gives advice by telephone or other form of telecommunication about the treatment of that person.

The protection **does not apply** if –

- the liability falls within the ambit of a compulsory third party motor vehicle insurance scheme; or
- the good Samaritan's capacity to exercise appropriate care and skill was significantly impaired by a recreational drug.

³³ Defined as a doctor; a person with professional qualifications in a legally recognised field of health care; or a current or former ambulance officer or other paramedic.

5.6 NORTHERN TERRITORY

Under **section 8** of the [Personal Injuries \(Liabilities And Damages\) Act \(NT\)](#), a good Samaritan does not incur personal civil liability for a personal injury caused by an act done in good faith and without recklessness while giving emergency assistance to a person.

A medically qualified³⁴ good Samaritan does not incur liability for advice given in good faith and without recklessness about medical treatment of a person being given emergency medical assistance.

A ‘**good Samaritan**’ means a person acting without expectation of payment or consideration who comes to the aid of another person apparently in need of emergency assistance or a medically qualified person who gives advice in the same circumstances.

However, protection **will not apply** –

- if the good Samaritan was intoxicated at the time;
- to claims for damages in respect of motor accidents or claims for benefits under the *Motor Accidents (Compensation) Act*;
- to claims for compensation within the meaning of the *Work Health Act*: [s 4](#);
- to claims for damages for a personal injury that is a dust-related condition: [s 4](#);
- to victims’ compensation claims: [s 4](#);
- to claims relating to the supply of certain goods under consumer protection legislation: [s 4](#).

When the legislation was introduced into the Northern Territory Parliament in October 2002, the Northern Territory Attorney-General commented that the community expected that people who are doing a good turn for others should be protected from liability.³⁵

Section 155 of the [Criminal Code](#) makes it an offence if a person who, being able to provide rescue, resuscitation, medical treatment, first aid or succour of any kind to a person urgently in need of it and whose life may be endangered if it is not provided, callously fails to do. Such a person is liable to imprisonment for 7 years.

Moreover, in February 2005, the Northern Territory Government amended the [Criminal Code](#) to make it an offence for people to attack good Samaritans or

³⁴ Defined as a person with qualifications as a medical practitioner, or in a category of legally recognised health care, or as an ambulance officer or other recognised paramedical capacity.

³⁵ Dr PH Toyne MLA, Minister for Justice and Attorney-General, Second Reading Speech, Personal Injuries (Liabilities and Damages) Bill, 17 October 2002, *Parliamentary Record* No 8.

emergency workers who are providing assistance to another. Section 155A provides that a person who assaults, obstructs, hinders or prevents a person who is providing rescue, resuscitation, medical treatment, first aid or succour of any kind to a third person is guilty of a crime and is liable to imprisonment for 5 years. If the person thereby endangers the life of, or causes bodily harm to, the third person, the person is liable to imprisonment for 7 years.

5.7 TASMANIA

While Tasmania's [Civil Liability Act 2002 \(Tas\)](#) provides volunteers with protection from civil liability while doing community work, it does not appear to address the position of good Samaritans.

APPENDIX A – NEWSPAPER ARTICLES

Title Qld Libs introduce 'good Samaritan' bill.
Source brisbanetimes.com.au
Date Issue 7 March 2007
Page Online

Queensland's coalition has introduced a bill to allow "good Samaritans" who help people in emergencies to avoid the threat of legal action.

Opposition Leader Jeff Seeney said the private member's bill would amend the Queensland's Civil Liability Act 2003 to provide legal protection to people who act in good faith to assist those in distress.

"Currently, the community is, in the large, cautious about assisting others in need because of the fear about being accused of causing further injury and in turn exposing themselves to legal liability," Mr Seeney told parliament.

"The threat of litigation has also perpetuated within the community an attitude that it's best not to get involved.

"Such reluctance to assist runs contrary to the Australian way of life and our renowned willingness to look after our mates."

Mr Seeney said the bill was prompted by an incident last year in which a prominent indigenous leader was left for dead after she fell ill at a busy Brisbane bus stop.

Delmae Barton, 62, lay for more than five hours in a pool of her own vomit at a bus stop seat near Griffith University's Nathan Campus last March after suffering a suspected stroke or diabetes attack.

Mr Seeney said legal protection in Queensland was currently extended only in limited circumstances to certain people such as doctors and nurses helping in emergency situations.

"Although there has been no successful litigation against good Samaritans in Queensland to date, the threat is there," he said.

"The Queensland coalition's laws seek to remove this threat and bring Queensland's civil liability laws into line with other states such as Victoria and Western Australia."

RECENT QPL RESEARCH PUBLICATIONS 2007

2007/01	<i>Homework for the 21st Century</i>	Feb 2007
2007/02	<i>Tackling Graffiti – Summary Offences and Other Acts Amendment Bill 2006 (Qld)</i>	Feb 2007
2007/03	<i>Ban on Speed Camera Alerts: Summary Offences and Other Acts Amendment Bill 2006 (Qld)</i>	Feb 2007
2007/04	<i>Random Drug Driving Tests under the Transport Legislation and Another Act Amendment Bill 2006 (Qld)</i>	Feb 2007
2007/05	<i>‘Wrongful Life’: the High Court decisions in Harriton v Stephens and Waller v James; Waller v Hoolahan</i>	Feb 2007
2007/06	<i>Comprehensive Regulation of the Security Industry: the Security Providers Amendment Bill 2006 (Qld)</i>	Feb 2007
2007/07	<i>Harmonisation of Sports Drug Testing Legislation – the Sports Drug Testing Amendment Bill 2006 (Qld)</i>	Mar 2007
2007/08	<i>‘Ice Pipes’: Prohibition on Sale, Supply and Display under the Health and Other Legislation Amendment Bill 2007 (Qld)</i>	Mar 2007
2007/09	<i>Protection for Good Samaritans under the Civil Liability (Good Samaritan) Amendment Bill 2007 (Qld)</i>	Apr 2007

Research Papers are available as PDF files:

- to members of the general public the full text of Research Briefs is now available on the parliamentary web site, URL, www.parliament.qld.gov.au/publications
- www.parliament.qld.gov.au/Library/Query.exe – e-Documents & e-Articles – Quick display of Library’s research publications

A Subject Index to Research Publications is available at the following site:

www.parliament.qld.gov.au/view/publications/publications.asp?area=research&LIndex=4&SubArea=s_aborigines&Bindex=0&Barea=search

Parliamentary Library - Research Publications & Resources Telephone (07) 3406 7108

Orders may be sent to Karen Sampford, Karen.Sampford@parliament.qld.gov.au



This Publication:

RBR 2007/09 *Protection for Good Samaritans under the Civil Liability (Good Samaritan) Amendment Bill 2007 (Qld)* (QPL, April 2007)

Related Publications:

RBR 2003/01 *Reform of Negligence Law – The Queensland Response: The Draft Civil Liability Bill 2002 (Qld)*, (QPL, February 2003).

RBR 19/2002 *Time for Tort Law Reform?* (QPL, June 2002).