NORTHERN TERRITORY OF AUSTRALIA

PROPORTIONATE LIABILITY ACT

As in force at 1 January 2011

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 January 2011. Any amendments that commence after that date are not included.

PROPORTIONATE LIABILITY ACT

An Act to replace the common law rule that imposes joint and several liability for economic loss or damage to property caused by concurrent wrongdoers with rules that limit the liability of each concurrent wrongdoer to reflect the extent of the wrongdoer's responsibility for the loss or damage, and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Proportionate Liability Act*.

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

apportionable claim means an apportionable claim to which this Act applies by virtue of section 4.

concurrent wrongdoer has the meaning in section 6(1).

court means the court, tribunal or other statutory body determining a proceeding.

damages includes any form of monetary compensation for loss or damage.

defendant includes any person joined as a defendant in a proceeding, whether joined under this Act or otherwise.

economic loss does not include economic loss resulting from a personal injury.

loss or damage means economic loss or damage to property.

proceeding means a proceeding involving an apportionable claim.

4 Apportionable claims to which Act applies

(1) This Act applies in relation to an apportionable claim if the loss or damage that is the subject of the claim occurs wholly or partly after the commencement of this Act.

(2) An apportionable claim is:

(a) a claim for damages (whether in tort, in contract, under a statute or otherwise) arising from a failure to take reasonable care; or

(b) a claim in respect of loss or damage arising from a contravention of section 18 of the Australian Consumer Law (NT).

(3) However, none of the following is an apportionable claim:

(a) a claim arising from a personal injury;

(b) a claim arising from a contravention of Part 3-3 or 3-4 of the Australian Consumer Law (NT);

(c) a claim specified by the Regulations not to be an apportionable claim.

(4) The Regulations may specify that a claim or class of claims is not an apportionable claim.

(5) In this section:

Australian Consumer Law (NT) means the provisions applying as a law of the Territory because of Part 4 of the *Consumer Affairs and Fair Trading Act*.

5 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 2 Proportionate liability

Division 1 Preliminary matters

6 Concurrent wrongdoers

(1) A concurrent wrongdoer is one of 2 or more persons whose acts or omissions caused (either jointly or independently) the loss or damage that is the subject of a claim for damages.

(2) In applying this Part to an apportionable claim, it is immaterial that a concurrent wrongdoer is insolvent, is being wound up, has ceased to exist or has died.

7 No apportionment for loss caused intentionally or fraudulently

(1) This section applies to a concurrent wrongdoer ("the excluded concurrent wrongdoer") who intended to cause, or fraudulently caused, the loss or damage that is the subject of an apportionable claim.

(2) This Part does not limit the liability of the excluded concurrent wrongdoer for that loss or damage.

(3) The liability of the excluded concurrent wrongdoer must be determined in accordance with the legal rules that, apart from this Part, are relevant.

(4) The liability of any other concurrent wrongdoer must be determined in accordance with this Part.

Division 2 General provisions for proceedings

8 Determination as single claim if more than one cause of action

If a proceeding involves 2 or more apportionable claims in respect of the same loss or damage arising out of different causes of action, liability for the loss or damage must be determined in accordance with this Part as if the claims were a single claim.

9 Determination of apportionable claim and other claim

If a proceeding involves both an apportionable claim and a claim that is not an apportionable claim:

(a) liability for the loss or damage that is the subject of the apportionable claim must be determined in accordance with this Part; and

(b) liability for the loss or damage that is the subject of the other claim must be determined in accordance with the legal rules that, apart from this Part, are relevant to that claim.

10 No need for all concurrent wrongdoers to be parties

This Part applies in relation to a proceeding whether or not all concurrent wrongdoers are parties to the proceeding.

11 Joining concurrent wrongdoers as defendants

(1) The court may give leave for any one or more persons who are (or may be) concurrent wrongdoers in relation to an apportionable claim to be joined as defendants in the proceeding involving that claim.

(2) The court must not give leave for the joinder of a person who was a party to any previously concluded proceeding in respect of that apportionable claim.

12 Costs order if failure to inform of concurrent wrongdoer

(1) This section applies if:

(a) a defendant in a proceeding has reasonable grounds to believe that another person may be a concurrent wrongdoer in relation to the apportionable claim;

(b) the defendant does not give the plaintiff, as soon as practicable, written notice of the information the defendant has about:

(i) the identity of the other person; and

(ii) the circumstances that may make the other person a concurrent wrongdoer; and

(c) the plaintiff unnecessarily incurs costs in the proceeding because the plaintiff does not know the other person may be a concurrent wrongdoer.

(2) The court may order the defendant to pay all or any of those costs unnecessarily incurred.

(3) The court may order that the costs payable by the defendant be assessed on the indemnity basis or otherwise.

Division 3 Determination of liability in apportionable claims

13 Determination of liability of concurrent wrongdoers

(1) In a proceeding:

(a) the liability of a defendant who is a concurrent wrongdoer is limited to an amount reflecting the proportion of the loss or damage claimed that the court considers just having regard to the extent of the defendant's responsibility for the loss or damage; and

(b) the court may give judgment against the defendant for not more than that amount.

(2) In apportioning responsibility for loss or damage between the defendants:

(a) the court must exclude any proportion of the loss or damage in relation to which the plaintiff is contributorily negligent under any relevant law; and

(b) the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceeding.

14 Other liability not affected

This Act does not:

(a) prevent a person from being held vicariously liable for a proportion of an apportionable claim for which another person is liable;

(b) prevent a partner from being held jointly and severally liable with another partner for the proportion of an apportionable claim for which the other partner is liable; or

(c) affect the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

Division 4 After judgment given in proceedings

15 Concurrent wrongdoers not required to contribute or indemnify

(1) A defendant in a proceeding against whom judgment is given under section 13 as a concurrent wrongdoer cannot be required:

(a) to contribute to the damages recovered or recoverable from another concurrent wrongdoer in the proceeding; or

(b) to indemnify any such wrongdoer.

(2) Subsection (1) does not affect any agreement by the defendant to contribute to the damages recoverable from, or to indemnify, another concurrent wrongdoer in the proceeding.

16 Subsequent actions

(1) A plaintiff who has previously obtained judgment against a concurrent wrongdoer for an apportionable part of loss or damage is not prevented by this Part or any other law from bringing another action against any other concurrent wrongdoer for that loss or damage.

(2) However, in a proceeding in respect of such an action, the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the loss or damage, would result in the plaintiff receiving compensation for loss or damage that is greater than the loss or damage actually sustained by the plaintiff.

Part 3 Miscellaneous matters

17 Regulations

he Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part 4 Repeal and transitional matters for Proportionate Liability Act 2005

18 Repeal of apportionable liability provisions of *Building Act*

Sections 154 to 158 (inclusive) of the *Building Act* are repealed.

19 Transitional matters

(1) Despite the repeal of the sections of the *Building Act* referred to in section 18, those sections continue to apply after the commencement date in relation to an action referred to in section 154 of the former *Building Act*:

(a) instituted before the commencement date; or

(b) instituted on or after the commencement date if the economic loss and rectification costs for which damages are claimed were incurred wholly before the commencement date.

(2) In this section:

commencement date means the date on which this Act comes into operation.

former Building Act means the *Building Act* as in force immediately before the commencement date.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Proportionate Liability Act 2005 (Act No. 18, 2005)

Assent date	5 May 2005
Commenced	1 June 2005 (*Gaz* S16, 16 May 2005)

Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010 (Act No. 41, 2010)

Assent date	8 December 2010
Commenced	1 January 2011 (*Gaz* S71, 20 December 2010)

3 LIST OF AMENDMENTS

s 4 amd No. 41, 2010, s 30