

# Torts Law Journal (TLJ)

## Volume 26 Part 1

*(articles, comment and book review included in this part are linked to the LexisNexis platform)*

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#### Articles

##### [Australian civil litigation reform in response to the recommendations of the Royal Commission into Institutional Child Sexual Abuse](#)

— *Pam Stewart and Allison Silink*

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It has been 4 years since the Royal Commission into Institutional Responses to Child Sexual Abuse released its final Redress and Civil Litigation Report making recommendations for civil liability reform to improve the capacity of survivors of institutional child sexual abuse to recover civil compensation. Legislative responses to the recommendations have differed across Australian jurisdictions. This article compares the reforms that have been enacted to date. It offers an analysis of the scope and application of the legislation and identifies significant omissions and obstacles to survivors of institutional child sexual abuse bringing actions for civil damages.

##### [The influence of defamation law on the interpretation of Australia's racial vilification laws](#)

— *Bill Swannie*

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This article examines the influence of defamation law on the interpretation and application of Australia's racial vilification laws. First, it highlights the significant overlap between the types of conduct sanctioned by s 18C of the Racial Discrimination Act 1975 (Cth), and the definition of defamatory matter. Both laws create liability for public communications that are insulting or abusive (even if they are satirical). Second, this article argues that both racial vilification laws and defamation law seek to protect individual dignity and autonomy. This is because public denigration of a person (including on a racial basis) affects how that person, and others similarly situated, are perceived and treated by others. Third, this article argues that not all conduct covered by Australia's racial vilification laws can be characterised as valuable 'political' discussion. Rather, these laws impose liability for conduct that causes serious personal and communal harms. Finally, this article examines the exemptions to liability in Australia's racial vilification laws. Drawing on defamation law, it articulates certain factors that are relevant to determining whether particular conduct is done 'reasonably and in good faith' and is therefore exempt from liability. In particular, it highlights the importance of factual accuracy, where publications are made to large audiences on public interest topics. The article argues that inaccurate and exaggerated publications are not supported by the truth-seeking rationale for protecting speech, and the harm they cause to members of target groups may be greater than the public interest in receiving such communications.

## Loss of chance as damage in negligence

— *James O'Hara*

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It is an essential element of a negligence suit that the plaintiff prove they have suffered damage. As to that element, the law of negligence draws a distinction between a loss of pecuniary chance and a loss of non-pecuniary chance. In broad terms, the former constitutes damage while the latter does not. But this dividing line in Australian law is unconvincing in its rationale, already blurred in its boundaries and weak in its analytical integrity. It is incoherent. My central argument is that Australian law should universally recognise loss of chance as damage, be it pecuniary or non-pecuniary. This article is structured in five parts. First, I demonstrate the incoherence of the current position. Secondly, I explain damage at common law and harm under the civil liability legislation. Thirdly, I provide 10 reasons as to why loss of chance should be universally recognised as damage. Fourthly, I propose limitations on loss of chance as damage. Fifthly, I conclude.

## Comment

Application of pt 1a of the *Civil Liability Act 2002 (WA)* to contract and other claims

— *Michael Douglas*

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## Book Review

*Reconceptualising Strict Liability for the Tort of Another*  
by Christine Beuermann

— *Joachim Dietrich*

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