

The Immunity of Suit Between Husband and Wife

Terms of Reference

In 1972 the Committee was asked to consider and report on the law as to the immunity of suit between husband and wife.

Background of Reference

Historically, spousal immunity of action in tort was based on the legal concept that a husband and wife were one person.¹ At the time of the reference it had become obvious that this concept was dated and no longer acceptable. The immunity of suit had already been abolished in all other Australian jurisdictions. Similar reforms had also already occurred in the United Kingdom and New Zealand and reform was under way in Canada.²

When the Committee was formally reconstituted as a Commission in January 1973 it inherited the conduct of this reference. A working paper on the subject was issued in June 1973 which recommended that the immunity be abolished.

Nature and Extent of Consultation

The Commission undertook a broad-ranging consultation and copies of the working paper were forwarded for comment to various members of the legal community. Copies were also sent to the Motor Vehicle Insurance Trust, the Citizens Advice Bureau of WA and the Community Welfare Department. A public notice was also placed in *The West Australian* newspaper inviting submissions.

Comments upon the working paper were received from the Director of the Citizens Advice Bureau, the Council of the Law Society of Western Australia and the Director of the Community Welfare Department. All respondents agreed with the abolition of the immunity. After consideration of the submissions, the Commission submitted its final report in September 1973.³

Recommendations

The Commission recommended that the immunity of action between spouses in tort should be completely abolished. It also recommended that the court should not have a discretion (as had been provided in other jurisdictions) to stay an action if no substantial benefit would accrue to either party, or if the issue could be more conveniently dealt with under the relevant statute.

Legislative or Other Action Undertaken

In 1975 the federal Parliament enacted the *Family Law Act 1975* (Cth). Section 119 of that Act provides that 'either party to a marriage may bring proceedings in contract or tort against the other party'. This provision made implementation of the Commission's primary recommendation in Western Australia unnecessary.⁴

1 Law Reform Commission of Western Australia, *Immunity of Suit Between Husband and Wife*, Project No 32 (1973) 3.

2 *Ibid* 2.

3 *Ibid*.

4 Law Reform Commission of Western Australia, *Annual Report 1976-1977*, 61.