

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CIVIL LAW (WRONGS) AMENDMENT BILL 2003

SUPPLEMENTARY  
EXPLANATORY STATEMENT  
GOVERNMENT AMENDMENTS

Circulated by authority of the  
Attorney General  
Mr Jon Stanhope MLA

## CIVIL LAW (WRONGS) AMENDMENT BILL 2003

### Amendments to be moved by the Attorney-General

#### Amendment 1

Amendment 1 amends clause 12 of the Bill, which proposes a new section 31H(1)(a). The amendment places the phrase *factual causation* into brackets rather than in inverted commas. This amendment is the result of comments from the Scrutiny of Bill's Committee.

#### Amendment 2

Amendment 2 amends clause 14 of the Bill by inserting a fourth subsection into section 31ZYA. The new provision imposes a requirement on an expert when giving evidence on the issue of whether particular medical treatment amounts to professional negligence. Under section 31ZYA(4), the expert must have regard to whether the treatment was in accordance with an opinion widely held by a significant number of respected Australian practitioners in that field. This amendment was requested by the ACT branch of the Australian Medical Association.

#### Amendment 3

Amendment 3 amends clause 23 of the Bill by replacing the words *agree to, or allow a court to set, a hearing date for the claim* with the phrase *sign a pleading in relation to the claim*. This amendment was recommended by the ACT Law Society. The Law Society was concerned that an obligation on a legal practitioner to certify as to the reasonable prospects of success should be required at an earlier stage than the setting of hearing date. It was recommended that a better approach was to provide that lawyers cannot sign pleadings unless there are reasonable prospects of success.

#### Amendment 4

Amendment 4 amends clause 23 of the Bill by replacing the words *an action on a claim for damages is set down for hearing* with the phrase *a pleading has been signed in relation to a claim for damages*. Like the previous amendment, this alteration was recommended by the ACT Law Society. The Law Society was concerned that an obligation on a legal practitioner to certify as to the reasonable prospects of success should be required at an earlier stage than the setting of hearing date. It was recommended that a better approach is to provide that lawyers cannot sign pleadings unless there are reasonable prospects of success.

#### Amendment 5

Amendment 5 inserts a new clause 58A into the Bill. Clause 58A replaces the existing section 30(3) of the *Limitation Act 1985*. The substituted subsection, at paragraph (a), provides that section 30 does not apply to a cause of action to recover a penalty, forfeiture or sum by way of penalty or forfeiture unless the person having the cause of action is an aggrieved party. Under subsection 3(b), section 30 also does not apply to causes of action to which section 30B applies. Section 30B is a special provision in relation to children, concerning claims relating to health services.

## Amendment 6

Amendment 6 amends clause 59 of the Bill. The amendment rectifies an incorrect citation of an Act, so that the new section 30A(1)(b) properly refers to the *Civil Law (Wrongs) Act 2002*.

## Amendment 7

Amendment 7 inserts a new clause 59A into the Bill. Clause 59A adds a new section 30B into the *Limitation Act 1985*. The ambit of section 30B is the establishment of a special provision relating to children, concerning claims relating to health services. Subsection (1) directs that section 30B applies if a child plaintiff suffers personal injury that gives rise to a claim for damages, and the claim relates to the provision of a health service.

Under subsection (2), a cause of action for damages in relation to a claim is not maintainable if the claim is brought after six years from the date of the accident that gave rise to the injury. Section 30B(3) alters the position if the injury is, or includes a disease or disorder. In such circumstances the cause of action is not maintainable if brought after the earlier of the periods detailed in paragraphs (a) and (b).

The period detailed in paragraph (a) is six years after the day the plaintiff, or the parent or guardian of the plaintiff, first knew or ought to have known either that the plaintiff suffered an injury that is or includes the disease or disorder, or that the injury is related to an act or omission of someone else. Paragraph (b) sets a period of 12 years after the day the accident that gave rise to the injury happened.

In considering whether or not the period mentioned in subsection (3) should be extended under section 36, subsection (4) provides that the court must have regard to the opinion of a medical expert, or experts. The expert(s) will give the court their opinion of when the plaintiff, or the plaintiff's parent or guardian, first knew, or ought to have known, that the plaintiff had suffered the injury, or that the injury was related to the act or omission of someone else.

Subsection (5) provides that for the purposes of section 30B, the term *health service* has the meaning provided in section 4 of the *Community and Health Services Complaints Act 1993*. In the *Community and Health Services Complaints Act* health service is defined as 'a service provided or to be provided in the ACT for, or purportedly for, the benefit of the health of a person and includes a service specified in schedule 1, part 1.1, but not a service specified in schedule 1, part 1.2'.

Subsection (6) clarifies that section 30B applies to a cause of action that arises on or after the 1<sup>st</sup> of July 2003. Under section 30B(7), if the cause of action arose prior to that date, then the cause of action is not maintainable after the first to occur of the periods found in paragraphs (a) and (b). Paragraph (a) is the period that would apply to the cause of action under section 30B, if section 30B applied to the action. The period in paragraph (b) is the limitation period that applied to the cause of action before 1 July 2003.

### **Amendment 8**

Amendment 8 amends clause 60 of the Bill. Clause 60 now adds section 36(5) and 36(6) into the *Limitation Act 1985*. Section 36(5) provides that section 36 does not apply in relation to a cause of action to which section 16B applies, with the heading '(other than claims for damages for personal injury)', nor does the section apply to Part 3.1 of the Civil Law (Wrongs) Act 2002, which deals with death caused by a wrongful act or omission.

Section 36(6) states that section 30 also does not apply in relation to the period mentioned in section 30B(2), which is the special provision in relation to children, concerning claims relating to health services.