

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Civil Law (Wrongs) Amendment Bill 2003

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Civil Law (Wrongs) Amendment Bill 2003

A Bill for

An Act to amend the *Civil Law (Wrongs) Act 2002*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Civil Law (Wrongs) Amendment Act 2003*.

4 **2 Commencement**

5 (1) This Act (other than sections 13 and 23) commences on the day
6 after its notification day.

7 (2) Sections 13 and 23 commence on a day fixed by the Minister by
8 written notice.

9 *Note 1* The naming and commencement provisions automatically commence on
10 the notification day (see Legislation Act, s 75 (1)).

11 *Note 2* A single day or time may be fixed, or different days or times may be
12 fixed, for the commencement of different provisions (see Legislation
13 Act, s 77 (1)).

14 *Note 3* If a provision has not commenced within 6 months beginning on the
15 notification day, it automatically commences on the first day after that
16 period (see Legislation Act, s 79).

Part 2 Civil Law (Wrongs) Act 2002

3 Act amended—pt 2

This part amends the *Civil Law (Wrongs) Act 2002*.

4 New section 4A

in chapter 1, insert

4A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- section 31ZL (Offence not to disclose particular material)
- section 31ZR (False or misleading statements)

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 New part 2.2A

insert

Part 2.2A Apologies

11A Application of pt 2.2A

- (1) This part applies to civil liability of any kind.

Section 5

- 1 (2) However, this part does not apply to civil liability for an award of
2 damages or compensation—
3 (a) for defamation; or
4 (b) under any of the following:
5 (i) the *Discrimination Act 1991*;
6 (ii) the *Victims of Crime (Financial Assistance) Act 1983*;
7 (iii) the *Workers Compensation Act 1951*.

8 **11B Meaning of *apology* in pt 2.2A**

9 In this part:

10 *apology* means an oral or written expression of sympathy or regret,
11 or of a general sense of benevolence or compassion, in relation to an
12 incident, whether or not the expression admits or implies fault or
13 liability in relation to the incident.

14 **11C Effect of apology on liability etc**

- 15 (1) An apology made by or on behalf of a person in relation to an
16 incident claimed to have been caused by the person—
17 (a) is not (and must not be taken to be) an express or implied
18 admission of fault or liability by the person in relation to the
19 incident; and
20 (b) is not relevant to deciding fault or liability in relation to the
21 incident.
22 (2) Evidence of an apology made by or on behalf of a person in relation
23 to an incident claimed to have been caused by the person is not
24 admissible in any civil proceeding as evidence of the fault or
25 liability of the person in relation to the incident.

6 Damages for a person's death
Section 22 (2)

omit

part 4.1 (General exclusions and limitations about damages)

substitute

part 4.1 (Damages for personal injuries—exclusions and limitations)

7 Contributory negligence not defence in relation to death
Section 24 (2)

omit

part 4.1 (General exclusions and limitations about damages)

substitute

part 4.1 (Damages for personal injuries—exclusions and limitations)

8 Part 3.2 heading

substitute

Part 3.2 Mental harm

9 Definitions for pt 3.2
Section 29

insert

consequential mental harm, to a person, means mental harm to the person that is a consequence of bodily injury to the person.

mental harm, to a person, means impairment of the person's mental condition.

negligence means failure to exercise reasonable care and skill.

1 *pure mental harm*, to a person, means mental harm to the person
2 other than consequential mental harm.

3 **10 New sections 30A and 30B**

4 **30A Mental harm—duty of care**

- 5 (1) A person (the *defendant*) does not owe a duty to another person (the
6 *plaintiff*) to take care not to cause the plaintiff mental harm unless a
7 reasonable person in the defendant's position would have foreseen
8 that a person of normal fortitude in the plaintiff's position might, in
9 the circumstances of the case, suffer a recognised psychiatric illness
10 if reasonable care were not taken.
- 11 (2) For the application of this section in relation to pure mental harm to
12 a person, the circumstances of the case to which the court must have
13 regard include—
- 14 (a) whether or not the mental harm was suffered as the result of a
15 sudden shock; and
- 16 (b) whether the plaintiff witnessed, at the scene, a person being
17 killed, injured or put in danger; and
- 18 (c) the nature of the relationship between the plaintiff and anyone
19 killed, injured or put in danger; and
- 20 (d) whether or not there was a pre-existing relationship between
21 the plaintiff and the defendant.
- 22 (3) For the application of this section in relation to consequential mental
23 harm to a person, the circumstances of the case to which the court
24 must have regard include the nature of the bodily injury out of
25 which the mental harm arose.
- 26 (4) This section does not affect the duty of care a person (the
27 *defendant*) has to another person (the *plaintiff*) if the defendant
28 knows, or ought reasonably to know, that the plaintiff is a person of
29 less than normal fortitude.

1 **30B Mental harm—damages**

2 (1) Damages must not be awarded for pure mental harm to a person
3 resulting from negligence unless the harm consists of a recognised
4 psychiatric illness.

5 (2) Damages must not be awarded for economic loss for consequential
6 mental harm to a person resulting from negligence unless the harm
7 consists of a recognised psychiatric illness.

8 **11 Extensions of liability under pt 3.2 in certain cases**
9 **Section 31 (5)**

10 *omit*

11 part 4.1 (General exclusions and limitations about damages)

12 *substitute*

13 part 4.1 (Damages for personal injuries—exclusions and limitations)

14 **12 New chapter 3A**

15 *insert*

16 **Chapter 3A Negligence**

17 **Part 3A.1 Preliminary**

18 **31D Definitions for ch 3A**

19 In this chapter:

20 ***harm*** means harm of any kind, and includes—

21 (a) personal injury; and

22 (b) damage to property; and

23 (c) economic loss.

1 *negligence* means failure to exercise reasonable care and skill.

2 **31DA Application of ch 3A**

3 (1) This chapter applies to all claims for damages for harm resulting
4 from negligence, whether the claim is brought in tort, in contract,
5 under statute or otherwise.

6 (2) However, this chapter does not apply to a claim under the *Workers*
7 *Compensation Act 1951*.

8 **Part 3A.2 Duty of care**

9 **31E Standard of care**

10 For deciding whether a person (the *defendant*) was negligent, the
11 standard of care required of the defendant is that of a reasonable
12 person in the defendant's position who was in possession of all the
13 information that the defendant either had, or ought reasonably to
14 have had, at the time of the incident out of which the harm arose.

15 **31F Precautions against risk—general principles**

16 (1) A person is not negligent in failing to take precautions against a risk
17 of harm unless—

18 (a) the risk was foreseeable (that is, it is a risk of which the person
19 knew or ought to have known); and

20 (b) the risk was not insignificant; and

21 (c) in the circumstances, a reasonable person in the person's
22 position would have taken those precautions.

23 (2) In deciding whether a reasonable person would have taken
24 precautions against a risk of harm, the court must consider the
25 following (among other relevant things):

-
- 1 (a) the probability that the harm would happen if precautions were
2 not taken;
- 3 (b) the likely seriousness of the harm;
- 4 (c) the burden of taking precautions to avoid the risk of harm;
- 5 (d) the social utility of the activity creating the risk of harm.

6 **31G Precautions against risk—other principles**

7 In a proceeding in relation to liability for negligence—

- 8 (a) the burden of taking precautions to avoid a risk of harm
9 includes the burden of taking precautions to avoid similar risks
10 of harm for which the person may be responsible; and
- 11 (b) the fact that a risk of harm could have been avoided by doing
12 something in a different way does not of itself give rise to or
13 affect liability for the way in which it was done; and
- 14 (c) the subsequent taking of action that would (had the action been
15 taken earlier) have avoided a risk of harm does not of itself
16 give rise to or affect liability in relation to the risk and is not of
17 itself an admission of liability in relation to the risk.

18 **Part 3A.3 Causation**

19 **31H General principles**

- 20 (1) A decision that negligence caused particular harm comprises the
21 following elements:
- 22 (a) that the negligence was a necessary condition of the happening
23 of the harm ‘factual causation’;
- 24 (b) that it is appropriate for the scope of the negligent person’s
25 liability to extend to the harm so caused (*scope of liability*).

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- 1 (2) However, if a person (the *plaintiff*) has been negligently exposed to
2 a similar risk of harm by a number of different people (the
3 *defendants*) and it is not possible to assign responsibility for causing
4 the harm to any 1 or more of them—
- 5 (a) the court may continue to apply the established common law
6 principle under which responsibility may be assigned to the
7 defendants for causing the harm; but
- 8 (b) the court must consider the position of each defendant
9 individually and state the reasons for bringing the defendant
10 within the scope of liability.
- 11 (3) In deciding the scope of liability, the court must consider (among
12 other relevant things) whether or not, and why, responsibility for the
13 harm should be imposed on the negligent party.

31I Burden of proof

- 15 In deciding liability for negligence, the plaintiff always bears the
16 burden of proving, on the balance of probabilities, any fact relevant
17 to the issue of causation.

Part 3A.4 Other provisions—negligence**31J Contributory negligence can defeat claim**

- 20 In deciding the extent of a reduction of damages because of
21 contributory negligence, a court may decide on a reduction of 100%
22 if the court considers it is just and equitable to do so, with the result
23 that the claim for damages is defeated.

31K Remedy available if claim fraudulent

- 25 (1) This section applies to a person if—
- 26 (a) the person did, or omitted to do, something in relation to a
27 claim; and

1 (b) the person did, or omitted to do, the thing—

2 (i) for the purpose of obtaining a financial benefit; or

3 (ii) knowing that the thing (or something else resulting from
4 doing or omitting to do the thing) is false or misleading.

5 **Example of something done in relation to claim**

6 the making of a statement

7 **Example of something resulting from the doing of the thing**

8 the statement

9 *Note* An example is part of the Act, is not exhaustive and may extend, but
10 does not limit, the meaning of the provision in which it appears (see
11 Legislation Act, s 126 and s 132).

12 (2) If this section applies to a claimant in relation to a claim—

13 (a) a person who has a liability in relation to a payment,
14 settlement, compromise or judgment relating to the claim is
15 relieved from the liability to the extent of the financial benefit
16 obtained by the claimant; and

17 (b) a person who has paid an amount to the claimant in relation to
18 the claim (whether under a settlement, compromise, judgment
19 or otherwise) is entitled to recover from the claimant the
20 amount of the financial benefit obtained by the claimant and
21 any costs incurred in relation to the claim.

22 (3) If this section applies to a person other than a claimant in relation to
23 a claim, the claimant is entitled to recover from the person as a debt
24 the amount of the financial benefit obtained by the person and any
25 costs incurred by the claimant in relation to the claim.

13 New chapter 3B*insert***Chapter 3B Personal injuries claims—
pre-court procedures****Part 3B.1 Preliminary****31N Definitions for ch 3B**

In this chapter:

claim means a claim (however described) for damages based on a liability for personal injury, whether the liability is based in tort or contract or on another form of action (including breach of statutory duty), and, for a fatal injury, includes a claim for the dead person's dependants or estate.

claimant means a person by whom, or on whose behalf, a claim is made.

complying notice of claim means a notice of claim under section 31O (Notice of claim) or section 31S (Claimant may add later respondents) that is given as required under this chapter.

contribution notice—see section 31U (Respondent may add someone else as contributor).

contributor means a person added as a contributor under section 31U (Respondent may add someone else as contributor).

court, in relation to a claim, means—

- (a) if a proceeding based on a claim has been begun—the court hearing the proceeding; or

1 (b) if no proceeding based on the claim has been begun—a court
2 with jurisdiction to hear the claim.

3 *insurer*, of a person in relation to a claim, means the insurer or other
4 entity providing, or purportedly providing, the person cover or an
5 indemnity against the claim.

6 *party* means claimant, respondent or contributor.

7 *respondent* means a person who—

8 (a) is a respondent under section 31O (Notice of claim); or

9 (b) is a later respondent under section 31S (Claimant may add later
10 respondents).

11 **31NA Application of ch 3B**

12 (1) This chapter applies to all claims for damages for personal injury,
13 including claims to which the *Road Transport (General) Act 1999*,
14 part 10 (Compulsory vehicle insurance) applies.

15 (2) However, this chapter does not apply to—

16 (a) a claim under the *Workers Compensation Act 1951*; or

17 (b) a claim for which—

18 (i) notice has been given by or for the claimant under the
19 *Limitation Act 1985*, section 30A (2) (Special provision
20 for injuries to children); and

21 (ii) notice has been given by a respondent under that Act,
22 section 30A (6).

Part 3B.2 Claims procedures

310 Notice of claim

- (1) Before a claimant brings a proceeding against someone else (a *respondent*) based on a claim in relation to a personal injury, the claimant must give the respondent written notice of the claim.

Note 1 A proceeding must be brought before the end of the relevant limitation period under the *Limitation Act 1985*.

Note 2 If a form is approved under s 147 for a notice of claim, the form must be used.

- (2) The notice must—

- (a) contain a statement of the information required under the regulations; and
- (b) authorise each of the following to have access to the records and sources of information relevant to the claim that are required under the regulations:
 - (i) the respondent;
 - (ii) if the respondent is insured against the claim—the respondent's insurer for the claim; and
- (c) be accompanied by the documents required under the regulations.

- (3) The notice must be given within the period that ends on the earlier of the following days:

- (a) the day that is 9 months after—
 - (i) the day the accident giving rise to the personal injury happened; or
 - (ii) if symptoms of the injury are not immediately apparent—the day symptoms of the injury first appear;

- 1 (b) that day that is 4 months after the day the claimant first
2 consults a lawyer to obtain advice about seeking damages for
3 the personal injury and the respondent is identified.
- 4 (4) If the claimant is a child, the claimant's parent or legal guardian
5 may give the notice for the claimant.
- 6 *Note* For another procedure for a claim in relation to a personal injury
7 suffered by a child, see the *Limitation Act 1985*, s 30A (Special
8 provision for injuries to children).
- 9 (5) If the notice is not given within the period required under
10 subsection (3), a reasonable excuse for the delay must be given in
11 the notice or by separate written notice to the respondent.
- 12 *Note* If the notice is not given as required under s (3), the obligation to give
13 the notice continues until it is given (see Legislation Act, s 152).
- 14 (6) If the respondent knows of anyone else (a **relevant person**) against
15 whom a proceeding based on the claim may be begun by the
16 claimant, the respondent must, within the period prescribed under
17 the regulations (or, if no period is prescribed, within 1 month after
18 the day the respondent receives the notice)—
- 19 (a) give a copy of the notice to each relevant person; and
- 20 (b) tell the claimant in writing about each relevant person and give
21 the claimant a short written statement explaining why each of
22 them may be a relevant person.
- 23 (7) If the respondent is a child, the respondent's parent or legal guardian
24 may comply with subsection (6) for the respondent.

25 **31P Preliminary response to claimant**

- 26 (1) A respondent must, in writing and within the required period—
- 27 (a) give notice to the claimant under section 31R (Respondent's
28 response to notice of claim); or

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- 1 (b) if the respondent cannot decide on the information in the notice
2 whether or not the respondent is properly a respondent to the
3 claim—tell the claimant, in writing, about the further
4 information the respondent reasonably needs to decide whether
5 the respondent is properly a respondent to the claim; or
- 6 (c) if the respondent considers that the respondent is not properly a
7 respondent to the claim, tell the claimant, in writing, that the
8 respondent considers the respondent is not properly a
9 respondent to the claim and give the claimant, in writing—
- 10 (i) reasons why the respondent considers the respondent is
11 not properly a respondent to the claim; and
- 12 (ii) any information the respondent has that may help the
13 claimant identify someone who should be a respondent to
14 the claim.
- 15 (2) If the claimant is told that further information is needed under
16 subsection (1) (b), the claimant must, within the required period—
- 17 (a) give the respondent the further information; or
- 18 (b) tell the respondent, in writing, that the claimant considers the
19 respondent to be properly a respondent to the claim and
20 requires the respondent to give notice to the claimant under
21 section 31R.
- 22 (3) Within the required period after being given information under
23 subsection (2) (a), the respondent must, having regard to that
24 information—
- 25 (a) give notice to the claimant under section 31R; or
- 26 (b) if the respondent considers that the respondent is not properly a
27 respondent to the claim, tell the claimant, in writing, that the
28 respondent considers the respondent is not properly a
29 respondent to the claim and give the claimant, in writing—

- 1 (i) reasons why the respondent considers the respondent is
2 not properly a respondent to the claim; and
- 3 (ii) any information the respondent has that may help the
4 claimant identify someone who should be a respondent to
5 the claim.
- 6 (4) If the claimant is told under subsection (1) (c) or (3) (b) that the
7 respondent is not properly a respondent to the claim, the claimant
8 must, within the required period, tell the respondent, in writing,
9 that—
- 10 (a) the claimant accepts that the respondent is not properly a
11 respondent to the claim; or
- 12 (b) the claimant considers the respondent to be properly a
13 respondent to the claim and requires the respondent to give
14 notice to the claimant under section 31R.
- 15 (5) Advice given to the respondent under subsection (4) (a) does not
16 prevent the claimant from giving the respondent another notice of
17 claim under section 31O at a later time.
- 18 (6) In this section:
- 19 *required period* means—
- 20 (a) the period prescribed under the regulations; or
- 21 (b) if no period is prescribed, the following:
- 22 (i) for subsection (1)—1 month after the day the respondent
23 receives a notice of claim under section 31O;
- 24 (ii) for subsection (2)—1 month after the day the claimant is
25 told under subsection (1) (b) that further information is
26 needed;
- 27 (iii) for subsection (3)—1 month after the day the respondent
28 is given the information;

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- 1 (iv) for subsection (4)—1 month after the day the claimant is
2 told under subsection (1) (c) or (3) (b) that the respondent
3 is not properly a respondent to claim.

4 **31Q Acknowledgment that proper respondent not admission**
5 **of liability**

6 Advice by a respondent that the respondent considers that the
7 respondent is properly a respondent to a claim is not an admission of
8 liability by the respondent in relation to the claim.

9 **31R Respondent's response to notice of claim**

- 10 (1) This section applies if a respondent—
11 (a) considers the respondent to be properly a respondent to a
12 claim; or
13 (b) is told under section 31P (2) (b) or (4) (b) (Preliminary
14 response to claimant) that the claimant considers the
15 respondent to be properly a respondent to a claim.
16 (2) The respondent must, within the required period, give the claimant
17 written notice (a *response*)—
18 (a) stating whether the respondent is satisfied that the notice is a
19 complying notice of claim; and
20 (b) if the respondent is not satisfied—identifying the
21 noncompliance and stating whether the respondent waives
22 compliance with the requirements; and
23 (c) if the respondent does not waive compliance with the
24 requirements—allowing the claimant a reasonable period, of at
25 least 1 month, stated in the response to—
26 (i) satisfy the respondent that the claimant has complied
27 with the requirements; or

-
- 1 (ii) take reasonable action stated in the response to remedy
2 the noncompliance.
- 3 (3) If the respondent does not give a response within the required
4 period, the respondent is conclusively presumed to be satisfied that
5 the notice is a complying notice of claim.
- 6 (4) If subsection (2) (c) applies, the respondent must, within 1 month
7 after the day the period stated in the response ends, give the
8 claimant a written notice—
- 9 (a) stating that the respondent is satisfied the claimant has
10 complied with the relevant requirements, is satisfied with the
11 action taken by the claimant to remedy the noncompliance, or
12 waives the noncompliance; or
- 13 (b) stating that the respondent is not satisfied that the claimant has
14 taken reasonable action to remedy the noncompliance, and
15 giving full particulars of the noncompliance and the claimant's
16 failure to remedy it.
- 17 (5) In this section:
- 18 *required period* means—
- 19 (a) if the respondent responds directly to the claimant under this
20 section as mentioned in section 31P (1) (a)—the period
21 applying under section 31P (1); and
- 22 (b) in any other case—
- 23 (i) the period prescribed under the regulations; or
- 24 (ii) if no period is prescribed, the later of the following:
- 25 (A) if the respondent gives notice to the claimant under
26 section 31P (3) (a)—1 month after the day the
27 respondent is given the further information under
28 section 31P (2) (a);
-

- 1 (B) if the claimant tells the respondent under section
2 31P (2) (b) or (4) (b) that the claimant considers the
3 respondent to be properly a respondent to the
4 claim—1 month after the day the claimant tells the
5 respondent under that paragraph.

6 **31S Claimant may add later respondents**

- 7 (1) After a claimant has given notice of a claim to a respondent under
8 section 31O, the claimant may add someone else as a respondent (a
9 *later respondent*) to the claim by giving the later respondent—
10 (a) a notice of a claim complying with section 31O (2); and
11 (b) copies of other documents given to or received from any other
12 respondent under this chapter.
13 (2) However, the claimant may add a later respondent only—
14 (a) within the time prescribed under the regulations; or
15 (b) if the later respondent and all parties to the claim agree; or
16 (c) if the court gives leave.
17 (3) If the claimant adds a later respondent under this section—
18 (a) the later respondent must respond to the notice as if it were a
19 notice of a claim given under section 31O; and
20 (b) the claimant must, in writing, tell each other respondent of the
21 addition within the time prescribed under the regulations.

22 **31T Multiple respondents**

- 23 (1) If there are 2 or more respondents to a claim, one of the respondents
24 (the *respondents' claim manager*) may act for 1 or more of the
25 other respondents under this chapter with the agreement of the other
26 respondents.

- 1 (2) The respondents' claim manager—
- 2 (a) may exercise the functions given under this chapter in relation
- 3 to the claim and the claimant for all respondents for whom the
- 4 respondents' claim manager acts; and
- 5 (b) must act as far as practicable with the agreement of the other
- 6 respondents for whom the manager acts.
- 7 (3) Action taken, or an agreement made, by the respondents' claim
- 8 manager in relation to the claim is binding on each respondent for
- 9 whom the respondents' claim manager acts so far as it affects the
- 10 claimant.
- 11 (4) However, if the respondents' claim manager acts beyond the scope
- 12 of the manager's authority under the agreement under
- 13 subsection (1), the manager is liable to each other respondent who is
- 14 a party to the agreement for any loss suffered by the other
- 15 respondent.

16 **31U Respondent may add someone else as contributor**

- 17 (1) A respondent who receives a complying notice of claim may, within
- 18 the time prescribed under the regulations, add someone else as a
- 19 contributor for this chapter by giving the person a written notice (a
- 20 *contribution notice*)—
- 21 (a) claiming an indemnity from, or contribution towards, the
- 22 respondent's liability; and
- 23 (b) stating the grounds on which the respondent holds the person
- 24 liable; and
- 25 (c) stating any other information prescribed under the regulations;
- 26 and
- 27 (d) accompanied by copies of documents about the claim given to
- 28 or received from any other party under this chapter.

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- 1 (2) If the time prescribed under subsection (1) for adding a contributor
2 has ended, the respondent may add someone else as a contributor
3 only if—
4 (a) the contributor and all parties to the claim agree; or
5 (b) the court gives leave.
6 (3) If the respondent adds someone else as a contributor under this
7 section, the respondent must give a copy of the contribution notice
8 to each other party within the time prescribed under the regulations.

9 **31V Contributor's response**

- 10 (1) A contributor must, within the period prescribed under the
11 regulations (or, if no period is prescribed, within 1 month after the
12 day the contributor receives a contribution notice), give the
13 respondent who gave the contribution notice a written response (the
14 *contributor's response*)—
15 (a) containing a statement of information prescribed under the
16 regulations; and
17 (b) accompanied by the documents (if any) prescribed under the
18 regulations.
19 (2) The contributor's response must also state—
20 (a) whether the claim for the contribution or indemnity claimed in
21 the contribution notice is admitted, denied or admitted in part;
22 and
23 (b) if the claim for the contribution or indemnity is admitted in
24 part—the extent to which it is admitted.
25 (3) An admission of liability in the contributor's response—
26 (a) is not binding on the contributor in relation to any other claim;
27 and

1 (b) is not binding on the contributor at all if it later appears the
2 admission was induced by fraud.

3 (4) If the respondent requires information provided by a contributor
4 under this section to be verified by statutory declaration, the
5 contributor must verify the information by statutory declaration.

6 **31W Claimant's failure to give complying notice of claim**

7 (1) If a claimant does not give a complying notice of claim, the claimant
8 cannot proceed further with the claim unless—

9 (a) the respondent to whom notice of the claim was purportedly
10 given—

11 (i) has given the claimant a written notice to the effect that
12 the respondent is satisfied the notice is a complying
13 notice of claim or the claimant has taken reasonable
14 action to remedy the noncompliance; or

15 (ii) is presumed, under section 31R (3) (Respondent's
16 response to notice of claim), to be satisfied the notice is a
17 complying notice of claim; or

18 (b) the respondent has waived any noncompliance; or

19 (c) the court, on application by the claimant—

20 (i) declares that the claimant has remedied the
21 noncompliance; or

22 (ii) authorises the claimant to proceed further with the claim
23 despite the noncompliance.

24 (2) An order of the court under subsection (1) (c) may be made on
25 conditions the court considers necessary or appropriate to minimise
26 prejudice to a respondent from the claimant's noncompliance.

1 **31X Legal disabilities**

2 (1) A claimant is not required to comply with an obligation under this
3 chapter while the claimant is under a legal disability.

4 *Note* If the claimant is a child, under s 31O (4) a parent or guardian of the
5 child may give the notice of claim for the child.

6 (2) The period within which the obligation must be complied with
7 begins when the claimant's legal disability ends.

8 (3) This chapter applies to the claimant as if—

9 (a) a reference to the day the accident giving rise to the personal
10 injury happened were a reference to the day the claimant's
11 legal disability ends; and

12 (b) all other changes were made to give effect to this section.

13 (4) This section does not prevent a claimant, or a person acting for a
14 claimant, from complying with an obligation under this chapter
15 while the claimant is under a legal disability.

16 (5) In this section:

17 *legal disability*—a claimant is under a *legal disability* in the
18 circumstances in which a person is under a disability for the
19 *Limitation Act 1985*.

20 **31Y Respondent must attempt to resolve claim**

21 (1) A respondent must, within the period prescribed under the
22 regulations (or, if no period is prescribed, within 6 months after the
23 day the respondent receives a complying notice of claim)—

24 (a) take any reasonable steps necessary to find out about the
25 accident claimed to have given rise to the personal injury to
26 which the claim relates; and

27 (b) give the claimant written notice stating—

28 (i) whether liability is admitted or denied; and

-
- 1 (ii) if contributory negligence is claimed—the degree of the
2 contributory negligence expressed as a percentage; and
- 3 (c) if the claimant made an offer of settlement in the notice of
4 claim—tell the claimant whether the respondent accepts or
5 rejects the offer; and
- 6 (d) if the claimant did not make an offer of settlement in the notice
7 of claim—invite the claimant to make a written offer of
8 settlement; and
- 9 (e) make a fair and reasonable estimate of the damages to which
10 the claimant would be entitled in a proceeding against the
11 respondent; and
- 12 (f) either—
- 13 (i) make a written offer, or counteroffer, of settlement to the
14 claimant setting out in detail the basis on which the offer
15 is made; or
- 16 (ii) settle the claim by accepting an offer made by the
17 claimant.
- 18 (2) If a notice of claim is not a complying notice of claim, a respondent
19 is taken to have been given a complying notice of claim when—
- 20 (a) the respondent gives the claimant written notice that the
21 respondent waives compliance with the requirement that has
22 not been complied with or is satisfied the claimant has taken
23 reasonable action to remedy the noncompliance; or
- 24 (b) the court makes a declaration that the claimant has remedied
25 the noncompliance, or authorises the claimant to proceed
26 further with the claim despite the noncompliance.
- 27 (3) An offer, or counteroffer, of settlement must be accompanied by a
28 copy of medical reports, assessments of cognitive, functional or
29 vocational capacity and all other material, including documents
30 relevant to assessing economic loss, in the offerer's possession or
-

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1 control that may help the person to whom the offer is made make a
2 proper assessment of the offer.

3 (4) A respondent or claimant to whom a written offer, or counteroffer,
4 of settlement is made must, unless a response to the offer is to be
5 made under subsection (1) (c), respond in writing to the offer within
6 the period prescribed under the regulations after the day the
7 respondent or claimant receives it (or, if no period is prescribed,
8 within 3 months), indicating acceptance or rejection of the offer.

9 (5) An admission of liability by a respondent under this section—

10 (a) is not binding on the respondent in relation to any other claim;
11 and

12 (b) is not binding on the respondent at all if it later appears the
13 admission was induced by fraud.

14 **31Z Consequences of noncompliance with pt 3B.2**

15 (1) If a claimant does not comply with the requirements of this part, a
16 court in which the claimant begins a proceeding based on the
17 claim—

18 (a) may, on a respondent's application in the proceeding, award in
19 the respondent's favour costs (including legal and investigation
20 costs) reasonably incurred by the respondent because of the
21 claimant's noncompliance; and

22 (b) may only award interest in the claimant's favour for a period
23 for which the claimant was in noncompliance if the court is
24 satisfied there is a reasonable excuse for the noncompliance.

25 (2) If a respondent does not comply with the requirements of this part, a
26 court in which the respondent defends a proceeding based on the
27 claim may, on a claimant's application in the proceeding, award in
28 the claimant's favour costs (including legal and investigation costs)
29 reasonably incurred by the claimant because of the respondent's
30 noncompliance.

Part 3B.3 Obligations of parties to give documents and information

31ZA Purpose of pt 3B.3

The purpose of this part is to put the parties in a position where they have enough information to assess liability and quantum in relation to a claim.

31ZB Claimant to give documents etc to respondent

(1) A claimant must give a respondent—

(a) copies of the following in the claimant's possession:

(i) reports and other documents about the accident claimed to have given rise to the personal injury to which the claim relates;

(ii) reports about the claimant's medical condition or prospects of rehabilitation;

(iii) reports about the claimant's cognitive, functional or vocational capacity; and

(b) information reasonably requested by the respondent about any of the following:

(i) the accident;

(ii) the nature of the personal injury and of any consequent disabilities;

(iii) if applicable, the medical treatment and rehabilitation services the claimant has sought or obtained;

(iv) the claimant's medical history, as far as it is relevant to the claim, and any other claims for damages for personal injury made by the claimant;

(v) the claimant's claim for past and future economic loss;

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- 1 (vi) any claim known to the claimant for gratuitous services
2 consequent on the claimant's personal injury.
- 3 (2) The claimant must give the copies mentioned in subsection (1) (a)—
- 4 (a) within the period prescribed under the regulations (or, if no
5 period is prescribed, within 1 month after the day the claimant
6 gives notice of the claim under part 3B.2, or purportedly under
7 part 3B.2); and
- 8 (b) to the extent that a report or other document mentioned in
9 subsection (1) (a) comes into the claimant's possession later,
10 within 7 days after the day it comes into the claimant's
11 possession.
- 12 (3) The claimant must respond to a request under subsection (1) (b)
13 within the period prescribed under the regulations (or, if no period is
14 prescribed, within 1 month after the day the request is received).
- 15 (4) If a respondent requires information given by a claimant under this
16 section to be verified by statutory declaration, the claimant must
17 verify the information by statutory declaration.
- 18 (5) If a claimant fails, without proper reason, to comply fully with this
19 section, the claimant is liable for costs to the respondent resulting
20 from the failure.

21 **31ZC Respondent and claimant may jointly arrange for expert**
22 **report**

- 23 (1) A respondent and a claimant may jointly arrange for an expert report
24 about 1 or more of the following:
- 25 (a) the cause, or probable cause, of the accident claimed to have
26 given rise to the personal injury to which the claim relates and
27 whether, in the expert's opinion, 1 or more people (who may
28 be named) are responsible for, or contributed to, the accident;

-
- 1 (b) the cause, or probable cause, of the personal injury and
2 whether, in the expert's opinion, 1 or more people (who may
3 be named) are responsible for, or contributed to, the accident;
- 4 (c) the claimant's medical condition or prospects of rehabilitation;
- 5 (d) the claimant's cognitive, functional or vocational capacity.
- 6 (2) Neither the respondent nor the claimant is under an obligation to
7 agree to a proposal to obtain a report under this section.
- 8 (3) The person from whom an expert report is obtained must be a
9 person, agreed to by both parties, with appropriate qualifications and
10 experience in the relevant field.
- 11 (4) The person preparing the expert report must give both parties a copy
12 of the report.

13 **31ZD Cost of expert report obtained by agreement**

- 14 (1) If an expert report is obtained by agreement between a respondent
15 and a claimant and the claimant is liable for the cost of obtaining the
16 report, the respondent must, at the claimant's request, reimburse the
17 claimant for the reasonable cost of obtaining the report.
- 18 (2) However, a claimant's right to reimbursement under this section is
19 subject to any agreement between the claimant and the respondent.

20 **31ZE Examination by expert if no agreement**

- 21 (1) This section applies if a respondent wants to obtain an expert report
22 about 1 or more of the matters mentioned in section 31ZC (1) but
23 fails to obtain the claimant's agreement.
- 24 (2) The claimant must comply with a request by the respondent to
25 undergo, at the respondent's expense, either or both of the
26 following:
- 27 (a) a medical examination by a doctor to be selected by the
28 claimant from a panel of at least 3 doctors with appropriate

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- 1 qualifications and experience in the relevant field nominated
2 by the respondent in the request;
- 3 (b) an assessment of cognitive, functional or vocational capacity
4 by an expert to be selected by the claimant from a panel of at
5 least 3 experts with appropriate qualifications and experience
6 in the relevant field nominated by the respondent in the
7 request.
- 8 (3) However, a claimant is not obliged to undergo an examination or
9 assessment under this section if it is unreasonable or unnecessarily
10 repetitious.
- 11 (4) If 3 doctors or experts with appropriate qualifications and
12 experience in the relevant field are not available for inclusion on a
13 panel under subsection (2), the number on the panel may be reduced
14 to 2.

31ZF Respondent to give documents etc to claimant

- 16 (1) A respondent must give a claimant—
- 17 (a) copies of the following in the respondent's possession that are
18 directly relevant to a matter in issue in the claim:
- 19 (i) reports and other documents about the accident claimed
20 to have given rise to the personal injury to which the
21 claim relates;
- 22 (ii) reports about the claimant's medical condition or
23 prospects of rehabilitation;
- 24 (iii) reports about the claimant's cognitive, functional or
25 vocational capacity; and
- 26 (b) if asked by the claimant—
- 27 (i) information that is in the respondent's possession about
28 the circumstances of, or the reasons for, the accident; or

- 1 (ii) if the respondent is an insurer of a person for the claim—
2 information that can be found out from the insured person
3 for the claim about the circumstances of, or the reasons
4 for, the accident.
- 5 (2) The respondent must give the copies mentioned in
6 subsection (1) (a)—
- 7 (a) within the period prescribed under the regulations (or, if no
8 period is prescribed, within 1 month after the day the
9 respondent receives a complying notice of claim); and
- 10 (b) to the extent that a report or other document mentioned in
11 subsection (1) (a) comes into the claimant's possession later,
12 within 7 days after the day it comes into the claimant's
13 possession.
- 14 (4) The respondent must respond to a request under subsection (1) (b)
15 within the period prescribed under the regulations (or, if no period is
16 prescribed, within 1 month after the day the request is received).
- 17 (5) If a claimant requires information given by a respondent under this
18 section to be verified by statutory declaration, the respondent must
19 verify the information by statutory declaration.
- 20 (6) If a respondent fails, without proper reason, to comply fully with
21 this section, the respondent is liable for costs to the claimant
22 resulting from the failure.

23 **31ZG Respondent to give documents etc to contributor**

- 24 (1) A respondent must give a contributor added by the respondent
25 copies of the following that are in the respondent's possession:
- 26 (a) reports and other documents about the accident claimed to
27 have given rise to the personal injury to which the claim
28 relates;
- 29 (b) reports about the claimant's medical condition or prospects of
30 rehabilitation;

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- 1 (c) reports about the claimant's cognitive, functional or vocational
2 capacity;
- 3 (d) reports about the claimant's person injury and of any
4 consequent disabilities;
- 5 (e) if applicable, information about the medical treatment and
6 rehabilitation services the claimant has sought or obtained;
- 7 (f) information about the claimant's medical history, as far as it is
8 relevant to the claim, and any other claims for damages for
9 personal injury made by the claimant;
- 10 (g) information about the claimant's claim for past and future
11 economic loss;
- 12 (h) information about any claim known to the respondent for
13 gratuitous services consequent on the claimant's personal
14 injury.
- 15 (2) The respondent must give the copies—
- 16 (a) within the period prescribed under the regulations (or, if no
17 period is prescribed, within 1 month after the day the
18 respondent gives a contribution notice to the contributor); and
- 19 (b) to the extent that a report or other document or information
20 mentioned in subsection (1) comes into the respondent's
21 possession later, within 7 days after the day it comes into the
22 respondent's possession.

31ZH Contributor to give documents to respondent

- 24 (1) A contributor must give the respondent who added the contributor
25 copies of reports and other documents about the accident claimed to
26 have given rise to the personal injury to which the claim relates that
27 are in the contributor's possession.

- 1 (2) The contributor must give the copies—
- 2 (a) within the period prescribed under the regulations (or, if no
- 3 period is prescribed, within 1 month after the day the
- 4 contributor is added as a contributor); and
- 5 (b) to the extent that a report or other document mentioned in
- 6 subsection (1) comes into the respondent's possession later,
- 7 within 7 days after the day it comes into the respondent's
- 8 possession.

9 **31ZI Alternative provision if more than 200 pages**

- 10 (1) In this section:
- 11 *relevant section* means any of the following sections:
- 12 • section 31ZF (Respondent to give documents etc to claimant)
- 13 • section 31ZG (Respondent to give documents etc to
- 14 contributor)
- 15 • section 31ZH (Contributor to give documents to respondent).
- 16 (2) This section applies to the extent that a relevant section requires a
- 17 person (the *disclosing person*) to give copies of reports or other
- 18 documents or information (*relevant material*) to someone else and
- 19 the total number of pages of the copies exceeds 200 pages.
- 20 (3) Within the time the disclosing person would, apart from this section,
- 21 be required to give relevant material to someone else under the
- 22 relevant section, the disclosing person need only offer the other
- 23 person a reasonable opportunity to inspect the material.
- 24 (4) If the other person, whether on inspection or otherwise, by written
- 25 notice given to the disclosing person, requires the disclosing person
- 26 to give the other person copies of some or all of the relevant
- 27 material, the disclosing person must comply with the requirement
- 28 within—
- 29 (a) if the total number of pages does not exceed 200—1 month
- 30 after the day the requirement is made; or

- 1 (b) in any other case—1 month after the day the other person pays
2 50 cents for each page by which the total number of pages
3 exceeds 200 pages.

4 *Note* If, under a provision of an Act or statutory instrument, an act is required
5 to be done, the obligation to do the act continues until it is done (see
6 Legislation Act, s 152).

7 **Part 3B.4 Other provisions—pre-court** 8 **procedures**

9 **31ZJ Nondisclosure of documents etc—client legal privilege**

- 10 (1) A party is not obliged to disclose a document or information under
11 this chapter if the document or information is protected by client
12 legal privilege.
- 13 (2) However, an investigative report, medical report or report relevant
14 to the claimant's rehabilitation must be disclosed even though
15 otherwise protected by client legal privilege.
- 16 (3) The regulations may prescribe exceptions to subsection (2).
- 17 (4) If a report mentioned in subsection (2) is required to be disclosed, it
18 may be disclosed with the omission of passages containing only
19 statements of opinion.
- 20 (5) In this section:
- 21 *investigative reports* does not include a document prepared in
22 relation to an application for, an opinion on or a decision about
23 indemnity against the claim from the Territory.

24 **31ZK Nondisclosure of documents etc—suspected fraud**

- 25 (1) If a respondent has reasonable grounds to suspect a claimant of
26 fraud, the respondent may apply to the court for approval to
27 withhold from disclosure under this chapter documents or
28 information that—

- 1 (a) would alert the claimant to the suspicion; or
2 (b) could help further the fraud.
3 (2) The application may be made without notice to the claimant.
4 (3) If the court gives approval on application under subsection (1), the
5 respondent may withhold from disclosure the documents or
6 information in accordance with the approval.

7 **31ZL Offence not to disclose particular material**

8 A respondent must not withhold information or documents from
9 disclosure under this chapter if the withholding is not—

- 10 (a) permitted under this chapter; or
11 (b) approved by the court.

12 Maximum penalty: 100 penalty units.

13 **31ZM Consequences of failure to give document**

- 14 (1) This section applies if a party fails to comply with a provision of
15 this chapter requiring the party to disclose a document to another
16 party.
17 (2) The document cannot be used by the party in a later court
18 proceeding based on the claim, or the deciding of the claim, unless
19 the court orders otherwise.
20 (3) If the document comes to the other party's knowledge, the document
21 may be used by the other party.

22 **31ZN Privilege generally for documents etc**

23 The information, reports and other documents given or disclosed
24 under this chapter are protected by the same privileges as if
25 disclosed in a proceeding in the Supreme Court.

1 **31ZO No requirement to give documents etc if already in other**
2 **party's possession**

3 This chapter does not require a party to give a document or other
4 information to another party if the document or information is
5 already in the possession of the other party.

6 **31ZP Court's power to enforce compliance with pt 3B.2 and**
7 **pt 3B.3**

- 8 (1) If a party (the *first party*) fails to comply with a duty imposed under
9 part 3B.2 or 3B.3, the court may, on the application of a party to
10 whom the duty is owed, order the first party to take stated action to
11 remedy the noncompliance within a time stated by the court.
- 12 (2) The court may make consequential or ancillary orders, including
13 orders about costs.

14 **31ZQ Need for urgent proceeding**

- 15 (1) The court, on application by a claimant, may give leave to the
16 claimant to begin a proceeding in the court for damages based on a
17 liability for personal injury despite noncompliance with this chapter
18 if the court is satisfied there is an urgent need to begin the
19 proceeding.
- 20 (2) The order giving leave may be made on conditions the court
21 considers appropriate having regard to the circumstances of the
22 case.
- 23 (3) If leave is given, the proceeding begun by leave is stayed until the
24 claimant complies with this chapter or the proceeding is
25 discontinued or otherwise ends.
- 26 (4) However, the proceeding is not stayed if—
27 (a) the court is satisfied that—
28 (i) the claimant is suffering from a terminal condition; and

- 1 (ii) the trial of the proceeding should be expedited; and
- 2 (b) the court orders the proceeding be given priority in the
- 3 allocation of a trial date.
- 4 (5) If, under subsection (4), the proceeding is not stayed, this chapter
- 5 (other than this section) does not apply in relation to the personal
- 6 injury.

7 **31ZR False or misleading statements**

- 8 (1) A person commits an offence if—
- 9 (a) the person makes a statement in a notice, response or other
- 10 document given under this chapter; and
- 11 (b) the person does so knowing that the statement—
- 12 (i) is false or misleading; or
- 13 (ii) omits anything without which the statement is
- 14 misleading.
- 15 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 16 both.
- 17 (2) Subsection (1) (b) (i) does not apply if the statement is not false or
- 18 misleading in a material particular.
- 19 (3) Subsection (1) (b) (ii) does not apply if the omission does not make
- 20 the statement misleading in a material particular.
- 21 (4) A person commits an offence if—
- 22 (a) the person makes a statement in a notice, response or other
- 23 document given under this chapter; and
- 24 (b) the person is reckless about whether the statement—
- 25 (i) is false or misleading; or

1 (ii) omits anything without which the statement is
2 misleading.

3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.

5 (5) Subsection (4) (b) (i) does not apply if the statement is not false or
6 misleading in a material particular.

7 (6) Subsection (4) (b) (ii) does not apply if the omission does not make
8 the statement misleading in a material particular.

9 **14 New chapter 3C**

10 *insert*

11 **Chapter 3C Expert medical evidence**

12 **31ZT Purpose of ch 3C**

13 The purpose of this chapter is to define the role, and limit the
14 number, of witnesses who may give expert medical evidence in a
15 proceeding based on a claim.

16 **31ZU Definitions for ch 3C**

17 In this chapter:

18 *agreed expert*—see section 31ZW.

19 *appointed expert*—see section 31ZW.

20 *claim* means a claim (however described) for damages based on a
21 liability for personal injury, whether the liability is based in tort or
22 contract or on another form of action (including breach of statutory
23 duty), and, for a fatal injury, includes a claim for the dead person's
24 dependants or estate.

25 *evidence* means evidence given orally or in writing.

1 **expert**, in relation to an issue, means a person who has specialised
2 knowledge about matters relevant to the issue based on the person's
3 training, study or experience.

4 **expert medical evidence** means opinion evidence on a medical issue
5 given by an expert in relation to the issue.

6 **medical issue**—an issue is a **medical issue** if it relates to—

- 7 (a) the medical condition or prospects of rehabilitation of a person;
8 or
9 (b) the cognitive, functional or vocational capacity of a person; or
10 (c) the question whether particular medical treatment amounts to
11 professional negligence.

12 **31ZV Application of ch 3C**

- 13 (1) This chapter applies to all claims for damages for personal injury,
14 including claims to which the *Road Transport (General) Act 1999*,
15 part 10 (Compulsory vehicle insurance) applies.
16 (2) However, this chapter does not apply to a claim under the *Workers*
17 *Compensation Act 1951*.

18 **31ZW Limitation on expert medical evidence**

19 Expert medical evidence may be given in a proceeding in a court
20 based on a claim only by—

- 21 (a) an expert appointed by the parties under section 31ZX or
22 31ZZA (1) (an **agreed expert**); or
23 (b) an expert appointed by the court under section 31ZY or
24 31ZZA (2) (an **appointed expert**).

1 **31ZX Agreed expert**

- 2 (1) The parties to the proceeding may agree, in writing, to appoint
3 1 stated person to give expert medical evidence in the proceeding.
- 4 (2) The agreed expert may be (but need not be)—
- 5 (a) a person who prepared an expert report for the parties under
6 section 31ZC (Respondent and claimant may jointly arrange
7 for expert report); or
- 8 (b) a person on a panel mentioned in section 31ZE (Examination
9 by expert if no agreement).
- 10 (3) The agreed expert may give evidence in the proceeding as an expert
11 on any issue on which the expert is qualified to give evidence based
12 on the expert's specialised knowledge.

13 **31ZY Appointed expert**

- 14 (1) If the parties do not appoint an agreed expert, the court may, on
15 application by 1 or more of the parties or on its own initiative,
16 appoint a stated person to give expert medical evidence in the
17 proceeding.
- 18 (2) The court may appoint an additional expert, or additional experts, to
19 give expert medical evidence in the proceeding if—
- 20 (a) expert medical evidence is required on 2 or more issues in the
21 proceeding and the agreed or appointed expert is not qualified
22 to give evidence on all the issues based on the expert's
23 specialised knowledge; or
- 24 (b) the court considers that the interests of justice otherwise
25 require it.
- 26 (3) The court must not appoint more than 1 expert to give expert
27 medical evidence on any particular issue unless the court considers
28 that the interests of justice require it.

-
- 1 (4) The court must not appoint a person to give expert medical evidence
2 on an issue unless the court is satisfied the person is an expert in
3 relation to the issue.
- 4 (5) An appointed expert may be (but need not be)—
- 5 (a) a person who prepared an expert report for the parties under
6 section 31ZC (Respondent and claimant may jointly arrange
7 for expert report); or
- 8 (b) a person on a panel mentioned in section 31ZE (Examination
9 by expert if no agreement).
- 10 (6) An appointed expert may give evidence in the proceeding as an
11 expert on any issue on which the expert is qualified to give evidence
12 based on the expert's specialised knowledge.

13 **31ZYA Role of expert**

- 14 (1) The role of an agreed or appointed expert is to assist the court
15 impartially on the issue or issues on which the expert is giving
16 expert medical evidence.
- 17 (2) The expert's primary duty is to the court.
- 18 (3) The expert is not an advocate for a party to the proceeding.

19 **31ZZ Documents etc to be given to expert**

20 The parties to a proceeding must ensure that—

- 21 (a) all reports and other documents or information relevant to the
22 issue or issues on which an agreed or appointed expert is to
23 give evidence are made available to the expert; and
- 24 (b) the expert is jointly briefed by the parties or the parties have
25 equal opportunity to brief the expert.

1 **31ZZA If agreed or appointed expert unavailable**

- 2 (1) If an agreed expert is not available to give evidence on an issue
3 when required, the court may, on application by the parties, allow
4 the parties to appoint another agreed expert to give evidence on the
5 issue.
- 6 (2) If an appointed expert is not available to give evidence on an issue
7 when required the court may appoint another expert to give
8 evidence on the issue.

9 **31ZZB Costs of experts**

10 The costs and expenses of an agreed or appointed expert must be
11 paid by the parties in equal shares or as otherwise agreed by them or
12 ordered by the court.

13 **31ZZC Rules etc to make further provision**

- 14 (1) For a proceeding in the Supreme Court, rules under the *Supreme*
15 *Court Act 1933* may make provision in relation to—
- 16 (a) how the court is to choose an expert; and
17 (b) how experts may give evidence and be questioned.
- 18 (2) For a proceeding in the Magistrates Court, the regulations may make
19 provision in relation to—
- 20 (a) how the court is to choose an expert; and
21 (b) how the expert may give evidence and be questioned.

15 Part 4.1 heading*substitute***Part 4.1 Damages for personal injuries—exclusions and limitations****16 Definitions for pt 4.1****Section 32, definitions of *accident*, *motor accident*, *motor vehicle* and *personal injury****omit***17 New section 38A***in part 4.1, insert***38A Tariffs for damages for non-economic loss**

- (1) In deciding damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceeding.
- (2) For that purpose, the parties to the proceeding or their lawyers may bring the court's attention to awards of damages for non-economic loss in those earlier decisions.
- (3) This section does not change the rules for deciding other damages.
- (4) In this section:
non-economic loss includes the following:
 - (a) pain and suffering;
 - (b) loss of amenities of life;
 - (c) loss of expectation of life;

1 (d) disfigurement.

2 **18 Apportionment of liability—contributory negligence**
3 **Section 41 (5)**

4 *omit*

5 part 4.1 (General exclusions and limitations about damages)

6 *substitute*

7 part 4.1 (Damages for personal injuries—exclusions and limitations)

8 **19 New chapter 4A**

9 *insert*

10 **Chapter 4A Liability of public and other**
11 **authorities**

12 **46A Application of ch 4A**

13 (1) This chapter applies in relation to civil liability in tort.

14 (2) This chapter extends to any such liability even if the damages are
15 sought in an action for breach of contract or any other action.

16 (3) However, this chapter does not apply to—

17 (a) a claim to which the *Road Transport (General) Act 1999*,
18 part 10 (Compulsory vehicle insurance) applies; or

19 (b) a claim under the *Workers Compensation Act 1951*.

20 **46B Definitions for ch 4A**

21 In this chapter:

22 *duty of care* means a duty to take reasonable care or to exercise
23 reasonable skill (or both).

1 ***public or other authority*** means any of the following:

- 2 (a) the Territory;
- 3 (b) an administrative unit;
- 4 (c) a Territory authority;
- 5 (d) an entity prescribed under the regulations for this paragraph;
- 6 (e) any entity so far as the entity exercises a function prescribed
- 7 under the regulations for this paragraph.

8 **46C Principles about resources, responsibilities etc of public**

9 **or other authorities**

10 The following principles apply in deciding in a proceeding whether

11 a public or other authority has a duty of care or has breached a duty

12 of care:

- 13 (a) the functions required to be exercised by the authority are
- 14 limited by the financial and other resources reasonably
- 15 available to the authority for exercising the functions;
- 16 (b) the general allocation of the resources by the authority is not
- 17 open to challenge;
- 18 (c) the functions required to be exercised by the authority are to be
- 19 decided by reference to the broad range of its activities (and
- 20 not only by reference to the matter to which the proceeding
- 21 relates);
- 22 (d) the authority may rely on evidence of its compliance with the
- 23 general procedures and applicable standards for the exercise of
- 24 its functions as evidence of the proper exercise of its functions
- 25 in the matter to which the proceeding relates.

1 **46D Proceedings against public or other authorities based on**
2 **breach of statutory duty**

- 3 (1) This section applies to a proceeding based on a claimed breach of a
4 statutory duty by a public or other authority (the *defendant*
5 *authority*) in relation to the exercise of, or a failure to exercise, a
6 function of the defendant authority.
- 7 (2) For the proceeding, an act or omission of the defendant authority is
8 a breach of statutory duty only if the act or omission was in the
9 circumstances so unreasonable that no authority having the
10 functions of the defendant authority could properly consider the act
11 or omission to be a reasonable exercise of its functions.
- 12 (3) For a function of a public or other authority to prohibit or regulate
13 an activity, this section applies in addition to section 46E.

14 **46E When public or other authority not liable for failure to**
15 **exercise regulatory functions**

- 16 (1) A public or other authority is not liable in a proceeding so far as the
17 claim in the proceeding is based on the failure of the authority to
18 exercise, or to consider exercising, a function of the authority to
19 prohibit or regulate an activity if the authority could not have been
20 required to exercise the function in a proceeding begun by the
21 claimant.
- 22 (2) Without limiting what is a function to regulate an activity for this
23 section, a function to issue a licence, permit or other authority in
24 relation to an activity, or to register or otherwise authorise a person
25 in relation to an activity, is a function to regulate the activity.

26 **46F Special nonfeasance protection in relation to roads etc**

- 27 (1) A public or other authority is not liable in a proceeding for harm
28 arising from a failure of the authority to maintain, repair or renew a
29 road, or to consider maintaining, repairing or renewing a road,
30 unless at the time of the claimed failure the authority knew, or ought

reasonably to have had known, of the particular risk the materialisation of which resulted in the harm.

(2) This section does not operate—

(a) to create a duty of care in relation to a risk only because the authority has actual knowledge of the risk; or

(b) to affect any standard of care that would otherwise apply in relation to a risk.

(3) In this section:

road means a street, road, lane, cyclepath, footpath or paved area that is open to, or used by, the public.

46G Exercise of function or decision to exercise does not create duty

The fact that a public or other authority exercises or decides to exercise a function does not of itself indicate that the authority is under a duty to exercise the function or that the function should be exercised in particular circumstances or in a particular way.

20 Definitions for pt 7.1 **Section 76, definition of *motor vehicle***

omit

21 Liability of occupiers **Section 101 (3)**

omit

part 4.1 (General exclusions and limitations about damages)

substitute

part 4.1 (Damages for personal injuries—exclusions and limitations)

22 New part 10.1 heading*insert***Part 10.1 Maximum costs for certain personal injury damages claims****23 New part 10.2***insert***Part 10.2 Costs in damages claims if no reasonable prospects of success****118A Definitions for pt 10.2**

In this part:

court includes a tribunal or arbitrator.

provable facts, in relation to a lawyer—a fact is *provable* in relation to a lawyer only if the lawyer believes on reasonable grounds that the material then available to the lawyer provides a proper basis for claiming the fact.

reasonable prospects of success—

- (a) a claim has *reasonable prospects of success* if there are reasonable prospects of damages being recovered on the claim; and
- (b) a defence has *reasonable prospects of success* if there are reasonable prospects of the defence defeating the claim or leading to a reduction in the damages recovered on the claim.

1 **118B Application of pt 10.2**

- 2 (1) This part applies despite any obligation of the lawyer to act in
3 accordance with the instructions or wishes of the client.
- 4 (2) This part does not apply to legal services provided by a lawyer in
5 relation to a claim for damages at any time before the lawyer gives
6 the certification required under section 118C for the claim.
- 7 (3) Also, this part does not apply to a claim for damages if the court
8 considers that it is in the interests of justice for the claim to be
9 continued and makes an order to that effect.

10 **118C Certificate that claim or defence has reasonable**
11 **prospects of success**

- 12 (1) This section applies to a lawyer who is providing legal services on a
13 claim for damages, or in defence of a claim for damages.
- 14 (2) The lawyer must not agree to, or allow a court to set, a hearing date
15 for the claim unless the lawyer has filed in the court a certificate
16 stating that the lawyer believes, on the basis of provable facts and a
17 reasonably arguable view of the law, that the claim or defence has
18 reasonable prospects of success.
- 19 (3) Contravention of subsection (2) by a lawyer is not an offence but
20 can be professional misconduct or unsatisfactory professional
21 conduct under the *Legal Practitioners Act 1970*, part 8 (Discipline).
- 22 (4) The regulations may make provision in relation to the certificate
23 mentioned in subsection (2), including, for example, about the form
24 of the certificate.

25 *Note* An example is part of the Act, is not exhaustive and may extend, but
26 does not limit, the meaning of the provision in which it appears (see
27 Legislation Act, s 126 and s 132).

1 **118D Costs order against lawyer acting without reasonable**
2 **prospects of success**

3 (1) If the court in which an action on a claim for damages is set down
4 for hearing considers that legal services were provided by a lawyer
5 for a client on the claim, or in defence of the claim, without the
6 claim or defence having reasonable prospects of success, the court
7 may (on its own initiative or on the application of a party to the
8 proceeding) make either or both of the following orders:

9 (a) an order directing the lawyer to repay to the client (or to pay)
10 all or part of the costs that the client has been ordered to pay to
11 another party;

12 (b) an order directing the lawyer to indemnify a party other than
13 the client against all or part of the costs payable by that party.

14 (2) The Supreme Court may, on its own initiative or on the application
15 of a party to the action, make any order that the court considers
16 necessary for this section.

17 (3) An application for an order under this section cannot be made after
18 the court concerned (or a taxing officer) has made a final decision
19 about the costs payable in the action.

20 (4) A lawyer is not entitled to demand, recover or accept from a client
21 any part of the costs for which the lawyer is directed to indemnify a
22 party under an order under this section.

23 **118E Onus on lawyer to show facts provided reasonable**
24 **prospects of success**

25 (1) For this part, it must be presumed that legal services were provided
26 for a client by a lawyer on a claim for damages, or in defence of a
27 claim for damages, without the claim or defence having reasonable
28 prospects of success if—

29 (a) the trial court hearing the action finds that the facts established
30 by the evidence before the court do not form the basis for a

- 1 belief on reasonable grounds that the claim or defence had
2 reasonable prospects of success; or
- 3 (b) the Supreme Court (if it is not the trial court) is satisfied,
4 because of a finding, or the judgment, of the trial court, that the
5 facts established by the evidence before the trial court do not
6 form the basis for a belief on reasonable grounds that the claim
7 or defence had reasonable prospects of success.
- 8 (2) The lawyer can rebut the presumption by establishing that, when the
9 legal services were provided, there were provable facts that
10 provided a basis for a belief on reasonable grounds that the claim or
11 defence had reasonable prospects of success.
- 12 (3) For the purpose of rebutting the presumption, a lawyer may disclose
13 information or a document despite client legal privilege (including
14 any duty of confidentiality to a client) if—
- 15 (a) the client is the client for whom the legal services were
16 provided; or
- 17 (b) the client consents to the disclosure; or
- 18 (c) the court is satisfied that the disclosure is necessary for the
19 lawyer to rebut the presumption.

20 **24 Part 11.1 heading**

21 *substitute*

22 **Part 11.1 Mediation and neutral**
23 **evaluation**

Section 25

1 **25 Purpose of pt 11.1 etc**
2 **Section 119**

3 *before*

4 neutral evaluation

5 *insert*

6 mediation or

7 **26 Section 120 heading**

8 *substitute*

9 **120 Meaning of *mediation*, *neutral evaluation* etc**

10 **27 New section 120 (1A) and (1B)**

11 *before section 120 (1), insert*

12 (1A) For this part, ***mediation*** is a structured negotiation process in which
13 the mediator, as a neutral and independent party, assists the parties
14 to a dispute to achieve their own resolution of the dispute.

15 (1B) For this part, ***mediation session*** means a meeting arranged for the
16 mediation of a matter under this part.

17 **28 Section 120**

18 *renumber subsections when Act next republished under Legislation*
19 *Act*

29 New section 120A*insert***120A Who can be a mediator**

A person can be a mediator if the person—

- (a) is a registered mediator under the *Mediation Act 1997*; and
- (b) is appointed by a court or tribunal as a mediator.

30 Section 122 heading*substitute***122 Referral by court or tribunal for mediation or neutral evaluation****31 Section 122 (1)***before*

neutral evaluation

insert

mediation or

32 Section 122 (2)*substitute*

- (2) Mediation is to be undertaken by a mediator appointed by the court or tribunal, and neutral evaluation is to be undertaken by an evaluator appointed by the court or tribunal.
- (3) For a proceeding before the Supreme Court, an order under subsection (1), and an appointment under subsection (2), may be made by—
 - (a) the master of the court; or

1 (b) if the rules of court allow—the registrar of the court.

2 **33 Duty of parties to take part in neutral evaluations**
3 **Section 123**

4 *before*

5 neutral evaluation

6 *insert*

7 mediation or

8 **34 Costs of neutral evaluation**
9 **Section 124**

10 *before*

11 neutral evaluation

12 *insert*

13 mediation or

14 **35 New section 124A**

15 *insert*

16 **124A Agreements and arrangements arising from mediation**
17 **sessions**

18 (1) The court or tribunal may make orders to give effect to an
19 agreement or arrangement arising out of a mediation session.

20 (2) This part does not affect the enforceability of any other agreement
21 or arrangement that may be made, whether or not arising out of a
22 mediation session, in relation to the matters that are the subject of
23 the mediation session.

24 *Note* For provisions about privilege, secrecy and protection in relation to
25 mediators, see the *Mediation Act 1997*.

36 Application provisions—for certain new measures
Section 150 (2)

omit

Part 4.1 (General exclusions and limitations about damages)

substitute

Part 4.1 (Damages for personal injuries—exclusions and limitations), other than section 38A (Tariffs for damages for non-economic loss),

37 Section 150 (3)

omit

Chapter 10 (Limitations on legal costs)

substitute

Part 10.1 (Maximum costs for certain personal injury damages claims)

38 Section 150 (3A)

substitute

(3A) Also, part 10.1 does not apply to a claim based on a cause of action that arose before the commencement of the part.

39 New section 150A*insert***150A Application provisions—for *Civil Law (Wrongs) Amendment Act 2003***

- (1) The following provisions do not apply to a claim based on a cause of action that arose before the commencement of the provision:
- (a) part 2.2A (Apologies);
 - (b) section 30A (Mental harm—duty of care);
 - (c) section 30B (Mental harm—damages);
 - (d) chapter 3A (Negligence);
 - (e) chapter 3C (Expert medical evidence);
 - (f) section 38A (Tariffs for damages for non-economic loss);
 - (g) chapter 4A (Liability of public and other authorities);
 - (h) part 10.2 (Costs in damages claims if no reasonable prospects of success);
 - (i) schedule 3 (Equine activities).
- (2) Chapter 3B (Personal injuries claims—pre-court procedures) does not apply to a claim if, before the commencement of the chapter, the claimant had consulted a lawyer to obtain advice about seeking damages for the personal injury.
- (3) This section expires 3 years after the day it commences.
- (3) Subsections (1) and (2) are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

40 Transitional regulations
Section 155 (4)

omit

1 year

substitute

2 years

41 Modification of ch 12's operation
Section 156 (2)

omit

1 year

substitute

2 years

42 New schedule 3

insert

Schedule 3 Equine activities

1 Definitions for sch 3

In this schedule:

equine means a horse, donkey, mule or hinny.

equine activity means any of the following:

- (a) an equine show, fair, competition, performance or parade that involves 1 or more equines and 1 or more equine disciplines;
- (b) equine teaching or training activities;
- (c) agisting or boarding equines;

Section 42

- 1 (d) riding, inspecting or evaluating an equine belonging to
2 someone else, whether or not the owner—
- 3 (i) receives any reward for use of the equine; or
- 4 (ii) is permitting a prospective buyer to ride, inspect or
5 evaluate the equine;
- 6 (e) a ride, trip, hunt or other activity (however informal or
7 impromptu) that is sponsored by an equine activity sponsor;
- 8 (f) placing or replacing horseshoes on an equine.

9 **Examples for par (a)**

- 10 1 dressage
- 11 2 3-day events
- 12 3 performance riding
- 13 4 polo
- 14 5 showjumping
- 15 6 steeplechasing

16 *Note* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 Legislation Act, s 126 and s 132).

19 ***equine activity sponsor*** means—

- 20 (a) an entity that (whether or not it operates for profit) sponsors,
21 organises or provides a facility for an equine activity; or
- 22 (b) an operator, instructor or promoter of an equine facility.

23 **Examples for par (a)**

- 24 1 pony clubs
- 25 2 riding clubs or schools
- 26 3 equestrian centres
- 27 4 school-sponsored classes

28 ***equine facility*** includes an equestrian centre, riding school, stable,
29 clubhouse, fair or arena where an equine activity is held.

1 ***equine professional*** means a person engaged for reward in—

2 (a) instructing a participant or renting an equine to a participant
3 to—

4 (i) ride or be a passenger on the equine; or

5 (ii) drive the equine; or

6 (b) renting equipment or tack to a participant.

7 ***inherent risks of equine activities*** means the dangers or conditions
8 that are an integral part of equine activities, including, for
9 example—

10 (a) the propensity of an equine to behave in ways that may result
11 in injury, harm or death to people on or around them; and

12 (b) the unpredictability of an equine's reactions including to
13 sounds, sudden movement and unfamiliar objects, people or
14 animals; and

15 (c) hazards such as surface and subsurface conditions; and

16 (d) collisions with other equines or objects; and

17 (e) the potential of a participant to act negligently that may
18 contribute to injury to the participant or others.

19 **Examples for par (e)**

20 1 failing to maintain control over an equine

21 2 not acting within the participant's ability

22 ***participant*** means a person who participates in an equine activity
23 (whether or not a fee is paid for the participation).

- 1 ***participate*** in an equine activity—
- 2 (a) means—
- 3 (i) ride or be a passenger on an equine; or
- 4 (ii) drive or train an equine, whether mounted or unmounted;
- 5 or
- 6 (iii) assist in medical treatment of an equine, whether
- 7 mounted or unmounted; or
- 8 (iv) assist a participant or show management; but
- 9 (b) does not include be a spectator at an equine activity (unless the
- 10 spectator is in an unauthorised area and in immediate
- 11 proximity to the equine activity).

12 **2 Application of sch 3**

13 This schedule does not prevent or limit the liability of an equine

14 activity sponsor, an equine professional or anyone else in relation

15 to—

- 16 (a) activities engaged in as part of the horseracing industry; or
- 17 (b) any action for breach of the *Trade Practices Act 1974* (Cwlth)
- 18 or the *Fair Trading Act 1992*; or
- 19 (c) a claim under the *Workers Compensation Act 1951*.

20 **3 Limitation on liability for injury or death of participant**

- 21 (1) An equine activity sponsor, an equine professional or anyone else is
- 22 not liable for personal injury to a participant resulting from the
- 23 inherent risks of equine activities.
- 24 (2) However, this clause does not prevent or limit the liability of a
- 25 person (the ***defendant***) if—
- 26 (a) the injury was caused by faulty equipment or tack and the
- 27 defendant—

- 1 (i) provided the equipment or tack; and
- 2 (ii) knew or ought reasonably to have known that the
- 3 equipment or tack was faulty; or
- 4 (b) the defendant provided the equine and failed to make
- 5 reasonable and prudent efforts to assess, based on the
- 6 participant's representations, the participant's ability to—
- 7 (i) engage safely in the equine activity; and
- 8 (ii) safely manage the particular equine; or
- 9 (c) the injury was caused by a dangerous latent condition of the
- 10 land or facility used for the equine activity and—
- 11 (i) the defendant owned, leased or was otherwise in lawful
- 12 possession of the land or facility; and
- 13 (ii) the defendant knew, or ought reasonably to have known,
- 14 of the dangerous latent condition; and
- 15 (iii) a sign warning about the dangerous latent condition had
- 16 not been conspicuously displayed on the land or at the
- 17 facility; or
- 18 (d) the defendant acted, or omitted to act, in a way that showed
- 19 intentional or reckless disregard for the safety of the participant
- 20 and the act or omission caused the injury; or
- 21 (e) the defendant intentionally injured the participant.
- 22 (3) Also, this clause does not prevent or limit an equine professional's
- 23 liability to a participant in relation to an equine facility if, before the
- 24 injury happened, the equine professional had not complied with
- 25 clause 4 in relation to the facility.

4 Warning notice

(1) An equine professional must ensure that a warning notice is displayed—

(a) on or near an equine facility that is owned, managed or controlled by the equine professional; and

(b) so that it can be clearly seen by participants before participating in equine activities at the facility.

(2) The warning notice must be to the following effect:

WARNING

Under the *Civil Law (Wrongs) Act 2002*, an equine professional is not liable for injury to, or the death of, a participant in an equine activity that results from an inherent risk of the activity. This is subject to limitations set out in the Act.

(3) The warning notice must be in black letters with each letter at least 2cm high.

(4) The warning notice must also be included in clearly visible print in each written contract the equine professional enters into for the provision of professional services, instruction or rental of equipment or tack to a participant.

43 Dictionary, definition of *accident*

substitute

accident means an incident out of which personal injury arises, and includes a motor accident.

44 Dictionary, new definitions

insert

agreed expert, for chapter 3C (Expert medical evidence)—see section 31 ZW.

apology, for part 2.2A (Apologies)—see section 11B.

appointed expert, for chapter 3C (Expert medical evidence)—see section 31 ZW.

45 Dictionary, definition of *claim*

substitute

claim—

(a) for chapter 3B (Personal injuries claims—pre-court procedures)—see section 31N; and

(b) for chapter 3C (Expert medical evidence)—see section 31ZU; and

(c) for part 4.1 (Damages for personal injuries—exclusions and limitations)—see section 32.

46 Dictionary, new definitions

insert

claimant, for chapter 3B (Personal injuries claims—pre-court procedures)—see section 31N.

complying notice of claim, for chapter 3B (Personal injuries claims—pre-court procedures)—see section 31N.

consequential mental harm, for part 3.2 (Mental harm)—see section 29.

Section 47

1 **contribution notice**, for chapter 3B (Personal injuries claims—pre-
2 court procedures)—see section 31U (Respondent may add someone
3 else as contributor).

4 **contributor**, for chapter 3B (Personal injuries claims—pre-court
5 procedures)—see section 31N.

47 Dictionary, definition of court

7 *substitute*

8 **court**—

9 (a) for part 2.4 (Proceedings against and contributions between
10 wrongdoers)—see section 16; and

11 (b) for chapter 3B (Personal injuries claims—pre-court
12 procedures)—see section 31N; and

13 (c) for part 4.1 (Damages for personal injuries—exclusions and
14 limitations)—see section 32; and

15 (d) for part 4.3 (Contributory negligence)—see section 40; and

16 (e) for chapter 5 (Defamation)—see section 47; and

17 (f) for chapter 9 (Misrepresentation)—see section 105; and

18 (g) for part 10.1 (Maximum costs for certain personal injury
19 damages claims)—see section 113.

20 (h) for part 10.2 (Costs in damages claims if no reasonable
21 prospects of success)—see section 118A.

48 Dictionary, new definitions

23 *insert*

24 **duty of care**, for chapter 4A (Liability of public and other
25 authorities)—see section 46B.

26 **equine**, for schedule 3 (Equine activities)—see schedule 3, clause 1.

- 1 *equine activity*, for schedule 3 (Equine activities)—see schedule 3,
2 clause 1.
- 3 *equine activity sponsor*, for schedule 3 (Equine activities)—see
4 schedule 3, clause 1.
- 5 *equine facility*, for schedule 3 (Equine activities)—see schedule 3,
6 clause 1.
- 7 *equine professional*, for schedule 3 (Equine activities)—see
8 schedule 3, clause 1.
- 9 *evidence*, for chapter 3C (Expert medical evidence)—see
10 section 31ZU.
- 11 *expert*, for chapter 3C (Expert medical evidence)—see
12 section 31ZU.
- 13 *expert medical evidence*, for chapter 3C (Expert medical
14 evidence)—see section 31ZU.
- 15 *harm*, for chapter 3A (Negligence)—see section 31D.
- 16 *inherent risks of equine activities*, for schedule 3 (Equine
17 activities)—see schedule 3, clause 1.

49 Dictionary, definition of *insurer*

19 *substitute*

20 *insurer*—

- 21 (a) of a person in relation to a claim, for chapter 3B (Personal
22 injuries claims—pre-court procedures)—see section 31N; and
- 23 (b) for part 11.2 (General reporting requirements of insurers)—see
24 section 128.

50 Dictionary, new definitions

insert

mediation—see section 120.

mediation session—see section 120.

medical issue, for chapter 3C (Expert medical evidence)—see section 31ZU.

mental harm, for part 3.2 (Mental harm)—see section 29.

51 Dictionary, definitions of *motor accident* and *motor vehicle*

substitute

motor accident means an accident caused by, or arising out of the use of, a motor vehicle.

motor vehicle means—

(a) a motor vehicle under the *Road Transport (General) Act 1999*;
or

(b) a vehicle operated on a railway or other fixed track;

and, for part 7.1 (Traveller accommodation providers liability), includes a boat, caravan and trailer attached to a motor vehicle.

52 Dictionary, new definitions

insert

negligence—

(a) for part 3.2 (Mental harm)—see section 29; and

(b) for chapter 3A (Negligence)—see section 31D.

participant, for schedule 3 (Equine activities)—see schedule 3, clause 1.

1 *participate*, for schedule 3 (Equine activities)—see schedule 3,
2 clause 1.

3 *party*, for chapter 3B (Personal injuries claims—pre-court
4 procedures)—see section 31N.

5 **53 Dictionary, definition of *personal injury***

6 *substitute*

7 *personal injury* means bodily injury, and includes—

8 (a) mental or nervous shock; and

9 (b) death.

10 **54 Dictionary, new definitions**

11 *insert*

12 *provable* facts, in relation to a lawyer, for part 10.2 (Costs in
13 damages claims if no reasonable prospects of success)—see
14 section 118A.

15 *public or other authority*, for chapter 4A (Liability of public and
16 other authorities)—see section 46B.

17 *pure mental harm*, for part 3.2 (Mental harm)—see section 29.

18 *reasonable prospects of success*, for part 10.2 (Costs in damages
19 claims if no reasonable prospects of success)—see section 118A.

20 *respondent*, for chapter 3B (Personal injuries claims—pre-court
21 procedures)—see section 31N.

22 **55 Act amended—renumbering**

23 *renumber provisions when Act next republished under Legislation*
24 *Act*

1 **Part 3** **Civil Law (Wrongs)**
2 **Regulations 2002**

3 **56 Regulations repealed**

4 *The Civil Law (Wrongs) Regulations 2002 No 41 are repealed.*

Section 59

- 1 (b) the limitation period that applied to the cause of action before
2 1 July 2003.
- 3 (5) Subsections (3) to (6) expire 5 years after the day this section
4 commences.
- 5 (6) Subsections (3) and (4) are declared to be laws to which the
6 Legislation Act, section 88 (Repeal does not end effect of
7 transitional laws etc) applies.

59 New section 30A

9 *insert*

30A Special provision for injuries to children

- 11 (1) This section applies if—
- 12 (a) a child (the *plaintiff*) suffers personal injury that gives rise to a
13 claim for damages; and
- 14 (b) a notice of claim has not been given under the *Civil Law*
15 (*Wrongs*) *Act 2003*, chapter 3B (Personal injuries claims—
16 pre-court procedures), or a proceeding has not been begun in a
17 court, in relation to the claim; and
- 18 (c) the limitation period applying to the claim under this Act does
19 not end within the relevant period.
- 20 (2) The plaintiff (or the plaintiff's parent or guardian) must, within the
21 relevant period, give notice of an intended claim to anyone (the
22 *defendant*) claimed to be liable for damages in relation to the claim.
- 23 *Note* If a form is approved under s 58 (Approved forms) for a notice, the
24 form must be used.
- 25 (3) If the injury is claimed to have arisen out of a motor accident, the
26 notice must be given to the third-party insurer.
- 27 (4) The notice must contain the information required under the
28 regulations.

-
- 1 (5) The plaintiff (or the plaintiff's parent or guardian) must comply with
2 a reasonable request by the defendant—
- 3 (a) to provide copies of medical and other records and reports in
4 the possession of the plaintiff (or the plaintiff's parent or
5 guardian) that are relevant to the nature and extent of the
6 plaintiff's injury and any consequent disability; or
- 7 (b) to undergo examination, at the defendant's expense, by a
8 medical expert for the purpose of finding out the nature and
9 extent of the plaintiff's injury and any consequent disability.
- 10 (6) The defendant may, by written notice given to the plaintiff, require
11 the plaintiff, within 6 months after the day the notice is given, to
12 bring a proceeding in a court so that the claim may be decided by
13 the court.
- 14 *Note* A court may make a finding of liability on the claim independently of
15 making an award of damages on the claim (see *Civil Law (Wrongs) Act*
16 *2002*, s 46).
- 17 (7) Noncompliance with a requirement of this section by the plaintiff
18 does not prevent the plaintiff from bringing a proceeding in a court
19 for damages but, unless the court is satisfied there is reason to
20 excuse the noncompliance, damages must not be awarded in the
21 proceeding to allow or compensate for medical, legal or gratuitous
22 services provided to the plaintiff before the day the proceeding
23 began.
- 24 (8) In this section:
- 25 ***accident*** means an incident out of which personal injury arises, and
26 includes a motor accident.
- 27 ***claim*** means a claim (however described) for damages based on a
28 liability for personal injury, whether the liability is based in tort or
29 contract or on another form of action (including breach of statutory
30 duty) but does not include a claim under the *Workers Compensation*
31 *Act 1951*.
-

Section 59

- 1 **motor accident** means an accident caused by, or arising out of the
2 use of, a motor vehicle.
- 3 **motor vehicle** means—
- 4 (a) a motor vehicle under the *Road Transport (General) Act 1999*;
5 or
- 6 (b) a vehicle operated on a railway or other fixed track.
- 7 **relevant period**, in relation to a claim, means—
- 8 (a) if the injury is or includes a disease or disorder—6 years after
9 the day the plaintiff (or the plaintiff's parent or guardian) first
10 knows—
- 11 (i) that the plaintiff has suffered an injury that is or includes
12 a disease or disorder; and
- 13 (ii) that the injury is related to someone else's act or
14 omission; or
- 15 (b) in any other case—6 years after the day the accident giving rise
16 to the injury happened.
- 17 (9) This section applies to an injury whenever it happened.
- 18 (10) However, the regulations may make provision in relation to the
19 application of this section to injuries that happened before 1 July
20 2003.
- 21 (11) Regulations made for this section within 6 months after the day this
22 section commences may provide for the regulations to commence on
23 or after 1 July 2003.
- 24 (12) Subsections (9) to (13) expire 5 years after the day this section
25 commences.
- 26 (13) Subsections (9) to (11) are declared to be laws to which the
27 Legislation Act, section 88 (Repeal does not end effect of
28 transitional laws etc) applies.

60 Personal injuries
Section 36 (5)

substitute

(5) This section does not apply in relation to a cause of action to which either of the following applies:

- (a) section 16B (Other claims for damages for personal injury);
- (b) the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death).

61 New division 4.5

insert

Division 4.5 Other provisions

58 Approved forms

- (1) The Minister may, in writing, approve forms for this Act
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

59 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Endnotes

Republications of amended laws

- 1 For the latest republication of amended laws, see www.legislation.act.gov.au.

Penalty units

- 2 The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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