

2004

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CIVIL LAW (WRONGS) AMENDMENT REGULATIONS 2004 (No 1)

EXPLANATORY STATEMENT

SL2004-8

Circulated by authority of the
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Outline

The *Civil Law (Wrongs) Amendment Act 2003 (No 2)* amends the *Civil Law (Wrongs) Act 2002* by including a range of reforms to improve the ACT civil justice system and address legal issues arising from the recent insurance crisis.

The objectives of the legislation are:

- to create greater certainty in personal injury outcomes, particularly in the case of medical negligence;
- to adopt measures that will foster efficiency in case processing and management; and
- to adopt pre-court procedures to assist settlement of cases before they get to court.

The *Civil Law (Wrongs) Amendment Regulations 2004 (No 1)* (the Regulations) prescribe information that is required under the recent reforms to the *Civil Law (Wrongs) Act 2002*. The Regulations specify what information is required to be included in a Notice of Claim, Statement of Claim, and the information that parties can have access to in personal injury matters, as part of the pre-court procedure provisions. The Regulations also prescribe several time limits for the steps in the pre-court procedures; they require legal practitioners to certify that cases have a reasonable chance of success; they state the documents that must accompany a notice of claim; and prescribe a contributors response to a notice.

In addition, the regulations clarify how the pre-court procedures in part 5 of the Act apply to existing injuries where the plaintiff did not consult a lawyer before the commencement of part 5. In these cases the time limits in the Act for submitting a notice of claim may not be met, although there is provision for the plaintiff to give a reasonable excuse for not meeting the time limits. However, to clarify this, a transitional regulation has been included that provides that the appropriate time limit for these plaintiffs to provide a notice of claim is the lesser of nine months after 8 March 2004 or four months after they consult a lawyer. This transitional regulation also provides time limits for persons whose symptoms arise before 8 March 2004.

Clause Notes

Regulation 1 – Name of regulations – provides that the regulations are the Civil Law (Wrongs) Amendment Regulations 2004 (No 1).

Regulation 2 – Commencement – states that the regulations commence on the day after their notification day.

Regulation 3 – Legislation amended – provides that the regulations amend the Civil Law (Wrongs) Regulations 2003.

Regulation 4 – New part 1 heading – provides a new part 1 heading to be inserted into the Regulations.

Regulation 5 – New part 2 – inserts a new part 2 into the Regulations. Part 2 provides requirements and prescribes guidelines for the pre-court procedures for personal injury claims.

New regulation 4A – Information in notice of claim – Act, s 51(2)(a) – states the information to be contained in a notice of claim under section 51(2)(a) of the Act. The regulation provides requirements for the pre-court procedures of personal injury claims. The information that a notice of claim must contain, or substantially contain, includes:

- Details about the injured person, such as name, home address and date of birth;
- Details about the accident, including the date, time and place of the accident, details and a diagram of how the accident happened, whether any emergency services attended, details about witnesses and witness statements (if any), and if a seatbelt or helmet was worn when the accident happened;
- Details about the injured person's injury, such as a description, hospitalisation details, and medical treatment;
- Details about economic loss, including changes to employment of the injured person;
- The date the claimant first consulted a lawyer about the claim and identified the respondent;
- If the claim is against a health service provider, a description of the medical condition, the alleged act or omission by the provider.

New regulation 4B – Records respondent to be authorised to access etc – Act, s 51(2)(b) – states that a notice of claim must authorise the respondent and the respondent's insurer to have access to particular records and sources of information relevant to the personal injury under s 51(2)(b) of the Act. These include:

- Clinical notes held by a health service provider who treated or assessed the injured person;
- Clinical notes held by a hospital where the injured person received treatment;
- Records held by an emergency service that treated or assisted the injured person;
- Wage, leave and work history records in the possession of an employer or previous employer of the injured person.

New regulation 4C – Documents to accompany notice of claim – Act, s 51(2)(c) – states the documents that must accompany a notice of claim under s 51(2)(c) of the Act. These include documents from health service providers, and other documents upon which the claimant might rely for the claim.

New regulation 4D – Claimant may add later respondents – prescribed times – Act, s 55(2)(a) and (3)(b) – states the time prescribed within which the claimant may add a later respondent under s 55(2)(a) of the Act. The regulation states that the claimant may add a later respondent anytime before the certificate of readiness is filed in a court in a proceeding in relation to the claim. The regulation also states the time within which the claimant must notify, in writing, the other respondents of the later respondent, under s 55(3)(b) of the Act. The claimant must notify the other respondents within one month from the day that the later respondent is added.

New regulation 4E – Respondent may add someone else as contributor – prescribed times – Act, s 57(1) and (3) – states the time within which the respondent may add someone else as a contributor under s 57(1) of the Act. The contributor must be added before the certificate of readiness is filed in a court in the claim's proceedings. The regulation also states the time within which the respondent, if adding another contributor, must give a copy of the contributing notice to each other party, under s 57(3) of the Act. The respondent must give the contributing notice within one month of adding someone else as a contributor.

New regulation 4F – Contributor's response – prescribed information and documents – Act, s 58(1)(a) – states the information that must be contained in the contributors response under s 58(1)(a) of the Act. The contributor's response must contain particulars about the contributor such as name, address, lawyer's details, and if relevant, the corporation's ACN and address.

Regulation 6 – New part 3 heading – provides a new part 3 heading to be inserted into the Regulations.

Regulation 7 – New regulation 5A – inserts new regulation 5A into the regulations. Regulation 5A provides the general format for the certificate signed by the claimant's lawyer stating that the claim or defence has a reasonable prospect of success.

Regulation 8 – New regulation 7 – inserts new regulation 7 into the regulations. Regulation 7 is a transitional regulation which provides that part 5 of the Act dealing with pre-court procedures applies to accidents that occurred before the commencement of the part, on 8 March 2004, if the plaintiff did not consult a lawyer before the commencement. This regulation also clarifies the time limits for submitting a notice of claim for these plaintiffs. The regulation provides that these plaintiffs must provide a notice of claim in the lesser of nine months after 8 March 2004 or four months after they consult a lawyer. This transitional regulation also provides time limits for persons whose symptoms arise before 8 March 2004.

Regulation 9 – Dictionary, new definitions – provides definitions for *health service* and *provider*.

Regulation 10 – Legislation amended – renumbering – provides that the provisions will be renumbered when the regulations are next republished under Legislation Act.