

CIVIL LAW (WRONGS) AMENDMENT BILL 2005

EXPLANATORY STATEMENT

Circulated by Vicki Dunne MLA

Overview

This Bill clarifies the position of the law of negligence as it relates to ‘wrongful births’ cases.

The common law position as a result of the High Court’s decision in *Cattanach v Melchior* (2003) is that if an unwanted childbirth was to result from a medical practitioners negligence in performing a sterilisation procedure, the parents of that child would be entitled to damages for the cost of raising the child until that child is 18.

These amendments seek to clarify the law so that a healthy child cannot be considered as a ‘loss’ or ‘damage’.

Following the High Court’s decision in *Cattanach v Melchior* New South Wales, Queensland and South Australia, have amended their legislation so as to prevent parents from receiving damages in so called ‘wrongful birth’ cases

The Civil Law (Wrongs) Amendment Bill 2005 would bring the ACT into line with Queensland, New South Wales and South Australia.

Summary of Clauses

Clauses 1 – 3 are mechanical clauses relating to the naming and commencement of the legislation

Clause 1 – Name of Act – This Act is the *Civil Law (Wrongs) Amendment Bill 2005*

Clause 2 – Commencement – This clause provides that this Act commences on the day after its notification day.

Clause 3 – Legislation Amended – This Act amends the *Civil Law (Wrongs) Act 2002*.

Clause 4 – New Part 7.1A

The new part 7.1 through new sections 99A and 99B sets up the system for determining claims for damages resulting from the birth of a child. Section 99B determines that damages cannot be sought for the birth of a healthy child. However 99B(2) ensures that additional costs can be claimed for rearing a child who is disabled as a result of negligence.

Clause 5 – New Section 226

This is a mechanical clause relating to the commencement of the bill.