

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CIVIL LAW (WRONGS) (THRESHOLDS) AMENDMENT BILL 2003

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
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Outline

The Civil Law (Wrongs) (Thresholds) Amendment Bill 2003 (the Bill) amends the *Civil Law (Wrongs) Act 2002* to include a threshold in relation to non-economic loss arising from the provision of a health service by a doctor.

This Bill forms part of the second stage in a three-stage process to address the insurance crisis. The *Civil Law (Wrongs) Act 2002* (the Act) was the first stage, that set up the essential building blocks for reform and included a number of tort law reforms. The Assembly has previously considered and passed other provisions relating to stage two, the current stage, based on the recent national reviews on insurance and tort law reform (commonly known as the Ipp and Neave Reviews). Stage three will improve the management of civil claims in our courts.

This provision restricts the award that may be made for non-economic loss that arises from a wrong occasioned by the provision of a health service by a doctor.

Clause Notes

Clause 1 – Name of Act – states the title of the Act, which is the Civil Law (Wrongs) (Thresholds) Amendment Act 2003.

Clause 2 – Commencement – states that the Act commences on the day after notification.

Clause 3 – Amendment – provides that the Act amends the Civil Law (Wrongs) Act 2002.

Clause 4 – New section 99A – provides a new section 99A.

This provision restricts the non-economic loss that might be awarded where the loss arises from a wrong occasioned by the provision of a health service by a doctor.

When assessing damages, a court may make an award for non-economic loss. This includes pain and suffering, loss of amenities of life, loss of expectation of life, or disfigurement.

No damages may be awarded for non-economic loss in medical indemnity cases unless the severity of the non-economic loss is at least \$12,001. Where the severity of the non-economic loss is at least \$12,001 but less than \$20,001, the damages that may be awarded for the non-economic loss in medical indemnity cases are to be determined in accordance with the following formulae:

$$A = (B - 12000) * 2.5$$

Where

A is the damages that may be awarded

B is the assessed non-economic loss

Examples:

1. The severity of the non-economic loss is \$10,000. No damages for non-economic loss are payable.
2. The severity of the non-economic loss is \$12,001. The damages awardable for non-economic loss is \$2.50.
3. The severity of the non-economic loss is \$12,100. The damages awardable for non-economic loss is \$250.
4. The severity of the non-economic loss is \$19,999. The damages awardable for non-economic loss is \$19,997.50.
5. The severity of the non-economic loss is \$20,000. The provision does not apply. Full damages for non-economic loss of \$20,000 are payable.

New section 99B – provides a new section 99A.

Section 99B provides that section 99A must be reviewed after two years and a report provided to the Assembly.

Clause 5 – Section 224(2) – provides that Part 7.1 of the Act does not apply in relation to section 99A to wrongs prior to commencement.

Clause 6 – New section 225A – provides that section 99A does not apply in relation to wrongs prior to commencement.