



Australian Capital Territory

Civil Law (Wrongs) Regulations 2003

SL2003-20

made under the

Civil Law (Wrongs) Act 2002

Republication No 2

Effective: 3 March 2004 – 12 July 2004

Republication date: 3 March 2004

Last amendment made by SL2004-8
(republishing for amendments by SL2004-8 and
general renumbering)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Civil Law (Wrongs) Regulations 2003*, made under the *Civil Law (Wrongs) Act 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 3 March 2004. It also includes any amendment, repeal or expiry affecting the republished law to 3 March 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Contents

| | Page | |
|---------------|---|---|
| Part 1 | Preliminary | |
| 1 | Name of regulations | 2 |
| 2 | Dictionary | 2 |
| 3 | Notes | 2 |
| Part 2 | Personal injuries claims—pre-court procedures | |
| 4 | Information in notice of claim—Act, s 51 (2) (a) | 3 |
| 5 | Records respondent to be authorised to access etc—Act, s 51 (2) (b) | 6 |
| 6 | Documents to accompany notice of claim—Act, s 51 (2) (c) | 7 |
| 7 | Claimant may add later respondents—prescribed times—Act, s 55 (2) (a) and (3) (b) | 7 |

R2
03/03/04

Civil Law (Wrongs) Regulations 2003
Effective: 03/03/04-12/07/04

contents 1

Contents

| | Page |
|-------------------|---|
| 8 | Respondent may add someone else as contributor—prescribed times— Act, s 57 (1) and (3) 8 |
| 9 | Contributor's response—prescribed information and documents—Act, s 58 (1) (a) 8 |
| Part 3 | Other matters |
| 10 | Limitation amount—Act, s 144, def <i>limitation amount</i> 9 |
| 11 | Certificate that claim or defence has reasonable prospects of success—Act, s 188 (4) 9 |
| 12 | Insurers reporting requirements—Act, s 203 9 |
| 13 | Modification of Act, ch 16—Act, s 231 10 |
| Dictionary | 11 |
| Endnotes | |
| 1 | About the endnotes 12 |
| 2 | Abbreviation key 12 |
| 3 | Legislation history 13 |
| 4 | Amendment history 13 |
| 5 | Earlier republications 15 |
| 6 | Renumbered provisions 16 |



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Part 1 Preliminary

1 Name of regulations

These regulations are the *Civil Law (Wrongs) Regulations 2003*.

2 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary at the end of these regulations defines certain terms used in these regulations.

Note 2 A definition in the dictionary applies to the entire regulations unless the definition, or another provision of the regulations, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in these regulations is explanatory and is not part of these regulations.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Personal injuries claims— pre-court procedures

4 Information in notice of claim—Act, s 51 (2) (a)

- (1) A notice of claim must contain a statement of the information required under subregulations (2) to (8) or information that substantially complies with those subregulations.
- (2) The following information about the injured person is required:
 - (a) the person's full name and home address;
 - (b) any other name by which the person is, or has been, known;
 - (c) the person's date of birth.
- (3) The following information about the accident claimed to have given rise to the personal injury to which the claim relates is required:
 - (a) the date, time and place of the accident;
 - (b) details of how the accident happened;
 - (c) if appropriate, a diagram showing, to the best of the claimant's knowledge, the scene of the accident;
 - (d) if known that the police, ambulance, fire brigade or any other emergency service attended the accident—
 - (i) that fact; and
 - (ii) if known, the name of the service or services that attended the accident; and
 - (iii) if known, the name and contact details of the person or people who attended the accident for the service;
 - (e) if known, the name, address and telephone number of anyone who has given a witness statement;

- (f) if known, the name, address and telephone number of the person or people (if any) who were, in the claimant's opinion, responsible for causing the accident (apart from the respondent);
 - (g) if a seatbelt or helmet was required under the *Road Transport (Safety and Traffic Management) Act 1999*—whether it was being worn as required when the accident happened;
- (4) The following information about the nature and treatment of the injured person's personal injury is required:
- (a) a description of the injury suffered;
 - (b) if the injured person was or is hospitalised for treatment of the injury—the name of the hospital;
 - (c) if the injured person received or is receiving medical treatment for the injury—
 - (i) the general nature of the treatment; and
 - (ii) the name and address of the treatment provider or providers; and
 - (iii) the date of the person's first examination by a doctor.
- (5) The date the claimant first consulted a lawyer about the possibility of making a claim and identified the respondent is required.
- (6) If damages for economic loss are claimed, the following information relevant to economic loss is required:
- (a) if the injured person was employed or self-employed at the time of the accident—details of the employment or self-employment;
 - (b) if the employment or self-employment has changed since the accident—
 - (i) how it has changed; and

- (ii) an assessment, as far as possible, of the economic loss suffered from the change.
- (7) If the claimant is entitled to payment under a statutory scheme because of the accident, details of the entitlement are required.
- (8) If the claim is against a health service provider, the following information is also required:
 - (a) a description of the medical condition for which the injured person sought treatment;
 - (b) the act or omission claimed to have given rise to the personal injury or to have exacerbated a pre-existing injury or condition;
 - (c) if the claim relates to or includes a claimed failure of the health service provider to adequately inform the injured person of the risks involved in the treatment sought—
 - (i) the date, time and place of each consultation with the health service provider at which information about the risks could have been given; and
 - (ii) if any written or oral information or warning was given to the injured person by the health service provider about the treatment—
 - (A) the date and place the information or warning was given; and
 - (B) details of the information or warning including what the injured person was informed or warned about;
 - (d) if written or oral consent was given by the injured person to the health service provider about the treatment claimed to have given rise to the personal injury—the date and place the consent was given.

5 Records respondent to be authorised to access etc—Act, s 51 (2) (b)

- (1) The notice of claim must authorise the respondent and the respondent's insurer for the claim (if any) to have access to the following records and sources of information relevant to the claim:
 - (a) if the personal injury exacerbated a pre-existing injury or condition—clinical notes in the possession of a health service provider who treated or assessed the injured person for the pre-existing injury or condition;
 - (b) clinical notes in the possession of a hospital (including a private hospital) where the injured person received treatment relevant to the personal injury;
 - (c) records in the possession of an ambulance or other emergency service that treated or assisted the injured person in relation to the personal injury;
 - (d) clinical notes in the possession of a health service provider who treated or assessed the injured person in relation to the personal injury;
 - (e) wage, leave and work history records in the possession of—
 - (i) the injured person's employer; or
 - (ii) anyone else who employed the injured person at any time during the 3 years before the accident.
- (2) The respondent and the respondent's insurer (if any) must not use records and sources of information accessed under subregulation (1) otherwise than for a purpose related to the claim.

6 Documents to accompany notice of claim—Act, s 51 (2) (c)

The notice of claim must be accompanied by the following documents:

- (a) for a claim other than a claim against a health service provider—a copy of any certificate signed by a doctor relevant to the personal injury to which the claim relates that is in the claimant's possession;
- (b) for a claim against a health service provider—a copy of any advice or warnings given to the injured person by the health service provider about the treatment claimed to have given rise to the personal injury that is in the claimant's possession;
- (c) for a claim against a health service provider—a copy of any consent given to the health service provider by the injured person about the treatment claimed to have given rise to the personal injury that is in the claimant's possession;
- (d) a copy of any other document on which the claimant currently expects to rely for the claim that is in the claimant's possession.

7 Claimant may add later respondents—prescribed times—Act, s 55 (2) (a) and (3) (b)

- (1) For the Act, section 55 (2) (a), the time prescribed is the time when a certificate of readiness is filed in a court in a proceeding in relation to the claim.
- (2) For the Act, section 55 (3) (b), the time prescribed is 1 month after the day the claimant adds the later respondent.

8 Respondent may add someone else as contributor—prescribed times—Act, s 57 (1) and (3)

- (1) For the Act, section 57 (1), the time prescribed is the time when a certificate of readiness is filed in a court in a proceeding in relation to the claim.
- (2) For the Act, section 57 (3), the time prescribed is 1 month after the day the respondent adds someone else as a contributor.

9 Contributor's response—prescribed information and documents—Act, s 58 (1) (a)

- (1) The contributor's response must contain the following information:
 - (a) the contributor's full name;
 - (b) the contributor's postal address and daytime telephone number, or, if the contributor is represented by a lawyer, the name and contact details of the lawyer;
 - (c) if the contributor is a corporation—
 - (i) the corporation's ACN (if any); and
 - (ii) the address of the corporation's registered office (if any).
- (2) The contributor's response must be accompanied by a copy of any document relevant to the claim that is in the contributor's possession (and not already in the respondent's possession).

Part 3 Other matters

10 Limitation amount—Act, s 144, def *limitation amount*

The amount prescribed is \$40.

11 Certificate that claim or defence has reasonable prospects of success—Act, s 188 (4)

- (1) The certificate must be to the following effect:

I, [*full name of lawyer*] certify that I believe, on the basis of provable facts and a reasonably arguable view of the law, that this [*claim OR defence*] has reasonable prospects of success.

- (2) The certificate must be signed and dated by the lawyer.

12 Insurers reporting requirements—Act, s 203

- (1) Each of the following is a prescribed class of insurance policy:

- (a) professional indemnity insurance for doctors;
- (b) professional indemnity insurance for people other than doctors;
- (c) each class of direct business for which information is required under the reporting standard GRS 210.1 (Premium Liabilities – Insurance Risk Charge) made by APRA under the *Financial Sector (Collection of Data) Act 2001* (Cwlth), section 13 (other than professional indemnity).

Note Par (c) requires information about the following classes of direct business (described in the instruction guide in the standard):

- houseowners/householders
- commercial motor vehicle
- domestic motor vehicle
- travel
- fire and industrial special risks
- marine

- aviation
 - mortgage
 - consumer credit
 - other accident
 - other
 - compulsory third party motor vehicle
 - public and product liability
 - employers' liability.
- (2) A report must state, for each class of policy, the value of claims paid.
- (3) A report must be given in writing.

13 Modification of Act, ch 16—Act, s 231

The Act, section 225 is modified by inserting the following subsection:

(2A) Chapter 5 applies to a claim based on a cause of action that arose before 8 March 2004 and in relation to which the claimant had not consulted a lawyer as mentioned in subsection (2) as if section 51 (3) (a) (i) and (ii) read as follows:

- ‘(i) 8 March 2004; or
- (ii) if symptoms of the injury were not immediately apparent and did not appear before 8 March 2004—the day the symptoms of the injury first appear;’

Dictionary

(see reg 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to these regulations.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following term:

- writing.

APRA means the Australian Prudential Regulation Authority established under the *Australian Prudential Regulation Authority Act 1998* (Cwlth), section 7.

health service—see the *Community and Health Services Complaints Act 1993*, section 4 (1).

provider—see the *Community and Health Services Complaints Act 1993*, section 4 (1).

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

| | |
|--|--|
| am = amended | ord = ordinance |
| amdt = amendment | orig = original |
| ch = chapter | par = paragraph/subparagraph |
| cl = clause | pres = present |
| def = definition | prev = previous |
| dict = dictionary | (prev...) = previously |
| disallowed = disallowed by the Legislative Assembly | pt = part |
| div = division | r = rule/subrule |
| exp = expires/expired | reg = regulation/subregulation |
| Gaz = Gazette | renum = renumbered |
| hdg = heading | reloc = relocated |
| IA = Interpretation Act 1967 | R[X] = Republication No |
| ins = inserted/added | RI = reissue |
| LA = Legislation Act 2001 | s = section/subsection |
| LR = legislation register | sch = schedule |
| LRA = Legislation (Republication) Act 1996 | sdiv = subdivision |
| mod = modified/modification | sub = substituted |
| o = order | SL = Subordinate Law |
| om = omitted/repealed | <u>underlining</u> = whole or part not commenced or to be expired |

3 Legislation history

Civil Law (Wrongs) Regulations 2003 SL2003-20

notified LR 30 June 2003

reg 1, reg 2 commenced 30 June 2003 (LA s 75 (1))

remainder commenced 1 July 2003 (reg 2)

as amended by

Civil Law (Wrongs) Amendment Regulations 2004 (No 1) SL2004-8

notified LR 2 March 2004

reg 1, reg 2 commenced 2 March 2004 (LA s 75 (1))

remainder commenced 3 March 2004 (reg 2)

4 Amendment history

Preliminary

pt 1 hdg ins SL2004-8 reg 4

Dictionary

reg 2 orig reg 2 om LA s 89 (4)
(prev reg 3) renum R2 LA (see SL2004-8 reg 10)

Notes

reg 3 orig reg 3 renum as reg 2
(prev reg 4) renum R2 LA (see SL2004-8 reg 10)

Personal injuries claims—pre-court procedures

pt 2 hdg ins SL2004-8 reg 5

Information in notice of claim—Act, s 51 (2) (a)

reg 4 orig reg 4 renum as reg 3
(prev reg 4A) ins SL2004-8 reg 5
renum R2 LA (see SL2004-8 reg 10)

Endnotes

4 Amendment history

Information in notice of claim—Act, s 51 (2) (a)

reg 4A renum as reg 4

Records respondent to be authorised to access etc—Act, s 51 (2) (b)

reg 4B renum as reg 5

Documents to accompany notice of claim—Act, s 51 (2) (c)

reg 4C renum as reg 6

Claimant may add later respondents—prescribed times—Act, s 55 (2) (a) and (3) (b)

reg 4D renum as reg 7

Respondent may add someone else as contributor—prescribed times—Act, s 57 (1) and (3)

reg 4E renum as reg 8

Contributor's response—prescribed information and documents—Act, s 58 (1) (a)

reg 4F renum as reg 9

Records respondent to be authorised to access etc—Act, s 51 (2) (b)

reg 5 orig reg 5 renum as reg 10
(prev reg 4B) ins SL2004-8 reg 5
renum R2 LA (see SL2004-8 reg 10)

Certificate that claim or defence has reasonable prospects of success—Act, s 188 (4)

reg 5A renum as reg 11

Documents to accompany notice of claim—Act, s 51 (2) (c)

reg 6 orig reg 6 renum as reg 12
(prev reg 4C) ins SL2004-8 reg 5
renum R2 LA (see SL2004-8 reg 10)

Claimant may add later respondents—prescribed times—Act, s 55 (2) (a) and (3) (b)

reg 7 orig reg 7 renum as reg 13
(prev reg 4D) ins SL2004-8 reg 5
renum R2 LA (see SL2004-8 reg 10)

Respondent may add someone else as contributor—prescribed times—Act, s 57 (1) and (3)

reg 8 (prev reg 4E) ins SL2004-8 reg 5
renum R2 LA (see SL2004-8 reg 10)

Contributor's response—prescribed information and documents—Act, s 58 (1) (a)

reg 9 (prev reg 4F) ins SL2004-8 reg 5
renum R2 LA (see SL2004-8 reg 10)

Other matters

pt 3 hdg ins SL2004-8 reg 6

Limitation amount—Act, s 144, def *limitation amount*

reg 10 (prev reg 5) renum R2 LA (see SL2004-8 reg 10)

Certificate that claim or defence has reasonable prospects of success—Act, s 188 (4)reg 11 (prev reg 5A) ins SL2004-8 reg 7
renum R2 LA (see SL2004-8 reg 10)**Insurers reporting requirements—Act, s 203**

reg 12 (prev reg 6) renum R2 LA (see SL2004-8 reg 10)

Modification of Act, ch 16—Act, s 231reg 13 (prev reg 7) ins SL2004-8 reg 8
renum R2 LA (see SL2004-8 reg 10)**Dictionary**dict def *health service* ins SL2004-8 reg 9
def *provider* ins SL2004-8 reg 9**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

| Republication No and date | Effective | Last amendment made by | Republication for |
|----------------------------------|----------------------------|-------------------------------|--------------------------|
| R1 1 July 2003 | 1 July 2003– 2 Mar 2004 | not amended | new regulations |

Endnotes

6 Renumbered provisions

6 Renumbered provisions

as made by *Civil Law (Wrongs) Amendment Regulations 2004 (No 1)* SL2004-8 and under the *Legislation Act 2001*

| previous number | provision heading | renumbered or inserted as |
|-----------------|---|---------------------------|
| 3 | Dictionary | 2 |
| 4 | Notes | 3 |
| 4A | Information in notice of claim—Act, s 51 (2) (a) | 4 |
| 4B | Records respondent to be authorised to access etc—Act, s 51 (2) (b) | 5 |
| 4C | Documents to accompany notice of claim—Act, s 51 (2) (c) | 6 |
| 4D | Claimant may add later respondents—prescribed times—Act, s 55 (2) (a) and (3) (b) | 7 |
| 4E | Respondent may add someone else as contributor—prescribed times—Act, s 57 (1) and (3) | 8 |
| 4F | Contributor's response—prescribed information and documents—Act, s 58 (1) (a) | 9 |
| 5 | Limitation amount—Act, s 144, def <i>limitation amount</i> | 10 |
| 5A | Certificate that claim or defence has reasonable prospects of success—Act, s 188 (4) | 11 |
| 6 | Insurers reporting requirements—Act, s 203 | 12 |
| 7 | Modification of Act, ch 16—Act, s 231 | 13 |

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