



Australian Capital Territory

# Civil Law (Wrongs) Amendment Regulations 2004 (No 1)

**Subordinate Law SL2004-8**

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The Australian Capital Territory Executive makes the following regulations under the *Civil Law (Wrongs) Act 2002*.

Dated 2 March 2004.

JON STANHOPE  
Minister

BILL WOOD  
Minister

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*Civil Law (Wrongs) Act 2002*

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**1 Name of regulations**

These regulations are the *Civil Law (Wrongs) Amendment Regulations 2004 (No 1)*.

**2 Commencement**

These regulations commence on the day after their notification day.

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

**3 Legislation amended**

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

**4 New part 1 heading**

*insert*

**Part 1 Preliminary****5 New part 2**

*after regulation 4, insert*

**Part 2 Personal injuries claims—  
pre-court procedures****4A 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.

**4B 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;



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- (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.

**4C 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.

**4D 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.

**4E 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.

**4F 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).

**6 New part 3 heading**

*before regulation 5, insert*

**Part 3 Other matters**

**7 New regulation 5A**

*insert*

**5A 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.

**8 New regulation 7**

*insert*

**7 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;’

**9 Dictionary, new definitions**

*insert*

**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).

**10 Regulations—renumbering**

*renumber provisions when regulations next republished under Legislation Act*

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## Endnotes

**1 Notification**

Notified under the Legislation Act on 2 March 2004.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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