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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CIVIL LAW (WRONGS) AMENDMENT BILL 2003

EXPLANATORY STATEMENT

Circulated by authority of the  
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## CIVIL LAW (WRONGS) AMENDMENT BILL 2003

### Outline

The Civil Law (Wrongs) Amendment Bill 2003 (the Bill) 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.

This Bill is 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. Stage two, the current stage, consists of amendments to the Act 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 the courts.

The reforms that have been included in this Bill aim to create greater certainty in personal injury outcomes, particularly in the case of medical negligence. The proposed reforms also contain measures that will foster efficiency in case processing and management and additional pre-trial procedures to assist settlement of cases before they get to court.

Each amendment included in the Bill is detailed below and a statement is included to show where amendments are the result of a national review.

### Without prejudice sorry (Neave Recommendation)

The Bill provides that an apology does not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with civil liability of any kind. This provision is based on the New South Wales *Civil Liability Amendment (Personal Responsibility) Act 2002*.

This amendment was recommended by the Neave Report specifically for medical negligence cases, as if people are treated appropriately at an early stage immediately following the occurrence of an adverse event, then the whole process of litigation can often be avoided.

A study in the United Kingdom in 1999 entitled *Mediating medical negligence claims: an option for the future?* also highlighted the benefits of apologies in medical negligence cases. This study found that in 44% of medical negligence cases the plaintiff was litigating to receive an apology, rather than compensation.

### Early notification and open disclosure (Ipp Recommendation 9)

The Bill requires legal practitioners to notify doctors or other defendants of a client's instruction to proceed with a personal injury case. This provision is based on the Queensland *Personal Injuries Proceedings Act 2002*.

This provision promotes early notification of claims and open disclosure. This provision will allow early investigation of claims while evidence is still fresh and will allow appropriate cases to be managed outside the court system and compensation to be made available much earlier and at a lower cost. In cases where there is no evidence of negligence, it also allows the refusal of a claim with greater certainty.

### **New provision relating to expert witnesses (Ipp Recommendation 8)**

The Bill establishes a new regime for expert witnesses. Under the new regime parties will be given the opportunity to nominate and agree on one medical expert witness to provide evidence to the court. If agreement is reached, the court appoints the expert and the parties pay equally. If the parties cannot agree, the court will appoint an expert and the parties will share the cost. This new regime should remove some of the adversarial process, as it will provide for medical experts to assist the court rather than their respective parties. This regime will also reduce costs in litigation, as parties will share the cost of one medical expert rather than having at least one medical expert for each party.

### **Statute of limitations (Ipp recommendations 24 through 26)**

The Bill changes the statute of limitations for adults from six years to three years from the date of occurrence of their injury or discovery of the injury. This will ensure that matters are settled quickly and will allow parties to move on with their lives. This will also ensure that matters are heard before evidence is lost.

The Bill changes the statute of limitations for children. The Bill provides that parents or guardians of children under 15 years of age must give notice of a claim to the prospective defendant within 6 years of the accident or discovery of the injury. If a parent fails to give notice, the child does not lose the right to sue - this still endures until the "child" turns 21. However, in that case, the cost of medical treatment, legal work and gratuitous services incurred by the parents before the commencement of the proceedings are not claimable from the defendant, unless the court finds that there was a good reason excusing the non-compliance with the notice requirement. Further, the Bill provides that a defendant who has been served with a notice can require the child's parent/guardian to apply for a declaratory judgment on liability. After 6 years, it should be possible to deal with the issue of liability, even though final assessment of damages may need to await the child's maturity.

The reforms to the statute of limitation for children balance the competing interests of children and defendants. The reforms encourage early notification and settlement of claims, while retaining the right of children to sue for injuries when they reach adulthood.

These provisions will take effect immediately on commencement of the Bill, and will apply to all possible causes of action whether the cause arose before commencement. Transitional provisions deal with the application in greater detail.

### **Reasonable chance of success**

The Bill reintroduces Part 10.2 of the Civil Law (Wrongs) Bill 2002 with some minor modifications. This part requires legal practitioners to certify that cases have a reasonable chance of success. This will ensure that parties do not incur costs for claims or defences that have no reasonable prospects of success. The Bill provides that the court can allow claims to continue where the interests of justice so dictate (eg, to allow the Court to consider a desirable advance within the common law).

### **Effective case management**

The Bill allows the courts to order that parties attend mediation. Mediation will not assist in all cases, rather it can be ordered by a court where a case is identified as suitable for mediation. The cases that are generally suitable for mediation are simple cases where the compensation sought is small. Other suitable cases are those where one party is seeking non-legal remedies such as apologies and explanations; claims where parties wanted greater involvement in case management; claims where speedier resolution was required; and those where the parties have a long term relationship.

### **Fraud prevention**

The Bill includes a provision from the existing compulsory third party scheme that allows for parties to be penalised for making a claim or statement knowing that it is false or misleading in a material particular.

### **Partial codification of the law of negligence (Ipp Recommendations 28-29)**

The Bill includes a partial codification of the law of negligence. The Ipp Report recommended legislative clarification of the general principles of negligence in response to recent cases that have had the potential to expand liability for negligence. The basic principles of negligence, including duty of care, standard of care for negligence, precautions against risk and causation have been included in this Bill.

### **Contributory Negligence (Ipp Recommendations 30-31)**

The Bill provides a restatement of the common law regarding contributory negligence and provides that the court may reduce a plaintiff's damages by 100% for contributory negligence.

In relation to claims for negligently caused personal injury and death, contributory negligence is a failure by a person to take reasonable care for their own safety, which contributes to the harm the person suffers. There is currently legislation in all Australian jurisdictions that provides for the courts to reduce the damages that a person is entitled to, to take into account their own contribution to their injuries.

The Ipp Report recommended there should be a legislative statement setting out the test for contributory negligence, that is: whether a reasonable person in the plaintiff's position would have taken precautions against the risk of harm (recommendation 30). The Ipp Report also recommended that a court should be entitled to reduce a plaintiff's damages by 100% for contributory negligence, where it is just and equitable to do so (recommendation 31).

An underlying principle applied by the Ipp Report in recommendations 30 and 31 is that people should take responsibility for their own lives and safety. Recommendation 31 recognises that there may be cases where the plaintiff's relative responsibility for their injuries is so great that it is fair to deny the plaintiff any damages at all.

### **Mental Harm (Ipp Recommendations 33-38)**

The Bill provides that damages are not available for mental harm unless the mental harm is a recognised psychiatric illness. Implementation of this provision will avoid what appear to be early signs of the courts developing a new head of damages for 'mere sadness'.

### **Tariffs for General Damages (Ipp Recommendations 46)**

The Ipp Report recommended that, in assessing general damages, courts should be able to refer to decisions in earlier cases.

In most jurisdictions, including the ACT, the High Court decision in *Planet Fisheries Pty Ltd v La Rosa* (1968) 119 CLR 118 prevails, preventing counsel from referring to earlier awards involving similar injuries. The basis of the High Court's decision was that damages should be proportionate to injuries suffered by the plaintiff and not to the injuries suffered by other persons, even if some similarity exists between their injuries.

Implementation of this Ipp recommendation will allow the courts to consider comparable injuries and damages and will ensure that the courts are consistent in awarding damages. This recommendation will also assist in the collection of data on personal injuries damages.

### **Public Authorities (Ipp Recommendations 39-42)**

On 31 May 2001, the High Court of Australia issued two decisions, *Brodie v Singleton Shire Council* and *Ghantous v Hawkesbury City Council* (collectively referred to as *Brodie*). *Brodie* abolished the common law non-feasance immunity, popularly known as the highway rule. The immunity was a court made rule designed to protect Australian road authorities from liability due to the failure of road authorities to inspect and repair roads—but not from their negligent actions in actually repairing, designing or constructing roads.

In abolishing the immunity, the court described the broad contours of the duty of care owed by road authorities to road users, including the duty road users have to take

reasonable care for their own safety. In place of one liability rule for a road authority's failure to act (non-feasance) and one for its failure to act properly (misfeasance), the court applied a unitary standard sounding in negligence. To meet its duty of care, a road authority must have practices, processes and standards that reasonably enable it to (1) identify dangers to road users; (2) assess and prioritise the dangers and (3) implement a program of works to reduce or eliminate the dangers.

The *Brodie* decision has caused an understandable level of concern amongst road authorities at the local, state and federal level about the implications the decision may have on already strained road budgets and what response is required of government.

In response to these concerns the Ipp Report recommended legislative clarification of the duties of public authorities. Specifically, the Ipp Report recommended that legislation provide that:

- a policy decision should not be able to be used to support a finding that a public authority was negligent unless the decision was so unreasonable that no reasonable public authority could have made it (recommendation 39); and
- a public authority should only be liable for personal injury damages for breach of a statutory duty where the provisions and policy of the relevant statute are compatible with the existence of such liability (recommendation 41).

The Bill clarifies the liability of public authorities.

### **Equine activities**

Insurance for the equine (horse) activities industry is currently unavailable. To ensure that equine activities can continue and to encourage insurers back into this market, the Bill clarifies the liability of people who provide equine activities. The legislation is based on model legislation operating in 42 American States that provides a stable insurance environment and from that, should restore the insurance market for these activities. Further, the provisions fairly balance the rights of participants in equine activities with obligations on the providers of equine activities.

The Bill provides that there is no liability for an injury to or the death of a participant resulting from the inherent risks of equine activities. The inherent risks include: the unpredictability of an equine's reaction to such things as sounds, sudden movements, and unfamiliar objects, certain hazards such as surface and subsurface conditions and collisions with other equines or objects. The Bill provides that there is liability for providing equipment or tack that is faulty and causes injury, failing to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity, committing an act or omission that constitutes wilful or wanton disregard for the safety of the participant (which causes injury) or intentionally injuring the participant.

## Clause Notes

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

**Clause 2 – Commencement** – provides that the Act (other than section 13 and section 23) commences on the day after its notification day. Sections 13 and 23 commence on a day fixed by the Minister by written notice.

**Clause 3 – Act amended** - provides that the Act amended by this Act is the *Civil Law (Wrongs) Act 2002*.

**Clause 4 – New Section 4A** – inserts section 4A which provides that other legislation applies in regard to offences against this Act. For example chapter 2 of the Criminal Code applies to offences in this Act. This clause increases awareness of the Criminal Code and alerts the reader to the fact that chapter 2 of the Criminal Code, setting out the general principles of criminal responsibility, applies to this Act.

**Clause 5 – New part 2.2A** – inserts part 2.2A to the Act. Part 2.2A provides that an apology by or on behalf of a person will not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with civil liability of any kind.

New section 11A – Application of pt 2.2A – provides that this part applies to civil liability of any kind, except for defamation, discrimination, workers compensation, and claims for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*.

New section 11B – Meaning of apology – provides a definition of apology for this part.

New section 11C – Effect of apology on liability etc – provides that an apology is not an admission of fault or liability and is not relevant to deciding fault or liability. This section also provides that an apology is not admissible in any civil proceeding as evidence of the fault or liability of a person.

**Clause 6 – Damages for a person’s death Section 22 (2)** – substitutes ‘Part 4.1 (Damages for personal injuries – exclusions and limitations) for ‘Part 4.1 (General exclusions and limitations about damages)’.

**Clause 7 – Contributory negligence not defence in relation to death Section 24 (2)** – substitutes ‘Part 4.1 (Damages for personal injuries – exclusions and limitations) for ‘Part 4.1 (General exclusions and limitations about damages)’.

**Clause 8 – Part 3.2 heading** – provides that the heading for Part 3.2 of the Act will be changed to ‘Part 3.2 Metal Harm’.

**Clause 9 – Section 29** – inserts definitions into section 29 of the Act. The new definitions are for ‘consequential mental harm’, ‘mental harm’, ‘negligence’ and ‘pure mental harm’.

**Clause 10 – New sections 30A and 30B** – inserts new sections 30A and 30B into the Act. These sections set out the rules for determining when a duty of care is owed for mental harm and provide limitations on the claims that can be made for mental harm. These amendments are based on provisions in the NSW *Civil Liability Act 2002* and the SA Law Reform (Ipp Recommendations) Bill 2003.

New section 30A – Mental harm – duty of care - provides that no duty of care is owed in respect of mental harm unless a reasonable person in the defendant’s position would have foreseen that a person of normal fortitude in the plaintiff’s position might suffer a recognised psychiatric illness. Section 30A also prescribes a list of circumstances to which the court must have regard when applying the section in relation to pure mental harm. In addition, the section prescribes that the court must have regard to the nature of the bodily injury out of which the mental harm arose when applying the section in relation to consequential mental harm. Section 30A does not affect the duty of care owed where the defendant knows, or ought reasonably to know that the plaintiff is a person of less than normal fortitude.

New section 30B – Mental harm – damages - provides that damages for pure mental harm or economic loss for consequential mental harm in respect of negligence must not be awarded unless the harm consists of a recognised psychiatric illness.

**Clause 11 – Extensions of liability under pt 3.2 in certain cases Section 31 (5)** - substitutes ‘Part 4.1 (Damages for personal injuries – exclusions and limitations) for ‘Part 4.1 (General exclusions and limitations about damages).

**Clause 12 – New chapter 3A** - inserts the new chapter 3A into the Act. Chapter 3A sets out general principles of negligence, including duty of care, causation, burden of proof and contributory negligence. These provisions are based on provisions in the NSW *Civil Liability Act 2002* and the SA Law Reform (Ipp Recommendations) Bill 2003.

New section 31D – Definitions for ch 3A – provides definitions for chapter 3A of the Bill. This section includes definitions of ‘accident’, ‘harm’, ‘negligence’ and ‘personal injury’.

New section 31DA – Application of ch 3A – provides that chapter 3A of the Act applies to all claims for damages for harm resulting from negligence. This includes claims under tort, contract, statute or otherwise. This chapter does not apply to workers compensation claims.

New section 31E – Standard of care – provides that, in determining whether a person was negligent, the standard of care required is that of a reasonable person in the defendant’s position, including having all of the information that the defendant had or ought to have had.



New section 31F – Precautions against risk – general principles – provides that a person is not negligent in failing to take precautions against a risk of harm unless:

- the risk was foreseeable; and
- the risk was not insignificant; and
- in the circumstances, a reasonable person in the person’s position would have taken those precautions.

New section 31G – Precautions against risk – other principles – provides three additional principles in regards to precautions against risk. The first principle is that the burden of taking precautions to avoid a risk of harm includes the burden of taking precautions to avoid similar risks. Secondly, the fact that the risk of harm could have been avoided by doing something in a different way does not, of itself, give rise to, or affect liability for the way in which it was done. Thirdly, the subsequent taking of action that would have avoided the risk of harm does not, of itself, give rise to or affect liability in relation to the risk and is not of itself an admission of liability in relation to the risk.

Part 3A.3 - New section 31H – General principles – provides that a determination that negligence caused particular harm comprises the following elements:

- that the negligence was a necessary condition of the happening of the harm (factual causation) and
- that it is appropriate for the scope of the negligent person’s liability to extend to the harm so caused (scope of liability).

This section also provides that if the plaintiff has been negligently exposed to a similar risk of harm by a number of different defendants and it is not possible to assign responsibility for causing the harm to any one or more of them, then:

- the court may continue to apply the established common law principle under which responsibility may be assigned to defendants for causing the harm, but
- the court must consider the position of each defendant individually and state the reasons for bringing the defendant within the scope of the liability.

New section 31I – Burden of Proof – provides that, in determining liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation.

New section 31J – Contributory negligence can defeat claim – provides that a court may decide on a reduction in damages of 100% if the court considers it is just and equitable to do so, with a result being that the claim for damages is defeated.

New section 31K – Remedy available if claim is fraudulent – provides for a remedy in the event of a fraudulent claim.

**Clause 13 – New chapter 3B** - inserts new chapter 3B into the Act. Chapter 3B sets out pre-court procedures in relation to personal injury claims.

New section 31N – Definitions for ch 3B – provides definitions for chapter 3B of the Bill. This section includes definitions of ‘accident’, ‘claimant’, ‘contribution notice’ ‘respondent’, etc.

New section 31NA – Application of ch 3B – provides that chapter 3B of the Bill applies to all claims for damages for personal injury, including claims to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies. However, chapter 3B does not apply to a claim under the *Workers Compensation Act 1951* or a claim for which notice has been given by, or for, the claimant under the *Limitation Act 1985*, section 30A (2). Chapter 3B also does not apply if notice has been given by the respondent under section 30A (6) of the *Limitation Act 1985*.

Part 3B.2 Claims Procedures - New section 31O – Notice of claim – provides that a written notice of the claim is to be given to the person against whom the proceeding is proposed to be started (a proceeding must be brought before the end of the relevant limitation period under the *Limitation Act 1985*), and the timeframe for such notices. A reasonable excuse for the delay in giving notice must be given where the notice is not given within the prescribed times.

If the respondent knows of anyone else against whom a proceedings, based on the claim may be begun, the respondent must (within the specified timeframe) give a copy of the notice to each relevant person, tell the claimant in writing about each relevant person and give the claimant a short written statement explaining why they are relevant persons.

If the respondent is a child, the respondent’s parent or legal guardian may comply with subsection 6 for the respondent.

New section 31P – Preliminary response to the claimant – provides that the alleged respondent must, within one month of receiving the claim, inform the claimant whether they are the proper respondent to the claim, or inform the claimant of the further information needed to decide whether they are the proper respondent.

If the claimant disputes the alleged respondent’s advice that the alleged respondent is not a proper respondent to the claim, the claimant must give written notice to the alleged respondent that the claimant regards the alleged respondent as a proper respondent to the claim and requires the respondent to give notice under section 31R. The claimant must also tell the respondent in writing if the claimant accepts that the respondent is not properly a respondent to the claim.

New section 31Q – Acknowledgement that proper respondent not admission of liability – provides that an acknowledgement that a person is a proper respondent to a claim does not constitute an admission of liability for the claim.

New section 31R – Respondent’s response to notice of claim – prescribes the respondent’s obligations in responding to the notice of claim.

New section 31S – Claimant may add later respondents – provides that a claimant may add other respondents by giving them a notice of the claim and copies of other documents given to, or received from, any other respondent. If the time for adding further respondents has ended, further respondents can only be added with the agreement of the parties or with the court's leave.

New section 31T – Multiple respondents – provides the conditions under which one respondent may act for another respondent as claim manager where a claim involves two or more respondents. However, if the respondents' claim manager acts beyond the scope of their authority, the respondents' claim manager is liable to the other respondent or respondents for any loss suffered by other respondent or respondents.

New section 31U – Respondent may add someone else as contributor – sets out a procedure by which a respondent can add another party in order to have that party contribute towards the respondent's liability. If the time for a respondent to add further contributions has ended, further contributions can only be added with the agreement of the parties or with the court's leave. If the respondent adds someone as a contributor under this section, the respondent must give a copy of the contribution notice to each other party within the time prescribed under the regulations.

New section 31V – Contributor's response – provides that a person served with a contribution notice must respond to the notice within the prescribed period by admitting, denying or partially denying or admitting the contribution or indemnity. An admission of liability in the contributor's response is not binding in relation to any other claim, or if induced by fraud. The section also provides that if the respondent requires information provided by the contributor to be verified by statutory declaration, the contributor must verify that information by statutory declaration.

New section 31W – Claimant's failure to give complying notice of claim – provides that a claimant who fails to give notice of a claim as required by this division is not able to proceed further with the claim unless the respondent is satisfied that the relevant material has been provided or the claimant's non-compliance has been remedied or the respondent waives compliance. The court can also give authority to proceed or declare that the claimant has remedied the non-compliance or impose any conditions it considers necessary or appropriate to minimise prejudice to a respondent from the claimant's failure.

New section 31X – Legal Disabilities – protects the position of the claimant during a period of legal disability. However, this section does not prevent someone from acting for a person under a legal disability.

New section 31Y – Respondent must attempt to resolve claim – sets out the requirements of a respondent to attempt to resolve a claim. Steps the respondent must take include: the taking of reasonable steps for informing themselves about the incident, advising the claimant whether liability is admitted or denied, if contributory negligence is claimed and the making of offers of settlement. Offers and counteroffers must be accompanied by

relevant material to enable a proper assessment of the offer and counteroffer. Admissions of liability by a respondent under this section are not binding in relation to any other claim, or if induced by fraud.

New section 31Z – Consequences of non-compliance with pt 3B.2 – provides that if a claimant does not comply with the requirements of part 3B.2 a court in which the claimant has brought proceedings may, on a respondent’s application, award costs in the respondent’s favour. The court may only award interest in the claimant’s favour for the period for which the claimant was in non-compliance if the court is satisfied that there is a reasonable excuse for the non-compliance.

The section also provides that if a respondent does not comply with the requirements of part 3B.2 a court in which the respondent defends a proceedings may, on a claimant’s application, award costs in the claimant’s favour reasonably incurred by the claimant because of the respondent’s non-compliance.

Part 3B.3 Obligations of parties to give documents and information – New section 31ZA – Purpose of pt 3B.3 - establishes the purpose of part 3B.3 which is to put the parties in a position where they have enough information to assess liability and quantum in relation to a claim.

New section 31ZB – Claimant to give documents etc to respondent – establishes the duty of a claimant to provide documents that are in the claimant’s possession to the respondent and information reasonably requested by the respondent about any of the matters listed in section 31ZB (1) (b). If the claimant fails, without proper reason, to comply fully with this section, the claimant is liable for costs to the respondent resulting from that failure.

New section 31ZC – Respondent and claimant may jointly arrange for expert report – provides for the claimant and the respondent to jointly arrange for an expert report.

New section 31ZD – Cost of expert report obtained by agreement – provides that where a claimant is liable for the costs of an expert report obtained by agreement, the respondent must reimburse the claimant for any reasonable cost of obtaining the report, subject to any agreement between the claimant and the respondent.

New section 31ZE– Examination by expert if no agreement – enables the respondent, where the respondent fails to obtain the claimants agreement, to require a claimant to undergo a medical examination at the respondent’s expense. However, a claimant is not obliged to undergo an examination or assessment if it is unreasonable or unnecessarily repetitious.

New section 31ZF – Respondent to give documents etc to claimant – requires the respondent to cooperate with a claimant by providing information relating to the claim.

New section 31ZG – Respondent to give document etc to contributor – imposes an obligation on a respondent who is seeking contribution from another person to cooperate with a contributor.

New section 31ZH – Contributor to give documents to respondent – imposes an obligation on a contributor to cooperate with the respondent.

New section 31ZI – Alternate provision if more than 200 pages – provides that for the purposes of section 31ZF, 31ZG and 31ZH that if a person is required to give copies of reports or other documents or information and the total number of pages of the copies exceeds 200 pages that the person need only offer a reasonable opportunity to inspect the material. If the other person still requires copies then they must be provided one month after the day the other person pays 50 cents for each page by which the total number of pages exceeds 200 pages.

Part 3B.4 Other provisions – pre-court procedures – New section 31ZJ – Nondisclosure of documents etc – client legal privilege – relates to the rights of nondisclosure of information or documentary material protected by legal professional privilege. However, investigative reports and other reports connected with rehabilitation, though they would otherwise be protected by legal professional privilege, must be disclosed (the regulations may prescribe exceptions). Investigative reports do not have to be disclosed where they include any document prepared in relation to an application for, or an opinion on, or a decision about, indemnity from the State.

New section 31ZK – Nondisclosure of documents etc – suspected fraud – provides that if a respondent has reasonable grounds to suspect a claimant of fraud, the respondent may, without notice to the claimant, apply to the court for approval to withhold documents which would alert the claimant to the suspicion, or that could help further the fraud. If the court gives approval the respondent may withhold the relevant documents.

New section 31ZL – Offence not to disclose particular material – provides that it is an offence not to disclose material required by chapter 3B. The maximum penalty for the offence is 100 penalty units. It is not an offence to withhold documents if permitted to withhold the documents under the chapter or if approved by the court.

New section 31ZM – Consequences of failure to give document – sets out the consequences of a party's failure to comply with provisions requiring the giving of information. A document that should have been disclosed cannot be used by a party in a subsequent court proceeding based on the claim unless the court otherwise orders. If the document comes to the other party's knowledge, the other party may use the document.

New section 31ZN – Privilege generally for documents etc – provides for information disclosed under this division to have the same privileges as if it had been disclosed in the course of proceedings before the Supreme Court.

New section 31ZO – No requirement to give documents etc if already in other party's possession – clarifies that a party is not obliged to provide the same document on more than one occasion or if the documents are already in the possession of the other party.

New section 31ZP – Court’s power to enforce compliance with pt 3B.2 and pt 3B.3 – authorises the court to order any party to comply with the duties imposed by part 3B.2 and part 3B.3.

New section 31ZQ – Need for urgent proceedings – the court may give leave for a claimant to begin proceedings despite non-compliance with chapter 3B if the court is satisfied there is an urgent need to begin the proceedings. If leave is given the proceedings begun by leave are stayed until the claimant complies with chapter 3B. However, the proceedings are not stayed if the court is satisfied that the claimant is suffering from a terminal medical condition and the trial of the proceedings should be expedited, or, the court orders the proceeding be given priority in the allocation of a new trial date.

New section 31ZR – False or misleading statements – provides that a person commits an offence if they make a statement or omit anything in a notice, response or other document under chapter 3B that is false or misleading or that is made recklessly as to the consequence of whether the statement is false or misleading. This section does not apply if the statement or omission is not false or misleading in a material particular.

The maximum penalty for this offence is 100 penalty units and/or imprisonment for a year if the offence is committed knowingly and 50 penalty units and/or imprisonment for six months if the offence is committed recklessly.

**Clause 14 – New chapter 3C** - inserts new chapter 3C into the Act. Chapter 3C sets out the role, and limits the number, of witnesses who may give medical evidence in a proceedings based on a claim.

Chapter 3C Expert medical evidence – New section 31ZT – Purpose of ch 3C – provides that the purpose of the chapter is to define the role, and to limit the number, of witnesses who may give expert medical evidence in a proceeding based on a claim.

New section 31ZU – Definitions for ch 3C – provides definitions for chapter 3C of the Bill. This section includes definitions of ‘agreed expert’, ‘claim’, ‘expert’ ‘medical issue’, etc.

New section 31ZV – Application of ch 3C – provides that chapter 3C applies to all claims for damages for personal injury, including claims to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies. However, chapter 3C does not apply to a claim under the *Workers Compensation Act 1951*.

New section 31ZW – Limitation on expert medical evidence - provides that expert medical evidence may only be given in a proceeding in a court based on a claim by an expert appointed by the parties under section 31ZX (an ‘agreed expert’) or an expert appointed by the court under section 31ZY (an ‘appointed expert’).

New section 31ZX – Agreed expert – provides that the parties may agree, in writing, to appoint one stated person to give medical evidence in the proceedings. The agreed expert

may (but need not) be a person who prepared an expert report as per section 31ZC or a person on a panel mentioned in section 31ZE. The agreed expert may give evidence in the proceedings on any issue on which the expert is qualified to give evidence based on the expert's specialised knowledge.

New section 31ZY – Appointed expert – provides that if the parties do not appoint an agreed expert, that the court may, on application by one or more of the parties or on its own initiative, appoint a stated person to give medical evidence in the proceeding (the court must be satisfied that person is an expert in relation to the issue).

The court may appoint an additional expert, or additional experts, if expert evidence is required on two or more matters and the agreed or appointed expert is not qualified to give medical evidence (based on the expert's specialised knowledge) on a particular issue or issues. However the court must not appoint more than one expert to give medical evidence on any one particular issue. The court may also appoint additional experts if it considers that the interests of justice otherwise require it.

The appointed expert may (but need not) be a person who prepared an expert report as per section 31ZC or a person on a panel mentioned in section 31ZE. The appointed expert may give evidence in the proceedings on any issue on which the expert is qualified to give evidence based on the expert's specialised knowledge.

New section 31ZYA – Role of expert – provides that the role of an agreed expert is to assist the court impartially and that the expert is not an advocate for any party to the proceedings, but instead owes their primary duty to the court.

New section 31ZZ – Documents etc to be given to expert – provides that all parties to a proceeding must ensure that all reports and other documents or information relevant to the issue on which the agreed or appointed expert is to give evidence are available to the expert. The section also provides that the expert must be jointly briefed by the parties or that the parties have equal opportunity to brief the expert.

New section 31ZZA – If agreed or appointed expert unavailable – provides that if an agreed or appointed expert is unavailable to give evidence when required the court may allow the parties to appoint another agreed expert to give evidence on the issue.

New section 31ZZB – Costs of experts – provides that the costs and expenses of an agreed or appointed expert must be paid by the parties in equal shares, or as otherwise agreed by them or ordered by the court.

New section 31ZZC – Rules etc to make further provision – provides that the Supreme Court Rules under the *Supreme Court Act 1933* may apply in relation to how the court chooses an expert and how that expert is questioned and gives evidence. The section also provides that the regulations may make provision as to how an expert is chosen and is questioned and gives evidence in the Magistrates Court.

**Clause 15 – Part 4.1 heading** – provides that the heading for Part 4.1 of the Act will be changed to ‘Part 4.1 Damages for personal injuries – exclusions and limitations’.

**Clause 16 – Definitions for pt 4.1 Section 32, definitions of *accident, motor accident, motor vehicle and personal injury*** – this provision omits the definitions of ‘accident’, ‘motor accident’, ‘motor vehicle’ and ‘personal injury’.

**Clause 17 – New section 38A – Tariffs for damages for non-economic loss** – defines ‘non-economic loss’ for the purposes of this section and provides that in deciding damages for non-economic loss a court may refer to earlier decisions of that or other courts for the purpose of establishing an appropriate award in the proceedings.

In this section, non-economic loss is defined as including: pain and suffering, loss of amenities of life, loss of expectation of life and disfigurement.

**Clause 18 – Apportionment of liability – contributory negligence Section 41 (5)** – substitutes ‘Part 4.1 (Damages for personal injuries – exclusions and limitations) for ‘Part 4.1 (General exclusions and limitations about damages)’.

**Clause 19 – New chapter 4A** – inserts new chapter 4A into the Act. This chapter clarifies the liability of public authorities. This chapter is based on the NSW *Civil Liability (Personal Responsibility) Act 2002*.

New section 46A – Application of ch 4A - provides that the chapter applies in relation to civil liability in tort and extends to any such liability even if the damages are sought in an action for breach of contract or any other action. However, chapter 4A does not apply claims to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies or to a claim under the *Workers Compensation Act 1951*.

New section 46B – Definitions for ch 4A - provides definitions for chapter 4A of the Bill. This section includes definitions of ‘duty of care’ and ‘public or other authority’.

New section 46C – Principles about resources, responsibilities etc of public or other authorities- provides the principles that apply in deciding whether a public or other authority has a duty of care or has breached a duty of care, which are:

- the functions required to be exercised by the authority are limited by the financial and other resources reasonably available for the exercising of those functions;
- the general allocation of the resources of the resources by the authority is not open to challenge;
- the functions required to be exercised by the authority are to be decided by reference to the broad range of its activities;
- the authority may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions.

New section 46D – Proceedings against public or other authorities based on breach of statutory duty - provides that an act or omission of the defendant authority is a breach of statutory duty only if the act or omission was so unreasonable that no authority having



the functions of the defendant authority could properly consider the act or omission to be a reasonable exercise of its functions. For a function of a public or other authority to prohibit or regulate an activity, this section applies in addition to section 46E.

New section 46E – When a public or other authority not liable for failure to exercise regulatory functions – provides that a public or other authority is not liable in a proceedings so far as the claim is based on the failure of the authority to exercise, or to continue exercising, a function of the authority to prohibit or regulate an activity if the authority could not have been required to exercise the function in a proceeding begun by the claimant.

The section also clarifies that, without limiting what is a function to regulate an activity for this section, a function to issue a licence, permit or other authority in relation to an activity, or to register or otherwise authorise a person in relation to an activity is a function to regulate the activity.

New section 46F – Special nonfeasance protection in relation to roads etc - provides that a public or other authority is not liable for harm arising from a failure of the authority to maintain, repair or renew a road, or to consider maintaining, repairing or renewing a road, unless at the time of the claimed failure the authority knew, or ought reasonably to have known, of the particular risk. However the section does not operate to create a duty of care in relation to risk only because the authority had actual knowledge of the risk or to affect any standard of care that would otherwise apply in relation to a risk.

The section defines ‘road’ as including a street, road, lane, cyclepath, footpath or public paved area.

New section 46G – Exercise of function or decision to exercise does not create duty - provides that the fact that a public, or other, authority exercises, or decides, to exercise a function does not, of itself, indicate that the authority is under a duty to exercise the function, or that the function, should be exercised in particular circumstances or in a particular way.

**Clause 20 – Definitions for pt 7.1 Section 76, definition of *motor vehicle*** – this provision omits the definition of ‘motor vehicle’.

**Clause 21 – Liability of occupiers Section 101 (3)** – substitutes ‘Part 4.1 (Damages for personal injuries – exclusions and limitations) for ‘Part 4.1 (General exclusions and limitations about damages).

**Clause 22 – New part 10.1 heading** – inserts the heading ‘Part 10.1 Maximum costs for certain personal injury damages claims’ into the Act.

**Clause 23 – New part 10.2** – inserts new part 10.2 into the Act. This Part changes the responsibilities of lawyers in connection with all claims for damages (not just personal injury damages) where there are no reasonable grounds for believing a claim or defence has reasonable prospects of success. A court can relax the prohibition where the interests

of justice so dictate (eg, to allow the Court to consider a desirable advance within the common law).

New section 118A – Definitions for pt 10.2 – provides definitions of ‘court’, ‘provable’ and ‘reasonable prospects of success’ for the purposes of part 10.2.

New section 118B – Application of pt 10.2 – provides that part 10.2 dealing with reasonable prospects of success applies despite any obligation of a lawyer to act in accordance with their client’s instructions. In addition, this clause provides that this part does not apply to legal services for damages prior to certification under new section 118C, and does not apply where the court orders that the claim be continued in the interests of justice.

New section 118C – Certificate that claim or defence has reasonable prospects of success – provides that a lawyer must not prosecute a claim or defence of a claim (once a matter is to be set down for hearing) unless they reasonably believe that the claim or defence has reasonable prospects of success. Breaching this prohibition can result in action for professional misconduct or unsatisfactory professional conduct under the *Legal Practitioners Act 1970*.

New section 118D – Costs order against lawyer acting without reasonable prospects of success – provides that the court can order a lawyer to pay their client’s costs or provide an indemnity, if they proceed with a case where there are not reasonable prospects of success. The Supreme Court may also make any order it considers necessary for this section.

New section 118E – Onus on lawyer to show facts provided reasonable prospects of success – provides a rebuttable presumption that a case did not have reasonable prospects of success. The presumption applies where either the trial court or the Supreme Court finds that the facts established by the evidence do not form the basis for a reasonable belief as to the prospects of success. Lawyers can rebut this presumption by establishing that there were reasonable prospects of success at the time the legal services were provided.

For the purposes of rebutting the presumption this section permits a lawyer to disclose information, which is the subject of client professional privilege.

**Clause 24 – Part 11.1 heading** – provides that the heading for Part 11.1 of the Act will be changed to ‘Mediation and neutral evaluation.’

**Clause 25 – Section 119** – provides that the words ‘mediation or’ will be inserted into section 119 of the Act. This will allow courts to refer matters to mediation, as well as to neutral evaluation.

**Clause 26 – Section 120 heading** – provides that the heading for section 120 of the Act will be changed to ‘Meaning of *mediation, neutral evaluation* etc.’ This reflects the

inclusion by this Bill of the ability of a court or tribunal to refer matters to mediation, as well as to neutral evaluation.

**Clause 27 – New section 120 (1A) and (1B)** – inserts definitions for the terms ‘mediation’ and ‘mediation session’. ‘Mediation’ is defined to be a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute. ‘Mediation session’ is defined to be a meeting arranged for the mediation of a matter under part 11.1 of the Act.

**Clause 28 – Section 120** – this is a machinery provision providing that the subsections of section 150 of the Act will be renumbered when the Act is next republished under the *Legislation Act 2001*.

**Clause 29 – New section 120A** – inserts a new section 120A into the Act. The new section is facilitative provision, allowing persons to be mediators under this part if that person is a registered mediator under the *Mediation Act 1977* and is appointed by the court or tribunal as mediator.

**Clause 30 – Section 122 heading** – changes the heading of section 122 to ‘Referral by court or tribunal for mediation or neutral evaluation.’ This reflects the inclusion by this Bill of the ability of a court or tribunal to refer matters to mediation, as well as to neutral evaluation.

**Clause 31 – Section 122(1)** – provides that the words ‘mediation or’ will be inserted into section 122 (1) of the Act. This allows a court or tribunal refer matters to mediation, as well as to neutral evaluation.

**Clause 32 – Section 122 (2)** – substitutes the existing section 122 (2) with an alternate section 122 (2) and additional section 122 (3). This reflects the inclusion by this Bill of the ability of a court or tribunal to refer matters to mediation, as well as to neutral evaluation. The new section 122 (2) provides that the mediation or neutral evaluation is to be undertaken by a mediator or evaluator appointed by the court or tribunal. The new section 122 (3) provides that for a proceeding before the Supreme Court, an order or appointment made under section 122 (2) or (3) may be made by the master of the court, or if the rules provide, the registrar of the court.

**Clause 33 – Duty of parties to take part in neutral evaluations section 123** – provides that the words ‘mediation or’ will be inserted into section 123. This provides that the duty of parties to participate in mediation is the same for mediation as for neutral evaluation. Namely, a party must take part in mediation genuinely and sincerely.

**Clause 34 - Sections 124** – provides that the words ‘mediation or’ will be inserted into section 124. This provides that the sharing of costs for mediation is the same for mediation as for neutral evaluation. Namely, the costs of mediation are payable as agreed by the parties or as ordered by the court or tribunal.

**Clause 35 – New section 124A** – inserts a new section 124A into the Act. The new section 124A provides that a court or tribunal may make orders to give effect to an agreement or arrangement arising from a mediation session. The section does not affect the enforceability of other agreements or arrangements arising on relevant matters from a mediation session.

**Clause 36 – Section 150 (2)** - is a consequential amendment resulting from a changes in other parts of the Act. The amendment provides that part 4.1 of the Act dealing with exclusion and limitations on damages for personal injuries, other than section 38A (dealing with tariffs for damages for non-economic loss), does not apply to a claim arising out of an accident that happened before the commencement of that part.

**Clause 37 – Section 150 (3)** - is a consequential amendment resulting from a change to the structure of the Act. The amendment provides that part 10.1 of the Act dealing with maximum costs for certain personal injury damages claims, does not apply to a cause of action where there is costs agreement and that agreement was entered into before the commencement of the part.

**Clause 38 – Section 150 (3A)** – The amendment inserts a new section 150 (3A) into the Act that provides that part 10.1 of the Act, does not apply to a claim based on a cause of action that arose before the commencement of that part.

**Clause 39 – New section 150 A** – inserts a new section 150 A into the Act. The new section is a transitional provision. Subsection (1) provides that particular provisions of the Act do not apply to a claim based on a cause of action that arose before the commencement of the provision. The provisions are: part 2.2A dealing with apologies; section 30A dealing with duty of care in relation to mental harm; section 30B dealing with damages in relation to mental harm; chapter 3A dealing with negligence; chapter 3C dealing with expert medical evidence; section 38A dealing with tariffs for damages for non-economic loss; chapter 4A dealing with the liability of public and other authorities; part 10.2 dealing with costs in damages claims where there are no reasonable prospects of success; and schedule 3 dealing with equine activities. Chapter 3B of the Act dealing with pre-court procedures for personal injuries claims does not apply to a claim, if before the commencement of the chapter, the claimant had consulted a lawyer about the possibility of seeking damages for the personal injury. Subsection (3) of the new section 150 A provides that the new section will expire three years after the day it commences. Subsection (4) provides that expiration of the section in accordance with subsection (3) does not affect the declarations made in subsections (1) and (2): *Legislation Act 2001* section 88.

**Clause 40 – Transitional regulations –section 155 (4)** – provides that section 155 of the Act will expire two years after it commences, rather than one year after it commences. Transitional regulations made under section 155 of the Act will expire with the section.

**Clause 41 – Modification of ch 12's operation – Section 156 (2)** – provides that section 156 of the Act will expire two years after it commences, rather than one year after it commences. Regulations made under section 155 modifying chapter 12 of the Act to

make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in the chapter of the Act that will expire with the section.

**Clause 42 – New Schedule 3** – inserts Schedule 3 into the Act. Schedule 3 sets out definitions and general principles relating to equine activities. These provisions are based on legislation currently in force in the state of Tennessee in the United States of America.

New Schedule 3 clause 1 – Definitions for sch 3 – provides definitions for schedule 3 of the Bill. This section includes definitions of 'equine', 'equine activity', 'participant', etc.

New Schedule 3 clause 2 - Application of sch 3 – provides that Schedule 3 of the Bill does not prevent or limit liability in relation to:

- activities engaged in as part of the horse racing industry
- any action for breach of the *Trade Practices Act 1974* (Cwth) or the *Fair Trading Act 1992*, or
- a claim under the *Workers Compensation Act 1951*.

New Schedule 3 clause 3 – Limitations on liability for injury or death of a participant - provides an equine activity sponsor, an equine professional or anyone else is not liable for personal injury to a participant resulting from the inherent risks of equine activities. However, the section does not prevent or limit the liability if:

- the injury was caused by faulty equipment or tack and the defendant provided the equipment or tack and knew or ought reasonably to have known that it was faulty.
- the defendant provided the equine and failed to make reasonable and prudent efforts to assess, based on the participants representations, the participants ability to engage safely in the equine activity and safely manage the particular equine, or
- the injury was caused by a dangerous latent condition of the land or facility used for the equine activity and the defendant was in lawful possession of the land or facility and the defendant knew of the dangerous latent condition and a warning sign had not been conspicuously displayed on the land or at the facility, or
- the defendant acted, or omitted to act, with intentional or reckless disregard for the safety or the participant and the act or omission caused the injury, or
- the defendant intentionally injured the participant.

Also the section does not prevent or limit the defendant's liability to the participant before the injury happened, if the defendant had not complied with clause 4 in relation to the activity.

New Schedule 3 clause 4 – Warning notice – provides that an equine professional must display the warning notice on or near the facility that they own, manage or control so that it can be clearly seen by participants before participating in an equine activity at the facility. The clause also prescribes the contents, size, etc of the warning notice.

**Clause 43 – Dictionary, definition of *accident*** – changes the meaning of 'accident' to means 'an incident out of which personal injury arises, and includes a motor accident.'

**Clause 44 – Dictionary, new definitions** – inserts the terms ‘agreed expert,’ ‘apology,’ and ‘appointed expert’ into the dictionary of the Act. These terms are defined elsewhere in the Act and are included in the dictionary as signposts.

**Clause 45 – Dictionary, definition of *claim*** – changes the meaning of ‘claim’ in the dictionary of the Act. The term is defined for different parts of the Act by a number of sections. Those sections are included in the dictionary as signposts.

**Clause 46 – Dictionary, new definitions** – inserts the terms ‘claimant,’ ‘complying notice of claim,’ ‘consequential mental harm,’ ‘contribution notice’ and ‘contributor’ into the dictionary of the Act. These terms are defined elsewhere in the Act and are included in the dictionary as signposts.

**Clause 47 – Dictionary, definition of *court*** – changes the meaning of ‘court’ in the dictionary of the Act. The term is defined for different parts of the Act by a number of sections. Those sections are included in the dictionary as signposts.

**Clause 48 – Dictionary, new definitions** – inserts the terms ‘duty of care,’ equine,’ ‘equine activity,’ ‘equine activity sponsor,’ ‘equine facility,’ ‘equine professional,’ ‘evidence,’ ‘expert,’ ‘expert medical evidence,’ ‘harm’ and ‘inherent risks of equine activities’ into the dictionary of the Act. These terms are defined elsewhere in the Act and are included in the dictionary as signposts.

**Clause 49 – Dictionary, definition of *insurer*** – changes the meaning of ‘insurer’ in the dictionary of the Act. The term is defined for different parts of the Act by two sections. Those sections are included in the dictionary as signposts.

**Clause 50 – Dictionary, new definitions** – inserts the terms ‘mediation,’ ‘mediation session,’ ‘medical issue’ and ‘mental harm’ into the dictionary of the Act. These terms are defined elsewhere in the Act and are included in the dictionary as signposts.

**Clause 51 – Dictionary, definition of *motor accident* and *motor vehicle*** – changes the meaning of ‘motor accident’ to mean ‘an accident caused by, or arising out of the use of, a motor vehicle’. This clause changes the meaning of the term ‘motor vehicle’ in the dictionary of the Act. The term means a motor vehicle under the *Road transport (General) Act 1999* or a vehicle operated on a railway or other fixed track. For part 7.1 of the Act, dealing with traveller accommodation providers liability, ‘motor vehicle’ includes a boar caravan and trailer attached to a motor vehicle.

**Clause 52 – Dictionary, new definitions** – inserts the terms ‘negligence,’ participant,’ ‘participate’ and ‘party’ into the dictionary of the Act. These terms are defined elsewhere in the Act and are included in the dictionary as signposts.

**Clause 53 – Dictionary, definition of *personal injury*** – changes the meaning of ‘personal injury’ in the dictionary of the Act. The term means bodily injury and includes mental or nervous shock and death.

**Clause 52 – Dictionary, new definitions** – inserts the terms ‘provable’, ‘public or other authority’, ‘pure mental harm’, ‘reasonable prospects of success’ and ‘respondent’ into the dictionary of the Act. These terms are defined elsewhere in the Act and are included in the dictionary as signposts.

**Clause 55 – Act amended – renumbering** – this is a machinery provision providing that the provisions of the Act will be renumbered when the Act is next republished under the Legislation Act 2001.

**Clause 56–Regulations Repealed** – repeals the *Civil Law (Wrongs) Regulations 2002*. The Regulations modify the section 150 of the Act by providing that chapter 10 does not apply to a claim based on a cause of action that arose before the commencement of that chapter. Previous amendments in this Bill make the regulations unnecessary.

**Clause 57 – Act amended – pt 3** – provides that this part amends the *Limitation Act 1985*.

**Clause 58 – Limitation Act 1985, new section 16B** – inserts a new section 16B into the *Limitation Act 1985*. The new section applies to a cause of action for personal injury other than a cause of action to which section 16 dealing with compensation to relatives, or 16A of the Act apply. The new section provides a three-year limitation period for the bringing of a cause of action for personal injury. To be maintained, an action must be brought within three years of the day the injury happened; or if the injury is, or includes a disease or disorder, an action must be brought within three years of the person knowing: that they have suffered an injury; and that the injury was related to someone else’s act or omission.

Subsection (3) of the new section provides that if the cause of action arose before 1 July 2003, then the cause of action is not maintainable if brought three years after 1 July 2003 or after the limitation period applying to the cause of action before the day the section commences has expired, which ever is the sooner. Subsection (4) provides that subsections (3) to (5) of the new section expire three years after the day the new section commences. Subsection (5) of the new section provides that the expiration of the new section in accordance with subsection (4) does not affect the declaration made in subsection (3): *Legislation Act 2001* section 88.

**Clause 59 – New section 30A** – inserts a new section 30A into the *Limitation Act 1985*, dealing with injuries to children. Where: a child suffers personal injury and a notice of claim has not been given under the *Civil Law (Wrongs) Act 2003*, chapter 3B or a proceeding has not been begun in court; and the limitation period applying to the claim under the Act does end within the relevant period, the child or child’s guardian must, within the relevant period give notice of an intended claim to any person claimed to be liable for damages in relation to the claim.

Where the injury is or includes a disease or disorder, the relevant period is defined to be six years after the day the child or the child’s guardian first knows that the child suffered an injury and that the injury was related to someone else’s act or omission. In all other

cases the relevant period is six years after the day the accident giving rise to injury happened.

Where the injury arose from a motor accident, the notice must be given to the third-party insurer. The notice required to be given under the section must contain the information prescribed under the regulations.

Where a person claimed to be liable makes a reasonable request, the child or guardian of the child must provide relevant copies of medical and other reports and undergo examination by a medical expert for the purpose of determining the nature and extent of the child's injury and any consequent disability. A person claimed to be liable may require that the child or child's guardian bring a proceeding in a court so that claim may be decided by the court within six months.

Where a child or child's guardian does not comply with this section they may still bring proceedings for damages, however, unless a satisfactory reason for non compliance can be established, damages will not be awarded for medical, legal or gratuitous services provided to the plaintiff before the commencement of the proceeding.

The regulations may deal with how this section applies to injuries that happened before 1 July 2003.

**Clause 60 – Personal injuries – section 36 (5)** – substitutes subsection 36 (5), providing that section 36 of the *Limitation Act 1985*, dealing with an extension of the period when an action for personal injury may be brought, does not apply to an action to which the new section 16B of the *Limitation Act 1985*, dealing with personal injuries other than those for common law compensation for workers compensation, applies or part 3.1 of the *Civil Law (Wrongs) Act 2002*, dealing with a wrongful act or omission causing death, applies.

**Clause 61 – New division 4.5** – inserts a new division 4.5 into the Act entitled 'Other provisions' and new sections 58 and 59.

**Section 58 – Approved forms** – provides that the Minister, in writing, approve forms for the Act. Where the Minister approves such a form, then the form must be used for the purpose for which it was designed. Forms made under this section are notifiable instruments.

**Section 59 – Regulation-making power** – provides that the Executive may make regulations for the administration of the Act.