



Australian Capital Territory

# **Civil Law (Wrongs) Regulation 2003**

**SL2003-20**

made under the

**Civil Law (Wrongs) Act 2002**

**Republication No 5**

**Effective: 1 October 2005 – 22 February 2006**

Republication date: 1 October 2005

Last amendment made by A2005-43

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Civil Law (Wrongs) Regulation 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 1 October 2005. It also includes any amendment, repeal or expiry affecting the republished law to 1 October 2005.

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](http://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 does not include 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.



Australian Capital Territory

# Civil Law (Wrongs) Regulation 2003

made under the

**Civil Law (Wrongs) Act 2002**

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R5  
01/10/05

Civil Law (Wrongs) Regulation 2003  
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Australian Capital Territory

# Civil Law (Wrongs) Regulation 2003

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made under the

**Civil Law (Wrongs) Act 2002**

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## Part 1 Preliminary

### 1 Name of regulation

This regulation is the *Civil Law (Wrongs) Regulation 2003*.

### **U** 2 Dictionary

The dictionary at the end of this regulation is part of this regulation.

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*health service*—see the *Community and Health Services Complaints Act 1993*, section 4 (1).’ means that the term ‘health service’ is defined in that section and the definition applies to this regulation.

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

### 3 Notes

A note included in this regulation is explanatory and is not part of this regulation.

*Note* See the 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 subsections (2) to (8) or information that substantially complies with those subsections.
- (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 subsection (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.

**6A Reasonable excuse for delay in giving notice—Act, s 51 (6)**

- (1) If a claimant does not give notice under the Act, section 51 within the period required under the Act, section 51 (3) because the claim is being conciliated under the *Human Rights Commission Act 2005*, part 4 the claimant has a reasonable excuse for the delay.
- (2) The reference in subsection (1) to the *Human Rights Commission Act 2005*, part 4 includes a reference to the *Community and Health Services Complaints Act 1993*, part 4.
- (3) Subsection (2) and this subsection expire on the day the *Human Rights Commission Act 2005* commences.

**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

**Part 3**            Other matters

Section 12

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- 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.

## **U** Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this regulation.

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

- doctor
- lawyer
- writing.

*Note 3* Terms used in this regulation have the same meaning that they have in the *Civil Law (Wrongs) Act 2002* (see Legislation Act, s 148.) For example, the following terms are defined in the *Civil Law (Wrongs) Act 2002*, dict:

- accident
- personal injury.

**APRA** means the Australian Prudential Section 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

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## 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
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
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

This regulation was originally the *Civil Law (Wrongs) Regulations 2003*. It was renamed under the *Legislation Act 2001*.

#### **Civil Law (Wrongs) Regulation 2003 SL2003-20**

notified LR 30 June 2003  
s 1, s 2 commenced 30 June 2003 (LA s 75 (1))  
remainder commenced 1 July 2003 (s 2)

as amended by

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

notified LR 2 March 2004  
s 1, s 2 commenced 2 March 2004 (LA s 75 (1))  
remainder commenced 3 March 2004 (s 2)

#### **Justice and Community Safety Legislation Amendment Act 2004 (No 2) A2004-32 pt 6**

notified LR 29 June 2004  
s 1, s 2 commenced 29 June 2004 (LA s 75 (1))  
pt 6 commenced 13 July 2004 (s 2 (3))

#### **Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.1**

notified LR 1 September 2005  
s 1, s 2 commenced 1 September 2005 (LA s 75 (1))  
sch 1 pt 1.1 commences on the day the Human Rights Commission Act 2005 A2005-40 commences (s 2 (2))

*Note* default commencement of Human Rights Commission Act 2005 under LA s 79: 1 March 2006

#### **Justice and Community Safety Legislation Amendment Act 2005 (No 3) A2005-43 sch 1 pt 1.3**

notified LR 30 August 2005  
s 1, s 2 commenced 30 August 2005 (LA s 75 (1))  
sch 1 pt 1.3 commenced 1 October 2005 (s 2 (3) and CN2005-18)

### 4 Amendment history

#### **Preliminary**

pt 1 hdg ins SL2004-8 s 4

## Endnotes

### 4 Amendment history

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#### **Name of regulation**

s 1 am R4 LA

#### **Dictionary**

s 2 orig s 2 om LA s 89 (4)  
(prev s 3) renum R2 LA (see SL2004-8 s 10)  
am A2005-41 amdt 1.1

#### **Notes**

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

#### **Personal injuries claims—pre-court procedures**

pt 2 hdg ins SL2004-8 s 5

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

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

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

s 4A renum as s 4

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

s 4B renum as s 5

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

s 4C renum as s 6

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

s 4D renum as s 7

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

s 4E renum as s 8

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

s 4F renum as s 9

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

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

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

s 5A renum as s 11

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

s 6 orig s 6 renum as s 12  
(prev s 4C) ins SL2004-8 s 5

renum R2 LA (see SL2004-8 s 10)

**Reasonable excuse for delay in giving notice—Act, s 51 (6)**

s 6A ins A2005-43 amdt 1.10  
(2), (3) exp on the day the Human Rights Commission Act 2005 commences (s 6A (3))

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

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

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

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

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

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

**Other matters**

pt 3 hdg ins SL2004-8 s 6

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

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

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

s 11 (prev s 5A) ins SL2004-8 s 7  
 renum R2 LA (see SL2004-8 s 10)

**Insurers reporting requirements—Act, s 203**

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

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

s 13 (prev s 7) ins SL2004-8 s 8  
 renum R2 LA (see SL2004-8 s 10)  
 om A2004-32 s 68

**Dictionary**

dict def **health service** ins SL2004-8 s 9  
sub A2005-41 amdt 1.2  
 def **provider** ins SL2004-8 s 9  
sub A2005-41 amdt 1.2

## Endnotes

5 Earlier republications

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### 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. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 1 July 2003	1 July 2003– 2 Mar 2004	not amended	new regulation
R2 3 Mar 2004	3 Mar 2004– 12 July 2004	SL2004-8	amendments by SL2004-8 and general renumbering
R3 13 July 2004	13 July 2004– 2 Nov 2004	A2004-32	amendments by A2004-32
R4 3 Nov 2004	3 Nov 2004– 30 Sept 2005	A2004-32	includes editorial amendments under Legislation Act

## 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

## Endnotes

7 Uncommenced amendments

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### 7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

<p><b>Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.1</b></p>
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## Part 1.1 Civil Law (Wrongs) Regulation 2003

### [1.1] Section 2, note 1

*substitute*

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*health service*—see the *Human Rights Commission Act 2005*, section 7 (1) and (3) (a).’ means that the term ‘health service’ is defined in that section and the definition applies to this regulation.

### [1.2] Dictionary, definitions of *health service* and *provider*

*substitute*

*health service*—see the *Human Rights Commission Act 2005*, section 7 (1) and (3) (a).

*provider*—see the *Human Rights Commission Act 2005*, section 10.

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