

CIVIL LIABILITY BILL 2003

AMENDMENTS AGREED TO IN COMMITTEE

1 Clause 2—

At page 8, line 11—

omit, insert—

- chapter 3, parts 2 and 4
- sections 54, 55 and 57 to 61’.

2 Clause 4—

At page 9, after line 4—

insert—

‘(2) The following provisions apply only in relation to a breach of duty happening on or after 2 December 2002—

- chapter 2, part 1, divisions 1 to 6
- chapter 2, part 3, division 1
- section 56.

‘(3) The following provisions apply in relation to a breach of duty happening on or after the day this Act receives assent—

- chapter 2, part 4
- sections 53, 55, 57, 58, 59, 60, 61, 73

‘(4) Sections 65, 66, 67, 68 and 74 apply in relation to personal injuries damages regardless of when the injury happened.’.

3 After clause 8—

At page 11, lines 1 to 3—

omit, insert—

‘CHAPTER 2—CIVIL LIABILITY FOR HARM’.**4 Clause 10—**

At page 11, line 22, after ‘duty’—

insert—

‘happening on or after 2 December 2002’.

5 Clause 15—

At page 14, after line 25—

insert—

‘(4) In this section—

“a professional” has the same meaning as it has in division 5.’.

6 Clause 21—

At page 16, lines 18 and 19—

omit.

7 Clause 21—

At page 16, line 21, ‘asking for or giving’—

omit, insert—

‘giving or being given’.

8 Clause 22—

At page 17, line 11, ‘information’—

omit, insert—

‘information,’.

9 Clause 22—

At page 17, line 12, ‘person’—

omit, insert—

‘person, that is’.

10 Clause 26—

At page 18, line 11, ‘Liability at law’—

omit, insert—

‘Civil liability’.

11 Clause 26—

At page 18, line 12, ‘on or after 18 June 2002’—

omit.

12 Clause 27—

At page 18, line 26, ‘Liability at law’—

omit, insert—

‘Civil liability’.

13 Clause 31—

At page 20, lines 34 and 35, from ‘misrepresentation’ to ‘loss.’—

omit, insert—

‘misrepresentation and confirmed the income of the business as claimed by R. P, relying on D’s professional advice, purchased the business and suffered loss.’.

14 Clause 37—

At page 23, lines 22 to 26 and line 32—

omit.

15 Clause 38—

At page 24, lines 4 and 5—

omit, insert—

‘**“community organisation”** means any of the following that organises the doing of community work by volunteers—

- (a) a corporation;
- (b) a trustee acting in the capacity of trustee;
- (c) a church or other religious group;
- (d) a registered political party as defined under the *Electoral Act 1992* or the *Commonwealth Electoral Act 1918* (Cwlth);
- (e) a public or other authority as defined under section 34.’.

16 Clause 38—

At page 24, line 7, after ‘sporting,’—

insert—

‘recreational, political.’.

17 Clause 46—

At page 27, lines 12 and 13—

omit.

18 Clause 52—

At page 30, lines 15 to 26 and page 31, lines 1 to 8—

omit.

19 Clause 54—

At page 32, line 10, after ‘section’—

insert—

‘or a written notice given under the *Personal Injuries Proceedings Act 2002*, section 26’.

20 Clause 54—

At page 32, after line 19—

insert—

‘(4A) Subsection (4) does not apply in assessing damages for personal injury if leave to start the proceeding was given under the *Personal Injuries Proceedings Act 2002*, section 43(1) and was not stayed under section 43(3) of that Act because section 43(4) of that Act applied.’.

21 Clause 60—

At page 34, lines 10 to 31 and page 35, lines 1 and 2—

omit, insert—

‘60 Damages for gratuitous services

‘(1) Damages for gratuitous services are not to be awarded unless—

- (a) the services are necessary; and
- (b) the need for the services arises solely out of the injury in relation to which damages are awarded; and
- (c) the services are provided, or are to be provided—
 - (i) for at least 6 hours per week; and
 - (ii) for at least 6 months.

‘(2) Damages are not to be awarded for gratuitous services if gratuitous services of the same kind were being provided for the injured person before the breach of duty happened.

‘(3) Damages are not to be awarded for gratuitous services replacing services provided by an injured person, or that would have been provided by the injured person if the injury had not been suffered, for others outside the injured person’s household.

‘(4) In assessing damages for gratuitous services, a court must take into account—

- (a) any offsetting benefit the service provider obtains through providing the services; and
- (b) periods for which the injured person has not required or is not likely to require the services because the injured person has been or is likely to be cared for in a hospital or other institution.’.

22 Clause 62—

At page 35, line 27, after ‘a court’—

insert—

‘in relation to an injury arising after 1 December 2002’.

23 Clause 62—

At page 36, line 3, ‘deciding’—

omit, insert—

‘assessing’.

24 Clause 62—

At page 36, after line 7—

insert—

‘(2) If a court assesses an injury scale value for a particular injury to be more or less than any injury scale value prescribed for or attributed to similar particular injuries under subsection (1)(c), the court must state the factors on which the assessment is based that justify the assessed injury scale value.’.

25 Clause 64—

At page 38, line 5, after ‘award of’—

insert—

‘personal injury’.

26 Clause 65—

At page 38, lines 13 and 14—

omit.

27 Clause 73—

At page 40, line 8, ‘on or after 18 June 2002’—

omit.

28 Clause 81—

At page 42, lines 20 to 22 and page 43, line 1—

omit, insert—

‘(b) injury as defined under the *WorkCover Queensland Act 1996*, but only to the extent that an entitlement to seek damages, as defined under that Act, for the injury is regulated by chapter 5 of that Act.

Example for paragraph (b)—

W, a worker, sustains an injury in the course of employment. The injury is caused by a design fault in a machine. As a result of sustaining the injury, W seeks damages against both E, W’s employer, and X Company, the designer of the machine.

Before starting a proceeding in a court for damages against E, W must comply with the pre-court procedures under the *WorkCover Queensland Act 1996*. Similarly, before starting a proceeding in a court for damages against X Company, W must comply with the pre-court procedures under this Act.’

29 Clause 82—

At page 43, after line 14—

insert—

‘(2) Section 7—

insert—

‘(2) Despite subsection (1), notice of a claim is to be given in the form approved for a notice of a claim when the notice is given.

‘(3) Also, subsection (2) has effect for notice of a claim given before the commencement of this subsection.’.

30 Clause 83—

At page 44, line 14, after ‘(3)’—

insert—

‘or section 9A(9)(b)’.

31 Clause 83—

At page 44, after line 20—

insert—

‘(6A) Section 9(6), after ‘subsection (3)’—

insert—

‘or section 9A(9)(b)’.’.

32 Clause 83—

At page 45, line 5, after ‘first person’—

insert—

‘in writing’.

33 Clause 83—

At page 45, after line 21—

insert—

‘(13) Section 9—

insert—

‘(9A) For subsection (3)(b), consultation by a claimant with a community legal service as defined under section 67A(2), whether before or after the commencement of this subsection, is to be disregarded.

‘(9B) This section is subject to section 9A.’.’.

34 After clause 83—

At page 45, after line 21—

insert—

‘83A Insertion of new s 9A

‘After section 9—

insert—

‘9A Particular provision for notice of a claim procedure for medical negligence cases

‘(1) This section applies to a claim based on a medical incident happening on or after the commencement of this section that is alleged to have given rise to personal injury.

‘(2) Before giving part 1 of a notice of a claim under section 9, the claimant must give written notice (“**initial notice**”) of the claim to the person against whom a proceeding based on the claim is proposed to be started.

‘(3) The initial notice must state it is given under this section and contain the following information—

- (a) the claimant’s full name and address;
- (b) any other name by which the claimant is known or has been known;
- (c) if the initial notice is given by the claimant’s parent or legal guardian, the parent’s or guardian’s name;
- (d) the claimant’s date of birth;
- (e) a description of the medical services alleged to have given rise to the personal injury;
- (f) if known, the name of the doctor who provided the medical services;
- (g) the date or dates when the medical services were provided;
- (h) the place or places at which the medical services were provided; and
- (i) a description of the personal injury alleged to have been suffered.

‘(4) The initial notice must be given within the period ending on the earlier of the following days—

- (a) the day 9 months after the day the medical incident happened or, if symptoms of the personal injury arising out of the incident were not immediately apparent, the first appearance of symptoms of the injury;
- (b) the day 1 month after the day the claimant first consults a lawyer about the possibility of seeking damages for the personal injury and the person against whom the proceeding is proposed to be started is identified.

‘(5) If the claimant is a child, the child’s parent or legal guardian may give the initial notice for the child.

‘(6) If the initial notice is not given within the period prescribed under subsection (4), the obligation to give the initial notice continues and a reasonable excuse for the delay must be given in the initial notice to the person against whom the proceeding is proposed to be started.

‘(7) If the person against whom the proceeding is proposed to be started is the State or an entity with the privileges and immunities of the State, the giving of the initial notice is effective for subsection (2) only if it is given to—

- (a) if the place at which the medical incident happened is a place under the control of a district manager—the district manager for the place; or
- (b) if paragraph (a) does not apply—the chief executive officer of the department or entity having control of the place at which the medical incident happened.

‘(8) A person to whom an initial notice is given must, within 1 month after receiving the initial notice, give the claimant—

- (a) a written response advising whether any documents are held in relation to the medical services mentioned in the notice; and
- (b) copies of all documents held by the person about the medical services.

‘(9) The claimant—

- (a) may give part 1 of the notice of the claim only after giving the initial notice; and
- (b) must give part 1 of the notice within 12 months after the respondent complies with subsection (8); and
- (c) is not required to comply with section 9(3); and
- (d) must, as part of giving a complying part 1 notice of claim, give a written report from a medical specialist, competent to assess the medical incident alleged to have given rise to the personal injury, stating, in the medical specialist’s opinion—
 - (i) that there was a failure to meet an appropriate standard of care in providing medical services; and
 - (ii) the reasons justifying the opinion; and

(iii) that as a result of the failure, the claimant suffered personal injury; and

(e) must give the report mentioned in paragraph (d) when giving part 1 of the notice of claim.

‘(10) If the claim is based on, or includes, an allegation of a failure to warn of a risk in relation to the provision of medical services, it is not necessary for subsection (9) for the report to comment on, or address, the alleged failure.

‘(11) To remove any doubt, it is declared that subsection (4)(a), to the extent that it provides that a notice may be given after the first appearance of symptoms of the personal injury, does not determine or affect when a cause of action in relation to the injury arose for the purposes of the *Limitation of Actions Act 1974*.

‘(12) No obligation exists on a person to whom an initial notice is given to investigate, assess or respond to the initial notice other than as required by subsection (8).

‘(13) For subsection (4)(b), consultation by a claimant with a community legal service as defined under section 67A(2) is to be disregarded.

‘(14) In this section—

“**district manager**”, for a place, means the manager appointed under the *Health Services Act 1991*, section 22, for the district in which the place is located.

“**medical incident**” means an accident, or other act, omission or circumstance involving a doctor happening during the provision of medical services.

“**medical specialist**” means a person registered or eligible for registration as a specialist registrant under the *Medical Practitioners Registration Act 2001*.’.

35 Clause 85—

At page 46, after line 12—

insert—

‘(4) Subsection (2) or (3) has effect whether the notice under the subsection was given before or after the commencement of the subsection.’.

36 Clause 87—

At page 47, line 10, from ‘12’ to ‘that’—

omit, insert—

‘10 or 12¹ within the prescribed period under the’.

37 Clause 92—

At page 49, after line 11—

insert—

‘(2) This division applies regardless of when the personal injury to which the claim relates arose.’.

38 Clause 92—

At page 49, line 19, ‘1 year’—

omit, insert—

‘18 months’.

39 Clause 92—

At page 49, after line 28—

insert—

‘(4) For subsection (1)(b), consultation by a claimant with a community legal service as defined under section 67A(2), whether before or after the commencement of this subsection, is to be disregarded.’.

40 Clause 95—

At page 52, line 27, after ‘despite section’—

insert—

‘9A(9),’.

¹ Section 10 (Person to whom notice of a claim is given must give preliminary response to claimant) or 12 (Respondent’s response to part 1 of a notice of a claim)

41 Clause 105—

At page 56, lines 10 to 12—

omit, insert—

“community legal service” means an entity, prescribed under a regulation, that provides free legal services to the community or a section of the community.’.

42 After clause 105—

At page 56, after line 15—

insert—

‘105A Omission of ch 3, pt 2

‘Chapter 3, part 2—

omit.’.

43 After clause 106—

At page 57, after line 4—

insert—

‘106A Amendment of s 77D (Alteration of limitation period for personal injury arising out of an incident happening before 18 June 2002)

Section 77D(2)(a), after ‘2003’—

insert—

‘—before or on 18 June 2003’.

44 Clause 107—

At page 58, line 11, after ‘be’—

insert—

‘the day 18 months after’.

45 Clause 107—

At page 58, after line 11—

insert—

‘81 Particular provisions having continuing effect

The following provisions as in force immediately before the commencement of this section continue to have effect in relation to personal injury arising out of an incident happening before the day the *Civil Liability Act 2003* received assent as if that Act had not been enacted—

- chapter 2 (Claims), part 2 (Expressions of regret)
- section 51 (Damages for loss of earnings or earning capacity)
- section 52 (Discount rate to be applied in calculating the present value of future loss or gratuitous services)
- section 53 (Damages for loss of consortium or loss of servitium)
- section 54 (Damages for gratuitous services)
- section 55 (Interest)
- chapter 3 (Other matters), part 2 (Protection of persons performing duties to enhance public safety).’.

46 Clause 108—

At page 58, line 19, ‘given under section 9 or 14’—

omit, insert—

‘complying with section 9 and, if a respondent is added under section 14, section 14’.

47 Schedule 2—

At page 63, line 12, ‘on tort’—

omit, insert—

‘in tort’.