



Queensland

*Personal Injuries Proceedings Act 2002*

# **Personal Injuries Proceedings Regulation 2014**

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Queensland

# Personal Injuries Proceedings Regulation 2014

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# Personal Injuries Proceedings Regulation 2014

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Personal Injuries Proceedings Regulation 2014*.

### 2 Commencement

This regulation commences on 1 July 2014.

### 2A Definitions

The dictionary in schedule 1 defines particular words used in this regulation.

## Part 2 Claims

### 3 Notice of a claim—information required for Act, s 9(2)(a)

- (1) This section states the information required for section 9(2)(a) of the Act.
- (2) The following particulars about the injured person are required—
  - (a) the injured person's full name, address and telephone number;
  - (b) any other name by which the injured person is, or has been, known;
  - (c) the injured person's date of birth;
  - (d) the injured person's gender;

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- (e) the name of any educational institution attended by the injured person;
  - (f) details of the injured person's consumption of alcohol or drugs, including medication, during the 12 hours before the incident.
- (3) The following particulars about the incident alleged to have caused the personal injury to which the claim relates are required—
- (a) the date, time and place of the incident;
  - (b) details of how the incident happened;
  - (c) if appropriate, a diagram showing, to the best of the claimant's knowledge, the scene of the incident;
  - (d) the names, addresses and, if known, telephone numbers of any witnesses to the incident;
  - (e) the names, addresses and, if known, telephone numbers of any other persons able to provide relevant particulars about the incident;
  - (f) if an emergency response entity or an investigative entity attended the incident—
    - (i) the name of the entity; and
    - (ii) if known, the name of the person who attended the incident on behalf of the entity; and
    - (iii) the entity's and, if known, the person's contact details; and
    - (iv) if known, any reference number assigned to the incident by the entity;
  - (g) the name, address and, if known, telephone number of the person or persons who were, in the claimant's opinion, responsible for causing the incident;
  - (h) the reasons the claimant attributes responsibility to the person or persons;

- (i) if a protective device was available for use—the nature of the device and whether the injured person was using the device when the incident happened.
- (4) The following particulars about the nature and treatment of the injured person’s personal injury are required—
  - (a) a description of the personal injury suffered, including how the personal injury affects the injured person at the date of the notice of the claim;
  - (b) if the injured person was or is hospitalised for treatment of the personal injury, details of the hospitalisation;
  - (c) if the injured person received or is receiving medical treatment for the personal injury, details of the treatment and the name and address of the treatment provider;
  - (d) if the injured person received or is receiving rehabilitation for the personal injury, details of the rehabilitation and the name and address of the rehabilitation provider;
  - (e) details of any disability suffered by the injured person from the personal injury if—
    - (i) the disability is relevant to the assessment of the extent of the personal injury; or
    - (ii) the disability or its symptoms lasted for 4 weeks or more;
  - (f) if the personal injury caused by the incident exacerbated a pre-existing injury or medical condition, details of how the personal injury exacerbated the pre-existing injury or condition.
- (5) The following particulars relevant to economic loss are required—
  - (a) the injured person’s usual occupation and, if the injured person is currently employed, the name and address of the person’s employer;
  - (b) details of the injured person’s employment during the 3-year period immediately before the incident, and

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- between the date of the incident and the date of the notice of the claim, including details of the injured person's income, the names of employers, the duration of employment and positions held;
- (c) the injured person's gross income per week when the incident happened;
  - (d) full details of the nature and extent of the injured person's economic loss, as far as it can be assessed at the date of the notice of the claim;
  - (e) details of all claims made by the injured person for damages, compensation or social security benefits for a disability mentioned in subsection (4)(e);
  - (f) details of all amounts received by the injured person by way of damages, compensation or social security benefits for a disability mentioned in subsection (4)(e);
  - (g) details of all claims made by the injured person for damages, compensation or social security benefits for any personal injury, illness or disability mentioned in subsection (6)(d);
  - (h) details of all amounts received by the injured person for damages, compensation or social security benefits for any personal injury, illness or disability mentioned in subsection (6)(d);
  - (i) whether the injured person planned, before the incident, to change occupation, work duties, hours or earnings and if so, details of the change and the steps the injured person took to implement the change;
  - (j) details of any accountant used to prepare the injured person's tax or business records during the 3-year period immediately before the incident, and between the date of the incident and the date of the notice of the claim.
- (6) The following particulars of a general nature are required for a claim—



- (a) if the injured person was examined by a doctor in relation to the personal injury to which the claim relates, the date of the first examination;
  - (b) the date the claimant first consulted a lawyer about the possibility of making a claim;
  - (c) the name, address and, if known, telephone number of any person to whom the claimant has delivered, or intends to deliver, a notice of a claim in relation to the personal injury to which the claim relates;
  - (d) details of any personal injury, illness or disability, in existence or sustained before the incident, that may affect the extent of the disabilities resulting from the personal injury to which the claim relates;
  - (e) when the injured person returned to work or expects to return to work.
- (7) If the claim is a dependency claim, the following particulars about the claimant and any dependants are required—
- (a) for the claimant—
    - (i) the claimant's full name and address; and
    - (ii) the claimant's relationship to the injured person; and
    - (iii) if the claimant was the spouse of the injured person—
      - (A) if the claimant and the injured person were married—the date and place of the marriage; or
      - (B) if the claimant and the injured person were in a civil partnership—the date the civil partnership had effect and the place of registration; or
      - (C) if the claimant and the injured person were de facto partners—the date on which they started living together in a de facto relationship; and

- (iv) if the claimant suffers from any serious medical condition or disability, the nature of the condition or disability; and
- (v) the date the claimant first consulted a lawyer about the possibility of making a claim;
- (b) for each dependant, including the claimant if a dependant—
  - (i) the dependant’s full name and residential address; and
  - (ii) whether the dependant is—
    - (A) married; or
    - (B) in a civil partnership; or
    - (C) in a de facto relationship; and
  - (iii) the dependant’s date of birth; and
  - (iv) the dependant’s gender; and
  - (v) the dependant’s relationship to the injured person; and
  - (vi) whether the dependant is a full-time student; and
  - (vii) if the dependant has an independent income—the amount and source of the income; and
  - (viii) if the dependant received any financial payments or other benefits from the injured person before the incident, the average amount of the payments and how often they were received; and
  - (ix) if the dependant has applied for or received any financial payments or other benefits in relation to the incident, the source and amount of the payments and how often they were received; and
  - (x) if the dependant suffers from any serious medical condition or disability, the nature of the condition or disability.

- (8) If the claim is a health care claim, the following particulars are also required—
- (a) a description of the medical condition for which the injured person sought treatment;
  - (b) the aspect of the treatment alleged to have given rise to the personal injury or to have exacerbated a pre-existing injury or condition;
  - (c) the nature, type and severity of symptoms alleged to have arisen from the treatment;
  - (d) if applicable, the names, addresses and, if known, telephone numbers of all health care providers who treated the injured person in relation to the medical condition for which treatment was sought during the three years before receiving the treatment alleged to have given rise to the personal injury;
  - (e) if the injured person made a complaint to the Health Rights Commission under the repealed *Health Rights Commission Act 1991*, the Health Quality and Complaints Commission under the repealed *Health Quality and Complaints Commission Act 2006* or the Health Ombudsman under the *Health Ombudsman Act 2013* about a person alleged to have caused the personal injury—
    - (i) the date the complaint was made; and
    - (ii) if the complaint was finalised under the repealed *Health Rights Commission Act 1991*, the repealed *Health Quality and Complaints Commission Act 2006* or the *Health Ombudsman Act 2013*, brief details of how the complaint was dealt with under the relevant Act and the date the complaint was finalised;
  - (f) if the claim relates to or includes an alleged failure of the health care provider to inform or adequately inform the injured person of the risks involved in the treatment sought—

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- (i) the date, time and place of each consultation with the health care provider at which information of the risks should have been given; and
- (ii) if written or oral information or a warning was given to the injured person by the health care 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; and
- (iii) the risks about which the injured person should have been informed or adequately informed by the health care provider;
- (g) if written or oral consent was given by the injured person to the health care provider about the treatment alleged to have given rise to the personal injury, the date and place the consent was given;
- (h) the names, addresses and, if known, telephone numbers of all health care providers who provided the injured person with information or explanations about the personal injury or an exacerbation of a pre-existing injury alleged to have arisen from the treatment.

#### **4 Notice of a claim—authority for Act, s 9(2)(b)**

For section 9(2)(b) of the Act, the records and sources of information relevant to the claim to which the person or the person's insurer is authorised to have access are—

- (a) if the personal injury exacerbated a pre-existing injury or condition—
  - (i) any records in the possession of any insurer involved in the claim for the pre-existing injury or condition relevant to the pre-existing injury or condition; and

- (ii) any reports or clinical notes in the possession of a health care provider who treated or assessed the injured person for the pre-existing injury or condition; and
- (b) records in the possession of a department, agency or instrumentality of the Commonwealth, the State or another State administering police, transport, taxation or social welfare law relevant to an investigation of the incident alleged to have given rise to the personal injury to which the claim relates or to assessing economic loss; and
- (c) reports and clinical notes in the possession of a hospital, including a private hospital, at which the injured person received treatment relevant to the personal injury to which the claim relates; and
- (d) records in the possession of an ambulance or other emergency service that treated or assisted the injured person relevant to the personal injury to which the claim relates; and
- (e) reports or clinical notes in the possession of a health care provider who treated or assessed the injured person relevant to the personal injury to which the claim relates; and
- (f) wage, leave and work history records in the possession of an employer (or previous employer) of the injured person, and if the claim is a dependency claim, of each dependant; and
- (g) academic records in the possession of any educational institution attended by the injured person and, if the claim is a dependency claim, of each dependant.

## **5 Notice of a claim—documents for Act, s 9(2)(d)**

- (1) For section 9(2)(d) of the Act, this section provides for the documents required to accompany a notice of a claim.

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- (2) Part of the notice of a claim must be accompanied by the following documents—
  - (a) for a claim other than a health care claim, 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 dependency claim, a copy of the injured person's death certificate;
  - (c) for a health care claim, a copy of any advice or warnings provided to the injured person by a health care provider about the treatment alleged to have given rise to the personal injury that is in the claimant's possession;
  - (d) for a health care claim, a copy of any consent provided to the health care provider by the injured person about the treatment alleged to have given rise to the personal injury that is in the claimant's possession.
- (3) Also, part 1 of the notice of a claim must be accompanied by a claimant's certificate.
- (4) However, if the notice of a claim is signed by the claimant's lawyer under the Act, section 44(3), the claimant's certificate must accompany the notice of the claim signed and given by the claimant under the Act, section 44(4).
- (5) Part 2 of the notice of a claim must be accompanied by a copy of any other document relevant to the personal injury, economic loss, treatment or rehabilitation that is in the claimant's possession.
- (6) In this section—  
*claimant's certificate* see section 5A.

## **5A Claimant's certificate**

- (1) A *claimant's certificate* for a notice of a claim is a certificate that complies with subsection (2) and states—
  - (a) whether the claimant is making the claim on the claimant's own initiative; and

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- (b) whether the claimant was personally approached or contacted by a person and solicited or induced to make the claim; and
- (c) if the claimant was personally approached or contacted by a person and solicited or induced to make the claim—
- (i) the name of the person who approached or contacted the claimant; and
- (ii) the circumstances in which the person approached or contacted the claimant; and
- (d) if the claimant has instructed a law practice to act for the claimant in relation to the claim—whether, to the claimant’s knowledge, the law practice gave another person consideration for referring the claimant to the law practice.
- (2) A claimant’s certificate must be—
- (a) in a form approved by the commissioner; and
- (b) verified by statutory declaration.

## **Part 3                      Miscellaneous**

### **6            Notice of a claim—prescribed period for Act, s 9(7)**

For section 9(7) of the Act, the period prescribed is the period ending on the later of the following days—

- (a) the day 1 month after the person receives part 1 of the notice of claim;
- (b) the day 7 days after the person identifies another person against whom a proceeding might be started by the claimant based on the claim.

## **7 Claimant may add other respondents—Act, s 14**

- (1) For section 14(1) of the Act, the time prescribed within which a claimant may add someone else as a respondent is the later of the following days—
  - (a) if applicable, the day by which part 1 of a notice of a claim must be given by the claimant under section 9(3) or 9A(9)(b) of the Act;
  - (b) the day 1 month after the claimant receives information under section 10(1)(c)(ii) of the Act;
  - (c) the day 1 month after the claimant receives a copy of a contribution notice given to the claimant under section 16(3) of the Act.
- (2) For section 14(3)(b) of the Act, the time prescribed is 7 days.

## **8 Respondent may add other person as contributor—Act, s 16**

- (1) For section 16(1) of the Act, the time prescribed is the later of the following—
  - (a) 3 months after the respondent receives part 1 of the notice of a claim under section 9 of the Act;
  - (b) 7 days after the respondent identifies someone else as a contributor.
- (2) For section 16(3) of the Act, the time prescribed is 7 days.

## **9 Contributor's response—Act, s 17(1)(a)**

For section 17(1)(a) of the Act, the contributor's response must state the following—

- (a) the contributor's full name;
- (b) the contributor's business address;
- (c) the contributor's postal address;
- (d) the name and contact details of the contributor's legal representatives, if appointed;



- (e) the contributor's ABN, if any;
- (f) if the contributor is a corporation—
  - (i) the corporation's ACN; and
  - (ii) the corporation's registered office.

## 10 Offers of settlement

- (1) An offer of settlement made by a respondent to a claimant must, if the claimant is not represented by a lawyer, be accompanied by an explanatory statement.
- (2) The explanatory statement must include the following statement—

‘Your acceptance of this offer of settlement will finalise this claim and you will not be able to make any further claim or receive any further payment from (name of the respondent) for personal injury you received arising out of this incident.

If you have a concern about accepting this offer of settlement, you should seek legal advice.’

## 11 Costs if mandatory final offer is accepted—Act, s 40

- (1) For section 40 of the Act, if a mandatory final offer for more than the lower offer limit but not more than the upper offer limit is accepted, the claimant is entitled to payment of costs on the following bases—
  - (a) 100% of item 1 costs;
  - (b) 50% of item 5 costs on the basis that preparations for trial and a directions conference have been undertaken;
  - (c) the claimant's cost of legal representation at the compulsory conference (if applicable) at the rate of \$175 for the first hour and \$150 for each hour after the first, and, for a period of less than 1 hour, the relevant proportion of the appropriate hourly rate;

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- (d) the claimant's costs of an application to the court up to a maximum of \$400 for each application;
  - (e) reasonable disbursements if documentary evidence supporting the disbursements is available.
- (2) However, if the amount calculated under subsection (1) is more than the declared costs limit, the claimant's entitlement is limited to the declared costs limit.
- (3) In this section—

*item 1 costs* means costs allowable under the *Uniform Civil Procedure Rules 1999*, schedule 2, part 2, item 1.

*item 5 costs* means costs allowable under the *Uniform Civil Procedure Rules 1999*, schedule 2, part 2, item 5.

## 12 Prescribed limits for particular definitions—Act, sch 1

- (1) This section prescribes the amount for the definitions *declared costs limit*, *lower offer limit* and *upper offer limit* in schedule 1 of the Act.
- (2) For an injury arising during a period stated in an item of the following table, the amounts stated in the item are prescribed.

Item	Period (dates inclusive)	Declared costs limit	Lower offer limit	Upper offer limit
1	2 December 2002 to 30 June 2010	\$2,500	\$30,000	\$50,000
2	1 July 2010 to 30 June 2011	\$2,950	\$35,340	\$58,900
3	1 July 2011 to 30 June 2012	\$3,040	\$36,400	\$60,670
4	1 July 2012 to 30 June 2013	\$3,210	\$38,390	\$63,990
5	1 July 2013 to 30 June 2014	\$3,380	\$40,460	\$67,450
6	1 July 2014 to 30 June 2015	\$3,510	\$41,990	\$70,010
7	1 July 2015 to 30 June 2017	\$3,600	\$43,020	\$71,730
8	1 July 2017 to 30 June 2018	\$3,690	\$44,070	\$73,490
9	1 July 2018 to 30 June 2019	\$3,800	\$45,430	\$75,750

Item	Period (dates inclusive)	Declared costs limit	Lower offer limit	Upper offer limit
10	1 July 2019 to 30 June 2020	\$3,910	\$46,800	\$78,040
11	1 July 2020 to 30 June 2021	\$4,000	\$47,850	\$79,790
12	1 July 2021 to 30 June 2022	\$4,020	\$48,030	\$80,090
13	1 July 2022 to 30 June 2023	\$4,160	\$49,700	\$82,870
14	1 July 2023 and after	\$4,380	\$52,350	\$87,300

## Part 4 Repeal and transitional provisions

### 13 Repeal

The Personal Injuries Proceedings Regulation 2002, SL No. 192 is repealed.

### 14 Reference to repealed regulation

- (1) From the commencement of this regulation, a reference in a document to the repealed regulation is, if the context permits, taken to be a reference to this regulation.
- (2) Subsection (1) does not limit the application of the *Acts Interpretation Act 1954*, section 14H.
- (3) In this section—

***repealed regulation*** means the *Personal Injuries Proceedings Regulation 2002* as in force before the commencement of this regulation.

## **Schedule 1      Dictionary**

section 2A

*health care claim* see section 22(9) of the Act.

*health care provider* see section 22(9) of the Act.