

Queensland



**PERSONAL INJURIES  
PROCEEDINGS AMENDMENT  
ACT 2002**

**Act No. 38 of 2002**



# Queensland



## PERSONAL INJURIES PROCEEDINGS AMENDMENT ACT 2002

### TABLE OF PROVISIONS

Section		Page
1	Short title . . . . .	4
2	Commencement . . . . .	4
3	Acts amended . . . . .	4
4	Amendment of s 6 (Application of Act) . . . . .	4
5	Replacement of ss 6 and 7 . . . . .	4
6	Application of Act . . . . .	5
7	Provisions of this Act that are provisions of substantive law . . . . .	6
6	Amendment of s 9 (Notice of a claim) . . . . .	6
7	Amendment of s 15 (Multiple respondents) . . . . .	6
7A	Amendment of s 43 (Need for urgent proceeding) . . . . .	7
8	Amendment of s 50 (Awards of exemplary, punitive or aggravated damages) . . . . .	7
9	Amendment of s 59 (Alteration of period of limitation) . . . . .	7
10	Insertion of new pt hdg . . . . .	8
11	Amendment of s 76 (Special provision for injuries suffered between commencement and 1 August 2002) . . . . .	8
12	Insertion of new ch 4, pt 2 . . . . .	8
	<b>PART 2—TRANSITIONAL PROVISIONS FOR PERSONAL INJURIES PROCEEDINGS AMENDMENT ACT 2002</b>	
77A	Special provision for personal injuries arising out of incidents happening before 18 June 2002 . . . . .	9
77B	Costs and outlays incurred before 18 June 2002 . . . . .	9
77C	Written offers of settlement made before 1 July 2002 . . . . .	10
77D	Alteration of limitation period for personal injury arising out of an incident happening before 18 June 2002 . . . . .	10

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	77E Stay of proceedings in particular cases . . . . .	10
13	Amendment of schedule (Dictionary) . . . . .	11
	<b>SCHEDULE</b> . . . . .	12
	<b>MINOR AMENDMENTS</b>	
	PART 1—AMENDMENT OF PERSONAL INJURIES PROCEEDINGS ACT 2002 . . . . .	12
	PART 2—AMENDMENT OF QUEENSLAND LAW SOCIETY ACT 1952 . . . . .	15

Queensland



**Personal Injuries Proceedings Amendment Act  
2002**

**Act No. 38 of 2002**

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**An Act to amend the *Personal Injuries Proceedings Act 2002*, and for  
other purposes**

*[Assented to 29 August 2002]*

## The Parliament of Queensland enacts—

### 1 Short title

This Act may be cited as the *Personal Injuries Proceedings Amendment Act 2002*.

### 2 Commencement

Sections 4 and 8 are taken to have commenced on 18 June 2002.

### 3 Acts amended

(1) This Act, other than part 2 of the schedule, amends the *Personal Injuries Proceedings Act 2002*.

(2) The schedule, part 2 amends the Act it mentions.

### 4 Amendment of s 6 (Application of Act)

(1) Section 6—

*insert—*

‘(4A) In addition, the following provisions of this Act do not apply to personal injury if the act causing the personal injury is an unlawful intentional act done with intent to cause personal injury or is unlawful sexual assault or other unlawful sexual misconduct—

- section 40(2)
- sections 49 to 56.’.

(2) Section 6—

*insert—*

‘(9) In subsection (4A)—

“act” includes omission.’.

### 5 Replacement of ss 6 and 7

Sections 6 and 7—

*omit, insert—*

## **‘6 Application of Act**

‘(1) This Act applies in relation to all personal injury arising out of an incident whether happening before, on or after 18 June 2002.

‘(2) However, this Act does not apply to—

- (a) personal injury as defined under the *Motor Accident Insurance Act 1994* and in relation to which that Act applies; or
- (b) injury as defined under the *WorkCover Queensland Act 1996*.

‘(3) Also, this Act, other than section 58, does not apply to—

- (a) personal injury in relation to which a proceeding was started in a court, including in a court outside Queensland or Australia, before 18 June 2002; or
- (b) personal injury that is a dust-related condition.

‘(4) In addition, the following provisions of this Act do not apply to personal injury if the act causing the personal injury is an unlawful intentional act done with intent to cause personal injury or is unlawful sexual assault or other unlawful sexual misconduct—

- section 40(2)
- sections 49 to 56.

‘(5) Further, this Act does not affect the seeking, or the recovery or award, of damages in relation to personal injury under any of the following—

- (a) the *Anti-Discrimination Act 1991*, section 209(1)(b);<sup>1</sup>
- (b) the *Civil Aviation (Carriers’ Liability) Act 1964*, including the applied provisions as defined under that Act;
- (c) the *Criminal Offence Victims Act 1995*;
- (d) the Criminal Code, repealed section 663D.<sup>2</sup>

‘(6) This section does not affect the general application of chapter 3, part 1 or 2.

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1 *Anti-Discrimination Act 1991*, section 209 (Orders the tribunal may make if complaint is proven)

2 Criminal Code, repealed section 663D (Governor in Council may approve ex gratia payment in other cases)

‘(7) In subsection (4)—  
“act” includes omission.

#### **‘7 Provisions of this Act that are provisions of substantive law**

‘Provisions of this Act that provide for the kinds of damage, and the amount of damages, that may be recovered by a person, and the provisions of chapter 2, part 1, divisions 1, 2 and 4,<sup>3</sup> are provisions of substantive, as opposed to procedural, law.’

#### **6 Amendment of s 9 (Notice of a claim)**

Section 9—

*insert—*

‘(8) If the person against whom a proceeding based on a claim is proposed to be started is the State or an entity with the privileges and immunities of the State, the giving of a notice of a claim under subsection (1) is effective only if given to the Crown solicitor.

‘(9) To remove any doubt, it is declared that subsection (3)(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*.

‘(10) In this section—

“access”, to records and sources of information, includes access to copy the records and sources of information.’

#### **7 Amendment of s 15 (Multiple respondents)**

Section 15—

*insert—*

‘(5) If there are 2 or more respondents to a claim and a respondents’ claim manager is not acting for all the respondents, the respondents must cooperate with each other, to the greatest extent practicable, to ensure that

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3 Chapter 2 (Claims), part 1 (Pre-court procedures), divisions 1 (Claims procedures), 2 (Obligations of the parties) and 4 (Compulsory conferences)



all respondents are in a position to participate in the compulsory conference with the claimant at the earliest possible opportunity.’.

### **7A Amendment of s 43 (Need for urgent proceeding)**

Section 43(4)—

*omit, insert—*

‘(4) Despite subsection (3), the proceeding is not stayed if—

- (a) the court is satisfied that—
  - (i) the claimant is suffering from a terminal condition; and
  - (ii) the trial of the proceeding should be expedited; and
- (b) the court orders the proceeding be given priority in the allocation of a trial date and certifies it for speedy trial.

‘(5) If, under subsection (4), the proceeding is not stayed, the following provisions do not apply in relation to the personal injury—

- (a) this part, other than this section;
- (b) sections 48, 49, 56 and 59;
- (c) chapter 4.’.

### **8 Amendment of s 50 (Awards of exemplary, punitive or aggravated damages)**

Section 50(2) and (3)—

*omit.*

### **9 Amendment of s 59 (Alteration of period of limitation)**

(1) Section 59(3)—

*renumber* as section 59(4).

(2) Section 59—

*insert—*

‘(3) Also, if a proceeding is started under subsection (2) without the claimant having complied with part 1, the proceeding is stayed until the claimant complies with the part or the proceeding otherwise ends.’.

**10 Insertion of new pt hdg**

Chapter 4, before section 76—

*insert—*

**‘PART 1—TRANSITIONAL PROVISIONS FOR  
ACT NO. 24 OF 2002 AND JURY TRIALS’.**

**11 Amendment of s 76 (Special provision for injuries suffered between commencement and 1 August 2002)**

(1) Section 76, heading, ‘injuries suffered between commencement’—

*omit, insert—*

**‘personal injuries arising out of incidents happening between 18 June 2002’.**

(2) Section 76(1), ‘suffered’—

*omit, insert—*

‘arising out of an incident happening’.

(3) Section 76—

*insert—*

‘(4) This section is subject to section 19.<sup>4</sup>’.

**12 Insertion of new ch 4, pt 2**

Chapter 4, after section 77—

*insert—*

**‘PART 2—TRANSITIONAL PROVISIONS FOR  
PERSONAL INJURIES PROCEEDINGS AMENDMENT  
ACT 2002**

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4 Section 19 (Legal disabilities)

**‘77A Special provision for personal injuries arising out of incidents happening before 18 June 2002**

‘(1) This section applies to a personal injury arising out of an incident happening before 18 June 2002 and in relation to which a period of limitation has not ended.

‘(2) For the purposes of section 9(3)(a),<sup>5</sup> the day the incident giving rise to the personal injury happened is taken to be 1 August 2002.

‘(3) For the purposes of section 9(3)(b), a claimant is taken not to have consulted a lawyer earlier than the day 3 months after the day the *Personal Injuries Proceedings Amendment Act 2002* receives assent.

‘(4) To remove any doubt, it is declared that this Act, other than sections 58 and 77, does not apply in relation to the personal injury if, during the period starting on 18 June 2002 and ending at the end of 30 June 2002, a person started a proceeding in a court for damages based on a liability for the personal injury.

‘(5) Subsections (2) and (3) are subject to section 19.<sup>6</sup>

**‘77B Costs and outlays incurred before 18 June 2002**

‘(1) This section applies in relation to a personal injury arising out of an incident happening before 18 June 2002.

‘(2) An amount paid or payable for disbursements incurred before 1 July 2002 in relation to a claim is recoverable as if this Act had not been enacted.

‘(3) To remove any doubt, it is declared that—

- (a) the award or payment of costs, other than an amount mentioned in subsection (2), is subject to this Act; and
- (b) an amount mentioned in subsection (2) is to be disregarded for sections 40 and 56.<sup>7</sup>

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5 Section 9 (Notice of a claim)

6 Section 19 (Legal disabilities)

7 Sections 40 (Provisions about mandatory final offers) and 56 (Costs in cases involving damages awards of not more than \$50 000)

**‘77C Written offers of settlement made before 1 July 2002**

‘(1) This section applies in relation to a personal injury arising out of an incident happening before 18 June 2002.

‘(2) This Act, other than sections 58 and 77, does not apply in relation to the personal injury if, before 1 July 2002, the person making a claim, or a person against whom the claim is made, made a written offer to settle the claim.

‘(3) Subsection (2) has effect whether or not the offer is accepted.

**‘77D Alteration of limitation period for personal injury arising out of an incident happening before 18 June 2002**

‘(1) This section applies in relation to a personal injury arising out of an incident happening before 18 June 2002 if—

- (a) the period of limitation for a proceeding based on a claim for the personal injury ends during the period starting 18 June 2002 and ending at the end of 18 December 2003; and
- (b) a proceeding based on the claim has not been started in a court, including in a court outside Queensland or Australia.

‘(2) If the period of limitation has ended, the claimant may start a proceeding in a court based on the claim—

- (a) if a complying notice of claim is given before 18 June 2003; or
- (b) at a later time, not more than 6 months after the complying notice of claim is given and not later than the end of 18 December 2003, with the court’s leave.

‘(3) If a proceeding is started under subsection (2) without the claimant having complied with chapter 2, part 1, the proceeding is stayed until the claimant complies with the part or the proceeding otherwise ends.

‘(4) This section does not limit section 43.<sup>8</sup>

**‘77E Stay of proceedings in particular cases**

‘(1) This section applies in relation to a proceeding started in a court during the period starting 1 July 2002 and ending at the end of the day the

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8 Section 43 (Need for urgent proceeding)

*Personal Injuries Proceedings Amendment Act 2002* receives assent if the proceeding is based on a claim arising out of an incident happening before 18 June 2002.

‘(2) The proceeding is stayed until the claimant complies with chapter 2, part 1 or the proceeding is discontinued or otherwise ends.’.

### **13 Amendment of schedule (Dictionary)**

Schedule—

*insert—*

“**court**”, outside Queensland or Australia, includes any entity outside Queensland or Australia having an adjudicative function.

“**dust-related condition**” means—

(a) any of the following diseases—

- aluminosis
- asbestosis
- asbestos induced carcinoma
- asbestos related pleural diseases
- bagassosis
- berylliosis
- byssinosis
- coal dust pneumoconiosis
- farmers’ lung
- hard metal pneumoconiosis
- mesothelioma
- silicosis
- silico-tuberculosis
- talcosis; or

(b) any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust.’.

## SCHEDULE

### MINOR AMENDMENTS

#### PART 1—AMENDMENT OF PERSONAL INJURIES PROCEEDINGS ACT 2002

section 3

**1 Section 12(4), definition “prescribed period”,  
paragraph (b)(ii)(A), ‘gives the notice’—**

*omit, insert—*

‘is given the further information under section 10(2)(a)’.

**2 Section 14(1)(a) ‘complying with’—**

*omit, insert—*

‘under’.

**3 Section 20(2), ‘receive’—**

*omit, insert—*

‘have been given’.

**4 Section 37(3), after ‘conduct’—**

*insert—*

‘or practice’.

**5 Section 39(5), after ‘the offer’—**

*insert—*

‘if the offer is accepted’.

## SCHEDULE (continued)

**6 Section 43(3), after ‘discontinued’—***insert—*

‘or otherwise ends’.

**7 Section 45, after ‘of the individual’—***insert—*

‘or someone else’.

**8 Section 46, from ‘an individual’ to ‘the individual’—***omit, insert—*

‘an individual on or after 18 June 2002 in relation to an incident alleged to give rise to a claim at any time before a civil proceeding’.

**9 Section 54(1)(b), ‘suffered in’—***omit, insert—*

‘arising out of’.

**10 Section 56(1)—***omit, insert—*

‘(1) This section applies if a court awards \$50 000 or less in damages in a proceeding based on a claim, but it does not apply to the costs of an appellate proceeding.’.

**11 Section 66(3), after ‘conduct’—***insert—*

‘or practice’.

**12 Section 69—***omit, insert—*

## SCHEDULE (continued)

**‘69 Consequence if person approved or regulated under an Act is convicted under s 67 or 68**

‘(1) This section applies to a person if—

(a) under an Act—

- (i) the person is approved for a profession, type of employment or calling; or
- (ii) the person’s activities for the person’s profession, employment or calling are regulated; and

(b) under the Act under which the person is approved or the person’s activities are regulated, the person’s approval may be suspended or cancelled for misconduct or the person may be disciplined or otherwise dealt with for misconduct.

‘(2) If the person is convicted of an offence against section 67 or 68,<sup>9</sup> the person’s conviction may also be dealt with as misconduct under the Act under which the person is approved or the person’s activities are regulated.’.

**13 Section 71(1), after ‘omitted’, first occurring—**

*insert—*

‘on or after 18 June 2002’.

**14 Schedule—**

*insert—*

“**period of limitation**” means period of limitation under the *Limitation of Actions Act 1974*.’.

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<sup>9</sup> Section 67 (Prohibition on touting at scene of incident or at any time) or 68 (Prohibition against paying, or seeking payment, for touting)



## SCHEDULE (continued)

**PART 2—AMENDMENT OF QUEENSLAND LAW  
SOCIETY ACT 1952****1 Section 3B(1)—***insert—*

- ‘(d) conduct described, under another Act, as unprofessional conduct or practice.’.