



Queensland

# **Motor Accident Insurance and Other Legislation Amendment Act 2019**

**Act No. 36 of 2019**

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**An Act to amend the Motor Accident Insurance Act 1994, the Motor Accident Insurance Regulation 2018 and the legislation mentioned in schedule 1 for particular purposes**

**[Assented to 5 December 2019]**





Queensland

# Motor Accident Insurance and Other Legislation Amendment Act 2019

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Motor Accident Insurance and Other Legislation Amendment Act 2019*.

## **Part 2 Amendment of Motor Accident Insurance Act 1994**

### **2 Act amended**

This part amends the *Motor Accident Insurance Act 1994*.

*Note—*

See also the amendments in schedule 1.

### **3 Amendment of s 3 (Objects)**

(1) Section 3(b)—

*omit, insert—*

(b) to establish a basis for assessing the affordability of CTP insurance; and

(ba) to keep the costs of CTP insurance at a level the average motorist can afford; and

(2) Section 3—

*insert—*

(da) to encourage licensed insurers to act in a way that supports the integrity of, and public

[s 4]

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confidence in, the statutory insurance scheme; and

- (3) Section 3(g), ‘motor vehicle accident claims’—

*omit, insert—*

claims

- (4) Section 3(ba) to (h)—

*renumber* as section 3(c) to (j).

- (5) Section 3—

*insert—*

- (k) to establish measures directed at eliminating or reducing the practice of giving or receiving consideration for a claim referral or potential claim referral, or soliciting or inducing a claimant to make a claim, in contravention of this Act.

#### 4 Amendment of s 4 (Definitions)

- (1) Section 4, definition *public place*—

*omit.*

- (2) Section 4—

*insert—*

***affected person***, in relation to a decision, for part 5A, see section 81.

***associate***, of a law practice, see the *Legal Profession Act 2007*, section 7(1).

***associated person***, for an investigated person, for part 5B, see section 87ZA.

***authorised person***, for part 5A, see section 81.

***barrister*** see the *Legal Profession Act 2007*, schedule 2.

***decision notice***, for part 5A, see section 87SD(1).

**electronic document**, means a document of a type mentioned in the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

**identity card**, for part 5A, see section 81.

**information notice**, for an original decision, for part 5A, see section 81.

**internal review**, of an original decision, for part 5A, see section 87SA(1).

**internal review decision**, for part 5A, see section 81.

**investigated person**, for part 5B, see section 87ZA.

**investigator**, for part 5B, see section 87ZA.

**law practice** see the *Legal Profession Act 2007*, schedule 2.

**law practice certificate** see section 36B(1).

**notice**, for part 5A, see section 81.

**occupier**, of a place, for part 5A, see section 81.

**of**, a place, for part 5A, see section 81.

**offence warning**, for a requirement by an authorised person, for part 5A, see section 81.

**original decision**, for part 5A, see section 81.

**owner**, of a thing that has been seized under part 5A, see section 81.

**person in control**, of a thing, for part 5A, see section 81.

**place**, for part 5A, see section 81.

**premises**, for part 5A, see section 81.

**principal**, of a law practice, see the *Legal Profession Act 2007*, section 7(4).

**public place**—

[s 5]

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(a) generally, has the meaning given by the *Transport Operations (Road Use Management) Act 1995*; and

(b) for part 5A, see section 81.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***supervising principal***, of a law practice in relation to a claim, means the principal of the law practice who has the primary responsibility for the conduct of the claim.

***vehicle***, for part 5A, see section 81.

## 5 Amendment of s 10 (Commission's functions)

(1) Section 10(1)—

*insert—*

(aa) regulate the statutory insurance scheme; and

(2) Section 10(1)—

*insert—*

(ba) establish and revise standards about the proper management of claims with which licensed insurers must comply; and

(3) Section 10(1)(ca), 'motor vehicle accident claim'—

*omit, insert—*

claim

(4) Section 10(1)(l), 'motor vehicle accident claims'—

*omit, insert—*

claims

(5) Section 10(1)—

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*insert—*

(oa) perform another function given to the commission under this or another Act.

(6) Section 10(1)(aa) to (oa)—

*renumber* as section 10(1)(b) to (u).

(7) Section 10—

*insert—*

(3) The commission must publish on its website standards made under subsection (1)(c) or (d).

(4) A standard made under subsection (1)(d) applies to the management of a claim from the day the standard is published, whether the claim was made before or after that day.

## **5A Amendment of s 34 (Duty to notify accidents to police)**

(1) Section 34(2)(a)—

*omit, insert—*

(a) the giving of required particulars under the *Transport Operations (Road Use Management) Act 1995*, section 93(4); or

(2) Section 34(2)(b), ‘reported’—

*omit, insert—*

given

## **6 Insertion of new pt 4, div 2A**

Part 4—

*insert—*

**Division 2A Law practice certificates generally and certificates before notice of claim**

### **36A Law practice retained by claimant before notice of claim**

- (1) This section applies if a law practice is retained by a claimant to act in relation to the claimant's claim before the claimant has given notice of the claim under section 37.
- (2) The supervising principal of the law practice must—
  - (a) complete a law practice certificate for the claim; and
  - (b) give the certificate to the claimant before the claimant gives notice of the claim under section 37.

Maximum penalty—300 penalty units.

*Note*—

See also section 36C.

- (3) In this section—  
*claimant* includes a potential claimant.

### **36B Meaning of *law practice certificate***

- (1) A *law practice certificate* is a certificate in a form approved by the commission that states the matters mentioned in subsections (2) to (4).
- (2) The certificate must state—
  - (a) the supervising principal and each associate of the law practice have not—
    - (i) given, agreed to give or allowed or caused someone else to give consideration to another person for a claim referral or potential claim referral for the claim in contravention of section 74(1); or

- (ii) received, agreed to receive or allowed or caused someone else to receive consideration from another person for a claim referral or potential claim referral for the claim in contravention of section 74(2); or
  - (b) if section 74 does not apply to the supervising principal or an associate of the law practice—the circumstances mentioned in section 74(3) why it does not apply.
- (3) Also, the certificate must state—
  - (a) the supervising principal and each associate of the law practice have not personally approached or contacted the claimant and solicited or induced the claimant to make the claim in contravention of section 75; or
  - (b) if section 75 does not apply to the supervising principal or an associate of the law practice—the circumstances mentioned in section 75(3) why it does not apply.
- (4) Further, if the claim is a speculative personal injury claim, the certificate must state the costs agreement relating to the claim complies with section 79 or with the *Legal Profession Act 2007*, section 347.
- (5) The law practice certificate must be signed by the supervising principal and verified by statutory declaration.
- (6) To remove any doubt, it is declared that this section does not require or permit the supervising principal of a law practice to give information about communication with a claimant that is subject to legal professional privilege.
- (7) In this section—  
***claimant*** includes a potential claimant.

[s 6]

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*claim referral* see section 74(4).

*consideration*, for a claim referral or potential claim referral, see section 74A.

*speculative personal injury claim* see the *Legal Profession Act 2007*, section 346.

*supervising principal* includes a person who is completing a certificate under section 36C.

### **36C Supervising principal cannot complete law practice certificate or notice**

- (1) This section applies if the supervising principal of a law practice cannot comply with section 36A, 36E, 37AB, 39A or 41A in relation to a claim.
- (2) Either of the following may complete and give the law practice certificate or notice mentioned in section 36E(3) for the supervising principal to satisfy the section—
  - (a) another principal of the law practice;
  - (b) if the supervising principal is the only principal of the law practice—a lawyer nominated by the supervising principal.

### **36D False or misleading law practice certificate**

- (1) A supervising principal of a law practice must not sign, or give to a claimant or an insurer, a law practice certificate the principal knows is false or misleading in a material particular.

Maximum penalty—300 penalty units.

- (2) In this section—

*claimant* includes a potential claimant.

*supervising principal* includes a person who is completing a certificate under section 36C.



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### **36E Law practice referral through sale of business**

- (1) This section applies if—
  - (a) a law practice (the *current practice*) sells all or part of the law practice's business to another law practice (the *new practice*); and
  - (b) as part of the sale, a claimant is referred to the new practice; and
  - (c) the claimant has not given notice of the claim under section 37 before the claimant is referred to the new practice.
- (2) The supervising principal of the current practice must, before the referral occurs—
  - (a) complete a law practice certificate for the claim; and
  - (b) give the law practice certificate to the new practice and a copy of the certificate to the claimant.

Maximum penalty—300 penalty units.

*Note—*

See also section 36C.

- (3) If the new practice does not receive the law practice certificate mentioned in subsection (2), the supervising principal of the new practice must, as soon as practicable—
  - (a) complete a notice that states the new practice has not received the certificate; and
  - (b) give the notice to the commission.
- (4) In this section—

*claimant* includes a potential claimant.

## **7 Amendment of s 37 (Notice of accident claim)**

- (1) Section 37(1) and (3), 'motor vehicle accident claim'—

[s 8]

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*omit, insert—*

claim

(2) Section 37(1)—

*insert—*

(ca) if a law practice is retained by the claimant to act in relation to the claim, accompanied by—

(i) a law practice certificate for the claim from the supervising principal of the law practice; and

(ii) if the claimant has received a copy of a law practice certificate for the claim under section 36E—the copy of the certificate; and

(3) Section 37(1)(ca) and (d)—

*renumber* as section 37(1)(d) and (e).

(4) Section 37—

*insert—*

(5) In this section—

***supervising principal*** includes a person who has completed a certificate under section 36C.

## **8 Amendment of s 37A (Additional information form)**

(1) Section 37A(1), ‘motor vehicle accident claim’—

*omit, insert—*

claim

(2) Section 37A(2) to (4)—

*omit, insert—*

(2) Without limiting subsection (1), an insurer may, for considering any of the following matters, ask the claimant to provide additional information

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about the injury the subject of the claim or about the circumstances in which the claim is made—

- (a) whether the injury is a serious personal injury in relation to which the National Injury Act applies;
  - (b) whether the claimant is an eligible person.
- (3) The claimant must, within 1 month after the date of the request, provide the information to the insurer in a form approved by the commission (an *additional information form*).

## 9 Insertion of new ss 37AA and 37AB

After section 37—

*insert—*

### **37AA Law practice certificate not given**

- (1) This section applies if—
  - (a) the supervising principal of a law practice in relation to a claim fails to give a law practice certificate to the claimant as required under section 36A; and
  - (b) because of the principal's failure, the claimant—
    - (i) cannot comply with the requirements of section 37(1) within the period mentioned in section 37(2); and
    - (ii) terminates in writing the engagement of the law practice to act for the claimant in relation to the claim.
- (2) The principal must, within 14 days after the termination, refund to the claimant all fees and costs, including disbursements, paid by the claimant in relation to the claim.
- (3) In this section—

[s 10]

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*claimant* includes a potential claimant.

### **37A Law practice retained by claimant after notice of claim**

- (1) This section applies if—
  - (a) a law practice is retained by a claimant to act in relation to the claimant's claim; and
  - (b) the claimant has given notice of the claim under section 37 before retaining the law practice.
- (2) The supervising principal of the law practice in relation to the claim must within 1 month after the practice is retained—
  - (a) complete a law practice certificate for the claim; and
  - (b) give the law practice certificate to the insurer.

Maximum penalty—300 penalty units.

*Note—*

See also section 36C.

## **10 Amendment of s 39 (Response to the notice of claim)**

- (1) Section 39, 'motor vehicle accident claim'—

*omit, insert—*

claim
- (2) Section 39—

*insert—*

  - (9) This section is subject to section 39A.

## **11 Insertion of new s 39A**

After section 39—

*insert—*

**39A Duty to give law practice certificate if waiver or presumption**

- (1) This section applies if—
  - (a) a claimant gives notice of the claimant's claim that does not comply with section 37(1)(d)(i); and
  - (b) the insurer for the claim—
    - (i) waives compliance with the requirements under this division for giving notice of the claim; or
    - (ii) is presumed to be satisfied notice has been given as required under this division.
- (2) If the supervising principal of a law practice or a person mentioned in section 36C(2) acting for the supervising principal gave the claimant a law practice certificate for the claim under section 36A but the claimant has not given the certificate to the insurer, the supervising principal must give a copy of the certificate to the insurer as soon as practicable.
- (3) Subsection (4) applies if—
  - (a) the supervising principal of a law practice retained by the claimant in relation to the claimant's claim or a person mentioned in section 36C(2) acting for the supervising principal did not give the claimant a law practice certificate for the claim under section 36A; and
  - (b) the claimant has not subsequently given the insurer a law practice certificate for the claim from the supervising principal or the person.
- (4) The supervising principal must, within a month

[s 12]

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after the claimant is notified of the waiver or the presumption takes effect—

- (a) complete a law practice certificate for the claim; and
- (b) give the certificate to the insurer and a copy of the certificate to the claimant.

Maximum penalty for subsection (4)—300 penalty units.

*Note—*

See also section 36C.

## 12 Insertion of new s 41A

After section 41—

*insert—*

### **41A Supervising principal must complete law practice certificate on settlement or judgment**

- (1) This section applies if—
  - (a) a law practice is retained by a claimant to act in relation to the claimant’s claim; and
  - (b) either—
    - (i) the claimant or the insurer accepts an offer (or counter offer) of settlement; or
    - (ii) judgment is given on the claim.
- (2) The supervising principal of the law practice in relation to the claim must—
  - (a) complete a law practice certificate for the claim; and
  - (b) give the certificate to the insurer and a copy of the certificate to the claimant within 7 days after the acceptance or judgment.

Maximum penalty—300 penalty units.

*Note—*

See also section 36C.

**13 Amendment of s 64 (Conditions of licence)**

Section 64(6), penalty—

*omit, insert—*

Maximum penalty—300 penalty units.

**14 Omission of pt 5, div 3 (Special investigations)**

Part 5, division 3—

*omit.*

**15 Insertion of new pt 5AA**

After section 73—

*insert—*

**Part 5AA Referrals of claims and  
contact to solicit or  
induce claims**

**74 Giving or receiving consideration for claim referrals**

- (1) A person (a *payer*) must not give, agree to give or allow or cause someone else to give consideration to another person (a *payee*) for a claim referral or potential claim referral.

Maximum penalty—300 penalty units.

- (2) A person (also a *payee*) must not receive, agree to receive or allow or cause someone else to receive consideration from another person (also a *payer*) for a claim referral or potential claim referral.

[s 15]

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Maximum penalty—300 penalty units.

- (3) This section does not apply if—
- (a) the payee is a law practice (the *current practice*) that is selling all or part of the law practice's business to another law practice (the *new practice*); and
  - (b) the new practice gives, agrees to give or allows or causes someone else to give the current practice an amount for the referral of a claimant to the new practice; and
  - (c) the amount is not more than the current legal costs for the claimant; and
  - (d) the new practice discloses payment of the amount to the claimant in a costs agreement.
- (4) In this section—
- claimant* includes a potential claimant.
- claim referral*—
- (a) means a referral of a claimant by the payee or someone else—
    - (i) to the payer for the purpose of the payer providing a service for the claimant; or
    - (ii) to the payer or someone else for the purpose of a person other than the payer providing a service for the claimant; but
  - (b) does not include the advertisement or promotion of a service or person that results in a claimant using the service or person if the advertisement or promotion is made to the public or a group of persons.



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*Examples of advertisement or promotion that is not a claim referral—*

- an advertisement of services provided by a law practice on the website or in the newsletter of a sporting association or charity
- the distribution of promotional stationery or clothing that displays a law practice's logo to members of an industrial organisation

**consideration**, for a claim referral or potential claim referral, see section 74A.

**legal costs**, for a claimant, means the fees and costs, including disbursements, a law practice is entitled to charge and recover from the claimant in relation to the claimant's claim.

**service**, for a claimant, means a service related to the claimant's claim.

*Examples—*

a legal service, a medical service

## **74A Meaning of *consideration* for s 74**

- (1) **Consideration**, for a claim referral or potential claim referral, means a fee or other benefit given for the claim referral or potential claim referral but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of \$200 or less.
- (2) To remove any doubt, it is declared that **consideration** does not include—
  - (a) a payment or other benefit, not for a claim referral or potential claim referral, to—
    - (i) a community legal service; or
    - (ii) an industrial organisation; or
    - (iii) a registered entity within the meaning of the *Australian Charities and*

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*Not-for-profits Commission Act 2012*  
(Cwlth); or

(iv) a school association; or

(v) a sporting association; or

*Example—*

legal services provided pro bono by an associate of a law practice to a community legal service

(b) an amount given by a claimant for a service provided to the claimant as part of making a claim including, for example, an amount for legal costs.

(3) In this section—

***community legal service*** see the *Legal Profession Act 2007*, schedule 2.

***industrial organisation*** means a federal organisation, or an organisation, as defined under the *Industrial Relations Act 2016*, schedule 5.

***school association*** means—

(a) an association within the meaning of the *Education (General Provisions) Act 2006*; or

(b) a parents and friends association formed for a non-State school within the meaning of the *Education (Accreditation of Non-State Schools) Act 2017*.

***sporting association*** means an association formed and operated on a not-for-profit basis for the purpose of conducting a sporting activity.

## **75 Approach or contact for the purpose of making a claim**

(1) A person (the ***first person***) must not personally approach or contact another person (the ***second person***) and solicit or induce the second person to

make a claim.

Maximum penalty—300 penalty units.

- (2) For subsection (1), a person personally approaches or contacts another person if the person specifically contacts that person, whether in person or by mail, telephone, email or another form of electronic communication.
- (3) This section does not apply if—
  - (a) the first person—
    - (i) does not expect or intend to receive, and does not receive, consideration because of the approach or contact; and
    - (ii) does not ask for someone else to receive, or agree to someone else receiving, consideration because of the approach or contact; or
  - (b) the first person—
    - (i) is a law practice or lawyer that is supplying, or has previously supplied, the second person, or a relative of the second person, with legal services; and
    - (ii) reasonably believes the second person will not object to the approach or contact; or
  - (c) the first person—
    - (i) is a law practice or lawyer that has been asked by a person on behalf of a community legal service or industrial organisation (a *representative*) to approach or contact the second person; and
    - (ii) has been advised by the representative that the representative reasonably

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believes the second person will not object to the approach or contact.

- (4) This section applies regardless of whether—
- (a) the second person is entitled to make the claim; or
  - (b) the second person had already decided to make, or had made, the claim.

- (5) In this section—

**community legal service** see the *Legal Profession Act 2007*, schedule 2.

**consideration** means a fee or other benefit but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of \$200 or less.

**industrial organisation** means a federal organisation, or an organisation, as defined under the *Industrial Relations Act 2016*, schedule 5.

**legal services** means work done, or business transacted, in the ordinary course of legal practice.

## **76 Responsibility for acts or omissions of representative**

- (1) This section applies to a proceeding for an offence against section 74(1) or (2) or 75.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable precautions and proper diligence, have prevented the act or omission.

(4) To remove any doubt, it is declared that a representative for an individual includes an employee or agent of a partner of a partnership.

(5) In this section—

*executive officer*, of a corporation, means a person who is concerned with or takes part in its management, whether or not the person is a director or secretary or the person's position is given the name of executive officer.

*representative* means—

(a) for an individual—an employee or agent of the individual; or

(b) for a corporation—an executive officer, employee or agent of the corporation.

*state of mind*, of a person, includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

## **77 Additional consequences for law practice**

(1) This section applies if an associate of a law practice is convicted of an offence against section 41A, 74(1) or (2) or 75 in relation to a claim or potential claim.

(2) The law practice is not entitled to recover any fees

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or costs, including disbursements, that relate to the provision of services for the claim and must repay any amount received that relate to the services to the person from whom it was received.

## **78 Injunction to prevent or restrain a contravention of s 74 or 75**

- (1) This section applies if the commissioner reasonably believes a person (an *offending party*) has engaged, is engaging or is proposing to engage in conduct, whether in Queensland or elsewhere, that contravened, is contravening or would contravene section 74(1) or (2) or 75.
- (2) The commissioner may apply to a court of competent jurisdiction (the *court*) for an injunction restraining the offending party from engaging, or continuing to engage, in the conduct.
- (3) The court may grant an interim injunction restraining the offending party from engaging, or continuing to engage, in the conduct pending a decision about the application.
- (4) After considering the application, the court may—
  - (a) if it is satisfied on the balance of probabilities that the offending party has engaged, or is likely to engage or continue to engage, in the conduct—grant the injunction; or
  - (b) refuse to grant the injunction.
- (5) The court may grant the injunction—
  - (a) if it is satisfied the offending party has engaged in the conduct—whether or not it considers the offending party intends to engage again, or continue to engage, in the conduct; or

- 
- (b) if it is satisfied the offending party will likely engage in the conduct if the injunction is not granted—whether or not the offending party has previously engaged in the conduct.
- (6) If the court is satisfied there is a sufficient reason for doing so, it may grant an injunction under subsection (3) or (4) without notice to the offending party.
- (7) In this section—

*court of competent jurisdiction* includes a court of another State or Territory vested with jurisdiction under the cross-vesting laws.

*cross-vesting laws* means the *Jurisdiction of Courts (Cross-vesting) Act 1987* and the corresponding laws of the other States and Territories.

## **79 Maximum amount of legal costs for claims**

- (1) This section applies if—
- (a) a law practice has the conduct of a speculative motor accident claim; and
- (b) the *Legal Profession Act 2007*, section 347 does not apply to the practice.
- (2) The maximum amount of legal costs the law practice may charge and recover from a client for work done in relation to the claim can not be more than the amount worked out using the formula stated in the *Legal Profession Act 2007*, section 347(1).
- (3) However, approval to charge and recover a greater amount may be applied for and approved in the way described in the *Legal Profession Act 2007*, section 347(2) to (4).
- (4) This section applies to a barrister only if the

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barrister has not been retained by another law practice.

(5) This section applies despite anything to the contrary in the costs agreement that relates to the claim.

(6) In this section—

*legal costs* see the *Legal Profession Act 2007*, section 346.

*speculative motor accident claim* means a claim or potential claim if the right of a law practice to charge and recover legal costs from the client who made the claim for work done is dependent on the client's success in pursuing the claim.

## **80 Extraterritorial application of part**

(1) This part, other than section 78, applies both within and outside Queensland.

(2) This part applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

## **16 Insertion of new pt 5A, div 1AA**

Part 5A, before division 1—

*insert—*

### **Division 1AA Interpretation**

#### **81 Definitions for part**

In this part—

*affected person*, in relation to a decision, means—



- (a) if the decision is an original decision—a person who must be given an information notice for the decision; or
- (b) if the decision is an internal review decision—the person who applied for the internal review.

***authorised person*** means a person who holds office under division 1 as an authorised person.

***decision notice*** see section 87SD(1).

***identity card*** means an identity card given under section 87D.

***information notice***, for an original decision, means a written notice stating the following information—

- (a) the decision;
- (b) the reasons for the decision;

*Note—*

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may ask for a review of the decision under this Act;
- (d) how, and the period within which, the review may be started;
- (e) how the person may apply for a stay of the operation of the decision.

***internal review***, of an original decision, see section 87SA(1).

***internal review decision*** means a decision made, or taken to have been made, under section 87SC on an application for internal review of an original decision.

***notice*** means a written notice.

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**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**offence warning**, for a requirement by an authorised person, means a warning that, without a reasonable excuse, it is an offence for the person of whom the requirement is made, not to comply with it.

**original decision** means a decision for which an information notice must be given under this part.

**owner**, of a thing that has been seized under this part, includes a person who would be entitled to possession of the thing had it not been seized.

**person in control**, of a thing, includes any person who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

**place** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

***premises*** includes the following—

- (a) a building or other structure;
- (b) a part of a building or other structure;
- (c) a caravan or vehicle;
- (d) a cave or tent;
- (e) premises held under more than 1 title or by more than 1 owner.

***public place*** means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under paragraph (a)—*

a beach, a park, a road

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

*Examples of a place that may be a public place under paragraph (b)—*

a saleyard, a showground

***vehicle***—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

## **82 References to exercise of powers**

If—

- (a) a provision of this part refers to the exercise of a power by an authorised person; and
- (b) there is no reference to a specific power;

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the reference is to the exercise of all or any authorised persons' powers under this part or a warrant, to the extent the powers are relevant.

### **83 Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **17 Replacement of s 87E (Display of authorised person's identity card)**

Section 87E—

*omit, insert—*

### **87E Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an authorised person must—
  - (a) produce the authorised person's identity card for the other person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place

as mentioned in section 87G(1)(b) or (d).

**18 Amendment of s 87F (Protection from liability)**

(1) Section 87F(1), ‘An authorised person’—

*omit, insert—*

A designated person

(2) Section 87F(2), ‘an authorised person’—

*omit, insert—*

a designated person

(3) Section 87F—

*insert—*

(3) In this section—

***designated person*** means an authorised person or a person acting under the authority or direction of an authorised person.

**19 Replacement of pt 5A, divs 2–4**

Part 5A, divisions 2 to 4—

*omit, insert—*

**Division 2 Entry of places by authorised persons**

**Subdivision 1 Power to enter**

**87G General power to enter places**

(1) An authorised person may enter a place if—

(a) an occupier at the place consents under subdivision 2 to the entry and section 87J has been complied with for the occupier; or

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- (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 87Q has been complied with for the occupier; or
  - (d) it is a licensed insurer's premises and is—
    - (i) open for carrying on business; or
    - (ii) otherwise open for entry.
- (2) For subsection (1)(d), a *licensed insurer's premises* does not include a part of the premises where a person resides.
  - (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
  - (4) The consent may provide consent for re-entry and is subject to the conditions of consent.
  - (5) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
  - (6) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

## **Subdivision 2 Entry by consent**

### **87H Application of subdivision**

This subdivision applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 87G(1)(a).

### **87I Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **87J Matters authorised person must tell occupier**

Before asking for the consent, the authorised person must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
  - (i) the occupier is not required to consent; and
  - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

### **87K Consent acknowledgement**

- (1) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and

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- (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
  - (c) that the occupier has been told—
    - (i) that the occupier is not required to consent; and
    - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (d) that the occupier gives the authorised person or another authorised person consent to enter the place and exercise the powers; and
  - (e) the day and time the consent was given; and
  - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (4) However, if it is impractical for the authorised person to give the occupier a copy of the acknowledgment immediately, the authorised person must give the copy as soon as practicable.
- (5) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.



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## **Subdivision 3 Entry under warrant**

### **87L Application for warrant**

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

### **87M Issue of warrant**

- (1) The magistrate may issue a warrant for the place only under subsection (2).
- (2) The magistrate may issue the warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act or the National Injury Act.
- (3) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised person or any authorised person may with necessary and reasonable help and force—

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- (i) enter the place and any other place necessary for entry to the place; and
- (ii) exercise the authorised person's powers; and
- (c) particulars of the offence that the magistrate considers appropriate; and
- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

### **87N Electronic application**

- (1) An application under section 87L may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) The application—
  - (a) may not be made before the authorised person prepares the written application under section 87L(2); but

- (b) may be made before the written application is sworn.

### **87O Additional procedure if electronic application**

- (1) For an application made under section 87N, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 87N; and
  - (b) the way the application was made under section 87N was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised person the information mentioned in section 87M(3); and
    - (ii) the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 87M(3) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised person must, at the first reasonable opportunity, send to the magistrate—

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- (a) the written application complying with section 87L(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

- (7) This section does not limit section 87L.
- (8) In this section—

*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

### **87P Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in—
  - (a) the warrant; or

- (b) compliance with this subdivision;  
unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—  
**warrant** includes a duplicate warrant mentioned in section 87O(3).

### **87Q Entry procedure**

- (1) This section applies if an authorised person is intending to enter a place under a warrant issued under this subdivision.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised person's identity card or another document evidencing the authorised person's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the authorised person is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—  
**warrant** includes a duplicate warrant mentioned in section 87O(3).

## **Division 3      Other authorised persons’ powers and related matters**

### **Subdivision 1    General powers of authorised persons after entering places**

#### **87R Application of subdivision**

- (1) The powers under this subdivision may be exercised if an authorised person enters a place under section 87G(1)(a), (c) or (d).
- (2) However, if the authorised person enters under section 87G(1)(a) or (c), the powers under this subdivision are subject to any conditions of the consent or terms of the warrant.

#### **87RAGeneral powers**

- (1) The authorised person may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the

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extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

- (g) take to, into or onto the place and use any person, equipment and materials the authorised person reasonably requires for exercising the authorised person's powers under this part;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised person may take a necessary step to allow the exercise of a general power.
  - (3) If the authorised person takes a document from the place to copy it, the authorised person must copy the document and return it to the place as soon as practicable.
  - (4) If the authorised person takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised person must produce the document and return the article or device to the place as soon as practicable.
  - (5) In this section—

*examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.

*film* includes photograph, videotape and record an image in another way.

*inspect*, a thing, includes open the thing and examine its contents.

### **87RB Power to require reasonable help**

- (1) The authorised person may make a requirement (a *help requirement*) of an occupier of the place or a

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person at the place to give the authorised person reasonable help to exercise a general power, including, for example, to produce a document or to give information.

- (2) When making the help requirement, the authorised person must give the person an offence warning for the requirement.
- (3) In this section—  
*general power* see section 87RA(1).

### **87RC Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—200 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) In this section—  
*help requirement* see section 87RB(1).

## **Subdivision 2 Seizure by authorised persons**

### **87RD Seizing evidence at a place that may be entered without consent or warrant**

An authorised person who enters a place the authorised person may enter under this part without the consent of an occupier of the place and without a warrant may seize a thing at the place if the authorised person reasonably believes the thing is evidence of an offence against this Act



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or the National Injury Act.

**87RESeizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an authorised person is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised person enters the place after obtaining the consent or under a warrant.
- (2) If the authorised person enters the place with the occupier’s consent, the authorised person may seize a thing at the place only if—
  - (a) the authorised person reasonably believes the thing is evidence of an offence against this Act or the National Injury Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier’s consent.
- (3) If the authorised person enters the place under a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person may also seize anything else at the place if the authorised person reasonably believes—
  - (a) the thing is evidence of an offence against this Act or the National Injury Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The authorised person may also seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act or the National Injury

Act.

### **87RF Seizure of property subject to security**

- (1) An authorised person may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised person or a person acting under the direction or authority of the authorised person.

### **87RG Power to secure seized thing**

- (1) Having seized a thing under this subdivision, an authorised person may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the authorised person may, for example—
  - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or  
*Example—*  
make it inoperable by dismantling it or removing a component without which the equipment can not be used
  - (c) require a person the authorised person reasonably believes is in control of the place or thing to do an act mentioned in paragraph

(a) or (b) or anything else an authorised person could do under subsection (1)(a).

### **87RH Offence to contravene seizure requirement**

A person must comply with a requirement made of the person under section 87RG(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

### **87RI Offence to interfere**

(1) If access to a seized thing is restricted under section 87RG, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an authorised person's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If access to a place is restricted under section 87RG, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an authorised person's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

### **87RJ Receipt and information notice for seized thing**

(1) This section applies if an authorised person seizes anything under this subdivision unless—

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- (a) the authorised person reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
  - (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised person to comply with this section.
- (2) The authorised person must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) an information notice for the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The authorised person may delay giving the receipt and information notice if the authorised person reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised person under this part.
- (6) However, the delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

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### **87RK Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised person who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

### **87RL Return of seized thing**

- (1) This section applies if a seized thing is not forfeited or transferred under subdivision 3 or 4.
- (2) As soon as the commission stops being satisfied there are reasonable grounds for retaining the thing, the commission must return it to its owner.
- (3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the commission for its return.
- (4) Within 30 days after receiving the application, the commission must—
  - (a) if the commission is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner an information notice for the decision; or
  - (b) otherwise—return the thing to the owner.
- (5) For this section, there are reasonable grounds for retaining a seized thing if—
  - (a) the thing is being, or is likely to be, examined; or

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- (b) the thing is needed, or may be needed, for the purposes of—
    - (i) a proceeding for an offence against this Act or the National Injury Act that is likely to be started or that has been started but not completed; or
    - (ii) an appeal from a decision in a proceeding for an offence against this Act or the National Injury Act; or
  - (c) it is not lawful for the owner to possess the thing.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.
- (8) In this section—  
*examine* includes analyse, test, measure, weigh, grade, gauge and identify.

### **Subdivision 3 Forfeiture**

#### **87RM Forfeiture by commission decision**

- (1) The commission may decide a seized thing is forfeited to the State if an authorised person—
- (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner; or
  - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence against section 74(1) or (2), 75 or 87T for which it was seized.

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- (2) However, the authorised person is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

### **87RN Information notice about forfeiture decision**

- (1) If the commission decides under section 87RM(1) to forfeit a thing, the commission must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) If the decision was made under section 87RM(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if—
  - (a) the decision was made under section 87RM(1)(a) or (b); and

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- (b) the place where the thing was seized is—
  - (i) a public place; or
  - (ii) a place where the notice is unlikely to be read by the former owner.

#### **Subdivision 4 Dealing with property forfeited or transferred to State**

##### **87RO When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 87RM(1); or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

##### **87RP How property may be dealt with**

- (1) This section applies if, under section 87RO, a thing becomes the property of the State.
- (2) The commission may deal with the thing as the commission considers appropriate, including, for example, by destroying it or giving it away.
- (3) The commission must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the commission sells the thing, the commission must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.
- (5) In this section—  
*former owner*, of a thing, see section 87RN(1).



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## **Subdivision 5 Other information-obtaining powers of authorised persons**

### **87RQ Power to require name and address**

- (1) This section applies if an authorised person—
  - (a) finds a person committing an offence against this Act or the National Injury Act;  
or
  - (b) finds a person in circumstances that lead the authorised person to reasonably suspect the person has just committed an offence against this Act or the National Injury Act;  
or
  - (c) has information that leads the authorised person to reasonably suspect a person has just committed an offence against this Act or the National Injury Act.
- (2) The authorised person may require the person to state the person's name and address.
- (3) The authorised person may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the authorised person must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

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(6) In this section—

*address*, of a person, includes the person's residential and business address and, for a person temporarily in Queensland, includes the place where the person is living in Queensland.

### **87RROffence to contravene personal details requirement**

(1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) A person may not be convicted of an offence against subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

(3) In this section—

*personal details requirement* see section 87RQ(5).

### **87RSPower to require information**

(1) This section applies if an authorised person reasonably believes a person has information relevant to any of the following matters—

- (a) a liability under the statutory insurance scheme;
- (b) an entitlement under the statutory insurance scheme;
- (c) an offence the authorised person reasonably believes has been committed against this Act or the National Injury Act.

(2) The authorised person may require the person to—

- (a) give the authorised person the information by a stated reasonable time; or
  - (b) produce a document to the authorised person for inspection at a stated reasonable time and place and allow the authorised person to make a copy of the document.
- (3) To remove any doubt, it is declared that under subsection (2) an authorised person may require the information to be given, or document to be produced, immediately at the place the requirement is made, if the requirement is reasonable in the circumstances.
- (4) When making a requirement under subsection (2), the authorised person must give the person an offence warning for the requirement.
- (5) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.

### **87RTOffence to contravene information requirement**

- (1) A person of whom a requirement is made under section 87RS(2) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information or produce the document if—
- (a) the person would be entitled to refuse to give the information or produce the document in a court proceeding on the ground that giving the information or producing the document might tend to

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incriminate the individual or expose the individual to a penalty; or

- (b) for a requirement to produce a document—the cost of producing the document would be unreasonable, having regard to its evidentiary value and any other relevant circumstances.
- (3) The person does not commit an offence against this section if the information or document sought by the authorised person is not relevant to a matter mentioned in section 87RS(1).

## **Division 4      Miscellaneous provisions relating to authorised persons**

### **Subdivision 1    Damage**

#### **87RU Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 87RW.

#### **87RV Notice of damage**

- (1) This section applies if—
  - (a) an authorised person damages something when exercising, or purporting to exercise, a power; or

- (b) a person (the *assistant*) acting under the direction or authority of an authorised person damages something.
- (2) However, this section does not apply to damage the authorised person reasonably considers is trivial or if the authorised person reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The authorised person must give notice of the damage to a person who appears to the authorised person to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised person must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The authorised person may delay complying with subsection (3) or (4) if the authorised person reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the authorised person's functions.
- (6) The delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or the assistant, the authorised person may state the belief in the notice.

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- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 87RW.

## **Subdivision 2 Compensation and costs of investigation**

### **87RW Compensation**

- (1) A person may claim compensation from the commission if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised person including a loss arising from compliance with a requirement made of the person under division 3.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or a lawful forfeiture.
- (3) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act or the National Injury Act the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.

- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 87RU does not provide for a statutory right of compensation other than as provided by this section.
- (8) In this section—  
*loss* includes costs and damage.

### **87RX Costs of investigation**

- (1) This section applies if a person is convicted by a court of an offence against this Act or the National Injury Act.
- (2) The court may order the person to pay the commission's reasonable costs of an investigation about the offence, including reasonable costs of preparing for the prosecution.
- (3) This section does not limit the order for costs the court may make on the conviction.

## **Subdivision 3 Other offences relating to authorised persons**

### **87RY Obstructing authorised person**

- (1) A person must not obstruct an authorised person exercising a power, or someone helping an authorised person exercising a power, unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) If a person has obstructed an authorised person, or someone helping an authorised person, and the authorised person decides to proceed with the

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exercise of the power, the authorised person must warn the person that—

- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the authorised person considers the person's conduct an obstruction.
- (3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

### **87RZ Impersonating authorised person**

A person must not impersonate an authorised person.

Maximum penalty—50 penalty units.

## **Division 4A      Reviews and appeals    about particular decisions**

### **Subdivision 1   Internal review**

#### **87S Review process must start with internal review**

An affected person for an original decision may appeal to a Magistrates Court only if a decision on an application for internal review of the decision has been made, or taken to have been made, under this subdivision.

#### **87SA Who may apply for internal review**

- (1) An affected person for an original decision may apply to the commission for a review of the



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decision under this subdivision (an *internal review*).

- (2) If the affected person has not been given an information notice for the original decision, the affected person may ask the commission for an information notice for the decision.
- (3) A failure by the commission to give the affected person an information notice for the original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.

### **87SB Requirements for application**

- (1) An application for internal review of an original decision must—
  - (a) be written; and
  - (b) for a person who has been given an information notice for the decision—include enough information to enable the commission to decide the application; and
  - (c) be made to the commission within—
    - (i) for a person who has been given an information notice for the decision—28 days after the day the person is given the notice; or
    - (ii) for a person who has not been given an information notice for the decision—28 days after the day the person becomes aware of the decision.
- (2) The commission may, at any time, extend the period within which the application may be made.
- (3) The application does not affect the operation of the original decision or prevent the decision being implemented.

*Note—*

Subdivision 2 provides for a stay of the original decision.

## **87SCInternal review**

- (1) The commission must, within 20 days after receiving an application for internal review of an original decision—
  - (a) review the original decision; and
  - (b) decide to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the affected person for the original decision a decision notice for the commission's decision under paragraph (b).
- (2) The commission and the affected person may, before the period stated in subsection (1) ends, agree to a longer period for the commission to comply with the subsection.
- (3) The application may be dealt with only by a person who—
  - (a) did not make the original decision; and
  - (b) holds a more senior office than the person who made the original decision.
- (4) Subsection (3) does not apply to an original decision made by the commission personally.
- (5) If the commission does not give the affected person a decision notice within the period required under subsection (1) or a longer period agreed under subsection (2), the commission is taken to confirm the original decision.

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## **87SD Decision notice**

(1) A notice given for an internal review decision (a *decision notice*) must state the following information—

- (a) the decision;
- (b) the reasons for the decision;

*Note—*

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may appeal the decision under this Act;
  - (d) how, and the period within which, the appeal may be started;
  - (e) how the person may apply for a stay of the operation of the decision.
- (2) If the commission does not give an affected person a decision notice for an internal review decision within the period required under section 87SC, the affected person may ask the commission for the decision notice.
- (3) A failure by the commission to give an affected person a decision notice for an internal review decision does not limit or otherwise affect the person's right to appeal to the Magistrates Court the internal review decision.

## **Subdivision 2 Staying operation of original decision**

### **87SECourt may stay operation of original decision**

- (1) An affected person for an original decision may apply to the Magistrates Court for a stay of the operation of the decision.

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- (2) The application may be made at any time within the period within which an application for an internal review of the original decision may be made under subdivision 1.
- (3) The court may make an order staying the operation of the original decision only if it considers the order is desirable after having regard to the following—
  - (a) the interests of any person whose interests may be affected by the making of the order or the order not being made;
  - (b) any submission made to the court by the entity that made the original decision;
  - (c) the public interest.
- (4) A stay by the court under this section—
  - (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (5) The period of a stay by the court under this section must not extend past—
  - (a) the end of the period within which an application for an internal review of the original decision may be made under subdivision 1; or
  - (b) if an application for an internal review of the original decision is made under subdivision 1 within the period allowed under that subdivision—the end of the period within which an appeal against the internal review decision may be made under section 87SF.

### **Subdivision 3 Appeals**

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### **87SF**Appealing internal review decision

- (1) This section applies to a person who—
  - (a) has applied for an internal review of an original decision; and
  - (b) is dissatisfied with the internal review decision.
- (2) The person may appeal to a Magistrates Court (the *court*) against the internal review decision by filing a notice of appeal with the registrar of the court.
- (3) The notice of appeal must state fully the grounds of the appeal.
- (4) The person must file the notice of appeal within 28 days after a decision notice for the internal review decision is given to the person.
- (5) However, the court may, on application and at any time, extend the time for filing the notice of appeal.
- (6) The person must serve a copy of the notice of appeal, and any application to extend the time for filing the notice of appeal, on the commission.
- (7) The appeal does not affect the operation of the internal review decision or prevent the decision being implemented.

### **87SG**Staying operation of internal review decision

- (1) A person mentioned in section 87SF(1) may apply to the court for a stay of the operation of the internal review decision.
- (2) The court may, by order, stay the operation of the internal review decision to secure the effectiveness of the appeal.
- (3) The court may stay the operation of the internal review decision on conditions the court considers

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appropriate.

- (4) The stay operates for the period decided by the court.
- (5) However, the period of the stay must not extend past the time when the court decides the appeal.

### **87SH Powers of court on appeal**

- (1) When deciding an appeal against an internal review decision, the court—
  - (a) has the same powers as the commission in making the internal review decision; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
  - (a) confirm the internal review decision; or
  - (b) substitute another decision for the internal review decision; or
  - (c) set aside the internal review decision and return the matter to the commission with directions the court considers appropriate.

### **87SI Effect of court's decision on appeal**

- (1) If the court substitutes another decision for the internal review decision—
  - (a) the substituted decision is taken to be a decision of the decision-maker; and
  - (b) the commission may give effect to the decision as if—
    - (i) the decision were the original decision of the decision-maker; and

- 
- (ii) no application for review or appeal of the original decision had been made.
  - (2) If the court sets aside the internal review decision and returns the matter to the original decision-maker with directions, any decision made by the decision-maker in accordance with the directions may not be reviewed or appealed against under this part.
  - (3) In this section—  
*decision-maker*, of an original decision, means—
    - (a) for an original decision mentioned in section 87RJ—an authorised person; or
    - (b) otherwise—the commission.

**20 Amendment of s 87U (False or misleading information or documents)**

- (1) Section 87U, heading, after ‘documents’—  
*insert—*  
**about claim**
- (2) Section 87U(4)—  
*omit, insert—*
  - (4) Subsection (3) does not apply to a person if the person, when giving a document—
    - (a) tells the commission, or the Nominal Defendant or other insurer, to the best of the person’s ability, how the document is false or misleading; and
    - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

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## 21 Insertion of new s 87UA

After section 87U—

*insert—*

### **87UA Giving authorised person false or misleading information**

- (1) A person must not, in relation to the administration of this Act or the National Injury Act, give an authorised person information the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units.

- (2) Subsection (1) applies to information given in relation to the administration of this Act or the National Injury Act whether or not the information was given in response to a specific power under this Act or the National Injury Act.
- (3) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the authorised person, to the best of the person’s ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

## 22 Replacement of pt 5A, div 6 (Information from Commissioner of Police Service)

Part 5A, division 6—

*omit, insert—*

### **Division 6 Information from commissioner of police service**



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## **Subdivision 1 Risk to authorised person's safety**

### **87V Commission's power to obtain criminal history report for authorised person's safety**

- (1) The commission may ask the commissioner of the police service for a written report about the criminal history of a person if an authorised person reasonably suspects the person—
  - (a) may be present at a place when the authorised person enters the place under part 5A; and
  - (b) may create an unacceptable level of risk to the authorised person's safety.
- (2) The commissioner of the police service must give the report to the commission.
- (3) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.
- (4) The commission must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence against a person.
- (5) The commission may give the authorised person information in the report about the offences identified under subsection (4).
- (6) The commission or an authorised person to whom the report or written information in the report is given must destroy the report or written information as soon as practicable after the authorised person considers the risk to the authorised person's safety.

### **87VA Confidentiality of criminal history under s 87V**

- (1) A person must not use or disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 87V unless the use or disclosure is allowed under subsection (2).

Maximum penalty—100 penalty units.

- (2) The person may use the information, or disclose the information to another person, if the use or disclosure—
  - (a) is for the purpose of the other person performing a function under this Act; or
  - (b) is with the consent of the person to whom the information relates; or
  - (c) is otherwise permitted or required by law.

## **Subdivision 2 Offence against this Act or National Injury Act**

### **87VB Commission's power to obtain criminal history report about offence**

- (1) The commission may ask the commissioner of the police service for information in the possession of the Queensland Police Service that is mentioned in subsection (2) about a person the commission reasonably suspects to have committed an offence against this Act or the National Injury Act.
- (2) The information that may be given is—
  - (a) the person's criminal history or part of the person's criminal history; and
  - (b) a brief of evidence compiled by the Queensland Police Service on anything

mentioned in the person's criminal history;  
and

- (c) a document about a complaint made by or against the person.
- (3) For this section, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply.

### **87VCC**Confidentiality of information under s 87VB

- (1) A person must not use or disclose, directly or indirectly, to anyone else information given under section 87VB unless the use or disclosure is allowed under subsection (2).

Maximum penalty—100 penalty units.

- (2) The person may use the information, or disclose the information to another person, if the use or disclosure—
- (a) is for the purpose of an investigation or prosecution under this Act or the National Injury Act; or
  - (b) is with the consent of the person to whom the information relates; or
  - (c) is otherwise permitted or required by law.

## **23 Insertion of new ss 87WA and 87WB**

After section 87W—

*insert—*

### **87WAA**Appointments and authority

The following must be presumed in a proceeding under this Act unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of an authorised person;

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- (b) the authority of an authorised person to do anything under this Act.

### **87WBSignatures**

A signature purporting to be the signature of an authorised person is evidence of the signature it purports to be.

## **24 Insertion of new pt 5A, div 9**

Part 5A—

*insert—*

### **Division 9            Miscellaneous**

#### **87Y Extraterritorial application of part**

- (1) This part applies both within and outside Queensland to the extent necessary for any investigation of a contravention of section 74(1) or (2) or 75.
- (2) For subsection (1), this part applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

#### **87Z Confidentiality of information**

- (1) An authorised person must not, whether directly or indirectly, disclose confidential information.  
Maximum penalty—100 penalty units.
- (2) However, subsection (1) does not apply if—
  - (a) the confidential information is disclosed—
    - (i) in the performance of functions under this part; or

- 
- (ii) with the written consent of the person to whom the information relates; or
  - (iii) to the person to whom the information relates; or
  - (iv) in a form that could not identify any person; or
- (b) the disclosure of the confidential information is authorised under an Act or another law.
- (3) In this section—

*confidential information* means information that has become known to an authorised person in the course of performing the authorised person's functions for this part.

## 25 Insertion of new pt 5B

After section 87Z, as inserted by this Act—

*insert—*

### **Part 5B                      Special investigations**

#### **87ZA Definitions for part**

In this part—

*associated person*, for an investigated person, means—

- (a) for an investigated person who is an insurer—an officer of the insurer; or
- (b) for an investigated person who is a related body corporate for an insurer—an officer of the body corporate; or
- (c) for an investigated person who is a law practice—

[s 25]

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- (i) an associate of the law practice; or
- (ii) a barrister briefed by the law practice in relation to a claim the commission reasonably suspects is connected to a contravention of section 74(1) or (2) or 75; or
- (iii) a corporation associated with the law practice and the corporation's executive officers; or
- (d) for an investigated person who is a lawyer—a barrister briefed by the lawyer in relation to a claim the commission reasonably suspects is connected to a contravention of section 74(1) or (2) or 75.

***investigated person*** means any of the following—

- (a) an insurer mentioned in section 87ZC(1);
- (b) an entity mentioned in section 87ZC(2);
- (c) a body corporate mentioned in section 87ZE.

***investigator*** means an investigator appointed under section 87ZC.

### **87ZB Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

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## **87ZCA**Appointment of investigator

- (1) If the commission considers it desirable in the public interest, the commission may appoint an investigator to investigate the affairs of an insurer that is, or has been, licensed under this Act.

*Note—*

See also section 87ZE.

- (2) Also, the commission may appoint an investigator to investigate the relevant affairs of either of the following entities—
  - (a) a law practice or lawyer that is acting or has acted for a claimant;
  - (b) an entity prescribed by regulation for this section.
- (3) The commission may appoint an investigator under subsection (2) if the commission reasonably suspects that section 74(1) or (2) or 75 may have been contravened by the investigated person or an associated person for the investigated person.
- (4) The commission may, by written instrument, appoint any of the following persons as an investigator—
  - (a) an Australian legal practitioner;
  - (b) a qualified accountant;
  - (c) another appropriately qualified person.
- (5) The instrument of appointment must state the terms of appointment and the matters into which the investigation is to be made.
- (6) The instrument of appointment may state a period within which the investigation must be completed.
- (7) The commission may, by written notice given to the investigator—

[s 25]

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- (a) amend the instrument of appointment; or
  - (b) end the appointment.
- (8) In this section—

*Australian legal practitioner* see the *Legal Profession Act 2007*, section 6.

*qualified accountant* means—

- (a) a member of CPA Australia Ltd ACN 008 392 452 who is entitled to use the letters ‘CPA’ or ‘FCPA’; or
- (b) a member of Chartered Accountants Australia and New Zealand ARBN 084 642 571 who is entitled to use the letters ‘CA’ or ‘FCA’; or
- (c) a member of the Institute of Public Accountants Ltd ACN 004 130 643 who is entitled to use the words ‘MIPA’ or ‘FIPA’.

*relevant affairs*, of an investigated person, means matters relating to how the investigated person received or was referred instructions for a claim, and how the investigated person gave or referred instructions for a claim, and includes a transaction involving the investigated person or an associated person for the investigated person relevant to the receipt or referral of instructions.

### **87ZD Delegation of powers by investigator**

- (1) An investigator may delegate a power under this part other than the power to administer an oath or affirmation or the power to examine on oath or affirmation.
- (2) A delegate must produce the instrument of delegation for inspection on request by an investigated person or an associated person for an investigated person.



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## **87ZE Investigation of related body corporate**

If an investigator considers it necessary, in investigating the affairs of an insurer, to investigate the affairs of a body corporate that is or has at any relevant time been a related body corporate for the insurer, the investigator may investigate the affairs of the body corporate with the commission's written agreement.

## **87ZF Powers of investigators**

- (1) An investigator may, by written notice, require an investigated person or an associated person for an investigated person—
  - (a) to produce to the investigator a document that is in the custody or control of the investigated person or associated person; and
  - (b) to give the investigator all reasonable help in connection with the investigation.
- (2) An investigator may, by written notice, require an investigated person, or an associated person for an investigated person, who is an individual to appear before the investigator for examination on oath or affirmation.
- (3) An investigator may administer an oath or affirmation.
- (4) For an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.

## **87ZG Documents produced to investigator**

- (1) If a document is produced to an investigator under this part, the investigator may keep the document for the period that the investigator reasonably considers necessary for the investigation.

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- (2) The investigator must allow a person who would be entitled to inspect the document if it were not being kept by the investigator to inspect the document at all reasonable times.
- (3) The investigator must allow an owner of the document to copy it.

### **87Z Examination of investigated person or associated person**

- (1) An investigated person or associated person for an investigated person must not—
  - (a) fail to comply with a lawful requirement (a *relevant requirement*) of the investigator to the extent the person is able to comply with it; or
  - (b) in purported compliance with a relevant requirement, give information knowing it to be false or misleading in a material particular; or
  - (c) when appearing before an investigator for examination under a relevant requirement—
    - (i) state anything knowing it is false or misleading in a material particular; or
    - (ii) fail to be sworn or to make an affirmation.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the investigator, to the best of the person's ability, how the information is false or misleading; and

- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the investigator.
- (3) A person who complies with the requirement of an investigator under this section does not merely because of the compliance—
  - (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy; or
  - (b) incur any civil liability.
- (4) A person required to attend for examination under this part is entitled to the allowances and expenses prescribed by regulation.

### **87ZISelf-incrimination and legal professional privilege**

- (1) This section applies to a person who is an investigated person or an associated person for an investigated person if the person is required to answer a question put to the person by an investigator or produce a document to an investigator.
- (2) The person is not excused from failure to comply with the requirement on the basis that complying—
  - (a) might tend to incriminate the person or expose the person to a penalty; or
  - (b) in the case of an investigated person mentioned in section 87ZC(2) or an associated person for an investigated person mentioned in section 87ZC(2), would disclose a privileged client communication.
- (3) The investigator must inform the person, in a way that is reasonable in the circumstances, that—

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- (a) the person must comply with the requirement even though complying—
    - (i) might tend to incriminate the person or expose the person to a penalty; or
    - (ii) would disclose a privileged client communication; and
  - (b) if the person is an individual—under section 87ZQ, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person is an individual and the individual fails to comply with the requirement when the investigator has failed to comply with subsection (3), the individual may not be convicted of the offence against section 87ZH(1).
- (5) If, in complying with a requirement made under section 87ZH, the person discloses a privileged client communication—
- (a) the person is taken for all purposes not to have breached legal professional privilege in complying with the requirement; and
  - (b) the disclosure does not constitute a waiver of legal professional privilege or otherwise affect any claim of legal professional privilege for any purpose other than a proceeding for an offence against section 36A, 36D, 36E, 37AB, 39A, 41A, 74(1) or (2) or 75.
- (6) In this section—
- privileged client communication*** means communication protected against disclosure by legal professional privilege that operates for the benefit of a client of an investigated person.

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### **87ZJ Failure of person to comply with requirement of investigator**

- (1) If an investigated person or associated person for an investigated person fails to comply with a requirement of an investigator, the investigator may give the Supreme Court a certificate about the failure to comply.
- (2) If an investigator gives a certificate under subsection (1), the court may inquire into the case and may—
  - (a) order the person to comply with the requirements of the investigator within a period fixed by the court; and
  - (b) if the court is satisfied that the person failed without lawful excuse to comply with the requirement of the investigator—punish the person in the same way as if the person had been guilty of contempt of the court.

### **87ZK Recording of examination**

- (1) An investigator must make a record of the questions asked and the answers given at an examination under this part.
- (2) Subject to section 87ZQ, a record of the examination of a person under this part may be used in evidence in a legal proceeding against the person.
- (3) A copy of the record of the examination of a person must be given to the person on the written request of the person without fee.
- (4) The record must be included with the investigator's final report on the investigation.
- (5) Nothing in this section affects or limits the admissibility of other written or oral evidence.

### **87ZL Report of investigator**

- (1) An investigator may, and, if directed by the commission, must make interim reports to the commission.
- (2) On the completion or termination of the investigation, the investigator must report to the commission the investigator's opinion on the matters under investigation, together with the facts on which the opinion is based.
- (3) A copy of a final report must, and a copy of the whole or a part of an interim report may, be given by the commission to the investigated person to which the report relates.
- (4) However, the commission is not bound to give an investigated person a copy of a report, or a part of a report, if the commission is of the opinion that there is good reason for not divulging its contents.
- (5) If the commission is of the opinion that it is in the public interest, the commission may publish, on its website and any other place the commission considers appropriate, the whole or a part of a report.
- (6) If an investigator has given a record of an examination under this part to the commission with the report to which the record relates, a copy of the record may be given to any person, and on the conditions, that the commission considers appropriate.

### **87ZM Admission of investigator's report in evidence**

- (1) A document certified by the commission to be a copy of an investigator's report is admissible in a legal proceeding as evidence of any facts stated in the report.
- (2) Nothing in this section operates to diminish the

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protection given to witnesses by law.

### **87ZN Documents taken during investigation**

- (1) On the completion or termination of the investigation, an investigator must give the commission any documents the investigator has taken possession of under this part.
- (2) The commission may—
  - (a) keep the documents for the period that the commission reasonably considers necessary to enable a decision to be made about whether or not a legal proceeding ought to be started; and
  - (b) keep the documents for any further period the commission reasonably considers necessary to enable a legal proceeding to be started and continued.
- (3) The commission may—
  - (a) allow other persons to inspect the documents while they are in the commission's possession; and
  - (b) allow the use of the documents for a legal proceeding started because of the investigation.
- (4) The commission must allow a person who would be entitled to inspect a document if it were not in the commission's possession to inspect the document at all reasonable times.

### **87ZO Costs of investigation**

- (1) The commission may recover the costs of and incidental to an investigation under this part from the investigated person to which the investigation relates.

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- (2) However, costs may not be recovered from an investigated person under this section if the investigation established—
  - (a) for an insurer or related body corporate for an insurer—no irregularity on the part of the insurer or related body corporate; or
  - (b) for an investigated person mentioned in section 87ZC(2)—no evidence of a contravention by the person of section 74(1) or (2) or 75.

### **87ZPOther offences about investigations**

- (1) A person must not—
  - (a) conceal, destroy, mutilate or alter a document of or about an investigated person whose affairs are being investigated under this part; or
  - (b) send, cause to be sent or conspire with someone else to send out of the State a document mentioned in paragraph (a) or any property belonging to or under the control of the investigated person.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) It is a defence to a prosecution of an offence against subsection (1) for the defendant to prove that the defendant did not act with intent to defeat the purposes of this part or to delay or obstruct the carrying out of an investigation under this part.

### **87ZQEvidential immunity for individuals complying with particular requirements**

- (1) This section applies if an individual gives or produces information or a document to an investigator under section 87ZF.



- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) However, this section does not apply to—
  - (a) a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence; or
  - (b) a proceeding for an offence against section 36A, 36D, 36E, 37AB, 39A, 41A, 74(1) or (2) or 75.

### **87ZR Extraterritorial application of part**

- (1) This part applies both within and outside Queensland to the extent necessary for any investigation of—
  - (a) a contravention of section 36A, 36D, 36E, 37AB, 39A, 41A, 74(1) or (2) or 75; or
  - (b) the affairs of an investigated person under section 87ZC(2).
- (2) For subsection (1), this part applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

### **87ZS Confidentiality of information**

- (1) An investigator must not, whether directly or indirectly, disclose confidential information.  
Maximum penalty—100 penalty units.
- (2) However, subsection (1) does not apply if—

[s 26]

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- (a) the confidential information is disclosed—
  - (i) in the performance of functions under this part; or
  - (ii) with the written consent of the person to whom the information relates; or
  - (iii) to the person to whom the information relates; or
  - (iv) in a form that could not identify any person; or
- (b) the disclosure of the confidential information is authorised under an Act or another law.

(3) In this section—

*confidential information* means information that has become known to an investigator in the course of performing the investigator's functions for this part.

## 26 Insertion of new pt 7, div 7

Part 7—

*insert—*

### **Division 7                      Transitional provisions for Motor Accident Insurance and Other Legislation Amendment Act 2019**

#### **115 Certificate matters apply to conduct on and after commencement**

- (1) This section applies if—
  - (a) a law practice is retained by a claimant before the commencement to act in relation to the claimant's claim; and

- 
- (b) immediately before the commencement, the claim has not been settled, decided by a court or otherwise concluded.
- (2) Despite section 36B, a law practice certificate for the claim that the supervising principal of the law practice may be required to complete and give to a person under section 36A, 36E, 37AB, 39A or 41A must state the matters in section 36B(2) to (4) only in relation to conduct on and after the commencement.
- (3) In this section—  
*claimant* includes a potential claimant.  
*supervising principal* includes a person who is completing a certificate under section 36C.

### **116 Maximum amount of legal costs for claims does not apply to work starting before commencement**

- (1) This section applies if—
- (a) a law practice is retained by a client before the commencement to act in relation to the client's speculative motor accident claim; and
- (b) the law practice continues to have the conduct of the claim on the commencement.
- (2) Section 79 does not apply to the legal costs the law practice may charge and recover from the client for work done in relation to the claim.
- (3) In this section—  
*legal costs* see the *Legal Profession Act 2007*, section 346.  
*speculative motor accident claim* means a claim or potential claim if the right of a law practice to charge and recover legal costs from the client who



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names, addresses, telephone numbers and email addresses

(5) Section 17(1)—

*insert—*

(ea) whether, in relation to the vehicle the claimant or, for a derivative claim, the injured person was travelling in at the time of the accident, a property damage claim has been made under a comprehensive insurance policy or a third party property damage policy;

(eb) if a claim has been made under a policy mentioned in paragraph (f)—the insurer for the policy, the policy number and the number of any property damage claim made under the policy;

(6) Section 17(1)(f), ‘names and addresses’—

*omit, insert—*

names, addresses, telephone numbers and email addresses

(7) Section 17(1)(n) and (o)—

*omit, insert—*

(n) for a claim other than a derivative claim—

(i) the date the claimant was first physically examined by a doctor in relation to personal injury resulting from the accident; and

(iii) the date the claimant was first physically examined by the certifying doctor in relation to personal injury resulting from the accident; and

(iv) the unique identifier given to the certifying doctor under the Health

[s 29]

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Practitioner Regulation National Law,  
section 233;

- (o) if the claimant consulted a lawyer about the possibility of making a claim—the date the claimant first consulted the lawyer;
  - (p) if the claimant has retained a law practice to act for the claimant in relation to the claim—
    - (i) the name of the law practice; and
    - (ii) the date the claimant retained the law practice.
- (8) Section 17(1)(ea) to (p)—  
*renumber* as section 17(1)(f) to (r).
- (9) Section 17(4)—  
*insert*—  
***certifying doctor*** means the doctor who signed the certificate mentioned in section 18(1)(a).
- (10) Section 17(4), definition *derivative claim*, ‘motor vehicle accident claim’—  
*omit, insert*—  
claim
- (11) Section 17(4), definition *derivative claim*—  
*relocate* to schedule 5.

**29 Amendment of s 18 (Certificates to accompany notice of claim—Act, s 37(1)(d))**

- (1) Section 18, heading—  
*omit, insert*—

**18 Certificates and identity documents to accompany notice of claim—Act, s 37(1)(e)**

- (2) Section 18(1)(a), ‘contain’—

---

*omit, insert—*

be accompanied by

- (3) Section 18(1)(a)(i), after ‘address,’—

*insert—*

email address,

- (4) Section 18(1)(a)—

*insert—*

(ia) that the doctor physically examined the claimant; and

(ib) whether the claimant was, at the date of the accident, an existing patient of the doctor or of a medical practice in which the doctor practises or was practising; and

- (5) Section 18(1)(ia) to (iii)—

*renumber* as section 18(1)(ii) to (v).

- (6) Section 18—

*insert—*

(1A) Also, a notice of claim must be accompanied by a certificate signed by the claimant that states—

(a) whether the claimant is making the claim on the claimant’s own initiative; and

(b) either—

(i) the claimant was not personally approached or contacted by a person and solicited or induced to make the claim; or

(ii) if the claimant was personally approached or contacted by a person and solicited or induced to make the claim—the name of the person and the circumstances in which the claimant

[s 29]

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was personally approached or contacted; and

- (c) if the claimant has retained a law practice to act for the claimant in relation to the claim—whether the claimant knows if the law practice gave consideration to a person for the referral of the claimant to the law practice.
- (1B) The certificate mentioned in subsection (2) must be in a form approved by the commission and verified by statutory declaration.
- (1C) Further, if the claimant is at least 15 years, a notice of claim must be accompanied by—
  - (a) a certified copy of an identity document for the claimant that is current; or
  - (b) if the claimant does not hold an identity document—a recent certified photograph of the claimant.
- (7) Section 18(2), definition *derivative claim*—  
*omit.*
- (8) Section 18(2)—  
*insert—*

***certified copy***, of an identity document, means a copy of the document certified by any of the following persons to be a true copy of the document—

- (a) a lawyer;
- (b) a notary public;
- (c) a commissioner for declarations;
- (d) a justice of the peace.

***consideration*** means a fee or other benefit but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of



\$200 or less.

*identity document*, for a claimant, means a document issued by a government that is evidence of the claimant's identity and contains a photograph of the claimant.

*recent certified photograph*, of a claimant, means a passport-size photograph of the claimant taken within the last 2 years and certified to be a photograph of the claimant by a person who has known the claimant for at least 1 year.

- (9) Section 18(1A) to (2)—  
*renumber* as section 18(2) to (5).

**30 Replacement of s 24 (Condition about when licence takes effect—Act, s 64(1))**

Section 24—

*omit, insert*—

**24 Conditions of licence—Act, s 64**

For section 64(1) of the Act, the conditions of a licence are—

- (a) the licensed insurer must not start carrying on business under the licence until the first day of the quarter next following the grant of the licence; and
- (b) the licensed insurer must comply with standards made under section 10(1)(d) of the Act about the proper management of claims.

**31 Amendment of s 26 (Information to be provided by return—Act, s 88)**

- (1) Section 26(6)—

*insert*—

[s 31]

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*certifying doctor* means the doctor who signed the certificate mentioned in section 18(1)(a).

- (2) Section 26(6), definitions *required claim details* and *required further claim details*, after ‘means’—

*insert—*

each of

- (3) Section 26(6), definition *required claim details*, paragraph (g)—

*insert—*

- (iii) the claimant’s medicare number; and
- (iv) if the notice of claim was accompanied by an identity document under section 18 that has a unique identifying number—the number.

- (4) Section 26(6), definition *required further claim details*, paragraphs (d) to (h)—

*omit, insert—*

- (d) whether, in relation to the vehicle the claimant or, for a derivative claim, the injured person was travelling in at the time of the accident, a property damage claim has been made under a comprehensive insurance policy or a third party property damage policy;
- (e) if a claim has been made under a policy mentioned in paragraph (d)—the insurer for the policy, the policy number and the number of any property damage claim made under the policy;
- (f) the name and address of each witness to the accident known to the insurer;
- (g) the circumstances of the accident, including how the claimant came to be involved in the accident;

- (h) the nature of the personal injury to the claimant;
- (i) for a claim other than a derivative claim, the following details as shown in the notice of claim—
  - (i) the date the claimant was first physically examined by a doctor in relation to personal injury resulting from the accident;
  - (iii) the date the claimant was first physically examined by the certifying doctor in relation to personal injury resulting from the accident;
  - (iv) the unique identifier given to the certifying doctor under the Health Practitioner Regulation National Law, section 233;
- (j) for a claim other than a derivative claim, whether the claimant was, at the date of the accident, an existing patient of the doctor or of a medical practice in which the doctor practises or was practising, as shown in the certificate accompanying the notice of claim;
- (k) if the claimant consulted a lawyer about the possibility of making a claim—the date, as shown in the notice of claim, the claimant first consulted the lawyer;
- (l) if the claimant has retained a law practice to act for the claimant in relation to the claim, the following details as shown in the notice of claim—
  - (i) the name of the law practice;
  - (ii) the date the claimant retained the law practice.

[s 32]

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## **Part 4**                      **Minor and consequential amendments**

### **32**      **Legislation amended**

Schedule 1 amends the legislation it mentions.

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## Schedule 1      Minor and consequential amendments

section 32

### Legal Profession Act 2007

#### 1      Section 347(1)

*insert—*

*Note—*

See also the *Motor Accident Insurance Act 1994*, section 79.

### Motor Accident Insurance Act 1994

#### 1      Section 4, definitions *claim* and *motor vehicle accident claim—*

*omit.*

#### 2      Section 4—

*insert—*

*claim* means a claim for damages based on a liability for personal injury arising out of a motor vehicle accident and, for a fatal injury, includes a claim on behalf of the deceased's dependants or estate.

**3 Amendment of various sections for reference to motor vehicle accident claim**

Each of the following provisions is amended by omitting ‘motor vehicle accident claim’ and inserting ‘claim’—

- section 34(1)
- section 36(2)
- section 37B(1)(a)
- section 38(1) and (6)
- section 41(1)
- section 43(1)
- section 44(1) and (3)
- section 45(2)(a)
- section 51C(1) and (7)
- section 52(3), (6) and (7)
- section 52A(1)(a)
- section 55F(1)
- section 57(1)
- section 59(1)
- section 65(2)(ba).

**4 Amendment of various sections for reference to motor vehicle accident claims**

Each of the following provisions is amended by omitting ‘motor vehicle accident claims’ and inserting ‘claims’—

- section 19(2)(a)
- section 29(3)(b)
- section 57A(1)
- section 88(2)(a).

**5 Section 67A(7)(e), '87'—**

*omit, insert—*

73

**6 Section 67A(7)—**

*insert—*

(f) part 5B.

## **Motor Accident Insurance Regulation 2018**

**1 Section 30, heading, '78(3)'—**

*omit, insert—*

87ZH(4)

**2 Section 30, 'part 5, division 3'—**

*omit, insert—*

part 5B

**3 Schedule 4, section 3(3)(a) and (b), 'motor vehicle accident claims'—**

*omit, insert—*

claims

**4 Schedule 4, section 13(1), 'motor vehicle accident claim'—**

*omit, insert—*

claim

**5 Schedule 5, definition *notice of claim*, ‘motor vehicle accident claim’—**

*omit, insert—*

claim

**National Injury Insurance Scheme (Queensland) Act 2016**

**1 Section 103(2), ‘10(1)(ha)’—**

*omit, insert—*

10(1)(m)

**2 Schedule 1, definition *claim*—**

*omit, insert—*

*claim* see the Insurance Act, section 4.

**Victims of Crime Assistance Act 2009**

**1 Schedule 3, definition *motor accident claim*, ‘motor vehicle accident claim’—**

*omit, insert—*

claim

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