

PERSONAL INJURIES PROCEEDINGS AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Purpose of legislation

The main purpose of this Act is to amend the *Personal Injuries Proceedings Act 2002* to extend its application to personal injuries that arose out of incidents that happened on or before 18 June 2002.

The Act also amends the *Personal Injuries Proceedings Act 2002* to exclude from the application of certain provisions of the Act, personal injuries that occurred as a result of an unlawful intentional act or sexual assault or other sexual misconduct.

The Act also contains several technical amendments that clarify the operation of the provisions of the Act and to maintain consistency of language used across the Act.

Administrative cost to Government of implementation

There are no financial implications for the Government in the Bill.

Fundamental legislative principles

The Bill gives rise to a breach of the fundamental legislative principles that legislation should not adversely affect the rights of individuals retrospectively.

Retrospective application of the *Personal Injuries Proceedings Act 2002* may adversely affect the rights of persons injured before the commencement of the Act on 18 June 2002.

The potential adverse affect on individuals must be balanced against the interests of the community in achieving the affordability of insurance to enable the ongoing provision of health care to injured persons, and the affordability of public liability insurance generally.

Limiting the retrospective application of the Act to injuries which were not the subject of a claim in a court, or for which no offer of settlement had been made by a party, mitigates the effect of retrospectivity on individuals.

While retrospectivity will potentially result in some plaintiffs receiving damages awards less than they may otherwise have received, the pre-court procedures that must be followed under the Act will also deliver savings to the parties in terms of reduced legal costs and early resolution of the claim.

The Government recognises that claimants who were injured pre-18 June 2002 may be disadvantaged in relation to legal costs. However, the Bill offers protection for the costs incurred for outlays and disbursements.

The Bill preserves the rights of plaintiffs under the *Limitation of Actions Act 1974* for injuries that happened before commencement by extending the 3 year period for claims for damages for personal injuries by up to 18 months. This will enable a party who may have otherwise been statute barred to attempt the resolution of their claim under the Act's pre-court procedures.

Consultation

Consultation has been undertaken with officers of other interested Departments and agencies, and the Australian Medical Association Queensland.

NOTES ON PROVISIONS

Clause 1 sets out the short title to the Act.

Clause 2 provides that sections 4 (Application of the Act) and 8 (Amendment of s 50—Awards of exemplary, punitive or aggravated damages) of this Act are taken to have commenced on 18 June 2002.

Clause 3(1) provides that this Act, other than the schedule, part 2, amends the *Personal Injuries Proceedings Act 2002*.

Clause 3(2) provides the schedule amends the Act it mentions (*Queensland Law Society Act 1952*).

Clause 4 amends section 6 (Application of the Act) and provides that certain provisions of the Act do not apply to a claimant who is injured as a

result of unlawful intentional acts done with intent to cause personal injury, sexual assaults or other sexual misconduct. These provisions would otherwise limit the damages awarded to plaintiffs injured from these acts.

Clause 5 inserts a new section 6 and section 7 into the *Personal Injuries Proceedings Act 2002* that includes the exclusion referred to under clause 4, and gives effect to the retrospective operation of the Act. The Act is to apply to all personal injuries, arising out of an incident whether happening before, on, or after 18 June 2002. The principal Act, as enacted, only applied to injuries occurring on or after 18 June 2002. However, new section 6(3) makes it clear that persons who started proceedings before 18 June 2002 are largely unaffected by the changes made by this Bill. Also, this Bill does not interfere with any accrued right a person who suffered injury before 18 June 2002 and started a proceeding on or after 18 June 2002 and before 1 July 2002 may have, to continue the proceeding unaffected by the changes.

Section 7 is omitted and a new section 7 is inserted. This follows advice received from the Crown Solicitor about the efficacy of section 7. This provision had been uplifted from s. 57A of the *Motor Accident Insurance Act 1994* which was inserted in that Act by the *Motor Accident Insurance Amendment Act 2000* which received assent on 8 June 2000, thirteen days before the decision of the High Court of Australia in *John Pfeiffer Limited v Rogerson* (2000) 203 CLR 503 which was delivered on 21 June 2000. The Crown Solicitor was concerned that a court in another Australian jurisdiction might conclude that s. 7 has the effect of limiting, or even excluding, the principles in *Pfeiffer*. The Crown Solicitor advised that an option was to amend s. 7 to make as complete a statement as possible of the principles stated in *Pfeiffer*. Accordingly, the inserted section 7 does so by clearly stating what provisions of the Act are substantive, as opposed to procedural, law.

The Crown Solicitor also advised that the provisions that were intended to apply for actions which might be taken outside Australia for personal injuries suffered in Queensland were of doubtful utility and therefore do not appear in the new section 7.

Clause 6 inserts a new section 9(8) providing that the service of notices of a claim on the State is to be effected by serving the Crown Solicitor. Section 9 is also amended to require the claimant to enable the person served with the notice to make copies of records and sources of information.

Clause 7 amends s. 15 by inserting a new subsection (5) to ensure that all respondents to notices of claim arising out of the one incident cooperate so

that all respondents are in a position to participate in the compulsory conference with the claimant.

Clause 8 amends section 50 (awards of exemplary, punitive or aggravated damages) as a consequence of the broader limitations on the application of the Act contained in the amended section 6.

Clause 9 inserts a new subsection (3) to clarify the operation of subsection (2) and renumbers the existing subsection (3) as subsection (4).

Clause 10 inserts a new part heading into Chapter 4.

Clause 11 amends section 76 to clarify that it applies only to injuries arising out of incidents that happened between 18 June 2002 and 1 August 2002. It is also amended to clarify that it is subject to section 19, which suspends the obligations of a plaintiff under a legal disability.

Clause 12 inserts a new Chapter 4, **Part 2—“Transitional Provisions for Act No.24 of 2002 and Jury Trials”**.

New section 77A applies to injuries arising out of incidents happening before 18 June 2002 and in relation to which a period of limitation has not ended. It deems that, for section 9(3)(a), the day the incident giving rise to a personal injury is 1 August 2002. It also deems that, for section 9(3)(b), a claimant is taken not to have consulted lawyer before 1 August 2002.

New section 77B applies to injuries arising out of incidents that happened before 18 June 2002. It provides that an amount paid or payable for disbursements incurred before 1 July 2002 is recoverable as if the Act had not been enacted.

The Government recognises that claimants who suffered injury pre-18 June 2002 may be disadvantaged in relation to costs. However the Bill offers protection for the costs incurred for disbursements.

New section 77C applies to injuries arising out of incidents that happened before 18 June 2002. Where an offer of settlement has been made in relation to the injury before 1 July 2002, the Act, apart from sections 58 and 77, does not apply to the injury. The section applies whether or not the offer is accepted.

New section 77D alters the period of limitation applying to injuries arising out of incidents that happened before 18 June 2002 which would otherwise end during the period starting on 18 June 2002 and ending at the end of 18 December 2003 and a proceeding based on the claim has not been started in a court. The section extends the limitation period to 18 December 2003, provided that a complying notice of claim is given before

18 June 2003 or at a later time, not more than 6 months after the complying notice of claim is given and not later than the end of 18 December 2003, with the court's leave.

New section 77E stays proceedings that were commenced in the court during the period starting 1 July 2002, (when it was announced that the Act would be amended to operate retrospectively to that date) and ending at the end of the day when the *Personal Injuries Proceedings Amendment Act 2002* receives assent if the proceeding is based on a claim arising out of an incident happening before 18 June 2002. The proceedings are stayed until the plaintiff complies with chapter 2, part 1 or the proceeding is discontinued or otherwise ends.

The Schedule contains a number of minor amendments to the *Personal Injuries Proceedings Act 2002 Act* to clarify the relevant sections referred to and to maintain consistency of the language used across the Act.

It amends the schedule to the Act to insert a definition of "period of limitation".

It also amends the *Queensland Law Society Act 1952* to recognise that unprofessional conduct or practice may arise under Acts other the *Queensland Law Society Act 1952* (for example under the *Personal Injuries Proceedings Act 2002*) and to provide a link back to the *Queensland Law Society Act*.