

Queensland



# **PERSONAL INJURIES PROCEEDINGS ACT 2002**

**Reprinted as in force on 18 June 2002  
(includes retrospective amendments in Act No. 38 of 2002)**

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**Reprint No. 0A revised edition**

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- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.

Queensland



**PERSONAL INJURIES PROCEEDINGS  
ACT 2002**

**TABLE OF PROVISIONS**

Section		Page
<b>CHAPTER 1—PRELIMINARY</b>		
<b>PART 1—INTRODUCTION</b>		
1	Short title . . . . .	5
2	Commencement . . . . .	5
3	Notes in text . . . . .	5
<b>PART 2—MAIN PURPOSE AND APPLICATION OF ACT</b>		
4	Main purpose . . . . .	5
5	Act binds all persons . . . . .	6
6	Application of Act . . . . .	6
7	Application of limitation of liability and awards to foreign awards . . . . .	8
<b>PART 3—INTERPRETATION</b>		
8	Definitions . . . . .	8
<b>CHAPTER 2—CLAIMS</b>		
<b>PART 1—PRE-COURT PROCEDURES</b>		
<i>Division 1—Claims procedures</i>		
9	Notice of a claim . . . . .	9
10	Person to whom notice of a claim is given must give preliminary response to claimant . . . . .	10
11	Acknowledgement that a person is a proper respondent to a claim is not an admission of liability . . . . .	12
12	Respondent’s response to the notice of a claim . . . . .	12
13	Consequences for respondent of failure to respond to notice of a claim . . . . .	13
14	Claimant may add other respondents . . . . .	14
15	Multiple respondents . . . . .	14

*Personal Injuries Proceedings Act 2002*


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16	Respondent may add other person as contributor . . . . .	15
17	Contributor's response. . . . .	15
18	Claimant's failure to give notice of a claim. . . . .	16
19	Legal disabilities . . . . .	17
20	Respondent must attempt to resolve claim . . . . .	17
	<b><i>Division 2—Obligations of the parties</i></b>	
21	Purpose of div 2. . . . .	19
22	Duty of claimant to provide documents and information to respondent. . . . .	19
23	Respondent and claimant may jointly arrange for expert report. . . . .	21
24	Costs of obtaining expert report if report obtained by agreement. . . . .	21
25	Examination of claimant by medical expert in absence of agreement between the parties . . . . .	22
26	Mitigation of damages. . . . .	22
27	Duty of respondent to give documents and information to claimant . . . . .	23
28	Duty of respondent to give documents to contributor. . . . .	24
29	Duty of contributor to give documents to respondent. . . . .	25
30	Nondisclosure of particular material . . . . .	25
31	Offence not to disclose particular material . . . . .	26
32	Consequence of failure to give information . . . . .	26
33	Privilege. . . . .	26
34	No requirement to give documents twice . . . . .	27
	<b><i>Division 3—Enforcement of divs 1 and 2</i></b>	
35	Court's power to enforce compliance with divs 1 and 2 . . . . .	27
	<b><i>Division 4—Compulsory conferences</i></b>	
36	Compulsory conference. . . . .	27
37	Exchange of material for compulsory conference. . . . .	28
38	Procedure at conference . . . . .	30
39	Parties to exchange mandatory final offers if claim not settled at compulsory conference . . . . .	31
40	Provisions about mandatory final offers . . . . .	32
41	Offer to contribute . . . . .	33
42	Time for starting proceeding . . . . .	33

***Division 5—Urgent proceedings***

43	Need for urgent proceeding . . . . .	34
----	--------------------------------------	----

**PART 2—EXPRESSIONS OF REGRET**

44	Purpose of pt 2. . . . .	35
45	Meaning of “expression of regret” . . . . .	35
46	Expressions of regret are inadmissible . . . . .	35

**PART 3—PROCEEDINGS IN COURT**

47	Exclusion of summary judgment on the basis of admissions . . . . .	36
48	Consequences of failure to comply with claims procedures may result in adverse costs order . . . . .	36
49	Consequences of failure to mitigate damages . . . . .	36
50	Awards of exemplary, punitive or aggravated damages . . . . .	37
51	Damages for loss of earnings or earning capacity. . . . .	37
52	Discount rate to be applied in calculating the present value of future loss or gratuitous services . . . . .	37
53	Damages for loss of consortium or loss of servitium . . . . .	38
54	Damages for gratuitous services . . . . .	38
55	Interest. . . . .	39
56	Costs in cases involving damages awards of not more than \$50 000 . . . . .	39
57	General regulation of court awards . . . . .	41
58	Exclusion of jury trial . . . . .	41
59	Alteration of period of limitation . . . . .	41
60	Recovery in case of fraud . . . . .	42

**PART 4—STRUCTURED SETTLEMENTS**

61	Court may make consent order for structured settlement . . . . .	42
----	--	----

**CHAPTER 3—OTHER MATTERS****PART 1—RESTRICTION ON ADVERTISING OF PERSONAL INJURY SERVICES AND TOUTING**

62	Application of pt 1. . . . .	43
63	Definitions for pt 1 . . . . .	43
64	Meaning of “advertises personal injury services”. . . . .	44
65	Meaning of “allowable publication method” . . . . .	45
66	Restriction on advertising personal injury services. . . . .	46

*Personal Injuries Proceedings Act 2002*

67	Prohibition on touting at scene of incident or at any time . . . . .	47
68	Prohibition against paying, or seeking payment, for touting . . . . .	49
69	Consequence if person approved under an Act is convicted under s 67 or 68 . . . . .	50
<b>PART 2—PROTECTION OF PERSONS PERFORMING DUTIES TO ENHANCE PUBLIC SAFETY</b>		
70	Application of pt 2 . . . . .	50
71	Protection of persons performing duties to enhance public safety . . . . .	51
<b>PART 3—MISCELLANEOUS</b>		
72	Offences involving fraud . . . . .	51
73	False or misleading information or documents . . . . .	52
74	Approved forms . . . . .	52
75	Regulation-making power . . . . .	53
<b>CHAPTER 4—TRANSITIONAL PROVISIONS</b>		
76	Special provision for injuries suffered between commencement and 1 August 2002 . . . . .	53
77	Jury trials . . . . .	53
<b>CHAPTER 5—AMENDMENT OF MOTOR ACCIDENT INSURANCE ACT 1994</b>		
78	Act amended in ch 5 . . . . .	54
79	Insertion of new pt 4, div 6B . . . . .	54
	<i>Division 6B—Structured settlements</i>	
	57B Court may make consent order for structured settlement . . . . .	54
80	Omission of ss 97A and 97B . . . . .	54
<b>SCHEDULE . . . . .</b>		
<b>55</b>		
<b>DICTIONARY</b>		
<b>ENDNOTES</b>		
1	Index to endnotes . . . . .	59
2	Date to which amendments incorporated . . . . .	59
3	Key . . . . .	59
4	List of legislation . . . . .	60
5	List of annotations . . . . .	60
6	Information about retrospectivity . . . . .	60

# **PERSONAL INJURIES PROCEEDINGS ACT 2002**

[as amended by all amendments that commenced on or before 18 June 2002]

**An Act to regulate particular claims for and awards of damages based on a liability for personal injuries, and for other purposes**

## **CHAPTER 1—PRELIMINARY**

### **PART 1—INTRODUCTION**

#### **1 Short title**

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

#### **2 Commencement**

This Act is taken to have commenced on 18 June 2002.

#### **3 Notes in text**

A note in the text of this Act is part of the Act.

### **PART 2—MAIN PURPOSE AND APPLICATION OF ACT**

#### **4 Main purpose**

(1) The main purpose of this Act is to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury.

(2) The main purpose is to be achieved generally by—

- (a) providing a procedure for the speedy resolution of claims for damages for personal injury to which this Act applies; and
- (b) promoting settlement of claims at an early stage wherever possible; and
- (c) ensuring that a person may not start a proceeding in a court based on a claim without being fully prepared for resolution of the claim by settlement or trial; and
- (d) putting reasonable limits on awards of damages based on claims; and
- (e) minimising the costs of claims; and
- (f) regulating inappropriate advertising and touting.

## **5 Act binds all persons**

(1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

## **6 Application of Act**

(1) Section 58<sup>1</sup> applies in relation to all personal injury arising out of an incident whether happening before or on or after 18 June 2002.

(2) The other provisions of this Act apply in relation to all personal injury arising out of an incident happening on or after 18 June 2002.

(3) However, this Act does not apply to—

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

(4) Also, this Act, other than section 58, does not apply to personal injury in relation to which a proceeding was started in a court before the commencement of this section.

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1 Section 58 (Exclusion of jury trial)



*Personal Injuries Proceedings Act 2002*

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

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

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

- (a) the *Anti-Discrimination Act 1991*, section 209(1)(b);<sup>2</sup>
- (b) the *Civil Aviation (Carriers' Liability) Act 1964*, including the applied provisions as defined under that Act;
- (c) the *Criminal Offence Victims Act 1995*;
- (d) the Criminal Code, repealed section 663D.<sup>3</sup>

(6) For subsection (2), if—

- (a) the day the incident giving rise to personal injury happened can not be ascertained with certainty; and
- (b) the first appearance of symptoms of the injury happened on or after 18 June 2002;

the incident is taken to have happened at the first appearance of symptoms of the injury.

(7) To remove any doubt, it is declared that subsection (6) does not determine or affect when a cause of action in relation to a personal injury arose for the purposes of the *Limitation of Actions Act 1974*.

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

(9) In subsection (4A)—

“**act**” includes omission.

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

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

## **7 Application of limitation of liability and awards to foreign awards**

(1) This section applies to a proceeding for damages based on a liability for personal injury suffered by a person in Queensland that is started outside Queensland.

(2) It is the Parliament's intention that the limits on liability and awards for damages for personal injury—

- (a) are to apply, to the full extent of the Parliament's extraterritorial legislative capacity, whether damages are assessed in Queensland or elsewhere; and
- (b) are to be regarded by courts within and outside Queensland as substantive, rather than procedural, provisions.

(3) Subsection (4) applies if a claimant, by proceeding in a court outside Queensland, recovers damages of more than the amount that could have been recovered if the limits on liability and awards mentioned in subsection (2) had been applied.

(4) The person liable to pay the damages may recover from the claimant as a debt the amount by which the amount of the damages is more than the amount that would have been recovered if the proceeding had been started in Queensland.

(5) In this section—

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

## **PART 3—INTERPRETATION**

### **8 Definitions**

The dictionary in the schedule defines particular words used in this Act.

## CHAPTER 2—CLAIMS

### PART 1—PRE-COURT PROCEDURES

#### *Division 1—Claims procedures*

#### **9 Notice of a claim**

(1) Before starting a proceeding in a court based on a claim, a claimant must give written notice of the claim, in the approved form, to the person against whom the proceeding is proposed to be started.

(2) The notice must—

- (a) contain a statement of the information required under a regulation; and
- (b) authorise each of the following to have access to records and sources of information relevant to the claim specified under a regulation—
  - (i) the person;
  - (ii) if the person is insured against the claim, the person's insurer for the claim; and
- (c) be accompanied by the documents required under a regulation.

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

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

(4) If the claimant is a child, the child's parent or legal guardian may give the notice for the child.

(5) If the notice is not given within the period prescribed under subsection (3), the obligation to give the notice continues and a reasonable

excuse for the delay must be given in the notice or by separate notice to the person against whom the proceeding is proposed to be started.

(6) If the notice is not given within the period prescribed under subsection (3), the claimant is taken to have a reasonable excuse for subsection (5) if the claimant—

- (a) has made a complaint about the person against whom the proceeding is proposed to be started to the Health Rights Commissioner under the *Health Rights Commission Act 1991* within the period prescribed for making a complaint under that Act; and
- (b) gives notice of a claim under this section to the person as soon as practicable after the complaint is finalised under the *Health Rights Commission Act 1991*.

(7) If a proceeding based on a claim may be started against 2 or more persons, the person to whom notice is given under subsection (1) must, within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving it—

- (a) give a copy of the notice to each other person known to the person who may be a person against whom a proceeding might be started by the claimant based on the claim; and
- (b) advise the claimant of each other person to whom a copy of the notice has been given and give the claimant a short statement of the person's reasons for considering the other person may be a person against whom a proceeding might be started based on the claim.

## **10 Person to whom notice of a claim is given must give preliminary response to claimant**

(1) A person to whom notice of a claim is given must, in writing and within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving the notice—

- (a) if the person considers that the person is a proper respondent to the claim, give notice to the claimant under section 12; or
- (b) if the person is unable to decide on the information contained in the notice whether or not the person is a proper respondent to the claim, advise the claimant of the further information the person

*Personal Injuries Proceedings Act 2002*

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reasonably needs to decide whether the person is a proper respondent to the claim; or

- (c) if the person considers that the person is not a proper respondent to the claim, give the claimant, in writing—
  - (i) reasons why the person considers the person is not a proper respondent to the claim; and
  - (ii) any information the person has that may help the claimant to identify a proper respondent to the claim.

Maximum penalty—100 penalty units.

**(2)** If the claimant is advised of the need for further information under subsection (1)(b), the claimant must—

- (a) give the person the information the person reasonably needs to decide whether the person is a proper respondent to the claim; or
- (b) advise the person, in writing, that the claimant considers the person to be a proper respondent to the claim and require the person to give notice to the claimant under section 12.

**(3)** After being given information under subsection (2)(a), the person must, having regard to the information given to the person—

- (a) if the person considers that the person is a proper respondent to the claim, give notice to the claimant under section 12; or
- (b) if the person considers that the person is not a proper respondent to the claim, give the claimant, in writing—
  - (i) reasons why the person believes the person is not a proper respondent to the claim; and
  - (ii) any information the person has that may help the claimant to identify a proper respondent to the claim.

Maximum penalty—100 penalty units.

**(4)** If the person advises the claimant that the person considers the person is not a proper respondent to the claim, the claimant must advise the person, in writing, that—

- (a) on the information available to the claimant, the claimant accepts the person is not a proper respondent to the claim; or
- (b) the claimant considers the person to be a proper respondent to the claim and requires the person to give notice to the claimant under section 12.

(5) Advice given to a person under subsection (4)(a) does not prevent the claimant from giving the person another notice of a claim under section 9 at a later time.

### **11 Acknowledgement that a person is a proper respondent to a claim is not an admission of liability**

Notice by a person that the person considers that the person is a proper respondent to a claim is not an admission of liability by the person in relation to the claim.

### **12 Respondent's response to the notice of a claim**

(1) This section applies to a person (“**respondent**”) to whom a notice of a claim is given under this division or purportedly under this division and who—

- (a) considers himself, herself or itself to be a proper respondent to the claim; or
- (b) is given notice under section 10(2)(b) or (4)(b) that the claimant considers the person to be a proper respondent to the claim.

(2) The respondent must, within the prescribed period, give the claimant written notice—

- (a) stating whether the respondent is satisfied that the notice is a complying notice of claim; and
- (b) if the respondent is not satisfied, identifying the noncompliance and stating whether the respondent waives compliance with the requirements; and
- (c) if the respondent does not waive compliance with the requirements, allowing the claimant a reasonable period, of at least 1 month, specified in the notice either to satisfy the respondent that the claimant has in fact complied with the requirements or to take reasonable action specified in the notice to remedy the noncompliance.

(3) If the respondent is not prepared to waive compliance with the requirements in the first instance, the respondent must, within 1 month after the end of the period specified under subsection (2)(c), give the claimant a written notice—

- (a) stating that the respondent is satisfied the claimant has complied with the relevant requirements, is satisfied with the action taken by the claimant to remedy the noncompliance, or waives the noncompliance in any event; or
- (b) stating that the respondent is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, and giving full particulars of the noncompliance and the claimant's failure to remedy it.

(4) In this section—

**“prescribed period”** means—

- (a) if the respondent responds directly to the claimant under this section as contemplated by section 10(1)(a)—the period prescribed under section 10(1); or
- (b) otherwise—
  - (i) the period prescribed under a regulation; or
  - (ii) if no period is prescribed, the later of the following—
    - (A) if the respondent gives notice to the claimant under section 10(3)(a) that the respondent is a proper respondent to the claim—1 month after the respondent gives the notice;
    - (B) if the claimant advises the respondent under section 10(2)(b) or (4)(b) that the claimant considers the person to be a proper respondent to the claim and requires the person to give notice to the claimant under this section—1 month after the claimant advises the respondent under the paragraph.

### **13 Consequences for respondent of failure to respond to notice of a claim**

If a claimant gives notice of a claim under this division or purportedly under this division to a person against whom a proceeding is proposed to be started, and the person does not respond to the notice under section 12<sup>4</sup> within the prescribed period under that section, the person is conclusively presumed to be satisfied the notice is a complying notice of claim.

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4 Section 12 (Respondent's response to the notice of a claim)

## 14 Claimant may add other respondents

(1) A claimant may, within the time prescribed under a regulation, add someone else as a respondent by giving the person—

- (a) a notice of a claim complying with section 9(2); and
- (b) copies of other documents given to or received from any other respondent under this Act.

(2) If the time prescribed under subsection (1) for adding a respondent has ended, the claimant may add someone else as a respondent only with the person's agreement and the agreement of the parties or with the court's leave.

(3) If a claimant adds someone as a respondent under this section—

- (a) the person must respond to the notice as if it were a notice of a claim given under section 9; and
- (b) the claimant must notify each other party of the addition by written notice within the time prescribed under a regulation.

## 15 Multiple respondents

(1) If there are 2 or more respondents to a claim, 1 of the respondents (the “**respondents’ claim manager**”) may act for 1 or more of the other respondents under this division, division 2 and part 3<sup>5</sup> with the agreement of the other respondents.

(2) The respondents’ claim manager—

- (a) may exercise the powers and perform the duties conferred by this division, division 2 and part 3 in relation to the claim and the claimant for all respondents for whom the respondents’ claim manager acts; and
- (b) must act as far as practicable with the agreement of the other respondents for whom the respondents’ claim manager acts.

(3) Action taken or an agreement made by the respondents’ claim manager in relation to the claim is binding on each respondent for whom the respondents’ claim manager acts so far as it affects the claimant.

(4) However, if the respondents’ claim manager acts beyond the scope of the respondents’ claim manager’s authority under the agreement under

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5 Division 2 (Obligations of the parties) and part 3 (Proceedings in court)



subsection (1), the respondents' claim manager is liable to each other respondent who is a party to the agreement for any loss suffered by the other respondent.

## **16 Respondent may add other person as contributor**

(1) A respondent who receives a complying notice of claim may, within the time prescribed under a regulation, add someone else as a contributor for the purposes of this part by giving the person a written notice ("**contribution notice**")—

- (a) claiming an indemnity from, or contribution towards, the respondent's liability; and
- (b) stating the grounds on which the respondent holds the person liable; and
- (c) stating any other information that may be prescribed under a regulation; and
- (d) accompanied by copies of documents about the claim given to or received from any other party under this Act.

(2) If the time prescribed under subsection (1) for adding a contributor has ended, a respondent may add someone else as a contributor only with the person's agreement and the agreement of the parties or with the court's leave.

(3) If a respondent adds someone as a contributor under this section, the respondent must give a copy of the contribution notice to each other party within the time prescribed under a regulation.

Maximum penalty for subsection (3)—50 penalty units.

## **17 Contributor's response**

(1) A contributor must, within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving a contribution notice, give the respondent who gave the contribution notice a written response ("**contributor's response**")—

- (a) containing a statement of information prescribed under a regulation; and
- (b) accompanied by any documents that may be prescribed under a regulation.

(2) The contributor's response must also state—

- (a) whether the claim for the contribution or indemnity claimed in the contribution notice is admitted, denied or admitted in part; and
- (b) if the claim for the contribution or indemnity is admitted in part, the extent to which it is admitted.

(3) An admission of liability in the contributor's response—

- (a) is not binding on the contributor in relation to any other claim; and
- (b) is not binding on the contributor at all if it later appears the admission was induced by fraud.

(4) If the respondent requires information provided by a contributor under this section to be verified by statutory declaration, the contributor must verify the information by statutory declaration.

## **18 Claimant's failure to give notice of a claim**

(1) A claimant's failure to give a complying notice of claim prevents the claimant from proceeding further with the claim unless—

- (a) the respondent to whom notice of a claim was purportedly given—
  - (i) has stated that the respondent is satisfied the notice has been given as required or the claimant has taken reasonable action to remedy the noncompliance; or
  - (ii) is presumed to be satisfied the notice has been given as required; or
- (b) the respondent has waived compliance with the requirement; or
- (c) the court, on application by the claimant—
  - (i) declares that the claimant has remedied the noncompliance; or
  - (ii) authorises the claimant to proceed further with the claim despite the noncompliance.

(2) An order of the court under subsection (1)(c) may be made on conditions the court considers necessary or appropriate to minimise

prejudice to a respondent from the claimant's failure to comply with the requirement.

## **19 Legal disabilities**

(1) A claimant's obligation to comply with this division is suspended while the claimant is under a legal disability.

*Note—*

If the claimant is a child, under section 9(4) a parent or guardian of the child may give the notice mentioned in section 9 for the child.

(2) A period within which the obligation is to be complied with begins when the claimant's legal disability ends and, to give effect to this part, this chapter is to be read as though a reference to the day the incident giving rise to the personal injury happened were a reference to the day the claimant's legal disability ends, and with other necessary changes.

(3) This section does not prevent a claimant, or a person acting for the claimant, from complying with an obligation under this chapter while the claimant is under a legal disability.

(4) A claimant is under a legal disability for this section in the circumstances in which a person is taken to be under a disability for the *Limitation of Actions Act 1974*.

## **20 Respondent must attempt to resolve claim**

(1) Within the period prescribed under a regulation or, if no period is prescribed, within 6 months after a respondent receives a complying notice of claim, the respondent must—

- (a) take reasonable steps to inform himself, herself or itself about the incident alleged to have given rise to the personal injury to which the claim relates; and
- (b) give the claimant written notice stating—
  - (i) whether liability is admitted or denied; and
  - (ii) if contributory negligence is claimed, the degree of the contributory negligence expressed as a percentage; and
- (c) if the claimant made an offer of settlement in the notice of a claim, inform the claimant whether the respondent accepts or rejects the offer, or if the claimant did not make an offer of

*Personal Injuries Proceedings Act 2002*

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settlement in the notice, invite the claimant to make a written offer of settlement; and

- (d) make a fair and reasonable estimate of the damages to which the claimant would be entitled in a proceeding against the respondent; and
- (e) make a written offer, or counteroffer, of settlement to the claimant setting out in detail the basis on which the offer is made, or settle the claim by accepting an offer made by the claimant.

(2) If a notice of a claim is not a complying notice of claim, a respondent is taken to receive a complying notice of claim when—

- (a) the respondent gives the claimant notice that the respondent waives compliance with the requirement that has not been complied with or is satisfied the claimant has taken reasonable action to remedy the noncompliance; or
- (b) the court makes a declaration that the claimant is taken to have remedied the noncompliance, or authorises the claimant to proceed further with the claim despite the noncompliance.

(3) An offer, or counteroffer, of settlement must be accompanied by a copy of medical reports, assessments of cognitive, functional or vocational capacity and all other material, including documents relevant to assessing economic loss, in the offerer's possession that may help the person to whom the offer is made make a proper assessment of the offer.

(4) A respondent or claimant to whom a written offer, or counteroffer, of settlement is made must, unless a response to the offer is to be made under subsection (1)(c), respond in writing to the offer within the period prescribed under a regulation or, if no period is prescribed, within 3 months after receiving it, indicating acceptance or rejection of the offer.

(5) An admission of liability by a respondent under this section—

- (a) is not binding on the respondent in relation to any other claim; and
- (b) is not binding on the respondent at all if it later appears the admission was induced by fraud.

***Division 2—Obligations of the parties*****21 Purpose of div 2**

The purpose of this division is to put the parties in a position where they have enough information to assess liability and quantum in relation to a claim.

**22 Duty of claimant to provide documents and information to respondent**

(1) A claimant must give a respondent—

(a) copies of the following in the claimant's possession—

- (i) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;
- (ii) reports about the claimant's medical condition or prospects of rehabilitation;
- (iii) reports about the claimant's cognitive, functional or vocational capacity; and

(b) information reasonably requested by the respondent about any of the following—

- (i) the incident;
- (ii) the nature of the personal injury and of any consequent disabilities;
- (iii) if applicable, the medical treatment and rehabilitation services the claimant has sought or obtained;
- (iv) the claimant's medical history, as far as it is relevant to the claim, and any other claims for damages for personal injury made by the claimant;
- (v) the claimant's claim for past and future economic loss;
- (vi) any claim known to the claimant for gratuitous services or loss of consortium or servitium consequent on the claimant's personal injury.

(2) If the claim is a health care claim, the claimant must, if reasonably requested by a respondent, give the respondent a single report from a

*Personal Injuries Proceedings Act 2002*

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doctor with appropriate qualifications and experience in the relevant field that includes an opinion regarding—

- (a) the nature and extent of the personal injury alleged to have been suffered; and
- (b) the causal relationship between the incident and the personal injury alleged to have arisen from the incident.

(3) The respondent may not request a report under subsection (2) if a similar report has already been given under subsection (1).

(4) However, the giving of a report under subsection (2) does not limit the respondents's right to require the claimant to undergo an examination or assessment under section 25.<sup>6</sup>

(5) The claimant must—

- (a) provide the copies mentioned in subsection (1)(a) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after giving notice of a claim under division 1 or purportedly under division 1 and, to the extent that the reports or material come into the claimant's possession later, within 7 days after they come into the claimant's possession; and
- (b) respond to a request under subsection (1)(b) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving it.

(6) If, after notice of a claim is given to a respondent under division 1 or purportedly under division 1 but before the claim is resolved, the claimant becomes aware of—

- (a) a change in the claimant's medical condition or disabilities; or
- (b) a change in other circumstances relevant to an assessment of the claimant's claim;

the claimant must, within the period prescribed under a regulation or, if no period is prescribed, within 1 month after becoming aware of the change, inform the respondent of the change.

(7) If a respondent requires information provided by a claimant under this section to be verified by statutory declaration, the claimant must verify the information by statutory declaration.

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6 Section 25 (Examination of claimant by medical expert in absence of agreement between the parties)

(8) If a claimant fails, without proper reason, to comply fully with a request by a respondent under this section, the claimant is liable for costs to the respondent resulting from the failure.

### **23 Respondent and claimant may jointly arrange for expert report**

(1) A respondent and a claimant may jointly arrange for an expert report about all or any of the following—

- (a) the cause or probable cause of the incident alleged to have given rise to the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more persons (who may be named) are responsible for, or contributed to, the incident;
- (b) the cause or probable cause of the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more persons (who may be named) are responsible for, or contributed to, the injury;
- (c) the claimant's medical condition or prospects of rehabilitation;
- (d) the claimant's cognitive, functional or vocational capacity.

(2) Neither a respondent nor a claimant is under any obligation to agree to a proposal to obtain a report under this section.

(3) The person from whom an expert report is obtained is to be a person, agreed to by both parties, with appropriate qualifications and experience in the relevant field.

(4) The person preparing the expert report must give both parties a copy of the report.

### **24 Costs of obtaining expert report if report obtained by agreement**

(1) If an expert report is obtained by agreement between a respondent and a claimant, and the claimant is liable for the cost of obtaining the report, the respondent must, at the claimant's request, reimburse the claimant for the reasonable cost of obtaining the report.

(2) However, a claimant's right to reimbursement under this section is subject to the terms of any agreement between the claimant and the respondent.

## **25 Examination of claimant by medical expert in absence of agreement between the parties**

(1) This section applies if a respondent wants to obtain an expert report about all or any of the following, but fails to obtain the claimant's agreement—

- (a) the cause or probable cause of the incident alleged to have given rise to the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more persons (who may be named), are responsible for, or contributed to, the incident;
- (b) the cause or probable cause of the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more persons (who may be named) are responsible for, or contributed to, the injury;
- (c) the claimant's medical condition or prospects of rehabilitation;
- (d) the claimant's cognitive, functional or vocational capacity.

(2) The claimant must comply with a request by the respondent to undergo, at the respondent's expense either or both of the following—

- (a) a medical examination by a doctor to be selected by the claimant from a panel of at least 3 doctors with appropriate qualifications and experience in the relevant field nominated by the respondent in the request;
- (b) an assessment of cognitive, functional or vocational capacity by an expert to be selected by the claimant from a panel of at least 3 experts with appropriate qualifications and experience in the relevant field nominated by the respondent in the request.

(3) However, a claimant is not obliged to undergo an examination or assessment under this section if it is unreasonable or unnecessarily repetitious.

(4) If 3 doctors or experts with appropriate qualifications and experience in the relevant field are not available for inclusion on a panel under subsection (2), the number on the panel may be reduced to 2.

## **26 Mitigation of damages**

(1) If a respondent is not satisfied with the action taken by a claimant to mitigate damages, the respondent may give the claimant a written notice suggesting specified action the claimant should take to mitigate damages.



(2) The notice may, for example, suggest that—

- (a) the claimant should undergo medical treatment of a specified kind; or
- (b) the claimant should return to work or take specified steps to obtain employment; or
- (c) the claimant should undergo rehabilitation therapy of a specified kind, or undertake specified programs of rehabilitation and training.

*Note—*

For the consequences of a failure to take reasonable steps to mitigate damages by following suggestions made under this section, see section 49.<sup>7</sup>

(3) Subsection (1) does not limit the claimant's duty to mitigate damages.

## **27 Duty of respondent to give documents and information to claimant**

(1) A respondent must give a claimant—

- (a) copies of the following in the respondent's possession—
  - (i) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;
  - (ii) reports about the claimant's medical condition or prospects of rehabilitation;
  - (iii) reports about the claimant's cognitive, functional or vocational capacity; and
- (b) if asked by the claimant—
  - (i) information that is in the respondent's possession about the circumstances of, or the reasons for, the incident; or
  - (ii) if the respondent is an insurer of a person for the claim, information that can be found out from the insured person for the claim, about the circumstances of, or the reasons for, the incident.

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<sup>7</sup> Section 49 (Consequences of failure to mitigate damages)

(2) A respondent must—

- (a) give the claimant the copies mentioned in subsection (1)(a) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving a complying notice of claim and, to the extent any report or documentary material comes into the respondent's possession later, within 7 days after it comes into the respondent's possession; and
- (b) respond to a request under subsection (1)(b) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving it.

(3) If the claimant requires information provided by a respondent under this section to be verified by statutory declaration, the respondent must verify the information by statutory declaration.

(4) If a respondent fails, without proper reason, to comply fully with this section, the respondent is liable for costs to the claimant resulting from the failure.

## **28 Duty of respondent to give documents to contributor**

(1) A respondent must give a contributor for the claim added by the respondent copies of the following in the respondent's possession—

- (a) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;
- (b) reports about the claimant's medical condition or prospects of rehabilitation;
- (c) reports about the claimant's cognitive, functional or vocational capacity;
- (d) reports about the claimant's personal injury and of any consequent disabilities;
- (e) if applicable, information about the medical treatment and rehabilitation services the claimant has sought or obtained;
- (f) information about the claimant's medical history, as far as it is relevant to the claim, and any other claims for damages for personal injury made by the claimant;
- (g) information about the claimant's claim for past and future economic loss;

- (h) information about any claim known to the respondent for gratuitous services or loss of consortium or servitium consequent on the claimant's personal injury.

(2) The respondent must give the copies—

- (a) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after giving a contribution notice to the contributor; and
- (b) to the extent any report, documentary material or information comes into the respondent's possession more than 1 month after giving the contribution notice, within 7 days after it comes into the respondent's possession.

## **29 Duty of contributor to give documents to respondent**

(1) A contributor must give the respondent who added the contributor as a contributor copies of reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates that are in the contributor's possession.

(2) The contributor must provide the copies—

- (a) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after being added as a contributor; and
- (b) to the extent any report or documentary material comes into the contributor's possession more than 1 month after being added as a contributor, within 7 days after it comes into the respondent's possession.

## **30 Nondisclosure of particular material**

(1) A party is not obliged to disclose information or documentary material under division 1 or this division if the information or documentary material is protected by legal professional privilege.

(2) However, investigative reports, medical reports and reports relevant to the claimant's rehabilitation must be disclosed even though otherwise protected by legal professional privilege but they may be disclosed with the omission of passages consisting only of statements of opinion.

(3) If a respondent has reasonable grounds to suspect a claimant of fraud, the respondent may apply, *ex parte*, to the court for approval to

withhold from disclosure under division 1 or this division information or documentary material, including a class of documents, that—

- (a) would alert the claimant to the suspicion; or
- (b) could help further the fraud.

(4) If the court gives approval on application under subsection (3), the respondent may withhold from disclosure the information or documentary material in accordance with the approval.

(5) In this section—

“**investigative reports**” does not include any document prepared in relation to an application for, an opinion on or a decision about, indemnity against the claim from the State.

### **31 Offence not to disclose particular material**

A respondent must not withhold information or documentary material from disclosure under division 1 or this division unless the withholding is permitted under the division or the court approves the withholding.

Maximum penalty—100 penalty units.

### **32 Consequence of failure to give information**

(1) This section applies if a party fails to comply with a provision of division 1 or this division requiring the party to disclose a document to another party.

(2) The document can not be used by the party in a subsequent court proceeding based on the claim, or the deciding of the claim, unless the court orders otherwise.

(3) If the document comes to the other party’s knowledge, the document may be used by the other party.

### **33 Privilege**

The information, reports and documentary material given or disclosed under division 1 or this division are protected by the same privileges as if disclosed in a proceeding before the Supreme Court.

### **34 No requirement to give documents twice**

No provision of this Act requires a party to give a document to another party if the document has already been given to the other party under another provision.

#### *Division 3—Enforcement of divs 1 and 2*

### **35 Court’s power to enforce compliance with divs 1 and 2**

(1) If a party fails to comply with a duty imposed under division 1 or 2, the court may, on the application of another party to whom the duty is owed, order the first party to take specified action to remedy the default within a time specified by the court.

(2) The court may make consequential or ancillary orders, including orders as to costs.

#### *Division 4—Compulsory conferences*

### **36 Compulsory conference**

(1) Before starting a proceeding in a court based on a claim, there must be a conference of the parties (the “**compulsory conference**”).

(2) Any party may call the compulsory conference—

- (a) at a time and place agreed between the parties; or
- (b) if the relevant day has passed, at a reasonable time and place nominated by the party calling the conference.

(3) For subsection (2)(b), the relevant day is the later of the following days—

- (a) if there is only 1 respondent to the claim, the day 6 months after the claimant gave the respondent a complying notice of claim or, if there is more than 1 respondent to the claim, the day 6 months after the day the claimant last gave a respondent a notice of a claim under section 14(1);<sup>8</sup>

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8 Section 14 (Claimant may add other respondents)

- (b) if, under section 12,<sup>9</sup> a person to whom a notice of a claim is given gives notice to the claimant that the person is a proper respondent to the claim—the day 6 months after the person gives notice or, if there is more than 1 person to whom a notice is given, the day 6 months after the day after the last person gives notice.

(4) The parties may, for good reason, dispense with the compulsory conference or the signing of a certificate of readiness under section 37(1)(d) by agreement.

(5) The court may, on application by a party—

- (a) fix the time and place for the compulsory conference; or
- (b) dispense with the compulsory conference for good reason; or
- (c) dispense with the requirement to sign a certificate of readiness under section 37(1)(d) in cases of complexity including, for example, a case involving multiple respondents, non-party discovery and the need for further expert evidence;

and make any other orders the court considers appropriate in the circumstances.

(6) In considering whether to make any order under subsection (5), the court must take into account—

- (a) the extent of compliance by the parties with their respective obligations relating to the claim; and
- (b) how the main purpose of this Act is to be achieved having regard, in particular, to section 4(2)(a) to (e).<sup>10</sup>

### **37 Exchange of material for compulsory conference**

(1) At least 7 days before the compulsory conference is held, each party must give each other party—

- (a) copies of all documents not yet given to the other party that are required to be given to the party under this Act; and
- (b) a statement signed by the party or, if the party has legal representation, the party's lawyer verifying that all relevant

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<sup>9</sup> Section 12 (Respondent's response to the notice of a claim)

<sup>10</sup> Section 4 (Main purpose)

*Personal Injuries Proceedings Act 2002*

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documents in the possession of the party or the party's lawyer that are required to be given under this Act have been given as required; and

- (c) details of the party's legal representation; and
- (d) a certificate ("**certificate of readiness**") signed by the party or, if the party has legal representation, the party's lawyer.

(2) The certificate of readiness must state that, having regard to the documents in the party's possession—

- (a) the party is in all respects ready for the conference and the trial, subject to compliance with the procedural requirements of the *Uniform Civil Procedure Rules 1999*; and
- (b) all investigative material required by the party for the trial has been obtained, including witness statements from persons, other than expert witnesses, the party intends to call as witnesses at the trial; and
- (c) medical or other expert reports have been obtained from all persons the party proposes to call as expert witnesses at the trial; and
- (d) the party has fully complied with the party's obligations to give the other parties material required to be given to the parties under this Act; and
- (e) if the party has legal representation, the party's lawyer has given the party a statement (a "**costs statement**") containing the information required under subsection (4).

(3) A lawyer who, without reasonable excuse, signs a certificate of readiness knowing that it is false or misleading in a material particular commits unprofessional conduct.

(4) A costs statement must contain—

- (a) details of the party's legal costs (clearly identifying costs that are legal fees and costs that are disbursements) up to the completion of the compulsory conference; and
- (b) an estimate of the party's likely legal costs (clearly identifying costs that are estimated legal fees and costs that are estimated disbursements) if the claim proceeds to trial and is decided by the court; and

- (c) a statement of the consequences to the party, in terms of costs, in each of the following cases—
- (i) if the amount of the damages awarded by the court is equal to, or more than, the claimant's mandatory final offer;
  - (ii) if the amount of the damages awarded by the court is less than the claimant's mandatory final offer but equal to, or more than, a respondent's, or the respondents', mandatory final offer;
  - (iii) if the amount of the damages awarded by the court is equal to, or less than, a respondent's, or the respondents', mandatory final offer.

(5) The court may, on the *ex parte* application of a party, exempt the party from an obligation to give or disclose material to another party before trial if satisfied that—

- (a) disclosure would alert a person reasonably suspected of fraud to the suspicion; or
- (b) there is some other good reason why the material should not be disclosed.

(6) In this section—

“party” does not include contributor.

### **38 Procedure at conference**

(1) The compulsory conference may be held with a mediator if all parties agree.

(2) An agreement that the compulsory conference is to be held with a mediator must specify how the costs of the mediation are to be borne.

(3) The mediator must be a person independent of the parties—

- (a) agreed to by the parties; or
- (b) nominated by the registrar of the court on application under subsection (4).

(4) If the parties are unable to agree on the appointment of a mediator within 30 days after the day for the compulsory conference is fixed, any party may apply to the registrar of the court for the nomination of a mediator.



(5) A person authorised by a party to settle the claim on the party's behalf may participate in the conference as a party.

(6) Each party must, unless the party has a reasonable excuse, attend the compulsory conference and actively participate in an attempt to settle the claim.

(7) The compulsory conference may be conducted, if the parties agree, by using any technology that reasonably allows the parties to hear and take part in discussions as they happen.

*Example—*

Teleconferencing.

(8) The parties may, by agreement, change the time or place for holding the compulsory conference or adjourn the compulsory conference from time to time and from place to place.

### **39 Parties to exchange mandatory final offers if claim not settled at compulsory conference**

(1) If the claim is not settled at the compulsory conference, the claimant and a respondent must, unless the court has dispensed with this obligation, exchange written final offers—

- (a) at the conference; or
- (b) if the conference has been dispensed with, within 14 days after the date of the agreement or order dispensing with the conference.

(2) If there are 2 or more respondents, the claimant may make a written final offer to settle with any respondent, and any respondent may make a written final offer to settle with the claimant.

(3) However, subsection (4) applies if—

- (a) the claimant agrees to make a written final offer to all of the respondents to settle the claim as against all of the respondents; and
- (b) all of the respondents agree to make a written joint final offer to the claimant to settle the claim as against all of the respondents.

(4) If this subsection applies—

- (a) the claimant's offer must be made to all of the respondents and is an offer to settle the claim against all of the respondents; and

- (b) the respondents' offer must be made by all of the respondents to the claimant and is an offer to settle the claim against all of the respondents.

(5) Respondents who make an offer under subsection (3) are jointly and severally liable to the claimant for the whole of the amount of the offer.

(6) A written final offer required under this section is called a **“mandatory final offer”**.

#### **40 Provisions about mandatory final offers**

(1) A mandatory final offer for \$50 000 or less must be exclusive of costs.

(2) If a mandatory final offer is for more than \$30 000 but not more than \$50 000, and is accepted, costs are to be calculated and paid on a basis (but subject to limits) stated under a regulation.

(3) Even though a respondent denies liability altogether, the respondent must nevertheless make a mandatory final offer but, in that event, the offer is to be expressed as an offer of \$nil.

(4) A mandatory final offer must remain open for 14 days and a proceeding in a court based on a claim must not be started while the offer remains open.

(5) If the claimant starts a proceeding in a court based on the claim, the claimant must, at the start of the proceeding, file at the court a sealed envelope containing a copy of the claimant's mandatory final offer.

(6) A respondent must, before or at the time of filing a defence, file at the court a sealed envelope containing a copy of the respondent's mandatory final offer or, if a joint final offer is made by multiple respondents, a copy of the respondents' mandatory final offer.

(7) The court must not read the mandatory final offers until it has decided the claim.

(8) However, the court must, if relevant, have regard to the mandatory final offers in making a decision about costs.

(9) The court may, on application by a party, dispense with the obligation to make mandatory final offers.

#### **41 Offer to contribute**

(1) This section applies if a respondent makes a claim (a “**contribution claim**”) to recover contribution or indemnity against a person, whether a respondent to the claim or not, in relation to a claim made by a claimant.

(2) A party to the contribution claim may give another party to the contribution claim an offer to contribute towards the settlement of the claim on the conditions specified in the offer.

(3) The court may take account of an offer to contribute in deciding whether it should order that the party to whom the offer to contribute was given should pay all or part of—

- (a) the costs of the party who made the offer; and
- (b) any costs the party is liable to pay to the claimant.

#### **42 Time for starting proceeding**

(1) A proceeding in a court based on the claim should be started—

- (a) within 60 days after the conclusion of the compulsory conference; or
- (b) within a further period—
  - (i) agreed by the parties within the 60-day period mentioned in paragraph (a); or
  - (ii) fixed by the court on an application made by the claimant within the 60-day period mentioned in paragraph (a).

(2) If the parties or the court dispenses with the compulsory conference, a proceeding in a court based on the claim should be started—

- (a) within 60 days after the later of the following—
  - (i) if there is only 1 respondent to the claim, the day 6 months after the day on which the claimant gives the respondent a complying notice of claim, or if there is more than 1 respondent to the claim, the day 6 months after the day the claimant last gave a respondent a notice of a claim under section 14(1);<sup>11</sup>

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<sup>11</sup> Section 14 (Claimant may add other respondents)

- (ii) the date of the agreement or order dispensing with the conference; or
- (b) within a further period—
  - (i) agreed by the parties within the 60-day period mentioned in paragraph (a); or
  - (ii) fixed by the court on an application made by the claimant within the 60-day period mentioned in paragraph (a).

(3) However, if the court dispenses with the obligation to make mandatory final offers, a proceeding in a court based on the claim should be started within a period fixed by the court when giving the dispensation or later.

(4) The expiry of the time within which the proceeding should be started under subsection (1), (2) or (3) does not prevent the claimant from starting the proceeding but the court may—

- (a) unless the claimant establishes a reasonable excuse for the delay, order the claimant to pay, in any event, a respondent's costs arising out of the delay; and
- (b) on a respondent's application, make an order fixing a time limit within which the proceeding must be started.

(5) If the claimant fails to start the proceeding within a time limit fixed under subsection (4)(b), the claim is barred.

(6) To remove any doubt, it is declared that subsection (5) has effect despite the *Limitation of Actions Act 1974*.

### ***Division 5—Urgent proceedings***

#### **43 Need for urgent proceeding**

(1) The court, on application by a claimant, may give leave to the claimant to start a proceeding in the court for damages based on a liability for personal injury despite noncompliance with this part if the court is satisfied there is an urgent need to start the proceeding.

(2) The order giving leave to start the proceeding may be made on conditions the court considers necessary or appropriate having regard to the particular circumstances of the case.

(3) However, if leave is given, the proceeding started by leave is stayed until the claimant complies with this part or the proceeding is discontinued.

(4) Subsection (3) does not limit the ways a proceeding that has been stayed may be ended.

## **PART 2—EXPRESSIONS OF REGRET**

### **44 Purpose of pt 2**

The purpose of this part is to allow an individual to express regret about an incident that may give rise to a claim without being concerned that the expression of regret may be construed or used as an admission of liability or negligence.

### **45 Meaning of “expression of regret”**

An “**expression of regret**” made by an individual in relation to an incident alleged to give rise to a claim is any oral or written statement expressing regret for the incident that does not contain an acknowledgment of fault on the part of the individual.

### **46 Expressions of regret are inadmissible**

An expression of regret made by an individual in relation to an incident alleged to give rise to a claim at any time before a proceeding against the individual is started in a court in relation to the incident is not admissible in the court proceeding.

*Example—*

Suppose a patient attended a health service and was diagnosed as suffering from gall stones. Removal of the gall bladder was recommended for treatment of the condition. The procedure was attempted, but there was an adverse outcome.

A health care provider stated that the provider was sorry that there was an adverse outcome.

The statement is inadmissible in any future proceeding against the health care provider in relation to a personal injury allegedly arising out of the procedure.

## **PART 3—PROCEEDINGS IN COURT**

### **47 Exclusion of summary judgment on the basis of admissions**

(1) In a proceeding in a court based on a claim, summary judgment is not to be given on the basis of a respondent's admissions.

(2) However, this section does not prevent a court from giving a judgment by consent.

### **48 Consequences of failure to comply with claims procedures may result in adverse costs order**

(1) If a claimant does not comply with the requirements of part 1, division 1,<sup>12</sup> a court in which the claimant starts a proceeding based on the claim—

- (a) may, on a respondent's application in the proceeding, award in the respondent's favour costs (including legal and investigation costs) reasonably incurred by the respondent because of the claimant's default; and
- (b) may only award interest in the claimant's favour for a period for which the claimant was in default if the court is satisfied there is a reasonable excuse for the default.

(2) If a respondent does not comply with the requirements of part 1, division 1, a court in which the respondent defends a proceeding based on the claim may, on a claimant's application in the proceeding, award in the claimant's favour costs (including legal and investigation costs) reasonably incurred by the claimant because of the respondent's default.

### **49 Consequences of failure to mitigate damages**

In assessing damages for personal injury, the court must—

- (a) consider whether the claimant has failed to take reasonable steps to mitigate damages by not following suggestions made under section 26;<sup>13</sup> and

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12 Part 1 (Pre-court procedures), division 1 (Claims procedures)

13 Section 26 (Mitigation of damages)

- (b) if it appears the claimant has failed to take reasonable steps to mitigate damages by not following the suggestions, reduce the claimant's damages to an appropriate extent reflecting the failure.

## **50 Awards of exemplary, punitive or aggravated damages**

A court can not award exemplary, punitive or aggravated damages in relation to a claim.

## **51 Damages for loss of earnings or earning capacity**

(1) In assessing damages for loss of earnings, including in a dependency claim, the court must disregard earnings above the limit fixed by subsection (2).

(2) The limit is 3 times average weekly earnings per week.

(3) In this section—

“**dependency claim**” means a claim in relation to a fatal injury brought on behalf of a deceased's dependants or estate.

“**loss of earnings**” means—

- (a) past economic loss due to loss of earnings or the deprivation or impairment of earning capacity; and
- (b) future economic loss due to loss of prospective earnings or the deprivation or impairment of prospective earning capacity.

## **52 Discount rate to be applied in calculating the present value of future loss or gratuitous services**

(1) This section applies if—

- (a) a claimant is to be compensated for future expenditure or loss; or
- (b) damages are to be awarded for gratuitous services;

and an actuarial multiplier is to be used to calculate the present value of future loss or gratuitous services.

(2) A discount rate of 5% is to be applied in determining the actuarial multiplier.

**53 Damages for loss of consortium or loss of servitium**

(1) A court must not award damages for loss of consortium or loss of servitium unless—

- (a) the injured person died as a result of injuries suffered; or
- (b) general damages for the injured person are assessed (before allowing for contributory negligence) at \$30 000 or more.

(2) The court must not assess damages for loss of servitium above the limit fixed by subsection (3).

(3) The limit is 3 times average weekly earnings per week.

**54 Damages for gratuitous services**

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

- (a) the services are necessary; and
- (b) the need for the services arose solely out of the personal injury suffered in the incident.

(2) Damages are not to be awarded for gratuitous services if the services are provided, or are to be provided—

- (a) for less than 6 hours per week; and
- (b) for less than 6 months.

(3) Damages are not to be awarded for gratuitous services if gratuitous services of the same kind were being provided for the claimant before the date of the incident giving rise to the personal injury on which the claim is based.

(4) Damages are not to be awarded for gratuitous services replacing services the claimant provided, or would have provided if the personal injury had not been suffered, for others outside the claimant's household.

(5) In assessing damages for gratuitous services, the court must take into account—

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



**55 Interest**

(1) Interest awarded on damages compensating past monetary loss—

- (a) must not be more than interest at the appropriate rate; and
- (b) must be related in an appropriate way to the period over which the loss was incurred.

(2) The appropriate rate is the rate for 10 year Treasury bonds published by the Reserve Bank of Australia under ‘Interest rates and yields—capital market’ as at the beginning of the quarter in which the award of interest is made.

*Example of calculation of interest for this section—*

Suppose that past monetary loss consists of medical expenses that have been incurred at a uniform rate over a particular period. The interest to be awarded would be calculated under the following formula—

$$A = am/100 \times p \times 0.5$$

where—

“A” is the amount of the award of interest.

“a” is a percentage rate decided by the court subject to the limit fixed in subsection (2).

“m” is the aggregate of the medical expenses.

“p” is the period over which the medical expenses have been incurred (expressed in years).

**56 Costs in cases involving damages awards of not more than \$50 000**

(1) This section applies if a court awards \$50 000 or less in damages in a proceeding, other than an appellate proceeding, based on a claim.

(2) If the court awards \$30 000 or less in damages, the court must apply the following principles—

- (a) if the amount awarded is less than the claimant’s mandatory final offer but more than the respondent’s, or the respondents’, mandatory final offer, no costs are to be awarded;
- (b) if the amount awarded is equal to, or more than, the claimant’s mandatory final offer, costs are to be awarded to the claimant on an indemnity basis as from the day on which the proceeding started, but no award is to be made for costs up to that date;
- (c) if the amount awarded is equal to, or less than, the respondent’s, or the respondents’, mandatory final offer, costs are to be

*Personal Injuries Proceedings Act 2002*

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awarded to the respondent or respondents on a standard basis as from the day on which the proceeding started, but no award is to be made for costs up to that date.

**(3)** If the court awards more than \$30 000 but not more than \$50 000 in damages, the court must apply the following principles—

- (a) if the amount awarded is less than the claimant's mandatory final offer but more than the respondent's, or the respondents', mandatory final offer, costs are to be awarded to the claimant on a standard basis up to a maximum of \$2 500;
- (b) if the amount awarded is equal to, or more than, the claimant's mandatory final offer, costs are to be awarded to the claimant on the following basis—
  - (i) costs up to the date on which the proceeding started are to be awarded on a standard basis up to a limit of \$2 500;
  - (ii) costs on or after the date on which the proceeding started are to be awarded on an indemnity basis;
- (c) if the amount awarded is equal to, or less than, the respondent's, or the respondents', mandatory final offer, costs are to be awarded on the following basis—
  - (i) costs up to the day on which the proceeding started are to be awarded to the claimant on a standard basis up to a limit of \$2 500;
  - (ii) costs on or after the day on which the proceeding started are to be awarded to the respondent or respondents on a standard basis.

**(4)** The court must not award costs to a party related to the introduction of evidence by the party that is unnecessarily repetitive.

*Example—*

If a claimant calls 2 or more expert witnesses from the same area of expertise to give evidence to substantially the same effect, and the claimant is entitled to costs of the proceeding under the principles laid down in this section, the court might only allow costs related to 1 of the expert witnesses.

**(5)** Unless an award of damages is affected by factors that were not reasonably foreseeable at the time of the exchange of mandatory final offers, the court must not award costs to a party related to investigations or gathering of evidence by the party after—

- (a) the conclusion of the compulsory conference; or

- (b) if the parties or the court dispensed with the compulsory conference, the day when the parties completed the exchange of mandatory final offers.

(6) If an award of damages is affected by factors that were not reasonably foreseeable by a party at the time of making the party's mandatory final offer, the court may, if satisfied that it is just to do so, make an order for costs under subsection (2) or (3) as if the reference to a mandatory final offer in the relevant subsection were a reference to a later offer made in the light of the factors that became apparent after the parties completed the exchange of mandatory final offers.

*Example—*

Suppose that a claimant's medical condition suddenly and unexpectedly deteriorates after the date of the final offers and the court makes a much higher award of damages than would have been reasonably expected at that time. In that case, the court may ignore the mandatory final offers and award costs on the basis of later offers of settlement.

(7) This section does not limit the court's power under section 48.<sup>14</sup>

(8) In this section—

“party” does not include contributor.

## **57 General regulation of court awards**

A court can not award damages, or interest on damages, contrary to this chapter.

## **58 Exclusion of jury trial**

A proceeding in a court based on a claim must be decided by the court sitting without a jury.

## **59 Alteration of period of limitation**

(1) If a complying notice of claim is given before the end of the period of limitation applying to the claim, the claimant may start a proceeding in a court based on the claim even though the period of limitation has ended.

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<sup>14</sup> Section 48 (Consequences of failure to comply with claims procedures may result in adverse costs order)

(2) However, the proceeding may be started after the end of the period of limitation only if it is started within—

- (a) 6 months after the notice is given or leave to start the proceeding is granted; or
- (b) a longer period allowed by the court.

(3) If a period of limitation is extended under the *Limitation of Actions Act 1974*, part 3,<sup>15</sup> this section applies to the period of limitation as extended under that part.

## **60 Recovery in case of fraud**

A respondent may recover from a claimant or other person who defrauds or attempts to defraud the respondent on a claim any costs reasonably incurred by the respondent because of the fraud.

## **PART 4—STRUCTURED SETTLEMENTS**

### **61 Court may make consent order for structured settlement**

(1) This section applies if the parties to a claim agree to settle the claim by making a structured settlement and apply to the court for an order approving of or in the terms of the structured settlement.

(2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.

(3) In this section—

**“structured settlement”** means an agreement providing for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.

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<sup>15</sup> *Limitation of Actions Act 1974*, part 3 (Extension of periods of limitation)

## CHAPTER 3—OTHER MATTERS

### PART 1—RESTRICTION ON ADVERTISING OF PERSONAL INJURY SERVICES AND TOUTING

#### 62 Application of pt 1

This part is of general application.

#### 63 Definitions for pt 1

In this part—

**“advertises personal injury services”** see section 64.

**“allowable publication method”** see section 65.

**“approved”** includes accredited, authorised, employed, licensed, registered or otherwise permitted to carry on activities.

**“client”**, of a lawyer, includes a person who makes a genuine inquiry of a lawyer about a personal injury.

**“convicted”** includes being found guilty, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

**“employment”** includes self-employment.

**“fee”** includes the following—

- (a) a bonus, commission, cash payment, deduction, discount, rebate, remission or other valuable consideration;
- (b) employment, or an agreement to give employment, in any capacity.

**“hospital”** includes the following—

- (a) any premises used for receiving, caring for or treating persons who are injured, sick or mentally ill;
- (b) any premises used for providing a service for maintaining, improving or restoring a person’s health and wellbeing;
- (c) any land or building occupied or used in connection with premises mentioned in paragraph (a) or (b).

*Examples of a hospital—*

1. Nursing home.
2. Community health facility.
3. Medical centre.
4. Physiotherapist's rooms.
5. Dentist's surgery.
6. Hostel.

**“misconduct”** includes malpractice, professional misconduct and unprofessional conduct or practice.

**“potential claimant”** means—

- (a) a person who suffers, or may suffer, personal injury arising out of an incident; or
- (b) another person who has or may have a claim in relation to a person mentioned in paragraph (a).

**“printed publication”** includes a newspaper, magazine, journal, periodical or directory.

**“prohibited person”** means a person who, for the purpose of the person's employment, is attending or attended the scene of an incident at or from which a person allegedly suffered personal injury or at a hospital after an incident at or from which a person allegedly suffered personal injury.

*Example—*

A tow truck operator, police officer, ambulance officer, emergency services officer, doctor or hospital worker.

**“public place”** means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public, whether on payment of money, through membership of a club or other body, or otherwise.

## **64 Meaning of “advertises personal injury services”**

(1) For this part, a lawyer, or a person acting for a lawyer, **“advertises personal injury services”** if the lawyer or person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person—

- (a) to make a claim for compensation or damages under any Act or law for a personal injury; or
  - (b) to use the services of the lawyer, or another named lawyer or a named firm of lawyers in connection with the making of a claim mentioned in paragraph (a).
- (2) It does not matter that the statement also relates to other matters.
- (3) For this section, a statement is “**published**” if it is—
- (a) published in a printed publication; or
  - (b) disseminated by the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance; or
  - (c) broadcast by radio or for television; or
  - (d) displayed on an Internet website or otherwise publicly disseminated by means of the Internet; or
  - (e) publicly exhibited in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place; or
  - (f) displayed on any document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle; or
  - (g) displayed on any document provided to a person as a receipt or record for a transaction.

## **65 Meaning of “allowable publication method”**

(1) For this part, each of the following is an “**allowable publication method**” for the publication of a statement by a lawyer or a person acting for a lawyer—

- (a) publication of the statement in a printed publication;
- (b) publication of the statement on an Internet website by means of the publication of an electronic version of a printed publication, but only if the statement merely reproduces a statement as

published in that printed publication and the printed publication is published independently of the lawyer;

- (c) publication of the statement on an Internet website by the publication of the contents of a directory or database that includes the statement and that is published or maintained independently of the lawyer;
- (d) public exhibition of the statement in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place;
- (e) display of the statement on any printed document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle;
- (f) display of the statement on any printed document provided to a person as a receipt or record in relation to a transaction.

(2) However, each of the following is not an **“allowable publication method”** for the publication of a statement by a lawyer or a person acting for a lawyer—

- (a) public exhibition of the statement in or on a hospital;
- (b) display of the statement on any printed document gratuitously sent or delivered to a hospital or left in a hospital or on any vehicle in the vicinity of a hospital.

(3) A printed publication, directory or database is considered to be published or maintained independently of a lawyer only if—

- (a) it is not published or maintained by the lawyer or by a partner, employee or member of the lawyer’s practice; and
- (b) the person who publishes or maintains it does so in the ordinary course of the conduct of the person’s business or affairs.

## **66 Restriction on advertising personal injury services**

(1) A lawyer or a person acting for a lawyer must not advertise personal injury services except by the publication of a statement that—

- (a) states only the name of a lawyer or a firm of lawyers and the contact details of the lawyer or firm, together with information as to any area of practice or speciality of the lawyer or firm; and
- (b) is published by an allowable publication method.



*Example of advertising that contravenes subsection (1)—*

Advertising personal injury services on a ‘no win, no fee’ or other speculative basis.

Maximum penalty—300 penalty units.

(2) However, a lawyer or a person acting for a lawyer does not contravene subsection (1) only because—

- (a) the lawyer or person advertises personal injury services—
  - (i) to any person who is already a client of the lawyer; or
  - (ii) to any person at the lawyer’s place of business; or
  - (iii) under any order by a court; or
- (b) the lawyer or person advertises personal injury services on the lawyer’s Internet website if the advertisement is limited to a statement about—
  - (i) the operation of the law of negligence and a person’s legal rights under that law; and
  - (ii) the conditions under which the lawyer is prepared to provide personal injury services.

(3) A lawyer who contravenes subsection (1) may be charged with unprofessional conduct in addition to being liable to the penalty provided under the subsection for the contravention.

(4) A lawyer or a person acting for a lawyer does not contravene subsection (1) only because the lawyer or person advertises personal injury services in an edition of a publication which edition was published before the commencement of this section.

(5) This section does not apply to a client agreement under the *Queensland Law Society Act 1952*, part 4A<sup>16</sup> given by a lawyer to a client for whom the lawyer is acting.

## **67 Prohibition on touting at scene of incident or at any time**

(1) At the scene of an incident at which a person allegedly suffered personal injury or at a hospital after an incident at which a person allegedly suffered personal injury—

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16 *Queensland Law Society Act 1952*, part 4A (Client agreements)

*Personal Injuries Proceedings Act 2002*

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- (a) a prohibited person must not solicit or induce a potential claimant involved in the incident to make a claim; or
- (b) a person, other than a prohibited person, must not solicit or induce, in a way that would be unreasonable in the circumstances, a potential claimant involved in the incident to make a claim.

*Example for paragraph (b)—*

A person who lives near the scene of the incident helps a potential claimant immediately after the incident. If the person, without being asked to do so, telephones a lawyer and insists the potential claimant speaks with the lawyer about making a claim, the person is acting in a way that would be unreasonable in the circumstances.

Maximum penalty—300 penalty units.

(2) Subsections (3), (4) and (5) apply, as stated in the subsections, to the following persons—

- (a) a prohibited person;
- (b) a person who, for the purpose of the person's employment, obtains information about an incident at or from which a person allegedly suffered personal injury;
- (c) a person who, for the purpose of the person's employment, has contact with a potential claimant if the contact substantially arises because of an incident at or from which a person allegedly suffered personal injury.

*Example for paragraph (c)—*

A hospital worker in the casualty department of a large hospital who attends to a potential claimant.

(3) A person mentioned in subsection (2)(a) or (b) must not give a potential claimant involved in the incident, or someone on the potential claimant's behalf, the name, address or telephone number of—

- (a) a particular lawyer or firm of lawyers; or
- (b) an employee or agent of the lawyer or firm.

Maximum penalty—300 penalty units.

(4) A person mentioned in subsection (2)(c) must not give the potential claimant, or someone on the potential claimant's behalf, the name, address or telephone number of—

- (a) a particular lawyer or firm of lawyers; or

- (b) an employee or agent of the lawyer or firm.

Maximum penalty—300 penalty units.

(5) Also, a person mentioned in subsection (2) must not disclose the name or address of a person involved in the incident to anyone other than—

- (a) a police officer; or
- (b) a person to whom the person is required to disclose the information under a law; or
- (c) a potential claimant involved in the incident or the potential claimant’s lawyer or agent; or
- (d) the person’s employer, if the person is attending or attended the incident for the purpose of the person’s employment and the employer requires the person to disclose the information on grounds that are reasonable in the circumstances; or
- (e) a person (“**insurer**”) who carries on the business of providing insurance for people or property, or someone who is acting as the insurer’s lawyer or agent.

Maximum penalty—300 penalty units.

(6) However, a person does not commit an offence against subsection (5) only because the person discloses the name or address of a person involved in the incident to a lawyer if—

- (a) the person is a client of the lawyer for the purpose of making a claim or exercising a legal right, whatever its nature, arising out of the incident; and
- (b) in the circumstances, it is reasonable for the person to think the person may have a claim or a legal right; and
- (c) the disclosure is for the purpose of making the claim or exercising the legal right.

(7) Also, a person does not commit an offence against subsection (5) if the disclosure is not likely to result in a potential claimant involved in the incident being solicited or induced to make a claim.

## **68 Prohibition against paying, or seeking payment, for touting**

(1) A person must not pay, or seek payment of, a fee for the soliciting or inducing of a potential claimant to make a claim.

Maximum penalty—300 penalty units.

(2) However, a person does not commit an offence against subsection (1) only by—

- (a) if the person is not a lawyer or a person acting for a lawyer—advertising, in the ordinary course of the conduct of the person's business as an advertiser or publisher, legal services about claims; or
- (b) if the person is a lawyer or a person acting for a lawyer—charging a potential claimant a fee for professional services provided to the potential claimant as part of making a claim.

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

(1) This section applies to a person if—

- (a) the person is approved under an Act for a profession, or for carrying on activities for the purpose of the person's employment; and
- (b) under the Act under which the person is approved, the person's approval may be suspended or cancelled for misconduct.

(2) If the person is convicted of an offence against section 67 or 68,<sup>17</sup> the person's conviction may also be dealt with as misconduct under the Act under which the person is approved.

## **PART 2—PROTECTION OF PERSONS PERFORMING DUTIES TO ENHANCE PUBLIC SAFETY**

### **70 Application of pt 2**

This part is of general application.

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<sup>17</sup> Section 67 (Prohibition on touting at scene of incident or at any time) or 68 (Prohibition against paying, or seeking payment, for touting)

**71 Protection of persons performing duties to enhance public safety**

(1) Liability at law does not attach to a person in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress if—

- (a) the first aid or other aid or assistance is given by the person while performing duties to enhance public safety for an entity prescribed under a regulation that provides services to enhance public safety; and
- (b) the first aid or other aid or assistance is given in circumstances of emergency; and
- (c) the act is done or omitted in good faith and without reckless disregard for the safety of the person in distress or someone else.

(2) Subsection (1) does not limit or affect the *Law Reform Act 1995*, part 5.<sup>18</sup>

(3) In this section—

“**person in distress**” includes—

- (a) a person who is injured, apparently injured or at risk of injury; and
- (b) a person who is suffering or apparently suffering from an illness.

**PART 3—MISCELLANEOUS****72 Offences involving fraud**

(1) A person must not in any way—

- (a) defraud or attempt to defraud a respondent; or
- (b) deliberately mislead or attempt deliberately to mislead a respondent; or
- (c) connive at conduct by another that contravenes paragraph (a) or (b).

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18 *Law Reform Act 1995*, part 5 (Voluntary aid in emergency)

Maximum penalty—400 penalty units or 18 months imprisonment.

(2) If conduct that constitutes an offence defined in subsection (1) is recurrent so that, apart from this subsection, each instance of the conduct would constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute but 1 offence committed over a period specified in the complaint laid in relation to the conduct, and may be charged and be dealt with on 1 complaint.

### **73 False or misleading information or documents**

(1) This section applies to a statement made or document given in connection with a claim to a respondent or contributor.

(2) A person must not state anything to the respondent or contributor the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year's imprisonment.

(3) A person must not give the respondent or contributor a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year's imprisonment.

(4) Subsection (3) does not apply to a person who, when giving the document—

- (a) informs the respondent or contributor, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the respondent or contributor, if the person has, or can reasonably obtain, the correct information.

(5) Subsection (3) does not require the respondent or contributor to tell someone that a document is false or misleading, or to disclose information, if the probable effect would be to alert a person suspected of fraud to the suspicion.

(6) It is enough for a complaint against a person for an offence against subsection (2) or (3) to state the information or document was false or misleading to the person's knowledge, without specifying which.

### **74 Approved forms**

The chief executive may approve forms for use under this Act.

**75 Regulation-making power**

The Governor in Council may make regulations under this Act.

**CHAPTER 4—TRANSITIONAL PROVISIONS****76 Special provision for injuries suffered between commencement and 1 August 2002**

(1) This section applies to a personal injury suffered on or after 18 June 2002 and before 1 August 2002.

(2) For the purposes of section 9(3)(a),<sup>19</sup> the day the incident giving rise to the personal injury happened is taken to be 1 August 2002.

(3) For the purposes of section 9(3)(b), a claimant is to be taken not to have consulted a lawyer earlier than 1 August 2002.

**77 Jury trials**

(1) Subsection (2) applies if a proceeding for damages based on a liability for personal injury is before the court and the plaintiff or defendant in the proceeding has elected a trial by jury under the *Uniform Civil Procedure Rules 1999*.

(2) Section 58<sup>20</sup> has effect despite the election unless the trial date has been set before the commencement of this section.

(3) Section 58 does not apply to a proceeding if the proceeding was tried by a jury and, on the hearing of an appeal, the court hearing the appeal set aside the decision and ordered a new trial.

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19 Section 9 (Notice of a claim)

20 Section 58 (Exclusion of jury trial)

## **CHAPTER 5—AMENDMENT OF MOTOR ACCIDENT INSURANCE ACT 1994**

### **78 Act amended in ch 5**

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

### **79 Insertion of new pt 4, div 6B**

After section 57A—

*insert—*

#### ***‘Division 6B—Structured settlements***

#### **‘57B Court may make consent order for structured settlement**

‘(1) This section applies if the parties to a claim agree to settle the claim by making a structured settlement and apply to the court for an order approving of or in the terms of the structured settlement.

‘(2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.

‘(3) In this section—

“**structured settlement**” means an agreement providing for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.’.

### **80 Omission of ss 97A and 97B**

Sections 97A and 97B—

*omit.*



## SCHEDULE

### DICTIONARY

section 8

**“advertises personal injury services”**, for chapter 3, part 1, see section 64.

**“allowable publication method”**, for chapter 3, part 1, see section 65.

**“approved”**, for chapter 3, part 1, see section 63.

**“approved form”** see section 74.

**“average weekly earnings”** means the seasonally adjusted amount of Queensland full-time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician’s report on average weekly earnings,<sup>21</sup> averaged over the last 4 quarters for which the statistician’s report is available.

**“award”**, of damages, includes—

- (a) a payment of damages, whether or not liability is admitted; and
- (b) an ex gratia payment of monetary compensation.

**“child”** means an individual who is under 18.

**“claim”** means a claim, however described, for damages based on a liability for personal injury, whether the liability is based in tort or contract or in or on another form of action including breach of statutory duty and, for a fatal injury, includes a claim for the deceased’s dependants or estate.

**“claimant”** means a person by whom, or on whose behalf, a claim is made.

**“client”**, of a lawyer, for chapter 3, part 1, see section 63.

**“complying notice of claim”** means a notice of claim given under section 9 or 14 that is given as required under chapter 2, part 1, division 1.

**“compulsory conference”** see section 36(1).

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<sup>21</sup> The publication is currently entitled ‘Average Weekly Earnings, Australia’.

## SCHEDULE (continued)

**“contribution notice”** means a contribution notice under section 16.

**“contributor”** means a person added as a contributor under section 16.

**“convicted”**, for chapter 3, part 1, see section 63.

**“costs”** —

- (a) when used in reference to legal costs, includes disbursements, whether or not a person has legal representation; and
- (b) when used in reference to the costs of a respondent on a claim, includes—
  - (i) the amount paid out by the respondent on the claim to the claimant or for the claimant’s benefit, including—
    - (A) the cost to the respondent of providing rehabilitation services in connection with the claim; and
    - (B) the cost to the respondent of paying private hospital, medical and pharmaceutical expenses in connection with the claim; and
  - (ii) the cost to the respondent of investigating the claim and of litigation related to the claim, but not the respondent’s general administration costs.

**“court”**, in relation to a claim, means—

- (a) if a proceeding based on the claim has been started—the court hearing the proceeding; or
- (b) if no proceeding based on the claim has been started—a court with jurisdiction to hear the claim.

**“damages”** includes any form of monetary compensation.

**“employment”**, for chapter 3, part 1, see section 63.

**“expression of regret”** see section 45.

**“fee”**, for chapter 3, part 1, see section 63.

**“health care”** means any care, treatment, advice, service or goods provided in relation to the physical or mental health of a person.

**“health care claim”** means a claim against a health care provider in relation to personal injury caused entirely or partly by the fault of the health care provider in providing health care.

## SCHEDULE (continued)

**“health care provider”** means—

- (a) a provider; or
- (b) a provider of a public sector health service as defined under the *Health Services Act 1991*; or
- (c) a licensee of a private health facility as defined under the *Private Health Facilities Act 1999*.

**“hospital”**, for chapter 3, part 1, see section 63.

**“incident”**, in relation to personal injury, means the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury.

**“injured person”** means a person who suffers personal injury.

**“insured”** includes indemnified.

**“insured person”**, in relation to a claim, means a person who is insured or purportedly insured against the claim.

**“insurer”**, of a person in relation to a claim, means the insurer or other entity providing, or purportedly providing, the person cover or an indemnity against the claim.

**“mandatory final offer”** see section 39(6).

**“misconduct”**, for chapter 3, part 1, see section 63.

**“party”** means claimant, respondent or contributor.

**“personal injury”** includes—

- (a) fatal injury; and
- (b) prenatal injury; and
- (c) psychological or psychiatric injury; and
- (d) disease.

**“possession”** includes control.

**“potential claimant”**, for chapter 3, part 1, see section 63.

**“printed publication”**, for chapter 3, part 1, see section 63.

**“prohibited person”**, for chapter 3, part 1, see section 63.

## SCHEDULE (continued)

**“provider”** means a person who is a registrant under a health practitioner registration Act as defined under the *Health Practitioner Registration Boards (Administration) Act 1999*.

**“public place”**, for chapter 3, part 1, see section 63.

**“rehabilitation”** includes the use of medical, psychological, physical, social, educational or vocational measures—

- (a) to restore, as far as reasonably possible, physical or mental functions lost or impaired through personal injury; and
- (b) to optimise, as far as reasonably possible, the quality of life of a person who suffers the loss or impairment of physical or mental functions through personal injury.

**“respondent”** means a person who—

- (a) is a respondent under section 12(1); or
- (b) is added as a respondent under section 14.

## ENDNOTES

### 1 Index to endnotes

		Page
2	Date to which amendments incorporated . . . . .	59
3	Key . . . . .	59
4	List of legislation . . . . .	60
5	List of annotations . . . . .	60
6	Information about retrospectivity . . . . .	60

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 18 June 2002. Future amendments of the Personal Injuries Proceedings Act 2002 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	retro	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## **4 List of legislation**

### **Personal Injuries Proceedings Act 2002 No. 24**

date of assent 20 June 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 18 June 2002 (see s 2)

amending legislation—

### **Personal Injuries Proceedings Amendment Act 2002 No. 38**

date of assent 29 August 2002

ss 1–2 commenced on date of assent

ss 4 and 8 commenced on 18 June 2002 (see s 2)

remaining provisions commenced on assent

## **5 List of annotations**

### **Application of Act**

s 6 retro amd 2002 No. 38 s 4

### **Awards of exemplary, punitive or aggravated damages**

s 50 retro amd 2002 No. 38 s 8

## **6 Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in “List of Legislation” and “List of Annotations”. Any retrospective amendment that has not been consolidated is noted in footnotes to the text.