

Queensland



# **PERSONAL INJURIES PROCEEDINGS ACT 2002**

**Reprinted as in force on 3 December 2004  
(includes commenced amendments up to 2004 Act No. 43)**

**Reprint No. 1D**

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



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# **PERSONAL INJURIES PROCEEDINGS ACT 2002**

[as amended by all amendments that commenced on or before 3 December 2004]

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

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

- (a) personal injury as defined under the *Motor Accident Insurance Act 1994* and in relation to which that Act applies; or
- (b) injury as defined under the *Workers' Compensation and Rehabilitation Act 2003*, but only to the extent that an entitlement to seek damages, as defined under that Act, for the injury is regulated by chapter 5 of that Act.

*Example for paragraph (b)—*

W, a worker, sustains an injury in the course of employment. The injury is caused by a design fault in a machine. As a result of sustaining the injury, W seeks damages against both E, W's employer, and X Company, the designer of the machine.

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Before starting a proceeding in a court for damages against E, W must comply with the pre-court procedures under the *Workers' Compensation and Rehabilitation Act 2003*. Similarly, before starting a proceeding in a court for damages against X Company, W must comply with the pre-court procedures under this Act.

(3) Also, this Act does not apply to—

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

(4) In addition, sections 40(2) and 56 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.

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

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

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

(7) In subsection (4)—

“act” includes omission.

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

(1) Provisions of this Act that provide for the kinds of damage, and the amount of damages, that may be recovered by a person, and the provisions

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

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

of chapter 2, part 1, divisions 1, 1A, 2 and 4,<sup>3</sup> are provisions of substantive, as opposed to procedural, law.

(2) Despite subsection (1), notice of a claim is to be given in the form approved for a notice of a claim when the notice is given.

(3) Also, subsection (2) has effect for notice of a claim given before the commencement of this subsection.

## **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.

(1A) The approved form must provide for the notice to be in 2 parts, namely part 1 and part 2.

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<sup>3</sup> Chapter 2 (Claims), part 1 (Pre-court procedures), divisions 1 (Claims procedures), 1A (Special provisions for notification of claims in relation to injuries to children arising out of medical treatment), 2 (Obligations of the parties) and 4 (Compulsory conferences)

**(1B)** The approved form may provide that some or all information included in the notice be verified by statutory declaration.

**(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.

**(2A)** A regulation may require information or other material to accompany a particular part of a notice of a claim.

**(3)** Part 1 of 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 instructs a lawyer to act on the person's behalf in seeking damages for the personal injury and the person against whom the proceeding is proposed to be started is identified.

**(3A)** Part 2 of the notice must be given, to the person to whom part 1 of the notice was given, within 2 months after the earlier of the following to happen—

- (a) the person to whom part 1 of the notice was given complies with section 10(1);
- (b) the person to whom part 1 of the notice was given is, under section 13, conclusively presumed to be satisfied part 1 of the notice is a complying part 1 notice of claim.

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

(5) If part 1 of the notice is not given within the period prescribed under subsection (3) or section 9A(9)(b), the obligation to give the notice under subsection (1) continues and a reasonable excuse for the delay must be given in part 1 of the notice or by separate notice to the person against whom the proceeding is proposed to be started.

(6) If part 1 of the notice is not given within the period prescribed under subsection (3) or section 9A(9)(b), 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 part 1 of the notice 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 part 1 of a notice of a claim is given 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 it 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 it 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.

(7A) Subsection (7)(a) does not require the person (the “**first person**”) to whom part 1 of the notice is given by a claimant to give a copy of it to another person if the claimant has advised the first person in writing that the claimant has given, or will give, a copy of it to the other person.

(8) If the person against whom a proceeding based on a claim is proposed to be started is the State or an entity with the privileges and immunities of the State, the giving of part 1 of a notice of a claim is effective only if it—

- (a) is given to the Crown solicitor; and

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(b) identifies the government department or entity the claimant considers responsible for the conduct that caused the injury.

(8A) If part 1 of a notice of a claim is given under subsection (8), the government department or entity identified under subsection (8)(b) is taken to be the person to whom part 1 of the notice of a claim is given.

(9) To remove any doubt, it is declared that subsection (3)(a), to the extent that it provides that part 1 of a notice may be given after the first appearance of symptoms of the personal injury, does not determine or affect when a cause of action in relation to the injury arose for the purposes of the *Limitation of Actions Act 1974*.

(9A) For subsection (3)(b), consultation by a claimant with a community legal service as defined under section 67A(2), whether before or after the commencement of this subsection, is to be disregarded.

(9B) This section is subject to section 9A.

(10) In this section—

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

## **9A Particular provision for notice of a claim procedure for medical negligence cases**

(1) This section applies to a claim based on a medical incident happening on or after the commencement of this section that is alleged to have given rise to personal injury.

(2) Before giving part 1 of a notice of a claim under section 9, the claimant must give written notice (“**initial notice**”) of the claim to the person against whom a proceeding based on the claim is proposed to be started.

(3) The initial notice must state it is given under this section and contain the following information—

- (a) the claimant’s full name and address;
- (b) any other name by which the claimant is known or has been known;
- (c) if the initial notice is given by the claimant’s parent or legal guardian, the parent’s or guardian’s name;
- (d) the claimant’s date of birth;

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- (e) a description of the medical services alleged to have given rise to the personal injury;
- (f) if known, the name of the doctor who provided the medical services;
- (g) the date or dates when the medical services were provided;
- (h) the place or places at which the medical services were provided; and
- (i) a description of the personal injury alleged to have been suffered.

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

- (a) the day 9 months after the day the medical incident happened or, if symptoms of the personal injury arising out of the incident were not immediately apparent, the first appearance of symptoms of the injury;
- (b) the day 1 month after the day the claimant first instructs a lawyer to act on the person's behalf in seeking damages for the personal injury and the person against whom the proceeding is proposed to be started is identified.

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

**(6)** If the initial notice is not given within the period prescribed under subsection (4), the obligation to give the initial notice continues and a reasonable excuse for the delay must be given in the initial notice to the person against whom the proceeding is proposed to be started.

**(6A)** If an initial notice, given after the commencement of this subsection, is not given within the period prescribed under subsection (4), the claimant is taken to have a reasonable excuse for subsection (6) 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 the initial notice to the person as soon as practicable after the complaint is finalised under the *Health Rights Commission Act 1991*.



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(7) If the person against whom the proceeding is proposed to be started is the State or an entity with the privileges and immunities of the State, the giving of the initial notice is effective for subsection (2) only if it is given to—

- (a) if the place at which the medical incident happened is a place under the control of a district manager—the district manager for the place; or
- (b) if paragraph (a) does not apply—the chief executive officer of the department or entity having control of the place at which the medical incident happened.

(8) A person to whom an initial notice is given must, within 1 month after receiving the initial notice, give the claimant—

- (a) a written response advising whether any documents are held in relation to the medical services mentioned in the notice; and
- (b) copies of all documents held by the person about the medical services.

(9) The claimant—

- (a) may give part 1 of the notice of the claim only after giving the initial notice; and
- (b) must give part 1 of the notice within 12 months after the respondent complies with subsection (8); and
- (c) is not required to comply with section 9(3); and
- (d) must, as part of giving a complying part 1 notice of claim, give a written report from a medical specialist, competent to assess the medical incident alleged to have given rise to the personal injury, stating, in the medical specialist's opinion—
  - (i) that there was a failure to meet an appropriate standard of care in providing medical services; and
  - (ii) the reasons justifying the opinion; and
  - (iii) that as a result of the failure, the claimant suffered personal injury; and
- (e) must give the report mentioned in paragraph (d) when giving part 1 of the notice of claim.

(10) If the claim is based on, or includes, an allegation of a failure to warn of a risk in relation to the provision of medical services, it is not

necessary for subsection (9) for the report to comment on, or address, the alleged failure.

(11) To remove any doubt, it is declared that subsection (4)(a), to the extent that it provides that a notice may be given after the first appearance of symptoms of the personal injury, does not determine or affect when a cause of action in relation to the injury arose for the purposes of the *Limitation of Actions Act 1974*.

(12) No obligation exists on a person to whom an initial notice is given to investigate, assess or respond to the initial notice other than as required by subsection (8).

(13) For subsection (4)(b), consultation by a claimant with a community legal service as defined under section 67A(2) is to be disregarded.

(14) In this section—

“**district manager**”, for a place, means the manager appointed under the *Health Services Act 1991*, section 22, for the district in which the place is located.

“**medical incident**” means an accident, or other act, omission or circumstance involving a doctor happening during the provision of medical services.

“**medical specialist**” means a person registered or eligible for registration as a specialist registrant under the *Medical Practitioners Registration Act 2001*.

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

(1) A person to whom part 1 of a 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 part 1 of 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 part 1 of the notice whether or not the person is a proper respondent to the claim, advise the claimant of the further information the person reasonably needs to decide whether the person is a proper respondent to the claim; or

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- (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 part 1 of a 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**

(1) 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.

(2) Also, a person does not breach a term or condition of any relevant insurance policy only because the person gives notice under subsection (1).

(3) Further, an insurer does not agree to indemnify a person under any relevant insurance policy only because the insurer gives notice on behalf of the person under subsection (1).

(4) Subsection (2) or (3) has effect whether the notice under the subsection was given before or after the commencement of the subsection.

## **12 Respondent's response to part 1 of a notice of a claim**

(1) This section applies to a person (“**respondent**”) to whom part 1 of 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 part 1 of the notice is a complying part 1 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

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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 is given the further information under section 10(2)(a);
    - (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 part 1 of a notice of a claim**

If a claimant gives part 1 of a 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 it under section 10 or 12<sup>4</sup> within the prescribed period under the section, the person is conclusively presumed to be satisfied it is a complying part 1 notice of 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) part 1 of a notice of a claim mentioned in section 9; 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 part 1 of the notice as if it were 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—

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4 Section 10 (Person to whom notice of a claim is given must give preliminary response to claimant) or 12 (Respondent's response to part 1 of a notice of a claim)

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

- (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 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.

(5) If there are 2 or more respondents to a claim and a respondents' claim manager is not acting for all the respondents, the respondents must cooperate with each other, to the greatest extent practicable, to ensure that all respondents are in a position to participate in the compulsory conference with the claimant at the earliest possible opportunity.

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

(1) A respondent who receives a complying part 1 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 part 1 of a notice of a claim**

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

- (a) the respondent to whom part 1 of a notice of a claim was purportedly given—



- (i) has stated that the respondent is satisfied part 1 of the notice has been given as required or the claimant has taken reasonable action to remedy the noncompliance; or
- (ii) is conclusively presumed to be satisfied it is a complying part 1 notice of claim under section 13; 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 part 1 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 part 2 of 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 settlement in part 2 of 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 part 1 of a notice of a claim is not a complying part 1 notice of claim, a respondent is taken to have been given a complying part 1 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 1A—Special provisions for notification of claims in relation to injuries to children arising out of medical treatment***

**20A Limitation of actions not affected**

This division does not limit or affect the *Limitation of Actions Act 1974*.

**20B Application of div 1A**

(1) This division applies if the claimant is, or at the time of the cause of action arose was, a child and the personal injury to which the claim relates arises or arose out of the provision of medical treatment to the claimant.

(2) This division applies regardless of when the personal injury to which the claim relates arose.

**20C Notice of claim for damages for child**

(1) A parent or legal guardian of the claimant must give part 1 of a notice of a claim under section 9 for the claimant before the earlier of the following days—

- (a) the day 6 years after the day when the parent or legal guardian knew or ought reasonably to have known that the personal injury had occurred;
- (b) the day 18 months after the day the parent or legal guardian first consults a lawyer about the possibility of seeking damages for the personal injury.

(2) A lawyer acting for a parent or legal guardian required by subsection (1) to give part 1 of a notice of a claim for a child must, as soon as practicable after being instructed by the parent or legal guardian to give part 1 of the notice to the person against whom the proceeding is proposed to be started, give part 1 of the notice to that person.

(3) A failure by a lawyer to comply with subsection (2) is unprofessional conduct or practice.

(4) For subsection (1)(b), consultation by a claimant with a community legal service as defined under section 67A(2), whether before or after the commencement of this subsection, is to be disregarded.

### **20D Respondent may apply for late claim not to proceed**

If part 1 of the notice is given after the time mentioned in section 20C, the person to whom part 1 of the notice is given may apply to the court for an order that the claim not proceed further.

### **20E To what the court must have regard in deciding application**

In deciding an application under section 20D, the court must consider the justice of the case having regard to the following—

- (a) the extent of the injuries;
- (b) the reason for the delay in giving part 1 of the notice;
- (c) any prejudice suffered by the applicant as a result of the delay;
- (d) the nature of the parties' conduct;
- (e) any other relevant matter.

### **20F Court may order that certain costs not be recovered**

(1) This section applies if an application under section 20D is dismissed.

(2) The claimant is not entitled to recover any of the following amounts in relation to any period before the giving of part 1 of the notice, unless the court orders otherwise—

- (a) an amount for costs incurred by the claimant's parent or legal guardian for medical or other expenses, or legal costs paid or incurred;

- (b) an amount for gratuitous services provided by the parent or legal guardian.

### **20G Notice of adverse incidents**

(1) A person who provides medical treatment to a child may give a parent or legal guardian of the child a written notice of an adverse event arising out of the treatment.

(2) The notice may be accompanied by an expression of regret under the *Civil Liability Act 2003*, chapter 4, part 1<sup>6</sup> or an offer to remedy any harm suffered as a result of the incident, or both an expression of regret and offer.

(3) A notice of an adverse event is not an admission of liability and is inadmissible in any subsequent proceeding in relation to the event, other than a proceeding mentioned in section 20H.

(4) A person who gives a notice of an adverse event must as soon as practicable after giving the notice give to the public trustee a copy of the notice and any document provided to a parent or legal guardian with the notice.

### **20H Time by which claim must be made after notice of adverse incident**

(1) If a notice of an adverse event is given, and part 1 of a notice of a claim under section 9 is not given within the time prescribed under section 20C, notice of a claim under section 9 can be given only with the leave of the court.

(2) The onus of showing why the claim should proceed is with the claimant.

### **20I Matters to which the court must have regard in deciding application**

In deciding whether leave should be granted under section 20H to give a notice of a claim, the court must consider the justice of the case having regard to the following—

- (a) the extent of the injuries;

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<sup>6</sup> *Civil Liability Act 2003*, chapter 4 (Miscellaneous), part 1 (Expressions of regret)

- (b) the reason for the delay in giving part 1 of the notice;
- (c) any prejudice suffered by the respondent as a result of the delay;
- (d) the nature of the parties' conduct;
- (e) any other relevant matter.

## **20J Court may order that certain costs not be recovered**

(1) This section applies if the court grants leave to give notice of a claim under section 20H.

(2) The claimant is not entitled to recover any of the following amounts in relation to any period before giving part 1 of the notice of a claim, unless the court orders otherwise—

- (a) an amount for costs incurred by the claimant's parent or legal guardian for medical or other expenses, or legal costs paid or incurred;
- (b) an amount for gratuitous services provided by the parent or legal guardian.

### *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;

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- (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 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>7</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

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<sup>7</sup> Section 25 (Examination of claimant by medical expert in absence of agreement between the parties)

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.

(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.

## **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 that are directly relevant to a matter in issue in the claim—
  - (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.

(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 part 1 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.

## **29A Alternative provision if number of pages exceeds 200**

(1) This section applies despite section 9A(9), 27, 28 or 29 (a “**relevant section**”).

(2) This section applies to the extent a relevant section requires a person (a “**relevant person**”) to give copies of documents or other things to someone else and the total number of pages of the copies exceeds 200 pages.

(3) Within the time a relevant person would, apart from this section, be required to give copies of documents or other things to someone else under

a relevant section, the relevant person need only offer the other person a reasonable opportunity to inspect the documents or other things.

(4) If the other person, whether on inspection or otherwise, by written notice given to the relevant person, requires the relevant person to give the other person copies of some or all of the documents or other things, the relevant person must comply with the requirement in the time mentioned in subsection (5).

(5) For subsection (4), the time is—

- (a) if the total number of pages does not exceed 200 pages—1 month after the requirement is made under the subsection; or
- (b) otherwise—1 month after payment by the other person of an amount of 50c for each page the total number of pages exceeds 200 pages.

(6) If a relevant person does not act under subsection (3), the relevant section concerned continues to apply.

### **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 or other information twice or if already in other party’s possession**

No provision of this Act requires a party to give a document or other information to another party if the document or information has already been given to the other party under another provision or is otherwise already in the possession of the other party.

***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 part 1 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 part 1 of a notice of a claim under section 14(1);<sup>8</sup>
- (b) if, under section 12,<sup>9</sup> a person to whom part 1 of 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 part 1 of a notice of a claim is given, the day 6 months after the day after the last person gives notice to the claimant.

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<sup>8</sup> Section 14 (Claimant may add other respondents)

<sup>9</sup> Section 12 (Respondent’s response to part 1 of a notice of a claim)

(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 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.

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



(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 or practice.

(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 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 if the offer is accepted.

(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 part 1 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 part 1 of a notice of a claim under section 14(1);<sup>11</sup>
  - (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.

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

(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 or otherwise ends.

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

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

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

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

### **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.

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

**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 based on a claim, but it does not apply to the costs of an appellate proceeding.

(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 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>13</sup>

(8) In this section—

**“party”** does not include contributor.

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13 Section 48 (Consequences of failure to comply with claims procedures may result in adverse costs order)

**57 General regulation of court awards**

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

**59 Alteration of period of limitation**

(1) If a complying part 1 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.

(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 complying part 1 notice is given or leave to start the proceeding is granted; or
- (b) a longer period allowed by the court.

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

(4) If a period of limitation is extended under the *Limitation of Actions Act 1974*, part 3,<sup>14</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.

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14 *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 or practice 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>15</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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15 *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.

### **67A Exemption from s 67(3) and (4)**

(1) A person does not commit an offence against section 67(3)(a) or (4)(a) if—

- (a) the person gives the potential claimant, or someone on the potential claimant's behalf, the name, address or telephone number of a particular lawyer or firm of lawyers (the **“information”**); and
- (b) the person, in giving the information, is acting on behalf of a community legal service or industrial organisation; and
- (c) the community legal service or industrial organisation approved of the giving of that information by the person.

(2) In this section—

**“community legal service”** means an entity, prescribed under a regulation, that provides free legal services to the community or a section of the community.

**“industrial organisation”** means a federal organisation, or an organisation, as defined under the *Industrial Relations Act 1999*, section 409.

## **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 or regulated under an Act is convicted under s 67 or 68**

(1) This section applies to a person if—

- (a) under an Act—

- (i) the person is approved for a profession, type of employment or calling; or
  - (ii) the person's activities for the person's profession, employment or calling are regulated; and
- (b) under the Act under which the person is approved or the person's activities are regulated, the person's approval may be suspended or cancelled for misconduct or the person may be disciplined or otherwise dealt with for misconduct.

(2) If the person is convicted of an offence against section 67 or 68,<sup>16</sup> the person's conviction may also be dealt with as misconduct under the Act under which the person is approved or the person's activities are regulated.

## **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).

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.

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16 Section 67 (Prohibition on touting at scene of incident or at any time) or 68 (Prohibition against paying, or seeking payment, for touting)

**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.

**73A Proceeding**

(1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886* before a magistrate on the complaint of—

- (a) the Attorney-General; or
- (b) a person authorised by the Attorney-General to take the proceeding.

(2) The proceeding must start—

- (a) within 1 year after the commission of the offence; or

- (b) within 6 months after the commission of the offence comes to the knowledge of the complainant, but not later than 2 years after the commission of the offence.

(3) A statement in a complaint that—

- (a) the complainant is authorised by the Attorney-General to take the proceeding; or
- (b) the commission of the alleged offence came to the knowledge of the complainant on a particular date;

is evidence of the authorisation or when the offence came to the knowledge of the complainant.

#### **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**

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

#### **76 Special provision for personal injuries arising out of incidents happening between 18 June 2002 and 1 August 2002**

(1) This section applies to a personal injury arising out of an incident happening on or after 18 June 2002 and before 1 August 2002.

(2) For the purposes of section 9(3)(a),<sup>17</sup> the day the incident giving rise to the personal injury happened is taken to be 1 August 2002.

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<sup>17</sup> Section 9 (Notice of a claim)

(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.

(4) This section is subject to section 19.<sup>18</sup>

## **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>19</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.

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

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

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

(2) For the purposes of section 9(3)(a),<sup>20</sup> the day the incident giving rise to the personal injury happened is taken to be 1 August 2002.

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

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18 Section 19 (Legal disabilities)

19 Section 58 (Exclusion of jury trial)

20 Section 9 (Notice of a claim)

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

(5) Subsections (2) and (3) are subject to section 19.<sup>21</sup>

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

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

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

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

- (a) the award or payment of costs, other than an amount mentioned in subsection (2), is subject to this Act; and
- (b) an amount mentioned in subsection (2) is to be disregarded for sections 40 and 56.<sup>22</sup>

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

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

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

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

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21 Section 19 (Legal disabilities)

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

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

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

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

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

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

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

(4) This section does not limit section 43.<sup>23</sup>

**77DA Validity of s 77D proceedings**

(1) This section applies to a proceeding for a personal injury in relation to which section 77D applies.

(2) It is declared that the proceeding was validly started, and is taken to have always been validly started, under section 77D(2) if—

- (a) for a proceeding started on or before 18 June 2003—a complying notice of claim was given before the proceedings were started; or
- (b) for a proceeding started after 18 June 2003 but not later than the end of 18 December 2003—
  - (i) a complying notice of claim was given within 6 months before the proceeding was started; and

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23 Section 43 (Need for urgent proceeding)



(ii) the court's leave under that provision was given before the proceeding was started.

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

(a) section 77D(2)(a) or (b) does not require 6 months to have elapsed between the giving of the complying notice of claim and the start of the proceeding; and

(b) for the purposes of section 77D(2)(b)—

(i) the complying notice of claim may have been given before, on or after 18 June 2003; and

(ii) a court had power to grant leave under that provision if a complying notice of claim was given at any time within 6 months before the proceeding was started.

(4) Subsections (2) and (3) apply to a proceeding despite any decision of a court to the contrary in relation to the proceeding.

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

(1) This section applies in relation to a proceeding started in a court during the period starting 1 July 2002 and ending at the end of the day the *Personal Injuries Proceedings Amendment Act 2002* receives assent if the proceeding is based on a claim arising out of an incident happening before 18 June 2002.

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

## **PART 3—TRANSITIONAL PROVISIONS FOR CIVIL LIABILITY ACT 2003**

### **78 Definitions for pt 3**

In this part—

“**commencement**” means the commencement of the provision in which the term is used.

**“pre-amended Act”** means this Act as in force before the commencement of the *Civil Liability Act 2003*, chapter 6, part 1.<sup>24</sup>

### **79 Notice of a claim given under the pre-amended Act**

(1) This section applies if a notice of a claim has been given under section 9 or 14 of the pre-amended Act.

(2) The prescribed sections of the pre-amended Act continue to apply to the notice as if the *Civil Liability Act 2003*, chapter 6, part 1, had not commenced.

(3) For subsection (2), the definition “complying notice of claim” in the schedule of the pre-amended Act also continues to apply.

(4) In this section—

**“prescribed sections”** means sections 9, 10, 12, 13, 14, 16, 18, 20, 27(2)(a), 36, 42 and 59.

### **80 Special provision for notification of claims in relation to injuries to children arising out of medical treatment**

(1) This section applies if the day mentioned for a claim in section 20C(1)(a) or (b) occurred before the commencement and a period of limitation has not ended in relation to the claim.

(2) For section 20C(1)(a), the day when the parent or legal guardian knew or ought reasonably to have known that the personal injury had occurred, is taken to be the date of commencement.

(3) For section 20C(1)(b), the day the parent or legal guardian first consults a lawyer about the possibility of seeking damages for the personal injury, is taken to be the day 18 months after the date of commencement.

### **81 Particular provisions having continuing effect**

The following provisions as in force immediately before the commencement of this section continue to have effect in relation to personal injury arising out of an incident happening before the day the

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<sup>24</sup> *Civil Liability Act 2003*, chapter 6 (Amendment of Acts and regulation), part 1 (Amendment of Personal Injuries Proceedings Act 2002)

*Civil Liability Act 2003* received assent as if that Act had not been enacted—

- chapter 2 (Claims), part 2 (Expressions of regret)
- section 51 (Damages for loss of earnings or earning capacity)
- section 52 (Discount rate to be applied in calculating the present value of future loss or gratuitous services)
- section 53 (Damages for loss of consortium or loss of servitium)
- section 54 (Damages for gratuitous services)
- section 55 (Interest)
- chapter 3 (Other matters), part 2 (Protection of persons performing duties to enhance public safety).

## **PART 4—TRANSITIONAL PROVISION FOR JUSTICE AND OTHER LEGISLATION AMENDMENT ACT 2003**

### **82 Time for lodging notice**

(1) The amendment of section 9(3)(b)<sup>25</sup> by the *Justice and Other Legislation Amendment Act 2003* apply to claims that arose before the commencement of the amendment.

(2) The amendment of section 9A(4)(b)<sup>26</sup> by the *Justice and Other Legislation Amendment Act 2003* apply to claims that arose after 9 April 2003.

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25 Section 9 (Notice of a claim)

26 Section 9A (Particular provision for notice of a claim procedure for medical negligence cases)

## 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>27</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 part 1 notice of claim”** means part 1 of a notice of a claim complying with section 9 and, if a respondent is added under section 14, section 14 that is given as required under chapter 2, part 1, division 1.

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<sup>27</sup> The publication is currently entitled ‘Average Weekly Earnings, Australia’.

## SCHEDULE (continued)

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

**“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.

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

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

**“dust-related condition”** means—

- (a) any of the following diseases—
  - aluminosis
  - asbestosis

## SCHEDULE (continued)

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

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

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

**“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.

**“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.

## SCHEDULE (continued)

**“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.

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

**“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.

**“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—

## SCHEDULE (continued)

- (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**

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**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 3 December 2004. 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	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

#### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
0A rv	to 2002 Act No. 38	18 June 2002	18 June 2002 (Column discontinued) Notes
1	to 2002 Act No. 38	29 August 2002	
1A	to 2003 Act No. 16	9 April 2003	
1B	to 2003 Act No. 27	1 July 2003	
1C	to 2003 Act No. 77	8 December 2003	
1D	to 2004 Act No. 43	3 December 2004	

## **5 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 date of assent

### **Civil Liability Act 2003 No. 16 ss 1, 2(2), ch 6 pt 1**

date of assent 9 April 2003

ss 1–2 commenced on date of assent

remaining provisions commenced on date of assent (see s 2(2))

### **Workers' Compensation and Rehabilitation Act 2003 No. 27 ss 1–2(2), 622 sch 5**

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (see s 2(2))

### **Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(3), pt 21**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 2003 (2003 SL No. 310)

### **Justice and Other Legislation Amendment Act 2004 No. 43 ss 1–2, pt 18**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2004 (2004 SL No. 263)

## **6 List of annotations**

### **Application of Act**

s 6 amd 2002 No. 38 s 4 (retro)

sub 2002 No. 38 s 5

amd 2003 No. 16 s 80; 2003 No. 27 s 622 sch 5

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

s 7 sub 2002 No. 38 s 5

amd 2003 No. 16 s 81

### **Notice of a claim**

s 9 amd 2002 No. 38 s 6; 2003 No. 16 s 82; 2003 No. 77 s 104

### **Particular provision for notice of a claim procedure for medical negligence cases**

s 9A ins 2003 No. 16 s 83

amd 2003 No. 77 s 105; 2004 No. 43 s 86

**Person to whom notice of a claim is given must give preliminary response to claimant**  
**s 10** amd 2003 No. 16 s 84

**Acknowledgement that a person is a proper respondent to a claim is not an admission of liability**  
**s 11** amd 2003 No. 16 s 85

**Respondent's response to part 1 of a notice of a claim**  
**prov hdg** sub 2003 No. 16 s 86(1)  
**s 12** amd 2002 No. 38 s 3 sch pt 1; 2003 No. 16 s 86(2)–(3)

**Consequences for respondent of failure to respond to part 1 of a notice of a claim**  
**s 13** sub 2003 No. 16 s 87

**Claimant may add other respondents**  
**s 14** amd 2002 No. 38 s 3 sch pt 1; 2003 No. 16 s 88

**Multiple respondents**  
**s 15** amd 2002 No. 38 s 7

**Respondent may add other person as contributor**  
**s 16** amd 2003 No. 16 s 89

**Claimant's failure to give part 1 of a notice of a claim**  
**prov hdg** sub 2003 No. 16 s 90(1)  
**s 18** amd 2003 No. 16 s 90(2)–(5)

**Respondent must attempt to resolve claim**  
**s 20** amd 2002 No. 38 s 3 sch pt 1; 2003 No. 16 s 91

**Division 1A—Special provisions for notification of claims in relation to injuries to children arising out of medical treatment**  
**div 1A (ss 20A–20J)** ins 2003 No. 16 s 92

**Mitigation of damages**  
**s 26** om 2003 No. 16 s 93

**Duty of respondent to give documents and information to claimant**  
**s 27** amd 2003 No. 16 s 94

**Alternative provision if number of pages exceeds 200**  
**s 29A** ins 2003 No. 16 s 95

**No requirement to give documents or other information twice or if already in other party's possession**  
**s 34** sub 2003 No. 16 s 96

**Compulsory conference**  
**s 36** amd 2003 No. 16 s 97

**Exchange of material for compulsory conference**  
**s 37** amd 2002 No. 38 s 3 sch pt 1; 2003 No. 77 s 105A

**Parties to exchange mandatory final offers if claim not settled at compulsory conference**  
**s 39** amd 2002 No. 38 s 3 sch pt 1

**Time for starting proceeding**

s 42 amd 2003 No. 16 s 98

**Need for urgent proceeding**

s 43 amd 2002 No. 38 ss 7A, 3 sch pt 1; 2003 No. 16 s 99

**PART 2—EXPRESSIONS OF REGRET**

pt hdg om 2003 No. 16 s 100

**Purpose of pt 2**

s 44 om 2003 No. 16 s 100

**Meaning of “expression of regret”**s 45 amd 2002 No. 38 s 3 sch pt 1  
om 2003 No. 16 s 100**Expressions of regret are inadmissible**s 46 amd 2002 No. 38 s 3 sch pt 1  
om 2003 No. 16 s 100**Consequences of failure to mitigate damages**

s 49 om 2003 No. 16 s 101

**Awards of exemplary, punitive or aggravated damages**s 50 amd 2002 No. 38 s 8 (retro)  
om 2003 No. 16 s 101**Damages for loss of earnings or earning capacity**

s 51 om 2003 No. 16 s 101

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

s 52 om 2003 No. 16 s 101

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

s 53 om 2003 No. 16 s 101

**Damages for gratuitous services**s 54 amd 2002 No. 38 s 3 sch pt 1  
om 2003 No. 16 s 101**Interest**

s 55 om 2003 No. 16 s 101

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

s 56 amd 2002 No. 38 s 3 sch pt 1

**Exclusion of jury trial**

s 58 om 2003 No. 16 s 102

**Alteration of period of limitation**

s 59 amd 2002 No. 38 s 9; 2003 No. 16 s 103

**PART 4—STRUCTURED SETTLEMENTS**

pt 4 (s 61) om 2003 No. 16 s 104

**CHAPTER 3—OTHER MATTERS****Restriction on advertising personal injury services**

s 66            amd 2002 No. 38 s 3 sch pt 1

**Exemption from s 67(3) and (4)**

s 67A        ins 2003 No. 16 s 105

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

s 69        sub 2002 No. 38 s 3 sch pt 1

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

pt hdg     om 2003 No. 16 s 106

**Application of pt 2**

s 70        om 2003 No. 16 s 106

**Protection of persons performing duties to enhance public safety**s 71        amd 2002 No. 38 s 3 sch pt 1  
              om 2003 No. 16 s 106**Proceeding**

s 73A     ins 2003 No. 16 s 107

**CHAPTER 4—TRANSITIONAL PROVISIONS****PART 1—TRANSITIONAL PROVISIONS FOR ACT No. 24 OF 2002 AND JURY TRIALS**

pt hdg     ins 2002 No. 38 s 10

**Special provision for personal injuries arising out of incidents happening between 18 June 2002 and 1 August 2002**

prov hdg   amd 2002 No. 38 s 11(1)

s 76        amd 2002 No. 38 s 11(2)–(3)

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

pt hdg     ins 2002 No. 38 s 12

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

s 77A     ins 2002 No. 38 s 12

**Costs and outlays incurred before 18 June 2002**

s 77B     ins 2002 No. 38 s 12

**Written offers of settlement made before 1 July 2002**

s 77C     ins 2002 No. 38 s 12

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

s 77D     ins 2002 No. 38 s 12

amd 2003 No. 16 s 108

**Validity of s 77D proceedings**

s 77DA    ins 2004 No. 43 s 87

**Stay of proceedings in particular cases**

s 77E ins 2002 No, 38 s 12

**PART 3—TRANSITIONAL PROVISIONS FOR CIVIL LIABILITY ACT 2003**

pt 3 (ss 78–81) ins 2003 No. 16 s 109

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

ch 5 (ss 78–80) om R1 (see RA s 40)

**PART 4—TRANSITIONAL PROVISION FOR JUSTICE AND OTHER  
LEGISLATION AMENDMENT ACT 2003**

pt 4 (s 82) ins 2003 No. 77 s 106

**SCHEDULE—DICTIONARY**def “**complying notice of claim**” om 2003 No. 16 s 110(1)def “**complying part 1 notice of claim**” ins 2003 No. 16 s 110(2)def “**court**” ins 2002 No. 38 s 13def “**dust-related condition**” ins 2002 No. 38 s 13def “**expression of regret**” om 2003 No. 16 s 110(1)def “**period of limitation**” ins 2002 No. 38 s 3 sch pt 1

## **7 List of forms notified or published in the gazette**

**Form 1 Version 3—Notice of Claim (Non Health Care Claims)**

pubd gaz 11 April 2003 p 1312

**Form 2 Version 4—Notice of Claim (Health Care Claims)**

pubd gaz 11 April 2003 p 1312

**Form 3 Version 2—Notice of Claim (Dependency Claims)**

pubd gaz 11 April 2003 p 1312

## **8 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.