



Queensland

# **Civil Liability and Other Legislation Amendment Act 2010**

**Act No. 9 of 2010**





Queensland

# Civil Liability and Other Legislation Amendment Act 2010

## Contents

---

		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	6
2	Commencement . . . . .	6
<b>Part 2</b>	<b>Amendment of Civil Liability Act 2003</b>	
3	Act amended . . . . .	6
4	Amendment of s 5 (Civil liability excluded from Act) . . . . .	6
5	Amendment of s 7 (Provisions relating to operation of Act) . . . . .	7
6	Amendment of s 38 (Interpretation) . . . . .	7
7	Amendment of s 43 (Liability not excluded if insurance required)	7
8	Amendment of s 58 (Damages for loss of consortium or loss of servitium) . . . . .	7
9	Amendment of s 59 (Damages for gratuitous services) . . . . .	8
10	Insertion of new ss 59A–59D . . . . .	8
	59A Damages for gratuitous domestic services provided by an injured person . . . . .	8
	59B Circumstances in which section 59A damages can not be awarded . . . . .	11
	59C Provisions for assessment of section 59A damages .	12
	59D Restriction on damages if section 59A damages already recovered . . . . .	12
11	Amendment of s 60 (Interest) . . . . .	13
12	Replacement of s 62 (Calculation of general damages) . . . . .	13
	62 Calculation of general damages . . . . .	13
13	Amendment of s 64 (Court required to inform parties of proposed award) . . . . .	13
14	Insertion of new s 75 . . . . .	14
	75 Indexation of particular amounts . . . . .	14

Contents

15	Insertion of new ch 5, pt 7 . . . . .	15
	Part 7 Transitional provisions for Civil Liability and Other Legislation Amendment Act 2010	
85	Retrospective effect of section 59A damages provisions for dust-related claims only . . . . .	15
86	Amendment of regulation under Civil Liability and Other Legislation Amendment Act 2010. . . . .	16
16	Amendment of sch 2 (Dictionary) . . . . .	16
<b>Part 3</b>	<b>Amendment of Civil Liability Regulation 2003</b>	
17	Regulation amended . . . . .	17
18	Insertion of new s 5A . . . . .	17
	5A Prescribed amount of damages for loss of consortium or loss of servitium—Act, s 58 . . . . .	17
19	Insertion of new ss 6A and 6B . . . . .	17
	6A General damages calculation provisions—Act, s 62 . . . . .	17
	6B Prescribed amount of award for future loss—Act, s 64 . . . . .	18
20	Insertion of new sch 6A . . . . .	18
	Schedule 6A General damages calculation provisions	
	1 General damages calculation provisions—2 December 2002 to 30 June 2010. . . . .	18
	2 General damages calculation provisions—1 July 2010 . . . . .	20
<b>Part 4</b>	<b>Amendment of Law Reform Act 1995</b>	
21	Act amended . . . . .	22
22	Replacement of s 13 (Wife’s remedy for loss or impairment of consortium) . . . . .	22
	13 Spouse’s remedy for loss or impairment of consortium . . . . .	22
<b>Part 5</b>	<b>Amendment of Limitation of Actions Act 1974</b>	
23	Act amended . . . . .	22
24	Amendment of s 7 (Saving of other limitations) . . . . .	23
25	Amendment of s 11 (Actions in respect of personal injury) . . . . .	23
26	Omission of s 30A (Application of s 30 in actions for dust-related conditions) . . . . .	23
27	Amendment of pt 5 (Transitional provision) . . . . .	23
28	Omission of pt 6, hdg (Transitional provision). . . . .	24
29	Omission of pt 7, hdg (Transitional provision). . . . .	24
30	Insertion of new s 47 . . . . .	24

	47	Transitional provision for Civil Liability and Other Legislation Amendment Act 2010. . . . .	24
<b>Part 6</b>		<b>Amendment of Motor Accident Insurance Act 1994</b>	
31		Act amended . . . . .	25
32		Amendment of s 4 (Definitions) . . . . .	25
33		Amendment of s 51C (Parties to exchange mandatory final offers if claim not settled at compulsory conference) . . . . .	25
34		Amendment of s 55F (Costs in cases involving relatively small awards of damages). . . . .	26
35		Insertion of new s 100A . . . . .	26
	100A	Indexation of particular amounts . . . . .	26
36		Insertion of new pt 7, div 5 . . . . .	27
	Division 5	Provision for Civil Liability and Other Legislation Amendment Act 2010	
	112	Amendment of regulation under Civil Liability and Other Legislation Amendment Act 2010. . . . .	28
<b>Part 7</b>		<b>Amendment of Motor Accident Insurance Regulation 2004</b>	
37		Regulation amended . . . . .	28
38		Insertion of new s 27A . . . . .	28
	27A	Prescribed limits for particular definitions—Act, s 4 . . . . .	28
39		Amendment of s 29 (Costs if mandatory final offer accepted—Act, s 51C) . . . . .	29
<b>Part 8</b>		<b>Amendment of Personal Injuries Proceedings Act 2002</b>	
40		Act amended . . . . .	29
41		Amendment of s 37 (Exchange of material for compulsory conference) . . . . .	29
42		Amendment of s 40 (Provisions about mandatory final offers). . . . .	30
43		Amendment of s 43 (Need for urgent proceeding) . . . . .	30
44		Insertion of new s 44 . . . . .	30
	44	Starting urgent proceeding by agreement . . . . .	30
45		Amendment of s 56 (Costs in cases involving damages awards of not more than \$50000) . . . . .	31
46		Insertion of new s 75A . . . . .	32
	75A	Indexation of particular amounts . . . . .	32
47		Insertion of new ch 4, pt 7 . . . . .	33
	Part 7	Transitional provision for Civil Liability and Other Legislation Amendment Act 2010	
	86	Amendment of regulation under Civil Liability and Other Legislation Amendment Act 2010. . . . .	34

Contents

---

48	Amendment of schedule (Dictionary) . . . . .	34
<b>Part 9</b>	<b>Amendment of Personal Injuries Proceedings Regulation 2002</b>	
49	Regulation amended . . . . .	35
50	Amendment of s 11 (Costs when mandatory final offer is accepted—Act, s 40) . . . . .	35
51	Insertion of new s 13 . . . . .	35
	13 Prescribed limits for particular definitions—Act, schedule . . . . .	35



Queensland

## **Civil Liability and Other Legislation Amendment Act 2010**

### **Act No. 9 of 2010**

---

**An Act to amend the Civil Liability Act 2003, the Civil Liability Regulation 2003, the Law Reform Act 1995, the Limitation of Actions Act 1974, the Motor Accident Insurance Act 1994, the Motor Accident Insurance Regulation 2004, the Personal Injuries Proceedings Act 2002 and the Personal Injuries Proceedings Regulation 2002 for particular purposes**

**[Assented to 17 March 2010]**

[s 1]

---

**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Civil Liability and Other Legislation Amendment Act 2010*.

### **2 Commencement**

The following commence on 1 July 2010—

- sections 4, 5, 9, 10, 11 and 41
- section 16 to the extent it inserts the definition *section 59A damages*
- part 4.

## **Part 2 Amendment of Civil Liability Act 2003**

### **3 Act amended**

This part amends the *Civil Liability Act 2003*.

### **4 Amendment of s 5 (Civil liability excluded from Act)**

- (1) Section 5(3) and (4)—  
*renumber* as section 5(4) and (5).
- (2) Section 5—  
*insert—*



‘(3) Despite subsection (1)(c) and (d), this Act applies for deciding awards of section 59A damages relating to an injury mentioned in subsection (1)(c) or (d).’

**5 Amendment of s 7 (Provisions relating to operation of Act)**

Section 7(1), ‘This Act’—

*omit, insert—*

‘Subject to sections 5(3) and 59A, this Act’.

**6 Amendment of s 38 (Interpretation)**

Section 38(1), definition *community organisation*—

*insert—*

‘(f) a parents and citizens association formed under the *Education (General Provisions) Act 2006*, chapter 7;

(g) another entity prescribed under a regulation.’

**7 Amendment of s 43 (Liability not excluded if insurance required)**

Section 43, after ‘liability that’—

*insert—*

‘the volunteer’.

**8 Amendment of s 58 (Damages for loss of consortium or loss of servitium)**

Section 58(1)(b), from ‘at \$30000’—

*omit, insert—*

‘at the amount prescribed under a regulation for this provision, or more.

[s 9]

---

*Note—*

Under section 75, the Minister must make a recommendation about the amount to be prescribed.’.

## **9 Amendment of s 59 (Damages for gratuitous services)**

(1) Section 59, heading, after ‘services’—

*insert—*

**‘provided to an injured person’.**

(2) Section 59(1), after ‘gratuitous services’—

*insert—*

**‘provided to an injured person’.**

(3) Section 59(3)—

*omit.*

(4) Section 59(4)—

*renumber* as section 59(3).

## **10 Insertion of new ss 59A–59D**

After section 59—

*insert—*

### **‘59A Damages for gratuitous domestic services provided by an injured person**

‘(1) Subject to section 59B, damages (*section 59A damages*) may be awarded to an injured person for any loss of the person’s capacity to provide gratuitous domestic services to someone else (the *recipient*) if subsection (2) or (4) applies.

‘(2) Generally, the court may award section 59A damages only if it is satisfied of all of the following—

(a) either—

(i) the injured person died as a result of the injuries suffered; or

- (ii) general damages for the injured person are assessed (before allowing for contributory negligence) at the amount prescribed under section 58, or more;
  - (b) at the relevant time the recipient was—
    - (i) a person who resided at the injured person’s usual residence; or
    - (ii) an unborn child of the injured person;
  - (c) before the relevant time, the injured person—
    - (i) provided the services to the recipient; or
    - (ii) if the recipient was then an unborn child—would have provided services to the recipient had the recipient been born;
  - (d) the recipient was, or will be, incapable of performing the services personally because of the recipient’s age or physical or mental incapacity;
  - (e) there is a reasonable expectation that, if not for the relevant injury, the injured person would have provided the services to the recipient—
    - (i) for at least 6 hours a week; and
    - (ii) for a period of at least 6 months;
  - (f) there will be a need for the services for the hours and the period mentioned in paragraph (e), and the need is reasonable in all the circumstances.
- ‘(3) Subsection (4) applies if—
- (a) the court is satisfied, as required under subsection (2), in all respects other than that the injured person would have provided the services for the hours and the period mentioned in subsection (2)(e) and (f); and
  - (b) the recipient was provided with accommodation by a parent other than the injured person or with other care to which all of the following apply—

[s 10]

---

- (i) it included accommodation provided other than by the injured person;
- (ii) it was provided because the recipient is aged, frail or suffers from a mental or physical disability;
- (iii) its primary purpose was to give the recipient or the injured person a break from their usual care arrangements.

‘(4) The court may award section 59A damages if it considers that—

- (a) the injured person would not have provided the services for the hours and the period because of the provision of the accommodation or the other care; and
- (b) awarding the damages is reasonable in all the circumstances.

*Examples of circumstances that may make the award reasonable—*

- 1 The injured person would have had custody of the recipient each alternate week for a full week at a time.
- 2 The recipient would have spent part of their school holidays with a non-custodial parent.
- 3 The recipient is an elderly parent and is placed in short-term or occasional respite care at a nursing home.

‘(5) In this section—

***gratuitous domestic services*** means services of a domestic nature for which there has been, and will be, no payment or liability to pay.

***parent*** includes a person who stands in the place of a parent.

***relevant time*** means—

- (a) generally, when the relevant injury happened; or
- (b) if the symptoms of the relevant injury were not immediately apparent when it happened, when the nature and extent of the injury becomes known.

---

**‘59B Circumstances in which section 59A damages can not be awarded**

- ‘(1) To remove any doubt, it is declared that section 59A damages can not be awarded if the recipient is not a person mentioned in section 59A(2)(b).
- ‘(2) Section 59A damages can not be awarded for loss if, and to the extent—
  - (a) the injured person can recover damages for gratuitous services mentioned in section 59 for the same injury that caused the loss; and
  - (b) the provision of gratuitous services to the injured person also resulted, or would also result, in the recipient being provided with the domestic services that the person has lost the capacity to provide.
- ‘(3) Section 59A damages can not be awarded if, and to the extent—
  - (a) the loss resulted from personal injury to which the *Motor Accident Insurance Act 1994* applies; and

*Note—*

For when the *Motor Accident Insurance Act 1994* applies, see section 5 of that Act.

  - (b) under section 51 of that Act an insurer has paid, or is liable to pay, the cost of providing rehabilitation services to the injured person; and
  - (c) the provision of the rehabilitation services resulted, or would result, in the recipient being provided with the domestic services that the injured person has lost the capacity to provide.
- ‘(4) An injured person, or an injured person’s legal representative, can not be awarded section 59A damages for a loss if the recipient has previously recovered damages for a loss sustained because of the person’s loss of capacity.

[s 10]

---

### **‘59C Provisions for assessment of section 59A damages**

- ‘(1) In deciding, for section 59A, the value of any gratuitous domestic services that an injured person has lost the capacity to provide to the recipient, the court must take into account—
- (a) the extent of the injured person’s capacity to provide the services before the relevant time under section 59A; and
  - (b) the extent to which provision of the services would, if not for the injury sustained by the injured person, have also benefited persons outside the injured person’s household; and
  - (c) the vicissitudes or contingencies of life for which allowance is ordinarily made in the assessment of damages.
- ‘(2) Section 59A damages must be assessed on the injured person’s life expectancy immediately before the relevant time under section 59A.
- ‘(3) However, if the injured person’s life is shortened by an unrelated event, section 59A damages can not be awarded for any period after the person’s death.

*Example of an unrelated event—*

a life-limiting illness first suffered after the breach of duty happened

- ‘(4) In deciding the amount of section 59A damages, if any, to be awarded to the injured person for a loss of capacity mentioned in section 59A, a court—
- (a) may only award damages for that loss as provided under section 59A; and
  - (b) must not include in any general damages awarded to the injured person a component that compensates the person for the loss of that capacity.

### **‘59D Restriction on damages if section 59A damages already recovered**

- ‘(1) This section applies to anyone (the *claimant*), including a recipient mentioned in section 59A(1), who makes a claim for

loss sustained because of personal injury suffered by an injured person.

- ‘(2) The claimant can not be awarded damages for a loss sustained by the claimant because of the injured person’s loss of capacity to provide gratuitous domestic services if the injured person or the person’s legal representative has previously recovered section 59A damages for that loss.’

## **11 Amendment of s 60 (Interest)**

Section 60(1)—

*omit, insert—*

- ‘(1) A court can not order the payment of interest on—
- (a) an award for general damages; or
  - (b) an award of damages for gratuitous services provided to an injured person.’

## **12 Replacement of s 62 (Calculation of general damages)**

Section 62—

*omit, insert—*

### **‘62 Calculation of general damages**

- ‘(1) For an injury arising after 1 December 2002, general damages must be calculated by reference to the general damages calculation provisions applying to the period within which the injury arose.
- ‘(2) In this section—
- general damages calculation provisions*, applying to a period, means the provisions prescribed for the period under a regulation.’

## **13 Amendment of s 64 (Court required to inform parties of proposed award)**

- (1) Section 64(2), ‘\$100000’—

[s 14]

---

*omit, insert—*

‘the amount prescribed under a regulation for this section’.

(2) Section 64(2)—

*insert—*

*Note—*

Under section 75, the Minister must make a recommendation about the amount to be prescribed.’.

## **14 Insertion of new s 75**

Chapter 4, part 3—

*insert—*

### **‘75 Indexation of particular amounts**

- ‘(1) The Minister must, on or before 1 July 2011 and on or before 1 July in each succeeding year, recommend to the Governor in Council the amounts that are to be prescribed under a regulation for or under the following provisions—
- (a) section 58(1)(b);
  - (b) section 62(2), definition *general damages calculation provisions*;
  - (c) section 64(2).
- ‘(2) The amount recommended for or under the provision is to be the amount last prescribed under a regulation for or under the provision adjusted by the percentage change in average weekly earnings over the 4 quarters preceding the date of the recommendation and rounded to the nearest ten dollar.
- ‘(3) However, if the percentage change in average weekly earnings over the 4 quarters preceding the date of the recommendation would reduce the amount prescribed for or under the provision or result in no change to the amount, the Minister need not make a recommendation.
- ‘(4) If the percentage change in average weekly earnings mentioned in subsection (2) is not available from the



---

Australian Statistician, the Minister must advise the Governor in Council accordingly.

- ‘(5) If the Minister advises the Governor in Council of the unavailability of the percentage change under subsection (4), the amount prescribed for or under the provision is the amount decided by the Governor in Council.
- ‘(6) A regulation notified in the gazette after 1 July in a year and specifying a date that is before the date it is notified as the date from which the amount prescribed for the provision is to apply has effect from the specified date.
- ‘(7) Subsection (6) applies despite the *Statutory Instruments Act 1992*, section 34.
- ‘(8) This section does not limit the power of the Governor in Council to amend the amount prescribed under a regulation for a limit.’.

## **15 Insertion of new ch 5, pt 7**

Chapter 5—

*insert—*

# **‘Part 7 Transitional provisions for Civil Liability and Other Legislation Amendment Act 2010**

## **‘85 Retrospective effect of section 59A damages provisions for dust-related claims only**

- ‘(1) The section 59A damages provisions apply to any dust-related claim, even if the relevant breach of duty has happened or happens before 1 July 2010.

*Note—*

The section 59A damages provisions commence on 1 July 2010.

- ‘(2) However, the section 59A damages provisions do not apply to a dust-related claim if, before the date of assent of the amending Act—

[s 16]

---

- (a) the claim was settled; or
  - (b) a proceeding for the claim was started and—
    - (i) the proceeding was discontinued; or
    - (ii) judgment was given in the proceeding.
- ‘(3) The section 59A damages provisions apply to another type of personal injury claim only if the relevant breach of duty happens on or after 1 July 2010.
- ‘(4) To remove any doubt, it is declared that in a proceeding for a dust-related claim started before 1 July 2010, section 59A damages may be claimed even though the section 59A damages provisions have not yet commenced.
- ‘(5) In this section—

*amending Act* means the *Civil Liability and Other Legislation Amendment Act 2010*.

*dust-related claim* means a claim for personal injury damages resulting from a dust-related condition.

*section 59A damages provisions* means sections 5, 7, 59, 59A to 59D and 60 and schedule 2, definition *section 59A damages*, as amended or inserted under the amending Act.

## ‘86 **Amendment of regulation under Civil Liability and Other Legislation Amendment Act 2010**

‘The amendment of the *Civil Liability Regulation 2003* under the *Civil Liability and Other Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

## 16 **Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert*—

*‘injury scale value* see section 61(1)(a).

*section 59A damages* see section 59A(1).’.



[s 20]

---

**‘6B Prescribed amount of award for future loss—Acts 64**

‘For the Act, section 64, the amount prescribed is—

- (a) for an injury arising on and from 2 December 2002 to and including 30 June 2010—\$100000; or
- (b) for an injury arising on and from 1 July 2010—\$117800.’.

**20 Insertion of new sch 6A**

After schedule 6—

*insert—*

**‘Schedule 6A General damages calculation provisions**

section 6A

**‘1 General damages calculation provisions—2  
December 2002 to 30 June 2010**

‘The general damages must be calculated for an injury arising on and from 2 December 2002 to and including 30 June 2010 as follows—

- (a) if the injury scale value of the injury is assessed as 5 or less—by multiplying the injury scale value by \$1000;
- (b) if the injury scale value of the injury is assessed as 10 or less but more than 5—by adding to \$5000 an amount calculated by multiplying the number by which the injury scale value exceeds 5 by \$1200;
- (c) if the injury scale value of the injury is assessed as 15 or less but more than 10—by adding to \$11000 an amount calculated by multiplying the number by which the injury scale value exceeds 10 by \$1400;

- 
- (d) if the injury scale value of the injury is assessed as 20 or less but more than 15—by adding to \$18000 an amount calculated by multiplying the number by which the injury scale value exceeds 15 by \$1600;
  - (e) if the injury scale value of the injury is assessed as 25 or less but more than 20—by adding to \$26000 an amount calculated by multiplying the number by which the injury scale value exceeds 20 by \$1800;
  - (f) if the injury scale value of the injury is assessed as 30 or less but more than 25—by adding to \$35000 an amount calculated by multiplying the number by which the injury scale value exceeds 25 by \$2000;
  - (g) if the injury scale value of the injury is assessed as 35 or less but more than 30—by adding to \$45000 an amount calculated by multiplying the number by which the injury scale value exceeds 30 by \$2200;
  - (h) if the injury scale value of the injury is assessed as 40 or less but more than 35—by adding to \$56000 an amount calculated by multiplying the number by which the injury scale value exceeds 35 by \$2400;
  - (i) if the injury scale value of the injury is assessed as 50 or less but more than 40—by adding to \$68000 an amount calculated by multiplying the number by which the injury scale value exceeds 40 by \$2580;
  - (j) if the injury scale value of the injury is assessed as 60 or less but more than 50—by adding to \$93800 an amount calculated by multiplying the number by which the injury scale value exceeds 50 by \$2760;
  - (k) if the injury scale value of the injury is assessed as 70 or less but more than 60—by adding to \$121400 an amount calculated by multiplying the number by which the injury scale value exceeds 60 by \$2940;
  - (l) if the injury scale value of the injury is assessed as 80 or less but more than 70—by adding to \$150800 an amount calculated by multiplying the number by which the injury scale value exceeds 70 by \$3120;

[s 20]

---

- (m) if the injury scale value of the injury is assessed as 90 or less but more than 80—by adding to \$182000 an amount calculated by multiplying the number by which the injury scale value exceeds 80 by \$3300;
- (n) if the injury scale value of the injury is assessed as 100 or less but more than 90—by adding to \$215000 an amount calculated by multiplying the number by which the injury scale value exceeds 90 by \$3500.

## **‘2 General damages calculation provisions—1 July 2010**

‘The general damages must be calculated for an injury arising on and from 1 July 2010 as follows—

- (a) if the injury scale value of the injury is assessed as 5 or less—by multiplying the injury scale value by \$1180;
- (b) if the injury scale value of the injury is assessed as 10 or less but more than 5—by adding to \$5900 an amount calculated by multiplying the number by which the injury scale value exceeds 5 by \$1410;
- (c) if the injury scale value of the injury is assessed as 15 or less but more than 10—by adding to \$12950 an amount calculated by multiplying the number by which the injury scale value exceeds 10 by \$1650;
- (d) if the injury scale value of the injury is assessed as 20 or less but more than 15—by adding to \$21200 an amount calculated by multiplying the number by which the injury scale value exceeds 15 by \$1880;
- (e) if the injury scale value of the injury is assessed as 25 or less but more than 20—by adding to \$30600 an amount calculated by multiplying the number by which the injury scale value exceeds 20 by \$2120;
- (f) if the injury scale value of the injury is assessed as 30 or less but more than 25—by adding to \$41200 an amount calculated by multiplying the number by which the injury scale value exceeds 25 by \$2360;

- (g) if the injury scale value of the injury is assessed as 35 or less but more than 30—by adding to \$53000 an amount calculated by multiplying the number by which the injury scale value exceeds 30 by \$2590;
- (h) if the injury scale value of the injury is assessed as 40 or less but more than 35—by adding to \$65950 an amount calculated by multiplying the number by which the injury scale value exceeds 35 by \$2830;
- (i) if the injury scale value of the injury is assessed as 50 or less but more than 40—by adding to \$80100 an amount calculated by multiplying the number by which the injury scale value exceeds 40 by \$3040;
- (j) if the injury scale value of the injury is assessed as 60 or less but more than 50—by adding to \$110500 an amount calculated by multiplying the number by which the injury scale value exceeds 50 by \$3250;
- (k) if the injury scale value of the injury is assessed as 70 or less but more than 60—by adding to \$143000 an amount calculated by multiplying the number by which the injury scale value exceeds 60 by \$3460;
- (l) if the injury scale value of the injury is assessed as 80 or less but more than 70—by adding to \$177600 an amount calculated by multiplying the number by which the injury scale value exceeds 70 by \$3680;
- (m) if the injury scale value of the injury is assessed as 90 or less but more than 80—by adding to \$214400 an amount calculated by multiplying the number by which the injury scale value exceeds 80 by \$3890;
- (n) if the injury scale value of the injury is assessed as 100 or less but more than 90—by adding to \$253300 an amount calculated by multiplying the number by which the injury scale value exceeds 90 by \$4120.’.





---

**24 Amendment of s 7 (Saving of other limitations)**

Section 7, ‘section 43A’—

*omit, insert—*

‘sections 11(2) and 43A’.

**25 Amendment of s 11 (Actions in respect of personal injury)**

Section 11—

*insert—*

‘(2) However, a right of action relating to personal injury resulting from a dust-related condition is not subject to a limitation period under an Act or law or rule of law.

‘(3) To remove any doubt, it is declared that personal injury resulting from a dust-related condition does not include personal injury resulting from smoking or other use of tobacco products or exposure to tobacco smoke.

‘(4) In this section—

*dust-related condition* see the *Civil Liability Act 2003*, schedule 2.’.

**26 Omission of s 30A (Application of s 30 in actions for dust-related conditions)**

Section 30A—

*omit.*

**27 Amendment of pt 5 (Transitional provision)**

Part 5, heading, ‘provision’—

*omit, insert—*

‘**provisions**’.

[s 28]

---

**28 Omission of pt 6, hdg (Transitional provision)**

Part 6, heading—

*omit.*

**29 Omission of pt 7, hdg (Transitional provision)**

Part 7, heading—

*omit.*

**30 Insertion of new s 47**

After section 46—

*insert—*

**‘47 Transitional provision for Civil Liability and Other Legislation Amendment Act 2010**

‘(1) Section 11(2) applies to a right of action relating to personal injury resulting from a dust-related condition whether the right of action accrued before or after the commencement of this section.

‘(2) However, subsection (1) does not apply if—

- (a) judgment has been given in the action; or
- (b) the action has been settled or discontinued; or
- (c) an application before the commencement of this section to extend the period of limitation applying to the action before the commencement was refused by a court.

‘(3) In this section—

*court* includes—

- (a) a court in a place outside Queensland, including outside Australia; and
- (b) the Dust Diseases Tribunal of New South Wales established under the *Dust Diseases Tribunal Act 1989* (NSW).’



[s 34]

---

*omit, insert—*

‘the lower offer limit but not more than the upper offer limit’.

**34 Amendment of s 55F (Costs in cases involving relatively small awards of damages)**

- (1) Section 55F(1) and (3), ‘\$50000’—

*omit, insert—*

‘an amount equal to the upper offer limit’.

- (2) Section 55F(2) and (3), ‘\$30000’—

*omit, insert—*

‘an amount equal to the lower offer limit’.

- (3) Section 55F(3)(a), ‘a maximum of \$2500’—

*omit, insert—*

‘the declared costs limit’.

- (4) Section 55F(3)(b)(i) and (c)(i), ‘a limit of \$2500’—

*omit, insert—*

‘the declared costs limit’.

**35 Insertion of new s 100A**

After section 100—

*insert—*

**‘100A Indexation of particular amounts**

- ‘(1) The Minister must, on or before 1 July 2011 and on or before 1 July in each succeeding year, recommend to the Governor in Council the amounts that are to be prescribed under a regulation as—
- (a) the declared costs limit; and
  - (b) the lower offer limit; and
  - (c) the upper offer limit.

- 
- ‘(2) Each amount recommended for a limit is to be the amount last prescribed under a regulation for the limit adjusted by the percentage change in average weekly earnings over the 4 quarters preceding the date of the recommendation and rounded to the nearest ten dollar.
- ‘(3) However, if the percentage change in average weekly earnings over the 4 quarters preceding the date of the recommendation would reduce the amount prescribed as the limit or result in no change to the amount, the Minister need not make a recommendation.
- ‘(4) If the percentage change in average weekly earnings mentioned in subsection (2) is not available from the Australian Statistician, the Minister must advise the Governor in Council accordingly.
- ‘(5) If the Minister advises the Governor in Council of the unavailability of the percentage change under subsection (4), the amount prescribed as the limit is the amount decided by the Governor in Council.
- ‘(6) A regulation notified in the gazette after 1 July in a year and specifying a date that is before the date it is notified as the date from which the amount prescribed as the limit is to apply has effect from the specified date.
- ‘(7) Subsection (6) applies despite the *Statutory Instruments Act 1992*, section 34.
- ‘(8) This section does not limit the power of the Governor in Council to amend the amount prescribed under a regulation for a limit.’.

### **36 Insertion of new pt 7, div 5**

Part 7—

*insert—*

[s 37]

---

**‘Division 5                      Provision for Civil Liability and  
Other Legislation Amendment Act  
2010**

**‘112    Amendment of regulation under Civil Liability and  
Other Legislation Amendment Act 2010**

‘The amendment of the *Motor Accident Insurance Regulation 2004* under the *Civil Liability and Other Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’

**Part 7                              Amendment of Motor Accident  
Insurance Regulation 2004**

**37            Regulation amended**

This part amends the *Motor Accident Insurance Regulation 2004*.

**38            Insertion of new s 27A**

Part 6—

*insert—*

**‘27A    Prescribed limits for particular definitions—Act, s 4**

‘(1) For the Act, section 4, definition *declared costs limit*, the amount prescribed is—

(a) for an injury arising on and from 2 December 2002 to and including 30 June 2010—\$2500; or

(b) for an injury arising on and from 1 July 2010—\$2950.

‘(2) For the Act, section 4, definition *lower offer limit*, the amount prescribed is—

- 
- (a) for an injury arising on and from 2 December 2002 to and including 30 June 2010—\$30000; or
  - (b) for an injury arising on and from 1 July 2010—\$35340.
- ‘(3) For the Act, section 4, definition *upper offer limit*, the amount prescribed is—
- (a) for an injury arising on and from 2 December 2002 to and including 30 June 2010—\$50000; or
  - (b) for an injury arising on and from 1 July 2010—\$58900.’.

**39 Amendment of s 29 (Costs if mandatory final offer accepted—Act, s 51C)**

- (1) Section 29(1), ‘\$30000 but not more than \$50000’—  
*omit, insert—*  
‘the lower offer limit but not more than the upper offer limit’.
- (2) Section 29(2), ‘\$2500’—  
*omit, insert—*  
‘the declared costs limit’.

## **Part 8 Amendment of Personal Injuries Proceedings Act 2002**

**40 Act amended**

This part amends the *Personal Injuries Proceedings Act 2002*.

**41 Amendment of s 37 (Exchange of material for compulsory conference)**

Section 37(2)(a)—

[s 42]

---

*omit, insert—*

‘(a) the party is in all respects ready for the conference; and’.

**42 Amendment of s 40 (Provisions about mandatory final offers)**

(1) Section 40(1), ‘\$50000’—

*omit, insert—*

‘the upper offer limit’.

(2) Section 40(2), ‘\$30000 but not more than \$50000’—

*omit, insert—*

‘the lower offer limit but not more than the upper offer limit’.

**43 Amendment of s 43 (Need for urgent proceeding)**

Section 43, heading—

*omit, insert—*

**‘43 Starting urgent proceeding with the court’s leave’.**

**44 Insertion of new s 44**

Chapter 2, part 1, division 5, after section 43—

*insert—*

**‘44 Starting urgent proceeding by agreement**

‘(1) The purpose of this section is to enable a claimant to avoid the need to bring an application under section 43.

‘(2) Without limiting section 43, if the claimant believes there is an urgent need to start a proceeding for a claim despite noncompliance with this part, the claimant may, in the claimant’s notice of claim—

(a) state the reasons for the urgency and the need to start the proceeding; and



- 
- (b) ask the person or persons against whom the proceeding is proposed to be started (*proposed respondent*) to allow the claimant to start the proceeding despite noncompliance with this part.
- ‘(3) The claimant’s lawyer may sign the notice of claim on the claimant’s behalf if it is not reasonably practicable for the claimant to do so.
- ‘(4) However, if the claimant’s lawyer signs the notice of claim, the claimant must sign the notice personally and give it to the proposed respondent as soon as practicable.
- ‘(5) The claimant’s notice of claim may be given electronically in any way provided for under a regulation.
- ‘(6) A proposed respondent must advise the claimant, in the approved form, that the proposed respondent agrees or does not agree to allow the claimant to start the proceeding despite noncompliance with this part.
- ‘(7) The advice must be given to the claimant before the end of 7 days after the proposed respondent receives the notice of claim signed by the claimant’s lawyer.
- ‘(8) If each proposed respondent agrees to allow the claimant to start the proceeding despite noncompliance with this part—
- (a) the claimant may start the proceeding; and
- (b) the proceeding is stayed until the claimant complies with this part or the proceeding is discontinued or otherwise ends.’.

**45 Amendment of s 56 (Costs in cases involving damages awards of not more than \$50000)**

- (1) Section 56, heading, ‘\$50000’—  
*omit, insert—*  
**‘an amount equal to the upper offer limit’.**
- (2) Section 56(1) and (3), ‘\$50000’—  
*omit, insert—*

[s 46]

---

‘an amount equal to the upper offer limit’.

- (3) Section 56(2) and (3), ‘\$30000’—

*omit, insert—*

‘an amount equal to the lower offer limit’.

- (4) Section 56(3)(a), ‘a maximum of \$2500’—

*omit, insert—*

‘the declared costs limit’.

- (5) Section 56(3)(b)(i) and (c)(i), ‘a limit of \$2500’—

*omit, insert—*

‘the declared costs limit’.

## **46 Insertion of new s 75A**

Chapter 3, part 3—

*insert—*

### **‘75A Indexation of particular amounts**

- ‘(1) The Minister must, on or before 1 July 2011 and on or before 1 July in each succeeding year, recommend to the Governor in Council the amounts that are to be prescribed under a regulation as—
- (a) the declared costs limit; and
  - (b) the lower offer limit; and
  - (c) the upper offer limit.
- ‘(2) Each amount recommended for a limit is to be the amount last prescribed under a regulation for the limit adjusted by the percentage change in average weekly earnings over the 4 quarters preceding the date of the recommendation and rounded to the nearest ten dollar.
- ‘(3) However, if the percentage change in average weekly earnings over the 4 quarters preceding the date of the recommendation would reduce the amount prescribed as the limit or result in no

---

change to the amount, the Minister need not make a recommendation.

- ‘(4) If the percentage change in average weekly earnings mentioned in subsection (2) is not available from the Australian Statistician, the Minister must advise the Governor in Council accordingly.
- ‘(5) If the Minister advises the Governor in Council of the unavailability of the percentage change under subsection (4), the amount prescribed as the limit is the amount decided by the Governor in Council.
- ‘(6) A regulation notified in the gazette after 1 July in a year and specifying a date that is before the date it is notified as the date from which the amount prescribed as the limit is to apply has effect from the specified date.
- ‘(7) Subsection (6) applies despite the *Statutory Instruments Act 1992*, section 34.
- ‘(8) This section does not limit the power of the Governor in Council to amend the amount prescribed under a regulation for a limit.
- ‘(9) In this section—  
*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, averaged over the last 4 quarters for which the statistician’s report is available.’.

#### **47 Insertion of new ch 4, pt 7**

Chapter 4—

*insert*—



---

## Part 9                      Amendment of Personal    Injuries Proceedings    Regulation 2002

### 49      Regulation amended

This part amends the *Personal Injuries Proceedings Regulation 2002*.

### 50      Amendment of s 11 (Costs when mandatory final offer is accepted—Act, s 40)

- (1) Section 11(1), ‘\$30000 but not more than \$50000’—  
*omit, insert—*  
‘the lower offer limit but not more than the upper offer limit’.
- (2) Section 11(2), ‘\$2500’—  
*omit, insert—*  
‘the declared costs limit’.

### 51      Insertion of new s 13

Part 3—  
*insert—*

### ‘13      Prescribed limits for particular definitions—Act,    schedule

- ‘(1) For the Act, schedule, definition *declared costs limit*, the amount prescribed is—
- (a) for an injury arising on and from 2 December 2002 to and including 30 June 2010—\$2500; or
- (b) for an injury arising on and from 1 July 2010—\$2950.
- ‘(2) For the Act, schedule, definition *lower offer limit*, the amount prescribed is—

[s 51]

---

- (a) for an injury arising on and from 2 December 2002 to and including 30 June 2010—\$30000; or
  - (b) for an injury arising on and from 1 July 2010—\$35340.
- ‘(3) For the Act, schedule, definition *upper offer limit*, the amount prescribed is—
- (a) for an injury arising on and from 2 December 2002 to and including 30 June 2010—\$50000; or
  - (b) for an injury arising on and from 1 July 2010—\$58900.’.

© State of Queensland 2010