



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

**Current as at 18 November 2016**





Queensland

# National Injury Insurance Scheme (Queensland) Act 2016

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# National Injury Insurance Scheme (Queensland) Act 2016

**An Act to provide for a scheme for the treatment, care and support of persons seriously injured in motor accidents, and to amend this Act, the Civil Liability Act 2003 and the Motor Accident Insurance Act 1994 for particular purposes**

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *National Injury Insurance Scheme (Queensland) Act 2016*.

#### 2 Commencement

- (1) The following provisions commence on a day to be fixed by proclamation—
  - (a) chapter 4, part 2;
  - (b) chapter 10, part 1 and part 2, division 2, subdivision 3.
- (2) The remaining provisions of this Act commence on 1 July 2016.

## Part 2 Purpose and application

### 3 Purpose of Act and achieving purpose

- (1) The purpose of this Act is to ensure that persons who suffer particular serious personal injuries as a result of a motor accident in Queensland receive necessary and reasonable treatment, care and support, regardless of fault.
- (2) The purpose is achieved by establishing—
  - (a) a national injury insurance scheme, Queensland for—
    - (i) assessing the treatment, care and support needed by participants in the scheme; and
    - (ii) making payments for the treatment, care and support of participants; and
  - (b) a National Injury Insurance Agency, Queensland to administer the scheme; and
  - (c) a national injury insurance scheme fund, Queensland.

### 4 Application of Act

- (1) This Act applies in relation to a serious personal injury caused by, through or in connection with a prescribed vehicle, if—
  - (a) the injury is a result of—
    - (i) the driving of the prescribed vehicle; or
    - (ii) a collision, or action taken to avoid a collision, with the prescribed vehicle; or
    - (iii) the prescribed vehicle running out of control; or
    - (iv) a defect in the prescribed vehicle causing loss of control of the vehicle while the vehicle is being driven; and
  - (b) the incident (the *motor accident*) resulting in the injury happens in Queensland on or after 1 July 2016.

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- (2) However, this Act does not apply in relation to a serious personal injury caused by, through or in connection with an uninsured motor vehicle, other than a prescribed vehicle stated in subsection (3)(a), unless the motor accident resulting in the injury happens on a road or public place.
- (3) Also, this Act does not apply in relation to a serious personal injury caused by, through or in connection with—
- (a) any of the following prescribed vehicles unless the motor accident resulting in the injury happens on a road—
- (i) a tractor, backhoe, bulldozer, end-loader, forklift, industrial crane or hoist, or other mobile machinery;
  - (ii) an agricultural machine;
  - (iii) a motor vehicle adapted to run on rail or tram tracks;
  - (iv) an amphibious vehicle;
  - (v) a motor vehicle prescribed by regulation; or
- (b) a prescribed vehicle that, at the particular time of the motor accident resulting in the injury, is being used for the actual doing of an act or making of a threat that is an act of terrorism.
- (4) In this section—

***act of terrorism*** see the Insurance Act, section 4B.

***agricultural machine*** means a machine with its own automotive power that is—

- (a) built to perform agricultural tasks; and
- (b) being used for agricultural purposes.

*Examples—*

tractors and harvesters being used for agricultural purposes

***mobile machinery*** see the Insurance Act, section 4.

**public place** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

**road** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

**uninsured motor vehicle** means a prescribed vehicle—

- (a) for which a CTP insurance policy is not in force; and
- (b) of which a self-insurer is not the registered owner; and
- (c) that is not a trailer.

## 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 State, the Commonwealth or another State can not be prosecuted for an offence against this Act.

## Part 3 Interpretation

### 6 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

### 7 Meaning of *prescribed vehicle*

A *prescribed vehicle* is—

- (a) a motor vehicle or a trailer for which a CTP insurance policy is in force; or
- (b) a trailer to which a CTP insurance policy extends; or
- (c) a motor vehicle of which a self-insurer is the registered owner; or

- (d) a trailer for which a self-insurer would be the insurer under the Insurance Act or a corresponding law if the trailer were involved in an incident in Queensland resulting in personal injury; or
- (e) a motor vehicle or a trailer to which a nominal defendant scheme would apply if the motor vehicle or trailer were involved in an incident in Queensland resulting in personal injury.

## **8 Meaning of *treatment, care and support needs***

The *treatment, care and support needs* of a person are the person's needs for, or relating to, 1 or more of the following—

- (a) medical or pharmaceutical treatment;
- (b) dental treatment;
- (c) rehabilitation;
- (d) ambulance transportation;
- (e) respite care;
- (f) attendant care and support services;
- (g) aids and appliances, other than ordinary personal or household items;

*Examples of ordinary personal or household items—*

an air conditioner, a laptop, linen, a mobile phone, a personal computer or a washing machine

- (h) prosthesis;
- (i) education or vocational training;
- (j) home or transport modification.

## **9 Meaning of *excluded treatment, care and support***

(1) *Excluded treatment, care and support* is treatment, care and support that—

- (a) is provided without charge; or

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- (b) if the participant is a child—ordinarily falls within the ordinary costs of raising a child; or
  - (c) must be provided by a registered provider but is provided by a person who, at the time of provision, is not a registered provider; or
  - (d) is provided as part of a medical trial or on another experimental basis; or
  - (e) is provided as part of a public sector health service, as defined in the *Hospital and Health Boards Act 2011*, schedule 2; or
  - (f) is provided by State emergency services, including the Queensland Ambulance Service or the Queensland Fire and Emergency Service; or
  - (g) is prescribed by regulation.
- (2) For subsection (1)(c), the following treatment, care and support must be provided by a registered provider—
- (a) attendant care and support services that are personal assistance services or services to assist a person to participate in the community;
  - (b) any other treatment, care or support prescribed by regulation.
- (3) However, subsection (2)(a) does not apply if the treatment, care and support is being provided to a person at a hospital (whether as an inpatient or an outpatient) as part of the services provided by the hospital.

## 10 When a claim is *finalised*

For this Act, a claim against an insurer is *finalised* if—

- (a) the claim has been settled by agreement and, if the agreement must, under another Act, be sanctioned by a court or the public trustee, the sanction has been given; or



- (b) final judgment has been given by a court on an action for damages in relation to the claim and, if an award of damages under the final judgment must, under another Act, be sanctioned by a court or the public trustee, the sanction has been given.

## 11 References in Act to particular terms

- (1) In a provision of this Act about an application, a reference to—
  - (a) the applicant is a reference to the person who made the application; and
  - (b) the injured person is a reference to the injured person the subject of the application; and
  - (c) the serious personal injury is a reference to the serious personal injury the subject of the application.
- (2) In a provision of this Act about a participant in the scheme, a reference to—
  - (a) the participant's injury is a reference to the serious personal injury in relation to which the participant is accepted into the scheme; and
  - (b) the motor accident is a reference to the motor accident that resulted in the participant's injury.
- (3) In a provision of this Act about a service request or a payment request, a reference to the participant is a reference to the participant the subject of the request.
- (4) In a provision of this Act about the giving of a notice or other document to or by a participant or an injured person, a reference to the participant or injured person includes a reference to—
  - (a) if the participant or injured person is a child—the child's parent or guardian; or
  - (b) otherwise—a person acting for the participant or injured person.

- (5) In a provision of this Act about the giving of a notice or other document to or by an insurer against whom a claim has been made, a reference to the insurer is a reference to the claim manager under the Insurance Act, section 38, if 2 or more insurers may be liable on the claim.

## Chapter 2      National injury insurance scheme, Queensland

### Part 1              Preliminary

#### 12      Persons eligible to participate in scheme

- (1) A person is eligible to participate in the scheme in relation to a serious personal injury suffered by the person if—
- (a) this Act applies in relation to the injury; and
  - (b) the injury meets the criteria (the *eligibility criteria*) for the injury prescribed by regulation.
- (2) However, a person is not eligible to participate in the scheme in relation to a serious personal injury if—
- (a) the person has been awarded damages, under a final judgment of a court or a binding settlement, in relation to the person's treatment, care and support needs as a result of the injury; and
  - (b) the damages were paid other than by way of a payment by the agency under section 44(3)(a).
- (3) Also, a person is not eligible to participate in the scheme in relation to a serious personal injury if—
- (a) before the motor accident resulting in the serious personal injury, the person suffered from another injury or condition; and

- (b) the serious personal injury does not permanently increase the extent of any disability experienced by the person before the motor accident.

### 13 Persons may buy into scheme in particular circumstances

- (1) This section applies to a person who—
  - (a) suffers a serious personal injury prescribed by regulation; and
  - (b) is not eligible under section 12 to participate in the scheme in relation to the injury.
- (2) The agency may decide to accept the person as a participant in the scheme in relation to the injury for a period agreed between the person and the agency.
- (3) If the person is accepted as a participant under subsection (2), the person must pay to the agency a contribution, calculated in the way prescribed by regulation, towards the person's treatment, care and support needs as a result of the injury.
- (4) If the contribution is not paid within 28 days after the person is accepted as a participant, the person—
  - (a) stops being a participant; and
  - (b) is taken to have never been a participant.
- (5) The following provisions do not apply to the person—
  - (a) part 4, division 4;
  - (b) part 5;
  - (c) section 52.
- (6) A regulation may make provision about accepting persons as participants in the scheme under this section, including by prescribing any of the following matters—
  - (a) the circumstances in which an application (a *buy-in application*) may be made to the agency for approval to participate in the scheme under this section;

- (b) the requirements for making a buy-in application;
- (c) the matters the agency must consider in deciding a buy-in application;
- (d) the period for deciding a buy-in application;
- (e) when and how the agency must give notice of a decision on a buy-in application, including whether the notice must be an information notice;
- (f) how a contribution must be dealt with if the person stops being a participant.

## 14 Participants in scheme

- (1) A person is a *participant* in the scheme if the agency accepts the person as a participant in the scheme under—
  - (a) section 13; or
  - (b) section 22.
- (2) A participant is a *lifetime participant* if the agency accepts the person as a participant for the rest of the person's life under—
  - (a) section 22(3); or
  - (b) section 46(4).
- (3) A participant is an *interim participant* if the agency accepts the person, under section 22(1)(a), as a participant in the scheme for the participation period.
- (4) A participant is a *buy-in participant* if the agency accepts the person, under section 13, as a participant in the scheme.
- (5) A person's participation in the scheme starts the day the person is accepted into the scheme.
- (6) A person's participation in the scheme ends—
  - (a) if the person dies; or
  - (b) if the person stops being a participant under this chapter; or

- (c) for a buy-in participant—at the end of the period mentioned in section 13(2); or
- (d) in the circumstances prescribed by regulation.

## 15 Necessary and reasonable treatment, care and support needs

For this chapter, the agency must consider the following matters in deciding whether a person's treatment, care and support needs as a result of a serious personal injury are necessary and reasonable in the circumstances—

- (a) whether the treatment, care and support needs are excluded treatment, care and support;
- (b) any other matter prescribed by regulation.

# Part 2 Application to participate in scheme

## Division 1 Making application

### 16 Application for approval

- (1) A person may apply to the agency for approval to participate in the scheme in relation to a serious personal injury suffered by the person as a result of a motor accident.
- (2) If the application is made within 1 year after the motor accident happened (the *application period*), the agency must accept the application.
- (3) If the application is made after the application period, the agency must decide whether or not to accept the application.
- (4) In making a decision under subsection (3), the agency must consider whether it would be fair and reasonable in the circumstances to accept the application, having regard to—

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- (a) whether the person is likely to be eligible to participate in the scheme; and
  - (b) whether a claim has been made, or can be made, for the serious personal injury; and
  - (c) the nature and severity of the person's injury.
- (5) If the agency decides not to accept an application, the agency must give the applicant an information notice for the decision.

## **17 When application may not be made**

- (1) An application may not be made in relation to an injured person's serious personal injury if—
- (a) another person has made an application in relation to the injury and the application has not been decided; or
  - (b) the injured person is an interim participant in relation to the injury.
- (2) Subsection (3) applies if—
- (a) an application has been made in relation to an injured person's serious personal injury and the application has been refused; or
  - (b) an injured person was an interim participant in relation to a serious personal injury and the injured person's participation in the scheme has ended.
- (3) A person may not make an application in relation to the serious personal injury unless—
- (a) the person gives the agency medical information, not previously considered by the agency, about the injured person's injury or condition; or
  - (b) the person gives the agency medical information showing that the injured person's condition as a result of the injury has deteriorated since the earlier application was made or the injured person's participation ended.

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- (4) If an injured person, or a person acting for an injured person, has received a payment under section 44(3)(a) in relation to the injured person's serious personal injury—
- (a) an application in relation to the injury—
    - (i) may be made only in the circumstances prescribed by regulation; and
    - (ii) may not be made for a period, of at least 5 years after the payment is received, prescribed by regulation; and
  - (b) section 16(2) and (3) do not apply to the making of the application.

## **18 When person other than injured person may make application**

- (1) An application may be made for an injured person—
- (a) by an insurer against whom a claim has been made, if the claim—
    - (i) relates to the injured person's serious personal injury; and
    - (ii) has not been finalised; or
  - (b) if the injured person is a child—by the child's parent or guardian; or
  - (c) by another person who is acting for the injured person.
- (2) If an insurer makes an application for an injured person, the insurer must give the person a copy of the application.

## **19 Requirements for application**

- (1) An application must—
- (a) be in the approved form; and
  - (b) include or be accompanied by the information prescribed by regulation.

- (2) Subsections (3) and (4) apply if an application is made by a person other than an insurer.
- (3) The application must state that the applicant permits the agency to exchange information about the injured person with an entity prescribed by regulation for the purpose of the agency performing its functions under this Act, including, in particular—
  - (a) deciding whether or not the person is eligible to participate in the scheme; and
  - (b) if it is decided that the person is eligible to participate in the scheme—
    - (i) deciding whether the person is to be a lifetime participant or an interim participant; and
    - (ii) assessing the treatment, care and support needed by the person; and
    - (iii) reviewing the person's participation in the scheme.
- (4) If the injured person, or a person acting for the injured person, has made, or intends to make, a claim against an insurer for the serious personal injury, the application must also state—
  - (a) that the person has made, or intends to make, the claim; and
  - (b) if the claim has been made—
    - (i) the day the claim was made; and
    - (ii) the status of the claim; and
  - (c) the insurer against whom the claim was, or is intended to be, made.

## **20 Notifying insurer about application**

- (1) This section applies if an application—
  - (a) is made by a person other than an insurer; and
  - (b) states that—



- (i) a claim has been made against an insurer for the serious personal injury; and
  - (ii) the claim has not been finalised.
- (2) The agency must give notice of the application to the insurer.
- (3) The notice must—
- (a) state the name of the injured person; and
  - (b) state the day the application was made; and
  - (c) include a brief description of the serious personal injury; and
  - (d) state the day the motor accident resulting in the injury happened.

## 21 Information request

- (1) The agency may, by notice (an *information request*), ask any of the following persons to give further information needed to decide an application—
- (a) the applicant;
  - (b) if the applicant is not the injured person—the injured person.
- (2) The information request must be made within 28 days after the application is received.

## Division 2 Deciding application

### 22 Deciding application

- (1) After receiving an application, the agency must—
- (a) if the injured person is eligible to participate in the scheme in relation to the serious personal injury—accept the person as a participant in the scheme in relation to the injury for the participation period; or
  - (b) otherwise—refuse the application.

- (2) Subsection (3) applies if the agency is satisfied that the serious personal injury is likely to continue to meet the eligibility criteria for the injury after the participation period ends.
- (3) The agency may, instead of accepting the injured person as a participant for the participation period, accept the injured person as a participant in the scheme for the rest of the person's life.
- (4) Subsections (5) and (6) apply if—
  - (a) the injured person, or a person acting for the injured person, has received a payment from the agency under section 44(3)(a) in relation to the serious personal injury; and
  - (b) the agency is not satisfied that the injured person is suffering severe financial hardship.
- (5) Despite subsection (1)(a), the agency may refuse the application.
- (6) If the agency decides to accept the injured person as a participant in the scheme, the acceptance may be subject to conditions.
- (7) A decision under this section must be made within the decision-making period.
- (8) However, the agency may, by notice given to the applicant and without the applicant's agreement, extend the decision-making period by not more than 28 days.
- (9) A notice given under subsection (8) must state the reason for the extension.

## **23 Notice of decision**

- (1) The agency must give notice of a decision on an application to—
  - (a) the applicant; and

- 
- (b) if the applicant is not the injured person—the injured person; and
  - (c) if a claim, other than a finalised claim, has been made against an insurer for the serious personal injury and the insurer is not the applicant—the insurer.
- (2) If the agency refuses the application, or accepts the injured person on conditions, the notice must be an information notice.

## **24 Failure to decide application**

- (1) If the agency fails to decide an application within the decision-making period, the failure is taken to be a decision by the agency to refuse the application.
- (2) If the application is taken to be refused under this section, each person mentioned in section 23(1) is entitled to be given an information notice by the agency for the decision.
- (3) In this section—  
*decision-making period* includes an extension of the decision-making period under section 22(8).

# **Part 3 Assessing needs**

## **Division 1 Preparing support plans**

### **25 Assessment of participant's needs for treatment, care and support**

- (1) For each participant in the scheme, the agency—
  - (a) must assess the participant's treatment, care and support needs as a result of the participant's injury; and
  - (b) may assess any other treatment, care or support needed by the participant, including treatment, care or support

that is, or may be, provided or funded other than under the scheme.

- (2) In carrying out the assessment, the agency must, to the extent practicable, consult with the participant about the following matters—
  - (a) the treatment, care and support the participant considers necessary and reasonable as a result of the participant's injury;
  - (b) the participant's abilities and limitations;
  - (c) the participant's individual goals.
- (3) The agency may also consult with any other person the agency considers appropriate.
- (4) The assessment must be carried out in the way, and at the intervals, prescribed by regulation.
- (5) However, subsection (4) does not prevent the agency from carrying out—
  - (a) an extra assessment at any time the agency considers appropriate; or
  - (b) an assessment of the treatment, care and support needed by a participant for a particular period only.

## 26 Making support plan

- (1) After carrying out the first assessment of a participant under section 25, the agency must make a plan (a *support plan*) that states—
  - (a) the name of the participant; and
  - (b) the outcomes of the assessment under section 25(1); and
  - (c) the matters stated in section 25(2), if known by the agency; and
  - (d) any treatment, care and support needs the agency considers are necessary and reasonable in the circumstances as a result of the participant's injury; and

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- (e) any other treatment, care or support the agency considers should be funded, in whole or part, under the scheme, having regard to the following matters—
- (i) whether the treatment, care or support is needed by the participant as a result of the participant's injury or another personal injury resulting from the motor accident;
  - (ii) whether it would be fair and reasonable in the circumstances to fund, in whole or part, the treatment, care or support;
  - (iii) whether providing the treatment, care or support will, or is likely to, reduce the participant's treatment, care and support needs;
  - (iv) whether funding all or part of the treatment, care or support is more practical or cost-effective than funding the participant's treatment, care and support needs, without compromising the level of treatment, care or support received by the participant under the scheme;
  - (v) whether the treatment, care or support is excluded treatment, care and support;
  - (vi) where the treatment, care or support is to be provided, including, for example, whether the treatment, care or support is to be provided outside Australia; and
- (f) any other matter prescribed by regulation.
- (2) After making the support plan, the agency must give the participant a copy of the plan.
- (3) A support plan made for a participant must be consistent with an existing decision on a service request relating to the participant.
- (4) However, subsection (3) applies only to the extent the support plan relates to the period covered by the existing decision.

## 27 Amending support plan

- (1) After carrying out a further assessment of a participant under section 25, the agency may amend the participant's support plan to reflect the outcomes of the assessment.

*Note—*

See also sections 31(5) and 51.

- (2) Without limiting subsection (1), the agency may amend the support plan to include—
  - (a) any treatment, care and support needs the agency considers are necessary and reasonable in the circumstances as a result of the participant's injury; or
  - (b) any other treatment, care or support the agency considers should be funded, in whole or part, under the scheme, having regard to the matters stated in section 26(1)(e).
- (3) An amendment to a participant's support plan must be consistent with an existing decision on a service request relating to the participant.
- (4) However, subsection (3) applies only to the extent the amendment relates to the period covered by the existing decision.

## Division 2 Service requests

### 28 Making service request

- (1) A person may, by notice (a *service request*), ask the agency to fund particular treatment, care or support (the *requested service*) to be provided to a participant in a particular period.
- (2) A service request may be made before or after a support plan is made for the participant.
- (3) If a service request is made by a person who is not the participant, the person making the request must give a copy of the request to the participant.

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## 29 Information request

- (1) The agency may, by notice (an *information request*), ask any of the following persons for further information needed to decide a service request—
  - (a) the person who made the request;
  - (b) if the person who made the request is not the participant—the participant.
- (2) The information request must be made within 28 days after the service request is received.

## 30 Assessing service request

In assessing a service request, the agency must consider the following matters—

- (a) whether or not the requested service relates to the participant's treatment, care and support needs as a result of the participant's injury;
- (b) if the requested service relates to the participant's treatment, care and support needs as a result of the participant's injury—whether or not the needs are necessary and reasonable in the circumstances;
- (c) if the requested service does not relate to the participant's treatment, care and support needs as a result of the participant's injury, or it relates to treatment, care and support needs that are not necessary and reasonable in the circumstances—whether or not the agency considers the requested service should be funded, in whole or part, under the scheme, having regard to the matters stated in section 26(1)(e).

## 31 Deciding service request

- (1) After assessing a service request, the agency must—
  - (a) decide to—
    - (i) approve the request with or without conditions; or

- (ii) refuse the request; and
- (b) give notice of the decision to—
  - (i) the person who made the request; and
  - (ii) if the person who made the request is not the participant—the participant.
- (2) A decision under subsection (1) must be made within the decision-making period.
- (3) If the agency decides to approve the request with conditions, or refuse the request, the notice given to the participant must be an information notice.
- (4) Subsections (5) and (6) apply if a support plan has been made for the participant.
- (5) If the agency decides to approve the request, with or without conditions, the agency must amend the support plan to reflect the approval.
- (6) If the agency decides to refuse the request, a copy of the information notice for the decision must be attached to the support plan.

## **32 Failure to decide service request**

- (1) If the agency fails to decide a service request within the decision-making period, the failure is taken to be a decision by the agency to refuse the request.
- (2) If the request is taken to be refused under this section, the participant is entitled to be given an information notice by the agency for the decision.



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## Part 4                      Payments

### Division 1                Preliminary

#### 33      About this part

- (1) This part sets out the 3 ways that payments may be made in relation to the treatment, care and support of participants in the scheme.

*Note—*

See also section 94.

- (2) Division 2 provides for payments to be made under funding agreements to cover particular treatment, care and support expenses incurred in particular periods.
- (3) Division 3 provides for payment requests to be made for treatment, care and support expenses as the expenses are incurred.
- (4) Division 4 provides for the agency to contribute towards an insurer's liability for treatment, care and support damages on a claim in particular circumstances.

### Division 2                Funding agreements

#### 34      Funding agreement

- (1) The agency may enter into an agreement (a *funding agreement*) with a person that provides for the agency to pay to the person an amount to cover particular expenses to be incurred by the person, in a stated period, for the treatment, care or support of a participant.
- (2) However, a funding agreement may not be entered into in the circumstances, or for the treatment, care or support, prescribed by regulation.

- (3) A funding agreement must include the terms prescribed by regulation.

## **Division 3                      Payment requests**

### **35            Request for payment**

- (1) A person who incurs an expense for the treatment, care or support of a participant may, by notice (a *payment request*), ask the agency to pay all or part of the amount of the expense (the *requested amount*).
- (2) However, a payment request may not be made for the expense if—
  - (a) the person has entered into a funding agreement with the agency for the treatment, care or support; and
  - (b) the expense was incurred in the period covered by the funding agreement.
- (3) A payment request must be made within 6 months after the expense is incurred.
- (4) However, the agency may accept a later payment request if the agency considers it is fair and reasonable in the circumstances to accept the request.

### **36            Information request**

- (1) The agency may, by notice (an *information request*), ask any of the following persons for information needed to decide a payment request—
  - (a) the person who made the payment request;
  - (b) if the person who made the payment request is not the participant—the participant.
- (2) The information request must—
  - (a) be made within 28 days after the payment request is received; and

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- (b) state that, if the requested information is not given to the agency by a stated day (the *due day*), the payment request will lapse.
  - (3) The due day must be at least 10 days after the information request is given.
  - (4) The payment request lapses if the requested information is not given to the agency—
    - (a) by the due day; or
    - (b) by a later day agreed between the agency and the person to whom the information request was given.
  - (5) If the information request is made to a person, other than the person who made the payment request, the agency must give a copy of the information request to the person who made the payment request.

### **37 Deciding payment request**

- (1) The agency must, within the decision-making period, decide to—
  - (a) approve the payment request; or
  - (b) refuse the payment request.
- (2) The agency must approve the payment request if—
  - (a) the expense is incurred in the period the participant is a participant in the scheme; and
  - (b) the treatment, care or support that the request relates to is an approved service for the participant.
- (3) To remove any doubt, it is declared that the agency may approve the payment request even though the treatment, care or support is not an approved service.
- (4) If the agency approves the payment request, the agency must pay the requested amount to the person who made the request within 28 days after making the decision.
- (5) However, the agency is not liable to pay a part of the requested amount that exceeds—

- (a) if the requested amount relates to treatment, care or support provided within Australia—an amount prescribed by regulation for the treatment, care or support; or
  - (b) if the requested amount relates to treatment, care or support provided outside Australia—the average cost of providing the treatment, care or support in Queensland.
- (6) In this section—
- approved service* does not include excluded treatment, care and support, unless—
- (a) if a support plan has been made for the participant—the excluded treatment, care and support is specifically stated in the support plan to be—
    - (i) a treatment, care and support need that the agency considers is necessary and reasonable in the circumstances as a result of the participant’s injury; or
    - (ii) treatment, care or support the agency considers should be funded, in whole or part, under the scheme; or
  - (b) if a support plan has not been made for the participant—the excluded treatment, care and support is specifically approved under a service request approval relating to the participant.

### **38 Notice of decision**

- (1) If the payment request is refused, the agency must give notice of the decision to—
  - (a) the person who made the payment request; and
  - (b) if the person who made the payment request is not the participant—the participant.
- (2) The notice given to the participant must be an information notice.

### **39 Failure to decide payment request**

- (1) If the agency fails to decide a payment request within the decision-making period, the failure is taken to be a decision by the agency to refuse the request.
- (2) If the request is taken to be refused under this section, the participant is entitled to be given an information notice by the agency for the decision.

## **Division 4 Contribution by agency**

### **40 Application of division**

This division applies in relation to a lifetime participant if a claim has been made against an insurer for the participant's injury.

### **41 Notice about right to treatment, care and support damages**

- (1) The participant must give a notice to the agency and the insurer stating whether or not the participant wants to preserve any right the participant may have to be awarded treatment, care and support damages under a final judgment of a court or a binding settlement.
- (2) A notice given under subsection (1) stating that the participant wants to preserve any right the participant may have to be awarded treatment, care and support damages is a ***preservation notice***.
- (3) The participant must give a notice under subsection (1)—
  - (a) if the claim is made after the participant is accepted as a lifetime participant—within 14 days after the participant is given, or is entitled to be given, a notice under the Insurance Act, section 39(1) or (2); or
  - (b) if the claim is made before the participant is accepted as a lifetime participant—within 14 days after the

participant is given notice of the participant's acceptance into the scheme as a lifetime participant.

- (4) However, a notice may be given after the period stated in subsection (3), but before a final judgment is given, or a settlement is made, in relation to the claim, if—
  - (a) the insurer and the agency agree to the notice being given; and
  - (b) for a claim that is the subject of a proceeding before a court—the court orders that the notice may be given.
- (5) If the agency considers the participant is a person under a legal disability, the agency must apply to the court for an order sanctioning a notice given under subsection (1).
- (6) Subsections (7) and (8) apply if the court considers the participant is a person under a legal disability.
- (7) The court—
  - (a) must decide whether or not to sanction the notice; and
  - (b) may order that the participant, or a person acting for the participant, give a new notice under subsection (1); and
  - (c) may make any other order the court considers appropriate.
- (8) If the participant is an adult, the court may exercise all the powers of QCAT under the *Guardianship and Administration Act 2000*, chapter 3.
- (9) If the court exercises a power mentioned in subsection (8), the *Guardianship and Administration Act 2000*, section 245(3) to (6) applies in relation to the exercise of the power as if the court were acting under section 245(2) of that Act.
- (10) This section is subject to section 43.
- (11) In this section—

***court*** means—

  - (a) if a proceeding in relation to the claim has been brought in the District Court or the Supreme Court—the court hearing the proceeding; or

- (b) otherwise—the District Court or the Supreme Court.

## 42 Liability of agency to contribute towards damages

- (1) If the participant gives a preservation notice, the agency is liable to contribute towards the insurer's liability, if any, on the claim for treatment, care and support damages.

*Notes—*

- 1 For the awarding of damages in relation to a participant's treatment, care and support needs, see the *Civil Liability Act 2003*, chapter 3, part 2A.
  - 2 For the role of the agency in relation to a claim that the agency is liable to contribute towards, see the Insurance Act, part 4, division 8.
- (2) However, the agency stops being liable to contribute if—
- (a) a court decides, or the parties to the claim agree by way of settlement, that—
    - (i) the participant is guilty of contributory negligence in relation to the claim; and
    - (ii) the damages that the participant would otherwise be entitled to in the absence of contributory negligence are to be reduced, because of the contributory negligence, by 50% or more; or
  - (b) a court decides, under section 41(7), not to sanction the preservation notice; or
  - (c) a court makes an order, under section 43, preventing the participant from being awarded treatment, care and support damages; or
  - (d) for a participant other than a participant whose preservation notice has been sanctioned by a court—the participant, by notice to the agency and the insurer, withdraws the preservation notice.
- (3) In this section—  
**party**, to the claim, includes the agency.

### **43 Application to court for order**

- (1) The agency may apply to the court for an order preventing the participant from being awarded treatment, care and support damages under a final judgment of a court or a binding settlement.
- (2) An application under subsection (1) may be made whether or not the participant has given a notice under section 41(1).
- (3) The participant is the respondent to the application.
- (4) In deciding whether to make the order, the court—
  - (a) must consider the participant’s ability to manage an award of treatment, care and support damages in a way that will not compromise the participant’s—
    - (i) prospects of improvement or rehabilitation; or
    - (ii) future health and wellbeing; and
  - (b) must consider whether the participant is a person under a legal disability; and
  - (c) may consider any other matter the court considers relevant.
- (5) If the court makes the order—
  - (a) the participant may not give a preservation notice; and
  - (b) any preservation notice given by the participant is taken not to have been given.
- (6) If the participant is an adult, the court may exercise all the powers of QCAT under the *Guardianship and Administration Act 2000*, chapter 3.
- (7) If the court exercises a power mentioned in subsection (6), the *Guardianship and Administration Act 2000*, section 245(3) to (6) applies in relation to the exercise of the power as if the court were acting under section 245(2) of that Act.
- (8) In this section—

***court*** means—



- 
- (a) if a proceeding in relation to the claim has been brought in the District Court or the Supreme Court—the court hearing the proceeding; or
  - (b) otherwise—the District Court or the Supreme Court.

#### **44 Acceptance of treatment, care and support damages**

- (1) This section applies if—
  - (a) the participant is awarded treatment, care and support damages under a final judgment of a court or a binding settlement; and
  - (b) the agency is liable, under section 42, to contribute towards the insurer’s liability on the claim for treatment, care and support damages.
- (2) The participant must, within the acceptance period, give notice to the agency and the insurer stating whether or not the participant accepts the awarded treatment, care and support damages.
- (3) If the participant states in the notice given under subsection (2) that the participant accepts the awarded treatment, care and support damages—
  - (a) the agency must pay to the participant the amount of the awarded treatment, care and support damages, less any amount that relates to the period of the participant’s participation in the scheme; and
  - (b) the participant stops being a participant in the scheme when the participant receives the payment under paragraph (a); and
  - (c) despite the final judgment of the court or the terms of the binding settlement—
    - (i) the insurer is not liable to pay to the participant the amount of the awarded treatment, care and support damages; and
    - (ii) the agency is not liable to pay to the participant any amount of the awarded treatment, care and support

damages that relates to the period of the participant's participation in the scheme.

- (4) Subsection (5) applies if the participant gives a notice under subsection (2) stating that the participant does not accept the awarded treatment, care and support damages.
- (5) Despite the final judgment of the court or the terms of the binding settlement, neither the agency nor the insurer is liable to pay the amount of the awarded treatment, care and support damages.
- (6) For this section, a payment of an amount of damages is taken to have been paid to, or received by, the participant if the payment is paid to, or received by, a person who may lawfully receive the payment for the participant.
- (7) This section applies despite the *Civil Proceedings Act 2011*, part 13.
- (8) In this section—  
***acceptance period*** means—
  - (a) if the binding settlement or final judgment under which the treatment, care and support damages are awarded must, under another Act, be sanctioned by a court or the public trustee—the period of 14 days after the sanction is given; or
  - (b) if the treatment, care and support damages are awarded under a binding settlement and paragraph (a) does not apply—the period of 14 days after the settlement is made; or
  - (c) if the treatment, care and support damages are awarded under a final judgment of a court and paragraph (a) does not apply—the period of 14 days after the period for lodging an appeal against the judgment ends.

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## Part 5                      Reviewing participation

### 45            Reviewing participation of interim participant

- (1) The agency may review the participation of an interim participant at any time during the participation period.
- (2) At least 1 review must be carried out before the end of the participation period.
- (3) The agency must give the interim participant notice of the review at least 28 days before carrying out the review.
- (4) In carrying out the review, the agency may ask the participant to give the agency information needed to make a decision under section 46.

### 46            Decision about review

- (1) After carrying out a review, the agency must make a decision about—
  - (a) whether or not the participant is still eligible to participate in the scheme; and
  - (b) if the agency decides that the participant is still eligible to participate in the scheme—whether or not the agency is satisfied that the participant’s injury is likely to continue to meet the eligibility criteria for the injury after the participation period ends.
- (2) A decision under subsection (1) must be made before the end of the participation period.
- (3) Subsection (4) applies if the agency decides that—
  - (a) the participant is still eligible to participate in the scheme; and
  - (b) the agency is satisfied that the participant’s injury is likely to continue to meet the eligibility criteria after the participation period ends.

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- (4) The agency must accept the person as a participant in relation to the injury for the rest of the person's life.
- (5) If subsection (4) does not apply, the participant stops being a participant—
  - (a) at the end of the participation period; or
  - (b) if the agency decides the participant is no longer eligible to participate in the scheme—on an earlier day stated in the notice given to the participant under section 47.

#### **47 Notice of review decision**

- (1) Within 14 days after making a decision under section 46, the agency must give notice of the decision to—
  - (a) the participant; and
  - (b) if a claim has been made against an insurer for the participant's injury and the claim has not been finalised—the insurer.
- (2) If the agency makes either of the following decisions, the notice must be an information notice—
  - (a) a decision that the participant is no longer eligible to participate in the scheme;
  - (b) a decision that the agency is not satisfied that the participant's injury is likely to continue to meet the eligibility criteria for the injury after the participation period ends.

#### **48 Failure to make review decision**

- (1) If the agency does not make a decision under section 47 about a review before the end of the participation period—
  - (a) the agency is taken to have decided that the participant is no longer eligible to participate in the scheme; and
  - (b) the participant stops being a participant in the scheme at the end of the participation period.

- 
- (2) If the agency is taken, under this section, to have decided that the participant is no longer eligible to participate in the scheme, the following persons are entitled to be given an information notice by the agency for the decision—
- (a) the participant;
  - (b) if a claim has been made against an insurer for the participant's injury and the claim has not been finalised—the insurer.

## **Part 6**                      **Participants absent from Australia**

### **49**      **Application of part**

This part applies to a participant in the scheme if—

- (a) the participant leaves Australia; and
- (b) while the participant is absent from Australia, expenses are, or are likely to be, incurred by or for the participant for the participant's treatment, care or support; and
- (c) the agency did not, in deciding the approved services for the participant, consider the need for treatment, care and support to be provided outside Australia as a result of the participant's absence.

### **50**      **Participant must notify agency of absence**

- (1) At least 1 month before leaving Australia, the participant must give notice of the absence to the agency, unless the participant has a reasonable excuse.

Maximum penalty—10 penalty units.

- (2) The notice must state—
- (a) the day the participant intends to leave Australia; and
  - (b) if the participant intends to return to Australia—the day the participant intends to return; and

- (c) the participant's address while outside Australia; and
  - (d) any treatment, care and support to be provided outside Australia that the participant wants the agency to fund.
- (3) However, this section does not apply if, before the participant leaves Australia, a service request is made, or a funding agreement is entered into, for the treatment, care and support to be provided to the participant outside Australia.

## **51 Reviewing support plan or service request approval**

- (1) This section applies if—
- (a) a support plan has been made for the participant; or
  - (b) a support plan has not been made for the participant, but a service request approval relating to the participant has been given.
- (2) To the extent the support plan or service request approval relates to the period the participant is, or intends to be, absent from Australia, the agency may—
- (a) review the plan or approval; and
  - (b) make any amendments to the plan or approval the agency considers appropriate.
- (3) Without limiting subsection (2), the agency may amend the approved services for the participant by—
- (a) removing or rescheduling any treatment, care or support that is to be provided in Australia while the person is absent from Australia; or
  - (b) including any treatment, care or support that is to be provided outside Australia while the person is absent from Australia, if the agency considers the treatment, care or support should be funded, in whole or part, under the scheme, having regard to the following matters—
    - (i) the length of the absence;

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- (ii) whether the treatment, care or support is to be, or could be, provided or funded in another way during the absence;
  - (iii) whether the treatment, care or support is excluded treatment, care and support;
  - (iv) any other matter the agency considers relevant.
- (4) However, the agency may amend the approved services to include treatment, care or support that is to be provided outside Australia only if a service request has not been made for the treatment, care or support.
- (5) If the agency decides to amend the support plan or the service request approval, the agency must, within 14 days of making the decision, give the participant—
- (a) a copy of the amended plan or approval; and
  - (b) if the decision is to amend approved services—an information notice for the decision.
- (6) To remove any doubt, it is declared that the agency is not required to carry out an assessment under section 25 before amending a support plan under this section.

## **52 Suspending participation**

- (1) The agency may suspend the participant's participation in the scheme if—
- (a) the agency is satisfied the participant has left Australia for more than 3 consecutive months; and
  - (b) either of the following applies—
    - (i) a claim has not been made against an insurer for the participant's injury;
    - (ii) a claim has been made against an insurer for the participant's injury, but the insurer has denied liability on the claim or has been held by a court not to be liable for the participant's injury.

- (2) Also, the agency may suspend the participant's participation in the scheme if the agency considers that the participant's absence from Australia will, or is likely to, adversely affect—
  - (a) the participant's condition as a result of the participant's injury; or
  - (b) the participant's prospects of improvement or rehabilitation.
- (3) The participant's participation in the scheme may be suspended for all or part of the period the participant is absent from Australia.
- (4) If the agency decides to suspend the participant's participation, the agency must give the participant an information notice for the decision.
- (5) The information notice—
  - (a) must state the period of the suspension; and
  - (b) may state that the period of suspension starts on the day the person left Australia, even if the information notice is given after that day.
- (6) For part 4, division 3, the participant is taken not to be a participant in the scheme for the period of the suspension.
- (7) This section applies subject to section 14(6).

## Part 7 Miscellaneous

### 53 Requirement to notify of claim

- (1) This section applies if—
  - (a) a person makes an application in relation to a serious personal injury and, before the application is decided, a claim is made for the injury; or
  - (b) a person makes a claim for a participant's injury after the participant is accepted into the scheme.



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- (2) Within 14 days of making the claim, the person must give the agency notice stating—
- (a) that the person has made the claim; and
  - (b) the day the claim was made; and
  - (c) the insurer against whom the claim has been made.
- Maximum penalty—10 penalty units.

## 54 Electronic applications

- (1) Without limiting the *Electronic Transactions (Queensland) Act 2001*, a person is taken to have complied with the requirements for making an application stated in section 19(1)(a) and (b) if the person—
- (a) gives the information required on the approved form by a method acceptable to the agency; and
  - (b) gives the agency any information that must, under section 19(1)(b), be included in or accompany the application within the reasonable period decided by the agency.
- (2) If the person's signature is required on the approved form, the requirement is met if—
- (a) a method is used to identify the person and to indicate the person's approval of the information given under subsection (1); and
  - (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
  - (c) the agency consents to the requirement being met by using the method mentioned in paragraph (a).

## **Chapter 3            National Injury Insurance Agency, Queensland**

### **Part 1                Establishment, functions and powers**

#### **Division 1            Establishment of agency**

##### **55            Establishment**

The National Injury Insurance Agency, Queensland is established.

##### **56            Legal status**

The agency—

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) may sue and be sued in its corporate name.

##### **57            Relationship with State**

- (1) The agency represents the State.
- (2) Without limiting subsection (1), the agency has the status, privileges and immunities of the State.

#### **Division 2            Functions and powers**

##### **58            Functions**

- (1) The main functions of the agency are to—
  - (a) administer the scheme; and

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- (b) provide information to the community about the scheme; and
  - (c) monitor and review the operation of the scheme, including the treatment, care and support received by participants under the scheme; and
  - (d) conduct research and collect statistics about the scheme; and
  - (e) give advice and information to the Treasurer and the commission about the administration, efficiency and effectiveness of the scheme; and
  - (f) provide support and funding for programs, research and education relevant to the treatment, care and support of participants in the scheme; and
  - (g) manage the fund; and
  - (h) keep a register of providers of services under the scheme.
- (2) The agency's functions also include any other function given to it under this Act or another Act.

## **59 General principles for performing functions**

- (1) In performing its functions under this Act, the agency must have regard to the following principles—
- (a) participants in the scheme should be assisted to set and achieve individual goals;
  - (b) participants should be supported to maximise independence, participation in the community and employment;
  - (c) participants should be encouraged, and given the opportunity, to take part in decision-making and exercise choice and control;
  - (d) the dignity and rights of participants is to be respected;
  - (e) identifying effective treatment, care and support for a participant requires collaboration and open

- communication between the participant, the agency, the participant's family and caregivers, and service providers;
- (f) the level of treatment, care and support received by participants under the scheme is to—
    - (i) be evidence-based; and
    - (ii) reflect community expectations; and
    - (iii) provide value for money;
  - (g) as far as possible, the scheme is to be managed in a way that ensures its operation is financially sustainable.
- (2) Subsection (1) does not limit the matters the agency may have regard to in performing its functions.

## **60 Agency may agree to perform functions of support entity**

- (1) The agency may enter into an agreement with a support entity that provides for the agency to perform a function of the entity under a care and support scheme law.
- (2) The agreement may deal with any matter necessary or convenient to help the agency perform the function of the support entity, including, for example—
  - (a) how the performance of the function is to be funded; and
  - (b) arrangements for sharing information that is relevant to the performance of the function.
- (3) If an agreement is entered into with a support entity, the agency may, subject to the agreement, perform the function of the entity stated in the agreement.
- (4) In this section—

***care and support scheme law*** means an Act, or a law of the Commonwealth or another State, that provides for—

  - (a) a scheme that is substantially the same as, or similar to, the scheme; or

- (b) a scheme for the payment of compensation, or providing other care and support, to persons who have suffered injury, whether or not the injury was caused by an incident involving a prescribed vehicle.

***support entity*** means an entity that has functions under a care and support scheme law, including functions under a contract of insurance required, or provided for, by a care and support scheme law.

## **61 Powers**

- (1) The agency has all the powers of an individual and may, for example—
- (a) enter into contracts; and
  - (b) acquire, hold, deal with and dispose of property; and
  - (c) employ staff; and
  - (d) appoint agents and attorneys; and
  - (e) engage consultants; and
  - (f) do anything else necessary or convenient to be done in the performance of its functions.
- (2) The agency also has the powers given to it under this Act or another Act.

## **62 Performing functions and exercising powers outside Queensland**

The agency may perform its functions, or exercise its powers, inside or outside Queensland, including outside Australia.

## **Division 3                      Administration**

### **63            Staff of agency**

- (1) The agency may employ staff it considers appropriate to perform its functions.
- (2) Staff are employed under this Act and not the *Public Service Act 2008*.

### **64            Delegation**

The agency may delegate its functions or powers under this Act to—

- (a) the board; or
- (b) a member of the board; or
- (c) the chief executive officer; or
- (d) an appropriately qualified employee of the agency; or
- (e) an appropriately qualified person who performs work for the agency under a contractual or other arrangement;  
or
- (f) an appropriately qualified employee of an entity that performs work for the agency under a contractual or other arrangement.

### **65            Advisory committees**

- (1) The agency may establish 1 or more advisory committees to advise the agency on the performance of the agency's functions under this Act.
- (2) The matters an advisory committee may advise on are to be decided by the agency, with the approval of the Minister.
- (3) An advisory committee consists of the persons appointed by the Minister on the agency's recommendation.

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- (4) The members of an advisory committee hold office on the terms decided by the Minister.

## **Part 2                      Board**

### **Division 1                      Establishment, functions and membership**

#### **66                      Establishment**

A board is established as the governing body of the agency.

#### **67                      Functions**

- (1) The functions of the board are to—
- (a) manage the agency; and
  - (b) ensure the agency performs its functions in a proper, effective and efficient way; and
  - (c) develop strategies and policies about the performance of the agency's functions; and
  - (d) set investment objectives for the fund or part of the fund and establish investment strategies and policies to achieve the objectives.
- (2) The board's functions also include any other function given to the board under this Act.
- (3) The board may appoint an entity to perform, or advise the board about performing, the board's function under subsection (1)(d).
- (4) However, an entity appointed under subsection (3) must be—
- (a) an entity nominated by the Treasurer; or
  - (b) if the Treasurer has not nominated an entity—the Long Term Asset Advisory Board.

(5) In this section—

*Long Term Asset Advisory Board* means the Long Term Asset Advisory Board established under the *Queensland Treasury Corporation Act 1988*, section 10.

## **68 Appointment of members**

The board consists of at least 4, but not more than 9, members appointed by the Governor in Council.

## **69 Chairperson and deputy chairperson**

- (1) The Governor in Council may appoint—
  - (a) a member of the board to be the chairperson of the board; and
  - (b) another member of the board to be the deputy chairperson of the board.
- (2) A member may be appointed as the chairperson or deputy chairperson at the same time the person is appointed as a member.
- (3) The chairperson or deputy chairperson holds office for the term, ending not later than the person's term of appointment as a member, stated in the person's appointment as chairperson or deputy chairperson.
- (4) The deputy chairperson must act as chairperson—
  - (a) during a vacancy in the office of chairperson; and
  - (b) during all periods when the chairperson is absent from duty or for another reason can not perform the duties of the office.

## **70 Term of appointment**

- (1) Subject to section 73, a member of the board holds office for the term, not longer than 5 years, stated in the member's instrument of appointment.



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- (2) Subsection (1) does not prevent a member from being reappointed.

## 71 Disqualification as member

- (1) A person is disqualified from becoming, or continuing as, a member of the board if the person—
- (a) has a conviction, other than a spent conviction, for an indictable offence; or
  - (b) is an insolvent under administration under the Corporations Act, section 9; or
  - (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6.

- (2) In this section—

*indictable offence* includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659 applies to the indictable offence.

*spent conviction* means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

## 72 Conditions of appointment

- (1) A member of the board is entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A member holds office on the terms, not provided for by this Act, decided by the Governor in Council.
- (3) The members are appointed under this Act and not the *Public Service Act 2008*.

### **73 Vacancy in office**

- (1) A board member's office becomes vacant if—
  - (a) the member completes the member's term of office and is not reappointed; or
  - (b) the member resigns office by signed notice given to the Minister; or
  - (c) the member becomes disqualified under section 71 from continuing as a member; or
  - (d) the member's appointment is ended by the Governor in Council under subsection (2).
- (2) The Governor in Council may, at any time, end a member's appointment for any reason or none.

## **Division 2 Administration**

### **74 Conduct of business**

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

### **75 Time and place of meetings**

- (1) Board meetings are to be held at the times and places the board decides.
- (2) The board must meet at least once every 3 months.
- (3) The chairperson of the board may, at any time, call a meeting of the board.
- (4) The chairperson of the board must call a meeting of the board if asked, in writing, to do so by at least 2 members of the board.

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## 76 Quorum

A quorum for a meeting of the board is a majority of the board's members for the time being.

## 77 Presiding at meetings

- (1) The chairperson is to preside at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent from a meeting, the deputy chairperson presides.
- (3) If neither the chairperson nor deputy chairperson is present at a meeting, a member of the board chosen by the members presides.

## 78 Conduct of meetings

- (1) A question at a board meeting is decided by a majority of the votes of the members present at the meeting.
- (2) Each member present at a meeting has a vote on each question to be decided.
- (3) If there is an equality of votes at a meeting, the member presiding at the meeting also has a casting vote.
- (4) A member present at a meeting may abstain from voting.
- (5) A meeting may be held using any technology allowing reasonably contemporaneous and continuous communication between members.

*Examples of use of technology—*

teleconferencing, videoconferencing

- (6) A member who takes part in a meeting under subsection (5) is taken to be present at the meeting.

## 79 Minutes

The board must keep minutes of its meetings.

## **Division 3                      Duty of members**

### **80            Disclosure of interests**

- (1) This section applies to a board member if—
  - (a) the member has a direct or indirect financial or personal interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the member's duties when considering the issue.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.
- (3) The disclosure must be recorded in the board's minutes.
- (4) Unless the board otherwise decides, the member must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board about the issue.
- (5) The member must not be present when the board is considering its decision under subsection (4).
- (6) If there is another member who must, under subsection (2), also disclose an interest in the issue, the other member must not—
  - (a) be present when the board is considering its decision under subsection (4); or
  - (b) take part in making the decision.

## **Part 3                              Chief executive officer**

### **81            Appointment**

- (1) The agency must have a chief executive officer.

- (2) The chief executive officer is to be appointed by the board with the prior written approval of the Treasurer.

## **82 Term of appointment**

- (1) The chief executive officer holds office for the term, not longer than 5 years, stated in his or her contract of employment.
- (2) Subsection (1) does not prevent the chief executive officer from being reappointed.
- (3) The board may, at any time and with the Treasurer's approval, end the chief executive officer's appointment for any reason or none.
- (4) The ending of the appointment under subsection (3) does not affect any rights to compensation that the chief executive officer is entitled to under the contract of employment.
- (5) The chief executive officer may resign by giving a signed notice of resignation to the board at least the required period before the notice is to take effect.
- (6) In this section—  
*required period* means the period—
  - (a) stated in the chief executive officer's contract of employment; or
  - (b) otherwise agreed with the board.

## **83 Conditions of appointment**

- (1) For matters not provided for under this Act or stated in the chief executive officer's contract of employment, the chief executive officer holds office on the terms of appointment decided by the board.
- (2) The chief executive officer is appointed under this Act and not the *Public Service Act 2008*.

## **84 Chief executive officer's responsibilities**

The chief executive officer is responsible for ensuring the efficient and effective administration and operation of the agency in accordance with the board's priorities.

# **Part 4 Reporting and accountability**

## **Division 1 Application of financial Acts**

### **85 Application of financial Acts**

- (1) The agency is—
  - (a) a statutory body under the *Financial Accountability Act 2009*; and
  - (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the agency's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **Division 2 Reporting generally**

### **86 Quarterly reports**

- (1) The board must give the Treasurer a report about the agency's financial position and performance for each quarter in a financial year.
- (2) A quarterly report must be given to the Treasurer within—
  - (a) 4 weeks after the end of the quarter; or
  - (b) another period after the end of the quarter agreed between the board and the Treasurer.
- (3) In this section—

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*quarter*, in a financial year, means any of the following periods in the year—

- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March;
- (d) 1 April to 30 June.

## **87 Board to inform Treasurer of particular issues**

- (1) The board must immediately inform the Treasurer if an issue arises that, in the board's opinion, may significantly affect—
  - (a) the agency's financial position; or
  - (b) the ability of the agency to perform its functions.
- (2) As soon as practicable after informing the Treasurer of an issue, the board must give the Treasurer—
  - (a) a written report about the issue; and
  - (b) any other information about the issue required by the Treasurer to make an informed assessment of the issue.

## **88 Reporting to department**

- (1) The Treasurer may act under this section for the purpose of monitoring, assessing or reporting on the agency's performance of its functions.
- (2) The Treasurer may require the board to report to the department by, for example, giving stated information at stated times to the chief executive.
- (3) The board must comply with the requirement.

## **Division 3                      Annual reports**

### **89            Information to be included in annual report**

- (1) The agency's annual report under the *Financial Accountability Act 2009* for a financial year must include—
  - (a) enough information to enable the Treasurer to make an informed assessment of the agency's financial position and performance; and
  - (b) information about whether the agency has achieved the objectives stated in the agency's strategic plan for the financial year; and
  - (c) information about the extent to which the scheme was fully funded in the financial year, based on actuarial advice; and
  - (d) if the Treasurer gave a direction to the agency under section 136 in the financial year—
    - (i) a copy of the direction; and
    - (ii) information about whether the direction affected the ability of the agency to achieve the objectives stated in the agency's strategic plan for the financial year; and
  - (e) any other information that a guideline made by the Treasurer states must be included in the annual report.
- (2) This section does not limit the *Financial Accountability Act 2009*, section 63.

## **Division 4                      Strategic and operational plans**

### **90            Relationship with Financial Accountability Act 2009**

- (1) If something is required to be done under this division and the same thing, or something to the same effect, is required to be done under the *Financial Accountability Act 2009*,



compliance with this division is sufficient compliance with the *Financial Accountability Act 2009*.

- (2) Otherwise, the requirements under this division are in addition to the requirements under the *Financial Accountability Act 2009*.
- (3) If there is an inconsistency between this division and the *Financial Accountability Act 2009*, this division prevails to the extent of the inconsistency.

## **91 Draft strategic and operational plans**

- (1) Before 31 March each year, the board must prepare, and give to the Treasurer for agreement, a draft strategic plan and a draft operational plan for the next financial year.
- (2) When the draft strategic plan or draft operational plan is agreed to in writing by the Treasurer, it becomes the agency's strategic plan or operational plan for the relevant financial year.

## **92 Modifications of strategic or operational plan**

The board may modify the agency's strategic plan or operational plan only with the written agreement of the Treasurer.

## Chapter 4 Funding of scheme

### Part 1 National injury insurance scheme fund, Queensland

#### 93 Establishment of fund

- (1) There is to be a fund called the national injury insurance scheme fund, Queensland.
- (2) The fund consists of—
  - (a) the amounts received by the agency by way of the levy; and
  - (b) the amounts received or recovered by the agency in connection with the scheme; and
  - (c) income derived from the investment of the fund; and
  - (d) an amount transferred to the fund under section 95; and
  - (e) an amount paid to the agency under section 96(2).
- (3) The following amounts are to be paid from the fund—
  - (a) the costs of administering the scheme, including payments made under chapter 2, part 4;
  - (b) the costs of managing the fund;
  - (c) the costs of the agency in performing its functions and exercising its powers under this Act;
  - (d) an amount that must be paid under section 94;
  - (e) an amount to reimburse the Commonwealth for expenses incurred by the Commonwealth under the *National Disability Insurance Scheme Act 2013* (Cwlth) in relation to persons suffering a serious personal injury in relation to which this Act applies.
- (4) The agency must, in managing the fund, consider the financial sustainability of the fund and seek actuarial advice as appropriate.

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**94 Payments from fund for public hospital services and emergency services**

- (1) An amount decided by the Treasurer must be paid from the fund for each financial year to—
  - (a) the department in which the *Fire and Emergency Services Act 1990* is administered; and
  - (b) the department in which the *Hospital and Health Boards Act 2011* is administered; and
  - (c) the department in which the *Ambulance Service Act 1991* is administered; and
  - (d) any other government entity, decided by the Treasurer, that is responsible for providing public hospital services or emergency services.
- (2) The amount decided by the Treasurer must cover a reasonable proportion of the estimated cost of providing public hospital services and emergency services for the financial year in which the amount is paid, having regard to the number of people who—
  - (a) are injured in motor accidents; and
  - (b) make use of public hospital services and emergency services as a result of their injuries; and
  - (c) are participants, or eligible to participate, in the scheme.

**95 Transfer of funds from the nominal defendant fund**

- (1) The Treasurer may transfer an amount decided by the Treasurer from the nominal defendant fund under the Insurance Act to the fund.
- (2) This section applies despite the Insurance Act, section 29(3).

**96 Payment of unearned insurer's premiums**

- (1) The Treasurer may decide, based on actuarial advice, an amount that is payable by a licensed insurer in relation to—

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- (a) the amount derived, or to be derived, by the insurer from insurer's premiums relating to its liability, or potential liability, for damages for the treatment, care and support needs of persons covered by a CTP insurance policy; and
  - (b) the extent to which the liability, or potential liability, mentioned in paragraph (a) is reduced after the commencement.
- (2) The amount decided by the Treasurer for a licensed insurer must be paid by the licensed insurer to the agency at a time decided by the Treasurer.
- (3) In this section—  
*insurer's premium* see the Insurance Act, section 4.  
*licensed insurer* see the Insurance Act, section 4.

## Part 2 Fund levy

### 97 Agency's recommendation about levy

At least 5 months before the end of each financial year, the agency must—

- (a) calculate, based on actuarial advice, the amount required to be contributed to the fund for the next financial year—
  - (i) to fully fund the present and likely future liabilities of the agency under chapter 2, part 4 in the financial year, other than a liability relating to a person accepted as a participant in the scheme under section 13(2); and
  - (ii) to meet other payments required to be made from the fund in the financial year; and
  - (iii) to cover any other matter the agency considers appropriate; and
- (b) give a copy of the calculations to the commission; and

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- (c) give the commission a written recommendation about the amount of the levy for the next financial year.

## **98 Commission's recommendation about levy**

- (1) At least 4 months before the end of each financial year, the commission must give the Treasurer a written recommendation about the amount of the levy for the next financial year.
- (2) In making the recommendation, the commission—
  - (a) must consider—
    - (i) the agency's calculations and recommendation under section 97 for the financial year; and
    - (ii) an analysis of the scheme prepared by an actuary; and
  - (b) may consider any other matter the commission considers appropriate.
- (3) Subsection (4) applies if—
  - (a) there is an unexpected increase in the agency's liabilities for a financial year; and
  - (b) the commission is satisfied the increase requires the levy fixed for the financial year to be increased before the end of the financial year.
- (4) The commission may, at any time, recommend to the Treasurer a special increase in the levy.

## **99 Fixing levy**

- (1) The levy for a financial year is the amount fixed by regulation for the financial year.
- (2) A regulation for a financial year must be made at least 3 months before the start of the financial year.
- (3) However, if a regulation fixing the levy for a financial year is not made at least 3 months before the start of the financial

year, the levy last fixed continues as the levy for the financial year until a regulation for the financial year commences.

- (4) A regulation made for a financial year that is not made at least 3 months before the start of the financial year commences—
  - (a) 3 months after it is notified; or
  - (b) on a later day stated in the regulation.
- (5) If the commission recommends a special increase in the levy and the Treasurer approves the increase, a regulation fixing the increased levy may be made at any time.
- (6) If a regulation fixes an increased levy, the increased levy becomes the levy fixed for the remainder of the financial year in which the regulation commences.
- (7) Subsection (4) applies despite the *Statutory Instruments Act 1992*, section 32.

## **Part 3                      Recovery of amounts**

### **100      Recovery in case of fraud**

The agency may recover, as a debt, from a person who defrauds or attempts to defraud the agency in relation to a participant in the scheme any costs reasonably incurred by the agency because of the fraud.

### **101      Recovery from persons in default**

- (1) This section applies if—
  - (a) an insurer has a right of recovery against a person under the Insurance Act, section 58 in relation to personal injury arising out of a motor vehicle accident; or
  - (b) the nominal defendant has a right of recovery against a person under the Insurance Act, section 60 in relation to personal injury arising out of a motor vehicle accident.

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- (2) The agency may exercise the same right of recovery against the person as the insurer or nominal defendant may exercise for the present value of the agency's treatment, care and support liabilities for a participant in the scheme.
- (3) However—
- (a) this section does not give a right of recovery against a participant; and
  - (b) the agency may exercise its right of recovery against a person only if, and to the extent, the participant's injury was caused, wholly or partly, by a wrongful act or omission of the person.
- (4) The Insurance Act, sections 58 and 60(1) and (2) apply in relation to the agency's right of recovery—
- (a) as if a reference in section 58 to the claimant were a reference to the participant; and
  - (b) as if a reference in section 58 to the insurer were a reference to the agency; and
  - (c) as if a reference in section 60(1) and (2) to the nominal defendant were a reference to the agency; and
  - (d) with any other necessary changes.
- (5) To remove any doubt, it is declared that this section applies whether or not a claim has been made for the personal injury stated in subsection (1)(a) or (b).
- (6) In this section—
- motor vehicle accident* see the Insurance Act, section 4.
- personal injury* see the Insurance Act, section 4.

## 102 Recovery from insurer for interstate vehicles

- (1) This section applies if—
- (a) a participant's injury was caused, wholly or partly, by a wrongful act or omission of the owner or driver of a prescribed vehicle, other than the participant; and

- (b) when the motor accident resulting in the injury happened, the vehicle was covered by a CTP insurance policy under the law of another State.
- (2) The agency may recover, as a debt, from the insurer under the CTP insurance policy the present value of the agency's treatment, care and support liabilities for the participant.
- (3) However, subsection (2) applies only to the extent the owner or driver of the prescribed vehicle is liable for the injury.

## Chapter 5      Role of the commission

### 103      Commission's functions

- (1) The commission has the following functions in relation to the scheme—
  - (a) to monitor the operation of the scheme, including monitoring—
    - (i) the efficiency and effectiveness of the agency's administration of the scheme; and
    - (ii) the agency's compliance with this Act; and
    - (iii) interactions between the scheme and the statutory insurance scheme under the Insurance Act;
  - (b) to conduct research and collect statistics about the scheme;
  - (c) to make recommendations to the Treasurer about changes to the scheme;
  - (d) to make recommendations to the Treasurer under section 98 about the levy.
- (2) The call centre established by the commission under the Insurance Act, section 10(1)(ha) may, in addition to providing information about the statutory insurance scheme under that Act, provide information about the scheme.



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## 104 Information to be included in commission's annual report

- (1) The commission's annual report under the *Financial Accountability Act 2009* for a financial year must include—
  - (a) a report dealing with all significant aspects of the operation of the scheme; and
  - (b) information about the cost of administering the scheme for the financial year.
- (2) This section does not limit—
  - (a) the Insurance Act, section 19(2); or
  - (b) the *Financial Accountability Act 2009*, section 63.

# Chapter 6 Reviews

## Part 1 Internal review

### 105 External review by QCAT starts with internal review

A person may not apply to QCAT for review of a decision unless the person has applied for an internal review of the decision under this part.

### 106 Who may apply for internal review

- (1) A person who has been given, or is entitled to be given, an information notice for a decision made under this Act (an *original decision*) may apply (an *internal review application*) to the agency for a review (an *internal review*) of the decision under this part.
- (2) A person who has not been given, but is entitled to be given, an information notice for an original decision may ask the agency for an information notice for the decision.

- (3) The failure by the agency to give a person an information notice for an original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision under subsection (1).
- (4) An internal review application does not stay the original decision to which it relates.

### **107 Requirements for making application**

- (1) An internal review application must—
  - (a) be in the approved form; and
  - (b) if the applicant is given an information notice for the original decision to which the application relates—
    - (i) be supported by enough information to enable the agency to decide the application; and
    - (ii) be made within 28 days after the applicant is given the information notice.
- (2) However, the agency may, at any time, extend the time for making an internal review application.
- (3) If an internal review application is made, the applicant must give a copy of the application to any other affected person for the application.

### **108 Information request**

- (1) The agency may, by notice (an *information request*), ask any of the following persons to give further information needed to decide an internal review application—
  - (a) the applicant;
  - (b) another affected person for the application.
- (2) The information request must be made within 28 days after the internal review application is received.

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## 109 Internal review

- (1) The agency must, within the decision period—
  - (a) conduct an internal review of the original decision; and
  - (b) make a decision (the *internal review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision.
- (2) The application may be dealt with only by a person who—
  - (a) did not make the original decision; and
  - (b) is in a more senior office than the person who made the original decision.
- (3) Subsection (2)—
  - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
  - (b) does not apply to an original decision made by the agency itself.
- (4) If the agency does not make a decision under subsection (1)(b) within the decision period, the agency is taken to have made an internal review decision confirming the original decision.
- (5) If the internal review decision confirms, or under subsection (4) or section 110(3), is taken to confirm, the original decision, for the purpose of an external review, the original decision is taken to be the internal review decision.
- (6) If the internal review decision amends the original decision, for the purpose of an external review, the original decision as amended is taken to be the internal review decision.
- (7) In this section—

*decision period* means—

- (a) if an information request for the internal review application is made—the period of 28 days after the further information requested is given to the agency; or
- (b) otherwise—the period of 28 days after the agency receives the internal review application.

### **110 Notice of internal review decision**

- (1) Within 14 days after making an internal review decision, the agency must give notice of the decision to—
  - (a) the applicant; and
  - (b) another affected person for the internal review application to which the decision relates.
- (2) If the internal review decision is not the decision sought by the applicant, the notice must be a decision notice.
- (3) If the agency does not give the notice under subsection (1), the agency is taken to have made an internal review decision confirming the original decision.
- (4) If the agency is taken, under subsection (3) or section 109(4), to have made an internal review decision confirming the original decision, the persons stated in subsection (1) are entitled to be given a decision notice for the decision.

### **111 Request for decision notice**

- (1) A person who has not been given, but is entitled to be given, a decision notice for an internal review decision may ask the agency for a decision notice for the decision.
- (2) The failure by the agency to give a person a decision notice for an internal review decision does not limit or otherwise affect the person's right to apply for an external review of the decision under section 127.

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## Part 2 External reviews

### Division 1 Review by medical tribunal

#### Subdivision 1 Referral to medical tribunal

##### 112 Request to refer medical matter to medical tribunal

- (1) This section applies if an internal review decision involves a decision on any of the following matters (each a *medical matter*)—
  - (a) whether a motor accident is the medical cause of a serious personal injury;
  - (b) whether a serious personal injury meets the eligibility criteria for the injury, to the extent the eligibility criteria relate to matters of a medical nature;
  - (c) whether an interim participant's injury is likely to continue to meet the eligibility criteria for the injury after the participation period ends, to the extent the eligibility criteria relate to matters of a medical nature;
  - (d) another matter of a medical nature prescribed by regulation.
- (2) A person who has been given, or is entitled to be given, a decision notice under section 110(2) or (4) for the internal review decision may, by notice (a *referral request*), ask the agency to refer the medical matter to a medical tribunal.
- (3) The referral request must be made within 28 days after the decision notice is given, or required to be given, to the person.
- (4) If a person makes a referral request, the person must give a copy of the request to any other affected person for the request.
- (5) A medical tribunal has jurisdiction to make a decision about a medical matter referred to it.

### **113 Agency must refer medical matter**

- (1) If the agency receives a referral request for a medical matter, the agency must refer the matter to a medical tribunal for decision on the matter.
- (2) The reference must—
  - (a) be in the form approved by the Regulator under the Workers' Compensation Act; and
  - (b) include, or be accompanied by, a copy of all documents held by the agency that are relevant to the medical matter.

### **114 Constitution of medical tribunal**

- (1) This section applies—
  - (a) if a medical matter is referred to a medical tribunal under section 113; and
  - (b) despite the Workers' Compensation Act, section 494.
- (2) The tribunal must not be constituted by a person who is an employee of—
  - (a) the agency; or
  - (b) an insurer.

### **115 Power of medical tribunal to carry out or arrange examination**

- (1) If a medical matter is referred to a medical tribunal under section 113, the tribunal may—
  - (a) make a personal examination of the injured person to whom the referral relates at any time; or
  - (b) arrange for the examination to be made by a doctor nominated by the tribunal.
- (2) The Workers' Compensation Act, section 510(1A) to (3) applies in relation to the examination of the injured person as if—

- (a) a reference to the worker were a reference to the injured person; and
- (b) the reference in section 510(3) to any entitlement the worker may have to compensation were a reference to an entitlement the injured person may have to a payment under chapter 2, part 4.

## **Subdivision 2 Proceedings of medical tribunal**

### **116 Application of subdivision**

- (1) This subdivision applies to a proceeding of a medical tribunal for a medical matter referred to the tribunal under section 113.
- (2) The Workers' Compensation Act, chapter 11, part 4 does not apply to a proceeding mentioned in subsection (1).

### **117 Medical tribunal may request further information**

- (1) The medical tribunal may, by notice, ask any of the following persons to give the tribunal further information needed to make a decision on the medical matter—
  - (a) the person who made the referral request;
  - (b) the agency;
  - (c) another affected person for the referral request.
- (2) The requested information must be given to the medical tribunal within the period stated in the notice.

### **118 Exchange of relevant documents before medical tribunal**

- (1) After the agency refers the medical matter to the medical tribunal, relevant documents can only be exchanged between the tribunal, the agency and the injured person to whom the reference relates.
- (2) The tribunal must give the injured person a copy of a relevant document given by the agency to the tribunal—

- (a) if the document is given under section 113(2)(b)—within 10 business days after the medical matter is referred to the tribunal; or
  - (b) otherwise—within 5 business days after the tribunal receives the document.
- (3) At least 10 business days before the injured person is scheduled to attend before the tribunal, the injured person must give the tribunal and the agency a copy of any relevant document the injured person wants considered by the tribunal.
  - (4) At least 3 business days before the injured person is scheduled to attend before the tribunal, the agency may give the tribunal and the injured person a written submission on the factual matters referred to in the relevant documents given by the injured person under subsection (3).
  - (5) The tribunal may proceed to decide the matter even though the agency has not given a written submission to the tribunal and the injured person.
  - (6) The tribunal can not consider or rely on any relevant document given by the agency or the injured person that has not been exchanged under this subdivision.
  - (7) However, subsection (6) does not prevent the tribunal from relying on either of the following—
    - (a) a report (a *doctor's report*) resulting from an examination of the injured person by a doctor nominated by the tribunal under section 115(1)(b);
    - (b) a medical image given to the tribunal by the injured person.

*Examples of medical images—*

CT, MRI, ultrasound scan, X-ray

## **119 Right to appear and be heard before medical tribunal**

- (1) Despite any Act or other law, this section is the only provision of law under which a person may be heard in relation to a medical matter referred under this Act to a medical tribunal.



- (2) On a reference to a medical tribunal, the injured person to whom the reference relates is entitled to be heard before the tribunal in person or by the person's representative.
- (3) Only the injured person and any representative of the injured person may be present or heard before the medical tribunal.
- (4) To remove any doubt, it is declared that the agency or any other person (not being the injured person) whose interests may be affected by a decision made by a medical tribunal can not be present, represented or heard before a medical tribunal.

## **120 New medical information**

- (1) This section applies if—
  - (a) new information about a medical matter, other than information in a relevant document, comes to a medical tribunal's knowledge when an injured person attends before the tribunal; or
  - (b) a medical tribunal receives a doctor's report.
- (2) The medical tribunal is not required to give the information or report to the agency or to anyone else for any purpose, either before or after the tribunal makes its decision.

## **121 Record keeping by medical tribunal**

- (1) A medical tribunal must keep a record of—
  - (a) relevant documents exchanged in relation to a reference of a medical matter; and
  - (b) the reasons for the tribunal's decision on the reference.
- (2) However, the tribunal is not required to make a transcript or recording of an injured person's attendance before the tribunal.
- (3) A transcript or recording, if made, can only be disclosed to an injured person and a representative of the injured person.
- (4) This section does not limit section 124.

## **122 Deferral of decisions**

- (1) A medical tribunal may defer its decision on a reference to it.
- (2) However, a deferral must not be for longer than 3 months at any 1 time.

## **123 Finality of medical tribunal's decision**

A decision of a medical tribunal on a medical matter referred to it is final and is not reviewable by QCAT.

## **124 Decisions of medical tribunal**

- (1) After a medical tribunal makes a decision on a medical matter referred to it, the tribunal must give notice of the decision, including the reasons for the decision, to—
  - (a) the person who made the referral request; and
  - (b) the agency; and
  - (c) another affected person for the referral request.
- (2) If a medical matter referred to a medical tribunal involves other matters that are not medical matters, the notice given under subsection (1) must—
  - (a) note the other matters; and
  - (b) state the tribunal has not made a decision on the other matters.

## **125 Protection from liability**

- (1) A member of a medical tribunal does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a member of the tribunal, the liability attaches instead to the State.

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## **Subdivision 3      Reviewing internal review decision**

### **126      Agency must review internal review decision**

Within 14 days after receiving notice of a medical tribunal's decision under section 124, the agency must—

- (a) review the internal review decision to which the tribunal's decision relates; and
- (b) if the internal review decision is inconsistent with the tribunal's decision—make a new internal review decision under section 109.

## **Division 2              External review by QCAT**

### **127      Who may apply for review by QCAT**

- (1) A person who is given, or is entitled to be given, a decision notice under section 110(2) or (4) for an internal review decision may apply, as provided under the QCAT Act, to QCAT for review of the decision.
- (2) Subsection (3) applies if—
  - (a) an internal review decision involves a decision on a medical matter; and
  - (b) the medical matter is referred to a medical tribunal under section 113.
- (3) An application for review of the internal review decision may be made within 28 days after the medical tribunal gives notice, under section 124, of its decision on the medical matter.
- (4) If a person applies to QCAT for a review, the person must give a copy of the application to any other person who was given, or was entitled to be given, a decision notice for the internal review decision to which the application relates.

## **128 Receiving or adopting things in other proceedings**

- (1) During the hearing of a proceeding for the review of an internal review decision, QCAT may—
  - (a) receive in evidence a transcript, or part of a transcript, of evidence taken in a relevant proceeding before a court, tribunal or other entity, and draw conclusions of fact from the evidence that QCAT considers appropriate; or
  - (b) adopt, as QCAT considers appropriate, decisions, findings, judgments, or reasons for judgment, of a court, tribunal or other entity that may be relevant to the hearing.
- (2) In this section—

*relevant proceeding* means a proceeding for, or relating to, an action for damages for a personal injury that—

  - (a) arises out of a motor vehicle accident, as defined in the Insurance Act; and
  - (b) relates to the internal review decision.

## **129 Proceedings involving medical matters referred to medical tribunal**

- (1) This section applies to a proceeding before QCAT for the review of an internal review decision if—
  - (a) the internal review decision involves a decision on a medical matter; and
  - (b) the medical matter is referred to a medical tribunal under section 113.
- (2) QCAT must not make a decision in the proceeding until the medical tribunal makes a decision on the medical matter.

*Note—*

See also section 123.

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## Chapter 7 Information exchange

### 130 Information to be given to the commission

The agency must give the commission information that is relevant to the performance of the commission's functions under section 103(1), if—

- (a) the information is prescribed by regulation; or
- (b) the commission, by notice to the agency, asks for the information; or
- (c) the commission and the agency agree that the agency must give the information to the commission.

### 131 Agency may give personal information to particular entities

- (1) The agency may give personal information about a participant in the scheme to an entity that provides services under the scheme to the participant, if giving the information may help in providing the services.
- (2) Also, the agency may give personal information about a participant, or a person who applies to participate, in the scheme to—
  - (a) an entity engaged in work relating to—
    - (i) the administration of the scheme; or
    - (ii) monitoring or reviewing the operation of the scheme; or
    - (iii) conducting research or collecting statistics about the scheme; or
  - (b) an insurer; or
  - (c) an entity prescribed by regulation.
- (3) However—

- (a) subsection (2)(a) applies only if the information given is necessary to help the entity do the work; and
  - (b) subsection (2)(b) applies only if the information relates to a claim against the insurer, other than a claim that has been finalised.
- (4) An entity that is given personal information under this section must not disclose the information to anyone, unless the disclosure is authorised or required by law.
- Maximum penalty—50 penalty units.
- (5) In this section—
- personal information* see the *Information Privacy Act 2009*, section 12.

## Chapter 8      Miscellaneous

### Part 1              Offences, evidence and proceedings

#### 132      Offences involving fraud

- (1) A person must not—
- (a) defraud or attempt to defraud the agency; or
  - (b) deliberately mislead or attempt deliberately to mislead the agency; 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, but for 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.

### **133 False or misleading information**

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

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

- (2) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the agency, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **134 Offences against this Act**

- (1) An offence against this Act is a summary offence.
- (2) A proceeding for the offence must start within—
  - (a) 1 year after the commission of the offence; or
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **135 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

## **Part 2                      Other provisions**

### **136      Direction to agency or board about functions and powers**

- (1) The Treasurer may give a written direction to the following entities about the performance of the entity's functions or the exercise of the entity's powers—
  - (a) the agency;
  - (b) the board.
- (2) However, a direction must not be about the content of advice or information, or a recommendation or report, prepared by the agency.
- (3) The entity must comply with the direction.

### **137      Direction to agency or commission about alternative service delivery**

- (1) The Treasurer may give a written direction to the agency or the commission requiring the preparation of a report about alternative ways of providing insurance or funding for the treatment, care and support of persons who are eligible to participate in the scheme.
- (2) If a direction is given under subsection (1), the agency or commission must, within the period stated in the direction—
  - (a) prepare the report; and
  - (b) give the report to the Treasurer.

### **138      Referral of matters to parliamentary committee**

- (1) The Treasurer may refer a matter about the operation of the scheme to the parliamentary committee.
- (2) Without limiting subsection (1), the Treasurer may refer a matter about—
  - (a) the efficiency and effectiveness of the scheme; or



- (b) the treatment, care and support received by participants under the scheme; or
  - (c) interactions between the scheme and the statutory insurance scheme under the Insurance Act.
- (3) This section expires 5 years after the commencement.
- (4) In this section—

*parliamentary committee* means—

- (a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or
- (b) if paragraph (a) does not apply and the standing rules and orders under the *Parliament of Queensland Act 2001* state that the portfolio area of a portfolio committee includes the scheme—that committee; or
- (c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

*portfolio area*, of a portfolio committee, see the *Parliament of Queensland Act 2001*, section 88(2)(b).

*portfolio committee* see the *Parliament of Queensland Act 2001*, section 88(1).

### 139 Approved forms

The board may approve forms for use under this Act.

### 140 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) prescribe the circumstances in which a person is entitled to a rebate on, or refund of, the payment of the levy and the process for applying for a rebate or refund; and

- (b) prescribe fees payable under the Act; and
- (c) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

## Chapter 9 Transitional provisions

### 141 Definition for chapter

In this chapter—

*insurance commissioner* means the insurance commissioner under the Insurance Act in the commissioner's official capacity, but not in the capacity of insurance commissioner or nominal defendant under that Act.

### 142 Insurance commissioner is first board

- (1) The insurance commissioner constitutes the board until it first consists of at least 4 members appointed under this Act.
- (2) For subsection (1), the insurance commissioner has the functions and powers of the board stated in—
  - (a) section 67(1) and (3); and
  - (b) sections 86 to 88; and
  - (c) sections 91 and 92; and
  - (d) section 139.

### 143 Insurance commissioner is first chief executive officer

- (1) The insurance commissioner is the chief executive officer of the agency until the earlier of the following events happens—
  - (a) the board, consisting of at least 4 members, appoints a chief executive officer under section 81(2);

- 
- (b) the Governor in Council appoints a chief executive officer under subsection (4).
  - (2) Section 83(2) does not apply to the insurance commissioner in relation to the commissioner's role as chief executive officer.
  - (3) Subsections (4) and (5) apply until the board first consists of at least 4 members.
  - (4) The Governor in Council may, on the recommendation of the Treasurer, appoint a chief executive officer of the agency.
  - (5) A person appointed as the chief executive officer under subsection (4) holds office on the terms, not provided for under this Act, decided by the Governor in Council.

#### **144 Agency's first strategic and operational plans**

- (1) This section applies—
  - (a) to the agency's first strategic plan and operational plan; and
  - (b) despite section 91.
- (2) The period within which the board must prepare, and give to the Treasurer, a draft strategic plan and a draft operational plan is—
  - (a) 1 month after the agency is established; or
  - (b) another period agreed between the board and the Treasurer.
- (3) The strategic plan or operational plan mentioned in subsection (2) becomes the agency's strategic plan or operational plan for—
  - (a) the remainder of the financial year in which the plan is agreed to in writing by the Treasurer; and
  - (b) if the board and the Treasurer agree the plan is also to apply for the following financial year—that financial year.

**145 Levy for the 2016-2017 financial year**

- (1) Section 99(2) and (4) does not apply to a regulation fixing the levy for the 2016-2017 financial year.
- (2) If a regulation fixing the levy for the 2016-2017 financial year commences after the start of the financial year, the regulation fixes the levy for the remainder of the financial year.

## **Chapter 10 Amendment of this Act and other legislation**

### ***Part 1 Amendment of this Act***

**146 Act amended**

*This part amends this Act.*

**147 Amendment of long title**

*Long title, from ‘, and to amend’—  
omit.*

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**Part 2**                      **Amendment of other legislation**

**Division 2**                **Amendment of Motor Accident  
Insurance Act 1994**

**Subdivision 3**        **Amendments commencing by  
proclamation**

**172**    ***Amendment of s 12 (Insurance premiums)***

(4) *Section 12(4)(c)—*

*omit, insert—*

(c) *are claimants or potential claimants under  
the statutory insurance scheme, but are  
not—*

(i) *participants in the injury insurance  
scheme; or*

(ii) *eligible persons.*

## Schedule 1 Dictionary

### section 6

***affected person***—

- (a) for an internal review application, means a person who has been given, or is entitled to be given, an information notice for the original decision to which the application relates; or
- (b) for a referral request, means a person who has been given, or is entitled to be given, a decision notice for the internal review decision to which the referral request relates.

***agency*** means the National Injury Insurance Agency, Queensland established under section 55.

***application*** means an application under section 16.

***approved form*** means a form approved by the board under section 139.

***approved service***, for a participant, means—

- (a) if a support plan has not been made for the participant—treatment, care or support approved under a service request approval relating to the participant; or
- (b) if a support plan has been made for the participant—
  - (i) a treatment, care and support need stated in the support plan to be a need the agency considers is necessary and reasonable in the circumstances as a result of the participant's injury; and
  - (ii) other treatment, care or support stated in the support plan to be treatment, care or support the agency considers should be funded, in whole or part, under the scheme.

***attendant care and support services*** means services to help a person with everyday tasks.

*Examples—*

domestic, home maintenance, nursing or personal assistance services

**board** means the board of the agency established under section 66.

**chairperson** means the chairperson of the board holding office under section 69(1)(a).

**chief executive officer** means the chief executive officer of the agency appointed under section 81.

**claim** means a motor vehicle accident claim under the Insurance Act.

**commission** means the Motor Accident Insurance Commission established under the Insurance Act.

**corresponding law**, to an Act or provision of an Act, means a law of the Commonwealth or another State that provides for the same matter as—

- (a) for an Act—the Act or a provision of the Act; or
- (b) for a provision of an Act—the provision.

**CTP insurance policy** means—

- (a) a policy of insurance under the Insurance Act for a motor vehicle insuring against liability for personal injury caused by, through or in connection with the motor vehicle; or
- (b) a policy of insurance, or a statutory indemnification, for a motor vehicle registered under the law of another State, providing insurance, or indemnifying against liability, for personal injury caused by, through or in connection with the vehicle anywhere in Australia.

**decision**, for chapter 6, includes a failure to make a decision if the failure is taken to be—

- (a) a decision to refuse an application; or
- (b) a decision to refuse a service request; or
- (c) a decision to refuse a payment request; or

- (d) a decision that a participant is no longer eligible to participate in the scheme.

***decision-making period***, for an application, service request or payment request, means—

- (a) if an information request is made for the application, service request or payment request—the period of 28 days after the further information requested is given to the agency; or
- (b) otherwise—the period of 28 days after the agency receives the application, service request or payment request.

***decision notice***, for an internal review decision, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) any right the recipient of the notice has to have the decision reviewed by QCAT or a medical tribunal; and
- (d) how, and the period within which, the recipient of the notice may apply for a review mentioned in paragraph (c); and
- (e) any right the person has to have the operation of the decision stayed under the QCAT Act, section 22, if a proceeding for the review of the decision is started under that Act.

***deputy chairperson*** means the deputy chairperson of the board holding office under section 69(1)(b).

***doctor*** see the Workers' Compensation Act, schedule 6.

***doctor's report*** see section 118(7)(a).

***eligibility criteria*** see section 12(1)(b).

***excluded treatment, care and support*** see section 9(1).

***finalised***, for a claim, see section 10.

***fund*** means the national injury insurance scheme fund, Queensland established under section 93.



***funding agreement*** see section 34(1).

***information notice***, for a decision of the agency, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the day the decision has effect; and
- (d) that, within 28 days after the notice is given, the person to whom the notice is given may apply to the agency for a review of the decision; and
- (e) how the person may apply for the review.

***information request***—

- (a) for an application—see section 21(1); or
- (b) for a service request—see section 29(1); or
- (c) for a payment request—see section 36(1); or
- (d) for an internal review application—see section 108(1).

***injured person*** means a person suffering a serious personal injury.

***Insurance Act*** means the *Motor Accident Insurance Act 1994*.

***insurer*** means an insurer under the statutory insurance scheme under the Insurance Act.

***interim participant*** see section 14(3).

***internal review*** see section 106(1).

***internal review application*** see section 106(1).

***internal review decision*** see section 109(1)(b).

***judgment*** includes an order.

***levy***, for a financial year, means the levy fixed under section 99 for the financial year.

***lifetime participant*** see section 14(2).

***medical matter*** see section 112(1).

**medical tribunal** means a medical assessment tribunal established under the Workers' Compensation Act, chapter 11.

**motor accident** see section 4(1)(b).

**motor vehicle** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

**nominal defendant scheme** means—

- (a) the nominal defendant scheme under the Insurance Act; or
- (b) a scheme under a law of the Commonwealth or another State that is substantially the same as, or similar to, the nominal defendant scheme under the Insurance Act.

**notice** means a written notice.

**operational plan**, of the agency, means the agency's operational plan under the *Financial Accountability Act 2009*.

original decision see section 106(1).

**participant**, in the scheme, see section 14(1).

**participation period**, for an interim participant, means—

- (a) if the participant is a child less than 4 years—the period starting the day the participant is accepted into the scheme and ending the day the participant turns 6; or
- (b) otherwise—the period of 2 years starting the day the participant is accepted into the scheme.

**payment request** see section 35(1).

**personal injury** includes a prenatal injury.

**person under a legal disability** means—

- (a) a child; or
- (b) a person with impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000*.

**prescribed vehicle** see section 7.

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***present value of the agency's treatment, care and support liabilities***, for a participant, means the total of the following amounts—

- (a) an amount paid by the agency under chapter 2, part 4 to a person in relation to the participant's treatment, care and support;
- (b) the present value of any amount the agency estimates it will be required to pay under chapter 2, part 4 in the future in relation to the participant's treatment, care and support.

***preservation notice*** see section 41(2).

***referral request*** see section 112(2).

***registered owner***, of a motor vehicle, means a person in whose name the vehicle is registered under the *Transport Operations (Road Use Management) Act 1995* or a corresponding law.

***registered provider***, of a service, means an entity registered in the register of providers as a provider of the service.

***register of providers*** means the register of providers kept by the agency and made available on the agency's website.

***relevant document***, for a proceeding of a medical tribunal for a medical matter, means a document that is relevant to a reference of the medical matter to the tribunal.

***representative***, of an injured person, means a person nominated by the injured person to be the injured person's representative in relation to a reference of a matter to a tribunal.

***requested amount*** see section 35(1).

***requested service*** see section 28(1).

***scheme*** means the national injury insurance scheme, Queensland under chapter 2 for the treatment, care and support of persons suffering particular serious personal injuries as a result of motor accidents.

***self-insurer*** means—

- (a) the Commonwealth; or
- (b) a State (other than Queensland) that does not insure its motor vehicles under CTP insurance policies.

***serious personal injury*** means a personal injury that is—

- (a) a permanent spinal cord injury resulting in a permanent neurological deficit; or
- (b) a traumatic brain injury resulting in a permanent impairment of cognitive, physical or psychosocial function; or
- (c) a forequarter amputation or shoulder disarticulation amputation; or
- (d) the amputation of a leg through or above the femur; or
- (e) the amputation of more than 1 limb or parts of different limbs; or
- (f) a permanent injury to the brachial plexus resulting in an impairment equivalent to a shoulder disarticulation amputation; or
- (g) a full thickness burn to all or part of the body; or
- (h) an inhalation burn resulting in a permanent respiratory impairment; or
- (i) permanent blindness caused by a trauma.

***service request*** see section 28(1).

***service request approval*** means a notice given under section 31 approving a service request.

***strategic plan***, of the agency, means the agency's strategic plan under the *Financial Accountability Act 2009*.

***support plan*** see section 26(1).

***trailer*** means a vehicle without motive power designed to be hauled by a motor vehicle.

***treatment, care and support damages***, in relation to a participant, means damages relating to the participant's treatment, care and support needs that—

- (a) result from the participant's injury or another personal injury resulting from the motor accident; and
- (b) arise after the participant is accepted into the scheme.

*treatment, care and support needs*, of a person, see section 8.

**Workers' Compensation Act** means the *Workers' Compensation and Rehabilitation Act 2003*.

*wrongful act or omission* see the Insurance Act, section 4.

## 1 Index to endnotes

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- 3 Table of reprints
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- 5 List of annotations

## 2 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
amd	= amendment	prov	= provision
t			
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	renu	= renumbered
		m	
ins	= inserted	rep	= repealed
lap	= lapsed	(retro	= retrospectively
		)	
notf	= notified	rv	= revised version
d			
num	= numbered	s	= section

<b>Key</b>	<b>Explanation</b>	<b>Key</b>	<b>Explanation</b>
<b>o in c</b>	= <b>order in council</b>	<b>sch</b>	= <b>schedule</b>
<b>om</b>	= <b>omitted</b>	<b>sdiv</b>	= <b>subdivision</b>
<b>orig</b>	= <b>original</b>	<b>SIA</b>	= <b>Statutory Instruments Act 1992</b>
<b>p</b>	= <b>page</b>	<b>SIR</b>	= <b>Statutory Instruments Regulation 2012</b>
<b>para</b>	= <b>paragraph</b>	<b>SL</b>	= <b>subordinate legislation</b>
<b>prec</b>	= <b>preceding</b>	<b>sub</b>	= <b>substituted</b>
<b>pres</b>	= <b>present</b>	<b>unnum</b>	= <b>unnumbered</b>
<b>prev</b>	= <b>previous</b>	<b>m</b>	

### 3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

<b>Current as at</b>	<b>Amendments included</b>	<b>Notes</b>
1 July 2016	none	RA ss 7(1)(k), 40
15 August 2016	none	RA s 40

<b>Current as at</b>	<b>Amendments included</b>	<b>Notes</b>
18 November 2016	—	RA s 40

## **4 List of legislation**

### **National Injury Insurance Scheme (Queensland) Act 2016 No. 34**

date of assent 14 June 2016

ss 1–2 commenced on date of assent

ch 1 pts 2–3, chs 2–3, ch 4 pts 1, 3, chs 5–9, 10 pt 2 divs 1–2 sdivs 1–2, sch 1 commenced 1 July 2016 (see s 2(2))

ch 4 pt 2, ss 171–172(1)–(3), 173–175, 176(1) commenced 15 August 2016 (2016 SL No. 128)

ss 176(2)–(4), 177 commenced 18 November 2016 (2016 SL No. 128)

ch 10 pt 1, s 172(4) commence 1 July 2017 (2016 SL No. 129)

amending legislation—

### **National Injury Insurance Scheme (Queensland) Act 2016 No. 34 ss 1, 2(1)(b), ch 10 pt 1**

date of assent 14 June 2016

ss 1, 2(1)(b) commenced on date of assent

ch 10 pt 1 commences 1 July 2017 (2016 SL No. 129)

## **5 List of annotations**

### **Referral of matters to parliamentary committee**

s 138 exp 1 July 2021 (see s 138(3))