

Queensland



Subordinate Legislation 2002 No. 192

Personal Injuries Proceedings Act 2002

**PERSONAL INJURIES PROCEEDINGS
REGULATION 2002**

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PART 1—PRELIMINARY

1 Short title

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

2 Commencement

This regulation commences on 1 August 2002.

PART 2—CLAIMS

3 Notice of claim—information required for Act, s 9(2)(a)

(1) This section states the information required for section 9(2)(a) of the Act.

(2) The following particulars about the injured person are required—

- (a) the injured person's full name and address;
- (b) the injured person's date of birth;
- (c) the injured person's gender;
- (d) the name of any educational institution attended by the injured person;
- (e) details of the injured person's consumption of alcohol or drugs during the 12 hours before the incident.

(3) The following particulars about the incident alleged to have caused the personal injury to which the claim relates are required—

- (a) the date, time and place of the incident;
- (b) details of how the incident happened;
- (c) if appropriate, a diagram showing, to the best of the claimant's knowledge, the scene of the incident;
- (d) the names, addresses and telephone numbers of any witnesses to the incident;

- (e) if an emergency response entity or an investigative entity attended the incident—
 - (i) the name of the entity that attended the incident; and
 - (ii) if known, the name of the person who attended the incident on behalf of the entity; and
 - (iii) the entity's and, if known, the person's contact details; and
 - (iv) if known, any reference number assigned to the incident by the entity;
 - (f) the name, address and telephone number of the person or persons who were, in the claimant's opinion, responsible for causing the incident;
 - (g) the reasons the claimant attributes responsibility to the person or persons;
 - (h) if a protective device was available for use, the nature of the device and whether the injured person was using the device when the incident happened.
- (4) The following particulars about the nature and treatment of the injured person's personal injury are required—
- (a) a description of the personal injury suffered;
 - (b) if the injured person was or is hospitalised for treatment of the personal injury, details of the hospitalisation;
 - (c) if the injured person received or is receiving medical treatment for the personal injury, details of the treatment and the name and address of the treatment provider;
 - (d) if the injured person received or is receiving rehabilitation for the personal injury, details of the rehabilitation and the name and address of the rehabilitation provider;
 - (e) details of any disability suffered by the injured person from the personal injury if—
 - (i) the disability is relevant to the assessment of the extent of the personal injury; or
 - (ii) the disability or its symptoms lasted for 4 weeks or more;
 - (f) if the personal injury caused by the incident exacerbated a pre-existing injury or medical condition, details of how the personal injury exacerbated the pre-existing injury or condition.

(5) The following particulars relevant to economic loss are required—

- (a) the injured person's usual occupation and, if the injured person is currently employed, the name and address of the person's employer;
- (b) the injured person's gross income per week when the incident happened;
- (c) full details of the nature and extent of the injured person's economic loss, as far as it can be assessed at the date of the notice of a claim;
- (d) details of all claims made by the injured person for damages, compensation or social security benefits for a disability mentioned in subsection (4)(e);
- (e) details of all amounts received by the injured person by way of damages, compensation or social security benefits for a disability mentioned in subsection (4)(e).

(6) The following particulars of a general nature are required for a claim other than a dependency claim—

- (a) the date the injured person was first examined by a doctor in relation to the personal injury to which the claim relates;
- (b) the date the injured person first consulted a lawyer about the possibility of making a claim.

(7) If the claim is a dependency claim, the following particulars about the claimant and any dependants are required—

- (a) for the claimant—
 - (i) the claimant's full name and address; and
 - (ii) the claimant's relationship to the injured person; and
 - (iii) if the claimant was the spouse of the injured person, the date and place of their marriage or, if not married, the date on which the claimant and injured person started living together as husband and wife; and
 - (iv) if the claimant suffers from any serious medical condition or disability, the nature of the condition or disability; and
 - (v) the date the claimant first consulted a lawyer about the possibility of making a claim;
- (b) for each dependant, including the claimant if a dependant—

- (i) the dependant's full name and residential address; and
- (ii) the dependant's marital status; and
- (iii) the dependant's date of birth; and
- (iv) the dependant's gender; and
- (v) the dependant's relationship to the injured person; and
- (vi) whether the dependant is a full time student; and
- (vii) if the dependant has an independent income, the amount and source of the income; and
- (viii) if the dependant received any financial payments or other benefits from the injured person before the incident, the average amount of the payments and how often they were received; and
- (ix) if the dependant has applied for or received any financial payments or other benefits in relation to the incident, the source and amount of the payment and how often they were received; and
- (x) if the dependant suffers from any serious medical condition or disability, the nature of the condition or disability.

(8) If the claim is a health care claim, the following particulars are also required—

- (a) a description of the medical condition for which the injured person sought treatment;
- (b) the aspect of the treatment alleged to have given rise to the personal injury or to have exacerbated a pre-existing injury or condition;
- (c) the nature, type and severity of symptoms alleged to have arisen from the treatment;
- (d) if applicable, the names, addresses and telephone numbers of all health care providers who treated the injured person in relation to the medical condition for which treatment was sought during the three years before receiving the treatment alleged to have given rise to the personal injury;
- (e) if the injured person made a complaint to the Health Rights Commission about a person alleged to have caused the personal injury—

- (i) the date the complaint was made to the commission; and
 - (ii) if the complaint was finalised under the *Health Rights Commission Act 1991*, brief details of how the complaint was dealt with under that Act and the date the complaint was finalised;
- (f) if the claim relates to or includes an alleged failure of the health care provider to inform or adequately inform the injured person of the risks involved in the treatment sought—
- (i) the date, time and place of each consultation with the health care provider; and
 - (ii) if written or oral advice or a warning was given to the injured person by the health care provider about the treatment, the date and place the advice or warning was given; and
 - (iii) the risks about which the injured person should have been informed or adequately informed by the health care provider;
- (g) if written or oral consent was given by the injured person to the health care provider about the treatment alleged to have given rise to the personal injury, the date and place the consent was given;
- (h) the names, addresses and telephone numbers of all health care providers who provided the injured person with information or explanations about the personal injury or an exacerbation of a pre-existing injury alleged to have arisen from the treatment.

4 Notice of claim—authority for Act, s 9(2)(b)

For section 9(2)(b) of the Act, the records and sources of information relevant to the claim to which the person or the person's insurer is authorised to have access are—

- (a) if the personal injury exacerbated a pre-existing injury or condition, any records in the possession of any insurer involved in the claim for the pre-existing injury or condition relevant to the pre-existing injury or condition; and
- (b) records in the possession of a department, agency or instrumentality of the Commonwealth, the State or another State administering police, transport, taxation or social welfare law

relevant to an investigation of the incident alleged to have given rise to the personal injury to which the claim relates or to assessing economic loss; and

- (c) reports and clinical notes in the possession of a hospital, including a private hospital, at which the injured person received treatment relevant to the personal injury to which the claim relates; and
- (d) records in the possession of an ambulance or other emergency service that treated or assisted the injured person relevant to the personal injury to which the claim relates; and
- (e) reports or clinical notes in the possession of a health care provider who treated or assessed the injured person relevant to the personal injury to which the claim relates; and
- (f) wage, leave and work history records in the possession of an employer (or previous employer) of the injured person, and if the claim is a dependency claim, of each dependant if applicable; and
- (g) academic records in the possession of any educational institution attended by the injured person and, if the claim is a dependency claim, of each dependant.

5 Notice of claim—documents for Act, s 9(2)(c)

For section 9(2)(c) of the Act, the notice of a claim must be accompanied by the following documents—

- (a) for a claim, other than a health care claim, a copy of any certificate signed by a doctor relevant to the personal injury to which the claim relates that is in the claimant's possession;
- (b) for a dependency claim, a copy of the injured person's death certificate;
- (c) for a dependency claim if the claimant is the spouse of the injured person, a copy of their marriage certificate;
- (d) for a health care claim, a copy of any advice or warnings provided to the injured person by a health care provider about the treatment alleged to have given rise to the personal injury that is in the claimant's possession;

- (e) for a health care claim, a copy of any consent provided to the health care provider by the injured person about the treatment alleged to have given rise to the personal injury that is in the claimant's possession;
- (f) a copy of any other document relevant to the personal injury, economic loss, treatment or rehabilitation that is in the claimant's possession.

PART 3—MISCELLANEOUS

6 Offers of settlement

(1) An offer of settlement made by a respondent to a claimant must, if the claimant is not represented by a lawyer, be accompanied by an explanatory statement.

(2) The explanatory statement must include the following statement—

‘Your acceptance of this offer of settlement will finalise this claim and you will not be able to make any further claim or receive any further payment from (name of the respondent) for personal injury you received arising out of this incident.

If you have a concern about accepting this offer of settlement, you should seek legal advice.’.

7 Costs when mandatory final offer is accepted—Act, s 40

(1) For section 40 of the Act, if a mandatory final offer for more than \$30 000 but not more than \$50 000 is accepted, the claimant is entitled to payment of costs on the following bases—

- (a) 100% of item 1 costs;
- (b) 50% of item 5 costs on the basis that preparations for trial and a directions conference have been undertaken;
- (c) the claimant's cost of legal representation at the compulsory conference (if applicable) at the rate of \$175 for the first hour and \$150 for each hour after the first, and, for a period of less than 1 hour, the relevant proportion of the appropriate hourly rate;

- (d) the claimant's costs of an application to the court up to a maximum of \$400 for each application;
- (e) reasonable disbursements if documentary evidence supporting the disbursements is available.

(2) However, if the amount calculated under subsection (1) is more than \$2 500, the claimant's entitlement is limited to \$2 500.

(3) In this section—

“item 1 costs” means costs allowable under the *Uniform Civil Procedure Rules 1999*, schedule 3, part 2, item 1.

“item 5 costs” means costs allowable under the *Uniform Civil Procedure Rules 1999*, schedule 3, part 2, item 5.

8 Claimant may add other respondents—Act, s 14

(1) For section 14(1) of the Act, the time prescribed within which a claimant may add other respondents is the later of the following days—

- (a) the day by which a notice of a claim must be given by the claimant under section 9(3) of the Act;
- (b) the day 1 month after the claimant receives information under section 10(1)(c)(ii) of the Act;
- (c) the day 1 month after the claimant receives a copy of a contribution notice given to the claimant under section 16(3) of the Act.

(2) For section 14(3) of the Act, the time prescribed is 7 days.

9 Respondent may add another person as contributor—Act, s 16

(1) For section 16(1) of the Act, the time prescribed is 3 months after the respondent receives the notice of a claim under section 9 of the Act.

(2) For section 16(3) of the Act, the time prescribed is 7 days.

10 Contributor's response—Act, s 17(1)(a)

For section 17(1)(a) of the Act, the contributor's response must state the following—

- (a) the contributor's full name;

- (b) the contributor's business address;
 - (c) the contributor's postal address;
 - (d) the name and contact details of the contributor's legal representatives, if appointed;
 - (e) the contributor's ABN, if any;
 - (f) if the contributor is a corporation—
 - (i) the corporation's ACN; and
 - (ii) the corporation's registered office.
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ENDNOTES

1. Made by the Governor in Council on 1 August 2002.
2. Notified in the gazette on 1 August 2002.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.