

Queensland

Personal Injuries Proceedings Act 2002

Current as at 29 October 2026

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Personal Injuries Proceedings Act 2002

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Personal Injuries Proceedings Act 2002

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

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

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

2 Commencement

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

3 Notes in text

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

Part 2 Main purpose and application of Act

4 Main purpose

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

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

(a) providing a procedure for the speedy resolution of claims for damages for personal injury to which this Act applies; and

(b) promoting settlement of claims at an early stage wherever possible; and

(c) ensuring that a person may not start a proceeding in a court based on a claim without being fully prepared for resolution of the claim by settlement or trial; and

(d) putting reasonable limits on awards of damages based on claims; and

(e) minimising the costs of claims; and

(f) regulating inappropriate advertising and touting; and

(g) establishing measures directed at eliminating or reducing the practice of giving or receiving consideration for a claim referral or potential claim referral, or soliciting or inducing a claimant to make a claim, in contravention of this Act.

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, unless otherwise provided.

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

6 Application of Act

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

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

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(a) personal injury within the meaning of the *Motor Accident Insurance Act 1994* and in relation to which that Act applies; or

(b) accidental bodily injury caused by, through, or in connection with a motor vehicle, within the meaning of the *Motor Vehicles Insurance Act 1936*, and in relation to which that Act applies; or

(c) injury within the meaning of the *Workers' Compensation and Rehabilitation Act 2003* and in relation to which that Act applies, but only to the extent that an entitlement to seek damages within the meaning of that Act for the injury is regulated by chapter 5 of that Act; or

Example for paragraph (c)—

W, a worker employed by E, sustains an injury in the course of employment. The injury is caused by a design fault in a machine designed by X Company.

If, as a result of sustaining the injury, W seeks damages against E, W must comply with the pre-court procedures under the *Workers' Compensation and Rehabilitation Act 2003* before starting a proceeding in a court for damages against E. This Act does not require W to comply with pre-court procedures under this Act in seeking damages against E.

If, as a result of sustaining the injury, W seeks damages against X Company, W must comply with the pre-court procedures under this Act before starting a proceeding in a court for damages against X Company.

(d) injury within the meaning of the *WorkCover Queensland Act 1996* and in relation to which that Act applies, but only to the extent that an entitlement to seek damages within the meaning of that Act for the injury is regulated by chapter 5 of that Act; or

(e) injury within the meaning of the *Workers' Compensation Act 1990* suffered on or after 1 January 1996 and in relation to which that Act applies, but only to the extent that an entitlement to seek damages within the meaning of that Act for the injury is regulated by part 11 of that Act; or

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(f) injury within the meaning of the *Workers' Compensation Act 1990* suffered before 1 January 1996 and in relation to which that Act applies, but only to the extent that the injury suffered created, independently of that Act, a legal liability in the employer of the person suffering the injury for which the employer was indemnified under that Act in relation to the injury or required by that Act to be so indemnified; or

(g) injury within the meaning of the *Workers' Compensation Act 1916* and in relation to which that Act applies, but only to the extent that the injury suffered created, independently of that Act, a legal liability in the employer of the person to pay damages in relation to the injury.

(3) Also, this Act does not apply to—

(a) personal injury in relation to which a proceeding was started in a court, including in a court outside Queensland or Australia, before 18 June 2002; or

(b) personal injury that is a dust-related condition.

(4) In addition, sections 40(2) and 56 do not apply to personal injury if the act causing the personal injury is an unlawful intentional act done with intent to cause personal injury or is unlawful sexual assault or other unlawful sexual misconduct.

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

(a) the *Anti-Discrimination Act 1991*, section 209(1)(b);

(b) the *Civil Aviation (Carriers' Liability) Act 1964*, including the applied provisions as defined under that Act;

(c) the *Victims of Crime Assistance Act 2009*;

(d) the repealed *Criminal Offence Victims Act 1995*, as it continues to apply under the *Victims of Crime Assistance Act 2009*, chapter 6, part 2;

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(e) the Criminal Code, repealed section 663D, as it continues to apply under the *Victims of Crime Assistance Act 2009*, chapter 6, part 2.

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

(7) In subsection (4)—

act includes omission.

7 Provisions of this Act that are provisions of substantive law

(1) Provisions of this Act that provide for the kinds of damage, and the amount of damages, that may be recovered by a person, and the provisions of chapter 2, part 1, divisions 1, 1A, 2 and 4, are provisions of substantive, as opposed to procedural, law.

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

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

Part 3 Interpretation

8 Definitions

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

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Chapter 2 Claims

Part 1 Pre-court procedures

Division 1AA Requirements for law practice certificates

8A Application of division to potential claimants

In this division, a reference to a claimant includes a reference to a potential claimant.

8B Meaning of *law practice certificate*

(1) A ***law practice certificate*** is a certificate in a form approved by the commissioner that states the matters mentioned in subsections (2) to (4).

(2) The certificate must state—

(a) the supervising principal and each associate of the law practice have not—

(i) given, agreed to give or allowed or caused someone to give consideration to another person for a claim referral or potential claim referral for the claim in contravention of section 71(1); or

(ii) received, agreed to receive or allowed or caused someone else to receive consideration from another person for a claim referral or potential claim referral for the claim in contravention of section 71(2); or

(b) if the supervising principal believes section 71 does not apply because of section 71(3)—the reasons for the belief.

(3) Also, the certificate must state—

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(a) the supervising principal and each associate of the law practice have not personally approached or contacted the claimant and solicited or induced the claimant to make the claim in contravention of section 71B; or

(b) if the supervising principal believes section 71B does not apply because of section 71B(3)—the reasons for the belief.

(4) In addition, if the claim is a speculative personal injury claim, the certificate must state the costs agreement relating to the claim complies with section 71E or the *Legal Profession Act 2007*, section 347.

(5) The law practice certificate must be signed by the supervising principal and verified by statutory declaration.

(6) To remove any doubt, it is declared that this section does not require or permit the supervising principal of a law practice to give information about communication with a claimant that is subject to legal professional privilege.

(7) In this section—

consideration, for a claim referral or potential claim referral, see section 71A.

speculative personal injury claim see the *Legal Profession Act 2007*, section 346.

8C Law practice retained by claimant before notice of claim or urgent proceeding

(1) This section applies if a law practice is retained by a claimant to act in relation to the claimant's claim before—

(a) the claimant has given notice of the claim under section 9 or 9A; or

(b) an urgent proceeding for the claim is started under division 5.

(2) The supervising principal of the law practice must—

(a) complete a law practice certificate for the claim; and

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(b) give the certificate to the claimant before the claimant gives notice of the claim or the urgent proceeding is started.

Maximum penalty—300 penalty units.

8D Supervising principal can not complete law practice certificate or notice

(1) This section applies if the supervising principal of a law practice can not comply with section 8C, 8F, 9C, 13A or 61 in relation to a claim.

(2) Either of the following may complete and give the law practice certificate or notice mentioned in section 8F(3) for the supervising principal to satisfy the section—

(a) another principal of the law practice;

(b) if the supervising principal is the only principal of the law practice—a lawyer nominated by the supervising principal.

8E False or misleading law practice certificate

A supervising principal of a law practice must not sign or give to a claimant, potential claimant, respondent or respondent's insurer, a law practice certificate or copy of a law practice certificate the principal knows is false or misleading in a material particular.

Maximum penalty—300 penalty units.

8F Law practice referral through sale of business

(1) This section applies if—

(a) a law practice (the ***current practice***) sells all or part of the law practice's business to another law practice (the ***new practice***); and

(b) as part of the sale, a claimant is to be referred to the new practice; and

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(c) the claimant has not or will not have given notice of the claim under section 9 before the referral occurs.

(2) The supervising principal of the current practice must, before the referral occurs—

(a) complete a law practice certificate for the claim; and

(b) give the law practice certificate to the new practice and a copy of the certificate to the claimant.

Maximum penalty—300 penalty units.

(3) If the new practice does not receive the law practice certificate mentioned in subsection (2), the supervising principal of the new practice must, as soon as practicable—

(a) complete a notice that states the new practice has not received the certificate; and

(b) give the notice to the commissioner.

Division 1 Claims procedures

9 Notice of a claim

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

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

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

(2) The notice must—

(a) contain a statement of the information required under a regulation; and

(b) authorise each of the following to have access to records and sources of information relevant to the claim specified under a regulation—

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(i) the person;

(ii) if the person is insured against the claim, the person's insurer for the claim; and

(c) if a law practice is retained by the claimant to act in relation to the claim and section 9A does not apply in relation to the claim—be accompanied by—

(i) a copy of the law practice certificate for the claim given under section 8C by the supervising principal of the law practice; and

(ii) if the claimant has received a copy of a law practice certificate for the claim under section 8F(2)(b)—the copy of the certificate; and

(d) be accompanied by the documents required under a regulation.

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

(3) Part 1 of the notice must be given within the period ending on the earlier of the following days—

(a) the day 9 months after the day the incident giving rise to the personal injury happened or, if symptoms of the injury are not immediately apparent, the first appearance of symptoms of the injury;

(b) the day 1 month after the day the claimant first instructs a law practice to act on the person's behalf in seeking damages for the personal injury and the person against whom the proceeding is proposed to be started is identified.

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

(a) the person to whom part 1 of the notice was given complies with section 10(1);

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

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

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

(6) If part 1 of the notice is not given within the period prescribed under subsection (3) or section 9A(9)(b), the claimant is taken to have a reasonable excuse for subsection (5) if—

(a) the claimant—

(i) has made a health service complaint about the person against whom the proceeding is proposed to be started to the Health Rights Commissioner under the *Health Rights Commission Act 1991* within the period prescribed for making a complaint under that Act; and

(ii) gives part 1 of the notice to the person as soon as practicable after the complaint is finalised under the *Health Rights Commission Act 1991*, the repealed *Health Quality and Complaints Commission Act 2006* or the *Health Ombudsman Act 2013*; or

(b) the claimant—

(i) has made a health service complaint about the person against whom the proceeding is proposed to be started to the Health Quality and Complaints Commission under the *Health Quality and Complaints Commission Act 2006* within the period prescribed for making a complaint under that Act; and

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(ii) gives part 1 of the notice to the person as soon as practicable after the complaint is finalised under the *Health Quality and Complaints Commission Act 2006* or *Health Ombudsman Act 2013*; or

(c) the claimant—

(i) has made a health service complaint about the person against whom the proceeding is proposed to be started to the health ombudsman under the *Health Ombudsman Act 2013* within 2 years after the claimant became aware of the matter of the complaint; and

(ii) gives part 1 of the notice to the person as soon as practicable after the complaint is finalised under the *Health Ombudsman Act 2013*.

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

(a) give a copy of it to each other person known to the person who may be a person against whom a proceeding might be started by the claimant based on the claim; and

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

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

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

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(a) is given to the Crown solicitor; and

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

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

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

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

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

(9C) Subsections (3), (5) and (6) do not apply to a claim based on a personal injury of a person resulting from the abuse of the person when the person was a child.

(10) In this section—

abuse, of a child, means—

(a) sexual abuse or serious physical abuse of the child; or

(b) psychological abuse of the child perpetrated in connection with sexual abuse or serious physical abuse of the child.

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

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

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

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

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

(a) the claimant's full name and address;

(b) any other name by which the claimant is known or has been known;

(c) if the initial notice is given by the claimant's parent or legal guardian, the parent's or guardian's name;

(d) the claimant's date of birth;

(e) a description of the medical services alleged to have given rise to the personal injury;

(f) if known, the name of the doctor who provided the medical services;

(g) the date or dates when the medical services were provided;

(h) the place or places at which the medical services were provided;

(i) a description of the personal injury alleged to have been suffered.

(3A) If a law practice is retained to act in relation to the claim, the initial notice must also be accompanied by—

(a) a copy of the law practice certificate for the claim given under section 8C by the supervising principal of the law practice; and

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(b) if the claimant has received a copy of a law practice certificate for the claim under section 8F(2)(b)—the copy of the certificate.

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

(a) the day 9 months after the day the medical incident happened or, if symptoms of the personal injury arising out of the incident were not immediately apparent, the first appearance of symptoms of the injury;

(b) the day 1 month after the day the claimant first instructs a law practice to act on the person's behalf in seeking damages for the personal injury and the person against whom the proceeding is proposed to be started is identified.

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

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

(6A) If an initial notice, given after the commencement of this subsection, is not given within the period prescribed under subsection (4), the claimant is taken to have a reasonable excuse for subsection (6) if—

(a) the claimant—

(i) has made a health service complaint about the person against whom the proceeding is proposed to be started to the Health Rights Commissioner under the *Health Rights Commission Act 1991* within the period prescribed for making a complaint under that Act; and

(ii) gives the initial notice to the person as soon as practicable after the complaint is finalised under the *Health Rights Commission Act 1991*, the repealed *Health Quality and Complaints*

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Commission Act 2006 or the *Health Ombudsman Act 2013*; or

(b) the claimant—

(i) has made a health service complaint about the person against whom the proceeding is proposed to be started to the Health Quality and Complaints Commission under the *Health Quality and Complaints Commission Act 2006* within the period prescribed for making a complaint under that Act; and

(ii) gives the initial notice to the person as soon as practicable after the complaint is finalised under the *Health Quality and Complaints Commission Act 2006* or *Health Ombudsman Act 2013*; or

(c) the claimant—

(i) has made a health service complaint about the person against whom the proceeding is proposed to be started to the health ombudsman under the *Health Ombudsman Act 2013* within 2 years after the claimant became aware of the matter of the complaint; and

(ii) gives the initial notice to the person as soon as practicable after the complaint is finalised under the *Health Ombudsman Act 2013*.

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

(a) if the place at which the medical incident happened is a place under the control of a Hospital and Health Service—the health service chief executive of the Hospital and Health Service; or

(b) if paragraph (a) does not apply—the chief executive officer of the department or entity having control of the place at which the medical incident happened.

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

(a) a written response advising whether any documents are held in relation to the medical services mentioned in the notice; and

(b) copies of all documents held by the person about the medical services.

(9) The claimant—

(a) may give part 1 of the notice of the claim only after giving the initial notice; and

(b) must give part 1 of the notice within 12 months after the respondent complies with subsection (8); and

(c) is not required to comply with section 9(3); and

(d) must, as part of giving a complying part 1 notice of claim, give a written report from a medical specialist, competent to assess the medical incident alleged to have given rise to the personal injury, stating, in the medical specialist's opinion—

(i) that there was a failure to meet an appropriate standard of care in providing medical services; and

(ii) the reasons justifying the opinion; and

(iii) that as a result of the failure, the claimant suffered personal injury; and

(e) must give the report mentioned in paragraph (d) when giving part 1 of the notice of claim.

(10) If the claim is based on, or includes, an allegation of a failure to warn of a risk in relation to the provision of medical services, it is not necessary for subsection (9) for the report to comment on, or address, the alleged failure.

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

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injury arose for the purposes of the *Limitation of Actions Act 1974*.

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

(13) For subsection (4)(b), consultation by a claimant with a community legal service is to be disregarded.

(14) In this section—

Hospital and Health Service means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

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

medical specialist means a person registered or eligible for registration under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant.

9B Law practice certificate not given

(1) This section applies if—

(a) the supervising principal of a law practice in relation to a claim fails to give a law practice certificate to the claimant as required under section 8C; and

(b) because of the principal's failure, the claimant—

(i) can not comply with the requirements of section 9(2) within the period mentioned in section 9(3) or 9A(9)(b); and

(ii) terminates in writing the engagement of the law practice to act for the claimant in relation to the claim.

(2) The principal—

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(a) must, within 14 days after the termination, refund to the claimant all fees and costs, including disbursements, paid by the claimant in relation to the claim; and

(b) can not charge or recover from the claimant any further fees and costs in relation to the claim.

(3) In this section—

claimant includes a potential claimant.

9C Law practice retained by claimant after notice of claim

(1) This section applies if a law practice is retained to act in relation to a claimant's claim after the claimant has given notice of the claim under section 9.

(2) The supervising principal of the law practice in relation to the claim must within 1 month after the practice is retained—

(a) complete a law practice certificate for the claim; and

(b) give a copy of the law practice certificate to the respondent to the claim mentioned in section 12(1).

Maximum penalty—300 penalty units.

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

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

(a) if the person considers that the person is a proper respondent to the claim, give notice to the claimant under section 12; or

(b) if the person is unable to decide on the information contained in part 1 of the notice whether or not the person is a proper respondent to the claim, advise the claimant of the further information the person

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

(c) if the person considers that the person is not a proper respondent to the claim, give the claimant, in writing—

(i) reasons why the person considers the person is not a proper respondent to the claim; and

(ii) any information the person has that may help the claimant to identify a proper respondent to the claim.

Maximum penalty—100 penalty units.

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

(a) give the person the information the person reasonably needs to decide whether the person is a proper respondent to the claim; or

(b) advise the person, in writing, that the claimant considers the person to be a proper respondent to the claim and require the person to give notice to the claimant under section 12.

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

(a) if the person considers that the person is a proper respondent to the claim, give notice to the claimant under section 12; or

(b) if the person considers that the person is not a proper respondent to the claim, give the claimant, in writing—

(i) reasons why the person believes the person is not a proper respondent to the claim; and

(ii) any information the person has that may help the claimant to identify a proper respondent to the claim.

Maximum penalty—100 penalty units.

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

(a) on the information available to the claimant, the claimant accepts the person is not a proper respondent to the claim; or

(b) the claimant considers the person to be a proper respondent to the claim and requires the person to give notice to the claimant under section 12.

(5) Advice given to a person under subsection (4)(a) does not prevent the claimant from giving the person another part 1 of a notice of a claim under section 9 at a later time.

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

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

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

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

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

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

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

(a) considers himself, herself or itself to be a proper respondent to the claim; or

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

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

(a) stating whether the respondent is satisfied that part 1 of the notice is a complying part 1 notice of claim; and

(b) if the respondent is not satisfied, identifying the noncompliance and stating whether the respondent waives compliance with the requirements; and

(c) if the respondent does not waive compliance with the requirements, allowing the claimant a reasonable period, of at least 1 month, specified in the notice either to satisfy the respondent that the claimant has in fact complied with the requirements or to take reasonable action specified in the notice to remedy the noncompliance.

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

(a) stating that the respondent is satisfied the claimant has complied with the relevant requirements, is satisfied with the action taken by the claimant to remedy the noncompliance, or waives the noncompliance in any event; or

(b) stating that the respondent is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, and giving full particulars of the noncompliance and the claimant's failure to remedy it.

(4) In this section—

prescribed period means—

(a) if the respondent responds directly to the claimant under this section as contemplated by section 10(1)(a)—the period prescribed under section 10(1); or

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(b) otherwise—

(i) the period prescribed under a regulation; or

(ii) if no period is prescribed, the later of the following—

(A) if the respondent gives notice to the claimant under section 10(3)(a) that the respondent is a proper respondent to the claim—1 month after the respondent is given the further information under section 10(2)(a);

(B) if the claimant advises the respondent under section 10(2)(b) or (4)(b) that the claimant considers the person to be a proper respondent to the claim and requires the person to give notice to the claimant under this section—1 month after the claimant advises the respondent under the paragraph.

13 Consequences for respondent of failure to respond to part 1 of a notice of a claim

If a claimant gives part 1 of a notice of a claim under this division or purportedly under this division to a person against whom a proceeding is proposed to be started, and the person does not respond to it under section 10 or 12 within the prescribed period under the section, the person is conclusively presumed to be satisfied it is a complying part 1 notice of claim.

13A Duty to give law practice certificate if waiver or presumption

(1) This section applies if—

(a) a claimant gives notice of the claimant's claim that does not comply with section 9(2)(c)(i); and

(b) the respondent to the claim—

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(i) waives compliance with the requirements under this division for giving notice of the claim; or

(ii) is presumed to be satisfied notice has been given as required under this division.

(2) If the supervising principal of a law practice gave the claimant a law practice certificate for the claim under section 8C but the claimant has not given the certificate to the respondent, the supervising principal must, as soon as practicable, give a copy of the certificate to—

(a) the respondent; and

(b) if the respondent's insurer has responded to part 1 of the claimant's notice of claim—the respondent's insurer.

(3) Subsection (4) applies if—

(a) the supervising principal of a law practice retained by the claimant in relation to the claimant's claim did not give the claimant a law practice certificate for the claim under section 8C; and

(b) the claimant has not subsequently given the respondent a law practice certificate for the claim from the supervising principal.

(4) The supervising principal must, within 1 month after the claimant is notified of the waiver or the presumption takes effect—

(a) complete a law practice certificate for the claim; and

(b) give the certificate to the respondent and a copy of the certificate to—

(i) the claimant; and

(ii) if the respondent's insurer has responded to part 1 of the claimant's notice of claim—the respondent's insurer.

Maximum penalty for subsection (4)—300 penalty units.

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14 Claimant may add other respondents

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

(a) part 1 of a notice of a claim mentioned in section 9; and

(b) copies of other documents given to or received from any other respondent under this Act.

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

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

(a) the person must respond to part 1 of the notice as if it were given under section 9; and

(b) the claimant must notify each other party of the addition by written notice within the time prescribed under a regulation.

15 Multiple respondents

(1) If there are 2 or more respondents to a claim, 1 of the respondents (the ***respondents' claim manager***) may act for 1 or more of the other respondents under this division, division 2 and part 3 with the agreement of the other respondents.

(2) The respondents' claim manager—

(a) may exercise the powers and perform the duties conferred by this division, division 2 and part 3 in relation to the claim and the claimant for all respondents for whom the respondents' claim manager acts; and

(b) must act as far as practicable with the agreement of the other respondents for whom the respondents' claim manager acts.

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

(4) However, if the respondents' claim manager acts beyond the scope of the respondents' claim manager's authority under the agreement under subsection (1), the respondents' claim manager is liable to each other respondent who is a party to the agreement for any loss suffered by the other respondent.

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

16 Respondent may add other person as contributor

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

(a) claiming an indemnity from, or contribution towards, the respondent's liability; and

(b) stating the grounds on which the respondent holds the person liable; and

(c) stating any other information that may be prescribed under a regulation; and

(d) accompanied by copies of documents about the claim given to or received from any other party under this Act.

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

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

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

17 Contributor's response

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

(a) containing a statement of information prescribed under a regulation; and

(b) accompanied by any documents that may be prescribed under a regulation.

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

(a) whether the claim for the contribution or indemnity claimed in the contribution notice is admitted, denied or admitted in part; and

(b) if the claim for the contribution or indemnity is admitted in part, the extent to which it is admitted.

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

(a) is not binding on the contributor in relation to any other claim; and

(b) is not binding on the contributor at all if it later appears the admission was induced by fraud.

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

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18 Claimant's failure to give part 1 of a notice of a claim

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

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

(i) has stated that the respondent is satisfied part 1 of the notice has been given as required or the claimant has taken reasonable action to remedy the noncompliance; or

(ii) is conclusively presumed to be satisfied it is a complying part 1 notice of claim under section 13; or

(b) the respondent has waived compliance with the requirement; or

(c) the court, on application by the claimant—

(i) declares that the claimant has remedied the noncompliance; or

(ii) authorises the claimant to proceed further with the claim despite the noncompliance.

(2) An order of the court under subsection (1)(c) may be made on conditions the court considers necessary or appropriate to minimise prejudice to a respondent from the claimant's failure to comply with the requirement.

(3) This section does not affect the application of section 13A.

19 Legal disabilities

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

Note—

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

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

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

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

20 Respondent must attempt to resolve claim

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

(a) take reasonable steps to inform himself, herself or itself about the incident alleged to have given rise to the personal injury to which the claim relates; and

(b) give the claimant written notice stating—

(i) whether liability is admitted or denied; and

(ii) if contributory negligence is claimed, the degree of the contributory negligence expressed as a percentage; and

(c) if the claimant made an offer of settlement in part 2 of the notice of a claim, inform the claimant whether the respondent accepts or rejects the offer, or if the claimant did not make an offer of settlement in part 2 of the notice, invite the claimant to make a written offer of settlement; and

(d) make a fair and reasonable estimate of the damages to which the claimant would be entitled in a proceeding against the respondent; and

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(e) make a written offer, or counter offer, of settlement to the claimant setting out in detail the basis on which the offer is made, or settle the claim by accepting an offer made by the claimant.

(2) If part 1 of a notice of a claim is not a complying part 1 notice of claim, a respondent is taken to have been given a complying part 1 notice of claim when—

(a) the respondent gives the claimant notice that the respondent waives compliance with the requirement that has not been complied with or is satisfied the claimant has taken reasonable action to remedy the noncompliance; or

(b) the court makes a declaration that the claimant is taken to have remedied the noncompliance, or authorises the claimant to proceed further with the claim despite the noncompliance.

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

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

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

(a) is not binding on the respondent in relation to any other claim; and

(b) is not binding on the respondent at all if it later appears the admission was induced by fraud.

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Division 1A Special provisions for notification of claims in relation to injuries to children arising out of medical treatment

20A Limitation of actions not affected

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

20B Application of div 1A

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

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

20C Notice of claim for damages for child

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

(a) the day 6 years after the day when the parent or legal guardian knew or ought reasonably to have known that the personal injury had occurred;

(b) the day 18 months after the day the parent or legal guardian first consults a practitioner about the possibility of seeking damages for the personal injury.

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

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(3) A failure by the practitioner to comply with subsection (2) is professional misconduct.

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

20D Respondent may apply for late claim not to proceed

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

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

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

(a) the extent of the injuries;

(b) the reason for the delay in giving part 1 of the notice;

(c) any prejudice suffered by the applicant as a result of the delay;

(d) the nature of the parties' conduct;

(e) any other relevant matter.

20F Court may order that certain costs not be recovered

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

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

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

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

20G Notice of adverse incidents

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

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

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

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

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

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

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

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

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

(a) the extent of the injuries;

(b) the reason for the delay in giving part 1 of the notice;

(c) any prejudice suffered by the respondent as a result of the delay;

(d) the nature of the parties' conduct;

(e) any other relevant matter.

20J Court may order that certain costs not be recovered

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

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

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

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

Division 2 Obligations of the parties

21 Purpose of div 2

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

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22 Duty of claimant to provide documents and information to respondent

(1) A claimant must give a respondent—

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

(i) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;

(ii) reports about the claimant's medical condition or prospects of rehabilitation;

(iii) reports about the claimant's cognitive, functional or vocational capacity; and

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

(i) the incident;

(ii) the nature of the personal injury and of any consequent disabilities;

(iii) if applicable, the medical treatment and rehabilitation services the claimant has sought or obtained;

(iv) the claimant's medical history, as far as it is relevant to the claim, and any other claims for damages for personal injury made by the claimant;

(v) the claimant's claim for past and future economic loss;

(vi) any claim known to the claimant for gratuitous services or loss of consortium or servitium consequent on the claimant's personal injury.

(2) If the claim is a health care claim, the claimant must, if reasonably requested by a respondent, give the respondent a single report from a doctor with appropriate qualifications and experience in the relevant field that includes an opinion regarding—

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(a) the nature and extent of the personal injury alleged to have been suffered; and

(b) the causal relationship between the incident and the personal injury alleged to have arisen from the incident.

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

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

(5) The claimant must—

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

(b) respond to a request under subsection (1)(b) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving it.

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

(a) a change in the claimant's medical condition or disabilities; or

(b) a change in other circumstances relevant to an assessment of the claimant's claim;

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

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

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

(9) In this section—

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

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

health care provider means—

(a) a person who is registered under the Health Practitioner Regulation National Law in a health profession; or

(b) a provider of a public sector health service as defined under the *Hospital and Health Boards Act 2011*, schedule 2; or

(c) a licensee of a private health facility as defined under the *Private Health Facilities Act 1999*, section 8.

23 Respondent and claimant may jointly arrange for expert report

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

(a) the cause or probable cause of the incident alleged to have given rise to the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more persons (who may be named) are responsible for, or contributed to, the incident;

(b) the cause or probable cause of the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more persons (who may be named) are responsible for, or contributed to, the injury;

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(c) the claimant's medical condition or prospects of rehabilitation;

(d) the claimant's cognitive, functional or vocational capacity.

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

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

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

24 Costs of obtaining expert report if report obtained by agreement

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

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

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

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

(a) the cause or probable cause of the incident alleged to have given rise to the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more persons (who may be named), are responsible for, or contributed to, the incident;

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(b) the cause or probable cause of the personal injury to which the claim relates and whether, in the expert's opinion, 1 or more persons (who may be named) are responsible for, or contributed to, the injury;

(c) the claimant's medical condition or prospects of rehabilitation;

(d) the claimant's cognitive, functional or vocational capacity.

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

(a) a medical examination by a doctor to be selected by the claimant from a panel of at least 3 doctors with appropriate qualifications and experience in the relevant field nominated by the respondent in the request;

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

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

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

27 Duty of respondent to give documents and information to claimant

(1) A respondent must give a claimant—

(a) copies of the following in the respondent's possession that are directly relevant to a matter in issue in the claim—

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(i) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;

(ii) reports about the claimant's medical condition or prospects of rehabilitation;

(iii) reports about the claimant's cognitive, functional or vocational capacity; and

(b) if asked by the claimant—

(i) information that is in the respondent's possession about the circumstances of, or the reasons for, the incident; or

(ii) if the respondent is an insurer of a person for the claim, information that can be found out from the insured person for the claim, about the circumstances of, or the reasons for, the incident.

(2) A respondent must—

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

(b) respond to a request under subsection (1)(b) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving it.

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

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

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28 Duty of respondent to give documents to contributor

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

(a) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;

(b) reports about the claimant's medical condition or prospects of rehabilitation;

(c) reports about the claimant's cognitive, functional or vocational capacity;

(d) reports about the claimant's personal injury and of any consequent disabilities;

(e) if applicable, information about the medical treatment and rehabilitation services the claimant has sought or obtained;

(f) information about the claimant's medical history, as far as it is relevant to the claim, and any other claims for damages for personal injury made by the claimant;

(g) information about the claimant's claim for past and future economic loss;

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

(2) The respondent must give the copies—

(a) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after giving a contribution notice to the contributor; and

(b) to the extent any report, documentary material or information comes into the respondent's possession more than 1 month after giving the contribution notice, within 7 days after it comes into the respondent's possession.

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29 Duty of contributor to give documents to respondent

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

(2) The contributor must provide the copies—

(a) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after being added as a contributor; and

(b) to the extent any report or documentary material comes into the contributor's possession more than 1 month after being added as a contributor, within 7 days after it comes into the respondent's possession.

29A Alternative provision if number of pages exceeds 200

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

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

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

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

(5) For subsection (4), the time is—

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(a) if the total number of pages does not exceed 200 pages—1 month after the requirement is made under the subsection; or

(b) otherwise—1 month after payment by the other person of an amount of 50c for each page the total number of pages exceeds 200 pages.

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

30 Nondisclosure of particular material

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

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

(3) If a respondent has reasonable grounds to suspect a claimant of fraud, the respondent may apply, ex parte, to the court for approval to withhold from disclosure under division 1 or this division information or documentary material, including a class of documents, that—

(a) would alert the claimant to the suspicion; or

(b) could help further the fraud.

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

(5) In this section—

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

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31 Offence not to disclose particular material

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

Maximum penalty—100 penalty units.

32 Consequence of failure to give information

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

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

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

33 Privilege

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

34 No requirement to give documents or other information twice or if already in other party's possession

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

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Division 3 Enforcement of divisions 1 and 2

35 Court's power to enforce compliance with divs 1 and 2

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

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

Division 4 Compulsory conferences

36 Compulsory conference

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

(2) Any party may call the compulsory conference—

(a) at a time and place agreed between the parties; or

(b) if the relevant day has passed, at a reasonable time and place nominated by the party calling the conference.

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

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

(b) if, under section 12, a person to whom part 1 of a notice of a claim is given gives notice to the claimant that the person is a proper respondent to the claim—the day 6 months after the person gives notice or, if there is more

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than 1 person to whom part 1 of a notice of a claim is given, the day 6 months after the day after the last person gives notice to the claimant.

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

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

(a) fix the time and place for the compulsory conference; or

(b) dispense with the compulsory conference for good reason; or

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

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

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

(a) the extent of compliance by the parties with their respective obligations relating to the claim; and

(b) how the main purpose of this Act is to be achieved having regard, in particular, to section 4(2)(a) to (e).

37 Exchange of material for compulsory conference

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

(a) copies of all documents not yet given to the other party that are required to be given to the party under this Act; and

(b) a statement signed by the party verifying that all relevant documents, in the possession of the party or, if the party has legal representation, the practitioner acting

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for the party, that are required to be given under this Act have been given as required; and

(c) details of the party's legal representation; and

(d) a certificate (***certificate of readiness***) signed by the party.

(1A) A statement mentioned in subsection (1)(b) or a certificate of readiness must, if the party has legal representation, be signed by the practitioner acting for the party.

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

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

(b) all investigative material required by the party for the trial has been obtained, including witness statements from persons, other than expert witnesses, the party intends to call as witnesses at the trial; and

(c) medical or other expert reports have been obtained from all persons the party proposes to call as expert witnesses at the trial; and

(d) the party has fully complied with the party's obligations to give the other parties material required to be given to the parties under this Act; and

(e) if the party has legal representation, the practitioner acting for the party has given the party a statement (a ***costs statement***) containing the information required under subsection (4).

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

(4) A costs statement must contain—

(a) details of the party's legal costs (clearly identifying costs that are legal fees and costs that are disbursements) up to the completion of the compulsory conference; and

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

(c) a statement of the consequences to the party, in terms of costs, in each of the following cases—

(i) if the amount of the damages awarded by the court is equal to, or more than, the claimant's mandatory final offer;

(ii) if the amount of the damages awarded by the court is less than the claimant's mandatory final offer but more than, a respondent's, or the respondents', mandatory final offer;

(iii) if the amount of the damages awarded by the court is equal to, or less than, a respondent's, or the respondents', mandatory final offer.

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

(a) disclosure would alert a person reasonably suspected of fraud to the suspicion; or

(b) there is some other good reason why the material should not be disclosed.

(6) In this section—

party does not include contributor.

38 Procedure at conference

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

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

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

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(a) agreed to by the parties; or

(b) nominated by the registrar of the court on application under subsection (4).

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

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

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

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

Example—

teleconferencing

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

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

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

(a) at the conference; or

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

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

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

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

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

(4) If this subsection applies—

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

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

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

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

40 Provisions about mandatory final offers

(1) A mandatory final offer for the upper offer limit or less must be exclusive of costs.

(2) If a mandatory final offer is for more than the lower offer limit but not more than the upper offer limit, and is accepted, costs are to be calculated and paid on a basis (but subject to limits) stated under a regulation.

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

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

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

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

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

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

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

41 Offer to contribute

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

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

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

(a) the costs of the party who made the offer; and

(b) any costs the party is liable to pay to the claimant.

42 Time for starting proceeding

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

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(a) within 60 days after the conclusion of the compulsory conference; or

(b) within a further period—

(i) agreed by the parties within the 60-day period mentioned in paragraph (a); or

(ii) fixed by the court on an application made by the claimant within the 60-day period mentioned in paragraph (a).

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

(a) within 60 days after the later of the following—

(i) if there is only 1 respondent to the claim, the day 6 months after the day on which the claimant gives the respondent a complying part 1 notice of claim, or if there is more than 1 respondent to the claim, the day 6 months after the day the claimant last gave a respondent part 1 of a notice of a claim under section 14(1);

(ii) the date of the agreement or order dispensing with the conference; or

(b) within a further period—

(i) agreed by the parties within the 60-day period mentioned in paragraph (a); or

(ii) fixed by the court on an application made by the claimant within the 60-day period mentioned in paragraph (a).

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

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

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(a) unless the claimant establishes a reasonable excuse for the delay, order the claimant to pay, in any event, a respondent's costs arising out of the delay; and

(b) on a respondent's application, make an order fixing a time limit within which the proceeding must be started.

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

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

Division 5 Urgent proceedings

43 Starting urgent proceeding with the court's leave

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

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

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

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

(a) the court is satisfied that—

(i) the claimant is suffering from a terminal condition; and

(ii) the trial of the proceeding should be expedited; and

(b) the court orders the proceeding be given priority in the allocation of a trial date and certifies it for speedy trial.

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

(a) this part, other than this section;

(b) sections 48, 56 and 59;

(c) chapter 4.

44 Starting urgent proceeding by agreement

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

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

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

(b) ask the person or persons against whom the proceeding is proposed to be started (***proposed respondent***) to allow the claimant to start the proceeding despite noncompliance with this part.

(3) The claimant's lawyer may sign the notice of claim on the claimant's behalf if it is not reasonably practicable for the claimant to do so.

(4) However, if the claimant's lawyer signs the notice of claim, the claimant must sign the notice personally and give it to the proposed respondent as soon as practicable.

(5) The claimant's notice of claim may be given electronically in any way provided for under a regulation.

(6) A proposed respondent must advise the claimant, in the approved form, that the proposed respondent agrees or does not agree to allow the claimant to start the proceeding despite noncompliance with this part.

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(7) The advice must be given to the claimant before the end of 7 days after the proposed respondent receives the notice of claim signed by the claimant's lawyer.

(8) If each proposed respondent agrees to allow the claimant to start the proceeding despite noncompliance with this part—

(a) the claimant may start the proceeding; and

(b) the proceeding is stayed until the claimant complies with this part or the proceeding is discontinued or otherwise ends.

Part 3 Proceedings in court

47 Exclusion of summary judgment on the basis of admissions

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

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

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

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

(a) may, on a respondent's application in the proceeding, award in the respondent's favour costs (including legal and investigation costs) reasonably incurred by the respondent because of the claimant's default; and

(b) may only award interest in the claimant's favour for a period for which the claimant was in default if the court is satisfied there is a reasonable excuse for the default.

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

56 Costs in cases involving damages awards of not more than an amount equal to the upper offer limit

(1) This section applies if a court awards an amount equal to the upper offer limit or less in damages in a proceeding based on a claim, but it does not apply to the costs of an appellate proceeding.

(2) If the court awards an amount equal to the lower offer limit or less in damages, the court must apply the following principles—

(a) if the amount awarded is less than the claimant's mandatory final offer but more than the respondent's, or the respondents', mandatory final offer, no costs are to be awarded;

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

(c) if the amount awarded is equal to, or less than, the respondent's, or the respondents', mandatory final offer, costs are to be awarded to the respondent or respondents on a standard basis as from the day on which the proceeding started, but no award is to be made for costs up to that date.

(3) If the court awards more than an amount equal to the lower offer limit but not more than an amount equal to the upper offer limit in damages, the court must apply the following principles—

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(a) if the amount awarded is less than the claimant's mandatory final offer but more than the respondent's, or the respondents', mandatory final offer, costs are to be awarded to the claimant on a standard basis up to the declared costs limit;

(b) if the amount awarded is equal to, or more than, the claimant's mandatory final offer, costs are to be awarded to the claimant on the following basis—

(i) costs up to the date on which the proceeding started are to be awarded on a standard basis up to the declared costs limit;

(ii) costs on or after the date on which the proceeding started are to be awarded on an indemnity basis;

(c) if the amount awarded is equal to, or less than, the respondent's, or the respondents', mandatory final offer, costs are to be awarded on the following basis—

(i) costs up to the day on which the proceeding started are to be awarded to the claimant on a standard basis up to the declared costs limit;

(ii) costs on or after the day on which the proceeding started are to be awarded to the respondent or respondents on a standard basis.

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

Example—

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

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

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(a) the conclusion of the compulsory conference; or

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

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

Example—

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

(7) This section does not limit the court's power under section 48.

(8) In this section—

party does not include contributor.

57 General regulation of court awards

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

59 Alteration of period of limitation

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

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

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(a) 6 months after the complying part 1 notice is given or leave to start the proceeding is granted; or

(b) a longer period allowed by the court.

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

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

60 Recovery in case of fraud

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

Part 4 Other requirements for giving law practice certificates

61 Supervising principal must complete law practice certificate on settlement or judgment

(1) This section applies if—

(a) a law practice is retained by a claimant to act in relation to the claimant's claim; and

(b) either—

(i) the claimant or the respondent accepts, in writing, an offer, or counter offer, of settlement; or

(ii) judgment is given on the claim.

(2) The supervising principal of the law practice in relation to the claim must—

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(a) complete a law practice certificate for the claim as soon as practicable after the offer or counter offer is accepted or judgment is given; and

(b) within 7 days after the acceptance or judgment, give the certificate to the respondent and a copy of the certificate to—

(i) the claimant; and

(ii) if the respondent's insurer has responded to part 1 of the claimant's notice of claim, or the respondent has given details of the respondent's insurer to the claimant—the respondent's insurer.

Maximum penalty—300 penalty units.

Chapter 3 Other matters

Part 1 Restriction on advertising of personal injury services and touting

62 Application of pt 1

(1) This part is of general application.

(2) However, this part does not bind the State, the Commonwealth or the other States.

63 Definitions for pt 1

In this part—

advertises personal injury services see section 64.

allowable publication method see section 65.

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

client, of a law practice, includes a person who makes a genuine inquiry of a law practice about a personal injury.

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

employment includes self-employment.

fee includes the following—

(a) a bonus, commission, cash payment, deduction, discount, rebate, remission or other valuable consideration;

(b) employment, or an agreement to give employment, in any capacity.

hospital includes the following—

(a) any premises used for receiving, caring for or treating persons who are injured, sick or mentally ill;

(b) any premises used for providing a service for maintaining, improving or restoring a person's health and wellbeing;

(c) any land or building occupied or used in connection with premises mentioned in paragraph (a) or (b).

Examples of a hospital—

1 nursing home

2 community health facility

3 medical centre

4 physiotherapist's rooms

5 dentist's surgery

6 hostel

incorporated legal practice see the *Legal Profession Act 2007*, schedule 2.

law firm see the *Legal Profession Act 2007*, schedule 2.

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legal practitioner director see the *Legal Profession Act 2007*, schedule 2.

legal practitioner partner see the *Legal Profession Act 2007*, schedule 2.

member, of a law practice, means—

(a) if the law practice is a sole practitioner—the sole practitioner; or

(b) if the law practice is a law firm—each partner, and each employee of the law firm, who is a practitioner; or

(c) if the law practice is an incorporated legal practice—each legal practitioner director and each employee who is a practitioner of the incorporated legal practice; or

(d) if the law practice is a multi-disciplinary partnership—each legal practitioner partner and each employee who is a practitioner of the multi-disciplinary partnership.

misconduct means professional misconduct or unsatisfactory professional conduct as defined under the *Legal Profession Act 2007*.

multi-disciplinary partnership see the *Legal Profession Act 2007*, schedule 2.

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

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

Example—

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

public place means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is

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being used by, the public or a section of the public, whether on payment of money, through membership of a club or other body, or otherwise.

sole practitioner see the *Legal Profession Act 2007*, schedule 2.

64 Meaning of *advertises personal injury services*

(1) For this part, a practitioner or another person, whether or not the other person is acting for a law practice, ***advertises personal injury services*** if the practitioner or person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person—

(a) to make a claim for compensation or damages under any Act or law for a personal injury; or

(b) to use the services of the practitioner, or a named law practice, in connection with the making of a claim mentioned in paragraph (a).

(2) It does not matter that the statement also relates to other matters.

(3) For this section, a statement is ***published*** if it is—

(a) published in a printed publication; or

(b) disseminated by the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance; or

(c) broadcast by radio or for television; or

(d) displayed on an Internet website or otherwise publicly disseminated by means of the Internet; or

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(e) publicly exhibited in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place; or

(f) displayed on any document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle; or

(g) displayed on any document provided to a person as a receipt or record for a transaction.

65 Meaning of *allowable publication method*

(1) For this part, each of the following is an ***allowable publication method*** for the publication of a statement by a practitioner or another person, whether or not the other person is acting for a law practice—

(a) publication of the statement in a printed publication;

(b) publication of the statement on an Internet website by means of the publication of an electronic version of a printed publication, but only if the statement merely reproduces a statement as published in that printed publication and the printed publication is published independently of the practitioner or a law practice of which the practitioner is a member;

(c) publication of the statement on an Internet website by the publication of the contents of a directory or database that includes the statement and that is published or maintained independently of the practitioner or a law practice of which the practitioner is a member;

(d) public exhibition of the statement in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place;

(e) display of the statement on any printed document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle;

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(f) display of the statement on any printed document provided to a person as a receipt or record in relation to a transaction.

(2) However, each of the following is not an ***allowable publication method*** for the publication of a statement by a practitioner or another person, whether or not the other person is acting for a law practice—

(a) public exhibition of the statement in or on a hospital;

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

(3) A printed publication, directory or database is considered to be published or maintained independently of a practitioner or a law practice of which the practitioner is a member only if—

(a) it is not published or maintained by the practitioner or an employee of the practitioner or a member or an employee of the law practice of which the practitioner is a member; and

(b) the person who publishes or maintains it does so in the ordinary course of the conduct of the person's business or affairs.

66 Restriction on advertising personal injury service

(1) A practitioner or another person, whether or not the other person is acting for a law practice, must not advertise personal injury services except by the publication of a statement that—

(a) states only the name and contact details of the practitioner or a law practice of which the practitioner is a member, together with information as to any area of practice or speciality of the practitioner or law practice; and

(b) is published by an allowable publication method.

Example of advertising that contravenes subsection (1)—

advertising personal injury services on a 'no win, no fee' or other speculative basis

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Maximum penalty—300 penalty units.

(2) However, for a practitioner or a person acting for the practitioner or a law practice of which the practitioner is a member, the practitioner or person does not contravene subsection (1) only because—

(a) the practitioner or person advertises personal injury services—

(i) to any person who is already a client of the practitioner or law practice; or

(ii) to any person at the practitioner's or law practice's place of business; or

(iii) under any order by a court; or

(b) the practitioner or person advertises personal injury services on the Internet website of the practitioner or a law practice of which the practitioner is a member if the advertisement is limited to a statement about—

(i) the operation of the law of negligence and a person's legal rights under that law; and

(ii) the conditions under which the practitioner or law practice is prepared to provide personal injury services.

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

(4) A practitioner or another person, whether or not the other person is acting for a law practice, does not contravene subsection (1) only because the practitioner or person advertises personal injury services in an edition of a publication which edition was published before 18 June 2002.

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

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

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

(a) a prohibited person must not solicit or induce a potential claimant involved in the incident to make a claim; or

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

Example for paragraph (b)—

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

Maximum penalty—300 penalty units.

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

(a) a prohibited person;

(b) a person who, for the purpose of the person's employment, obtains information about an incident at or from which a person allegedly suffered personal injury;

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

Example for paragraph (c)—

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

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

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(a) a particular law practice; or

(b) an employee or agent of a law practice.

Maximum penalty—300 penalty units.

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

(a) a particular law practice; or

(b) an employee or agent of a law practice.

Maximum penalty—300 penalty units.

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

(a) a police officer; or

(b) a person to whom the person is required to disclose the information under a law; or

(c) a potential claimant involved in the incident or a practitioner acting for the potential claimant or the practitioner's agent; or

(d) the person's employer, if the person is attending or attended the incident for the purpose of the person's employment and the employer requires the person to disclose the information on grounds that are reasonable in the circumstances; or

(e) a person (***insurer***) who carries on the business of providing insurance for people or property, a practitioner acting for the insurer or someone acting as the insurer's agent.

Maximum penalty—300 penalty units.

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

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(a) the person is a client of the practitioner or a law practice of which the practitioner is a member for the purpose of making a claim or exercising a legal right, whatever its nature, arising out of the incident; and

(b) in the circumstances, it is reasonable for the person to think the person may have a claim or a legal right; and

(c) the disclosure is for the purpose of making the claim or exercising the legal right.

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

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

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

(a) the person gives the potential claimant, or someone on the potential claimant's behalf, the name, address or telephone number of a particular practitioner or law practice (the ***information***); and

(b) the person, in giving the information, is acting on behalf of a community legal service or industrial organisation; and

(c) the community legal service or industrial organisation approved of the giving of that information by the person.

68 Prohibition against paying, or seeking payment, for touting

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

Maximum penalty—300 penalty units.

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

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(a) if the person is not a law practice or a person acting for a law practice—advertising, in the ordinary course of the conduct of the person's business as an advertiser or publisher, legal services about claims; or

(b) if the person is a law practice or a person acting for a law practice—charging a potential claimant a fee for professional services provided to the potential claimant as part of making a claim.

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

(1) This section applies to a person if—

(a) under an Act—

(i) the person is approved for a profession, type of employment or calling; or

(ii) the person's activities for the person's profession, employment or calling are regulated; and

(b) under the Act under which the person is approved or the person's activities are regulated, the person's approval may be suspended or cancelled for misconduct or the person may be disciplined or otherwise dealt with for misconduct.

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

Part 2 Referrals of claims and contact to solicit or induce claims

70 Meaning of *claim referral*

(1) A ***claim referral*** is a referral of a claimant to a person for the purpose of—

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(a) the person providing a service for the claimant; or

(b) someone other than the person providing a service for the claimant.

(2) However, a ***claim referral*** does not include the advertisement or promotion of a service or person that results in a claimant using the service or person if the advertisement or promotion is made to the public or a group of persons.

Examples of advertisement or promotion that is not a claim referral—

- an advertisement of services provided by a law practice on the website or in the newsletter of a sporting association or charity
- the distribution of promotional stationery or clothing that displays a law practice's logo to members of an industrial organisation

(3) In this section—

claimant includes a potential claimant.

service, for a claimant, means a service related to the claimant's claim.

Examples—

a legal service, a medical service

71 Giving or receiving consideration for claim referrals

(1) A person (a ***payer***) must not give, agree to give or allow or cause someone else to give consideration to another person (a ***payee***) for a claim referral or potential claim referral.

Maximum penalty—300 penalty units.

(2) A person (also a ***payee***) must not receive, agree to receive or allow or cause someone else to receive consideration from another person (also a ***payer***) for a claim referral or potential claim referral.

Maximum penalty—300 penalty units.

(3) This section does not apply if—

(a) the payee is a law practice (the ***current practice***) that is selling all or part of the law practice's business to another law practice (the ***new practice***); and

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(b) the new practice gives, agrees to give or allows or causes someone else to give the current practice an amount for the referral of a claimant to the new practice; and

(c) the amount is not more than the current legal costs for the claimant; and

(d) the new practice discloses payment of the amount to the claimant in a costs agreement.

(4) In this section—

claimant includes a potential claimant.

consideration, for a claim referral or potential claim referral, see section 71A.

legal costs, for a claimant, means the fees and costs, including disbursements, a law practice is entitled to charge and recover from the claimant in relation to the claimant's claim or potential claim.

71A Meaning of *consideration* for s 71

(1) ***Consideration***, for a claim referral or potential claim referral, means a fee or other benefit given for the claim referral or potential claim referral but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of $200 or less.

(2) To remove any doubt, it is declared that ***consideration*** does not include—

(a) a payment or other benefit, not for a claim referral or potential claim referral, to—

(i) a community legal service; or

(ii) an industrial organisation; or

(iii) a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth); or

(iv) a school association; or

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(v) a sporting association; or

Example—

legal services provided pro bono by an associate of a law practice to a community legal service

(b) an amount given by a claimant for a service provided to the claimant as part of making a claim including, for example, an amount for legal costs.

(3) In this section—

school association means—

(a) an association under the *Education (General Provisions) Act 2006*; or

(b) for a non-State school under the *Education (Accreditation of Non-State Schools) Act 2017*—an association of parents and friends formed for the school.

sporting association means an association formed and operated on a not-for-profit basis for the purpose of conducting a sporting activity.

71B Approach or contact for the purpose of making a claim

(1) A person (the ***first person***) must not personally approach or contact another person (the ***second person***) and solicit or induce the second person to make a claim.

Maximum penalty—300 penalty units.

(2) For subsection (1), a person personally approaches or contacts another person if the person contacts the other person—

(a) whether in person or by mail, telephone, email or another form of electronic communication; and

(b) whether the other person is contacted individually or as a member of a class of persons.

(3) This section does not apply if—

(a) the first person—

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(i) does not expect or intend to receive, and does not receive, consideration because of the approach or contact; and

(ii) does not ask for someone else to receive, or agree to someone else receiving, consideration because of the approach or contact; or

(b) both of the following apply—

(i) the first person is a law practice or lawyer that is supplying, or has previously supplied, the second person, or a relative of the second person, with legal services;

(ii) the first person reasonably believes the second person will not object to the approach or contact; or

(c) the first person—

(i) is a law practice or lawyer that has been asked by a person on behalf of a community legal service or industrial organisation (a ***representative***) to approach or contact the second person; and

(ii) has been advised by the representative that the representative reasonably believes the second person will not object to the approach or contact.

(4) This section applies regardless of whether—

(a) the second person is entitled to make the claim; or

(b) the second person had already decided to make, or had made, the claim.

(5) In this section—

consideration means a fee or other benefit but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of $200 or less.

legal services means work done, or business transacted, in the ordinary course of legal practice.

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71C Responsibility for acts or omissions of representative

(1) This section applies to a proceeding for an offence against section 71(1) or (2) or 71B.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable precautions and proper diligence, have prevented the act or omission.

(4) To remove any doubt, it is declared that a representative for an individual includes an employee or agent of a partner of a partnership.

(5) In this section—

executive officer, of a corporation, means a person who is concerned with or takes part in its management, whether or not the person is a director or secretary or the person's position is given the name of executive officer.

representative means—

(a) for an individual—an employee or agent of the individual; or

(b) for a corporation—an executive officer, employee or agent of the corporation.

state of mind, of a person, includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

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(b) the person's reasons for the intention, opinion, belief or purpose.

71D Additional consequences for law practice

(1) This section applies if an associate of a law practice is convicted of an offence against section 61, 71(1) or (2) or 71B in relation to a claim or potential claim.

(2) The law practice is not entitled to recover any fees or costs, including disbursements, that relate to the provision of services for the claim and must repay any amount received relating to the services to the person from whom it was received.

71E Maximum amount of claim-related costs that may be charged and recovered

(1) This section applies if—

(a) a law practice has the conduct of a speculative personal injury claim; and

(b) the *Legal Profession Act 2007*, section 347 does not apply to the practice.

(2) The maximum amount of claim-related costs the law practice may charge and recover from a client for work done in relation to the claim can not be more than the amount worked out using the formula stated in the *Legal Profession Act 2007*, section 347(1).

(3) However, approval to charge and recover a greater amount may be applied for and approved in the way described in the *Legal Profession Act 2007*, section 347(2) to (4).

(4) This section applies to a barrister only if the barrister has not been retained by another law practice.

(5) This section applies despite anything to the contrary in the costs agreement that relates to the claim.

(6) In this section—

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claim-related costs see the *Legal Profession Act 2007*, section 347(8).

speculative personal injury claim see the *Legal Profession Act 2007*, section 346.

71F Extraterritorial application of part

(1) This part applies both within and outside Queensland.

(2) This part applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

Part 2A Requirement to report non-compliance with particular provisions

71G Reporting non-compliance

(1) This section applies in relation to—

(a) the supervising principal of a law practice retained by either of the following—

(i) the respondent to a claim;

(ii) the respondent's insurer; and

(b) the insurer for the respondent.

(2) If the supervising principal reasonably believes a person is contravening a law practice certificate requirement, the supervising principal must, within 14 days after forming the belief, or a longer period agreed by the commissioner, give the commissioner the information the principal has in relation to the contravention.

Note—

A supervising principal's failure to comply with this section may constitute unsatisfactory professional conduct or professional misconduct under the *Legal Profession Act 2007*, chapter 4.

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(3) The supervising principal is taken to have formed the reasonable belief under subsection (2) if an associate of the law practice knows or ought reasonably to have known that a person is contravening a law practice certificate requirement.

(4) If the insurer reasonably believes a person is contravening a law practice certificate requirement or section 71 or 71B, the insurer may give the commissioner the information the insurer has in relation to the contravention.

(5) This section applies both within and outside Queensland.

(6) This section applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

(7) In this section—

law practice certificate requirement means a requirement under the following sections—

(a) section 8C;

(b) section 8E;

(c) section 8F;

(d) section 9C;

(e) section 13A;

(f) section 61.

supervising principal, of a law practice acting for a respondent to a claim or the respondent's insurer, means the principal of the law practice who has primary responsibility for the conduct of the matter for the respondent or the respondent's insurer.

Part 3 Miscellaneous

72 Offences involving fraud

(1) A person must not in any way—

(a) defraud or attempt to defraud a respondent; or

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(b) deliberately mislead or attempt deliberately to mislead a respondent; or

(c) connive at conduct by another that contravenes paragraph (a) or (b).

Maximum penalty—400 penalty units or 18 months imprisonment.

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

73 False or misleading information or documents

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

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

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

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

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

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

(a) informs the respondent or contributor, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the respondent or contributor, if the person has, or can reasonably obtain, the correct information.

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

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

73A Proceeding

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

(a) the Attorney-General; or

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

(c) if the proceeding is for an offence against part 1 or a claim farming provision, the commissioner or a person authorised by the commissioner.

(2) A proceeding, other than a proceeding for an offence against a claim farming provision, must start—

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

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

(2A) A proceeding for an offence against a claim farming provision must start within the later of—

(a) 2 years after the commission of the offence; or

(b) 6 months after the commission of the offence comes to the knowledge of the complainant.

(3) A statement in a complaint that—

(a) the complainant is authorised by the Attorney-General to take the proceeding; or

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(b) the commission of the alleged offence came to the knowledge of the complainant on a particular date;

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

(4) Proof of an authorisation by the commissioner or Attorney-General under subsection (1)(b) or (c) is not required in a proceeding unless the defendant gives the entity responsible for prosecuting the proceeding a notice of intention to challenge the authorisation at least 10 business days before the hearing date.

(5) The notice must be in the form approved by the commissioner or Attorney-General.

(6) In this section—

claim farming provision means each of the following provisions—

(a) chapter 2, part 1, division 1AA;

(b) section 9B, 9C or 13A;

(c) chapter 2, part 4;

(d) chapter 3, part 2.

73B Disclosure of information for administering claim farming provisions

(1) This section applies if, in exercising a power or performing a function under a claim farming provision under this Act or the *Legal Profession Act 2007*, the commissioner obtains information.

(2) The commissioner may disclose the information to a relevant entity if the commissioner believes the information is relevant to—

(a) the administration by the relevant entity of a claim farming provision; or

(b) monitoring and identifying patterns or trends in conduct to which claim farming provisions apply.

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(3) The commissioner must have a written arrangement with the relevant entity providing for the way in which the commissioner, or staff of the commission under the *Legal Profession Act 2007* may, under subsection (2), disclose the information to the relevant entity and its officers.

(4) Information disclosed under this section must not be used for any purpose other than the administration of a claim farming provision.

(5) In this section—

claim farming provision means—

(a) each of the following provisions—

(i) chapter 2, part 1, division 1AA;

(ii) section 9B, 9C or 13A;

(iii) chapter 2, part 4;

(iv) chapter 3, parts 2 and 2A; and

(b) each of the following provisions of the *Motor Accident Insurance Act 1994*—

(i) part 4, division 2A;

(ii) sections 37AA, 37AB, 39A and 41A;

(iii) part 5AA; and

(c) the *Workers' Compensation and Rehabilitation Act 2003*, chapter 6B.

relevant entity means each of the following—

(a) the Motor Accident Insurance Commission established under the *Motor Accident Insurance Act 1994*, section 6;

(b) the Regulator established under the *Workers' Compensation and Rehabilitation Act 2003*, section 326.

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74 Approved forms

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

(2) The commissioner may approve forms in relation to law practice certificates for use under this Act.

75 Regulation-making power

The Governor in Council may make regulations under this Act.

75A Indexation of particular amounts

(1) The Minister must, before each financial year starts, make a notice for the financial year fixing—

(a) an amount as the declared costs limit; and

(b) an amount as the lower offer limit; and

(c) an amount as the upper offer limit.

(2) The amount fixed for a limit is to be the amount last fixed by the Minister for the limit adjusted by the percentage change in average weekly earnings between the current financial year and the last financial year and rounded to the nearest 10 dollars (rounding one-half upwards).

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

(a) the percentage change in average weekly earnings between the current financial year and the last financial year would reduce or would not change the amount fixed as the limit; or

(b) the percentage change in average weekly earnings between the current financial year and the last financial year is not available from the Australian Statistician.

(4) The Minister must fix an amount for the limit that is not less than the amount for the limit last fixed by the Minister.

(5) The Minister's notice is subordinate legislation.

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(6) Despite subsection (1), the Minister may make a notice for a financial year, after 1 July in the financial year, that has retrospective operation to 1 July in the financial year.

(7) Subsection (6) applies despite the *Statutory Instruments Act 1992*, section 34.

(8) In this section—

average weekly earnings, for a financial year, means the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings publication most recently published before the start of the financial year.

current financial year, for a notice, means the financial year immediately before the financial year for which the notice is made.

last financial year, for a notice, means the financial year immediately before the current financial year.

Chapter 4 Transitional provisions

Part 1 Transitional provisions for Act No. 24 of 2002 and jury trials

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

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

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

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

(4) This section is subject to section 19.

77 Jury trials

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

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

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

Part 2 Transitional provisions for Personal Injuries Proceedings Amendment Act 2002

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

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

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

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

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

(5) Subsections (2) and (3) are subject to section 19.

77B Costs and outlays incurred before 18 June 2002

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

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

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

(a) the award or payment of costs, other than an amount mentioned in subsection (2), is subject to this Act; and

(b) an amount mentioned in subsection (2) is to be disregarded for sections 40 and 56.

77C Written offers of settlement made before 1 July 2002

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

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

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

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

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

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(a) the period of limitation for a proceeding based on a claim for the personal injury ends during the period starting 18 June 2002 and ending at the end of 18 December 2003; and

(b) a proceeding based on the claim has not been started in a court, including in a court outside Queensland or Australia.

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

(a) if a complying notice of claim is given before 18 June 2003—before or on 18 June 2003; or

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

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

(4) This section does not limit section 43.

77DA Validity of s 77D proceedings

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

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

(a) for a proceeding started on or before 18 June 2003—a complying notice of claim was given before the proceedings were started; or

(b) for a proceeding started after 18 June 2003 but not later than the end of 18 December 2003—

(i) a complying notice of claim was given within 6 months before the proceeding was started; and

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

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

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

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

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

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

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

77E Stay of proceedings in particular cases

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

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

Part 3 Transitional provisions for Civil Liability Act 2003

78 Definitions for pt 3

In this part—

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commencement means the commencement of the provision in which the term is used.

pre-amended Act means this Act as in force before the commencement of the *Civil Liability Act 2003*, chapter 6, part 1.

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

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

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

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

(4) In this section—

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

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

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

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

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

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81 Particular provisions having continuing effect

The following provisions as in force immediately before the commencement of this section continue to have effect in relation to personal injury arising out of an incident happening before the day the *Civil Liability Act 2003* received assent as if that Act had not been enacted—

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

Part 4 Transitional provision for Justice and Other Legislation Amendment Act 2003

82 Time for lodging notice

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

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

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Part 5 Transitional provisions for Civil Liability (Dust Diseases) and Other Legislation Amendment Act 2005

83 Multiple pre-court procedures

(1) This section applies if, before the commencement of this section, a claimant started—

(a) pre-court procedures under chapter 2, part 1 in relation to an incident against a respondent; and

(b) recovery procedures under, or as permitted by, a relevant Workers' Compensation Act or a relevant Motor Accident Insurance Act in relation to the same incident and against the same respondent.

(2) The pre-court procedures against the respondent are stayed.

(3) A claimant is not entitled to start a proceeding in a court against the respondent only because the pre-court procedures are stayed under this section.

(4) A court may, on application by the claimant, lift the stay if the court is satisfied that—

(a) a claim under a relevant Workers' Compensation Act or a relevant Motor Accident Insurance Act in relation to the incident against the respondent has been incorrectly made; and

(b) completion of the pre-court procedures is necessary and appropriate to deal with the claim.

(5) Any liability for costs in relation to the pre-court procedures stayed under this section is taken to be a liability for costs in the recovery procedures unless the stay is lifted under subsection (4).

(6) In this section—

recovery procedures means—

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(a) procedures, other than proceedings, taken under a relevant Motor Accident Insurance Act or relevant Workers' Compensation Act to recover damages for personal injury; or

(b) proceedings to recover damages for personal injury.

relevant Motor Accident Insurance Act means—

(a) the *Motor Accident Insurance Act 1994*; or

(b) the *Motor Vehicles Insurance Act 1936*.

relevant Workers' Compensation Act means—

(a) the *Workers' Compensation and Rehabilitation Act 2003*; or

(b) the *WorkCover Queensland Act 1996*; or

(c) the *Workers' Compensation Act 1990*; or

(d) the *Workers' Compensation Act 1916*.

84 Continuing application of repealed s 51

(1) Section 51 (Damages for loss of earnings or earning capacity) as in force immediately before 9 April 2003 has no effect in relation to personal injury arising out of an incident happening before that day.

(2) Instead, the *Civil Liability Act 2003*, section 54 as in force on the commencement of this section has effect in relation to personal injury arising out of an incident happening before 9 April 2003.

(3) To remove any doubt, it is declared that subsections (1) and (2) do not apply in relation to an appeal against an award for damages for loss of earnings heard on or after the commencement of this section if the award was made before the commencement.

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Part 6 Transitional provision for Personal Injuries Proceedings (Legal Advertising) and Other Acts Amendment Act 2006

85 Provision for advertising of personal injury services and touting

(1) This section applies to an act or omission happening before the commencement of this section that contravened chapter 3, part 1 as in force before the commencement and had not been dealt with or finally dealt with at the commencement.

(2) The Legal Services Commissioner may, after the commencement—

(a) investigate, or continue the investigation of, the act or omission under the *Legal Profession Act 2007*; or

(b) bring proceedings in relation to the act or omission under this Act.

Part 7 Transitional provision for Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016

86 Time for lodging notice for existing claims

Section 9(9C) applies to a claim mentioned in the section arising before or after the commencement.

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Part 8 Transitional provision for Civil Liability and Other Legislation Amendment Act 2019

87 Time for lodging notice for existing claims

(1) Section 9(9C) and (10), as amended by the 2019 amendment, applies to a claim mentioned in the section arising before or after the commencement of the 2019 amendment.

(2) In this section—

2019 amendment means the *Civil Liability and Other Legislation Amendment Act 2019*, section 14.

Part 9 Transitional provision for Personal Injuries Proceedings and Other Legislation Amendment Act 2022

88 Requirements for law practice certificates apply to conduct on commencement

(1) This section applies if—

(a) before the commencement, a law practice was retained by a claimant to act in relation to the claimant's claim; and

(b) on the commencement, the claim has not been settled, decided by a court or otherwise concluded.

(2) Despite section 8B, a law practice certificate for the claim that the supervising principal of the law practice is required to complete and give to a person under section 8C, 8F, 9C, 13A or 61 must state the matters in section 8B(2), (3) and (4) only in relation to conduct after the commencement.

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(3) Section 8F applies to a referral of a client to a new practice as mentioned in section 8F(1)(b) made after the commencement, even if the agreement for the sale of the current practice was entered into before the commencement.

Part 10 Transitional provisions for Justice and Other Legislation Amendment Act 2023

89 Definition for part

In this part—

new section 75A means section 75A as in force from the commencement.

90 First notice made by Minister

(1) This section applies in relation to the first notice made by the Minister under new section 75A.

(2) For new section 75A(2) and (4), a reference to the amount last fixed by the Minister is taken to be a reference to the amount last prescribed by regulation for the limit.

91 Existing prescribed limits for particular definitions

(1) This section applies in relation to each amount that, immediately before the commencement, was prescribed by regulation as the declared costs limit, the lower offer limit or the upper offer limit for a period.

(2) The amount continues to have effect as if it had been fixed under new section 75A.

(3) The Minister may, for information only, include the amount in the notice made by the Minister under new section 75A.

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Schedule 1 Dictionary

section 8

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

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

approved, for chapter 3, part 1, see section 63.

approved form see section 74.

associate, of a law practice, see the *Legal Profession Act 2007*, section 7(1).

Australian legal practitioner see the *Legal Profession Act 2007*, schedule 2.

award, of damages, includes—

(a) a payment of damages, whether or not liability is admitted; and

(b) an ex gratia payment of monetary compensation.

child means an individual who is under 18.

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

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

claim referral see section 70.

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

commissioner means the Legal Services Commissioner established under the *Legal Profession Act 2007*, section 583.

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community legal service see the *Legal Profession Act 2007*, schedule 2.

complying part 1 notice of claim means part 1 of a notice of a claim complying with section 9 and, if a respondent is added under section 14, section 14 that is given as required under chapter 2, part 1, division 1.

compulsory conference see section 36(1).

contribution notice means a contribution notice under section 16.

contributor means a person added as a contributor under section 16.

convicted, for chapter 3, part 1, see section 63.

costs—

(a) when used in reference to legal costs, includes disbursements, whether or not a person has legal representation; and

(b) when used in reference to the costs of a respondent on a claim, includes—

(i) the amount paid out by the respondent on the claim to the claimant or for the claimant's benefit, including—

(A) the cost to the respondent of providing rehabilitation services in connection with the claim; and

(B) the cost to the respondent of paying private hospital, medical and pharmaceutical expenses in connection with the claim; and

(ii) the cost to the respondent of investigating the claim and of litigation related to the claim, but not the respondent's general administration costs.

court, in relation to a claim, means—

(a) if a proceeding based on the claim has been started—the court hearing the proceeding; or

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

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

damages includes any form of monetary compensation.

declared costs limit means the amount fixed by the Minister under section 75A as the declared costs limit.

dust-related condition means—

(a) any of the following diseases—

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

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

employment, for chapter 3, part 1, see section 63.

fee, for chapter 3, part 1, see section 63.

hospital, for chapter 3, part 1, see section 63.

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

incorporated legal practice, for chapter 3, part 1, see section 63.

industrial organisation means a federal organisation, or an organisation, under the *Industrial Relations Act 2016*, schedule 5.

injured person means a person who suffers personal injury.

insured includes indemnified.

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

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

law firm, for chapter 3, part 1, see section 63.

law practice see the *Legal Profession Act 2007*, schedule 2.

law practice certificate see section 8B.

legal practitioner director, for chapter 3, part 1, see section 63.

legal practitioner partner, for chapter 3, part 1, see section 63.

lower offer limit means the amount fixed by the Minister under section 75A as the lower offer limit.

mandatory final offer see section 39(6).

member, for chapter 3, part 1, see section 63.

misconduct, for chapter 3, part 1, see section 63.

multi-disciplinary partnership, for chapter 3, part 1, see section 63.

party means claimant, respondent or contributor.

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

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personal injury includes—

(a) fatal injury; and

(b) prenatal injury; and

(c) psychological or psychiatric injury; and

(d) disease.

possession includes control.

potential claimant means—

(a) a person who suffers, or may suffer, personal injury arising out of an incident; or

(b) another person who has or may have a claim in relation to a person mentioned in paragraph (a).

practitioner means an Australian legal practitioner.

principal, of a law practice, see the *Legal Profession Act 2007*, section 7(4).

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

professional misconduct see the *Legal Profession Act 2007*, schedule 2.

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

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

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

(a) to restore, as far as reasonably possible, physical or mental functions lost or impaired through personal injury; and

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

respondent means a person who—

(a) is a respondent under section 12(1); or

(b) is added as a respondent under section 14.

sole practitioner, for chapter 3, part 1, see section 63.

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supervising principal, of a law practice in relation to a claim means—

(a) the principal of the law practice who has the primary responsibility for the conduct of the claim; or

(b) if section 8D applies in relation to a law practice certificate for the claim—the person who completes the certificate under that section.

upper offer limit means the amount fixed by the Minister under section 75A as the upper offer limit.

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