

Pre court procedures are governed by the *Personal Injuries Proceedings Act 2002 (Qld)* (PIPA) which dictate when parties to a personal injuries claim must take certain steps. Relevant timeframes include the following:

- **Section 9(3):** Service of Part 1 Notice of Claim by Claimant to be served the earlier of 9 months after the day of the incident or symptoms of the injury become apparent OR 1 month after the claimant appoints a solicitor.
- **Section 9(3A):** Service of Part 2 Notice of Claim by Claimant to occur within 2 months after the earlier of Part 2 Notice of Claim being compliant OR the Notice of Claim is presumed to be compliant.
- **Section 10:** Respondent gives notice as to whether correct respondent has been served within 1 month of service of Notice of Claim.
- **Section 12:** Respondent gives notice as to whether the Notice of Claim complies within 1 month of service of Part 1 Notice of Claim OR within 1 month of receiving a response to the section 10 notice.
- **Section 16:** Any contribution / indemnity notice from the respondent to be served by the later of 3 months of receipt of complying Part 1 Notice of Claim OR 7 days after the respondent identifies someone else as a contributor.
- **Section 17:** Contributors response to be served within 1 month after receiving contribution notice.
- **Section 20:** Admission or denial of liability notice to be served within 6 months after respondent receives a complying Part 1 Notice of Claim.
- **Section 22:** Request for documentation and information from claimant. The claimant must respond within 1 month after receiving the request.
- **Section 27-28:** Respondent's disclosure of documents and information to the claimant and contributor within 1 month of receiving a complying Part 1 Notice of Claim and ongoing duty to disclose documents. The respondent must respond to a request for disclosure by the claimant within 1 month after receiving the request.
- **Section 36:** Any party may call Compulsory Conference at a time and place agreed. Compulsory Conference documents to be served at least 7 days before the compulsory conference is held (s 37).
- **Section 39:** Mandatory Final Offers must be made if settlement is not reached at Compulsory Conference OR if conference dispensed with, within 14 days of agreeing to dispense with the Conference.
- **Section 42:** Litigated proceedings under the Uniform Civil Procedure Rules 1999 (UCPR) should be started within 60 days of conclusion of Compulsory Conference OR if a Conference is dispensed with, within 60 days of later of:
 - The day 6 months after the claimant last gives a respondent a complying Part 1 Notice of Claim; or
 - The date of the agreement.

The **Civil Liability Act 2003 (Qld) (CLA)** applies to civil claims for damages subject to the following exclusions:

- Personal injury claims to which the *Motor Accident Insurance Act 1994 (Qld)* applies; and
- Claims within the Queensland's workers compensation legislation.

The CLA deals with the substance of civil claims and damages to be awarded as distinct from the PIPA which deals with the pre-court procedures when making claims. Key provisions of the CLA are as follows:

- **Sections 9-10 Scope of Duty of Care:** Includes the standard of care that is applicable, when the duty of care has been breached and relevant factors the court must take into consideration.
- **Section 11-12 Causation:** For a finding of causation there must initially be factual causation (the belief that negligence was a necessary condition of the harm) and subsequently, a finding that the harm comes within the scope of the negligent person's liability.
- **Sections 13-16 Obvious Risk:** There is no proactive duty to warn another of an obvious risk.
- **Section 17-19 Dangerous Recreational Activities:** There is no liability in negligence for harm resulting from an obvious risk of a dangerous recreational activity.
- **Sections 20-22 Liability of Professionals:** The standard of care owed by professionals; a professional will not have breached a duty arising from the provision of a professional service if the professional acted in a way that was widely accepted by peer professional opinion as competent professional practice.
- **Sections 23-24 Contributory Negligence:** Outlines principals that apply in determining whether a person has breached a duty of care, and whether a person who suffered the harm has been contributory negligent.
- **Sections 28-33 Proportionate Liability:** In a proceeding involving an apportionable claim, the liability of a defendant is limited to an amount reflecting the proportion of the loss and damage claim having regard to the extent of their responsibility for the loss and damage.
- **Section 34-37 Liability of Public Authorities:** Outlines the general principles to be used in determining liability and provides a public policy defence. A 'public authority' is:
 - The Crown (within the meaning of the *Crown Proceedings Act 1980*);
 - A local government; or
 - Any public authority constituted under an Act.
- **Sections 38-44 Liability of volunteers and Good Samaritans:** Provides an exemption of liability for volunteers who perform community work for a community organisation.
- **Sections 46-49 Intoxication and illegal activity:** Outlines the effect that a claimant's intoxication will have on the duty and standard of care owed.
- **Sections 53-62 Damages:** Regulates awards for general damages, economic loss, gratuitous care, interest, discount rate and exemplary, punitive or aggravated damages.
- **Sections 68-73 Apology:** Expressions of regret that do not admit liability are not admissible if it was made prior to the commencement of the proceedings.

Interaction between the PIPA and the CLA:

- The CLA and PIPA operate concurrently for the regulation of personal injury claims in Queensland, subject to the exclusions outlined above.
- PIPA regulates the procedural conduct of the claim whilst the CLA overlays the procedural regime for the assessment of the substantive liability and quantum issues.
- The PIPA regime regulates the procedural conduct of the claim until such time as litigated proceedings commence under the Uniform Civil Procedure Rules 1999 (Qld), at which stage, the PIPA proceedings are largely disregarded. Thereafter, the CLA will continue to apply to the substance of the claim and assist the Court when determining liability and quantum issue.

The material contained in this publication is in the nature of general comment only, and neither purports nor is intended, to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering and, if necessary, taking appropriate professional advice upon his or her own particular circumstances.

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