

Section 73 of the *Personal Injuries Proceedings Act 2002* (Qld) - The most underutilised section in personal injuries legislation in Queensland?

The legislation

Section 73 of the *Personal Injuries Proceedings Act 2002* (Qld) ("PIPA") relates to false or misleading information given by a claimant to a respondent or contributor. It applies to both statements and documents given by a claimant (ss 73(2), (3)) where the person knows it is false or misleading in a "material particular".

An example of this would be where a claimant, in answering the questions set out in the Part 1 Notice of Claim, has denied a history of previous injury that would affect their claim for damages or fails to disclose a previous claim for damages.

A breach therefore would usually arise at the beginning of a claim when the claimant serves their Part 1 or 2 Notice of Claim.

A respondent or contributor who receives false or misleading information is under no obligation to bring it to that person's (or presumably their solicitor's) attention, if to do so would alert that person to the suspicion of fraud.

Procedure for making a complaint – what needs to be given

When making a complaint under Section 73, it is enough for the complaint to merely state the information was false or misleading without specifying which.

Section 73A states a proceeding under this section of the PIPA is to be taken in the summary way under the *Justices Act 1886* before a magistrate on the complaint of the Attorney General or a person authorised by the Attorney General to take the proceeding.

Currently, there are no written guidelines available from the Justice Department as to the information that needs to be given in such circumstances.

Practitioners are advised to provide written submissions outlining the false or misleading information given by a claimant. The

submissions should be as detailed as possible and contain information as to any steps taken by a claimant to remedy the provision of untruthful or misleading information.

The written submissions should also be very clear in providing the date of any alleged offence as this has importance with respect to filing an application.

The complainant

It is open to the Attorney General to authorise another person to file the complaint.

This however, might cause difficulties where a PIPA claim is ongoing and there is the risk of filing a complaint under section 73 being perceived as an abuse of process if it is made by the respondent.

However, PIPA stipulates timeframes which would make it almost impossible to delay making such a complaint until the PIPA claim has been finalised (or proceedings commenced).

Therefore, the safest and perhaps most equitable course is for the Attorney General's department to file the complaint.

Timeframe for filing an application

The proceeding (i.e. the filing of the application, not the referral to the Attorney General's department) must start within:

- one year of the commission of the offence (e.g. signing the Part 1 Notice of Claim which contained false or misleading information); or
- within six months after the commission of the offence comes to the knowledge of the complainant, but not later than two years after the commission of the offence.

Accordingly, under the second limb, presuming that the Attorney General (or a member of their staff) will be the named complainant, an application must be filed within six months of the referral being made to the department.

Penalties

PIPA imposes a penalty of 150 penalty units (currently equivalent to \$25,500.00) or one year's imprisonment.

Underutilised?

Consideration is currently being given to the first application under section 73A.

The purpose of the disclosure provisions under the legislation is to put both parties in a position where they have all of the relevant information relating not only to the incident that caused loss itself, but also to the quantum position of the claimant.

Where for example, a claimant fails to provide information in relation to a previous claim for damages (whether successful or not) or fails to disclose that they were in receipt of a disability support pension at the time of an incident, the respondent is immediately at a disadvantage and it is most likely they will incur additional costs in obtaining that information (e.g. obtaining medical records from another State or Territory). It can also significantly alter the way the respondent would have handled the claim had they had that information.

In situations where information has not been disclosed in a Part 1 or 2 Notice of Claim or where it is untruthful, it is not uncommon for the legal representatives of claimants to say that their client was unaware of the disclosure obligations or it was the solicitor's own fault for the omission of information.

However, claimants are required to sign a statutory declaration at the bottom of each part of the Notice of Claim. Their attention is drawn to bold font which sets out the penalty provisions if they provide false or misleading information.

It is therefore unacceptable for claimants to wholly apportion blame to their legal representative where information has not been disclosed or it is incorrect, and legal representatives should be careful to ensure that they are properly counselling their clients to provide up-front disclosure of all relevant information and documents.

If this does not occur, section 73 of the PIPA can be of assistance and it could be of great use to

defendant solicitors or respondents in general. If section 73 applications were more common, it may ensure that claimants give all of the relevant information to respondents when making a claim for personal injuries and that they cannot simply pick and choose which parts of their history they would like to leave out. The penalties, if they fail to adhere to their disclosure obligations, should serve as a deterrent.

Recent experience

Carter Newell is currently involved in an ongoing matter where a complaint was made to the Attorney General's department regarding the failure to disclose and the provision of misleading information by a claimant.

After a thorough investigation of the allegations, the Attorney General's department filed a complaint. Crown Law will be appearing on behalf of the Attorney General at a preliminary hearing of this matter in North Queensland in May 2013.

From enquiries with the Justice Department, Carter Newell understands this is the first application under section 73 of the PIPA since the inception of the legislation 10 years ago.

If an application under section 73A is successful, it should serve to remind claimants that they must pursue their claims with complete honesty in respect of disclosure to respondents or penalties will apply.

Further information about the success of this application and the effect for respondents will be provided once the application has been heard.

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