NORTHERN TERRITORY OF AUSTRALIA

PERSONAL INJURIES (CIVIL CLAIMS) ACT

As in force as at 1 May 2016
Provisions not in force are marked as not commenced

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NORTHERN TERRITORY OF AUSTRALIA

As in force as at 1 May 2016
Provisions not in force are marked as not commenced.

PERSONAL INJURIES (CIVIL CLAIMS) ACT

An Act to provide for the economical and early resolution of claims for damages for personal injuries before proceedings are commenced, to authorise the making of rules to regulate the procedures to be followed in relation to those claims and provide for the commencement of proceedings in respect of unresolved claims, to limit legal costs payable in relation to those claims and proceedings, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Personal Injuries (Civil Claims) Act*.

2 Commencement

The provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3 Objectives

(1) The objectives of this Act are to improve the efficiency of processes for the resolution of claims for damages for personal injuries and to assist the affordability of those claims.

(2) The objectives of this Act are to be achieved generally by:

(a) providing for the resolution of claims before a proceeding is commenced in a court;

(b) promoting settlement of claims, if possible, at an early stage of the processes for resolution of claims;

(c) providing that a person is not entitled to commence a proceeding in respect of a claim without being fully prepared for resolution of the claim by settlement or trial;

(d) minimising the costs in relation to the making of claims;

(e) fixing appropriate awards of legal costs; and

(f) authorising the making of rules to provide for efficiency and equity in the resolution of claims and to regulate the commencement of proceedings in respect of unresolved claims.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

applicable scale of costs, in relation to a proceeding, means the scale of costs applicable to the proceeding in the court in which the proceeding is conducted.

claim means a claim for damages.

claimant means a person making a claim and includes a person making a claim on behalf of a person under a disability.

contributor, in relation to a claim, means a person from whom the respondent claims an indemnity or a contribution in respect of the respondent's liability.

costs:

(a) in relation to legal costs, includes disbursements, whether or not a party has legal representation; and

(b) in relation to the costs incurred by a respondent in respect of a claim, includes:

(i) the amount paid by the respondent to the injured person or for the injured person's benefit, including the costs of providing rehabilitation services and paying private hospital, medical and pharmaceutical expenses; and

(ii) the costs of investigating the claim and of litigation related to the claim, but not the respondent's general administration costs.

court:

(a) in relation to a claim in respect of which no proceeding has been commenced, means the court with jurisdiction to hear the claim; and

(b) in relation to a claim in respect of which a proceeding has been commenced, means the court in which the proceeding is conducted.

damages means damages for a personal injury.

disabled person means a person who, by reason of age, disease, illness or mental or physical infirmity, is incapable of managing his or her affairs in respect of legal proceedings.

final offer means a final offer made under section 11.

hospital report means a statement in writing concerning an injured person made by or on behalf of a hospital, rehabilitation centre or other medical institution.

incident, in relation to a personal injury, means the incident, accident, circumstance, act or omission alleged to have caused the injury.

limitation period, in relation to a claim, means the limitation period that would, but for this Act, apply under the *Limitation Act* to the commencement of a proceeding in respect of that claim.

medical expert means a person lawfully practising in a branch of medicine, psychology, psychiatry, dentistry, pharmacology, occupational therapy, physiotherapy, rehabilitation, ergonomics or related field.

medical report means a statement in writing by a medical expert concerning an injured person and includes a document that the medical expert intends should be read with the statement, whether the document was in existence at the time the statement was made or was a document that he or she obtained or caused to be brought into existence subsequently.

notice of claim means a notice given under section 8.

person under a disability means an infant, a disabled person or a convicted person who, after conviction, is undergoing a sentence of imprisonment.

personal injury includes:

(a) a fatal injury;

(b) a prenatal injury;

(c) a psychological or psychiatric injury;

(d) a disease; and

(e) the aggravation, exacerbation or acceleration of a pre-existing injury or condition.

proceeding means a proceeding in respect of a claim.

rehabilitation includes the use of medical, psychological, physical, social, educational or vocational measures:

(a) to restore, as far as is reasonably possible, physical or mental functions lost or impaired as a result of a personal injury; or

(b) to optimise, as far as is reasonably possible, the quality of life of a person who suffers the loss or impairment of physical or mental functions as a result of a personal injury.

resolution conference means a conference referred to in section 11.

respondent, in relation to a claim or proceeding, means the person from whom the claimant seeks damages.

Rules means rules made under Part 2, Division 3.

structured settlement has the same meaning as in Part 4, Division 6 of the *Personal Injuries (Liabilities and Damages) Act*.

(2) Subject to a contrary intention, a reference in this Act to a respondent is, in relation to a claim or proceeding in which there is more than one respondent, a reference to each respondent.

5 Application of Act *[not commenced]*

(1) Subject to this section, this Act applies in relation to a claim for damages for a personal injury that occurs on or after the commencement day.

(2) Subject to this section, this Act applies in relation to a claim for damages for a personal injury:

(a) that occurred before the commencement day;

(b) in respect of which no proceeding has been commenced; and

(c) in respect of which the limitation period has not expired.

(3) This Act applies in relation to a claim referred to in subsection (2) as if the period within which a notice of claim is to be given under section 8(1) were 12 months after the commencement day.

(4) The following claims are excluded from the application of this Act:

(a) a claim for damages for a personal injury in respect of which a proceeding has been commenced before the commencement day;

(b) a claim for damages for a personal injury in respect of which no proceeding has been commenced and the limitation period expired before the commencement day;

(c) a claim for damages for a personal injury if the injured person is under 18 years of age at the expiry of the period within which section 8(1) requires the person's notice of claim to be given, whether or not by virtue of subsection (3);

(d) a claim for benefits, or a claim or an action for damages, under the *Motor Accidents (Compensation) Act*;

(e) a claim for compensation as defined in the *Return to Work Act*;

(f) a claim for damages for a personal injury that is a dust-related condition.

(5) The Regulations may specify claims for damages (however described) that are excluded from the application of this Act or a provision of this Act.

(6) For the purposes of this section, a personal injury occurs:

(a) when the incident in relation to the personal injury occurs; or

(b) if symptoms of the personal injury are not immediately apparent on the occurrence of the incident – when the symptoms first appear.

(7) In this section:

commencement day means the day on which section 8 comes into operation.

dust-related condition means:

(a) aluminosis, asbestosis, asbestos induced carcinoma, asbestos related pleural disease, bagassosis, berylliosis, byssinosis, coal dust pneumoconiosis, farmer's lung, hard metal pneumoconiosis, mesothelioma, silicosis, silico-tuberculosis or talcosis; or

(b) any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust.

6 Act binds Crown

This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 2 Claims

Division 1 Obligations of parties

7 No commencement of proceeding unless claim made etc. *[not commenced]*

(1) Subject to subsection (2), a person seeking damages for a personal injury is not entitled to commence a proceeding to claim damages unless he or she has complied with the obligations imposed by or under this Part.

(2) The court may, in accordance with the Rules, give a person seeking damages for a personal injury leave to commence a proceeding in respect of that claim if the court is satisfied there is an urgent need to commence the proceeding.

8 Claimant to give notice of claim *[not commenced]*

(1) A claimant must give written notice of his or her claim to the respondent:

(a) within 12 months after the day when the incident in relation to the personal injury occurred; or

(b) if symptoms of the personal injury are not immediately apparent on the occurrence of the incident – within 12 months after the day on which the symptoms first appear.

(2) A notice of claim is to be in the form prescribed by the Rules and is to be accompanied by the documents (if any) specified by the Rules.

(3) A claimant may give a notice of claim after the expiry of the period referred to in subsection (1) only if:

(a) the claimant has a reasonable reason for the delay and gives that reason in the notice of claim; or

(b) the Court grants the claimant leave to do so.

(4) For the purposes of (but without limiting) subsection (3)(a), the claimant is taken to have a reasonable reason for delay in giving a notice of claim if he or she:

(a) has made a complaint about the respondent under the *Health and Community Services Complaints Act* before the expiry of the period within which he or she is required to give notice under subsection (1); and

(b) gives a notice of claim to the respondent as soon as practicable after the complaint has been dealt with under the *Health and Community Services Complaints Act*.

(5) An action to claim damages for a personal injury to which section 12(1)(b) of the *Limitation Act* applies is maintainable after the expiry of the limitation period, despite no proceeding having been commenced, if a notice of claim has been given within the period referred to in subsection (1) or as extended in accordance with the Rules.

9 Respondent must respond to claim *[not commenced]*

(1) A respondent given a notice of claim must give the claimant a notice of response in the form and within the period prescribed by the Rules.

(2) A notice of response is to be accompanied by the documents (if any) specified by the Rules.

(3) For the purposes of subsection (1), the period prescribed by the Rules includes an extension of that period granted by the court on application by the respondent.

(4) A statement in a response under subsection (1) to the effect that the person responding to the claim has been properly identified as the respondent is not an admission of the person's liability in respect of the claim.

10 Parties to provide all relevant information *[not commenced]*

(1) A party to a claim must provide to each other party all the information and documents that will enable the other party to identify any other potential party, assess liability and assess the amount of damages that may be payable in respect of the claim.

(2) Unless the court orders otherwise, a party must not withhold information or documents from disclosure required by the Rules.

(3) If a party to a claim fails to comply with a provision of the Rules requiring the party to give a document to another party, the defaulting party is not entitled to use the document in a subsequent court proceeding in respect of the claim unless the court orders otherwise.

(4) If a document referred to in subsection (3) comes to the other party's knowledge, the other party may use the document in a subsequent proceeding in respect of the claim.

11 Resolution conference and final offers *[not commenced]*

(1) The parties to an unresolved claim must hold a resolution conference before a proceeding is commenced unless the court dispenses with the requirement.

(2) The resolution conference:

(a) is to be held after the procedures specified by the Rules have been completed; and

(b) is to be attended by the parties or other persons in accordance with the Rules.

(3) If the claim is not resolved at the resolution conference, the parties must exchange written final offers at the conference or within the time prescribed by the Rules.

(4) If the court dispenses with the requirement for a resolution conference, the parties must exchange written final offers within the time specified by the court.

(5) A final offer is to remain open for 14 days and if the parties fail to resolve the claim within that period each party must lodge at the court a copy of that party's final offer enclosed in a sealed envelope.

Division 2 Structured settlements

12 Court may make order for structured settlement

(1) The parties to a claim may resolve the claim by consenting to an order for a structured settlement.

(2) On application by the parties to the claim, the court may make an order for a structured settlement as if a proceeding in respect of that claim had been commenced in the court.

Division 3 Rules

13 Power to make Rules

(1) The Judges of the Supreme Court, or a majority of those Judges, may make rules for regulating and prescribing the following matters:

(a) the rights and obligation of the parties to a claim;

(b) the procedures to be followed by the parties to a claim before a proceeding is commenced;

(c) the practice and procedures to be followed in the Supreme Court in relation to a claim before a proceeding is commenced;

(d) the procedure for commencing a proceeding in the Supreme Court if a claim is not resolved under this Part;

(e) all matters incidental to or necessary or convenient to be prescribed in relation to the rights, obligations, practice and procedures referred to in paragraphs (a), (b), (c) and (d).

(2) Rules may be made under section 48 of the *Local Court Act* for regulating and prescribing the following matters:

(a) the practice and procedures to be followed in the Local Court in relation to a claim before a proceeding is commenced;

(b) the procedure for commencing a proceeding in the Local Court if a claim is not resolved under this Part;

(c) all matters incidental to or necessary or convenient to be prescribed in relation to the practice and procedures referred to in paragraphs (a) and (b).

(3) The Rules:

(a) are to be made in accordance with any processes and consultative requirements specified by the Regulations; and

(b) are to be consistent with this Act and the Regulations, promote the objects of this Act, and ensure that parties to a claim have sufficient information to assess liability and the amount of damages that may be payable to the claimant.

(4) The following rules apply in relation to a claim regardless of the court that has jurisdiction to determine the claim if a proceeding is commenced:

(a) a rule made under subsection (1)(a) or (b);

(b) a rule prescribing matters incidental to or necessary or convenient to be prescribed in relation to a rule referred to in paragraph (a).

(5) The following rules may (but need not) be included in the *Supreme Court Rules*:

(a) a rule made under subsection (1)(c) or (d);

(b) a rule prescribing matters incidental to or necessary or convenient to be prescribed in relation to a rule referred to in paragraph (a).

(7) In this section:

Judges of the Supreme Court means Judges who are not acting or additional Judges of the Supreme Court.

14 Subject matter of Rules

(1) Without limiting section 13, the Rules may provide for any of the following matters:

(a) the matters required or permitted by this Act to be provided for in the Rules;

(b) procedures relating to the making of applications to the court during the processes for resolving a claim;

(c) the authorisation of persons to have access to documents relevant to a claim;

(d) procedures relating to the giving of a notice of claim and a notice of response;

(e) the matters the court must consider before granting an extension of the period in which the claimant may give a notice of claim;

(f) the manner in which the person given a notice of claim may challenge his or her identification as the respondent;

(g) procedures relating to the resolution of questions or disagreements about the identification of the respondent;

(h) the reasonable steps to be take by the respondent to resolve the claim as quickly as possible;

(i) the referral of the parties to information sessions or mediation;

(j) the adding of other respondents by the claimant and the adding of contributors by the respondent;

(k) the appointment of a person to manage the claim if there are 2 or more respondents;

(l) the manner in which procedures are to apply in relation to a person under a disability;

(m) the documents and information a party is required to give to another party and the time in which the documents and information are to be given;

(n) procedures relating to the making of offers and counter-offers and the documents (if any) that are to accompany those offers;

(o) procedures relating to offers of contribution towards the settlement of the claim;

(p) the requirement for the claimant to undergo an examination or assessment for the purpose of obtaining a hospital report or medical report;

(q) procedures to be followed before and during a resolution conference, which may include procedures relating to the exchange of specified material, the attendance and payment (if any) of a mediator, the provision by each party of a certificate indicating the party's readiness for trial if the claim is not resolved, the provision by each party of a statement of the party's actual costs incurred to the date of the conference and future estimated costs if the claim is not resolved at the conference, and any other relevant matter;

(r) the circumstances in which the court may dispense with the requirement for a resolution conference;

(s) matters relevant to an order, application or award referred to in section 16 or 17;

(t) costs payable under section 16 or 17, including by reference to a specified scale of costs or lump sum payment;

(u) matters relevant to the making of an order for a structured settlement;

(v) procedures relating to the commencement of proceedings, including the commencement referred to in section 7(2);

(w) procedures relating to the lodgment of copies of final offers at the court.

(2) The Rules may require a party to lodge at the court, free of charge, a copy of a notice of claim, a notice of response or any other document the party provides under this Act to another person or party.

Division 4 Miscellaneous

15 Privilege

(1) Section 12(2) of the *Evidence Act* does not apply in relation to a claim.

(2) Subject to subsection (3), client legal privilege does not apply to a medical report, hospital report or other medical document that relates to a claim.

(3) Unless the court orders otherwise, a party who is required by the Rules to give another party a copy of a hospital report or medical report may exclude from that copy an expression of opinion in the original report on the question of liability.

(4) Other information, reports and documents given or disclosed in accordance with the Rules are protected by the same privileges as if given or disclosed in a proceeding in the Supreme Court.

16 Court's power to enforce compliance etc. *[not commenced]*

(1) If a party to a claim fails to comply with an obligation imposed on the party by or under this Part, the court may order the defaulting party to take specified action to remedy the default within the period specified by the court.

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

(3) The court may, in accordance with the Rules, order that a claim is dismissed or struck out or that a response to a claim is struck out:

(a) if the defaulting party fails to comply with an order under subsection (1) or (2); or

(b) in other circumstances specified by the Rules.

17 Costs consequences of non-compliance *[not commenced]*

(1) If a claimant does not comply with a requirement imposed on the claimant by or under this Part, the court:

(a) may, on application by the respondent, 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 in which the claimant was in default if the court is satisfied there is a reasonable excuse for the default.

(2) If a respondent does not comply with a requirement imposed on the respondent by or under this Part, the court may, on application by the claimant, award in the claimant's favour costs (including legal and investigation costs) reasonably incurred by the claimant because of the respondent's default.

18 Costs in relation to resolved claim *[not commenced]*

(1) Where a claim is resolved at the resolution conference or during the period the final offers remain open:

(a) if the damages to be paid are less than the prescribed minimum amount referred to in section 20 – no costs are payable; or

(b) if the damages to be paid are equal to or more than the prescribed minimum amount referred to in section 20 – costs are payable in accordance with the Regulations.

(2) For the purposes of subsection (1)(b), the Regulations may provide for:

(a) the payment of a fixed sum of costs in respect of specified matters;

(b) the payment of costs by reference to the prescribed minimum amount and the prescribed maximum amount referred to in section 20; or

(c) the payment of costs by a combination of the methods referred to in paragraphs (a) and (b).

(3) Subsection (1) does not affect the obligation of a party to pay costs in accordance with an order of the court under section 16 or 17.

Part 3 Proceedings

19 No summary judgment on basis of admissions *[not commenced]*

(1) The court must not give summary judgment in a proceeding on the basis of a respondent's admissions in relation to the claim.

(2) This section does not prevent the court from giving summary judgment in a proceeding by consent of the parties or as permitted by the Rules.

20 Costs order after damages awarded *[not commenced]*

(1) If a court awards damages in a proceeding commenced after the parties have failed to resolve the claim under Part 2, an order for costs is to be in accordance with this section.

(2) In relation to an award of damages that is less than the minimum amount prescribed by the Regulations, the following provisions apply:

(a) if the damages are less than the claimant's final offer and more than the respondent's final offer – no costs are payable;

(b) if the damages are less than the claimant's final offer and equal to or less than the respondent's final offer:

(i) no costs are payable in respect of the period up to the date of the respondent's final offer; and

(ii) the claimant must pay the respondent's costs, fixed at 25% of the applicable scale of costs, from the date of the respondent's final offer;

(c) if the damages are equal to or more than the claimant's final offer and more than the respondent's final offer – the respondent must pay the claimant's costs fixed at 25% of the applicable scale of costs.

(3) In relation to an award of damages that is equal to or more than the minimum amount prescribed by the Regulations and less than the maximum amount prescribed by the Regulations, the following provisions apply:

(a) if the damages are less than the claimant's final offer and more than the respondent's final offer – the respondent must pay the claimant's costs fixed at 25% of the applicable scale of costs;

(b) if the damages are less than the claimant's final offer and equal to or less than the respondent's final offer:

(i) no costs are payable in respect of the period up to the date of the respondent's final offer; and

(ii) the claimant must pay the respondent's costs, fixed at 50% of the applicable scale of costs, from the date of the respondent's final offer;

(c) if the damages are equal to or more than the claimant's final offer and more than the respondent's final offer – the respondent must pay the claimant's costs fixed at 50% of the applicable scale of costs.

(4) In relation to an award of damages that is equal to or more than the maximum amount prescribed by the Regulations, the following provisions apply:

(a) if the damages are less than the claimant's final offer and more than the respondent's final offer – the respondent must pay the claimant's costs fixed at 50% of the applicable scale of costs;

(b) if the damages are less than the claimant's final offer and equal to or less than the respondent's final offer:

(i) no costs are payable in respect of the period up to the date of the respondent's final offer; and

(ii) the claimant must pay the respondent's costs, fixed at 100% of the applicable scale of costs, from the date of the respondent's final offer;

(c) if the damages are equal to or more than the claimant's final offer and more than the respondent's final offer – the respondent must pay the claimant's costs fixed at 100% of the applicable scale of costs.

(5) If the court is satisfied that a party introduced unnecessarily repetitive evidence in the proceeding, no costs are payable in relation to that evidence.

(6) Unless an award of damages is affected by factors that were not reasonably foreseeable at the exchange of final offers, costs are not payable to a party in relation to investigations or the gathering of evidence by that party after the exchange of final offers.

(7) If an award of damages is affected by factors that were not reasonably foreseeable by a party at the time the party made the final offer, the court may, if satisfied it is just to do so, make an order for costs in accordance with subsection (2), (3) or (4) as if a reference to a final offer is a reference to a later offer made in the light of the factors that became apparent after the parties completed the exchange of final offers.

(8) This section does not affect the obligation of a party to pay costs in accordance with an order of the court made as a consequence of a default by the party.

Part 4 Miscellaneous

21 False or misleading information or documents *[not commenced]*

(1) A person must not make a statement to a party that the person knows is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 12 months.

(2) A person must not give to a party a document that the person knows is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 12 months.

(3) Subsection (2) does not apply to a person who, when giving the document to the party:

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

(b) if the person is able to obtain the correct information – gives that information to the party.

(4) Subsection (3) does not require the party 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.

(5) It is sufficient for a complaint against a person for an offence against subsection (1) or (2) to state the information or document was to the person's knowledge false or misleading, but it is not necessary to specify whether it was false or whether it was misleading.

22 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Personal Injuries (Civil Claims) Act 2003* (Act No. 17, 2003)**

Assent date	29 May 2003
Commenced	ss 1 – 4, 6, 12 – 15, 22: 1 July 2003 (*Gaz* G25, 25 June 2003, p 3); rem: nc

***Justice Legislation Amendment Act 2007* (Act No. 5, 2007)**

Assent date	24 April 2007
Commenced	s 37 (except amd of Criminal Code and *Legal Profession Act 2006*): 1 May 2007 (s 2(1), s 2 *Victims of Crime Assistance Act 2006* (Act No. 15, 2006) and *Gaz* G17, 26 April 2007, p 7); rem: 24 April 2007

***Law Reform (Work Health) Amendment Act 2007* (Act No. 30, 2007)**

Assent date	12 December 2007
Commenced	1 July 2008 (*Gaz* S29, 25 June 2008)

***Evidence (National Uniform Legislation) (Consequential Amendments) Act 2012* (Act No. 23, 2012)**

Assent date	21 November 2012
Commenced	1 January 2013 (*Gaz* G51, 19 December 2012, p 4)

***Workers Rehabilitation and Compensation Legislation Amendment Act 2015* (Act No. 9, 2015)**

Assent date	23 April 2015
Commenced	ss 3, 4, 5, 24, 25 and pt 4: 22 May 2015; rem: 1 July 2015: (*Gaz* S50, 22 May 2015)

***Local Court (Related Amendments) Act 2016* (Act No. 8, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

3 LIST OF AMENDMENTS

s 5	amd No. 5, 2007, s 37; No. 30, 2007, s 59; No. 9, 2015, s 31
s 13	amd No. 8, 2016, s 45
s 15	amd No. 23, 2012, s 32