

Personal Injuries Proceedings Regulation 2025

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, provide this human rights certificate with respect to the *Personal Injuries Proceedings Regulation 2025* (PIP 2025 Regulation) made under section 75 of the *Personal Injuries Proceedings Act 2002* (PIP Act).

In my opinion, the PIP 2025 Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The PIP Act regulates particular claims for and awards of damages for personal injury. The main purpose of the PIP Act is to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury.

The *Personal Injuries Proceedings Regulation 2014* (PIP 2014 Regulation) supports the operation of the PIP Act by prescribing:

- the information to be included in, and documents to accompany, a notice of a claim;
- the records and sources of information a notice of claim authorises a person or a person's insurer to have access to;
- the requirements for a claimant's certificate;
- various timing requirements for the making of, and responding to, a notice of a claim;
- an explanatory statement that must be provided with an offer of settlement made by a respondent to a claimant who is not legally represented; and
- the costs payable in the event certain offers of settlement are accepted.

The PIP 2014 Regulation expires on 31 August 2025 under section 56A of the *Statutory Instruments Act 1992*. In accordance with *The Queensland Government Better Regulation Policy*, a sunset review of the PIP 2014 Regulation was undertaken to evaluate the continuing need for, effectiveness and efficiency of the regulation.

Consistent with the outcomes of the sunset review, the PIP 2025 Regulation provides for the same matters as the PIP 2014 Regulation, as well as various changes to implement stakeholder feedback received as part of the sunset review. These changes include amendments and additions to:

- improve readability and reflect current drafting standards, including by clarifying information in some provisions and moving provisions about particulars for a notice of claim to Schedule 1;
- clarify the documents required to be provided with each part of a notice of claim;

- specify that certain particulars are not required for an abuse claim, healthcare claim or dependency claim;
- clarify that a claimant may provide an image or diagram of the scene of the incident, if appropriate;
- provide that the authority to access documents and other sources of information relevant to a claim authorises the Motor Accident Insurance Commission to release records relevant to the claim; and
- provide a process for a notice of claim to be given by an electronic communication to the proposed respondent under section 44(5) of the PIP Act.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

The PIP 2025 Regulation engages the right to privacy (section 25(a) of the HR Act).

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The right to privacy manifests the underlying value of human beings as autonomous individuals with power over their actions.

The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. The right protects individuals' rights against interference with physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home and individual identity (including appearance, clothing and gender).

The right to privacy includes internal limitations. The right to privacy is only limited if the interference is unlawful or arbitrary. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate to the aim sought.

Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the HR Act, it is convenient to consider these questions below before making a determination as to whether any limitation on the right to privacy will be arbitrary.

The PIP 2025 Regulation sets out certain particulars that must be included in a notice of claim about the claimant's personal details, financial history, medical history and health information. The claimant is required to authorise a person or the person's insurer to access records and sources of information relevant to the claim.

The requirement to disclose this information limits a person's right to privacy.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the right to privacy is to ensure that respondents and insurers have the necessary information and access to relevant records to assess, investigate and quantify a claim brought by a claimant.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The requirement for a claimant to provide and authorise access to certain documents and information ensures claimants wishing to bring a claim for personal injury can make an informed decision to provide all necessary information to the respondent and insurer to further the claim. Providing the required documents and information ensures that respondents and insurers have the necessary information to assess a claim made against them and to accurately quantify any compensation for which they may be liable.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

An alternative option would be to require the claimant to disclose and provide all the required information, without authorising the respondent or insurer access to collect information and documents. This option would essentially place the onus entirely on the claimant to provide the information required. However, this option could result in claimants withholding information or failing to disclose information for a number of reasons, both intentional and unintentional. It could create a significant disadvantage for the respondent and insurer who require particular information to appropriately assess a claim brought against them and quantify any compensation they may be liable to pay. It could also lead to delays as respondents would have to make requests for additional information directly to the claimant.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The PIP 2025 Regulation strikes an appropriate balance between the importance of the purpose of the information and the importance of preserving human rights.

On the one hand, it is accepted that requiring a claimant to provide and authorise respondents and insurers access to personal medical and other information affects a claimant's right to privacy.

On the other hand, it is necessary for all parties involved in a claim for personal injury to be able to assess the claim and quantify any compensation which may be payable. Given the nature of personal injury claims, the provision of, and access to extensive medical and personal information is relevant to this assessment and quantification.

For these reasons, any limit on a person's right to privacy is considered justified.

- (f) any other relevant factors

Nil.

Conclusion

I consider that the PIP 2025 Regulation is compatible with the HR Act because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for Integrity

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