

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Shannon Fentiman MP Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence

Personal Injuries Proceedings and Other Legislation Amendment Bill 2022

Objectives of the Amendments

The objectives of the Bill are to:

- stop claim farming for personal injury and workers' compensation claims;
- prevent undesirable costs agreement practices by law practices for personal injury claims;
- confirm the policy intent for when an entitlement to terminal workers' compensation arises under the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act); and
- make technical and clarifying amendments to the *Electoral Act 1992* (Electoral Act) relating to fundraising contributions and state campaign accounts and disclosure returns.

The objectives of the amendments during consideration in detail (ACiDs) of the Bill are to:

- expand the exclusion from 'additional amounts' under section 347(8) of the *Legal Profession Act 2007* (LP Act) of barristers' fees incurred after the part 1 notice or initial notice for claims under the *Personal Injuries Proceedings Act 2002* (PIP Act) to include fees incurred after claims have been lodged under the WCR Act and the *Motor Accident Insurance Act 1994* (MAI Act) and for urgent proceedings;
- address concerns raised during the parliamentary committee process that the proposed claim farming offence in the PIP Act relating to approaching or contacting a person for the purpose of soliciting or inducing them to make a claim may not apply where the contact or approach is made by way of bulk communications to vulnerable groups;

- respond to Legal Affairs and Safety Committee (the Committee) recommendations to streamline the provision of law practice certificate requirements in the workers' compensations scheme, particularly during a statutory claim;
- respond to the evidence presented to the Committee to amend the timeframe to be inserted into the definition of terminal condition in the WCR Act to five years;
- respond to the Committee recommendation to amend the transitional arrangements to allow the 2019 definition of terminal condition to continue to apply to any claim or dispute on foot if the worker has provided medical evidence to their insurer about the terminal nature of their condition before 1 July 2022; and
- ensure the amendments in the Bill operate as intended by making minor technical and cross-referencing changes.

Achievement of the Objectives

The ACiDs amend the proposed definition of '*additional amounts*' in proposed new section 347(8) of the LP Act, which is inserted by clause 16 of the Bill, so that the exclusion in (b) also refers to claims under the WCR Act and MAI Act and urgent proceedings. As a result of this amendment, fees paid or payable to a barrister engaged by the law practice for services provided after a notice of claim is given under the WCR Act and the MAI Act, and for urgent proceedings, will not be additional amounts (and therefore claim related costs) for the purposes of determining the maximum amount of claim related costs that may be charged to a client.

New section 71B of the PIP Act (inserted by clause 51 of the Bill) prohibits a person from personally approaching or contacting another person and soliciting or inducing the second person to make a claim. The ACiDs achieve the objective in relation to the proposed new offence by clarifying that the second person may be contacted either individually or as a member of a class of persons.

In relation to streamlining the law practice certificate requirements, the proposed amendments achieve this by omitting the requirement for a law practice to provide a certificate on retainment during a statutory workers' compensation claim (section 325I).

In relation to terminal compensation, the proposed amendments achieve the objective by inserting a timeframe of five years into section 39A of the WCR Act and amending the transitional arrangements to allow claims or disputes on foot to continue under the 2019 definition of terminal condition if the worker has provided medical evidence to their insurer about the terminal nature of their condition before 1 July 2022.

The ACiDs also make minor technical and cross-referencing changes:

- amending the definition of 'claim farming provision' utilised in clauses 36, 52, 53 and 62 to refer to 'division 1AA';
- clarifying clause 42 by replacing the reference to 'a law practice certificate has not previously been given by the law practice under section 9A(3)(j)' with a reference to 'section 9A does not apply in relation to the claim';
- for the definition of *related body corporate*, removing reference to 'in this section' in limb (b) given the definition is in the schedule;

- amending section 275(7A) of the WCR Act to confirm a copy of a certificate previously given may accompany a notice of claim; and
- technical drafting amendments to the commencement provision to ensure the ‘Act amended’ clauses and part headings commence on assent.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways for achieving these policy objectives.

Estimated Cost for Government Implementation

There will be no cost for government in implementing the ACiDs.

Consistency with Fundamental Legislative Principles

The ACiDs are consistent with the fundamental legislative principles.

The proposed amendments to the WCR Act do not significantly alter the intent of the provisions as drafted in the Bill. A full consideration of the Bill’s consistency with the fundamental legislative principles is given in the original explanatory notes.

Consultation

The ACiDs are largely the result of consultation on the Bill through the parliamentary Committee process.

The amendments to the WCR Act respond in part to the recommendations of the Committee and issues raised in the Committee process.

The Office of Industrial Relations extended invitations to brief the following scheme stakeholders on the proposed amendments including: the Asbestos Disease Support Society; Association of Self-Insured Employers of Queensland; the Australian Industry Group; Australian Lawyers Alliance; Australian Workers’ Union (Queensland); Bar Association of Queensland; Construction, Forestry, Maritime, Mining and Energy Union of Employees (Queensland); Rural Fire Brigades Association; Queensland Council of Unions; Queensland Law Society and WorkCover Queensland.

NOTES ON PROVISIONS

Amendment 1 amends the commencement clause in the Bill to commence certain provisions from 1 July 2022.

Amendment 2 makes a minor technical amendment to the commencement clause in the Bill to ensure that clause 13 commences on assent.

Amendment 3 makes a minor technical amendment to the commencement clause in the Bill to ensure that clause 39 commences on assent.

Amendment 4 makes a minor technical amendment to the commencement clause in the Bill to ensure that clause 57 and the new chapter 37 heading commence on assent.

The commencement of clause 59; clause 60, to the extent it inserts new chapter 6B, parts 2, 3 and 5; and clause 66, to the extent it inserts section 747, will continue to be fixed by proclamation.

Amendment 5 amends clause 16 of the Bill so that the exclusion in (b) applies to claims under the WCR Act and MAI Act and urgent proceedings.

Amendment 6 corrects a minor drafting error in clause 36 of the Bill by removing an incorrect reference to '1A' and replacing it with '1AA'.

Amendment 7 corrects a minor drafting error in clause 36 of the Bill by removing an incorrect reference to 'section' and replacing it with 'definition'.

Amendment 8 clarifies the operation of clause 42 by replacing the reference to 'a law practice certificate has not previously been given by the law practice under section 9A(3)(j)' with a reference to 'section 9A does not apply in relation to the claim'.

Amendment 9 clarifies that a person may be contacted either individually or as a member of a class of persons for the purposes of the offence in new section 71B (Approach or contact for the purpose of making a claim) of the PIP Act (inserted by clause 51 of the Bill).

Amendment 10 corrects a minor drafting error in clause 52 of the Bill by removing an incorrect reference to '1A' and replacing it with '1AA'.

Amendment 11 corrects a minor drafting error in clause 53 of the Bill by removing an incorrect reference to '1A' and replacing it with '1AA'.

Amendment 12 amends clause 58 (which amends section 39A) to insert a timeframe of five years into section 39A.

Amendment 13 amends clause 59 (which amends section 275) to clarify a copy of a previously given certificate may accompany a notice of claim for damages.

Amendment 14 amends clause 60 (new section 325H) to clarify the application of the section i.e., applies if the law practice has been retained by a claimant to act in relation to a claim for damages, and the claimant has not yet given a notice of claim (or started urgent proceedings) and the law practice has not previously provided a law practice certificate to the claimant for the claim.

Amendment 15 amends clause 60 (new section 325I) to remove the requirement for the supervising principal of a law practice, retained for a statutory claim to provide a law practice certificate to the claimant.

Amendment 16 amends clause 62 (new section 573A) to correct a cross reference.

Amendment 17 amends clause 66 (new chapter 37 transitional provisions) to omit certain transitional provisions from section 744 that applied to injuries sustained on or after 31 January 2015 where certain events happened before the commencement of the Bill.

Amendment 18 amends clause 66 (new chapter 37 transitional provisions) to insert new savings provisions into section 745. The amendment means the former section 39A continues to apply if the worker, or their dependants, made an application for compensation and gave medical evidence to the insurer about the terminal nature of the condition before commencement.

In addition, former section 39A continues to apply regardless of whether the application for compensation was decided or lump sum compensation under 128B or 128D was paid before commencement or not.