LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Ms SL Bolton MP (virtual)
Ms JM Bush MP
Mrs LJ Gerber MP (virtual)
Mr JE Hunt MP (virtual)
Mr LL Millar MP

Staff present:
Ms R Easten—Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 27 APRIL 2022

Brisbane

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The committee met at 10.42 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022. My name is Peter Russo, the member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share. With me here today are: Laura Gerber, the member for Currumbin and deputy chair, who is appearing via teleconference; Sandy Bolton, the member for Noosa, who is appearing via videoconference; Jonty Bush, the member for Cooper; Jason Hunt, the member for Caloundra, who is appearing via videoconference; and Lachlan Millar, the member for Gregory, who is substituting this morning for Jon Krause, the member for Scenic Rim.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the briefing at the discretion of the committee. I remind committee members that departmental officers are here to provide factual and technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings, and images may also appear on the parliament's website or social media pages. I ask that your mobile phones be turned off or switched to silent mode.

ARNDELL, Ms Courtney, Principal Legal Officer, Department of Justice and Attorney-General

BICK, Mr Bradley, Director, Workers Compensation Policy, Office of Industrial Relations

BRADLEY, Ms Imelda, Director, Strategic Policy, Department of Justice and Attorney-General

HILLHOUSE, Ms Janene, Executive Director, Workers Compensation Regulatory Services, Office of Industrial Relations

ROBERTSON, Mrs Leanne, Assistant Director General, Strategic Policy and Legal Services, Department of Justice and Attorney-General

CHAIR: I welcome representatives from the Department of Justice and Attorney-General and the Office of Industrial Relations who have been invited to brief the committee on the bill. I invite you to brief the committee, after which committee members will have some questions for you.

Mrs Robertson: Thank you for the opportunity to brief the committee today about the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022. The bill will prohibit claim farming of personal injury and workers compensation claims and prevent undesirable billing practices by lawyers in speculative personal injury proceedings. The bill also confirms when an entitlement to terminal compensation arises under the Workers' Compensation and Rehabilitation Act following a recent decision in the Queensland Industrial Relations Commission and includes technical and clarifying amendments to the Electoral Act to address implementation issues regarding the new political donation caps due to commence 1 July 2022.

I will speak to the claim-farming amendments, with particular reference to the amendments in the Personal Injuries Proceeding Act 2002 and the Legal Profession Act 2007, as well as unrelated amendments in the Electoral Act. My colleagues from the Office of Industrial Relations may then have some opening comments on the claim-farming and terminal illness compensation amendments in the Workers' Compensation and Rehabilitation Act.

Claim farming is the process by which a third party, the claim farmer, cold-calls or otherwise approaches individuals to pressure them into making claims and then sells those claims to a legal practitioner or other claims management service provider. In 2019 the government introduced amendments to the Motor Accident Insurance Act 1994 to stop the practice of claim-farming compulsory third party—better known as CTP—claims. It has become apparent that since these amendments commenced the claim-farming industry has pivoted to new types of claims, with key legal stakeholders expressing concerns about the claim farming of personal injuries claims, particularly institutional sexual abuse and workers compensation claims. As a result, the bill will amend both the Personal Injuries Proceedings Act and the Workers' Compensation and Rehabilitation Act to each adopt a claim-farming framework, modelled on that applying to CTP claims under the Motor Accident Insurance Act, to prohibit claim farming and break the nexus between claim farmers and legal practices by requiring law practices to certify that claims they are representing have not been farmed. The various nuances, requirements and oversight arrangements of the motor accident insurance, workers compensation and personal injuries legislation are recognised by having separate claim-farming frameworks in each of the three acts.

The bill was developed in consultation with stakeholders, including the Queensland Law Society, the Australian Lawyers Alliance and the Insurance Council of Australia. Firstly, the bill inserts two new offences into both acts which prohibit claim-farming conduct and carry a maximum penalty of 300 penalty units. One offence prohibits a person from personally approaching or contacting another person to solicit or induce them to make a claim. This offence is intended to stop claim farmers from cold-calling or personally approaching another person without their consent and soliciting or inducing them to make a claim. Further offences apply to any person who pays claim farmers for the details of potential claimants or a person who receives payment for a claim referral or potential claim referral. These offences are intended to remove the financial incentive to engage in claim-farming activity.

To ensure law practices do not incentivise claim farmers, and consistent with the Motor Accident Insurance Act, the bill will require supervising principals of law practices to complete and provide a law practice certificate at various points during the personal injury and workers compensation claim process. The briefing material which the department provided to the committee includes flowcharts outlining the stages of proceedings at which a law practice certificate or a copy thereof is to be given under the Personal Injuries Proceedings Act and the Workers' Compensation and Rehabilitation Act. The bill imposes an obligation on the supervising principal of a law practice acting for a respondent and the respondent's insurers for a claim under the Personal Injuries Proceedings Act to notify the Legal Services Commissioner if the law practice or an associate of the law practice reasonably believes a person is contravening a law practice certificate requirement. Insurers under the Workers' Compensation and Rehabilitation Act have similar requirements to report noncompliance with claim-farming offences and all practice certificate requirements.

Additionally, the bill expands the powers of the Legal Services Commissioner and the Workers' Compensation Regulator to enable these bodies to oversee and enforce the new claim-farming provisions and law practice certificate requirements. This includes empowering the Legal Services Commissioner and the Workers' Compensation Regulator to appoint a special investigator—or, in the case of the Workers' Compensation and Rehabilitation Act, an investigator—who will have extensive powers to investigate suspected contraventions of claim-farming provisions. The bill introduces information-sharing provisions which will enable the Legal Services Commissioner and the Workers' Compensation Regulator to disclose information to each other and the Motor Accident Insurance Commission for the purposes of the administration of a claim-farming provision or monitoring and identifying patterns or trends in conduct to which the claim-farming provisions apply.

As a result of the proposed amendments to section 346 of the Legal Profession Act, legal practitioners will be required to include certain additional amounts as legal costs rather than as disbursements for the purpose of determining whether the legal costs charged to a client for a speculative personal injury claim exceed the statutory limit under the act. This statutory limit, commonly referred to as the fifty-fifty rule, and the additional amounts to be treated as legal costs are explained in more detail in the briefing material provided by the department.

The bill also makes technical and clarifying amendments to the Electoral Act to address implementation issues regarding the new political donation caps due to commence 1 July 2022. The bill will amend requirements for managing the state campaign accounts of registered political parties and candidates by clarifying that fundraising contributions may only be paid into the state campaign account if the contribution is $200 or less or the first $200 of a larger contribution. The part of a fundraising contribution that exceeds $200 must be treated as a political donation and therefore will be subject to the political donation caps to be paid into the state campaign account.

Additionally, the bill amends disclosure requirements for gifts to registered political parties and candidates to support the Electoral Commission of Queensland in monitoring compliance with the new political donation caps. The bill will require that from 1 July 2022 disclosure returns for gifts to registered political parties and candidates must specify whether or not the gift is a political donation. The bill will also require that, in the case of political donations given to an electoral committee established by a registered political party, the disclosure return must state the name of the relevant electoral district. For consistency, a donor statement provided by a donor with the political donation must also specify the relevant electoral district.

I thank you for the opportunity to brief the committee. Once colleagues from the Office of Industrial Relations have concluded their opening comments we are happy to assist the committee by answering questions.

Ms Hillhouse: I will make a short statement about the workers compensation related amendments included in this bill. I do not intend to go over what the Department of Justice and Attorney-General covered in their statement, but I would like to acknowledge the work they have undertaken in leading the preparation and briefing of this bill.

I can confirm to the committee the importance of claim farming in the workers compensation scheme. We have received anecdotal reports of workers compensation claim files being sold, suspicious activity from interstate law firms and scam phone calls falsely impersonating WorkCover Queensland. This indicates the scheme is within the sights of claim farmers and there is a risk that, if left unprotected, the scheme would be targeted. In adopting these amendments, Queensland will be the first workers compensation scheme in Australia to legislate against claim farming.

The difference between the workers compensation scheme and other personal injury schemes is our no-fault statutory scheme, which means that injured workers can access medical treatment, lost wages, rehabilitation and lump sum payments during their recovery and return to work without the need of having to prove fault against their employer. This difference is recognised by the amendments to ensure injured workers are protected from being targeted in both statutory workers compensation claims as well as a common law claim. As a result, a certificate will be required: firstly, when a law practice is retained by a claimant; secondly, when a statutory claim is finalised or a notice of claim is to be lodged; and, thirdly, when a common law claim is to be finalised. We recognise that this proposal creates new responsibilities for legal practitioners and insurers, and we will work with stakeholders and their representative bodies to provide education and guidance. We are also committed to working with the Legal Services Commission and the Motor Accident Insurance Commission to ensure consistent implementation of the bill if passed.

The bill also expands the Workers' Compensation Regulator's compliance and enforcement powers to enable the effective investigation and prosecution of claim farm offences. These powers are consistent and will provide parity across personal injuries schemes, ensuring there are no weak links to be exploited by claim farmers.

The bill also confirms the entitlement for terminal compensation that arises when a worker is diagnosed with a terminal condition that will end their life within three years. The bill does not change the entitlement designed to support workers in the final stages of their terminal injury but confirms the time that it is to be accessed. A worker certified with a condition that sits outside of this time frame will continue to be able to access support within the workers compensation scheme such as other lump sum payments, medical expenses and rehabilitation support. Workers are also entitled to seek common law access or to access terminal compensation if their injury progresses to that phase into the future. It is important that the policy intent of this entitlement is confirmed to ensure that funds are provided at the right time so that workers and their families receive it when they are most in need and to respond to the current and significant cost pressures that are being experienced by the scheme as a result of the current breadth of access to this entitlement.

Finally, the amendments contained in the bill are measured and designed to protect the ongoing financial sustainability of the scheme for the benefit of all Queensland workers. I invite questions from the committee.

Mrs GERBER: I am happy for any one of the department representatives present to answer this question. In relation to claim farming, I note that the explanatory notes on page 1 say there have been reports of the growing prevalence of this type of activity. Can the department advise the committee how many reports have been made or how many cases or instances of claim farming they can point to, and who has made the report?

Ms Bradley: The reports we have had have been through the representative organisations: the Australian Lawyers Alliance and the Queensland Law Society. They made representations to the Attorney that they believe the incidents they are aware of are so serious that legislative action is required. It is not so much that the department of justice has received reports from people; we are relying on the representative organisations.

Mrs GERBER: Does the department have any evidence from these representative organisations? Has the department been provided with evidence of which law firms are colluding in claim farming? Can you name names? If you cannot name names, why can't you? Do you know where the schemes are run from—

CHAIR: Laura, slow down. You have about three questions in one there. I will allow you to ask the run of questions that you have; you do not need to compress it into one question. Do you mind just going back and asking one question at a time? It will be easier on the people answering the questions, for a start.

Mrs GERBER: Thanks, Chair. I will rephrase the question. In relation to the notifications that you received from the stakeholders, does the department have any evidence of which law firms are perhaps colluding in claim farming or where the scheme might be being run from?

Ms Bradley: The answer is no. The information that has been provided to us by the Law Society and the ALA has been of a general, anecdotal nature.

Mrs GERBER: There is no real, hard evidence the department can point the committee to; is that correct?

Ms Bradley: That is correct. We are relying on the advice to us from the professional bodies.

Mrs GERBER: Excellent, thank you. Thank you, Chair.

Ms BOLTON: Ms Hillhouse, I am trying to get my head around the flexibility that was available previously—since 2019—regarding those terminally ill and that with these changes they will still be able to access the financial assistance they need. How will that occur with the time frame now reduced to three years?

Ms Hillhouse: I can give you a little bit of background to demonstrate the point. Prior to the current legislation there was a time frame of two years put in place. What that meant was: when a worker hit that two-year period, they were then able to access the compensation. However, we have had workers who had an active claim for anywhere up to 20 years who, once they hit that final stage of their condition and their two years, have actually accessed that compensation. The compensation is available to workers once they meet the entitlement condition and that will be, under the bill, that they are within three years of the end of their life as diagnosed by a doctor. I can definitely give the committee the assurance that when a worker hits that point they will have that entitlement through the scheme.

Ms BOLTON: In 2019 there was the change to allow the flexibility; there was not a time frame. How is it going to impact those who have claims in already? Why are we going to the three years when there was the greater flexibility since 2019 regarding claims?

Ms Hillhouse: The reason we have brought forward this amendment is that there was a Queensland Industrial Relations Commission decision of Blanch that occurred in December last year that expanded the scope of the flexibility that had been provided with the scheme above and beyond what was the intention at the time. It was intended that insurers would have the discretion to be able to determine whether a claim was in that terminal phase or approaching the end of life. What the decision of the Queensland Industrial Relations Commission said was that an insurer did not have that discretion; if a worker was able to show that at some time into the future their condition may cause the end of their life then they would have an entitlement to this particular lump sum payment which is above and beyond what the intention was.

That particular case involved a 64-year-old miner who had COPD and their life expectancy had decreased by two years, but what that meant was that they would potentially die within 17 years, at the age of 82. It took the flexibility above and beyond what was anticipated and meant that the payment of lump sum compensation was no longer being made to support a worker at the end of their life but was actually being made potentially decades before the potential end of a worker's life.

Ms BUSH: Whilst we are on that point, my reading of this is that once someone with COPD has received that terminal illness payment that precludes them from accessing any of the other WorkCover benefits that might come through, such as access to allied health and counselling and other assistance. The point is that we want people to remain accessing those components of cover for as long as they can rather than exiting WorkCover prematurely through a terminal illness payment. Have I read that right?

Ms Hillhouse: That is correct. The decision to access a terminal lump sum payment is an important decision that a worker with a latent onset injury would be making because it does change the support the scheme is able to provide them on a day-to-day basis. What we do know is that it does mean that a worker will have to fund their own medical treatment, whereas if they stayed within the statutory scheme they would have that support. Most importantly, especially when you are talking about workers who potentially have life expectancies 10, 15, 20, 30 or 40 years into the future, it means that the scheme will no longer be able to provide them with the support around rehabilitation and return to work so that they are able to participate in their life to the greatest extent possible. The terminal payment is very much a final payment within the workers compensation scheme and the only other access a worker would have would be through common law.

Ms BUSH: I think what we as a committee would want to know is that no-one will be worse off under these amendments. Are you able to give us any kind of satisfaction around that or a response?

Ms Hillhouse: Workers with latent onset injuries that become terminal under the new definition will still be able to access compensation and workers whose condition at this point in time may not be considered to be terminal will be able to access it in the future, once their condition hits that three years.

Mr Bick: Can I add that in 2017 we implemented amendments that related to the CWP Select Committee and we inserted a particular lump sum payment for people suffering from pneumoconiosis, silicosis, asbestosis and black lung, or CWP. Those amendments are designed to give people a payment based on the severity of their disease and individuals are actually able to come back and get a top-up of that lump sum as their disease progresses. There is an ability for people to make a claim and come back in three years or five years and get an additional top-up as their disease is progressing as well. If they can stay in the scheme there is support available to them: rehabilitation and retraining. We know that workers who are given a life sentence—that is, 10, 20, 30 years—can be quite psychologically impacted, as can be their family, and if they can stay in the scheme and get that support from us it is a better outcome at that point in time until they move into that phase where they need to access that specific payment.

CHAIR: Do you have any questions, member for Gregory?

Mr MILLAR: Given that I am a substitute, and listening to what is an incredibly important piece of legislation, I would like to defer to the member for Currumbin, Laura Gerber, to ask questions.

CHAIR: Member for Currumbin, do you have another question?

Mrs GERBER: Yes, thank you, Chair. I would like to go back to the claim-farming amendments. I am happy for anyone who is present to answer the question in the best way they can. Can you advise how much claim farming is costing or estimated to cost? I guess in my mind it is what has been the effect on premiums, or are you able to quantify it in any way for the committee?

Ms Bradley: The answer is no, we cannot.

Ms Hillhouse: I can confirm that from a workers compensation perspective as well, especially as at the moment it is unregulated and that makes it very difficult for us to have the level of oversight that we would need to be able to come to any sort of strong conclusion in relation to the cost to the scheme.

Mr Bick: What we do know is that what we are experiencing is very similar to what MAIC experienced when they considered these amendments. The examples we have provided are the anecdotal evidence. We have very similar patterns. For another personal injuries scheme to be protected in Queensland and the workers comp scheme not to be protected would simply make our scheme a target for those farmers, which is why we are part of this reform today.

Mrs GERBER: To understand the effectiveness of these proposed amendments, is the department able to advise how much difference the provisions in the Motor Accident Insurance Act 1994 have made since being introduced and perhaps point to the evidence of this type of legislative change having an effect on claim farming?

Mr Bick: We cannot speak on behalf of MAIC, obviously, but what we can report is that in their 2021 annual report MAIC stated that it was pleasing to record a significant drop in the number of people reporting that they were harassed by a claim farmer or a crash scammer. Obviously our schemes are

different because we deal with different cohorts of people. We will be undertaking monitoring of the impact of our amendments, of course, through the monitoring of law practice certificates we receive from law firms over the coming years as well.

CHAIR: Really, that is the data that workers compensation needs to be able to make the assessment that the deputy chair is asking for? At the moment there is a valid reason you are not able to provide that data: you do not have legislation to allow you to capture it all.

Mr Bick: Correct.

Ms BUSH: Coming back to the issuing of the practice certificates, I would imagine that a large percentage of claims do not go on to receive a lump sum payment. I was curious about those moments when a practice certificate is being issued, whether it places a burden on genuine legal professionals. I was interested in why those time frames were chosen; for example, when a lawyer is retained versus when a payment is made, if that makes sense. I am imagining there would be a number of claims that do not end up with a positive outcome. Are we confident that we have chosen the right points to issue those certificates?

Ms Arndell: The points in time that were chosen follow the model that was provided for under the Motor Accident Insurance Act and also under the workers' compensation act so it ensures there is consistency of approach in terms of when there is an expectation to complete a law practice certificate. We do appreciate that there may be some burden on law practices in having to complete this requirement. However, there are a number of other documents that need to be prepared as part of a claim and this will be just one part of a process. In some instances provision has been made for a copy of a certificate rather than an additional original certificate to be provided to try to cut down on some of the impacts of requiring a law practice certificate at various points in a proceeding.

CHAIR: In relation to the question that Jonty asked in relation to the certificate, it is one at the beginning?

Ms Arndell: Yes.

CHAIR: And one prior to the claim settling?

Ms Arndell: Yes. There is an original given to the claimant at the start of proceedings, if a law practice is engaged at that point. A copy of that is then provided with the part 1 notice, or the initial notice, in medical negligence cases, and then there is another law practice certificate provided on settlement or judgement. There are a couple of other scenarios where a certificate may be required; for example, if there is a sale of a law practice or if the certificates have not been provided with the notice to claim and there is a presumption of compliance or a waiver of a compliance. There are requirements for law practice certificates to be given at those stages as well.

CHAIR: And also at the sale of a file?

Ms Arndell: Yes, that is correct.

CHAIR: Just dealing with the certificates, what about the situation where, for example, the injured person or the person bringing the claim has several components to their claim? The one that comes to mind is, say, a subcontractor injured at work; therefore, the layer of who they have to notify will not be just the one.

Ms Arndell: We do appreciate that there may be some duplication across the law certificate requirements across the various schemes. As you say, there may be claims where an injured worker has something against an employer under the Workers' Compensation and Rehabilitation Act and a PIPA claim as well. As I said, there has been some appreciation of that in terms of providing copies of certificates to be given at various points under one particular scheme. We also understand that the regulators have formed a working group to discuss some implementation issues around particularly the hybrid schemes, including minimising administrative burden on law practices, form requirements and whatnot.

CHAIR: Because the ultimate cost will end up with the consumer, won't it?

Ms Arndell: Yes, we assume so.

CHAIR: I am sorry, it is an opinion question. I should know better.

Ms BOLTON: The explanatory notes state that if the Blanch decision is not corrected and the scheme is left unfettered, the sustainability of the QWCS is at risk. Given that we have sought assurances that no claimant will be worse off with these changes, could you quickly extrapolate why the scheme would be in a bit of trouble if these changes are not made?

Ms Hillhouse: Traditionally the payments have been made over a period of time, over what the worker's life expectancy would be. This is potentially bringing forward claims. It also means that some workers who would not otherwise have made a claim or had an entitlement to that particular

compensation may end up making a claim. For example, something else in their life may have actually, as their life has moved on, been a diagnosis that has impacted on their life expectancy as well. It is twofold in terms of why it is having such an impact.

I understand that in our briefing to the committee a table was provided which shows a change in claims numbers. What we have seen over the past five years is that the claims rate has gone from around eight claims per month in 2016-17 to 13.2 claims per month in 2020-21. In 2021-22 that trend is continuing. At the start of this year we have actually seen a claims rate per month of 23.3 claims. There is a significant increase in the number of these claims, following the Blanch decision, that have been coming through and been brought forward early. If we do not do anything around it, the cost to the scheme, in addition to the normal costs of providing this benefit, will be an additional $84 million over the next 12 months.

CHAIR: Can you repeat that number?

Ms Hillhouse: $84 million, which is equivalent to around three cents if you were to do a comparison to our workers compensation premium rate. The average rate is $1.20 per $100 in wages. It is equivalent in terms of cost to the scheme of around three cents if you did a comparison to premium.

Mrs GERBER: I have one further question around claim farming. I know it was addressed briefly in the opening statement as well as in the briefing, but I think the committee would benefit from hearing a bit of an expansion around what types of personal injury and workers compensation claims the department has evidence of being farmed so that we can understand all the different types being impacted.

Ms Bradley: The one that has been mentioned is the historical child abuse claims area. That is one that the professional bodies particularly mentioned as being of concern.

Mrs GERBER: Are there any others?

Ms Bradley: It is capable of being any personal injury matter. That is why we are trying to close the gap.

Mrs GERBER: I appreciate that. I was asking if there was any evidence or if stakeholders had mentioned any other areas or types of personal injury or workers compensation claim. Thank you.

Mr MILLAR: Can you explain how claim farming works? Is it people who are qualified in the legal profession or is it just people off the street who go and approach a legal firm and say, 'This is what I have.'

Mr Bick: From the workers compensation perspective, we are aware of some companies that pretend to be claims management services that are designed to connect people into a scheme. They take all their personal details and then sell them to a law firm, basically.

Mr MILLAR: They do not have any legal qualifications or do not have to have legal qualifications?

Mr Bick: Not necessarily. They are literally just people who come together.

Mr MILLAR: People who come off the street and say, 'I have a good idea for you'?

Mr Bick: They do it through social media, telephone, email.

CHAIR: Isn't it also people who set themselves up as: 'We will point you in the right direction. Do you have a claim? Contact us.'

Mr Bick: Yes: 'We can help you lodge your claim with WorkCover.'

CHAIR: But they are not necessarily law firms?

Mr Bick: Not necessarily.

CHAIR: No. I do not know what you call them. They set themselves up as a sort of referral service. They are not practitioners as such.

Mrs Robertson: That is actually a fair comment. They see an opportunity and they do not have to be linked to a legal practice or have those qualifications. They see a business opportunity and set themselves up in that space.

Mr MILLAR: The ambition of this legislation is to close that loophole and have fines in place if you find evidence of claim farming?

Mrs Robertson: Exactly.

Ms Bradley: The additional thing is that the second offence that was mentioned in the opening statement about approaching people to make a claim would equally apply to a law practice, but there are exceptions.

CHAIR: Sorry, I was not suggesting that there is not that crossover.

Ms BUSH: Talking about the proposed offences, 71(1) and 71(2) are PIPA. The proposed new offence does not include a gift or hospitality if it has a value of less than $200. I am not sure in practice what that actually would look like, what that means or what the practice is.

Ms Bradley: This is something that was considered in the context of the motor accident scheme, and we have copied that from that scheme. For example, a client refers the practice to another client. The practice might want to reward that client by providing them with a bottle of wine or some form of hospitality. The amount of $200 was struck as just something that might be reasonable in that context, so we did not interfere with what was normal practice in that area.

Ms BUSH: That is good. I understand that. In terms of the proposed second offence of soliciting or inducing, how would that impact on lawyers advertising for third-party claims in a bona fide way? I could not quite get from the bill whether they would be caught up into that unintentionally. What I am saying is: we do need people to be able to advertise for services so that vulnerable people can get access to compensation. I was curious about that.

Mr MILLAR: That is not like a class action?

Ms BUSH: I guess what I am saying is that a legal practice may specialise in PIPA claims and we want to make sure that they are connecting to people who might not know they actually have the ability to make a claim but who ought to. We do not want to stop them from doing that if it is genuine, bona fide advertising versus claim farming.

Ms Hillhouse: The provisions do not stop advertising to a group of people. It is really very much around personal contact. That is what the provisions are really designed to achieve. It is really about making sure that you are not targeting a particular person. We know that claim farmers will do everything including cold calling, where it is very much targeted at a very specific person rather than to a group at large.

CHAIR: It is unsolicited?

Mr Bick: A definition of claim referral in 325Q, which is the same in the PIPA legislation but a different numbered provision, is that a claim referral does not include advertisement or promotion of a service or a person that results in a claimant using the service if the advertising or promotion is made. It talks around advertisement of services provided by a law firm on their website or in a newsletter of an industrial organisation. It does not prohibit those genuine organisations.

Ms BUSH: They can advertise on social media?

Mr Bick: Yes.

Mrs GERBER: Moving to the prevention of undesirable cost agreement practices by law firms in personal injury claims, it might benefit for me to explain my understanding of it. My understanding of the objectives of this proposed legislative change is that in practice some law firms are contracting out to maybe associated entities or other contractors parts of clients' work that they would normally do in-house, like secretarial services such as typing up affidavits or preparing statements, so that they can chalk this up as a disbursement which then falls outside the fifty-fifty rule in practice. Where the explanatory notes refer to the other disbursements or expenses prescribed by the regulation, are you able to identify for the committee what other expenses and disbursements are going to be covered in the regulation?

Ms Arndell: At this stage we do not envisage including anything by way of regulation. That provision was just required in the event that some other undesirable cost agreement practices which may be used to facilitate or hide claim-farming activity are identified and then that could be prescribed by regulation at a later point in time if needed.

Mrs GERBER: Are you able to advise the committee what services you are aware of now that law firms are perhaps charging out as disbursements in order to maximise the fee they can charge under the fifty-fifty rule? Can you give an indication of what services you are targeting? I have already listed a few, but I think it would be helpful for the department to advise the committee in a more fulsome way.

Ms Bradley: Based on the advice we had from legal stakeholders there was concern that, if you consider claim farming and lawyers making a payment to a claim farmer for providing the claimant to them, they did not want the arrangement to pivot so that it is dressed up as providing money for a service to the person who is the effective claim farmer who has provided the claim and who is paid for providing the details of the claim. It was not really intended to cover a situation where the contractor

was providing genuine legal services, which is why there is a specific exclusion in relation to counsel. It was identified that they might legitimately be looking to have disbursements by seeking advice from counsel once the part 1 notice was given, I think.

Mrs GERBER: I just have a point of clarification. These amendments are targeted towards claim farming. The objective is not specifically to create an impact on the practice of some law firms contracting out in-house services for the purpose of that falling within a disbursement category and then outside the fifty-fifty rule, thereby meaning that clients are being charged more or the firm is able to charge clients more than they ordinarily could under the fifty-fifty rule if those services were ordinarily performed in-house.

Ms Bradley: That is right. The secondary aspect is the interest in relation to credit arrangements and loans. The advice to us from legal stakeholders was that that was something that really would ordinarily be borne by the law practice in relation to their overdraft arrangements. They were concerned that there would be these associated loan arrangements involving clients which would allow for higher interest to be charged and for it to be treated as a disbursement rather than a legal cost. That is not directly related to claim farming.

Mrs GERBER: It is my hope that this legislative reform will also cover off the areas I have spoken about. Are you able to provide the committee with any further information around the practice of law firms treating matters that would ordinarily be in-house expenses and disbursement in cost agreements, and if you have that information can you provide it to the committee today? Are you able to name any firms that are doing it?

CHAIR: Laura, I do not know if that is a question that can be answered by the department or whether they have access to that type of information.

Ms Bradley: All I can say is that the amendments which have identified those two particular matters are on advice to us from the legal profession, and we responded to those. We are obviously not aware of any others but have provided for a regulation to be made should it be necessary. We are not aware of any specific firms.

CHAIR: Going back, Ms Bradley, to one of the answers that you gave, are counsel's fees excluded as a disbursement?

Ms Bradley: Clause 16(5)(b) in the definition of additional amounts states—

(b) does not include an amount ... paid or payable to a barrister engaged by the law practice for services provided after a notice of claim is given under the *Personal Injuries Proceedings Act 2002*, section 9 or 9A.

CHAIR: Does that mean that counsel's fees can be claimed as a disbursement?

Ms Bradley: Yes.

CHAIR: It does not exclude the law firm from getting—

Ms Bradley: Not legitimate arrangements.

CHAIR: Because normally counsel would be briefed, I understand, to give opinions on prospects—

Ms Bradley: That is right.

CHAIR: Also in relation to quantum. That is my understanding of how it works. Has that changed?

Ms Bradley: Counsel's fees are generally accepted as disbursements under the provision.

CHAIR: And do not impact on the fifty-fifty rule?

Ms Bradley: No.

CHAIR: I have a couple of questions, but before I ask them I will go back to Sandy. Sandy, do you have anything further?

Ms BOLTON: Thank you, Chair. I want to go to the amendments to the Electoral Act. Can someone elaborate on the unintended policy outcome regarding the ability to deposit political contributions into the state campaign account? Can I just get some clarity around that?

Ms Bradley: Political donations can be paid into the state campaign account. They are the political donations which have a donor statement with them and are then subject to the cap. That is one of the key amendments in relation to donor caps. The way the provision is drafted at the moment, it would allow a fundraising contribution to be included if it is not a political donation, which means it does not have a donor statement. The way it is worded, it would allow for unlimited fundraising contributions to be paid into the state campaign account, whereas the intention when that provision was included was to allow for fundraising contributions that were $200, or the first $200 of a fundraising

contribution, to be included, like raffle sales and that sort of thing. The way the provision is drafted, it would allow for unlimited fundraising contributions to go in, which is contrary to the whole policy of donor caps. The amendment is being made to restore the original intention, which is to allow fundraising contributions which are not gifts which are the amounts under the $200 to be still paid into the state campaign account but not unlimited fundraising contributions.

CHAIR: I have a couple of questions in relation to terminal compensation. It is my understanding from the explanatory notes that there is some retrospectivity in relation to it. Can you just explain to the committee why it is necessary to have that?

Ms Hillhouse: The current legislation was introduced in 2019 applying from January 2015. The reason for that was to ensure that it aligned with the provisions that were introduced in 2015 that provided presumptive legislation for firefighters with certain cancers. That was to make sure that the flexibility that was introduced was applying to that cohort equally as well. In terms of ensuring that the policy intent is confirmed in terms of the application of terminal conditions and terminal compensation, it was necessary for us to have a level of retrospective application to ensure a number of things (1) we did not have inequity between workers; and (2) that we were not creating an incentive for workers. Because a number of workers with latent onset injuries, due to the industries they work in, can work across a number of jurisdictions, it would create an incentive for them to claim in Queensland over other schemes. It says that if a worker has already been paid a terminal compensation these amendments do not apply to them. It applies to anybody who has a claim that is yet to be decided. It also excludes application; for example, if someone has already put in a notice of claim then the amendments would not apply to them. The only group it really applies to is those people who have yet to have a claim decided, to ensure we have equity.

CHAIR: Why do you need retrospectivity? Could that not be achieved another way? There are two examples that come to mind. The legislation could have a date that would set when it is to commence from. By making it retrospective, isn't there a danger that someone is going to miss out?

Ms Hillhouse: It has been done this way to make sure it is really clear in relation to whom the changed definition applies to and whom it does not apply to. That is the reason it has been drafted in that way.

CHAIR: Could that not be achieved by having an end date or a commencement date? Could the same thing not be achieved by that and therefore that would—

Mr Bick: I think the main concern around having a commencement date that would be for everyone from when the bill started, for example, was that it would create two different cohorts. We still have the old cohort of workers who are covered by the old 2019 definition, which was quite broad; then we would have another cohort of workers who would be covered after the commencement of the bill with the three-year time frame; and we would also have workers who were still captured by the former two-year time frame. We would have quite a lot of inequity. For workers with silicosis, depending on what group they fell into, some of them may or may not be able to access that payment. Bringing it back to when the original amendment started and confirming that policy intent ensures that everyone has the same experience so there is no inequity. The other key concern was around sustainability of the scheme.

CHAIR: I know that is a concern, but my concern relates to the retrospectivity of people's claims.

Ms Hillhouse: What I can say in relation to retrospectivity is that, as I said earlier, this does not affect a worker's entitlement to access compensation in the future.

CHAIR: I appreciate that. On page 18 of the briefing that was provided, under the heading 'Terminal compensation', it says, 'However, increased awareness since the Blanch decision regarding the removal of time frames resulted in a large increase in the number of claims paid by terminal compensation.' Can you quantify 'large increase'?

Mr Bick: I think that is primarily covered by table 1 in the departmental briefing on page 17. We have seen a significant increase. It is not quite a doubling between 2016-17 and 2020-21, and the 2021-22 figures are yet to be finalised but we are expecting a significant increase there.

CHAIR: Is it possible to do the 2021-22 figures up until a date? How do you work your figures? Is it on the financial year?

Mr Bick: Yes.

CHAIR: We are not too far away from the end of the financial year. Are you able to work out the numbers up until, say, the—

Ms Hillhouse: We can take that on notice.

CHAIR: I know that it will not be the same as 30 June, but it would be an indicator, would it not, of what is in the pipeline?

Mr Bick: Yes.

CHAIR: Down further you talk about there being a further 70 claims paid for terminal and there is another 37 pending a decision. Are those 37 impacted by the retrospectivity of the legislation?

Mr Bick: It depends where they are within the claims determination phase. If the insurer makes the decision for these prior to commencement of the bill, they will not be affected, but—

CHAIR: Sorry to interrupt, Bradley, but that is what I am worried about in relation to retrospectivity. I know you probably said this, and I apologise, but how does that retrospectivity work? When do you say to a claimant, 'Your claim cannot be proceeded with because of the legislation'?

Ms Hillhouse: If the legislation is passed, if a worker has an accepted late onset injury that they have put in and provided some evidence to the insurer medically that it is a terminal condition, regardless of what their life expectancy is, at that point in time that worker will not be paid if that life expectancy is above three years. That is how it kicks in. However, if they have already been paid, then—

CHAIR: I appreciate the evidence you gave about that. I know I am repeating myself, so forgive me, but as at the date of proclamation the retrospectivity kicks in—I understand that—but what I am trying to understand is how many claims that will impact on. How many people who are in the process now are going to be excluded once the proclamation of the bill is made? That is what retrospectivity does, does it not?

Mr Bick: Yes.

CHAIR: Whereas my suggestion is a commencement date or a date at the proclamation, taking away the retrospectivity. Sorry, my next question is an opinion so I am not going to ask it.

Mr Bick: I guess that is a policy decision.

CHAIR: Exactly. That is why I said I am not going to ask the question, because I am venturing into territory where I should know better. It is time, ladies and gentlemen. Unless anyone has a burning question, I would like to conclude the briefing. Does anyone wish to add anything that they may feel is of importance to the committee?

That concludes this briefing. I would like to thank everybody who has participated today. I would like to thank Hansard. I would like to thank the secretariat staff. A transcript of these proceedings will be available on the committee's webpage in due course.

Mrs Robertson: Sorry, Chair, I would like to clarify: we have taken one question on notice.

CHAIR: Yes, there is one question on notice. Is it possible to provide the answer to the question to the secretariat by 4 pm on Friday, 6 May?

Mr Bick: That is fine.

CHAIR: I apologise for the late start, but technology sometimes gets in the way of progress. I declare this public briefing closed.

The committee adjourned at 11.49 am.