




Speech By  
**Jason Hunt**

**MEMBER FOR CALOUNDRA**

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Record of Proceedings, 21 June 2022

## **PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL**

 **Mr HUNT** (Caloundra—ALP) (12.35 pm): I rise today to speak in support of the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022. The committee worked well together, as is always the case. I thank my fellow members: Peter Russo, committee chair and member for Toohey; Laura Gerber, member for Currumbin; Jonty Bush, member for Cooper; Sandy Bolton, member for Noosa; and Jon Krause, member for Scenic Rim.

On 5 April of this year the committee invited stakeholders to make submissions and in total 18 were received. The objectives of the bill are to (1) stop claim farming for personal injuries and workers compensation claims; (2) prevent undesirable costs agreement practices by law practices for personal injury claims; (3) confirm the policy intent for when an entitlement to terminal workers compensation arises under the Workers Compensation and Rehabilitation Act 2003; and (4) make technical and clarifying amendments to the Electoral Act 1992 relating to fundraising contributions and state campaign accounts and disclosure returns.

Claim farming itself is a process by which a third party, the claim farmer, cold-calls or approaches individuals to pressure them into making a compensation claim for personal injuries. Claim farmers may use tactics such as implying that they act on behalf of government agencies or insurers; inducing or harassing individuals to make a claim with a promise of quick, easy and significant compensation; and even offering to coordinate medical treatment. Claim farmers then sell the individual's personal information to a legal practitioner or other claim management service provider who handles the claim.

Amendments to the Motor Accident Insurance and Other Legislation Amendment Act 2019 introduced provisions to stop claim farming. This bill is seeking to extend the prohibition to halt the same phenomena for WorkCover. The bill will prohibit the giving or receiving of consideration for claim referral or even the potential for claim referral. It will also prohibit personally approaching or contacting a person for the purpose of making a claim or soliciting or inducing them to make a claim.

Submitters universally condemned the practice, claiming it brought the profession into disrepute and threatens the viability of insurance schemes and causes distress to potential vulnerable community members. The practice itself had morphed into an even more disgusting format when it began to target the survivors of institutional child sexual abuse. This practice became known as survivor farming.

The claim farmers in this instance were paid a fee to introduce survivor clients to particular firms. In some instances these already traumatised people were subjected to harassment and high-pressure tactics while they were at their most vulnerable. Survivors were asked to sign documents they did not fully understand. Survivors were repeatedly cold-called. One survivor had their confidentiality brutally breached when they were cold-called and had the history of their sexual abuse disclosed to a family member who took the call but who was previously unaware of the personal history.

In some cases, levels of harassment went on for a full year. These amendments, with the provisions surrounding the law practice certificates, will certainly reduce incidents of claim farming. In essence, LPCs require law practices acting for claimants to declare that claim farming has not occurred in relation to the claim. LPCs could be issued at multiple stages and to multiple recipients, including the claimant, the WorkCover insurer, the respondent and the respondent's insurers.

The bill also sought to make changes around terminal conditions as they pertain to WorkCover. Terminal benefits were first introduced to the WorkCover scheme in 2005. Lump sum benefits quite rightly enable workers to secure appropriate medical and palliative care, and allow them to attend to the financial needs of their families. This scheme still allows workers to seek common-law damages if negligence has contributed to their terminal condition. Clause 58 of the bill would restore the former section 39 for injuries sustained on or after 31 January 2015. It specifies that a condition is terminal if it is certified by a doctor as being a condition that is expected to terminate a worker's life within three years after the terminal nature of the condition is diagnosed. The section is proposed to read—

A "terminal condition", of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker's life within 3 years after the terminal nature of the condition is diagnosed.

It is fair and reasonable to say that this change attracted a significant amount of comment from submitters. Mr Peter Allen from the RTBU added—

If a worker ... cannot achieve a diagnosis that the condition will terminate his/her life within three years, he/she will not be eligible for the terminal benefit lump sum payment, which he/she would be automatically available under current arrangements. We are concerned that this will lead to an inequity in how injured workers are treated—even though there is agreement that their condition is terminal.

From the Australian Manufacturing Workers' Union the committee heard—

Winding back the rights of terminally ill Queensland workers by re-introducing a three-year strict time limit is a retrograde step that will significantly disadvantage workers suffering from diseases such as silicosis, mesothelioma, asbestosis, 'black lung' and lung cancer.

Similarly, Maurice Blackburn contended—

... three (3) year strict time limit is a regressive legislative amendment that will produce unfair outcomes for many workers suffering from progressive forms of lung disease including mesothelioma, asbestosis, ... fibrosis, silicosis, coal workers' pneumoconiosis and silica induced auto-immune diseases.

Maurice Blackburn further noted that, except in the very severe cases, workers with a progressive lung disease have life expectancies generally beyond three years, although the condition is terminal. This would make them ineligible for terminal benefits at around the time of their diagnosis when they have to stop work due to illness.

The other aspect of the amendment that brought significant and highly charged feedback from submitters was the introduction of chapter 37, which provides that the proposed new terminal condition definition in section 39A applies retrospectively to all injuries sustained on or after 31 January 2015. This attracted some concern from almost every submitter. The Australian Lawyers Alliance stated quite definitively that the proposed commencement date will retrospectively abolish many Queensland workers' entitlements to terminal benefits and that those entitlements can and should be determined under the current iteration of section 39A. The AMWU offered—

Retrospectivity has the potential to 'catch out' injured workers who are already in the system.

...

It would mean that workers who have lodged an application for support under the current laws in good faith could find themselves subject to new requirements—that the goal posts have shifted.

The Queensland Law Society expressed a view—

This retrospective application will impact claimants who have taken steps based on section 39A as it has existed since the October 2019 amendments and unfairly interfere with their legitimate expectations arising from the law as it currently stands.

Similarly, the United Firefighters Union of Australia Union of Employees Queensland added—

For firefighters diagnosed with a terminal condition with an estimated life expectancy greater than 3 years, the amendment creates an inequity between those firefighters who have received terminal compensation prior to the passage of the Bill and those who may receive it after the passage of the Bill. Our members have a reasonable ... expectation under the current legislation that they will be entitled to the same benefits as other firefighters who have found themselves in ... similar circumstances.

I thank each and every one of those submitters who spoke with such conviction and those who submitted such fulsome and heart-felt written statements. After hearing these people and hearing the victims through their industrial representatives, I am very pleased to be able to say that the ministers and this government have heard you. This is another example of the positive contribution that unions make to the working lives of everyday Queenslanders. There will indeed be considerations made during

the passage of this bill that will bring much relief to those who spoke so eloquently about their concerns with the change from five to three years and to those who warned against possible under intended consequences of retrospectivity. On that basis, I am content to recommend the bill to the House.