




Speech By  
**Jonty Bush**

**MEMBER FOR COOPER**

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Record of Proceedings, 21 June 2022

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

 **Ms BUSH** (Cooper—ALP) (12.53 pm): I rise in support of the Personal Injuries Proceedings and Other Legislation Amendment Bill. I, too, want to thank the Legal Affairs and Safety Committee and in particular the chair, the member for Toohey, who, as always, was really invested in the outcome of this report. I also want to thank the secretariat for the support that it provided. In April of this year the committee invited stakeholders to make submissions and in total 18 submissions were received. I want to thank those submitters who, as usual, brought a great depth of knowledge and personal insight into the hearings and we have attempted to capture that insight in the report and the report recommendations. The report has ultimately recommended that the bill be passed. However, the report has made two additional recommendations for suggested amendments and considerations that the committee would like to see prior to implementation. I will speak to those two recommendations, but first I will speak broadly to the issue of claim farming. It is a bit of a niche area but an important area to strengthen, as we have been hearing today.

Claim farming, as we have heard, occurs when a third party uses high-pressure techniques to get an individual who may be eligible to make a personal injury claim to agree to make that claim through them or a legal firm that they recommend. Submitters at the public hearings told us that claim farmers often use tactics such as implying that they are acting on behalf of government agencies or insurers or promising a quick, significant and often guaranteed compensation payment. The claim farmers then sell the individual's personal information to a legal practitioner or other claims management service provider who handles the claim. The benefit to the claim farmer is of course financial. Their fees are commonly taken as costs and directly reduce the amount of compensation which ultimately goes towards the applicant, and these costs are substantial.

We heard from knowmore legal service, which is a free and independent community legal centre providing legal information, advice and representation, amongst other services, for victims and survivors of child abuse, that it regularly witnessed costs agreements from law firms showing the fees to a third-party claim farmer was in the area of \$9,000 to \$14,000 plus GST, and written evidence was given to the committee that demonstrated that. That is money coming directly from the applicant's payment into the hands of an organisation whose services might be limited only to sourcing the potential client, working with them to agree to make an application and potentially some initial form filling.

To demonstrate the often limited scope of claim farmers engaging in these claim applications, I want to read from the transcript of a podcast aired in December 2020 where one of the founders of an organisation established to help survivors of historic claims of sexual assault speaks about his organisation's role. He says—

What would happen is, a survivor would contact myself, give me a call, we'll touch base and I'll just figure out a few rough details about where they were, how old they were, just see if it's worth having a look at or if we can refer them on to somebody that can support them with counselling services, drug and alcohol counsellors. And then from there, we'd pass that ... information on to the law firm, so the law firm would get in contact with the survivor, qualify them—'cos we can't actually give out legal advice 'cos we're obviously not lawyers, we're just a consultancy. They'd send out a costs agreement and we can help out with paperwork.

This is exploitative. We heard no evidence that they are referring victims to support services. What they are doing is referring them to a legal firm to make an application for compensation which they may or may not receive, and if they do receive a payment it will be months or years down the track from which substantial fees will be removed for form filling. All submitters universally condemned the practice. Kate Avery, Principal Lawyer and Director at Kare Lawyers, stated that it—

... brings the profession into disrepute, threatens the viability of our insurance schemes and causes unnecessary distress to potentially vulnerable members of the community.

Both Kate's written and verbal submissions to the committee were really strong, and I am not just saying that because she is a constituent of mine. They were great submissions. Suncorp submitted that claim farming has the potential to negatively impact insurance affordability and increase the incidence of fraud.

This practice of claim farming first emerged in the traffic accident arena and amendments to the Motor Accident Insurance Act in 2019 introduced provisions to stop claim farming. This bill seeks to extend that prohibition to similarly prevent claim-farming activities for WorkCover claims under the Workers' Compensation and Rehabilitation Act and personal injury claims under the Personal Injuries Proceedings Act. One of the ways we aim to tackle claim farming is to remove that financial incentive to engage in farming by prohibiting a person from giving or receiving consideration for referring a claimant or potential claimant. The bill inserts provisions in the Personal Injuries Proceedings Act and the Workers' Compensation and Rehabilitation Act to create new and explicit offences making it a crime for anyone, including lawyers, to pay claim farmers for the details of potential claimants or to receive payment for a claim or potential claim referral.

Turning to recommendation 2 in the committee report, submitters gave us some really useful feedback in relation to law practice certificates, or LPCs. An LPC is a certificate in a form approved by the Legal Services Commissioner which provides particular prescribed information, including that the supervising principal and each associate of the law practice did not solicit or induce a person into making a claim, that they did not give or receive consideration for referring a claimant or potential claimant and that the costs agreement relating to a speculative personal injury claim complies with the requirements of the PIP Act or the Legal Profession Act. Essentially, these certificates are a declaration that claim farming has not occurred in relation to the claim. Whilst submitters raised no issue with the need for LPCs, the timing of which LPCs were required and the inefficiencies and a potential duplication of issuing certificates were issues that were raised. The committee agreed that the LPC regime as proposed in the bill could be streamlined and clarified and that that would be beneficial to the scheme, and I accept that the minister has spoken to that and circulated some amendments around that already this morning.

A final reform in this bill is in relation to terminal benefits payments that are payable to an eligible worker with a terminal condition under the workers compensation act. Lump sum terminal benefits enable workers to secure medical and palliative care and support and allow them to attend to the financial needs of their family and dependants. Two concerns were raised from the consultation on this, the first being the proposed retrospective application—

Debate, on motion of Ms Bush, adjourned.