Speech By

Laura Gerber

MEMBER FOR CURRUMBIN

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PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL

Mrs GERBER (Currumbin—LNP) (12.44 pm): As a lawyer and now as a parliamentarian and the deputy chair of the Legal Affairs and Safety Committee, I heard from numerous stakeholders with a vested interest in this bill. While I stand with these stakeholders and my LNP colleagues in supporting the objectives of the bill, there are key concerns that I would like to raise.

I turn first to the issue of claim farming. Claim farming is a process whereby a third party—the claim farmer—cold-calls individuals to pressure them into making a compensation claim for personal injuries. Claim farmers then sell the individual's personal information to a legal practitioner or other claims management service provider who handles the claim. Undeniably, claim farming is abhorrent. It is two pronged and affects both the profession and the victim. Claim farming brings the profession into disrepute, threatens the viability of industry-wide insurance schemes and causes unnecessary stress to potentially vulnerable members of the committee.

During the committee process we heard testimony from child abuse service knowmore about claim farming. Knowmore told us—

'One client was sent a costs agreement by a law firm, being unaware of ever having been in contact with that firm. It is believed that an acquaintance of our client gave their name to a survivor advocacy business, which in turn passed our client's name onto the law firm. Our client said that they "felt used and taken advantage of" by these lawyers and felt that the lawyers "were out to make money from their pain.

This bill introduces provisions for personal injury and WorkCover claims that will require law practices acting for claimants to declare that claim farming has not occurred in relation to the claim through law practice certificates. The law practice certificate is a means by which claim farming can be deterred and detected, rather than an end in and of itself. The intention to require a law practice certificate mirrors the intention of the Motor Accident Insurance Act; however, due to the complexity of the law practice certificate regime in this bill, including the complex nature of personal injury and WorkCover claims and that there may be hybrid claims, the bill—indeed the amendment to the amendment of the bill in its current form—is in need of further amendment. I agree with the Law Society of Queensland when they say—

It is essential that these additional bureaucratic requirements—

being law practice certificates—

be simple and efficient to comply with ... There is no public good in law-abiding practitioners becoming overburdened by excessive certificate requirements or being prosecuted for inadvertent failure to comply.

Accordingly, the Legal Affairs and Safety Committee recommended that the bill be amended to stipulate that the recipient of the law practice certificate for WorkCover statutory and common law-claims be the Office of Industrial Relations and, further, that the recipient of the law practice certificate for personal injury proceedings and/or institutional child sex abuse claims be the Legal Services Commission.

This recommendation was made so that there is a central authority receiving the law practice certificates, to alleviate some of the very valid concerns of almost all the submitters—simplifying matters for complying legal practitioners and acting as a stronger deterrent to claim-farming practices. Ensuring a regulator has direct knowledge of claims and the opportunity to check law practice certificates is a more effective monitoring mechanism than relying on insurers, who have a discretion to report, or their solicitors.

I note that this recommendation has not been supported by the government. I remain very concerned that the legal practice certificate regime, as drafted by this bill, may not achieve its objectives. I urge the government to monitor closely the effectiveness of compliance and enforcement to ensure the bill achieves its objectives of stamping out claim farming.

The Legal Affairs and Safety Committee also recommended that the bill be amended to stipulate—

- That the obligation in relation to common law damages claims is to provide one certificate to the Legal Services Commission at or shortly following the law firm being retained by the client in respect of a damages claim
- In relation to statutory claims pursuant to the Workers' Compensation and Rehabilitation Act, the obligation to give the Law Practice Certificate to the Office of Industrial Relations should only enlivened where the claimant is legally represented at the time the claimant accepts a lump sum offer in a Notice of Assessment including for any terminal condition, and prior to any payment being made to a law firm's trust account.

Again, the recommendation was made to streamline the stages at which law practice certificates are provided to alleviate some of the complexity of the regime. To this end, the Australian Lawyers Alliance commented—

To require a Law Practice Certificate for all statutory claims is a heavy and unnecessary burden, with no tangible benefit.

…

The administrative burden of this is excessive and risks weakening the regulatory and enforcement function of the Regulator.

Again, I note this recommendation is not supported by the government in its entirety. However, I do note that the government is somewhat streamlining the regime by proposing amendments to the amendments by omitting the requirement for a law practice to provide a certificate on retainment during a statutory workers compensation claim.

Turning now to the other unscrupulous billing practices that the bill seeks to provide a protection from, currently in Queensland costs related to speculative personal injury have a fifty-fifty rule applied. In recent times we have seen unscrupulous law firms, in order to maximise the amount they can charge a client under the fifty-fifty rule, enter into costs agreements with clients which treat certain items as disbursements which normally would be expenses of the law practice so that they are not captured by the fifty-fifty limit. The bill proposes to amend the Legal Profession Act to clarify that legal costs will include an amount paid or payable to a third-party entity for obtaining instructions or preparing statements in relation to the claim, but the Attorney's department has advised that at this stage it does not envisage including anything by way of regulation to fix the problem in its entirety.

This amendment is only a step towards stamping out undesirable costs agreement practices which may be used to facilitate or hide claim-farming activity. It by no means goes far enough to address the full problem of unscrupulous law firms contracting out work that should be covered by the fifty-fifty agreement so they can chalk this up as a disbursement falling outside the fifty-fifty rule and allowing them to cost gouge their clients. In fact, when I questioned the minister's department about this billing practice during the committee hearing, the department seemed unaware. I also note that in the first iteration of the government's amendment barristers' fees were only exempt under the Personal Injuries Proceedings Act, leaving out barristers' fees under WC or CP claims. I am pleased this sloppy drafting error has been rectified and the government has amended the bill accordingly.

Finally, I turn to the entitlement changes for terminal workers compensation proposed by the bill. In 2019 the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill was introduced by the Palaszczuk Labor government to remove the two-year time limit on terminal benefits claims. In the second reading speech for the amendment bill, Minister Grace stated—

This is an important amendment for those who need it most and a great step forward in that area.

However, now we see Labor going back on this and reintroducing a time period. Not only is Labor proposing to reintroduce a time period to fix up its blunder in the first place; it also originally proposed to make it retrospective, meaning that the proposed commencement date will retrospectively abolish many Queensland workers' entitlements to terminal benefits. The Law Society of Queensland submission commented that retrospective laws are unjust, unfair and unreasonable and as a matter of basic principle this should not be permitted to stand. The retrospective application of the abolishment of the time period was one of the major issues consistently raised throughout the committee process. It

was heavily criticised as unfair and as bad law and could also be costly on injured workers where eligibility is changed mid-claim. It is pleasing to hear that the government is now proposing to amend the transitional arrangements to allow claims or disputes on foot to continue under the 2019 definition, but let us not forget that the very fact that we are seeing amendments to amendments to fix up blunders is very sloppy work by this government.

In summary, the LNP will not be opposing the bill, but the concerns raised by stakeholders during the committee process need to be acknowledged and I would suggest that those issues which form the basis of the recommendations of the Legal Affairs and Safety Committee not taken up by the government need to be monitored closely. No doubt this sloppy government will be back here making further amendments to amendments because this is a government that simply cannot get it right the first time.