




Speech By
Peter Russo
MEMBER FOR TOOHEY

Record of Proceedings, 21 June 2022

PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL

 **Mr RUSSO** (Toohey—ALP) (12.15 pm): I rise to speak in support of the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 and the amendments to be moved during consideration in detail by the Attorney-General. The Personal Injuries Proceedings and Other Legislation Amendment Bill was introduced into the Legislative Assembly and referred to the Legal Affairs and Safety Committee on 31 March. 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 entitlement to terminal workers compensation arises under the Workers' Compensation and Rehabilitation Act; and make technical and clarifying amendments to the Electoral Act relating to fundraising contributions and state campaign accounts and disclosure returns.

The committee in its report No. 27, which was tabled in the Assembly on 27 May, has recommended to the Assembly that the bill be passed. There were three recommendations in the report. The committee heard and read about instances of great personal suffering and the devastating toll on individuals, their families and their workmates that accompanies a terminal illness diagnosis. The committee appreciates the selfless actions of those who told of their own pain in the hope of making things better for others. On behalf of the committee, I thank those individuals and organisations who appeared before the committee at its public hearing and those who made written submissions to the bill. On 5 April 2022, the committee invited stakeholders and subscribers to make written submissions on the bill, and we received 18 submissions.

The aim of the claim-farming provisions under the bill is to apply and adapt the provisions enacted under the Motor Accident Insurance and Other Legislation Amendment Act to prohibit claim farming in the personal injury and workers compensation areas. The explanatory notes state—

It is not the intention that the prohibitions on claim farming affect the ability for potential claimants to initiate and progress legitimate claims for personal injuries arising out of ordinary civil litigation or workers' compensation matters. Rather, it will prevent potential claimants from being incentivised, harassed, or induced into making claims by claim farmers.

Flowing from the practice of claim farming, the bill aims to combat undesirable costs agreements and billing practices by law practices that currently exist in the area of speculative personal injury matters. This type of client billing arrangement is currently being used to disguise claim-farming arrangements and ultimately prevent successful claimants from receiving a fair and equitable share of judgement or settlement funds. Consequently, the bill proposes to clarify how legal fees are calculated in relation to these types of personal injury matters.

The majority of the committee recommended that the Personal Injuries Proceedings and Other Legislation Amendment Bill be passed. However, the committee urges that the amendments to the bill recommended in its report be made. In 2019, amendments to the Motor Accident Insurance and Other Legislation Amendment Act first introduced provisions to stop claim farming. The bill today seeks to extend the prohibition to similarly prevent claim-farming activities for workers compensation claims

under the Workers' Compensation and Rehabilitation Act and personal injury claims under the Personal Injuries Proceedings Act. The bill aims to outlaw claim farming by prohibiting: the giving or receiving—or agreeing to give or receive or allowing or causing someone else to give or receive—consideration for a claim referral or potential claim referral; and personally approaching or contacting a person for the purpose of making a claim, or soliciting or inducing them to make a claim.

Submitters on the issue of claim farming unanimously condemned the practice, with Kare Lawyers noting that claim farming is abhorrent, it brings the profession into disrepute, threatens the viability of our insurance schemes, and causes unnecessary distress to potentially vulnerable members of the community.

Observed as having the potential to be particularly shameful was the evolving business of survivor farming or survivor advocacy. This is the name given to claim-farming activity in relation to institutional child sexual abuse survivor claims, where behaviours of claim farmers have extended beyond cold calling to targeting abuse survivors specifically by approaching particular communities to sign people up without also informing them about the existence of other free services available for abuse survivors.

The submission from knowmore gave us extensive examples of survivor farming conduct, including advice that some survivors were being subjected to harassment, intimidation and high-pressure tactics, or survivors were being asked to sign documents they did not understand with survivors unsure or confused about what work was being done for them or by whom. It was disturbing to hear of a situation where one survivor had complained to knowmore about an unsolicited phone call from a survivor advocacy business that breached the survivor's confidentiality by disclosing the survivor's status as an institutional child sexual abuse survivor to their family member who took the call and who was previously unaware of the survivor's experience of childhood sexual abuse.

Knowmore's evidence to the committee also depicted how survivor advocacy businesses are claimed to farm some of the most vulnerable survivor populations, in specific settings and circumstances of vulnerability such as prisons and remote First Nations communities as well as target the past students and residents of schools and institutions where institutional child sexual abuse is known to have occurred.

Reforms under the bill will require a law practice certificate in a form approved by the Legal Services Commission, stating the law practice acting for claimants has declared that claim farming has not occurred in relation to the claim. The committee noted the complexity of the LPC regime as proposed. Streamlining the stages at which LPCs are provided, and clarifying the repositories for the certificates, is considered likely to alleviate some of this complexity.

Concerns were raised by stakeholders that some of the initiatives aimed at stamping out claim farming do not align with the core purpose of the workers compensation scheme in Queensland. Several Queenslanders work in environments where they are potentially exposed to harmful dust and fumes. Workers such as spray painters, welders and diesel mechanics have the potential to be exposed to a number of airborne toxins, as part of their day-to-day work, or workers may have been exposed in trains, in rail infrastructure, or in the removal and transport of building materials. Firefighters are another group of workers who, in the course of their duties, are frequently exposed to toxins and poisons that evidence has clearly demonstrated put them at an elevated risk of being diagnosed with cancer.

A worker with a terminal condition has an entitlement to latent onset terminal condition lump sum benefits or compensation. The key purpose of the scheme in Queensland is to balance the provision of fair and appropriate benefits to injured workers, dependants and other persons, and to maintain reasonable insurance costs for employers.

Prior to amendments in 2019, the act defined a terminal condition as a condition certified by a doctor that was expected to terminate the worker's life within two years. Workers with a terminal condition as a result of their employment—for example, any one of a number of dust lung diseases, or work related cancers such as those sustained by firefighters—with a life expectancy up to two years had an entitlement to a statutory lump sum payment.

The committee received submissions and took evidence from stakeholders that spoke to the difficult nature of dust related lung diseases and cancers. The Asbestos Disease Support Society provides support and assistance to individuals, along with their families and carers, who have been diagnosed with an asbestos related disease or the deadly lung disease that results from the inhalation of crystalline silica.

Track workers are strong, fit and hardworking people. They are the people who build the track and fix it when it gets buckled by the hot Queensland sun. It is expected that someone in the field would earn about \$100,000 a year. Once Greg got sick, he went back to about \$85,000 for the first six months. I commend the bill to the House.