




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 31 March 2022

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

Message from Governor

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.21 am): I present a message from Her Excellency the Governor.

Madam DEPUTY SPEAKER (Ms Lui): The message from Her Excellency recommends the Personal Injuries Proceedings and Other Legislation Amendment Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL 2022

Constitution of Queensland 2001, section 68

I, DR JEANNETTE ROSITA YOUNG PSM, Governor, recommend to the Legislative Assembly a Bill intitled—


A Bill for an Act to amend the Electoral Act 1992, the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020, the Legal Profession Act 2007, the Motor Accident Insurance Act 1994, the Personal Injuries Proceedings Act 2002 and the Workers' Compensation and Rehabilitation Act 2003 for particular purposes

GOVERNOR

Date: 31 March 2022

Tabled paper: Message, dated 31 March 2022, from Her Excellency the Governor, recommending the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 [475](#).

Introduction

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.22 am): I present a bill for an act to amend the Electoral Act 1992, the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020, the Legal Profession Act 2007, the Motor Accident Insurance Act 1994, the Personal Injuries Proceedings Act 2002 and the Workers' Compensation and Rehabilitation Act 2003 for particular purposes. I table the bill, the explanatory notes and a statement of capability with human rights. I nominate the Legal Affairs and Safety Committee to consider the bill.

Tabled paper: Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 [476](#).

Tabled paper: Personal Injuries Proceedings and Other Legislation Amendment Bill 2022, explanatory notes [477](#).

Tabled paper: Personal Injuries Proceedings and Other Legislation Amendment Bill 2022, statement of compatibility with human rights [478](#).

I am pleased to introduce the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022. The main purpose of the bill is 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 an entitlement to terminal workers compensation arises under the Workers' Compensation and Rehabilitation Act 2003; and make technical and clarifying amendments to the Electoral Act 1992 relating to fundraising contributions and state campaign accounts and disclosure returns.

I will deal firstly with the issue of claim farming. Acknowledging the agile nature of the claim farming industry and the concerns of stakeholders that personal injuries claims, particularly institutional child sexual abuse and workers compensation claims, are being claim farmed, there is merit in proactively preventing widespread claim farming across all personal injury schemes and ensuring parity across personal injury legislation in Queensland.

Claim farming 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 high-pressure and deceptive tactics to elicit the individual's personal information and agreement to submit a claim, often with the lure of quick, easy and significant compensation and even offering to coordinate medical treatment. This information is then sold, for a fee, to a lawyer or claims management service provider to handle the claim.

Members will recall that in 2019 the Palaszczuk government introduced the Motor Accident Insurance and Other Legislation Amendment Act 2019 to stop the increasingly prevalent practice of claim farming compulsory third party claims. These amendments have been successful in interrupting the market in which claim farmers sought to sell their product. However, it has become apparent that since the Motor Accident Insurance and Other Legislation Amendment Act was enacted, the claim farming industry has pivoted to new types of claims. There have been reports of a growing prevalence of claim farming activity for personal injury and workers compensation claims that make it necessary to expand claim farming prohibitions into these markets.

The bill amends the Personal Injuries Proceedings Act 2002, the Legal Profession Act 2007 and the Workers' Compensation and Rehabilitation Act 2003 to introduce provisions modelled on the Motor Accident Insurance Act 1994 that: prohibit cold calling or personally approaching another person without their consent and soliciting or inducing them to make a claim; make it an offence for any person to pay claim farmers for the details of potential claimants or to receive payment for a claim referral or potential claim referral; impose obligations on legal practitioners who represent injured claimants to certify during the claims process that neither they nor their associates have paid a claim farmer for the claim; require law practices to refund, or not recover, fees and disbursements paid in connection with a claim that has been claim farmed; provide the Legal Services Commission with additional powers to oversee and enforce the new claim farming provisions; and expand the Workers' Compensation Regulator's enforcement and investigation powers so it can effectively prosecute claim farming.

As I have indicated, the bill inserts provisions in the Personal Injuries Proceedings Act and the Workers' Compensation and Rehabilitation Act that create new offences prohibiting claim farming practices. These offences are modelled on the equivalent offences in the Motor Accident Insurance Act. The first offence removes the financial incentive to engage in claim farming by prohibiting a person from giving or receiving consideration for referring a claimant or potential claimant. This offence aims to prevent a person from paying a claim farmer for the details of potential claimants or receiving payment for a claim referral or potential claim referral.

The second offence prohibits a person from personally approaching or contacting another person to solicit or induce them to make a claim. Personal approach or contact includes contact by mail, telephone, email or other forms of electronic communication. This offence aims to prohibit the act of cold calling or personally approaching another person without their consent to solicit or induce them to make a personal injury claim.

Like the Motor Accident Insurance Act, the bill provides certain exceptions for these offences. The first offence will not apply to a law practice that is selling its business to another law practice provided the new practice pays for the referral of a claimant or potential claimant and the amount is consistent with the current fees and costs the law practice is entitled to charge for the claim. Additionally, the first offence does not prohibit advertising or promoting a service or person to the public or a group, which results in a claimant using the service or person. Similarly, the second offence will not apply if the act of contacting a potential claimant is not expected or intended to result in, and does not result in, that person or another person receiving consideration because of the contact.

Additionally, there are circumstances where a law practice or lawyer may contact a person. The first is if a law practice or lawyer has previously provided services to the person and the law practice or lawyer reasonably believes that the person will not object to that approach or contact. The second is if a community legal service or industrial organisation has asked the law practice or lawyer to contact the person and it is advised that the person will not object to that approach or contact.

To ensure law practices abide by the claim farming provisions and consistent with the Motor Accident Insurance Act, the bill will require law practice certificates to be completed and provided by law practices representing a claimant at various points during the personal injury and workers compensation claim process. A law practice certificate must state the supervising principal and each associate of the law practice has not paid a claim farmer for the claim or approached, solicited or induced the claimant to make a claim in contravention of the claim farming provisions. Additionally, and in line with the objective of the bill in preventing undesirable billing practices, when a claim is a speculative personal injury claim, the law practice certificate must also state that the costs agreement complies with the rules regarding costs under the Legal Profession Act and section 71E of the Personal Injuries Proceedings Act.

It is noted that the Queensland workers compensation scheme comprises a no-fault statutory component as well as the common law component. In this context, the bill creates a requirement for the provision of a law practice certificate if a workers compensation claimant becomes legally represented as part of a statutory claim and upon receipt of a direction to pay compensation to an account held by a law practice or within seven days after payment of certain lump sum compensation.

A breach of the obligation to provide a law practice certificate, or providing a false or misleading certificate, attracts a maximum penalty of 300 penalty units. In addition to the penalties for noncompliance with the law practice certificate requirements, law practices may need to refund, or may not be entitled to recover, fees and disbursements paid in connection with a claim. Additionally, if a law practice is convicted of certain specified law practice certificate and claim farming offences, the law practice is not entitled to recover any fees or costs including disbursements that relate to the provision of services for the claim and must repay any amount received.

To ensure the oversight and enforcement of the claim farming and law practice certificate provisions, the bill extends the role of the Legal Services Commissioner and the Workers' Compensation Regulator by providing the power to investigate and prosecute breaches of the claim farming provisions. Additionally, the commissioner and regulator may appoint an investigator, also referred to as a special investigator under the Legal Profession Act provisions, who will have extensive powers to investigate suspected contraventions of the claim farming offences.

To ensure the investigator can properly investigate breaches, a person under investigation cannot claim legal professional privilege or the privilege of self-incrimination as a reason for failing to comply with a request of the investigator. However, the bill will counterbalance the abrogation of both privileges by specifying that, if a person discloses a privileged client communication when complying with a requirement of these provisions, the person is taken to have not breached legal professional privilege. The disclosure also does not constitute a waiver of legal professional privilege or otherwise affect any claim of legal professional privilege for any purpose other than a proceeding for an offence against specified law practice certificate and claim farming provisions.

The bill also introduces information sharing provisions. This is essential, as claim farmers can act across schemes, and may target dual liability claims. Where nefarious conduct is detected, the Workers' Compensation Regulator, the Legal Services Commission and the Motor Accident Insurance Commission will be able to proactively share information on claim farming activity, enabling more efficient and targeted investigations.

I turn now to amendments to address undesirable billing practices by lawyers. Currently, the Legal Profession Act limits legal costs that can be charged in speculative personal injury matters to 50 per cent of legal costs after disbursements, known as the fifty-fifty rule. Concerns have been raised with me that law practices are utilising undesirable billing practices by inflating disbursements, through the charging of 'additional amounts', thereby increasing the amount of legal costs that can be charged and in turn reducing the amount payable to the successful claimant.

To address some of these concerns, amendments in the bill will provide for these additional amounts to be treated as legal costs and not disbursements when determining whether the legal costs charged to a client exceed the fifty-fifty rule under the act.

I turn now to amendments relating to terminal compensation. The bill includes an amendment to confirm when an entitlement for terminal compensation arises under the Workers' Compensation and Rehabilitation Act 2003. Importantly, the proposed amendment does not prevent workers from accessing terminal compensation; instead, it confirms when the entitlement arises.

The bill inserts an explicit timeframe of three years in the definition of terminal condition and this timeframe will apply to latent onset terminal conditions sustained on or after 31 January 2015. The amendments will ensure terminal compensation is accessed when most needed by workers in the end stages of life and protects the sustainability of the scheme for all workers who may need it.

Separately, the bill makes technical and clarifying amendments to address implementation issues concerning the new political donation caps that are scheduled to commence under the Electoral Act 1992 on 1 July this year. The bill will correct an unintended policy outcome regarding the payment of fundraising contributions into a state campaign account of registered political parties and candidates. The bill clarifies that a fundraising contribution that may be paid into the state campaign account is limited to an amount of \$200 without being subject to the political donation caps. The part of a fundraising contribution that exceeds \$200 must be a political donation and subject to the caps to be paid into the state campaign account. This reflects the original policy intent of the amendments.

Additionally, to assist the Electoral Commission of Queensland in monitoring compliance of new political donation caps, the bill will amend the disclosure return requirements for gifts to registered political parties and candidates. From 1 July 2022, it will be a requirement that a disclosure return for these gifts specifies whether or not the gift is a political donation. For political donations given to an electoral committee established by a registered political party, it will also be a requirement for the disclosure return to state the relevant electoral district. This additional information will ensure that the ECQ can effectively and efficiently monitor compliance with the political donation caps.

In conclusion, I can assure parliament that the claim farming amendments will not affect the rights of genuinely injured Queenslanders to initiate and progress legitimate claims under the Personal Injuries Proceedings Act or the Workers' Compensation and Rehabilitation Act. The amendments will, however, prevent them from being incentivised, harassed and induced into making a claim by a claim farmer who will receive payment for the referral.

It is intended that this bill will remove the financial incentive for claim farmers to harass Queenslanders and will amplify the disincentive for legal practitioners to engage with claim farmers given that they will be required to certify, at various stages of the claim process, that the claim was not claim farmed. Lawyers will still be able to inform people of their rights and entitlements at law and to advertise and promote their services. However, what this bill aims to do is stop the harassing calls and intimidating behaviour—all too often targeted at the most vulnerable within our communities—and minimise the potential for unmeritorious claims and fraudulent behaviour in relation to personal injury and workers' compensation claims.

Queensland will be the first jurisdiction in the country to introduce explicit claim farming offences for a workers' compensation scheme and its coverage will prevent the workers' compensation scheme from becoming an unregulated avenue for claims farmers. By doing so, the Palaszczuk government maintains its proud record of supporting Queensland workers and maintaining a strong and sustainable scheme. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.37 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Safety Committee

Madam DEPUTY SPEAKER (Ms Lui): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.