Speech By

Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 21 June 2022

PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL

Second 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) (11.28 am): I move—

That the bill be now read a second time.

I thank the Legal Affairs and Safety Committee for their consideration of the Personal Injuries Proceedings and Other Legislation Amendment Bill. The committee tabled their report No. 27 on 27 May 2022. I table the government's response to that report.

Tabled paper: Legal Affairs and Safety Committee: Report No. 27, 57th Parliament—Personal Injuries Proceedings and Other Legislation Amendment Bill 2022, government response 844.

I extend my thanks to all the stakeholders who made submissions during the committee process, including members of the legal profession, insurers, industrial organisations and survivor and support advocacy groups.

The bill amends 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. The bill will 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; and make technical and clarifying amendments to the Electoral Act relating to fundraising contributions and state campaign accounts and to disclosure returns.

This bill is further testament to the Palaszczuk government's commitment to stamp out the insidious practice of claim farming in Queensland. Claim farmers, also known as claims management services, approach individuals to pressure them into making personal injury and workers' compensation claims, often with the promise of significant amounts of compensation. They will then charge a fee to sell their claim to a lawyer or claims management service provider to handle the claim.

The Palaszczuk government introduced the Motor Accident Insurance and Other Legislation Amendment Act 2019 to provide for the first explicit legislative prohibition on claim farming in Queensland to stop the—at the time—increasingly prevalent practice of claim farming for compulsory third-party claims. Since these claim-farming reforms commenced in 2019, a significant drop has been recorded in the number of people reporting that they are being harassed by claim farmers.

Due to the success of the claim-farming reforms, the claim-farming industry has pivoted to new types of personal injury claims, with stakeholders reporting claim-farming activity occurring in respect of personal injury, including those involving institutionalised child sexual abuse claims and workers compensation claims.

To address this behaviour, the bill amends the Personal Injuries Proceedings Act and the Workers' Compensation and Rehabilitation Act to adopt a claim-farming framework in each act which will prohibit claim farming and require law practices to certify that claims they are representing have not been farmed. The bill inserts two new offences into both acts which prohibit claim-farming conduct and carry a maximum penalty of 300 penalty units. These offences include an offence prohibiting a person from personally approaching or contacting another person without their consent and soliciting or inducing them to make a claim.

Any person who pays claim farmers for the details of potential claimants or a person who receives payment for a claim referral or potential claim referral will have committed an offence. It will also be a breach of an obligation to provide a law practice certificate, or providing a false or misleading certificate, which attracts a maximum penalty of 300 penalty units.

The bill also imposes an obligation on the supervising principal of a law practice to notify the Legal Services Commissioner if the law practice, or an associate of the law practice, reasonably believes a person is contravening a law practice certificate requirement.

Recognising the need for a strong enforcement and compliance mechanism, the bill expands the powers of the Legal Services Commissioner and the Workers' Compensation Regulator to oversee and enforce the new claim-farming provisions and law practice certificate requirements. This includes empowering the Legal Services Commissioner and the Workers' Compensation Regulator to appoint an investigator who will have extensive powers to investigate suspected contraventions of the claim-farming offence. The Department of Justice and Attorney General and I have consulted extensively with the Legal Services Commissioner in relation to the mechanics of the proposed bill. I thank Ms Mahon for her contribution to this piece of legislation.

Turning to the recommendations of the Legal Affairs and Safety Committee, I note that the committee recommended passage of the bill but did urge the government to make some changes to the proposed legal practice certificate requirements and to the commencement of the terminal condition definition. I acknowledge the committee's recommendation that law practice certificates relevant to workers compensation claims be given to the Office of Industrial Relations rather than to scheme insurers. However, this recommendation is not supported as insurers are best placed to collect and retain law practice certificates.

Insurers are responsible for the day-to-day management of claims and will be able to recognise when a claimant may be legally represented and to identify the stages when a certificate is required and not provided. Adoption of the recommendation would create an unnecessary intermediary step, potentially leading to an increased regulatory burden on insurers and the Office of Industrial Relations as well as delays in claim processing. The bill as drafted ensures that the Office of Industrial Relations has appropriate oversight at the systems level and is consistent with the broader performance and compliance monitoring of the scheme.

The committee also recommended that law practice certificates under the Personal Injuries Proceedings Act be given to the Legal Services Commission. In engaging with the Legal Services Commissioner, it became clear that there are no clear benefits in requiring all law practice certificates to be given to the commission as a matter of course. Given the expectation that law firms would more often than not be compliant with the law practice certificate requirements, the recommendation is likely to impose a significant, and potentially unnecessary, regulatory burden on the commission.

Further, providing certificates to the commission would not facilitate a reconciliation of when a certificate has not been provided, as required. Instead, the obligation to receive certificates and monitor compliance is primarily placed on law practices representing respondents and respondents' insurers. These law practices are well placed to know whether a law practice certificate has or has not been provided to them as required under the act, because it is their role to closely examine claim documentation to ensure compliance with the various legislative requirements applying to the claim.

The committee further recommended that only one law practice certificate should be provided under the Personal Injuries Proceedings Act at the time the law practice is retained. This represents a fundamental change in approach to the framework contained in the Motor Accident Insurance Act 1994 upon which the requirements are based and which has proven successful in preventing claim farming of compulsory third-party claims. Again, this is not supported by the Legal Services Commissioner.

Aligning the law practice certificate requirements across the three personal injury frameworks ensures certainty and consistency for practitioners operating in this area and lessens the potential for noncompliance and breaches due to confusion arising from various differing arrangements.

Further, I note that during the development of the claim-farming provisions in the Motor Accident Insurance Act, the Queensland Law Society strongly advocated for the completion of a certificate on settlement of judgement in the matter. According to the society, this is the time when the claimant or plaintiff will feel most comfortable in revealing the source of the claim referral. For these reasons, this change is not supported.

In relation to the provision of law practice certificates, the committee also recommended that certificates should only be provided in the statutory phase when the claimant is represented and accepts a lump sum offer as given in a notice of assessment and prior to any payment being made into a law firm's trust account.

I acknowledge that the committee was seeking to streamline the provision of certificates and respond to legal stakeholder concerns about the complexity of certificates for a statutory claim. As such, I propose to move amendments to the bill to omit the requirement to provide a certificate on retainment in a statutory claim. While this approach simplifies the requirements for when a law practice certificate is given, it continues to ensure direct alignment with the Motor Accident Insurance Act and Personal Injuries Proceedings Act by making sure a law practice certificate is provided on retainment for a claim for damages across all the schemes. In addition, linking a law practice certificate to the notice of assessment as recommended by the committee would remove important safeguards which are not supported by the Legal Services Commissioner. However, I will move an amendment which, in consultation with the commissioner and other regulatory bodies, will significantly streamline this process for legal practitioners.

Not every statutory payment is linked to a formal notice of assessment. They are only provided with respect to a permanent impairment assessment and exclude other substantial payments including: industrial deafness, terminal latent onset injuries, redemption payments and death benefits. As drafted, the bill provides greater coverage and protection for statutory claims by covering any matter that is subject to a payment direction and all substantial lump sum payments that may be attractive to a claim farmer.

With respect to the committee's third recommendation, that the proposed new terminal condition definition in section 39A have an operational date of 1 July 2022 or on proclamation, the government supports this recommendation in principle. The government recognises that diagnosis of a terminal latent onset injury has a profound and complex impact on a worker's life. The Queensland workers compensation scheme provides a lump sum payment to workers with terminal conditions, with Queensland being the only jurisdiction in Australia to offer broad-ranging statutory terminal compensation of this nature.

The bill as drafted clarifies the timing of when a worker is able to access a terminal compensation payment. It does not remove a worker's right to access a terminal compensation payment if their injury progresses. It also does not stop a worker from accessing the many other workers compensation entitlements, including weekly benefits, medical, rehabilitation and return to work support and lump sum payments before their injury is in its final stages.

It is important the policy intent of this entitlement is confirmed to ensure funds are provided at the right time, so workers and their families receive it when they need it most. However, it is acknowledged there will be some claimants who have provided certification of a terminal condition to their insurer and, rightly so, expect it to be progressed under the current definition. To respond to the committee's findings and concerns raised by stakeholders, it is proposed to move amendments to the bill that will allow those workers with current claims or disputes underway, and who have provided medical evidence to their insurer of a terminal condition before 1 July 2022, to continue to rely on the current definition.

It is also proposed to amend the time frame to be inserted into the definition of terminal condition. A time frame of five years, not three years as originally proposed in the bill, will be progressed under these amendments. This approach balances fairness for workers together with clarifying the policy intent of the 2019 amendment.

Further, in the body of the report, the committee recommended a fulsome examination of the advertising restrictions in the Personal Injuries Proceedings Act, noting that the current restrictions are ineffective, outdated and deny people the opportunity to obtain important and relevant information about their legal rights. Whilst this recommendation is outside the scope of the bill, I intend to consult with key stakeholders to seek their views on the advertising restrictions in the Personal Injuries Proceedings Act. Consultation is likely to start later this year in relation to this issue.

To address implementation issues regarding the new political donation caps due to commence on 1 July 2022, the bill makes technical and clarifying amendments to the Electoral Act 1992. The bill will amend the requirements for managing the state campaign accounts of registered political parties and candidates by clarifying that fundraising contributions may only be paid into the state campaign account if the contribution is $200 or less or the first $200 of a larger contribution. The part of a fundraising contribution that exceeds $200 must be treated as a political donation and therefore be subject to the political donation caps to be paid into the state campaign account.

Additionally, the bill will require that from 1 July disclosure returns for gifts to registered political parties and candidates must specify whether or not the gift is a political donation. The bill will also require that, in the case of political donations given to an electoral committee established by a registered political party, the disclosure return must state the name of the relevant electoral district. To ensure consistency in approach, a donor statement provided by a donor with the political donation must also specify the relevant electoral district. These amendments will support the ECQ in monitoring compliance with the new political donation caps.

In addition to those amendments in response to the committee report, I also intend to move some further amendments to the bill during consideration in detail. Firstly, amendments will be moved to clarify that barristers' fees incurred in obtaining instructions or preparing statements in urgent proceedings or after a notice of claim is given under the Workers' Compensation and Rehabilitation Act and the Motor Accident Insurance Act constitutes a disbursement and is outside the scope of the fifty-fifty rule, consistent with the approach in the bill for Personal Injuries Proceedings Act claims.

Concerns have been raised that law practices are utilising undesirable billing practices by inflating disbursements thereby increasing the amount of legal costs that can be charged and in turn reducing the amount payable to the successful claimant. To address these concerns, and to ensure claimants receive a fair and equitable share of a settlement, amendments in the bill will provide for these additional amounts to be treated as claim related costs and not disbursements. Claim related costs will be within the operation of the fifty-fifty rule and must be taken into account when determining the maximum amount a client may be charged under the fifty-fifty rule.

Secondly, amendments will be moved to facilitate the use of a single approved form across the three claim-farming schemes—the feasibility of which is currently being considered by regulators. Thirdly, amendments will be moved ensuring that the claim-farming offence in the Personal Injuries Proceedings Act relating to approaching or contacting a person for the purpose of soliciting or inducing them to make a claim also applies where the contact or approach is made by way of bulk communications to vulnerable groups to address concerns raised by knowmore in their submission to the committee.

Finally, I propose to rectify some minor technical and cross-referencing issues with the proposed amendments in the bill which were identified after the bill's introduction. I want to end my contribution today by assuring parliament that the claim-farming amendments included in the bill will not affect the rights of genuinely injured Queenslanders to access justice. Claimants can still initiate and progress legitimate claims under the Personal Injuries Proceedings Act or the Workers' Compensation and Rehabilitation Act. The amendments will, however, prevent claimants or potential claimants from being incentivised, harassed and induced into making a claim by a claim farmer who will receive payment for the referral. They will ensure the justice system is not burdened by the cost of unnecessary personal injury and workers compensation claims and injured Queenslanders will be able to access more efficient rehabilitation and compensation for their claims. Finally, the amendments make sure workers who unfortunately succumb to a work related terminal condition are able to access terminal compensation when they most need it. I commend the bill to the House.