Speech By

Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 22 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) (3.16 pm), in reply: At the outset, I thank all members who have contributed to the debate of the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022. As I indicated in my earlier speeches, the main purpose of the bill is to amend the Personal Injuries Proceedings Act 2002 and the Workers' Compensation and Rehabilitation Act 2003 to: prohibit a person cold calling or personally approaching another 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 by way of a law practice certificate that neither they nor their associates have paid a claim farmer for the claim; and require law practices retained by respondents and insurers to notify the Legal Services Commission if they suspect a contravention of the law practice certificate requirements.

The claim-farming provisions in the bill are modelled on those applying to compulsory third-party claims under the Motor Accident Insurance Act 1994. The measures contained within the Motor Accident Insurance Act 1994 have been so successful—which has been widely acknowledged. The Motor Accident Insurance Commission has seen a decline in reported claim-farming activity. I would like to join with the member for Logan in thanking and recognising the former member for South Brisbane, Jackie Trad, for championing the original reforms to the Motor Accident Insurance Act.

Mr Power: Pioneering work.

Ms FENTIMAN: I take that interjection—it was pioneering work. She commenced this reform process, which is so important, and now we are extending it to personal injuries and workers compensation claims.

The bill also provides the Workers' Compensation Regulator and the Legal Services Commission with additional powers to oversee and enforce the new claim-farming provisions, including 'special investigation powers' like those possessed by the Motor Accident Insurance Commission. The bill also amends the fifty-fifty rule in the Legal Profession Act 2007 to ensure claimants receive a fair and equitable share of settlement funds and addresses concerns that certain disbursements are used to potentially disguise a claim-farming arrangement. It confirms the policy intent for when an entitlement to terminal workers compensation arises under the Workers' Compensation and Rehabilitation Act, and it makes technical and clarifying amendments to the Electoral Act 1992 relating to fundraising contributions and state campaign accounts and disclosure returns.

I would now like to address comments made during the second reading debate. The members for Clayfield and Kawana made much of the fact that the bill will require amendments during consideration in detail. However, the honourable members will be aware that there can be a range of

reasons why amendments are necessary, and a prime example of that might be the fact that we are listening and responding to matters raised as part of the committee process or by key stakeholders post introduction of a bill. Important legislation may also need to be developed at short notice and consideration in detail of the bill provides an opportunity for any amendments to clarify the operation of provisions and ensure the bill achieves its objectives. These amendments show our parliamentary and democratic processes are working.

For the LNP, a party that constantly says that the committee system is somehow broken, it is a little bit hypocritical to then say we should not make amendments after receiving feedback from a committee. However yesterday, as I heard the ongoing criticism by the member for Kawana and the member for Clayfield about so many amendments being needed to this bill, I thought to myself, 'I wonder what their track record might be when it comes to amendments to bills when they were ministers.' I had a look at how many amendments the former attorney-general, the member for Kawana, introduced during his time in office.

Mr Power: How many?

Ms FENTIMAN: 456! That is how many amendments to his legislation he moved in 2012 alone—363 amendments to one bill! He comes in here saying, 'This government do not know what they are doing.' We have 18 amendments to this bill; he had 363 to a bill! I recall that the member for Kawana yesterday referred to the government as #confused—who speaks in hashtags?—and #incompetent. Excuse me, #hypocritical, #worstattorneygeneralinqueenslandshistory! It surely then begs the question what the member for Kawana must think of his own time in office. Over the three short years he was attorney-general, he moved more than 900 amendments. If we judge them on that standard they have set themselves, it is no wonder the title 'worst attorney-general in Queensland's history' is beginning to stick. To stand up in this chamber and make a fuss about 18 amendments, responding to people who had contributed to the committee process, is embarrassing.

Mr Hart interjected.

Ms FENTIMAN: Clearly, the member for Kawana and the member for Clayfield were too lazy to write a speech that actually dealt with the issues that are facing Queenslanders.

Mr Hart interjected.

Mr DEPUTY SPEAKER (Mr Martin): Member for Burleigh.

Ms FENTIMAN: They just decided to get up and criticise.

Mr Hart interjected.

Mr DEPUTY SPEAKER: Member for Burleigh!

Ms FENTIMAN: Well, look at their own record. It is absolutely embarrassing!

Mr Hart: If you are going to screech at me, I'm going to screech at you.

Mr DEPUTY SPEAKER: Attorney-General, you can take your seat. Member for Burleigh, you are warned under the standing orders for continually interjecting. I would ask everyone to remain silent and listen to the rest of the minister's submission.

Ms FENTIMAN: It is absolutely embarrassing when the shadow minister and the former attorney-general come in here and criticise the government for having 18 amendments which respond to community concerns about the bill, when their own record shows that the former attorney-general had 900 amendments in his term—over 300 in one bill. It is astounding!

Let me move on to some of the other contributions in the debate. The member for Clayfield also implied that the scheme for the management of law practice certificates was overly complex and framed to shift costs from the Legal Services Commission to the profession. I want to make it very clear that all of the views have been considered at various stages of the policy development process. The government has worked incredibly closely with legal stakeholders in the development of this legislation, and these bodies are to be commended for their support for combatting claim-farming practices and working with us. I know that there were some concerns raised about the complexity; however, this legislation builds on the current successful model that applies to CTP claims, and we want to continue that successful model.

For PIPA claims, a law practice certificate is required when a lawyer is retained. That is critical to breaking the nexus between claim farmers and law practices, as well as removing the financial incentive to participate in a claim-farming scheme. Provision of a fresh certificate at judgement or settlement is consistent with the approach under the Motor Accident Insurance Act. During the development of amendments to the Motor Accident Insurance Act, the Queensland Law Society strongly advocated for the completion of a certificate on settlement of judgement. Under the provisions, in certain instances it will be sufficient for a copy of the certificate previously provided to the claimant to be provided to a respondent or, if the circumstances require, to multiple respondents. Completion of a

law practice certificate is not considered to be a particularly time-consuming task when compared to the many other documents that are required to progress a claim. It is considered that, at this stage, any further simplification would undermine the effectiveness of the system.

The member for Clayfield also repeated comments about hybrid claims. Again, advice has been taken from the various regulators on this issue and there is no scope, at this stage, to simplify this process. The option of providing all the law practice certificates to the Legal Services Commission and the Office of Industrial Relations was considered. However, no clear benefit was seen in requiring all law practice certificates to be given to these entities as a matter of course. Centralising all the certificates at the commission and the Office of Industrial Relations would have been at considerable cost to government and would not have materially assisted the detection of cases where a certificate has not been provided.

The related suggestion that the Legal Services Commission crosschecks certificates against every personal injury award and settlement is also not practical. Instead, the obligation was imposed on law practices because, as part of their representation of respondents and insurers, they would already be required to closely examine the claim documentation to ensure compliance with the various legislative requirements applying to the claim and, as such, they would know whether a law practice certificate has or has not been provided to them as required.

It is not unreasonable to expect members of the profession to do their part in combatting claim farming where they are well placed to do so. It also provides oversight, whether or not an insurer is involved, and allows the Legal Services Commission to focus on cases where possible breaches have been identified. This additional responsibility is fully funded and will not impact the commission's performance of its other responsibilities. Once the scheme is implemented, I will be happy to hear further from stakeholders and regulators about whether or not there are options for further improving the processes.

In terms of costs to clients, the legal practice certificate will be a very simple document for the supervising legal practitioner to complete: was the claim claim farmed? Where it is appropriate, copies rather than original certificates will suffice. The cost to the practice in preparing these certificates, if passed on to the client, would be very minimal.

I note the member for Currumbin's concerns about the charging of excessive legal costs. The amendments in the bill concerning legal costs are intended to address concerns relating to law firms contracting out work that they would normally do in-house, with the effect that these amounts can be treated as disbursements and therefore outside the operation of the fifty-fifty rule. The amendments address the potential to disguise payments to claim farmers as disbursements and ensure that interest on credit arrangements associated with a claim are treated as legal costs for the purpose of the fifty-fifty rule. Provision has also been made for the prescription of other disbursements and expenses to be treated similarly, if the need is identified. I will continue to work with legal stakeholders in considering whether any other disbursement should be prescribed for this purpose and would be pleased to receive representations from any member who has any suggestions to make this work better.

With regard to the wider concerns raised during the debate about legal costs and the decision in Adamson v Enever, which are outside the scope of this bill, I can inform the House that the Legal Services Commission has issued a regulatory guide in relation to charging outlays and disbursements. Under the guide, the commission is clear that a law firm is not entitled to charge clients for practice overheads as if they were outlays or disbursements. It is also clear that items, including postage and photocopies, can only be billed to clients as disbursements if the actual cost to the client is capable of being and has been accurately costed.

The assertion that has been made that this bill somehow removes the right to claim terminal compensation on diagnosis is simply incorrect. The proposed amendment clarifies the timing of when a worker is able to access a terminal compensation payment; that is, when they are in the final stages of their injury and, sadly, their life. It does not remove a worker's right to access a terminal compensation payment into the future.

The proposed amendment does not stop a worker from accessing other workers compensation entitlements or those at common law including weekly benefits, medical, rehabilitation, return-to-work support and lump sum payments before their injury is in its final stages. The bill before the House today directly aligns with the policy intent. However, this amendment responds to a decision in the QIRC that well extended the discretion in the legislation beyond the policy intent to workers who were not in the terminal phase of their illness, and it aims to ensure funds are provided at the right time so workers and their families receive it when they are most in need. The government recognises that a diagnosis of a terminal latent onset injury has a profound and complex impact on a worker's life and is an incredibly

difficult time for workers and their families. We have listened to the evidence given to the committee, and amendments to the bill today will extend the time frame to five years to ensure workers can plan for their needs and their families during that difficult time.

Some members have commented on the proposed amendments to the Electoral Act that have been included in this bill. I can assure honourable members that the amendments which are proposed at the request of the ECQ are merely intended to clarify and improve the operation of new laws in relation to donation caps before they commence on 1 July 2022. Again, the member for Kawana's contribution yesterday that somehow capping donations is corruption is more nonsense from Queensland's worst attorney-general in history. In fact, getting rid of big money donations in politics is all about getting rid of corruption. Again, I just cannot fathom how the member for Kawana and the member for Clayfield came in here and made these contributions clearly not wanting to actually write a speech that dealt with significant issues that affect Queenslanders and their families.

Finally, in my second reading speech I foreshadowed an amendment to be moved during consideration in detail to facilitate the use of a single approved form across the three claim-farming schemes. Following advice that this can be achieved without a legislative amendment, I would like to inform the House that there is no amendment in relation to this issue and the feasibility of a single form is being considered by the regulators.

In conclusion, the bill is a further testament to the Palaszczuk government's commitment to stamp out the insidious practice of claim farming in Queensland. Provisions contained in the bill will prohibit the harassing calls and intimidating behaviour associated with claim farming and break the nexus between claim farmers and law practices. I commend the bill to the House.