Personal Injuries Proceedings and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022.

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. stop claim farming for personal injury and workers' compensation claims;
2. prevent undesirable costs agreement practices by law practices for personal injury claims;
3. confirm the policy intent for when an entitlement to terminal workers' compensation arises under the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act); and
4. make technical and clarifying amendments to the *Electoral Act 1992* (Electoral Act) relating to fundraising contributions and state campaign accounts and disclosure returns.

'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 tactics such as implying they act on behalf of government agencies or insurers; inducing or harassing individuals to make a claim with the promise of quick, easy, and significant compensation; and even offering to coordinate medical treatment. Claim farmers then sell the individual's personal information to a legal practitioner or other claims management service provider who handles the claim.

The *Motor Accident Insurance and Other Legislation Amendment Act 2019* (MAI Amendment Act) was enacted to stop claim farming for compulsory third party (CTP) claims under the statutory insurance scheme established by the *Motor Accident Insurance Act 1994* (MAI Act). The provisions in the MAI Amendment Act have been successful in interrupting the market in which claim farmers sought to sell their product.

The MAI Amendment Act was limited to CTP claims, because at that time claim farming was only a demonstrable problem in this area. It has, however, become apparent that since the MAI Amendment Act was enacted, the claim farming industry has pivoted to new types of claims. There have been reports of a growing prevalence of this type of activity for personal injury and workers' compensation claims that make it necessary to expand claim farming prohibitions into these markets.

The Bill will apply and adapt the provisions enacted under the MAI Amendment Act to prohibit claim farming in the personal injury and workers' compensation areas. 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.

Related to this issue are concerns about undesirable billing practices by law practices in speculative personal injury matters, which may be used to disguise claim farming arrangements and ultimately prevent successful claimants from receiving a fair and equitable share of judgment or settlement funds. Therefore, the Bill aims to clarify how legal fees are calculated in relation to speculative personal injury matters.

The Bill will also confirm when an entitlement for terminal workers' compensation arises under the WCR Act. This amendment confirms the government's policy intent and protects the financial sustainability of the workers' compensation scheme following the December 2021 decision in *Blanch v Workers' Compensation Regulator* [2021] QIRC 408 (*Blanch*). This decision expanded access to this type of compensation beyond the policy intent of previous amendments in 2019.

Additionally, the Bill will make technical and clarifying amendments to the Electoral Act in relation to the new political donation caps that are scheduled to commence on 1 July 2022. These amendments address issues regarding the implementation of the caps identified by the Electoral Commission of Queensland (ECQ) concerning fundraising contributions that may be deposited into a State campaign account, and how the ECQ will monitor compliance with the caps, particularly in relation to electoral committees.

Achievement of policy objectives

The Bill will achieve is policy objectives by implementing the reforms outlined below.

Claim farming offences

The Bill will amend the *Personal Injuries Proceedings Act 2002* (PIP Act) and the WCR Act to create two new offences in each Act prohibiting claim farming practices, modelled on the equivalent offences in the MAI 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. Similar to the offence in the MAI Act on which this provision is based, consideration will mean a fee or other benefit, but does not include a gift other than money or hospitality if the value is $200 or less. 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 MAI 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, where the new practice pays for the referral of a claimant or potential claimant, provided 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, for example, an advertisement about a law practice's services on a website.

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, such as if they had previously provided services to the person, or a community legal service or industrial organisation has asked the law practice or lawyer to contact the person and, in these circumstances, it is believed or advised that the person will not object to that approach or contact.

Law practice certificates

To ensure compliance by law practices with the claim farming provisions, the Bill will require that a law practice certificate be provided by legal practitioners in relation to personal injury claims and workers' compensation claims. A law practice certificate must be provided when a claim is made and settled/finalised. Additionally, if a law practice sells their business to another law practice before a claimant lodges a claim, the current law practice must give the new law practice a law practice certificate, and a copy to the claimant, before the referral occurs.

Both schemes for the common law process are modelled on the MAI Act, ensuring certification is required across the personal injury schemes. However, the Queensland workers' compensation scheme comprises a no-fault statutory component as well as access to common law. 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. This protects this component of the scheme yet does not impede access to statutory compensation or mean claimants are pressured to seek legal representation in the no-fault and non-adversarial statutory claim process.

The 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, 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 2007* (LP Act) and section 71E of the PIP Act.

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.

Additionally, the Bill will impose an obligation on the supervising principal of those practices representing respondents and insurers in PIP Act claims to notify the Legal Services Commissioner (Commissioner) if the respondent does not receive the law practice certificate as required under the new provisions. Insurers under the WCR Act have similar requirements to report non-compliances with claims farming offences and law practice certificates.

Enforcement and special investigations

The Bill extends the role of the Commissioner and the Workers' Compensation Regulator (Regulator) by providing the Commissioner and Regulator with the power to investigate breaches of the claim farming provisions.

Additionally, the Commissioner may appoint a special investigator and the Regulator may appoint an investigator who will have extensive powers to investigate suspected contraventions of the claim farming offences. The special investigator (or investigator) will have the power to require an investigated entity or person , or an associated person for an investigated entity or person, to produce documents or appear for examination on oath or affirmation. The Bill provides significant penalties of up to 300 penalty units or 2 years imprisonment for failing to comply with a request of a special investigator (or investigator), or for misleading a special investigator (or investigator).

To ensure the special investigator (or investigator) can properly investigate breaches, a person under investigation cannot claim the privilege of self-incrimination or legal professional privilege as a reason for failing to comply with a request of the special investigator (or investigator). However, the Bill will counterbalance the abrogation of both privileges by specifying that:

- if in complying with a requirement made under section 581D of the LP Act or section 532Q of the WCR Act, the person discloses a privileged client communication—
    - the person is taken for all purposes not to have breached legal professional privilege in complying with the requirement; and
    - the disclosure 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 the following sections of the PIP Act: 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B, or the following sections of the WCR Act: chapter 6B, part 2 or section 325P, 325R(1) or (2) or 325T; and
- if an individual gives or produces information or a document — evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty in the proceeding, other than:
    - a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence; or

- a proceeding for an offence against section the following sections of the PIP Act: 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B, or the following sections of the WCR Act: chapter 6B, part 2 or section 325P, 325R(1) or (2) or 325T.

At the conclusion of an investigation, the special investigator (or investigator) is required to report to the Commissioner (or the Regulator) about their opinion on the matters under investigation. This report may be published by the Commissioner or the Regulator, in whole or in part, if considered in the public interest and where the investigated entity or person has been convicted of an offence under a claim farming provision.

The Bill also enables the Regulator to apply for injunctions against persons believed to be engaging in claim farming activity. Certain offences under the WCR Act are already investigated and prosecuted by the Office of Industrial Relations (OIR) on delegation of the Regulator. These include: defrauding a workers' compensation insurer; providing false or misleading information to an insurer or medical provider; failure by an employer to insure or under-insuring; and prohibited use of workers' compensation information by employers. Claim farming offences will be managed in a similar way.

Information sharing framework to support enforcement

Importantly, the Bill facilitates an information sharing framework among the relevant enforcement bodies, being the Commissioner, the Regulator and the Motor Accident Insurance Commission (MAIC). The Bill specifically authorises the Commissioner and the Regulator to disclose information with each other and the MAIC for the purpose of the administration by the relevant entity of a claim farming provision or monitoring and identifying patterns or trends in conduct to which claim farming provisions apply. These provisions will operate in addition to the existing information sharing provisions in the MAI Act and the *Motor Accident Insurance Regulation 2018.*

This information sharing framework will promote inter-agency coordination and manage the risk of duplication in enforcement and investigation activities across schemes, given the foreseeable risk that claim farming entities may target multiple personal injury schemes. Through information sharing, enforcement bodies will also be able to identify entities that are frequently exhibiting signs of engaging in claim farming across compensation schemes or who may present a risk of such activity.

Additionally, the Bill contains a specific provision in the PIP Act which provides that insurers may provide information about non-compliance with the law practice certificate requirement or claim farming provisions to the Commissioner. It will be in insurers' interests to notify contraventions of the scheme given it is intended to deter fraudulent and unmeritorious claims.

Calculating legal costs and undesirable billing practices

Under sections 345 to 347 of the *Legal Profession Act 2007* (LP Act), for a speculative personal injury claim, a law practice is entitled to charge a client no more than half the amount to which the client is entitled under a judgment or settlement, after deducting any refunds the client is required to pay and the total amount of disbursements for which the client is liable. This is commonly referred to as the 50:50 rule.

To maximise the amount that may be charged to clients, some law practices are entering into costs agreements which treat certain matters as outlays that would ordinarily be expenses of the law practice and within the 50:50 rule limit. There are also circumstances where a fee paid to a third party for preparing a document detailing the particulars of a claim may potentially disguise a claim farming arrangement.

To address these concerns and ensure that successful claimants receive a fair and equitable share of judgment or settlement funds, the Bill amends the LP Act to clarify that, for the purpose of determining whether the maximum amount of legal costs has been exceeded under the 50:50 rule, 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 (not including amounts paid or payable to counsel engaged by the legal practice after notice of the claim is given under the PIP Act); interest on certain loans or other arrangements for funding disbursements or expenses relating to the claim; and other disbursements or expenses prescribed by regulation.

Confirming the policy intent for terminal workers' compensation

A worker with a work-related latent onset injury that is a terminal condition is entitled to lump sum compensation of up to approximately $750,000 under the WCR Act. This compensation is intended to provide for palliative care and additional support urgently needed by a worker in the final stages of their injury or illness. Although some workers are eligible to seek common law damages to compensate for their end-of-life care and financial needs, for others the prompt assessment and payment of terminal compensation may provide a more practical and immediate benefit and alleviate the immediate need to seek common law damages.

Prior to 2019, the WCR Act stated that a terminal condition was expected to terminate the worker's life within two years after the terminal nature of the condition is diagnosed. In October 2019, the WCR Act was amended by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019* to remove the two-year timeframe due to uncertainty in medical prognosis of artificial stone workers with accelerated silicosis. At that time, the disease was not well understood, and clinicians were providing ranges of life expectancy for workers in their 30s and 40s of between three to five years.

On 2 December 2021, the decision in *Blanch* held there was to be no limit imposed on when a worker can access terminal compensation. Terminal compensation is payable on certification by a doctor, and there is no basis for an insurer discretion unless there is medical evidence to the contrary on the terminal nature of the condition. In response to the impact of the amendment and the Queensland Industrial Relations Commission decision, the Bill confirms the policy intent of when a worker's entitlement to terminal compensation arises by re-inserting an explicit timeframe in the definition of terminal condition in section 39A of the WCR Act.

A three-year timeframe is considered appropriate as it aligns with the policy intent of the 2019 amendment and provides an additional year buffer where there is medical uncertainty about a worker's prognosis.

In addition, the three-year timeframe will apply to latent onset terminal conditions sustained on or after 31 January 2015. It is important to note, when the 2019 amendment commenced it applied to injuries sustained on or after 31 January 2015. As part of confirming the policy intent, this proposed amendment will also apply in the same way. Workers who have received terminal compensation prior to passage of the Bill will not be affected. This approach is necessary to limit inequity between workers who do not yet have an entitlement or have not claimed, as well as limiting the financial impacts to the scheme. Importantly, the Bill does not prevent workers from accessing terminal compensation, as it instead only confirms when the entitlement arises.

Political donation caps under the Electoral Act

On 1 July 2022, new part 11, division 6 of the Electoral Act will commence, as inserted by section 22 of the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020.* Relevantly, new part 11, division 6 provides for various caps on political donations. The Bill will achieve its objectives by addressing two issues identified in relation to the implementation of the political donation caps.

Firstly, the Bill will correct an unintended policy outcome regarding the ability to deposit fundraising contributions in the State campaign account.

Under section 216(1)(h) of the Electoral Act, a fundraising contribution may be paid into the State campaign account of a registered political party or candidate, other than to the extent the contribution or amount is a political donation. In line with section 250(1)(b) of the Electoral Act, the relevant action that causes a fundraising contribution (being a gift) to be considered a political donation, is that it is accompanied by a donor statement. Therefore, provided a donor does not give a donor statement when making the fundraising contribution, the contribution will not be considered a political donation. This provides an unintended avenue for fundraising contributions to circumvent the political donation caps and may allow for fundraising contributions of any amount to be deposited in the State campaign account.

This original intent was for fundraising contributions to be dealt with in line with the definition of "gift" in section 201 of the Electoral Act. That is, a fundraising contribution:

- is a gift when the part of a fundraising contribution made by a person to another person exceeds $200; and
- is not a gift when the fundraising contribution is $200 or less, or is the first $200 of a fundraising contribution that exceeds $200.

The Bill will amend section 216(1)(h) of the Electoral Act to provide that a fundraising contribution may be paid into the State campaign account, other than to the extent the contribution or amount is a "gift". This will ensure that fundraising contributions greater than $200, or the part that is greater than $200, cannot be paid into the State campaign account unless it is treated as a political donation, and will therefore be subject to the political donation caps.

Secondly, the ECQ has requested additional disclosure requirements that will assist in monitoring compliance with the political donation caps.

Currently, there is no requirement for a disclosure return to specify whether a gift is a political donation or other gift (such as a gift for administrative purposes). The Bill will amend sections 261, 262, 264, 265 and 290 of the Electoral Act so that disclosure returns provided by candidates, registered political parties, and third parties under those sections must specify whether the gift is a political donation or other gift. This will assist the ECQ in calculating the total amount of political donations given and received to monitor compliance with the caps.

Furthermore, the ECQ has requested additional disclosure requirements to monitor compliance with the political donation caps as they relate to electoral committees. Currently, section 203 of the Electoral Act applies the donation caps to an electoral committee as if it were the endorsed candidate of the political party that established it. This ensures the integrity of the donation caps, as it is ultimately the candidate endorsed for the electoral district that will benefit from the donations received by the electoral committee.

However, section 203 of the Electoral Act does not deal with the disclosure provisions, meaning a registered political party (being the entity that established the electoral committee) continues to be responsible for disclosing political donations received for the electoral committee. When providing a disclosure return in these circumstances, the registered political party discloses the gift as being received by the party and is not required to specify that it was received for an electoral committee. This results in the ECQ not having the necessary information to determine the amount of political donations received by an electoral committee for the purpose of determining compliance with the political donation caps.

To address this issue, the Bill will amend the disclosure requirements for registered political parties under sections 265 and 290 of the Electoral Act to provide that disclosure returns must name the electoral committee when relevant. This will occur when a political donation is received by a registered political party for an electoral committee established by the party, or for an electoral district in which the party has established an electoral committee. Additionally, to ensure that disclosure returns between donors and recipients reconcile, the Bill will amend section 251 of the Electoral Act so that a donor statement must also name the electoral committee in the same circumstances. This will ensure that the ECQ can determine the amount of political donations received for electoral committees, and monitor compliance with the political donation caps as they apply to electoral committees.

Alternative ways of achieving policy objectives

Legislative amendments are the only way to:

- make it an offence for a person to engage in the practice of claim farming;
- make it an offence for a law practice to not complete and give a law practice certificate at various stages of a proceeding;
- expand the oversight and enforcement powers of the Commissioner and the Regulator in relation to claims farming offences;
- confirm when an entitlement for terminal workers' compensation arises; and
- make the technical and clarifying amendments to the Electoral Act relating to fundraising contributions and state campaign accounts and disclosure returns.

Estimated cost for government implementation

The State Government will incur an additional cost to support the Commissioner in implementing the proposed claim farming reforms. Funding will be provided for approximately six Full-Time Equivalent (FTE) staff during the establishment and implementation phases of the reforms, transitioning to four FTEs after 18 months for ongoing monitoring and compliance matters. One off funding will also be provided to undertake necessary information technology and software capability improvements, advertising and awareness campaigns, education, and stakeholder engagement, as well as set up and workspace fit-out equipment costs for new personnel.

In terms of the workers' compensation scheme, the costs of investigating and prosecuting the claims farming offences will be borne by the Regulator and monitored for impacts noting there is limited data to estimate these costs due to limited scheme experience.

In relation to terminal workers' compensation, the cost of paying terminal claims is already borne by the scheme. These costs do not impact the consolidated fund as they are funded by employers who are required to hold a WorkCover policy and pay an annual premium to meet the cost of this insurance, which varies annually according to their industry, wages, and prior claims experience. The proposed amendment is likely to mitigate the financial impact of the *Blanch* decision on the workers' compensation scheme.

In relation to the electoral amendments, changes to the electronic disclosure system administered by the ECQ can be implemented from within existing resources.

Consistency with fundamental legislative principles

Section 4(3)(d) of the *Legislative Standards Act 1992* (LSA) provides that legislation should not reverse the **onus of proof** in criminal proceedings without adequate justification. The Bill will include new section 71C in the PIP Act and section 325U of the WCR Act, modelled on section 76 of the MAI Act, which confer responsibility on a person, for example, a corporation or a partner in a law practice, for the acts or omissions of the person's representative which are within the scope of the representative's actual or apparent authority. It is noted that the provisions will provide a defence to a person who proves they could not have prevented the act or omission by exercising reasonable precautions and proper diligence and the provision will apply narrowly, only in the context of claim farming offences. In these circumstances, the person is in a better position to disprove guilt because of the person's position in the partnership or corporation.

Further, proposed sections 581M(2) of LP Act and 532Z of the WCR Act contain a **defence which is to be proven by the defendant** which applies to the offence of concealing, destroying, mutilating, or altering a document of a person investigated under the special investigation powers or sending, causing to be sent or conspiring with someone else to send out of the State a document or property belonging to or under the control of the investigated entity or person or associated person. These sections are modelled on section 87ZP of the MAI Act and place an onus on the defendant to prove

they did not act with intent to defeat the purposes of the special investigations chapter. This approach is considered justified as this conduct, on its face, may be designed to circumvent the purposes of the claim farming provisions, and the matter the subject of the defence would be within the knowledge of the defendant.

Pursuant to section 4(3)(f) of the LSA, legislation should provide appropriate **protection against self-incrimination**. The Bill confers on the Commissioner (and the Regulator) special investigative powers to investigate potential claim farming breaches including a provision which provides that an investigated entity or person or an associated person for an investigated entity or person is not excused from answering a question or producing a document if doing so might tend to incriminate the person or expose the person to a penalty (proposed section 581G of LP Act and 532T of the WCR Act). Provisions of this nature are required as the information or documents sought, and questions asked, relate to information that is likely to be within the investigated entity's or person's or an associated person's knowledge and would be difficult to establish by alternate means.

It is noted that the abrogation will only apply in cases where the special investigation powers are invoked. These powers can be invoked if the Commissioner reasonably suspects an entity may have contravened section 71 or 71B of the PIP Act. Under the LP Act, an investigated entity may be a law practice or third-party entity. As part of the special investigation, the special investigator may investigate the relevant affairs of the investigated entity. Relevant affairs are defined as including how the investigated entity received or was referred details of a claimant or potential claimant or instructions for the claim; and how they gave or were referred instructions for a claim, and includes transactions involving the investigated entity (or an associated person for the investigated entity) relevant to the receipt or referral of instructions.

Similarly, in the WCR Act, the abrogation applies to an investigated person or an associated person, if they are required to answer a question put by, or produce a document to, an investigator. For the WCR Act, investigated person means an insurer, law practice or lawyer that is acting for or has acted for a claimant, or an entity prescribed by regulation.

Additionally, proposed new section 581H of the LP Act (and section 532U of the WCR Act) provide that in cases of non-compliance with the requirement to answer a question or produce a document, a special investigator (or investigator) can give the Supreme Court a certificate which in turn empowers the Supreme Court to enquire into the case and order the person to comply with the requirement. It is expected that investigators will only resort to this power where compliance with an investigator's requirement would be crucial to the outcome of the investigation.

The Bill provides evidential immunity for individuals captured by this compulsion requirement to balance the abrogation of the privilege against self-incrimination. Proposed section 581N of the LP Act (and section 532ZA of the WCR Act) provide that the information given, or the documents produced, to a special investigator (or investigator) as well as other evidence directly or indirectly derived from that information or document, is not admissible against the person in any proceeding to the extent it tends to incriminate them, or expose them a penalty, except for a proceeding

relating to the false or misleading nature of the information or document or a proceeding for an offence against the claim farming provisions.

The sections referred to above are based on existing sections of the MAI Act and in the case of section 581H, a similar provision also exists in section 195 of the *Financial Intermediaries Act 1996*.

Section 4(2)(a) of the LSA provides that legislation is to have sufficient regard to the **rights and liberties of individuals**.

The disclosure of **private or confidential information and right to privacy and confidentiality** is a relevant consideration as to whether legislation has sufficient regard to individuals' rights and liberties. The information sharing provisions in proposed section 73B of the PIP Act (and section 573A of the WCR Act) will permit the sharing of individuals' personal information, including potentially sensitive information. However, these provisions would limit disclosure to an appropriate purpose (that being the administration of the claim farming provisions) and to appropriately limited entities (being entities which have oversight of the various claim farming frameworks). The amendments will enable the Commissioner and the Regulator to share information with the MAIC, which is already empowered to share information with these bodies pursuant to section 92 of the MAI Act and section 31(2)(i) and (j) of the *Motor Accident Insurance Regulation 2018.* Further, section 73B of the PIP Act requires the Commissioner to have a written arrangement with entities regarding the way in which information is to be disclosed.

Additionally, proposed section 581I of the LP Act (and section 532V of the WCR Act) provide for the recording of questions asked and answers given by a person at an examination, for the person to be given a copy of the recording on request and for the recording to be included in the special investigator's (or investigator's) report. New section 581J of the LP Act (and section 532W of the WCR Act) then provide for the special investigator's (or investigator's) report to be given to the Commissioner (or Regulator). The Commissioner and the Regulator are not bound to give a copy of the report to the investigated entity or person. Further, the Commissioner and the Regulator may, if the investigated entity or person is convicted of a claim farming offence and they consider it in the public interest, publish the report on its website or any other place considered appropriate, in whole or in part.

Whilst the recording of the examination and special investigator's (or investigator's) report may include information affecting a person's privacy or correspondence, access to this information ensures the Commissioner and Regulator have access to all relevant information when deciding whether to start legal proceedings in relation to the special investigation. Provision for the Commissioner and the Regulator to publish all or part of a special investigator's (or investigator's) report can only occur if the investigated entity or person has been convicted of a relevant offence and is balanced by the requirement that the Commissioner or the Regulator must consider publication to be in the public interest.

Further it is proposed to amend section 575 of the WCR Act (*information use immunity),* to enable information gathered in relation to an application for compensation or a claim for damages to be used in a proceeding under another Act, where the proceeding is for an offence against a claim farming provision. This amendment is important as information provided in the course of a claim for damages or application compensation, may provide evidence of a claim farming offence. If evidence were to be discovered in the course of a claim under the WCR Act that an individual/s or lawyers had knowledge of (or involvement in) claim farming in the MAI Act or PIPA context then, presently, that evidence would not be admissible in a prosecution under the legislation governing those schemes.

Additionally, the proposed **new offence and penalty provisions** in the Bill that will apply to those engaging in claim farming, and for not completing and giving a law practice certificate or for contraventions of the investigation and enforcement provisions, will impact on the rights and liberties of individuals who contravene them (sections 4(2) (a) and (3) of the LSA). Requiring a law practice that is selling all or part of its business to another law practice to also complete a law practice certificate ensures claim farming does not occur under the guise of law practices transferring or exchanging files. The requirement also gives confidence that the referred claims have not been claim farmed.

The new offence and penalty provisions (including up to a maximum penalty of 300 penalty units: see proposed sections 581F(1) and 581M(1) and (3) of the LP Act; sections 8C(2), 8E, 8F(2), 9C(2), 13A(4), 61(2), 71(1) and (2) and 71B(1) of the PIP Act; and sections 325H(2); 325I(2); 325J(2), (5) and (7); 325K(4); 325L(2); 325M(2); 325P, 325R(1) and (2); 325T(1), 325Y(2), 532S(1), 532Z(1) and 532ZC of the WCRA) are justified, as without an enforcement mechanism, the Bill would be ineffective at achieving its policy objective of stopping claim farming of personal injury claims in Queensland. The proposed offences, and prescribed maximum penalties, are consistent with those applying to the claim farming of CTP claims under the MAI Act, other advertising offences under the PIP Act and existing provisions in the LP Act and WCR Act.

Further, new section 71G of the PIP Act will also impact on the rights and liberties of a supervising principal of a law practice retained by a respondent or insurer if they fail to report a person's non-compliance with the law practice requirements (sections (4)(2)(a) and (3) of the LSA). The obligation on a supervising principal is triggered where they, or an associate of the practice, form a reasonable belief that a person is contravening the law practice certificate requirements. A breach of the reporting requirement does not constitute a criminal offence but may constitute unsatisfactory professional conduct or professional misconduct under the LP Act.

Pursuant to section 4(2)(a) of the LSA, legislation should have sufficient regard to the rights and liberties of a person, and this includes not abrogating **common law rights** without sufficient justification.

In terms of **common law property rights**, the Bill will include proposed section 581L of the LP Act (and section 532Y of the WCR Act) which allow the Commissioner and the Regulator to **recover the costs of, and incidental to, a special investigation**. Despite this, it is noted that special investigations will only be undertaken in limited

circumstances and no costs will be recoverable where the investigation does not result in a conviction for claim farming offences. Claim farming is conduct which is primarily aimed at generating income for those who farm claims and the law firms who engage with them to generate clients. Accordingly, in cases where there is a proven disregard for the claim farming prohibitions, it may not be in the public interest for the Queensland taxpayers to bear the cost of any special investigation. These provisions are modelled on section 87ZO of the MAI Act.

The Bill also contains provisions which reduce to capacity for claimants and the law practices they retain to contract freely with each other and enforce their **contractual entitlements**. New section 9B of the PIP Act and new section 325O of the WCR Act , provide that if a law practice certificate is not given to the claimant under new sections 8C and 325H (respectively), and this results in the claimant being unable to comply with their statutory obligations, the claimant may terminate their engagement with the law practice. The supervising principal of the law practice must refund to the claimant all fees and costs, including disbursements, paid by the claimant in relation to the claim.

Additionally, new section 71D of the PIP Act and new section 325V of the WCR Act, will provide that a law practice convicted of a relevant offence 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 amounts received that relate to those services.

The deprivation of the entitlements of a law practice under these provisions is reasonable and proportionate to ensure compliance with the provisions preventing claim farming and is not arbitrary as the property that must be forfeited is limited to the amounts received by a law practice in contravention of the relevant provisions.

Common law rights to **freedom of movement** are associated with the rights to liberty and security of the person, to freedom of peaceful assembly and procession, and to a democratic society respecting the rule of law. New section 581D of the LP Act (and section 532Q of the WCR Act) limit the right to freedom of movement by providing a special investigator (or investigator) with the power to require an investigated entity or person or associated person to appear before the special investigator (or investigator) for examination on oath or affirmation. New section 581H of the LP Act (and section 532U of the WCR Act) also limit this right in that a person who has failed to comply with the requirement to appear under section 581D of the LP Act (and section 532Q of the WCR Act) may be ordered by the court to comply (see discussion of this subsection above).

The purpose of the provisions is to ensure that the special investigator (or investigator) can examine an investigated entity or person and an associated person of an investigated entity or person for the purpose of uncovering claim faming activity and it is appropriate that a special investigator has the necessary tools to identify breaches.

Further, it is proposed to include a new section 581G of the LP Act (and section 532T of the WCR Act) to partially abrogate the common law right of **legal professional privilege** by stating that a law practice or lawyer that is acting or has acted for a claimant (or an associated person for the law practice or lawyer) is not excused from answering a question or producing a document on the basis that complying would disclose a privileged client communication (that is, a communication protected against

disclosure by legal professional privilege). Legal professional privilege is a significant right that enables full and frank communication between lawyers and their clients.

This amendment is modelled on section 87ZI of the MAI Act and is intended to assist the Commissioner and the Regulator in uncovering how a law practice received and was referred instructions for a claim and how it gave or referred instructions for a claim. This includes a transaction involving the law practice and an entity that is relevant to the referral of instructions. The amendments will enable enforcement bodies to gather the necessary evidence to prosecute a potential breach of a claim farming offence.

The amendment will not affect a claimant's access to justice or confidential discussions with their lawyers about the prospects of their claim. A client's legal privilege would continue unaffected by these amendments.

Without the proposed abrogation, the potential exists for a law practice to use the privilege for its own benefit (and not the client's benefit) to conceal any wrongdoing, resist the production of documents concerning the sourcing of the claim and thereby frustrate or defeat the investigation, and the intent of the scheme, altogether.

The safeguards under that section mean that in complying with the requirement:

- a person is taken not to have breached legal professional privilege by complying with the requirement; and
- the disclosure 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 the claim farming provisions.

Section 4(2)(b) of the LSA provides that legislation is to have sufficient regard to the **institution of Parliament**. Included in the Bill are new sections 581O of the LP Act and 532ZB of the WCR Act, modelled on sections 87Y and 87ZR of the MAI Act, which apply the claim farming offences and the enforcement and special investigation powers extraterritorially. It is proposed that these sections, like those they are modelled on, will be clearly and unambiguously worded to displace the legal assumption that legislation is assumed not to have extraterritorial effect, and to establish a sufficient connection between Queensland and the matter regulated by the claim farming offences. The extraterritorial application of the framework is intended to ensure the farming of Queensland personal injury and workers' compensation claims are properly investigated and dealt with. Proposed section 71G of the PIP Act (and section 532ZB of the WCR Act) dealing with reporting non-compliance with law practice requirements, section 568A of the LP Act in relation to investigation powers under part 5A of the LP Act, section 71F of the PIP Act in relation to the application of chapter 3, part 2 of the PIP Act and section 325X of the WCR Act in relation to the application of part 4 of the WCR Act will similarly apply extraterritorially.

Section 4(4)(a) of the LSA allows for the **delegation of legislative power** only in appropriate cases and to appropriate persons. The Bill includes amendments to require legal practitioners to include certain additional amounts for the purpose of determining whether the legal costs charged to a client exceed the 50:50 rule under the LP Act. These additional amounts include an amount paid or payable to a third-party entity for obtaining instructions or preparing statements in relation to the claim (not including amounts paid or payable to counsel engaged by the legal practice after notice of the

claim is given under the PIP Act) and interest on certain loans or other arrangements for funding disbursements or expenses relating to the claim. The Bill also proposes to enable the definition of 'additional amounts' to be expanded by way of regulation. These changes are intended to address concerns that the operation of the rule can be used by law practices to disguise claim farming arrangements. Given that other limbs of the definition are quite specific, it is envisaged that other ways of circumventing the rule might arise. Accordingly, this provision will enable additional amounts to be prescribed if, and when, the need arises.

Amendment to confirm the policy intent of terminal compensation

Section 4(3)(g) of the LSA provides that legislation must not **adversely affect rights and liberties retrospectively**. The policy intent of the 2019 amendments was to entitle a worker with access to terminal compensation if their death was expected within three to five years if their injury was sustained on or after 31 January 2015. This policy intent has been impacted by the decision of *Blanch*, which has found there is no time limit for workers accessing terminal compensation. To confirm the policy intent, the proposed amendment will apply to workers who sustained their injury from 31 January 2015.

While the proposed amendment, on commencement, will apply to injuries sustained on or after 31 January 2015, the practical impact of this is considered negligible because:

- it does not affect workers who have already received their terminal compensation;
- it does not prevent workers, who are yet to lodge a claim or even identify they have an injury, from accessing terminal compensation. Instead, the proposed amendment confirms when the entitlement arises. This ensures workers receive terminal compensation at the critical time when it is intended to support them through this phase, and not risk exhausting these funds prior to this time;
- since the 2019 amendments, it is unlikely workers would have an expectation of receiving terminal compensation so far into the future, in particular the explanatory notes for the Bill and the guidance material issued by the Regulator noted the policy intent of the 2019 amendment. This expectation only arose due to the Blanch decision on 2 December 2021;
- it provides certainty for all parties and prevents inequity between workers i.e., does not create different cohorts of workers who may have the same injury yet different access to terminal compensation; and
- in any case, the proposed amendment is still more generous than any other jurisdiction in the country and the former provision which had a two-year time limit.

There may be limited numbers of workers who have lodged a claim in the scheme which is yet to be decided in the period up until commencement of the Bill. All claims are currently being decided as per the *Blanch* decision; however, any claims decided after commencement will be decided as per the law as it stands. No specific transitional arrangement is made for these claims as this would not meet the intent of Parliament and it would jeopardise the financial sustainability of the scheme. The OIR will work with insurers to ensure any workers affected will be advised to make a further application when their injury progresses within the intended terminal phase.

The impact on this limited cohort of workers of having their access to terminal compensation delayed, must be balanced against the interests of protecting the workers' compensation scheme for the benefit of all injured workers. Left unfettered, the

application of *Blanch* jeopardises the financial sustainability of the scheme as a whole, potentially impacting all workers trying to access workers' compensation benefits or leading to premium increases for employers who fund the scheme.

Consultation

An exposure draft of the amendments to the LP Act and PIP Act was released for targeted stakeholder consultation with the Legal Services Commission, Queensland Law Society (QLS), Bar Association of Queensland (BAQ), Australian Lawyers Alliance (ALA) and Insurance Council of Australia (ICA) on 25 February 2022. Stakeholders were invited to provide written submissions over a two-week period. An updated exposure draft was circulated to stakeholders and, in some instances, stakeholder meetings were convened ahead of finalising the Bill.

Workers' compensation key scheme stakeholders briefed on the proposals and during preparation of the Bill in February and March 2022 included:

- Asbestos Disease Support Society – terminal compensation only;
- Association of Self-Insured Employers Queensland;
- Australian Industry Group;
- ALA;
- Australian Rehabilitation Providers Association;
- Australian Workers' Union;
- BAQ;
- Construction Forestry Maritime Mining and Energy Union – construction and mining divisions;
- Queensland Council of Unions;
- QLS; and
- WorkCover Queensland.

Stakeholder feedback resulting from these consultation processes was considered and incorporated into the Bill where appropriate.

The Office of Best Practice Regulation was consulted regarding the regulatory impact analysis requirements of the Queensland Government Guide to Better Regulation and advised that no further assessment was required.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with, or complementary to, legislation of the Commonwealth or another state.

Claims farming

Queensland was among the first Australian jurisdictions to introduce offence provisions to stop the practice of claim farming of CTP claims by prohibiting the giving and receiving of consideration for claim referrals and approaching or contacting individuals to induce them to make a CTP claim.

Other jurisdictions have similar or related arrangements as follows:

- In the Australian Capital Territory, section 485 of the *Motor Accident Injuries Act 2019* makes it an offence for a lawyer (or a related entity) to give or receive consideration for a referral for legal representation for an application for defined benefits in relation to a motor accident or a motor accident claim and carries a maximum penalty of 200 penalty units;
- In New South Wales, section 24 of the *Motor Accidents Compensation Regulation 2015* creates a duty for legal practitioners not to give or receive fees or other consideration in respect of referrals in relation to motor accident claims. This breach of the duty may constitute unsatisfactory professional conduct or professional misconduct;
- CTP regulators in New South Wales (NSW State Insurance Regulatory Authority) and South Australia (CTP Regulator) provide information and a process for reporting unsolicited contact relating to CTP claims on their websites;
- In Western Australia, rule 18(5) of the *Legal Profession Conduct Rules 2010* provides that legal practitioners in that State are not permitted to pay or receive an introduction fee or spotter's fee to any person for introducing professional business to the practitioner. This provision applies generally;
- The Australian Solicitors Conduct Rules – which apply in South Australia, Queensland, New South Wales, Victoria, Tasmania, and the Australian Capital Territory – contain strict requirements around disclosure of the referral arrangements, intrusion on people in vulnerable situations and gauging the clients' capacity to make informed decisions about engaging a lawyer, which might be breached by a lawyer's involvement in a claim farming arrangement depending on the circumstances of the case; and
- In Northern Territory, rule 29 of the *Rules of Professional Conduct and Practice 2005* prohibits solicitors from accepting a retainer or instructions to provide legal services to a person, who has been introduced or referred to the practitioner by a third party to whom the practitioner has given or offered to provide a fee, benefit or reward for the referral of clients or potential clients, unless the practitioner has first disclosed to the person referred the practitioner's arrangement with the third party. This applies generally.

Queensland will be the first Australian workers' compensation scheme to introduce amendments to protect against claim farming; its coverage will prevent the workers' compensation scheme from becoming an unregulated avenue for claims farmers.

Terminal compensation

Queensland is the only jurisdiction which features a specific compensation payment for a terminal condition.

Certain jurisdictions recognise terminal conditions for compensation purposes and consistently require that death be imminent with date ranges of between 12-24 months. Examples of approaches include:

- Victoria has issued guidance for non-economic loss claims where an injury (or an unrelated medical condition) gives rise to an imminent risk of death if a treating medical practitioner considers:

    - there is no or only minimal prospect of recovery, with optimal treatment; and
    - the worker's life expectancy reasonably is 12 months or less (with guidance that WorkSafe Victoria will consider it within this protocol if a doctor expresses a range that includes 12 months e.g. 12-18 months, but only if the end range is no greater than 24 months);
- Tasmania provides compensation for those with asbestosis-related disease, with eligibility criteria for imminently fatal asbestos-related disease being one where the relevant person has a prognosis of less than two years life expectancy; and
- At the Commonwealth level superannuation funds may make lump sum payments for a terminal medical condition when two doctors (including one relevant specialist) have certified that the person has an illness or injury that is likely to result in their death within a period that ends not more than 24 months after the date of certification.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the Act may be cited as the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022*.

Clause 2 provides that part 2, sections 5-10 commence on 1 July 2022 and the following provisions commence on a day to be fixed by proclamation:

(a) part 4, other than sections 14 to 16 and 32 to 36;
(c) part 6, other than—
(i) section 50;
(ii) section 51, to the extent it inserts part 2;
(iii) sections 52, 53 and 56;
(d) part 7, other than—
(i) section 58;
(ii) section 60, to the extent it inserts part 4;
(iii) sections 61 to 65;
(iv) section 66, to the extent it inserts sections 743 to 746;
(v) section 67.

Part 2 Amendment of Electoral Act 1992

Clause 3 provides that this part amends the *Electoral Act 1992*.

Clause 4 amends section 216 (Payments into State campaign account) to provide that an amount may be paid into the State campaign account of a registered political party or candidate if the amount is a fundraising contribution, other than to the extent the contribution or amount is a gift mentioned in section 201(2)(d).

Clause 5 amends section 261 (Disclosure by candidates of gifts) to provide that a return from a candidate about a gift must state whether or not the gift is a political donation.

Clause 6 amends section 262 (Loans to candidates) to provide that a return from a candidate about a loan must state whether or not the loan is a political donation.

Clause 7 amends section 264 (Disclosure by third parties of gifts to candidates) to provide that a return from a third party about a gift must state whether or not the gift is a political donation.

Clause 8 amends section 265 (Gifts to political parties) to provide that a return required under subsections (2) and (4) from an entity that makes a gift to a registered political party must state whether or not the gift is a political donation, and if the gift is a political donation to or for the benefit of an electoral committee established by the registered political party, the return must also state the electoral district.

Clause 9 amends section 272 (Requirement to keep record about loan received) to provide that the record about a loan must include the electoral district if the loan is a

political donation made to or for the benefit of an electoral committee established by the registered political party for an electoral district.

Clause 10 amends section 290 (Returns by registered political parties) to specify additional details that must be included in a return from the agent of a registered political party. For a gift received by the registered political party, the return must also state whether or not the gift is a political donation, and if the gift is a political donation to or for the benefit of an electoral committee established by the party, the return must state the electoral district. For a loan received by the registered political party, the return must state the information required to be kept under section 272(3) and whether or not the loan is a political donation.

Part 3 Amendment of Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020

Clause 11 provides that this part amends the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020*.

Clause 12 amends section 22 (Replacement of pt 11, div 5 (Policy development payments)), which inserts section 251 in the *Electoral Act 1992*, to provide that a donor statement about a gift or loan must state:

- if the gift or loan is made to or for the benefit of an electoral committee established by a registered political party for an electoral district—the registered political party and electoral district; or
- otherwise—the name of the election participant (the recipient) to whom, or for the benefit of whom, the gift or loan is made.

Part 4 Amendment of Legal Profession Act

Clause 13 provides that this part amends the *Legal Profession Act 2007*.

Clause 14 amends section 110 (Definitions for pt 2.7) to omit the definition of 'related body corporate' which is inserted into schedule 2 (Dictionary) by clause 36.

Clause 15 omits the definition of 'legal costs' from section 346 (Definitions for div 8) which is inserted into section 347(8) by clause 16.

Clause 16 amends section 347 (Maximum payment for conduct of speculative personal injury claim) to require legal practitioners to treat certain additional amounts as disbursements or expenses for the purpose of determining whether the claim-related costs charged to a client exceed the maximum amount a law practice may charge and recover in a speculative personal injury claim. These additional amounts include an amount paid or payable to a third-party entity for obtaining instructions or preparing statements in relation to the claim (not including amounts paid or payable to counsel engaged by the legal practice after notice of the claim is given under the PIP Act); interest on certain loans or other arrangements for funding disbursements or expenses relating to the claim; and other disbursements or expenses prescribed by regulation.

Clause 17 omits section 421(d) (Meaning of respondent). New Chapter 5A will apply to persons captured by (d).

Clause 18 omits section 426 (Chapter also extends to other persons in particular circumstances) which is no longer required as a result of new chapter 5A.

Clause 19 corrects a minor drafting error in section 427 (Chapter also applies to unlawful operators).

Clause 20 corrects a minor drafting error in section 429(1) (Making a complaint).

Clause 21 inserts a new section 434(1)(ca) to allow the Commissioner to delay dealing with a complaint which relates to a requirement under a claim farming provision if the person who is the subject of the complaint is also the subject of an investigation or proceeding under a claim farming scheme under another Act. A definition of 'claim farming scheme' is inserted at subsection (3).

Clause 22 amends section 435(1)(c) (Referral by commissioner to law society or bar association) to remove the reference to any person suspected of contravening the PIP Act, chapter 3, part 1. New Chapter 5A will apply to these offences.

Clause 23 amends section 437 (Australian lawyer to be notified of complaint or investigation matter) to clarify the heading.

Clause 24 makes a minor consequential amendment to section 492 (Waiver of legal professional privilege or benefit of duty of confidentiality) which is required as a result of new section 581G.

Clause 25 amends section 499 (Appointment of supervisor of trust money) to omit reference to 'person holding accounting qualifications' and instead refer to 'qualified accountant'.

Clause 26 amends section 512 (Appointment of receiver) to omit reference to 'person holding accounting qualifications' and instead refer to 'qualified accountant'.

Clause 27 inserts a new chapter 5A (Provisions for offences under Personal Injuries Proceedings Act 2002).

New section 539A (Application of chapter) applies new chapter 5A to an entity (an external entity) to which chapter 4 does not apply. Subsection (2) provides that an entity to which this chapter applies is an external entity.

New section 539B (Commissioner may investigate external entity) provides that the Commissioner may, under chapter 6 or 6A, investigate the conduct of an external entity if the Commissioner suspects the entity has contravened a claim farming provision or the PIP Act, chapter 3, part 1.

Clause 28 makes a consequential amendment to section 540 (Main purpose of ch 6) required as a result of the application of chapter 6 to the investigation of external entities.

Clause 29 makes a consequential amendment to section 541 (Definitions for ch 6) required as a result of the application of chapter 6 to the investigation of external entities.

Clause 30 makes a consequential amendment to section 543 (Requirements that may be imposed for investigations under ch 4) required as a result of the application of chapter 6 to the investigation of external entities.

Clause 31 inserts a new section 568A (Extraterritorial application of chapter for particular matters) which is based on section 87Y of the MAI Act. Section 568A provides that chapter 6 applies extraterritorially to the extent necessary for any investigation of a contravention of the PIP Act, section 71 or 71B.

Clause 32 inserts a new chapter 6A (Special investigators).

New section 581A (Definitions for chapter) provides the definitions applicable to the chapter, including '*associated person*', '*investigated entity'* and '*special investigator'*.

New section 581B states that a reference to a document includes a reference to an image or writing produced from an electronic document or not yet produced, but reasonably capable of being produced, from an electronic document. The provision is based on section 87ZB of the MAI Act.

New section 581C, which is based on section 87ZC of the MAI Act, applies if the commissioner reasonably suspects an entity (the ***investigated entity***) may have contravened the PIP Act, section 71 or 71B. Under this section, the Commissioner may appoint a special investigator to investigate the 'relevant affairs' of the investigated entity. Subsection 581C(2) lists the persons the Commissioner may appoint as a special investigator. Under section 581C(6), relevant affairs:

- means matters relating to:
    - how the investigated entity received or was referred details of the claimant or potential claimant or instructions for a claim; and
    - how the investigated entity gave or referred instructions for a claim; and
- includes a transaction involving the investigated entity or an associated person for the investigated entity relevant to the receipt or referral of instructions.

New section 581D (Powers of special investigators), which is modelled on section 87ZF of the MAI Act, allows an investigator, by written notice, to require an investigated entity, or an associated person for an investigated entity, to produce a document to the investigator, to appear before the special investigator for examination under oath or affirmation or to give the investigator all reasonable help in connection with the investigation.

New section 581E (Documents produced to special investigator), which replicates section 87ZG of the MAI Act, provides that, if a document is produced under this part, the investigator may keep the document for as long as it is considered reasonably necessary, but the investigator must allow a person who would be entitled to inspect the document to inspect the document at all reasonable times. New section 581E also requires an investigator to allow the owner of the document to copy it.

New section 581F (Examination of investigated entity or associated person), which is modelled on section 87ZH of the MAI Act, sets out the obligations of a person who an investigator is examining. These obligations include complying with a lawful requirement and not knowingly giving false or misleading information. Contravening this section may make an investigated person liable to a maximum penalty of 300 penalty units or 2 years imprisonment. However, persons will not contravene this section if they tell the investigator, to the best of their ability, how the information is false and misleading, and they give the investigator the correct information (if they can obtain the correct information). Under subsection (4), a person required to attend for examination is entitled to the allowances and expenses prescribed by regulation.

New section 581G (Self-incrimination and legal professional privilege) is modelled on section 87ZI of the MAI Act, which in turn expanded the application of existing section 79 of the MAI Act in two ways. Firstly, it provides that an investigated entity or an associated person for an investigated entity is not excused from answering a question or producing a document on the basis that complying might tend to incriminate the person. Secondly, section 581G partially abrogates the common law right of legal professional privilege for a law practice or lawyer. Thus, the provision states an investigated entity or an associated person is not excused from answering a question or producing a document on the basis that complying would disclose a privileged client communication, which means communication protected against disclosure by legal professional privilege that operates to the benefit of a client of an investigated entity.

When putting a question to a person or requesting a document, the investigator must inform the person of the obligation to comply and, if the person is an individual, of the limited immunity against future use of the information or document given under section 581N. If the investigator does not do so, and an individual does not comply with the investigator's request, the individual may not be convicted. Section 581G(5) further provides that if a person discloses a privileged client communication:

- the person is taken for all purposes not to have breached legal professional privilege in complying with the requirement; and
- the disclosure 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 section 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B of the PIP Act.

New section 581H (Failure of person to comply with requirement of special investigator) is based on section 87ZJ of the MAI Act and states that, if an investigated entity or associated person for an investigated entity does not comply with a requirement, the investigator may give to the Supreme Court a certificate about the failure to comply. The court may inquire into the case and order compliance with the special investigator's requirement.

New section 581I (Recording of examination) is modelled on section 87ZK of the MAI Act and specifies an investigator must make a record of the questions asked and the answers given at an examination. The section further provides that, subject to section 581N, a record of the examination may be used in evidence in a legal proceeding against the person. This record of the examination must be given to the person if the person requests it in writing. The record must also be included with the special investigator's

final report on the investigation. Subsection (5) confirms nothing in the section affects or limits the admissibility of other written or oral evidence.

New section 581J (Report of special investigator) is modelled on section 87ZL of the MAI Act and states an investigator may (and if directed by the Commissioner must) make interim reports to the Commissioner. An investigator must give a report to the Commissioner when the investigation ends. This report must hold an opinion on the matters under investigation, along with all facts on which that opinion was based. The Commissioner must give a copy of a final report, or may give a copy of an interim report, to the investigated entity. However, the Commissioner is not bound to give an investigated entity a copy of the report, or part thereof, if the Commissioner is of the opinion there is good reason for not divulging its contents. The section provides the Commissioner may publish the whole or part of the report on its website or any other place it considers appropriate, if the investigated entity is convicted of an offence against a claim farming provision and it is in the public interest to do so.

New section 581K (Documents taken during investigation) is modelled on section 87ZN of the MAI Act and requires an investigator to give the Commissioner, at the end of an investigation, any documents the investigator has taken possession of under chapter 6A. The Commissioner can determine a reasonable period for the documents to be kept and who can inspect these documents. The Commissioner must allow a person who would be entitled to inspect the document, if it was not in the Commissioner's possession, to inspect the document at all reasonable times.

New section 581L (Costs of investigation) is based on section 87ZO of the MAI Act and enables the Commissioner to recover the costs of and incidental to an investigation if an investigated entity is convicted of an offence against section 71(1) or (2) or 71B of the PIP Act.

New section 581M (Other offences about investigations) is modelled on section 87ZP of the MAI Act and prohibits a person concealing, destroying, mutilating, or altering a document of or about an investigated entity whose affairs are being investigated under chapter 6A. Additionally, a person must not send, cause to be sent or conspire with someone else to send out of the State such a document or any property belonging to or under the control of an investigated entity or associated person for the investigated entity. The maximum penalty applicable to the offence is 300 penalty units or 2 years imprisonment. It is a defence to a prosecution of the offence for the defendant to prove they did not act with intent to defeat the purposes of chapter 6A, or to delay or obstruct the carrying out of an investigation under chapter 6A.

New section 581N (Evidential immunity for individuals complying with particular requirements) affords individuals evidential immunity if they give or produce information or a document to an investigator under section 581D. Accordingly, evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is inadmissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose the individual to a penalty, other than in:

- a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the document is relevant evidence; or

- a proceeding for an offence against section 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B of the PIP Act.

New section 581O (Extraterritorial application of chapter), which replicates 87ZR of the MAI Act, provides that chapter 6A applies extraterritorially to the extent necessary for any investigation of a contravention of section 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B of the PIP Act or the affairs of an investigated entity.

Clause 33 amends section 703 (Injunctions) to provide that when applying this section to the offences in section 71(1) or (2) or 71B of the PIP Act, a reference to the Supreme Court includes a reference to a court of another State vested with jurisdiction under the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Qld) and the laws of the other States that correspond to that Act.

Clause 34 amends section 705 (Confidentiality of personal information) to omit reference to personal from the heading and provide that the section does not apply to disclosures that do not identify or help in identifying an Australian legal practitioner, law practice employee or other entity that is the subject of a complaint or investigation matter, or an entity or law practice that employs the entity, legal practitioner or employee; an investigated entity that is the subject of a chapter 5A investigation; or a person associated with an entity mentioned above. Subclause (3) also provides that the section does not apply to a disclosure by an investigator to the Commissioner; if the investigator was employed by a regulatory authority, to the regulatory authority; or to the person to whom the information relates.

Clause 35 inserts new part 9 (Transitional provision for Personal Injuries Proceedings and Other Legislation Amendment Act 2022) containing section 788 (Application of s 347) into chapter 10 to provide for transitional arrangements arising from the amendments.

Clause 36 amends schedule 2 (Dictionary) to amend the definition of *'relevant law'* and insert definitions of *' 'associated person'. 'chapter 5A investigation', 'claim farming provision', ' 'external entity', 'investigated entity', 'qualified accountant'*, *related body corporate'* and *'special investigator*'.

Part 5 Amendment of Motor Accident Insurance Act 1994

Clause 37 provides that this part amends the *Motor Accident Insurance Act 1994*.

Clause 38 makes consequential amendments to section 79 (Maximum amount of legal costs for claims) to reflect changes made to section 346 and 347 of the LP Act.

Part 6 Amendment of Personal Injuries Proceedings Act 2002

Clause 39 provides that this part amends the *Personal Injuries Proceedings Act 2002*.

Clause 40 amends section 4 (Main purpose) to extend the objects of the Act to include establishing measures directed at eliminating or reducing the practice of giving or receiving consideration for a claim referral or potential claim referral or soliciting or

inducing a claimant to make a claim, in contravention of this Act. This is consistent with section 3(k) of the MAI Act (Objects).

Clause 41 inserts a new chapter 2, part 1, division 1AA (Requirements for law practice certificates) containing new sections 8A-8F which outline the requirements for the completion and giving of law practice certificates at various stages of a claim. This section is based on the provisions in part 4, division 2 of the MIA Act.

New section 8A (Application of division to potential claimants) provides that in division 1AA, a reference to claimant includes a reference to a potential claimant.

New section 8B (Meaning of *law practice certificate)* specifies the content requirements for a law practice certificate. The certificate must be in a form approved by the Commissioner and state the supervising principal and each associate of the law practice did not give or receive (or agree or allow or cause someone else to give or receive) consideration for a claim referral or potential claim referral in contravention of section 71(1) or 71(2); nor did they approach or contact a person and solicit or induce the person to make a claim in contravention of section 71B; and the costs agreement for the client complies with section 347 of the LP Act or section 71E. Importantly, subsection (6) declares that this section does not require or permit a supervising principal to give information about communication with a claimant that is subject to legal professional privilege.

New section 8C (Law practice retained by claimant before notice of claim or urgent proceeding) requires a supervising principal of a law practice retained to act for a claimant to complete a law practice certificate and give it to the claimant before the claimant has given notice of the claim under section 9 or 9A or urgent proceedings for a claim are started under division 5. The maximum penalty for a breach is 300 penalty units.

If a supervising principal cannot comply with sections 8C, 8F, 9C, 13A or 61, new section 8D (Supervising principal can not complete law practice certificate or notice) allows another principal of a law practice or, in the case of a law practice with only one principal, another lawyer nominated by the supervising principal to complete and give the law practice certificate or the notice mentioned in section 8F(3). This provision will enable law practices to meet the certificate requirement if a supervising principal cannot sign the certificate or notice.

New section 8E (False or misleading law practice certificate) makes it an offence for a supervising principal to sign, or give to the claimant, potential claimant, respondent, or respondent's insurer, a false or misleading law practice certificate. The maximum penalty is 300 penalty units.

New section 8F (Law practice referral through sale of business) requires a law practice (current practice) that refers a claimant (who has not yet or will not have been given notice of the claim under section 9) as part of a sale of all or part of its law practice's business to another law practice (new practice) to complete and give a law practice certificate, before the referral occurs, to the new practice and a copy to the claimant. If the new practice does not receive the certificate, the supervising principal of the new practice must, as soon as practicable, give a notice to the Commissioner stating it has

not received the certificate. The maximum penalty for the current practice not giving the certificate is 300 penalty units.

Clause 42 makes amendments to section 9 (Notice of claim) to provide a new requirement for the claimant to include in the notice of claim a copy of the law practice certificate provided by the supervising principal under section 8C, unless it has previously been given under section 9A(3)(j); and if a claim was referred through a sale of a law practice's business, the law practice certificate under section 8F.

Clause 43 amends section 9A (Particular provision for notice of a claim procedure for medical negligence cases) to provide that if a law practice is retained to act in relation to the claim based on a medical incident, the initial notice must include a copy of the law practice certificate given by the supervising principal under section 8C; and if a claim was referred through a sale of a law practice's business, a copy of the law practice certificate under section 8F.

Clause 44 inserts new sections 9B (Law practice certificate not given) and 9C (Law practice retained by claimant after notice of claim). These sections are modelled on section 37AA and 37AB of the MAI Act.

Section 9B requires a principal of a law practice retained to act for a claimant to refund to the claimant all fees and costs including disbursements the claimant paid in relation to the claim if the principal fails to give the claimant a law practice certificate and because of that failure the claimant is unable to satisfy the requirements of section 9(2) and terminates in writing the engagement of the law practice. The provision ensures a supervising principal's failure to comply does not disadvantage the claimant.

Section 9C applies if a claimant retains a new law practice to act in relation to the claimant's claim after the claimant gives the notice of claim. The supervising principal must give a copy of the law practice certificate to the respondent within 1 month after the practice is retained. A principal's failure to comply attracts a maximum penalty of 300 penalty units.

Clause 45 inserts a new section 13A into the Act. New section 13A (Duty to give law practice certificate if waiver or presumption) will ensure the obligation to give a law practice certificate under section 8C continues despite a waiver or presumption of compliance under this division. If the supervising principal gave the claimant a law practice certificate under section 8C but the claimant did not give it to the respondent, the supervising principal must give the respondent and the respondent's insurer (if the respondent's insurer has responded to the claimant's notice of claim), a copy of the certificate as soon as practicable. Also, if the supervising principal did not give the claimant a law practice certificate under section 8C and the claimant has not subsequently given the respondent a law practice certificate, the supervising principal must, within 1 month after the claimant is notified of the waiver or the presumption takes effect, complete the certificate and give it to the respondent, and a copy to the claimant and respondent's insurer (if the respondent's insurer has responded to the claimant's part 1 notice of claim). A supervising principal who breaches the requirement is liable to a maximum penalty of 300 penalty units. This section is modelled on section 39A of the MAI Act.

Clause 46 amends section 18 (Claimant's failure to give part 1 of a notice of a claim) to provide that the section does not affect the application of section 13A.

Clause 47 makes a consequential amendment to section 20C (Notice of claim for damages for child).

Clause 48 inserts a new chapter 2, part 4 into the Act titled 'Other requirements for giving law practice certificates' and containing new section 61. This section, titled 'Supervising principal must complete law practice certificate on settlement or judgment' is modelled on section 41A of the MAI Act with some modifications and requires a supervising principal of the law practice retained by a claimant to act in relation the claimant's claim to complete a law practice certificate as soon as practicable after an offer, or counter offer, of settlement has been accepted in writing or judgment is given, and give the certificate to the respondent (and a copy to the claimant and the respondent's insurer (if the respondent's insurer has responded to the part 1 notice of the claim or the respondent has given details of the respondent's insurer) within 7 days of the acceptance or judgment. A failure to comply with the requirement attracts a maximum penalty of 300 penalty units.

Clause 49 makes consequential amendments to section 63 (Definitions for pt 1) to omit the definitions of *'law practice'* and *'potential claimant'*.

Clause 50 makes a consequential amendment to section 67A (Exemption from s 67(3) and (4)) to omit section 67A(2).

Clause 51 inserts new chapter 3, parts 2 (Referral of claims and contact to solicit or induce claims) and 2A (Requirement to report non-compliance with particular provisions) into the Act.

New chapter 3, part 2 contains new sections 70 to 71F.

New section 70 (Meaning of claim referral) provides a definition of claim referral. 'Claim referral' means a referral of a claimant to a person for the purpose of the person providing a service for the claimant or someone other than the person providing a service for the claimant. Subsection (2), however, states that the term does not include the advertisement or promotion of a service or person that results in a claimant using the service or person if the advertisement or promotion is made to the public or a group of persons. Subsection (3) indicates that in this section '*claimant*' means potential claimant and '*service'* means a service related to the claimant's claim.

New section 71 (Giving or receiving consideration for claim referrals) prohibits a person 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. The offences applying to the giving or receiving of consideration carry a maximum penalty of 300 penalty units. Subsection (3) outlines when the section does not apply and subsection (4) provides the definitions applicable to the section including that *'claimant'* includes a potential claimant.

New section 71A (meaning of consideration for section 71), is modelled on section 74A of the MAI Act and provides that consideration, for a claim referral or potential claim

referral, means a fee or other benefit but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of $200 or less. The definition excludes money to prevent cash payments of up to $200 for a claim referral.

Subsection (2) makes clear that consideration does not include –

- a payment or other benefit, not for a claim referral or potential claim referral, to:
    - a community legal service; or
    - an industrial organisation; or
    - a registered entity within the meaning of the *Australian Charities and Not-for-Profits Commission Act 2012* (Cwlth); or
    - a school association; or
    - a sporting association
- an amount given by a claimant for a service provided to the claimant as part of making a claim, for example, an amount for legal costs.

Subsection (3) contains some of the definitions relevant to this section.

New section 71B (Approach or contact for the purpose of making a claim) will prohibit a person personally approaching or contacting another person to solicit or induce that person to make a claim. Personal approach or contact captures contact in person, by mail, telephone, email or other form of electronic communication. The offence carries a maximum penalty of 300 penalty units. Subsection (3) provides that the section does not apply if:

- the person making the contact either does not expect or intend to receive (and does not receive) consideration because of the approach or contact, or does not ask for someone else to receive consideration or agree to someone else receiving consideration because of the approach or contact;
- a law practice or lawyer is supplying, or has previously supplied, services to the person (or a relative of the person) contacted and reasonably believes the person will not object to the approach or contact; or
- a law practice or lawyer approaches or contacts a person because a representative of a community legal service or industrial organisation (on behalf of the service or organisation) has asked the law practice or lawyer to do so and advised the person will not object to the approach or contact.

Subsection (4) provides that the section applies regardless of whether the claimant is entitled to make a claim or the claimant has already decided to make or had made a claim. Subsection (5) contains definitions relevant to this section.

New section 71C (Responsibility for acts or omissions of representative) is modelled on section 76 of the MAI Act. This new section provides that a person (individual or a corporation) is responsible for the acts or omissions of the person's representatives by:

- specifying it is enough to show the person's representative did or omitted to do the act (within the scope of the representative's actual or apparent authority) and had the 'state of mind';
- deeming the act done or omitted to be done by the person's representative (within the scope of the representative's actual or apparent authority) to have been done or omitted to be done by the person.

A representative means an employee or agent of an individual (including a partner of a law practice), or an executive officer, employee or agent of a corporation. State of mind, of a person, includes the person's knowledge, intention, opinion, belief, or purpose; and the person's reasons for the intention, opinion, belief, or purpose.

New section 71D (Additional consequences for law practice) provides that, if an associate of a law practice is convicted of a claim farming offence under section 61, 71(1) or (2) or 71B, the law practice will not be 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 that relate to the services. This section is modelled on section 77 of the MAI Act.

New section 71E (Maximum amount of claim-related costs that may be charged and recovered) applies the '50:50 rule' set out in section 347(1) of the LP Act to a speculative personal injury claim if section 347 does not apply to the law practice. The section applies despite anything to the contrary in the costs agreement that relates to the claim. This section is modelled on section 79 of the MAI Act with amendments to reflect the changes outlined in clauses 15-16 of the Bill.

New section 71F (Extraterritorial application of part) provides that this part applies both within and outside Queensland and applies outside of Queensland to the full extent of the extraterritorial legislative power of the Parliament.

New chapter 3, part 2A inserts new section 71G (Reporting non-compliance) into the Act. This section applies in relation to the supervising principal of a law practice retained by either the respondent to a claim or the respondent's insurer; as well as the insurer for the respondent. Under subsection (2), if the supervising principal reasonably believes a person is contravening a law practice certificate requirement, the supervising principal must, within 14 days after forming the belief, or a longer period agreed by the Commissioner, give the Commissioner the information the principal has in relation to the contravention. As a result of amendments to the definition of 'relevant law' in the LP Act, failure to comply with this requirement may constitute unsatisfactory professional conduct or profession misconduct under chapter 4 of that Act. Subsection (3) provides that a supervising principal is taken to have formed the reasonable belief if an associate of the law practice knows or ought reasonably to have known that a person is contravening a law practice certificate requirement.

Subsection (4) states that, if the insurer reasonably believes a person is contravening a law practice certificate requirement or section 71 or 71B, the insurer may give the Commissioner the information the insurer has in relation to the contravention.

Subsections (5) and (6) confirm the extraterritorial application of this section and subsection (7) contains definitions of *'law practice certificate requirements'* and *'supervising principal*' which apply to this section.

Clause 52 amends section 73A (Proceedings) to provide that a proceeding for an offence against a claim farming provision (which is defined in subsection (6)) must start within the later of – 2 years after the commission of the offence or 6 months after the commission of the offence comes to the knowledge of the complainant. The provision

also provides that proof of authorisation by the Commissioner or Attorney-General is presumed unless a party to the proceeding needs proof of it.

Clause 53 inserts a new section 73B (Disclosure of information for administering claim farming provisions). This section will apply if, in exercising a power or performing a function under a claim farming provision (defined in subsection (5)) under this Act or the LP Act, the Commissioner obtains information. Subsection (2) provides that the Commissioner may disclose the information to a relevant entity if the Commissioner believes the information is relevant to the administration by the relevant entity of a claim farming provision or monitoring and identifying patterns or trends in conduct to which claim farming provisions apply. Subsections (3) and (4) provide some safeguards around the disclosure and use of this information.

Clause 54 amends section 74 (Approved forms) to provide that the Commissioner may approve forms in relation to law practice certificates.

Clause 55 inserts a new chapter 4, part 9 (Transitional Provisions for Personal Injuries Proceedings and Other Legislation Amendment Act 2022). This part contains new section 88 (Requirements for law practice certificates apply to conduct on commencement) which specifies that, if before commencement a law practice was retained by a claimant to act in relation to the claimant's claim and on commencement, the claim has not been settled, decided or otherwise concluded, for sections 8C, 8F, 9B, and 9C or 61, the law practice certificate must state those matters only in relation to conduct after commencement. Subsection (3) provides that section 8F applies to a referral of a client to a new practice as mentioned in section 8F(1)(b) made after the commencement, even if the agreement for the sale of the current practice was entered into before the commencement.

Clause 56 amends schedule 1 (Dictionary) to omit the definitions of *'law practice'* and '*potential claimant'* and to insert definitions of '*associate', 'claim referral', 'commissioner', 'community legal service', 'industrial organisation', 'law practice', 'law practice certificate', 'potential claimant'*, *'principal'* and *'supervising principal'*.

Part 7 Amendment to the Workers Compensation and Rehabilitation Act 2003

Clause 57 provides this part amends the WCR Act.

Clause 58 amends section 39A(1) to insert an explicit requirement that a condition is only a terminal condition if it is certified by a doctor as being a condition that is expected to terminate a worker's life within 3 years after the terminal nature of the condition is diagnosed.

Clause 59 amends section 275 of the WCR Act to outline requirements for a law practice certificate to accompany a notice of claim for damages if a claimant has retained a law practice to act in relation to the claim.

Clause 60 inserts a new Chapter 6B (sections 325E – 325X) in the WCR Act to clarify the requirements for completing and giving law practice certificates and to create the new claim farming offence provisions.

New Part 1, section 325E provides definitions for the chapter.

New section 325F specifies the content requirements for a law practice certificate. The certificate is to be in a form approved by the Regulator and state the supervising principal and each associate of a law practice did not give or receive, (or agree or allow or cause someone else to give or receive) consideration for a claim referral or potential claim referral in contravention of section 325R; nor approach or contact a person and solicit or induce them to make a claim in contravention of section 325T. The certificate also requires that the supervising principal state that the costs agreement meets the '50/50' rule under section 347 of the *Legal Profession Act 2007*. Notably, the section clarifies that communication with a claimant that is subject to legal professional privilege is not required or permitted to be given under this section.

New Part 2, section 325G clarifies that claimant includes reference to a potential claimant.

New section 325H applies if a law practice is retained to act in relation to a claimant's claim for damages, before the claimant has given a notice of claim for damages or urgent proceedings are started, and the practice has not previously been retained by the claimant in relation to the claim. The supervising principal of the law practice must complete a law practice certificate for the claim and give the certificate to a claimant before the claimant gives notice of claim, or the urgent proceedings is started. New section 325H supports the new requirement under section 275(7A) which requires that a notice of claim to be accompanied by a law practice certificate. The maximum penalty for a failing to provide the certificate is 300 penalty units.

New section 325I applies if the law practice is retained by a claimant to act in relation to a claimant's claim, other than for the purpose mentioned in 325H. The supervising principal must complete a law practice certificate and provide the certificate as follows:

- to the claimant when retained in relation to a statutory claim; or
- to the insurer and a copy to the claimant when retained in relation to a claim for damages.

The supervising principal is required to comply with this requirement within a month from when an application for compensation is lodged or otherwise at the point the law practice is retained by the claimant.

New section 325J requires when a law practice gives a payment direction to an insurer, it must be accompanied by a law practice certificate, with a copy given to the claimant. Payment direction means a direction or authorisation given by the client of a law practice for the payment of compensation for the claimants claim to the trust account of the law practice.

If the insurer receives a payment direction that is not accompanied by a law practice certificate, the insurer must as soon as practicable, give a notice requesting the law practice to produce a law practice certificate. The law practice must within seven days after receiving the notice, give the insurer the law practice certificate, and provide a copy of the certificate to the claimant. The maximum penalty for a failing to provide the certificate is 300 penalty units.

Further this section requires the supervising principal to complete a law practice certificate and provide it to the insurer, and a copy to the claimant within seven days after the payment of a lump sum benefit (unless a certificate has already been given to the insurer for the claim under this section). Where the supervising principal is unable to comply with the timeframe, they must have reasonable excuse. If the claimant is paid more than one lump sum, the supervising principal need only provide a certificate for the first payment. The maximum penalty for a failing to provide the certificate is 300 penalty units.

New section 325K ensures an obligation to give a law practice certificate under section 275(7A) continues despite a waiver or presumption given under section 278(2)(b) or (3), or section 278(4). Under these sections, the insurer may waive compliance with the requirements of a notice of claim, or, if the insurer does not give the requisite written notice to the claimant within 10 business days after receiving the notice of claim, the notice of claim is taken to be compliant.

If an insurer notifies the claimant of a waiver or presumption and:

- the supervising principal gave the claimant a law practice certificate under sections 325H or 325I but the claimant did not provide it to the insurer, they must give a copy of the certificate to the insurer as soon as practicable; or
- the supervising principal did not give the claimant a law practice certificate for the claim under sections 325H or 325I, they must provide a law practice certificate to the insurer (and a copy to the claimant) within one month of the claimant being notified of the waiver or the notice of claim is taken to be compliant. The maximum penalty for a failing to provide the certificate is 300 penalty units.

New section 325L sets out the requirements for when a supervising principal of a law practice retained to act in relation to a claimant's claim for damages must complete a law practice certificate when the damages claim is finalised. The supervising principal is to give a law practice certificate to the insurer and a copy to the claimant within seven days after the claimant or the insurer accepts an offer (or counter-offer) of settlement or judgment is given on the claim for damages. The maximum penalty for a failing to provide the certificate is 300 penalty units.

New section 325M requires a law practice (current practice) that intends to refer a claimant as part of a sale of all or part of its law practice's business to another law practice (new practice) to complete and give a law practice certificate to the new practice and a copy to the claimant before the referral occurs. This requirement only applies if the claimant has not yet lodged an application for compensation or given a notice of claim for damages. If the new practice does not receive the certificate, the supervising principal of the new practice must give a notice to the insurer stating it has not received the certificate. The maximum penalty for the current practice not giving the certificate is 300 penalty units.

New Part 3 details other requirements relating to law practice certificates.

New section 325N details that if a supervising principal cannot comply with sections 325H, 325I, 325J, 325K, 325L or 325M another principal of a law practice, or in the case of a law practice with only one principal, another lawyer nominated by the

supervising principal, is able to complete and give the law practice certificate or the notice mentioned in section 325M(3).

New section 325O requires a supervising principal of a law practice to refund all fees and costs (including disbursements) the claimant paid in relation to the claim if:

1. they fail to give the claimant a law practice certificate, and
2. because of that failure the claimant is unable to satisfy the requirements under section 275(7A) of a notice of claim for damages within the period that a claimant may bring a proceeding for damages under section 302, and the claimant terminates in writing the engagement of the law practice.

The refund must be made within 14 days after the termination of the engagement and the law practice cannot charge or recover any further fees or costs in relation to the claim. This provision ensures a supervising principals' failure to comply does not disadvantage the claimant.

New section 325P makes it an offence for a supervising principal to sign, or give the claimant, potential claimant or insurer, a certificate the principal knows is false or misleading in a material particular. The maximum penalty is 300 penalty units.

New Part 4 details the new offences related to the referral of claims and contact to solicit or induce claims, and related definitions.

New section 325Q provides the definition of claim referral as meaning a referral of a claimant by a person for the purposes of:

- providing a service to the claimant (such as legal or medical services); or
- someone other than the person providing a service to the claimant.

The section clarifies that advertising or promoting a service or persons that results in a claimant using the service or person is not a claim referral if the advertising or promotion is directed to the public or group of persons.

New section 325R prohibits a person giving or receiving, agreeing to give or receive, or allowing or causing another person to give or receive, consideration (as defined in 325S) for a claim referral or potential claim referral. The provision does not apply if the referral of a claimant is part of a sale by a law practice (current practice) of all or part of its business to another law practice (new practice) if the amount for the referral is not more than the current legal costs for the claimant and this amount is disclosed to the claimant in a costs agreement. In this section claimant also includes potential claimant. An offence under this provision attracts a maximum penalty of 300 penalty units.

New section 325S defines consideration as a fee or benefit, but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of $200 or less. The definition of consideration excludes money to prevent a cash payment of up to $200 for a claim referral.

This section clarifies that consideration does not include a payment or other benefit, not for a claim referral or potential claim referral to a community legal service, industrial

organisation, registered charitable or not-for-profit entity, school association, or sporting association.

The section also clarifies that consideration does not include the payment for services rendered to the claimant such as legal costs. In the context of the workers' compensation scheme this would also not include an amount given by a claimant for medical treatment or rehabilitation services.

New section 325T prohibits a person approaching or contacting another person to solicit or induce that person to make a claim under the scheme. An offence under this provision attracts a maximum penalty of 300 penalty units.

However, the offence does not apply if the person making the approach or contact (the first person):

- does not expect or intend to receive, and does not receive, consideration because of the approach or contact; and does not ask for some else to receive consideration or agree to someone else receiving consideration because of the approach or contact; or
- is a law practice or a lawyer that is supplying, or has previously supplied, a legal service to the second person or the second person's relative and reasonably believes the second person will not object to the approach or contact; or
- is a law practice or lawyer that has been asked by a representative of a community legal service or industrial organisation (on behalf of the service or organisation) to contact the second person and has been advised the second person will not object to the approach or contact.

In the context of the workers' compensation scheme this offence would not apply in the circumstances where a doctor, provider of treatment or rehabilitation services who, in the course of providing services to an injured worker makes a recommendation about making a claim or assists a worker to make a claim.

This provision applies regardless of whether the person being contacted is entitled to make the claim or has already decided to make or had made the claim. In this section, consideration means a means a fee or other benefit but does not include a gift, other than money, or hospitality if the gift or hospitality has a value or $200 or less.

New section 325U makes a person (individual or a corporation) responsible for the acts or omissions of the person's representatives by:

- specifying it is enough to show the person's representative did or omitted to do the act (within the scope of the representative's actual or apparent authority) and had the 'state of mind'; and
- deeming the act done or omitted to be done by the person's representative (within the scope of the representative's actual or apparent authority) to have been done or omitted to be done by the person.

In this section, a representative means an employee or agent of an individual (including a partner of a law practice); or an executive officer, employee or agent of a corporation. State of mind, of a person, includes the person's knowledge, intention, opinion, belief or purpose; and the person's reasons for the intention, opinion, belief or purpose.

New section 325V provides that a law practice convicted of an offence under sections 325J, 325L, 325R(1) or (2) or 325T will not be 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 that relates to the services.

New section 325W allows the Regulator to apply to a court of competent jurisdiction for an injunction to restrain a person (an offending party) who it reasonably believes has contravened, is contravening, or will contravene section 325R(1) or (2) or 325T, whether in Queensland or elsewhere. The court may grant an interim injunction pending a decision about the application. A decision to grant the injunction must be made on the balance of probabilities that the offending party has engaged, or is likely to engage or continue to engage, in the conduct. A court of competent jurisdiction includes a court of another State or Territory vested with jurisdiction under the *Jurisdiction of Courts (Cross-vesting) Act 1987* (QLD) and the corresponding laws of the other States and Territories.

New section 325X applies Part 4 to both within and outside of Queensland to the full extent of the extraterritorial legislative power of the Parliament.

New Part 5 details requirements to report non-compliance with new Chapter 6B.

New section 325Y requires an insurer to give to the Regulator, without delay, any relevant information where the insurer reasonably believes a person is contravening any of the following provisions chapter 6B, part 2 and 325P, 325R, 325T. A failure to comply with this section attracts a maximum penalty of 50 penalty units.

Clause 61 inserts new Chapter 12 Part 1A to introduce special investigations powers for claim farming.

New section 532L inserts definitions for Part 1A.

New section 532M states that a reference to a document includes a reference to an image or writing produced from an electronic document or not yet produced, but reasonably capable of being produced, from an electronic document.

New section 532N allows the Regulator to appoint an investigator to investigate (in addition to the affairs of an insurer) the 'relevant affairs' of a law practice or lawyer that is acting or has acted for a claimant, or an entity, if the Regulator reasonably suspects that section 325R (1) or (2) or section 325T may have been contravened. Under section 532N, relevant affairs:

- means matters relating to:
    - how the investigated person received or was referred the claimant, potential claimant or instructions for a claim; and
    - how the investigated person gave or referred instructions for a claim; and
- includes a transaction involving the investigated person or an associated person for the investigated person relevant to the receipt or referral of instructions.

Subsection 4 lists the persons the Regulator may appoint as an investigator.

New section 532O allows an investigator to delegate a power, other than the power to administer or examine an oath or affirmation. If a power is delegated, the investigator must be able to produce the instrument of delegation for inspection upon request.

New section 532P allows an investigator investigating the affairs of an insurer to also investigate the affairs of a related body corporate, with the Regulator's written consent.

New section 532Q allows an investigator, by written notice, to require an investigated person, or an associated person for an investigated person, to produce a document to the investigator, to appear before the investigator for examination under oath or affirmation or to give the investigator all reasonable help in connection with the investigation.

New section 532R provides that if a document is produced to an investigator under this part, the investigator may keep the document for as long as it is considered reasonably necessary, but the investigator must allow a person who would be entitled to inspect the document to inspect the document at all reasonable times. This section also requires an investigator to allow the owner of the document to copy it.

New section 532S sets out the obligations of a person who an investigator is examining. These obligations include complying with a lawful requirement and not knowingly giving false or misleading information. Contravening this section may make an investigated person or associated person liable to a maximum penalty of 300 penalty units or 2 years imprisonment. However, persons will not contravene this section if they tell the investigator, to the best of their ability, how the information is false and misleading, and they give the investigator the correct information (if they can obtain the correct information). Under subsection 4, a person required to attend for examination is entitled to the allowances and expenses prescribed by regulation.

New section 532T provides that an investigated person or an associated person is not excused from answering a question or producing a document on the basis that complying might tend to incriminate the person or expose them to a penalty. This expands the abrogation of the protection against self-incrimination to a law practice or lawyer. Section 532T partially abrogates the common law right of legal professional privilege for a law practice or lawyer. Thus, the provision states an investigated person or an associated person is not excused from answering a question or producing a document on the basis that complying would disclose a privileged client communication, which means communication protected against disclosure by legal professional privilege that operates to the benefit of a client of an investigated person.

When putting a question to a person or requesting a document, the investigator must inform the person of the obligation to comply and, if the person is an individual, of the limited immunity against future use of the information or document given under section 532ZA. If the investigator does not do so, and an individual does not comply with the investigator's request, the individual may not be convicted of an offence under 325S(1). Section 532T further provides that if a person discloses a privileged client communication:

- the person is taken for all purposes not to have breached legal professional privilege in complying with the requirement; and

- the disclosure 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 section chapter 6B, part 2 or section 325P, 325R(1) or (2) or 325T.

New section 532U states that, if an investigated person or associated person for an investigated person does not comply with a requirement, the investigator may give to the Supreme Court a certificate about the failure to comply. The court may inquire into the case and order compliance with the investigator's requirement.

New section 532V specifies an investigator must make a record of the questions asked and the answers given at an examination. The section further provides that, subject to section 532ZA, a record of the examination may be used in evidence in a legal proceeding against the person. A record of the examination must be given to the person without fee if the person requests it in writing. The record must also be included with the investigator's final report on the investigation. Subsection five confirms nothing in the section affects or limits the admissibility of other written or oral evidence.

New section 532W states an investigator may (and if directed by the Regulator, must) make interim reports to the Regulator. An investigator must give a report to the Regulator when the investigation ends. This report must hold an opinion on the matters under investigation, along with all facts on which that opinion was based. The Regulator must then give the final report to the investigated person, unless it has a good reason for not divulging it. Section 532W provides the Regulator may publish a report on its website or any other place it considers appropriate, if the subject of the report is convicted of an offence against chapter 6B, and if it is in the public interest to do so.

New section 532X requires an investigator to give the Regulator, at the end of an investigation, any documents the investigator has taken possession of under Part 1A. The Regulator can keep the documents for a reasonable period to enable a decision to be made about whether to start a legal proceeding. The Regulator must allow a person who would be entitled to inspect the document, if it was not in the Regulator's possession, to inspect the document at all reasonable times.

New section 532Y enables the Regulator to recover the costs of, and incidental to, an investigation if an investigated person is convicted of an offence against section 325R(1) or (2) or 325T.

New section 532Z prohibits a person concealing, destroying, mutilating, or altering a document of or about an investigated person or associated person for an investigated person whose affairs are being investigated under Part 1A.

Furthermore, a person must not send, cause to be sent, or conspire with someone else to send out of the State such a document. The maximum penalty applicable to the offence is 300 penalty units or 2 years imprisonment. It is a defence to a prosecution of an offence for the defendant to prove the defendant did not act with intent to defeat the purposes of this part, or to delay or obstruct the carrying out of an investigation under this part.

New section 532ZA affords individuals evidential immunity if they give or produce information or a document to an investigator under section 532Q. Accordingly, evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is inadmissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose the individual to a penalty, other than in:

- a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the document is relevant evidence; or
- a proceeding for an offence against sections chapter 6B, part 2 or section 325P, 325R(1) or (2) or 325T.

New section 532ZB provides that Part 1A applies extraterritorially to the extent necessary for any investigation of a contravention of chapter 6B, part 2 or section 325P, 325R(1) or (2) or 325T, or the affairs of an investigated person under section 532N(2).

New section 532ZC prohibits an investigator directly or indirectly disclosing confidential information. The prohibition does not apply if the disclosure is authorised under an Act or another law; or the confidential information is disclosed:

- in the performance of functions under this part;
- with consent of the person about whom the information relates;
- to whom the information relates; or
- in a form that would not identify any person.

Clause 62 inserts new section 573A to allow the Regulator to disclose information obtained in relation to administering a claim farming provision to the Motor Accident Insurance Commission and the Legal Services Commission. This information can be disclosed if the Regulator believes the information is relevant to the administration by that entity of a claim farming provision, or monitoring or identifying patterns and trends in conduct to which claim farming provisions apply. The information disclosed under this section must not be used for any other purposes.

Clause 63 amends section 575, which outlines information use immunity for information gathered in an application for compensation or a claim for damages. This section is amended to insert a caveat that the information may be used against a person in a proceeding for an offence under another Act, in a proceeding where that information was false or misleading, or a proceeding for an offence against a claim farming provision within the meaning of section 573A(4).

Clause 64 amends section 579, which outlines timeframes for proceedings for offences other than against Chapter 8. The section is amended to prescribe that a proceeding for claim farming offences under Chapter 6B must start within two years from the commission of the offence, or within 6 months of the offence coming to the knowledge of the Regulator, whichever is later. This is consistent with the relevant timeframe given in the *Motor Accident Insurance Act 1994.*

Clause 65 inserts a note regarding the disapplication of section 732(1) as set out in new section 744 in relation to terminal compensation.

Clause 66 inserts new Chapter 37 to provide the transitional provisions for the Personal Injuries Proceedings and Other Legislation Amendment Act 2022.

New section 743 provides the definition relevant to this chapter.

New section 744 confirms existing section 732(1) does not apply and provides the new definition of terminal condition, as set out in this Bill, applies and is always taken to have applied in relation to a condition that is a latent onset injury sustained by a worker on or after 31 January 2015. Further, it is made clear that section 732 does not apply, and is taken to never have applied, in relation to the condition.

The new definition of terminal condition is taken to apply even if certain events have occurred on the worker's claim prior to the commencement of the Bill. This includes where an application for compensation has been allowed, or if the insurer has accepted the doctor's diagnosis as to the terminal nature of the condition, or if an administrative review or appeal are in progress but not yet decided. However, the operation of this transitional arrangement is subject to new section 745.

New section 745 preserves the only instances when the former definition of terminal condition prior to commencement will apply to a worker who has sustained a latent onset injury on or after 31 January 2015. The former definition of terminal condition will continue to apply if:

- a worker has already received terminal lump sum compensation under section 128B; or
- if the relevant benefit under section 128D(3) has been paid to the worker or the worker's dependents.

This provision also preserves the worker's right to continue applying the former definition in further actions on their claim, such as when they give a notice of claim with the insurer.

Further, to limit the impact on workers who have already commenced court proceedings to pursue common law damages for their latent onset injury, new section 745 confirms the former definition of terminal condition continues to apply to the damages claim already in progress if the worker has given the insurer a notice of claim before the commencement. If neither of these circumstances apply, the worker's latent onset injury is to be assessed under the new definition of terminal condition from commencement of this Bill.

New section 746 provides certainty for terminal conditions that are not latent onset injuries. Specifically, that in the circumstances of Chapter 5 of the WCR Act, the new definition of terminal condition applies to any notice of claim lodged after commencement of the Bill.

New section 747 details law practice certificates are to apply to conduct from commencement. The section applies if a law practice was retained to act in relation to a claimant's claim prior to commencement, and by commencement, the claim has not been settled, decided by a court, or otherwise concluded.

Where there is a law practice certificate for the claim that the supervising principal of the law practice is required to complete and give to a person under section 325H, 325I,

325J, 325K, 325L or 325M, the certificate must state the matters in section 325F(2), (3) and (4) only in relation to conduct after the commencement.

Section 325M applies to a referral of a client to a new practice as mentioned in section 325M(1)(b) made after the commencement, even if the agreement for the sale of the current practice was entered into before the commencement.

In this section, 'claim' has the same meaning as section 325E.

Clause 67 amends Schedule 6 to provide additional definitions for terms introduced in the Bill.