

# Personal Injuries Proceedings and Other Legislation Amendment Bill 2022

## Statement of Compatibility

**Prepared in accordance with Part 3 of the *Human Rights Act 2019***

In accordance with section 38 of the *Human Rights Act 2019*, I, Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Bill

The Bill amends the *Legal Profession Act 2007* (LP Act), the *Personal Injuries Proceedings Act 2002* (PIPA), the *Motor Accident Insurance Act 1994* and the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) to stop ‘claim farming’ for personal injury and workers’ compensation claims and prevent undesirable cost agreement practices by law practices for personal injury claims. The Bill will achieve these purposes through the following key reforms:

- prohibiting the act of cold-calling or personally approaching another person without their consent and soliciting or inducing them to make a personal injury claim;
- making it an offence for any person to pay claim farmers for the details of potential claimants or to receive payment for a claim referral or potential claim referral;
- imposing obligations on legal practitioners representing injured claimants to certify at various stages during the claim process, through ‘law practice certificates’, that neither they nor their associates have paid a claim farmer for the claim;
- providing powers to the Legal Services Commissioner (the Commissioner) and the Workers’ Compensation Regulator (Regulator) to enforce the ‘claim farming provisions’;
- providing for an information sharing framework between the Commissioner and Regulator and with the Motor Accident Insurance Commission (MAIC); and
- preventing undesirable cost agreement practices by law practices for personal injury claims by specifying how costs in relation to these claims are calculated.

Additionally, the Bill confirms when an entitlement for terminal compensation arises under the WCR Act. Following a recent decision in the Queensland Industrial Relations Commission which expanded, beyond the policy intent, when an entitlement to terminal compensation arises, this amendment confirms the Government’s policy intent and protects the financial sustainability of the scheme.

The Bill also amends the *Electoral Act 1992* (Electoral Act) and the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* to make technical and clarifying amendments in relation to the caps on political donations, to ensure the caps operate as intended in relation to fundraising contributions paid into the State campaign account, and to support the Electoral Commission of Queensland (ECQ) in monitoring compliance with the caps.

## **Human Rights Issues**

### **Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)**

#### **Amendments to the Legal Profession Act 2007, Personal Injuries Proceedings Act 2002, Motor Accident Insurance Act 1994, Motor Accident Insurance Act 1994 and Workers' Compensation and Rehabilitation Act 2003**

In my opinion, the human rights that are relevant to the amendments made by parts 4 to 7 of the Bill are:

- freedom of movement (section 19 of the *Human Rights Act 2019* (HR Act));
- freedom of expression (section 21 of the HR Act);
- property rights (section 24 of the HR Act);
- privacy and reputation (section 25 of the HR Act); and
- rights in criminal proceedings (section 32 of the HR Act).

#### **Amendments to the Workers' Compensation and Rehabilitation Act 2003 relating to terminal compensation**

In my opinion, the human rights that are relevant to the amendments made by part 7 of the Bill are:

- recognition and equality before the law (section 15 of the HR Act); and
- privacy and reputation (section 25 of the HR Act).

#### **Amendments to the Electoral Act 1992**

In my opinion, the human rights that are relevant to the amendments made by parts 2 and 3 of the Bill are:

- freedom of expression (section 21 of the HR Act);
- taking part in public life (section 23 of the HR Act); and
- privacy and reputation (section 25 of the HR Act).

#### **If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)**

#### **Amendments to the Legal Profession Act 2007, Personal Injuries Proceedings Act 2002, Motor Accident Insurance Act 1994 and Workers' Compensation and Rehabilitation Act 2003**

***Freedom of movement (section 19)***

**(a) the nature of the right**

The right to freedom of movement under section 19 of the HR Act protects a person's right to move freely within Queensland and to enter and leave it and have the freedom to choose their place of residence, if they are lawfully within Queensland.

New section 581D of the LP Act (clause 32) limits that right by providing a special investigator with the power to require an investigated entity or associated person for an investigated entity to appear before the special investigator for examination on oath or affirmation. There is similar provision (for an investigator) in new section 532Q of the WCR Act (clause 61). New section 581H of the LP Act (clause 32) also limits that right where an investigated entity or associated person has failed to comply with the requirement to appear under section 581D by allowing the court to inquire into the case and order the person to comply with the requirements of the special investigator within a period fixed by the court. There is similar provision (for an investigator) in new section 532U of the WCR Act (clause 61).

**(b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom**

New section 581C of the LP Act (clause 32) provides for the Commissioner to appoint a special investigator where the Commissioner reasonably suspects an entity has contravened claim farming offences under PIPA, section 71 or 71B. There is similar provision (for the appointment of an investigator) in new section 532N(2) and (3) of the WCR Act (clause 61) in relation to suspected contraventions of claim farming offences under section 325R(1) and (2) or section 325T of the WCR Act.

The claim farming offences: prohibit the act of cold-calling or personally approaching another person without their consent and soliciting or inducing them to make a personal injury claim; and make it an offence for any person to pay claim farmers for the names of potential claimants or to receive payment for a claim referral or potential claim referral. These amendments are intended stop the practice of claim farmers inducing or harassing individuals to make a claim with the promise of quick, easy and significant compensation and concerns that this is resulting in an increase in fraudulent and unmeritorious personal injury claims.

The purpose of the limitation is to ensure that the special investigator (or investigator under the WCR Act) can examine an investigated entity or person and an associated person for an investigated entity or person for the purpose of the special investigation. This purpose is consistent with a free and democratic society because it is appropriate that the special investigator (or investigator) obtain information necessary for reporting to the Commissioner (or the Regulator) on whether there has been a breach of the claim farming offences.

**(c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose**

The limitation helps to achieve the purpose by allowing the special investigator (or investigator), by notice, to require the investigated entity or person or associated person for the investigated entity or person to appear before the special investigator (or investigator) for

examination on oath or affirmation and, if the person fails to appear, for the court to be able to order that compliance with the requirements of the special investigator within a fixed period.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive and reasonably available way of achieving the purpose of the amendments. If that power were not present, it is unlikely that an investigated entity or person or associated person would voluntarily appear at the special investigator's (or investigator's) request. The power to require appearance for examination only applies when a special investigator (or investigator) has been appointed and that will only occur where the Commissioner (or Regulator) reasonably suspects that an investigated entity or person may have contravened the claim farming provisions. Further, in the event of failure to comply, the order to comply would be made by a court.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the freedom of movement and having regard to the information and analysis detailed above, I consider that the need for powers of examination as part of a proper investigation of suspected contraventions of the claim farming offences, outweighs the negative impact on the freedom of movement of investigated entities and their associates.

*Freedom of expression (section 21)*

- (a) the nature of the right

Section 21 of the HR Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds – whether orally, in writing, in print or by way of art or other medium. The right to freedom of expression and the free flow of information and ideas is central to a healthy and democratic society.

Clauses 51 and 60 of the Bill will insert new prohibitions on the act of cold-calling or personally approaching another person without their consent and soliciting or inducing them to make a personal injury claim.

These provisions engage the right to freedom of expression as individuals will be prevented from initiating contact with potential claimants and seeking information from, or imparting information to, a potential claimant with the intention of soliciting or inducing the person to make a claim.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of these amendments is to stop the practice of claim farming. This purpose is consistent with a free and democratic society because it is appropriate to prohibit claim farming practices which seek to induce or harass individuals into making personal injury claims with

the promise of quick, easy and significant compensation and address concerns that claim farming is resulting in an increase in fraudulent and unmeritorious personal injury claims.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on freedom of expression of claim farmers will promote the intended purpose of stopping claim farming practices.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments. The limitation on the freedom of expression will not prevent genuine interactions with potential claimants or the ability of potential claimants to seek, or persons providing, genuine advice, assistance, or support, including discussing options to obtain legal advice or otherwise navigating the claims process.

Rather, to the extent these prohibitions limit the right to freedom of expression, the limitation is reasonable and demonstrably justified to: ensure that potential claimants are protected from being harassed, induced or incentivised into make a personal injury claim; remove the economic incentive for claim farmers as there will be no market in Queensland in which to sell their farmed claims; and reduce minor, unmeritorious or fraudulent claims against respondents and their insurers.

In turn, the prohibitions will also safeguard a potential claimant's right to privacy, as the provisions will negate the ability for claim farmers to:

- contact the potential claimant without their consent; or
- sell or transmit information about a potential claimant to a third party, without the knowledge or consent of the potential claimant.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the freedom of expression and having regard to the information and analysis detailed above, I consider that need to prohibit the practice of claim farming outweighs the negative impact on the freedom of expression of those who would otherwise engage in claim farming practices.

#### *Property rights (section 24)*

The protection of property rights under section 24 of HR Act encompasses 'free use, enjoyment and disposal of all [one's] acquisitions'. It protects the right of all persons to own property (alone or with others) and protects individuals from the arbitrary deprivation of their property, including real property, shares, etc. In a human rights context, 'arbitrary' means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought.

A number of the provisions in the Bill impact the right to property:

- limits on legal costs;
- retention of documents;
- investigation cost recovery; and
- limits on cost recovery/refunds of legal fees.

Limits on legal costs

(a) the nature of the right

Under sections 345 to 347 of the LP Act, a law practice is entitled to charge a client in a speculative personal injury matter 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 (commonly called the 50:50 rule).

Clauses 15 and 16 of the Bill will amend sections 346 and 347 of the LP Act to require legal practitioners to exclude certain amounts from being regarded as disbursements for the purpose of determining whether the legal costs charged to a client exceed the 50:50 rule. 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 sections 9 or 9A of the PIPA); and interest on certain loans or other arrangements for funding disbursements or expenses relating to the claim. Currently, such amounts may be treated as disbursements by law practices and paid from the settlement amount before the application of the 50:50 rule. The Bill also proposes to enable the definition of 'additional amounts' to be expanded by way of regulation.

(b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to ensure that a successful claimant's share of a judgment or settlement is not unfairly reduced and address concerns that certain fees being treated as disbursements are potentially disguised payments to claim farmers. This purpose is consistent with a free and democratic society because seeks to ensure that: successful claimants will receive a fair and equitable share of a judgment or settlement funds and legal costs are limited accordingly; and the claim farming prohibition is not undermined through payments to claim farmers being disguised as disbursements relating to a claim. The deprivation of property under the limitation is not arbitrary as the property affected is limited to the "additional amounts".

(c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the property of a law practice by potentially reducing legal costs that it can charge, ensures that a successful claimant's share of a judgment or settlement is not unfairly reduced and address concerns that certain fees being treated as disbursements are potentially disguised payments to claim farmers.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive and reasonably available way to achieve the purpose of the amendments.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to property and having regard to the information and analysis detailed above, I consider that need to ensure that the additional amounts are not treated as ordinary disbursements under the 50:50 rule for the benefit of successful claimants and in support of the prohibition on claim farming, outweighs the negative impact on the right to property of affected law practices.

#### Retention of documents

- (a) the nature of the right

Clauses 32 and 61 will insert:

- new section 581E of the LP Act and new section 532R of the WCR Act to allow documents produced to the special investigator (or investigator) to be kept by the special investigator (or investigator); and
- new section 581K of the LP Act and new section 532X of the WCR Act to allow documents taken during a special investigation to be kept by the Commissioner or Regulator.

This limits the right to property of the owner of the document.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to allow documents required for the special investigation to be retained by the special investigator (or investigator) and documents required for deciding whether legal proceedings should be started in relation to the investigation and for the purpose of such proceedings to be retained by the Commissioner or the Regulator. This purpose is consistent with a free and democratic society because it ensures that potential evidence concerning breaches of claim farming offences is retained for the purposes of investigation and decisions relation to legal proceedings in relation to the investigation.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation helps to achieve the purpose by allowing the retention of the documents.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive and reasonably available way to achieve the purpose of the amendments. The special investigator (or investigator) may only keep the document for a period the special investigator (or investigator) reasonably considers necessary for the

investigation. The limitation is balanced by allowing a person entitled to inspect the document to inspect it at reasonable times and the owner of the document to copy it.

The Commissioner or the Regulator may only keep the documents for the period reasonably considered necessary to enable a decision to be made about whether a legal proceeding ought to be started in relation to the investigation; and a further period necessary to enable a legal proceeding to be started or continued. The limitation is balanced by providing for the inspection of documents and the use of the document in a legal proceeding started because of an investigation.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to property in the documents and having regard to the information and analysis detailed above, I consider that need for the retention of the documents by the special investigator (or investigator) and the Commissioner (or Regulator) for the purposes of the investigation and deciding on legal proceedings outweighs any negative impact on the right to property in the documents.

#### Investigation cost recovery

- (a) the nature of the right

Clause 32 will insert new section 581L(1) of the LP Act which provides that, if an investigated entity is convicted of a claim farming offence, the Commissioner may recover the costs of and incidental to the special investigation from the investigated entity. This will limit the property rights of the investigated entity. Clause 61 inserts similar section 532Y into the WCR Act for an investigated person.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

This purpose is to ensure that the costs of a special investigation can be recovered from an entity or person convicted of 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 (or investigation). It is consistent with a free and democratic society for a convicted person who has engaged in claim farming for economic gain, despite it being prohibited, to meet the costs of the special investigation. This may also act as a deterrent to claim farming.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve the purpose of allowing for the recovery of costs of and incidental to the investigation from the investigated entity or person.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive and reasonably available way to achieve the purpose of the amendments. Special investigations will only be undertaken in limited circumstances and no costs will be recoverable where the investigation does not result in a conviction against section 71 and 71B of the PIPA or sections 325R and 325T of the WCR Act. The limitation is not arbitrary, it will apply only where an investigated entity or person is convicted and only to the costs of and incidental to the special investigation of the entity.

(e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to property of the convicted investigated entity or person and having regard to the information and analysis detailed above, I consider that the ability to recover of costs of the special investigation in respect of claim farming activities from the convicted investigated entity or person outweighs any negative impact on the right to property of the convicted investigated entity or person.

Limits on cost recovery/refunds of legal costs

(a) the nature of the right

Clauses 44 and 60 of the Bill will insert new section 9B in the PIPA and new section 325O in the WCR Act (respectively), which provide that, if a law practice certificate is not given and this results in the claimant being unable to comply with their statutory obligations and terminating the 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, clauses 51 and 60 of the Bill will insert new section 71D in the PIPA and new section 325V in the WCR Act (respectively), to 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 the services.

(b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the provisions is to deter law practices from engaging with claim farmers in the knowledge that they will not be able to recover fees and costs and will need to refund any paid if they do. It is consistent with a free and democratic society that law practices should not receive professional fees and costs in respect of claims obtained in breach the claim farming provisions.

(c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve the purpose constituting a significant deterrent to claim farming.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There are no less restrictive and reasonably available ways for achieving the purpose. The deprivation of property for 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 affected is limited to the professional costs attributable to the claim farmed claim.

(e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to property of the law practice and having regard to the information and analysis detailed above, I consider that the need to deter claim farming practices outweighs any negative impact on the right to property of the law practice.

*Privacy and reputation (section 25)*

Section 25 of the HR Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have their reputation unlawfully attacked. This right protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

A number of the provisions in the Bill impact the right to privacy:

- retention of documents provided to the special investigator (investigator), the Commissioner or the Regulator;
- recording of the examination; and
- information sharing among enforcement authorities.

Retention of documents

(a) the nature of the right

Clause 32 will insert new section 581D which allow a special investigator to require an investigated entity, or an associated person for an investigated entity, to produce a document that is in their custody or control; or require an individual to appear before the special investigator for examination on oath or affirmation. Clause 61 inserts similar provision in new section 532Q of the WCR Act. Documents provided and information examined may include information affecting a person's privacy or correspondence.

Clause 32 will insert new section new sections 581E and 581K allow documents produced to the special investigator to be kept by the special investigator and documents taken during a special investigation to be kept by the Commissioner. Clause 61 inserts similar provisions in new sections 532R and 532X of the WCR Act (in relation to the investigator or Regulator.)

Documents kept may include information affecting a person's privacy or correspondence.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to allow documents and information required for the special investigation to be obtained and retained by the special investigator (or investigator) and documents required for deciding whether legal proceedings should be started in relation to the investigation and for the purpose of such proceedings to be retained by the Commissioner or the Regulator. This purpose is consistent with a free and democratic society because it ensures that evidence concerning potential breaches of claim farming offences is retained for the purposes of an investigation and any resulting prosecution.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on privacy helps to achieve the purpose by allowing the documents and information to be provided and retained for the purposes of the investigation and /resulting proceedings.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive and reasonably available way to achieve the purpose of the amendments. The requirements to provide the documents and information are reasonable and proportionate for ensuring that the special investigator (or investigator) has the information needed for a special investigation. The requirement is not arbitrary. Before appointing a special investigator under section 581C of the LP Act or an investigator under section 532N (2) of the WCR Act, the Commissioner or the Regulator must have reasonably suspected that the investigated entity or person has contravened the claim farming offences under PIPA, section 71 or 71B or WCR Act, section 325R(1) or (2) or 325T.

The keeping of the documents is reasonable and proportionate for ensuring that documents can be retained if required for the special investigation or the decision by the Commissioner or the Regulator as to whether legal proceedings should be started in relation to the investigation. The requirements are not arbitrary, the special investigator (or investigator) can only keep documents for the period the special investigator (or investigator) considers necessary for the investigation.

Section 705 of the LP Act and 532ZC of the WCR Act provide for offences for breaches of confidentiality requirements.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to privacy and having regard to the information and analysis detailed above, I consider that the interests in the conduct of a proper investigation of reasonably suspected claim farming contraventions outweigh any negative impact on the right to privacy of persons impacted through the provision of information and documents for an investigation.

Recording of examination / publication of special investigator's report

(a) the nature of the right

Clause 32 inserts new section 581I of the LP Act which provides 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 record to be included in the special investigator's report. New section 581J of the LP Act provides for the special investigator's report to be given to the Commissioner. The Commissioner is not bound to give a copy of the report to the investigated entity. The Commissioner may publish the report, in whole or in part, on its website and any other place the Commissioner considers appropriate, if— (a) the investigated entity the subject of the report is convicted of an offence against a claim farming provision; (b) the Commissioner considers publishing the report or part of the report is in the public interest. The recording of the examination and special investigator's report may include information affecting a person's privacy or correspondence. Similar issues are raised by clause 61 which inserts new sections 532V and 532W of the WCR Act in relation to the investigator under that Act and the Regulator.

(b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of recording the examination ensures that the Commissioner or the Regulator has this information when deciding whether to start legal proceeding in relation to the investigation. The requirement to provide a copy to the person examined for no fee promotes transparency and natural justice. This purpose is consistent with a free and democratic society and promotes the right to a fair hearing.

The purpose of allowing the Commissioner or the Regulator to publish all or part of a special investigator's (or investigator's) report is that this information may be educative of the legal profession and the public. This purpose is consistent with a free and democratic society and is balanced by the requirement that the investigated entity or person the subject of the investigation must have been convicted and the Commissioner or the Regulator must consider publication to be in the public interest.

(c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy imposed by recording the examination which may include information affecting a person's privacy or correspondence and its provision to the Commissioner or the Regulator ensures that the Commissioner or the Regulator has this information when deciding whether to start legal proceeding in relation to the investigation.

Allowing the Commissioner or the Regulator to publish all or part of a special investigator's (or investigator's) report may assist in educating the legal profession and the public about the enforcement of claim farming provisions.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

The recording of the examination is reasonable and proportionate for ensuring that the Commissioner or the Regulator has all information needed for the decision whether or not legal proceedings should be started in relation to the investigation and the person examined knows the content that will be provided to the Commissioner or the Regulator. Provision for the publication of all or part of a special investigator's (or investigator's) report is balanced by the requirement that investigated entity or person must have been convicted and the Commissioner or the Regulator must consider it to be in the public interest.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to privacy and having regard to the information and analysis detailed above, I consider that the interests of the conduct of a proper investigation of claim farming contraventions and benefits of educating the legal profession and public about claim farming enforcement outweighs any negative impact on the right to privacy of persons in information and documents provided to the special investigator (investigator) and Commissioner or the Regulator for an investigation or included in the report or part of it published by the Commissioner or the Regulator.

#### Information sharing – claim farming

- (a) the nature of the right

Clause 53 inserts new section 73B of PIPA and clause 62 inserts new section 573A of the WCR Act to allow the Commissioner and the Regulator to disclose and share information with each other and with MAIC when relevant to the administration and enforcement of claim farming provisions. This information must only be used for the purposes of investigation or prosecution under a claim farming provision. These provisions, in addition to existing provisions in the MAI Act and *Motor Accident Insurance Regulation 2018*, will enable enforcement bodies to identify entities that are exhibiting signs of engaging in claim farming across compensation schemes or who may present a risk of such activity.

These provisions engage the right to privacy and reputation as they will permit the disclosure and sharing of:

- personal information, including potentially sensitive information, of claimants or potential claimants; and
- personal information about individuals or entities engaging, or suspected of engaging, in claim farming activities, in contravention of the claiming farming provisions.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of allowing disclosure between these enforcement bodies is to enable relevant agencies to: administer the claim farming provision; prevent potential duplication of enforcement and compliance mechanisms; monitor and identify patterns or trends in conduct to which claim farming provisions apply; and manage the foreseeable risk that claim farming entities may target multiple personal injury schemes. This purpose is consistent with a free and

democratic society in allowing enforcement authorities to share information for the purpose of administering these functions.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation assists the purpose by ensuring enforcement authorities are apprised of information concerning claim farming activity that may be relevant to their functions

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments. To the extent the provisions limit the right to privacy and reputation, the limitation is reasonable and proportionate to support the enforcement bodies in enforcing the claim farming provisions, which address the significant public and social concern of claim farming practices.

The collection, use or disclosure of personal or sensitive information is not arbitrary as:

- the disclosure is limited to the administration and enforcement of claim farming provisions, and may only be shared between bodies that are responsible for enforcing these provisions; and
- use of the personal or sensitive information is protected by the safeguard that information disclosed must not be used for any purpose other than the administration of a claim farming provision.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to privacy practice and having regard to the information and analysis detailed above, I consider that the interests of assisting in the enforcement of claim farming provisions outweighs any negative impact on the right to privacy of persons in information provided to enforcement agencies under the information sharing provisions.

#### *Rights in criminal proceedings (section 32)*

Section 32 of the HR Act provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. A person charged with a criminal offence is entitled without discrimination to not to be compelled to testify against themselves or to confess guilt.

#### Right to be presumed innocent until proved guilty according to law in criminal proceedings

- (a) the nature of the right

Section 32(1) of the HR Act protects the right of a person charged with a criminal offence to be presumed innocent until proved guilty.

Clauses 51 and 60 of the Bill will insert new section 71C of the PIPA and new section 325U of the WCR Act (respectively), to confer criminal responsibility on a person for an act or omission that was done by a representative of the person, within the scope of the representative's actual or apparent authority. These deeming provisions apply in relation to an offence under new sections 71(1) and (2) and 71B of the PIPA and new sections 325R(1) and (2) and 325T of the WCR Act (respectively), being the provisions that prohibit claim farming activities. It is a defence for the person to prove they could not have prevented the act or omission by exercising reasonable precautions and proper diligence.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of these limitations is to place strict responsibilities on persons to ensure that no claim farming practices are occurring. The creation of a criminal offence operates as an enforcement mechanism to stop claim farming of personal injury claims in Queensland.

New sections 71C of the PIPA and section 325U of the WCR Act achieve this purpose by deeming persons criminally responsible for claim farming activities conducted by their representative within the scope of the representative's actual or apparent authority. In the absence of these provisions, for example, a law practice principal could deny involvement if lawyers under their supervision engaged in claim farming practices and, it would be difficult to prove otherwise. In addition, without these provisions, the prosecution would have to rely on and prove a person's criminal responsibility under the party provisions contained in sections 7 and 8 of the Criminal Code.

These limitations are consistent with a free and democratic society where the person will only be responsible for the acts and omissions within the scope of their representative's actual or apparent authority and it is reasonable to expect the responsible person would exercise reasonable precautions and proper diligence to prevent their representatives breaching the claim farming provisions.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Placing responsibility on persons for the claim farming practices of their representatives will encourage persons to be vigilant and exercise reasonable precautions and proper diligence to ensure claim farming provisions are not breached.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments. The deeming provisions under new section 71C of PIPA and new section 325U of the WCR Act are confined to claim farming offences under new sections 71(1) and (2) and 71B of the PIPA and new sections 325R(1) and (2) and 325T of the WCR Act. Further, the provisions contain a defence if the person can prove that they could not, by the exercise of reasonable precautions and proper diligence, have prevented the act or omission by the person's representative. The defence acknowledges the unfairness of holding the person responsible for

the actions of their representative in those circumstances and ensures the deeming provisions are a proportionate way to achieve its purpose. Without the provisions, it would be difficult to prove that a person engaged in claim farming and liability would rest solely with their representatives.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right and having regard to the information and analysis detailed above, I consider that the interests of ensuring persons are responsible for claim farming activities conducted by their representative within the scope of the representative's actual or apparent authority outweigh any negative impact on the right to the presumption of innocence for those they represent.

Reversal of onus of proof

- (a) the nature of the right

As above, new section 71C of the PIPA and new section 325U of the WCR Act deem a person criminally responsible for offending under new sections 71(1) and (2) and 71B of the PIPA and new sections 325R(1) and (2) and 325T of the WCR Act (respectively) that was done by a representative of the person, within the scope of the representative's actual or apparent authority. It is a defence for the person to prove they could not have prevented the act or omission by exercising reasonable precautions and proper diligence.

Additionally, proposed new section 581M(1) of the LP Act (and new section 532Z(1) of the WCR Act) provide for an offence in relation to tampering with evidence that is the subject of an investigation. The provision states that a person must not conceal, destroy, mutilate or alter a document of or about an investigated entity or associated person for the investigated entity (investigated person or associated person for the investigated person under the WCR Act) whose affairs are being investigated under this division. 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 property belonging to or under the control of an investigated entity or an associated person for the investigated entity (investigated person or associated person for the investigated person under the WCR Act). Under section 581M(2), 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. Section 532Z(2) provides similarly in respect of special investigations under part 1A of the WCR Act. The defence is intended to exclude people who are undertaking otherwise lawful activities where their conduct is legitimate, but may otherwise fall within the activities specified in section 581M(1) (and new section 532Z(1) of the WCR Act) and attract the application of the offence.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of these limitations is to recognise that, in relation to specific offences, it is more appropriate that the accused bear the onus of proving the defence, as it relates to matters that

fall peculiarly within an accused's knowledge – that is, the purpose for which the person engaged in the conduct, or the relationship between the person and their representative. These matters would be unduly onerous on the prosecution to investigate and disprove at first instance.

This is consistent with a free and democratic society. Relevant case law demonstrates that the question of whether a reverse burden of proof constitutes a reasonable limitation on the presumption of innocence depends on all the circumstances of the case, including:

- the seriousness of the offence and the punishment which may flow from a conviction;
- whether the provision places an evidential or legal burden on the accused; and
- the nature and extent of the factual matters required to be proved by the accused, including whether they are matters within the accused's own knowledge or to which they have access.

(c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations achieve the purpose by placing the onus of proof on the accused to prove the defence based on information within their knowledge.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive and reasonably available way to achieve the purpose of the amendments, as the provisions relate to matters that fall peculiarly within an accused's knowledge – that is, the purpose for which the person engaged in the conduct, or the relationship between the person and their representative. These matters would be unduly onerous on the prosecution to investigate and disprove at first instance.

(e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right and having regard to the information and analysis detailed above, I consider that the interests of holding persons to account for the claim farming actions of their representatives, or, who conceal, destroy, mutilate or alter a document of or about an investigated entity or person or who would send documents and property relevant to an investigation out of the State outweighs any negative impact on the right to the presumption of innocence.

Right not to be compelled to testify against themselves or to confess guilt

(a) the nature of the right

Section 32(2) of the HR Act sets out a number of “minimum guarantees” in criminal proceedings, including the privilege against self-incrimination.

While section 32(2) of the HR Act refers to “a person charged with a criminal offence”, courts have interpreted the protections as also extending to persons who have not been charged. This acknowledges that the privilege against self-incrimination can be infringed by the use in criminal proceedings of evidence that a person was compelled to give prior to being charged.

New section 581D of the LP Act (and section 532Q of the WCR Act) provide a special investigator (or investigator) with the power to require an investigated entity or person or associated person to:

- produce a document that is in their custody or control;
- give the special investigator (or investigator) all reasonable help in connection with the investigation; and
- appear before the special investigator (or investigator) for examination on oath or affirmation.

New section 581F of the LP Act (and section 532S of the WCR Act) provide that an investigated entity or person or associated person must not:

- fail to comply with a lawful requirement of a special investigator (or investigator) to the extent the person is able to comply with it; or
- give information, or state anything during an examination, that the person knows to be false or misleading in a material particular; or
- fail to be sworn or to make an affirmation.

Relevantly, new section 581G of the LP Act (and section 532T of the WCR Act) provide that, if an investigated entity or person or associated person is required to answer a question from, or produce a document to, a special investigator (or investigator), the person is not excused from a failure to comply with that requirement on the basis that complying:

- might tend to incriminate the person or expose the person to a penalty; or
- would disclose a privileged client communication.

These provisions engage the rights under section 32 of the HR Act by enabling the access and use of evidence that is given subject to the abrogation of the privilege of self-incrimination.

(b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Claim farming practices are an abuse of an injured person's privacy, which seek to take advantage of and exploit that person for the claim farmer's benefit. It is a significant public and social concern that persons who have experienced a personal injury, including in workplace incidents, may be subjected to harassment and inducement in relation to a claim for that injury. The purpose of the provision is to ensure that the special investigator (or investigator) has the power to access and use evidence essential to enforcing the prohibitions against claim farming practices. Without abrogating the privilege against self-incrimination, the special investigator (or investigator) would be unable to gather evidence and therefore stop/deter claim farming as such conduct would rarely be authorised in writing and, therefore, evidence gathering relies upon the testimony of participants etc.

(c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will ensure that the special investigator (or investigator) has the power to access and use evidence essential to enforcing the prohibitions against claim farming practices.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive way to enable a special investigator (or investigator) to perform its proposed functions. Importantly, the Bill provides safeguards against the use of evidence obtained subject to the abrogation of the privilege of self-incrimination.

New section 581N of the LP Act and new section 532ZA of the WCR Act provide evidential immunity if an individual answers a question or, produces a document to a special investigator (or investigator) under section 581D or section 532Q respectively. New sections 581N and 532ZA expressly prohibit any evidence gathered directly or indirectly from the information or document from being admissible against the person in any proceeding, other than in a proceeding about the false or misleading nature of the information or anything in the document in the specified claim farming offences under the PIPA and WCR Act, to the extent it tends to incriminate the individual or expose the individual to a penalty. The derivative use immunity under this section provides a proportionate counterbalance for the use of evidence given under compulsion, and ensures that this evidence may only be used to prosecute an offence in relation to false and misleading information and the claim farming provisions.

There are also safeguards under section 581G(3) of the LP Act and section 532T(3) of the WCR Act which require the investigator to inform the person that they must comply even though doing so might tend to incriminate them and, to explain the operation of the evidential immunity. If this requirement is not complied with an individual may not be convicted of a offence under section 581F (1) of the LP Act or section 532S(1) of the WCR Act.

Additionally, to further protect an individual in complying with a request from a special investigator (or investigator), new section 581F of the LP Act (and new section 532S of the WCR Act) provide that a person, because of the compliance, does not:

- contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy; or
- incur any civil liability.

Similarly, to preserve legal professional privilege beyond the investigation by a special investigator, new section 581G of the LP Act and section 532T of the WCR Act state that, if in complying with a requirement made under section 581F or 532S, 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 section 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B of the PIPA (or chapter 6B, part 2 or section 325P, 325R(1) or (2) or 325T of the WCR Act).

(e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right and having regard to the information and analysis detailed above, I consider that the interests of assisting in the enforcement of claim farming provisions outweighs any negative impact on the right of a person not to be compelled to testify against themselves or to confess guilt and consider that any limitations on these rights are necessary to achieve the purposes of the Bill, and are reasonable and demonstrably justified in accordance with section 13 of the HR Act.

**Amendments to the *Workers' Compensation and Rehabilitation Act 2003* relating to terminal compensation**

*Recognition and equality before the law (section 15)*

(a) the nature of the right

Section 15 of the HR Act encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. This right reflects the essence of human rights; that every person holds the same rights by virtue of being human and not because of some particular characteristic or membership of a particular group.

(b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

All people who are ‘workers’ with a work-related injury, including a latent onset injury, are entitled to seek workers’ compensation. The Bill confirms the policy intent of terminal compensation by re-inserting a requirement that a worker’s latent onset injury is only a terminal condition if this condition will end the worker’s life within three years from the date certified by a doctor.

Providing an eligibility criteria may limit the right to recognition and equality before the law for those workers with a latent onset injury that is, or may progress, to a terminal condition. This limitation is only to the extent of the timeframe when the entitlement to compensation arises. It is important to note that all workers with a terminal condition remain entitled to this compensation once the timeframe requirement has been met.

(c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Consistent with all eligibility measures within the WCR Act, the aim of this limitation is to ensure workers receive necessary and reasonable compensation at the appropriate time for their work-related injury. Benefits provided through the workers’ compensation scheme must also be balanced to ensure the ongoing financial sustainability of the scheme, largely funded by employers through their workers’ compensation premiums, to ensure fair entitlements are accessible by all Queensland workers.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive way and limitation to this right is considered reasonably and demonstrably justifiable as it will:

- protect the ongoing financial sustainability of the workers’ compensation scheme for the benefit of all Queensland workers;

- ensure workers access terminal compensation in the period it was intended, such as when the worker needs palliative care or for workers to provide financial security for their families when facing the imminence of the end of their life; and
  - consistent with the objectives of the WCR Act, ensure workers with long life expectancies are able to continue accessing entitlements, rehabilitation, vocational counselling or rehabilitation opportunities offered through the workers' compensation scheme, which is no longer possible once they have received terminal compensation as this effectively ends their claim.
- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to recognition and equality before the law and having regard to the information and analysis detailed above, I consider ensuring appropriate eligibility criteria to protect the financial sustainability of the workers' compensation scheme for the benefit of all workers outweighs the negative impact on the right of including an explicit timeframe for terminal compensation.

*Privacy and reputation (section 25)*

- (a) the nature of the right

Section 25 of the HR Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have their reputation unlawfully attacked.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Throughout the course of claim, a worker is required to provide, or consent to release, personal and medical information. This information assists workers' compensation insurers in making informed decisions, often in conjunction with the worker and their treating doctors and rehabilitation providers, about how best to meet a worker's medical, treatment, rehabilitation and return to work needs.

The assessment of whether a worker has a terminal condition under section 39A of the WCR Act is also facilitated through personal medical information provided by doctors. This may give rise to limiting a worker's right to privacy and reputation.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation ensures informed decision-making on workers' compensation claims to best meet the worker's needs.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

There is no less restrictive way and this purpose is consistent with a free and democratic society because it is appropriate to ensure informed decision-making on workers' compensation claims to best meet the worker's needs. However, as for all personal information obtained for workers'

compensation claims, the requirement to provide this information is mitigated by insurers, and other professionals in connection to claims, having strict obligations and responsibilities for confidentiality including the collection, storage, use and sharing of a worker's information. It is also noted a worker is entitled to revoke their consent at any time.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the worker's right to privacy and having regard to the information and analysis detailed above, I consider ensuring informed decision-making by insurers and providing terminal benefits at the appropriate time in a worker's illness outweighs the potential negative impact on the right of workers having to provide private and medical information in support of their terminal claim.

### **Amendments to the *Electoral Act 1992***

#### *Freedom of expression (section 21)*

- (a) the nature of the right

Section 21 of the HR Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds – whether orally, in writing, in print or by way of art or other medium. The right to freedom of expression and the free flow of information and ideas is central to a healthy and democratic society.

Clause 4 of the Bill provides that a fundraising contribution may be paid into a State campaign account (SCA) to the extent the contribution is not a “gift”. This will limit fundraising contributions that can be paid into an SCA to an amount of \$200. Relevantly, only fundraising contributions that are paid into the SCA may be used for electoral expenditure.

This will ensure that any fundraising contribution that is a “gift” (in excess of \$200) may only be paid into the SCA if it is a political donation (accompanied by a donor statement) which in turn ensures that these types of contributions are subject to the caps on political donations.

Limiting fundraising contributions that can be paid to an SCA engages the right to freedom of expression by:

- limiting the funds available to a candidate, registered political party, or third party to engage in political communication for incurring electoral expenditure; and
- limiting a person's ability to make fundraising contributions for the purpose of engaging in political communication through the incurring of electoral expenditure.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations is to maintain the integrity of the limit on fundraising contributions that can be paid to an SCA without a donor statement and the caps on political donations. This is intended to reduce the risk that a single person or entity can have an

improper, corrupting or undue influence on political parties and candidates through political donations. This purpose is consistent with a free and democratic society because a reduced risk of improper, corrupting or undue influence on registered political parties, candidates and elected representatives is an important feature of a properly functioning democracy and the integrity of representative government, and is necessary to ensure equal participation in the electoral process.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve the purpose ensuring that fundraising contributions in excess of \$200 must be accompanied by a donor statement to be paid into an SCA and will be subject to the donation caps.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

No less restrictive and reasonably available ways to achieve this purpose have been identified.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to freedom of expression and having regard to the information and analysis detailed above, I consider that the interests of maintaining the integrity of the donation caps outweighs any negative impact on the limiting of the right to freedom of expression through contributions to candidates, registered political parties and third parties.

*Taking part in public life (section 23)*

- (a) the nature of the right

Section 23 of the HR Act provides that a person has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives. Additionally, every eligible person has the right, and is to have the opportunity, without discrimination:

- to vote and be elected at periodic State and local government elections that guarantee the free expression of the will of the electors; and
- to have access, on general terms of equality, to the public service and to public office.

Section 23 of the HR Act affirms the right of all persons to contribute to and exercise their voice in relation to the public life of the State. It also ensures that all persons can contribute to political processes, whether that participation is directly, or through freely chosen representatives.

As discussed above, clause 4 of the Bill clarifies how fundraising contributions may be paid into the SCA, to apply the caps on political donations to fundraising contributions that are “gifts” (fundraising contributions in excess of \$200).

This clause engages the right to take part in public life by:

- limiting the funds available to a candidate, registered political party, or third party to engage in political communication through incurring of electoral expenditure; and
- limiting a person's ability to make fundraising contributions for the purpose of engaging in political communication through the incurring of electoral expenditure.

These limitations may impact on persons contributing to and exercising their voices in relation to the public life of the State and the campaigning activities for an election.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations is to maintain the integrity of the caps on political donations and is reasonable and demonstrably justified to secure the actual and perceived integrity of State electoral and political processes, by reducing the risk that a single person or entity can have an improper, corrupting or undue influence on political parties and candidates through political donations. This purpose is consistent with a free and democratic society because a reduced risk of improper, corrupting or undue influence on registered political parties, candidates and elected representatives is an important feature of a properly functioning democracy and the integrity of representative government, and is necessary to ensure equal participation in the electoral process.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve the purpose ensuring that fundraising contributions in excess of \$200 must be accompanied by a donor statement to be paid into an SCA.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

No less restrictive and reasonably available ways to achieve this purpose have been identified.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to take part in public life and having regard to the information and analysis detailed above, I consider that the interests of maintaining the integrity of the donation caps outweighs any negative impact on a person's right to take part in public life through contributions to candidates, registered political parties and third parties.

*Privacy and reputation (section 25)*

- (a) the nature of the right

Section 25 of the HR Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have their reputation unlawfully attacked. This right protects privacy in the sense of personal information,

data collection and correspondence, but also extends to an individual's private life more generally.

Clauses 5 to 10 of the Bill will require that disclosure returns provided under sections 261, 262, 264, 265 or 290 of the Electoral Act must specify whether or not the gift is a political donation. This engages the right to privacy and reputation as additional information will be disclosed about the nature of gifts made to candidates, registered political parties and third parties.

Additionally, clauses 8, 9, 10 and 12 of the Bill will require that a donor statement provided under section 251 of the Electoral Act (as inserted by the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020*), a record for a loan under section 272 of the Electoral Act, or a disclosure return provided under sections 265 or 290 of the Electoral Act, must specify whether a political donation is made to, or for the benefit of, an electoral committee established by a registered political party, or an electoral district for which the registered political party has established an electoral committee (when applicable). This engages the right to privacy and reputation as additional information is disclosed about the recipient of a political donation.

- (b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose is intended to assist the ECQ in monitoring compliance with the donation caps.

This is consistent with a free and democratic society to the extent that it assists the ECQ in the enforcement of donations caps which are intended to reduce the risk of improper, corrupting or undue influence on registered political parties, candidates and elected representatives and ensure equal participation in the electoral process.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The additional required information will assist the ECQ in monitoring compliance with the donation caps. The limitation is not arbitrary as the information is:

- only required to be provided for a gift or loan equal to or above the threshold amount of \$1,000; and
- necessary and proportionate to enable the ECQ to properly administer the caps on political donations, and to promote transparency in financing elections.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

No less restrictive and reasonably available ways to achieve this purpose have been identified. If the ECQ does not have the additional information it will make the administration of its functions in monitoring the donation caps inefficient.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to privacy and reputation and having regard to the information and analysis detailed above, I consider that the interests of maintaining the integrity of the donation caps outweighs any negative impact on a person's right to privacy and reputation.

## **Conclusion**

In my opinion, the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

**SHANNON FENTIMAN MP**  
Attorney-General and Minister for Justice  
Minister for Women  
Minister for the Prevention of Domestic and Family Violence

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