Parliamentary Committees



Personal Injuries Proceedings and Other Legislation Amendment Bill 2022

Report No. 27, 57th Parliament
Legal Affairs and Safety Committee
May 2022

Legal Affairs and Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mrs Laura Gerber MP, Member for Currumbin
Members	Ms Sandy Bolton MP, Member for Noosa
	Ms Jonty Bush MP, Member for Cooper
	Mr Jason Hunt MP, Member for Caloundra
	Mr Jon Krause MP, Member for Scenic Rim

Committee Secretariat

Telephone	+61 7 3553 6641
Email	lasc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/LASC

Acknowledgements

The committee acknowledges the assistance provided by the Department of Justice and Attorney-General and the Office of Industrial Relations.

All web address references are current at the time of publishing.

Contents

Abbreviations

ALA	Australian Lawyers Alliance
Attorney-General	The Hon Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence
BAQ	Bar Association of Queensland
Bill	Personal Injuries Proceedings and Other Legislation Amendment Bill 2022
Blanch	*Blanch v Workers' Compensation Regulator* [2021] QIRC 408
committee	Legal and Affairs and Safety Committee
CTP	compulsory third party
department	Department of Justice and Attorney-General
departments	Department of Justice and Attorney-General and Office of Industrial Relations
Electoral Act	*Electoral Act 1992*
ECQ	Electoral Commission of Queensland
HRA	*Human Rights Act 2019*
ICA	Insurance Council of Australia
LP Act	*Legal Profession Act 2007*
LPC	Law practice certificate
LSC	Legal Services Commission
LS Commissioner	Legal Services Commissioner
LSA	*Legislative Standards Act 1992*
Maurice Blackburn/MBL	Maurice Blackburn Lawyers
MAI Act / MAIA	*Motor Accident Insurance Act 1994*
MAI Amendment Act	*Motor Accident Insurance and Other Legislation Amendment Act 2019*
NRS	National Redress Scheme
OIR	Office of Industrial Relations
PI	Personal injuries
PIP Act / PIPA	*Personal Injuries Proceedings Act 2002*

QLS	Queensland Law Society
WC	workers compensation
WCR Act	*Workers' Compensation and Rehabilitation Act 2003*

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The committee heard and read about instances of great personal suffering, and the devastating toll on individuals, their families and their workmates, that accompanies a terminal illness diagnosis. The committee appreciates the selfless actions of those who told of their own pain in the hope of making things better for others.

On behalf of the committee, I thank those individuals and organisations who appeared before the committee at its public hearing and who made written submissions on the Bill.

I also thank our secretariat and the departments who assisted the committee.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Recommendation 1 **4**

The majority of the committee recommends that the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 be passed. However, the committee urges that the amendments to the Bill recommended in this report be made before the Bill is passed.

Recommendation 2 **10**

The majority of the committee recommends that the Bill be amended to stipulate:

- That the recipient of the Law Practice Certificate for WorkCover statutory and common law claims be the Office of Industrial Relations
- That the recipient of the Law Practice Certificate for Personal Injury Proceedings and/or Institutional Child Sexual Abuse claims be the Legal Services Commission
- That the obligation in relation to common law damages claims is to provide one certificate to the Legal Services Commission at or shortly following the law firm being retained by the client in respect of a damages claim
- In relation to statutory claims pursuant to the Workers' Compensation Rehabilitation Act, the obligation to give the Law Practice Certificate to the Office of Industrial Relations should only be enlivened where the claimant is legally represented at the time the claimant accepts a lump sum offer in a Notice of Assessment including for any terminal condition, and prior to any payment being made to a law firm's trust account.

Recommendation 3 **17**

The majority of the committee recommends that the proposed new terminal condition definition in section 39A have an operational date of 1 July 2022 or on proclamation.

1 Introduction

The Legal Affairs and Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[2]

The Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly and referred to the committee on 31 March 2022. The committee is to report to the Legislative Assembly by 27 May 2022.

1.1 Inquiry process

On 5 April 2022, the committee invited stakeholders and subscribers to make written submissions on the Bill. 18 submissions were received.

The committee received a written briefing about the Bill from the Department of Justice and Attorney-General and Office of Industrial Relations (the departments) on 22 April 2022.

The committee received a public briefing about the Bill from the departments on 27 April 2022 (see Appendix B for a list of officials).

The committee received written advice from the department in response to matters raised in submissions on 29 April 2022.

The committee held a public hearing on 4 May 2022 (see Appendix C for a list of witnesses).

The submissions, correspondence from the departments and transcripts of the briefing and hearing are available on the committee's webpage.

1.2 Policy objectives of the Bill

The objectives of the Bill are to:

- stop claim farming for personal injury and workers' compensation claims
- prevent undesirable costs agreement practices by law practices for personal injury claims
- confirm the policy intent for when an entitlement to terminal workers' compensation (WC) arises under the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act)

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1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019*, ss 39, 40, 41 and 57.

- make technical and clarifying amendments to the *Electoral Act 1992* (Electoral Act) relating to fundraising contributions and state campaign accounts and disclosure returns.

1.3 Overview of the Bill

1.3.1 Claim farming

The explanatory notes provide:

> '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.[3]

In 2019, 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 explanatory notes state that 'the provisions in the MAI Amendment Act have been successful in interrupting the market in which claim farmers sought to sell their product'.[4]

However, the MAI Amendment Act was limited to CTP claims because at that time claim farming was only perceived to be an issue in that area. However, in recent times, it has become evident that the claim farming industry has now focussed on different types of claims, specifically personal injury and workers' compensation claims. Consequently, it has become necessary to expand claim farming prohibitions into these areas.[5]

The aim of the claim farming provisions under the Bill is to 'apply and adapt the provisions enacted under the MAI Amendment Act to prohibit claim farming in the personal injury and workers' compensation areas'.[6] The explanatory notes state:

> 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.[7]

1.3.2 Undesirable costs agreements for personal injury claims

Flowing from the practice of claim farming, the Bill aims to combat undesirable costs agreements and billing practices by law practices which currently exist in the area of speculative personal injury matters. This type of client billing arrangements are currently being used to 'disguise claim farming arrangements and ultimately prevent successful claimants from receiving a fair and equitable share of judgment or settlement funds'. Consequently, the Bill proposes to clarify how legal fees are calculated in relation to these types of personal injury matters.[8]

3 Explanatory notes, p 1.

4 Explanatory notes, p 1.

5 Explanatory notes, p 1.

6 Explanatory notes, p 2.

7 Explanatory notes, p 2.

8 Explanatory notes, p 2.

1.3.3 Confirming the policy intent for terminal workers' compensation

The Bill also aims to clarify when an entitlement for terminal workers' compensation arises under the WCR Act. As stated in the explanatory notes:

> 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.[9]

1.3.4 Political donation caps under the Electoral Act

The Bill will also make technical and clarifying amendments to the Electoral Act concerning the new political donation caps that are scheduled to commence on 1 July 2022. The explanatory notes explain that:

> 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.[10]

1.4 Government Consultation on the Bill

As set out in the explanatory notes, on 25 February 2022, an exposure draft of the amendments to the LP Act and PIP Act was released for targeted stakeholder consultation with the following stakeholders:

- Legal Services Commission (LSC)
- Queensland Law Society (QLS)
- Bar Association of Queensland (BAQ)
- Australian Lawyers Alliance (ALA), and
- Insurance Council of Australia (ICA).[11]

These stakeholders were invited to provide written submissions over a two-week period. Subsequently, an updated exposure draft was further circulated to stakeholders and, in some instances, stakeholder meetings were held prior to finalising the Bill.[12]

During February and March 2022, the departments briefed the following workers' compensation key scheme stakeholders on the proposals during preparation of the Bill in February and March 2022 including:

- Asbestos Disease Support Society – terminal compensation only
- Association of Self-Insured Employers Queensland
- Australian Industry Group
- ALA
- Australian Rehabilitation Providers Association
- Australian Workers' Union

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9 Explanatory notes, p 2.

10 Explanatory notes, p 2.

11 Explanatory notes, p 16.

12 Explanatory notes, p 16.

- BAQ
- Construction Forestry Maritime Mining and Energy Union – construction and mining divisions
- Queensland Council of Unions
- QLS; and
- WorkCover Queensland.[13]

The explanatory notes state that stakeholder feedback resulting from these consultation processes was considered and incorporated into the Bill where appropriate. Additionally, 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.[14]

As advised by the departments, for terminal compensation, OIR consulted widely with key stakeholders on guidance clarifying the policy intent of terminal compensation prior to its publication in 2021. The departments further advised that no substantive issues were raised by stakeholders and feedback was incorporated into the guidance as appropriate.[15]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

The committee recommends that the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 be passed. However, the committee urges that the amendments to the Bill recommended in this report be made before the Bill is passed.

Recommendation 1

The majority of the committee recommends that the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 be passed. However, the committee urges that the amendments to the Bill recommended in this report be made before the Bill is passed.

13 Explanatory notes, p 16.

14 Explanatory notes, p 16.

15 Correspondence from the departments dated 22 April 2022, p 19.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill, particularly in submissions and during the public hearing.

2.1 Claim farming

Amendments to the MAI Act in 2019 first introduced provisions to stop claim farming. This Bill seeks to extend the prohibition to similarly prevent claim farming activities for WC claims under the WCR Act and personal injury claims under the *Personal Injuries Proceedings Act 2002* (PIP Act).

The Bill aims to outlaw claim farming by prohibiting:

- the giving or receiving of (or agreeing to give or receive or allow or cause someone else to give or receive) consideration for a claim referral[16] or potential claim referral (proposed ss 71 PIP Act and 325R WCR Act), and
- personally approaching or contacting a person for the purpose of making a claim (and soliciting or inducing them to make a claim) (proposed ss 71B PIP Act and 325T WCR Act).

Submitters on the issue of claim farming[17] unanimously condemned the practice, noting:

- 'claim farming is abhorrent, brings the profession into disrepute, threatens the viability of our insurance schemes and causes unnecessary distress to potentially vulnerable members of the community' (Kare lawyers)
- 'claims farming has the potential to negatively impact insurance affordability and increase incidents of fraud' (AAI Ltd (Suncorp))
- 'too often claims farming practices target those who are most vulnerable' (MBL).

Observed as having the potential to be particularly reprehensible was the evolving business of 'survivor farming' or 'survivor advocacy'. This is the name given to claim farming activity in relation to institutional child sexual abuse survivor claims, where behaviours of claim farmers have extended beyond cold calling to targeting abuse survivors specifically by approaching particular communities to 'sign people up' without also informing them about the existence of other free services available for abuse survivors.[18]

The submission from knowmore gives extensive examples of 'survivor farming' conduct, advising:

- Claim farming and related practices in respect of institutional child abuse claims is being engaged in by both claim farmers (referred to as 'survivor advocacy businesses') and the law firms associated with them.
- The claim farmers are paid referral fees by law firms for introducing survivor clients and passing on initial (often limited) information, with their services coming at a significant cost which is ultimately borne by the survivor.
- Survivors were being subjected to harassment, intimidation and high-pressure tactics.

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16 The submission from AAI Ltd (Suncorp) noted that, consistent with the MAI Act, the Bill allows legal practitioners to provide gifts or hospitality up to the value of $200 for claim referrals. Suncorp submitted its concern that this 'has the potential to diminish the legislation's effectiveness and is counter to the intent of the legislation', recommending its removal.

17 See for example the submissions from kare lawyers, ALA, AAI Ltd (Suncorp), Maurice Blackburn, knowmore and QLS

18 See knowmore, submission 12.

- Survivors are being asked to sign documents they do not understand, and survivors are unsure/confused about what work is doing done for them, and by whom.
- Some survivors have reported being 'cold called' (in person, by mail and by phone) about whether they want to pursue a claim related to their childhood sexual abuse.
- One survivor had complained to knowmore about an unsolicited phone call from a survivor advocacy business that breached the survivor's confidentiality by disclosing the survivor's status as an institutional child sexual abuse survivor to their family member who took the call and who was previously unaware of the survivor's experience of childhood sexual abuse.
- One knowmore client had been sent an unsolicited costs agreement by a law firm, with the contact believed to have come via an acquaintance of the client who gave the client's name to a survivor advocacy business which then passed it on to the law firm.
- One knowmore client received an unsolicited letter (while in prison) from a survivor advocacy business that was unknown to them.
- A client was attending court when they were approached by a survivor advocacy business, which subsequently called multiple times, until the survivor, feeling harassed, began screening their calls. The client told knowmore the advocacy business was 'overbearing and pushy'.
- A knowmore client was harassed for over a year by phone calls and correspondence from a law firm linked to a survivor advocacy business, despite not having signed a costs agreement with the firm. The firm had a lot of information about the client that the client had not provided to them. The firm's actions caused knowmore's client significant distress.
- A law firm with links to a survivor advocacy business 'aggressively pursued' a knowmore client to sign a costs agreement, months after the client submitted an application to the National Redress Scheme (NRS). The client told knowmore that the firm contacted them and sent paperwork and were 'coming on pretty heavy about it.' The firm contacted the client again when the client received an offer from the NRS, pressuring them to reject the offer and to sign a costs agreement with the firm.

Knowmore's evidence to the committee also depicted how survivor advocacy businesses are claim farming some of the most vulnerable survivor populations, in specific settings and circumstances of vulnerability, such as prisons and remote First Nations' communities, as well as targeting the past students and residents of particular schools and institutions where institutional child sexual abuse is known to have occurred.

Knowmore advised that, in respect of prison populations:

- There is significant claim farming activity occurring in Queensland prisons, likely driven by the large number of abuse survivors within the prison population.
- Prisoners can be particularly susceptible to friendly cold calling tactics due to loneliness and social isolation.
- Survivor advocacy businesses regularly send unsolicited mail to survivors in prison.
- A survivor advocacy business took a statement from a prisoner about the prisoner's experiences of institutional child sexual abuse. The prisoner was then contacted by a law firm and asked to sign a large number of documents. The prisoner told knowmore that they did not understand the documents they signed, nor knew what the law firm was doing for them.
- Some prisoners are alleged to have received cash deposits into their prison accounts for 'referrals' of the names of abuse survivor prisoners to survivor advocacy businesses.

2.2 Law Practice Certificates to reduce incidents of claim farming

2.2.1 When required and to whom

A law practice certificate (LPC) is a certificate in a form approved by the Legal Services Commissioner (LS Commissioner) which states the matters mentioned in proposed s 8B of the PIP Act, such as:

- that the supervising principal and each associate of the law practice did not give or receive consideration for referring a claimant or potential claimant (proposed s 8B(2)),
- that the supervising principal and each associate of the law practice did not personally approach or contact another person to solicit or induce them to make a claim (proposed s 8B(3), and
- that the costs agreement relating to a speculative personal injury (PI) claim complies with s 71E of the PIP Act or s 347 of the *Legal Profession Act 2007* (LP Act) (proposed s 8B(4)).

The certificate must be signed by the supervising principal and verified by statutory declaration (proposed s 8B(5)).

Essentially, LPCs require law practices acting for claimants to declare that claim farming has not occurred in relation to the claim.

The Bill requires a LPC be given at various stages of an injury claim, to claimants, the WC insurer (for WCR Act claims), respondents and respondents' insurers (for PIP Act claims).

The Bill stipulates detailed requirements for LPCs that include:

- legal practitioners must provide a LPC for PI and WC claims at various stages
- (as above) the LPC must state the supervising principal and each associate of the law practice has not paid a claim farmer for the claim; nor approached, solicited, or induced the claimant to make a claim in contravention of the claim farming provisions
- when a claim is a speculative PI claim, the LPC must state that the costs agreement complies with the rules about costs under s 347 LP Act and s 71E PIP Act
- a copy of the LPC given to the complainant must also be provided to the respondent with the initial notice (in medical negligence cases) or a Part 1 Notice (if not otherwise given with the initial notice) (ss 9 and 9A PIP Act)
- where a law practice sells its business to another law practice before a claimant lodges a claim, the current law practice must give the new law practice a LPC, and a copy to the claimant, before the referral occurs (proposed s 8F)
- a LPC is to be given after notice of the claim has been given (ss 9C and 13A)
- generation and provision of a fresh LPC when a claim is settled or finalised (proposed s 61)
- a LPC for a statutory claim must be provided as per proposed ss 325I and 325J
- for common law claims, the LPC for the WC scheme are modelled on the MAI Act, with a LPC having to be provided (as per proposed ss 275(7A), 325K or 325L) with the notice of claim/within a month of an insurer's waiver of compliance and within 7 days of a claim being finalised
- for a claimant represented for both a statutory and common law claim, a LPC will generally be provided:
    - when a law practice is retained by a claimant to act in relation to their claim

- on receiving a direction to pay compensation to an account held by a law practice or within 7 days after payment of certain lump sum compensation and
- at the finalisation of a claim for damages.

AND again in instances:

- where a claimant retains or changes a law firm mid-claim (proposed s 325I)
- where a law practice sells all of part of its business to another law practice (proposed s 325M).

2.2.2 Failure to provide a required LPC

Failing to provide a required LPC or providing a false or misleading LPC attracts a maximum penalty of 300 penalty units (see proposed new ss 8C, 8E, 8F, 9C, 13A and 61 and sections 325H, 325I, 325J, 325K, 325L, 325M and 325P in the WCR Act).

2.2.3 Obligation to report non-provision of a LPC

The Bill also mandates that the supervising principal of those law practices representing respondents and respondent insurers in PIP Act claims must notify the LSC if the respondent does not receive the LPC as required (proposed s 71G PIP Act). Failure to report to the LSC as required risks a finding of unsatisfactory professional conduct or professional misconduct.

The reporting obligations are directed to eliminating or substantially reducing incidents of claim farming activities.

Potential issues with the reporting obligations were flagged by submitters, including the following:

- The obligation of a supervising principal of a law practice acting for a respondent/respondent insurer to report to the LSC about contraventions of LPC requirements that they reasonably believe are taking place may create a problem for future conduct and resolution of the claim (MIGA)
- Equating knowledge of the principal's associate (including employed or contracted solicitors) to be that of the principal under s 71G(3) of PIPA (MIGA)
- Lack of a reasonable excuse provision for not making a mandatory report (eg. for an IT failure) (MIGA)
- Respondent's insurers have a discretion to report non-compliance with a LPC requirement (or with a substantive claim farming provision (proposed ss71 or 71B). Commercial insurers lack motivation to report contraventions of LPC requirements unless farmed claims impact on their business. It is hence possible that contraventions of LPC requirements will go unreported and claim farming activity will therefore go undetected (QLS)

2.2.4 The complexity of the LPC regime

The complexity of the LPC requirements was not lost on the legal profession, with practitioners commenting:

- A 'minefield of requirements…. neither practical, nor ultimately necessary.' (ALA)
- '…will add to administrative burdens, and ultimately to the cost of pursuing actions.' (ALA)
- LPCs '…will be required to be given across each of the MAIA, WCRA and PIPA. This covers nearly all personal injury claims in Queensland.' (ALA)
- 'To require a LPC for all statutory claims is a heavy and unnecessary burden, with no tangible benefit' (ALA)

- Seriously concerned about the need to give multiple LPCs at many different times (ALA)
- 'Proposed s 325I appears to impose excessive certificate requirements where solicitors are retained to act in relation to both a statutory claim for compensation and a common law claim for damages.'(QLS)
- Concerned about the complexity of LPC requirements in the case of 'hybrid claims'[19] that arise across multiple claim schemes and involve multiple respondents (eg. an injured construction worker typically has a WC statutory and common law claim against their employer and may have a PIP Act claim against a head contractor and multiple sub-contractors, with 2, 3 or 4 respondents in such a scenario not uncommon)(ALA)
- '.. in some instances, LPCs arising out of the same injury will need to be given to a number of different entities at different times. This is particularly the case in so-called 'hybrid' claims where the claimant seeks compensation/damages via claims under both PIPA and WCRA or WCRA and MAIA or, less commonly, all three ... certificates will need to be given under each Act at different times and in PIPA claims with multiple respondents, where it is not clear whether a new LPC must be given to the claimant before giving a notice of claim to second and subsequent respondents ... the WCR Act LPC requirements are more difficult to comprehend'(QLS).

2.2.5 Suggested reforms

Several submitters[20] suggested changes to the proposed LPC regime to make it more administratively viable and to reduce honest mistakes that may arise from navigating its complexity:

- a copy of a LPC originally given under one scheme [should] be effective to discharge the obligation to provide a LPC under another scheme for a claim arising from the same circumstances and from the same law practice (MBL; ALA)
- [need] a single approved form of LPC applicable to all three schemes (MBL; ALA)
- make very clear when a copy of an earlier LPC suffices and when a new LPC is required (MBL)
- each initial notice under the schemes [should] be amended to include the LPC (MBL; ALA)
- in respect of the WCR Act, to target the key steps within the claims process where claim farmers may operate, [we suggest] the giving of a LPC when a damages claim is commenced, or when a lump sum is accepted by a claimant who has retained a lawyer, or if the claimant has already commenced a damages claim when they retain a lawyer, within 1 month of retaining the lawyer (ALA)
- noting that the greatest risk for claim farming in respect of WCR Act claims is where there is likely to be a substantial lump sum payment on a statutory claim, or where there is a common law claim for damages, these risks could be mitigated by requiring a LPC prior to a lump sum being paid into a law practice trust account, and, for common law claims, requiring a LPC to be provided with a notice of claim for damages and at the time the claim is finalised (QLS)

[19] Hybrid claims involve claims under both the WCRA and PIPA, eg. where a labour hire worker is placed with a third party for a period of time such as on a construction site or at a large event, the injured worker can have a PI claim under the WCR Act against their employer, the labour hire agency, and a separate public liability claim against the [site] host under the PIP Act. A further example is someone injured in a car accident going to/from work who will have a CTP claim under the MAIA and also make a WC statutory claim under the WCR Act.

[20] Including ALA, QLS, Maurice Blackburn and MIGA.

- the QLS recommended LPCs in PIP Act matters to be given to a central authority (either the QLS or LSC) at the beginning of the matter and again at judgement/settlement, to deter claim farming practices by requiring the LPC be submitted to a regulator of the profession
- the QLS also suggested that settlement sums should not be released until the central authority confirms that the second LPC has been received and is compliant with statutory requirements.

Committee comment

The committee notes the complexity of the LPC regime as proposed. Streamlining the stages at which LPCs are provided, and clarifying the particular repositories for the certificates, is considered likely to alleviate some of this complexity. Accordingly the committee recommends the following:

Recommendation 2

The majority of the committee recommends that the Bill be amended to stipulate:

- That the recipient of the Law Practice Certificate for WorkCover statutory and common law claims be the Office of Industrial Relations
- That the recipient of the Law Practice Certificate for Personal Injury Proceedings and/or Institutional Child Sexual Abuse claims be the Legal Services Commission
- That the obligation in relation to common law damages claims is to provide one certificate to the Legal Services Commission at or shortly following the law firm being retained by the client in respect of a damages claim
- In relation to statutory claims pursuant to the Workers' Compensation Rehabilitation Act, the obligation to give the Law Practice Certificate to the Office of Industrial Relations should only be enlivened where the claimant is legally represented at the time the claimant accepts a lump sum offer in a Notice of Assessment including for any terminal condition, and prior to any payment being made to a law firm's trust account.

2.2.6 Prosecuting LPC breaches and claim farming activity

As noted above, failing to provide a required LPC or providing a false or misleading LPC attracts a maximum penalty of 300 penalty units. Submitters[21] commented about the risks arising from multiple regulatory agencies oversighting LPC compliance and claim farming investigation and prosecution:

- Having three separate entities (LSC, MAI Commission and Workers Compensation Regulator) 'each with separate and siloed prosecutor powers could lead to inefficiencies' (ALA)
- If the 3 agencies have an inconsistent approach to investigations, there are missed opportunities for prosecution, for anticipating future claims farming conduct, and for responding to known activities (ALA)
- If 3 separate regulators investigating and prosecuting breaches of analogous provisions, there is a risk of inconsistent methods, processes, duplication, ineffective and inconsistent monitoring, investigation and prosecution, especially for hybrid/multi-scheme claims if the circumstances result in LSC and WCR both investigating and prosecuting the same conduct. (MBL)
- Suncorp welcomed new information sharing provisions that will allow the WCR, LSC and MAI Commission to proactively share information on claim farming activity, noting information sharing will be more effective if a single authority is tasked with collating, analysing and

[21] See for example the submissions from ALA and MBL.

distributing the information, so swift action can be taken when issues are identified. Suncorp recommended that the LSC be appointed the central authority responsible for managing information sharing and appropriate investigation of identified issues.

2.3 Stopping billing practices that disguise claim farming activity

The Bill aims to prevent undesirable costs agreement and billing practices by law firms in PI claims that can disguise claim farming activity. The submission from AAI Ltd (Suncorp) observed that 'Unfair cost agreements adversely impact injured people and can disproportionately impact vulnerable claimants who are limited in their capacity to effectively challenge such agreements.'

Currently in Queensland, in relation to costs for a speculative personal injury, the '50:50' rule applies.[22] This rule provides that 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.[23]

In order to maximise the amount that the law firms may charge the clients, some law firms enter into cost agreements with their clients which treat certain items as disbursements which would normally be expenses of the law practice so such amounts are not captured by the 50:50 rule limit. The explanatory notes provides the example that claim farming arrangements can potentially be disguised by circumstances where a fee is paid to a third party for preparing a document detailing the particulars of a claim.[24]

The Bill proposes to 'address these concerns and ensure that successful claimants receive a fair and equitable share of judgment or settlement funds' by amending:

> … 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.[25]

Submitters[26] on this issue were generally supportive of the change to the 50:50 rule[27] that treats additional amounts as professional fees rather than disbursements, to increase the amount successful claimants receive, and disincentivise unscrupulous billing practices that may hide claim farming referral fees or result in claimants paying excessive interest on loans or credit facilities that were used to fund disbursements.

knowmore strongly supported the clause 16 amendments to s 347 of the LP Act that make 'additional amounts' (including fees for the services of survivor advocacy businesses in obtaining instructions and preparing statements) treated the same as legal costs when determining the maximum amount a law firm can charge for speculative personal injury claims.[28]

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22 Sections 345 to 347 of the LP Act.

23 Explanatory notes, p 5.

24 Explanatory notes, p 6.

25 Explanatory notes, p 6.

26 See for example ALA, MIGA, AAI Ltd (Suncorp), Maurice Blackburn, knowmore and QLS.

27 The "50/50 rule" is a safety mechanism which ensures that a client must receive in the hand at least as much as their lawyer charges in legal fees after deduction of statutory refunds and disbursements.

28 Knowmore, submission 12.

ALA's submission noted that proposed s 347(8)(a)(i) deals with payments to third party entities for the preparation of statements or obtaining of instructions, which can be used by claims farmers to disguise a referral fee ('payment of consideration as termed under the claim farming provisions').

Under the current 50:50 rule, barristers' fees are outside the scope of the rule and generally treated as disbursements.

Maurice Blackburn noted for the s 347(8)(a)(i) and (b) amendments, relating to payments to an entity other than a law practice for obtaining instructions or preparing statements, that 'the exemption of barristers' fees is critical'. Maurice Blackburn's submission noted the vital strategic role of barristers in progressing a client's claim, but that proposed s 347(8)(b) of the LP Act as drafted only provides an exemption to barristers' costs in relation to the PIP Act.[29] They propose that the exemption should extend to the MAI Act and the WRC Act. They note that the impact of this discrepancy is that, without including all 3 schemes, barristers' fees for preparing certain work related to a WC or CTP claim would have to be borne by the law practice, yet for claims under the PIP Act, the fees would be treated as a disbursement.[30] DJAG noted these submissions and stated that it would consider the matter.[31]

MIGA also submitted that barristers' work should also be included in the scope of claim-related costs and additional amounts for a claim under the 50:50 rule.[32]

The departments advised:

> As a result of the amendments, barrister's fees paid or payable to a barrister engaged by a law practice after a notice of claim is given under section 9 and 9A of the PIP Act will continue to be treated as a disbursement but barrister's fees incurred in obtaining instructions or preparing statements in relation to the claim before the Part 1 notice or initial notice is given are to be treated as legal costs.[33]

Currently, under the 50:50 rule, interest on disbursements is not treated as a legal cost or a disbursement. Both ALA and Maurice Blackburn submitted their support for the amendments under the Bill which provide that interest on disbursements will be treated as a legal cost.[34]

In this regard, the departments noted:

> To 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 interest on certain loans or other arrangements for funding disbursements or expenses relating to the claim.[35]

Beyond Abuse raised its own concerns about law firms further exploiting victims 'by inducing victims to enter into a financial lending arrangement to cover costs such as disbursements (for example, expert reports, barrister fees, etc)'. According to Beyond Abuse, while such costs were previously held over until completion of the matter, service providers are now often paid upfront by the finance provider and the client is charged the underlying cost and interest. Beyond Abuse considers that this practice should be prohibited by the legislation.[36]

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29 This concern was also raised by ALA and the QLS, see sub 2, p7, sub 8, p 16 and sub 14, p 7

30 Maurice Blackburn, submission 8.

31 Correspondence from the departments dated 29 April 2022, Attachment 1, page 15.

32 MIGA, submission 5.

33 Correspondence from the departments dated 29 April 2022, Attachment 1, page 16.

34 Submissions 2 and 8.

35 Correspondence from the departments dated 29 April 2022, Attachment 1, page 16.

36 Submission 16, p 2.

2.4 Electoral Act amendments

The Bill makes technical and clarifying amendments to the Electoral Act related to fundraising contributions and state campaign accounts and disclosure returns.

The Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020 introduced caps on political donations and electoral expenditure to:

- Secure the actual and perceived integrity of the State electoral process by reducing the risk that a single person or entity could have an improper, corrupting or undue influence on political parties, candidates and third parties involved in election campaigning, and
- Ensure that the 'playing field' for election campaigning is levelled out so that an individual or entity has a reasonable opportunity to communicate their message and influence voters without being 'drowned out' by the communication styles and methods of others.

The Electoral Commission Queensland (ECQ) has since identified some matters requiring clarification, including changes required to the Electronic Disclosure System prior to the commencement of the political donation caps.[37]

The Bill's amendments clarify how the new regulatory regime will apply to fundraising contributions and electoral committees and helps the ECQ perform its compliance and enforcement functions under the Electoral Act.

2.5 Terminal conditions

2.5.1 Definition of terminal condition

A worker with a terminal condition has an entitlement to latent onset terminal condition lump sum benefits/compensation (terminal benefits) under Part 3, Division 4 of the WCR Act.

Terminal benefits were first introduced to the WC scheme under the *Workers' Compensation and Rehabilitation Act and Other Act Amendment Act 2005*. Lump sum benefits enable workers to secure appropriate medical and palliative care and support and allows them to attend to the financial needs of their family and dependants. Workers can still opt to seek common law damages for negligence where that has contributed to their terminal condition.

The key purpose of the WC scheme in Queensland[38] is to balance between the provision of fair and appropriate benefits to injured workers, dependants and other persons; and maintaining reasonable insurance costs for employers.

Prior to amendments in 2019, the WCR Act defined a terminal condition as a condition certified by a doctor as being a condition that was expected to terminate the worker's life within 2 years after the terminal nature of the condition was diagnosed (s 39A). Workers with a terminal condition as a result of their employment, for example dust lung diseases such as asbestosis, silicosis, coal workers' pneumoconiosis, or work related cancers such as those, for example, sustained by firefighters, with a life expectancy up to 2 years, had an entitlement to a statutory lump sum payment of up to $743,041.[39]

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37 The political donation caps are scheduled for implementation by ECQ on 1 July 2022, ECQ, submission 13.

38 See s 5, WCR Act.

39 *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019,* First reading speech, Hon G.Grace MP, 22 August 2019, p 2476.

Workers diagnosed with a terminal work-related condition with a life expectancy greater than two years had been excluded from accessing this payment, so amendments in 2019 addressed this by removing the time period restriction of 2 years.[40]

The 2019[41] amendments saw s 39A amended, to the current terminal condition definition, for injuries arising after 31 January 2015, to:

(1) A terminal condition, of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker's life

(2) A condition is a terminal condition only if the insurer accepts the doctor's diagnosis of the terminal nature of the condition

The 2019 removal of limits on when a worker could access latent onset terminal payment entitlements was designed to provide workers with greater flexibility in terms of how they utilised their payment.[42] The explanatory notes to the 2019 Bill show that the 'introduction of the current terminal condition definition was to ensure that workers suffering from terminal conditions that will reduce their life expectancies, including those with life expectancies of 5 years, should receive this [terminal condition] benefit.'[43] The explanatory note and First Reading Speech also made it clear that the 'terminal condition definition was designed specifically to accommodate workers diagnosed with various forms of progressive dust-related injuries, principally from the mining and stonemasonry industries.'[44]

Clause 58 of the Bill restores the former s 39A definition, for injuries sustained on/after 31 January 2015, and extends it by a year, to specify that a condition is 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. It states:

(1) A terminal condition, of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker's life within 3 years after the terminal nature of the condition is diagnosed.

(2) A condition is a terminal condition only if the insurer accepts the doctor's diagnosis of the terminal nature of the condition.

As described by the Rail, Tram and Bus Union in its submission, this means that:

> …if a worker cannot achieve a diagnosis that the condition will terminate his/her life within three years, he/she will not be eligible for the terminal benefit lump sum payment, which he/she would be automatically available under current arrangements. We are concerned that this will lead to an inequity in how injured workers are treated – even though there is agreement that their condition is terminal.[45]

As submitted by the Australian Manufacturing Workers Union:

> Winding back the rights of terminally ill Queensland workers by re-introducing a three-year strict time limit is a retrograde step that will significantly disadvantage workers suffering from diseases such as silicosis, mesothelioma, asbestosis, 'black lung' and lung cancer.

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[40] *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019,* First reading speech, Hon G.Grace MP, 22 August 2019, p 2476.

[41] See s 36 *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*, and s 732 WCR Act.

[42] *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019,* First reading speech, Hon G.Grace MP, 22 August 2019, p 2476.

[43] See Maurice Blackburn Lawyers, submission 8, p 7.

[44] See Maurice Blackburn Lawyers, submission 8, p 8.

[45] Rail, Tram and Bus Union, Queensland branch, submission 10, p 3.

> Most workers with these illnesses have life expectancies beyond three years but their conditions are considered terminal, because the disease will continue to progress and will ultimately result in death.
>
> It is also well known that workers with these diseases are often unable to continue working and indeed many are forced to stop work immediately at the time of diagnosis due to the nature of their condition, compounding an already incredibly difficult time with financial pressures.
>
> The ability to access a lump sum for Terminal Benefits at the time of diagnosis has been profoundly beneficial for our members. It enables them to focus on adjusting to their situation (physically and mentally), without having the additional stress of financial concerns. Reimposing an arbitrary time point at which that benefit is accessible will prove detrimental to the physical and psychological wellbeing of our members.
>
> Denying these workers access to a lump sum payment at the outset means they will be 'attached' to Queensland's workers' compensation system, unnecessarily, for years. The impacts of reliance on long-tail schemes on mental health are well documented.
>
> Given the above, the AMWU submits that the re-introduction of an arbitrary life expectancy is unfair, unnecessary and represents bad policy.[46]

Maurice Blackburn submitted that a '3 year strict time limit is a regressive legislative amendment that will produce unfair outcomes for many workers suffering from progressive forms of lung disease including mesothelioma, asbestosis, progressive massive fibrosis, silicosis, coal workers' pneumoconiosis and silica induced auto-immune diseases.' Their submission flagged that:

- Except in very severe cases, workers with progressive lung diseases have life expectancies generally beyond 3 years, although their conditions are terminal, which would make them ineligible for terminal benefits at/around the time of their diagnosis when they may have to stop working due to illness
- Many workers with progressive lung disease have to suddenly cease employment, often permanently, and they remain on minimal workers' compensation benefits for two years or more until their diseases reach the point of being capable of assessment for permanent impairment. 'Very often their permanent impairment is rated at or below 20% DPI. As a result these workers stay on the scheme for very lengthy periods of time, and, further, their psychological health suffers significantly as a result.'
- Noting the difficulties of accurately gauging life expectancy they submitted 'forming an opinion on life expectancy is fraught and rarely accurate….a mandatory 3 year time limit is arbitrary and may not in all cases reflect the period in which workers enter the end stage of their diseases.'
- The vast majority of workers with progressive lung diseases go on to pursue common law damages from their employers and/or product manufacturers and/or occupiers. 'Due to their age and loss of earning capacity, their common law claims often exceed the terminal benefit permitting the insurers to receive a full recovery of the terminal benefit pursuant to s 207 WCR Act. Section 207 WCRA also entitles insurers to bring a recovery action if a worker elects not to, which permits an insurer to recover contribution from other tortfeasors for the terminal benefits paid to a worker.'

At the committee's public hearing Mr Jonathon Walsh, Principal Lawyer and Queensland Head of Dust Diseases, Maurice Blackburn, advised the committee that[47]:

> There has been evidence provided to this committee that in the alternative, if workers do not access their terminal illness benefits now or some time in the near future, they can simply stay on the scheme for an indeterminate period of time at which point they will become terminal and therefore claim benefits.

[46] AMWU, submission 9, p 3.

[47] Hansard, LASC public hearing, 4 May 2022, p 14.

> There are a lot of inherent assumptions in that principle which are completely wrong and false, one being that a worker can only receive wages for a period of five years for one injury. The way in which it works is a worker receives 80 per cent of prior pre-injury earnings for six months, then 70 per cent for 18 months and then after two years they are dropped back down to the minimum Centrelink Newstart rate. The expectation inherent in that assumption is that these workers will be able to persist on wages as low as a Newstart Centrelink amount per week and pay a mortgage, fund their kids' schooling, pay for bills, pay for their food and support a spouse. There is a lot wrong with that inherent assumption around that they can simply exist on a scheme and that is the point we make in respect of that.

2.5.2 Proposed retrospectivity

The Bill introduces chapter 37, which provides that the proposed new terminal condition definition in s 39A applies retrospectively to all injuries[48] sustained on or after 31 January 2015 (the 'proposed commencement date'). It applies to a claim where an insurer has allowed an application for terminal benefits/accepted the terminal diagnosis, but the worker or their dependants have not yet received the terminal benefits, or where a review relating to a claim for terminal benefits has been started under chapter 13 WCR Act but has not yet been decided.

Submitters were concerned about the proposed retrospective operation, commenting:

- 'the Proposed Commencement Date will retrospectively abolish many Queensland worker's entitlements to Terminal Benefits as those entitlements can and should be determined under the current iteration of section 39A.'(ALA)
- 'It is also abhorrent that terminally ill Queensland workers should have their rights retrospectively abolished by the Proposed Commencement Date, as those entitlements can and should be determined under the Current Terminal Condition Definition.'(ALA)
- 'workers that have incurred costs (often significant) associated with medical expert opinions and related legal advice incurred seeking Terminal Benefits under the WCRA, including matters currently the subject of review with the Workers Compensation Regulator, will have these costs thrown away.'(ALA)
- 'Retrospectivity has the potential to 'catch out' injured workers who are already in the system.' '...it would mean that workers who have lodged an application for support under the current laws in good faith could find themselves subject to new requirements – that the goal posts have shifted.'(AMWU)
- 'for firefighters diagnosed with a terminal condition with an estimated life expectancy greater than 3 years, the amendment creates an inequity between those firefighters who have received terminal compensation prior to the passage of the Bill and those that may receive it after the passage of the Bill. Our members have a reasonable and legitimate expectation under the current legislation that they will be entitled to the same benefits as other firefighters who have found themselves in the same or similar circumstances. This expectation will not be met should the amendment be passed.'(United Firefighters' Union of Australia, Union of Employees, Queensland)
- 'This retrospective application will impact claimants who have taken steps based on section 39A as it has existed since the October 2019 amendments and unfairly interfere with their legitimate expectations arising from the law as it currently stands.'(QLS)
- '…concerns are held in relation to the lack of transitional arrangements for terminal claims lodged but not yet determined. The Society's position is that already lodged claims be

[48] Apart from latent onset injuries sustained after that date in relation to which terminal compensation has already been paid under s128B or s128D or where a notice of claim for damages has been given to the insurer before commencement, see QLS, submission 14 and proposed s 745(2).

assessed under the current s39A of the Act rather than have an amended section retrospectively apply to them.'(Asbestos Disease Support Society)

A number of submitters[49] suggested removal of the retrospective application, with the 'proposed commencement date' being a future date (rather than 31 January 2015) so that the provision operates prospectively, not retrospectively. The date most commonly suggested was 1 July 2022.[50]

Recommendation 3

The majority of the committee recommends that the proposed new terminal condition definition in section 39A have an operational date of 1 July 2022 or on proclamation.

2.6 Issue raised outside the scope of the Bill

It is worth noting that several submitters commented as part of this inquiry on restrictions that currently apply in relation to the advertising of personal injury legal services, as set out within the PIP Act. Those submissions included a recognition that Queensland remains one of only a small handful of jurisdictions with such restrictions still in place, with submitters making it clear that such restrictions are archaic and continue to limit access to justice in denying people timely and relevant information about their legal rights, the impacts of which can have significant consequences on a person's legal options particularly in relation to time limits to bring a claim. Submitters noted that such restrictions are no longer fit for purpose in an increasingly digital world, notably with the rise of social media in particular. Submitters also observed that lawyers' advertising is subject to other limits and consumer protection mechanisms, and the Australian Solicitors Conduct Rules.

The committee considers that the current PIP Act restrictions are ineffectual, outdated and deny people the opportunity to obtain important and relevant information about their legal rights. It is also the view of the committee that such restrictions can be removed without undoing the important work of this Bill in seeking to tackle insidious claims farming practices; indeed such measures would better allow legitimate practitioners to appropriately advertise their work, which in itself will help to damage a key aspect of claims farmers' current business model. The resources of the LSC are better allocated to that priority, than the PIP Act restrictions.

We therefore encourage a fulsome examination of the PIP Act restrictions in the near future.

[49] See for example, ALA; AMWU; AWU; Asbestos Disease Support Society; IEUA-QNT; Maurice Blackburn Lawyers; QLS; RTBU; United Firefighters' Union of Australia, Union of Employees, Queensland.

[50] See submissions from ALA, MBL, AMWU and RTBU.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.2 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.2.1 Onus of proof

The committee considered whether the Bill reverses the onus of proof in criminal proceedings without adequate justification?

Summary of provisions

Clauses 51 and 60 insert proposed section 71C in the *Personal Injuries Proceedings Act 2002* (PIP Act) and proposed section 325U in the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act), respectively,[51] and assign liability to a person, for example, 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.[52]

Under sections 71C(5) and 325U(5), 'representative' means an employee or agent of an individual (which includes a partner of a law practice[53]) or an executive officer, employee or agent of a corporation.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.[54]

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence.[55]

> Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.[56]

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51 These proposed sections are modelled on s 76 of the *Motor Accident Insurance Act 1994*.

52 Explanatory notes, p 9.

53 Explanatory notes, p 30.

54 *Legislative Standards Act 1992*, s 4(3)(d).

55 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

56 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

The introduced clauses deem the person responsible for the representative's actions if the act or omission was within the scope of the representative's actual or apparent authority, unless the person proves they could not, by the exercise of reasonable precautions and due diligence, have prevented the act or omission. This means that the onus of proof lies with the person.

The explanatory notes state:

> … 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.[57]

In this regard, although the explanatory notes do not explicitly seek to justify the reversal of the onus of proof, they do reference the narrow application of the provisions (ie only to claim farming offences), the inclusion of a defence and that the person is best placed to disprove guilt.

Committee comment

Given the limited circumstances in which the onus of proof is reversed, on balance, the committee considers that the reversal of the onus of proof is justified.

3.2.2 Protection against self-incrimination

The committee considered whether the Bill provides appropriate protection against self-incrimination.

Summary of provisions

Clauses 32 and 60 insert proposed section 581G in the LP Act and proposed section 532T in the WCR Act, respectively,[58] which provide that an investigated entity or person (or an associated person) is not excused from answering a question or producing a document as required by an investigator,[59] if doing so might tend to incriminate the entity or person or expose them to a penalty.

Under the Bill, an investigator[60] may, amongst other things, investigate the 'relevant affairs' of the investigated entity or person.[61]

'Relevant affairs':[62]

- means matters relating to:
    - how the investigated entity received or was referred details of a claimant or potential claimant, or how the investigated entity or person received or was referred instructions for a claim, and
    - how the investigated entity or person gave or referred instructions for a claim, and

57 Explanatory notes, p 9.

58 These proposed sections are modelled on existing sections of the *Motor Accident Insurance Act 1994*, including those in 'Part 5B Special investigations', and in the case of proposed s 581H of the LP Act, a similar provision also exists in s 195 of the *Financial Intermediaries Act 1996.*

59 Being a 'special investigator' for the purposes of the LP Act and an 'investigator' for the purposes of the WCR Act.

60 Appointed by the Legal Services Commissioner or the Workers' Compensation Regulator, as relevant.

61 Clauses 32 and 61 (new s 581C LP Act; and new s 532N WCR Act; respectively).

62 Being relevant affairs of an 'investigated entity' for the purposes of the LP Act and of an 'investigated person' for the purposes of the WCR Act.

- includes a transaction involving the investigated entity or person (or an associated person) relevant to the receipt or referral of instructions.[63]

Issue of fundamental legislative principle

Whether legislation has sufficient regard to the rights and liberties of the individual depends on whether, for example, it provides appropriate protection against self-incrimination.[64]

The explanatory notes state that these provisions 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.[65]

The explanatory notes advise that abrogation of the protection against self-incrimination will be limited, only applying in cases where:

- the Legal Services Commissioner (Commissioner) invokes special investigation powers under the LP Act, because of a reasonable suspicion that an entity[66] may have contravened section 71 or 71B of the PIP Act (being the proposed claim referral offence provisions)
- an investigated person[67] or an associated person is required to answer a question put by, or produce a document to, an investigator, under the WCR Act.[68]

The principle that legislation should provide appropriate protection against self-incrimination:

> … has as its source the long established and strong principle of common law that an individual accused of a criminal offence should not be obliged to incriminate himself or herself.[69]
>
> …
>
> Provisions denying the privilege [against self-incrimination] are rarely essential to the operation of legislation, although there is a perception that they are essential.[70]

Denial of the protection afforded by the privilege against self-incrimination is only potentially justifiable if:

1. the questions posed concern matters that are peculiarly within the knowledge of the persons to whom they are directed and that would be difficult or impossible to establish by any alternative evidential means
2. the legislation prohibits use of the information obtained in prosecutions against the person
3. in order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming a right).[71]

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63 New ss 581C(6) LP Act; and 532N(8) WRC Act.

64 *Legislative Standards Act 1992* s 4(3)(f).

65 Explanatory notes, p 10.

66 Under the LP Act, an investigated entity may be a law practice, a lawyer who is acting or has acted for a claimant, or a third-party entity.

67 Under the WCR Act, an '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.

68 Explanatory notes, p 10.

69 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 52.

70 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles:* The *OQPC Notebook*, p 52.

71 Scrutiny of Legislation Committee, *Alert Digest* 1 of 2000, p 7, para 57; *Alert Digest* 13 of 1999, p 31; and *Alert Digest* 4 of 1999, p 9, para 1.60.

In light of these factors, it can be noted that the explanatory notes assert that 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 associated person's knowledge and would be difficult to establish by alternate means, and that the abrogation of the privilege is balanced by the Bill providing evidential immunity for individuals captured by the proposed compulsion requirement.[72]

In that regard, proposed section 581N of the LP Act and section 532ZA of the WCR Act, respectively, provide a limited immunity, where an individual gives or produces information or a document to an investigator.[73] 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 various sections of the PIP Act and WCR Act.[74]

Committee comment

The committee considers that the breach of fundamental legislative principle occasioned by the abrogation of the privilege against self-incrimination is justified because the information sought is likely to be within the investigated entity's or person's or associated person's knowledge, would be difficult to establish by alternate means, and that the abrogation of the privilege is balanced by the Bill providing evidential immunity for individuals captured by the proposed compulsion requirement.

3.2.3 Right to privacy – disclosure of information

The committee considered whether the Bill has sufficient regard to rights and liberties of individuals with respect to the right to privacy and the disclosure of information.

Summary of provisions

Clauses 53 and 62 insert proposed section 73B in the PIP Act and proposed section 573A in the WCR Act, respectively, which will apply if the Commissioner or the Workers' Compensation Regulator (Regulator) obtains information in exercising a power or performing a function under a claim farming provision.

The Bill provides that the Commissioner or Regulator (as relevant) may disclose the information to a 'relevant entity' (being the Motor Accident Insurance Commission (MAIC), or the LSC, if the Commissioner or Regulator believe the information is relevant to the administration by the relevant entity of a claim farming provision or to monitoring and identifying patterns or trends in conduct to which claim farming provisions apply.[75]

The Bill provides a safeguard, requiring that information disclosed under these sections must not be used for any purpose other than the administration of a claim farming provision.[76]

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72 Explanatory notes, p 10.

73 Being a 'special investigator' for the purposes of the LP Act and an 'investigator' for the purposes of the WCR Act.

74 Explanatory notes, pp 4-5. The various sections being: under new s 581N LP Act, ss 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B PIP Act; and under new s 532ZA WCR Act, chapter 6B, part 2 or s 325P, 325R(1) or (2) or 325T WCR Act.

75 New s 73B(2) PIP Act; and new s 573A(2) WCR Act; respectively.

76 Explanatory notes, p 11.

The Bill would insert a provision into the PIP Act, mandating that the Commissioner have a written arrangement with the relevant entity, providing for the way in which the Commissioner or commission staff may disclose the information to the relevant entity and its officers.[77]

Issue of fundamental legislative principle

Clauses 53 and 62 raise an issue of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal information.[78]

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

The Bill would effectively create an information-sharing arrangement, supplementing existing disclosure provisions in the MAI Act, by authorising the Commissioner or Regulator to disclose information to the relevant entity, being the MAIC and the other agency.[79]

An individual's privacy may be interfered with where information shared between agencies includes personal information.

The explanatory notes acknowledge that the proposed information sharing provisions will permit the sharing of individuals' personal information, including potentially sensitive information, but contend that such sharing is appropriately limited:

> … 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 …[80]

Committee comment

Given the proposed limitations intended to apply to the disclosure of information, including that disclosure is limited to the MAIC and the other agency, the committee considers that the interference with privacy is justified.

3.2.4 Right to privacy – use of information in proceedings

The committee considered whether the Bill has sufficient regard to rights and liberties of individuals with respect to the right to privacy and the use of information in proceedings.

Summary of provisions

Clause 63 amends section 575 of the WCR Act to enable information obtained from a person in relation to an application for compensation or a claim for damages to be used in a proceeding for an offence against the person for a claim farming offence (within the meaning of proposed section 573A(4) WCR Act).

Issue of fundamental legislative principle

The explanatory notes raise clause 63 in the context of an individual's right to privacy.

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

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77 Clause 53 (new s 73B PIP Act); explanatory notes, p 11.

78 See *Legislative Standards Act 1992*, s 4(2)(a).

79 That is, for the Commissioner, the other agency refers to the Regulator; and for the Regulator, the other agency refers to the Commissioner.

80 Explanatory notes, p 11.

At present, information obtained from a person in relation to an application for compensation or a claim for damages cannot be used against the person in a proceeding for an offence under any Act other than the WCR Act, except a proceeding in which it is alleged the information was false or misleading. The Bill would extend the circumstances in which the information can be used to include a proceeding for an offence against a claim farming provision in the MAI Act and the PIP Act.[81]

Whilst the explanatory notes do not set out the specific privacy concerns that arise from this clause, the following overall justification is provided:

> 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.[82]

Committee comment

The committee considers that given the object of the Bill is to stop claim farming, enabling the use of evidence of claim farming from information obtained in proceedings, any breach of fundamental legislative principles is justified.

3.2.5 Proportion and relevance of penalties

The committee considered whether the Bill has sufficient regard to rights and liberties of individuals with respect to the proportion and relevance of penalties.

Summary of provisions

The Bill creates several new offences.

Clause 32 inserts the following new offence provisions in the LP Act, which each carry a maximum penalty of 300 penalty units (currently, $41,355.00) or 2 years imprisonment:[83]

- proposed section 581F makes it an offence for an investigated entity (or associated person) to fail to comply with a lawful requirement of a special investigator, to knowingly give false or misleading information,[84] and to fail to be sworn or to make an affirmation when appearing before a special investigator for examination.
- proposed section 581M makes it an offence to conceal, destroy, mutilate or alter a document of (or about) an investigated entity, and to 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.

The following clauses insert new offence provisions in the PIP Act, which each carry a maximum penalty of 300 penalty units (currently, $41,355.00):

- **Clause 41** inserts proposed sections 8C, 8E and 8F, which provide for the proposed LPC requirements applying to legal practitioners in relation to personal injuries claims. For example, they make it an offence for the supervising principal of a law practice retained to act

81 Being, a claim farming provision within the meaning of new s 573A(4) WCR Act.

82 Explanatory notes, p 12.

83 A penalty unit is currently $137.85 – Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 2015*, s 5A. However, the value currently ascribed to a penalty unit is due to increase by 4.3% in July 2022.

84 Both in purported compliance with a lawful requirement of a special investigator, as well as when appearing before a special investigator for examination.

for a claimant, to fail to complete a certificate and give it to the appropriate recipient[85] or to make a false or misleading certificate; or for a law practice, that refers a claimant as part of a sale of its business to another law practice, to fail to complete and give a certificate in the specified manner.

- **Clause 44** inserts proposed section 9C, which creates a new offence provision in the PIP Act, applies if a claimant retains a law practice to act on their claim, and makes it an offence for the supervising principal to fail to give a copy of the certificate to the respondent within 1 month.
- **Clause 45** inserts proposed section 13A(4), which creates a new offence provision in the PIP Act, applies if the supervising principal of a law practice retained by the claimant did not give the claimant a certificate under section 8C and the claimant did not give it to the respondent, and makes it an offence for the supervising principal to fail to[86] complete a certificate and give it to the respondent.[87]
- **Clause 48** inserts proposed section 61 into the PIP Act, and makes it an offence for a supervising principal of the law practice retained by a claimant to fail to complete an LPC as soon as practicable after an offer (or counter offer) of settlement has been accepted in writing (or judgment is given), and to fail to give the certificate to the respondent,[88] within 7 days of the acceptance or judgment.
- **Clause 51** inserts proposed sections 71(1) and 71(2) into the PIP Act, which make it an offence for a person to give or receive[89] consideration for a claim referral (or potential claim referral), and proposed section 71B, which makes it an offence for a person to personally approach or contact another person to solicit or induce that person to make a claim.

Clause 60 provides for the certificate requirements applying to legal practitioners in relation to workers' compensation claims, and inserts the following new offence provisions in the WCR Act, which each carry a maximum penalty of 300 penalty units (currently, $41,355.00):[90]

- proposed sections 325H and 325I apply if a law practice is retained by a claimant, and makes it an offence for the supervising principal to fail to complete, and provide, the certificate (in specified circumstances)
- proposed section 325J includes three separate offences, relating to when a certificate must be given to the insurer for a claim, for example, under subsection (2), if a claimant gives its law practice a payment direction about the payment of compensation, it is an offence if the law practice gives a copy of the payment direction to the insurer, but the payment direction

85 Such as to the claimant, potential claimant, respondent, or respondent's insurer.

86 Within 1 month after the claimant is notified of the waiver or the presumption takes effect

87 And a copy of the certificate to the claimant and the respondent's insurer (if the respondent's insurer has responded to part 1 of the claimant's notice of claim).

88 And a copy of the certificate 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).

89 Or agree to give or receive or allow or cause someone else to give or receive.

90 Additionally, new s 325Y (clause 60) applies if an insurer reasonably believes a person is contravening chapter 6B, part 2; s 325P; s 325R; or s 325T WCR Act, and includes a lesser offence provision (attracting 50 penalty units, currently, $6,892.50), where an insurer must, without delay, give the Regulator the information the insurer has in relation to any such contravention.

is not accompanied by a certificate completed by the supervising principal and a copy of the certificate is not given to the claimant[91]

- proposed sections 325K and 325L provide offences for a legal practitioner's failure to discharge a duty to give a certificate if a claimant's notice of claim in not compliant with section 275, and to fail to complete a certificate on finalisation of a claim for damages, respectively – if the former applies, the supervising principal must[92] complete and give a certificate for the claim to the insurer and a copy to the claimant; if the latter applies, the supervising principle must attend to these same things, but within 7 days after the acceptance or judgment
- proposed sections 325M, 325P, 325R(1), 325R(2) and 325T are comparable to the abovementioned inclusion of new sections 8F, 8E, 71(1), 71(2) and 71B in the PIP Act, respectively.

Clause 61 inserts new offence provisions (proposed sections 532S and 532Z) in the WCR Act, which are comparable to the abovementioned inclusion of new sections 581F and 581M in the LP Act, respectively, each carrying a maximum penalty of 300 penalty units (currently, $41,355.00) or 2 years imprisonment. The clause also makes it an offence (proposed section 532ZC) for an investigator to disclose confidential information, attracting 100 penalty units, currently $13,785.00.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. As the Office of the Queensland Parliamentary Counsel (OQPC) explains:

> In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.
>
> … Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[93]

The introduction of the Bill's offence provisions may impact on the rights and liberties of a person, particularly those provisions in the Bill relating to the Special Investigation procedure for claims farming which set out a maximum penalty which includes a term of imprisonment.

The explanatory notes concede that the proposed new offence and penalty provisions in the Bill that apply to those engaging in claim farming, and for not completing and giving an LPC or for contraventions of the investigation and enforcement provisions, 'will impact on the rights and liberties of individuals who contravene them'.[94]

The explanatory notes state, however, that requiring a law practice that is selling all or part of its business to another law practice to complete a certificate 'ensures claim farming does not occur under

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91 Sections 325J(5) and 325(7) provide for offences similarly involving the failure to provide a law practice certificate to an insurer in certain circumstances and within certain timeframes.

92 Within one month after the insurer notifies the claimant that the insurer waives compliance with the requirements for giving a complying notice of claim under ss 278(2)(b) or (3) WCR Act, or the notice of claim is taken to be a complying notice of claim under s 278(4); and within the specified circumstances.

93 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

94 Explanatory notes, p 12.

the guise of law practices transferring or exchanging files' and 'gives confidence that the referred claims have not been claim farmed'.[95]

The explanatory notes assert that the new offence and penalty provisions are consistent with other claim farming penalties and are required to achieve the objective of stopping claim farming:

> … 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 [compulsory third party] claims under the MAI Act, other advertising offences under the PIP Act and existing provisions in the LP Act and WCR Act.[96]

Committee comment

The committee considers the offence and penalty provisions are proportionate, consistent and have sufficient regard to the rights and liberties of individuals.

3.2.6 Common law property rights and recovery of costs from individuals

The committee considered whether the Bill has sufficient regard to rights and liberties of individuals in relation to common law property rights and recovery of costs from individuals.

Summary of provisions

Clauses 32 and 60 insert proposed section 581L in the LP Act and proposed section 532Y in the WCR Act, respectively, which allows the Commissioner or Regulator (as relevant), to recover the costs of, and incidental to, an investigation from the investigated entity or person, if convicted of particular claim farming offences.

Issue of fundamental legislative principle

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

The introduction of these provisions might be seen to be unfair to an individual investigated under the LP Act or WCR Act. The costs may be considerable.

Noting that the proposed provisions will allow the Commissioner and the Regulator to recover the costs of, and incidental to, a special investigation, the explanatory notes observe 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.[97]

Committee comment

Given the limited circumstances in which costs will be recoverable, and the potential cost to Queensland taxpayers of any special investigations, the committee considers the provisions have sufficient regard to the rights and liberties of individuals and that any breach of fundamental legislative principles is justified .

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95 Explanatory notes, p 12.

96 Explanatory notes, p 12.

97 Explanatory notes, pp. 12-13.

3.2.7 Abrogation of the common law right of legal professional privilege

The committee considered whether the Bill has sufficient regard to the rights and liberties of individuals as regards the abrogation of the common law right of legal professional privilege.

Summary of provisions

Clauses 32 and 60 insert proposed section 581G in the LP Act and proposed section 532T in the WCR Act, respectively,[98] which provide that an investigated entity or person (or an associated person) is not excused from answering a question or producing a document as required by an investigator,[99] if doing so would disclose a 'privileged client communication'.

Specifically, these sections apply to:

- an investigated entity that is a law practice or lawyer (or an associated person)[100]
- an investigated person who is a law practice or lawyer that is acting or has acted for a claimant, or who is an entity prescribed by regulation (or an associated person).[101]

Under the Bill, 'privileged client communication' means communication protected against disclosure by legal professional privilege that operates for the benefit of a client of an investigated entity or person.[102]

Issue of fundamental legislative principle

The proposed sections involve an abrogation of legal professional privilege, a common law right. In this respect, the sections breach the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals.

As stated in *Fundamental legislative principles: the OQPC notebook*:

> Legislation should not abrogate common law rights without sufficient justification.
>
> This principle is recognised by the common law to the extent that the courts will examine carefully any loss of common law rights before accepting that the Parliament intended that loss to happen.[103]

The explanatory notes acknowledge that legal professional privilege is a significant right that enables full and frank communication between lawyers and their clients. The explanatory notes go on to state, however, that the new provisions which would involve an abrogation of legal professional privilege are 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.[104]

The explanatory notes assert that the amendments will not affect a claimant's access to justice or confidential discussions with their lawyers about the prospects of their claim, and that a client's legal privilege would continue unaffected by these amendments.[105]

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98 These proposed sections are modelled on existing s 87ZI MAI Act.

99 Being a 'special investigator' for the purposes of the LP Act and an 'investigator' for the purposes of the WCR Act.

100 New s 581G(2) LP Act.

101 New ss 532N(2) and 532T(2) WCR Act.

102 New s 581G(6) LP Act; and new s 532T(6) WCR Act; respectively.

103 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, pp 95-96.

104 Explanatory notes, p 14.

105 Explanatory notes, p 14.

The explanatory notes provide the following justification for the proposed abrogation of legal professional privilege:

> 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.[106]

Committee comment

Given the limited circumstances in which legal professional privilege may be abrogated, the committee considers the breach of fundamental legislative principle is sufficiently justified.

3.2.8 Rights and liberties of individuals – Terminal workers' compensation

The committee considered whether the Bill adversely affects rights and liberties, or imposes obligations, retrospectively.

Summary of provisions

Clause 58 amends the definition of 'terminal condition' in section 39A of the WCR Act to provide that a terminal condition of a worker is a condition certified by a doctor as being a condition that is expected to terminate the worker's life *within 3 years after the terminal nature of the condition is diagnosed* (proposed amendments in italics).

Clause 66 inserts transitional provisions (new sections 744 to 746 of the WCR Act) which provide that the new definition of terminal condition, as set out above, applies 'and is taken to always have applied' in relation to a condition that is a latent onset injury sustained by a worker on or after 31 January 2015.

This 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 by an insurer, or
- an insurer has accepted the doctor's diagnosis as to the terminal nature of the condition, or
- a review or appeal is in progress but not yet decided.[107]

The current section 39A definition will only apply in particular instances, for example, if the worker, or their dependents, has already received lump sum compensation under certain provisions of the WCR Act or if the worker has given an insurer notice of claim for damages for the injury before the commencement of the Bill's provisions.[108]

Issue of fundamental legislative principle

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation adversely affects rights and liberties, or impose obligations,

[106] Explanatory notes, p 14.

[107] Clause 66 (new s 744(3) WCR Act).

[108] Clause 66 (new s 745 WCR Act).

retrospectively.[109] Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.[110]

The new definition of terminal condition under clause 58 and the transitional provisions contained in clause 66 apply, in some part, retrospectively and potentially adversely impact the existing rights of workers.

The explanatory notes focus on the fact the amendments are intended to confirm the policy intent of when a worker's entitlement to terminal compensation arises.[111]

The history of the definition of terminal condition is relevant here, as set out in the explanatory notes:

> 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.[112]

The explanatory notes to the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 (2019 Bill) provides further background for this amendment:

> The WCR Act currently defines a terminal condition as a condition that is expected to terminate the worker's life within two (2) years after the terminal nature of the condition is diagnosed (section 39A). However, some workers are diagnosed with a terminal work-related condition with a life expectancy greater than 2 years (for example 3 or 5 years) which means they are excluded from accessing this payment. The Bill amends the WCR Act to extend entitlement to the latent onset terminal entitlements by removing the reference to two years and replacing it with an assessment that the insurer is satisfied that the worker has a latent onset condition that is terminal.[113]

The result of the 2019 amendments was the definition of terminal condition changed from being a condition expected to terminate a worker's life within two years, to a condition that an insurer was satisfied as being terminal (i.e. there was no prescribed time limit in the definition).

In the first reading speech for the 2019 Bill, the Honourable Grace Grace MP described the omission of the timeframe as 'an important amendment for those who need it most and a great step forward in that area'.[114] There was no mention in her speech of a policy intent that the 2019 amendments were to entitle a worker who sustained an injury on or after 31 January 2015 with access to terminal compensation only if their death was expected within 3-5 years.

The recent decision by the Queensland Industrial Relations Commission (QIRC) in *Blanch v Workers' Compensation Regulator* [2021] QIRC 408 (*Blanch*) considered the definition of terminal condition under section 39A and found that the 2019 amendments, in removing the reference to two years and not replacing it with anything else, had dispensed with the temporal requirement altogether.[115]

In response, the Bill proposes to 'confirm 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'.[116]

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109 *Legislative Standards Act* 1992, s 4(3)(g).

110 OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 55.

111 Explanatory notes, pp 6, 7, 15 and 16.

112 Explanatory notes, p 6.

113 2019 Bill, explanatory notes, p 9.

114 Queensland Parliament, Record of Proceedings, 22 August 2019, p 2476.

115 *Blanch* at [59].

116 Explanatory notes, p 6.

According to the explanatory notes, 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.[117]

The issue of fundamental legislative principle arises here because the proposed amendments will operate retrospectively – i.e. they will apply to injuries sustained on or after 31 January 2015.

The explanatory notes acknowledge this raises an issue with respect to retrospectivity of legislation, but justify such retrospectivity on the basis that the practical impact 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.[118]

Notwithstanding the arguments in the explanatory notes justifying retrospectivity (set out above), there will be workers whose rights will be adversely affected by the retrospectivity of these amendments.

As set out in clause 66 (new section 744 of the WRC Act), 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 (eg insurer has accepted an application, insurer has accepted doctor's diagnosis or a review or appeal has started but not yet decided). These workers, in particular, may have held an expectation that they would receive a terminal compensation payment at the time of making their application based on the law at the time. In addition, these workers may have outlaid money on expert medical reports and legal assistance.

The explanatory notes justify any adverse impacts to these workers on the basis of the financial sustainability of the workers' compensation scheme.

> 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.[119]

According to the explanatory notes, 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'.[120]

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117 Explanatory notes, p 6.

118 Explanatory notes, p 15.

119 Explanatory notes, pp 15-16.

120 Explanatory notes, p 15.

The explanatory notes do not address the issue of costs that may already have been incurred by some claimants for expert reports and legal fees related to making claims for compensation and/or appealing decisions.

Further, the explanatory notes do not contemplate whether there is a larger cohort of workers who may be adversely impacted by this retrospective amendment (i.e. those who sustained a latent onset injury on or after 31 January 2015 that could be considered a terminal condition under the current section 39A, but would not be considered a terminal condition under the proposed section 39A). Under the proposed amendments, these workers would not be entitled to compensation until a later date.

Given that the 2 year time limit in section 39A of the WCR Act was omitted in 2019, it is unlikely, as is posited in the explanatory notes (and quoted above), that the *Blanch* decision in 2021 is the only reason that potential claimants consider that a terminal diagnosis of a longer period gives rise to an expectation of receiving terminal compensation.

The Department of Justice and Attorney-General (department) shed further light on the rationale for the proposed amendments. It stated that with no time limit in section 39A, the decision in *Blanch*:

> … may allow workers who have life expectancies 30 to 40 years into the future to access terminal compensation well before it is needed to assist the worker in the final stages of their illness. For these workers, once they have received terminal compensation, they will not be able to access support from the scheme such as ongoing compensation entitlements, rehabilitation, vocational counselling, or re-training. These funds are also highly likely to have dissipated by the time the worker and their family are in most need of it. There is also likely to be a psychological impact to workers and their families from receiving a diagnosis of a terminal condition.[121]

The department further advised that the number and cost of terminal compensation claims have increased since the time limit was omitted in 2019:

> … in the three financial years preceding the 2019 amendment, terminal compensation claim numbers and costs were relatively stable. However, increased awareness since the *Blanch* decision regarding the removal of the timeframe resulted in a large increase in the number of claims paid terminal compensation. The total cost to the scheme almost doubled in 2020–21 compared to payment years prior to the amendment.
>
> Terminal compensation costs for the 2021-22 financial year are not yet finalised. However, further increases to claim costs are expected, particularly given insurers have noted increased applications for this compensation following the *Blanch* decision in December 2021.
>
> WorkCover advises that in the two months following the *Blanch* decision, they paid a further 70 claims for terminal compensation with another 37 pending a decision. Prior to *Blanch*, WorkCover estimates less than 10 terminal compensation claims were paid each month.
>
> ...
>
> In undertaking approximately 41 administrative reviews of insurer decisions on terminal compensation between June 2020 and March 2022, WCRS [Workers' Compensation Regulatory Services] notes many of these reviews involve workers with life expectancies more than 15 years in the future, with some projected more than 30 or 40 years in the future. In many of these cases, doctors commented it was too early to diagnose with certainty terminal nature of the worker's condition and considered further monitoring over time was necessary.[122]

[121] Department of Justice and Attorney-General, briefing paper, 3 May 2022, p 13.

[122] Department of Justice and Attorney-General, briefing paper, 3 May 2022, p 17.

Committee comment

Clauses 58 and 66 will operate, in some part, retrospectively to adversely affect the rights of some workers in their ability to access compensation payments for a terminal condition under the WRC Act.

As noted above, the committee recommends that the Bill not operate retrospectively, particularly in relation to those who have already lodged a claim based on the law as it currently stands and whose claim is not decided prior to commencement of the proposed Act (see Recommendation 3 above).

3.3 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

3.3.1 Constitutional validity

The committee considered the issue of constitutional validity.

Summary of provisions

Clauses 32 and 60 insert proposed section 581O in the LP Act and proposed section 532ZB in the WCR Act, respectively,[123] which apply the claim farming offences and the enforcement and special investigation powers extraterritorially. The explanatory notes also identify additional provisions which will 'similarly apply extraterritorially'.[124] The proposed sections provide that the relevant provisions apply outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

Issue of fundamental legislative principle

The institution of Parliament is enhanced by the enactment of effective laws. On the other hand, laws enacted by Parliament that are invalid might call into question the authority of Parliament and the competence with which its affairs are being conducted.[125]

State parliaments have power to pass extraterritorial laws for the peace order and good government of the State.[126] At the same time, there is a well-established presumption against extraterritoriality.[127] The presumption is rebuttable, including if by express words, the statute applies extraterritorially.[128]

The wording of the provisions here is expressly aimed at establishing a link to Queensland and a clear intention for there to be an extraterritorial effect. The explanatory notes state:

> 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.[129]

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123 These proposed sections are modelled on existing ss 87Y and 87ZR MAI Act.

124 Being, new s 71G PIP Act (and s 532ZB WCR Act) dealing with reporting non-compliance with law practice requirements, s 568A LP Act in relation to investigation powers under part 5A LP Act, s 71F PIP Act in relation to the application of chapter 3, part 2 PIP Act and s 325X WCR Act in relation to the application of part 4 WCR Act (explanatory notes, p 14).

125 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 171.

126 Since the *Australia Act 1986*.

127 *Acts Interpretation Act 1954* (Qld), s 35.

128 *Jumbunna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309.

129 Explanatory notes, p 14.

Committee comment

The committee is satisfied that the extraterritorial application of the Bill is justified in the circumstances.

3.3.2 Delegation of legislative power

The committee considered whether the Bill has sufficient regard to the institute of Parliament with respect to the delegation of legislative power.

Summary of provisions

Clause 16 proposes to amend section 347 of the LP Act, which provides for the maximum payment for the conduct of a speculative personal injury claim. The clause proposes to insert a definition for 'additional amounts' into the LP Act which includes 'other disbursements or expenses prescribed by regulation'.

Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill, for example, allows the delegation of legislative power only in appropriate cases and to appropriate persons.[130] This question is concerned with the level at which delegated legislative power is used.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.[131]

According to the explanatory notes, 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 section 347 of 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.[132]

It is noted that regulations that seek to further amend the definition of 'additional amounts' in the LP Act will be subject to parliamentary scrutiny by the Legislative Assembly through the usual tabling and disallowance procedures.

Committee comment

The committee is satisfied that the delegation of legislative power in clause 16 is appropriate, such that the Bill has sufficient regard for the institution of Parliament.

3.4 Explanatory notes

Part 4 of the LSA requires an explanatory note to be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill.

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130 *Legislative Standards Act* 1992, s 4(4)(a).

131 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

132 Explanatory notes, pp 14-15.

Although, the notes comply with section 23(1)(f) of the LSA, which requires a brief assessment of the consistency of the Bill with fundamental legislative principles and, if inconsistent, the reasons for the inconsistency, it is noted that the justifications for such inconsistency are not always explicitly provided and, when matters are addressed, not always to a satisfactory level of detail. This observation is made more evident when undertaking a comparison with the notes for the MAI Amendment Act, which addressed the amendments made to the MAI Act, several of which are applied and adapted to the Bill.

The notes otherwise contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[133]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[134]

The HRA protects fundamental human rights drawn from international human rights law.[135] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

4.1.1 Overview

The Bill make some amendments which will raise certain human rights to varying degrees. For instance, the Bill sets out provisions relating to caps on political donations and worker's compensation. The committee has assessed these amendments and consider that these provisions limit rights to an extent that is reasonable and justified. The committee also notes that most of the human rights concerns in relation to matters arising under the Bill have been sufficiently addressed in the statement of compatibility.

However, the committee considers that the following 'claim farming' provisions require a more detailed analysis in the context of determining the bill's compatibility with human rights:

- Proposed sections 532S and 532Z of the WCR Act and proposed sections 581F and 581M of the LP Act which set out a maximum penalty that includes a term of imprisonment; and
- Proposed sections 532W of the WCR Act and 581J of the LP Act which permit the publication of a report on the enforcement of the claims farming provisions against investigated entities.

4.1.2 Right to Liberty - Arbitrary Detention

<u>New penalty provisions including terms of imprisonment</u>

The proposed sections 532S and 532Z of the WCR Act and sections 581F and 581M of the LP Act set out a term of imprisonment for 2 years for dishonesty and fraud offences relating to the examination of investigated entities.

Section 29(2) of the HRA states that a person must not be subject to arbitrary arrest or detention. According to international guidance and case law on detention, 'arbitrary' includes elements of reasonableness, necessity and proportionality. For instance, UN General Comment 35 states:

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133 HRA, s 39.

134 HRA, s 8.

135 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

> The notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances. Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention.[136]

The UN Human Rights Committee in dicta comments in *Van Alphen v. Netherlands* and *Gorji-Dinka v. Cameroon* also stated that detention 'must not only be lawful but reasonable and necessary in all circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime'.[137]

One of the leading commentaries on the International Covenant on Civil and Political Rights (ICCPR) by Paul Taylor confirms this approach, noting that:

> It requires, among other things, cogent and individualised justification for detention, frequent periodic reassessment of its necessity (especially as circumstances change), the shortest duration necessary to achieve its objectives, and the use of the least restrictive alternatives.[138]

Therefore, it is important to establish that the term of imprisonment in the proposed provisions is necessary, reasonable and proportionate. The provisions outlining the offence leading to imprisonment need to be sufficiently defined (they should not be vague) and consideration should be given to whether the period of detention is appropriate given the nature of the offence.

a) nature of the purpose of the limitation

The purpose of the term of imprisonment set out in the proposed sections is to ensure that evidence relating to investigations for claims farming are protected from abuse such as alteration of documents. It seeks to punish unlawful behaviour connected with the special investigation process. The protection of the investigation process is an important objective.

b) the relationship between the limitation and its purpose

The specific purpose and justification for attaching a term of imprisonment to the fraud offences is not addressed specifically in the legislative materials (either in the explanatory notes, statement of compatibility or second reading speech).

Although there is no specific mention of the reason for imposing a term of imprisonment, the second reading speech refers generally to the overarching purpose of the claims farming provisions which is to 'minimise the potential for unmeritorious claims and fraudulent behaviour in relation to personal injury and workers' compensation claims'.

Therefore, it appears that the purpose of limitation on liberty (imprisonment for two years as a maximum) is in the Bill to act as a deterrent to those seeking to engage in fraudulent or misleading acts in relation to the claims farming investigation process.

c) whether there are less restrictive and reasonably available ways to achieve the purpose

There are less restrictive ways to achieve the purpose, for instance, the proposed provisions could set out a penalty of 300 units only without including a term of imprisonment. This would mirror the penalties for claim farming set out elsewhere in the Bill. However, it is arguable that this would not achieve the purpose of the Bill which is to ensure that investigations about claim farming can be

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136 UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35 at [12].

137 *Van Alphen v. Netherlands*, CCPR/C/39/D/305/1988 23 July 1990 [5.8] and *Gorji-Dinka v. Cameroon*, CCPR/C/83/D/1134/2002, 17 March 2005 [5.1].

138 Taylor, P. (2020). A Commentary on the International Covenant on Civil and Political Rights. Cambridge University Press, p 254.

undertaken in a robust way with protections in place to prevent destruction of evidence, fraud or evasion.

d) the importance of the purpose of the limitation

The purpose of the limitation, which is to deter the giving of false or misleading evidence and enforce evidential protections in relation to claim farming is important in terms of ensuring that the investigation process operate fully.

e) the importance of preserving the human right

The right to liberty is a cornerstone human right but the protection of an investigatory process and the prevention of abuse of evidence is also an important due process objective. Further, as noted above, the right to liberty protects against 'arbitrary' detention. It therefore permits detention if that is necessary, reasonable and proportionate in the circumstances.

f) the balance between the importance of the purpose of the limitation and the importance of preserving the human right

The proposed sections permit detention in a way which is necessary, reasonable and proportionate in the circumstances. Relevantly:

- the proposed provisions are set out in legislation and are specific (rather than vague). For instance, proposed s581M of the LP Act makes it an offence punishable by 2 years imprisonment to 'conceal, destroy, mutilate or alter a document of or about an investigated entity or associated person for an investigated entity'
- the provisions are necessary in order to achieve the enforcement of the claims farming provisions which are central to the reforms set out in the Bill
- although there is no direct equivalent in other Australian jurisdictions for offences relating to claim farming, the 2 year imprisonment for fraud or misrepresentation in the proposed provisions in this Bill are proportionate to the objective
- there is no demonstration on the face of the law that the imprisonment will be arbitrary.

Committee comment

The committee considers that the limitations on the right to liberty under the Bill are reasonable and demonstrably justified given that the proposed detention of persons is not arbitrary and the term of imprisonment set out is proportionate in the circumstances.

4.1.3 Right to Privacy and Reputation

Proposed sections 532W of the WCR Act and 581J of the LP Act - Publication of Investigator's and Special Investigator's report -

Section 25 of the HRA provides that a person has the right (a) not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and (b) not to have the person's reputation unlawfully attacked.[139]

This right is engaged by proposed section 532W of the WCR Act and proposed section 581J of the LP Act which permits publication of certain reports about an investigated entity (including the recording of questions asked and answers given by a person at an examination). This is permitted where the investigated entity the subject of the report is convicted of an offence against a claim farming provision and the Regulator or the Commissioner, as the case may be, considers publishing the report or part of the report is in the public interest.[140]

[139] This right is based on Article 17 of the International Covenant on Civil and Political Rights.

[140] Statement of Compatibility, p 12.

The fact that the investigated entity the subject of the report must be convicted of an offence (rather than just charged with one) is important. The case law on the right to privacy in the context of criminal investigations has tended to hold that an individual has a reasonable expectation of privacy in the investigation phase.

a) nature of the human right

The right to privacy includes respect for informational privacy, that is, respect for private and confidential information. This is designed to particularly protect the storage, use and sharing of such information.[141] The right does not simply protect privacy but an *arbitrary or unlawful* interference with privacy.

Whether an interference with privacy is permissible will depend on whether there is a reasonable expectation of privacy in the circumstances. For example, a person will have a greater expectation of privacy in relation to their home than in relation to their workplace or public area. This is relevant because the information which is the subject of the proposed amendments is personal information, but is being disclosed at the completion of a criminal investigation when a conviction has taken place (and does not relate to sensitive personal data such as health information etc.).

The UN Human Rights Committee has indicated, in its General Comment on the Right to Privacy, that a law which authorises interference with privacy must be precise and circumscribed.[142]

b) nature of the purpose of the limitation

The proposed amendments seek to fulfil the purpose of education. The statement of compatibility provides that:

> 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.[143]

The purpose is also to also deter people from engaging in claim farming (by making the results of investigations public) and to permit the public and profession to make informed decisions about dealing with certain individuals and organisations (allowing the public and profession to avoid those entities who have been convicted). As such, the publication provision can be viewed as part of the regulatory and enforcement process.

c) the relationship between the limitation and its purpose

The purpose of the amendments is to ensure that the public can access information about the enforcement of the claim farming provisions. The statement of compatibility notes that the purpose 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'.[144]

The statement of compatibility also provides:

> 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.[145]

d) whether there are less restrictive and reasonably available ways to achieve the purpose

Regarding whether there are less restrictive and reasonably available ways to achieve this purpose, the statement of compatibility provides:

141 UN Human Rights Committee, General Comment No. 16: Article 17 (1988), para 10.
142 Office of the High Commissioner for Human Rights, General Comment 16, 8 April 1988 [4].
143 Statement of Compatibility, p 12.
144 Statement of Compatibility, p 12.
145 Statement of Compatibility, p 12.

Provision for the publication of all or part of a special investigator's (or investigator's) report is balanced by the requirement that the investigated entity or person must have been convicted and the Commissioner or the Regulator must consider it to be in the public interest.[146]

Committee comment

The committee considers that there are no less restrictive and reasonably available ways to achieve the purpose in this instance as the alternatives will not be as effective in achieving the purpose.

e) the importance of preserving the human right

The right to privacy is clearly important. However, it is a derogable right and can be limited where that is necessary and reasonable.

f) The balance between the importance of the purpose of the limitation and the importance of preserving the human right.

Publication represents a necessary part of the proposed claim farming scheme and is a reasonable limitation of privacy for the purpose of ensuring transparency and accountability.

Committee comment

The committee considers that any limitation on the right to privacy is reasonable and demonstrably justified given the purpose of the amendments to ensure that the public can access information about the enforcement of the claim farming provisions and the purpose is balanced by:

- the requirement that the investigated entity or person the subject of the investigation must have been convicted
- the requirement that the Commissioner or the Regulator must consider publication to be in the public interest
- the nature of the privacy information to be disclosed is limited
- the method of obtaining the information is bound by legislated procedures.

The committee finds the Bill is compatible with human rights.

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

[146] Statement of Compatibility, p 13.

Appendix A – Submitters

Sub #	Submitter
001	Kare Lawyers
002	Australian Lawyers Alliance
003	Crime and Corruption Commission
004	Independent Education Union Queensland and Northern Territory Branch
005	MIGA
006	AAI Limited
007	Asbestos Disease Support Society
008	Maurice Blackburn Lawyers
009	Australian Manufacturing Workers' Union
010	Rail Tram and Bus Union, Queensland Branch
011	United Firefighters' Union of Australia, Union of Employees, Queensland
012	knowmore
013	Electoral Commission Queensland
014	Queensland Law Society
015	Australian Workers' Union
016	Beyond Abuse
017	Queensland Council of Unions
018	Trevor Lansdown

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney General

- Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Imelda Bradley, Director, Strategic Policy
- Ms Courtney Arndell, Principal Legal Officer

Office of Industrial Relations

- Ms Janene Hillhouse, Executive Director, Workers' Compensation Regulatory Services
- Mr Bradley Bick, Director, Workers' Compensation Policy

Appendix C – Witnesses at public hearing

Kare Lawyers

- Kate Avery, Director, Kare Lawyers

AAI Limited

- Daniel Wilkinson, Executive Manager CTP QLD & ACT
- Kylie Horton, Executive Manager QLD CTP Claims

Asbestos Disease Support Society

- Trevor Torrens, General Manager, Asbestos Disease Support Society
- Margot Hoyte, Director, Asbestos Disease Support Society

Maurice Blackburn Lawyers

- Greg Spinda, Principal Lawyer and Brisbane office leader
- Jonathan Walsh, Principal Lawyer and Qld Head of Dust Diseases

Rail Tram and Bus Union, Queensland Branch

- Peter Allen, State Secretary

United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ)

- Nate Tosh, Industrial Officer

knowmore

- Warren Strange, Chief Executive Officer
- Simon Bruck, Principal Lawyer
- Lauren Hancock, Law Reform and Advocacy Officer

Electoral Commission Queensland

- Julie Cavanagh, Executive Director, Election Event Management
- Matthew Thurlby, Acting Director, Funding, Disclosure and Compliance

Queensland Law Society

- Kara Thomson, President
- Michael Garbett, Chair of QLS Accident Compensation and Tort Law Committee
- Luke Murphy, Deputy Chair of QLS Accident Compensation and Tort Law Committee

MIGA

- Tim Bowen, Manager, Advocacy & Legal via videoconference

Queensland Council of Unions

- Jacqueline King, Assistant General Secretary via videoconference

Australian Lawyers Alliance

- Sarah Grace, Queensland Branch President
- Rod Hodgson, Workers Compensation Special Interest Group Chair

Dissenting Report

Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 Dissenting Report

Sandy Bolton MP Noosa

Whilst supporting the majority of amendments in the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022, and Recommendations 2 and 3 of this Committee Report, I would like to draw attention to my opposition to Recommendation 1 which is to pass this Bill without any recommendations to amend the timeframe for those diagnosed with a terminal illness which I have sought on behalf of Queenslanders.

Treating workers fairly, who are our family and friends, is one of the cornerstones of the Workers Compensation Act. The purpose of the Committee is to ensure that a system is not created that will adversely impact a section of our community.

The strongest language and overwhelming view echoed throughout the majority of submissions and witness presentations was that the retrospectivity of the Bill would negatively impact Queenslanders who have already lodged.

The Australian Lawyers Alliance urged the Committee to immediately remove the retrospective nature of the Bill as it was stripping away the rights of claimants during a legal process and I thank my fellow committee members who supported the Committee recommendation to amend.

However, my dissenting view is related to the timeframe that this Bill amends, from the determinations in 2019 that a lump sum payment due to a terminal diagnosis should not be restricted to a timeline, as the then 2 years did not accommodate the reality these workers were confronted with.

The time limit was then removed; however this bill now proposes a reintroduction of a 3 year time limit to ensure 'sustainability' of the Workers Compensation Scheme.

In addition the proposed changes to take effect on July 1 2022 does not take into consideration that many currently preparing claims, may not be able to lodge before that date due to lengthy waits to see specialists.

For these, they will be impacted by the more restrictive conditions that is outside of their control.

Given the rationale presented at the hearing regarding the increase in claims as a result of the 2019 determinations has not been supported by appropriate analysis including around the context of the increase, this aspect of the bill should be removed or altered to 5 years, as suggested by submitters.

Ultimately, this is about people. Fellow Queenslanders who through no fault of their own, through the work they did for us, are to die as a result of. We are now reverting to a timeframe that was rejected previously, leaving these terminally ill workers as they have shared an inability to keep up with house payments, or rent, and provide food on the table for their families prior to being eligible for a lump sum payment

May anyone who takes the time to read this, understand why it is so important to listen to what is actually being experienced. All but one witness in the hearings outside of government supported changing the current terminal timeframe from what it is.

For the many reasons given by submitters, as a Committee Member I cannot support Committee Report Recommendation 1, nor ultimately the Bill unless an amendment to the timeframe is put forward.

This is about human beings and fellow Queenslanders, not dollars, or as put forward at the hearing, '3 cents if you were to do a comparison to our workers compensation premium rate'.

SANDY BOLTON MP

Member for Noosa Date: 27 May 2022