

Personal Injuries Proceedings and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 146

made under the

Legal Profession Act 2007

Personal Injuries Proceedings Act 2002

Workers' Compensation and Rehabilitation Act 2003

General Outline

Short Title

Personal Injuries Proceedings and Other Legislation Amendment Regulation 2022

Authorising law

Sections 9(2A) and 75 of the *Personal Injuries Proceedings Act 2002*

Section 581F and 715 of the *Legal Profession Act 2007*

Section 532S and 584 of the *Workers' Compensation and Rehabilitation Act 2003*

Policy objectives and the reasons for them

The *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* (Amendment Act) received assent on 30 June 2022.

The main purpose of the Amendment Act is to amend the *Personal Injuries Proceedings Act 2002* (PIP Act) and the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) to address claim farming.

'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 then sell the individual's personal information to a legal practitioner or other claims management service provider to handle the claim.

The Amendment Act:

- prohibits a person cold-calling or personally approaching another person without their consent and soliciting or inducing them to make a claim;
- makes it an offence for any person to pay claim farmers for the details of potential claimants or to receive payment for a claim referral or potential claim referral;
- imposes obligations on legal practitioners who represent injured claimants to certify during the claims process by way of a law practice certificate that neither they nor their associates have paid a claim farmer for the claim; and
- requires law practices retained by respondents and insurers to notify the relevant

regulator if they suspect a contravention of the law practice certificate requirements.

The Amendment Act is modelled on the *Motor Accident Insurance and Other Legislation Amendment Act 2019* which introduced the first explicit legislative prohibition on claim farming in Queensland to stop claim farming for compulsory third party claims.

Implementation of the Amendment Act requires consequential regulation amendments.

Under section 9(2)(c) of the PIP Act, a regulation may require information or other material to accompany a particular part of a notice of a claim. Section 9(2A) of the PIP Act provides that a regulation may require information or other material to accompany a particular part of a notice of a claim

Consistent with the approach under section 18 of the *Motor Accident Insurance Regulation 2018* (MAI Regulation), it is proposed to require the notice of claim to be accompanied by a certificate signed by the claimant stating certain matters including: whether the claimant is making the claim on the claimant's own initiative; whether the claimant was personally approached or contacted by a person and solicited or induced to make the claim; and if a law practice is retained, whether the claimant knows if the law practice gave consideration to a person for the referral of the claimant to the law practice.

Under section 581F (Examination of investigated entity or associated person) of the *Legal Profession Act 2007* and section 532S (Examination of investigated person or associated person) of the WCR Act, a person required to attend for examination is entitled to the allowances and expenses prescribed by regulation.

Consistent with the approach under the MAI Regulation, the Amendment Regulation prescribes the allowances and expenses for a person required to attend an examination on the same basis as a witness in a proceeding before the District Court.

Achievement of policy objectives

The policy objective is achieved by the Amendment Regulation:

- inserting new section 79A in the *Legal Profession Regulation 2017* which provides that a person required to attend for examination under chapter 6A of the Act is entitled to allowances and expenses on the same basis as a witness in a proceeding before the District Court;
- amending section 5 and inserting new section 5A in the *Personal Injuries Proceedings Regulation 2014* to require the notice of claim to be accompanied by a certificate signed by the claimant stating certain matters, with special provision for cases where a claimant's lawyer signs the notice of claim under the Act; and
- inserting new section 147A in the *Workers' Compensation and Rehabilitation Regulation 2014* which provides that a person required to attend for examination under chapter 12, part 1A of the Act is entitled to allowances and expenses on the same basis as a witness in a proceeding before the District Court.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Amendment Regulation will assist in the effective implementation of the claim farming reforms in the Amendment Act. There will be additional costs (but not significant) in complying with the new claims processes directed to identifying claims that have been claim farmed. The allowances and expenses paid to persons required to attend for examination are expected to be minimal.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles.

Consultation

The Legal Services Commission, the Office of Industrial Relations and the Motor Accident Insurance Commission (the Regulators) were consulted on the Amendment Regulation.

The Regulators have undertaken stakeholder consultation on the subject matter of the Amendment Regulation with relevant legal and other stakeholders who were also consulted during the development of the Amendment Act.

A self-assessment by the Department of Justice and Attorney-General has determined that a Regulatory Impact Statement is not required in relation to the prescribed allowances and expenses for people attending examinations as this regulatory proposal is excluded under category (a) and category (g) of the Queensland Government Guide to Better Regulation – regulatory proposals that make consequential amendments and regulatory proposals that are of a machinery nature.

The Office of Best Practice Regulation has assessed the regulatory proposal to require the giving of a claimant certificate and has advised that the proposal is unlikely to result in any significant adverse impacts and no further regulatory impact analysis is required.

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