

Personal Injuries Proceedings and Other Legislation Amendment Regulation 2022

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Personal Injuries Proceedings and Other Legislation Amendment Regulation 2022* (Amendment Regulation) made under the *Legal Profession Act 2007*, the *Personal Injuries Proceedings Act 2002* and the *Workers' Compensation and Rehabilitation Act 2003*.

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

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* 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 the claimant has engaged legal representation, 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, it is proposed to prescribe 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.

Human Rights Issues

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

The Amendment Regulation does not affect or engage a human right.

Conclusion

I consider that the *Personal Injuries Proceedings and Other Legislation Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

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