

**INSURANCE LEGISLATION AMENDMENT
(MOTOR VEHICLE CLAIMS HARVESTING) BILL 2023**

Introduction and First Reading

Bill introduced, on motion by **Ms D.G. D'Anna (Parliamentary Secretary)**, and read a first time.

Explanatory memorandum presented by the parliamentary secretary.

Second Reading

MS D.G. D'ANNA (Kimberley — Parliamentary Secretary) [11.55 am]: I move —

That the bill be now read a second time.

I am pleased to introduce the Insurance Legislation Amendment (Motor Vehicle Claims Harvesting) Bill 2023, which seeks to stamp out predatory claims harvesting practices in motor vehicle injury insurance claims in Western Australia. Many members will be aware of unsolicited calls, emails or social media contact made to themselves or to family or friends fishing for information about whether they, or anyone they know, has been injured in a motor vehicle accident. This practice is known as “claims harvesting”, in which parties employ various tactics to identify people to make a claim under the state’s compulsory third-party insurance scheme or CTP.

These claims harvesters, as they are known, might be law firms specialising in these claims, or third parties, who then onsell a potential claimant’s personal information to a law firm. Claims harvesters will often mislead people about their entitlements and exaggerate the amount of compensation that they are likely to receive, creating unreasonable and unrealistic expectations that more often than not are not met. There are plenty of examples when at the end of what a claimant initially considered to have been a successful claim, they are left with very little after the lawyer takes their fees and disbursements due to terms hidden deep within a long and complicated costs agreement.

One example is when a person was contacted by a claims harvester and told that their claim had a value of \$150 000. This person then signed a no-win, no-fee agreement with a lawyer based in Sydney. Eventually, the lawyer recommended the claimant accept \$5 000 for their pain and suffering. After settlement, the lawyer kept the \$5 000 in compensation on top of the \$3 000 in fees and disbursements from the Insurance Commission of Western Australia, and then told the claimant they could be pursued for the balance of the claimed costs. Disturbingly, more and more people have been the subject of targeted calls after their personal information has been sold to a claims harvester or law firm by a tow truck company, accident repair service or hire car company. A person involved in a motor vehicle accident advised the Insurance Commission that after taking her car to a smash repairer, she received three text messages and two emails from a claims harvester, four phone calls and two text messages from a physiotherapist and two emails from a law firm. The claimant had not had any previous contact with these organisations.

The Insurance Commission has also received reports of tow truck operators recommending particular law firms to crash victims, and those victims subsequently being contacted by said law firm after their details were passed on by the tow truck operator in exchange for a referral fee. Claims harvesting can be lucrative for all involved, and as other states have successfully tackled claims harvesting, claims harvesters have shifted their sights to Western Australia, to the detriment of our community. This is shown by the simple fact that the number of motor injury insurance claims in Western Australian has grown over recent years, despite the number of crashes declining. Harvested claim frequency in WA has grown substantially over the last few years, from almost no harvested claims in 2014–15 to now making up to 28 per cent of all claims reports for the most recent accident year.

During the pandemic, accident rates and claim rates fell in all Australian jurisdictions except WA, where accident rates declined and claim numbers increased. This activity has contributed to an increase in CTP premiums, with the estimated cost of claims harvesting in Western Australia having risen from \$3 to \$14 per vehicle premium paid since 2016–17. For all these reasons, it is important that these predatory practices are stamped out, and that is addressed in the bill introduced today.

This bill is primarily informed by the reforms introduced by Queensland in 2019 that have curtailed claims harvesting practices. Referral fees and claims harvesting are inseparable. This new bill will remove the underlying financial motives that enable claims harvesting by making it an offence to pay or receive referral fees. Further, it will be an offence to approach or contact a potential claimant for the purposes of soliciting or inducing them to make a claim or referring them to a third party to provide a claim-related service. To further disincentivise claims harvesting, law practices whose representatives breach the claims harvesting offences included in this bill will be precluded from charging or recovering legal costs in relation to the claim and required to refund legal costs already received to the person from whom they were received. The bill will require the supervising principal of a law practice representing a motor injury insurance claimant to certify via statutory declaration that they and each associate of the law practice have not breached the claims harvesting offences for that claim. These compliance certificates will be required once when the law practice is retained and then again within seven days after judgement or settlement of the claim.

The bill will introduce a requirement for claimants and the Insurance Commission to engage in a pre-action conference in an attempt to settle a claim before an action for damages can be commenced in court. That is expected to reduce the number of writs issued, reducing legal costs for both claimants and the Insurance Commission, and speed up claims resolution, reducing stress and anxiety associated with litigation for claimants. This reform will have the added benefit of reducing burden on the court system and allow priority to be given to the resolution of claims that genuinely require it. The parties must exchange offers of settlement before a writ can be issued, in a streamlining of provisions recently introduced in South Australia to address the same problems.

The bill will add information-sharing and enforcement provisions into the Insurance Commission of Western Australia Act 1986, facilitating the sharing of information on suspected claims harvesting between the Insurance Commission and the Legal Practice Board, the Commissioner for Consumer Protection and the Department of Transport. Provisions will also be made for the investigation of persons regulated by those entities. Further, the Insurance Commission, when necessary, may appoint an appropriately qualified person to assist in investigating suspected breaches of claims harvesting offences. The bill will introduce an offence for providing false or misleading information to the Insurance Commission. There is currently a similar provision in the Motor Vehicle (Third Party Insurance) Act 1943, but it does not enable the Insurance Commission to refer for prosecution in all circumstances in which false or misleading information is provided. This new provision will remedy this situation. Although provisions contained in the Civil Liability Act 2022 may appear to prohibit claims harvesting activities, claims harvesters have carefully tailored their techniques to fall outside the scope of these provisions. As such, a more targeted approach is required and that is what this bill will do.

Finally, in drafting this legislation, we have also taken the opportunity to further disincentivise driving while under the influence of drugs. The bill will extend the warranty provided by the vehicle owner under the statutory CTP insurance policy to include that the vehicle will not be driven by a person who is impaired by drugs, improving consistency in the treatment of alcohol and drugs, and reflecting community expectations and the approach under road traffic laws.

This bill is a crucial step to limit claims harvesting activity and to protect vulnerable members of our community from the predatory and detrimental effects of claims harvesting.

I commend the bill to the house.

Debate adjourned, on motion by **Ms M.J. Davies**.