



# ***Motor Accident Insurance and Other Legislation Amendment Bill 2019***

Submission to the Economics and Governance  
Committee

**[3 July 2019]**

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## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input into the *Motor Accident Insurance and Other Legislation Amendment Bill 2019* (“the Bill”).
2. The ALA strongly supports legislative measures to deal with activities of claims farmers and others, including lawyers, involved in the claims farming process. We commend the government for taking action in this regard.
3. The Explanatory Note to the Bill<sup>[2]</sup> clearly outlines the policy objectives of the proposed change:

*The Bill’s policy objective is to stop claim farming. ‘Claim farming’, as it is known in the insurance industry, involves anonymous persons contacting members of the public, from local or overseas call-centres or via email or social media, to ask whether they or a family member have been involved in a motor vehicle accident.*

It goes on to say:

*Claim farmers induce and harass individuals to make a claim under the statutory insurance scheme (scheme) established by the Motor Accident Insurance Act 1994 (Act), often with the promise of quick and easy compensation, and may even offer to coordinate medical treatment. Claim farmers sell individuals’ personal information obtained through the contact for a fee (either directly or through an intermediary) to a legal practitioner or other claims management service provider who then handles the claim under the scheme. (p.1)*

4. The ALA welcomes this prudent and long awaited policy objective, and congratulates the Government on taking positive action to remove the scourge of claims farming practices. Queensland is the first jurisdiction in Australia to move, legislatively, on this issue.
5. The ALA notes that this bill stems from a report on claim farming prepared by Mr Richard Douglas QC dated 17 January 2019. In the report Mr Douglas QC states that conventional claim farming consists of:
  - a. Contact made by cold calling, with the caller having prior knowledge of a motor vehicle accident;
  - b. Telephone contact is preferred as it involves little or no documentary proof of contact;

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<sup>[2]</sup> <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-090>

- c. “Critically, the call is international, often originating in the United Kingdom”;
  - d. The contact is often commenced by false pretences, such as the caller falsely identifying themselves as being from the Motor Accident Insurance Commission, an insurer or some other government agency;
  - e. Farmed claims are then ‘sold’ for a fee to a lawyer.
6. The ALA believes that claims farming can be equated to the practice of illegal hawking, the impacts of which were clearly laid out during the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Commissioner Hayne, in his final report<sup>[3]</sup>, described such behaviours as follows:

*The practice has long been unlawful because it too readily allows the fraudulent or unscrupulous to prey upon the unsuspecting. (p.13)*
7. Queenslanders are most likely to fall victim to the unscrupulous practices of claim farmers at time when they are at their most vulnerable. It is fair that they expect that the advice and information they are receiving is trustworthy, and coming from a reputable source. The anonymous nature of the practice, as described in the Explanatory Note, hides the potentially compromised nature of the approach.
8. The intent of the legislative amendments as outlined therefore is welcome, including in Queensland showing leadership to tackle these issues through a meaningful and comprehensive approach. .
9. We have, however, in consultation with our members and key community groups, identified certain situations where the proposed drafting at present goes far beyond the intended purpose and may have unintended consequences. The matters we identify in these submissions are of concern for our members, as they may inadvertently impact access to justice and to legitimate and ethical relationships.
10. Our concerns are outlined in the sections below.

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<sup>[3]</sup> <https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf>

## Section 74 – giving or receiving consideration

### The concern with s.74

11. Section 74 prohibits the giving, or receiving, of consideration for a claim referral or potential claim referral.
12. The concern of the ALA is that proposed s.74 goes well beyond prohibiting the elements of claims farming that are outlined so clearly in the policy objectives. Aside from capturing the insidious, anonymous proponents of claims farming, it also has the potential impact of rendering relationships between law firms and a variety of non-profit bodies illegal. These relationships are widespread, and provide financial and in-kind support between non-profit and community groups and law firms.
13. Many peak bodies and representative groups see it as their core function to offer access to quality, trusted services to their members. Access to advice from trusted legal services is an example of these services. Access to such relationships differs significantly from the impersonal, anonymous, cold calling claims farming processes described in the policy objectives.
14. It is clear that the intent of the amendments detailed in the Bill was not, and is not, to proscribe such relationships.
15. The legal profession have had, and continue to have, arrangements with various non-profit organisations including:
  - a. Charitable groups, both incorporated and unincorporated;
  - b. Service or community organisations such as Rotary, Lions International or Zonta International;
  - c. Educational institutions – kindergartens, schools both private and public, TAFE facilities, and tertiary facilities;
  - d. Registered industrial organisations (unions);
  - e. Community legal services; and
  - f. Sporting and recreational bodies.
16. In general, these arrangements might involve:
  - a. A payment by the law firm to the organisation by way of sponsorship, donation or support;
  - b. Undertaking of legal work at reduced (or no) cost;
  - c. Free initial consultations or portions of work for free (e.g. lodging an application for review of a workers' compensation insurer's decision to reject a worker's

- application for compensation, to assist the member of one of the above organisations); and
- d. Secondment or provision of lawyers for short periods to provide legal and strategic advice, assist with advocacy or provide other support.
17. Such arrangements are based on values alignment. Meaning that law firms and their lawyers have interests and values in common with these organisations and their members; which interests inherently revolve around the community.
18. On occasion, an element of such arrangements is also the receipt of referrals, although it must be noted that this does not occur in every arrangement.
19. Those referrals when they do occur can take the form of some members, clients, stakeholders and associates of the organisation being referred to the law firm or alternatively seeking out the law firm where the legal services being sought by the referee include advice on personal injury claims from a motor vehicle accident.
20. Such activities are quite different to claims farming in that:
  - a. There is no anonymity – the relationship between the community organisation and the service provider is well known, often stemming over many years;
  - b. There is no cold-calling involved;
  - c. There is no on-selling of personal information; and
  - d. Contact with a lawyer or the community organisation is no based on false pretences.
21. The building of relationships between law firms and community organisations is not restricted to law firms whose work includes the bringing of motor vehicle accident claims. Many organisations share relationships with firms who practise in different areas of the law or even outside of law, such as accountants and other professionals, where again the relationship is founded on supporting the work of the organisation (whose values they share), but where also from time to time referrals of potential new clients may be received from the organisation which is supported.
22. The ALA is also concerned that s.74, as presently worded, may also capture lawyers or other law firm employees, who refer a family member, friend or others they meet in a social setting who may potentially have a CTP claim. Once again, this is a far cry from the policy objectives articulated in the explanatory notes.

## Examples of potential breaches of s.74

23. In the following paragraphs, we outline some examples of situations where a mutually beneficial relationship between a community service organisation and a law firm may be proscribed by anti-claims farming legislation, placing the organisation, its members and the law firm at unnecessary and unintended risk of legal consequence.

### 24. Example 1 – industrial organisation

A law firm sponsors Christmas drinks for an industrial organisation. The law firm pays to the organisation \$2,500 for those Christmas drinks.

The organisation has a preferred legal services provider arrangement of longstanding with the law firm. Under that arrangement, the organisation encourages its members and members' families to consult the law firm for advice about a range of legal rights including, but not limited to, rights arising under the operation of the *Motor Accident Insurance Act*.

An organiser from the organisation becomes aware that one of her members has been cycling to work and was hit by a car, thus sustaining serious injuries. The organiser believes that such an event may give rise to possible legal rights and entitlements and wishes to ensure that the member has advice about those rights. The law firm has expertise in at least three areas in respect of which the union member may have rights and entitlements:

- (i) Rights under Queensland's workers' compensation scheme – journey claim and possible permanent impairment entitlements;
- (ii) Rights under the *Motor Accident Insurance Act* (CTP) – rehabilitation and common law damages; and
- (iii) Rights under the superannuation fund of which the union member is a member – potential income protection and total and permanent disablement rights.

The organiser passes on the member's details to the law firm or the law firm's details to the member.



**25. Example 2 – sporting and recreational bodies**

A law firm has a sponsorship arrangement by which it provides \$5,000 per year to the Leyland P76 Owners Club (LP76C). Under that sponsorship arrangement, LP76C uses those funds to finance show and shine events, and maintain a volunteers' database. The club also uses those funds to buy a range of merchandise and give-away items (chamois, dashboard ornaments), some of which bear the law firm's name. The club's website identifies the law firm as providing services including personal injury services to members of LP76C.

From time to time potential members with an injury may be referred by the club or one of its executives, rather than through promotional material. The law firm supplies legal services to members of the club, and their families, at a discounted rate.

One the club's members has been involved in a serious accident, and the club secretary contacts the member and in the process tells the member about the advice services provided by the law firm. The secretary suggests they speak to the law firm for advice about the insurance policy that the club has for its members, a possible CTP claim, and any other entitlements under other insurance held by the member.

**26. Example 3 – sporting and recreational bodies**

A law firm reaches an arrangement with a suburban football club. Under that arrangement the law firm pays \$3,000 in return for which the football club places the law firm's logo on its jerseys. Further, the law firm also provides concessional arrangements to financial members of the football club with respect to legal services, including a free first appointment.

The coach of the club becomes aware that a player or their family member is injured in a motor vehicle accident. The coach provides guidance in the form of referring them to the law firm.

**27. Example 4 – community legal service**

A Community Legal Service holds a fundraiser for funds for their service as a result of cuts to Federal funding. A law firm donates \$1,000. Like many law firms in the profession, the firm also donates time to the community legal service for the benefit of members of the public. The community legal service provides a panel of law firms, in the local area, for those who seek legal advice for specific areas of legal practice,

including personal injury. This law firm's name is provided to a client by the community legal service, for an injury they have suffered from a motor vehicle accident.

**28. Example 5 – charitable organisations**

A law firm sponsors a regular fundraising dinner for a charity, in the amount of \$5,000. The charity has clients from disadvantaged or migrant backgrounds. Some of the lawyers from the firm give presentations on various legal issues to the clients and staff of the charity. It is not uncommon for volunteers and staff of the charity to give details of the law firm to those clients who need legal assistance or alternatively to assist in setting up meetings with lawyers from the law firm, often the staff member or volunteer agreeing to act as an interpreter. In turn, the law firm offers clients of the charity discounted legal fees. One of the types of legal matters referred is motor vehicle accident claims.

**29. Example 6 – community organisations**

A Rotary club in a Queensland regional centre wishes to send a student, from a less advantaged socioeconomic background, on a study exchange, but doesn't have the funds. A law firm in the regional centre donates \$5,000 to the rotary club, which makes the exchange for the student affordable and possible. The program goes so well that it becomes an annual bursary by the law firm.

The daughter of a rotary club member sustains serious injuries in a cycling incident, which involved a car, and the president of the rotary club refers the member and daughter to the law firm.

**30. Example 7 – educational institutions**

The partner of a law firm has a child in a school. The school intends to put on a rendition of Macbeth and the law firm partner's child in starring in the play. The school's drama department does not have all the funds it needs, so the law firm donates \$2,000 via the P&F association. The play is a success and it is decided to arrange two plays per year, with the law firm agreeing to provide \$2,000 every year as a donation towards those plays. Some weeks after the play a parent of a student is injured in a car accident and asks the P&F where they can get assistance from. They are referred to the law firm. The P&F and teachers at the school regularly refer people to the law firm for legal advice, including as a result of motor vehicle accidents.

**31. Example 8 – educational institutions**

A law firm advertises or buys advertising space in the “Red Book”, published every year at a private school. The book lists the names and telephone numbers of the students at the school with their parents’ names listed as well. It includes other useful information for the school and is an important source of income for the school’s P&F, including alumni. Two of the teachers assist in the preparation of the Red Book.

The law firm takes out the advertising largely to support the school. There are, from time to time, some referrals, but it is not the main reason the law firm advertises in the Red Book.

A parent of a student is injured in a motor vehicle accident. The parent’s partner tells a teacher that things have been financially difficult at home since the accident and they need legal advice but does not know who to speak to. The teacher says that the only firm that she is aware of is the firm listed in the Red Book. The parent therefore comes to the knowledge of the law firm through the teacher’s referral, not the advertising.

**32. Example 9 – law firm employees**

Ms L is a law student who works two days a week at a law firm. One evening at networking drinks for university students she meets for the first time a person from the same campus studying veterinary science. This person is in a wheelchair. Ms L asks “what happened?”. The vet science student tells her that she was cycling three weeks ago when she was struck by a car which failed to observe a give way sign. Ms L says “I am not a lawyer yet, but I work in a law firm that helps lots of people who have been injured in accidents and I know that based on what you told me, you have legal rights. You should lodge a claim. I can arrange for you to see one of the lawyers at our firm in the next few days to explain your rights, and get the ball rolling”. Ms L receives her wages from the law firm, and knows if the referral leads to a claim, the law firm will be charging legal costs.

**Why is the ALA concerned with the impact of s.74?**

- 33.** The organisations, noted above, provide access to justice, which is supported by law firms, both financially and by the provision of legal services to members or clients of these organisations. The provision such legal services quite often involves:
- a.** Free initial consultations; and
  - b.** Discounted legal fees.

34. In the various examples provided above, the sponsorship, donation, free initial consultation and reduced legal fees, are all consideration within the meaning of the presently draft s.74.
35. The link between the giving, or receiving, of consideration is that it is “for a claim referral or potential claim referral”, which requires a purposive connection between the consideration and the claim referral. Specifically, something may be done “for”, that is, to achieve an object, even though that particular purpose may not be the sole or even principal object of the action.
36. Ultimately, the purpose of making or agreeing to make a payment is a subjective matter. It is the subjective intention of the law firm which is at issue. However, this would not prevent the subjective intention from being inferred from a history of the relationship between the law firm and an organisation., which is likely not only to include referrals but also messages expressing gratitude and praising the relationship.
37. Where the relationship includes concessions for members of the organisation in terms of free or reduced price consultations, the proof of the purposive link between donations and sponsorship and the referral of work will be able to be established. Such arrangements provide a form of institutionalising referrals which might, in other relationships, be much more occasional and ad hoc.
38. The bill also requires law practice supervising principals to provide a law practice certificate verified by statutory declaration that there has been no breach of ss.74 and 75 (we deal with s.75 separately below). Law practices therefore will have to act in a way that avoids a breach of the obligations to be created by ss.74 and 75 and, in respect of every new client with a motor accident claim, the supervising principal must definitively declare that no breach of the law has occurred. This requirement places law firms, who participate in claims farming activities, under an obligation to disclose that fact, or commit a further offence.
39. A breach of s.74 may result in the law practice, and lawyers within the practice, facing significant fines, being investigated, professional sanctions and potential prosecution for perjury, for maintaining long standing and important community relationships. The consequences for practitioners, breaching these provisions, are of the severest type. The ALA advocated for severe sanctions for lawyers who engage in claims farmers’ business models.
40. These organisations and individuals acting on behalf of the organisations, themselves would potentially also breach s.74(2) and thereby face significant financial penalties. The reputations of such organisations would be unfairly tarnished with the same brush

as claims farmers, despite these arrangements clearly being anything but claim farming arrangements.

41. Members and clients of these organisations (and their families) would have a vital right to access to justice taken away.
42. Section 74, as presently drafted; unfairly captures legitimate, ethical and longstanding relationships. Therefore, given the serious consequences of s.74, the need for complete certainty about the extent of the reach of s.74 is both acute and apparent.

## A proposed solution

43. The ALA proposes a solution to this issue, which revolves around the definition of 'consideration', as follows:

*"Consideration means a fee or other benefit but does not include:*

- (a) *A gift or hospitality if the gift or hospitality has a value of \$200 or less; or*
  - (b) *Fees and costs, including disbursements, a law practice is entitled to charge and recover in relation to a claimant's claim; or*
  - (c) *Any fee or other benefit to:*
    - (i) *An unincorporated association that is a registered entity under the Australian Charities and Not-For-Profits Commission Act 2012 (Cth);*
    - (ii) *An incorporated association that is a registered entity under the Australian Charities and Not-For-Profits Commission Act 2012 (Cth);*
    - (iii) *A community legal service as defined by the Legal Profession Act 2007;*
    - (iv) *A school, university or other educational institution;*
    - (v) *An overarching body, subsidiary or affiliate of a National Sporting Organisation (NSO) or National Sporting Organisation for People with Disability (NSOD) as recognised by Sport Australia;*
    - (vi) *An industrial organisation as defined under the Industrial Relations Act 2016; or*
    - (vii) *Any other person prescribed by regulation."*
44. The drafting proposed by the ALA specifically ties consideration to the exempted organisations. Therefore, s.74 will remain effective to proscribe claim farming and the conduct of any rogue individuals within such organisations as it should, and others not exempted, from partaking in claims farming activities. Both the individual or non-exempt organisation, and the law firm, would thus still be liable for the consequences of a breach of s.74.
  45. The proposed explicit exemptions will not lead to a rush of community, charitable, educational, sporting or industrial organisations being utilised as shams to foster claims farming activities. There is no evidence of such arrangements presently existing.

46. Each of these organisations have reporting responsibilities, either legislatively or through their governing structures. Further, to set up such organisations requires compliance with regulatory frameworks and is not an easy exercise. The ALA's proposed solution therefore will not open up such organisations to be used as fronts for claim farming activities.
47. The exception of law firm's legal fees and costs will ensure that the very wide meaning of "consideration" does not unintentionally capture law firm employees and lawyers referring their family, friends and others they may meet in social settings who may be referred to the law firm for a potential claim.

## **Section 75 – approaching or contacting**

### **The concern with s.75**

48. Section 75 prohibits a person from personally approaching or contacting another person (the second person) to solicit or induce the second person to make a claim.
49. As with s.74, the ALA understands the intention underpinning the clause, and applauds the intention of the State Government to rid Queenslanders of unwanted hawking.
50. Unlike s.74, there is an express exemption for community legal services and industrial organisations contained in s.75. The effect of this exemption is to permit a law firm or lawyer to approach or contact a second person, if they are asked to do so by a representative of a community legal service or industrial organisation and the representative reasonably believes the second person will not object.
51. Section 75 also permits a person to approach or contact a second person for the purpose of a claim referral if:
  - a. The first person does not expect or intend to receive consideration, and does not actually receive consideration, and does not ask anyone else to give or receive consideration; or
  - b. A law firm or lawyer approaches or contacts an existing or former client, or their relative, and reasonably believes this will not be objected to.
52. The operation of s.75 in its current drafting is inconsistent with s.74 given the limited exemptions offered to community legal services and industrial organisations.
53. The ALA is concerned that this section stops short of providing the same exemption to:
  - a. Charitable groups, both incorporated and unincorporated;

- b.** Service or community organisations such as Rotary, Lions International or Zonta International;
- c.** Educational institutions; and
- d.** Sporting and recreational bodies

On a strict interpretation, the operation of s.75 may make the exemption for community legal services and industrial organisations illusory.

- 54.** We are also concerned that lawyers may risk breaching s.75 in innocuous social settings.
- 55.** The inconsistency between ss.74 and 75, in respect of s.75 exempting community legal services and industrial organisations, may well lead to the withdrawal of sponsorships, donations, free initial consultations and reduced cost legal work by law firms for the members and clients of community legal services and industrial organisations. If a law firm does not provide any consideration to these organisations, then there would be no breach of s.74, and s.75, and would permit the approach or contact. Thus those law firms' currently providing valuable and values aligned support to such organisations would be compelled to withdraw such support otherwise still breach s.74. This would have a negative impact on these organisations and access to justice.
- 56.** The ALA does not believe there is any genuine and reasonable basis not to extend the exemption for s.75 to charitable, community, educational and sporting organisations. These organisations have commonalities with community legal services and industrial organisations in that they are membership based bodies with a non-profit special interest focus.
- 57.** Section 75 also raises the question of whether there is a breach if a lawyer discusses a motor vehicle accident with family, friends, acquaintances or someone they have just met in a social or business setting. Can the lawyer speak to someone at a friend's barbecue, whose leg is in full length plaster, to ask that person what happened, and if they were injured in a motor vehicle accident, whether she intends to do anything about her legal rights? Can the solicitor hand over a business card in case the person wishes to have a more detailed formal discussion and consider pursuing a claim? There may be a number of reasons why this situation breaches s.75, including:
  - a.** Is the lawyer's salary considered consideration? Possibly, as there would be an expectation by law firms that their lawyers introduce new work.
  - b.** If the law firm offers its staff a bonus or gift over \$200.00 for introducing a new client, this would breach s.75(3)(a).

- c. The lawyer may well, inadvertently cause the law firm to breach s.75, as an associate of the law firm.
- 58. It would seem, from the broad terms of s.75(1) and (2) that simple actions of this kind may be prohibited by s.75 if it is enacted – again with respect to activities that fall well apart from any agreed understanding or notion of behaviour that constitutes claims farming.

### **Examples of potential breaches of s.75**

- 59. In the following paragraphs, we outline some examples of situations where the mutually beneficial and agreeable sharing of information may inadvertently be caught up in anti-claims farming legislation.
- 60. Example 1 – industrial organisation

A union organiser (“first person”) becomes aware that a union member (“second person”) has sustained serious injuries in a motor vehicle accident. The organiser and the union member have no existing personal or social relationship; it is purely a relationship arising from union membership.

The union organiser makes some enquiries as to the circumstances of the accident and learns that the union member had been working a 12 hour shift overnight and then been asked to perform four hours overtime before embarking on a three hour drive, the length of which was known to the employer. On the drive, a vehicle travelling in the opposite direction veers towards the member’s vehicle. The member’s fatigue contributes to a slow reaction time. No collision occurs but the member’s vehicle rolls and he is thereby injured.

The union organiser attends at the hospital where the union member is receiving treatment and provides general support. In the course of that meeting the organiser tells the union member that his legal rights are crucial and that he may be able to bring claims, including under the Queensland CTP scheme, and against his employer for allowing such a lengthy drive when the employer knew, or ought to have known, that its employee was fatigued. The union receives sponsorships from a law firm, which also provides its members discounted legal fees.



The union organiser arranges for a lawyer from the law firm to meet with the member to provide advice on various legal rights. The union member is not at that time, nor has he at any previous time been a client of the lawyer or the law firm.

Upon attending the hospital and eliciting full instructions from the union member, the lawyer forms a view that the union member has viable claims to be pursued.

The lawyer having formed that view, advises that such claims should be pursued. She is thus *soliciting or inducing* a claim, inter alia, under the CTP scheme. If a broad literal interpretation is applied to s.75, the organiser may be agreeing to the union receiving future sponsorships and therefore the union and the organiser may breach s.75. However, the lawyer and the law firm would not be protected by s.75(3)(c).

**61. Example 2 – law firm staff**

Ms L is a law student who works two days a week at a law firm. One evening at networking drinks for university students she meets for the first time a person from the same campus studying veterinary science. This person is in a wheelchair. Ms L asks “what happened?”. The vet science student tells her that she was cycling three weeks ago when she was struck by a car which failed to observe a give way sign. Ms L says “I am not a lawyer yet, but I work in a law firm that helps lots of people who have been injured in car, motorbike, cycling and pedestrian accidents and I know that based on what you told me you have legal rights. You should lodge a claim. I can arrange for you to see one of the lawyers at our firm in the next few days to explain your rights, and get the ball rolling”. The vet science student is not, and has never previously been, a client of the law firm.

In this example Ms L is the “first person” contemplated by s.75(1), the vet science student is the “second person” contemplated by s.75(1). Quite obviously, Ms L has solicited or induced the vet science student to obtain advice and make a claim under the statutory insurance scheme.

**62. Example 3 – law firm staff**

A partner of a law firm which predominantly practices in personal injury work, sees their personal accountant. On arriving for the appointment, another principal of the accountancy practices meets with the law firm partner and tells them that their accountant has been urgently called away. The husband of the accountant has been involved in a serious car accident. This accident involved a hit and run, with the driver

leaving the scene. The appointment is rescheduled to a later date, at which time the law firm partner asks his accountant about her husband's wellbeing. She advises it is serious, her husband is now paraplegic. The accountant asks if the law firm partner would speak to her husband about his legal rights. The lawyer agrees and visits the husband in hospital, as a result of which they receive instructions to act in relation to a number of matters, including a CTP claim.

The law firm partner is the "first person" and the accountant's husband is the "second person". The law firm partner and their law firm expects and does charge legal fees, which is consideration. This scenario breaches s.75.

**63. Example 4 – sporting and recreational bodies**

A law firm reaches an arrangement with a suburban football club. Under that arrangement the law firm pays \$3,000 in return for which the football club places the law firm's logo on its jerseys. Further, the law firm provides concessional arrangements to financial members of the football club for a free first appointment and concessional hourly rate.

Both the "free first appointment" and the concessional hourly rate would constitute an "other benefit" within the context of the definition of "consideration". If a player's family member is injured in a motor vehicle accident and a committee member or executive were to provide details of the law firm and encourage they seek legal advice about making a claim, there would be a breach of s.75. In this case, the committee member or executive would be in breach of s.75 with a consequent maximum financial penalty of 300 penalty units.

**64. Example 6 – community legal service**

A community legal service (*first person*) holds an annual fundraiser for funds for their service. A law firm donates \$3,000 annually to support the service. Like many law firms in the profession, the law firm also donates time to the Community Legal Service for the benefit of members of the public. They also offer discounted legal fees for clients of the service who are referred for more detailed legal advice. The community legal service (*first person*) provides a panel of law firms, in the local area, for those who seek legal advice (*second person*) for specific areas of legal practice, including personal injury. The law firm's name is regularly provided to clients by staff members of the community legal service, where the clients have suffered injuries from a motor vehicle accident. The community legal service and its staff potentially breach s.75.

## Why is the ALA concerned with the impact of s.75?

- 65. Section 75, as drafted, will capture charitable, community, educational and sporting organisations, who provide valuable support to their members, including access to justice or access to appropriate legal advice.
- 66. In respect of community legal services and industrial organisations, the exemption in s.75(3)(c) is arguably illusory.
- 67. The provision will mean that lawyers cannot discuss any injuries with family, friends, acquaintances or people they meet in social setting, for fear of soliciting or inducing a person to bring a claim and therefore leading to a breach of s.75.
- 68. It appears to be unreasonably and unintentionally wide in its basic prescriptions raising concern about its correct construction, including some worrying possible implications as to what this may be. Therefore, it is presently uncertain in its construction.

## A proposed solution to s.75

- 69. The ALA proposes a solution to this issue, which is the same as for s.75, being the definition of 'consideration', as follows:

*“Consideration means a fee or other benefit but does not include:*

- (d) A gift or hospitality if the gift or hospitality has a value of \$200 or less; or*
- (e) Fees and costs, including disbursements, a law practice is entitled to charge and recover in relation to a claimant’s claim; or*
- (f) Any fee or other benefit to:*
  - (viii) An unincorporated association that is a registered entity under the Australian Charities and Not-For-Profits Commission Act 2012 (Cth);*
  - (ix) An incorporated association that is a registered entity under the Australian Charities and Not-For-Profits Commission Act 2012 (Cth);*
  - (x) A community legal service as defined by the Legal Profession Act 2007;*
  - (xi) A school, university or other educational institution;*
  - (xii) An overarching body, subsidiary or affiliate of a National Sporting Organisation (NSO) or National Sporting Organisation for People with Disability (NSOD) as recognised by Sport Australia;*
  - (xiii) An industrial organisation as defined under the Industrial Relations Act 2016; or*
  - (xiv) Any other person prescribed by regulation.”*

70. Further, the ALA proposes the insertion of a new s.75(3)(d), as follows:

*“(i) personal approach or contact arises from, or is incidental to, an existing social, personal or business relationship; and  
(ii) the first person reasonably believes the second person will not object to the approach or contact”*

## **Certificate accompanying the notice of claim**

71. Clause 29 of the bill amends s.18 of the Motor Accident Insurance Regulation 2018 by requiring the claimant sign a certificate stating:
- a. whether they have personally been approached or contacted and solicited or induced to make a claim; and
  - b. if so, that name of the person and the circumstances in which the approach or contact occurred.
72. The ALA appreciates the intent behind this provision, however suggests that this provision should be linked directly to the s.74 and s.75 offences specifically.
73. Lawyers will be required to explain this to their clients, and therefore it is important that there is clarity as to what a lawyer is to explain and what conduct is and is not caught. This is particularly important if the exemptions proposed by the ALA are adopted, to make clear that a personal approach or contact in those specific circumstances is not required to be identified in the certificate by the claimant.

## **Transitional provision**

74. Clause 26 of the bill inserts s.115 in the *Motor Accident Insurance Act 1994*. This provision applies where a law practice is retained to act for a claimant before the commencement of the amendments and the claim has not concluded before to the commencement of the amendments.
75. It requires the law practice to comply with the requirements to provide law practice certificates at times required in the proposed amendments, as follows:
- a. s.36A – which requires the law practice certificate be given before the claimant gives the notice of accident claim form;
  - b. s.36E – which requires a law practice certificate be given during the sale of all or part of a law practice;

- c. s.37AB – which requires the law practice certificate be given within one month of the law practice being retained to act for a claimant who has already given a notice of accident claim form;
  - d. s.39A – which requires that, if the law practice has not given the certificate to the claimant prior to the notice of accident claim form being given and the insurer has waived non-compliance, the law practice certificate must be given within one month of the claimant being notified of the waiver of compliance;
  - e. s.41A – which requires the law practice certificate be given within seven days after settlement or judgement.
  
- 76. The timing of when the law practice certificate has to be given under ss.37AB and 39A is problematic. If a law practice is retained after the claimant has given the notice of accident claim form, the law practice certificate must be given within one month of the law practice being retained. As an example, if the law practice was retained to act on 2 July 2019, then the certificate would be required to be given by 2 August 2019. However, if the amendments do not commence until 2 September 2019, it is simply not possible for the law practice to comply with the requirement to give the certificate within one month of being retained.
  
- 77. The ALA suggests that a law practice certificate required to be given in circumstances identified by ss.37AB and 39A should be given within a specified time of the commencement of the amendments. We would suggest within 3 months of the date of commencement. This will allow sufficient time for law practices to implement any required systems changes and identify all claimants who fall within the circumstances of these provisions.

## Conclusion

18. The ALA welcomes action being taken to stop the conduct that is commonly referred to as claim farming to ensure the integrity of the compulsory third party insurance scheme in Queensland.
19. However, legislative change must take a measured approach to avoid unintended consequences on the conduct of legitimate and ethical business, and the profound social and community benefit conferred by relationships of the type we have described in this submission. Our submission has reflected on some examples of how the current proposed drafting of the Bill could impact such legitimate and ethical business, and also access to justice.
20. The ALA has provided suggested amendments to the Bill to ensure a measured approach, but also ensure an effective mechanism to proscribe claim's farming conduct.
21. We are available for further discussion of the Bill and look forward to being involved in further stakeholder consultations.

Yours sincerely,



Greg Spinda  
Queensland President  
**Australian Lawyers Alliance**