INSURANCE COUNCIL OF AUSTRALIA

3 July 2019

Ms Lucy Manderson
Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane QLD 4000

Via email: egc@parliament.qld.gov.au

Re: Motor Accident Insurance and Other Legislation Amendment Bill 2019 (QLD)

Dear Ms Manderson,

The Insurance Council of Australia (ICA) welcomes the opportunity to provide feedback on the *Motor Accident Insurance and Other Legislation Amendment Bill 2019* (QLD).

The ICA is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by general insurers. This includes the four insurers who underwrite the CTP scheme in QLD.

The ICA is supportive of the Bill and welcomes the Government taking action to address claim farming practices. Claim farming practices promote abnormal claim frequency, which leads to increased operating costs for insurers across the scheme.

The ICA supports the prohibition on cold calling and unsolicited approaches to people in order to induce them to make a claim. The ICA also supports the prohibition on paying claim farmers for personal information of potential CTP claimants and the prohibition on paying for a claim referral or future claim referral.

The ICA agrees these measures will help to protect vulnerable people being taken advantage of as well as protect the affordability and integrity of the CTP scheme.

We note that the Government has addressed a number of the concerns we raised in our submission to the exposure draft and thank the Government for its consideration of our feedback. We have attached a table outlining remaining issues we have about the operation of the Bill.

In reviewing the Bill, the Committee should review all matters in the context of the Bill's purpose to curtail and disincentivise claim farming in the QLD CTP scheme. We further urge the Committee to critically examine any provisions in the Bill that may operate to frustrate the Bill's objectives, so that any weakness, gap or allowance in the scheme will not be open to exploitation.

If you would like to discuss any of these matters further please do not hesitate to contact Fiona Cameron, General Manager Policy, Consumer Outcomes at [redacted] or [redacted]

Yours sincerely

Robert Whelan
Executive Director and CEO

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Clause No.	New Section	ICA Comments
15	74(4) and 75(5)	The definition of 'consideration' in the Bill does not include a gift, other than money, or hospitality if the gift or hospitality has a value of $200 of less. In our exposure draft submission, the ICA submitted that the exclusion of a 'token gift or hospitality if the gift or hospitality has a value of $50 or less' was not desirable. This is because a claim farming operation may still be profitable if the referral payment is less than $50 per referral. For example, a claim farmer could send emails or use an overseas call centre to contact claimants and receive a 'gift' of $50 from the law practice for referrals. We note this value has been increased to $200 in the Bill, which provides an increased scope for claim farming incentives. The ICA submits that no gift of any value should be permitted to be received for the referral of a claim, as this is contrary to the aims of the legislation. Alternatively, the ICA submits that the definition could read, 'Consideration means a fee or other benefit, but does not include a gift, other than a gift of money or credit.'
15	74(2)	The ICA was concerned that the exposure draft was not drafted broadly enough to capture situations where groups of claims are bundled together and sold by a firm or another party, as it merely made reference to receiving or allowing or causing another person to receive 'consideration for *a claim* referral'. This could be read as only applying to a one-to-one relationship between the consideration paid and the claim referral or claim service engagement. There might be instances where a claim farmer could be paid for a number of claim referrals or claim service engagements where a law practice pays a claim farmer an annual sum for obtaining referrals. We note that the Bill retains the reference to *a claim referral* but has the addition of a '*potential claim referral*'. This could potentially capture situations where there is an advanced payment or annual sum for obtaining referrals. However, the ICA submits this can be more clearly addressed by a general explicit prohibition on receiving consideration for *claim referral services*.
15	74(1) and 74(2)	The ICA submits that the words 'allow' and 'cause' are potentially too wide. It could mean that the section is breached if a person does not prevent such a payment from being made even if they did not authorise the payment, nor were a party/privy to the transaction. For example, read literally, the prohibition could apply to banks facilitating the payments of such consideration or insurers paying claims where the claim payment may be used by a law practice or claimant to pay such consideration. We propose that the words 'allow' and 'cause' be deleted and replaced with 'authorise'.
15	75(1)	The ICA believes that 75(1) does not capture situations where claims can be farmed without a personal approach to the potential claimant. For instance, a claim farmer may pay an internet search engine to have their contact

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		details come up as the first search result when a potential claimant seeks the claims contact of a CTP insurer. The search result may not alert the customer to the fact that the contact details are not those of the insurer. There has been no personal approach to the claimant – in fact, the claimant approaches the claim farmer. The ICA submits that the advertising of claims service engagements should explicitly disclose that the advertiser and service provider are not CTP insurers.
15	77	The ICA submits that s77 should not only apply where there is a court conviction but where there is any contravention of 41A, 74(1) or (2) or 75. Consequences should also flow from any contraventions, not just those that result in a conviction. The ICA proposes that s77(1) be drafted so that it applies where there is a court conviction, where there is a contravention enforced by MAIC or where there is an admission of claim farming practice.
19	87RX	The provision is limited to ordering costs for the Commission's reasonable costs of an investigation and preparing for prosecution. The ICA submits that the Bill should also provide that the court may issue a cost order for an insurers' reasonable investigation and legal costs. The ICA believes this is reasonable, as scheme funds should be protected against actions brought by unmeritorious and fraudulent claims where prosecution is successful. A provision to seek reimbursement for costs incurred due to a Commission initiated investigation would also act as a good balance to the broad powers of the Commission under s87ZC(1).
25	87ZC(1), (2) and (8)	The ICA argued in its exposure draft submission that as drafted, 87ZC(1) allows the Commission to investigate into the 'affairs' of an insurer which is broader in scope than 87ZC(2) which allows the commission to investigate the 'relevant affairs' of a law practice or lawyer, associate of a law practice or entity prescribed by regulation. The ICA is concerned that this broad power might allow for the investigation of claims by the commission outside the CTP scheme which would go beyond the intent of the legislation. Both subsections should mirror each other. Therefore the ICA proposes adding 'relevant' before 'affairs' in 87ZC(1). The ICA also notes that the definition of 'relevant affairs' under 87ZC(8) may now be too narrow. The ICA submits that 'relevant affairs' should be defined as any arrangements, operations, practices, transactions or activities by the investigated person relating to the circumstances of referral and instruction of the investigated person, or an associate of the investigated person, in relation to a claim.
25	87ZC(2)	The ICA submits that the power to investigate related bodies corporate should be extended to 87ZC(2) entities. This is because some law firms or other entities that are likely to be prescribed by legislation can have complex and connected ownership structures.

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25	87ZE	The ICA proposes that the scope of 87ZE 'related bodies corporate' should be applied to all 87ZC investigated bodies. The ICA submits that this would allow the Commission to investigate any related subsidiaries of relevant law firms, medical providers, or other entities that interact with the scheme.
	The Bill as a whole	The ICA noted in our exposure draft submission that under 39(1)(a)(ii) of the *Motor Accident Insurance Act 1994* (QLD), the insurer can waive compliance with the requirements for notice to be given as required under the relevant division. The ICA continues to query whether the intention of the Bill is that insurers can waive non-compliance if a law practice does not provide a certificate, as the current Bill does not address this. We request certainty around the progress of a claim and how the requirement to provide a certificate can be enforced and balanced with progressing the claim.
	The Bill as a whole	The ICA wishes to repeat our query in our exposure draft submission as to what occurs if there is a breach due to non-compliance with the provision of a certificate. We seek clarity as to whether the claim should proceed or not proceed, as there needs to be certainty for claimants and where a breach would leave them in relation to ongoing claim management. We also wish to reiterate that there ought to be additional incentives in the Bill to comply. Such as, for example, a requirement that no fee is paid until a certificate is provided.
	The Bill as a whole	The ICA noted in our exposure draft submission that the Bill requires the provision of two certificates: one at lodgement and one at settlement. We reiterate that the Bill's application should be extended to include the settlement of claims currently on the insurer's books.
	The Bill as a whole	The ICA submits that the proposed maximum 300 penalty points are an insufficient financial deterrent to the practices of claim farming. The penalty should be more meaningful to allow the Bill's purpose to curb claim farming practices to be achieved. The ICA submits that penalties could be calculated based on company revenue.