

Submission regarding the Motor Accident Insurance and Other Legislation Amendment Bill 2019

Introduction

1. Shine Lawyers is a Queensland based national law firm who represents every day people who have been injured or wronged. We represent many people across the State of Queensland having offices in over 20 locations. As a legal practice that operates in the area the subject of the Bill, we have welcomed the opportunity to have input and have previously provided input on the draft Bill through a submission to the Motor Accident Insurance Commission.
2. Shine Lawyers supports the objective of the Bill to stop the practice of insurance “Claims Farming” where this is described as anonymous persons contacting members of the public to ask whether they have been involved in a motor vehicle accident with the objective of identifying people who have been in accidents and on selling that information onto a legal practitioner or other claims management service provider who handles a claim under the scheme.
3. However, it is our view that parts of the Bill will either not achieve the objective of the Bill or extends its reach far beyond that which its objective is stated to achieve and thereby diminishing an injured persons rights or placing other community members at risk of committing an offence for simply being a trusted advisor and providing sound guidance. The remainder of this submission details the concerns held by Shine Lawyers regarding the Bill and potential solutions.

Section 36A

4. The requirement to provide a certificate to a claimant before the claimant has given a notice creates risks for both the claimant and the legal practice. An example of this is where a claimant consults a legal practice close to the limitation date for their claim under the Act and there is a practical difficulty in providing the certificate, it may mean that the legal practitioner cannot protect the claimant’s rights prior to the limitation date passing meaning the claimant loses their rights and the legal practice may be at risk of professional negligence.
5. A solution to this issue would be to either reword the section to allow the claim to be commenced without a certificate being provided to the claimant or to include a provision where the requirement can be waived.

Section 36C

6. Shine Lawyers is a large legal practice that is listed on the ASX. In Queensland we have a large number of lawyers operating across over 20 geographical locations. Due to the organisations entity there is only one person who is allowed to be provided with a principal practicing certificate.
7. As such in our previous submission to the draft Bill where there was no contemplation of a person other than the principal signing the certificate, we submitted another person ought to be allowed. We appreciate that the Bill has been amended to include Section 36C(2)(b) however we are concerned about how this will work in practice as the section does not provide any guidance or for practices where there are more than one principal but all principals are not available to sign the certificate.
8. Again, is Section 36A remains as worded, claimants and legal practices will be at risk in circumstances as described.
9. We submit that Section 36C(2)(b) be amended to remove the precondition and read:
A lawyer nominated by the supervising principal where the supervising principal has notified the Motor Accident Insurance Commission of that nomination.
10. Alternatively the notification could be made to the Queensland Law Society.

Section 37AA

11. Nearly all claims transacted by legal practitioners under the Act are done so on a no win, no fee arrangement, usually in compliance with s347 of the *Legal Profession Act 2007*. We submit this section is therefore irrelevant in a majority of arrangements and should be amended to not apply for any agreements which were entered into in compliance with s347.

Section 41A

12. It is our submission that the provision of a second certificate is unnecessarily repetitious and should be removed. In the alternative it is our submission that the section be amended to include a “and” after 1(b)(ii) and a further sub-paragraph 1(c) as follows:
the law practice has not previously provided a certificate in relation to the claimant's claim.
13. It is our submission that a law practice supervising principal or nominated lawyer should not be required to make the certification twice.
14. Further we would point out that Section 36C will be irrelevant in most cases as a claimant will be very unlikely to have made any payments to the law practice within 7 days of a settlement or judgment as the insurer will not have paid the settlement funds at that point.

Section 74

15. Shine Lawyers concerns are that the definition of consideration could make unlawful those situations which the profession has at all times openly engaged in without breaching either the law or any ethical or professional obligation. It is submitted that the Bill has strayed too far from its stated primary objective that being, to stop the cold calls and to break the claim farmer business model.
16. It has long been recognised that personal injury litigation is a complex area of law and it is important that practitioners are able to refer potential claimants or claimants on to another law practice that has the appropriate expertise, skill and capacity to act in the best interests of that potential claimant or claimant. A fee or benefit being paid or given for this referral is something that is reasonable as long as it is disclosed to the potential claimant or claimant prior to a retainer being entered into in accordance with the Australian Solicitors Conduct Rules.
17. It is therefore Shine Lawyers concern that these provisions will diminish the community's ability to access justice in circumstances where they have legitimate entitlements under the Act but that they are not aware of because this section makes it more difficult for a referral to be made.

Section 75

18. Legitimate referrals are likely to be made further difficult by this section. For example an injured person's treating medical or allied health professional will be in breach of this section if they are treating the injured person and have informed the injured person of their rights under the scheme and make a referral to a lawyer knowing that previously that lawyer has provided them with a gift or something with a value over \$200.
19. The provisions regarding the claim referral under Section 74 are not made for Section 75. That means that for example if a law practice was to sponsor an event and as a consequence of that sponsorship an individual approaches the law practice for legal services, this would be a breach of the section.
20. Law practices often give to charitable and community organisations often without expectation of a referral in return but sometimes it may happen. The impact of this section will mean law firms will be unlikely to support charitable and community organisations like they have in the past.
21. The same submission can be made with respect to advertising of services on a broad interpretation of the Bill. It could be that some legitimate advertising performed in compliance with the *Personal Injuries Proceedings Act 2002* could contravene this section.
22. At a minimum it is submitted that Section 75 needs to have the exclusions that Section 74 has by way of s74(4)(b). However it is submitted that the preferred approach to protect the communities access to justice would be to specifically exclude charitable organisations, community organisations, medical and allied health professionals who have provided the claimant with services and other trusted community advisors and professionals.

Section 18(1)(a)(ia)

23. This section is problematic for any hospital, public or private, as often another doctor will complete the certificate due to resourcing issues. If the sub-section requires the actual doctor in emergency who examined the claimant to complete the medical certificate, this will cause delay for the claimant and financial strain on the public system and increase the workload of emergency doctors in public hospitals.
24. Many claimants with no private health or cannot afford the gap in attending upon a GP, will attend a public hospital. This will cause expense and delay to claimants who may need to urgently access treatment or rehabilitation funded by CTP insurers. Prior to CTP insurers funding reasonable and appropriate rehabilitation, first a fully completed CTP medical certificate must be completed and lodged with the section 37 notice.
25. In addition, if the claimant is significantly injured or unconscious and brought into a public hospital, the claimant may not be physically examined but rather undertakes scans and testing. If a claimant seeks medical attention from a GP and then decides to bring a claim and the GP either leaves the practice, goes on holidays or dies, the claimant is faced with finding a further GP either at that practice or another practice and paying the gap expense to again attend for the purposes to complete the CTP medical certificate. This will add delay and expense to lodging a section 37 notice and compliance will be delayed and so will the claimant's access to reasonable and appropriate treatment.
26. The drafted sub-section is fraught with difficulties and our strong recommendation is for the sub-section to be removed in its entirety.

Section 18(1)(a)(ib)

27. This sub-section assumes that a previously very healthy and fit person who is injured and then attends upon a GP for treatment is litigious when in practice, this could not be further than the truth. Most claimants are fit and healthy and in fact, cannot afford physiotherapy treatment at \$100 per session and seek legal advice in the hope to have such costs covered by the CTP insurer.
28. This question seeks to stigmatise and marginalise those members of the community who rarely seek medical attention or do for their injuries. The drafted sub-section serves no purpose to stamp out claim farming and our strong recommendation is for the sub-section to be removed in its entirety.

Conclusion

29. Shine Lawyers supports a Bill to stamp out claims farming in Queensland but considers the proposed Bill goes too far, will restrict fair and ethical business relationships, impact on the community's access to justice and further make it more difficult for injured motorists to access the scheme. We consider that if

the suggestions we have made are adopted the Bill can achieve its objectives whilst not disadvantaging those genuinely injured on our roads.

30. Should the committee require any further clarification or information we are available to provide that.

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