Motor Accident Insurance and other Legislation Bill 2019 "the Bill"

Dear Chair

I write to you in respect of the abovementioned Bill.

Thank you for allowing me to make this submission out of time.

I have been admitted as a solicitor of approximately 37 years.

For the last 20 odd years I have served on various committees of the Queensland Law Society (QLS), Law Council of Australia and Australian Lawyers Alliance (ALA).

Specifically I served on the Torts reform task committee of the QLS and I was actively involved in the Personal Injuries Proceedings Act (PIPA), which contains important restrictions as to advertising and marketing in the sensitive area of personal injury compensation law.

Accordingly, I believe in appropriate and sensible restrictions in relation to marketing for personal injury claims.

I agree thoroughly with the intent of the Bill.

I have made submissions to MAIC, the Government and the Legal Services Commissioner regarding claim farming.

I am the author of the proposed legislation for solicitors to execute statutory declarations that they have not been involved in claim farming, and accordingly I wholeheartedly endorse the submissions of the Queensland Law Society and Australian Lawyers Alliance in relation to claim farming.

However, I do object to the parts of the Bill which refer to referral arrangements.

The present situation with respect to referral arrangements are legitimate and ethical, and are properly covered by the Australian Solicitors Guidelines and the Personal Injuries Proceedings Act (PIPA). All ethical considerations have been adequately addressed in the Guidelines and the Act.

I am concerned that by proscribing what referral arrangements should be permitted and what arrangements should not will lead to unintended consequences.

Proscribing what is acceptable will lead to anti-competitive behaviour with the consequence that only the major law firms will receive most of the work. This may in turn contravene anti-competitive legislation.

The intent of the Bill was simply to strongly address claim farming and should not be extended to legitimate and ethical referral arrangements which many small firms rely upon. Many firms cannot afford to advertise on Google, billboards, and radio. This is why referral work is so imperative to small firms, provided that the referral arrangements comply with the Australian Solicitors Guidelines and do not breach the PIPA restrictions. With respect, that should be the end of the matter.

I strongly endorse the submissions of the Queensland Law Society and Australian Lawyers Alliance with respect to claim farming. However I submit that all reference to referral arrangements should be expunged from the Bill as being likely to be unworkable and probably anti-competitive.

Lawyers who practise in personal injuries law already have appropriate restrictions as to marketing. Proscribing what referral arrangements should be allowed would result in unsatisfactory outcomes. For example, I believe that paying money to Unions (or "charitable institutions") for referrals will result in lack of transparency and is unnecessarily messy legislation.

The Australian Solicitor Guidelines have already addressed all the ethical considerations with regard to referral arrangements. In essence, any referral arrangement must be disclosed to the client, and any fee that has been paid must be paid by the law firm and cannot be charged to the client. Provided there has been no breach of PIPA, the arrangement with respect to referrals should be left alone with no further limitations which this Bill is intending to do. The Treasurer wants to deal with claim farming. There has not been a problem with referral arrangements, and I do not understand why the Bill proposes to unnecessarily interfere in this area when there has been no problems with the present legislation [PIPA and Australian Solicitors Guidelines].

I submit that for the legislation to be effective and properly workable, it needs to be radically simplified to simply a statutory declaration from partners of law firms that they have not been involved in claim farming.

The intention of the Bill should not be about limiting access to justice for citizens where they have no knowledge of their rights to claim. Personal injury compensation law is an important right of citizens to be restored as much as possible to the original position that they were in prior to the accident.

Personal injury compensation law in Queensland according to common law is fair. When I made a submission to the Productivity Commission in relation to the NDIS several years ago, approximately 1 billion dollars was remitted back to Government in the form of Government statutory refunds from common law systems. Accordingly, it is important not just for citizens to be restored as much as possible to their original position but also for the Government to be able to reclaim from the compensation sum. This is due to the costs imposed on the Government by accidents such as, repaying social welfare debts, WorkCover debts, health insurance debts, and hospital charges. Limiting referral arrangements are simply about limiting knowledge of citizens to claim, which of course is about the profits of Insurance companies. Additionally, a balance has to be obtained in relation to containing premiums which the present legislation and Guidelines do.

It would appear from the Bill that lawyers who practise in personal injury law and who presently have referral arrangements are considered prima facie as criminals and should be further restricted! There are already many existing restrictions in marketing of personal injury law which are absolutely appropriate.

The further restrictions proposed by this Bill in relation to referral arrangements are not appropriate and should be expunged. Regrettably it would appear that the Bill is based on the UK legislation [which is completely different to our excellent system and which actually entertains claim farming companies – I know this because I am also presently admitted in the UK and the Bill is very much modelled on that UK legislation which is not appropriate for Queensland.], and unnecessarily entertains the proposals as to referral arrangements without considering the basic question, "Why should there be any further restrictions of referral arrangements which would only wipe out and eliminate most lawyers in small practices from practising personal injury law and result in a triopoly of just the major law firms, when referral arrangements are already properly covered in the Guidelines and PIPA?".

I think it is important to advise you that the bulk of my firm's work emanates from traditional advertising [at great expense to me] with there being only a couple of matters where I have paid an

employee a referral fee for introducing a matter or a solicitor in a regional area a referral fee. Aside from these small exceptions, all my work is from traditional advertising and referral work where I do not pay any fees. Furthermore, I will be retiring soon and therefore there can be no allegation to my submission that I make it from a position of self-interest.

I am happy to elaborate further should you wish me to.

Kind Regards,

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