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Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
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Via email only: lasc@parliament.qld.gov.au

PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL 2022

Thank you for the opportunity to contribute to the Queensland Government's consultation on the *Personal Injuries Proceedings and Other Legislation Amendment Bill (Qld) 2022*.

The Suncorp Group (Suncorp) broadly supports the objectives of the Bill, notably the intent to prohibit the practice of 'claim farming' and address undesirable cost agreements.

Claims farming has the potential to negatively impact insurance affordability and increase incidents of fraud. Unfair cost agreements adversely impact injured people and can disproportionately impact vulnerable claimants who are limited in their capacity to effectively challenge such agreements.

Claim farming provisions

As the largest provider of compulsory third party (CTP) insurance in Queensland and one of the largest providers of personal injury insurance in Australia, Suncorp is aware of the negative impacts of claim farming.

Suncorp welcomed the 2019 amendments to the *Motor Accident Insurance and Other Legislation Amendment Act 2019* (MAI Amendment Act) to prohibit claim farming and supports the extension of prohibition of claim farming to other classes of personal injury insurance.

We note that, consistent with the provisions of the *Motor Accident Insurance and Other Legislation Amendment Act (Qld) 2019*, the proposed *Personal Injuries Proceedings and Other Legislation Amendment Bill (Qld) 2022* allows legal practitioners to provide gifts or hospitality up to the value of \$200 for claim referrals. Suncorp's view is that this element of the legislation has the potential to diminish its effectiveness and is counter to the intent of the legislation.

RECOMMENDATION 1: Remove the provision for legal practitioners to provide gifts or hospitality up to the value of \$200 for claim referrals.

Information sharing

Suncorp welcomes the proposed information sharing provisions that will allow the Workers' Compensation Regulator, the Legal Services Commission (LSC) and the Motor Accident Insurance Commission to proactively share information on claim farming activity.

Suncorp's view is that information sharing will be more effective if a single authority is tasked with collating, analysing and distributing the information, in order that swift action can be taken when issues are identified.

RECOMMENDATION 2: The Legal Services Commission (LSC) be appointed the central authority responsible for management of information sharing and ensuring appropriate investigation is conducted upon identification of issues.

We note the current limitations that impact the effectiveness of the LSC. The LSC is limited under s435 of the *Legal Profession Act (Qld) 2007* to investigating individual legal practitioners, restricting its ability to investigate and identify systemic issues within a legal firm and take appropriate action. Further, compliance investigation audits conducted by the LSC under Part 2.7 of the Act are limited to auditing the management systems of incorporated legal practices (ILPs). As ILPs comprise approximately 60 per cent of the industry, a significant proportion are not subject to this oversight from the LSC.

RECOMMENDATION 3: The investigative powers of the Legal Services Commission (LSC) be expanded significantly, including empowering the LSC to investigate all legal firms regardless of structure including partnerships

Undesirable cost agreements

Suncorp welcomes the proposed provisions intended to reduce incidents of undesirable cost agreements between claimants and their legal representatives.

A significant proportion of personal injury insurance costs are directed to legal fees. Suncorp has consistently advocated for accurate and transparent reporting of all legal fees to assess the proportion of each dollar in premium directed to injured people (scheme efficiency).

We note that recommendation 12 of the 2016 Review of Queensland's CTP insurance scheme stated: *MAIC implement a legal fee reporting model to allow for greater transparency of scheme efficiency.*¹ This recommendation was supported by the Motor Accident Insurance Commission (MAIC). To date, no discernible action to implement this recommendation has occurred.

Reporting regimes have been implemented in the NSW and ACT CTP schemes to capture the proportion of financial settlements paid to injured people that are directed to their legal representative (solicitor-client costs). As no reporting of this component of costs are captured in the Queensland CTP scheme, scheme efficiency is unknown.

¹ Review of Queensland's Compulsory Third Party Insurance Scheme – Recommendations (<https://maic.qld.gov.au/wp-content/uploads/2017/04/2016-CTP-Scheme-Review-Recommendations.pdf>)

Capturing and publicly reporting all legal costs in the CTP scheme would provide transparency and ensure compliance with the requirement to limit the proportion of a claimant's settlement directed to legal costs to 50 per cent. The benefits derived from transparent reporting of all legal costs are applicable to all classes of personal injury insurance.

RECOMMENDATION 4: Implement a mechanism to capture and publicly report (by insurance class) all personal injury insurance legal costs in Queensland.

Suncorp believes that comprehensive reporting of all personal injury insurance legal fees would benefit injured people and reduce the incidents of excessive legal fees being charged. We note the comments made by Justice Applegarth in the case of *Adamson v Enever & Anor* [2021]. Justice Applegarth described the legal fees as “*extremely high, indeed excessive*”.² Justice Applegarth also raised a number of other concerns regarding the manner in which legal fees had been charged by Shine Lawyers.

A comprehensive solution to the issue of the high proportion of scheme costs directed to legal fees is available in the form of reform of the Queensland CTP scheme to introduced no-fault, defined benefits, as has been successfully implemented in other jurisdictions. Such reform increases cover to all injured drivers and provided both medical and income support to all injured people in a fair and efficient manner.

Enhancing information to Claimants regarding legal costs

Suncorp believes that another avenue towards addressing undesirable cost agreements is further legislative amendment to the *Legal Profession Act* to mandate education to prospective Claimants explaining common legal terms that they may encounter in the cost agreement, the different type of cost agreements in place in the market, that hourly rates may differ markedly from firm to firm and outlining the benefits and detractors of entering into speculative agreements.

Whilst disclosure is required under section 308 of the *Legal Profession Act (Qld) 2007*, many Claimants will not fully understand or appreciate the terms of the cost agreement.

RECOMMENDATION 5: Implement further education for prospective Claimants explaining common legal terms in cost agreements.

Conclusion

We welcome the opportunity to discuss our written response. Please do not hesitate to contact Daniel Wilkinson [REDACTED] or Kylie Horton [REDACTED] if you require any further clarification.

Yours Faithfully



Matthew Pearson

Executive General Manager, Statutory Classes

² *Adamson v Enever & Anor* [2021] QSC 221, par 105.
(<https://www.queenslandjudgments.com.au/caselaw/qsc/2021/221>)