ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP (Chair)
Mr PS Russo MP
Mr ST O'Connor MP
Mr DG Purdie MP
Ms KE Richards MP
Mr RA Stevens MP

Staff present:

Ms L Manderson (Acting Committee Secretary)
Mr J Gilchrist (Assistant Committee Secretary)

PUBLIC HEARING—EXAMINATION OF THE MOTOR ACCIDENT INSURANCE AND OTHER LEGISLATION AMENDMENT BILL 2019

TRANSCRIPT OF PROCEEDINGS

MONDAY, 22 JULY 2019

Brisbane

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The committee met at 11.16 am.

CHAIR: Good morning. I declare open this public hearing for the Economics and Governance Committee's examination of the Motor Accident Insurance and Other Legislation Amendment Bill 2019. I want to acknowledge the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging. I also note that Committee Room 1 will also be known as the Torres Strait Islander Peoples Room along with new artwork, so we acknowledge the continual traditional owners of the Torres Strait.

I am Linus Power, the member for Logan and chair of the committee. Other committee members here with me today are Ray Stevens MP, the member for Mermaid Beach and deputy chair; Sam O'Connor MP, the member for Bonney; Kim Richards MP, the member for Redlands; and Dan Purdie MP, the member for Ninderry. Peter Russo MP, the member for Toohey, is participating as a substitute member for Nikki Boyd MP, the member for Pine Rivers.

On 14 June 2019 the Hon. Jackie Trad MP, Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, introduced the Motor Accident Insurance and Other Legislation Amendment Bill 2019 into the Legislative Assembly. The bill was referred to this committee for examination, with a reporting date of 9 August 2019. The purpose of this morning's hearing is to assist the committee with its examination of the bill, including exploring various issues that have been raised by submitters. This hearing is a proceeding of the Queensland parliament and is subject to the standing rules and orders of the parliament. The hearing is being recorded and broadcast live on the parliament's website. All those present today should note that it is possible you may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages.

CREWS, Ms Jodie, Manager, CTP Scheme Performance—RACQ, Insurance Council of Australia

JOB, Ms Chloe, Manager CTP and Specialty Claim Initiatives, Suncorp (AAI Ltd)

MOBBS, Mr Tony, General Manager, CTP—Allianz, Insurance Council of Australia

SULLIVAN, Ms Sharyn, Head of CTP Claims, Suncorp (AAI Ltd)

WILKINSON, Mr Dan, Executive Portfolio Manager—Queensland CTP, Suncorp (AAI Ltd)

CHAIR: We will begin today's proceedings by hearing from representatives from the Insurance Council of Australia and from Suncorp. Good morning to you all. I invite each of the organisations to make an opening statement. We will start with representatives from the Insurance Council, if that is your preference, and I also extend the same opportunity to Suncorp. After that process, committee members will definitely have some questions for you.

Mr Mobbs: On behalf of the Insurance Council of Australia, we thank you for the opportunity to appear before the committee this morning. The Insurance Council of Australia is the peak representative body of the general insurance industry in Australia. Our members include the four insurers who underwrite the CTP scheme in Queensland. As outlined in our submission, the Insurance Council supports the Motor Accident Insurance and Other Legislation Amendment Bill 2019. The insurance industry has previously called for action to eliminate claims-farming behaviour and its associated business model.

The Insurance Council welcomes the Queensland government taking early action. Claims farming is a well-recognised phenomenon which undermines the scheme's purpose. Other jurisdictions—for example, the United Kingdom in 2015—recognised that claims farming was driving up the cost of insurance. In response, the UK government introduced a range of measures including referral fee bans—a similar mechanism to that being proposed under the current bill. The CTP

scheme ensures that injured road users, where eligible, can get the compensation they need to assist in their recovery and return to normal life. Access to the scheme by injured road users and the scheme's ongoing affordability for all Queenslanders are critical.

Claims-farming business models ultimately undermine the scheme's objectives and work against the best interests of the public. Left to fester, claims farming will cause instability in an otherwise stable scheme and put unnecessary upward pressure on premiums. The behaviour of claim farming can involve unwelcome intrusion into the lives of members of the public, luring people with promises of compensation that may be unrealistic. This can lead to people lodging a claim they otherwise would not. The result is an unnatural increase in the number of claims within the scheme, diverting scheme resources and undermining the affordability of the scheme for those who need it most. Therefore, the Insurance Council supports the aims of the bill to prohibit unsolicited approaches from claims farmers or associated business models in order to induce people into making a claim as well as eliminate the referral payment to claims farmers for personal information to claim referrals.

The Insurance Council believes that these measures will help protect vulnerable Queenslanders and uphold the integrity of the scheme. The measures in this bill, taken as a whole, can be expected to suppress the emerging trends and avoid volatility within the scheme. We acknowledge that this must be balanced with the need for Queenslanders to exercise their rights and obtain appropriate advice and to ensure legitimate relationships between the law practice and members of the community are not inadvertently curtailed.

We support the committee's critical examination of the bill to ensure that its purposes and objectives will be met and there are no gaps that can be exploited by claims-farming behaviour or associated claims-farming business models. Our submission has outlined areas where we believe the bill can be further improved. As a further note, this morning over coffee Jodie received a call from a claims-farming organisation, and I hope the committee might take the opportunity to listen to something that is obviously a very real and ongoing practice within society at this time. Thank you.

CHAIR: Thank you very much. Mr Wilkinson?

Mr Wilkinson: Good morning, Chair, Deputy Chair and members of the committee. We appreciate the opportunity to appear before you today. Suncorp Group is the largest private personal injury insurer in Australia. We are a proud Queensland company with a strong history of supporting statutory insurance scheme reforms that improve outcomes for our customers and the community more broadly. Given our history and experience with personal injury and CTP schemes nationally, we believe we are in a privileged position of being able to share our unique insights and input with the committee.

We commend the government's introduction of the bill to parliament. Taking action to eliminate claim farming is essential. In recent years, despite seeing improvements in accident rates in our motor insurance business, Suncorp has seen a significant increase in the number of CTP claims made from injuries arising out of minor motor vehicle accidents. We believe that claim-farming practices have contributed materially to this increase, which has the potential to impact the financial sustainability of the scheme and put upward pressure on premiums. Neither of those outcomes is desirable.

Today I want to emphasise three main points to the committee. The first is the regulation of legal fees. Suncorp is advocating for the Motor Accident Insurance Commission to have greater visibility of legal fees. Lawyers will argue that disclosure of costs between themselves and their clients is a breach of the fundamental principle of solicitor-client privilege. There is merit to that argument. In the Queensland CTP scheme, however, insurers have no such privilege. We are required to disclose the costs between ourselves and our lawyers in defending actions. We are required to disclose our costs in managing claims and our costs in administering policies, and we provide a detailed breakdown of our entire costs of operating our CTP business. This provides MAIC with an extremely detailed and completely transparent view on precisely how much of the motorist CTP premium goes to insurers, including our profit.

Despite this detailed disclosure by insurers, the Queensland scheme actuary recently reported that it was unable to determine how much CTP premium ultimately goes to injured claimants because of this lack of plaintiff cost reporting. The impact of this imbalance in upholding the privilege is that MAIC is unable to objectively determine how much of the CTP premium is actually going to the people that the CTP premium is supposed to be going to. Instead, MAIC must rely on surveys of claimants to get some understanding, and those surveys have shown that claimants might be receiving only 31 cents of every premium dollar paid.

The ability for a lawyer to take 50 per cent of a lump sum payout is the reason claim farming exists. It provides the financial incentive that will drive lawyers to seek out and reward referrals and creates the foundations for the structural problems within the scheme. It is our view that the

Queensland CTP scheme is not so complex that it should require a claimant to spend $1 in legal costs for every dollar they receive in compensation. In other Australian jurisdictions such as New South Wales oversight of legal costs is afforded to CTP regulators through compulsory plaintiff legal cost reporting. Without disclosure and reporting of fees charged to claimants, MAIC will have limited ability to enforce the cost rule within the bill. To address this, Suncorp recommends amending the bill to provide a specific method for calculating the maximum legal costs payable on a claim regardless of the solicitor's state of registration and enforcing a mandate upon lawyers who handle a CTP claim in Queensland. If the argument that privilege takes priority over disclosure holds, then this must apply equally to defendants as it does to plaintiffs.

Our second point is that Queensland is becoming an outlier. As other states move to no-fault defined benefit models, the Queensland CTP scheme is becoming more of an outlier compared to other schemes in jurisdictions. For instance, Victoria, Tasmania, New South Wales, the Northern Territory and soon to be the Australian Capital Territory have all adopted no-fault defined benefit CTP schemes. These states and territories have seen greater efficiencies with their respective schemes, whether that be through reduced CTP premiums for motorists or through greater proportion of premium dollar going to treatment and rehabilitation for injured claimants. The changes to the CTP scheme suggested by Suncorp are not without precedent in Queensland. Queensland adopted a form of the no-fault defined benefits model in its workers compensation scheme. The NDIS and the NIIS also provide no-fault cover because this provides better outcomes for injured people.

Our third point is around that no-fault defined benefits model. The best way to disrupt the claim-farming business model is to remove lump sum payments for minor claims and introduce a no-fault defined benefit CTP scheme in Queensland. Personal injury schemes that allow largely unrestricted common law payments for minor claims and that remain based on establishing fault are most exposed to exploitation by claim-farming practices. This is because that lump sum payment creates a pool of money that can be used to sustain the claim-farming business model. There are also many other benefits associated with adopting such a model, including a greater proportion of premium going to injured people and cover for the 40 per cent of Queenslanders who are injured on our roads who do not receive cover from the CTP scheme today. Suncorp looks forward to working with the Queensland government on addressing this serious threat to the viability of the scheme and we welcome questions from the committee.

Mr STEVENS: Tony, in relation to claim farming we see a lot of advertising by the legal community such as no-win no-fee, which basically encourages people to go along and make a claim. If they have something to offer, the legal firm pays until they actually get a collect because they cannot afford to, so there is a great benefit to the community through those people who cannot afford the fees. What would you say to the suggestion that these claim farmers make people aware of their capacity and rights, if you like, that they might not have otherwise been aware of to make a claim and that all they are doing is a good service to the public by making these people aware of the possibilities of getting financial compensation for the injuries they have suffered?

Mr Mobbs: Thank you for the question. It is a good question. There are two things that I would say to that. The first is that there are tremendous unrealistic expectations set up in the mind of the potential claimant. There is also an unrealistic sense of what is claimable from a claims farmer. For instance, the call that was received just over an hour ago—

Mr STEVENS: This is what I was hoping to hear about.

Mr Mobbs: It is based on a phone call that would have lasted a minute or so—maybe you want to jump in a second. Jodie was offered $60,000 for a hypothetical car accident.

Mr STEVENS: What is she doing here then?

Mr Mobbs: There are many citizens who realise that that is just shenanigans and totally false and unreasonable and they do the right thing of hanging up, but, by being offered $60,000, it is very understandable that some people, through other circumstances, would be willing to entertain such a phone call and pursue it. That is not in anybody's interests. Had Jodie pursued that matter, that would be an unrealistic, not sensible cost for the scheme to bear which would result in upward pressure on premiums.

Mr STEVENS: To use that example if I may, obviously Jodie has had a car accident for them—

Ms Crews: No.

Mr STEVENS: No car accident? What is the purpose of the call if there is no car accident involved?

Ms Crews: Fishing, luring.

Mr STEVENS: Right.

Ms Crews: Farming.

Mr STEVENS: You cannot farm unless there is something to catch.

Ms Crews: Very true.

Mr Mobbs: They create something to catch.

Mr STEVENS: If you have not had an accident, the lawyers would not take the case—most of them.

Mr Mobbs: It is difficult to understand how that connection works in detail. The claims farmers do not operate in the open. The phone call taken this morning originated from somewhere overseas. We will never know who made that phone call. That is just a luring with an offer of $60,000. It is very difficult to understand how that can be in the public interest.

Mr STEVENS: We have had a lot of input into this bill in relation to the size of the problem, yet we have had no quantifying of the size of the problem. What is your best guess estimate as to how much claims farming has cost in dollar terms or percentage terms of CTP? At the moment we are really shooting at ducks in the air.

Mr Mobbs: Sure. I think the way to answer that question is to say that this is not a Queensland-specific problem. We have seen this problem in Europe, where premiums doubled over a decade and they did something about it. It took them a long time to figure out to uncover what was going on. The same thing happened in New South Wales, where we saw the premiums not double but increase quite substantially. Certainly claims frequency went up by 50 per cent or more by the time it was finally stamped out. I would say that in Queensland you are not yet at that level of maturity by the claims farmers. It is increasing. It is growing. We can see a 20-odd per cent increase in frequency of the type of claims that the claims farmers seem to specialise in, which is the small claims. Can we say that each and every one of those originated from a claims farmer or that each and every one of them is not a meritorious claim? We cannot say that, but we can say that, overall, we can see this increase in claims. We can note that it matches exactly the experience in other jurisdictions—New South Wales and the UK. Our advice is that, unless you take action to prevent it, it is very predictable where this will go.

Mr STEVENS: They have stopped it in New South Wales. How much did the claims farming drop after they stopped it?

Mr Mobbs: It is very difficult to quantify the claims farming, but what I can say—

Mr STEVENS: Did the number of claims go down?

Mr Mobbs: Yes, the small claims, which is the specialty area.

Mr STEVENS: Yes, the 60 grand—

Mr Mobbs: It would be about a 50 per cent drop in frequency.

Ms RICHARDS: Thank you for presenting to us this morning. We have read in some of the submissions about the relationships that law firms have with community groups and we have seen Queensland Treasury's response. Could you speak a little bit about that? Do you still hold those same concerns?

Mr Mobbs: In relation to the examples given, it is difficult to say that they are anything other than sensible. We note the commissioner's comments in the feedback given, which is that the commissioner does not believe that those relationships with community organisations are the subject of this bill. I am not a specialist in this area, but if I note the commissioner's advice to this committee, which is that they are not the subject of the bill and they will not be impacted, I would say that the bill has struck more or less a fair and reasonable balance. I am open to further refinement, but it does not seem to me to be the subject of the bill or an immediate problem in the bill.

Mr PURDIE: Mr Wilkinson, I think you said that the New South Wales jurisdiction has compulsory disclosure of legal costs. Are there any other jurisdictions around the country that keep track of that? What are the benefits for regulators tracking those fees?

Mr Wilkinson: New South Wales is the one that I know of that has recently put that in its revised legislation. That is certainly the example that I would point to where it is occurring within Australia already. The advantage to the regulator in doing that is not so much around monitoring the legal profession and what they are charging on claims as fees; it is more about understanding how much money is going to the people who are injured on our roads. That is the part that at the moment is very difficult to determine—how much of that premium pool at the end of the day goes to the person who has been injured.

That is not to say that someone should not have legal representation. There would be many people out there who indeed should be seeking legal representation to run a CTP claim in Queensland. Our argument is more around how much it should cost the claimant to access that right and for some visibility of that to occur with the regulator so that if there were efficiencies introduced into the scheme the regulator would have the option to control the rate at which a lawyer could charge fees on a claim and at the very least, if there were improvements made to the scheme, make price adjustments for that. It would enable the regulator to see the benefit going to a claimant and also to control some of those costs, delivering compensation to the claimant.

Mr RUSSO: Mr Mobbs, you are from Allianz here in Queensland?

Mr Mobbs: Yes.

Mr RUSSO: You spoke about the New South Wales scheme. Is it correct that New South Wales failed to act on claims farming early?

Mr Mobbs: With the benefit of hindsight, I think all stakeholders would wish earlier action had been taken.

Mr RUSSO: I am particularly interested in New South Wales. Is that a correct assumption?

Mr Mobbs: I think it would be very fair to say that everyone would have wanted the action to be taken earlier than it was taken.

Mr RUSSO: The system in New South Wales is somewhat different from Queensland. Basically, in New South Wales what happened was principally the stripping of rights of common law claims.

Mr Mobbs: That is a component. The way New South Wales has always been is to allow very small claims. We had what is known as an accident notification form. Claimants were able to receive benefits of up to $5,000. That has been longstanding. The effect of the legislation was to increase that $5,000 to $50,000 for six months. It is a different way of defining it. Everybody is entitled to six months of care, whether they are at fault or not at fault. That is a statutory benefit. It is essentially a recovery of lost income, a recovery of any expenses paid, a recovery of any medical expenses and associated costs that you might incur as a claimant. Everybody got six months of care and costs reimbursement. For the people to avail themselves of common law, the claim had to go beyond six months and there was the fault test as well. It is a hybrid.

Mr O'CONNOR: I have some questions about the provision of hospitality and gifts to both of you. You had differing submissions on that. Suncorp thought the $200 threshold was too high. I think $50 was a suggested alternative.

Mr Wilkinson: That is correct. From the exposure bill, where it was originally $50, we thought that was probably a sensible way of making sure that someone who was expressing a genuine gesture of gratitude for the referral of business or an introduction was not caught up in this legislation, because that is clearly not the intent of the legislation or the behaviours we are trying to prevent. Our concern with going up to $200, and with further exemptions around how that could be funded and provided and who it could be provided to, was that in one instance it would allow effectively more loopholes within the legislation. While it may be well intentioned and designed to not capture legitimate business practices, the more loopholes that are created in the legislation the less effective it will be. We also had concerns that the ability to package up five referrals to get to $5,000 was a lot easier than having to get to 20 of them if you had $50 referrals. The ability to rack up a significant value for consideration is greater when it is $200 than when it is $50.

Mr O'CONNOR: Allianz?

Mr Mobbs: I think our initial understanding was that that $50 in the original exposure draft—and now $200—was per claim. I understand from recent comments from the commissioner that that is not a per-claim figure; it is more annual, periodic, whenever you are having a social gathering or something of that nature. If it is of that type where it is not per claim then I think I am pretty comfortable with $200, but if it is $200 per claim it opens up the scheme, the bill or its operation to questions.

Mr Wilkinson: I could be incorrect—sorry for interrupting—but my understanding of the legislation is that it was not even per claim; it was per referral, which could be a potential claim or an actual claim. My understanding of the legislation—I could be incorrect—was that it would not even take a claimant; it could be a list of 10 names, each with $200 worth of consideration. It was not clear whether that is $200 for the consideration of the people on the list or $200 for the consideration of everyone who is on the list.

Mr O'CONNOR: Your concern is that it could be a loophole to continue—

Mr Wilkinson: We agree with the principle that something needs to be there to not capture people who are genuinely not involved in claims farming. The concern is around creating a loophole that would allow some kind of farming behaviour to continue.

Mr O'CONNOR: This question is particularly with Suncorp, because you have mentioned it previously today. Could you give some more background of the no-fault system in New South Wales, because it is the most recent that has come in. Was that in 2017?

Mr Wilkinson: The most recent would be the Australian Capital Territory, which has just passed the legislation, but it is not up and running yet. New South Wales is probably the most recent one that is functioning. As Tony mentioned, the principles around the scheme are around that. Yes, there is a loss of some access to claim common law damages on very small claims. That is why we would propose—similar to what happens in other jurisdictions—that there is some method of determining what is a serious claim, to allow those people to still have access to common law rights as they do today but, at the smaller end of the scale where there are smaller injuries, remove some of the costs of delivering benefit to those injured people and allow them to get on with their lives. We think the savings of doing that should then be extended to include no-fault cover. Regardless of how the accident occurred and who caused it, people would have access to that funding to do rehabilitation, some limited loss of funds—all of those types of things.

Mr O'CONNOR: The broad picture is that it has led to premium reductions and more money in the pocket of the injured party?

Mr Wilkinson: Ultimately, yes, and that is the principle of the scheme. It can lead to either reduced premiums or an increase in coverage. In Queensland at the moment we have a very low premium compared to that of other states, but we also have by our estimates about 40 per cent of people injured on the roads who do not get access to that compensation. In New South Wales, the access to the compensation is much higher and they pay a higher premium than we do in Queensland. It is around that modelling, and there is some ability to model that scheme around a cost outcome.

Mr O'CONNOR: Just out of interest, by how much are the premiums higher?

Mr Mobbs: Queensland does have a very affordable scheme compared to New South Wales, yes. The only thing I would say is that there was a range of reforms in New South Wales. One of them was the elimination of common law for the very small claims, but there was a range of other reforms that serve together as a package that would have led to the outcomes.

CHAIR: Obviously insurers like Allianz and Suncorp make profit out of the statutory system. The changes to reduce particular rights may increase those profits for the companies. Is that one of the motivating factors in the changes that are suggested as part of your submissions?

Mr Wilkinson: No. The model that is suggested by Suncorp, and a model that we did have costed and provided as part of the 2016 scheme reform review, would actually moderate the level of insurer profit. In fact, it would give the regulator far greater control over setting what that insurer profit ultimately was, compared to today's model. With our current model the profit can be highly variable and insurers set their premium levels within a floor and a ceiling range set by the regulator. The nuances of the scheme mean that it is very difficult to predict an outcome of that, which means that insurers get it wrong all the time and so does MAIC. Picking that level of what a premium really should be is extremely difficult when you are looking forward. By implementing a model of defined benefits you can actually control that profit outcome more, and we think that under such a model we would probably have less profit than we do today.

CHAIR: That being said, insurers would prefer that lawyers were not coming forward with any cases whatsoever. The first question the deputy chair put was about that tension relating to the rights of someone who has been injured and suffered loss and their access to the scheme. Obviously this restricts that access to some extent. We want to address the issues of claim farming. Is it necessary to continue to make a more complete change when, as we said, we have a relatively affordable scheme compared to other states?

Mr Wilkinson: On the first part, I would like to point out that I would not be happy if we saw fewer claims out of this legislation. If genuine claimants were deterred as a part of this bill then that would not be success, certainly as far as Suncorp is concerned. We have no interest in deterring someone who has a legitimate claim, and if they make the decision to get legal representation then we are supportive of that under the current scheme. That is an option available to them. We do not support the method of referrals and paying for referrals or cold-calling people to encourage them to make a claim.

As far as moving to a model that might dissuade people from making a claim, we believe that a model that we are suggesting would make it easier for people to make a claim and it would make it easier for more people to make a claim. We are just suggesting that it should not require complex legal advice to make a claim in a scheme that is a statutory scheme. If people have to pay for it, it should be an easy process for people to access the compensation that is there for them to recover from an injury.

CHAIR: With respect, we are seeking to reduce claims of those who would not have made a claim unless they were cold-called and induced, in the way Ms Crews was, to come forward about a claim. That is part of the purpose of this legislation; is it not?

Mr Wilkinson: The primary purpose of the legislation, as I understand it, was to remove the cold calls, but you are right: it will have the effect of removing a claim that would be a legitimate claim that someone may not have made but for someone having called them and encouraging them to make a claim. It would remove those claims.

CHAIR: Sometimes falsely.

Ms RICHARDS: This question is across the board to all insurers. You spoke in terms of the infancy of claim farming within the Queensland context being on the uplift. Ms Crews experienced the call and knew it was a scam—dodgy—and put it down. Are you undertaking an education process within communities around what claim farming looks like?

Mr Mobbs: It is very difficult to educate on this particular issue. Claims farming has been proven to be highly innovative, unscrupulous and very agile. As one of the learned representatives has submitted to this inquiry, they live in the shadows. The methods of operation of claims farming changes all the time. It is a multilevel problem and it is diverse in its operation, and if the claims farmers feel that one mode of operation is being clamped down on then they very quickly change their direction to another path. I think one of the benefits of the bill in front of you is that it addresses all aspects of the possible ways in which claims farming can operate.

The Insurance Council has published information on how to deal with unwanted calls and who to report those to. I do not think the insurance companies do that themselves. That is more an industry effort, which is absolutely taking place, but it is very difficult for people to think of that in the moment when they receive a telephone call and within 60 seconds they are being offered $60,000. The front-of-mind thing is not something you may have read about previously. It is all sort of in the moment.

Ms Crews: From an Insurance Council of Australia perspective, Tony is right: we do put out material for the public. As a standalone, independent, Queensland peak motoring group, RACQ does exercise its role in the community quite heavily by producing quite a bit of educational material for the community to be alert to the scam calls that are harassing members of the public and onselling people's private data. We do that as a motoring club. We put out material via social media and our own websites, and we refer members of the public to the Motor Accident Insurance Commission to report that.

CHAIR: The time allocated for this session has expired. Thank you very much, and thank you very much for the submissions that we have. I note that there are no questions placed on notice. Thank you for assisting the committee today.

GIBSON, Mr Peter, General Manager Queensland, Shine Lawyers

HODGSON, Mr Rodney, National Director, Australian Lawyers Alliance

MURPHY, Ms Karen, General Manager, Queensland, Slater and Gordon Lawyers

SPINDA, Mr Greg, Queensland President. Australian Lawyers Alliance

VINES, Ms Helen, Special In-House Counsel, Slater and Gordon Lawyers

YUJNOVICH, Ms Peta, Practice Group Leader, Queensland, Slater and Gordon Lawyers

CHAIR: Good morning. I might first invite our representatives from the ALA to make an opening statement. After they have made a statement we will extend the same invitation to Slater and Gordon and Shine Lawyers. Please keep it to no more than five minutes—we do have your submissions—and then committee members might have questions for you.

Mr Spinda: Thank you very much for the opportunity to speak this morning. The ALA has long advocated for effective measures to stop activity known as claim farming. We welcome the core intent of the legislation and commend the government for moving on this issue. A balanced approach needs to be taken to ensure there are no unintended consequences on proscribing activities that can truly be characterised as claim farming. As presently drafted, the bill will outlaw many arrangements that are ethical, legitimate and beneficial. Our submission gives several examples of this. Our view of the current reach of the bill is supported by independent senior counsel Mr Stephen Keim SC. To the best of our knowledge, none of the other submitters has commissioned independent advice of senior counsel.

We submit that an objects clause will more clearly frame and clarify legislative intent. We further submit that clear and explicit exemptions for sections 74 and 75 are required to put beyond doubt the conduct being proscribed. The exemptions proposed are for relationships with registered charitable organisations, service or community organisations, educational institutions, registered industrial organisations, community legal services and sporting and other recreational bodies. Absent such specific exemptions, the interpretation of sections 74 and 75 enlivens real risk to access to justice and will proscribe conduct which is not claims farming. The bill as presently drafted overreaches.

The unintended consequences of the bill are serious. They outlaw or they likely outlaw activities which are ethical and promote access to justice. Those activities have nothing at all to do with claims farming. We need to put beyond doubt the legitimacy of these activities and focus squarely on the problem, which is claims farming. With the amendments we propose, the bill is capable of striking that correct balance. Once again, thank you.

Ms Murphy: Slater and Gordon appreciates the invitation to appear as a panel witness today. We are supportive of the policy objective to stop the practice of claim farming and the undesirable behaviours and public impact associated with that. However, it is critical in seeking to shut down the claim-farming industry that the legislature does not hinder Queenslanders from accessing advice about and their entitlements under a scheme they fund through compulsory premiums.

We are concerned that the intent of the bill and its corresponding impact are not completely aligned. The effect of sections 74 and 75 in their current form is broad and potentially cruels traditional relationship-driven referrals. While we appreciate that amendments have already been made to the bill to try to avoid this, we do not believe that the amendments have gone far enough. To ensure that legitimate practices are excluded from being unintentionally captured by the bill, we strongly recommend that the exclusions in section 75(3)(c)(i) be expanded to include amounts paid to employees of law firms contingent on law firms achieving business objectives and targets; educational benefits, for example training medical professionals in the skill of report writing; general hospitality that is reasonable in the circumstances and not clearly and directly provided in exchange for referrals; and fees paid in exchange for professional services rendered in respect to a referred claimant's matter consistent with the current carved out under PIPA.

The bill also imposes certification requirements on law firms that in our view are impractical. The requirements fail to consider the practicalities and structures of many firms, including ours, and the issues faced by Shine Lawyers regarding those requirements are similar to ours. Finally, it is not appropriate for the bill to override the timeworn concepts of legal professional privilege and the

common law privilege against self-incrimination as it does in section 87Z(2)(a)(i). These concepts represent fundamental cornerstones of justice under Australian law and the parliament should only override the protection afforded by these professional privileges if matters are of extreme importance.

In summing up, it is critical that in seeking to shut down the claim-farming industry the legislature does not hinder Queenslanders from accessing their entitlements and learning of their rights under a scheme that they fund through compulsory premiums.

Mr Gibson: Thank you for the invitation to speak today. We support the objective of the bill as well, to stop claims farming. For some context around what I am going to say, Shine Lawyers has about 60 practising lawyers across Queensland across 22 locations helping people who are injured in motor vehicle accidents. The certificate we have to sign is our first concern. Given our organisational type, structure and size, the requirement to sign this certificate is quite challenging. Shine is listed on the ASX. We have over 700 employees. It has a corporate board. We have one legal practitioner who is entitled to hold a principal practising certificate. The governance function of our business, the marketing function of our business and the actual transacting of legal work function of the business are all very separate in our business as well. It is therefore very challenging for any lawyer or principal in our business to be able to certify what is happening across each of these functions, so it makes signing certificates difficult.

If this provision remains it must be suitable for all law practices. The solution could be that the principal should be allowed to nominate other lawyers who can sign that certificate even when there is more than one principal, and they should be able to make that nomination whether they can or cannot sign the certificate themselves. Alternatively, a simple solution would be to allow other supervising lawyers to sign these certificates as well, which would serve that purpose.

What concerns us most is the impact that these provisions could have on a claimant's rights due to the fact that the provision of the certificate is required to be given in the initial notice, meaning that if it is not given there has not been compliance with the section. This means if there is difficulty in having the certificate signed, for example, and the claimant's limitation period is impending, it might be impossible to deliver that compliant notice of claim and the claimant could lose their rights altogether.

I note the Treasury's response to our submission. They said they can do it themselves, but the reality is that that fails to consider that not every claimant has the ability to do it themselves. Some are illiterate and cannot put in that claim and some have language barriers. Those are just two examples of that difficulty. Therefore, the claimant should not be prejudiced at all in their rights or there should not be a delay for the claimant at all just because of this requirement to sign a certificate. It should not be connected, in our view.

Sections 74 and 75 in themselves interpret it broadly as well. We would put normal business practices at risk of being in contravention of those sections, as my colleagues have said today. That real lack of clear meaning in sections 74 and 75 makes it really difficult in itself to sign those certificates as well, because we do not know what it means. If it is unclear amongst all the people who are submitting before you at the moment, how can a lawyer certify what they are required to? For example, some normal business practices might be affected. Under the Australian Solicitors Conduct Rules, a fee is allowed to be exchanged or a benefit is allowed to be exchanged between practitioners, as long as that is disclosed to a client. If that cannot be paid, deserving claimants might actually turn away. Often we hear a lot from people who come to us saying that it is actually a really hard thing to approach a lawyer and to bring a claim. There is a stigma attached to doing that in Australia. Therefore, it is really important that we do not make another barrier for those people.

The approach and contact in section 75 is fraught with difficulties. Referrals by medical and allied health professionals, contact by a potential claimant due to a community sponsorship, even some forms of digital and other advertising could be seen as a breach of those sections, yet none of those things is what this bill is actually trying to prevent. Thank you.

Mr STEVENS: The compulsory third-party scheme, which started before my term, is obviously very much a scheme in the public interest to protect people who are severely injured et cetera. Because these are public funds that are gathered to pay to injured people, why would it not be in the public interest to know the legal amount that is paid out of the final settlement of the claim—that is, how much is the legal part of the claim that is received—as opposed to how much the claimant receives? I hear about client/professional relationships and all the rest of it. It is a public interest fund of money. Why would the public interest test not apply to how much actually goes to the third-party people who actually make claims?

CHAIR: In some ways it is not actually part of the bill that we are examining, but it has come up.

Mr STEVENS: It has come up in discussions at the table today because as it is in other jurisdictions, as I understand it.

CHAIR: I ask witnesses to keep it relatively brief, because we do want to examine what is actually in the bill.

Ms Vines: I would comment that the 50 per cent restriction on legal fees is unique to Queensland. In Queensland there is already a restriction on the amount of legal fees that can be charged. That is not echoed in other jurisdictions. That is useful context.

We did talk about the overriding fundamental nature of legal professional privilege and the right against self-incrimination. You can talk about the public interest of knowing about what those amounts are; however, I think if the legislature is going to overrule those fundamental common law rights it needs to have a very substantive reason to do that.

Mr STEVENS: Greg, you mentioned that this bill may have unintended consequences in section 75 of picking up other organisations and agencies. Could you give me a definitive example of that, please?

Mr Spinda: Those examples are contained in the ALA submission. We have provided something in the order of at least 12.

Mr STEVENS: Are they definitive?

Mr Hodgson: Yes, they are all definitive and they are borne out by the views expressed by senior counsel who has provided advice to the Australian Lawyers Alliance as well. Those examples cover a gamut of situations through sporting, community groups, industrial organisations and so on.

Mr STEVENS: This bill will capture those matters?

Mr Hodgson: We are of the view that the bill will capture many legitimate and ethical arrangements. There is a difference of views amongst legal professionals—lawyers at 10 paces—in relation to the reach. In our view, it is not for this committee to seek to reconcile those differences of views.

We need to get back to core policy intent. We back the Treasurer. We back the core policy intent of getting at the grubs who are claims farmers and those who are in bed with claims farmers. However, more important than seeking to reconcile those technical differences, which are borne out in those examples, is putting beyond doubt the protection of ethical and legitimate arrangements that have zero to do with claims farming. The core policy intent, which we support absolutely, is to curtail claims-farming activities.

We all know what claims farming is and, just as importantly, we know what claims farming is not. If there is legal uncertainty about the reach of the bill, and many of the submissions allude to this, particularly in respect of sections 74 and 75, then, getting back to basics and getting back to what the core policy intent is—and bearing in mind that this bill creates criminal offences—our view and our independent advice is that ethical and legitimate arrangements are at risk. This committee has the opportunity to make recommendations about how the bill can be made more certain whilst maintaining the core policy intent of the bill.

Mr RUSSO: There are differences in the submissions between the ALA, the Queensland Law Society and the bar. Today you have also heard Suncorp's call for a fundamental change to the architecture of the Queensland scheme. I am interested in how you would reconcile the differences between the submissions.

CHAIR: There are different approaches taken by the Queensland Law Society and the submission put forward. Can those two things act in the same way? That might be the first question and we can go back to the other.

Mr Hodgson: I am happy to deal with both questions. I think I covered the first point, that there are technical legal differences in view. It is not unusual for lawyers to disagree about some technical aspects of various matters. There is an opportunity for this committee not to go through the minutiae of those differences but rather to put beyond doubt what the policy intent is. The policy intent is to deal with claims farming and the policy intent is not to impugn or interfere with legitimate and ethical arrangements of long standing.

As far as Suncorp goes, yes, you are right: they have called for a fundamental change in the architecture of Queensland's excellent scheme. I say that Suncorp's submission is predictably silly for these reasons. It is predictable because Suncorp has long wanted to boost its very big profits from this scheme by denying Queenslanders their longstanding common law rights. It is silly because the Queensland CTP scheme is a successful and well-regulated scheme. We have the second lowest

aggregate premiums in the country. Queenslanders have good access to legal rights compared to many states. We should be proud of the scheme. Gutting it in the way advocated for by Suncorp makes no sense on economic grounds, other than perhaps for their own bottom line. It makes no sense on fairness grounds, either.

History, in the context of the architecture of compensation schemes, is also important. I recall that a few years ago the member for Mermaid Beach was the chair of a committee that looked at the architecture of Queensland's excellent workers compensation scheme. That committee correctly and commendably said, 'It ain't broke; don't try to fix it.' Someone who is no longer premier of this state did not take notice of his own committee and so-called changes to sort out minor claims resulted in—

CHAIR: We might focus on this legislation.

Mr Hodgson: I think the analogy is important, Mr Chair. In any event, Suncorp's views are ideological, greedy, not supported by the evidence and will not deal with claims farming.

CHAIR: Obviously we need to have a balance between legal firms that reach out to the community and make sure that their services are available and that people have their rights when they have been injured or suffered loss. You have this list on page 6 of your report. Given that there are alternative legal views about this—and you have obviously had legal advice—is it likely that, regardless of where the settled legal position eventually comes, there would be a chilling effect on the relationships that legal firms have with the community and their outreach to the community, because of their potential to have to sign off on these certificates and these issues?

Mr Hodgson: If this committee deals with the unintended consequences of the bill as we see them and this committee's recommendations in that regard are congruent with what we say ought to occur to resolve the issue, those organisations—footy clubs, schools, industrial organisations, community legal centres and so on, all of which do a great job—should be able to sleep at night. However, the resolution of those issues, putting it beyond doubt, seems to me to be a very critical part of making sure that the bill is correctly balanced.

Ms Vines: I think that lawyers—and certainly I can speak for our own firm—if there is any ambiguity in the legislation, would err on the side of being on the right side. Yes, I think it would have a cruelling effect. One of the other relationships, and it is a fundamental relationship in this particular arena, is that of the treating doctor acting as a referrer of legal work to lawyers. That is a mutually beneficial arrangement whereby the law firms provide educational benefits and support networks for the treating doctors. The treating doctor is often the most appropriate person to refer their patient who has suffered injuries in an accident to a lawyer who they know will be able to manage their patient's claim. Then it is most appropriate for the lawyer to engage the doctor to provide a medicolegal report and it is appropriate that that person gets paid for the report. Under the current drafting of the legislation, that would be caught. I notice that in the Personal Injury Proceedings Act there is an exemption for this type of referral arrangement and the payment of that professional service fee. We would need to ensure that such an exemption is made in the context of this bill as well.

Mr PURDIE: Mr Hodgson, I refer to what you were saying about Suncorp's silly submission in relation to trying to protect their big profits. What is your position on the legal fraternity having to declare or disclose their profits? In her submission Ms Murphy talked about legal privilege and that it was a breach of that against Australian law. This morning we have also heard that other jurisdictions across the country have decided to breach that Australian law and disclose those profits. If we know that Suncorp and others are making big profits, what is your position on lawyers disclosing their profits?

Mr Hodgson: I understood the evidence from Suncorp and/or the Insurance Council of Australia to refer to New South Wales regulations in that regard. I am not familiar with the finer detail of what happens in other jurisdictions, but two things are clear in relation to lawyers' fees. Firstly, lawyers are one of the most heavily regulated professions in this country. Our legal fees need to be the subject of very clear, open disclosure. Where people are under a disability, such as having an intellectual disability, or are an infant, there are additional protective mechanisms in place. We are heavily regulated and our fees are an open book.

In Queensland there is a legal requirement that lawyers must not charge, no matter what, more than 50 per cent of the damages which are recovered. A lot of people, insurers included, say, 'Well, that means lawyers take half of everything.' That proposition is plainly not correct. Lawyers' legal fees are much less than that in the vast majority of cases.

I say that we are already heavily regulated. The appropriate regulatory arrangements with respect to lawyers' fees are well understood by all participants and stakeholders. Any person who has concerns about the adequacy of their legal fees can have those concerns resolved through a well-understood process of having the lawyers' fees double-checked by independent means.

CHAIR: We are talking about things that are not really in the bill before us, even though they have been canvassed.

Mr PURDIE: You spoke about authorities. At that point do legal firms have to disclose? Can they breach the client-lawyer privilege to disclose? We heard earlier this morning that surveys are showing that some claimants are getting only 31 cents in the dollar. At some point is there an oversight authority that can look at the legal fees that are being charged or is it just assumed that 50 per cent is the regulation at the moment and they do not go over that?

Mr Hodgson: There are two strands to the question. The first strand is around what a can claimant do in the relatively rare occurrence that a person is not satisfied with their legal fees. They are entitled to challenge the legal fees through a process that is well understood. The second strand to the question is around the regulatory oversight of legal fees. As has been indicated already, the Motor Accident Insurance Commission has the ability—and I understand it has done this in the past—to do an after-the-event survey of claimants to determine their legal fees as a proportion of the total claim.

I am only speaking from the personal experience of my firm, but the number of people who challenge their legal fees is very small. It is a tiny proportion. The big picture here is that Suncorp is presenting a solution to something that is not a problem. As the chair has indicated, this is left field. It is not core to the issue of claims farming and we need to get back to the basics.

CHAIR: The claims-farming legislation before us is complex enough. Going through other provisos around safeguards for people with legal fees is contained in other legislation that we might try to focus on.

Ms RICHARDS: We heard from Mr Gibson the concerns around the certification process. Everybody should be prepared to stand behind the integrity and level of service they provide. Does anybody else have any commentary on the certification process and how that might affect your business, assuming new sections 74 and 75 were cleared up and there was more definition around those conflicts? If that were addressed, would certification be any issue to anybody else?

Ms Yujnovich: The certification requirements pose logistical issues for our firm. We have a situation where the responsible principal—in our case the legal practice director—is not client facing and is based in Melbourne. Although section 36C(2) allows for a lawyer nominated by a supervising principal to provide the certificate, that section only applies if the supervising principal is the only principal in the law practice. It is quite conceivable that there may be more than one legal practice director on a board of an incorporated legal practice like ours, which means in those circumstances that section does not apply. We believe that section 36C(2) should therefore be expanded to allow the delegation of certification requirements to any legal practice director.

Also for large firms such as ours, which has a centralised client intake system, the lawyer who has responsibility for the file will not necessarily have direct knowledge of the circumstances by which that client came to them. That also then creates uncertainty in terms of them being able to sign that certificate. In those circumstances it becomes very difficult for them to sign something that they are not ultimately sure of.

Ms RICHARDS: I guess that would be a business practice change. You would be able to capture that information, I am sure?

Ms Yujnovich: That is correct. That is why we have outlined in our submission that if it is the case that these certification requirements are going to remain it would be our recommendation that it be the lawyer with the carriage of the matter who is the one who signs that.

Ms Vines: The certification requirements effectively require lawyers, who are already subject to very heavy regulation, to certify that they have complied with the law. Under Queensland legislation as it currently stands, referral fees for the payment of personal injury claims are banned. Touting is banned in Queensland. The conduct that we are looking to prevent under this particular legislation is already outlawed in Queensland.

We can ensure that it is consistent, at the very least, with that legislation, but it also needs to ensure that the certification requirements go beyond that. Given we have all said here that there is enough uncertainty about some of the aspects of the legislation, as a lawyer with very onerous obligations and obligations in terms of their practising certificate continuance in the future, it is a fairly significant thing to require them to certify that they have in fact complied with the law.

Mr O'CONNOR: Ms Vines, you said the conduct is already outlawed. Was that under the Personal Injuries Proceedings Act? Are there lawyers out there already flouting the current system?

Ms Vines: I cannot comment from personal experience. That is not our experience.

Mr O'CONNOR: If it is already outlawed, is it not being enforced properly? Does anyone have a comment on that?

Mr Hodgson: That is a question that is probably diverting a little away from the main game. It is worth observing that claims farming—although the evidence on it is not empirical—in Queensland we believe is a small spot of a melanoma and this legislation is designed to stop it metastasising.

We believe anecdotally that the number of lawyers in bed with claims farmers at present is very small. The evidence is that it is the low end claims that have spiked a bit—not a lot. One would assume that those small number of lawyers who are in bed with claims farmers are probably doing some things that breach existing legislation and that is, in the murky world that is claims farming, not being picked up and policed.

One of the policy objectives of this legislation is to target the lawyers who want to roll the dice and get into bed with claims farmers—emphasising again that the problem is not a large one at the moment, as far as we can see. Within the broader context, we have an excellent scheme of which Queenslanders ought to be very proud.

Mr O'CONNOR: If it is just that small number who are ignoring the existing legislation, what is to stop them ignoring the new legislation?

Mr Hodgson: This legislation has real teeth. If one breaches this legislation—and what I am about to explain to you underpins the need to get the calibration of the legislation right—one can lose their practising certificate, their right to practise law, and indeed could end up going to jail for perjury for falsely swearing a sworn document. This legislation has real teeth, and rightly so. We need to make sure that it does not overreach.

Mr O'CONNOR: You all had issues with new sections 74 and 75. How are these referrals paid for? Are the costs of the current referral arrangements being charged back to the claim that was initially referred?

Mr Hodgson: They are not.

Mr O'CONNOR: Where are they coming from?

Mr Hodgson: I will give you one example of a referral arrangement. This sort of arrangement exists all around this state—city and country. Your local footy club gets a couple of grand to put the lawyers' name on their jersey and then someone might be referred because they are associated with that footy club. We say—and our independent QC's advice is to this effect as well—that that risks breaching the legislation.

It is not per claim: 'You send me someone and I will give you a thousand dollars.' That money is just an amount of money which is paid, typically due to wanting to support your local community and values alignment. Normal business practice is that people refer to people that they know. We need to make sure that those arrangements are appropriately protected. We have suggested a number of measures by which we can put that beyond doubt.

CHAIR: You are at the event giving away the trophy to the best player—the Shine or Slater and Gordon best player trophy—and someone says, 'This person has been in a car accident.' You are concerned that there is an unintended consequence?

Mr Hodgson: Yes, we are. We are equally convinced that it is not the intention of this government to impugn those arrangements, but the alignment of that intent with the wording of the bill and putting that beyond doubt is the critical issue that we are seeking to push here today.

Mr O'CONNOR: It is not a direct relationship between the referral—it is a passive thing—

Ms Vines: There may be an overarching arrangement whereby we support you and you refer your members or the people who have contact with you. For example, a law firm may provide a bursary for a charitable purpose on the understanding that that organisation will refer their members—for example, who have acquired injuries through accidents—to law firm X.

There is another thing I would like to put on the table. There have been figures put up in terms of the problem that claim farming represents. I think not many people can really substantiate those figures. We cannot substantiate those figures. I do not think the insurers can actually genuinely substantiate it. One thing that is worthwhile noting is that just because there is an increase at the lower end of claims does not necessary correlate to claims farming, per se.

We have been looking at some statistical evidence in Victoria, which is where I am based, and TAC, which is the equivalent of MAIC down there, has some statistical evidence that says that, whilst the number of hospitalised injuries—that is, genuine injuries—at the lower end is increasing, serious injury hospitalisations have remained pretty static. Those figures have been marked in recent years.

I do not think that the claims farmers are causing the injuries to increase. The claims farmers are an annoying pest in relation to the manipulation of people to bring claims. Having said that, in wanting to stamp that conduct out we need to ensure that these legitimate other arrangements which have existed for a long time are not also cruelled.

Mr STEVENS: Rodney, what I am hearing is that we are all against claim farmers, basically. As a practice you are all against claim farming. What we are arguing about is the legalese behind the definition in relation to the bill here. Our guys are saying, 'No, it is not going to pick up your footy club.' When I say 'our guys', they are not mine; they are Crown Law—they will be our guys next time. One lawyer goes into town and he goes broke and two lawyers make a fortune. One lawyer is saying that it does not get the people that you are saying it does based on your independent QC's advice. How are we going to satisfy that? As a committee we have to make a recommendation. How are we going to be satisfied that we all end up on the same bus against claim farmers?

Mr Hodgson: There are five key elements to the fix dealing with unintended consequences. The first element is to have an objects clause in the legislation. This builds on the Treasurer's first reading speech and embeds in the legislation some material clarifying what claims farming is and what it is not. In addition to our submission, we have briefed senior counsel to draft such a clause. We are happy to provide that drafting to this committee.

The second element to the fix is some explicit exemptions for the groups we have identified—charities, community service organisations, educational organisations, registered industrial organisations, community legal centres and sporting and recreational bodies. The third element is that we would give the regulator power to exempt upon application any other bona fide arrangements. We think we have captured the field there. If someone were able to come to the regulator and say, 'This is kosher. It has nothing to do with claims farming,' then give the regulator the power to say, 'Yes, we sign off on that.'

The fourth element which we say is part of the fix is to adopt the phraseology in the Queensland Law Society's submission, which says 'consideration which is not given for a specific claims referral'. That is a definitional change. Finally, we would also generally support what the Queensland Law Society has had to say and what my colleagues here have had to say in respect of the right to remain silent and legal professional privilege. If this committee were to make recommendations along those lines, we would end up with an appropriately calibrated piece of legislation which is consistent with the Treasurer's first reading speech.

CHAIR: We do not want the unintended consequence of allowing a loophole which allowed claim farmers to continue to do that through some other mechanism. Upon reflection, do you have any concerns that your proposed solution might have such a loophole?

Mr Hodgson: None whatsoever. I have read what the Treasury legals have had to say—this thesis that if you provide these explicit exemptions that we have advocated for then there is going to be a flood of claim farmers rushing to set up behind a facade of footy clubs, schools and community service organisations. I will say two things about that: firstly, politely, that argument is untenable; and, secondly, were that to occur then deal with it at the time. There has been not a skerrick of evidence overseas that claim farmers have set up behind a facade of sporting institutions, schools and other entities that we would propose be exempt, and I do not believe that it will happen here.

CHAIR: There being no further questions, thank you very much for your attendance here today. We also have your submissions. We will end this session. I note that there were no questions taken on notice.

Mr STEVENS: What about the drafting?

Mr Hodgson: We are happy to provide that through the chair today.

Proceedings suspended from 12.31 pm to 12.44 pm.

O'DONNELL, Mr Tom, Principal, O'Donnell Legal

SPLATT, Mr Kerry, Principal, Splatt Lawyers

CHAIR: The committee will now hear from Tom O'Donnell, Principal of O'Donnell Legal, and Kerry Splatt, Principal of Splatt Lawyers. Good afternoon. I invite each of you to make an opening statement, beginning with Mr O'Donnell. After that we will go to questions from members.

Mr O'Donnell: Chair and members of the committee, thank you very much for listening to me today. I appreciate the opportunity. Like everyone else you have heard, I am against claim farming, per se, as described in the explanatory notes. I am a sole practitioner whose practice largely revolves around personal injuries law. As a sole practitioner, I obtain my work from referrals. Some of these referrals come from other law firms that do not practise in my area of law but who like to refer their clients or locals who contact them to someone they know and trust. Like mine, these firms are small and some of them are in regional areas.

To at least one of these firms I pay referral fees. These fees are fully disclosed to the client in the cost agreement and are paid from my professional fees at the successful completion of the claim. They are not an add-on. They are not illegal under the Legal Profession Act or the Australian solicitors' guidelines. They are not an attempt to circumvent legislation or to pay some kind of backhander. Instead, I submit they are an ethical business expense fully disclosed which is in the interests of the claimant, the referring practitioner and me: the claimant because he or she is referred to a practitioner known to the local practitioner as someone who is trusted and competent in the field of personal injuries law; the referring practitioner because the local practitioner is protected and that practitioner receives a fee for the referral; and me because I maintain a practice without engaging in expensive advertising campaigns and/or paying for links with industrial and/or community organisations.

What is more ethical? A referral fee fully disclosed to the claimant and paid to a local practitioner who does not practise in the area of personal injuries law or leaving the claimant to fend for themselves in the marketplace? You have all seen the billboards with slogans like 'Had one up the tail pipe?', 'We specialise in rear enders' and 'Contact the prang gang.' Would you much rather a constituent of yours be left in that market or be looked after by a firm recommended by a local practitioner?

In my view, if the proposed new section 74 is passed as drafted, it will consolidate the personal injuries field into those firms that, one, have links to industrial organisations or, two, spend massive amounts on advertising. As such, it penalises small firms and is potentially uncompetitive. The proposed new section 75 would make it illegal for me to contact a prospective client if asked to do so by a fellow practitioner. In my view, this is simply absurd. Contacting people at the request of a fellow practitioner is, in my view, a usual business practice. As parliamentarians, how many times are you asked by a constituent or another MP to contact another person? All the time, I imagine.

Finally, I go back to claim farming as defined in the explanatory notes. The explanatory notes state that the objective of the bill is to stop the practice of insurance claim farming. This involves anonymous persons contacting members of the public, from 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. Under this definition, does a referral of a claimant from one small practitioner to another for a fully disclosed referral fee constitute claim farming? I submit that it does not.

Why does the legislation as currently drafted treat community legal centres differently to small legal practices? Likewise, why should community groups like Bicycle Queensland be treated as claim farmers if they refer their members to a legal practice? Whilst I laud the purpose of the claim farming legislation, I implore the committee to be aware of its unforeseen and presumably unintended consequences. It would be unfortunate if community groups and their members, and small and regional law firms and their clients, were impacted by this legislation. Please do not throw the baby out with the bathwater.

Mr Splatt: Thank you, Chair, for giving me the opportunity to appear. I would like to very quickly address the issue that Suncorp raised and that Mr Purdie and Mr O'Connor were talking about with respect to New South Wales no fault. Queensland has a hybrid common law system. We have the ISV, the injury scale valuation, which is different to other jurisdictions which contain damages. Also, Suncorp talked about 31 per cent going back to the claimant. They did not point out that a large amount of money goes back to the Australian taxpayer. When we settle a matter, there are statutory refunds back to the government—back to WorkCover, back to Medicare, back to Veterans' Affairs, back to all sorts of government departments.

When I made a submission to the Productivity Commission in 2012 in relation to the NDIS which recommended doing away with the common law, I pointed out to the Productivity Commission that through the common law schemes that were still around at that time over $1 billion was remitted back to the Australian taxpayer. I think Suncorp are quite disingenuous in what they put up today. I know that it is not about the bill. Just be aware that we have one of the lowest premiums in Australia and it is to do with our excellent hybrid common law scheme, which takes into account the injury scale valuation which knocks out small claims. I just wanted to point that out.

I am a sole proprietor. I have been on committees of the Queensland Law Society, the Australian Lawyers Alliance and the Law Council of Australia for the last 23 years. I have been actively agitating for the end of claim farming since 2012. There has been a lot of correspondence between me and MAIC, the Queensland government, the Law Society and the Lawyers Alliance. I am also admitted in the United Kingdom, so I have experience in the United Kingdom jurisdiction.

I was trying to work out why in this bill we are talking about referral arrangements which have already been covered by our onerous PIPA legislation and the Australian solicitors' guidelines. They very adequately deal with the ethics of referral fees and referral arrangements. I do not know why they are even in this bill. We should be stamping out claim farming, but the arrangements with respect to solicitors' referrals are already covered in legislation.

Everyone has made submissions about how to deal with the issue of referral arrangements. I think it has become very complex. I made a detailed submission to MAIC in 2016 in which I talked about the British legislation. The British legislation is entirely appropriate for Britain but not for Queensland. The British legal profession use claim farmers for their work. Law firms do not advertise, on the whole. They use claim farmers. In Queensland it is quite different. They do not use claim farming or claim management companies.

This is where this has got right out of hand. When I made the submission to MAIC I pointed out what the UK government did. It seems that that has flowed into this. I am the one who made the suggestion about statutory declarations to deal with claim farming, but I also pointed out the referral arrangements as dealt with by the UK legislation. That seems to have been the basis of this bill, and it has got out of hand. We should be dealing with what the Treasurer wants to deal with—that is, claim farming. It increases frivolous claims and it should be dealt with. The bill deals very well with claim farming. It is now going down the track of dealing with referral arrangements. There is no evidence that that has been a problem. It is peculiar to the British system. With respect, it should be expunged from this bill.

If you have any concerns about claim referrals, have the partners of the law firms sign statutory declarations not in relation to claim farming but in relation to saying, 'I have a referral arrangement. It is PIPA compliant and it complies with the Australian solicitors' guidelines.' Then it is dealt with ethically. All of these legal organisations are saying that it is confusing and are going on and on about how referral arrangements are so unnecessarily complex when they need not be. It has got out of hand. It is dealt with by PIPA and the Australian solicitors' guidelines. Just stick to the essence of what the bill should be about.

Mr STEVENS: Mr O'Donnell, in your opening statement you mentioned that it was like ringing politicians for advice et cetera and then the politician rings someone after that. Quite clearly, I see a major difference in a professional body that charges a fee. The last time I charged a fee for helping someone, the bill still has not been paid. That is a little different. A better analogy that you may well draw is a doctor's referral. I do not ever hear of doctors ringing patients to ask, 'Can I help with your particular medical condition?'

I am concerned about the matters you raise, particularly since Queensland Treasury have said that the matters you raise in terms of your stated referral fee, which you make clear on your bill to your client et cetera, do not breach section 75. Does that give you any more comfort in the fact that Queensland Treasury and our legal gurus are basically saying that your referral scenario is not covered by this bill?

Mr O'Donnell: Thank you for pointing out that it has been a long time since you have been paid for your advice. No, it does not give me comfort, in a sense. The reason it does not give me comfort is that I have read section 74. It seems to me that, if consideration is paid and I have to sign a certificate pursuant to section 36, that would mean that I am in breach of the act. I would be liable to be found guilty or found that the way I had acted was professional misconduct, which would in turn have an impact upon my ability to potentially practise law. That concerns me a great deal for obvious reasons, although I was heartened by Mr Hodgson's submission from the ALA with respect to the potential to ask the commissioner for an exemption. That might cover that particular avenue.

Mr STEVENS: Mr Splatt, do you feel that the overall intent of this supposed claim farming bill has been to try to reduce the capacity of people to go through normal referral areas such as solicitors and barristers to get through the legal system and push them more towards the charitable institution or union organisation type of referral?

Mr Splatt: I have seen that it should be prescribed for charities and that type of work to be exempt. What is a 'charity'? That is going to be abused. The Australian solicitors' guidelines and the PIPA legislation deal with it. I do not know why the legislation should be interested in prescribing. The term 'charity' is going to be abused.

Mr STEVENS: A front.

Mr Splatt: It is going to be a front; it is going to be used. It is not necessary. The Treasurer has not alluded to it. In my dealings with MAIC—which have been many—we have talked about claim farmers, not the referral arrangements. The Legal Services Commissioner has not talked about referral arrangements being out of whack. There is no evidence of it at all, but it is in the bill. I think it is in the bill because I handed up to MAIC a very comprehensive statement on the British jurisdiction, but I did point out to them later on that it is a different market. The law firms over there do not advertise. I am admitted there; I know what they do. They think advertising is beneath them; it is not gentlemanly.

Mr STEVENS: It used to be here too, apparently.

Mr Splatt: Yes. If you get rid of the referral arrangements, of course firms like Tom's and regional firms will go out of business. I mean no disrespect to my colleagues in the large firms, but they will have the full market. That is an unintended consequence. I think there is no problem with the referral arrangements because that is very well covered by the Australian solicitors' guidelines and the PIPA legislation.

CHAIR: You talked about England and how claim farming was part of the practice before restrictions were put on it. The intent of this legislation is to anticipate that that is where the Australian legal market could go and to head it off before it transitions to that type of arrangement, is it not?

Mr Splatt: Yes.

CHAIR: What I was clarifying is that we want to have similar legislation with the same kind of teeth to ensure it does not change to that situation, do we not?

Mr Splatt: Yes. Basically, the essence of claim farming legislation should be: did the claimant initiate the call? It should be that simple. Did the solicitor or the agent of the law firm contact the claimant to make a claim? It should be that simple. It should be: who initiated the claim? This bill is so complex and it need not be. When I submitted to MAIC in relation to the statutory declaration, I pointed out they should get the law firms to sign off saying, 'I did not use a claim farmer. I did not initiate the claim. The claimant came to the lawyer. If I have a referral arrangement, it is PIPA complaint and I have complied with the Australian solicitors' guidelines.' That way, you are dealing with the insidious practice of claim farming. Claim management companies in England started cold-calling clients, and then it came to Australia because we have a similar common law jurisdiction. They had to bring in legislation dealing with referral arrangements because the British have a different system of marketing to Australian lawyers.

Mr O'Donnell: I would like to address the member for Ninderry's comments with respect to legal fees being disclosed. In my view, Suncorp's submissions with respect to that were disingenuous. As has been mentioned by other people who have given evidence today, in Queensland we are covered by the fifty-fifty law, which is part of the Legal Profession Act. If we break the fifty-fifty rule we are subject to professional misconduct and can be struck off. Notably, that happened to a practitioner in Townsville. Furthermore, you asked if it is policed. I recently had my trust account audited by the Queensland Law Society, which is a common thing. It happens once every three years or so. As part of that process they check to see whether or not I have breached the fifty-fifty rule. It is all looked at; it is policed. There is protection there for Queensland consumers.

Mr Splatt: I was audited by the Legal Services Commission several years ago. They were very strong about it. They came in and made sure that our client agreements were proper and that everything was compliant with the fifty-fifty rule. Consumers have very good protections with the Legal Services Commissioner, who is very vigilant.

CHAIR: That is something we are not examining as part of the bill.

Mr Splatt: Yes, I know.

Ms RICHARDS: We heard earlier from some of the larger legal firms that there are complexities around the certification process. Do you have any feedback from the perspective of a smaller law firm with regard to the practice of signing off certification?

Mr O'Donnell: It is very, very easy for me: I sign it and hand it in.

Mr Splatt: The same for me.

Mr O'CONNOR: As opposed to the larger firms we heard from before, you both make comments in your submissions about the anticompetitive nature. Do you want to elaborate on that a bit more?

Mr O'Donnell: Mr O'Connor, it seems to me that if referral arrangements are impacted then inevitably it will push consumers to those firms that either have links with industrial organisations and/or advertise a great deal or possibly those who have good links with community associations. For example, I am aware that one of the larger firms has a relationship with Bicycle Queensland. That is fine; I would imagine they pay quite well for that. The reality is that small firms cannot afford those types of relationships. As such, if referral arrangements were squeezed out, in my view it would squeeze small firms out of the market.

Mr O'CONNOR: I can certainly attest to that. Driving up and down the M1 you see the Logan Law billboards. I do not know how many small firms can afford that.

Mr O'Donnell: Exactly.

Mr Splatt: I agree with that. The arrangement that Tom has with regional law firms is a good one. In country towns the small practitioner competes with the big firms. The small firms that have an opportunity to be involved in a relationship with the likes of Tom is a good thing. I have only had two referral arrangements when I paid fees for regional solicitors, but they share in the work. I give them some of the work to do and I will do my work. I also disclose it in the client agreement pursuant to the Australian solicitors' guidelines and it is PIPA compliant in that I have not encouraged the claim; the claimant has initiated the claim. Regional firms and small firms will be greatly affected by this. You will probably see a lot more billboards. I get a lot of my work from traditional advertising—billboards et cetera—and I hate it, but I have to do it. The public is going to get more of it, and I think the public has had enough of it. I think you should not touch the referral arrangements. They are very good, they serve a good purpose and it is already covered. Just take the damn thing out of the bill. It should not be in there.

Ms RICHARDS: My interpretation is that it tightens up that practice and it sits within there. In terms of referrals for professional services and a marketing approach by a business—you are all businesses—at the end of the day, whether you are a small firm or a large firm, claim farming versus a professional referral system are two different things in your mind; is that correct?

Mr Splatt: Yes.

Ms RICHARDS: I wanted to clarify that.

Mr O'Donnell: Absolutely.

Mr Splatt: The referral has been mixed in with the claim farming, which is the British way of dealing with it, which should not be in Queensland.

CHAIR: Thank you very much for appearing here today and for your submissions. We all have copies. There were no questions on notice.

GARBETT, Mr Michael, Chair, Accident Compensation/Tort Law Committee, Queensland Law Society

HOWE, Mr Keith, Committee Member, General Litigation Committee, Bar Association of Queensland

MURPHY, Mr Luke, Deputy Chair, Accident Compensation/Tort Law Committee, Queensland Law Society

POTTS, Mr Bill, President, Queensland Law Society

CHAIR: Good afternoon, Mr Potts. I invite you to make an opening statement. I will extend the same opportunity to Mr Howe. After that I am sure members will have some questions for you.

Mr Potts: We hope so. Thank you for inviting the Queensland Law Society to appear at the public hearing of the Motor Accident Insurance and Other Legislation Amendment Bill 2019. As this committee is well aware, the Queensland Law Society is the peak professional body for solicitors in Queensland. Our central ethos is good law, good lawyers and—we hope as part of our submissions here today—the public good of the community. Our views are representative of our nearly 13,000 members.

For the last few years the society has advocated for legislative reform to deal with the issue of claim farming. In this regard, I note the substantial advocacy efforts and contribution of members of the society's accident compensation and tort law committee. Two of their members are here today. I would also like to thank the government for consulting with us on this important legislation. In particular I acknowledge Mr Singleton from MAIC, which we have contributed to over a very lengthy period of time as part of our discussions in the development of this bill. It has been a constructive and not always easy process, but we think that the legislation which is here for your consideration today strikes a balance, notwithstanding the tensions which have already been identified to this committee. I think it was Mr Rod Hodgson who said that if you have three lawyers you will get five opinions. The reality is that we hope our opinions will receive significant consideration by the committee.

We welcome several positive aspects of the bill which aim to put a stop to claim farming, including requiring the law practice and claimant to swear certificates that the claim did not originate from claim farming; the extraterritorial application of the fifty-fifty rule; and strengthening the position on giving or receiving consideration for claim referrals. However, we are obviously aware that there are some concerns within the profession and some community organisations which have been relayed to this committee about the potential interpretation of the bill, specifically the claim-farming offences in sections 74 and 75 which I know are giving this committee some concern.

The Law Society also has some concerns about the bill which were raised in detail in our written submission before you, including ensuring that the nature and scope of the proposed investigative powers do not impact the fundamental right to remain silent and that cornerstone principles such as legal professional privilege and protection against self-incrimination are preserved.

As part of my opening statement I have two experts who have very brief statements. I will ask Mr Michael Garbett, the chair of the QLS accident compensation and tort law committee, to address the committee.

Mr Garbett: As the committee would be aware, there is a divergence of views in the profession as to a potential interpretation of proposed section 74, in particular, that it may proscribe longstanding legitimate and beneficial relationships between law practices, practitioners and community organisations. Whilst we do not believe that such an interpretation is likely, the proscribing of conduct by legal practices that provide essential support to community organisations should of course be avoided.

In our submission we have proposed an amendment to section 74(4). We note the Bar Association of Queensland, in their correspondence to the committee on 15 July 2019, considered that the society's proposed amendment was worthy of consideration. We have also suggested an amendment in section 75 to expressly exclude application of the provision in circumstances where the first person is requested to approach or contact the second person by the spouse, relative or friend of the second person.

The society believes that amendments assist in striking the balance, the right balance, to eliminating claim-farming practices and any unintended impacts on law practices providing fees or other benefits to the community for the public good. I will now hand over to Luke Murphy, the deputy chair of the QLS Accident Compensation/Tort Law Committee.

Mr Murphy: The society's written submission also addressed some concerns in relation to the investigative powers that are given to authorised persons. Whilst noting the Treasury's position that the enforcement powers are consistent with current legislation, the society's position is, as it always has been, that the compromise of such cornerstone fundamental principles of law should only be exercised in the rarest of circumstances and the need to safeguard civil liberties and promote the rule of law should always be adhered to. We have raised a number of concerns where we consider the proposed legislation is inconsistent with those cornerstone principles and they must be the subject of legislative or judicial scrutiny.

Mr Howe: The bar's approach to it was that the bar was content with the bill as drafted, but we thought it apt to assist the committee to make a submission given that you have been given a submission from the Australian Lawyers Alliance and the Queensland Law Society about what concerns the bar today: extending the definition of 'consideration'. If I can just deal with what the thrust of the difference is between the ALR and the Law Society, it is this. Stripping it down, the ALA proposes that certain organisations be carved out from the proposed act having any application to community organisations, industrial organisations and so forth. In our view, the examples given by the ALA would not be caught by the bill in any event because there is not the quid pro quo in those examples, or the correlation between fee or benefit and getting the work. Be that as it may, two esteemed bodies of some respect have expressed concerns.

We think, as I said before, that the bill is adequate as drafted but that if there is to be any amendment by extending the definition of 'consideration' in section 74, the Queensland Law Society model better addresses the risk. The Law Society, you will see, still has a carve-out so to speak. It is dealt with on page 2 of the submissions in dot point No. 4, a carve-out of certain organisations, but you will note that the qualification is in there 'for a specific claim referral'. It is there to achieve what the mischief is. In other words, it is a societal good for lawyers to have a healthy relationship, whether it be with a charity or any other organisation and they may indeed provide sponsorship and so forth. Obviously, the legislation is not designed to capture that. There has been some concern expressed obviously about certain organisations being caught, and we see that in those submissions.

The Law Society model still keeps that requirement there for it being referable to 'for a specific claim referral', which we see as important. In an upshot, we see that if the committee is to be considering any amendment to the extended definition of 'consideration', serious consideration should be given, if you so choose, to the Law Society model. However, that is not at all departing from my initial point that we see the bill as sufficient in its current form.

CHAIR: Members of the bar are not going to be the principals of solicitor firms that sign off on—

Mr Howe: Not at all. We are one step removed, or a number of steps removed.

Mr Potts: We would not have them!

Mr STEVENS: I will go to Mr Howe if I may. This is all very confusing when we have very high profile, learned ladies and gentlemen here arguing over the legal points of this legislation. I have always believed that the more prescriptive we make the legislation, the more holes it creates by leaving out other matters. The Law Society, and Mr Potts's, submission basically says consideration, it leaves it open and that sort of thing. What we were trying to do was stop cold callers. The earlier presentation we had from Mr O'Donnell was not a cold call; it was a referral from an associate of a client to call a person to see if he could help with his business. I would not imagine that would be captured by this legislation, but we have independent barrister's advice—a QC no less, or SC I think they were called—that this legislation does capture those types of referrals and would create problems for a lot of the firms.

Getting back to the intent of the legislation, it is to attack those cold callers on the matter. Does the Bar Association in their legal representation—the peak body—say that we need to change or exclude 74 and 75 so that the genuine law practices throughout our community can go ahead and take referrals without fear of prosecution under the heavy penalties in this legislation?

Mr Howe: I can only repeat that the Bar Association—and that explains why initially it did not make any submissions concerning the content of the bill—was satisfied that it achieved that purpose. We thought it apt to respond, given the submissions the committee received, to endeavour to assist the committee. If there is to be any amendment—we are here to talk about this extended definition of 'consideration'—then the Law Society model or suggestion is one that better addresses the risk. To emphasise again, we did not think that those examples that were given would be caught. After all, any prosecution would need to be beyond a reasonable doubt to prove that it is caught by the section. I hope that addresses that to some extent.

Mr STEVENS: It does.

Mr Howe: There will always be debate, of course, on the width and ambit of legislation. We all know there is with any legislation, whether it be legislation relating to the building units and group title matters over the years, section 49 and so forth; there has been quite a huge amount of litigation and so forth. We were content with the bill.

Mr Murphy: Could I add something to that? In relation to the example that you highlighted, if I understood it correctly, it was a regional practitioner referring an established client, a relative, to an expert—

Mr STEVENS:—in that field, correct.

Mr Murphy:—in the area. There is no difficulty with that whatsoever and we do not believe it would be caught. The concern would arise under the current drafting of section 74 if there was consideration paid specifically for that referral. That has been a cause of some angst amongst members of the profession, as has been evidenced today. However, the motivation behind that is that, as was addressed by one of the earlier submissions of one of the insurers, Mr Mobbs from Allianz, he made the point that the claim farmers are quite agile, they lurk in the shadows and they do move.

One of the problems that has arisen is that there has been comment and belief of a practice where there has been what I would describe as—and I tremble to add another expression to the mix—claims harvesting where members of the legal profession do no more than collect instructions and then onsell. It is a similar practice, but those claimants that the practitioners secure instructions from are then onsold en masse and correspondence has been forwarded between members of the profession where fees of up to $3,000 for a referral have been stated. The concern is that encourages the same practice that underpins the cold calling but in a different format, and it is consistent with the comment that Mr Mobbs made earlier this morning.

Mr STEVENS: Is harvesting a bigger form of farming?

Mr Murphy: I do not know that there is any data that could say that one way or the other.

CHAIR: In this case though we were attempting to address claim farming by the unsolicited contact to establish a lead to be then onsold. This evidence seems to be about a different circumstance where someone perhaps has reached out to a law firm that does not have those specialist skills and then there is some involvement in line with the regulations—and Mr Splatt spoke about the firm having some involvement with the file and getting compensation for that, which is perhaps a problem with the legal profession but a different one from the one that this bill intends to address.

Mr Garbett: I can address that for you. If one particular firm is consulted by a claimant and does some work and then hands that claim on to a new firm, they are fully entitled to be paid for the work that has been done; we have no difficulty with that. The situation we are trying to avoid is essentially the lawyer becoming the claim farmer, so the lawyer doing the cold calling or having somebody do the cold calling on their behalf and then essentially selling off claims to the highest bidder. When Mr Richard Douglas QC—

CHAIR: Protected by the fact that they are a solicitor?

Mr Garbett: When Mr Richard Douglas QC originally prepared his paper, he actually made the point in that paper that one of the forms of claim farming that could be anticipated is actually lawyers doing the claim farming. I would also echo what Mr Murphy said; we have absolutely no difficulty with one lawyer referring somebody to another lawyer who is an expert in that field. That is not what we are trying to capture.

CHAIR: Are those in breach of the Personal Injuries Proceedings Act in that circumstance?

Mr Garbett: I believe—or at least the society's view is—that it breaches the Personal Injuries Proceedings Act.

CHAIR: Already?

Mr STEVENS: Even if it is a lawyer doing it, are they not still breaching this proposed bill we are bringing forward? You mentioned a lawyer doing it directly and then harvesting that.

Mr Garbett: That is correct, they would be breaching.

Mr STEVENS: Correct. That is what we are trying to stop.

Mr Garbett: That is correct.

Mr Potts: The point we are making—terms such as 'agile' and 'changing'. There is no point having a piece of legislation that sits in concrete as the claims farmers move on to different forms of claims farming. I appreciate the view that the magnificent member for Mermaid Beach referred to before, but it is not about being prescriptive; it is actually about ensuring that this legislation remains agile to anticipate and deal with future problems.

Mr STEVENS: A-ha. Now I have got you.

Mr RUSSO: Just to clarify what Mr Murphy was talking about, where you have a lawyer who has an existing client who may come and see him about a personal injury claim or road accident or whatever and that lawyer then refers that matter on, that is not claim farming.

Mr Murphy: No.

Mr RUSSO: There would be lawyers, for example, who sell—that is, they have a small personal injury practice and through circumstances beyond their control no longer have the capacity to manage those files so they do the right thing by passing those over to another firm. Again, that would not be claim farming.

Mr Murphy: No.

Mr RUSSO: But it would be caught by the current legislation?

Mr Murphy: No, that is exempted.

CHAIR: If there was consideration.

Mr Murphy: Mr Russo, that comes through proposed subsection 74(3), and that was specifically included to address that issue where a practitioner has legitimately taken initial instructions and in some circumstances given the initial notice the claimant is starting to receive rehabilitation and, for whatever reason, validly sells that file on. It may be selling as part of the practice. They are fully entitled to proper and reasonable fees for the work they have undertaken, and that has been exempted in 74(3).

Mr Potts: The evil that is being addressed, Mr Russo, is a firm that does little or nothing else but being a funnel. They get a claim, whether through their own advertising or some referral, and little or no work is then done and then the whole file is sold holus-bolus for sums, as we have heard, of up to about $3,000, so it becomes a business model and a business practice rather than the unforeseen circumstances that you refer to.

Mr RUSSO: What about where the person comes to the firm and asks for assistance and then is automatically referred on?

Mr STEVENS: There is no work done.

Mr RUSSO: It is not part of their practice but—

Ms RICHARDS: There has been no service provided other than referral.

Mr Potts: That is the bit we say is in fact excluded. We are concerned about where it is a business practice where little or no work is being done but, with all great respect, the client gets it in the neck two years later when the matter is settled by effectively being seen as a disbursement, and it should not be that way.

Mr RUSSO: I know there has been some reference to the Australian Lawyers Alliance submission in relation to the unintended consequences and there have also been suggested changes by the Queensland Law Society. However, on my reading of it, do you agree with this: the suggested amendments by the Queensland Law Society fall short of providing certainty for some schools, kindergartens and sporting entities that may be involved in consideration? An example that was given this morning is you sponsor the school musical or something—sorry, but that might not have been given in evidence; that might have been in a submission—and then someone refers something.

Mr Garbett: We fundamentally do not believe that would be caught by the bill in its present form, so we do not believe that that further carve out is necessitated.

Mr Murphy: With regard to the difference between the submissions, Mr Russo, you are correct: it is a fine difference in terms of the categories that are being exempted or carved out. However, we do not see that that example, as Mr Garbett has just said, of the sponsorship of a school function causes a breach because, consistent with the interpretation that Mr Douglas—SC or QC I am not sure—and consistent with the objective of the legislation, it is, we say, a specific referral and the consideration has to be for a specific referral and we would readily acknowledge that that is the

fundamental difference between our interpretation of the legislation and the ALA's interpretation of the legislation. If, however, that difference is put to one side, apart from the educational institutions, the bulk of the submissions are not that significantly apart, but that is the rationalisation behind the difference.

Mr Howe: Mr Russo, if I may for the benefit of the committee, the suggested amendment by the Law Society is on page 2 of their submission and with the ALA it is on page 13. It is true, comparing the two, that in the Law Society proposal there is no mention of a school, university or other educational institution as there is in the ALA's and it was quite proper and appropriate, Mr Russo, for you to raise that. However, again the Bar Association sees that, in the example that you gave, it would not be captured by the act as enshrined here because that sponsorship or activity is not for a claim referral. You will note that, as I said before without being repetitious, in the proposal on page 2 of the Law Society submission it actually has engrafted into it for a specific claim referral, and that is what means those transactions will not be captured.

Ms RICHARDS: Potentially you could think though that that could be expanded out given that you are referring to ACNCs and not for profits, if you know what I mean. What is the difference between the local church community group versus a school P&C? There would be potential. If you think that the ACNC organisations need to be in there, why would you think that a school does not need to be or a school P&C? Why would you be suggesting to broaden out the term 'consideration' and include an entity registered under the ACNC and not for profits if you did not think that a school P&C would likely also be captured under the same?

Mr Murphy: Ms Richards, I am happy to answer that. The motivation behind the exemption in the society's viewpoint is that there are the following circumstances. The easier example is if I could use a community legal centre, but I envisage it would also occur just as readily for industrial organisations and also for a number of registered charities and not for profits. At a community legal centre you will have an employed solicitor attending and offering advice to members of the public. One of those members of the public may well be in need of legal advice in relation to a CTP claim. If that employed solicitor was to refer that member of the public to the firm that employs them or indeed to another firm that has the requisite expertise they would be in breach of proposed section 74 because there is consideration of the employed solicitor's time in attending, and that would be in excess of the monetary limit; the legal firm that is receiving instructions would be receiving consideration because they would be entitled to charge legal fees for the conduct of the claim itself; and, arguably, the community legal centre is receiving a consideration through the time that the employed solicitor is providing and it could be said to be specifically related to that referral because that was what the time was given for and the referral to the legal firm was for that.

Ms RICHARDS: I appreciate that but in terms of having, under (4)(b), an entity registered under the ACNC and not for profits, if you are talking about any organisation that falls within that remit, then you would also be looking at the likes of a school P&C that could also be perceived to be taking a public benefit as well.

Mr RUSSO: This is a question along similar lines, so I apologise in advance. Just from a point of view of making legislation, there is obviously a range of legal views here about the precise reach of proposed sections 74 and 75.

Mr Garbett: Yes.

Mr RUSSO: In those circumstances, is it not better that the legislation puts it beyond doubt squarely so that the legislation is only aimed at claims farmers as we understand their activities? In terms of the example that you use of the community legal centre, as you said, that is captured by the legislation. Did I hear that correctly?

Mr Murphy: In the bill as drafted but not by the—

Mr RUSSO: Amendment.

Mr Murphy: Yes, if our submission was adopted.

Mr RUSSO: All right, but would it not be better to put it all beyond doubt? We have a diversion of views between the legal—

Mr Murphy: Mr Russo, there is absolutely no doubt that if we could get it beyond doubt that would be the ideal achievement and we believe that the submission that the society has made goes to that. I would not be bold enough to suggest that it would ever be beyond doubt because otherwise there would not be so many lawyers, but we think it does achieve a significant proportion of that goal.

Mr Potts: Putting it plainly, we think it does put it, substantially and majestically to assist this committee, beyond a doubt.

Ms RICHARDS: Majestically?

Mr Potts: Yes, absolutely, because it is a simple solution.

CHAIR: There must be some of your members who, if they have doubts, are going to change their behaviour and their involvement with community organisations. For instance, if the firm of Power & Stevens was sponsoring a footy club and that footy club referred a particular issue to Potts & Garbett, I would suggest that neither of us being lawyers it is probably better that they did that. If they did that and we said, 'We're not going to sponsor you if you keep giving it to those two,' we would then be creating a circumstance where, once Stevens found out that I had said that, I could be putting the firm in some kind of uncertain territory.

Mr Garbett: Again, in terms of the sponsorship, we would say that it has not been paid for a specific claim referral. You are still just sponsoring a sporting club or whatever it might be. Consideration has not been paid for a specific claim referral.

CHAIR: It does get difficult though there where we had made language about your failure to do a specific referral.

Mr Murphy: Mr Power, if I could, in proposed section 74(4)(b) as is currently drawn in the bill, the example that is given in our view specifically addresses that and should provide the level of comfort that any practitioner does need.

Mr STEVENS: Mr Potts, talking about agility in relation to this bill—and the Suncorp guys alluded to it earlier—if we adopt your methodology in terms of consideration and exempt these ones then the agile claim callers will then say, 'I'm from the Oodnadatta special school. I'm ringing on behalf of this group,' and there will be a fee paid—a small one perhaps—out of the claim caller's fee to the Oodnadatta special school, if there is one. I am just using that as an example obviously.

Mr Potts: I understand.

Mr STEVENS: In other words, the claims farmers that we are trying to grab by the legislation will move to hide in a hole on exemptions if we follow your line. Is that what I am hearing?

Mr Potts: No. Whether you accept what our submissions are or whether you do not, we think that the claims farmers will change their model. They always do. They find a hole so they try and get around it or get through it at least, and can I thank the firm of Power & Stevens for their referral to Potts & Garbett.

Mr STEVENS: We want the 1,500 bucks back!

Mr Potts: For no work! The point is this: we would say that there are, firstly, two things. It is not a specific referral, but the reason why we want the firms to sign the declarations is that that at least is a solid reminder to them of their obligations. We have heard evidence here today of large firms saying, 'We can't do that because we've got all these sorts of problems and issues around our business structure.' I think perhaps either Luke or Michael can comment upon that because they actually practise in this area.

Mr Murphy: The only comment I would make is: you heard earlier today about the need to have a solicitor appointed to be able to sign. That is specifically included in the legislation. It is already there. It was the subject of much discussion with the commission and the department officials, both by the ALA and the society. We think that any concern has been—

Mr STEVENS: Addressed.

Mr Murphy: Certainly addressed. We just cannot see what the concern is. Can I just add one other thing on that. In a couple of the written submissions there were comments about an onerous responsibility for a legal practitioner to sign the certificate. The society's viewpoint—and I can say with confidence that it was the entire accident compensation and tort law committee—is that the signing of a further certificate by a legal practitioner is far from onerous. The completion of a section 37 notice has been entrenched since 1994. What we are doing is just another paragraph or couple of paragraphs in that document. We just do not see that there is any additional onerous obligation. There is a clear responsibility that that is reinforcing the message of the need for proper conduct, but it is not an onerous, time-consuming responsibility.

Mr Garbett: We also have to look at the responsibility in the context of the problem that we are trying to fix. It is a serious problem. When that is viewed as against a lawyer signing a certificate, the lawyer signing a certificate, with respect, is a small price to pay.

Mr Potts: With the leave of the chair, the only other matter that I would like to clear up is that you heard earlier today—it was from either Shine's or Slater and Gordon's representatives—about doctors doing referrals—

Mr STEVENS: That was me.

Mr Potts:—and how this would be a terrible thing. It is specifically forbidden under section 67 of the PIPA in any case. It is not a practice that should be in existence in any case. It is simply proscribed.

CHAIR: It is already proscribed under PIPA. This perhaps gives teeth to that. Thank you very much. The time that we have allocated for you to speak has expired. I do not think there are any further questions. Thank you very much your assistance in putting in both the submission and the letter. Thank you for your attendance and information today.

BOJORGE, Ms Celica, Principal Legal Officer, Queensland Treasury

PIGNOLET, Ms Melissa, Manager, Policy and Communication, Motor Accident Insurance Commission, Queensland Treasury

SINGLETON, Mr Neil, Insurance Commissioner, Motor Accident Insurance Commission, Queensland Treasury

CHAIR: I would now like to welcome representatives from Queensland Treasury. Thank you for making yourselves available today and for your written response to the issues raised in submissions, which have been published on the committee's website. We invite you to address any further issues, especially those that have been raised during today's hearing, or to provide any additional information or address any outstanding questions that members may have about the bill. Would you like to start with an opening statement on the matters raised today?

Mr Singleton: A couple of the points that were coming out through the discussion were already addressed by the QLS. Shine Lawyers raised a concern about their structure and having a principal having to sign a statutory declaration. New section 36C was introduced into the bill after that consultation period to accommodate where a solicitor can be appointed to sign. However, what we want to avoid is having one person in a firm—and I am not suggesting this of Shine in any way—dealing with claim farmers but then a second solicitor in the firm signing the certificate, not being aware of that connection. We were concerned to make sure that the principal, who is allocating responsibility to sign a certificate, is not removing responsibility for the firm as a whole so that we do not have a junior solicitor, if you like, signing a certificate blind—to avoid a practice within that firm.

CHAIR: Understood.

Mr Singleton: In terms of the submissions from Mr O'Donnell and Mr Splatt, the bill allows for referrals. If a regional solicitor who does not practise in personal injury law wishes to refer a client to Mr O'Donnell, that is allowed. The issue of the $200 hospitality payment as gratitude for that referral was increased from $50 to ensure that that gratitude could be shown, but that referral arrangement remains in place and lawful. We are not looking to capture those sorts of arrangements under this bill.

CHAIR: Unless there had been work done by the other firm in the initial part of the—

Mr Singleton: Indeed. If the other firm has done work, it can then charge for those costs incurred as part of that referral. I think as Mr O'Donnell said, those costs are properly disclosed to the claimant.

CHAIR: In the circumstance of a small town where they have the costs of maintaining an office and advertising and then do very few hours of work on the actual file, but they still have various legal costs for the firm, what proportion is the fact that they need to have a presence in the small town in order to get the trust of the community to be contacted? Are they limited by the number of hours they put into it or the costs involved in having that presence?

Mr Singleton: That would be the reasonable costs that that solicitor would ordinarily charge that client for the work performed. I think as both stated, the QLS or the LSC monitor bills to ensure that bills of cost are reasonable. The referral arrangements where there is this notional $3,000 paid and the suggestion is that there is no work done—it is just a charge for referring a name or a client—that may fall foul of the legislation if it is a claim farmer who is simply passing on a name for a profit rather than a legitimate referral where a firm is saying, 'We don't specialise in this area. We know someone who does and we recommend you go to that firm and our reasonable bill of costs will be assigned to that firm, or paid by that firm on completion of the matter.'

CHAIR: In that situation with Mr Splatt and Mr O'Donnell where they have a relationship with other small solicitors firms that have limited skills, they are able to retain the same kind of relationships that they had with those smaller firms with which they are interrelated in a way?

Mr Singleton: Correct. That is not captured by these reforms in any way. Those relationships remain in place.

CHAIR: Why did they hold those concerns so strongly?

Mr Singleton: I think this is the challenge, or the question, that has been raised by a number of lawyers around the definition of 'consideration' and whether you read that up or read that down in terms of broad or narrow interpretation.

CHAIR: Right.

Mr Singleton: We say that the bill makes it sufficiently clear that that is not captured under the proposed arrangements.

CHAIR: Payment for work done in that way is not consideration?

Mr Singleton: Correct.

CHAIR: Including their ability to build that trust with the client that they then refer—

Mr Singleton: Indeed.

CHAIR: Sorry.

Mr Singleton: No, it was a pertinent point. In terms of new section 75, we have also spoken about the arrangements where a first person approaches a second person. If that second person reasonably expects to be contacted and would not object to a lawyer saying, 'Bicycle Queensland has told me that you were injured in a car crash. We can offer services to assist you,' again, we do not say that that breaches the legislation. If that second person said, 'Please go away. I have a law firm,' or, 'I don't wish to pursue a claim,' that should be the end of the matter. The ill we are trying to stop is where, unfortunately, some claim farmers continue to harass the person and do not take no for an answer. That has not been suggested by any of the conversation that was held here this morning. Again, we would say that where the second person is reasonably expecting to be contacted that would remain allowable.

In terms of the claim-harvesting issue, I think that is an entirely separate matter from a Law Society or LSC perspective. If lawyers are gathering clients with the intent to just onsell them to another firm, again, that does not necessarily mean that those matters were farmed; they were just matters that were gathered by that law firm. If they do not intend to progress that claim in their own right, if there was a conduct issue in question there, I think that is a separate matter away from these reforms.

CHAIR: And not captured, although it might be captured under the Personal Injury Proceedings Act? In your understanding, the Law Society might have other questions about the PIPA but not necessarily this legislation?

Mr Singleton: Correct. Thank you. I am in the committee's hands.

CHAIR: Are there any questions?

Mr STEVENS: Thank you, Mr Singleton. The explanatory notes acknowledge the additional costs to MAIC of the proposed legislation, chiefly in the form of engaging external contractors to investigate and prosecute a contravention. Obviously it does not quantify that, because you would not be aware of how much it is at a particular point. You say that it will be funded through existing budgets. How certain are you that eventually there will not be a team of investigators put on, or external contractors put on, to chase down these funds? It will probably cost your department more to run that particular investigation than to stop the money that claims farmers are generating. How long is the piece of string?

Mr Singleton: The unknown, and that is how many times law firms attempt to get around the reforms or breach the legislation requiring an investigator to be appointed?

Mr STEVENS: Correct.

Mr Singleton: That is an unknown number. We would hope that with one successful prosecution the word would be out there to lawyers—and I think that was raised today—that the consequences would be quite serious if any law firm were found to have breached these reforms in terms of the fine, potential issues for their practising certificate and potentially a perjury charge. We think the consequences are not going to be such that we will have a plethora of lawyers attempting to get around the bill or challenge the nature of these reforms.

MAIC already has powers under the act to prosecute claimants who commit a fraud against the scheme. Currently, all of those costs are run from within our existing budget. We do not see this as being an area that will significantly add to MAIC's operating costs but, clearly, we do not know how many law firms may attempt to bring matters forward that have been farmed.

Mr STEVENS: We were told earlier that claim farmers are very agile in their operational procedures. You are confident that your prosecution, once you finally get one, will see an end to the claim-farming practice?

Mr Singleton: I would love to see an end to the claim-farming practice. I think the bill as proposed gives us sufficient powers to address any claim-farming practices and to be adaptable if we see a change in that business model.

Mr STEVENS: Adaptable to the legislation? Is that what you are saying?

Mr Singleton: Adaptable to how claim farmers may attempt to shift their business model. I think we have sufficient expertise and analytics skills to be able to spot changes in claim dynamics such that we hope we can continue to combat claim farming in whatever form it may morph into.

Mr RUSSO: One of the things I have not been able to identify—and I may have missed it—is that there are no figures on how claim farming is impacting on Queensland, or the insurers. Is that true, or do have I that wrong?

Mr Singleton: In material we have provided we referenced, in market research that we have done, a number of people who reported they had been contacted by a claim farmer. The majority of those people did not progress a claim. They realised that it was a scam call and they ignored it. We have had over 1,300 people contact MAIC through our website telling us about interactions they have had with claim farmers. We do not have the exact number of claims that have come into the scheme as yet through the claim farmer, but we are aware the practice is out there and does exist.

Mr RUSSO: From the point of view of putting this legislation together we are, for want of a better term, ahead of the curve in the sense that if this legislation was passed, either amended or in its current form, it would be getting it, as has been suggested, before it actually mushroomed into a bigger problem.

Mr Singleton: I think the evidence from the ICA is pertinent that in other schemes where the problem has been allowed to grow before reforms were passed premiums have risen significantly. In Queensland we have not seen that cost pressure on the scheme, but we are sufficiently concerned that if left unchecked that would be a situation that could arise.

Mr RUSSO: This legislation is timely?

Mr Singleton: Absolutely.

CHAIR: We had the quote from Mr Potts that if you have five lawyers you will have six opinions. Given that these opinions may impact on and have unintended consequences, Mr Splatt defined it as looking to curtail where the claim was initiated by a cold call, and that is what we are attempting to do, and other relationships, other than those affected by PIPA, were not aimed to be affected. If there is doubt and uncertainty and we are going to perhaps change the behaviour and interactions between law firms and the community, is it worth looking at what the QLS or the ALA has put forward as ways to explicitly clarify that that is not the intent of the legislation?

Mr Singleton: I think we take heart from the Bar Association position that the bill as drafted is sufficient and addresses the intended consequence of claim farming. We do not believe that there is a need for additional change to the bill. We would be working with ALA, QLS and the Bar Association upon assent of the bill around education and awareness as to how the bill should be applied to make sure that solicitors are comfortable in arrangements that are bona fide versus arrangements that we are looking to curtail.

CHAIR: As you said, there is significant teeth which do not apply to barristers because they do not have to be the people signing off their potential licence and profession through signing the certificate. For those solicitors whom we wish to make comfortable, as you said, they do not seem to be comfortable at this stage about uncertainties about the relationships they have with community organisations. Is there something we can do to make it clearer in that circumstance?

Mr Singleton: In reading through the submissions, I think a lot of them were prefaced by words like 'may' or 'might' rather than 'will'. I think there is still a sufficient degree of comfort that the bill is well structured and well designed. I am not sure how we could give absolute certainty to a lawyer that we will allow practices of the type that people are seeking to exempt or carve out without creating the risk that claim farmers could usurp those exclusions to maintain their existing practices.

CHAIR: Your fear is that any of these clarifications actually expand something that allows claim farmers to exploit?

Mr Singleton: I think the ALA position—that MAIC would have to continually monitor which entities are exempt and either exempt additional entities or unexempt any entity that was found to be harbouring a claim farmer—becomes very impractical and very difficult compared to the current clean nature of the bill that says, 'If you are paying someone consideration for advertising, sponsorship or community support, that is legitimate; if you are deliberately paying someone for a referral that should already be covered or captured by PIPA but to make certain if it is a claim-farming type arrangement it is now captured by this bill.' I think they are two very different things.

Mr RUSSO: Isn't the legal profession trying to clarify whether an existing arrangement—for example, they may have an arrangement with a school or a charity organisation whereby they put their ad in their local magazine and they get direct referrals—is caught by the legislation? I do not

know who is right or wrong, so I am coming from the basis of trying to understand it. Isn't it of concern if their belief is that they are going to be in breach of the legislation, if the bill remains in its current form?

Mr Singleton: Through the consultation we have had, particularly with ALA and QLS over the last few months, this has been a strong theme of conversation and discussion: how do you distinguish advertising and sponsorship as opposed to a direct payment for a referral? We have sought to make it clear that advertising and sponsorship—those sorts of support payments—are legitimate and are not captured by the bill. It is purely where a referral fee is paid for the referral of a client. We have sought to amend the bill or to make it clear that there is that clear strong distinction.

Mr RUSSO: If you sponsor a football club jersey and you get direct referrals from the club, that is not going to be in breach of the act?

Mr Singleton: No.

Mr RUSSO: But if you were paying so much per referral then you would be in breach?

Mr Singleton: I think if you structure the sponsorship to say, 'We will pay you an amount for every referral we receive,' that is entirely different and I do not believe that is the way lawyers are arranging their sponsorships now. It is, 'Here is an amount of money for a purpose,' whether specified or general. It is not based on, 'We expect X number of referrals from you in order that we will continue this sponsorship.'

Ms RICHARDS: Continuing on from that, every lawyer from law firms has suggested that for them it is not beyond doubt and that it will have knock-on unintended consequences.

Mr Singleton: I understand, and I think that is the dilemma. If we put this beyond doubt, it would say that any arrangement could be open to a claim farmer to hide behind that structure and it would be almost impossible from a MAIC perspective to pick apart what are legitimate referrals and what are claim farmed referrals.

Ms RICHARDS: You do not think that the fix within there is simplified with the definition of a couple of those key terms?

Mr Singleton: I think we would have to give that close consideration—the unintended consequences of what on the surface appears to be a simple amendment to the bill, how that might flow on.

Ms Bojorge: To make it clear, section 74 makes it clear that the giving of the consideration and then the receiving of it has to be for a claim referral or potential claim referral which is then defined separately in subsection (4). That claim referral specifically excludes payments that are made, so it does not include advertisement or promotion of a service or person that results in a claimant using the service or person if the advertisement or promotion is made to the public or group of persons. A lot of those examples where they are making a contribution or a donation to a charity, a sporting association or a community group—that was the intent of paragraph (4)(b). In fact, that paragraph was included in that section, and those examples were included there as well, to give comfort to stakeholders that those types of advertisements and promotion and that type of activity that they do currently are not intended to be captured by 74(1) or (2). We have also excluded those payments that are made between law practices where they are selling their practice. If a practice ceases to operate in that area and they want to transfer the files to another practice, they can. There are other requirements around signing a law practice certificate from the first practice to the new practice.

Mr RUSSO: The second practice that gets the files would sign the certificate?

Ms Bojorge: The practice that is in essence selling the files would sign a certificate saying that those files were not claim farmed, basically, and that it complies with the requirements of section 36.

CHAIR: There being no further questions I thank Queensland Treasury and the Motor Accident Insurance Commission. I thank all of the witnesses who have appeared today. There were no questions taken on notice. I thank all the witnesses who appeared today to assist the committee with its inquiry. Thank you to our Hansard reporters, who always do a wonderful job, and also the parliamentary staff for their assistance. A transcript of these proceedings will be available on the committee's parliamentary web page in due course and will be circulated to all witnesses for review. I declare this public hearing closed.

The committee adjourned at 2.10 pm.