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The Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane Qld 4000



By email: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Dear Committee

**RE: Operation of Queensland's Workers' Compensation Scheme - Restriction of Lawyer Advertising and Misconceptions Regarding 'No-win No-Fee'**

*The manner in which lawyers services are advertised and marketed can have a detrimental effect on both the court system and the availability of affordable insurance.<sup>1</sup>*

I refer to the review of the Queensland workers' compensation scheme to be undertaken by the Parliamentary Finance and Administration Committee which was announced by the Attorney-General on 7<sup>th</sup> June 2012. I have worked as a solicitor and legal consultant practicing exclusively in the area of personal injuries law for 14 years. I am also a Court Appointed Cost Assessor.

I have had benefit of reviewing and reflecting upon some of the other submissions to date. In particular I note the excellent submissions by Queensland Law Society, Bar Association of Queensland, Australian Lawyers Alliance, Splatt & Associates and Rio Tinto.

In relation to the push from various business councils for thresholds in order to contain common law claims I note that the short comings of thresholds have been dealt with at length in the previous submissions I have mentioned. In summary, thresholds will result in a

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<sup>1</sup> John Hatzisfergos, Second Reading Speech, Legal Profession Act 2004 (NSW)

'long tail' administrative scheme that pushes the financial burden of injuries onto the taxpayer. Furthermore, the introduction of thresholds will lead to wide spread industrial unrest. In this respect I note with interest the submission from Rio Tinto that supports my view that thresholds are not the answer.

A much better way to contain common law would be to introduce a complete ban on television, radio and bill board advertising for all lawyers.

In Queensland personal injury advertising is regulated by the *Personal Injuries Proceedings Act 2002* (PIPA).<sup>2</sup> The Legal Services Commission is tasked with enforcing these advertising restrictions.

Interestingly, the current restrictions do prevent the advertising of personal injury legal services on television. The problem is that the current regulations are difficult to interpret and somewhat ambiguous making the task of enforcing the restrictions for regulators with limited resources such as the Legal Services Commission extremely difficult.

The current regulations contain a test<sup>3</sup> whether the restrictions apply or not – that is whether a particular advertisement pertains to 'personal injury services' or not.

Furthermore, it is only in the last couple of months that there has been what can only be described as an 'advertising war' between personal injury solicitors in Queensland with a proliferation of television advertisements. Competition in any industry is beneficial to the consumer, and the legal services industry is no different in this regard. Competition keeps costs competitive and service levels high. However, in my view this 'advertising war' is detrimental to consumers of legal services since such trends will simply lead to an oligopoly of large firms that can afford the massive advertising budgets required.

Several advertisements currently appearing on television cleverly circumvent the current regulations and section 64(1) of PIPA by not directly mentioning 'personal injury' or

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<sup>2</sup> See sections 62 - 69

<sup>3</sup> Section 64 (1) of PIPA:-

(1) For this part, a lawyer, or a person acting for a lawyer, "**advertises personal injury services**" if the lawyer or person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person—

- (a) to make a claim for compensation or damages under any Act or law for a personal injury; or
- (b) to use the services of the lawyer, or another named lawyer or a named firm of lawyers in connection with the making of a claim mentioned in paragraph (a).

'compensation' or similar phrases but contain indirect references such as images of workers in hard hats etc. Then there are advertisements that flout the restrictions and openly advertise legal services for 'compensation'. Television advertisements such as these not only create an unfair market advantage for firms capable of supporting a massive advertising budget but also create a public perception of frivolous claims and a litigious society.

The answer to me seems straightforward – simplify the current regulation so that it is not necessary to determine whether a particular advert pertains to 'personal injury' or not by introducing a ban all lawyer advertising on the television, radio, bill boards and print media. In any event, the vast majority of lawyer advertising in these mediums is done by personal injury law firms.

I also wish to deal with in some detail common misconceptions regarding 'no-win no-fee' cost arrangements exposed by proponents of thresholds.

#### **Ban Lawyer Advertising on Television, Radio, Bill Boards and Print Media**

A public perception of 'ambulance chasing' personal injury lawyers and the question of affordability of insurance make it necessary to regulate the advertising activities of practitioners in the field. Distasteful and vulgar ('in-your face') advertising on television, radio, bill boards and print media needs to be more heavily regulated.

It is important at the outset to draw a distinction between aggressive 'in-your-face' style advertising to the public at large, whether injured or not (such as television/radio ads, bill boards, street advertising and print media) and passive advertising where injured people are purposely seeking out legal services and information (such as yellow pages and internet websites). The later plays an important role in access to justice.

Injured people should be able to access information about legal remedies, advice and representation. Informing consumers can be achieved in a professional and appropriately subdued manner (telephone directories and internet websites). Such information helps them to make informed decisions in an efficient, consumer-friendly manner.

#### **Appropriate vs inappropriate advertising methods**

Radio, television, billboard advertising and print media are inappropriate mechanisms for a profession to advertise their services. The Queensland regulations currently allow such

media to be used (albeit with very restricted content) but it is one area where the restrictions in Queensland ought to be tightened.

In the interests of furthering the consumer's need to access information to make appropriate choices, advertisements in the solicitors' sections of telephone directories and on solicitors' websites should be allowed. Such advertisements should be suitably subdued and professional in nature. It should be permissible for such advertisements to state the law firms' areas of practice, any specialist accreditation, as well as the appropriate contact information. They should not contain visual depictions of accidents or injuries.

The White Pages and Yellow Pages have long been the starting point for consumers seeking a whole manner of goods and services. In the modern age many people are now looking to the internet and search engines such as Google for similar information.

Telephone directories and the internet are a natural first-point-of-call for those seeking information on legal remedies, representation and advice. Consumers that search telephone directories and the internet for a lawyer have already made the decision to seek assistance and any such 'passive' means do not encourage litigation.

*Access to appropriate information is beneficial to the Government*

Claims for personal injury compensation arise out of the finding of negligent conduct by another party. Employers, retailers, governments, motorists, householders and others take out insurance cover for such eventualities. Where someone sustains an injury and subsequent loss as a result of someone else's negligence, they should be able to access appropriate information about enforcing their legal rights against the negligent party.

When injured parties do not enforce their rights in these circumstances, the cost of the injury is passed onto the taxpayer, often through unemployment benefits and health care costs.

Where a claim is successfully pursued, any government benefits such as hospitalisation, Medicare expenses and unemployment benefits are compulsorily repaid, adding to consolidated revenue. Large sums of money are repaid to Medicare, Centrelink and public hospitals. Across the board hundreds of millions of dollars are being returned to consolidated revenue from personal injury claims.

My position is certainly not to encourage litigation, but rather that appropriate claims be made in the most appropriate, equitable, efficient and effective manner. Consumers having access to the necessary and appropriate information through 'passive' means with which to pursue existing legal rights and entitlements is critical in this process.

### **Misconceptions Regarding 'No-win No-fee' Cost Arrangements**

Often the proponents of thresholds cite 'no-win no-fee' cost arrangements to support their positions. However, there is often ignorance on the part of the business community, citizens and at times politicians regarding 'no-win no-fee' cost arrangements.

Contrary to popular belief 'no-win no-fee' is not a contingency fee. Contingency fees are where the lawyer charges based on a percentage of what is recovered from the claim. The concept seems to have been popularized in Australia by American television. Contingency fees are in fact illegal in Australia.

'No-win no-fee' cost arrangements in Queensland are strictly regulated by the *Legal Profession Act 2007* (Qld) and more recently the *Australian Consumer Law* (Cwth). All 'no-win no-fee' cost arrangements must be fair and reasonable and based on Court scale. A solicitor can only charge for the actual work that is done on a file, irrespective of outcome. Law firms also undergo regular audits by the Legal Services Commissioner. The end result is that solicitors can only afford to take on genuine claims. One important point that is often overlooked is the fact that 'no-win no-fee' arrangements ensure access to justice for those injured citizens that could not otherwise afford upfront legal fees.

As a policy 'no-win no-fee' it is good and the legal profession only has themselves to blame for not educating the public and other stakeholders that confuse 'no-win no-fee' with the American concept of contingency fees (which are illegal in Australia for good reason).

Proponents pushing for the introduction of thresholds use 'no-win no-fee' as the basis for arguments that litigation is 'out of control'. In reality there is no basis for this and this is not factual. The answer to counter the *perception* that litigation is 'out of control' is to ban all advertising which is encouraging litigation such as that on television, radio, bill boards and print media.

## Conclusion

The Queensland legislation should further restrict 'aggressive' style adverts by solicitors and implementing a total ban on television, radio, bill board advertising and print media. To avoid the ambiguity and enforcement issues with the current regulation the ban on such mediums should be 'across the board' and apply to advertising by all lawyers- noting that the majority of lawyer advertising is by personal injury firms in any event.

However, citizens who are injured should have appropriate access to appropriate information regarding their rights and contacting an appropriate lawyer. When in need of a lawyer they can begin the process by consulting the yellow pages or internet. The injured citizen initiates contact with a lawyer rather than being encouraged to do so through inappropriate advertising. Mediums such as television, radio, bill boards and print media encourage claims and should be banned on that basis.

Banning such advertising mediums also create fair market share with all solicitors on an even playing field and there is absolutely no encouragement for citizens to claim. It will also bring to an end the current ridiculous advertising war that may have as a consequence an increase in frivolous claims.

All lawyer advertising should be restricted to appropriate, informative, 'passive' advertisements in telephone directories and solicitors websites.

Consumers of legal services should be able to have efficient, seamless and appropriate access to information to assist them in pursuing legitimate rights and entitlements.

'No-win no-fee' is often incorrectly confused by proponents of thresholds and others with contingency fees. However, the truth of the matter is that 'no-win no-fee' cost arrangements are critical to ensuring access to justice for those in society that can least afford it.

Restrictions on lawyer advertising have been tested and upheld in the High Court<sup>4</sup> and this is a matter that the Attorney General can regulate very easily with simple legislative amendments.

Restricting all lawyers from advertising on television, radio, bill boards and print media will address the concerns of business without the need to introduce thresholds which will only

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<sup>4</sup> *APLA Limited v Legal Services Commissioner (NSW)* High Court of Australia, 1 September 2005 [2005] HCA 44; (2005) 219 ALR 403

**Restriction of Lawyer Advertising and Misconceptions Regarding 'No-win No-Fee'  
Submission by Associate Services Pty Ltd – Legal Consulting and Cost Assessment**

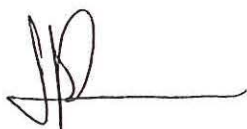
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result in long tailed schemes that push the cost of injuries onto the tax payer and undoubtedly result in industrial unrest.

If you have any queries in relation to this submission please do not hesitate to contact me.

Yours faithfully,

Per:-

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a horizontal line extending to the right.

Luke Randell LLB, BSc (Proprietor – Associate Services Pty Ltd)  
Solicitor of the Supreme Court of Queensland and the High Court of Australia, Court Appointed Cost Assessor.