Queensland Law Society

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Office of the President

16 December 2019

Our ref: KS: ACTL

Ms Bronwyn Morris
President
RACQ
PO Box 4
Springwood Qld 4127

Dear President

The Sunday Mail (Qld) article – "RACQ calls for more money for victims from CTP insurance"

We are writing to express our disappointment in the misleading and plainly inaccurate information which appears to have been supplied and indeed, quoted directly from, the RACQ, for the article "RACQ calls for more money for victims from CTP insurance", published in the Sunday Mail on 1 December 2019.

The article makes the following statements which are of most concern to the Society:

> *"LAWYERS take more money from the CTP scheme than their injured clients get, the RACQ says, calling for more cash to go to injured people."*
>
> *"Lawyers don't have to reveal their earnings and can take up to half of anything their clients get, but on top of that, they take extra fees before their client sees a cent."*
>
> *Meanwhile an "uplift fee" means a lawyer may pocket an additional 25 per cent.*

QLS is deeply concerned that your membership and the public generally, will be misinformed and misled on an important issue. With respect, the inaccuracy of these statements undermines the legitimacy of your "ReThink CTP" campaign. Significantly, they also unfairly call into question the absolute professionalism and conduct of the vast majority of our membership. It should be noted that it was the Society, in providing guidance to its membership, who first introduced a ruling on speculative personal injury actions, commonly called the "50 / 50 rule".

Further, such statements demonstrate a complete misunderstanding of the 50/50 rule for 'no win no fee' personal injury claims as well as the ethical obligations to which solicitors must have regard, with respect to costs disclosure to their clients and the professional fees and disbursements which are incurred. They overlook the recent amendments to the *Motor Accident Insurance Act* 1994 (**MAIA**), which apply extra-territorially, requiring a supervising principal of the law practice acting for a claimant to complete a law practice certificate confirming compliance with the 50 / 50 rule. New provisions (under s 36D of MAIC) make it an offence for a practitioner to sign and give a claimant or insurer a law practice certificate which they know is false or misleading.

The QLS and the Legal Services Commission set out a range of information and guidance on these issues which is easily accessible on these respective websites. Briefly, and in the

context of the issues raised by this article, the following matters ought to be clarified for the public record:

- '[T]he 50/50 rule prescribes the maximum fees lawyers are entitled to charge in speculative personal injury matters. It sets a cap, not a floor.'[1]
- Guidance from the Legal Services Commission and the QLS clearly sets out that charging a client in excess of the maximum amount they are entitled to charge under the 50/50 rule would potentially amount to unsatisfactory professional conduct or professional misconduct.[2]
- The 50/50 rule is not applied until after any statutory refunds, (that is, repayments that claimants or plaintiffs are statutorily obligated to pay back from any settlement or judgment amount) and disbursements including medical and other expert reports which have been accessed to properly investigate and support a claimant's claim.
- Any reference to "extra" or "uplift" fees which practitioners can take from the remaining balance, is simply untrue. What is true, is that in extraordinarily rare circumstances, section 347 of the *Legal Profession Act* 2007 allows an application to be made to the QLS Council for approval to charge more than the statutory formula. However, this is confined to limited circumstances such as when a client has materially misled a practitioner or not provided the whole story which has resulted in a lower than expected outcome.

The Society has extensive material available to support our members on understanding their responsibilities when communicating costs issues to their clients. The 50 / 50 rule is unique within Australia and QLS is proud of the fact that it originally introduced the concept and showed leadership in protecting injured clients.

Finally, the article seems to suggest some concerns held by the RACQ with respect to "greater transparency" around these issues. We would of course be pleased to assist in providing any further information about these matters to RACQ.

We once again invite you to meet with myself and the Chair and Deputy Chair (and QLS President-elect for 2020) of the QLS Accident Compensation and Tort Law Committee so that we can better understand your concerns and ensure that accurate information can be provided to the community.

We note that to date, we have yet to receive any response to our previous invitation to RACQ in this regard.If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully

Bill Potts
President

[1] https://www.lsc.qld.gov.au/__data/assets/pdf_file/0004/183991/Regulatory-Guide-3-Charging-Fees-in-Speculative-Personal-Injury-Matters-April-2019.pdf at p 4

[2] https://www.lsc.qld.gov.au/__data/assets/pdf_file/0004/183991/Regulatory-Guide-3-Charging-Fees-in-Speculative-Personal-Injury-Matters-April-2019.pdf at p 4; http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Costs/What_is_the_'5050_rule'_for_'no_win_no_fee'_personal_injury_cases.