

9 February 2022

Our ref: HS/ACTL

Shannon Fentiman MP  
Attorney-General and Minister for Justice  
Minister for Women and Minister for the  
Prevention of Domestic and Family Violence  
1 William Street  
Brisbane QLD 4000

By email: [REDACTED]

Dear Attorney

**Personal Injuries Proceedings Act 2002 advertising restrictions**

Thank you for your letter of 25 October 2022 inviting a submission in relation to the advertising restrictions contained in part 1 of chapter 3 of the *Personal Injuries Proceedings Act 2002 (Qld)* (PIPA). The Queensland Law Society (QLS) appreciates being consulted on this important issue and thanks you for the additional time allowed to respond.

This response has been compiled by the QLS Accident Compensation and Tort Law Committee, whose members have substantial expertise in personal injuries law, acting for both plaintiffs and defendants/insurers.

QLS notes the views expressed by the Legal Affairs and Safety Committee (LASC) at part 2.6 of its report on the *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* (PIPOLA). The LASC considers that the current restrictions are 'ineffectual, outdated and deny people the opportunity to obtain important and relevant information about their legal rights.' The LASC was of the view that the removal of the restrictions would not undermine the objective of PIPOLA, rather it would 'better allow legitimate practitioners to appropriately advertise their work, which in itself will help to damage a key aspect of claims farmers' current business model.'

QLS has long maintained the view that restrictions on personal injuries advertising play an important role in keeping Queensland's personal injury compensation regime and insurance schemes financially sustainable and in keeping costs to a minimum, thereby maximising the damages received by the injured members of the public for whose benefit the schemes exist. Appropriate regulation of advertising also protects the reputation and good standing of the legal profession.

However, QLS recognises that there are a range of views about personal injuries advertising and a number of difficulties with the current provisions. QLS does not agree that the claim farming provisions necessarily make advertising restrictions obsolete but agrees that it is an

## Personal Injuries Proceedings Act 2002 advertising restrictions

opportune time to conduct a 'fulsome examination' of the advertising restrictions, as proposed by the LASC. We urge against wholesale removal or significant relaxation of the restrictions without a detailed inquiry into how such changes would impact both the viability of Queensland's enviable injury compensation insurance schemes and the public's perception of the legal profession, the good standing of which is essential to the administration of justice.

We acknowledge the concerns about the current provisions, including:

- The difficulties faced by practitioners who are complying with the letter and the spirit of the provisions in competing against practices who are not complying.
- The difficulties faced by smaller practices in building brand recognition compared to large, long-established and higher profile plaintiff firms.
- Confusion that can arise amongst members of the public as a result of the ability to advertise legal services related to injured people accessing superannuation and total and permanent disability insurance claims but not claims for compensation or damages.
- Concerns that some injured people may not be aware of their rights or pursue them promptly - and within time limits imposed by legislation - due to not becoming aware of those rights, raising a potential access to justice issue.
- That the restrictions are not consistent with other Australian jurisdictions.
- That the restrictions are not well adapted to the modern media landscape, particularly social media and practices related to internet search engines.

Many of our members share these concerns and some take the view that the restrictions should be abolished or significantly modified to focus upon standards and good taste in advertising, as opposed to continuing with restrictive provisions. Other members believe that most of the difficulties could be solved by the existing restrictions being modernised, consistently enforced and, potentially, extended to include compensation-adjacent advertising relating to superannuation and total and permanent disability claims.

QLS is concerned that significantly relaxing or abolishing the restrictions could jeopardise the long term financial viability of Queensland's insurance schemes and have potential impacts on insurance premiums. In the long term, this would risk the ability of Queenslanders to continue to access the benefits of common law claims. Our understanding is that the Queensland compulsory third party and workers' compensation insurance schemes are more financially stable than those in other states where advertising is allowed in respect of personal injury claims. Protecting the viability of Queensland's schemes must be at the forefront of any policy change in this area.

QLS recommends that, along with detailed stakeholder consultation, the Government gather and analyse evidence of how personal injury advertising has impacted claim statistics in other Australian jurisdictions. Such analysis would naturally need to take into account that advertising is not the only difference between states that may account for differences in claim numbers and scheme sustainability (ie take into account the impact of no fault motor vehicle accident, long tail statutory workers compensation schemes and longer limitation periods). QLS has not been in a position to conduct this analysis but envisages that relevant data would be available from other states.

QLS also recommends that the Government consider available evidence of the impact personal injury advertising had in Queensland prior to the commencement of the existing provisions. The removal of advertising restrictions was said to have 'had a significant impact on the incidence of claims particularly at the lower end of the spectrum' between the removal of restrictions in



the mid-90s and the 1999 Review of the Queensland Compulsory Third Party Insurance Scheme.<sup>1</sup> Advertising was also a major issue of concern identified by the Kennedy Inquiry, which concluded that lawyer advertising had brought about an increase in the level of common law workers' compensation claims, though it acknowledged that the exact increase directly resulting from advertising was impossible to quantify.<sup>2</sup>

Regarding the standing of the profession, QLS is concerned that removing restrictions and instead relying on general advertising standards, consumer law, or rule 36 of the Australian Solicitors Conduct Rules could be an unwieldy approach that risks diminishing public confidence in the profession. It is reasonable to expect that a targeted, well-understood framework, consistently enforced by a single authority, would maintain standards more effectively than disparate bodies reacting to complaints about unsavoury advertising using generic rules. This is another matter where it would be informative to analyse evidence from jurisdictions which allow advertising for personal injury services.

Regarding the access to justice point, QLS has heard anecdotal reports of potential claimants missing limitation periods. The precise content of advertising restrictions and whether there are opportunities to allow for increased educative information without detracting from the goal of the restrictions is a matter that should be carefully considered as part of a comprehensive review.

At this stage, QLS is of the view that the primary difficulties with the current provisions are lack of enforcement and the need to modernise the provisions to ensure they keep pace with communication practices. QLS submits that the course of action which best meets the needs of the public and the profession is to:

1. Conduct a thorough review of available evidence regarding historical impacts of personal injury advertising on claims in Queensland.
2. Analyse available evidence regarding the impact of personal injuries advertising in other Australian jurisdictions.
3. If the analysis above supports the maintenance of restrictions, largely maintain the current restrictions but review how they apply in the modern media landscape and whether there is an opportunity to allow additional educative information to be published. It may be appropriate, for example, for law practices to be permitted to publish similar information on their social media channels to that which they are allowed to publish on their own websites, given that many consumers seek services via social media. Very careful consideration would need to be given to issues such as whether or how posting on social media would be allowed as opposed to information only being permitted in the 'about' or 'bio' section of a firm's page.

Consideration should also be given to whether advertising related to superannuation and total and permanent disability claims needs to be brought into the restrictions.

4. If the analysis supports relaxing or removing restrictions, carefully consider how remaining regulation would be enforced.

---

<sup>1</sup> Page 11 of the [Review of the Queensland Compulsory Third Party Insurance Scheme Report](#).

<sup>2</sup> Page 199 of the [Report of the Commission of Inquiry into Workers' Compensation and Related Matters in Queensland, 30 June 1996](#).

5. Increase resourcing to the Legal Services Commission so that it can properly enforce advertising restrictions/regulation alongside its new responsibilities in respect of claim farming.

As expressed above, QLS welcomes a detailed review of the advertising restrictions and would be pleased to play a significant role in such a process for the benefit of the public and the profession.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully

[REDACTED]  
Chloé Kopilović  
**President**