

Restrictions on the Advertising of Personal Injury Legal Services

Submission to Queensland Attorney-General
the Hon. Shannon Fentiman MP

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Contents

Who we are 4

Introduction..... 5

The flawed premise for introducing restrictions on personal injury services advertising in Queensland..... 6

 The *Ipp Report*..... 7

 Queensland’s response 7

 Observations on a misguided legislative response 8

Legitimate advertising as distinct from claims farming, and as a means of curtailing it 10

The inadequacies of the current restrictions and the impact on Queenslanders 11

 The impact on legal education and access to justice 12

 Legal Services Commission resources are going to waste 15

What has happened in jurisdictions that have either never had or have since removed specific personal injury advertising restrictions 16

Effective ways to regulate advertising by legal practitioners in Queensland 17

Other legal stakeholders..... 17

Amendments needed to the *PIP Act* to remove personal injury services advertising restrictions... 18

Conclusion 18

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to make a submission as part of stakeholder consultation regarding Queensland's current advertising restrictions in the *Personal Injuries Proceedings Act 2002* (Qld) ('*PIP Act*') that restrict personal injury advertising,² at the invitation of the Hon. Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence.
2. The ALA maintains that Queensland's restrictions in the *PIP Act* on advertising personal injury services are unfair, anachronistic and not fit for purpose. It is time they are removed.
3. While there are regulations affecting advertising at both federal and state/territory jurisdictions across Australia, Queensland is one of only three jurisdictions with advertising restrictions that specifically target personal injury services advertising. Queensland's personal injury advertising restrictions are objectively the most restrictive in Australia.
4. With that in mind, the ALA contends that this places injured and vulnerable Queenslanders at a distinct disadvantage to their counterparts in any other state or territory. The current restrictions are an impediment to injured, unwell and even dying Queenslanders learning of their legal rights and achieving access to justice.
5. The ALA also notes that no other lawyers in Queensland are subject to such restraint of trade.
6. The ALA agrees with the Queensland Parliament's Legal Affairs and Safety Committee report finding from May 2022 that the *PIP Act* personal injury advertising restrictions "are ineffectual, outdated and deny people the opportunity to obtain important and relevant information about their legal rights".³
7. The ALA's submission will address:
 - the flawed premise for introducing restrictions on personal injury services advertising in Queensland as a response to the so-called 'insurance crisis';
 - legitimate advertising as distinct from claims farming, and as a means of curtailing it;
 - the inadequacies of the current restrictions and the impact on Queenslanders, including the impact on legal education and access to justice;

² *Personal Injuries Proceedings Act 2002* (Qld) Chapter 3, Part 1, ss 64–66.

³ Legal Affairs and Safety Committee, *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* (Report No. 27, May 2022) 17 <<https://documents.parliament.qld.gov.au/tp/2022/5722T734-C23A.pdf>>

- what has happened in jurisdictions that have either never had or have since removed specific personal injury advertising restrictions;
- the suite of effective ways to regulate advertising by legal practitioners in Queensland without the *PIP Act* restrictions;
- other legal stakeholders' views on this matter; and
- the amendments needed to remove personal injury services advertising restrictions from the *PIP Act*.

The flawed premise for introducing restrictions on personal injury services advertising in Queensland

8. The so-called 'insurance crisis' from the late 1990s until 2002 was characterised by unsustainably high premiums of both public liability insurance and professional indemnity insurance, as well as by the collapse of HIH Insurance ('HIH') in 1999.⁴
9. The effect of HIH's collapse on injured, sick or disabled policyholders was immediate: for example, in Queensland, individuals injured in car accidents who had been insured with HIH were left waiting for operations and other medical procedures worth \$190 million.⁵
10. HIH had left tens of thousands of employees, shareholders and policy holders in the lurch.
11. Even so, at the time blame for the 'insurance crisis' was attributed to the injured claimants themselves for causing "an explosion in common law personal injuries claims",⁶ as well as for being awarded "excessive damages".⁷

⁴ Law Council of Australia, 'Tort Law Reform', *Policy Agenda* (Web Page, 23 November 2016) <<https://www.lawcouncil.asn.au/policy-agenda/access-to-justice/tort-law-reform>>.

⁵ The Treasury, Australian Government, 'Community impacts', *Aftermath of the HIH collapse* (Web Page, 19 June 2015) <<https://treasury.gov.au/publication/economic-roundup-issue-1-2015/economic-roundup-issue-1/the-hih-claims-support-scheme/3-aftermath-of-the-hih-collapse>>.

⁶ Andrew Field, "There must be a Better Way": Personal Injuries Compensation since the 'Crisis in Insurance' (2008) 13(1) *Deakin Law Review* 67.

⁷ The Hon. Justice Kenneth Hayne, 'Restricting Litigiousness' (Speech, 13th Commonwealth Law Conference, 14 April 2003) <https://www.hcourt.gov.au/assets/publications/speeches/current-justices/haynej/haynej_Restrictinglitigiousness.htm>

The Ipp Report

12. In response to perceived crisis, on 30 May 2002, representatives from Commonwealth, state and territory governments agreed to appoint a four-person panel ('the Panel'), led by Justice David Ipp, to undertake the Review of the Law of Negligence.
13. The Panel's task was "to examine a method for the reform of the common law with the objective of limiting liability and quantum of damages arising from personal injury and death".⁸
14. On 30 September 2002, the Panel's report – *Review of the Law of Negligence: Final Report* (known as the *Ipp Report*) – was released.
15. The *Ipp Report* contained 61 recommendations as part of "a package of legislative measures",⁹ which reflected the Panel's desire for a national response in the form of a "single statute...to be enacted in each jurisdiction",¹⁰ applicable "to any claim for damages for personal injury or death resulting from negligence regardless of whether the claim is brought in tort, contract, under a statute or any other cause of action".¹¹
16. The Panel acknowledged in the *Ipp Report* that, if their recommendations were implemented, "some injured persons who, under the current law, would be entitled to compensation will no longer be so entitled; and other persons will be entitled to less compensation".¹²
17. However, the ALA notes that none of the Panel's recommendations in the *Ipp Report* were to curtail the ability of lawyers to advertise personal injury services.

Queensland's response

18. On 18 June 2002, in response to the insurance crisis but well before the IPP Report had been finalised (let alone released), the Queensland Government introduced the Personal Injuries Proceedings Bill 2002 [Qld] ('PIP Bill') into Queensland Parliament.
19. By 20 June 2002, Queensland Parliament had passed the PIP Bill and it had been assented to by the Governor, becoming the *PIP Act*.

⁸ *Review of the Law of Negligence* (Final Report, September 2002) ix.

⁹ *Ibid* 35.

¹⁰ *Ibid* 1, Recommendation 1.

¹¹ *Ibid* 1, Recommendation 2.

¹² *Ibid* 1.20, 28.

20. The legislative intent was clear – this was a direct response to the ‘insurance crisis’:

Purpose of legislation

The main purpose of this Act is to facilitate the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury.¹³

21. It was also clear that the legislation was primarily focused on constraining claimants/plaintiffs and their legal representatives, including: offering incentives for claimants/plaintiffs to settle their claims quickly and “an early stage”;¹⁴ placing “reasonable limits” on the damages to which claimants/plaintiffs may be entitled;¹⁵ and the introduction of strict restrictions to regulate “inappropriate advertising and touting”,¹⁶ with the example provided of “advertising personal injury services on a ‘no win, no fee’ or other speculative basis”.¹⁷

Observations on a misguided legislative response

22. The rush to respond to the insurance crisis with legislation, including by the Queensland Government, on the basis that the insurance crisis was caused by an excessive number of injured individuals making claims has attracted strong criticism in the ensuing years:

...the blame for the ‘crisis in insurance’ was incorrectly attributed to an excess of plaintiffs exercising their rights under the existing law, whether their claims were based on negligence or any other cause of action, and that the laws passed on this basis to address the crisis were therefore not justified.¹⁸

Whilst the insurance industry blamed the crisis on an “explosion” in litigation and “overly generous” courts, most commentators believed the insurance crisis was precipitated by the collapse of HIH Insurance in 1999, combined with several other factors including a hardening global insurance market, increase in the cost of reinsurance and unrealistically low public liability insurance premiums in a highly competitive domestic insurance market.¹⁹

¹³ Explanatory Notes, Personal Injuries Proceedings Bill 2002 (Qld) 1.

¹⁴ *Personal Injuries Proceedings Act 2002* (Qld) s 4(2)(a) and (b); these provisions are detailed in Chapter 2.

¹⁵ *Ibid* s 4(2)(d); these provisions are detailed in Chapter 2.

¹⁶ *Ibid* s 4(2)(f); these provisions are detailed in Chapter 3, Part 1, ss 64–66.

¹⁷ *Ibid* s 66(b).

¹⁸ Andrew Field, “There must be a Better Way’: Personal Injuries Compensation since the ‘Crisis in Insurance’ (2008) 13(1) *Deakin Law Review* 67, 70.

¹⁹ Law Council of Australia, ‘Tort Law Reform’, *Policy Agenda* (Web Page, 23 November 2016) <<https://www.lawcouncil.asn.au/policy-agenda/access-to-justice/tort-law-reform>>.

23. The ALA notes that, when reflecting on the negligence and tort law reform legislation instigated by governments across Australia contemporaneously to the *Ipp Report*, Justice Ipp has commented that such legislation was “inconsistent, unbalanced and unfair to injured people”.²⁰

24. Justice Ipp has also observed that “[c]ertain of the statutory barriers that plaintiffs now face are inordinately high”.²¹

25. The ALA contends that cause of the insurance crisis, therefore, cannot and should not be attributed to injured individuals pursuing their legal rights. This is supported by quantitative analyses of available data, which has reflected that there was actually:

- a. a decline in the rate of claims since the mid-1990s;²² and
- b. a decline in litigation for personal injury claims in the late 1990s,²³ as well as in the early 2000s.²⁴

26. Instead, the primary underlying cause of the insurance crisis was the collapse of HIH and the responsibility for that lies with HIH management, not with HIH insurance policy holders or claimants:

The answer here is that HIH was mismanaged. The factors contributing to the mismanagement of the group—and hence the reasons for the failure—are many, varied and complex. They are also interrelated. They are epitomised by a lack of attention to detail, a lack of accountability for performance, and a lack of integrity in the company’s internal processes and systems. Combined, these features led to a series of business decisions that were poorly conceived and even more poorly executed.²⁵

²⁰ Geoffrey Provis, ‘From the President: A Source Worth Saving’ (2007) 81(7) *Law Institute Journal* 4, 4, citing Justice David Ipp, ‘The Politics, Purpose and Reform of the Law of Negligence’ (Paper, Conference of the Australian Insurance Law Association, 17 May 2007).

²¹ NSW Supreme Court, *Index to compilation of speeches delivered by the Hon. Justice D Ipp AO* (Speech, 13 November 2009) 12.

²² Rob Davis, ‘The Tort Reform Crisis’ (2002) 25 *University of New South Wales Law Journal* 865.

²³ *Ibid*, 866; cited in Andrew Field, ‘“There must be a Better Way”: Personal Injuries Compensation since the ‘Crisis in Insurance’ (2008) 13(1) *Deakin Law Review* 67, 73.

²⁴ E W Wright, ‘National Trends in Personal Injury Litigation: Before and After “Ipp” (2006) 14 *Torts Law Journal* 233; cited in Andrew Field, ‘“There must be a Better Way”: Personal Injuries Compensation since the ‘Crisis in Insurance’ (2008) 13(1) *Deakin Law Review* 67, 74.

²⁵ The HIH Royal Commission, *The Failure of HIH Insurance* (Report, April 2003) vol. 1, xvii.

...the collapse of HIH was not caused by either an increasingly litigious community, or a devastating downturn in the insurance market. Its troubles were the result of internal failures and a fatally flawed and ineffective record of corporate governance.²⁶

27. Therefore, regarding the Queensland Government's legislative response to the so-called 'insurance crisis', the ALA maintains that:

- a. the focus on claimants/plaintiffs and their legal representatives was misplaced and highly unfair, as it has been well-recognised that they were not the cause of the 'insurance crisis';
- b. the imposition of specific restrictions on the advertising of personal injury services, especially the conflation of legitimate advertising with disreputable practices like touting, was unfounded and misguided; and
- c. legislators should have instead been focused on regulating the management of insurance companies to avoid a future situation akin to the collapse of HIH, not on injured claimants and their representatives.

28. The ALA strongly recommends the removal of Queensland's advertising restrictions on personal injury legal services, given the flawed foundations underpinning the rushed introduction of those restrictions, as well as the resulting negative legacy (which will be detailed in the subsequent sections of this submission).

Legitimate advertising as distinct from claims farming, and as a means of curtailing it

29. The ALA supports action to quash the insidious practice of claims farming and has a strong record of calling out such activities, including this year in our submission to the Queensland Parliament Legal Affairs and Safety Committee's inquiry into the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022.²⁷ The ALA was also closely involved in supporting the Queensland Government in their earlier CTP claims farming reforms.

²⁶ Andrew Field, "There must be a Better Way": Personal Injuries Compensation since the 'Crisis in Insurance' (2008) 13(1) *Deakin Law Review* 67, 76.

²⁷ See: Australian Lawyers Alliance, Submission to the Legal Affairs and Safety Committee, *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* (22 April 2022) <<https://www.lawyersalliance.com.au/documents/item/2343>>.

30. ALA Members who provide personal injury legal services in Queensland wish to advertise those services ethically and appropriately (that is, advertising in ways which comply with all taste and ethics-based restrictions), with the ultimate goal of informing Queenslanders of their legal rights and entitlements.
31. It is, therefore, important at this point to address any concern that legitimate advertising by legal practitioners may compromise efforts to curtail activities that qualify as claims farming. Quite the contrary: the ALA maintains that legitimate advertising will empower consumers with knowledge of their legal rights, which will greatly undermine the ability of claims farmers to prey on the vulnerabilities and ignorance of some members of the Queensland public.
32. The ALA agrees with the following assessment from the Queensland Parliament's Legal Affairs and Safety Committee this year regarding legitimate advertising and the removal of *PIP Act* personal injury advertising restrictions:

It is also the view of the committee that such restrictions can be removed without undoing the important work of this Bill in seeking to tackle insidious claims farming practices; indeed such measures 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.²⁸

The inadequacies of the current restrictions and the impact on Queenslanders

33. The ALA contends that the current restrictions on personal services advertising are inadequate and obstructive, including for the following two reasons:
- a. these provisions in the *PIP Act* prevent legal education, which ultimately comprises Queenslanders' access to justice; and
 - b. moreover, Legal Services Commission (LSC) resources are far better directed to the monitoring and enforcement of claims farming activities, rather than being wasted on Queensland's advertising restrictions.

²⁸ Legal Affairs and Safety Committee, *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* (Report No. 27, May 2022) 17 <<https://documents.parliament.qld.gov.au/tp/2022/5722T734-C23A.pdf>>.

The impact on legal education and access to justice

34. The ALA strongly maintains that these advertising restrictions are an impediment to public legal education and to accessing justice.
35. ALA Members in Queensland have reported that members of the public are confused about their legal rights and entitlements, which affects Queenslanders' access to justice.
36. Even from September 2021 to November 2022, a large firm in Queensland to which many ALA Members belong reported 236 'declines' – that is, injured people who approached that firm about making a claim but that firm needed to turn them away as the limitation date for that injured people claim had passed.
37. Two other large firms at which many ALA Members work have also reported regularly needing to inform injured Queenslanders that their entitlements had been barred by the effluxion of statutory time limits.
38. The following three deidentified case studies are recent examples of injured Queenslanders who are barred from making claims as – unbeknownst to those injured Queenslanders in every instance – the limitation date had passed by the time they approached a lawyer for more information and representation:

Case study 1: Prospective Client A

Prospective Client A slipped on a footpath on local council property in 2018 and required surgery for sustained back injuries. Prospective Client A lost both legs in that surgery and spent six and a half weeks in hospital rehabilitation, during which time Prospective Client A sustained damage to the sciatic nerve in her left leg and has no feeling in the left side of her body.

Prospective Client A must use crutches permanently, lives with serious pain, and now has debilitating anxiety.

In a chance conversation with a stranger on the street, Prospective Client A learned about the option to make a personal injury claim against the local council. Unfortunately, Prospective Client A was already barred from making a claim when she approached a major law firm for more information about making a personal injury claim, as the limitation period had passed.

Case study 2: Prospective Client B

Prospective Client B began working in a job in 2018 which involved using a handheld tool intensely during shifts lasting eight to 12 hours. He was diagnosed with a cervical spinal injury on 15 January 2021, and had surgery on or about 31 March 2021. In the meantime, his employment was terminated. Prospective Client B has not worked since this time.

Prospective Client B only approached a lawyer for assistance with his claim in mid-2022. Regardless of whether the time limitation for making a claim was calculated by three years from the date of the injury, *or* by a year after Prospective Client B's surgery, Prospective Client B was out of time to make a claim.

When asked why it took him so long to see a lawyer, Prospective Client B answered that he had been unsure of the option to even make a claim until this year.

Case study 3: Prospective Client C

Prospective Client C worked night shifts stocking supermarket shelves for 10 years. Around 2017, Prospective Client C started experiencing shoulder pain and was prescribed pain relief by his GP.

However, the pain persisted so intensely that Prospective Client C needed to quit his job in 2019.

When Prospective Client C enquired about legal recourse in late 2022, he learned that he could have pursued claims via statutory and common law avenues – however, Prospective Client C did not know about those legal avenues soon enough, and was out of time to make a claim either way.

39. In above examples – and there are many, many others – prospective, injured clients cannot access the justice they seek. Earlier and more fulsome exposure to information about legal rights will ameliorate this.

40. These are not just theoretical or hypothetical scenarios; there are real-world consequences for injured Queenslanders and their families:

Of course, the injured parties have not vanished into thin air. They have simply been deprived of the ability to make a claim against those whose negligence caused their loss.²⁹

²⁹ Andrew Field, "There must be a Better Way': Personal Injuries Compensation since the 'Crisis in Insurance'" (2008) 13(1) *Deakin Law Review* 67, 82.

41. Queenslanders should be aware of their legal rights and entitlements, especially when there are statutory time limits on making claims. All forms of personal injury claims are subject to some type of time restriction, the expiration of which results in a loss of rights. Personal injury lawyers would be able to clearly communicate that legal knowledge to the general public, but currently cannot when they are silenced by the *PIP Act* advertising restrictions:

The depletion of the public's right to information and, consequently, the reduction of the public's right to avail itself of legal remedies, are the prices paid by having such far-ranging restrictions in place. ... Quite simply, the advertising of legal services in general, and personal injury services in particular, is a necessary component of a robust legal system. If appropriately prepared, advertising benefits the public and fosters competition. On condition that advertising for personal injury services satisfies basic criteria such as being fair, straightforward and not bringing the legal profession into disrepute, it has a valid and valuable part to play in serving the community. This role should not be overly stifled.³⁰

42. The ALA contends that in this digital age, when people consume information online and are constantly seeking information from educated sources in order to make a range of personal decisions and consumer choices, these advertising restrictions deny Queenslanders access to important information about their legal rights. Those injured Queenslanders are too often then blocked when making a claim and are unable to access the justice to which they and their families should be entitled.

43. Where, through paucity of access to information, people who have been injured are unable to pursue their rights, the burden of unsafe conduct shifts from the wrongdoer and the wrongdoer's insurer to government and the taxpayer – examples include social security programs, Centrelink, the National Disability Insurance Scheme, and the aged care system.

44. In the ALA's view, governments ought always to be pursuing means by which access to justice facilitates wrongdoers and their insurers paying the cost of unsafe conduct, rather than that cost falling on governments and taxpayers. The ALA contends that a government safety net should be invoked as a last resort.

45. However, if injured people cannot make claims because the information flow about their legal rights has been curtailed, governments and taxpayers will continue to pick up those costs by default.

³⁰ Jeni Engel, 'The costs of restricting legal advertising of personal injury services' [2008] (July/August, 87) *Precedent* 31, 36.

Legal Services Commission resources are going to waste

46. The ALA contends that managing these advertising restrictions are a wasteful use of the LSC's resources.
47. ALA Members are aware that firms regularly approach the LSC for advice on compliance about content that those firms wish to publish – whether in the form of direct advertising, or in another form of communication, such as a blog post. This is reflected in the LSC's own data whereby responding to enquiries made to the LSC about advertising restrictions (62 in 2021-22; 89 in 2020-21)³¹ far outweighs the proactive investigations the LSC then has capacity to undertake into advertising restrictions breaches (1 in 2021-22; 8 in 2020-21).³²
48. The LSC is being used as a quasi-advisory body, which the ALA contends is not a sensible use of the LSC's self-characterised "limited resources".³³
49. Further, the ALA is aware of multiple instances of advertising restrictions breaches that the LSC has not even examined. By not pursuing those multiple, clear breaches of the advertising restrictions, the ALA maintains that the LSC has, rightly, acknowledged, that:
- a. the provisions have no contemporary utility; and
 - b. the LSC's limited resources are being used up in responding to compliance requests, as outlined above, and it does not have the capacity to properly monitor and respond to breaches of the current personal injury services advertising restrictions.
50. Moreover, this is also consistently drying up resources which the LSC should instead be diverting to claims farming investigations and prosecutions. As observed in May 2022 by Queensland Parliament's Legal Affairs and Safety Committee: "The resources of the LSC are better allocated to that priority, than the *PIP Act* restrictions."³⁴
51. The ALA is not suggesting that the LSC has shirked its responsibilities at all. The ALA has a positive relationship with the LSC. It is simply unrealistic to expect that the LSC has the resources to allocate to a plethora of advertising-related matters through multiple media and, in particular, increasingly through thousands of digital channels.

³¹ Legal Services Commission, *Annual Report 2021-2022* (Report, 24 October 2022) 11; Legal Services Commission, *Annual Report 2020-2021* (Report, 25 October 2021) 15.

³² Ibid.

³³ Legal Services Commission, *Annual Report 2020-2021* (Report, 25 October 2021) 15.

³⁴ Legal Affairs and Safety Committee, *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* (Report No. 27, May 2022) 17 <<https://documents.parliament.qld.gov.au/tp/2022/5722T734-C23A.pdf>>.

What has happened in jurisdictions that have either never had or have since removed specific personal injury advertising restrictions

52. Some in the insurance industry may assert that a removal of the *PIP Act* restrictions will precipitate a major increase in advertising and a consequent increase in claims. The ALA contends that there is no evidence for such an assertion.
53. To that effect, this section will explore the experiences of the two jurisdictions most comparable to Queensland – New South Wales and Victoria – based on the ALA’s analysis of claims data from all three jurisdictions from the late 1990s to mid-2022, as well as reports from ALA Members.
54. In New South Wales, advertising restrictions on personal injury legal services – the analogue of Queensland’s advertising restrictions – were introduced in 2005. However, those restrictions were removed by NSW Parliament in May, 2014, effective 1 July 2015.³⁵
55. ALA Members have not reported any notable change in claims metrics in NSW since that time. There is certainly no evidence of sustained claims increases post-abandonment attributable to a lack of restrictions on personal injury legal services advertising.
56. Victoria, which has never had specific Queensland-like restrictions on the advertising of personal injury legal services, has had no flood of claims notionally attributed to the absence of those restrictions.
57. The ALA can also report that in general there is no evidence that jurisdictions which never adopted personal injury legal services advertising restrictions had and have higher differential claims rates; and there is no evidence of differential rates of insurance affordability in jurisdictions which either never had personal injury legal services advertising restrictions, or had personal injury legal services advertising restrictions but now do not have them.

³⁵ With the passage of the *Legal Profession Uniform Law 2014* (NSW); the changes to personal injury services advertising came into effect from 1 July 2015.

Effective ways to regulate advertising by legal practitioners in Queensland

58. Lawyers' conduct, including how they present and advertising their services, is subject to a suite of legislation, regulations, consumer protection mechanisms, and industry codes of conduct outside of the *PIP Act*.

59. The ALA contends that these national and Queensland-specific regulations and codes of practice are sufficient without the *PIP Act* personal injury services advertising restrictions:

- *Competition and Consumer Act 2010* (Cth) (known as the 'Australian Consumer Law') Schedule 2, Chapter 2, in particular regarding misleading or deceptive conduct, and unconscionable conduct;
- *Legal Profession Regulation 2017* (Qld);
- *Australian Solicitors Conduct Rules 2012* (Qld), including Rule 36;
- The Bar Association of Queensland's *Barristers' Conduct Rules*; and
- Australian Association of National Advertisers' Code of Ethics.

60. The regulatory framework summarised above has been operating effectively in jurisdictions which never adopted *PIP Act*-like restrictions, and in jurisdictions such as NSW which had, then subsequently abolished them. Any assertion that the abolition of the *PIP Act* restrictions would place Queensland lawyers in a regulation vacuum is unfounded.

Other legal stakeholders

61. The ALA anticipates the possibility that other representative bodies may advocate for the maintenance, in some form, of the *PIP Act* advertising restrictions.

62. The ALA respects the right of any law firm to not advertise. It is the right to advertise, subject to the suite of other regulations (outlined above) which the ALA regards as essential for the reasons provided in this submission.

63. The ALA also notes that our membership is almost solely practitioners representing injured and dying people, whilst other membership bodies will have broader membership, including practitioners representing the interests of insurers.

Amendments needed to the *PIP Act* to remove personal injury services advertising restrictions

64. The ALA supports amendments to the *PIP Act* to remove sections 64, 65 and 66 and to make any resulting changes to the definitions in section 63.

65. The ALA contends that removal of these sections will not compromise the overall operation of the *PIP Act*, including the prohibitions on touting as they currently stand.³⁶

Conclusion

66. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into Queensland Attorney-General the Hon Shannon Fentiman MP's stakeholder consultation on the personal injury advertising restrictions currently in the *Personal Injuries Proceedings Act 2002* (Qld).

67. The ALA is available to provide further assistance to the Attorney-General on the issues raised in this submission.



Sarah Grace
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Australian Lawyers Alliance

³⁶ *Personal Injuries Proceedings Act 2002* (Qld) ss 67, 68 and 69