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Motor Accident Insurance and Other Legislation Amendment Bill 2019

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Jackie Trad MP, Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships

Title of the Bill

Motor Accident Insurance and Other Legislation Amendment Bill 2019

Objectives of the Amendments

The objectives of the amendments to the *Motor Accident Insurance and Other Legislation Amendment Bill 2019* (Bill) are:

- to include an objects clause in section 3 of the *Motor Accident Insurance Act 1994* (Act) that reflects the policy intent of the Bill to stop the harassing and intrusive practices of claim farmers who, for example, make unsolicited contact, misrepresent their identity, induce persons to make a claim and then refer the claim for a fee or other benefit to a law practice;
- to update a cross-reference in section 34(2)(a) (Duty to notify accidents to police) of the Act by inserting a new cross-reference to section 93(4) of the *Transport Operations (Road Use Management) Act 1995*;
- to clarify the application of new section 74 (Giving or receiving consideration for claim referrals) by relocating the definition of *consideration* into a separate definitional section;
- to make consequential amendments because of the proposed amendment to section 74;
- to increase the protection of a person's personal information by requiring, under new section 87V(6), the Motor Accident Insurance Commission (Commission) or an authorised officer to whom a criminal history report is given to destroy written information from the report, in addition to destroying the report;
- to remove the requirement for claimants to give, in the notice of claim (for a claim other than a derivative claim), the unique identifier given to the doctor (under the Health Practitioner Regulation National Law, section 233) who first physically examined the claimant in relation to personal injury resulting from the accident;
- to remove the associated requirement for a licensed insurer to give the Commission, via returns information, the unique identifier given to the

doctor (under the Health Practitioner Regulation National Law, section 233) who first physically examined the claimant in relation to personal injury resulting from the accident.

Achievement of the Objectives

The objectives of the amendments will be achieved as detailed below.

New objects clause

The proposed amendment will insert a new object in section 3 of the Act, namely: to establish measures directed at eliminating or reducing the practice of giving or receiving consideration for a claim referral or potential claim referral, or soliciting or inducing a claimant to make a claim, in contravention of the Act.

Updating cross-reference

Section 34(2)(a) of the Act describes giving ‘appropriate notice’ of a motor vehicle accident as a report of particulars under section 287 of the *Transport Operations (Road Use Management—Road Rules) Regulation 1999*. Section 287 has been repealed and the requirement to give appropriate notice has been relocated to section 93 (Duties of a driver involved in a crash—stopping to and providing information) of the *Transport Operations (Road Use Management) Act 1995*.

To update the cross-reference, the amendments will insert a new clause 5A to substitute paragraph 34(2)(a) with a new paragraph that refers to the giving of required particulars under the *Transport Operations (Road Use Management) Act 1995*, section 93(4).

Clarifying application of section 74

Section 74 prohibits a person giving or receiving (or agreeing to give or receive or allowing or causing someone else to give or receive) consideration for a claim referral or potential claim referral.

During the Economics and Governance Committee’s (Committee) inquiry into the Bill, submitters raised concerns that section 74 may capture existing arrangements between, for example, law practices and other entities such as parents and citizens’ associations, sporting associations, charities and not-for-profit organisations and therefore prevent donations to, or sponsorship of, these entities.

In Report No. 29, 56th Parliament—Motor Accident Insurance and Other Legislation Amendment Bill 2019 (report), the Committee:

“notes the substantial concerns from many in the legal community that the Bill may prevent law firms from maintaining relationships with

various not-for-profit groups and some submitters still hold concerns. The Committee notes that this was not the intention of the Bill”.

The Committee then noted the suggested amendments by the Queensland Law Society (QLS) could be worthy of consideration (page 16). The amendments the QLS suggested in its submission were to the definition of *consideration* in section 74(4).

Accordingly, to clarify the application of section 74, the amendments will omit the definition of *consideration* from new section 74(4) in clause 15 of the Bill and insert a new section 74A (Meaning of consideration for s 74).

New section 74A(1) replicates, for a claim referral or potential claim referral, the existing definition of *consideration* under section 74(4) of the Bill.

New section 74A(2) makes clear that *consideration* does not include:

- a payment or other benefit, not for a claim referral or potential claim referral, to:
 - a community legal service; or
 - an industrial organisation; or
 - a registered entity within the meaning of the *Australian Charities and Not-for-Profits Commission Act 2012* (Cwlth); or
 - a school association; or
 - a sporting association; or(For example, legal services provided pro bono by an associate of a law practice to the community legal service)
- an amount given by a claimant for a service provided to the claimant as part of making a claim, for example, an amount for legal costs.

New section 74A(3) defines community legal service, industrial organisation, school association and sporting association.

As a result of this amendment, consequential amendments are required to the following clauses in the Bill:

- clause 6 (section 36B(7), definition of *consideration*);
- clause 15 (section 74(4), definition of *consideration*); and
- clause 29 (section 18(2), definition of *consideration*, of the *Motor Accident Insurance Regulation 2018* (Regulation)).

Criminal history report

Clause 22 of the Bill inserts new section 87V. Section 87V(1) allows the Commission to ask the Commissioner of the Police Service for a written report about the criminal history of a person if an authorised person reasonably suspects the person may be present at the place when the authorised person enters the place and may create an unacceptable level of risk to the authorised person's safety.

Subsection 87V(6) requires the Commission or authorised person to whom the report or written information in the report is given to destroy the report as soon as practicable after the authorised person considers the risk to the authorised person's safety.

In its report, at page 46, the Committee draws attention to the difference in drafting between section 87V of the Bill (which is modelled on section 63 of the *Fair Trading Inspectors Act 2014*) and section 173E of the *Fisheries Act 1994*, which was inserted more recently. Section 87V only requires the destruction of the report itself, while section 173E of the *Fisheries Act 1994* also requires the destruction of any information about the report given in writing to an inspector.

To remove this difference, and thereby increase the protection of a person's personal information, subsection 87V(6) will be amended to require the Commission or an authorised person to also destroy written information from the report.

Information for notice of claim

Clause 28 of the Bill amends section 17 of the Regulation to insert new subparagraph (1)(n)(ii), which requires a claimant to give in the notice of claim the unique identifier given to the doctor (under the Health Practitioner Regulation National Law, section 233) who first physically examined the claimant in relation to personal injury resulting from the accident.

It is considered that the requirement for claimants to obtain the unique identifier of a doctor who may, for example, be an emergency room doctor or surgeon is unduly onerous on the claimant. On balance, it is considered that the benefit of having this information does not outweigh the inconvenience and delay the requirement may cause claimants in progressing their claim. Therefore, the amendments omit subparagraph 17(1)(n)(ii).

Information in licensed insurer's return

Clause 31 of the Bill amends section 26(6) of the Regulation to insert new paragraph (i)(ii), which requires insurers to give the Commission, in returns information (required further claim details), the unique identifier given to the doctor who first physically examines the claimant under the Health Practitioner Regulation National Law, section 233.

As section 17(1)(n)(ii) is proposed to be omitted by these amendments, the unique identifying numbers of the doctor who first physical examines the claimant will no longer be given in the notice of claim and therefore cannot be given by licensed insurers to the Commission as part of the information provided in returns. Accordingly, the amendments omit subparagraph 26(6)(i)(ii).

Alternative Ways of Achieving Policy Objectives

The policy objectives can only be achieved by amending the Bill.

Estimated Cost for Government Implementation

Implementing the proposed amendment will not result in increased administrative costs to government.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles. The amendment to section 87V will enhance the existing safeguard on the use of a person's confidential information.

Consultation

No further consultation with external stakeholders in relation to the proposed amendments was required as the amendments are consistent with the policy intent of the Bill. The amendment to the definition of *consideration* arose in response to concerns raised by submitters during the Committee inquiry and the Committee's comment on page 16 of its report that the suggested amendments from the QLS could be worthy of consideration. Similarly, the amendment to section 87V arose out of comments in the Committee's report on the Bill (on page 46) which highlighted differences in drafting between section 87V and section 173A of the *Fisheries Act 1994*. The remaining amendments are minor and consequential in nature.

Notes on Provisions

Amendment 1 inserts a new object in clause 3 (Amendment of s 3 (Objects)), namely: ‘to establish measures directed at eliminating or reducing the practice of giving or receiving consideration for a claim referral or potential claim referral, or soliciting or inducing a claimant to make a claim, in contravention of this Act’.

Amendment 2 inserts a new clause 5A Amendment of s 34 (Duty to notify accidents to police) to update a cross-reference in section 34(2)(a) of the Act by inserting a new paragraph (a) that cross-references the *Transport Operations (Road Use Management) Act 1995*, section 93(4). Section 34(2)(a) currently refers to section 287 of the *Transport Operations (Road Use Management—Road Rules) Regulation 1999*, which has been repealed. The amendment also makes a consequential amendment to section 34(2)(b) to refer to ‘given’ rather than ‘reported’ to align with the wording used in section 93(4) of the *Transport Operations (Road Use Management) Act 1995*.

Amendment 3 amends clause 6 (Insertion of new pt 4, div 2A) to make a consequential amendment to new section 36B(7), definition of *consideration*, to refer to new section 74A (rather than section 74(4)), as a result of the amendment to the definition in amendments 4 and 5 below.

Amendment 4 amends clause 15 (Insertion of new part 5AA) to omit the current definition of *consideration* in section 74(4) and substitute it with a cross-reference to new definitional section 74A.

Amendment 5 inserts a new section 74A (Meaning of consideration for s 74). The Bill currently defines consideration for section 74 under subsection (4) to mean a fee or other benefit but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of \$200 or less. The amendment relocates this definition into new section 74A(1).

Section 74A(2) makes clear that *consideration* does not include:

- a payment or other benefit not for a claim referral or potential claim referral to:
 - a community legal service; or
 - an industrial organisation; or
 - a registered entity within the meaning of the *Australian Charities and Not-for-Profits Commission Act 2012* (Cwlth); or
 - a school association; or
 - a sporting association; or

Example—legal services provided pro bono by an associate of a law practice to a community legal service

- an amount given by a claimant for a service provided to the claimant as part of making a claim, for example, an amount for legal costs.

Amendment 6 amends clause 22 (Replacement of pt 5A, div 6 (Information from Commissioner of Police Service)) to increase the protection of a person's personal information by requiring, under new section 87V(6), the Commission or an authorised officer to whom a criminal history report is given to destroy 'written information' from the report, in addition to destroying the report.

Amendment 7 amends clause 28(7) (Amendment of s 17 (Statement of information for notice of claim—Act, s 37(1)(a)) to remove the requirement for claimants to give, in the notice of claim (for a claim other than a derivative claim), the unique identifier given to the doctor (under the Health Practitioner Regulation National Law, section 233) who first physically examined the claimant in relation to personal injury resulting from the accident.

Amendment 8 amends clause 29(6) (Amendment of s 18 (Certificate to accompany notice of claim—Act, s 37(1)(d)) to make a consequential amendment to section 18(2) of the Regulation as a result of the amendment to the definition of *consideration* in amendments 4 and 5 above. The amendment inserts a new definition of *consideration* and omits the reference to section 74(4). *Consideration* means a fee or other benefit but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of \$200 or less.

Amendment 9 amends clause 31(4) (Amendment of s 26 (Information to be provided by return—Act, s 88)), consistent with the amendment to clause 28(7), to remove the need for a licensed insurer to give the Commission, via returns, the unique identifier given to the doctor (under the Health Practitioner Regulation National Law, section 233) who first physically examined the claimant in relation to personal injury resulting from the accident.

