

BRIEFING PAPER

INJURY INSURANCE CLAIMS HARVESTING

THE **ESSENTIAL** MEMBERSHIP FOR
THE LEGAL PROFESSION

Prepared by the Law Society of Western Australia

lawsocietywa.asn.au

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INJURY INSURANCE CLAIMS HARVESTING

Issue

Over the past two years, Western Australia has experienced an increase in an activity known as ‘claims harvesting’ (also referred to as ‘claim farming’) in relation to injury insurance claims. This is a pre-existing issue which has been present nationally and internationally for a number of years.

Background

The Insurance Commission of Western Australia (ICWA) has reported that since 2015, it has received 322 motor vehicle injury insurance claims, which it suspects have originated from claims harvesting.¹

Claims harvesting is the practice of pursuing people involved or connected to accidents in order to encourage them to retain a legal practitioner to lodge an injury insurance claim, including claims which are below the deductible threshold for damages, exaggerated or falsified. The motivation for doing so is to obtain a reward from a law firm to which the potential claimant is directed.

Members of the public are being targeted through information obtained from health service providers, automotive repairers and other sources potentially in breach of the *Privacy Act*, ‘cold-calls’ and social media prompts, enquiring as to whether they or members of their family have been injured in a motor vehicle accident.² The callers often pretend to be from a Crash Investigation Company or ICWA, and often deceive victims by promising sums of money if they lodge a claim through a specific law firm.³

ICWA has reported that it suspects some law firms are involved in claims harvesting.⁴ In such instances, the law firm purchases the injured person’s personal details from the third party, and then contacts the injured person directly.⁵

In September 2017, ICWA announced that it is working with other Government entities on the issue, by investigating and managing the claims as they arise.⁶

Legal Framework

In Western Australia legal practitioners or persons acting for legal practitioners are not permitted to pay or receive an introduction fee or spotter’s fee to any

person for introducing professional business to the practitioner.⁷

Legal practitioners (or persons acting for legal practitioners) are also prohibited from publishing or causing to be published a statement likely to encourage or induce a person to make a claim for compensation for personal injury, or to use the services of a legal practitioner to make such a claim.⁸

In other States, including in Queensland, New South Wales and Victoria, the payment and receipt of referral fees is allowed under the Australian Solicitors Conduct Rules provided that there is full disclosure to and informed consent from the prospective clients.

Although practitioners are required to avoid conflicts, merely acting for a claimant referred by others to the law firm does not per se give rise to a conflict. A conflict may arise where a law practice has paid for the referral from the claims harvesters, as the practice will therefore be more likely to pursue the claims to recoup their costs already paid.

Policy Positions

Law Council of Australia

The Law Council of Australia does not appear to have a published policy position on this issue.

Interstate

Queensland Law Society

The Queensland Law Society opposes claims harvesting and any conduct by legal practitioners and third parties that breaches provisions under the *Personal Injuries Proceedings Act 2002* and the *Australian Solicitors Conduct Rules 2012* (“ASCR”).⁹ The Queensland Law Society made submissions to the Queensland Government including, but not limited to; calling for ‘a requirement for the claimant and the solicitor to certify, at the beginning and end of the claim that the claim did not originate from a claim farmer; legislative reform; strengthening of the Qld Act relating to civil liability claims; and widening powers of the Legal Services Commission.’¹⁰

The Law Society of New South Wales

The Law Society of NSW is of the view that claim farming has the potential to bring the state's legal profession into disrepute.¹¹ The President of The Law Society of NSW recently stated, "We must question whether our professional ethics should permit financial gain where it results from the sale of private information by a third party or at the expense of potential intrusions on a client's privacy, forceful sales tactics or undue influence."¹²

Victorian Legal Services Commissioner

The Victoria Legal Services Commissioner has warned legal practitioners in a recent media release to exercise care when offering their services to consumers, stating that practices such as 'claims farming' and 'cold calling' could potentially constitute a breach of the Australian Solicitors Conduct Rules.¹³

Western Australia

The Legal Practice Board of Western Australia

The Legal Practice Board does not appear to have a published policy position on this issue. However, the Legal Profession Complaints Committee has confirmed the view that the general description 'claims harvesting' does not of itself establish that there is 'misconduct' and the facts of each individual matter would need to be considered, for example to see if there were breaches of the Conduct Rules.¹⁴

The Law Society of Western Australia

The Law Society of Western Australia opposes the practice of claims harvesting. The Society discourages legal practitioners and third parties, from being involved in such practice.

NOTES

1. Insurance Commission of Western Australia (28 September 2017) *Motor Injury Insurance Claims Harvesting* < <https://www.icwa.wa.gov.au/news-and-publications/news/news-articles/motor-injury-insurance-claims-harvesting> >
2. Motor Accident Insurance Commission (29 March 2017) *Just Hang up on Claim Farmers* < <https://maic.qld.gov.au/just-hang-up-claim-farmers/> >
3. Insurance Commission of Western Australia (28 September 2017) *Motor Injury Insurance Claims Harvesting* < <https://www.icwa.wa.gov.au/news-and-publications/news/news-articles/motor-injury-insurance-claims-harvesting> >
4. *Ibid.*
5. Motor Accident Insurance Commission (29 March 2017) *Just Hang up on Claim Farmers* < <https://maic.qld.gov.au/just-hang-up-claim-farmers/> >
6. Insurance Commission of Western Australia (28 September 2017) *Motor Injury Insurance Claims Harvesting* < <https://www.icwa.wa.gov.au/news-and-publications/news/news-articles/motor-injury-insurance-claims-harvesting> >
7. *Legal Profession Conduct Rules 2010 (WA)*, Reg 18(5)
8. *Civil Liability Act 2002 (WA)*, s17.
9. Queensland Law Society (25 June 2018) *Reminder to avoid claim farming* < http://www.qls.com.au/About_QLS/News_media/News/Reminder_to_avoid_claim_farming >
10. Queensland Law Society (27 June 2018) *Stamping out claim farming* < http://www.qls.com.au/About_QLS/News_media/News/Stamping_out_claim_farming >
11. Lawyers Weekly (3 July 2018) *Claim farming may bring profession into disrepute* < <https://www.lawyersweekly.com.au/biglaw/23554-claim-farming-may-bring-profession-into-disrepute> >
12. *Ibid.*
13. Victorian Legal Services Commissioner (13 July 2018) *Media Release* < http://www.lsbvc.vic.gov.au/documents/Media_Release-%20Commissioner-warns-lawyers-over-marketing-tactics-2018.pdf >
14. Based on correspondence between the Legal Profession Complaints Committee and the Law Society of Western Australia.

Recommendations

The Law Society:

- Reminds legal practitioners of their obligations under rule 6 and rule 45(1) of the *Legal Profession Conduct Rules* and warns legal practitioners and persons acting for them not against engaging in the practice of claims harvesting; and
- Recommends that where it is known that a client referral have arisen from either an inducement paid or a promise of reward made to a claims harvester, the legal practitioner with such knowledge report the circumstances to the Legal Practice Board, the Department of Commerce and/or the Australian Information Commissioner or other regulators as appropriate.