

Our Ref: WGS:MM

Please reply to: Brisbane office

5 November 2020

Ms Pauline Cullen
Committee Secretary
Joint Select Committee on Implementation of the National Redress Scheme
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: redress@aph.gov.au

Dear Ms Cullen

Answers to Additional Questions on Notice from the 25 September 2020 public hearing

I thank the Committee for inviting knowmore to appear at its public hearing on Friday 25 September 2020.

On 16 October 2020 we received additional questions on notice from the Committee. We provide the following information in response.

- 1. Your supplementary submission raises a number of concerns with the lack of regulation for legal practitioners in respect of the Scheme, can you explain why current provisions are not adequate to protect survivors?**

In our supplementary submission to the Committee we provided detailed information about the exploitative practices of some law firms and 'survivor advocacy' businesses and made several recommendations to address this problem. These practices have serious adverse impacts for survivors of institutional child sexual abuse and may also threaten the integrity of the National Redress Scheme (NRS). In our September 2020

submission to the second anniversary review of the NRS, we provided additional information about these practices and reiterated the pressing need for our recommendations to be implemented.¹

knowmore has received reports of exploitative and unethical practices being adopted by law firms and ‘survivor advocacy’ businesses targeting survivors in a number of jurisdictions throughout Australia. It is clear that this is a national issue that requires a national and coordinated response. However, as we noted in our supplementary submission to the Committee, the framework for regulating legal practice in Australia is fragmented and jurisdictional in nature. For example, different bodies including local law societies and legal services commissions, are responsible for regulating the conduct of legal practitioners and managing complaints handling processes in each jurisdiction.² While there has been some progress towards a uniform regulatory framework, this is yet to be achieved.³

This issue was highlighted by Professor Kathleen Daly and Ms Juliet Davis in their supplementary submission to the former Joint Select Committee:

*The regulation of the legal profession in Australia is conducted at the state/territory level, and as a consequence, it is highly fragmented. Currently, there is no entity that we are aware of that has oversight of the legal profession’s conduct nationally. This means that regulators dealing with similar complaints against legal practitioners may be working in silos, and the widespread nature of these harmful practices may be missed as a result. This may delay actions taken by the scheme Operator or regulators of the legal profession to stop unprofessional conduct.*⁴

In addition, there are also significant gaps in the current regulatory framework. As a result, the exploitative and unethical practices in question may fall outside the scope of current regulation. For example, as noted by Professor Patrick Parkinson AM, Academic Dean and Head of School at The University of Queensland’s TC Beirne School of Law and member of the former NRS Advisory Committee, regulations in some jurisdictions that prevent solicitors from charging contingency fees only apply in the context of litigation.⁵ Further, as we noted in our supplementary submission to the Committee “*legal regulatory bodies have limited scope to deal with the conduct of survivor advocacy businesses, save for very limited forms of conduct*”⁶ This is a significant shortcoming, given the emerging role of these businesses and the exploitative and unethical practices that they are reported to be engaging in, such as targeting survivors in prison and offering ‘referral fees’ to those who recruit fellow prisoners.

¹ knowmore, *Submission to the second anniversary review of the National Redress Scheme*, September 2020, <<https://knowmore.org.au/wp-content/uploads/2020/10/Submission-Second-anniversary-review-of-the-National-Redress-Scheme-30-September-2020.pdf>>. We have provided a copy of this submission to the Committee under cover of separate correspondence dated 2 November 2020.

² These bodies include: the Office of the Legal Services Commissioner (NSW); the ACT Law Society; the Legal Services Commission (Qld); the Law Society Northern Territory; the Legal Practice Board of Western Australia; the Legal Profession Conduct Commission (SA); the Victorian Legal Services Board and Commissioner; and the Legal Profession Board of Tasmania.

³ For example, the Legal Profession Uniform Law scheme currently only applies in NSW and Victoria. We note that the WA Government has announced that it will join the scheme and has introduced legislation to implement this reform, see *Legal Profession Uniform Law Application Bill 2020* <<https://www.parliament.wa.gov.au/Parliament/Bills.nsf/BillProgressPopup?openForm&ParentUNID=B3DFC715EBAF44CC4825852F000F85BF>>.

⁴ K Daly and J Davis, *Submission: Oversight of Legal Practitioners and Form Fillers*, Submission 40 — Supplementary Submission 1 to the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission, 2018, p. 2, <www.aph.gov.au/DocumentStore.ashx?id=248d99ab-b807-4e8a-9ad9-162bdf2eb0bc&subId=666563>.

⁵ Professor P Parkinson AM, ‘Re National Redress Scheme — Background Briefing Report’, letter to Senator Dean Smith, 22 June 2020, <www.aph.gov.au/DocumentStore.ashx?id=0a679923-9338-40e3-ab08-22eda503cad5>.

⁶ knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, May 2020, p. 6, <www.aph.gov.au/DocumentStore.ashx?id=6d888fef-153f-4aa2-9b44-898efa20760e&subId=680321>.

knowmore also remains concerned that even in situations where conduct by lawyers falls within the scope of current regulation; the relevant oversight bodies may lack either the capacity or the willingness to enforce them. For example, concerns have been raised about the Queensland Legal Services Commission's capacity to take action to address breaches of advertising regulations relating to personal injury claims:

The statutory body set up to regulate lawyers' conduct has failed to prosecute any breaches of advertising standards in more than a decade, despite admitting those breaches of the Personal Injuries Proceedings Act are occurring more often than not.

*The Legal Services Commission has also not fined any lawyers or legal firms for breaches of the PIPA since January 2014.'*⁷

For the reasons outlined above, we are of the view that the current regulatory framework is insufficient to protect survivors from exploitation under the NRS. There is a need for a national legislated response to address this problem, and we refer the Committee to our comprehensive recommendations for reform.⁸

2. You note that almost a quarter of the survivors you assist are First Nation's people. Can you detail what specific services you offer that account for cultural needs?

As we noted in evidence to the hearing, 28% of the total number of clients assisted by our service since 1 July 2018 have identified as Aboriginal and Torres Strait Islander peoples. This is consistent with the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) that Aboriginal and Torres Strait Islander children are over-represented in high-risk institutional settings and are more likely to encounter circumstances that increase their risk of abuse in institutions.

To answer the Committee's question about the specific services knowmore offers that account for the cultural needs of First Nation's people, I asked the members of knowmore's Aboriginal and Torres Strait Islander engagement team to prepare knowmore's response. That team consists of ten identified roles⁹, working across knowmore's four offices. Their response is as follows:

"The Royal Commission shone a light on the many injustices experienced by Aboriginal and Torres Strait Islander survivors in institutional settings. Not only did Aboriginal and Torres Strait Islander survivors report to the Royal Commission that they were subject to sexual, emotional, and physical abuse whilst being in an institutional setting, they also reported experiencing significant racism.

These responses are reiterated in the accounts Aboriginal and Torres Strait Islander people share in their interactions with knowmore legal service when they seek advice on the NRS. The racism and impacts of trauma that Aboriginal and Torres Strait Islander survivors have experienced over generations from Government policies like the Doctrine of Terra Nullius, Martial Law, the dispersal and forced removal of Aboriginal people onto missions and reserves and the Aborigines Protection Act, intersects with survivors' experiences of abuse in institutions, with many reporting feeling a great sense of injustice as a result of these complex and intergenerational experiences of trauma.

⁷ Matthew Newton, 'Breaches aplenty, but no action', published in the Toowoomba Chronicle, 24 August 2020 [A copy of the full article is enclosed with this letter].

⁸ knowmore, *Supplementary Submission to the Joint Select Committee on Implementation of the NRS (Submission 20.1)*, May 2020, <www.aph.gov.au/DocumentStore.ashx?id=6d888fef-153f-4aa2-9b44-898efa20760e&subId=680321>; knowmore, *Submission to the second anniversary review of the National Redress Scheme*, September 2020, pp. 52-56 <<https://knowmore.org.au/wp-content/uploads/2020/10/Submission-Second-anniversary-review-of-the-National-Redress-Scheme-30-September-2020.pdf>>.

⁹ Two positions in the team are vacant at present.

A significant issue for Aboriginal and Torres Strait Islander people accessing the NRS is describing their institutional and societal vulnerability and emphasising that for them there is no safe place. The denial of Aboriginal and Torres Strait Islander people's basic human rights and the suppression of Aboriginal and Torres Strait Islander cultural norms and values on missions and reserves through legislation and government and religious policies and systems, over generations, has created a social environment that was and is traumatic and dangerous. This coupled with the tolerance of racism, sexual assault, physical abuse, neglect and psychological harm in institutions was equally deleterious.

Furthermore, the treatment of Aboriginal and Torres Strait Islander people resulting in loss of cultural identity and country, loss of language and traditions, loss of protective and sustaining kinship and familial ties has compromised Aboriginal and Torres Strait Islander people's opportunities to form attachment bonds and be socialised into the society that they will have lived out their adult and post-institutional lives in.

knowmore accounts for the cultural needs of Aboriginal and Torres Strait Islander people in this context through the employment of an Aboriginal and Torres Strait Islander Engagement Team (AE Team) who work as a part of knowmore's multidisciplinary model alongside the legal, support, financial, intake, advocacy, communications and operations teams to provide culturally safe and trauma informed services. The team comprises male and female Aboriginal Engagement Advisors employed in each of the Perth, Sydney, Brisbane and Melbourne offices, led by a National Manager.

The AE Team is integral to every other team's work with Aboriginal and Torres Strait Islander survivors providing both cultural support to survivors along with cultural support and education to our knowmore colleagues, with the aim of increasing cultural awareness and competency and building the capacity of the organisation to provide culturally safe services to Aboriginal and Torres Strait Islander people. The cornerstone of the AE Team's work is to privilege an Aboriginal perspective in the organisation's work with Aboriginal people such that knowmore is able to provide services to people with respect and acknowledgement of their vulnerability to constant re-traumatisation.

The AE Team's capacity to pull out the threads of trauma and dysregulated affect, prevalent amongst survivors of childhood trauma, from cultural issues (particularly amongst Aboriginal and Torres Strait Islander survivors who will be impacted by both developmental trauma and by the stress of managing the impacts of transgenerational and intergenerational trauma) is imperative to providing a safe space for Aboriginal and Torres Strait Islander people to make the best use of knowmore's legal services.

The AE Team is also integral to knowmore's outreach programs especially to regional and remote areas that might be identified as Aboriginal places with discreet and isolated Aboriginal and Torres Strait Islander communities and where engagement with the local community and traditional custodians will ensure cultural safety to all knowmore staff travelling on Aboriginal land, will ensure cultural safety for Aboriginal clients engaging with knowmore on Country and significantly will honour and respect the Aboriginal lands we work on.

Aboriginal and Torres Strait Islander clients are offered AE Team support through the entirety of their contact with knowmore, are offered gender specific support, the opportunity to say no to AE support and to change their minds about that choice and the opportunity to request support from an AE Team member whose cultural contacts, relationships and connections are not known to the survivor.

The knowmore AE Team understands that often many survivors have experienced significant ruptures to their family and mob connections and identity and that it is important for them to have cultural support through these processes. This might include liaising with locally based Aboriginal and Torres Strait Islander Community controlled organisations on behalf of the survivor and/or facilitated and warm referrals to local redress and

other support services. It might also include support for Aboriginal and Torres Strait Islander survivors who do not want support from culturally specific services or workers in their local communities.

Cultural safety is an ongoing process that involves the empowerment of Aboriginal and Torres Strait Islander people. Within knowmore it involves creating an environment that is safe for people to come forward and tell their stories, where there is no assault, challenge or denial of their identity or who they are and what their cultural needs are. It includes an understanding that there is diversity of culture, identity and contact experiences amongst Aboriginal and Torres Strait Islander people, an awareness of the power dynamics of privilege and the impacts of colonisation and the development of strategies that will counteract imbalances.

The AE Team also assists in navigating complex terrains in supporting Aboriginal and Torres Strait Islander survivors whose perpetrators are entrenched in their family and community lives and where survivors do not feel safe disclosing and supporting survivors to understand and who may not be able to receive legal advice for conflict or potential conflict reasons.”

3. What does survivor feedback indicate as the main concerns or limitations of the Scheme in respect to the provision of legal advice?

knowmore contacted the Committee Secretariat to clarify the scope of this question. We understand that the Committee is seeking further information about the nature of the legal advice provided by knowmore, and possibly also feedback from our clients relating to the main limitations of the NRS. If necessary, we would be happy to provide further information upon request, if the below does not fully address the Committee’s inquiry.

knowmore is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide trauma-informed, client-centred and culturally safe support to clients.

In the two years since the NRS commenced, we have provided information and advice to thousands of survivors about their options for justice and redress, including under the NRS, access to compensation through other schemes, or common law claims. We are able to provide advice and support to survivors at any stage in the redress process. For example, it is not uncommon for survivors to engage with our service only after they have received an offer of redress, often to seek legal advice about whether to accept the offer they have received or whether to pursue a common law claim.

Importantly, our services do not cease once a survivor accepts an offer of redress under the NRS. For example, we are able to provide financial counselling support in relation to the monetary component of redress, as well as support in accessing the counselling and psychological component of redress and/or in participating in a direct personal response. Further, once our work with a client comes to an end, they are always able to return to our service should they require advice and support at a future point in time.

In our previous submissions, including our submissions to both the Committee and the second anniversary review of the NRS, we have highlighted what we consider to be the most pressing areas of concern in relation to the implementation and operation of the NRS. In identifying these areas of concern, we have drawn upon our extensive experience providing advice and support to survivors, as well as individual consultations with some of our clients in the preparation of these submissions. We refer the Committee to these submissions for further information about the main limitations of the Scheme.¹⁰

¹⁰ knowmore, *Submission to the Joint Select Committee on Implementation of the National Redress Scheme*, April 2020, <<https://www.aph.gov.au/DocumentStore.ashx?id=0b31875e-ce72-4a05-a47b-fcb0f572e4df&subId=680321>>. knowmore,

4. Does knowmore refer survivors to private law firms for advice on civil options?

knowmore provided information about referrals to private law firms in our letter to the Committee dated 20 October 2020, responding to questions taken on notice during the public hearing. In that letter we stated:

Under our funding agreement relating to the NRS, in assisting survivors to access the Scheme knowmore is required to help survivors by providing information and advice about the options available to them, including claims under the Scheme, access to compensation through other schemes or common law rights and claims. As Ms Swain explained in evidence, we provide all survivors contacting our service with legal advice on all options that may be available to them, and many survivors, after receiving such advice, make a decision that they would like to obtain further advice about the prospects of a civil claim. These clients are referred to a private law firm on knowmore's referral panel for this purpose. These referrals are either in the form of a 'cold' referral, with a number of firms provided as options, or a 'warm' or 'facilitated' referral to a particular firm, depending on the client's circumstances and needs.

As of 17 September 2020, knowmore had provided the following referral services for clients to receive advice from panel firms about civil claims:

- *approximately 2,160 clients received cold referrals; and*
- *433 clients received warm/facilitated referrals.*

5. Do you have an agreed set of outcome measure or targets with the Department of Social Services? Can you explain your reporting requirements to the Committee?

From 1 July 2018, knowmore has been funded by the Australian Government, represented by the Attorney-General's Department, to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the NRS. As part of our funding arrangement with the Attorney-General's Department, we are required to develop an agreed Activity Work Plan, and to report against that Work Plan through six-monthly Progress Reports. The current Activity Work Plan contains the high-level objective of:

"To provide a free legal advice service to assist survivors of institutional child sexual abuse to access the National Redress Scheme; providing advice and information about the options available to them, and on key steps in the redress process."

The Work Plan also contains 13 'deliverables', each with 'measures of success', that we report on in each Progress Report. These are:

| Deliverable | Measures of Success |
|---|---|
| 1. Operate a trauma informed legal practice | <ul style="list-style-type: none">▪ National phone line maintained and face to face services provided▪ Deliver holistic services to clients, based on trauma-informed and culturally safe practices▪ Clients receive social work, counselling and cultural support where required▪ Effective measures in place that prioritise staff support |

Submission to the second anniversary review of the National Redress Scheme, September 2020, <<https://knowmore.org.au/wp-content/uploads/2020/10/Submission-Second-anniversary-review-of-the-National-Redress-Scheme-30-September-2020.pdf>>.

| | |
|---|--|
| | <ul style="list-style-type: none"> ▪ Complied with legal practice requirements |
| 2. Provide legal advice and assistance to survivors applying under the NRS | <ul style="list-style-type: none"> ▪ Number of client contacts ▪ Number and nature of advices and casework provided ▪ Assistance provided at key stages of the redress process ▪ Clients feel supported by knowmore to navigate their redress options |
| 3. Operate a national telephone advice line during business hours, for assistance with redress – information and advice to be provided on options including access to the NRS, availability of alternate redress options, and/or common law options | <ul style="list-style-type: none"> ▪ National 1800 phone line maintained to provide legal advice and information to callers ▪ Number of calls received; call waiting and return performance |
| 4. Maintain offices in key locations | <ul style="list-style-type: none"> ▪ Offices in Sydney, Melbourne, Perth and Brisbane maintained |
| 5. Undertake community engagement, outreach and liaison about the NRS and options for individuals seeking redress | <ul style="list-style-type: none"> ▪ Number of community engagement, outreach and liaison events conducted ▪ Number of clients receiving face-to-face services through outreach, or contacting knowmore after engaging with knowmore outreach services ▪ Strategies developed and implemented to communicate effectively with client groups, communities and locations prioritised on the basis of difficulty in accessing services ▪ Strategies developed and implemented for the delivery of services in States and Territories without a permanent knowmore office ▪ Establish, maintain and enhance co-operative service delivery arrangements with other legal and service providers to support survivors and maximise effectiveness of outreach and engagement activities |
| 6. Develop and distribute education material on options for individuals seeking redress, in conjunction with community engagement and outreach activities as appropriate | <ul style="list-style-type: none"> ▪ Resources developed to ensure content is accessible and tailored to client groups and complements engagement activities; including Aboriginal and Torres Strait Islander clients, culturally and linguistically diverse clients and clients with a disability ▪ Clients and support services' feedback on resources ▪ Website visits ▪ Social media presence |

| | |
|---|---|
| 7. Maintain key personnel with relevant skills and experience | <ul style="list-style-type: none"> ▪ Relevant staff maintained ▪ Staff provided with relevant training and support |
| 8. Provide culturally appropriate and safe services for Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse individuals | <ul style="list-style-type: none"> ▪ Maintained relevant staff ▪ Numbers of A & TSI and CALD clients assisted ▪ Engagement and outreach activities targeting these client groups ▪ Effective working relationships and co-operative service delivery arrangements established with legal and other services supporting A & TSI and CALD survivors |
| 9. Establish/maintain appropriate referral arrangements with providers of non-legal support services | <ul style="list-style-type: none"> ▪ Effective referral pathways to and from knowmore, including supported referrals for vulnerable clients ▪ Co-operative working relationships with other service providers ▪ Number of referrals to and from knowmore and support services |
| 10. Establish/maintain appropriate referral arrangements to private lawyers for assistance with claims falling outside the NRS | <ul style="list-style-type: none"> ▪ Referral panel of appropriate firms maintained for advice on common law/civil claims ▪ Number of referrals completed ▪ Suitable new firms identified and added to panel ▪ Co-operative working relationships with panel lawyers to promote knowledge sharing |
| 11. Establish/maintain appropriate conflict of interest arrangements | <ul style="list-style-type: none"> ▪ Effective referral pathways in place with funded Redress Support Services and CLCs ▪ Referral panel of appropriate firms maintained for assistance in matters where knowmore is conflicted ▪ Suitable new firms identified and added to panel ▪ Co-operative working relationships with panel lawyers to promote knowledge sharing |
| 12. Collect data on service delivery | <ul style="list-style-type: none"> ▪ Relevant data collected on, for example, client engagement with the service; services provided to clients; client demographics; referrals; outcomes for clients; community engagement and liaison events |
| 13. Develop productive working relationships with key stakeholders including the Attorney-General's Department, other legal and redress support service providers and the Redress Scheme Administrators | <ul style="list-style-type: none"> ▪ Effective working relationships established and maintained ▪ Build and strengthen co-operative working and service delivery relationships ▪ Timely communication |

Unlike the non-legal Redress Support Services, and as noted above, knowmore's primary Commonwealth funding agreement relating to its NRS services is not with the Department of Social Services (DSS), but the Attorney-General's Department (AGD). However, we have received some funding administered directly through DSS in FYs 2019_20 and 2020_21, to undertake a capacity-building project to support the Redress Support Services.

We also develop an agreed Activity Work Plan and provide regular Progress Reports under this separate funding agreement. The key Activity objectives for this grant/project are for knowmore to:

- *develop a tailored support package for Redress Support Services; and*
- *improve organisational and staff capability within Redress Support Services so they can better support people applying to the NRS.*

The 'deliverables' that we are required to deliver in carrying out this project include:

- delivering regular training and support to Redress Support Services;
- identifying and engaging with non-funded services requiring training and support;
- developing and distributing support and guidance materials (including ensuring content is accessible and tailored to client groups and complements engagement activities; including Aboriginal and Torres Strait Islander clients, culturally and linguistically diverse clients and clients with a disability);
- formalising and increasing the duty lawyer assistance knowmore provides to the Redress Support Services and other services (through advice and case consultations); and
- reviewing redress applications drafted by Redress Support Services.

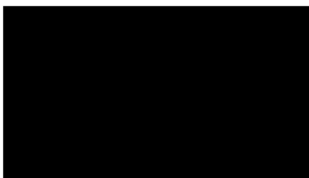
Again, these deliverables have 'measures of success' that we report against.

Our two Commonwealth funding agreements also require financial reporting, through the regular Progress reports and also annual acquittal statements.

As we have noted in our previous evidence to the Committee, knowmore also receives some funding from the Financial Counselling Foundation, which currently funds our financial counselling positions and program. We have a separate funding agreement with the Foundation, under which we provide regular reports on a six-monthly basis. These reports cover various outcome measures such as the number of clients assisted; capacity building activities and support provided to the financial counselling sector; as well as systemic advocacy activities to address broader issues experienced by our clients.

I trust the above information addresses the Committee's further questions.

Yours sincerely



WARREN STRANGE
Executive Officer

Encl. Article by Matthew Newton, 'Breaches aplenty, but no action', published in the Toowoomba Chronicle on 24 August 2020



Breaches aplenty, but no action

MATTHEW NEWTON

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THE statutory body set up to regulate lawyers' conduct has failed to prosecute any breaches of advertising standards in more than a decade, despite admitting those breaches of the Personal Injuries Proceedings Act are occurring more often than not.

The Legal Services Commission has also not fined any lawyers or legal firms for breaches of the PIPA since January 2014.

The reluctance of the LSC to fine or prosecute individuals and firms was revealed through a Right to Information request from Toowoomba law clerk Randall Hart.

Fed up with what he saw as an increase in advertising that breached the PIPA over the last two years, and an acceleration in the number or breaches in the last six months, Mr Hart lodged a complaint with the LSC in late May.

"Personal injury services is big money," he said.

"If a person suffers whiplash injuries in a car accident and cannot work, some lawyers are estimating huge legal costs of \$50,000 to \$70,000 to handle a claim," Mr Hart said.

"That's why (firms) are spending thousands of dollars on advertising campaigns.

"If you spend \$20,000 on an illegal advertising campaign for three months there is no consequence.

"A firm might receive 30 claims they otherwise would not get. If that occurs, they've added almost \$900,000 to \$1.5 million in revenue, unethically."

In his complaint, which features more than 20 firms and

their advertising, Mr Hart said a review of material he had secured two years previously showed "some law firms appear to be repeat offenders and breaches of PIPA are systemic".

"I cannot find any public record of action being taken against particular firms. It appears that the absence of any public action has emboldened other firms to adopt a similar approach," he wrote to the commission.

But it was the LSC's response which Mr Hart said was "remarkable".

The LSC's acting director of investigations Michael Roessler wrote back saying Mr Hart had sent a large amount of material about alleged breaches, and that "the commission has limited resources to allocate to this issue at present".

"While the commission hopes to be able to deal with these matters in due course, as one of the main purposes of the Legal Profession Act is to provide for the protection of the consumers of legal services, the other regulatory functions of the commission, especially the investigation of complaints about legal practitioners, law practice employees and unlawful operators must be given priority over PIPA breaches," Mr Roessler wrote.

"That is not to say that breaches of PIPA are being ignored, however, as you would be aware, across the profession the advertising restrictions are being honoured more in the breach than in the observance."

The LSC's 2018/19 annual report showed it had received 52 undertakings from principals of law firms to amend their personal injury advertis-

ing to become compliant under the PIPA.

The 2017/18 report showed it had received 18 undertakings.

Previous annual reports made no mention of undertakings, but said between 2012/13 and 2016/17 reporting years, roughly 160 complaints led to advertising being made PIPA-compliant.

Mr Hart said the lack of fines and prosecutions meant more and more firms were disregarding the personal injury services advertising restrictions.

"The advertising restrictions are there to ensure the Queensland compensation schemes remain healthy and viable," he said.

"They aim to strike a balance to ensure injured Queenslanders have the best and fairest compensation scheme in the country.

"The abysmal conduct of many lawyers to flagrantly disregard the clearly set out laws puts the viability of the Queensland schemes at risk."

He said there seemed to be an "absence of long-term thinking" in the advertising breaches.

"Many lawyers are putting their profit margins ahead of the benefits and interests of the public, and the injured persons that rely on their support through difficult times in their lives.

"Aside from the benefits to the public of a viable compensation scheme, the current advertising standards of some

lawyers has been described by some as 'bottom feeding' and 'grubby'.

"I think the conduct of lawyers when law firms are putting profit, and it's significant



24 Aug 2020

Toowoomba Chronicle, Toowoomba

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excessive profit, ahead of their clients, it has the potential to affect the public's confidence in the profession."

The LSC when contacted by *The Chronicle* said in a statement it considered each and every complaint within the constraints of the Legal Profession Act.

"The Act requires that we must first be satisfied that there is a reasonable likelihood of a finding of misconduct," the statement said.

"If that test is satisfied, then public interest considerations must be taken into account ... There are many steps and considerations before a matter can be prosecuted and to date, there has not been any infringement of the PIPA legislation that has been in the public interest to prosecute."

Mr Hart said he had regularly been tagging the Queensland Law Society in social media advertising that breached the PIPA.

"Some firms just delete the comment ... but some firms have changed their ad campaigns, which is pleasing," he said.

"It's disappointing that it's up to the individual to do something about it rather than there being a groundswell from the profession itself to ensure that its members are doing the right thing by the community."



FED UP: Toowoomba law clerk Randall Hart is concerned breaches of advertising rules in the legal industry are going unchecked.

Picture: Kevin Farmer