REVISED DRAFT CURRENT AS AT 21 SEPTEMBER 2018

Standing Committee on Law and Justice
Inquiry into 2018 Review of the Compulsory Third Party Insurance Scheme

Response to Questions on Notice put to Ms Genevieve Henderson on Thursday 23 August 2018

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Question:

> **The Hon. DANIEL MOOKHEY:** Yes. Most call centres in respect to a lot of these calls—for example, insurer-based call centres or bank-based call centres all work according to codes of conduct, all of which have training requirements, all of which have a whole bunch of things which have been standards which have been voluntarily endorsed. Did any such apply in respect to the call centres that Slater and Gordon employ?
> **Ms HENDERSON:** Can I take that on notice? I think the answer is yes, but I would like to check with the people who are directly involved.
> **The Hon. DANIEL MOOKHEY:** Can you identify as well on notice the code of conduct that was applied?
> **Ms HENDERSON:** Yes, absolutely I can.

Response:

Slater and Gordon's marketing pilot programs were developed as an initiative of the former Head of Personal Injury Law and other former senior managerial personnel in 2016-2017. Current management has chosen to discontinue the marketing pilot program. The program operated primarily in the state of Victoria.

All pilots were entered into on the express written understanding that both Slater and Gordon and the marketing partner would be fully compliant with all legislative requirements applicable to the jurisdiction in which the pilot was to be conducted. The terms of each contract enabled Slater and Gordon to enforce those requirements. All arrangements required express client consent to the provision of their details to Slater and Gordon.

In addition, in the course of undertaking various pilots, Slater and Gordon developed a **Statement of Pilot Principles**, which articulated that the aim of the pilot was to achieve best practice in the marketing of legal services with a rigorous and multifaceted compliance strategy that expressly addressed the requirements of the *Privacy Act (APP 7 Direct Marketing)*, the *Spam Act,* the *Do Not Call Register Act* and the *Telemarketing and Research Calls Industry Standard 2017,*the *Australian Consumer Law* and the *Legal Profession Uniform Law.*

Specifically, the Principles required the marketing partner to:

- ensure that telephone calls or messaging to potential clients was only conducted during standard business hours of 9.00am – 6.00 pm Monday to Friday (with no calls or messages on public holidays);
- clearly notify the potential client of the partner's name and function at the commencement of the call;

- provide Slater and Gordon and/or any potential client, promptly on request, the details of the website, time, date and specifics of the potential client's opt-in selection consenting to receiving the marketing call;
- notify the potential client of the referral arrangement with Slater and Gordon and before proceeding, seek the potential client's consent to:
    - disclose their details to Slater and Gordon;
    - Slater and Gordon contacting the potential client regarding a potential claim; and
    - Slater and Gordon providing the partner with information about the status of the potential client's claim, including whether the potential client has retained Slater and Gordon or chosen not to progress a claim.
- inform each potential client that:
    - Slater and Gordon would act for the potential client and not the referral partner; and
    - engaging with Slater and Gordon is entirely voluntary.
- maintain an ongoing archive of each opt-in consent data record and a recording of each call, for at least 12 months, to allow regular compliance and service standards auditing and to facilitate complaint resolution if necessary.

The Principles further provided that throughout the pilot Slater and Gordon would appoint a Partnership Pilot Auditor from amongst Slater and Gordon's team of Professional Standards and Risk Lawyers to:

- conduct monthly random auditing of calls to assess and report on compliance;
- attend to any complaints, if necessary, in accordance with Slater and Gordon's established complaint handling procedures; and
- provide feedback throughout the pilot to the partner and participating staff on any opportunities for improvement.

The Principles required that Slater and Gordon would reinforce to the partner and all participating staff at the commencement and throughout the pilot that:

- Slater and Gordon's over-arching duty to the courts and the administration of justice remains paramount and requires us to decline to act in any claim we believe to be fraudulent, frivolous or without merit; and
- The partner must not at any time engage in any behaviour which could amount to undue influence, coercion or duress or be perceived as harassment or nuisance.

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Question:

The Hon. DANIEL MOOKHEY: Before we move much beyond your last answer, is there a financial arrangement between Medibank and Slater and Gordon?
Ms HENDERSON: I would have to take that on notice.
The CHAIR: Could you also take on notice the Compass Claims question?
Ms HENDERSON: Yes, certainly.

Response:

The arrangement between Slater and Gordon and Medibank did not involve the payment of any fee or other form of financial consideration. Prospective clients were only referred to Slater and Gordon with their express consent and when it was in their best interests.

In 2016 Slater and Gordon entered into a pilot with CompassCorp Pty Ltd in respect of Victoria only. It did not involve any other jurisdiction. Under that arrangement Compass

identified from its Victorian-based customers those who had suffered an injury in a motor vehicle accident and, with the customers' express consent, referred those customers to Slater and Gordon. The pilot was discontinued in 2017.

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Question:

The Hon. TREVOR KHAN: In terms of looking at the article, PreLegal, which has a lovely name that gives it a degree of authority, would seem to have been a subsidiary of Prolearn Corporation, which had a background in direct marketing for vocational education courses. Noting how the vocational education market had a problematic history, can you explain how a rebadged vocational guidance flogger of courses would have the expertise to be referring clients to Slater and Gordon?
Ms HENDERSON: I cannot answer that question. If you wish me to answer I will have to take that one on notice as well.

Response:

Slater and Gordon is not in a position to comment about the historical activity of the parent company of PreLegal, ProLearn Corporation.

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Question:

The Hon. TREVOR KHAN: And your sister firm, or your subsidiary in Britain, was engaged in taking referrals from claims farmers there. It is a transfer, is it not, from your British experience to Australia?
Ms HENDERSON: I cannot answer the question why this decision was made. It was not mine.
The Hon. TREVOR KHAN: Would you like to take that on notice, as to whether this was a practice that your firm adopted in Britain?
Ms HENDERSON: I will take that on notice, if you wish me to answer that question.

Response:

Slater and Gordon divested its UK business in 2017, having had a presence there since 2012. However, the Australian operations were always conducted quite independently of the UK operations. Slater and Gordon's marketing partner pilot program in Australia was developed having specific regard to the Australian legislative landscape pertaining to direct marketing generally and the promotion of legal services specifically.

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Question:

The Hon. DANIEL MOOKHEY: How many referrals did these pilot programs actually produce?
Ms HENDERSON: I cannot answer that question.
The CHAIR: Would you like to take that on notice?
The Hon. TREVOR KHAN: Hundreds and hundreds.
The Hon. DANIEL MOOKHEY: Can you take that on notice?
Ms HENDERSON: I will take that on notice, because I do not think that is the answer.

Response:

There were only three partners from whom Slater and Gordon received prospective client enquiries in New South Wales: Medibank, Health Engine and PreLegal.

Having spoken to our data analytics team, I am informed that the numbers of New South Wales client enquiries arising out of those arrangements were as follows:

- Medibank: 27 enquiries, resulting in 2 new clients
- Health Engine: 69 enquiries, resulting in 11 new clients
- PreLegal: 227 client enquiries, resulting in 42 new clients

There were no referral fees paid in New South Wales. The arrangement with PreLegal was for the provision of marketing services and not on a referral fee basis. There was no financial consideration paid to Medibank. There was also no consideration paid by Slater and Gordon to Health Engine in New South Wales.

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Question:

The Hon. DANIEL MOOKHEY: Point of order: I am asking the question. How many of those referrals therefore lead to meritorious claims?
Ms HENDERSON: I cannot answer that question.
The CHAIR: Can you take that on notice?
Ms HENDERSON: I can take that on notice. Bearing in mind, are we confining to New South Wales?

Response:

Regardless of the source of a potential client enquiry, Slater and Gordon only agrees to act for a prospective client where their claim is considered to be meritorious, having met the firm's strict screening criteria. A prospective client is only offered a legal costs agreement if their claim is determined by Slater and Gordon to have reasonable prospects of success. Accordingly, in terms of the enquiries initiated as a consequence of the partnership arrangements in New South Wales:

- Of the 27 enquiries initiated by Medibank, 2 were offered legal costs agreements and 1 matter has already settled successfully
- Of the 69 enquiries initiated by Health Engine: 11 were offered legal costs agreements and 3 matters have already settled successfully
- Of the 227 enquiries initiated by PreLegal: 42 were offered legal costs agreements and 2 matters have already settled successfully

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Question:

The Hon. DANIEL MOOKHEY: When did they cease?
Ms HENDERSON: I would need to know the date. I have to take that question on notice. I do no know when it ceased but I can check.

Response:

The marketing partner pilot programs that were actively conducted in New South Wales ceased as follows:

- PreLegal – ceased in 2017 after 3 weeks of active operation
- Health Engine – ceased in June 2017
- Medibank – ceased in 2018

No active referral pilot arrangements currently remain on foot in New South Wales.

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Question:

The CHAIR: Are there other entities, other than these PreLegal and HealthEngine? Are you able to either take that on notice or answer whether there were other partnerships?
The Hon. DANIEL MOOKHEY: Is the Medibank arrangement continuing?
Ms HENDERSON: I would need to take that on notice.
The Hon. DANIEL MOOKHEY: What is the economic importance of the CTP scheme in claims to Slater and Gordon as a percentage of your revenue in New South Wales?
Ms HENDERSON: I am not sure whether I have the authority to answer that question.
Mr DAVID SHOEBRIDGE: Perhaps you can take that on notice.
Ms HENDERSON: Yes, I will take that on notice.
The Hon. DANIEL MOOKHEY: You are a publicly listed company, are you not?
Ms HENDERSON: Yes, we are.
The Hon. DANIEL MOOKHEY: You are required to make such disclosures to the Australian Stock Exchange.
Ms HENDERSON: Yes. If that information is publicly disclosed, yes, you will be able to see it. But I will take that on notice.

Response:

In addition to the marketing services arrangements with PreLegal and Health Engine, Slater and Gordon had a national referral relationship with Medibank.

The Medibank arrangement has now discontinued.

The economic value of the CTP scheme as a percentage of Slater and Gordon's revenue in New South Wales is a matter that is commercial in confidence. It is not sufficiently material such that it is required to be disclosed on the ASX. Slater and Gordon's most recent accounts were published on the ASX platform on 30 August 2018 – see the following link: https://www.asx.com.au/asxpdf/20180830/pdf/43xv6mz0xwfc90.pdf