

6 February 2012

The Hon Simon O'Brien MLC  
Minister for Commerce  
13<sup>th</sup> Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

Dear Minister

**SECTION 27A MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT 1943 AND SECTION 87 WORKERS' COMPENSATION AND INJURY MANAGEMENT ACT 1981**

In March 2010, the enclosed submission was forwarded to yourself, Hon Troy Buswell MLA the then Minister for Commerce, Hon Christian Porter MLA the Attorney General and Hon John Quigley MLA Shadow Attorney General. Copies of the responses received at that time are attached for your information.

The *Workers' Compensation and Injury Management Act 1981* was recently amended and the WorkCoverWA Costs Committee recently revised the Costs Determination for workers' compensation matters. Consideration of section 87 of the *Workers' Compensation and Injury Management Act 1981* did not form part of the review of that Act. New provisions, rules and procedures in the workers' compensation jurisdiction commenced from 1 December 2011. It is considered timely to ask you, as Minister for Commerce, to give consideration to the issues raised in the enclosed submission. The Society remains of the view that section 27A of the *Motor Vehicle (Third Party Insurance) Act 1943* and section 87 of the *Workers' Compensation and Injury Management Act 1981* should be repealed.

On 15 April 2011, in response to the Society's submission, in relation to section 87 of the *Workers' Compensation and Injury Management Act 1981*, Hon Troy Buswell wrote:

*"While section 87 prohibits a legal practitioner appearing or acting for a party in a common law action from charging more than the Supreme Court Scale of Costs, it is the Legal Costs Determination made by the Legal Costs Committee under the Legal Profession Act 2008 that sets the rates at which work is charged and the time that can be charged. Section 87 simply links to this well established process for determining legal costs between solicitor and client....*

*Neither WorkCover nor I have received any complaints from legal practitioners or clients that the operation of section 87 is unreasonable, unfair or inconsistent with the Legal Profession Act 2008; therefore, I can find no compelling reason to repeal it."*

The Society agrees that in most motor vehicle or work place accidents, particularly where liability for negligence is admitted, a claim for damages should be resolved in a manner that would not justify costs in excess of the Scale. However, as stated in the Society's submission:

*"In a significant number of cases issues may arise that may render the case complex and difficult, such as liability for negligence, contributory negligence and contributions between parties, indemnity statutory construction, causation and the assessment of multiple heads of damage...In matters which are complicated in this way, the application of the hourly rate and times prescribed the Supreme Court Scale is likely to result in inadequate remuneration to the legal practitioners involved on one side or both...Legal practitioners running complex and/or large damages claims, for any party, are exposed to substantial under-recovery of costs, particularly if such matters run to trial. Moreover, conducting such cases on a shoestring budget courts the risk of error and neglect."*

Pursuant to section 280(2) of the *Legal Profession Act 2008* a Court may make a special costs order removing limits on costs:

*...if a court or judicial officer is of the opinion that the amount of costs allowable in respect of a matter under a costs determination is inadequate because of the unusual difficulty, complexity or importance of the matter, the court or officer may do all or any of the following —*

- (a) order the payment of costs above those fixed by the determination;*
- (b) fix higher limits of costs than those fixed in the determination;*
- (c) remove limits on costs fixed in the determination;*
- (d) make any order or give any direction for the purposes of enabling costs above those in the determination to be ordered or assessed.*

The District Court has made special costs orders in actions where plaintiffs have claimed damages for injuries arising out of motor vehicle accidents and work place accidents:

1. *"In my opinion s 27A of the Motor Vehicle (Third Party Insurance) Act does not act as a bar to special costs orders pursuant to s 215 of the LPA [please note section 215 of the Legal Practice Act 2003 has been replaced by section 280 of the Legal Profession Act 2008]": Michael Aaron James (by his next friend Rhonda Dawn James) v Grant [2009] WADC 201 (S2) (per Mazza DCJ at par20).*
2. In *Wyatt v MR & RC Smith Pty Ltd* [2010] WADC 178 (S) the plaintiff commenced proceedings for damages against the first defendant (his employer) for injuries arising out of a fall during the course of his employment. In *Wyatt* Wager DCJ ordered that *"the plaintiff's costs against the first defendant be taxed without regard to the limits of the Legal Practitioners (Supreme Court) (Contentious Business) Determinations 2008 and 2010"* (the Supreme Court Scale).

Sections 27A and 87, while not preventing parties from obtaining costs above the Supreme Court Scale, force parties to make an application for a special costs order (which is time consuming and expensive) when seeking costs above the Scale. The majority (approximately 97%) of motor vehicle and work place accident claims are settled prior to trial (including complex claims) with parties often agreeing on costs. The necessity for parties to make application for a special costs order does, in the majority of complex claims, create unnecessary expense.

The *Legal Profession Act 2008* introduced a statutory duty of disclosure to clients. Section 260 lists the matters that a law practice is required to disclose to a client. Disclosure must be made in relation to:

- (a) the basis on which legal costs will be calculated, including whether a costs determination applies to any of the legal costs; and
- (b) the client's right to:
  - (i) negotiate a costs agreement with the law practice, and
  - (ii) receive a bill from the law practice, and
  - (iii) request an itemised bill after receipt of a lump sum bill, and
  - (iv) be notified under section 267 of any substantial change to the matters disclosed under this section; and
- (c) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable –
  - (i) a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs; and
- (d) details of the intervals (if any) at which the client will be billed; and
- (e) the rate of interest (if any) that the law practice charges on overdue costs; and
- (f) if the matter is litigious, an estimate of the range of costs that may be recovered if the client is successful and may be ordered to be paid if the client is unsuccessful, and a statement that an order by the court for payment of costs in favour of the client will not necessarily cover the whole of the client's costs; and
- (g) the client's right to progress reports in accordance with section 269; and
- (h) the person whom the client may contact to discuss the legal costs; and
- (i) the client's right to costs assessment, to apply to have the Agreement set aside and to make a complaint; and
- (j) any time limits in relation to the courses of action in (i); and
- (k) that the law of this jurisdiction applies to legal costs; and
- (l) any information about the client's right to corresponding laws being written into the agreement.

It is the Society's view that the interests of participants in personal injury claims are sufficiently served by the costs disclosure provisions of the *Legal Profession Act 2008*.

As such, it is the Society's view that Section 27A of the *Motor Vehicle (Third Party Insurance) Act 1943 (WA)* and section 87 of the *Workers' Compensation and Injury Management Act 1981 (WA)* should be repealed.

The Society asks that you give consideration to these matters and those addressed in detail in the enclosed submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Kendall', with a horizontal line drawn through the middle of the signature.

Dr Christopher Kendall  
**President**

cc The Hon Christian Porter MLA  
Attorney General of Western Australia  
21<sup>st</sup> Floor, Governor Stirling Tower  
197 St Georges Terrace  
PERTH WA 6000

**Submission**

**Section 27A of the Motor Vehicle  
(Third Party Insurance) Act 1943  
and  
Section 87 of the Workers  
Compensation and Injury  
Management Act 1981  
Cost Issues for Legal Practitioners**

To  
The Hon Simon O'Brien MLC  
Minister for Commerce  
13<sup>th</sup> Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

**Society Contact**  
Andrea Lace  
Direct line: 9324 8646

**Date**  
6 February 2012

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## Introduction

1. Section 27A of the *Motor Vehicle (Third Party Insurance) Act 1943* and s87 of the *Workers Compensation and Injury Management Act 1981* prohibit the making of a costs agreement for a legal practitioner appearing for or acting on behalf of a person in an action to which those statutes relate to receive any greater reward than is provided for by a costs determination as defined in the *Legal Profession Act 2008* ("LPA 2008").
2. Effectively this means that legal practitioners are limited to the costs allowed by the Supreme Court Scale of Costs as set from time to time by the determinations of the Legal Costs Committee. The application of both provisions has unreasonable and unfair consequences for legal practitioners and their clients. Having regard to the extensive provisions in Part 10 of the LPA 2008 regarding legal costs, it is timely to consider whether the provisions in question should be repealed.

## Section 27A

3. Section 27A of the *Motor Vehicle (Third Party Insurance) Act* relevantly provides:
  - (1) *This section applies to an action for damages in respect of the death of or bodily injury to a person directly caused by, or by the driving of, a motor vehicle.*
  - (2) *An agreement is not to be made for a legal practitioner to receive, for appearing for or acting on behalf of a person in an action to which this section applies, any greater reward than is provided for by any costs determination (as defined in the Legal Profession Act 2008) that is in force.*
  - (3) *An agreement is void –*
    - (a) *if it is made contrary to this section; or*
    - (b) *if it would have been contrary to this section if it had been made after the commencement of section 6 of the Motor Vehicle (Third Party Insurance) Amendment Act 1994,*  
*and any money paid under such an agreement is recoverable by the person who has paid it.*
  - (4) ....
4. Since its introduction in 1994, s27A has been amended, but only to insert references to the *Legal Practice Act 2003* and the LPA 2008 in place of the *Legal Practitioners Act 1893*.
5. When s27A was introduced the *Legal Practitioners Act 1893* was in force. Section 59 of that Act permitted a practitioner to make a written agreement as to costs, reviewable as to reasonableness. By such an agreement a practitioner could charge fees higher than those allowed by what was then the Fourth Schedule of the Supreme Court Rules.

6. This provision had attracted the attention of the Supreme Court in *Jovetic v Stoddart & Co* (1992) 7 WAR 208 and *Stoddart & Co v Jovetic* (1993) WAR 420 in which a number of costs agreements in respect of a personal injury action by a worker against his employer were set aside on the grounds of unreasonableness, with the exception of an agreement for counsel fees.
7. In the Second Reading speech of the *Motor Vehicle (Third Party Insurance) Amendment Bill* 1993 on 1 December 1993 the Hon Richard Court MLA stated that s27A was a consumer protection provision which "makes it illegal ... for lawyers to charge their clients an amount greater than that determined by the Legal Costs Committee" and that "if lawyers enter into costs agreements which provide for remuneration in excess of that determined by the Legal Costs Committee, then the costs agreement is void and any money paid under the agreement is recoverable by the person who paid it".

### Section 87

8. Section 87 of the *Workers Compensation and Injury Management Act* 1981 relevantly provides:
  - (1) *This Section applies to an action for damages independently of this Act if Division 2 applies to the awarding of damages in the action (whether or not an award of damages is affected).*
  - (2) *An agreement is not to be made for a legal practitioner to receive, for appearing for or acting on behalf of a person –*
    - (a) *in an action to which this Section applies; or*
    - (b) *in respect of an application for a declaration under Section 11 of the Workers Compensation and Rehabilitation Amendment Act 1993,*  
*any greater reward than is provided for by any costs determination (as defined in the Legal Profession Act 2008, Section 252).*
  - (3) *An agreement is void –*
    - (a) *if it is made contrary to this Section; or*
    - (b) *if it would have been contrary to this Section if it had been made after the commencement of Section 4 of the Workers Compensation and Rehabilitation Amendment Act 1993."*
9. Significantly, s87(3) does not include the words "and any money paid under such agreement is recoverable by the person who has paid it" (as in s27A). In all other practical respects s87 has the same effect as s27A. It would appear to apply to legal practitioners, both solicitors and barristers, acting for any party in an action for damages at common law for an injury for which workers compensation is payable.

### Relevant costs determinations

10. The Legal Practitioners (Supreme Court) (Contentious Business) Determination 1996 altered the basis upon which the Supreme Court Scale was fixed. It provided, by clause 6(4), as follows:

*"The new scale of costs set out in the schedule reflects the fact that the costs of legal services provided in relation to Supreme Court and District Court actions are in the main calculated by reference to the time reasonably spent in the provision of those services and by applying to that time a reasonable hourly rate, that rate varying according to the seniority and experience of the practitioner and the complexity of the work."*

11. The Supreme Court Scale, so determined, set arbitrary limits on various items, such as pleadings, proceedings in chambers, getting up case for trial and counsel fees at trial. Such items are limited by the prescribed hourly rates and a maximum number of hours.

12. In explaining how a time-based scale would operate, the Legal Costs Committee stated in clause 7(4) of the 1996 Determination:

*"Thus ... it can be seen that item 2 of the schedule applies a maximum of \$540.00. It has been calculated on the basis of a junior practitioner taking three hours to perform the work and charging at a rate of \$180.00 per hour. However, if in a particular case a senior practitioner performed the work and took 2.45 hours at a reasonable hourly rate of \$220.00 per hour, the result would still be within the maximum amount allowed by the scale. It would then be a matter for the taxing officer to decide whether the time spent in performance of the work was reasonably spent by a practitioner of that seniority."*

13. That statement may reasonably be construed to mean that the taxing officer should assess the reasonableness of the time actually spent on the work for which charge is made. Accordingly, it does not authorise the taxing officer to compensate in costs for economy achieved through experience and specialised skill (except to the limited extent allowed by the rather simplistic dichotomy between junior and senior practitioners).

14. Clause 6 of the schedule to the 1999 Determination reads:

(1) *Subject to the provisions of sub-clause (2) and of the Legal Practitioners Act 1893 permitting a practitioner to make a written agreement as to costs with a client, the costs in relation to a party to an action or other proceeding (inclusive of counsel fees but exclusive of other disbursements) –*

(a) *recoverable by one party from another party; or*

(b) *payable by a party to that party's own practitioner.*

*shall not exceed the amounts set out in the Table to this clause (except as otherwise provided in item 13A of the table).*

(2) *Allowances made under item 13A of the Table to this clause are only to be awarded as between practitioner and client, or if costs are awarded on an indemnity basis and not between party and party unless the Court otherwise orders.*

15. Item 13A was as follows:

(a) *time reasonably spent by a practitioner on work requiring the skill of a practitioner (of the standing indicated) but not covered by any other item – per hour:*

SP/QC	\$270.00
JC	\$210.00
JP	\$180.00

(b) *time reasonably spent by a practitioner, or by a clerk or paralegal of a practitioner, on work not covered by any other item or by paragraph (a) – per hour:*

C/PL	\$130.00
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16. In the Supreme Court Scale fixed by the 2004 Determination item 13A became item 32.

17. The hourly rates prescribed by the 2010 Determination (current) for item 33 (former item 32) are:

Senior counsel	\$605.00
Senior practitioner	\$429.00
Counsel	\$341.00
Junior practitioner	\$297.00
Clerk/Paralegal	\$209.00

(These rates are inclusive of GST.)

18. Clearly, the item is intended to pick up costs for work of a solicitor/client nature. However, it is not a "catch all". It only allows the recovery of costs for work not covered by any other item. It also limits the hourly rate for such work. So, for example, in a case where work is reasonably done by way of getting up case for trial in excess of 100 hours, such work could not be charged. It is likely that item 33 would cover such matters as advices and opinions, informal conferences, dealing with a defendant's insurer for payment of expenses and post judgment/settlement work, none of which falls within other scale items.

19. No explanation is to be found in the scale or the determinations of the Legal Costs Committee as to why the rate of a senior practitioner (admitted for more than five years) is higher than that of counsel. The term "counsel" is not defined. Currently, a solicitor admitted for more than five years may charge \$429.00 (inclusive of GST) whereas the maximum allowance for counsel is \$341.00 per hour (inclusive of GST).

20. The 1996 Determination and subsequent determinations have acknowledged the right of parties and their solicitors to apply for special orders increasing the scale limits. Clause 7(1) of the 1996 Determination stated, "*the Committee's determinations have never prevented the Court from making special costs orders and such orders are often made*". Clause 4 of the 1999 Determination noted specifically that the Court, or the taxing officer, had the power to make orders pursuant to, *inter alia*, O 66 r 12.

21. O 66 r 12 was replaced by s215 of the *Legal Practice Act* 2003. Currently, the LPA 2008 provides by section 280(2) that "if a court or judicial officer is of the opinion that the amount of costs allowable in a matter under a costs determination is inadequate because of the unusual difficulty, complexity or importance of the matter" a number of different orders can be made to increase the costs allowable.

#### Construction of s27A

22. In the Society's view the meaning of s27A is plain and unambiguous. The section prohibits a practitioner from agreeing to charge more than the Supreme Court Scale as fixed from time to time by the determinations of the Legal Costs Committee. It effectively creates a penalty for breach in the form of a liability to disgorge the costs wrongfully charged and does not permit the practitioner to prove a *quantum meruit*.
23. Quite simply, if the costs agreement in question is for greater reward than is provided for by the relevant costs determination, then it is void. In that event, any money paid under the agreement is recoverable by the client.
24. The section would appear to apply to practitioners acting for any party in an action for damages for death or bodily injury directly caused by or by the driving of a motor vehicle.
25. That position has been altered by Part 10 of the LPA 2008 which applies to all law practices. Section 271 provides that legal costs are recoverable on three bases: under a costs agreement, in accordance with an applicable costs determination, or, if there is neither, according to the fair and reasonable value of the services provided. Section 27A, therefore, clearly applies to fee agreements made by counsel.
26. Section 27A does not reserve to a practitioner, in the event of a void agreement, the right otherwise afforded by s271 and s287 of the LPA 2008 to recover costs according to the applicable costs determination or the fair and reasonable value of the legal services provided.
27. Furthermore, the section would appear to preclude the operation of s280 of the LPA 2008 which allows the court to make a special costs order increasing the costs otherwise recoverable. Obviously, if a practitioner may not enter into an agreement to charge more than is provided by the relevant costs determination, the client would have no cause to seek a special costs order. In the case of party-party costs the client could not recover from the defendant more than he or she could be charged.
28. This proposition, however, was rejected in the District Court decisions of *Hanson v English* [1999] WADC 141 and *Penfold v Quinn* [2000] WADC 115, the judges in those cases accepting, to the contrary, that because the Legal Practitioners (Supreme Court) (Contentious Business) Determination specifically acknowledged the right of a party to seek a special order for costs pursuant to O 66 r 12 of the Rules of the Supreme Court, s27A did not prevent a successful plaintiff from seeking an order removing or increasing the scale limits.
29. More recently, a special costs order increasing the limit on item 13 (getting up case for trial) was made in *Smith v Hanrahan* [2006] WADC 74, a motor vehicle injury case. The reasons do not address the operation of s27A at all, even though there was a costs agreement between the plaintiff's next friend and the solicitor which would appear from the reasons to have been for greater reward than that provided by the relevant costs determination. The point was apparently not taken.

30. In the Society's respectful view the correctness of these decisions is doubtful. The power to make a special costs order increasing or removing the scale limits does not derive from the relevant costs determination. At the time of the decisions in *Hanson v English* and *Penfold v Quinn* it was found in O 66 r 12 of the Rules. It is now a statutory power conferred by the LPA 2008. A party who has the benefit of s27A would have no cause to seek a special costs order either in respect of solicitor-client costs or party-party costs. The costs recovery in both cases is limited by the agreement which may not be for more than scale costs.
31. Needless to say, s27A would not allow conditional fee agreements for an uplift in the event of success, as otherwise now permitted by s283 of the LPA 2008.

#### Implications for practitioners and litigants

32. Section 27A prohibits a practitioner appearing or acting for a party in an action to which the *Motor Vehicle (Third Party Insurance) Act 1943* applies charging more than scale costs. Section 87 has a similar effect with respect to actions affected by the *Workers Compensation and Injury Management Act 1981*. The prohibitions limit the rates at which work is charged, as well as, in respect of some scale items, the time that can be charged.
33. In order to be charged properly, work must necessarily be characterised according to the items set out in the Supreme Court Scale of Costs.
34. The value of legal work involves not only the time which is spent, but also "the difficulty of the case, the novelty or complexity of the legal issues presented, the experience of the practitioner, the quality of his or her work, the amount of time spent by the practitioner on the matter, the responsibility involved, and the amount or value of the subject matter in issue": *D'Alessandro v Legal Practitioners Complaints Committee* (1995) 15 WAR 198 at 214 per Ipp J. To these criteria one might also add to the importance of the case to the client. The Scale, however, regards time reasonably spent as the sole criterion of value. The problems associated with approach to costing are well-known: see L Fisher, "The Crude Yardstick of the Billable Hour" (1996) 70 ALJ 160.
35. No doubt many actions for damages for personal injury occasioned by motor vehicle or work place accidents, particularly where liability is clear, can be resolved in a manner that would not justify costs greater than those allowable on scale. However, not all claims, in their prosecution or defence, are straight-forward or run of the mill.
36. In a significant number of cases issues may arise that may render the case complex and difficult, such as liability for negligence, contributory negligence and contributions between parties, indemnity, statutory construction, causation of injury and the assessment of multiple heads of damage. Economic loss claims may be particularly complicated if commercial losses and loss of opportunity are involved.
37. Evidence in many cases often includes conflicting expert opinion in the areas of engineering, medicine and accounting. Increased responsibility may be involved where an injured person is under legal disability. In Fatal Accident Act claims affected by the relevant acts, the assessment of financial dependency may be particularly complex and difficult due to the business and financial arrangements of the deceased.

38. In matters which are complicated in this way, the application of the hourly rates and time limits prescribed by the Supreme Court Scale is likely to result in inadequate remuneration to the legal practitioners involved on one side or both. The effect of this may be to deprive a litigant of a proper choice of representation.
39. Take, for example, the position of the next friend of a person who, by reason of severe head injury is rendered incapable of managing his or her own affairs and whose claim for damages may measure several million dollars. In such a case, there may well be significant issues with respect to liability, causation and quantum. The current Supreme Court Scale allows a maximum of \$51,480.00 (inclusive of GST) for getting up the case for trial, including work reasonably necessarily undertaken prior to commencement of proceedings. An allowance for getting up based on 120 hours of work may be grossly inadequate. The Scale would allow counsel a maximum fee on brief (first day of trial and three and a half days preparation) of \$15,345.00 (inclusive of GST) and \$3,410.00 (inclusive of GST) thereafter. For a long or difficult trial, three days' preparation is also inadequate.
40. In such a case the litigant has no choice but to instruct a practitioner who is prepared to undertake responsibility for the conduct of the case for no more than scale costs, regardless of the amount of work that may be required. A practitioner undertaking such a case would be in an invidious position if, at a point prior to trial, the costs incurred reached the scale limit for getting up, as would likely occur in such a case.
41. Legal practitioners running complex and/or large damages claims, for any party, are exposed to substantial under-recovery of costs, particularly if such matters run to trial. Moreover, conducting such cases on a shoestring budget courts the risk of error and neglect. Appropriately skilled and experienced practitioners are deterred from accepting instructions in such matters. Litigants are thus deprived of freedom of choice of practitioner.
42. On the other hand, in simple claims the provisions may well encourage charging up to the limits of the Scale amounting to over-charging. The intended purpose of "consumer protection" is not served.
43. Prohibitions against legal practitioners agreeing a fee which reflects the criteria referred to by Ipp J in *D'Alessandro's* case (supra) have a deleterious effect on the administration of justice. Ironically, these provisions which were intended to protect litigants do, in fact, deprive them of access to those practitioners who, by their skill and experience, are likely to achieve more satisfactory and economical outcomes than those left in the field.

#### Submission

44. It is the Society's position that sections 27A and 87 unreasonably restrict freedom of contract. The interests of litigants in personal injury claims arising from motor vehicle and work place accidents are sufficiently served by the costs disclosure provisions of the LPA 2008. The sections in question should be repealed.

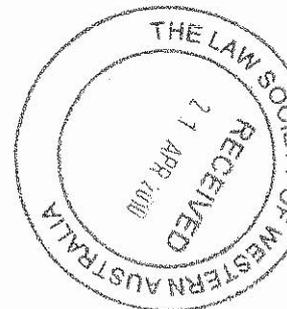


**Dr Christopher Kendall**  
President  
February 2012



Attorney General; Minister for Corrective Services

Our Ref: 35-08428



Mr H Quail  
President  
The Law Society of Western Australia (Inc)  
PO Box Z5345  
St Georges Terrace  
PERTH WA 6831

Dear ~~Mr Quail~~ Mr Hille

**SECTION 27A OF THE MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT 1943 (WA), AND SECTION 87 OF THE WORKERS COMPENSATION AND INJURY MANAGEMENT ACT 1981 (WA)**

Thank you for your letter dated 8 March 2010 in which you suggest that section 27A of the *Motor Vehicle (Third Party Insurance) Act 1943 (WA)* and section 87 of the *Workers Compensation and Injury Management Act 1981 (WA)* should be repealed as they unreasonably restrict freedom of contract and any concerns legislators may have are sufficiently served by the disclosure provisions of the *Legal Profession Act 2008 (WA)*.

You have also written to my colleagues the Hon Troy Buswell MLA, Treasurer, as he is responsible for the administration of the *Motor Vehicle (Third Party Insurance) Act 1943 (WA)* and the Hon Simon O'Brien MLC, Minister for Transport, as he is responsible for the *Workers Compensation and Injury Management Act 1981 (WA)*.

I have no doubt that Mr Buswell and Mr O'Brien will consider your letter and advise you whether they are prepared to make the amendments you have suggested.

Thank you for advising me about this matter.

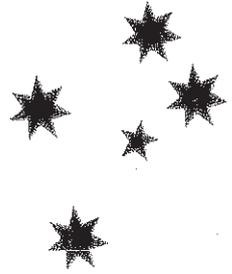
Yours sincerely

C. Christian Porter MLA  
ATTORNEY GENERAL; MINISTER FOR CORRECTIVE SERVICES

20 APR 2010



**JOHN QUIGLEY LLB JP MLA**  
MEMBER FOR MINDARIE



19 April 2010

The President  
Law Society of Western Australia  
PO Box Z5345  
ST GEORGES TERRACE  
PERTH WA 6831

Dear Hylton

Thank you for your letter of 30 March 2010 enclosing a copy of your submission to the Honourable Ministers O'Brien, Buswell and Porter.

I have read the submission with interest and have sympathy with the profession's position.

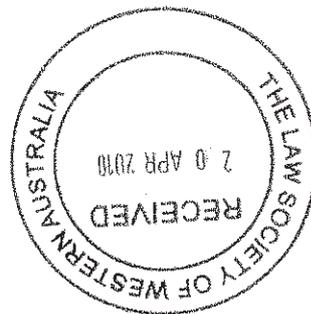
There is nothing that I believe we can do from Opposition in terms of amending the legislation as that would require the Government to make the move.

If the Government did move to amend the legislation then I would take any proposed Bill before the Caucus to gain support.

In the meantime, can you advise whether or not you have received a response from the Ministers beyond an acknowledgement of receipt of your submission?

Yours sincerely,

**JOHN QUIGLEY LLB JP MLA**  
Member for Mindarie





Hon Simon O'Brien MLC  
Minister for Transport; Disability Services

Your ref:  
Our ref: 29-12373  
Enquiries: Yvette Roper - Ph 08 9213 6400 Fax 08 9213 6401  
Email: yvette.ropер@dpc.wa.gov.au

Mr Hyllton Quail  
President  
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PO Box Z5345  
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16 MAR 2010

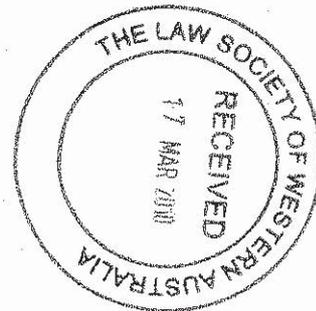
Dear Mr Quail

The Minister for Transport and Disability Services, the Hon Simon O'Brien MLC has asked me to thank you for your letter of 8 March 2010 regarding Section 27A of the Motor Vehicle (Third Party Insurance) Act 1943 and Section 87 of the Workers Compensation and Injury Management Act 1981.

Your correspondence is currently under consideration. If you need to contact us concerning this matter, please quote the reference number above so that we can direct your enquiry to the appropriate person.

Yours sincerely

Yvette Roper  
Receptionist/Administrative Assistant  
Office of the Minister for Transport; Disability Services

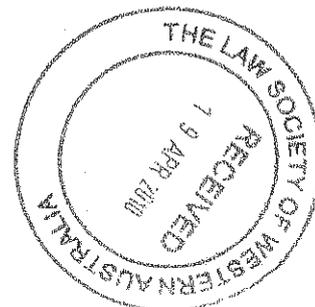




TREASURER; MINISTER FOR COMMERCE;  
SCIENCE & INNOVATION; HOUSING & WORKS

Ref: 30-12432

Mr Hylton Quail  
President  
The Law Society of Western Australia  
PO Box 5345  
St Georges Terrace  
PERTH WA 6000



Dear Mr Quail

**PROPOSED REPEAL OF SECTION 87**

Thank you for your letter dated 8 March 2010 in which you requested that I consider repealing section 87 of the *Workers' Compensation and Injury Management Act 1981* (the Act).

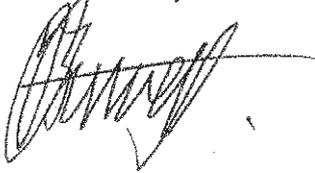
As you are aware, section 87 provides that solicitors cannot make agreements that would see them rewarded for their services in excess of any legal costs determination made under the *Legal Profession Act 2008*. This section was inserted into the Act in 1993 as part of a broader reform agenda to address escalating common law costs and associated legal expenses.

While section 87 prohibits a legal practitioner appearing or acting for a party in a common law action from charging more than the Supreme Court Scale of Costs, it is the Legal Costs Determination made by the Legal Costs Committee under the *Legal Profession Act 2008* that sets the rates at which work is charged and the time that can be charged. Section 87 simply links to this well established process for determining legal costs between solicitor and client.

Neither WorkCover WA nor I have received any complaints from legal practitioners or clients that the operation of section 87 is unreasonable, unfair or inconsistent with the *Legal Profession Act 2008*; therefore, I can find no compelling reason to repeal it.

As your concerns relate more to the application of the Supreme Court Scale of Costs to certain services provided to clients I suggest you pursue this matter with the Attorney General and the Legal Costs Committee for consideration in any future legal costs determination.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Troy Buswell', written over a horizontal line.

**Hon Troy Buswell MLA**  
**MINISTER FOR COMMERCE**

1 5 APR 2010