

**II.D. Discussion and Possible Action on Amendments to the
Certified Lawyer Referral Service Rules and Statutes**

September 14, 2021 Crispin Passmore:

Again, the high quality analysis in the paper aided my understanding of how this applies at present and options for reform.

I support a clear and clean liberalisation in this area. I am very sceptical of attempts to regulate referral services. Referral is, like advertising, one of the key ways to match supply and demand. It harnesses consumer experience (ask a friend) and scales it through referral websites (as in other markets). But we should also be clear that comparison websites and referral services can be skewed by fees.

My view is that rather than attempt to regulate referral services (because of those risks) we should focus on our core competence: regulating attorneys. It should not matter if an attorney is dealing with a fee-based referral service, a network of other professionals, or the members of a local golf club for their client pipeline: if they are bound by clear ethical rules and a duty to the client and rule of law the public interest is well served.

By that I mean that the duty to act in the best interests of the client is a strong ethical duty that should run through any commercial activity and limit self interest by attorneys. Attorneys are used to this in their daily practice – they do not advise to proceed and litigate just because it will command a higher fee for example. So long as core ethical obligations are clearly stated then we do not need detailed additional rules or restrictions on paid referral.

I would also suggest that these sorts of rules are also largely ineffective at preventing unethical practice. Like most other forms of prohibition, bans of this sort simply drive bad practice underground. Meanwhile ethical lawyers comply and lose out to those that are unethical. The answer to this, as with so many other regulatory issues, is not detailed and prescriptive rules or bans but clear ethical standards and strong enforcement. It is the cleansing effect of sunlight.