

# **MOTOR ACCIDENT INSURANCE AMENDMENT BILL (No. 2) 1999**

## **EXPLANATORY NOTE**

### **GENERAL OUTLINE**

#### **Objective of the Bill**

The objective of the Bill is to stop the practice of soliciting injured persons involved in motor vehicle accidents to contact nominated lawyers for the purpose of bringing compulsory third party (CTP) claims.

#### **Reason for the Bill**

The Bill is seen as necessary to ensure the long term financial stability of the CTP scheme. The upward trend in the number of CTP claims is having an adverse effect on premium levels. The practice adopted by a small number of legal firms in touting for business through tow truck operators and other intermediaries is contributing significantly to the increase in claim numbers. By stemming the practice premiums can be maintained at affordable levels.

The practice if unchecked, may lead to community demands for the changes to Queensland's unfettered common law scheme reducing benefits to injured parties in order to contain premium costs.

The amendment legislation seeks to prohibit the practice whereby, for a fee or reward, parties are solicited at the scene of a motor vehicle accident, or following the incident, to lodge personal injury claims through particular solicitors.

The practice of tow truck operators and other persons involved with motor vehicle accidents passing on personal information (names, telephone numbers etc) to solicitors or their agents is becoming widespread. This practice has little regard for an individual's privacy with information relevant to the injured person passed on to various people. In addition there are claims of harassment by lawyers or their agents to obtain the business.

The canvassing of CTP claims by lawyers through this process is limited to a small number of legal firms. The activity is not supported by the relevant professional bodies (Queensland Law Society and the Australian Plaintiff Lawyers Association).

### **Achievement of Objective**

The objective of the Bill is achieved by introducing offences for:

- a prohibited person (tow truck operators or other persons attending the scene of an accident for the purpose of their employment) to solicit for instructions from a potential claimant at the scene of an accident or any other person at the scene of the accident to solicit for instructions in a way that would be unreasonable in the circumstances.
- a prohibited person, or another person who obtains information about an incident through their employment, or a person whose contact with a potential claimant substantially arises from the incident, to provide a potential claimant with the name, address or telephone number of a particular lawyer or firm of lawyers.
- disclosure of information about the incident to persons other than those persons specifically authorised.
- a person at any time to pay, or seek payment of a fee or reward for soliciting instructions from a potential claimant or to induce a potential claimant to make a claim.

The object is further achieved, in respect of a professional person such as a lawyer or social worker, by the Commission reporting a conviction for a breach of anti-touting provisions to the relevant professional association/society concerned. Such a breach may be dealt with as misconduct under the provisions of the relevant Act under which the person is approved or registered.

### **Alternative Ways of Achieving the Policy Objectives**

Alternative methods of limiting the practice have been canvassed. The Queensland Law Society rules provide restrictions on unprofessional practices. Seen as an anti-competitive restriction, the former bar on advertising in the society rules has been lifted and the current rules on

unprofessional conduct are not seen as strong enough for the Society to curtail its members in this practice.

The Australian Plaintiff Lawyers Association Code of Conduct specifically addresses practices related to soliciting at times of trauma or distress, soliciting in a manner which is likely to offend or distress and the visiting of incident scenes for the purposes of solicitation. The Code applies only to association members.

Existing provisions in the *Criminal Code Act 1899* prohibit the payment of secret commissions for the acquisition of business. In instances where disclosure of the commission is made, no offence is committed.

Effective from 1 July 1999 sections 19 and 20 of the *Tow Truck Regulation 1999* provide a partial solution to the practice of touting within the towing industry. The regulation prohibits the disclosure of details of persons involved in an incident to unauthorised persons and the distribution or display of advertising or promotional literature for other persons or businesses. While the regulation restricts the ability of the towing industry to tout for claims, it provides no control over other intermediaries who may solicit for claims either at the incident scene or for a fee.

### **Estimated Cost for Government Implementation**

The CTP scheme is funded by way of premiums paid by registered motor vehicle owners and this Bill will not result in any implementation costs to Government.

### **Consistency with Fundamental Legislative Principles**

The proposed legislation, to some degree, will arguably infringe fundamental legislative principles but the infringement is clearly outweighed by the overall public benefit.

The practice of soliciting in the current context involves the passage of private details of a potential claimant (eg names, residential addresses, and private and business telephone numbers) to lawyers and other intermediaries without the permission of the potential claimant.

The amendment prohibits soliciting or inducing at the scene of the accident of any person who has suffered, or may have suffered, personal injury in the motor vehicle accident. The structure of this provision could

have wider implications in so far as limiting a person soliciting for the purpose of a claim for property damage or say for a workers' compensation claim. Such activity would be remote but if the legislation does not take the broader approach, the objective could not be achieved.

The legislative changes will infringe on the rights and liberties of those people currently soliciting, by curtailing the activity and in some cases affecting the income generated through the receipt of spotter's fees.

The proposal however, does not limit any person from providing information to a potential claimant about their rights under common law or to advise that they should seek legal advice.

The impact on fundamental legislative principles is minimised as far as practicable without reducing the effectiveness of the legislative goal in reducing the incidence of touting.

## **Consultation**

In formulating the proposed Bill community consultation was undertaken with the Insurance Council of Australia, the scheme's licensed insurers, Motor Trades Association of Queensland, Royal Automobile Club of Queensland, Australian Plaintiff Lawyers Association, Queensland Law Society, and the Bar Association.

Within Government, consultation has been undertaken with the Queensland Police Service, Department of Premier and Cabinet, Department of Justice, The Office of the Queensland Parliamentary Counsel, National Competition Policy Review Unit, (Treasury Department) and Queensland Transport.

## **NOTES ON PROVISIONS**

### **Clause 1—Short Title**

This is a formal provision that states that the Act will be referred to as the *Motor Accident Insurance Amendment Act (No. 2) 1999*.

**Clause 2—Act Amended**

This clause identifies the *Motor Accident Insurance Act 1994* as the legislation to be amended.

**Clause 3—Insertion of new ss 97A and 97B****(Prohibition on touting at scene of an incident or at any time)****Section 97A**

This clause takes a 3 tier approach to the prohibition on soliciting or inducing a person to make a CTP claim.

At the scene of an accident a prohibited person (a tow truck operator or a person at the accident scene for the purpose of their employment) must not solicit or induce a person who has or may have suffered a personal injury in a motor vehicle accident, to make a claim. Also any other person at the scene of an accident is not allowed to solicit or induce in a way that could be considered unreasonable in the circumstances (sub clause 1).

A person cannot provide to a potential claimant the name, address or telephone number of a particular lawyer or firm of lawyers (sub clause 3). Further, the person is not permitted to disclose information to anyone other than the category of persons specified in sub clause 4.

Irrespective of where soliciting or inducement may take place it is an offence for a person to pay or seek payment of a fee or reward for that soliciting or inducement (sub clause 7).

Sub clauses 2, 5, 6 and 8 address special categories and exemptions.

The clause is structured so as not to affect a solicitor undertaking advertising campaigns using mass communication (eg advertisements in newspapers).

In addition, the rights of a person are protected if the disclosure of information to a lawyer, relating to the motor vehicle accident, is to exercise a legal right.

To aid interpretation, sub clause 9 defines terms that are used in the clause.

**(Consequence if person approved under Act is convicted under s.97A)****Section 97B**

This clause introduces a complementary amendment to the previous clause. It addresses the circumstance of a person who is approved under an Act in a professional capacity (sub clause 1).

The clause stipulates that if the professional person is convicted of an offence under clause 97A the conviction may be treated as misconduct under the Act under which the person is approved/registered (sub clause 2).

Following a conviction, the Commission is required to notify or complain to the relevant professional body (sub clause 3).

To aid interpretation, sub clause 4 defines terms that are used in the clause.