

Personal Injuries Proceedings (Legal Advertising) and Other Acts Amendment Bill 2006

Explanatory Notes

General Outline

Objectives of the Legislation

The objective of the Bill is to:

- amend the *Personal Injuries Proceedings Act 2003* (PIPA) to extend restrictions on advertising legal services to non-lawyers;
- amend the *Legal Profession Act 2004* to provide that the Legal Services Commissioner has the power to investigate and enforce breaches of the advertising restrictions and touting provisions in PIPA;
- amend the *Legal Profession Act 2004* to further postpone the commencement of those provisions that are yet to be commenced;
- amend the *Dangerous Prisoners (Sexual Offenders) Act 2003* to enable the Supreme Court to impose interim detention pending final determination of an application relating to a contravention of a supervision order.

Reasons for the objectives and how they will be achieved

Personal Injuries Proceedings Act 2003

PIPA was the first of three Acts introduced by the Queensland Government to introduce an agenda of tort law reform. At that time, major problems had emerged with the availability and affordability of insurance, particularly in the area of public liability. PIPA introduced a range of measures including restrictions on legal advertising and touting, caps on compensation for economic loss and pre-court procedures designed to avoid lengthy court battles and delays.

PIPA was followed by the *Civil Liability Act 2003* and the *Professional Standards Act 2004*. The *Civil Liability Act 2003* aims to ensure sustainable awards of general damages for personal injury claims and the *Professional Standards Act 2004* provides for limitations on occupational liability in return for implementing risk management systems. Altogether, the provisions in these Acts aim to place downward pressure on insurance premiums and discourage an aggressive culture of litigation in Queensland.

Part 1 of Chapter 3 of PIPA contains the prohibition on touting for legal services at the scene of an incident as well as the restrictions on advertising. The touting prohibitions apply to lawyers and non-lawyers whereas the restrictions on advertising apply only to lawyers.

Section 66 of PIPA provides that advertisements may only state the name of a lawyer or firm of lawyers, together with information as to any area of practice or specialty. Further, section 66 provides that the advertising may only be done in certain specified ways, and must not be in or on a hospital.

Section 67 prohibits any person from touting for personal injury services at the scene of an incident or at any other time. Section 68 imposes an additional prohibition on lawyers against paying or seeking payment for touting.

The advertising restrictions are now being circumvented by businesses colloquially known as “claims harvesters.” “Claims harvesters” are non-lawyers who advertise that they provide assistance in commencing personal injury claims and finding lawyers to complete claims. They attract claimants through aggressive advertising that advises the claimant that they will not have to pay any fees to the claims harvester. The claims harvester then sells the claim file to a lawyer.

There is concern that some claimants will be subject to unreasonable costs and reductions in any compensation payable as a result of the conduct of the claims harvesters. A lawyer who has paid for a file (no matter what the amount) must recover this amount on top of any fees that may be reasonably charged to break even. The Bill amends PIPA to close this loop-hole so that the advertising restrictions apply to non-lawyers as well as lawyers.

Further amendments are being made to ensure that suspected breaches of the advertising restrictions and the prohibitions on touting for legal services can be investigated by the Legal Services Commission and prosecuted by either the Attorney-General or the Legal Services Commission. This is consistent with the purpose of the *Legal Profession Act 2004* to regulate

legal practice and to “provide for the protection of consumers of legal services and the public generally” (section 3(b)).

Where non-lawyers are suspected of breaching the provisions, there will in most cases inevitably be a breach by a lawyer. For this reason, and because the same evidence would be needed to prosecute both breaches, it is considered practical and cost effective that the legal Services Commission has the power to investigate and prosecute complaints.

Legal Profession Act 2004

It is desirable that those provisions of the *Legal Profession Act 2004* that are yet to commence not commence pending further amendments to be included in another Bill to be introduced shortly. The Bill therefore provides that section 15DA (Automatic commencement of postponed law) of the *Acts Interpretation Act 1954* does not apply to the provisions of the *Legal Profession Act 2004* that have not yet commenced.

Dangerous Prisoners (Sexual Offenders) Act 2003

Pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DP(SO) Act), the Supreme Court may order that a prisoner be detained in custody for an indefinite term for control, care or treatment (continuing detention order) or that a prisoner be released from custody subject to certain conditions (supervision order), if satisfied that the prisoner poses an unacceptable risk that he or she will commit a serious sexual offence if released from custody or if released without a supervision order being made.

If a police officer or corrective services officer reasonably suspects a released prisoner is likely to contravene, is contravening, or has contravened, a condition of a supervision order, the officer may apply to a magistrate for a summons requiring the released prisoner to appear before the Supreme Court (section 20).

At the Supreme Court hearing, the Attorney-General may apply to have the supervision order or interim supervision order amended or rescinded. Pursuant to section 22(2), where the application seeks the rescission of a supervision order and the imposition of a continuing detention order, the Court must apply the same threshold test applicable when considering final orders for an original application. To make such a determination the Court requires acceptable and cogent evidence that the released prisoner has contravened or is likely to contravene a condition of the supervision order

and that the released prisoner is a serious danger to the community. The preparation of such evidence can take a significant period of time. The DP (SO) Act does not allow the Court to make an interim detention order in the circumstances and therefore the released prisoner remains in the community during this time.

The proposed amendment will give the Court the option of imposing interim detention pending the final determination of an application to rescind a supervision order and impose a continuing detention order.

Alternatives to the Bill

No alternatives to the Bill have been considered.

Administrative cost to Government of implementation

Personal Injuries Proceedings Act 2003

It is anticipated that investigations and prosecutions will be conducted on a complaint driven basis. Any prosecutions undertaken by the Attorney-General will be funded out of current budgets.

The Legal Services Commission is almost entirely funded from the Legal Practitioner Interest on Trust Accounts Fund. The amendments will result may result in an increased workload for the Legal Services Commission. Once the effect is quantified, the Director-General of the Department of Justice and Attorney-General has the power to approve additional funding under section 209(1) of the *Legal Profession Act 2004*.

Legal Profession Act 2004

The amendment which defers the commencement of various provisions of the *Legal Profession Act 2004* is at no cost to the Government.

Dangerous Prisoners (Sexual Offenders) Act 2003

The amendment will result in an interim hearing in certain cases. The costs associated with extra court appearances will be met within existing resources. Although the amendment allows for the interim incarceration of a released prisoner, it is not expected to result in a significant increase in prisoner numbers such that would impact on resources of the Department of Corrective Services.

Consistency with Fundamental Legislative Principles

The amendment to the DP(SO) Act will allow the Supreme Court to suspend a supervision order and make an interim detention order where the Court is satisfied that there are reasonable grounds for believing the prisoner poses a serious danger to the community. The amendment allows for a person's temporary incarceration based on a test of 'reasonable belief' and such a threshold test is currently applied in relation to preliminary hearings pursuant to section 8 of the DP(SO) Act. The current and proposed provisions are justified in order to protect the community from released prisoners who pose an ongoing serious risk of reoffending.

Consultation

Personal Injuries Proceedings Act 2003

Both the Queensland Law Society and the Australian Lawyers Alliance have requested the amendments to extend the advertising restrictions to non-lawyers.

During the preparation of the Bill the following government agencies were consulted:

- Crown Law;
- Legal Services Commission;
- Motor Accident Insurance Commission;
- Queensland Treasury; and
- Department of the Premier and Cabinet.

Legal Profession Act 2004

There has not been consultation on the amendment postponing the commencement of provisions of the *Legal Profession Act 2004*.

Dangerous Prisoners (Sexual Offenders) Act 2003

Crown Law, the Department of the Premier and Cabinet and the Department of Corrective Services were consulted during the preparation of the amendments.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides the short title of the Bill for citation purposes.

Part 2 Amendment of Personal Injuries Proceedings Act 2002

Clause 2 provides that Part 2 amends the *Personal Injuries Proceedings Act 2002*.

Clause 3 amends section 5 of the Act to allow for parts of the Act not to apply to the State, Commonwealth or other States, unless otherwise provided. See also clause 8 of the Bill below.

Clause 4 replaces the term “lawyer” with “law practice” in section 9 to provide consistency with the terminology used in the *Legal Profession Act 2004*.

Clause 5 replaces the term “lawyer” with “law practice” in section 9A to provide consistency with the terminology used in the *Legal Profession Act 2004*.

Clause 6 updates the terminology of section 20C to provide consistency with the terminology used in the *Legal Profession Act 2004*.

Clause 7 updates the terminology of section 37 to provide consistency with the terminology used in the *Legal Profession Act 2004*.

Clause 8 provides that Chapter 3, Part 1 of the Act, which contains the prohibitions on touting and the restrictions on legal advertising, does not bind the State, the Commonwealth or other States.

Clause 9 updates the definitions in section 63, applying to Chapter 3, Part 1 of the Act, so that they are consistent with the terminology used in the *Legal Profession Act 2004*.

Clause 10 amends section 64 of the Act so that the definition of “advertises personal injury services” extends to advertising by non-lawyers as well as lawyers.

Clause 11 amends section 65 of the Act so that the definition of “allowable publication method” extends to advertisements by non-lawyers as well as lawyers.

Clause 12 amends section 66 of the Act so that the restriction on advertising personal injury services extends to non-lawyers as well as lawyers.

Clause 13 updates the terminology in section 67 of the Act to provide consistency with the terminology used in the *Legal Profession Act 2004*.

Clause 14 updates the terminology of section 67A of the Act to provide consistency with the terminology used in the *Legal Profession Act 2004*.

Clause 15 updates the terminology of section 68 of the Act to provide consistency with the terminology used in the *Legal Profession Act 2004*.

Clause 16 amends section 73A of the Act to provide that the Legal Services Commissioner or person authorised by him or her, may commence proceedings for an offence against Chapter 3, Part 1 of the Act.

Clause 17 inserts a new Part 6 containing transitional provisions for the commencement of the amendments to Chapter 3, Part 1 of the Act.

Clause 18 inserts new definitions into the Dictionary, to provide for consistency with terminology used in the *Legal Profession Act 2004*.

Part 3 Amendment of Legal Profession Act 2004

Clause 19 provides that this part amends the *Legal Profession Act 2004*.

Clause 20 provides that section 15DA (Automatic commencement of postponed law) of the *Acts Interpretation Act 1954* does not apply to the provisions of the *Legal Profession Act 2004* that have not yet commenced.

Clause 21 inserts a note to section 250 of the Act, to clarify the application of the transitional provisions of the Bill.

Clause 22 inserts a new section 252A, to extend the application of Chapter 3 (Complaints, investigation matters and discipline) of the Act to contraventions or suspected contraventions of Chapter 3, Part 1 of the *Personal Injuries Proceedings Act 2002*.

Clause 23 amends section 255 to ensure that a complaint can be made against a person, including a non-lawyer, who breaches Chapter 3, Part 1 of the *Personal Injuries Proceedings Act 2002*.

Clause 24 amends section 265 to provide that the term “investigation matter” includes an investigation relating to a suspected breach of Chapter 3, Part 1 of the *Personal Injuries Proceedings Act 2002*.

Clause 25 amends the definition of “relevant law” to include Chapter 3, part 1 of the *Personal Injuries Proceedings Act 2002*.

Part 4 Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003

Clause 26 provides that this part amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Clause 27 amends section 20 by inserting new subsections (7) and (8). Subsection (7) provides that a copy of the summons must be given to the Attorney-General within two (2) business days of the released prisoner being served. This will ensure the Attorney-General receives timely notification that it is believed the released prisoner is contravening or has contravened a condition of the supervision order.

Clause 28 amends section 22. Subsection (3) is amended by the addition of paragraph (c) which allows the Supreme Court to suspend a supervision order and make an interim detention order. New subsection (4) provides that the Court can make an interim detention order if satisfied as required under section 8(1), that is, if satisfied there are reasonable grounds for believing the released prisoner is a serious danger to the community by remaining in the community.

Clause 29 amends section 43A (3) to provide that a person who is subject to a supervision order remains a prisoner for the purposes of any relevant application, appeal or rehearing.

Clause 30 amends the definition of interim detention order as contained in the schedule (Dictionary) to include new section 22 (5) (b).