O'DONNELL LEGAL

Our Ref: TOD:

Phone: (07) 3257 2258
Fax: (07) 3257 1122
Email: [redacted]

3 July 2019

Mr L Power, MP
Chair of Economics & Governance Committee
Queensland Parliament
George Street
BRISBANE QLD 4000

"By email only: egc@parliament.qld.gov.au"

Dear Sir,

RE: MOTOR ACCIDENT INSURANCE AND OTHER LEGISLATION BILL 2019 ("the Bill")

I am writing to you with respect to the abovementioned Bill.

Introduction

Firstly, may I say I agree thoroughly with the intent of the Bill. Claims harvesting is a blight on the Motor Accident Insurance Scheme in Queensland and has the potential to increase the cost of the scheme, which would result in increased CTP premiums for Queenslanders. This in turn may lead to the reduction or cessation of common law rights, an outcome, which in my view, would be detrimental to all citizens of this State.

That being said, the Bill as drafted, creates unintended consequences for some small practitioners. Accordingly, I write to you as a sole practitioner who practises almost exclusively in Personal Injuries law.

Referral Fees

Because I do not engage in expensive advertising or media campaigns, my practice relies on the referral of claims from other solicitors. These are solicitors who do not practice in personal injuries law but refer clients who suffer personal injuries to me. Most of these practitioners are also small or sole practitioners, who are based in regional or outer suburban areas.

These solicitors like to refer their clients to a practitioner who specialises in the field of personal injuries law, who they trust and who they know will not charge their clients excessive fees. Some of these solicitors are paid referral fees. These referral fees are:

1. Not prohibited under the *Legal Profession Act* 2007 or the *Solicitors' Conduct Rules 2012*;
2. Are fully disclosed to the client in the Costs Agreement; and
3. Are paid to the referring practitioner at the successful conclusion of the claim.

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The non-intended consequence of the Bill is that clause 15, which introduces a new section 74 to the *Motor Accident Insurance Act 1994* ("the Act"), makes the payment of referral fees from one legal practitioner to another, illegal. This may result in:

(a) Practitioners not experienced in personal injuries law attempting to do work beyond their experience or expertise; and/or

(b) An increase in the market share of the large personal injuries firms, which rely on referrals from industrial organisations and/or mass advertising to obtain clients.

It may be concluded, therefore, that section 74 is anti-competitive and, indeed, discriminates against smaller practitioners, particularly those in the regions.

Thus, I would recommend amending Clause 15, so that Section 74 includes a new subsection:

"*This section does not apply if –*

(a) The payee is a law practice that receives consideration for a claim referral from the payer; and
(b) That consideration and how it is calculated, is disclosed to the claimant in a Costs Agreement".

Approach or Contact for the Purpose of Making a Claim

Periodically, in the conduct of my practice, I am contacted by other practitioners and asked to contact a client of that firm, or someone who has made an enquiry to that firm about their rights with respect to a potential claim for personal injuries. Often, these calls amount to nothing but, sometimes, these potential claimants do become clients.

Under the new Section 75 of the Act, as contained in Clause 6 of the Bill, it may become illegal for me to call potential claimants when asked to do so by other law practices.

Accordingly, I recommend inserting a new Section 75(3)(d) –

"*The first person –*

(i) Is a law practice or lawyer that has been asked by another law practice to approach or contact the second person; and
(ii) *Has been advised by the other law practice that they reasonably believe the second person will not object to the approach or contact*".

Retrospectivity

Clause 26 of the Bill inserts a new Section 115 into the Act. Unfortunately, in my view, it may make existing contractual arrangements illegal. This is because the payment of a referral fee after the commencement of the Act ("the Commencement") will be illegal even in circumstances where that referral fee formed part of a Costs Agreement which was entered before the Commencement.

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As you are no doubt aware, there is a general principle that legislation should not operate retrospectively and, indeed, it is arguable that retrospective legislation offends the Fundamental Legislative Principles contained in the *Legislative Standards Act 1992*.

Thus, it is submitted that the Bill should only apply to claims made after the commencement of the Act.

Conclusion

If you have any queries, please do not hesitate to contact me.

Yours faithfully,

TOM O'DONNELL
Principal

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