kare lawyers
a fresh start after injury

Principals
Renée Eglinton
Kate Avery

Kare Lawyers Pty Ltd
ACN: 610 961 334

Level 6, 200 Creek Street
Brisbane QLD 4000

PO Box 410
Spring Hill QLD 4004

Phone (07) 3193 9911
www.karelawyers.com.au

Your Ref:
Our Ref: KA160033

13 April 2022

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Secretary

RE: ***PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL 2022***

Contact Details

I am a principal of Kare Lawyers and I am authorised to make this submission on behalf of our firm. My contact details are contained in the signature and letterhead.

Our Interest in the Legislation

Kare Lawyers is a specialist personal injuries firm. We act on behalf of Plaintiffs.

I am a Queensland Law Society Accredited Specialist in Personal Injuries and I have 23 years post admission experience in personal injuries litigation.

Submissions

In general, we commend the Committee for the proposed amendments to the Act. We agree that claim farming is abhorrent, brings the profession into disrepute, threatens the viability of our insurance schemes and causes unnecessary distress to potentially vulnerable members of the community.

We would like to draw the Committee's attention to problems which have emerged from the restrictions on advertising for personal injuries legal services which we respectfully suggest ought to be considered as part of the current review.

We support the restriction of advertising for personal injuries services although we have identified that the legislation as it currently stands has led to some apparently unintended consequences which we believe are contrary to the interests of consumers.

Existing Legislation

As you are no doubt aware, Section 66 of the *Personal Injuries Proceedings Act 2002* provides as follows:-

> ***66Restriction on advertising personal injury service***
>
> *(1)A practitioner or another person, whether or not the other person is acting for a law practice, must not advertise personal injury services except by the publication of a statement that—*
> *(a)states only the name and contact details of the practitioner or a law practice of which the practitioner is a member, together with information as to any area of practice or speciality of the practitioner or law practice; and*
> *(b)is published by an allowable publication method.*
>
> *Example of advertising that contravenes subsection (1)—*
>
> *advertising personal injury services on a 'no win, no fee' or other speculative basis*

Maximum penalty—300 penalty units.

When this provision was introduced, the legislative intent was to address concerns that advertising for personal injuries services were leading claims to be made in circumstances where injured parties would not already have done so. I am also aware that, within the profession, there was a concern that brash and tasteless advertising was bringing the profession into disrepute.

Importantly, the legislation was introduced before social media, when internet use was less prevalent and the reputation economy, in particular through Google reviews, was less influential.

The legislation has lead to a number of what I believe to be unintended consequences. I can summarise those consequences as follows:-

1. The application of the legislation in the current technological environment is so complex as to lead to inadvertent breaches by honest practitioners;

2. Strict adherence to the legislation has caused confusion with consumers of legal services who are actively seeking representation as to which practitioners are able to help them;

3. Personal Injuries lawyers are able to advertise legal services for "TPD and Superannuation Claims" without restriction although the public perception is that those services are personal injuries services.

Inadvertent Breaches

The Legal Services Commission has advised us that its reading of the legislation is that the Firm's website cannot contain pictures, including photographs of practitioners, on the same page as any reference to the Firm engaging in "personal injuries litigation".

This was not our reading of the legislation but we complied when the Legal Services Commission asked us to remove any reference to "personal injuries" on any page containing a photograph of ourselves.

We have sought advice from marketing and technology experts and we understand that it is possible for references to "personal injuries litigation", "compensation" and "injury" to be embedded within a website for search results but we do not have the technological expertise to be able to examine nor assess whether these search terms are embedded within search engines much less to determine whether they comply with the legislation.

We asked the Legal Services Commission whether we can continue to write blog posts and post them to social media. We use social media to keep in touch with our supporters, usually former and existing clients, colleagues, family and friends. As a small firm, social media can help us feel more connected to the broader community and the profession. We asked whether, in these circumstances, our social media posts could be regarded as "advertising" but we have not received a clear answer from the Legal Services Commission.

Google reviews also cause us concern. Testimonials are not permitted and yet many of the positive Google reviews we receive amount to testimonials. We have received advice that we cannot remove only negative reviews as this amounts to misleading and deceptive conduct. However, on a strict reading of the legislation, all personal injuries lawyers in Queensland may be required to remove only positive Google reviews.

Confusion among consumers

The feedback we have received from non-legally qualified people is that they do not know what the area of law is in which we practice. This is the case even if they have entered search terms such as "personal injuries law Brisbane" or similar. These consumers are actively seeking legal representation but it is unclear when they come to our website whether we can assist.

The prevalence of mainstream advertising of "TPD and Superannuation Claims" has also caused consumers to believe that they require representation for these types of claims.

Permitted Advertising

Advertising for TPD and Superannuation Claims is unrestricted. Many firms are advertising for this type of work in such a way that consumers do not realise that the advertisement is not for personal injuries litigation. For example, one of the large personal injuries firms has advertising for "if something happens to you on the road" on television. This is not an "allowable publication" under the Act but, since the advertisement has a disclaimer that it refers only to TPD and superannuation claims, the Legal Services Commission has confirmed that it is not covered by Section 66.

Our concern about this loophole is two-fold:-

- Most people do not require legal representation for TPD and Superannuation claims. While we are qualified and will assist people with TPD and Superannuation claims if they insist, this is not an area of law we are prepared to promote as most people can lodge these claims without assistance unless and until a claim is rejected.
- The advertisements are disingenuous. Consumers do not understand the distinction even when the firm has strictly complied with the legislation.

Firms who practice in other areas of law as well as personal injuries litigation are able to use the phrase "no win no fee" even if speculative fee agreements are only available for personal injury claims. This is also disingenuous even though technically within the wording of the legislation.

Why it matters

If the purpose of the restrictions on advertising was to avoid bringing the profession into disrepute it has failed for the following reasons:-

- Honest practitioners are inadvertently breaching the legislation even with a standard website;
- Dishonest practitioners are ignoring the restrictions;
- Larger firms are able to circumvent the restrictions without members of the public appreciating the distinction.

If the purpose of the restrictions on advertising was to avoid claims being made by people who had not intended to seek damages, it has also failed for the following reasons:-

- Consumers cannot reasonably distinguish between advertising for "TPD and Superannuation Claims" and personal injuries claims;
- Consumers readily associate the term "no win no fee" with personal injuries litigation. If they contact a firm which is advertising "no win no fee" about any other matter, they will be refused;
- Consumers have difficulty finding smaller and honest firms when they are actively seeking them out.

In our experience, smaller firms who can provide more personalised service at lower cost, are the preferred suppliers of other lawyers and their families and friends. The majority of our work comes from referrals from our colleagues.

Our concern is that it is contrary to public policy interests for members of the public who are without legal training or contacts to be directed towards either larger firms who can circumvent the legislation or smaller firms who are prepared to ignore the restrictions on advertising.

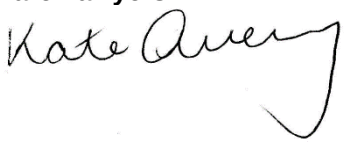
Suggested Amendments

Our suggestion is that the restrictions on advertising be amended as follows:-

1. Restrictions contained in Section 66 should not apply to a Firm's website or social media;
2. Unsolicited reviews should not be required to be removed by a Firm;
3. Restrictions contained in Section 66 should also be extended to TPD, Superannuation or Contractual claims associated with a person's health conditions;
4. Solicitors should not be able to advertise that they act on a "no win no fee" basis in relation to any area of practice.

Thank you for considering our submissions.

Yours faithfully
Kare Lawyers



Kate Avery
Principal Lawyer | Director

Direct: [redacted]
Email: [redacted]