Speech by

Mark McArdle

MEMBER FOR CALOUNDRA

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PERSONAL INJURIES PROCEEDINGS (LEGAL ADVERTISING) AND OTHER ACTS AMENDMENT BILL

Mr McARDLE (Caloundra—Lib) (7.52 pm): The bill before the House today encompasses four points: firstly, restriction on advertising by what are termed 'claim harvesters' by amending the Personal Injuries Proceedings Act 2003; secondly, an extension of the powers of the Legal Services Commissioner to deal with complaints under the preceding point and resourcing of such investigations; thirdly, the postponement of certain provisions of the Legal Profession Act 2004; and, finally, amendments to the Dangerous Prisoners (Sexual Offenders) Act 2003 to allow interim detention orders to be made.

The amendments to the Personal Injuries Proceedings Act 2003 derive from the High Court decision of APLA Ltd v Legal Services Commissioner (New South Wales). That case determined the validity of regulations in New South Wales under the Legal Profession Regulation 2005, which restricted advertising for personal injury services in New South Wales.

Subdivision 3 of the regulation includes a provision that a person must not publish a personal injury advertisement if the person is engaged in a practice involving or is party to an agreement that provides for the referral of persons to lawyers for the provision of legal services in respect of personal injury. The provision in New South Wales would appear to cover advertising by what are called 'claim harvesters'. As the High Court ruled that the regulation was valid, it would therefore appear a similar provision in Queensland legislation would also be valid.

The term 'claim harvester' is a new term in this state and derives from people—not legal practitioners—who place advertisements promising or offering to assist the public to obtain money in personal injuries matters. The current legislation does not cover these 'claim harvesters'. It deals only with lawyers or persons acting for lawyers. Clearly, there is a gap in which a legal firm or a firm in conjunction with a legal firm could flout existing legislation.

The 2004 act came into existence to cease the practice of 'no win, no fee' advertising and placed a prohibition on legal practitioners using that term or one similar in nature. The amendments contained in this bill are to extend that to capture 'claim harvesters'. The Queensland Law Society has written to me confirming that it is in agreement with the proposal.

In essence, firstly, the bill amends section 64 of the principal act to define a person as advertising personal injury services if a published document is likely to encourage or induce a person to make a claim for compensation or damages or to use the services of a practitioner or a named legal practice in making a claim.

However, it is the second point that is of concern and where claim harvesters come directly into play. The second principle contained within the bill is the insertion of a new section 66, which places restrictions on advertising personal injury services by limiting what a publication can contain. It provides, in fact, only for the allowing of the name and contact details of a practitioner or law practice, plus information as to the area of law or specialty, coupled with it being published by or in an allowable publication method. I note that the penalty involved in this matter is 300 penalty units.

The third provision in the bill in relation to claim harvesters is that it acknowledges that exceptions should apply, and rightly so, where a practitioner can advertise directly to a class of persons, including an existing client, a person who works at the practice, a person who works at the practice's place of business or under any court order. Further, it states that a practitioner can advertise personal injury services on the internet web site of that practitioner or law practice if the advertising is limited to the operation of the law of negligence, a person's legal rights under that law and conditions under which the practitioner or practice is prepared to provide personal injury services.

Fourthly, it is clear under the terms that a breach of these provisions will result in a charge of misconduct. Under this bill, 'misconduct' means professional misconduct or unsatisfactory professional conduct as defined under the Legal Profession Act 2004. This places actions contravening the act on a very high level of misconduct and could well result in significant penalties being imposed by the Legal Services Commissioner as a consequence of any investigation. The question that I pose, of course, is whether amendments of such a draconian nature are required.

During my briefing with the Attorney-General's staff, I asked whether complaints had been lodged with the Attorney-General's office or whether they were aware of any adverse public comment in relation to what are termed claim harvesters. The answer—and the Attorney may well correct me on this point—was no. On my interpretation, the bill seems to be a pre-emptive strike as to what could happen in the future. Naturally, a pre-emptive strike carries with it certain dangers in that you do not really comprehend or understand the danger or risk that you are dealing with. A comment I would pass is that if there has been no adverse reaction nor a claim that legal bills or fees have increased as a consequence of claim harvesters it is somewhat difficult to gauge the evil you are attempting to combat.

Irrespective, I can see a clear benefit attaching to this bill as it really moves forward the initial act of 2004 to encapsulate people who would attempt to use a loophole, and in that sense we will be supporting the terms in relation to what are termed claim harvesters.

The second point covered in the bill is the extension of the powers of the Legal Services Commissioner. To date, that officer has only dealt with practitioners. However, the bill will extend that and allow the commissioner to commence an investigation involving a legal practitioner or a person suspected of contravening the terms of the bill—that is, the claim harvester. This is a logical extension of the powers and duties of the commissioner, as it would be impractical to have two separate bodies investigating what would, in essence, be one complaint. In addition, more likely than not that complaint would involve if not the same persons then certainly a relationship that blurs the distinction between the two.

The third issue dealt with in the bill concerns the postponement of certain provisions of the Legal Profession Act 2004. I note that in her second reading speech the Attorney said—

It is desirable that those provisions not commence until certain amendments included in another bill, expected to be introduced in May, also commence. In the event that the other bill is not assented to by 31 May 2006, the bill provides for the commencement of the provisions that would otherwise automatically commence to be further postponed.

I note the contents of *Alert Digest No. 4 of 2006* when dealing with this issue and the particular comments raised therein. However, it would appear the Attorney's statement is quite unequivocal. The bill was only to delay the implementation of the provisions included in what is clause 20 of this bill for a very short period of time.

I ask the Attorney to clarify in her response the circumstances surrounding clause 20 as they currently stand—that is, is it the intention to introduce in the immediate future into parliament a bill that encapsulates clause 20 so that the terms of section 15A of the Acts Interpretation Act are not excluded as they would be under the current wording as it appears in clause 20? Clause 20 simply says that the Acts Interpretation Act does not apply to certain provisions of the 2004 act.

Mrs Lavarch: It would be automatic.

Mr McARDLE: Can the minister clarify when the bill is to come into parliament potentially to activate those particular sections of that act?

Mrs Lavarch: It will be activated upon the proclamation.

Mr McARDLE: The fourth and final provision of the bill deals specifically with the amendment to the Dangerous Prisoners (Sexual Offenders) Act 2003. The act passed this House unanimously when it came before it on 4 June 2003. This bill now proposes an amendment to it allowing an interim order to be made in detaining the person under an interim detention order pending the hearing of an application to rescind a supervision order. I note in particular that the determination of whether a person is so incarcerated is on the basis of the test of reasonable belief. *Alert Digest No. 8 of 2003* went into great detail in discussing the principal act, in particular detailing a number of concerns that it had. I note that those concerns incorporated the length of time the prisoner had to respond to the initial application, how they could obtain proper and ongoing legal advice to deal with the material, the fact that there appeared to be no right of the

prisoner to obtain a lawyer to appear for him at the preliminary hearing and the standard of proof required to obtain the requisite order.

As I said, the digest did go into some detail as to the concerns it held and then quoted at length from the Wood royal commission in New South Wales and I believe that it is important that we refer to that document as there are some pertinent points to be raised. In report No.8 this comment appears and it does give some solace to what is a very restrictive provision concerning the individual liberties and rights of citizens of this state—

For none, on the evidence received by the Royal Commission, can there be any certainty that the experience or threat of imprisonment will act as an effective deterrent, or that treatment will prevent an offender from reoffending... Clearly however there may need to be some difference in the response of the system, according to the characteristics of the individual offender.

The report further states—

There is ample evidence that conventional forms of punishment, whether they involve imprisonment or supervision in the community, have little value in reducing recidivism.

Whether treatment provides any long term benefits in the reduction of recidivism has been questioned, and still remains far from resolved.

From those two quotes I take clearly that the commission was making it very clear that there are certain people in our community who, irrespective of what treatment is provided to them, will reoffend. In that context, provisions in legislation that protect the individual and protect society from that person are an integral part of ensuring the safety of society and the public at large.

Under the current act there is no power for the court to make an interim detention order. This bill remedies this position by giving the court sufficient power to make such an order if the criteria contained within the act are met. This will mean that a convicted person is not at large in the community with the potential to commit serious and ongoing sexual offences. It must be clearly understood that the act applies to a very small class of person and deals with the class of person that has to be kept from the public, and if there are circumstances that warrant them being taken into custody and dealt with then we on this side of the House will support the proposition. It must be also clearly understood that this bill does remove significant legal rights, as in fact does the initial act, from the citizens of this state.

As a consequence, only in the most extreme and urgent circumstances should this House pass such legislation. There is, without doubt, uniform agreement across the chamber that this legislation—that is, the principal act—falls clearly within the terms of those two principles; that is, it applies only in the most extreme and urgent circumstances. The bill before the House merely extends the terms of the current act and in my opinion it also deals with the most extreme and urgent circumstances.

This House has an obligation to protect the citizens of the state and this bill, though it is beyond what would be classed as normal in terms of legislation in that it impacts upon the rights of citizens, does nothing more than as stated in the *Alert Digest* and that is to extend the current legislation to a practical conclusion.

As a consequence, the opposition will be supporting the bill, but I do ask the Attorney to clarify the clause 20 scenario and how it impacts in the near future. We support the bill.