



New South Wales

Workers Compensation (General) Amendment (Advertising) Regulation 1997

under the

Workers Compensation Act 1987

His Excellency the Governor, with the advice of the Executive Council, and with the concurrence of the Minister administering the *Legal Profession Act 1987*, has made the following Regulation under the *Workers Compensation Act 1987*.

JEFFREY SHAW, Q.C., M.L.C.,
Minister for Industrial Relations

Explanatory note

The object of this regulation is to insert a new Part into the *Workers Compensation (General) Regulation 1995* to regulate advertising in the area of workers compensation by lawyers and agents.

The proposed new Part provides for the following:

- (a) The Part will be phased in, so that it will apply only to advertisements published more than 2 months after commencement, or later if it can be proved that the offending advertisement was contracted for before the commencement.
- (b) The Part will apply to advertising that appears to be intended or likely to encourage or induce a person to make a workers compensation or damages claim or to use the services of a lawyer or agent in connection with such a claim.

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- (c) Advertising will be required to contain a warning statement about the penalties for making false workers compensation claims, unless the advertisement is solely about the area of practice or specialty of the lawyer or agent. The penalty for a contravention of this provision will be a fine of up to 200 penalty units.
- (d) Advertising that is false, misleading, vulgar, sensational or unprofessional will be prohibited. The penalty for a contravention of this provision by an agent is a fine of up to 200 penalty units. For a lawyer, a contravention is to be dealt with as a breach of the regulations under the *Legal Profession Act 1987*.

This Regulation is made under the *Workers Compensation Act 1987*, including sections 148L (Regulation of advertising) and 280 (the general regulation making power).

Workers Compensation (General) Amendment (Advertising) Regulation 1997

1 Name of Regulation

This Regulation is the *Workers Compensation (General) Amendment (Advertising) Regulation 1997*.

2 Commencement

This Regulation commences on 15 December 1997.

3 Amendment of Workers Compensation (General) Regulation 1995

The *Workers Compensation (General) Regulation 1995* is amended as set out in Schedule 1.

4 Notes

The explanatory note and notes do not form part of this Regulation.

Schedule 1 Amendment

(Clause 3)

Part 19B

Insert after Part 19A:

Part 19B Advertising by lawyers and agents (s 148L)

73C Phasing in of Part

- (1) This Part applies only to statements published more than 2 months after the commencement of this Part.
- (2) It is a defence in proceedings for an offence under this Part in respect of the publication of a statement if the defendant proves that the publication of the statement occurred as a result of a contract or other arrangement entered into by or on behalf of the defendant before the commencement of this Part.

73D Advertising to which Part applies

- (1) This Part applies to any statement published or caused to be published by a lawyer or agent:
 - (a) that appears to be intended (whether or not it is in fact intended) to encourage or induce a person to make a claim for compensation or damages for a work related injury or to use the services of a lawyer or agent in connection with the making of such a claim, or
 - (b) that may reasonably be thought likely to encourage or induce a person to make a claim for compensation or damages for a work related injury or to use the services of a lawyer or agent in connection with the making of such a claim.
- (2) The fact that a statement also relates to compensation or damages for injuries that are not work related does not of itself prevent the statement being a statement to which this Part applies.

- (3) A statement is considered to be published if it is:
- (a) inserted in any newspaper or any other printed publication and published or distributed in NSW, or
 - (b) publicly exhibited in, on, over or under any building, vehicle or place or in the air in view of persons being or passing in or on any street or public place, or
 - (c) contained in any document gratuitously sent or delivered to any person or thrown or left on premises occupied by the person, or
 - (d) disseminated on any system to which public access is available for the transfer of information by electronic means (whether or not on payment of a charge), such as the Internet, or
 - (e) broadcast by radio or television.

73E Advertising to contain warning about false claims

- (1) A lawyer or agent who publishes or causes to be published a statement to which this Part applies in the form of an advertisement is guilty of an offence unless the advertisement includes a statement (*the warning statement*) that complies with the requirements of this clause.

Maximum penalty: 200 penalty units.

- (2) The advertisement need not include the warning statement if the content of the statement to which this Part applies is solely information as to the area of practice or specialty of the lawyer or agent concerned.
- (3) The following requirements apply to the warning statement:
- (a) it must be in or to the effect of the following form:
Warning: The Workers Compensation Act provides severe penalties (including fines and imprisonment) for the making of a false workers compensation claim.

- (b) it must appear or feature in the advertisement in such a manner as to ensure that the statement is prominent and easily seen or heard and understood (depending on the advertising medium) by persons reading or listening to the advertisement,
 - (c) if the advertisement is wholly or substantially in a language other than English, the warning statement must be in that language (whether or not it is also in English).
- (4) It is a defence in proceedings for an offence under this clause if the lawyer or agent satisfies the court that:
 - (a) the lawyer or agent took all reasonable steps to ensure that the advertisement included the required warning statement, and
 - (b) the failure to include the warning statement was not the fault of the lawyer or agent.

73F Prohibited advertising

- (1) A lawyer or agent must not publish or cause to be published a statement to which this Part applies that is:
 - (a) false or misleading in a material particular, whether or not the lawyer or agent knows that it is false or misleading, or
 - (b) vulgar or sensational, or
 - (c) unprofessional or likely to bring the lawyer's or agent's profession into disrepute.
- (2) Without limiting the generality of subclause (1), a statement is considered to be false or misleading if:
 - (a) it is of such a nature that it may reasonably be thought likely to tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement indicates that that state of affairs does or will exist, or
 - (b) it does not conform to fact in any respect that is or may be significant to any person who may make a claim for compensation or damages for a work related injury, or

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- (c) in the whole context in which the statement is made, the statement (whether or not it may be literally true) may be understood by a person not in possession of special knowledge regarding workers compensation or common law entitlements, as indicating the absence of any exclusion, limitation, disadvantage or qualification that is of possible significance to a person making a claim for compensation or damages for a work related injury, or
- (d) it is a representation in relation to any future matter and the lawyer or agent does not have reasonable grounds for making the representation.
- (3) For the purposes of this clause, a person is not considered to have published a statement that is false or misleading in a material particular if it is established that:
- (a) the person took all reasonable precautions against publishing a statement that was false or misleading, and
- (b) the person had reasonable grounds for believing and did in fact believe that the statement was true, or had reasonable grounds for believing in the existence of the state of affairs and did in fact believe that that state of affairs existed, and
- (c) the person had no reason to suspect that the statement was false or misleading in a material particular.
- (4) An agent who contravenes this clause is guilty of an offence.

Maximum penalty: 200 penalty units.

Note. Clause 69A of the *Legal Profession Regulations 1994* provides that a barrister or solicitor must not advertise in contravention of clause 73F of this Regulation.

73G Operation of other laws not affected

This Part does not limit the operation of any other law with respect to advertising.

Note. Expressions used in this Part have the same meaning as in Division 7 of Part 4 of the Act. An agent is a person who acts, or holds himself or herself out as willing to act, as agent for a person for fee or reward in connection with a claim but does not include a legal practitioner, and “lawyer” means a legal practitioner. Each of the following activities is considered to constitute acting as agent for a person in relation to a claim:

- (a) advising the person with respect to the making of a claim,
- (b) assisting the person to complete or prepare, or completing or preparing on behalf of that person, any form, correspondence or other document concerning a claim,
- (c) making arrangements for any test or medical examination to determine the person's entitlement to compensation,
- (d) arranging referral of the person to a lawyer for the performance of legal work in connection with a claim.

A reference to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).