



New South Wales

Workers Compensation (General) Amendment (Advertising) Regulation 2001

under the

Workplace Injury Management and Workers Compensation
Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workplace Injury Management and Workers Compensation Act 1998*.

JOHN DELLA BOSCA, M.L.C.,

Special Minister of State

Explanatory note

The object of this Regulation is to amend the *Workers Compensation (General) Regulation 1995* to repeal and replace Part 19B of that Regulation, which prohibits certain advertising by lawyers or agents with respect to workers compensation claims.

The new Part 19B makes it an offence for a lawyer, agent, solicitor corporation or incorporated legal practice to advertise workers compensation services except by means of a statement that:

- (a) states only the name and contact details of the lawyer, agent, solicitor corporation or incorporated legal practice, together with information as to any area of practice or specialty, and
- (b) is published only by certain allowable methods, which include printed publications such as newspapers, magazines or directories, Internet websites that reproduce such publications, and electronic databases and directories that are accessible on the Internet.

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Explanatory note

This Regulation also makes that offence a penalty notice offence.

This Regulation is made under the *Workplace Injury Management and Workers Compensation Act 1998*, including section 142 (Regulation of advertising) and section 248 (the general regulation-making power).

Workers Compensation (General) Amendment (Advertising) Regulation 2001

1 Name of Regulation

This Regulation is the *Workers Compensation (General) Amendment (Advertising) Regulation 2001*.

2 Commencement

This Regulation commences on 26 May 2001.

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 does not form part of this Regulation.

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Schedule 1 Amendments

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(Clause 3)

[1] Part 19B

Omit the Part. Insert instead:

Part 19B Advertising of workers compensation services

Note. Expressions used in this Part have the same meaning as in Division 8 of Part 2 of Chapter 4 of the 1998 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. **Lawyer** means a legal practitioner and, as provided below, includes solicitor corporations and incorporated legal practices.

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 the 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).

73C Definitions

In this Part:

lawyer includes a solicitor corporation and an incorporated legal practice.

printed publication means a newspaper, magazine, journal, periodical, directory or other printed publication.

public place means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

73D Restriction on advertising workers compensation services

- (1) A lawyer or agent must not advertise workers compensation services except by means of a statement that:
 - (a) states only the name and contact details of the lawyer or agent, together with information as to any area of practice or specialty of the lawyer or agent, and
 - (b) is published by an allowable publication method, as provided by subclause (2).
 - (2) Each of the following is an allowable publication method:
 - (a) publication of the statement in a printed publication,
 - (b) publication of the statement on an Internet website by means of the publication of an electronic version of a printed publication, but only if the statement merely reproduces a statement as published in that printed publication and the printed publication is published independently of the lawyer or agent,
 - (c) publication of the statement on an Internet website by the publication of the contents of a directory or database that includes the statement and that is published or maintained independently of the lawyer or agent,
 - (d) public exhibition of the statement in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place,
 - (e) display of the statement on any printed document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle,
 - (f) display of the statement on any printed document provided to a person as a receipt or record in respect of a transaction or bet.
- Note.** Examples of these kinds of documents are shopping dockets and betting tickets.
- (3) This clause does not prevent a lawyer or agent from advertising workers compensation services:
 - (a) to any person who is already a client of the lawyer or agent, or

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- (b) to any person at a place of business of the lawyer or agent.
- (4) A printed publication, directory or database is considered to be published or maintained independently of a lawyer or agent only if:
 - (a) it is not published or maintained by the lawyer or agent or by a partner, employee or member of the practice of the lawyer or agent, and
 - (b) the person who publishes or maintains it does so in the ordinary course of the conduct of the person's business or affairs.

73E What constitutes advertising of workers compensation services

- (1) For the purposes of this Part, a person advertises workers compensation services when the person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person:
 - (a) to make a claim for compensation or damages for a work-related injury, or
 - (b) to use the services of a lawyer or agent in connection with the making of such a claim.
- (2) It does not matter that the statement also relates to compensation or damages for injuries that are not work-related.
- (3) For the purposes of this clause, a statement is published if it is:
 - (a) published in a printed publication, or
 - (b) disseminated by means of the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance, or
 - (c) broadcast by radio or television, or
 - (d) displayed on an Internet website or otherwise publicly disseminated by means of the Internet, or

- (e) publicly exhibited in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place, or
- (f) displayed on any document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle, or
- (g) displayed on any document provided to a person as a receipt or record in respect of a transaction or bet.

73F Offence

- (1) A lawyer or agent who contravenes this Part is guilty of an offence.

Maximum penalty: 200 penalty units.

- (2) For the purposes of a prosecution for an offence under this clause, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate.

73G Operation of other laws not affected

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

[2] Schedule 5 Penalty notice offence

Re-number Parts 2 and 3 of Schedule 5 (as inserted by the *Workers Compensation (General) Amendment (Miscellaneous) Regulation 2001*) as Parts 3 and 4 of Schedule 5

[3] Schedule 5

Insert in appropriate order in Part 3 (as re-numbered by this Regulation):

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| Clause 73F (1) | Not comply with advertising restriction | 750 |
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BY AUTHORITY