



New South Wales

Legal Profession Amendment (Advertising) Regulation 2002

under the

Legal Profession Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Legal Profession Act 1987*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to restrict the manner in which barristers and solicitors advertise personal injury services.

Under the new Part 7B to be inserted in the *Legal Profession Regulation 1994*, a barrister or solicitor must not advertise personal injury services except by means of a statement that:

- (a) states only the name and contact details of the barrister or solicitor, together with information as to any area of practice or specialty of the barrister or solicitor, and
- (b) is published only by certain allowable methods such as printed publications and electronic databases and directories that are accessible on the Internet.

The public exhibition of such a statement in or on a hospital, or displaying the statement on any printed document sent to or left in or around a hospital, will not be an allowable publication method.

For the purposes of the new Part, a person advertises personal injury 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 to make a claim

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for compensation or damages under any Act or law in respect of a personal injury, or to use the services of a barrister or solicitor in connection with the making of such a claim.

The new Part provides that a contravention of the requirements relating to advertising personal injury services is capable of being professional misconduct under the *Legal Profession Act 1987*.

This Regulation also omits clause 69A of the *Legal Profession Regulation 1994* which is superseded by the new Part 7B.

This Regulation is made under the *Legal Profession Act 1987*, including sections 38J (2) (c), 127 (1) (d) and 216 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Legal Profession Amendment (Advertising) Regulation 2002*.

2 Commencement

This Regulation commences on 1 April 2002.

3 Amendment of Legal Profession Regulation 1994

The *Legal Profession Regulation 1994* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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(Clause 3)

[1] Part 7B

Insert after Part 7A:

Part 7B Advertising of personal injury services

68A Definitions

In this Part:

hospital means:

- (a) a public hospital within the meaning of the *Health Services Act 1997* controlled by an area health service or the Crown, or
- (b) a statutory health corporation or affiliated health organisation within the meaning of that Act, or
- (c) an establishment within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988* or a nursing home within the meaning of the *Nursing Homes Act 1988*,

and any land or building occupied or used in connection with such a hospital, establishment or nursing home.

personal injury includes:

- (a) death, and
- (b) pre-natal injury, and
- (c) psychological or psychiatric injury, and
- (d) disease.

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).

68B Restriction on advertising personal injury services

- (1) A barrister or solicitor must not advertise personal injury services except by means of a statement that:
 - (a) states only the name and contact details of the barrister or solicitor, together with information as to any area of practice or specialty of the barrister or solicitor, and
 - (b) is published by an allowable publication method, as provided by subclause (4).
- (2) A contravention of subclause (1) is capable of being professional misconduct.
- (3) Subclause (2) applies only in respect of contraventions that occur after the commencement of this clause.
- (4) Subject to subclause (5), 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 barrister or solicitor,
 - (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 barrister or solicitor,
 - (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,

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- (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.
- (5) Each of the following is not an allowable publication method for the purposes of this clause:
- (a) public exhibition of the statement in or on a hospital,
 - (b) display of the statement on any printed document gratuitously sent or delivered to a hospital or left in a hospital or on any vehicle in the vicinity of a hospital.
- (6) This clause does not prevent a barrister or solicitor from advertising personal injury services:
- (a) to any person who is already a client of the barrister or solicitor, or
 - (b) to any person at a place of business of the barrister or solicitor, or
 - (c) in accordance with any order by a court.
- (7) This clause does not apply to or in respect of a disclosure made by a barrister or solicitor under Division 2 of Part 11 of the Act.
- (8) A printed publication, directory or database is considered to be published or maintained independently of a barrister or solicitor only if:
- (a) it is not published or maintained by the barrister or solicitor or by a partner, employee or member of the practice of the barrister or solicitor, 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.

68C What constitutes advertising of personal injury services

- (1) For the purposes of this Part, a person advertises personal injury 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:

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- (a) to make a claim for compensation or damages under any Act or law in respect of a personal injury, or
 - (b) to use the services of a barrister or solicitor in connection with the making of a such a claim.
- (2) It does not matter that the statement also relates to other matters.
- (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.

[2] Clause 69A Advertising in relation to workers compensation claims

Omit the clause.