



Legal Profession Amendment (Personal Injury Advertising) Regulation 2003

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

Existing provisions of the *Legal Profession Regulation 2002* place restrictions on the content and method of advertising by barristers and solicitors of personal injury services.

The object of this Regulation is to broaden the current restrictions so as to prohibit a barrister or solicitor from publishing or causing or permitting publication of an advertisement that makes any reference to or depicts:

- (a) personal injury, or
- (b) matters related to personal injury, such as an activity, event or circumstance that suggests personal injury or a cause of personal injury, or
- (c) legal services relating to the recovery of money for personal injury.

Existing exceptions to advertising restrictions are retained and additional exceptions are provided for.

A contravention of the new provisions will be an offence and will also constitute professional misconduct.

The new provisions are not intended to prevent legitimate public comment in good faith about personal injury and are not intended to interfere with the delivery in good faith of legal education to the legal profession or the ordinary use of business cards or letterheads.

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Explanatory note

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

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Legal Profession Act 1987

1 Name of Regulation

This Regulation is the *Legal Profession Amendment (Personal Injury Advertising) Regulation 2003*.

2 Commencement

This Regulation commences on 23 May 2003.

3 Amendment of Legal Profession Regulation 2002

The *Legal Profession Regulation 2002* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 3)

Part 14

Omit the Part. Insert instead:

Part 14 Advertising of personal injury services

138 Definitions

In this Part:

advertisement means any communication of information (whether by means of writing, or any still or moving visual image or message or audible message, or any combination of them) that advertises or otherwise promotes the availability or use of a barrister or solicitor to provide legal services, whether or not that is its purpose or only purpose and whether or not that is its only effect.

personal injury includes pre-natal injury, impairment of a person's physical or mental condition, and disease.

publish means:

- (a) publish in a newspaper, magazine, journal, periodical, directory or other printed publication, or
- (b) disseminate 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) display on an Internet website or otherwise publicly disseminate by means of the Internet, or
- (e) publicly exhibit 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

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- (f) display on any document (including a business card or letterhead) gratuitously sent or gratuitously delivered to any person or thrown or left on any premises or on any vehicle, or
 - (g) display on any document provided to a person as a receipt or record in respect of a transaction or bet.

solicitor includes firm of solicitors, solicitor corporation and incorporated legal practice.

139 Restriction on advertising personal injury services

- (1) A barrister or solicitor must not publish or cause or permit to be published an advertisement that includes any reference to or depiction of any of the following:
 - (a) personal injury,
 - (b) any circumstance in which personal injury might occur, or any activity, event or circumstance that suggests or could suggest the possibility of personal injury, or any connection to or association with personal injury or a cause of personal injury,
 - (c) a *personal injury legal service* (that is, any legal service that relates to recovery of money, or any entitlement to recover money, in respect of personal injury).

Maximum penalty: 10 penalty units.

- (2) A contravention of this clause by a barrister or solicitor is declared to be professional misconduct.

Note. A contravention of clause 73D of the *Workers Compensation (General) Regulation 1995* can also be a contravention of this clause.
- (3) Evidence that a barrister or solicitor has been convicted of an offence under this clause or under clause 73D of the *Workers Compensation (General) Regulation 1995* is sufficient evidence of a contravention of this clause by the barrister or solicitor for the purposes of any proceedings under Part 10 (Complaints and discipline) of the Act.

140 Exception for advertising speciality

- (1) This Part does not prevent the publication of an advertisement that advertises a barrister or solicitor as being a specialist or offering specialist services, but only if the advertisement is published by means of:

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Schedule 1 Amendment

- (a) an entry in a practitioner directory that states only the name and contact details of the barrister or solicitor and any area of practice or accredited specialty of the barrister or solicitor, or
- (b) a sign displayed at a place of business of the barrister or solicitor that states only the name and contact details of the barrister or solicitor and any accredited specialty of the barrister or solicitor, or
- (c) an advertisement on an Internet website operated by the barrister or solicitor the publication of which would be prevented under this Part solely because it refers to personal injury or personal injury legal services in a statement of accredited specialty of the barrister or solicitor.

(2) In this clause:

accredited specialty of a barrister or solicitor means a specialty in which the barrister or solicitor is accredited under an accreditation scheme conducted or approved by the Bar Council or Law Society.

practitioner directory means a printed publication, directory or database that is published by a person in the ordinary course of the person's business (and not by the barrister or solicitor concerned or a partner, employee or member of the practice of the barrister or solicitor).

140A Other exceptions

This Part does not prevent the publication of any advertisement:

- (a) to any person who is already a client of the barrister or solicitor (and to no other person), or
- (b) to any person on the premises of a place of business of the barrister or solicitor, but only if the advertisement cannot be seen from outside those premises, or
- (c) in accordance with any order by a court, or
- (d) pursuant to a disclosure made by a barrister or solicitor under Division 2 of Part 11 of the Act, or
- (e) to the extent that it relates only to the provision of legal aid or other assistance by an agency of the Crown and is published by or on behalf of that agency, or

- (f) to the extent that it relates only to legal education and is published to members of the legal profession by a person in the ordinary course of the person's business or functions as a provider of legal education, or
- (g) that is required to be published by or under a written law of the State.

140B Responsibility for employees and others

For the purposes of this Part, evidence that a person who is an employee of a barrister or solicitor, or a person otherwise exercising functions in the barrister's or solicitor's practice, published or caused to be published an advertisement is evidence (in the absence of evidence to the contrary) that the barrister or solicitor caused or permitted the publication of the advertisement.

140C Double jeopardy

A person who has been convicted of an offence under Part 19B of the *Workers Compensation (General) Regulation 1995* is not, if that offence would constitute an offence under this Part in respect of the publication of an advertisement, liable to be convicted of an offence under this Part in respect of that publication.

140D Transitional—finalised publications

This Part does not prevent the publication of an advertisement in a printed publication the contents of which were finalised (by the publisher of that publication) before the date of publication in the Gazette of the *Legal Profession Amendment (Personal Injury Advertising) Regulation 2003*.