



New South Wales

Workers Compensation (General) Amendment (Work Injury Advertising) Regulation 2003

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.,

Minister for Commerce

Explanatory note

Existing provisions of the *Workers Compensation (General) Regulation 1995* place restrictions on the content and method of advertising by lawyers and agents of services relating to claims for compensation or damages for a work injury.

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

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

A contravention of the new provisions will be an offence. Contravention by a lawyer of a parallel provision under the *Legal Profession Regulation 2002* will also constitute professional misconduct by the lawyer.

Existing exceptions to advertising restrictions are retained and additional exceptions are provided for. The exceptions set out in proposed clause 73F are similar to the exceptions that apply to the prohibition on advertising by lawyers under Part 14 of the *Legal Profession Regulation 2002*, except for the addition of clause 73F (g). The additional exception is included because this Regulation prohibits advertising by agents as well as legal practitioners. The exception relates to advertising by an industrial organisation

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itself, and neither this Regulation nor the *Legal Profession Regulation 2002* would impose any liability on a legal practitioner who is employed by an industrial organisation merely because of the publication of an advertisement by the industrial organisation.

The new provisions are not intended to prevent legitimate public comment in good faith about work 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.

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

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1 Name of Regulation

This Regulation is the *Workers Compensation (General) Amendment (Work Injury Advertising) Regulation 2003*.

2 Commencement

This Regulation commences on 23 May 2003.

3 Amendment of Workers Compensation (General) Regulation 1995

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

Schedule 1 Amendment

(Clause 3)

Clauses 73C–73GB

Omit clauses 73C–73G. Insert instead:

73C 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 lawyer to provide legal services or an agent to provide agent services, whether or not that is its purpose or only purpose and whether or not that is its only effect.

lawyer means a legal practitioner and includes a firm of legal practitioners, solicitor corporation and incorporated legal practice.

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
- (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

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- (g) display on any document provided to a person as a receipt or record in respect of a transaction or bet.

work injury has the same meaning as in the 1998 Act.

73D Restriction on advertising work injury services

A lawyer or agent 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) work injury,
- (b) any circumstance in which work injury might occur, or any activity, event or circumstance that suggests or could suggest the possibility of work injury, or any connection to or association with work injury or a cause of work injury,
- (c) a *work injury service* (that is, any service provided by a lawyer or agent that relates to recovery of money, or any entitlement to recover money, in respect of work injury).

Maximum penalty: 200 penalty units.

Note. A contravention of this clause can also be a contravention of Part 14 of the *Legal Profession Regulation 2002*. A contravention of that Part by a lawyer constitutes professional misconduct.

73E Exception for advertising specialty

- (1) This Part does not prevent the publication of an advertisement that advertises a lawyer or agent as being a specialist or offering specialist services, but only if the advertisement is published by means of:
 - (a) an entry in a practitioner directory that states only the name and contact details of the lawyer or agent and any area of practice or specialty of the lawyer or agent, or
 - (b) a sign displayed at a place of business of the lawyer or agent that states only the name and contact details of the lawyer or agent and any specialty of the lawyer or agent, or
 - (c) an advertisement on an Internet website operated by the lawyer or agent the publication of which would be prevented under this Part solely because it refers to work injury or work injury services in a statement of specialty of the lawyer or agent.

(2) In this clause:

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 lawyer or agent concerned or a partner, employee or member of the practice of the lawyer or agent).

specialty of a lawyer is limited to a specialty in which the lawyer is accredited under an accreditation scheme conducted or approved by the Bar Council or Law Society.

73F Other exceptions

This Part does not prevent the publication of any advertisement:

- (a) to any person who is already a client of the lawyer or agent (and to no other person), or
- (b) to any person on the premises of a place of business of the lawyer or agent, 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 lawyer under Division 2 of Part 11 of the *Legal Profession Act 1987*, 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) by an industrial organisation (within the meaning of the *Industrial Relations Act 1996*) if the advertisement (or so much of it as would otherwise contravene clause 73D) relates only to the provision of advice or services by that organisation and states only the name and contact details of the industrial organisation along with a description of the services that it provides, or
- (h) that is required to be published by or under a written law of the State.

73G Responsibility for employees and others

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

73GA Double jeopardy

A person who has been convicted of an offence under Part 14 of the *Legal Profession Regulation 2002* 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.

73GB 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 *Workers Compensation (General) Amendment (Work Injury Advertising) Regulation 2003*.