



New South Wales

# Legal Profession Amendment (Advertising) Regulation 2005

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 amend the *Legal Profession Regulation 2002*:

- (a) to change existing provisions that restrict advertising of personal injury services by lawyers to impose restrictions on advertising by persons other than lawyers, and
  - (b) to make the changes outlined below to the existing restrictions applicable to lawyers.
- The new restrictions on non-lawyers have the following features:

- (a) advertising that depicts personal injury or circumstances of personal injury will be prohibited if it:
  - (i) advertises the provision of legal services, or
  - (ii) includes any mention of recovery of money, or entitlement to recover money, for personal injury, or
  - (iii) is advertising by a person who engages in a practice involving or is a party to an arrangement for the referral of persons to a lawyer for the provision of legal services for the recovery of money,
- (b) exceptions to the advertising restrictions include the following:
  - (i) advertising in some media of accredited specialty of a lawyer,
  - (ii) advertising of services provided by community legal centres in connection with domestic violence or discrimination,
  - (iii) advertising by legal aid providers,
  - (iv) advertising by bona fide providers of legal education,
  - (v) advertising of services provided by industrial organisations.

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#### Explanatory note

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The existing restrictions applicable to lawyers will be modified as follows:

- (a) the penalty for contravening the restrictions will be increased from 10 to 200 penalty units,
- (b) there will be an exemption for advertising of services provided by community legal centres in connection with domestic violence or discrimination,
- (c) an advertisement placed by a person will be deemed to have been placed by or on behalf of a lawyer if:
  - (i) the advertisement promotes the provision by the lawyer of legal services in connection with the recovery of money, or an entitlement to recover money, in respect of personal injury, or
  - (ii) the lawyer is a party to an arrangement with the person that provides for the referral of persons to the lawyer for the provision of legal services in connection with the recovery of money, or an entitlement to recover money, in respect of personal injury, or
  - (iii) the lawyer is a party to an arrangement with the person that provides for the person to advertise on behalf of the lawyer,
- (d) the definition of *solicitor* will be extended to include multi-disciplinary partnerships.

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.

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

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## Legal Profession Amendment (Advertising) Regulation 2005

under the

Legal Profession Act 1987

### 1 Name of Regulation

This Regulation is the *Legal Profession Amendment (Advertising) Regulation 2005*.

### 2 Commencement

This Regulation commences on 1 July 2005.

### 3 Amendment of Legal Profession Regulation 2002

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

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 3)

**[1] Part 14, heading**

Omit the heading. Insert instead:

#### **Part 14 Promotion of personal injury legal services**

##### **Division 1 Preliminary**

**[2] Clause 138 Definitions**

Omit the definition of *advertisement*. Insert instead:

*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 a product or service, whether or not that is its purpose or only purpose and whether or not that is its only effect.

**[3] Clause 138, definition of “solicitor”**

Omit the definition. Insert instead:

*solicitor* includes the following:

- (a) a partnership of which a solicitor is a member (but only if the business of the partnership includes business of a kind ordinarily conducted by a solicitor),
- (b) a solicitor corporation,
- (c) an incorporated legal practice.

**[4] Part 14, Division 2, heading**

Insert before clause 139:

##### **Division 2 Advertising by barristers and solicitors**

**[5] Clause 139 Restriction on advertising personal injury services**

Insert “promotes the availability or use of a barrister or solicitor to provide legal services if the advertisement” after “advertisement that” in clause 139 (1).

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**[6] Clause 139 (1), penalty**

Omit the penalty. Insert instead:

Maximum penalty: 200 penalty units.

**[7] Clause 139A**

Insert after clause 139:

**139A Exception for advertisements about domestic violence and discrimination—community legal centres**

This Division does not apply to the publication by or on behalf of a community legal centre (within the meaning of section 48H of the Act) of an advertisement that would constitute a contravention of clause 139 by reason only that it advertises or promotes services provided by the community legal centre in connection with domestic violence or discrimination.

**[8] Clause 140 Exception for advertising specialty**

Omit “This Part” from clause 140 (1). Insert instead “This Division”.

**[9] Clause 140 (1) (c)**

Omit “this Part”. Insert instead “this Division”.

**[10] Clause 140A Other exceptions**

Omit “This Part”. Insert instead “This Division”.

**[11] Clause 140B Responsibility for employees and others**

Omit “this Part”. Insert instead “this Division”.

**[12] Clause 140BA**

Insert after clause 140B:

**140BA Responsibility for advertisements published by others**

- (1) For the purposes of this Division, an advertisement is taken to have been published or caused to be published by a barrister or solicitor if:
  - (a) the advertisement advertises or otherwise promotes the availability or use of the barrister or solicitor (either by name or by reference to a business name under which the barrister or solicitor practises) for the provision of legal services in connection with the recovery of money, or an entitlement to recover money, in respect of personal injury, or

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- (b) the barrister or solicitor is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the referral of persons to the barrister or solicitor for the provision of legal services in connection with the recovery of money, or an entitlement to recover money, in respect of personal injury, or
  - (c) the barrister or solicitor is a party to an agreement, understanding or other arrangement with the person who published the advertisement or caused it to be published that expressly or impliedly provides for the person to advertise on behalf of the barrister or solicitor.
- (2) This clause does not apply to an advertisement if the barrister or solicitor proves that the barrister or solicitor took all reasonable steps to prevent the advertisement being published.

**[13] Clause 140C Double jeopardy**

Omit “this Part” wherever occurring. Insert instead “this Division”.

**[14] Clause 140D Transitional—finalised publications**

Omit “This Part”. Insert instead “This Division”.

**[15] Part 14, Division 3**

Insert after clause 140D:

**Division 3 Advertising by persons other than barristers and solicitors**

**140E Application of Division**

This Division does not apply to conduct of a barrister or solicitor.

**140F Definition of “personal injury advertisement”**

In this Division:

*personal injury advertisement* means an advertisement that includes any reference to or depiction of:

- (a) personal injury, or
- (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.

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**140G Restrictions on personal injury advertisements**

- (1) A person must not publish or cause or permit to be published a personal injury advertisement if the advertisement:
  - (a) advertises or otherwise promotes the availability or use of a barrister or solicitor (whether or not a particular 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, or
  - (b) includes any reference to or depiction of the recovery of money or a claim for money, or any entitlement to recover money or claim money, in respect of personal injury.

Maximum penalty: 200 penalty units.

- (2) A person must not publish or cause or permit to be published a personal injury advertisement if the person is engaged in a practice involving, or is a party to an agreement, understanding or other arrangement that provides for, the referral of persons to one or more barristers or solicitors for the provision of legal services in connection with the recovery of money, or an entitlement to recover money, in respect of personal injury.

Maximum penalty: 200 penalty units.

- (3) A person who is a member of a partnership or a director or officer of a body corporate must not expressly, tacitly or impliedly authorise or permit a contravention of subclause (1) or (2) by the partnership or body corporate or by an employee or agent of the partnership or body corporate on behalf of the partnership or body corporate.

Maximum penalty: 200 penalty units.

**140H Exception for advertisements about domestic violence and discrimination—community legal centres**

This Division does not apply to the publication by or on behalf of a community legal centre (within the meaning of section 48H of the Act) of an advertisement that is a personal injury advertisement by reason only that it advertises or promotes services provided by the community legal centre in connection with domestic violence or discrimination.

**140I Exception for advertising specialty**

- (1) This Division 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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- (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 on behalf of the barrister or solicitor the publication of which would be prevented under this Division solely because it refers to personal injury or 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).

#### 140J Other exceptions

This Division does not apply to the publication of an advertisement:

- (a) in accordance with any order by a court, or
- (b) 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
- (c) 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
- (d) 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 140G) 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



- (e) by a person in the ordinary course of the person's business as an insurer or insurance agent or broker, to the extent only that it includes a reference to or depiction of the recovery of money under a policy of insurance, or
- (f) that is required to be published by or under a written law of the State.

**140K Protection of publishers**

A contravention of clause 140G by a person who publishes an advertisement in the ordinary course of the person's business as a publisher does not constitute an offence under this Division (but is still a contravention of that clause for the purposes of section 38JA of the Act).

**Note.** Section 38JA provides for the giving of directions to persons to prevent contraventions of this Division. A publisher who contravenes a direction not to publish a particular advertisement will commit an offence.

**140L Double jeopardy**

A person who has been convicted of an offence under Part 18 of the *Workers Compensation Regulation 2003* is not, if that offence would constitute an offence under this Division in respect of the publication of an advertisement, liable to be convicted of an offence under this Division in respect of that publication.

**140M Transitional—finalised publications**

This Division does not prevent the publication of an advertisement in a printed publication if the contents of the publication were finalised (by the publisher of that publication) before the date of publication in the Gazette of the *Legal Profession Amendment (Advertising) Regulation 2005*.