



New South Wales

Workers Compensation Amendment (Advertising) Regulation 2005

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

The object of this Regulation is amend the *Workers Compensation Regulation 2003*:

- (a) to change existing provisions that restrict advertising of work injury services by lawyers and agents to impose restrictions on advertising by persons other than lawyers and agents, and
- (b) to make the changes outlined below to the existing restrictions applicable to lawyers and agents.

The new restrictions on non-lawyers/agents have the following features:

- (a) advertising that depicts work injury or circumstances of work injury will be prohibited if it:
 - (i) advertises the provision of legal services or agent services, or
 - (ii) includes any mention of recovery of money, or entitlement to recover money, for work injury, or
 - (iii) is advertising by a person who is a party to an arrangement for the referral of persons to a lawyer or agent for the provision of legal services or agent 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 or agent,
 - (ii) advertising of services provided by community legal centres in connection with discrimination,
 - (iii) advertising by legal aid providers,

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- (iv) advertising by bona fide providers of legal education,
- (v) advertising of services provided by industrial organisations.

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

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

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 Amendment (Advertising) Regulation 2005*.

2 Commencement

This Regulation commences on 1 July 2005.

3 Amendment of Workers Compensation Regulation 2003

The *Workers Compensation Regulation 2003* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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(Clause 3)

[1] Part 18, heading

Omit the heading. Insert instead:

Part 18 Marketing of work injury legal services and agent services

Division 1 Preliminary

[2] Clause 74 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 74, definition of “lawyer”

Omit the definition. Insert instead:

lawyer means a legal practitioner and includes the following:

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

[4] Part 18, Division 2, heading

Insert before clause 75:

Division 2 Advertising by lawyers and agents

[5] Clause 75 Restriction on advertising work injury services

Insert “promotes the availability or use of a lawyer or agent to provide legal services or agent services if the advertisement” after “advertisement that”.

[6] Clause 75A

Insert after clause 75:

75A Exception for advertisements about 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 *Legal Profession Act 1987*) of an advertisement that would constitute a contravention of clause 75 by reason only that it advertises or promotes services provided by the community legal centre in connection with discrimination.

[7] Clause 76 Exception for advertising specialty

Omit “This Part” from clause 76 (1). Insert instead “This Division”.

[8] Clause 76 (1) (c)

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

[9] Clause 77 Other exceptions

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

[10] Clause 78 Responsibility for employees and others

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

[11] Clause 78A

Insert after clause 78:

78A 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 lawyer or agent if:
 - (a) the advertisement advertises or otherwise promotes the availability or use of the lawyer or agent (either by name or by reference to a business name under which the lawyer or agent practises or carries on business) for the provision of legal services or agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury, or
 - (b) the lawyer or agent 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

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Schedule 1 Amendments

persons to the lawyer or agent for the provision of legal services or agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work injury, or

- (c) the lawyer or agent 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 lawyer or agent.

- (2) This clause does not apply to an advertisement if the lawyer or agent proves that the lawyer or agent took all reasonable steps to prevent the advertisement being published.

[12] Clause 79 Double jeopardy

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

[13] Clause 80 Transitional—finalised publications

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

[14] Part 18, Division 3

Insert after clause 80:

Division 3 Advertising by persons other than lawyers and agents

80A Application of Division

This Division does not apply to conduct of a lawyer or agent.

80B Definition of “work injury advertisement”

In this Division:

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

- (a) work injury, or
- (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.

80C Restrictions on work injury advertisements

- (1) A person must not publish or cause or permit to be published a work injury advertisement if the advertisement:
 - (a) advertises or otherwise promotes the availability or use of a lawyer or agent (whether or not a particular lawyer or agent) to provide legal services or agent 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 work injury.

Maximum penalty: 200 penalty units.

- (2) A person must not publish or cause or permit to be published a work 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 lawyers or agents for the provision of legal services or agent services in connection with the recovery of money, or an entitlement to recover money, in respect of work 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.

80D Exception for advertisements about 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 *Legal Profession Act 1987*) of an advertisement that is a work injury advertisement by reason only that it advertises or promotes services provided by the community legal centre in connection with discrimination.

80E Exception for advertising specialty

- (1) This Division 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:

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- (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 on behalf of the lawyer or agent the publication of which would be prevented under this Division solely because it refers to work injury or legal or agent 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.

80F 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 80C) 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.

80G Protection of publishers

A contravention of clause 80C 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.

80H 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 Division in respect of the publication of an advertisement, liable to be convicted of an offence under this Division in respect of that publication.

80I 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 *Workers Compensation Amendment (Advertising) Regulation 2005*.