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## SPECIAL SUPPLEMENT



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.

Legal Profession Amendment (Advertising) Regulation 2005

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).

Legal Profession Amendment (Advertising) Regulation 2005

Clause 1

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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.

## Legal Profession Amendment (Advertising) Regulation 2005

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).

## Legal Profession Amendment (Advertising) Regulation 2005

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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

## Legal Profession Amendment (Advertising) Regulation 2005

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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.

## Legal Profession Amendment (Advertising) Regulation 2005

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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:

## Legal Profession Amendment (Advertising) Regulation 2005

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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



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- (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*.



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,

## Workers Compensation Amendment (Advertising) Regulation 2005

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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).

Workers Compensation Amendment (Advertising) Regulation 2005

Clause 1

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## **Workers Compensation Amendment (Advertising) Regulation 2005**

under the

Workplace Injury Management and Workers Compensation Act 1998

### **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.

## Workers Compensation Amendment (Advertising) Regulation 2005

Schedule 1 Amendments

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**Schedule 1 Amendments**

(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”.

## Workers Compensation Amendment (Advertising) Regulation 2005

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**[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

## Workers Compensation Amendment (Advertising) Regulation 2005

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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.

## Workers Compensation Amendment (Advertising) Regulation 2005

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**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

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- (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*.