

QUEENSLAND LAW SOCIETY
PERSONAL INJURIES AND INSURANCE LAW CONFERENCE 2008

THE RESTRICTIONS ON ADVERTISING
PERSONAL INJURY SERVICES

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You will be keenly aware that personal injury lawyers have found themselves subject to increasing regulatory controls in recent years and that the Legal Services Commission is the primary regulator for two of them – the so-called 50/50 rule which caps the fees you are entitled to charge in speculative personal injury matters and the restrictions on the advertising of personal injury services.

The 50/50 rule came about in the first instance pursuant to amendments to the *Queensland Law Society Act 1952* (at sections 48IA-48IC) which came into effect in 2003 and have since been replaced, after the *Legal Profession Act 2007* came into effect on 1 July 2007, by the more broadly expressed sections 345-347 of that Act. The rule was enacted in response to a public perception, regrettably not entirely unwarranted, that people who suffered an injury could ‘win’ compensation only to win little at all - because their lawyers could take the bulk of the proceeds for their fees. Indeed one notorious former practitioner sought to claim and enforce payment of fees that would have seen his client nett worse off financially than if she had ‘lost’ her claim or made no claim at all.

You should know by now that the Commission sought a declaration recently as to the proper interpretation of the rule, given our concerns about the way another of your colleagues had contrived to circumvent it, and that we got the declarations we sought

both in the court of first instance and on appeal.ⁱⁱ We have gone to some lengths to bring these judgements to the profession's attention - we have prepared *Guidelines for Billing Fees in Speculative Personal Injury Matters* and published them on our website and in the current July edition of Proctor, and we wrote a week or so ago to over 400 solicitors the Law Society tells us have a personal injury practice to bring them up to speed. We say that we see no public interest in initiating disciplinary proceedings against any lawyers who misunderstood the true meaning of the rule and so overcharged their clients before the law was settled by the decision of the Court of Appeal provided of course that they reimburse their clients the amounts they overcharged them together with interest. We say that lawyers who overcharge their clients in the relevant ways now that the law is settled will not be treated so leniently. If you don't know about these matters, you should, and you should make it your business to find out.

The restrictions on the advertising of personal injury services came into effect on the commencement of the *Personal Injuries Proceedings Act 2002* (the Act) in response to a once again not entirely unwarranted public perception that some personal injury lawyers were 'ambulance chasing'. The Act prohibited touting at the scene of incidents where someone might have suffered an injury and at hospitals following such incidents and it imposed restrictions on the advertising of personal injury services – restrictions on what advertisements can say and where they can be published.

The Act had some loopholes, however, not least that the advertising restrictions applied only to lawyers and were unaccompanied by any effective enforcement provisions, and it comes as no surprise then that they were as honoured in the breach as the observance, as any cursory glance at the phone books of the time will tell you. Whatever else might be said about this sorry state of affairs it was unfair to and must have been galling for the majority of personal injury lawyers who tried to do and did the right thing.

The Act was amended to fix the loopholes with effect from on 29 May 2006 and the changes included corresponding amendments to the *Legal Profession Act 2004* (which have carried over to the *Legal Profession Act 2007*). The amendments extend the advertising restrictions to lawyers and non-lawyers alike and make the Legal Services

Commission responsible for their enforcement through a simple extension to our complaints and investigation matter powers – they give us powers to receive and investigate complaints which allege that the restrictions have been breached, to initiate investigations of our own motion if the Commissioner believes an investigation should be started, and to prosecute lawyers and non-lawyers alike if the evidence after investigation establishes a reasonable likelihood an alleged breach or breaches will be proved. Notably, the amendments give us powers to prosecute lawyers either before a disciplinary body pursuant to the *Legal Profession Act* or before a court pursuant to the Act or both.ⁱⁱⁱ

I propose to talk today about the advertising restrictions, how the Commission interprets and applies them, and what we've done thus far and plan to do by way of their enforcement.

The restrictions on advertising personal injury services

The restrictions are set out in Chapter 3, Part 1 of the Act and I draw your attention to the following sections in particular (with my emphasis added in italics):

1. section 64(1): '*a practitioner or another person, whether or not the other person is acting for a law practice, advertises personal injury services if the practitioner or person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person:*
 - a) [*either*] to make a claim for compensation or damages under any Act or law for a personal injury; *or*
 - b) *to use the services of the practitioner, or a named law practice, in connection with the making of a claim.*

2. section 66(1): '*a practitioner or another person, whether or not the other person is acting for a law practice, must not advertise personal injury services except by the publication of a statement that:*

- a) *states only the name and contact details of the practitioner or a law practice of which the practitioner is a member, together with information as to any area of practice or specialty of the practitioner or law practice; and*
 - b) *is published by an allowable publication method.’^{iv}*
3. section 66(2): *‘however, for a practitioner or another person acting for the practitioner or a law practice of which the practitioner is a member, the practitioner or person does not contravene subsection (1) only because:*
- a) *the practitioner or person advertises personal injury services to any person who is already a client of the practitioner or law practice [note: a client includes a person who makes a genuine inquiry of a law practice about a personal injury] or to any person at the practitioner’s or law practice’s place of business... or*
 - b) *the practitioner or person advertises personal injury services on the Internet website of a practitioner or a law practice of which the practitioner is a member if the advertisement is limited to a statement about:*
 - (i) *the operation of the law of negligence and a person’s legal rights under that law; and*
 - (ii) *the conditions under which the practitioner or law practice is prepared to provide personal injury services.’*

How the Commission interprets the restrictions

We published and widely distributed *A Guide to Advertising Personal Injury Services* shortly after we were handed the job of enforcing the restrictions and the guidelines spell out how we understand them.

We interpret the restrictions strictly, and deliberately so, in order to leave the least possible room for slippage and the thin ‘end of the wedge’ arguments that would inevitably accompany any broader interpretation. This seems to us to be the best and probably the only practical way to achieve some certainty and to keep a level playing

field – to look after the majority of practitioners who do the right thing and who are rightly annoyed by and stand to be disadvantaged by the minority of their colleagues who push the boundaries.

a) when does an advertisement count as a personal injury advertisement?

There are two limbs to the meaning of ‘advertise personal injury services’ but it’s the second limb that casts the net most widely. That’s because an advertisement doesn’t have to be intended to or likely to cause or induce a person to make a claim for compensation or damages, only to use the services of a particular lawyer or law firm for the purposes of making a claim – and that’s a much broader notion. Clearly a person who has suffered an injury might have already decided to make a claim for compensation or damages without having read or seen or been influenced by advertisements of any kind and might simply be looking around for a lawyer for the purposes of making the claim.

And that must mean, having regard to the fact that the whole point of advertising is to influence people who read or see the advertisement to use the advertiser’s services, that any advertisement advertising the services of a lawyer or law firm becomes a personal injury advertisement merely by announcing or suggesting or implying that the named lawyer or law firm provides personal injury services – any statements to that effect ‘may reasonably be thought to be intended or likely to encourage or induce a person to use the services of the practitioner, or named law practice, in connection with the making of a claim’.

That is to say, advertisements become personal injury advertisements when they say or suggest or imply that a lawyer or law firm provides personal injury services by using words or images that refer to injuries or accidents or slips and trips and falls or worker’s compensation or work related illnesses or other like words and images.

Generally it’s clear, but not always, and in those circumstances we have to make judgement calls. And so, for example, we took a print advertisement that made no

explicit reference to personal injury services as such to be a personal injury advertisement because it used the words 'insurance disputes' and also and in particular the words 'no win, no fee' that are typically associated with but specifically prohibited in personal injury advertisements. That was because it appeared in close proximity to a separate and compliant personal injury advertisement for the same law practice and both advertisements referenced 'insurance disputes'.

Similarly, we've come across circumstances on a number of occasions now in which two ostensibly separate print advertisements for the law firm have appeared in close proximity or even side by side on a page, one of them clearly a personal injury advertisement and fully compliant and the other one clearly not a personal injury advertisement but an advertisement that contained words which would clearly have been prohibited if it had. We've come across exactly the same situation with street signage – a situation in which two ostensibly separate advertisements appeared on separate hoardings but in close proximity in the same line of vision.

The question in each case was whether we were dealing with two separate and both fully compliant advertisements, one of them a personal injury advertisement and the other not, or in their full context really just the one non-compliant personal injury advertisement. We had to ask ourselves whether, taken together, the advertisements 'may reasonably be thought to be intended or likely to encourage or induce a person to use the services of the named law firm in connection with the making of a claim'. In each of the cases that have confronted us thus far, we decided they did.

We've also come across 'advertorials' or articles written by a lawyer commenting on a matter of public interest or news items about a law firm opening a new office for example in the same edition of a newspaper as an advertisement for the lawyer or law firm. We have construed the apparently discrete pieces to be but one multi-sited advertisement, depending on their proximity, and assessed it against the restrictions accordingly.

Inevitably we will have to make judgement calls of these kinds and we repeat that we will read the Act narrowly and strictly, to look after lawyers and law firms who do the right thing and to prevent them being put at a competitive disadvantage by colleagues who appear keen to push the envelope.

b) what can a personal injury advertisement say?

Except in certain limited circumstances, a personal injury advertisement are allowed to include *only* the name and contact details of the lawyer or law firm named in the advertisement and information as to the lawyer's or law firms areas of practice or specialty - the Act specifically prohibits by way of example advertising personal injury services on a 'no win, no fee' or other speculative basis.

The same restrictions apply to personal injury advertising *on a lawyer's website or the website of a law firm of which the lawyer is a member* but with two exceptions – unlike all other personal injury advertising, personal injury advertising on a lawyer's or a law firm's website is allowed to include statements about the operation of the law of negligence and a person's rights under that law and statements about the conditions under which the lawyer or law firm is prepared to provide personal injury services.

▪ **the restrictions that apply to all personal injury advertising**

The restrictions seem clear enough, certainly on a literal interpretation. They clearly exclude photographs, for example, including photographs of the lawyers who are providing the services and even more obviously - and these are all real examples from the only recent past - photographs or drawings of ambulances and hospitals and people with various of their body parts swathed in bandages. It's simple - photographs and drawings are not names, and nor are they contact details or statements describing areas of practice or specialty.

Nor are slogans of any kind – slogans such as ‘free quotes’, ‘home visits and after hours appointments welcome’, ‘compensation doesn’t happen by accident’, ‘industry leaders in injury compensation’, ‘tough case – we’re tougher’ and the like – and so they are prohibited too.

- **the restrictions that apply to personal injury advertising on the internet**

The restrictions that apply to all other personal injury advertising are eased *on a lawyer’s website or the website of a law firm of which the lawyer is a member* to allow the website to include statements about the operation of the law of negligence and a person’s rights under that law and statements about the conditions under which the lawyer or law firm is prepared to provide personal injury services.

We emphasise the words ‘*on a lawyer’s website or the website of a law firm of which the lawyer is a member*’ – they mean as we see it that a website counts as *a lawyer’s website or the website of a law firm of which the lawyer is a member* if and only if the website clearly identifies a lawyer or a law firm by name.

Failing that, the additional information that is otherwise allowed on a lawyer’s website or the website of a law firm of which the lawyer is a member remains strictly prohibited.

The eased restrictions mean, for example, that some statements which are specifically prohibited in all other forms of personal injury advertising are specifically allowed – including slogans like ‘free quotes’, ‘home visits and after hours appointments welcome’ and ‘no win, no fee’, all of which are statements about the conditions under which the lawyer or law firm is prepared to provide personal injury services.

It’s far from open slather, however. Slogans like ‘compensation doesn’t happen by accident’ and ‘tough case, we’re tougher’ remain prohibited, and equally war stories, client testimonials and statements like ‘we have a 98% success rate’

(that's a real example) and 'the WorkCover Act favours employers and disadvantages employees by making it difficult to obtain fair compensation for injury and by protecting employers interests' (another real example).

We urge lawyers and law firms who advertise on their websites to be cautious about including links to what appear considered in and of themselves to be fully compliant personal injury advertisements on a separate 'page' on the website. We will read linked pages on a website in just the same way we read ostensibly separate but contiguous print advertisements – depending on the circumstances as just one advertisement - and we will apply the restrictions accordingly.

We urge caution, too, about interpreting the 'out clause' in the restrictions too liberally – the clause that says they do not contravene the restrictions on advertising personal injury services *only because they advertise personal injury services to any person who is already a client of the practitioner or law practice, including any person who person makes a genuine inquiry of the law practice about a personal injury.*

Some firms have interpreted the 'out clause' to mean that viewers count as making a genuine inquiry about a personal injury merely by clicking a box that says they're making a genuine inquiry about a personal injury that gives them immediate access to ostensibly 'clients-only' and otherwise non-complaint advertisements. That is a contrivance, in our view, because it makes the supposedly restricted information readily accessible to anyone - it fails to adequately differentiate a person who is making a genuine inquiry from someone who is merely browsing.

We are reinforced in that view by the fact that there are ready alternatives more consistent with the Act's fundamental purposes – making the otherwise restricted information password protected. This is neither difficult nor unduly onerous – it may involve no more than requesting a person who is making a genuine inquiry to email the lawyer or law firm to obtain a password.

What the Commission has done and plans to do to enforce the restrictions

We want to secure compliance with the restrictions on the advertising of personal injury services in the same way we want to secure lawyers' compliance with their professional obligations more generally - by persuasion rather than prosecution as our first preference - and we have gone to some lengths to achieve that goal.

I have mentioned already that the Commission prepared *A Guide to Advertising Personal Injury Services* to assist lawyers understand and comply with the restrictions and to describe our attitude to prosecuting apparent breaches. We prepared those guidelines in June 2006, less than a month after we were given responsibility for enforcing the restrictions, and took pains to bring them to the attention of the profession by publishing them in *Proctor* and of course on our website where they remain.

We followed them up in August 2006 with a separate *Guide to Advertising Personal Injury Services on the Internet*. We have taken every opportunity since to talk about the guidelines publicly at continuing legal education events and the like including at this same conference last year.

We have also developed a good working relationship with the Law Society in relation to these issues. We need to be cautious as the regulator not to give specific advice to lawyers and law firms about their advertisements when we may be called upon to form a view during the course of a subsequent investigation whether those advertisements contravene the restrictions, and so we refer lawyers and law firms who request our advice to the Law Society as their professional body. The staff of the Professional Standards Unit at the Law Society understand these issues very well.

We received a handful of complaints in 2006-07, the first full year we had responsibility for enforcing the restrictions, a few of them about advertisements in local papers and one each about a billboard, a radio and a television advertisement, but we directed our energies in the main to systematically reviewing the Yellow Pages directories for the

Brisbane and every other telephone district in Queensland. We had to start somewhere and that was the obvious place to do it.

We initiated just short of a hundred investigations into alleged or apparently non-compliant advertisements during that first year, the vast majority of them investigations we initiated of our own motion into advertisements in the Yellow Pages. We were pleased to be able to say in our annual report for 2006-07 that we had persuaded every lawyer we believed had breached the restrictions to bring their advertisements into line in future editions, albeit some of them reluctantly. We said we were especially pleased that we were able to achieve that result through persuasion, without having to resort even once to prosecution, and we expressed confidence that the 2008 Yellow Pages would contain many fewer non-compliant advertisements than previous editions.

We said we would check and we did - and we were right. We had cause to initiate many fewer - about fifty - investigations into apparently non-compliant Yellow Pages advertisements in 2007-08 and only six of them involved 'repeat offenders'. We will check the forthcoming editions too and anticipate finding many fewer non-compliant advertisements again.

That task now largely behind us, we intend to begin systematically reviewing lawyer and law firm websites to ensure their compliance also. We will adopt the same approach we adopted to print advertisements with only the obvious adjustments - we will review the guidelines we have already published on advertising on internet websites in the light of our experience to date and we will publish revised guidelines and circulate them widely, on our website, in Proctor and by writing directly to every lawyer and law firm we have identified with the Law Society's help to be personal injury practitioners and practices.

We will also seek the assistance of our interstate counterparts to bring lawyers and firms in those jurisdictions up to speed about their obligations when they advertise personal injury services in Queensland.

How has it all gone down?

Some personal injury lawyers – I have no idea how many – believe that the restrictions on advertising personal injury services are an ‘indefensible infringement of the right to free speech [and] a sop to the insurance industry’ and that they should be repealed. They are of course entitled to that belief and to express it, to lobby the powers that be to have the Act amended and to seek the support of their representative bodies in so doing.

The more relevant issue for us is how the profession views the way the Commission has exercised its responsibilities under the Act. We haven’t conducted any surveys that might give us an informed answer to this question - although we plan to conduct surveys in the near future which would canvass this issue among others, and to conduct them in an ongoing way thereafter - but we have had some unsolicited feedback commending us for issuing guidelines that alert lawyers and law firms to their obligations as we see them and give them the heads up as it were. That is pleasing. We do not want to sit back and wait for mistakes and then pounce on them – that is not and should never be our modus operandi. Our goal as I’ve mentioned several times already is and should always be to secure compliance as far as possible by persuasion not prosecution.

Of course there are two aspects to that - one is to try to head off non-compliance as far as possible by issuing guidelines, and the other, when we come across advertisements we believe are non-complaint, is wherever possible and appropriate to give the lawyers and law firms concerned the opportunity to rectify their mistake before resorting to prosecution. We’ve done that and will continue to do that although we’ll be disinclined to be so lenient if we’re persuaded the non-compliance is flagrant or knowing or repeated.

We’re pleased however as I’ve noted already that the one hundred and fifty or so lawyers and law firms we’ve ‘put it on’ thus far have all cooperated with us and we’ve not yet had to resort to prosecution. That’s not to say we won’t – our counterpart in New South Wales (where there are also restrictions on the advertising of personal injury

services, but unhelpfully different restrictions to those we have here) has had occasion twice in recent times to initiate disciplinary proceedings and the lawyers concerned have been ordered to pay substantial financial penalties.^v

Issuing guidelines has the advantage also of giving lawyers and law firms and their representative bodies the opportunity to take issue with us and to challenge them. That hasn't happened, or at least not by way of disinterested policy discussion - we have had some critical feedback, but only from a handful of lawyers and law firms and only from lawyers and law firms who have been responding to correspondence from us pointing out that they have published advertisements we believe are non-compliant and asking them to respond.

I do not propose to identify them of course, but it might be helpful to canvass with you what they've had to say and our response.

- one law firm strongly objected to my approach in respect of photographs. Its website contained photographs of injured people which the principal conceded might be seen to encourage or induce a person to make a claim. He could not understand however why other photographs he described as nothing more than pleasing to the eye should also be prohibited - photographs of bridges, beaches and trees.

The principal of another firm took exception for the same reason to our insistence that he was not allowed to include statements in a personal injury advertisement on the firm's website protesting the Act's allegedly indefensible infringement of his and his firm's right to free speech.

Both firms were under the misapprehension the restrictions apply solely to advertisements that are intended or likely to encourage a person to make a personal injury claim. The Act makes it abundantly clear however that the restrictions apply to any advertisement that is intended or likely to encourage or induce a person

either to make a personal injury claim *or* to use the services of a named lawyer or law firm to make a claim.

And the Act goes on to make it abundantly clear that an advertisement that is intended or likely to encourage or induce a person to use the services of a named lawyer or law firm to make a claim can contain *only* the lawyer or law firm's name and contact details together with a statement describing the lawyer or law firm's areas of practice or specialty – and also, in the case of internet advertisements, statements describing the law of negligence and a person's legal rights under that law and the conditions under which the lawyer or law firm is prepared to provide personal injury services.

A photograph is none of those things, however pleasing to the eye, and nor are arguments in support of a political cause to remove or liberalise the restrictions on the advertising of personal injury services.

- the principal of one law firm objected bitterly to our telling him his website was non-compliant because, as he put it, 'we should not have to change the content of our website when the accuracy of the guidelines remains an open question'. He argued that the Commission should 'seek a judicial ruling on the legality or otherwise of the guidelines' and went on to complain that 'the Commission is acting as prosecutor, judge, jury and executioner all at the same time. The last time a country gave its public entities powers like that, Australia invaded it.'

We might well have sought a declaration as to proper interpretation of the restrictions on the advertising of personal injury services if we'd been persuaded that the accuracy of the guidelines is an 'open question', just as we sought a declaration as to the proper interpretation of the 50/50 rule. We did that precisely because the practitioner we believed had overcharged his clients contrary to the rule persuaded us there was room for doubt – he provided us with advice he'd obtained from Senior Counsel before he embarked upon the course he did suggesting that the rule allowed him to charge his clients in the relevant ways. We thought that advice

was wrong, but sufficient to leave room for doubt. We see no such doubt here, and no one has persuaded us we're wrong.

It goes without saying that we're not the judge, jury and executioner in these matters, merely the investigator and, if we believe there's a reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct and that it's in the public interest to initiate disciplinary proceedings, also in those circumstances the prosecutor but never the judge or jury or executioner. The disciplinary body will tell us, if we bring a prosecution and get it wrong, and it will impose a penalty if a penalty is called for, not us.

- the same law firm maintained that the Commission should accept that it has a credibility problem with the personal injury profession over its interpretation of the Act and should seek submissions from the profession or, at least, from the Australian Lawyer's Alliance as a representative of the profession practising in this jurisdiction.

We're not aware we have a credibility problem in relation to these matters and frankly we doubt that we do. We published the guidelines over two years ago now and despite being in regular communication with us neither the Law Society nor the Australian Lawyer's Alliance have made any submissions to us that the guidelines should be changed.

We've set out over that time to secure compliance through persuasion rather than prosecution and in the course of that exercise we've sought submissions from every one of the one hundred and fifty or so lawyers and law firms we've communicated with to say that their advertisements appeared to us at first blush to be non-compliant. We considered their submissions carefully and some of them persuaded us we were wrong. The others all agreed to withdraw or amend their advertisements in future publications. Some of them conceded the point only reluctantly and on a 'without prejudice' basis but at the end of the day none of them argued the toss. We take comfort in that.

- one law firm has told us that we admit that ‘we only review [web]sites for compliance when we receive a complaint and that we have no program of proactive monitoring. This is scary stuff. Neighbour being required to turn on neighbour as a basis for the operations of a public service entity is reminiscent of the Committee of Public Safety in Paris 1789.’

The principal of that same law firm tells us that it’s easy to find non-compliant advertisements on the internet yet we threaten some firms ‘while knowingly allowing other firms to continue to not comply’. He says that’s ‘hardly fair.’

I have noted already that the Commission has undertaken a systematic review of print advertising and that it is now substantially more compliant than previously, and that we intend now to embark upon the same process in relation to advertising on law firm websites. I am confident that we are using our limited resources to good effect and that law firm websites will become progressively more complaint now that we are turning our attention there.

I have to say that I am surprised that a lawyer would argue in these circumstances that he has been treated unfairly by being held to account for acting unlawfully when other lawyers who have acted similarly unlawfully have not similarly been held to account. Are lawyers who find themselves audited by the Tax Office being treated unfairly because it doesn’t have the resources to audit everybody? Are lawyers who have been caught speeding by a speed camera being treated unfairly because other lawyers have got away with it?

- finally, one law firm has alleged that we have made ‘certain exemptions from the guidelines’ for interstate law firms and that we should be prepared to guarantee that ‘all firms will be treated equally and will not receive different treatment based on locality’. I am happy to give that guarantee. No law firm here or interstate has been given any exemptions. We apply the law equally to all.

That said, we face significant challenges enforcing the restrictions when there is no cross-jurisdictional uniformity in legislation and when advertisements and particularly internet advertisement can so easily cross state and territory borders. That issue aside, we face difficulties because advertisements on the internet are so constantly changing - we have recommended to some law firms that they look at the websites of some other law firms that have obviously gone to some trouble to make their websites complaint only to find that the next time we looked they were different and no longer complaint. So it goes. We will persevere.

I draw your attention in conclusion – although I doubt it escaped your attention on the way through – to the way in which these disgruntled personal injury practitioners frame their objection to the way the Commission plays its regulatory role in relation to these matters. They dress up their objections in the language of rights and liberties and one goes so far as to draw analogies with the excesses of French revolutionaries in the late 1700's and our own nation's invasion of a foreign country as part of the so called war on terror – amazing.

I'll content myself with the observation that the rights and liberties they're really seeking to champion are the rights and liberties of business operators to secure a commercial advantage over their competitors through advertising. They should get a grip. They're entitled to argue their case but they'd do us a favour by naming it for what it is.

ENDNOTES:

ⁱ I want to acknowledge and thank the staff of the Commission and especially Michael Roessler and Louise Syme for their help and advice in preparing this paper and for doing the work it describes.

ⁱⁱ *Legal Services Commissioner v Dempsey* [2007] QSC 270 and [2008] QCA 122

ⁱⁱⁱ section 66

^{iv} PIPA lists a series of allowable publication methods at section 65 and by implication, because of their conspicuous omission from the list, identifies other methods of publication that are not allowed.

It allows personal injury services to be advertised in printed publications, and hence in newspapers and the Yellow Pages and the like. It allows them to be exhibited in or on buildings and hence on billboards and signage and also to be displayed in printed documents that are 'gratuitously sent or delivered to any person or thrown or left on premises or vehicles', and hence in handbills and junk mail - but not however

on billboards or signage in or on a hospital or in handbills and junk mail delivered to a hospital or left in a hospital or on any vehicle in the vicinity of a hospital.

Importantly, PIPA does not allow personal injury services to be advertised on radio and television - broadcasts on radio and television are included within the meaning of *advertises personal injury services* but excluded from the meaning of *allowable publication method*. Nor does it allow 'the public exhibition of photographs, films or other recordings of images or sound [in cinemas, for example, or on recorded telephone messages] or their exhibition to persons attending a place for the purpose of receiving professional advice, treatment or assistance.'

^v Legal Services Commissioner v Malouf [2007] NSWADT 215, and Legal Services Commissioner v Keddie [2008] NSWADT 185.