

A GUIDE TO ADVERTISING PERSONAL INJURY SERVICES ON THE INTERNET

The *Personal Injuries Proceedings Act 2002* (PIPA) restricts the advertising of personal injury services by legal practitioners and others and gives the Legal Services Commissioner powers to investigate and prosecute breaches of the restrictions.

The Commissioner interprets and applies the restrictions narrowly to bring certainty to the grey areas, ensure a consistency of approach and create a level playing field.

The Commissioner has published a general guide - *A Guide to Advertising Personal Injury Services* - which sets out the restrictions and the Commissioner's interpretation of the restrictions that apply to advertisements for personal injury services generally.¹ This Guide deals specifically with advertising personal injury services on the internet but should be read as a companion document to the general guide.

The Commission has also published an interactive on-line tool (the Website Comparer) which takes viewers on a tour of two 'dummy' law firm websites – one of them compliant and the other non-compliant – that both include 'pop up' commentary which describes the features which make them compliant and non-compliant respectively. Those 'dummy' websites illustrate the key points this guide expresses in words and is likely to prove helpful for that reason.²

What is a personal injury advertisement on the internet?

A legal practitioner or any other person advertises personal injury services on the internet by publishing a statement or statements that "*may be reasonably thought to be intended or likely to encourage or induce a person to make a claim for compensation or damages under any Act or law for a personal injury **OR** to use the services of the practitioner, or a named law practice, in connection with the making of a claim.*"³

¹ See the Policies and Guidelines page of the Commission's website at <www.lsc.qld.gov.au>.

² See the Compliance page of the Commission's website.

³ Section 64, *Personal Injuries Proceedings Act 2002*

The Commissioner is of the view that every page of a website that contains a direct or indirect reference to personal injury, compensation, damages or related services or claims which may reasonably be thought to be intended or likely to encourage or induce a viewer to make a claim for compensation or damages **OR** to use the services of a named practitioner or law firm in connection with making a claim should be construed to be an advertisement for personal injury services. It follows that every page that fits that description must comply with the advertising restrictions.

Internet websites that could be construed to be advertising personal injury services may include, but are not limited to the following:

- practitioner and law firm websites;
- Yellow Pages Online or similar on-line directories;
- rehabilitation service provider and other community agency websites that include information about or links or referrals to personal injury services, or that are sponsored by named practitioners or law firms that provide personal injury services; and
- websites which refer inquiries regarding personal injury services to a practitioner or law firm.

Websites and jurisdiction

The Commissioner will regard any website that is viewed in Queensland to have been published in Queensland, wherever it originated,⁴ and, accordingly, expects every website which is viewable in Queensland and publishes statements which amount to advertisements for personal injury services to be PIPA compliant.

Allowable content

PIPA provides that *"a practitioner or another person... must not advertise personal injury services except by the publication of a statement that 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 speciality** of the practitioner or law practice."*⁵

⁴ see *Dow Jones & Company v Gutnick* [2002] 194 ALR 433

⁵ Practitioners must also ensure that they comply with Rule 36 of the *Legal Profession (Solicitors) Rules 2007* and in particular comply with the restrictions on the use of the words "accredited specialist".

Allowable content on practitioner and law firm websites

That said, PIPA authorises practitioners and law firms to include on their websites certain other **additional allowable content**, namely statements about:

- *"the operation of the law of negligence and a person's legal rights under that law", and*
- *"the conditions under which the practitioner or law practice is prepared to provide personal injury services."*⁶

Accordingly, practitioners and law firms are allowed to include material on their websites that is prohibited in personal injury advertising more generally including references to their preparedness to offer "free initial consultations" and "no win-no fee" services and reports or other objective analysis of personal injury cases that have come before the courts.

The additional allowable content is allowable only in websites that clearly identified as the website of a named practitioner or law firm. It otherwise remains prohibited.

Prohibited content

PIPA prohibits the inclusion of statements in advertisements for personal injury services other than the "allowable content" (including the additional allowable content) and accordingly prohibits: –

- Photographs or images of any kind, including photographs of practitioners, their offices, and local landmarks;
- Statements amounting to self- promotion of the practitioner or law firm such as:
 - "We have a reputation for getting great results"
 - "Our caring, professional yet tenacious approach ensures success"
 - "Joseph has a great reputation for getting the job done"
 - "I am a strong advocate for injured workers"
 - "Our solicitors are members of the Fair Go for Workers Association"
 - Client testimonials or war stories;
- Logos which are based on legal images or themes, slogans or mottoes such as "industry leaders" or "20 years experience"; and

⁶ See section 66(2) (b) *Personal Injuries Proceedings Act 2002*

- Descriptions of the practitioner's or law firm's role in cases or recent decisions that are more than an objective analysis or report of the law.

Client Inquiries

PIPA provides that "*a practitioner or a person acting for the practitioner or law practice of which the practitioner is a member does not contravene [the advertising restrictions] only because the practitioner or other person advertises personal injury services to any person who is already a client of the practitioner or law practice.*"⁷ It defines a "*client*" to include a person who makes a "*genuine inquiry*" of a practitioner or law firm.⁸

The Commissioner is of the view that a member of the public who views or browses a practitioner's or firm's website ought not be characterised as a client or genuine inquirer for that reason alone. The Commissioner believes that practitioners and law firms are entitled to claim the "client" exemption only if they take reasonable measures to prevent people who are simply browsing or idly curious from accessing information that PIPA requires be restricted to "clients".

It is not enough in the Commissioner's view to ask people who are viewing the website to identify themselves as a client or someone who is making a genuine inquiry simply by clicking a 'yes' or 'no' box (where the 'yes' box takes them directly to content that is otherwise prohibited). The Commissioner believes something more is required to distinguish "clients" from the merely curious – a process, for example, which requires them to enter a password before they are given access to otherwise restricted material, or to enter their email address or other contact details so they can be sent a password.

Linked pages

As mentioned already, the Commissioner is of the view that every page of a website that contains a direct or indirect reference to personal injury, compensation, damages or related services or claims which may reasonably be thought to be intended or likely to encourage or induce a viewer to make a claim for compensation or damages **OR** to use the services of a named practitioner or law

⁷ See section 66(2)(a)(i) *Personal Injuries Proceedings Act 2002*

⁸ See section 63 *Personal Injuries Proceedings Act 2002*

firm in connection with making a claim should be construed to be an advertisement for personal injury services.

Most websites contain “links” from one page to another. The Commissioner is of the view that pages that link to each other are intended to be read together and should be construed to be just different parts of one larger document in the same way that two apparently discrete print advertisements that are published directly adjacent to or in close proximity to each other should be construed to be just one print advertisement. Accordingly, the Commissioner will construe website pages that contain direct links to pages that advertise personal injury services to be part of the one personal injury advertisement.

The Commissioner recommends accordingly that practitioners and law firms take particular care to ensure *either* that every page on their website complies with the restrictions on the advertising of personal injury services *or* alternatively that there are no direct links between pages that contain personal injury advertisements and pages that do not.

The second option may be more appealing to practitioners but is difficult to achieve because of the way pages are linked, particularly to Home pages that typically contain prohibited content including photos and logos and the like. Accordingly, the Commissioner will not construe a website Home page to be part of a personal injury advertisement (even though it may be directly linked to an advertisement for personal injuries) *provided:*

- the Home page contains no direct or indirect reference to the provision of personal injury services *and*
- the Home page contains no more than one direct link to a page which contains an advertisement for personal injury services that complies with PIPA.⁹

Prosecuting breaches of PIPA

The Commissioner will consider each breach of the restrictions on the advertising of personal injury services on its own facts in accordance with the Commission’s Prosecution Guidelines.¹⁰

⁹ The Website Comparer shows how this solution can be achieved – see the Compliance page of the Commission’s website.

¹⁰ See “Policies and Guidelines” at www.lsc.qld.gov.au

As a general rule, however, the Commissioner:

- will be *disinclined* to prosecute isolated minor or merely technical breaches of the restrictions which are promptly remedied once drawn to attention ; and
- will be *inclined* to prosecute flagrant or deliberate breaches of the restrictions or repeated minor or technical breaches.

Further information

This guide will be updated from time to time. Whilst the Commission will endeavour to inform practitioners and law firms about any amendments, they should regularly review the Policies and Guidelines page of the Commission's website (www.lsc.qld.gov.au) to ensure that they have the most up to date information. They should refer also to the interactive on-line tool the Commission has published on the Compliance page of its website which illustrates the restrictions on the advertising of personal injury services on the internet by reference to two fictitious law firm websites - one of them compliant and the other not.¹¹

The Commission will not provide specific advice to practitioners or law practices about the content of their website unless it has commenced an investigation. However the Queensland Law Society has a very good understanding of the views of the Commissioner as expressed in this guide and is able to provide assistance to practitioners and law practices.¹²

¹¹ See the Compliance page of the Commission's website at www.lsc.qld.gov.au.

¹² Queensland Law Society Client Relations Centre ph: (07) 3842 5843 or email: crc@qls.com.au