

## Regulatory Guide 2

# Advertising Personal Injury Services

Version 4, 20 May 2013

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 monitor and enforce the restrictions by investigating complaints about alleged breaches of the restrictions and where appropriate commencing disciplinary or other enforcement action.

This guide sets out the restrictions on the advertising of personal injury services and the factors the Commission takes into account in dealing with related complaints.<sup>1</sup> Notably the Commissioner interprets and applies the restrictions narrowly with a view to bringing certainty to the grey areas, ensuring a consistency of approach and creating a level playing field.

The Commissioner has published a separate guide dealing specifically with advertising personal injury services on the internet.<sup>2</sup>

## What is a personal injury advertisement?

A legal practitioner or any other person advertises personal injury services 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.*”<sup>3</sup>

The Commissioner is of the view that any statement in an advertisement that contains a reference to personal injury or compensation or damages whether direct or indirect or that uses some other words relating to the making of a claim for compensation or damages is an advertisement for personal injury services and so must comply with the advertising restrictions contained in PIPA.

## 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***”

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<sup>1</sup> Please refer to [Regulatory Guides: An Overview \(the Overview\)](#) for further information about the regulatory guides and what we hope to achieve by publishing them. The Overview is published on the [Regulatory Guides](#) page of the Commission’s website at [www.lsc.qld.gov.au](http://www.lsc.qld.gov.au). We note there that we ‘hope and intend that the guides will promote adherence to high professional standards and help prevent non-compliance, especially inadvertent non-compliance by that vast majority of lawyers who want to do the right thing’ but that the guides ‘are not, nor can they ever be binding.’ We explain that ‘the Commission is responsible for promoting, monitoring and enforcing appropriate standards of conduct in the provision of legal services, not for setting them. The standards are set in laws enacted by parliaments, in the judgments of the disciplinary bodies and the courts and in the conduct rules developed by the professional bodies.’ We are very clear that the guides simply ‘set out the factors we take into account in exercising our regulatory responsibilities in grey areas where it is uncertain how a lawyer’s professional obligations apply.’ This is no more than lawyers and users of legal services are entitled to expect of a transparent and accountable regulator.

<sup>2</sup> *Regulatory Guide 4 - Advertising Personal Injury Services on the Internet*

<sup>3</sup> Section 64, *Personal Injuries Proceedings Act 2002*

- *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.”*<sup>4</sup>

The Commissioner is of the view that the name of a law firm must not be a name that itself contravenes PIPA (for example, ‘No Win, No Fee Lawyers’).

The Commissioner is also of the view that the recognised accredited specialist symbol counts as “information as to an area of practice or speciality” and similarly a list of the legal services including personal injury services which the practitioner or law firm provides (such as sports injuries, medical negligence, or motor vehicle accidents).<sup>5</sup> The Commissioner is also of the view that a geographical area of practice does not count as “information as to an area of practice or speciality.”

Note that PIPA allows advertisements for personal injury services on the internet to include certain additional allowable content.<sup>6</sup>

## Prohibited Content

PIPA prohibits the inclusion of statements in advertisements for personal injury services other than the “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”;
- Statements about the conditions under which the practitioner or law firm is prepared to provide personal injury services including, but not limited to:
  - ‘no win, no fee’
  - ‘competitive rates’
  - ‘free initial consultation’
  - ‘home consultations by arrangement’ and

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<sup>4</sup> Section 66(1) *Personal Injuries Proceedings Act 2002*

<sup>5</sup> Practitioners must also ensure that they comply with Rule 36 of the Australian Solicitors Conduct Rules and in particular note the restrictions on the use of the words “accredited specialist”.

<sup>6</sup> *Regulatory Guide 4 - Advertising Personal Injury Services on the Internet*

- ‘personal and thorough service’.

## Allowable Methods of Publication

PIPA also provides that “a practitioner or another person... must not advertise personal injury services **EXCEPT** by the publication of a statement that ... is published by an allowable publication method.”<sup>7</sup>

It provides that the only allowable publication methods for the advertising of personal injury services are:

- printed publications
- internet websites that reproduce a printed publication which was published independently of the practitioner or law firm (eg Yellow Pages on-line)
- internet directories or databases that are published independently of a practitioner or law firm
- public exhibitions such as billboards or signs provided they are not exhibited in or on a hospital or medical centre<sup>8</sup>
- printed documents such as flyers that are sent or delivered, but not printed documents that are sent or delivered to a hospital or left in a hospital or on any vehicle in the vicinity of a hospital
- printed documents that are provided as a receipt or record in relation to a transaction.

## Prohibited Methods of Publication

PIPA prohibits the publication of advertisements for personal injury services by any methods other than the “allowable publication methods”. Prohibited publication methods include, but are not limited to:

- advertisements on radio and television
- the public exhibition of photographs, films or other recordings of images or sound (eg cinema advertising)
- recorded telephone messages

## Client Inquiries

A practitioner or law firm does not contravene the advertising restrictions in PIPA by advertising personal injury services:

- “to a person who is already a client of the practitioner or law firm or a person who makes a genuine inquiry of the practitioner or law firm about personal injury services; or
- to a person attending at the practitioner’s or law firm’s place of business; or
- pursuant to a court order.”<sup>9</sup>

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<sup>7</sup> Section 65, *Personal Injuries Proceedings Act 2002*

<sup>8</sup> See the definition of “hospital” in section 63, *Personal Injuries Proceedings Act 2002*

<sup>9</sup> Section 66(2)(a) *Personal Injuries Proceedings Act 2002*

## Contiguous or adjacent advertisements

The Commissioner will have regard when investigating apparent breaches of the advertising restrictions to separate advertisements for the same practitioner or law firm that appear in close proximity. The Commissioner is of the view that two apparently discrete advertisements for the same practitioner or law firm that are published directly adjacent or in close proximity to each other – one of which fits the definition of a personal injury advertisement and the other of which when considered in isolation does not – may, depending on the circumstances, properly be construed to be just one personal injury advertisement.

The Commissioner recommends that practitioners and law firms take particular care to ensure that any advertisements in their name that are published in close proximity to advertisements for personal injury services also in their name comply with the restrictions.

## 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 Discipline Application Guidelines.<sup>10</sup>

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 ; but
- 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. The Commissioner will make every effort to notify the profession of any changes but practitioners should regularly review the Regulatory Guides page of the Commission's website ([www.lsc.qld.gov.au](http://www.lsc.qld.gov.au)) to ensure they have the most up to date information.

The Legal Services Commission will not provide specific advice to practitioners or law firms about the content of their advertisements unless it has commenced an investigation. However the Queensland Law Society's Ethics Advisors have a good understanding of the Commissioner's views as expressed in this guide and are able to provide assistance to practitioners and law firms upon request.

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<sup>10</sup> The [Discipline Application Guidelines](#) are published on the [Policies](#) page of the Commission's website.

<b>Version</b>	<b>Notes</b>	<b>Version date</b>
1		July 2006
2 & 3		Minor formatting changes
4		20 May 2013