

## Regulatory Guide 4

# Advertising Personal Injury Services on the Internet

**Version 5, 5 September 2014**

The *Personal Injuries Proceedings Act 2002* (PIPA) restricts the advertising of personal injury services by legal practitioners and others, including on the internet. It 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.

The Commissioner has published a general guide - [Regulatory Guide 2: 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.<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.

This guide deals specifically with the restrictions on the advertising of personal injury services on the internet and the factors the Commission takes into account in dealing with related complaints.<sup>2</sup>

## 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."*<sup>3</sup>

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.

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<sup>1</sup> Go to Regulatory Guides page of the Commission's website at [www.lsc.qld.gov.au](http://www.lsc.qld.gov.au)

<sup>2</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. 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>3</sup> Section 64, *Personal Injuries Proceedings Act 2002*

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;
- 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,<sup>4</sup> 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.”<sup>5</sup>

## 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.”<sup>6</sup>

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.

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<sup>4</sup> see *Dow Jones & Company v Gutnick* [2002] 194 ALR 433

<sup>5</sup> Practitioners must also ensure that they comply with Rule 36.2 of the Australian Solicitors Conduct Rules and in particular the restrictions on the use of the words “accredited specialist”.

<sup>6</sup> Section 66(2) (b) *Personal Injuries Proceedings Act 2002*

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
- 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.*”<sup>7</sup> It defines a “*client*” to include a person who makes a “*genuine inquiry*” of a practitioner or law firm.<sup>8</sup>

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

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<sup>7</sup> Section 66(2)(a)(i) *Personal Injuries Proceedings Act 2002*

<sup>8</sup> Section 63 *Personal Injuries Proceedings Act 2002*

access to otherwise restricted material, or to enter their email address or other contact details so they can be sent a password.

## 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>9</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 ; 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 page of the Commission's website ([www.lsc.qld.gov.au](http://www.lsc.qld.gov.au)) to ensure that 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 Commission will provide general advice or clarification about its approach if requested.

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<sup>9</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		September 2008
2 & 3		Minor format changes
4		20 May 2013
5	Removed issues regarding linked pages and reference to QLS Ethics Advisory service.	5 September 2014