

Regulatory Guide 5

Advertising Personal Injury Services on Internet Search Engines and Non-Lawyer Websites

Version 2, 20 May 2013

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

The Commissioner has published two guides which set out the restrictions on the advertising of personal injury services and the factors the Commission takes into account in dealing with related complaints - [Regulatory Guide 2 - Advertising Personal Injury Services](#) and [Regulatory Guide 4 - Advertising Personal Injury Services on the Internet](#).¹

It has since come to the Commissioner's attention that "advertisements" for personal injury services appear on the Search Engine Results Pages (SERPs) of websites like Google. Thus entering words such as "personal injury lawyer queensland" or "workcover lawyer brisbane" into these search engines will result in viewers being given many thousand of listings that allow them to link to law firm and other websites which provide information about personal injury services in Queensland.

In the Commissioner's view, some of those listings amount to advertisements for personal injury services pursuant to section 64 of PIPA and as such should comply with the restrictions set out in the Act.

Accordingly, and in response to concerns raised by practitioners, the Commissioner has given consideration to the appropriate regulation of information appearing on SERPs. This is to ensure the advertising restrictions in PIPA are not being breached and, in particular, to ensure a level playing field. Law firms which comply with the restrictions should not be disadvantaged by those who do not.

Search engine listings

Search engine results or "listings" fall into one of two kinds - "organic links" and "sponsored links".

Organic links are created when the search engine compares the search terms with the content of websites. Comparisons are made with both the material visible on the website and

¹ Both guides are published on the [Regulatory Guides](#) page of the Commission's website at www.lsc.qld.gov.au. 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 similarly 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.

background or programming data which is not visible on websites. The best matches to the search terms are listed allowing the viewer to link to the relevant website. The information displayed in these organic links is often replicated from material appearing on compliant practitioner websites including statements such as “no-win, no-fee”. That material is replicated without the website owner’s consent and knowledge. Accordingly, the Commissioner does not believe that organic links can be reasonably be construed to be advertisements or practically be dealt with as advertisements under PIPA.

In contrast, “sponsored links” appear on SERPs as a result of the website owner entering into an arrangement with the search engine provider to ensure that links to their website will be given preferential positioning on the SERP. Sponsored links are usually purchased on a “pay per click” basis and the website manager can contrive to have particular words or terms included in the information that appears in the listing for a sponsored link. In other words a sponsored link is no different from any other paid advertisement.

Section 66 of PIPA provides:

(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 speciality of the practitioner or law practice; and*
- (b) is published by an allowable publication method.*

Example of advertising that contravenes subsection (1)-- advertising personal injury services on a 'no win, no fee' or other speculative basis. Maximum penalty--300 penalty units.

(2) However, for a practitioner or a 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--*
 - (i) to any person who is already a client of the practitioner or law practice; or*
 - (ii) to any person at the practitioner's or law practice's place of business; or*
 - (iii) under any order by a court; or*
- (b) the practitioner or person advertises personal injury services on the Internet website of the 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.*

The exemptions that are applicable to the internet advertising of personal injury services apply only in respect of a practitioner’s own website. In any other circumstances, such as

sponsored links on SERPs, the allowable information is restricted to the name, contact details and area of practice or speciality of the practitioner or firm.

In respect of sponsored links it remains the obligation of each practitioner and firm to ensure that any listings are PIPA compliant. Accordingly all practitioners should review their internet advertising and take steps to make certain that all advertisements contain only the allowable information.

Furthermore practitioners should ensure that the content of any pages accessed through a sponsored link is also PIPA compliant.

Non-lawyer websites

The Commissioner has also noted that a number of websites are operated by companies that are not legal practices. These websites generally act as direct referral agencies or provide basic advice before directing enquiries about personal injury matters to practitioners.

It is the Commissioner's view that any practitioner who receives referrals from such sites has a professional obligation to ensure that the referring website is compliant. Where a website is not compliant a practitioner must not accept any referrals or should withdraw any listing.

The Commissioner takes the view that a practitioner's failure to comply with these requirements is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

Practitioners must also ensure that in dealing with these types of entities they do not breach section 68 of PIPA which deals with touting or rule 12.4.4 of the Australian Solicitors Conduct Rules which deals with referral fees.

Version	Notes	Version date
1		February 2010
2		20 May 2013