

A GUIDE TO ADVERTISING PERSONAL INJURY SERVICES

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, to ensure a consistency of approach and to create a level playing field.

This guide sets out the restrictions that apply to advertisements for personal injury services generally and the Commissioner's interpretation of the restrictions. The Commissioner has published a separate guide dealing specifically with advertising personal injury services on the internet.¹

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.*"²

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.

¹ See *A Guide to Advertising Personal Injury Services on the Internet* on the Policies and Guidelines page of the Commission's website at <www.lsc.qld.gov.au>.

² Section 64, *Personal Injuries Proceedings Act 2002*

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."* ³

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). ⁴ 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.⁵

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"

³ See section 66(1), *Personal Injuries Proceedings Act 2002*

⁴ Practitioners must also ensure that they comply with Rule 36 of the *Legal Profession (Solicitors) Rules 2007* and in particular note the restrictions on the use of the words "accredited specialist".

⁵ See *A Guide to Advertising Personal Injury Services on the Internet* on the Policies and Guidelines page of the Commission's website at www.lsc.qld.gov.au.

- “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
 - ‘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.”*⁶

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 centre⁷
- 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.

⁶ See section 65, *Personal Injuries Proceedings Act 2002*

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.”*⁸

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.

⁷ See definition of “hospital” in section 63, *Personal Injuries Proceedings Act 2002*

⁸ Section 66(2)(a), *Personal Injuries Proceedings Act 2002*

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 Prosecution Guidelines.⁹

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 of amendments to this guide, practitioners should regularly review the policies and guidelines published on the Legal Services Commission internet website (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 Queensland Law Society has a very good understanding of the Commissioner's views as expressed in this guide and is able to provide assistance to practitioners and law firms.¹⁰

⁹ See the Policies and Guidelines page at www.lsc.qld.gov.au.

¹⁰ Queensland Law Society Client Relations Centre ph: (07) 3842 5843 or email:crc@qls.com.au