



Legal Profession Legislation Amendment (Advertising) Bill.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [9.50 p.m.]: I move:

That this bill be now read a second time.

I seek the leave of the House to have the second reading speech incorporated in *Hansard*.

Leave granted.

The manner in which lawyers' services are advertised and marketed can have a detrimental effect on both the court system and on the availability of affordable insurance. For this reason, regulations made under the Legal Profession Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998 prohibit lawyers from advertising in relation to personal injury or work injury, except in limited, specified ways. Workers compensation agents are also prohibited from advertising in relation to work injury.

This bill amends those Acts to achieve consistency between the Acts and to permit consistency in the regulations made under the Acts. The bill also allows regulations to prohibit the circumvention of the prohibition by third parties and to ensure that offending advertisements are withdrawn as soon as possible.

Consistency—penalty and marketing

The maximum penalty for advertising in breach of a workers compensation regulation is 200 penalty units, or \$22,000. The maximum penalty for advertising in breach of an equivalent Legal Profession Act regulation, however, is only 10 penalty units, or \$1,100.

This bill amends the Legal Profession Act 1987 to increase the maximum penalty that can be imposed by an advertising regulation to 200 penalty units. This will allow the penalty to be made consistent with the penalty for a breach of a workers compensation advertising regulation.

This bill also amends the Legal Profession Act 1987 to provide that regulations can regulate any conduct with respect to the marketing of legal services, to make this consistent with the power conferred under the Workplace Injury Management and Workers Compensation Act 1998.

Advertising by Third Parties

The prohibition on lawyers advertising personal injury and work injury services is being circumvented by businesses that are not legal firms but that target their advertising at persons who may have a personal injury or work injury claim. These businesses then refer clients attracted by this advertising to lawyers. Lawyers typically pay a retainer to the referral business for being on the business's panel of lawyers or a referral fee for clients referred to them—or they may pay both a retainer and a referral fee.

Advertising by these third party businesses circumvents and undermines the prohibition on lawyers advertising.

This bill broadens the power to regulate under the Legal Profession Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998 to advertising by any person on behalf of a lawyer, or in connection with the provision of legal services or personal injury or work injury.

This will allow regulations to be made to prohibit third parties advertising in a way that undermines the ban on lawyers advertising in relation to personal injury or work injury.

Ensuring offending advertisements are withdrawn as soon as possible

It is an offence to advertise in breach of a legal profession or workers compensation regulation and it is also professional misconduct for a lawyer to advertise in breach of a regulation.

A problem however exists because prosecutions for an offence, or disciplinary proceedings against a lawyer for professional misconduct, can take some time to pursue. In the meantime the advertisement may continue to appear in, say, newspapers or on the radio or television.

This bill amends the Legal Profession Act 1987 and the Workplace Injury Management and Workers Compensation Act

1998 to provide two alternatives for the issuing of directions that advertising in breach of the regulations cease.

Firstly the bill permits the Ministers responsible for these Acts to direct a person not to engage in specified conduct if the Minister is of the view that the conduct contravenes the regulations. The Ministers will therefore be able to direct both lawyers and other parties to cease advertising in breach of the regulations.

The bill also permits the Legal Services Commissioner, the Bar Association and the Law Society to make an application to the Administrative Decisions Tribunal for a direction that a barrister or solicitor not engage in specified conduct that is a breach of the regulations. This will allow the Tribunal to direct a lawyer to cease advertising in breach of a regulation. The tribunal is to conduct an initial ex parte hearing to determine whether to issue an interim direction pending a final determination of the matter. This will allow immediate directions to be made for the withdrawal of an advertisement that is likely to be found to be in breach of a regulation.

It will be an offence for a person to continue to advertise in breach of a direction from a Minister or the Administrative Decisions Tribunal under the Legal Profession Act 1987 or the Workplace Injury Management and Workers Compensation Act 1998. If the person is a lawyer advertising in breach of a direction this will also constitute professional misconduct.

These amendments introduce simple and quick mechanisms for directions for advertising in breach of a regulation to cease, to ensure that offending advertisements are withdrawn as soon as possible.

Conclusion

This bill strengthens the regulation of legal services advertising so the existing prohibitions on advertising in relation to personal injury and work injury remain effective. This is critical to ensure that such advertising does not have a detrimental effect on the court system and on public liability and workers compensation insurance premiums.

I commend the bill to the House.

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