



New South Wales

Legal Profession Legislation Amendment (Advertising) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Legal Profession Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*:

- (a) to expand the power to make regulations under those Acts to regulate advertising by legal practitioners by providing that the regulations can regulate or prohibit advertising by or on behalf of legal practitioners and advertising by any person in connection with the provision of legal services or of services connected with personal or work injuries, and
- (b) to ensure that the regulations under the *Legal Profession Act 1987* with respect to advertising can regulate any conduct with respect to the marketing of legal services (in line with the power conferred under the *Workplace Injury Management and Workers Compensation Act 1998*), and

- (c) to increase the penalty that advertising regulations under the *Legal Profession Act 1987* can impose from 10 to 200 penalty units (that is, from \$1,100 to \$22,000) (in line with the maximum penalty applicable under the *Workplace Injury Management and Workers Compensation Act 1998*), and
- (d) to empower the Law Society Council (in the case of solicitors), the Bar Council (in the case of barristers) and the Legal Services Commissioner (in the case of solicitors or barristers) to apply to the Administrative Decisions Tribunal for a direction that a person cease advertising or other conduct considered to be in breach of the regulations (with a person who contravenes such a direction being guilty of an offence in addition to any offence in respect of the advertising or other conduct itself), and
- (e) to give the Minister administering the *Legal Profession Act 1987* and the Minister administering the *Workplace Injury Management and Workers Compensation Act 1998* the same power to issue a direction to any person to cease advertising or other conduct without the involvement of the Administrative Decisions Tribunal, and
- (f) to make consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Legal Profession Act 1987* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Workplace Injury Management and Workers Compensation Act 1998* set out in Schedule 2.

Schedules 1 and 2 contain the amendments outlined in the Overview.

First print



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New South Wales

Legal Profession Legislation Amendment (Advertising) Bill 2003

No. _____, 2003

A Bill for

*An Act to amend the *Legal Profession Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* to make further provision with respect to legal advertising; and for other purposes.*

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Legal Profession Legislation Amendment (Advertising) Act 2003</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Legal Profession Act 1987 No 109	8
The <i>Legal Profession Act 1987</i> is amended as set out in Schedule 1.	9
4 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86	10 11
The <i>Workplace Injury Management and Workers Compensation Act 1998</i> is amended as set out in Schedule 2.	12 13

Schedule 1 Amendment of Legal Profession Act 1987 1
(Section 3) 2

[1] Section 38J Advertising 3

Insert “, subject to any regulations under section 38JA” after “thinks fit” 4
in section 38J (1). 5

[2] Section 38J (2) 6

Omit the following: 7

, or 8

(c) in contravention of any requirements of the regulations. 9

[3] Section 38JA 10

Insert after section 38J: 11

38JA Regulation of advertising and other marketing of services 12

(1) The regulations may make provision for or with respect to 13
regulating or prohibiting conduct by any person that relates to 14
the marketing of legal services, including (without limitation) 15
regulating or prohibiting any of the following: 16

(a) advertising by a barrister or solicitor, 17

(b) advertising by any person for or on behalf of a barrister 18
or solicitor, 19

(c) advertising by any person in connection with the 20
provision of legal services, 21

(d) advertising by any person of services connected with 22
personal injury. 23

(2) The regulations under this section may create an offence 24
punishable by a penalty not exceeding 200 penalty units. 25

(3) The Minister may direct a person in writing not to engage in 26
conduct described in the direction if the Minister is satisfied 27
that: 28

(a) the conduct contravenes the regulations under this 29
section, and 30

(b) the person has been engaging in conduct of that or a 31
similar kind. 32

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- (4) The Administrative Decisions Tribunal may, on application made under subsection (5), direct a barrister or solicitor not to engage in conduct described in the direction if the Tribunal is satisfied that:
- (a) the conduct contravenes the regulations under this section or the regulations under section 142 of the *Workplace Injury Management and Workers Compensation Act 1998*, and
 - (b) the barrister or solicitor has been engaging in conduct of that or a similar kind.
- (5) An application to the Administrative Decisions Tribunal may be made under this section by:
- (a) in the case of a barrister—the Bar Council, or
 - (b) in the case of a solicitor—the Law Society Council, or
 - (c) the Commissioner.
- (6) The Administrative Decisions Tribunal cannot deal with an application for a direction with respect to conduct that is the subject of a direction by the Minister under this section or under section 142 of the *Workplace Injury Management and Workers Compensation Act 1998*. Any such Ministerial direction may be given with respect to any conduct even if proceedings are pending in, or have been dealt with by, the Tribunal with respect to the conduct.
- (7) The following applies in connection with proceedings before the Administrative Decisions Tribunal under this section:
- (a) the parties to the proceedings are the applicant and the person to whom the direction is proposed to be given,
 - (b) the matter is to be allocated to the Legal Services Division of the Tribunal,
 - (c) the Tribunal is to conduct an initial ex-parte hearing for the purposes of determining whether to issue a direction pending the final determination of the matter.
- (8) A person who contravenes a direction under this section is guilty of an offence.
- Maximum penalty: 200 penalty units.

(9)	A barrister or solicitor is guilty of professional misconduct if the barrister or solicitor:	1
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(a)	contravenes a direction under this section or under section 142 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , or	3
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		5
(b)	contravenes a regulation under this section (or under section 142 of that Act), but only if the regulation declares the contravention to be professional misconduct.	6
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(10)	The Minister is not required, before giving a direction under this section, to notify the person to whom the direction is given or any other person who may be affected by the direction.	10
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(11)	A direction under this section may be amended or revoked.	14
(12)	Payments are to be made from the Public Purpose Fund for the purposes of meeting the costs and expenses of a Council or the Commissioner in exercising functions under this section (including the prosecution of offences under this section).	15
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(13)	In this section:	20
	<i>personal injury</i> includes pre-natal injury, impairment of a person's physical or mental condition or a disease.	21
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[4]	Section 38K Specialisation	23
	Omit "A barrister or solicitor may advertise or hold himself or herself out as being a specialist or as offering specialist services, but only if the barrister or solicitor:" from section 38K (1).	24
		25
		26
	Insert instead "A barrister or solicitor must not advertise or hold himself or herself out as being a specialist or as offering specialist services, unless the barrister or solicitor:".	27
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		29

Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 (Section 4)

[1] Section 142 Regulation of advertising

Omit section 142 (1). Insert instead:

- (1) The regulations may make provision for or with respect to regulating or prohibiting conduct by any person that relates to the marketing of services to be provided by a lawyer or agent in connection with claims for compensation under this Act or claims for work injury damages, including (without limitation) regulating or prohibiting any of the following:
 - (a) advertising by a lawyer or agent,
 - (b) advertising by any person for or on behalf of a lawyer or agent,
 - (c) advertising by any person in connection with the provision of those services,
 - (d) advertising by any person of services connected with injuries.

[2] Section 142 (4)–(7)

Insert after section 142 (3):

- (4) The Minister may direct a person in writing not to engage in conduct described in the direction if the Minister is satisfied that:
 - (a) the conduct contravenes the regulations under this section, and
 - (b) the person has been engaged in conduct of that or a similar kind.
- (5) A person who contravenes a direction under this section is guilty of an offence.
Maximum penalty: 200 penalty units.

- (6) The Minister is not required, before giving a direction under this section, to notify the person to whom the direction is given or any other person who may be affected by the direction. 1
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- (7) A direction under this section may be amended or revoked by the Minister. 5
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