

# **A** *Advertising Legal Services – the guidelines*

For many years the legal profession has been restricted in its ability to advertise. Those shackles have been removed and providers of legal services can advertise in the same way as other providers of goods and services. There is a very helpful, free booklet called "Guidelines for the Advertising of Legal Services" produced by the Federal Bureau of Consumer Affairs\*, and I recommend it to all people involved in providing advertisements for the legal profession, including advertising agencies, media and marketing personnel.

Although the guidelines are not enforceable by law, following them, will avoid problems with section 52 of the *Trade Practices Act* 1974 regarding misleading and deceptive advertising.

The booklet contains guidelines on the qualification of legal service providers, the use of the words "expertise" and "specialist", and their respective derivations, representation of previous success, expectations of results in a legal matter, comparative advertising, fee advertising, testimonials and endorsements, identification of advertisements, referral agents and misleading and deceptive advertisements. There is also a very useful glossary section and a 10 point check list to ensure your advertising follows the guidelines. Here of some of the key points I think are worth noting.

## **Can Lawyers call themselves "Experts" or "Specialists"?**

The guidelines state that the use of the word "expert" is a risk, due to the fact that it cannot be easily quantified and can be interpreted differently by different people. However, if the claim is well founded and can be proven by qualification and experience or recognised by the winning of an award, or accreditation, then it could possibly be used, but always with care. It should be noted however that the use of any such words in relation to a legal service is specifically forbidden in the Northern Territory.

It is not recommended to state that the firm has expertise in all aspects of the law. The gaining and maintaining of the knowledge required for absolutely every area of the law is not possible, even for large firms. It can also create an unrealistic expectation in the mind of the

client as to the firm's abilities to handle a matter.

As for the word "specialist" it entails into the same traps as the word "expert". The only exception to this is where lawyers have completed an accredited course which enables them to be entitled as an "accredited specialist".

## **Statistics in Advertising**

Any statistics used should be quantifiable, preferably by independent research. It is also unwise to quote prior success rates - the example quoted in the booklet is "we win 75% of the cases we take on". The dubious nature of the calculation, even with a disclaimer, and the variance of situation and evidence between cases, is enough to warrant avoidance of such advertising.

**"It is also important that the legal staff fully understand the nature of the free first appointment, so that they do not mislead the consumer in error."**

## **Comparative Advertising**

Comparative advertising of legal services is very risky due to the difficulty in comparing "apples with apples" and the high risk of the advertising possibly being in breach of section 52 of the *Trade Practices Act*.

The guidelines recommend that to avoid such a breach the comparative advertising should be :-

- accurate;
- disclose any basis for the comparison;
- only compare like with like;
- only make claims that are current for the life of the advertisement.

The use of clear and accurate disclaimers and explanatory notes is recommended if comparative advertising is utilised.

## **"First Appointment Free"**

The above statement requires full clarification either in the actual advertisement or in subsequent contact with potential clients, prior to their attending for the interview. If the first half



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an hour is free but time after that is charged, then it should be clearly stated. Different areas of practice may have different ways of handling an initial interview in terms of charging, and it can be very confusing for the consumer. It is also important that the legal staff fully understand the nature of the free first appointment, so that they do not mislead the consumer in error.

## **"No Win - No Fee"**

To the potential client the above wording may appear to mean that if the matter is unsuccessful then the client will have absolutely nothing to pay. Lawyers know that this is often not the case and that disbursements and other third party costs may still be charged to the client. It is essential that the question of disbursements and other party costs are disclosed to the client in the advertising.

## **Misleading and Deceptive Advertising - The Penalties**

Many people treat the consequences of inaccurate advertising as being trivial. Perhaps they are ignorant of the actions for damages, injunctions and requirements for corrective advertising which arise out of the *Trade Practices Act*. Fines may also apply. For legal advertising such deceptive advertising could also be part of an unprofessional conduct issue and the subject of a consumer complaint.

Prevention is the far better path and if in doubt, and you do not have access to your own internal marketer, it would be wise to run your initial concerns, or even your actual advertising past the Law Society. Further information can also be found at the Australian Consumer Commission office.

*\*Available from the Law Society*