

2005 Policy document

Legal Advertising

Traditionally, lawyers have not advertised their services. But during the 1980s governments around Australia - responding to the imperatives of competitive practice advocated by numerous government and independent reports – introduced reforms allowing legal advertising.

The rationale was simple: people's needs are best met if lawyers can actively tailor their services to consumers' requirements and compete on that basis by advertising. Competition policy applies as much to legal services as it does to other markets and consumer services.

More importantly, content-rich advertising not only promotes competition but, increases the quality, volume and prominence of public information about the legal system. Because of what lawyers do, legal advertising tends to incorporate valuable legal information. The result is improved access to justice for people who might otherwise be unaware of, or poorly informed about, their rights.

However, as part of their response to the 'insurance crisis', some Australian governments have sought to reduce or ban legal advertising, particularly by personal injury lawyers. The most draconian legislation was passed in NSW, where advertising of personal injury or workers' compensation legal services was totally banned in 2002.

The NSW ban is written in very broad language. Regardless of the purpose of a public communication by a lawyer, if one of its effects is to promote a personal injury legal practitioner or service, then it is illegal.

The ban contradicts all the previous findings that recommended legal advertising in the first place. Increased advertising of legal services promotes access to justice; it does not increase 'frivolous' suits.

Second, banning advertising is an approach to law reform that is perverse at best. Politicians like to be photographed alongside asbestos disease sufferers as champions of injured people. Yet, simultaneously, they outlaw the best mechanism for informing people about their rights: public communications from a lawyer. The stated aim of the NSW ban is to reduce court cases. The message from policymakers is confused: you have rights; but we don't want you to know what they are, or to find a lawyer who can help you enforce them.

The last point concerns the wording of the regulations enshrining the ban, which is so broad as to catch not only commercial advertising, but *any* communication. Letters inviting people to participate in class actions and informing them of their rights at law, pamphlets and web material – not only from private law firms but also from community legal centres and other government agencies – and seminars or other public gatherings that disseminate information about legal rights, are all in breach if they contain information about personal injury or workers' compensation.

We believe that the advertising of legal services plays an important public information role and effectively promotes access to justice. It is preposterous for governments to claim to advocate rights on the one hand but on the other outlaws any discussion of them. Provided that advertising is not vulgar or misleading – requirements set out the Australian Lawyers Alliance code of conduct for members – it is a healthy part of our legal system.