



Queensland

Personal Injuries Proceedings (Legal Advertising) and Other Acts Amendment Bill 2006



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2006

A Bill

for

**An Act to amend the *Personal Injuries Proceedings Act 2002*,
and for other purposes**

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The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Personal Injuries Proceedings
(Legal Advertising) and Other Acts Amendment Act 2006*. 4
5

**Part 2 Amendment of Personal
Injuries Proceedings Act 2002** 6
7

Clause 2 Act amended in pt 2 8

This part amends the *Personal Injuries Proceedings Act 2002*. 9

Clause 3 Amendment of s 5 (Act binds all persons) 10

Section 5(1), after ‘States’— 11

insert— 12

‘, unless otherwise provided’. 13

Clause 4 Amendment of s 9 (Notice of a claim) 14

Section 9(3)(b), ‘lawyer’— 15

omit, insert— 16

‘law practice’. 17

**Clause 5 Amendment of s 9A (Particular provision for notice of a
claim procedure for medical negligence cases)** 18
19

Section 9A(4)(b), ‘lawyer’— 20

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omit, insert— 1
‘law practice’. 2

Clause 6	Amendment of s 20C (Notice of claim for damages for child)	3 4
	(1) Section 20C(1)(b), ‘a lawyer’—	5
	<i>omit, insert—</i>	6
	‘a practitioner’.	7
	(2) Section 20C(2), ‘A lawyer’—	8
	<i>omit, insert—</i>	9
	‘A practitioner’.	10
	(3) Section 20C(3)—	11
	<i>omit, insert—</i>	12
	‘(3) A failure by the practitioner to comply with subsection (2) is professional misconduct.’.	13 14

Clause 7	Amendment of s 37 (Exchange of material for compulsory conference)	15 16
	(1) Section 37(1)(b)—	17
	<i>omit, insert—</i>	18
	‘(b) a statement signed by the party verifying that all relevant documents, in the possession of the party or, if the party has legal representation, the practitioner acting for the party, that are required to be given under this Act have been given as required; and’.	19 20 21 22 23
	(2) Section 37(1)(d)—	24
	<i>omit, insert—</i>	25
	‘(d) a certificate (<i>certificate of readiness</i>) signed by the party.’.	26 27
	(3) Section 37—	28
	<i>insert—</i>	29

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- (1A) A statement mentioned in subsection (1)(b) or a certificate of readiness may, if the party has legal representation, be signed by the practitioner acting for the party.’ 1
2
3
- (4) Section 37(2)(e), ‘the party’s lawyer’— 4
omit, insert— 5
‘the practitioner acting for the party’. 6
- (5) Section 37(3), ‘lawyer’— 7
omit, insert— 8
‘practitioner’. 9
- (6) Section 37(3), ‘unprofessional conduct or practice’— 10
omit, insert— 11
‘professional misconduct’. 12

- Clause 8 Amendment of s 62 (Application of pt 1)** 13
- Section 62— 14
insert— 15
- ‘(2) However, this part does not bind the State, the Commonwealth or the other States.’. 16
17

- Clause 9 Amendment of s 63 (Definitions for pt 1)** 18
- (1) Section 63, definition *misconduct*— 19
omit. 20
- (2) Section 63— 21
insert— 22
‘incorporated legal practice see the *Legal Profession Act 2004*, schedule 5. 23
24
law firm see the *Legal Profession Act 2004*, schedule 5. 25
law practice see the *Legal Profession Act 2004*, schedule 5. 26
legal practitioner director see the *Legal Profession Act 2004*, 27
schedule 5. 28

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- legal practitioner partner** see the *Legal Profession Act 2004*,
schedule 5. 1
2
- member**, of a law practice, means— 3
- (a) if the law practice is a sole practitioner—the sole
practitioner; or 4
5
- (b) if the law practice is a law firm—each partner, and each
employee of the law firm, who is a practitioner; or 6
7
- (c) if the law practice is an incorporated legal
practice—each legal practitioner director and each
employee who is a practitioner of the incorporated legal
practice; or 8
9
10
11
- (d) if the law practice is a multi-disciplinary
partnership—each legal practitioner partner and each
employee who is a practitioner of the multi-disciplinary
partnership. 12
13
14
15
- misconduct** means professional misconduct or unsatisfactory
professional conduct as defined under the *Legal Profession
Act 2004*. 16
17
18
- multi-disciplinary partnership** see the *Legal Profession Act
2004*, schedule 5. 19
20
- sole practitioner** see the *Legal Profession Act 2004*, schedule
5.’. 21
22
- (3) Section 63, definition *client*, ‘of a lawyer’— 23
omit, insert— 24
‘of a law practice’. 25

- Clause 10** **Amendment of s 64 (Meaning of *advertises personal
injury services*)** 26
27
- Section 64(1)— 28
omit, insert— 29
- ‘(1) For this part, a practitioner or another person, whether or not
the other person is acting for a law practice, **advertises
personal injury services** if the practitioner or person publishes
or causes to be published a statement that may reasonably be 30
31
32
33

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- thought to be intended or likely to encourage or induce a person— 1
2
- (a) to make a claim for compensation or damages under any Act or law for a personal injury; or 3
4
- (b) to use the services of the practitioner, or a named law practice, in connection with the making of a claim mentioned in paragraph (a).’ 5
6
7

- Clause 11** **Amendment of s 65 (Meaning of *allowable publication method*)** 8
9
- (1) Section 65(1), ‘a lawyer or a person acting for a lawyer’— 10
omit, insert— 11
‘a practitioner or another person, whether or not the other person is acting for a law practice’. 12
13
- (2) Section 65(1)(b) and (c), ‘the lawyer’— 14
omit, insert— 15
‘the practitioner or a law practice of which the practitioner is a member’. 16
17
- (3) Section 65(2), ‘a lawyer or a person acting for a lawyer’— 18
omit, insert— 19
‘a practitioner or another person, whether or not the other person is acting for a law practice’. 20
21
- (4) Section 65(3)— 22
omit, insert— 23
- ‘(3) A printed publication, directory or database is considered to be published or maintained independently of a practitioner or a law practice of which the practitioner is a member only if— 24
25
26
- (a) it is not published or maintained by the practitioner or an employee of the practitioner or a member or an employee of the law practice of which the practitioner is a member; and 27
28
29
30

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- (b) the person who publishes or maintains it does so in the ordinary course of the conduct of the person's business or affairs.' 1
2
3

Clause 12	Replacement of s 66 (Restriction on advertising personal injury services)	4 5
	Section 66—	6
	<i>omit, insert—</i>	7
'66	Restriction on advertising personal injury service	8
	‘(1) A practitioner or another person, whether or not the other person is acting for a law practice, must not advertise personal injury services except by the publication of a statement that—	9 10 11
	(a) 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; and	12 13 14 15 16
	(b) is published by an allowable publication method.	17
	<i>Example of advertising that contravenes subsection (1)—</i>	18
	advertising personal injury services on a ‘no win, no fee’ or other speculative basis	19 20
	Maximum penalty—300 penalty units.	21
	‘(2) However, for a practitioner or a person acting for the practitioner or a law practice of which the practitioner is a member, the practitioner or person does not contravene subsection (1) only because—	22 23 24 25
	(a) the practitioner or person advertises personal injury services—	26 27
	(i) to any person who is already a client of the practitioner or law practice; or	28 29
	(ii) to any person at the practitioner's or law practice's place of business; or	30 31
	(iii) under any order by a court; or	32

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- (b) the practitioner or person advertises personal injury services on the Internet website of the practitioner or a law practice of which the practitioner is a member if the advertisement is limited to a statement about—
- (i) the operation of the law of negligence and a person’s legal rights under that law; and
- (ii) the conditions under which the practitioner or law practice is prepared to provide personal injury services.

- ‘(3) A practitioner who contravenes subsection (1) may be charged with misconduct in addition to being liable to the penalty provided under the subsection for the contravention.
- ‘(4) A practitioner or another person, whether or not the other person is acting for a law practice, does not contravene subsection (1) only because the practitioner or person advertises personal injury services in an edition of a publication which edition was published before 18 June 2002.
- ‘(5) This section does not apply to a client agreement under the *Queensland Law Society Act 1952*, part 4A¹ given by a practitioner to a client for whom the practitioner is acting.’.

Clause 13 Amendment of s 67 (Prohibition on touting at scene of incident or at any time)

- (1) Section 67(1)(b), example—
- omit, insert—*
- ‘*Example for paragraph (b)—*
- ‘A person who lives near the scene of the incident helps a potential claimant immediately after the incident. If the person, without being asked to do so, telephones a law practice and insists the potential claimant speaks with a practitioner at the law practice about making a claim, the person is acting in a way that would be unreasonable in the circumstances.’.
- (2) Section 67(3)(a) and (b)—
- omit, insert—*

¹ *Queensland Law Society Act 1952*, part 4A (Client agreements)

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‘(a) a particular law practice; or 1

(b) an employee or agent of a law practice.’. 2

(3) Section 67(4)(a) and (b)— 3

omit, insert— 4

‘(a) a particular law practice; or 5

(b) an employee or agent of a law practice.’. 6

(4) Section 67(5)(c)— 7

omit, insert— 8

‘(c) a potential claimant involved in the incident or a 9

practitioner acting for the potential claimant or the 10

practitioner’s agent; or’. 11

(5) Section 67(5)(e)— 12

omit, insert— 13

‘(e) a person (*insurer*) who carries on the business of 14

providing insurance for people or property, a 15

practitioner acting for the insurer or someone acting as 16

the insurer’s agent.’. 17

(6) Section 67(6), ‘lawyer’, first mention— 18

omit, insert— 19

‘practitioner’. 20

(7) Section 67(6)(a), ‘lawyer’— 21

omit, insert— 22

‘practitioner or a law practice of which the practitioner is a 23

member’.

 24

Clause 14 Amendment of s 67A (Exemption from s 67(3) and (4)) 25

Section 67A(1)(a)— 26

omit, insert— 27

‘(a) the person gives the potential claimant, or someone on 28

the potential claimant’s behalf, the name, address or 29

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	telephone number of a particular practitioner or law practice (the <i>information</i>); and’.	1 2
Clause 15	Amendment of s 68 (Prohibition against paying, or seeking payment, for touting) Section 68(2)(a) and (b), ‘a lawyer or a person acting for a lawyer’— <i>omit, insert—</i> ‘a law practice or a person acting for a law practice’.	3 4 5 6 7 8
Clause 16	Amendment of s 73A (Proceeding) Section 73A(1)— <i>insert—</i> ‘(c) if the proceeding is for an offence against part 1, the Legal Services Commissioner or a person authorised by the Legal Services Commissioner.’.	9 10 11 12 13 14
Clause 17	Insertion of new ch 4, pt 6 Chapter 4— <i>insert—</i>	15 16 17
‘Part 6	Transitional provision for Personal Injuries Proceedings (Legal Advertising) and Other Acts Amendment Act 2006	18 19 20 21
‘85	Provision for advertising of personal injury services and touting ‘(1) This section applies to an act or omission happening before the commencement of this section that contravened chapter 3, part 1 as in force before the commencement and had not been dealt with or finally dealt with at the commencement.	22 23 24 25 26 27

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- ‘(2) The Legal Services Commissioner may, after the commencement—
- (a) investigate, or continue the investigation of, the act or omission under the *Legal Profession Act 2004*; or
- (b) bring proceedings in relation to the act or omission under this Act.’.

Clause 18	Amendment of sch (Dictionary)	7
	Schedule—	8
	<i>insert—</i>	9
	‘ <i>Australian legal practitioner</i> see the <i>Legal Profession Act 2004</i> , schedule 5.	10 11
	<i>incorporated legal practice</i> , for chapter 3, part 1, see section 63.	12 13
	<i>law firm</i> , for chapter 3, part 1, see section 63.	14
	<i>law practice</i> , for chapter 3, part 1, see section 63.	15
	<i>legal practitioner director</i> , for chapter 3, part 1, see section 63.	16 17
	<i>legal practitioner partner</i> , for chapter 3, part 1, see section 63.	18 19
	<i>member</i> , for chapter 3, part 1, see section 63.	20
	<i>multi-disciplinary partnership</i> , for chapter 3, part 1, see section 63.	21 22
	<i>practitioner</i> means an Australian legal practitioner.	23
	<i>professional misconduct</i> see the <i>Legal Profession Act 2004</i> , schedule 5.	24 25
	<i>sole practitioner</i> , for chapter 3, part 1, see section 63.’.	26

	Part 3	1
	Amendment of Legal Profession Act 2004	2
Clause 19	Act amended in pt 3	3
	This part amends the <i>Legal Profession Act 2004</i> .	4
Clause 20	Amendment of s 2 (Commencement)	5
	(1) Section 2(2), ‘The’—	6
	<i>omit, insert—</i>	7
	‘Subject to subsection (3), the’.	8
	(2) Section 2—	9
	<i>insert—</i>	10
	‘(3) The <i>Acts Interpretation Act 1954</i> , section 15DA does not apply to commence the following provisions—	11
	• section 43	13
	• chapter 2, parts 5 and 6	14
	• sections 199 and 200	15
	• chapter 5	16
	• chapter 7, part 2, division 7	17
	• schedule 4, amendments of the <i>Queensland Law Society Act 1952</i> , amendments 12 and 14.’.	18 19
Clause 21	Amendment of s 250 (Conduct to which this chapter applies—generally)	20 21
	Section 250, note—	22
	<i>insert—</i>	23
	‘However, conduct that happened before the commencement of this provision that contravened the <i>Personal Injuries Proceedings Act 2002</i> , chapter 3, part 1 and had not been dealt with, or finally dealt with, under that Act may be dealt with under this Act. See the <i>Personal Injuries Proceedings Act 2002</i> , section 85 (Provision for advertising of personal injury services and touting).’.	24 25 26 27 28 29

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Clause 22	Insertion of new s 252A	1
	Chapter 3, part 1, division 3—	2
	<i>insert</i> —	3
	‘252A Chapter also extends to other persons in particular circumstances	4 5
	‘This chapter applies to the conduct of all persons, including Australian legal practitioners and law practice employees, suspected of contravening the <i>Personal Injuries Proceedings Act 2002</i> , chapter 3, part 1. ² .’	6 7 8 9
Clause 23	Amendment of s 255 (Conduct about which complaint may be made)	10 11
	Section 255(1)—	12
	<i>insert</i> —	13
	‘(c) the conduct of any other person to which this chapter applies.’	14 15
Clause 24	Amendment of s 265 (Referral by commissioner to law society or bar association)	16 17
	Section 265(1)(c)—	18
	<i>omit, insert</i> —	19
	‘(c) the commissioner believes that an investigation about a matter (an <i>investigation matter</i>) should be started into the conduct of—	20 21 22
	(i) an Australian legal practitioner or a law practice employee; or	23 24
	(ii) any person, including an Australian legal practitioner or law practice employee, suspected of contravening the <i>Personal Injuries Proceedings Act 2002</i> , chapter 3, part 1. ³ .	25 26 27 28

2 *Personal Injuries Proceedings Act 2002*, chapter 3 (Other matters), part 1 (Restriction on advertising of personal injury services and touting)

3 *Personal Injuries Proceedings Act 2002*, chapter 3 (Other matters), part 1 (Restriction on advertising of personal injury services and touting)

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Clause 25	Amendment of sch 5 (Dictionary)	1
	Schedule 5, definition <i>relevant law</i> —	2
	<i>insert</i> —	3
	‘(e) the <i>Personal Injuries Proceedings Act 2002</i> , chapter 3, part 1 ⁴ as in force at any time before or after the commencement of this paragraph.’	4 5 6
Part 4	Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003	7 8 9
Clause 26	Act amended in pt 4	10
	This part amends the <i>Dangerous Prisoners (Sexual Offenders) Act 2003</i> .	11 12
Clause 27	Amendment of s 20 (Summons or warrant for released prisoner suspected of contravening a supervision order or interim supervision order)	13 14 15
	Section 20—	16
	<i>insert</i> —	17
	‘(7) If the magistrate issues a summons under subsection (3), the commissioner of the police service or the chief executive must give a copy of the summons to the Attorney-General within 2 days after the released prisoner is given a copy of the summons.	18 19 20 21 22
	‘(8) To remove any doubt, it is declared that a failure by the commissioner of the police service or the chief executive to comply with subsection (7) does not affect the	23 24 25

⁴ *Personal Injuries Proceedings Act 2002*, chapter 3 (Other matters), part 1
(Restriction on advertising of personal injury services and touting)

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Attorney-General's ability to apply to the Supreme Court for a
further order under section 22.' 1
2

Clause 28	Amendment of s 22 (Court may make further order)	3
	Section 22(3)—	4
	<i>omit, insert—</i>	5
	'(3) For the purpose of deciding whether to make a continuing detention order under subsection (1)(b), the court may do any or all of the following—	6 7 8
	(a) act on any evidence before it;	9
	(b) make any order necessary to enable evidence of a kind needed to support an application for a division 3 order to be brought before it, including an order in the nature of a risk assessment order;	10 11 12 13
	(c) suspend the supervision order and make an order that the released prisoner be detained in custody for the period stated in the order.	14 15 16
	'(4) For subsections (1)(c) and (3)(c), the court may make an order that the released prisoner be detained in custody for the period stated in the order if it is satisfied as required under section 8(1).'	17 18 19 20
Clause 29	Amendment of s 43A (Persons who remain prisoners for particular purposes)	21 22
	Section 43A(3), 'subject to an'—	23
	<i>omit, insert—</i>	24
	'subject to a supervision order or'.	25
Clause 30	Amendment of sch (Dictionary)	26
	Schedule, definition, <i>interim detention order</i> , after '22(1)(c)'—	27 28
	<i>insert—</i>	29
	'or (3)(c)'.	30

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