

Use of the terms 'specialist' and 'expert' in advertisements

Guidelines

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Version 1

1. Guideline Statement

The Legal Profession Complaints Committee (*LPCC*) is established under the *Legal Profession Act 2008 (LPA)* to supervise the conduct of legal practitioners. Other functions of the LPCC include inquiring into complaints and any conduct on the part of a legal practitioner for the purpose of determining whether it may constitute unsatisfactory professional conduct or professional misconduct.

The conduct of a legal practitioner which may be considered by the LPCC includes conduct relating to the advertising of legal services.

2. Purpose

The purpose of these guidelines is to set out for the assistance of legal practitioners, the LPCC's approach to complaints and conduct investigations concerning advertisements by legal practitioners which make claims to being a 'specialist' or an 'expert'.

3. Background

Rule 45(1) of the *Legal Profession Conduct Rules 2010 (LPCR)* provides that a practitioner and the principal of a law practice must ensure that any advertising, marketing or promotion in connection with the practitioner or the law practice is not –

- (a) false, misleading or deceptive; or
- (b) likely to mislead or deceive; or
- (c) offensive; or
- (d) likely to be prejudicial to, or diminish public confidence in, the administration of justice; or
- (e) likely to bring the profession into disrepute; or
- (f) prohibited by law.

Rule 45(2) provides that without limiting the generality of subrule (1), a practitioner must not –

- (a) convey a false or misleading impression that the practitioner or the practitioner's law practice has specialist expertise in relation to services offered by the practitioner or the practitioner's law practice; or
- (b) advertise or otherwise hold out or imply that the practitioner or the practitioner's law practice is accredited by a relevant professional body to provide specialist services in an area of legal practice unless the practitioner or law practice is so accredited.

Conduct in breach of rule 45(1) may constitute unsatisfactory professional conduct or professional misconduct¹.

4. Specialisation

In Western Australia, practitioners are able to gain specialist accreditation in family law through a program conducted by The Law Society of Western Australia. At present, no other accreditation program is available in any other area of law. However, some practitioners may obtain specialist accreditation in other areas of law in other States.

In order to participate in specialist accreditation programs, the eligibility requirements require the applicant to have practised for at least five years and to demonstrate substantial involvement (at least 25%) in the area of the accreditation for the three years prior to application. In order to obtain accreditation, a practitioner is generally required to successfully complete an assessment program which includes an examination.

Practitioners who have gained accreditation through one of these programs can advertise themselves as an accredited specialist in the area in which they obtained the accreditation although practitioners with accreditation interstate must ensure that the accreditation is valid for work conducted in Western Australia.

5. Use of term 'specialist' without accreditation

Whether a practitioner can refer to himself or herself as a 'specialist' in the absence of specialist accreditation will depend on whether to do so would convey a false or misleading impression.

The term 'specialist' may be understood by members of the public as implying expertise rather than merely conveying a preferred area of practice. Accordingly, practitioners should take care to ensure that the meaning of any advertisement, marketing or promotion is clear and unambiguous. If a practitioner merely intends to convey that he or she practises in a particular area of law, the preferred terminology to use would be 'specialises'.

In considering whether a claim to be a specialist (when the practitioner is not accredited) would convey a false or misleading impression in breach of rule 45(1) LPCR, the LPCC will take into consideration the same criteria used by the law societies in Australia to consider eligibility into an accreditation program. That is, if a practitioner has been in practice for at least five years (on a full-time basis or its equivalent) and can demonstrate substantial involvement (time devoted is at least 25% of normal full-time practice or its equivalent if the practitioner has worked part time, for example, not less than 2.5 days per fortnight) in that area during the previous three years, then the LPCC may consider that the practitioner is not in contravention of rule 45(1) in calling himself or herself a specialist in that area of law, provided that there is nothing else about the

¹ The LPCR are rules made by the Legal Practice Board (LPB) under ss 576, 577 and 583 of the LPA. Section 583 of the LPA expressly declares rules made by the LPB to be "subsidiary legislation". "Subsidiary legislation" is, by virtue of the *Interpretation Act 1984*, included within the meaning of "this Act" in s 404(a) LPA. The LPCC acknowledges Mark Ritter SC for his analysis of the LPA and LPCR.

practitioner's advertisement, statement, etc which is misleading as regards the expertise of the practitioner or otherwise.

The LPCC recognises that there will be some situations where practitioners may be able to demonstrate they have a valid claim to be a 'specialist' other than by reference to the above criteria, however, the LPCC expects those situations to be limited.

If a law practice promotes itself as a 'specialist' practice in a particular area of law, the LPCC would expect that the practice's work in that area would constitute at least 25% of its total work. The LPCC would also expect that each of the principals of the practice who supervise the work of the employed practitioners in that area would themselves be 'specialists' and that the degree of supervision of the employed practitioners would be sufficient to ensure work is performed at the standard expected from a 'specialist' practitioner.

The LPCC will consider whether practitioners who promote themselves as 'specialists' meet the minimum level of experience and speciality to justify the use of that term or whether it conveys a false or misleading impression.

The LPCC does not consider that the mere use of the word 'specialist' would imply that the practitioner is accredited by a relevant professional body in breach of rule 45(2)(b) LPCR.

6. Use of term 'expert'

The term 'expert' in advertisements, marketing or promotions may be understood by members of the public as implying that a practitioner has particular knowledge, skill, training or experience in an area of law above that of other practitioners, even accredited specialists. The LPCC considers that the term 'expert' should only be used in limited circumstances where a clear claim to expertise can properly and reasonably be made, having regard to the particular qualifications, experience and continuous involvement and professional development of a practitioner in a particular field of practice.

In considering whether a claim to be an 'expert' would convey a false or misleading impression in breach of rule 45(1) LPCR, the LPCC will take into consideration a number of factors including the same criteria used by the law societies in Australia to consider eligibility into an accreditation program as set out above and/or similar criteria used by a court to satisfy itself that a witness is a qualified expert such as whether the practitioner has some particular knowledge, skill, training or experience in that area of law and would properly and reasonably be accepted by his or her peers as being an expert in that area of law.

The LPCC recognises that there will be some situations where practitioners may be able to demonstrate a valid claim to be an 'expert' other than by reference to the above criteria, however, the LPCC expects those situations to be limited.

The LPCC will consider whether practitioners who promote themselves as 'experts' meet the minimum level of qualifications, experience and professional development to justify the use of that term or whether it conveys a false or misleading impression.

If a law practice promotes itself as offering 'expert' advice or being 'experts' in a particular area of law, the LPCC would expect that the actual work in that area would be undertaken substantially by practitioners who would themselves be properly and reasonably considered to be 'experts' in that area.