QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Bray* [2025] QCAT 525
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **DAVID LINDSAY BRAY** (respondent)
APPLICATION NO:	OCR152-25
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	18 December 2025
DELIVERED AT:	Brisbane
HEARING DATE:	9 December 2025
JUDGE:	Justice Davis Assisted by: Ms Patricia Schmidt, Practitioner Panel Member Ms Patrice McKay, Lay Panel Member
ORDERS:	**1. Charge 1 is proved and constitutes professional misconduct.** **2. Charge 2 is proved and constitutes professional misconduct.** **3. Charge 3 is proved and constitutes unsatisfactory professional conduct.** **4. On each charge, the respondent be publicly reprimanded.** **5. The respondent is to pay a pecuniary penalty of $15,000.00 in relation to charge 1.** **6. The respondent is to pay a pecuniary penalty of $10,000.00 in relation to charge 2.** **7. The respondent is to pay a pecuniary penalty of $5,000.00 in relation to charge 3.** **8. The respondent is to pay the Commissioner's costs of the disciplinary application, such costs to be assessed on the standard basis in the manner in which costs would be assessed if the matter were litigated in the Supreme Court of Queensland.** **9. The pecuniary penalties totalling $30,000.00 must be paid by 4 pm on 30 June 2026.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the Legal Services Commissioner alleges that the respondent advertised legal services contrary to the *Personal Injuries Proceedings Act 2002* (Qld) – where the legal practitioner accepts the breaches – where the parties made a joint submission – where the joint submission agrees the conduct is unsatisfactory professional conduct – where the parties have agreed a fine of $2,000.00 – whether the agreed position should be accepted – whether the agreed position adequately reflects the seriousness of the breaches – whether the agreed position adequately reflects the protective nature of the jurisdiction

Legal Profession Act 2007 (Qld), s 9, s 31, s 111, s 418, s 419, s 456, s 462, s 701
Personal Injuries Proceedings Act 2002 (Qld), s 4, s 64, s 65, s 66

Adamson v Queensland Law Society Incorporated [1990] 1 Qd R 498; [1989] QSCFC 145 , cited
Allinson v General Council of Medical Education and Registration [1894] 1 QB 750 cited
Attorney-General v Bax [1999] 2 Qd R 9, cited
Australian Competition and Consumer Commission v TPG Internet Pty Ltd (2013) 250 CLR 640; [2013] HCA 54, cited
Barbaro v The Queen (2014) 253 CLR 58; [2014] HCA 2, cited
Commonwealth v Director, Fair Work Building Industry Inspectorate (2015) 258 CLR 482; [2015] HCA 46, followed
Legal Services Commissioner v Bryden & Hagipantelis (No 3) [2012] NSWADT 225, cited
Legal Services Commissioner v Laylee [2016] QCAT 237, cited
Legal Services Commissioner v Madden [2009] 1 Qd R 149; [2008] QCA 301, cited
Legal Services Commissioner v Malouf [2007] NSWADT 215, cited
Legal Services Commissioner v Shand [2018] QCA 66, cited
Legal Services Commissioner v Tang [2025] QCA 206, cited
Rich v Australian Securities and Investments Commission (2004) 220 CLR 129; [2004] HCA 42, cited
Trade Practices Commission v Allied Mills Industries Pty Ltd (No 5) (1981) 60 FLR 38, cited
Victorian Legal Services Commissioner v Hyatt (Legal Practice) [2018] VCAT 1498, cited

APPEARANCES & REPRESENTATION:	A P Hamrey (*sol*) for the Legal Services Commissioner The respondent appeared on his own behalf

[1] The Legal Services Commissioner (LSC) brings disciplinary proceedings against a solicitor, David Lindsay Bray. It is alleged that the incorporated legal practice of Bray Lawyers Pty Ltd which practises as "Your Claim Lawyers" breached provisions of the *Personal Injuries Proceedings Act 2002* (PIPA) which restricts advertising by legal practitioners of services concerning claims for personal injuries.

Background

[2] Mr Bray was admitted to the legal profession in Queensland on 22 February 1991.

[3] He holds an unrestricted principal practising certificate and at all material times was the principal of Bray Lawyers.[1]

[4] The practice represents clients who have suffered personal injuries and seek damages in recompense.

[5] Mr Bray caused various advertising of the practice's services to be published.

[6] That resulted in three disciplinary charges being laid.

[7] The charges, without the pleaded particulars, are as follows:

> "***Charge 1 – Advertising personal injury services by public exhibition***
>
> 1. Between 25 May 2020 and around January 2025, the Respondent published, or caused to be published, statements on billboards or signage which were advertisements for personal injury services, in a manner which breached the *Personal Injuries Proceedings Act 2002* (**PIPA**).
>
> …
>
> ***Charge 2 – Advertising personal injury services on an Internet website***
>
> 2. In the periods particularised further below, the Respondent published, or caused to be published, statements on an Internet website, which were advertisements for personal injury services, in a manner which breached the PIPA.
>
> …
>
> ***Charge 3 – Advertising personal injury services on social media***
>
> 3. On or before 7 March 2024, the Respondent published, or caused to be published, statements on social media accounts, which were

1 An incorporated legal practice: *Legal Profession Act 2007*, s 111; A legal practitioner director of an incorporated legal practice is a "principal" for the purposes of the *Legal Profession Act 2007*.

advertisements for personal injury services, in a manner which breached the PIPA."

[8] Extensive particulars accompany each charge but it is only necessary to provide a short summary.

[9] Charge 1 concerns the display of advertising on an electronic billboard attached to a building in Smith Street, Southport which is occupied primarily by medical practitioners. Your Claim Lawyers also occupies the building. The building is signed with the name "Spine Centre".

[10] Between 25 May 2020 and about January 2025, Mr Bray caused to be published on the billboard advertisements for the practice. The offending statements are particularised as follows:

> "1.7 Between at least on or about 25 May 2020 and at least about January 2025, the Digital Billboard displayed the following statement:
>
> "*"Injured?" No Win – No Fee" – your claim lawyers."*
>
> 1.8 Between at least on or about 25 May 2020 and at least about September 2023, the Physical Billboard displayed the following statements:
>
> (a) "*NO WIN NO FEE*";
>
> (b) "*Accident Claims*
>
> ✓*Motor Vehicle*
> ✓*Workplace*
> ✓*Slip & Fall"*;
>
> (c) "*on your side – your claim lawyers*"; and
>
> (d) "*We're here for you*"."

[11] The first of the offending statements appeared on the digital billboard for a period of about 4 years and 8 months. The second offending statements appeared on the billboard for about 3 years and 4 months.

[12] Charge 2 concerns statements published on an internet website bearing the heading "on your side Your Claim Lawyers". The offending statements are particularised as follows:

> "2.3 Between at least on or about 25 May 2020 and at least on or about 29 April 2025, the Website displayed the following statements on the home page (https://www.yourclaimlawyers.com.au/):
>
> (a) "*on your side*"; and
>
> (b) "*maximum claim, minimum fuss*".

2.4 Between a date unknown and at least on or about 29 April 2025, the Website displayed the following statement on the home page (https://www.yourclaimlawyers.com.au/):

"*As our brand ambassador, Trevor "the Axe" Gillmeister says – "Your Claim Lawyers are tough, dependable and honest"*".

2.5 Between at least on or about 25 May 2020 and at least on or about 9 June 2020, the Website displayed the following statements on the locations webpage (https://www.yourclaimlawyers.com.au/locations/):

(a) "*on your side*";

(b) "*Your Claim Lawyers is on your side*"; and

(c) "*From whiplash compensation to accident injury claims, Your Claim Lawyers are here to help*".

2.6 Between a date unknown and at least on or about 3 April 2024, the Website displayed the following statement on the services webpage (https://www.yourclaimlawyers.com.au/services):

"*[Your Claim Lawyers]…will be on your side through every step of your compensation claim*".

2.7 Between at least on or about 25 May 2020 and at least on or about the dates further particularised in paragraphs 2.7(a) and 2.7(b) below, the Website displayed the following statements on the workplace accident claims webpage (https://www.yourclaimlawyers.au/services/workplace-accident-claims/):

(a) 9 June 2020, a testimonial from prominent rugby league player, Mr Trevor Gillmeister:

"*Your Claim Lawyers are tough, dependable and honest*"; and

(b) 29 April 2025:

"*So whether you've broken your nose or broken your back, Your Claim Lawyers are the lawyers who will be there with you all the way, fighting through the legal system, until you get the financial compensation you deserve*."

2.8 Between at least on or about 25 May 2020 and at least on or about the dates particularised in paragraphs 2.8(a) and 2.8(b) below, the Website displayed the following statements on the about us webpage (https://www.yourclaimlawyers.com.au/about/):

(a) 9 June 2020:

i. "*Your Claim Lawyers is a strong, experienced and committed team of legal professionals who will be on* *your side every step of the way, managing the highly complex legal system to ensure you get the maximum amount of compensation you are entitled to*"; and

ii. "*Our lawyers are the best in the business and we have an excellent history of achieving great outcomes for all of our clients. So if f you or a loved one has a legal claim then please give us a call…*"; and

(b) 29 April 2025, an image of Mr Gillmeister superimposed with the words:

"*No Win, No Fee*";

2.9 Between a date unknown and at least on or about 29 April 2025, the Website displayed the following statement on the about us webpage (https://www.yourclaimlawyers.com.au/about/):

"*Our firm is comprised of an experienced and committed team of legal professionals who are dedicated to being on your side every step of the way, managing the highly complex legal system to ensure you get the maximum amount of compensation you are entitled to*".

2.10 Between at least on or about 25 May 2020 and at least on or about 9 June 2020, the Website displayed the following statements on the workers' compensation claims webpage (https://www.yourclaimlawyers.com.au/services/workplace-accident-claims/):

"*At Your Claim Lawyers, we will fight to ensure you get the maximum compensation you deserve when you have been in a workplace accident. As expert compensation lawyers, we will be with you every step of the way because we know that a workplace accident can be devastating to the lives of those involved, and their families.*"

2.11 Between a date unknown and at least on or about 29 April 2025, the Website displayed the following statements on the workers' compensation claims page (https://yourclaimlawyers.com.au/services/workplace-accident-claims/):

(a) "*Your Claim Lawyers are the frontrunners in workplace injury compensation claims*";

(b) "*We fight to ensure our clients receive the compensation they deserve when they have sustained a workplace injury*":

(c) "*As expert compensation lawyers, we will be with you every step of the way, and do everything possible to maximise your claim, as we know that a workplace injury can devastate the lives of workers and their families*"."

[13] The offending material mentioned in particulars 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10 and 2.11 appeared for periods either unknown, or for a matter of weeks. The offending statements alleged in paragraph 2.3 were published for a period of 4 years and 11 months.

[14] Charge 3 concerns social media accounts maintained by the practice on the platforms Instagram and LinkedIn. The offending statements were:

> "3.3 As at 7 March 2024, the Social Media Accounts displayed the following statements:
>
> (a) Instagram – *"For all personal injury claims, we are on your side - fighting for you"*; and
>
> (b) LinkedIn – *"Your Claim Lawyers is a community-driven, No Win, No Fee personal injury compensation law firm that seeks justice for Queenslanders who have been injured in motor vehicle accidents, at work, in a public place or in the healthcare system.*
>
> *Your Claim Lawyers is a strong, experienced and committed team of legal professionals who will be on your side every step of the way, managing the highly complex and expensive legal system to ensure you get the maximum amount of compensation you are entitled to.*
>
> *Our lawyers are the best in the business and we have an excellent history of achieving great compensation outcomes for all of our clients. So if you or a loved one has been injured then please give us a call or fill out our online form and we will get to the bottom of your case and let you know exactly what we can do for you."*"

[15] After detection of the improper advertising, the conduct ceased. On 1 July 2025, the disciplinary proceedings were commenced in this Tribunal. In the application, the three charges were alleged. As already observed, very detailed particulars accompany each charge.

[16] On 1 August 2025, Mr Bray responded by filing a formal response to the discipline application. Minor points were taken in relation to some of the particulars but, in practical terms, the response constituted a full admission of the substance of all allegations.

[17] The parties agreed a joint submission. The culmination of which appears in paragraphs [54], [55] and [56]:

> "54. In considering the appropriate sanction in this matter, the following features weigh in favour of the Respondent:
>
> (a) the Respondent was admitted on 22 February 1991;

(b) the Respondent has not previously been the subject of an adverse disciplinary finding;

(c) the Respondent has cooperated, generally, with the Commissioner in the course of the investigation into the subject conduct and, subsequently, in the conduct of these proceedings;

(d) the Respondent has made early admissions as to the salient facts (and related salient legal issues) in the proceedings and joined with the Commissioner in producing the SAFAI and these joint submissions;

(e) the Respondent has demonstrated substantial insight into his conduct and has implemented, or caused to be implemented, many changes with respect to the advertising, marketing and/or promotional practices of Your Claim Lawyers.

55. The parties otherwise acknowledge and agree that:

(a) the conduct in issue is of a general variety that is quite prevalent within the personal injuries/compensation legal practice in Queensland (other than in respect of the uniqueness of the alleged conduct in this matter involving the advertising of personal injury services in or on a "hospital" within the meaning of the PIPA); and

(b) in those circumstances, it is appropriate for the Tribunal to have close regard to the general deterrence function of the disciplinary process under the LPA.

56. In all of the circumstances of this specific matter, the parties submit that:

(a) having regard to paragraph 54 above, it is neither necessary, nor appropriate, in this instance for the Tribunal to impose any further sanction upon the Respondent other than a monetary fine (for clarity, no reprimand is sought in this matter);

(b) a fine of $2,000.00 is appropriate and, without limitation, is adequately representative of the Tribunal's disapproval of the subject conduct."

[18] Section 462(1) of the *Legal Profession Act* provides that the person against whom orders are made must pay the costs, relevantly here, of the LSC unless there are "exceptional circumstances". Mr Bray accepts that there are no exceptional circumstances and that he must be ordered to pay the costs.

Relevant statutory provisions

[19] Section 4 of the PIPA defines its main purpose as:

> "(1) The main purpose of this Act is to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury."

[20] Those aims are sought to be achieved in part by forbidding a person to solicit or induce a claimant to make a claim.[2] That, in turn, is sought to be achieved by restricting the advertising of "personal injury services",[3] which term is defined in s 64 of the PIPA. There is no doubt here that what was being advertised were "personal injury services".

[21] Section 64 defines the concept of advertising personal injuries services:

> "**64 Meaning of *advertises personal injury services***
>
> (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 thought to be intended or likely to encourage or induce a person—
>
> (a) to make a claim for compensation or damages under any Act or law for a personal injury; or
>
> (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)…"

[22] The relevant restriction on that type of advertising is effected by s 66 of the PIPA:

> "**66 Restriction on advertising personal injury service**
>
> (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—
>
> (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
>
> (b) is published by an allowable publication method.
>
> *Example of advertising that contravenes subsection (1)—*
>
> advertising personal injury services on a 'no win, no fee' or other speculative basis
>
> Maximum penalty—300 penalty units.

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[2] Section 4(2)(g).

[3] Section 66.

(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—

(a) the practitioner or person advertises personal injury services—

(i) to any person who is already a client of the practitioner or law practice; or

(ii) to any person at the practitioner's or law practice's place of business; or

(iii) under any order by a court; or

(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 4A given by a practitioner to a client for whom the practitioner is acting." (emphasis added)

[23] Section 65, relevantly, provides:

"**65 Meaning of *allowable publication method***[4]

(1) For this part, each of the following is an ***allowable publication method*** for the publication of a statement by a practitioner or another person, whether or not the other person is acting for a law practice—

…

[4] The term used in s 66(1)(b).

(d) public exhibition of the statement in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place;

(e) display of the statement on any printed document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle;

(f) display of the statement on any printed document provided to a person as a receipt or record in relation to a transaction.

(2) However, each of the following is not an ***allowable publication method*** for the publication of a statement by a practitioner or another person, whether or not the other person is acting for a law practice—

(a) public exhibition of the statement in or on a hospital;

(b) display of the statement on any printed document gratuitously sent or delivered to a hospital or left in a hospital or on any vehicle in the vicinity of a hospital…" (emphasis added)

[24] The upshot is, for present purposes, that advertising material under the description in s 64(1) is prohibited. Where the content falls outside s 64(1) and within the exception in s 66(1)(b) the advertising is permissible, provided that it is published in a way allowed by s 65. It is not permissible to publish by exhibition of the statement in or at or on a hospital.[5]

[25] It is common ground that the "Spine Centre" building is a hospital.

[26] The term "hospital" is defined in s 63:

"***hospital*** includes the following—

(a) any premises used for receiving, caring for or treating persons who are injured, sick or mentally ill;

(b) any premises used for providing a service for maintaining, improving or restoring a person's health and wellbeing;

(c) any land or building occupied or used in connection with premises mentioned in paragraph (a) or (b).

Examples of a hospital—

1 nursing home

2 community health facility

3 medical centre

4 physiotherapist's rooms

5 dentist's surgery

6 hostel"

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5 Section 65(2)(a).

[27] An incorporated legal practice, such as Bray Lawyers Pty Ltd practising as Your Claim Lawyers, is a "law practice" as defined by the *Legal Profession Act*.[6] As observed, a legal practitioner who is a director of the incorporated legal practice is a "principal" of that practice. Accordingly, Mr Bray is a principal of the practice known as Your Claim Lawyers as he is a director of Bray Lawyers Pty Ltd.

[28] Subject to certain exceptions which do not apply here, s 701 of the *Legal Profession Act* provides that where a law practice contravenes any provision or regulation imposing an obligation of the practice, the principal of the practice is taken to contravene the same provision.

[29] The *Australian Solicitors' Conduct Rules 2012* were in force until they were repealed and replaced by the *Australian Solicitors' Conduct Rules 2023*. Rule 36.1.4 of both the *Australian Solicitors' Conduct Rules 2012* and the *Australian Solicitors' Conduct Rules 2023* provide:

> "36.1. <u>A</u> solicitor or <u>principal of a law practice must ensure that any advertising</u>, marketing, or promotion in connection with the solicitor or <u>law practice is not</u>:
>
> 36.1.1. false;
>
> 36.1.2. misleading or deceptive or likely to mislead or deceive;
>
> 36.1.3. offensive; or
>
> 36.1.4. <u>prohibited by law</u>." (emphasis added)

[30] It was accepted by Mr Bray that s 66(1) has been breached by way of content and the publication method, and that r 36.1.4 has been contravened.

The proceedings in the Tribunal

[31] As already observed, an agreed Statement of Facts was settled and a joint submission on penalty submitted.

[32] As explained by the High Court in *Commonwealth v Director, Fair Work Building Industry Inspectorate*,[7] parties in civil penalty proceedings are at liberty to make submissions to the Court as to what the penalty should be.[8] The High Court distinguished proceedings for civil penalties with criminal proceedings where, subject to statute, no submission as to the actual sentence to be imposed ought to be made.[9]

[33] It was further observed that it is "highly desirable in practice for the Court to accept the parties' proposal and therefore impose the proposed penalty."[10] However, that course is "subject to the Court being sufficiently persuaded of the accuracy of the

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6 Sch 2: Dictionary and s 111.
7 (2015) 258 CLR 482.
8 At [56] and [57].
9 At [72] and [73], distinguishing *Barbaro v The Queen* (2014) 253 CLR 58.
10 *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482 at [58].

parties' agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances…"[11]

[34] Here, in my view, the gravity of the conduct has been misunderstood by the LSC. For reasons which appear below, the conduct ought not be classified as "unsatisfactory professional conduct",[12] but "professional misconduct".[13] Further, a public reprimand for the conduct is called for. The agreed fine of $2,000.00 is not adequate to fulfil the purposes of the protective regime established by the *Legal Profession Act*.

[35] When the matter was called for hearing, I raised these views with Mr Hamrey. I informed him that my preliminary view was that evidence of any profit gained by the practice via the illicit advertising might be relevant. He informed me that had not been investigated. I was informed that Mr Bray had not even been asked to produce evidence on that topic. Mr Hamrey informed me that there were mitigating circumstances of which he was aware but which were not detailed in the material.

[36] Mr Bray told me that he thought the practice paid between $8,000.00 to $10,000.00 per year for the privilege of displaying the billboard. He told me that the practice keeps record of the sources of its referrals, and he thought that none of the impugned publications led to instructions being given to the practice.

[37] I told Mr Bray that I could not act on his statements and that he should consider whether to seek an adjournment so that further material could be produced. I told him that, in the absence of material, I may draw the inference that the advertising was effective in attracting instructions. I told him that a finding of professional misconduct may be made and a fine imposed in excess of that agreed between the parties. I then stood the matter down for him to consider his position.

[38] Upon my return to Court, Mr Bray advised me that he would not seek an adjournment, did not propose to produce new material, and wished to have the matter finalised. He reminded me that he had been in practice since 1991 and had an unblemished record. He told me that the billboard was displaying messages in similar terms to other billboards he had seen and he did not realise that he was in breach of the provisions of the PIPA.

Consideration

[39] There are four matters for determination:

(a) the characterisation of the conduct;

(b) the quantum of any fine;

(c) whether a public reprimand should be made; and

(d) costs.

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11 At [58], approving the comments of Sheppard J in *Trade Practices Commission v Allied Mills Industries Pty Ltd (No 5)* (1981) 60 FLR 38; and see also *Victorian Legal Services Commissioner v Hyatt (Legal Practice)* [2018] VCAT 1498 at [24]-[25].

12 *Legal Profession Act*, s 418.

13 *Legal Profession Act*, s 419.

Categorisation of the conduct

[40] The common law drew a distinction between "professional misconduct" and "unprofessional conduct". As explained by Thomas J (as his Honour then was) in *Adamson v Queensland Law Society Incorporated*,[14] the difference between the two concepts is one of degree. Unprofessional conduct is conduct which violates or falls short of the standard of professional conduct expected of lawyers of good repute and competency. "Unprofessional conduct" does not embrace every error made by a legal practitioner. It must be a sufficiently substantial failing which justifies a finding of professional breach.[15] Professional misconduct is conduct which falls short of, to a substantial degree, that standard.[16]

[41] The *Legal Profession Act* adopts similar, but not identical, categories which are legislatively defined.

[42] Section 418 of the *Legal Profession Act* defines "unsatisfactory professional conduct":

> "**418 Meaning of *unsatisfactory professional conduct***
>
> ***Unsatisfactory professional conduct*** includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner."

[43] Section 419 concerns "professional misconduct":

> "**419 Meaning of *professional misconduct***
>
> (1) ***Professional misconduct*** includes—
>
> (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and
>
> (b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
>
> (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for

14 [1990] 1 Qd R 498 at 507.
15 *Legal Services Commissioner v Laylee* [2016] QCAT 237 at [43].
16 See also *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750.

admission to the legal profession under this Act or for the grant or renewal of a local practising certificate."

[44] It can be seen the definitions of both "unsatisfactory professional conduct" and "professional misconduct" are inclusionary and not exhaustive.

[45] Section 419(1)(b) links the notion of "professional misconduct" to fitness to engage in legal practice.[17] In order to make that assessment, regard should be had to "suitability matters" prescribed under the Act.[18]

[46] Section 9 prescribes suitability matters:

> "**9 Suitability matters**
>
> (1) Each of the following is a ***suitability matter*** in relation to a natural person—
>
> (a) whether the person is currently of good fame and character;
>
> (b) whether the person is or has been an insolvent under administration;
>
> (c) whether the person is or has been a legal practitioner director of an incorporated legal practice while the practice is or was a chapter 5 body corporate;
>
> (d) whether the person is or has been a director of a corporation while the corporation is or was a chapter 5 body corporate;
>
> (e) <u>whether the person has been convicted of an offence in Australia or a foreign country, and if so</u>—
>
> (i) <u>the nature of the offence; and</u>
>
> (ii) <u>how long ago the offence was committed; and</u>
>
> (iii) <u>the person's age when the offence was committed;</u>
>
> (f) whether the person engaged in legal practice in Australia—
>
> (i) when not admitted to the legal profession, or not holding a practising certificate, as required under a relevant law or a corresponding law; or
>
> (ii) if admitted to the legal profession, in contravention of a condition on which admission was granted; or
>
> (iii) if holding an Australian practising certificate, in contravention of a condition applicable to the certificate or while the certificate was suspended;
>
> (g) whether the person has practised law in a foreign country—
>
> (i) when not permitted under a law of that country to do so; or
>
> (ii) if permitted to do so, in contravention of a condition of the permission;
>
> (h) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following—
>
> (i) a relevant law;

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17 *Legal Services Commissioner v Tang* [2025] QCA 206 at [21].

18 Section 419(2), s 9 (which defines 'suitability matters') and s 31(1) (which compels the consideration of suitability matters upon a consideration of admission to the profession).

(ii) a corresponding law;
(iii) a corresponding foreign law;

(i) whether the person—
(i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or
(ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt;

(j) whether the person's name has been removed from—
(i) a local roll but has not since been restored to or entered on a local roll; or
(ii) an interstate roll, but has not since been restored to or entered on an interstate roll; or
(iii) a foreign roll;

(k) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;

(l) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;

(m) whether, under a relevant law, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;

(n) whether the person is or has been subject to an order under this Act, a previous Act, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;

(o) whether the person currently is unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner;

(p) a matter declared under an Act to be a suitability matter.

(2) A matter under subsection (1) is a suitability matter even though it happened before the commencement of this section." (emphasis added)

[47] As already observed, the "suitability matters" are not an exhaustive list of considerations for admission to the legal profession. Section 31 provides:

"**31 Suitability for admission**

(1) <u>A person is suitable for admission to the legal profession under this Act only if the person is a fit and proper person to be admitted</u>.

(2) In deciding if the person is a fit and proper person to be admitted, <u>the Supreme Court must consider</u>—

(a) <u>each of the suitability matters</u> in relation to the person to the extent a suitability matter is appropriate; and

(b) other matters that the Supreme Court considers relevant.

(3) However, the Supreme Court may consider a person to be a fit and proper person to be admitted to the legal profession under this Act despite a suitability matter because of the circumstances relating to the matter." (emphasis added)

[48] A general breach of the law without conviction is not an identified "suitability matter",[19] although breaches of the law would reflect upon whether the person is "currently of good fame and character".[20] General breaches of the law, therefore, must be a relevant matter for the purposes of suitability.[21] As earlier observed, each of the breaches alleged in charges 1, 2 and 3 involve contraventions of s 66 of the PIPA. Breaches of s 66 constitute an offence and are, therefore, criminal in nature. A maximum penalty of 300 penalty units is prescribed.

[49] The offending conduct in charges 1 and 2 occurred consistently over a period of almost 5 years. Mr Bray produced no sworn material but explained that there were billboards of similar content being displayed by other legal firms and that he did not consider that the content of the billboard[22] and the internet site[23] offended the PIPA. This statement is, in itself, concerning. Mr Bray practises exclusively in personal injuries litigation. The PIPA is a statute which governs many claims which Mr Bray would litigate on behalf of clients. He must have known that the PIPA restricted his right to advertise, yet, apparently, did not ensure that his advertisements did not contravene the statute.

[50] In my view, the reckless (at best) breach of the statutory restrictions on advertising over a period of 5 years constitutes a substantial and consistent failure to attain a reasonable standard of competence. The continuing illegal conduct also shows unfitness although the conduct has ceased as Mr Bray shows insight.[24] In my view, charges 1 and 2 constitute professional misconduct. The position with charge 3 is different. The LSC only allege a breach as at 7 March 2024. Charge 3 on its face is not alleged to be continuing offending, such as that shown in charges 1 and 2. In relation to charge 3, there should be a finding of unsatisfactory professional conduct.

Quantum of any fine

[51] Section 456 of the *Legal Profession Act* provides that a practitioner may be fined an amount of not more $100,000.00.[25]

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19 Section 9(1)(e).
20 Section 9(1)(a).
21 Section 31(2)(b).
22 Charge 1.
23 Charge 2.
24 Section 419(1).
25 Section 456(4)(a).

[52] The purpose of imposition of sanction is not to punish, but to protect the community.[26] Although the proceedings are "protective" the effect of the imposition of a penalty is to punish even though it is an act motivated to protection of the public.[27]

[53] I cannot accept, without sworn evidence, that no benefit was received as a result of the illegal advertising. Mr Bray said that the source of new clients was documented, but he did not take up the opportunity to prove it. He thought the billboard cost between $8,000.00 and $10,000.00 per year and I do not accept that he would expend between $40,000.00 and $50,000.00 over the 5 years of offending if there was no benefit to the practice. As already observed the behaviour which breached the restrictions occurred for five years.

[54] Any fine ought to have a deterrent effect to other practitioners who might contemplate breaching the advertising regulation.[28] A fine imposed upon Mr Bray and, therefore, expected to be imposed upon others must be significant so as not to represent a mere "cost of business" and be a risk worth taking.[29] Substantial fines have been imposed in relation to similar conduct.[30]

[55] The appropriate fines here are:

(a) Charge 1 – $15,000.00

(b) Charge 2 – $10,000.00

(c) Charge 3 – $5,000.00

[56] Given that the pecuniary penalties are significant, Mr Bray should be given until 30 June 2026 to pay them.

Reprimand

[57] Section 456(2)(e) of the *Legal Profession Act* provides that a practitioner may be reprimanded:

> "(e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner…"

[58] Advertising in breach of the regulations frustrates the purposes of the PIPA and gives Mr Bray an advantage over practitioners who comply with the restrictions As earlier explained, deterrence is an important consideration. There are no special circumstances which would engage a discretion to give a private reprimand, and the circumstances (especially the relevance of deterrence) strongly justify a public reprimand. That should be given.

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26 *Legal Services Commissioner v Madden* [2009] 1 Qd R 149 at [122]; *Legal Services Commissioner v Shand* [2018] QCA 66 at [52], recently approved in *Legal Services Commissioner v Tang* [2025] QCA 206 at [27] and [28].

27 *Rich v Australian Securities and Investments Commission* (2004) 220 CLR 129 at [35]-[38].

28 *Attorney-General v Bax* [1999] 2 Qd R 9 at 22.

29 *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* (2013) 250 CLR 640.

30 *Legal Services Commissioner v Malouf* [2007] NSWADT 215; and *Legal Services Commissioner v Bryden & Hagipantelis (No 3)* [2012] NSWADT 225.

Costs

[59] There are no exceptional circumstances which justify a departure from the default position as to costs prescribed in s 462(1) of the *Legal Profession Act*; that Mr Bray pay the Commissioner's costs. Mr Bray does not say otherwise. It should be ordered that Mr Bray pay the Commissioner's costs of the application to be assessed on the standard basis as if the proceeding was one before the Supreme Court of Queensland.

Orders

[60] For the reasons given, the orders of the Tribunal are that:

1. Charge 1 is proved and constitutes professional misconduct.
2. Charge 2 is proved and constitutes professional misconduct.
3. Charge 3 is proved and constitutes unsatisfactory professional conduct.
4. On each charge, the respondent be publicly reprimanded.
5. The respondent is to pay a pecuniary penalty of $15,000.00 in relation to charge 1.
6. The respondent is to pay a pecuniary penalty of $10,000.00 in relation to charge 2.
7. The respondent is to pay a pecuniary penalty of $5,000.00 in relation to charge 3.
8. The respondent is to pay the Commissioner's costs of the disciplinary application, such costs to be assessed on the standard basis in the manner in which costs would be assessed if the matter were litigated in the Supreme Court of Queensland.
9. The pecuniary penalties totalling $30,000.00 must be paid by 4 pm on 30 June 2026.