



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

Response template: Public consultation - revised *Guidelines for advertising regulated health services*

National Boards and the Australian Health Practitioner Regulation Agency (AHPRA) are seeking feedback about the revised *Guidelines for advertising regulated health services*.

This response template is an alternative to providing your response through the online platform available on the consultation [website](#).

IMPORTANT INFORMATION

Privacy

Your response will be anonymous unless you choose to provide your name and/or the name of your organisation.

The information collected will be used by AHPRA to evaluate the revised guidelines. The information will be handled in accordance with AHPRA's privacy policy available [here](#).

Publication of responses

Published responses will include the name (if provided) of the individual and/or the organisation that made the response.

You must let us know if you do **not** want us to publish your response.

Please see the [public consultation papers](#) for more information about publication of responses.

Submitting your response

Please send your response to: AHPRA.consultation@ahpra.gov.au

Please use the subject line: Feedback on guidelines for advertising regulated health services

Responses are due by: **26 November 2019**

Public consultation questions

Please ensure you have read the [public consultation papers](#) before providing feedback as the questions are specific to the revised Guidelines for advertising regulated health services.

Use the corresponding text boxes to provide your responses. You do not need to answer every question if you have no comment.

1. How clear are the revised guidelines?
The revised guidelines are easily read and understood and therefore we have no comments in this regard.
2. How relevant is the content of the revised guidelines?
The RANZCP considers the content of the revised guidelines to be relevant and therefore has no comments in this regard.
3. Please describe any content that needs to be changed or deleted in the revised guidelines.
<p>We recommend removing the excerpts of section 133 of the National Law from the substantive text and consolidating them into an appendix. They do not necessarily add to the content of the revised guidelines, and a clear explanation of the law in non-legalistic language is more likely to assist readers in understanding the relevant law.</p> <p>Placing the relevant National Law provisions into an appendix also draws the structure of these revised guidelines into line with the structure of the draft revised <i>Guidelines for mandatory notifications</i> (as published for public consultation in September 2019). Providing consistency across these documents may assist readers to become familiar with documents published by AHPRA and the National Boards more quickly, therefore allowing readers to better navigate and understand them.</p>

4. Should some of the content be moved out of the revised guidelines to be published in the advertising resources section of the AHPRA website instead?

If yes, please describe what should be moved and your reasons why.

We recommend removing content from the guidelines where that content is already published on the AHPRA website. Duplicated material includes, for example, the [Summary of advertising obligations](#). Instead of duplicating the material, a link to the relevant material could be provided. Please see our response to Question 9 for further comments in relation to this matter.

5. How helpful is the structure of the revised guidelines?

The general structure of the revised guidelines is clear, consistent and helpful for readers. We do, however, make the following suggestions in relation to the structure of the revised guidelines.

We consider that the 'Summary of advertising obligations' section should be placed after the Introduction. Changing the order of these sections will allow readers to consider the purpose and scope of the guidelines before considering the substantive information about advertising obligations. It will also allow readers to consider a summary of their obligations before considering the detailed explanation of each advertising requirement in section 133 of the National Law. This suggestion may no longer be relevant if the Summary of advertising obligations section is removed in accordance with our response to Question 4 above.

The 'Definitions' section is currently near the end of the revised guidelines and therefore it may be easy for readers to read the entirety of the revised guidelines before appreciating that some terms used in them have specific meanings in the context of the guidelines and section 133 of the National Law. Additionally, moving the 'Definitions' section to the beginning of the revised guidelines will enable the definitions of 'advertising' and 'advertiser' in sections 3.1 and 3.2 to be removed, avoiding duplications. We therefore recommend that the 'Definitions' section should be incorporated into the Introduction.

We also recommend that any substantive content included in footnotes (such as the content in footnotes 3, 6 and 8, for example) should be moved into the text. Given that this information is likely to be helpful and relevant to readers, it should be obvious to readers in the main text.

6. Are the flow charts and diagrams helpful?

Please explain your answer.

We consider that the flowcharts are likely to assist advertisers to self-assess their advertising materials to ascertain whether they are compliant with the National Law.

In Figures 1 and 2, the final boxes, which read '[c]heck that the claim is not otherwise fake, misleading or deceptive' and '[n]ot in breach of advertising provisions but might be relevant to other legislation, standards, codes or guidelines' respectively, could refer the reader to Appendix 1. Readers may find it helpful to refer to the information about other regulations and regulators provided in Appendix 1 at that juncture.

The table included in section 4.3.3 is also very useful for advertisers and provides much clarity in relation to responsibility for compliance. We are pleased to see that this table clarifies that health practitioners are not responsible for removing unsolicited testimonials which are published on websites and platforms over which they do not have control.

7. Is there anything that needs to be added to the revised guidelines?

We encourage AHPRA and the National Boards to consider the following additions to the guidelines.

Examples

The inclusion of examples would be helpful in the revised guidelines. In particular, examples of advertising which would and would not contravene the advertising provisions would be helpful for advertisers or potential advertisers. Examples may assist advertisers to better understand the 'tipping point' at which advertising material becomes, for example, false, misleading or creates an unreasonable expectation of beneficial treatment. Examples could draw upon previous decisions made by the National Boards or relevant tribunals in relation to section 133 of the National Law.

Alternatively, a link could also be provided to the [examples on the AHPRA website](#).

Practical compliance tips

We consider that the revised guidelines could provide further practical guidance for advertisers. For example, it would be useful to include a list of questions which advertisers could ask themselves to assess whether advertising material breaches section 133 of the National Law.

Additionally, a link should also be provided to the [Check and correct](#) resources on the AHPRA website.

Section 2: Purpose of the guidelines

It may be pertinent to add a comment in Section 2 which sets out that the revised guidelines do not apply to health practitioners use of social media generally (ie not for advertising). A link to [the National Boards' Social Media Policy](#) could also be provided for clarity and ease of reference.

Definition of advertising

It is noted that the advertising definition identifies examples of advertising and relevant exclusions. The RANZCP recommends that consideration also be given to whether guidelines or standards published by health services, which may refer to services provided by that health service, should be included or excluded from the definition of advertising.

Further comments regarding issues which would be given more emphasis in the revised guidelines are provided in our response to Question 9.

8. It is proposed that the guidelines will be reviewed every five years, or earlier if required.

Is this reasonable?

Please explain your answer.

We agree that the guidelines should be reviewed every five years, subject to changes required as a result of legislative amendments, considerable changes in the National Boards' decision-making processes or AHPRA's notification and investigation processes.

9. Please describe anything else the National Boards should consider in the review of the guidelines.

We recommend that the following issues be given greater emphasis in the revised guidelines.

We suggest that the revised guidelines emphasise that, when considering whether advertising material is false, misleading or deceptive, advertisers should consider both how patients would perceive the material and what the 'overall impression' of the material is. This principle is canvassed in the current published *Guidelines for advertising regulated health services*, and referred to in [guidance published by the Australian Competition and Consumer Commission](#). It is important to include as it allows advertisers to assess whether their material is compliant with section 133(1)(a) using the correct legal test and considering the patient perspective.

When creating advertising materials, we consider that it is important for health practitioners to have regard to professional and ethical standards, as evidenced in, for example, the Medical Board's *Good Medical Practice: a code of conduct for doctors in Australia* or the RANZCP's [Code of Ethics](#). We therefore recommend that the guidelines encourage health practitioners to consider their broader ethical and professional obligations when creating and publishing advertising materials. Reference to these obligations could be made in the Introduction.

It is also recommended that due consideration be given to minimising the current overlap of information provided on the AHPRA website and the revised guidelines. Duplication of material increases the volume of information and therefore it may be less clear to advertisers which source of information is current and accurate. Hyperlinks in the guidelines which take advertisers to pre-existing online information may be one way to remedy this.

10. Please add any other comments or suggestions for the revised guidelines.

We do not have any further comments or suggestions in relation to the revised guidelines at this time.

The RANZCP looks forward to seeing the final version of the revised guidelines following this consultation, and is willing to provide any other feedback to the consultation as required. Please contact [REDACTED] or at [REDACTED] to discuss further.

Thank you!

Thank you for participating in the consultation.

Your answers will be used by the National Boards and AHPRA to improve the Guidelines for advertising regulated health services.