



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

## Guidelines for advertising a regulated health service

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Draft 2019

consultation draft

# Contents

<b>Foreword</b> .....	<b>4</b>
<b>Summary of advertising obligations</b> .....	<b>5</b>
<b>1. Introduction</b> .....	<b>6</b>
<b>1.1 About these guidelines</b> .....	<b>6</b>
<b>1.2 Compliance and enforcement</b> .....	<b>6</b>
<b>2. Purpose of the guidelines</b> .....	<b>7</b>
<b>3. Scope and application</b> .....	<b>7</b>
<b>3.1 What is considered advertising?</b> .....	<b>7</b>
<b>3.2 Who is an advertiser?</b> .....	<b>7</b>
<b>4. What are the advertising provisions of the National Law?</b> .....	<b>8</b>
<b>4.1 False, misleading or deceptive advertising</b> .....	<b>8</b>
4.1.1 Evidence required for claims about the effectiveness of regulated health services.....	8
4.1.2 What is acceptable evidence?.....	8
4.1.3 Titles and claims about registration, competence and qualifications .....	10
Use of endorsements, specialisations, specialties and specialist terms in advertising.....	10
Overstating specialist area of practice.....	10
Position titles in employment contexts.....	11
Use of the title doctor .....	11
4.1.4 Making comparisons.....	11
<b>4.2 Gifts, discounts or inducements</b> .....	<b>11</b>
<b>4.3 Testimonials</b> .....	<b>12</b>
4.3.1 What is a testimonial?.....	12
4.3.2 Are patient reviews permitted in advertising? .....	12
4.3.3 Who is responsible for compliance with the prohibition on the use of testimonials in advertising?.....	13
<b>4.4 Advertising that creates an unreasonable expectation of beneficial treatment</b> .....	<b>14</b>
4.4.1 Images and photographs.....	14
<b>4.5 Encouraging indiscriminate or unnecessary use of health services</b> .....	<b>15</b>
Definitions .....	16
<b>Advertiser</b> .....	<b>16</b>
<b>Advertising</b> .....	<b>16</b>
<b>AHPRA</b> .....	<b>17</b>
<b>Health practitioner</b> .....	<b>17</b>

Health service provider .....	17
National Board.....	17
National Law .....	17
Person .....	17
Product.....	17
Regulated health service.....	17
Social media .....	17
<b>5. Appendix 1: Associated legislation and agencies .....</b>	<b>18</b>
Australian Consumer Law .....	18
Poisons Standard (Standard for the Uniform Scheduling of Medicines and Poisons) .....	18
Drugs and Poisons legislation.....	18
<b>6. Appendix 2: Title protection .....</b>	<b>19</b>

consultation draft

## Foreword

The 15 national health practitioner boards regulate registered health practitioners in Australia. They:

- set the standards that practitioners must meet through the development of registration standards, codes and guidelines
- register health practitioners and students, and
- manage notifications about the health, conduct or performance of practitioners<sup>1</sup>.

The Australian Health Practitioner Regulation Agency (AHPRA) works in partnership with the National Boards to implement the National Registration and Accreditation Scheme (the National Scheme) and administer the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

The core role of the National Boards and AHPRA is to protect the public.

The National Law provides for National Boards to develop and approve codes and guidelines. As a guideline established under the National Law, the *Guidelines for advertising a regulated health service* are admissible in proceedings under the National Law as evidence of what constitutes acceptable advertising.

A court or tribunal may consider these guidelines when hearing advertising offences against section 133 of the National Law. Anyone advertising regulated health services (both registered health practitioners and non-practitioners) must ensure their advertising complies with the National Law and other relevant legislation.

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<sup>1</sup> In NSW notifications about health, performance and conduct are managed by the Health Care Complaints Commission and the Health Professional Councils. In Queensland they are managed jointly by the Office of the Health Ombudsman and the National Boards. Complaints about advertising are managed according to the *Advertising compliance and enforcement strategy for the National Scheme*.

## Summary of advertising obligations

Advertising health services is lawful and can be a helpful source of information for patients and consumers. However, both health practitioners and non-practitioners have regulatory obligations when advertising a regulated health service. Advertising can be misinterpreted or taken out of context, meaning it can be misleading, so advertisers have a responsibility to take steps to prevent this from happening. While these obligations are summarised below the guidelines should be read in their entirety.

### **1. Advertising must not be false, misleading or deceptive, or likely to be misleading or deceptive.**

There are many ways in which advertisements can be false, misleading or deceptive. Common misleading advertising includes:

- statements, claims or comparisons about the effectiveness of treatment that are not supported by acceptable evidence
- lists of health conditions a practitioner can 'assist with' or 'treat' without clearly specifying what aspect of the health condition or associated symptoms the treatment will focus on or how it will help (unqualified claims), and/or
- the misleading use of titles, in particular, the use of a title or words that imply a practitioner is a registered specialist when they are not.

### **2. Any terms or conditions must be included when advertising offers a gift, discount or other inducement.**

### **3. Advertising must not include testimonials about a service or business.**

Advertising that uses testimonials is prohibited because testimonials are personal opinions recommending a health service or business. Testimonials often have no scientific or objective basis and can mislead consumers about clinical services or treatment options. They are also not usually a balanced source of information as they typically include a narrow selection of positive comments about patient experiences, so they do not tell the whole story.

Advertisers are responsible for all published testimonials (solicited or unsolicited) that are within their control, such as those on social media.

### **4. Advertising must not create an unreasonable expectation of beneficial treatment.**

Advertising must not state or imply a treatment can help consumers in a way that may not be realistic, likely or possible.

### **5. Advertising must not directly or indirectly encourage the indiscriminate or unnecessary use of regulated health services.**

Advertising must not encourage consumers to buy or use a regulated health service they do not need and is not clinically indicated.

## 1. Introduction

### 1.1 About these guidelines

The National Law states that the National Boards can develop and approve codes and guidelines, including guidelines about the advertising of regulated health services by registered health practitioners or other persons/entities<sup>2</sup>. The *Guidelines for advertising regulated health services* (the guidelines) were jointly developed by all National Boards. As guidelines developed under the National Law, they are admissible in proceedings as evidence of what constitutes acceptable advertising.

The guidelines explain the obligations under the National Law that apply to anyone advertising regulated health services and explain what is meant by false, misleading and deceptive advertising. [Resources](#) to supplement these guidelines have also been developed and are available on the website to further help advertisers understand their obligations.

The guidelines do not provide advice about how to advertise. AHPRA and the National Boards cannot provide advertisers with legal advice about their advertising and they cannot approve advertising.

*These guidelines are not a substitute for legal advice. Anyone requiring advice about advertising a regulated health service should seek appropriate independent advice from their legal adviser or indemnity insurer.*

### Obligations under the National Law

Section 133 of [the National Law](#) regulates advertising of regulated health services. It states:

1. *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—*
  - (a) *is false, misleading or deceptive or is likely to be misleading or deceptive; or*
  - (b) *offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer; or*
  - (c) *uses testimonials or purported testimonials about the service or business; or*
  - (d) *creates an unreasonable expectation of beneficial treatment; or*
  - (e) *directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.*

*Maximum penalty—*

*in the case of an individual—\$5,000; or*

*in the case of a body corporate—\$10,000.*

*A person does not commit an offence against subsection (1) merely because the person, as part of the person's business, prints or publishes an advertisement for another person.*

*In proceedings for an offence against this section, a court or tribunal may have regard to a guideline approved by a National Board about the advertising of regulated health services.*

*In this section — regulated health service means a service provided by, or usually provided by, a health practitioner.*

### 1.2 Compliance and enforcement

AHPRA has published an [Advertising compliance and enforcement strategy for the National Scheme](#) that sets out how the National Boards and AHPRA monitor and enforce compliance with the advertising

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<sup>2</sup> Sections 39, 40 and 133 of the National Law.

provisions of the National Law. The strategy adopts a risk-based, proportionate approach to enforcing the advertising requirements in the National Law. Please refer to the strategy for more information about how complaints about and potential breaches of the advertising provisions in the National Law are managed.

As a risk-based regulator AHPRA will only take regulatory action where there is a risk to the public, and only take the minimum regulatory force appropriate to manage the risk.

## 2. Purpose of the guidelines

These guidelines are developed to help advertisers to understand their obligations when they are advertising a regulated health service. The guidelines, together with the supplementary additional resources, support compliance with the advertising requirements in the National Law. Compliance with the advertising requirements in the National Law is in the interest of the public as it protects the public from false, misleading or deceptive advertising.

The guidelines do not prevent health service providers from informing the public about the services they provide or stop members of the community from discussing their experiences online or in person.

The guidelines are developed in recognition that:

- advertising can be a helpful and effective way to communicate services that are available to the public
- advertising can be misinterpreted or taken out of context meaning it can be misleading, so advertisers have a responsibility to take steps to prevent this from happening, and
- false, misleading or deceptive advertising can cause harm to the public if it results in poorly informed healthcare choices.

## 3. Scope and application

### 3.1 What is considered advertising?

In the context of advertising a regulated health service, advertising includes all forms of verbal, printed or electronic public communication that promotes and seeks to attract a person to a health service provider.

A practitioner providing information about treatment or cost related issues to their patient or client within the context of a healthcare consultation is not considered advertising.

### 3.2 Who is an advertiser?

For the purpose of section 133 of [the National Law](#), anyone (person or business) who advertises a regulated health service (see above and in the Definitions), is considered an 'advertiser' and must comply with the advertising provisions of the National Law.

The person or entity who controls part or all of the advertising (i.e. who authorises the content) is the advertiser<sup>3</sup>. Advertisers can include:

- registered health practitioners
- individuals (non-registered practitioners), and
- businesses, partnerships and corporate entities.

A regulated health service is<sup>4</sup>:

- any service provided by a registered health practitioner, or
- a service that is usually provided by a registered health practitioner (but is provided by a non-registered practitioner).

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<sup>3</sup> An advertiser is deemed to have control of the advertising if they publish or authorise content or direct someone to publish or draft content (including a third party, a patient, staff member or marketing agency) or if there is a mechanism for the advertiser to modify or remove content published by an unrelated publisher.

<sup>4</sup> The National Law does not regulate therapeutic goods. These are regulated by the Therapeutic Goods Administration (TGA). See the TGA website for further explanation of its regulatory scope.

## 4. What are the advertising provisions of the National Law?

This section provides further explanation about the advertising requirements of the National Law.

### 4.1 False, misleading or deceptive advertising

*133 (1) A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—*

*(a) is false, misleading or deceptive or is likely to be misleading or deceptive*

Advertisers must not make false, misleading or deceptive claims in their advertising.

Advertising may be false, misleading or deceptive when it:

- misleads, either directly or by implication through the use of emphasis, comparison, contrast or omission
- provides partial information and omits important details
- makes statements about the effectiveness of the treatment that are not supported by acceptable evidence
- makes unqualified claims about the effectiveness of treatment by listing health conditions that a treatment or service can 'assist with' or 'treat'
- suggests a practitioner is a registered health practitioner or holds specialist registration or an endorsement when they do not, by using a title and/or other means
- minimises, underplays or under-represents the risk or potential risk associated with a treatment or procedure
- makes comparisons about the health outcomes, the quality of care or competency or experience of practitioners that are not supported by acceptable evidence, and/or
- makes claims about providing a superior health service.

#### 4.1.1 Evidence required for claims about the effectiveness of regulated health services

Advertisers of regulated health services must be able to substantiate claims made in advertising. This is referred to as 'acceptable evidence' in these guidelines. Acceptable evidence mostly encompasses empirical data from formal research or systematic studies, in the form of peer-reviewed publications. The evidence required for claims in advertising and the evidence for clinical decisions about the services provided are different. Figure 1 can be used to help identify when claims about health services might be in breach of the advertising provisions in the National Law because they are not supported by acceptable evidence.

#### 4.1.2 What is acceptable evidence?

The approach of AHPRA and the National Boards towards assessing the evidence for claims made in advertising is consistent with that used by the wider scientific and academic community, including that primary sources of evidence should be used wherever possible. Advertisers should consult the *Guide to assessing the evidence for advertising claims* to make sure there is acceptable evidence for any claims made in their advertising. The guide is available<sup>5</sup> on the [AHPRA website](#).

The evidence required to support a therapeutic claim will depend on the specific claim made in the advertisement. A well-conducted systematic review of relevant Randomised Control Trials (RCT) represents the highest level of evidence where it includes and identifies all studies on a given topic and the review is systematic, reproducible and representative of the totality of evidence. Where a systematic review is unavailable, it is important that all relevant sources of evidence are considered (i.e. the research is not 'cherry picked').

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<sup>5</sup> The guide is currently being developed and will be published by the time the revised advertising guidelines are finalised.



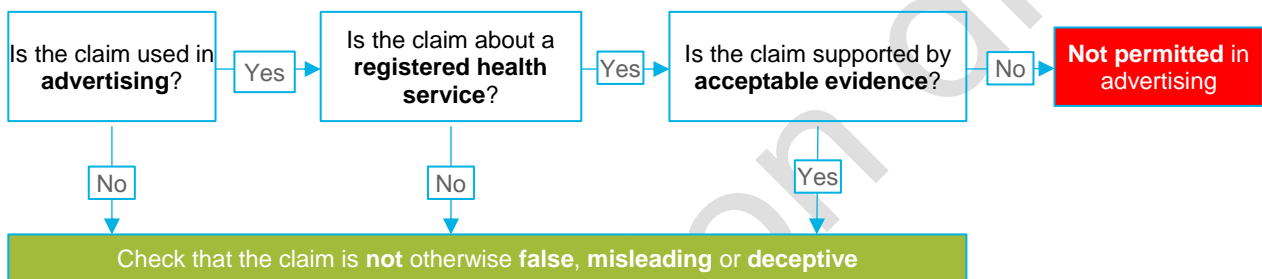
Examples of unacceptable evidence could include a comparative study without concurrent controls or a single case study. Such evidence has a higher risk of biased (or inaccurate) findings because of the study's design.

The following types of studies will generally not be considered acceptable evidence for advertising claims:

- studies involving no human subjects
- before and after studies with few or no controls
- self-assessment studies
- anecdotal evidence based on observations in practice
- outcome studies or audits, unless bias or other factors that may influence the results are carefully controlled, and/or
- studies that are not applicable to the target population.

AHPRA and the National Boards have published further guidance about acceptable evidence at [www.ahpra.gov.au/Publications/Advertising-resources/Further-information.aspx](http://www.ahpra.gov.au/Publications/Advertising-resources/Further-information.aspx).

Figure1: When claims are not supported by acceptable evidence and so are not permitted in advertising under the National Law



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<sup>6</sup> A claim can be false, misleading or deceptive for reasons other than a lack of acceptable evidence (see 4.1)

### 4.1.3 Titles and claims about registration, competence and qualifications

The National Law regulates the use of certain titles. Misuse of a protected title is an offence under the National Law. Advertisers should be aware of the protected titles for the profession that they are advertising.

#### Use of endorsements, specialisations, specialties and specialist terms in advertising

The National Law protects specialist titles and endorsements. A specialist title indicates that a practitioner holds specialist registration in one of the recognised specialties available to certain professions. An endorsement on a practitioner's registration indicates that the practitioner is qualified to practise in an approved area of practice. A registered health practitioner who does not hold specialist registration or an endorsement may not use the title 'specialist', a recognised speciality title or an endorsed title, through advertising or other means, to present themselves to the public as holding specialist registration or endorsement in relation to approved areas of practice in a health profession.

The National Law prohibits claims of:

- holding a type of registration, including specialist registration or endorsement, if the person does not hold this type of registration and/or
- being qualified to practise as a specialist health practitioner, or to hold an endorsement, if the person does not hold this type of registration.

So a registered health practitioner may not, through advertising or other means:

- claim to be a 'specialist' or use a recognised specialty title to present themselves to the public as holding specialist registration, when they do not hold specialist registration in the relevant recognised specialty
- claim to hold an endorsement or use an endorsed title to present themselves to the public as holding an endorsement in relation to approved areas of practice in a health profession, when they do not hold the relevant endorsement
- claim to be qualified to practise as a specialist health practitioner when they are not registered in the relevant specialty, or
- claim to be qualified to hold an endorsement when they do not hold the relevant endorsement.

While the use of some titles may not necessarily breach title protections in the National Law, when used in advertising it may be considered false, misleading or deceptive under the advertising provisions. When advertising, it is important that the use of words or titles does not lead a consumer to believe the practitioner holds specialist registration or an endorsement they do not hold; or imply that the practitioner is more skilled or has greater experience than is the case.

Advertising that uses the words, or variations of the words or phrases 'specialist', 'specialises in', 'specialty', 'specialised' implies the practitioner holds specialty registration and is likely to mislead the public if the practitioner does not hold specialist registration. Words such as 'substantial experience in' or 'working primarily in' are less likely to be misleading.

An unlawful claim about specialist registration or endorsement by a registered health practitioner may also constitute behaviour for which health, conduct or performance action may be taken.

#### Overstating specialist area of practice

Where a practitioner holds specialist registration in a recognised specialty, they should ensure their use of 'specialist', 'specialises in', 'specialty', or 'specialised' in their advertising is restricted to the specialty they are registered in and does not misrepresent their specialist registration.

For example, a medical practitioner who holds specialist registration in general practice should not claim that they are a cancer specialist, as this may mislead the public into the belief that they hold specialist registration in oncology.

## Qualifications

Advertising qualifications or memberships can provide the public with useful information about a practitioner's education and experience. It can help consumers make informed decisions about accessing regulated health services. If a practitioner holds further or postgraduate qualifications, or has specific experience it is acceptable to advertise that in an accurate and factual manner. For example, 'Master of Public Health', or '10 years' experience working at clinic XY'.

Where a National Board acknowledges further education awarded by a professional college, as in physiotherapy, any reference to the further qualification must clearly specify the relevant educational award. For example, 'Mr P Smith, Specialist Musculoskeletal Physiotherapist (as awarded by the Australian College of Physiotherapists in 2008)'.

Take care that abbreviations or post-nominal letters to indicate membership of a body or association are not misleading by explaining the reference unless it is widely understood (such as some recognised specialties).

## Position titles in employment contexts

Context is important when considering whether a title is used in advertising to be subject to section 133 of the National Law. Use is unlikely to be considered advertising where the title is used within the employment context only (the title not used externally to promote the service to consumers) and:

- is recognised under an industrial award; or
- is determined by the employer and appears in the position description (e.g. Intensive Care Nurse); or
- the role does not involve patient care.

While this might be permitted in the circumstances, it must be clear to the public that the title relates specifically to the position held and the practitioner must not use this title outside the context of their employment.

In some contexts, individuals might use a title that includes some or all of a protected title together with a descriptive term. Use of a descriptor with a protected title might provide useful information to the public about the sub-set of the population, area of practice or specific setting the practitioner works in. However, advertisers must take care that the title does not over-represent the practitioner's skills, experience or qualifications, or imply specialist registration or endorsement.

## Use of the title doctor

Doctor is not a protected title, but registered health practitioners must be careful about how they use 'Doctor' or 'Dr' in their advertising because many patients historically associate the term with medical practitioners. If the title 'Dr' is used in advertising and does not refer to a registered medical practitioner, then (regardless of whether or not a Doctorate degree or PhD is held) the profession the practitioner is registered in should be made clear. For example, 'Dr John Citizen (chiropractor)'.

### 4.1.4 Making comparisons

Comparative advertising that is used to promote a service or product over another<sup>7</sup>, can be misleading and/or deceptive because it can be difficult to include complete information when comparing one health service with another. If comparative claims are used in advertising of regulated health services they must be substantiated and supported by acceptable evidence. Use of price comparisons of regulated health services must be clear and accurate.

## 4.2 Gifts, discounts or inducements

*133 (1) A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—*

- (b) offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer*

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<sup>7</sup> Comparison might relate to factors such as price, quality, range or volume and is also subject to Australian Consumer Law.

Advertising that offers a gift, discount or other inducement to attract someone to use the regulated health service or business must state the terms and conditions of the offer, gift or inducement.

Consumers generally consider the word 'free' to mean absolutely free. When the costs of a 'free offer' are recouped through a price rise elsewhere or through other sources such as Medicare, the offer is not actually free.

Advertising may be in breach of the National Law when the advertiser has failed to include terms and conditions and/or where the terms and conditions could be misleading for example, if it:

- contains price information that is unclear or inexact or vague
- excludes reference to any existing restrictions or limitation, such as age, expiry date, geographical or restrictions on who is eligible for the offer, and/or
- states an instalment amount without stating the total cost (which is a condition of the offer).

### 4.3 Testimonials

*133 (1) A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—*

*(c) uses testimonials or purported testimonials about the service or business;*

Section 133(1)(c) of the National Law specifically prohibits advertising a regulated health service in a way that uses testimonials or purported<sup>8</sup> testimonials. The risk of harm posed by the use of testimonials in advertising is greatest where it:

- creates an unreasonable expectation of beneficial treatment;
- is false, misleading or deceptive or likely to be misleading or deceptive, including testimonials that are:
  - selectively published or edited; or
  - fake.

#### 4.3.1 What is a testimonial?

The National Law does not define 'testimonial', so AHPRA and the National Boards have adopted its ordinary meaning of a positive statement about a person or thing. In the context of the National Law, testimonials are recommendations or positive statements about the clinical aspects of a regulated health service.

Not all reviews or positive comments made about a regulated health service are considered testimonials (as defined in these guidelines). For example, comments about customer service that do not include a reference to clinical aspects of care are not considered testimonials for the purposes of the National Law.

A clinical aspect<sup>9</sup> exists if one of the following is expressed:

- **Symptom** – the symptom or the reason for seeking treatment is stated in the comment or statement.
- **Intervention** – the specific treatment that the practitioner provided is stated or inferred.
- **Outcome** – the statement comments on the specific outcome or the skills or experience of the practitioner either directly or via comparison.

#### 4.3.2 Are patient reviews permitted in advertising?

Some consumers use online reviews to make decisions about their choice of practitioner and treatment options. Reviews can appear on business web sites, in a service directory or booking site, on social media, discussion for a search engine or on a review platform. The prohibition on using testimonials (or purported testimonials) to advertise a regulated health services does not affect consumers sharing information, expressing their views online or posting reviews on review platforms. The National Law does not regulate how members of the public can interact with review sites or discussion fora. The prohibition only exists where an advertiser makes use of testimonials (as defined above) to advertise a regulated

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<sup>8</sup> Such as fake testimonials, patient stories, patient experiences, or success stories.

<sup>9</sup> Practitioner-patient communication is considered a clinical aspect of care.

health service. Individuals or businesses that do not advertise a regulated health service are not subject to the ban on testimonials.

The restriction on testimonials only applies if a person or a business advertises (promoting a business or service provider) in a way that makes use of the testimonials to promote the service. See Figure 2 below to help identify whether or not a review is considered to be a testimonial used in advertising and is in breach of the advertising provisions in the National Law.

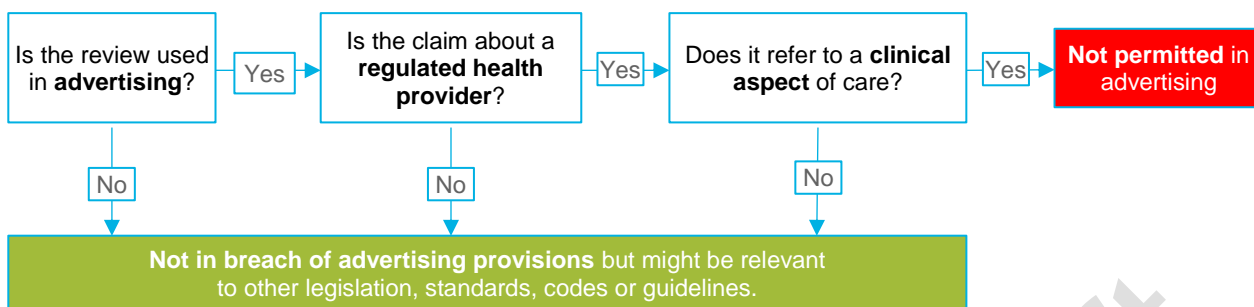
#### 4.3.3 Who is responsible for compliance with the prohibition on the use of testimonials in advertising?

The advertiser is responsible for ensuring that the content of the testimonial does not breach the National Law. Some scenarios include:

<b>Reviews appearing on:</b>	<b>Advertiser with responsibility for compliance with 133(1)(c)</b>
Online booking site or review platform with promotional content where practitioner/clinic has no control over the testimonials/reviews function.	Owner of online booking site, responsible for content (practitioner/clinic does not have control).
Clinic or practitioner’s website that publishes (or republishes) reviews/testimonials.	Clinic business owner or practitioner.
Clinic or practitioner’s social networking site or social media site that has reviews/testimonials function.	Clinic business owner or practitioner.  Not all social networking or social media sites allow for editing or removal of reviews/testimonials. However, reviews/testimonials may be required to be removed, such as by disabling the reviews/testimonials functions, if they pose a risk to the public.
Third party sites (including service directories, review platforms and/or patient discussion forums) where the reviews/testimonials were published, but not solicited by the practitioner/clinic.	Practitioner may have control over some content, but unlikely to have control over reviews/testimonials function.  The third-party site hosting the reviews is responsible for the reviews.
Third party sites (including service directories, review platforms and/or patient discussion forums) where the reviews/testimonials were published but were solicited by the practitioner/clinic.	If a person publishes a review/testimonial on a third-party site or requests a third party to publish reviews/testimonials on their behalf, the person is considered to be responsible for the reviews/testimonials.  An example of this would be where a practitioner has a media company publish testimonial videos to a third party, video-hosting site. As the practitioner requested the videos to be published, they are considered responsible for the content.

Practitioners are not responsible for removing (or trying to have removed) unsolicited testimonials published on platforms they do not control or on sites that are not advertising a regulated health service. However, a health service provider should take care if they choose to engage with a testimonial on a third-party site. Service providers should refrain from responding to reviews in a way that would be considered using a testimonial to advertise a regulated health service. Practitioners should also not direct or encourage clients to place reviews.

Figure 2: When reviews about a health service are in breach of the National Law



#### 4.4 Advertising that creates an unreasonable expectation of beneficial treatment

133 (1) A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—

(d) creates an unreasonable expectation of beneficial treatment;

Advertising must not create an unreasonable expectation of beneficial treatment. The claims of beneficial treatment can range from unsubstantiated scientific claims through to miracle cures. Advertising of treatments or services must not encourage or promote unreasonable expectations.

Examples where advertising may contravene this section of the National Law include where it:

- creates an unreasonable expectation of outcomes or recovery time after providing a regulated health service (such as by exaggerating or by providing incomplete or biased information)
- minimises the complexity of risk associated with a treatment
- contains false or unsubstantiated information or material that is likely to make a person believe their health or wellbeing may suffer from not using the health service, and/or
- contains a claim, statement or implication that is likely to create an unreasonable expectation of beneficial treatment by:
  - either expressly, or by omission, indicating that the treatment is infallible, unailing, magical, miraculous or a certainty, guaranteed or sure cure, and/or
  - stating that the practitioner has an exclusive or unique skill or remedy that will benefit the patient.

##### 4.4.1 Images and photographs

Care should be taken when using graphic or visual representations in health service advertising to ensure they do not create an unreasonable expectation of benefit.

Advertising may contravene this section of the National Law where:

- the outcomes experienced by one patient do not necessarily reflect the outcomes that other consumers may experience
- it is not clear how the advertised treatment is responsible for, or directly caused, the benefit, and/or
- images are not genuine and have been edited or enhanced.

Care should be taken when using 'before and after' images in advertising of regulated health services as they have the potential to be misleading or deceptive, to cause a member of the public to have unreasonable expectations of a successful outcome.

Use of 'before and after' images is less likely to be misleading if:

- the images are as similar as possible in content, camera angle, background, framing and exposure
- the posture, clothing and makeup are consistent
- the lighting and contrast are consistent
- there is an explanation if images have been altered in any way
- the referenced treatment or procedure is the only visible change that has occurred for the person being photographed, and
- the images are used within an individual consultation.

#### 4.5 Encouraging indiscriminate or unnecessary use of health services

133 (1) A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that—

(e) directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

Advertising must not directly or indirectly encourage the indiscriminate or unnecessary use of a regulated health service. Encouraging the unnecessary and indiscriminate use of regulated health services can lead consumers to buy or use a regulated health service they do not need and is not clinically indicated. Any health intervention involves inherent risks so encouraging the use of health services which is not based on clinical need or therapeutic benefit is not in the public interest.

Advertising may be unlawful when it:

- directly encourages indiscriminate or unnecessary use through words or phrases to create a sense of urgency. Examples include 'don't delay', 'act now before it's too late', 'quick', 'hurry', 'don't miss out', 'time is running out', 'for a limited time only' which influence the consumer to make a decision about timing or money rather than their healthcare needs
- indirectly encourages indiscriminate or unnecessary use through financial incentives such as prizes, bulk purchases, discounts, bonuses, gifts or without an option to exit the arrangement, to encourage consumers to use services regardless of clinical need or therapeutic benefit
- entices consumers with photos or images of unrealistic outcomes, and/or
- is misleading by underplaying or minimising potential risks (i.e. using words or phrases such as 'safe', 'effective', 'risk-free', 'pain-free').

## Definitions

Terms in this document are defined for the purposes of section 133 in the National Law. Advertisers should note that definitions in other legislation may be different to the definitions in these guidelines and should refer to the relevant definitions to ensure they comply with all relevant legislation.

### **Advertiser**

Any person or business that advertises a regulated health service provider (practitioner or business).

### **Advertising**

Includes but is not limited to all forms of verbal, printed or electronic public communication that promotes a regulated health service provider to attract a person to the provider (practitioner or business). This can include advertising via:

- television or cinema
- radio
- newspapers
- billboards
- books (if the book is promoting a particular health service provider)
- public and professional lists
- pictorial representations
- designs
- mobile communications or other displays
- internet (including websites and social media)
- all electronic media that promotes a particular regulated health service provider
- business cards, announcement cards
- office signs
- letterheads on public facing documents used to promote a particular health service provider
- public and professional directory listings, and
- any other similar professional notice (e.g. patient recall notices).

Advertising can also include situations in which practitioners make themselves available or provide information for media reports, magazine articles or advertorials if the practitioner (author) also promotes a particular (or their own) regulated health service provider.

This definition of advertising excludes:

- material issued to patients or clients during consultations when this material is designed to provide the person with clinical or technical information about their health conditions or relevant/recommended/clinically appropriate procedures, and when the person is given adequate opportunity to discuss and ask questions about the material. The information should not refer to services by the practitioner that could be interpreted as promoting that practitioner's services, as opposed to providing general information to the patient or client about a procedure or practice
- material issued by a person or organisation for the purpose of public health information, or as part of a public health program or health promotion activities (e.g. free diabetes screening), which confer no promotional benefits on the practitioners involved
- tenders, tender process, competitive business quotations and proposals, and the use of references about non-health services in those processes, provided the relevant material is not made available to the general public or used for promotional purposes (such as being published on a website)
- comments made by a patient/consumer about a practice or a practitioner where:
  - the comments are made on a social media site or account or patient/consumer information sharing site or account which is not used to advertise a regulated health service, and
  - that site or account is not owned, operated or controlled by the practice or practitioner referred to in the comments; and
- promotion of a profession, training or education for a profession.



## **AHPRA**

AHPRA is the Australian Health Practitioner Regulation Agency. AHPRA's operations are governed by the National Law (defined below). AHPRA provides administrative and policy support to the 15 National Boards that are responsible for regulating the registered health professions.

### **Health practitioner**

An individual who practises a registered health profession (as defined in the National Law).

### **Health service provider**

A person or entity that provides a regulated health service.

### **National Board**

A national health practitioner board established by section 31 of the National Law.

### **National Law**

The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

### **Person**

Expressions used to denote persons generally (such as 'person', 'party', 'someone', 'anyone', 'no-one', 'one', 'another' and 'whoever'), include a body politic or corporate as well as an individual.

### **Purported testimonial**

A statement or representation that appears to be a testimonial, whether provided in the first or third person.

### **Product**

A therapeutic good within the meaning of the *Therapeutic Goods Act 1989* (Cth) and does not apply to the advertising of other products that are not associated with the provision of regulated health services.

### **Regulated health service**

A service provided by, or usually provided by, a health practitioner (as defined in the National Law). A health service is one that aims *to prevent or ameliorate a person's specific health condition*.

### **Social media**

Includes websites and applications that enable users to create and share content or to participate in social networking. Social media is sometimes used to advertise a regulated health service.

Common social media platforms include:

- social networking
- micro blogging
- photo sharing
- video sharing, and
- forums.

See the AHPRA website at [www.ahpra.gov.au](http://www.ahpra.gov.au) for more information about what falls within the definition of social media.

## 5. Appendix 1: Associated legislation and agencies

### Australian Consumer Law

Administered by: Australian Competition and Consumer Commission (ACCC) and relevant state and territory consumer protection departments and agencies

Go to: [www.accc.gov.au](http://www.accc.gov.au)

### Therapeutic Goods

*Therapeutic Goods Act 1989* (Cth)

Therapeutic Goods Regulations 1990

*Therapeutic Goods Advertising Code 2018*

*Price information code of practice*

Administered by: Department of Health – Therapeutic Goods Administration

Go to: [www.tga.gov.au](http://www.tga.gov.au)

### Poisons Standard (Standard for the Uniform Scheduling of Medicines and Poisons)

Administered by: Department of Health – Therapeutic Goods Administration

Go to: [www.tga.gov.au](http://www.tga.gov.au)

### Drugs and Poisons legislation

Administered by agencies in each Australian state and territory

Queensland: Health (Drugs and Poisons) Regulation 1996: [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

New South Wales: *Poisons and Therapeutic Goods Act 1966*, Poisons and Therapeutic Goods Regulation 2008: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

Victoria: *Drugs, Poisons and Controlled Substances Act 1981*, Drugs, Poisons and Controlled Substances Regulations 2006: [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

Tasmania: *Poisons Act 1971*: [www.legislation.tas.gov.au](http://www.legislation.tas.gov.au)

ACT: *Medicines, Poisons and Therapeutic Goods Act 2008*, Medicines, Poisons and Therapeutic Goods Regulation 2008: [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

South Australia: *Controlled Substances Act 1984*, Controlled Substances (Poisons) Regulations 2011: [www.legislation.sa.gov.au/index.aspx](http://www.legislation.sa.gov.au/index.aspx)

Western Australia: *Medicines and Poisons Act 2014*: [www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_a147008.html](http://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147008.html) and Medicines and Poisons Regulations 2016: [www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_s48030.html](http://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s48030.html)

Northern Territory: *Medicines, Poisons and Therapeutic Goods Act*: <https://legislation.nt.gov.au/Legislation/MEDICINES-POISONS-AND-THERAPEUTIC-GOODS-ACT>

## 6. Appendix 2: Title protection

Summary of relevant sections of the National Law

Sections 113 to 119 describe the title and practice protections under the National Law, including the penalties for offences by individuals and bodies corporate.

Section 113 provides that a person cannot knowingly or recklessly take or use a protected title found in the table of that section or a prescribed title for a health profession which would induce a belief that the person is registered in that profession.

Section 115 provides that a person cannot knowingly or recklessly take or use the titles, 'dental specialist', 'medical specialist' or a specialist title for a recognised specialty unless the person is registered under that specialty.

Section 116 provides that a person who is not a registered health practitioner must not knowingly or recklessly (i) take or use the title 'registered health practitioner' or claim to be so registered or (ii) take or use a title, name, initial, symbol, word or description to indicate the person is a health practitioner or claim to be a health practitioner or (iii) indicate the person is authorised or qualified to practise as a health practitioner.

Section 117 provides that a person must not knowingly or recklessly claim or hold him or herself out to be registered or qualified to practise in a health profession or a division of a health profession if the person is not so registered. Section 117 also provides that a person cannot use or take a title which would induce a belief that such a person is so registered.

Section 118 provides that a person who is not a specialist health practitioner must not knowingly or recklessly take or use the title 'specialist health practitioner'. Further, a person must not use a title, name, symbol, word or description that would induce a belief that a person is or is authorised or qualified as a specialist health practitioner. Further, the person must not claim or hold out to be registered in a recognised specialty or claim to be qualified to practise as a specialist health practitioner.

Section 119 provides that a person must not knowingly or recklessly make claims about a type of registration, endorsement, or registration in a recognised specialty that the person does not have. Further, a person must not knowingly or recklessly make claims about another person having a type of registration, endorsement, or registration in a specialty that the person does not have. These are called 'holding out' provisions.

Note: the above is a summary only – please consult the National Law for more detail.