



Ahpra
& National
Boards

Guidelines for advertising a regulated health service

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Background

The Australian Health Practitioner Regulation Agency (Ahpra) works in partnership with 15 national health practitioner boards (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 National 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
- manage notifications about the health, conduct or performance of practitioners.¹

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

The National Law states that the National Boards can develop and approve codes and guidelines including guidelines about the advertising of a regulated health service by registered health practitioners or others.² The *Guidelines for advertising a regulated health service* (the guidelines) were jointly developed by all National Boards.

A note on terminology

These guidelines use both 'patient' and 'consumer' to mean a person or persons accessing healthcare, which includes clients and healthcare consumers. These terms can also include families, carers, groups and/or communities.

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

² Sections 39, 40 and 133 of the National Law

Executive summary

The National Law establishes the requirements for advertising a regulated health service. These requirements are important for public protection and help to ensure the public receives accurate and honest information about healthcare services. These guidelines have been developed to explain those obligations.

As the guidelines are established under the National Law, a court or tribunal may consider them when hearing advertising offences against section 133 of the National Law (see Appendix 1).

Anyone (registered health practitioners, individuals who are not registered as health practitioners and body corporates) advertising a regulated health service must ensure their advertising complies with the National Law and other relevant legislation (see Appendix 3).

Advertising requirements

The guidelines explain the obligations under the National Law that apply to any person or business advertising a regulated health service.

The guidelines set out:

- who is defined as an advertiser
- what is considered advertising
- how an advertiser can meet their legal obligations when advertising.

It is not possible to provide an exhaustive list of advertising that will or will not breach the National Law. The guidelines aim to explain legal obligations when advertising and to provide practical examples to help this understanding. Resources to supplement these guidelines are available on the [Ahpra website](#) to further help advertisers understand their obligations.

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

As regulators, Ahpra and the National Boards cannot provide advice about whether specific advertising is compliant. Advertisers should seek their own independent advice such as from their legal adviser or indemnity insurer.

If you are advertising a regulated health service, your advertising must not:

- **be false, misleading or deceptive**, or likely to be misleading or deceptive
- **offer a gift, discount or other inducement**, unless the terms and conditions of the offer are also stated
- **use testimonials or purported testimonials** about the service or business
- **create an unreasonable expectation of beneficial treatment**
- directly or indirectly **encourage the indiscriminate or unnecessary use of regulated health services.**

1. Purpose and advertising breaches

1.1 Purpose of the guidelines

These guidelines were developed to help advertisers understand their obligations when they are advertising a regulated health service. The guidelines, together with the resources published on Ahpra and National Board websites, support compliance with the National Law's advertising requirements. Compliance with the advertising requirements is in the public interest as it protects the public from unlawful advertising. The public are entitled to receive accurate, clear information about regulated health services. Unlawful advertising may compromise the healthcare choices of the public.

The guidelines do not prevent regulated health service providers from informing the public about the services they provide or stop members of the community from discussing their experiences online in forums outside the provider's control, 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
- false, misleading or deceptive advertising can cause harm to the public if it results in poorly informed healthcare choices.

1.2 How to make a complaint about an advertising breach under the National Law

A complaint about advertising can be made by using the complaint form on the [Ahpra website](#). You can also call Ahpra on 1300 419 495 for further information on making a complaint about advertising.

The [Ahpra website](#) also has information about how complaints about advertising are managed.

1.3 Process for managing advertising breaches under the National Law

A breach of an advertising requirement is a criminal offence for which a court may impose a monetary penalty. If you are a current or previously registered health practitioner, you may also be subject to disciplinary action.

Ahpra has published an [Advertising compliance and enforcement strategy for the National Scheme](#) (the strategy) that sets out how the National Boards and Ahpra monitor and enforce compliance with the National Law's advertising requirements. The strategy adopts a risk-based, proportionate approach to enforcing the advertising requirements of the National Law. Please refer to the strategy for more information about how complaints about breaches and potential breaches of the advertising requirements are managed.

Compliance and enforcement action will escalate depending on the ongoing assessment of risk and whether the advertiser is willing to comply.

The compliance and enforcement tools available to the National Boards and Ahpra vary depending on whether the advertiser is a registered health practitioner (or a previously registered health practitioner), individual, business, or a corporate entity.

For registered health practitioners the enforcement tools available under the National Law include the power to:

- investigate a practitioner's conduct
- impose conditions on the practitioners' registration, such as restricting their ability to advertise their services
- take disciplinary action in a panel or tribunal
- prosecute, which may lead to a financial penalty.

For corporate entities, business and individuals who are not registered health practitioners, the tools available under the National Law include the power to prosecute which may lead to a financial penalty.

1.4 What penalties apply for advertising breaches under the National Law?

Section 133 of the National Law includes financial penalties for offences which breach the advertising requirements of the National Law (see Appendix 1).

Advertisers whose advertising breaches the National Law may be prosecuted and ordered by a court to pay a penalty for each offence which breaches the National Law. The financial penalties vary depending on the type of advertiser. In the case of:

- an individual, there may be a financial penalty of up to \$5,000 per offence
- a body corporate, there may be a financial penalty of up to \$10,000 per offence.

If an advertising breach is related to an unlawful use of a protected title (see Appendix 2) this is also an offence under the National Law for which penalties can apply.³ In the case of:

- an individual, there may be a financial penalty of up to \$60,000 per offence, imprisonment of up to three years per offence or both
- a body corporate, a financial penalty of up to \$120,000 per offence may apply.

³ In Western Australia different penalties apply. In the case of an individual the maximum penalty is \$30,000, or in the case of a body corporate \$60,000.

2. What do the guidelines not cover?

2.1 Advice about whether advertising is compliant

The guidelines do not provide advice about how to advertise. Ahpra and the National Boards cannot give advertisers legal advice about their advertising and they cannot approve advertising. This is because as statutory regulators our role is to enforce the law and not to provide legal advice to advertisers about their 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.

2.2 Advertising therapeutic goods and Australian Consumer Law

Advertising a regulated health service often involves the advertising of therapeutic goods (e.g. medicines and medical devices) and requires compliance with the Australian Consumer Law. Advertisers must comply with all relevant legislation. The Australian Competition and Consumer Commission (ACCC) is responsible for laws governing Australian Consumer Law and the Therapeutic Goods Administration (TGA) is responsible for laws governing the advertising of therapeutic goods. More information about this is included in Appendix 3.

If a complaint about advertising may be of interest to another Australian regulatory authority, such as the TGA or ACCC, Ahpra may refer the matter to the appropriate regulator.

2.3 Public health publications or advice

The National Law's advertising requirements do not apply to public health information, advice and publications about or from public health services. This information is often provided as part of a public health program led by public health agencies such as Commonwealth, state or territory government health departments.

Example: Public health campaign

A regulated health service displaying a National Immunisation Program poster produced by the Australian Government that promotes the influenza vaccine would not breach the advertising requirements of the National Law.⁴

⁴ Advertisers who generate independent advertising material promoting a service involving the use or supply of therapeutic goods (including vaccines) should be aware that the therapeutic goods advertising legislation is likely to apply (see Appendix 3).

3. Scope and application

3.1 What is considered advertising?

The meaning of advertising for the purpose of these guidelines is set out in the Definitions.

In the context of advertising a regulated health service, advertising includes all forms of verbal, printed and electronic communication that promotes and seeks to attract a person to a regulated health service provider and/or to attract a person to use the regulated health service. Social media is also often used to advertise a regulated health service. The meaning of 'social media' for the purpose of these guidelines is set out in the Definitions.

A practitioner providing information about treatment or costs in a consultation, whether in person, by telephone or video or via other digital means, is not considered to be advertising a regulated health service.

3.2 Who is an advertiser?

Anyone (person, business or corporate entity) who advertises a regulated health service, is considered an advertiser and must comply with the advertising requirements of the National Law (see below and the Definitions).

The person or entity who controls part or all of the advertising (i.e. who authorises the content) is the advertiser.

An advertiser has control of the advertising if:

- they publish or authorise content or direct someone to publish or draft content (including a third party, staff member or marketing agency) or
- there is a mechanism for the advertiser to modify or remove content published by an unrelated publisher.

Advertisers are responsible for their advertising, so they need to check any content produced by others on their behalf.

Advertisers can include:

- registered health practitioners
- individuals who are not registered health practitioners
- businesses, partnerships and corporate entities.

A regulated health service is a service provided by, or usually provided by a registered health practitioner.

3.3 What must an advertiser do?

All advertisers of regulated health services must comply with:

- The National Law, including:
 - the advertising requirements under section 133 (see Appendix 1)
 - title and practice protection provisions under sections 113 to 120 (see Appendix 2).
- All other applicable legislation, such as laws related to Australian Consumer Law and therapeutic goods. The National Law does not regulate therapeutic goods, such as medicine and medical devices. These are regulated by the TGA. See the TGA website for further explanation of its regulatory scope. For information about Australian Consumer Law and the TGA see Appendix 3.

All registered health practitioners who advertise should be aware that:

- They must comply with other codes and guidelines published by the National Boards that describe the professional standards expected for each regulated health profession, including when advertising. Each National Board has published a code of conduct or equivalent which registered health practitioners must comply with or face possible disciplinary action.
- Although the National Boards do not enforce the legislation of other government departments or agencies such as therapeutic goods legislation or drugs and poisons legislation, a breach of this legislation may form the basis for disciplinary action under the National Law.

4. What are the advertising requirements of the National Law?

Section 133 of the National Law establishes the requirements for advertising a regulated health service and is set out in Appendix 1. This section of the guidelines provides further explanation about these requirements.

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. To avoid being misleading and deceptive when advertising, advertisers should aim for the following:

- sell your professional services on their merits
- be honest about what you do and say in relation to your business practices
- be able to identify when published material falls under the definition of advertising
- be able to regularly check and maintain compliance of all your advertising
- look at the overall impression of your advertising.⁵ Consider who the audience is, what the advertisement is likely to say or mean to them, and how easy it is for your audience to navigate and understand your 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/or omits important details
- uses scientific information that is inaccurate, unbalanced, not easily understood by the public, or does not clearly identify researchers, sponsors and the academic publication in which the results appeared
- 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, qualifications 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
- compares health outcomes, regulated health professions or practitioners or prices without complete information
- makes claims about providing a superior regulated health service.

⁵ See www.accc.gov.au/business/advertising-promoting-your-business/false-or-misleading-statements

4.1.1 Evidence required for claims made in advertising about the effectiveness of a regulated health service

Advertisers of a regulated health service must be able to substantiate claims made in advertising. This is referred to as 'acceptable evidence' in these guidelines. Acceptable evidence mostly includes empirical data from formal research or systematic studies in the form of peer-reviewed publications. Figure 1 on page 10 provides further guidance about when claims made in advertising need to be supported by acceptable evidence.

The evidence required for claims in advertising and the evidence for clinical decisions about the services provided are different.

There is an important difference between acceptable evidence for claims made in advertising and the evidence used for clinical decisions. When providing healthcare services, practitioners must obtain informed consent and are expected to discuss the evidence for different treatment options. This means patients have an opportunity to consider a proposed treatment, benefits and potential negative effects, ask questions of their practitioner(s) and make informed decisions about their healthcare.

Advertising does not provide this opportunity as the claims are generic and practitioners are not available to clarify whether a treatment is appropriate for an individual.

4.1.2 What is acceptable evidence?

Ahpra and the National Boards assess the evidence for claims made in advertising consistent with approaches used by the wider scientific and academic community. Primary sources of evidence should be used wherever possible. Advertisers should consult the Ahpra and National Boards' framework for assessing acceptable evidence for any claims made in their advertising. The framework is available on the [Ahpra website](#).

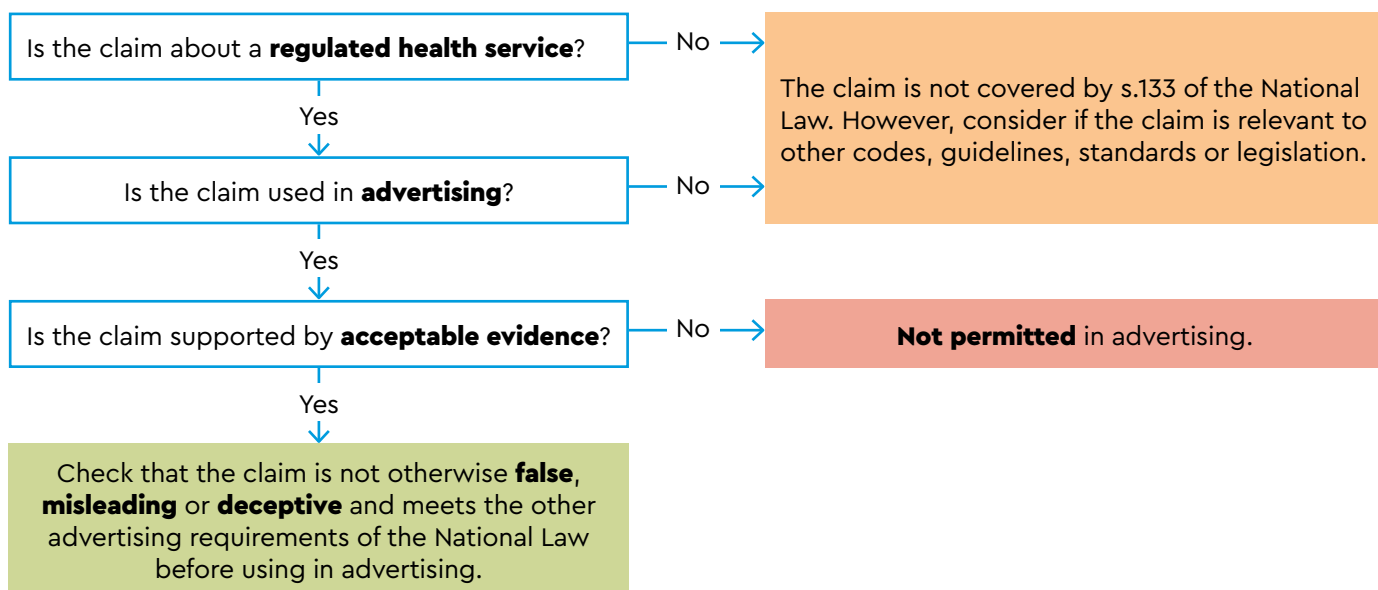
The evidence required to support a therapeutic claim will depend on the specific claim made in the advertisement. A well-conducted systematic review of relevant randomised controlled trials represents the highest level of evidence where it includes and identifies all studies on a given topic and the 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').

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
- studies that are not applicable to the target population.

Figure 1: When advertising claims need to be supported by acceptable evidence



4.1.3 Making comparisons with other regulated health services

Comparative advertising that is used to promote a regulated health service over another can be misleading and/or deceptive because it can be difficult to include complete information when making comparisons.

If comparative claims are used in advertising of regulated health services they must be clear, accurate and supported by acceptable evidence where relevant. Examples of comparative advertising include:

- comparisons between health outcomes and quality of care offered by different regulated health services
- comparing professions, or the competency, skill or experience of practitioners
- price comparisons of regulated health services.

4.1.4 Titles and claims about registration, competence and qualifications

The National Law regulates the use of certain titles (protected 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. Penalties can apply for a breach of National Law title protection provisions. In the case of an individual, there may be a financial penalty, imprisonment or both. In the case of a body corporate a financial penalty may apply (see section 1.4 What penalties apply for advertising breaches under the National Law?).

A summary of title protection under the National Law is set out in Appendix 2. This also provides lists of protected titles, recognised specialties, divisions, and endorsements, or links to those lists.

Further information and examples of non-compliant advertising about titles, claims about registration, competence and qualifications are on the [Ahpra website](#).

4.1.4.a Use of endorsements and recognised specialist titles in advertising

The National Law protects endorsements and recognised specialist titles. A specialist title indicates that a practitioner holds specialist registration in one of the recognised specialties for certain professions. An endorsement on a practitioner's registration indicates that the practitioner is qualified to practise in an approved area of practice.

Under the National Law, only the Ministerial Council can approve a recognised specialty in a health profession or approve an area of practice in a health profession for endorsement.

Only a registered health practitioner who holds specialist registration in a recognised specialty or an endorsement may use the relevant specialist title or a title relating to an endorsement in advertising. This includes in the name of the business or other advertising to the public.

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

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 a title related to an endorsement 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
- claim to be qualified to hold an endorsement when they do not hold the relevant endorsement.

An unlawful claim about specialist registration or endorsement by a registered health practitioner may also raise concerns about the practitioner's health, performance or conduct for which the National Board may take action to protect the public.

4.1.4.b Other uses of specialisations, specialties and specialist terms in advertising

Other uses of titles and specialist claims in advertising may not necessarily breach title protection provisions of the National Law, but may be considered false, misleading or deceptive under the advertising requirements.

When a practitioner does not hold specialist registration, the National Boards consider that any advertising using words or titles related to specialty is likely to mislead the public to believe the practitioner holds a type of specialist registration approved under the National Law.

This includes advertising that uses the words, or variations of the words or phrases 'specialist', 'specialises in', 'specialty', or 'specialised'. Words such as 'substantial experience in' or 'working primarily in' are less likely to be misleading.

Example – Use of 'specialist', 'specialises in', 'specialty', 'specialised'

Potential breach: Dr Lopez (Chiropractor) is a specialist in paediatric chiropractic care.

Correct: Dr Lopez (Chiropractor) has substantial experience working with musculoskeletal issues in children.

4.1.4.c 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.

Example – Overstating specialist area of practice

Potential breach: Dr Chan, Specialist paediatric general practitioner.

Correct: Dr Chan, Specialist general practitioner with substantial experience working with children.

A medical practitioner who holds specialist registration in general practice should not claim they are a paediatric specialist, as this may mislead the public into the belief that they hold specialist registration in paediatrics.

4.1.4.d Qualifications

Advertising of qualifications or memberships can provide the public with useful information about a practitioner's education and experience. It can help the public make informed decisions about accessing regulated health services. If a practitioner holds further or postgraduate qualifications, or has specific experience, or has completed specific courses it is acceptable to advertise that in an accurate and factual manner. It is also acceptable to refer to where the qualification was issued.

Example: Postgraduate qualifications

Correct: Master of Public Health.

Example – Specific experience

Correct: 10 years' experience working at clinic XY.

When 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.

Example – A National Board acknowledges further education

Correct: P Smith, Specialist Musculoskeletal Physiotherapist (as awarded by the Australian College of Physiotherapists in 2008).

Advertisers should ensure that abbreviations or post-nominal letters to indicate membership of a body or association are not misleading by implying the practitioner has more qualifications, skill or experience than is the case.

4.1.4.e Position titles in employment contexts

When considering whether a title may be in breach of section 133 of the National Law it is important to consider the context in which the title is used. A title is unlikely to be considered advertising when it is used within the employment context only (i.e. the title is not used externally to promote the service to the public) and:

- is recognised under an industrial award (e.g. Psychiatric Registered Nurse), or
- is determined by the employer and appears in the position description (e.g. Intensive Care Nurse), or
- the role does not involve providing healthcare.

However, 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.

4.1.4.f Protected titles with descriptive term

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 descriptive term with a protected title might provide useful information to the public about the subset 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.

Example – Recognised specialist title with a descriptive term

Potential breach: Dr Taylor, GP Oncologist.

If a medical practitioner who holds registration as a general practitioner uses this title this would be misleading as it implies the practitioner holds registration as a medical oncologist, a recognised specialty.

Correct: Dr Taylor, GP who works extensively with patients undergoing cancer treatment.

Example – Protected title with a descriptive term

Correct: Dr Nguyen, Sports chiropractor.

Sports chiropractor is not a recognised specialty, so this does not imply the practitioner holds specialist registration, rather it describes the area of practice the practitioner works in.

4.1.4.g 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 the public historically associates the term with medical practitioners. If the title 'Dr' is used in advertising and does not refer to a registered medical practitioner, then (whether or not a doctorate or PhD is held) the profession the practitioner is registered in should be made clear.

Example – Use of title doctor by professions other than medical practitioners

Potential breach: Dr Lee.

Correct: Dr Lee (Osteopath).

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.

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. The terms and conditions should be provided in plain language.

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.

The public 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 that may breach the National Law includes advertising that:

- contains price information that is unclear, inexact or vague
- makes an offer of 'make one consultation appointment, get one free', but raises the price of the first consultation to largely cover the cost of the second (free) appointment
- 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).

It may not be possible in some advertising to display the terms and conditions alongside an offer of a gift, discount or inducement. In this case the offer should direct the public to the location of the terms and conditions, such as through a link or directions to the section of the advertiser's website that contains the terms and conditions. This allows for an advertiser's full terms and conditions to be stated.

Advertisers must ensure that terms and conditions are easily found and accessible. The public should not be required to exhaustively search for or contact the advertiser for terms and conditions.

Further information and examples of non-compliant gifts, discounts and inducements are on the [Ahpra website](#).

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 testimonials, such as for example, patient stories and experiences, success stories, or fake testimonials. The risk of harm posed by using testimonials in advertising is greatest where it:

- creates an unreasonable expectation of beneficial treatment
- encourages the unnecessary use of regulated health services, and/or
- 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 used in advertising.

Not all reviews or positive comments made about a regulated health service are considered testimonials. For example, comments about customer service or communication style that do not include a reference to clinical aspects are not considered testimonials for the purposes of the National Law.

A clinical aspect exists if one of the following is expressed:

- **Symptom** – the specific symptom or the reason for seeking treatment.
- **Diagnosis or treatment** – the specific diagnosis or treatment provided by the practitioner.
- **Outcome** – 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 patients 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, on discussion forums, on a search engine or on a review platform.

The prohibition on using testimonials (or purported testimonials) to advertise regulated health services does not affect:

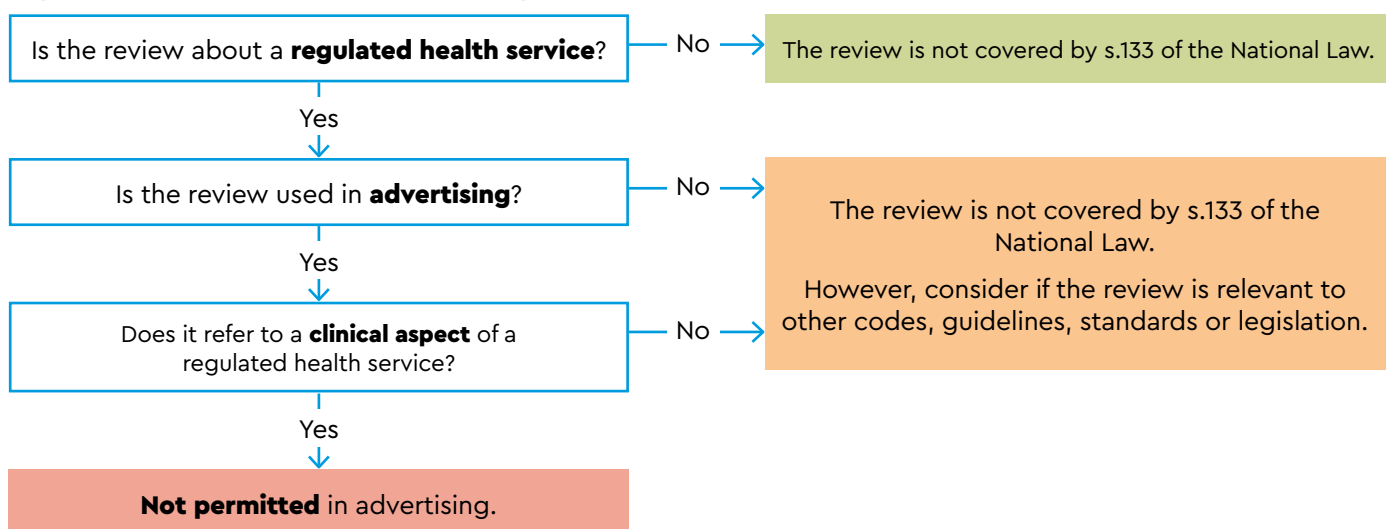
- patients sharing information, expressing their views online or posting reviews on review platforms
- how members of the public can interact with review sites or discussion forums
- individuals or businesses that do not advertise a regulated health service.

The prohibition on the use of testimonials only exists when:

- an advertiser makes use of testimonials (as defined above) to advertise a regulated health service, and/or
- a person or a business advertises in a way that makes use of the reviews/testimonials to promote the service.

See Figure 2 below to help identify whether a review is considered a testimonial used in advertising and is in breach of the requirements of the National Law.

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



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

The advertiser – that is, whoever has control over the advertising – is responsible for compliance with the prohibition on the use of testimonials in advertising.

Advertisers are not responsible for removing (or trying to have removed) testimonials published on platforms they do not control or on sites that are not advertising a regulated health service.

However, a regulated health service provider should take care if they choose to engage with reviews on a third-party site as this may be considered using a testimonial to advertise a regulated health service.

The examples below help to explain who is responsible for ensuring compliance with the advertising requirements of the National Law in relation to reviews from the public. Where the review appears and whether it is being used in advertising (as defined in these guidelines) are important for determining who is responsible for ensuring compliance.

Example – Clinic or practitioner's website

Review appearing on a clinic or practitioner's website that publishes (or republishes) reviews/testimonials.

The clinic business owner or practitioner (that is, whoever has control over the website) is responsible for compliance.

Example – Clinic or practitioner's business social media

Review appearing on a clinic or practitioner's business social media that has reviews/testimonials functions.

The clinic business owner or practitioner (that is, whoever has control over the website) is responsible for compliance.

Not all social media sites allow for editing or removal of testimonials. However, the clinic business owner or practitioner (whoever has control over the social media) is still responsible for ensuring compliance with the prohibition on testimonials. This may be achieved by disabling the reviews/testimonials functions.

Example – Third-party sites that include advertising

Review appearing on a third-party site that advertises a regulated health service (such as a booking site or review platform) where the practitioner/clinic has no control over the testimonials/reviews function.

The owner of the online booking site or review platform is responsible for compliance (that is, whoever has control over the testimonials/reviews function of the site or platform).

The clinic business owner or practitioner may have control over other content on the third-party site and would be responsible for ensuring that content complies with the advertising requirements.

Example – Third-party sites that do not advertise a regulated health service

Review appearing on a third-party site that does not advertise a regulated health service (including service directories, review platforms, social media platforms and/or discussion forums).

Advertisers are not responsible for removing (or trying to have removed) testimonials published on platforms they do not control or on sites that are not advertising a regulated health service.

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 be in breach of 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)
- overstates the potential benefit of a treatment
- minimises the complexity of risk associated with a treatment (i.e. using words or phrases such as 'safe', 'effective', 'risk-free', 'pain-free') without acknowledging possible adverse reactions or mixed/inconclusive evidence for the 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 regulated health service
- 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, unfailing, magical, miraculous or a certainty, guaranteed or sure cure
 - stating that the practitioner has an exclusive or unique skill or remedy that will benefit the patient and/or
 - uses photos or images of unrealistic outcomes.

Patient stories and journeys or anecdotes from the advertiser about the personal benefit or outcome obtained from treatment may create an unreasonable expectation of beneficial treatment as the outcomes experienced by one person do not necessarily reflect the outcomes that other people may experience.

Example – Anecdote from the advertiser

Potential breach: 'I decided to study to become a chiropractor after regular chiropractic treatment was the only thing that helped reduce my asthma symptoms.'

4.4.1 Images and photographs

Care should be taken when using graphic or visual representations in advertising of regulated health services to ensure they do not create an unreasonable expectation of benefit, as the outcomes experienced by one person do not necessarily reflect the outcomes that other people may experience.

Advertising may be in breach of this section of the National Law if:

- it is not clear how the advertised treatment is responsible for, or has directly caused, the benefit shown in the image
- images are not genuine and/or have been edited or enhanced.

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

Use of 'before and after' images are 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 make-up is consistent
- the lighting and contrast is consistent
- there is an explanation if images have been altered in any way
- the referenced treatment or procedure is the only visible change to the person being photographed.

4.5 Encouraging indiscriminate or unnecessary use of regulated 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 a regulated health service can lead the public to buy or use a regulated health service they do not need and is not clinically indicated or provides no therapeutic benefit. Any health intervention involves inherent risks, so encouraging the use of regulated health services which is not based on clinical need or therapeutic benefit is not in the public interest.

Advertising may be unlawful when it:

- Creates an impression or a sense of urgency that is linked to a person's health suffering if they do not use a regulated health service, where there is no clinical indication to support this. Words or phrases such as 'don't delay', 'act now before it's too late', 'don't miss out', 'time is running out', or 'for a limited time only' create a sense of urgency, and may be unlawful where they are linked to unsubstantiated claims that a person's health may suffer if they do not use a regulated health service.
- Encourages a person to attend periodic or regular appointments where there is no clinical indication to do so. This includes contracting for future services.
- Uses incentives such as prizes, discounts, bonuses, gifts that would encourage people to use services regardless of clinical need or therapeutic benefit. If the value of the prize greatly outweighs the cost and risk of the treatment to the person, it may encourage them to use a regulated health service regardless of clinical need or therapeutic benefit.

Example – Substantial prize

Potential breach: 'Each time you attend for cosmetic injections at our practice you go into the draw to win a luxury car. The more times you attend the more entries you get and the more chances you have to win!'

Definitions

Terms in this document are defined for the purposes of section 133 of 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

This definition of 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
- flyers
- billboards
- books (if the book is promoting a particular regulated 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
- 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 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 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).
- 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 about a practice or a practitioner when:
 - the comments are made on a social media site or account or patient 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.
- 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 16 registered health professions.

Health practitioner

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

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.

Regulated health service

A service provided by, or usually provided by, a health practitioner (as defined in the National Law).

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
- forums.

See the [Ahpra website](#) for more information about what falls within the definition of social media.

Review

Date of issue: 14 December 2020

Date of review: These guidelines will be reviewed from time to time as required. This will generally be at least every five years.

Appendix 1: Obligations under the National Law

Obligations under section 133 of the National Law

Section 133 of [the National Law](#) regulates advertising of a regulated health service. 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—

- (a) in the case of an individual—\$5,000; or*
- (b) in the case of a body corporate—\$10,000.*

(2) 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.

(3) 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.

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

Appendix 2: Title protection

Summary of relevant sections of the National Law

Sections 113 to 119 describe the title and practice protection provisions under the National Law, including the penalties for offences by individuals and bodies corporate. Each provision applies both to the way that an individual describes themselves, and the way that anyone describes another person.

Section 113 provides that a person must not knowingly or recklessly take or use a protected title found in the table of that section (Table 1 on page 23) which would induce a belief that the person is registered in that profession.

Section 114 provides that a registered health practitioner whose registration is endorsed under section 97 of the National Law as being qualified to practise as an acupuncturist may use the title 'acupuncturist'.

Section 115 provides that a person must not 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' (ii) take or use a title, name, initial, symbol, word or description to indicate the person is a health practitioner or claim is authorised or qualified to practise as a health practitioner, or (iii) claim to be registered or hold themselves out as being registered.

Section 117 provides that a person must not knowingly or recklessly claim or hold themselves 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.

These provisions are often referred to as 'holding out' provisions.

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

Table 1 – Protected titles

Profession	Title
Aboriginal and Torres Strait Islander Health Practice	Aboriginal and Torres Strait Islander Health Practitioner, Aboriginal Health Practitioner, Torres Strait Islander Health Practitioner
Chinese medicine	Chinese medicine practitioner, Chinese herbal dispenser, Chinese herbal medicine practitioner, Oriental medicine practitioner, acupuncturist
Chiropractic	chiropractor
Dental	dentist, dental therapist, dental hygienist, dental prosthetist, oral health therapist
Medical	medical practitioner
Medical radiation practice	medical radiation practitioner, diagnostic radiographer, medical imaging technologist, radiographer, nuclear medicine scientist, nuclear medicine technologist, radiation therapist
Midwifery	midwife, midwife practitioner
Nursing	nurse, registered nurse, nurse practitioner, enrolled nurse
Occupational therapy	occupational therapist
Optometry	optometrist, optician
Osteopathy	osteopath
Paramedicine	paramedic
Pharmacy	pharmacist, pharmaceutical chemist
Physiotherapy	physiotherapist, physical therapist
Podiatry	podiatrist, chiropodist
Psychology	psychologist

Table 2 – Professions with recognised specialties

The Ministerial Council approved the recognised specialties and specialist titles for the following professions.

Profession	Specialist title
Medical practitioner	The approved list of specialties, specialty fields and specialist titles for medical practitioners is provided on the Medical Board of Australia website.
Dental practitioner	The approved list of specialist titles for dental practitioners is provided on the Ahpra website.
Podiatrist	The approved specialist title for podiatric surgery is podiatric surgeon.

Table 3 – Professions with divisions

Profession	Division
Chinese medicine practitioner	Acupuncturist, Chinese herbal medicine practitioner, Chinese herbal dispenser
Dental practitioner	Dentist, dental therapist, dental hygienist, dental prosthetist, oral health therapist
Medical radiation practitioner	Diagnostic radiographer, nuclear medicine technologist, radiation therapist
Nurse	Registered nurse, enrolled nurse

Table 4 – Professions with endorsements

Profession/Division	Endorsement	Subtype
Chiropractors ⁶ Osteopaths ⁶ Physiotherapists ⁶ Medical practitioners	Acupuncture	Not applicable
Registered nurse	Supply scheduled medicines	Rural and isolated practice
Registered nurse	Nurse practitioners	Not applicable
Midwives	Endorsement for scheduled medicines for midwives	Not applicable
Optometrists	Scheduled medicines	Not applicable
Podiatrists	Scheduled medicines	Not applicable
Dental practitioner – division of dentists	Area of practice	Conscious sedation
Psychologist	Area of practice	Community psychology, clinical psychology, counselling psychology, forensic psychology, health psychology, clinical neuropsychology, organisational psychology, sport and exercise psychology, educational and developmental psychology

⁶ The Chiropractic, Osteopathy and Physiotherapy Boards have no approved program or pathway for acupuncture endorsement. There are currently practitioners with acupuncture endorsement in these professions as a result of Victoria having different legislation before the start of the National Scheme.

Appendix 3: 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

Therapeutic Goods Administration

Therapeutic Goods Act 1989 (Cth)

Therapeutic Goods Regulations 1990

Therapeutic Goods Advertising Code

Price Information Code of Practice (see Schedule 4 of the Therapeutic Goods Advertising Code)

Administered by: Department of Health – Therapeutic Goods Administration

Go to: 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

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
- New South Wales: *Poisons and Therapeutic Goods Act 1966*, Poisons and Therapeutic Goods Regulation 2008: 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
- Tasmania: *Poisons Act 1971*: www.legislation.tas.gov.au
- Australian Capital Territory: *Medicines, Poisons and Therapeutic Goods Act 2008*, Medicines, Poisons and Therapeutic Goods Regulation 2008: www.legislation.act.gov.au
- South Australia: *Controlled Substances Act 1984*, Controlled Substances (Poisons) Regulations 2011: www.legislation.sa.gov.au
- Western Australia: *Medicines and Poisons Act 2014*: and Medicines and Poisons Regulations 2016: www.legislation.wa.gov.au
- Northern Territory: *Medicines, Poisons and Therapeutic Goods Act 2012*: www.legislation.nt.gov.au