



Review of the Guidelines for advertising regulated health services

Consultation report

April 2020

Introduction

The 15 National Boards and the Australian Health Practitioner Regulation Agency (Ahpra) have completed a joint scheduled review of the *Guidelines for advertising regulated health services* (the guidelines).

The National Law¹ enables the National Boards to develop and approve codes and guidelines in implementing the National Scheme². The National Boards first developed the guidelines in 2010. The guidelines were reviewed, and a revised version published in May 2014, and in keeping with good regulatory practice are now due for review. The guidelines are intended to support compliance with the advertising requirements of section 133 of the National Law. They aim to help practitioners, and other advertisers (individuals and businesses) to understand their obligations and to advertise responsibly.

This report describes the consultation process, and summarises the feedback received from the public consultation on the guidelines.

Development of revised guidelines

The National Boards considered the objectives and guiding principles of the National Law and the *Regulatory principles for the National Scheme* in deciding whether they should propose changes to the existing guidelines, adopting a risk-based approach to the review.

The review also addressed legislative changes to the National Law in relation to penalties passed in early 2019, which included increased financial penalties for a body corporate and increased financial penalties and possible imprisonment for individuals³ for an advertising breach related to an unlawful use of a protected title.

Consultation process

The National Boards undertook preliminary consultation with key stakeholders in late 2018. The Commonwealth Office of Best Practice Regulation (OBPR) was also consulted during preliminary consultation in order to assess the potential for any significant regulatory impacts. The OBPR advised that a regulation impact statement was not required.

Public consultation on the guidelines was open from 11 September 2019 to 26 November 2019, to ensure wide-ranging consultation on proposed changes, a requirement under the National Law.

The public consultation was announced in a media release, news items on each National Board's webpage, promoted on social media and directly advised via email to National Board and Ahpra profession-specific stakeholders. The National Boards and Ahpra invited feedback from practitioners, stakeholders and the community.

The media release explained how stakeholders could participate and included a link to the Ahpra public consultation webpage. The Ahpra webpage had a link to an online survey with the public consultation paper available for download. The option to provide written feedback via email was also available.

Public consultation documents and submissions (except those made in confidence) are published under Ahpra's consultation webpage.

¹ Health Practitioner Regulation National Law, as in force of each state and territory (the National Law).

² National Registration and Accreditation Scheme (the National Scheme).

³ In Western Australia the legislative amendments do not apply, there was no increase to financial penalties or the introduction of imprisonment for individuals.

Overview of responses

There was a modest response to the public consultation process, with responses received from 46 stakeholders, 12 from individuals, 29 from organisations, and five jurisdictions (Commonwealth and state/territory health departments). The majority of individuals responded via the online survey. Most organisations responded by written feedback via email.

A range of stakeholder groups provided feedback including professional associations, unions, education providers, Medical Colleges, indemnity insurers, regulators, the National Health Practitioner Ombudsman and Privacy Commissioner, health services providers and individual practitioners. There was one response from a community member.

The consultation feedback can be broadly classified into the following groups of responses:

1. positive comments about the revised guidelines
2. suggested improvements to the guidelines or specific aspects of them
3. comments which are outside the review of the guidelines e.g. legislation or policy issues for decision by the Council of Australian Governments (COAG) Health Council.

The themes arising from groups one and two are outlined below.

Summary of themes

Positive comments about the revised guidelines

Submissions provided positive comments about the revised guidelines which included:

1. More user-friendly than the current guidelines.
2. Well structured, clearly expressed and comprehensive.
3. Content is relevant, concise, and the use of guiding questions assists understanding.
4. Use of flowcharts and tables make information easier to understand.

Suggested improvements to the guidelines

While the majority of responses were positive, and strongly supported the revised guidelines, they also provided suggestions for improvements:

1. Expand intended audience of the guidelines including: relevance to non-practitioner advertisers, third-party providers and legal (non-natural) persons; clarify who must comply; write to a consumer audience; publish an accessible version on the Ahpra website.
2. Explicit reference to public protection purpose including: move the purpose to the introduction; reinforce professional responsibility of practitioners and public safety; retain surgical warnings for high risk procedures.
3. Increased transparency and clarity including: improve plain English; provide clear explanation or definition of concepts; additional appendices; more information about compliance and enforcement and other regulators; include flow charts to increase understanding; provide a quick reference guide; and provide more examples, templates, specific advice.
4. Structure and content including: format, terminology, consistency, repetition; remove appendices; and remove flowcharts, with mixed views on the last point.
5. Needs to be responsive and agile to remain relevant in a technology driven and rapidly evolving environment.

Feedback incorporated in the revised guidelines

Some suggested improvements have been adopted and incorporated in the revised guidelines. The revised guidelines include:

Structure

1. More internal and external hyperlinks to improve access to information, such as Definitions and references to the resources already developed and available on Ahpra and/or National Board websites.
2. Revised headings and formatting to improve structure and readability.
3. Emphasised examples.

Content

1. Revised language, terminology and formatting throughout to improve plain English, readability and consistency in terminology.
2. Revised content and layout to clarify: who the guidelines apply to; what the guidelines do not cover; public protection and purpose of the guidelines; and the process for managing advertising breaches under the National Law.
3. More information about advertising requirements for health products and therapeutic goods regulated by other regulators.
4. Substantive content has been moved from the footnotes into the body of the guidelines.
5. Revised content to increase clarity in relation to: titles and claims about registration, competence and qualifications; gifts, discounts or inducements; testimonials; unreasonable expectation of beneficial treatment; and indiscriminate or unnecessary use of health services.
6. Expanded Appendix on title protection to include the titles protected under the National Law.

Other suggestions

There was a relatively even split between a preference for a three year and five-year review period of the guidelines. National Boards decided the guidelines will be reviewed regularly, generally every five years, or earlier in response to any changes to the National Law or emerging advertising issues to ensure the guidelines continue to be relevant and workable.

Overall feedback was supportive that content should remain in the guidelines rather than be removed and published on the website as there was concern this could cause fragmentation. As the guidelines may be used in court or tribunal proceedings it is important they contain all essential information. It was decided to retain almost all content in the guidelines, except for the summary of the guidelines which will be removed from the guidelines. The content of the summary will continue to be published on the Ahpra website to provide a high-level overview of advertising obligations.

National Boards noted some feedback requesting that the surgical warning for high-risk procedures be retained in the guidelines. The decision to remove the specific warnings in relation to surgical or invasive procedures has been maintained as it unintentionally captured advertising that did not require such a warning. It is considered that this issue is adequately covered by the inclusion of 'minimises or underplays or underrepresents the risk or potential risk associated with a treatment or procedure'.

National Boards also noted some feedback to review the required level of evidence in the evidence evaluation tool. Changes to the *Acceptable evidence in advertising* are beyond the scope of this review. Further, the acceptable evidence guide was only finalised recently and there were no compelling reasons provided for change in the small number of submissions on this issue.

Conclusion

The National Boards consider that the revised guidelines clearly explain the obligations under the National Law that apply to any person or business, including a practitioner, advertising a regulated health service. Unlawful advertising can negatively influence health care choices and therefore involves risks to public safety. The guidelines clearly explain the limits and obligations on advertising regulated health services to help advertisers to meet these requirements and advertise responsibly.

Next steps

National Boards and Ahpra identified that some of the feedback at public consultation (such as more examples, case studies, resources and explanation of specific terms) may be more appropriately addressed in separate resources rather than in the guidelines themselves. This would allow for the resources to be updated more regularly, taking into account post implementation monitoring, and profession-specific material where needed and ensure that the guidelines do not increase in length.

National Boards and Ahpra sincerely thank stakeholders for their feedback about the revised guidelines.