

Health insights

“Check, Correct, Change” guidance published by AHPRA a welcome resource for practitioners seeking clarity in advertising regulation

In the wake of a recent flurry of regulatory activity by the Australian Health Practitioner Regulation Agency (‘AHPRA’) regarding advertising obligations, many practitioners may be feeling apprehensive about their ongoing compliance under the Health Practitioner National Law 2009 (the ‘National Law’). However, a new resource recently published by AHPRA may help practitioners to navigate the regulatory scheme going forward and clear up some of the chronic uncertainty of the past.

By way of a brief reminder, the National Law specifies that a person must not advertise a regulated health service or a business that provides a regulated health service, in a way that:

- Is false, misleading or deceptive or is likely to be misleading or deceptive, or
- 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
- Uses testimonials or purported testimonials about the service or business, or
- Creates an unreasonable expectation of beneficial treatment, or
- Directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

A breach of this section is an offence. Anyone advertising a regulated health service in contravention of the section may be prosecuted and ordered to pay fines ranging from \$5,000 penalty per offence (for an individual) or \$10,000 penalty per offence (for a body corporate). To help give colour to the wording of the National Law, the National Boards jointly published the Guidelines for advertising regulated health services which are designed to help practitioners achieve compliant advertising.

However despite this additional guidance, advertising regulation under the National Law has remained a source of confusion for many, as evidenced by the number of practitioners who have sought assistance from Guild Insurance and Meridian Lawyers to respond to AHPRA advertising notifications in recent years.



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In particular, we have witnessed the frustrations of well-intentioned practitioners trying to apply the law to their advertising, in the face of near to absent examples from the regulator as to what it considers “compliant” and “non-compliant” wording.

Happily, AHPRA's newly published resource is designed to help practitioners check their advertising and modify it (if necessary) by providing explicit problem examples together with the ways to fix them. It is called “Check, Correct, Comply” and can be found at the AHPRA website.¹

The resource lists 10 different types of advertising breaches, and under each type AHPRA has included a specific example(s) of advertising that would be considered a breach of that nature. The types of breaches range from advertising that is considered misleading and deceptive because it includes a claim that is not supported by acceptable evidence, through to advertising which is in breach because it does not include the terms of a gift, discount or inducement.

The most helpful aspect of this resource, however, is that it goes on to explain why AHPRA considers each example to be a breach and provides express guidance as to how it could be cured (either by amendment of the content or removal completely). The resource also includes a tri-colour key, which is used to indicate:

- When the advertising example is considered “in breach of the legal requirements”,
- When the advertising example is considered “okay and is unlikely to mislead consumers”, and,
- When the compliance of the advertising example will depend on whether “you have provided the appropriate context and clarification”.

The published examples and corrections are based on AHPRA's assessment of advertising complaints received across the 14 regulated health professions and although some of the examples may be obvious as to why they would breach the law, many are similar to issues commonly raised during recent advertising investigations for health professionals assisted by Meridian Lawyers.

This resource is therefore a welcome and helpful addition to the toolbox for practitioners seeking to ensure they are, and remain, compliant with the advertising provisions under the National Law.

THIS ARTICLE WAS WRITTEN BY PRINCIPAL KELLIE DELL'ORO AND ASSOCIATE ANNA MARTIN. PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS OR WOULD LIKE MORE INFORMATION.

¹ <http://www.ahpra.gov.au/Publications/Advertising-resources/Check-and-correct/All-professions-examples.aspx>