

20th August 2010

The Project Officer
Advertising Consultation
Regulatory Reform Section
Therapeutic Goods Administration
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Dear Sir or Madam,

I am writing on behalf of the **Publishers' Advertising Advisory Bureau**, (formerly the Australian Publishers' Bureau), an association of Australia's major newspaper and magazine publishers established over 30 years ago to provide a united voice for publishers on issues affecting the industry as a whole. It is the pre-eminent industry Advisory Body on matters relating to advertising. The Bureau provides advice to its publisher members and their constituent publications, on legal and other issues affecting advertising.

The purpose of this letter is to provide the industry's remarks on the **Consultation Paper on Advertising Therapeutic Goods in Australia**.

Background of the PAAB

For many years, until the end of 1996, when the advertising industry's system of regulation ceased, its principal role was to pre-clear for publishers, advertisers and their agencies, all print advertisements covered by particular product based advertising codes, such as the Therapeutic Goods, Slimming and Alcoholic Beverages. Essentially, it was the Bureau's duty to ensure that such advertisements conformed to the provisions of the relevant advertising codes before the advertisement could be printed.

At the **PAAB** we pride ourselves on our extensive knowledge of the estimated 160 pieces of Commonwealth, State and Territory legislation, which include requirements on advertising, the various professional and industry Codes of Practice/Ethics, along with publishers' legal obligations under the Trade Practices Act and Fair Trading Acts. We believe that with all advertisements, the more pertinent information included in the advertisement the more likely it is that readers' expectations will be met, and the less likely it is that the advertisement will be subject to any complaint.

The **PAAB** is the only media which is a full member of the Therapeutic Goods Advertising Code Council.

The Bureau maintains a cordial and professional relationship with a number of Government and Regulatory Bodies, and is recognised by the ACCC as the representative industry association for newspaper and magazine publishers on all advertising and related matters. The ACCC has referred to the Bureau as "a model of industry co-operation".

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Comments in Relation to the Review

The Bureau believes that the current system requiring sponsors' advertisements to comply with the provisions of the Therapeutic Goods Advertising Code (TGAC) provides consumer benefits due to the serious implications that therapeutic goods can have on a person's health. It assists publishers' to determine what is acceptable and that which is not, enabling consumers to make informed decisions about their purchase.

The streamlining of current inter and intra jurisdictional requirements as per the Productivity Commissions Review is imperative as it would ease the burden and streamline the compliance procedures for businesses advertising across jurisdictions.

We make the following comments on the Government's objectives to achieve a regulatory framework for advertising which is more effective, efficient, and transparent.

The Pre-approval Process

- Whilst complementary and pharmacy medicines are required to be cleared prior to publication, the Bureau believes all advertisements for therapeutic devices which are on the ARTG should also be cleared prior to publication.
- All advertisements for therapeutic goods which appear in all forms of media should conform to the requirements of the TGAC.

The Bureau believes this would provide a **more robust system of compliance**.

Complaints Mechanism

- The Bureau believes the proposal that the TGA regularly publish on its website products which have been removed from the ARTG as a result of a regulatory decision would add to consumer confidence and provide current information for stakeholders.
- The Complaints Resolution Panel (CRP) should be able to accept complaints for all forms of media.
- Whilst an independent CRP may provide further transparency to the system we believe the current CRP members have extensive knowledge and experience and provide a valuable service where there are matters of conflicts of interest these are addressed appropriately. Although representing their respective industry associations, the integrity and reputation of the current sitting members of the CRP are beyond reproach and would not impact adversely on their decision making in fact it would be just the opposite.
- Even if reconstituted with "independent" new members with no connection and independent to the therapeutic goods and advertising industry, the Bureau believes this would be a backwards step because of their lack of understanding of the specifics of the industries involved. An alternative would be fully trained permanent panel members employed to determine complaints on a regular basis, which we do not believe to be a cost-effective measure.
- The Secretariat of the CRP should be able formulate a procedure for handling complaints of a trivial or straight-forward nature, for example the failure to include a pre-approval number. By addressing this at the Secretariat level without the need to elevate the complaint would further streamline complaint handling procedures.
- The Bureau would suggest that 'Substantiation Notices' could be issued by the Therapeutic Goods Administration (similar to those issued by the ACCC and ASIC) to those making a claim promoting, or intending to promote therapeutic goods. These notices would require the sponsor to provide supporting documentation that would be capable of substantiating the claim.
- For serious breaches of the TGAC enforceable undertakings could be asked for as a deterrent to ensure effective remediation of advertisements that are found to be in a breach.
- Strengthening the support that the Secretariat receives to provide stakeholders with the determinations in a timely manner.

Conclusion...

Whilst some have raised concerns over the current system of approvals and complaints handling the Bureau believes these are unwarranted particularly when balanced against the number of complaints received by the CRP and the overall number of advertisements which are published and broadcast annually.

Readership Estimates for the 12 months to June 2010 ¹

Newspapers Mon – Fri	Newspapers Sat	Newspapers Sun	Newspaper Insert Magazines	Magazines
7,324,000	8,560,000	7,843,000	14,462,000	42,265,000

Indeed the overall complaint numbers to the CRP are small when compared to the number of complaints handled by the self-regulatory system administered by the **Advertising Standards Bureau**.

2008	2009
3,596	3,796

The Bureau believes that the existing Therapeutic Goods Advertising Code Council and the Complaints Resolution Panel demonstrates a very successful marriage of self-regulatory and regulatory systems.

The Therapeutic Goods Advertising Code and its provisions assist publishers to ensure that the advertisements that they are accepting are from reputable business and aid in eliminating those in the industry that are dishonest and misleading consumers.

Newspapers and magazines have acquired, over many years, a significant role in the community in providing platforms for debate by facilitating public participation in discussion on policy issues, providing consumer information and choice, along with promoting and generating innovation. Publishers are also mindful of the plight of many in the community who are misled by those that are nefarious in their dealings.

The **Publishers' Advertising Advisory Bureau** is always very keen to contribute in any forum which promotes a balanced approach to social and corporate responsibility in the role of advertising.

Yours faithfully,



Lianne Richards
Executive Director

1. Roy Morgan Readership estimates for Australia for the 12 months to June 2010

2. Advertising Standards Bureau – Review of Operations 2009