

12 June 2018

Advertising Compliance Unit
Regulatory Practice, Education and Compliance Branch
Therapeutic Goods Administration

Via email - advertising.consultation@health.gov.au

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Dear colleagues

MIGA submission – Advertising complaints handling consultation

MIGA appreciates the opportunity to contribute to the TGA's consultation on *Complaints handling – Advertising therapeutic goods to the public*.

MIGA is a medical defence organisation and medical/professional indemnity insurer advising, assisting, educating and advocating for medical practitioners, medical students, healthcare organisations and privately practising midwives throughout Australia. With over 31,000 members and a national footprint, MIGA has represented the medical profession for 117 years and the broader health care profession for 15 years.

It is generally supportive of the TGA's proposed approach towards advertising complaints handling outlined in its consultation document, including:

- The multi-layered and proportionate approach to advertising compliance and enforcement
- A focus on education, including a new TGA advertising hub, e-learning program and fact sheets
- Recognition that formal compliance action is not necessary in each matter, using education or other guidance in situations involving minor, one-off and/or unintentional non-compliance.

The foreshadowed strategy of targeted education and/or direct liaison with advertisers where there are similar issues arising out of different complaints is a useful strategy, particularly for emerging issues.

MIGA sees a number of issues for clarification or further consideration, namely:

- **Clear identification of advertising breaches**
 - Each and every breach should be identified with specificity, not just by reference to the advertising sources or general issues
 - MIGA has experienced issues in Australian Health Practitioner Regulation Agency (AHPRA) advertising cases where the necessary clarity around the alleged breach has been lacking.
- **Public harm / health and safety risks**
 - It is important that these concepts not be given unduly wide definitions
 - Alleged advertising breaches which may impact only one or a small number of patients are should not normally be considered for a more significant compliance and enforcement approach if education would otherwise be appropriate.
- **Publicly identifying responsible persons / entities in "medium priority" cases**
 - Although these cases would usually involve situations of ongoing advertising breaches where non-compliance has already been brought to the advertiser's attention, MIGA is concerned about the possibility of unintentional or one-off non-compliance not previously brought to the advertiser's attention falling within this category
 - MIGA does not believe that publicly identifying advertisers who have been trying to do the right thing is appropriate in those cases.

If you have any questions or would like to discuss, please contact me, 02 8905 3400 / timothy.bowen@miga.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'TB', written in a cursive style.

Timothy Bowen

Senior Solicitor – Advocacy, Claims & Education