



Public Health Association
AUSTRALIA

Public Health Association of Australia submission on complaints handling – advertising therapeutic goods to the public

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.



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Introduction

PHAA welcomes the opportunity to provide input to the design of the new complaints management process at the Therapeutic Goods Administration (TGA) for advertising therapeutic goods to the public. As stated in the consultation paper, the object of the advertising code is to ensure that advertising:

- Promotes the safe and proper use of therapeutic goods by minimising misuse, overuse or underuse of the goods; and
- Is ethical and does not mislead or deceive the consumer or create unrealistic expectations about product performance; and
- Supports informed health choices; and
- Is consistent with current public health campaigns.

The consultation paper also notes that it is the anticipated impact on a reasonable audience, rather than the subjective intention of the advertiser that defines whether or not something is advertising or complies with the code.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. The Australian Government, in collaboration with the States/Territories, should provide a comprehensive national cross-government framework on promoting a healthy ecosystem and reducing social and health inequities. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

PHAA Response to the consultation paper

Background

There is considerable support for the concept of single body taking over the existing Therapeutic Goods Advertising Complaint System to provide a single, more efficient, complaint body, with powers to apply timely and meaningful sanctions for regulatory violations.¹

The Government has decided that the TGA would assume responsibility for handling all complaints about therapeutic goods advertisements directed to the public from 1 July 2018. This model would be independently reviewed after three years of operation to determine whether it was the most effective solution.²

However, whilst the PHAA broadly supports the new changes, there are some aspects of the TGA's recent proposals for the implementation of the new Therapeutic Goods Advertising Complaint Handling System that we believe require further consideration.

¹ <https://www.tga.gov.au/submissions-received-response-consultation-regulatory-framework-advertising-therapeutic-goods-november-2016>

² <https://www.tga.gov.au/media-release/tga-improve-handling-advertising-complaints>

Areas of concern

1. Triaging

Specific details of the triaging process (including how it is to be followed) remain unclear and could benefit from some case study examples in the educative material to be developed on the TGA website advertising hub.

2. Complaint priorities

In the interests of transparency, we believe that complainants should be informed of the priority level their complaint is assigned to as part of this process.

3. Transparency

In order to educate complainants, advertisers and the industry, details of specific Code breaches upheld or rejected by the TGA (alleged by the complainant or found by the TGA) should be communicated and published (including product and advertiser details where this is permissible by law), as has been the practice of the Complaint Resolution Panel CRP.³ This is also crucial for monitoring the performance of the TGA.

4. Complaint handling

We believe it is essential that the TGA evaluates whether the regulatory action taken on all complaints results in compliance. For example, if a “regulatory obligation notice” or “warning letter” is sent to the advertiser these should be followed-up to ensure compliance is achieved. Ideally statistics on compliance should be made publicly available.

The TGA should not readily assume that the problem has been fixed by sending a “regulatory obligation notice” to the advertiser or getting a response from the advertiser to a “warning letter” the problem has been fixed, as experience with the current CRP has shown significant levels of non-compliance.

If more serious enforcement actions (such as court action) are instituted, we suggest that the TGA publish an advisory notice when the court action initiated, rather than when the case is closed. Court action can be a time-consuming process and it can be many years before a case is closed. We note that this is current practice with other regulatory agencies such as the Australian Competition and Consumer Commission – including in cases around advertising non-compliance for health products⁴ – and we believe this approach would help bring consistency among regulators in this space.

5. Metrics (time taken to close complaints)

We submit that the time taken to close a complaint should depend on the time taken to confirm actual compliance, not merely the time taken to send a notice such as a “regulatory obligation notice” or “warning letter”. We believe that capturing both metrics would allow for transparency in the operation of the process for complaint resolution.

³ <http://www.tgacrp.com.au/>

⁴ <https://www.accc.gov.au/media-release/accc-targets-alleged-false-and-misleading-nurofen-claims>

Conclusion

PHAA supports the TGA taking over the complaint system and acknowledges that this will help address jurisdictional issues that have previously precluded appropriate regulatory actions being taken against non-compliers when they have attempted to appeal CRP decisions. However, we do believe transparency of the new system must be improved, especially with respect to:

- Informing complainants of the priority level their complaint is assigned to;
- Communicating and publishing details of specific Code breaches upheld or rejected by the TGA (including product and advertiser details);
- Evaluating and publishing if the regulatory action undertaken by the TGA on all complaints results in Code compliance.

We understand that these changes may require additional resources beyond those enabled by the current cost-recovery model, and we urge the appropriate government departments to provide any additional funding the TGA requires to appropriately discharge its role of regulating in the public interest.

The PHAA appreciates the opportunity to make this submission. Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.



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