



Submission to the  
**Department of Health, Therapeutic Goods Administration**  
Consultation: Proposed improvements to the Therapeutic  
Goods Advertising Code

on behalf of

Australian Association of National Advertisers

June 2021

## Australian Association of National Advertisers

Consultation: Proposed improvements to the Therapeutic Goods Advertising Code

### Introduction

The AANA welcomes the review and appreciates the opportunity to provide this submission to the Therapeutic Goods Advertising Code proposed improvements (“TGA Code”).

The AANA is the peak body for advertisers and has represented national advertising for 90 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry.

The AANA has a strong ongoing commitment to self-regulation. The AANA designed and delivered the self-regulatory component of regulation controlling advertising and marketing communication in Australia.

The AANA’s Codes apply to all media and virtually all forms of advertising and marketing communication. The AANA protects the rights of consumers by ensuring advertising and marketing communication is conducted responsibly, including through the development and administration of industry codes and the overall self-regulatory system.

### AANA self-regulatory system

#### Background

Self-regulation is an essential part of the Australian business landscape and contemporary society. The current self-regulatory system for advertising and marketing communication in Australia was established by the AANA in 1997. Its establishment was due to advertisers’ recognition that they have a responsibility to deliver marketing that is aligned to community standards and expectations.

The AANA system of self-regulation sits alongside and complements systems of regulation, co-regulation and self-regulation. It provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing community expectations.

#### A platform neutral approach

In previous submissions to the TGA, the AANA has highlighted the advantage of applying one set of rules using an overarching platform neutral approach for advertising in Australia.

The AANA Codes do not make a distinction between traditional media advertising (ie TV and radio), digital advertising or emerging mediums. It applies to all mediums. It defines **Advertising or Marketing Communication** as:

*any material which is published or broadcast using any medium or any activity which is undertaken by, or on behalf of, an advertiser or marketer, and*

- *over which the advertiser or marketer has a reasonable degree of control, and*
- *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.*

The definition also notes some exclusions, principally labels and packaging, and corporate reports. In the AANA Code, **Medium** is defined as:

*any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct to consumer media including new and emerging technologies.*

These definitions ensure virtually all commercial communication is captured (including direct-to-consumer public relations material, online, social media and outdoor). The platform neutral, national self-regulatory model allows complaints to be made without the consumer having to consider the

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medium or geographical location in which the relevant advertisement appeared. The AANA Code will continue to evolve as new technology and means of communication evolve so that they remain relevant and universal.

### *Response to Section 16 Endorsements and Section 17 Testimonials*

AANA supports the simplification of Sections 16 and 17 to allow both testimonials and endorsements to simply be another form of advertising which fall within the TGA's definition of advertising (*"any statement, pictorial representation or design that is intended, whether directly or indirectly, to promote the use or supply of the goods"*).

When including testimonials and endorsements as another form of advertising additional guidance may be required to ensure the advertising is clearly distinguishable to consumers by declaring the relationship in an easily understood manner (e.g. using commonly understood labels or declarations such as, but not limited to, #ad, Advert, Advertising, Branded Content, Paid Partnership, Paid Promotion).

Influencer marketing is firmly established in Australia and world-wide, attracting attention by regulators such as ACCC and recently leading to the establishment of The Australian Influencer Marketing Council (AiMCO) and their [Influencer Marketing Code of Practice](#).

The AiMCO Code of Practice provides guidance to any business engaging in influencer marketing. Areas covered include:

- Transparency regarding influencer vetting practices;
- Brand safety considerations;
- Advertising disclosure requirements under Australian Consumer Law;
- Ensuring appropriate briefs and contracts;
- Importance of including content rights/IP within contracts; and
- Metrics and reporting transparency.

The [AANA Code of Ethics](#) contains a provision which ensures the disclosure of commercial relationships that may impact consumers' decision making. By stipulating that *"advertising must be clearly distinguishable as such"*, the AANA has codified good business practices adopted by responsible advertisers, to set a standard across all media for those who may be unclear or unaware of the standard to which they should adhere. In this way additional regulation by government or regulators may be avoided, through industry's proactive participation in the self-regulatory system.

An update to this provision effective 1 February this year, ensures that where an influencer or affiliate accepts payment of money or free products or services from a brand in exchange for them to promote that brand's products or services, the relationship must be clear, obvious and upfront to the audience and expressed in a way that is easily understood (e.g. #ad, Advert, Advertising, Branded Content, Paid Partnership, Paid Promotion). Social media platforms now provide very simple tools that ensures that the appropriate labels known and understood by consumers are applied.

The effectiveness of this change has been evident, with Ad Standards receiving 82 complaints leading to 28 individual cases in the past three months about "influencers" not labelling their posts appropriately. The complaints to the Ad Standards Community Panel have received widespread media attention which serves to highlight the issue and assist in future compliance. Complaints

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about advertising on social media platforms were the second most complained about advertising medium in 2020<sup>1</sup>.

In summary, the AANA recommends:

- simplification of Sections 16 and 17 to allow both testimonials and endorsements to simply be another form of advertising and fall within the TGA's definition of advertising;
- If testimonials and endorsements fall within the definition of advertising then ensure the advertising is clearly distinguishable to consumers by declaring the relationship in an easily understood manner (e.g. using commonly understood labels or declarations such as, but not limited to, #ad, Advert, Advertising, Branded Content, Paid Partnership, Paid Promotion);
- the adoption of platform neutral definitions to ensure that advertising standards apply in the same way across all media, subject to more detailed information or warnings which may be better suited to certain media.

## Further Consultation

The AANA welcome an opportunity to discuss this submission in detail. Please contact Megan McEwin [megan@aana.com.au](mailto:megan@aana.com.au) for further consultation.

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<sup>1</sup> Ad Standards Review of Operations 2020:  
[https://adstandards.com.au/sites/default/files/review\\_of\\_operations\\_2020\\_fa.pdf](https://adstandards.com.au/sites/default/files/review_of_operations_2020_fa.pdf)