

**Submission
No 63**

THE PROMOTION OF FALSE OR MISLEADING HEALTH-RELATED INFORMATION OR PRACTICES

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**Complementary Healthcare Council of Australia's
Submission to the NSW Parliament
The Promotion of False or Misleading Health-Related Information or
Practices (Inquiry)**

To:
Committee on the Health Care Complaints Commission
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From:
Complementary Healthcare Council of Australia



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The Complementary Healthcare Council of Australia (CHC) welcomes the opportunity to provide a response to the NSW Parliament Inquiry into 'The Promotion of False or Misleading Health-Related Information or Practices'.

It is the CHC's aim to improve public health and wellbeing through education and information on the use of complementary healthcare products, to support and enhance a robust, vital and sustainable complementary healthcare products industry, and to support the ethical and responsible promotion of complementary healthcare products. Vital to achieving this objective is an appropriate co-regulatory environment that supports the right for suitably qualified healthcare professionals to prescribe complementary healthcare products to consumers in a way that promotes the quality use of medicines.

The CHC strongly supports consumer safety with regard to services provided by healthcare professionals. We note the aim of this Inquiry is to seek to achieve proper oversight of organisations that offer health related services or advice, with particular regard to those that may disseminate information of a purportedly medical nature that is not only contrary to accepted medical practice, but which may be harmful to individual or public health.¹

The broad terms of this Inquiry infers that a wide range of individuals, groups and organisations could potentially be affected. However, it is understood that this Inquiry is not focused on the many complementary medicines adopted as part of responsible complementary healthcare. Nor will it inquire into the many legitimate discussions and studies taking place within the science community about effective health treatment options.

About the CHC

The Complementary Healthcare Council of Australia (CHC) is the peak industry body for the complementary medicines industry and is unique in representing the entire supply chain, including manufacturers, importers, exporters, raw material suppliers, wholesalers, distributors and retailers.

Complementary medicines and natural healthcare products include vitamins, mineral and nutritional supplements, special purpose foods, herbal and homeopathic medicines, aromatherapy products, and natural cosmetics using herbals and botanicals. The term 'complementary medicine' also comprises traditional medicines, including Traditional Chinese Medicines, Ayurvedic, and Australian Indigenous medicines.

The CHC promotes appropriate industry regulation and advancement to ensure consumers have access to complementary medicines of the highest quality.

Complementary medicines have been widely embraced by the Australian community, with two out of every three Australians regularly using a complementary medicine product. Australian consumers have been increasingly using a combination of mainstream and complementary medicines to meet their health needs.

National Code of Conduct

The CHC provided a submission to the Victorian Department of Health in 2011 that supported a national statutory code of conduct for unregistered health practitioners. More recently, Health Ministers have agreed in principle to strengthen state and territory health complaints mechanisms via:

¹ Parliament of NSW Committee on the HCCC Media Release 29 November 2013
[https://www.parliament.nsw.gov.au/Prod/Parliament/committee.nsf/0/caa69cedd968c72aca257c35007f0508/\\$FILE/Media%20Release.pdf](https://www.parliament.nsw.gov.au/Prod/Parliament/committee.nsf/0/caa69cedd968c72aca257c35007f0508/$FILE/Media%20Release.pdf)

- a single national Code of Conduct for unregistered health practitioners to be made by regulation in each state and territory;
- statutory powers to enforce the Code by investigating breaches and issuing prohibition orders; and
- a nationally accessible web based register of prohibition orders; and mutual recognition of state and territory issued prohibition orders.

The CHC notes that to give effect to these decisions, Ministers have asked the Australian Health Ministers Advisory Council (AHMAC) to undertake a public consultation on the terms of the first national Code of Conduct and proposed policy parameters to underpin nationally consistent implementation of the Code.

Work toward the registration of practitioners (ingestive modalities)

The CHC advocates the rights of Australians to have the freedom of choice in choosing their healthcare providers and access to qualified health professionals. We recognise the vital role played by the estimated thousands of complementary healthcare practitioners, such as naturopaths and Western herbalists and nutritionists in Australia in private practice, health food stores, pharmacies, and within the government and complementary medicines industry. The government endorses complementary healthcare professions by approving training and education in both the VET as well as the higher education sectors.

Statutory registration for naturopaths and western herbalists has been called for in order to protect public safety. This was the preferred model of regulation recommended as a result of the Lin Report tabled in 2005². The CHC supports an independent registration system for practitioners, such as the Australian Register of Naturopaths and Herbalists (ARONAH). The ARONAH is a system of registration that mirrors the Federal Government's National Registration and Accreditation Scheme for health professionals – the system that includes doctors, dentists and nurses, and more recently practitioners of Traditional Chinese Medicine – and is a system that provides a level of confidence that there are strict qualification benchmarks, codes of conduct and other professional obligations applicable to these professions.

The CHC believes that with an independent registration body for these health professionals, the complementary medicines regulator, the Therapeutic Goods Administration, and the public, can have greater confidence that only those who are suitably trained and qualified receive the information that is vital for them to continue to practise in a competent and ethical manner.

As such, the CHC is currently working closely with the ARONAH, with the Therapeutic Goods Administration, and with a number of practitioner associations to ensure the most accepted and effective registration process for these healthcare professionals.

We are confident that these proposed changes will provide increased confidence to the Australian public that the vast majority of complementary healthcare practitioners practise in a safe, competent and ethical manner.

The CHC considers any further inquiry into options for increased regulatory scope, prior to the implementation of the national code of conduct and the on-going work toward a registration process, would be premature.

² Lin V, Bensoussan A, Myers S, McCabe P, Cohen M, Hill S, Howse G. The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine. Melbourne. Victoria Department of Human Services; 2005. Available from: <http://www.health.vic.gov.au/pracreg/naturopathy.htm>

CHC comments in relation to the HCCC Terms of Reference

The Terms of Reference (TOR) for the Inquiry outline that the Committee will have particular regard to:

- the publication and/or dissemination of false or misleading health-related information that may cause general community mistrust of, or anxiety toward, accepted medical practice;
- the publication and/or dissemination of information that encourages individuals or the public to unsafely refuse preventative health measures, medical treatments, or cures;
- the promotion of health-related activities and/or provision of treatment that departs from accepted medical practice which may be harmful to individual or public health;
- the adequacy of the powers of the HCCC to investigate such organisations or individuals;
- the capacity, appropriateness, and effectiveness of the HCCC to take enforcement action against such organisations or individuals; and
- any other related matter.

The CHC notes in the HCCC ToR the use of the term 'accepted medical practice' rather than the typically used 'orthodox medical practice' or words to similar affect. By using the wording 'accepted medical practice' it may be interpreted that the Committee considers alternative therapies examined by the Committee's Inquiry to be 'unacceptable'.

Provisions for unregistered healthcare professionals

As you would be aware, section 7 of the NSW Code of Conduct for unregistered health practitioners, made under the *Public Health Regulation 2012* schedule 3, provides that a practitioner must not attempt to dissuade a consumer for seeking or continuing treatment with a registered medical practitioner.

Industry best practice

The CHC, as the peak body for the complementary medicines industry, promotes industry best practice particularly in relation to the publication and dissemination of technical information to the complementary medicine healthcare professional.

The CHC's *Guideline for the Sale and Supply of Practitioner Only Products* provides guidance to the complementary healthcare industry on the appropriate content of practitioner only (PO) product guides and technical manuals to comply with the provisions in the *Therapeutic Goods Act 1989*, the *Therapeutic Goods Regulations 1990*, and the *Therapeutic Goods Advertising Code 2007*, as amended.

This guideline was published to assist sponsors in ensuring product guides and technical manuals meet the required advertising provisions, and were developed in cooperation with members of CHC's Practitioner Medicine Technical Committee and the medicines regulator, the Therapeutic Goods Administration.

The high level principles of the guideline are underpinned by the CHC's [Marketing Code of Practice: Complementary Medicines and Health Food Products](#). Section 7.2.3 of the Code of Practice specifically provides that no advertisement should in any way tend to discourage the consumer from seeking the advice of a qualified health care professional.

The guidance provided to industry by these publications adds to the level of assurance that advertising materials for these healthcare products do not create of a sense of mistrust in the community for orthodox medical practice.

Advertising of complementary medicines

Irrespective of the target audience, therapeutic goods may only be advertised with claims which are consistent with their indications or intended purpose, as entered in the Australian Register of Therapeutic Goods (ARTG).

The advertisement of complementary medicines to consumers via mainstream media (such as magazine or newspaper) and below-the line materials (such as flyers and brochures), internet and broadcast media, must comply with the *Therapeutic Goods Advertising Code 2007* (TGAC) and other relevant provisions in the Act and Regulations.

The legislation also establishes controls relating to the advertising of therapeutic goods which aim to minimise the risk of misuse of such products arising out of, for example, misrepresentation or misunderstanding about the uses of the goods.

Schedule 1 list recognised by the TGA

Other than the aforementioned breaches, all other advertising offences in the Act do not apply to advertisements directed exclusively at those healthcare professionals noted in s.42AA of the Act. Hence, section 42AA of the Act does not apply to members of an Australian branch of one of the bodies listed [here](#).

Whilst the CHC recognises the schedule 1 list requires updating, it does provide the basis for the recognition of the practitioner associations and their respective members.

Pre-approvals

By law, all advertisements for therapeutic goods, including complementary medicines, appearing in specified media (newspapers, magazines, cinema, outdoor display, television and radio) must be approved prior to publication or broadcast.

Advertisements appearing on the internet or in below the line media such as flyers, brochures, or point of sale material do not require approval, unless those flyers, brochures etc are inserted into mainstream newspapers or magazines for consumers, in which case they will also require pre-approval.

Importantly, below-the-line and internet consumer advertisements must still comply with the [Therapeutic Goods Advertising Code \(TGAC\)](#) and other relevant provisions in the Act and Regulations. Although these advertising materials may not require formal approval, the CM industry are encouraged to consult with the Complementary Healthcare Council's Advertising Services Managers, or a consultant who is familiar with the regulatory requirements for the complementary healthcare industry, regarding all advertising material.

Appropriate complaints mechanisms

Australian complementary medicines are regulated through a comprehensive series of processes from manufacturing through to marketing and specific controls are placed on the advertising of therapeutic goods to consumers, including complementary healthcare products to ensure advertisements are truthful, appropriate and not misleading.

Complaints in relation to the content of complementary medicines advertising material can be directed to the Complaints Resolution Panel (CRP), which deals with complaints about advertisements for any therapeutic product directed to consumers in TV, radio, the internet, newspapers, magazines, displays (except inside individual shops) and in cinemas.

If the complaint is about an advertisement not covered by the CRP or is about the conduct of a particular company, the complaint can be directed to the relevant industry associations under its self-regulatory Code of Practice. More information about how to lodge a complaint can be found [here](#).

Appropriate dissemination of information

The CHC supports the right of companies to use the internet as a means of providing accurate and reliable information on products for the benefit of healthcare professionals and the wider community. For example, internet and social media pages designed specifically for healthcare professionals must be log-in and password protected to prevent access by consumers. This includes, but is not limited to, product pages, technical information and forums.