

**Consultation Draft**

**Complementary Healthcare Council of Australia**

**Code of Practice for the  
Marketing of Complementary Medicines & Health Food  
Products**

### Version History

Version	Description of Change	Contributors	Effective Date
Version 2	Multiple text changes	Marketing Code Governance Committee/ Practitioner Medicine Technical Committee	February 2012
Version 1	Text	Marketing Code Governance Committee	November 2005

**Title:** CHC Code of Practice for the Marketing of Complementary Medicines & Health Food Products

**Publication date:** February 2012

**Review date:** February 2014

**Edition:** Two

**ISBN:**

**Published by:** Complementary Healthcare Council of Australia

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## Definitions

- 1.1** *Active ingredient* means the therapeutically active component in the medicine's final formulation that is responsible for its physiological or pharmacological action.
- 1.2** *Adverse event* when an active ingredient or medicine is implicated as a causal factor in an event causing harm. This encompasses both harm that results from the intrinsic nature of the medicine (adverse drug reaction) as well as from harm that results from medication errors or system failures associated with the manufacturer, distribution or use of the medicines.
- 1.3** *Advertisement* includes any statement, pictorial representation or design however made that is intended whether directly or indirectly to promote the use or supply of the goods.
- 1.4** *Advertisement (Internet)* the *Therapeutic Goods Act 1989* considers internet as specified media although advertisements for therapeutic goods appearing on websites do not currently require pre-approval.
- 1.5** *Advertising Services Manager* – a delegate of the Secretary of the Department of Health and Ageing, and given the power to approve or refuse to approve therapeutic goods advertising appearing in specified media, which includes: newspapers, magazines, cinema, outdoor display, television and radio. Outdoor display includes displays about goods appearing in shopping malls (except inside individual shops), in or on public transport and on billboards.
- 1.6** *Advertorial* means an advertisement which links editorial comment with a specific product in such a way that the reader is led to associate the two, regardless of whether identified as an advertisement or not.
- 1.7** *Approval* for all advertisements for therapeutic goods appearing in specified media must be finalised prior to publication or broadcast (reviewed and accepted by an Advertising Services Manager). Advertisements appearing in specified media (other than television and radio advertisements) must prominently display an approval number in the bottom right hand corner of the advertisement, stand-alone.

Advertisements only appearing on the internet or in below the line media do not require approval. However, 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.

- 1.8** *ARTG* Australian Register of Therapeutic Goods. The ARTG is a computer database of therapeutic goods. Unless exempt, medicines must be entered on the ARTG before they may be supplied in or exported from Australia.
- 1.9** *AUST L* medicines are low risk self-medication products. They are used for minor health problems and are reviewed for safety and quality. They include sunscreens over SPF4 and many vitamin, mineral, herbal and homeopathic products. A purpose must be included on the label.
- 1.10** *AUST R* medicines are assessed for safety, quality and effectiveness. They include all prescription-only medicines and many over-the-counter products such as those for pain relief, coughs and colds and antiseptic creams. Prescription only medicines do not display their purpose on the label as the decision for using them lies with a doctor, however, over-the-counter medicines must have a purpose displayed.
- 1.11** *Below the Line* advertising is comprised of materials such as leaflets, brochures, catalogues, shelf talkers, newsletters, practitioner magazine and journal advertising, point of sale material, videos, direct mail letters, lectures, seminars etc not considered to be *mainstream media*. It does not include broadcast media or internet advertising.
- 1.12** *Board* committee elected by the membership of the annual general meeting of the Complementary Healthcare Council of Australia Inc. to govern the Council.
- 1.13** *Botanical name* is the Latin binomial used to uniquely define the plant species. It may sometimes include the classification system being employed such as Linneaus (L.) as a suffix.
- 1.14** *Brand Marketing* is the use of a name, term, design, symbol, or any other feature to identify one brand or product line as distinct from others. To qualify as ‘brand marketing’, an advertisement or any other marketing material **must not** include any statement, pictorial

representation or design however made that is intended whether directly or indirectly to promote the use or supply of that organisation's goods

- 1.15 *Brand Name Reminder*** means such items of low monetary value which are intended to remind healthcare professionals of the existence of a product.
- 1.16 *Broadcast media*** in relation to an advertisement or generic information, means any means (other than a means declared in the Therapeutic Goods Regulations to be an exempted means) by which the information is disseminated electronically in a visible or audible form or a combination of such forms.
- 1.17 *Claim*** is a description of the specific therapeutic purpose of a product, is an advertising statement about a product and needs to be seen in the broader advertising context. The link between an indication and a claim is through Section 22(5) of the *Therapeutic Goods Act 1989*, which requires that sponsors may only make claims that are consistent with the indications for the product recorded on the ARTG.
- 1.18 *Council*** means the Complementary Healthcare Council of Australia Inc.
- 1.19 *Company*** means all entities supplying complementary medicine and/or health food products in Australia. This may include a Direct Selling Organisation.
- 1.20 *Complaints Resolution and Monitoring Committee (CRMC)*** is the committee appointed under the provisions of this Code to handle complaints made concerning breaches of provisions of this Code.
- 1.21 *Complementary Medicines*** include vitamin, mineral and nutritional supplements, herbal remedies, homoeopathic and aromatherapy products. They may also be defined as therapeutic goods consisting wholly or principally of one or more designated active ingredients, each of which has a clearly established identity and a traditional use. Traditional use means use of the designated active ingredient that is well documented, or otherwise established, according to the accumulated experience of many traditional healthcare

practitioners over an extended period, and accords with well-established procedures of preparation, application and dosage.

**1.22 *Direct Marketing*** is a form of advertising that reaches its audience without using traditional formal channels of advertising such as TV, newspapers or radio. Companies or individuals communicate straight to the consumer with advertising techniques such as fliers, catalogue distribution, promotional letters, and street advertising.

*Direct Advertising* is a sub-discipline and type of marketing. There are two main definitional characteristics which distinguish it from other types of marketing. The first is that it sends its message directly to consumers, without the use of intervening commercial communication media. The second characteristic is the core principle of successful advertising driving a specific "call-to-action." This aspect of direct marketing involves an emphasis on trackable, measurable, positive responses from consumers regardless of medium. If the advertisement asks the prospect to take a specific action, for instance call a free phone number or visit a website, then the effort is considered to be direct response advertising.

**1.23 *Direct Selling*** is the supply of a product or service where, regardless of other characteristics, the supply arises or emanates from a relationship that is personally negotiated between an independent sales person and a consumer away from a fixed retail location, commonly in a home or workplace.

**1.24 *Educational material*** means any representation or literature that is intended to provide information about a medical condition or therapy and does not contain specific promotional claims. Examples of educational material include:

- Technical manuals
- CPE (continuing professional education) materials and course notes.

**1.25 *Ethical Promotion*** includes:

- Promotion only of therapeutic products that are legally available in Australia and then only where permitted under therapeutic goods legislation;
- Claims made that are reliable, accurate, truthful, informative, balanced, up-to-date, capable of substantiation and in good taste. They do not include misleading

or unverifiable statements or omissions likely to induce unjustifiable use of product or give rise to undue risks;

- Comparison of products is factual, fair, and capable of substantiation; and
- Promotional activities do not, directly or indirectly, involve misleading, deceptive, unfair or unconscionable conduct, or make inappropriate inducements.

**1.26 Evidence** used in product promotion should reflect the levels required as outlined in the TGA's Guidelines for Levels and Kinds of Evidence to Support Indications and Claims.

**1.27 Food** is defined under the *Food Standards Australia New Zealand Act 1991* as:

*Food* includes:

- (a) any substance or thing of a kind used, capable of being used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared); and
  - (b) any substance or thing of a kind used, capable of being used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a); and
  - (c) any substance used in preparing a substance or thing referred to in paragraph (a); and
  - (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and
  - (e) any substance or thing declared to be a food under a declaration in force under section 3B. (It does not matter whether the substance, thing or chewing gum is in a condition fit for human consumption.)
- (2) However, *food* does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*.
  - (3) To avoid doubt, *food* may include live animals and plants.

**1.28 Healthcare Professional** includes a person that meets the description of a healthcare professional in subsection 42AA(1) (2) (3) of the *Therapeutic Goods Act 1989* and any other person represented directly or indirectly to be a healthcare professional.

- 1.29 Industry** means the complementary medicine and health food industry, including sports supplements.
- 1.30 Mainstream Media** means any magazine or newspaper for consumers containing a range of news, public interest items, advertorials, advertisements or competitions.
- 1.31 Marketing** is the sum of commercial processes involved in promoting, selling and distributing a product or service.
- 1.32 Marketing Code Governance Committee (MCGC)** is the committee appointed under the provisions of this Code to administer the Code.
- 1.33 Mediation** is a voluntary and confidential conference, facilitated by mediators independent of any party, where all participants have agreed to attend and to co-operate in good faith to resolve the dispute between them.
- 1.34 Member** means any individual or company, including its employees, that is a member of the Complementary Healthcare Council.
- 1.35 Misrepresentation** a false claim of possessing certain positive attributes or of not possessing certain negative attributes.
- 1.36 Practitioner** means a complementary medicine healthcare practitioner accredited by an association listed in Schedule 1 of the Therapeutic Goods Regulations.
- 1.37 Practitioner-only product** means a complementary medicine listed or registered on the Australian Register of Therapeutic Goods (ARTG) and supplied exclusively to a healthcare practitioner.
- 1.38 Practitioner-only technical manual** – must not be linked to any specific products. The technical manual is a reference to provide technical and scientific information about complementary medicine raw materials and health conditions/symptoms.

- 1.39 Product** means a complementary medicine or health food product.
- 1.40 Product guide (for consumers, including retailers)** – a Sponsor’s document (hard copy or electronic medium) that provides a list of company specific products with relevant information around ingredients, such as indications, dosage and storage information, etc. Considered to be an advertisement and therefore bound by the *Therapeutic Goods Advertising Code 2007*.
- 1.41 Promotion** in relation to a therapeutic product, means any communication or activity by a sponsor to a healthcare professional that, directly or indirectly, encourages the use, acquisition or other supply of a therapeutic product, by purchase, sale or otherwise, or discourages such use, acquisition or supply of a therapeutic product.
- 1.42 (The) Regulations**- The *Therapeutic Goods Regulations 1990*, as amended from time to time.
- 1.43 Puffery** is advertising or a sales presentation relying on exaggerations and opinions with little or no credible evidence to support its claims. Excessive claims may amount to misrepresentation.
- 1.44 Retailers (or retail outlets)** are businesses that sell goods directly to the consumer (as opposed to a wholesaler or supplier that normally sell their goods to another business). Retailers can include large businesses, chain stores, independent stores, direct sellers and direct marketers.
- 1.45 Schedule 1** refers to Schedule 1 of the *Therapeutic Goods Regulations 1990*.
- 1.46 Shelf Talkers** are printed cards or other signs attached to a store shelf to call buyers' attention to a particular product displayed on that shelf.
- 1.47 Specified media** in relation to an advertisement or generic information, means:
- a) mainstream media within the meaning of s. 42B of the Act; or

- b) broadcast media, within the meaning of s. 42B of the Act; or
- c) cinematograph films; or
- d) displays about goods, including posters:
  - i. in shopping malls (except inside individual shops);
  - ii. in or on public transport; and
  - iii. on billboards.

**1.48** *Sponsor* is defined in the Therapeutic Goods Act as:

- a) A person who exports or arranges the export of the (therapeutic) goods from Australia; or
- b) A person who imports or arranges the import of the (therapeutic) goods into Australia; or
- c) A person who, in Australia, manufactures the (therapeutic) goods, or arranges for another person to manufacture the (therapeutic) goods, for supply (whether in Australia or elsewhere);

But does not include a person who:

- d) Exports, imports or manufactures the goods; or
- e) Arranges the exportation, importation or manufacture of the goods on behalf of another person who; at the time of the exportation, importation, manufacture or arrangements, is a resident of, or is carrying out business in, Australia.

**1.49** *Technical Manual* is a document containing technical, scientific or education information.

A technical manual is produced exclusively for healthcare professionals and is not distributed or available to consumers, and must not refer to or have a direct link to a company product guide or a company branded product.

**1.50** *Therapeutic Goods* are defined by the Therapeutic Goods Act as goods:

- a) that are represented in any way to be, or that are, whether because of the way in which the goods are presented or for any other reason, likely to be taken to be:
  - i) for therapeutic use; or
  - ii) for use as an ingredient or component in the manufacture of therapeutic goods; or
  - iii) for use as a container or part of a container for goods of the kind referred to in sub paragraph (i) or (ii); or
- b) Included in a class of goods the sole or principal use of which is, or ordinarily is, a therapeutic use or a use of a kind referred to in subparagraph (a), (ii) or (iii);

and includes medical devices and goods declared to be therapeutic goods under an order in force under section 7, but does not include:

- c) goods declared not to be therapeutic goods under an order in force under section 7; or
- d) goods in respect of which such an order is in force, being an order that declared the goods not to be therapeutic goods when used, advertised, or presented for supply in the way specified in the order where the goods are used, advertised, or presented for supply in that way; or
- e) goods (other than goods declared to be therapeutic goods under an order in force under section 7) for which there is a standard (within the meaning of subsection 4(1) of the *Food Standards Australia New Zealand Act 1991*); or
- f) goods (other than goods declared to be therapeutic goods under an order in force under section 7) which, in Australia or New Zealand, have a tradition of use as foods for humans in the form in which they are presented.

**1.51** *Therapeutic Use* is defined by the *Therapeutic Goods Act 1989* as meaning:

Use in or in connection with:

- a) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in persons; or
- b) influencing, inhibiting or modifying a physiological process in persons; or
- c) testing the susceptibility of persons to a disease or ailment; or
- d) influencing, controlling or preventing conception in persons; or
- e) testing for pregnancy in persons; or
- f) the replacement or modification of parts of the anatomy in persons.

**1.52** *Acronyms* that may be used in this document:

AAC	Advertising Appeals Committee
ACCC	Australian Competition & Consumer Commission
ADMA	Australian Direct Marketing Association
ARTG	Australian Register of Therapeutic Goods
ASM	Advertising Services Manager
ATMS	Australian Traditional-Medicines Society

CHC	Complementary Healthcare Council of Australia Inc
CRMC	Complaints Resolution Committee
CRP	Complaints Resolution Panel
DSAA	Direct Selling Association of Australia
FSANZ	Food Standards Australia New Zealand
MCGC	Marketing Code Governance Committee
TGA	Therapeutic Goods Administration
TGAC	Therapeutic Goods Advertising Code

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## Introduction

- 2.1** The Complementary Healthcare Council of Australia (CHC) is the peak body representing the complementary healthcare industry in Australia. In consultation with key stakeholders, the CHC has undertaken the development of this Code of Practice.
- 2.1.1 The CHC was founded in 1998 following the amalgamation of the Nutritional Foods Association of Australia (NFAA) and Australian Council for Responsible Nutrition (ACRN) and incorporated under the ACT Associations Incorporation Act in October 1998.
- 2.1.2 **Membership:** raw material suppliers, manufacturers, wholesalers, distributors, importers and retailers of complementary medicine products and health foods, (including direct marketing and direct selling organisations), consultants, practitioner associations, practitioners and consumers.
- 2.1.3 **Philosophy:** The Council seeks to promote the industry's interests by encouraging and advancing optimum community health through increasing awareness of the role played by the appropriate use of complementary medicine and health food products to improve health and prevent sickness.
- 2.1.4 **Activities:** include policy development; information gathering, assessment and dissemination; regulatory affairs and government liaison; issuing relevant publications; organising trade and consumer promotions and trade shows; providing education and training seminars, and facilitating co-regulation and industry self-regulation.
- 2.1.5 **Self Regulation:** within the industry commenced in 1984 with the introduction of a Code of Ethics and Advertising Guidelines. The CHC's policy setting and direction is vested in its Board, elected by the membership at an annual general meeting, CHC management and the execution of policy are coordinated by its national secretariat in Canberra.
- 2.1.6 This Code owes its origin to the determination of the CHC's members to further secure and maintain high standards of marketing and promotion. Members have enshrined this philosophy in the industry's evolving vision and value statements, as follows:
- Vision:** Sustainable health, enhanced wellness.....naturally.

**Mission :**

- *facilitating* a change in emphasis in health policy from a disease care model to one based on health and wellness.
- *ensuring* all Australians have timely access to affordable, safe, high quality and efficacious complementary medicines.
- *improving* public health and wellbeing through education and information on the use of complementary medicine products.
- *supporting* and *enhancing* a robust, vital and sustainable complementary medicine products industry.
- *forging* alliances with government, media and consumers to ethically and responsibly promote complementary medicine products and their value to the health and wellness of our community.

**2.2** Stakeholders involved in the development of this Code include:

2.2.1 CHC Secretariat;

2.2.2 CHC Members: suppliers; distributors / wholesalers (importers, exporters); retailers; associates (consultants, healthcare professionals and direct marketing and direct selling organisations);

2.2.3 Therapeutic Goods Administration (TGA);

2.2.4 Consumer representatives; and

2.2.5 Australian Competition and Consumer Commission (ACCC)

**2.3** This Code defines the principles designed to assist in the quality marketing of complementary medicine products and health foods, as well as the mechanisms for complaints handling and enforcement action, including sanctions for non-compliance.

**2.4** This Code may be referred to using the abbreviated title of the *CHC Marketing Code of Practice*.

**2.5** The source documents that were used in the development of this Code are listed in **Appendix 1 References**.

## Objectives

- 3.1** To define the principles and minimum requirements which need to be adhered to by members, in their efforts to maintain the quality of marketing for complementary medicine and health food products.
- 3.2** To define guidelines to be followed by members in attempts to minimise their risk of breaching the *Therapeutic Goods Act 1989*, *Therapeutic Goods Regulations 1990* and the *Therapeutic Goods Advertising Code 2007* (all as amended from time to time) as well as all other relevant legislation, legislative instruments, government guidelines or standards (existing from time to time).
- 3.3** To maintain and enhance the credibility and the sustainability of the complementary medicine and health foods industry.
- 3.4** To enhance consumer confidence in the quality and safety of complementary medicine and health food products by ensuring members:
- 3.4.1 possess a thorough knowledge and due regard for their customers' requirements by responsibly informing them about health and nutrition products that are available and their importance to wellbeing;
  - 3.4.2 present information in an accurate and balanced way that advances the responsible and rational use of complementary medicine and health food products, but does not encourage salesmanship at the expense of customer welfare and needs;
  - 3.4.3 employ the highest standards of professionalism in dealings and relationships; and
  - 3.4.4 are aware that sanctions will apply for those found to be in breach of this Code.
- 3.5** The CHC's prime objective in developing this Code is to develop and recommend acceptable principles and practices that deal fairly with relationships between the:
- Supplier and consumer
  - Supplier and retailer
  - Supplier and health care professional

- Retailer and the consumer but do not compromise safety or public benefit, or the right of a particular consumer to make an informed judgment or purchasing decision.

The approach is predicated on the capacity of respective audiences to understand messages and discriminate between what is empirical and what is promotional or puffery. What distinguishes this code from imposed regulations is that Members agree to support it and not treat its provisions as obstacles to be circumvented by legal ingenuity.

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## Scope

- 4.1 The provisions, requirements and principles described in this Code apply to healthcare professionals, retailers (including direct marketing and direct selling agents), consumers, and all other parties involved with the marketing, advertising, supply or distribution of complementary medicine and health food products (**‘Relevant Parties’**).
- 4.2 Acceptance of and adherence to the provisions, requirements and principles described within this Code is mandatory for all Relevant Parties that are members of the CHC (**‘Members’**).
- 4.3 All members agree that they shall ensure all agents and all other intermediaries acting on their behalf are fully conversant, keep up to date and otherwise undertake to comply with the provisions of this Code.
- 4.4 In line with the Federal Government’s objectives for industry self-regulation of marketing, and to strengthen the likely outcome of a level playing field for self-regulatory codes, the CHC encourages all non-members to adopt and follow the principles described within this Code. Non-members will be invited to submit to the Code’s processes if a complaint is received, with refusal of this invitation resulting in the complaint being referred to the relevant Government authority e.g TGA, ACCC, NSW Food Safety Authority.

## Principles of the Code

- 5.1** Therapeutic products companies have as their primary objective the maintenance of the trust and confidence of all communities with which they engage, the effectiveness of which is assessed through the eyes of the relevant community. Companies will do this by:
- 5.1.1 promoting therapeutic products ethically;
  - 5.1.2 providing products that conform to the highest relevant standards of safety, efficacy and quality; and
  - 5.1.3 providing trust and confidence in the industry through transparency and accountability;
  - 5.1.4 respecting ethical requirements and Codes of Practice which apply to healthcare professionals;
  - 5.1.5 upholding not just the letter of the Code but also the spirit of the Code;
  - 5.1.6 being subject to a transparent complaints process and governance;
  - 5.1.7 having in place a comprehensive process to monitor behaviour and deal with complaints;
  - 5.1.8 remedying behaviour if found to be in breach of the Code;
  - 5.1.9 being entitled to fair and equitable treatment under the Code.
- 5.2** Members must not engage, directly or indirectly, or be knowingly concerned in any unethical behaviour, misleading or deceptive conduct, unfair or unconscionable practices or conduct in normal commercial practice.
- 5.3** Members shall ensure they are familiar and comply with the provisions of this Code and all Commonwealth, State or Territory legislation or instruments applicable to the sale, supply and distribution of complementary medicine and/or health food products.
- 5.4** Members must comply with all further guidelines and provisions that are applicable to the marketing of complementary medicine and/or health food products that are developed from time to time and adopted by this Code.
- 5.5** Members agree to bring to the attention of the CHC any information which relates to concerns around the marketing of complementary medicine and/or health food products.

## General Principles for the Marketing of Complementary Medicines

**Scope:** This section applies to all promotional material, directed to either consumers or healthcare professionals.

### 6.1 Underlying Principles

- 6.1.1 All advertisements must comply with Part 5-1 of the *Therapeutic Goods Act 1989*.
- 6.1.2 Advertising and promotional material (including graphics and other visual representations) must not mislead or contain exaggerated claims (direct or implied) and must conform to generally accepted standards of good taste and recognise the standing of the recipient.

### 6.2 Advertising and Promotion

- 6.2.1 Complementary medicine products may be advertised only for those indications included in the ARTG in relation to that product.
- 6.2.2 Advertising and promotional material must be clearly distinguishable as such. For example, advertisements shall be clearly distinguishable from editorial material.
- 6.2.3 Advertisements should not be placed (or accepted) on the basis that they will be in juxtaposition to editorial matter in such a way as to suggest that the product is suitable for conditions for which the product would not be permitted to be recommended in an advertisement, or for which it has not been accepted.
- 6.2.4 All material must clearly identify the source of that material by detailing the advertiser's name, address, telephone / facsimile number.
- 6.2.5 Literature references, information, findings or conclusions from independent research, surveys or scientific studies must be assessed and presented in a balanced, objective and accurate manner.
- 6.2.6 All descriptions, claims and comparisons that relate to any objectively ascertainable facts must be capable of substantiation.
- 6.2.7 Comparisons should be balanced, fair and compare like with like. All comparative statements should be designed so that on any reasonable interpretation, consumers would not be misled either about the product being advertised or about any product with which it may be compared.

- 6.2.8 Unqualified superlatives must not be used.
- 6.2.9 Claims must not imply that a product or an active ingredient is unique or has some special merit, quality or property unless this can be substantiated.
- 6.2.10 A product may not use the word *new* for more than one year following general introduction. To justify such a description the advertiser must be able to demonstrate the existence of real novelty in effect or formulation or presentation or brand name.
- 6.2.11 No advertisement shall denigrate or attack unfairly any other products, goods or services or other sectors of the industry.
- 6.2.12 Advertising and promotional material should not imitate the devices, copy, slogans or general layout adopted by other advertisers in a way that is likely to mislead or confuse.
- 6.2.13 Slogans, which, because of brevity or for any other reason, are capable of misinterpretation, shall be used only in association with copy that clearly indicates their correct meaning.
- 6.2.14 No advertisement shall rest on claims that a product does not contain an ingredient commonly used in competitive products in such a way as to give the impression that the ingredient is generally unsafe or harmful.
- 6.2.15 Care should be taken in the use of the word *natural* or a similar term used without qualification to describe a product or its ingredients. Claims around the words natural, organic, environmental and sustainable or similar must be verifiable.
- 6.2.16 Advertising and promotional material shall not promote products in a way that might encourage inappropriate use in children.
- 6.2.17 No advertisement shall employ any words, phrases or illustrations that claim or imply the cure of any ailment, illness or disease as distinct from the relief of its symptoms.
- 6.2.18 Advertisements suggesting that the use of a product should be for routine or prolonged use are acceptable only if such use is capable of reasonable justification.

## **Marketing of Complementary Medicine & Health Food Products to the General Public, including Retailers**

**Scope:** This section sets out principles governing marketing activities to the public, including retailers.

This section applies to all advertising materials directed to the general public, including *mainstream media* and *below-the line* materials, internet and broadcast media. These provisions are in addition to the *general principles* at Section 6.

### **7.1 Underlying Principles**

- 7.1.1 It is recognised and understood that the general public may possess limited technical and scientific knowledge, and may rely on statements and claims made in advertising and promotional material to form judgments on the performance expected of a product.
- 7.1.2 No advertisement shall encourage directly or indirectly the indiscriminate, unnecessary or excessive use of the product in question, and shall not encourage salesmanship at the expense of customer welfare and needs.

### **7.2 Advertising Approval**

- 7.2.1 All advertisements for complementary medicine products in specified media are required by law to be approved by an Advertising Services Manager.
- 7.2.2 The CHC Advertising Services Manager must approve advertisements for complementary medicine products in specified media other than broadcast media.
- 7.2.3 Advertisements for complementary medicine products in broadcast media must be approved by the Advertising Services Manager of the Australian Self Medication Industry.
- 7.2.4 Members are encouraged to seek clearance for all other advertising material through the preclearance service established under the CHC Code of Practice.

### 7.3 Advertising Rules

- 7.3.1 Advertisements for complementary medicine products must comply with the *Therapeutic Goods Advertising Code 2007* (TGAC).
- 7.3.2 Advertising of complementary medicine products shall contain the relevant mandatory statements as set out in provisions of the TGAC.
- 7.3.3 No advertisement shall contain any offer to diagnose, prescribe or treat with therapeutic products by correspondence.
- 7.3.4 No advertisement should in any way tend to induce fear or unjustified concern that the reader is suffering, or without using the product being advertised, may suffer or suffer more severely, from any illness, ailment or disease.
- 7.3.5 No advertisement should in any way tend to discourage the reader from seeking the advice of a qualified health care professional.

### 7.4 Advertorials

- 7.4.1 Advertorials are permissible provided their content complies with the advertising provisions. In general, there are two categories of publications:
  - 7.4.1.1 those published independently of a particular sponsor (and are more appropriately known as editorials); and
  - 7.4.1.2 those published by or on behalf of a particular sponsor for the primary purpose of promoting the use or supply of that sponsor's products (and are advertisements.) Such a publication may be a single page, a pamphlet, Internet or a magazine, etc.
- 7.4.2 In relation to the *first category* of publication, editorial comment is regarded as an advertisement (*advertorial*) for a product if a product name, label, advertisement or product specific information, for the ingredients mentioned in the *editorial* content appears on the same page, or on the page immediately preceding or the page immediately proceeding the *editorial* content.
- 7.4.3 In relation to the *second category*, the publication is regarded in its entirety as an advertisement, and is therefore subject to the advertising requirements.

## **7.5 Web Site Advertising**

- 7.5.1 Advertisements on company web sites must comply with the advertising requirements as detailed in the *Therapeutic Goods Advertising Code 2007* (as amended from time to time).
- 7.5.2 Claims for a branded product on websites must be in compliance with those that are included in the ARTG in relation to that product.
- 7.5.3 Consumer comments and testimonials linked in any way to a company's website or social media page must be monitored and removed from the company website if not compliant with this Code and the TGAC.

## **7.6 Provisions for Advertising Foods**

- 7.6.1 Advertisements for food shall comply with the provisions specified in Standard 1.1A.2 of the Australia New Zealand Food Standards Code, and are as follows:
  - a) The label on or attached to a package containing or an advertisement for food shall not contain a claim or statement that the food is a slimming food or has intrinsic weight-reducing properties.
  - b) Save where otherwise expressly prescribed by this Code, any label on or attached to a package containing or any advertisement for food shall not include a claim for therapeutic or prophylactic action or a claim described by words of similar import.
  - c) Any label on or attached to a package containing or an advertisement for a food shall not include the word 'health' or any word or words of similar import as a part of or in conjunction with the name of the food.
  - (d) Save where otherwise expressly prescribed by this Code, any label on or attached to a package containing or any advertisement for food shall not contain any word, statement, claim, express or implied, or design that directly or by implication could be interpreted as advice of a medical nature from any person.
  - (e) Save where otherwise expressly prescribed by this Code, the label on or attached to a package containing or any advertisement for food shall not contain the name of or a reference to any disease or physiological condition.

Notwithstanding the above, the Food Standards Code does allow some foods to make health claims (refer to the Standard for the approved foods and claims).

## **7.7 Recommendations and Testimonials**

- 7.7.1 Testimonials should represent the user's genuine views. If a testimonial is shortened, care should be taken that the original meaning is not changed in any way.
- 7.7.2 Any material in testimonials, which is contrary to this Code, must not be used.
- 7.7.3 Testimonials for therapeutic goods can be used only in relation to the indication for which the product has been accepted for inclusion in the ARTG.

## **7.8 Shelf Talkers**

- 7.8.1 Claims included in shelf talkers must be consistent with those included in the ARTG in relation to that product.
- 7.8.2 Shelf talkers that include a statement of purpose must carry the appropriate required warning statements.

## **7.9 In store Advice to Consumers**

- 7.9.1 [Refer to the CHC's Retailers Code of Practice \(under development in 2012\).](#)
- 7.9.2 In store advice and information is encouraged but the following parameters should be observed:
  - advice or information should not be diagnostic in nature;
  - it shall be confined to general [health and nutrition] issues;
  - it shall not involve sale of Practitioner only products without consultation or receipt of a valid script ; and
  - it shall be consistent with respect to a customer's legitimate needs and welfare.

## **7.10 Direct Sellers**

- 7.10.1 In the event that a salesperson, distributor or representative offering a Direct Selling Organisation's products for sale should engage in any improper course of conduct pertaining to a sales presentation of its goods or services, the company shall promptly investigate the complaint and shall take such action as it may find

appropriate and necessary to redress the problem and to put in place systems that will prevent the problem recurring.

- 7.10.2 A Direct Selling Organisation will be considered responsible for breaches of any relevant legislation by their salespersons, distributors or representatives where the company has authorised, supported or condoned the practice. The Direct Selling Organisation is required to establish appropriate procedures to ensure that its salespersons, distributors or representatives comply with all relevant legislation.
- 7.10.3 Direct Selling Organisations shall not use the independent contractor status of salespersons, distributors or representatives supplying their products under its trademark or trade name as a defence against alleged breaches of any relevant legislation, but they shall not be prevented from raising such a defence under any other circumstances.

## **7.11 Direct Marketers**

- 7.11.1 A direct marketer shall not make misleading or deceptive claims about an offer delivered through direct marketing whether by words, omission, illustration or any other means. A direct marketer shall not make false or misleading claims with respect to the price or quality of goods or services.
- 7.11.2 A Company will be considered responsible for breaches of any relevant legislation by their employees, agents or subcontractors where the company has authorised, supported or condoned the practice. Its employees, agents or subcontractors shall consider a Company responsible for breaches of legislation, even if it had no knowledge of the offending practice. The company is required to establish appropriate procedures to ensure that its employees, agents or subcontractors comply with all relevant legislation.
- 7.11.3 In the event that an employee, agent or subcontractor offering a company's products for sale should engage in any improper course of conduct pertaining to the sales presentation of its goods or services, the company shall promptly investigate the complaint, and shall take such action as it may find appropriate and necessary to redress the problem and to put in place systems that will prevent the problem recurring.

## **7.12 Books**

- 7.12.1 If an advertisement for a product also mentions or offers the sale of a book the following rules must be observed:
- 7.12.2 the overall intent of the advertisement must not seek to circumvent the provisions of this Code or the *Therapeutic Goods Advertising Code 2007*(as amended from time to time);
- 7.12.3 the book cannot make a claim for a branded product if that claim is not included in the ARTG for that product;
- 7.12.4 if a book is published by or on behalf of the advertiser then it will be treated as an extension of the advertisement and subject to the same rules;
- 7.12.5 if the book is published independently and is offered to the reader there must be a cover price and there can be no inference in the advertisement itself that the book might contain information of a medical nature not permitted in the advertisement;
- 7.12.6 if an independently published book is mentioned but not offered for sale the advertisement should not give the impression that there is any medical claim being made that would not normally be permitted.

## **7.13 Journal References**

- 7.13.1 The title of an article referenced in an advertisement must not contravene this Code or section 22(5) of the *Therapeutic Goods Act 1989*. However, the name of the journal should appear, even if the name of the journal includes a prohibited representation.

## Marketing of Complementary Medicine Products to Healthcare Professionals

**Scope:** This section of the Code sets out principles governing marketing activities by advertisers to Healthcare Professionals. These provisions are in addition to the *general principles* in section 6.

### 8.1 Underlying Principles

- 8.1.1 Therapeutic products companies have as their primary objective the maintenance of the trust and confidence of all communities with which they engage, the effectiveness of which is assessed through the eyes of the relevant community. Companies will do this by:
- 8.1.1.1 Promoting therapeutic products ethically;
  - 8.1.1.2 Providing products that conform to the highest relevant standards of safety, efficacy and quality;
  - 8.1.1.3 Providing trust and confidence in the industry through transparency and accountability;
  - 8.1.1.4 Respecting ethical requirements and codes of practice which apply to healthcare professionals;
  - 8.1.1.5 Upholding not just the letter of the Code but also the spirit of the Code;
  - 8.1.1.6 Being subject to a transparent complaints process and governance;
  - 8.1.1.7 Having in place a comprehensive process to monitor behaviour and deal with complaints;
  - 8.1.1.8 Remediating behaviour if found to be in breach of the Code;
  - 8.1.1.9 Being entitled to fair and equitable treatment under the Code.
- 8.1.2 Healthcare professionals typically possess a higher level of understanding and knowledge about disease states, and have the ability to distil pertinent information about therapeutic products.
- 8.1.3 Advertisements and promotional material distributed by sponsors to healthcare professionals are regulated through section 22(5) of the *Therapeutic Goods Act 1989* and by this Code of Practice, unless such material supplied by the sponsor is to be

used as product support information (e.g. video, audiotape, leaflet or brochure) which is subsequently supplied by the healthcare professional to the patient.

- 8.1.4 This Code should be viewed as the minimum set of standards required to promote complementary medicine products to healthcare professionals in Australia and does not inhibit more stringent and comprehensive requirements being applied by individual companies.
- 8.1.5 The Complementary Healthcare Council aims to encourage a high level of knowledge of the safety, quality, efficacy and appropriate uses of complementary medicine products amongst healthcare professionals.
- 8.1.6 Companies conduct a range of commercial and marketing activities to promote complementary medicine products to healthcare professionals.
- 8.1.7 Companies are required to supply, distribute and market their products in accordance with all applicable legislative requirements, including but not limited to, the *Therapeutic Goods Act 1989*, *Therapeutic Goods Regulations 1990*, *Competition and Consumer Act 2010* (all as amended from time to time), and all other applicable laws and Codes.

## **8.2 Responsibility**

- 8.2.1 All information, claims and graphical representations provided to healthcare professionals must be current, accurate, balanced and must not mislead, either directly, by implication or by omission.
- 8.2.2 Promotional and educational materials directed to healthcare professionals must not imply that the goods are safe or that their use cannot cause harm or that they have no side-effects.

## **8.3 Good Taste**

- 8.3.1 All promotional and educational material (including graphics and other visual representations) must conform to generally accepted standards of good taste and recognise the professional standing of the recipients. These materials must not contain anything that would be likely to cause serious or widespread offence taking into consideration current professional community standards.

## **8.4 Promotional Claims**

- 8.4.1 Information and claims must be capable of substantiation, and as such the indications must not exceed those included on the ARTG in relation to a product as required under Section 22(5) of the Act. Such substantiation must be provided to a healthcare professional without delay upon receipt of a reasonable request.
- 8.4.2 Any information used to substantiate a therapeutic or promotional claim must include sufficient detail and be of adequate quality to allow evaluation of the validity of the claim.
- 8.4.3 Quotations from medical literature or from personal communications must accurately reflect the meaning of the author and statistical significance of the study.
- 8.4.4 Any reports from educational events held or sponsored by a company must be a balanced, true and accurate reflection of that meeting.

## **8.5 Qualifying Statements**

- 8.5.1 If qualifying statements are used with a therapeutic or promotional claim, they should be linked to the relevant claim with an asterisk or similar identifier. Qualifying statements must appear directly below or adjacent to the claim and be of a size that is easily read.

## **8.6 Comparative Statements**

- 8.6.1 Points of comparison should be based on facts which have been previously substantiated and reflect the full body of evidence or experience at the time of publishing.

## **8.7 Imitation**

- 8.7.1 Promotional material should not imitate the devices, copy slogans or general layout adopted by other companies in a way that is likely to mislead or confuse.
- 8.7.2 Advertisements in any media should not be designed to resemble editorial matter unless clearly identified as an advertisement or advertorial.

## **8.8 Company Media**

- 8.8.1 Company audiovisual media, electronic media or physical media, must comply with all relevant provisions of this Code.
- 8.8.2 The font size and graphics in all audiovisual media must be such that allows easy and clear legibility. The resolution provided by different screen sizes should be taken into account when assessing legibility.
- 8.8.3 Information provided by a company to a third party for inclusion in audiovisual media must comply with all relevant provisions of this Code.

## **8.9 Internet**

- 8.9.1 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.
- 8.9.2 Website pages designed specifically for healthcare professionals including but not limited to product pages, technical information and forums, must be log-in and password protected to prevent access by consumers.
- 8.9.3 The font size and graphics used in all internet advertisements must be such that allows easy and clear legibility.
- 8.9.4 Where references to other information sources or internet sites are made, companies must take all reasonable steps to ensure that these information sources and sites are appropriate and will enhance appropriate use of the product. It should be made clear when the reader is leaving the site or being directed to a site that the company has not developed.
- 8.9.5 It is appropriate for companies to link their websites to the text of the Code of Practice on the CHC website. Such a linkage must not be used to imply that the CHC endorses any part of the content of the company's site but to provide information to healthcare professionals on the Code of Practice and the standards it sets.

## **8.10 Social Media**

- 8.10.1 Social media (such as Facebook, YouTube, Myspace, blogs, and Twitter) is an umbrella term that defines the various activities that integrate technology, social interaction, and the creation of content.

- 8.10.2 Advertising to healthcare professionals via social media must comply with the relevant provisions of the Code and must comply with the TGAC. The TGAC prohibits advertisements that contain or imply endorsement of a therapeutic good by a healthcare professional.
- 8.10.3 Consumer comments and testimonials linked in any way to a company's website or social media page must be monitored and removed from the company website if not compliant with this Code and the TGAC.

### **8.11 eNewsletters and Facsimilie**

- 8.11.1 Company eNewsletters, whether available on-line or sent via e-mail, must comply with the relevant provisions of this Code and the *Commonwealth Spam Act 2003*. Under the Act, no person is permitted to send 'spam' being an unsolicited commercial electronic message (which includes emails, instant messaging, SMS and other phone messaging).

### **8.12 Communication with Media aimed at Healthcare Professionals** (primary intended audience healthcare professionals).

- 8.12.1 A media release to the healthcare professional media must comply with the relevant provisions of this Code.
- 8.12.2 A company may issue a media release to the healthcare professional media for the following purposes, including but not limited to: announcing a new product, new dosing, or new formulation; or alerting healthcare professionals to the results of significant new research.
- 8.12.3 Upon specific request, companies may provide educational material to medical journalists in the same manner as provided to healthcare professionals. Such information must be current, accurate and balanced and comply with the relevant provisions of this Code.
- 8.12.4 No sponsorship should be conditional upon any obligation by the journalist to report on a company's product(s). Nothing should be offered or provided in a manner or on conditions that would interfere with the independence of a journalist.

### **8.13 Celebrity Endorsements**

- 8.13.1 Any celebrity endorsement in advertising directed to healthcare professionals must comply with the relevant provisions of this Code.

### **8.14 Gifts and Offers**

#### *Brand name reminders*

- 8.14.1 The nature of any brand name reminder or its packaging must not have the capacity to be confused with a therapeutic good.
- 8.14.2 An individual brand name reminder should be of token value and should not bring discredit to the industry.
- 8.14.3 Brand name reminders must conform to the provisions of the TGAC, as these items may inadvertently come into the possession of a consumer.

#### *Competitions*

- 8.14.4 The conduct of competitions shall comply in all respects with relevant Commonwealth and State regulations.

### **8.15 Management of Company Representatives**

#### *Conduct*

- 8.15.1 All material for use by company representatives must conform with the relevant provisions of this Code.
- 8.15.2 Company representatives should at all times maintain a high standard of ethical conduct and professionalism in the discharge of their duties.
- 8.15.3 Company representatives must not employ any deception to gain an appointment with a healthcare professional.
- 8.15.4 Company representatives should ensure that the frequency, timing and duration of appointment, together with the manner in which they are made, are such as not to cause inconvenience to the healthcare professional or practice.

#### *Training*

- 8.15.5 Companies have a duty to ensure that employees are fully trained and informed of their responsibilities under this Code and all relevant laws, guidelines and other codes.

- 8.15.6 Company representatives should possess sufficient knowledge to present information on the company's products in a current, accurate and balanced manner.

#### **8.16 Product Samples**

- 8.16.1 The distribution of samples must be carried out in a reasonable manner and be compliant with individual State and Territory legislation, as applicable.
- 8.16.2 Records must be kept in compliance with individual State and Territory legislation, as applicable.
- 8.16.3 On request companies should accept the return of samples of their products. Returned stock should be processed through a returned goods system.

#### **8.17 Industry Sponsored Educational Events**

- 8.17.1 The primary purpose of an educational meeting must be the enhancement of healthcare and the quality use of complementary healthcare products.
- 8.17.2 Company involvement in educational events must have the objective of providing current, accurate and balanced healthcare education in an ethical and professional manner. When organising or sponsoring educational events, it is also important to ensure an appropriate balance between the duration of educational content and any hospitality provided to delegates.
- 8.17.3 The conduct of company representatives at educational events must also be able to withstand public and professional scrutiny and be socially responsible.
- 8.17.4 The company typically initiates and manages the duration of educational content and the selection of speakers. The educational program should be reviewed and approved through an internal company process.
- 8.17.5 The identity of the company organising the event should be clearly communicated in all materials relevant to the educational event.
- 8.17.6 The choice of venue must be able to successfully withstand public and professional scrutiny and conform to professional and community standards of ethics and good taste. The venue should not be chosen for its leisure, sporting or recreational facilities.

## **8.18 Hospitality and Entertainment**

- 8.18.1 Meals or beverages offered by companies to healthcare professionals must be secondary to the educational content. Meals and beverages must be appropriate for the educational content and duration of the meeting and should not be excessive.
- 8.18.2 Travel may be provided to delegates of the meeting if justified by the educational content or the origin of the delegates.
- 8.18.3 A reasonable level of accommodation expenses may be provided to delegates at a company educational meeting if justified by the time and duration of the meeting or the origin of the delegates.
- 8.18.4 Delegates at educational events must not be paid for their attendance unless they have an additional role at the event such as presenting or acting as MC.

## **8.19 Sponsorship of third party educational conferences**

- 8.19.1 Companies may sponsor educational events which are organised by a society, college, university or other healthcare professional organisation, and may sponsor 'in-institution' educational events held within a healthcare professional workplace.
- 8.19.2 Financial sponsorship of an educational event should be paid to the healthcare professional organisation, and not paid directly to an individual healthcare professional.
- 8.19.3 The third party organising the educational meeting should independently determine the educational content, select the speakers and invite the attendees. Companies should undertake a review of the educational value prior to agreeing to sponsor the event.
- 8.19.4 The sponsoring company may propose a speaker for the educational meeting, but the final choice of speakers should be determined by the healthcare professional organisation or nominated faculty.

## **8.20 Sponsorship of healthcare professionals to attend educational events**

- 8.20.1 Sponsorship may be provided to a healthcare professional to attend an educational event (Australasian and international) provided the meeting is related to the healthcare professional's area of expertise.
- 8.20.2 Such sponsorship must be able to successfully withstand public and professional scrutiny, and conform to professional and community standards of ethics and good taste.

- 8.20.3 Any accommodation provided to a sponsored healthcare professional must be reasonable and appropriate for the time and duration of the meeting and origin of the healthcare professional.
- 8.20.4 Any meals or beverages offered by companies to sponsored healthcare professionals must be secondary to the educational content. Meals and beverages must be appropriate for the educational content and duration of the meeting and must not be excessive.
- 8.20.5 A company must not subsidise or pay for the hospitality, travel or other expenses of any relative or associate of a sponsored healthcare professional attending an educational event.

## **8.21 Trade Displays**

- 8.21.1 Trade displays, if in a public area, must comply with the TGAC.
- 8.21.2 A trade display should include the name of the sponsoring company.
- 8.21.3 All promotional materials used at trade displays must be consistent with the relevant provisions of this Code.
- 8.21.4 Gifts or offers provided by a company to encourage healthcare professionals to visit a trade display must comply with this Code.
- 8.21.5 Samples must not be made available for collection from unattended trade display stands, nor be supplied to non-healthcare professionals.
- 8.21.6 Promotion of practitioner-only products at professional trade displays, seminars and forums must only be directed at healthcare professionals.
- 8.21.7 Any activities of a company in relation to its trade display must be able to successfully withstand public and professional scrutiny, and conform to professional and community standards of ethics and good taste.

## **8.22 Research and Education Grants**

- 8.22.1 A company may provide a grant or financial support provided that the support is made only to a healthcare professional practice, institution or health related organisation for education, research, for activities that improve the use of complementary healthcare products, and/or to improve health outcomes.
- 8.22.2 Financial support should be paid to a healthcare practice or health related organisation, and not paid directly to an individual healthcare professional.

### **8.23 Funding of Healthcare Practice Activities and Patient Groups**

8.23.1 A Company may provide financial support for healthcare practice activities, provided such programs:

- are intended to improve patient outcomes;
- comply with the relevant privacy legislation;
- are intended to enhance the quality use of complementary medicine products;
- can successfully withstand public and professional scrutiny.

8.23.2 Consistent with privacy legislation, any patient level data that is accessible to the company providing the financial support must be de-identified.

### **8.24 Market Research with Healthcare Professionals**

8.24.1 The purpose of these activities should be to collect data and not a means to promote company product(s).

8.24.2 Market research studies must be clearly identified as such when the initial approach is made to participants.

8.24.3 Any payment (whether cash or kind) should not exceed a level commensurate with the time involved.

8.24.4 Promotion should not be represented as market research or research of any type.

8.24.5 Market research should be a genuine initiative to collect relevant and useful information to enhance the provision of healthcare.

### **8.25 Product familiarisation programs**

8.25.1 Company materials associated with the provision of product familiarisation programs must comply with the relevant provisions of this Code.

8.25.2 Companies must ensure that support materials designed to be disseminated by the healthcare professional to patients comply with the TGAC.

### **8.26 Consulting arrangements with healthcare professionals**

8.26.1 Companies may seek the services of suitably qualified and experienced healthcare professionals to provide a service, advice and/or guidance on a range of matters.

- 8.26.2 The number of healthcare professionals retained should not be greater than the number reasonably necessary to achieve the identified purpose.
- 8.26.3 Any remuneration for services rendered should not exceed that which is commensurate with the services supplied. A company may provide reasonable travel, accommodation or hospitality to consultants in association with the consulting services.
- 8.26.4 A company must not subsidise or pay for the travel, hospitality, accommodation or other expenses for any relative or associate of the consulting healthcare professional.

### **8.27 Shareholdings by healthcare professionals in therapeutic product companies**

- 8.27.1 Companies should ensure that relationships with healthcare professionals do not bring the industry into disrepute or reduce public confidence in the industry.
- 8.27.2 Companies should avoid both actual and potential conflicts of interest with healthcare professionals responsible for prescribing and dispensing therapeutic goods.
- 8.27.3 Companies should act in a manner that does not compromise or appear to compromise patient care.

### **8.28 Ghost Writing/Medical Writers**

- 8.28.1 Advertising material directed to healthcare professionals does not require pre-approval. Companies must therefore satisfy themselves that any material they have produced aimed at healthcare professionals complies with this Code.

## Marketing and Supply of Practitioner Only Products

**Scope:** This section of the Code sets out principles governing marketing and supply activities by advertisers of practitioner only complementary medicine products to healthcare professionals.

The CHC has published the *Guideline for the Sale and Supply of Practitioner Only Products*, which documents industry-endorsed best practice for the sale and supply of these products.

### 9.1 Underlying Principles

9.1.1 These provisions deal specifically with the advertising, promotion and supply of practitioner only complementary medicine products.

9.1.2 Practitioner only complementary medicine products may be included in the ARTG as either Listed or Registered products. Practitioner only products also include, but are not limited to, practitioner only foods and cosmetics.

9.1.3 Practitioner only products in retail outlets are so located that they are **not visible** and not accessible by the general public.

### 9.2 General Provisions

9.2.1 'For Practitioner Dispensing Only' or 'Practitioner only range' products are complementary medicines that are supplied in a dispensing pack to a complementary healthcare practitioner with the words 'For Practitioner Dispensing Only' or 'Practitioner only range' included on the label. These medicines must meet the same standards required for other Listed or Registered complementary medicines.

9.2.2 Sponsors shall not supply practitioner only products to a retail outlet unless the following is observed:

9.2.2.1 If a healthcare professional is prescribing onsite, the retail outlet has a separate, discrete area in which the consultation is conducted.

9.2.2.2 The healthcare professional is to maintain accurate, complete and up-to-date records, and retain all patient records in a safe and secure area for the duration as required by State or Federal law.

- 9.2.3 Practitioner only complementary medicine products must not be publicly accessible or supplied for sale over the counter without a script or authorisation by the healthcare professional.
- 9.2.4 Practitioner only products can be marketed to healthcare students for educational purposes only once clinic hours have commenced..

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## **In-house Compliance**

- 10.1** Members should adopt effective compliance programs by issuing written policies and procedures, conducting training programs and implementing clear procedures, controls and enforcement mechanisms.
- 10.2** A member company will appoint a responsible person within the organisation to ensure that these code provisions are followed diligently. The CHC will be notified of the details of this person and these will be included in a register.
- 10.3** Members shall ensure that all appropriate personnel within their organisations and outside service organisations and consultants shall be aware of the requirements of this Code and the responsibilities attendant to it.
- 10.4** Members will cooperate with the CHC in the investigation of problems and/or complaints that may from time to time arise under the provisions of the Code.
- 10.5** A complaint regarding any non-compliance of this Code by a Member must be dealt with by the CRMC pursuant to the provisions of this Code.
- 10.6** Upon receiving a complaint, which prima facie does or may involve a breach or a potential breach of this Code, the Member to which the complaint has been made (whether directly or through its employees or representatives) must seek to collect not less than the following:
- 10.6.1 full details relating to or evidencing the complaint;
  - 10.6.2 full name and address of the business being complained about;
  - 10.6.3 full details of the type and frequency of the complaint in question;
  - 10.6.4 any evidence which can be used to support the complaint;
  - 10.6.5 comments, observations or opinions of the complainant or any other relevant party which may evidence or otherwise indicate that the type of complaint being made is a recurring or systemic problem for the company, the subject of the complaint and/or the industry generally. If the latter, full details of other companies guilty of similar conduct should also be sought, if available.

## Complaints Handling

### Establishment and Procedures of the Complaints Resolution and Monitoring Committee (CRMC)

- 11.1** Complaints relating to alleged breaches of this Code will be heard by a complaints resolution and monitoring committee (CRMC), as approved by the CHC Board, which:
- 11.1.1 will provide for a Chair that the committee elects by a majority vote of the members of the committee and holds the initial term of two (2) years;
  - 11.1.2 will include a CRMC Secretariat staff member (acting as Secretary to the committee);
  - 11.1.3 will consist of:
    - 11.1.3.1 the Executive Director;
    - 11.1.3.2 a maximum of three (3) members of the CHC one of whom must have technical expertise and the other two being a sponsor and a retailer member;
    - 11.1.3.3 a Practitioner;
    - 11.1.3.4 a member with extensive experience in administration of food law at State level;
    - 11.1.3.5 a consumer representative;
    - 11.1.3.6 a representative of the Direct Selling Association of Australia;
    - 11.1.3.7 an observer from the Therapeutic Goods Administration (with regulatory experience in the advertising and supply of CMs);
    - 11.1.3.8 an observer from the Australian Competition & Consumer Commission on invitation from the Committee; and
    - 11.1.3.9 an observer from a special interest group on invitation from the Committee.
  - 11.1.4 will provide for committee members to be entitled to hold office for two (2) years and thereafter to be eligible for reappointment.
  - 11.1.5 will provide for each position to have an alternate to attend meetings in the absence of the member.

11.1.6 will meet as required but not less than six (6) times a year.

**11.2** The CHC Board may from time to time appoint one or more experts to assist the CRMC in its deliberations. Experts and observers will not have voting rights.

**11.3** A quorum consists of the Chair and four (4) other members of the CRMC.

**11.4** Complaints handling procedures shall include, not less than the following:

11.4.1 the CRMC will not consider a complaint while it's substance is the subject of pending Court proceedings;

11.4.2 a party to a complaint must notify the Chair of the CRMC immediately upon becoming aware of any Court proceedings concerning the substance of the complaint;

11.4.3 the Secretary of the CRMC must acknowledge a complaint, whether concerning a Member or a non-Member, in writing, within ten (10) working days of its receipt and allow the advertiser the opportunity to provide an explanation prior to the CRMC's consideration of the complaint.

11.4.5 Anonymous complaints will be accepted by the Secretary of the CRMC and progressed through the complaints process.

11.4.6 Where a complaint about a complementary medicine product involves risk to public safety or a complementary medicine product that has not been included in the ARTG, the CHC Executive Director, or his/her delegate, will refer the matter immediately to the Regulatory Compliance Unit of the Therapeutic Goods Administration for further action, as it deems appropriate.

11.4.7 A complaint may be referred to the NSW Food Authority, National Industrial Chemicals Notification and Assessment Scheme, Complaints Resolution Panel, or other agency, as appropriate.

11.4.7 After considering all information provided where the complaint may constitute a breach of this Code, the Secretariat shall refer the complaint to the CRMC.

11.4.8 Upon determination of the alleged breach, the Executive Director, or his/her delegate, shall notify all relevant parties of the decision of the CRMC and appeal provisions.

11.4.8 Complaints referred as part of a monitoring process will be referred to the CRMC for consideration and determination of appropriate action.

**11.5** With respect to a complaint made by a consumer or a non-industry complainant:

- 11.5.1 the party wishing to complain will be encouraged by the Secretary of the CRMC, (but not required) before lodging a complaint to seek to resolve the issue with the Member or non-Member whose behaviour has given rise to the complaint (the respondent); and
- 11.5.2 the complainant may apply to the CRMC to have their name withheld so as to protect the privacy of the complainant and avoid any possible disincentive to making a complaint.
- 11.6** It is an obligation of the CRMC to encourage an industry complainant to seek evidence and to resolve the subject of the complaint directly with the Member whose behaviour has given rise to the complaint.
- 11.7** In relation to the procedure for making a complaint, the following shall apply:
  - 11.7.1 The complaint and supporting material must be in writing and forwarded to the Secretary of the CRMC, and must state, amongst other things:
  - 11.7.2 the nature of the conduct being complained of;
  - 11.7.3 the provision(s) of this Code alleged to have been breached and the reasons for asserting the breach has occurred; and
  - 11.7.4 where relevant, provide supporting traditional, scientific or other technical data to support the complaint.

### **Consideration of the Complaint**

- 11.8** The Secretary of the CRMC must forward a copy of the complaint to the Chief Executive Officer (or equivalent) of the respondent within ten (10) working days of receiving the complaint and request a response, in writing, to the Secretary of the CRMC within a further ten (10) working days.
- 11.9** The CRMC may inform itself of any other matter by:
  - 11.9.1 seeking further information from the complainant or respondent;
  - 11.9.2 consulting such persons as it thinks fit; and
  - 11.9.3 referring to publicly available information,Provided that:

- (a) Members of the CRMC with a conflict of interest must leave the meeting and this exit plus re-entry to the meeting must be recorded in the minutes of the meeting.
- (b) any person consulted by the CRMC is bound to maintain confidentiality under a written non-disclosure agreement;
- (c) matters not raised in the original complaint are forwarded to the Respondent with an opportunity to respond within ten (10) working days; and
- (d) the parties are provided with a record of all information obtained pursuant to this clause and are afforded a period of ten (10) working days within which to respond.

**11.10** The CRMC must consider a complaint on the basis of all material properly before it and subject to any contrary provisions set out in this Code, the CRMC will deal with all complaints in accordance with amongst other things, the standards set out in Australian Standards ISO 10002-2006 (Customer Satisfaction – Guidelines for complaints handling in organisations).

**11.11** If the CRMC considers that a breach of this Code has occurred, it must determine the appropriate sanction as provided under clause 12 of this Code.

**11.12** The CRMC must provide a written notice of its decision to the complainant and the respondent within fifteen (15) working days of the CRMC making its decision together with its reasons and any sanctions. The notice must include details of appeal procedures.

**11.13** A complainant may withdraw a complaint at any time, in which event the respondent must be informed in writing by the Secretary of the CRMC and the complaints handling procedure terminated.

**11.14** The CRMC may determine not to hear a complaint, if it is satisfied that:

- 11.14.1 the complaint is trivial, vexatious, misconceived or lacking in substance/ supporting material; or
- 11.14.2 the complaint has previously been dealt with by the CRMC or another authority; or

11.14.3 the complaint can be more effectively or more conveniently dealt with by another authority, and refers the complaint to that other authority.

**11.15** If the complaint is not heard pursuant to clause 11.14 the Secretary to the CRMC must inform the complainant and the respondent in writing, detailing the reasons.

**11.16** Termination of the complaints handling procedure pursuant to this clause will not prevent the CRMC from referring to the CHC Board for its consideration any action or conduct on the part of a Member, which in its opinion may constitute a criminal offence or be likely to bring the complementary healthcare industry into disrepute.

### **Mediation**

**11.17** The CHC Board may invite members or non-members who are in dispute, to participate in mediation. The CHC Board will appoint a mediator or mediation panel to assist the parties to discuss, negotiate and achieve a solution. Mediation may take place at any time.

**11.18** All negotiations during mediation are non-binding and confidential. The parties must be present in person at mediation. It is not expected that the parties will be legally represented at mediation.

**11.19** Any agreement reached as a result of mediation will be in writing and signed by the parties and the chair of the mediation panel or mediator. The agreement remains confidential to the parties and the mediation panel and/or the mediator, unless the parties agree it be made public. The CHC Board will monitor progress in implementation of the agreement.

**11.20** Where the parties agree that mediation may be preferable to litigation in resolving a dispute, the CHC Board will engage a mediator or establish a mediation panel to facilitate the process. The panel will normally comprise CHC Board members, including where practicable, the CHC Executive Director.

- 11.21** Where the CHC Board agrees to engage a mediator, the mediator will be responsible for arranging and conducting mediation and reporting to the Board with regard to progress. The mediator will be available to help the parties come to a final decision based on the discussions. Mediation is not legally binding.
- 11.22** The CHC secretariat will arrange the mediation session in consultation with the parties and panel members.
- 11.23** Relevant documentation will be circulated to the Parties and Mediator or Panel Members one week before the scheduled mediation.
- 11.24** The CHC Board may seek from the parties a contribution to the costs incurred by the CHC in arranging a mediation session e.g. room hire, mediator or secretariat travel. CHC Board panel members and the parties will normally meet their own expenses when participating in mediation.

## Sanctions and Enforcement Action

**12.1** Where a breach of this Code has been established, before determining any sanction, the CRMC must first classify the severity of the breach with reference to the classification set out below. Note that only examples of breaches are given and these examples may not cover the complete scope of breaches, and/or the levels of breach may vary upon objective review and intent of whole.

Severity of Breach	Potential Implications	Examples of Breach (this list is not exhaustive and is intended to provide examples only)
Minor or Moderate Breach	<ul style="list-style-type: none"> <li>○ No safety implications to consumers</li> </ul>	<ul style="list-style-type: none"> <li>○ Font size or location of warning statement</li> <li>○ Unqualified marketing statement</li> <li>○ Unqualified, unverifiable marketing claim</li> <li>○ Exaggerations</li> <li>○ Advertisements used as editorial</li> <li>○ Appropriate warnings absent</li> <li>○ Endorsement present</li> <li>○ Unfair comparisons with other products</li> <li>○ Repeat same/similar minor breach within twelve months</li> </ul>
Severe Breach	<ul style="list-style-type: none"> <li>○ Illegal Products</li> <li>○ Safety implications</li> <li>○ Major adverse impact on the complementary healthcare industry in Australia</li> </ul>	<ul style="list-style-type: none"> <li>○ Severe breaches of relevant regulations/ standards etc. ...</li> <li>○ Unlisted products making illegal therapeutic claims</li> <li>○ Repeat same/similar moderate breach within twelve months</li> </ul>

		○ Restricted representations
Repeat Severe Breach	<ul style="list-style-type: none"> <li>○ Safety implications</li> <li>○ Major adverse impact on the complementary healthcare industry in Australia</li> </ul>	<ul style="list-style-type: none"> <li>○ Member commits the same/similar severe breach of the Code within the preceding twelve (12) months</li> </ul>
Please note: Examples are provided by way of assisting Members only and may not cover all potential breaches.		

**12.2** Where the CRMC finds that a Member has breached this Code, the CRMC may apply one or more of the following sanctions outlined below. Note that only examples are given and these examples may not cover the complete scope of sanctions that may be applied by the CRMC.

Minor or Moderate Breach	<ul style="list-style-type: none"> <li>○ Warning issued;</li> <li>○ Member to take immediate action to discontinue/modify the practice in breach of Code (confirmed in writing to CRMC that remedial action has occurred within ten (10) working days of receipt of notification);</li> <li>○ Requirement to have the offending material amended at the next print run and to destroy any offending material remaining in the Member’s possession.</li> <li>○ Publishing of complaint and sanction on the CHC website.</li> <li>○ Member to take immediate action to discontinue/modify practice in breach of Code (confirmed in writing to CRMC that remedial action has occurred within ten (10) working days of receipt of notification);</li> <li>○ Requirement to recall and destroy all offending material;</li> <li>○ Member to provide written undertaking to comply with the Code in future, acknowledging consequences of future breach;</li> <li>○ Publishing of complaint and sanction on the CHC website.</li> <li>○ Referral to other relevant agency.</li> </ul>
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<p><b>Severe Breach</b></p>	<ul style="list-style-type: none"> <li>○ Member to provide written undertaking to comply with the Code in future, acknowledging consequence of future breach;</li> <li>○ Requirement to recall and destroy all offending material;</li> <li>○ Requirement to have future advertising and promotion material pre-cleared by an ASM at the expense of the advertiser/sponsor for a specified period;</li> <li>○ Repeat offenders may be required to appear before the CRMC;</li> <li>○ In the case of supply of therapeutic goods which are not included in the ARTG, reference of the matter to the TGA Regulatory Compliance Unit;</li> <li>○ In the case of supply of a food, reference of the matter to the relevant State Authority;</li> <li>○ Suspension (for such time as determined by the CHC Board) and exclusion from CHC activities if a CHC member e.g. committee participation;</li> <li>○ Advertising of ‘Practitioner Only’ products to consumers - publish a public retraction;</li> <li>○ Refer to ACCC for misleading and deceptive conduct;</li> <li>○ Fine of up to \$20,000 plus GST;</li> <li>○ TGA notification;</li> <li>○ Publishing of complaint and sanction on the CHC website.</li> <li>○ Referral to other relevant agency.</li> </ul>
<p><b>Repeat Severe Breach</b></p>	<ul style="list-style-type: none"> <li>○ Instant removal of CHC membership (where applicable). The company may re-apply for CHC membership once compliance to the CHC Code requirements are demonstrated to the satisfaction of the CRMC and CHC Board;</li> <li>○ Requirement to recall and destroy all offending material;</li> <li>○ Refer to ACCC for misleading and deceptive conduct;</li> <li>○ TGA notification and referral;</li> <li>○ Fine of up to \$40,000 plus GST;</li> <li>○ Publishing of complaint and sanction on the CHC website.</li> </ul>

	○ Referral to other relevant agency.

**12.3** If the CRMC resolves that a complaint from a Member is frivolous or vexatious, the CRMC may request the complainant to show cause why it should not pay to the Secretary of the CRMC, costs and any out-of-pocket expenses associated with the complaint for abuse of this Code.

**12.4** If the CRMC resolves that a breach of this Code warrants the suspension or the expulsion of any member from the CHC, it must make a recommendation to the CHC Board. The CHC Board must deal with the recommendation under the provisions of the CHC Constitution.

**12.5** In the event that the CRMC requires a Member to cease conduct and the Member wishes to appeal the decision, the CRMC decision will stand and must be complied with, pending the outcome of the appeal.

**12.6** Should a respondent fail to comply with an order or directive of the CRMC the CHC may:

- 12.6.1 refer the complaint to the TGA (or other relevant authority);
- 12.6.2 direct the publication in the next edition of the CHC’s newsletter details of the breach and the CHC’s consequent requirements for remedial action;
- 12.6.2 refer to the CHC Board for disciplinary action under the Constitution; or
- 12.6.3 institute legal proceedings on behalf of the CHC.

### **Publishing of Complaints**

**12.7** The CHC shall publish the outcomes of all complaints received by the CRMC on the CHC website as and when the complaints are finalised.

12.7.1 The details published shall include a minimum of:

- the name of the product and parties identified in the complaint;
- the nature of the complaint;

- if stated by the complainant, the alleged breaches of this Code, TGAC and/or Therapeutic Goods Act 1989;
- if the whole or part of the complaint is found to be justified, those breaches upheld by the CRMC and those, if any, not upheld;
- the sanctions, if any, imposed by the CRMC;
- if the complaint is treated as withdrawn by the CRMC, the reasons for treating the complaint as such.

12.7.2 The complainant's name will not be published without permission.

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## Appeal Procedures

### Establishment of the Advertising Appeals Committee

- 13.1** An Advertising Appeals Committee (AAC) is to be established by the CHC Board and will comprise not less than the following:
- 13.1.1 an independent Chair, preferably a qualified lawyer;
  - 13.1.2 a Secretary to the AAC provided by the CHC (**‘Appeals Secretary’**);
  - 13.1.3 three other members drawn from a panel established by the CHC who **did not sit** on the CRMC which heard the complaint being appealed against, being:
    - 13.1.3.1 one technical expert;
    - 13.1.3.2 one industry representative; and
    - 13.1.3.3 one complementary healthcare Practitioner;
    - 13.1.3.3 An observer from the TGA.
- 13.2** The appellant will be provided with the opportunity to pay for and nominate a further independent representative on the AAC, with this individual to be agreed by the Chair of the AAC.
- 13.3** Prior to selection of members of the AAC, the CHC Board must establish that a proposed member has no conflict of interest with a party subject to an appeal. No panellist may sit on AAC if he or she has a conflict of interest or perceived conflict of interest in the subject matter or with a party, before the AAC.
- 13.4** The quorum for the AAC is the Chair and three (3) other members.
- 13.5** The AAC must make decisions by a majority of its members.
- 13.6** The AAC must consider only:
- 13.5.1 the material that was considered by the CRMC in the matter;

13.5.2 the appeal papers and any response from the respondent to the appeal; and

13.5.3 any additional material which the AAC reasonably believes will assist in its deliberations.

**13.7** The Appeals Secretary must provide a copy of any additional material before the AAC to each party no later than ten (10) working days before the date of the appeal hearing.

**13.8** A party is entitled to attend the meeting or be heard by the AAC in person on prior arrangement with the Appeals Secretary.

**13.9** The findings of the AAC are final and binding on the parties. The Appeals Secretary must provide the outcome of the deliberations of the AAC to each party, no later than ten (10) working days after the AAC reaches its decision.

**13.10** The deliberations of the AAC are confidential and must not be disclosed by a party to the appeal or by a member of the AAC.

### **The Appeal Procedures**

**13.10** A Member who has been found to be in breach of this Code and/or a complainant who has been penalised or fined under clause 12.3 for a frivolous or vexatious complaint or abuse of this Code (the Appellant) may lodge an appeal against the findings and any imposed sanctions.

**13.11** The Appellant must lodge notice of intention to appeal in writing with the Appeals Secretary within ten (10) working days of receiving advice of the CRMC decision and/or sanctions. The Appellant then has a further ten (10) working days in which to lodge material in support of an Appeal with six (6) copies (one (1) for each member of the AAC and one (1) for the Appeals Secretary).

**13.12** The Appeals Secretary must provide a copy of the written Appeal to the Secretary of the CRMC for the CRMC's information and any action it may deem necessary to take. The

Appeals Secretary must provide a copy of the response from the Secretary of the CRMC to the Appellant within ten (10) working days of receiving it.

**13.13** The AAC, after meeting to examine the Appeal and providing the Appellant and the Secretary of the CRMC an opportunity to present their cases either in person or in writing, may:

13.13.1 uphold the Appeal;

13.13.2 reject the Appeal;

13.13.3 amend the CRMC decision; or

13.13.4 defer a decision pending provision of further information.

**13.14** The Appellant may be required to lodge a bond. If unsuccessful in appeal, the Appellant must reimburse the CHC for its costs including out-of-pocket expenses, legal costs and reasonable expenses associated with the determination of the Appeal, unless the AAC determines otherwise. Alternatively, the AAC may require such costs to be shared by the parties in proportions determined by the AAC.

## Monitoring of Promotional Materials

- 14.1** To support compliance with this Code the CRMC may proactively monitor selected promotional materials produced by Members, on a regular and ongoing basis.
- 14.2** The aims of monitoring are:
- 14.2.1 to encourage compliance with this Code;
  - 14.2.2 to provide advice on compliance issues where necessary;
  - 14.2.3 to obtain and publish statistical data, and identify possible trends in marketing activities; and
  - 14.2.4 to provide information for potential future amendments to this Code.
- 14.3** The CRMC may review any form of promotional material that is not subject to the formal ASM approval process.
- 14.3.1 Specific types of promotional materials will be requested of Member companies on a random basis.
  - 14.3.2 The CRMC will determine annually the subject matter to be reviewed during the next twelve (12) months.
- 14.4** Member companies may be asked to provide seven (7) copies of the selected materials issued by the Member during a period of time, to be specified by the Committee e.g 3 months, for the category of promotional material under review.
- 14.5** Members will submit to th, within 15 working days of receipt of the request, all material of the type specified by the CRMC, and a written statement confirming that the supplied material constitutes all the selected material for the category under review.
- 14.6** Only material making therapeutic claims will be forwarded to the CRMC seven (7) days prior to the meeting. Large pieces of material will not be sent to committee members but reviewed on the day of the CRMC meeting.

- 14.7** CRMC members will advise the committee when there is a conflict of interest associated either with the product class subject to review or the companies that have submitted material. The Committee will determine the appropriate action following this disclosure.
- 14.8** The CRMC may request, and Member companies to provide, any further information concerning the promotional materials under review.
- 14.9** In a financial year, the CRMC will review three types of promotional material across three different types of complementary healthcare product.
- 14.10** If, following review of submitted material, the CRMC considers that there has been a failure to comply with this Code, the material will be treated as a complaint.
- 14.11** If monitoring is conducted during the financial year, the CRMC may publish an annual report on the CHC website, which will include a minimum of the following:
- 14.11.1 the types of materials reviewed;
  - 14.11.2 the number of items reviewed;
  - 14.11.3 the number and type of problems found;
  - 14.11.4 the number of submissions subsequently treated as a complaint;
- 14.12 Examples of materials for Monitoring** (including, but not limited to:)

CM product type	Promotional Categories
Aromatherapy	Brochures
Herbal & Homeopathic medicines	Catalogues
Minerals	Detail Aids
Nutritional Supplements	Direct Mail
Practitioner only Products	Education materials for retailers
Special Purpose Foods	Internet
Vitamins	Leaflets/pamphlets

<p>Weight Loss Topical products Cough &amp; Cold Memory</p>	<p>Other Packaging Press releases Point-of-sale materials (shelf wobblers, display stands Posters Training materials</p> <p>Photographs to be submitted if impractical to provide original materials (e.g large display stands)</p>
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## **Administration**

### **Establishment and Procedures of Marketing Code Governance Committee**

- 15.1** This Code is administered by a Committee (the Marketing Code Governance Committee (MCGC)) which is appointed by and responsible to the Board of the CHC.
- 15.2** The MCGC shall be comprised of:
- 15.2.1 the Executive Director of the CHC or their nominee (as Chair);
  - 15.2.2 the Chair of the Advertising Complaints Resolution Committee;
  - 15.2.3 one nominated Advertising Services Manager;
  - 15.2.4 maximum of five (5) members of the CHC representing each of the CHC membership types.
- 15.3** The MCGC shall meet on an “as needs basis” and at a minimum not less than once per year for annual review.
- 15.4** The MCGC must operate in accordance with the following procedures:
- 15.4.1 All MCGC members appointed by the CHC Board shall have an initial term of two (2) years. Thereafter, each such member of the MCGC may stand for re-appointment by the CHC Board in company with any other candidates identified by the CHC Board, for a further term of two (2) years. Not more than one-half of all members of the MCGC should resign in the same year wherever practicable.
  - 15.4.2 The CHC may from time to time second one or more experts to assist the MCGC in its deliberations. Experts and advisors will not have voting rights.
  - 15.4.3 A quorum consists of the Chair and three (3) other members of the MCGC.
  - 15.4.4 Where decisions of the MCGC are not unanimous, a decision shall be made by a majority vote of its members, with the Chair having a casting vote.

## Functions of the Marketing Code Governance Committee

- 16.1** The MCGC is responsible for the review and evaluation of this Code as well as its administration. To fulfil these functions, the MCGC will, amongst other things:
- 16.1.1 conduct regular 12-monthly internal and three-yearly external reviews of the Code to ensure it continues to reflect community, industry and regulatory standards and values;
  - 16.1.2 consult with key stakeholders if it considers that more than minor amendments are required;
  - 16.1.3 publish amendments to this Code;
  - 16.1.4 collate statistical data of complaints received and their outcomes;
  - 16.1.5 conduct a regular review and analysis of complaints and industry issues of which it becomes aware and make recommendations to the CHC Board;
  - 16.1.6 produce an annual report;
- 16.2** publish on the CHC's website the report produced under clause 16.1.6;
- 16.3** develop, review and renew (where necessary), a set of performance indicators, both quantitative and qualitative, (as the case requires), which will enable ongoing monitoring of the success of this Code in meeting its objectives. The performance indicators will be drafted in such a manner as to enable a third party not otherwise engaged in the administration of this Code, to easily identify the extent to which the objectives of this Code have been met;
- 16.4** develop policy for the coordinated promotion of the Code throughout the market and its recognition by consumers;
- 16.5** to prepare at least annually an operating budget for the Code that will cover its cost of operation and promotion.

## Code Monitoring

- 17.1** The MCGC will meet no less than once a year and otherwise as and when required to develop strategies to be implemented necessary to:
- 17.1.1 continue to monitor serious and/or systemic breaches of this Code as they are identified; and
  - 17.1.2 take the appropriate remedial action to deal with such serious and systemic breaches of this Code as soon as reasonably possible; and
  - 17.1.3 put in place such preventative measures to evidence that the CHC is undertaking to prevent the continuation of such serious or systemic breaches of this Code as and when required.
- 17.2** The MCGC shall otherwise monitor this Code for compliance through the following additional methods and procedures:
- 17.2.1 a proactive review of all complaints and breaches of this Code received by the CHC will be undertaken no less than one (1) time a year and otherwise as required from time to time.
  - 17.2.2 the methods and procedures for monitoring compliance with this Code, from time to time, shall include a detailed review and consideration of no less than the following:
    - 17.2.2.1 an analysis of all data on complaints received by the CHC during the periods monitored;
    - 17.2.2.2 comparison with complaints analysis carried out during prior periods of monitoring; and
    - 17.2.2.3 identification of any trends, in types of complaints and/or organisations or industry sectors using the comparison referred to in 17.2.2.2.
- 17.3** Following the collection and analysis of the data referred to in clause 17.2, the MCGC shall identify, document and take all necessary steps to put into effect:
- 17.3.1 all such immediate and longer term remedial action considered necessary to deal with any current and existing problems identified; and
  - 17.3.2 all such preventative action considered necessary or desirable to prevent further breaches of this Code, whether systemic or not.

**17.4** The MCGC will also audit on a general basis the activities of the CRMC, including but not less than:

17.4.1 the number and nature of sanctions imposed; and

17.4.2 the number of successful appeals, if any, to decisions of the CRMC.

**17.5** In monitoring the performance of this Code, the MCGC shall produce an annual report that includes:

17.5.1 the total number of complaints received during the year;

17.5.2 the number of complaints received during the year regarding members and non-members;

17.5.3 the total number of breaches, including the specific provisions of the Code breached and any repeat breaches;

17.5.4 the enforcement action or sanction(s) taken; and

17.5.5 the level of compliance with the requested enforcement action or sanctions;

17.5.6 any further quantitative and qualitative analysis of the performance of this Code against the performance indicators set by the MCGC; and

17.5.7 a written interpretation of these results in such a way that a person who is not a member of the MCGC can understand the extent to which the code has met its objectives.

## Review and Amendments

- 18.1** This Code shall be internally reviewed on a regular basis, and at a minimum of no less than once every year.
- 18.2** This Code shall be externally reviewed once every three (3) years or more frequently if so determined by the ACAC.
- 18.3** The internal review process will be managed by the MCGC. The MCGC, in conducting the internal review, may seek comment or submissions from Members and other relevant stakeholders.
- 18.4** External reviews may be conducted by:
- 18.4.1 an independent, appropriately qualified and experienced consultant; or
  - 18.4.2 a panel of independent, appropriately qualified and experienced persons.
- 18.5** Both the internal and external review process should consider not less than the following issues:
- 18.5.1 Is there a high level of Industry awareness of this Code?
  - 18.5.2 Is there a high level of stakeholder awareness of this Code?
  - 18.5.3 Has the number of complaints on issues this Code is designed to address, been reduced?
  - 18.5.4 Is this Code meeting its stated objectives?
  - 18.5.5 Are the complaints handling mechanisms highly visible?
  - 18.5.6 Are the response times reasonable?
  - 18.5.7 Are this Code's compliance mechanisms effective?
- 18.6** Amendments to this Code must be approved by the CHC Board.

- 18.7** Amendments resulting from both an internal and external review of this Code must be adequately publicised so that all stakeholders are aware of those amendments.

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## Publicising the Code

- 19.1** The MCGC must identify and recommend to the CHC the optimal means for the CHC to promote this Code to its members, the complementary healthcare industry, and other relevant stakeholders and participants in the industry.
- 19.2** The MCGC must undertake a publicity campaign upon the commencement of this Code and every time more than a minor change is made and in any case, at least once every three (3) years.
- 19.3** The CHC must ensure this Code is available on its website at all times and must encourage Members to reference and provide links to this Code on their own websites.
- 19.4** The CHC must encourage members to otherwise promote this Code on a regular basis.
- 19.5** The MCGC must ensure the regular provision of education regarding the interpretation and application of this Code to Members, healthcare Practitioners, other professionals, regulators and other relevant stakeholders and participants in the complementary healthcare industry.

## Disclaimer

- 20.1** This Code is not intended to provide nor shall it be construed as legal advice.
- 20.2** Where there is any conflict or inconsistency between the provisions of this Code and any Commonwealth, State or Territory legislation or instruments, that legislation or instrument will take precedence over this Code.
- 20.3** By being members of the CHC and by remaining members of the CHC following enactment of this Code, all such organisations or individuals are deemed to have submitted themselves to the provisions of this Code.
- 20.4** The CHC and all committees established under this Code will at all times seek to exercise their powers and functions hereunder in a fair, impartial and objective manner for the benefit of no particular member, but rather for the overall greater good and benefit of the complementary healthcare industry and the wider community generally.
- 20.5** The rules of conduct and the standards of good practice imposed upon Signatories by this Code, are fair and reasonable and are otherwise necessary for this Code to achieve its objectives.
- 20.6** The powers granted to the CHC and the committees established under this Code, particularly but without limitation as they are related to (“**Complaints Handling**”), (“**Sanctions and Enforcement Action**”) and (“**Appeal Procedures**”), are fair and reasonable and otherwise necessary for this Code to achieve its objectives.
- 20.7** All Members are deemed to have released the CHC, its servants, agents, consultants and all committees established by the CHC under this Code from all claims, demands, actions, suits or proceedings which a Member might otherwise have brought or have been entitled to bring against all or any of the released parties, for or in relation to any act or omission taken by one or more of them, in the exercise of their functions or duties under this Code, **PROVIDED, HOWEVER, THAT** any such act or omission has not been taken or made in bad faith, maliciously or in a recklessly negligent manner.

## Appendix 1 References

- 22.1** Australian Competition & Consumer Commission (ACCC) *Guidelines for Developing Effective Voluntary Industry Codes of Conduct*, February 2005  
<http://www.accc.gov.au/content/index.phtml/itemId/658186>
- 22.2** AS 3806-2006 *Australian Standard™ Compliance Programs*  
<http://www.saiglobal.com/shop/script/Details.asp?docn=AS073377296XAT>
- 22.3** Medicines Australia *Code of Conduct* Edition 16  
<http://www.medicinesaustralia.com.au/pages/page251.asp>
- 22.4** *Therapeutic Goods Act 1989*  
<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401372?OpenDocument>
- 22.5** *Therapeutic Goods Regulations 1990*  
<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200400127?OpenDocument>
- 22.6** *Therapeutic Goods Advertising Code 2007*  
<http://www.tgacc.com.au/codeList.cfm>
- 22.7** *Australian Regulatory Guidelines for Complementary Medicines*  
<http://www.tga.gov.au/docs/html/argcm.htm>