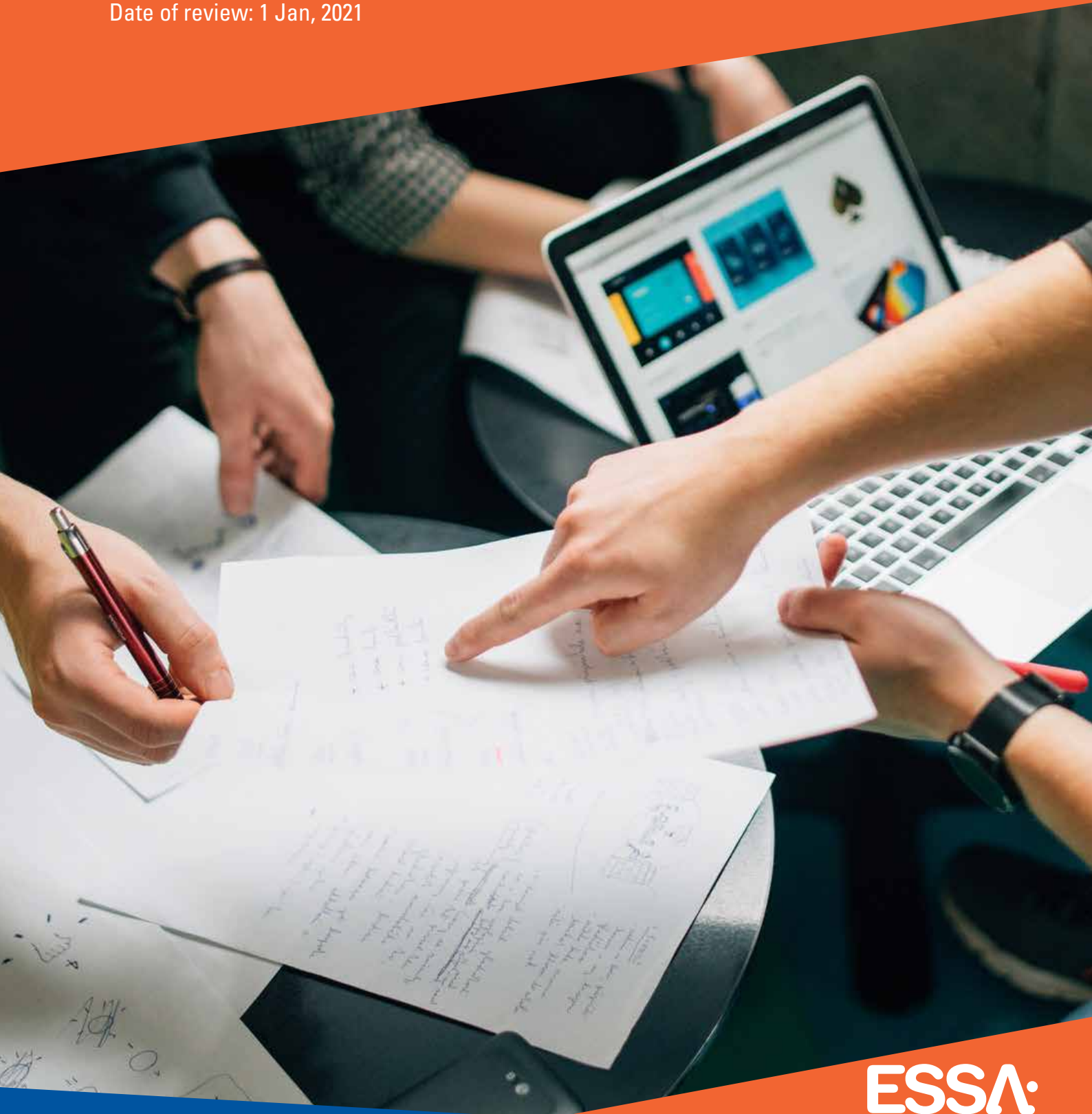




# ESSA ADVERTISING GUIDELINES

Date of issue: 1 Jan, 2018  
Date of review: 1 Jan, 2021





## ABOUT EXERCISE & SPORTS SCIENCE AUSTRALIA

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Exercise & Sports Science Australia (ESSA) is a professional association representing tertiary qualified accredited exercise scientists, accredited exercise physiologists, accredited sports scientists and accredited high performance managers who prescribe exercise interventions to a diverse range of people. These include people exercising for general fitness and function; for managing chronic conditions; and to optimise elite performance.

ESSA supports its members and accredited individuals to maintain high professional standards of practice and ensure quality delivery of services to the public through its policies and comprehensive accreditation system.

ESSA recognises the benefits that advertising brings to individuals and the profession and this advertising framework includes:

- Legislation
- ESSA Code of Professional Conduct and Ethical Practice
- ESSA Social Media Policy

These advertising guidelines are to promote members to uphold best practice professional standards and behaviour in relation to advertising and meet the standards of professional practice and behaviour expected of exercise and sports science professionals.

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## PREFACE

The Exercise & Sports Science Australia (ESSA) Advertising Guidelines have been developed to support ESSA's mission to lead and promote excellence in exercise and sports science for the benefit of society and the professions. They:

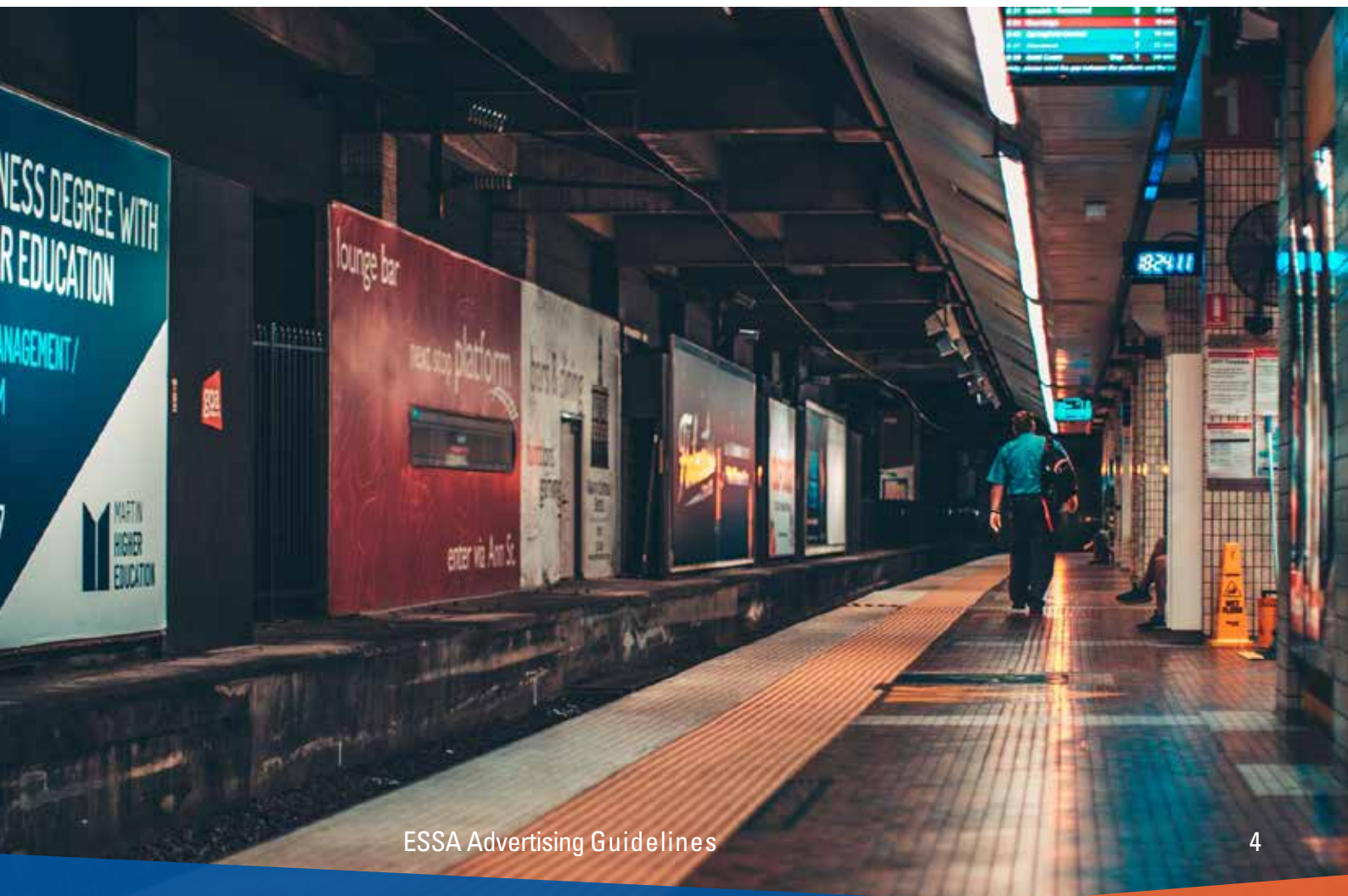
- apply to exercise and sports science professional membership and accreditation categories
- are intended to promote and uphold professional excellence by providing general advertising guidance.

Depending on the environment in which they practice, exercise and sports science professionals may be subject to a range of advertising legislation that includes, but is not limited to, the:

- Competition and Consumer Act (formerly known as Trade Practices Act)
- Health Practitioner Regulation National Law (National Law)
- Department of Veterans' Affairs (DVA), Notes for Allied Health Providers, Section one, General.
- Therapeutic Goods Act
- Therapeutic Goods Advertising Code

ESSA is not able to provide exercise and sports science professionals with legal advice about their advertising, or approve advertising, and these guidelines are not a substitute for legal advice. Breaching advertising requirements legislation may also constitute a breach of the ESSA Code of Professional Conduct and Ethical Practice and lead to disciplinary action. ESSA's overall guidance to exercise and sports science professionals about advertising is *if in doubt, leave it out*.

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## DEFINITIONS

- **AEP** means Accredited Exercise Physiologist.
- **Advertising** means a notice or announcement in a public medium promoting or recommending a product, service or event.
- **Consumer guarantees** means the basic, guaranteed level of protection under the Competition and Consumer Act<sup>1</sup> for goods and services bought in Australia.
- **ESSA** means Exercise & Sports Science Australia.
- **Exercise and sports science professional** means an ESSA-accredited exercise and sports science professional and/or a member of ESSA.
- **Fake review** means; see fake testimonial.
- **Fake testimonial** means a testimonial or review that does not reflect the genuinely held opinion of the author.
- **Misleading advertising** means the use of: fake reviews; tactics to influence a client to provide a positive review or refrain from a negative review; or selectively removing or editing review, particularly negative reviews for commercial or promotional reasons.
- **Misrepresentation** means a claim or statement that is false or misleading made by one party to another.<sup>1</sup>
- **Moderating** means to monitor (an Internet forum or online discussion) for inappropriate or offensive content.
- **National Law** means the Health Practitioner Regulation National Law as implemented in each Australian state or territory.
- **Over servicing** means the provision of an unnecessary health care intervention.
- **Premium claim** means a broad term used to describe a claim that gives the impression that a product, or one of its attributes, has some kind of added benefit when compared to similar products and services.
- **Representation** means the way that something is described or portrayed.
- **Review platform** means a website that allows consumers to leave reviews and ratings about businesses.
- **Review website** means review platform.
- **Social media** means any internet based application that facilitates the exchanged of user-generated content.
- **Sponsor** means a person or organisation that pays for contributes to the cost involved in staging an event in return for advertising.
- **Sponsorship** means to provide funds for a project or activity for the person or organisation carrying it out.
- **Testimonial** means any statement, story or anecdote about clinical care from past patients or clients making a recommendation about a health service or its quality.<sup>2</sup>
- **Therapeutic Goods advertisement** means any statement, pictorial representation or design, however made, that is intended, whether directly or indirectly, to promote the use or supply of the goods.<sup>3</sup>

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## WHAT IS THE PURPOSE OF THESE GUIDELINES?

The ESSA Advertising Guidelines are intended to provide guidance on:

- the legislative and regulatory obligations that apply to advertising in an exercise and sports science environment
- what ESSA expects from exercise and sports science professionals when they advertise
- general and specific conditions, as well as consumer protections, that apply to advertising
- consequences of breaching advertising legislation and the ESSA Code of Professional Conduct and Ethical Practice.

ESSA encourages the reader to refer to relevant legislation and regulator websites for more information on relevant advertising requirements and, where necessary, to seek independent legal advice.

## DO THESE GUIDELINES APPLY TO ME?

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These guidelines should be considered by anyone:

- advertising an exercise and sports science service individually, as part of a business, as part of a professional sport environment, or as part of a multi-disciplinary health setting; see [Appendix 1](#) for listings of registered and self-regulating health professions
- using testimonials in an exercise and sports science environment
- advertising therapeutic goods in an exercise and sports science environment.

These guidelines are not intended to stop members of the public and clients from discussing their experiences (via review platforms, in person, or other mediums).

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## WHAT DO I NEED TO KNOW ABOUT ADVERTISING?

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Advertising is a mechanism that allows professionals and businesses to engage with the public and potential clients. In Australia, legislation is in place to ensure that advertising and an individual's or business' advertising practices meet both the law and community values.<sup>1</sup>

There are a number of legislations that govern advertising in Australia including:

- [Competition and Consumer Act](#) (formerly the Trade Practices Act)
- [Health Practitioner Regulation National Law Act](#) (National Law)
- [Department of Veterans' Affairs \(DVA\), Notes for Allied Health Providers, Section one, General.](#)
- [Therapeutic Goods Act](#)
- [Therapeutic Goods Advertising Code](#)

The following regulators also offer further information on advertising in general and specific environments:

- [Australian Competition and Consumer Commission \(ACCC\)](#)
- [Australian Health Practitioner Regulation Agency \(AHPRA\)](#)
- [Therapeutic Goods Administration \(TGA\)](#)

To meet the legislation, advertising should be socially responsible, truthful, and appropriate and not mislead. In particular, there are specific rules that apply to advertising around health services and health care products to protect the rights of consumers. Before advertising, individuals should make themselves familiar with the requirements that apply to advertising that type of service or product in that environment.

# WHAT MUST I DO WHEN ADVERTISING?

It is essential that exercise and sports science professionals provide consumers with accurate and truthful information so they can make informed decisions. The Competition and Consumer Act is the legislation that deals with general advertising requirements and is administered through the ACCC.

## 1. FALSE OR MISLEADING STATEMENTS

Section 29 of the Competition and Consumer Act deals with false or misleading representation about goods or services. This encompasses two fundamental advertising rules that when advertising a goods or services it is illegal to:

- engage in conduct that is likely to mislead or deceive
- make false or misleading claims or statements.<sup>1</sup>

Misleading (or false) advertising includes, but is not limited to:

- non-disclosure or partial disclosure of information that may impact a consumers decision to take-up a particular service such as:
  - commercial relationships that may impact the perception of the service or its benefits, for example, sponsorship
  - failing to provide information on the common side-effects of a health service
  - failing to provide information on alternate services and/or goods that may be suitable for the consumer. For example, if asked about the benefits of using a particular service and/or product over another, the practitioner must provide true, unbiased and impartial information based upon current best practice evidence
- advertising services or goods as superior to other services or goods that are commonly used in the prevention, treatment, management of health where no evidence exists to support such claims. For example, claiming that exercise be used in place of medications for treatment of a specific illness where best practice evidence recommends the use of a medication
- encouraging or attempting to sway a consumer to use a particular service they don't really need, that is, over servicing
- advertising services as free or at a discount when funded by Medicare, Department of Veterans' Affairs (DVA), a private health insurer, a workers compensation scheme or another compensation scheme. This includes statements that promote indiscriminate use of funded health services such as, "buy one get one free", or, "2 for 1" offers<sup>4</sup>
- making a consumer feel their health would unduly suffer if they did not take up the service where no evidence exists to support this statement
- making statements about the expected outcomes or proposed benefits of a service and or treatment that cannot be substantiated with credible evidence. The AHPRA website provides information on levels of evidence
- using "jargon" or terminology that is difficult for the consumer to understand and to subsequently make an informed decision about their care. For example, using quotes, data or scientific information that would not readily be understood by consumers
- using post-nominals or additional "qualifications" that suggest one provider is superior to another of the same profession where there is no formal recognition of the additional qualification.<sup>5</sup>

Care should be taken in using the title 'Dr' to represent holding a PhD or the term 'specialist' to emphasise a skill set in order to avoid any confusion with medical use of these terms.

## 2. SCIENTIFIC DATA AND ADVERTISING

Scientific data provides the evidence base to support treatment claims and health care claims. Claims should always be made on the best level of evidence available within the research study design hierarchy. That is, the best available evidence is provided by randomised, double-blind studies. The [AHPRA website](#) provides guidance on advertising and level of evidence.

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## 3. PREMIUM CLAIMS, DVA, MEDICARE AND HEALTHCARE PAYMENTS

While advertisers use claims as a way of engaging with potential clients, care must be taken with using particular types of claims such as *premium claims* as they can influence and potentially mislead the consumer. For example, saying something is “free” is a very powerful *premium claim* that should be avoided in health care advertising. It can influence consumer choice as it implies an absolute condition.<sup>1</sup> In health care, someone always pays for the service whether it is the client or rebate scheme such as Medicare or DVA. To advertise a Medicare or DVA service as “free” is misleading and hence breaches the [Competition and Consumer Act](#). The term “free” implies that no one pays for this service or there is no cost associated this service. It has an added enticement to influence the client to use the service whether they have a real need or not. However, the scheme (Medicare or DVA) is paying for the cost of this service through rebates to the provider. Acceptable wording for advertising to DVA clients is, “DVA Health Cards (Gold and White) are accepted as payment upon a GP referral.” Similarly, wording that reflects the Medicare payment system are that services are “bulk-billed” to Medicare; see [Appendix 2](#) for advertising case examples.

Other restrictions for advertising to DVA clients includes restrictions on the use of the Australian Government logo, references to DVA and inducements; see [DVA Notes for allied health providers, section one: general](#) for more information on advertising services to DVA clients.

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## 4. REVIEWS, TESTIMONIALS AND SOCIAL MEDIA

### 4.1 General requirements for using testimonials

While permitted in advertising generally, [registered health professions](#) and businesses providing registered health services are not permitted to use testimonials as:

- they are personal opinions and are not scientific or objective in nature
- one person’s experiences may not reflect the likely outcomes for a condition or the experiences of another person
- they are not considered a balanced source of information and can be misleading as they generally reflect a selection of positive comments from patients
- they may influence patients who place too much weight on their validity.<sup>1</sup>



ESSA permits the use of testimonials that are compliant with relevant legislation that includes, but is not limited to:

- Competition and Consumer Act
- Health Practitioner Regulation National Law Act (National Law)
- Therapeutic Goods Act
- Therapeutic Goods Advertising Code
- Department of Veterans' Affairs (DVA) Notes for Allied Health Providers, Section one, General.

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#### **4.2 Testimonials and multidisciplinary environment that includes regulated health profession(s)**

Section 133(1) of the National Law states:

A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that-

- (a) is false, misleading or deceptive or is likely to be misleading or deceptive; or
- (b) offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer; or
- (c) uses testimonials or purported testimonials about the service or business; or
- (d) creates an unreasonable expectation of beneficial treatment; or
- (e) directly or indirectly encourages the indiscriminate or unnecessary use of a regulated health service.<sup>6</sup>

Consequently, exercise and sports science professionals who work in a business or multidisciplinary work environment that includes regulated health profession(s) must adhere to the National Law requirements, including to **not use** testimonials to advertise their business or professional practice. This includes, but is not limited to: print or electronic media such as websites, Facebook, YouTube, Twitter and Instagram, etc.

The National Law requirements apply equally to practitioners providing the service and the business providing the service. For example, an AEP working in or for a business that includes a registered health profession, see Appendix 1 for a listing, is subject to the National Law and cannot use testimonials. If the *business* were to use testimonials to advertise AEP services, both the AEP and the registered health practitioner would both be in breach of the National Law requirements. Similarly, an accredited sports scientist working for a sporting club that has a club doctor is subject to the National Law and cannot use testimonials as medical practitioners are a registered health profession.

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#### **4.3 Testimonials and multidisciplinary environments that includes dietitians**

While self-regulating practitioners and their services are not subject to the National Law requirements, the Dietitians Association of Australia (DAA) has stipulated that its members cannot use testimonials and must comply with the National Law requirements for advertising. Consequently, exercise and sports science professionals who work in a business or multidisciplinary work environment that **does not** include regulated health profession(s), but does provide dietetic services, are not permitted to use testimonials to advertise their services.

#### 4.4 Testimonials and multidisciplinary environment not subject to the National Law

Where an exercise and sports science professional provides services as a sole trader, through a business or in an environment not subject to the National Law requirements, see 4.2 and 4.3, they are permitted to use testimonials to promote their services.

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#### 4.5 Testimonials and social media

Under the Competition and Consumer Act, an exercise and sports science professional is responsible for the content of their advertising material and advertising mediums. This includes website content, social media (review platform, Facebook, LinkedIn, Twitter and Instagram, etc.), or a print, radio or television advertisement. They should:

- implement good record keeping practices to manage their electronic media and to ensure they are able to show that reviews and testimonials are honest and accurate
- remove any posts that provide a false, misleading or deceptive impression of exercise and sports science services
- ensure that testimonials are a true and accurate representation of the client's opinion of the services and or product(s) received
- take care to not selectively remove or edit negative reviews.<sup>1</sup>

Care must be taken with moderating social media content to ensure it complies with the Competition and Consumer Act. For example, if a consumer writes a testimonial on an exercise and sports science business Facebook page which states, "John's exercise program was fantastic, it cured my diabetes and I recommend everyone stop their current Diabetes treatment and come see John," this statement is at odds with the overall image of the exercise and sports science industry, is misleading and does not comply with the intention of the advertising principles. It should be removed. Whereas a post that states, "John was late and inattentive during the session," while negative, reflects the clients' perception and should not be removed. Omitting negative reviews or creating false or fake reviews for commercial or promotional reasons is misleading and breaches advertising law.

ACCC Advertising and Selling guide and the AHPRA website provide further guidance on advertising and testimonials.

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#### 4.6 Social media review platforms

An exercise and sports science professional is not responsible for content on sites they do not have control over such as review platforms.<sup>1</sup> However, the same laws and principles that apply to other advertising mediums also apply to social media and review platforms. Consequently, care must be taken in sharing content from review platforms as this can be considered as advertising and hence is subject to the Competition and Consumer Act and the Health Practitioner Regulation National Law Act.

ACCC Advertising and Selling guide and the AHPRA website provide further guidance on review platforms.

## 4.7 Social media postings

Exercise and sports science professionals and businesses have responsibilities towards their peers, other service providers and the public when posting on social media platforms.

They must not:

- compare their products or services to others of another business in a way that is misleading to consumers
- post negative reviews which are not based on a genuine opinion about another practitioner on online review sites; that is fake or misleading reviews
- make inaccurate premium claims to the disadvantage of another practitioner or business.

They must ensure that:

- their advertising and conduct in relation to ESSA social media complies with ESSA's Social Media Policy<sup>7</sup>
- they consider confidentiality and privacy obligations when using social media such as not posting pictures or discussing patients, case studies, patients or sensitive information in a way that enables the client to be identified or potentially identified without first obtaining their written consent
- any qualifying claims or exclusionary clauses they use in their advertising are legal and not misleading
- the real terms and conditions of any offer are clear, readable and are appropriate to the context of exercise and sports science practice.

The ACCC Advertising and Selling guide provides further guidance on posting and review platforms.

## 5. LEGISLATED CONSUMER PROTECTIONS

There are basic levels of protections provided to consumers under the Competition and Consumer Act for goods and services purchased in Australia; these are known as consumer guarantees.<sup>1</sup> These guarantees or rights for services include that the service will be:

- provided with due care and skill
- fit for any purposed specified by the consumer
- provided within a reasonable time, where no time has been agreed.<sup>1</sup>

The ACCC Advertising and Selling guide provides more information on consumer protections.

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## 6. PRICING AND DISCOUNTS

Advertising prices for exercise and sports science professional services must comply with the Competition and Consumer Act, and hence, not be misleading. To comply with the Act, an exercise and sports science professional who chooses to advertise the fees for their service must provide accurate information on all cost included with the service in a visible and transparent way before the client engages their services. This would include clearly showing cost for a “no show” or fee for cancellation of an appointment in the 24 hours prior to the appointment.

Additional care must also be taken when advertising any services of an exercise and sports science professional that attract rebates through Medicare, Department of Veterans’ Affairs, workers compensation schemes or private health insurance. These services must not be:

- advertised as “free” or “discounted services”; see Premium claims, DVA, Medicare and healthcare payments
- used to offset additional private pricing services and/or goods.

As with other aspects of advertising, discounts must be compliant with the Competition and Consumers Act and not be misleading. While it is acceptable for a practitioner to charge a lower rate for subsequent sessions related to the same condition, gifts and other inducement discounts should not be offered with exercise physiology services. In a health care setting, such offers would breach the Competition and Consumer Act as they could:

- entice consumers to use services they do not really need; see false or misleading statements
- elicit referrals/recommendations from other healthcare professionals.

Promotional activities in a general fitness setting that include gifts and discounts can be offered in compliance with schedule 2, sections 32 and 154 of the Competition and Consumer Act that deal with offering rebates, gifts, prizes, etc. To be compliant, promotional activities must:

- not be misleading about the items on offer or the chances of receiving them
- ensure the terms and conditions are in plain English and readily understandable by the consumer
- be clear at the outset of any catch such as people meeting certain conditions to be eligible for the promotion. For example, be over the age of 18 years.<sup>1</sup>

For example, if a clinic provides a discount to consumers to purchase a specific exercise product but to actually receive the discount the client must have purchased ‘x’ number of exercise sessions, this must be clearly stated in the advertising offer.

For more information on compliant advertising, see the ACCC Advertising and selling guide.

## 7. ADVERTISING OF THERAPEUTIC GOODS

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In addition to the Competition and Consumer Act, advertisements for therapeutic goods in Australia are subject to the requirements of the Therapeutic Goods Act and Regulations as well as the Therapeutic Goods Advertising Code.<sup>8</sup> The Therapeutic Goods Administration (TGA) recognises three broad categories of therapeutic goods:

- Medicines such as prescription medications for example antibiotics and steroids; over the counter products such as paracetamol; and complementary medicines such as vitamin supplements
- Biologicals such as human growth hormone
- Medical devices such as blood pressure monitors and sports tapes.<sup>9</sup>

Where advertising of therapeutic goods is permitted in law, the exercise and sports science professional must:

- make themselves familiar with the definition of a therapeutic goods advertisement
- comply with their profession's scopes of practice
- comply with relevant legislations
- seek appropriate approvals
- comply with any legislated restrictions.

Individuals who are members of more than one profession, for example, a registered health profession and an exercise and sports science professional, must also consider the position of their relevant profession peak bodies and regulating bodies in relation to advertising of therapeutic goods. It is strongly recommended that an individual seeks independent legal advice in relation to advertising of therapeutic goods.

More information about advertising therapeutic goods is available from the TGA website.

## 8. COMPLIANCE CHECKING AND COMPLAINTS

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### 8.1 Compliance checking

Legislative bodies such as ACCC, AHPRA and DVA have in place advertising compliance and enforcement strategies to ensure that advertising is conducted responsibly, in line with legislation and in line with community values. When investigating complaints, in addition to their specific requirements, the relevant authority will consider the overall impression of the advertising to determine if it meets the legislation, or if it is false, misleading or contrary to community values.

This includes the impression the advertising:

- presents to the public and general consumers
- presents to healthcare professionals and elite/professional sport
- creates of exercise and sports science professions.

The ACCC website and the ACCC Advertising and selling guide provides additional advice on reviewing business advertising to ensure the information is not false or misleading.

## 8.2 Complaints

There are a number of bodies that accept complaints from the public about advertising. These bodies will accept different types of complaints depending on their remit. Complaints about advertising should be directed to the relevant authority. Additional information about where to direct advertising complaints can be found on the following websites:

ACCC: The ACCC website provides guidance on how to make a complaint as a:

- Consumer
- Business

AHPRA: The AHPRA website contains formation about making a complaint about a business that includes a registered health profession

DVA: Complaints about provider advertising to DVA clients can be directed to DVA provider enquiries

TGA: The TGA website provides guidance on how to make a complaint about advertising of therapeutic products.

## 9. ADVERTISING BREACH CONSEQUENCES AND PENALTIES

Breaches of advertising law may be pursued as civil or legal proceedings, potentially leading to fines and pecuniary penalties.<sup>1</sup> The ACCC website provides more information on legislated penalties. In addition to penalties, the outcome of investigations may be published by the relevant regulator.

A breach to advertising law may also constitute a breach of ESSA's Code of Professional Conduct and Ethical Practice and attract disciplinary action. Complaints to ESSA are investigated under the By-law Complaints and Disciplinary Procedures and disciplinary actions can include suspension of membership, suspension of accreditation(s) and permanent exclusion from ESSA.



## APPENDIX 1 – HEALTH PROFESSIONALS

Registered health professions include:

- Aboriginal and Torres Strait Islander health practice
- Chinese medicine
- Chiropractic
- Dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist)
- Medical
- Medical radiation practice
- Nursing and midwifery
- Occupational therapy
- Optometry
- Osteopathy
- Pharmacy
- Physiotherapy
- Podiatry
- Psychology
- Paramedicine

See the [AHPRA website](#) for more information on registered health professions.

Self-regulating health professions include:

- Accredited Exercise Physiologist
- Accredited Practising Dietitian
- Audiologists
- Diabetes educators
- Orthotists/Prosthetists
- Perfusionists
- Social Workers
- Sonographers
- Speech Pathologists
- Genetic Counsellors
- Orthoptist
- Rehabilitation Counsellors
- Art Therapists
- Music Therapists

See the [AHPA website](#) for more information on self-regulating and allied health professions.

## APPENDIX 2 – ADVERTISING CASE EXAMPLES

**DID YOU KNOW EXERCISE CAN**

- Reduce the amount of fatal heart attacks by up to 50%
- Reduce the risk of type 2 diabetes by almost 60%
- Help combat depression and the effects of medication

ACTIVATE CLINIC  
John Smith  
Accredited Exercise Physiologist

M: 0417 704 885  
E: info@activateclinic.com.au  
A: 33 Fiddlers Parade, Podiatry  
W: www.activateclinic.com.au

ESSA  
www.exercisright.com.au

Don't let it be important to EXERCISE RIGHT for who you are.  
Speak to an accredited exercise physiologist who can help you live a happier and healthier life.

Figure one: An example of **acceptable** AEP advertising

**LOSE WEIGHT FAST!**

Let an AEP help you meet your weight loss goals today!

Buy one Session  
Get one free!

ACTIVATE CLINIC  
John Smith  
Accredited Exercise Physiologist

M: 0417 704 885  
E: info@activateclinic.com.au  
A: 33 Fiddlers Parade, Podiatry  
W: www.activateclinic.com.au

ESSA  
www.exercisright.com.au

Figure two: An example of **unacceptable** AEP advertising

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