

Senate Community Affairs Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Additional Estimates 2011-12, 15 February 2012

Question: E12-234

OUTCOME 1: Population Health

Topic: PUBLISHING COMPLAINTS INFORMATION

Written Question on Notice

Senator Di Natale asked:

There are a number of complaints that are yet to be made public and are not on the website. Why the delay? Is the intention, once the outcome of that complaint has been reached, to make those decisions public?

Answer:

Under the Therapeutic Goods Regulations 1990 (the Regulations), the Complaints Resolution Panel (the Panel) can request the person “apparently responsible” for an advertisement that the Panel has found breaches the advertising rules in the Therapeutic Goods Act or the Therapeutic Goods Advertising Code (the Code) to withdraw the advertisement, publish a retraction or correction or withdraw a representation in the advertisement and undertake not to use it again. The person “apparently responsible” will usually be the advertiser and/or the “sponsor” of the product (ie the person in whose name the product is included in the Australian Register of Therapeutic Goods). In the event that the person fails to comply with the request within the relevant period, the Panel, under the Regulations, can make a recommendation to the Secretary of the Department of Health and Ageing that she take action in relation to the person.

One of the things that the Secretary can do following a recommendation from the Panel is to make an order under regulation 9 of the Regulations that the person withdraw the advertisement, publish a retraction or correction, recover any advertisement still in circulation, destroy the advertisement or withdraw any representation made by the advertisement and undertake to not use it again unless the person satisfies the Secretary that its use would not result in a contravention of the Act, the Regulations or the Code.

In August 2011 the Therapeutic Goods Administration (TGA) started publishing on its website the outcome of certain investigations into complaints about therapeutic goods advertising directed to consumers referred to the Secretary with a recommendation from the Panel for follow-up action. Information about this can be found at <http://www.tga.gov.au/industry/advertising-complaint-investigations.htm#publication>

A number of the advertising complaints with the TGA as a result of such a recommendation require a detailed scientific assessment of the sponsor's evidence supporting the product claims before the matter can be finalised. It is still the TGA's intention to publish the outcome on its website where the Secretary (or her delegate) issues an order under regulation 9 to the person apparently responsible for the advertisement to carry out one of the actions referred to above in relation to the advertisement. It is expected that a number of regulation 9 orders will be published on the TGA's website over the next few months.