



CODES, PRACTICE NOTES & GUIDELINES

ADVERTISING REGULATORY GUIDE

The AANA Codes are the industry's commitment to responsible advertising and marketing communications. They are platform neutral and should be your first checkpoint to ensure advertising standards are met.

WHY SHOULD I CONSIDER THE AANA CODES?

The AANA Codes apply to advertising and marketing communications directed to customers in Australia, in any medium. So essentially, whatever advertising or marketing communications you produce must comply with the Codes. If not, any member of the public can complain to the Advertising Standards Bureau. If your material breaches the codes you will need to remove or modify it - which may impact your bottom line and reputation.

WHAT ARE THE AANA CODES?

The AANA administers four codes:

- Code of Ethics
- Code for Marketing & Advertising to Children
- Food & Beverages Advertising & Marketing Communications Code
- Environmental Claims in Advertising & Marketing Code
- Wagering Advertising & Marketing Communication Code

You can find the AANA Codes [here](#).

ARE THE AANA CODES LEGALLY BINDING?

The AANA Codes exist as part of industry self-regulation, meaning that instead of government regulation, industry has agreed the standards it will meet. Industry has also agreed that complaints about advertising or marketing can be made to the Advertising Standards Bureau to be determined by an independent Board made up of members of the community.

WHAT IS THE ROLE OF THE AANA WITHIN THE INDUSTRY?

It is the AANA's responsibility to proactively evolve its Codes to align with developments in marketing communication techniques so the Codes continue to meet community expectations. However it is AANA members who contribute to the debate and the scope of the Codes, providing guidance to the AANA on what works practically and what can be achieved. Ultimately we aim to avoid unnecessary regulatory involvement or operational cost to industry. While consumers can see self-regulation as a defensive manoeuvre, marketers can change this perception by seeing self-regulation as a

responsibility to the consumer. Self-regulation is a long-term commitment for industry as a means of investment in the prevention of advertising issues, rather than a fix after the fact. One negative incident is enough to create an issue where the response is regulation, a response that applies to all.

HOW CAN THE AANA HELP MY ORGANISATION?

The AANA brings together member representatives to evolve the AANA Codes, Guidelines and Practice Notes and provides a unified voice for government and regulator engagement. AANA also provides members with guidance on advertising matters relating to the AANA Codes including our exclusive advertisement pre-vetting service AdlCheck. We provide in-house training on self-regulation and code compliance and can tailor information for our members. In this way the AANA provides tools for legal, corporate affairs and marketing teams and can help ensure self-regulation becomes part of a company's DNA.

WHAT IS 'ADVERTISING' OR 'MARKETING COMMUNICATIONS'?

The AANA Codes apply to "advertising and marketing communications" – that is material which is published or broadcast in any medium:

- Over which the advertiser has a reasonable degree of control
- That promotes a product, service, person, organisation

WHAT DOES 'ANY MEDIUM' INCLUDE?

In the AANA Codes, Medium is defined as:

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

ARE THERE ANY EXCLUSIONS?

The AANA Codes do not apply to labels and packaging; corporate reports; or promotions for broadcasters' programs aired on that network (television or radio).

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WHAT ARE THE REQUIREMENTS OF THE CODE OF ETHICS?

- You must avoid portrayals of people or depictions which discriminate against or which vilify a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.
- Your ad should not employ sexual appeal where images of Minors, or people who appear to be Minors, are used. Minors are persons under 18 years of age.
- Your ad should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.
- Don't portray violence unless it is justifiable in the context of the product or service advertised.
- Treat sex, sexuality and nudity with sensitivity to the relevant audience.
- Only use language which is appropriate in the circumstances - strong or obscene language should be avoided.
- Don't depict material contrary to prevailing community standards on health and safety.
- Advertising and marketing should be clearly distinguishable as such to the relevant audience. You can find more information in the AANA Best Practice Guide - Clearly Distinguishable Advertising [here](#).

The Advertising Standards Board includes people from a broad range of age groups and backgrounds and is gender balanced – representative of the diversity of Australian society. This group determine the prevailing community standards at the relevant time in relation to advertising or marketing communications.

HOW DOES THE CODE OF ETHICS APPLY TO SOCIAL MEDIA AND USER-GENERATED CONTENT?

The Code applies to material on the internet or in social media in the same way as it applies to any other form of advertising or marketing communications. Where the marketer has reasonable control over the message in social media, it will be responsible for it. Similarly a brand owner will be responsible for user-generated content (UGC) where it has reasonable control over that content – this happens when the brand owner becomes aware of the material where:

- it has posted or published the material;
- it becomes aware of the UGC through reasonable review;
- a user notifies the advertiser/marketer of the UGC; or
- a complaint is lodged with the Advertising Standards Bureau about the UGC

You can find more information in the the AANA Best Practice Guidelines - Responsible Marketing in the Digital Space [here](#).

HOW DO THE AANA CODES APPLY TO CONSUMER PUBLIC RELATIONS MATERIAL?

Material that is produced by a brand owner for the purpose of direct reproduction as content and which is not subject to editorial discretion/control would be covered by the Codes. Editorial content such as independent review content, editorial blog content or claims made in the context of editorial content is excluded from the Codes. For example:

- Consumer public relations material that is provided directly by a brand owner (or their agent) to journalists for editorial consideration and interpretation would not be covered by the Codes as the brand owner does not have a reasonable degree of control over the final content.
- Where a brand owner has a relationship with a reviewer, blogger, tweeter or similar and that relationship enables the brand owner to provide content for reproduction without editorial input in order to promote a product or service, it is likely that the brand owner will have reasonable control over the content produced and it will be covered by the Codes

DO THE AANA CODES APPLY TO CORPORATE REPORTS?

Corporate reports are not covered by the Codes. This includes:

- Corporate public affairs messages in press releases and other media statements;
- Annual reports; and
- Statements on matters of public policy and the like, such as:
 - Corporate or public affairs messages;
 - Corporate/stakeholder websites containing corporate material including corporate social media or career sites;
 - Internal company communication, sustainability reports, investor documents;
 - Submissions, position statements, comments on policy issues; and
 - Direct communications to audiences in their capacity as commercial stakeholders of the company.

IS MY AD AIMED AT CHILDREN?

A child is defined in the AANA Codes to mean a person 14 years old or younger. Advertising and marketing communications featuring children or which are aimed at children need special attention. Consider whether your ad engages and resonates with children in such as way as to bring about a response, reaction or action from children and whether it uses themes, visuals and language aimed at children. Consider whether the product or service is of principal appeal to children, not just a general consumer.

If the ad, and its product, is found to be aimed at children you need to take into account the special precautions in the AANA Code of Advertising & Marketing Communications to Children:

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- Ads must be factual, accurate and unambiguous in a manner clearly understood by children - this includes price;
- Don't use sexual appeal nor sexual imagery;
- Portray only safe uses of products;
- Products must have Australian safety approvals;
- Don't use frightening/distressing images;
- Don't demean any grouping of people;
- Don't undermine parental authority;
- Any product/service qualifiers should be clearly displayed and explained;
- Ensure accurate statements about competitions;
- Make a clear delineation between commercial promotion and program content when/if using popular personalities or celebrities to promote/endorse/market product;
- Ads aimed at children must not be for or relate in any way to alcohol products or draw any association with a company that supplies alcohol products;
- If private information in relation to a child is to be collected, your ad must include a statement that the child must obtain a parent/guardian's express consent;
- Ads relating to food or beverage product must neither encourage nor promote an inactive lifestyle, unhealthy eating or drinking habits;

You can find the AANA Code of Advertising & Marketing Communications to Children [here](#).

WHAT IF MY AD FEATURES CHILDREN, BUT IS NOT AIMED AT CHILDREN?

You should consider the AANA Code of Ethics generally. Also consider the Practice Guide for Managing Portrayal of People:

- Parents/guardians, and minors have a right to decide whether the minor's image is to be taken and how that image may be used;
- Respect the integrity of minors by taking action appropriate to their age; protect them from exploitation and ill-treatment;
- Protect minors from being hurt.

You can find the AANA Practice Guide for Managing Portrayal of People [here](#).

DOES MY AD FEATURE A FOOD OR BEVERAGE PRODUCT?

The AANA Food & Beverages Advertising & Marketing Communications Code is designed to ensure a high sense of social responsibility in advertising and marketing of food & beverage products and services in Australia. It includes the following provisions:

- Claims in an ad must be truthful, accurate and honest, in particular any reference made to nutritional values or health benefits;
- Ads must not undermine healthy or active lifestyles nor encourage excess consumption;

- Health claims must be supported by appropriate scientific evidence as per the ANZA Food Standards Code;
- Nutritional and health claims must be accurate and understandable by an average consumer.

You can find the AANA Food & Beverages Advertising & Marketing Communications Code [here](#).

DOES MY AD MAKE ANY ENVIRONMENTAL CLAIMS?

Consider the AANA Environmental Claims in Advertising & Marketing Code which ensures that advertisers and marketers develop and maintain rigorous standards when making Environmental Claims, to increase consumer confidence to the benefit of the environment, consumers and industry. Environmental claims should be:

- Truthful and factual;
- Relevant to the product or service and its actual environmental impacts; and
- Substantiated and verifiable.

You can find the AANA Environmental Claims in Advertising & Marketing Code [here](#).

AM I ADVERTISING A WAGERING PRODUCT?

Consider the Wagering Advertising & Marketing Communications Code which applies to advertising and marketing communication for wagering products and services provided by licensed operators in Australia and includes betting on horse races, harness races, greyhound races, or sporting events including electronic sports (competitive video gaming), fantasy sport teams as well as betting on a series of races or events. It also includes novelty events such as betting on royal baby names or award winners. The Code is designed to ensure a high sense of social responsibility in advertising and marketing wagering products in Australia.

The key principles of the Wagering Code are that advertising and marketing communications of wagering products and services -

- Must not be directed, or appeal, to minors* (*minor: persons under 18 years of age)
- Must not depict minors unless incidental
- No-one under 25 to be shown wagering
- Must not associate consuming alcohol with placing a wager
- Must not condone or encourage excessive wagering
- Must not show wagering as the answer to money problems

You can find the AANA Wagering Advertising & Marketing Communications Code [here](#).

WHAT IS THE PROCESS WHEN THERE IS A COMPLAINT?

A single complaint is sufficient to initiate a formal process.

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Once a complaint has been accepted by the Advertising Standards Bureau (ASB), the advertiser is notified about the complaint. The advertiser is provided a copy of the complaint and is normally given about 7 days to respond. The Advertising Standards Board (the Board) considers the complaint and the advertiser's response in light of relevant Code to make a determination. The Board meets twice a month to consider complaints. The Board will also meet between meetings, usually by teleconference, if the ASB considers that a matter should be considered as a matter of urgency. The Board reaches its decision by way of simple majority. In the event of a tied vote, the Chair has a casting vote.

- post the case report on the ASB's website, and
- if appropriate, the ASB can refer the case report to the appropriate government agency.

The original complainant or advertiser/marketer can also ask for a review of the determination.

WHAT HAPPENS IF THE AD IS IN BREACH OF A CODE?

When a complaint is upheld, the advertiser is requested to remove or amend the offending advertisement as soon as possible after receiving a copy of the draft case report. On receipt of the draft case report the advertiser/marketer is requested to advise the Board whether it agrees to modify or discontinue the advertising or marketing communication (Advertiser Statement). This advice is requested to be provided within 5 business days of receiving the covering letter advising of the outcome and the draft case report. The advertiser/marketer is also advised of the opportunity to include an Advertiser's Statement in the case report.

If an advertising or marketing communication is found to breach a provision of a Code and the advertiser/marketer does not modify or discontinue the advertising or marketing communication within the allowed time frame, the Board will:

- include the advertiser/marketer's failure to respond in the case report
- forward the case report to media proprietors

The information contained in this guide is for information purposes only. It should not be considered legal advice or a comprehensive guide to every regulation that applies to advertising or marketing communications. It is not guaranteed to be correct or complete. The purpose of this guide is to help advertisers and marketers gain a basic knowledge of the various regulatory regimes that apply to advertising and marketing communications in Australia.