



Code of Ethics Review

AANA discussion paper for public comment

September 2019

CONSULTATION

Background

The AANA is reviewing the AANA Code of Ethics, to ensure that it continues to provide a robust framework for the self-regulation of advertising and marketing communication.

The objectives of the AANA Code of Ethics are to set standards ensure that advertisements and other forms of marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.

The AANA Code of Ethics is accompanied by Practice Notes which have been developed by the AANA. The Practice Notes provide guidance to advertisers and complainants on the intent of the Code's clauses, and must be applied by the Ad Standards Community Panel in making its determinations.

The aim of the current review of the AANA Code of Ethics is to update and, where necessary, develop the Code and Practice Notes to ensure that it continues to meet community requirements and expectations. It is our intention that a revised AANA Code of Ethics will articulate world's best practice standards against which it can be measured and administered.

The purpose of this discussion paper is to promote dialogue with all stakeholders and to stimulate informed input to the review. It is not intended to be prescriptive and any other matters raised will be given due consideration.

Submissions received in response to this paper will assist the AANA in preparing a new Code of Ethics for consideration by the AANA Board.

Consultation process

Consultation on the Discussion Paper will be undertaken through:

- written submissions from any interested party; and
- discussions between interested stakeholders and the AANA.

The AANA invites submissions from all interested parties by **5pm on Friday 18 October 2019**. Written submissions or enquires on this discussion paper may be made as follows:

By email: aanasubmissions@aana.com.au

By mail AANA Code of Ethics Review Discussion Paper
Suite 301, 100 William Street
Sydney NSW 2011

AANA requests that all submitters clearly identify:

- the name of the party making the submission; or
- the organisation or interest group represented by the submission; and
- contact details – including telephone number, postal address and email address (if available).

THE AANA AND SELF-REGULATION

Background

Advertising and marketing communication plays an important role in the national and international economy and society, contributing approximately \$40 billion to the Australian economy and employing over 200,000 people¹. It takes many forms, including advertising in traditional and digital media, consumer engagement on social media platforms and direct-to-consumer marketing. Advertising helps consumers and wider society to be better informed, to achieve insights and understanding about products and services and to secure value for money. As a key driver of demand, it enables innovation to be brought to market and stimulates economic growth and employment. It underwrites the economic viability of commercial media, including news media, and enhances the variety of media content.

The Australian Association of National Advertisers (AANA) has been the peak national body for advertisers for over 90 years. The AANA exists to inspire and promote responsible, innovative and respected marketing, through a commitment to sustainable industry collaboration. It is engaged in a wide range of activities on behalf of its members, including the development of formal self-regulatory mechanisms. These self-regulatory mechanisms serve to protect the interests and rights of consumers by helping to ensure advertising and marketing communication is conducted responsibly. They are also designed to represent the common interests and obligations of companies across all business sectors involved in marketing communication.

AANA's advertising self-regulatory system came into operation in 1997 following extensive consultation by AANA with consumers and consumer groups, advertisers and business and government representatives. The system, which has the support of all major media owners and their associations, includes both code making expertise and a complaints handling system administered by Ad Standards, providing independent determinations regarding breaches of the AANA Codes. It is a national system that is technology and platform neutral and applies to all consumer advertising and marketing communication, whether or not the brand owner is an AANA member.

AANA Codes

General

The Code of Ethics provides the overarching set of principles to which advertising and marketing communication, across all channels, should comply. The Code of Ethics is widely regarded as the standard for ethical behaviour by advertisers and marketers as well as by advertising and marketing agencies. The vast majority of complaints dealt with by Ad Standards relate to elements of this over-arching Code.

In addition to the Code of Ethics, the AANA currently administers four other codes:

- Food & Beverages Advertising and Marketing Communications Code
- Code for Advertising & Marketing Communications to Children ("Children's Code")
- Environmental Claims in Advertising & Marketing Code
- Wagering Advertising & Marketing Communication Code

The AANA codes are acknowledged and supported by Federal and state governments as an important self-regulatory mechanism to assist in achieving public policy outcomes. The self-regulatory system in Australia is rooted in the model of best practice developed with regulators, NGOs, consumer and public health groups, providing consensus not only on the model but the critical role that effective self-regulation plays to ensure robust qualitative advertising standards. The model ensures consultation of third parties in the

¹ *Advertising Pays: the economic, employment and business value of advertising*, June 2016
<http://www.advertisingpays.com.au/>

development of codes and both complaints and decisions are dealt with transparently².

A key strength of the AANA self-regulatory system is the commitment to regular review and evolution of the Codes to maintain universality (application to all media and all brands) and to address specific problem areas.

Definition of advertising

In the AANA Codes, **Advertising or Marketing Communication** means:

- a. *any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,*
 - o *over which the advertiser or marketer has a reasonable degree of control, and*
 - o *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,*
- b. *but does not include:*
 - o *labels or packaging for products*
 - o *corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like*
 - o *in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.*

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

Platform neutral, national approach

The AANA Codes do not make a distinction between traditional media advertising and digital advertising. The definition of “Advertising or Marketing Communication” in the AANA Codes ensures virtually all commercial communication directed at consumers is captured (including direct-to-consumer public relations material, online, social media and outdoor). This means that the standards specified in the AANA Codes apply equally across all media.

The platform neutral, national self-regulatory model allows complaints to be made without the consumer having to consider the medium or geographical location in which the relevant advertisement appeared. The AANA Codes will continue to evolve as new technology and means of communication evolve so that they remain relevant and universal.

Application of the Codes to online platforms

The AANA Codes apply equally to digital platforms and traditional media. Advertisements on online channels totalled 16.1% of all cases considered by the Ad Standards Community Panel in 2018³. The online channels include social media, TV on demand, apps and internet in general, the second largest area of cases considered after free-to-air TV complaints cases. Recent examples of upheld complaints in relation to advertisements online include:

- *A TV on-demand ad depicting a couple together in the outdoors, followed by a close up of the product with the super “9 out of 10 agree sex is better with a gel” and a closing with a range shot of the full Durex Lubricant range. The images of the couple in the ad were not sexualised, but the ad*

² <http://www.easa-alliance.org/>; <https://iccwbo.org/publication/icc-advertising-and-marketing-communications-code/>

³ Ad Standards, *Review of Operations 2018*, p 26.

used the word and text “sex” four times in the context of having sex. In the Panel’s view it was not a sensitive treatment of sex to an audience that includes children (read decision [here](#));

- A *Youtube community awareness ad* about organ donation, which also appeared on Facebook and various other channels, depicted two soldiers approaching Jesus about organ donation as he hangs on the cross. In this instance the Panel considered that the demeaning take on an important Christian belief did amount to vilification of Christians and the Christian religion (read decision [here](#));
- An *internet ad on the Sydney Morning Herald website* depicting a woman in lace underwear split down the middle focussing on the woman's buttocks. The Community Panel considered that the relevant audience for this ad was most likely to be predominately adult however found the ad to be inappropriate for such environments (read decision [here](#));
- A *Facebook post ad* contained a picture of a business card. The business card featured the caricature of an Asian man, the words 'Mr Wong Hydraulics' and 'to fix call wongy.....will do good job, proper fix'. The majority considered that the overall effect of the ad was a negative depiction of Chinese people and a portrayal which vilifies a section of the community on the basis of race (read decision [here](#)).

The table below shows the number of cases considered by the Ad Standards Community Panel according to media type⁴.

ANALYSIS OF CASES BY MEDIA (%) *

	2014	2015	2016	2017	2018
TV - Free-to-air	44.77%	42.71%	40.45%	42.96%	38.81%
Poster	6.42%	5.99%	7.99%	5.88%	10.55%
Internet - social media	2.20%	3.59%	7.64%	5.88%	7.71%
Transport	7.89%	6.59%	4.34%	4.99%	7.16%
Radio	7.16%	6.59%	7.81%	7.31%	6.59%
Internet	7.16%	6.39%	7.47%	7.84%	5.84%
Billboard - static	5.14%	6.99%	5.90%	7.13%	5.46%
TV - Pay	7.34%	8.38%	7.47%	7.66%	4.90%
Print	5.14%	4.39%	2.26%	2.67%	2.45%
Outdoor	2.94%	2.40%	1.56%	1.43%	2.26%
TV - On demand	-	1.00%	0.69%	1.07%	2.07%
Email	-	-	1.22%	1.96%	1.69%
Cinema	1.47%	0.80%	2.08%	0.89%	1.13%
Promo material	0.37%	1.00%	0.52%	0.18%	1.13%
TV - Out of Home	0.55%	0.40%	1.04%	0.53%	1.13%
App	0.55%	0.60%	0.00%	0.71%	0.56%
Mail	0.55%	1.40%	1.39%	0.71%	0.38%
Billboard - mobile	0.18%	0.80%	0.17%	0.00%	0.19%
Flying banner	0.18%	0.00%	0.00%	0.00%	0.00%
SMS	0.00%	0.00%	0.00%	0.18%	0.00%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

* This table relates to individual cases, not complaints

⁴ Ad Standards, *Review of Operations 2018*, p 26.

https://adstandards.com.au/sites/default/files/ad_standards_review_of_operations_2018_final.pdf

CODE OF ETHICS

Objectives

The objectives of the Code of Ethics are to:

Ensure that advertisements and other forms of marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.

Questions

1. **Does the Code of Ethics continue to meet its stated objectives? If not, why not?**
2. **Do the current objectives need to be amended? If so, what are the objectives that the Code of Ethics should address?**

Structure

The Code is divided into two sections. The purpose of the two sections is to differentiate between the provisions which apply to complaints by competitors (Section 1) and complaints which are brought by consumers (Section 2). Section 1 - Competitor Complaints is intended to provide a mechanism for complainants to resolve disputes between competitors in an efficient and low cost way without the need for recourse to the courts. Section 2 – Consumer Complaints is the section for complaints under the Code by consumers. A single written complaint is sufficient to initiate a formal investigation.

Section 1 - Competitor Complaints

SECTION 1 Section 1 reflects the consumer protection principles in the Australian Consumer Law (part of the *Competition and Consumer Act*) (ACL). Complaints under this section are considered by the Ad Standards Industry Jury.

Section 1.2 reflects concepts in the ACL in relation to misleading and deceptive conduct. To establish that advertising or marketing communication is not misleading or deceptive an advertiser may be required to provide substantiation of any claims made. This means that an advertiser must have a reasonable basis for their claims. Substantiation may be in the form of tests, studies or expert reports depending on the type of claim made. The Ad Standards Industry Jury will consider whether the meaning most likely to be taken from the advertisement or marketing communication by a typical consumer in the target market would be reasonably regarded as truthful and honest. The Industry Jury will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive.

Section 2 - Consumer Complaints

Section 2 of the Code provides the self-regulatory rules around clearly distinguishable advertising, portrayal of people, violence and treatment of sexual appeal, sex, sexuality and nudity, appropriate language and Prevailing Community Standards in advertising or marketing communication.

Complaints under Section 2 are considered by the Ad Standards Community Panel which is made up of people from a broad range of age groups and backgrounds and is gender balanced. The makeup of the Community Panel seeks to be representative of the diversity of Australian society. If a complainant or advertiser is not satisfied with the determination of the Community Panel, they may seek a review of the determination. In line with international best practice, the Independent Reviewer's role is to assess the validity of the process followed by the Community Panel, or to assess any new material provided by parties to the case. The Independent Reviewer does not provide a further merit-based review of a case.

Prevailing Community Standards apply to all parts of Section 2. This means that the Ad Standards Community Panel will have regard to community standards at the time the advertising or marketing communication was published. Prevailing Community Standards are determined primarily by the

Community Panel, whose members are representative of the community, on a case by case basis, as part of the complaints process.

Practice Note/Industry Practice Notes

The AANA has developed and published the following Practice Notes to assist advertisers, their agencies and the community in the interpretation of specific provisions of the Code of Ethics:

- AANA Practice Note – Code of Ethics
- Industry Practice Notes – Clearly Distinguishable Advertising
- Industry Practice Notes – Managing the Portrayal of People
- Industry Practice Notes – Marketing in the Digital Space

The interpretations in these Practice Notes are based on the AANA's intent in relation to the Code of Ethics and relevant determinations of the Ad Standards Community Panel. The Code of Ethics Practice Note is applied by the Ad Standards Community Panel in making its determinations. In the event of any ambiguity, the provisions of the Code prevail.

The Practice Note is published separately to the Code of Ethics document however regard must be had to both the Code of Ethics and the Practice Note in order to fully understand the rules. The Industry Practice Notes are designed specifically for marketers and their agencies as a resource when creating advertising. By having multiple documents, instances of repetition or inconsistency may occur. By combining the Code of Ethics and the Practice Notes into fewer source documents, this could simplify the rules for industry and consumers.

Questions

3. **The AANA welcomes comments on steps that could be taken to simplify and streamline the current Code and Practice Notes to provide clarity for consumers and reduce regulatory burden.**
4. **Should the substantive provisions of the Code of Ethics, Practice Note and Industry Practice Notes be incorporated into fewer documents?**
5. **Are there any other comments on the contents and structure of the Code, Practice Note or Industry Practice Notes?**
6. **Are there any comments on the introduction of Industry Practice Notes in addition to the Practice Note, and/or their content and structure?**

Evolution

The AANA Code of Ethics is the cornerstone of Australian advertising standards and continues to evolve to reflect any changes to community standards and best practice. Substantive changes have been made to the Code of Ethics since the last full review in 2012 including:

- A new provision (section 2.7) ensuring advertising is “clearly distinguishable as such to the relevant audience” was included in the Code of Ethics effective March 2017.
- Section 2.2 of the Code of Ethics, which relates to exploitative and degrading content, was introduced in 2012 following responses to a public consultation demonstrating community concern in this area. In 2016, AANA made a submission and attended the NSW Parliament Inquiry into the Sexualisation of Children and Young People leading to an amendment and update of the provision in 2017 to include an outright prohibition on the sexualisation of people under the age of 18 in advertising and marketing communication.
- On further evaluation of the section 2.2 in 2017, community groups and academics were calling for further strengthening of the Code around the use of nudity, sex and sexism in advertising. Effective March 2018, clause 2.2 was changed to prohibit the use of sexual appeal “in a manner which is

exploitative or degrading of any individual or group of people”. The change also incorporated an update of the definitions of “exploitative” and “degrading” in the Code of Ethics Practice Note.

- Finally, Practice Note guidance on section 2.6, the Health and Safety provision of the Code of Ethics was amended in November 2018 to stipulate that “Advertising must not portray an unrealistic ideal body image by portraying body shapes or features that are unrealistic or unattainable through healthy practices”.

Questions

7. Should the Code of Ethics and Practice Notes continue to evolve outside of formal public reviews?

Compliance

Ad Standards

Ad Standards administers the complaint handling service for the AANA Codes. Complaints to Ad Standards under the Code of Ethics fall into two categories:

- Competitor complaints under Section 1 of the Code of Ethics – these complaints are adjudicated by the Ad Standards Industry Jury.
- Consumer complaints under Section 2 of the Code of Ethics - these complaints are adjudicated by the Ad Standards Community Panel, made up of an independent panel of individuals who are representative of the wider community.

Advertisers who are found by the Industry Jury or Community Panel to be in breach of the AANA Code of Ethics are required to withdraw or modify the material so that it is no longer published or broadcast in the same format. The resulting commercial consequences of breaching the Code of Ethics include the direct and indirect costs of withdrawing an advertisement and the reputational cost when a non-compliance decision is made public, including possible adverse media coverage.

This complaints-based system under Section 2 of the Code of Ethics offers the public an opportunity to participate in facilitating advertisers’ compliance with the Code. It provides a free, open and transparent mechanism to address concerns about the content of advertisements and other marketing communication.

Complaint volumes

Although Ad Standards handles complaints in relation to a number of Codes, in 2018 almost 90 per cent of all complaints considered by the Ad Standards Community Panel related to issues of community concern covered by the Code of Ethics. The number of complaints coming under the umbrella of the Code of Ethics demonstrates the important role the Code of Ethics plays in providing an effective national standard for advertising that applies to all platforms.

According to the Ad Standards *Review of Operations 2018*, the proportion of complaints coming under the various Codes and provisions handled by Ad Standards were as follows:

ISSUES ATTRACTING COMPLAINT (%)

	2014	2015	2016	2017	2018
AANA Section 2.4 - Sex, sexuality and nudity	14.27%	27.32%	22.74%	14.59%	36.39%
AANA Section 2.3 - Violence	12.13%	11.80%	17.98%	12.57%	26.58%
AANA Section 2.1 - Discrimination or vilification	27.61%	15.76%	27.23%	18.34%	8.66%
AANA Section 2.5 - Language	5.23%	14.01%	11.45%	18.79%	7.09%
AANA Section 2.2 - Exploitative or degrading	11.51%	4.60%	12.30%	9.06%	5.87%
AANA Section 2.6 - Health and safety	9.38%	10.46%	5.36%	12.55%	4.83%
Other	16.61%	12.06%	1.52%	4.77%	3.72%
AANA Wagering Code	-	-	0.26%	6.66%	3.35%
AANA Food and Beverages Code	1.87%	0.76%	0.56%	0.97%	1.13%
FCAI Code	1.25%	2.56%	0.29%	0.60%	1.04%
AANA Advertising to Children Code	0.05%	0.23%	0.17%	0.52%	0.50%
AANA Section 2.7 - Distinguishable advertising	-	-	0.00%	0.22%	0.41%
AFGC Quick Service Restaurant Resp Childrens Marketing Initiative (QSRI)	0.04%	0.17%	0.03%	0.20%	0.32%
AFGC Responsible Childrens Marketing Initiative (RCMI)	0.04%	0.12%	0.09%	0.11%	0.07%
AANA Environmental Code	0.01%	0.15%	0.03%	0.05%	0.05%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

CONSULTATION ON EXISTING PROVISIONS OF THE CODE OF ETHICS

Code of Ethics Provisions

Section 1 – Competitor Complaints

The provisions in section 1 of the Code of Ethics reflect the consumer protection principles in the ACL and stipulate that:

Section 1.1:

Advertising or Marketing Communication shall comply with Commonwealth law and the law of the relevant State or Territory.

Section 1.2:

Advertising or Marketing Communication shall not be misleading or deceptive or be likely to mislead or deceive.

Section 1.3

Advertising or Marketing Communication shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor.

Section 1.4:

Advertising or Marketing Communication shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.

Section 1.5:

Advertising or Marketing Communication shall not make claims about the Australian origin or content of products advertised in a manner which is misleading.

Question

8. Are any changes required to Section 1 of the Code of Ethics? If yes, please give reasons.

Section 2

Section 2.1 - Discrimination and vilification

Advertising or Marketing Communication shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

Practice Note for Section 2.1

This section describes types of behaviour and restricts depictions of those types of behaviour against people within certain groups. The types of behaviour are:

DISCRIMINATION - unfair or less favourable treatment

VILIFICATION - humiliates, intimidates, incites hatred, contempt or ridicule

The groups are:

- *RACE – viewed broadly this term includes colour, descent or ancestry, ethnicity, nationality, and includes, for example, ideas of ethnicity covering people of Jewish or Muslim origin*
- *ETHNICITY – those with a common social identity as a result of customs, traditions or belief about historical origins*
- *NATIONALITY – people belonging to a particular nation either by birth, origin or naturalisation. This can change over time so, for example, a person born in the United States who becomes a citizen of Australia by marriage may describe their nationality as either/both Australian or/and American*
- *GENDER – male, female or trans-gender characteristics*
- *AGE – based on a person’s actual age (i.e. from the date they were born) and not a person’s biological age (i.e. how old they may appear)*
- *SEXUAL PREFERENCE – includes homosexuality, heterosexuality, bisexuality and trans sexuality*
- *RELIGIOUS VIEWS – a person’s belief or non-belief in a faith or system of worship*

- *DISABILITY* – a current, past or potential physical, intellectual, psychiatric, or sensory illness, disease, disorder, malfunction, malformation, disfigurement or impairment, including mental illness
- *POLITICAL BELIEF*– support for or opposition to a particular political party or ideology.

HUMOUR - A negative depiction of a group of people in society may be found to breach section 2.1, even if humour is used. The depiction will be regarded as a breach, if a negative impression is created by the imagery and language used in the advertisement. Advertisements can humorously suggest stereotypical aspects of an ethnic group or gender, provided the overall impression of the advertisement does not convey a negative impression of people of that group.

DISABILITY - A realistic depiction of people with a disability can be acceptable, even if the advertisement may be upsetting to some members of the community, where there is an important message being delivered.

MINORS - Particular care must be exercised when portraying people, particularly Minors, in advertising or marketing communication. Advertisers should have regard to Section 2.2 below and the AANA Industry Practice Note: *Managing the Portrayal of People*.

GENDER STEREOTYPES - Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer. As such, advertisements may feature people undertaking gender-stereotypical roles e.g. a woman cleaning the house or a man doing DIY, or displaying gender-stereotypical characteristics e.g. a man being assertive or a woman being sensitive to others' needs, but they should take care to avoid suggesting that stereotypical roles or characteristics are:

- always associated with that gender;
- the only options available to that gender; or
- never carried out or displayed by another gender;

as this may amount to discrimination on the basis of gender.

Portrayals may amount to discrimination or vilification as determined by the Community Panel where they depict unfair or less favourable treatment of gender; and/or humiliate or invite contempt or ridicule of gender. For example, advertising which:

- depicts family members creating a mess while a woman has sole responsibility for cleaning it up;
- suggests that a specific activity is inappropriate for boys because it is stereotypically associated with girls, or vice-versa; or
- features a man trying and failing to undertake simple parental or household tasks. Portraying a person as attractive does not, in and of itself, constitute discrimination or vilification.

Complaints Under Section 2.1

According to Ad Standards, community concern about discrimination and vilification was the third most complained about issue in 2018 at 8.66 per cent however this was down from 18.34 per cent in 2017⁵.

Complaints that have been upheld under this section include:

- A negative depiction of an Asian man in a print ad featuring a caricature of an Asian man, the words 'Mr Wong Hydraulics' and the words 'to fix call wongy.....will do good job, proper fix' (read decision [here](#));
- An ad for organ donation was found to contain a disparaging depiction of Jesus and demeaning take on the Christian religion (read decision [here](#));

⁵ Ad Standards, *Review of Operations 2018*, p 24.

- A billboard ad for Sydney University depicting children's hands gripping a chain link fence with the tagline "unlearn criminal" with the word "criminal" struck-out was found to be discriminatory and vilifying (read decision [here](#));

Question

9. Are any changes required to Section 2.1 of the Code of Ethics? If yes, please give reasons.
10. Are any changes required to the Practice Notes for section 2.1? If yes, please give reasons.

Section 2.2 - Exploitative or degrading

Advertising or Marketing Communication shall not employ sexual appeal:

- (a) where images of Minors, or people who appear to be Minors, are used; or*
- (b) in a manner which is exploitative or degrading of any individual or group of people.*

Practice Note for Section 2.2

This Code provision was amended on 1 March 2018.

EXPLOITATIVE - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focusing on their body parts where this bears no direct relevance to the product or service being advertised.

DEGRADING - lowering in character or quality a person or group of persons.

Section 2.2 prohibits the use of advertising or marketing communication which employs sexual appeal which is exploitative of or degrading to any individual or group of people. It applies to all genders, with distinct criteria when it comes to the portrayal of minors.

In advertisements where minors, or people who appear to be minors, are used, sexual appeal is not acceptable and will always be regarded as exploitative or degrading. Advertisements must not include sexual imagery, state or imply that minors, or people who appear to be minors, are sexual beings or that ownership or enjoyment of the advertised product will enhance their sexuality. Minors, or people who appear to be minors, must not be portrayed in a manner which treats them as objects of sexual appeal.

For material to breach this section of the Code, it must contain sexual appeal, however not all images or other material depicting people who are scantily clad or naked will be unacceptable under this section. This section restricts the use of material only if it employs sexual appeal in a manner which is exploitative of or degrading to any individual or group of people. The Community Panel may have regard to the context or medium in which the material appears.

Complaints Under Section 2.2

According to Ad Standards research, overall community agreement with the ethics set out in Section 2.2 is strong at 83 per cent in 2017⁶. Advertisers are generally responsible when it comes to the depiction of children in advertisements and no advertisements have been found to breach this provision of the Code since 2014⁷.

⁶ Ad Standards, Community perceptions 2007-2017, December 2015, p16

⁷ <https://adstandards.com.au/products-and-issues/exploitative-or-degrading/determination-summary>

The advertisements found to have breached section 2.2 involve the following portrayals of sexual appeal of adults:

- An online real estate ad featuring various models included scenes which focussed on body parts not relevant to an advertisement for a house and a scene portraying women as commodities or objects to possess. The ad was found to employ sexual appeal in a manner that was exploitative of women (read decision [here](#));
- An ad for boots featured a depiction of the woman in a leotard from the waist down only. The focus of the ad was on the woman's buttocks and found not directly relevant to the boots being sold (read decision [here](#));
- A transport ad which featured the brand name and a painted image of a naked female on the back of a truck cab. The woman was depicted reclining with her genitals covered by her legs, and her breasts visible. The ad was found to use sexual appeal in a way that clearly focussed on the body parts of the woman while bearing no direct relevance to the product being advertised (read decision [here](#));
- A billboard ad in a shopping centre for women's underwear featured a woman in a sheer black bra, garter belt, underpants and stockings laying on a lounge. The ad was found to use sexual appeal in an exploitative manner (read decision [here](#));

Question

11. Are any changes required to Section 2.2 of the Code of Ethics? If yes, please give reasons.

12. Are any changes required to the Practice Notes for section 2.2? If yes, please give reasons.

Section 2.3 - Violence

Advertising or Marketing Communication shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

Practice Note for Section 2.3

Consequences of violence may also be prohibited however graphic depictions of traffic accidents or the consequences of domestic violence may be justified by the community safety message involved. Sexual violence is not acceptable.

The Community Panel has also found that a strong suggestion of menace presents violence in an unacceptable manner and breaches this section of the Code. Audio representations of violence may be prohibited. For example, a radio advertisement for a vehicle which included the sound of a man being slapped and his consequent expression of pain, was found in breach. Violence against animals is caught by this section.

Depiction of violence to promote a violent game may be acceptable provided it is relevant to the product advertised. Realistic depictions of the consequences of violence are not acceptable. More leeway is permitted where the depiction is stylised rather than realistic. However, advertisers should exercise caution when using cartoon violence as a cartoon style may be attractive to children.

Complaints Under Section 2.3

According to Ad Standards data, violence was the second highest issue of community concern overall in 2018, at 26.58 per cent (up from 14.59 per cent in 2017)⁸. Complaints that were upheld under this section include:

⁸ Ad Standards, *Review of Operations 2018*, p 24.

- A TV ad for a horror movie containing scenes which exceeded the level of violence and menace justifiable in the context of the product (read decision [here](#));
- A TV ad depicted a woman at a child's birthday party who receives a notification on her phone about a health insurance rate rise. She becomes angry and starts beating a piñata aggressively while the children watch. The service offered was price comparison for health insurance and in the context of such a price comparison service the level of violence depicted was not justifiable (read decision [here](#));
- A radio ad for a navigation device featured a female criticising the driving of her partner and calling them an idiot. The ad was found to present or portray violence in a manner which was not justifiable in the context of the product advertised by featuring language suggestive of domestic verbal abuse (read decision [here](#));
- A poster ad featuring an image of a cross with a hand nailed to it and the text "Get Nailed Piercings - \$5". The ad was found to contain a level of blood loss and portrayal of a hand wound that had no relevance to the service promoted (read decision [here](#)).

Question

13. Are any changes required to Section 2.3 of the Code of Ethics? If yes, please give reasons.
14. In particular, should the audience likely to view the advertisement be a consideration under Section 2.3?
15. Are any changes required to the Practice Notes for section 2.3? If yes, please give reasons.

Section 2.4 - Sex, sexuality and nudity

Advertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

Practice Note for Section 2.4

This section applies equally to images of men as well as images of women and children.

Images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience. Explicit sexual depictions in marcomms, particularly where the depiction is not relevant to the product or service being advertised, are generally objectionable to the community and will offend Prevailing Community Standards.

Full frontal nudity and explicit pornographic language is not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.

Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and fashion) is generally permitted but note the applications of the relevant audience. More care should be taken in outdoor media than magazines, for example. Advertisements which depict women or men scantily clad, are generally acceptable, if relevant to the product.

Images of women in bikinis are permitted, however, unacceptable images could include those where a woman (or man) is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects).

Models who appear to be minors should not be used in sexualised poses. An advertisement in which the female looks very young and is lying in bed with a man, with no direct reference to the product being advertised, was found in breach by the Community Panel as it used a highly sexualised image regardless of the audience to which the advertisement was directed.

The use of the word “sex” does not, of itself, make an advertisement unacceptable. However, such advertisements must not contain images that are highly sexualised.

Complaints Under Section 2.4

Concerns to Ad Standards about sex, sexuality and nudity in advertising more than doubled to 36.39 per cent of total complaints (up from 14.59 per cent in 2017) in 2018⁹. This may reflect changing community sentiment when it comes to the depiction of sex, sexuality and nudity, in particular of women, in advertising. Complaints that have been upheld under section 2.4 include:

- An internet ad on the Sydney Morning Herald website depicting a woman in lace underwear split down the middle focussing on the woman's buttocks. The Community Panel considered that the relevant audience for this ad was most likely to be predominately adult however found the ad to be inappropriate for such environments (read decision [here](#));
- A poster ad for Bras N Things located in the front window of a store depicting a woman in a black see-through bodysuit holding a pompom. The Panel considered that the imagery included on a poster that is visible to members of the community in a shopping centre is explicit and is inappropriate for the relevant broad audience which would likely include children (read decision [here](#));
- A Pay TV ad depicting a naked man from the waist up, with his leg up on the bathroom counter using a razor to groom or 'manscape'. The Panel noted that many of the complaints identified sports related programming being broadcast at the time the ad aired and considered that such sports programming would have a broad audience that would include children (read decision [here](#));

Question

16. Are any changes required to Section 2.4 of the Code of Ethics? If yes, please give reasons.

17. Are any changes required to the Practice Notes for section 2.4? If yes, please give reasons.

Section 2.5 - Language

Advertising or Marketing Communication shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

Practice Note for Section 2.5

Words and phrases which are innocuous and in widespread and common use in the Australian vernacular are permitted (provided they are used in a manner consistent with their colloquial usage, for example with gentle humour, and not used in a demeaning or aggressive manner). Examples are “bugger”, “shit”, “pissed off”, “crap”, “bloody”, “cheap bastard”, “bum”, and “balls”. The “f” and “c” words are generally not permitted. Non-verbal representations of the “f” word are also not permitted.

Words and acronyms that play on the ‘f’ word, e.g. WTF and LMFAO, but do not use the actual word are normally considered acceptable if used in a light hearted and humorous way, are in subtitle rather than spoken word and are appropriate to the situation.

When considering the application of this section to UGC within the control of the advertiser, the Community Panel will have regard to the contextual and conversational nature of social media. In some cases the use of the vernacular in UGC may not offend Prevailing Community Standards of the relevant audience.

Complaints Under Section 2.5

Complaints that have been upheld under section 2.5 related to the use of language such as:

- A window poster ad appearing in a shopping centre reads "The F**king Huge Sale" where the "uc" was covered by a "Censored by Typo" emblem that looks like a sticker. The Panel's found that,

⁹ Ad Standards, *Review of Operations 2018*, p 24.

particularly in public areas and areas where children can see the material, the community view is that this term is strong or obscene language and is not appropriate to be used in advertising in a public medium (read decision [here](#));

- A radio ad featuring a woman being entertained by her partner becoming angry and frustrated at trying to use car parts that he ordered online. The man in the ad is heard swearing, with the words beeped out. The Panel considered that the beeping effect was insufficient to hide the strong language being used in the ad, and that the repetition of the strong language, and the aggressive manner in which it is used was not appropriate for a broad audience (read decision [here](#));
- A radio ad promoting Village Cinemas Date Night Event with audio clips from a movie including "I want to go to Prom and lose my God-damn virginity". The majority of the Panel considered that using the term 'God-damn' in combination with the term 'virginity' was a phrase that many people would find inappropriate in the circumstances, including for the relevant audience and medium and considered that the accumulated effect of these words was likely to cause offence to members of the community, and was not appropriate for a radio advertisement which would likely be heard by children (read decision [here](#)).

Question

18. Are any changes required to Section 2.5 of the Code of Ethics? If yes, please give reasons.

19. Are any changes required to the Practice Notes for section 2.5? If yes, please give reasons.

Section 2.6 - Health and safety

Advertising or Marketing Communication shall not depict material contrary to Prevailing Community Standards on health and safety.

Practice Note for Section 2.6

UNSAFE PRACTICES - Images of bike riding without helmets or not wearing a seatbelt will be contrary to prevailing community standards relating to health and safety. Similarly, advertisements depicting unsafe practices or images, such as riding down a hill in a wheelie bin, using a mobile phone while driving or apparently hiding in a chest freezer etc are unacceptable. Advertisers should take care not to depict behaviour that children may imitate.

MOTOR VEHICLES - Advertisements are subject to the health and safety section. This means that a motor vehicle advertisement cannot depict images contrary to public health and safety notwithstanding the images being unrelated to the motor vehicle advertised.

BULLYING - The age of the people depicted in an advertisement, their relationship to each other and the nature of the communication are relevant in determining whether an advertisement constitutes bullying and is contrary to Prevailing Community Standards. More care must be taken when the people depicted in an advertisement are Minors or if there is an unequal relationship between the people in the advertisement, e.g. student and teacher, manager and worker.

BODY IMAGE - Advertising must not portray an unrealistic ideal body image by portraying body shapes or features that are unrealistic or unattainable through healthy practices.

Unrealistic ideal body image: Advertising that provides an unrealistic ideal body image by portraying body shapes or features that are unrealistic or unattainable through healthy practices, which is not justifiable in the context of the product or service being advertised, will be contrary to prevailing community standards relating to health and safety.

An unrealistic ideal body image may occur where the overall theme, visuals or language used in the advertisement imply that:

- *a body shape, or feature, of the kind depicted (e.g. very thin or very muscular) is required to use the product or service or to participate in an activity associated with the product or service;*

- those people who do not have a body shape, or feature, of the kind depicted cannot use the product or service, or participate in a particular activity; or
- those people who do not have a body shape, or feature, of the kind depicted should alter their body shape, or features, before they can use the product or service, or participate in a particular activity.

An unrealistic ideal body image may also occur where models are depicted in a way that:

- promotes unhealthy practices
- presents an unrealistic body image as aspirational; or
- is reasonably likely to cause pressure to conform to a body shape that is unrealistic or unattainable through healthy practices (such as diet or physical activities), unless such depictions are justifiable in the context of the product or service advertised.

Body size: The Code does not require the use of ‘healthy weight’ models as this term could exclude people in smaller or larger bodies from advertising, by unnecessarily limiting the portrayal of diversity in society. As such, advertisements may include a diversity of images, including people who have a variety of sizes and shapes, but advertisers should take care to avoid images of people with extreme body weights or shapes that are unrealistic or unattainable through healthy practices which are not justifiable in the context of the product or service advertised, and which are contrary to prevailing community standards relating to health and safety.

While the use of people in smaller or larger bodies is itself not necessarily problematic, advertisers must ensure that models do not adopt a pose or are not depicted in a way which produces an unrealistic sense of body image, for example through the style of the advertising, the clothing, lighting, or make-up used.

Alteration of images: The use of digitally-enhanced images is a normal part of the production process used in many aspects of the media and advertising industries, and is a vehicle for visual expression. The Code does not prevent the use of post-production, altering or digitally enhancing an image. Similarly, the Code does not require a disclosure that images have been digitally altered.

However, where technology is used to digitally alter images of people to such an extent that their body shape, or features, are no longer realistic or attainable through healthy practices, or where the changes are not justifiable in the context of the product or service advertised, the advertisement may breach the Code if it is contrary to prevailing community standards relating to health and safety. Advertisers should refrain from altering images in a way that changes the body shape or proportions portrayed, for example by lengthening a person’s legs to the extent they are not in proportion with the rest of their body or tightening their waist disproportionately to the rest of their body, so that the resulting image portrays a body shape or features that are unrealistic or unattainable through healthy practices.

Complaints Under Section 2.6

Complaints that have been upheld under section 2.6 have portrayed the following:

- A TV infomercial for an infrared wall heater shown in various settings including a scene where water is poured on the heater. The majority of the Panel considered that although the action itself may not cause fatal harm, the activity displayed in the ad was in direct contrast to public messaging around electrical safety (read decision [here](#));
- A catalogue ad depicts a man on a bicycle not wearing a helmet. The ad included a disclaimer stating “Bicycle imagery depicted on this page is for advertising purposes only. Road rules state that bicycle riders on roads and road related areas must wear an approved bicycle helmet, securely fitted and fastened.” The Panel considered that the inclusion of the disclaimer did not exempt the depiction of material which would breach the law (read decision [here](#));
- A billboard ad contained an image of a wrapped gift which appeared to be a hand gun. The Panel noted that leaving a firearm unsecured or under a Christmas tree is incorrect storage of a firearm and is illegal therefore the ad was found to be contrary to prevailing community standards on gun safety (read decision [here](#)).

Question

20. Are any changes required to Section 2.6 of the Code of Ethics? If yes, please give reasons.
21. In particular, should the audience likely to view the advertisement be a consideration under Section 2.6?
22. Are any changes required to the Practice Notes for section 2.6? If yes, please give reasons.

2.7 Clearly Distinguishable advertising

Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience.

Practice Note for Section 2.7

Context driven advertising and marketing approach is permitted, but marketers should be cognizant that, in seeking to make their advertising and marketing communication more engaging, they do not camouflage the fact that it is advertising.

Advertising or marketing communication should not be disguised as, for example independent market research, user-generated content, private blogs or independent reviews.

There is no absolute requirement that advertising or marketing communication must have a label. If it is clear to the relevant audience that the content is commercial in nature (for example by the nature of the content, where the content is placed, how consumers are directed to the content, the theme, visuals and language used, or the use of brand names or logos), then no further disclosure or distinguishing element is needed.

For example, where advertisers have made commercial arrangements for the branded products to feature as a product placement, and no other claim is made about the products, no label or disclosure may be required. Even though consumers may not realise the advertisers have made a commercial arrangement for their products to appear, the use of the branded products may be sufficient to distinguish the material as an advertisement or marketing communication. Further disclosure of product placement may not be necessary because there is a prevailing community view that audiences do not need to be notified of this sort of product placement.

Advertisers have flexibility as to how to ensure that material is distinguishable as advertising or marketing communication. Advertisers may use logos or brand names combined with other visual or audio cues where appropriate, such as background shading, outlines, borders, graphics, video or audio messages depending on the medium. When advertisements are targeted to a specific audience, the relevant perspective is that of a typical member of the targeted group.

Where a third party recommends a product due to an arrangement with the brand owner, it should be clear that the view expressed is not the independent view of the third party. Again, the advertiser has flexibility as to how this distinction may be achieved. Similarly where a brand has an arrangement for contextually targeted content that is designed to fit in with surrounding editorial content, and the brand has reasonable control over the content, the content should be clearly distinguishable to the relevant audience as advertising.

Responsibility for developing content that is aligned to the AANA Codes falls to the advertiser – the brand owner who has control over the relevant material and whose products or services are being promoted. The AANA Codes do not apply to the broadcaster or publisher unless they are acting as advertiser for their own products or services. Be aware that other industry codes, such as the Commercial Television Industry Code of Practice; Commercial Radio Code of Practice; ASTRA Codes of Practice; ADMA Code of Practice may also apply. For more information see the AANA Industry Practice Note: Clearly Distinguishable Advertising.

Disclosure rules for Influencers

In relation to social media influencers, vloggers and bloggers, rules on how to clearly distinguish advertising from genuine user-generated content are set out in the following Industry Practice Notes:

- AANA's Industry Practice Note on Marketing in the Digital Space - <http://aana.com.au/content/uploads/2018/03/180316-Marketing-in-the-Digital-Space-Industry-Practice-Note.pdf>
- AANA Industry Practice Note on Clearly Distinguishable Advertising - http://aana.com.au/content/uploads/2018/10/AANA_Clearly-Distinguishable-Advertising_2018-2.pdf

Although these Industry Practice Notes require clear disclosure of advertising by influencers, vloggers and bloggers, the requirement to do so applies where the advertiser has a reasonable degree of control over the material.

Ad Standards recently conducted research into the community's perceptions and understanding of clearly distinguishable advertising and found around half (49%) of the surveyed participants sometimes felt online advertisements were not clearly distinguishable as such.

Complaints Under Section 2.7

This provision was first introduced in March 2017. Complaints that have been upheld under section 2.7 have involved advertising in the following instances:

- An advertorial in an in-program health segment in Studio 10 for Nutra-Life. Studio 10 is a morning talk on Network Ten, filmed live in Sydney every week day. The segment was part of a fully integrated paid media campaign for Nutra-Life. The Community Panel considered that while the ad met the requirements of the Commercial Television Industry Code of Practice through the disclosure in the play-off and the credits, the segment itself did not contain any indication through visual or audio statements or any other action that the content was commercial in nature and was a promotion for a specific product (read decision [here](#));
- A TV ad featured a Medibank reporter doing a news-segment style report on health news. The Community Panel considered that the style and theme of the ad was very closely linked to news content and was not clearly comical or fictitious. There was a call to action to search the brand's website at the end of the ad, however there were also calls to action to visit Beyond Blue and the Raising Children Network. The brand's call to action was not clearly distinguishable as an ad (read decision [here](#)).

Question

- 23. Are any changes required to Section 2.7 of the Code of Ethics? If yes, please give reasons.**
- 24. Are any changes required to the Industry Practice Notes for section 2.7? If yes, please give reasons.**
- 25. Should the Practice Note and Industry Practice Notes associated with section 2.7 be amended to provide more clarity on the disclosure requirements for influencers, vloggers and bloggers where payment, payment in kind (e.g. free product) or any other benefit has been received? If yes, please give reasons.**

Other topics

This Discussion Paper poses a range of questions in relation to the Code of Ethics. The issues and related questions raised are presented to facilitate discussion and are not intended to be exhaustive. Stakeholders and interested parties are invited to comment on any other matters they wish to raise.

Question

- 26. Are there any other issues, rules or standards that should be included in the Code of Ethics? If so please, give details.**
- 27. Do you know of any other evidence-based research which could inform the evolution of the Code of Ethics? If so, please give details.**
- 28. Do you have any additional suggestions or comments on the review of the Code of Ethics?**

LIST OF CONSULTATION QUESTIONS

1. Does the Code of Ethics continue to meet its stated objectives? If not, why not?
2. Do the current objectives need to be amended? If so, what are the objectives that the Code of Ethics should address?
3. The AANA welcomes comments on steps that could be taken to simplify and streamline the current Code and Practice Notes to provide clarity for consumers and reduce regulatory burden.
4. Should the substantive provisions of the Code of Ethics, Practice Note and Industry Practice Notes be incorporated into fewer documents?
5. Are there any other comments on the contents and structure of the Code, Practice Note or Industry Practice Notes?
6. Are there any comments on the introduction of Industry Practice Notes in addition to the Practice Note, and/or their content and structure?
7. Should the Code of Ethics and Practice Notes continue to evolve outside of formal public reviews?
8. Are any changes required to Section 1 of the Code of Ethics? If yes, please give reasons.
9. Are any changes required to Section 2.1 of the Code of Ethics? If yes, please give reasons.
10. Are any changes required to the Practice Notes for section 2.1? If yes, please give reasons.
11. Are any changes required to Section 2.2 of the Code of Ethics? If yes, please give reasons.
12. Are any changes required to the Practice Notes for section 2.2? If yes, please give reasons.
13. Are any changes required to Section 2.3 of the Code of Ethics? If yes, please give reasons.
14. In particular, should the audience likely to view the advertisement be a consideration under Section 2.3?
15. Are any changes required to the Practice Notes for section 2.3? If yes, please give reasons.
16. Are any changes required to Section 2.4 of the Code of Ethics? If yes, please give reasons.
17. Are any changes required to the Practice Notes for section 2.4? If yes, please give reasons.
18. Are any changes required to Section 2.5 of the Code of Ethics? If yes, please give reasons.
19. Are any changes required to the Practice Notes for section 2.5? If yes, please give reasons.
20. Are any changes required to Section 2.6 of the Code of Ethics? If yes, please give reasons.
21. In particular, should the audience likely to view the advertisement be a consideration under Section 2.6?
22. Are any changes required to the Practice Notes for section 2.6? If yes, please give reasons.
23. Are any changes required to Section 2.7 of the Code of Ethics? If yes, please give reasons.
24. Are any changes required to the Industry Practice Notes for section 2.7? If yes, please give reasons.
25. Should the Practice Note and Industry Practice Notes associated with section 2.7 be amended to provide more clarity on the disclosure requirements for influencers, vloggers and bloggers where payment, payment in kind (e.g. free product) or any other benefit has been received? If yes, please give reasons.
26. Are there any other issues, rules or standards that should be included in the Code of Ethics? If so please, give details.
27. Do you know of any other evidence-based research which could inform the evolution of the Code of Ethics? If so, please give details.
28. Do you have any additional suggestions or comments on the review of the Code of Ethics?