

Code of Ethics

Practice Note

MARKETING ASSOCIATION OF AUSTRALIA
AANA + ADMA

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OBJECTIVES

This Practice Note is provided as a guide to interpretation to assist advertisers, their agencies and the community. The interpretations in this Practice Note are based on the MAA's intent in relation to the Code and relevant determinations of the Ad Standards Community Panel.

This Practice Note must be 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 may be amended by the MAA from time to time.

What does the code apply to?

The Code applies to material which 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, and includes:

- all advertising or marketing communication under the reasonable control of the advertiser, whether or not a payment or other valuable consideration has been involved;
- all advertising or marketing communication where any of the potential customers of the product, service etc. are physically present in Australia and the advertising or marketing communication is directed to those customers;
- sponsorship announcements such as "this program brought to you by . . . ";
- advertorials and infomercials;
- community service announcements;
- user generated content which is communicated via a site or digital platform over which the marketer has a reasonable degree of control; and
- any media, including online and social media (the Code is technology neutral).

For the avoidance of doubt, placing advertising and marketing communication online or publishing it in a digital format does not by itself mean that the communication is directed to a particular audience – for example, advertising or marketing communication contained on an international website will not be considered to be directed to Australians unless the material is clearly addressed to Australian consumers.

Where advertising or marketing communication are directed to consumers physically present in Australia, the Code applies to the advertiser or marketer who has reasonable control over the communications – for example, in the case of an international campaign this may be a brand owner based overseas and not the local entity for the brand, where the local entity does not have reasonable control over the communication.

Two sections of the code

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

Section 1 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

Section 2 is the section for complaints under the Code by consumers.

01. Competitor Complaints

Competitor means an actual or potential rival business that supplies or acquires substitutable goods or services within a relevant market.

Section 1 reflects the consumer protection principles in the **Australian Consumer Law** (part of the Competition and Consumer Act) (ACL). Complaints are made to the Ad Standards Industry Jury: www.adstandards.com.au/process/claimsboardprocess

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 information most likely to be taken from the advertisement or marketing communication by an average 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.



02. Consumer Complaints

Section 2 of the Code provides the rules around portrayal of people, violence, treatment of sex, sexuality and nudity, appropriate language and health & safety in advertising.

The **MAA** Codes apply to advertising and marketing communication where two key criteria are met:

- The marketer has a reasonable degree of control over the material; and
- The material draws the attention of the public in a manner calculated to promote the product or service.

Material may originate to provide information to stakeholder groups such as media, investors or government and not be covered by the Codes. However once it is targeted directly at consumers or the public in a way that is calculated to promote a service or product and in circumstances where the brand owner retains reasonable control over the material, then the Codes would apply. Contextually targeted branded content, integrated content, native advertising – that is, material which seeks to provide content generated by brands which does not look out of place in the habitat within which it is being viewed, heard or experienced – is included within the definition of advertising.

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.

To assist advertisers and complainants, this Practice Note provides some guidance into Prevailing Community Standards. It is influenced in part by previous decisions of the Community Panel, the **MAA's** intent in developing this Code and any relevant research of the **MAA** or Ad Standards. There is no one test of Prevailing Community Standards. The Prevailing Community Standard will differ in relation to health and safety, nudity, language, violence and portrayal of people.

Relevant audience is informed by the content of the advertising or marketing communication as well as other material that may be provided by the advertiser including classification material, audience measurement data and the media placement plan, to determine the audience that the advertiser intends to see the advertising. The Community Panel will have regard to the audience or readership composition data for the relevant media where this is provided.

In the case of social media, the Community Panel should have regard to the opt-in nature of the medium and the age gating which may apply to some social media sites in determining the relevant audience. The Community Panel will consider reasonable members of the relevant audience in making its determinations.

For the purposes of advertisements in public places, the Community Panel will not only take account of the intended audience, but it can also take a broad view of the actual audience. This recognises the broad nature of the audience for advertisements in public places, which may include Minors. The Community Panel will take that into consideration in determining their view of whether the advertisement treats sex, sexuality and nudity with sensitivity to that audience or whether the language used is appropriate for that audience.

User Generated Content (UGC)

User Generated Content (UGC) is material which has not been created by the brand owner but by a person interacting on the brand owner's digital marketing platform. A brand owner has reasonable control of user generated content when it becomes aware of the material. An advertiser becomes aware of material when:

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

The Code does not apply to UGC on pages and sites which are not within an advertiser's reasonable control even if brands or products are featured.

Editorial content

Editorial content such as independent review content, editorial blog content or claims made in the context of editorial content is excluded from the Codes. 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.

Target Consumer

In the event of a complaint being considered by the Community Panel, the advertiser should be in a position to provide details about the Target Consumer, which may include data from audience data tools. Where accurate audience data is not available, the Community Panel may have regard to other factors.

Corporate Reports and PR Communication

Advertising includes consumer public relations communication. Consumer public relations material, as distinct from corporate reports, that is reproduced as public facing content (e.g. a press release posted on a brand's consumer facing website) would be covered by the Codes because the brand owner has retained a reasonable degree of control over the material and it was used in a manner intended to directly promote a product or service.

The following are excluded from the definition of advertising:

- corporate reports, public affairs messages in press releases and other media statements, annual reports,
- statements on matters of public policy (eg internal company communication, sustainability reports, investor documents, regulatory affairs submissions, position statements or comments on policy issues)
- corporate social responsibility (CSR) programs.

Where brand owners have provided material for their employees to promote a product or service via social media or similar, the material would be covered by the Codes if that material is reproduced substantially unaltered.

SECTION 2.1

Discrimination / Vilification

Section 2.1 prohibits the discrimination or vilification of any individual or group of people on the basis of certain defined attributes. 'Discrimination' and 'vilification' are defined as:

Discrimination

unfair or less favourable treatment

Vilification

humiliates, intimidates, incites hatred, contempt or ridicule

The defined attributes 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 – refer to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate based on a person's biological sex

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 ORIENTATION – means a person's sexual orientation towards:

a. persons of the same sex;

b. persons of a different sex; or

c. persons of the same sex and persons of a different sex

RELIGION – a 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

Advertising which shows members of a certain group as ridiculous, unintelligible or unable to recognise a dangerous situation incites ridicule towards their behaviour.

Advertising which compares members of a specific group to animals or objects will be seen as degrading and vilifying.

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 of a person or group of people on the basis of a defined attribute listed above. Advertisements can humorously or satirically suggest stereotypical aspects of a group of people in society provided the overall impression of the advertisement does not convey a negative impression of people of that group on the basis of one or more of the attributes listed above.

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.

GENDER STEREOTYPES

Harmful gender stereotypes are unacceptable because they perpetuate unconscious bias and rigid norms of femininity and masculinity that shape what it means to be a girl, woman, boy or man.

Advertisements should take care to avoid suggesting that skills, interests, roles or characteristics are:

- always uniquely associated with one gender (eg. family members creating a mess while a woman has sole responsibility for cleaning it up);
- the only options available to one gender; or
- never carried out or displayed by another gender,

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

This includes, but is not limited to advertisements that:

- mock people for not conforming to gender stereotypes;
- portray an activity or product as being inappropriate for a girl or boy because it is stereotypically associated with another gender; or
- portray one sex failing at a task that is stereotypically associated another gender (eg. 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. However, ads should be sensitive to the emotional and physical well-being of vulnerable groups of people who may be under pressure to conform to particular gender stereotypes. For example, an ad aimed at new mums which suggests that looking attractive or keeping a home pristine is a priority over other factors such as their emotional wellbeing.

In relation to ads featuring or aimed at children, ads can be targeted at and feature a specific gender but should take care not to explicitly convey that a particular children's product, pursuit, activity, including choice of play or career, is uniquely suited to one gender or inappropriate for one or another gender. Explicit labelling of children that contrasts stereotypical characteristics in a way that reinforces perceptions of what children can or cannot be, because of their gender, is more likely to be problematic.

Advertising which highlights the causes of violence against women, does not suggest that all men are violent towards women or that men cannot be victims of domestic violence.

Advertisements for services or activities only available to one gender are legally able to be advertised and highlighting this key feature in advertising does not amount to discrimination or vilification.

Nothing in this rule is intended to prevent ads from featuring:

- one gender only;
- products designed or made for one gender featuring only that gender (eg tampons, breastfeeding products);
- gender stereotypes as a means to challenge their negative effects.

SECTION 2.2

Exploitative or Degrading

Section 2.2 prohibits the use of sexual appeal in advertising which is exploitative of or degrading to any individual or group of people.

'Exploitive' and 'degrading' are defined as:

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.

Treating humans as sexual objects or commodities for sale perpetuates the harmful view that people, particularly women and girls, are evaluated based on their appearance and risks the premature sexualization of children.

Section 2.2 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 harmful, 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.

Advertising featuring someone who appears to be a minor in a pose which indicates they are trying to appear alluring has been found to breach this section of the Code.

For material to breach this section of the Code, it must contain sexual appeal.

Models in underwear or lingerie surrounded by or next to fully clothed models may suggest a power imbalance and be found to be exploitative or degrading.

Material can be found to be exploitative or degrading even where the model is looking confident where the model is being depicted as a product or commodity or the focus on body parts is not relevant to the product or service being advertised. Advertising which used sexual appeal and suggests that a person is a product, or that they exist only for the enjoyment of others has been found to breach this section of the Code. Likewise, advertising which uses attractive models in revealing clothing, where the use of the model is not relevant to the product, has been found to be exploitative.

'Focusing on body parts' can include a close-up, multiple close-ups or long-still on breasts or buttocks or cropping in such a way as to emphasise these body parts. Such focus on body parts is not acceptable unless used to advertise relevant products and services.

The Community Panel may have regard to the context or medium in which the material appears.

SECTION 2.3

Violence

Section 2.3 requires that advertising must not depict content that would encourage or condone violence.

Any advertising message that can be interpreted as condoning or encouraging suicide is not justifiable. Likewise, sexual violence is not acceptable under any circumstances.

Otherwise, in determining whether an ad condones or encourages violence, regard should be had to the context, tone, execution, audience and product/service being advertised, Prevailing Community Standards and the following factors:

- **could it normalise violence?**
- **is there a power imbalance?**
- **is it intentional?**
- **is it gendered violence?**
- **is it too graphic or intense for the audience?**

The results or consequences of violence (e.g. a black eye) and audio representations of violence are included in this rule.

If the purpose of the advertisement is to promote safety or educate about prevention, it may be justified to show violence.

Comic or slapstick contact with clear humorous intent and execution is typically acceptable. Tone and execution affect whether comic contact is appropriate.

Harmless horseplay where no serious harm is depicted or intended is generally acceptable.

SECTION 2.4

Sex, Sexuality or Nudity

Section 2.4 prohibits the harmful use of sex, sexuality or nudity in advertising and requires that such content must be appropriate for the relevant audience. Images that are considered harmful and which are not permitted are those which are overtly sexual and inappropriate having regard to the relevant audience.

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

Sex

sexual intercourse; person or persons engaged in sexually stimulating behaviour.

Sexuality

the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters.

Nudity

The depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity.

Sensitivity

Understanding and awareness to the needs and emotions of others.

Overtly sexual depictions where the depiction is not relevant to the product or service being advertised are likely to offend Prevailing Community Standards and be unacceptable.

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

Overtly sexual images are not appropriate in outdoor advertising or shop front windows.

Although not exhaustive, the following may be considered to be overtly sexual:

- Poses suggestive of sexual position: parting of legs, hand placed on or near genitals in a manner which draws attention to the region;
- People depicted in sheer lingerie or clothing where a large amount of buttocks, female breasts, pubic mound or genital regions can be seen;
- The use of paraphernalia such as whips and handcuffs, particularly in combination with images of people in lingerie, undressed or in poses suggestive of sexual position;
- Suggestive undressing, such as pulling down a bra strap or underpants; or
- Interaction between two or more people which is highly suggestive of sexualised activity.

Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and underwear) is generally permitted but note the application of the relevant audience. More care should be taken in outdoor media than magazines, for example.

Images of models in bikinis or underwear are permitted, however, unacceptable images could include those where a model 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 sexual poses.

The use of the word “sex” does not, of itself, make an advertisement unacceptable. However, such advertisements must not contain images that are overtly sexual and inappropriate having regard to the relevant audience.

Images of naked couples embracing when viewed in a public space, has been found to be inappropriate and to not treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

Sexualised images which include elements which would be attractive to children, such as cartoons or depictions of Santa, when in a medium which can be seen by children have been found to not treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

Images of naked people when viewed in a public space, where the nudity is evident and the focus of the advertisement, have been found not to treat the issue of nudity with sensitivity to the relevant audience, even when the image is not sexual in nature.

SECTION 2.5

Language

Section 2.5 prohibits the use of strong or obscene language and requires that the language used in advertising must be appropriate for the circumstances.

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.

The “f” and “c” words are generally viewed as harmful, unacceptable and not permitted. Nonverbal representations of the “f” word are also generally 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. Advertisements which use the ‘f’ word in full will be seen to constitute strong and offensive language, even when the audience is restricted. Advertising which uses the ‘f’ word where it has been insufficiently censored so that it can be easily understood by audiences, will be seen to constitute strong language, especially when seen by a broad audience.

Advertising which sufficiently beeps or censors language so that it cannot be understood will not be seen to be strong or obscene language.

Advertising which uses rhyming words, or similar words to strong language, will not be seen to be strong or obscene when used in a light-hearted and humorous manner.

There is a higher sensitivity in the community relating to the use of inappropriate language by children, even when it is not used in a demeaning or aggressive manner.

When considering the application of this section to user generated content (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.

Advertising that uses sexualised double entendre will often be seen to not breach the Code when there is a non-sexualised interpretation which would be understood by children viewing the advertisement.

SECTION 2.6

Health & Safety

Section 2.6 requires that advertising must not depict content that would encourage or condone unhealthy or unsafe behaviour.

When assessing this threshold, the Community Panel will take into account context, medium, audience, product and Prevailing Community Standards.

If the purpose of the advertisement is to promote safety, it may be justified to portray dangerous behaviour or unsafe practices.

Advertisements featuring exaggerated or fantastical elements that the relevant audience would not view as realistic are generally unlikely to be seen as encouraging unsafe behaviour.

Encouraging dangerous behaviour or unsafe practices includes wording or imagery that trivialises or accepts it. Such behaviour includes but is not limited to:

- behaviours that pose a recognised risk to health.
- behaviours, that if imitated would pose a real risk of serious harm to self or others or both.
- irresponsible use of substances.
- disregard for public safety, road safety, electrical safety, and water.
- disregard for sun safety (e.g. promoting tan lines, sunburn, deliberate sunbaking and tanning bed use).
- unsafe or harmful practices involving children (e.g. bullying), vulnerable groups, or animals.
- misleading representations of safety equipment or protective measures.
- any portrayal that glamourises or trivialises risk or hazardous actions.

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. Exposure to unrealistic body ideals can lead to harmful body dissatisfaction and disordered eating and for this reason it is not acceptable in advertising. The Code does not prevent the use of post-production, altering or digitally enhancing an image however 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.

03. Misleading and Deceptive

Section 3 requires that advertising must not be misleading or deceptive or be likely to be misleading or deceptive to the Target Consumer.

In the event that the Environmental Claims Code or Food & Beverage Advertising Code also apply, the ad will be considered under the specialist Code, not this Code.

The Community Panel should consider any relevant guidance from the ACCC, other fair trading or government bodies when considering if an ad breaches this rule.

Identification	Advertisements must be identifiable as such. Content controlled, directly or indirectly, by the advertiser must not be presented in a way that hides its commercial nature. It must be clear to the audience that they are engaging with an advertisement, regardless of its format or platform. Disclaimers and other qualifying statements must be clearly visible and easily understood.
Exaggeration	Obvious untruths, exaggeration, puffery or deliberate hyperbole may be acceptable where they are unlikely to mislead.

Evidence	Advertisers must hold evidence to substantiate all claims made in an advertisement at the times the claims are made. When evidence is included in an advertisement, it must be easily understood.
Science	Advertisers must not suggest that their claims are universally accepted if there is a significant division of informed or scientific opinion.
Disclaimers	Disclaimers, asterisks, footnotes and small print must not contradict or diminish the claims they qualify. This information must be clear, obvious and easy to read and/or hear, taking into account medium, format, audience and the advertisement's role in the consumer path to purchase. Where appropriate, it must be linked to the relevant part of the main message.
Deliverables	Advertisers must be able to meet any reasonable demand created by their advertising.
Prices	Pricing information in an advertisement must be clear, accurate and not misleading.
Artificial Intelligence	This rule applies to all forms of Advertising, including Advertising generated or modified by AI. Deceptive AI-generated testimonials, fake consumer reviews, AI-generated photos, audio, and video ("deepfakes") that resemble authentic people or events are likely to breach this rule.

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