



Food & Beverages Advertising Code Review

AANA discussion paper for public comment

MAY 2020

Consultation

The AANA is reviewing its Food & Beverages Advertising Code (F&B Code) to ensure that it remains fit for purpose in its central role in the self-regulation of the content of advertising and marketing communication related to food and non-alcoholic drinks.

The F&B Code is accompanied by a Practice Note which has been developed by the AANA. The Practice Note gives guidance to advertisers and the public on the intent of the F&B Code's clauses and must be applied by the Ad Standards Community Panel in considering its determinations.

The aim of the current review of the F&B Code is to update and, where necessary, develop the Code and Practice Note so that they can continue to provide Ad Standards' independent Community Panel with the appropriate framework to make decisions that are aligned to community expectations. It is our intention that a revised F&B Code 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 secretariat in preparing a new F&B Code for consideration by the AANA Board.

A copy of the F&B Code and practice notes is available here <https://aana.com.au/self-regulation/codes-guidelines/food-and-beverages-code/>

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 12 June 2020. Written submissions or enquires on this discussion paper may be made as follows:

By email: aanasubmissions@aana.com.au

By mail: AANA Review of Food & Beverages Advertising 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 its members); 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 global economy, contributing approximately \$40 billion to the Australian economy and employing over 200,000 people. It takes many forms, including advertising in traditional and digital media, direct-to-consumer marketing, and consumer engagement on social media platforms. 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 innovations 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, which is administered by Ad Standards and provides independent determinations regarding alleged 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 overarching Code.

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

- Food & Beverages Advertising Code
- Children's Advertising Code
- Environmental Claims Code
- Wagering Advertising 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 appropriate qualitative advertising

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standards. The model ensures that all stakeholders have the opportunity to contribute to the development of codes and both complaints and decisions are dealt with transparently¹.

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.

Question

1. It is the AANA's intention to formally review each of its Codes via a public consultation at least every five years. Is this frequency appropriate for the F&B Code? If not, why not?

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 in relation to food and beverage marketing and marketing to children apply equally across all media.

¹ <http://www.easa-alliance.org/>; <https://iccwbo.org/publication/icc-advertising-and-marketing-communications-code/>

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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.

Community Complaints and Compliance

The process for handling complaints is the same, irrespective of which Code is in scope. Complaints about advertising content are directed to Ad Standards, which administers the operation of the independent adjudicators who comprise the Community panel. Complaints can be made to Ad Standards about any advertising (including complaints relating to the Alcohol Beverages Advertising Code, which is administered separately), regardless of the advertiser, the product or the medium. This provides the public with a 'one stop' shop to which to direct concerns about advertising. Anyone can make a complaint quickly and easily. There is no cost to complainants and knowledge of Codes or legal advice is not required. Once a complaint is received, the relevant advertiser is required to demonstrate to Ad Standards its compliance to each requirement of the relevant Code, not only with respect to the issues raised by the complainant.

Complaints are adjudicated by Ad Standards' Community Panel. It includes people from a broad range of age groups and backgrounds and is gender-balanced to be representative of wide cross-section of society. Individual Community Panel members do not represent any particular interest group and are clearly independent of advertisers and the advertising industry.

Brand owners that are found in breach of the standards are required to swiftly remove or amend the relevant marketing material, irrespective of the medium. All decisions made by the Community Panel are published on the Ad Standards website.

The resulting commercial consequences of breaching any of the Codes are:

- direct and indirect costs of withdrawing an advertisement;
- reputational cost when a non-compliance decision is made public; and
- the risk of loss of sales as a consequence of possible adverse consumer reaction.

Although complaints considered against the Food & Beverage Code are relatively low (Fig 1), complaints about ads that contain food and beverages constitute around 18.5 per cent of total complaints (see Fig 2). The majority of complaints received by Ad Standards are considered under the Code of Ethics (see Fig 1).

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ISSUES ATTRACTING COMPLAINT (%)	2015	2016	2017	2018	2019
Other	12.06%	1.52%	4.77%	3.72%	33.91%
AANA Section 2.4 - Sex, sexuality and nudity	27.32%	22.74%	14.59%	36.39%	16.37%
AANA Section 2.3 - Violence	11.80%	17.98%	12.57%	26.58%	15.78%
AANA Section 2.1 - Discrimination or vilification	15.76%	27.23%	18.34%	8.66%	13.08%
AANA Section 2.2 - Exploitative or degrading	4.60%	12.30%	9.06%	5.87%	5.96%
AANA Section 2.5 - Language	14.01%	11.45%	18.79%	7.09%	5.82%
AANA Section 2.6 - Health and safety	10.46%	5.36%	12.55%	4.83%	5.25%
AANA Food and Beverages Code	0.76%	0.56%	0.97%	1.13%	1.56%
FCAI Code	2.56%	0.29%	0.60%	1.04%	0.85%
AANA Environmental Code	0.15%	0.03%	0.05%	0.05%	0.34%
AANA Wagering Code	-	0.26%	6.66%	3.35%	0.31%
AFGC Quick Service Restaurant Resp Childrens Marketing Initiative (QSRI)	0.17%	0.03%	0.20%	0.32%	0.26%
AANA Advertising to Children Code	0.23%	0.17%	0.52%	0.50%	0.20%
AFGC Responsible Childrens Marketing Initiative (RCMI)	0.12%	0.09%	0.11%	0.07%	0.17%
AANA Section 2.7 - Distinguishable advertising		0.00%	0.22%	0.41%	0.14%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

Fig 1

PRODUCT CATEGORY ATTRACTING COMPLAINT (%)	2015	2016	2017	2018	2019
Food and beverages	12.67%	26.26%	24.01%	10.72%	18.43%
Lingerie	3.00%	3.74%	5.14%	7.28%	11.79%
Entertainment	7.27%	5.31%	5.09%	8.96%	11.30%
House goods/services	4.13%	2.13%	2.30%	1.50%	5.90%
Vehicles	14.26%	2.02%	1.86%	1.84%	5.90%
Community awareness	5.86%	3.58%	2.97%	3.57%	4.67%
Gambling	6.54%	1.54%	18.31%	23.12%	4.67%
Clothing	1.77%	1.75%	1.30%	1.52%	4.42%
Sex industry	1.18%	2.56%	1.51%	1.60%	4.42%
Travel	1.32%	0.83%	0.44%	1.86%	3.69%
Health products	2.09%	0.40%	0.84%	2.50%	2.95%

Fig 2

The success of the advertising self-regulatory ecosystem in Australia relies on several integral participants. These include media specific industry bodies such as the Outdoor Media Association (OMA) and FreeTV that have internal mechanisms (pre-vetting) that check ads before they can appear on the relevant medium ensuring a high level of compliance with all standards. AANA and Ad Standards also offer pre-vetting of advertising to both members and non-members against all current codes for any medium.

Extra care is taken to ensure children don't see advertising that isn't appropriate for them. In the Free-to-air television space, food or beverages advertisements that feature products that are a less healthy choice will not be placed in a children's show. TV advertisements for less healthy foods are given a "W" rating which means such food and drinks cannot be advertised during P and C programs or G programs principally directed to children.

In the rare event that a brand owner ignored Ad Standards adjudication, all major Australian media bodies and their members have committed to support the self-regulatory system and would decline to carry an advertisement that is non-compliant.

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Questions

2. Do you think the relatively low level of complaints about F&B advertising is indicative of public satisfaction with food and beverage advertising.? If not, why not?
3. Ad Standards reports 100% compliance by food and beverage advertisers with decisions made by its Community Panel. There are significant costs associated with withdrawing advertisements and, in the rare event that non-compliance were to occur, major media owners would step in to ensure compliance. Is there a need for further sanctions for breaches of the AANA F&B Code or AFGC initiatives and/or a need to consider penalties for non-compliance? If so, why?

Food & beverage advertising self-regulation

Australia's food & beverage industry

The \$131 billion food and beverage, grocery and fresh produce sector is an essential services sector that accounts for approx. 39 per cent of Australian manufacturing jobs. The food and beverage industry also plays a key role in providing employment in rural and regional areas. Around 42 per cent of regional and rural jobs come from the sector².

All food and beverage industry participants are bound by the AANA Codes, whether or not they are members of the AANA. The AANA Food and Beverages Advertising Code is designed to ensure that advertisers develop and maintain a high sense of social responsibility in advertising and marketing food and beverage products in Australia.

The AANA Food & Beverages Advertising Code (F&B Code)

Outline

The AANA F&B Code originally took effect in March 2007, gaining international attention as a world first. The current F&B Code applies to any advertising or marketing communication of food or beverage products other than alcohol beverages, which are subject to the Alcohol Beverages Advertising Code. The F&B Code aligns with the International Chamber of Commerce Consolidated Code of Advertising and Marketing Communication Practice and Framework for Responsible Food and Beverage Communications.

The F&B Code and the Children's Code currently provide a range of requirements in relation to food and beverage advertising and marketing communication, including in relation to children. The Code specifies that food and beverage advertising and marketing communication must:

- be truthful and honest and not misleading or deceptive;
- not undermine the importance of healthy or active lifestyles;
- not encourage excess consumption;
- be based on appropriate substantiation for claims made;
- clearly distinguish advertising from editorial content such as news or current affairs;
- not portray food and beverages products as suitable meal substitutes when they are not; and

in relation to children advertising and marketing communication must not:

² AFGC Annual Report 2018-2019, p 10.

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- encourage an inactive lifestyle or unhealthy eating or drinking habits;
- employ ambiguity or a misleading sense of urgency;
- feature inappropriate price minimisation;
- undermine the role of parents;
- appeal to children to urge parents to buy products for them (pester power);
- feature ingredients or premiums unless they are an integral element of the product;
- claim the product will give the child a physical, social or psychological advantage over other children; and
- contravene the Australian Food & Grocery Council (AFGC) Initiatives.

Evolution

The F&B Code has continued to evolve to reflect changes to community standards and best practice. The following substantive changes have been made to the F&B Code since it was launched in 2007:

- In January 2016, the Code was amended to:
 - change the definition of ‘advertising’ to remove the exclusion for consumer public relations material, thereby expanding the application of the Code;
 - change the definitions of ‘advertising’ and ‘medium’ to ensure the Code applies equally in the digital world as it does in traditional media;
- In June 2019, the Code was amended to make compliance with the AFGC Initiatives compulsory for all food and beverage advertisers, not just signatories; and
- In March 2020, the Code was amended to enable fresh fruit and vegetables to be advertised to children without the additional requirement to promote physical activity.

Additional Industry Initiatives

AFGC Initiatives

The AFGC is the industry association for the Australian food and grocery supply industry.

In 2009, the AFGC Responsible Children’s Marketing Initiative (RCMI) and Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI) were introduced. The RCMI and QSRI provided an additional self-regulatory layer for advertising and marketing communication of food and beverages directed primarily to children or that are placed in a medium that is directed primarily to children and/or where children represent 35 per cent or more of the relevant audience. These requirements broadly align with those of the EU Pledge and the International Food & Beverage Alliance Global Marketing to Kids Policy and form part of a network of international pledges which require extended commitments regarding creative content and the viewing audience for verifiable select media.

Signatories’ advertising to children must only include healthier products (as determined by nutrition criteria) and must encourage good dietary habits and physical activity. The latter requirement to promote physical activity in an advertisement for food or beverages is peculiar to Australia and goes beyond any other global requirement. The RCMI and QSRI contain restrictions and prohibitions regarding signatories’ activities in primary schools, pre-schools and day care centres, with the QSRI also restricting product giveaways at children’s sporting events unless they comply with specified nutrition criteria.

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The Outdoor Media Association and the Australian Beverages Council have also introduced initiatives to underpin the F&B Code requirements that restrict the advertising of discretionary foods, including to children³.

Like complaints made under the F&B Code, all complaints under the RCMI and QSRI are handled by Ad Standards.

As of June 2019, the F&B Code requires all relevant food and beverage advertisers to comply with the AFGC's Initiatives, meaning that the provisions apply to all food advertisers, large and small, irrespective of whether they are signatories to the AFGC initiatives.

The AFGC and the AANA have agreed that the AANA will assume responsibility for the operation of the RCMI and QSRI from 30 June 2020. Therefore, this review encompasses the AFGC's RCMI and QSRI insofar as they are essential elements of the AANA's F&B Code.

Questions

4. Following a change to the F&B Code, the RCMI and QSRI requirements now apply to all advertisers. Should the F&B Code incorporate the requirements of the RCMI and QSRI to create one over-arching Food and Beverage Code? If not, why not?
5. There are differences in terms of what the F&B Code, RCMI and QSRI define as 'included' or 'excluded' media (see table below). Should there be a single definition of 'medium' to which the self-regulation of F&B advertising in Australia applies? If not, why not? If so, what should the definition of 'medium' include and exclude?

	F&B Code	RCMI	QSRI
Included	Any advertising medium, including but not limited to cinema, internet, outdoor media, print, radio, television, telecommunications, and other direct to consumer media including new and emerging technologies.	Television, radio, print, cinema and internet.	Television, radio, print, outdoor, email, interactive games, cinema and internet.
Excluded	Product packaging and labelling. Corporate activity, including corporate public relations, annual reports and	Product packaging and labelling. In-store point-of-sale. Both corporate and consumer public relations activity.	Product packaging and labelling. In-store point-of-sale. Both corporate and consumer public relations activity.

³ https://www.oma.org.au/sites/default/files/uploaded-content/field_f_content_file/final_01_health_and_wellbeing_policy_0.pdf

<https://www.australianbeverages.org/initiatives-advocacy-information/marketing-advertising/>

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6. The RCMI and QSRI 's definition of advertising to children includes a placement definition whereby *“Advertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or where Children represent 35 per cent or more of the audience of the Medium”*. Should these parameters around placement be incorporated into the F&B Code?
7. The F&B Code (via the requirements of the RCMI) currently requires all ads directed to children for food or beverages, other than fresh fruit and vegies, to promote good dietary habits and physical activity. There are foods like legumes, milk, mushrooms and tinned vegetables that have considerable nutritional value that must include promotion of good dietary habits and physical activity. This has created an additional hurdle for such products to be advertised to children. Should certain other products with known nutritional benefits be exempt from the additional requirement to promote good dietary habits and physical activity? If so, which foods?
8. The application of the AFGC Initiatives to all advertisers has resulted in all ads for food or beverages, other than for fresh fruit or vegetables, being prohibited during C and P rated TV programmes and movies regardless of the time it is shown and the makeup of the audience unless the ad is for a healthier choice and promotes good dietary habits and physical activity. Should food advertising designed specifically to target adults through the themes, visuals and language used be permitted during TV programming during certain times, e.g. 9pm – 6am? If not, why not?
9. Under the F&B Code, there is no definitive rule or guidance regarding the application of the F&B Code in cases of incidental placement of food or beverages in an advertisement. For example, an ad for a supermarket showing a family dinner in the background may be required to also promote good dietary habits and physical activity if that ad was aired during a children’s show or on a show where 35% of the audience was comprised of children. Do you think advertisements where food or beverages are incidental to the ad should comply with the requirement to promote good dietary habits and physical activity? If so, why?
10. The AFGC’s QSRI specifies nutrition criteria for assessing whether an advertisement for that meal can be directed to children⁴. Is this definition of meals offered by quick service restaurants for which advertising can be directed to children appropriate? If not, why not?
11. The AFGC’s RCMI specifies that signatories can determine what nutrition criteria they use to determine whether advertising for the food product can be directed to children and publicly

⁴ AFGC QSRI Schedule 2, page 7 <https://www.afgc.org.au/wp-content/uploads/2019/06/QSR-Initiative-for-Responsible-Advertising-and-Marketing-to-Children-March-2018.pdf>

report on this annually⁵. Should signatories to the RCMI continue to determine and publish the nutrition criteria used to establish whether advertising for the food product can be directed to children and/or should common nutrient criteria be applied noting an expert, on behalf of Ad Standards independently validates the nutritional composition of a product subject to complaint? If so, what methodology should apply?

12. Both of the AFGC's initiatives have a range of compliance requirements, in relation to which signatories have agreed to report annually and publicly⁶. Given that all relevant advertisers, not just signatories, now need to meet the requirements of the initiatives, is a compliance regime required? If so, what should it look like?
13. Should the Practice Note applying to the F&B Code be amended to include specific references to the additional requirements currently contained in the AFGC's initiatives that only healthier options be marketed to children and brand owners restrict activities in places where children congregate? If not, why not?

Food & beverage advertising and health

A key community expectation is that advertising generally, and food and beverage advertising in particular, does not lead to adverse health outcomes. An evidence-based approach is the best way to assess whether the current measures are appropriate and whether any changes are required.

The AANA welcomes any evidence that will assist it in determining whether additional measures relating to food and beverage advertising are required or whether existing measures may no longer be necessary or proportionate.

Evidence can take many forms but in general terms we would expect it to be grounded on the best available science and submitted in full, and should:

- identify the nature, scale and impact of any health outcomes;
- be rigorous in its impartiality and disclose in full its methodology;
- have been subject to peer review;
- take into account confounding variables; and
- have been carried out on a representative sample of Australia's population or a relevant part of our population e.g. children (or carried out in a country where valid comparisons with Australia can be made).

Question

14. Are you aware of any evidence-based research that could help inform the development of the self-regulation of food and beverage advertising in Australia?

⁵ AFGC RCMI Schedule 5, page 5 <https://www.afgc.org.au/wp-content/uploads/2019/06/Responsible-Childrens-Marketing-Initiative-March-2018.pdf>

⁶ AFGC 2018 Compliance Report <https://www.afgc.org.au/download/2018-annual-compliance-report-final-7-aug-2019>

Specific provisions of the F&B Code

Objectives

The objectives of the F&B Codes are to:

The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing food and beverage products in Australia.

Questions

15. Does the F&B Code continue to meet its stated objectives? If not, why not?
16. Do the current objectives need to be amended? If so, what are the objectives that the F&B Code should address?

Section 2 - Definitions

In addition to the definition of “advertising” and “medium” detailed above, the following key definitions are contained in the F&B Code:

Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children’s Food or Beverage Product.

Average Consumer means a regular adult family shopper able to compare products by label-listed definition.

Children means persons 14 years old or younger and **Child** means a person 14 years old or younger.

Children’s Food or Beverage Product means any food or beverage product (other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code) which is targeted toward and has principal appeal to Children.

Food or Beverage Products means any food or beverage products other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code.

Fresh fruit or vegetables means any fruit or vegetable as defined by the Australian New Zealand Food Standards Code (Standard 1.2.7-2) that has not been processed and includes peeled, chopped or diced fresh fruit and vegetables. The definition of fresh fruit and vegetables excludes those preserved by canning, dehydration, freezing or smoking.

Premium means anything offered free or at a reduced price and which is conditional upon the purchase of an advertised Children’s Food or Beverage Product.

Question

17. Are any changes required to the definitions in the F&B Code? If so, what changes are required and why?
18. The AANA Codes define a child as a person 14 years old or younger. The Australian government’s *Children’s Television Standards* define children as “people younger than 14 years of age”. The QSRI defines a child as a person under 14 years of age and the RCMI defines a child as a person under 12 years of age. The New Zealand Children and Young

People's Advertising Code defines children as all persons below the age of 14 years. Should there be a single definition of a child and if not, why not? If so, what should that definition be?

Section 2 - Advertising for food and beverage products

Section 2.1 – Truth in advertising

2.1 Advertising or Marketing Communication for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

Practice Note for Section 2.1

The Community Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that an advertising or marketing communication should be truthful and honest, the Community Panel will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Community Panel will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, an advertising or marketing communication may make reference to one or more of the nutritional values or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product.

Some complaints made under this Code that the Community Panel is better able to determine under the broader aspects of the AANA Code of Ethics will be considered under that Code e.g. complaints about matters such as language, sex and violence.

Section 2.2 – Healthy balanced diet and active lifestyle

2.2 Advertising or Marketing Communication for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.

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Practice Note for Section 2.2

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Community Panel will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication undermines the importance of a healthy lifestyle, the Community Panel will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise. Such disparagement need not be explicit, and the Community Panel will consider the message that is likely to be taken by the average consumer within the target market of the communication.*
- In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Community Panel will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.*

The Community Panel will also consider the age of the person shown in association with the product, recognising for example, that a teenage male may often consume more than a female or younger child and this may not be a representation that encourages excess consumption in the situation portrayed.

Section 2.3 – Health or nutrition claims

2.3 Advertising or Marketing Communication for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.

Practice Note for Section 2.3

This provision is intended to be triggered by the Community Panel when considering that an average consumer, acting reasonably, might consider statements made within an advertising or marketing communication as health or nutrition claims.

In testing whether this provision is properly triggered, the Community Panel will apply its view of what an average consumer within the target market, might reasonably take from a communication.

Having considered that statements made within an advertisement might reasonably be taken by an average consumer as health or nutrition claims, the Community Panel will rely on substantiation provided by the advertiser and/ or appropriate expert or professional advice as to whether such claims can be properly supported by scientific evidence meeting the requirements of the Food Standards Code.

Complaints upheld on this basis, and where the Community Panel considers the product involves a risk to public safety, may be referred to the appropriate food regulatory enforcement body.

Section 2.4 – Nutritional or health comparisons

2.4 Advertising or Marketing Communication for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non-

misleading and non-deceptive manner clearly understandable by an Average Consumer.

Practice Note for Section 2.4

Rather than a legal test, in testing whether an advertising or marketing communication that it finds likely to be regarded by an average consumer as making a nutritional or health related comparison, either explicitly or by implication, the Community Panel will consider whether, in its view, such comparison is presented in a non-misleading and non-deceptive manner that is clearly understandable by an average consumer.

Section 2.5 – Consumer taste, preference tests or scientific terms

2.5 Advertising or Marketing Communication for Food or Beverage Products shall not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is none, nor otherwise use scientific terms to falsely ascribe validity to advertising claims.

Practice Note for Section 2.5

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Community Panel will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication includes reference to consumer taste or preference tests in a way implying statistical validity when no statistically valid testing had taken place, the Community Panel will consider whether target audiences of the communication would most likely believe that the communication claimed some statistical validity.*
- In testing whether an advertising or marketing communication uses scientific terms to falsely ascribe validity to a claim the Community Panel will consider the probable view of the target audience.*
- In testing the validity of any associated claim of endorsement by a scientific, health or other organisation, the Community Panel will rely on substantiation by the advertiser. Use of scientific terms in the name of supporting organisations will not automatically constitute a breach of this section.*

Section 2.6 – Material characteristics

2.6 Advertising or Marketing Communication for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.

Practice Note for Section 2.6

In testing whether any claim is included within a advertising or marketing communication, the Community Panel will consider whether an average consumer, acting reasonably, would consider a statement as constituting a claim (i.e. an assertion or contention about the component, as against a 'claim' as defined under other legislation).

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Once a claim relating to a material characteristic of a promoted product is established, the Community Panel will need to determine whether such a claim can be substantiated by the product alone, rather than its consumption in combination with other products.

The Community Panel will also need to consider whether the claim is accurate in its representations about the product, and will usually do so on the basis of information provided on the packaging or otherwise provided by the advertiser.

Visual or textual representation of a 'suggested serving' will not, on its own, represent grounds for finding an advertisement or marketing communication in breach of the Code. Any taste or nutrition claims relating to the product as consumed with an external ingredient (eg cereal consumed with milk) must be clearly distinguished as being a claim for the product as consumed with such external ingredient/s.

Section 2.7 – Clearly distinguishing between ads and other content

2.7 Advertising or Marketing Communication for Food or Beverage Products appearing within segments of media devoted to general and sports news and/or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communication without clearly distinguishing between commercial promotion and editorial or other program content.

Practice Note for Section 2.7

In testing whether the use of a personality contravenes the Code, the Community Panel will consider whether the target audience would see a clear distinction between advertising and editorial or program content.

In testing the matter of target audience, the Community Panel will not rely solely on the advice of the advertiser, but also consider the placement of the material or, in the case of broadcast media, the program within which it appears.

For any advertising or marketing communication directed towards children the Community Panel will:

- consider whether children within the target audience would be likely to see a clear distinction between advertising and editorial or program content.*
- exercise particular sensitivity in relation to younger children, taking special notice of target audience and time zones, recognising that while an advertisement might be placed between sections of editorial or program content, or between separate editorial material or programs, this might not represent a clear distinction for very young children.*

This section does not apply to 'product placement' within films or programs.

Section 2.8 – Clearly distinguish between ads and other content

2.8 Advertising or Marketing Communication for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.

Practice Note for Section 2.8

In its determination of whether any advertising or marketing communication portrays a product as suitable as a substitute for a meal when it is not intended or suitable for such use, the Community

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Panel will consider whether an average consumer, acting reasonably, would consider that the communication presents the product as suitable as a meal replacement. In determining whether such meal is intended or suitable for use as a meal replacement the Board will apply its view of what a reasonable consumer might think.

Section 2.9 – Code of Ethics and Children’s Code

2.9 Advertising or Marketing Communication for Food and/or Beverage Products must comply with the AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children.

Practice Note for Section 2.9

In its determination of all complaints, the Community Panel will automatically consider them under the provisions of the AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children as well as the AANA Food & Beverages Advertising & Marketing Communications Code.

Questions

19. Are any changes required to the rules in Section 2 of the F&B Code? If yes, please give reasons.
20. Are any changes required to the Practice Notes for section 2 of the Code? If yes, please give reasons.

Section 3 - Advertising & children

Section 3.1 – Truthful and understandable advertising

3.1 Advertising or Marketing Communication to Children shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.

Practice Note for Section 3.1

In its determination of whether any advertising or marketing communication is directed towards children, the Community Panel will apply the same criteria as used in considering complaints under the AANA Code for Advertising & Marketing Communications to Children.

The Community Panel will consider the advertiser's stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted.

This section contains a number of separate obligations. Failure to comply with any one will be considered a breach of the Code. Again, the Community Panel will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication is properly designed and delivered in a manner to be understood by children comprising the target audience, the Community Panel will apply its own view of what it considers a reasonable child of the target audience would understand from the advertisement.*
- In testing whether an advertising or marketing communication is misleading or deceptive or seeks to mislead or deceive in relation to any nutritional or health claims, the Community Panel will form its own view on the information likely to be taken from a communication by a reasonable child of the target audience.*
- In testing whether an advertising or marketing communication employs ambiguity, the Community Panel will form its own view of what it considers a reasonable child of the target audience would understand from the communication.*
- In testing whether an advertising or marketing communication incorporates a misleading or deceptive sense of urgency, the Community Panel will form its own view of what a reasonable child of the target audience would understand from the communication.*
- In testing whether an advertising or marketing communication features practices such as price minimisation inappropriate to the age of the intended audience, the Community Panel will form its own view of what a reasonable child of the target audience would understand from the communication.*

Section 3.2 – Excessive consumption

3.2 Advertising or Marketing Communication to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered,

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acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.

Practice Note for Section 3.2

In testing whether an advertising or marketing communication improperly exploits children's imagination in ways which might reasonably be regarded as based upon an intent to encourage excessive consumption, the Board need not rely exclusively on evidence of actual intent, but form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.3 – Advantage over other children

3.3 Advertising or Marketing Communication to Children shall not state nor imply that possession or use of a particular Children's Food or Beverage Product will afford physical, social or psychological advantage over other Children, or that non possession of the Children's Food or Beverage Product would have the opposite effect.

Practice Note for Section 3.3

In testing whether an advertising or marketing communication contains an explicit or implied message that ownership or consumption of a particular product would provide particular positive or negative outcomes, the Community Panel will form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.4 – Role of parents/carers

3.4 Advertising or Marketing Communication to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.

Practice Note for Section 3.4

In testing whether an advertising or marketing communication contains information or depictions that would undermine the role of a parent or other responsible adult in guiding a child's diet and lifestyle, the Community Panel will form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.5 – Pester power

3.5 Advertising or Marketing Communication to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.

Practice Note for Section 3.5

In considering whether an advertising or marketing communication contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Community Panel will form its own view of what a reasonable child of the target audience would understand from the communication and, in addition, will form a view inclusive of the following pointers:

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- *Although children may be expected to exercise some preference over the foods and beverages they consume, an advertising or marketing communication must be prepared with a due sense of responsibility and should not directly encourage children to urge the purchase of particular products for them.*
- *An advertising or marketing communication must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products. (As an example, in a supermarket setting, a child should not be portrayed asking for a particular product or putting it into a shopping trolley without asking, while voice or text messages must not include such urging as “Ask Mummy to buy you one.”)*

Section 3.6 – Featuring ingredients or premiums

3.6 Advertising or Marketing Communication to Children shall not feature ingredients or Premiums unless they are an integral element of the Children’s Food or Beverage.

Practice Note for Section 3.6

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Community Panel will not apply a legal test, but consider material subject to complaint as follows:

- *In testing whether an advertising or marketing communication features ingredients or premiums that are not an integral part of the product or service, the Community Panel will consider whether the ingredient or premium is given undue prominence by way of being made the dominant feature or otherwise occupies more than half of the advertisement.*
- *In testing whether an advertising or marketing communication features ingredients that are not an integral element of the product being offered, the Community Panel will consider whether attributes claimed for the product are wholly dependent on its consumption in association with ingredients that are not integral to the promoted product. In determining whether something is an ‘integral’ element of a product, the Community Panel will consider whether the element is necessary to the completeness of the product or service being offered.*
- *In testing whether an advertising or marketing communication features a premium that is not an integral element of the product being offered, the Community Panel will use the definition of premiums contained in the AANA Code for Advertising & Marketing Communications to Children.*

In both tests, the Community Panel will consider whether the advertising or marketing communication features inclusions in a manner that accords them undue prominence in relation to the product being promoted, taking account of the fact that it is not the intention of this clause to prohibit legitimate promotion of special offers, but rather to impose a reasonable limit, based on the Community Panel’s representation of prevailing community standards, on the extent to which an average child within the target audience might regard the advertising or marketing communication being for a featured ingredient or premium rather than the product itself.

Questions

21. Are any changes required to the rules in Section 3 of the F&B Code? If yes, please give reasons.
22. Are any changes required to the Practice Notes for section 3 of the Code? If yes, please give reasons.

Section 4 – Compliance with RCMI and QSRI

Section 4.1 – RCMI compulsory

4.1 Except as set out in section 4.2, Advertising or Marketing Communication for Food or Beverage Products, other than fresh fruit or vegetables, must comply with Schedule 1 of the RCMI, where applicable.

Section 4.2 – QSRI compulsory

4.2 Advertising or Marketing Communication for Food or Beverage Products by a Quick Service Restaurant must comply with Schedule 1 of the QSRI, where applicable.

Practice Note for Sections 4.1 and 4.2

General

This provision first came into effect on 1 June 2019 and the fresh fruit and vegetable exception came into effect on 1 March 2020.

The purpose of this provision is to ensure that Schedule 1 of the QSRI applies to advertising or marketing communication for a quick service restaurant and that Schedule 1 of the RCMI applies to other advertising of food or beverages products, other than fresh fruit or vegetables, regardless of whether the advertiser is a signatory to either the RCMI or the QSRI.

This provision does not otherwise alter the application of the RCMI or the QSRI or alter the defined terms used in those documents. Reference should be had to the RCMI and the QSRI to assess whether, and in what circumstances, they apply.

When do the RCMI or QSRI apply?

The QSRI applies to advertising or marketing communications to children by a Quick Service Restaurant in an applicable medium. The RCMI applies to advertising or marketing communications to children in an applicable medium, except where the advertising is for fresh fruit or vegetables. Where the advertising is for fresh fruit or vegetables, the remaining terms of this Code will apply however the RCMI will not apply. Where advertising for fresh fruit or vegetables also includes food and beverage items that are not fresh fruit or vegetables, the RCMI will still apply. With the exception of the term “fresh fruit or vegetables”, which is defined in this Code, each of these italicised terms are defined in the RCMI and QSRI and the Community Panel will apply either the definitions in the RCMI to material considered under section 4.1 of the AANA Food & Beverages Advertising Code, or the definitions in the QSRI to material considered under section 4.2.

Should advertisers comply with the RCMI or the QSRI?

If advertising or marketing communications is directed primarily to children in an applicable medium, advertisers should comply with either the RCMI or the QSRI, unless the advertising or marketing communications is solely for fresh fruit or vegetables. Advertisers should comply with the QSRI if they operate a quick service restaurant, i.e. a quick service food outlet whose business primarily offers for sale portable and/or ready-made Food or Beverage Products, excluding supermarkets and convenience stores. If the advertiser does not operate a quick service restaurant, they should comply with the RCMI, unless the advertising or marketing communication is solely for fresh fruit or vegetables.

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What are the requirements of the RCMI and the QSRI?

Section 4.1 requires compliance with Schedule 1 of the RCMI and section 4.2 requires compliance with the QSRI where the advertising or marketing communication promotes a quick service restaurant. Reference should be had to those documents to determine the current requirements. They are available at afqc.org.au.

At the time of section 4.1 coming into effect, the key requirements for the RCMI are that advertising or marketing communications to children for food and/or beverages must:

- a) Represent healthier dietary choices, consistent with established scientific or Australian government standards, as detailed in a Company Action Plan; and
- b) Reference, or be in the context of, a healthy lifestyle, designed to appeal to children through messaging that encourages:
 - i. Good dietary habits, consistent with established scientific or government standards; and
 - ii. Physical activity.

At the time of section 4.2 coming into effect, the key requirements for the QSRI are that advertising or marketing communications to children for food and/or beverages must:

- a) Represent healthier dietary choices, as determined by the Nutrition Criteria; and
- b) Reference, or be in the context of, a healthy lifestyle, designed to appeal to children through messaging that encourages:
 - i. Good dietary habits, consistent with established scientific or government standards; and
 - ii. Physical activity.

How is a 'healthier dietary choice' determined?

The QSRI determines 'healthier dietary choice' by reference to nutrition criteria, which are set out in Schedule 2 of the QSRI. If advertisers operate a quick service restaurant, they must comply with Schedule 1 of the QSRI and use the nutrition criteria contained within Schedule 2 to determine what constitutes a healthier dietary choice.

The RCMI determines 'healthier dietary choice' by reference to a company action plan – this is a document developed by a signatory to the RCMI (the advertiser) that details their commitments and the specific nutrition criteria that signatory applies in order to determine healthier dietary choices. For the purposes of the AANA Food & Beverages Advertising Code, if an advertiser is not a current signatory under the RCMI and doesn't have a company action plan, they should develop or adopt a nutrition criteria against which to determine healthier dietary choices, before commencing any advertising or marketing directed primarily to children.

In Australia, there is no one nutrition criteria that has been developed specifically to assess whether a product is a healthier dietary choice for the purposes of advertising or marketing communications to children. While the AANA does not endorse any particular nutrition criteria, you may choose to look at the following for further information and guidance, which have been developed both locally and in other countries for the purpose of assessing the 'healthiness' of their products under the RCMI:

Developed in Australia:

- [The Food Standard Australia New Zealand's Nutrient Profiling Scoring Calculator](#)
- [School Canteen Association Guidelines, e.g. NSW Healthy School](#)
- [Australian Dietary Guidelines](#)
- [Health Star Rating System](#)

Developed Internationally (for the purposes of marketing to children):

- [EU Pledge](#)

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- [*Singapore Common Nutrition Criteria*](#)
- [*Canadian Children's Food and Beverage Advertising Initiative Uniform Nutrition Criteria*](#)

Questions

23. Are any changes required to the rules in Section 4 of the F&B Code? If yes, please give reasons.
24. Are any changes required to the Practice Notes for section 4 of the Code? If yes, please give reasons.

Additional comments

25. Do you have any additional questions or comments on the effectiveness of the self-regulation of food and beverage advertising in Australia?