

2024 AVIA Regulating for Growth – Advertising Matrix for New Zealand

	Pay TV	OCC TV	Foreshadowed changes
GENERAL			
<i>Overview of Regulation</i>	<ul style="list-style-type: none"> The advertising industry is largely self-regulated, but there are government agencies that also regulate aspects of advertising. 	<ul style="list-style-type: none"> As for pay television. 	
<i>Regulatory Bodies</i>	<p>Advertising Standards Authority</p> <ul style="list-style-type: none"> Most advertising is self-regulated via the Advertising Standards Authority Incorporated (ASA). The ASA is an industry-created and run body, not a government agency, and it has no statutory powers. The ASA creates Codes of Practice and issues Guidelines for those Codes. The Codes currently are: <ul style="list-style-type: none"> Advertising Standards Code Children and Young People's Advertising Code Therapeutic and Health Advertising Code Alcohol Advertising and Promotion Code Financial Advertising Code Gambling Advertising Code The ASA also hears and determines complaints within its jurisdiction for breaches of the Codes, via the Advertising Standards Complaints Board. Appeals against the Board are made to the ASA's Advertising Standards Appeal Board. 	Similar regulatory bodies as pay TV	<ul style="list-style-type: none"> There are no clearly foreshadowed changes to the regulatory bodies. For the last nine years there have been proposals at creating a single regulatory body tasked with regulating media and online content: <ul style="list-style-type: none"> The previous National-led government had conducted a Convergence Review in 2015/2016 and in 2016 proposed a Digital Convergence Bill. In 2017, the then-Labour-led government put the Digital Convergence Bill on hold to seek further consensus and address issues it identified with the Bill. In 2022/2023, a review on media and online content regulation was carried out by the Department of Internal Affairs. That review recommended a new independent regulator that would regulate online and other media platforms under one cohesive framework with consistent safety standards. However, the new National-led government has decided not to proceed with this proposal.

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	<p>Government agencies</p> <ul style="list-style-type: none"> There are two government agencies that regulate certain advertisements: <ul style="list-style-type: none"> The Broadcasting Standards Authority (BSA) can also determine complaints about advertisements made on television (but not on demand services) that are considered to impact children or promote illegal or antisocial behaviour if neither the broadcaster nor advertiser recognise the jurisdiction of the ASA. The Commerce Commission monitors and takes enforcement actions in the District Court or High Court concerning advertisements that breach the Fair Trading Act 1986, or specific industry legislation and regulations such as the Credit Contracts and Consumer Finance Act 2003 and Regulations 2004 that govern advertising of lending practices. 		<ul style="list-style-type: none"> Separately, in its 2022/2023 annual report the BSA identified the need to change its legislation saying that regulatory reform is urgently needed. However, it is not clear whether the latest proposals will be implemented: <ul style="list-style-type: none"> Exactly what the government's position is remains to be seen with the Media and Communications Minister recently replaced before any policy proposals were put forward to Cabinet for discussion.
<i>Advertising per hour</i>	<ul style="list-style-type: none"> No general restrictions. The only restrictions are over advertising in linear streams: <ul style="list-style-type: none"> between 6am and noon on Sundays and Anzac Day; or on particular public holidays (Christmas Day, Good Friday and Easter Sunday) 	<ul style="list-style-type: none"> As for pay television. 	<ul style="list-style-type: none"> Some public commentary suggests advertising restrictions should be removed on Sundays and public holidays. But there is no official indication that these restrictions will be removed.
<i>Revenue Restrictions</i>	<ul style="list-style-type: none"> No regulations/restrictions exist. 	<ul style="list-style-type: none"> No regulations/restrictions exist. 	
<i>Product Placement</i>	<ul style="list-style-type: none"> No specific regulations/restrictions exist, but in some contexts, where the advertiser has control over the placement and content, the Advertising Standards Code requires the placement to be identified as an advertisement. 	<ul style="list-style-type: none"> As for pay television. 	

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	<ul style="list-style-type: none"> Some product-specific codes (e.g., alcohol and tobacco) apply to both advertising and product placement. 		
<i>Foreign Commercials</i>	<ul style="list-style-type: none"> No particular restrictions but must comply with New Zealand laws unless they are not intended for a New Zealand audience. 	<ul style="list-style-type: none"> As for pay television. 	
<i>Govt Levy</i>	<ul style="list-style-type: none"> No government levy for the ASA. Members of the ASA pay a subscription determined by the ASA. Government levy on broadcasters (but not advertisers) for the BSA where the broadcaster's total revenue from broadcasting in New Zealand exceeds \$500,000. The levy to the BSA is calculated as total revenue x 0.00051. 	<ul style="list-style-type: none"> As for pay television. 	
<i>PSAs</i>	<ul style="list-style-type: none"> No regulations/restrictions exist. 	<ul style="list-style-type: none"> No regulations/restrictions exist. 	
PRODUCT-SPECIFIC			
<i>Alcohol</i>	<ul style="list-style-type: none"> Must comply with the Supply of Alcohol Act 2012, which prohibits the irresponsible promotion of alcohol, including promoting excessive consumption and targeting minors. Breaches of those provisions are a criminal offence. Alcohol advertising and promotions must comply with principles set out in the ASA's Advertising and Promotion of Alcohol Code, which include: <ul style="list-style-type: none"> observing a high standard of social responsibility; being consistent with the need for responsibility and moderation in consumption; being directed at adults, not minors; and being careful with alcohol sponsorship, including primarily promoting the sponsored team/individual/activity and 	<ul style="list-style-type: none"> As for pay television. In respect of the ASA's code, which notes that advertising in media where the audience is less predictable and likely to include minors requires care. The code also provides that if an alcohol brand advertiser has direct involvement with website content, it is expected that age verification entry pages will be used. 	

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	<p>restricting references to the sponsor and the sponsor's products.</p> <ul style="list-style-type: none"> • These principles are accompanied by more detailed guidelines. • The BSA's Standards also includes similar, legally binding standards on alcohol promotion under Standard 3. The BSA notes however that the level of editorial control is important. If the content is shown on foreign pass-through channels where the broadcaster has little editorial control, then that may avoid fining the Broadcaster has breached the Standard. 		
<i>Pharmaceutical</i>	<ul style="list-style-type: none"> • Must comply with the Medicines Act 1981 (ss 56-62), which restricts advertisements relating to any medicine or medical device. The Act requires advertisements to: <ul style="list-style-type: none"> ○ be factually correct and complete ○ include certain regulatory information; ○ not suggest that the medicine or device cannot harm people or is a panacea or infallible; ○ not include healthcare professional endorsements other than for services to support a normal bodily function; ○ not include patient testimonials other than for natural health products and dietary supplements and services to support normal bodily function; ○ not suggest that the medicine, device or treatment has beneficially improved the health of a real or fictitious person; • The ASA's Therapeutic and Health Advertising Code applies to therapeutic 	<ul style="list-style-type: none"> • As for pay television. 	<ul style="list-style-type: none"> • The Therapeutic Products Act 2023 was passed in 2023 and covers all therapeutic products. The Act would restrict advertisements of therapeutic products and impose a range of conditions. • Most of the Act would only come into effect until mid-2026. • However, the new National-led government has announced that it will repeal the Therapeutic Products Act 2023 leaving the Medicines Act 1981 in place.

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	<p>and health advertising. The Code requires that:</p> <ul style="list-style-type: none"> ○ Specific accompanying disclaimers are required. ○ Claims must be substantiated and not mislead, exaggerate, promote excessive use or glamorise ○ Claims must observe a high standard of social responsibility. 		
<i>Gambling</i>	<ul style="list-style-type: none"> • Must comply with the Gambling Act 2003, which prohibits advertising overseas gambling. • Must comply with the ASA Gambling Advertising Code. Advertisements must comply with New Zealand laws, promote social responsibility (including not advertising to minors) and not be misleading or deceptive. • Notably advertisements in New Zealand can capture not only the promotional “advertisement” but also the website that the advertisement directs the consumer to the entirety of that conduct considered to be the “advertisement”. 	<ul style="list-style-type: none"> • As for pay television. 	
<i>Claims</i>	<ul style="list-style-type: none"> • Two major consumer protection schemes apply to promotions, offers and sales made in New Zealand: the Fair Trading Act 1986 and the Consumer Guarantees Act 1993. • The Fair Trading Act applies to any promotion made in New Zealand of services or goods (or, in some cases, even promotion outside New Zealand), while the Consumer Guarantees Act only applies where there is an offer to supply goods or services in New Zealand. 	<ul style="list-style-type: none"> • As with pay television. • With respect to products offered for sale over the internet, the Fair Trading Act applies only if the offer is made in relation to goods or services offered or available in New Zealand. 	

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	<ul style="list-style-type: none"> • Under both statutes, claims made in advertising about a good or service must be: <ul style="list-style-type: none"> ○ Accurate and not misleading; and ○ substantiated. This applies regardless of whether the claim is express or implied. • Further, the Fair Trading Act prohibits bait advertising. • There are also some industry specific statutes that impose further specific limits on claims: <ul style="list-style-type: none"> ○ Part 2 of the Financial Markets Conduct Act 2013 also contains similar provisions over the marketing of financial products and services. ○ The Credit Contracts and Consumer Finance Act 2003 and Responsible Lending Code also contains restrictions and obligations on offers of lending what claims can be made in relation to consumer credit contracts. 		
<i>Food & Beverages – general</i>	<ul style="list-style-type: none"> • Must comply with the Food Act 2014, which prohibits false or misleading claims around age, composition, effects, nature, origin and other characteristics of the food or food-related accessories. The Act also imposes additional requirements around disclosure. • Must comply with the ASA Advertising Standards Code, which imposes particular obligations where food advertisements contain nutrient, nutrition or health claims (Rules 1(h), 2(g)) from 1 November 2024. • Food advertisements that influence children (14 years and under) and young 	<ul style="list-style-type: none"> • As for pay television. 	

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	people are subject to the ASA Children and Young People's Advertising Code , which requires social responsibility and restricts misleading claims, promotion of excess or unhealthy eating or endorsements by well-known persons or characters (Rules 1(i), 1(j), 1(k), 1(l)), 2(f), 3(a), 3(b). Specific codes include the Infant Nutrition Council's Code of Practice for the Marketing of Infant Formula.		
<i>Food & Beverages – sugar levels</i>	<ul style="list-style-type: none"> Food advertisements that influence children (14 years and under) and young people are subject to the ASA Children and Young People's Advertising Code, which requires advertisements not to mislead around high-fat products being low in sugar or being sugar free, or claiming products high in sugar to be low fat or fat free (Rule 2(f)). Australia New Zealand Food Standards Code requires labelling around sugar, and prohibits claiming foods that have more than 2.5g of sugar per 100mL of liquid food or 5g of sugar per 100g of solid food as being “low sugar”. The Code also imposes requirements around claims of “reduced sugar” or “% sugar free”, “no added sugar” and “unsweetened”. 		<ul style="list-style-type: none"> The Australia New Zealand Food Standards Code has also been amended to prohibit claims of “no added sugar” when no sugar has been added but the food contains more than 10g of sugars per 100g of solid food, or beverages contain more than 7.5g of sugar per 100mL of liquid. However, there is a four-year transition period meaning that this change only comes into force on 13 December 2027.
<i>Personal hygiene/ Sanitary (including condoms)</i>	<ul style="list-style-type: none"> No specific requirements, but the following ASA Codes apply: <ul style="list-style-type: none"> Therapeutic and Health Advertising Code which requires advertisements to be truthful, balanced and avoid glamorising such products or services. Advertising Standards Code, which says that sexual imagery or language must be appropriate to 	<ul style="list-style-type: none"> As for pay television. 	

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	the audience and medium (Rule 1(c)).		
<i>Tobacco</i>	<ul style="list-style-type: none"> • Part 2 of the Smokefree Environments Act 1990 generally prohibits tobacco advertising or sponsorship. However, advertisements in television, film or videos made outside New Zealand are exempt from the advertising prohibition, unless the main purpose of that is to promote tobacco or the television broadcast is targeted primarily at a New Zealand audience. 	<ul style="list-style-type: none"> • As for pay television. 	
<i>Children</i>	<ul style="list-style-type: none"> • Must comply with ASA Children and Young People's Advertising Code. This Code restricts/regulates the use of violence, horror, anti-social behaviour, unsafe acts, weaponry, sex and gambling. Further restrictions apply to misleading, exaggerated or exploitative advertising. 	<ul style="list-style-type: none"> • As for pay television. 	
<i>Women</i>	<ul style="list-style-type: none"> • The ASA Advertising Standards Code requires that advertisements not portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of gender (among other grounds) (Rule 1(c)). • Restrictions on the use of sexual depictions of people or groups of people are only permitted when used to advertise relevant products and services, and there are age restrictions and restrictions around audience and medium (Rule 1(c), 1(d)). 	<ul style="list-style-type: none"> • As for pay television. 	
<i>Property</i>	<ul style="list-style-type: none"> • No specific restrictions, but generic obligations on misleading conduct or unsubstantiated claims apply. 	<ul style="list-style-type: none"> • As for pay television. 	

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COUNTRY-SPECIFIC INFORMATION			
Useful Links	See links above		