



2024 AVIA Regulating for Growth – Advertising Matrix for **Australia**

	Pay TV	OCC TV	Foreshadowed changes
GENERAL			
<i>Overview of Regulation</i>	<ul style="list-style-type: none"> <li data-bbox="450 403 1052 608">□ In Australia, advertising that is included in programming via pay TV is subject to a framework of laws, regulations and industry-based codes and standards which are administered by a number of regulatory bodies. <li data-bbox="450 619 1052 1474">□ This co-regulatory framework consists of: <ul style="list-style-type: none"> <li data-bbox="495 655 1052 1043">A) laws and regulations which govern areas that are relevant to the conduct of advertising and marketing activities, including, for example, consumer protection under the <i>Australian Consumer Law (ACL)</i> (i.e. misleading and deceptive advertising), intellectual property, privacy and defamation. These are regulated by Australia’s competition and consumer regulator, the Australian Competition and Consumer Commission (ACCC); <li data-bbox="495 1050 1052 1474">B) specific codes developed by industry groups under the <i>Broadcasting Services Act 1992 (Cth)</i> (BSA) which include, relevantly, the <i>Australian Subscription Television and Radio Association (ASTRA</i> - the peak industry body which represents pay TV providers) Subscription Broadcast Television Code of Practice (SBTCP), which regulates the broadcast content of subscription television. This is regulated by ASTRA and the Australian Communications and Media Authority (ACMA); 	<ul style="list-style-type: none"> <li data-bbox="1093 403 1695 608">□ In Australia, advertising that is included in programming via OCC television is also subject to a similar (but less comprehensive) framework of laws, regulations and standards which are administered by certain regulatory bodies. <li data-bbox="1093 619 1695 1506">□ This co-regulatory framework consists of: <ul style="list-style-type: none"> <li data-bbox="1137 655 1695 1007">A) as described in the adjoining column, laws and regulations which govern areas that are relevant to the conduct of advertising and marketing activities, including, for example, consumer protection (i.e. misleading and deceptive advertising), intellectual property, privacy and defamation. These are regulated by Australia’s competition and consumer regulator, the ACCC; and <li data-bbox="1137 1013 1695 1506">B) as also described in the adjoining column, the self-regulatory system administered by the AANA which regulates advertising and marketing communications across a range of products and across all mediums of communication (including via online platforms) - the AANA codes are intended to be platform and technology neutral and provide a uniform set of self-regulatory standards that apply to all advertisers, regardless of AANA membership (whilst compliance with the AANA codes and Ad Standards decisions are voluntary for both members and non-members, Ad Standards 	

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	<p>C) a self-regulatory system, administered by the Australian Association of National Advertisers (AANA) which is comprised of a uniform set of voluntary codes (e.g. the AANA Code of Ethics) and a complaints handling system overseen by the Advertising Standards Bureau (Ad Standards), designed to regulate advertising and marketing communications across a range of products and across all mediums of communication (the AANA codes are intended to be platform and technology neutral) (noting that the SBTCP incorporates, by reference, the Codes adopted by the AANA (e.g. the AANA Code of Ethics, the Code for Advertising to Children (discussed below) and the Food and Beverages Advertising & Marketing Communications Code).</p>	<p>still informs a non-member advertiser of a complaint against it and a failure to comply with an Ad Standards decision which upholds a complaint may lead to further action being taken, including, for example: (a) Ad Standards forwarding the case report to media proprietors who may remove the ad; and/or (b) if appropriate, Ad Standards referring the case report to the appropriate government agency or industry body for further action).</p> <ul style="list-style-type: none"> <input type="checkbox"/> The specific codes developed by industry groups under the BSA (including, for example, the SBTCP and the Commercial Television Industry Code of Practice) do not apply to most OCC providers on the basis that most of these providers are not subscription television or commercial television licensees for the purposes of the BSA. The ACMA has advocated for law reform to be introduced by the Federal Government to address this regulatory gap (as noted in the adjoining column). <input type="checkbox"/> Certain online content providers (both foreign and domestic) are members of the AANA which administers the various self-regulatory codes and, because of this, there tends to be compliance by the major local content platforms. 	
<i>Regulatory Bodies</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Besides the Australian Communications and Media Authority (ACMA), Australia has several other regulatory bodies that act in synergy with each other. The Australian Subscription Television and Radio Association (ASTRA) Codes of Practice for Subscription Broadcast Television require that advertisements comply with any relevant Australian Association of 	<ul style="list-style-type: none"> <input type="checkbox"/> ACCC is key regulator in relation to competition and consumer protection (e.g. misleading or deceptive advertising) issues. <input type="checkbox"/> Ad Standards may also review advertisements that are the subject of a consumer complaint and, where appropriate, take further action. 	<ul style="list-style-type: none"> <input type="checkbox"/> In 2022, the ACMA publicly called for an overhaul of the regulatory framework applicable to television, citing that the self-regulatory codes of practices (including those concerning advertising

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	<p>National Advertisers' (AANA) Codes and complaints referred to the Advertising Standards Bureau (ASB) where appropriate.</p> <ul style="list-style-type: none"> <input type="checkbox"/> The codes are designed to recognise the fundamental differences between the mass appeal and target of FTA TV and the niche nature of subscription/pay TV. A higher level of self-regulation is allowed for pay TV because the audience is narrower and viewers have opted in to receive the programming in the first place. 		<p>restrictions) do not apply to OCC platforms (as noted in the adjoining column).</p> <ul style="list-style-type: none"> <input type="checkbox"/> There has been no indication from the Federal Government to date as to whether it intends to pursue these reforms during its current term of government.
<i>Advertising per hour</i>	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions (we note there are restrictions that apply to commercial television broadcasting licensees under the BSA, but these do not apply to pay TV providers). 	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	
<i>Revenue Restrictions</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Subscription fees must be the predominant source of revenue for the licensee of a pay TV service; as such, revenue from advertising must form less than half of a pay TV licensees' revenue. 	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	
<i>Product Placement</i>	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	
<i>Foreign Commercials</i>	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	
<i>Govt Levy</i>	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	
<i>PSAs</i>	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	<ul style="list-style-type: none"> <input type="checkbox"/> No restrictions. 	
PRODUCT-SPECIFIC			
<i>Alcohol</i>	<ul style="list-style-type: none"> <input type="checkbox"/> The Alcohol Beverages Advertising Code (ABAC) requires a responsible approach that imposes a number of restrictions in relation to alcohol advertisements. These include requirements that the relevant marketing communication must not, for example: <ul style="list-style-type: none"> o encourage excessive or rapid consumption, abuse of alcohol or underage drinking; 	<ul style="list-style-type: none"> <input type="checkbox"/> The ABAC Code also applies to online advertising. Almost all alcohol companies operating in Australia are signatories to the Code, and there have been several adjudications under the Code in respect of online alcohol advertising. <input type="checkbox"/> There are restrictions on the scheduling of alcohol advertising to reduce children's exposure. If a media platform has age 	<ul style="list-style-type: none"> <input type="checkbox"/> Critics of the ABAC Code and alcohol advertising regulation more generally have cited the inconsistency between rules which apply to free-to-air (FTA) television channels under the BSA, and OCC television

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	<ul style="list-style-type: none"> ○ show or encourage irresponsible or offensive behaviour associated with alcohol; ○ dare people to consume alcohol; ○ promote specific beverages by reference to its alcoholic strength or its intoxicating effect; ○ be appealing to children, and broadly are restricted from depicting an adult who is under 25; ○ suggest that alcohol contributes to a change in mood or environment, or contributes to achievements of personal, business, social, sporting, sexual or other success, or otherwise offers any therapeutic benefit or is a necessary aid to relaxation; and ○ show any person consuming alcohol before or during any activity that requires a high degree of alertness or coordination, such as driving, sailing, using machinery or swimming. <ul style="list-style-type: none"> □ Pay TV providers are also required to take into account the intended audience when scheduling alcohol advertisements. □ Alcohol ads may only be placed where the audience is reasonably expected to comprise at least 80% adults. 	<p>restriction controls available, the marketer must use those age restriction controls to exclude minors from the audience.</p> <ul style="list-style-type: none"> □ Alcohol ads must not be placed with programmes or content primarily aimed at minors. 	<p>platforms run by those same FTA providers.</p> <ul style="list-style-type: none"> □ For example, linear FTA channels can only air alcohol advertisements between 12pm-3pm on school days, and between 8:30pm and 5:00am every night/morning. However, there have been several instances of alcohol ads shown on OCC services running a simulcast of a linear FTA broadcast, when they otherwise would not have been permitted. □ In 2023, ABAC completed a review of the ABAC Code, which was last substantially updated in 2017. □ These criticisms were not addressed during ABAC’s review, and there has been no indications that action will be taken to address these perceived loopholes.
<i>Pharmaceutical</i>	<ul style="list-style-type: none"> □ Ad content for over-the-counter and complementary medicine must adhere to the Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021 (Therapeutic Goods Advertising Code), as well as the <i>Therapeutic Goods Act 1989</i> (Cth) and <i>Therapeutic Goods Regulation 1990</i> (Cth), which are of broader application. 	As for pay TV.	

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	<ul style="list-style-type: none"> <input type="checkbox"/> The Therapeutic Goods Advertising Code contains requirements relating to the advertising of therapeutic goods, including that the relevant advertisements must, for example: <ul style="list-style-type: none"> ○ be accurate, balanced and not misleading; ○ only contain information that is substantiated by the advertiser prior to publication or dissemination; ○ promote the safe and proper use of the therapeutic goods by minimising misuse, overuse or underuse; ○ be ethical and not mislead or deceive the consumer or create unrealistic expectations about the performance of the therapeutic goods; ○ support informed healthcare choices; and ○ must not be inconsistent with current public health campaigns. <input type="checkbox"/> Advertising in the public domain is permitted for the majority of medical devices, as well as most medicines for over-the-counter sale in Australia; however, advertising of prescription only and certain pharmacist only medicines to the public is prohibited. <input type="checkbox"/> Paid or incentivised testimonials cannot be included in advertisements for therapeutic goods, including from anyone engaged in the production, marketing or supply of the goods. 		
<i>Gambling</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Pay TV providers are required to take into account the intended audience when scheduling gambling advertisements. For example, any gambling ad on a pay TV channel dedicated to children's programming is very likely to contravene the regulations. <input type="checkbox"/> There are specific gambling advertising restrictions that apply in relation to the 	<ul style="list-style-type: none"> <input type="checkbox"/> Online advertising of certain interactive gambling services is prohibited under the <i>Interactive Gambling Act 2001</i> (Cth) if the website or platform containing advertising is accessible by end users in Australia and the majority of people accessing the website are physically present in Australia. 	<ul style="list-style-type: none"> <input type="checkbox"/> In June 2023, the Federal Government released a report titled 'You win some, you lose more', which followed an inquiry into online gambling and its impact on those

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	<p>broadcast of live sports events and depend on when the advertisement is being broadcast. For example, pay TV providers cannot – between 5:00am and 8:30pm - broadcast gambling advertisements or promote betting odds from 5 minutes before the scheduled start of play until 5 minutes after conclusion of live coverage of play. Between 8:30pm and 5:00am, the rules change slightly and pay TV providers cannot broadcast gambling advertisements and betting odds during play, during breaks in play (e.g. half time) and no promotion of betting odds by commentators and representatives from gambling services (that are, or appear to be at the venue) are allowed from 30 minutes before play begins until 30 minutes after play.</p> <ul style="list-style-type: none"> □ During a live sporting event, pay TV broadcasters must ensure that anyone who represents a gambling organisation is clearly identified, not part of the commentary team, and not at the venue. □ Pay TV broadcasters are not permitted to promote any gambling content that is socially irresponsible. For example, the content must not target children or suggest they are participating in gambling, exaggerate how likely someone is to be successful, or make a connection between gambling and alcohol. □ Advertising of certain interactive gambling services is prohibited under the <i>Interactive Gambling Act 2001</i> (Cth). □ An AANA Wagering Advertising Code of Practice regulating the content of gambling advertising has come into force and contains certain requirements which include, for 	<ul style="list-style-type: none"> □ Most providers that stream live sports content must abide by the Online Content Service Provider Rules 2018, which prohibits gambling advertising during live sport that is streamed online between 5:00am and 8:30pm, and restricts gambling advertising at all other times. □ Providers must not promote any gambling content that is socially irresponsible, e.g. targeting children, exaggerating the likelihood of a gambler's success, or connecting gambling with alcohol. □ An AANA Code of Practice relates to socially responsible gambling advertising and contains certain requirements which include, for example, requirements that the advertisement must not: <ul style="list-style-type: none"> ○ having regard to the theme, visuals and language used, be primarily directed at minors; ○ depict a person aged 18-24 years old engaged in wagering activities; or ○ portray, condone or encourage wagering in combination with the consumption of alcohol. □ The AANA Code of Practice does not place any new restrictions in relation to the placement or scheduling of gambling advertisements. □ For the OCC provider that is streaming a sporting event outside Australia, that provider must follow the Australian rules if it targets people who are in Australia or any of the content is likely to appeal to the public in Australia. □ Certain regulations depend on the timing of the advertisement. The applicable time zone is 	<p>experiencing gambling harm.</p> <ul style="list-style-type: none"> □ The Report noted that, amongst other things, there is a growing community sentiment that there is currently too much gambling advertising, and that current restrictions are insufficient. □ As part of the Report, the Committee recommended that the Federal Government implement a comprehensive ban on all forms of advertising for online gambling, to be introduced in four phases over three years. □ Since then, the Australian Government has been involved in consultations with a number of stakeholders from the sports and media industry in Australia as it considers its response to the Committee's recommendations. A number of key stakeholders from the industry, including, in particular, sporting codes, major media companies and

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	<p>example, requirements that the advertisement must not:</p> <ul style="list-style-type: none"> ○ having regard to the theme, visuals and language used, be primarily directed at minors; ○ depict a person aged 18-24 years old engaged in wagering activities; or ○ portray, condone or encourage wagering in combination with the consumption of alcohol. <p>□ The AANA Code of Practice but does not place any new restrictions in relation to the placement or scheduling of gambling advertisements.</p>	<p>that of the person using the streaming service in Australia (as opposed to the time the live sports event is taking place). Accordingly streaming service providers must consider the time zone of all potential viewers across Australia.</p> <p>□ However, it should be noted that exceptions apply where gambling promotional content occurs as part of live coverage of the sporting event in relation to:</p> <ul style="list-style-type: none"> ○ the name of a sporting venue; ○ a player/official's uniform; or ○ advertising signage (e.g. a field barrier, big screen, scoreboard) at the venue of the sporting event, <p>As long as the OCC provider does not receive any direct or indirect benefit for providing the gambling promotional content.</p> <p>□ If an online service streams identical content at the same time as a live broadcast (i.e. simulcasts), the broadcast rules must be followed.</p>	<p>wagering operators, have been engaged in significant lobbying efforts to persuade the Government not to implement a complete ban on gambling advertising.</p> <p>□ It is currently unclear how the Australian Government will respond to the Committee's recommendations, but there are reports that it is considering making changes to gambling advertising laws which fall short of the complete ban on online gambling advertising and which include, for example, limiting gambling advertising to two spots per hour on TV until 10pm, banning gambling advertisements on social media and banning gambling advertisements on TV an hour before, during and after live sporting programmes. It has already been 15 months since the Committee published its report, but it looks like we will need to further await</p>

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			the Government's response.
<i>Claims</i>	<input type="checkbox"/> Misleading claims prohibited.	<input type="checkbox"/> Misleading claims prohibited.	
<i>Food & Beverages – general</i>	<input type="checkbox"/> Numerous self-regulatory codes address food and beverage advertising to adults and children in Australia, including the AANA Food and Beverages Advertising and Marketing Communications Code , which was most recently updated in 2021. <input type="checkbox"/> Insertions made to the code as part of the update include: <ul style="list-style-type: none"> ○ restrictions on advertising to 'children' have been lifted to children under the age of 15 (a 'child' was previously a person under the age of 14 years old); ○ requiring that advertising of 'occasional food and beverage products' must not target children; and ○ broadening the application of the Code so that it also applies to sponsorship advertisements <input type="checkbox"/> Must not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage excess consumption. <input type="checkbox"/> Claims cannot be misleading and must be able to be substantiated; in particular, any health or nutrition claims must be supported by scientific evidence meeting the requirements of the Australian and New Zealand Food Standards Code.	<input type="checkbox"/> As for pay TV.	<input type="checkbox"/> In June 2023, independent MP Dr Sophie Scamps put a bill before Parliament which, if successful, would prohibit the advertising of 'junk' food on TV and radio between 6:00am and 9:30pm, as well as a blanket ban on online advertising of junk food. <input type="checkbox"/> The Bill was not passed and the Federal Government has not indicated any intention to implement changes in this area.
<i>Food & Beverages – sugar levels</i>	<input type="checkbox"/> No specific regulation re advertising for F&B with high sugar content – see answers above re F&B generally.	<input type="checkbox"/> As for pay TV.	

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<i>Personal hygiene/ Sanitary (including Condoms)</i>	<input type="checkbox"/> Under the Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021 condom and tampon advertisements must not be directed primarily to children under the age of 12.		
<i>Tobacco</i>	<input type="checkbox"/> Prohibited.	<input type="checkbox"/> Prohibited.	
<i>Children</i>	<input type="checkbox"/> Advertising should not seek to exploit children's innate credulity, loyalty and sense of fair play. <input type="checkbox"/> The AANA Children's Advertising Code , which came into effect in December 2023, requires advertising to children to: <ul style="list-style-type: none"> ○ not employ sexual appeal or include sexual imagery; ○ not portray unreasonably frightening or distressing images or events; ○ not undermine the authority, responsibility, or judgement of parents or carers, or appeal to children to urge their parents to buy the advertised product/service; ○ not encourage the purchase of an excessive quantity or irresponsible consumption; ○ clearly distinguish the relevant communication as advertising when using popular personalities or celebrities (live or animated) to endorse, recommend, promote or advertise or market products <input type="checkbox"/> Regarding F&B, similar to general F&B regulations.	<input type="checkbox"/> As for pay TV.	
<i>Women</i>	<input type="checkbox"/> No regulations exist, other than general rule in AANA Code of Ethics against discrimination on the basis of gender, amongst other things.	<input type="checkbox"/> As for pay TV.	
<i>Property</i>	<input type="checkbox"/> No regulations exist.	<input type="checkbox"/> No regulations exist.	

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COUNTRY-SPECIFIC INFORMATION	<ul style="list-style-type: none"> <input type="checkbox"/> As noted above, there is a framework of laws, regulations and industry-based codes and standards which regulates the conduct of advertising in Australia. <input type="checkbox"/> Some examples of other self-regulatory codes that apply in Australia include, for example, the AANA Environmental Claims in Advertising and Marketing Code (which is currently being reviewed) and the Voluntary Code of Practice for Motor Vehicle Advertising. 		
Useful Links			