

HAVE YOUR SAY

Consultation on the Children and
Young People's Advertising Code

Key Dates

12 July 2022
Consultation Opens

31 August 2022
Consultation Closes



12 July 2022

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INTRODUCTION

The Advertising Standards Authority

The [Advertising Standards Authority](#) (ASA) sets the standards (the Codes) for responsible advertising across truthful presentation and matters of social responsibility within the legal framework for advertising in New Zealand. It is an industry regulator, and the ASA member organisations represent advertisers, agencies and media companies. It is funded through subscriptions and levies. Its work is complementary to Government regulators, including the Commerce Commission, Medsafe, the Ministry for Primary Industries, the Department of Internal Affairs, the Human Rights Commission and the Chief Censor.

The Advertising Codes

The [Advertising Standards Code](#) sets the standards for all ads across all media platforms. Specialist Codes are also in place when more care and a high standard of social responsibility are required. These Codes have been developed for categories where there may be vulnerable audiences or products and services that could cause harm if misused. The specialist Codes cover advertising targeted to children and young people and are also for ad categories, including alcohol, gambling, financial and therapeutic and health products and services. Through a principle-and-rule framework, the Codes guide what is acceptable and not acceptable in ads. They apply to both the ad content and where consumers see the ads.

Codes application

The ASA definition of Advertising and Advertisement(s) is: *Any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.*

The ASA Codes apply to advertisements in all forms of media.

This includes, but is not limited to, television (including on-demand television), radio, print, out of home (for example, billboards, bus shelters and buses), cinema, digital, email, websites, social media including Meta (Facebook, Instagram), Google (YouTube), Snapchat, Tik Tok, and includes user-generated content, influencers, video, apps, advergames, addressed and unaddressed mail, brochures and point-of-sale material.

The Codes do not apply to content not controlled by the advertiser.

The ASA process for regulating advertising

There are several parts to the ASA process to support responsible advertising. The first part is to develop the Codes through a consultation process, which is the purpose of this document.

Once a new Code is in place, the ASA provides training across the industry to support compliance during the process of creating the ads and when placement decisions are made about where the ads will be seen. Over 330 industry representatives attended training on Code compliance in 2021.

The third step is the free consumer complaints process. The ASA dealt with 1990 enquiries during 2021, including 1245 formal complaints about 570 ads from a range of products and services and advocacy advertising.

Not all ads that are complained about reach the threshold to be considered by the Complaints Board. The Chair of the Complaints Board accepted 284 ads for review by the Complaints Board in 2021, and 84 (30%) ads were not considered to breach the Codes.

Two hundred (70%) ads were in breach of the Codes in some way, and the ASA requested removal or amendment. There was a 97% compliance rate with the decisions of the Board in 2021.

The Complaints and Appeal Boards have public member majorities and are chaired by public members with extensive experience in complaints adjudication. The breadth of ASA membership across media platforms provides additional support for decision enforcement to support removal of the advertising, or not publishing or broadcasting it again to ensure Code compliance. The few non-compliant advertisers are generally in unpaid media and often promote ideas or beliefs under the advocacy advertising rule. We publish decisions about every ad we consider on our website, www.asa.co.nz.

The effectiveness of industry self-regulation

Advertising is a dynamic and fast-moving industry. Over its nearly 50-year history, the ASA has adapted many times to deal with rapid changes to media platforms, options for advertisers to have direct engagement with consumers, and the role of influencers, to name a few.

The advertising industry is highly engaged in ensuring the ASA provides a robust and credible platform for responsible advertising. This applies to the life cycle of advertising from concept to execution to placement.

Codes are reviewed regularly to ensure they are fit for purpose. We actively work with the industry on training and education, and our complaints process is quick and flexible, with the staff and Boards working hard to promptly address complaints.

The average time for the Complaints Board to deal with complaints is 25 working days. If a complaint is more complex or involves multiple ads, the process may take longer. A single complaint will trigger the process of reviewing an ad.

In contrast, complaints processes anchored by legislation are more complex, take longer and cost more, either to the parties involved in the complaint or the taxpayer.

The purpose of the Children and Young People’s Advertising Code

The primary purpose of the Children and Young People’s Advertising Code (the Code) is to set out rules that restrict what advertisers can do when advertising to children and/or young people. It covers any product or service where the ad is targeting children or young people and includes ads for toys, games, clothing, sports equipment, events and food & beverages. The Code is one tool of many that can help protect children and young people from physical, mental and moral harm. It does this by restricting some words and images that can be used to advertise products and services. The collection of personal information is also restricted. In 2017, a requirement not to target occasional food and beverage ads to children was introduced. The Code also sets out requirements for advertising to be truthful about pricing, competition rules and extra items that may be required for products to work.

The role of other ASA Codes for children and young people

Children and young people are exposed to a wide range of ads, not all of which are intended for them. The ASA has specialist Codes for ad categories, including alcohol, gambling, financial and therapeutic and health. These Codes also help protect children from ads for restricted products (for example alcohol and gambling) or categories where a robust legislative framework includes advertising rules. They provide standards to minimise the exposure of these ads to children and young people and, should they encounter such advertising, work to ensure the content of the ad is not appealing to them. There are rules for food and beverage ads in the Advertising Standards Code. The Advertising Standards Code Rule 2 (g) ‘Food and Beverage Claims’ provides standards for the responsible advertising of claims about all food and beverages. This rule includes guidelines for adherence to the Australia and New Zealand Food Standards Code. Rule 1 (h) ‘Health and well-being’ provides standards to support health and well-being, including guidance on ensuring consistency with the food and nutrition policies of the Government and the Ministry of Health, such as the [Food and Nutrition Guidelines](#) or the [Eating and Activity Guidelines](#).

The 2022 Review of the Children and Young People’s Advertising Code

The ASA Codes Review Policy requires Codes to be reviewed every five years to ensure they are fit for purpose. The Children and Young People’s Advertising Code came into effect for all ads on 2 October 2017. As part of its review process, the Codes Committee will consider relevant Complaints Board decisions (see Appendix 1 – Complaints summary) and any changes in legislation and in generally prevailing community standards. The structure of the Code will also be updated to reflect a new format used in recent new Codes (alcohol and finance). The ASA Governance Board is responsible for approving the Codes Committee work plan, review process and the final Code.

What is in the current Code?

The Code has three principles with rules and guidelines that set out requirements when advertising to children and young people. In the Code, children are defined as under 14 years, and young people are aged 14 years to 17 years of age. Advertising targeting children and/or young people is determined by the context of the advertisement and the relationship between the appeal of the product or service (principally or generally appealing) and the appeal of the ad presentation. It also considers if the expected average audience for the ad includes a significant proportion of children or young people. The Code provides additional guidance in Rule 1 (i) to assist advertisers with assessing what a 'significant proportion of children or young people' means. For example, 25% or more of the expected audience is children or child viewing time zones or locations where children gather.

Principle 1 requires advertisers to apply a high standard of social responsibility when advertising to children and young people and has rules about safety, anti-social behaviour, peer pressure, body image and sexual appeal and imagery. This principle also includes specific rules for advertising occasional food and beverage products. These ads cannot be placed in a medium where children are a significant proportion of the expected average audience. Where food or beverage ads are permitted, they must show appropriate portion sizes, promotional offers with food or beverages must not encourage excessive purchase or consumption, and health claims about a food or beverage must be understood by the audience the ad is targeted to. The Code also provides restrictions that prevent ads for occasional food and beverage products (high fat/salt/sugar) from targeting children and requires a high standard of social responsibility when these ads target young people.

Principle 2 covers truthful presentation in advertising, and its rules include ad identification, pricing, privacy, competitions and claims about health benefits.

Principle 3 applies to occasional food and beverage sponsorship advertising to young people.

Recent consultation on the Nutrient Profiling System for the Children and Young People's Advertising Code

The current Code uses the Food and Beverage Classification System (FBCS) and Health Star Rating (HSR) to determine if a food or beverage is considered for 'occasional' consumption.

Prior to commencing this review, the Codes Committee sought feedback from nutrition experts and those in the food industry on a proposal to replace the FBCS and HSR with the Nutrient Profiling Scoring Criterion (NPSC) from Food Standards Australia New Zealand to classify occasional food and beverage products. The full consultation document is available on the ASA website.

The Committee received 11 submissions. Three were from organisations in the health sector, five were from food and/or beverage advertisers, and three were from organisations representing a wide range of advertisers. The Committee thanks those who took the time to provide a submission. It was clear that submitters understand the technical aspects of identifying a suitable Nutrient Profiling System (NPS) for use in this Code, and the Committee appreciates the information that has been provided.

Submitters raised important points, and the Committee has agreed to continue work in this area as it reviews the Code to give more detailed consideration to the NPS.

THE PROCESS GOING FORWARD

The scope of this consultation

The ASA welcomes views from all sectors to help the existing regulatory framework for advertising to children and young people support responsible advertising. The Codes Committee is seeking your views on all aspects of the current Children and Young People's Advertising Code along with any evidence you have to support your position. Your feedback will inform possible changes to the updated Children and Young People's Advertising Code to help meet the objectives outlined above.

Consultation opens on 12 July 2022 and will close at 5pm on 31 August 2022. Submissions can be made:

1. Online: Click here to access the online submission form.
2. Email to asa@asa.co.nz
3. Post to:

Advertising Standards Authority Inc
PO Box 10675
Wellington 6140

Submissions should include your name, a contact phone number and email address along with advice regarding your preferred form of contact. Contact details of individuals will not be made public. Details of organisations represented by submitters will be made public. The Codes Committee may release submissions from this consultation to the public at the conclusion of the review. **Please advise if you do not want your submission to be released.** If you are not the right person in your organisation to respond, we would be grateful if you could please forward this request. If you know of other individuals or organisations who would also be interested in providing a submission, please forward this information to them.

Next steps

The Codes Committee has directly invited submissions from a range of organisations, including those in the advertising industry and health and education sectors. It is expected a further period of consultation will be undertaken following a review of the submissions and proposed changes to the current Code. The Codes Committee may also consider oral presentations from some submitters if there is a need to better understand any of the issues raised.

Key issues for comment

The following issues concerning the Code have either been raised directly with the ASA or through complaints to the ASA about ads targeting children and young people.

1. Age definitions

The 2017 Code review determined children would be defined as those under 14 years of age. The Code introduced those 14 to under 18 years of age to be defined as 'young people'.

Extract from the 2017 Review Report on the discussion for the age definition.

The panel discussed this issue at length and considered a range of arguments relating specifically to food and beverage advertising but also taking account of advertising to children generally. There is acknowledgement of the argument to provide more protection for young people aged from 14 to under 18 and that this should be addressed within the new code. The diversity of the entire age group was recognised. Young people are allowed to make significant life choices including leaving school, working in fulltime jobs, serving in the armed forces, flying aircraft and having consensual sex. If the age definition of a child was increased to under 18, a young person could be working at a fast food outlet yet ostensibly not allowed to see advertising by their employer. Thirteen is the age at which social media (e.g. Facebook) will accept registration – although it is recognised that this restriction is unpoliced and can and is breached.

Strong views were expressed by some panel members in support of moving the definition of a child to under 18, to be consistent with the United Nations Convention on the Rights of the Child, in contrast, there was no support for a change to 12 years. In order to progress the matter, the majority of the panel agreed a distinction was required for advertisements aimed at children under 14 and those aimed at young people in an older age group.

Submitters may like to comment in section 2 of the submission form on the age definitions for children and young people.

2. Application of the targeting criteria

The targeting criteria are defined in the Code as follows:

Targeting is determined by the context of the advertisement and the relationship between the following three criteria:

1. Nature and intended purpose of the product or service being promoted is principally or generally appealing to children or young people.
2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people.
3. Expected average audience at the time or place the advertisement appears includes a significant proportion of children or young people.

The Complaints Board has taken the approach that the three aspects of the targeting criteria should be considered together to give an overall assessment of whether the ad is targeting children or young people, or a wider audience. Ads in media with robust data to show the audience is less than 25% children and/or young people or tools that are used to select audiences who are over the age of either 14 or 18 are deemed not to be targeting them.

A different approach to targeting has been taken in the more recent Alcohol Advertising and Promotion Code. This sets out detailed rules for placement by media platforms. This includes an audience threshold of 20% of minors.

Submitters may like to comment in sections 3 and 4 of the submission form on the application of the targeting criteria and/or the approach used in the recent [Alcohol Advertising and Promotion Code](#) and how it may be applied to the [Children and Young People's Advertising Code](#).

3. Brand advertising

Some of the rules in the current Code only apply to ads for products or services and do not apply to what is classified as brand advertising. Brand advertising will use the company's brand (name and logo) instead of images of a company's products or services. Some brands have the same name as one or more of their company's products. For example, a Nike brand ad could just feature its name and the trademark 'swoosh' logo. A Nike product ad could include some of its activewear clothing or sports shoes. Submitters may like to comment in section 5 of the submission form on how brand advertising could be addressed in a revised Code, including all brand ads and/or only those brand ads that are closely associated with the company's products or services.

4. Sponsorship advertising

The ASA does not have jurisdiction over commercial sponsorship agreements between organisations and advertisers. Ads that refer to or feature an occasional food or beverage product sponsorship agreement are covered by the Code. These ads are not allowed to target children, and a high standard of social responsibility is required when these ads target young people. The Code does not currently include rules for advertising sponsorship agreements from organisations or from product-related sponsorship agreements that are not occasional food or beverage products. Submitters may like to comment in section 6 of the submission form on the current rules or the extension of these rules to other sponsorship ads.

Issues outside the scope of this review

From time to time, submitters may raise issues that are outside the scope of the ASA and its Codes during a Code review process. Where possible, these issues will be referred to the relevant government and non-government organisations. However, to assist submitters, it is noted that this review is not able to assist in the following areas.

1. Product names, packaging and labels

The Children and Young People's Advertising Code does not have jurisdiction over the naming, packaging and labelling of products for children and young people. However, when a name, label or packaging appears in an ad, it forms part of the ad, and therefore, any visible aspects are covered by the Code.

The Code applies to advertising and advertisements. The ASA definition is:

“Advertising and Advertisement(s)” means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

The Code does not apply to content not controlled by the advertiser.

2. Product development, formulation, availability and density of outlets

The ASA does not have jurisdiction over product development and related matters, including the location and density of food outlets.

3. Events

The ASA does not have jurisdiction over events and other marketing activities undertaken by advertisers that do not meet the definition of advertising. However, the Code applies to any advertising relating to the event or activity.

4. Editorial/programme content

The ASA does not have jurisdiction over editorial content or programme content where there is no advertiser control.

5. Sponsorship agreements

The ASA does not have jurisdiction over commercial sponsorship agreements between organisations and advertisers. However, ads that refer to or feature an occasional food or beverage sponsorship agreement are covered by the Code.

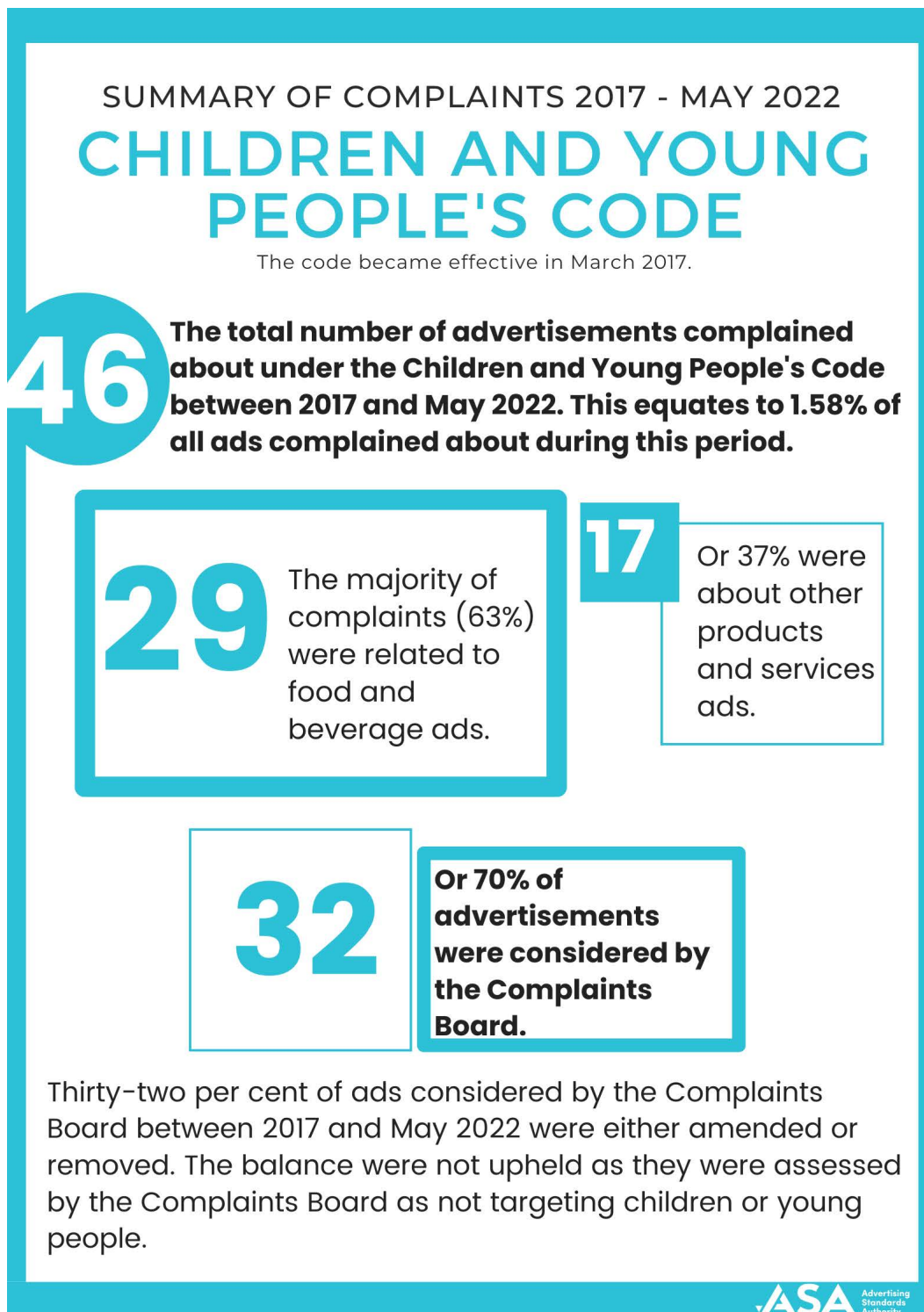
6. Legislation

The ASA Codes reflect and support current legislation that relates to advertising. Requests for Government regulation of advertising to children and young people are not within the scope of the ASA Codes or the ASA Code review process.

APPENDIX 1

Children and Young People's Advertising Code complaints summary 2017 to May 2022

There has been a total of 46 ads complained about under the Children and Young People's Advertising Code since the Code became effective in March 2017. Twenty-nine (63%) of these complaints were for ads for food or beverages. Seventeen (37%) were for other products and services, including toys, games, toiletries, retail outlets, clothing, alcohol, cigarette alternatives and vape products, household goods and guns.



APPENDIX 2

ASA Codes Committee membership

Ashleigh Harding: **Chair and Media Representative**
Dr Harriette Carr: **Public Health Agency**
Chantelle Hurdell: **Advertising Agency Representative**
Arizona Leger: **Public Representative**
Kate Morrissey: **Advertiser Representative**
Lindsay Mouat: **ASA Governance Board Representative**
Marj Noble: **Public Representative**
Hilary Souter: **ASA Chief Executive**
Claire Hofer: **ASA Secretariat**

Professional roles held by Committee members

Ashleigh Harding: Legal Counsel, New Zealand Media and Entertainment

Dr Harriette Carr: Acting Director of Public Health, Public Health Agency

Chantelle Hurdell: Client Service Director, PHD Media

Arizona Leger: RWC 2021 Communications Specialist - Chair of Global Summit Steering Committee. Fora: Network for Change. ASA Complaints Board - Public Member.

Kate Morrissey: General Counsel, New Zealand Lotteries Commission

Lindsay Mouat: Chief Executive, Association of New Zealand Advertisers

Marj Noble: Self-Employed Accountant; ASA Complaints Board - Public Member; Tribunal Member