



# **Clear Ads**

# **Handbook**

A comprehensive guide  
to getting your ads on air

Prepared by  
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44 Avenue Road  
Mosman NSW 2088  
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Edition 8

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## About Free TV and ClearAds

Free TV Australia is the industry body representing Australia's commercial free-to-air television broadcasters.

Free TV is not a government organisation. Free TV provides a forum for discussion of industry matters and is the public voice of the industry on a wide range of issues. Free TV is governed by a Board of Directors representing all of the free-to-air television networks. The Board is supported by a number of committees which formulate advice and recommendations in relation to policy and regulatory issues, engineering and technical issues and other areas affecting the industry.

ClearAds is operated on behalf of the members of Free TV Australia.

### ClearAds' Service

The content of free-to-air commercial television is regulated under the Commercial Television Industry Code of Practice ('Code') which has been developed by Free TV Australia and registered with the Australian Communications and Media Authority (ACMA).

The Code covers the matters prescribed in Section 123 of the *Broadcasting Services Act 1992* and other matters relating to television content including:

- program classifications;
- accuracy, fairness and respect for privacy in news and current affairs;
- advertising time on television;
- placement of commercials and program promotions; and
- complaints handling.

The Code operates alongside the ACMA Standards which regulate programs for children and the Australian content of programs and commercials.

The Code balances the various and often conflicting interests of our diverse society in the delivery of commercial television services.

The Code provides that television commercials (including infomercials) and community service announcements must be classified before they can be broadcast. ClearAds strongly recommends that television commercials are submitted to ClearAds to be classified before they are submitted for broadcast.

To view a copy of the Code visit <https://www.clearads.com.au/information-hub/>

In addition to reviewing advertising content under the Code, ClearAds provides information that aims to direct the attention of advertisers, agencies and production houses to legislative and regulatory requirements relevant to commercials.

There is much Commonwealth and State/Territory legislation relevant to commercials. The *Broadcasting Services Act 1992* requires television stations not to use broadcasting services in the commission of an offence against another Act or a law of a State or Territory. Various provisions of the Code are directed to ensuring that television commercials comply with these laws.

ClearAds does not provide legal advice. It is the responsibility of each advertiser and/or its advertising agency to ensure their commercial complies with all relevant laws and regulatory requirements, that is State/Territory and Federal laws, including the *Competition and Consumer Act 2010* (previously known as the *Trade Practices Act*), any other State/Territory-based consumer legislation and relevant voluntary codes and guidelines, for example the AANA Code of Ethics and the ACCC Advertising & Selling Guidelines.

Review of a commercial by ClearAds will not guarantee that the commercial will be broadcast by an individual television station. Decisions relating to acceptance of a commercial for broadcast, the times during which it can be broadcast, and the terms of agreement with any advertiser or advertising agent, are a matter for each television station.

## Office Hours

ClearAds is open Monday to Friday 9am to 5.30pm. ClearAds is closed on national and NSW public holidays.

After-hours services are available by prior arrangement with ClearAds.

## ClearAds Contact Details

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Email: [hello@clearads.com.au](mailto:hello@clearads.com.au) | Web: <https://www.clearads.com.au/>

**Part 1:**

**OASIS APPLICATION PROCESS**

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# Television Commercial (TVC) Applications

There are three main steps involved with applying for the review of a TVC:

## Step 1: Pre-Production - Things to note for script development

### 1. Review the ClearAds Handbook

This handbook provides an overview of ClearAds review processes, an A to Z Checklist of the main regulatory requirements affecting television commercials, detail on the placement codes applied to advertising material and Information Sheets on specific topics.

### 2. Familiarise yourself with the Simple and Complex categories

Details of the Simple and Complex categories are available [here](#) in the TVC Application Categories document.

### 3. Determine if you would like to utilise ClearAds Pre-Check service

Agencies are strongly encouraged to discuss the content of a TVC during pre-production to obtain an indication of the likely classification and be directed to any content and/or regulatory requirements. This service is highly recommended. Please allow at least 3 working days for this service. Please see the pre-check section on page 17 for further information.

## Step 2: Post-Production - Submitting a finished TVC to ClearAds

### 1. Complete the ClearAds Application/Attach a script /Attach your documentation

- a) You will need to submit your application via [OASIS](#).
- b) Upload a copy of the script/s with your application. The script must detail, in full, the audio and vision including voice-overs, jingles, dialogue from films, graphics, supers and disclaimers etc. A template can be found on page 19.
- c) Upload relevant substantiation and documentation to support claims made in the TVC. Some categories of TVCs require more specific types of substantiation. Please refer to page 20 of the Classification Handbook for more information.

### 2. Provide a copy of the TVCs with ID board

You can upload OP53 compliant MPEGS of your TVCs using [OASIS](#).

**Note: Review and classification cannot commence until ALL materials are received by ClearAds.**

## Step 3: Prior-to-Air - Receiving a ClearAds Number

### Check if your TVC has been classified

To see if your TVC has been classified, simply log in to OASIS and select 'My Jobs'.

## Revisions

The process for submitting a revised TVC is similar to submitting an application for a new TVC. Revisions include changes to voice-overs, product inserts or cut-downs.

The revised TVC application process is as follows:

1. Submit your application via [OASIS](#) by selecting the Classify a TVC option.
2. Upload a copy of the revised audio/visual script detailing the revision (clearly indicating changes made).
3. Upload a comment confirming the revision, quoting the original key number and/or ClearAds Number issued. You may also need to re-supply substantiation if the original substantiation documentation is no longer valid.
4. You can upload OP53 compliant MPEGS onto the [OASIS](#) portal.

## Minor Revisions

As with revisions, you will need to resupply the TVC and changes to OASIS for classification.

The application for minor revisions is as follows:

1. You will need to submit your application via [OASIS](#).
2. Upload a copy of the revised audio/visual script detailing the minor revision (clearly indicating changes made).
3. Post a comment confirming the revision, quoting the original key number.

The following are examples of minor revisions:

- Change to a phone number/web address or removal/addition of a phone number/web address
- Dealer tags – addition or amendment to an existing dealer tag
- Film release tags e.g. change from 'Starts Thursday' to 'Now Showing' revisions
- DVD, CD or game release tags, e.g. 'In store Monday' to 'Out Now' revisions
- Addition of captions
- Change to audio mix/colour grading
- Logo changed/added
- One-line VO changes (where further substantiation is not required)
- Single super changes

ClearAds reserves the right to request the final vision.

Minor revisions do not include cut-downs or changes to product inserts. These are classified as Revisions. Please refer to the Classification of a Revised TVC section above. If you are in doubt as to what materials you need to provide, please contact ClearAds.

## Processing Times for TVCs

The below processing times apply to TVC applications.

Type of TVC	Normal Processing Time	Priority Processing	Red Hot	Rush Hour
<b>New</b>	2 days	24 hours (within business hours)	3 hours (submit before 2pm)	Submit between 2pm and 4pm for a response before 6pm
<b>Revision</b>	2 days	24 hours (within business hours)	3 hours (submit before 2pm)	Submit between 2pm and 4pm for a response before 6pm
<b>Minor Revision</b>	2 days	24 hours (within business hours)	3 hours (submit before 2pm)	Submit between 2pm and 4pm for a response before 6pm

## Processing Times for Infomercials

The following processing times apply for Infomercials, Infomercial Revisions and Infomercial Minor Revisions.

Infomercial Type	Normal Processing Time	Priority Processing	Red Hot	Rush Hour
New Infomercial	28 days	14 days	10 days	7 days
Infomercial Revision	14 days	7 days	5 days	3 days
Infomercial Minor Revision	5 days	2 days	24 hours	3 hours

ClearAds must receive ALL materials (including, but not necessarily limited to vision and accurate script) before classification can commence. The turnaround times above are dependent on ClearAds receiving all the relevant material for each application. Days are business days. Times are Sydney times. For Priority Processing Terms and Conditions, please refer to [OASIS](#). If you require an after-hours service, please call ClearAds between normal business hours, as this can be arranged.

**For further information on Processing Times for Infomercials and TVCs please refer to the [FAQs](#) available at <https://www.clearads.com.au/>The fees applicable to our Priority, Red Hot and Rush Hour services are also available on our website**

## Pre-check Applications

Producers are encouraged to discuss the content of a commercial at script/storyboard stages of production to obtain an indication of the likely classification and to be directed to any content or regulatory requirements.

This service is highly recommended. Any discussions will be kept strictly confidential.

### How to apply for a Pre-check

1. Complete your pre-check application using [OASIS](#). This service can also be used for review of off-line edits prior to finalising a TVC.
2. Make sure you provide a copy of your script/storyboard or off-line edit.
3. If your media schedule dictates that the commercial attains a certain classification, please detail this in your application.
4. Respond to any requests made for substantiation or other information prior to production in case we need to provide you with further feedback. **Substantiation provided to ClearAds during a pre-check reduces the risk of delay with your application for a ClearAds number or the possibility of the TVC requiring an amendment which may delay on-air commitments.**

Please allow at least 3 working days for ClearAds to review and provide comments/feedback. Please note that this service does not provide legal advice and that it is the responsibility of each advertiser and/or its advertising agency to ensure their commercial complies with all relevant laws and regulatory requirements.

ClearAds Numbers are not issued for pre-checks and are only issued on completed commercials. Once your pre-check is complete, you will need to submit the final TVC and any information requested at the pre-check stage, if this has not already been provided via **OASIS**.

### Processing Times for Pre-checks

Prechecks	Normal Processing Time	Priority Processing	Red Hot	Rush Hour
Precheck	3 days	2 days	24 hours (within business hours)	5 hours (if submitted before 12pm).

ClearAds must receive a script or storyboard before the pre-check review can commence. The turnaround times above are dependent on ClearAds receiving the script or storyboard material for each application. Days are business days. Times are Sydney times. For Priority Processing Terms and Conditions, please refer to [OASIS](#).

## Application Categories

TVCs, pre-checks and infomercials are categorised depending on the types of goods or services advertised. A Simple application may become Complex and vice versa, depending on the complexity of claims and the time taken to review the application. Examples of Simple and Complex goods and services are included below:

Category and Description	Examples
<b>Simple Applications</b> Simple applications contain subject matter or claims that are generally non-scientific and uncomplicated.	<ul style="list-style-type: none"> <li>- General household and retail items (excluding therapeutic claims) primarily governed by the Australian Consumer Law</li> <li>- Food and beverage (excluding therapeutic claims)</li> <li>- Cosmetics (excluding therapeutic claims)</li> <li>- Entertainment, dining facilities</li> <li>- Motor vehicles</li> <li>- Financial products, services and advice (corporate branding only)</li> <li>- Film, television, DVD and streaming services</li> <li>- Legal services, personal injury</li> <li>- Travel</li> <li>- Community Service Announcements (not political or election matter)</li> <li>- Real estate</li> </ul>
<b>Complex Applications</b> Complex applications contain subject matter or claims that are generally complicated and are likely to require additional review by senior members of the ClearAds Team.	<ul style="list-style-type: none"> <li>- Therapeutic goods/devices</li> <li>- Cosmetics (where therapeutic claims are made)</li> <li>- Weight loss products</li> <li>- Lotteries, Gambling or Gaming</li> <li>- Political/Election matter</li> <li>- TVCs to be placed in 'C' time</li> <li>- Health services</li> <li>- Financial products, services and advice (TVC includes specific details in relation to the financial product, service or advice)</li> </ul>

## Broadcasting Zones - Metro

TVCs, pre-checks and infomercials are categorised either regionally or metro/nationally depending on the zones that they are airing.

Metro/National	Regional
<ul style="list-style-type: none"> <li>- Brisbane</li> <li>- Sydney</li> <li>- Canberra</li> <li>- Melbourne</li> <li>- Adelaide</li> <li>- Perth</li> </ul>	<ul style="list-style-type: none"> <li>- Northern Territory</li> <li>- Gold Coast</li> <li>- Broome</li> <li>- Newcastle</li> <li>- Cairns</li> <li>- All other regions</li> </ul>

Script Template

Each application must be submitted with a vision script that matches the vision exactly. Below is an example of a vision script that can be used to accompany all applications.

TVC SCRIPT

Advertiser	
Product	
Title	
Key Number	
Duration	

VIDEO	AUDIO
<p>Describe the vision/action in detail. You must also include any on-screen graphics or disclaimers here.</p>	<p>Detail the voice over, sound bytes and any lyrics here.</p>

# ClearAds (Classification) Numbers

## Duration of ClearAds Numbers

ClearAds Numbers are valid for two years, unless otherwise indicated at the time of application. The two-year period commences from the date the ClearAds Number is issued.

ClearAds Numbers issued for Government or Statutory Authorities/Agencies expire three months after initial classification unless an extension is requested. The ClearAds Number can be extended for a further three-month period, where no change has been made to the commercial. To request an extension, you need to upload a comment via your Job List on **Oasis** and also send an email to [hello@clearads.com.au](mailto:hello@clearads.com.au).

**Note:** Changes in legal and regulatory requirements can occur at any time. As such, classification may be withdrawn within the relevant two-year period. It is the responsibility of the advertiser to monitor and inform ClearAds of any changes in fact or law that may affect the classification.

## Issuing of ClearAds (Classification) Numbers

ClearAds will issue a ClearAds Number after a commercial has been classified and on the understanding that the commercial is true, accurate and complete, visually and aurally, including all statements and representations, express and implied and that these statements and representations are not misleading or likely to mislead the intended audience.

ClearAds cannot issue a ClearAds Number or provide final classification advice until a commercial is submitted in final form along with any required documentation.

Subsequent alteration to a commercial after it has been classified will render the ClearAds Number invalid, except for the addition of captioning, provided that the captioning does not obscure any visual information such as supers, graphics, disclaimers, pricing and other details.

## How do I know if my commercial has been classified?

Upon classification, ClearAds will send confirmation of the ClearAds number/s via email. The ClearAds numbers will also be available in the Classified and Closed tab under My Jobs **Oasis**.

## How will I know what classification my commercial has received?

ClearAds will assign a Classification, indicated by way of a Placement Code to your commercial which appears as the first character in the assigned ClearAds Number. A guide to the Placement Codes is provided in the A-Z Television Production Checklist within this document.

## Withdrawal of ClearAds Numbers

ClearAds may withdraw a ClearAds Number in certain circumstances, including:

- a) When the Australian Communications and Media Authority (ACMA) have determined that the commercial is in breach of the provisions of the Broadcasting Services Act, the Standards of the Authority or the Commercial Television Industry Code of Practice.
- b) A court or other competent tribunal has determined that a commercial is in breach of legislation in force in the Commonwealth or a State or Territory.
- c) The advertiser has failed to provide further substantiation of claims made in the commercial and/or evidence of legal clearance, requested by the Director of Commercial Operations (ClearAds).
- d) There is a change in legal requirements or ClearAds becomes aware of information or facts which affect the classification of the commercial or its compliance with a relevant legal or regulatory requirement.
- e) ClearAds may temporarily suspend the ClearAds Number pending consideration of any consumer law issue pending the advertiser obtaining legal advice relating to any trade practices issue.
- f) ClearAds has requested and is awaiting further substantiation from the advertiser.



- g) When the ABAC Adjudication Panel has upheld complaints against a commercial requiring it to be modified or discontinued.
- h) When Ad Standards has upheld complaint against a commercial requiring it to be modified or discontinued.
- i) When the TGA (Therapeutic Goods Administration) has upheld a complaint against a commercial requiring it to be modified or discontinued.
- j) Failure to pay any fees according to any agreed terms of payment and the terms set out in the Terms and Conditions of Application for a ClearAds number
- k) ClearAds receives legal advice recommending that the classification should be withdrawn.

If, in his/her discretion, the Director of ClearAds decides that the ClearAds Number should be withdrawn, this may be done immediately.

# Material submitted to ClearAds

## Substantiation and Other Documentation Requirements

The consumer protection provisions of the Australian Consumer Law require advertising to be truthful and not misleading. To facilitate the classification of commercials, advertisers must provide adequate substantiation for any claims made.

To avoid delays in classification, you can provide documentation to substantiate any claims made about the product or service being advertised when submitting your application.

Where substantiation has previously been provided you can either re-supply the substantiation OR quote the original key number and/or ClearAds Number on your application. Any resubmission of substantiation or reliance on previous substantiation submitted is subject to a review by ClearAds for currency and relevance.

Some of the categories that typically require written substantiation or additional documentation include:

- Adult Products and Services
- Alcoholic Beverages
- Cinema Films/DVDs/Games
- Comparative claims
- Consumer Credit
- Financial Products, Services & Advice
- Food products
- Gambling
- Health Services
- Legal Services
- Testimonials
- Therapeutic Goods and Devices

If additional substantiation is required once your commercial is submitted, the nature of the substantiation required may, in some cases, only require you to post a comment via your Job List on **Oasis** confirming the claims.

We may also require:

- Information relating to terms and conditions of guarantees and warranties
- Information relating to rebate offers and any rebate value stated
- Information for country of origin claims.
- Entry terms and conditions for competitions to confirm prizes offered and entry mechanism
- Information relating to conditions applying to offers e.g. trade-ins, cashback offers, bonus offers, gifts with purchase
- A summary of a report or other material which supports the claims made about a product or service. ClearAds may request additional information following review of the summary.
- Evidence of the classification and consumer advice for a film, DVD or game

Examples of other claims that may require substantiation include:

- '25 per cent more power'
- 'Biggest ever ... sale'; 'Biggest seller'; 'Top selling'; 'Price Breakthrough'
- 'Market leading'; 'World's ...smallest, largest, fastest, leading'
- 'Cheapest ever'; 'Our lowest prices ever'
- 'Unique'; 'Revolutionary'
- 'Exclusive to ...' (a specific retailer/publisher)

- 'Award winning'
- 'Endorsed by experts'
- 'Environmentally friendly'
- 'Patented', 'Patent pending'
- 'Superfood'

For more information on specific categories, refer to the A-Z Television Production Checklist and the Information Sheets contained in Appendix A.

## Privacy

When you apply for classification of a TVC or infomercial, you consent to the way we use and disclose the material provided to ClearAds. Upon submitting a TVC or infomercial to ClearAds, you will be required to accept certain terms and conditions which include, but are not limited to, our Privacy Policy. Our Privacy Policy can also be found at <https://www.freetv.com.au/privacy-policy/>.

Material provided to ClearAds will be confidential. In any circumstance, where material is shared with a third party, there are confidentiality arrangements in place. We may disclose material to third parties:

- For the purpose of obtaining advice or information (including from regulators and industry bodies);
- For the purposes of ClearAds, Free TV and Free TV Members to administer, monitor, evaluate and improve our services and systems and for management functions and reporting purposes;
- As required by law or reasonably requested by a government or regulatory body;
- Where it is necessary or desirable for consideration of the application;
- In the context of legal or regulatory proceedings (including any regulatory investigation);
- If the material is:
  - also in the possession of the third party without any breach of confidentiality;
  - enters the public domain;
  - discussed publicly by you and your actions have released us from our duty of confidentiality in such a way that requires us to respond publicly;
  - or otherwise ceases to be confidential (for example through the broadcast of the commercial forming part of the application); or
- With your consent, which you agree not to unreasonably withhold.

## Foreign Content of Television Commercials

Commercials consisting of wholly foreign sound and vision may be broadcast in Australia. However, the Australian Content in Advertising Standard requires that at least 80 per cent of advertising time that is broadcast is 'Australian'.

Refer: ACMA Television Program Standard 23 – Australian Content in Advertising

<http://www.acma.gov.au/Industry/Broadcast/Television/Advertising/australian-content-in-tv-advertising>

The Australian/Foreign Content questions in the Declaration section on **OASIS** must be completed for all television commercials, infomercials or community service announcements submitted to ClearAds.

## Operational Practices

Free TV Australia's Operational Practices 29 and 36 provide information on the requirements for the delivery of television commercials in digital production formats to Australian television broadcasters.

Operational Practice 48 sets out the requirements for television commercials in relation to audio levels and loudness to assist in addressing issues surrounding the problem of commercials sounding louder than adjacent programs.

In addition, Operational Practice 59 sets out guidelines for measuring and matching the loudness of programs and commercials that are presented contiguously in digital television broadcasting on Australian television services to assist with compliance with Operational Practice 48.

OP53 and OP55 provide guidance to advertisers when submitting commercials in an MPEG file format as a digital delivered bit stream or on a DVD to ClearAds for review prior to broadcast by Australian television broadcasters.

Copies of the Operational Practices are available from  
[www.freetv.com.au/Content\\_Common/pg-Engineering-Guides.seo](http://www.freetv.com.au/Content_Common/pg-Engineering-Guides.seo)

## **Part 2:**

# **A-Z TELEVISION PRODUCTION CHECKLIST**

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## Introduction

This Checklist has been produced by ClearAds to assist the producers of television commercials/infomercials. The Checklist is an alphabetical guide to the classification criteria that ClearAds will have regard to in classifying commercials/infomercials. The Checklist also details the compliance requirements and guidelines to which advertisers should have regard to, to ensure their commercials/infomercials comply with legal requirements.

Compliance with this Checklist does not guarantee that a ClearAds Number will be issued in relation to any specific commercial. Further, even if a ClearAds Number is provided, that number does not guarantee that the commercial will be broadcast by an individual television station, as decisions relating to acceptance of a commercial for broadcast, the times during which it can be broadcast and the terms of agreement with any advertiser or advertising agent are a matter for each television station.

The Checklist is provided for guidance only and is not exhaustive, nor applicable to the circumstances of every case. It is not a substitute for specific advice in relation to a commercial/infomercial, including, where appropriate, legal or other professional advice.

Throughout the Checklist, any reference to “Commercial/s” should be taken to include Infomercials unless otherwise stated.

## Acknowledgment

ClearAds acknowledges the assistance of the Australian Competition and Consumer Commission (ACCC) in producing this Checklist.

## Abbreviations

Care should be taken with the use of abbreviations and symbols that may not be widely understood by the community, particularly when referring to prices or conditions. In order to avoid the risk of misleading viewers, it is recommended that abbreviations are not used and references are stated in full.

For example:

Annual Percentage Rate or per annum (p.a.)	not A.P.R.
Drive away Price	not d/a
Loan to Value Ratio	not LVR
Mobile Repayment Option	not MRO
Per Person	not P.P.
Small-scale Technology Certificates	not STC
To Approved Purchasers	not T.A.P.

## ANZAC

Use of the word “Anzac” is regulated under the *Protection of Word “Anzac” Regulations 1921 (Cth)*. The Regulations prohibit the use of the word “Anzac” without the authority of the Minister for Veterans’ Affairs, in connection with any trade, business, calling or profession. The word “Anzac” will be deemed to have been used if it is applied to any goods manufactured, produced, sold or offered by sale or if it is used as the name or part of a name of any firm or company registered in Australia.

For enquiries on the use of the word “Anzac” please contact the Commemorations Branch of the Department of Veterans’ Affairs on 1300 550 459 or refer to the website

<http://www.dva.gov.au/commemorations-memorials-and-war-graves/protecting-word-anzac>

## Audio Levels and Loudness

The Commercial Television Code of Practice requires that commercials comply with the requirements of Free TV’s Operational Practice Notes 48 (Audio Levels and Loudness) and 59 (Measurement and Management of Loudness in Soundtracks for Television Broadcasting, as amended from time to time).

Free TV’s Operational Practice 48 – *Audio Levels and Loudness* (OP48) sets out limits on the use of compression, limiting and equalisation in the production of television commercials. OP 48 applies to all commercials, whether delivered by video tape or in a digital delivery format, and whether SDTV or HDTV. Operational Practice 48 also provides advice and recommendations for a compression profile related to any processing applied AFTER the final mix of a soundtrack.

Producers will be required to certify that their commercials comply with OP 48 as a condition of acceptance for broadcast. This will require a declaration of compliance on **Oasis** when submitting the commercial to ClearAds for classification. Compliance with OP 48 should also be noted on the visual identification.

Free TV’s Operational Practice 59 – *Measurement and Management of Loudness in Soundtracks* sets out guidelines for measuring and matching the loudness of programmes and commercials that are presented contiguously in digital television broadcasting on Australian television services, to assist with compliance to OP48 when producing soundtracks for television commercials.

Free TV Operational Practices 29 and 36 provide advice on audio signal processing and the final mix of a soundtrack.

Refer: Clause 5.7.2 Code of Practice

Free TV Operational Practices 29, 36, 48 and 59

## Audio Requirements for Commercials

The duration of commercials is measured from the start of the program video to the end of the program video.

A period of audio silence is required at the beginning and at the end of each commercial.

Sound should commence 0.5 seconds after the commencement of program video. The end of program sound including any sound tag shall occur 0.5 seconds before the end of program video.

See: [Audio Levels and Loudness](#)

Refer: Free TV Operational Practices 29 and 36

## Australian Consumer Law

The [Australian Consumer Law](#) is a schedule to the *Competition and Consumer Act 2010* and replaces previous Commonwealth, state and territory consumer protection legislation in fair trading acts. The Australian Consumer Law ensures that Australian consumers have the same legal protections and expectations in relation to advertising and selling practices wherever they are in Australia.

## Bicycles

See: Appendix A: [Information Sheet – Producing TVCs Directed to Children](#)

Appendix A: [Information Sheet – Producing TVCs which promote Motor Vehicles](#)

## Builders' Licence Number/Unlicensed Contractors/Contractors

In New South Wales, ACT, Queensland, South Australia, Tasmania and Western Australia, commercials for builders, renovation companies, pool builders, kitchen installers etc. are required to display the builders' licence or registration number on screen. Commercial producers will need to refer to relevant state and territory Builders' Licensing Boards for confirmation of the requirements in the state or territory in which they wish to advertise.

Specifically, in Queensland, legislation provides how unlicensed people can advertise to perform building work of a value of \$3,300 or less. It is an offence for a person who does not hold a Queensland Building and Construction Commission (QBCC) contractor's licence to advertise to carry out building work, unless the person states in their commercial the value of the work they are allowed to do without a licence.

An example of a statement to be included in a commercial for an unlicensed contractor includes:

"Cannot perform building work valued in excess of \$3,300"

Certain types of work require a QBCC licence regardless of the value of the work, including building design, plumbing and drainage, gas fitting, termite inspections and reports and pre-purchase building inspections. Any commercial by an unlicensed contractor for these types of work must state the following:

"Cannot perform building work valued in excess of \$0"

Advertisements for licensed builders in Queensland are required to include the following:

- the name of the licensee (being either the builder's name or company's name whichever is licensed)

- the builder's QBCC licence number (or the company's licence number if licensed) e.g. QBCC Lic. 1717X

The above information should be in an easily legible and reasonably prominent form.

Refer: Queensland Building and Construction Commission Fact Sheets -

*Advertising requirements for licensees*

*Advertising requirements for contractors who do not hold a Contractor licence*

<http://www.qbcc.qld.gov.au/contractors/forms-fact-sheets-publications/fact-sheets>

## Captioning

Closed captions enable people who are deaf or hearing impaired to view a transcript of the audio contained within television commercials.

Captioning your TVC or infomercial ensures your message reaches the deaf and hearing impaired community, estimated at over 3.5 million Australians. The Commonwealth Government and all State and Territory Governments have policies in place requiring their commercials to be captioned.

For technical recommendations refer to the Free TV Operational Practice 42 – *Distribution, Transmission and Monitoring of Closed Captions On Line 21/334*. This OP describes the technical/operational practices associated with the distribution to and subsequent monitoring and transmission by broadcasters of Closed Caption data.

Of importance are:

- use of television lines 21 and 334 for insertion of closed caption data;
- monitoring of closed captions; and
- transmission of closed captions.

The following companies provide captioning services to advertisers:

### **Adstream**

Telephone: 1300 423 787

Website: <https://www.adstream.com/>

### **Ai-Media**

Website: [ai-media.tv](http://ai-media.tv)

Telephone: 02 8870 7777

### **Ericsson Broadcast & Media Services**

Telephone: 02 9212 5277

Website: [ericsson.com/broadcastandmedia](http://ericsson.com/broadcastandmedia)

### **Sub Station**

Telephone: 02 9467 3231

Website: [thesubstation.com.au](http://thesubstation.com.au)

## Claims

No claim can be false or misleading. Commercials must comply in all respects with the provisions of the Australian Consumer Law and any other relevant legislation. As a number of cases regarding the provisions of the Australian Consumer Law have concerned the price, performance and availability of products, ClearAds will consider these sorts of claims particularly closely.

The ACCC's publication, *Advertising and Selling* provides useful guidelines to assist advertisers and highlights that the ACCC will focus on the fine print in television commercials.

Claims in your commercial may need to be substantiated. Substantiation may be uploaded when you lodge your application. Where substantiation has previously been provided, you can either re-supply the substantiation or quote the original key number and/or ClearAds Number on your new application.

Examples of when substantiation or other documentation is required can be found on page 18. If you are unsure about these requirements, please contact C.

See: [Comparative Advertising](#), [Free Goods and Services](#), [Price](#)

Refer: ACCC Publication – Advertising & Selling [www.accc.gov.au](http://www.accc.gov.au)

## Commercial Identification

A visual identification is required to accompany each commercial in the format recommended by Free TV Australia's Operational Practices 29 and 36. The OPs state that in a typical case, the identification should detail the following information:

Client	Product
Title	Key Number
Duration	ClearAds Number
Classification	Loudness Compliance
Audio format	Aspect ratio/Protected state of Product
Closed Captions	Agency
Production Company	Date

## Community Service Announcements

Community Service Announcements (CSAs) are those announcements which promote a charitable cause or activity, or which constitute a service to the community, and which are broadcast free of charge by a television station.

Unpaid community service announcements for organisations that have a charitable, public health or educational purpose may contain unlimited amounts of overseas footage. Such material is exempt from the station quota on foreign content.

Individual stations may reserve the right to restrict the use of the terms "community service announcement". Allocation of free air-time for CSAs is a matter for individual stations.

CSAs are required to be classified prior to scheduling in the same manner as paid commercials.

Refer: Section 2 and 8, Code of Practice.

## Comparative Advertising

Comparative claims made in commercials must compare like with like and must not be misleading or deceptive.

Some guidelines to consider when preparing commercials which name or draw comparison with another product or service are:

- The intent of the commercial should be to inform and not discredit or unfairly attack competitors, competing products or services.
- When a competitive product is named, it should be one that exists in the marketplace as significant competition.
- The advertising should compare related or similar properties or ingredients of the product, like for like.
- The identification should be for honest comparison purposes. Adequate substantiation of the comparison must be provided.
- If a competitive test is conducted, it should be done by an objective testing source, preferably an independent one, so that there will be no doubt as to the veracity of the test.
- In all cases, the test should be supportive of all claims made in the advertising that are based on the test.

- The advertising should never use partial results or stress insignificant differences to cause the consumer to draw an improper conclusion.
- The property being compared should be significant in terms of value or usefulness of the product to the consumer.
- Comparatives delivered through the use of testimonials should not imply that the testimonial is more than one individual's thought unless that individual represents a sample of the majority viewpoint.
- It is advisable to seek legal advice on proposed comparative advertising before commencing production. You are also advised to discuss the proposed commercial with ClearAds at scripting or pre-production stage.

See: [Injurious Falsehood, Price](#)

Refer: ACCC publication – *Advertising and Selling* [www.accc.gov.au](http://www.accc.gov.au)

## Competitions

It is necessary to comply with State/Territory legislation when promoting a competition in a commercial. Where a trade promotion lottery involving a game of chance is advertised, a permit to operate the lottery may need to be obtained. Currently it may be necessary to obtain a permit to conduct a trade promotion lottery in New South Wales, South Australia, the Northern Territory and the ACT. Any advertising for a trade promotion must include the permit number. A permit is not required for a game of skill.

ClearAds will require a copy of the entry terms and conditions for competitions to confirm prizes offered and entry mechanism.

See: [Telephone Services – Children](#)

Appendix A: [Information Sheet – Producing TVCs Directed to Children](#)

## Condoms

Commercials for condoms must not be broadcast in a program that is classified G or lower, unless it contains a public health or safety message.

Condoms are considered to be therapeutic goods. All advertising for condoms should be pre-approved by the Australian Self Medication Industry (ASMI). However, certain representations within condom advertising have already been approved (and do not have to be pre-approved by ASMI for each commercial), namely representations to the effect that, condoms:

- may help reduce the risk of transmission of sexually transmitted disease (STDs); and/or
- may help reduce the possibility of pregnancy

Refer: Clause 6.3.1, Code of Practice

See: [Personal Products](#)

Appendix A: [Information Sheet - Producing TVCs for Therapeutic Goods or Devices](#)

## Copyright

The advertiser must own or obtain permission for all uses of copyright in a commercial/infomercial, including any script, musical score, musical performance, film footage, photograph and material extracted from other sources. The publication of material on the internet or any other outlet does not waive copyright or entitle an advertiser to use that material without permission. ClearAds does not review a commercial or infomercial for copyright compliance and an advertiser is strongly advised to obtain legal advice if there is any doubt about ownership of the copyright of material used in a commercial or infomercial.



## Cosmetics

Products may not make therapeutic use claims unless included in the Australian Register of Therapeutic Goods. This applies to products advertised as cosmetics.

The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) Guidelines 2007 provides a list of products that are regulated as cosmetics and also sets out how claims for certain cosmetic products should be presented in commercials. The NICNAS Guidelines explain the legislative requirements of the *Industrial Chemicals (Notification and Assessment) Act 1989*.

See: Appendix A: [Information Sheet - Producing TVCs for Therapeutic Goods or Devices Substantiation and Other Documentation Requirements](#)

Refer: NICNAS *Cosmetic Guidelines 2007*

Therapeutic Goods Act 1989 and Regulations

Therapeutic Goods Advertising Code

## Country of Origin

The [Australian Consumer Law \(ACL\)](#) prohibits false and misleading claims about the place of origin of goods. If a business chooses to make a country of origin claim, or is required by law to disclose the country of origin of a good (such as under the *Australia New Zealand Food Standards Code* or the *Commerce (Trade Descriptions) Act 1905*), the ACL prohibits the business from making claims that are false or misleading. The ACCC provides further information for advertisers making such claims in the publication *Country of Origin Claims and the Competition and Consumer Act*. The ACCC also provides guidelines for specific industries making country of origin claims e.g. electrical industry, food and beverage industry, furnishing industries, textiles, clothing and footwear industries and the toy industry.

The ACL also provides (at section 255) a safe harbour defence for country of origin claims, outlining bases on which a person may claim that a good was grown, produced or manufactured in a particular country. Broadly, they require that a significant component or ingredient of the goods originate in the relevant country, or all or virtually all processes involved in the production or manufacture of the goods occur in the country.

Pictorial representations may also be interpreted as country of origin claims, for instance the use of logos, pictures, animals or symbols which are iconic of a particular place. Refer: ACCC website – [www.accc.gov.au](http://www.accc.gov.au)

## Criminal Activity

A commercial which encourages participation in a criminal activity could in extreme circumstances, constitute the offence of aiding and abetting.

## Currency

ClearAds will query the representation of currency in advertising. Section 16 of the *Crimes (Currency) Act 1981* prohibits the defacing or destroying of Australian coins or currency notes unless consent has been given by either the Reserve Bank or the Treasury.

Section 19 of the *Crimes (Currency) Act 1981* prohibits the designing, making, printing or distributing of representations of currency notes capable of leading people to believe they are genuine currency notes (when they are not), unless consent has been given by either the Reserve Bank or the Treasury.

Those wishing to use representations of currency in commercials should review the Reserve Bank's guidelines prior to production.



Refer: Reserve Bank of Australia – Reproducing Banknotes –  
<http://banknotes.rba.gov.au/legal/reproducing-banknotes/>

## Defacement of Property

Commercials should not portray any wilful defacement of or damage to property, or any incitement or encouragement of crimes against property, which would constitute a legal offence.

See: [Graffiti](#)

## Defamation

Commercials must not contain statements that defame people or corporations. Defamatory claims are statements that can damage a person's reputation in the eyes of ordinary viewers. However, if a potentially defamatory statement can be defended on grounds including justification, honest opinion, contextual truth, absolute privilege and qualified privilege it may no longer be considered defamatory.

Please note that both broadcasters and producers can be liable for defamation as well as for the cost of defending proceedings.

ClearAds does not clear commercials for a producer's legal liability but reserves the right to require further substantiation of factual material or evidence of legal clearance for any claims that may be considered to be defamatory.

See: [Impersonation of Real People, Injurious Falsehood](#)

Appendix A: [Information Sheet – Producing a TVC containing Political Matter including Election Material](#)

## Disclaimers

All disclaimers must be legible. If a disclaimer is not on screen long enough to be read or the text is not distinguishable from the background used in the TVC, ClearAds will request amendments to the disclaimer

See: Appendix A: [Information Sheet – Producing TVCs with Disclaimers and Other On-Screen Text](#)

## Discounts

The Australian Consumer Law prohibits false claims regarding the price of goods or services. All discounts must be genuine. It may be a breach of the Australian Consumer Law to claim a discount off a recommended or list price which is not normally charged by the seller or its competitors.

The ACCC considers that there is a high chance of misleading consumers if you claim savings but don't quote the normal price. Some examples of misleading claims include:

- “\$9.99 reduced” – if your normal selling price is \$10
- “Below cost” – if the stated price does not allow for discounts, rebates or other allowances you get from a wholesaler or manufacturer
- “Now at special low prices” – if you have in fact been charging the advertised prices for some time. This sort of advertising may be acceptable if you make it clear that prices are low
- “Closing down sale”, “fire sale”, “forced sale” or “clearance sale” are misleading if the implication that you have reduced prices is false
- Consumers may also be misled through the use of the term “up to” (eg up to 50% off) especially where those words are in very small print. If only some items are reduced by this amount, then the discount claim must make this clear. This means such words as “up to” should be of a

similar size to the rest of the wording and not so small that consumers are likely to overlook them.

- Where percentage discounts or similar savings are quoted in a commercial, it is likely to be assumed by the audience that the discount or saving is a reduction off the advertiser's normal selling price unless otherwise stated in the commercial. ClearAds may require a letter of substantiation from advertisers confirming that the savings offered are genuine

See: [Abbreviations](#), [Price](#)

Refer: ACCC publication – *Advertising and Selling* [www.accc.gov.au](http://www.accc.gov.au)

## Electrical Contractors

In Queensland, legislation provides that electrical contractors holding a licence in Queensland need to include the following information in their commercials:

- Name of the licence holder or registered business name;
- The statement 'Licensed in Queensland'; and
- Licence number

Refer: Queensland Government – Electrical Licensing Enquiries Division

## Environmental Claims

Care needs to be taken that claims or representations regarding environmentally sound products do not overstate or misrepresent the environmental friendliness of particular goods. All such claims must be fully substantiated.

When making "environmentally friendly" claims, advertisers will need to take account of the production processes, packaging and waste disposal aspects of a particular product. In particular, care must be taken when an environmental claim only relates to one aspect of the product.

The *AANA Environmental Claims in Advertising and Marketing Code* recommends that environmental claims should be truthful and factual, relevant to the product or service and its actual environmental impacts substantiated and verifiable.

Refer: ACCC publication – *Green Marketing and the Australian Consumer Law* [www.accc.gov.au](http://www.accc.gov.au)

*AANA Environmental Claims in Advertising and Marketing Code* [www.aana.com.au](http://www.aana.com.au)

## Finance

Commercials must comply with Commonwealth and State legislation. Any commercials for shares, debentures, unsecured notes or mortgage debentures or prospectuses must comply with the *Corporations Act 2001* and the *ASIC Act 2001*. Unless exempt, such commercials must make clear that the public may only apply for shares, debentures, etc. by way of a disclosure document, such as a prospectus, or profile statement which will contain or be accompanied by an application form.

## Financial Services Reform Act 2001(Cth)

Advertising for financial products must:

- be undertaken by the holder of an Australian Financial Services Licence;
- identify the issuer (and in some instances the seller) of the product;
- indicate that a Product Disclosure Statement is available and where it can be obtained; and
- indicate that a person should consider the Product Disclosure Statement in deciding whether to acquire or continue to hold the product.

The definition of a financial product is very broad under the Financial Services Reform Act 2001. It covers all products which involve:

- making a financial investment;
- managing a financial risk; or
- making non-cash payments.

Products that are specifically included in the definition, include:

- shares and debentures;
- managed funds;
- derivatives;
- general and life insurance (with specific exclusions);
- superannuation interests; and
- deposit taking facilities made available by a bank or similar financial institution.

Products that are excluded from the definition include:

- some types of insurance - including health, reinsurance and insurance provided by the Commonwealth, a state or the Northern Territory;
- interests in some unregistered managed investment schemes;
- contracts for future services; and
- credit facilities (which are not financial products if their whole or predominant purpose is the provision of a credit facility).

## Superannuation benefits

Commercials which refer to early access to superannuation benefits need to take special care that they are not misleading or deceptive. Commercials which suggest that members of the public can freely access their superannuation benefits or that the benefits are equivalent to cash available for ready use are likely to be misleading and deceptive. Expressions describing benefits as “*your money*” or “*cash*” should be avoided.

## Firearms

The following points need to be considered when producing a television commercial promoting the sale of Firearms:

- Commercials for the sale of firearms are subject to State or Territory regulation. Particular care should be exercised when depicting use and handling of guns in commercials. Such commercials may require a restrictive classification prior to broadcast. ClearAds can advise of the likely rating at offline or at finished TVC stage.
- Most States and Territories have rules for advertising firearms which require only licensed firearm dealers to advertise firearms.
- Certain States or Territories have additional requirements as set out below:

Victoria	the serial number of the firearm must be shown: Firearms Act 1996.
Queensland	the serial number of the firearm must be shown: Weapons Act 1990.
Northern Territory	the serial number of the firearm must be shown unless the sale is by a dealer licensed for that particular firearm: Firearms Act 1997.
South Australia	a person (other than a licensed dealer in firearms) who advertises a firearm for sale must include in the commercial a statement that transfer of possession of the firearm on sale must take place in the presence of, and be witnessed by, a licensed dealer in firearms, an

Western Australia

authorised officer of a recognised firearms club or a member of the police force: in accordance with Section 15B(9) Firearms Act 1977.

a non-dealer or non-manufacturer must ensure the commercial includes the details of the type, make, serial number and calibre of the firearm. Holders of Dealer or Manufacturer licences must ensure that the licence number is included along with details sufficient to identify the holder of the licence: Firearms Act 1973.

## Fireworks

Fireworks can only be sold under permit for sale to authorised persons, except in the ACT where sales to adult ACT residents are permitted. Advertising fireworks may be interpreted to include 'selling' fireworks under various State dangerous goods legislation so legal advice should be sought in those circumstances.

Special care needs to be taken when using the image of fireworks or the lighting of fireworks in a commercial. Depictions of fireworks should be responsible and should not depict the actual lighting of the firework or any other behaviour which could incite the illegal use of fireworks.

## Food

The advertising of food is governed by the *Australia New Zealand Food Standards Code*, the *State Food Acts* and more generally under the *Competition and Consumer Act 2010*.

Standard 1.2.7 and Schedule 4 of the *Australia New Zealand Food Standards Code* set out the conditions and criteria for the substantiation and approval of both health claims and nutrition content claims in commercials. These conditions are mandatory and legally enforceable by government. Standard 1.2.7 also sets out clearly that claims for food products must not be therapeutic in nature.

The food being advertised may also fall under a different Standard in the *Australia New Zealand Food Standards Code* if, for example, it constitutes a formulated meal replacement, or a food for a special medical purpose.

Descriptions of food in advertising should not be misleading or deceptive, or likely to mislead or deceive. Any representation, whether stated or implied in a commercial, should be able to be substantiated, if required.

Advertisers need to be particularly careful about 'quality descriptors' such as 'fresh'; 'home-made'; 'superfood'; 'natural'; 'pure'; '100%'; 'all'; 'true'; 'real'; 'free range'; 'free' of an ingredient or quality; and 'genuine', among others.

State Food Acts set out the penalties for false and misleading descriptions of foods in advertising. The details of the Food Acts for each State should be examined when considering producing a commercial for food.

The AANA has published a *Food & Beverages Advertising & Marketing Communications Code* to ensure that commercials maintain a high sense of social responsibility and includes restrictions in relation to nutritional and health claims in food and beverage commercials.

See: Appendix A: [Information Sheet – Producing TVCs Directed to Children](#)

Refer: AANA *Food & Beverages Advertising & Marketing Communications Code*  
[www.aana.com.au](http://www.aana.com.au)

FSANZ: <http://www.foodstandards.gov.au/Pages/default.aspx>  
Therapeutic Goods Advertising Code

## Foreign Language

ClearAds will require a certified English translation of any foreign language included in a commercial submitted for a ClearAds Number.

Organisations such as the following can assist advertisers with translation services:

SBS Language Services

Tel: (02) 9212 5277

Web: <http://www.sbs.com.au/inlanguage/>

I&G Pty Ltd

Tel: (020) 8090 7730

Web: [www.iandg.com.au](http://www.iandg.com.au)

## Free Goods and Services

Particular care must be exercised when describing goods and services as “free”. It is considered misleading or deceptive conduct under the Australian Consumer Law to falsely advertise goods or services as “free” if the cost of those goods or services is recouped from the buyer in another way.

Where goods or services are available at no cost but subject to conditions the relevant conditions must be made clear to the viewer in the ad itself, for example, where a second good or service is made available free or as a gift only if a first good or service is purchased for a price, this must be stated.

Refer: ACCC publication – *Advertising and Selling* [www.accc.gov.au](http://www.accc.gov.au)

## Gambling/Gaming

Gambling advertising is regulated at both the State and Federal level. There are different restrictions and requirements to comply with depending on where the TVC is being broadcast. Please see our Information sheet for more details.

See: [Placement Codes](#)

Appendix A: [Information Sheet – Producing a TVC promoting Gambling and Gaming](#)

## Goods & Services Tax (GST)

Advertisers should take care in making price claims in advertising without including any GST payable. The Australian Consumer Law requires any price advertising to include the ‘single price’. The ‘single price’ is calculated by adding up each of the price components that are quantifiable at the time of the commercial, including all ‘mandatory charges’. The GST payable by the customer is a mandatory charge.

See: Appendix A: [Information Sheet – Producing TVCs which includes Component Pricing](#)

Refer: ACCC publication – *What is GST inclusive pricing?* [www.accc.gov.au](http://www.accc.gov.au)

## Graffiti

Where it is proposed that graffiti be depicted in a commercial, care should be taken that the depiction of the graffiti or the depiction of the act of painting or spraying the graffiti is not prohibited by the legislation of a State or Territory in which it will be shown. Generally, there is nothing to prohibit the controlled depiction of graffiti, provided the act of graffiti in context was not a criminal offence. It is prohibited in Victoria and Western Australia to aid, abet or procure the commission of graffiti and the same prohibition is likely to be applied to all State criminal codes.

Commercials containing graffiti may breach the Australian Association of National Advertisers Code of Ethics which prohibits the depiction of violence, vilifying material or unsafe behaviour which is unjustified in the context.

Refer: AANA Code of Ethics [www.aana.com.au](http://www.aana.com.au)

# Health Services

The *Health Practitioner Regulation National Law Act 2009* ('the National Law') provides a nationally consistent legislation for the regulation of health services.

The National Law currently applies to the following health professions registered in each State and Territory:

- medical
- nursing and midwifery
- pharmacy
- physiotherapy
- dental (dentists, dental prostheses, dental therapists, dental hygienists)
- psychology
- optometry
- osteopathy
- chiropractic
- podiatry
- Aboriginal and Torres Strait Islander health practice
- Chinese medicine
- medical radiation practice
- occupational therapy

The National Law sets out the provisions relating to commercials for regulated health services. A person must not advertise a regulated health service or a business that provides a regulated health service, in a way that:

- Is false, misleading or deceptive or is likely to be misleading or deceptive; or
- Offers a gift, discount or other inducement to attract a person to use the service or the business, unless the commercial also states the terms and conditions of the offer; or
- Uses testimonials or purported testimonials about the service or business; or
- Creates an unreasonable expectation of beneficial treatment; or
- Directly or indirectly encourages the unnecessary use of regulated health services

Commercials for regulated health services must also comply with the Australian Consumer Law. For example, overstating results or effects, or understating risks or pain levels will generally be found to be misleading or deceptive and in breach of the Australian Consumer Law.

The National Boards regulating Australia's health practitioners have published *Guidelines for Advertising of Regulated Health Services*. The purpose of the Guidelines is to provide guidance about the interpretation of the provisions of the National Law that apply to advertising of regulated health services. The Guidelines assist regulated health practitioners in seeking to comply with their obligations under the National Law by setting out the type of advertising that is acceptable and unacceptable. It is advisable that commercial producers ensure compliance with the National Law by referring to the Guidelines before commencing production.

Refer: Health Practitioner Regulation National Law Act 2009 - *Guidelines for advertising of regulated health services* [www.ahpra.gov.au/](http://www.ahpra.gov.au/)



# Impersonation of Real People

Caution should be exercised in a commercial in which a real person or persons are portrayed by means of impersonation, caricature or look-a-like characters.

Relevant laws include:

## Australian Consumer Law

It is an offence to make representations that goods, services or companies have sponsorship, approval or affiliation that they do not have. For example, a commercial in which the Prime Minister's voice or what appears to be their voice, leads listeners to believe that the Prime Minister approves of, or is somehow connected with a particular product or company, could be a breach of the Australian Consumer Law.

## Defamation

If the reputation of the person whose voice or appearance is simulated would be affected by their association with the commercial or product, or if the imitation itself could be considered to be insulting to the person being imitated in a way that is defamatory, the broadcast could lead to a defamation action.

Some helpful guidelines:

1. In deciding whether a problem exists, the commercial should be considered as a whole. An advertiser needs to consider whether the impersonation or voiceover is believable based on how good and convincing the voice or imitation is, how characteristic the product or service is in terms of the imitated person's usual arena or area of sponsorship, and the setting and script of the commercial. A useful test is – 'would viewers be misled into believing the person who is impersonated has endorsed or sponsored the product advertised?'
2. Impersonations or voices that are obviously caricature or commercials that include a denial (e.g. "this is not ..... telling you..." or "this is someone who sounds just like...") are unlikely to be a concern.

Individual stations may be concerned about accepting a commercial for broadcast which portrays a famous deceased person and subjects that person to derision or ridicule, is offensive to that person's descendants or would be offensive or objectionable to a substantial section of the community.

See: [Defamation](#)

## Injurious Falsehood

A commercial can give rise to an action for injurious falsehood if the commercial disparages the goods, services or business of another person (for example, in a product comparison). A right to damages can arise if the other person can show that the defendant knew the disparaging statement to be false, was recklessly indifferent to whether it was true or false or had an improper motive, such as an intention to damage the business of the other person. Commercials which criticise a competitor's goods or services therefore need to be carefully considered, as they create high risks. It is important to note that unlike defamation, a corporation has a general right to sue for injurious falsehood.

See: [Comparative Advertising](#)

## Legal Services

The advertising of personal injury legal services and workers' compensation legal services is regulated under State and Territory law. As such, different restrictions and requirements apply depending on where the TVC is being broadcast.

See: Appendix A: [Information Sheet – Producing a TVC which promotes Legal Services](#)

## Lotteries

South Australia State Lotteries are required to comply with the advertising provisions of the South Australia *Gambling Codes of Practice Notice 2013*.

Western Australia State Lotteries are required to comply with the Western Australia *Gaming and Wagering Commission Act 1987* and *Regulations 1988*

See: [Competitions](#), [Placement Codes](#)

Appendix A: [Information Sheet – Producing TVCs promoting Gambling and Gaming](#)

## Metric Weights & Measures

The Metric system is the accepted system of measurement of physical quantities in Australia. This system should be used when advertising anything sold by weight or measure. Advertising goods in Imperial measure can be misleading and deceptive.

The ACCC, National Measurement Institute, and individual State and Territory Measurement Authorities can provide guidance on Metric Advertising.

Refer: *National Measurement Act 1960 (Cth)*

## National Anthems

### Australia – “Advance Australia Fair”

Permission must be obtained for the use of the Australian National Anthem for commercial purposes. Advertisers wishing to include the anthem in a commercial should seek permission from:

The Assistant Secretary

Honours, Symbols and Territories Branch

Department of the Prime Minister and Cabinet

Email: [nationalsymbols@pmc.gov.au](mailto:nationalsymbols@pmc.gov.au)

Web: [www.itsanhonour.gov.au](http://www.itsanhonour.gov.au)

## Foreign

The use of foreign national anthems in commercials has been the cause of some concern and has even led to official complaints being lodged with the Australian Government by representatives of foreign Governments. It is recommended that foreign national anthems not be used in commercials without the permission of the appropriate foreign Consulate.

## National Flags

### Aboriginal flag

The Aboriginal flag is protected by copyright and may only be reproduced in accordance with the provisions of the Copyright Act 1968 or with the permission of Mr Harold Thomas. Contact details are:

Mr Harold Thomas

PO Box 41807

CASUARINA NT 0810



## National flag

The National flag may be used for advertising purposes without the need for formal permission.

The Australian Government provides the following guidelines on the use of the National Flag for commercial purposes:

- The flag should be used in a dignified manner and be reproduced completely and accurately.
- The flag should not be defaced by overprinting with words or illustration.
- The flag should not be covered by other objects in displays.
- All symbolic parts of the flag should be identifiable.

Should producers be in any doubt about the appropriateness of a suggested representation of the Australian flag, enquiries can be made of the following:

Commonwealth Flag Officer

Honours, Symbols and Territories Branch

Department of the Prime Minister and Cabinet

Email: [itsanhonour@pmc.gov.au](mailto:itsanhonour@pmc.gov.au)

Web: <https://www.pmc.gov.au/government/its-honour>

## National Symbols

The Commonwealth Coat of Arms is not in the public domain. It is a symbol of the Commonwealth of Australia and is for Commonwealth use only. For information regarding the use of the Coat of Arms or any other National or State/Territory symbols or emblems please contact:

The Assistant Secretary

Honours, Symbols and Territories Branch

Department of the Prime Minister and Cabinet

Email: [governmentbranding@pmc.gov.au](mailto:governmentbranding@pmc.gov.au)

Web: <https://www.pmc.gov.au/government/its-honour>

## New Products or Services

Special care should be taken when advertising a product or service as 'new'. Advertisers considering making a claim of 'new' should be satisfied they are able to substantiate this claim.

## New Zealand Approvals

Commercials on-air in New Zealand require separate pre-broadcast classification from the Commercial Approvals Bureau (CAB) in Auckland. A classification number issued in one country does not ensure broadcast in the other.

Contact details for the CAB are:

Tel: +64 9 373 2907

Email: [advice@commercialapprovals.co.nz](mailto:advice@commercialapprovals.co.nz)

Web: [www.commercialapprovals.co.nz](http://www.commercialapprovals.co.nz)

## Offensive Language

The language used is relevant to the classification given to a commercial.

The *AANA Advertiser Code of Ethics*, recommends that commercials only use language which is appropriate in the circumstances and strong or obscene language should be avoided.

See: <http://aana.com.au/self-regulation/codes/>

## Olympic Insignia

The *Olympic Insignia Protection Act 1987* regulates the commercial use of certain Olympic expressions. Commercials for products or services of advertisers who are not licensed users should avoid the use of words such as “Olympic” and “Olympic Games”. Care should also be taken when referring to athletes as “Olympians” in connection with non-licensed users that may imply a sponsorship or association that is false.

The Olympic Symbol should not be used in commercials without the permission of its copyright owner, the Australian Olympic Committee.

Refer: *Olympic Insignia Protection Act 1987 (Cth)*

## Personal Products

Products for personal hygiene may offend some members of the public and therefore require sensitive treatment. When classifying commercials for feminine hygiene products, napkins for incontinence and condoms, ClearAds will apply the normal classification criteria.

See: [Condoms](#)

Refer: Section 6.3, Code of Practice

## Price

Care needs to be taken that representations as to “price” are not misleading and deceptive or otherwise in breach of the law. The following guidance identifies areas that have proved to be contentious.

### “Two-price” Advertising

It is common for retailers to compare a “sale” price with “normal” or recommended prices to suggest that they are offering bargains or big savings. This is permissible as long as the normal or regular prices quoted for a particular store are not fictitious. This means they must be the prices at which that store has genuinely offered those goods for a reasonable period beforehand.

For example, a commercial stating “*Was \$15 – reduced to \$10*” would be misleading if most previous sales of the item had been made at \$10. It would also be misleading to say:

“*Was \$15 - reduced to \$10*” if the normal selling price was \$12.50.

Obviously if a product is new to the market there is no “normal” selling price to which you can refer. Such new products should not be advertised as a “sale” price as there is no basis for such claims.

What is meant by “reasonable period” will vary from case to case. Some factors that may need to be considered are:

- the type of product;
- how often prices usually change; and
- the market or markets in which the advertising takes place.

There is a limit to how long a price cut can be advertised or promoted without qualification or explanation. If you offer “discounted prices” continually, or for much of the year, then they are in fact your regular selling prices.

## Recommended retail prices

Many commercials or promotions compare current prices with a higher “*recommended retail price*”, suggesting a saving. Often, however, “*recommended*” prices have little or no relevance to the market – because no one in fact charges them.

Unless you have in fact regularly been charging recommended retail prices it may be illegal to use them as the basis for price comparisons that suggest savings for consumers. For example, a commercial offering a product for \$180 which labels this price a “*\$60 saving on the recommended retail price of \$240*” would be misleading if the product regularly sold for \$180.

## Comparison with competitors’ prices

It is risky to compare your prices with those of your competitors unless you are absolutely sure that the comparison is accurate, the products being compared are reasonably similar, and that the comparison will be valid for the life of the promotion. You could not safely or accurately claim, “*Our price \$250–\$40 below anywhere else*” because any of your competitors might vary their minimum price without you knowing. However, you could claim, “*We will beat any genuinely advertised price by \$40*”, as long as you are prepared always to live up to that promise.

Consumers will usually be able to judge for themselves whether general claims such as, “*discount prices*” or “*lower prices*” are accurate. Care needs to be taken with claims about discounts on particular goods. These should be genuine reductions from prices you or your competitors normally charge.

See: [Comparative Advertising](#)

See: Appendix A: [Information Sheet – Producing TVCs which includes Component Pricing](#)

## Availability of price reductions

You must not make unqualified claims about savings or other benefits if these are not available to all potential customers e.g. if you don’t offer them to people buying on credit or where the goods are replacement items under an insurance claim.

Additionally, in commercials for a range of items, you must take care not to imply that discounts are available on all of the items if in fact the savings apply only to one or a few of the items.

See: [Discounts](#)

Refer: ACCC publication – *Advertising and Selling* [www.accc.gov.au](http://www.accc.gov.au)

## Real Estate

See: Appendix A: [Information Sheet - Producing TVCs for Real Estate](#)

## Red Cross

The Red Cross emblem is a protected symbol under the Geneva Convention. Use of the Red Cross emblem is governed by the *Geneva Conventions Act 1957 (Cth)*, and is prohibited without the consent in writing of the Commonwealth Attorney-General.

Advertisers can obtain further information regarding the Red Cross emblem from:

Australian Red Cross

155 Pelham Street

CARLTON VIC 3053

Tel: (03) 9345 1800

Web: [www.redcross.org.au](http://www.redcross.org.au)

## Royalty

No commercial may state or imply Royal custom or Royal favour unless a Royal Warrant applies. Legislation in Queensland expressly prohibits false representations of a Royal Warrant.

## Sporting Events Indicia and Images

The Major Sporting Events (Indicia and Images) Protection Act 2014 provides special protection regarding the commercial use of indicia and images to be used by major sporting events such as the Gold Coast 2018 Commonwealth Games.

The Act prohibits the use of a major sporting event's protected indicia and images for commercial purposes in the lead-up to, during, and immediately after the event, except by official event bodies and authorised persons. The Act provides a list of protected words and phrases, and variants of event names and known abbreviations associated with each of the events.

See: [Olympic Insignia](#)

Refer: *Major Sporting Events (Indicia and Images) Protection Act 2014 (Cth)*

## Streaming Services

TVCs advertising streaming services will need to comply with relevant consumer law requirements. If the TVC for the streaming service includes prominent reference to a film/TV program/game (whether classified or unclassified), the classification marking and consumer advice (or CTC if unclassified) is required.

## Suicide

Material not suitable for television includes commercials depicting realistic methods of suicide, or promotion or encouragement of suicide.

Refer: Code of Practice

## Telephone Services

### 190 Services

190 telephone services are covered by the Code of Practice for Infocall 190 Services. This Code includes rules and regulations relating to the supply of InfoCall 190 Telephone Information Services. Compliance with the Code is required through the Service Agreement between each Service Provider and Telstra.

The Code includes requirements for the advertising and promotion of premium rate services ie commercials for services that have telephone numbers commencing with '190' and that are charged at a premium rate.

Advertising for these services must also comply with the *AANA Code of Ethics*, broadcasting laws, standards and codes and the *Code of Practice*. Advertisers should consult the Code for further information.

Refer: [Code of Practice for Infocall 190 Services](#)

## Children

Commercials airing in C periods involving the use of premium charge telephone services must comply with the CTS and with the advertising provisions of the Code of Practice for Infocall 190 Services.

In addition, commercials directed primarily to children must comply with the *AANA Code for Marketing and Advertising Communications to Children* and the *Mobile Premium Services Industry Code*.

Prior to production of commercials directed to children, advertisers and agencies are encouraged to seek pre-production comments on scripts from ClearAds.

See: Appendix A: [Information Sheet – Producing TVCs which promote Mobile Premium Services](#)

## Freecall/Toll Free

Where a Freecall or Toll Free number is promoted, confirmation will be required that the service is free to ALL callers. Where it is not, a prominent disclaimer will need to be included on screen, stating the conditions that apply to the toll free service eg applies to landlines only or normal charges apply from mobiles etc.

## Timing of Commercials

See: [Audio Requirements for Commercials](#)

Refer: Free TV Operational Practices 24, 29, and 36

[www.freetv.com.au/Content/Common/pg-Engineering-Guides.seo](http://www.freetv.com.au/Content/Common/pg-Engineering-Guides.seo)

## Tobacco Products and Electronic Cigarettes

Advertisements for tobacco and tobacco products are prohibited in Australia. The advertising of electronic cigarettes is restricted in some States. Retailers of tobacco products wishing to promote the sale of non-tobacco products and advertisers promoting the sale of electronic cigarettes should seek legal advice before submitting a commercial to ClearAds.

Refer: *Tobacco Advertising Prohibition Act 1992*

State and Territory Tobacco advertising legislation

Department of Health and Aging publication – [Easy guide to the Tobacco Advertising Prohibition Act 1992](#)

## Travel

See: Appendix A: [Information Sheet – Producing TVCs which includes Component Pricing](#)

Refer: ACCC publications – *Pricing Manual for the Travel Industry* [www.accc.gov.au](http://www.accc.gov.au)

## Uniforms

Before producing a commercial depicting talent wearing military or police uniforms, producers are advised to check with appropriate authorities.

## Value of Goods and Services

The Australian Consumer Law prohibits false representations about the value of goods or services. Advertising claims such as “worth \$100 – now only \$50” gives consumers the impression that the true value of the goods is the higher price, not just that you may have previously sold the goods at that price.

Where products are advertised at a price, but a claim is made regarding their true value, ClearAds will require substantiation.

For example, “*The Mega Showbag, \$25 value, now \$10*”, full substantiation of the \$25 value will be required.

If claims regarding the value of purchase incentives or premium offers are made, substantiation will be required.

For example, “*When you buy \$60 worth of True Beauty products, you get this gift worth \$100*”, full substantiation regarding the value of the gift will be required.

## Video Break-Up Effects

Individual stations may refuse to broadcast commercials that may suggest to viewers that broadcast quality is defective by depicting technical malfunctions.

## Volume Compression Levels

See: [Audio Levels and Loudness](#)

## Water Safety and Water Sports

Producers should exercise care when depicting people engaged in activities in or near the water, particularly if they are consuming alcohol. Commercials directed to children should never depict dangerous situations which may encourage unsafe behaviour. Care should be taken to avoid depicting people diving or jumping from heights into shallow water or into water which might conceal obstacles. In some States diving or jumping from jetties or other like structures is contrary to law.

# **Appendix A:**

## **INFORMATION SHEETS**

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## Producing a TVC for Adult Products and Services

The following points need to be considered when producing a television commercial promoting Adult Products and Services:

- Legislation in New South Wales, Queensland, the Northern Territory and Victoria prohibits the advertising of prostitution services.
- The content of a commercial for adult products and services must not exceed the MA classification criteria in the Commercial Television Industry Code of Practice. Note: Advertising of X or RC material is prohibited.
- A commercial for a sex-line or similar product or service must not exceed the MA classification criteria and will be classified S by ClearAds.
- A commercial for an adult cinema film, DVD or game must display the Classification Board's classification markings. Confirmation of the classification and consumer advice must be provided to ClearAds however, advertising of X, RC or unclassified adult films is prohibited.
- Advertisers of adult content via a mobile premium phone service should have regard to the rules set out in the *Mobile Premium Services Industry Code and Schedule 7 of the Broadcasting Services Act* (BSA). Advertisers should look carefully at these rules before proceeding with production and may wish to obtain legal advice to ensure they fully understand their obligations under the rules. Note: Advertising of X or RC material via mobile premium phone services is prohibited.
- Advertisers of adult content via a website should have regard to the rules set out in the BSA. Content may be considered 'potential prohibited content' under the provisions of Schedule 5 and Schedule 7 of the BSA if the content has not been classified by the Classification Board. Content may be considered 'prohibited content' if classified MA or R by the Classification Board and access to the content is not subject to a restricted access system. Websites with R rated content must have approved restricted access systems in place. Again, advertisers may wish to obtain legal advice to ensure they fully understand their obligations under the rules prior to submitting a commercial to ClearAds or stations. Note: Advertising of X or RC material via a website is prohibited.
- When submitting a commercial for adult content ClearAds may request written confirmation of compliance with any relevant rules including the confirmation of the classification of mobile/web content provided as part of the service.
- First time advertisers of adult products and services should allow a minimum of two weeks to obtain ClearAds classification and where possible submit a script for a pre-check or the commercial at an offline stage to allow time for any amendment which may be necessary.

See: [Placement Codes](#) – A – Z Television Production Checklist  
[Telephone Services](#) – A-Z Television Production Checklist  
[Producing TVCs for Cinema Films/DVDs/Games](#) – Information Sheet

Refer: Mobile Premium Services Industry Code –  
<http://www.commsalliance.com.au/Activities/mps>

## Producing a TVC promoting or including reference to Alcohol

The following points need to be considered when producing a television commercial which either promotes or includes reference to alcohol, or which includes themes that have some connection with alcohol:

The alcohol beverages industry has agreed to abide by a voluntary advertising code called the ABAC Responsible Alcohol Marketing Code (ABAC Code). The ABAC Code outlines the standards for alcohol advertising in Australia. The Commercial Television Industry Code of Practice (the Code of Practice) states that advertisers are expected to comply with the ABAC Code. A copy of the ABAC Code is available from the website – [www.abac.org.au/publications/thecode](http://www.abac.org.au/publications/thecode)

- The Alcohol Advertising Pre-vetting Service (AAPS) is available to pre-vet alcohol commercials for compliance with the ABAC Code. An AAPS application can be lodged online at [www.abac.org.au/for-advertisers](http://www.abac.org.au/for-advertisers). Please note any revisions made to a commercial that has received AAPS approval may need to resubmitted for further AAPS approval.
- In addition to the ABAC Code/AAPS requirements, the Code of Practice and the Children's Television Standards 2009 set out certain restrictions in relation to the scheduling of alcohol commercials. These are set out in CTS 36 and Clause 6.2 and Section 8 of the Code of Practice.
- CTS 36 provides:

Advertisements for alcoholic drinks may not be broadcast during C periods.

No advertisement or sponsorship announcement during C periods may identify or refer to a company, person, or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks. This is in addition to the requirements of the Commercial Television Industry Code of Practice.

- Clause 6.2 of the Code of Practice sets out further scheduling restrictions that apply to a 'Commercial for Alcoholic Drinks'. The term 'Commercial for Alcoholic Drinks' is defined in Section 8 of the Code. Commercials falling within this definition are given an 'L' placement code by ClearAds.

A Commercial for Alcoholic Drinks may be broadcast at any of the following times:

- a) in the M and MA15+ classification zones set out in Section 2 (except between 5.00 am and 6.00 am, and 7.30 pm and 8.30 pm); and
  - b) as an accompaniment to a Sports Program on a Weekend or a Public Holiday; and
  - c) as an accompaniment to the broadcast of a Live Sporting Event broadcast simultaneously across more than one licence area, if one of subclauses (a) or (b) is satisfied for:
    - i. the licence area in which the Live Sporting Event being broadcast is held, for an event taking place in Australia;
    - ii. the majority of metropolitan licence areas in which the Live Sporting Event is shown, for an event taking place overseas.
- One of the main issues that arise for consideration under the Code of Practice restrictions is whether or not a commercial is a 'Commercial for Alcoholic Drinks'. Some of the questions that will often be relevant to consider are:
    - does the commercial contain visuals of alcohol?
    - does the commercial contain references to alcohol?
    - does the commercial contain branding/trademarks associated with alcohol?

- is the commercial encouraging people to purchase/drink alcohol?
- is the commercial promoting the purchase/use of alcohol?
- It is not only when dealing with obvious commercials that clause 6.2 of the Code of Practice should be brought to mind, for example a commercial promoting a particular brand of beer. They should also be considered in relation to commercials promoting pubs/clubs, food and wine festivals, sporting/entertainment events with alcohol sponsors, and other similar commercials. Please refer to the definition of “Commercial for Alcoholic Drinks” at Section 8 of the Code of Practice for more information.
- Additionally, the NSW Director of Liquor and Gaming, under section 102 of the *Liquor Act 2007* has published the *Liquor Promotion Guidelines* for the responsible promotion of liquor. The guide describes the circumstances upon which the Director may restrict or prohibit a licensee carrying on, or being involved in, activities or promotions involving the sale or supply of liquor. A copy of the guidelines is available from the NSW Office of Liquor, Gaming and Racing website <https://www.liquorandgaming.nsw.gov.au/>. Advertisers should consult the relevant state or territory liquor licence authority and legislation for similar guidelines on liquor promotion.

## Producing TVCs Directed to Children

Commercials or community service announcements scheduled in C periods must comply with the requirements set out in the ACMA's Children's Television Standards (CTS) 25, 30-36.

Further, the AANA operates a voluntary self-regulation scheme and has published a *Code for Marketing and Advertising Communications to Children* including restrictions on food advertising which may promote an unhealthy lifestyle.

A commercial for a trade promotion lottery in NSW cannot depict a child participating in a lottery activity or winning or collecting a prize.

### Children and Safety

Where one or more children appear in a commercial, common sense precaution should be taken to avoid portraying actions which could be dangerous if performed by children when unsupervised by adults. If such actions are portrayed, a restrictive classification will apply and the commercial may receive complaint.

The following are some useful guidelines for the production of commercials in accordance with CTS 25, in particular the prohibition on the presentation of 'images or events which depict unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them'.

### Children and Bicycles

When children are depicted in commercials as bicycle riders, such commercials should:

- not show a child who appears to be less than twelve years old riding on any road;
- show children wearing safety helmets.

### Children and Dangerous Substances

The depiction of medicines, disinfectants, antiseptics, insecticides and caustic substances within reach of children without close parental supervision is best avoided, and children should not be shown using these products in any way.

### Children and Fire, Electricity and Explosives

An open fire in a domestic scene in a commercial should generally have a fireguard clearly visible if a child is included in the scene.

Children should not be shown using matches or any gas, kerosene, petrol, mechanical or mains powered appliance which could lead to them suffering burns, electrical shock or other injury, unless the commercial contains an explicit safety message.

### Children and Heights

Children should not be seen leaning dangerously out of windows or over bridges or climbing dangerous cliffs.

Small children should not be shown climbing up to high shelves or reaching up to take things from a table above their heads.

### Children and Road Safety

The portrayal of the following should be avoided:

- children unattended in street scenes unless they are obviously old enough to be responsible for their own safety;
- children playing on the road;
- children stepping carelessly off the pavement or crossing the road without due care; or

- children playing on agricultural machines (including tractor drawn carts or implements) or on backs of trucks

Preferably, children should be seen:

- wearing seat belts or approved child restraints when passengers in cars
- using pedestrian crossings when crossing the road; and
- generally behaving in accordance with accepted road safety principles.

### **Children's Television Standards 2009**

A Guide to the CTS to assist organisations in seeking to comply with their obligations is available from the ACMA or from ClearAds.

### **Who does the CTS 2009 apply to?**

Commercial television broadcasters and those advertising during designated viewing times on commercial free-to-air television will need to be aware of the CTS , which relate to the provision of children's programs and advertising safeguards intended to protect children. Compliance with the CTS is a licence condition for commercial television broadcasting licensees.

### **Key features of the CTS relevant to commercial placement**

#### **Unsuitable material – CTS 25**

Unsuitable material cannot be broadcast in programs and commercials during C and P periods.

Unsuitable material is material which:

- Demeans individuals or groups of people on the basis of race, nationality, ethnicity, gender, sexual preference, religion or mental or physical disability.
- Presents images in a way which is unduly frightening or unduly distressing to children
- Presents images or events depicting unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them. This is likely to include a reference to social networking websites and services where registration and use is generally restricted to persons over a certain age.
- Advertise products or services officially declared unsafe or dangerous by a Commonwealth authority or by an authority having jurisdiction within a licensee's licence area.

#### **Content of advertisements – CTS 30**

- No commercial may mislead or deceive children.
- Nothing in the CTS is to be taken to limit the obligation imposed by CTS 30.

#### **Pressure in advertisements – CTS 31**

An advertisement may not be designed to put undue pressure on children to ask their parents or another person to purchase an advertised product or service.

No commercial may state or imply:

- that a product or service makes children who own or enjoy it superior to their peers; or
- that a person who buys an advertised product or service for a child is more generous than a person who does not.

#### **Clear Presentation – CTS 32**

Commercials are required to accurately represent the advertised product or service.

The provisions include:

- Claims made in advertisements must not be ambiguous;

- If accessories (e.g. batteries) are required to operate a product this should be clearly understood by children. References to price must clearly differentiate between the price of the product and the price of any accessories
- Presentation of a product and its price must be accurate and clearly understood. Prices must not be minimised by words such as 'only' or 'just';
- If the size of the product is not clear in an advertisement, it must be made clear by reference to something which a child can readily recognise;
- Where children are shown using a product and advertisement must fairly represent the performance a child can obtain from that product; and
- Advertisements for a food product must not contain any misleading or incorrect information about the nutritional value of that product

### **Disclaimers and premium offers – CTS 33**

A disclaimer used in an advertisement should be presented so that it is easily seen by or readily attract the attention of the child audience.

A premium is anything offered with or without additional cost that is intended to induce the purchase of an advertised product or service. 'Bundled' products which typically comprise edible and non-edible components are considered to be premiums.

A competition, being the offer of a chance to win prizes by purchasing a product or service, will usually be captured by the definition of a premium.

Any reference to a premium offer in an advertisement must be merely incidental to the reference to the product being advertised. This means that any reference to the premium offer must occur as secondary to, or given lesser importance than, the reference to the main product or service advertised. Similarly, where a food product is advertised, any reference to a non-food product must be merely incidental to the reference to the food component.

In determining whether a reference is merely incidental, a number of factors need to be considered, including;

- The amount of time devoted to the premium offer compared to the advertised product or service;
- The use of moving pictures, text or images used to promote the premium offer; and
- The use of sound to promote the premium offer.

An advertisement containing a premium offer must not stimulate any unreasonable expectation of the main product or service being advertised.

Any conditions relating to the requirements, arrangements or rules that customers have to satisfy before obtaining the premium must be clearly set out.

### **Competitions – CTS 34**

If competitions for children are referred to in advertisements:

- A summary of the basic rules must be stated; and
- Any statements made about the chance of winning must be clear, fair and accurate.

CTS 24(1) prohibits the offer of prizes during P programs.

Competitions referred to in an advertisement may also be a premium, in which case the advertisement will require compliance with both CTS 33 and CTS 34.

### **Promotion by popular characters – CTS 35**

Popular characters and personalities cannot be used to endorse, recommend or promote commercial products or services during C or P periods. CTS 2005 prohibited an endorsement, recommendation or promotion of a commercial product or service by a principal personality or character from a C or P program. CTS 2009 expands the list of such characters and personalities, including encompassing proprietary characters.

‘Endorse’, ‘recommend’ or ‘promote’, refers to activities and particular advertising techniques used to publicise, market or advocate the purchase of, a particular product or service. This can be direct, e.g. where a personality verbally expresses approval for a product, or indirect, e.g. where it is implied or understood from the appearance or conduct of the personality, having regard to the context of the material broadcast. The use of a character or popular personalities voice-over in an advertisement is also prohibited.

‘Popular’ has its primary dictionary meaning (i.e. ‘regarded with favour or approval by the general public’) and covers any Australian or international well known character or personality regarded with favour or approval by the child audience, or members of the public and includes well known sporting and music personalities.

CTS 35 applies to all material broadcast during a C or P period or in the break immediately before or after a C or P period. The definition for ‘material’ is based on the definition of ‘C material’ in CTS 5 and includes a program, program promotions, a community service announcement and advertisements.

### Categories of popular personalities and characters

- **Principal personalities or characters from C and P programs**

Examples include the host/presenter of a C or P variety or live action game show or a character from an animated or live action C drama program.

- **Popular program or movie characters**

Characters (human, puppet or animated) from any television program or movie that can be reasonably expected to be well known to children, or to members of the public in general, within the licensee’s licence area. Examples include a main character from a G classified drama series broadcast during prime time or Batman from the movie *The Dark Knight*.

- **Popular cartoon, animated or computer-generated characters**

All popular cartoon, animated or computer-generated characters that feature in television programs, movies or games, or that were developed or created to promote a brand, product or service. Examples include Bart Simpson from *The Simpsons* television series and Master Chief Petty Officer John-117 from Xbox 360 game, *Halo 3*.

- **Popular personalities**

Well-known people who are favourably regarded by the general public and come from a range of fields and industries, including sport, music and other performing arts. Examples include Olympic medallists, high-profile cricketers and footballers, Top 40 singers and award-winning actors.

- **Licensed and proprietary characters**

Licensed characters are defined in CTS 5 as a character used, under licence from the owner of the character, in the promotion or advertising of products and services. Examples include Mickey Mouse from Disney and Nemo from Pixar.

Proprietary characters are defined in CTS 5 as characters used by its owner in the promotion or advertising of products or services. Examples include Coco the Monkey for Coco Pops and the Target Teddy Bear for Target.

### Exceptions to CTS 35

There are exemptions to the prohibition on promotion of products and services by popular characters and personalities where:

- An advertisement depicts a product in the form in which it is usually offered for sale, for example retail product packaging featuring a popular character or personality can be included in the advertisement, or product logos incorporating the image of a popular character or personality, or in the case of promoting a DVD or video, a clip may be included in the advertisement, or for a concert or live show a clip or segment of the show including the popular personality may be



included in the advertisement. However, animation of a character is not permitted to promote, recommend or endorse the product or service advertised.

- A popular character or personality endorses a toy or game when that character or personality is represented in that toy or game. The exemption does not apply where a group of popular characters promote a toy or game which represents only one of the characters from the group.
- Popular characters and personalities are used to promote products and services which are non-commercial (that is, not connected to a private business or profit making enterprise) provided that if the advertisement relates to nutrition, safety, education or like matters, it contains only generic statements about such matters.

For hypothetical examples illustrating the application of CTS 35 for each of the categories of popular characters and personalities and the exceptions, please see the ACMA Guide to the Children's Television Standards 2009.

### **Advertising of alcoholic drinks – CTS 36**

- Advertisements for alcoholic drinks may not be broadcast during a C period.
- No advertisement or sponsorship announcement broadcast during a C period may identify or refer to a company, person, or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice.
- No advertisement for alcoholic drinks may be broadcast during a C program or P program that is broadcast outside a C period or P period or in a break immediately before or after any C program or P program.
- No advertisement or sponsorship announcement broadcast during a C program or P program that is broadcast outside a C period or P period, or in a break immediately before or after such a C or P program, may identify or refer to a company, person or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks. This requirement is in addition to the requirements of the Commercial Television Industry Code of Practice.

See: [Telephone Services – Children](#)

Refer: AANA Code for Advertising & Marketing Communications to Children  
<http://www.aana.com.au>

ACMA Children's Television Standards 2009

ACMA Guide to the Children's Television Standards 2009

### Producing TVCs for Cinema Films/DVDs/Blu-Rays or Computer Games

The following points need to be considered when producing a television commercial promoting Cinema Films, DVDs/Blu-Rays or computer Games:

- Commercials for a Film released in cinemas or on DVD/Blu-Ray and classified Games must comply with Clause 2.5.4 and Section 6.4 of the Code of Practice. Commercials will be scheduled in accordance with Appendix 1 of the Code of Practice. See: Appendix B: [Placement Codes](#)
- When submitting a commercial for a Film or Game, the classification markings, that is the Classification Board's rating, and any consumer advice must be included and displayed according to the *Classification (Publications, Films and Computer Games)(Markings and Consumer Advice) Determination 2014*. ClearAds will also require confirmation of the classification and consumer advice for each title advertised. This may be obtained from the online database search available at [www.classification.gov.au](http://www.classification.gov.au). Please note: commercials for X rated Films/DVDs are not permitted to be broadcast.
- Advertisers should note that even where Film or Game footage is not shown in a commercial, if the title of the Film/Game and a call to action to see/own it are included, then the classification markings will need to be displayed.
- When a commercial includes a cross promotion with a non-Film/Game product and includes for example, Film ticket giveaways or other calls to action to see a Film or DVD or Game prizes in competitions, the classification markings will need to be included.

Where a commercial for a film promotes both 2D and 3D versions, certain classification markings are required depending on the nature of the reference to each version. For full details of the classification marking requirements see the *Classification (Publications, Films and Computer Games)(Markings and Consumer Advice) Determination 2014* which is available at [www.classification.gov.au](http://www.classification.gov.au)

- Some DVDs and Games may be exempt from classification under certain criteria. A copy of the relevant criteria listing exempt categories under the *Classification Act* is available from ClearAds or the Classification Board. Where a DVD/Game is exempt from classification there will be no markings displayed but the advertiser will have to provide ClearAds with written confirmation that the Film is exempt and under which exemption category.
- State and Territory classification enforcement legislation permits most unclassified films and computer games to be advertised, subject to certain conditions. It is still illegal to advertise unclassified films likely to be classified X 18+ and films and games likely to be classified RC. Western Australia is the only State which has not yet passed amendments to permit advertising of unclassified computer games. It will continue to be illegal to advertise unclassified computer games until WA legislation is amended.
- Advertising for an unclassified film or computer game may be allowed subject to an assessment by either an Authorised Advertising Assessor (AAA) or by the Classification Board. Assessment of the likely classification means that the unclassified film or computer game has been approved to be advertised before it is classified. If the assessment is made by the Classification Board, ClearAds will require a copy of the Assessment for Advertising Certificate. If the assessment is made by an AAA, ClearAds will require a copy of the letter from the Classification Board authorising the assessor to be an AAA and a letter from the AAA indicating the likely classification. The markings to be displayed in a commercial when a film or computer game has been granted an exemption are detailed in the Classification Board fact sheet - *Television Advertising of Unclassified Films or Computer Games*. A copy is available at [www.classification.gov.au](http://www.classification.gov.au).

Refer: Classification Board - [Classification Website](#)

## Producing TVCs which include Component Pricing

### Component pricing

This information sheet sets out the points to consider when producing a television commercial that includes component pricing (including cash back offers).

Component pricing is the advertising of a price in its component parts rather than as a single (total) figure. A commercial that makes a representation about the price of goods or services using component pricing runs the risk of creating an impression that the total price of the product is cheaper than it actually is.

To ensure that consumers are able to make informed choices and recognising that price is usually a major consideration in influencing consumers' purchasing decisions, the Australian Consumer Law (ACL) requires any price advertising to include the 'single price' at least as prominently as the component or part of the price which is advertised.

This is additional to the requirement that any advertising or marketing materials not be false, misleading or deceptive.

### Single price - minimum total quantifiable cost at the time the commercial is produced

A 'single price' is the **minimum total cost** that is quantifiable at the time the commercial is produced. This 'single price' must include all of the following:

- **any charges payable by a consumer** to purchase the good or service (for example, administration fees, compulsory service charges, booking fees); and
- **any taxes, duties, fees, levies or charges payable by the consumer** for the supply of the good or service (for example, GST or sales tax).

The 'single price' does **not** need to include:

- optional extras – additional charges the consumer may choose to pay. An optional extra does not include a price of a good or service which is discounted but such discount is dependent on the purchase of another product or service (in this instance, compliance with component pricing requirements is required);
- delivery charges – unless, at the time of the commercial, you are aware of a minimum charge that must be paid to receive the good or service;
- components that are not quantifiable at the time the commercial is run (see below for further details); or
- amounts the business pays to third parties that are not passed onto the consumer.

### Calculating or quantifying components

A charge is quantifiable if, at the time of the commercial, it can **readily be converted into a dollar amount**. The 'single figure' is the sum of all these quantifiable components. Where a total price involves:

- a combination of quantifiable and non-quantifiable components; or
- a component amount that fluctuates or varies (for example, a component price reliant on foreign exchange rates);

you must calculate the components and total price based on the **available information at the time the commercial is produced**.

Where the 'single price' is a mixture of quantifiable and non-quantifiable components, the charges that are quantifiable should be represented as a single figure and the commercial must state that not all components are included in the single figure price. The commercial must also indicate the basis on which the amounts were calculated and that they may change. Please note that the fact a price may be subject to change does not mean it cannot be quantified.

If you decide not to include a component as part of a total price because you cannot quantify a component, you will need to be able to substantiate why you are unable to calculate the amount.

Some charges will not be quantifiable because they are contingent on a customer's choices. For example, where charges vary according to geographic region (for example, additional freight charges applicable to goods advertised nationally that vary according to the geographic location), these charges are unlikely to be a quantifiable component of the single total price to be charged for the product and failure to include them in a price would likely not breach the single figure price requirement. A business could advertise a recommended national price (being the 'single price' excluding the additional freight cost) but prominently disclose that additional freight costs may apply.

### Prominence of single price

You are required to display the 'single price' **at least as prominently as the most prominent component price** or part of the price which is advertised. A consumer should be able to identify the 'single price' (ie total cost) as easily as the most prominent component price or part of that total.

The 'single price' should be clear, eye-catching and noticeable and stand out so that it is easily identifiable by a consumer. When deciding how to display the component prices and the 'single price', you should consider:

- size, colour and font of text used to display the price;
- placement of the price relative to the background of the commercial;
- duration of price representation on screen;
- any special effects (such as text movement, shading, fade-in or fade-out); and
- how viewers will see and hear and interpret the advertising message.

For example, if the single price is smaller or in a font colour that is harder to read than any component price, then this is likely to mean that it is not as prominent.

Note: there are two exceptions to the rule requiring that a single price be shown at least as prominently as any component. They are:

1. Where you make a representation exclusively to a business – in this instance you do not need to include a single price.
2. Where services are supplied under a contract (for a term) that also provides for periodic payments – while you still need to provide a prominent single price, that price does not need to be as prominent as any other component.

### Cash back offers

"Cash back" offers are a form of discounting where manufacturers or retailers maintain the price of a good or service and then offer to return some of the consumer's money after the purchase. Where a consumer is required to pay an amount of money to acquire the good or service and then has to actively take steps to receive a reimbursement from the manufacturer or retailer, a commercial representing the price "after cash back" without the amount the consumer must initially pay is likely to mislead the consumer and be in breach of the single price requirement.

It is best practice to state the amount the consumer must pay as prominently as the amount the consumer pays following the "cash back" reimbursement.

### Travel commercials using multiple share rates

Where travel packages and accommodation are advertised at a per person multiple share rate (for example \$500 per person twin share), best practice to comply with the component pricing provisions

of the ACL would be to state the total minimum price payable to take advantage of that offer (that is \$1000) at least as prominently as the per person rate.

Unless it is possible for a person to buy a one person share at the advertised price without also paying for the other shares, you should consider that there may be a risk that the price representations made could be considered a breach of the ACL requirements if you do not include the total minimum price payable.

Regardless of whether you state the total minimum price payable, it should be made clear in a commercial that an advertised per person price is only available on a multiple share basis to take advantage of the advertised offer.

### How the price representation is conveyed in a TVC

It is important to remember that representations can be made by written words, images, symbols or pictures and voice overs or sounds. For television commercials, the ACCC expects:

- **Audio (voice over)** – where a component price representation is made verbally, the single price should also be stated verbally and in a way that is as prominent as the component price. For example, if a component price representation is made at the beginning of the commercial, the total price should be stated in a clear and timely way, not muffled at the end of the commercial.
- **Visual (text)** – where the component price representation is made in writing, the single price should also be shown in writing and in a way that is as prominent as the component price. For example, if the component price representation is on screen in a clear, large font, the total price should also be shown in a clear, large font and not in fine print at the end of the commercial.
- **Mixed method (voice over and text)** – where the commercial includes a component price representation in both audio and visual methods, the single total price must be made clear in both audio and vision to ensure that the minimum total price payable is made clear to the consumer.

More generally, the ACCC considers that:

- Brief commercials (often lasting 30 seconds or less) are only capable of conveying limited amounts of information. Accordingly, advertisers should be conscious that using this media may only be possible to make simple offers or advertise the availability of goods or services in a general way.
- Television commercials may use a combination of images, text and commentary to create an overall impression. These elements should be balanced in a way that ensures none of the important elements of the offer are obscured by other parts of the presentation.
- Misrepresentations may occur by using graphics that divert attention away from important text, or commentary that is too briefly displayed or spoken, or too faint to be understood or heard.
- Important qualifications should appear for sufficient time on screen (as text, symbols or graphics) to be understood by the audience and reinforced by voice overs.

## Hypothetical Examples

**Example 1:** A commercial promoting an accommodation package - component price in vision only

### Unlikely to be approved

The text appearing on the screen reads:

**Escape to the Mountains**  
**Luxury accommodation**  
**From \$199 per person per night\***  
**Includes hot buffet breakfast**

Graphics are too small.  
The component price is not shown.

\* Minimum 3 night stay. Subject to availability.

The voice over states:

"Why not treat yourself to a relaxing Mountain escape? Enjoy deluxe accommodation and a delicious hot buffet breakfast each morning. Call us now!"

### Likely to be approved

The text appearing on the screen reads:

**Escape to the Mountains**  
**Luxury accommodation**  
**From \$199 per person per night\***  
**Includes hot buffet breakfast**

Graphics are legible.  
The component price is shown & is the same size as individual price.

**\*Minimum 3 night stay at just \$597. Subject to availability**

The voice over states:

"Why not treat yourself to a relaxing Mountain escape? Enjoy deluxe accommodation and a delicious full buffet breakfast each morning. Call us now!"

**Example 2:** A commercial for a football cap at a cost of \$2 with the purchase of a newspaper – component price in audio only

**Unlikely to be approved**

The text on the screen reads:

**Get your fantastic football cap\***

\* With the purchase of the Daily Post

The voice over states:

“Get your hands on this fantastic football cap and you’ll be ready for the new season. Only \$2, and only with tomorrow’s Daily Post.

The total inclusive  
price is not  
announced.

**Likely to be approved**

The text on the screen reads:

**Get your fantastic football cap\***

\*With the purchase of the Daily Post

The voice over states:

“Get your hands on this fantastic football cap for \$2 and you’ll be ready for the new season. Only with the purchase of tomorrow’s Daily Post. Total price \$4.50.

The total inclusive  
price is announced

**Example 3:** A commercial promoting a “cash back” offer – component price in audio and vision

**Unlikely to be approved**

The text on the screen reads:		
The text on the screen reads:	Latest cameras only <b>\$400</b> after \$50 cash back!*	Graphics are too small. The component price is not shown.
	Latest cameras only <b>\$400</b> after \$50 cash back!*	
	Price before cash back <b>\$450</b>	Graphics are legible. The component price is shown & is the same size as individual price.
The voice over states:		
*Redeemable from the manufacturer.		
“End of Financial Year Sale – all cameras must go. Get yourself the latest camera for a bargain at only \$400 after \$50 cash back.”		
The voice over states:		
“End of Financial Year Sale – all cameras must go. Get yourself the latest camera for a bargain at only \$450 and get \$50 cash back!.”		
		The total inclusive price is not announced.
		The total inclusive price is announced

**Likely to be approved**



**Example 4:** A commercial promoting a discounted product with the purchase of another product—component price in audio and vision

**Unlikely to be approved**

The text on the screen reads:

DVD Player only **\$10!**

When you purchase any television priced at \$500 or more

The voice over states:

“Purchase any television priced at \$500 or above and get a DVD player for only \$10. That’s great value!”

**Likely to be approved**

The text on the screen reads:

DVD player only **\$10!**

When you purchase a television priced at \$500 or more.

Total package cost from **\$510**

The voice over states:

“Purchase any television priced at \$500 or above and get a DVD player for only \$10. That’s great value from only \$510 for the package.”

**Example 5:** A commercial for the sale of dining chairs by a furniture retailer – component price in audio and vision

### Unlikely to be approved

The text on the screen reads:

**\$50\*** leather dining chairs!!!!

\*Conditions apply

The voice over states:

“Quality leather dining chairs only \$50 each. That’s a bargain!”

### Likely to be approved

The text on the screen reads:

**\$50** leather dining chairs!!!!

Minimum purchase of 4.

Total price **\$200**

The voice over states:

“Quality leather dining chairs only \$50 each when you purchase 4. That’s a bargain at a total cost of \$200.”

**Example 6:** A commercial for tickets to a concert – component price in audio and vision

**Unlikely to be approved**

The text on the screen reads:

**Live on Stage**  
Tickets \$80 plus \$5 booking fee  
**ON SALE NOW!**

The voice over states:

“Once in a lifetime opportunity to experience this amazing performance live at the Arena. Tickets are only \$80 and are on sale now.”

**Likely to be approved**

The text on the screen reads:

**Live on Stage**  
Tickets \$80 plus \$5 booking fee.  
**Total cost \$85**  
**ON SALE NOW!**

The voice over states:

“Once in a lifetime opportunity to experience this amazing performance live at the Arena. **Tickets are only \$85.** On sale now!”.

See: Appendix A: *Information Sheet – Producing TVCs with Disclaimers & Other On-Screen Text*

## Producing a TVC promoting Consumer Credit

The National Credit Code regulates credit provided to consumers and requires any commercial which states or implies that consumer credit is available to comply with the National Credit Code.

Credit providers include banks, finance companies, credit unions and building societies, retailers providing credit and any other person or company providing credit in the course of any business.

Although the advertising provisions of the National Credit Code do not usually require a commercial to refer to an annual percentage rate, if a commercial states the amount of a repayment, it must also state the applicable annual percentage rate(s). Then, depending on the circumstances, it may also be required to contain further information.

If a commercial contains an annual percentage rate and if credit fees and charges are payable, it will need to contain a statement:

- disclosing that fees or charges are payable; or
- specifying the amount of the fees and charges payable; or
- specifying the amount of some of the fees and charges payable and that other fees and charges are payable.

Where an interest rate is disclosed in a commercial, it must be expressed as an annual percentage rate or as the comparison rate.

Further, if the commercial is for fixed term consumer credit (ie the commercial is not for continuing credit products such as credit cards), and if an annual percentage rate is disclosed, the commercial will also need to disclose the “comparison rate” and the legislatively prescribed warning. The calculation of a comparison rate is relatively complex and this should be done by the credit provider.

Some comparison rate rules:

- comparison rates must be calculated based on one of the following amounts and terms that is most typical of the credit product being advertised as provided in Regulation 97 of the *National Consumer Credit Protection Regulations 2010*:
  - \$250 for a term of 2 weeks
  - \$1000 for a term of 6 months
  - \$2,500 for a term of 2 years
  - \$10,000 for a term of 3 years
  - \$30,000 for a term of 5 years
  - \$150,000 for a term of 25 years

Comparison rates will usually be different from the annual percentage rate;

- credit commercials containing a comparison rate must:
  - clearly state the amount and term on which a comparison rate is based;
  - identify the comparison rate as a comparison rate;
  - identify the name of the credit product being advertised for example, ‘ABC Low Rate Home Loan’ or ‘Rewards Car loan’. The name of a credit product is the usual product name or description by which the credit provider describes the credit product;
  - if the amount of credit on which the advertised comparison rate is calculated is either \$10,000 or \$30,000, identify whether the comparison rate is for a secured or unsecured loan;

- be accompanied by a "prescribed warning" about the accuracy of the comparison rate (refer below); and  
the comparison rate must be no less prominent than any annual percentage rate or amount of repayment.

- Rules regarding the method of communicating the comparison rate:
  - if the annual percentage rate is in spoken form and not displayed on a television screen in text, the comparison rate must also be in spoken form;
  - if the annual percentage rate is displayed on the television screen in text, the comparison rate must also be displayed on the screen in text and may be in spoken form;
  - if the comparison rate is in spoken form, the warning and other information may be either in spoken form or displayed on the television screen in text; and
  - if the comparison rate is displayed on the screen in text, the warning and other information must also be displayed on the screen in text.

NOTE: The "prescribed warning" needs to state as follows:

"WARNING: This comparison rate is true only for the examples given and may not include all fees and charges. Different terms, fees or other loan amounts might result in a different comparison rate."

ClearAds may require a letter of substantiation for commercials which include the advertising of credit. If requested, the letter should take the form of the draft below:

## CONSUMER CREDIT SUBSTANTIATION

*(Insert Advertisers name and address) hereby indemnifies ClearAds and any person to whom it provides advice ("the Indemnified") against all liability claims or proceedings whatsoever arising from publication of television commercial(s) key numbered (insert key number/s) and warrants and represents to the Indemnified that the information contained in the abovementioned commercial(s) is correct and in the opinion of the Advertiser and their legal advisers, publication of the commercial(s) does not contravene the provisions of the National Credit Code.*

.....  
Signed by (responsible officer to sign)

.....  
Title/Position in Company

.....  
Name of signatory

.....  
Date

## Producing TVCs with Disclaimers & Other On-Screen Text

Disclaimers must be clearly legible and easily comprehensible and held on screen long enough for all text on screen, not just the disclaimers, to be read by the average viewer to avoid rendering a commercial potentially misleading under the Australian Consumer Law.

Disclaimers are generally used to expand or clarify an advertised offer or to make minor qualifications and should, where possible, be introduced at the same time as the representations they qualify. Disclaimers should simply explain the representation in further detail and should not be used in an attempt to correct a misleading impression created by the commercial as a whole.

Disclaimers should not be used to conceal important information.

A disclaimer must be effective – this means it must be:

- able to be readily identified by a consumer;
- placed close to the main representation; and
- clear in meaning.

Disclaimers should appear for sufficient time on screen for them to be noticed, read and understood by the audience. Important disclaimers should be reinforced by voice-overs.

To assist in making the process easier for producers when submitting final commercials for ClearAds classification, ClearAds makes the following recommendations:

### Duration on Screen

ClearAds recommends allowing a minimum of 0.2 seconds per word or 2 seconds minimum duration if less than 10 words, taking into account all text on screen at the same time as any disclaimer.

Registered trademark legal lines need not be included in the calculation of duration on screen for other text.

### Text Height

Taking into account the duration of on-screen text and the additional factors below, the size of text and choice of font should allow any disclaimer to be easily read.

Free TV Australia Operational Practices 29 and 36 provide the following in relation to a recommended text height:

For standard definition images, the minimum height of the text lower case elements be 15 pixels [15 lines] in a 576 line raster.

For high definition images, the minimum height of the text lower case elements should be 28 pixels [28 lines] in a 1080 line raster.

NOTE: However, if in the case of television commercials, the recommendation above is met, and the text is unreadable on screen, ClearAds may seek another copy of the commercial at a higher encoded bit rate that increases the on-screen resolution of the text.

### Additional Factors

Some other factors to be taken into account when producing a commercial to ensure all on-screen text is clearly legible include:

- the contrast between text and its background must allow for the text to be clearly legible.
- if the background is moving, on-screen text may need to be placed on a single-coloured box.

- certain colour combinations e.g. white on yellow or red may increase the difficulty of reading any on-screen text.
- fading text in and out of vision is not recommended unless the text is held to allow for the fact that at some points the text will be less visible.

### Limits on price disclaimers

The Australian Consumer Law requires any price advertising to include the 'single price' (i.e. total cost) at least as prominently as the most prominent price component advertised. This means that the total price cannot simply be stated in a disclaimer except for when services are supplied under a contract and that also provides for periodic payments. In that case while a prominent 'single price' needs to be provided it does not need to be as prominent as any of the component prices.

The 'single price' is calculated by adding up each of the price components that are quantifiable at the time of the commercial, including all mandatory charges.

A charge is quantifiable if, at the time of the commercial, it can readily be converted into a dollar amount. The 'single price' does not need to include charges that are payable only at the option of the customer.

Displaying the 'single price' at least as prominently as the component or part of the total price which is advertised means that a consumer should be able to identify the 'single price' as easily as the component or part of that total. In meeting these requirements producers should consider factors such as the size, placement, colour and font of the prices in the commercial, as well as the background of the commercial.

See: Appendix A: *Information Sheet – Producing TVCs which includes Component Pricing*  
 Appendix A: *Information Sheet – Producing TVCs which promote Motor Vehicles*

Refer: ACCC publication – *Advertising and Selling* [www.accc.gov.au](http://www.accc.gov.au)

ACCC publication – *Pricing manual for the motor vehicle industry* [www.accc.gov.au](http://www.accc.gov.au)

### Producing a TVC promoting Financial Products, Services and Advice

Commercials for financial products, services and advice must comply with both the general law and the requirements of the *Corporations Act* and the *Australian Securities and Investments Commission Act*. The legal obligations which apply to these commercials are explained in the ASIC publication, Regulatory Guide 234 Advertising Financial Products and Services: Good Practice Guidance, available at: <https://asic.gov.au/>

Any commercial which states or implies that consumer credit is available must comply with the National Credit Code. More information on these obligations is set out in [Information Sheet – Producing a TVC promoting Consumer Credit](#).

Prior to review and classification of a commercial for a financial product, service or advice, ClearAds requires all such advertisers to confirm that they have read and are familiar with Regulatory Guide 234 and that the commercial submitted for classification complies with this Regulatory Guide, as set out in the confirmation letter below.

Note also that if ASIC issues a stop notice, public warning advice or other advice that in its view the commercial does not comply with the relevant legal requirements, ClearAds' practice is to withdraw any ClearAds number given for the commercial.

A key requirement is that commercials for financial products, services or advice do not, and are not likely to, mislead or deceive consumers. While the whole of Regulatory Guide 234 should be considered, the following questions included in the Guide provide some useful indicators:

In relation to commercials for financial products:

- (a) Does the commercial clearly and accurately describe the relevant financial product or product feature?
- (b) Does the commercial provide a balanced and clear view of what the product is likely to deliver?
- (c) Are the risks, fees and other drawbacks of the product clearly described and presented?
- (d) Is the product capable of being advertised in a simple and clear way or is it too complex?

In relation to commercials for financial advice services:

- (a) Does the commercial create realistic impressions about what the advice is likely to achieve, cover or address?
- (b) Are the limitations of the advice clearly identified including the basis upon which it will be given?
- (c) If the commercial refers to costs, does the advertising give a realistic impression of the cost of the advice?
- (d) If the commercial makes any claims about the impartiality of the service, does it accurately describe any relevant relationship?

The overall impression created by the commercial will also be very important. By way of example only:

- Commercials must be consistent with information and disclosures made in related documents (such as product disclosure information);
- A balanced view should be given of the benefits and risks associated with a product or service;
- If a benefit depends on a certain set of circumstances (which might or might not occur) that should be made clear;
- Risks, warnings, disclaimers and qualifications should be given sufficient prominence;
- A realistic impression should be given of the overall costs and fees that a consumer would be liable for;



- Comparisons with other products or services should be undertaken with care and only where the comparison can validly be made between similar offerings;
- References to past performance should provide that this is not indicative of future performance; and
- Phrases such as “free”, “secure” and “guaranteed” must be used with care.

## LETTER OF CONFIRMATION

ClearAds requires a letter of confirmation for each commercial for a financial product, service or advice. If there is any issue regarding the veracity, accuracy or completeness of the information and representations made in a commercial, or its compliance with relevant laws, ClearAds may in its discretion also require that the advertiser provide a statutory declaration.

The wording of the required letter of confirmation is as follows:

*I acknowledge and agree on behalf of (Insert Advertiser’s name and address) (Advertiser) that:*

1. *I have read and am familiar with ASIC Regulatory Guide 234 and the commercial submitted to ClearAds for classification with key number/s [insert] (Commercial) complies with that Guide and all applicable laws.*
2. *The Advertiser warrants and represents that all information contained in the Commercial, including all aural and visual information, is correct, accurate and complete and that the statements and representations contained in the Commercial, both express and implied, are not misleading or deceptive and are not likely to mislead or deceive.*
3. *The Advertiser has verified the correctness, accuracy and completeness of all statements and representations contained in the commercial.*
4. *In consideration for ClearAds’ acceptance of the Commercial for review and for ClearAds undertaking that review, the Advertiser indemnifies ClearAds and any person to whom it provides advice (“the Indemnified”) against all liability, losses, damages, costs (including client legal costs), claims or proceedings whatsoever arising from publication of the commercial. The Advertiser acknowledges that ClearAds accepts this indemnity on behalf of and on trust for the Indemnified.*
5. *Paragraphs 1 to 4 inclusive above are not limited in time and apply to the Commercial as submitted to ClearAds and as subsequently revised, amended or altered (whether or not at ClearAds’ request).*

*I also warrant that I have authority to make these representations and enter into these obligations on behalf of the Advertiser and I acknowledge that they are legally binding and subject to the law in force in New South Wales.*

.....

Signed by (responsible officer to sign)

.....

Print name

.....

Title/Position in Company

.....

Date

### Producing a TVC promoting Gambling and Gaming – applicable to interactive gambling, wagering, casinos and gaming machines

Commercials promoting gambling and gaming must comply with the *Commercial Television Industry Code of Practice* as well as Commonwealth, State or Territory legislation which relates to gambling and gaming. The Australian Consumer Law also applies in relation to misleading and deceptive conduct.

There are specific restrictions on placement of commercials relating to betting and gambling in a Live Sporting Event and these are set out in Appendix 3 of the *Commercial Television Industry Code of Practice*.

This information sheet applies to commercials promoting interactive gambling, wagering, gaming machines and casinos. The summaries below do not include regulations that apply to advertising trade promotions and lotteries as there is different legislation that applies to these types of activities and would need to be checked separately. Please refer to the “Lotteries” and “Competitions” section of the ClearAds Classification Handbook for more information.

The regulations applicable to a commercial will depend on the nature of the gambling or gaming being advertised, and the States and Territories in which the commercial will appear. In some instances, advertising of certain gambling or gaming services is prohibited. In other instances, advertising is permitted but it is subject to certain rules and conditions.

**Disclaimer:** *This Information Sheet is a general summary of the Commonwealth and State based legislation relevant to advertising by gambling service providers. It does not contain details of other relevant legislation that may also be applicable to a commercial. You should always seek your own legal advice.*

The information in this Information Sheet refers to legislation applying to Australian authorised or licensed operators. Unauthorised or unlicensed operators are not able to offer gambling services and accordingly are not able to advertise on television. It is also unlawful for authorised or licensed gambling service providers to advertise a type of gambling they are not authorised or licensed to provide. You should seek advice if you have any concerns regarding your licensing as the penalties for these offences can be significant.

Some of the regulations refer to “publishing” a commercial, which in some cases specifically includes television and in other cases is likely to include on television. The ClearAds Classification Handbook sets out the appropriate time zones for the broadcast of commercials relating to betting and gambling. For more information, please refer to Appendix B: Placement Codes.

This information sheet is split into 3 parts.

1. The first part is a consideration of general restrictions that apply, regardless of where the commercial is broadcast.
2. The second part relates to interactive gambling in any state or territory in Australia.
3. The third part relates to wagering, casinos and gaming machines and contains separate information for each state and territory. Please be aware that in this section some restrictions only apply to a particular type of gambling or gaming.

### General Requirements

Please consider the following general requirements of gambling advertising of any type in any state or territory:

- is the advertiser advertising a type of gambling service they are permitted to provide and if relevant, at a location they are permitted to provide the service?

- does the commercial comply with Appendix 3, Restrictions on Gambling and Betting Promotions in a Live Sporting Event of the *Commercial Television Industry Code of Practice*? For example:
  - does the Commercial contain a Responsible Gambling Message, as required by the relevant State/Territory law (or if not, an acceptable message such as 'Gamble Responsibly')?
  - If the Commercial is intended to be broadcast during a Live Sporting Event, it must not contain a representative of a gambling organisation.
- the Commercial must not:
  - be directed to children
  - portray children as participating in betting or gambling
  - portray betting or gambling as a family activity
  - make exaggerated claims
  - promote betting or gambling as a way to success or achievement
  - associate betting with alcohol.
- the Commercial must:
  - be socially responsible
  - not mislead or deceive the audience.
- is the advertiser subject to any additional advertising restrictions by any state or territory Gambling Authority and if so, are these being complied with?
- does the commercial comply with the Australian Consumer Law including the obligation not to mislead and deceive?

## **Interactive Gambling**

### **Australia wide**

**Summary:** It is illegal to advertise designated interactive gambling services in Australia. Under no circumstances can advertising for a designated interactive gambling service be broadcast in any state or territory in Australia.

**Source of restrictions:** *Interactive Gambling Act 2001* (Cth).

A "designated interactive gambling service" is defined as prohibited interactive gambling services or unlicensed regulated interactive gambling services.

A 'prohibited interactive gambling service' is a gambling service where the service is provided as part of a business to customers using either an Internet service, a broadcasting service, any other content service, or a datacasting service. Exempted from that definition are, for example, services of that nature which are provided by a licensed operator at a particular place, using electronic equipment made available for the use of any customer who is at that place, and not linked with any other service not provided by that licensed operator (i.e. a 'place-based betting service').

Prohibited interactive gambling services include those games that are often described as 'online casinos' and usually involve using the internet to play games of chance, or games of mixed chance and skill. Examples include poker, roulette, craps, online 'pokies' and blackjack but novel and hybrid gambling games are equally covered. From 9 January 2019, to the extent that a service relates to betting on the outcome of any lottery, or a contingency that may or may not happen in the course of the conduct of a lottery (including in a keno-type lottery draw), that service will be a 'prohibited interactive gambling service' under the Commonwealth legislation. An example of a 'contingency' event would include the drawing of a particular number at a particular position, the first three numbers drawn, or the drawing of a particular 'bonus' number.

Wagering on a horse race, harness race, greyhound race or sporting event is *not* interactive gambling even when bets are placed online provided the wagering operator is licensed in Australia. However, 'in-play' betting services (services that relate to betting on a sporting event) after the event has begun, other than for horse, harness or greyhound races) are prohibited. In other events or contingencies, wagering services that relate to betting on a lottery outcome or a contingency that may or may not happen in the course of the conduct of a lottery are prohibited. However, online betting on multiple-day cricket matches, golf tournaments and cycling events is permitted from the end of play or racing on one day to the start of play or racing the next.

A 'telephone betting service' (being a gambling service provided wholly by way of voice calls over a carriage service, involving a spoken conversation between individuals) is exempted from the definition of 'prohibited interactive gambling service', and may be used to provide betting on in-play events. However, if the telephone betting service relates to betting on the outcome of a lottery or a contingency that may or may not happen in a lottery, then it will (from 9 January 2019) be prohibited. Wholesale and trade promotion gambling services are also exempted, though they must be properly licensed under the relevant state or territory laws.

Unlicensed regulated interactive gambling services are those interactive gambling services exempted from the definition of 'prohibited interactive gambling service' where the operator does not hold a licence to conduct that service under the law of the relevant state or territory. These services must not be provided to customers in Australia and must not be advertised.

"Gambling service" is defined broadly and means a service for placing, receiving bets, making or accepting bets, for introducing individuals who wish to make or receive bets, for the conduct of a lottery, for the conduct of a game where the game is played for money or anything else of value, where the game is of chance and/or skill or any other gambling service within the ordinary meaning of that expression.

The prohibition on advertising designated interactive gambling services is broad and includes any material that promotes or gives publicity to an interactive gambling service, interactive gambling services in general, the whole or part of a trade mark in respect of an interactive gambling service, a domain name or URL that relates to an interactive gambling service or any words closely associated with an interactive gambling service.

Exemptions apply where the broadcast of the commercial is an accidental or incidental accompaniment to the broadcasting of other matter and the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the commercial (in addition to any benefit the person receives for broadcasting the other matter).

**Penalty:** up to \$37,800 per offence.

Examples: The following types of television commercials would appear to be prohibited under the legislation:

- a television commercial promoting an online casino, poker website or the domain name or URL that relates to an interactive gaming service.

**Please note:** the ACT and Queensland restrictions are outlined below for completeness. As the Commonwealth Act outlaws all interactive gambling advertising, the reference to the ACT and Queensland Acts is to note that advertising interactive gambling is also regulated under ACT and Queensland law. The Commonwealth Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

## ACT Only

**Source of restrictions:** *Interactive Gambling Act 1998* (ACT).

**Prohibited advertising:** It is prohibited to advertise:

- that premises are available for playing interactive games; or
- an interactive game unless that game is an authorised game.

"Interactive game" means a game in which a prize can be won and a person enters the game through a telecommunications device and the winner of the prize is decided wholly or partly by chance or skill.

An "authorised game" is an interactive game where the Minister has approved a written application for authorisation by a licenced provider.

**Penalty:** \$30,000 for an individual (\$150,000 for a corporation), imprisonment for 2 years or both.

**Prohibited advertising:** It is also prohibited to advertise an authorised game without the approval of the relevant authorised provider.

**Penalty:** \$6,000 for an individual or \$30,000 for a corporation.

### QLD Only

**Source of restrictions:** *Interactive Gambling (Player Protection) Act 1998* (QLD)

**Prohibited advertising:** It is prohibited to advertise:

- that premises are available for playing interactive games; or
- an interactive game in Queensland unless the game is an authorised game.

"Interactive game" means a game in which a prize is offered or can be won and a player enters the game or takes any step in the game through a telecommunications device and the winner of a prize is decided wholly or partly by chance or by a competition or other activity in which the outcome is wholly or partly dependent on the player's skill.

"Authorised game" is an interactive game that a licensed provider is authorised to conduct under the Act such as by receiving the approval of the Minister.

**Penalty:** Maximum \$23,560 or 2 years imprisonment.

- **Prohibited advertising:** It is also prohibited to advertise an authorised game in Queensland without the approval of the relevant authorised provider.

**Penalty:** Maximum \$4,712.

**Requirements:** If advertising an authorised game, you must take reasonable steps to ensure that the commercial:

- is not indecent or offensive;
- is based on fact; and
- is not false, deceptive or misleading in a material way.

**Please note:** While an interactive gambling advert may be permissible under Queensland law, it will not be permissible under the current Commonwealth law.

## Wagering, Casino and Gaming Machines

### Australian Capital Territory

**Summary:** It is permissible to advertise wagering, casinos and gaming machines in the ACT subject to the restrictions outlined below.

#### General restrictions for all licensees

**Source of restrictions:** *Gambling and Racing Control (Code of Practice) Regulation 2002* (ACT)

A "licensee" means a gaming machine licensee, a casino licensee, a licensed provider under the *Interactive Gambling Act 1998*, the holder of a bookmaking licence or ACT TAB Limited.

**Prohibited advertising:** The Code prohibits advertising in the ACT that:

- encourages anyone to contravene a gaming law (e.g. to participate in or arrange unlawful betting, inviting a child to bet, cheating, owning premises used for unlawful gambling, receiving proceeds from unlawful gambling, failing to comply with condition of approval to conduct game);

- shows people under 25 years old gambling;
- encourages or targets people under 18 years old to: make a bet, enter into or take an interest in a bet or to obtain information or advice in relation to a bet;
- is false or misleading, especially about the chances of winning;
- suggests that gambling is a form of financial investment;
- suggests that skill can influence games that are games of chance;
- shows or promotes the consumption of alcohol while gambling;
- requires or encourages people to gamble for a minimum period of time to qualify for rewards;
- includes an offer of free or discounted alcohol; or
- encourages people to gamble a minimum amount to qualify for rewards (unless the licensee is the holder of a sports betting licence under the *Race and Sports Bookmaking Act 2001* or for the promotion of a commission-based player scheme under the *Casino Control Act 2006*).

**Mandatory information:** The Code requires a licensee to publish the name and telephone number of an approved gambling counselling service in the ACT in conjunction with any advertising material.

**Penalty:** The Commission may make directions in relation to an act of non-compliance and a maximum penalty of \$1,150 for an individual and \$7,750 for a corporation, per offence, applies for contravening a direction.

### **Gaming machines licensees only**

The Code prohibits advertising in the ACT that:

- encourages people to increase their frequency of betting at the facility or the amount of each bet;
- offers cash or free or discounted gambling credits, unless the offer of cash or credits is made to all patrons of the facility all of the time as part of the facility's usual or regular prize schedule;

Please note that these restrictions are in addition to the general restrictions above.

Examples: The following types of television commercials would appear to be prohibited in the ACT:

- a television commercial promoting a venue for unlawful gaming or unlawful betting;
- a television commercial depicting a young man who appears to be under the age of 25 engaging in gaming of any kind;
- a television commercial depicting a young woman with friends at a roulette table while the voiceover states: "You'll never lose with [casino name]"; or
- a television commercial depicting cartoon characters playing poker where the nature of the cartoon will appeal to a young audience.

## **New South Wales**

**Summary:** It is permissible to advertise wagering and casinos in NSW subject to the restrictions outlined below. Please pay particular attention to the restrictions around offering inducements to gamble for wagering. It is prohibited to publish any gaming machine advertising.

### **General restrictions for all licensees**

**Source of restrictions:** *Betting and Racing Act 1998 / Totalizator Act 1997 / Casino Control Regulation 2009*

### **Advertising Requirements:**

A gambling advertisement can be broadcast if it complies with the requirements listed in 33H (2) of the *Betting and Racing Act 1998* and has been provided to the broadcaster by a betting service provider (i.e., a bookmaker, a person who operates a totalizator, or a person who operates a betting exchange). The broadcaster will not be liable for any failure to comply with the listed



requirements if the gambling advertisement was in the form provided (directly or indirectly) or approved by or on behalf of a betting service provider for the purposes of its publication or communication unless the broadcaster has been notified by or on behalf of the Minister that the publication or communication of the gambling advertisement may contravene section 33H(2).

The listed requirements are that the gambling advertisement must not:

- encourage a breach of the law;
- depict children gambling;
- be false, misleading or deceptive;
- suggest that winning will be a definite outcome of participating in gambling activities;
- suggest that participation in gambling activities is likely to improve a person's financial prospects (and for a casino - improve a person's social standing);
- promote alcohol consumption while engaging in gambling activities;
- be published in a manner that is not in accordance with decency, dignity and good taste or the Code; or
- offer any free or discounted liquor as an inducement to participate in gambling activity.

**Penalty:** Various penalties up to a maximum of \$11,000.

#### **Wagering only**

**Source of restrictions:** *Betting and Racing Act 1998 / Totalizator Act 1997*

- offer any inducement to participate, or to participate frequently, in any gambling activity, including inducing a person to open a betting account, irrespective of whether the offer is available to persons in NSW.

**Penalty:** Various penalties up to a maximum of \$11,000.

**Source of restrictions:** *Betting and Racing Act 1998 / Totalizator Act 1997*

- publish gambling advertising during a sporting fixture (including during any breaks in the fixture) where the advertising relates to that fixture and where there is a sport controlling body for the sporting event. This prohibition does not apply to an extended sporting fixture (a fixture scheduled to take place over a period exceeding 4 hours or which takes place on multiple days) unless the Minister has prescribed otherwise in the public interest.

**Penalty:** Various penalties up to a maximum of \$5500

#### **Casino only**

**Source of restrictions:** *Casino Control Regulation 2009*

- suggest that a player's skill can influence the outcome of a game that is purely a game of chance.

**Penalty:** Various penalties up to a maximum of \$11,000.

#### **Gaming Machines only**

**Source of restrictions:** *Gaming Machine Act 2001*

It is prohibited to publish any gaming machine advertising.

"Gaming Machine Advertising" means any form of advertising that gives publicity to or promotes the playing of approved gaming machines in a hotel or registered club, or the supply, sale or manufacture of an approved gaming machine.

**Exceptions:** It is not prohibited to publish gaming machine advertising if it is:

- conducted by or on behalf of the State Government in relation to problem gambling; or

- accidentally or incidentally included in a commercial and the person publishing it does not receive any direct or indirect benefit for specifically publishing the gaming machine advertising.

Publishing the corporate name or logo of a corporation that holds a gaming machine dealer's licence, in itself, is not prohibited under the *Gaming Machine Act 2001*.

**Penalty:** \$11,000.

Examples: The following types of television commercials would appear to be prohibited in NSW:

- any commercial for a gaming machine;
- a commercial for a casino which suggests that a person's skill can influence a game of chance.

## Northern Territory

**Summary:** It is permissible to advertise wagering, casinos and gaming machines in NT subject to the restrictions outlined below.

### General restrictions for all licensees

**Source of restrictions:** *Code of Practice for Responsible Gambling 2016/Northern Territory Code of Practice for Responsible Online Gambling 2016*

The mandatory Code of Practice for Responsible Gambling 2016 applies to providers of gambling services in the Northern Territory. Under the Code, gambling providers must ensure that any advertising or promotion:

- is delivered in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling;
- complies with the Advertiser Code of Ethics as adopted by the Australian Association of National Advertisers or The Communications Council;
- complies with the Commercial Television Industry Code of Practice (television advertising);
- is not false or deceptive;
- accurately details prizes on offer and the game results available;
- does not give the impression that gambling is a reasonable strategy for financial betterment;
- is not implicitly or explicitly directed at minors or portrays minors participating in gambling;
- does not advertise individual winnings unless done so within the gambling provider's premises;
- does not verbally urge non-gambling customers or residents to buy gambling products; and
- does not depict or promote the consumption of alcohol when engaged in gambling activities.

**Penalty:** \$2,120.

Examples: The following types of television commercials would appear not to comply with the Code of Practice:

- a television commercial which depicts a person who appears under the age of 18 years playing a poker machine; or
- a television commercial which depicts people winning from gambling with a voice-over that states "You'll win every time you play".

### Totalisators only

**Source of restrictions:** *Totalisator Licensing and Regulation Act (NT)*

- A licensee must not be involved in any advertising relating to the conduct of wagering that is:
- indecent or offensive; or
- false or misleading in a material particular

**Penalty** \$7,650



## **Gaming Machines only**

**Source of restrictions:** *Gaming Machine Regulations 1995* (NT)

**Prohibited advertising:** A person who advertises shall also ensure that a commercial is factual and not indecent or offensive and does not contain an inducement to engage in gaming or any material as determined by the NT Director of Licensing to be an inducement to engage in gaming.

**Prohibited advertising:** A person who advertises shall ensure that a commercial:

- is not indecent or offensive;
- based on fact; and
- not false, deceptive or misleading.

An inducement to engage in gaming includes:

- an offer of transport to licensed premises, whether or not a charge applies;
- an offer of free or discounted rates for:
  - accommodation;
  - meals, refreshments, liquor or other amenities; or
- an offer of:
  - gaming tokens to play a gaming machine; or
  - an offer of jackpots or other prizes or gifts that are not available to a person in the normal course of playing a gaming machine; or
- any material which a NT Director considers to be an inducement to engage in gaming.

**Exception:** The prohibition relating to an inducement does not apply to gaming in a casino.

**Penalty:** A maximum of \$6,120.

**Code of Practice for Responsible Online Gambling:** The Northern Territory has recently launched a new Code of Practice for Responsible Online Gambling. The codes set out mandatory minimum requirements which will come into effect on 1 March 2016.

**Source of restrictions:** *Northern Territory Code of Practice for Responsible Online Gambling 2016*.

The mandatory Code of Practice for Responsible Online Gambling applies to all online gambling including web-based, app and telephone betting on any platform such as computers, tablets and smartphones. Under the Code, gambling providers must ensure that any advertising or promotion:

- is delivered in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling;
- complies with the Advertiser Code of Ethics as adopted by the Australian Association of National Advertisers or The Communications Council;
- complies with the Commercial Television Industry Code of Practice (television advertising);
- is not false or deceptive;
- accurately represents and clearly defines the terms and conditions associated with the promotions, bonus offers, competitions etc;
- contain appropriate problem gambling warning messages in a clearly visible manner;
- does not give the impression that gambling is a reasonable strategy for financial betterment (i.e. advertisements should centre on entertainment purposes);
- must not be directed at minors or portray minors participating in gambling;
- does not depict or promote the consumption of alcohol while gambling;

- does not advertise winnings other than on the online gambling provider's own site. Generic messages such as 'Players have won more than \$1m this month' may be advertised in places other than the operator's website (but not to minors); and
- does not urge non-gambling customers to use their gambling services.

**Penalty:** A maximum of \$13,000.

## Queensland

**Summary:** It is permissible to advertise wagering, casinos and gaming machines in QLD subject to the restrictions outlined below.

### General restrictions for all licensees

**Source of restrictions:** *Wagering Act 1998, Casino Control Act 1982, Gaming Machine Act 1991*

You must ensure that advertising:

- is not indecent or offensive;
- is based on fact;
- is not false, deceptive or misleading in a material way; and
- is stopped or changed where a direction is received from the chief executive.

**Penalty for wagering advertising:** \$2,356

**Penalty for casino and gaming machine licensees:** \$23,560

### Gaming Machines only

**Source of restrictions:** *Gaming Machine Regulation 2002*

**Requirements:** A licensee must ensure that gaming does not dominate a commercial for licensed premises.

Examples: The following types of television commercials would appear to be prohibited in Queensland:

- a television commercial where gaming dominates.

### Queensland Responsible Gambling Code of Practice

This Code of Practice is a voluntary code which provides that the gambling industry must ensure that any advertising or promotion:

- complies with the Advertiser Code of Ethics as adopted by the Australian Association of National Advertisers;
- is not false, misleading or deceptive;
- does not implicitly or explicitly misrepresent the probability of winning a prize;
- does not give the impression that gambling is a reasonable strategy for financial betterment;
- does not include misleading statements about odds, prizes or chances of winning;
- does not offend prevailing community standards;
- does not focus exclusively on gambling where there are other activities to promote;
- is not implicitly or explicitly directed at minors or vulnerable or disadvantaged groups;
- does not involve any irresponsible trading practices by the gambling provider;
- does not depict or promote the consumption of alcohol while engaged in the activity of gambling;
- has the consent of the person prior to publishing or causing to be published anything which identifies a person who has won a prize; and

- incorporates, where appropriate, positive responsible gambling messages, such as "Keep gambling enjoyable—gamble responsibly", "Have fun and play responsibly", "Bet with your head, not over it".

Examples: The following types of conduct would appear not to comply with the Code in Queensland:

- a television commercial which depicts people winning at a gaming machine in a manner which exaggerates the chances of winning;
- a television commercial which depicts the images of previous jackpot winners without previously obtaining their consent; or
- a television commercial promoting a hotel, gaming and tourism convention which focuses on gaming machines to a degree disproportionate to the other elements of the convention.

## South Australia

**Summary:** It is permissible to advertise wagering, casinos and gaming machines in South Australia subject to the restrictions outlined below. Please take note of the very specific prohibitions discussed below. It is a licence condition that a gambling provider must comply with the Gambling Codes of Practice Notice 2013.

**Source of restrictions:** *Gambling Codes of Practice Notice 2013*

### General restrictions for all licensees

South Australia has the mandatory Gambling Codes of Practice Notice 2013 that applies to different categories of gambling providers:

- Bookmakers;
- SA TAB;
- Casino;
- Licensed Racing Clubs;
- Gaming Machine Venues;
- Interstate Betting Operators; and
- (for completeness - the Lotteries Commission. Please note that lotteries are not covered by this Information Sheet.)

The Codes also apply to agents of these gambling providers (for example, providers of lottery or TAB services).

For people other than gambling providers, "indirect liability" is limited to "matters within the reasonable control of the third party and in respect of which the third party has received payment or some other form of valuable consideration (including an agreement to purchase advertising)".

Gambling advertising:

- must comply with relevant industry codes of practice (whether mandatory or voluntary);
- must comply with applicable State and Federal laws;
- must not encourage a breach of the law;
- must not depict children gambling;
- must not be false, misleading or deceptive;
- must not suggest that winning will be a definite outcome of participating in gambling activities;
- must not suggest that participation in gambling activities is likely to improve a person's financial prospects;
- must not promote the consumption of alcohol while engaging in gambling activities;
- must be published in accordance with decency, dignity and good taste;

- must not offer any credit, voucher or reward as an inducement to participate, or to participate frequently, in any gambling activity (including as an inducement to open a gambling account). However, a gambling provider may draw attention to the name of the loyalty program and its availability to customers of the gambling provider, or a prize that is being offered as part of a trade promotion lottery;
- must not make claims relating to winning or the prizes that can be won which are not based on fact, unable to be proven or exaggerated;
- in relation to non-skill gambling must not suggest that a player's skill can influence the outcome of a gambling activity;
- in relation to skill gambling, must not exaggerate the extent to which skill can influence the outcome of gambling activity;
- must not include sounds of or sounds suggestive of coins landing in a tray of a gaming machine; and
- must not include "win" or "\$" (or anything analogous), except in relation to a particular prize which is payable, or a reasonable approximation or estimate of a prize which can be won.

#### Prize promotions

If gambling advertising refers to, or relies on, the value or nature of one of the prizes which are available to be won (whether money or not) or the frequency with which the prize might be won, the advertising:

- must include sufficient information to allow a reasonably informed person to understand the overall return to player or, if the product does not have one, the odds of winning; and
- must, if the advertising is intended to encourage a person to gamble during a particular period, include sufficient information to allow a reasonably informed person to appreciate how likely it is that the prize will be won by someone during that period.

#### **Mandatory warning messages for gambling advertisements on television**

##### Advertisements

- **An advertisement longer than 15 seconds** - must include the expanded gambling warning message.
- **An advertisement 15 seconds or shorter** - must include the expanded gambling warning message unless it would not be reasonable or practicable. In which case, the condensed warning message (i.e. "Gamble Responsibly.") must be included.

**If the advertisement includes a plug other than celebrity commentary** - must feature the superimposition, for the duration of the plug, of the condensed warning message and the national gambling helpline number 1800 858 858.

**If the advertisement includes celebrity commentary** - must include the person expressly or impliedly representing the gambling provider mentioning the national gambling helpline number 1800 858 858.

**If the advertisement includes the presence of a logo on screen** (other than as part of a television commercial which includes a mandatory warning message) - must include the placement of the condensed warning message adjacent to the logo, occupying no less space than that occupied by the logo.

For a gambling advertisement (but not a plug including celebrity commentary or presence of logo on screen (unless as part of a television commercial)), the mandatory warning message must:

1. occupy at least 25% of the screen area for at least one-sixth of the length of the advertisement; or
2. occupy the whole of the screen area for at least one-tenth of the length of the advertisement; and
3. the message must be spoken in a neutral tone at the same time as it appears on the screen.

The correct expanded warning message changes according to the table below. After 30 June 2018 repeat from the beginning at 6 month intervals.

<b>Expanded warning message</b>	<b>First relevant period</b>
Don't let the game play you. Stay in control. Gamble responsibly.	1 July 2018–31 December 2018
Stay in control. Leave before you lose it. Gamble responsibly.	1 January 2019–30 June 2019
You know the score. Stay in control. Gamble responsibly.	1 July 2019–31 December 2019
Know when to stop. Don't go over the top. Gamble responsibly.	1 January 2020–30 June 2020
Think of the people who need your support. Gamble responsibly.	1 July 2020–31 December 2020
Don't chase your losses. Walk away. Gamble responsibly.	1 January 2021–30 June 2021

The manner of inclusion of the mandatory warning message must be consistent with the message being a warning message.

### Dispensations

The Independent Gambling Authority (IGA) can provide the following dispensations:

- dispensation from the television blackout (4:00pm - 7:30pm Monday to Friday) if the IGA is satisfied that the advertising will not be incompatible with family time or that the dispensation is otherwise in the public interest.
- dispensation from some of the restrictions outlined above if the IGA is satisfied that a regulatory requirement of another State or Territory in which the gambling provider advertises presents a suitable alternative.
- a time limited or transitional dispensation from the application of a new requirement or obligation.

Dispensation can be provided on the application of a gambling provider or an agent of a gambling provider, or on the initiative of the IGA. Dispensations may be sought for the benefit of a class of gambling providers or for the benefit of gambling providers generally.

### **Penalty:**

- IGA enforcement actions and fine of up to \$100,000 where the licensee fails to observe or carry out IGA directions.

Examples: The following types of television commercials would appear to be prohibited in South Australia:

- a 30 second television commercial which does not contain the correct expanded gambling warning for the required period of time; or
- a television commercial which depicts a person winning at a gaming machine and then buying a luxury car; or
- a television commercial where the voiceover states "win almost every time" or which otherwise exaggerates the chances of winning; or
- offering deals/ specials involving both alcohol and gambling; or
- a television commercial that uses the sound of coins landing in the tray of a slot machine.

### **Management Plans**

The requirements relating to mandatory messages for gambling advertisements of television in the Code are variable by management plan. These provisions include the 25% rule for the presentation

of the mandatory warning message on television, which is regarded by the IGA as a critical feature of the regulatory regime.

The IGA has issued *Management Plans (Clause 22) Guidelines* in respect of their key expectations when gambling providers are proposing to place additional responsible gambling messaging under a management plan:

- responsible gambling advertising should represent at least 10% of the advertisement;
- where more than one gambling product is advertised in a 24 hour period, there should be at least 2 instances of responsible gambling messaging;
- responsible gambling messages should be refreshed or renewed every 6 months;
- responsible gambling messaging should be unbranded (although the gambling provider's name may be discreetly included in the end panel of the television commercial);
- the product advertising will still need to carry mandatory warning messaging meeting, at a minimum, the regulatory requirements of another jurisdiction where it is aired;
- should include the national gambling helpline number 1800 858 858 (must be legible and onscreen for a significant part of the advertisement);
- advertisers should be able to demonstrate that the content of responsible gambling messaging and its timing will be directed to the target group of the product advertising; and
- advertisers are advised to liaise with the Office for Problem gambling before filing a management plan proposing a variation and to anticipate a turnaround time of 30 days.

### **Wagering Only**

**Source of restrictions:** *Authorised Betting Operations Act 2000, Gambling Codes of Practice Notice 2013*

An authorised interstate betting operator must ensure that advertising in South Australia by the operator complies with the Gambling Codes of Practice Notice 2013 (sections relevant to television advertising are set out above).

"Interstate betting operator" means a person who holds a licence or other authority issued by the Commonwealth or another State or Territory authorising the holder to conduct betting operations in that State or Territory, or a Commonwealth, State or Territory statutory body established for the purpose of conducting betting operations in that State or Territory. An "authorised interstate betting operator" is an interstate betting operator who has given to the IGA a notice of intention to conduct or cease betting operations.

**Penalty:** If a licensee or authorised interstate betting operator breaches the Act or a condition of its licence, the IGA may exercise powers which include issuing a compliance notice or taking disciplinary action, including financial penalties, suspension or cancellation or variation of a licence. A fine of up to \$100,000 may be imposed where the licensee fails to observe or carry out IGA directions.

### **Prohibition of Broadcasting Live Odds**

**Source of restrictions:** *Gambling Codes of Practice Notice 2013*

Broadcast of commercials in South Australia containing live odds or 'in the run betting' for an event is prohibited at particular times once the relevant event has started.

These rules apply unless the advertisement is placed in a live sporting broadcast in a manner which complies with the *Free TV Commercial Television Industry Code of Practice* (the Code).

Subject to the foregoing exception, the live odds prohibition applies during specific **time periods** in relation to **specific types of advertisements**:

The types of advertisements that are prohibited are those that promote betting on:

- A contingency as to the outcome of a particular event (eg predicting the winner of a match or winning margin);

- A contingency which is dependent on the holding of a particular event (eg the leader at half-time, first try scorer, number of kicks, possessions achieved by a player);
- Betting on a contingency which is dependent on the outcomes of particular multiple related events or rounds of events (a tournament) (eg winner of a series, whether a team will make the finals series, whether a team will win an annual competition)

AND

- Quote a price; or
- Draw attention to the time period in which the form of gambling is available; or
- Draw attention in any way to the availability of the form of gambling; or
- Otherwise encourage the betting.

If an advertisement does contain this content, then placement restrictions will apply depending on the event and the nature of the promotion.

The **time period** during which these advertisements **cannot be shown** depends on the particular event or events to which the bet relates as follows:

Event which is the subject of the bet being advertised	Time period of prohibition	What is this intended to Address?
If the event is completed in a single period of 24 hours.	Any time after the commencement of the event.	Live odds on the outcome of any game cannot be advertised once play has commenced.
If the event is scheduled to be completed over more than one period of 24 hours and the contingency relates to the actual outcome of the event.	Any time after the commencement of the event during the 24 hour period in which the <u>event is scheduled to conclude</u> .	Live odds on the outcome of extended games such as a 5 day test cricket match cannot be advertised after the start of play on the fifth day.
If the event is scheduled to be completed over more than one period of 24 hours and the contingency does not relate to the actual outcome of the event.	Any time between the commencement of the event in a particular period of 24 hours and the end of the event in that period.	Live odds such as the identity of first scorer in an event, wickets achieved by player, whether the event will conclude early.
If the event is a tournament	The commencement of the related event or round of events (as the case requires) by or in which the relevant contingency will be determined.	Live odds such as a player reaching the semi-finals of a tournament could not be advertised after the start of the player's quarter-final round match.

These restrictions are in addition to the restrictions on broadcasting gambling advertisements between 4:00pm and 7:30pm, Monday to Friday unless on a dedicated sports channel.

## Tasmania

**Summary:** It is permissible to advertise wagering, casinos and gaming machines in Tasmania subject to the restrictions outlined below.

### General restrictions for all licensees

**Source of restrictions:** *Responsible Gambling Mandatory Code of Practice*

The Code contains the following mandatory provisions to ensure that advertising of gambling products:

- comply with the Code of Ethics adopted by the Australian Association of National Advertisers.
- be socially responsible and consistent with the expectation that gambling will be conducted responsibly so as to minimise harm.
- not be offensive or indecent in nature, and not offend prevailing community standards.
- not be false, misleading or deceptive, including not misrepresenting the odds, the probability of winning a prize, or the prizes that can be won.
- not give the impression that gambling is a reasonable strategy for financial betterment or enhancing social situation.
- not challenge or dare a person to play.
- not suggest that skill can influence games that are games of chance.
- not encourage or target people under 18 years of age to gamble.
- not show or promote the consumption of alcohol while engaged in the activity of gambling.

Any gambling advertising that shows the incidental consumption of alcohol in a gambling venue must reflect responsible customary behaviour and must be accompanied by a message which highlights the dangers of gambling whilst intoxicated.

This does not apply to advertising that shows celebrating a win in a responsible manner outside of a gambling venue.

- not show people who are under 25 years of age in gambling advertising unless:
- their appearance is incidental as part of a natural situation; and
- they are not located in a gambling venue; and
- there is no implication that the person will participate in gambling.

This does not apply to a person engaged to advertise or promote gambling as part of a sponsorship agreement, however the person must be over 18 years of age and must not be shown participating in gambling.

- not be directed at vulnerable or disadvantaged groups, where people may not have a capacity to fully understand the information, such as refugees or people with intellectual disabilities.
- not procure, incite or encourage a person to commit an offence.
- include responsible gambling messages (licence holders are able to choose their own responsible gambling message) in all media (including internet) advertising that incorporates the name and telephone number for the Gambling Helpline, to a size and form which meets the requirements of the Tasmanian Gaming Commission Gambling Product Advertising Standards document. Please refer to the additional guidance set out below for this requirement.
- not be directed at, or provided to, excluded persons.
- not involve irresponsible trading practices.
- not violate the confidentiality of information relating to, or the privacy of, players without the consent of the player.
- not occur on television between:
  - a) 6:00 am - 8:30 am and 4:00 pm - 7:00 pm weekdays; and
  - b) 6:00 am - 8:30 am and 4:00 pm - 7:30 pm on weekends.

The following forms of advertising are exempt from the above periods:

- advertising during a racing or sports broadcast; and
- advertising that focuses specifically on entertainment or dining facilities and does not depict or refer to gambling in any way.



- sounds associated with gaming machine operation must not be included in any television advertising.

### **Responsible Gambling Message**

The Code has also been supplemented by the *Tasmanian Gaming Commission Gambling Product Advertising Standards (TGCAS001)*.

In addition to the requirement for a television commercial to include a responsible gambling message, TGCAS001 provides that television commercials must also include the words "Gamblers Help" and the national helpline telephone number (1800 858 858). The message must be legible and onscreen for a reasonable period of time. The Fact Sheet accompanying the Standards also provides that the message must be displayed clearly and of a size that is appropriate and sufficiently prominent. Examples demonstrating the appropriate display of the responsible gambling message are provided in the Fact Sheet. A copy of the Fact Sheet is available at the Tasmanian Treasury website <http://www.treasury.tas.gov.au>. We suggest searching on the Tasmania Treasury website for *Tasmanian Gaming Commission Gambling Product Advertising Standards (TGCAS001)* as its exact URL may change.

## **Victoria**

**Summary:** It is permissible to advertise wagering and casinos in Victoria subject to the restrictions outlined below. It is not permissible for a casino or anyone else to advertise gaming machines.

### **General restrictions for all licensees**

**Source of restrictions:** *Gambling Regulation Act 2003 (including the changes contained in the Victorian Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014)*

This Act prohibits advertising unauthorised gambling and otherwise regulates gambling advertising in Victoria. The summary below sets out the prohibitions that apply to gambling advertising and the applicable penalties.

**Prohibited advertising:** The Act prohibits:

- Publishing, or causing to be published, any advertising that contains any information, term, expression, symbol or other thing associated with unauthorised gambling. The concept of unauthorised gambling is broad and includes betting that is not authorised by the Act or another act (Penalty: \$14,761.00);
- publish includes disseminate in any way, whether by oral, visual, written or other means (for example, dissemination by means of cinema, video, radio, electronics, the internet or television or by means of promotional material such as club journals, brochures or flyers);
- publishing any gaming machine advertising outside the gaming machine area of an approved venue or the boundaries of a casino (Penalty: \$17,713.20);
- entering into or extending the duration of any contract or arrangement for the publication of such gaming machine advertising set out above (penalty: \$17,713.20);
- encouraging a breach of the Act; depiction of children wagering or involved in any other form of gambling; suggesting that winning will be a definite outcome of participating in wagering or sports betting activities; suggesting that participating in wagering or sports betting activities is likely to improve a person's financial prospects; promoting the consumption of alcohol while engaged in wagering or sports betting activities; or is offensive (Penalty: \$2,952.20);
- advertisements that fail to contain a prescribed statement (responsible gambling message) in relation to problem gambling (Penalty: \$2,952.20)
- a wagering service provider offering any credit, voucher or reward as an inducement to open a betting account (Penalty \$2,952.20)

**Exceptions:** The prohibition does not apply where the advertisement is by a licensed wagering operator and relates to:

- a horse, greyhound or harness race; or

- an event on which a betting competition has been approved by the Victorian Commission for Gambling Regulation.

A list of betting competitions which have been approved by the Victorian Commission for Gambling Regulations is available at: <http://www.vcglr.vic.gov.au/>.

**Source of restrictions:** *Responsible Gambling Code of Conduct* approved by the VCGLR.

Each gambling licensee must have a Responsible Gambling Code of Conduct approved by the VCGLR. A Code must include advertising restrictions. A breach of licensee's Code may result in disciplinary action including the cancellation or suspension of the licence, variation of the terms of the licence, a letter of censure or a fine.

### **Restrictions for venue and casino operators:**

**Source of restrictions:** *Gambling Regulation Act 2003*

Gaming machine commercials are prohibited. A gaming machine commercial means any commercial that promotes or is intended to promote the playing of gaming machines. It does not include information about problem gambling or technical information relating to the operation of a gaming machine. Please note that the Crown Casino logo in and of itself does not make a commercial a gaming machine commercial.

**Penalty:** \$17,713.20

Examples: The following types of television commercials would appear to be prohibited in Victoria:

- any television commercial for gaming machines

## **Western Australia**

**Summary:** It is permissible to advertise wagering, casinos and gaming machines in WA subject to the restrictions outlined below. Please pay particular attention to the restrictions around offering inducements to gamble for wagering.

### **General restrictions for all licensees**

**Source of restrictions:** *Gaming and Wagering Commission Act 1987, Gaming and Wagering Commission Regulations 1988, Rules of Wagering 2005*

A commercial must not:

- procure, incite or encourage a person to commit an offence;
- show a child gambling or at a place where gambling is, or is depicted as, occurring;
- be false, misleading or deceptive;
- suggest that every bet placed with, or placed or accepted through the operator will be successful;
- offers a benefit, consideration or reward in return for the person:
  - participating in gambling;
  - continuing to gamble; or
  - opening a betting account with the operator; or
  - referring another person to the gambling operator.

However, these restrictions don't apply to a trade promotion lottery provided by the gambling operator or where the benefit is in the form of a dividend paid by the gambling operator. Guidelines issued by the responsible WA Department indicates that "dividend paid by the wagering operator" refers to the dividend paid by the operator on a single bet and could include conditions relating to the single bet such as a limit on the size of the bet, a conditional refund or credit (say if a horse wins a place but the bet was for a win). However, if the gambling operator adds special conditions to the payment, for example, related to the number or value of other bets or results, the amount paid will not be regarded as a dividend.

- contains an express or implied inducement for a person to contact the gambling operator other than in relation to food, accommodation or other non-gambling goods offered by the gambling operator;
- offers a person free or discounted liquor.

The broadcaster will not be liable for any failure to comply with the listed requirements if the broadcaster has written approval to publish the advertisement from the gambling operator (regulation 43(2A)(b)).

If a gambling operator publishes or cause to be published, a commercial that conveys or is likely to be understood as conveying, the existence of a gambling operator, he or she must include in the commercial:

- the telephone number of the national problem gambling helpline: 1800 858 858; and
- details of the:
  - National Problem Hotline Website: <http://www.gamblinghelponline.org.au/>

Advertisers should check that those details have not changed at the time they are to broadcast a commercial.

**Penalty:** \$1,000.

Examples: The following types of television commercials would appear to be prohibited in Western Australia:

- a commercial for a bookmaker which provides a bonus \$50 when a person establishes a betting account.

## **Wagering Only**

**Source of restrictions:** *Rules of Wagering 2005*

- any racing or wagering information or advertising published in association with the internet wagering service provided by a bookmaker authorised to conduct wagering via the internet, is not to contravene the laws of any other State or Territory of Australia.

## Producing a TVC which promotes Legal Services

The following points need to be considered when producing a television commercial promoting legal services:

### General

A lawyer may advertise a legal practice provided the content of the commercial is not false, misleading or deceptive.

### Claims to be a specialist

A lawyer may not advertise as a specialist in a particular area of practice unless they hold the appropriate qualifications.

Under the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015<sup>1</sup>, which apply in NSW, Victoria and the ACT, and under conduct rules that apply in WA<sup>2</sup>, QLD<sup>3</sup> and SA<sup>4</sup>, advertising that uses the words "accredited specialist" or a derivative of those words must only be used by solicitors who are accredited in the relevant specialty by their relevant professional association.

There are no specific rules relating to the advertising of specialists in Tasmania <sup>5</sup>.

### Personal Injury services

- There is no prohibition on the advertising of personal injury services in NSW, Vic, ACT Tasmania, and SA. The position in NSW and Victoria is governed by under the new Legal Profession Uniform Law across NSW and Victoria.
- Advertising of personal injury services is prohibited in Queensland and restricted in WA and NT:
  - a) In Queensland, under the *Personal Injuries Proceedings Act 2002*, a lawyer or another person must not "advertise personal injury services"<sup>6</sup> on television.
  - b) In Western Australia under the *Civil Liability Act 2002* a lawyer or a person acting for a lawyer must not "publish or cause to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person to make a claim under any Act or law for compensation or damages for a personal injury" or to use the services of any lawyer or firm of lawyers in connection with such a claim.<sup>7</sup>
  - c) In the Northern Territory under the *Legal Profession Act* a lawyer must not publish or cause to be published a statement with the intention that a person make a personal injury claim<sup>8</sup> and engage a legal practice named in the statement for making a claim.<sup>9</sup>

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<sup>1</sup> Rule 36.2

<sup>2</sup> Rule 45(2)

<sup>3</sup> Rule 36.2

<sup>4</sup> Rule 36.2

<sup>5</sup> *Legal Profession Act 2007* (Tas)

<sup>6</sup> A legal practitioner or any other person "advertises personal injury services" by publishing a statement or statements that may be reasonably thought to be intended or likely to encourage or induce a person:

(a) to make a claim for compensation or damages under any Act or law for a personal injury; or

(b) use the services of the practitioner, or a named law practice, in connection with the making of a claim.

<sup>7</sup> Note that limited exceptions to this restriction apply in relation to print advertising, but not to advertising on television.

<sup>8</sup> A claim is defined as "a claim for compensation or damages under an Act or other law for a personal injury".

<sup>9</sup> Note that limited exceptions to this restriction apply in relation to print advertising, but not to advertising on television.

## Workers Compensation services

- There is no prohibition on the advertising of work injury legal services in NSW, Vic, ACT Tasmania, and SA. The position in NSW and Victoria is governed by under the new Legal Profession Uniform Law across NSW and Victoria.
- In relation to NSW, the prohibition on advertising work injury legal services by lawyers in the *Workers Compensation Regulation 2010* has been repealed. Please note s 79 of the Regulation restricts advertising work injury agent services. Agent is defined as a person who acts or holds himself or herself out as willing to act, as an agent for a person for a fee or reward in connection with a claim, but does not include a legal practitioner. The note to Part 16 of the Regulation lists the activities considered to constitute acting as an agent for a person in relation to a claim.
- In Queensland, while there is no specific legislation restricting the advertising of work injury legal services, the restrictions on personal injury advertising in the *Personal Injuries Proceedings Act 2002*, outlined above, will apply equally to the advertising of workers compensation services. Advertisements will be considered personal injury advertisements when they say or suggest or imply that a lawyer or law firm provides services by using words or images that refer to injuries or accidents or slips and trips and falls or worker's compensation or work related illnesses or other like words and images.
- In Western Australia, while there is no specific legislation restricting the advertising of work injury legal services, such services will be covered by the prohibition on the advertising of personal injury services in section 17 of the *Civil Liability Act 2002*, outlined above.
- Similarly, in the Northern Territory, workers compensation services will fall within the definition of "personal injury" for the purposes of the *Legal Profession Act* and be subject to the same restrictions.

Refer: Individual State Legal Practitioners Acts, Regulations and Professional and Conduct Guidelines

## Producing TVCs which promote Mobile Premium Services

### Mobile Premium Services

From 1 June 2012, the Mobile Premium Services Code C637:2011 (**Code**) replaces the previous Mobile Premium Services Code C637:2009 (**2009 Code**). The Code applies to all commercials for premium messaging services. This Information Sheet is intended as a summary only of the advertising requirements in the Code. There are other requirements in the Code that may be relevant to you and with which you will need to comply.

The Communications Alliance Limited has also issued Mobile Premium Services Mandatory Information Industry Guidelines G639:2012 (**Guidelines**) to assist organisations in seeking to comply with their obligations under the Code.

### What is a Mobile Premium Service?

The Code sets out a list of terms to define the various types of Mobile Premium Services and suppliers of those services. The terms are specific, and you will need to check them to see whether your service is a Mobile Premium Service, and if so, what type of Mobile Premium Service.

By way of general summary, Mobile Premium Services are mobile services offered to consumers at an additional or "premium" cost. All charges for these services are billed to the customer by the provider of the Mobile Premium Service.

They include premium messaging services, being communications delivered or carried by a mobile or telecommunications service (or Carriage Services) and broadcasting services or any on-line information, entertainment or other services (or Content Services) which are delivered to customers through a call to a number with a predetermined prefix (eg 191, 193, 194 etc).

### Which services does the Code apply to?

The Code only applies to premium messaging services and not proprietary network services. Proprietary network services are services provided by a mobile carrier that enable customers of that carrier only to access, by way of a mobile device, a premium content service that is not otherwise generally available. Proprietary network services are regulated under the Telecommunications Consumer Protection Code.

### Who does the Code apply to?

The Code applies to Carriage Service Providers and Content Service Providers in Australia. These providers must comply with the Code if they are engaged in the following activities:

- carrying on a business as a mobile or telecommunications provider;
- supplying Content Services using a mobile or telecommunications service located in Australia; or
- supplying goods or services for use in connection with the supply of a mobile or telecommunications service located in Australia.

The Code does not apply to matters covered by codes or standards registered or determined under the *Broadcasting Services Act 1992* (Cth).

### How is the Code enforced?

The Code is registered with and enforceable by ACMA. ACMA may direct suppliers of Mobile Premium Services who are subject to the Code to comply with the Code.

### Which rules regulate other premium telephone services?

The Code of Practice for Infocall 190 Services regulates advertising and promotion of premium rate services. These are information services charged at a premium rate which are accessed by using

a telephone number starting with a prefix of 190 (eg 1900, 1901 and 1902 numbers). Calls to these services can be via a fixed line service or mobiles. Further information on the Code is available at [Code of Practice for Infocall 190 Services](#)

*A full list of acronyms and definitions is attached as Annexure A.*

## **Rules that apply to commercials for premium messaging services**

### **What information must the commercial include?**

Commercials must be clear, legible or audible (if applicable), and use plain language and include prominent and up to date information about:

- any fees charged by the supplier for the supply of a mobile premium service, including any fees incurred on sign-up and the basis for calculating these fees (eg the amount charged per message and how often the customer will be charged);
- if applicable, whether the advertised service is a Subscription Service (ie whether the service delivers content on an ongoing or periodic basis, and not only on one single instance);
- any Data Fees charged by an End Carriage Supplier (eg Telstra, Optus or Vodafone) for the supply of mobile internet data;

**Some examples** from the Guidelines of a clear reference to Data Fees that the customer will have to pay include: "\$3 plus standard SMS rates" and "data carriage charges also apply".

- the Content Supplier's customer support helpdesk number;
- how to unsubscribe from a Subscription Service (if applicable);
- any limitations on the offer, eg if the offer is for a limited period, in a limited quantity, or only available to a limited class of customers; and
- any fees charged to the customer for replying to marketing, prompt or inducement message sent as part of the premium messaging service.

**For example:** An offer will not be up to date, and should not be advertised, if the offer has expired or a different offer has replaced it.

In addition, commercials for premium messaging services must:

- display the Short Code (defined in Annexure A) for at least 10 seconds; and
- only imply that the premium messaging service is supplied or endorsed by a particular End Carriage Supplier or Aggregator if that is true.

### **How should the information be displayed?**

Information about the premium messaging service must be displayed in a clear, prominent and legible or audible (as applicable) manner, that is:

- in the same orientation and direction as the Short Code or subscription number;
- at the same time as, and for the same duration as, the Short Code or subscription number; and
- displayed for long enough to allow the average person to read, hear and understand the information, keeping in mind the relevant audience that will be viewing the commercial - it is recommended that each word should be displayed for a minimum of 0.2 seconds and each set of 5 words or less should be displayed for a minimum of 2 seconds.

**For television commercials**, this information must be displayed in a manner that:

- contrasts with the background of the commercial, keeping in mind that moving text, fading text and certain colour combinations make text harder to read; and
- is easily comprehensible and on screen long enough for an average viewer to read all text.

**Pricing information** must:

- be displayed in a prominent and highly visible manner in the visual part of the commercial;



- be displayed in a font size that is at least 50% of the font size of the Short Code; and
- include any sign-up cost and the basis for calculating charges for a Premium Messaging Subscription Service (eg the charge per message).

### Special rules about proximity

An advertiser must display information about:

- fees charged for the supply of a premium messaging service; and
- (if applicable) whether the advertised service is a Subscription Service, in "sufficient proximity" to the Short Code.

For Subscription Services, an advertiser must:

- state that the advertised service is a Subscription Service; and
- display this statement in "sufficient proximity" to any information on fees charged for the subscription service.

### What is sufficient proximity?

Information will be deemed to be displayed within "sufficient proximity" to the Short Code or other information (as applicable) if:

- the information is included in the visual components of a commercial;
- the information is placed directly above, below or on either side and within three line breaks of the Short Code or the other information; and
- there is no intervening text or graphics between the two pieces of information.

Note: This description of "sufficient proximity" in the Code does not limit the ways in which commercials can comply with the Code. Rather, it indicates a particular way of complying with the proximity requirements that will be deemed to comply with the Code.

## Additional rules that apply to commercials for premium messaging Subscription Services

### What information must the commercial include?

In addition to all the rules above, commercials for premium messaging Subscription Services must also:

- clearly state whether, by subscribing, the customer is also consenting to their details being included in a marketing database;
- clearly and prominently state that the offer is for a Subscription Service;
- clearly and prominently include any fees charged by the supplier for the supply of the service, including any fees incurred on sign-up and the basis for calculating these fees (eg the amount charged per message and how often the customer will be charged);
- display pricing information close to the statement that the offer is for a Subscription Service. This is intended to make it sufficiently clear that the fees charged relate to a Subscription Service;
- include details of the "STOP" Message;
- include information about how the customer can opt-out of receiving marketing material; and
- include the word "subscription" or "subscribe" in a prominent and highly visible manner in all visual elements of the commercial. For a **television commercial**, this means for the same amount of time as the Short Code is displayed, and in a font size that is at least 50% of the font size of the Short Code and in a voice over for the commercial.



**Here is an example** from the Guidelines of how to include some of the required information in a commercial for a Subscription Service:

"Subscription service costs \$5 to subscribe and \$2 per message sent. 5 messages per month. To unsubscribe send STOP to 17X. Further information is available at [www.17X.com.au](http://www.17X.com.au). Content Supplier is 1717. Contact 1717 for customer help and support."

**Here are some examples** from the Guidelines of how to include information in a commercial about the basis for calculating charges for a Subscription Service:

- "Subscription service: \$5 per message, 2 messages each week (\$10 weekly)."
- "Subscription service: \$5 on sign-up, then 1 x \$5 message each day (\$5 plus \$35 weekly)."
- "Subscription service: \$10 per week plus \$5 on sign-up".

## **Other relevant rules**

### **How should a disclaimer be displayed?**

A disclaimer in a commercial for a premium messaging service must be:

- included as part of the commercial, either visually or aurally;
- displayed next to the offer for the premium messaging service; or
- linked to the offer for the premium messaging service by an asterisked footnote or other symbol.

Disclaimers must also be clearly displayed, keeping in mind the context and the intended audience of the commercial.

### **What should not be included in a disclaimer?**

A disclaimer in a commercial for a premium messaging service:

- must not be inconsistent with, contradict or negate anything in the principal message of the commercial;
- must not introduce a new or additional offer to that in the principal message of the commercial; and
- should not include the types of information that must be specifically displayed in a clear, prominent and legible way (eg information about pricing and Data Fees - see above).

### **What information must be included about special offers, customer savings or benefits?**

A commercial for a special offer to give a discount or rebate from standard fees must include specific details about:

- any conditions or limitations on the offer;
- any future start date of the offer; and
- the end date of the offer.

A commercial that makes a claim about customer savings must include specific details about how the savings are calculated, including the service or rate used as the basis for calculating the savings.

A commercial that offers any benefits (such as credits, free services or free products) must clearly state any conditions or limitations on the customer's ability to access and use the benefits.

### **When can a service be described as "free"?**

A commercial that offers a premium messaging service as "free" must:

- truly be 100% free - the offer must not be subject to any charge, fee or cost other than regular Data Fees and the price of any other products or services accompanying the free service must not be inflated to cover some or all of the offer described as "free";

- clearly identify those parts of the offer that are free, particularly if other parts of the offer are not free; and
- clearly state any conditions on supplying the service as free, eg if the free offer is conditional on the customer purchasing another service.

**For example:**

If a premium messaging service that is a subscription service does not usually have a sign-up fee and usually charges customers only \$5 per week subscription fee and \$1 per message, any offer to provide "free messaging for your first week" would not be permitted if the supplier intends to charge new customers a sign-up fee of, for example, \$10 in addition to the usual \$5 per week subscription fee. This is because the usual sign-up fee of \$0 has been inflated to cover at least some of the costs of the "free" messaging.

**What are equivalent terms to the word "free"?**

The rules above apply to offers that use the word "free" AND any equivalent term, eg "no cost", "no fee", "no charge" or "\$0".

**How can premium messaging services be advertised to children?**

A commercial must not be broadcast or displayed in or around any program that is specifically and primarily targeted at children less than 15 years, eg after-school cartoons.

A commercial that is broadcast or displayed in a way that is reasonably likely to attract or encourage a significant number of children under 18 years to use the premium messaging service must include the following warning: "If you are under 18 you must ask the account holder before using this service".

Whether a commercial will be reasonably likely to attract a significant number of children depends on its content, placement, context and time of broadcast. For example, advertisements broadcast around a program presenting video clips of popular songs that is broadcast during a timeslot that is reasonably likely to attract a significant number of children less than 18 years.

**Annexure A ACRONYMS AND DEFINITIONS**

**Act**

means the *Telecommunications Act 1997* (Cth).

**Aggregator**

means a Supplier who contracts with both:

- (a) a Content Supplier; and
- (b) an End Carriage Supplier,

to facilitate the carriage of the Content Supplier's Mobile Premium Service to Customers using the End Carriage Supplier's Carriage Service.

**Carriage Service**

has the meaning given by section 7 of the Act. In summary, a carriage service is a means of delivery or carriage of a mobile or telecommunications service. It refers to the apparatus or infrastructure for delivery or carriage of the service rather than the content of the service itself.

**Carriage Service Intermediary**

has the meaning given by section 87(5) of the Act.

**Carriage Service Provider**

has the meaning given by section 87 of the Act. In summary, a carriage service provider is a person who supplies Carriage Services, including telecommunications providers in Australia such as Telstra, Optus, APPT and Vodafone.

**Content Service**

means:

- (a) a broadcasting service;
- (b) an on-line information service (for example, a dial-up information service);
- (c) an on-line entertainment service (for example, a video-on-demand service or an interactive computer game service);
- (d) any other on-line service (for example, an education service provided by a State or Territory government); or
- (e) a service of a kind specified in a determination made by the Minister for the purposes of section 15(1)(e) of the Act.

**Content Service Provider**

has the meaning given by section 97 of the Act. In summary, a content service provider is a person who provides or supplies a Content Service to the public via a Listed Carriage Service.

**Content Supplier**

means the Content Service Provider who is the originating Supplier of a Mobile Premium Service to Customers via the supply chain, but does not include a Supplier who is only acting in the capacity of an Aggregator.

**Customer**

means a customer who acquires a Mobile Premium Service, or a potential customer of Mobile Premium Services.

**Data Fees**

means fees charged by an End Carriage Supplier for the supply of mobile internet data.

**End Carriage Supplier**

means the Mobile Carriage Service Provider who:

- (a) has a contract with the Customer for the carriage of data, which includes a Mobile Premium Service; and
- (b) is the entity responsible for charging the Customer any Data Fees in respect of that carriage.

**Exempt Service**

means:

- (a) a Carriage Service supplied by way of a call from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199; or
- (b) a Content Service supplied by way of a call from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199, where:
- (c) the only purpose of messages sent as part of that service is to facilitate the billing of another service (for the purposes of this definition, the non-related service);
- (d) the non-related service is not a service of the kind described in subclause (a) or (b) above, nor a Proprietary Network Service; and
- (e) the messages sent as part of the service do not contain content (or a means to access content) of any kind, other than:
  - (i) a statement that the customer has been charged for the non-related service;
  - (ii) any relevant details of the non-related services being billed and the relevant charges; and
  - (iii) any other content required by law.

**Helpline**

means the Customer support helpdesk number referred to in clause 6.1.2.

**Listed Carriage Service**

has the meaning given by section 16 of the Act.

**Minor**

means a person below the age of 18.

**Mobile Carriage Service Provider**

means:

- (a) a Carriage Service Provider who supplies a customer with a public mobile telecommunications service; or
- (b) a Carriage Service Intermediary who arranges for the supply by a Carriage Service Provider to a customer of a public mobile telecommunications service.

**Mobile Content Fees**

means fees charged for the supply of a Mobile Premium Service, excluding any Data Fees.

**Mobile Premium Service**

means:

- (a) a Premium Messaging Service; or
- (b) a Proprietary Network Service.

**Premium Content Service**

means a Content Service to which either of the following applies:

- (a) a charge for the supply of the service is expected to be included in a bill sent to a relevant Customer of a Mobile Carriage Service Provider or any person acting on behalf of that provider;
- (b) a charge for the supply of the service is payable by a relevant Customer to a Mobile Carriage Service Provider or any person acting on behalf of that provider:
  - (i) in advance; or
  - (ii) in any other manner

**Premium Messaging Service**

means:

- (a) a Carriage Service supplied by way of a call to or from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199; or
- (b) a Content Service supplied by way of a call to or from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199

where all charges for use of the Premium Messaging Service are billed to the Customer by their Mobile Carriage Service Provider, other than a Billing Only Service.

**Premium Messaging Subscription Service**

means a Premium Messaging Service that is a Subscription Service.

**Proprietary Network**

means a Telecommunications Network used by a Mobile Carriage Service Provider that enables Customers of that provider to access, by way of a mobile device, a Premium Content Service that is not otherwise generally available.

***Proprietary Network Service***

means a public mobile telecommunications service that enables an end-user to access a Proprietary Network.

***Public Mobile Telecommunications Service***

has the meaning given in section 32 of the Act.

***Short Code***

means a number between 6 and 8 digits long that enables the charging of Mobile Content Fees.

***"STOP" Message***

means a "STOP" message as described in clause 7.2.1.

***Subscription Service***

means a Mobile Premium Service that delivers material to a Customer on an ongoing or periodic basis.

***Supplier***

means a Mobile Carriage Service Provider or Content Service Provider.

***Telecommunications Network***

has the meaning given in section 7 of the Act.

## Producing TVCs which promote Motor Vehicles

Points to consider when producing a television commercial promoting motor vehicles:

- Commercials promoting new and used motor vehicles for sale must comply with legislation relating to the sale and advertising of these classes of motor vehicles. For example, it is a requirement in New South Wales (see next point), the Northern Territory, Tasmania, Victoria and Western Australia that a motor dealer must specify their dealer licence number on any commercial relating to or in connection with the business of the dealer. Information on this is available from State Motor Traders' Associations and individual State and Territory Motor Dealer Regulations and Acts.
- In New South Wales it is also a requirement to include the name of the licence holder, along with the words 'licence number', 'Lic.No' or a similar abbreviation followed by the licence number eg. Lic.No.1234. For further information refer to the *NSW Motor Dealers and Repairers Regulation 2014* - Reg 7 Licence holder to display signs.
- It is not mandatory for commercials promoting new and used motor vehicles to include pricing information. However, if pricing information is included it must be accurate and the commercial must disclose certain minimum information. The Australian Consumer Law requires any price advertising to include the total 'single price'.

### Price representations - Dealer commercials

- Dealer commercials for both new and used motor vehicles (including demonstrators) that include reference to price must specify the 'single price' which is quantifiable at the time of the commercial, as well and at least as prominently as the dollar amounts of any components of the 'single price', such as applicable 'mandatory charges'.
- The 'single price' is the total dollar amount the consumer must pay to take ownership of the motor vehicle, calculated by adding up each of the price components that are quantifiable, at the time of the commercial, including all 'mandatory charges'.
- 'Mandatory charges' are those charges that must be paid in order to purchase the advertised vehicle. They will include things like the vehicle purchase price; stamp duty, compulsory third party insurance (CTP), registration and dealer delivery charges if those charges are collected by the dealer. The GST payable by the customer is also a mandatory charge.
- A charge is quantifiable if, at the time of the commercial, it can readily be converted into a dollar amount. Some mandatory charges may not be quantifiable because they are contingent on a customer's choices.
- Where the 'single price' is a mixture of quantifiable and non-quantifiable charges, the charges that are quantifiable should be represented as a single figure and the commercial must indicate that not all components are included in the single figure price. The commercial must also indicate the basis on which the 'single price' has been calculated and/or that some components may change.
- The fact that a charge may actually be payable to a third party and not to the person advertising does not matter, if the practice of the dealer is to collect those charges. For example, stamp duty must be included in the 'single price' for the sale of a new or used motor vehicle if the dealer arranges payment of the stamp duty on the consumer's behalf and then collects the stamp duty from the consumer as part of the sale. However, stamp duty does not need to be included in the 'single price' for the sale of a new or used motor vehicle if the dealer does not collect the stamp duty and the consumer pays the stamp duty directly to the relevant authority.
- The 'single price' does not include charges that are payable only at the option of the customer (ie 'optional extras' are not 'mandatory charges') or charges that are payable for sending the goods to the customer.

Note - 'dealer delivery' charges (as presently used in the motor vehicle industry) are not a charge payable for sending the goods to the customer and must be included in the 'single price'.

- The 'single price' must be displayed at least as prominently as the most prominent price component (including the vehicle purchase price). This means that a consumer should be able to identify the 'single price' (ie. total cost) as easily as the component or part of that total. Advertisers should consider factors such as the size, placement, colour and font of the prices in the commercial, as well as the background of the commercial.
- A 'drive away no more to pay' price can be used provided that the statement is accurate (ie there are no additional fees or charges which need to be paid by the customer to purchase the motor vehicle and 'drive away'). For example, a dealer might advertise a 'drive away no more to pay' price of \$29,990. That price must include all the different fees and charges that a customer has to pay to drive away (eg cost of motor vehicle, stamp duty, CTP, registration and dealer delivery).

Note – where a dealer wishes to highlight some component of price but also wants to use 'drive away no more to pay' wording, the total price should be called the 'drive away no more to pay total price' and should be displayed as prominently as the component.

- Consider the following examples:

**Example 1** – A dealer commercial promoting a new motor vehicle for sale at \$20,000. Assume mandatory charges are \$250 CTP, \$500 registration, \$1,000 for dealer delivery and \$500 for stamp duty.

The commercial must specify the 'single price' at least as prominently as any component of the total price, as follows:

“\$20,000 plus \$250 CTP, \$500 registration, \$1,000 dealer delivery and \$500 stamp duty, for a total price of \$22,500”; or

“\$20,000 plus \$2,250 CTP, registration, dealer delivery and stamp duty, for a total price of \$22,250”; or

“\$22,250 includes CTP, registration, dealer delivery and stamp duty”; or

“\$22,250 drive away”.

Notes – this and the following examples must also include the GST payable by the customer. If the car includes less than 12 months registration the commercial should include a disclaimer indicating the registration period offered with the vehicle.

**Example 2** – A dealer commercial promoting a used motor vehicle for sale at \$15,000. Assume mandatory charges are \$475 for stamp duty and transfer fees. Assume also that the dealer does not collect stamp duty and transfer fees on used motor vehicle sales (ie. consumers pay those charges directly to relevant authorities).

The commercial must specify the 'single price' at least as prominently as any component of the total price, as follows:

“\$15,000”; or

“\$15,000 excluding stamp duty and transfer fee”; or

“\$15,000 excludes \$475 stamp duty and transfer fee”.

Note – If the car includes less than 12 months registration the commercial should include a disclaimer indicating the registration period offered with the vehicle.

**Example 3** – A dealer with multiple outlets in New South Wales and Victoria promoting a motor vehicle for sale at \$20,000. Assume mandatory charges are \$4,000 CTP, registration, stamp duty and dealer delivery in New South Wales and \$4,500 stamp duty and dealer delivery in Victoria.

The commercial must specify the 'single price' payable by the customer in each State or the minimum 'single price' payable by the customer across any State (provided it is made clear to

the customer where that price is available and that prices in other areas may be higher), at least as prominently as any component of the total price, as follows:

"\$20,000 plus CTP, registration, stamp duty and dealer delivery – NSW \$4,000, VIC \$4,500 – for a total price of \$24,000 in New South Wales or \$24,500 in Victoria"; or

"\$24,000 in New South Wales or \$24,500 in Victoria includes CTP, registration, stamp duty and dealer delivery";

"\$24,000 drive away in New South Wales or \$24,500 drive away in Victoria"; or

"\$20,000 plus minimum CTP, registration, stamp duty and dealer delivery of \$4,000, for a minimum total price of \$24,000\*" (\*CTP, registration, stamp duty and dealer delivery quoted is that for NSW – may be higher for Victoria); or

"\$24,000 includes minimum CTP, registration, stamp duty and dealer delivery\*" (\*CTP, registration, stamp duty and dealer delivery quoted is that for NSW - may be higher for Victoria).

Note – to avoid stating total prices for each area or having to note that the total price may be higher in another area, dealers may choose to target advertising to particular geographical areas with the same mandatory charges.

Note – the examples above assume a uniform on-road cost across each State but if that is not the case, the dealer must make sure that it is clear in what geographical area (eg Sydney) the minimum total price stated is available.

**Example 4** – As per Example 1, but a \$2,000 cash back offer is made on the sale of the motor vehicle. The cash back offer is available after buying the vehicle.

The commercial must specify the 'single price' at least as prominently as any component of the total price, and the rebate or cash back offer must be identified as a separate payment that will be after buying the vehicle, as follows:

"\$20,000 plus \$250 CTP, \$500 registration, \$1,000 dealer delivery and \$500 stamp duty, for a total price of \$22,500. \$2000 cash back available after purchase"; or

"\$20,000 plus \$2,250 CTP, registration, dealer delivery and stamp duty, for a total price of \$22,250. \$2000 cash back available after purchase"; or

"\$22,250 includes CTP, registration, dealer delivery and stamp duty. \$2000 cash back available after purchase"; or

"\$22,250 drive away. \$2,000 cash back available after purchase".

Note – clearly state, sufficiently prominently, any limitations or conditions that apply to the cash back offer.

Note – commercials that are adapted from manufacturer commercials to include specific dealer tags should include the pricing information described above. This does not apply to manufacturer commercials that include only a generic statement such as "See your local dealer" with or without a list of the dealers available.

### Price representations - Manufacturer commercials

- Even though manufacturer commercials may refer only to the recommended retail price of a motor vehicle and not to an actual purchase price, the recommended retail price must specify the recommended 'single price' which is quantifiable at the time of the commercial, including all 'mandatory charges' (as above in the case of dealer commercials). It should be clear that the price is a 'recommended retail price'.
- As is the case for dealer commercials, manufacturer commercials are not required to specify charges that are payable only at the option of the customer.

**Example 5** – A manufacturer commercial in New South Wales promoting a motor vehicle and indicating a recommended retail price of \$30,000. The manufacturer knows that other mandatory charges will be \$1000 in CTP, \$500 in registration and \$1,000 in stamp duty in New South Wales. Dealer delivery charges will vary by dealer across New South Wales and the maximum charge is \$2,500. It is clear from the commercial that the price is a recommended



retail price only and not a price at which the vehicle is actually available for purchase from any dealer.

The commercial must at the very least specify the recommended retail price as the minimum 'single price' payable by the customer, at least as prominently as any component of the recommended retail price, and note additional delivery charges which are not quantifiable, as follows:

"Recommended retail price of \$30,000 plus \$1,000 CTP, \$500 registration and \$1,000 stamp duty, plus dealer delivery\*, for a total minimum recommended retail price of \$32,500 plus dealer delivery\* (\*dealer delivery charges will vary by dealer)"; or

"Recommended retail price of \$30,000 plus \$2,500 CTP, registration and stamp duty, plus dealer delivery\*, for a total minimum recommended retail price of \$32,500 plus dealer delivery\* (\*dealer delivery charges will vary by dealer)"; or

"Total minimum recommended retail price of \$32,500 includes CTP, registration and stamp duty. Dealer delivery additional\* (\*dealer delivery charges will vary by dealer)".

Alternatively, the commercial can specify the maximum recommended retail price payable by the customer across New South Wales, at least as prominently as any component of the recommended retail price, as follows:

"Recommended retail price of \$30,000 plus \$1,000 CTP, \$500 registration, \$1,000 stamp duty and \$2,500 dealer delivery, for a total recommended retail price of \$35,000"; or

"Recommended retail price of \$30,000 plus \$5,000 CTP, registration, stamp duty and dealer delivery, for a total recommended retail price of \$35,000"; or

"Recommended retail price of \$35,000 includes CTP, registration, stamp duty and dealer delivery"; or

"\$35,000 drive away".

Note – where a manufacturer is also a dealer, it is important to understand the capacity in which the manufacturer is advertising, ie as a manufacturer on behalf of all dealers or just its company owned dealerships.

**Example 6** – As per Example 5, except the commercial will be broadcast in Queensland, New South Wales and Victoria. The manufacturer knows that other mandatory charges (CTP, registration and stamp duty) are \$1,500 in Queensland, \$2,000 in New South Wales and \$2,500 in Victoria. Dealer delivery charges will vary by dealer across each State and the maximum charge is \$1,500 in Queensland, \$2,000 in New South Wales and \$2,500 in Victoria.

The commercial must at the very least specify the recommended retail price as the minimum 'single price' payable by the customer in each State or the minimum 'single price' payable by the customer across any State (provided it is made clear to the customer where that price is available and that prices in other areas may be higher), at least as prominently as any component of the recommended retail price, and note additional delivery charges which are not quantifiable, as follows:

"Recommended retail price of \$30,000 plus stamp duty, CTP and registration of \$1,500 in Queensland, \$2,000 in New South Wales and \$2,500 in Victoria, plus dealer delivery\*, for a total minimum recommended retail price of \$31,500 plus dealer delivery\* in Queensland, \$32,000 plus dealer delivery\* in New South Wales and \$32,500 plus dealer delivery\* in Victoria" (\*dealer delivery charges will vary by dealer); or

"Minimum recommended retail price of \$31,500 plus dealer delivery\* in Queensland, \$32,000 plus dealer delivery\* in New South Wales and \$32,500 plus dealer delivery\* in Victoria (inclusive of stamp duty, CTP and registration) (\*dealer delivery charges will vary by dealer)"; or

"Minimum total recommended retail price of \$31,500 plus dealer delivery\* (\*CTP, registration and stamp duty included is that for Queensland – other States may be higher. Dealer delivery charges will vary by dealer)".

Alternatively, the commercial can specify the maximum recommended retail price payable by the customer across all of the States, at least as prominently as any component of the recommended retail price, as follows:

"Recommended retail price of \$30,000 plus stamp duty, CTP, registration and dealer delivery of \$3,000 in Queensland, \$4,000 in New South Wales and \$5,000 in Victoria, for a total recommended retail price of \$33,000 in Queensland, \$34,000 in New South Wales and \$35,000 in Victoria"; or

"Recommended retail price of \$33,000 in Queensland, \$34,000 in New South Wales and \$35,000 in Victoria (inclusive of stamp duty, CTP, registration and dealer delivery charges"; or

"\$33,000 drive away in Queensland, \$34,000 drive away in New South Wales and \$35,000 drive away in Victoria"; or

"\$35,000 drive away [although we anticipate that this would be disadvantageous to dealers operating in Queensland and New South Wales who would prefer to advertise at the lower prices applicable in those States].

Note – to avoid stating total recommended retail prices for each area, or having to note that the total recommended price may be higher in another area, manufacturers may choose to target advertising to particular geographical areas with the same mandatory charges.

Note – the examples above assume a uniform on-road cost across each State but if that is not the case, the dealer must make sure that it is clear in what geographical area (eg Brisbane) the minimum total price stated is available.

### Other matters

- Where a commercial shows a vehicle on screen and includes pricing information, the pricing information displayed must relate to the vehicle that is shown, ie same model, features and options. Any material qualifications must be prominently displayed in a way that is easily understandable to the viewer. For example, where a car is shown with optional alloy wheels and metallic paint and these options are not included in the price displayed, the commercial must clearly disclose that these are optional items and are not included in the price displayed. Where a commercial shows a range of motor vehicles, for example model A, model B and model C, and includes pricing information for one vehicle only, it must be clear which vehicle the pricing information relates to.
- A motor vehicle depicted in a dealership commercial should correspond in model, visible accessories and price to a vehicle offered for sale at the dealership. If not, it risks breaching the misleading and deceptive conduct provisions of the Australian Consumer Law. A disclaimer to the effect of "picture for illustrative purposes only" is not likely to be enough to remove any misleading or deceptive impression.
- The Australian Consumer Law prohibits advertising goods at a specified price if the advertiser is aware or should have been aware that they would not be able to supply reasonable quantities at that price for a reasonable period. For example, a commercial will likely breach the bait advertising provisions where it offers, "loads of 2003 model 4WDs" at an attractive special price of \$43,990, when only one 2003 model 4WD was recently available for sale at the dealership. Where it is possible that demand will be greater than the stock available, it is appropriate to insert the disclaimer "while stocks last". It may also be appropriate to insert the disclaimer "excludes trade/fleet buyers" or to limit the number of vehicles that can be purchased by any single customer. As motor vehicle stock is sometimes purchased against orders received, it is acceptable to have the vehicle available subject to a reasonable delivery time.
- Special care should be taken when advertising a motor vehicle as new. The ACCC Advertising and Selling guideline defines new as meaning, "not used or repaired or reconditioned, or used in display, and also not old or already known".
- Commercials including finance or lease offers must disclose key terms and conditions and charges. The ACCC's "Guidelines for Pricing in the Motor Vehicle Industry", provides specific

guidance of the information to be included. Note: commercials must also comply with any relevant requirements of the Consumer Credit Code.

- Advertisers should be aware of the Voluntary Code of Practice for Motor Vehicle Advertising. This Code has been instituted by the Federal Chamber of Automotive Industries as a means of industry self-regulation of motor vehicle advertising in Australia. The primary purpose of the Code is to provide guidance to advertisers in relation to appropriate standards for the portrayal of images, themes and messages relating to road safety. The Code is available at <https://www.fcai.com.au/news/publication> and covers things such as, unsafe, reckless and menacing driving, speeding, unlawful driving practices, driving while fatigued or under the influence of drugs or alcohol, driving causing environmental damage, use of motor sport in advertising and the depiction of off-road vehicles.
- It is recommended that road users and vehicle operators including motorcyclists and pedal cyclists depicted in commercials observe the rules of the road, with the exception of those commercials which have a road safety educational purpose. It is recommended that particular regard be paid to the following:
  - vehicles should not appear to be travelling at obviously excessive speeds on public roads;
  - seat belts or other forms of occupant restraints should be worn by all persons in motor vehicles;
  - riding in the back of trucks or on construction and farm machinery should not be shown;
  - helmets approved by the Standards Association of Australia should be worn by all motorcyclists and pedal cyclists. In addition, it is desirable that motor and pedal cyclists be shown to use sturdy footwear and make themselves conspicuous through the use of bright protective clothing;
  - it is desirable that stereo headsets should not be shown in association with motor vehicles (including motorcycles and bicycles) and should not be associated with pedestrian activities;
  - the portrayal of vehicles on race circuits, testing tracks and in rally conditions should be easily recognisable by television viewers.
- Clause 25 of the Children's Television Standard sets out requirements that are relevant to road safety and children. The Children's Television Standard is available at [www.acma.gov.au](http://www.acma.gov.au). Care must be taken not to promote the sale of motor vehicle accessories or parts for which there are prohibitions relating to their use. For example, radar detectors are prohibited by the Australian Road Rules, and items such as tinted headlight covers are prohibited by some State Roads and Traffic Authorities.

### Producing a TVC containing Political Matter including Election Material

The following points need to be considered when producing a television commercial promoting Political Matter (including election material):

- The Broadcasting Services Act 1992 defines “political matter” very broadly as “any political matter”. A commercial dealing with an issue that falls within this broad definition of political matter must comply with the provisions of the BSA. Even when commercials are broadcast outside an election period or are not on behalf of a political party, they may still be deemed political matter. Broadly, to be deemed political matter, the matter must, when viewed objectively, be able to be characterised as participation in the political process or as an attempt to influence or comment upon that process.
- It is usually advertising by Government, lobby groups and other interest groups that will require consideration under the political matter provisions of the BSA. However, it should be kept in mind that these provisions apply to any ad that contains political matter. Although this would be rare, an ad that is principally about advertising products/services but which contains a political statement would also need to be considered under the political matter provisions.
- Under certain circumstances advocacy advertising by lobby and other interest groups may fall within the political matter provisions of Schedule 2, Sections 1, 3 and 4 of the BSA. This applies to both election and non-election periods.
- In such circumstances, an “authorisation tag” must appear immediately after the commercial. It must be separate from the content of the commercial but included in the overall length.
- ClearAds will also review commercials prior to broadcast for the purposes of classification and protecting broadcasters from liability for publishing defamatory material. ClearAds reserves the right to require substantiation relevant to defamation assessment.
- Commercials containing political matter must comply with the relevant provisions of the BSA. During an election, the person authorising the commercial is expected to ensure that the commercial complies with all relevant laws including the applicable Electoral Act.
- The content required in an authorisation tag will depend on whether the TVC has been authorised by a ‘disclosure entity’, an entity that isn’t a disclosure entity, or an individual. A ‘disclosure entity’ is defined in section 321B of the *Commonwealth Electoral Act 1918* and generally refers to persons or entities that have a clear and obvious interest in the outcome of elections, such as political parties, associated entities, candidates and Senate groups, and persons that are (or will be) required to provide a return to the Australian Electoral Committee related to political expenditure or gifts over certain thresholds.
- Authorisation tags must be announced and shown in the language used for the rest of the communication.

Please refer over for examples of authorisation tags.

Authorisation tag examples:

**Format for authorisation tag where a commercial is authorised by a disclosure entity that is not a natural person:**

Video	Audio
Cut to GRAPHIC with no other visual on screen	V/O to commence once the GRAPHIC appears with no music or SFX under
<i>Authorised by (name of the natural person responsible for giving effect to the authorisation) for the (name of disclosure entity (as included in the most recent return given in relation to the entity under Part XX of the Commonwealth Electoral Act 1918, if a return has been given in relation to the entity under that Part)), (relevant town or city of the entity)</i>	<i>Authorised by (name of the natural person responsible for giving effect to the authorisation) for the (name of disclosure entity (as included in the most recent return given in relation to the entity under Part XX of the Commonwealth Electoral Act 1918, if a return has been given in relation to the entity under that Part)), (relevant town or city of the entity)</i>

**Format for authorisation tag where a commercial is authorised by a natural person:**

Video	Audio
Cut to GRAPHIC with no other visual on screen	V/O to commence once the GRAPHIC appears with no music or SFX under
<i>Authorised by (name of the person who authorised the broadcasting of the political matter), (town or city in which the person lives)</i>	<i>Authorised by (name of the person who authorised the broadcasting of the political matter), (town or city in which the person lives)</i>

**Format for authorisation tag where a commercial is authorised by an entity that is not a disclosure entity or a natural person:**

Video	Audio
Cut to GRAPHIC with no other visual on screen	V/O to commence once the GRAPHIC appears with no music or SFX under
<i>Authorised by (name of entity), (relevant town or city of the entity)</i>	<i>Authorised by (name of entity), (relevant town or city of the entity)</i>

Please note: The longest single line in the authorisation should not extend beyond the standard TV essential width. An authorisation graphic must be held on screen long enough and be large enough for the average

viewer to read its contents. After the voice-over, the essential 0.5 seconds of silence at the end is in addition to this period.

See: [Audio Requirements for Commercials](#) - A-Z Television Production Checklist

## Producing TVCs for Real Estate

The following points need to be considered when producing a television commercial promoting the sale of real estate:

- Commercials for real estate may be subject to State legislation, in addition to relevant Commonwealth laws, such as the Australian Consumer Law. Commercials must comply with any such provisions.
- Commercials referring to deposits or terms for purchasing land must also specify the full cash price. Full cash price means the price including all the individual agent's own charges. If finance is being provided on terms, the commercial must state the amount of the deposit, repayments and time period over which the repayment can be made. If finance is offered for a limited time, for example "vendor finance over twelve months", this must be clearly stated.
- Commercials that are not clear and unequivocal about price risk breaching the Australian Consumer Law. For example, "\$200 deposit secures your home site" or "Buy your home site for \$40 a month". It is preferable here to say something like, "A \$45,000 deposit secures this house and land package – total price \$450,000".
- Where a commercial is promoting multiple blocks of land/units with different characteristics (e.g. different block sizes, single storey, double storey, 2 bedroom, 3 bedroom) the commercial must be clear as to which type of land/unit it is referring to if it contains specific descriptions or references to price. For example, a commercial will risk breaching the Australian Consumer Law if it shows images of the highest value land/unit, but refers to the costs associated with purchasing the lowest value land/unit in the development in a way that implies that those costs relate to the land/unit shown.
- Viewers could be misled about the average price of units or blocks of land if more than one is on offer. For example, most viewers would interpret the statement '45 blocks from \$10 000' to mean that there was a range of prices for the blocks and that some would be priced at or around \$10 000. However, if there were only one at that price and the next was considerably more expensive, a statement like this could be misleading. Prices can be expressed in general terms such as 'from \$20,000 to \$28,000'. However, it would be better also to state the approximate price of most blocks and to update commercials as sales occur. It would be misleading to continue running the original commercial once the cheaper units/blocks were sold.
- To avoid misleading or deceptive conduct, GST should be included in any advertised price.
- The Australian Consumer Law requires any price advertising to include the 'single price' ie. total cost. The 'single price' is calculated by adding up each of the price components that are quantifiable at the time of the commercial, including all 'mandatory charges'.
- Mandatory charges are those charges that must be paid in order to purchase the property. The GST payable by the customer is a mandatory charge. The stamp duty on property is not a mandatory charge because it is imposed directly on the consumer.
- The 'single price' must be displayed at least as prominently as the most prominent price component. This means that a consumer should be able to identify the 'single price' (ie. total cost) as easily as the component or part of that total. Advertisers should consider factors such as the size, placement, colour and font of the prices in the commercial, as well as the background of the commercial.

See: [Price](#) - A-Z Television Production Checklist

Appendix A: [Information Sheet – Producing TVCs which includes Component Pricing](#)

Appendix A: [Information Sheet – Producing TVCs with Disclaimers and other on-screen text](#)

## Producing a TVC promoting Telecommunications Products

### TELECOMMUNICATIONS CONSUMER PROTECTIONS CODE

The Telecommunications Consumer Protections Code C628:2012 (**TCP Code**), published by the Communications Alliance, applies to all commercials for Telecommunications Products and is effective from 1 September 2012.

This Information Sheet is intended as a summary only of the advertising requirements of the TCP Code. There are other requirements in the TCP Code that may be relevant to you and with which you will need to comply.

#### Which goods and services does the TCP Code apply to?

The TCP Code applies to all advertising of Telecommunications Products. Telecommunications Products" include:

- Telecommunication Services, i.e. mobile or telecommunications services provided by a Carriage Service Provider to the public;
- broadcasting services or any on-line information, entertainment or other services (or content services) provided by a Carriage Service Provider in connection with the supply of a mobile or telecommunications service; and
- Telecommunications Goods, i.e. any goods supplied for use in connection with the above services, whether or not the goods are supplied separately from the services themselves.

#### Who does the TCP Code apply to?

The TCP Code applies to Carriage Service Providers in Australia. Carriage Service Providers are defined under the *Telecommunications Act 1997* (Cth), but in summary, a Carriage Service Provider is a person who supplies carriage services, including telecommunications providers in Australia.

These providers must comply with the TCP Code if they are engaged in the following activities:

- carrying on a business as a mobile or telecommunications provider; or
- supplying goods or services for use in connection with the supply of a mobile or telecommunications service located in Australia.

Importantly, the TCP Code only applies to Carriage Service Providers' relationships with residential and small business customers and does not apply to matters covered by codes or standards registered or determined under the *Broadcasting Services Act 1992* (Cth).

#### How is the TCP Code enforced?

The TCP Code is registered with and enforceable by the ACMA. The ACMA may direct providers of Carriage Services who are subject to the TCP Code to comply with the TCP Code.

The TCP Code includes a large number of specially defined terms. Terms used in this Information Sheet have the meanings set out in the TCP Code.

A full list of acronyms and definitions is attached as Annexure A.

### Rules that apply to commercials for Telecommunications Products and Services

#### Content of Commercials

Section 4.2 of the TPC Code sets out the provisions for advertising Telecommunications Products and Services by Carriage Service Providers.

#### Section 4.2.1 – Content of Advertising



A Carriage Service Provider must include any important conditions, limitations, qualifications or restrictions about an Offer, to allow Consumers to make informed choices and to avoid Consumers being misled.

A Carriage Service provider must not engage in the following practices:

- a) **Headline representations:** use headline representations as to a price or offer in circumstances where the overall impression of the price or offer is subsequently qualified by fine print terms and conditions that make it unlikely or impossible that a Consumer, by the ordinary use of their service, could reasonably achieve the benefits offered in the headline representation;
- b) **Unlimited:** use the term 'unlimited' or an equivalent term in an unqualified manner when referring to usage, unless the ordinary use of the service in Australia is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network;
- c) **No exceptions, exclusions or catches:** use the terms 'no exceptions', 'no exclusions' or 'no catches' or equivalent terms without sufficient disclosure when referring to a price or service offer, unless there are genuinely no exceptions to the offer;
- d) **Free:** use the term 'free' or an equivalent term to promote or advertise a handset or other hardware product or service unless the cost of the handset or other hardware product or service is not recovered from the Consumer over the life of the contract by way of higher costs, including by way of higher call charges, higher network access fees, higher early termination fees or higher unlock fees, compared to the costs that would be payable by the Consumer over the life of the contract were the handset or other hardware product or service not provided free of charge;
- e) **Price per minute:** use headline representations as to a price per minute for mobile phone calls, or calls made using phone cards, in circumstances where there is insufficient disclosure of extra charges including flag fall or call connection fees or for non-standard calls;
- f) **Bundled products or services:** use headline representations as to price for a particular product or service, unless that product or service is available for purchase at the advertised price without being part of a bundled product or service or the advertised price is clearly identified as the price for that product or service when purchased as part of a bundled product or service;
- g) **Offer:** use headline representations as to prices for an Offer unless any exclusions are Prominently Displayed;
- h) **Prices for data allowances:** use unqualified headline representations as to ongoing prices for specified data allowances in circumstances where the price for that data is likely to increase within a reasonable use period;
- i) **Phone cards:** use headline representations as to the minutes of call time available on phone cards unless those minutes can be achieved by Consumers with ordinary use of the card;
- j) **Network coverage:** advertise or promote network coverage unless the network coverage is generally available to Consumers in the claimed coverage area;
- k) **Full minimum quantifiable price:** advertise or promote a periodic price to be paid for a Telecommunications Product without also Prominently Displaying (but not necessarily as prominent as the periodic price) the "single price" as defined in the *Competition and Consumer Act 2010*; or
- l) **Cap:** use the term "cap" to advertise:
  - a. any new Offers launched after the date of registration (1 September 2012) of the TCP Code unless the Offers contain a Hard Cap; and
  - b. any existing Offers in any television, radio and print a commercial from the date which is 6 months after the date of registration of the TCP Code, provided that a Carriage Service Provider can still do the following at any time during the duration of the TCP Code:
    - i. use the term "cap", or an equivalent term, to advertise existing Offers that contain a Hard Cap and

- ii. refer to existing, older Offers that use the term “cap”, or an equivalent term, by their existing name in online information, billing information, Customer Contracts, reference materials for customers, partners and staff, and one-on-one communications with Customers.
- m) **Basis of claims:** make claims in a commercial in relation to broadband speed, network coverage and other performance characteristics of a Telecommunications Product unless the Carriage Service Provider is able to substantiate such claims. (Carriage Service Providers must have regard to the ACCC Information Paper: HFC and Optical Fibre Broadband “Speed” Claims and the *Competition and Consumer Act 2010* when a commercial or promoting broadband speeds or data transfer rates on their networks.)

#### Section 4.2.2 – Advertising Medium

A Supplier must provide a level of detail in its Advertising which is appropriate to the manner in which the Advertising is displayed to Consumers.

A Supplier must take the following actions to enable this outcome:

- a) **Clarity:** ensure the principal message and the main terms are captured in the body of the Advertising;
- b) **Detail:** ensure that use of any disclaimers does not negate the principal message and main terms of the Advertising; and
- c) **Format:** take into account the typical amount of time that Consumers are able to view the particular Advertising in deciding how much information to include in the Advertising.

#### Section 4.2.3 – Special Promotions

A Supplier must communicate any important limitations which apply to its Special Promotions so Consumers are informed of the limitations.

A Supplier must take the following actions to enable this outcome:

- a) **Principal terms:** disclose the key terms of the Special Promotion and any key limitations, such as whether stocks are limited;
- b) **Timeframes:** if the Special Promotion is to end within a short period of time, the Supplier must disclose the end date for the Special Promotion; and
- c) **Eligibility:** if there are special eligibility requirements, such as provision of coupons, bundling with other products and services or restriction to a specific class of Consumers, the Supplier must disclose each requirement of the Special Promotion.

## **Annexure A**

### **ACRONYMS AND DEFINITIONS UNDER THE TELECOMMUNICATIONS CONSUMER PROTECTIONS CODE**

#### ***Carriage Service Provider***

has the meaning given by the *Telecommunications Act 1997* (Cth). In summary, a carriage service provider is a person who supplies carriage services (for example phone or internet access services) to the public using network units owned by a carrier.

#### ***Charge***

means the tariff or fee which a Supplier levies for the provision of a Telecommunications Product or a related transaction.

#### ***Consumer***

means:

- a) an individual who acquires or may acquire a Telecommunications Product for the primary purpose of personal or domestic use and not for resale; or
- b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into the Customer Contract, it:
  - i. does not have a genuine and reasonable opportunity to negotiate the terms of the Customer Contract; and
  - ii. has or will have an annual spend with the Carriage Service Provider which is, or is estimated on reasonable grounds by the Carriage Service Provider to be, no greater than \$20,000.

A reference to a Consumer includes a reference to a Customer.

#### ***Customer Contract***

means an arrangement or agreement between a Carriage Service Provider and a Consumer for the supply of a Telecommunications Product to that Consumer.

#### ***Discount***

means a reduction in the Charge which is usually levied by a Supplier.

#### ***Hard Cap***

means a maximum amount applied to a Customer's use of Telecommunications Services, which cannot be exceeded.

#### ***Offer***

means a current, standard in-market plan containing pricing that is made by a Carriage Service Provider for the provision of Telecommunications Products, which is available to any individual Consumer or Consumers as a class and includes, without limitation such offers made in a commercial.

#### ***Prominently Displayed***

means conspicuously presented in clear font and in a prominent and visible position that is appropriate for the advertising medium in the main body of the commercial.

#### ***Special Promotion***

means an offer of limited duration, limited quantity or offered to a limited sub-set of Consumers, (for example, a once-off promotion for members of a local gym or a special discount for the staff of a business customer of a Supplier), such as Discounts off Telecommunications Goods or components of Telecommunications Services.

#### ***Supplier***

means a Carriage Service Provider.

***Telecommunications Goods***

means any goods supplied by a Carriage Service Provider for use in connection with the supply of a Telecommunications Service, whether or not the goods are supplied in conjunction with, or separately from, a Telecommunications Service.

***Telecommunications Product***

means Telecommunications Goods and/or a Telecommunications Service.

***Telecommunications Service***

means:

- a) a carriage service or any service supplied by a Carriage Service Provider in connection with that service; and
- b) a content service (other than a subscription broadcasting service or a television subscription narrowcasting service) provided by the Supplier in connection with the supply of a Listed Carriage Service.

# Producing a TVC containing Testimonials and Endorsements

## What is a testimonial?

A testimonial is a personal statement certifying or attesting to the value or qualities of a product or service, including an endorsement or recommendation. It does not matter who is giving the testimonial – what does matter, is the statements that are made.

Expressions of personal support for a product, as distinct from objective facts or statements, are testimonials. For example, a statement such as “Consumer research has shown that this product is suitable for the majority of users” is a statement of fact, but a statement by a person that “The product works for me and probably will for you” is a testimonial.

Note that even if the statement made is not a testimonial, it nevertheless needs to comply with general consumer law requirements regarding its accuracy and truthfulness.

Whether something is a testimonial will depend on a range of circumstances. When assessing whether or not a statement is a testimonial, ClearAds will consider the statements made by an individual within the context of a commercial, having regard to all elements of the commercial.

## Testimonials and endorsements

Testimonials and endorsements from individuals can be used to add credibility to a claim in a commercial. The Australian Consumer Law prohibits the making of a false or misleading representation that purports to be a testimonial or endorsement. In 2010 new legislation was introduced, which had the effect of deeming a testimonial to be misleading if evidence is not provided to the contrary.

Advertisers must ensure that any representation or claim made is accurate and truthful. ClearAds requires supporting evidence to support any testimonial – acceptable forms are set out below.

## Examples of statements that are unlikely to be considered testimonials

Example 1:

“This product is used by over 5,000 people in Australia every day”. This is not a testimonial because it is a statement, rather than a personal endorsement or recommendation. However, the advertiser must still supply substantiation for the claim.

Example 2:

“You can buy this product for less than \$50” or “You can buy this product at [Store name]”. This statement does not contain any element of personal endorsement or recommendation, so it would be unlikely to be considered a testimonial. However, it would be considered a testimonial if the statement was expanded to include a favourable opinion – for example – “You can buy this product for less than \$50 and it is fantastic”.

## Examples of testimonials that may be misleading

Example 1:

A well-known actress endorses a hair product with the words “I use it every day”. If the actress does not use the product every day, this testimonial will be misleading.

Example 2:

An advertisement includes people making favourable comments about a product, such as “I would never use anything else now”, when in fact they are not genuine consumers but paid actors who do not actually hold that favourable opinion. These testimonials are misleading.

Example 3:

Edited transcripts of consumer feedback are presented in an advertisement, but negative comments are edited out. For example, if a consumer has stated in feedback that “This product cured me of my symptoms overnight, but did make me very drowsy”, but the advertisement states only that “This product cured me of my symptoms overnight”, it is misleading.

Example 4:

A well-known sports person states that an energy drink improved their performance, when in fact there was no such improvement over any period when the drink was used by the sports person. This testimonial is misleading.

Example 5:

A pensioner states that he has invested in a particular pension fund all his life and is now enjoying a comfortable retirement. If this is not true, the testimonial will be misleading. In this case, the testimonial implies a connection between the pension fund and the pensioner’s retirement, but if in fact only a proportion of the pensioner’s retirement income was derived from the pension, the testimonial would be misleading.

Example 6:

A celebrity gives an opinion about a product, such as “This product is fantastic”. If the celebrity does not honestly hold that opinion the advertisement is misleading.

### **The evidence required to support a testimonial**

Before classifying a commercial that contains a testimonial, ClearAds will require certain information from the advertiser to support the testimonial.

The evidence required to support a testimonial will depend on the nature of the testimonial, but as a general rule ClearAds will require the following material, which may be provided in a single document:

#### **1. A release**

A release or other statement by the person in the advertisement agreeing to be in the advertisement is mandatory. In the case of a celebrity or sports person, this can be made by an agent or other person with authority to represent them. Where anonymous feedback is used, or actors simulating feedback, then the agency or advertiser will need to confirm that the feedback is accurate, complete and appropriately presented (for example, without distorting or unbalanced editing).

#### **2. Confirmation of any personal experiences**

Where the endorsement includes statements regarding personal use or personal experience of the product, the person providing the release must confirm that this use or experience has taken place. Where an agent or another person is providing a release on behalf of a celebrity (or paid actor), the confirmation must be based on personal knowledge. For example, “As X’s agent for five years, I am familiar with their routine and I know that they do use this product every day”, where the claim is that the celebrity or actor uses the product every day.

#### **3. Confirmation of opinions or recommendations**

Where the person gives an opinion or recommendation about the product, the person providing the release must state that this is the person’s honestly held opinion or recommendation. Where an agent or other person is providing the release on behalf of a celebrity, they must state that they have discussed the statements in the advertisement with the celebrity and the celebrity genuinely holds that opinion. Note that whether the advertisement contains an opinion does not depend on whether words such as “In my opinion” or “In my view” are used. A celebrity who states “This is a great product” is stating an opinion, for example.

Please see Appendix A of this Information Sheet for an acceptable form of evidence to support a testimonial.

### **Currency of Evidence**

The evidence described above must relate to the advertisement being submitted and to the claims made in that advertisement. An old or stale statement made in the context of a different advertisement with different claims will not suffice.

## Disclaimers

In some cases, a disclaimer or qualification may sufficiently qualify or give context to a testimonial, so that it is not misleading despite the absence of supporting evidence as required above.

However, those cases will be rare, because the usual purpose of a testimonial is to add an element of personal commitment to an advertisement, which is persuasive with a consumer. For example, if a celebrity gives an opinion about the quality of a product, it will be very difficult to provide a disclaimer which addresses that opinion (such as a disclaimer that the views expressed in the advertisement are not necessarily held by the celebrity - this is obviously in conflict with the intention of the testimonial).

Nevertheless, there may be cases where a celebrity or paid actor is in a simulated situation, in which a disclaimer that the scene is simulated and not based on an actual event or experience may be sufficient. However, as the Australian Consumer Law requires an advertiser to demonstrate that a testimonial is not misleading, an advertiser who believes that a disclaimer will address any potentially misleading impression should consult ClearAds first.

## APPENDIX A

### Example of Testimonial Release/Confirmation

The evidence required to support a testimonial will vary, depending on the type of testimonial involved. Accordingly, the following example should be used only as a guide:

I, [name of celebrity, actor or other person giving the testimonial], appeared and/or made a statement/s in the television commercial [insert key number] promoting [good or service promoted] (**Commercial**). I confirm that:

1. I consented to the use of my name, statement/s image, likeness and reputation in connection with the Commercial.
2. The opinions and views stated by me in the Commercial are genuinely held by me.
3. All statements in the Commercial regarding my use, or other experience of, the [advertised product or service] are correct and fairly represent that use and experience.

Signature: .....

[Name]

[Date]

As an example, a confirmation statement in relation to a sporting figure who endorses an energy drink could provide the following:

I, Tom Bowler, appeared in a television advertisement promoting the Cricket Energy Drink (Commercial). I confirm that:

1. I consented to the use of my name, image, likeness and reputation in connection with the Commercial.
2. The opinions and views stated by me in the Commercial are genuinely held by me.

All statements in the Commercial regarding my use and experience of the Cricket Energy Drink are correct and fairly represent that use and experience.

## Producing TVCs for Therapeutic Goods and Devices

The following points need to be considered when producing a television commercial promoting the sale of Therapeutic Goods or Devices:

### Therapeutic Goods

- Commercials for prescription medicines are not permitted under the Therapeutic Goods Act.
- Commercials for non-prescription medicines must comply with the Therapeutic Goods Advertising Code (Code), the Therapeutic Goods Act and Regulations. A copy of the Code is available <https://www.tga.gov.au/>
- Scripts of commercials for therapeutic goods must be pre-cleared by the Australian Self-Medication Industry (ASMI) prior to being submitted to ClearAds or stations. The ASMI pre-clearance process incurs a fee for service. Refer [ASMI Guidelines](#)
- Scripts of commercials for retailers of therapeutic goods are not required to be pre-cleared by the ASMI provided no therapeutic claims are made in either voiceover, vision or on product packaging.

### Therapeutic Devices

- Commercials for therapeutic devices must comply with the Therapeutic Goods Advertising Code, the Therapeutic Goods Act and Regulations. The script does not need to be pre-cleared by the ASMI prior to being submitted to ClearAds or stations; however, at least two weeks should be allowed for classification by ClearAds for first time advertisers.
- Advertisers of therapeutic devices will need to provide a copy of the Listing Certificate for the device, issued by the Therapeutic Goods Administration (TGA) along with the TGA approved intended purpose for the device. Substantiation for any claims and written statements in support of testimonials will also need to be provided.
- Advertisers of therapeutic treatments should also note that a commercial for a treatment may also be a commercial for a therapeutic device if the device is shown in the commercial and/or claims about its use are made.

If advertisers are uncertain whether their product is a therapeutic good or device or whether certain claims are therapeutic, enquiries can be made with the Therapeutic Goods Administration via the following contact details:

Email: [tga.advertising@tga.gov.au](mailto:tga.advertising@tga.gov.au) or

Phone: 1800 020 653



## Producing TVCs for Weight Loss Products or Services

The following points need to be considered when producing a television commercial promoting Weight Loss products or services:

- When preparing commercials for weight loss which include a reference to an aid to weight loss which is a therapeutic good e.g. appetite suppressant or fat metaboliser etc, the script must be pre-cleared by the ASMI prior to being submitted to ClearAds or to stations – refer Producing a TVC for Therapeutic Goods information sheet for further guidance.
- Commercials for weight loss which feature testimonials will need to be supported by the following documentation:
  - a) a signed release by the individual making the testimonial, granting permission for publication; and
  - b) such a release should be current and contain a statement asserting the accuracy or truth of the testimonial. The currency of a testimonial will be assessed in the context of the claims made and the product or service advertised and should reflect typical cases only.

Advertisers should note there is a voluntary code covering commercials for weight loss, adopted by the weight management industry for their members. This Code may provide useful guidance for first time advertisers. A copy of the Code may be obtained from ClearAds or from the Weight Management Code Administration Council of Australia at [The Weight Council](#)

## **Appendix B:**

# **PLACEMENT CODES**

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# Appendix B: Placement Codes 2018

*Please Note: The following placement codes listed below appear as the first character in the ClearAds Classification Number and provide advice to stations regarding placement of the commercial in the appropriate classification zone under the requirements of the Code of Practice.*

## 1. Betting/Gambling and Liquor

### Betting/Gambling “B”

**Definition:** Commercials relating to betting or gambling

Commercials relating to betting or gambling during a Live Sporting Event

A commercial relating to betting or gambling must not be broadcast:

In any Program that is broadcast between 5.00 am and 8.30 pm and is principally directed to Children (aged under 15); and

In a P, C or G classified Program on any channel:

- Between 6.00am and 8.30am on any day; and
- Between 4.00 pm and 7.00 pm on any day.

News, current affairs and Sports Programs are not included in these time restrictions. Note that different rules apply for such TVCs during Live Sporting Events.

Different restrictions apply in South Australia between 4.00pm and 7:30pm on weekdays – see Note 1

**Note 1:** In South Australia the restriction between 4pm and 7.30pm weekdays includes commercials for SA Lotteries, SA TAB, Adelaide Casino (Skycity) and Licensed Racing Clubs. These commercials will be given a B placement code by ClearAds. The exception for news, current affairs and sporting programs does not apply in SA between 4.00pm and 7.30pm on weekdays. There is no restriction on SA Lotteries commercials outside 4.00pm and 7.30pm weekdays.

Refer: Section 6.5 Code of Practice

### South Australian ‘Live Odds’ restrictions

Placement restrictions apply in South Australia to commercials which encourage betting on a particular event once the relevant event has started. These rules do not apply during a broadcast of a Live Sporting Event.

For information on the types of commercials that are prohibited and the time period during which these commercials cannot be shown please refer to the *Advertising Codes of Practice (Live Odds) Variation Notice 2013* available at <http://www.iga.sa.gov.au>

### Commercials relating to Betting and Gambling during a Live Sporting Event

For Commercials relating to Betting and Gambling during a Live Sporting Event, refer to *The Code of Practice*, Appendix 3: *Restrictions on Promotion of Odds and Commercials relating to Betting and Gambling which are broadcast during a Live Sporting Event*. Appendix 3 operates in conjunction with the restrictions set out at clause 6.5 of the Code of Practice. See 4. Placement Flags.

The requirements of Appendix 3 do not apply to Live Sporting Events that consist of horse, harness or greyhound racing.

**Product Description:** Any commercial relating to betting or gambling, such as the TAB, clubs promoting poker machines or gambling facilities, casinos, race clubs which feature bookies etc.

Does not include:

A commercial relating to such things as Government lotteries, lotto, keno or contests. Except in South Australia – see Note 1 above.

A commercial relating to entertainment or dining facilities at places where betting or



gambling take place, or a tourism commercial which incidentally depicts betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use.

Refer: Clause 6.5.3 Code of Practice.

## **M/Liquor “L”**

**Definition:** Mature – Liquor/alcoholic drinks

A Commercial for Alcoholic Drinks may be broadcast only during the following periods:

- Between 8.30pm and 5.00am on any day
- Between 12 noon and 3.00pm on school days (but see clause 2.1.2 for time zone difference adjustment)

On weekends and public holidays during a Sports Program – includes live sports, delayed telecasts, analysis, commentary and awards programs but does not include sports themed light entertainment/variety programs.

During a Sports Program which involves the live broadcast of a sporting event, where the event is simulcast to a number of licence areas and a direct commercial for alcohol is permitted in the area where the event is held (if the event is held outside Australia and commercials are permitted in a majority of metropolitan licence areas, then commercials are permitted in all broadcast areas).

Weekends commence at 6pm on a Friday and end at midnight the following Sunday.

**Product Description:** Alcoholic Drinks and Commercial for Alcoholic Drinks is defined at Section 8 of the Code.

Ref: Clause 6.2.1 and Section 8 Code of Practice

## **2. Cinema Films, DVDs, Videos and Games**

There are no longer specific rules about TVCs for Films, DVDs, Videos and Games, with the exception of advertisements for material that is classified R18+ (which are time restricted) and X18+ (which are prohibited).

As a general rule, the content of the TVC will dictate its classification and it may then be broadcast in the permitted classification zone/s.

Advertisers of such material are expected to comply with the requirements of:

*Classification (Publications, Films and Computer Games) (Markings and Consumer Advice) Determination 2014 (for classified films/games); and*

*Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009 (for unclassified films/games).*

## **MA Classified Material/G or PG Style “J”**

**Definition:** G or PG style commercials for MA classified cinema films, DVDs, videos and games. Please note, M or MA style material for MA classified films will be classified as either M or MA, depending on the content.

May be broadcast at any time of day, except during P and C programs or adjacent to P or C periods. Exercise care when placing in programs principally directed to children.

**Product Description:** Commercials which comply with the PG classification criteria in Appendix 1 of the Code of Practice but require special care in placement in PG programs principally directed to children.

## **M or MA Classified Material with Horror or Violence/PG Style “H”**

**Definition:** PG style commercials for M or MA classified cinema films with horror elements OR MA classified cinema films with strong violence.

May be broadcast at any time of day, except during P and C programs or adjacent to P or C periods. Exercise care when placing in programs likely to attract a substantial child audience.

**Product Description:** Commercials which comply with the PG classification criteria in Appendix 1 of the Code of Practice but require special care in placement in programs likely to attract a substantial child audience.

## **R18+ Classified Material/G or PG Style “Q”**

**Definition:** G or PG style commercials for R18+ classified cinema films, DVDs, videos and games

Can only be broadcast:

- Between 8.30pm and 5.00am on any day
- Between 12 noon and 3.00pm on school days (see clause 2.1.2 for time zone difference adjustment)

Product Description: Commercials must comply with the criteria for PG or lower.

## **R18+ Classified Material/M Style “R”**

**Definition:** M style commercials for R18+ classified cinema films, DVDs, videos and games.

Can only be broadcast:

- Between 8.30pm and 5.00am on any day
- Between 12 noon and 3.00pm on school days (see clause 2.1.2 for time zone difference adjustment)

**In addition to the time restrictions, a Commercial classified “R” must NOT be shown:**

Before 9.30 pm during Sports Programs and Films classified G or PG which commence before 8.30 pm and continue after 8.30 pm (unless it is a Film which is neither promoted to Children nor likely to attract substantial numbers of Children).

Refer: Clause 6.4.2 Code of Practice.

**Product Description:** Commercials for R18+ classified Films and computer games.

## **R18+ Classified Material/MA Style “A”**

**Definition:** MA style commercials for R18+ classified cinema films, DVDs, videos and games

May be broadcast between 8.30pm and 5.00am on any day.

**In addition to the time restrictions, a Commercial classified “A” must NOT be shown:**

Before 9.30 pm during Sports Programs and Films classified G or PG which commence before 8.30 pm and continue after 8.30 pm (unless it is a Film which is neither promoted to Children nor likely to attract substantial numbers of Children).

**Product Description:** Commercials which comply with the MA classification criteria in Appendix 1 of the Code of Practice.

**In addition to the time restrictions, a Commercial classified “A” must NOT be shown:**

Before 9.30 pm during Sports Programs and Films classified G or PG which commence before 8.30 pm and continue after 8.30 pm (unless it is a Film which is neither promoted to Children nor likely to attract substantial numbers of Children).

### 3. General Product Categories

#### Children “C”

**Definition:** General unrestricted

May be broadcast at any time, except during P (Preschool) programs.

**Product Description:** Commercials which comply with the ACMA Children's Television Standards and G Classification criteria at Appendix 1 of the Code of Practice.

#### General “G”

**Definition:** General

May be broadcast at any time except during P and C (Children's) programs or adjacent to P or C periods.

**Product Description:** Commercials which comply with the G classification criteria in Appendix 1 of the Code of Practice and provided the content is very mild in impact and does not contain any matter likely to be unsuitable for children to watch without supervision

#### General/Warning “W”

**Definition:** General/Care in placement

May be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in G programs principally directed to children.

**Product Description:** Commercials which comply with the G classification criteria in Appendix 1 of the Code of Practice but require special care in placement in G programs principally directed to children.

#### PG – Parental Guidance “P”

**Definition:** Parental Guidance Recommended

May be broadcast at any time of day, except during P and C programs or adjacent to P or C periods.

**Product Description:** Commercials which comply with the PG classification criteria in Appendix 1 of the Code of Practice and which contain careful presentations of adult themes or concepts which are mild in impact and remain suitable for children to watch with supervision.

#### Parental Guidance/Warning “J”

**Definition:** Parental Guidance Recommended/Care in placement

May be broadcast at any time of day, except during P and C programs or adjacent to P or C periods. Exercise care when placing in programs principally directed to children.

**Product Description:** Commercials which comply with the PG classification criteria in Appendix 1 of the Code of Practice but require special care in placement in PG programs principally directed to children.

#### M – Mature “M”

**Definition:** Recommended for viewing only by persons 15 and over

May be broadcast during the following hours, except during P and C programs or adjacent to P or C periods:

Weekdays ( schooldays):

- 7.30pm – 6.00am
- 12 noon - 3.00pm (see Note 1)

Public Holidays, Weekdays (school holidays) & Weekends:

- 7.30pm – 6.00am

**In addition to the time restrictions, a Commercial classified “M” must NOT be shown:**



- Between 5.00 am – 6.00 am and 7.30 pm - 8.30 pm during a Sports Program, or a Program classified G or PG; and
- Before 9.30 pm during Sports Programs and Films classified G or PG which commence before 8.30 pm and continue after 8.30 pm (unless it is a Film which is neither promoted to Children nor likely to attract a substantial Child audience). Refer: Clause 2.4.2 Code of Practice.

**Note 1:** see Clause 2.1.2 Code of Practice for time zone difference adjustment.

**Product Description:** Commercials which comply with the M classification criteria in Appendix 1 of the Code of Practice.

## **MA15+ – Mature Adult “A”**

**Definition:** Suitable for viewing only by persons 15 and over

May be broadcast between 8.30pm and 5.00am on any day.

**In addition to the time restrictions, a Commercial classified “A” must NOT be shown:**

Before 9.30 pm during Sports Programs and Films classified G or PG which commence before 8.30 pm and continue after 8.30 pm (unless it is a Film which is neither promoted to Children nor likely to attract a substantial Child audience).

**Product Description:** Commercials which comply with the MA classification criteria in Appendix 1 of the Code of Practice.

## **MA/S – Mature Adult / Sex Lines “S”**

**Definition:** Sex services (including a sex line) commercials within MA viewing period

May be broadcast between the hours of 11.00pm and 5.00am on any day.

Refer: Clause 6.3.2 Code of Practice.

**Product Description:** A commercial for a sex-line or similar services which complies with the MA classification criteria in Appendix 1 of the Code of Practice.

## **4. Placement Flags**

### **Advertisements relating to Betting and Gambling which are broadcast during a Live Sporting Event**

#### **BHARM: Harm Minimisation Rules for Commercials during a Live Sporting Event**

Must not be broadcast during a Live Sporting Event, with the exception of Live Sporting Events that consist of horse, harness or greyhound racing.

Refer: Appendix 3, Clauses 3.12-3.14 and 3.17 of the Code of Practice.

#### **BLIVE: Live Sporting Events**

Commercials relating to Betting or Gambling are not permitted during Play during a Live Sporting Event, with the exception of Live Sporting Events that consist of horse, harness or greyhound racing. In respect of Long Form Sporting Events over multiple days and/or involving multiple concurrent matches or events (such as the Australian Open Tennis), Play is taken to start from the formal commencement of the first match, game or race or each day, and ends at the conclusion of active play of each day.

Between 8.30pm and 5.00pm, Commercials relating to Betting or Gambling are only permitted at the following times during a Live Sporting Event:

- a. before Play has commenced;
- b. during Scheduled Breaks;
- c. during Unscheduled Breaks; and
- d. after Play has concluded.

Between 5.00am and 8.30pm, Commercials relating to Betting or Gambling during the broadcast of a Live Sporting Event is not permitted:

from:

- five minutes before the Scheduled Start of Play of the Live Sporting Event, where live-to-air coverage of Play commences no earlier than the Scheduled Start of Play;
- in all other cases, five minutes before the broadcast of the first Program that includes the Live Sporting Event;

to:

- five minutes after the conclusion of live-to-air coverage of Play by the Licensee or 8.30pm, whichever is sooner.
- The restrictions between 5.00am and 8.30pm above do not apply to:
  - a program that is not a Related Program and:
    - o that is broadcast within a planned suspension of coverage of a Live Sporting Event or a Scheduled Break; and
    - o that is at least 30 minutes duration; and
    - o the start time of which is either:
      - listed in the Licensee's EPG at least 24 hours prior to the broadcast of the program; or
      - published on the Licensee's website at least 24 hours prior to broadcast of the program and notified to relevant EPG providers at least 24 hours prior to broadcast of that program.
  - a program that is not a Related Program and that is:
    - o broadcast within an Unscheduled Break or due to changes in the broadcast schedule; and
    - o at least 30 minutes duration; and
    - o accompanied by an advice in the form of a pull through or announcement that alerts the viewer that the Live Sporting Event will be suspended;
  - a live cross to a Live Sporting Event, from within a program that is not a Related Program, so long as the total duration of all live crosses to Live Sporting Events within the program is no more than five minutes in any 30-minute period. The 30- minute period will be based on the time of commencement of the program.

For the avoidance of doubt, a live cross as contemplated in this clause will not make the program a Related Program.

Any Commercial relating to Betting and Gambling broadcast pursuant to the exceptions above must not be broadcast:

- within five minutes immediately following the suspension of the broadcast of the Live Sporting Event; or
- five minutes immediately before the re-commencement of the broadcast of the Live Sporting Event.

Refer: Appendix 3, Clauses 3.1- 3.4 and 3.17 of the Code of Practice.

### **BNSW: In-play Gambling Advertising Rules (NSW)**

Must not be broadcast during any program from the start to the finish of (Fixture Name) on (Date) including during any scheduled or unscheduled breaks of the fixture. For more information see the NSW Office of Liquor and Gaming Information Sheet 'In-play gambling advertising' available at [www.liquorandgaming.justice.nsw.gov.au](http://www.liquorandgaming.justice.nsw.gov.au)

### **BODDS: Commercials containing Odds during a Live Sporting Event**

Must not be broadcast at certain times during a Live Sporting Event (with the exception of Live Sporting Events that consist of horse, harness or greyhound racing), generally once the players have entered the field of Play directly before the start of the game. Different rules apply for long form sporting events.

Refer: Appendix 3, Clauses 3.5-3.10 and 3.17 of the Code of Practice  
**BREP: Commercials containing a Representative of a Gambling Organisation at a Sporting Venue**

Must not be broadcast during a Live Sporting Event (with the exception of Live Sporting Events that consist of horse, harness or greyhound racing) if the gambling representative is, or appears to be, at the venue of that Event.

Refer: Appendix 3, Clause 11 and 3.17 of the Code of Practice.

### **BSA: In the Run Betting**

Please note placement restrictions generally apply in South Australia once the advertised event has started, although there are variations for long form events. A summary of the placement restrictions is available in the South Australia section 'Prohibition of Broadcasting Live Odds' of the information Sheet for Producing a TVC promoting Gambling and Gaming.

Refer: Appendix A: *Information Sheet – Producing a TVC promoting Gambling and Gaming*

### **BTAS: Broadcast restrictions Tasmania**

Must not be broadcast in Tasmania between:

- a) 6.00am-8.30am and 4.00pm-7.00pm on weekdays; and
- b) 6.00am-8.30am and 4.00pm-7.30pm on weekends,

except for advertising during a racing or sports broadcast.

For more information, see the Responsible Gambling Mandatory Code of Practice for Tasmania available at [www.treasury.tas.gov.au/liquor-and-gaming/gambling](http://www.treasury.tas.gov.au/liquor-and-gaming/gambling)

### **Advertisements for Intimate Products**

**CONDOM:** A commercial for condoms or other contraceptive products must not be broadcast in a Program classified G or lower unless it contains a public health or safety message.

Refer: Clause 6.3.1 Code of Practice

# Appendix C: GLOSSARY OF TERMS AND ABBREVIATIONS

<b>AANA</b>	Australian Association of National Advertisers <a href="http://www.aana.com.au">www.aana.com.au</a>
<b>ABAC Code</b>	ABAC Responsible Alcohol Marketing Code <a href="http://www.abac.org.au">www.abac.org.au</a>
<b>ACCC</b>	Australian Competition and Consumer Commission <a href="http://www.accc.gov.au">www.accc.gov.au</a>
<b>ACL</b>	Australian Consumer Law
<b>ACMA</b>	Australian Communications and Media Authority <a href="http://www.acma.gov.au">www.acma.gov.au</a>
<b>Advertiser Code of Ethics</b>	The code adopted by the AANA for advertising self-regulation in Australia which covers all forms of advertising
<b>AHPRA</b>	Australian Health Practitioners Agency
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ASMI</b>	Advertising Self-Medication Industry <a href="http://www.asmi.com.au">www.asmi.com.au</a>
<b>BSA</b>	<i>Broadcasting Services Act 1992</i>
<b>ClearAds</b>	ClearAds <a href="http://www.clearads.com.au">www.clearads.com.au</a>
<b>Code of Practice</b>	Commercial Television Industry Code of Practice
<b>Communications Council</b>	The Communications Council is an organisation bringing together the AFA, AWARD, the Account Planning Group (APG) and the Australasian Promotional Marketing Association (APMA). <a href="http://www.communicationscouncil.org.au">www.communicationscouncil.org.au</a>
<b>CTS</b>	ACMA determined Children's Television Standards 2009
<b>FCAI</b>	Federal Chamber of Automotive Industries <a href="http://www.fcai.com.au">www.fcai.com.au</a>
<b>Free TV</b>	Free TV Australia <a href="http://www.freetv.com.au">www.freetv.com.au</a>
<b>FSANZ</b>	Food Standards Australia New Zealand
<b>Legislation</b>	Commonwealth and State legislation governing or having application to marketing and advertising
<b>MPS Code</b>	Mobile Premium Services Code <a href="http://www.commsalliance.com.au">www.commsalliance.com.au</a>
<b>NICNAS</b>	National Industrial Chemicals Notification and Assessment Scheme
<b>TGA</b>	Therapeutic Goods Administration <a href="http://www.tga.gov.au">www.tga.gov.au</a>
<b>TGAC</b>	Therapeutic Goods Advertising Code
<b>TVC</b>	Television Commercial