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# WHO WE ARE 2009

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*The Advertising Standards Bureau (ASB) administers Australia's national system of self-regulation in relation to both public and competitor complaints.*

*This is achieved through the independent complaints resolution processes of the Advertising Standards Board and the Advertising Claims Board respectively.*

The Bureau was established for the purposes of:

- establishing and monitoring a self-regulatory system to regulate advertising standards in Australia
- promoting confidence in, and respect for, the general standards of advertising on the part of the community and the legislators
- explaining the role of advertising in a free enterprise system
- running other regulatory systems as contracted from time to time.

Funded through a levy paid by Australian advertisers, this proven system of advertising self-regulation has operated since 1998 following extensive consultation within the industry and with government and consumer representatives.

In 2009 the ASB administered the following codes of practice:

- AANA Advertiser Code of Ethics
- AANA Code for Advertising and Marketing Communications to Children
- AANA Food and Beverages Advertising and Marketing Communication Code
- Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising
- Australian Food and Grocery Council Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry
- Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children

The ASB also works with the Alcohol Beverages Advertising Code (ABAC) management scheme, and accepts, and forwards to the ABAC chief adjudicator, all complaints about alcohol advertisements.

Public complaints about particular advertisements in relation to the issues below are considered cost-free to the community by the Advertising Standards Board:

- health and safety
- use of language
- discriminatory portrayal of people
- concern for children
- portrayal of violence, sex, sexuality and nudity
- advertising to children
- advertising of food and beverages
- advertising of cars under the FCAI Voluntary Code of Practice for Motor Vehicle Advertising

In 2009 the independent review process, which was established in 2008 to consider consumer and advertiser disagreement with Board determinations, was enhanced by the addition of a second Independent Reviewer.

Competitor claims between advertisers in relation to truth, accuracy and legality of particular advertisements are considered on a user-pays basis by the Advertising Claims Board.



# MISSION STATEMENT AND VALUES

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*In 2009 the Advertising Standards Bureau assessed its purpose, mission and values to develop a 2009–2010 strategic plan. In doing this we also formulated a vision – a statement of where the Advertising Standards Bureau will be in 2014.*

## Purpose

To efficiently manage and promote the complaints adjudication component of the advertising self-regulation system in Australia.

To ensure the community, industry and government is confident in and respects the advertising self-regulatory system.

To ensure the general standards of advertising are in line with community values.

## Mission

To administer a well respected, effective and independent advertising complaints resolution service that regulates advertising standards in Australia adjudicating both public and competitor complaints and ensure compliance with relevant codes.

## Values

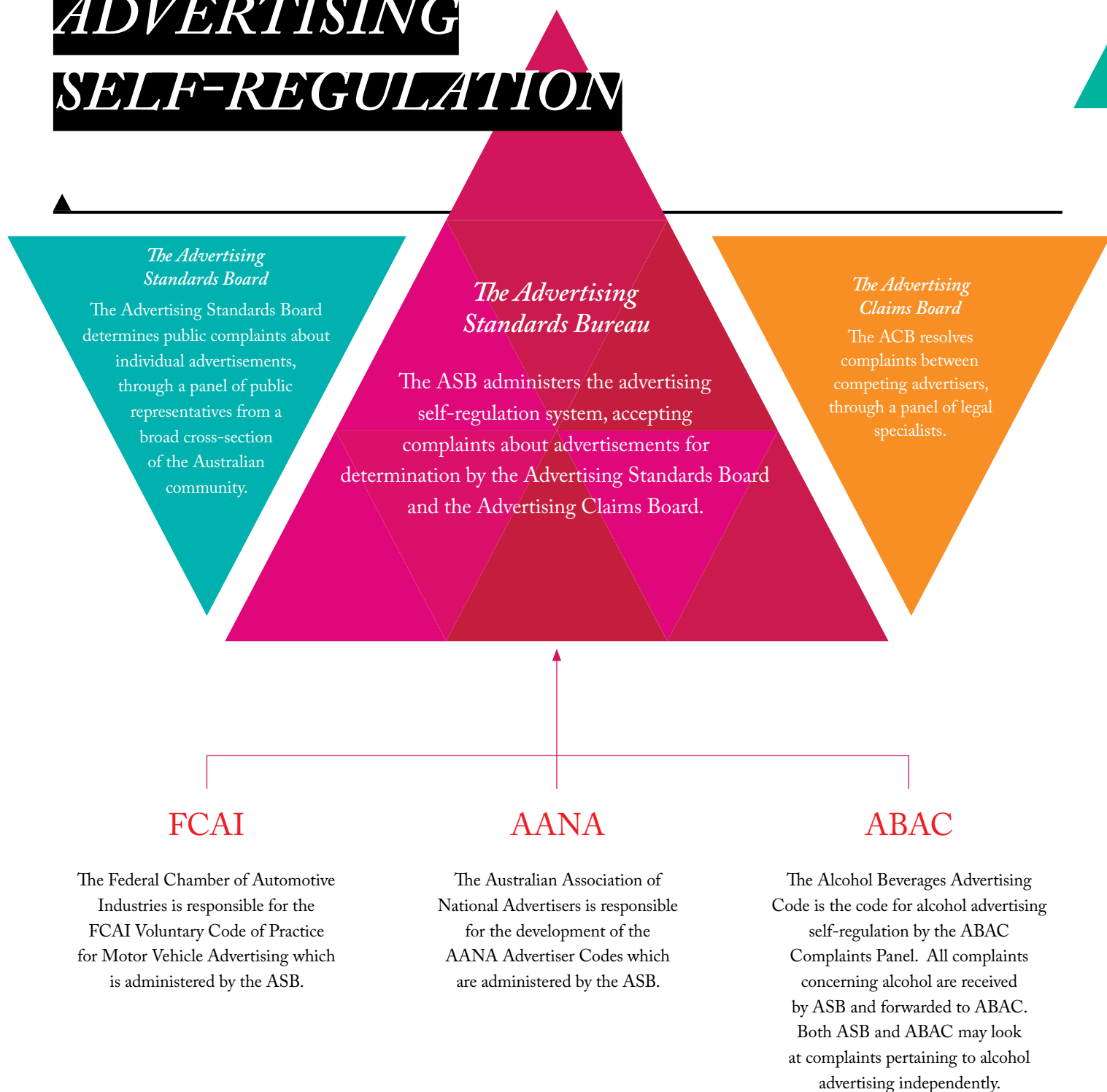
- Transparency in decision making
- Accountability to advertisers and the community
- Responsive to complaints
- Independent

## Vision

In 2014, the Advertising Standards Bureau will:

- be the pre-eminent adjudicative authority for advertising and marketing communication complaints against industry codes of practice in Australia
  - deliver effective advertising self regulation in Australia
  - reflect community standards
  - have a well recognised awareness and profile among the public, industry, government and other stakeholders
  - have kept pace with advertising and marketing communication developments in new media
  - comply with international best practice complaints-handling procedures and protocols
  - be financially viable
  - have a skilled and sustainable workforce.
- 

# ADVERTISING SELF-REGULATION





# FUNDING OF ADVERTISING SELF-REGULATION

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*The Advertising Standards Bureau is not funded by Government in Australia. Self-regulation of the Australian advertising industry is funded by a levy paid by advertisers.*

Responsible advertisers pay a levy to the ASB in recognition of the value self-regulation provides to the broader community, advertisers and their agencies. The amount of the levy is based on their advertising spend and is set at 35 cents per \$1,000 (0.035 per cent) of gross media expenditure.

The levy is mainly collected through media buying agencies, as well as directly from some advertisers.

The levy is remitted to the Australian Advertising Standards Council (AASC) as the funding body of advertising self-regulation. The AASC is a separate legal entity. Levy funds provided to the AASC can only be transferred to the ASB and used for purposes of the advertising self-regulation system.

The AASC was created by the AANA at the same time as the Advertising Standards Bureau. The independent nature of the AASC ensures commercial confidentiality in relation to the expenditure of individual advertisers on particular products and services, and provides for proper accountability for the monies applied to the operational and promotional activities of the ASB.

All monies collected by the voluntary levy system are applied exclusively to activities necessary to the maintenance of the self-regulation system.

# 2009 SNAPSHOT

Number of complaints received 3,796

Number of complaints about ads  
that were found to breach the code 521

Number of complaints made about  
matters outside ASB jurisdiction 941

Number of advertisements  
complained about 595

Number of advertisements the Board  
found consistent with AANA code 503

Number of advertisements found by  
the Board to breach the AANA code 81

Number of advertisements withdrawn  
voluntarily before the advertisement  
was considered by the Board 11

Number of advertisements which  
were NOT modified or discontinued  
after a complaint was upheld 0

# MOST COMPLAINED ABOUT ADS IN 2009

**1. GASP denim**  
*Case number 450/09*  
**(Billboard – displayed only in Victoria)**  
**Images of topless females dressed in jeans.**  
**Issue** – Discrimination or vilification,  
Section 2.1 AANA Code of Ethics  
**Board decision** – Dismissed  
About 300 complaints

**2. Advanced Medical Institute**  
*Case number 63/09*  
**(Radio) Man and woman talk about reaching the big O.**  
**Issue** – Portrayal of sex, sexuality and  
nudity, Section 2.3 AANA Code of Ethics  
**Board decision** – Dismissed  
About 55 complaints

**3. BConfidential**  
*Case number 464/09*  
**(Billboard) Black and pink sign with woman on left and words: “Tell your wife that you will be home late”.**  
**Issue** – Discrimination or vilification,  
Section 2.1 AANA Code of Ethics  
**Board decision** – Dismissed  
About 55 complaints

**4. Target**  
*Case number 40/09*  
**(TV) Denim nation. People get in and out of a clothes dryer to dry jeans.**  
**Issue** – Health and Safety, Section 2.6,  
AANA Code of Ethics  
**Board decision** – Upheld – Discontinued  
About 50 complaints

**5. Coca Cola Zero**  
*Case number 137/09*  
**(TV) The break up, with pole dancers and sexy women.**  
**Issue** – Discrimination or vilification,  
Section 2.1 AANA Code of Ethics  
**Board decision** – Upheld – Discontinued  
About 50 complaints

**6. Advanced Medical Institute**  
*Case number 289/09*  
**(Billboard) Making Love – Do it Longer.**  
**Issue** – Portrayal of sex, sexuality and  
nudity, Section 2.3 AANA Code of Ethics  
**Board decision** – Dismissed  
About 50 complaints

**7. Advanced Medical Institute**  
*Case number 555/08*  
**(Billboard) Men do it LONGER**  
**Issue** – Portrayal of sex, sexuality and  
nudity, Section 2.3 AANA Code of Ethics  
**Board decision** – Dismissed  
About 40 complaints

**8. Cadbury Schweppes – Solo**  
*Case number 460/09*  
**(TV) Man drinks solo then kicks the can into a bin but misses and leaves the can on the ground as litter.**  
**Issue** – Health and Safety, Section 2.6,  
AANA Code of Ethics  
**Board decision** – Dismissed  
About 35 complaints

**9. Cadbury Schweppes – Solo**  
*Case number 14/09*  
**(TV) Man wearing pink tutu is tackled by Australian cricketer Andrew Symonds.**  
**Issue** – Discrimination or vilification,  
Section 2.1 AANA Code of Ethics  
**Board decision** – Dismissed  
About 30 complaints

**10. Yum (KFC)**  
*Case number 377/09*  
**(TV) Man at picnic lies about owning a car when asked to move it.**  
**Issue** – Other, social values  
**Board decision** – Dismissed  
About 25 complaints



# *Executive reports*

*Chairman's report*

*CEO's report*

*Advertising Standards Bureau Board of Directors*





# CHAIRMAN'S REPORT

The community has continued to take a high level of interest in the advertising industry, in particular how its messages and the impact they have are being felt by the community.

This continued interest is helping to continue the development of self-regulatory codes by which the advertising industry itself can measure its performance.

The work of the Advertising Standards Bureau in administering these Codes and the decisions made by the Advertising Standards Board in applying them is paramount to the continued effectiveness of Australia's advertising self-regulation system.

Since its inception in 1998, the system of advertising self-regulation has grown and developed. The addition of code of practice initiatives by industry groups in 2009 is part of this growth. The adoption of new and updated processes by the Advertising Standards Bureau is also key in maintaining a world class system of advertising self regulation in Australia.

I would like to thank my Bureau Board colleagues for their work during the year and also for their contribution early in the year toward a new strategic plan. The plan was implemented by the Bureau and further aligns it with international

standards and allows it to measure its operational performance. Continued membership of international organisations, such as the European Advertising Standards Alliance, provides important benchmarks against which the Bureau's performance can be measured.

On this note I would like to take the opportunity to congratulate the Bureau Chief Executive Officer on the high quality leadership she offers. This leadership was one of several commendations the Bureau received in an operational quality audit conducted during 2009, by the Social Marketing and Advertising Research Team (SMART) at the University of the Sunshine Coast.

The operational quality audit also commended the composition and diverse range of views and opinions of the Advertising Standards Board. The selection process for the 20 member Board was also found to be "particularly impressive". While the decisions of the Advertising Standards Board will never please everybody, the community, industry and government can be assured that the system they support meets world best practice. My respect for the work and dedication to the task of each member of the Advertising Standards Board is unwavering.

Advertisers have continued to show solid support for the advertising self-regulation system, both financially and through quick responses to requests for information and once again complete compliance with decisions made by the Advertising Standards Board. Unfortunately, several large advertisers still do not financially support the system, despite the benefit they gain from the lack of government intervention in advertising. Financial support is essential to the smooth running and administration of the complaints handling system.

My thanks also to the staff at the Bureau for their continued high level of work in ensuring the smooth running of the complaints handling process. This work is also a key in ensuring continued success of the self-regulation of advertising in Australia.

We all look forward to the new issues and challenges of the year ahead.

Ian Alwill



# CEO'S REPORT

The success of self-regulation depends on many factors. One of these is jurisdiction. ASB is at the forefront in this area.

During 2009, ASB felt the impact of AANA's expansion of the jurisdiction of the Codes from 'advertising' to 'advertising and marketing communications'. Local advertising is now within jurisdiction so complaints about material such as posters in shop windows are considered by the Board. At the other end of the spectrum, being able to consider complaints about advertising in digital and emerging media is also critical.

During 2009 complaints about internet advertising, including marketing material on an advertiser's own website and material placed on social sites such as YouTube were considered by the Board. A relevant self-regulation system must respond to complaints in all media.

Self-regulation also cannot operate without the support of advertisers. This support is operational (by providing information in response to complaints and ensuring compliance with Board decisions) and financial.

ASB is funded by advertisers through a levy on their advertising expenditure (0.035% of media expenditure = \$350 per \$1 million). The size of the levy has not changed since it was introduced in 1998. This is a voluntary levy. Unfortunately some advertisers choose not to

support the self-regulation system financially. Changing their minds was a priority for 2009 and will continue to be so in 2010. Information on the importance of advertisers' financial support is available on our website – I urge any company that does not support the system financially to do so.

During 2009 we commissioned an Audit of the Operations of the ASB. Areas in which we scored highly included recruitment and operations of Board members, industry training, transparency and information available on our website. Of interest also are recommendations from the report, with most of the items recommended now underway or planned for 2010.

Our research program during 2009 revealed that the Board's decisions are mostly in line with community standards around violence in advertising. We aim to conduct yearly research around different areas of the Code, to provide industry with confidence that the Board's decisions are in line with the community's views on the acceptability of advertising in Australia. It is important that we are able to show that there is congruence between the Board's decisions and community standards.

During 2009 the Board met twice per month (with the ability to call additional special meetings if required). Unfortunately, due to the increase in Codes that we now

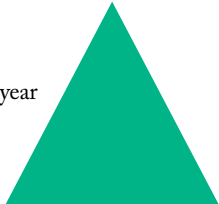
administer and the complexity of decisions, this has not translated into a measureable improvement in our turn-around times. We are working hard behind the scenes to be industry leaders in turn-around times.

It is of continuing frustration that the media chooses not to report self-regulation successes to the community. It is disappointing when media interest wanes because the outcome is not controversial. While it is of interest and relevance to the community to know that an advertisement is giving rise to complaints, it is of equal interest and relevance to know what action the Board has taken. The ASB website provides factual information about our successes and challenges. A revamp of our website is a priority for 2010.

Work at the ASB is always interesting and often challenging with a relentless submission of complaints which must be assessed and adjudicated on within strict timeframes. The complaints management staff at the ASB perform a great job in ensuring that the complaints system works well. Thank you to them and to all of my staff for another year of hard work, dedication and much laughter.

Looking forward to another busy year in 2010.

Fiona Jolley



# ADVERTISING STANDARDS BUREAU BOARD OF DIRECTORS

The Advertising Standards Bureau is a limited company headed by a Board of Directors. Under the Constitution of the Advertising Standards Board, there must be between three and six directors of the company that is the Advertising Standards Bureau (the ASB).

The Board of Directors is responsible for management of the business of the ASB consistent with the objectives of the ASB.

The Bureau Board is responsible, with the CEO, for the corporate governance of the Advertising Standards Bureau. With strategic, financial and operational concerns within its purview, it is anxious to improve the operation of the ASB with the aim of positioning ASB to become the foremost complaints resolution body for advertising in Australia.

The Bureau Board has the integrity of the advertising self-regulation system at heart. It insists on absolute separation between the work of the Bureau Board and that of the Advertising Standards Board.

During 2009 the membership of the Board of Directors changed, with the departure of one director in February and the induction of a new director in March.

## Board of Directors

### **Ian Alwill**

#### *Chairman, ASB*

Director – Marketing Communications,  
Nestle Australia

### **Michael Duncan**

#### *Director, ASB*

Former Agency Client Director,  
Nova 106.9 Radio

### **Jane Emery**

#### *Former Director, ASB*

Former Managing Director,  
Grey Worldwide

### **Hayden Hills**

#### *Director, ASB*

Group Manager – Finance Operations –  
Allianz Insurance

### **John McLaren**

#### *Director, ASB*

Group Account Director,  
Clemenger BBDO

### **John Sintras**

#### *Director, ASB*

Chief Executive Officer,  
Starcom Media Vest Group

## Meetings

The Board of Directors met 6 times during 2009.

BOARD MEMBER	POSITION	MEETINGS ATTENDED	PERIOD OF BOARD MEMBERSHIP
Ian Alwill	Chairman	4 (of 6)	December 2004 (continuing)
Michael Duncan	Director	5 (of 6)	November 2001 (continuing)
Jane Emery	Director	1 (of 1)	March 2008 to February 2009
Hayden Hills	Director	6 (of 6)	December 2004 (continuing)
John McLaren	Director	5 (of 5)	March 2009 (continuing)
John Sintras	Director	5 (of 6)	December 2005 (continuing)



## *Path to our vision*

*Objective 1 – Be the pre-eminent adjudicative authority for advertising and marketing communication complaints against industry codes of practice*

*Objective 2 – Deliver effective advertising self regulation in Australia*

*Objective 3 – Reflect community standards*

*Objective 4 – Have a well recognised awareness and profile among the public, industry, government and other stakeholders*

*Objective 5 – Have kept pace with advertising and marketing communication developments in new media*

*Objective 6 – Comply with international best practice complaints-handling procedures and protocols*

*Objective 7 – Be financially viable*

*Objective 8 – Have a skilled and sustainable workforce*

# ACHIEVEMENTS IN 2009

*In 2009 the Advertising Standards Bureau assessed its purpose, mission and values to develop a 2009–2010 strategic plan. In doing this we also formulated a vision – a statement of where the Advertising Standards Bureau will be in 2014.*

*This vision includes eight objectives by which it will evaluate its progress.*

## Vision


In 2014, the Advertising Standards Bureau will:

- be the pre-eminent adjudicative authority for advertising and marketing communication complaints against industry codes of practice in Australia
- deliver effective advertising self regulation in Australia
- reflect community standards
- have a well recognised awareness and profile among the public, industry, government and other stakeholders
- have kept pace with advertising and marketing communication developments in new media
- comply with international best practice complaints-handling procedures and protocols
- be financially viable
- have a skilled and sustainable workforce.



# OBJECTIVE 1

Be the pre-eminent adjudicative authority for advertising and marketing communication complaints against industry codes of practice



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During 2009 several industry bodies looked at methods to ensure advertising in their sector met the high standards expected in Australia. As a result two initiatives relating to food and beverage advertising were added to the self-regulation measures already in force in relation to advertising and marketing to children .

The Advertising Standards Bureau worked with the Australian Food and Grocery Council to assist in implementing its Responsible Children's Marketing Initiative. The initiative came into force at the beginning of 2009 and is being administered by ASB. Complaints received in relation to this initiative are received by the ASB, and the ASB then forwards these complaints to either or both an appointed healthy choices arbiter and the Advertising Standards Board.

Another initiative now administered by the Advertising Standards Bureau is the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR). Leading quick service restaurants in Australia, in collaboration with the Australian Association of National Advertisers (AANA), developed the initiative as part of the system of advertising and marketing self-regulation in Australia.

Companies currently signed up to the QSR initiative represent the majority of television advertisers of such food in Australia and have agreed that all marketing communications and advertising of food and beverage combinations to children under-14 years must represent healthier lifestyle choices, as determined by a defined set of nutrition criteria for assessing children's meals.

As part of its ongoing commitment to international best practice in delivering the advertising self-regulation system in Australia, the Advertising Standards Bureau (ASB) introduced another Independent Reviewer in 2009. The review process for Advertising Standards Board (Board) decisions was introduced in April 2008. Between its introduction and December 2009, the process was accessed seven times.

# OBJECTIVE 2

## Deliver effective advertising self regulation in Australia

In an operational audit the Advertising Standards Bureau received commendations on its outstanding leadership and the composition of the Advertising Standards Board. The audit was commissioned by the ASB to gain an independent, rigorous and considered evaluation of its operational quality from experts in the field.

Overall the ASB scored well in the operational quality audit conducted by the Social Marketing and Advertising Research Team (SMART) at the University of the Sunshine Coast. The team, including University of Sunshine Coast Associate Professors Dr Michael Harker and

Dr Debra Harker and Adjunct Professor Glen Wiggs, adopted a nine stage process for the audit.

Stages included a review of world's best practice, a questionnaire completed by stakeholders, interviews with the CEO and industry stakeholders, as well as observation of a Board meeting.

In its conclusion the audit report states: "We are of the firm view that the Secretariat led by Fiona Jolly and the Board are real strengths."

Another commendation related to the composition and diverse range of views and opinions of the Advertising Standards Board. The selection process for the 20 member Board was also found to be "particularly impressive".

The audit report concludes that: "The ASB is an advertising self-regulatory organisation of high standard and one of which industry can be proud."

### Highlight

#### **Operational Quality Audit of the Advertising Standards Bureau, Australia**

##### *Commendations*

1. The complaint board composition provides a diverse range of views and opinions, and the selection process is particularly impressive.
2. The complaint board operations are conducted to a very high standard.
3. A close relationship is being built through the office of the Advertising Standards Bureau CEO with key stakeholders, such as the ACCC, and this is very healthy but needs to be widened.

4. The ASB website is an excellent tool for all stakeholders and is maintained to a high standard.
5. The industry training and awareness campaign of the Codes and system is an excellent initiative but requires some monitoring and evaluation to ensure that education is actually achieved.
6. The leadership provided by the CEO is outstanding and Fiona Jolly is an impressive leader in advertising self-regulation in Australia.



### *Affirmations*

1. The ASB regularly commissions research into prevailing community standards and then uses that evidence to educate and inform Board decisions.
2. The revolving Chair for Board meeting is a key initiative and should be championed as an effective tactic to avoid capture.
3. Regular training is provided for Board members.
4. The ASB complaints handling board is one of the few boards around the world that is entirely manned by members of the public. There are no industry members of the Board.
5. The AFA/ASB industry awareness road trip is a key initiative and should be continued but also monitored and evaluated regularly.

### *Recommendations*


1. That key stakeholders be invited to attend ASB meetings as observers.
2. That there be an annual function attended by Board members, the Governance Board members and the wider industry.
3. That a complaint filtering system be developed and adopted.
4. The appeals system needs to be revised and should be free to public complainants. Also a full report should be provided to parties to a complaint that has been appealed.
5. Further investigation of an online, virtual meeting to complement the complaints determination procedure should be considered.
6. That a program be implemented of monitoring and auditing of the ease of complaint, stakeholder perceptions of Code performance, general stakeholder satisfaction, compliance with Codes, etc.
7. Awareness levels need to be addressed. Wider dissemination of adjudications would assist in this regard, as would the 'humanisation of the board' in public relations campaigns.
8. Public awareness levels need to be monitored and the findings utilised to guide campaigns.





## OBJECTIVE 3

### Reflect community standards



During 2009 the Advertising Standards Bureau commissioned two research projects as part of its continuing efforts to maintain up-to-date knowledge about community standards around advertising and whether the Board's decisions reflect those standards.

A report contrasting the legal and socio-ethical definitions of discrimination and vilification in relation to the Advertising Standards Board's determinations about advertisements was completed in March 2009. Two researchers were engaged to provide complementary papers.

Twenty advertisements previously considered by the Advertising Standards Board were considered by the researchers. With few exceptions, the findings of both researchers generally agreed with the determinations made by the Board.

Results from research regarding violence in advertising (conducted by Colmar Brunton for the Advertising Standards Bureau) showed that Board decisions are closely aligned with the views of the community.

The research sample included 790 complainants drawn from ASB records and 1195 members of the general population

sourced randomly from Colmar Brunton's online panel. It collected information about the community's perception of acceptability of advertisements. The 13 advertisements chosen for the research represented a selection of the varied issues which are considered by the Board under Section 2.2 (violence) of the AANA Code of Ethics. Information was also collected about the level of violence perceived, as well as the relevance of the violence depicted to the product advertised.

Both reports were made available to the public in hard copy and in an electronic version available from the Advertising Standards Bureau website.

#### Highlight

Research which surveyed and reported on the decisions community members would have made on a range of advertisements across different media has found that Board decisions generally reflect community standards. All advertisements shown in both sets of research had been the subject of complaints that had been before the Board.

Results from research completed by Colmar Brunton for the Advertising Standards Bureau in 2009 show that Board decisions regarding violence in advertising are closely aligned with the views of the community. With the exception of one community announcement (considered inappropriate by a large proportion of the general public, but dismissed by the Board) the ads that were most unacceptable to those surveyed had complaints upheld. The pattern of upholding complaints matched almost exactly to the ranking of inappropriateness by the general public.

Similarly results from Community Standards Research in 2007 found Board decisions generally reflect community standards on the key provisions of the AANA Code of Ethics including portrayal of violence, use of language and health and safety. In this research community opinion differed in two areas. The Board was found to be more broadminded about politically incorrect statements and the community more conservative in their attitude towards sex, sexuality and nudity.

	COMMUNITY STANDARDS RESEARCH - 2007	VIOLENCE RESEARCH - 2009
Number of ads considered	15	13
Board decisions reflecting community opinion	12	12
Board decisions not reflecting community opinion	3	1

# OBJECTIVE 4

Have a well recognised awareness and profile among the public, industry, government and other stakeholders

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The Advertising Federation of Australia and the Advertising Standards Bureau joined forces to present a series of breakfast seminars around Australia during 2009.

The seminars updated members and their clients on recent changes to the Codes, using current and relevant examples to demonstrate the application of the Codes in the self regulation process.

Seminars were held in Sydney, Melbourne, Brisbane and Adelaide. In addition to these seminars the Advertising Standards Bureau continued to build on its profile by participating in a Youngbloods (Advertising Federation of Australia) seminar in Sydney, Legalwise seminars in Sydney, Brisbane and Melbourne, the National Radio Conference

run by Commercial Radio Australia and also the Children and Sexualised Media seminars run by the Australian Council on Children and the Media.

Two initiatives which proved popular in 2009 was the introduction of an electronic bulletin and newsletter.

The new electronic bulletin, Ad Standards Bulletin, was implemented in September. The bulletin was distributed to subscribers through an electronic communications management system and took the place of the regular monthly media release. The bulletin allows for readers to access the ASB website and other relevant information through links. It covers issues of the moment as well as highlighting recent Board determinations.

From the third quarter of 2009 the Advertising Standards Bureau's newsletter was distributed electronically. The newsletter raises awareness of the work of the ASB and the successful operation of the self-regulation system, provides analysis on quarterly trends or interesting decisions of the Advertising Standards Board, and encourages visits to the ASB website.

Media releases and other information for particular stakeholder groups were also distributed throughout 2009. The Chief Executive officer also participated in numerous media interviews for print, radio and television about issues relating to ASB operations.

## Highlight

During research conducted in 2009 about violence in advertising information about the concerns of those surveyed, reasons they did/did not complain, who they complained to and general awareness of the ASB was also collected.

Results showed that awareness of the Advertising Standards Bureau as the place to complain jumped to 67 per cent spontaneous awareness - up dramatically from the 10 per cent spontaneous awareness result achieved in Community Awareness Research conducted in December 2006. In the 2006 research awareness of the ASB jumped to 65 per cent after prompting.

In the 2009 research, 67 per cent of the general public were aware that they could complain to the Advertising Standards Bureau if they had a complaint about paid advertising in relation to language, discrimination, concern for children, violence, sex, sexuality, nudity or health and safety.

Similar questions were asked in both the 2006 and 2009 research projects about awareness of the ASB and about why people had chosen not to make complaints.

### Awareness of place/organisation to complain

ORGANISATION/PLACE	COMMUNITY AWARENESS RESEARCH – 2006 (PERCENTAGE OF SURVEY SAMPLE)	VIOLENCE RESEARCH – 2009 (PERCENTAGE OF SURVEY SAMPLE)
Advertising Standards Bureau	10%	65%
TV/Radio station where ad seen/heard	15%	58%
Newspaper/magazine where ad seen	3%	48%
Other	17%	29%
Don't know	43%	9%
None (there is nowhere to complain)	9%	4%

### Reasons for choosing not to make a complaint

REASON	COMMUNITY AWARENESS RESEARCH – 2006 (PERCENTAGE OF SURVEY SAMPLE)	VIOLENCE RESEARCH – 2009 (PERCENTAGE OF SURVEY SAMPLE)
Too lazy/couldn't be bothered	38%	22%
Nothing would happen/not worth it	23%	45%
Didn't know who to complain to	11%	15%
Too complicated/complex	6%	15%
Don't know	7%	6%



## OBJECTIVE 5

### Kept pace with advertising and marketing communication developments in new media

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The ever-growing advertising space created by new technology is widening the opportunities for advertisers and also the style of advertising and marketing communications. In order for the self-regulation system to function appropriately, it is important that the Advertising Standards Board is able to consider complaints about material on all types of media that is accessible to consumers including complaints arising from advertisements seen on emerging media.

During 2009 the Advertising Standards Bureau received complaints about You tube, internet, social networking sites, and mobile phone advertising. The complaints received related to more than 50 emerging media advertisements, and along with other traditional media advertisements, were forwarded to the Board for consideration.

Since 2006 the Board has considered complaints about advertising material on the internet. This includes advertising material on advertiser own websites, microsites established by advertisers for particular products and, of course, advertising material placed on third party websites. In mid 2009 the jurisdiction of the Board was expanded again when the AANA amended the AANA Codes to expand their application from advertising to 'advertising and marketing communications'.

The definition included in the Code of 'advertising and marketing communication' has considerably expanded the scope of the Codes and thereby the jurisdiction of the Board. Marketing communications cover a range of activities undertaken by advertisers such as material placed on social networking sites (such as an Internet YouTube advertisement from Nandos showing the premiere of the opening for the film "Bruno" and an imposter (impersonating the character Bruno – case 321/09).

The Board is no longer restricted to only considering complaints about material that is broadly distributed, so for the first time the Board is now able to consider complaints about local advertising – such as a poster from Australian Hair & Beauty Imports for its MUK product – case 404/09. The Board is also now able to consider material that is displayed by an advertiser themselves – such as a poster in the front of a store – case 397/09.

It is important that the community has access to a complaints resolution service in relation to advertisements and equally important that the Board's jurisdiction covers the range of media and fora in which advertising and marketing communications are made available.



## OBJECTIVE 6

### Comply with international best practice complaints-handling procedures and protocols

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Advertising Standards Bureau CEO Fiona Jolly representing the ASB at the EASA General Council meeting in Prague in May. The ASB is an affiliate member of EASA. The European Advertising Standards Alliance International Council meeting was also held during the general council meeting.

The international council meeting was attended mainly by affiliate members including Australia, Canada, New Zealand, South Africa, and other non-European members. Its focus was on improving information sharing around international complaints and providing assistance outside Europe to countries wishing to establish self-regulation.

The ASB continues to evaluate the Australian system and sets its standards based on best practice recommendations outlined by EASA .

During the international council meeting the Australian delegation introduced a representative from the Korea Communications Standards Commission, Park Chun II, following his visit to ASB earlier in 2009.

A number of important pieces of work were also completed at the meeting.

1. EASA Portrayal of Gender Guidance notes which provide a useful framework for the Bureau to use to explain Board decisions around portrayal of gender in advertising and marketing communications in Australia.
2. EASA Best practice recommendations on Self-Regulatory Organisation Standards of service.

These documents, along with briefing papers about the benefits of self-regulation, proved to be a significant resource for the ASB. Key aspects of these documents were used in ASB's work during 2009. For example, ASB utilised three briefing papers developed to enable self-regulation organisations to explain the role and benefit of advertising self-regulation to the range of stakeholders. These papers provide evidence that shows the effectiveness of self-regulation and that it can be trusted and assist ASB's work with governments, consumers and industry alike.

Timeframes for complaints processing was also considered, and although the differences in systems used internationally make it difficult to set benchmarks, ASB looked at its systems to ensure timeliness. The ASB spent considerable time and resources on development of a new complaint management system focussing on timeliness and reporting, the benefits of which will be seen during 2010.

Other discussions around the need for an additional code around environmental sustainability provided useful information which was forwarded to the Australian Association of National Advertisers to inform its Environmental Code development.



# OBJECTIVE 7

## Be financially viable

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The levy system, which underpins self regulation of the advertising industry in Australia, is administered by the Australian Advertising Standards Council (AASC). All levy is paid directly to the AASC.

In 2009 the ASB continued to promote the benefits of Australia's advertising self regulation system to advertisers. It is critical to the success of self regulation that advertisers support the ASB's work in two ways. Compliance with decisions of the Board and providing necessary information to the ASB's decision once complaints have been made is obviously important. Just as important is the financial contribution that all advertisers should make to the ASB.


The contribution made by advertisers in relation to their media expenditure (0.035% of gross media expenditure – 35c per \$1000) is small in relation to the benefits of maintaining self regulation. Levy of 0.035% has not increased since its introduction in 1998, despite a considerable increase in the ASB's workload, including the fact that the number of Codes adjudicated on by the Board and the complexity of issues have both increased, as have number of cases considered by the Board.

It is also important that advertising spend across all media (traditional and new) is captured. ASB spent time in 2009 ensuring that advertising expenditure in the digital environment is taken into consideration by media agencies and the digital media sector.

There was also considerable work encouraging advertisers who do not financially contribute to the self regulation system to do so. ASB considers complaints against all advertisements. This is an administrative cost and it is only fair that those who are using the service contribute to it. Some advertisers take a low risk approach to advertising and consequently receive few complaints requiring attention from ASB. Even in that situation however an advertiser benefits from the work and existence of the ASB. Self regulation provides a common set of self-imposed standards for responsible advertising. Such Codes are flexible and therefore less of an impediment to healthy competition and cost effective business. Self regulation also demonstrates that industry cares about consumers by providing an additional layer of consumer protection. In addition ASB case reports, research projects and guidelines provide information and guidance to advertisers about the

acceptability of advertising and current community standards (e.g. in relation to the portrayal of gender, violence, sex, sexuality and nudity in advertising) when developing their campaigns.

Despite the economic downturn the level of financial support to the ASB continued at a level that was relatively similar to previous years.





# OBJECTIVE 8

## Have a skilled and sustainable workforce

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In March 2009 the Advertising Standards Bureau introduced an Operations Manager into the team.

This new position was created after a review of the work and roles in the organisation. The review found the organisation would benefit from allowing the Chief Executive Officer more time to concentrate on strategic issues and stakeholder liaison activities. The Operations Manager is responsible for supporting the Chief Executive Officer in the operation of the ASB, including the day-to-day management of staff, supervision of projects, management of finances and in 2009 the oversight of the design, development and maintenance of a new client management system (CMS).

In January 2009 the position of Case Manager was divided and two new case managers took on the responsibility of the complaints management process. Each case manager was provided with an induction and given training in the systems in place at the time.

All staff were given training and development opportunities in line with their needs. These opportunities included formal training in IT skills, as well as attendance at industry events, seminars and conferences.

Staff continued to be involved all in discussions about emerging issues and key work. Early in the year this included providing input into a new strategic plan. Since September, all Bureau staff, but particularly the Case Managers and Operations Manager, were been heavily involved in critical business practice mapping and process design required for construction and implementation of a new Case Management System.



## *Board reports*

*The Board's view*

*Advertising Standards Board*

*Board members – 2009*

*The Advertising Claims Board*



# THE BOARD'S VIEW

## Applying the codes of practice

When considering complaints about advertising, the Advertising Standards Board is bound by section 2 of the *Advertiser Code of Ethics* (Section 2). This code determines what issues the Board can look at when considering complaints. These issues fall broadly into eight categories:

- discrimination
- violence
- portrayal of sex, sexuality and nudity
- use of language
- health and safety
- advertising to children (including the AANA Code for Advertising and Marketing to Children)
- motor vehicle advertising (the FCAI Code Voluntary Code for Advertising of Motor Vehicles)
- food and beverages (including the AANA Food and Beverages Marketing and Communications Code).

In 2009 two industry initiatives relating to food and beverage advertising to children were implemented. The Australian Food and Grocery Council developed its Responsible Children's Marketing Initiative and the ASB has been able to receive complaints under this initiative since January 2009. Leading quick service restaurants in Australia, in collaboration with the Australian Association of National Advertisers (AANA), developed the Australian Quick Service Restaurant

Industry Initiative for Responsible Advertising and Marketing to Children which came into effect from 1 August 2009. These two initiatives bring to six the total number of Codes and industry initiatives that the ASB administers complaints in relation to.

During 2009 the majority of complaints concerned issues arising under section 2 of the Code of Ethics. The use of sex, sexuality and nudity in advertising attracted the highest percentage of complaints (40.54 per cent). Another grouping which captures "other" legitimate issues attracted the second highest number of complaints in 2009 (17.04 per cent) with discrimination and vilification only slightly lower (16.31 per cent). There was then a drop to complaints about health and safety (8.38 per cent) followed by violence (7.93 per cent) and language (5.35 per cent).

The Food and Beverage Code had a low percentage of complaints at 2.47 per cent, the Quick Service Restaurant initiative only just charted at 0.16 per cent. No complaints were raised under the Australian Food and Grocery Council's Responsible Children's Marketing Initiative during 2009.

The Advertising to Children Code received the second lowest rate of complaint at 0.63 per cent, while the FCAI Code received 1.19 per cent of all complaints.


## Issues attracting complaint

### **Discrimination or vilification** (Section 2.1, AANA Code of Ethics)

The issue of discrimination and vilification is a complex one in the law. The Board asked for the Bureau to provide advice or guidelines about the interpretation of legal standards for discrimination and vilification, and how they may differ from those in the Code. Research on this issue was commissioned towards the end of 2008 and a report was released in March 2009.

Section 2.1 is a broad category which includes discrimination or vilification on the basis of race, ethnicity, nationality, sex, disability and age. The percentage of complaints about the portrayal of people in a way which discriminates or vilifies fell for the third consecutive year to 16.31 per cent in 2009 from 22.76 per cent 2008 and 28.05 per cent in 2007

During 2009 the Board considered a large number of advertisements where the issue of concern by complainants was the depiction of women. The Board, consistent with community standards, is taking a more strict approach to the depiction of women. The objectification of women – depicting a woman in an advertisement as an object – was determined to amount to discrimination against women in a number of cases – Pharmicare – Brut (278/09), Brothers Ink



– Skinny Blonde beer (283/09) and Custom Security Services (261/09) were cases from internet, outdoor and television in which the Board determined that the depiction of a woman breached the Code. This is an area where advertisers need to take particular note of Board decisions as a reflection of changing community standards around acceptability of stereotypical and objectified images of women.

Discrimination on the basis of disability or physical condition also caused debate during 2009. In a number of Youi advertisements (250/09), 310(09) and (267/09) the Board considered that the depiction of people with obsessive compulsive disorder was not humorous – rather it amounted to a demeaning depiction which breached section 2.1 of the Code. While humour is well accepted as a valid aspect of advertising, the Board determined that the humour in these advertisements did not negate the negative depiction of a group of people in society. By contrast, realistic depiction of people with a disability can be acceptable, even if the advertisement is upsetting to some members of the community, where there is an important message being delivered such as in an advertisement developed by the Multiple Sclerosis Society (324/09).

Humour is often used successfully in advertisements which attract complaints that there is discrimination of particular ethnic groups. During 2009, complaints about the depiction of Americans (54/09, 147/09), and British people (12/09) were dismissed by the Board on the basis that although the advertisements suggested stereotypical aspects of people, the humour in the advertisements worked and the overall impression of the advertisement was not a negative impression of people of that ethnicity.

## Violence

### *(Section 2.2, AANA Code of Ethics)*

Section 2.2 of the Code is strictly worded – there can be no violence in advertising unless it is justifiable in the context of the product or service advertised. The advertising of very few products or services realistically justify the depiction of violence.

The Board applies this provision pragmatically, and considers the context of any perceived violence, whether the violence is ‘slapstick’, animated, or shows realistic consequences. Included within this category are ‘graphic’ depictions of the consequences of violence or ‘graphic’ depictions of the consequences of such events as road traffic accidents.

During 2009 research into the community perception of acceptability of violence in advertising showed that Board decisions are closely aligned with the views of the community. This research was released in May 2009.

The percentage of complaints about violence issues in advertising dropped dramatically in 2009 to its lowest recorded rate of just 7.93 per cent from the previous year’s high of 17.67 per cent. The highest rate of complaint was 18.01 per cent in 2006.

There are always a significant number of complaints about government advertising which depicts accidents or the consequences of violence. such as Victorian Government Workcover advertisements of late 2008 and other similarly graphic advertisements. Consistent with previous decisions the Board has dismissed complaints about these advertisements.

However during 2009 the Board upheld complaints about an advertisement from the WA Government (108/09). The Board considered that the accident depicted in the advertisement was an accident that could have occurred by a woman being bumped by a person who is not affected by alcohol. The Board considered that the link between excessive alcohol consumption and the baby’s death was tenuous and unlikely. As the link between the person drinking and the baby’s death was so tenuous, the Board considered that the advertisement’s graphic violence was not justified by the public health message it was attempting to convey.

Depictions of torture or abuse will not be tolerated by the Board. The depiction of a woman’s mouth sewn shut for General Pants Group (402/09) was found to breach the Code.

Radio advertisements which suggest, rather than depict violence, will also not be considered acceptable if there is a suggestion of domestic violence or other unacceptable violent behavior (522/09 and 174/09)

Consistent with previous decisions, the Board often considers complaints about violence in advertising for movies or computer games. Although there is a limit as to what is acceptable, the depiction of violence in promoting a violent game or movie can be acceptable (364/09, 366/09, 513/09, 515/09).

## Sex, sexuality and nudity

### *(Section 2.3, AANA Code of Ethics)*

The portrayal of sex, sexuality and nudity continues to be a dominant issue in complaints about advertising. For the past three years it has been the most complained about category, with an all time high of 40.54 per cent in 2009, up considerably from 25.61 per cent in 2008, but only slightly higher than 37.91 per cent in 2007.

While a range of mediums accounted for complaints in this section, complaints about outdoor, internet and television advertisements made up the majority. Advertising placed on public transport and other vehicles also received a higher level of complaint than in previous years.


A poster advertisement from Australian hair and beauty importers for its MUK product was found to breach section 2.3 of the Code as it did not treat sex, sexuality and nudity with sensitivity to the relevant audience. The Board noted that a man featured in the poster was naked except for a towel. The positioning of the towel meant that most of the man's body was exposed, with the exception of his genitals. The Board noted that the nudity of the man was not relevant to the product advertised - hair styling products. It considered the man's positioning was sexualised and was made more so by text ('wanna muk') which was suggestive of sexual or intimate behavior. The Board noted that the posters were displayed in store windows which could be seen by a range of people (including children) and considered that the sexualised nature of the image was not appropriate to the likely audience.

The Board adopted a strict view on limits of acceptability of sexual innuendo in television advertising during PG rated time zones. An advertisement from Jamba for a mobile phone ringtone featured the lyrics "jizz in my pants" which were shown in text on the screen along with convulsive and sexually suggestive movements of characters. The Board noted that the word "jizz" is understood colloquially to be a reference to semen and would be understood as that by a significant section of the community. The Board also noted the PG rating and the subsequent time zones in which the advertisement was screened, and considered that the sexualised language and accompanying suggestive movements used in the advertisement were not appropriate to the relevant audience, which may include children. The Board determined the advertisement breached both Sections 2.3 and 2.5 of the Code.

Full exposure of women's breasts was cause for the Board to uphold complaints about two internet advertising and marketing attempts by Brothers Ink for their Skinny Blonde alcohol product. In the first case the advertiser's website included a page where viewers can select one of six blonde girls wearing red bikinis. By selecting and clicking on a girl, the viewer was taken to a separate page where they could select to increase the temperature on the thermometer beside the girl to make the bikini top disappear. The Board considered the entire focus of the website was the women and that they were depicted as commodities to be 'chosen' and 'undressed', in particular where the women are presented in a beer box with the option to 'choose'. In the second case a woman with blonde hair is shown wearing a red bikini. She dares viewers to have a staring competition and after 30 seconds takes off her bikini top to display her breasts in frontal view. The images cuts to a screen shot of the Skinny Blonde logo and website address.

In the first case the Board considered that the ability to effectively 'remove' the women's tops was sexualised and that those images of the women naked from the waist up did not treat sex, sexuality and nudity with sensitivity to the relevant audience and were in breach of section 2.3 of the Code. In the second case the Board considered that the images of the woman in her bikini was not overtly sexualised and was not inappropriate to the likely audience, but that once the woman removed her top the image was highly sexualised. The Board noted that the advertiser's website was not age restricted and that younger people are able to access the site. The Board considered that the nude image of the women naked from the waist up did not treat sex, sexuality and nudity with sensitivity to the relevant audience and was in breach of section 2.3 of the Code.

Going beyond information about sexual issues resulted in the Board determining that the Advanced Medical Institute's two-minute man advertisement breached section 2.3 of the Code. The Board noted that while the advertisement was for a sexually related product and that mentions of sex and enhancement of sexual performance were relevant to the product it considered that the advertisement went beyond information about sexual dysfunction and treated sexual dysfunction and sexuality in an overt and negative manner that it considered even a broad minded relevant radio audience would find inappropriate and offensive.



Blatant references to a sexual act by Wicked Campers was considered by the Board as not treating sex with sensitivity to the relevant audience, while more subtle, humorous references were found to not offend. The Board considered that a reference to 'oral sex' was a clear and blatant reference to a sexual act and that this reference was not subtle, discrete or in any way connected with the product being advertised (camper vans). The Board noted that the slogan was on a camper van being driven on public roads and accessible to a broad audience. On this basis the Board found it breached section 2.3 of the Code. The Board agreed a phrase "*honk if you did it last night*" used on another vehicle had been in use for a very long time, was open-ended and could be construed in a variety of ways and was unlikely to be considered or understood as a sexual reference by young people. The Board considered that adults would generally not find the sexual suggestion offensive.

The Board noted that in research conducted in 2007 it was suggested that the Board was too liberal in its determinations about sex, sexuality and nudity in advertising. As the issue most complained about by the community in 2009, the Board asked that the issue of the acceptability of sex, sexuality and nudity in advertisements, particularly in advertising in outdoor media, be the subject of the Bureau's next community standards testing.

## Language

### (Section 2.5, AANA Code of Ethics)

Complaints about the language used in advertising made up 5.35 per cent of all complaints in 2009, down from 7.24 per cent in 2008, but still higher than the lowest rate of just 1.68 per cent in 2007.

Most complaints under this part of the Code relate to language commonly referred to as colloquialisms or as part of the Australian vernacular. Consistent with decisions in previous years, colloquialisms in general use within the Australian community were found to not breach section 2.5 of the Code.

The Board noted that the term 'crap' had come into common usage, as part of the Australian vernacular when it considered an advertisement from Raptor Electrical. The Board noted the term was used by a character in the advertisement to express his frustration. While recognising that some members of the community would find the use of the term distasteful, the Board considered the word was used in the context that is consistent with Australian usage and was not strong or obscene language.

In considering the advertisement from Arena Sports Store the Board noted that the term 'bloody' was used in a manner consistent with its colloquial usage and was not used in a demeaning or aggressive manner towards any person or thing. The Board considered that the term has become part of Australian colloquial language and is unlikely to be considered offensive by the majority of Australians.

The Board noted the phrase 'cheap bastard' used in an advertisement from Mo's Mobiles was intended to be a lighthearted, funny and inoffensive colloquial use of language. The Board recognised that some members of the community could be upset by the advertisement being shown in a family viewing time, but noted the gentle humour used in the advertisement and agreed the term was not used in a strong or obscene manner.

The use of strong language by children in advertisements generally gives rise to more complaints than if the same word were used by an adult. During 2009, the depiction of a young girl using the term 'bum' in an advertisement from Kimberley Clark did not breach section 2.5 of the Code according to the Board. The Board agreed that the word is in common use with respect to children and toileting and that it was used in a manner consistent with its meaning and not in a strong or offensive manner.

Using words and acronyms that play on the 'f' word, but do not use the actual word were considered to not contravene section 2.5 of the Code. A radio advertisement from Billy the Toolman (case 204/09) for the company's products includes this usage.

The use of acronyms likely to suggest strong language raised some ire in the community. A campaign from Nova 106.9 which incorporated a number of billboards which had the letters 'WTF' in large print was one example. The Board noted it had previously considered advertisements which used acronyms to appeal to a younger adult market and that the use of the acronym 'WTF' was not of itself strong or obscene language. In this case the advertiser stated it would monitor further complaints and ensure that advertisements are not offensive to a significant proportion of the community

Another billboard from National Foods for its Farmers Union Iced Coffee product used the acronym FUIC. The Board noted that the acronym was not actually obscene language and considered that although obviously meant to be a risqué way of promoting its product, the advertisement did not contain any language that was strong or obscene. The Board found that the depiction did not contravene the provisions of the Code relating to language.

In a similar vein, although some words may be suggestive of strong language, much of the time use of language that is not actually strong will be considered acceptable. The Board considered use of the word 'freakin' in an advertisement from Sunshine Kababs was not offensive in the context of the advertisement and generally was not considered to be strong or obscene language. The Board noted that the word was a very minor part of the advertisement and considered that most people in the community would not consider the word a swear word and would also not consider it inappropriate in the circumstances.

The combination of smutty language and not treating sex, sexuality and nudity with sensitivity to the relevant audience resulted in the Board determining to uphold complaints about a radio advertisement for the 'I love you man' movie. The Board noted that the audience for this advertisement could include children as it was broadcast during a family time when people would normally be travelling to work or school and included sexual references that were explicit.

### Health and safety

#### *(Section 2.6, AANA Code of Ethics)*

Complaints about health and safety issues in advertising were again low in 2009 at 8.38 per cent, although slightly up from the previous year's low of 6.04 per cent. The highest recorded rate of complaint about health and safety issues was 10.85 per cent in 2007.

The Board considered any implication that use of illicit substances is acceptable was contrary to the community's standards on health and safety. In considering complaints about a billboard from Wize Guys for its energy drink called Cocaine, the Board agreed the advertisers use of a 'wicked devil' alongside the use of the name 'cocaine' and the phrase 'drink cocaine' was likely to create an impression that the product is sexy and 'cool' to drink. The Board considered that it was likely to create an impression - through familiarisation and the lighthearted use of the term 'cocaine' - that consumption of cocaine or use of cocaine is also acceptable. The Board considered that this advertisement depicted the product in a manner likely to lead to a section of the community, most likely younger people, thinking that use of an illicit substance is acceptable and determined that the advertisement breached section 2.6 of the Code.

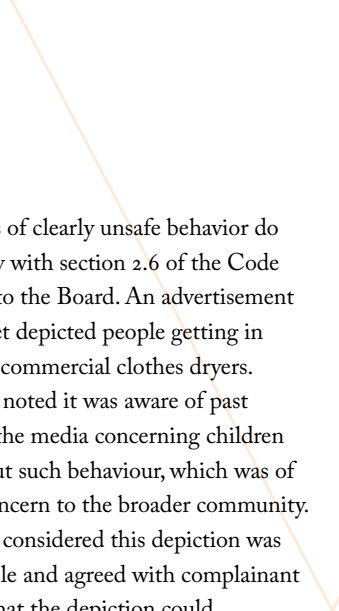
Similarly, the Board considered that depiction of illicit drugs in an advertisement for clothing brand Unit was grossly inappropriate and contrary to prevailing community standards on health and safety. It agreed that white powder shown next to credit cards in the advertisement appeared to represent cocaine or some other illicit drug. The Board's concern was heightened because children and young adults were readers of the magazine in which the advertisement appeared.

An inference to a young woman having drunk too much on her night out in an advertisement from Vodafone was given extensive consideration by the Board. However, it considered that the overall context of the advertisement aimed to highlight various reasons for spending a long time on the telephone and considered that while some people may consider it a reference to excessive alcohol consumption, there was not a strong indication that this was the case. The Board agreed most people in the community would consider it a depiction of material that is contrary to prevailing community standards on health and safety.

Concern from the community that advertisements condone bullying was raised again during 2009. The Board considered that an advertisement from Telstra may send the wrong message to viewers, particularly younger viewers, about cyber-bullying. It agreed that cyber-bullying was a real and current concern in Australian society and that messages about bullying should not be diluted or undermined. The Board felt that sending a photo of a person to a group of people contrary to that person's express wishes is contrary to prevailing community standards on health and safety, particularly standards around bullying, and breached section 2.6 of the Code.

By contrast, the obviously comical nature and overacting of characters in an advertisement from Weight Watchers resulted in the Board determining that it did not breach section 2.6 of the Code. In the advertisement the objectionable and intrusive behavior of a man results in his colleagues using glue on his keyboard to which his fingers then get stuck. The Board also noted the times at which the advertisement aired and that the target audience would be of sufficient maturity and discernment to understand that the actions were intended as a lighthearted prank.





Depictions of clearly unsafe behavior do not comply with section 2.6 of the Code according to the Board. An advertisement from Target depicted people getting in and out of commercial clothes dryers. The Board noted it was aware of past reports in the media concerning children carrying out such behaviour, which was of obvious concern to the broader community. The Board considered this depiction was irresponsible and agreed with complainant concerns that the depiction could potentially encourage children to copy the behaviour.

The Board agreed that exaggerated actions which appeared unrealistic, were not likely to encourage dangerous behaviour or condone illegal activity, and did not breach section 2.6 of the Code in an advertisement from Parmalat for its Ice Break drink. The Board considered the activities in the advertisement appeared to parody a Western-style film and that many of the depictions in the advertisement were not possible (sticking to a truck door with toilet plungers after leaping from a car).

A three second shot in which a truck driver is shown driving without his seatbelt was not 'fleeting' enough to allow an advertisement from Yum Restaurants to continue without modification. The Board noted that section 2.6 of the Code prohibits depictions of material that contravene prevailing community standards on health and safety and considered that wearing a seatbelt while driving a vehicle is a key factor in road safety and a legal requirement. The advertiser modified the advertisement to comply with the law and with the Code.

### **"Other" issues**

In the interests of the self-regulation system and so that complainants are not left without an entity to consider their complaints, matters raised that are not strictly within Section 2, but are unable to be referred to any other regulatory or self-regulatory body, are often considered by the Board. This type of matter may include complaints about the content of an advertisement which include depictions of cruelty to animals, scenes or images which cause alarm and distress, issues raised about social values, discrimination on grounds of occupation, and environmental concerns.

'Other' issues received the second highest rate of complaints (17.04 per cent) in 2009, up from 2008 when it received 15.84 per cent of the complaints. This category includes cases in which complainants have raised concerns about causing alarm and distress, environmental issues, the portrayal of people (occupation), and social values.

A major factor in raising this category to the second highest rate of complaint was a campaign for Kentucky Fried Chicken from Yum Restaurants International. This campaign included three advertisements which each depicted a character lying to another. The issue of this socially unacceptable behaviour was highlighted by many complainants as a cause for concern. The Board agreed that the advertisements were intended to portray in a comical and humorous manner, an unlikeable figure, whose behaviour was not tolerated by the other members of his family. The Board determined the advertisements were not in breach of the Code as most members of the community would be able to discern that the advertisements were a light hearted attempt to promote the advertiser's product.



The issue of gambling, and in particular, problem gambling, was brought in front of the Board through complaints about a Betfair Australia advertisement in the form of commentary during cricket games. In this case the Board could only consider whether the advertisement itself depicted material contrary to prevailing community standards on health and safety. In considering the case the Board agreed the advertisement did not breach section 2.6 of the code and did not advertise in a manner that was suggesting excessive gambling. It also considered that the content of the advertisements was unlikely to be attractive to minors and that the advertising did not suggest or encourage gambling by minors. The Board noted Betfair service are legally able to be used and the advertising of those services is also, including during commentary, provided that such advertising is in accordance with the provisions of the Commercial Television Industry Code of Practice.

Emotional exploitation of viewers likely to lead to distress or negative psychological impacts was another issue brought to the Board's attention through consumer complaints.

Several health insurance advertisements from HBF and Insurance Line were subject of complaints, in particular the advertiser's attempts at provoking emotional responses in order to persuade people to purchase their products. In these cases the Board noted the complainants' concerns that the advertisement was distressing and exploitative of people's emotions but that they were not in breach of Section 2 of the Code. The Board considered that the advertisements were generally designed to highlight the risks of not having life insurance and that the product is one that can be legally advertised.

The Board also considered that an advertisement for Clearasil was unlikely to lead to any increase in lack of self-esteem of young people and did not depict material that is contrary to prevailing community standards on health. The Board noted complainants' concerns that the advertisement was likely to lower self-esteem for young women suffering from acne, but agreed that acne is a common part of life for many young people and that the scenario depicted was typical of the way young people (men and women) feel during that part of their development. The Board agreed that while the advertisement did depict young people not wanting to go out with a pimple, it also offered a possible solution for the problem.

Other social values were also tested by complainants – issues surrounding burping, flatulation and images of other bodily excretions.

The Board considered that some members of the community would find an advertisement from Jamba for a fart noise ringtone offensive. However the Board noted that there was no depiction of any person passing wind, that the advertisement clearly depicted the noise coming from the telephone and that the intention of the advertisement was to create humour at the discomfort that the people in the lift would suffer if there was a person passing wind in the lift. The Board considered that most members of the community would find the advertisement humorous, albeit in bad taste, rather than offensive.

The Board agreed with complainants that an advertisement from Browne's foods for its flavoured milk product was very distasteful and was not a pleasant or an inspiring way of promoting a product. However, the Board agreed that the depiction of 'belching' out loud, although distasteful, would not constitute a breach of any of the provisions of the Codes.

The unpleasant suggestion that a car becomes filled with poo was considered not to breach the Code. While complainants described the advertisement as disgusting and in bad taste, the Board noted that there is no depiction of actual poo in the advertisement and considered the advertisement to be a light and humorous portrayal of a potentially embarrassing situation for many parents.

## Children

*(Section 2.4, AANA Code of Ethics and AANA Code for Advertising and Marketing Communication to Children)*

Two elements must be met in order for an advertisement to come within the Children's Code.

The advertisement must be:

- directed primarily to children (14 years or younger), and
- be for goods or service targeted towards and having principal appeal to children.

A number of complaints received during the year raised issues about advertising to children but were not considered under the AANA Code as they were:

- an advertisement for a product that is not of principal appeal to children eg: Pizza 29/09; or
- an advertisement not directed PRIMARILY to children 14 and under eg: NutriGrain 23/09 targeted to main grocery buyers.

There were four advertisements considered under the Children's Code during 2009.

In 28/09 (Hasbro Australia) the Board dismissed a complaint that depicting a child using a nasal dropper on a toy doll was inappropriate.

In 18/09 (McDonald's) the Board dismissed complaints that the advertisement, targeted to teaching children about fire safety, depicted material that was inconsistent with recommended fire safety protocol.

### *Accurately presenting the advertised product*

It is important to consider whether a child would understand from the advertisement what is being advertised.

In two cases during 2009 the Board upheld complaints against promotions on the basis that it considered that the advertised product was unclear to a child.

In McDonald's promotion (184/09) which depicted characters from a movie. The Board considered sections 2.1(b) and 2.2(c) of the Children's Code and determined that:

'...the advertisement was ambiguous in relation to whether or not the Happy Meal contains a salad. While consumers familiar with the Happy Meal product may think it unlikely that the product contains a salad, it is likely that some consumers, perhaps those who are unfamiliar with the product, or those who know that the advertiser is quite frequently updating its menu, would think that it is now possible to obtain a salad with the product. The Board considered that the advertisement is ambiguous in this respect and is in breach of section 2.2.(b) of the Children's Code.

...The Board noted the extensive images of the toys and movie characters, the ambiguity in relation to whether or not the product contains a salad, and the very brief images of the food and beverages that actually are part of the Happy Meals product. The Board considered that as a whole the advertisement did not represent the Happy Meals product in a manner likely to be clearly understood by children. On this basis the Board determined that the advertisement breached section 2.2(c) of the Children's Code.'

Similarly, in 572/09, the Board determined that:

'...in the advertisement the components of the Happy Meal were arranged in the background of the advertisement and are a 'passive' component of the advertisement. The Board considered that for children, particularly younger children, the actions of the monkey are the primary focus of the advertisement. Once the monkey departs the scene, the focus of the advertisement is the voiceover talking about toys and the appearance of the toys. The Board considered that despite the presence of the Happy Meal components in the advertisement at all time, the advertisement would not represent 'in a manner that is clearly understood by children' - particularly young children, the advertised product. The Board determined that the advertisement breached section 2.2(c)(i) of the Children's Code.

### *Premiums*

During 2009 the Board consistently ruled that toys forming part of a kid's meal were not within the definition of premium under the Children's Code. The Board's decisions for example in 572/09 was that:

As noted above 'Premium' is defined in section 1 of the Children's Code as: *"anything offered free or at a reduced price and which is conditional upon the purchase of a regular product."*

The Board determined that the toys which come with the Happy Meal do not fall within the Children's Code definition of 'Premium' as they are part of the Happy Meal – not a product that is additional to the regular product.

### *Food and beverages*

*(Section 2.8, AANA Code of Ethics and AANA Food and Beverages Advertising and Marketing Communications Code)*

During 2009 there were complaints which raised issues under the Food and Beverages Code (the Food Code) about 33 Advertisements. Of those 33, complaints about 26 advertisements were dismissed, complaints about 5 were upheld and two advertisements were withdrawn before being considered by the Board.

The issue of whether or not food advertisements were misleading or deceptive was the predominant issue for 2009. Early in 2009, an investigation undertaken by the Australian Competition and Consumer Commission resulted in Coca-Cola ceasing an advertisement and publishing a statement correcting potentially misleading or inaccurate statements in the advertisement. The Board was subject to some criticism for having dismissed complaints about this advertisement in late 2008 (case 443/08).

This issue has resulted in the Board adopting a more rigorous process for assessing advertisements for food and beverages or for advertisements to children, where there is a complaint that the advertisement is untrue or misleading or deceptive.

The Advertising Standards Bureau now requires people making complaints about the truth and accuracy of claims in an advertisement to provide information about which specific statements in the advertisement they consider are untrue and also what evidence there is to suggest that this information is incorrect. In cases where information provided by the advertiser is highly technical, independent scientific advice will be requested by the ASB.



Case 202/09 (CSR) resulted in the advertiser being required to modify the advertisement to ensure that the information presented was in compliance with the Code. A Meat and Livestock Australia (161/09) newspaper insert directed to children was also determined to be in breach of the Advertising To Children code on the basis that children were unlikely to be able to identify that the material was advertising material – not content.

The issue of misleading and deceptive representations was also considered in cases such as: 162/06 (Meat and Livestock), 316/09 (Unilever Paddle Pops), 430/09 (Mars).

Statements about the nutritional value or ‘healthiness’ of the product were considered in cases including: 72/09 (Souvlaki Hut), 107/09 (Woolworths), 284/09, 293 and 294/09 (Nestle Fruit Fix).

## Cars

*(Section 2.7, AANA Code of Ethics and Federal Chamber of Automotive Industries Code of Practice for Advertising of Motor Vehicles)*

Under the advertising self-regulation system the community can raise concerns about the driving shown in advertisements for vehicles as well as non-safety related issues in vehicle advertisements (eg: issues related to sex, violence etc).

During 2009 there were complaints about 19 car advertisements which raised issues related to the FCAI Code.

### Issues complained about:

CODE	ISSUE	COMPLAINTS
s.2(a)	unsafe driving	12
s.2(b)	excessive speed	1
s.2(c)	driving practices	10
s.2(d)	alcohol and drugs	0
s.2(e)	causing environmental damage	0
s.3	association with Motor Sport	0
s.4	depiction of off-road vehicles	2

People can raise more than one issue about an advertisement. Complaints were also made that one advertisement 248/09 Chrysler Australia (Spring Break) depicted inappropriate sexuality and nudity and discriminated against women.

Concerns about driving practices were made in relation to issues such as: use of fog lights, depictions of driving doing four wheel drifts, failing to indicate, a vehicle with an unrestrained dog.

Of the advertisements considered under the FCAI Code, complaints were upheld in relation to three and dismissed in relation to 16.

The Board’s decision in relation to 231/09 and 268/09 (BMW) was contentious. Complaints in relation to these advertisements concerned the depiction of a vehicle losing traction. The Board said:

‘The Board formed the view that clause 2(c) had been breached. The Board noted that the advertisement does depict in a number of places the driver intentionally allowing the wheels of the car to lose traction and perform, as the complainant suggested, a four wheel drift. The Board noted that this depiction and the context in which the car was filmed and the driving undertaken was in a controlled environment and that there are no people in the area that the car is driving. The Board considered that the intentional skidding of a car, depicted a number of times in the advertisement, is a driving practice that would breach Commonwealth, State or Territory legislation were it to occur on a road or road related area.

The Board noted the advertiser’s response that the advertisement depicts a car in an artistic setting. The Board noted that under the FCAI Code, the use of fantasy could not be used by an advertiser to justify the inclusion of material that otherwise does not comply with the formal provisions of the FCAI Code.’

By contrast, the outdoor version of this advertisement (230/09) was found not to breach the Code on the basis that:

‘The Board noted that the advertisement does not depict the car being driven and that the depiction of the car beside painted tyre marks did not indicate or really suggest that the vehicle was being driven in a manner that would breach any Commonwealth or other law if it were driven on a road or road related area.’

### **Australian Food and Grocery Council (AFGC) – Responsible Children’s Marketing Initiative**

By arrangement with the AFGC, from February 2009 the ASB took on the role of administering complaints regarding the AFGC – Responsible Children’s Marketing Initiative.

For the period 1 February to 31 December 2009, there were no complaints received in relation to advertisements that came within the requirements of the Responsible Children’s Marketing Initiative.

The complaints process under the RCMI requires the ASB to determine:

- Is the complaint about a product that is manufactured by a signatory to the RCMI?
- If so, is the advertisement complained about broadcast or published in children’s programming (programs or media are directed primarily to children).

In determining whether or not the advertisement complained about is broadcast or published in children’s programming, the ASB considers the wording of the RCMI which places obligations on advertisers not to advertise certain types of products in ‘media’.

Media is defined as: television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children.

In assessing whether or not the advertisement is broadcast or published on ‘media’ the ASB considers information provided by the Advertiser about when and in what programs the advertisement is shown, and also considers data from the advertiser about viewing audiences. In the view of the ASB, there were no advertisements complained about in 2009 which were broadcast or published in ‘media’ as defined in the RCMI.

### **Quick Service Restaurant Industry Initiative**

By arrangement with the Quick Service Restaurant Industry, from August 2009 the ASB took on the role of administering complaints regarding the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the Initiative) as part of the system of advertising and marketing self-regulation in Australia.


The Initiative establishes a common framework:

- to ensure that only food and beverages that represent healthier choices are advertised to children; and
- to help parents and guardians make informed product choices for their children.

Companies currently signed up to the Initiative represent the majority of TV advertisers of such food in Australia. They are:

- Chicken Treat
- Hungry Jack’s
- KFC
- McDonald’s
- Oporto
- Pizza Hut
- Red Rooster

The Initiative reflects companies’ agreement that all marketing communications and advertising of food and beverage combinations to children under 14 years must represent healthier lifestyle choices, as determined by a defined set of nutrition criteria for assessing children’s meals and physical activity.



Companies have further committed to ensuring nutrition information is available on their websites or upon request in restaurants and, wherever practical, displayed on packaging.

For the period 1 August to 31 December 2009, the Board considered complaints about five advertisements under the QSR Initiative.

The complaints processes under the QSR initiative require the ASB to determine:

- Is the complaint about a product that is manufactured by a signatory to the initiative
- Is the advertisement complained about, advertising or marketing to children.

#### *Advertising or marketing to children*

In 484/09, (28 October 2009) a complaint was made that information about KFC Kids meals which appeared on the KFC website breached the QSR initiative. The key issue in this case was whether the information about the Kids Meal constituted 'advertising or marketing to children'. In this case the Board determined that: notwithstanding the content of this part of the website, due to the level of investigation required to locate the promotion, and the lack of material directing people to this information from the home page of the website, that the advertisement did not constitute an advertisement or marketing campaign that was targeted to children'. On this basis the Board determined that the QSR Initiative did not apply.



#### *Healthier choices*

In 571/09 and 572/09 (McDonald's cases) the Board noted advice from the Independent Arbiter that the advertisements complained about did meet the requirement for a 'healthier choice' and dismissed the complaints under the QSR Initiative.

In 573/09 (Hungry Jack's) the Board noted the complaint alleging that the advertisement is directed to children and does not 'represent healthier choices' as required by 4.1(a) of the QSR Initiative. The Advertiser agreed that the product advertised did not meet the requirement of 4.1(a) of the Initiative and the Board determined that there was a breach of this provision of the Initiative.

#### *Representing a healthy lifestyle*

In 571/09 (McDonald's Box of Fun 9 December 2009) the Board determined that the QSR initiative did apply to the advertisement complained about. In this case the complainant argued that it was not clear which products were being advertised and that therefore there was a question about whether or not the product advertised met the criteria for a 'healthier choice' product. Following advice from McDonald's about what products were advertised, the Independent Arbiter advised that the advertised product did meet the criteria for 'healthier choices'. The Board then considered whether the advertisement represented a healthy lifestyle and determined that:

*'The Board noted that the advertisement depicted physical activity occurring in the background of the advertisement and images of animated origami figures (kite, dog, man) were depicted throughout the advertisement and encouraging playing outside. The Board noted that the advertisement depicted very fast and short glimpses of images of the food contained in the MacDonald's happy meal and that although it was not altogether easy to identify what foods would be contained within the Happy Meal at first glance, the advertisement did depict and encourage an active lifestyle and healthier lifestyle choices.'*

### *Use of Licensed Figures*

The Initiative prohibits use of licensed figures in advertising to children unless the product advertised meets the requirements of 4.1(a) (Healthier choices). In 573/09 the Board noted that:

*'...the advertisement features a licensed Character SpongeBob SquarePants. As the advertisement does not meet the requirements of Article 4.1 of the QSR Initiative, the Board determined that the advertisement also did not meet the requirements of Article 4.2 of the QSR Initiative.'*

### *Premiums*

During 2009 a number of complaints raised the issue that advertisement for products which included a toy breached section 4.6 of the Initiative. Section 4.6 requires that 'Participants must not advertiser Premium offers in any Medium directed towards children unless the reference to the premium is merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes and section 20 of the Children's Television Standards 2005.

In relation to this issue the Board has consistently determined that:

*'.... premium is defined as 'anything offered free or at a reduced price and which is conditional upon the purchase of regular Children's Food or Beverage Product.' The Board noted that this definition is the same as the definition in the AANA Code for Advertising and Marketing to Children (the Children's Code). Consistent with previous decisions the Board considered that the toy in the xxxx Kids Meal is not a premium as a toy is an integral part of the product that is a Kids Meal. The Board noted the complainant's concern that if this approach is taken then section 4.6 of the QSR Initiative has no effect. The Board disagreed with this interpretation and noted that there are many promotions by companies where there is a product, toy or gift that is offered 'free or at a reduced price and which is conditional upon the purchase of a regular' food product. The Board considered that section 4.6 does have effect but that it does not apply to the Kids Meal advertisement.'*

# ADVERTISING STANDARDS BOARD

Australia's advertising self-regulation system depends on the dedication, composition and independence of the Advertising Standards Board.

The Board includes 20 people from a broad range of age groups and backgrounds and is gender balanced – representative of the diversity of Australian society.

The Board members are individually and collectively independent of the advertising industry and discharge their responsibilities with fairness, impartiality and a keen sense of prevailing community attitudes.

The Board's task is often difficult and the determinations made will not and cannot always please everyone. When considering complaints about advertising, the Board is bound by section 2 of the Australian Association of National Advertisers (AANA) Code of Ethics. The AANA code determines what issues the Board can look at when considering complaints.

Membership of the Board is on a fixed term basis. New appointments are staggered to ensure it retains a mix of corporate knowledge and at the same time introducing people with different experiences, views and skills. Board appointments are made following a publicly advertised application and interview process.

Appointments are made by the Directors of the corporate governance Board of the Advertising Standards Bureau. People sought for appointment to the Board ideally have an interest in, and views on, advertising and community standards.

## Board meetings

The Board holds two regular monthly meetings as well as convening outside of this regular meeting timetable if urgent matters arise. In 2009 the Board met 22 times.

The position of Chair is rotated among Board members on a meeting-by-meeting basis. The Chair for each meeting is generally set at the beginning of each year but can be varied to accommodate changes in individuals' schedules.

Board members must disclose any personal interest in a matter that is the subject of a complaint. The member concerned must withdraw from contributing to the debate and decision and/or approving the case report in relation to those complaints.

If a Board member's duties to another Board or organisation require that they breach their duty of loyalty or confidentiality to the Board for a period of time, then the member must disclose this position to the Board.

A general conflict with the Board would require that the member withdraw from their duties to the Advertising Standards Board during the period that the conflict continues.

The Board reaches its decision by way of a simple majority. In the event of a tied vote, the Chair has the casting vote.

## Attendance at Board meetings in 2009

There were 22 Board meetings held in 2009.

BOARD MEMBER	MEETINGS ATTENDED
Tanveer Ahmed	11
John Brown	12
Sibylla Budd	22
Joanna Cohen	16
Barbara David	11
Khoa Do	13
Ann Drummond	19
Rachel Grant	21
Thomas Keneally	12
Sophie Killen	19
John Lee	11
JaneMaree Maher	19
Paul McCarthy	18
Paula McNamara	10
Gary Rice	22
Graham Rixon	16
Natasha Stott Despoja	18
Josephine Tiddy	19
Craig White	17
Helen Wicks	19

# BOARD MEMBERS – 2009



**Tanveer Ahmed**

*Appointed August 2006*

Dr Tanveer Ahmed is a psychiatrist and opinion columnist for the Sydney Morning Herald. A former SBS television journalist he is also a Governor of the Smith Family. He has performed comedy and co-hosted a prime time gameshow. He has been chosen by a Prime Minister's committee as one of 100 future leaders of Australia and as a 'young man of influence' by a popular men's magazine.



**The Hon John Brown AO**

*Appointed May 1998*

Former Federal Tourism Minister John Brown was a member of the Commonwealth Parliament for 13 years.

John has been awarded the Olympic Silver Order of Merit and Australian Institute of Marketing Gold Medal. He was elected a Life Member of the Australian Institute of Sport and is a member of the President's Council of the Surf Lifesaving Association. He is also the Emeritus Chairman of Spinesafe and the Transport and Tourism Forum.

Born and bred in Concord in Sydney, John has five adult children and 11 grandchildren.



**Sibylla Budd**

*Appointed August 2006*

Sibylla Budd grew up in Canberra and moved to Melbourne to study acting at the Victorian College of the Arts, where she graduated with a degree in dramatic art.

Since then, Sibylla has shot to prominence with her role in the Australian drama, *The Secret Life of Us*, and Australian feature film *The Bank*. Her other television work has included roles in *The Farm*, *All Saints*, *Something In The Air*, *Kath and Kim*, *Sea Patrol* and *Canal Road*.

Sibylla's film credits include *September*, *The Bank*, *The Book of Revelation* and *The Bet*, for which she was nominated for an AFI award for best supporting actress in 2007. Sibylla has also worked solidly in theatre with the Melbourne Theatre Company, Company B (Belvoir street theatre), The Griffin and Newtheatricals.





**Joanna Cohen**

*Inaugural Member appointed 1997*

Joanna Cohen is the editor of film reviewing website, Rotten Tomatoes and the Marketing Manager for three Fox Interactive Media websites.

For many years Joanna worked in marketing and communication at the University of Sydney and, reflecting her diverse talents, has also managed a Sydney rock band, run a small film festival and worked as a freelance writer.

Joanna has a Bachelor of Arts in Communications and a Master of Arts in English Literature.

Joanna has lived most of her life in the inner western suburbs of Sydney but spent some of her childhood in the central west of New South Wales, and has also lived and worked in London.



**Barbara David**

*Appointed August 2008*

Barbara David has broad experience with both young and mature-age Australians. Her career has included time spent as a high school music teacher as well as a lecturer and researcher in social and child psychology at the Australian National University.

Barbara has retired from lecturing and is currently reliving the student experience, undertaking a TAFE Diploma in Visual Arts. She was awarded Arts and Media Student of the Year in 2007.

Barbara's passion for informed investigation of social issues continues in her ongoing supervision of PhD students. Their research covers topics such as the role of modeling (imitation) in children's gendered behaviour, and the part played by perceptions of capability in the perpetuation of inequality in the workplace.



**Khoa Do**

*Appointed August 2006*

Khoa Do was born in Vietnam and came to Australia as a refugee when he was two years old. Khoa began working in the performing arts in the late 1990s, developing and producing a number of shows and films. He is now a film director in his own right, having achieved significant success in his short career.

Khoa's most recent works include *Footy Legends* in 2006, starring Anh Do, Angus Sampson and Claudia Karvan. His first feature film, *The Finished People*, was a gritty and realistic story about at-risk adolescents on the edge of survival. The film won international acclaim and was nominated for an Australian Film Industry Award for Best Direction, and Film Critics Circle of Australia Awards for Best Film and Best Director. It won the Independent Film Independent Spirit Award in 2003.

Khoa has also worked as a volunteer with Open Family Australia at Cabramatta in Sydney, assisting at-risk youths. He was awarded Bankstown City's Young Citizen of the Year Award in 2002.

Khoa was named Young Australian of the Year in 2005.



**Ann Drummond**  
*Appointed August 2006*

Ann Drummond was born in Scotland where she spent her early childhood years before her family migrated to Canada. Ann lived in Canada for 16 years before moving to Australia in 1975. She now lives in St Kilda in Melbourne. Ann has two grown step-children.

Ann has a degree in both theology and early childhood education. She is a retired Uniting Church minister but continues her involvement as Chairperson of the Synod of Victoria and Tasmania Sexual Misconduct Complaints Committee and provides leadership in the 'Code of Ethics and Prevention of Sexual Misconduct' workshops for clergy of the Uniting Church's Synod of Victoria and Tasmania. She is also a member of the Victorian Ecumenical Professional Standards Group.

Ann has extensive experience in the fields of child education and children's services.

She has managed government programs which delivered services to the community for maternal and child health, child care, youth development, and aged and community care.

Ann is an active member in many groups including YWCA Victoria, Victorian Women's Trust and Friends of the St Kilda Botanical Gardens.



**Rachel Grant**  
*Appointed August 2008*

Rachel Grant grew up in Ballina, northern New South Wales, before moving to Brisbane to complete a Bachelor of Business Communications at the Queensland University of Technology.

Since graduating with a major in public relations in 1990, she has worked for a range of organisations in the energy, ICT, financial and environmental sectors. She currently works as a freelance public relations consultant, with clients including Olex, Humes, Bunya to the Bay 2010 and Peaks to Points 2010.

Rachel has a keen interest in her local area and is committed to working to improve facilities and create a sense of community for her children. She is currently a member of the Parents and Friends Committee at her son's primary school and the parent committee at Church St Kindergarten and Preschool.

Rachel lives in Ipswich with her husband and two young sons and is an avid reader when time permits.



**Thomas Keneally AO**  
*Inaugural Member appointed 1997*

Thomas Keneally is a best-selling, multi award-winning author, playwright, scriptwriter, English professor and holder of a number of honorary doctorates. Tom has written more than 20 novels including *The Chant of Jimmy Blacksmith* and *Schindler's Ark*. In 2009 Tom added to his vast stable of novels with *The People's Train*, as well as publishing a non-fiction work *Australians: Origins to Eureka*.

He was the inaugural chairman of the Australian Republican Movement and is now a director of the organisation.

Tom spent his early years in country towns in northern New South Wales before moving to Sydney. He is married with two children and several grandchildren, and is widely-known as an obsessive rugby league fan.





### **Sophie Killen**

*Appointed August 2006*

Sophie is undertaking a Master of Laws at the University of Melbourne and works at the Australian Communications and Media Authority.

Previously Sophie worked as a research fellow at the Centre for Media and Communications Law at the University of Melbourne where she researched a paper on the control of cross-border tobacco advertising, promotion and sponsorship in a joint project with the VicHealth Centre for Tobacco Control. Sophie has also worked as a judicial associate in the Federal Magistrates Court of Australia and as a casual academic in law and media studies at four universities.

For many years Sophie has been a singer in choirs including The Australian Voices, Canticum, The Melbourne Chorale and most recently, the Sydney Philharmonia choirs. In this capacity, Sophie has participated in a number of festivals, concerts and educational workshops with children living in metropolitan and regional Australia.

Born in Canberra, Sophie was raised in Brisbane, recently enjoyed three years in Melbourne and now lives in Sydney.



### **John Lee**

*Appointed August 2006*

John Lee has worked in senior roles in both the public and private sectors. He is currently consulting to ASX companies and Governments on strategic issues and delivery/performance metrics.

John's previous roles include Director General of the NSW Department of Premier and Cabinet, Department of Commerce, CEO of the NSW State Transit Authority, Director-General of Transport (NSW) and Head of Communications and Marketing at CityRail. He was a key member of the team that successfully delivered transport for the Sydney 2000 Olympic Games.

John has spent most of his life based in western Sydney where he has been involved in numerous community and charity projects.

John is married and his family includes two daughters and a son.



### **Janemaree Maher**

*Appointed August 2008*

JaneMaree Maher is Director of the Centre for Women's Studies and Gender Research, in the School of Political and Social Inquiry, at Monash University in Melbourne. She has degrees in Law and Arts (Hons) from the University of Melbourne (1991) and gained her PhD in 1999 from La Trobe University.

JaneMaree's research focuses on birthing, pregnancy, women, family life and work. She is currently involved in research focused on how families manage working and caring. JaneMaree teaches media and popular culture studies, focusing on gender and power.

JaneMaree has experience as a board member in girls' education and recently participated in the Victorian Government Centenary of Suffrage Reference Group, celebrating women's right to vote.

She has three teenage daughters who share her passion for the Essendon Football Club.



**Paul McCarthy**

*Appointed August 2006*

Paul McCarthy grew up in Queensland before moving to Sydney to work for the Office of Film and Literature Classification in January 2003.

A career public servant, Paul has worked in human services policy (health, disability, education, community services) arts policy, liquor and gaming policy, censorship policy and media regulation, and privacy and complaints handling. His work for Commonwealth, State and local governments has included consulting with industry and the community on a range of projects. While at the Office of Film and Literature he advised on the statutory framework for the application of community standards to films, computer games and publications.

Paul's first professional job was as a child guidance therapist in a child psychiatry clinic and he has been a member of the Speech Pathologists Board of Queensland.

Paul is a vegetarian with interests in spiritism, holistic health, fitness, and the arts, particularly film.



**Paula McNamara**

*Appointed August 2008*

Growing up with parents in the hospitality industry, Paula made her first coffee at 15 and has worked in a variety of restaurants and cafes in Melbourne, London and Sydney. Preferring to work in cafes Paula loves the sense of community and familiarity that builds up over time between the regular customers and staff. 'In a big city that can be quite anonymous, cafes can be a small haven.'

Paula is also involved in her daughter's school community and sports club, which keeps her involved in the community as well as busy while she isn't studying.

Paula is completing her Arts Degree at Sydney University, majoring in English Literature and has a strong interest in theatre, film and television. 'Time constraints have made television my main form of entertainment and I love documentaries, particularly stories about real people and the challenges life throws our way.'



**Gary Rice**

*Appointed August 2008*

Formerly Managing Director and CEO of Seven Network Limited, Gary Rice had a career of nearly 30 years in the television and radio industries.

Before taking on the role at Seven, he was Managing Director and CEO of the Australian Radio Network (formerly Wesgo Limited) and before that he was Managing Director and CEO of Network Ten. Gary was with the Nine Network for several years in both Sydney and Melbourne which culminated in him becoming Managing Director of the Network. He began his television career in Ballarat.

In a move away from television Gary became involved in the hospitality industry. He has had continued success with accommodation complexes in Mooloolaba and now Noosa on Queensland's Sunshine Coast, where his family-owned company, Oceans Queensland Pty Ltd is based.

Gary is also active in the tourism industry and has been a judge for the Queensland Tourism Awards.

Gary has completed the Program for Management Development at Harvard Business School, is a Fellow of the Advertising Institute of Australia and an Associate of the Australian Marketing Institute.



**Graham Rixon**

*Appointed August 2008*

Graham Rixon is currently engaged in part-time educational consultancy work. He stepped down as Principal of Penrhos College, Perth, Western Australia at the end of 2007 – a position he held since September 1986.

Graham is a passionate educator and has worked on a number of state and national committees aiming to improve the quality of education in both government and non-government schools.

He regularly presents workshops, seminars and papers about middle schooling, technology in education and strategic planning at state, national and international conferences.

Graham grew up in Melbourne where, along with his career in education, he was active with Lifeline and his local Uniting Church. He moved to Perth in 1986 with his wife, Meredith and two children. Graham and Meredith share interests in travel, reading, cycling and kayaking.



**Natasha Stott Despoja**

*Appointed August 2008*

Natasha Stott Despoja is a former Senator for South Australia (1995–2008) and former Leader of the Australian Democrats.

Natasha has made a significant contribution to a wide range of policy debates.

She was a spokesperson on portfolios including foreign affairs, higher education, science and biotechnology, Attorney-General's, privacy, women, work and family.

Natasha is an Honorary Visiting Research Fellow at The University of Adelaide and is a columnist for The Advertiser and The Business Spectator.

She is also a Director of beyondblue, the Burnet Institute and the South Australian Museum.

Natasha lives in Adelaide with husband Ian and their two children.



**Josephine Tiddy**

*Appointed August 2006*

Josephine is the Managing Director and Principal Consultant of consultancy firm, JTCT, specialising in culture change, investigating and resolving complaints from consumers, and disputes in the workplace.

Dr Tiddy was Australia's longest-serving Commissioner for Equal Opportunity and Chief Executive of the Equal Opportunity Commission in South Australia for 16 years.

She was awarded a honorary doctorate by Flinders University in recognition of her national contribution to the field of administrative law, specifically discrimination law and social policy, conciliation of complaints and legislative reform.

Josephine has written widely on equality, fair treatment and discrimination.

Josephine lives in Adelaide where she is heavily involved in community organisations as well as being a serving member of numerous boards and committees.

Josephine enjoys life with her three married children and five grandchildren. She is also a keen participant in the arts, particularly theatre, as well as tennis and swimming.



**Craig White**

*Appointed August 2008*

Craig has served as a Queensland police officer for almost 20 years.

He has been awarded both the National Service Medal for 15 years Police Service and the Queensland Police Service Medal for good conduct.

Craig has served throughout Queensland including 10 years working in remote communities in Far Northern and Central Western Queensland. During that time he was involved in implementing a number of publicly funded projects aimed at reducing substance abuse and domestic violence.

As well as being a serving member on numerous boards and committees, Craig is currently involved in a number of community organisations. He holds a Masters Degree in Business, Graduate Diploma in Human Resources and a Diploma in Public Safety (Policing).

Craig is married and has three children and enjoys spending spare time with his family.



**Helen Wicks**

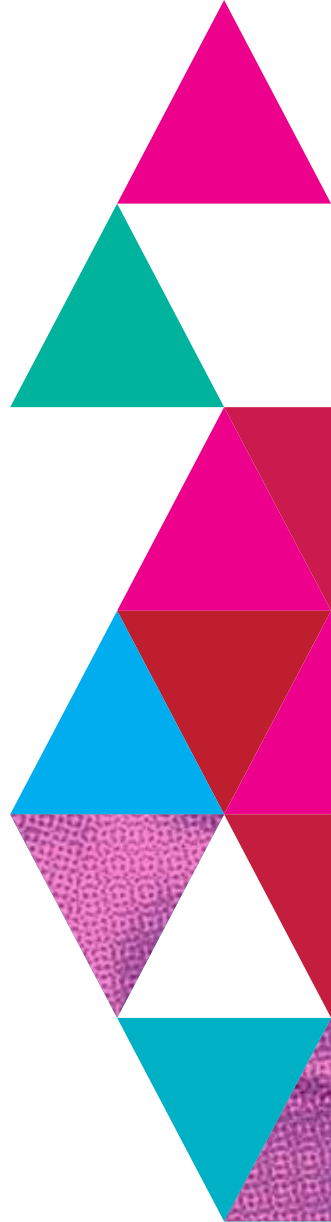
*Appointed 2006*

Helen Wicks is a full-time mother of three children who has a long association with community organisations in professional and volunteer capacities.

Helen has been a member of the Australian Breastfeeding Association since 1998. In 2005, she qualified as a breastfeeding counsellor and now conducts information and discussion groups for new mothers as well as providing her expertise on the Helpline telephone advisory service. She works at a national level coordinating Breastfeeding Welcome Here venue registrations.

Helen is a past president of Playgroup NSW and although her children are beyond playgroup, she is returning to Playgroup as a facilitator of My Time Playgroup for children with disabilities.

Helen also has an active role in the church and school communities in Armidale, NSW.



# THE ADVERTISING CLAIMS BOARD

The Advertising Claims Board is one of the ASB's two Boards. The ACB is a purpose-built alternative to expensive litigation. It is a system of alternative dispute resolution directed to addressing and resolving challenges to advertising that might otherwise lead to litigation.

**The Claims Board considers complaints which breach Part 1 of the AANA Code of Ethics. This includes complaints about:**

- the legality of an advertisement
- misleading or deceptive advertisements
- advertisements which contain misrepresentations likely to harm your business
- misleading country-of-origin claims.

**The benefits of the Claims Board and its system of alternative dispute resolution are that:**

- the process is concluded in a timely manner (the Claims Board must make a determination within 15 business days of the receipt of final submissions from the complainant and advertiser complained about)
- the process is less costly than litigation, with the only cost being fees for the members sitting on the Claims Board panel and legal and administration fees of the ASB
- the parties have the option of proceeding to usual dispute resolution procedures if desired.

Complaints received by the Claims Board are considered by a panel of qualified legal advisors. A panel consists of a minimum of three practitioners nominated by the ASB from its Register of Legal Practitioners. The practitioners on this register have certified to the ASB that they have experience and expertise in the area of advertising and/or trade practices law and that they hold a current practicing certificate. They must also certify that they have no conflict of interest in the particular matter.

Usage of the Claims Board by industry is quite low. Since 1998 there have been 11 cases considered by the Board. The cost of the Claims Board process is relatively inexpensive compared with litigation – a ballpark cost of a claims Board matter is in the vicinity of \$25,000. Claims Board matters are also faster to resolve than litigation – with the average matter taking about 10 weeks from receipt of complaint to determination of the Board.

Despite the relatively low use of the Claims Board, the Bureau will continue to work to raise the profile of the Claims Board and ensure that advertisers are aware that this unique form of alternative dispute resolution is available.

## Advertising Claims Board cases – 2009

During 2009 the Claims Board resolved one matter.

NRMA Insurance Australia Limited  
v Australian Associated Motor  
Insurers Limited

This complaint was about advertisements which appeared in print, in bus shelters and on the sides of buses for Australian Associated Motor Insurers Limited.

The complainant alleged that the advertisements contravened sections 1.2, 1.3 and 2.5 of the *Australian Association of National Advertisers (AANA) Code of Ethics* which provide:

*1.2 Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.*

*1.3 Advertising or Marketing Communications shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill or a competitor.*

*2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.*

The Claims Board's deliberations included consideration of the advertisements and the comparative statement made in the advertisements. In the view of the Board, the statement was intended to represent AAMI car insurance as superior to NRMA car insurance and that NRMA car insurance premiums are more expensive than those of AAMI.

The statement in the advertisement was:

*"It's unlucky if you're with NRMA - AAMI just lowered car insurance prices on the North Shore. Switch now and you could save."*

The Claims Board agreed that NRMA customers would be unlucky if they were paying a higher premium, but the Claims Board also considered general principles which have been applied to comparative advertisements, including:

(i) there is a heavy burden on the advertiser to ensure that its comparisons are accurate, for inaccurate comparisons are inherently likely to mislead the public: *State Government Insurance Commission v J.M. Insurance Pty Ltd* (1984) ATPR 40- 465 at 45,362;

(ii) errors in comparative advertising may have a greater potential to mislead consumers than statements made in ordinary advertisements which may be perceived as mere 'puffs': *Trade Practices Commission v Telstra Corporation Ltd* (1993) ATPR 41-256 at 41,454; and

(iii) to publish an advertisement suggesting that one product will outperform another product, without there being any tests to demonstrate the truth of the claim, is itself to engage in misleading conduct: *Colgate-Palmolive Pty Ltd v Rexona Pty Ltd* (1981) ATPR 40-242 at 43,192.

The Claims Board considered information from the complainant which provided a sample of 20 common insurance customers and compared the comprehensive car insurance premiums to the premiums of the advertiser.

The Claims Board requested further information from the advertiser, specifically the market research information comparing the comprehensive car insurance premiums of both insurance companies, which the advertiser had referred to in its submissions. The advertiser declined to provide the information because it considered the information commercially sensitive and that its market research methods were proprietary and represented valuable intellectual property.

Because the advertiser declined to provide further information, the Claims Board agreed that the advertiser had failed to substantiate the claim in the advertisements that NRMA customers pay more than AAMI customers for their car insurance premiums. Accordingly, it determined to uphold the complaint in relation to section 1.2 and 1.3 of the AANA Code.

However, the Claims Board did not agree that use of the term 'unlucky' breached section 2.5 of the AANA Code of Ethics. It agreed in cases of comparison, negative language is not prohibited, that the word 'unlucky' is inoffensive and is reflective of common use in contemporary Australian society. The Board also did not agree with the complainant's submission that the use of the word 'unlucky' had a broad inference extending to other reputational issues such as its customer service, the manner in which it makes its claims payments, its financial stability and the like.

The Claims Board found the advertisements should be discontinued and the advertiser was requested to provide a statement confirming they would discontinue or modify the advertisements.

Prior to the final determination of the Claims Board the advertiser had informed the Claims Board that it would not run the campaign in its current state in the future. The advertiser re- confirmed this formally on the same day it received the Claims Board's formal request.



*Independent reviewer*

*Cases reviewed in 2009*

*Independent Reviewers*





# CASES REVIEWED IN 2009

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*As part of its ongoing commitment to international best practice in delivering the advertising self-regulation system in Australia, the Advertising Standards Bureau (ASB) introduced a review process for Advertising Standards Board (Board) decisions in April 2008.*

During 2009 four cases were considered by the Independent Reviewer. One of these was not accepted by the Independent Reviewer because it did not meet any of the grounds for review. Three other cases were accepted and reviewed.

In two of the cases accepted by the Independent Reviewer, her recommendation was that the Advertising Standards Board review its initial determination. In the third case the Independent Reviewer confirmed the initial determination made by the Advertising Standards Board.

The Government of Western Australia requested a review of the Board determination about its “Rethink Drink” advertisement (case number – 108/09).

The advertiser disagreed with the Board determination that the advertisement breached sections 2.2 and 2.6 of the AANA Code of Ethics in that “the advertisement’s graphic violence was not justified by the public health message it was attempting to convey” and that the violence depicted was not justified and “therefore amounted to a depiction of material contrary to prevailing community standards on health and safety”.

In her recommendation, the Independent Reviewer discussed whether the violence depicted was relevant to the product or service being advertised. The Independent Reviewer recommended that the decision should stand since: “...in my view this matter has been properly and legally considered”.

A complainant requested a review of the Board’s determination to dismiss complaints about the Advanced Medical Institute’s SMS “TRY” – Making Love? Do it longer advertisement (case number – 419/09).

The complainant felt that there was a substantial flaw in the Board’s decision in relation to s2.3 and s2.5 of the Code.

The Independent Reviewer’s view was that the Board: “...dealt very effectively with the issues raised in section 2.3”. However, since the Board had not dealt with the issue of “inappropriate language” in its reasons for decision, the Independent Reviewer recommended that the Board review its determination.

In its review, the Board considered that, while this advertisement was at the upper end of what is considered acceptable, the language used was not what most people in the community would consider strong or obscene, and was appropriate in the circumstances. The Board determined that the advertisement did not breach section 2.5 of the Code and affirmed its previous decision to dismiss complaints.

Telstra requested a review of the Board determination about its Next G network advertisement (case number – 474/09).

The advertiser strongly disagreed with the Board determination that the advertisement breached section 2.6 of the Code – “that depiction of sending a photo of a person to a group of people contrary to that person’s express wishes is contrary to prevailing community standards on health and safety, particularly standards around bullying”.

The Independent Reviewer accepted the request on the basis of the large amount of new material provided, and recommended that the Board should consider this new material and as a result, review its decision.

After reviewing the original decision in the light of the Independent Reviewer’s comments and the additional material provided by the advertiser and complainants, the Board reconfirmed its original decision that the advertisement breached section 2.6 of the Code, and upheld complaints.

## Outline of requests for independent review

CASE	INITIAL BOARD DETERMINATION	INDEPENDENT REVIEWER RECOMMENDATION	BOARD DETERMINATION ON REVIEW
Government of Western Australia (Rethink Drink) Case number - 108/09	Complaints Upheld April 2009	Initial Board determination confirmed by Independent Reviewer May 2009	Upheld
Advanced Medical Institute (SMS “TRY” - Making Love? Do it longer) Case number - 419/09	Complaints Dismissed September 2009	Independent Reviewer recommended Board review its initial determination, as it had not properly considered whether the language in the advertisement was ‘appropriate’. November 2009	Dismissed
Telstra (Next G network) Case number - 474/09	Complaints Upheld October 2009	Independent Reviewer recommended Board review its initial determination, as there was new evidence provided by the advertiser. November 2009	Upheld

# INDEPENDENT REVIEWERS



**The Hon Deirdre O'Connor,**  
*Independent Reviewer with the  
Advertising Standards Bureau*

The Advertising Standards Bureau appointed the Hon Deirdre O'Connor as the first Independent Reviewer for the advertising self-regulation system in Australia in March 2008.

Ms O'Connor is a lawyer who, in addition to many judicial appointments since being admitted to the NSW Bar in 1980, was the first female appointed as a Justice of the Federal Court of Australia, President of the Administrative Appeals Tribunal and President of the Australian Industrial Relations Commission.

She lectured at Macquarie University before being admitted to the NSW Bar in 1980 and joining the Law Reform Commission.

Her other achievements and appointments include: Alternate Chair, Parole Authority of New South Wales since 2004; Consultant, Communications and Administrative Law Procedures; Judge, Federal Court of Australia 1990-2002; Judicial Member, New South Wales Parole Board since 2003; President Administrative Appeals Tribunal 1999-2002 and 1990-94, Australian Industrial Relations Commission 1994-97, National Native Title Tribunal 1993-94, Security Appeals Tribunal 1990-94; Commissioner, New South Wales Law Reform Commission 1983-85; Senior Lecturer in Law, Macquarie University 1975-78; Member of the Council of the University of Canberra 1992-95; Member of the Order of Australia Council 1990-96; Member of the Administrative Review Council 1990-94.



**Michael Palmer,**  
*AO APM, Independent Reviewer with the  
Advertising Standards Bureau*

The Advertising Standards Bureau appointed another Independent Reviewer - Michael John (Mick) Palmer in 2009. Mick is a lawyer, and an Honours graduate of the Queensland Barristers Admission Board. He was admitted to practice as a Barrister at Law in Queensland in 1982 and practised at the private bar during 1982 and 1983 before returning to policing.

A former Australian Federal Police Commissioner, Mick is a 33-year career police officer with extensive experience in police leadership and reform in community, national and international policing. He served as Commissioner of the Northern Territory Police, Fire and Emergency Services agency from 1988-1994 and was then appointed Commissioner of the Australian Federal Police (AFP), a position he held for 7 years until his retirement in March 2001.

Since retiring from policing in 2001 Mick has conducted a range of inquiries and reviews for the federal and Australian State Governments, both within Australia and overseas. He is currently contracted to the Australian Federal Government as the Inspector of Transport Security with a legislative mandate to conduct inquiries into serious transport security matters and offshore security matters.

In 1998, Mick was appointed Deputy Chair of the Australian National Council on Drugs. He was also appointed by the former Prime Minister to oversee an Inquiry into the Government's handling of Cornelia Rau in 2005.

He received the Australian Police Medal in 1998 and was admitted to the Order of Australia (AO) for his work in "advancing the professionalisation of policing through the introduction of far-reaching anti-corruption processes and management practice reform".



# *Statistics*

*Advertising complaints statistics*



# ADVERTISING COMPLAINTS STATISTICS

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The number of complaints received in 2009 by the Advertising Standards Bureau totalled 3,796 – up from 2008 when we received 3,596 complaints. This year's complaints figure still does not top the 4,044 received in 2006.

Figures reported in 2008 about complaints received outside the Bureau's charter were incorrect due to a system reporting error which came to light when preparing 2009 figures.

The figures continue to show an upward trend in the percentage of complaints which were about advertisements which were found to breach the Codes. There has also been a continued increase over the past five years in the number of advertisements which have been found to breach the Codes.

Complaints about 595 advertisements were received in 2009, with 11 withdrawn by advertisers before Board consideration. Overall, the Board considered 584 advertisements in 2009. The highest number since operations began in 1998.

The 584 cases considered by the Board in 2009 represented 2,855 individual complaints. Of this number, 2,278 complaints (503 separate cases) were dismissed by the Board.

The number of complaints upheld in 2009 was the highest recorded since operation of the complaints system began, with complaints against 81 advertisements upheld. The number of advertisements found to breach the Code equates to about 13.6 per cent of all advertisements considered during 2009.

On receiving advice that there had been a complaint 11 advertisers withdrew their advertisement before the Board determination.

Of the 584 advertisements dealt with during the year, 16 advertisements received more than 20 complaints. Of these advertisements, complaints against five were upheld by the Board.

If complaints about advertisements were upheld by the Board, 100 per cent were removed from broadcast or publication or modified. The 100 per cent compliance with Board decisions demonstrates the advertising industry's continuing support and understanding of its obligations and responsibilities of adherence to the AANA Code of Ethics and to the system of advertising self-regulation.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>OUTCOME OF COMPLAINTS (No., by Complaint)</b>												
Dismissed	927	1553	1971	1291	1191	1770	1349	1753	2648	1730	2263	2278
Upheld	73	111	162	47	11	23	55	94	164	280	477	521
Withdrawn before board determination	0	0	0	0	16	113	236	139	20	15	57	56
Outside Charter	382	401	425	367	354	714	656	970	1212	577	799	941
<b>TOTAL</b>	<b>1,382</b>	<b>2,065</b>	<b>2,558</b>	<b>1,705</b>	<b>1,572</b>	<b>2,620</b>	<b>2,296</b>	<b>2,956</b>	<b>4,044</b>	<b>2,602</b>	<b>3,596</b>	<b>3,796</b>

#### BOARD DETERMINATIONS (No., by Advertisement)

Withdrawn before board determination	0	0	0	0	6	5	20	33	13	5	10	11
Upheld	5	11	8	6	3	4	8	14	28	36	62	81
Dismissed	262	434	384	363	291	401	337	344	488	405	477	503
<b>TOTAL</b>	<b>267</b>	<b>445</b>	<b>392</b>	<b>369</b>	<b>300</b>	<b>410</b>	<b>365</b>	<b>391</b>	<b>529</b>	<b>446</b>	<b>549</b>	<b>595</b>

#### AGE RANGE OF COMPLAINTS (%)

< 19											2.25%	1.81%
19–29											14.99%	15.81%
30–39											23.11%	22.35%
40–54											30.56%	28.34%
55–65											11.15%	11.40%
> 65											3.28%	3.44%
Unspecified											14.66%	16.85%
<b>TOTAL</b>											<b>100.00%</b>	<b>100.00%</b>

#### GEOGRAPHIC SOURCE OF COMPLAINTS (%)

NSW	42.20%	39.10%	34.98%	32.94%	31.71%	37.73%	38.20%	32.68%	36.77%	35.63%	34.47%	36.77%
VIC	13.70%	13.60%	23.92%	23.62%	25.61%	24.75%	22.17%	21.19%	22.59%	20.18%	23.53%	21.16%
QLD	19.60%	20.20%	19.71%	16.47%	18.74%	15.86%	16.16%	24.60%	17.01%	19.79%	20.51%	18.38%
SA	11.20%	10.30%	7.87%	9.20%	7.77%	7.22%	7.10%	8.54%	10.08%	9.80%	9.24%	9.83%
WA	6.70%	11.80%	7.95%	12.43%	10.53%	7.68%	8.84%	7.98%	7.84%	9.80%	7.17%	9.63%
ACT	2.90%	2.80%	2.38%	2.23%	2.95%	4.40%	4.75%	2.47%	2.58%	2.50%	2.90%	2.16%
TAS	2.20%	1.70%	2.06%	2.17%	2.25%	1.52%	1.92%	1.84%	2.31%	1.54%	1.48%	1.62%
NT	1.50%	0.50%	1.09%	0.94%	0.39%	0.84%	0.83%	0.60%	0.84%	0.77%	0.70%	0.45%
Abroad	0.00%	0.00%	0.04%	0.00%	0.06%	0.00%	0.04%	0.10%	0.00%	0.00%	0.00%	0.00%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

#### GENDER OF COMPLAINANTS (%)

Couple	0.00%	0.00%	6.35%	4.87%	3.59%	2.30%	2.61%	2.10%	1.35%	0.92%	0.92%	0.82%
Unspecified	13.40%	15.20%	7.56%	6.86%	4.55%	2.83%	2.70%	2.13%	1.45%	1.08%	3.11%	4.29%
Male	23.20%	21.80%	25.24%	28.66%	34.76%	32.37%	37.63%	38.08%	36.75%	32.67%	36.93%	36.21%
Female	63.40%	63.00%	60.85%	59.61%	57.11%	62.50%	57.06%	57.69%	60.45%	65.33%	59.04%	58.68%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>



	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>ISSUES ATTRACTING COMPLAINT (%)</b>												
AANA Section 2.3 – Sex, sexuality and nudity								26.49%	22.23%	37.91%	25.61%	40.54%
AANA Section 2.1 – Discrimination or vilification								27.13%	23.25%	28.05%	22.76%	16.31%
AANA Section 2.2 – Violence								17.38%	18.01%	8.42%	17.67%	7.93%
Other								14.59%	14.69%	4.86%	15.84%	17.04%
AANA Section 2.5 – Language								4.36%	7.55%	1.68%	7.24%	5.35%
AANA Section 2.6 – Health and Safety								6.46%	9.70%	10.85%	6.04%	8.38%
AANA Section 2.7/FCAI Code								3.38%	1.84%	4.91%	3.09%	1.19%
AANA Section 2.4/Advertising to Children Code								0.20%	2.73%	2.95%	0.49%	0.63%
Food and Beverage Code								0.00%	0.00%	0.37%	1.26%	2.47%
Quick Service Restaurant Initiative								0.00%	0.00%	0.00%	0.00%	0.16%
<b>TOTAL</b>								<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

#### REASON COMPLAINTS FELL OUTSIDE CHARTER (NO.)

Outside Section 2 – Dislike of advertising	30	25	19	62	185
Not an advertisement – Product or service	29	92	58	84	126
Not an advertisement – Community service announcements	35	61	15	67	99
Withdrawn/Discontinued – Other	13	43	12	32	81
Other – Dissatisfied	0	0	0	88	53
Other – Trivial complaint	4	6	16	5	53
Not an advertisement – TV and radio promotional material	144	186	28	18	35
Within Section 1 – Misleading or deceptive	121	186	45	62	32
Not an advertisement – Local advertising	30	14	21	16	28
Outside Section 2 – Other	108	70	89	128	27
Not an advertisement – Program content or programming	73	126	13	15	27
Not an advertisement – Internet	30	39	11	9	27
Other – Insufficient information	13	34	23	33	23
Outside Section 2 – Phone sex	0	1	0	7	18
Outside Section 2 – Broadcast timing	104	118	60	33	15
Not an advertisement – Point of sale	27	29	28	16	15
Specific industry code – Alcoholic Beverages code	3	2	12	5	14
Not an advertisement – Label directions	2	5	1	7	13
Not an advertisement – Other	21	48	44	46	11
Not an advertisement – Loudness of ads	71	12	11	8	11
Not an advertisement – Product name or logo	5	5	0	3	9
Other – Other	37	38	31	32	6
Not an advertisement – Direct distribution to an individual	11	5	1	1	4
Not an advertisement – Informercial	1	1	0	0	4
Within Section 1 – Legality	1	11	6	10	3
Outside Section 2 – Political advertising	10	11	26	3	3
Within Section 1 – Business practices	6	6	1	2	3



1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009

#### REASON COMPLAINTS FELL OUTSIDE CHARTER (NO.) CONTINUED

Specific industry code – Therapeutic Goods code	1	1	1	0	3
Specific industry code – Weight Management code	2	2	0	1	3
Not an advertisement – Direct mail	19	11	3	4	2
Within Section 1 – Misrepresentation	1	6	1	0	2
Within Section 1 – Tobacco	3	8	0	0	2
Within Section 1 – Misleading claim of protecting environment	0	0	0	0	2
Within Section 1 – Harm to business	0	1	0	1	2
Within Section 1 – Compliance with law	15	4	0	1	0
Within Section 1 – Misleading claim about Australian country of origin/content	0	5	1	0	0
<i>TOTAL</i>	<i>970</i>	<i>1212</i>	<i>577</i>	<i>799</i>	<i>941</i>

#### MEDIA ATTRACTING COMPLAINT (%)

TV	84.10%	71.70%	71.87%	66.44%	58.22%	80.59%	85.33%	84.81%	85.81%	75.10%	68.59%	59.83%
Outdoor	1.90%	11.70%	18.66%	14.01%	29.77%	9.23%	6.28%	6.67%	3.67%	12.80%	16.48%	23.92%
Radio	2.00%	3.60%	1.22%	1.38%	2.06%	1.69%	1.74%	2.11%	4.10%	2.36%	2.77%	3.12%
Print	10.70%	11.80%	7.41%	13.58%	8.80%	4.48%	5.47%	4.76%	3.85%	4.08%	4.73%	1.92%
Pay TV	0.00%	0.00%	0.05%	0.00%	0.16%	0.00%	0.00%	0.25%	0.18%	0.44%	1.46%	5.61%
Internet	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.25%	1.13%	1.13%	2.58%
Transport	0.00%	0.00%	0.00%	0.09%	0.41%	0.63%	0.62%	0.45%	1.73%	1.62%	3.64%	2.46%
Cinema	0.60%	1.20%	0.33%	0.35%	0.16%	0.43%	0.50%	0.60%	0.42%	2.46%	0.80%	0.11%
Mail	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.29%
Other	0.70%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.40%	0.15%
Multiple Media	0.00%	0.00%	0.46%	4.15%	0.41%	2.95%	0.06%	0.35%	0.00%	0.00%	0.00%	0.00%
<i>TOTAL</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>

1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009

#### PRODUCT CATEGORY ATTRACTING COMPLAINT (%)

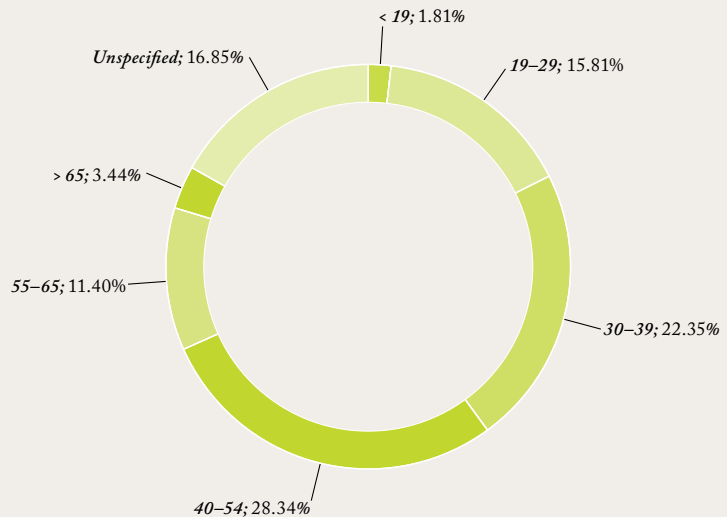
Food and Beverages	20.85%	28.14%	33.25%	14.39%	24.08%						
Clothing	6.22%	4.31%	2.24%	5.83%	7.69%						
House goods/services	11.18%	2.15%	6.03%	7.65%	6.86%						
Community Awareness	8.02%	12.29%	3.39%	9.29%	5.69%						
Vehicles	15.19%	8.37%	9.92%	5.28%	5.69%						
Professional services	2.56%	5.61%	10.77%	5.10%	5.18%						
Entertainment	0.00%	2.90%	3.09%	3.28%	4.85%						
Sex Industry	0.00%	0.00%	0.00%	0.36%	4.35%						
Health Products	3.46%	7.94%	1.40%	1.46%	4.35%						
Alcohol	7.07%	3.14%	2.44%	6.38%	4.00%						
Toiletries	5.26%	2.86%	2.94%	3.46%	3.51%						
Insurance	0.00%	2.97%	2.44%	5.10%	3.51%						
Telecommunications	4.51%	2.40%	2.24%	3.46%	3.18%						
Leisure & Sport	1.45%	1.73%	2.14%	1.09%	2.84%						
Mobile Phone/SMS	0.00%	2.44%	2.04%	5.46%	2.17%						
Other	6.67%	5.30%	3.94%	4.74%	2.01%						
Travel	1.85%	1.09%	0.15%	2.37%	2.01%						
Gambling	0.00%	0.00%	0.00%	0.73%	1.51%						
Finance/Investment	2.81%	1.80%	1.30%	2.37%	1.34%						
Hardware/machinery	0.00%	0.00%	0.00%	1.09%	1.34%						
Real Estate	0.00%	0.00%	0.00%	0.55%	1.00%						
Information Technology	0.00%	0.00%	0.00%	0.18%	1.00%						
Toys & Games	0.00%	0.00%	0.00%	1.09%	0.67%						
Restaurants	2.91%	1.17%	5.78%	2.19%	0.50%						
Retail	0.00%	1.17%	1.65%	2.37%	0.33%						
Media	0.00%	2.22%	2.84%	3.28%	0.17%						
Office goods/services	0.00%	0.00%	0.00%	0.91%	0.17%						
Slimming	0.00%	0.00%	0.00%	0.36%	0.00%						
Education	0.00%	0.00%	0.00%	0.18%	0.00%						
<i>TOTAL</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>						

#### METHOD OF COMPLAINT (%)

E-mail	10.42%	47.46%	60.44%	69.95%	73.08%	82.71%	84.05%	87.07%	85.30%	
Post	86.83%	43.32%	32.65%	25.96%	22.36%	14.47%	13.87%	10.22%	11.85%	
Fax	2.75%	9.22%	6.91%	4.09%	4.56%	2.82%	2.08%	2.71%	2.85%	
<i>TOTAL</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	<i>100.00%</i>	

### What age are complainants?

The highest percentage of complainants are in the 40 to 54 year old age group accounting for just under 30 per cent of all complaints received. The age grouping from 30 to 39 account for 22 per cent of complaints and the 19 to 29 age group accounting for almost 16 per cent. The lowest number of complaints from people under 19 years of age. This is consistent with data since it was first collected in 2008.



### Who is complaining?

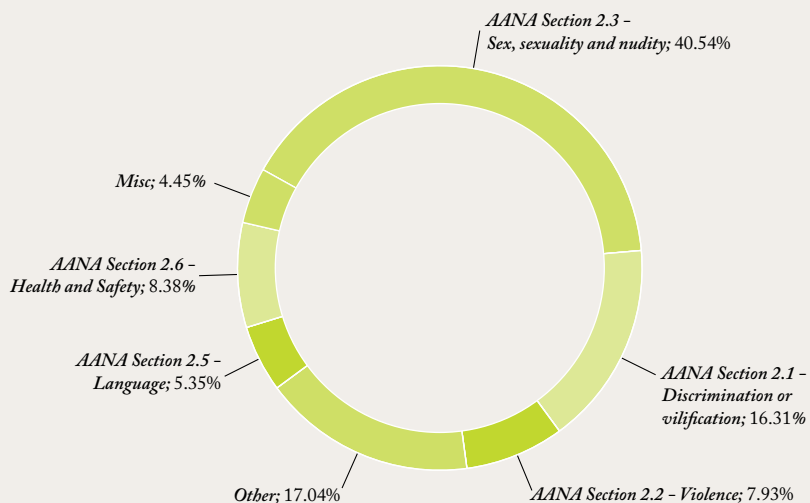
In 2009 the percentage of males and females represented among complainants remained steady, with males representing 36.21 per cent of complainants and females 58.68 per cent. The figures continue to show a trend in the gender of complainants, with the rate of about 60 per cent female and 40 per cent male complainants similar for the past five years.



### What do people complain about?

The portrayal of sex, sexuality and nudity continues to be the dominant issue raised by complainants. In 2009 this issue accounted for 40 per cent of complaints, rising from 25 per cent in 2008. The issue of discrimination and vilification accounted for 16 per cent of complaints, but complaints assigned to the general 'other category' accounted for just over 17 per cent. Together these three issues comprised almost 75 per cent of all complaints made in 2009.

In 2009 the proportion of complaints about violence in advertising decreased by almost 10 per cent from 2008 to 7.93 per cent, and is at the lowest level recorded. Complaints about health and safety issues increased slightly to 8.38 per cent, while the issue of language dropped slightly to 5.35 per cent.

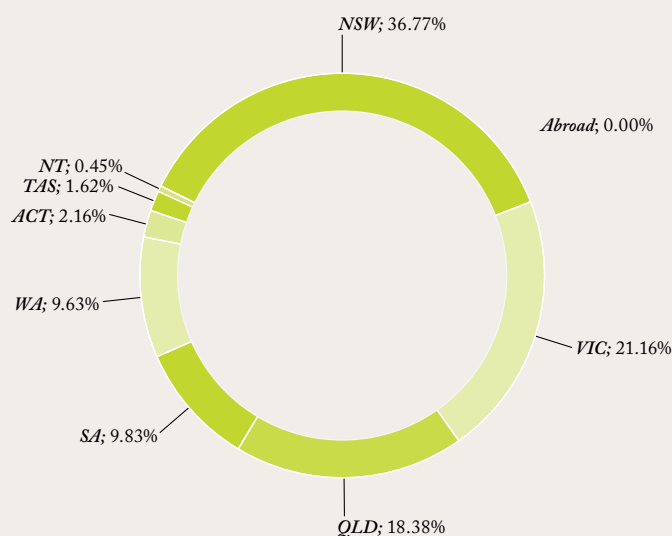


### Where are complaints coming from?

In terms of complainant demographics, once again complaints were generally spread out nationally in proportion to each state's population. As the most populous state, New South Wales topped the percentage of complaints received with 36.77 per cent (an increase of about two percent from 2008).

Queensland and Victoria had a similar percentage of complaints as well as a similar level of decrease in the overall percentage of complaints. Victoria dropped by two per cent (from 23.538 per cent in 2008 to 21.16 per cent in 2009).

Complaints received from South Australia and Western Australia equated to 19.46 per cent of the total. The combined percentage of complaints from Tasmania (1.62 per cent) and the Northern Territory (0.45 per cent) was only slightly lower than the Australian Capital Territory (2.16 per cent).



### Which products attract the most complaints?

Food and beverage advertisements continued to be the most-complained about product category in 2009, being the subject of almost a quarter of all complaints.

Advertisements for both clothing and for household goods and services received high levels of complaint, while complaints about community awareness issues dropped by almost four per cent. Complaints about advertisements for clothing bounced from just 5.83 per cent in 2008 to 7.69 per cent in 2009 with one billboard advertisement for jeans receiving more than 300 complaints.

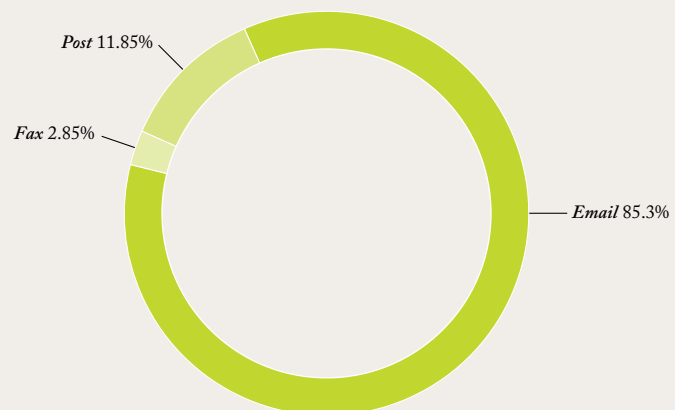
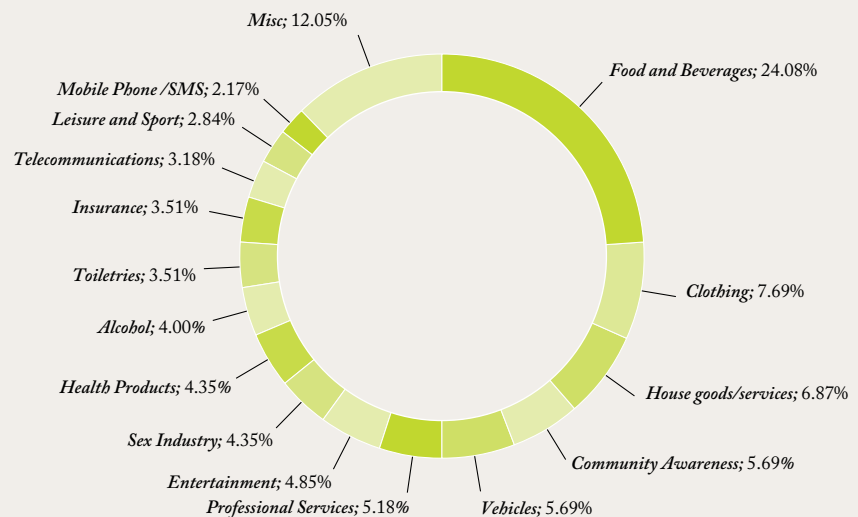
Complaints about alcohol products dropped more than two per cent, but complaints about sex industry advertisements rose by four per cent and those about health products rose by almost three per cent. Vehicle advertisement complaints remained steady at around five per cent.

### Method of complaint

The number of people choosing to lodge their complaints through the online complaints system has remained steady at 85.3 per cent. This rate of on line lodgement was similar in 2008 at 87.07 per cent and 84.05 per cent in 2007.

The ASB has invested significantly in creating a quick and easy-to-follow complaint lodgement process on its website to reflect increasing internet access throughout Australia.

Complaints will continue to be accepted by post (11.85 per cent in 2009) and fax (2.85 per cent). Due to a significant number of form letters received in 2009 about one billboard advertisement for jeans, the trend in the decline of complaints received by mail was reversed. The rate of postal complaints had dropped steadily each year from more than 25 per cent in 2004 to just 10.2 per cent in 2008.

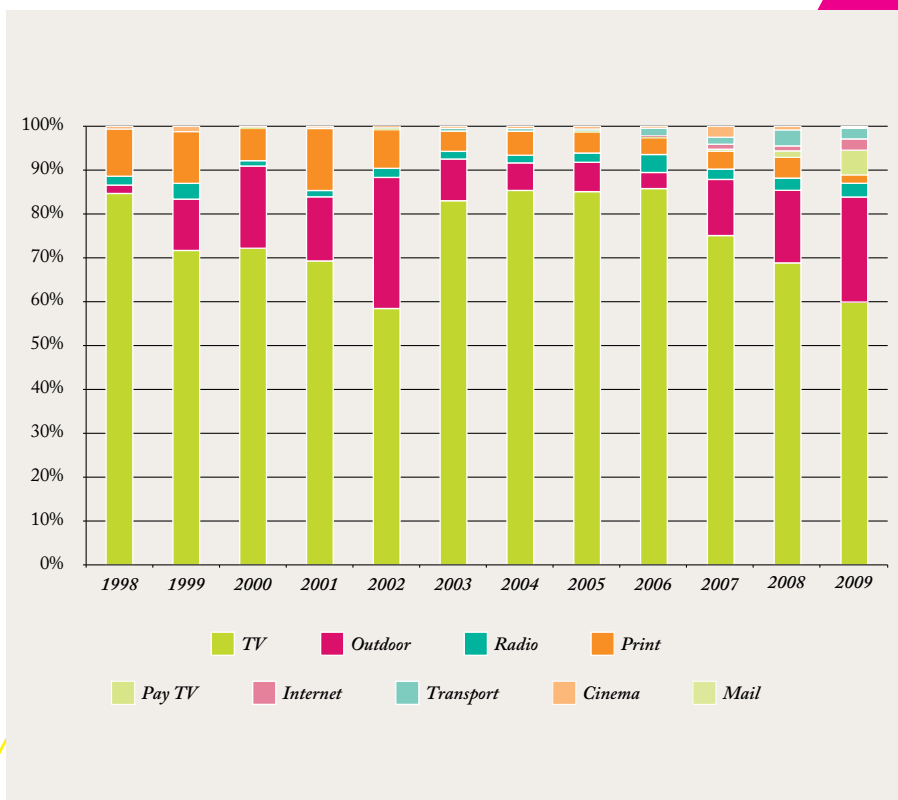


## Media attracting complaint

As with previous years, the majority of complaints (59.83 per cent ) relate to advertisements shown on television, although this is down nine per cent on the previous year and the lowest percentage recorded for television. The percentage of complaints about internet advertising (2.58 per cent in 2009), although low, doubled from the previous year's percentage of 1.13 per cent.

Outdoor media complaints continued to increase, rising to 23.92 per cent of all complaints (up from 16.48 per cent in 2008, 12.80 per cent in 2007 and just 3.67 per cent in 2006). A billboard advertisement for jeans received the year's highest number of complaints and another for a club which received the third highest number of complaints account for some of the increase in percentage of complaints about outdoor advertising.

Complaints about Pay TV rose to 5.61 per cent in 2009 from just 1.46 per cent in 2008. Print advertising complaints dropped noticeably from 4.73 per cent to just 1.92 per cent while complaints about radio advertising increased slightly to 3.12 per cent and transport decreased slightly to 2.46 per cent. The remainder of complaints for cinema and mail advertising were below one per cent in total.



# *Appendices*

*Advertising Standards Board complaints process*

*Independent Review Process*

*AANA Advertiser Code of Ethics*

*AANA Code for Advertising & Marketing  
Communications to Children*

*Food & Beverages Advertising & Marketing Communications Code*

*The Responsible Children's Marketing Initiative of the Australian  
Food and Beverage Industry*

*Australian Quick Service Restaurant Industry Initiative  
for Responsible Advertising and Marketing to Children*

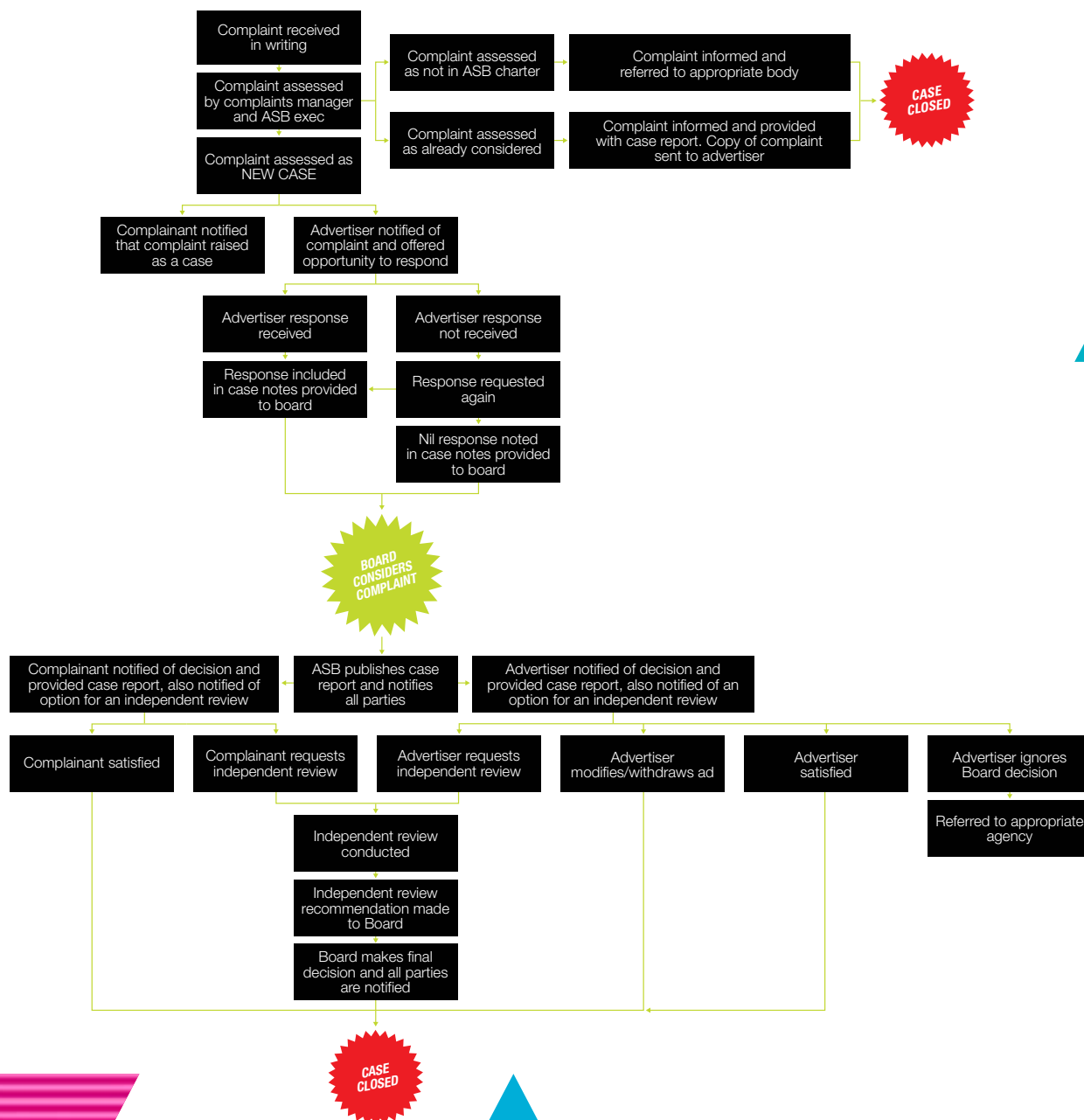
*Federal Chamber of Automotive Industries (FCAI)  
Voluntary Code of Practice for Motor Vehicle Advertising*

*Alcohol Beverages Advertising Code*



# ADVERTISING STANDARDS BOARD

## COMPLAINTS PROCESS



# INDEPENDENT REVIEW PROCESS

The ASB introduced the review process for Advertising Standards Board decisions in April 2008 as part of its ongoing commitment to international best practice.

If people who originally complained about an advertisement or the advertiser are unhappy about a Board decision regarding a particular advertisement, they may ask for a review of the decision.

Requests for review will be considered by the Independent Reviewer.

If they decide to accept the request, the Independent Reviewer will undertake appropriate investigation and make a recommendation to the Board, stating whether the decision should be reviewed, amended or confirmed. The investigation will include an invitation from the Independent Reviewer for other parties in the case (i.e. either the complainant or the advertiser) to comment on the submission provided by the party requesting the review.

If the Independent Reviewer decides not to accept the request because she considers that it does not meet any of the grounds set out below, the person making the request will be informed.

The cost of lodging a request for review is \$500 for complainants, \$1000 for complainants from Incorporated

Associations and \$2000 for advertisers. This payment must accompany a request for review and is not refundable if the Independent Reviewer decides that the request does not meet the grounds for review.

During the review process, the original decision (and any subsequent remedial action or withdrawal of the advertisement) will stand.

The ASB will not delay publication of the relevant decision pending the outcome of the review.

The Board's decision on reviewed cases is final. No further review is possible.

The Advertising Standards Bureau will inform all parties of the Board's final decision.

Decisions that are revised or amended following a review will be published on the ASB website: [www.adstandards.com.au](http://www.adstandards.com.au)

Grounds for review:

- where new or additional relevant evidence which could have a significant bearing on the decision becomes available (an explanation of why it was not submitted previously will be required);

- where there was a substantial flaw in the Board's decision (decision clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence);
- where there was a substantial flaw in the process by which the decision was made.

Since no review will proceed if the point at issue is the subject of legal action between anyone directly involved, requests for review should make plain that no such action is underway or contemplated.

- Requests for review should be sent within 10 business days of the date of the ASB's letter of notification of a decision.

Requests for a review must:

- Contain a full statement of the grounds;
- Be in writing;
- Be accompanied by relevant payment; and
- be addressed to  
*Independent Reviewer of ASB Decisions  
Level 2  
97 Northbourne Avenue  
TURNER ACT 2612.*

# AANA CODE OF ETHICS

*This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this Code is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors.*

In this Code, unless the context otherwise requires:

**Advertising or Marketing Communication** means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

**Advertising or Marketing**

**Communications to Children** means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.

**Advertising Standards Board** means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

**Children** means children [14] years old or younger and **Child** means a child [14] years old or younger.

**Excluded Advertising or Marketing Communications** means labels or packaging for Products.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

**Prevailing Community Standards** means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it see fit, in relation to Advertising or Marketing Communications.

**Product** means goods, services and facilities which are targeted toward and have principal appeal to Children.

## 1. Section 1

- 1.1 Advertising or Marketing  
Communications shall comply with Commonwealth law and the law of the relevant State or Territory.
- 1.2 Advertising or Marketing  
Communications shall not be misleading or deceptive or be likely to mislead or deceive.
- 1.3 Advertising or Marketing  
Communications shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor.
- 1.4 Advertising or Marketing  
Communications shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.

- 1.5 Advertising or Marketing  
Communications shall not make claims about the Australian origin or content of products advertised in a manner which is misleading.

## 2. Section 2

- 2.1 Advertising or Marketing  
Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.
- 2.2 Advertising or Marketing  
Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.
- 2.3 Advertising or Marketing  
Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.
- 2.4 Advertising or Marketing  
Communications to Children shall comply with the AANA's Code for Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code for Advertising & Marketing Communications to Children applies.

- 2.5 Advertising or Marketing  
Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.

- 2.6 Advertising or Marketing  
Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

- 2.7 Advertising or Marketing  
Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.

- 2.8 Advertising or Marketing  
Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code.

# AANA CODE FOR ADVERTISING & MARKETING COMMUNICATIONS TO CHILDREN

*This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing to children in Australia.*

## 1. Definitions

In this Code, unless the context otherwise requires:

**Advertising or Marketing Communication** means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct, but does not include Excluded Advertising or Marketing Communications.

## Advertising or Marketing

**Communications to Children** means

Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.

**Advertising Standards Board** means

the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

**Alcohol Products** means products which

have some association with alcohol including alcoholic beverages, food products that contain alcohol or other Products that are associated in some way with alcohol including in the sense of being branded in that way.

**Children** means children 14 years old or younger and **Child** means a child 14 years old or younger.

**Excluded Advertising or Marketing Communications** means labels or packaging for Products.



**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct-to-consumer media including new and emerging technologies.

**Premium** means anything offered free or at a reduced price and which is conditional upon the purchase of a regular Product.

**Prevailing Community Standards** means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications to Children.

**Product** means goods, services and/or facilities which are targeted toward and have principal appeal to Children.

## **2. Code of Practice**

### **2.1 Prevailing Community Standards**

Advertising or Marketing Communications to Children must not contravene Prevailing Community Standards.

### **2.2 Factual Presentation**

Advertising or Marketing Communications to Children:

- (a) must not mislead or deceive Children;
- (b) must not be ambiguous; and
- (c) must fairly represent, in a manner that is clearly understood by Children:
  - (i) the advertised Product;

- (ii) any features which are described or depicted or demonstrated in the Advertising or Marketing Communication;
- (iii) the need for any accessory parts; and
- (iv) that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non-commercial communication.

### **2.3 Placement**

Advertising or Marketing Communications to Children must not be placed in Media where editorial comment or program content, in close proximity to that communication, or directly accessible by Children as a result of the communication is unsuitable for Children according to Prevailing Community Standards.

### **2.4 Sexualisation**

Advertising or Marketing Communications to Children:

- (a) must not include sexual imagery in contravention of Prevailing Community Standards;
- (b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.

### **2.5 Safety**

Advertising or Marketing Communications to Children:

- (a) must not portray images or events which depict unsafe uses of a Product or unsafe situations which may encourage Children to engage in dangerous activities or create an unrealistic impression in the minds of Children or their parents or carers about safety; and
- (b) must not advertise Products which have been officially declared unsafe or dangerous by an unauthorised Australian government authority.

### **2.6 Social Values**

Advertising or Marketing Communications to Children:

- (a) must not portray images or events in a way that is unduly frightening or distressing to Children; and
- (b) must not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability.

### **2.7 Parental Authority**

Advertising or Marketing Communications to Children:

- (a) must not undermine the authority, responsibility or judgment of parents or carers;
- (b) must not contain an appeal to Children to urge their parents or carers to buy a Product for them;
- (c) must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and
- (d) must not state or imply that persons who buy the Product the subject of the Advertising or Marketing Communication are more generous than those who do not.

### 2.8 Price

- (a) Prices, if mentioned in Advertising or Marketing Communications to Children, must be accurately presented in a way which can be clearly understood by Children and not minimised by words such as “only” or “just”.
- (b) Advertising or Marketing Communications to Children must not imply that the Product being promoted is immediately within the reach of every family budget.

### 2.9 Qualifying Statements

Any disclaimers, qualifiers or asterisked or footnoted information used in Advertising or Marketing Communications to Children must be conspicuously displayed and clearly explained to Children.

### 2.10 Competitions

An Advertising or Marketing Communication to Children which includes a competition must:

- (a) contain a summary of the basic rules for the competition;
- (b) clearly include the closing date for entries; and
- (c) make any statements about the chance of winning clear, fair and accurate.

### 2.11 Popular Personalities

Advertising or Marketing Communications to Children must not use popular personalities or celebrities (live or animated) to advertise or market Products or Premiums in a manner that obscures the distinction between commercial promotions and program or editorial content.

### 2.12 Premiums

Advertising or Marketing Communications to Children which include or refer to or involve an offer of a Premium:

- (a) should not create a false or misleading impression in the minds of Children about the nature or content of the Product;
- (b) should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;
- (c) must make the terms of the offer clear as well as any conditions or limitations; and
- (d) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.

### 2.13 Alcohol

Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products.

### 2.14 Privacy

If an Advertising or Marketing Communication indicates that personal information in relation to a Child will be collected, or if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain parental consent prior to engaging in any activity that will result in the disclosure of such personal information.

### 2.15 Food and Beverages

- (a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits.
- (b) Advertising or Marketing Communications to Children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code.

### 2.16 AANA Code of Ethics

Advertising or Marketing Communications to Children must comply with the AANA Code of Ethics.



# FOOD & BEVERAGES ADVERTISING & MARKETING COMMUNICATIONS CODE

## 1. Definitions

In this Code, unless the context otherwise requires:

### **Advertising or Marketing**

**Communication** means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

### **Advertising or Marketing**

**Communications to Children** means

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

### **Advertising Standards Board** means

the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

### **Average Consumer** means a regular adult

family shopper able to compare products by label-listed definition.

### **Children** means persons 14 years old or

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

### **Children's Food or Beverage Product** means

any food or beverage product other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code, which is targeted toward and has principal appeal to Children.

### **Excluded Advertising or Marketing**

**Communications** means labels or packaging for Products.

### **Food or Beverage Products** means any

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

### **Medium** means any medium whatsoever

including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct to consumer media including new and emerging technologies.

### **Premium** means anything offered free or

at a reduced price and which is conditional upon the purchase of a regular Product.

### **Prevailing Community Standards** means

the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of Food or Beverage Products taking into account, at a minimum, the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.

## 2. Advertising or marketing communications for food or beverage products

### 2.1 Advertising or Marketing

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

### 2.2 Advertising or Marketing

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

### 2.3 Advertising or Marketing

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

### 2.4 Advertising or Marketing

Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non misleading and non deceptive manner clearly understandable by an Average Consumer.

### 2.5 Advertising or Marketing

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

### 2.6 Advertising or Marketing

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

### 2.7 Advertising or Marketing

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

### 2.8 Advertising or Marketing

Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.

### 2.9 Advertising or Marketing

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

### 3. Advertising and children

#### 3.1 Advertising or Marketing

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

#### 3.2 Advertising or Marketing

Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.

#### 3.3 Advertising or Marketing

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

#### 3.4 Advertising or Marketing

Communications to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.

#### 3.5 Advertising or Marketing

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

#### 3.6 Advertising or Marketing

Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered.

An outline of the process by which complaints can be made against this Code follows.

# ***THE RESPONSIBLE CHILDREN'S MARKETING INITIATIVE OF THE AUSTRALIAN FOOD AND BEVERAGE INDUSTRY***

## **Introduction**

The Australian Food and Beverage Industry has developed this initiative to demonstrate its commitment to responsible marketing of foods and beverages to children.

The goal is to ensure that a high level of social responsibility in marketing communication and marketing food and beverage products in Australia is maintained.

This initiative will provide confidence in the responsible marketing practices via clear expectations of the form, spirit and context, and a transparent process for monitoring and review of practices. The aim is to provide a framework for food and beverage companies to help promote healthy dietary choices and lifestyles to Australian children.

This Initiative has been developed in collaboration with the AANA as part of the system of advertising and marketing self-regulation in Australia. Signatories to this initiative must also abide by:

- The AANA Code for Advertising & Marketing Communications to Children
- The AANA Food & Beverages Advertising & Marketing Communications Code
- The AANA Code of Ethics

This document outlines the minimum commitments required by signatories. Companies may choose to adopt additional commitments.

## **Core Principles**

Companies participating in this initiative will publicly commit to marketing communications to children under 12, only when it will further the goal of promoting healthy dietary choices and healthy lifestyles.

Each participant will develop an individual company action plan that outlines how they will meet the following core principles:

### **• Advertising Messaging**

Participants will not advertise food and beverage products to children under 12 in media unless:

1. those products represent healthy dietary choices, consistent with established scientific or Australian government standards.
- And
2. the advertising and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:

- good dietary habits, consistent with established scientific or government criteria
- physical activity.

### **• Use of Popular Personalities and Licensed Characters**

Participants will not use Popular Personalities or Licensed characters' in advertising primarily directed to children under 12 unless such advertising complies with the messaging options set out above and the specific requirements of the Children's Television Standards in relation promotions and endorsement by Program Characters (CTS section 22).

### **• Product Placement**

Participants will commit to not paying for or actively seeking to place their food or beverage products in the program/ editorial content of any medium primarily directed to children under 12 for the purpose of promoting the sale of those products unless those products are consistent with healthy dietary choices under #1 above.

### **• Use of Products in Interactive Games**

Participants will commit that, in any interactive game primarily directed to children under 12 where the company's food or beverage products are incorporated into the game, the interactive game must incorporate



or be consistent with healthy dietary choices under #1 above and healthy lifestyle messaging under #2 above.

- **Advertising in Schools**

Participants will refrain from product-related communications in primary schools, except where specifically requested by, or agreed with, the school administration for educational or informational purposes, or related to healthy lifestyle activities under the supervision of the school administration or appropriate adults.

- **Use of Premium Offers**

Participants will commit to not advertising premium offers unless the reference to the premium is merely incidental to product being advertised in accordance with the AANA codes and in the Children's Television Standards (CTS Section 20).

### **Individual Company Action Plans**

Companies will sign up to this initiative as a minimum commitment and will develop and publish individual Company Action Plans that outline their specific commitments including individual nutritional standards if applicable in order to meet the core principles of this initiative.

Because companies and their product lines vary, the way companies comply with this framework will differ. However, all commitments will be consistent with the core principles outlined in this initiative.

This initiative outlines the minimum commitments required by signatories. Companies may choose to go further if they wish to.

### **Compliance and Complaints**

Key criteria will be established to assess how companies' marketing communications to children meet the core principles outlined in this initiative.

The AFGC will work with the AANA to formulate a transparent compliance program including the administration of a public complaints system in relation to the Responsible Children's Marketing Initiative.

Sanctions will be developed to ensure that participants meet their obligations under the terms of this initiative.

The compliance program will publicly issue reports detailing its activities.

The compliance program, in consultation with the participants, will periodically review its procedures and the overall impact of this initiative. The first such review shall be started after the new program has been operational for at least 1 year.

### **Monitoring**

The Australian Food and Grocery Council will commission a study to monitor food and beverage advertising to children over a period 12 months from the commencement of this initiative. This will be repeated periodically.

The purpose of this study will be to measure the industry's response, determine the nature of improvements in performance and to report on the findings.

### **Implementation**

1. Agreement to this initiative to be finalised by the end of 2008.
2. The position statement will become effective from 1 January 2009.

3. Company Action Plans will be required to be submitted by 1 January 2009.
4. The AFGC and the AANA undertake to review this initiative in 2010.

### **Appendix I – Definitions**

In this Initiative:

**Marketing Communications** means

- a) matter which is published or broadcast using any medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it, to a product, service, person, organisation, or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct;
- b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

**Excluded Advertising or Marketing Communications** means labels or packaging for products.

**Advertising or Marketing Communications to Children** is defined by the AANA Code for Advertising and Marketing Communications to Children and means advertising or marketing communications which, having regard to the theme, visuals, and language used, are directed primarily

to children and are for product

**Media** means television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children.

**Children** means children under 12.

#### **Popular Personalities and Licensed**

**Characters** means:

- a personality or character from a C program or P program
- a popular program or movie character
- a non-proprietary cartoon, animated or computer generated character

**Premium** means anything offered free or at a reduced price and which is conditional upon the purchase of a children's food or beverage product.

#### **Appendix II – Indicative Television Program List**

Under The Responsible Children's Marketing Initiative, participants will not advertise food and beverage products to children under 12 in media unless it meets core principles in relation to advertising messaging.

#### **In this initiative media is defined as:**

television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children.

#### **The key to determining whether media or programs are designed for children**

is whether the themes, visuals, language and concepts are those that are appropriate to children under 12. This includes all

P and C programs but there are also a number of G rated programs which, using the criteria outlined above, are considered to be designed for children.

The following list has been provided to illustrate the types of programs covered by the initiative. This list includes all P and C programs, all programs where more than 50% of the audience is children under 12, plus those G rated programs that meet the criteria outlined above as being designed for children.

It should be noted that this is not an exhaustive list. It is indicative only and will be updated from time to time to reflect current programming.

*Puzzle Play*  
*Rock it!*  
*Hercules*  
*Kid's WB on Nine*  
*I Got a Rocket*  
*H2O - Just Add Water*  
*G2G: Got to Go*  
*Erky Perky*  
*Bush Beat*  
*Blinky Bill's Around The World Adventures*  
*Holly's Heroes*  
*Hi-5*  
*Faireez*  
*Master Raindrop*  
*New Macdonald's Farm*  
*Lab Rats Challenge*  
*Here's Humphrey*  
*Double Trouble*  
*Playhouse Disney*  
*Dive Olly Dive*  
*Totally Wild*  
*Pirate Islands 2 - The Lost Treasure Of Fiji*  
*The Sleepover Club*  
*The Shak*  
*Dora The Explorer*  
*Go, Diego Go*  
*Saturday Disney*

*Toon Disney*  
*Toasted TV*  
*Sharky's Friends*  
*M-Barbie Mariposa*  
*Pucca*  
*Get Ed*  
*The Proud Family*  
*Ben 10*  
*Hannah Montana And Miley Cyrus: Best of Both Worlds*  
*Sea Princesses*  
*My Friends Tigger and Pooh*  
*Stanley*  
*Flipper and Lopaka - The Search For Neptune's Trident*  
*W.I.T.C.H*  
*Life is Ruff*  
*The Backyardigans*  
*Yin Yang Yo!*  
*Now You See It*  
*Doctor Dolittle*  
*The Cat in The Hat*  
*Stuart Little*  
*Curious George*  
*Jimmy Neutron: Boy Genius*  
*Barbie In The Diamond Castle*  
*Thunderbirds*  
*The Adventures Of Rocky & Bullwinkle*  
*Mickey Mouse Clubhouse*  
*Spy Kids*  
*Free Willy*  
*Rugrats Go Wild!*

# AUSTRALIAN QUICK SERVICE RESTAURANT INDUSTRY INITIATIVE FOR RESPONSIBLE ADVERTISING AND MARKETING TO CHILDREN

Leading quick service restaurants in Australia, in collaboration with the Australian Association of National Advertisers (AANA), have developed the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the Initiative) as part of the system of advertising and marketing self-regulation in Australia.

The Initiative establishes a common framework:

- to ensure that only food and beverages that represent healthier choices are advertised to children; and
- to help parents and guardians make informed product choices for their children.

Companies currently signed up to the Initiative represent the majority of TV advertisers of such food in Australia. The companies agree that all marketing communications and advertising of food and beverage combinations to children under-14 years must represent healthier lifestyle choices, as determined by a defined set of nutrition criteria for assessing children's meals and physical activity.

Companies have further committed to ensuring nutrition information is available on their websites or upon request in restaurants and, wherever practical, displayed on packaging.

This Initiative commenced on 1 August 2009.

## 1. Statement of intent

The Australian Quick Service Restaurant Industry has developed this initiative to demonstrate its commitment to responsible advertising and marketing of food and/or beverages to children.

The Initiative provides a common framework for quick service restaurant companies to ensure that only food and beverages that represent healthier choices are promoted directly to children and to ensure parents or guardians can make informed product choices for their children.

This Initiative has been developed in collaboration with the AANA as part of the system of advertising and marketing self-regulation in Australia.

Participants must also abide by:

- The AANA Code for Advertising & Marketing Communications to Children
- The AANA Food & Beverages Advertising & Marketing Communications Code
- The AANA Code of Ethics

This initiative will provide confidence in the responsible marketing practices via clear expectations of the form, spirit and context, and a transparent process for monitoring and review of practices.

**Definitions are set out in Clause 7 and Appendix 1**

## 2. Participants

Participants to this Initiative include:

McDonald's  
KFC  
Pizza Hut  
Hungry Jack's  
Oporto  
Red Rooster  
Chicken Treat

## 3. Commencement

This Initiative commences on 1 August 2009.



#### 4. Core principles

##### 4.1 Advertising and Marketing Messaging

Advertising or Marketing Communications to Children for food and/or beverages must:

- (a) Represent healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals (see Appendix 1); and/or
- (b) Represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:
  - (i) healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals (see Appendix 1); and
  - (ii) physical activity.

##### 4.2 Popular Personalities and Licensed Characters

Popular Personalities or Licensed Characters must not be used in Advertising or Marketing

Communications to Children for food and/or beverage products, unless such Advertising or Marketing Communications complies with the messaging options set out in Article 4.1 and the specific requirements of Section 22 (Promotions and Endorsements by Program Characters) of the Children's Television Standards 2005.

##### 4.3 Product Placement

Participants must not pay for the placement of, or actively seek to place, food and/or beverage products in the program or editorial content of any Medium directed primarily to Children unless such food and/or beverage products are consistent with Article 4.1(a).

##### 4.4 Use of Products in Interactive Games

Each Participant must ensure, as far as possible, that any interactive game which incorporates food and/or beverage products sold at that Participant's store or outlet and is primarily directed to Children, is consistent with Article 4.1(b).

##### 4.5 Advertising in Schools

Participants must not engage in any product-related communications in Australian schools, except where specifically requested by, or agreed with, the school administration, or related to healthy lifestyle activities under the supervision of the school administration or appropriate adults.

##### 4.6 Use of Premium Offers

Participants must not advertise Premium offers in any Medium directed primarily to Children unless the reference to the Premium is merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes and Section 20 (Disclaimers and Premium Offers) of the Childrens Television Standards 2005.

##### 4.7 On-Pack Nutrition Labelling

Nutritional profile information must be provided on packaging wherever possible, in respect of those food products usually contained in such packaging to assist parents and guardians to make informed food choices for their children.

##### 4.8 Availability of Nutrition Information

Nutritional profile information must also be available on company websites or upon request, in respect of all food and beverage products to assist parents and guardians to make informed food choices for their children.

#### 5. Individual company action plans

5.1 Participants must develop and publish individual 'Company Action Plans' for the purposes of communicating how they will each meet the requirements of this Initiative and the anticipated timeframe for these required actions.

5.2 All commitments must be consistent with the core principles outlined in this Initiative.

#### 6. Compliance, complaints, and monitoring

##### 6.1 Key Criteria for Meeting Core Principles

Participants acknowledge that key criteria will be established in consultation with nutritional experts and the AANA to assess whether Signatories' Advertising or Marketing Communications to Children for food and/or beverage products meet the core principles outlined in this document.

##### 6.2 Compliance and Complaints

Participants acknowledge that:

- (a) they will work with the AANA to formulate a public compliance program, including the administration of a public complaints system in relation to this Initiative via the Advertising Standards Bureau which will be determined by the Advertising Standards Board, and each Participant will be subject to such compliance and public complaints process;
- (b) any compliance program developed will be made publicly available;
- (c) the compliance program developed will periodically be reviewed, in consultation with the participants, in respect of procedures and the overall impact of this Initiative. The first such review will be started on or around the first anniversary from the implementation of this compliance program.

### 6.3 Monitoring Implementation of Initiative

On and from the commencement of this Initiative, the Participants will appoint an independent individual or organisation to monitor Participants' Advertising or Marketing Communications to Children for food and/or beverage products for a period of 12 months and will publish a publicly available report of its findings. Such monitoring and reporting will be repeated periodically. The final report will focus on industry response and determine the nature of improvements in performance and will report generally on the findings.

### 7. Definitions

In this Initiative, unless the context otherwise requires:

#### Advertising or Marketing

**Communications** means any matter generated by a Participant which is published or broadcast using any Medium for payment or other valuable consideration and which draws the attention of the public or a segment to it, to a product, service, person, organisation, or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct but does not include instore point of sale material, labels, or packaging of products.

#### Advertising or Marketing

**Communications to Children** means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.

**Child** means a person under 14 years of age.

**Children** means persons under 14 years of age.

#### Children's Television Standards 2005

means the Australian Communications and Media Authority *Children's Television Standards 2005*.

**Participants** means:

- (a) McDonald's Australia,
- (b) Yum Brands Australia,
- (c) Hungry Jack's Australia;
- (d) Quick Service Restaurant Holdings Pty Ltd; and
- (e) any other Quick Service Restaurant who agrees to be bound by the terms of the initiative after its commencement.

**Medium** means television, radio, newspapers, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites.

#### Popular Personalities and Licensed

**Characters** means a personality or character from a C program or P program, a popular program or movie character, a non-proprietary cartoon, animated or computer generated character

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

### 8. Implementation

- (a) Agreement to this initiative to be finalised by 25 June 2009.
- (b) Company Action Plans will be required to be submitted on company website by 1 August 2009.
- (c) The Participants and the AANA undertake to review this initiative in 2010.

# **FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES (FCAI) VOLUNTARY CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING**

## **Explanatory Notes**

### *Context*

The Voluntary Code of Practice for Motor Vehicle Advertising (the Code) has been instituted by the Federal Chamber of Automotive Industries (FCAI) 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.

Vehicle occupant protection and road safety are primary concerns for the automotive industry in the design and operation of all motor vehicles supplied to the Australian market. FCAI endorses the National Road Safety Strategy and acknowledges the importance of increased road safety awareness in the Australian community and fully supports the efforts of all relevant Commonwealth, State and Territory authorities to secure this outcome.

### *Date of Commencement*

This revised version of the Code is to be applied to all advertisements for motor vehicles published or broadcast in Australia from 1 July 2004.

### *Scope and Coverage of the Code*

The Code is to be applied to all forms and mediums for advertising of motor vehicles in Australia. This includes television, radio, print media, cinema, billboards and Australian domain internet websites.

### *Guidance to Advertisers*

The FCAI supports a responsible approach to advertising for motor vehicles. FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia.

Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. Moreover, advertisers need to be mindful that excessive speed is a major cause of death and injury in road crashes and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle.

FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code.

In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the Code.

Advertisers should avoid references to the speed or acceleration capabilities of a motor vehicle (for example, “0–100 km/h in 6.5 seconds”). Other factual references to the capabilities of the motor vehicle (for example, cylinder capacity, kilowatt power of the engine, or maximum torque generated) are acceptable, provided that they are presented in a manner that is consistent with the provisions of the Code.

The Code contains a specific clause (clause 3) relating to the use of motor sport, simulated motor sport and similar vehicle testing or proving activities in advertising. It is acknowledged that motor sport plays a crucial role in brand promotion and the development and testing of crucial technologies, many of which result in safer vehicles.



Accordingly the Code seeks to ensure that advertisers can continue to legitimately make use of motor sport in advertising, provided that care is taken to ensure that depictions of speed, racing and other forms of competitive driving are clearly identified as taking place in this context. FCAI urges also advertisers to avoid any suggestion that depictions of such vehicles participating in motor sport, or undertaking other forms of competitive driving are in any way associated with normal on-road use of motor vehicles.

In addition, it is noted that the Code contains a clause (clause 4) relating to the depiction of off-road vehicles which have been designed with special features for off road operation. This clause provides some limited flexibility allowing advertisers to legitimately demonstrate the capabilities and performance of such vehicles in an off-road context. In so doing however, care should be taken to ensure that all other provisions and the underlying objectives of the Code are still adhered to. In particular, advertisers should be mindful to ensure that advertisements for such vehicles do not involve the depiction of 'excessive' or 'unsafe' speed. Equally, advertisers should avoid portrayal of images of off-road driving which could otherwise be construed as being unsafe.

In interpreting and applying the Code, FCAI asks that advertisers take into account both the explicit and implicit messages that are conveyed by an advertisement. Advertisers should make every effort to ensure that advertisements not only comply with the formal provisions of the Code but are also consistent with the objectives and guidelines expressed in these Explanatory Notes which accompany the Code.

## **Compliance and Administration**

Assessment of compliance with the Code is to be administered by the Advertising Standards Board (ASB). The ASB will review all public complaints made against advertisements for motor vehicles under the terms of the Code.

In administering the Code, the ASB is to give relevant advertisers the opportunity to present such evidence as they deem appropriate in defence of an advertisement under review, prior to making any determination in relation to its consistency, or otherwise, with the provisions of the Code.

The ASB will ensure that all complaints are considered in a timely fashion. As a general rule the panel should finalise its determination within one calendar month of a complaint having been received. Where necessary the ASB may be required to meet more frequently to ensure the timely consideration of complaints.

The ASB will arrange prompt publication of the reasons for all decisions on its website. An annual report on the outcomes of the complaint process will be compiled and published.

Companies may also seek an opinion, from the ASB, on whether the content of a planned advertisement meets the Code, prior to finalisation and release of the advertisement.

FCAI and ASB will work to increase public awareness of the Code and the complaints process.

## **Consultation**

In developing the Code, FCAI has undertaken an extensive process of consultation with a wide range of stakeholders, including representatives of the following:

- (a) The Federal Government and its agencies (including the Australian Transport Safety Bureau);
- (b) Relevant State and Territory Government authorities;
- (c) The National Road Safety Strategy Panel (which comprises representatives of police services, road safety authorities, motoring organisations and industry groups);
- (d) The Australian Automobile Association;
- (e) The Australian Association of National Advertisers; and
- (f) The Advertising Standards Bureau Limited.

## **1. Definitions**

In this Code, the following definitions apply:

- (a) **Advertisement:** means matter which is published or broadcast in all of Australia, or in a substantial section of Australia, for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct.
- (b) **Off-road vehicle:** means a passenger vehicle having up to 9 seating positions including that of the driver having been designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC category). An off-road vehicle will normally have 4 wheel drive.

- (c) Motor sport: means racing, rallying, or other competitive activities involving motor vehicles of a type for which a permit would normally be available under the National Competition Rules of the Confederation of Australian Motor Sport, or other recognised organising body.
- (d) Motor vehicle: means passenger vehicle; motorcycle; light commercial vehicle and off road vehicle.
- (e) Road: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.
- (f) Road-related area: means an area that divides a road; a footpath or nature strip adjacent to a road; an area that is not a road and is open to the public and designated for use by cyclists or animals; an area that is not a road and that is open to or used by the public for driving, riding or parking motor vehicles.

## 2. General Provisions

Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

- (a) Unsafe driving, including reckless and menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.

[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]

- (b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.
- (c) Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation. [Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]
- (d) People driving while being apparently fatigued, or under the influence of drugs or alcohol to the extent that such driving practices breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing directly with road safety or traffic regulation.
- (e) Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.

## 3. Use of Motor Sport in Advertising

Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following:

- (a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia.
- (b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.

## 4. Depiction of Off-road Vehicles

An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.

# ALCOHOL BEVERAGES ADVERTISING CODE

## Preamble

Brewers Association of Australia and New Zealand Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of all advertisements for alcohol beverages, other than point of sale material, produced for publication or broadcast in Australia complying with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.

## Definitions

For the purpose of this Code –

**adult** means a person who is at least 18 years of age;

**alcohol beverage** includes any particular brand of alcohol beverage;

**adolescent** means a person aged 14–17 years inclusive;

**Australian Alcohol Guidelines** means the electronic document ‘Guidelines for everyone (1–3)’ published by the National Health & Medical Research Council (NHMRC) as at 1st January 2004.

**child** means a person under 14 years of age; and

**low alcohol beverage** means an alcohol beverage which contains less than 3.8% alcohol/volume.

## Advertisements for alcohol beverages must –

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
  - i) must not encourage excessive consumption or abuse of alcohol;
  - ii) must not encourage under-age drinking;
  - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - iv) must only depict the responsible and moderate consumption of alcohol beverages;
- b) not have a strong or evident appeal to children or adolescents and, accordingly –
  - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
  - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
  - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;



- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
  - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
  - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
  - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
  - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
  - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.

- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

#### Internet advertisements

The required standard for advertisements outlined in (a) to (h) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to be made available in Australia, and to banner advertising of such products on third party sites.

#### Retail Advertisements

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published, must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

#### Promotion of alcohol at events

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and
- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible serving of alcohol (which preclude the serving of alcohol to underage persons); and
- Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age; and
- Promotional materials distributed at events do not clearly target underage persons; and
- Promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success; and.



- Promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success; and
- Promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and Prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age.

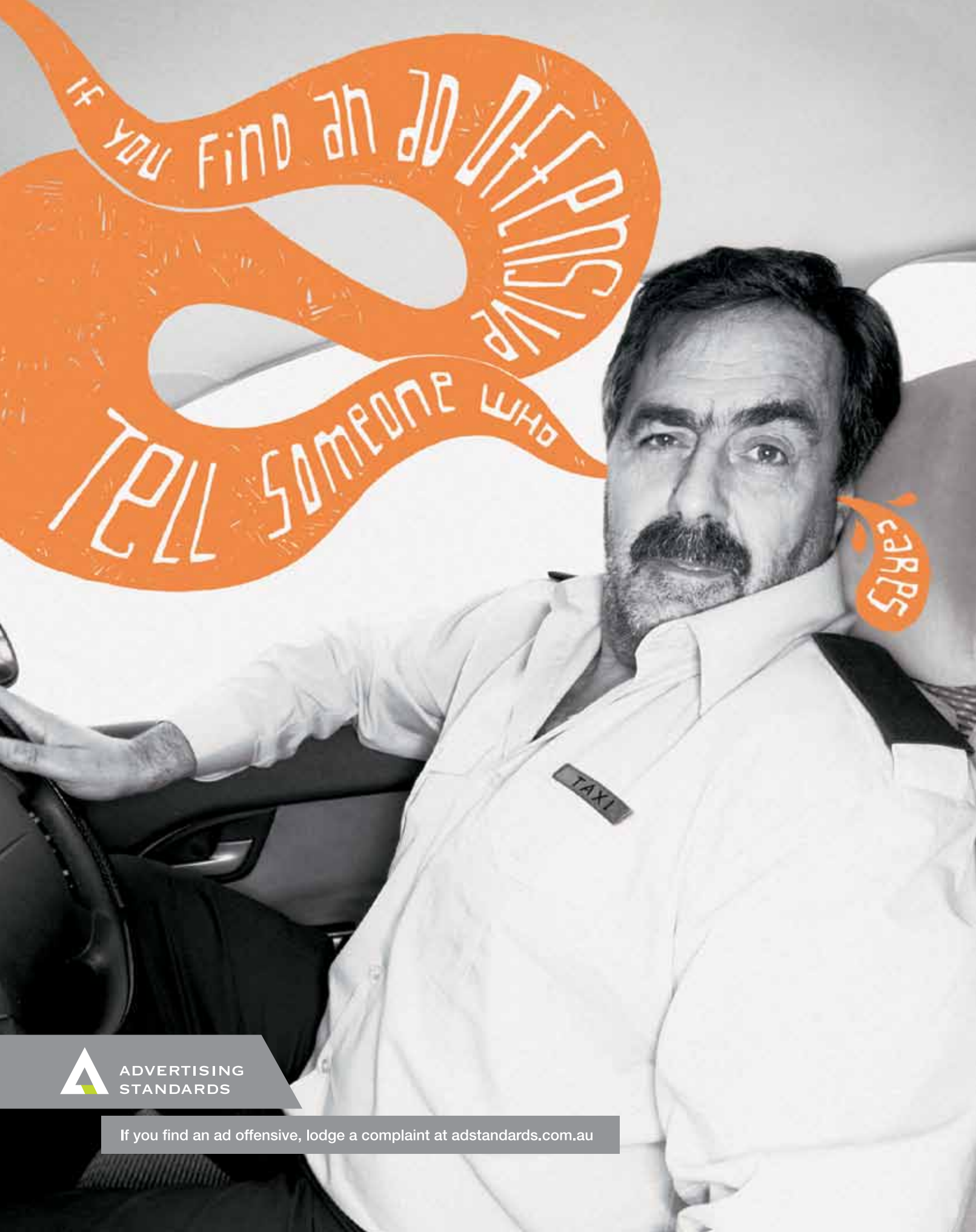
### *Third Parties*

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

### *Public Education*

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.



if you find an ad offensive  
tell someone who

cars



ADVERTISING  
STANDARDS

If you find an ad offensive, lodge a complaint at [adstandards.com.au](http://adstandards.com.au)