



ADVERTISING  
STANDARDS  
BUREAU

Advertising Standards Bureau  
*Review of Operations*

2010



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# Who we are 2010

*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 2010 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
- AANA Environmental Claims in Advertising and Marketing 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

Independent Review of the Board's decision is available to complainants and advertisers. The Independent Review process enables consideration of Board processes. It is not a merits review. The process was established in 2008, with a review of the process conducted in late 2010.

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*

## **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 the self regulation system*

## Who funds the self regulation system?

Responsible advertisers assist in maintaining the self regulation system's viability and support its administration by agreeing to a levy being applied to their advertising spend. Since the establishment of the advertising self regulation system in Australia, the levy has been set at 0.035 per cent, just \$3.50 per \$10,000 of gross media expenditure.

Funding of the Advertising Standards Bureau (ASB) and its secretariat support of the Advertising Standards Board and Advertising Claims Board is provided through the voluntary levy – the ASB receives no government funding. The levy is paid to and administered by the Australian Advertising Standards Council (AASC).

The Media Federation of Australia supports ASB through its members' collection of levy.

## How levy is collected

The levy is collected mainly through media buying agencies but also directly from advertisers that buy their own media space.

The levy is remitted quarterly through the AASC, the funding body of advertising self-regulation. The AASC holds the industry funds in an account

which is drawn upon to pay the costs involved in administering and operating the self regulatory system.

Management of the funds is outsourced, the financial accounts are prepared by chartered accountants and audited by an independent audit firm.

## What the levy is used for

All levy monies are applied exclusively to the maintenance of the self regulation system and are used to finance activities such as:

- general ASB administration and operation of the self regulation system, including maintenance of complaints management
- recruitment of Advertising Standards Board members, and payment of 20 Board members from diverse geographical backgrounds at regular meetings
- Advertising Standards Board and Bureau teleconferences, meetings with industry and government as appropriate throughout the year
- research to assist Advertising Standards Board members and the community to understand self regulation and specific Code related issues, including research into community standards and levels of awareness of the ASB
- ASB contribution to AANA Code reviews.

## Confidentiality of levy collected

The amount of levy collected from individual advertisers is kept confidential from the Board and Directors of both the ASB and the AASC. This ensures appropriate commercial confidentiality about the expenditures of individual advertisers on particular products and services.

# 2010 Snapshot



## 2010 complaint snapshot

Number of complaints received	3526
Number of complaints about ads that did not breach the code	1692
Number of complaints about ads previously considered by the Board	708
Number of complaints made about matters outside ASB jurisdiction	620
Number of complaints about ads that were found to breach the code	361



## 2010 ad snapshot

Number of advertisements complained about	520
Number of advertisements the Board found consistent with AANA code	442
Number of advertisements found by the Board to breach the AANA code	49
Number of advertisements withdrawn voluntarily before the advertisement was considered by the Board	29
Number of advertisements which were NOT modified or discontinued after a complaint was upheld	1



# TOP 10

Advertising Standards Bureau – Most complained about ads in 2010

## 1. Advanced Medical Institute (TV)

*Case number: 0284/10*

**Cookie jar at top of cupboard – man offers wife an erect penis as a step.**

**Issue** – Portrayal of sex, sexuality and nudity, Section 2.3 AANA Code of Ethics

**Board decision** – Dismissed  
About 220 complaints

## 2. Ashley Madison – Avid Life (TV)

*Case number 0257/10*

**Life is short. Have an affair.**

**Issue** – Portrayal of sex, sexuality and nudity, Section 2.3 AANA Code of Ethics and Other – Social values

**Board decision** – Dismissed  
About 115 complaints

## 3. Vic Roads (Internet)

*Case number 0148/10*

**Viral clips aimed at influencing the behaviour of young Victorian drivers – ‘Everytime you use your mobile phone in your car...’**

**Issue** – Discrimination or vilification, Section 2.1 AANA Code of Ethics and Language, Section 2.5 AANA Code of Ethics

**Board decision** – Dismissed  
About 105 complaints

## Most complained about ads in 2010

## 4. Sexpo Pty Ltd (Billboard)

*Case number 60/10*

**Featuring woman on knees and man on motorbike –ad for Brisbane Sexpo in March.**

**Issue** – Portrayal of sex, sexuality and nudity, Section 2.3 AANA Code of Ethics

**Board decision** – Dismissed  
About 75 complaints

## 5. Ashley Madison – Avid Life (Billboard)

*Case number 0292/10*

**(TV) Life is short. Have an affair – Sydney.**

**Issue** – Portrayal of sex, sexuality and nudity, Section 2.3 AANA Code of Ethics and Other – Social values

**Board decision** – Upheld  
About 60 complaints

## 6. Advanced Medical Institute (TV)

*Case number 0315/10*

**Running race with beds on the track.**

**Issue** – Portrayal of sex, sexuality and nudity, Section 2.3 AANA Code of Ethics

**Board decision** – Upheld  
About 50 complaints

## 7. Fernwood Fitness Centres Aust Pty Ltd (Billboard)

*Case number 15/10*

**“Join Now for Fox Sake”**

**Issue** – Portrayal of sex, sexuality and nudity, Section 2.3 AANA Code of Ethics and Language, Section 2.5 AANA Code of Ethics

**Board decision** – Dismissed  
About 50 complaints

## 8. AAMI (TV)

*Case number 18/10*

**Compilation of accidents and man singing “What about me”.**

**Issue** – Health and Safety, Section 2.6 AANA Code of Ethics

**Board decision** – Dismissed  
About 50 complaints

## 9. SCA Hygiene Australasia (TV)

*Case number 109/10*

**Libra pads made into Ninja armour by boyfriend.**

**Issue** – Discrimination or vilification, Section 2.1 AANA Code of Ethics

**Board decision** – Dismissed  
About 45 complaints

## 10. Calvin Klein (Billboard)

*Case number 0411/10*

**Image of one woman and three men. Woman is lying on her back with her head resting on the thighs of one of the men and he is looking down at her. Another man is crouched over her.**

**Issue** – Portrayal of sex, sexuality and nudity, Section 2.3 AANA Code of Ethics and Violence, Section 2.2 AANA Code of Ethics

**Board decision** – Upheld  
About 45 complaints

# *Executive Reports*

*ASB Board of Directors*

*Chairman's report*

*CEO's report*

# ASB 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 ASB. 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 2010 the membership of the Board of Directors remained unchanged.

## Board of Directors

**Ian Alwill**  
*Chairman, ASB*  
Director – Marketing  
Communications, Nestle Australia

**Michael Duncan**  
*Director, ASB*  
Industry Director – Agencies,  
Morgan Research

**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 2010.

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)
Hayden Hills	Director	5 (of 6)	December 2004 (continuing)
John McLaren	Director	4 (of 6)	March 2009 (continuing)
John Sintras	Director	4 (of 6)	December 2005 (continuing)

# Chairman's Report

## *2010 was a year of consolidation for the Bureau and Boards.*

With no changes to the composition of the Advertising Standards Board during 2010 the focus was on ensuring consistency of decisions, ensuring decisions met community standards and developing the Board's understanding of emerging issues and media.

The Bureau spent considerable time during 2010 building awareness of advertising self-regulation and the role of the Advertising Standards Bureau and its Boards at the Federal Government level. The presence of Communications Minister, the Hon Senator Stephen Conroy, at the launch of the ASB research into sex, sexuality and nudity in advertising, demonstrated the respect that the Bureau and the advertising self-regulation system have attained among Governments.

Raising awareness of ASB among members of Parliament will certainly assist ASB's work in the various Federal government inquiries involving advertising and classification which were announced at the end of 2010. We welcome the opportunity to provide input into these inquiries and we are confident that the advertising self regulation system will withstand the strongest scrutiny. Having implemented



*From left: Chairman of the Advertising Standards Bureau, Ian Alwill, Senator the Hon. Stephen Conroy, Minister for Broadband, Communications and the Digital Economy and Advertising Standards Bureau Chief Executive Officer Fiona Jolly, at the release of the ASB's research into community perceptions of sex, sexuality and nudity in advertising.*

a program of continuous improvement and a strong strategic focus, I am confident the Bureau will ably demonstrate the important contribution it makes to the Australian community and the benefit to the community and government of keeping advertising self-regulated.

As mentioned in previous years, continued scrutiny of the self-regulation system requires continued support from industry, both in upholding the spirit of the Codes that are in place, but also in ensuring that the ASB is sufficiently resourced to continue all of its work. While a number of new advertisers have signed up to contribute to the self-regulation levy, there are still too many large advertisers receiving the benefit of the ASB's work without making their contribution. The levy is a very modest 0.035% of media expenditure – and has been unchanged since 1998.

Our international links, primarily through the European Advertising Standards Alliance (EASA) are also important to the everyday work of ASB

– guiding the continuous improvement strategy and ensuring that all practices align with or exceed the standards agreed by our international counterparts. In 2011 we look forward to using our role as Deputy Chair of the International Committee of EASA to raise awareness of advertising self-regulation systems in the Asia Pacific Region.

Thank you to the members of the Advertising Standards Board for their dedication to the role and their commitment to applying the various industry codes in line with community standards. Thank you also to our Independent Reviewers, the Hon Deirdre O'Connor and Mr Mick Palmer, for the important role they play in providing impartial assessment of the appropriateness of Board decisions and Bureau process. I also want to express my appreciation to the Bureau Board who voluntarily and willingly offer their time to assist with corporate and strategic matters.

Ian Alwill



# CEO's Report

*At the time 2010 seemed to be a relatively quiet and internally focused year. In hindsight though it is apparent that a great deal was accomplished – operationally and strategically.*

We spent a good deal of time bedding down our new internal complaints management system. ASB considers it important to substantively respond to complaints within the fastest possible time and our new system highlights for us the places where our current system works well or is not working as quickly as desirable. Our new system also allows us to continually analyse our processes and to implement improvements. We are pleased to finally see measurable improvements in processing times – and we will be building on these during 2011.

A highlight of the year was of course the completion and release of our research into sex, sexuality and nudity. In this, our third such research, we can see that there is concern in the community about sexualised images and themes in advertising – particularly in areas of the media that cannot be 'switched off'. We cannot credibly present our Board

as being in touch with the community without having a diverse board. Equally important is our testing of the Board's decisions against community views. 2010's research gives the Board licence to take a more strict approach towards sex in advertising where there is a difference of opinion in the Board itself. The research also provides important information to industry about community views into acceptable uses of sexualised images or themes.

We hope that advertisers will make use of the three Determination Summaries put together during 2010. These summaries, available on our website, provide detailed information and references for advertisers to make use of in developing campaigns.

Thank you to industry and the community for inviting the Bureau to speak to members of industry and the public. A highlight was being invited to speak at the Victorian Premier's conference on Women where nearly 200 people discussed women working in the media and how women are represented in the media. While we continue to provide training to advertisers and creative agencies, in 2011 we hope to provide training and information to a broader range of advertisers by targeting small to medium enterprises – an important sector of the advertising industry. As a means of improving advertiser and community interaction with the Bureau, in November this year

we also launched our new website, which is more interactive and provides more in-depth information about ASB's work, recent and past cases and the advertising self-regulation system.

As administrators of a number of industry codes we ensure we provide feedback to the owners of those Codes. During 2010 we made submissions to the AANA review of the Code of Ethics, improved clarity around administration and interpretation of the FCAI Code, and met a number of times with food industry representative bodies to provide feedback on the efficacy of the new initiatives aimed at advertising to children.

Finally, another fascinating year for our staff at the coal face of complaints. As anybody who works in complaints management will attest, a sense of humour is essential! Thank you to everyone in our small team for making an action packed year so rewarding.

Fiona Jolly

# *Our path to our vision*

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

# *Path to our vision – Achievements in 2010*

*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*

## **Our role**

The role of the Advertising Standards Bureau continues to be unique in Australia.

In early 2010, the Bureau accepted responsibility for administration and adjudication against the AANA's newest code – the AANA Environmental Claims in Advertising and Marketing Code. This takes the number of codes administered by the ASB to seven.

## **Input to Code review**

The Advertising Standards Bureau is in a unique position in Australia's advertising self regulation system and welcomed the chance in 2010 to provide input and assistance to the review of the AANA Code of Ethics.

Through administration of the advertising self-regulation system, the Bureau gains first-hand knowledge of both the community's and advertisers' concerns in relation to the AANA Code of Ethics and other associated Codes and industry initiatives. Care is taken to note issues raised and these were compiled into the Bureau's submission to the AANA Code of Ethics review.

As secretariat for the Advertising Standards Board, the body responsible for adjudicating complaints made under the Code, the Bureau was able to provide the AANA with feedback taking into account the Standards Board's approach to interpretation of the existing Code provisions and the challenges the Standards Board has sometimes faced in this regard. The Bureau was also able to communicate issues identified through its day-to-day dealings with members of the community, advertisers, advertising agencies, media proprietors and other parties who have provided feedback to the Bureau on the Code's application.

## **Information to stakeholders**

In relation to some complex determinations made by the Advertising Standards Board under the Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising, the Bureau prepared an information paper for the FCAI.

This information paper highlighted issues that FCAI members should consider when creating and releasing motor vehicle advertisements.



# Objective 2

## *Deliver effective advertising self regulation in Australia*

### **New system – faster, more efficient**

Following preparatory work undertaken toward the end of 2009, the ASB launched its new Case Management System (CMS) in March 2010, replacing a system that was unsuitable for future development.

The new system has greater business process management capabilities required to future-proof the ASB, uses business process management technology and techniques to improve the efficiency and effectiveness of all aspects of the complaints handling system, and allows the organisation to achieve improvements in adjudication timeliness and manage increased workloads within the existing staffing profile.

The new CMS has also enabled the ASB to accurately (and automatically) track and measure its performance in regard to timeliness in managing the complaint adjudication process and obtain information about possible inefficiencies or bottle necks within the system. The internal system improvements were complemented by the launch of a redesigned website.

The ASB website was redesigned to provide a more interactive, informative, functional, logical and user friendly internet experience. The redesigned ASB website incorporated a host of features to support and assist all stakeholders. A complaint and case ticker provides transparent statistical data of the previous month's activity, the complaint lodgement process has been redesigned to more intuitively lead complainants and direct the complainant to the right place if their complaint is outside the charter of the ASB, while the advertiser know-how section provides greater detail regarding the obligations of advertisers and what is required when responding to complaints.

When comparing 2009 activity with 2010 activity, the implementation of enhanced technology solutions has achieved significant operational efficiencies and resource savings across the operations of the ASB. Some key statistics include:

- 1050% increase in cases completed within 30 days or less,
- 14.3% increase in cases completed within 31 – 60 days,
- 85.7% decrease in cases completed in 61+days,
- 59.44% improvement in the average time between receipt of complaint and formal notification of complaint to advertiser, and
- 63.2% reduction in consumption of paper and printing consumables.

### **Revised meeting arrangement brings efficiencies**

During 2010, the ASB implemented a structured roster arrangement for member attendance at each meeting of the Advertising Standards Board. Board meetings were restructured to include 12 members on a rotating basis. The revised roster arrangements have been embraced by members of the Board. The new arrangement has not detracted from the efficacy of the operations of the Board or the quality of the decision making process and has produced modest savings in Board overheads.

The meetings are complemented by two training days each year. These days include a review of the previous six months cases and a check of cases where Board members were divided in their opinions. The training days assist in ensuring the roster approach is providing results that are consistent with the views of the whole Board.

### **New procedure with fewer resources expended**

As a further improvement in the complaint adjudication process (identified in an Operational Audit of the ASB conducted in 2009), the ASB implemented a new procedure to assess and manage complaints that raise issues that have been consistently dismissed in the past.

This consistently dismissed complaints initiative was designed to ensure there is an appropriate balance between providing a service for the entire community and removing a burden on the system from those issues raised by complainants that, in the past, have consistently been found to not contravene prevailing community standards.

The initiative enables the Board to spend meeting time discussing more complex cases, and also requires less Bureau and advertiser resources to be expended in dealing with matters that are consistently dismissed.

#### **Determination Summaries**

The sex, sexuality and nudity research report completed in 2010 and the earlier reports into violence (2009) and discrimination and vilification (2009) have resulted in three internally produced Determination Summaries relating to these three topics. These documents provide information to the advertising industry and the community by highlighting the considerations and process followed by the Board when determining whether an advertisement breaches a Code. They also assist the Board in maintaining consistency in their determinations.

#### **Independent reviewer process review**

In line with EASA Best Practice, ASB introduced a review process in April 2008 to provide original complainants and advertisers the opportunity to request a review of a Board determination in prescribed circumstances. In August 2010 the ASB considered that the process had been in operation sufficiently long to undertake an internal review. The aim was to fine tune issues about which complainants or advertisers had expressed concern or that ASB had identified as matters for exploration.

ASB invited all individuals and organisations that requested an independent review of a Board determination or who had contacted ASB regarding the process, to be part of the review. A range of other people and organisations that had specifically expressed interest in the Independent Reviewer process were also invited to participate. In addition, wide participation was encouraged via an ASB media release, newsletter article and bulletin items which were distributed to subscribers and available on the ASB website.

ASB accepted recommendations for action and implementation regarding communication and education issues; technical issues relating to Independent Reviewer operation; and fee structure. Issues relating to cost and case reports will be implemented immediately while other matters requiring greater time and staff resource will be dealt with over the course of 2011.

A report outlining the process followed, questions asked of respondents, responses and recommendations was made available early in 2011.

# Objective 3

## Reflect community standards

### Research

During 2010, the Advertising Standards Bureau commissioned a major research project into the very controversial issue of the use of sex, sexuality and nudity in advertising and what the community thinks about it. The research report was completed in June 2010.

The Board applies community standards in determining whether sex, sexuality and nudity is treated with sensitivity. The aim of the research was to increase understanding within the Board about current community standards regarding this issue, including a focus on assisting the Board to identify if there were community concerns about sexualisation of children in advertising and whether community standards were different depending on the medium in which an advertisement appears.

Specifically, the research aimed to measure the decisions taken by the Board when assessing complaints about sex, sexuality and nudity against the opinions of the broader community to determine if the Board's decisions are broadly in line with, or out of step with, the views of the wider community.

The ASB convened a Reference Group to assist in the choice of advertisements that would be tested and to provide comment on the questions to be asked. The Reference Group included a former Federal Senator who had been a member of a Senate Inquiry Committee

into Sexualisation of Children in Media in 2008, a leading academic in the field of sex and advertising, a representative from a creative agency, and a representative from the peak body for outdoor advertising.

ASB engaged Colmar Brunton, an independent consumer research company to conduct the project. Initial research involved an online survey tool provided to 1207 members of Colmar Brunton's research panel. In order to drill down to elicit concrete trends and analysis, two follow-up face-to-face focus groups were conducted. The research tested community reactions to 22 advertisements from TV, radio, print, outdoor and internet media – 15 in the survey stage and 11 of these 15 and a further seven advertisements in the focus group stage.

As with previous community standards research, the overall responses in both the quantitative and qualitative stages of the research showed a general congruence in that the upheld determinations tended to be related to advertisements with higher levels of community unacceptability.

Research participants who felt that advertisements were unacceptable identified several key factors:

- **Irrelevance** of nudity or sexual imagery to some products
- Even where nudity and sexual imagery is relevant, being **too sexually explicit** is inappropriate in advertising.
- Reinforcement of **women as sexualised 'objects'** through portrayal in sexualised ads.
- Issues of **children's exposure** were commonly raised, with specific themes including:
  - Material that children should not be exposed to as they could mimic it or be prompted to ask questions of their parents that are not desired,
  - Outdoor advertising in particular was identified as giving parents little control over what children saw. The one internet ad considered generated some similar comment,
  - Concern that some children will be exposed to material even in M-timeslots, and
  - The use of younger models in ads creating negative body image issues for younger girls.

In addition to the factors that contributed towards an ad being unacceptable, there were also mitigating factors which reduced or offset concern and contributed to an ad being acceptable:

- **Relevance and factual content** which makes otherwise unpalatable advertisements acceptable
- **Humour** which lightens the tone and reduces severity so that the sex, sexuality and nudity issue can be acceptable
- **Artistic treatment** – i.e. where nudity appears to be natural or artistic without “loud” sexual overtones and suggestiveness
- **Children not “getting it”** – i.e. when sexual connotations are sufficiently subtle to go over the heads of children

A number of ads were specifically included in the research to explore the issue of premature sexualisation of children. Participants in the groups were very sensitive to issues around sex and young people. In particular, they were concerned about the adoption of sexualised appearance and behaviours, and this was exacerbated by concerns about self esteem and unrealistic body image reinforced by advertising. ASB had difficulty finding advertisements that fit into this category and the particular advertisements tested in the survey were found to have very low levels of unacceptability.

Following publication of this significant research project, the Board is now more aware of the community’s concerns and views. Information provided by the research allows the Board to rigorously apply standards for billboards and outdoor advertising to more closely reflect community concern about whether sex, sexuality and nudity is being treated, according to community standards, with sensitivity to the relevant audience.

### Board training

During 2010 the Advertising Standards Bureau convened two one-day training sessions for the Board. This training included presentations and discussions about a variety of issues covered by the Codes administered by the Board.

Face to face training included:

- discussion of a selection of complex or contentious determinations which had involved significant discussion regarding the merits of the case. In addition to this, the Bureau made available to the Board an electronic resource of complex cases for ongoing reference and to ensure consistency and high quality decision making.
- a presentation and detailed discussion following the completion of ASB’s research report into sex, sexuality and nudity in advertising. This is an issue of particular concern to many in the community and about which the Board is required to make many, sometimes complex, determinations.

- discussion of three Determination Summaries. The sex, sexuality and nudity research report completed in 2010 and the earlier reports into violence (2009) and discrimination and vilification (2009) resulted in three internally produced Determination Summaries relating to these three topics. These documents were designed to assist all parties in the advertising self-regulatory system by highlighting the considerations and process followed by the Board when determining whether an advertisement breaches a Code.

During the year the Board and Bureau staff were also able to take part in several information sessions presented by national and international bodies. These included:

- a presentation from the Communications Council providing the Board with insight into advertising to children from the perspective of their member creative agencies,
- a highly interactive discussion about the new Australian Food and Grocery Council Responsible Children’s Marketing Initiative led by a representative from the Australian Food and Grocery Council,
- an overview of the New Zealand approach to advertising to children and depiction of women in advertising by the Chief Executive Officer, Hilary Souter, of the New Zealand Advertising Standards Authority , and
- a look at issues relating to internet advertising by a Google executive.



# Objective 4

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

In 2010 the Advertising Standards Bureau continued to build on awareness of its role through participation in industry events and seminars, government forums, distribution of information and other specific activities to foster community awareness.

A survey taken as part of the 2010 sex, sexuality and nudity in advertising research showed that the level of spontaneous awareness of the ASB was 63 per cent. This is significantly higher than the 10 per cent level in the 2007 Community Awareness research but lower than the 69 per cent recorded during research in 2009.

A major upgrade to the Advertising Standards Bureau website was completed and launched in November. The new format has received positive feedback from the community, media, government and industry bodies. The website provides greater interactivity and easier access to more in depth information about the Bureau.

The electronic bulletin, Ad Standards Bulletin, continued to be distributed to subscribers each month. 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.

The Advertising Standards Bureau's newsletter is also distributed electronically to raise awareness of the work of the ASB and the successful operation of the self-regulation system. It provides analysis on trends or interesting decisions of the Advertising Standards Board, and encourages visits to the ASB website.

Electronic monitoring of the open rates of the newsletter and monthly bulletin show high levels of interest in the information content, across all stakeholder groups – industry, community, media, and government.

Throughout the year, information provided on the website, through the bulletins and newsletters were covered by general news, social affairs and marketing reporters. The Chief Executive Officer also participated in numerous media interviews for print, internet, radio and television about issues relating to ASB operations.

The Bureau also took opportunities to support other industry organisations in promotion of Australia's world-class self regulation system and the importance of responsible advertising.

The Bureau sponsored the Media Federation Awards which rewards collaborative work done in producing campaigns that reach target markets, and also the 'Long term effects' category of the 2010 Communications Council Effie awards.

Since the release of ASB's research into community perceptions of sex, sexuality and nudity in advertising by Senator the Hon. Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, in June, Ms Jolly, Advertising Standards Bureau Chief Executive Officer, has met with parliamentary officials interested in the self regulation of advertising in Australia.

Ms Jolly was also invited to speak at the 2010 annual Victorian Premier's Women's Summit, attended by more than 200 representatives from the media, business and community. The summit focused on women in the media and explored the complexities around the portrayal of women.

During late 2009 and 2010, ASB presented papers at 18 seminars and conferences to a total audience of approximately 835 people. These included presentations at a Chief Marketing Officer Summit, Communications Council seminars, an RMIT seminar, an Australian Council on Children and the Media sexualisation of children seminar, a Media Classifiers' Association of Australia seminar, Youngbloods seminar and Legalwise seminars. Specific information was also presented to the Australian Communications and Media Authority and an advertising workshop held by the Australian National Audit Office.

# Objective 5

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

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 on emerging media.

During 2010 the Advertising Standards Bureau received complaints about YouTube, internet, social networking sites, and mobile phone/Bluetooth advertising.

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 rate of complaints about advertisements recorded as being seen on the internet tripled in 2010.

Under the internet category the ASB collects statistics on advertisements which are viewed via an internet feed. This includes interactive advertisements, such as a series of ads released by Brut (case number 164/10) via a Bluetooth feed.

In 2010 the ASB also took complaints about advertising content on advertiser-own websites.

During 2010, ASB referred complaints about online content of two advertisements to the Australian Communications and Media Authority. These both involved content appearing as unauthorised pop-ups. It also successfully negotiated with an overseas website owner (American Apparel – case number 141/10) whose advertisement appeared on its own Australian-based websites.

The increase in the number of complaints about internet based ads was contributed to by a high number of complaints about a series of viral advertisements released by VicRoads (case number 148/10).

The ASB believes it is important that the community has access to a complaints resolution service in relation to all advertisements and it is 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*

### **International representation**

Advertising Standards Bureau CEO Fiona Jolly represented the ASB at the European Advertising Standards Alliance (EASA) General Council meeting in Sofia in April. EASA is the single authoritative voice on advertising self regulation issues in Europe and beyond. Membership of EASA allows the Bureau to measure its performance and operations against international standards and ensures that we have access to an appropriate best practice model for advertising complaint resolution.

During the 2010 meeting in Sofia, the General Council considered a range of matters including own-initiative monitoring, copy advice, food monitoring, digital marketing communications and standards of service. ASB is expecting to make use of these and other EASA resources for training and information sessions for small to medium advertisers during 2011.

EASA members have been asked to undertake initiatives encouraging healthy dietary choices and healthy lifestyle when advertising food to children. Ms Jolly shared ASB experiences regarding the Australian Food and Grocery Council's Responsible Children's Marketing Initiative with members.

There was also considerable discussion about the EASA Best Practice Recommendations on Standards of Service, focussing on progress achieved and developing and implementing KPIs. The new Case Management System introduced to ASB will allow ASB to contribute more rigorous and accurate information on this issue in future discussions.

Member representatives shared information on how they are approaching the new issue of Digital Marketing Communications with particular reference to technical difficulties in capturing on-line advertisements and removing advertisements found in breach, non-compliant advertisers, and effective ways of linking with the interactive sector. ASB is ahead of international practice on this issue.

Ms Jolly is the Deputy Chair of the International Council of EASA which comprises affiliate members of EASA including Australia, New Zealand, Canada, South Africa, India and other non-European members. At the International Council meeting, Ms Jolly undertook to investigate the status of advertising self-regulation in the Asia/Pacific region and the possibility of establishing an Asia/Pacific advertising self-regulation forum to provide organisations in the region with information and experience of best practice in self-regulation.

At the 2009 EASA General Council meeting, a Portrayal of Gender Issue Paper was approved and this formed the basis for the 2010 ASB Determination Summary on the Portrayal of Gender in advertising. The Determination Summary provides strong guidance for industry regarding acceptable depictions and is an important tool in assisting industry to create advertisements that are less likely to breach community standards.

### **Compliance**

The Bureau's exemplary record of compliance with Standards Board determinations continued in 2010.

As a voluntary system it relies very much on the good will, good sense, and a common commitment of advertisers to provide consumers with appropriate advertisements and through this promote consumer and government confidence in the general standards of advertising.

Advertisers, advertising agencies, media personnel and agencies, know that there is no government intervention in the self-regulation system and to maintain this position it is necessary to achieve high levels of compliance with Board decisions.

In the vast majority of cases, advertisers comply immediately with determinations made by the Board. Our experience is that, regardless of an advertiser's reaction to a decision, most will quickly ensure that their advertisement is removed from the medium that the decision applied to. In the rare cases where an advertiser does not immediately comply, the ASB has an effective range of enforcement tools to apply to ensure compliance with Board decisions.

Firstly, if a complaint indicates that an advertisement may breach government regulations or has broken the law, the Bureau can refer the case report to an appropriate government agency or industry body that has the authority to withdraw the advertisement. This will be done without a case going to the Board for consideration.

More relevantly:

- An advertiser's failure to respond will always be included in the final case report which is made public on the Bureau's website. This is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided.
- In a similar fashion, an advertiser's failure to respond can feature in information released to the media which follows the relevant Board meeting. The Advertising Standards Bureau CEO responds to all media requests with a full account of the particulars of the case, including the timeliness of the advertiser's compliance.

- Should an advertiser fail to respond to the Bureau's request to remove or modify advertising, our relationship with industry and media bodies such as FreeTV and the Outdoor Media Association ensure that the industry body will either negotiate with the advertiser directly for the removal of the advertisement on our behalf, or in specific cases, take action to remove the advertisement in the face of advertiser opposition.
- Under appropriate circumstances, we will refer an advertiser to a government agency such as the Commonwealth Department of Communications, Broadband and the Digital Economy, the Australian Communications and Media Authority, the Attorney-General's Department, or to State Police Departments to request that these agencies assist in taking action against the advertiser.

#### **Enforcement in 2010**

Of the 49 cases upheld, all but three were modified or discontinued by the advertiser in response to the notification of determination. In the case of the three exceptions the Bureau sought the assistance of relevant government agencies to enforce the decisions:

- In May 2010 the Bureau notified the Fraser Coast Regional Council that a billboard owner would not remove the billboard. Council replied and removed the billboard (although only on the basis that the development was not approved – not on the basis of the content of the billboard).

- In September 2010 the Bureau notified the Yarra City Council that a local store would not remove a sandwich board. Council replied and advised that it is unable to revoke the approval of the sandwich board on the basis of content.
- In January 2011 the Bureau notified the Victorian Government that advertising for an adult premises breached the Code and asked that the Government take appropriate action.

Although Government agencies can be of assistance, ASB's priority is to achieve compliance with Board decisions on its own, as this can be achieved more quickly.



# Objective 7

## Be financially viable

In 2010 the Advertising Standards Bureau continued to promote the benefits of Australia's advertising self regulation system to advertisers. The ASB has maintained its approach that support from industry is critical in two areas; firstly through cooperation and compliance with the complaint adjudication role of the ASB; and secondly by financially supporting the system through payment of the advertiser levy.

The contribution made by advertisers in relation to their media expenditure (0.035 per cent of gross media expenditure – 35 cents per \$1000) is small in relation to the benefits of maintaining an effective self regulation system.

Financial support of self regulation by advertisers was maintained at similar levels to previous years.

At the end of 2010, approximately 63 per cent of the top 150 advertisers (as identified in annual Nielsen survey) contribute levy. The ASB is extremely grateful for the continuing support of those advertisers and is continuing to work with other advertisers to garner increased levels of financial support for the self-regulatory system.

The ASB continued to actively identify and target those major advertisers who do not financially contribute to the self regulation system. These advertisers receive the benefit of the system without contributing an equitable amount to maintain the system that is made available to all.

The ASB also maintained its argument that further growth in new technology and the complexity of cases considered by the Board impose greater costs that should be shared by the entire industry.

As well as striving to increase income, ASB has maintained a firm control of expenditure and has achieved cost efficiencies in a number of areas of operation.

# Objective 8

## *Have a skilled and sustainable workforce*

The ASB has a small and dedicated workforce.

Throughout 2010 staff were consistently involved in discussions and decisions relating to complaint adjudication processes and activity and other key projects. Staff engagement in considering emerging trends and issues, as well as delivering on the ASB's core business outputs, was at a very high level.

Staff provided detailed input into the workflow design, system pathway assessment and activity measures as part of the implementation of the new Case Management System. Staff were involved in testing, assessment and streamlining of the system throughout the project. All staff received comprehensive training in all aspects of the use and functionality of the system. The successful implementation of the new Case Management System, while continuing to maintain the normal case/complaint load, was a major achievement during the year.

Staff delivered in other major projects. These included the community standards testing research, review of the Independent Reviewer system, the implementation of the enhanced communications strategy, upgrade of the ASB website, as well as maintaining the efficient and effective ongoing operational and financial administration of the ASB.

The new case management system has streamlined a number of manual, data entry tasks and increased efficiencies across a range of complaint adjudication processes. These efficiencies have enabled case managers to provide a significantly higher level of assessment and analysis of case material and also allowed them to take on the responsibility of drafting case report determinations.

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

The ASB endeavours to provide a rewarding and challenging work environment while also maintaining a flexible family-friendly workplace.

In terms of staffing information, for the calendar year ended 31 December 2010, ASB had:

- eight staff members, five of whom work part-time hours
- a full time staffing equivalent of 6.33 people
- an average staff tenure of 2.47 years
- a staff gross attrition rate of 12.5% for 2010.

# *Board Reports*

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*Advertising Standards Board*

*Board view*

*Board Members*

*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).

During 2010 the portrayal of sex, sexuality and nudity continued to be the dominant issue raised by complainants. In 2010, this issue accounted for 45 per cent of complaints, rising from 40 per cent in 2009 and 25 per cent in 2008. The issue of discrimination and vilification accounted for 19.5 per cent of complaints. Together these two issues comprised almost 65 per cent of all complaints made in 2010.

In 2010 the proportion of complaints about violence in advertising and complaints about health and safety issues both increased slightly to 9.62 per cent each, while the issue of language dropped again for the third consecutive year to 4.85 per cent.

Complaints relating to food and beverage code issues continued to rise slightly, reaching 3.08 per cent, with the AFGC and QSR food advertising initiatives totalling 1.4 per cent of all complaints.



## Issues Attracting Complaint

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

Section 2.1 is a broad category which includes discrimination or vilification on the basis of race, ethnicity, nationality, sex, disability and age.

Objectification of women is the issue that continually dominates complaints about discrimination or vilification under the Code.

During 2010 the Bureau published a determination summary addressing this issue to provide guidance to advertisers about appropriate ways to depict both men and women. A number of cases did breach the Code on the basis that they depicted women in a discriminating or demeaning manner. Of most note is the Board's approach to the use of images of women's body parts, usually in conjunction with sexualised text, to promote a product to which the woman's body has no relevance. Cases 31/10 and 0517/10 provide particular examples of the Board's approach to discrimination against women.

Depictions of men also raised concerns during the year. In particular complaints about the Philadelphia Cream Cheese advertisement (case 0203/10) raised concerns about the objectification of men. In this particular case the Board commented:

'In the Board's view the advertisement is a parody of advertisements that use attractive women to present products – the parody element is clearly shown by the woman redirecting the viewer's attention to the product not to the men cooking and the depiction of the men wearing only underwear as they walk away – a clear reference



to the use of scantily clad women in advertising. The Board considered that the depiction of the woman patting one of the men on the bottom is a continuation of the parody. The Board considered that the tone of the advertisement is light hearted and flirty and that the men happily go along with the woman's references to them being good looking. The Board considered that the advertisement is not demeaning to men and does not discriminate against or vilify men.'

Also raising concerns during the year were a large number of complaints about a viral advertisement for road and traffic safety from Vic Roads (Case 0148/10). A large number of complaints were made in relation to the advertisement's reference to people with red hair. Although the colour of a person's hair is not a specific ground of discrimination mentioned in section 2.1 the Board will consider cases where the advertisement has raised a large number of complaints. In this case the Board determined that: 'Although the Code does not specifically refer to hair colour,

the advertisement does refer to a section of the community and that the suggestion about that sector of the community is negative. The Board considered however that the situations depicted were so incongruous with the road safety message of the advertisement, they would be considered by most people not to be a serious suggestion that red headed people are undesirable. The Board considered that the advertisement did not discriminate against or vilify red headed people.'

Although discrimination on the grounds of disability is not an area attracting many complaints, during 2010 the Board upheld complaints about a radio advertisement which suggested that it would be undesirable to go out with a woman with a disability – Jim Beam Brands (0306/10).

Similarly uncommon, but clearly in breach of the Code, is advertising which glamourises smoking. A One Teaspoon advertisement (0521/10) for clothing which depicted a model smoking was determined to breach the Code on the basis of depicting material contrary to community standards on health.



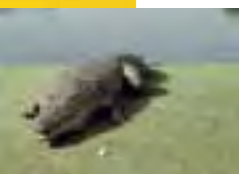
*Philadelphia – case number 203/10 (complaints dismissed)*

## 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.



Diageo crocodile – case number 488/10 (complaints dismissed)

Violence against animals continued to be an issue of concern to complainants during 2010. Whether or not real animals are depicted in situations or cartoon/animated/ or clearly ‘fake’ animals will make a difference to the Board’s view. However depictions of any violence against animals (real or otherwise) should be used with care. In Diageo (crocodile) (0485/10) the Board commented:

‘The minority of the Board considered that the advertisement did depict violence against animals (even though it would be clear to viewers of the advertisement that the crocodile used was not a real crocodile) and that such a depiction was unjustified and in breach of section 2.2 of the Code. The majority of the Board considered however that the explosion of the crocodile, the crocodile on the spit roast, and the suggestion that the luggage is made from crocodile skin, was so exaggerated and unrealistic that most members of the community would consider it humorous and not a depiction of or condoning of violence against animals.’



The use of violence against people is difficult for the Board. While section 2.2 clearly states that violence cannot be used unless justified in the context of the product advertised, the Board has not prohibited the use of slap stick images where no harm is shown. Again, exaggerated and unrealistic situations will often make use of slapstick activities acceptable, such as Mars Confectionery (0160/10), and Fishermen’s Friend (0370/10). In Fisherman’s friend:

‘The Board considered that the advertisement depicted an unreal situation, far removed from reality. The Board also noted that the man looks happy after being hit with the fish, and that he says, “Oh yeah!” straight afterwards. The Board considered the man’s reaction to be a positive one, and in no way did he appear to be the victim of an assault.

The Board considered that most members of the community would find the advertisement humorous and would recognise that it was not encouraging or condoning violence, but rather emphasising the effect of eating a Fisherman’s Friend lozenge.’

However realistic depictions of people hitting each other will be unlikely to be acceptable under section 2.2, such as in National Foods Coon Cheese (0433/10).

Suggestions of violence and sexualised images must be avoided see Calvin Klein (0411/10).

### **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. During 2010 the ASB released a research report which focussed on community perceptions of sex, sexuality and nudity in advertising and provided insight into consumer attitudes towards the use of sex, sexuality and nudity in advertising.

Most complained about advertisements in the area of sex, sexuality and nudity during 2010 were a television and billboard advertisement for Ashley Madison – a dating service for married men and women. The concept of the ‘relevant audience or time zone’ is critical for the Board in determining whether an advertisement ‘treats sex, sexuality and nudity with sensitivity to the relevant audience or timezone.’ In 0257/10 the television advertisement (rated S), the Board noted:

‘... that the advertisement depicts a man and woman kissing and embracing and that the kiss is fairly intimate. The Board considered however that the depictions were relevant to the product advertised and, although sexualised, were not explicitly sexual. The Board considered that this level of sexualised behaviour was appropriate for viewing in a late night timezone. The Board considered that the theme of the advertisement – an affair – very explicitly was not appropriate for viewing by children and noted again the late night classification of this advertisement. The Board considered that the sexual theme of this advertisement was not inappropriate for the timezone. The Board considered that this advertisement did not breach section 2.3 of the Code.’

However similar concepts in a still image that is available to the general public requires a different test of ‘sensitivity’.

‘The Board considered that the only sexual reference is to ‘have an affair’. The Board considered that the statement was relevant to the product advertised and, although not mentioning sex, in the context of the advertisement would be clearly understood to be encouraging sex between consenting adults. The Board noted that the advertisement is a billboard and is available for viewing by a broad audience. The Board considered that the theme of the advertisement – an affair – was explicit and although not likely to be understood by young children, was a treatment of sex and sexuality that is not appropriate for a broad viewing audience that includes older children. The Board determined that the advertisement did not depict sex and sexuality with sensitivity to the relevant audience and therefore breached section 2.3 of the Code.’

Sexualised images also continue to attract complaints with a number of advertisements breaching the Code. An advertisement for safe sex targeted to the gay community was inadvertently placed in a local newspaper and determined to breach the Code on the basis that the image was a very sexually suggestive image and was inappropriate for the audience (ACON 151/10).

Billboards attracted some attention during 2010 with the Board taking a harder line on what material is appropriate for viewing by a general audience. Complaints, for example, about advertisements for SEXPO (0216/10) and a gentleman’s club Larry Flynt (241/10) were upheld on the basis that the images in the advertisement were inappropriately sexualised for the audience.

Depictions that suggested that men were having sex with blow up dolls was considered highly inappropriate by the Board and a television advertisement for AMI was taken off air after the Board upheld complaints against it (AMI 351/10).

Nudity will not, of itself, breach the Code. In several cases during 2010 the Board considered images of nudity acceptable. Cobbity Turf (0376/10)



## Language

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

Complaints about the language used in advertising made up 4.85 per cent of all complaints in 2010.

The advertisement most complained about on the grounds of language during 2010 was a Fernwood Fitness advertisement (15/10) which used the word 'fox' in a context that many felt referred to another 'f' word. The Board determined that:

'...the advertisement is for the promotion of Fernwood Women's health club and that the ad forms part of a campaign. The Board agreed that the advertisement might be interpreted (by some members of the community) as FOX to mean an expletive or some other word. However, the Board noted that the use of the word FOX is part of an advertising campaign whereby the word FOX is a reference to women to "find their inner fox". The Board noted that the advertiser had been sensitive to the possible misinterpretation of the word FOX and another commonly used expletive, and in this regard had not broadcast the advertisement on radio.'

Other acronyms used in advertisements which attracted complaints during the year included 'WTF' and 'FUIC' both on billboards. The Board's view is that the use of these acronyms tends to be acceptable provided that they are reasonably unlikely to be understood by younger children. Similarly, removing letters from words to make the word incomplete can also be acceptable. (Peregrine Corporation 35/10, Sportsbet 0422/10)

Consistent with previous years, the Board continued to consider a range of complaints about the use of language that, in the Board's view would be considered to be colloquial Australian expressions. Where such expressions are used in a way that is consistent with their expected colloquial use and are not used in an aggressive manner the Board will usually determine that the language is not inappropriate and does not breach the code. Recent examples include the use of 'friggin awesome' (0338/10) and 'bugger' (0364/10).



*Fernwood – case number 15/10 (complaints dismissed)*

## Health and safety

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

Complaints about health and safety issues in advertising were again low in 2010 at 9.62 per cent, although slightly up from the previous year's figure of 8.38 per cent. Under section 2.6 of the Code, the Board must uphold complaints about an advertisement where the advertisement or marketing communications 'depict material that is contrary to prevailing community standards on health and safety.'

Some depictions of behaviour can be inappropriate. A Choice advertisement mailed to subscribers depicted a man inside a refrigerator (0178/10) and was upheld by the Board on the basis that:

'...the man is depicted in the fridge in a manner that is reminiscent of a game and that this image could be attractive to children.'

The Board noted that the advertisement appears primarily in publications targeted to adults but that many of these publications would be available to children in the home. The Board considered that the advertisement's depiction of a person in a fridge is a depiction that is contrary to prevailing community standards of safety. On this basis the Board determined that the advertisement breached section 2.6 of the Code and upheld the complaint.'

Similarly, depicting unsafe practices with electricity (Foxtel 0481/10) and a man trying to obtain chocolate from a vending machine (NRMA 256/10) were considered to be depictions of behaviour that is unsafe and had complaints upheld.



### “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.

During 2010 this category saw complaints about ads which caused alarm and distress, or included activities which were considered to not be socially acceptable.

The issue of stealing raised concerns within community.

A television advertisement from Toyota (227/10) featured a truck loaded with cars being stolen after the driver stopped to check on a puppy he saw on a remote country road. In this case the Board noted concerns that the advertisement promoted theft, but dismissed complaints. It considered that the advertisement was an exaggerated and unrealistic depiction of the lengths that some people will go to, but agreed that the advertisement did not condone or promote theft.

In an advertisement from NRMA (256/10) where complainants were concerned about the depiction of a football player shaking a chocolate vending machine, the Board upheld complaints in relation to unsafe behavior, but ruled out the suggestion of theft. The Board considered that there was no suggestion that the player had not paid for one of the products and that there was not necessarily a suggestion of theft. The Board did however consider that the depiction of the person shaking the machine was a depiction of an activity that could cause harm. The Board also considered that the use of a popular personality to depict this behaviour condoned the behaviour.

Alarm and distress caused by issues or images in advertisements are often of concern to the community. In 2010, the Board considered several cases where alarm and distress were the main cause of concern.

Complaints about an NRMA internet advertisement (176/10) which featured a spider were dismissed by the Board on the grounds that the depiction of a spider is not, of itself, a depiction of material that contravenes prevailing community standards. The Board noted the depiction of the spider, which was clearly not real, and agreed that people with arachnophobia might find the advertisement distressing, but the advertisement was unlikely to cause distress for others.

Acknowledging that advertisers cannot reasonably be expected to remove all content that might trigger individual phobias, the Board determined that in this instance, the advertisement did not depict any material that was in breach of prevailing community standards.

A community awareness television advertisement from the Heart Foundation (273/10) also caused alarm and distress for some viewers. In this advertisement a man on a hospital gurney makes a wish that he could have his heart attack again. The Board noted that the images presented in the advertisement, particularly that of a man who has just died from a heart attack, were confronting and agreed that the advertisement would be distressing to some viewers particularly those who have been touched by heart disease. In dismissing complaints the Board noted the important public health message underlying the images used and that such messages justify impactful advertising.

## Food and Beverage Advertising to Children – Industry Initiatives

In August 2008 and January 2009 the Advertising Standards Bureau commenced administering complaint resolutions under the Quick Service Restaurant and AFGC RCMI respectively.

In 2010 there was an increase in the number of complaints under these Initiatives about food and beverage advertisements. It is important to note the scope and intention of these Initiatives and of the AANA Codes which also regulate food and beverage advertising. These Codes and Initiative do not purport to stop all advertising of food and beverages to children.

### *The Quick Service Restaurant Initiative*

The QSR Initiative obliges signatories 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. The initiative applies to advertising to children under 14. Under this Initiative the Advertising Standards Board (the Board) must determine whether an advertisement complained about is 'advertising or marketing communications to children.

That is: is the advertisement, having regard to the theme, visuals and language used, directed primarily to children and is it for food and/or beverage products.'



*McDonald's playground – case number 430/10  
(complaints dismissed)*

The most referenced provision in the Initiative is the requirement that where a company is advertising to children then either:

1. The product advertised must represent healthier choices OR
2. The advertisement must represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages (1) healthier choices...and (2) physical activity.

For Quick Service restaurants the Board considered complaints against a number of cases. Breaches of the Initiative were found in 4 cases.

Key issues to be drawn from cases considered by the Board during 2010 are:

- The QSR only applies where the advertisement itself is, considering the theme, visuals and language used, directed primarily to children (495/10; 431/10; 430/10)

- Advertising products that do not meet the criteria for a 'healthier choice' in family programs that children may view is not prohibited by the Initiative provided that the advertisement itself is not primarily directed to children (400/10, 430/10, 431/10, 423/10, 495/10, 498/10, 499/10)
- A product advertised directly to children MUST meet the criteria for being a 'healthier choice' (32/10)
- The non-food component of a 'kids meal' package will generally be considered not to be a premium as the product purchased is the package of food and non-food products – the toy is not something which is offered 'free or at a reduced price with the purchase of a regular children's food or beverage product' (32/10)
- Advertisers must not use popular personalities or licensed characters in advertising products that do not represent a 'healthier choice' (32/10)
- Advertisements to children for 'healthier choice' products should avoid including products which would not meet the 'healthier choice' criteria as background or incidental shots (224/10)

- Children's 'tween' magazines such as K zone and Totally Girl are directed to children and any advertisements in those magazines will be considered to be advertising to children (427/10, 428/10);
- A reference to a group of products, for example 'Kidz Mealz' (where there are a range of meals described as 'Kidz Mealz') is considered a reference to all products of that description. All products of that description must meet the requirements of the Initiative (427/10, 428/10);
- If a product advertised does not represent a healthier choice the advertisement must clearly depict a healthy lifestyle that encourages healthier choices and physical activity (427/10, 428/10);
- When advertising directly to children, it is important to consider whether a child will understand the advertisement to be for a food product (in which case the QSR requirements will apply) or for a non food product or service – the advertiser's intention is not the test (523/10).

#### *The Australian Food and Grocery Council Initiative*

The AFGC Initiative obliges signatories to limit marketing communications to children under 12 only when it will further the goal of promoting healthy dietary choices and healthy lifestyles. The initiative applies to advertising to children under 12. Under this Initiative the Board must determine whether an advertisement complained about is advertised to children under 12 in media.

Media is defined as: '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.

During 2010 the AFGC amended the Guideline to the AFGC RCMI Initiative which provided that advertising or marketing communication activities are captured under the AFGC RCMI Initiative if:

1. the audience of the communication activity is predominantly children (under 12);
2. the media in which the communication activity appears is clearly directed primarily to children (under 12)
3. the communication activities are, regardless of the audience, clearly directed primarily to children under 12.

The most referenced provision in the Initiative is the requirement that where a company is advertising to children then:

1. The product must represent healthy dietary choices, consistent with established scientific or Australia government standards. AND
2. The advertising or marketing communications must reference or be in the context of a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages (a) good dietary habits, consistent with established scientific or government criteria and (b) physical activity.

For food and grocery products the Board considered complaints against a number of cases (0195/10, 0204/10, 0363/10, 0407/10, 0408/10, 0409/10 and 0414/10, 0429/10, 0438/10, 0443/10, 493/10, 514/10, 482/10). Breaches of the Initiative were found in 4 cases.

Key issues to be drawn from these cases are:

- Advertisers, media buyers and broadcasters must ensure that advertisements for products that do not meet Principle 1 of the Initiative are not broadcast in programmes that have predominantly child audiences or are primarily directed to children (408/10, 0409/10, 482/10, ),
- Programmes that have been determined not to have a predominantly child audiences or not to be directed primarily to children include Junior Masterchef, The Simpsons, Home and Away, The X Factor (0429/10, 0438/10, 0443/10)
- Particular care should be taken with kids and family movies as many of these may not have predominantly child audiences but might be considered by the Board to be 'primarily directed to children': eg: Robots, The Shaggy Dog (0407/10)
- Not every advertisement with child actors, bright colours and catchy music will be considered to be directed primarily to child, but caution should be exercised in their placement (0407/10, 0429/10)
- The Initiative does not apply to advertiser own websites or microsites (0414/10)



## AANA Food and Beverages Advertising and Marketing Communications Code

In addition to the Initiatives the ASB administers the AANA Food and Beverages Code (the Food Code)

The Food Code has provisions around advertising food and beverages generally. Part 3 of this Code has specific restrictions around advertising food and beverages to children. Key issues to be drawn from cases under the Food Code are:

- In the Board's view, while there are rules about HOW particular foods and beverages are advertised, there is not a community standard that treat foods cannot be advertised at all nor is there a community standard that food should not be sold in conjunction with toys or other merchandise (0443/10)
- Promotions which may require multiple purchases must be advertised with care to avoid suggestions that the advertisement promotes excess consumption (75/10, 0438/10)



Unilever Paddlepop – case number 75/10  
(complaints dismissed)



In the Eagle Boys case (78/10) the Board had to consider whether sweeping fresh ingredients out of the way in preference for a take-away pizza undermined the promotion of healthy balanced diets.

In this case the Board:

The Board noted the complainant's concern that the advertisement is inappropriate because it depicts wastage of food and suggests that take away food is preferable to food made at home. The Board noted that the advertisement depicts a family sweeping pizza ingredients from a table to the floor. The Board considered that the advertisement's depiction is a one-off, with no suggestion that the family regularly replaces home prepared food with take-away. The Board considered that this depiction is clearly meant to be humorous and that it does not undermine the promotion of healthy balanced diets. The Board determined that the advertisement does not breach section 2.2 of the Food Code.

The truth of claims and statements made in food advertisements is an issue that the Board can consider under section 2.2 of the Food Code. During 2010 a number of complaints were received about claims made in relation to a variety of Energy Drinks (104/10, 33/10, 137/10). Complaints were dismissed on the basis that the 'claims' made on the websites of these companies were general.



## AANA Code for Advertising and Marketing Communications to Children

The provisions of the Children's Code and Part 3 of the Food Code apply only to advertising which is directed primarily to children (taking into account the theme, visuals, and language used in the advertisement) and which is for products that are targeted towards or of principal appeal to children.

Of recent interest from Board decisions regarding advertising food to children is:

- The non-food component of a product which has both food and non-food components will generally be considered not to be a premium as the product purchased is the product as a whole – the toy is not something which is offered 'free or at a reduced price with the purchase of a regular children's food or beverage product' (0443/10).
- The determination of whether a product is of principal appeal to children is a decision to be made by the Board and is based on community standards. Advertisers should take particular care in advertising products that may be of appeal to both children and adults but could be seen to be of principal appeal to children (0429/10, 414/10, 407/10)

Section 2.5 of the Code requires that advertising to children does not 'portray images or events which depict unsafe uses of a product or unsafe situations which may encourage children to engage in dangerous activities...' Complaints about an advertisement for a lolly raised this issue. In the advertisement Sweetmans (393/10) the Board:

'... noted that the advertisement is a cartoon style depiction of a fairy tale setting and that two children



are invited in to a Theme Park by a character called Wacky. The Board noted the complainant's concerns that this goes against parents teachings to their children about stranger danger.

The Board considered that the theme of the advertisement was clearly a fantasy style and that all the characters featured were cartoon. The Board noted the advertiser's response that the character 'Wacky' is a well established face of the product, however the Board considered that not all viewers would know this. The Board considered that as the cartoon children are magically transported to the scene through the cinema screen this clearly indicates that this is not a real situation, and that the advertisement is not suggesting that children take sweets from strangers. The Board determined that this advertisement did not breach section 2.5 of the Children's code.

Sexualisation of children is an issue which raises a small number of complaints to the Board. In Waves (333/10) the Board determined that an image of two children kissing did breach the Children's Code. Specifically:

The Board considered that, although the faces of the children are obscured, the image of children is clear. The Board considered that the advertisement inappropriately depicted children in a sexualised or sexually suggestive pose.... The Board noted that there is a measureable and not insignificant readership which is 14 years and younger. The Board considered that the advertisement breached section 2.4 of the Children's Code by including sexual imagery in contravention of prevailing community standards.

### **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).

Although there were not a high number of complaints about motor vehicle advertisements, the issues raised under the cases produced some important interpretation principles, in particular that:

- regardless of where a car is depicted driving, the Board must consider whether the driving depicted would be unsafe if it were on a road or road-related area.
- the Board will give a broad interpretation to driving practices or other actions under section 2(c) and then consider whether the driving practice or other action would breach the law in the jurisdiction in which the advertisement is broadcast.
- advertisers must be aware of the need to meet the intent and spirit of the FCAI Code as expressed in the Explanatory Notes, not just the substantive provisions.

In August 2010, the ASB prepared a fact sheet to FCAI, for distribution to FCAI members. The objective was to provide FCAI members with current information about the Board's approach to determinations it makes under the FCAI Advertising Code.

During 2010 there were complaints about 15 car advertisements which raised issues related to the FCAI Code.



As well as complaints under the FCAI code, complaints were also made that three motor vehicle advertisements contained content that may breach the broad provisions of the AANA Code of Ethics.

Complaints about one motor vehicle advertisement raised issues under the AANA Environmental Claims in Advertising and Marketing Code.

The issues raised by complainants about motor vehicle advertisements mainly related to:

- driving practices that would breach the law;
- excessive speed; and
- unsafe driving.

Of the advertisements considered under the FCAI Code during 2010, complaints were upheld in relation to one case and dismissed in relation to 14 separate cases.

Three motor vehicle advertising cases were further considered through the Independent Reviewer process in 2010.

In Case 182/10, the Board originally dismissed the complaints about the advertisement. A complainant sought a review of the Decision. The Independent Reviewer accepted the request for review of the case, accepting that there were valid grounds to seek a review. The Independent Reviewer found that there was a flaw in the Board's process relating to the Board's initial interpretation that the use of fog lights was not a "driving practice" under Section 2(c) of the FCAI Code. The Independent Reviewer recommended that the Board reconsider its decision. The Board re-considered the advertisement, noting the revised FCAI Practice Note. On re-consideration of the case, the Board dismissed the complaint.

Following this case however it is now clear that the Board must consider the use of fog lights as a 'driving practice or other action' under section 2(c). Having decided that something is a 'driving practice or action' the Board considers the entire scenario depicted in the advertisement to determine whether the vehicle's use of fog lights would be likely to breach the relevant traffic laws in considering the application of section 2(c).

### *Explanatory Notes*

Two recent cases (215/10 and 298/10) highlighted the issue of advertisements making references to the acceleration or speed capabilities of a vehicle contrary to the direction contained in the Explanatory Notes to the FCAI Code. The Board expressed concern (echoed by the Independent Reviewer in case 215/10) that advice contained in the Explanatory Notes could be disregarded without any breach of the substantive provisions of the FCAI Code. Advertisers should take care to ensure that use of references to acceleration capabilities must not give rise to an overall impression of unsafe driving, speed in excess of speed limits, or unsafe driving practices.

### *Code of Ethics issues*

Complaints were also made that four advertisements raised issues under the broader advertiser codes of Practice. While three were dismissed, one, Mitsubishi (72/10), was upheld on the basis that the advertisement depicted people in a boat not wearing lifejackets. The Board noted that under Victorian law (the state in which the advertisement was shown) it is a requirement that all people in a moving vessel wear a life jack and determined that failure to depict this in an advertisement is breach of prevailing community standards on safety and therefore a breach of section 2.6 of the Code.

### **AANA Environmental Claims in Advertising and Marketing Code**

The ASB commenced administering complaints under the Code on 1 January 2010 and during 2010 considered one complaint under the new Environmental Code.

he complaint concerned representations made about a Nissan X-Trail which included comments that the vehicle contributes 'low emissions' and is advertised under an EcoFocus banner suggesting that it is an environmentally friendly vehicle.

Under the Environmental Code the Board must consider whether there is an 'environmental claim' and in this case it determined that: the use of the term 'low emissions' and, in the context of the advertisement, reference to 'excellent fuel economy' were both environmental claims.

The Board determined that 'on the basis of general community attitudes (supported by information such as that available on [www.greenvehicleguide.gov.au](http://www.greenvehicleguide.gov.au)) provided a vehicle actually does have good fuel economy and low emissions, it is not misleading to suggest a positive effect on the environment.' The Board also noted that the vehicle does have low emissions compared to other vehicles in its class (supported by evidence from [www.greenvehicleguide.gov.au](http://www.greenvehicleguide.gov.au)).

There were diverse views on the Board about whether the use of the EcoFocus logo in this advertisement complied with the Code's requirement that 'the use of any symbol or logo must be explained unless the symbol is required by law...'. The majority of the Board determined that the information provided complied with the Code.

# Board Members



**Tanveer Ahmed**

*Appointed August 2006*

Tanveer Ahmed is a psychiatrist and opinion columnist at the Sydney Morning Herald. He works a combination of private practice in western Sydney and rural work in Tamworth. He is also a Governor of the Smith Family. He is a former national representative for junior doctors within the Australian Medical Association and a former SBS TV journalist. He was born in Bangladesh and raised in Sydney from the age of five.



**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 13 grandchildren. Patron and Chairman of the Sport & Tourism Youth Foundation and The Australian newspapers Joint Australian of the Year with Paul Hogan in 1987.



**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 has been working in film and theatre for the last 12 years.

Over the years, he has been nominated for AFI Awards, IF Awards, Film Critics' Circle Awards, and has won many international awards including most recently prizes at the Orlando Film Festival, Canada International Film Festival and Vietnamese International Film Festival.

His most recent film is Australia's first African feature film, a romantic drama which world premieres at the 2011 Melbourne International Film Festival. Currently, he's writing a mini-series for FremantleMedia, a play for Belvoir St Theatre and a book with his brother.

Khoa Do was born in Vietnam and came to Australia as a refugee when he was two years old. He has worked as a volunteer with Open Family Australia at Cabramatta in Sydney, assisting at-risk youths and was awarded Bankstown City's Young Citizen of the Year Award in 2002. Khoa was also named Young Australian of the Year in 2005.





### **Ann Drummond**

*Appointed August 2006*

Ann Drummond lived in Scotland and Canada before moving to Australia in 1975. She now lives in St Kilda in Melbourne. Ann has two grown-up stepchildren.

Ann has a degree in both theology and early childhood education. She is a retired Uniting 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 the Uniting Church's Synod of Victoria and Tasmania. She is also a member of the Victorian Ecumenical Professional Standards Network.

Ann has extensive experience in the fields of early childhood education and children's services and is currently a member of the Victorian Government's Suitability Panel.

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. As Executive Director of the YWCA Melbourne she initiated programs for young women on issues of self-esteem, body image and the influence of the media.

Ann is a member of the Victorian Women's Trust, the Friends of the St Kilda Botanical Gardens and is an active volunteer in the YWCA at the State, National and World levels.



### **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 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 Killen 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 where she researched a paper on 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 a number of 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, spent some time in Melbourne and now lives in Sydney.



**John Lee**

*Appointed August 2006*

John Lee is the CEO of the Tourism & Transport Forum - the national peak industry body. John has worked in senior roles in both the public and private sectors over the past two decades.

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 particularly in the areas of school registration, middle schooling, technology in education and strategic planning.

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.

Graham is the Chairman of the Amanda Young Meningococcal Septicemia Foundation - a non-profit organisation working in the area of community awareness, survivor and carer support and offering grants for research to develop a Meningococcal Type B vaccine.

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.

She is the youngest woman to enter the Australian Federal Parliament.

She held the positions of Australian Democrats' Leader and Deputy Leader and is the longest serving Democrat Senator in the party's history.

Natasha has made a contribution to a wide range of policy debates including as a spokesperson on higher education, science and biotechnology, Attorney-General's, privacy, women, work and family. During her political career she also introduced Private Member's Bills on issues including paid maternity leave, the Republic, genetic privacy and stem cells, and captioning.

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

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

She is studying a PhD at The University of Adelaide.

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

**Josephine Tiddy***Appointed August 2006*

Dr Josephine Tiddy is the Managing Director and Principal Consultant of JTCT, specialising in dispute resolution and organisational wellness. She has worked with people since her early years as a nurse, establishing and managing the first Australian Nurse Counselling Service at the South Australian Women's and Children's Hospital.

As Commissioner for Equal Opportunity, Josephine managed and promoted controversial and complex legislative and social changes throughout South Australia and nationally - changes which have been accepted as common practice and integrated into the Australian community. She held the post for 16 years, making her Australia's longest serving Equal Opportunity Commissioner.

An expert in discrimination law, she has an in depth knowledge of the disadvantages people experience and the services they require. Josephine has written widely on equality, fair treatment and discrimination. She was awarded an honorary doctorate by Flinders University in recognition of her contribution to administrative law, public policy, dispute resolution and legislative reform.

Josephine is a Justice of the Peace, a member of The Rotary Club of Adelaide and a Fellow of the Australian Institute of Company Directors and serves on various boards and statutory committees.



**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 volunteer breastfeeding counselor and now conducts information sessions and discussion groups for new mothers at a local level as well as providing her expertise on the national Breastfeeding Helpline. She works at a national level coordinating Breastfeeding Welcome Here venue registrations.

Helen began volunteering in various roles at her children's playgroup and is a past president of Playgroup NSW.

Helen also has an active role in her church and school communities including Parent and Friend Committees and Children's Liturgy.

Helen lives in Armidale, NSW with her husband Dale and her children.

# 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 a 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 – 2010

During 2010 the Claims Board resolved one matter.

Fonterra Brands (Australia) Pty Ltd  
v Goodman Fielder Consumer Foods  
Pty Ltd

This complaint was about two advertisements which appeared on television (described as the “Animated TVC” and the “Cardiologist TVC”).

The complainant alleged that the advertisements contravened clause 3 of the Food Standards Code (FSC) 1.1A.2 (Transitional Standard – Health Claims) and therefore the relevant Food Act of each State; and as a consequence breached section 1.1 of the AANA Code of Ethics.

Under the transitional standard 1.1A.2, the FSC prohibits most “health claims” on packaging labels and in advertising for food.

The relevant Food Acts of each State prohibit selling or advertising of food in a manner contrary to the FSC.

Section 1.1 of the Code of Ethics provides:

*Advertising or Marketing  
Communications shall comply with  
Commonwealth law and the law  
of the relevant State or Territory.*

The advertiser's response to the complaint was that:

- (a) the Cardiologist TVC is not an "advertising or marketing communication" under the Code of Ethics;
- (b) the Cardiologist TVC is not an advertisement for "food" for the purpose of FSC 1.1A.2;
- (c) while the Animated TVC is conceded to be an advertising or marketing communication for food for the purposes of the Code of Ethics and FSC 1.1A.2, it does not contravene clause 3 of FSC 1.1A.2.

The advertiser also challenged whether the subject matter of the complaint fell within the jurisdiction of the Claims Board, as defined in its procedural guidelines.

The Claims Board considered the advertiser's arguments about jurisdiction, but concluded that it could properly review the complaint for the following reasons:

- The complaint did not fall within the Claims Board's general exclusion for complaints requiring it to resolve "highly technical issues", as the complaint did not require the Claims Board to assess the truth or accuracy of the claims made in the advertisement;
- The Claims Board considered the complaint did not fall within the general exclusion for complaints that are "covered by a specific industry code", as the FSC is not an "industry code" in the relevant context, but rather is quasi-legislative.

The Claims Board also rejected the advertiser's argument that the Cardiologist TVC was not an advertisement for food for the purposes of either the Code of Ethics or FSC 1.1A.2. It concluded that this advertisement satisfied the Code of Ethics definition of an "advertising or marketing communication", as it

involved both an opposition of a product and a promotion of a product being, respectively, butter and margarine spread. Further, the Claims Board considered the advice "switch to a margarine spread" constituted an advertisement for food for the purposes of the FSC.

In relation to the complaint that health claims were made, contravening Clause 3 of FSC 1.1A.2, the Claims Board considered the express prohibitions in clauses 3(b), (c) and (d), which provide:

- 3(b) Any label on or attached to a package containing or an advertisement for a food shall not include the word 'health' or any word or words of similar import as a part of or in conjunction with the name of the food;
- 3(c) Save where otherwise expressly prescribed by this Code, any label on or attached to a package containing or any advertisement for food shall not contain any word, statement, claim, express or implied, or design that directly or by implication could be interpreted as advice of a medical nature from any person;
- 3(d) Save where otherwise expressly prescribed by this Code, the label on or attached to a package containing or any advertisement for food shall not contain the name of or a reference to any disease or physiological condition.

The Claims Board determined that both advertisements breached clause 3(b). In the case of the Cardiologist TVC, the Claims Board considered that the use of the word "healthier" in relation to a food (margarine spread) constituted a breach of the clause. Similarly, in the case of the Animated TVC, the use of the word "health", or a variant of that word "healthier", in relation to a comparison between Meadow Lea spread and butter, was found to constitute a breach of clause 3(b).

The Claims Board also found both advertisements breached clause 3(c). In the Cardiologist TVC, the information presented by a cardiologist was considered to be advice of a medical nature, being that the reduction in saturated fats achieved through switching from butter to margarine will protect your children's cardiovascular health. In the Animated TVC, a reference to "experts" was considered to imply that the advice is from medical experts and, in conjunction with the display of the Heart Foundation logo, made the advice to switch from butter to Meadow Lea spread "advice of a medical nature" in breach of clause 3(c).

The Claims Board did not find any breach of clause 3(d). It considered that the use of the Heart Foundation's tick and multiple references to saturated fats flowing through arteries were not sufficiently specific reference to a disease or physiological condition so as to constitute a breach of the clause.

Since both advertisements were found to have breached clauses 3(b) and (c) of FSC 1.1A.2, the Claims Board also found the advertisements to be in breach of Section 1.1 of the Code of Ethics.

The Claims Board determined that the advertisements should immediately cease and be withdrawn. The advertiser provided a statement in response to the determination, questioning the Claims Board's jurisdiction in the matter as discussed above. Following this, the advertiser agreed to cease broadcasting the advertisements. The Bureau also advised the NSW Food Authority of the decision, at the request of the Claims Board.



# *Independent Reviewer*

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*Cases reviewed in 2010*

*Independent Reviewers*



# Cases reviewed in 2010

An independent review process for Advertising Standards Board (Board) decisions has been in place since April 2008.

During 2010, four cases were accepted and reviewed by the Independent Reviewer.

In one case the Independent Reviewer recommended that the Advertising Standards Board review its initial determination. In the other three cases the Independent Reviewer confirmed the initial determination made by the Advertising Standards Board.

## **Crazy Domains**

In the first review of 2010, Crazy Domains requested a review of the Board determination about its television and Pay television advertisement featuring Pamela Anderson (case numbers – 22/10 and 24/10).

The advertiser sought a review, disagreeing with the Board determination that the advertisement breached sections 2.1 and 2.3 of the AANA Code of Ethics in that “members of the community would regard the storyline, style and tone of the advertisement to be light-hearted and pure fantasy” and that “the depiction of the whole advertisement was completely over the top and ridiculous that ordinary viewers would not take it seriously that women are merely sexual objects”.

The advertiser sought the review on the grounds that new evidence had come to light subsequent to the ruling and that there was a flaw in the Board process in regard to the Codes. The new evidence was that complaints were made as a result of a deliberate campaign which had the aim of harming Crazy Domain’s business.

The Independent Reviewer accepted the review on the basis that further responses from original complainants would show if they had been motivated to complain out of malice. Of the 16 original complainants, seven responded, rejecting the notion they had complained out of malice.

In relation to a flaw in the process, the Independent Reviewer noted the Board’s attention to detail in regard to the submissions made and in its interpretation of the Code, finding that the Board made no procedural error.

In this case the Independent Reviewer recommended that the Board’s original decision to uphold complaints be confirmed.

## **Hyundai**

An original complainant, the Pedestrian Council of Australia, requested a review of the Board’s determination to dismiss a complaint about Hyundai’s television advertisement for its ix35 vehicle in which fog lights were used (case number – 0182/10).

The complainant felt there was a substantial flaw in the Board’s determination in relation to breaches of sections 2(a) or 2(c) of the Federal Chamber of Automotive Industries’ Advertising for Motor Vehicles Voluntary Code of Practice (the FCAI Code). The complainant also provided additional ‘expert advice’ in support of the review request.

The Independent Reviewer suggested that wherever possible complainants should submit all the evidence and material available to them at the time of the original complaint and also suggested that the Board consider requesting the Advertising Standards Bureau to make this preference clear to any person desiring to complain and to require, on each occasion when new or additional evidence is provided, an explanation of the reasons why the evidence was not provided at the time of the original complaint.

The Independent Reviewer said:

“Clearly, when new or additional evidence is provided at the time of a request for review, there is potential for a recommendation to be made that the original decision be reviewed. A better option, in my view, would be that, if reasonably available, all of the relevant evidence be provided in the first instance to the Board. This is more likely to lead to a decision that is satisfactory, or acceptable, to all parties and would avoid unnecessary cost and time delays.”

In the circumstances the Independent Reviewer found that the new evidence could have significant bearing on the original Determination of the Board and by failing to consider the use of fog lights as a 'driving practice or other action' there was a substantial flaw in the Board's decision.

In reconsidering the case the Board noted that the use of fog lights is a 'driving practice or other action' to which section 2(c) of the FCAI Code applies. In dismissing the complaint, the Board noted that Australian road rules stipulate that appropriate conditions for use of fog lights include atmospheric conditions that reduce or restrict visibility. The Board agreed that the advertisement did not breach the FCAI Code because for the majority of the advertisement the car appears to be driven in conditions of reduced visibility and therefore the use of fog lights are appropriate.

#### Lexus

An original complainant requested a review of the Board determination about Lexus Australia advertisement for its LFA supercar in which a reference is made to the speed capability of the vehicle (case number – 0215/10).

In this case the Independent Reviewer recommended that the Board's original decision to dismiss complaints be confirmed in that the Board did not make an error in its determination, but that the case did highlight a weakness in the FCAI Code.

The Independent Reviewer noted that, as pointed out by the Board in its determination, advice in the "Guidance to Advertisers" in the Explanatory Notes to the FCAI Code, exhorts advertisers, not to refer to the speed capability of the vehicle being tested or proved, but that this advice was not in the Code itself and the consequence of this was that the advertisement did not breach the Code.

#### Diageo

The Independent Reviewer accepted a request for review from an original complainant about an advertisement from Diageo Australia Ltd (case number – 0467/10) for an alcohol product. The review was accepted based on the complainant's argument that there had been a substantial flaw in the Board's determination – in particular its application of AANA Code of Ethics, Section 2.2 (violence) and Section 2.6 (health and safety).

The Independent Reviewer said the Board considered a range of factors in determining whether the advertisement complied with Section 2.2, and had done so. According to the Independent Reviewer's assessment of the Board's determination, the Board had also made a reasonable conclusion that Section 2.6 was not contravened.

In this case the Independent Reviewer recommended that the Board's original decision to dismiss complaints be confirmed, concluding there had been no substantial flaw in the Board's determination in regard to its application of the provision of the Code.

### Outline of requests for independent review

CASE	INITIAL BOARD DETERMINATION	INDEPENDENT REVIEWER RECOMMENDATION	BOARD DETERMINATION ON REVIEW (IF APPROPRIATE)
Crazy Domains (Pamela Anderson) Case number – 22/10 & 24/10	Complaints Upheld February 2010	Initial Board determination confirmed by Independent Reviewer April 2010	
Hyundai (ix35) Case number – 182/10	Complaints dismissed May 2010	Independent Reviewer recommended Board review its initial determination July 2010	Dismissed
Lexus (LFA Supercar) Case number – 215/10	Complaints dismissed May 2010	Initial Board determination confirmed by Independent Reviewer July 2010	
Diageo Australia (Bundaberg Rum) Case number – 467/10	Complaints dismissed November 2010	Initial Board determination confirmed by Independent Reviewer December 2010	

# 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 Michael John (Mick) Palmer as an Independent Reviewer 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 and 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*

Overall, the Board considered 491 advertisements in 2010. Complaints about 520 advertisements were received in 2010, with 29 withdrawn by advertisers before Board consideration.

This year's figures provide a more detailed summary of the complaints received, with information about consistently dismissed complaints, as well as a figure showing the number of complaints which were about advertisements already considered.

The number of complaints received in 2010 by the Advertising Standards Bureau totalled 3,526 – down slightly from the previous two years, 3,796 complaints in 2009 and 3,596 complaints in 2008. The highest number of complaints received was 4,044 in 2006.

The 2010 figures show a decrease in the number of complaints about advertisements which were found to breach the Codes as well as a decrease in the total number of advertisements which were complained about.

Although the number of advertisements found to breach the Codes was lower this year than in the previous two years, the percentage of advertisements found to breach the Code, weighed against the total number of advertisements receiving complaints, was similar to previous years, at 10.24 per cent.

## **Number of advertisements considered and outcome of complaints**

In 2010, the Board considered 491 advertisements against which 2,053 complaints were received. A total of 1,692 complaints against 442 ads were dismissed. There were 361 complaints about the 49 advertisements which were found to breach the Code. Compared to the total number of ads considered by the Board, the number of ads found to breach the Code, equated to an upheld rate of 9.42 per cent.

On receiving advice that there had been a complaint, 29 advertisers withdrew their advertisement before the Board determination – almost triple the number of the previous two years.

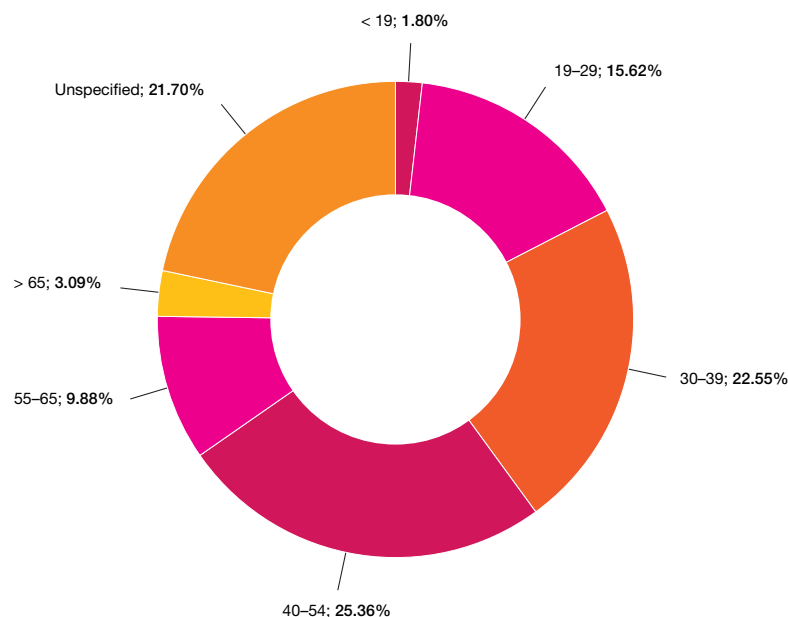
Statistics about the number of complaints about advertisements already considered by the Board were captured for the first time in 2010. Of the total 3,526 complaints received, 708 complaints were in relation to advertisements previously considered by the Board, equating to 20.08 per cent of all complaints received.

A total of 92 complaints were analysed via a newly implemented system for complaints which raise issues under the Code of Ethics that the Board has consistently considered not in breach of the Codes.

If complaints about advertisements were upheld by the Board, practically 100 per cent were removed from broadcast or publication or modified, one case is ongoing. The extremely high level of 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.

### What age are complainants?

The highest percentage of complainants are in the 40 to 54 year old age group accounting for just over 25 per cent of all complaints received. The age grouping from 30 to 39 account for 22.5 per cent of complaints and the 19 to 29 age group accounting for almost 16 per cent. The lowest number of complaints are from people under 19 years of age. People over 55 years of age account for about 13 per cent of complaints. This is consistent with data since it was first collected in 2008.

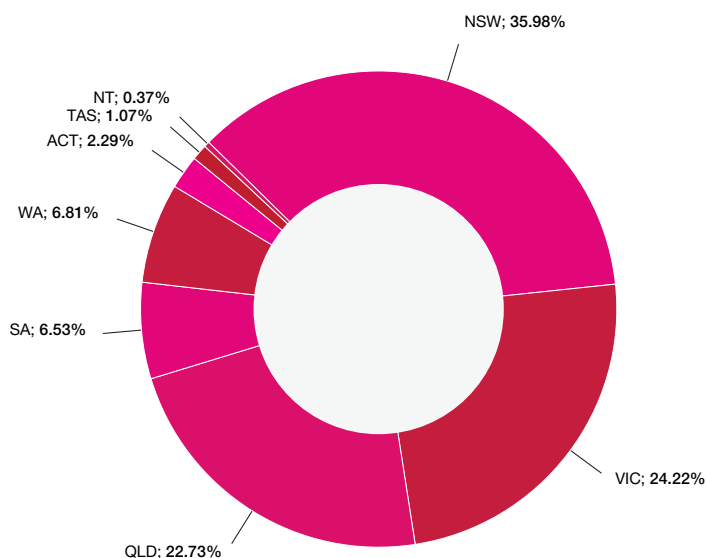


### Where are complaints coming from?

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 35.98 per cent (a decrease of less than one percent from 2009).

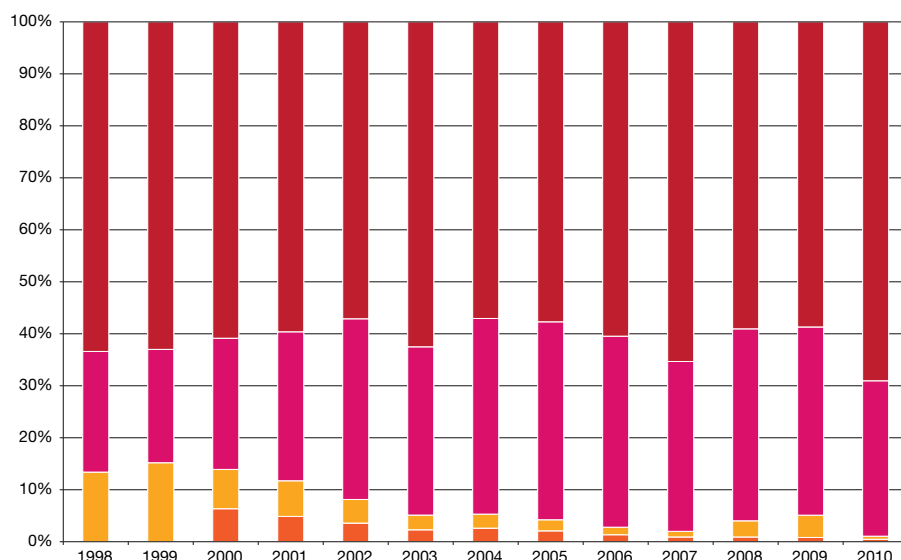
Queensland and Victoria had a slight increase in percentage of complaints. Victoria increased by two per cent (from 18.38 per cent in 2009 to 22.73 per cent in 2010), with Queensland increasing three per cent from 21.1 per cent in 2009 to 24.2 per cent in 2010.

Complaints received from South Australia and Western Australia equated to 13.35 per cent of the total. The combined percentage of complaints from Tasmania (1.07 per cent) and the Northern Territory (0.37 per cent) was slightly lower than the Australian Capital Territory total of 2.29 per cent.



### Who is complaining?

In 2010 the percentage of males and females represented among complainants changed slightly, with complaints from males at 29.9 per cent, the lowest since 2001 when it was 28.6 per cent. Complaints from females this year was 69.03 per cent, which is the highest since data began to be collected in 1998. The average since 1998 in the gender of complainants is 60.6 per cent female and 30.4 per cent male complainants and five per cent who do not provide that detail.

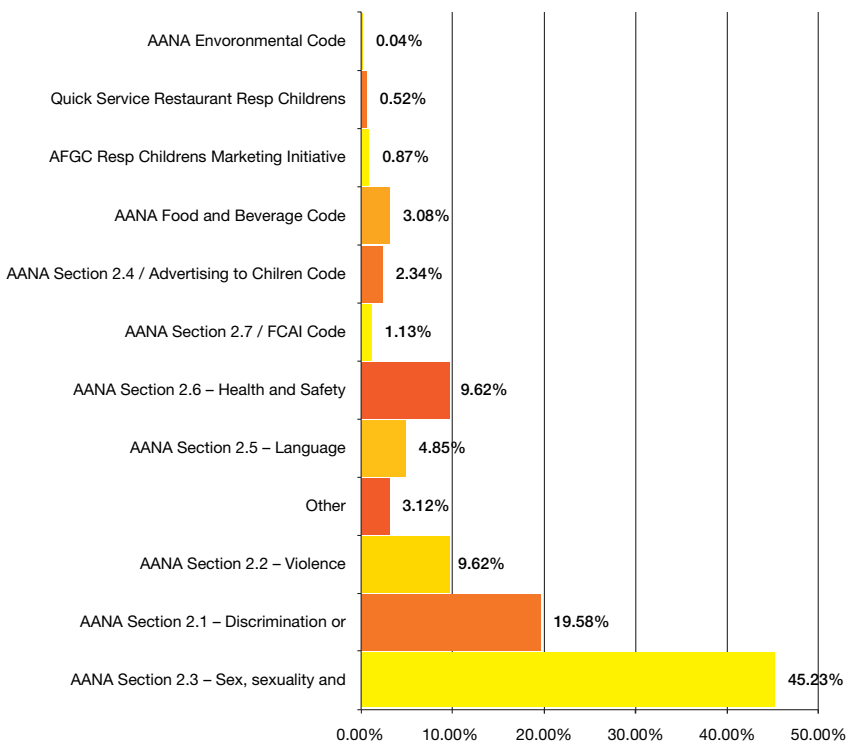


### What do people complain about?

The portrayal of sex, sexuality and nudity continued to be the dominant issue raised by complainants. In 2010, This issue accounted for 45 per cent of complaints, rising from 40 per cent in 2009 and 25 per cent in 2008. The issue of discrimination and vilification accounted for 19.5 per cent of complaints. Together these two issues comprised almost 65 per cent of all complaints made in 2010.

In 2010 the proportion of complaints about violence in advertising and complaints about health and safety issues both increased slightly to 9.62 per cent each, while the issue of language dropped again for the third consecutive year to 4.85 per cent.

Complaints relating to food and beverage code issues continued to rise slightly, reaching 3.08 per cent, with the AFGC and QSR food advertising initiatives totaling 1.4 per cent of all complaints.



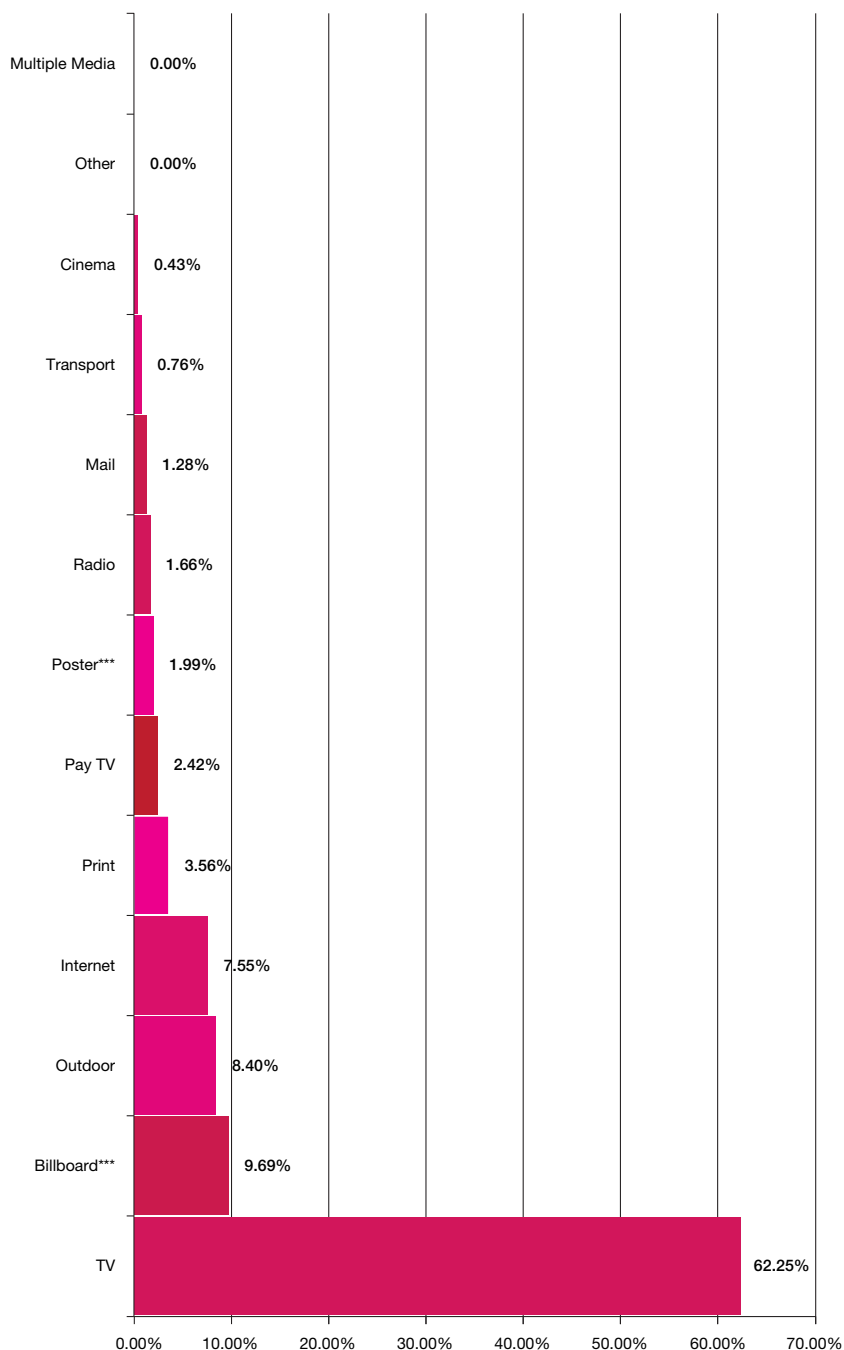
### Media attracting complaint

As with previous years, the majority of complaints (62.25 per cent) relate to advertisements shown on television, up slightly on the previous year which had the second lowest percentage recorded for television since data collection began in 1998.

The percentage of complaints about internet advertising (2.58 per cent in 2009) tripled to 7.55 per cent. A viral internet advertisement relating to road safety received the third highest number of complaints about any advertisement in 2010 which would account for some of the increase in percentage of complaints about internet advertising.

Statistics for outdoor advertising prior to 2010 captured all formats of outdoor displays, such as billboards and posters. In 2010 statistics for billboards and posters were captured separately. A comparison can be made of the 2009 figure of 23.92 per cent of all complaints relating to outdoor with a combined aggregate of the billboard (9.69 per cent,) outdoor (8.40 per cent) poster (1.99 per cent) and complaints in 2010 which total 20.08 per cent of all complaints.

Print advertising complaints increased noticeably from 1.92 per cent to 3.56 per cent as did mail advertising which rose from just 0.29 per cent in 2009 to 1.28 per cent in 2010. Complaints about radio advertising almost halved to 1.66 per cent as did complaints about Pay TV which dropped to 2.42 per cent in 2010 from a high of 5.61 per cent in 2009. The remainder of complaints for cinema and transport advertising were just over one per cent in total.



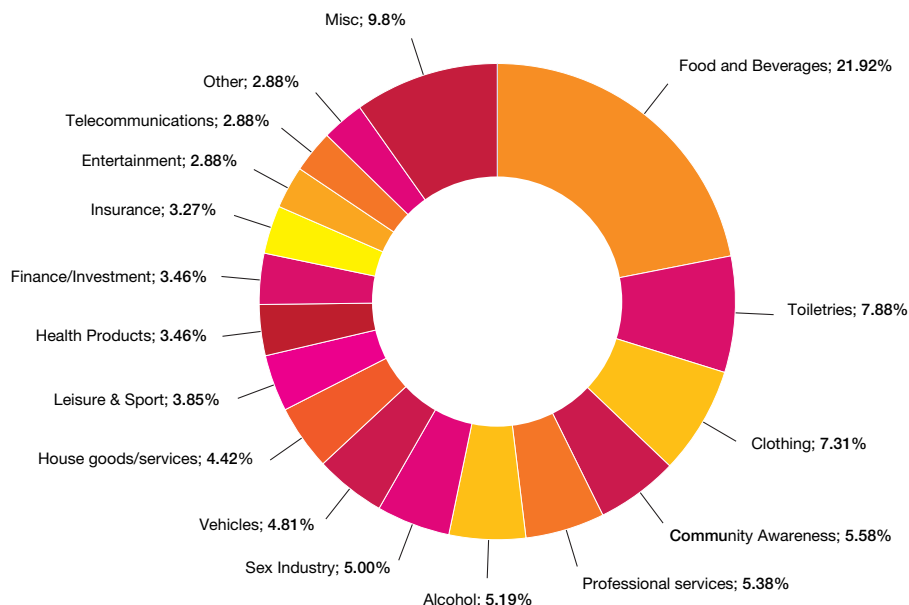


### Which products attract the most complaints?

Food and beverage advertisements continued to be the most-complained about product category in 2010, being the subject of 21.9 per cent of all complaints.

Advertisements for both toiletries and clothing received higher levels of complaint at over 7 per cent, while complaints about community awareness issues, professional services, alcohol and sex industry advertising all hovered around the 5 per cent range.

Vehicle advertisement complaints remained steady at around five per cent, while complaints about finance and investment advertisements almost tripled from 1.3 per cent to 3.5 per cent.

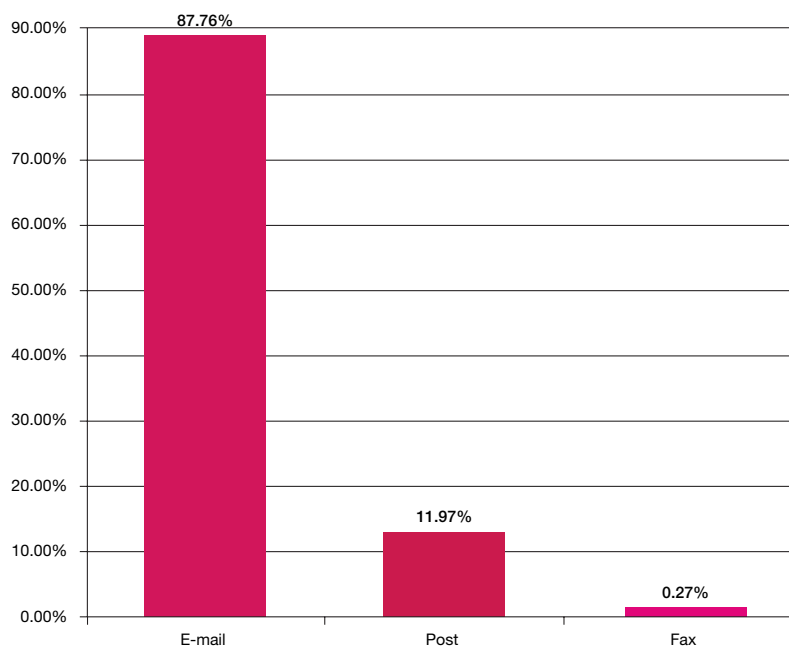


### Method of complaint

The number of people choosing to lodge their complaints through the online complaints system has remained steady at 87.8 per cent. This rate of online lodgement was similar in 2009 at 85.30 per cent and 87.07 per cent in 2008.

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

Complaints will continue to be accepted by post (11.97 per cent in 2010) and fax (0.27 per cent). The rate of postal complaints has dropped steadily each year from more than 25 per cent in 2004.



	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>OUTCOME OF COMPLAINTS (No., by Complaint)</b>													
Dismissed	927	1553	1971	1291	1191	1770	1349	1753	2648	1730	2263	2278	1692
Upheld	73	111	162	47	11	23	55	94	164	280	477	521	361
Withdrawn before board determination	0	0	0	0	16	113	236	139	20	15	57	56	53
Already considered advertisements **													708
Consistently dismissed complaints *													92
Not proceeding to a case	382	401	425	367	354	714	656	970	1212	577	799	941	620
<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>	<b>3,526</b>

\* Statistics not separately captured prior to 2010

# Prior to 2010, complaints about already considered complaints were aggregated with "Dismissed" complaints.

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

Withdrawn before board determination	0	0	0	0	6	5	20	33	13	5	10	11	29
Upheld	5	11	8	6	3	4	8	14	28	36	62	81	49
Dismissed	262	434	384	363	291	401	337	344	488	405	477	503	442
<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>	<b>520</b>

#### AGE RANGE OF COMPLAINTS (%)

< 19											2.25%	1.81%	1.80%
19–29											14.99%	15.81%	15.62%
30–39											23.11%	22.35%	22.55%
40–54											30.56%	28.34%	25.36%
55–65											11.15%	11.40%	9.88%
> 65											3.28%	3.44%	3.09%
Unspecified											14.66%	16.85%	21.70%
<b>TOTAL</b>											<b>100.00%</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%	35.98%
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%	24.22%
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%	22.73%
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%	6.53%
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%	6.81%
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%	2.29%
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%	1.07%
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%	0.37%
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%	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>	<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%	0.49%
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%	0.58%
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%	29.90%
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%	69.03%
<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>	<b>100.00%</b>

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>ISSUES ATTRACTING COMPLAINT (%)</b>													
AANA Section 2.3 – Sex, sexuality and nudity								26.49%	22.23%	37.91%	25.61%	40.54%	45.23%
AANA Section 2.1 – Discrimination or vilification								27.13%	23.25%	28.05%	22.76%	16.31%	19.58%
AANA Section 2.2 – Violence								17.38%	18.01%	8.42%	17.67%	7.93%	9.62%
Other								14.59%	14.69%	4.86%	15.84%	17.04%	3.12%
AANA Section 2.5 – Language								4.36%	7.55%	1.68%	7.24%	5.35%	4.85%
AANA Section 2.6 – Health and Safety								6.46%	9.70%	10.85%	6.04%	8.38%	9.62%
AANA Section 2.7 / FCAI Code								3.38%	1.84%	4.91%	3.09%	1.19%	1.13%
AANA Section 2.4 / Advertising to Children Code								0.20%	2.73%	2.95%	0.49%	0.63%	2.34%
AANA Food and Beverage Code								0.00%	0.00%	0.37%	1.26%	2.47%	3.08%
AFGC Resp Childrens Marketing Initiative								0.00%	0.00%	0.00%	0.00%	0.00%	0.87%
Quick Service Restaurant Resp Childrens Marketing Initiative								0.00%	0.00%	0.00%	0.00%	0.16%	0.52%
AANA Environmental Code								0.00%	0.00%	0.00%	0.00%	0.00%	0.04%
<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>

#### REASON COMPLAINTS FELL OUTSIDE CHARTER (NO.)<sup>##</sup>

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

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>REASON COMPLAINTS FELL OUTSIDE CHARTER (NO.)** Continued</b>													
Within Section 1 – Harm to business								0	1	0	1	2	##
Within Section 1 – Legality								1	11	6	10	3	##
Within Section 1 – Misleading claim about Australian country of origin/content								0	5	1	0	0	##
Within Section 1 – Misleading claim of protecting environment								0	0	0	0	2	##
Within Section 1 – Misleading or deceptive								121	186	45	62	32	##
Within Section 1 – Misrepresentation								1	6	1	0	2	##
Within Section 1 – Tobacco								3	8	0	0	2	##
<b>TOTAL</b>								<b>970</b>	<b>1212</b>	<b>577</b>	<b>799</b>	<b>941</b>	<b>##</b>

\*\* From 2010, data relating to complaints outside charter is captured in a more detailed form in the following table

**REASON COMPLAINT DID NOT PROCEED TO A CASE (NO.)\*\***

Ad not broadcast in Australia	4
ASB complainant dissatisfied	3
Community Service Announcement	3
Dislike of Advertising – AMI radio ads	2
Dislike of Advertising – AMI TV Ads	14
Editorial	7
Gambling odds in commentary	2
Insufficient information to identify ad – general	46
Insufficient information to identify ad – adult content	5
Legality	8
Loud ads	7
Misleading Truth and Accuracy – NOT FOOD	43
Not an Ad – General	14
Not an ad – Point of Sale	1
Not an ad – signage on premises	1
Not S2 – ABAC	14
Not S2 – ADMA	1
Not S2 – general	103
Overseas complaint	1
Overseas web site with no Aust connection	1
Political Advertising	40
Product or service – general	39
Product or service – on radio	4
Programming and content	4
Promotion TV and Radio	37
Subliminal advertising	7
Tasteless advertising	39
Timing – Cinema	3
Timing – Radio broadcast	4
Timing – TV	23
Tobacco advertising	13
Too many ads	3
Weight management	4
Wicked Campers – need for detailed information	12
Advertisement Withdrawn/Discontinued before case established	108
<b>TOTAL</b>	<b>620</b>

\*\* Following the launch of new Case Management System in March 2010, statistics relating to complaints not proceeding to a case are provided in greater detail.



	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>CONSISTENTLY DISMISSED COMPLAINTS (NO.) *</b>													
Unlikely interpretation													35
Not of concern to broad community													22
Consistently dismissed issue													18
Consistently dismissed language													12
Incorrect about content													3
Multicultural community													2
<b>TOTAL</b>													92

\* Statistics not separately captured prior to 2010

#### ANALYSIS OF CASES BY MEDIA (%) \*\*\*\*

Billboard													5.77%
Cinema													1.35%
Internet													6.73%
Mail													0.96%
Outdoor													5.00%
Pay TV													5.77%
Poster													4.23%
Print													9.62%
Radio													5.96%
Transport													2.50%
TV													52.12%
<b>TOTAL</b>													100.00%

\*\*\*\* This table relates to individual cases, not complaints

#### 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%	62.25%
Billboard ***													9.69%
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%	8.40%
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%	7.55%
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%	3.56%
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%	2.42%
Poster ***													1.99%
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%	1.66%
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%	1.28%
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%	0.76%
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%	0.43%
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%	0.00%
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%	0.00%
<b>TOTAL</b>	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

\*\*\* Statistics not separately captured prior to 2010. Information on this category aggregated in "Outdoor" category prior to 2010.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>PRODUCT CATEGORY ATTRACTING COMPLAINT (%)</b>													
Food and Beverages							20.85%	28.14%	33.25%	14.39%	24.08%	21.92%	
Toiletries							5.26%	2.86%	2.94%	3.46%	3.51%	7.88%	
Clothing							6.22%	4.31%	2.24%	5.83%	7.69%	7.31%	
Community Awareness							8.02%	12.29%	3.39%	9.29%	5.69%	5.58%	
Professional services							2.56%	5.61%	10.77%	5.10%	5.18%	5.38%	
Alcohol							7.07%	3.14%	2.44%	6.38%	4.00%	5.19%	
Sex Industry							0.00%	0.00%	0.00%	0.36%	4.35%	5.00%	
Vehicles							15.19%	8.37%	9.92%	5.28%	5.69%	4.81%	
House goods/services							11.18%	2.15%	6.03%	7.65%	6.86%	4.42%	
Leisure & Sport							1.45%	1.73%	2.14%	1.09%	2.84%	3.85%	
Health Products							3.46%	7.94%	1.40%	1.46%	4.35%	3.46%	
Finance/Investment							2.81%	1.80%	1.30%	2.37%	1.34%	3.46%	
Insurance							0.00%	2.97%	2.44%	5.10%	3.51%	3.27%	
Entertainment							0.00%	2.90%	3.09%	3.28%	4.85%	2.88%	
Telecommunications							4.51%	2.40%	2.24%	3.46%	3.18%	2.88%	
Other							6.67%	5.30%	3.94%	4.74%	2.01%	2.88%	
Retail							0.00%	1.17%	1.65%	2.37%	0.33%	1.54%	
Media							0.00%	2.22%	2.84%	3.28%	0.17%	1.54%	
Hardware/machinery							0.00%	0.00%	0.00%	1.09%	1.34%	1.35%	
Travel							1.85%	1.09%	0.15%	2.37%	2.01%	0.96%	
Gambling							0.00%	0.00%	0.00%	0.73%	1.51%	0.96%	
Education							0.00%	0.00%	0.00%	0.18%	0.00%	0.96%	
Information Technology							0.00%	0.00%	0.00%	0.18%	1.00%	0.77%	
Toys & Games							0.00%	0.00%	0.00%	1.09%	0.67%	0.77%	
Mobile Phone/SMS							0.00%	2.44%	2.04%	5.46%	2.17%	0.38%	
Real Estate							0.00%	0.00%	0.00%	0.55%	1.00%	0.19%	
Slimming							0.00%	0.00%	0.00%	0.36%	0.00%	0.19%	
Employment							0.00%	0.00%	0.00%	0.00%	0.00%	0.19%	
Restaurants							2.91%	1.17%	5.78%	2.19%	0.50%	0.00%	
Office goods/services							0.00%	0.00%	0.00%	0.91%	0.17%	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>	
<b>METHOD OF COMPLAINT (%)</b>													
E-mail			10.42%	47.46%	60.44%	69.95%	73.08%	82.71%	84.05%	87.07%	85.30%	87.76%	
Post			86.83%	43.32%	32.65%	25.96%	22.36%	14.47%	13.87%	10.22%	11.85%	11.97%	
Fax			2.75%	9.22%	6.91%	4.09%	4.56%	2.82%	2.08%	2.71%	2.85%	0.27%	
<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>	

# Appendices

*Advertising Standards*

*Board complaints process*

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and Marketing Communications  
to Children*

*AANA – Environmental*

*Claims in Advertising  
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*AANA Food and Beverages  
Advertising and Marketing  
Communications Code*

*AFGC Initiative*

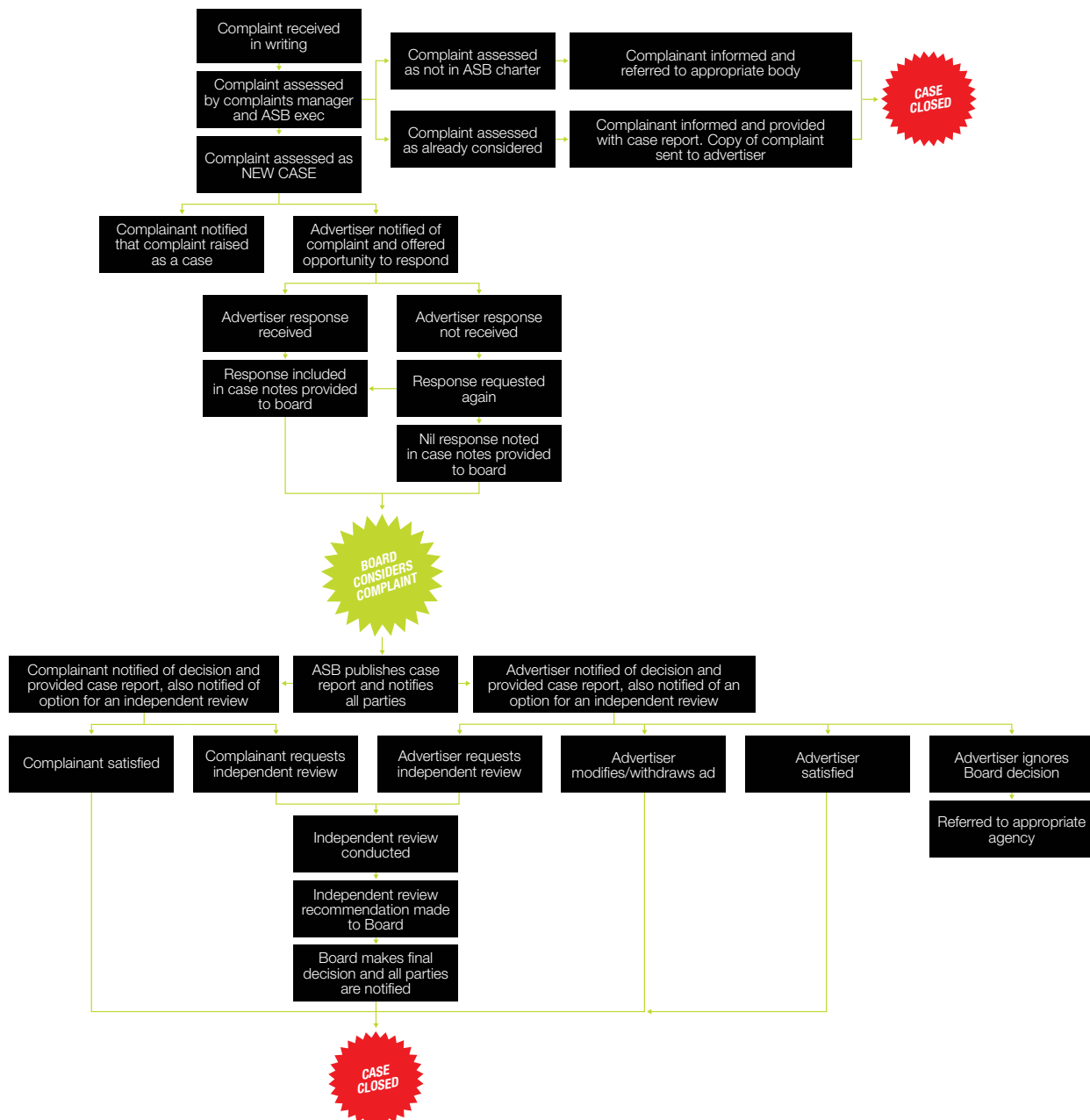
*QSR initiative*

*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 in 2010 was \$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.

# *AANA – Environmental Claims in Advertising and Marketing Code*

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 rigorous standards when making Environmental Claims in Advertising and Marketing Communications and to increase consumer confidence to the benefit of the environment, consumers and industry.

Providing clear, straightforward, environmental information, as outlined in this code, has benefits for consumers and business alike. By providing information about the environmental impacts and qualities of products and services, environmental claims (sometimes called 'green' claims) help consumers make informed buying choices. They also help raise awareness of the issues, enhance consumer understanding and improve product standards overall. At the same time businesses can enhance their credentials and demonstrate to the community at large their willingness to be accountable for upholding these standards.

## **Principles**

AANA supports the following principles for environmental claims.

Claims should be:

- Truthful and factual
- Relevant to the product or service and its actual environmental impacts, and
- Substantiated and verifiable.

## **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 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.

### **Authoritative (organisation, initiative, program)**

means a source of expert information, advice, assistance and includes, but is not limited to, government, industry bodies, scientific/technical organisations, independent certification schemes, international or national standards setting organisations.

### **Environment includes:**

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas.

### **Environmental Aspect**

means the element of a product, a component or packaging or service that interacts with or influences (or has the capacity to interact with or influence) the Environment.

**Environmental Claim** means any representation that indicates or suggests an Environmental Aspect of a product or service, a component or packaging of, or a quality relating to, a product or service.

**Excluded Advertising or Marketing Communications** means a label 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.

## Code Of Practice

### 1 Truthful And Factual Presentation

Environmental Claims in Advertising or Marketing Communications:

- i. shall not be misleading or deceptive or be likely to mislead or deceive.
- ii. must not be vague, ambiguous or unbalanced.
- iii. must display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.
- iv. must be supported by evidence that is current and reflects legislative, scientific and technological developments.
- v. that make any claim relating to future matters or commitments must be based on reasonable grounds.
- vi. must not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.
- vii. must not imply a product or service is endorsed or certified by another organisation when it is not.
- viii. must represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer.

Relevant information should be presented together.

- ix. must reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.
- x. that use scientific terminology, technical language or statistics must do so in a way that is appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed. Publication of research results must identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.

### 2 A genuine benefit to the environment

Environmental Claims must:

- i. be relevant, specific and clearly explain the significance of the claim.
- ii. not overstate the claim expressly or by implication.
- iii. in comparative advertisements, be relevant and balanced either about the product/service advertised or class of products or services, with which it is compared.
- iv. not imply that a product or service is more socially acceptable on the whole. The use of Environmental Claims must not reduce the importance of non-environment attributes / detriments of a product or service.
- v. not imply direct relationship to social initiatives of a business where there is no correlation to environmental benefits or attributes or improvements to a product or service.

### 3 Substantiation

- i. Environmental Claims must be able to be substantiated and verifiable. Supporting information must include sufficient detail to allow evaluation of a claim.
- ii. Environmental Claims must meet any applicable standards that apply to the benefit or advantage claimed.
- iii. The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.
- iv. Environmental Claims and comparisons that are qualified or limited may be acceptable if advertisers can substantiate that the product/service provides an overall improvement in environmental terms either against a competitor's or their own previous products.
- iv. Claims relating to sponsorships, approvals, endorsement or certification schemes must be current.
- v. The use of any symbol or logo must be explained unless the symbol is required by law, or is underpinned by regulations or standards, or is part of an authoritative certification scheme.
- vi. Substantiation information should be readily accessible, or made available in a timely manner in response to a reasonable written request.
- vii. Testimonials must reflect genuine, informed and current opinion of the person giving the testimonial.

September 2009



# *AANA 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 Children's 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.





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