



ADVERTISING
STANDARDS
BUREAU

Review of Operations

2011

Self regulation under scrutiny •.....•

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Who we are 2011

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 2011 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 Communications 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

Several government reviews and inquiries into different aspects of advertising in Australia resulted in the ASB providing and presenting information at these inquiries. The recommendations from these inquiries and reviews have been generally favourable for the ASB and advertising self regulation.

A review of the independent review process conducted in late 2010 resulted in a change to the fee structure in 2011 for individuals and businesses requesting a review. The review process was established in 2008 to consider consumer and advertiser disagreement with Board determinations.

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

Our Mission

The community, industry and government is confident in, and respects the advertising self regulatory system and is assured that the general standards of advertising are in line with community values.

Our Vision

The ASB will be the pre-eminent adjudicative authority for advertising and marketing communication complaints against industry codes of practice.

The Advertising Standards Bureau will achieve this vision by:

- delivering effective advertising self regulation in Australia
- reflecting community standards
- having a well recognised awareness and profile among the public, industry, government and other stakeholders
- keeping pace with advertising and marketing communication developments in new media
- complying with and assisting in setting international best practice complaints handling procedures and protocols
- being financially viable
- having a skilled and sustainable workforce

Advertising self regulation

The Advertising Standards Board

The Advertising Standards Board determines public complaints about individual advertisements, through a panel of public representatives from a broad cross-section of the Australian community.

The Advertising Standards Bureau

The ASB administers the advertising self regulation system, accepting complaints about advertisements for determination by the Advertising Standards Board and the Advertising Claims Board.

The Advertising Claims Board

The ACB resolves complaints between competing advertisers, through a panel of legal specialists.

AANA

The Australian Association of National Advertisers is responsible for the development of the AANA Advertiser Codes which are administered by the ASB.

AFGC

The Australian Food and Grocery Council is responsible for the Responsible Children's Marketing Initiative of the Food and Beverage Industry and the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children. Complaints for both initiatives are administered by the ASB.

ABAC

The Alcohol Beverages Advertising Code is the code for alcohol advertising self regulation by the ABAC Complaints Panel. All complaints about alcohol are received by ASB and forwarded to ABAC. Both ASB and ABAC may consider complaints about alcohol advertising.

FCAI

The Federal Chamber of Automotive Industries is responsible for the FCAI Voluntary Code of Practice for Motor Vehicle Advertising which is administered by the ASB.

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 the 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 advertising of particular products and services.

2011 Snapshot

2011 complaint snapshot

Number of complaints received	3491
Number of complaints made about matters within ASB jurisdiction	1491
Number of complaints made about matters outside ASB jurisdiction	1181
Number of complaints about ads previously considered by the Board	581
Number of complaints about ads already withdrawn	36
Number of complaints assessed as consistently dismissed complaints	113
Number of complaints unassessed at year end	50



2011 breach or not snapshot

Number of ads the Board found consistent with Code and Initiatives	412
Number of complaints about ads that did not breach Code or Initiatives	1569
Number of ads the Board found breached a Code or Initiatives	54
Number of complaints about ads that were found to breach the code	353



2011 ad snapshot

Number of ads complained about	476
Number of cases created but were not put forward for consideration by the Board for variety of reasons	38
Number of ads withdrawn by advertiser before consideration by Board	10
Number of ads which were NOT modified or discontinued after a complaint was upheld	3



Most complained about ads in 2011

Top

10

1 Queensland Association for Healthy Communities (Poster)

Case number: 0176/11

The ad portrays two men hugging and says "Rip & Roll" with a picture of a condom on it

Board decision – Dismissed

Number of complaints – 222

2 Energy Watch (TV)

Case number: 0267/11

Featured an Indian person doorknocking to sell the best deals for energy

Board decision – Upheld – Modified or discontinued

Number of complaints – 75

3 MyPeace – Jesus (Billboard)

Case number: 0192/11

A prophet of Islam with a phone number for people to call to receive a free Koran

Board decision – Dismissed

Number of complaints – 58

4 Queensland Association for Healthy Communities (Billboard)

Case number: 0177/11

The ad portrays two men with one kissing the other's neck. The billboard says it is a healthy communities and a safe sex message

Board decision – Dismissed

Number of complaints – 53

5 Essential Beauty Franchising (TV)

Case number: 0042/11

The advertisement shows a book with the first letters of words swapped around to tell the story of a woman requiring hair removal from personal areas

Board decision – Dismissed

Number of complaints – 44

6 General Pants Group (Poster)

Case number: 0151/11

Photo of a topless woman. Her nipples taped with black tape and male hands unzipping her pants. In the background there are giant words advertising 'Sex' and tiny print saying 'fashion'.

Board decision – Upheld – Modified or discontinued

Number of complaints – 37

7 FOXTEL Management Pty Ltd (TV)

Case number: 0481/10

A family is shown setting up Christmas lights on their house. When the lights go on they spell out the word FOXMAS.

Board decision – Upheld – Modified or discontinued

Number of complaints – 28

8 Supre Pty Ltd (TV)

Case number: 0183/11

Woman wearing product Jeggings wiggles around and shows off the Jeggings

Board decision – Dismissed

Number of complaints – 27

9 The Tool Shop (Billboard)

Case number: 0226/11

Three provocatively dressed women stand near the words "how about all three?"

Board decision – Upheld – Modified or Discontinued.

Number of complaints – 25

10 Equal 10th – Santos Ltd (TV)

Case number: 0214/11

Ad shows a farmer on his tractor in beautiful countryside advocating coal seam gas and the advertiser, Santos, is looking after our future

Board decision – Dismissed

Number of complaints – 24

10 Equal 10th – Optus Communications (TV)

Case number: 0011/11

The ad features two crocodiles 'playing' tennis. They are using a Sugar Glider as the 'ball'

Board decision – Dismissed

Number of complaints – 24



Executive Reports

Chairman's report _____

CEO's report _____

ASB Board of Directors _____

Chairman's Report

In my seven years as Chairman of the Advertising Standards Bureau, 2011 will stand out as a period of significant challenge to the advertising self regulation system and to the Directors of the ASB as the custodians of the system's complaints adjudication arm.

The Directors and I were well satisfied with the outcome of two Parliamentary Inquiries. These inquiries endorsed the effectiveness of the administration of the self regulation system and importantly the professionalism of the industry in applying and complying with the community standards as set out in the Codes and Initiatives.

The Bureau again spent considerable time in building higher level awareness of the important role of advertising self regulation for both the community and Australian businesses. I have to commend the energy and continued commitment of staff at the Bureau in responding to claims made by interest and lobby groups in relation to the effectiveness and worth of self regulation

during the 2011 Parliamentary Inquiries. Their work demonstrated that the community and Australian business benefits from a robust, transparent system which deals efficiently with consumer concerns about advertising and at no cost to consumers.

I would also like to express my appreciation to the Outdoor Media Association and its members in supporting the work of the ASB. The outdoor advertising space provided by OMA members in 2011, which helped to highlight the role and existence of the ASB, was invaluable.

The support of the industry is vital to the effective administration and continued improvement of the advertising self regulation system as a whole. Unfortunately, as mentioned last year, 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. I urge all advertisers to contribute.

We continue to build our international links, primarily through the European Association Standards Alliance (EASA). Work in our role as Deputy Chair of the International Committee of EASA to raise awareness of advertising self regulation systems in the Asia Pacific Region continued in 2011 and we look forward to further development in 2012.

The year saw the departure of several Advertising Standards Board members – including long-serving members, the Hon John Brown AO, Ms Joanna Cohen and Mr Tom Keneally AO – and the recruitment of nine new members, as well as a change to the Independent Reviewers. One of the highlights of the year was the chance to spend an evening with Board members past and present and personally thank them for their contribution.

Publicly, I would like to thank all members of the Advertising Standards Board – past and present – for their dedication to the role and their commitment to applying the various industry codes in line with community standards. Thank you also to Independent Reviewers, the Hon Deirdre O'Connor and Mr Mick Palmer, for the important role they played in providing impartial assessment of the appropriateness of Board decisions and Bureau process. Welcome to our new Independent Reviewers, Ms Victoria Rubensohn AM and Dr Dennis Pearce AO.

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.

CEO's Report

A desire to ensure we can objectively meet community expectations drives much of our work.

As such, it is always humbling to read reports and letters from people who are dissatisfied with advertising self regulation, but frustrating to read misinformation about the advertising self regulation system in documents, such as submissions to Parliamentary Inquiries. Dealing with these issues was our welcome to 2011.

Back on deck on 4 January 2011 and ASB launched into preparing submissions and representations to two Parliamentary Inquiries looking into self regulation and advertising. ASB worked closely with industry and media partners to ensure a comprehensive, statistically solid case was presented to both the House of Representatives and Senate Committees about the effectiveness of advertising self regulation in Australia.

After months of submission writing, meetings with MPs and Senators and appearances before both Committees, we were rewarded with endorsement of the advertising self regulation system – although given some pointers for improvement. Continuous improvement has been a feature of ASB operations and strategy since 2005. Some of the recommendations from the Inquiries relate to matters ASB was already progressing, some we implemented

during 2011 and we are considering the cost implications of others.

A fantastic result from our close work with, in particular, the Outdoor Media Association, was provision of \$1.7million worth of outdoor advertising space by OMA members. Thanks also to George Patterson Y&R for their creative contribution. Our 'Pink Lady' advertisement was displayed across a myriad of outdoor advertising locations. Designed to raise awareness of the role and existence of ASB, our sincere thanks goes to the very generous OMA members. Also following our close collaboration and experiences with the Parliamentary Committees were seminars, run in conjunction with OMA and the AANA, to OMA members around Australia about advertising standards and self regulation. We are confident that these two strategies will lead to fewer complaints about outdoor advertising on third party sites.

Our dedication to continuous improvement was also recognised internationally by our colleagues at the European Advertising Standards Alliance. It was my pleasure to accept a Bronze International Best Practice Award at the annual General Council meeting of EASA in April.

Continuing with our commitment to ensure membership of the Advertising Standards Board is representative of the Australian community, we farewelled a number of Board members. My particular thanks go to all members who

retired this year – all made fantastic contributions to discussions and decisions over their years on the Board. It was particularly sad to farewell our three longest-serving members – The Hon John Brown AO, Ms Joanna Cohen and Mr Tom Keneally AO. John, Joanna and Tom will be very much missed for their insight and, of course, their wit.

We also farewelled inaugural Independent Reviewers, the Hon Deirdre O'Connor and Mr Mick Palmer AO, APM. Apart from being a delight to work with, Mick and Deirdre showed great trust in ASB in taking on this new and challenging role. On the positive side we welcomed Ms Victoria Rubensohn AM and Dr Dennis Pearce AO as new Independent Reviewers.

Much thanks goes to the small team at ASB – Nikki and Daniela (Complaints), Brian (Operations), Sarscha (Administration), Sari (Communications) and Sue, Simone and Zehra (Research).

In 2011 we had a staff turnover of 0% (other than a happy departure on maternity leave of our legal policy officer, Simone, who welcomed twins). Our low staff turnover reflects the commitment of our people to the work of ASB and also reflects on the commitment we have to a family friendly workplace.

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 Advertising Standards Bureau. With strategic, financial and operational concerns within its purview, the Board works to continually improve the operation of the ASB in its role as the 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.

In November 2011, Ms Victoria Marles, CEO of the Trust for Nature (Victoria) was appointed as a member of the Bureau Board, bringing the total number of members to six.

Board of Directors

Ian Alwill

Chairman, ASB

Executive Director – Group Marketing and Communications, *Nestle Australia Ltd*

Victoria Marles

Director, ASB

Chief Executive Officer, *Trust for Nature, Victoria*

Michael Duncan

Director, ASB

Group Yield and Inventory Manager, *dmg Radio Australia*

John McLaren

Director, ASB

Group Account Director, *Clemenger BBDO*

Hayden Hills

Director, ASB

Group Manager – Finance Operations, *Allianz Insurance*

John Sintras

Director, ASB

Chief Executive Officer, *Starcom Mediavest Group*

Meetings

The Board of Directors met 6 times during 2010.

BOARD MEMBER	POSITION	MEETINGS ATTENDED	PERIOD OF BOARD MEMBERSHIP
Ian Alwill	Chairman	5 (of 6)	December 2004 (continuing)
Michael Duncan	Director	4 (of 6)	November 2001 (continuing)
Hayden Hills	Director	5 (of 6)	December 2004 (continuing)
John McLaren	Director	4 (of 6)	March 2009 (continuing)
Victoria Marles	Director	1 (of 1)	November 2011 (continuing)
John Sintras	Director	4 (of 6)	December 2005 (continuing)



Inquiries & Reviews – 2011

Self regulation under scrutiny in 2011 _____

House of Representatives inquiry _____

Senate inquiry _____

Australian Law Reform Commission review _____

Convergence Review _____

Self regulation under scrutiny in 2011

Australia's system of self regulation of advertising came under scrutiny in 2011 with the Advertising Standards Bureau providing information and assistance to two Parliamentary inquiries into advertising and classification while also keeping an eye on two others – the Australian Law Reform Commission (ALRC) review of the National Classification System and a Convergence Review led by the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy.

Kicking off on 4 January 2011 ASB commenced work on submissions for both the Senate Legal and Constitutional Affairs References Committee Inquiry into the Australian Film and Literature Classification Scheme (report tabled 23 June 2011) and the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the Regulation of Billboard and Outdoor Advertising (report tabled 4 July 2011).

ASB worked closely and collaboratively with other industry bodies so as to ensure a cohesive and consistent report on the operation and efficiency of self regulation was put forward to the Committees. The ASB met with a number of members of both Committees prior to the Inquiries in order to ensure members were provided with as much factual information as possible about the self regulation system in advance.

Both inquiries received enormous public exposure and a large number of submissions from people with a variety of views: supportive of advertising

self regulation and many from people and organisations who would prefer government regulation of advertising.

The ASB's position, as articulated in the Chief Executive Officer's Statement to the House of Representatives Inquiry is that:

- The complaint resolution process managed by the Bureau is an effective and efficient way to respond to consumers' concerns about advertising.
- The complaint process is transparent and accessible to all consumers, with easy to follow steps and support throughout the process provided by Bureau staff.
- The vast majority of advertising and marketing communications in Australia complies with the relevant codes and do not receive any complaints, while the majority of those complained about are not found to be in breach of the codes. Where a breach is found, the Bureau has a record of nearly 100 per cent compliance by industry with Advertising Standards Board determinations – demonstrating the commitment of the vast majority of advertisers to the system and to maintaining high standards of advertising.
- If required, the Bureau is supported in enforcing compliance with Advertising Standards Board determinations by the media sector.
- The work of the Bureau and its Board's is characterised as: Responsive, Accessible, Effective, Transparent, Robust and operates at no cost to government or the community.

The recommendations from both Inquiries, but more particularly the House of Representatives Inquiry, support the continuation of advertising self regulation.

The ASB has already taken action on several of the recommendations from the inquiries.

- More than \$1.6m of support from the Outdoor Media Association (OMA) and its members enabled a successful outdoor awareness raising campaign to run between September and November.
- Information and education seminars were conducted across Australia for OMA members, for Australian Food and Grocery Council members and are planned in 2012 for Communications Council members and advertisers more broadly.
- Clarified a range of information on the ASB website regarding both the complaints and Independent Review processes.
- Free-to-air and subscription TV and commercial radio have agreed to re-run the ASB awareness raising advertisements at no cost for the first quarter of 2012. The Internet Industry has given in principle support for doing so as well.
- The Australian Association of National Advertisers (AANA) Code was amended to include a section dealing with sexual objectification following ASB and AANA appearance before the Inquiry. This addresses what the Board had for some time identified as a gap in the Code.

Self regulation under scrutiny in 2011 (cont.)

- Implemented an informal system with OMA for providing non-binding advice on proposed campaigns leading (anecdotally at this stage) to less complaints and less upheld decisions in outdoor media.
- Enabled commencement of discussions with other sector

specific bodies regarding improving Codes and conducting joint research (eg Alcohol Beverages Advertising Code (ABAC) Scheme about funding for ASB research on the ABAC Code and AFGC regarding improvements to their initiative and collaboration on community standards research).

ASB is continuing to consider the range of other recommendations and looks forward to the Government's response to the Inquiry reports early in 2012.

Details of House of Representatives inquiry

The House of Representatives Standing Committee on Social Policy and Legal Affairs – Inquiry into the Regulation of Billboard and Outdoor Advertising (tabled 4 July 2011)

- The purpose of this inquiry was to examine whether current arrangements for billboard advertising (and other forms of outdoor advertising) continue to be an effective method for managing this form of advertising in Australia in line with Australian community expectations.
- In particular this inquiry considered:
 - The existing self-regulatory scheme for advertising
 - Whether the current arrangements, including the Industry Codes administered by the ASB, met community concerns about billboard advertising
 - Trade practices and fair trading legislation in all jurisdictions that

contain consumer protection provisions that prohibit false, misleading and deceptive advertising

- Technical developments in billboard advertising
- The rate and nature of complaints about billboard advertising
- Any improvements that may be made to current arrangements
- The desirability of minimising the regulatory burden on business; and
- Any other related matter.
- The Committee concluded that “the current self-regulatory model should remain in place subject to further review by 30 June 2013”.
- However, the report also makes a series of recommendations intended to “establish a more rigorous self-regulatory system that is able to reflect community standards and expectations, with particular reference to outdoor advertising”.
- Several of the recommendations in the

report are directed specifically at the ASB, while other recommendations are directed towards other industry bodies, including the AANA, OMA, FCAI, ABAC and AFGC. The report also makes recommendations for ongoing review by the Attorney-General's Department in relation to how advertising industry bodies respond to the recommendations contained in the report going forward.

The recommendations included:

- Reporting by industry bodies to the Attorney-General's Department in relation to the report recommendations by the end of 2011 and 2012, and review of the self-regulatory system by the Attorney-General's Department by 30 June 2013.
- Development of a separate AANA code of practice for out-of-home advertising.

Details of House of Representatives inquiry (cont.)

- Introduction of a copy advice service by ASB for all outdoor advertising.
- Annual random compliance surveys of outdoor advertising by ASB, as well as formal monitoring and self-initiated investigations by the Standards Board (these recommendations seem based on the UK's ASA model).
- Regular review of codes by AANA and also FCAI (regarding the motor vehicle code).
- Inclusion of a provision in the Code of Ethics on sexual objectification.
- Conduct of research by ASB every 2 years into community standards around sex, sexuality & nudity, health & safety, food & beverages, children and alcohol advertising (with ABAC also to conduct research every 2 years on community standards around alcohol advertising).
- Inclusion of sports sponsorship as a form of advertising in the AANA Food & Beverages Code, as well as the AFGC's RCMI and QSR initiatives.
- Inclusion of outdoor advertising by AFGC in the RCMI.
- Acceptance by ASB of telephone and email complaints, and anonymous complaints.
- Regular awareness campaigns by ASB across all media.
- Requiring AANA and OMA to have their members forward any complaints to ASB.
- "Name and shame" strategies for advertiser non-compliance, and annual reporting to the Attorney-General's Department on non-compliance rates and steps taken to achieve compliance.
- Strengthening of the Independent Review process.

Details of the Senate inquiry

The Senate Legal and Constitutional Affairs References Committee – Inquiry into the Australian Film and Literature Classification Scheme (tabled 23 June 2011)

- This inquiry considered the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme; and
- The effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising.
- While this Inquiry applied more broadly to the National Classification Scheme, the report considers whether the National Classification Scheme should have a role in the regulation of advertising and makes several recommendations relevant to the ASB.
- The Committee found that, subject to certain recommendations being followed, "the current complaints procedure for industries covered by a code of practice would remain largely in place".
- However, the broad recommendation of the Committee is an expansion of the National Classification Scheme to cover all mediums, *including advertising*, with harmonised standards, consumer advice and oversight by the Classification Board. This effectively means including advertising within the classification system, although it is unclear how some of the recommendations aimed at achieving this objective would work in the advertising context.
- However, the Government Senators on the Committee provided a dissenting report, noting that they cannot support many of the proposals in the committee's report, in light of the ongoing National

Details of the Senate inquiry (cont.)

Classification Scheme Review by the Australian Law Reform Commission (ALRC), due to report in January 2012. As such, the Government Senators only agreed with and supported 3 of the 30 recommendations contained in the report. Of those 3 recommendations, only two are of relevance to ASB:

- Establishment of a further inquiry to consider progress of industry bodies (including the ASB) in responding to recommendations in the 2008 Senate Inquiry report on *Sexualisation of children in the contemporary media*.
- As noted in our media release of 23 June 2011, the ASB considers this recommendation would be unnecessary as the ASB and other advertising bodies have implemented a raft of changes in line with the recommendations made in 2008.
- The Attorney-General direct the ALRC to consider, as part of its current review of the National Classification Scheme, all the findings, proposals and recommendations put forward in this report.

ASB expects that the ALRC review will take into account this Senate Inquiry and the House of Reps Inquiry, as well as other relevant reviews currently underway, such as the Convergence Review being undertaken by the DBCDE.

ASB noted that the dissenting report of the Government Senators suggested that the Government will await the findings of the broader ALRC review before giving weight to the recommendations of the Senate Committee.

Australian Law Reform Commission review of the Classification System

During the year ASB was also involved in the ALRC's review of the Classification System. ASB provided comment on an Issues Paper released by the Australian Law Reform Commission (ALRC) in relation to its review of the National Classification System. Information provided was in relation to the ASB's role within the self regulation system applying to advertising and marketing communications in Australia.

The ASB encouraged the ALRC to consider its submissions to the Senate and House of Representatives Inquiries, which highlighted that self regulation remains the most appropriate and effective means for regulating advertising and marketing communications in Australia.

The Australian Law Reform Commission report presented its report to the Attorney-General on 28 February 2012.

Details – The Australian Law Reform Commission – Review into the Classification System

- On 24 March 2011, the Attorney-General requested the Australian Law Reform Commission (ALRC) to undertake a review of the National Classification Scheme.
- The review considered issues including:
 - existing Commonwealth, State and Territory classification laws
 - the current classification categories

contained in the Classification Act, Code and Guidelines

- technological change
- the need to improve classification information available to the community
- the effect of media on children and
- the desirability of a strong content and distribution industry in Australia.
- The ASB has provided the ALRC with two submissions; the first on the Issues Paper (submitted 15 July 2011) and the second submission on the Discussion Paper (submitted 17 November 2011).
- The ALRC will present this report to the Attorney-General on the 28 February 2012.

The Convergence Review

The ASB has also made a submission in response to the Framing Paper for the Convergence Review, commenting on the appropriateness of the principles set out in the Convergence Review Framing Paper.

The ASB's comments were broadly supportive of the principles set out in the paper as a starting point for the Convergence Review. The ASB took a keen interest in the Convergence Review Committee's consideration of how to maintain an appropriate and achievable balance of media freedoms with community standards, which the Framing Paper suggested is a key issue.

In terms of the impact on industry and government revenue, the ASB noted that any consideration of the proposed principles need to take into account the cost effectiveness and enforceability of any proposed changes to regulatory frameworks as against existing frameworks.

The ASB was also supportive of the Convergence Review Committee's

consideration of international approaches to regulation. The ASB already has close ties to international self-regulatory bodies including membership of the European Advertising Standards Alliance (EASA), which is the single authoritative voice on advertising self regulation issues in Europe and beyond.

The Convergence review final report was due in the first quarter of 2012.

Details – Minister for Communications: Department of Broadband, Communications and the Digital Economy – Convergence Review

- The purpose of the Convergence Review was to examine the policy and regulatory frameworks that apply to the converged media and communications in Australia.
- An Interim Report (the Convergence Review Interim Report) was released by the Committee on 15 December 2011 setting out the committee's vision for fundamental change to the

regulatory framework of Australia's digital economy, and identifies key areas for reform.

- This interim report raises several recommendations which are as follows:
 - A new regulator for the digital economy
 - Removal of content-related licences
 - A platform-neutral regulatory framework focused on Content Service Enterprises
 - Diversity and competition measures for the converged market
 - Reform of spectrum allocation and management
 - Platform-neutral rules for Australian content
- Promotion of local content and support for innovation in its delivery
 - Updated charters for ABC and SBS
- The ASB has provided a response to the Committee on the Emerging Issues Paper and the Community Standards Discussion Paper.
- The Bureau is broadly supportive of the principles set out in the interim report as a starting point for the Convergence Review.



Achievements in 2011

Our path to our vision

Achievements against objectives

Objective 1

Delivering effective advertising self regulation in Australia

Throughout 2011 staff continued to deliver on the core function of delivering an effective and efficient complaint adjudication system.

In addition to the core responsibilities, during the first half of 2011, ASB staff invested a significant amount of time in the preparation of comprehensive submissions to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the Regulation of Billboard and Outdoor Advertising and the Senate Legal and Constitutional Affairs References Committee inquiry into the Australian film and literature classification scheme.

The ASB submissions were acknowledged by peer organisations as being of a very high standard. The ASB also cooperated with other industry bodies to support them with their submissions. The ASB team further combined to prepare comprehensive briefing material to support the CEO in her appearances before the inquiries.

Recommendations and findings made by the inquiries were that advertising self regulation remain.

The House of Representatives Standing Committee on Social Policy and Legal Affairs report into the regulation of billboard and outdoor advertising recognised the professionalism and commitment of the advertising industry and its desire and capacity to effectively regulate the industry in line with community expectations.

Some recommendations in the House of Representatives report which are specific to the role of the Advertising Standards Bureau cover activities that are already in place, including conducting regular research into community perceptions, educating and training of industry regarding self regulation responsibilities, provision of copy advice and information to the public about non-compliance.

A Senate Inquiry into the National Classification Scheme report suggested that the current complaints procedure should remain largely in place for industries covered by a code of practice.

For the first time, in 2011 the Advertising Standards Bureau (ASB) approached the Victorian Government to seek assistance in obtaining compliance of an advertiser – Kittens, a business in Melbourne. The ASB is liaising with the Minister for Police and Emergency Services, the Attorney-General, the Minister for Gaming and Consumer Affairs, the Minister for Women's Affairs and the Victorian Department of Justice to look at possible options to enforce the removal of the images and to achieve a resolution that meets community expectations.

In 2010 the Advertising Standards Board upheld the complaints against Kittens, finding its advertisement to be in breach of the AANA Code of Ethics. In particular the Board determined that the images displayed on a bus and a number of vehicles throughout Melbourne breached community standards in the treatment of sex, sexuality and nudity. The advertisements were for the advertiser's various premises

which included an adult premises, a school of striptease and a car wash.

The Board determined that these particular images went beyond community standards of acceptability and were inappropriate as the vehicles were able to move freely through all parts of the community and could be viewed by all. Under the self regulation system advertisers are required to remove or modify images that the Board determines breaches the Code. In this instance the advertiser had failed to comply with the ASB's request to remove the offending material or have it modified. The advertiser did not communicate with the ASB and failed to return phone calls or respond to correspondence.

During 2011 just three cases were recorded as Upheld – Not modified or discontinued. This description indicates cases where the advertiser has refused to cooperate with the Bureau to comply with the Board's decision. Following the confirmation from each advertiser that they would not comply with the Board's decision, the ASB has, and continues to, attempt to reach agreement with the advertisers to remove the offensive advertising and marketing communications. As these cases relate to advertisements that are not shown on third party media (eg television or newspaper) there is no media agency to assist the ASB in achieving agreement.

The overall high compliance rate with Board determinations is encouraging and demonstrates that the vast majority of advertisers take a responsible approach and are willing to adhere to community standards.

Objective 2

Reflecting community standards

During 2011, nine new members were appointed to the Advertising Standards Board, with the first official meeting of the new Board held in mid-September.

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

The Board discharges its responsibilities with fairness and impartiality. Prevailing community standards are at the heart of all Board decisions and are the reason the Board is made up of members of the community. The overriding objective of the Board is to make decisions relating to the AANA Code of Ethics and other Codes and Initiatives based on what it perceives are prevailing community attitudes. In this way, the Board aims to draw community expectations into its consideration of the rules set out in the Codes and Initiatives. The Board's task is often a difficult one and the outcomes of its determinations will not and cannot please everyone.

Board appointments are made following a publicly advertised application and interview process. In the 2011 process, just over 100 people applied to join the Board. Appointments are made by the Directors of the Board of the Advertising Standards Bureau. Since 2005, a number of changes have been made to the structure and procedural arrangements of the Board, including expansion to a membership of 20 and appointment of new members at staggered intervals to ensure that

the Standards Board has a mix of experienced and new members.

Following recruitment of the new Board members, all Board members received a comprehensive introduction to the Bureau and the Board – what is advertising self regulation and how it works in Australia, how the complaint adjudication process works, individual Board member's role and responsibilities, administrative and operational arrangements, Board procedures and policies and an introduction to all Codes for which the Board has responsibility.

In 2011 two other one day training sessions were conducted for the Board, with issues brought by the community through their complaints presented to the Board by Bureau staff. Added to this were presentations at two meetings by complaints managers who provided an overview of Board decisions during the preceding months, in particular about cases upheld by the Board, which were complex or contentious or which generated considerable discussion within the Board. These discussions allowed members to discuss their view regarding community standards and therefore consistency of decision-making.

Invited guests also made presentations about issues to Board and Bureau staff, including:

- the Attorney General's Department about the Classification Board, discussion of various classifications and how the Classification Board makes decisions
- the Australian Association of National Advertisers (AANA) about the

AANA structure and role, interaction with ASB and an update on progress of AANA Code of Ethics Review

- Dr Wayne Warburton from the Department of Psychology at Macquarie University explained his view of issues and research regarding violence in advertising and its effect on children
- FreeTV Australia provided an interactive outline of how advertisements are classified for television and discussed issues of particular interest to Board members including advertisements that could be considered unsuitable for children and when and how they could be shown.

During 2011, the three determination summaries completed in 2010 were updated to reflect new cases considered by the Board. Determination summaries were developed to assist the Board in maintaining consistency in their determinations, and to provide information to the advertising industry and the community about the issues considered by the Board when determining whether an advertisement breaches any of the Codes or Initiatives administered by the Board.

During 2011, staff from the ASB had considerable involvement in the Australian Association of National Advertiser's (AANA) review of its Code of Ethics. Information about Board decisions and interpretation of these in relation to sections of the Code were provided to assist the AANA with its review. Regular meetings are now held with AANA to provide information about recent determinations by the Board and general feedback about application of the Code.

Objective 3

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

During 2011 industry groups and agencies combined to assist ASB to again promote its services to the public with an extension of the “Tell someone who cares” campaign. The Outdoor Media Association (OMA) and its members, along with the support of creative agency GPY&R (Melbourne) assisted in creating and implementing an outdoor advertising campaign for ASB. Industry’s contribution to the campaign achieved provision of \$1.7million of advertising space. Billboard, transport and shopping centre advertising ran between September and November around Australia.



In 2011 the Advertising Standards Bureau also 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.

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.

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 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 2011 Communications Council Effie awards.

During late 2011, ASB also presented papers at seminars and conferences. In conjunction with the OMA and AANA, the ASB held information

sessions for outdoor advertising industry representatives at Adelaide, Perth, Sydney, Melbourne and Brisbane. The aim was to further develop knowledge and provide up to date information about the Codes and Initiatives applying to advertising in Australia.

The ASB also supported the Media Federation of Australia’s NGEN group with presentations to graduates in Melbourne and Sydney in late 2011.

Presentations were developed specifically for the South Australian Government’s marketing representatives to highlight Board determinations in relation to government and community awareness advertising and marketing communications, and Board member, Joanna Cohen participated in the Western Australian Government Women’s Forum, which focused on women and the media.

Objective 4

Keeping pace with advertising and marketing communication developments in new media

In the past five years new technology has brought a rapid increase in the styles of advertising and marketing communications and the opportunities available for use by advertisers. 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 in emerging media.

During 2011 the Advertising Standards Bureau received an increase in complaints about advertisers utilising direct email advertising to clients. Advertisers are using this method more often and the Board considered complaints about:

- Roger David – 0284/11 **Upheld** (Section 2.3 S/S/N)
- Purl Bar – 0442/11 Dismissed (Section 2.1 Discrimination –sex, Section 2.3 S/S/N)
- SABA – 0477/11 Dismissed (Section 2.6 H&S– models too thin)

Complaints about mobile billboards also increased. In 2011 the Board considered several mobile billboards including:

- Club Shoop – 0206/11 Dismissed (2.1 Disc Sex, 2.3 S/S/N) – (mobile billboard – Considered by Board as a billboard advertisement

- Dreams Gentlemen's Club – 0134/11 **Upheld** (2.1 Disc Sex, 2.3 S/S/N) –mobile billboard – Considered by Board as a transport advertisement
- Cartridge World – 0120/11 Dismissed (2.3 S/S/N) – advert painted on to car – Considered by Board as a transport advertisement
- Wicked Campers – 0039/11 **Upheld** (2.2 Violence, 2.5 Language, 2.6 H&S) – sticker in vehicles – Considered by Board as a transport advertisement

The Board has considered complaints about advertising material on the internet since 2006. 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.

An advertisement which received a higher level of complaint, and also raised interest in the media was a Unilever Lynx Rugby ad – 0399/11 **Upheld** under Section 2.1 Discrimination –sex. This was an internet based advertisement, although many complainants claimed to have seen it on television. The advertisement was brought to the attention of the community by lobby group Collective Shout, and through media items. The Advertising Standards Bureau received its first complaint about the ad on 5 October 2011. This first complaint related to a news article which reported on the internet advertisement.

The rate of complaints about advertisements recorded as being seen on the internet tripled in 2010 and in 2011 it rose again, but only marginally. The rate of complaints about more traditional advertising methods – poster, transport and billboard advertising – doubled from the previous year.

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

Objective 5

Complying with and assisting in setting international best practice complaints handling procedures and protocol

Advertising Standards Bureau CEO Fiona Jolly represented ASB at the European Advertising Standards Alliance (EASA) General Council Meeting in Vienna in April 2011. EASA is the key organisation regarding advertising self-regulation in Europe and beyond. It promotes high ethical standards in commercial communications by means of effective self-regulation and provides ongoing support to member self-regulation organisations. It also coordinates advertising best practice recommendations which self-regulatory member organisations are expected to implement.

Issues discussed by the General Council during the Vienna Meeting included:

- alcohol and food advertising, especially to children
- revision of the International Chamber of Commerce Code upon which most SRO's national codes are based
- cosmetics advertising
- digital marketing communications, and
- new self-regulatory industry standards and compliance mechanisms for online behavioural advertising.

At the General Council Meeting, EASA presented its Best Practice Awards for initiatives that implement the EASA Best Practice Recommendations in an effective and efficient way. The Advertising Standards Bureau and the Advertising Standards Council of India both won the Bronze Award. The ASB

was commended for its overhaul of the complaints system which allows us to deal with complaints much more efficiently than before. Now a quarter of complaints received are completed within one month.

Ms Jolly, Deputy Chair of International Council on Advertising Self-regulation (ICAS), has been investigating options for promoting advertising self-regulation in the Asia/Pacific region. ICAS currently comprises Australia, Brazil, Canada, Chile, India, New Zealand, Peru and South Africa. Work undertaken on this project includes development of an APEC Concept Note, in consultation with New Zealand, Canada and Peru SROs and relevant officers in the department of Foreign Affairs and Trade. This matter will be progressed during 2012 with the aim of seeking APEC financial support for the establishment of an Asia/Pacific self-regulation forum to promote expansion of self-regulation in this region.

The overall aim of ICAS is to provide a forum to facilitate information exchange, best practice discussion, and communication between members and interested parties, and to provide assistance to facilitate and promote the development of self-regulatory organisations where they do not currently exist.

During 2011 the ASB sought feedback through a survey from complainants and advertisers about the advertising complaint adjudication process. The survey was sent with the final case report relating to an advertisement considered by the Advertising Standards Board. Response was modest, with just over 50

complainants and less than 10 advertisers completing the survey.

The majority of advertisers indicated a high level of satisfaction in regard to their dealings with the ASB. Feedback from advertisers surrounded the length of time provided to respond to complaints, with the majority indicating that the time allowed is insufficient.

In the case of complainants, a majority of respondents indicated a neutral or positive degree of satisfaction with the overall complaint adjudication process. A majority of complainants were neutral or positive regarding the standard of correspondence received, the timeliness of the process, and the explanation of the Board's decision in the final case report. Respondents, whose complaints were upheld, were satisfied with the Board's decision, but the majority of respondents whose complaints were dismissed were dissatisfied with the Board's decision. Feedback from complainants indicated a concern that complainants should be given a further opportunity to address the matters included in the advertiser response. Conversely, many respondents felt that the process took too long.

The Advertising Standards Bureau Board of Directors considered the survey results toward the end of 2011 and similar surveys will be made available, and actively promoted, during 2012.

Objective 6

Being financially viable

The levy system, which underpins self regulation of the advertising industry in Australia, is administered by the Australian Advertising Standards Council (AASC). Levy is collected by media buyers and remitted directly to the AASC. The AASC provides funding to cover the operations of the Advertising Standards Bureau.

Following on from the work 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 paying 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.

During 2011, 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.

The overall level of financial support provided by advertisers was above the level of previous years.

At the end of 2011, ASB had achieved a contribution rate of 68 per cent of the top 150 advertisers who pay 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.

In mid-December 2011, the Board of the Advertising Standards Bureau participated in a strategy and planning session with representatives of the Australian Association of National Advertisers (AANA), Media Federation of Australia (MFA), Communications Council and advertiser representatives to develop enhanced success strategies in seeking advertiser support for the self regulation system. ASB's Board of Directors will consider and act on the outcomes of that forum during 2012.

The ASB continued to administer the complaint adjudication functions on behalf of the Federal Chamber of Automotive Industries (FCAI) and Australian Food and Grocery Council (AFGC – for the Responsible Children's Marketing Initiative and Quick Service Restaurant Initiative). ASB receives a modest income for the provision of these services.

During 2011, the review of the Independent Reviewer system resulted in a significant reduction in the level of fees required to lodge a request for Independent Review. Fees were reduced from \$500 to \$100 for an individual.

As well as striving to increase levy income, ASB has maintained a firm control of expenditure to ensure that financial administration is prudent and effective.

The further investment in the development and enhancement of the ASB's Case Management System is expected to generate long term efficiencies and improvements in timeliness of the complaint adjudication function.

Objective 7

Having a skilled and sustainable workforce

The ASB has a small and dedicated workforce.

During the first quarter of 2011, all ASB staff participated in the review and development of the ASB Strategic Plan. Staff input was a key component of the matters considered by the Bureau Board in setting the objectives, performance indicators and performance measures as part of the Strategic Plan for 2011 to 2013.

During 2011, ASB staff also delivered training to members of the Advertising Standards Board. Two full-day training sessions, in May and December 2011, were provided to the Advertising Standards Board. ASB staff presented sessions detailing elements of the advertiser codes, comprehensive sessions covering Board decisions and precedents as well as specific sessions on targeted elements of the self regulation system. In August 2011, ASB staff organised the farewell function for retiring members of the Advertising Standards Board.

Further to the established training days, in September 2011, ASB staff presented a further day of induction training to all members of the newly constituted Board. This day covered the broad advertiser codes as well as administrative requirements and obligations.

In the second half of 2011, following almost 18 months of operation, staff participated in a series of workshops to enhance the design and efficiency of the Case Management System. In the last quarter of 2011, staff were involved in system testing and assessment of the identified enhancements, in preparation for implementation in 2012.

Other significant achievements during the year included significant work in recruiting new members of the Advertising Standards Board in addition to the recruitment of two new Independent Reviewers.

All staff were given opportunities to undertake training and personal development in line with their needs, identified in their individual development and performance agreement.

All staff participated in sessions about dealing with difficult customers and contributed to the development of a revised policy on this matter.

Through an external service provider the ASB established an employee assistance program (EAP) which provides advice, counselling and support to all Bureau staff on request.

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

In terms of specific staffing information, for the calendar year ended 31 December 2011, 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 3.59 years
- a staff gross attrition rate of 0.00% for 2011.



Board Reports

The Board's view _____

Board Membership 2011 _____

Retiring Members as at August 2011 _____

The Advertising Claims Board _____

The Board's view

Applying the Codes and Initiatives

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 nine 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)
- environmental

The portrayal of sex, sexuality and nudity continued to be the dominant issue raised by complainants in 2011. This issue accounted for 32 per cent of complaints, decreasing from 45.2 per cent in 2010 and 40.5 per cent in 2009. The issue of discrimination and vilification accounted for 20.6 per cent of complaints, up just one per cent from 2010. Together these two issues comprised just over 50 per cent of all complaints made in 2011.

In 2011 the proportion of complaints about health and safety issues increased markedly from 9.62 per cent in 2010 to 13.59 per cent. Complaints about violence in advertising also rose noticeably from 9.62 per cent in 2010 to 11.82 per cent in 2011.

Complaints relating to food and beverage code issues continued to rise reaching 6.35 per cent from 3.08 per cent in 2010, with the AFGC and QSR food advertising initiatives adding 2.51 per cent to complaints about food advertising.

The issue of language saw a rise to 6.06 per cent of all complaints, but did not reach the highest recorded against language – 7.55 per cent in 2006.

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.

The issue of discrimination and vilification accounted for 20.6 per cent of complaints, up one per cent from 2010, with objectification of women continuing to dominate complaints about discrimination or vilification.

Discrimination against women

Most complaints under section 2.1 of the Code relate to the manner in which women are presented in advertisements. In several cases the Board considered the issue of advertisers depicting women in a manner which discriminates against or vilifies them. The Board has noted on many occasions that the Code does not prohibit the use of images of attractive women in advertising – and does not prohibit the use of attractive women in advertisements for products for which it is arguable that the image of a woman is irrelevant.

For example, describing women as ‘hotties’ will not necessarily amount to discrimination (Nandos 0251/11).

The issue of discrimination is often linked with sexualised images and while an advertisement may not amount to discrimination against women it can end up being considered not to treat sex with sensitivity to the relevant audience.

A Supre campaign (0145/11) during 2011 attracted considerable controversy – with one image used in a variety of media. In this campaign the image of concern was that of a young woman wearing a pair of ‘jeggings’ with no top on. The Board considered that as the product advertised is jeggings it is entirely reasonable to expect the advertiser to use their product in the advertisement and that the advertisement did not objectify women.

The various images used on the internet (0184/11), on television 0183/11 (where the young woman was depicted wearing a top as well as the jeggings), on a bus (0145/11) and on store signage (0152/11) were all considered acceptable as images which did not discriminate against women.

The issue of women being used as a sexual object is not seen favourably by the Board. In General Pants Co (0150/11) the Board considered the image was objectifying as it depicted a woman with her clothing being removed by someone else and showed the word sex above her head. This image positions the woman as a passive sexual object. The Board considered that this advertisement was demeaning to women.

Generally, advertisers should ensure that women are not presented as objects and it is preferable that women are not shown as headless bodies.

In Emerald Star (0274/11) the depiction of a woman from the rear with no face visible was determined to be objectifying and discriminatory even though the advertised service is a strip club.

By contrast, in Jersey Shore (0210/11), the advertisement featured only the torso of a woman in a bikini holding

on to the neck ties of the bikini to hold it up. The woman’s face is visible only from the mouth down. In this case the Board noted that the advertisement depicts the woman without a head and that this can be an indication that the image is objectifying. In addition, the Board noted that the advertisement is predominantly the image of a woman’s breasts and torso. The Board noted that the woman is wearing a bikini and that the setting of the advertisement is at the beach and relates to a program which is set at the beach. The Board considered that the image of the woman was relevant to the program advertised and was clearly linked to that program. On this basis the Board determined that, while some people would consider the image objectifying of women, the Board considered that most members of the public would consider that the advertisement does not depict material that discriminates against or vilifies a section of society.

However images of women without heads will generally breach the code.

Images accompanied by text

The text or voiceover in an advertisement can turn a suitable image of a woman into an overall impression of a discriminatory or demeaning depiction of women.

In Aussie Boat Loans (0517/10) the advertisement comprised the image of a woman posed in a bikini, without a head or any identity, and that the text accompanying the image suggests that a boat loan should be as good as a woman’s body. In this context the Board considered that the advertisement as a whole objectifies women to the point that the advertisement does discriminate against women.

Similarly in *The Tool Shop* (0226/11), the image of three women holding various tools accompanied by text which reads ‘imagine all three at once...we can’ was determined to be discriminatory on the basis that the text alongside the images could be read as a reference to being able to purchase all three tools in one place or to having sex with all three women at once and that the reference to having sex with all three women was discriminatory although the women were dressed in appropriate work wear and were not posed in a sexualised manner. In the Board’s view the overall advertisement clearly presented the women as sexual objects to be purchased or used and did so in a manner that was demeaning to women.

Similarly, a restaurant advertisement’s depiction of the lower half of a woman wearing a short skirt, with the text ‘fancy a tasty bit of skirt’ and then, on the following page, images of various cuts of meat was determined to be comparing a woman and pieces of meat which in the Board’s view is discrimination (*Steel Bar and Grill* – 0199/11).

Relevance to product and a relevant setting

Relevance to product and the setting are also important considerations in determining whether the use of a woman in a bikini will be acceptable.

In *Vitaco* (0395/11) the headless image of a woman by the beach, wearing a bikini was accompanied by the text ‘No ifs, just lovely Butts’ and the picture of a protein bar below her. The Board considered that the woman is depicted in a manner that is not sexualised, she is in a bikini at the beach, and the image is used in connection with a low carb/high protein food product. The Board

considered that the use of the image may be objectifying but that in this particular advertisement the image is not demeaning to women or degrading and does not amount to an image that discriminates against or vilifies women.

Similarly, in *CQ Field services* (0460/11) the advertiser had blatantly used the image of the woman to attract attention to an unrelated service. However, the Board noted that the woman in the bikini is smiling and is presented in the advertisement clearly for no reasons other than to attract attention because of how she looks. The Board considered that the advertisement is presenting the woman to attract the attention of a predominantly male workforce. The Board considered that the use of the woman is exploitative as it blatantly relies on her attractiveness. The Board agreed that the use of a woman in a bikini in this instance is gratuitous however the Board considered that the images are not degrading of women as she is presented in a positive attractive manner and therefore do not breach the specific provisions of the Code.

A relevant setting will not however override images which blatantly present women as sexual objects.

In *Lynx Rugby* (0399/11) images of young women wearing skimpy sports clothes to ‘demonstrate the rules of rugby’ was considered to discriminate against women as the women are not depicted on a sporting field. The Board considered that the advertisement is clearly shot to emphasise various physical attributes of the women – with lingering shots on the women’s breasts, groins and bottoms. The Board considered that the advertisement depicts the women as sexual objects. The Board considered that the ‘fantasy’ element of the advertisement

takes away any suggestion of the women actually being presented as sportswomen and increases the impact of them being presented as sexual objects.

Relevant audience – media

Placement of an advertisement can contribute to whether or not the Board will consider an objectifying image amounts to discrimination.

In *Purl Bar* (0442/11) the Board had to consider the image of a woman on all fours on a bed, with a riding saddle over her back accompanied by an invitation to a Melbourne Cup after party at the Purl Bar.

The Board noted that the image is an iconic photo by the famous *Helmet Newton* photo from the 80’s and was used as part of a *Vogue Magazine* fashion editorial in the 80’s.

The Board considered that the use of this image on Facebook and via an email member distribution list meant that it would be viewed by a limited audience that would not likely include children. The Board considered that it is reasonable for the advertiser to use such an image at the particular time of year as a clear connection can be made with the Melbourne Cup event and the racing saddle over the woman’s back in the image.

The Board considered that, while the advertisement does depict a woman in a pose that may be considered by members of the community as demeaning toward women, the image does not expose any inappropriate parts of the woman and is a stylised image recognised by many as an iconic fashion image. The Board noted that the pose of the model is provoking but not inappropriate for the likely small audience.

Discrimination against men

There are more complaints each year about advertisements on the basis that men are depicted in an objectifying or discriminatory manner.

When it comes to men most complaints are that men are depicted as being unintelligent or under the control of women.

There have not been complaints upheld on the basis that the advertisement discriminates against men. In YUM (0405/11) the Board noted complaints that the man is depicted as being under the control of his girlfriend and less of a man because he is wearing clothes she has picked for him. In this case the Board noted that the advertisement features a man being teased because his girlfriend has joined a group of mates to watch sport on TV and the man is wearing a pink jumper. The Board noted that the advertisement suggests that the man is wearing a pink jumper to please his girlfriend and that the complainant believes the woman is presented in a manner which is sexist. The Board considered that most members of the community would empathise with the man's predicament of wearing something to please his girlfriend and that depicting a woman as influential over someone's wardrobe choice is not a depiction which would be considered discriminatory.

Discrimination on basis of race/ethnicity

During 2011 complaints that a person was dressed as a 'golliwog' (National Foods 0355/11) were dismissed on the basis that the image of a dark skinned man wearing a suit and over sized bow tie does not equate to a depiction of a golliwog.

The use of stereotypical depictions of people of a certain ethnicity is often complained about but not necessarily upheld. The use of humour in such portrayals is relevant as is the need for such stereotypical depictions not to be negative or demeaning.

In Patties Food (0358/11) the Board considered that the depiction of Scotsmen wearing kilts on a construction site is a stereotypical portrayal which is not negative but is meant to be exaggerated and humorous. The Board considered that the advertisement is not racist and is unlikely to be considered offensive to most members of the community with Scottish heritage.

However the use of a person of a certain race in a stereotypical situation will be discriminatory if the person is presented in a negative manner. Energy Watch (0267/11) depicted a door to door salesman as an Indian man with a strong accent perpetuated a stereotype, and is one that would generally be considered to be a negative stereotype of a person from a particular racial background. The Board also considered that the subtle suggestion that the Indian man may not be completely honest is also offensive and that it is vilifying Indian people.

Action For Alice (0087/11) raised similar concerns by, according to complainants, portraying Aboriginal people in a racist manner and inciting racist hatred. This advertisement, which described problems faced by youth and business in Alice Springs was shot by an Indigenous Australian who was told to film a balanced view of what he saw at night on the streets of Alice Springs over a three week period, specifically focusing on younger children who should not be

on the streets late at night. The Board agreed that some members of the community would consider that the advertisement was attributing lawlessness to Indigenous people but in the Board's view the more likely interpretation of the advertisement is that there is a problem in the community with youth of all racial backgrounds. The Board considered, although controversial, the advertisement does not present a negative depiction of Indigenous people because of their Aboriginal race. The advertisement does depict a negative picture of youth in Alice Springs, primarily Indigenous youth, but this is attributed to a lack of services for young people in the community and a lack of appropriate action from law enforcement agencies. The Board determined that, in this instance, the advertisement did not depict any material that discriminated against or vilified any person or section of society on account of their race or ethnicity.

Discrimination on the ground of physical characteristics

Although not specifically included under section 2.1, the Bureau often receives complaints about depictions of people with particular physical characteristics, such as being obese or having a particular colour hair. However, the use of someone in an advertisement with particular features or physical characteristics does not of itself amount to discrimination or vilification of people with those characteristics or features (Origin Energy 0315/11).

Discrimination on the ground of disability

The Board considers negative portrayals of, or suggestions about, people with disabilities would generally breach the Code. This is not an area often complained about as advertisers

are generally careful to avoid such depictions or suggestions.

A play on words which included the term ‘environ-mental’ attracted complaints for suggesting that a mental illness was undesirable through use of the tag line ‘Why be environ-mental when you can be environ-normal?’ (Volkswagen– 0245/11).

However in this advertisement the Board considered that the advertisement depicts a far-fetched fictitious invention in a humorous manner to highlight the environmental aspects of the new Volkswagen Golf. The Board considered that the advertisement is over the top and features an unrealistic invention. The Board noted that the reference to environmental versus environ normal could be distasteful to some members of the community, however in the Board’s view the advertisement is clearly intended to be humorous, does not depict people with a mental illness and does not demean any sections of society.

Similarly, the depiction of a man who is short sighted being unable to determine which child is his at a sports carnival was considered to be a depiction of an amusing faux pas observed by friends and was not intended to be making fun of people who are visually impaired (Specsavers 0283/11).

Discrimination on the basis of religion

A controversial public debate attracted many complaints in 2011 on the basis that the advertisements were considered to be vilifying of the Christian religion.

The My Peace (0192/11) billboard campaigns contained statements about the beliefs of Islam which included reference

to the Islam faith’s consideration that Jesus is a prophet of Mohammed.

In this case the Board considered that a statement about the beliefs of a faith or religion may be offensive to people who do not hold those beliefs but that such a statement does not, of itself, discriminate against or vilify people who hold different beliefs.

Similarly, an advertisement in reply from Aussie Christians (0249/11) was determined not to be discriminatory to or vilifying of Muslims.

There are occasionally advertisements which make use of religious references or Icons to promote an unrelated product or service. In 2011 a depiction of Jesus surfing was complained about. In Sportsbet (0159/11) the advertisement depicts a Christ-like figure on a surfboard and the accompanying text reads “...it’ll take someone to walk on water to beat Slater.”

The Board considered that there was nothing negative in the depiction of Jesus surfing and that although the imagery of the advertisement could

be considered offensive to some people with strong Christian beliefs, in the Board’s view the overall tone of the advertisement is light-hearted. The Board considered the advertisement does not denigrate Christianity or Christians, and does not discriminate against Christ or Christians.

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.

The Board generally makes note of the important public health messages underlying the use of graphic images in government advertisements, agreeing that such messages justify impactful advertising.

The Board agreed that while a National Stroke Foundation (469/11) advertisement would be distressing to some viewers, particularly those who have been affected by a stroke either personally or through family or friends, the important public health message over rode the concerns raised about the confronting images presented.

Concerns about graphic images in a Motor Accident Commission (397/11) advertisement depicting the possible consequences of drink driving (repeated focus on a body lying in the street) were also over ruled by the Board. In this case the Board noted that the main purpose

of the advertisement was to educate the public on the consequences of driving. The Board agreed the images shown related directly to the message of the advertisement, although in some Board members’ view, they were close to the limit of what is acceptable in advertising.

The images and violence inherent in advertisements for the horror film genre and action computer games continues to be an issue of concern for the community. Under the Code however violent images in an advertisement can be acceptable if the advertised product is a violent movie, program or computer game.

The Board considered that the level of violence shown in an advertisement for a movie *Paranormal Activity 3* (413/11) was justifiable in the context of the product being advertised. The Board considered that while some members of the community may find movies such as *Paranormal Activity 3* to be frightening, in the Board’s view the content of the advertisement is suspenseful rather than violent.

During 2011 there were a number of complaints about advertisements which included images of guns. In considering an advertisement for a computer game (255/11), the Board considered that the image of a person holding a gun is relevant to the game and that images of guns are not of themselves prohibited. It considered that in this advertisement the gun is not pointed at a person and that there is more a suggestion of violence rather than an actual depiction.

Other issues raised by the community include the depiction of sexualised and domestic violence. The Board

has a strict view about suggestions of sexualised violence – with any suggestion of sexualised violence resulting in an advertisement being banned.

In an underwear advertisement (Sly Underwear – 0005/11) the Board noted that there is an image of a gun on the man’s shorts and considered that this image, along with the use of chains on the women, suggested a level of violence towards the woman. The Board considered that this suggestion of violence was not justifiable in the context of the product being advertised.

In another advertisement (Rivers – 0098/11) the Board considered that the suggestion of a dead woman under a lounge was likely to be seen as a suggestion of violence against a woman. The Board also considered it possible that the mildly sexually suggestive image of the woman could also lead some readers to a suggestion of sexualised violence – which is not acceptable. This case resulted in the Board’s decision being the subject of independent review and is discussed further in this report.

While the Board considers domestic violence to be a serious issue, the Board agreed the portrayal of a man tapping his wife’s leg which is in a cast (RACQ – 0303/11) was not a portrayal of domestic violence. The Board noted that when the man taps his wife’s leg he does so in a manner which is not violent or aggressive and considered that most members of the community would interpret the advertisement as portraying marital affection and an amusing lack of awareness on the part of the husband.

Similarly, the Board considered that most members of the community would interpret a tap on the cheek in an advertisement from HBF (0161/11) as a playful, brotherly action. The Board considered that there was no suggestion or depiction of violence and no suggestion or condoning of domestic violence or violence against a person.

Depictions of unreal, cartoon and far-fetched situations which include either violent connotations or scenes have been subject to Board considerations.

In one case the Board noted that while hostage situations are of themselves not an issue to laugh at or make fun of, an advertisement depicting a hostage situation (M & Ms 322/11) which is clearly unreal, in that two of the hostages are cartoon style chocolates, was unlikely to cause offence among most members of the community.

In another case (Sportsbet 404/11), the Board noted that the depiction of a man's cryogenically frozen finger falling off was clearly presented as far-fetched and considered that most members of the community would find the advertisement humorous and not violent.

Realistic actions which break the law or can endanger the community are frowned upon by the Board. In one such case (Liquor Alliance 0118/11), the vandalism of street signs, although intended to be humorous, was found to breach the Code. The Board considered that the advertisement endorsed the defacing of public signage, had no relevance to the product being advertised and, if copied, could potentially endanger members of the community.

Sex, sexuality and nudity (Section 2.3, AANA Code of Ethics)

The portrayal of sex, sexuality and nudity continued to be the dominant issue raised by complainants. Although showing a marked decrease from 45.2 per cent in 2010, this issue accounted for 32 per cent of complaints in 2011.

Portrayal of sex, sexuality and nudity
Sexualised images of (primarily) women attract many complaints each year. Generally, an advertisement which unnecessarily focuses on women's breasts or has a highly sexualised pose will attract complaint and the Board must give thorough consideration of whether the image is sensitive to the relevant audience.

In Jersey Shore (0210/11) the Board considered the outdoor advertisement which comprised an image of a woman's torso with, in the Board's view, an unavoidable focus for the viewing audience of the woman's breasts. Overall the Board considered that the close up image of the woman's breasts, with her top being undone, did amount to an advertisement that does not treat sex, sexuality and nudity with sensitivity to the relevant broad audience particularly considering that the advertisement is readily seen by children.

Nudity

Nudity is often a feature of advertisements for body grooming products. In such instances the key issue for the Board is whether or not the people who are nude (or scantily clad) appear in sexualised positions. Attractive, but not sexually suggestive, images of people in the nude have been determined

to be suitability 'sensitive' to the relevant audience and not in breach of the Code (Shaver Shop – 0467/11 and Garnier – 0324/11).

Similarly, lingerie and swimwear advertisements will usually feature women and men wearing the items advertised. Again provided that the focus of the advertisement is on the product and the posing of the models is not overtly sexualised (as opposed to attractive), the Board will usually consider that the image of a person wearing swimwear or lingerie is not a breach of the Code (David Jones – 0481/11, Bonds – 0326/11, and Myer – 0080/11).

Fashion advertising

Complaints in 2011 concerned a number of advertisements for clothing which featured images of women wearing no tops. In considering whether or not such advertisements are appropriate the Board believes that it is reasonable for an advertiser to feature a particular product in its advertising and that the depiction of a woman (or man) without a top is not of itself a depiction of nudity or sex that would breach the Code. The extent of nudity, whether breasts or genitals are visible or suggested, and the extent to which poses are sexualised all affect the Board's decision on whether or not the advertisement treats sex, sexuality or nudity with sensitivity to the relevant audience.

In Bardot Clothing 0069/11, the Board considered complaints that an advertisement for jeans which depicts a woman lying down with no shirt on is inappropriate and unnecessarily sexualised. The Board noted that the

image is on the back of a bus and is able to be seen by a broad audience.

The Board considered that while some members of the community may find this advertisement to be inappropriate, the images of a model posing wearing the product was relevant to the product.

The Board considered that while the ad does depict some nakedness, the nudity does not expose any private areas. The Board noted that the model's breasts are not visible and her pose is only mildly sexually suggestive.

Although available to a broad audience, the Board determined that the advertisement was not sexualised, did not contain inappropriate nudity and did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.

The placement and target audience of the product can also affect the Board's decision. A Supre campaign during 2011 attracted considerable controversy – with the same image being used in a variety of media. In this campaign the image of concern was that of a young woman wearing a pair of 'jeggings' with no top on.

The image used on the internet (0184/11) and on television (0183/11) where the young woman was depicted wearing a top as well as the jeggings, were considered acceptable.

However the image of the topless young woman on a bus (0145/11) and on store signage (0152/11) was considered not to 'treat sex, sexuality and nudity

with sensitivity to the relevant broad audience.'

The Board considered in particular that the media in which the advertisement appears affects the audience which views the advertisement and therefore affects the Board's decision on whether or not the advertisement treats the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

In this particular case the Board considered that this image of a young woman with no top and a significant part of her breasts exposed was sexualised. The Board noted that the Supre brand is attractive to and very popular with teenage and pre-teen girls and that this advertisement would be attractive to that age group.

The minority of the Board considered that, this advertisement would be seen in a fashion context – by being in the store window, with a price on the poster and extra close up images of features of the jeggings – and that the sexualised image is therefore treated appropriately to the relevant audience.

However, the majority of the Board considered that, in the context of an advertisement for a product which is very attractive to young girls, this image of a young woman with no top and breasts partially exposed does not treat sex, sexuality and nudity with sensitivity to the relevant broad audience.

Depictions of young looking people in sexualised context

In 2011 the fact that advertisers steer away from including images of people who look underage in advertisements

with a sexual context was demonstrated by very few complaints on this issue.

Two particular advertisements however were considered under this issue.

In Coty Oh Lola (– 0453/11) complainants raised concern that an image of a well know actress was inappropriate as she was posed with a large perfume bottle in a sexualised manner.

The Board considered however that the image of Ms Fanning, who is of age, was an image that showed the actress in a confident manner consistent with her persona and is not an image that sexualises young women.

The Board considered that the young woman is sitting on the ground in a position that is normal and appropriate for a person wearing a short dress. The Board noted that the young woman is fully clothed and is wearing a pretty dress which is not sexually suggestive. The Board agreed that it would be possible to have a sexualised interpretation of the positioning of the perfume bottle, but in the Board's view, this is not the interpretation that most people would have. In the Board's view any sexual suggestion is mild and subtle and the image of the famous actor provides a context that is not suggestive of sexualising children.

In the Board's view, the advertisement does not sexualise a child. The Board considered that a target audience of girls and young women would be unlikely to find a reference to Lolita in the advertisement and would be more likely to see the image as just a picture of Dakota Fanning. The Board considered

the advertisement presents an image which treats mild sexual connotation with sensitivity to the broad audience likely to see the advertisement and is not inappropriate in the Girlfriend magazine.

The Board determined that the advertisement treated sex, sexuality and nudity with sensitivity to the relevant audience and does not breach Section 2.3 of the Code.

However an advertisement for Roger David (0284/11) was determined to breach this provision of the Code on the basis that it presented a very young looking girl in a manner suggestive of sexualised violence in an advertisement directed to men.

The Board considered that the overall impression of the part of the advertising material which depicted the girl was that of a girl presented as a sexual object – due to a combination of factors in particular the age of the girl, the text ‘new love club’ and the tattoo of the word ‘slave’ on her arm.

The Board also considered that the image of the girl could be seen to be suggestive of the girl being held against her will – with the ‘slave’ reference on her arm and the depiction of her with an object filling her mouth which, in the Board’s view, evoked a sense of the girl being ‘gagged’.

The Board considered that the advertisement inappropriately depicted a young girl in a sexualised manner and that this depiction was not a treatment of sexuality in a manner sensitive to the relevant, in this case adult male, audience. On this basis the Board

determined that the advertisement breached section 2.3 of the Code.’

Advertising sex related products and services

There are always complaints about whether or not particular types of products or services should be advertised in a public space. In particular complaints relating to advertising of condoms, sex services and sex shops, and sexual health messages.

The Board does not consider whether such products and services should be advertised as they are legally able to advertise. The Board only considers whether the products are advertised in accordance with the Code. Most complaints therefore raise the issue of whether or not the advertisement – which sells a sex related product or topic – treats the issue of sex with sensitivity to the relevant audience.

Most advertisements for these types of products and services are considered appropriate (Sex products – Ansell 0408/11, Sex product store – Aphrodite’s Toy Box 0381/11, Safe sex messages – Mawarnkarra Health Service 0383/11 and Rip n Roll 0176/11).

Some advertisements however are considered by the Board to be inappropriate for, in particular, a broad outside audience with a number of small advertisers breaching this provision of the Code.

In Dreams Gentleman’s Club 0134/11 (an advertisement on a large truck), the Board noted the image of the woman was large and was not obscured by any images. Referring to an earlier advertisement from this advertiser the Board also:

‘...considered that community standards can and do change over time and that many people in the community find such images less acceptable than previously. In particular where such advertisements take the form of outdoor advertising where they are able to be seen by anyone in the community including young people.’

The Board considered that the pose of the woman, in particular the suggestion that she is taking down her pants, is strongly sexualised. The Board determined that the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience. The Board determined that the advertisement breached Section 2.3 of the Code and upheld the complaints.

Similarly highly sexualised images accompanied by sexually suggestive text will breach the Code where such advertisement are available to a broad audience (Grosvenor – 0396/11) and Good Vibrations 0299/11)

Humour and double entendres

In the right context sexual references or double entendres are considered acceptable by the Board. The Australian Pork campaign (0325/11) refers to various women ‘porking’ their partners.

Complainants raised concern about the sexual reference in this campaign, however in the Board’s view the sexual reference is light-hearted and unlikely to be understood by young people.

Similarly, reference to ‘cutting the neighbours grass’ (Vicia 0018/11), and to ‘premature perspiration’ (Lynx 0077/11) have been considered to be suitably mild to meet the requirements of the Code.

Language (Section 2.5, AANA Code of Ethics)

In 2011 the issue of language saw a rise to 6.06 per cent of all complaints from 4.85 per cent in 2010, but did not reach the highest recorded complaints figure against language – 7.55 per cent in 2006.

The Code requires that advertisements contain appropriate language and not include strong or obscene language.

In order to breach the Code it is likely that it is necessary that a particular word is actually stated – not just inferred.

Plays on words or innuendo such as ‘truck me’ and ‘truckin good news’ (Hyundai truck centre 434\11) and a range of words in Essential Beauty (0042/11) (which had an M rating for television) are generally considered to be acceptable.

Part of the rationale for allowing such plays on words is that the actual word is not stated. Although the use of these terms may convey a connotation of a profanity it can be acceptable where the innuendo would not be evident to young children.

Most importantly, in relation to words which are inferred as well as actually used, is that any words which are suggested should not be aggressive, threatening or demeaning (0434/11) and in some cases strong inference or use of a lot of such words would result in a television advertisement in particular being given a stricter classification eg: an M classification (0042/11).

Pictures in place of strong language were a component of a Motor Accident Commission SA (0335/11) campaign in

2011. In this campaign images of a screw and a rooster resulted in complaints as the images were used in place of words which suggested strong language. In these cases the Board noted the target audience and accepted that the language used in the advertisement was chosen as it reflects the language of the target audience and was more likely to convey the intended message effectively. The Board accepted that the word ‘screwed’ could be considered offensive by some members of the community however the Board considered that the word was clearly intended to refer to the inconvenience suffered if a person loses their licence, rather than sex. The Board considered that the context in which the word is used is not aggressive, threatening or demeaning, that the language is not strong or obscene and that the use of the word ‘screwed’ is not inappropriate in this instance.

Advertisers should take care however in using children to convey strong language. In Motor Accident Commission SA (0013/11) the Board considered the use of child’s voiceover gives one excuse for not wearing a seatbelt as, ‘you couldn’t be f***ed’.

The Board noted the advertiser’s response that the child was asked to read the word “fire truck” and that they beeped out the middle of the word to increase the impact on the listener and shock them in to taking in the message of the advertisement.

The Board noted that this advertisement is played on the radio and therefore is available to a wide audience. The Board noted that although the word is bleeped out, the inference to a strong swear word is clear. The Board considered that most members of the community would consider a child saying ‘fucked’ was not appropriate. The Board

considered that the inferred word as well as the child’s voice reading it makes this inappropriate in the circumstances.

Language must be appropriate for the advertisement and an advertisement for a function in Hobart which used the phrase “Slut Walk. Hobart.” (0450/11) was determined to be an appropriate use of the word ‘slut’ in the context. The Board accepted that the word ‘slut’ would be considered offensive by some members of the community and its use on a poster does make it visible to a broad audience including children. The Board considered however that the phrase “Slut Walk” was clearly intended to refer to the campaign and to raise community awareness of the group referred to in the poster. The Board noted the important message of the advertisement and considered that the advertisement is suitable for display on public posters.

The Board considered that the context in which the term is used is not aggressive, threatening or demeaning, that the language is not strong or obscene and that the use of the word ‘slut’ is not inappropriate in this instance. ‘

Other words considered to be acceptable during 2011 include ‘shit load’ (Game Australia 0389/11), and shit (Sportsbet 0086/11),

There was a spate of advertisements using the word ‘fuck’ or variations during 2011. The Board’s view is

that the word 'fuck' is a word that is still considered strong if not obscene by the broader community and is not appropriate for use in advertisements. In the Board's view this is the case even if the word is included in the name of, for example, a band and that some variations of the word, which still strongly suggest the complete word, are also unacceptable. Upheld cases included:

- 'f*ck me' (0407/11)
- 'fuck the reaper' (0362/11)
- 'fuck gluten' (0238/11)

Complaints were also upheld in Dangerfield (0318/11) which features text on a poster which suggests the use of the word "fuck" where the "u" has been replaced with an image of a hand with the middle finger extended – a visual image used in place of one letter of the 'f' word.

Considered acceptable was the promotion of a performance by a band named "Holy Fuck" (0367/11) where the Board considered that the location of the advertisement within the Courier Mail meant it would be viewed by a mature audience and that in the context of promoting a music and artistic festival, the use of the factual title of the band in this instance was relatively discrete. The Board considered that the name of the band was not inappropriately emphasised or presented in a way to be particularly attractive to children.

A promotion for the same band was however upheld (0032/11) where the use of bold bright lettering of the band's name in the advertisement drew the eye to the F word. The Board considered that the initial visual impact

of the advertisement is the F word and that the details about the band's gig are printed in much smaller lettering. The Board noted that this advertisement was seen on a pole in a nature strip. The Board considered that the location of the advertisement meant it would be available to a wide audience and that in the context of an outdoor location the prominent use of such language is inappropriate.

Health and safety (Section 2.6, AANA Code of Ethics)

In 2011 the proportion of complaints about health and safety issues increased markedly from 9.62 per cent in 2010 to 13.59 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.' There are no defined 'community standards' under this section – rather it is the Board's role to present its views on what an appropriate community standard is considered to be in relation to a particular issue.

Depictions of dangerous behavior in a realistic manner can be of concern under this part of the Code. In particular, images of people riding bicycles without helmets or driving without seat belts are the type of images that will always be considered by the Board to be contrary to community standards on safety.

During 2011 images of people hiding in appliances have also been considered to breach community safety standards – In 406/11 (Harvey Norman) a woman hiding in a freezer and in 228/11 (Diesel) a couple making out in a commercial dryer were both determined to be images contrary to the code – complaints were upheld and the advertisements were no longer able to be broadcast. Safety around electrical appliances and electricity is another important issue for the Board. In Australian Gas and Solar (295/11) the image of a baby touching a heater was determined to breach section 2.6 as

was dangerous use of Christmas lights (481/11). An advertisement would need to be very exaggerated and unrealistic in order for the Board to find that a blatant image of unsafe behavior is acceptable.

The depiction of a man base jumping Holden (0076/11) was determined to be acceptable on the basis that: The Board noted the advertiser's response that the advertisement featured footage of a legally sanctioned BASE jumping event in Kuala Lumpur and that subject to permission being provided or relevant approvals being sought, BASE jumping is a legal activity in Australia. The Board noted that the man performing the base jump in the advertisement is wearing the appropriate clothing and safety equipment to perform the jump. The Board considered it would be preferable for the advertisement to have a short disclaimer or statement about the activity. The Board considered that this depiction was unlikely to encourage people to undertake such activity on their own and did not therefore depict material contrary to prevailing community standards on safety. Despite the Board consistently determining that glamourised images of people smoking also breach section 2.6, complaints were upheld for two advertisements during 2011 including such depictions. Complaints about fashion advertisements for Scotch and Soda (131/11) and One Teaspoon (521/10) were upheld.

References to unacceptable behaviour on social media were also considered in a number of cases this year. Although the Board determined that a number

of advertisements did not condone or amount to bullying, the Board found that the endorsement or light hearted treatment of behaviour that is considered socially unacceptable and, in particular for children and teens, is an issue to which there is a lot of public education directed, and is contrary to prevailing community standards on safety.

In one case (Vodafone 334/11) the Board considered the experience of 'cyber-bullying' was a real and current concern in Australian society and messages about bullying should not be diluted or undermined. The Board considered that there is significant social concern around appropriate online behaviour and considerable resources directed to teaching children and young adults about appropriate behaviour and how to avoid cyber bullying. The Board considered that in this case the closing caption of the advertisement ...'power to you, Vodafone'... condones the behaviour depicted. In the Board's view it was possible that younger people would see the advertisement as condoning or at least giving some legitimacy to the behaviour of posting images without consent and that this is a message that the community views as unacceptable.

In an advertisement (Betstar – 0418/11) which referred to stalking on Facebook, the Board noted a number of references to stalking, a mildly sexualised reference to being able to do a variety of things, without having your pants on and a reference to stalking being a victimless crime. The Board considered that while the advertisement was intended to be humorous it noted with concern that stalking is a crime and that it is not a crime that is victimless.

On the other hand in another advertisement which mentioned Facebook stalking the Board considered that although some people would find the term ‘stalking on Facebook’ to be unpleasant and/or offensive, the intended audience of the advertisement would clearly understand the meaning of the advertisement, and to those who do not readily understand the contemporary meaning of the term the phrase in itself is not inappropriate in the context of the advertisement.

Advertisements about social issues such as abortion, euthanasia, religious views and any other social issues are able to be broadcast or published in Australia. It is not the Board’s view to judge whether the messages or points of view expressed in such an advertisement is true. However the Board does have a role in determining whether the overall content and impact of the advertisement meets the requirements of the Codes. During 2011 the Board considered a number of advertisements which made political statements about abortion.

While not having a view on whether or not abortion is appropriate, the Board noted that pregnancy termination is a legal procedure. In two advertisements from the same advertiser (0107/11 and 0108/11) the Board considered that one of these ads treated the issue in a manner that was appropriate, while the other breached the Code on health and safety considerations.

In relation to the advertisement which declared “one dead one wounded” (0107/11) the Board noted that the subject of abortion is

emotive and that this advertisement intentionally presented a view of abortion in a manner that is controversial.

The Board considered that the advertisement’s suggestion of “one dead one wounded” is a suggestion that is likely to raise questions or concerns for some members of the audience about the safety of abortion. The majority of the Board considered that this suggestion is likely to create misapprehension around a medical procedure which is legally allowed to be performed in Australia and that such a suggestion is contrary to prevailing community standards on health and safety. The Board determined that the advertisement did depict material contrary to prevailing community standards on health and safety.

In the other case (0108/11) the Board considered that the text of the advertisement, “Abortion. Your taxes at work in the community” is open to interpretation regarding whether it is a positive or negative message that taxes contribute towards the cost of abortions, and that a political message about how taxes are spent does not of itself breach the Code.

“Other” issues

In the interests of the self-regulation system and so that complainants are not left without an entity to consider their complaints, matters raised that are not strictly within Section 2, but are unable to be referred to any other regulatory or self-regulatory body, can be considered by the Board.

These other issues may include complaints about the content of an advertisement which include matters raised about social values, common decency and tastelessness.

Social values can include matters such as littering, lying, stealing, burping and similar other bodily actions. Tastelessness includes concerns raised about reference to bodily and animal excretions, feminine hygiene matters and other distasteful images.

During 2011, two advertisements attracted complaints on the basis of tasteless images or suggestions.

In Brownes Foods (0417/11), the Board noted that the advertisement shows a man passing wind and attempting to light it whilst surrounded by fellow party goers. While the Board considered whether the behaviour depicted was dangerous or antisocial the Board ultimately dismissed the complaint on the basis that as the man is presented as “a dipstick” it is less likely that people would want to emulate him. There were no other grounds in the Code on which to uphold the complaint.

Similarly a campaign for Libra pads (0302/11) where a man uses his girlfriend’s pads as body armour

attracted a number of complaints. Most complaints were concerned that it is tasteless to show a man sticking sanitary pads over his body and, in one depiction, chewing one.

The Board noted that some members of the community would prefer that the product should not be advertised on television, however noted that the product is legally available to be advertised on television and the Board's role is only to determine whether the advertisement complies in its content with the AANA Code of Ethics.

In this case the Board considered that the depiction in this advertisement was consistent with young people being taught that men's and women's reproductive systems are a normal part of life. The Board agreed that some members of the community would find the advertisement tasteless but considered that most members of the community would find the advertisement humorous. The Board noted that the issue of taste is not something which falls under the provisions of the Code and considered that whilst the complainant finds the advertisement rude, in the Board's view there is nothing in the advertisement which would breach any provisions of the Code.

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 *Australian Food and Grocery Council* Initiative – AFGC RCMI respectively.

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 Initiatives 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.'

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 (i) healthier choices...and (ii) physical activity.

For Quick service restaurants the Board considered complaints against 13 cases. No breaches of the Initiative were found.

Key issues to be drawn from cases considered by the Board during 2011 are:

- The QSR Initiative only applies where the advertisement itself is, considering the theme, visuals and language used, directed primarily to children (0046/11, 0052/11, 0081/11, 0084/11, 0091/11, 0104/11, 0211/11)
- A microsite which did not depict the product and had only minimal mentions of the advertiser was determined not to be advertising a product (0103/11)
- An advertisement directed to children which only depicted healthier choice products was determined to meet the requirements of the QSR Initiative (0140/11)
- Factual information on a corporate website about the Kids Club of a QSR member was determined to not be directed primarily to children (0282/11)
- An outdoor advertisement for a product was determined not to be primarily directed to children (0338/11).

The Australian Food and Grocery Council Initiative

The AFGC Initiative obliges signatories to direct 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: 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 AFGC Initiative therefore applies to advertisements 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 Australian 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 six advertisements. Breaches of the Initiative were found in four 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 (0136/11 – for broadcast in Bee Movie and Ice Age).
- Where an advertisement is primarily directed to children and is for a healthier choice product, then the advertisement must also comply with the advertising messaging requirement. This means that the advertisement 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.’
Depiction of the healthier choice product does not, of itself, meet the requirement of the Initiative and there is a positive obligation for the advertisement to encourage physical activity (0454/11).

- The RCMI Initiative applies to placement of the advertisement and then to advertisements which are primarily directed to children. Assuming media placements is appropriate, not every advertisement with cartoon characters, bright colours and catchy music will be considered to be directed primarily to child (0229/11, 0492/11, 0502/11).
- The Initiative does not apply to billboards (0045/11) or advertiser own websites or micro sites (0280/11, 0281/11).

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 considered under the Food Code during 2011 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 (0281/11, 0369/11).
- An advertisement for a competition which involves purchase of a confectionary product does not of itself undermine healthy dietary choices (0281/11).
- Advertising a menu on a corporate website is not, of itself, something which is contrary to prevailing community standards (0285/11).
- Advertising or promoting on a corporate website or on television the food available at a restaurant or available at a supermarket is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles (0285/11, 0286/11, 0280/11).

- Promotions which may require multiple purchases or which give away unlimited quantities of a product must be advertised with care to avoid suggestions that the advertisement promotes excess consumption (0437/11).

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 2011 a number of complaints concerned the truthfulness of statements made in advertisements for food products:

- Whether or not products were 'hormone free', did not have the nutritional benefits implied or were 'fresh' (0019/11, 0083/11, 0142/11, 0174/11, 0175/11, 0279/11, 0356/11, 0368/11, 0372/11, 0436/11, 0440/11).
- That the food depicted in the advertisement was not an accurate depiction of the product available at point of sale (due to size or composition) (0048/11, 0053/11, 0054/11, 0124/11, 0200/11, 0338/11, 0449/11).
- Of particular interest in these cases is the importance of ensuring that a claim on a corporate website that all products available have a particular characteristic (eg: low GI) must apply to all products on the website (0142/11).

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.

There were very few advertisements considered under the Advertising to Children Code during 2011. Of interest from Board decisions regarding advertising to children is:

- Advertisements must take care to accurately represent the advertised product to children (0394/11).
- An advertisement for toys is not necessarily 'directed primarily to children' (0256/11).
- 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).

There were no advertisements directed primarily to children which raised issues regarding sexualisation of children.

Motor Vehicles

(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.

During 2011 there were complaints about 16 car advertisements which raised issues related to the FCAI Code.

As well as complaints under the FCAI code, complaints were also made that 13 motor vehicle advertisements contained content that may breach the broad provisions of the AANA Code of Ethics.

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 2011, complaints were upheld in relation to one case and dismissed in relation to 15 separate cases.

In 0328/11 Volvo the complaint was upheld as the advertisement depicted a vehicle coming to a halt in a controlled

180 degree turn. This was determined to be a depiction of unsafe driving as it is a type of driving that would breach the law.

Other complaints related to:

- References to vehicles as 'naughty' (0030/11).
- Reference to features of a car including supercharged engines and relevant power output (0386/11).
- Showing a person reversing a car into a garage while two young children watch from the side of the garage (0143/11).
- People singing in a vehicle being a distraction to the driver (0186/11, 0330/11).
- Images of 4x4 vehicles being driven off road (0223/11, 0235/11, 0412/11, 0456/11).

Code of Ethics issues

Complaints were also made that 13 advertisements raised issues under the Codes of Ethics. While 12 were dismissed, one (0350/11) was upheld on the basis that the sound of a woman hitting a man contravened the prohibition on violence in the Code of Ethics.

Environmental Claims in Advertising and Marketing Code

The ASB began administering complaints under this Code on 1 January 2010. During 2011 the Board considered five cases under the Environmental Code.

Complaints were dismissed about each of the advertisements. The five cases were from three advertisers and related to a range of issues.

Several of the complaints raised concerns that the advertisements made environmental claims which were unfounded, however when considered by the Board, the advertisements were found not to make any specific or strongly implied environmental claims about the product. In *Jemena* (0190/11) a reference to '*Natural Gas. Natural choice.*' was considered not to be an environmental claim. Similarly two advertisements for Santos (a coal seam gas company) 0213/11 and 0214/11 were considered to be promotion for the relationships Santos has with landowners and communities and not to make any environmental claim.

Two matters substantively considered under the Environmental Code were:

Sir Walter Premium Lawn Turf – (0109/11) TV

The complaint about this advertisement concerned the statement that: 'Your average Sir Walter lawn absorbs more carbon and generates more oxygen than the world's largest tree' and a reference to 'lowering your home's carbon footprint'.

The Board considered that this advertisement contains suggestions that this product positively influences the environment and was required to consider whether the advertisement is misleading or deceptive in its description of its features or in a suggestion that such features have an environmentally positive effect (Part 1, clause i).

The Board noted significant information provided from the advertiser to support the claims made about the environmental benefit of the advertised product and determined that the advertisement meets the requirements of Part 1, clause iv of the Environmental Code.

The Board also noted Part 2 section iii of the Code which requires that "Environmental claims must...in comparative advertisements, be relevant and balanced either about the product/service advertised or class of products, with which it is compared."

The Board noted that the advertisement compares the carbon absorption and oxygen generation of trees and the advertised product. The Board considered that the particular claim met the requirement of the Code as it was a clearly understood comparison. Similarly, the Board noted that the advertiser has provided a range of material to support the claims made in the advertisement, and presumably would provide the same material to members of the public were it requested and therefore met the requirements of section i of Part 3.

Overall the Board considered that the advertisement met the requirements of the Environmental Claims Code.

Jemena – (0427/11) – Print

In this case the Board noted the complainant's concerns that the advertisement is misleading in its claims that Natural Gas hot water is better for the environment than older electric storage heaters when, in the complainant's view, natural gas drilling and production is not clean or environmentally friendly.

The Board noted that the advertisement features an image of a woman showering and that the accompanying text says that modern Natural Gas heaters are 'more efficient, cheaper to run and are better for the environment than electric storage heaters'.

The Board considered section 2(iii) of the Environmental Code and considered that the comparison in the advertisement to the efficiency and costs of Natural Gas is, to a reasonable consumer, a relevant and balanced one. The Board determined that the advertisement did not breach section 2(iii) of the Environment Code.

The Board also noted the complainant's concerns that the advertisement claims that natural gas drilling and production is clean and environmentally friendly. The Board considered that the advertisement makes no such claims or any references to the environmental effects or impact of gas drilling.

Board membership 2011

The contribution of Board members is at the heart of Australia's advertising self regulation system.

During 2011, nine new members were appointed to the Advertising Standards Board, with the first official meeting of the new Board held in mid-September.

The new Board members are Giuliana Baggoley, Maria Cosmidis, Karen Haynes, Nathan Hindmarsh, Jack Manning-Bancroft, Nigel Milan AM, Jaime Phillips, Peter Phillips and Peter Williams.

The Board currently has 20 members, with membership of the Board on a fixed term basis. New appointments are staggered to ensure the Board retains a mix of corporate knowledge while introducing people with a mix of experience, views and skills.

The Advertising Standards Bureau's previous appointment of new members to the Board was in 2008.

Among retiring Board members were inaugural members, Tom Keneally and Joanna Cohen, along with the Hon. John Brown who was appointed in 1998. All retiring Board members will be remembered for their commitment and contribution to upholding community standards, as well as their sense of humour.



The new look Board met for the first time in mid-September, with 16 of the 20 members attending the meeting (rear from left) Nathan Hindmarsh, Craig White, Jaime Phillips, Jo Tiddy, JaneMaree Maher, Maria Cosmidis, Nigel Milan, Peter Phillips, Jack Manning-Bancroft, (front from left) Graham Rixon, Sophie Kowald, Karen Haynes, John Lee, Paula McNamara and Giuliana Baggoley.



The longest serving members of the Board who retired in August, (left) Joanna Cohen 1997-2011, the Hon John Brown 1998-2011 and Tom Keneally 1997-2011 (right) with Ad Standards CEO, Fiona Jolly.

Retiring members as at August 2011

Dr Tanveer Ahmed

Appointed August 2006

Dr Tanveer Ahmed is a psychiatrist and opinion columnist for the Sydney Morning Herald. A former SBS television journalist he is also a Governor of the Smith Family.

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's awards include 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.

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.

Ann Drummond

Appointed August 2006

Ann Drummond, born in Scotland, raised in Canada and moved to Australia in 1975, has a degree in both theology and early childhood education, is a retired Uniting Church minister and has extensive experience in the fields of child education and children's services.

Rachel Grant

Appointed August 2008

Rachel Grant grew up in Ballina, northern New South Wales, and now lives in Ipswich with her husband and two young sons. She currently works as a freelance public relations consultant.

Thomas Keneally AO

Inaugural Member appointed 1997

Thomas Keneally is a best-selling, multi award-winning author, playwright and scriptwriter. Tom has written more than 20 novels including *The Chant of Jimmy Blacksmith* and *Schindler's Ark*. He was the inaugural chairman of the Australian Republican Movement and is now a director of the organisation. He is married with two children and several grandchildren, and is widely-known as an obsessive rugby league fan.

Paul McCarthy

Appointed August 2006

Paul McCarthy grew up in Queensland before moving to Sydney. 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.

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

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

Current Board members



Giuliana Baggoley
Appointed August 2011

Giuliana Baggoley is an optometrist in clinical practice and is also employed as clinical policy adviser for Optometrists Association Australia.

Giuliana has previously served on the Optometrist Association of Australia Boards and she is currently involved with her local P&C Association.

The majority of her professional life has been spent in rural and regional Australia and she now lives in Canberra where she is married with two young children.

Giuliana's interests include health, and following media and the arts.

Giuliana thrives on community involvement. "I am interested in people's stories and I value how different experiences and lifestyles enrich a community."



Jack Manning Bancroft
Appointed August 2011

At 19 years of age and in the third year of his media and communications degree, Jack founded the Australian Indigenous Mentoring Experience (AIME), partnering 25 Indigenous and non-Indigenous university student volunteer mentors with 25 Indigenous students from Alexandria Park Community School in a pilot program.

Jack has since become the CEO of AIME and in 2011 the program now operates out of 10 universities across New South Wales, Queensland and Victoria. Heading up a group of 35 full-time staff, Jack and the team are currently working with close to 1000 university student volunteers who mentored over 1000 Indigenous high school students in 2011. The program is currently increasing the Indigenous rates of school completion and university admission across the East Coast of Australia – to the point where some of the sites are already exceeding local and national averages.

At 26 years of age Jack's vision is to see Indigenous high school students finishing school and entering universities at the same rate as their fellow Australians.

Jack was the 2010 NSW Young Australian of The Year, and has recently been awarded the Young People's Australian Human Rights Medal. Jack was also the University of Sydney's 2010 Young Alumni of the Year.



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*.

Sibylla is married and has a son who was born in 2011.



Maria Cosmidis

Appointed August 2011

Maria Cosmidis is currently employed by the AFL as a Multicultural Programs Manager, and has a long history of working in the field of multicultural affairs, being the current Chairperson of the Metro Migrant Resource Centre and sitting on that board for over 10 years.

Maria is currently undertaking her Masters of Management as part of a scholarship with the Australian Sports Commission's "Sports Leadership Grants and Scholarships for Women". She is also a member of the "Next Generation of Corporate Leaders" program initiated by Women on Boards and UBS Investment Bank.

She is one of the producers of a movie review show on a local Sydney radio station and enjoys heated debate amongst co-reviewers on the latest film releases.

A passionate sport participant and fan, Maria enjoys watching and playing sport and spending time with her young daughter. Being of Greek heritage, Maria and her family travel to Greece regularly.



Barbara David

Appointed August 2008

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

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

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



Khoa Do

Appointed August 2006

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

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

Khoa has also worked as a volunteer with Open Family Australia at Cabramatta in Sydney, assisting at-risk youths. He was awarded Bankstown City's Young Citizen of the Year Award in 2002. Khoa was named Young Australian of the Year in 2005.



Karen Haynes

Appointed August 2011

Karen is from Brisbane and since 2008 she has been a Queensland Baptist Pastor, ministering at North-East Baptist Church in Nundah. Her ministry primarily focuses on teenagers and young adults. She also works for Australian Baptist's Cross-Cultural Agency, Global Interaction.

Karen's current role includes leading a team of people who provide a worship service, various programs and individual care to people aged 11 to 30.

Karen has worked with young people and their families since she was teenager. Between 2005-2008, Karen was a Youth Leader with a Baptist Church, held administration and director roles on a Scripture Union's camp, and was a member of two chaplaincy committees and was treasurer of the Malyon College Student Association and Student Representative to the Malyon College Council. She currently chairs a Chaplaincy Committee.

In 2010 Karen took on the role of Group Facilitator at the Queensland Student Leadership Forum on Faith and Values and is currently a Committee Member of a finance sub-committee of Queensland Baptists.



Nathan Hindmarsh

Appointed August 2011

Nathan Hindmarsh is considered one of Australian rugby league's great forwards. He captains the Parramatta Eels in the National Rugby League and has played his entire career to date at the Eels. In 2010 he became the most-capped Eel in the history of the Club, having played more than 265 games for Parramatta.

Nathan is also a New South Wales State of Origin and Australian international representative second-row forward. He is the first player to make 10,000 tackles in the NRL and is current co-holder of the world record for the most tackles made in a single game, making 75 tackles against the Melbourne Storm in round 23 of the 2007 season.

Nathan five times, consecutively, received the Provan Summons award (most popular player in rugby league) and has also been named 'Women's favourite Son' at the annual Women in League awards for the past three years.

He was also the 2009 recipient of the Ken Stephens medal for outstanding services to charity. His dedication to community programs such as Can Assist, The Children's Hospital at Westmead, Hope Rwanda, The Nathan Hindmarsh Cup and his ongoing work with numerous One Community programs secured him the medal. Nathan grew up in country New South Wales. He is married to Bonnie and they have three young boys – Archie, Buster and Rowdy.



Sophie Kowald

Appointed August 2006

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

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

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

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



John Lee

Appointed August 2006

John Lee is Chief Executive of the Tourism & Transport Forum (TTF) the peak body for the tourism, transport and aviation sectors. John's career to date has spanned a range of industries, including public transport, major events and tourism.

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.

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

Associate Professor 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. She teaches in the areas of media and popular culture, and gender, culture 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.



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.'



Nigel Milan, AM

Appointed August 2011

Most of Nigel's career has been in television and broadcasting, in both the public and private sectors, in Australia and New Zealand. He has also held numerous non-executive directorships in not for profit organisations. He was a member of the board of the Fred Hollows Foundation from 1997 – 2007 and was Chair from 2002.

He was National Chief Executive Officer of the Royal Flying Doctor Service (RFDS) from October 2006 until October 2010. He is currently CEO of the Livestock Health and Pest Authority based in Orange NSW.

He was Managing Director of the Special Broadcasting Service (SBS) from 1998 until 2006. Under his tenure, SBS's television and radio audiences grew significantly as did the quantity and quality of Australian (including indigenous) produced programs on the network.

In Australia, he had a successful commercial radio career in CEO and leadership roles in the Macquarie, Bond Radio and ARN networks. He was Chief Executive Officer of Radio New Zealand from 1991-1995.

Nigel and his wife Judi own a small cattle farm in the Southern Highlands of NSW. His daughter Lucy is a teaching musician and singer, she lives in London.



Jaime Phillips

Appointed August 2011

Jaime Phillips' career has taken her to regional and remote communities across Western Australia. Working in the private sector, Jaime develops community strategies for large resource and infrastructure projects. As a director of Palea Project Associates, Jaime moves between corporate offices, construction sites, mines and remote towns. She is inspired by projects that create jobs, address disadvantage and capture the imagination of local and Indigenous people in the regions.

Jaime has an honours degree in History and English from the University of Western Australia and is involved in Perth's creative sector. She volunteers on urban design and art groups and is fascinated by plans to revitalise the cityscape of Perth.

Jaime has served on the National Advisory Council of the Australian Broadcasting Corporation and the Advisory Committee of the Western Australian Maritime Museum.



Peter Phillips

Appointed August 2011

Peter grew up in Frankston and now lives with his wife and two young sons, Will and Tom, in Melbourne. Following university, Peter worked in Canberra as an economist with the Commonwealth Treasury, and has maintained an interest in economics and regulatory policy since then. Peter is the director of a small regulatory and governance consultancy, specialising in environmental and regulatory frameworks.

Peter has a Bachelor of Economics (Hons), Master of Applied Finance and Master of Regulatory Studies, and is currently working on a regulatory history of Victoria for his PhD. He has a keen interest in Australian history and is in receipt of a research grant to write a history of Australia in the First World War.

Peter is involved in a number of small community groups, including his sons' cub group, football team, and various church committees. Peter also serves as a Bails Justice and Justice of the Peace.



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, strategic planning and executive coaching. He stepped down as Principal of Penrhos College a Uniting Church School, Perth, Western Australia at the end of 2007 – a position he held since September 1986.

Graham is a passionate educator and has worked on a number of state and national committees aiming to improve the quality of education in both government and non-government schools. He is currently an Educational Consultant for the Western Australian Department of Educational Services.

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, AM

Appointed August 2008

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

Natasha has made a significant contribution to a wide range of policy debates. She was a spokesperson on portfolios including foreign affairs, higher education, science and biotechnology, Attorney-General's, privacy, women, work and family.

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

She is also a Director of beyondblue, the Burnet Institute and the South Australian Museum. She is a member of the Advisory Committee of the Museum of Australian Democracy and The University of Adelaide's Alumni Advisory Committee.

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



Josephine Tiddy

Appointed August 2006

Dr Josephine Tiddy is the Managing Director of JTCT Consultants specialising in dispute resolution and organisational wellness. She has worked with people since her early years as a nurse.

As Commissioner for Equal Opportunity, Josephine managed and promoted controversial and complex legislative and social changes throughout South Australia and nationally. 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 The Flinders University of South Australia in recognition of her national 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.



Peter Williams

Appointed August 2011

Peter Williams is a Fellow of the Dietitians Association of Australia and a Visiting Principal Fellow at the University of Wollongong, where he was previously Associate Professor of Nutrition and Dietetics.

Before working at the University of Wollongong, Peter was the Director of Scientific and Consumer Affairs at Kellogg for three years, and previously worked as the Chief Dietitian and Food Services Manager at Royal Prince Alfred Hospital in Sydney.

Peter has been an active researcher in nutrition in Australia, with over 100 peer reviewed publications. He has served on National Health and Medical Research Council working parties for the review of Dietary Guidelines for Australia and the review of Nutrient Reference Values, and is a member of the steering committee for the Heart Foundation's Pick the Tick program. He has also conducted consultancy projects with the NSW Department of Health to help develop Nutrition Standards for Adult Hospital Inpatients.

Peter is among those selected to be on the Federal Government's The National Food Policy Working Group which includes representatives from supermarkets chains, farmers, service providers and leading scientists. From 2005-2011 Peter was a member of the Board of Food Standards Australia New Zealand and now serves on the Therapeutic Goods Authority's Advisory Committee on Complementary Medicines (ACCM). In his spare time Peter enjoys cycling, bushwalking and yoga.

The Advertising Claims Board

The Advertising Claims Board is one of the ASB's two Boards. The Claims Board 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.

No cases were finalised in 2011. The case reports for all cases considered by the Claims Board are available on ASB's website.

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.



Independent Reviewer

Cases reviewed in 2011 _____

Independent Reviewers _____

Cases reviewed in 2011

People who originally complained about an advertisement, or the advertiser who the complaint was made against, may ask for a review of the determination if they are unhappy about a Board determination about the particular advertisement.

Since 2008, when the Independent Review process commenced, 17 cases have been considered by the Independent Reviewers.

During 2011, five cases were accepted and reviewed by the Independent Reviewer.

In three of these cases, the Independent Reviewer recommended that the Advertising Standards Board review its initial determination. Following further consideration, the Board confirmed its original determination in two cases and changed its initial determination in one case.

The Independent Reviewer recommended that the Board's initial determination be confirmed in the other two cases.

From receipt of the request for review, to publication of the case report, the five cases took between seven and 23 business days to complete. This time includes:

- two days for the Independent Reviewer to confirm initial acceptance of the case
- three days in which the relevant parties to the case can prepare their response to the request for review

- Independent Reviewer consideration of all relevant information (the advertisement, all original complaints, advertiser response to complaints, Board determination, request for review, responses to request for review, other relevant case reports, other relevant supporting information provided by parties), and
- if required, reconsideration of the case by the Advertising Standards Board.

Rivers

Rivers requested review of a Board determination about their identical print (case number 0098/11) and mail (case number 0099/11) advertisements showing female legs protruding from under a sofa, accompanied by the words "10 deadly deals".

The Board upheld complaints under section 2.2 of the AANA Code of Ethics on the basis that "the advertisement depicted the consequences of a violent act, was suggestive of sexualised violence, and was not relevant to the advertised product".

In this case the advertiser disputed the Board finding on the ground that there was a substantial flaw in the determination. Specifically, the advertiser submitted that:

"a majority of the Board improperly expands section 2.2 to cover situations where an image, in some viewers' minds, depict the consequence of a violent act. Such a test is clearly beyond the language of section 2.2 and cannot be used to support a finding of a breach thereof".

The Independent Reviewer agreed with the advertiser, saying that:

"although the Board found that there was an inference that the body had met a violent death, it made no finding of actual presentation or portrayal of violence which is required by section 2.2".

The Independent Reviewer recommended that the Board reconsider its original determination

Taking into account the Independent Reviewer recommendation and reasoning, and all other documentation, the Board changed its original determination, acknowledging that the advertisement does not present or portray violence and thus does not breach section 2.2 of the Code

McDonalds

An original complainant requested review of the Board's determination to dismiss complaints about the McDonalds Happy Meal website (case number 0103/11) on the basis that there was a substantial flaw in the Board's determination.

The complainant maintained that the website:

- breaches clauses 4.1 (website is a marketing communication to children that promotes Happy Meals and does not represent healthier choices), and
- breaches 4.2 (website features “Popular Personalities or Licensed Characters”) and 4.6 (website promotes premium offers) of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR Initiative).

The Board considered the complainant’s submission, including reference to an earlier decision but argued that the QSR Initiative does not apply to this case since in its view: “there was no advertising or marketing communication material contained within the website”.

In his recommendation, the Independent Reviewer said:

“The Board in considering the original complaint noted, correctly in my view, that the complaint related to the entire www.happymeal.com.au website and that the threshold issue for determination was whether the website is an advertising or marketing communication as defined in the Codes”.

In this case the Independent Reviewer was “satisfied that it was open to the Board to reach its original decision” and recommended that the Board determination to dismiss the complaint be confirmed.

Vitaco

The original complainant requested a review of a Board determination to dismiss complaints about the Vitaco billboard advertisement featuring a woman on a beach wearing a bikini (case number 0237/11).

The complainant disagreed with the Board view that: “most members of the community would not find the advertisement offensive”, and that the advertisement “did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code”.

In this case the complainant believed there was a substantial flaw in the Board’s determination regarding section 2.3 of the Code and that the Board had not considered other appropriate Codes, in particular the AANA Food and Beverages Advertising and Marketing Communications Code.

The Independent Reviewer discounted the complainant’s request regarding section 2.3, indicating that the complainant had not demonstrated a substantial flaw, saying that:

“minds may differ as to an outcome and the Board’s perception of the advertisement is simply different from the complainant’s”.

However, the Independent Reviewer agreed that the Board determination did not clearly indicate that the Board had considered all relevant codes when making its determination.

As such the Independent Reviewer recommended that the Board reconsider its determination with particular reference to whether the AANA Food and Beverages Advertising and Marketing Communications Code was breached by the advertisement.

In its reconsideration, the Board affirmed its earlier decision in relation to section 2.3 of the Code of Ethics, and looked at section 2.1 of the Code of Ethics and the entire Food Code in considerable detail.

The Board confirmed its earlier determination and dismissed the complaint, having found no breach against any of the Codes on any grounds.

Ansell

Two original complainants requested review of a Board determination to dismiss complaints about an Ansell billboard advertising Zero condoms which used an image of a man and woman in an embrace (case number 0408/11).

The Board considered complaints under sections 2.3 and 2.6 of the Code of Ethics.

The two requests for review (on the basis of the three available grounds) covered similar issues and were considered together by the Independent Reviewer.

The Independent Reviewer was not convinced that the ground for review dealing with new evidence was made out. In his view no new evidence was provided. The Independent Reviewer said:

“reiteration of previous arguments, albeit better reasoned, is not new evidence”.

Neither was the ground regarding substantial flaw in process made out.

The Independent Reviewer said:

“the Board has provided ample opportunity for the complainants and the advertiser to put their views and has taken those respective views into account”.

Regarding the second ground (substantial flaw in determination) the Independent Reviewer indicated that the Board should have:

“provided a sounder basis on which to reach a conclusion than the unsupported assumption advanced in this case”, and that the Board’s: “conclusion was dependent upon facts of which there is no evidence and it did not provide any other basis for reaching its conclusion”.

The Independent Reviewer recommended that the Board reconsider its decision:

“against the requirement in section 2.3 of the Code having regard to the product being advertised and the audience that will see the advertisement, namely all members of society, and reach a conclusion that is based upon a consideration of the impact of the advertisement on that audience”.

Following detailed reconsideration, the Board found that the advertisement did not breach any of the Codes on any grounds and dismissed the complaint.

Overall, the Board considered that the particular images in the advertisement and the overall impact of the advertisement treat a mildly sexualised image and a sex related product with sensitivity to the concerns of the broad community, including children. The Board determined that the advertisement does treat sex, sexuality and nudity with sensitivity to the relevant audience and that the advertisement does not breach section 2.3 of the Code.

Unilever

An advertiser requested review of a Board determination to uphold a complaint about their animated television advertisement for the Bubble Gum Berry Lava Paddle Pop and the Hero or Villain Choc Orange Paddle Pop (case number 0454/11).

The Board considered complaints under the Responsible Children’s Marketing Initiative of the Australian Food and Beverage Industry (RCMI) with particular reference to sections dealing with Advertising Messaging and Use of Popular Personalities and Characters , and determined that the advertisement breached those provisions of the RCMI.

The Board’s view was:

“although the advertisement did not depict any unhealthy eating choices or practices, it did not reference good dietary habits and was not in the context of a healthy lifestyle that would encourage good dietary habits.”

The Board then looked at all sections of the AANA Code for Advertising and Marketing to Children, and relevant sections of the AANA Food and Beverages Advertising and Marketing Communications Code, finding no breaches.

The advertiser requested review on the basis that:

- (i) the Board introduced new evidence in its determination,
- (ii) there was a substantial flaw in the process followed by the Board. That the Board did not consider relevant facts relating to the advertisement referencing a healthy lifestyle and encouraging good dietary habits and physical activity and did not consider the advertisement in the context of a broader marketing strategy.

The Independent Reviewer discounted the claim that the Board introduced new evidence and said that Unilever’s claim represented an opinion by Unilever and does not adduce evidence that the Board failed to consider relevant facts in this regard.

The Independent Reviewer recommended that the Board’s original decision to uphold the complaints be confirmed, concluding that there had been no substantial flaw in the process by which the determination had been made.

Outline of requests for independent review 2011

CASE	INITIAL BOARD DETERMINATION	INDEPENDENT REVIEWER RECOMMENDATION	BOARD DETERMINATION ON REVIEW (IF APPROPRIATE)	TIME TAKEN TO COMPLETE REVIEW
<i>In March 2011, ASB accepted a recommendation from the Review of the Independent Reviewer process that timeliness of the process should be made publicly available. The times indicated below refer to the time between ASB receipt of the request for review to notification of final case report.</i>				
Rivers Australia “Deadly Deals” Case numbers – 98/11 and 99/11	Complaints Upheld April 2011	Independent Reviewer recommended Board <i>review its initial determination</i> April 2011	Dismissed	21 business days
McDonald’s (Happy Meals) Case number – 103/11	Complaints Dismissed April 2011	Independent Reviewer recommended initial Board determination be <i>confirmed</i> May 2011		7 business days
Vitaco Health (Lo carb Body Beautiful bar) Case number – 237/11	Complaints Dismissed July 2011	Independent Reviewer recommended Board <i>review its initial determination</i> September 2011	Dismissed	23 business days
Ansell Zero or Nothing condoms Case number – 408/11	Complaints Dismissed November 2011	Independent Reviewer recommended Board <i>review its initial determination</i> December 2011	Dismissed	18 business days
Unilever Paddle Pop Case number – 454/11	Complaints Upheld December 2011	Independent Reviewer recommended initial Board determination be <i>confirmed</i> January 2012		19 business days

Independent Reviewers

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

An Independent Review process provides the community and advertisers a channel through which they can appeal decisions made by the Advertising Standards Board.

The Hon Deirdre O'Connor was appointed as the first Independent Reviewer in April 2008. The ASB appointed Mr Mick Palmer, AO APM, as an alternate Independent Reviewer in September 2009.

Ms O'Connor and Mr Palmer retired from their positions as Independent Reviewers in 2011.

Their positions were taken up by the Emeritus Professor Dennis Pearce AO and Ms Victoria Rubensohn AM in August 2011.

Dennis Pearce AO

Emeritus Professor Dennis Pearce is a consultant with HWL Ebsworth Lawyers and a Visiting Fellow at the Australian National University (ANU) College of Law. Dennis was formerly the Dean of the Law School at ANU.

He has held many appointments with government and other bodies. Among those appointments was that of Commonwealth Ombudsman, Chairman of the Australian Press Council, Chair of the Copyright Law Review Committee,

Member of the Copyright Tribunal of Australia, Chair of the Defence Honours and Awards Appeal Tribunal, and President of the ACT Racing Appeals Tribunal.

Dennis was made an Officer of the Order of Australia in 2003 and was also awarded a Centenary Medal in that year.

Dennis has published many books and articles, the most well known being *Statutory Interpretation in Australia* now in its 7th edition and *Delegated Legislation in Australia* (3rd edition). He is also the editor of *Lexis Nexis Administrative Law Service*.

Dennis holds the degrees of Bachelor of Laws (Adelaide), Master of Laws and PhD (ANU). He is admitted to legal practice in South Australia, the ACT and NSW.

Victoria Rubensohn AM

Victoria Rubensohn is the current Convenor of the Classification Review Board and since 1991 has been Principal of international communications consultancy Omni Media, which specialises in communications regulatory policy. She is a consumer representative member of the Mobile Premium Services Code Review Panel and is a member of the Australian Communications Consumer Action Network Standing Advisory Committee.

Victoria is a board member of the Communications Law Centre and Director and Company Secretary of Media Access Australia. She has worked

in radio and television in Australia and the USA and is a member of the Royal Television Society (UK). Victoria has worked extensively internationally in communications institution-building and is co-creator of a United Nations Convention on Disaster Communications.

Victoria has chaired government and non-government bodies and committees including:

- Chair of the National Film and Sound Archive
- Chair of the Telephone Information Services Standards Council for 15 years
- Chair of the Federal Government's Copyright Convergence Group
- Chair of the Federal Government's Digital Radio Advisory Committee

Victoria has been a Member of the Australian Broadcasting Tribunal and a Member of the Immigration Review Tribunal. She is a former President of the Communications and Media Law Association and has also been a member of the Copyright Law Review Committee.

Victoria was made a Member of the Order of Australia in 2004.

Victoria holds a Bachelor of Arts (Sydney), Master of Arts [in Government] (Sydney), Bachelor of Laws (UNSW) and Master of Human Rights (Sydney).



Statistics

Advertising complaints statistics

Advertising complaints statistics

Overall, the Board considered 466 advertisements in 2011. Complaints about 476 advertisements were received in 2011, with 10 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 2011 by the Advertising Standards Bureau totalled 3,491 – down slightly from the previous two years, 3,526 in 2010 and 3,796 complaints in 2009. The highest number of complaints received was 4,044 in 2006.

The 2011 figures show a slight 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.

Number of advertisements considered and outcome of complaints

In 2011, the Board considered 466 advertisements against which 1,830 complaints were received. A total of 1,521 complaints against 412 ads were dismissed. There were 319 complaints about the 54 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 11.58 per cent.

On receiving advice that there had been a complaint, five advertisers withdrew their advertisement before the Board determination. There were five cases where the ad was not sent to the board as campaigns had ended.

Statistics about the number of complaints about advertisements already considered by the Board were captured for the first time in 2010 and again in

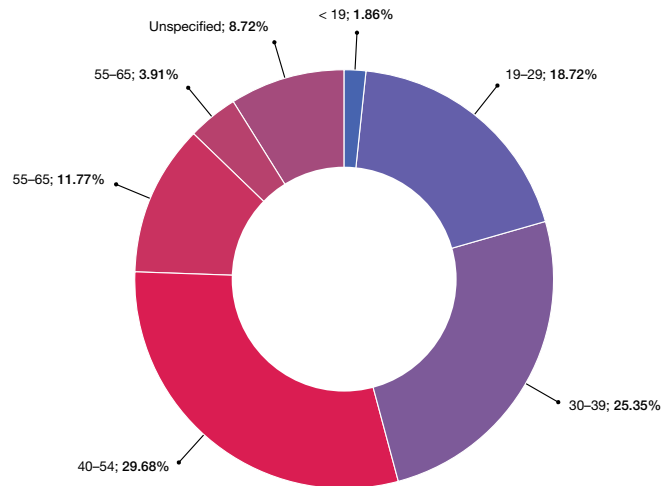
2011. Of the total 3,491 complaints received, 581 complaints were in relation to advertisements previously considered by the Board, equating to 16.64 per cent of all complaints received. Of the 581 complaints, 142 complaints were related to advertisements considered by the Board prior to 2011.

A total of 113 complaints were assessed as raising 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, three cases are 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.

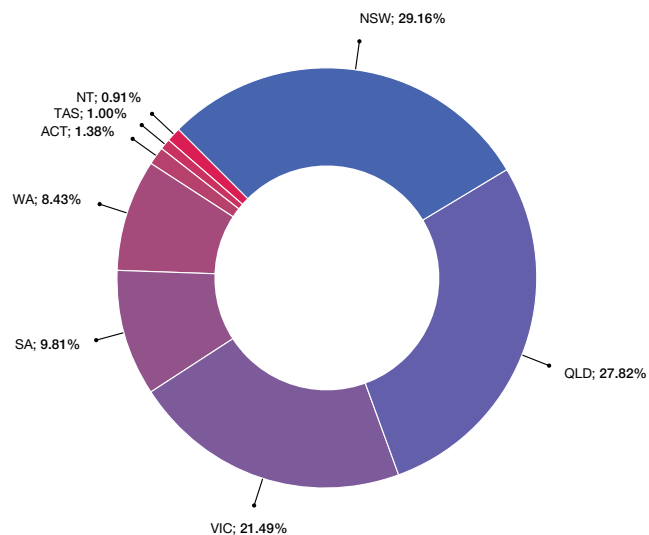
What age are complainants?

The highest percentage of complaints come from people in the 40 to 54 year old age group, accounting for almost 30 per cent of all complaints received. The age grouping from 30 to 39 account for 25.3 per cent of complaints and the 19 to 29 age group accounting for almost 19 per cent. People over 55 years of age account for about 12 per cent of complaints. The lowest number of complaints are from people under 19 years of age, with the second lowest, people over 65. 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 29.1 per cent (a decrease of almost six percent from 2009). This decrease was matched by Queensland's five per cent increase to 27.8 per cent in 2011 compared to 22.7 per cent in 2010.



Victoria had a slight decrease in percentage of complaints, down three per cent (from 24.2 per cent in 2010 to 21.5 per cent in 2011), while South Australia increased three per cent from 6.5 per cent in 2010 to 9.8 per cent in 2011.

The percentage of complaints received from Western Australia (8.4 per cent), the Australian Capital Territory (1.38 per cent), Tasmania (1.00 per cent) and the Northern Territory (0.91 per cent) remained similar to previous years.

Who is complaining?

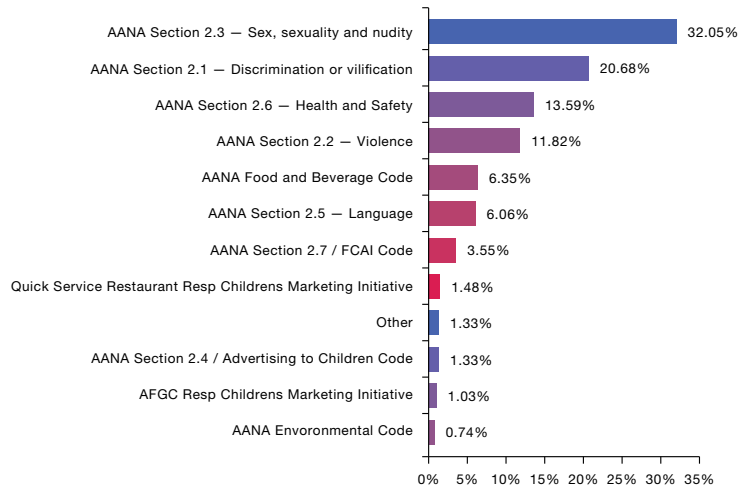
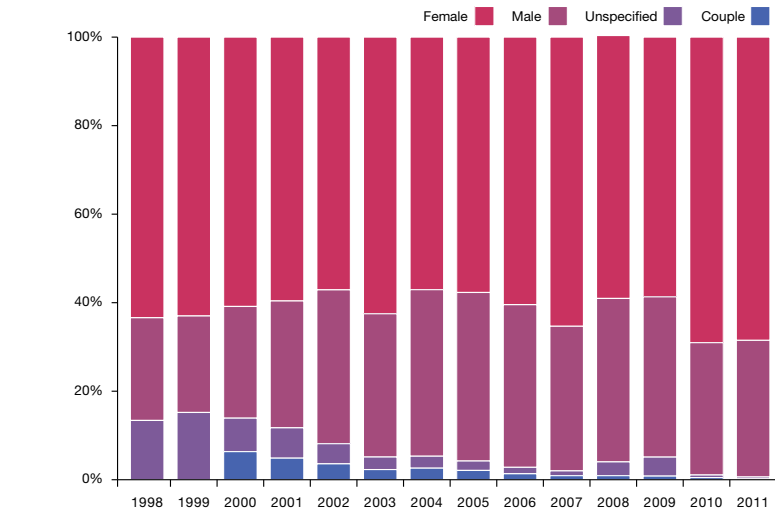
In 2011 the percentage of males and females represented among complainants changed only slightly, with complaints from males up slightly from 29.9 per cent in 2010 to 30.87 per cent in 2011. Complaints from females this year was 68.5 per cent, the second highest since data began to be collected in 1998. The average percentage of female complainants since 1998 is 61.5 per cent female.

What do people complain about?

The portrayal of sex, sexuality and nudity continued to be the dominant issue raised by complainants in 2011. This issue accounted for 32 per cent of complaints, decreasing from 45.2 per cent in 2010 and 40.5 per cent in 2009. The issue of discrimination and vilification accounted for 20.6 per cent of complaints, up just one per cent from 2010. Together these two issues comprised just over 50 per cent of all complaints made in 2011.

In 2011 the proportion of complaints about health and safety issues increased markedly from 9.62 per cent in 2010 to 13.59 per cent. Complaints about violence in advertising also rose noticeably from 9.62 per cent in 2010 to 11.82 per cent in 2011.

Complaints relating to food and beverage code issues continued to rise reaching 6.35 per cent from 3.08 per cent in 2010, with the AFGC and



QSR food advertising initiatives adding 2.51 per cent to complaints about food advertising.

The issue of language saw a rise to 6.06 per cent of all complaints, but did not reach the highest recorded against language — 7.55 per cent in 2006.

Which mediums attracted complaints?

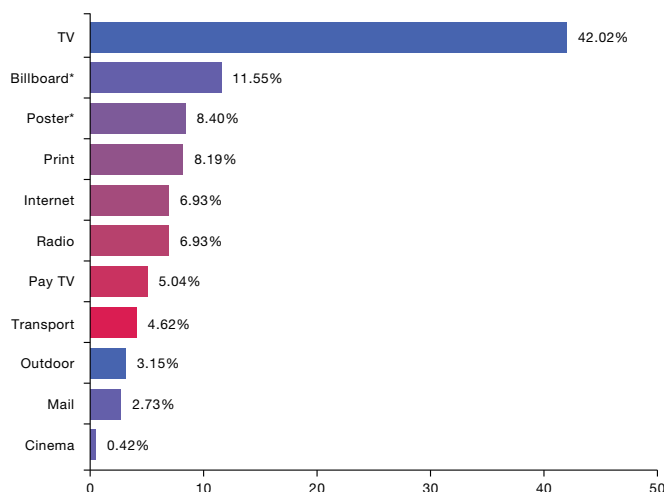
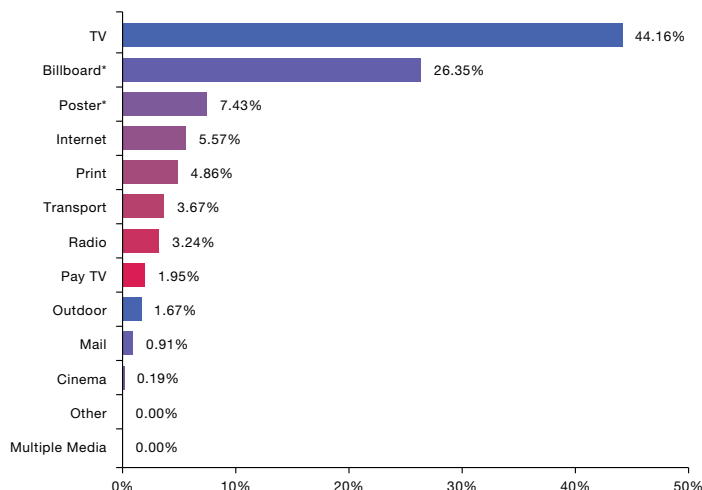
As with previous years, the majority of complaints (44.16 per cent) relate to advertisements shown on television, but this is a significant drop from the 2010 figure of 62.25 per cent. This is the lowest recorded percentage of complaint about television advertisements since data collection began in 1998, with the previous low being in 2009 at 59.83 per cent.

Commencing midway through 2010, the ASB has separated the medium of "Outdoor" into the more descriptive identifiers of Billboard, Poster and Outdoor. In 2009, the percentage of complaints against the aggregated Outdoor medium was 23.92 per cent. This figure reduced to an aggregated 20.09 per cent in 2010.

In 2011, the aggregated Outdoor medium represented 35.45 per cent of all complaints. These complaints were made up of 26.35 per cent about billboards, 7.45 per cent about posters and 1.67 per cent about other outdoor advertising.

The percentage of complaints about internet advertising (7.55 per cent in 2010) decreased to 5.57 per cent. Print advertising complaints increased for a second consecutive year from 3.56 per cent to 4.86 per cent.

Complaints about radio advertising almost doubled to 3.24 per cent in 2011 from 1.66 per cent in 2010. The remainder of complaints for cinema and PAY TV advertising were just over two per cent in total.



Which medium were the ads complained about seen and heard on?

Of the advertisements complained about, the vast majority – about 42 per cent – were advertisements seen on television, with another 5 per cent of advertisements seen on PAY TV.

Second in line were advertisements appearing on billboards at 11.5 per cent,

third were posters at 8.4 per cent, closely followed by print advertisements at 8.2 per cent.

The percentage of internet and radio advertisements was identical at 6.93 per cent. Advertisements seen on transport and other outdoor mediums totaled 7.77 per cent, with mail and cinema advertisements at just over 3 per cent.

What products attracted complaint?

Food and beverage advertisements continued to be the most-complained about product category in 2011, being the subject of 18.3 per cent of all complaints.

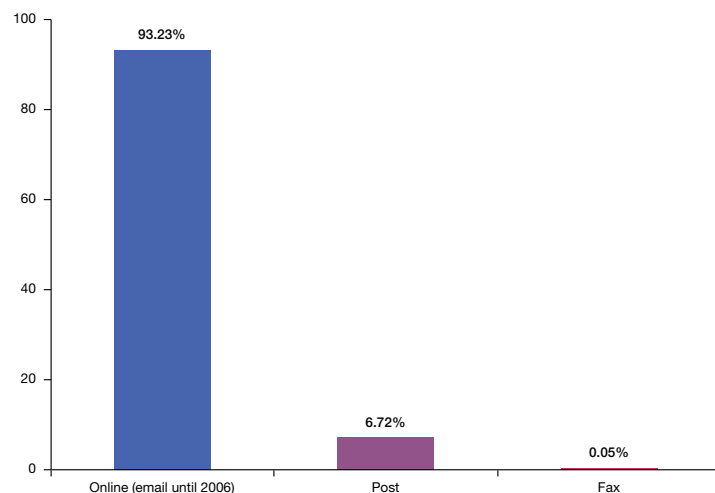
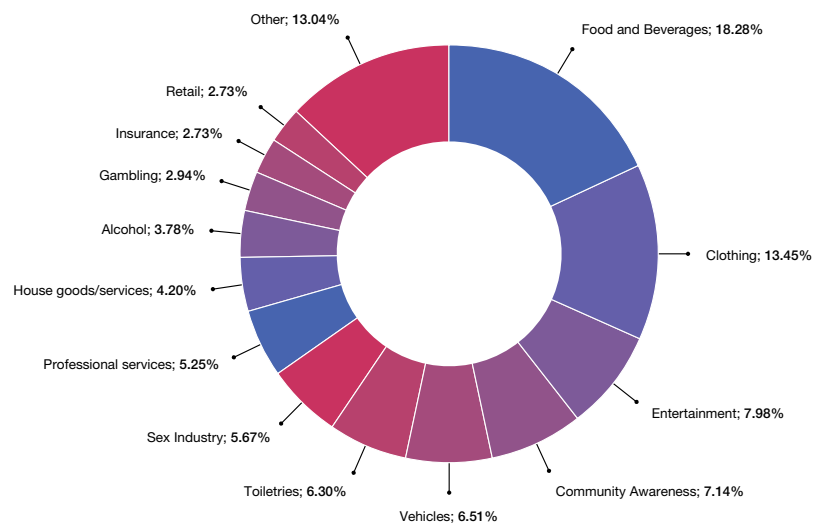
Advertisements for clothing received a higher rate of complaint than in previous years, rising to 13.45 per cent in 2011, from 7.3 per cent in 2010. This rise can be attributed to a high level of complaint about a smaller number of advertisements, such as case 0151/11 (General Pants Group) and case 0183/11 (Supre).

Entertainment and community awareness advertisements were subject to higher levels of complaint at over 7 per cent, while complaints about toiletries and vehicles received around 6.5 per cent of complaints.

Sex industry and professional service advertisements remained steady at around 5.5 per cent while complaints about gambling tripled from 0.96 per cent in 2010 to 2.94 per cent in 2011.

How do people complain?

The number of people choosing to lodge their complaints through the online complaints system rose to its highest level since the option was introduced, with 93.2 per cent of people lodging complaints via the online service. The rate has consistently risen since 2006, when the rate of online lodgement was 82.7 per cent, rising to 87.7 per cent in 2010.



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 (6.72 per cent in 2011) and fax (0.05 per cent). The rate of postal complaints has dropped steadily each year from more than 40 per cent in 2002.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
ALLOCATION OF COMPLAINTS (No., by Complaint)														
Complaints within jurisdiction														1491
Complaints outside jurisdiction														1181
Complaints about already considered advertisements (current year)														443
Complaints about already considered advertisements (previous years)														138
Consistently dismissed complaints														113
Not allocated at 31 December														50
TOTAL														3,416

This is a new table that identifies the treatment of complaints received during 2011.

OUTCOME OF COMPLAINTS (No., by Complaint)

Dismissed (complaints about 2011 ads)	1569
Dismissed (complaints about pre-2011 ads)	138
Upheld	353
Withdrawn	12
TOTAL	2,072

This is a new table that identifies the treatment of complaints that were considered by the Board during 2011.

OUTCOME OF COMPLAINTS (No., by Complaint – pre 2011)

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
TOTAL	1,382	2,065	2,558	1,705	1,572	2,620	2,296	2,956	4,044	2,602	3,596	3,796	3,526

* Statistics not separately captured prior to 2010

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

See previous table

BOARD DETERMINATIONS (No., by Advertisement)

Withdrawn before board determination	0	0	0	0	6	5	20	33	13	5	10	11	29	10
Upheld	5	11	8	6	3	4	8	14	28	36	62	81	49	54
Dismissed	262	434	384	363	291	401	337	344	488	405	477	503	442	412
Not proceeding to Board*														38
TOTAL	267	445	392	369	300	410	365	391	529	446	549	595	520	514

* This relates to cases established in the system that were not put forward for Board consideration for a variety of reasons – eg: case managers determined after research that:

- the complaint did not relate to an advertisement,
- the advertisement had already been considered by the Board,
- the campaign had ended prior to receipt of complaint and the advertiser undertook to not use that same advertisement again,
- the incorrect advertiser had been identified by the complainant and a new case was then created when the correct advertiser was identified.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
AGE RANGE OF COMPLAINTS (%)														
< 19											2.25	1.81	1.80	1.86
19–29											14.99	15.81	15.62	18.72
30–39											23.11	22.35	22.55	25.35
40–54											30.56	28.34	25.36	29.68
55–65											11.15	11.40	9.88	11.77
> 65											3.28	3.44	3.09	3.91
Unspecified											14.66	16.85	21.70	8.72
<i>TOTAL</i>											<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>
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	29.16
QLD	19.60	20.20	19.71	16.47	18.74	15.86	16.16	24.60	17.01	19.79	20.51	18.38	22.73	27.82
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	21.49
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	9.81
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	8.43
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	1.38
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	1.00
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	0.91
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	0.00
<i>TOTAL</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>
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	0.19
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	0.43
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	30.87
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	68.51
<i>TOTAL</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>
ISSUES ATTRACTING COMPLAINT (%)														
AANA Section 2.3 – Sex, sexuality and nudity								26.49	22.23	37.91	25.61	40.54	45.23	32.05
AANA Section 2.1 – Discrimination or vilification								27.13	23.25	28.05	22.76	16.31	19.58	20.68
AANA Section 2.6 – Health and Safety								6.46	9.70	10.85	6.04	8.38	9.62	13.59
AANA Section 2.2 – Violence								17.38	18.01	8.42	17.67	7.93	9.62	11.82
AANA Food and Beverage Code								0.00	0.00	0.37	1.26	2.47	3.08	6.35
AANA Section 2.5 – Language								4.36	7.55	1.68	7.24	5.35	4.85	6.06
AANA Section 2.7 / FCAI Code								3.38	1.84	4.91	3.09	1.19	1.13	3.55
Quick Service Restaurant Resp Childrens Marketing Initiative								0.00	0.00	0.00	0.00	0.16	0.52	1.48
Other								14.59	14.69	4.86	15.84	17.04	3.12	1.33
AANA Section 2.4 / Advertising to Children Code								0.20	2.73	2.95	0.49	0.63	2.34	1.33
AFGC Resp Childrens Marketing Initiative								0.00	0.00	0.00	0.00	0.00	0.87	1.03
AANA Environmental Code								0.00	0.00	0.00	0.00	0.00	0.04	0.74
<i>TOTAL</i>								<i>99.80</i>	<i>97.27</i>	<i>97.05</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
REASON COMPLAINT DID NOT PROCEED TO A CASE (NO.) (2010-2011)**														
Ad not broadcast in Australia													4	7
ASB complainant dissatisfied													3	2
ASB Public Awareness campaign														2
Business Practices Unethical														2
Community Service Announcement													3	11
Dislike of Advertising – AMI radio ads													2	
Dislike of Advertising – AMI TV Ads													14	1
Editorial													7	5
Gambling odds in commentary													2	
Insufficient information to identify ad – general													46	56
Insufficient information to identify ad – adult content													5	1
Legality													8	10
Loud ads													7	2
Misleading Truth and Accuracy – NOT FOOD													43	118
Misleading country of origin														1
Not an ad – Food packaging														6
Not an ad – General													14	61
Not an ad – Point of Sale													1	
Not an ad – signage on premises													1	2
Not S2 – ABAC													14	34
Not S2 – ACMA														3
Not S2 – ADMA													1	
Not S2 – general													103	262
Overseas complaint													1	
Overseas web site with no Aust connection													1	2
Political Advertising													40	180
Product or service – food														4
Product or service – general													39	98
Product or service – on radio													4	
Programming and content													4	16
Promotion TV and Radio													37	166
Subliminal advertising													7	8
Tasteless advertising													39	44
Therapeutic Goods														3
Timing – Cinema													3	1
Timing – Radio broadcast													4	
Timing – TV													23	27
Tobacco advertising													13	4
Too many ads													3	3
Unsolicited mail and products														1
Weight management													4	
Wicked Campers – need for detailed information													12	2
Advertisement Withdrawn/Discontinued before case established													108	36
TOTAL													620	1181

** 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.

REASON COMPLAINTS FELL OUTSIDE CHARTER (NO.) (2005–2009)^{##}

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
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
TOTAL	970	1212	577	799	941

^{##} From 2010, data relating to complaints outside charter is captured in a more detailed form in the following table

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
CONSISTENTLY DISMISSED COMPLAINTS (NO.) *														
Unlikely interpretation													35	49
Not of concern to broad community													22	20
Consistently dismissed issue													18	15
Consistently dismissed language													12	10
Incorrect about content													3	5
Product name														8
Multicultural community													2	5
Images of food														1
TOTAL													92	113

* Statistics not separately captured prior to 2010

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	44.16
Billboard ***													9.69	26.35
Poster ***													1.99	7.43
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	5.57
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	4.86
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	3.67
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	3.24
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	1.95
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	1.67
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	0.91
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	0.19
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	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	0.00
TOTAL	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	100.00

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

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

TV	52.12	42.02
Billboard	5.77	11.55
Poster	4.23	8.40
Print	9.62	8.19
Internet	6.73	6.93
Radio	5.96	6.93
Pay TV	5.77	5.04
Transport	2.50	4.62
Outdoor	5.00	3.15
Mail	0.96	2.73
Cinema	1.35	0.42
TOTAL	100.00	100.00

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

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
PRODUCT CATEGORY ATTRACTING COMPLAINT (%)														
Food and Beverages								20.85	28.14	33.25	14.39	24.08	21.92	18.28
Clothing								6.22	4.31	2.24	5.83	7.69	7.31	13.45
Entertainment								0.00	2.90	3.09	3.28	4.85	2.88	7.98
Community Awareness								8.02	12.29	3.39	9.29	5.69	5.58	7.14
Vehicles								15.19	8.37	9.92	5.28	5.69	4.81	6.51
Toiletries								5.26	2.86	2.94	3.46	3.51	7.88	6.30
Sex Industry								0.00	0.00	0.00	0.36	4.35	5.00	5.67
Professional services								2.56	5.61	10.77	5.10	5.18	5.38	5.25
House goods/services								11.18	2.15	6.03	7.65	6.86	4.42	4.20
Alcohol								7.07	3.14	2.44	6.38	4.00	5.19	3.78
Gambling								0.00	0.00	0.00	0.73	1.51	0.96	2.94
Insurance								0.00	2.97	2.44	5.10	3.51	3.27	2.73
Retail								0.00	1.17	1.65	2.37	0.33	1.54	2.73
Other								6.67	5.30	3.94	4.74	2.01	2.88	2.10
Leisure & Sport								1.45	1.73	2.14	1.09	2.84	3.85	1.47
Telecommunications								4.51	2.40	2.24	3.46	3.18	2.88	1.47
Restaurants								2.91	1.17	5.78	2.19	0.50	0.00	1.26
Hardware/machinery								0.00	0.00	0.00	1.09	1.34	1.35	1.05
Health Products								3.46	7.94	1.40	1.46	4.35	3.46	0.84
Media								0.00	2.22	2.84	3.28	0.17	1.54	0.84
Toys & Games								0.00	0.00	0.00	1.09	0.67	0.77	0.84
Real Estate								0.00	0.00	0.00	0.55	1.00	0.19	0.84
Finance/Investment								2.81	1.80	1.30	2.37	1.34	3.46	0.63
Travel								1.85	1.09	0.15	2.37	2.01	0.96	0.63
Mobile Phone/SMS								0.00	2.44	2.04	5.46	2.17	0.38	0.42
Office goods/services								0.00	0.00	0.00	0.91	0.17	0.00	0.42
Information Technology								0.00	0.00	0.00	0.18	1.00	0.77	0.21
Education								0.00	0.00	0.00	0.18	0.00	0.96	0.00
Slimming								0.00	0.00	0.00	0.36	0.00	0.19	0.00
Employment								0.00	0.00	0.00	0.00	0.00	0.19	0.00
<i>TOTAL</i>								<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>
METHOD OF COMPLAINT (%)														
Online (email until 2006)			10.42	47.46	60.44	69.95	73.08	82.71	84.05	87.07	85.30	87.76	93.23	
Post			86.83	43.32	32.65	25.96	22.36	14.47	13.87	10.22	11.85	11.97	6.72	
Fax			2.75	9.22	6.91	4.09	4.56	2.82	2.08	2.71	2.85	0.27	0.05	
<i>TOTAL</i>			<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	<i>100.00</i>	

Appendices

Advertising Standards Board complaints process _____

Independent Review process _____

AANA Code of Ethics _____

AANA Code for Advertising and Marketing Communications to Children _____

AANA – Environmental Claims in Advertising and Marketing Code _____

AANA Food and Beverages Advertising and Marketing Communications Code _____

AFGC Initiative _____

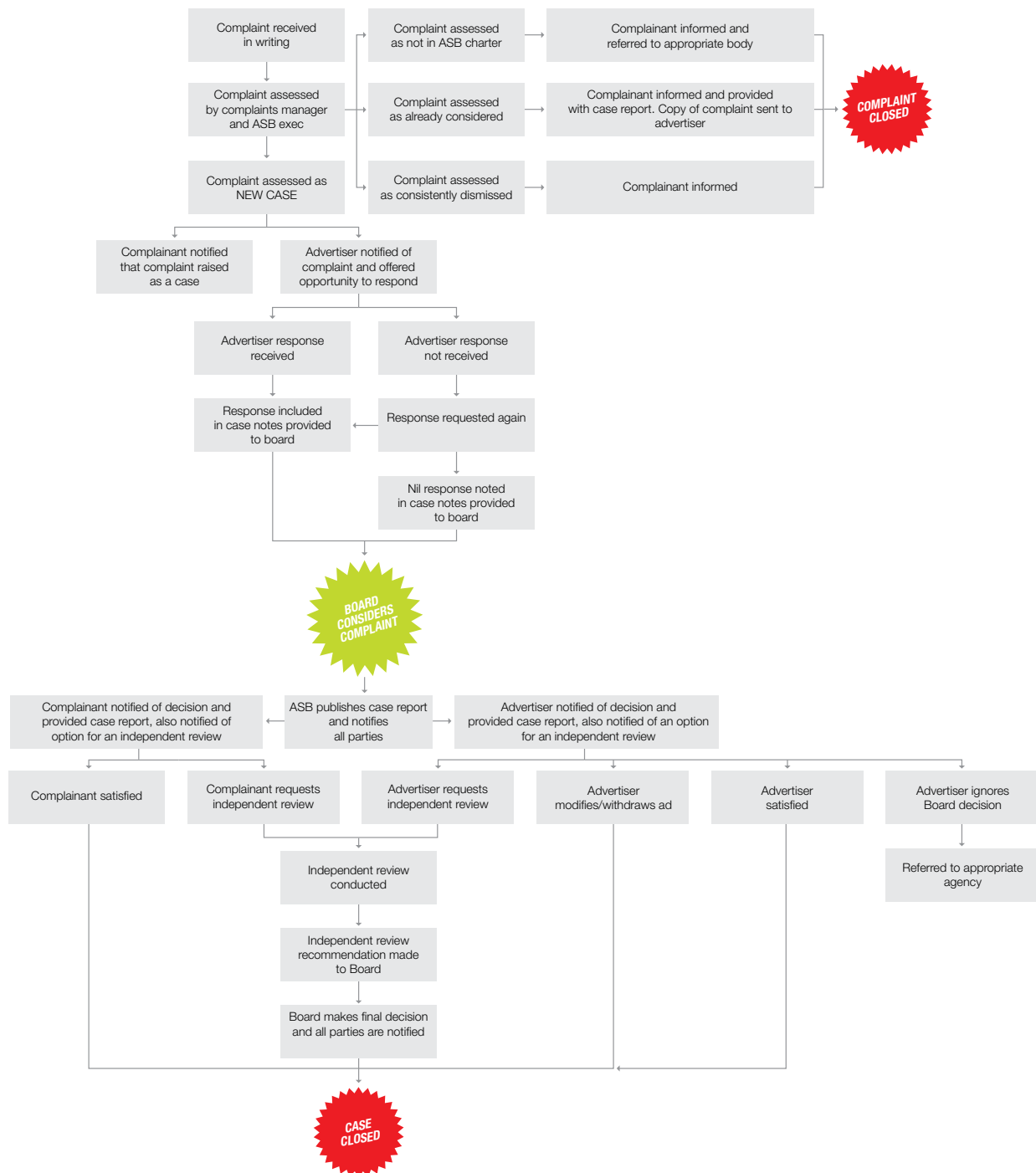
QSR initiative _____

FCAI Voluntary Code of Practice for Motor Vehicle Advertising _____

Alcohol Beverages Advertising Code _____

Advertising Standards Board

complaints process



Independent Review Process

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

Who can ask for a review?

People who originally complained about an advertisement and the advertiser are the only people who may request a review. If the complaint was made by an organisation, an advertiser or an industry complainant, the request for review should be signed by a person who, in the opinion of the Independent Reviewer, has the right to bind that organisation.

Requests for review received from people who were not original complainants will not be submitted to the Independent Reviewer and payment will be returned.

Time frame for requesting a review

Requests for review of a Board determination must be received within 10 business days of the date of the ASB's final letter of notification of a determination and must relate to a determination taken by the Board within the previous month.

Grounds for review

Reviews may be undertaken if the request is about at least one or all of the following grounds.

- Where new or additional relevant evidence which could have a significant bearing on the determination becomes available.

An explanation of why this information was not submitted previously must be provided.

- Where there was a substantial flaw in the Board's determination (determination 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 determination 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.

Cost of making a request

The cost of lodging a request for review is \$100 for complainants, \$500 for complainants from not for profit organisations, \$1000 for advertisers who pay the advertising levy and \$2000 for advertisers who do not pay the advertising levy. 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. The payment is refundable if the Independent Reviewer accepts the request and the Board changes its original determination.

Making the request

Requests for a review must be lodged via the ASB's online complaints system and must:

- contain a full statement of the grounds
- be in writing
- be accompanied by relevant payment.

Role of Independent Reviewer

In line with international best practice, the Independent Reviewer's role is to assess the validity of the process followed by the Board, or to assess any new material provided by parties to the case.

The Independent Reviewer does not provide a further merit review of a case. Their role is to recommend whether the Board's original determination should be confirmed or be reviewed. It is inappropriate to set up one person as a decision maker in place of a 20 member Board that makes determinations on the basis of community standards.

The Independent Reviewer will first consider whether the application for review sets out a prima facie case for review and will decide to accept or not accept the request.

If the Independent Reviewer decides to accept the request, the Independent Reviewer will undertake appropriate investigation. The investigation will include an invitation for other parties in the case (ie either the complainant(s) whose views were considered by the Board or the advertiser) to comment in writing on the submission provided by the party requesting the review. The Independent Reviewer can request that parties to a case appear in person or by teleconference if necessary.

If the Independent Reviewer decides not to accept the request because they consider that it does not meet any of the required grounds, the person making the request will be informed.

Following investigation the Independent Reviewer will make a recommendation to the Board, stating whether the Board's original determination should be reviewed or confirmed.

During the review process, the original determination (and any subsequent remedial action or withdrawal of the advertisement) will stand. The ASB will not delay publication of the relevant determination pending the outcome of the review.

What happens after a review

The Independent Reviewer can recommend:

- the Board's determination should be **confirmed**. There is no further investigation and the Board's original determination remains in place.
- the Board should **review** its determination. In this situation the case will be referred back to the Board at its next meeting along with the Independent Reviewer's recommendation and any material submitted during the independent review process. The Board must then review its determination in line with any recommendations from the Independent Reviewer. The Board can then either uphold or dismiss the original complaint/s.

The case report for the original case will be revised to include details of the Independent Reviewer's recommendation and, where necessary, the outcome of the Board's review of its determination.

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

The ASB will inform all parties of the Board's final determination.

Determinations that are revised or amended following a review will be published on the ASB website.

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

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.

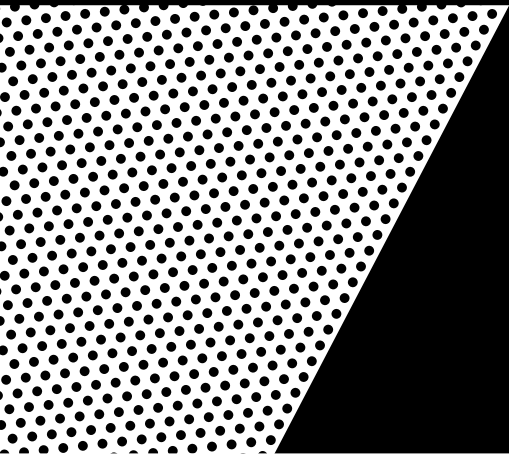
Third Parties

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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