



ADVERTISING
STANDARDS
BUREAU

Review of Operations

2012

Breaking · New · Ground



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Who we are

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 2012 the ASB administered the following codes of practice:

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

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

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

- health and safety
- use of language

- discriminatory portrayal of people
- use of sexual attraction in a manner which is an exploitative and degrading use of individuals or groups
- 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 during the past five years, 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.

The independent review process was established in 2008 to consider consumer and advertiser disagreement with Board determinations. The process was reviewed in 2010 and is kept under continuous review.

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

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 ASB 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 self-regulation

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 other than from some State governments which pay the levy in their capacity as an advertiser. The levy is paid to and administered by the Australian Advertising Standards Council (AASC).

How levy is collected

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

The levy is remitted quarterly through the AASC, the funding body of advertising self-regulation. The AASC holds the industry funds in an account which is drawn upon to pay the costs involved in administering and operating the self-regulatory system.

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

What the levy is used for

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

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

Confidentiality of levy collected

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

Snapshot

2012 complaint snapshot

Number of complaints received	3640
Number of complaints made about matters within ASB jurisdiction	1720
Number of complaints made about matters outside ASB jurisdiction	1280
Number of complaints about ads previously considered by the Board	501
Number of complaints about ads already withdrawn	45
Number of complaints assessed as consistently dismissed complaints	102
Number of complaints unassessed at year end	37



2012 breach or not snapshot

Number of ads the Board found consistent with Codes and Initiatives	404
Number of complaints about ads that did not breach Codes or Initiatives	1437
Number of ads the Board found breached a Code or Initiative	69
Number of complaints about ads that were found to breach the Code	283



2012 ad snapshot

Number of ads complained about	508
Number of cases created but were not put forward for consideration by the Board for variety of reasons	11
Number of ads withdrawn by advertiser before consideration by Board	24
Number of ads which were NOT modified or discontinued after a complaint was upheld	3



Most complained about ads in 2012

1 0305/12 TV *Johnson & Johnson Pacific Pty Ltd*

A younger woman aged mid 20's talks about how amazing our bodies are and about the body's way of keeping the vagina healthy and why Carefree has designed acti-fresh liners.
Board decision—Dismissed
Number of complaints—149

2 0079/12 TV *Red Bull Aust Pty Ltd*

Three cartoon characters fishing on a lake. One of the characters, named Jesus, states he's bored and decides to leave the boat and appears to walk on water as he departs.
Board decision—Dismissed
Number of complaints—96

3 0293/12 TV *Unilever Australasia*

Advertisement depicts an infomercial style scenario with a presenter and guest appearance by Sophie Monk who is a tennis player. She shows how the Lynx product can clean a variety of dirty balls.
Board decision—Dismissed
Number of complaints—92

4 0337/12 TV *Pacific Magazines*

As a cart and horse driven by an Amish elder couple stops to pick up a mother and son, the boy notices a discarded magazine lying in the grass nearby. In a series of vignettes the elder couple become increasingly concerned by changes occurring in their community and toss the magazine away.
Board decision—Dismissed
Number of complaints—85

5 0001/12 Internet *SCA Hygiene Australasia*

A drag queen and a woman in the bathroom of a nightclub or bar taking part in a friendly duel which ends with the woman pulling out her Libra tampon and giving the drag queen a cheeky smile.
Board decision—Dismissed
Number of complaints—78

6 0231/12 TV *Unilever Australasia*

Set in a TV studio with a mixed female and male audience and featuring a female presenter and another woman, "Amber Jones", introduced as former champion of a fictitious tennis tournament who talks about dirty sports balls and the difficulties of cleaning them properly.
Board decision—Upheld
(Modified or Discontinued)
Number of complaints—58

7 0025/12 TV *Pilot Pen Australia Pty Ltd*

A man is following a hand written recipe for soup. The word 'leek' is misspelled 'leak'. The man unzips his trousers and through sound effects we are led to understand that he is urinating in the soup.
Board decision—Dismissed
Number of complaints—54

8 0321/12 TV *Kimberly-Clark Aust Pty Ltd*

A Labrador puppy sniffs his way through the day, approaching various people from behind, including the backside of a plumber with his head under the kitchen sink.
Board decision—Dismissed
Number of complaints—40

=10 0170/12 TV *Transport Accident Commission*

The TVC shows in reverse the reconstructed actions of a motorbike crashing into a car.
Board decision—Dismissed
Number of complaints—19

=10 0437/12 Social *ACP Publishing Pty Ltd*

People are invited to comment on images on the Facebook page. Examples include a woman on the beach, separated into top and bottom halves and Facebook users were asked which half they would prefer.
Board decision—Upheld
(Modified or Discontinued)
Number of complaints—19

=10 0439/12 TV *Energy Australia*

Features a man sitting inside a fridge.
Board decision—Upheld
(Modified or Discontinued)
Number of complaints—19

Executive Reports

Chairman's report

CEO's report

ASB Board of Directors

Chairman's report



The highlights of 2012 all point toward taking on and promoting new and innovative approaches to advertising self-regulation.

This year the Board has faced new challenges in making determinations about the ever-growing advertising and marketing communication tools used by Australian business to promote good and services.

The determinations made by the Board, in relation to the use of social media, show that marketing communications which use social media to promote goods or services also need to be considered carefully and follow the Codes and Initiatives which underpin the advertising self-regulation system.

I would like to express my appreciation to all members of the Advertising Standards Board for the work done in rigorously upholding community standards.

The continued high level and quality output from staff at the Bureau is also an important ingredient in the success of Australia's advertising self-regulation system. The small team at the Bureau administers the complaints arm, adapts to new processes and a constantly changing advertising environment, while promoting the service to the community and providing information and training to the community, industry and advertisers. The ability of this team to continue at the relentless pace is to be commended.

Thank you also to Independent Reviewers Ms Victoria Rubensohn AM and Dr Dennis Pearce AO for the important role they played in providing impartial assessment of the appropriateness of Board decisions and Bureau process.

While the Bureau continues to build international links through the European Association Standards Alliance (EASA), work begun the year before 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, came to fruition in 2012.

A highly successful APEC Dialogue, hosted and coordinated by the ASB, was held in Hanoi with participants eagerly interacting with the wide range of speakers and with each other. The energy of those participating and commitment to further the self-regulation of advertising in their countries and throughout the region resonated well for the future.

The support of the industry continues to be a vital component to the effective administration and continued improvement of the advertising self-regulation system as a whole. Unfortunately, some larger advertisers continue to receive 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.

I also want to express my appreciation to the Board of the Bureau who voluntarily and willingly offer their time to assist with corporate and strategic matters.

Ian Alwill

CEO's report

The ASB is committed to continual improvement of the system of advertising self-regulation and ensuring that we are aware of criticism—some groups continue to rally for government intervention in advertising self-regulation.

Being able to accommodate complaints about advertising and marketing communications in all media is critical for ASB and for advertising self-regulation. During 2012 some of our biggest challenges arose in the emerging area of social media marketing.

In the second half of 2012, the ASB's approach to complaints about advertising and marketing communications in social media was groundbreaking and we worked hard with industry and with the ACCC to ensure that our approach was sustainable and that industry was able to meet the requirements of our approach.

Part of the challenge is to ensure that relevant government agencies and departments are aware of ASB and so we make considerable efforts to ensure submissions to relevant inquiries are submitted.

It is also appropriate for us to question due process—or a lack thereof—in government or quasi-government agencies. We were pleased this year to work constructively with government and the Federal Chamber of Automotive Industries to suggest improvements to the advertising of motor vehicles. This collaboration also helped the government to more appropriately use funds which were to be spent on a review by an agency which seemed to have predetermined the outcome.

We are very proud of the significant work that our small organisation undertook in having an APEC project on advertising self-regulation approved and funded. This meant that ASB was able to run, with the support of the European Advertising Standards Alliance, the International Chamber of Commerce and the World Federation of Advertisers, a very engaging and information filled Dialogue in Hanoi, Vietnam in November. Bringing together advertising self-regulation experts and novices from 17 of the 21 APEC Economies will make a significant difference to the expansion of advertising self-regulation. It will also provide support to other self-regulation organisations in our region.

Much thanks goes to the small team at ASB – Nikki and Daniela (Complaints), Brian (Operations), Sarscha and Rachel (Administration), Sari (Communications), Sue (Research and APEC planning) and Simone (Legal). This year in particular I must thank all of the team who worked very hard during my three month absence—particularly Brian for acting as CEO. Thank you also to the Bureau Board who believe in the value of balanced work and family life and happily released me from duty in order for me to take my family on an extended holiday in Europe.

In 2012 again we had a staff turnover of 0% (other than a happy departure on maternity leave of our office manager Sarscha, who welcomed her first child Jack). 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 high performing and a family friendly workplace.

Fiona Jolly

Advertising Standards Bureau Board of Directors

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

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

The Bureau Board is responsible, with the CEO, for the corporate governance of the ASB. With strategic, financial and operational concerns within its purview, 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.

At 31 December 2012, the Board of Directors included six members.

Board of Directors

Ian Alwill
Chairman, ASB
Principal, Alwill Associates

Michael Duncan
Director, ASB
Group Yield and Inventory Manager, DMG
Radio Australia

Hayden Hills
Director, ASB
Group Manager—Finance
Operations—Allianz Insurance

Victoria Marles
Director, ASB
Chief Executive Officer—
Trust for Nature, Victoria

John McLaren
Director, ASB
Principal, McCalaren Consulting

John Sintras
Director, ASB
Chairman,
Starcom MediaVest Group Australia

Meetings

The Board of Directors met six times during 2012.

Board member	Position	Number of meetings attended	Period of Board membership
Ian Alwill	Chairman	6	December 2004 (continuing)
Michael Duncan	Director	5	November 2001 (continuing)
Hayden Hills	Director	6	December 2004 (continuing)
John McLaren	Director	5	March 2009 (continuing)
Victoria Marles	Director	6	November 2011 (continuing)
John Sintras	Director	2	December 2005 (continuing)

APEC 2012

Dialogue on advertising standards—principles and practice

Dialogue session summaries

Dialogue outcomes

Dialogue on advertising standards—principles and practice



Delegates from 17 of the 21 APEC economies convened in Hanoi, Vietnam on 7–8 November 2012. During the two day Dialogue delegates and presenters from a world stage shared information, policies and best practice principles regarding advertising standards in order to reduce barriers to trade and investment across APEC member economies.

The Dialogue was the second held under APEC's Regulatory Cooperation Assistance Mechanism (ARCAM). The goal of ARCAM is to prevent and address unnecessary barriers to trade by creating an institutionalised process for early dialogue among APEC economies on emerging regulatory issues.


















With the guidance of the Department of Foreign Affairs and Trade, and assistance from members of the International Council of the European Advertising Standards Alliance (EASA), the Advertising Standards Bureau (ASB), developed and organised this event and took an active role at the Dialogue, promoting the concepts of advertising self-regulation into the Asia Pacific region.

Themes covered during the two-day event included:

- the importance of advertising to the free flow of goods and services
- effective advertising regulation
- good regulatory governance in advertising, and
- regulatory and self-regulatory best practices covering advertising content and complaint resolution.

The goal of the Dialogue—to affirm the importance of advertising as a driver of economic growth and to explore the application of internationally accepted practices regarding the self-regulation of advertising for possible broader use within APEC—also sought to foster partnerships between governments and business, advertisers and the media in the advertising sector.

APEC economies in attendance:

-  Australia
-  Canada
-  Chile
-  People's Republic of China
-  Indonesia
-  Japan
-  Malaysia
-  Mexico
-  New Zealand
-  Papua New Guinea
-  Peru
-  The Philippines
-  Russia
-  Singapore
-  Thailand
-  The United States of America
-  Vietnam



Group photo of the Dialogue participants.



Ms Dang Thi Bich Lien, Vice Minister of Ministry of Culture, Sport and Tourism, Vietnam



Ms Fiona Jolly, Chief Executive Officer, Advertising Standards Bureau, Australia; Ms Nguyen Thi Kim Loan, Chair, Advertising Club Vietnam; Mr Ian Alwill, Chairman, Advertising Standards Bureau, Australia

Opening comments

In his opening comments Mr Ian Alwill, Chairman, Advertising Standards Bureau, Australia, highlighted the purposes of the Dialogue:

- to address the issue of self-regulation in advertising and how self-regulation itself can be successful in reducing technical barriers to trade, specifically through consistent standards for advertising content, and models for the least interventionist regulation for advertising, and
- to enable APEC economies to share information, policies and best practice principles regarding advertising standards.

Keynote address

Ms Dang Thi Bich Lien, Vice Minister of Ministry of Culture, Sport and Tourism, Vietnam, opened the Dialogue. She expressed her hope that the outcomes of the Dialogue would provide the government bodies responsible for the advertising industry in Vietnam with the latest international good practices and experience in effective advertising convergence and regulatory cooperation which would set forth a favourable environment for the advertising industry to develop and contribute to the overall social-economic development of Vietnam.



Dialogue session summaries



Mr Will Gilroy and Mr Ian Alwill take a break during the Dialogue.



Dr Ricardo Maguina, CONAR Peru, talks about the role of his advertising standards body.



Ms Ildiko Fazekas, Chairman of EASA, highlights the European experience.

Session 1: Advertising— Macro and micro perspectives

Mr Will Gilroy, Director of Communications, World Federation of Advertisers, provided an overview of the economic, social, and cultural importance of advertising and the essential role that advertising standards play both from the perspective of the global marketing industry and from the world's biggest marketer, Procter and Gamble.

Sessions 2 and 3: Principles of self-regulation and good regulatory governance and what is self-regulation for advertising

Mr Oliver Gray, Director General EASA and Mr Glen Wiggs from the Foundation for Advertising Research, New Zealand, provided participants with an understanding of what advertising self-regulation is and what are the key elements for successful advertising self-regulation.

Session 4: Panel discussion on regulation, self-regulation, co-regulation—the options and the experiences

Building on the information provided in the first three sessions, session 4 was a panel discussion Chaired by Dr Oliver Gray (EASA), which enabled three APEC economies to discuss how they have each adopted approaches to advertising regulation, and also provided further perspective from the EASA.

Mr Tran Hung gave an overview of advertising in Vietnam, Dr Ricardo Maguina, CONAR Peru, highlighted the role of his advertising standards body. Ms Ildiko Fazekas, Chairman of EASA, highlighted the experience of advertising self-regulation development in the European Community. Mr Lee Peeler, President and CEO of the Advertising Self-Regulatory Council and Executive Vice President of the Better Business Bureau of the USA, shared US knowledge in this field.



Mr Alain Musende PhD and Ms Linda Nagel (Canada) take questions from the floor.



Ms Zenaída Cuisón Maglaya (Philippines) discussed the interests of consumers.

Session 5: Enforcement and compliance

The issue of enforcement of self-regulatory decisions and compliance by industry is critical to the success of advertising self-regulation. Mr William MacLeod, Vice Chair of the OECD BIAC Task Force on Consumer Policy presenting on behalf of himself and Mr Keith Fentonmiller, Senior Attorney, Federal Trade Commission focused on the American experience in this area.

Session 6: Case study

A case study of where a government regulator and a self-regulatory organisation work cooperatively to achieve positive outcomes for consumers was jointly presented by Mr Alain Musende PhD, Manager, Regulatory Advertising Section, Marketed Health Products Directorate, Health Canada, and Ms Linda Nagel, President and CEO, Advertising Standards Canada, who also explained the structure and role of Advertising Standards Canada.

Session 7: Case study

Another example of an advertising regulatory system and the way in which the self-regulatory organisation and government worked together was presented by Mr Audie Orleans, Advertising Standards Council, Philippines and Ms Zenaída Cuisón Maglaya, Under Secretary, Department of Trade and Industries, Philippines, who discussed the importance of the self-regulation system in protecting the interests of consumers.



During a workshop session a group discussed principles for effective ad standards.



Discussion about industry codes included a presentation from Mr Brent Sanders Chair, Advertising and Marketing Commission, ICC and Legal Counsel for Microsoft.

Session 8: Workshop

A workshop on advertising self-regulation was facilitated by Mr William MacLeod, Vice Chair of the Business and Industry Advisory Committee (BIAC) to the OECD Task Force on Consumer Policy and Former Director, Federal Trade Commission's Bureau of Consumer Protection.

Participants discussed the principles for effective self-regulation and ranked them in order of importance or less importance for particular economies.

The most important principle was found to be that:

Universal and effective codes should apply to communications.

Participants also identified major factors needed in various economies in order to move towards effective self-regulation including:

- Support and strong emphasis from government for putting in place a self-regulation program.
- Involvement of all stakeholders is essential (government, consumers and industry)
- Information from countries with SROs needs to be adapted to be relevant to other countries
- Industry (advertisers, advertising agencies and media) need to understand the threats to business from increased regulation in order to appreciate the relevance of self-regulation to their own business (international threats or local threats).

Session 9: Funding an effective self-regulation model

To complete discussion about the structure and functioning of a self-regulatory organisation, Ms Hilary Souter, Chief Executive, Advertising Standards Authority, New Zealand, presented information about how self-regulatory organisations can be funded.

Session 10: International Chamber of Commerce

Session 10 moved the Dialogue from a discussion about the structure and operation of self-regulation and a self-regulatory organisation into a more detailed discussion about industry codes, and their development and content. The discussion was led by Ms Elizabeth Thomas-Raynaud, Senior Policy Executive, from the International Chamber of Commerce (ICC), and Mr Brent Sanders, Chair, Advertising and Marketing Commission, ICC and Legal Counsel for Microsoft.

Session 11: Ethics, taste and decency

Turning to another specific area of the ICC Code, Ms Fiona Jolly, Chief Executive Officer, Advertising Standards Bureau, Australia introduced the Australian Advertising Standards Bureau and some detail about the Australian system, specifically addressing the emphasis in the Australian self-regulatory system on ethical standards around taste and decency.

Session 12 and 13: Panel discussion on emerging policy issues

The next two sessions were discussions of emerging policy issues that would affect advertisers in the APEC region. Issues included food and alcohol advertising, digital advertising and the use of standards for advertising on social media.

Panelists were Mr Will Gilroy, Director of Communications, World Federation of Advertisers, Mr Michael McShane, Managing Director Asia Pacific, Brown-Forman, Ms Karla Avila Jimenez, Executive Director, CONAR Mexico, Mr Andrey Kashevarov, Deputy Head, Federal Antimonopoly Service, Russia, Mr Fyodor Borisov, Director, Russian Association of Advertisers, and Mr Brian Gordon, Operations Manager, Advertising Standards Bureau Australia.

Session 14: Workshop and wrap-up

To conclude the Dialogue, Ms Jolly first presented, for discussion by participants, a summary of considerations from the two days. The participants reviewed the key themes from the event including the:

- different models of advertising standards regulation
- essential principles of effective advertising regulation
- numerous beneficiaries of self-regulation including consumers, governments, the advertising industry and small and medium sized enterprises (SMEs)
- key factors that are necessary to move towards advertising self-regulation
- existence of international best practices which can be tailored to cultural, legal and regulatory variations in each APEC economy
- importance of advertising to trade and investment flows, and
- possible additional next steps.

Conclusion

In closing the Dialogue, Mr Alwill outlined the need for freedom of commercial speech and the importance of removing or reducing technical barriers to trade to improve trade and advertising and hence consumer choice and information in the APEC Region.

Dialogue outcomes

1 The Dialogue discussed the critical importance of advertising to consumers and companies, noting that advertising was responsible for 15 per cent of GDP growth among the G20 economies and is an important driver of economic growth within APEC¹. Promoting alignment of regulatory frameworks to recognise a role for self-regulatory organisations (SROs) built upon international best practices will thus promote growth in, and trade among, APEC economies by reducing non-tariff barriers to trade or preventing such barriers from arising in the first place.

Reducing and preventing non-tariff barriers to trade

2 Delegates discussed the importance of good standards for governance and content, best practices and models of self-regulation as a complement to the regulatory framework, regulatory governance, compliance and enforcement, marketing and advertising codes and principles, stakeholder involvement (government, industry, media, and Self-Regulatory Organisations), and emerging policy issues. The Dialogue noted the mutual benefits to economies, consumers and business of enhanced cooperation between the public and private sectors regarding the regulation of advertising, and encouraged further exploration of those benefits.

3 The Dialogue discussed the benefits of advertising self-regulation in providing an efficient and effective system for resolving complaints about advertising that meets community needs in a manner that minimises costs to business and government. Self-regulation enables the advertising industry to effectively operate while reducing delays caused by government intervention in matters such as: pre-approval of advertising; lack of clarity in standards about appropriate advertising; and prescriptive procedures that prevent advertisers from responding quickly and cost effectively to problematic advertising. Self-regulation is generally complementary to legislative or regulatory options in member economies and is widely supported by industry in the economies in which it already operates. This support is manifested through compliance with codes and decisions and via funding.

4 The Dialogue also considered effective advertising self-regulation a useful consumer policy tool that provides an important complement to, but does not substitute for the regulatory framework. Effective self-regulation is an efficient means of preserving consumer trust and confidence in the market-place, empowering consumers by assuring prompt resolution of consumer complaints, stimulating competition, protecting brand integrity and thus market capitalisation, and preventing unnecessary and onerous non-tariff barriers to trade.

5 The Dialogue observed that in considering whether to establish a self-regulatory system, to be effective any such system must reflect the cultural, legal, and economic context of individual APEC economies. Participants noted that there is no 'one size fits all' approach to setting up a self-regulatory system. Developing an effective self-regulatory system is a process that typically evolves over time and does not necessarily follow a set chronology. As a result, the Dialogue observed that different components of the best practice model are likely to be prioritised to reflect the legal and cultural realities as well as the different levels of economic development in the 21 APEC member economies. The Dialogue agreed that there are several key elements that both foster and characterise effective advertising self-regulation. These include:

- 5.1 An effective regulatory framework that acknowledges and promotes the role of industry-led advertising standards in helping to achieve agreed policy objectives.
- 5.2 The establishment of an impartial, accountable, accessible and transparent self-regulatory system that is compliant with the law and follows an internationally accepted best practice model.

¹ McKinsey and Company report, Advertising as an economic-growth engine, March 2012.

- 5.3 Regardless of the regulatory model adopted by each APEC member economy, there are existing international advertising self-regulatory best practices from which the region could draw. The Dialogue discussed the Perspectives on Advertising Self-Regulation which had been developed by the EASA which identifies an agreed set of international best practices for effective advertising self-regulation.
- 5.4 These best practices have already been adopted to varying degrees by SROs in 13 APEC economies and might be suitable for adoption within APEC. Effective advertising regulation or self-regulation does not require the simultaneous implementation of all best practice components, particularly when the SRO is in its formative stages. Adoption of a universal and effective code which draws on the International Chamber of Commerce's *Consolidated Code of Advertising and Marketing Practice* would also be a useful first step for APEC economies to consider.

Recommendations

Building on discussion at the Dialogue several recommendations were proposed. These recommendations encourage further APEC support for the alignment of regulatory frameworks in acknowledgement that advertising self-regulation plays an important role in economic growth and in building consumer trust in the market. The recommendations also reflect the importance of reducing and preventing barriers to trade through the development of SROs on the basis of international best practice.

The recommendations were put to the APEC Committee for consideration. If accepted/adopted work to implement them will be in cooperation with APEC economies.



Achievements in 2012

Achievements against objectives

Objective 1

Delivering effective advertising self regulation in Australia

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

A highlight of 2012 was a review assessing the operation of the Australian Food and Grocery Council's (AFGC) Responsible Children's Marketing Initiative (RCMI) and Quick Service Restaurant Initiative (QSRI) which also looked at the administration and operation of Australia's advertising self-regulation complaints handling arm. This review found the work of the Advertising Standards Bureau (ASB) to represent an international best practice model for complaints resolution.

Cooperation with health authorities in line with continued high level discussion about advertising and obesity issues also featured in work carried out by the ASB. A response by the ASB to a discussion paper prepared by SA Health for the national seminar on food marketing to children led to ASB involvement in a working group formed to discuss the effectiveness of the industry initiatives and identify opportunities for improvement. The group was co-chaired by the AFGC and the Chief Public Health Officer, SA Health. Membership included representatives of the Australian National Preventive Health Agency (ANPHA), the Australian Association of National Advertisers, Australian Government Department of Health and Ageing, ASB, Australian Medical Association, Cancer Council New South Wales, Heart Foundation; Victorian Department of Health, Kellogg, McDonald's, Obesity Policy Coalition, and Sydney University.

The Working Group objective was to reduce children's exposure to the advertising and marketing of energy dense nutrient-poor foods and beverages. Agreement was reached that Codes and Initiatives relating to food advertising to children would be changed to further align with international self-regulatory

best practice in relation to placement of advertisements.

In other work, a proposed Department of Infrastructure and Transport request for tender for provision of a review into motor vehicle advertising standards was abandoned after Departmental inquiries were made into the efficacy of the complaints administration system and self-regulation of advertising. The Department, along with meeting with ASB and other relevant organisations, took into account favourable reports published after 2011 Senate and House of Representatives inquiries.

In line with the 2011 Senate and House of Representatives inquiries, the ASB provided responses to the Attorney-General's Department on the relevant recommendations as outlined in the final report of the House of Representatives Standing Committee inquiry into the regulation of billboard and outdoor advertising. The final report was released in August 2012.

A submission was also made by ASB to the Australian Subscription Television & Radio Association Review of the Codes of Practices specifically the Subscription Broadcast Television (SBT) Codes of Practice 2012.

Throughout 2012 staff continued to deliver on the core function of delivering an effective and efficient complaint adjudication system. Data sourced from the case management system shows that in 2012, 73 per cent of cases were completed within 30 business days (42 calendar days), with 91 per cent of cases completed within 42 business days. Improvements and streamlining of ASB procedures and the case management system are evident in these results, with previous year figures showing that 55 per cent of cases were completed in the 30 day time frame and 80 per cent in the 42 day time frame.

During 2012 just three cases were recorded as Upheld—Not modified or discontinued (Pleasuredome – 0028/12, Wicked Campers – 0086/12, Car Safe – 0269/12). This description indicates cases where the advertiser has refused to co-operate with the Bureau in complying 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 advertiser, and has also sought advice from State Government and industry stakeholders about other avenues of removing the offensive advertising and marketing communications.

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

A major initiative completed in 2012 to ensure the Board, Bureau and industry understand and are aware of community standards, was research testing the five core provisions of the Australian Association of National Advertisers (AANA) Code of Ethics. The ASB commissioned research to assess current community attitudes and also sought information about possible shifts in community standards and the Board's alignment with those standards. The research highlighted language and health and safety issues as areas of difference between community and Board perceptions. It found the community was in general more conservative than the Board regarding themes of strong language and that it was an area where community views appear to have become more conservative since 2007.

The overriding objective of the 20 member 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. 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 Board members are from a broad range of age groups and backgrounds and is gender balanced—representative of the diversity of Australian society.

Research such as the *Community Perceptions Research 2012* report provide the Board with further insight and understanding into the values and standards of the community and are highly valuable to ensure consistency between community views and Board determinations. The ASB will continue to research key aspects of importance to ensure community standards are reflected in decisions.

During 2012, to increase technical knowledge and consistency of decision making, the Board participated in two training sessions. These sessions included discussions on Code revisions, in-depth analysis of noteworthy upheld, technical and controversial cases, and feedback from the community on recent decisions. Members of the Bureau presented information to the Board regarding upcoming trends in complaints and community concerns, policy issues and the Bureau's management of consistently dismissed issues and complaints outside the scope of the Board.

During a training session, the main findings of the *Community Perceptions Research* report were presented to the Board. The presentation and discussion that followed allowed members to discuss their views regarding community standards and evaluate the consistency of their decision-making approaches.

Following increased complaints and community concern in the social media space, the Board was given a presentation by a Facebook representative discussing functionality, policies and usability of this advertising medium.

Issues raised in Facebook cases included those of great community concern, such as cyber safety. The issue of cyber safety was raised in a Bendon (0376/12) Facebook marketing communication. The concept was for best friends to upload pictures of themselves through Facebook. The case was found to breach the Code in relation to health and safety issues.

Another Facebook case of note in 2012 concerning online safety was a campaign for Mossimo (0076/12). This case was upheld under the newly introduced Section 2.2 of

the Code for using exploitative and degrading advertising. The campaign encouraged people to upload pictures of themselves and to view Miss Universe Australia in her own Mossimo Peep Show. The Board considered sexting—the practice of sending explicit self-portrait photographs via mobile phones, to be an issue of concern in Australian society and contrary to prevailing community standards of online behaviour.

During 2012, ASB staff assisted with input into Code reviews including the AFGC Initiative review and the Motor Vehicle Industry on the review of their Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising.

Regular sessions were also held with the AANA to provide information about Board decisions and interpretation of these in relation to sections of the Code to ensure the AANA receives general feedback about application of the Code.

Objective 3

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

In 2012 the ASB continued to build on awareness of its role through participation in industry events and seminars, government interaction, distribution of information and other specific activities designed to foster community awareness.

Participation by the Chief Executive Officer in a National seminar on food advertising and marketing to children, involving *Hon John Hill MP, South Australian Minister for Health and Ageing* led to interest being shown by the Australian National Preventive Health Agency (ANPHA) in the self-regulation of advertising and in particular the administration of the complaints system by the ASB. The ASB consequently made presentations to ANPHA in relation to their work in reviewing food and alcohol advertising.

Previous liaison and information provision with government officials (Senate inquiry into outdoor advertising and a House of Representatives inquiry into the National Classification Scheme) was helpful in providing support in relation to the efficacy of the complaints administration system and self-regulation of advertising. In the face of a proposed Department of Infrastructure and Transport request for tender for provision of a review into motor vehicle advertising standards, previous information provided to government and parliamentary officials, assisted the Department in making a decision to abandon the tender.

The ASB's continuing proactive response to media has also contributed to the maintenance of a high level of interest in Board determinations. Throughout the year, information provided on the website, through the bulletins were covered by general news, social affairs and marketing reporters. In addition, the Chief Executive Officer, and during her absence, the

Acting Chief Executive Officer, participated in media interviews for print, internet, radio and television about issues relating to ASB operations.

The number of subscribers to electronic publications rose steadily throughout 2012. Monitoring of the open rates of media releases and the monthly *Ad Standards Bulletin*, show high levels of interest in the information content, across all stakeholder groups—industry, community, media, and government. The bulletin allows 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. Other work during the year saw the introduction of a blog to the communication tools used to provide information and in this case also receive direct comment about issues concerning the public.

Although awareness of the Bureau remains high according to the 2012 community perceptions research finding, with unprompted recognition of ASB maintained at 62 per cent, planning for a new public awareness campaign in 2013 commenced in mid-2012.

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 Communications Council Effie awards.

The ASB also supported the Media Federation of Australia's NGEN group with presentations to graduates in Melbourne and Sydney in late 2012.

Objective 4

Keeping pace with advertising and marketing communication developments in new media

Options for reaching consumers continue to expand with technological innovations. 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—internet, social media, Apps and sms.

During 2012 the ASB received an increase in complaints about advertisers utilising social media and other internet based tools to reach consumers.

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.

In 2012 the Bureau separated mainstream internet advertising and marketing communication from internet-social media—such as Facebook.

In 2012 complaints were received about advertiser Facebook pages. These cases were put to the Board and in one landmark case comments included on that page were considered to be part of the marketing communication. The issue of who is responsible for content—whether it is an image or a comment—on these pages was, and continues to receive a good deal of commentary in the

media, legal fraternity and with advertisers themselves.

Social media cases considered during 2012 include:

- Smirnoff Facebook Page – 0272/12
Dismissed
Complaint referred to the various comments and photographs uploaded by the advertiser and members of the community.
- Fosters Facebook page for VB – 0271/12
Upheld
The page featured questions posted by the advertiser and comments from members of the community. The comments include coarse language and sexual references.
- Zoo Magazine Facebook – 0437/12
Upheld
Zoo magazine posted images of women on their Facebook page and invited comments on the images.
- Mossimo Peep show – 0076/12
Upheld
The Facebook and email campaign encouraged people to upload pictures of themselves or to check out Miss Universe Australia in her own Mossimo Peep Show.

During 2012 an App and an SMS were also considered to be advertising and marketing communication mediums. The Board considered an App (Stuart Alexander – 0187/12) after complaints were received about its promotion of confectionery to children and an SMS (Sportsbet – 0476/12) with complaints referring to promotion of excessive gambling.

The two related mediums (internet and internet-social media) received more than 10 per cent of all complaints in 2012. The rate

of complaints about internet advertisements rose again in 2012 to its highest level at 7.8 per cent of all complaints, with internet-social media accounting for 2.6 per cent of complaints received.

The ASB believes it is important that the community has access to a complaints resolution service in relation to all advertisements and marketing communications 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, Ms Fiona Jolly represented ASB at the European Advertising Standards Alliance (EASA) General Council Meeting in Brussels in April 2012. 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.

Priority areas for discussion in 2012 focused on some issues similar to those under consideration in Australia.

- Understanding the range of self-regulation initiatives that the international alcohol community is implementing.
- Sharing information about enforcement strategies and ways to improve compliance.
- A presentation of results from the EASA member implementation of the food brand website monitoring program. This program was designed to assess advertiser compliance with and interpretation of the European advertising to children initiatives and codes.

The issue of cosmetics advertising and marketing is significant in Europe and the meeting discussed the proposed new Cosmetics Europe Charter and Framework. This will be a useful resource should the issue become one of interest in Australia.

There was also significant discussion around the practicalities of implementing the complaints handling mechanisms which the European SROs will have responsibility for under the Online Behavioural Advertising Code.

The group was also able to make considerable progress on development of the program for the APEC conference specifically identifying key issues for presentations and speakers.

This year's General Council meeting provided opportunity for a special conference on self-regulation held in recognition of 20 years of EASA. The conference included a presentation from John Dalli, the European Commissioner for Health and Consumer Policy regarding the regulatory challenges and solutions for responsible advertising. Commissioner Dalli set out his view that advertising self-regulation can be a useful tool, which can helpfully complement the work of public enforcers. Commissioner Dalli also highlighted that advertising self-regulation can serve as best practice provided that is trusted and adequately monitored, something which was strongly reflected in the opinions of both advertising industry representatives and opinion makers in the two panel discussions.

In line with the EASA work, as Deputy Chair of International Council on Advertising Self-Regulation (ICAS), during the past two years Ms Jolly has worked on a project investigating options to promote advertising self-regulation in the Asia/Pacific region. Prior to 2012, work undertaken on this project included development of an APEC concept note, in consultation with New Zealand, Canada and Peru SROs and relevant officers in the Australian Department of Foreign Affairs and Trade. In 2012 the project was realised with a Dialogue on Advertising Standards-Principles and Practice held in Hanoi on 7 and 8 November 2012.

The ASB played the lead role in organising and conducting the event. The Dialogue, sponsored by APEC, was held under APEC's Regulatory

Cooperation Assistance Mechanism (ARCAM). Over 50 delegates from 17 of the 21 APEC countries participated in the Dialogue.

Themes covered during the two-day event included the importance of advertising to the free flow of goods and services, effective advertising regulation, good regulatory governance in advertising, and best practices for regulatory as well as self-regulatory practices covering advertising content and complaint resolution.

The Dialogue discussed the European Advertising Standards Alliance (EASA) Best Practice Self-Regulatory Model of April 2004 which identifies best practices identified following extensive consultation with regulators, non-governmental organisations (NGOs) and public interest groups. It was noted that these best practices have already been adopted to varying degrees by SROs in 13 APEC economies and might be suitable for adoption within APEC.

A report on the Dialogue outcomes will be presented to APEC with a view to encouraging further progress on the initiative. The ASB will encourage APEC support for the alignment of regulatory frameworks in acknowledgement of advertising's role in economic growth and the role that self-regulation plays in building consumer trust in the market. The report recommendations also reflect the importance of reducing and preventing barriers to trade through the development of SROs on the basis of international best practice.

Organisation of the Dialogue was a significant component of ASB's work during 2012, with all staff involved, in arranging and coordinating the event. A section of this *Review of Operations* provides detailed information about the Dialogue.



Following on from the scoping and design works undertaken in 2011, ASB dedicated a significant amount of time and staff resources into the testing and assessment of Phase II enhancements to the critical systems centrepiece of the ASB Case Management System (CMS). All complaint and case activity is progressed and managed via the CMS. All correspondence and case material is generated via the CMS and all workflow analysis, reporting and statistical information is contained within and generated from the CMS. In addition to many minor process improvements, the Phase II enhancements further streamlined the complaint and case management functionality by eliminating many manual process steps, incorporated the Independent Reviewer in the system processes and significantly improved the data interrogation and information analysis capability. These enhancements will result in improvements in the timeliness of those steps in the complaint adjudication process that rely on system processes and will allow the ASB to better analyse and report on complaint management trends and performance.

In 2012 the ASB continued the practice of seeking feedback from complainants and advertisers about the advertising complaint adjudication process in the form of an exit survey. Response to the survey invitation was modest, with almost 70 complainants and less than 10 advertisers completing the survey. The Bureau prepares a report for the Board of Directors providing system or procedural improvements that can be identified from the feedback provided by complainants and advertisers.

The majority of complainants indicated a neutral or positive degree of satisfaction with the overall complaint adjudication process, 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 broad range of concerns around matters such as the limited scope of the advertiser codes, the Board not being able to fine or sanction advertisers, the fact that a high number of complaints should result in an ad being banned and that the specific concerns raised by all complainants are not addressed in the final case reports.

The majority of advertisers indicated a high level of satisfaction about their dealings with the ASB.

Exit surveys will be implemented for 2013 and the Bureau will actively promote the use of the feedback mechanism, particularly for advertisers.

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 in turn provides funding to cover the operations of the Advertising Standards Bureau (ASB).

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

A core role for ASB is promotion of the benefits of Australia's advertising self-regulation system to advertisers and encouragement of participation in the levy system. ASB has maintained its approach that support from industry is critical in two areas: cooperation and compliance with the complaint adjudication role of the ASB; and through financial support of the system through payment of the advertiser levy.

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

During 2012, the ASB continued to actively identify and target those major advertisers who do not financially contribute to the self-regulation system. The ASB maintained its view 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.

Due to resource constraints and higher work priorities, the ASB was not able to progress work on further reviewing the structural

arrangements of the levy system during the 2012 calendar year. This issue is a priority for 2013.

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—the Responsible Children's Marketing Initiative and Quick Service Restaurant Initiative). ASB receives a modest income for the provision of these services.

During the latter half of 2012, the ASB undertook an Activity Based Costing exercise where all work activities of staff were recorded and, where possible, were identified against the individual Codes and Initiatives. Analysis of data from this exercise will enable ASB to more accurately identify the costs of undertaking various components of the complaint adjudication service.

The ASB completed the implementation of Phase II of its Complaints Management System during the second half of 2012. The investment in system functionality and capability is expected to generate long term efficiencies and improvements in timeliness of the complaint adjudication function. The enhancements have improved ASB's capacity to search and extract information on complaints and cases as well as providing improved reporting on all aspects of the ASB activities, including the timeliness of the complaint adjudication process.

The financial administration and control of ASB is overseen by an independent internationally recognised accounting firm and accounts are audited by an independent national audit firm. The audit report for the financial year 2011–12 confirmed that the financial management of the ASB was in accordance with current law and accounting standards.

Objective 7

Having a skilled and sustainable workforce

The small team at the ASB was able to manage its work and priorities during a demanding year. Staff made significant and effective contributions in achieving goals and managing a number of high priority projects—a research project, enhancements to the Case Management System and the APEC Dialogue.

During 2012, ASB staff delivered training to members of the Advertising Standards Board. Two full-day training sessions, in May and December 2012, were provided to the Advertising Standards Board. ASB staff presented sessions detailing elements of the advertiser codes with a particular emphasis on the food Codes and Initiatives, provided comprehensive sessions covering Board decisions and precedents as well as delivering specific sessions on targeted elements of the self-regulation system.

In addition to the ongoing complaint assessment and case management responsibilities, staff were also heavily involved in the ongoing testing and assessment of enhancements to the Case Management System. This work culminated in the implementation of the enhanced system in late September 2012.

The Chief Executive Officer took an extended period of leave from July to October 2012. In her absence, the Operations Manager acted as CEO and other staff, particularly the Case Managers and Administration Manager, took on extra responsibilities to ensure project and core business functions continued to be delivered efficiently.

During much of 2012, the Senior Project Officer was immersed in the complex and time consuming responsibilities of arranging, organising and driving the delivery of the APEC Dialogue. The senior project officer was

highly praised by all Dialogue participants for her exceptional efforts in bringing together a successful event with a comprehensive agenda and strong panel of speakers. All staff contributed to the arrangements in the final weeks leading to event. In addition to the CEO's role in leading the Dialogue, three staff members attended the Dialogue to assist with logistical arrangements, administration and successful delivery of the event.

The Administration Manager's role was extended in the last six months of the year to take on communication assistant duties. This has provided opportunity for development of new skills as well as providing assistance in completing more technical and administrative tasks involved in communications activities.

All staff were given opportunities to undertake training and personal development in line with their needs, identified in their individual development and performance agreement. A number of staff attended a Women Presenting Powerfully Masterclass and in preparation for the role of acting CEO, the Operations Manager participated in media training as well as executive leadership sessions.

In the CEO's absence, both the acting CEO and Communications Manager presented training sessions about the role, responsibilities and decisions of the Bureau and the Board, to participants of the MFA's NGEN program.

Through an external service provider the ASB maintained an Employee Assistance Program (EAP) which provides advice, counselling and support to all Bureau staff.

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

For the calendar year ended 31 December 2012, 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 4.60 years
- a staff gross attrition rate of 0.00% for 2012.

Board Reports

Board view

Board Members

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 two and three of the *AANA Code of Ethics*. This Code determines what issues the Board can look at when considering complaints. These issues fall broadly into 10 categories:

- discrimination
- exploitative and degrading images
- 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 Voluntary Code for Advertising of Motor Vehicles)
- food and beverages (including the AANA Food and Beverages Marketing and Communications Code, the Quick Service Restaurant and Australian Food and Grocery Council Initiative)
- environmental (Environmental Claims in Advertising and Marketing Code)

Discrimination and vilification was the dominant issue raised by complainants in 2012. This is a change from previous years when sex, sexuality and nudity accounted for the highest percentage of complaints. The introduction of a new Section of the Code—Section 2.2

Exploitation and degradation—accounted for almost 14 per cent of the cases previously considered under the sex, sexuality and nudity Section of the Code. Discrimination and vilification accounted for 28.5 per cent of complaints, increasing from 20.7 per cent in 2011. The issue of sex, sexuality and nudity accounted for 23.4 per cent of complaints, down nine per cent from 2011, with the new issue exploitation and degradation accounting for 14 per cent of complaints. Together these three issues comprised almost 66 per cent of all complaints made in 2012.

In 2012 the proportion of complaints about health and safety issues decreased markedly from 13.59 per cent in 2011 to 9.5 per cent. Complaints about violence in advertising also decreased noticeably from 11.82 per cent in 2011 to just 5.92 per cent in 2012.

Complaints relating to food and beverage code also decreased significantly from a high of 6.35 per cent in 2011 to just over one per cent in 2012, with the AFGC and QSR food advertising initiatives adding 0.56 per cent to complaints about food advertising.

The issue of language saw a rise from 6.06 per cent of all complaints, to its highest level of 12.17 per cent.

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 age, gender, race, ethnicity, nationality, physical characteristics, mental illness, disability, occupation, religion, sexual preference and lifestyle choice.

The issue of discrimination and vilification accounted for 28.49 per cent of complaints, up eight per cent from 2011. Discrimination of women continued to dominate complaints.

Cases for 2012

Discrimination against age

A campaign run across several mediums by Unilever caused a higher level of concern in the community – 0231/12 (TV), 0246/12 (Pay TV), 0247/12 (Cinema), 0240/12 (Internet).

The campaign for Lynx balls came under criticism for several issues, but the Board determined it breached only in the area of discrimination and vilification of the aged.

The Board noted the complainants' concerns that the advertisement is discriminatory toward older men, and stereotypes a range of men from different demographics, that it objectifies women, is demeaning to men, contains inappropriate sexualised scenes and dialogue of a sexual nature and features inappropriate language.

The Board considered that the advertisement does depict a number of male stereotypes—from different ethnic or professional backgrounds—but

agreed that, with the exception of the depiction of the older man, the depictions were not offensive or demeaning to any person or section of society. In considering this case the Board also took into account the Practice Note to the AANA Code of Ethics which highlights the issue of negative depictions and impressions. It states:

- *A negative depiction of a group of people in society may be found to breach section 2.1 even if humour is used. The depiction will be regarded as negative if a negative impression is created by the imagery and language used in the advertisement, and*
- *Advertisements can suggest stereotypical aspects of an ethnic group or gender with humour provided the overall impression of the advertisements is not a negative impression of people of that ethnicity or gender.*

The Board considered that while the advertisement did not discriminate against men in general, it was offensive and discriminates against elderly men as it refers to their *old saggy balls not being played with for years*. The Board considered that the older man is depicted in a negative manner with the inference being that the older man does not receive any attention due to his age. The Board considered that this is a negative depiction of an older person and that this depiction does amount to discrimination against older men.

An advertisement run by Golden Chain Motor Inns Ltd (0157/12) also raised concerns with some members of the community, but complaints were dismissed by the Board. In the advertisement people, both male and female retirees of ages 50 and over, gave testimonials as guests who have stayed at Golden Chain Motor Inns. The ad finishes with seniors saying: *Adventure now, dementia later*.

The Board noted the complainant's concerns that the advertisement is offensive and cruel to people who suffer from dementia by using a statement that makes light of such a serious condition.

The majority of the Board considered the realistic and natural style of the people in the advertisement reflected a genuine desire to live life to the fullest and enjoy every moment rather than wait to get old and perhaps be affected by any condition that may affect the ability to travel and participate in exciting adventures.

A minority of the Board agreed that members of the community who either suffered from dementia or have been affected by friends or family that have suffered from the condition would likely be offended by the apparent disregard for the seriousness of the condition.

In dismissing complaints the Board determined that the tone of the advertisement would be viewed by most people as a light hearted reference to an undesirable illness and old age and not be taken as being demeaning to sufferers of this disease.

The Board considered that most members of the community would not be offended by the comments in the advertisement and would recognise that the advertisement is a light hearted encouragement of taking time to travel and adventure before getting too old.

Discrimination against women

In cases where the Board considers the issue of discrimination or vilification of women it looks at the manner in which women are presented.

The Board has noted on many occasions that the Code does not prohibit the use of images of attractive women in advertising, even for



products for which it is arguable that the image of a woman is irrelevant.

Humorous depictions

The injection of humour into an advertisement often has the effect of lowering or negating the perceived discrimination or vilification.

In one case the Board viewed the depiction of a woman reading a magazine which is upside down to use humour as a way to encourage and promote the benefits of signing up with a health care fund (Medibank Private – 0013/12). Concerns were raised about the depiction of a woman in the context of not needing to be a genius. The Board considered the depiction of a woman as not a genius was not a deliberate attack on women but rather a humorous use of a stereotype and noted no negative reference was made to the physical characteristics of the woman.

In another case the Board considered that it is not demeaning to women for a man to suggest that it was not appropriate for one of his friends to bring his girlfriend to a guys get together (Food Safety Information Council – 0049/12). The Board noted that the advertisement features a man talking about a time when he accidentally poisoned his friend at a BBQ because he was distracted by the friend's model girlfriend.

Some members of the Board expressed concern that a community service announcement would include a comment about a female not being *that hot* and considered that while it didn't amount to a statement which discriminates against or vilifies women it is a statement which some members of the community could find demeaning.

While not breaching the provisions of the Code, the Board's view was that a gratuitous comment that a woman is not particularly attractive, may not be a particularly appropriate comment for this type of advertisement. Overall, the Board noted the serious community message concerning food safety and considered that the situation presented is intended to present a humorous but relatable scenario to demonstrate how easily food poisoning can occur.

In another case (Wicked Campers – 0096/12) the Board noted that some members of the community could find the question: *Were you a tart in tartan?* and reference to sexy nuns inappropriate and in particular the use of the word tart to be offensive in any context which involves women. The majority of the Board,

however, considered that the advertisement was not discriminatory towards women.

In this case the Board considered that the reference to tart in the context of the advertisement was intended to be light hearted and comedic and was consistent with the irreverent marketing approach by the advertiser. The Board noted the advertisement appeared on the company's website and visitors to this site would most likely be aware of its marketing ethos.

Use of slogans which discriminate or vilify

References to women which intentionally or not offend the community are not viewed favourably by the Board.

An example of this view is one where the advertiser's slogan *I wouldn't trust anything that bleeds for five days and doesn't die* (Wicked Campers – 0086/12) was found to be tasteless and denigrating.

The Board noted that the size of the text and nature of the advertisement being on a vehicle, meant that the advertisement could be viewed by a very broad audience including children. In upholding complaints the Board considered that the inclusion of text of this nature that applies specifically to the female gender was highly likely to cause offense.

The Board considered that the reference to bleeding for five days is a clear reference to the menstrual cycle of most women and that most people would interpret it as such.

The Board considered that this advertisement depicted material which discriminates against or vilifies a person or section of the community on account of gender, and was in breach of Section 2.1 of the Code.

Conversely, a tag line *Triple Awesomeness* (Stuart Alexander, Mentos – 0258/12) which was supported by imagery depicting three women whom the Board viewed as confident and in control of their decisions, was not found to discriminate against women. The Board noted that the advertisement depicts the women making a choice between three males in a silver convertible and one male in a triple decker blue convertible.

Stereotypical depictions

The Board does not necessarily view advertisements which depict scenes or

concepts which are traditional or familiar as discriminatory.

For example, an advertisement which depicts a mother doing dishes and standing in a doorway while dad and son watch footy (Harvey Norman – 0181/12) did not stereotype the woman in a negative way. The Board noted the scenes where the man, woman and child are in the kitchen working and the scene where the mother stands in the doorway, agreeing she was not excluded from the action, but chose to remain alone. The Board noted that the voiceover stating *immerse yourself in the action* did not suggest that only men should be entitled to watch football.

In another case (Cheap as Chips – 0183/12) the Board considered the image of a pink tool set with the text *ladies or low testosterone male pink tool set*, released as part of a Mother's Day promotional catalogue, was designed to target Mums and noted complainant concerns that the advertisement is offensive and reinforces stereotypical attitudes in the community.

The Board considered that stereotyping of pink for girls and blue for boys is an age old tradition that would not be considered offensive by the broader community. A minority of the Board felt that the advertisement made an inference that a woman is a man with low testosterone and that a man with low testosterone is the same as a woman and that these are negative depictions. The majority of the Board however, considered that although the message may be stereotyping men as being effeminate, the stereotype is not negative to the point that it would breach the Code.

Behaviour toward women

In cases where women are shown to be treated in a manner that could demean or discriminate against them the Board takes into account the tone and situation depicted in advertisements.

For example, the Board dismissed complaints about a radio advertisement which features two workmen talking—one whistles (very badly) at a woman on the street, who tells him to *shut up you moron!* The other workman (the boss) then whistles as well (0119/12 – RW Steel). The Board noted the complainants' concerns that the advertisement depicts material which is offensive to women and is a portrayal of sexual harassment.

The Board noted the serious nature of workplace harassment and the general community

attitude toward the practice of wolf whistling to passers-by from worksites. The Board considered however, that the situation presented in the advertisement would be understood by most listeners to be light-hearted and irreverent and not negative or sinister.

In the case of a woman being ignored by her children in favour of their father who has bought a Kia and takes them for drives (Kia – 0442/12), the Board considered that most members of the community would agree that the advertisement does not encourage bad behaviour towards mothers and dismissed complaints. The Board noted the complainant's concerns about the way the mother in the advertisement is treated. A bedroom door is closed in her face by her daughter because the father is reading a story to the children and the mother finds a painting of the father, children and car but not of her. Overall, the Board considered that the suggestion that children would favour their father based on the car he has chosen is depicted in a manner which is humorous and does not suggest that fathers in general are better than mothers.

Social issues

The context and intent of an advertisement has an impact on the Board view in cases where social issues are raised.

For example complaints of discrimination against women in a gambling awareness advertising campaign were dismissed due to the context and intent of the advertisement. In the advertisement a mother is depicted as one who feeds the pokies (Stop the Loss – 0143/12).

The Board noted the complainant's concerns that the advertisement implies only women have gambling problems and makes no mention of the father's whereabouts or responsibilities.

The Board noted the complainant's concerns that the advertisement mentions only the child's mother, and not father, but also noted the advertiser's response explaining that this particular advertisement was using the premise of a single parent family to highlight their point and that it is one of a series, each depicting a different family situation. The Board considered that most members of the community would not interpret the advertisement as suggesting that only women have gambling problems or that only women are responsible for their children.

The Board considered that the advertisement does not suggest gambling is linked to gender or that fathers have no responsibilities and that the advertisement does not discriminate against or vilify any person or section of the community on account of gender.

Discrimination against men

There are a growing number of complaints each year about advertisements which are perceived as discriminating against men. Most complaints this year were about men being depicted as being unintelligent or incapable or showing them being mocked.

The perception that men are incapable of shopping was challenged (George Weston Foods Limited – 0486/12), but the Board view was that the depiction of a man not knowing which type of bread to buy, would be consistent with many family situations across Australia—women are often the main grocery buyer and familiar with the products preferred by their family. The Board noted that the reaction of the mother and children to the father bringing back the wrong loaves is one of amusement and considered the overall tone is one of affection towards the father. Overall, the Board considered the advertisement was humorous and light-hearted and did not discriminate against men based on their ability to shop for their families.

Complaints that an advertisement suggests men are the same level as an animal (Great Wall Australia – 0218/12) were dismissed. The Board's view was that the phrase *in the doghouse* is a phrase commonly used by men to humorously convey that their wives are not happy with something they have said or done. The Board noted the humorous tone of the advertisement as well as the man's reaction to being in the doghouse and considered that the advertisement does not suggest that the man is equal to a dog or that men in general should be treated as dogs.

In another case (Rogue Wolf – 0298/12), the Board considered dialogue between a husband and wife was representative of a realistic scenario and that the husband was happy and in control of his responses to questions and prompting of his wife. The majority of the Board considered the husband's response *yes dear* set the tone of the advertisement and reflected his agreement with his wife's views. The Board

noted that at the end of the advertisement the wife prompts her husband to say a closing line, and after he delivers the line she says *good boy*. The Board agreed the dialogue between the couple is between the husband and wife and was intended to be light hearted and humorous and not offensive. The Board view is that this style of mild inter-relationship mocking was not discriminatory in this situation.

In the Board's view two separate advertisements (Carnival Australia – 0314/12 & 0315/12) use gentle mocking which is consistent with behaviour that commonly takes place in homes and among family members and friends.

In one advertisement two young brothers laugh at footage on an iPad screen of their father who has been buried in the sand and given seaweed hair and a mermaid body, with a crab crawling toward his nose. The Board considered that the father does appear to be mildly upset by the ridicule by his sons but agreed that most members of the community would relate to this behaviour and view the situation as humorous and light hearted.

The second advertisement depicts two middle-aged ladies laughing next to an open fridge door. On the fridge door is a photo of a man standing on a beach wearing his swimwear, revealing tan lines from previously worn swimwear which are out dated and humorous. The Board considered that the humorous exchange does not relate to particular characteristics of the male gender, but relates to the man's out dated fashion sense and although mocking him in a friendly manner was not discriminatory.

Discrimination on basis of race/ethnicity/nationality

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 cases where complaints are upheld there is usually an overt sense of denigration of a particular group of people.

In the Board's view two groups of people were vilified and discriminated against in an advertisement which suggested it was better to be black than gay (Wicked Campers – 0373/12).

The Board noted that the statement used reflected a reality—that to tell your parents you are gay can be a difficult experience—but also considered that the tone of the advertisement suggested that being gay, and being black, is shameful. The Board considered that a majority of the community would consider the message of the advertisement is that being black is somewhat more acceptable than being homosexual, but that both characteristics are portrayed as being inferior to the perception that being white and heterosexual is superior.

The tone and manner in which people are portrayed is an important consideration in Board determinations.

For example, the Board considered that the depiction of a woman speaking with an accent which belies her cultural roots does not of itself amount to a depiction which is discriminatory or vilifying (Woolworths – 0488/12). The advertisement features an Asian woman talking about her love of prawns and the creative dishes she makes with them while her husband looks on proudly. The Board noted that the Asian woman is presented in the context of a happily married Australian woman who is passionate about prawns and that her husband clearly adores her as does the rest of her family who appreciate her cooking skills. The Board view was that the overall tone of the advertisement does not make fun of people who speak with different accents.

The Board also viewed it as acceptable to portray something which an Australian tourist could typically expect to experience in considering an advertisement clearly set in a holiday destination (AAMI—Rhonda in Bali – 0128/12). The Board noted that the Balinese women in the advertisement are portrayed in a positive manner and considered that the use of a Balinese woman massaging Rhonda's feet is not something which most members of the community would consider racist.

Characterisations in advertising can highlight certain features of a nationality, but the Board does not necessarily view these characterisations as discriminatory or vilifying.

For example the Board considered that puppets portraying an Italian family were characters based on brand icons of the Dolmio range (Dolmio – 0016/12). The Board noted these characters had been used for many years and viewed the depiction of the puppets as

affectionate with no derogatory or demeaning treatment of the characters based on their ethnicity.

The Board viewed a depiction of a person from the Caribbean in an advertisement (Radio Rentals SA – 0045/12) as stereotypical, but that there was nothing in the depiction which was demeaning or negative. The Board agreed that the strong Jamaican accent of the cartoon character used in the advertisement was in keeping with the theme and the most likely interpretation of the character, shown in a hammock, is that Jamaicans are very relaxed and chilled out.

Similarly, the Board considered that the cartoon depiction of M&Ms wearing rasta hats does not of itself amount to a depiction which could be considered demeaning by most reasonable members of the community (Mars – 0090/12). The Board noted that one M&M character speaks in a strong Jamaican accent and considered that this is in keeping with his Jamaican appearance and again does not amount to a depiction which would be considered demeaning by most reasonable members of the community.

Although not a cartoon character, an advertisement depicting an actor dressing as a number of people of different social and ethnic backgrounds who are all depicted to have inappropriate (but relatable) opinions on an issue was also viewed as not discriminatory or vilifying (Intellectual Property Awareness Foundation – 0031/12). The Board considered that the depiction of one of these people as an Asian student is not vilifying of Asian students in the context of this particular advertisement.

An important community message about drinking while pregnant was delivered in an advertisement *Think again* (Drug & Alcohol Office WA – 0401/12) and featured a young Aboriginal woman at home with her Aboriginal Aunty (character Mary G) discussing alcohol consumption. The Board noted that the character Mary G is a long standing character recognised in the Aboriginal community as a respected and reputable educator, who takes on the Mary G persona as a tool for addressing important and sometimes uncomfortable community messages.

The Board noted that the message applies to pregnant women of all nationalities

and race and is not exclusive to women of Aboriginal background and considered that the interpretation of the advertisement as discriminatory and offensive is one which is unlikely to be shared by the broader community. In particular, the Board noted the advertiser's response outlining the record of community involvement of Mark Bin Bakar—the actor who plays the Mary G character. Based on the understanding and record of community engagement with the character, the Board view was that the advertisement does not discriminate against people based on their race or nationality.

Discrimination on the ground of physical characteristics

The ASB 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 can, but does not of itself usually amount to discrimination or vilification of people with those characteristics or features.

Obesity and issues of vilifying people who are overweight were highlighted in an advertisement which the Board viewed as demeaning of overweight people (Compare Insurance – 0010/12 & 0011/12). The Board noted concern that the advertisement demeaned overweight people in its depiction of the larger man as the undesirable big risk. The minority of the Board considered that most people would consider the reference to significant risk was appropriate given the product advertised. However, the majority of the Board considered the woman's reaction to massaging the big risk man is a reaction to his physique and physical attributes, rather than to the concept of risk and that her reaction demeaned overweight people and that the advertisement therefore depicted material which discriminated against people on account of being overweight.

The use of demeaning and discriminatory text and material in relation to hair colour was also viewed by the Board as inappropriate (Seven Eleven – 0047/12). The Board considered in this instance the reference to being *less popular than a red-headed step child* was a statement which was negative and one which oversteps the line between light hearted humour and makes a

strong suggestion that an identifiable group of children are less popular. The Board considered that the advertisement made a direct, negative comment about red headed step children which most members of the community would find unacceptable.

The use of left handed people to highlight the importance of accepting people with differences was not viewed by the Board as discriminating against left handed people (Beyond Blue – 0394/12 & 0395/12). The Board noted that the advertisement uses left handed people as an identifiable category of people on which it bases the overall theme and purpose of the campaign. The Board considered that most members of the community would understand that people who are left handed were once made to change their preferred hand but that this is not behaviour that still happens in today's society. The Board considered that the message given in the advertisement relating to discrimination against left handed people is not intended to offend people who are left handed but rather to draw attention to how hurtful discrimination of any kind can be.

Discrimination on the ground of mental illness

An advertisement which resulted in complaints relating to mental health issues (Parmalat Australia Ltd, Oak – 0216/12), was viewed by the Board as not depicting mental health issues. The Board noted that the man in the advertisement talks erratically and that it had previously considered a similar advertisement by this advertiser, 0524/10, which featured the same man speaking and acting in a similar manner. A minority of the Board considered that in this instance the man's behaviour is a reference to a person with a mental illness but that the portrayal is not discriminatory towards people who suffer from mental illness. The majority of the Board considered that the man's behaviour is not suggestive of a mental illness and is not discriminatory towards people who suffer from mental illness.

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.

In one advertisement considered by the Board an actor makes a facial expression and groan after being asked to portray how he would feel if he didn't have access to the internet for a few days (iiNet – 0145/12). Complainants linked his actions to brain disorder. The Board had differing opinions about the impact of a comment made in the advertisement by the casting director *how did he get in here?* after the man performs his act.

A minority of the Board considered it was in poor taste and gave the impression that people with a disability would not be welcome on the stage and also considered that the actor's portrayal of someone without internet access was too similar to the symptoms displayed by people with disabilities including brain injuries. The minority considered the combination of this and the casting director's comments amounted to a depiction which discriminated against people with disability.

The majority of the Board considered that the most likely interpretation of the casting director's comments is that he is judging the man's acting abilities to be poor and so questioning how he made it through to the auditions. Overall, the Board considered that text on screen and the audition setting of the advertisement places focus on a man portraying emotions rather than portraying people with disabilities.

Discrimination on the ground of occupation

Occupations can also come under scrutiny in relation to the discrimination and vilification section of the Code.

In 2012 an advertisement which a complainant said placed the real estate occupation in a negative light was considered by the Board (Parmalat Australia Ltd, Oak – 0216/12). The Board noted the advertisement depicts a man who says he doesn't have a son then admits he does but he is in Real Estate. The Board noted the complainant's concern regarding the man's rejection of his son due to his profession and considered that the overall intent of the comment is intended to be humorous.

Complainants were also concerned that an advertisement suggested that police officers

were susceptible to bribery (Pleasure State – 0469/12). The advertisement provides a choice as to which push up bra can help you get out of a speeding fine. The Board considered that the advertisement makes no strong inference about the behaviour of police officers or whether they might be swayed from giving a fine by such behaviour. The Board considered that the depiction of the woman and the police officer was intended to be humorous and while it presented a stereotypical situation, it did so in a manner that was not demeaning.

Discrimination on the basis of religion

There are occasionally advertisements which make use of religious references or icons to promote an unrelated product or service.

An advertising campaign featuring Amish people raised concerns in relation to discrimination against religion and lifestyle choices (Pacific Magazines – 0337/12, 0346/12 & 0347/12). The Board noted that the Amish community is presented in the advertisement in a manner which reflects their choice of living and way of life. Some members of the Board expressed concern about the manner in which the Amish had been used in the advertisement, however the majority of the Board considered that the overall tone of the advertisement is gentle and positive and presents a light hearted depiction of an Amish community and that the depiction did not discriminate or vilify.

Jesus walking on water in an animated advertisement (Red Bull – 0079/12, 0080/12 & 0083/12) was viewed by the majority of the Board as not denigrating Christianity or Christians. The Board considered that the advertisement would be seen by most people as a humorous play on a well-known biblical story with no reflection on the beliefs underpinning the scene. A minority of the Board agreed that some members of the community would consider that the advertisement mocked and trivialised Christian beliefs, in particular by suggesting that Jesus walking on water was not a miracle.

The majority of the Board considered that the advertisement clearly acknowledges that walking on water is one of the miracles that Jesus performed and that it supported the Christian belief that Jesus did perform miracles. Overall the Board noted that the Christian faith is well

established and accepted in Australian society and that many well-known elements are now used as general references (for example, *walking on water*) to describe the achievements and success of particular people.

Complaints about the inappropriate use of Handel's Hallelujah Chorus in relation to Christmas donations made through EFTPOS purchases were considered by the Board in relation to discrimination against religious beliefs (EFTPOS Payments Australia Ltd – 0493/12).

The Board noted the message of the advertisement was that EFTPOS would donate money to charity each time someone used cheque or savings to make a transaction. The Board also noted the complainant's concerns regarding the use of religious music to promote financial transactions. The Board noted the close association of this particular composition with the Christian faith and recognised that some members of the community would find its use in this context inappropriate. However, the Board considered that the use of the music in this advertisement was to encourage donations and was overall positive and not vilifying of religious beliefs.

Discrimination on the basis of lifestyle choices

Lifestyle options depicted in advertisements are at times the subject of complaint. The Board takes into consideration the tone, intent and appropriateness of links to the product or services advertised.

The Board view in relation to a message relayed by an advertisement which made use of a 'competition' between two women in a bathroom, was that the message was appropriate for a company which makes sanitary products (SCA Hygiene – 0001/12 & 0002/12). Issues raised by complainants that the advertisement is discriminatory towards transgender people and that it insinuates that women who do not menstruate are not women were dismissed. The Board view was that the focus of the advertisement was on the rivalry between the two people in the bathroom—the exaggerated one-upmanship which was clearly communicated by the competition between the two women in relation to who has the best breasts, longest eyelashes or best lips. The

Board noted that transgender issues are serious but viewed that the use of a man dressed as a woman was intended to make the advertisement light hearted and humorous and considered that the overall tone of the advertisement did not demean or vilify transgender people and does not vilify men who dress as woman.

The Board view in a case in which two men dress as women was that an image of men dressed as females does not necessarily amount to an image of a transsexual (Lion – 0102/12). The Board noted there are no references to transsexuals in the advertisement, positive or negative, and considered that most reasonable members of the community would consider that this advertisement is not alluding to transsexuals and that it does not amount to a depiction which discriminates against or vilifies a section of the community.

A young woman with tattoos was juxtaposed with a young woman in a floral dress in an advertisement which resulted in complaints about alternative lifestyle choices (Hungry Jacks – 0241/12). The Board viewed the advertisement portraying a stereotypical alternative heavy metal band girl and a stereotypical modest girl and considered that it uses the juxtaposition of the girls to make a humorous analogy and send a clear message that the product is nothing naughty. The Board considered that the interpretation likely to be taken by the community is clearly a message about the appeal of the product and is not a negative portrayal of either type of young woman.

Discrimination on the basis of sexual preference

Embarrassing moments and effeminate character use do not in themselves result in advertisements which present homophobic or negative depictions of the gay community.

For example the depiction of a stereotypical fashionista (Sunday Times Perth – 0154/12) was viewed by the Board as a humorous, tongue-in-cheek representation. The Board considered that the tone of the advertisement is a light hearted depiction of a stereotype and that there were no negative connotations.

An embarrassing moment when two men who are fishing reach for the bait at the same time and touch hands (BCF – 0403/12) was also viewed by the majority of the Board as a

depiction of two men who, after accidentally grasping each other's hands, react in a stereotypical manner by breaking an awkward silence with a reference to the football.

Although a minority of the Board considered that the advertisement depicted a stereotype of heterosexual men's negative attitude toward homosexuality, the majority Board view was that most members of the community would agree that the advertisement does not make any suggestion that homosexuality is wrong or shameful.

A man kissing another man after winning a bet (Tabcorp – 0487/12) was viewed by the Board as in no way discriminatory, or negative toward a group of people. The complainant's concerns that the depiction of the man celebrating his win by kissing another male is homophobic was viewed by the Board as an interpretation unlikely to be shared by the broader community given that the reaction to the kiss between two men is not in any way sexual or negative.

Please also see the reference to Wicked Campers – 0373/12 in the previous section – *Discrimination on basis of race/ethnicity/nationality*.

Discrimination on the basis of other

Other issues raised which do not fall into a particular category were also considered by the Board.

The Board considered the stuttering in an advertisement was not ridiculing people who stutter, but rather depicting a person trying to speak through chattering teeth because they are cold (Aircon and Heating Solutions – 0071/12).

Some concerns were raised by the Board about the possible negative connotations toward mothers-in-law in an advertisement comparing Mother Nature to mothers-in-law (Kellogg Aust Pty Ltd – 0482/12). The Board noted that the stereotyping of mothers-in-law is part of the common cultural narrative in Australia and that while this does not of itself make it acceptable, the Board considered that in this instance a mother-in-law is being likened to Mother Nature and this is not a negative comparison.

Exploitation and Degradation (Section 2.2, AANA Code of Ethics)

The AANA Code of Ethics was revised in late 2011 and a new section of the Code was implemented at the beginning of 2012. Section 2.2 of the Code now focuses on use of sexual appeal in a manner which is exploitative and degrading. Almost 14 per cent of complaints were about this issue.

The section takes into account objectification of children, men and women and requires that the advertisement use sexual appeal in a manner that is exploitative *and* degrading. The Board has at times considered some cases to use exploitative themes, however their view has been that the case is not also degrading. For this reason some cases although found to use exploitative themes have not been found to breach the Code in relation to Section 2.2.

Children

Late in 2011 a complaint was received about an advertisement featuring a young woman wearing a bra and skirt, applying red lipstick (Windsor Smith – 0513/11). The Board noted the complainant's concerns that the advertisement appeared to feature an underage girl in a provocative pose. The Board's view was that the advertisement depicted a woman and that she was posed in a confident manner and not represented in a manner which could be considered exploitative and degrading.

Men

A peep show theme used in an advertisement caused concerns about objectification of both **men and women** (Mossimo – 0075/12). The advertisement incorporated a window display with the words *Peep show*, and *take a peek inside* accompanied by images of men and women in lingerie. In one image the woman is pulling at the man's underpants so that they are coming away from his waist. While the advertisement was upheld in relation to Section 2.6 Health and Safety concerns, in particular in relation to sexting, the Board view was that although the images of the men and women did employ sexual appeal of young men and women it was not in a manner that was exploitative and degrading of either men or women.

Similarly, the Board considered that women watching men exercise at an early morning boot camp (SCA Hygiene – 0416/12) did not amount to a depiction which is exploitative and degrading. The Board noted that while the women are shown to be admiring the men, the overall tone of the advertisement was humorous rather than predatory and that the women are presented in a manner which is appreciative of the men rather than threatening towards them.

Women

Close-up shots of women's body parts, along with text which makes references to those body parts or to sexual acts are often, in the Board's view, exploitative and degrading.

The Board considered that the representation of the woman as a sheep being shorn (Shear Ewe – 0353/12 & 0239/12) was both irrelevant to the service advertised and that the impact of the advertisement as a whole was exploitative of women and also degrading. The Board noted the image of the woman depicted as a sheep about to be shorn and that she was posed in a mildly sexualised manner with the suggestion that she will soon be naked (from the shearing). The Board considered that the image made use of the woman's sexual appeal and attractiveness, that the image depicted the man in a position of power and the woman in a submissive position. The Board also considered that the image depicts the woman in a position in which she is compared to an animal, with a suggestion also of commodification—that there is, as there is in shearing, many others to be shorn.

Similarly, a slogan used by an advertiser (Wicked campers – 0461/12) which stated *I take my women like I take my bars—liquor in the front, poker in the rear* was viewed as material that most members of the community would consider offensive. The Board noted the use of the words *I take my women* in particular was a derogatory statement about women suggesting that they are sexual objects or possessions to be used sexually and are not people in their own right.

The Board considered that the combination of the close-up of a woman's chest, the implied reference to the woman's breasts as assets, and the connotation that the assets were a possession of someone other than the woman amounted to a use of sexual appeal that is degrading (Leading Edge Telecoms – 0007/12). The Board noted

that the advertisement opened with a full screen shot of the woman's chest with the words *do you know where your assets are?* written across her white shirt. In finding the advertisement breached Section 2.2 of the Code, the Board considered that the focus in the advertisement on the woman's chest was also an exploitative use of sexual appeal.

Conversely, the Board usually views the use of women's bodies and breasts to advertise underwear as acceptable if the poses do not use a strongly sexualised connotation to promote the product.

The slogan *Get your boobs done* (Pacific Brands, Berlei bra series – 0176/12 & 0185/12) although placed beside an image of a woman wearing a bra was not in the Board's view overtly sexualised and did not promote the woman as an object. The Board noted that in the image, although cropped so it did not include the woman's full face, she was posed in a manner which is clearly intended to show the bra. The Board also considered that although the image focused largely on the model's breasts, the relevance to the product was apparent.

Similarly, the Board agreed an image of a woman lying on her side wearing matching lingerie (Bras and things – 0146/12) was clearly intended to show the lingerie and was not overtly sexualised.

The positive representation of women, despite their attire or activities, is not generally viewed by the Board as exploitative or degrading.

For example, the Board viewed the use of attractive women painting words and logos on a model and discussing the benefits of a particular domain host (GoDaddy.com – 0115/12) as not in itself exploitative or degrading in an advertisement. The Board noted that there was a clear connection between the discussion by the women and the voiceover as well as the words they were painting on the model. The Board also noted that the two women painting were not referring negatively to the model and there were no sexualised images of breasts or genitals.

An advertisement where a young man suggests a packet of chips cannot turn a young woman into anything better than she already is (The Smith's Snackfood Co Ltd – 0046/12) was also viewed as not being exploitative or degrading. The Board noted that the advertisement has familiar

personality Stephen Curry moving through various scenes discussing the tasty features of the brand of chips. In the final scene he is on the beach referring to a woman in a bikini as a *nine, with a packet of Smiths*. The Board considered that the advertisement was humorous and light hearted and used terminology (ratings) used by young people in various situations. The Board also noted the scene is set at the beach and that the use of a woman in a bikini at the beach is not inappropriate. The Board considered the young woman is presented in a positive, attractive manner with a satirical use of the rating system to focus on the taste of the chips.

The Board usually does not view an advertisement to be exploitative and degrading when women are shown to be in control of their choices. This can relate to the choice made about clothing or activities.

In the Board's view a woman wearing shorts and promoting a drink appears confident and empowered (Suntory Australia – 0455/12). The Board noted the slogan used had many interpretations in that the drink being promoted mixed with shorts could refer to an alcohol shot being mixed with another beverage, the woman wearing shorts could mix a drink, or the woman wearing the shorts could mix a record as she appeared to be standing at a DJ booth. Overall, the Board agreed the image of the woman, standing with her back to the camera, looking over her shoulder was not exploitative or degrading.

The Board considered that women portrayed in the promotion of a Lingerie Football League game (Lingerie Football League – 0254/12) all appear confident and considered that most members of the community would consider the portrayal of women in this manner to not be disrespectful. The Board noted that the athletes in the advertisement were shown in game situations as well as in other poses and were wearing the attire worn during Lingerie Football League games. The Board considered that while sexual appeal is used in the advertisement it is used in a manner which would not be considered exploitative and degrading by most members of the community.

An advertisement depicting three women showing interest in a man driving an unrealistically modified car (Stuart Alexander & Co Pty Ltd—Mentos – 0258/12) was

considered by the Board as not employing sexual appeal in a manner which is exploitative and degrading. The Board noted the women are fully covered by their clothing and are presented as confident and in control of their own decision making.

Violence (Section 2.3, AANA Code of Ethics)

Section 2.3 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.

In 2012 the Board considered advertisements that portrayed bullying, cruelty to animals, graphic depictions, violence, and imagery that may cause alarm or distress under Section 2.3 of the Code.

Violence causing alarm or distress

Some light physical interactions in advertisements have been cleared by the Board if their use is humorous and not alarming or menacing. In a case where a man is tackled to the ground during a game of rugby (Austar Entertainment – 0082/12), and a Red Bull TV advertisement (0206/12) where a cartoon character is hit by a cricket ball, the Board found the violence to be unrealistic and exaggerated and acknowledged the advertisements were intended to be humorous and light-hearted.

The Board does not necessarily view humour as a means of minimising violence portrayed in advertisements. In a radio advertisement a man is heard to be hit by another that is threatening and abusing him (Hungry Jacks – 0415/12). The victim's moans were perceived to be distressing and pained. The Board determined that the sound effects were not sufficiently humorous or unrealistic to mitigate the depiction of hitting or violence and found the advertisement to breach violence standards.

Graphic imagery including zombies (Hewlett-Packard Australia – 0017/12, 0019/12 & 0029/12) and shrunken heads (Ripley's Odditorium – 0022/12) were considered by the Board as the images raised community concern of causing alarm and distress. In these cases, the Board determined that the imagery was not inappropriate for the broader community's viewing, and that the images were relevant to the product offered.

Violence involving children

Violent advertisements that children can see continued to raise community concerns in

2012. The Board considered cases advertising games (Sussex Media – 0483/12, THQ Asia Pacific – 0100/12, Bethesda – 0421/12), toys (Hasbro Australia – 0424/12) and movies (FOXTEL Management – 0428/11 & 0429/12, Paramount Pictures Australia – 0092/12, Target Australia – 0462/12) to which children may be exposed. Community perceptions research conducted in 2012 found that if children have easy exposure to certain advertising mediums, such as billboards, the community is less tolerant of the content. Violent advertising involving children was discussed in a campaign where a boy was bumped by a football (Herald Sun – 0172/12 & 0173/12). The Board noted the boy's reaction was one of awe, and the interaction did not seem to injure him. Since the advertisement did not condone or encourage violence towards children, the Board determined it did not breach Section 2.3.

Cruelty to animals

The Board considered several advertisements in 2012 which raised issues of animal cruelty and violence. As with other portrayals of violence, in the Board's view, humour in advertisements featuring violence and cruelty to animals does not necessarily negate or minimise the impact of the violence. While some cases (UBank – 0116/12, Red Bull – 0205/12) are intended to be unrealistic and successfully convey their message in a light hearted manner, others have crossed the line. One which crossed the line was an advertisement which presented an image of a dog with pegs clipped over its coat (Key Factors – 0262/12) with the tag line *feeling the pinch*. The Board unanimously agreed that the dog appeared to be distressed and that children would not understand that the image was digitally created, and accordingly found the advertisement to be a breach of Section 2.3. The Board additionally noted that caution should be exercised in depicting violence in a cartoon style (Merial – 0123/12) as cartoon style may be attractive to children.

The Board generally dismisses complaints where the behaviour shown was common accepted practice for animals. In one case (Sanofi Aventis – 0202/12) a dog was shown running on a treadmill. The Board considered evidence provided and determined that the use of treadmill exercise for pets is legitimate and this advertisement did not present violence

to animals. Similarly, cases involving catching yabbies (Kulkyne Kampers – 0051/12) and a car hitting cane toads (Ford Motor Co – 0203/12) were determined to be normal activities that do not aim to promote or condone violence to animals.

Finally, in the case of a community service advertisement (Animals Australia – 0460/12) the Board noted that the visuals of the animals in poor conditions were not violent but intended to conjure emotion and a potential for change and positive action from viewers who are affected by the advertisement.

Domestic violence

Community concerns regarding implied or displayed domestic violence were considered by the Board in 2012. Two advertisements (Super Retail Group – 0040/12, Samsung Electronics – 0422/12) featuring friendly banter and light-hearted physical interaction were dismissed by the Board.

A case featuring a mock evidence bag with a knife (Symex – 0167/12) was determined by the Board to breach Section 2.3 due to implied domestic violence. The Board's view was that the image was set up to suggest an alleged assault against a woman and that it presented violence in a manner that is not justifiable in the context of the product being advertised.

Implied sexual assault was discussed in a case (Icebreaker – 0507/11) with imagery of a man sneaking up on women and suggestive of assault. The Board noted that although there is no graphic depiction of violence, the advertisement did have a strong suggestion of menace and consequently found that it breached the Code.

Graphic depictions

Community service advertising that uses graphic depictions of illnesses, accidents and injuries raised community concerns in 2012. Although some images may be confronting and alarming, the Board sometimes considers that the message being delivered in a community service advertisement is important and it is justifiable to use a higher level of graphic depiction.

In several road safety advertisements (Department of Transport and Main Roads – 0052/12, Drug & Alcohol Services South Australia – 0209/12, Transport Accident

Commission – 0014/12, 0336/12 & 0170/12) the Board considered the level of violence used, road safety message and urgency, community concerns on violence, and determined the advertisements used justifiable levels of violence.

Similarly, some community awareness campaigns for smoking and cancer have raised concerns over violent or unpleasant graphic depictions. The Board dismissed complaints for the Australian National Preventive Health Agency (0050/12) and the Cancer Institute of NSW (0312/12 & 0313/12) deeming the value of the anti-smoking message contained in the advertisement outweighed any distress it may cause to some viewers and the depiction was therefore justified in the context of that message.

Advertisements for the Heart Foundation (0491/12, 0310/12, 0351/12 & 0294/12), Transperth WA (0059/12) and WA Prison Officer's Union (0457/12) were also considered under Section 2.3, with the Board determining that the violence portrayed was justified in the context of important community messages.

While the Board view is that a higher level of violence can be tolerated in community service advertisements, this view does not extend to all advertising in this sphere. A billboard depicting a woman's face with sores and burns where the woman is clearly distressed and in pain (Against Animal Cruelty Tasmania – 0091/12) breached standards of violence. Since the advertisement was placed on a billboard which was easily accessible to children, the Board's view was that the violence was presented in a manner that is not justifiable in the context of the service advertised.

Another community service advertisement found to breach Section 2.3 of the Code of Ethics was for the National Stroke Foundation (0397/12). The TV advertisement showed a man depicted as a serial killer who poked a brain with a scalpel and then struck the brain with a hammer. The Board considered that although the public health message is important, the violence presented is distressing and unjustifiable in the absence of positive information about stroke prevention or support.

Sex, sexuality and nudity (Section 2.4, AANA Code of Ethics)

The portrayal of sex, sexuality and nudity has in the past been the most complained about issue, but with the introduction of the new objectification Section 2.2, fewer complaints were considered in relation to this issue.

Tasteful nudity

The use of mild nudity in advertising is considered appropriate if relevant to the product or service and if it is not overly sexualised. The Board consistently finds partial nudity in advertisements for underwear acceptable (Brand Developers – 0220/12, Target Australia – 0072/12, Pacific Brands Holdings – 0223/12 & 0224/12) if no genitals are exposed and they show sensitivity to the relevant audience.

Tasteful partial nudity was also considered acceptable by the Board. For example, a case where women were exposing their undergarments but body parts were still completely covered (Bavarian Bier Café – 0412/12 & 0413/12) and images of naked women and men stepping out of fur suits (Parklife Music Festival – 0411/12) where only the backside was visible.

Instances where nudity has not been treated with sensitivity to the relevant audience include cases for Ontilt Events (0369/12), Honey Birdette (0095/12) and Natural Health Specialists (0419/12). In these cases, the Board's view was that the nudity used was highly sexually explicit and not appropriate for viewing by broader audiences.

In most cases, the Board finds nudity unacceptable when genitals are revealed completely in an advertisement. However, in the case of National Gallery of Victoria (0103/12) a painting of a woman with breasts and nipples completely exposed was dismissed. The Board considered the Code of Ethics Practice Note which states *Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example*. Accordingly, the Board's view was that the image was not overly sexualised and was appropriate in the context of the service advertised.

Sexualisation of children

Sexualised imagery of minors continued to raise community concerns in 2012. Two advertisements for the Queensland Theatre Company (0497/11 & 0289/12) were found to be in breach of Section 2.4 of the Code for sexualisation of children. These advertisements featured a young couple in bed, suggestive of prior sexual activity. Although the models were over 18 years, the Board considered that the broader community would view the woman as a young teenage girl. The Board noted the Code of Ethics Practice Note which states *advertisements with appeal to younger people which contain sexualised images or poses are to be used with caution. Models which appear to be young should not be used in sexualised poses*, and accordingly found this advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience.

Other advertisements which raised concerns of the sexualisation of children included clothing advertisements targeted towards teenagers (Way Funky Company – 0003/12 & Witchery – 0342/12), jewellery (Mazzucchellis – 0344/12) and perfume (Parfums Christian Dior – 0345/12). In these cases, the Board considered the models' clothing, make up, poses and expressions and determined that most members of the community would not feel that the imagery is of children or sexualised.

Use of humour

Sexual innuendo and the use of mild sexualised images presented in a humorous manner may be cleared by the Board if treated with sensitivity. Advertisements that referred to *porking* in a mild sexual connotation that was unlikely to be understood by young children (Australian Pork Limited – 0008/12 & 0151/12) were cleared. Other cleared cases involving humour and mild sexual images include a production line for confectionary (Kraft Foods – 0263/12), fixing the bed squeak with massage oil (Reckitt Benckiser – 0319/12) and mistaking a kitchen for a sauna (Specsavers – 0213/12).

In a television advertisement a man and his son-in-law are seen relaxing in a sauna wearing only towels (Lion – 0232/12). Eventually realising that they are trapped, the men struggle to escape from the sauna which involves some mild nudity and some complaints raised issues of implied

sexual connotations. The Board considered that most members of the community would not find the scene as sexual, rather an uncomfortable and humorous situation. Considering the advertisement was given an M rating, the Board view was that it treated sex, sexuality and nudity with sensitivity to the relevant audience.

Suggestive phrases and acts

Advertisements using suggestive sexual themes and innuendo may be cleared by the Board if they are unlikely to be understood by children. The phrase *we want you to come... to the Attic lounge bar* (Cairns Bed & Bar – 0366/12) was cleared by the Board as the sexual innuendo would not be understood by children. Another phrase *what do we do in bed* (Sealy – 0121/12) was deemed mildly sexually suggestive but not inappropriate for a broader audience.

A series of advertisements featuring the phrase *want longer lasting sex* (Advanced Medical Institute – 0350/12) were found to be in breach of Section 2.4 as the phrase is a clear and blatant phrase for a sexual act. Similarly, the phrase *If God was a woman would sperm taste like chocolate?* (Wicked Campers – 0375/12) was found to breach the Code. The Board considered that the statement clearly referred to a sexual act and its placement on a vehicle made it inappropriate for a broad audience, which could include children.

Product relevance

Where sex, sexuality and nudity are relevant or integral to the product or service of a business, the use of imagery may be considered appropriate if tasteful and shown in a suitable location. Advertisements with mild nudity and sexualised themes for tanning services (Naked Tan – 0009/12), butlers wearing cheeky outfits (Butlers in the Buff – 0207/12) and a health centre providing clinical information about sexually transmitted infections (Pika Wiya Health Service – 0215/12) were deemed acceptable in the context of the product being advertised.

During 2012, the Board has received several complaints for sex industry advertisements. Sex stores are legally allowed to advertise, so the Board must determine whether the advertising contains imagery which is sensitive to the relevant audience. The Board will and can note the placement of the advertisement and accessibility to a broad audience. In cases for sex-related

businesses (Adult Toybox – 0113/12, Cleopatra's Gentlemen's Club – 0482/11, and Lovers Adult Store – 0191/12), the Board found the imagery and positioning of the advertisements acceptable as they were only mildly sexualised and not in a position to be viewed by a broader audience. In contrast, reference to a sexual act (SindeRellas – 0468/12) and over exposure of a woman's bottom (Hot Stuff Adult Shop – 0470/12) were viewed as breaching Section 2.4 of the Code.

Advertising medium

Research commissioned by the ASB has shown a higher level of community concern in relation to advertising which uses sex, sexuality and nudity particularly where children may be exposed to such advertising.

The Board considered an advertisement featured in a community newspaper to be in breach of sex, sexuality and nudity standards (4Play Adult Store – 0027/12). The advertisement used a *spot the difference* competition which it considered would likely be of appeal to younger age groups and found the imagery overly sexualised. Similarly, concerns were expressed over a transport advertisement (Pleasuredome – 0028/12). The Board noted that since this was a moving sign there was no ability to censor the advertisement for certain ages and found it inappropriate for viewing by a broader audience that may include children.

With the rise of social media advertising, user generated comments on advertiser's Facebook pages have been classified as an advertising and marketing communication. Facebook page comments were considered by the Board to be in breach of the Code with inappropriate references to sexual activity (Victoria Bitter, Fosters Australia Asia & Pacific – 0271/12). A mildly sexualised image on the Facebook page (Pizza Hut, Yum Restaurants International – 0388/12) was also considered. The Board noted that the comments posted had mild sexual innuendo but were intended to be humorous as opposed to menacing or degrading, and accordingly cleared the case.

Language (Section 2.5, AANA Code of Ethics)

Research released in 2012 showed that the community was conservative in its attitude toward language, especially the use of certain words and where children may hear or view strong language.

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.

Innuendo

Sexualised and suggestive wording was considered in 2012 with the words and phrases *balls* (Unilever – 0293/12, 0231/12, 0240/12, 0246/12, 0247/12 & 0295/12), *whip it, lick it, kiss it* (Love Heart – 0056/12), *back, sack, crack* (Frank Health Insurance – 0446/12), *bush* (Coles – 0177/12) and *sausage* (Nigel's Gourmet on Tamar – 0467/12) which were deemed acceptable by the Board. Other suggestive play on words included *get porked* (Grosvenor Hotel – 0089/12), *porking* (Australian Pork Limited – 0120/12), *forking* (Coca-Cola Amatil – 0414/12) and *man nuts* (Nestle – 0194/12). Although the Board acknowledged that this innuendo would be considered offensive by some community members, the actual profanities were not explicitly stated and may not be evident to young children.

Gestures

Gestures were considered by the Board in 2012, with a billboard showing a middle finger extended found to breach the Code (The Investor's Club – 0288/12). The Board considered that this imagery was being presented on a billboard which children may view and upheld the complaint on the grounds of strong or obscene language. Paired with the slogan *stuff paying tax*, the implication of the extended middle finger was deemed aggressive. Extending the ring finger instead of the middle was shown in other advertisements (Tamanie Jewellers – 0384/12 and Roadshow Films – 0398/12) with the Board determining they were not strong or obscene uses of language.

Beeping

Implied strong or obscene language which is beeped out by another sound is not necessarily viewed in a positive light by the Board. A radio advertisement that attempted to beep the word *fuck* (Nova – 0188/12) was upheld by the Board because it was heavily alluded to and could be easily implied as being used. The Board considered other beeped cases of *fuck* (EMI Music – 0109/12), *shit* (Brakemart – 0496/11, Commercial Radio Australia – 0147/12, Eckander's Betstar – 0250/12) and *beep me* (Volkswagen 00129/12 & 00131/12) to be acceptable as the words were sufficiently inaudible.

Abbreviations

Abbreviated swearing such as *OMG*, *OMFG*, *WTF* and *LMFAO* was considered in a Pay TV commercial (BMW – 0158/12). The Board considered that the inferred language was not strong or obscene and deemed these abbreviations acceptable in the context of a light-hearted and comedic advertisement. A billboard with the obscured word *bullshit* (Newcastle Permanent Building Society – 0400/12) was also cleared by the Board as the word was not written in its entirety.

Religious

The Board considered concerns from members of the public regarding language which could be viewed as blasphemous or offensive to religious beliefs. The Board determined although members of the public could consider the use of *Jesus* in a campaign (Red Bull 0079/12, 0080/12 & 0083/12) as offensive, it was not strong or obscene language as outlined by the Code. The Board determined the phrase *Oh my God* used in a radio advertisement (Novus Auto Glass – 0155/12) was not conveyed in an aggressive manner and would be considered acceptable by the majority of the community.

Context

The context of language in respect to product type was considered by the Board in 2012. The Board considered it acceptable to use the word *prick* in the context of a vasectomy clinic (Dr Snip – 0034/12), *shnitz* and *tits* to advertise a burlesque event with schnitzel

dinners (Colonial Hotel – 0328/12), and *dick* in the context of the business name (Dick Smith Electronics – 0370/12 & 0371/12).

Referring to a dog as a *little bastard* (Assistance Dogs Australia – 0033/12) or *bitch* (Worksense – 0264/12) was deemed acceptable by the Board as the language is not used in a derogatory or violent manner, and the words are common colloquial terms for dogs.

Anatomical words were the topic of debate in 2012, deeming *penis* (Puppetry of the Penis – 0068/12, Nova – 0255/12) acceptable. The Board also considered the use of the word *vagina* in relation to a panty liners campaign (Johnson & Johnson – 0305/12, 0306/12 & 0307/12). The Board considered that the use of this word in relation to the product being advertised was not explicit or inappropriate.

Social media

The decision that advertisers are responsible for their social media communications has been the topic of significant media attention in 2012. The Board considered that public posts on Facebook forums are part of an advertiser's advertising or marketing communication if not removed in a reasonable period of time. Comments posted on the Facebook pages were considered by the Board to use strong and obscene language and were in breach of the Code, with examples *bad c**t*, *double fuck oath* and *vaginal backwash* particularly noted (Fosters – 0271/12).

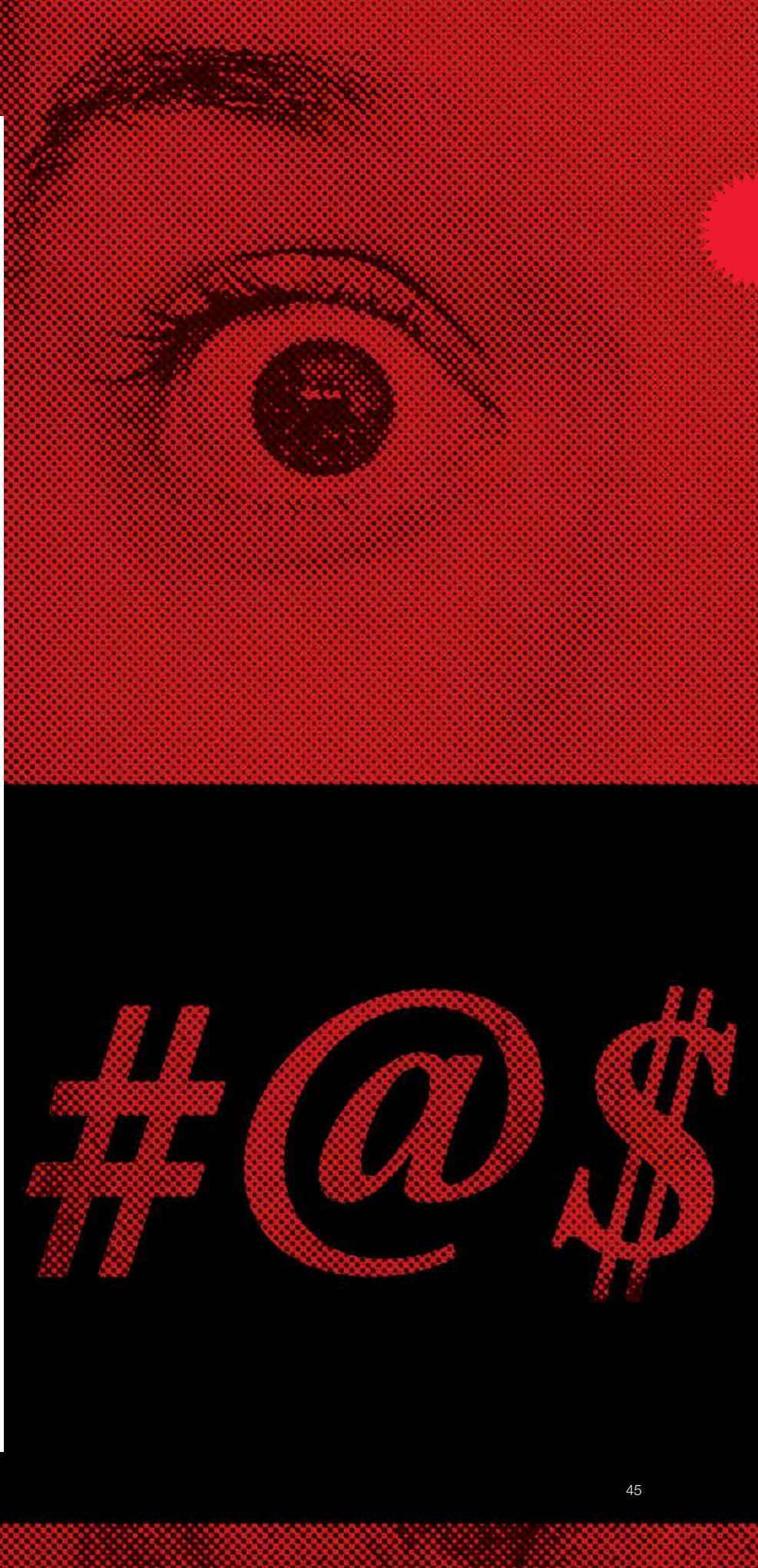
Obscene terms

Fuck has been consistently considered by the Board to be a strong and obscene term. In one case the word was explicitly written on a van as part of a slogan (Wicked Campers – 0487/11). The Board considered this use of language to be strong and obscene. Similarly a Facebook advertisement promoting alcohol (Hostage X Nightclub – 0256/12) which used the word was deemed unacceptable. A variation of the word, *firkin hell* (Liquor Barons – 0486/11) was not considered obscene by the Board.

Cunt is also considered by the Board as a strong and obscene word, and was upheld in the previously mentioned case (Fosters Facebook – 0271/12). Inference to this word was used in an internet campaign where the viewer was given

the final three letters *unt* with the inference the first letter was *c*, until revealing the word was *punt* (Sportsbet – 0367/12). As the word was not explicitly stated, and the advertisement was shown via the internet where children are unlikely to view or understand this inference, the Board dismissed this case.

Words considered acceptable in 2012 included *bollocks* (Mitsubishi Motors – 0062/12), *boobs* (Pacific Brands – 0185/12) and *bum* (Coles – 0282/12).



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

In 2012 the proportion of complaints about health and safety issues decreased from 13.59 per cent in 2011 to 9.5 per cent.

Under Section 2.6 of the Code, the Board must uphold complaints about an advertisement where the advertisement or marketing communications depicts 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.

Issues of health and safety considered by the Board in Section 2.6 include behaviours which are contrary to prevailing standards such as non-violent bullying and unsafe acts involving motor vehicles and depictions of smoking, drinking and gambling.

Non-violent bullying

Non-violent bullying is considered a health and safety issue and bullying behaviours such as intimidation, harassment and threatening actions are considered under Section 2.6 of the Code.

In 2012 the Board considered several instances of light hearted teasing, such as making a friend dance for food (Yum Restaurants – 0317/12), putting textbooks on a colleague's back (iSelect – 0230/12) and playfully throwing bricks near a colleague brick layer (Nestle – 0335/12). In these circumstances because light-hearted humour was used and there was no trauma or distress evident, the Board dismissed the complaints.

Similarly, in a series of Olympics related advertisements, a villain character was threatened with being pushed into a swimming pool (Commonwealth Bank – 0341/12), use of a javelin (Commonwealth Bank – 0348/12) and hockey balls (Commonwealth Bank – 0349/12). The Board considered that most members of the community would not consider this as threatening as it was portrayed in a light-hearted manner.

The difference between bullying and bossing was discussed in depth by the Board for a case (Energy Watch – 0099/12) where a tax collector

pressures an elderly lady to donate money. In this instance, the Board felt the tax collector was presented in a bossy manner as opposed to bullying, and dismissed the case.

The Board can and has viewed the depiction of bullying to promote community awareness as inappropriate. A series of advertisements aiming to draw attention to the issue of bullying were raised by members of the community as distressing, with the physical bullying of left-handers (Beyond Blue – 0394/12 & 0395/12) and employees (Worksafe Victoria – 0182/12). The Board dismissed these complaints noting that the use of violent scenes was important to the health message conveyed and considered that most members of the community would support the message being advertised.

Community standards of violence were considered for a poster stating *It's all fun and games until you shoot your girlfriend* (Strike Bowling Bar – 0193/12). The Board considered the statement was very prominent in the advertisement and that the message implied was violence towards women. Although recognising the intent was to display a humorous pun for a laser tag game, the Board found the advertisement contrary to community standards.

Depiction of smoking, drinking and gambling

The Board continues to find smoking imagery in advertisements in breach of the Code. In 2012, Nena & Pasadena (0140/12) and De Rucci Bedding (0410/12) were in breach of the Code for using cigarettes in their advertisements.

Glamourised imagery of gambling was an issue raised by members of the community (Centrebet – 0383/12, Tabcorp – 0409/12). The Board noted that there is a genuine community concern regarding excessive gambling and the real problems associated with gambling for certain members of society. The Board further noted that unlike advertising controls around alcohol products, as set out within the Alcohol Beverages Advertising Code (ABAC) Scheme, there are no broader specific restrictions or controls around the promotion of gambling products or services. Accordingly, the Board dismissed these complaints.

An SMS marketing communication was found in breach of Section 2.6 of the Code

for depicting material contrary to health and safety standards (Sportsbet – 0476/12). The phrase used in the advertisement *Bet on every race, every day, from your mobile* was viewed by the majority of the Board as encouraging more frequent gambling.

Alcohol advertisements are referred to the ABAC committee and also considered by the Board if Code of Ethics issues are raised. The Board upheld complaints for a series of advertisements (Big Night Recovery – 0141/12 & 0142/12) that insinuated after a night of heavy alcohol drinking, people could use the product and be fine to work the next day. The Board deemed these advertisements irresponsible as a significant community effort is made to communicate the dangers of excess alcohol consumption.

Motor vehicles

As well as considering motor vehicle related complaints under the FCAI code, some advertisements may also be considered under Section 2.6 for Health and Safety concerns.

Issues of dangerous driving were considered where a person was not clearly wearing a seatbelt (Coles – 0168/12), and where a girl leans out of a car window unrestrained (Star Track – 0299/12). The Board considered evidence for the Coles advertisement where the person had a lap belt secured which was not entirely visible and considered that most members of the community would know that the middle seat in the back of a car has a lap belt. In the case of Star Track a significant proportion of the girl's torso was outside of the vehicle and although restrained by a seatbelt while filming, this was unclear throughout the advertisement. The Board upheld complaints for this advertisement deeming the material contrary to prevailing community standards on health and safety.

Additionally, the Board found unsafe driving practices depicted where a tow bar was incorrectly used (Holden – 0251/12 & 0252/12), and where drivers were negligent and appeared nonchalant in response to a car accident (Ultratune – 0214/12, AAMI – 0472/12). An internet advertisement that depicted a driver holding and looking at a mobile phone was in breach of the Code for depicting an unsafe message contrary to prevailing community standards of safety (Telstra – 0039/12).

Transportation

In 2012, two bicycle-related advertisements were found to present imagery contrary to community views on safe behavior. A print advertisement showed two people perching on a one seated bicycle (Carsafe – 0269/12). The female passenger seated behind was found to contravene Australian Road Rules and the Board upheld complaints for this advertisement.

The second bicycle-related advertisement in breach of Section 2.6 of the Code was a radio advertisement featuring an interaction between mother and son where the son responds negatively to wearing protective gear (Nestle Australia – 0296/12). In the advertisement it is unclear if he does eventually put safety equipment on. The Board noted community concern around keeping children safe and encouraging healthy and active lifestyles and considered that the advertisement was contrary to prevailing community standards on health and safety.

Images of forklift machinery raised community concerns with advertisements for EFTPOS Payments (0174/12) and Homebuyer's Centre Victoria (0300/12). Both cases were found to meet standards of safe practices with machinery.

Train surfing, an act where a person stands on top of a moving train, was depicted in two cases in 2012 (Mars – 0197/12 & 0451/12 and HBF – 0149/12). In the Mars advertisement, scenes were presented in a fantastical and unrealistic manner, with the Board dismissing complaints. However, the HBF poster advertisement depicting a train surfing exercise was found to be in breach of the Code due to presenting material contrary to community views on health and safety.

Food related

Health and safety issues surrounding food hygiene and preparation were considered in 2012. In a case where a naked man was preparing food (Boyson Meat & Poultry – 0015/12), the Board's view was that the advertisement did not condone cooking while nude.

In the case of a man shown to be following a hand written recipe for leek soup the ad suggested he may have urinated in the soup pot (Pilot Pen Australia – 0025/12) because the word leek is misspelled as leak. The Board

considered the act as unrealistic and did not believe most members of the community would view it as condoning urinating in food.

Responsible food practices involving children's safety were considered by the Board with concerns over children eating pins (Reckitt Benckiser – 0290/12), choking concerns (Aldi Stores – 0094/12, Reckitt Benckiser – 0153/12) and discouraging vegetable intake (Swisse Vitamins – 0105/12).

Water related

Outdoor activities such as diving, fishing and swimming were considered by the Board under Section 2.6. The Board found a controlled cliff dive by a professional diver acceptable in two cases (Toyota – 0041/12, Sanofi Aventis – 0355/12), noting that the person in the advertisement is portrayed as a competent diver and that they are shown emerging from the water after the dive.

An advertisement depicting a staged shark attack (Pepsico Australia Holdings – 0304/12) was dismissed by the Board due to its overall fanciful and unrealistic elements. An insurance advertisement with a man fishing on rocks was also dismissed (Challenger Limited – 0134/12) since it did not present material contrary to community standards.

Appliances

The Board determined a depiction of a man trapped in a fridge (Energy Australia – 0439/12, 0440/12, 0441/12 & 0448/12) was portraying imagery contrary to community health and safety standards. The Board considered the important safety concerns around electrical appliances and noted that there have been incidences where children have been trapped in white goods. Consistent with previous determinations (Harvey Norman – 0406/11) involving people trapped or contained within a fridge or freezer, the Board upheld complaints.

The Board also found an advertisement featuring a man using a laptop in a bath contrary to community standards on health and safety (iSelect – 0488/11). The Board determined that although the use of a laptop, which is not plugged in, in a spa may not itself be dangerous, the depiction of the use of such equipment in water undermines public

messages about safe use of electrical appliances around water.

Online safety concerns

A social media case for a Facebook page raised community concerns over encouraging women to upload photographs with their *bestie* (Bendon – 0376/12), also the name of the underwear brand. The Board noted the community concern about appropriate online behavior and considered that the main phrase could be interpreted as encouraging women to take a photograph in their underwear and to upload it to the internet. Accordingly, the Board determined the imagery depicted material contrary to community standards and upheld complaints.

Other issues

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

Other issues may include complaints about social values, common decency and tastelessness. During 2012, one advertisement raised issues under the other category.

An advertisement for toilet paper raised community concerns of social values when a Labrador puppy sniffs the bottoms of people (Kimberly-Clark – 0321/12, 0325/12 & 0374/12). The Board determined that the advertisement was presented in a cheeky and humorous light, and that most members of the community would not feel that it breached community standards.

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 and 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 Board must determine whether an advertisement complained about is advertising or marketing communications to children.

Until 1 November 2012 the QSR Initiative provided that, for the QSR Initiative to apply, the advertisement, must be, having regard to the theme, visuals and language used, directed primarily to children and be for food and/or beverage products.

However, the QSR Initiative was amended with effect from 1 November 2012 so that the requirements of the Initiative now apply more broadly to advertising and marketing communication to children where:

- the communication is directed primarily to children (regardless of its placement); and/or

- the medium is directed primarily to children (in relation to children this includes all C and P programs and G rated programs that are directed primarily to children); and/or
- the medium attracts an audience share of greater than 50% children.

For quick service restaurants the Board considered complaints against 15 cases. One breach of the QSR Initiative was found with an advertiser advertising a brand of food but not including an image of the healthier choice product in the range (McDonald's – 0221/12).

Cases for 2012

Key issues to be drawn from cases considered by the Board during 2012 are:

- **the advertisement itself must be directed primarily to children (note this requirement has changed from 1/11/12):** Noting again that the QSR Initiative only applies where the advertisement itself is, considering the theme, visuals and language used, directed primarily to children (Hungry Jack's – 0161/12, Australian Fast Foods – 0137/12, McDonald's – 0382/12, McDonald's – 0378/12, Oporto – 0160/12, Yum Restaurants – 0163/12, Yum Restaurants – 0178/12, Yum Restaurants – 0261/12).
- **the advertisement must be for a food or beverage product:** In 2011 a microsite which did not depict the product and had only minimal mentions of the advertiser was determined not to be advertising a product (McDonald's – 0103/11). However, during 2012 the Board considered that a product specific microsite which mentions the product and encourages purchase

of the product is likely to be considered as advertising of a food or beverage product (Unilever Paddle Pops – 0044/12, McDonald's Australia – 0221/12).

- an advertisement encouraging people to visit an associated website to enter a competition where the website contained no suggestions of food was not an advertisement for a food product (McDonald's – 0324/12). Similarly a website which included an advertiser logo was determined to be an advertisement for the company but not for a food or beverage product (McDonald's – 0338/12).
- **healthier choice product must be depicted:** Advertising a product category means that one of the healthier choice options must be included in the advertisement (rather than no images of any product) (McDonald's – 0221/12).
- **licensed characters (3.2):** Licensed characters can be used in marketing directed primarily to children provided that the product is a healthier choice product and the messaging requirements of 4.1(a) of the QSR Initiative are met (McDonald's – 0023/12).
- a microsite featuring licensed characters on the site or in games on the site must ensure that the products advertised are healthier choice options otherwise there will be a breach of the licensed character and interactive games provisions of the QSR Initiative (McDonald's – 0221/12).
- **premiums (3.6):** a toy which is an integral part of the food product may not be considered a premium which means that it does not need to comply with 4.6 of the Initiative (McDonald's – 0339/12)

The Australian Food and Grocery Council Initiative

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

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

For food and grocery products the Board considered complaints against seven advertisements. No breaches of the Initiative were found in 2012.

Prior to 2012 cases under the RCMI all involved issues of placement of advertisements for products that did not meet the healthier

choice category. Several of the advertisements considered during 2012 raised that issue again.

The Board reiterated in several cases that for advertisements that are not shown in children's programming or in programs with a high child audience, to come within the AFGC RCMI the Board must find that the advertisement is aimed in the first instance at children. Although an advertisement may be attractive to children, the Board can determine that an advertisement is not directed primarily to children and therefore the RCMI does not apply (Kellogg's – 0228/12, Kellogg's – 0494/12, Kraft Foods – 0225/12).

Advertisements that appear on the advertiser's own website are not included within the scope of the RCMI at present (Lion – 0196/12).

Advertising Messaging

In late 2011 a Unilever Australia (0454/11) advertisement for Paddle Pops was found to breach the RCMI even though it was a healthier choice product being marketed directly to children. In that case the Board determined that the advertisement did not meet the messaging requirements of the RCMI Initiative.

Under the RCMI the product advertised must represent a healthier dietary choice and the advertising and/or marketing communications 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, and
- physical activity.

In early 2012 the Board considered an advertisement for a biscuit (Campbell's Australia – 0156/12) and considered the same issue. In that case the Board noted:

the advertisement describes the product as a 'favourite snack' and depicts the product being placed into a lunch box with a multigrain salad sandwich, an apple and carrot sticks.

The Board considered that the advertisement is encouraging a healthier choice product being consumed as part of a healthy balanced lunch. The Board considered that this element of the advertisement did encourage good dietary lunch habits for children. The Board noted that the advertisement must also encourage physical activity. The Board noted that the theme of

the advertisement is children dancing and the advertisement states 'get down with Big Ted.' The Board determined that the advertisement's depiction of children dancing and the encouragement to join in amounted to messaging that encourages physical activity.

The Board determined that the advertisement complied with the advertising messaging requirements of the RCMI and, having considered the other provisions of the RCMI, determined that it did not breach the RCMI.

AANA Food and Beverages Advertising and Marketing Communications Code

In addition to the Initiatives the ASB administers the AANA Food and Beverages Code (the AANA Food Code). The AANA 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 and cases raising issues under Part 3 are referred to below in conjunction with the discussion of the Advertising to Children Code.

Key issues to be drawn from cases considered under the AANA Food Code during 2012 are:

- the definition of advertising or marketing communication includes any INDIRECT promotion of a product. In the Board's view an advertisement, although for a water park, is also, by use of the Paddle Pop lion references, an indirect advertisement for Paddle Pops (Unilever – 0044/12).
- consistent with previous years, 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. The Food Code does not restrict the type of product (from a nutritional perspective) that can be advertised. During 2012, the Board considered that:

the advertising of a product of particular nutrient profile is not of itself undermining a balanced diet or healthy lifestyle and that the advertisement did not depict or encourage excess consumption and that there was nothing in this advertisement that would amount to

the undermining of a balanced diet or healthy lifestyle (Mamee Noodles – 0162/12, Retail Food Group – 0229/12, Stuart Alexander and Co – 0187/12, Kraft Foods – 0195/12).

Condone or encourage excess consumption (Section 2.2)

- Advertisements will not necessarily encourage or condone excess consumption merely by depicting (and not eating) a large product or the use of large amounts of the product in a game (Lindt – 0139/12, McCormick Foods – 0199/12).
- A suggestion that children will love a product for life, in an advertisement targeted to adults, was not encouraging excess consumption (Nando's Australia – 0236/12).
- An interactive game on a website which included donuts did not encourage excess consumption (Retail Food Group – 0229/12).
- Collecting a product as part of a game was considered not to encourage excess consumption. The Board considered that although the purpose of the game is to obtain as many lollipops as possible, it was reasonable to expect that the App be designed around a familiar format of rewarding the collection of a particular object and considered that while doing so, the person playing the game would not be being encouraged to eat excessive amounts of lollipops themselves (Stuart Alexander and Co – 0187/12).
- Promotion of a family pack of food was not encouraging excess consumption (Australian Fast Foods – 0137/12).
- A two for one promotion was not encouraging excess consumption (Burger Urge – 0408/12).

What amounts to an advertisement for a food or beverage product?

- Promotion of a Facebook page to share smiles is not of itself promotion of a food or beverage (Nestle Australia – 0393/12).
- An App which is a game that features depictions of a product, collection of the product and signage for the product within

the game will be considered to be an advertising or marketing communication for that product (Stuart Alexander and Co – 0187/12).

Truth and Accuracy/Nutritional composition of the product

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 2012 a number of complaints concerned the truthfulness of statements made in advertisements for food products including whether or not the following comments in advertising were misleading:

- references to using *canola oil* amounted to a claim that the products are good for you (Yum Restaurants – 0261/12) or use of the term *goodify* (Yum Restaurants – 0127/12)
- the depiction of chickens on a farm is misleading as to how the chickens are actually raised (Baiada – 0265/12)
- a reference to a feature of the product (hormone free, fresh, fresh baked) is a misleading inference that the same product from other producers do not have that feature (Baiada – 0404/12, Coles – 0063/12, Coles – 0067/12, Coles – 0432/12)
- a statement that the product is sterile and suitable for use in making baby formula (Bebi Australia – 0480/12)
- a statement that a store uses only fresh ingredients or sells fresh produce when some ingredients have been frozen (Boost Juice Bars Australia – 0453/12, Woolworths – 0118/12)
- comparison of saturated fat levels between competing products (Goodman Fielder – 0425/12)
- statements about the nature of an ingredient (Lion – 0323/12, Yum Restaurants – 0126/12)
- statements about the nutritional content of an ingredient compared to the product as consumed (Nestle – 0280/12)
- the food depicted in the advertisement was not an accurate depiction of the product available at point of sale due to size or composition (McDonald's – 0005/12,

Nestle Australia – 0357/12, Subway – 0198/12, Yum Restaurants – 0368/12).

On occasions the information provided by the advertiser will be technical and it will be beneficial for the Board or Bureau to obtain independent expert advice on the information so that it is able to be presented to the Board in terms that are easy to understand and/or support, or otherwise, the statements made by the advertiser.

In Kraft Foods Ltd (0195/12) the Board sought assistance regarding statements about different carbohydrate types and their role in replenishing bodies. Following advice from the ASB's consultant nutrition expert the Board determined that the statements in the advertisement were not misleading.

Depiction of a product as a meal replacement (Section 2.8)

The promotion of a product as a supplement for children who do not eat their meals was determined not to be a representation that the product is suitable as a meal replacement (Nestle Australia – 0212/12).

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.

During 2012 only 21 cases raised issues under the Advertising to Children Code.

Of these only one was for a toy (Hasbro Australia Ltd – 0424/12) with the remainder being for food products.

Of the 21 cases only five were considered by the Board to be advertising to which the Children's Code applies ie: where the advertisement is both directed primarily to children and is for a product that is targeted towards or of principal appeal to children (ABC Sales and Marketing, Mamee Noodles – 0162/12, Campbell's Australia 0156/12, Haribo Gold Bears – 0424/12, McDonald's – 0221/12, Lion – 0196/12).

Of advertisements that were directed primarily to children and were for a children's product, the Board considered that promotion of a product which may have a particular nutritional composition is not, per se, encouraging or promoting an inactive lifestyle or unhealthy eating habits under clause 2.15 of the Children's Code. To breach the Code there must be something in the marketing communication that would be considered by reasonable people to be a depiction of an inactive lifestyle or unhealthy eating habits (McDonald's – 0221/12).

In deciding that the other advertisements complained about were not directed primarily to children, Board decisions indicate that:

- an advertisement that encouraged people to visit an advertiser's Facebook page was not

primarily directed to children and the Board will take into account that the Facebook medium is not targeted to people under 13 (Nestle – 0393/12).

- the Board can decide that the content of a Facebook page is directed primarily to children 14 years or younger (Haribo – 0405/12).
- the Board must consider whether an advertisement is directed primarily to children and in 2012 considered that things such as the use of upbeat music, depictions of children cheering and laughing and dancing around and references to a children's nursery rhyme do not of themselves make an advertisement directed primarily to children rather than of appeal to both children and adults (Nestle – 0393/12, Lindt – 0139/12, McDonald's – 0382/12 and 0378/12, Nando's Australia – 0236/12, Nestle – 0393/12).
- inclusion of material attractive to children on an advertiser website which primarily contains factual information about the advertiser, its products and store locations will not necessarily amount to advertising that is directed primarily to children (Coldrock Management – 0234/12).
- the *Kids Corner* of a corporate website can be considered to be advertising or marketing communication directed primarily to children (Retail Food Group – 0229/12).

In considering whether products complained about are targeted towards or of principal appeal to children, the Board considered that:

- several advertisements for brands were not within the Children's Code on the basis

that a brand promotion (where a brand has a range of products) that does not highlight any particular product is not an advertisement for products that are targeted towards or of principal appeal to children (Nestle – 0393/12).

- products not targeted towards and of principal appeal to children included: iccream (Coldrock Management Pty Ltd – 0234/12); Haribo confectionery (0405/12); muffins (Muffin Break – 0233/12); Allens Confectionary (Nestle Australia – 0393/12); boutique donuts (Retail Food Group – 0229/12); and Chupa Chups (Stuart Alexander and Co – 0187/12).
- products targeted towards and of principal appeal to children were Mamee Noodles – 0162/12, Haribo Gold Bears – 0424/12 and Yogo Lion – 0196/12.

Sexualisation of children

In 2012 there were no advertisements directed primarily to children which raised issues regarding sexualisation of children.

Cars—(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 health and safety, sex, violence).

Key issues for 2012

The number of complaints about motor vehicle advertisements was significantly higher in 2012 (80 complaints in 2012, compared to 23 in 2011).

Although the overall number of complaints about motor vehicle advertisements is modest, the issues raised under the cases produced some important interpretation principles, in particular that:

- safety is of paramount importance—motor vehicle advertisers must be cognizant of the broad issues of health and safety—not just the driving practices portrayed
- motor vehicle advertisements must consider all applicable road rules, including the use of fog lights, seatbelts, indicators
- 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, and
- 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.

FCAI Code

During 2012, there were 31 complaints about 15 motor vehicle advertisements that were considered only under the provisions of the FCAI Code. Of these advertisements, four were upheld.

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

- driving practices that would breach the law
- excessive speed
- unsafe driving, and
- damage to the environment.

Cases for 2012

In case 0093/12, a TV advertisement for Suzuki was found to breach Section 2(a) of the FCAI code as the driving depicted in the advertisement was considered reckless and dangerous in a car park setting. The Board noted that while there is no independent verification of the actual speed of the vehicle, in the Board's view the combination of the firm depression of the accelerator pedal, the increase in engine revs and the sped up footage combined to give an overall impression of reckless speed which the Board considered to be a depiction of unsafe driving.

In case 0186/12, a Volvo advertisement was found in breach of Section 2(a) and part 3 of the FCAI Code. The Board determined that the image of the vehicle doing a sudden 180 degree turn is a depiction of driving that, if it occurred on a road, would be considered to be driving in an unsafe or reckless manner that would breach the law. As there was insufficient evidence to identify the driving as part of recognised motor

sports, the advertisement was found to breach clause 3 of the FCAI Code.

In case 0464/12, a Chrysler ad was found to breach Section 2(c) of the FCAI Code as the motor vehicle was depicted with the driving lights illuminated when not in hazardous or foggy conditions. In line with earlier decisions, that action is in contravention of national road rules and as such also in contravention of Section 2(c) of the FCAI Code

In case 0474/12, a Kia advertisement was found to breach Section 2(a) of the FCAI Code—as the advertisement depicted a vehicle travelling through city streets at an accelerated pace. The Board considered that the depiction of speed in a built up city area was excessive, breaching Section 2(a) of the FCAI Code.

Code of Ethics

During 2012, there were 19 complaints about six motor vehicle advertisements that were considered under the provisions both of the FCAI Code and the Code of Ethics. Of these advertisements, five were upheld.

Cases for 2012

A complaint in case 0133/12, a Pay TV advertisement for Suzuki (the same ad as considered in the TV medium in case 0093/12 which was found to breach Section 2(a) of the FCAI Code) raised concerns about the sexualised depiction of the female passenger in the vehicle. Consistent with case 0092/12, the Board found that the driving depicted was in breach of Section 2(a), however, found that the depiction of the female passenger did not breach the Code of Ethics

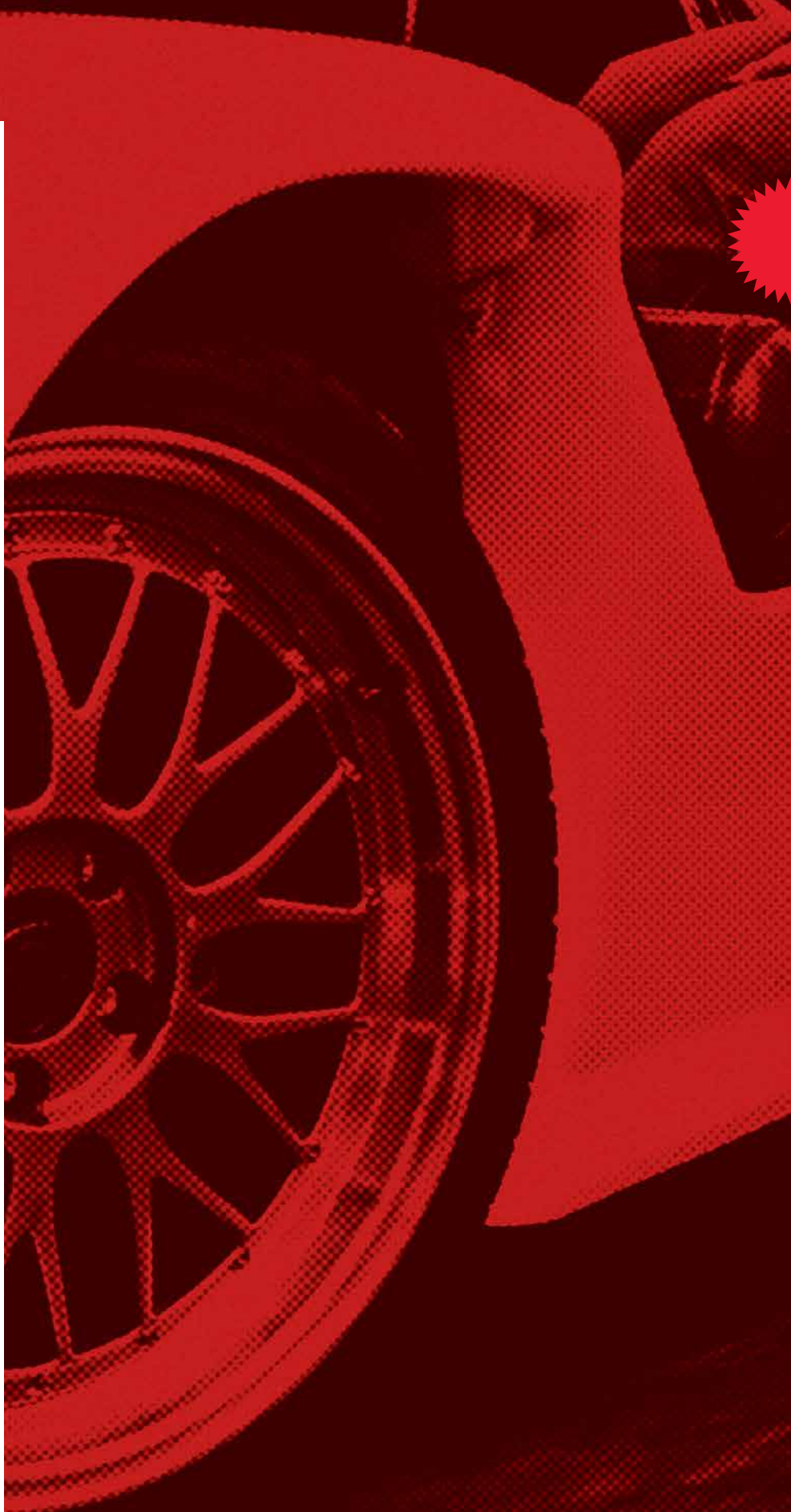
In cases 0165/12 (print advertisement for BMW) and 0330/12 (TV ad for Peugeot) there were images of a vehicle occupant with body parts extended out of the vehicle window. The Board considered this depiction to breach Section 2(c) as it was in contravention of Australian road rules.

Cases 0251/12 (TV) and 0252/12 (Pay TV), advertisements for a Holden Colorado, were found to breach Section 2.6 of the AANA Code of Ethics for the unsafe depiction of towing/ vehicle recovery on a work site. However, the Board found that the driving practices depicted in the advertisement were not in breach of Section 2(a) of the FCAI Code. The advertisements were modified to demonstrate an acceptable towing/recovery system.

During 2012, there were 30 complaints about 12 motor vehicle advertisements that were considered under the provisions of the AANA Code of Ethics.

Of these advertisements, no complaints were upheld. Dismissed complaints related to:

- a man in a dog kennel – 0218/12
- a woman checking out a man in her rear vision mirror – 0061/12
- an animated cane toad being run over – 0203/12
- a dog wearing women's clothes – 0030/12
- a man diving off a high cliff – 0041/12
- a young girl using inappropriate language – 0131/12.



Environmental Claims in Advertising and Marketing Code

The ASB began administering complaints under this Code on 1 January 2010. During 2012 the Board considered two advertisements under the Environmental Code which were dismissed. A case for Energy Watch (0099/12) had complaints made about it in relation to the Environmental Code, but as no specific environmental claims were made in the advertisement, the Code did not apply.

Bosch 0284/12 & 0285/12

A Bosch dishwasher advertisement was considered across two mediums—TV (0284/12) and Pay TV (0285/12). The claims made by the advertisement referred to dishwasher water and energy consumption in comparison to hand washing. The Board considered these statements against the Environmental Claims in Advertising and Marketing Code Section 1 (i), *environmental claims in advertising or marketing communications shall not be misleading or deceptive or be likely to mislead or deceive*.

The Board noted that the claims made in this advertisement for energy and water usage were validated by independent research. Since the advertisement also used terminology such as *average* or *up to* for energy usage, the Board considered that the advertisement was not misleading or deceptive, and accordingly found it did not breach the Code.

Shamic Sheetmetal 0332/12

The Board considered a TV advertisement for Shamic Sheetmetal (0332/12) regarding environmental claims about wood heaters. The complainant expressed concerns over the use of the term *cleanly and efficiently*. The Board noted scientific research provided by the advertiser regarding this claim, and also noted the advertisement did not directly compare wood heaters with any other heat source. Since the advertisement was not intended to mislead or deceive, the Board dismissed complaints.



Board member profiles—2012



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 currently serves on the ACT Clinical Senate and her local school board.

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, 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 2012 the Program now operates out of 10 university campuses across New South Wales, Queensland and Victoria. Heading up a group of 42 staff, Jack and the team are currently working with close to 1000 university student volunteers who will mentor over 1000 Indigenous high school students in 2012. 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 sites are already exceeding local and national averages.

Now, at 27 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, has recently been awarded the Young People's Australian Human Rights Medal and 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*, *September* 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*, *Newtheatricals*, and *The Queensland Theatre Company*.



Maria Cosmidis

Appointed August 2011

Maria Cosmidis is currently employed by the Sydney Swans as the Community 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 also one of the producers of a movie review show on a local Sydney radio station and enjoys heated debate among 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, but left with his parents and brother in a small fishing boat in 1980. They arrived in Australia and settled in Western Sydney, where Khoa developed a passion for storytelling and cinema.

Khoa began working in the performing arts in the late 1990s, developing and producing a number of shows and films. Over the years, he has worked extensively with marginalised communities in film – working with homeless youths, former prisoners and refugees of many nationalities. Khoa's 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.

Khoa has been nominated for AFI Awards, IF Awards, Film Critic's Circle of Australia Awards and was recently awarded prizes at the Orlando, Canada and Vietnamese International Film Festivals.

In 2012, Khoa wrote and directed a mini-series on capital punishment, Better Man, starring David Wenham, Bryan Brown and Claudia Karvan.

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. In January 2005, Khoa was announced as Young Australian of the Year, the first-ever filmmaker to have been awarded the accolade.



Karen Haynes

Appointed August 2011

Karen is from Brisbane and since 2008 she has been a Queensland Baptist Pastor. She is Associate Pastor at Windsor Road Baptist Church, and Brisbane city congregation. Her ministry primarily focuses on young adults and newcomers to Australia.

She also works for Australian Baptist's Cross-Cultural Agency, Global Interaction. As "Young Adults Consultant" for Queensland, she works across the state to increase awareness and involvement in cross-cultural work.

Karen is also a member of Queensland Baptist's Administrative Services Group, the property and finance committee of Queensland Baptists.

Karen has worked with young people and their families since she was teenager. She began her working career in administration and business roles, after completing a Bachelor of Business, but then changed direction and completed a Master of Divinity and a Graduate Diploma of Ministry through Malyon College a member of the Australian College of Theology.



Nathan Hindmarsh

Appointed August 2011

Nathan Hindmarsh is considered one of Australian rugby league's great forwards. He captained the Parramatta Eels in the National Rugby League (NRL) as well as playing his entire 330-game, 15-year career with the Eels.

Since retiring in 2012 he has taken on roles as the NRL game development coordinator and will be part of the Fox Sports team, hosting and co-hosting a number of sport and rugby league shows.

Nathan was also a New South Wales State of Origin and Australian international representative second-row forward. He was the first player to make 10,000 tackles in the NRL.

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

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 boys—Archie, Buster and Rowdy.



Sophie Kowald

Appointed August 2006

Sophie works at the Australian Communications and Media Authority and is a Master of Laws candidate at the University of Melbourne. Previously Sophie has worked as a research fellow on cross-border tobacco advertising control at the Centre for Media and Communications Law, a judicial associate in the Federal Magistrates Court of Australia and as a casual university academic in law and media studies.

For many years, Sophie has been a singer in choirs around the country, including The Australian Voices, Canticum, The Melbourne Chorale and, most recently, the Sydney Philharmonia Choirs.

Sophie was born in Canberra and raised in Brisbane. She now lives between Sydney and Melbourne with her husband and daughter.



John Lee

Appointed August 2006

John is the Chief Executive of the Australasian Casino Association. He is responsible for delivering the strategic and operational outcomes for the organisation.

Early in his career, John worked in hospitality including an extended period working for some major Australian iconic resorts. John has also held senior positions in Government, notably as head of communications and marketing for transport for the 2000 Sydney Olympics and as a Director General in NSW. He has run major transport logistic companies and prior to this role John was the CEO of the Tourism and Transport Forum (Australia).

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 teaches in the areas of media, popular culture, and gender, culture and power. She is currently involved in research focused on how families manage working and caring.

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 cafes and restaurants in Melbourne, Sydney and London. Working in businesses focused on food Paula loves the sense of community and familiarity that builds up over time between regular customers and staff—in a big anonymous city, the local cafe and shops can be a small haven of neighbourliness.

Returning to study Paula recently finished an Arts Degree at Sydney University, majoring in English literature and Australian History. With an interest in theatre, film and television, time constraints have made television her main form of entertainment. She loves documentaries, particularly stories about real people and the challenges life throws our way.

Paula lives in Sydney with her teenage daughter.



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 CEO 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 CEO 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, who 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 Palca 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 Masters 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' football team and various church committees. Peter also serves as a Justice of the Peace and is a board member for an organisation working with people with disabilities.



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 AM 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, teaches a course in politics at The University of Adelaide and is a columnist for The Advertiser.

She is 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.

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 to organisations in educational and not for profit sectors.

Josephine is a director with over 20 years experience, currently serving on various boards and statutory committees and is a Fellow of the Australian Institute of Company Directors.

Josephine was Commissioner for Equal Opportunity in South Australia for 16 years and the Chief Executive of the Equal Opportunity Commission.

She successfully managed and promoted controversial and complex legislative and social changes throughout South Australia and nationally—changes which have been accepted as common practice and integrated into the Australian community.

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 actively involved with the community. She is a Justice of the Peace and has worked with people from the early years of a nursing career, which she followed by establishing and managing the first Australian Nurse Counselling Service, at the South Australian Women's and Children's Hospital.



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 (Claims Board) is one of the two Boards for which the ASB is secretariat. 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
- exploitation of community concerns in relation to protecting the environment
- 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 receipt of final submissions from the complainant and advertiser)
- 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 practitioners. 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.

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

Advertising Claims Board cases—2012

During 2012 the Claims Board resolved two cases.

Sugar Australia Pty Ltd v Natvia Pty Ltd

The complaint raised concerns over two advertisements for a sweetener product—a television advertisement in the form of an advertorial and a print advertisement appearing in several newspapers.

The complainant alleged that the advertisements may breach Sections 1.2, 1.3 and 1.5 of the AANA Code of Ethics.

At issue were claims in the television advertisement that the product was *a new completely natural sweetener and natural guilt free sweetness*, and claims in the print advertisement that the product was *100% natural* and *the 100% natural sweetener* along with a comparative claim *natural like sugar... only better*.

The Claims Board noted that in determining whether the advertisements are misleading or deceptive (or likely to mislead or deceive), it was required to consider:

- the likely overall impression created by the advertisements (*Parkdale Custom Built Furniture Pty Ltd v Paxu Pty Ltd* (1982) ATPR 40-307), and
- community standards prevailing at the time of the advertisement regarding *natural* claims and whether the advertisement, judged according to those standards by a reasonable person of fair, average intelligence, would be misleading or deceptive.

In respect of the comparative statement *natural like sugar... only better*, the Claims Board noted the following principles applied:

- there is a heavy burden on the advertiser to ensure that its comparisons are accurate, for inaccurate comparisons are inherently likely to mislead the public (*State Government Insurance Commission v J.M. Insurance Pty Ltd* (1984) ATPR 40-465 at 45362),
- errors in comparative advertising may have a greater potential to mislead consumers than statements made in ordinary advertisements which may be perceived as mere *puffs* (*Trade Practices Commission v Telstra Corporation Ltd* (1993) ATPR 41-256 at 41,454), and
- to publish an advertisement suggesting that one product will outperform another product, without there being any tests to demonstrate the truth of the claim, is itself to engage in misleading conduct (*Colgate-Palmolive Pty Ltd v Rexona Pty Ltd* (1981) ATPR 40-242 at 43,192).

The Claims Board considered that the target audience of both advertisements is very broad, with consumers in general holding a wide range of views on what the term *natural* means when used in respect of food products. It was

acknowledged that there is no regulatory or statutory definition of the term and it is very widely used in the food industry. The Claims Board considered the term primarily refers to ingredients formed by nature and not man-made, but can also mean ingredients that imitate nature.

The Claims Board accepted that the target audience of the **television advertisement** could understand the *natural* claim to convey the representation that all ingredients included in this food are natural ingredients (rather than the product as a whole occurs naturally) because the advertisement itself described the product as being a sweetener and as having been *crafted*, both of which indicate that the product is the result of a process of manufacture.

The Claims Board considered that the *100% natural* claim should not be considered differently to the *natural* claim on the basis of its understanding of community standards.

Both parties accepted that one ingredient in the product is *natural* as it is extracted from a plant product. Whether the second ingredient is *natural* was considered to be more complex as it can naturally occur in fruits, but in the case of the product, appeared to be produced by biosynthesis to imitate a process occurring in nature. By a majority decision, the Claims Board concluded that it could not, with certainty, determine that the target audience would consider the second ingredient not to be *natural*. Therefore, the Board was not satisfied that the **television advertisement** was misleading or deceptive according to prevalent community standards, and similarly it was not satisfied that it was a misrepresentation on the part of the advertiser in respect of the product or its constituent ingredients to refer to the product as being *natural* or *100% natural*.

The Claims Board considered that the comparative claim *natural like sugar...only better* in the **print advertisement** required closer scrutiny on the basis that an error in a comparison claim may have a greater potential to mislead consumers.

The Claims Board considered that this claim was misleading and deceptive (or likely to mislead or deceive) as consumers may be misled into thinking that the product is (and both of its ingredients together are) derived from a naturally occurring plant in the same manner that sugar is derived from a naturally occurring plant. This was misleading as the product is a blend of two ingredients the combination of which is synthesised and not found in nature and, while one of the ingredients is derived from nature, the other is biosynthesised to imitate nature. It was also not clear that the claim that the product is better than sugar related to it having fewer calories than sugar and that claim was likely to give the impression that the product was a better product in a more general sense.

Accordingly, the Claims Board found that the **print advertisement** containing the comparison claim *natural like sugar...only better* breached Sections 1.2, 1.3 and 1.5 of the AANA Code of Ethics, while the **television advertisement** did not breach any of those sections. The Advertiser provided a statement in response to this determination that it intended to modify or discontinue the **print advertisement**.

LG Electronics Australia Pty Limited v Samsung Electronics Australia Pty Limited

The complaint concerned a series of advertisements in various media for Samsung's bubble wash technology washing machines.

These were point of sale displays, website publications, a television advertisement and a user manual. A further publication, a training module, was not considered as it was found not to be an advertising or marketing communication for the purposes of the AANA Code of Ethics.

The complainant alleged the advertisements breached Sections 1.1–1.4 of the AANA Code of Ethics.

The Advertiser submitted that the Claims Board should dismiss the complaint because the advertising campaign complained of was no longer running and was discontinued before challenge, and that any advertisements still publicly available at the time of complaint were only available in error.

The Claims Board noted that it had no power to dismiss the complaint on the basis that the campaign had been discontinued before challenge and further that it appeared the advertisements were publicly available at the time of complaint and remained in dispute as the advertiser continued to make no admissions regarding the allegations made. The case was therefore considered by the Claims Board.

At issue were the complainant's claims that the advertisements conveyed the following three representations that bubble technology is responsible for, or delivers:

- energy savings of up to 60%
- a wash in cold water which is *similar* to that which would be achieved using warm water, and
- improved wash cleanliness.

The complainant provided evidence demonstrating that:

- any energy savings were due solely to the use of cold water rather than warm water, which occurs even without the bubble technology
- the advertiser claims *similar* wash performance in cold and warm water also occurs even without bubble technology
- bubble technology is irrelevant to, and does not improve, wash performance whether in cold or warm water.

The advertiser did not provide any evidence in response to the complainant's evidence. In the absence of any evidence to the contrary, the Claims Board saw no reason why it should not accept the complainant's evidence. It followed that, if the Claims Board determined that the complainant's representations are conveyed by the advertisements, then the evidence supports a determination that the advertisements are misleading and deceptive (or likely to mislead or deceive) for the purposes of section 18 of the Australian Consumer Law and therefore contravene Sections 1.1 and 1.2 of the AANA Code of Ethics.

The Claims Board therefore considered each of the relevant advertisements to determine whether the alleged representations were conveyed. The Claims Board concluded that each of the advertisements complained of breached Sections 1.1 and 1.2 of the AANA Code of Ethics by conveying one or more representations which are misleading or deceptive or likely to mislead or deceive.

To establish a breach of Section 1.3 of the AANA Code of Ethics, the complainant was required to establish that any misrepresentation

conveyed was likely to cause damage to its business or goodwill. The Claims Board noted that the complainant submitted that they were *concerned* that the advertisements had caused and would continue to cause damage to its business and goodwill by virtue of their misleading nature. The Claims Board found that the complainant's submission on this point did not assist it in reaching a conclusion that the advertisements were likely to cause damage to the complainant's business or goodwill, and therefore was not able to make any finding on this allegation.

In regard to Section 1.4 of the AANA Code of Ethics, the Claims Board did not believe that a breach was supported by the evidence presented by the complainant. This was because the evidence suggested that there is an energy saving attributable to the washing machine when cold water rather than warm water is used and that it could not be said that the products do not have the benefit to the environment which is asserted for them when cold water is used.

The advertiser provided a statement in response to the determination confirming that the advertisements have been discontinued and will not be used in the current form in the future.



Independent Reviewer

Independent reviews conducted

Chart of outcomes

Independent Reviewers

Cases reviewed in 2012

People who originally made a complaint, or the advertiser who the complaint was made against, may ask for an independent review of the determination if they meet the criteria for the process.

In 2012, two cases were submitted for the independent review process, Red Bull (0079/12) and McDonald's (0324/12). In both cases, the Independent Reviewer declined to accept the request as it did not meet grounds for review.

The independent review is not a merit review of a Board decision.

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 Codes or Initiatives, or clearly made against the weight of evidence).
- Where there was a substantial flaw in the process by which the determination was made.

Red Bull – 0079/12

An advertisement for Red Bull (0079/12) featuring cartoon imagery intended to depict Jesus walking on water raised community concerns in 2012. The disciples accompanying him discuss whether this act was a miracle or a result of drinking Red Bull, with the Jesus character eventually confirming he knew where the stepping stones were. The advertisement generated a significant number of complaints on the grounds of discrimination against race and religion, and inappropriate language, with the character slipping on a rock and exclaiming 'Jesus'.

The Board considered community standards of acceptability and noted that some members of the community may consider the advertisement blasphemous and unacceptable. Considering the cartoon style characters and intended humorous nature of the advertisement, the Board considered that the advertisement did not denigrate or discriminate against Christianity. The language used was not considered strong, obscene or inappropriate in the context of the advertisement. Accordingly, the Board dismissed complaints determining that the advertisement did not breach community standards of discrimination, vilification or language.

An original complainant requested an independent review of this case claiming that new or additional evidence was available that may have significant bearing on the decision, and claimed that there was a substantial flaw in the Board's decision. The request included background history on controversial Red Bull advertising campaigns and outlined Board decisions of international advertising authorities.

The Independent Reviewer considered the information and determined that the materials provided on prior Red Bull campaigns and international determinations regarding the advertisement were not additional evidence relevant to the Board's determination. Additionally, the Independent Reviewer noted: *'the material submitted in support of the review application contains no argument or submission indicating a substantial flaw in the determination of the Board'.*

The independent review process was declined in this instance due to not meeting grounds for review.

McDonald's – 0324/12

A TV advertisement for McDonald's (0324/12) featured a group of children boarding a bus and going to a stadium while a voiceover provides information about a McDonald's football trip. Complaints concerned the use of marketing communications to children which did not represent a healthy choice. The advertisement was considered under the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR Initiative), with reference specifically to Clause 4.1.

The Board noted that, although primarily directed to children, the advertisement was not of itself a promotion for a food or beverage, rather that it was promoting a competition through a website with no images of food or beverages. The advertisement therefore did not meet the criteria for advertising and marketing communications to children within the QSR initiative. Similarly, due to the nature of the advertisement not



promoting a food or beverage product, it was determined that the AANA Food and Beverages Advertising and Marketing Communications Code did not apply. Finding that the advertisement did not breach the QSR, Food Code, Children's Code or Code of Ethics, the Board dismissed the complaint.

The submission for an independent review of this case claimed that there was a significant flaw in the Board's decision making process based on its determination that it was not an advertisement for food or beverages. The review request claimed that McDonald's promoting its brand and logo in this advertisement was used to promote all McDonald's food and beverages. The submission additionally questioned whether the Board had considered an investigation report originally provided in the complaint, as it was not stated in the final case report.

The Independent Reviewer considered all materials provided and determined that the appeal did not raise a case for consideration under Ground (2): *'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)'*.

The Independent Reviewer noted that the omission of the investigation report in the final case report did not indicate a substantial flaw in the Board's determination. The request for reconsideration as to whether the advertisement promoted a food and beverage product was rejected by the Independent Reviewer, noting that there was no basis for requiring the ASB to reconsider its conclusion. Accordingly, the Independent Reviewer declined to progress the case as it did not meet the required grounds for review.

Outline of requests for independent review 2012

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.

Case	Initial Board determination	Independent Reviewer recommendation	Time taken to complete review
Red Bull Jesus (walking on water) Case number – 0079/12	Complaints Dismissed March 2012	Independent review declined to accept the request as it did not meet grounds for review	8 business days
McDonalds (Mighty Footy Trip) Case number – 0324/12	Complaints Dismissed August 2012	Independent review declined to accept the request as it did not meet grounds for review	5 business days

Independent Reviewers

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

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

Independent Reviewers are Emeritus Professor Dennis Pearce AO and Ms Victoria Rubensohn AM.

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 Australian Capital Territory and New South Wales.

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

The Board considered 473 advertisements in 2012. An additional 24 cases were withdrawn by advertisers before Board consideration.

The number of complaints received in 2012 by the ASB totalled 3,640 complaints, a slight increase from 2011 (3,416 complaints). The highest number of complaints received was 4,044 in 2006.

A significant statistic for 2012 was the emergence of discrimination and vilification as the issue most complained about. The introduction of a new Section of the Code—objectification—accounted for almost 14 per cent of the cases previously considered under the sex, sexuality and nudity Section of the Code, which in the past has routinely been the most complained about issue.

Another interesting trend is the rise in complaints from men. In 2012 this rose to the highest recorded level of 39.6 per cent.

The number of advertisements found in breach of the Code rose to 68 in 2012 from 54 cases in 2011, the second highest figure recorded since 1998.

Number of advertisements considered and outcome of complaints

In 2012, the Board considered 473 advertisements against which 1,720 complaints were received. A total of 1,440 complaints against 405 ads were dismissed. There were 280 complaints about the 68 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 13.7 per cent.

On receiving advice that there had been a complaint, 24 advertisers withdrew their advertisement before the Board determination, increasing from 10 in 2011.

Of the total 3,640 complaints received, 501 complaints were in relation to advertisements previously considered by the Board. Of the 501 complaints about already considered ads, 211 complaints were related to advertisements considered by the Board prior to 2011.

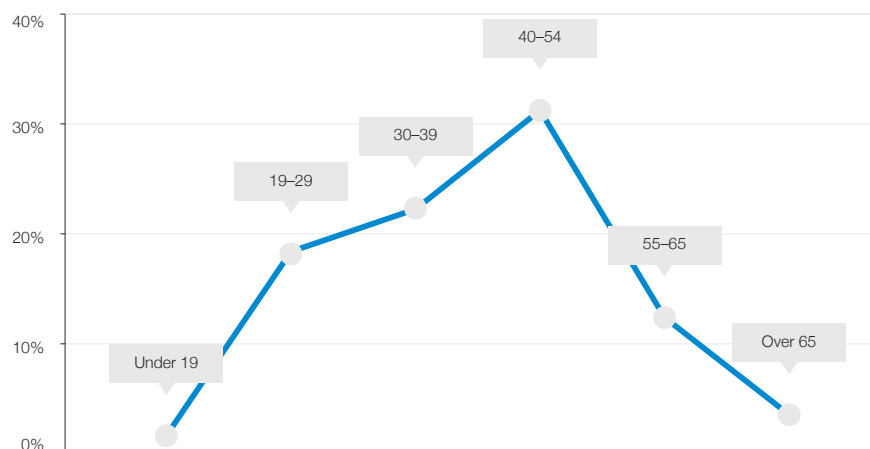
A total of 102 complaints were assessed as raising issues under the Code of Ethics that the Board has consistently considered not in breach of the Codes.

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 in 2012 came from people in the 40 to 54 year age group, accounting for over 30 per cent of all complaints received. The age group from 30 to 39 years account for 22.2 per cent of complaints and the 19 to 29 year age group account for almost 19 per cent. In 2012, people aged from 55 to 65 years accounted for 12.5 per cent of all complaints. The lowest number of complaints came 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.

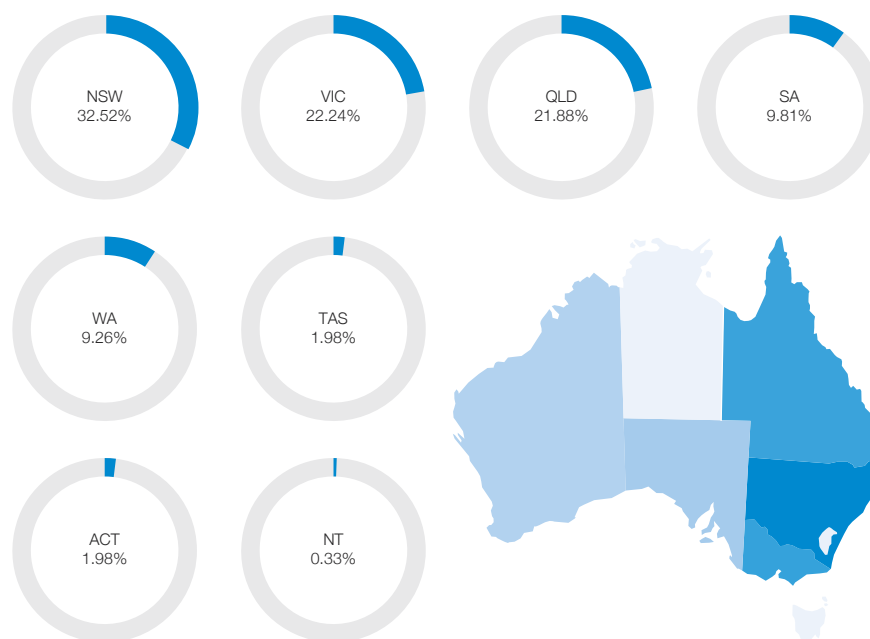


Where are complaints coming from?

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 32.5 per cent, an increase from the previous year's 29.2 per cent.

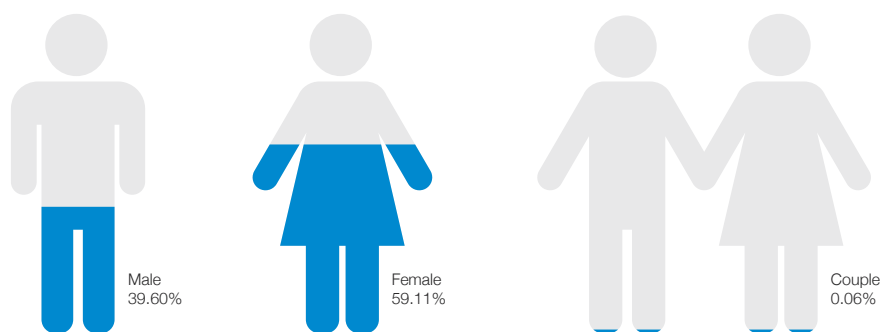
Victoria had a similar percentage of complaints in 2011 and 2012 with 24.2 per cent, while Queensland decreased almost six per cent from 27.8 per cent in 2011 to 21.8 per cent in 2012.

The percentage of complaints received from South Australia (9.81 per cent), Western Australia (9.26 per cent), the Australian Capital Territory (1.98 per cent), Tasmania (1.98 per cent) and the Northern Territory (0.33 per cent) remained similar to previous years.



Who is complaining?

In 2012, the percentage of males represented among complaints increased almost nine per cent from 30.9 per cent in 2011 to 39.6 per cent in 2012. This reflects the highest percentage of males raising complaints compared to females since statistics began to be collected in 1998. Complaints from females this year was 59.1 per cent, a decrease from 68.5 per cent in 2011.



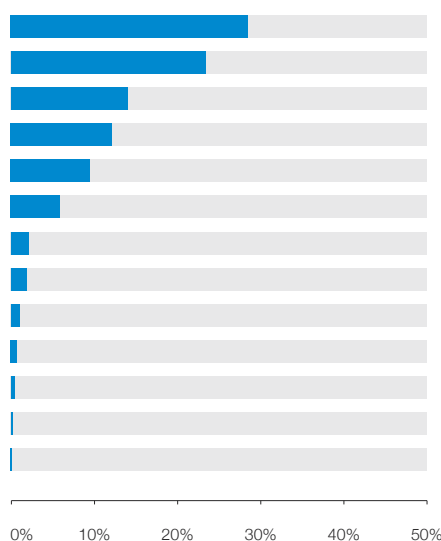
What do people complain about?

The issue of discrimination and vilification was the most dominant issue raised by complainants in 2012. In 2012, discrimination and vilification issues attracted 28.5 per cent of all complaints, an increase from 20.7 per cent in 2011.

The portrayal of sex, sexuality and nudity was consistently the most complained about issue for five years until 2012. A reason for this change is the introduction of a new Section of the Code—objectification—at the beginning of 2012.

Issues of sex, sexuality and nudity accounted for 23.4 per cent, and complaints of objectification accounted for almost 14 per cent in 2012.

Complaints concerning language doubled from 6.1 per cent in 2011 to 12.2 per cent in 2012. This is the highest recorded percentage of complaints regarding language since statistics were recorded in 2005. This increase in language complaints could reflect community concerns of exposing children to strong language, as identified by the ASB's 2012 *Community Perceptions Research*. Language complaint statistics could also be inflated by the most complained about advertisement in 2012 for Johnson & Johnson (0305/12) which raised concerns over the word *vagina*.



Issues declining in complaint in 2012 included health and safety issues (9.5 per cent in 2012, down from 13.6 per cent in 2011) and violence (5.9 per cent in 2012, decreased from 11.8 per cent in 2011). This was again reflective of *Community Perceptions Research* indicating the community is less conservative than the Board in respect to issues of health and safety and depictions of violence.

AANA Section 2.1 – Discrimination or vilification
AANA Section 2.4 – Sex, sexuality and nudity
AANA Section 2.2 – Objectification
AANA Section 2.5 – Language
AANA Section 2.6 – Health and Safety
AANA Section 2.3 – Violence
Other
FCAI Code
AANA Food and Beverage Code
AANA Advertising to Children Code
Quick Service Restaurant Resp Childrens Marketing Initiative
AANA Environmental Code
AFGC Resp Childrens Marketing Initiative

Complaints relating to food and beverage code issues decreased from 3.1 per cent in 2011 to one per cent in 2012 with the AFGC and QSR food advertising initiatives adding 0.6 per cent to complaints about food advertising.

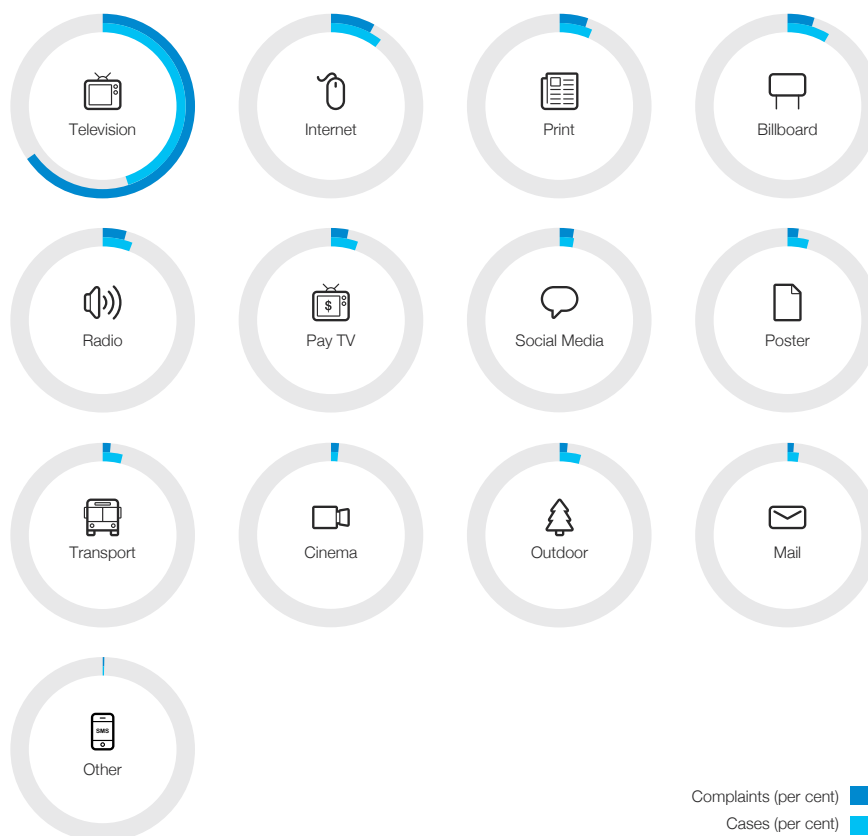
Which mediums attracted complaints?

Consistent with previous years, the majority of complaints (65.5 per cent) related to advertisements shown on television, a marked increase from the 2011 figure of 44.2 per cent.

In 2012, the ASB separated the *Internet* medium into *Internet* and *Internet—Social Media* to capture new forms of advertising. Internet advertising attracted the second highest percentage of complaints, 7.8 per cent, and internet-social media accounted for 2.6 per cent of all complaints.

Forms of outdoor media were considered under transport, billboard and outdoor mediums. Transport complaints accounted for 1.5 per cent of all complaints and outdoor represented 1.4 per cent. A noteworthy decrease from 2011 was for billboard complaints decreasing from 26.4 per cent in 2011 to 4.8 per cent in 2012.

Print media complaints remained consistent with previous years at almost five per cent. Other mediums attracting complaint included radio (4.1 per cent), pay TV (2.9 per cent), poster (1.9 per cent), cinema (1.4 per cent) and mail (1.2 per cent).



Which medium were cases seen and heard on?

Of the advertisements complained about which were raised as cases, the vast majority, about 45 per cent, were advertisements seen on television, with another 5.4 per cent of advertisements seen on pay TV.

The second highest percentage of cases was for internet advertisements, which had a significant increase from 6.9 per cent in 2011 to 10.3 per cent in 2012. The newly introduced category of internet in the form of social media was the medium in three per cent of all cases.

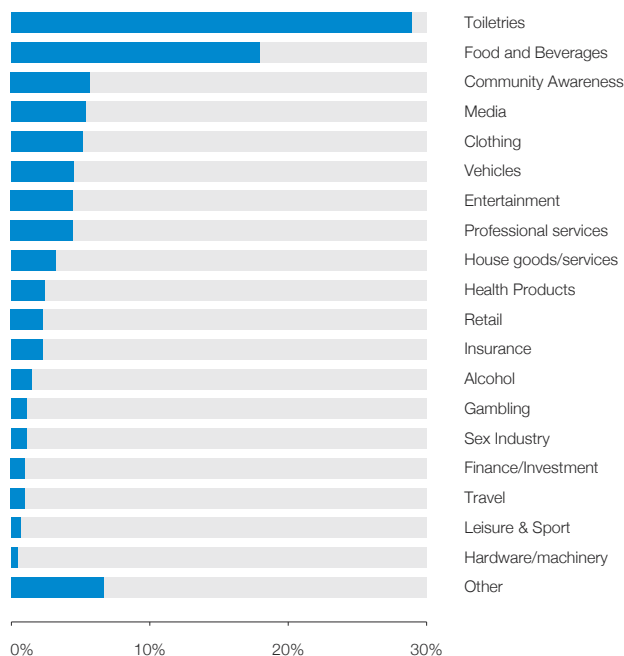
Mediums with decreasing case numbers include billboard (8.5 per cent), print (6.4 per cent)

and radio (5.6 per cent). Other mediums with less than five per cent included outdoor (4.2 per cent), poster (4 per cent), transport (3.8 per cent), mail (2 per cent), cinema (1.4 per cent), and a newly introduced medium of SMS (0.2 per cent).

What products attracted complaints?

A higher number of complaints about a sanitary product advertisement caused a change in the most complained about product category in 2012. Food and beverage advertisements have most often been the most complained about, but this year ads for toiletries were the subject of most complaints at 28.9 per cent. Food and beverage were second with 17.96 per cent. Complaints for clothing advertisements decreased from 13.5 per cent in 2011 to 5.38 per cent in 2012. The higher rate in 2011 was due to two highly complained about cases.

The category of media, which includes complaints about advertisements promoting magazines, newspapers and information websites increased substantially in 2012 from 0.84 per cent in 2011 to 5.38 per cent of all complaints in 2012. This rise was influenced by complaints about Zoo magazine. The only other category receiving more than five per cent of complaints was community awareness advertisements at 5.72 per cent.



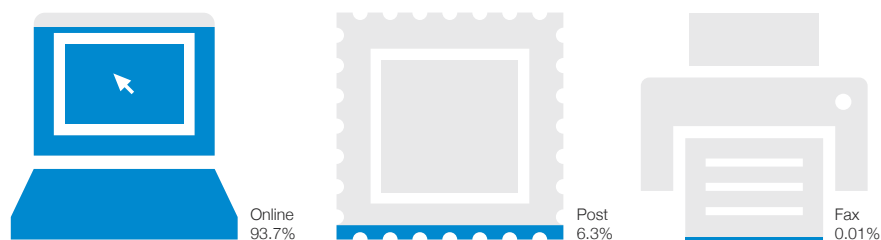
Of note, community concern about sex industry advertisements decreased markedly from 5.7 per cent in 2011 to 1.13 per cent in 2012.

How do people complain?

The number of people choosing to lodge their complaints through the online system again increased to its highest level since the option was introduced, with a rate of 93.7 per cent of submissions.

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.

In 2012, other complaints were submitted by post (6.3 per cent) and fax (0.01 per cent). Postal complaints also include referrals from industry groups, broadcasters and local Members of Parliament. The rate of postal and faxed complaints has dropped steadily each year from more than 40 per cent in 2002.





Allocation of complaints (No., by complaint)

Complaints within jurisdiction										1491	1720
Complaints outside jurisdiction										1181	1280
Complaints about already considered advertisements (current year)										443	290
Complaints about already considered advertisements (previous years)										138	211
Consistently dismissed complaints										113	102
Not allocated at 31 December										50	37
TOTAL	0	0	0	0	0	0	0	0	0	3,416	3,640

ASB is now able to maintain statistics about: whether a complaint is within jurisdiction or not, whether a complaint is about an ad which has previously been considered by the Board, whether the complaint raises a matter which has been consistently dismissed by the Board, and whether complaints which remained unallocated at 31 December.

Outcome of complaints (No., by complaint)

Number of complaints about ads which did not breach the Code (current year)										1569	1437
Number of complaints about ads which did not breach the Code (pre 2011)										138	211
Number of complaints about ads which were found to breach the Code										353	283
Number of complaints about ads that were withdrawn										12	45
TOTAL	0	0	0	0	0	0	0	0	0	2,072	1,976

ASB is now able to maintain statistics that show if a complaint was related to an advertisement considered by the Board in the current year or previous years.

Outcome of complaints (No. by complaint—pre 2011)

Dismissed	1191	1770	1349	1753	2648	1730	2263	2278	1692	see previous table
Upheld	11	23	55	94	164	280	477	521	361	
Withdrawn before board determination	16	113	236	139	20	15	57	56	53	
Already considered advertisements**									708	
Consistently dismissed complaints*									92	
Not proceeding to a case	354	714	656	970	1212	577	799	941	620	
TOTAL	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.

Board determinations (No., by advertisement)

Withdrawn before board determination	6	5	20	33	13	5	10	11	29	10	24
Upheld	3	4	8	14	28	36	62	81	49	54	69
Dismissed	291	401	337	344	488	405	477	503	442	412	404
Not proceeding to Board										38	11
TOTAL	300	410	365	391	529	446	549	595	520	514	508

For statistics prior to 2002, please see the publications section of our website—www.adstandards.com.au

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<i>Age range of complaints (%)</i>											
< 19							2.25%	1.81%	1.80%	1.86%	1.74%
19–29							14.99%	15.81%	15.62%	18.72%	18.38%
30–39							23.11%	22.35%	22.55%	25.35%	22.24%
40–54							30.56%	28.34%	25.36%	29.68%	31.22%
55–65							11.15%	11.40%	9.88%	11.77%	12.46%
> 65							3.28%	3.44%	3.09%	3.91%	3.55%
Unspecified							14.66%	16.85%	21.70%	8.72%	10.42%
TOTAL							100.00%	100.00%	100.00%	100.00%	100.00%

<i>Geographic source of complaints (%)</i>											
NSW	31.71%	37.73%	38.20%	32.68%	36.77%	35.63%	34.47%	36.77%	35.98%	29.16%	32.52%
VIC	25.61%	24.75%	22.17%	21.19%	22.59%	20.18%	23.53%	21.16%	24.22%	21.49%	22.24%
QLD	18.74%	15.86%	16.16%	24.60%	17.01%	19.79%	20.51%	18.38%	22.73%	27.82%	21.88%
SA	7.77%	7.22%	7.10%	8.54%	10.08%	9.80%	9.24%	9.83%	6.53%	9.81%	9.81%
WA	10.53%	7.68%	8.84%	7.98%	7.84%	9.80%	7.17%	9.63%	6.81%	8.43%	9.26%
ACT	2.95%	4.40%	4.75%	2.47%	2.58%	2.50%	2.90%	2.16%	2.29%	1.38%	1.98%
TAS	2.25%	1.52%	1.92%	1.84%	2.31%	1.54%	1.48%	1.62%	1.07%	1.00%	1.98%
NT	0.39%	0.84%	0.83%	0.60%	0.84%	0.77%	0.70%	0.45%	0.37%	0.91%	0.33%
Abroad	0.06%	0.00%	0.04%	0.10%	0.00%	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%

<i>Gender of complainants (%)</i>											
Couple	3.59%	2.30%	2.61%	2.10%	1.35%	0.92%	0.92%	0.82%	0.49%	0.19%	0.06%
Unspecified	4.55%	2.83%	2.70%	2.13%	1.45%	1.08%	3.11%	4.29%	0.58%	0.43%	1.24%
Male	34.76%	32.37%	37.63%	38.08%	36.75%	32.67%	36.93%	36.21%	29.90%	30.87%	39.60%
Female	57.11%	62.50%	57.06%	57.69%	60.45%	65.33%	59.04%	58.68%	69.03%	68.51%	59.11%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

<i>Issues attracting complaint (%)</i>											
AANA Section 2.1—Discrimination or vilification				27.13%	23.25%	28.05%	22.76%	16.31%	19.58%	20.68%	28.49%
AANA Section 2.4—Sex, sexuality and nudity				26.49%	22.23%	37.91%	25.61%	40.54%	45.23%	32.05%	23.41%
AANA Section 2.2—Objectification											13.98%
AANA Section 2.5—Language				4.36%	7.55%	1.68%	7.24%	5.35%	4.85%	6.06%	12.17%
AANA Section 2.6—Health and Safety				6.46%	9.70%	10.85%	6.04%	8.38%	9.62%	13.59%	9.50%
AANA Section 2.3—Violence				17.38%	18.01%	8.42%	17.67%	7.93%	9.62%	11.82%	5.92%
Other				14.59%	14.69%	4.86%	15.84%	17.04%	3.12%	1.33%	2.10%
FCAI Code				3.38%	1.84%	4.91%	3.09%	1.19%	1.13%	3.55%	1.87%
AANA Food and Beverage Code				0.00%	0.00%	0.37%	1.26%	2.47%	3.08%	6.35%	1.03%
AANA Advertising to Children Code				0.20%	2.73%	2.95%	0.49%	0.63%	2.34%	1.33%	0.76%
Quick Service Restaurant Resp Childrens Marketing Initiative				0.00%	0.00%	0.00%	0.00%	0.16%	0.52%	1.48%	0.41%
AANA Environmental Code				0.00%	0.00%	0.00%	0.00%	0.00%	0.04%	0.74%	0.21%
AFGC Resp Childrens Marketing Initiative				0.00%	0.00%	0.00%	0.00%	0.00%	0.87%	1.03%	0.16%
TOTAL				100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

For statistics prior to 2002, please see the publications section of our website—www.adstandards.com.au

Reason complaints fell outside charter (No.)^{##}

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

See following table

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

For statistics prior to 2002, please see the publications section of our website—www.adstandards.com.au

2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012

*Reason complaint did not proceed to a case (No.) ***

Ad not broadcast in Australia	4	7	4
ASB complainant dissatisfied	3	2	6
ASB—not pre-screening body			1
ASB Public Awareness campaign		2	1
Business Practices Unethical		2	1
Community Service Announcement	3	11	
Competitor complaint—ACB matter			3
Dislike of Advertising—AMI radio ads	2		2
Dislike of Advertising—AMI TV Ads	14	1	
Editorial	7	5	6
Gambling odds in commentary	2		2
Insufficient information to identify ad—general	46	56	59
Insufficient information to identify ad—adult content	5	1	
Legality	8	10	13
Loud ads	7	2	1
Misleading Truth and Accuracy—NOT FOOD	43	118	142
Misleading country of origin		1	1
Not an Ad—Food packaging		6	
Not an Ad—General	14	61	44
Not an ad—Point of Sale	1		
Not an ad—signage on premises	1	2	
Not S2—ABAC	14	34	31
Not S2—ACMA		3	18
Not S2—ADMA	1		3
Not S2—general	103	262	214
Overseas complaint	1		2
Overseas web site with no Aust connection	1	2	
Political Advertising	40	180	307
Product or service—food		4	13
Product or service—general	39	98	83
Product or service—on radio	4		1
Programming and content	4	16	11
Promotion TV and Radio	37	166	161
Subliminal advertising	7	8	7
Tasteless advertising	39	44	45
Therapeutic Goods		3	8
Timing—Cinema	3	1	2
Timing—Radio broadcast	4		2
Timing—TV	23	27	42
Tobacco advertising	13	4	2
Too many ads	3	3	8
Unsolicited mail and products		1	
Weight management	4		3
Wicked Campers—need for detailed information	12	2	5
Advertisement Withdrawn/Discontinued before case established	108	36	26
TOTAL	620	1181	1280

** 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.

For statistics prior to 2002, please see the publications section of our website—www.adstandards.com.au



	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<i>Consistently dismissed complaints (No.) *</i>											
Unlikely interpretation									35	49	51
Not of concern to broad community									22	20	9
Consistently dismissed issue									18	15	16
Consistently dismissed language									12	10	14
Incorrect about content									3	5	4
Product name										8	1
Multicultural community									2	5	0
Images of food										1	6
Food / beverage logos											1
TOTAL									92	113	102

* Statistics not separately captured prior to 2010

Media attracting complaint (%)

TV	58.22%	80.59%	85.33%	84.81%	85.81%	75.10%	68.59%	59.83%	62.25%	44.16%	65.47%
Internet	0.00%	0.00%	0.00%	0.00%	0.25%	1.13%	1.13%	2.58%	7.55%	5.57%	7.84%
Print	8.80%	4.48%	5.47%	4.76%	3.85%	4.08%	4.73%	1.92%	3.56%	4.86%	4.94%
Billboard***									9.69%	26.35%	4.80%
Radio	2.06%	1.69%	1.74%	2.11%	4.10%	2.36%	2.77%	3.12%	1.66%	3.24%	4.09%
Pay TV	0.16%	0.00%	0.00%	0.25%	0.18%	0.44%	1.46%	5.61%	2.42%	1.95%	2.90%
Internet—Social Media											2.59%
Poster***									1.99%	7.43%	1.88%
Transport	0.41%	0.63%	0.62%	0.45%	1.73%	1.62%	3.64%	2.46%	0.76%	3.67%	1.49%
Cinema	0.16%	0.43%	0.50%	0.60%	0.42%	2.46%	0.80%	0.11%	0.43%	0.19%	1.41%
Outdoor	29.77%	9.23%	6.28%	6.67%	3.67%	12.80%	16.48%	23.92%	8.40%	1.67%	1.38%
Mail	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.29%	1.28%	0.91%	1.16%
Other	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.40%	0.15%	0.00%	0.00%	0.06%
Multiple Media	0.41%	2.95%	0.06%	0.35%	0.00%	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%

*** 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%	45.07%
Internet	6.73%	6.93%	10.26%
Billboard	5.77%	11.55%	8.45%
Print	9.62%	8.19%	6.44%
Radio	5.96%	6.93%	5.63%
Pay TV	5.77%	5.04%	5.43%
Outdoor	5.00%	3.15%	4.23%
Poster	4.23%	8.40%	4.02%
Transport	2.50%	4.62%	3.82%
Internet—Social Media			3.02%
Mail	0.96%	2.73%	2.01%
Cinema	1.35%	0.42%	1.41%
SMS			0.20%
TOTAL	100.00%	100.00%	100.00%

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

For statistics prior to 2002, please see the publications section of our website—www.adstandards.com.au

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<i>Product category attracting complaint (%)</i>											
Toiletries				5.26%	2.86%	2.94%	3.46%	3.51%	7.88%	6.30%	28.90%
Food and Beverages				20.85%	28.14%	33.25%	14.39%	24.08%	21.92%	18.28%	17.96%
Community Awareness				8.02%	12.29%	3.39%	9.29%	5.69%	5.58%	7.14%	5.72%
Media				0.00%	2.22%	2.84%	3.28%	0.17%	1.54%	0.84%	5.38%
Clothing				6.22%	4.31%	2.24%	5.83%	7.69%	7.31%	13.45%	5.16%
Vehicles				15.19%	8.37%	9.92%	5.28%	5.69%	4.81%	6.51%	4.53%
Entertainment				0.00%	2.90%	3.09%	3.28%	4.85%	2.88%	7.98%	4.48%
Professional services				2.56%	5.61%	10.77%	5.10%	5.18%	5.38%	5.25%	4.48%
Other				6.67%	5.30%	3.94%	4.74%	2.01%	2.88%	2.10%	3.80%
House goods/services				11.18%	2.15%	6.03%	7.65%	6.86%	4.42%	4.20%	3.23%
Health Products				3.46%	7.94%	1.40%	1.46%	4.35%	3.46%	0.84%	2.44%
Retail				0.00%	1.17%	1.65%	2.37%	0.33%	1.54%	2.73%	2.32%
Insurance				0.00%	2.97%	2.44%	5.10%	3.51%	3.27%	2.73%	2.27%
Alcohol				7.07%	3.14%	2.44%	6.38%	4.00%	5.19%	3.78%	1.47%
Gambling				0.00%	0.00%	0.00%	0.73%	1.51%	0.96%	2.94%	1.13%
Sex Industry				0.00%	0.00%	0.00%	0.36%	4.35%	5.00%	5.67%	1.13%
Finance/Investment				2.81%	1.80%	1.30%	2.37%	1.34%	3.46%	0.63%	1.02%
Travel				1.85%	1.09%	0.15%	2.37%	2.01%	0.96%	0.63%	1.02%
Leisure & Sport				1.45%	1.73%	2.14%	1.09%	2.84%	3.85%	1.47%	0.68%
Hardware/machinery				0.00%	0.00%	0.00%	1.09%	1.34%	1.35%	1.05%	0.51%
Real Estate				0.00%	0.00%	0.00%	0.55%	1.00%	0.19%	0.84%	0.51%
Restaurants				2.91%	1.17%	5.78%	2.19%	0.50%	0.00%	1.26%	0.51%
Toys & Games				0.00%	0.00%	0.00%	1.09%	0.67%	0.77%	0.84%	0.51%
Information Technology				0.00%	0.00%	0.00%	0.18%	1.00%	0.77%	0.21%	0.45%
Telecommunications				4.51%	2.40%	2.24%	3.46%	3.18%	2.88%	1.47%	0.40%
Education				0.00%	0.00%	0.00%	0.18%	0.00%	0.96%	0.00%	0.00%
Employment				0.00%	0.00%	0.00%	0.00%	0.00%	0.19%	0.00%	0.00%
Mobile Phone/SMS				0.00%	2.44%	2.04%	5.46%	2.17%	0.38%	0.42%	0.00%
Office goods/services				0.00%	0.00%	0.00%	0.91%	0.17%	0.00%	0.42%	0.00%
Slimming				0.00%	0.00%	0.00%	0.36%	0.00%	0.19%	0.00%	0.00%
TOTAL				100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
<i>Method of complaint (%)</i>											
Fax	9.22%	6.91%	4.09%	4.56%	2.82%	2.08%	2.71%	2.85%	0.27%	0.05%	0.01%
Post	43.32%	32.65%	25.96%	22.36%	14.47%	13.87%	10.22%	11.85%	11.97%	6.72%	6.34%
Online (email until 2006)	47.46%	60.44%	69.95%	73.08%	82.71%	84.05%	87.07%	85.30%	87.76%	93.23%	93.65%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

For statistics prior to 2002, please see the publications section of our website—www.adstandards.com.au

Appendices

Advertising Standards Bureau complaints process

Independent Review process

ANAA Code of Ethics

ANAA Code for Advertising and Marketing Communications to Children

AANA Environmental Claims Code

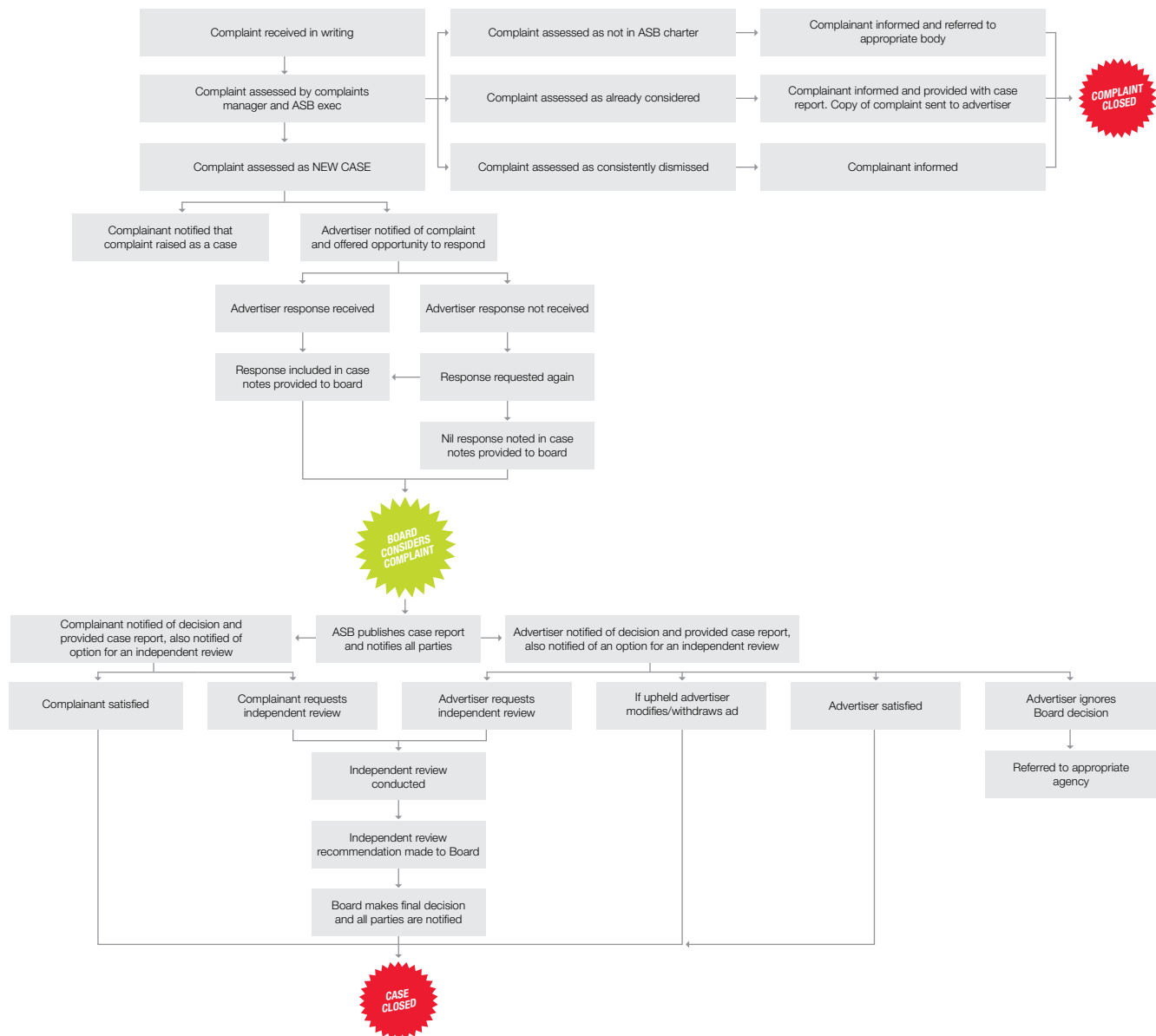
AANA Food and Beverages Advertising and Marketing Communications Code

AFGC/QSR Initiative

FCAI Voluntary Code of Practice for Motor Vehicle Advertising

Alcohol Beverages Advertising Code

Advertising Standards Bureau 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

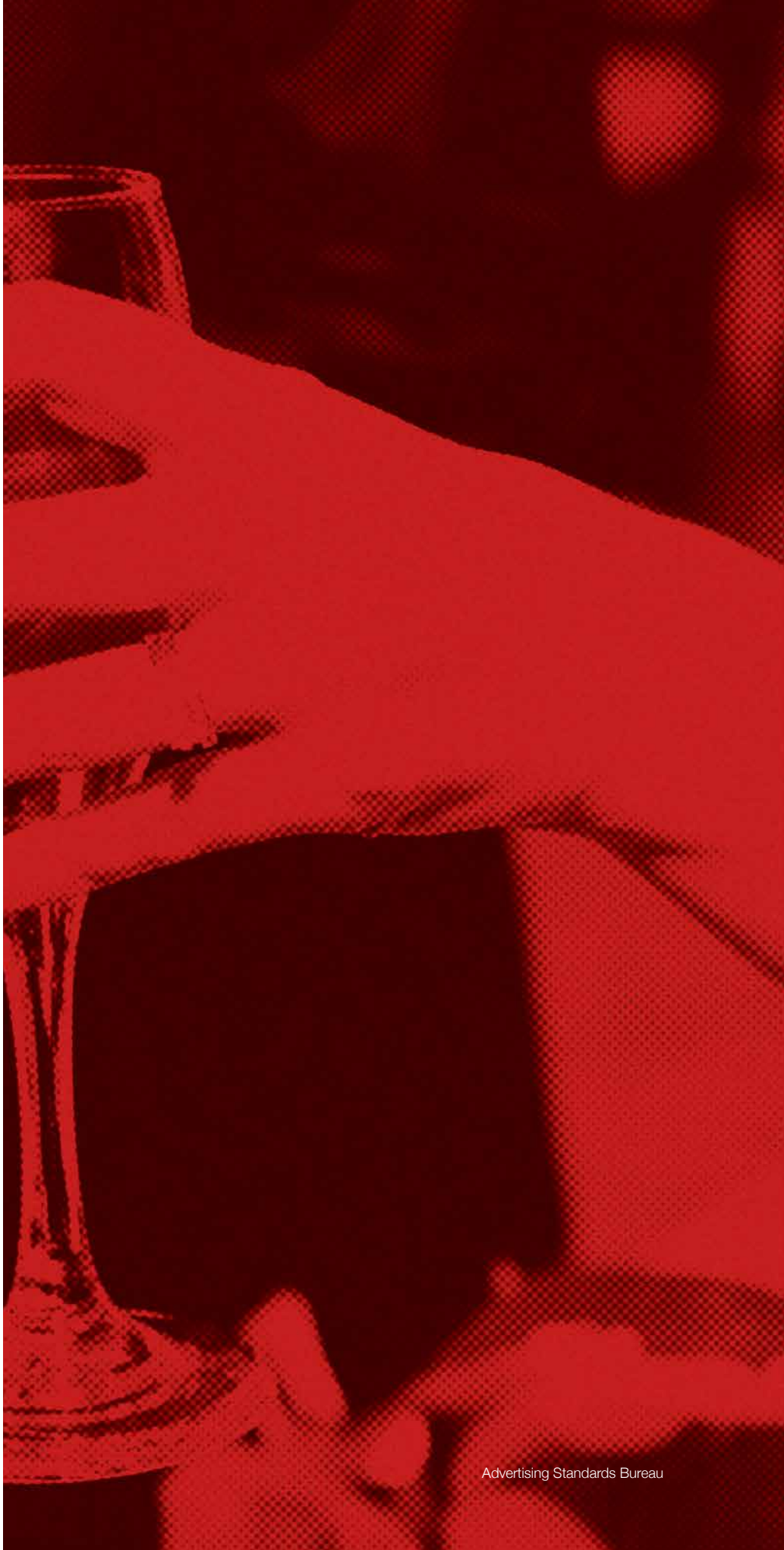
The Independent Reviewer can recommend:

- 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.



Australian Association Of National Advertisers (AANA) Code Of Ethics



Objectives

This Code has been adopted by the Australian Association of National Advertisers as part of advertising and marketing self-regulation. Its object is to ensure that advertisements and other forms of marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.

This Code comes into effect on 1 January 2012. It replaces the previous AANA Code of Ethics and applies to all advertising and marketing communications on and from 1 January 2012.

This Code is accompanied by Practice Notes which have been developed by AANA. The Practice Notes provide guidance to advertisers, complainants and the Advertising Standards Board (Board) in relation to this Code.

Definitions and Interpretation

In this Code, unless the context otherwise requires:

Advertising or Marketing Communications means any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a 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. "Product" is defined in the Code for Advertising & Marketing Communications to Children as follows: **Product** means goods, services and/or facilities which are targeted toward and have principal appeal to Children.

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

Excluded Advertising or Marketing Communications means labels or packaging for products, public relations communications (corporate or consumer) and related activities and, in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

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 Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications. Prevailing Community Standards apply to clauses 2.1–2.6 below. The

determination by the Board shall have regard to Practice Notes published by AANA and any research conducted by the Advertising Standards Bureau.

Section 1 Competitor Complaints¹

- 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.

Section 2 Consumer Complaints²

- 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, gender, age, sexual preference, religion, disability, mental illness or political belief.

- 2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.
- 2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.
- 2.4 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.
- 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). 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.

Section 3 Other Codes

- 3.1 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.
- 3.2 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.
- 3.3 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.

¹ Complaints under Section 1 are made to the Advertising Claims Board, <http://www.adstandards.com.au/process/claimsboardprocess>

² Complaints under Section 2 are made to the Advertising Standards Board <http://www.adstandards.com.au/process/theprocesssteps>

AANA Code for Advertising & Marketing Communications to Children



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

1. Definitions

In this Code, unless the context otherwise requires:

Advertising or Marketing Communication means:

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

Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed

primarily to Children and are for Product.

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

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

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

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

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

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

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

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

2. Code of Practice

2.1 Prevailing Community Standards

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

2.2 Factual Presentation

Advertising or Marketing Communications to Children:

- (a) must not mislead or deceive Children;
- (b) must not be ambiguous; and
- (c) must fairly represent, in a manner that is clearly understood by Children:
 - i. the advertised Product;
 - ii. any features which are described or depicted or demonstrated in the Advertising or Marketing Communication;
 - iii. the need for any accessory parts; and
 - iv. that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non-commercial communication.

2.3 Placement

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

2.4 Sexualisation

Advertising or Marketing Communications to Children:

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

2.5 Safety

Advertising or Marketing Communications to Children:

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

2.6 Social Values

Advertising or Marketing Communications to Children:

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

2.7 Parental Authority

Advertising or Marketing Communications to Children:

- (a) must not undermine the authority, responsibility or judgment of parents or carers;
- (b) must not contain an appeal to Children to urge their parents or carers to buy a Product for them;
- (c) must not state or imply that a Product makes Children who own or enjoy it

superior to their peers; and

- (d) must not state or imply that persons who buy the Product the subject of the Advertising or Marketing Communication are more generous than those who do not.

2.8 Price

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

2.9 Qualifying Statements

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

2.10 Competitions

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

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

2.11 Popular Personalities

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

2.12 Premiums

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

- (a) should not create a false or misleading

impression in the minds of Children about the nature or content of the Product;

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

2.13 Alcohol

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

2.14 Privacy

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

2.15 Food and Beverages

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

2.16 AANA Code of Ethics

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

AANA—Environmental Claims in Advertising and Marketing Code

This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this code is to ensure that advertisers and marketers develop and maintain rigorous standards when making Environmental Claims in Advertising and Marketing Communications and to increase consumer confidence to the benefit of the environment, consumers and industry.

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

Principles

AANA supports the following principles for environmental claims.

Claims should be:

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

Definitions

In this Code, unless the context otherwise requires:

Advertising or Marketing Communication means:

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

but does not include Excluded Advertising or Marketing Communications.

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

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

Environment includes:

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

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

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

Excluded Advertising or Marketing Communications means a label or packaging for Products.

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

Code Of Practice

1 Truthful And Factual Presentation

Environmental Claims in Advertising or Marketing Communications:

- i. shall not be misleading or deceptive or be likely to mislead or deceive.
- ii. must not be vague, ambiguous or unbalanced.
- iii. must display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.
- iv. must be supported by evidence that is current and reflects legislative, scientific and technological developments.
- v. that make any claim relating to future matters or commitments must be based on reasonable grounds.
- vi. must not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.
- vii. must not imply a product or service is endorsed or certified by another organisation when it is not.
- viii. must represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. Relevant information should be presented together.
- ix. must reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.
- x. that use scientific terminology, technical language or statistics must do so in a way that is appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed. Publication of research results must identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.

2 A genuine benefit to the environment

Environmental Claims must:

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

3 Substantiation

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

or standards, or is part of an authoritative certification scheme.

- vi. Substantiation information should be readily accessible, or made available in a timely manner in response to a reasonable written request.
- vii. Testimonials must reflect genuine, informed and current opinion of the person giving the testimonial.

September 2009

AANA Food and Beverages Advertising and Marketing Communications Code



1. Definitions

In this Code, unless the context otherwise requires:

Advertising or Marketing Communication means:

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

but does not include Excluded Advertising or Marketing Communications.

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

Advertising Standards Board means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer

a public complaints system in relation to Advertising or Marketing Communications.

Average Consumer means a regular adult family shopper able to compare products by label-listed definition.

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

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

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

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

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

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

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

advertising or marketing of Food or Beverage Products taking into account, at a minimum, the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.

2. Advertising or marketing communications for food or beverage products

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

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

- 2.3 Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.
- 2.4 Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non misleading and non deceptive manner clearly understandable by an Average Consumer.
- 2.5 Advertising or Marketing Communications for Food or Beverage Products shall not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is none, nor otherwise use scientific terms to falsely ascribe validity to advertising claims.
- 2.6 Advertising or Marketing Communications for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.
- 2.7 Advertising or Marketing Communications for Food or Beverage Products appearing within segments of media devoted to general and sports news and/or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communications without clearly distinguishing between commercial promotion and editorial or other program content.
- 2.8 Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.
- 2.9 Advertising or Marketing Communications for Food and/or Beverage Products must comply with the AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children.

3. Advertising and children

- 3.1 Advertising or Marketing Communications to Children shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.
- 3.2 Advertising or Marketing Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.
- 3.3 Advertising or Marketing Communications to Children shall not state nor imply that possession or use of a particular Children's Food or Beverage Product will afford physical, social or psychological advantage over other Children, or that non possession of the Children's Food or Beverage Product would have the opposite effect.
- 3.4 Advertising or Marketing Communications to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.
- 3.5 Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.
- 3.6 Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered.

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

QSR Initiative for Responsible Advertising and Marketing to Children

1. Statement of intent

The Australian Food and Grocery Council (AFGC) Quick Service Restaurant (QSR) Forum 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 QSR companies to ensure that only food and beverages that represent healthier choices are promoted directly to Children and to ensure parents and guardians can make informed product choices for their Children. 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.

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

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

2. Scope

This Initiative captures Advertising and Marketing Communications to Children where:

- The communication is directed primarily to Children (regardless of its placement); and/or
- The Medium is directed primarily to Children (in relation to television this includes all C and P programs and G rated programs that are directed primarily to Children); and/or
- The Medium attracts an audience share of greater than 50% of Children.

This Initiative is underpinned by the definitions of Advertising and Marketing Communications to Children and Medium set out in Article six.

3. Core principles

Advertising and Marketing Messaging

- 3.1. Advertising and 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
 - (b) Represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:
 - i. Good dietary habits, consistent with established scientific or government criteria; and
 - ii. Physical activity.

Popular Personalities and Characters

- 3.2. Popular Personalities, Program Characters or Licensed Characters must not be used in Advertising or Marketing Communications to Children for food and/or beverages products, unless such Advertising or Marketing Communications complies with the messaging options set out in Article 3.1.
- 3.3. Material broadcast on free to air television in C and P periods must also comply with the Children's Television Standards section 35.

Product Placement

- 3.4. Signatories must not pay for the placement of, or actively seek to place, food and/or beverages 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 3.1.

Use of Products in Interactive Games

- 3.5. Signatories must ensure that any interactive game directed primarily to Children which incorporates the Signatory's food and/or beverage products is consistent with Article 3.1.

Advertising in Schools

- 3.6. Signatories must not engage in any product-related communications in Australian 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

- 3.7. Signatories 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.

On-Pack Nutrition Labelling

- 3.8. Nutrition 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.

Availability of Nutrition Information

- 3.9. Nutrition profile information must be available on company websites and upon request in respect of all food and beverage products to assist parents and guardians to make informed food choices for their Children.

Children's Sporting Events

- 3.10. Signatories must not give away food and/or beverage products or vouchers to Children as awards or prizes at Children's sporting events unless those products meet the nutrition criteria.

4. Individual company action plans

- 4.1. Signatories must develop and publish individual Company Action Plans for the purposes of communicating how they will each meet the core principles of this Initiative.
- 4.2. All commitments must be consistent with the core principles outlined in this initiative.

5. Complaints and compliance

Complaints

- 5.1. AFGC QSR Forum has agreed that it is appropriate to have an independent body determine complaints under this Initiative. The Advertising Standards Bureau will consider any complaints made under the QSR Initiative.

- 5.2. Signatories must comply with decisions of the Advertising Standards Board.

- 5.3. Sanctions may be imposed on Signatories who fail to meet their obligations under the terms of this Initiative.

Compliance

- 5.4. Signatories must report on their Advertising or Marketing Communications to Children on an annual basis against key criteria.

- 5.5. AFGC is responsible for coordinating the monitoring of company activities on an annual basis to confirm compliance, with resultant reports being made publically available.

6. Definitions

In this Initiative the following terms mean:

Advertising or Marketing Communications

Any material generated by a Signatory which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of a Signatory, and

- Over which the Signatory has a reasonable degree of control, and
- That draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,

But does not include labels or packaging for products, public relations communications (corporate or consumer) or in-store point of sale material.

Advertising or Marketing Communications to Children

Content

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.

Placement

Advertising or Marketing Communications that are placed in Medium that is directed

primarily to Children (in relation to television this includes all C and P rated programs and G rated programs that are directed primarily to Children); and/or where the Medium attracts an audience share of greater than 50% of Children.

Child

A person under 14 years of age.

Children

Persons under 14 years of age.

Children's Television Standards 2009

The Australian Communications and Media Authority *Children's Television Standards 2009*.

Medium

Television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema, and internet sites.

Popular Personalities and Characters

- A personality or character from C or P programs; or
- A popular program or movie character; or
- A popular cartoon, animated or computer generated character; or
- A popular personality; or
- A licensed character; or
- A proprietary character.

Premium

Anything offered free or at a reduced price and which is conditional upon the purchase of regular Children's food and/or beverage products.

Signatory

Any company who has agreed to be bound by this Initiative and has submitted their Company Action Plan to AFGC.

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.

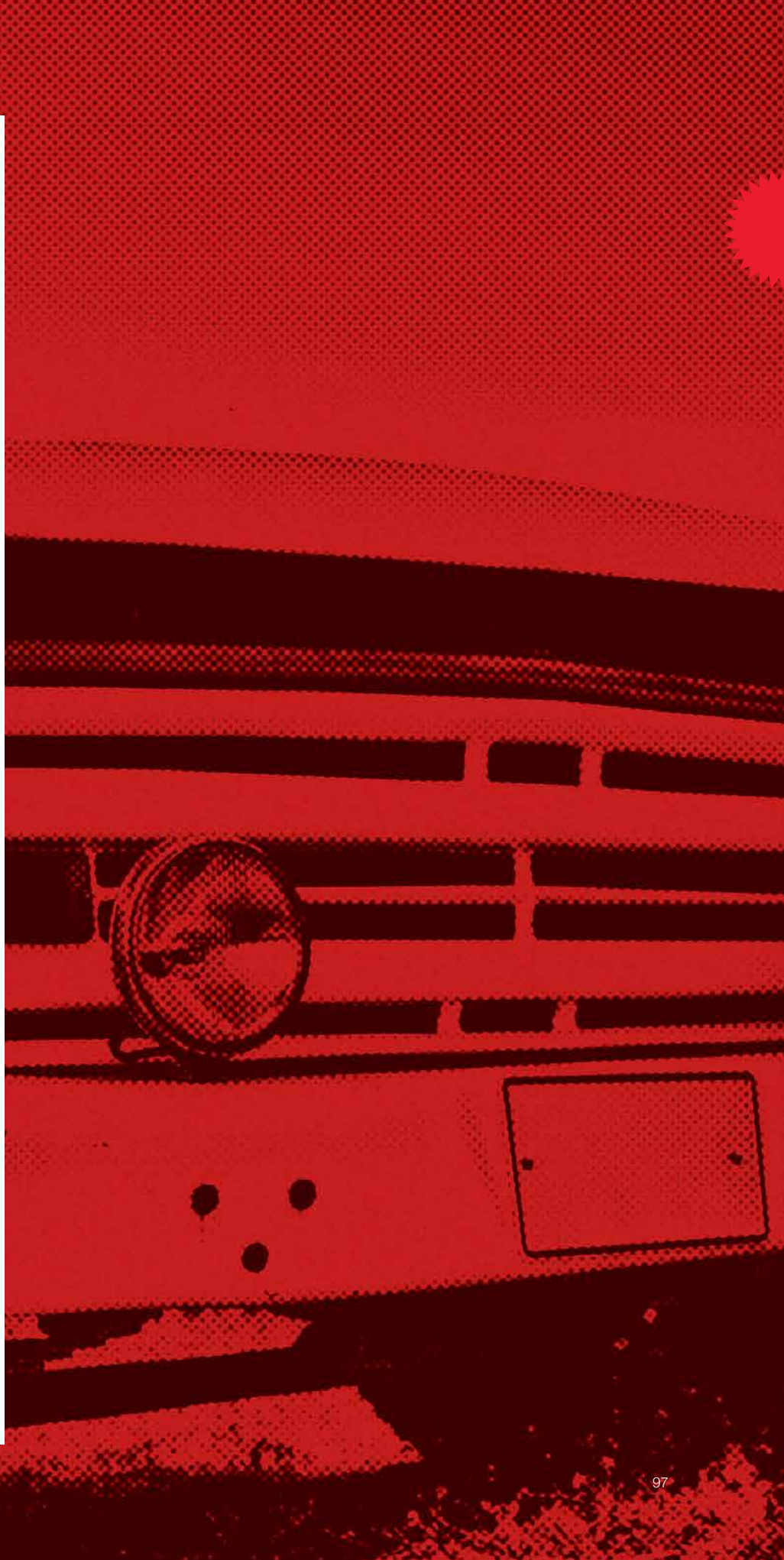
3. Use of Motor Sport in Advertising

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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