

IRK, EEEK, OH! & REALLY?

40 YEARS

**SELF-REGULATION
MEETING COMMUNITY
STANDARDS IN ADVERTISING**



**ADVERTISING
STANDARDS
BUREAU**



INTRODUCTION

The story of advertising self-regulation in Australia is a tale as tall as any roadside billboard, with a plot winding back through five decades of intrigue.

What we now know as the modern system of advertising self-regulation – an organised, cross-industry scheme with an independent panel to adjudicate complaints – had its origins in the early 1970s. But dramatic developments in the mid-1990s meant its first incarnation was ripped apart and rebuilt to form the Advertising Standards Board and its secretariat the Advertising Standards Bureau (ASB).

Known now for its stability and its role as a world leader in self-regulation, in its early years the new system was plagued by conflict.

This book charts the development of the self-regulatory scheme over the past 40 years, based on archival records and on reports published by the ASB and its predecessor, reports of tribunal decisions, comments from observers along the way, and observations from some of the participants asked to recall their part in the action.

The twists and turns are more shocking than we might expect, but it would be a mistake to overlook some significant achievements – even in the very early days of the scheme.

CONTENTS

INTRODUCTION 3

SECTION 1: THE ADVERTISING STANDARDS COUNCIL 4

Carving out the Advertising Standards Council	4
Accreditation and the tripartite scheme	5
Codes and complaints	8
Early relationship with the Trade Practices Commission	10
The relationship sours	11
Despair and dissolution	13
End of phase 1	14
Advertising self-regulation and the Trade Practices Commission	15

SECTION 2: THE ADVERTISING STANDARDS BOARD 16

Moving on	16
Building the ASB	16
Celebrities and consumers	19
Consolidation and community	21
Community values	23
Continuous improvement	24
Codes of Practice administered by the Advertising Standards Board	25
The EASA Best Practice Self-Regulatory Model	30

SECTION 3: WHERE TO FROM HERE 32

Regional leadership	32
Financial stability	33
Compliance and Small to Medium Business (SMEs)	33
Changing face of consumer engagement	34
Relevance	34
In conclusion ... !	35

SECTION 4: ISSUES AND STATISTICS – 40 YEARS OF CHANGING COMMUNITY VIEWS 36

Taste and decency in advertising	36
Cigarette advertising	36
Truth in advertising	37
Portrayal of people – discrimination	38
Sex in advertising	38
Sexualisation of children	39
Language in advertising	40
Advertising food and beverages	41
Alcohol advertising	41
Vehicle advertising	42
The Statistics	43

REFERENCES 44

SECTION 1

THE ADVERTISING STANDARDS COUNCIL

CARVING OUT THE ADVERTISING STANDARDS COUNCIL

Advertising self-regulation in some form dates back many decades to the early codes of ethics developed by newspapers and later radio and television stations, and by the Australian Association of National Advertisers (AANA), formed in 1928.

However, it was not until 1974 that a stand-alone system developed, offering consumers a complaints body independent of media outlets. 1974 stands as a watershed year, with the establishment of the cross-industry Trade Practices Commission and the launch of the Australian Advertising Standards Advisory Authority (known soon after—and henceforth in this book—as the Advertising Standards Council).

The timing of these initiatives was no coincidence. As the records of the advertising body show, the relationship between the two was at times cooperative and mutually supporting, at times openly hostile. In fact, the tension between the two systems defines this first phase of advertising self-regulation, prior to the establishment of the current Advertising Standards Board in 1997.

PUBLIC MEMBERS

In addition to the two Chairmen, the Hon Sir Richard Kirby and the Hon Paul Toose, and the long-serving Deputy Chairman, Sydney Einfeld, some other distinguished Australians to serve on the ASC included Olympic athletes Betty Cuthbert and Dawn Fraser; former Deputy Prime Minister the Hon Lionel Bowen; child and adolescent health specialist and later Governor of New South Wales, the Hon Dame Marie Bashir; former judge of the Supreme Court of NSW, the Hon Kevin Holland; and former Premier of Victoria, the Hon Lindsay Thompson.

The Advertising Standards Council (ASC) first met in February 1974. Operating under a Charter, it was established with the aim of “ensuring that advertising standards are such as to merit public confidence in the advertising industry”.

A key aspect of the system was unquestionably the appointment of a very distinguished Chairman. Sir Richard Kirby was a former judge and the founding President of the Commonwealth Conciliation and Arbitration Commission. Born in 1904 and having seen active service in World War II, Sir Richard was appointed to the ASC on his retirement from the Commission in 1973. He guided the Council through its first decade and implemented a number of changes to enhance public participation.

Sir Richard was supported by five public members and five industry members, three of whom were appointed by the “Charter organisations” that funded the new complaints body: the Media Council of Australia (MCA), the Australian Association of Advertising Agencies (later the Advertising Federation of

Australia and now the Communications Council) and the AANA.

It was the involvement of these three industry associations which, as Debra Harker et al have observed, led to the characterisation of the ASC as a “tripartite” scheme, founded on the cooperation of media companies, advertising agencies and advertisers.

Two decades later, it was also part of the organisation’s undoing.

ACCREDITATION AND THE TRIPARTITE SCHEME

“Thus was Rosemary’s baby born ...”

This is the description given by Robert Koltai to the introduction of the Media Council codes and the formation of the ASC. A leading figure in advertising self-regulation for 20 years, Koltai was General Counsel with a major advertiser, Colgate-Palmolive. He was also an industry member on the ASC from 1984 to its demise in 1996, the main instigator of its replacement and then Chairman of the ASB until he retired in 2005.

To understand how such an influential figure came to have such a poor view of the scheme, we need to consider the industry arrangements that preceded it and how they were affected by the introduction of the 1974 *Trade Practices Act* (TPA).

Whereas the current ASB scheme was initiated by AANA representing the advertiser section of the industry, its predecessor was initiated by the MCA, representing almost all print, radio and television

THE RELATIONSHIP BETWEEN THE TWO WAS AT TIMES COOPERATIVE AND MUTUALLY SUPPORTING, AT TIMES OPENLY HOSTILE

companies. The ASC’s *Third Report*, published in 1978, says the body was set up on behalf of the Federation of Australian Commercial Television Stations (FACTS, now Free TV), the Federation of Australian Radio Broadcasters (FARB, now Commercial Radio Australia) and the Australian Newspapers Council, as well as the AANA and the Advertising Federation of Australia (AFA).

The five industry members of the Council were appointed because of current or former membership of the MCA, AANA, AFA, FACTS and FARB. The Council’s *First Report* indicates the industry members

“... hold their position because of membership of associations in the Industry but balance their judgment in a personal way. It is stressed that their votes and decisions are not controlled by the respective associations.”

The five public members of the Council were nominated by the Chairman. The *First Report* states the public members serve as individuals, not as members of any organisation. Nevertheless, they had all held significant community positions, including as President of the Family Welfare Bureau of NSW, Chairman of the QLD Consumer Affairs Council, President of the Associated Chambers

of Manufacturers of Australia, President of the Australian Council of Retailers and Secretary of the Australian Council of Trade Unions.

The complaints-handling function under the various codes of practice formed one half of the ASC structure. The key role of the media sector explained the other: an accreditation scheme.

Prior to the launch of the ASC, the MCA had established a sub-committee, the Australian Media Accreditation Authority, which vetted advertising agencies and approved them for participation in a media buying arrangement. Decisions of the Trade Practices Tribunal (which examined the system at length) show there were two main features to the accreditation system. First, approved agencies whose financial backing and other arrangements had been vetted could submit advertisements and pay later. The scheme gave agencies about two months' credit, while giving the media companies some security over the agencies' capacity to pay.

The second feature was the commission. In addition to the fee it charged an advertiser for the production of the advertisement, an accredited agency could charge a media company a commission for the placing of an ad. The accreditation scheme placed a cap on the commission that could be charged, which in the case of commercial television and metropolitan newspapers was 10 per cent.

This binding of advertisers, agencies and media companies—in the accreditation scheme as well as the complaints system—explained the “tripartite” nature of the early arrangements. The interconnection of the two elements is also indicated by the role of the Accreditation Authority, which not only administered the accreditation side, but was also responsible, at least initially, for the maintenance of the Advertising Code of Ethics.

This account of the accreditation system is based on documents issued by the Trade Practices Commission (TPC) and published decisions of the Trade Practices Tribunal. Robert Koltai, approaching it from an advertiser's perspective, describes it somewhat differently.

“This system was devised by the media moguls of the 1960s and consisted of a system whereby only advertising agencies accredited by the media could buy advertising space (TV, radio and print) and in return would receive a flat rate of commission on advertiser spend. In effect it was a horizontal exclusive dealing arrangement with significant anti-competitive consequences in both the market for media and in the market for advertising agency services. It also ‘pushed television as the preferred media’ because that paid the highest rate of agency earnings.”

This system brought anti-competitive commercial oppression of advertisers because even a very significant advertiser could not buy media directly and use any semblance of its otherwise available market buying power.”

Though the accreditation scheme was established before the passage of the TPA, the initiators of the scheme had their antennae tuned to the emerging statutory scheme which prohibited restrictive trade practices.

Importantly, when the TPA was enacted in 1974 it allowed for authorisation of arrangements that might otherwise be prohibited—provided the public benefit outweighed the potential detrimental effect on competition. A cross-industry scheme comprised of codes of practice and an independent complaints body headed by an ex-judge was something new to the industry and, at that stage at least, an arrangement beyond the scope of the new regulator. An intrinsic part of the MCA case for approval of the accreditation scheme, therefore, was the benefits to the public that would flow from the new complaints scheme.

Robert Koltai puts it this way:

“In effect, the legislation made the operation of the Media Accreditation Scheme untenable unless some other measures were taken. In the result, the former Advertising Standards Council and Media Advertising Codes were brought into existence in order to provide some semblance of a ‘benefit to the public not otherwise available.’”

THIS INITIAL COUPLING OF ACCREDITATION AND COMPLAINTS WAS CENTRAL TO THE FORMATION OF THE ASC; THE SEVERING OF THE LINK BETWEEN THEM WAS CENTRAL TO ITS DISSOLUTION TWO DECADES LATER.

This, according to Koltai, is where “Rosemary's baby” enters the story:

“Sadly for advertisers, the TPC ‘adopted the baby’ and granted authorisation to the Media Council to continue to operate the Media Accreditation Scheme.”

As Koltai's comments suggest, this initial coupling of accreditation and complaints was central to the formation of the ASC; the severing of the link between them was central to its dissolution two decades later.

THE PUBLIC WOULD BE SERVED BY GUIDELINES ON TASTE AND DECENCY—PROVIDED THEY DID NOT INCLUDE “DOGMATIC PRINCIPLES”.

CODES AND COMPLAINTS

During its initial years, the ASC applied MCA codes, with separate committees sometimes hearing complaints at first instance. From the outset, however, the ASC offered the public the opportunity to submit a complaint to it, without the need to make a first complaint to an agency or media outlet.

In addition to an Advertising Code of Ethics, there were two product codes, one for proprietary medicines claiming therapeutic benefits, and one for domestic insecticide, as well as a Joint Committee for Disparaging Copy—which heard competitor complaints about advertisements said to disparage a rival or their products or services in an unfair or misleading way.

By 1978 the codes covered by the ASC included those relating to slimming preparations, hair pieces, alcoholic drinks and cigarettes, and mail order products. Advertisements, in turn, were cleared by agencies operating in each of the three mediums.

There are three interesting features of this early work.

The first is the scope of the work. Unlike the current ASB, the ASC heard claims dealing with misleading, unfair or untrue advertising from consumers as well as competitors. In 1975, for example, the Authority upheld a complaint about the description of an imitation suede jacket, while it dismissed a complaint claiming that the availability of season tickets to the Australian Opera, advertised as costing “from as little as \$8 in total—that is \$2 an opera”, was limited to seats with a restricted view.

The other interesting feature of the early codes of practice is the absence of any explicit provision dealing with taste and decency – an issue of some debate. In early 1978, when complaints about taste and decency for the period October 1976 to February 1978 numbered 204 out of a total 715, the Chairman observed that the interests of both the industry and the public would be served by guidelines on taste and decency—provided they did not include “dogmatic principles”.

This caution around the treatment of such complaints was evident from the outset, with Sir Richard noting in the *First Report* in 1974 that the organisation had already received complaints about “pornography and sex” and that the Authority:

“would be serving the public interest in developing considered views on taste and decency in advertising and letting them be authoritatively known to those concerned, as the occasion demands.”

However, he was also careful to observe:

“the Authority does not wish to be a censor (there are surely enough already!).”

It was not until 1986 that a provision relating to taste and decency was inserted into the Advertising Code of Ethics. Until then, as Sir Richard outlined in 1981, the Council’s approach was based on a test applied by the UK Advertising Standards Authority:

“Does this advertisement cause avoidable offence, either to a majority of those likely to see it or, where the offence caused may be particularly grave, to a minority?”

Looking back, excluding taste and decency while including misleading and unfair claims seems a curious move. While the ASC applied provisions that were substantially covered by trade practices legislation, it took many years to set down rules for the aspects not covered by the TPA.

Finally, while the Council certainly confronted a rising awareness of community responses to sexism in advertising (and in the media more generally), the issue that most clearly marks the ASC as a body of its time is its struggle with cigarette advertising. In the period 1976–78, during which time the ban on tobacco advertising on TV and radio came into effect, complaints about liquor and cigarettes combined amounted to only three per cent of complaints to the Council. However, complaints rose significantly in the early 1980s. By 1987 complaints about cigarette advertisements alone formed 28 per cent of all complaints.

The applicable code was tightened and in 1989 it was amended so as to prevent the depiction of people in cigarette advertisements. Then in 1991 numbers dropped dramatically to four complaints as a result of legislation which by that time banned cigarette advertising on television, radio and print, leaving only cinema, point-of-sale and outdoor media as a potential source of complaint.

The challenges for the ASC in steering a course through changing community values on an issue like cigarette advertising were great. They were highlighted in debate over the Paul Hogan advertisements for

Complaint No.	Product Service Advertised	Originator of Submission to Authority	Basis of Complaint	Conclusion
Complaint No. 1	“Trufruit” Orange Juice	Mr B. Ellis 41 Morton Street, Box Hill South, Vic.	A complaint related to Press and Television advertising for “Trufruit” orange fruit juice claiming “fresh” characteristics with preservative added.	Complaint upheld. Advertiser pointed out that the “fresh juice” is being phased out of their product range. The Company agreed future usage of the word “fresh” will be withdrawn.
Complaint No. 2	Rural and Industries Bank of Western Australia	Ms E. Hutchinson 19 Wakins Road, Dulkeith, W.A.	A complaint related to Press advertising by the Rural and Industries Bank of Western Australia depicting a “bandit” type figure and exhorting “secret ways to get cash”.	At the request of the Chairman the advertisers copy format was explained to the complainant with the matter being satisfactorily concluded between the parties.
Complaint No. 3	Australian Opera for Season Tickets	Mr S. B. Fisher 7/93 Alt Street, Ashfield, N.S.W.	A complaint related to misleading features of Press advertising by the Australian Opera for season tickets “from as little as \$8 total — that is \$2 an opera” — the complainant contending the availability of these type seats offered only a “restricted view”.	Complaint was dismissed following receipt of satisfactory evidence to the contrary from the responsible advertiser.
Complaint No. 4	Canon-Raynox Movie Outfit	Mr B. Holmquist Lot 48 Gutawong Road, Rouse Hill, N.S.W.	A complaint related to retail advertising, by Grace Bros. Pty. Ltd. featuring a Canon-Raynox Movie Outfit at varying prices within the same week in its “Expansion Spectacular” sale to mark the opening of the Westfield Shoppingtown Paramatta.	Advertiser acknowledged error as one of a genuine mistake and as a gesture of goodwill offered to supply at the special offer price. This was not accepted by the complainant.
Complaint No. 5	Worth’s Stores “Suede Casual Jackets”	Mr M. Fowler 10 Marie Way, Kalamunda, W.A.	A complaint related to apparent misleading features of Press advertising by Worth’s Stores for “suede casual jackets” when in fact the jackets were of an imitation suede type fabric.	Complaint upheld. The advertiser agreed that the customer may have been misled and suggested that the use of the word “sueded” would possibly avoid the evident confusion.

Excerpt from Complaint Statistics 1975 (*Second Report*)

A SIGNIFICANT FACTOR IN THE UNWINDING OF THE SELF-REGULATORY SYSTEM APPEARS TO HAVE BEEN THE CHANGING VIEWS OF ADVERTISERS

Winfield cigarettes in 1980. On one side, the ASC's decision that it breached rules against such ads having "major appeal" to children outraged some within the industry. B&T recorded AFA Chairman Keith Cousins stating that self-regulation itself was "under fire". On the other, the Australian Consumers Organisation (now Choice) and academics such as Bill Bonney and Helen Wilson criticised the time

taken by the ASC to consider, review and implement its decision. While such criticism may have been fair—it was said to have taken 18 months from start to finish—it was an important step in the ASC demonstrating it was prepared to take a firm stance, and to withstand the disapproval of some within the industry, when appropriate.

Codes and Standards and that these benefits should properly be regarded as resulting from the Accreditation System. They collectively constitute an important and substantial benefit to the public resulting from the Accreditation System."

motivate the advertising self-regulatory system to be more responsive to community concerns and to act in the public interest."

For its part, the ASC also backed the TPC. The *First Report* of the ASC records the Chairman's offer of "complete cooperation" with the TPC, which he later describes as an "ally" in a scheme which is a complement to, not a substitute for, the statutory scheme governing misleading and deceptive practices.

The changes to the ASC scheme included a further increase to the number of public members overall, a greater majority of public members to form a quorum, greater public participation in code revisions and a Credentials Committee to appoint public members to various code committees.

THE RELATIONSHIP SOURS

By the early 1980s, the TPC was taking a more active interest in the ASC—perhaps partly due to an increasingly active consumer sector, most notably represented by the Australian Consumers Association (ACA).

With these changes in place—and despite the objections of the ACA—the TPC continued to support the authorisation of the accreditation system. A decade later, however, the TPC changed its view.

In 1983, following comments from the Chairman of the TPC, the ASC added two public member positions, one of which was filled by the eminent former NSW Minister for Consumer Affairs, Sydney Einfeld who later became Deputy Chairman. Around this time, an MCA Codes and Standards Committee reviewed the Advertising Code of Ethics, then in the mid-1980s a further review by the TPC and appeal to the Trade Practices Tribunal resulted in more changes to the ASC scheme.

In 1995, following a further review of the accreditation system, the TPC decided there had been a "material change of circumstances" since the scheme was formally approved by the Trade Practices Tribunal in 1978. Its published decision shows these circumstances related primarily to the financial arrangements of agencies, their increased size profile and the number of unaccredited agencies as well as the emergence of media buying agencies. In addition, the TPC considered that the codes and complaints system now operated separately from the accreditation scheme, and there was no reason to believe that the latter was dependent on the former. As there was insufficient public benefit to offset the anti-competitive detriment, the the authorisation for the accreditation system was revoked.

By this time, the ACA was a significant player in what would become a long-running battle with the advertising industry. ACA outlined its efforts in the June 1987 issue of its journal, *Consuming Interest*:

"ACA's appeal to the Trade Practice's Tribunal was the end result of a long fruitless effort to

A significant factor in the unwinding of the self-regulatory system appears to have been the changing views of advertisers. The AANA considered the accreditation system an unfair impost on

COMPLAINT STATISTICS FOR THE YEAR ENDED 31 DECEMBER, 1985

TABLE 1 — BY MEDIA GROUP

	RECEIVED		DISMISSED		UPHELD		CURRENT		OUTSIDE CHARTER OR OTHERWISE SETTLED
	no.	%	no.	%	no.	%	no.	%	
PRINT	862	38.6	516	59.9	139	16.1	143	16.6	64
RADIO	74	3.3	42	56.8	4	5.4	23	31.0	5
TELEVISION	887	39.7	668	75.3	42	4.7	121	13.5	56
BILLBOARD *	179	8.0	151	84.4	2	1.1	17	9.5	9
CINEMA	7	0.3	3	42.9	2	28.6	1	14.3	1
PRINT/TV/RADIO	14	0.7	8	57.1	2	14.3	1	7.1	3
OTHER *	210	9.4	53	25.2	13	6.2	31	14.8	113
TOTAL	2233	100.0	1441	64.5	204	9.1	337	15.1	251

* These comprised for the major part complaints about billboard or taxi-back advertisements for cigarettes lodged by members of the anti-smoking and/or anti-cigarette advertising lobby.

TABLE 2 — BY CATEGORY OF COMPLAINT

	RECEIVED		DISMISSED		UPHELD		CURRENT		OUTSIDE CHARTER OR OTHERWISE SETTLED
	no.	%	no.	%	no.	%	no.	%	
BREACH LAW	20	0.9	7	35.0	1	5.0	10	50.0	2
BREACH CODES —									
ALCOHOL	41	1.8	31	75.6	2	4.9	7	17.1	1
CIGARETTE *	361	16.2	232	64.3	16	4.4	21	5.8	92
DOMESTIC									
INSECTICIDE	2	0.1	0	0.0	1	50.0	0	0.0	1
ETHICS	850	38.1	482	56.7	116	13.6	164	19.3	88
MAIL ORDER	16	0.7	5	31.3	0	0.0	4	25.0	7
SLIMMING	11	0.5	5	45.5	3	27.3	2	18.2	1
THERAPEUTIC	8	0.4	3	37.5	2	25.0	3	37.5	0
DISCRIMINATION —									
AGE	1	0.0	1	100.0	0	0.0	0	0.0	0
RACE	6	0.3	5	83.3	0	0.0	1	16.7	0
RELIGION	1	0.0	1	100.0	0	0.0	0	0.0	0
SEX	31	1.4	21	67.7	0	0.0	4	12.9	6
SAFETY	97	4.3	69	71.1	9	9.3	17	17.5	2
TASTE & DECENCY **									
TELEVISION	725	32.5	531	73.2	51	7.0	100	13.8	43
STANDARDS	3	0.1	3	100.0	0	0.0	0	0.0	0
OTHER	60	2.7	45	75.0	3	5.0	4	6.7	8
TOTAL	2233	100.0	1441	64.5	204	9.1	337	15.1	251

* The majority of these complaints were lodged by the anti-smoking and/or anti-cigarette advertising lobby.

** This category also includes complaints about those advertisements alleged to be sexist in content.

Excerpt from Complaint Statistics 1985 (*Ninth Report*)

EARLY RELATIONSHIP WITH THE TRADE PRACTICES COMMISSION

In one sense, the ASC was shadowed by the Trade Practices Commission for all 22 years it existed. But the regulator's part in the self-regulatory system is perhaps even more profound.

The ASC constituted the first independent complaints scheme for advertising in Australia, yet, as explained above, the motivation for this initiative was almost certainly the impending need for regulatory approval of the accreditation system.

In the early days, at least, the TPC agreed. Some changes were made to the system in 1976 to comply with requirements of the TPC and the Trade Practices Tribunal, but the system then operated without interference until 1981. The connection between codes and accreditation was emphasised by the Tribunal in its 1976 decision:

"We accept that those benefits to the public result from the establishment of, and adherence to, the Media Council's

advertisers. It had also expressed dissatisfaction with the ASC Chairman's handling of a legal challenge to one of its decisions, and it was known to have grave concerns about the capacity of the ASC to handle complex competitor complaints about the misleading or deceptive claims of their rivals.

Robert Koltai moved into action and took on the MCA. With about 10 large advertisers, he put together a fighting fund, briefing the TPC in its review of the accreditation scheme. When the TPC issued its decision revoking the scheme, the extent of division between the original partners in the ASC was plainly evident: the MCA and the AFA both appealed to the Australian Competition Tribunal, whereas the AANA supported the TPC and accused the MCA and the AFA of running “cartels”.

Koltai reports he played a leading role in the AANA's legal representation at the Tribunal, describing the outcome as follows:

“In the result, the authorisation of the media accreditation system and the media's private regulatory system over advertising content was revoked by the Tribunal. About 50 years of advertiser slavery to the media and agencies had dissolved.”

Not surprisingly, the change in approach by both the AANA and the TPC signalled the end of the ASC as well as the accreditation scheme and the MCA codes. In July 1996 the Competition Tribunal revoked authorisation of the accreditation system, and on 19 August 1996 the Australian Consumer Complaints Commission (ACCC), which replaced the TPC in 1995, announced it would review the authorisation of the codes and the administration of them by the

ASC. It gave several grounds for a “material change in circumstance” since authorisations for the codes were granted in 1988:

- the responsiveness of the codes to changes in community needs
- mechanisms for enforcement of the codes
- diminished confidence in the integrity of the system, leading some parties to try to circumvent or amend the codes
- public representation on the ASC, which no longer seemed adequate to reflect prevailing community views
- amendments to ASC funding arrangements which had eroded the original commitment to the scheme.

Soon after, on 27 September 1996, the MCA announced it would disband the codes system. This in turn prompted the ACCC to add another reason for a material change in circumstances:

“At the time authorisation was granted, the material circumstances included MCA support for the operation of the codes system. At the present time, the material circumstances include a decision by the MCA that the current system of advertising codes and structures will be disbanded with effect from 31 December 1996.”

Although the ASC did not officially dissolve until some time later, it stopped taking complaints in October 1996 and closed operations at the end of December.

DESPAIR AND DISSOLUTION

The response to the MCA from then Chairman of the ASC, Paul Toose, was severe. The breakdown in relations is underlined by his statement that he was only given one hour's notice of the MCA's decision prior to a public announcement.

In the final report of the ASC, the Chairman expressed his own view of the organisation that initiated the organisation he had chaired for over a decade:

“In retrospect, it is obvious that the MCA was interested in supporting the Codes only as long as its members had the commercial benefits of accreditation.”

About the advertisers he had this to say:

“Not only had the AANA, which had originally strongly supported the accreditation system, suddenly become vehemently opposed to it, but it was constantly opposing adequate funding of the ASC; it wanted the Codes watered down and, most of all, it wanted changes to the Charter which have the effect of emasculating the independence and autonomy of the ASC, so reducing the commercial effect of ASC determinations on advertisers.”

Lianne Richards—now Director of Advertising Regulation at The Newspaper Works, but at the time Executive Assistant at the ASC—recalls the reaction to the MCA decision, and the disbelief that the decision on accreditation would mean the end of the codes and complaints system:

“The ASC shared a floor with the Media Council and the Accreditation Authority, as well as the Australian Publishers' Bureau and the Audit Bureau. There were people in common on some of our boards, but we were independent of each other. The ASC had nothing to do with the Accreditation Authority.”

When the MCA announced it was closing, we were all flabbergasted. It was such a shock. There was a flow-on to us. The only organisations that continued were the Australian Publishers' Bureau and the Audit Bureau.”

The Chairman's comments at the end of the ASC were in one sense a culmination of his frustrations with funding levels, expressed as early as 1990. They also reflected his increasingly outspoken criticism—directed at the TPC, governments, the MCA and even complainants.

But were they a fair comment on the actions of the MCA and AANA?

There is some evidence in the ASB archives to back up the claim that changes to the ASC sought by AANA—while motivated at least in part by a desire to end certain practices which both the TPC and the Trade Practices Tribunal regarded as anti-competitive—would have severely weakened the ASC. But the ASC's own handling of the matter also appears flawed. In an article in *The Australian* published in October 1996 and titled “Council drinks its own vitriol”, journalist Katrina Strickland wrote:

“In searching to apportion blame for its upcoming demise, the Advertising Standards Council should look no further than its own front door.”

The in-fighting and internal vitriol which have characterised the council for the past 12 to 18 months have effectively stymied any proposals for change and focussed the attention of members on protecting their own philosophical positions rather than looking for practical ways to make the system more effective."

In an article published six months later, as the ASB was being set up and after Paul Toose had published his scathing attack in the final report of the ASC, Strickland offered up Koltai's response:

"There can be no more damning report of (the ASC's) behaviour and operations, indeed no more compelling explanation for its demise, than its final 1996 annual report," Mr Koltai said. 'Dripping with vitriol and anger, it lashes out at everyone and everything around it.

In stubborn refusal to acknowledge that by the end of 1996 it had no supporters in any quarter in any form, it blames everyone and everything, besides itself, for its abandonment and demise'."

Strickland also quoted ACCC Chairman, Professor Allan Fels:

"The simple fact is that the ASC had lost the support of all interest groups on all sides, from consumers to advertisers to everyone else, that is why it has been deserted."

END OF PHASE I

Whether the outrage expressed about the end of the ASC was justified, with the benefit of hindsight we can see that discontent had been building for some time, and a shake-up—ultimately, the development of the system in place today—was probably overdue.

It is now clear that the ASC played a vital part in carving out a role for advertising self-regulation in Australia. Its treatment of advertisers may have been inherently unsustainable and it may have lacked capacity to manage changing community values, especially on an issue like cigarette advertising, but in some ways at least it was an efficient and cost-effective alternative to government intervention and also to the courts.

In addition, the commitment from media proprietors to enforce upheld complaints did generate support. Of course it fell away with the end of the accreditation scheme but it may well have been crucial in the ASC gaining a foothold in an era when a new government regulator was marking out its territory and closely watching the performance of its self-regulating colleague.

Finally—and perhaps even more importantly—the ASC demonstrated that industry would support a system that had independent, community members as decision makers—a crucial component of the first phase of self-regulation, and one which was continued and enhanced with the emergence of the ASB in 1997.

ADVERTISING SELF-REGULATION AND THE TRADE PRACTICES COMMISSION

1974

Herald and Weekly Times (HWT) and others apply under the Trade Practices Act for authorisation of the accreditation scheme.

1976

TPC gives conditional authorisation.

1978

Trade Practices Tribunal (TPT) hears appeal from HWT and others about the conditions attached to authorisation; TPT imposes conditions which HWT and others agree to.

1985

TPC authorisation hearings; Australian Consumers Association opposes authorisation.

1986

TPC gives authorisation; ACA appeals.

1987

TPT refuses authorisation, but with opportunity for MCA to implement changes and resubmit.

1988

TPT authorises revised scheme.

1995

TPC reviews and revokes authorisation of accreditation scheme.

1996

MCA and AFA appeal to Australian Competition Tribunal; ACT revokes authorisation.

1996

ACCC advises it will review the codes system.

1996

MCA dissolves itself and the codes system.

SECTION 2

THE ADVERTISING STANDARDS BOARD

MOVING ON

Deserted. Dissolved. The end of self-regulation. Or was it?

Although it would be over a year before a replacement was up and running, the intrigue surrounding advertising's ethics regime continued. Chairman Toose was biding his time before lashing out at those he considered responsible for the ASC's demise. His opponents had already moved on.

Only a few weeks after the MCA decision to disband the codes system—and only one day before the final meeting of the ASC—a group of interested parties gathered in Parliament House on 10 December 1996 to discuss a new scheme. Agenda papers held in the ASB archives show the meeting was arranged by the Federal Bureau of Consumer Affairs; the opening address was given by the Minister for Small Business and Consumer Affairs, the Hon Geoff Prosser.

How was this group able to mobilise so soon after the MCA announced it was folding?

BUILDING THE ASB

Robert Koltai, the dissident ASC member representing AANA, was not only the driving force in the dismantling of the old scheme; he was also the engineer of its replacement.

Koltai's manoeuvring was legendary, as was his ability to mobilise players who appeared to have been at each other's throats only moments before. He arranged for

key media players to front up to Parliament House. Then on 5 December 1996, the AFA wrote to Koltai indicating that while it had some reservations with his 'AANA blueprint', "we feel at this time industry consensus is paramount".

The Advertising Self-Regulation Forum was attended by AANA, the AFA, FACTS and FARB as well as the ACCC and the Australia Broadcasting Authority. Consumer/public interest participants also attended—the Communications Law Centre, the National Women's Media Council, Griffith University academic Debra Harker and of course, the ACA which arrived at the forum with its own plan for a self-regulatory system.

At this meeting and in the months that followed, it seemed everyone wanted to move on from the ASC. Relations between the former "charter organisations" were strained; power was shifting from the media sector to the advertisers as the ASC died and the ASB was born. The agencies—whose creative efforts are scrutinised under the codes and complaints system—watched on. Current ASB Chairman, Ian Alwill, explains the rationale for advertisers taking the lead on industry regulation:

"It makes sense for advertisers to take responsibility. Advertisers do expect agencies to push the boundaries creatively, however it's the advertiser's money that is potentially squandered if there is a problem with the ad, so most advertisers will take these ideas, assess their commercial impact and consider them against the Code and decide."

"For the advertiser, it's his corporate reputation, his brand and his money ... not the agency."

This sense of responsibility is also expressed by current AANA CEO, Sunita Gloster:

"Responsible marketing is at the very heart of the AANA. Our purpose is clear, it is to drive responsible marketing and promote and evolve the self-regulatory system so that it remains aligned with community standards."

Back in 1996, although the advertisers and the agencies might have been prepared to bury their differences, there was certainly no agreement between the industry and the consumer side.

The National Women's Media Council was disappointed there would be no codes specifically addressing the representation of women, while the ACA actively pursued the AANA over what it saw as deficiencies in the code, the level of consumer involvement and a lack of enforceability. It would take several years for the ASB to successfully establish to its critics that its voluntary scheme could offer almost total compliance on upheld complaints. And even Koltai now acknowledges the original codes had some gaps:

"The first code was fairly kind, not onerous—I admit that. Then some other industries started to face some pressure, for example motor vehicles. Over time, the existing codes were strengthened and new codes were developed."

KOLTAI'S MANOEUVRING WAS LEGENDARY, AS WAS HIS ABILITY TO MOBILISE PLAYERS WHO APPEARED TO HAVE BEEN AT EACH OTHER'S THROATS ONLY MOMENTS BEFORE.

The codes did indeed evolve over the next few years. In the meantime, the tenacious Koltai rallied support for an improved version of the ASC levy system that would fund the new complaints body.

The levy on advertisers was to be set, at least initially, at 0.035 per cent of media expenditure, meaning an advertiser would pay \$350 for every \$1,000,000 spent. The key to the success of the new system would be the advertising agencies and media buying agencies agreeing to collect the levy and send quarterly remittances to an independent company that would, in turn, fund the ASB. The separation of this company from the agencies, AANA and the ASB would ensure confidentiality in advertising billings.

With the support of the AFA and leading agencies and advertisers, in August 1997 AANA announced the arrangement for the new Advertising Standards Board scheme. Simultaneously, Robert Koltai launched a campaign directed to the industry at large, urging adoption of the new scheme and bluntly advising them, "if the government ends up regulating advertising we will only have ourselves to blame".

Included in the campaign materials distributed by AANA were statements of support from the AFA and FACTS as well as advertisers and agencies:

“The introduction of the advertising self-regulation system is of benefit to all those involved in advertising activity in Australia. The modest cost should be shared by all advertisers. The levy system is the fairest means to fund this system.”

Matthew J Callachor, General Manager, Marketing, Toyota Motor Corporation Australia Ltd

“The advertising self-regulation system is of critical importance to everyone associated with the industry. We agree that the small percentage levy advertisers will be asked to pay is the most affordable and fairest way of spreading the cost and will benefit the entire industry.”

John Fawcett, CEO, George Patterson Bates

It helped that advertisers and agencies saw the new Advertising Code of Ethics as a manageable alternative to its predecessor. But a key driver in the industry’s support for the scheme, and particularly the levy, was the watchful eye of the new Coalition government. Over the course of 1997 Koltai managed to gain the support of the government sector—or at least, their agreement not to actively oppose the new scheme.

Correspondence from the time shows that in the first few months of 1997 the advertisers kept the pressure on the Department, which continued to organise meetings involving AANA, the ACCC

and the ACA. The Broadcasting Authority gave in-principle agreement, subject to the final content of the codes. Koltai also persevered with the ACCC, challenging what he saw as a degree of ambivalence on the regulator’s part and extracting at least a grudging concession:

“While the arrangements that you now propose do not reflect the Commission’s ideal model of self-regulation, the AANA is to be commended for its willingness to assume responsibility for advertising standards.”

It was enough for the AANA—and it was bettered by the federal Minister for Consumer Affairs later that year. On 4 September 1997, then Minister, Senator the Hon Christopher Ellis, wrote expressing his support for the proposal:

“The Government is committed to promoting industry self-regulation ... where it can operate effectively and to the benefit of the community. We receive many requests to regulate certain areas of business, not least in the area of advertising. An effective self-regulatory scheme provides a strong answer to such requests.”

Armed with at least the acquiescence of the government sector, Koltai put together his panel of public members and prepared for what *Business Review Weekly* journalist Neil Shoebridge described as “the storm that is building”.

The issue of consumer involvement was about to become a flashpoint in the tussle to bed down the new ASB.

CELEBRITIES AND CONSUMERS

The inaugural Board of the ASB challenged anyone tempted to ignore it.

The 12 members of the Board, which started taking complaints in January 1998, were author Thomas Keneally; author and cattle station owner Sara Henderson; business people Wendy McCarthy and Brian Sweeney; cricketer Geoff Lawson; television presenters Mary Kostakidis, Margaret Pomeranz, Carmel Travers and Trisha Goddard; academic Catherine Lumby; young communications graduate Joanna Cohen and medical student Kate Williams. Former Tourism Minister the Hon John Brown was among four additional appointments the following year.

The clear implication was that people of such standing would not lend their names to a system of no merit. While this may have been useful in Canberra, it didn’t please the ACA whose complaints were aired in national media.

ACA’s Mara Bun went on the attack in the *Australian Financial Review*:

“This group is a very elitist, selective media group ... there is more style than substance.”

It was a view picked up by some in the media, with Neil Shoebridge describing the ASB as:

“crowded with mini-celebrities who have no direct business (let alone marketing) experience.”

The ACA got some traction with government. The ACCC had mentioned consumer representation as one aspect of best practice that the AANA could take

THE CLEAR IMPLICATION WAS THAT PEOPLE OF SUCH STANDING WOULD NOT LEND THEIR NAMES TO A SYSTEM OF NO MERIT.

into account. And when Warren Truss, then Minister for Consumer Affairs, wrote to Robert Koltai at AANA in May 1998 welcoming the commencement of the scheme, he also noted his disappointment at the absence of any direct involvement of consumer representative organisations.

Koltai was not to be deterred, making his position very clear to the Minister:

“We are mindful to have a Board comprised of independent individuals acting on the basis of their own intellect, experience and conscience and not one which represents minority organisations and sectional interests groups.”

Pointing out there were no industry representatives on the Board, he was characteristically upfront about the decision to exclude consumer organisations. Including them, he said, “would strongly diminish industry support and that would be fatal to the potential of the system.”

Two decades later, reflecting on his motivations and the ultimate success of the scheme, Koltai observes:

“I was putting together a group of people who would truly represent community values and do so in a democratic process, with no permanent Chair. It was important not to let one person dominate. But it was also important that there were no industry representatives on the Board. I felt at the time it would degrade what we were

ADVERTISERS THOUGHT THESE PEOPLE DO REPRESENT THE COMMUNITY AND MAYBE THEY'VE GOT SOMETHING HERE.

trying to achieve. We had to consider what the community would expect on issues like taste and decency. I wanted to make the whole show truly independent of advertisers or any section of the industry. I didn't want vested interests."

This was, of course, a marked contrast to the arrangement at the old Advertising Standards Council, recalled by former Executive Assistant Lianne Richards:

"In the old days, everyone would have a foot under the decision table—the media, the advertisers and the agencies. But the community members would always outnumber the industry people."

So Koltai pushed on and the ASB moved forward, getting down to work in 1998 and finding its feet in the couple of years that followed. Inaugural Board member, Thomas Keneally, confirms Koltai's approach:

"This was a body for the public. It wasn't for the industry. It was a body to which the industry in many cases had voluntarily submitted itself."

"Without any malice, we would have tended to get finessed by the advertising industry, had it been represented."

Fellow inaugural member, Geoff Lawson, explains the "slow start" of the ASB:

"It started out as 'suck it and see' In those early days we weren't sure where those decisions would lead. Would they have an effect on people—would the commercial side of advertising actually take any notice of this, or were we just amusing ourselves by having these meetings and coming up with some positions?"

"After a pretty slow start in which advertisers may have sent back some responses which were very facile and self-serving, I think the business community thought on the whole this is pretty good stuff, with this Board with its very different interests. Because it was such a cross-section, my feeling is that the advertisers involved thought, 'well, these people do represent, more or less, the community and maybe they've got something here'. I think it built up momentum after a slow start."

That the system did outlast its initial critics is a testament to the commitment of these early members, but also to the person most clearly identified as the founder of the ASB. Robert Koltai's reign lasted until 2005 when he retired from Colgate-Palmolive and handed on the ASB to new Chairman Ian Alwill and CEO Fiona Jolly.

And so began the series of further changes and improvements that characterise the latest phase in the life of advertising self-regulation.

CONSOLIDATION AND COMMUNITY

Relocated from Sydney to Canberra, in 2006 the ASB started to implement changes to some of its most fundamental features, including the codes and the Board of independent community members.

Even before this time, an important development on the code side was the advent of the Voluntary Code of Practice for Motor Vehicle Advertising, developed by the Federal Chamber of Automotive Industries and administered by the ASB. Thomas Keneally explains its significance:

"There was a time when a National Party Senator was very interested in regulating automobile advertising. But I think automobile advertising turned out to be one of the great successes of the Advertising Standards Board. There are other successes but you can see it most clearly in the disappearance of speed hoon references from advertising. I go to other countries and see advertising and I think we've got beyond the 'hoonery' in automobile advertising."

"It was a voluntary code with meaningful provisions. My tendency to think government is the answer to things was certainly altered by the experience on that code. And the decision making of the ASB certainly helped speed the process of accommodation. We did have a de-emphasisation of what speed you could get to in five seconds and an onset of genuine concern with cabin safety and cabin comfort, and this had to be good."

Other significant improvements to the codes, and in particular the expanding operation of the Code of Ethics from 2006, are outlined below.

In addition, changes were made to the composition of the Board.

If the great founding innovation of the ASB was the independence of the Board, the great enhancement over the past decade is its diversity.

In 2008 the number of Board members increased from 12 to 20, providing a greater overall input from the community, as well as better managing Board member commitments. In addition, the frequency of meetings increased from 12 to 20 per year, thereby addressing both the number of complaints that could be heard and the speed with which they could be resolved.

But another, more subtle shift was taking place.

Chairman Ian Alwill explains the shift in thinking about Board composition:

"The self-regulatory scheme was open to be scrutinised by Parliamentary inquiries and the like. I considered that the only way it would survive was if the codes were made more robust and we strengthened the independence of the Board and ensured the system wasn't seen just as serving the interests of the industry."

"It was important to make it more autonomous and more representative of the community and over time operating at world's best practice. Philosophically, I don't think any organisation which wants to stand up in the community and say 'we stand for decency and honesty' and have a strong sense of ethics can put forward a case which seems to be self-serving. It just doesn't bare examination. They're my standards and I wasn't going to be part of anything if it wouldn't stand that level of scrutiny."

The results of this shift in thinking can be seen in the differences between the inaugural Board, described above, and the Board in 2015. Many Australians would know of the two actors on the Board today, William McInnes and Jay Laga'aia, as well as former Senator Sue Boyce, and past members such as former Senator Natasha Stott Despoja, writer Emma Tom, journalist Roy Masters and actor Sibylla Budd. Others members such as former media executive Nigel Milan are well known in business as well as in Canberra, while some such as Jack Manning Bancroft, chief executive of a national organisation helping Indigenous high school students to complete school, are building a strong reputation within the community.

But perhaps what most characterises the Board of the past decade is the presence of less well-known people from diverse backgrounds. There has increasingly been included in the Board a mix of people drawn from the community, some with previous experience in public life, some who are well recognised in their field, and others who have strong links within their community.

Current Board member, Gina Lee, explains her own background, which includes working as a lawyer in Sydney and her current life raising three children in country New South Wales, where she is involved with her church and a local orchestra:

"My background is second-generation Korean Australian. I was born in Sydney, grew up in Sydney and now live in regional Australia, in Orange."

Chairman Ian Alwill's vision of independence and diversity explains the importance of including people like Gina—or other current Board members:

optometrist Giuliana Baggoley; community legal centre executive officer Maria Cosmidis; sports administrator and educator Paul Doorn; writer and academic Fiona Giles; Baptist Pastor Karen Haynes; communications regulatory specialist Sophie Kowald; hospitality worker Paula McNamara; regulatory consultant Peter Phillips; education consultant Graham Rixon; medical student Andrew Robinson; editor, writer and businesswoman Sue Smethurst; police officer Craig White; and dietician and academic Peter Williams.

CEO Fiona Jolly explains what influenced her in pursuing this approach:

"In considering the role of an effective Board, I was influenced from the start by the Classification Board model. I had been with the Attorney-General's Department, working with the Classification Board, and I saw how people are appointed from the community and are expected to bring their experience as community members to the task of making classification decisions. That got me thinking about whether we had the right model at the ASB."

The two great innovations in the ASB Board, then, are the original vision for a panel made up exclusively of community members, and the later enhancement of this model which embraced a more diverse group of Australians.

The importance of having this level of diversity is seen in the most difficult aspect of the ASB's work: making decisions on community attitudes and values.

COMMUNITY VALUES

The history of the ASB, as well as counterparts such as the Australian Press Council and even government agencies such as the Australian Communications and Media Authority and the Classification Board, shows the task of judging community values can be fraught with risks. This is especially true where the activity being assessed is the high stakes, high cost content of advertising.

Opinions within the community are often polarised, multi-faceted and vehemently put.

In 2013, for example, the Board decided not to uphold complaints from people who reported extreme distress over an anti-smoking television advertisement which featured a man struggling to breathe. It upheld complaints against a print advertisement for burgers which featured an image of a woman with the contents of a burger between her buttocks and the tagline, "the freshest fun between the buns". In the last month of 2014, it dismissed complaints about a television advertisement featuring an image of "French kissing", but upheld complaints about a flyer for clothing distributed into letterboxes and featuring images of t-shirts which read, "I come fuck shit up and leave" and "No pain no gain so shut the fuck up and train".

Inaugural Board member, Thomas Keneally, explains how some topics are more difficult to assess than others:

"... it's easier to assess automobile advertising or quantify it because of its impact on our society. More people are going to agree that a particular proposition is safe or unsafe than are going to

OPINIONS WITHIN THE COMMUNITY ARE OFTEN POLARISED, MULTI-FACETED AND VEHEMENTLY PUT.

agree that a sanitary towel commercial violates public standards. There is more consensus on what is safe than on objectification of women and so on."

Current Board member Gina Lee explains her approach to complaints:

"I will certainly try and see how the complainant is viewing things. You can sometimes read into it a little too much. Maybe there is a sexual reference there, perhaps, but the general impact of the ad might not be that. I think sometimes we have to be careful how we as Board members react."

Keneally neatly captures the challenges of the task of judging aspects of "taste and decency":

"These are the areas where it is very hard to assess public opinion and it always will be. No matter what Board you appoint, it will be either ahead or behind public opinion, at least to a little extent."

IT IS NOT WITHOUT PERIL TO BE A MEMBER OF THE ASB!

During Keneally's time on the Board, one of the biggest challenges was outdoor advertising. He clearly recalls the billboards used by Advanced Medical Institute to advertise its products targeted to men who are "making love?" As Keneally puts it:

"In Star Wars there will also be Darth Vader. In the story of the ASB, there will always be the Advanced Medical Institute."

The ASB of course cannot rule on whether or not a product or service can be advertised – that is a matter for government. While the ASB has dismissed a number of complaints against AMI, it has also upheld several and continues to provide the community with a mechanism for assessing whether such advertising crosses the line of current community values. In another case concerning outdoor advertising—in this case a safe sex advertisement by the Queensland Association for Health in 2011—the ASB was showered with criticism and with praise for its decision to dismiss the complaint. The billboard featured two men embracing and was said by some complainants to be inappropriate content for children. However, the Board also received considerable support for the decision from people who thought the advertisement contained an important message.

Being subject to heated criticism from sections of the community for upholding, and at other times dismissing, complaints emphasises one of the Board's

great strengths – its independence. As Thomas Keneally puts it:

"In matters of sex, sexuality, sexism, community acceptance, you can easily be made to look foolish on the basis of a very skilled minority opinion. It is not without peril to be a member of the ASB!"

Over time, the value in the independence and diversity of the ASB Board has become evident and the attention generated by prominent cases has helped build awareness of the organisation. Despite several Parliamentary inquiries, most significantly in 2011, the environment today is far removed from the heady days of 1996 and the dissolution of the old Standards Council. Instead, Parliamentary Committees are presented with a responsive, efficient and low cost complaints system, dedicated to innovation and regarded as a world leader.

This hasn't, of course, occurred by accident. Each year since 2006 the organisation has re-committed itself to a continuous improvement program that has systematically built the capacity of the ASB.

CONTINUOUS IMPROVEMENT

Changes to the composition of the Board unquestionably strengthened the ASB and placed it in a position to authoritatively make decisions on community values. But they weren't the only changes which equipped the ASB for the future.

It became clear very early on that to withstand the criticism of media and keep the Government's confidence the ASB system had to at least measure up to other complaints handling bodies. CEO Fiona Jolly says:

"We spent time looking at other complaints handling bodies in Australia and found that most were in fact not true self-regulation – rather most were co-regulatory in nature. This meant that there was not an obvious model in Australia that really 'fitted' with our advertising focused system. In 2007 we discovered the European Advertising Standards Alliance (EASA) and joined as corresponding members. At the very first EASA Meeting I attended it was like coming home – a room full of CEOs who talked passionately about codes of ethics, complaint handling turnaround times, independent complaint boards and other similarly dorky issues. I knew we had found our best practice model."

THE CODES

For a self-regulation system to be effective it must have broad coverage and apply to advertising in whatever media it appears.

CEO Fiona Jolly says:

"One of the first changes we made in 2006 was to take a more expansive interpretation of the definition of 'advertising' and start looking at complaints that had previously been considered to be outside our remit. We realised that a system is not credible and therefore not sustainable if it cannot deal with consumer concerns."

The Advertising Code of Ethics (the Code) developed by the AANA in 1998 was revised in 2006 and again in 2012, on both occasions to expand its coverage following input from ASB around the broader interpretation it was now giving to existing definitions in the Code. These changes mean the Code now

CODES ADMINISTERED BY THE ADVERTISING STANDARDS BOARD

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

clearly covered marketing as well as advertising, local media as well as national media, and non-profit and government advertising which had previously been treated as community services.

Other improvements to the codes system have been made:

- Brief provisions in the original AANA Code of Ethics dealing with advertising to children and environmental claims have since been made the subject of separate codes.
- The scope of the provision dealing with discrimination and vilification has been broadened to include mental illness.
- In 2012, a new section was inserted to cover the use of sexual appeal in a manner which is exploitative and degrading.
- The Code now includes extensive practice notes to assist in its application. For example, in relation to language:

“The ‘f’ and ‘t’ words are generally not permitted. Non verbal representations of the ‘f’ word are also not permitted. Words and acronyms that play on the ‘f’ word, eg WTF and LFMAO, but do not use the actual word are normally considered acceptable if used in a light hearted and humorous way, are in subtitle rather than spoken word and are appropriate to the situation.”

- The Voluntary Code of Practice for Motor Vehicle Advertising was developed by the Federal Chamber of Automotive Industries in 2002.
- The Food and Beverages Advertising and

Marketing Code and the two initiatives of the Australian Food and Grocery Council have been tightened in response to community concerns about obesity and healthy living.

Perhaps most importantly, the revisions to the codes significantly expand the channels or platforms where advertising is presented. Back in 1998, the ASB handled complaints relating to print media, television, radio, cinema and outdoor advertising. As industry and community practices have changed, the following platforms have been added:

- websites
- social media including Facebook
- other online platforms such as YouTube
- sms and mms
- additional aspects of outdoor advertising, such as transport, sports stadiums, sky banners.

AANA CEO Sunita Gloster explains the advertisers’ approach to maintaining the Code:

“[The Code’s] values are timeless but how they are applied cannot be static. Most recently, the self-regulatory system has evolved to cope with the rise of digital advertising, including the advent of social media and the trend for brands to create content to engage consumers in real dialogue... There will be future evolutions of technology that will inevitably give rise to new self-regulatory challenges but we remain confident that these can be met by future evolutions of the Codes.”

The explosion of online media presents opportunities far beyond the media environment on which the

**THE ASB LED THE WAY
INTERNATIONALLY ON THIS ASPECT
OF SOCIAL MEDIA SELF-REGULATION**

original AANA Code of Ethics was based. Current Chairman Ian Alwill has noted both the challenge presented by social media and how the ASB has taken a leadership role internationally:

“The Board’s decision to uphold complaints about user generated content posted on an advertiser’s Facebook brand page received a lot of attention internationally and, initially, a lot of criticism. But that decision has since been accepted and now the same position has been adopted in the USA and a number of other countries. The ASB led the way internationally on this aspect of social media self-regulation.”

COMMUNITY COMPLAINTS PROCESS

In 2006, the ASB introduced a system for holding urgent meetings by teleconference, designed to respond to matters of pressing community concern and cases where an advertisement is only scheduled to run for a short time.

In the same year, it overhauled its website to provide more information to the community and to allow for lodgement of complaints online. By 2013—when the

site was again upgraded to make it mobile and tablet friendly—almost 90 per cent of complaints were lodged online.

Other back-office improvements made over several years have helped achieve an impressive average response time of 36 calendar days from receipt of complaint to publication of a final case report. New Board member Gina Lee reflects on this:

“One thing I was really struck with was the turn-around time. We’re working very, very quickly to get a good outcome.”

On the whole, the advertising industry in Australia has a high rate of compliance with the advertising codes, with just over seven per cent of complaints upheld in the period 1998 to 2013. Importantly though, the ASB has defied its early critics and established a highly effective approach to enforcement, meaning that over 99 per cent of advertisements found to be in breach of the codes are withdrawn or modified. As Chairman Ian Alwill explains:

“The practice over the last five years or so has shown there isn’t a problem. This has often been scrutinised by Parliamentary committees, but they have concluded government couldn’t do the job much better and in any event they would need to enact a whole lot of legislation if they wanted to make it enforceable through the courts.”

To further enhance the complaints system, in 2008, an independent review process was introduced, providing both complainants and advertisers with the right to seek review of a Board decision.

Perhaps one of the most telling aspects of the success of the ASB complaints system is just how well it functions for Board members. Inaugural member Thomas Keneally explains:

“Basically I had a dream run at the ASB. I was rarely in a minority position but, when I was, there was never a doctrinaire rancour about these things.”

New member, Gina Lee, makes a similar observation on her time so far:

“The Advertising Standards Board is the hub where these controversial issues of prevailing community standards can be discussed in a really civilised way. I really value all the opinions that everyone brings to the Board. I may not have thought of an ad in a particular way, but it certainly helps me in understanding how other sections of the community may view it.”

COMPETITOR COMPLAINTS – THE ADVERTISING CLAIMS BOARD

One of the reasons offered by former Chairman Robert Koltai for the dismantling of the old Advertising Standards Council was its handling of truth and accuracy claims made by competitors. The ASC panel was essentially deciding commercial disputes—without thorough testing of the issue before a court, but with potentially severe financial impact.

When the ASB was formed, competitor claims were transferred to the new Advertising Claims Board, an independent, user-pays scheme. The scheme is a cost-effective and timely alternative to legal action and uses a panel of suitably qualified legal practitioners to adjudicate complaints. A panel is only convened

if the competitors voluntarily submit themselves to its jurisdiction. The panel is comprised of at least three members and applies a set of provisions within the AANA Code of Ethics reserved for competitor complaints. Decisions are made within 15 days of receipt of final submissions.

The scheme considers 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.

Three matters were heard in 2014.

EDUCATION, ENGAGEMENT AND COMMUNITY AWARENESS

A recognition of the need for transparency and accountability has driven the ASB’s initiatives for gauging community attitudes, sharing with the community information about its process and outcomes, and offering members of the public the opportunity to comment on its activities.

- In 1998 the ASB ran print, radio and television advertisements to raise awareness of the new system. In 2008 the “tell someone who cares” campaign ran on TV, radio and print and was extended to outdoors in 2011. In 2014 the ASB launched its ‘people like you’ campaign, cantered around TV advertisements. As a result, the ASB has consistently achieved unprompted recall rates of around 63 per cent.

SEPARATION OF ASB FROM INDUSTRY MEANS THAT THE ASB IS ABLE TO OPERATE IN A FEARLESS MANNER THAT IS DEMONSTRABLY INDEPENDENT

GOVERNANCE

The independence of the ASB is seen in the composition of the Board but also in the separation of the Board from the industry which funds it. Fiona Jolly explains:

“ASB’s success hinges on the support it has from advertisers. A true self-regulation system—as opposed to a co-regulatory system in which government requires industry engagement—must have buy in and engagement from advertisers. This means engagement in the complaint process and financial support for the ASB. In addition the physical and operational separation of ASB from industry means that the ASB is able to operate in a fearless manner that is demonstrably independent.”

- Research into community attitudes commenced in 2007 and continued with projects dedicated to sex, sexuality and nudity (2010), violence (2011) and discrimination and vilification (2011). Additional community perceptions research was conducted in 2012 and in 2013 the ASB explored exploitative and degrading advertising. The research is designed to provide the Board with insights into current community values, while also testing past Board decisions against the views of ordinary members of the community. All the reports are published on the ASB website.

CEO Fiona Jolly observes the commitment to engaging with the public goes beyond the advertising campaigns, and how this has changed since the organisation was created in 1997:

“The most significant change has been the shift to proactive media engagements and intentionally having a high profile in the community, with industry and with governments. A high public profile has meant that ASB has had to improve many of its operating processes in order to be able to demonstrate our values of robust decision-making, accountability, transparency, accessibility and independence. Since our engagement internationally, the spirit of continuous improvement drives everything we do.”

Structurally, both the Advertising Standards Board and the Advertising Claims Board are administered by the Advertising Standards Bureau. The Bureau Board, of which Ian Alwill is Chairman, has seven directors, most with extensive industry experience and other independent directors. The industry levy which funds the scheme is administered by a separate company to preserve confidentiality.

In April 2014, the levy on advertisers increased from 0.035 per cent of expenditure to 0.05 per cent, meaning an advertiser pays \$500 for every \$1,000,000 in gross media billings. This increase—the first since the scheme commenced in 1998—will support the financial stability of the ASB into future years. The arms-length collection and audit arrangements continue, ensuring confidential information is not shared among competitors.

THE EASA BEST PRACTICE SELF-REGULATORY MODEL

International best practice on effective advertising self-regulation is articulated in the **EASA Best Practice Self-Regulatory Model of 2004**. Endorsed by the World Federation of Advertisers following the Toronto Global Advertising Summit in April 2007, it describes the various component parts of effective self-regulatory systems.

1. UNIVERSALITY OF THE SELF-REGULATORY SYSTEM

An effective advertising self-regulatory system should apply to all practitioners – advertisers, agencies and media. There needs to be a general consensus on the need for a self-regulatory system and the practical, active support of all three parts of the industry. Additionally, a self-regulatory organisation (SRO) must be able to depend on the moral support of a large majority of the industry, to lend credibility to its decisions and ensure that they can be applied even to uncooperative advertisers. This can be achieved only if the system has the active participation of practitioners in all areas of commercial communications.

2. SUSTAINED AND EFFECTIVE FUNDING

Self-regulation can function effectively only if it is properly funded. A self-regulatory system requires a robust method of funding involving the commitment of all the parties involved in the various sectors of commercial communications. It is important that such a method is sustainable and buoyant, i.e. so designed that it cannot be placed in jeopardy by the unilateral action of any company or industry sector. Finally, the funding method should be indexed to ensure that it keeps pace with increased costs and reflects changes in the advertising market. A levy system based on a small percentage of all advertising expenditure has been found to be a very satisfactory way of fulfilling all these criteria.

3. EFFICIENT AND RESOURCED ADMINISTRATION

SROs should be managed in a cost-efficient and business-like manner with defined standards of service. To maintain public confidence in the system, an SRO must be – and be seen to be – independent of the industry which funds it. To achieve this, it requires a dedicated secretariat within a structure that provides the necessary independence and external credibility.

4. UNIVERSAL AND EFFECTIVE CODES

A key element of any self-regulatory system is an overall code of advertising practice. This should be based on the universally-accepted ICC Codes of Marketing and Advertising Practice; it may subsequently be extended and developed in response to national requirements. The code should apply to all forms of advertising and there should be a procedure for the regular review and updating of the code, ensuring that it keeps abreast of developments in the market place, changes in public concerns and consumer sensitivity, and the advent of new forms of advertising. The code must be made widely available and advertisers, agencies and media must be familiar with its contents.

5. ADVICE AND INFORMATION

One of self-regulation's key roles is to prevent problems before they happen by providing advice to advertising practitioners. The advice provided by an SRO can take several forms: first, copy advice, i.e. confidential, non-binding advice about a specific advertisement or campaign, may be supplied on

request before publication. Secondly, the SRO can offer general advice on code interpretation; this advice will also draw on 'case law', i.e. precedents established in previous adjudications. General advice of this kind can also be made available in the form of published guidance notes, which supplement the code and indicate best practice, for example in high-profile or problem areas.

6. PROMPT AND EFFICIENT COMPLAINT HANDLING

The public perception of a self-regulatory system will depend to a very large extent on how efficiently it is seen to deal with complaints. It is essential that complaints are seen to be handled promptly. The amount of time required to investigate a complaint will depend on its complexity. Business to business complaints typically may take longer to resolve. SROs should manage their activities against defined standards of service, including complaint handling targets.

7. INDEPENDENT AND IMPARTIAL ADJUDICATION

A self-regulatory system must be able to demonstrate that it can judge cases brought before it efficiently, professionally and above all impartially. Deliberations in such bodies must be conducted in an independent and unbiased manner. There should be provision for the review of decisions in case of appeal.

8. EFFECTIVE SANCTIONS

Although in most cases self-regulatory systems can count on voluntary compliance (however reluctant) with their decisions, their credibility depends in no small measure on an ability to enforce them. The so-called 'name and shame' principle, involving routine publication of adjudications, with full details of the complaint and the name of the brand and the advertiser, has proved to be a powerful deterrent.

However, perhaps the most effective means of enforcing a disputed decision is media refusal of the offending advertisement.

9. EFFICIENT COMPLIANCE AND MONITORING

To be truly effective, an SRO cannot afford to restrict its activities to responding to complaints: if it does so, its interventions will inevitably be haphazard and lack consistency or thoroughness. To proceed effectively against violations of the code, it will need to put in place a planned programme of systematic monitoring, based on specific product sectors or problem areas. This allows the SRO both to institute cases on its own initiative and to evaluate levels of code compliance. This, in its turn, enables potential problems to be discussed with the industry and eliminated before they become too serious; regular dialogue with the industry should be a routine part of the SRO's activities. Monitoring and compliance surveys will also indicate areas where the code may need to be strengthened or changed.

10. EFFECTIVE INDUSTRY AND CONSUMER AWARENESS

An effective self-regulatory system should maintain a high profile: consumers should be aware of where and how to complain and the industry should be aware of the codes and procedures by which it regulates itself. It should be simple and straightforward for consumers to complain, both on- and offline. Simultaneously, an ongoing programme of promoting its codes and procedures to the advertising industry will enable the SRO to establish practical awareness at working level.

Finally, the SRO will need to be able to produce information and evidence of its activities, in the form of published surveys, case histories and statistics (for example, numbers of complaints handled or copy advice requests). Information of this kind is essential to demonstrate the effectiveness of self-regulation.

SECTION 3 WHERE TO FROM HERE

REGIONAL LEADERSHIP

A key outcome of the last five years, and one Chairman Ian Alwill cites as among the most significant achievements in the life of the ASB, is the leadership it has shown in applying the successes of the Australian system to other APEC countries.

As Vice Chair of the EASA International Council on Advertising Standards, ASB has taken a lead in the Asia Pacific region. ASB is helping to build a network of self-regulatory organisations to enable discussion of emerging issues and best practice sharing and also to work with economies who have no or only an infant self-regulation system to assist with implementation and capacity building.

While ASB has particularly strong links with self-regulatory bodies in the United Kingdom, Ireland, New Zealand and Canada – it is our neighbours in the Asia Pacific that the ASB is best able to work with in terms of time zones and cost.

In November 2012 in Hanoi, Vietnam, and again in 2014, in Beijing, China, the ASB delivered advertising self-regulation Dialogues with APEC economies and continues to cooperate with international colleagues to progress advertising development and reform throughout the Asia Pacific region.

Collaboration with other self-regulatory organisations or start up SROs is exciting. The challenge is to build awareness by Australian based companies of this work

and increase their understanding of how consistent advertising standards and systems in our trading partner countries will benefit Australian companies. The benefit to ASB, apart from providing career opportunities for staff, is that the expansion of self-regulation in more countries will build the credibility of our own advertising self-regulation system.

FINANCIAL STABILITY

When asked to nominate the challenges for the ASB in the future, both Ian Alwill and Fiona Jolly refer to the relatively inexpensive advertising opportunities presented by digital media.

Fiona Jolly puts it this way:

“Sustainable and adequate funding will continue to be a challenge. While the ASB has effectively transformed so as to manage the consideration of complaints with advertising in the online environment and in social media, the effect that this change in advertising direction has on funding is only just becoming clear.

With more ‘advertising and marketing’ being able to be done ‘in-house’ there is the potential for less expenditure through the levy collection agencies-media agencies. This has potential for two problems: less media purchase through the levy collection agencies media agencies; and less overall advertising expenditure. Less expenditure overall leads to a smaller pool on which the levy can be added. Expenditure directly into media by advertisers makes it more onerous to collect what levy there is as the ASB must approach and negotiate with each advertiser individually.”

While, as mentioned earlier, the levy increased in 2014, if the way in which advertising is bought and placed changes significantly, there is potential for a significant shift in the ASB’s income. This is an issue the ASB must keep in touch with. It must work closely with advertisers and media agencies to ensure it continues to have sustainable funding.

COMPLIANCE AND SMALL TO MEDIUM BUSINESS (SMEs)

ASB’s 100 per cent compliance standard reduced to 99 per cent in 2010. Those who refused to comply with the ASB’s determination have all been small to medium size companies.

As Ian Alwill observes, potential advertisers range from the very large to the very small, and the smaller players “will not be likely to know the codes, will potentially challenge the ASB management and its adjudication board.”

Engaging with this group will be a challenge for ASB – primarily in terms of cost – but is essential to undertake in order to stay as close to 100 per cent compliance as is possible. Fiona Jolly explains:

“Since the Code of Ethics expansion to less national (local) advertising, the ASB has engaged more with SMEs. While large national advertisers tend to see the clear benefits of self-regulation, albeit reluctantly sometimes, SMEs with small marketing budgets will often not see the big picture and this is a group that has challenged the ASB’s 100 per cent compliance rate. This is also a group that, in a country the physical size of Australia, can be most difficult and costly to educate and engage with.”



ASB CEO Fiona Jolly (right) accepting an EASA award in 2013 from Oliver Gray (EASA Director-General) and Ildikó Fazekas (EASA Chairman).

CHANGING FACE OF CONSUMER ENGAGEMENT

Consumers will continue to have a critical role in the future of advertising self-regulation.

In the early days of the ASB the consumer movement input appeared to have been centralised through the Australian Consumers Association. In 2015, there are different ways for consumers to engage with ASB.

The most obvious of these is by making a complaint directly to the ASB and the fundamental philosophy of one consumer being able to initiate a complaint continues. Recently-appointed Board member Gina Lee explains her approach:

“It only takes one complaint for it to come before the Board. For me, I certainly feel the responsibility of that one person’s complaint. We need to give it our full attention.”

While ASB engages proactively with the community through the media, it uses more diffuse channels to engage consumers and to gauge community attitudes. These include regular research reports on community perceptions, an Ad Standards blog, Twitter account and monthly bulletins.

The power of consumers to organise lobby groups and call for change is more simple and immediate with the internet and social media. The 2011 billboard advertisement for the Queensland Association of Health (0176/11), mentioned above, is a good example of community engagement with ASB matters.

When the advertisement featuring two men embracing was published, there was immediate furore and around 35 complaints to the ASB. Prior to the ASB making a determination, however, the media

company pulled the billboards down. What happened next is an impressive illustration of community response. The advertiser posted on its Facebook page its outrage at having its advertisements removed without a hearing from the ASB. More than 25,000 people joined the Facebook page within 24 hours protesting against the billboards’ removal. The media company then issued a statement saying many of the complaints were part of a campaign by the Australian Christian Lobby, and that it had reinstated the ads. “It has now become clear Adshel has been the target of a coordinated ACL campaign,” Adshel Chief Executive Steve McCarthy said.

Within days the Advertising Standards Board met and considered the complaints against the advertisement. It determined that the complaints should be dismissed finding that although it would offend some people, the depiction of a gay couple embracing in an advertisement with an important public health message did not breach the Code. This event illustrated the important role of independent decision making in assessing suitability of advertisements against community standards rather than leaving judgment calls to media.

While the ASB will remain the avenue for consumers to seek adjudication of such matters by an independent panel, in an era of social media it must also be alert to the opportunities for community-based action and outcomes.

RELEVANCE

This power of consumers to effect change without using the complaints system has other implications for the ASB. In 2012 the ASB had a significant drop in complaint numbers. One possibility is that consumers might be using social media to complain directly to

advertisers or about advertisers – and this tends to elicit immediate responses and changes to content from the advertiser.

If this happens – and, of course, it may bring great benefits for consumers – it may lead to a reduction in consumer generated complaints to the ASB and a consequential lack of relevance. Two particular elements of the EASA system which have not been fully implemented in Australia concern copy advice (pre broadcast advice to an advertiser about compliance with codes) and proactive monitoring (ASB monitoring advertising and assessing compliance). In an evolving media and advertising environment, these aspects of the international model may have added relevance, provided concerns about funding and operational separation of opinions of the secretariat/staff with subsequent decisions of the Advertising Standards Board can be alleviated.

IN CONCLUSION ... !

Reflecting on the early years of the ASB and its gradual acceptance by the industry, inaugural Board member Geoff Lawson comments:

“The advertisers figured it out that if you get self-regulation wrong, guess what? All of a sudden you get a government department formed, and you get into so much red tape it’s ridiculous. Trying to keep self-regulation and do it properly was a much better prospect than arcing up at any decision made and finding yourself with a government department telling you what to do.”

Beyond the industry’s understandable urge for self-protection, the ASB has shown that an independent, self-regulatory agency can do the job just as effectively and much more efficiently than a government regulator.

What makes the ASB’s outcomes under its program of continuous improvement so impressive is that they were achieved during a period in which media and the advertising industry started to undergo major structural shifts and the internet came to occupy a place in the lives of almost all Australians. The ASB’s decision on Facebook user comments, for example, illustrates the way in which the organisation has managed to get ahead of the game, leading the world in a way unlikely to be matched by any statutory regulator.

It also shows how the ASB scheme applies to advertising and marketing communications that consumers encounter across a range of channels and platforms. AANA CEO Sunita Gloster explains the commitment of the industry to adapt to changing technologies:

“Consumers have an entirely reasonable and justifiable expectation that marketers’ ethical behaviour remains the same, irrespective of whether they are operating in a traditional or a digital medium. Marketers recognise that for brands to maintain consumer loyalty they must retain trust.”

In his *Third Report* on the Advertising Standards Council, Chairman Sir Richard Kirby set out the aims of the organisation formed in 1974:

“An important function of the Council is to define and maintain standards of ethics in the advertising industry so as to conform with an ever changing world and to merit public confidence.”

Although the state of this “ever changing world” could not have been imagined back in 1974, the drive to maintain standards of ethics continues.

SECTION 4

ISSUES AND STATISTICS – 40 YEARS OF CHANGING COMMUNITY VIEWS

During the 40 year history of advertising self-regulation in Australia, it is clear that community views about a wide range of issues have continued to change. Some issues have continued to be of interest to the community, while others have been resolved and have ceased to raise any hackles.

The statistics gathered during the 40 year history also show an interesting pattern of the causes taken up by concerned community members.

TASTE AND DECENCY IN ADVERTISING

One of the main concerns for the ASC when it first began was how to look at ads that people complained about in terms of taste and decency. Between 1976 and 1978, taste and decency accounted for 204 of the total 715 complaints yet there was nothing in the Codes to cover this. Included were complaints about rough language, sex or nudity in advertisements, bad manners, inappropriate use of religion and discrimination against women.

Between 1978 and 1981, taste and decency continued to be the most complained about issue, with over 20 per cent of advertisements falling in this category. The ASC thought it to be too difficult to put in place a code which could cover all areas of taste and decency, and examined each complaint individually.

In the 1980s many of these issues were covered by the Code of Ethics, under a clause stating advertisements 'shall not contain anything which in the light of generally prevailing community standards is likely to cause grave offense to the community or a significant section of the community'. The AANA Code of Ethics used by the ASB after 1997 also covered most of these 'taste and decency' issues in more detail,

including discrimination, language, violence and sex and nudity.

To this day the ASB continues to receive a large number of complaints about the 'ick factor' in advertisements. This includes images of nose-picking or passing wind and social values issues like extra-marital affairs. Most are considered by the Board under the broad category of 'other', but in most cases complaints are dismissed as they don't breach a particular section of the code. In 2014, the 'other' category accounted for 16.6 per cent of total complaints.

CIGARETTE ADVERTISING

In 1975 legislation was passed banning advertising of cigarettes and tobacco products on radio and television. Complaints about other mediums continued to be considered by the ASC. Between 1981 and 1983, the percentage of all complaints about cigarettes received by ASC rose from four to 16 per cent. Surprisingly, it wasn't just the tobacco companies that were receiving complaints. In 1983 the ASC received multiple complaints about various anti-smoking campaigns, two of which were upheld for making unsubstantiated claims.

Between 1984 and 1989 an average of 17 per cent of complaints received each year were about cigarette advertising.

Cigarette advertising complaints included illegible or missing health warnings, exaggeration of the satisfaction given by smoking, making smoking attractive to children and associating smoking with physical prowess or athletic success.

In 1985 the issue of tobacco sponsorship of sporting events was addressed by the ASC. It noted that numerous complaints had been received about sponsorship and determined that if a particular brand of cigarettes was mentioned in sponsorship messages, this would constitute an advertisement and must carry the appropriate health messages. Excluded was where the company name formed an integral part of the title of a sponsored event, and tobacco products themselves weren't mentioned, such as the 'Winfield Cup'.

By 1987 nearly 28 per cent of complaints were about cigarette advertising, with concerns about sponsorship of sports and inadequate health warning labels continuing.

As of March 1990, people were no longer permitted to be depicted in cigarette advertising, and by the end of 1990 cigarettes were no longer able to be advertised in newspapers or magazines. After that complaints about cigarette advertising fell to less than one per cent a year.

The Tobacco Advertising Prohibition Act 1992 banned the majority of cigarette advertising, with the exception of point-of-sale advertising, which is regulated by State and Territory Governments. In 2012 the Act was amended to include internet advertising.

While the ASB doesn't have to consider tobacco advertising, the issue of smoking in advertisements is still of concern to the community. Any advertisement that is seen to glamorise smoking will be in breach of the AANA Code of Ethics.

In 2010, the ASB upheld a complaint against a Nicabate ad which showed a kangaroo smoking as

it made smoking attractive to children. Similarly an advertisement for electronic cigarettes in 2013, which didn't contain tobacco, was found to be in breach of the Code for glamorising smoking.

TRUTH IN ADVERTISING

From the establishment of the ASC, through to the mid-1990s, a large portion of complaints received fell under the original Advertising Code of Ethics. This code differed greatly to the current code, in that it mostly dealt with issues of false and misleading advertising.

Throughout the 1980s around one third of complaints received each year would fall under this code. The complaints received included allegations of deception and unfair disparagement of identifiable products, services or competitors.

By the early 1990s the ASC began to see fewer complaints about misleading or deceptive advertising, and began to see more about issues of sexism, discrimination or sex in advertising.

When the ASB was formed, truth and accuracy was not covered in its remit, and complaints received centred on community standards in advertising.

The ASB now considers some matters of truth and accuracy when related to food and beverage promotion, or environmental issues, but doesn't consider this in relation to the majority of advertisements.

The Advertising Claims Board (Claims Board) is also administered by the ASB, and it will consider competitor complaints in relation to truth and

accuracy claims. Since 1998 there have been 18 cases considered by the Claims Board.

PORTRAYAL OF PEOPLE – DISCRIMINATION

Discrimination in advertising has historically been the reason for numerous complaints. When the ASC was first established discrimination complaints were classified under taste and decency, with no codes to examine them against.

In 1986 the Code of Ethics was broadened to include issues around discrimination, and in particular, sexism. The new section of the code dealt with ‘matters likely to cause widespread offence’. During the 1990s there was extensive lobbying by women’s groups to create a specific clause under the Code of Ethics around the portrayal of women in advertising. The Council believed this wouldn’t be a good idea as it would be ‘unnecessary, discriminatory and potentially unlawful’ (ASC 1993).

In 1993 there were a number of advertisements which received large numbers of complaints for sexism against women. These included ads where a German Shepherd was considered a ‘man’s dog’ as it could rip a woman’s jeans off with its teeth (Eagle Bitter), and a woman in underwear being sawn in half by a magician, but still ‘looking good’ (Berlei), which were both dismissed by the ASC. There was also a lot of media attention for ads which said that women wouldn’t show up to work because of a sale (Katies), which compared a pregnant woman to a car “there’s nowhere more comfortable than inside a wide body” (Toyota), and which showed a man with his hand down a woman’s top “when you see this model in the flesh, you will express your desire for it on the spot” (Fairfax & Roberts). All of these complaints

were upheld by the ASC for demeaning the dignity of women.

In its first year of operation the ASB received the most complaints about section 2.1 of the new AANA Advertiser Code of Ethics. Section 2.1 dealt with discrimination on the basis of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.

In 1998 portrayal of people in advertisements was the issue that attracted the most complaints, with 30 per cent of complaints relating to this. In 1999 this issue continued to be the most complained about, with 38 per cent of complaints.

By 2000, portrayal of people was the second most complained about issue, behind sex, sexuality and nudity.

Until 2004, complaints about gender discrimination were mostly made by females, but one anti-domestic violence campaign in 2004 saw over 20 males complain that it suggested all men were violent.

Many complaints considered under discrimination were centred on the depiction of women in advertising. The proportion of complaints in this category decreased after the introduction of the exploitative and degrading section of the Code in 2012.

SEX IN ADVERTISING

The issue of sex, sexuality and nudity in advertising, attracts a large number of complaints. The ASC counted complaints of this nature under the category of taste and decency, which continued to be one

of the most complained about issues throughout the life of the ASC. Complaints were made about inappropriate or explicit sexual references, nudity or suggested nudity or highly suggestive poses of models in clothing and underwear advertisements.

A commercial for the February 1991 edition of Cleo magazine was the most complained about ad in 1991, and the most complained about television commercial in the history of the ASC, with complainants feeling it was too sexually explicit for family viewing. The ASC found it likely to cause offence to a wide range of people, and upheld the complaint.

Sex, sexuality and nudity continued to be one of the most complained about issues after the establishment of ASB. Between 1998 and 2004 it was consistently the third or fourth most complained about issue each year. By 2005 it was the second most complained about issue and in 2007 it became the most complained about issue for the first time, with 37.9 per cent of complaints. It continues to be either the first or second most complained about issue each year.

In 2012 a new section of the code was created to deal with exploitative and degrading themes in advertising. The section prohibits advertisements which employ sexual appeal which is exploitative and degrading, and allows for examination of complaints that may not fit into the sex, sexuality and nudity section.

Of the 10 most complained about advertisements between 1998 and 2014, eight have been raised under issues of sex, sexuality and nudity. The most complained about advertisement in ASB history was for a dating service for married men (0307/14), encouraging them to have an affair. Others included a pole-dancing mother (156/07), a man with long

nipples (410/06), topless women in a jeans advert (450/09) and three ads for sexual enhancement products (20/07, 0284/10 and 284/05).

SEXUALISATION OF CHILDREN

The Senate Standing Committee on Environment, Communications and the Arts conducted an inquiry in early 2008 into the sexualisation of children in the contemporary media environment, including radio and television, children’s magazines, other print and advertising material and the internet.

The ASB and AANA had considered the issue prior to the inquiry and in April 2008, after extensive public consultation the AANA revised the Children’s Code. While ASB found very few cases upheld on this issue, the revised code specifically prohibited the use of sexual imagery of children in advertising or marketing directed at children, whether in print, on television or online.

While advertisers are responsible and do not intentionally use sexualised images of children, the community can have a different view of an image than the advertiser. In 2014 a website advertisement was found to breach the Code as the Board considered the camera angle and the pose of a young girl to be inappropriate (0136/14).

Community perceptions research in 2013 showed this to be a continuing issue, with research showing that people had high levels of concern about the use of children in advertising, especially if used in an exploitative or degrading way.

LANGUAGE IN ADVERTISING

Year	Upheld	Dismissed
1975		Damn (Ardath Cigarettes)
1984	Sh*t (Wheels Mag)	
1984	“Stick it up your landlord” (Logan Units Display Homes)	
1986	Christ (Dad and Dave Security Doors)	Nuts (Mr Specs)
1986	Crap (Jeans Extra)	
1989		Bloody (Power Brewing)
1999		Bugger (Toyota)
2000		Shit scared (Autobarn Bundaberg)
2000		Bum (Kimberly-Clark Aust Pty Ltd)
2000		Piss (ChaosMusic Ltd)
2000		Wankers (J Jackson)
2001		Kick Arse (Rebel Sport Ltd)
2002		Sweet FA (Virgin Mobile Aust Pty Ltd)
2003		F### (beeped out) (Mitsubishi Motors Australia Ltd)
2003		Dickhead (NSW Premier's Department)
2003		Bitch (Sara Lee Household & Body Care Aust)
2004		Crap (Virgin Mobile)
2005		Bastard (Jim Beam)
2005	Fucked (Geoff Walsh Engine Parts Pty Ltd)	
2006		Freakn' (Vodafone Network Pty Ltd)
2009		WTF (Nova 106.9)
2011	Fuck (Mistletone Enterprises)	F*ck (Sydney Festival)
2012		Vagina (Johnson & Johnson Pacific Pty Ltd)
2013	OMFG Just Group Ltd	Boobs (Bonds Industries Ltd)
2013		C-Bomb (C-Bomb hot sauce)

ADVERTISING FOOD AND BEVERAGES

Since the ASC first began taking complaints three product types have consistently received the most complaints: food and beverage; alcohol; and vehicles.

While the percentages of complaints in each of these categories have fluctuated over the 40 years of advertising self-regulation, all three have consistently received complaints.

The percentages of complaints received about each product didn't change much between the periods of ASC and ASB.

The lowest recorded percentage of complaints about food and beverage advertising was in 1989, with just two percent of complaints, and the highest was in 2007 with 33 per cent of complaints.

In 2007 the AANA brought in a new code which looked specifically at food and beverage advertising. The Food and Beverage code differs from the Code of Ethics as it requires ASB to consider matters of truthfulness.

Following increased community debate about increasing obesity levels of children in Australia, in 2009 the Australian Food and Grocery Council lead development of two initiatives designed to reduce advertising of less-healthy food and beverages to children.

Despite having specific Codes and Initiatives for food and beverage products, the majority of complaints about these products fall under issues in the Code of Ethics, such as discrimination, sex, sexuality and nudity or health and safety.

ALCOHOL ADVERTISING

While both the ASC and ASB continually received complaints about alcohol advertising, the amount of complaints in this category has fluctuated. The lowest recorded percentage of alcohol ad complaints was in 1994 with just one per cent, and the highest was in 2004 with 21 per cent.

Complaints about alcohol advertisements fall under a variety of categories, including discrimination, sex, sexuality and nudity and violence. In particular, complaints that relate to issues of alcohol consumption will often be looked at under the health and safety section of the current Code of Ethics. Section 2.6 looks at issues that are contrary to prevailing community standards, such as encouraging excess consumption of alcohol, promoting alcohol to children and drink driving.

Complaints about alcohol ads are also referred to the Alcoholic Beverages Advertising Code (ABAC). ABAC has been in existence since 1998. Before that the ASC considered complaints under the Advertising Code for Alcoholic Beverages.

In 2002 a two year enquiry into alcohol advertising by Industry and Government resulted in a number of changes to the ABAC scheme which were implemented in 2004. This resulted in a co-regulatory system with Government nominees on both the management committee and the complaints panel, and more restrictive provisions on alcohol advisements, such as alcohol advertisements cannot use anyone under the age of 25 in an advertisement, unless part of a group scene, cannot promote drinking in excess of health guidelines and cannot show alcohol to be the cause of a positive change of mood, or social success.

VEHICLE ADVERTISING

Vehicle advertisements are one of the most consistently complained about forms of advertisements in Australia. Percentages of total advertisement complaints about vehicles have ranged from 4.8 per cent to 15.7 per cent.

A great change to vehicle advertising has occurred over the years. In the past many vehicle ads depicted driving at high speeds and in what would today be considered a ‘dangerous manner’.

The ASC started by looking at vehicle complaints under their Code of Ethics, which looked at issues such as not encouraging breaches of the law (Clause 3) and not encouraging unsafe behaviour (Clause 4).

In 1990 the ASC upheld two print advertisements for vehicles which promoted speeding and unsafe driving practices for the phrases “push back the scenery in speeds in excess of 200 kph” (Alpha Romeo) and “put your foot down and you’ll not only feel what the kick of 100 kw power does to your pulse rate...” (Toyota Corolla SX).

Since December 2002 the ASB has determined vehicle complaints under the Federal Chamber of Automotive Industries (FCAI) Code, although vehicle ads can also be considered under the Code of Ethics if driving safety issues are not the issue complained about.

In addition to only showing safe and legal driving practices, the FCAI code goes further than the Code of Ethics in that it looks at environmental damage, the suggestion of driving at speeds in excess of the speed limit and the use of motor sport in advertising.

THE STATISTICS

Year	# of complaints	Medium attracting highest complaint #	Category attracting highest complaint #	Issue attracting highest complaint #
1974	n/a	n/a	n/a	n/a
1975*	88	n/a	Food and Beverages	n/a
1979	n/a	n/a	n/a	n/a
1980	n/a	n/a	n/a	n/a
1981	176	Print	Other	Taste and Decency
1984*	272	Print	n/a	Truth / Accuracy
1985*	2233	Television	Cigarettes	Taste and Decency
1986	1066	Television	Food and Beverages	Taste and Decency
1989	958	Outdoor	Entertainment	Sexism
1990	1000	Television	Vehicles	Truth / Accuracy
1994	1066	Television	Housegoods/services	Truth / Accuracy
1995	1095	Television	Food and Beverages	Taste and Decency
1999*	2065	Television	Food and Beverages	Portrayal of People
2000	2558	Television	Clothing	Sex, sexuality & nudity
2004	2266	Television	Alcohol	Portrayal of People
2005	2956	Television	Food and Beverages	Discrimination and Vilification
2009	3796	Television	Food and Beverages	Sex, sexuality & nudity
2010	3526	Television	Toiletries	Sex, sexuality & nudity
2014*	5735	Television	Automotive	Discrimination and Vilification

* Public awareness campaigns.

1985 Rise in complaints related to public awareness campaign, as well as rising concern over sexism and cigarette advertising

2014 Rise in complaints related to public awareness campaign, as well as rising concern over social values in advertising.

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Resources used in compiling this publication include reports and articles readily available, records held in the files of the Advertising Standards Council, and interviews with some key participants. It was designed as an informative guide to developments over the past 40 years and not as a comprehensive review of all historical materials or perspectives on past events.

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SIGNATURES



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