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**By Email: [obesitycommittee.sen@aph.gov.au](mailto:obesitycommittee.sen@aph.gov.au)**

4 July 2018

**Submission to the Select Committee into the Obesity Epidemic in Australia**

Dear Committee

Please find **enclosed** our submission in response to the Select Committee into the Obesity Epidemic in Australia (**the Committee**).

We would be pleased to discuss any aspect of our submission with the Committee, or provide assistance on any other relevant matters that may arise. It would also be appreciated if you could please keep us notified of updates in relation to the Committee and its progress.

Finally, for your information and to clarify, earlier this year we launched a rebrand of our organisation, noting that while the names have changed the core function of what we do remains strongly the same. From 1 March 2018, the following brand changes applied:

- the Advertising Standards Bureau (ASB) is now known as '*Ad Standards*'
- the Advertising Standards Board is now known as the '*Ad Standards Community Panel*'
- the Advertising Claims Board is now known as the '*Ad Standards Industry Jury*'
- the Bureau Board is now known as the '*Ad Standards Board of Directors*', and
- a new '*Ad Standards Education and Advice*' brand has been introduced.

Kind regards

Fiona Jolly  
Chief Executive Officer





# Ad Standards - Submission to the Select Committee into the Obesity Epidemic in Australia

July 2018

## 1. Executive summary

1.1. Ad Standards appreciates the opportunity to provide comments to the Select Committee into the Obesity Epidemic in Australia (**the Committee**), in particular, our submission relates to the following matters in the Committee's Terms of Reference:

- e. The effectiveness of existing policies and programs introduced by Australian governments to improve diets and prevent childhood obesity;*
- h. any other related matters.*

1.2. Specifically the purpose of our submission is to inform the Committee:

- (a) about the current advertising self-regulation system, and in particular its effectiveness in minimising the exposure of children to unhealthy food and beverage advertising and marketing; and
- (b) about the low level of community concern in relation to food and non-alcoholic beverage advertising primarily directed to children, as evidenced by the low number of complaints received by Ad Standards on these issues.

## 2. Advertising self-regulation in Australia

2.1. Australia currently has in place a stringent and effective self-regulatory system for regulating the content of food and non-alcoholic beverage advertising, including advertising to children, across all forms of media.

2.2. Self-regulation provides an effective and efficient way for advertisers to engage with consumers and to respond to consumers' concerns about advertising. It also ensures consumer protection by providing a free and fast route for consumers to express their views about advertising, and the means by which their complaints can be resolved through an independent adjudication process.

2.3. Ad Standards is responsible for the administration of the complaint resolution component of the advertising self-regulation system in Australia. When required, Ad Standards is supported in enforcing compliance with Community Panel determinations by the media and media industry associations, for example, the Outdoor Media Association's commitment on behalf of its members to act on Community Panel decisions in relation to third party outdoor advertising.

2.4. This system has demonstrated its effectiveness during the past 20 years - with a record of nearly 100 per cent (currently 97%) compliance by industry with Community Panel determinations.



- 2.5. Ad Standards' independent, well-recognised and proven complaints resolution process therefore offers a practical and cost-effective solution to the handling of advertising content issues, including complaints in relation to food and beverage advertising and marketing.

### 3. About Ad Standards

- 3.1. Ad Standards supports the work of the Ad Standards Community Panel (**Community Panel**) and Ad Standards Industry Jury (**Industry Jury**), the bodies established to consider public and competitor complaints respectively about advertising and marketing communications against provisions set out in the relevant codes and initiatives.
- 3.2. In a report released by Deloitte Access Economics in August 2017<sup>1</sup>, positive findings were made about the efficiency, responsiveness and cost effectiveness of the work of Ad Standards. The report focused on the differences between self-regulation of complaints handling and direct government regulation, finding that the self-regulatory approach achieves similar outcomes to government regulation in compliance and effectiveness, and performs better in terms of cost, efficiency and responsiveness.
- 3.3. In its conclusion Deloitte Access Economics found that:
  - *On balance, **self-regulation of complaints handling is more likely to be effective than direct government regulation across the dimensions of cost, efficiency and responsiveness, and equal with government in terms of effectiveness and compliance.***
  - *Therefore in our view in this case **self-regulation appears to be a better choice than direct regulation by government.***
  - *The current self-regulatory complaints handling system for community standards in advertising appears to be working effectively and in the **best interests of Australian consumers.***
- 3.4. A more detailed description of the current advertising self-regulation system and the role of Ad Standards is provided for reference at **Appendix 1** to this submission.

### 4. Codes and Initiatives applying to advertising of food and beverages

- 4.1. The self-regulatory codes and initiatives that apply to food and beverage advertising and marketing in Australia are:
  - (a) AANA Code of Ethics
  - (b) AANA Food and Beverages Advertising and Marketing Communications Code (**AANA Food & Beverage Code**)
  - (c) AANA Code for Advertising and Marketing Communications to Children (**AANA Children's Code**)

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<sup>1</sup> "Assessing the benefits of a self-regulatory advertising complaints handling system" dated August 2017 ([https://adstandards.com.au/sites/default/files/final\\_benefits\\_of\\_self-regulation.pdf](https://adstandards.com.au/sites/default/files/final_benefits_of_self-regulation.pdf))



- (d) Australian Food and Grocery Council (**AFGC**) Responsible Children's Marketing Initiative (**RCMI**) for the Australian Food and Beverage Industry
  - (e) AFGC Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (**QSRI**)
- 4.2. These Codes and Initiatives have been negotiated with government, industry and advertisers to ensure appropriate advertising of food choices to children.
- 4.3. In particular, the AANA Food & Beverages Code aims to ensure that advertisers develop and maintain a high sense of social responsibility in advertising food and beverage products. The RCMI and QSRI have additional provisions relating to advertising food and beverage products to children, with the aim to ensure that only healthier foods are advertised to children and when they are advertised they include messages regarding nutrition and exercise.
- 4.4. Further details about these Codes and Initiatives are set out in **Appendix 2** to this submission, and they can also be accessed from the Ad Standards website<sup>2</sup>.

## **5. Rate of complaints about food and beverage advertising**

- 5.1. As set out above, Ad Standards' role is to administer complaints from the public about the compliance of advertisements with the advertising standards set out in the industry Codes and Initiatives, including those developed by the food and beverage industry. Complaint statistics form an important part of measuring compliance with these Codes and Initiatives.
- 5.2. The long term statistics support the view that the majority of complaints made to Ad Standards about food and non-alcoholic beverage advertising, are in relation to concerns around the taste and decency of the advertising content (which is covered by the AANA Code of Ethics), rather than the matters considered under the AANA Food & Beverage Code and AFGC Initiatives (which deal with complaints regarding: truth and accuracy, excessive consumption, health and nutrition claims and promotion of dietary choices - as set out in Appendix 2).
- 5.3. In particular it is relevant to note that for the five years from 2013 to 2017 (inclusive):
- (a) Ad Standards received 24,939 complaints, of which 2,786 raised issues about food and beverages (i.e. only around 11% of all complaints);
  - (b) only 120 of these food and beverage complaints raised issues under the AANA Food & Beverage Code, and only a further 64 complaints raised issues under the Initiatives;
  - (c) of these 184 complaints, only 26 complaints were about advertisements that were ultimately found by the Ad Standards Community Panel to breach the AANA Food & Beverage Code and/or Initiatives – this equates to 0.104% of all complaints received in this 5 year period;

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<sup>2</sup> <https://adstandards.com.au/codes-and-cases/codes-and-initiatives>



(d) in comparison, 10.42% of all complaints received by Ad Standards over this 5 year period were about advertisements that were found to be in breach of any of the AANA Codes and/or Initiatives.

- 5.4. Although advertisements for food and beverages were the most complained about category in 2017 (24% of all complaints received), a large number of these complaints raised concerns against the AANA Code of Ethics (which deals with issues of taste and decency). Specifically these complaints raised issues in relation to language (section 2.5) and discrimination and vilification (section 2.1)<sup>3</sup>.
- 5.5. In 2017, only 27 of the total 6,472 complaints received by Ad Standards, were considered by the Community Panel under the AANA Food & Beverage Code, and only a further 18 complaints raised concerns under the AFGC Initiatives. Of these 45 complaints only 2 complaints about two advertisements were found by the Community Panel to be in breach of the relevant standards. For 2017, this represented 0.031% of all complaints received.
- 5.6. What these statistics show is that there is a low level of community concern in relation to food and non-alcoholic beverage advertising primarily directed to children, and/or the portrayal of health and nutritional values of such products, as evidenced by the low number of complaints received by Ad Standards on these issues.
- 5.7. Details of particular complaints, decisions of the Community Panel and information about how the Community Panel applies the particular provisions of the Codes are available on our website and in our annual Review of Operations<sup>4</sup>.

## **6. Ad Standards Research into community perceptions about advertising to children**

- 6.1. Noting that a key focus of the Committee's inquiry is in relation to "childhood obesity", it is relevant to note that in 2015, Ad Standards commissioned research to explore community perceptions about advertising to children.
- 6.2. Although advertising to children represents a small percentage of complaints received by Ad Standards, it is an issue that is often raised in the media and by community groups. Because of the level of interest in this issue, we thought it important to gauge community perceptions especially in relation to advertising of food to children.
- 6.3. The research, conducted by Colmar Brunton Social Research<sup>5</sup>, took 10 advertisements which had been considered by the Community Panel under the AANA Children's Code and the AFGC's Responsible Children's Marketing Initiative (RCMI). Two advertisements were included to gauge community assessment regarding images of children and young people.
- 6.4. Overall, the research showed that the Community Panel's determinations about whether an advertising or marketing communication was directed primarily to children were

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<sup>3</sup> [https://adstandards.com.au/sites/default/files/ad\\_standards\\_review\\_of\\_ops\\_2017\\_final.pdf](https://adstandards.com.au/sites/default/files/ad_standards_review_of_ops_2017_final.pdf)

<sup>4</sup> <https://adstandards.com.au/publications/review-operations>

<sup>5</sup> [https://adstandards.com.au/sites/default/files/2015\\_community\\_perceptions\\_on\\_advertising\\_directed\\_primarily\\_to\\_children\\_web\\_final.pdf](https://adstandards.com.au/sites/default/files/2015_community_perceptions_on_advertising_directed_primarily_to_children_web_final.pdf)



generally in line with community perceptions. It also highlighted a low level of general concern about advertising toys or food and beverages to children.

- 6.5. Also importantly, respondents highlighted that the features of an advertisement that made an advertisement directed to children were largely in line with those found in the AANA Practice Note for the Children's Code.
- 6.6. The research also showed that when it came to specific sections of the AANA Children's Code, such as sexualisation of children, parental authority and food and beverage advertising, the Community Panel's determinations were generally in line with community perceptions.

## **7. Effectiveness of self-regulation for food and beverage advertising**

- 7.1. In conclusion, the current self-regulation system provides an effective, transparent and robust mechanism for consumers to raise concerns about the content of particular advertisements and provides a robust, independent and fair system for assessing whether or not an advertisement meets the broader community's standards.
- 7.2. A determination by the Community Panel that an advertisement breaches community standards results in the prompt removal of the advertisement and prohibits use of the advertisement in the future. Less than 1% of advertisements complained about failed to comply with the system in more than 14 years of operation.
- 7.3. We would be pleased to discuss further with the Committee the ways in which the current advertising self-regulation system delivers a cost effective and efficient system of regulation for food and non-alcoholic beverage advertising, and provides appropriate protections and safeguards for the community.

**4 July 2018**



### **1. The advertising self-regulation system**

- 1.1. Australia's system of advertising self-regulation is recognised as world class. The current system was established by the AANA in 1998. It recognises that advertisers share an interest in promoting consumer confidence in and respect for general standards of advertising.
- 1.2. Self-regulation of the advertising industry has been achieved by establishing a set of rules and principles of best practice to which the industry voluntarily agrees to be bound. These rules are expressed in a number of advertising codes and industry initiatives. The rules are based on the belief that advertisements should be legal, decent, honest and truthful, prepared with a sense of social responsibility to the consumer and society as a whole and with due respect to the rules of fair competition. Self-regulation of advertising is not designed to set community standards, but rather to reflect community standards.
- 1.3. The system is funded by advertisers agreeing to a levy being applied to their media expenditures and is well supported by all parts of the industry – advertisers, advertising agencies, media buyers, media operators and industry associations.
- 1.4. High standards of advertising are maintained through the interaction of the various parts of the self-regulation system:
  - (a) through the existence and development of appropriate codes and initiatives relating to advertising standards;
  - (b) the voluntary compliance of advertisers;
  - (c) the efforts of other industry stakeholders in ensuring compliance, supporting industry education and public awareness programs, and supporting enforcement where required; and
  - (d) the operation of the complaint resolution process.
- 1.5. The system meets world best practice in self-regulation and operates, at no cost to the consumer, on the principles of accessibility, transparency, responsiveness and robust decision making.

### **2. Role of Ad Standards**

- 2.1 Ad Standards administers the complaint resolution component of the advertising self-regulation system. The work of Ad Standards is not underpinned by any Government legislation.
- 2.2 Ad Standards' purpose is that the community, industry and government have confidence in, and respect the advertising self-regulatory system and are assured that the general standards of advertising are in line with community values.



- 2.3 Ad Standards aims to administer a well-respected, effective and independent advertising complaints resolution service that regulates advertising standards in Australia, adjudicating both public and competitor complaints, and to ensure compliance with relevant codes.
- 2.4 Currently, Ad Standards administers the following codes of practice relating to advertising and marketing communications in Australia:
- (a) Australian Association of National Advertisers (AANA) Code of Ethics;
  - (b) AANA Code for Advertising and Marketing Communications to Children;
  - (c) AANA Food and Beverages Advertising and Marketing Communication Code;
  - (d) AANA Environmental Claims in Advertising and Marketing Code;
  - (e) AANA Wagering Advertising and Marketing Communication Code;
  - (f) Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising;
  - (g) Australian Food and Grocery Council Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry; and
  - (h) Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.
- 2.5 These codes apply to all advertising and marketing communications across all media. Ad Standards also works with the Alcohol Beverages Advertising Code (ABAC) management scheme, and accepts, and forwards to the ABAC chief adjudicator, all complaints about alcohol advertisements.
- 2.6 Ad Standards is secretariat for the Community Panel and Industry Jury, the bodies appointed to adjudicate public and competitor complaints and to ensure compliance with the relevant codes and industry initiatives. They both have separate and distinct roles considering public and competitor complaints about advertising against the advertising codes they administer. Members of the Community Panel are community representatives, independent of the industry and appointed following a publicly advertised application and interview process. Members of the Industry Jury are legal practitioners sourced from a register of lawyers experienced in advertising and/or competition and consumer law.

### **3. Role of the Community Panel**

- 3.1 The Community Panel is the independent body established to determine public complaints about advertising and marketing communications against the principles set out in the relevant codes. The Community Panel makes determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety.
- 3.2 The Community Panel comprises 20 members of the community and reflects a diverse knowledge and experience base. The Community Panel is gender balanced and members





come from a broad range of age groups and backgrounds. It is independent, dedicated and diverse and as representative of the diversity of Australian society as any such group can be.

- 3.3 Individual Community Panel members do not represent any particular interest group (industry or consumer) and are individually and collectively clearly independent of the industry. On the rare occasion an individual member has a connection with a party concerned in a particular determination, that Community Panel member absents herself or himself from the meeting.
- 3.4 The Community Panel discharges its responsibilities with fairness, impartiality and with a keen sense of prevailing community values in its broadest sense. Its task is often a difficult one and the outcomes of its determinations will not and cannot please everyone.
- 3.5 Membership of the Community Panel is on a fixed term basis. New appointments are staggered to avoid desensitisation and to ensure the Community Panel retains a mix of corporate knowledge and at the same time introducing people with different experiences, views and skills. Profiles of current Community Panel members are available to all on the Ad Standards website ([www.adstandards.com.au](http://www.adstandards.com.au)).
- 3.6 Community Panel appointments are made following a publicly advertised application and interview process. People sought for appointment to the Community Panel ideally have an interest in, and views on, advertising and have been exposed to a broad range of community activities and interests.
- 3.7 Community Panel Members participate in twice yearly training days to reinforce codes and initiatives and highlight issues impacting on community standards in advertising.

#### **4. Role of the Industry Jury**

- 4.1 The Industry Jury provides a separate competitive complaint resolution service and is designed to determine complaints involving issues of truth, accuracy and legality of advertising on a user pays cost recovery basis.
- 4.2 The Industry Jury is a system of alternative dispute resolution aimed at addressing and resolving challenges to advertising that might otherwise lead to expensive and time consuming litigation.
- 4.3 The Industry Jury considers complaints which breach Part 1 of the AANA Code of Ethics. This includes complaints about: the legality of an advertisement; misleading or deceptive advertisements; and advertisements that contain misrepresentations likely to harm a business.
- 4.4 Complaints received by the Industry Jury are considered by a panel of legal advisors with experience and expertise in advertising and/or trade practices law.

#### **5. Role of Independent Reviewer of Community Panel determinations**

- 5.1 As part of its ongoing commitment to international best practice in delivering the advertising self-regulation system in Australia, Ad Standards introduced a review process for Community Panel determinations in April 2008.



- 5.2 The independent review process provides the community and advertisers a channel through which they can appeal decisions made by the Community Panel in prescribed circumstances. The review process is available to the advertiser and the person(s) who originally made a complaint.
- 5.3 In line with international best practice, the Independent Reviewer's role is to assess the validity of the process followed by the Community Panel, or to assess any new material provided by parties to the case. The Independent Reviewer does not provide a further merit review of a case. Their role is to recommend whether the Community Panel's original determination should be confirmed or be reviewed. It would be inappropriate to set up one person as a decision maker in place of a 20 member panel that makes determinations on the basis of community standards.
- 5.4 There are three grounds for review:
- (a) Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided;
  - (b) Where there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the codes or initiatives, or clearly made against the weight of evidence); and/or
  - (c) Where there was a substantial flaw in the process by which the determination was made.
- 5.5 The Independent Reviewer will first consider whether the application for review sets out a prima facie case for review and will decide to accept or not accept the request. If the request is accepted, the Independent Reviewer will undertake appropriate investigation and will make a recommendation to the Community Panel, stating whether the Community Panel's original determination should be reviewed or confirmed.
- 5.6 During the review process, the original determination (and any subsequent remedial action or withdrawal of the advertisement) will stand. The Ad Standards publishes the initial determination until the outcome of the review is known at which point the revised determination with Independent Reviewer recommendation is published.
- 5.7 Information about the review process is available on the Ad Standards website. The advertiser and original complainant(s) are also informed about the process when notified of the complaint determination.

## **6. Principles underpinning the self-regulation complaints system**

### **6.1 *Accessibility of complaint process***

- (a) The complaint process is accessible to all members of the public. Complaints may be made via an online complaint form, by post or facsimile. A single written complaint is sufficient to initiate the complaint process.
- (b) The complaint process is a free service and provides fairness for complainants and advertisers. Process steps are clearly set out and available to all on the Ad



Standards website, along with information about how the Community Panel makes its determinations. Members of the public without access to the internet are able to contact Ad Standards and request information about the complaint process.

- (c) Ensuring consumers know where to complain about advertising is an important issue for Ad Standards. Ad Standards considers that the increase in complaint numbers over recent years is partly attributable to the success of the Ad Standards awareness campaign, “People like you”, launched on television in early March 2014. In addition to raising awareness of the role and composition of the Ad Standards Community Panel, the awareness campaign highlighted how easy it is to lodge a complaint online. This campaign was extended to social media through 2016-17.
- (d) In 2017 Ad Standards commissioned a major research project to assess community perceptions since 2006. The 10 year review (‘Community Perceptions 2007-2017’ by Colmar Brunton Social Research<sup>6</sup>) showed the likelihood of people complaining to Ad Standards if they have a concern about advertising has increased significantly since 2006, with 51% of respondents likely to complain to Ad Standards in 2017 compared to 31% in 2006.
- (e) The ‘Community Perceptions 2007-2017’ research also showed a consistent trend since 2009 where the majority (90%) of participants had not made a formal complaint about advertising standards. The main reason for not making a complaint was that they were not concerned about any advertising they had seen or heard.

## **6.2 Transparency of complaint process and decision making**

- (a) Ad Standards is committed to a high standard of transparency with regards to Community Panel determinations.
- (b) A single written complaint is sufficient to initiate a formal investigation by Ad Standards. An anonymous complaint is not sufficient to initiate a formal complaint, but it can be included as part of a complaint that has already been raised or is subsequently raised.
- (c) Complaints are promptly assessed as to their appropriateness for submission to the Community Panel for determination. Ad Standards, as secretariat for the Community Panel, responds to all complainants, informing them of the status of their complaint and keeps complainants and advertisers informed of the progress of complaints throughout the process via written correspondence.
- (d) In 2010, Ad Standards initiated the development of a series of “Determination Summaries”, aimed at providing a general overview of Community Panel determinations on complaints about particular issues covered by the codes. The Determination Summaries are available from the Ad Standards website and cover

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<sup>6</sup> [https://adstandards.com.au/sites/default/files/2007-2017\\_community\\_perceptions\\_web.pdf](https://adstandards.com.au/sites/default/files/2007-2017_community_perceptions_web.pdf)



topics including *Discrimination and vilification in advertising*, *Use of sexual appeal in an exploitative and degrading manner* and *Portrayal of gender in advertising*.

- (e) The summaries are not “how to” guides and are not intended to operate in the manner of binding legal precedents, but are designed to assist the advertising industry, consumers and the Community Panel itself in understanding how the Community Panel has viewed particular issues covered by the codes that have been the subject of complaints in the past.
- (f) All case reports are also made publicly available on the Ad Standards website promptly after determination. Case reports contain details about the complaint, a description of the advertisement, the advertiser response and the Community Panel’s determination, along with a summary of the reasons for its decision.

### 6.3 **Robust decision making**

- (a) The Community Panel has the complex and sometimes difficult task of making determinations in relation to a wide range of issues covered by the various codes and initiatives it administers.
- (b) To assist the Community Panel in its deliberations, Ad Standards conducts two training days each year in which issues of topical or general importance and determination precedent are discussed. This often includes presentations from other organisations or experts on matters of current interest. For example, the Outdoor Media Association presented to the Community Panel on *Understanding who sees outdoor advertising and how*. An update was also provided at the training day from ABAC representatives on recent issues in alcohol advertising.
- (c) All community standards research which Ad Standards regularly undertakes on behalf of the Community Panel is discussed at training days both during the draft stage and subsequently during a formal presentation of the final research report. Ad Standards also involves the Community Panel in the development of the Determination Summaries which provide precedent information regarding previous Community Panel determinations on particular issues.
- (d) All case reports following Community Panel determinations are published on the Ad Standards website. Since these documents are available to the entire community, Ad Standards ensures that determinations in case reports are articulated clearly, logically and concisely.
- (e) The Community Panel is extremely careful to follow appropriate process in making its determinations. The introduction of the Independent Reviewer process in 2008, which allows for a request for review on the basis of a flaw in the determination or a flaw in the process the Community Panel followed, increases the Community Panel’s resolve to ensure sound decision making.

### 6.4 **Responsiveness of complaints handling**

- (a) The Ad Standards complaint handling system is efficient. Ongoing improvements to our case management system have allowed us to maintain prompt turnaround



of complaints and to more accurately report on timeliness. In 2017, 72% of cases were completed within 42 calendar days (covering the period from receipt of complaint until resolution and publication of the final case report), with considerably shorter timeframes for advertisements that receive a large number of complaints or that are likely to breach the code. The average case time during 2017 was 37.8 calendar days from initial complaint receipt to final publication. Ad Standards dealt with 560 cases in 2017.

- (b) Since early 2009 the Community Panel has met at least twice per month, which contributes to the timely turnaround of complaints. It is also possible to provide a 24 to 48 hour turn around for cases where it is likely that the advertisement will breach the Code or if there is immediate and significant community concern. In the latter case, however, most advertisers would remove the advertisement voluntarily – an example of this is a Target advertisement which depicted an act considered by many in the community to be dangerous. Upon receipt of Ad Standards notification of complaints, Target immediately withdrew the advertisement, prior to the Community Panel determination (in which the complaints were upheld). This self-regulatory action on the part of the advertiser is an example of the self-regulation system working as it should.
- (c) Neither the Community Panel nor Ad Standards considers the receipt of complaints a problem. Complaints provide a good test of the self-regulatory system and of the alignment of the codes to community opinion. We do not aim for, or expect to experience a situation where the community does not complain about advertising at all. No system of regulation is failsafe and the role of the complaints process is to act as a safeguard to ensure participants continue to comply with the codes, having regard to changing community standards.

#### 6.5 ***No cost to the community***

- (a) The system is funded by industry – it receives no government funding. Responsible advertisers assist in maintaining the self-regulation system's viability and support its administration by agreeing to a levy being applied to their advertising spend. The levy is paid to and administered by the Australian Advertising Standards Council (AASC). The AASC holds the industry funds in an account which is drawn down to pay the costs of managing the Community Panel and the self-regulatory system. Financial management of the funds is outsourced to a chartered accounting firm and the Annual Financial Statements of Ad Standards and the AASC are audited by independent auditors.

#### 6.6 ***Continuous improvement***

- (a) Ad Standards is committed to continuous improvement, taking into account input from the public and the industry, and having regard to international best practices relating to advertising self-regulation.



(b) Since 2005, Ad Standards has undergone substantial remodeling, including a range of initiatives to improve the transparency and accountability of its complaint handling service. These initiatives include the following:

i. Complaint processing

- A new case management system was implemented in 2010 and further enhanced in 2012 and again in 2016 resulting in improvements in the efficiency and timeliness of complaint processing.

ii. Public awareness

- Major public awareness campaigns were conducted in 2008 and continued in 2011 and 2014.
- Ongoing community standards research has included testing of community awareness about Ad Standards and advertising self-regulation.
- A new website was launched in 2015, with improvements to the presentation of information about the complaint process and role of Ad Standards and determination search functionality. The launch of a blog in 2012 and an official Twitter account in 2014 has assisted in improving our community engagement.
- A rebrand of the organisation was launched on 1 March 2018 to increase awareness and clarify to consumers, advertisers, government and the media, the various elements which make up Ad Standards.

iii. Community standards research

- Research to determine the level of unprompted awareness of the Ad Standards (2006).
- World-first research testing the Community Panel's decisions against the views of the community (2007).
- Community perceptions of violence in advertising (2009).
- Discrimination and vilification in advertising, at the request of the Community Panel, to better inform them about issues in this area (2009).
- Community perceptions of sex, sexuality and nudity in advertising (2010).
- Community perceptions to assess current community attitudes and seek information about possible shifts in community standards and the Community Panel's alignment with those standards (2012).
- Exploitative and degrading advertising (2013).
- Advertising directed primarily to children (2015).
- Community Standards plus 10 year longitudinal study of changes in community views (2017)



- Full research reports are available from the Ad Standards website.
  - Research conducted provides the Community Panel with valuable feedback and Community Panel members have taken the results of such research into account in their consideration of complaints under the codes.
- iv. Maintaining an independent and effective Community Panel
- Since 2005, a number of changes have been made to the structure and procedural arrangements of the Community Panel, including expansion to a membership of 20 and appointment of new members at staggered intervals to ensure that the Community Panel has a mix of experienced and new members.
  - The frequency of meetings has increased, with the Community Panel now meeting twice a month to consider complaints and also between scheduled meetings, usually by teleconference, if Ad Standards considers that a case should be considered as a matter of urgency.
- v. Introduction of an Independent Review process
- An Independent Review process was introduced in April 2008 as part of Ad Standards' efforts to meet international best practice. The process enables original complainants and advertisers to appeal determinations made by the Community Panel.
  - There are currently two Independent Reviewers, Professor Robin Creyke, appointed in June 2015 and Ms Victoria Rubensohn AM, appointed in August 2011.
- vi. Introduction of consistently dismissed category
- A "consistently dismissed" category was introduced in 2010, responding to concerns that resources be devoted to cases that are most likely to be upheld. This initiative has resulted in streamlining of this type of complaint.
- (c) Ad Standards will continue to work with the advertising industry, associated national and international bodies and the community to maintain a healthy system of advertising self-regulation.

## 7. Upheld rates

7.1 Compared to the total number of advertisements considered by the Community Panel in 2017, the number of advertisements found to breach the codes equated to an upheld rate of 15.98 per cent. This compares to 5 per cent in 2006. This is due to the continuous improvement initiatives referred to above, and in particular the appointment of new and more diverse Community Panel members and the incorporation of research findings into the decision making matrix of the Community Panel.



- 7.2 There is no right or wrong number for an upheld rate. There will always be circumstances in which people make valid complaints about an advertisement, but whose complaint is not in line with the broader community. There is a wide range of community views on particular issues and Ad Standards research shows that the Community Panel is generally in line with community views.

## **8. Compliance with Community Panel determinations**

- 8.1 Ad Standards has a record of nearly 100 per cent compliance by industry with decisions of the Community Panel. Ad Standards' ability to achieve compliance across Federal, State and Territory jurisdictions, regardless of the size of the advertiser, is something that legislation and government administration is very unlikely to rival.

## **9. Enforcement of Community Panel determinations**

- 9.1 Regardless of an advertiser's reaction to a Community Panel determination, in the majority of cases where Code breaches are found, advertisers quickly ensure that their advertisement is removed or modified. Very few advertisers require more encouragement to comply. However, if necessary Ad Standards has developed a range of enforcement actions to ensure compliance with Community Panel decisions.
- 9.2 Firstly, if a complaint indicates that an advertisement may breach government regulations or has broken the law, Ad Standards can refer the case report to an appropriate government agency or industry body that has the authority to withdraw the advertisement. This can be done without a case going to the Community Panel for consideration.
- 9.3 Other actions can include:
- (a) An advertiser's failure to respond will always be included in the final case report which is made public on the Ad Standards' website. This is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided.
  - (b) In a similar fashion, an advertiser's failure to respond can feature in information released to the media which follows the relevant Community Panel meeting, and the Ad Standards Chief Executive Officer will respond to all media requests with a full account of the particulars of the case, including the timeliness of the advertiser's compliance.
  - (c) Should an advertiser fail to respond to Ad Standards' request to remove or modify advertising, Ad Standards will liaise with industry and media bodies such as FreeTV and the Outdoor Media Association, which will either negotiate with the advertiser directly for the removal of the advertisement or in specific cases, take action to remove the advertisement.
  - (d) Under appropriate circumstances, Ad Standards will refer an advertiser to a government agency such as: the Commonwealth Department of Communications and the Arts; the Australian Communications and Media Authority; the Attorney-General's Department; or to State Police Departments to request that these





agencies assist in taking action against the advertiser. In some cases, local councils may also have relevant authority to assist with the removal of an advertisement, although this authority varies greatly between jurisdictions. Although Government agencies can be of assistance should Ad Standards be unable to facilitate removal of an advertisement, it is apparent that they do not have relevant powers or funding to achieve enforcement outcomes or, in some cases, are unable to act quickly or on the basis of community concerns.

- (e) The enactment of the Transport Operations (Road Use Management) (Offensive Advertising) Amendment Act 2016 (Qld) is an example of the effective working relationship Ad Standards developed with the Qld Government to provide a regulatory backstop to the advertising self-regulation system.



## Appendix 2

### **1. AANA Code of Ethics**

- 1.1. The AANA Codes set the accepted standards for advertising and marketing communications across all forms of media and throughout Australia.
- 1.2. Advertising and marketing communications are defined in the AANA Codes general terms as:

*Any material published or broadcast using any medium or any activity which is undertaken by or on behalf of an advertiser or marketer,*

- *over which the advertiser or marketer has a reasonable degree of control, and*
  - *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct*
  - *But does not include labels, packaging, or corporate reports.*
- 1.3. In addition to setting general standards around truth and decency in Sections 1 and 2 of the Code, Section 3 of the AANA Code of Ethics requires advertisers to also abide by specific codes of practice where relevant to the products and services they are promoting. These include the AANA Food & Beverage Code and the AANA Children's Code.

### **2. AANA Food & Beverage Code**

- 2.1 The AANA Food & Beverage Code sets provisions around the advertising and marketing of food and non-alcoholic beverages generally, including the following:
  - (a) truth and accuracy of claims;
  - (b) excess consumption and undermining of healthy or active lifestyles and balanced diets;
  - (c) supportable health and nutrition claims;
  - (d) distinguishing between commercial promotion and editorial or program content; and
  - (e) specific provisions relating to advertising to children.
- 2.2 The AANA Food & Beverage Code, together with its Practice Note, applies to all food and non-alcoholic beverage advertising in Australia, and is not limited to only advertising directed primarily to children. However, section 3 of the AANA Food & Beverage Code deals solely with advertising food and beverage products to children (14 years old and younger), providing the following specific restrictions around such advertising:
  - (a) advertisements must be designed and delivered in a manner easily understood by children, that are not misleading or deceptive



- (b) advertisements shall not improperly exploit children's imaginations in a way which would encourage excessive consumption of the food or beverage product
- (c) advertisements shall not imply that possession of the food or beverage product will afford physical, social or psychological advantages over other children
- (d) advertisements shall not aim to undermine the role of parents or guardians in guiding diet or lifestyle choices
- (e) advertisements shall not include any appeal for children to ask their parents or guardians to buy the food or beverage product for them
- (f) advertisements shall not feature ingredients or premiums unless they are an integral part of the food or beverage product being offered.

### 3. AANA Children's Code

3.1 The AANA Children's Code covers a range of provisions, which include food and beverages at Section 2.14. This section provides:

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

3.2 The AANA Children's Code applies to all advertising and marketing communications which are:

- (a) directed primarily to children (aged 14 and under)
- (b) for goods, services and/or facilities that are targeted towards and have principal appeal to children.

3.3 Under the definitions of the AANA Children's Code, whether an advertisement is directed primarily to children is an objective test based on a number of factors including: the nature of the product or service; themes and visuals used in the advertisement; and the storyline and language used.

### 4. AFGC Initiatives

4.1 The AFGC Initiatives (RCMI and QSRI) provide a common framework for food manufacturers and quick service restaurant companies to ensure that only food and beverages that represent healthier choices are promoted directly to children and to ensure parents or guardians can make informed product choices for their children.

4.2 **RCMI:** The RCMI applies to advertising to children under 12 years, and limits marketing communications to children only when it is for healthier dietary choice products and where the message of the advertisement will promote healthy dietary choices and healthy lifestyle.

4.3 **QSRI:** The QSRI applies to advertising to children under 14 and obliges signatories to ensure that only food and beverages that represent healthier choices are promoted



directly to children and to ensure parents or guardians can make informed product choices for their children.

- 4.4 Complaints under the RCMI and QSRI can only be accepted in relation to signatories to the relevant initiative. There are currently 7 signatories to the QSRI and 18 companies participating in the RCMI.
- 4.5 Ad Standards forwards complaints under both AFGC Initiatives to the Community Panel, and seeks confirmation from the independent arbiter that the product advertised meets the criteria for being a healthier choice based on the standards nominated by the company in their action plan (individual company action plans are available on each company's website and on the AFGC website).
- 4.6 Complaints to the Community Panel under these initiatives are also assessed in relation to the AANA Code of Ethics, the AANA Children's Code, and the AANA Food & Beverages Code. Complainants and the AFGC are informed of the decisions made by the Community Panel and the case reports are also published on Ad Standards website.