



ADVERTISING
STANDARDS
BUREAU

Advertising Standards Bureau Submission

**Therapeutic Goods Administration Consultation:
The regulatory framework
for advertising therapeutic goods**

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1. Executive Summary

- 1.1 The consultation paper seeks views on the appropriate body for the handling of complaints under the design of a new centralised advertising complaints management process and other recommended reforms to the advertising framework.
- 1.2 As expressed in our submission to the Expert Review of Medicines and Medical Devices Regulation and in earlier consultations regarding the regulatory system for advertising of therapeutic products, our view is that the Advertising Standards Bureau (Bureau) is the most appropriate body for the handling of complaints related to advertising of therapeutic products.
- 1.3 The Bureau is best placed to develop and maintain a robust and effective advertising complaints management process for therapeutic product advertising that provides confidence for consumers, leveraging off our existing model and extensive experience in advertising complaint management.
- 1.4 While the Bureau suggests in this submission a model for a centralised advertising complaints management process that meets international best practice standards for advertising self-regulation, the Bureau is also well placed to develop a more tailored approach if the TGA considers some elements require modification to meet stakeholder requirements.
- 1.5 Transferring this role to the Bureau offers the significant advantage that the Bureau is already the central authority for receiving complaints about advertising across all forms of media in all areas of Australia and in relation to advertising of any products. The category of therapeutic products is one of very few exceptions to the role that we provide to the Australian community in managing complaints about advertising. In fact, the Bureau already accepts complaints relating to therapeutic products if a complaint raises issues under the advertising codes that the Bureau currently administers and that are not covered under the Therapeutic Goods Advertising Code.
- 1.6 The complaint resolution process managed by the Bureau is an effective and efficient way to respond to consumers' concerns about advertising.
- 1.7 The Bureau complaint process is transparent and accessible to all consumers, with easy to follow steps and support throughout the process provided by Bureau staff.
- 1.8 When required, the Bureau is supported in enforcing compliance with Standards Board determinations by the media and media industry associations, such as the Outdoor Media Association. 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 Standards Board determinations.

1.9 Bringing therapeutic product advertising within the existing advertising self-regulatory complaint adjudication process managed by the Bureau will provide an important level of certainty for consumers and deliver on the objective of a single body to receive and manage complaints, not only about therapeutic product advertising, but all forms of advertising..

2. Introduction

- 2.1 The Advertising Standards Bureau (Bureau) appreciates the opportunity to provide comments on the consultation paper. Our principal interest is with regard to the appropriate body for the handling of complaints under a new complaints-management system for therapeutic goods advertisements directed to the public. We do not have detailed comments on other areas of the consultation, although we note our support for a more self-regulatory approach in favour of the current pre-approvals process.
- 2.2 As outlined in our earlier submission to the Expert Review of Medicines and Medical Devices Regulation (the Review), the Bureau is responsible for the administration of the complaint resolution component of the advertising self-regulation system in Australia. The Bureau supports the work of the Advertising Standards Board (Standards Board) and Advertising Claims Board (Claims Board), the bodies established to consider public and competitor complaints respectively about advertising and marketing communications against provisions set out in the relevant advertising codes. A brief description of the current advertising self-regulation system and the role of the Bureau is provided for reference at **Appendix 3** to this submission.
- 2.3 We consider that the Bureau's independent, well-recognised and proven complaint resolution process offers a practical and cost-effective solution to the problems with the current complaints process highlighted over successive reviews, including the recent findings of the Review.
- 2.4 Advertising of therapeutic products is one of very few exceptions to the advertising and marketing communications covered by the existing advertising self-regulation system. Bringing complaints about advertising of therapeutic products within the complaint resolution process managed by the Bureau achieves the goal of a single, central point for complaints about advertising of therapeutic products, but with the advantage that efficient processes and procedures for complaint handling are already in place.
- 2.5 While the Bureau has set out a proposed system for the therapeutic complaints system, the Bureau is well placed to modify and implement other requirements that may be required for Government and stakeholder approval.

3. Pre-approval of advertisements

- 3.1 The Bureau is supportive of the Government's endorsement of a more self-regulatory framework instead of the current statutory pre-approval of advertising of therapeutic products.
- 3.2 Our view is that the preferred approach is for industry associations to provide a voluntary copy advice service that meets established international best practice.
- 3.3 We note that this approach is consistent with the approach in other jurisdictions and that copy advice services are already in place in Australia in relation to advertising more generally. For

example, copy advice services are currently available to members of various industry associations, including the Australian Association of National Advertisers (AANA), the Outdoor Media Association (OMA) and the Communications Council. We consider that existing industry organisations such as ASMI and CMA would be well placed to provide a similar service.

3.4 The Bureau also supports the introduction of education programs for advertisers of therapeutic products to support compliance. The Bureau already works closely with other industry associations to support education of advertisers about the complaint resolution process, covering trends in complaint decisions and advertisers' obligations under the self-regulatory system. The Bureau collaborates with the Communications Council, the OMA and the AANA to provide regular education and training to Communications Council members across the country. We envisage a similar collaborative role, should the Bureau be given responsibility for the complaint management process for advertising of therapeutic products.

4. Sanctions and penalties

4.1 We do not have specific comments on the discussion around sanctions and penalties. However we note that, in the management of the advertising self-regulation complaint resolution process, the Bureau already has processes in place for referral of non-compliance (or serious matters warranting immediate referral prior to Standards Board consideration) to relevant government bodies. The Bureau has only had to seek the support of government bodies in very rare instances.

4.2 As an example, the Bureau has recently worked with the Queensland Government to find an enforcement solution for one rogue advertiser displaying marketing material on vans and representing an anomaly in an otherwise very effective complaint resolution process with a compliance rate of nearly 100%. As a result of this collaboration, the Queensland Government recently introduced legislation into Queensland Parliament that provides a legislative backstop in specified circumstances and on referral of the matter from the Bureau, to provide a disincentive for advertiser non-compliance. The Bureau fully supports the proposed legislation on the basis that the Queensland Government will only intervene on a referral from the Bureau and the decision as to the appropriateness of the advertising content remains within the jurisdiction of the Standards Board. The Bureau can provide further information on the legislative backstop approach if required.

5. Complaints handling

5.1 We support the Expert Panel's recommendation at Recommendation 56 of its Report on the Review that:

- current mechanisms for managing complaints are disbanded and a new mechanism is established consistent with best practice principles for complaint handling; and

- in establishing the new complaints management mechanism, a single agency should be responsible to receive and manage complaints on the advertising of therapeutic products to the public.

5.2 We note the Government's acceptance of Recommendation 56 and agree with the conclusion that a "single agency approach to complaints management has the potential to reduce complexity and encourage greater consistency in decision-making, benefiting consumers".

5.3 We do not agree with the first option to establish the complaint management function within either the Therapeutic Goods Administration (TGA) or another existing Commonwealth agency, or for that matter to create a new government body for this purpose. We consider this would represent an unnecessary duplication of effort when the Bureau offers an appropriate, efficient, effective and cost-effective alternative. Accordingly, we are in favour of the second option, that is for TGA to call for tenders from external organisations to undertake the function and we advise that, in the event of such a call, the Bureau would expect to tender for the work.

5.4 The Consultation paper notes that the Expert Panel found that both health care providers and consumers "were concerned that the current complaints handling system for advertisements does not provide an appropriate level of procedural fairness; lacks transparency about complaints outcomes; timeframes for complaint resolution are overly long; a number of bodies are involved (causing confusion about lodging a complaint); and the sanctions and penalties available to the regulator are ineffective".

5.5 As set out in our submission to the Review, Australia already has a well-developed advertising complaint management system, operated by the Bureau. This complaint resolution process is timely and efficient and applies broadly to complaints about the content of advertising and marketing communications across all media sectors. Transferring the complaint management process for advertising of all therapeutic products to the Bureau under a single code for advertising therapeutic products would effectively establish a 'one-stop-shop', not only for the advertising of therapeutic products, but for almost all advertising complaints in Australia. This would greatly improve clarity and consistency for consumers and would provide a single point of contact for those responsible for advertising therapeutic products.

5.6 The Consultation document refers to the desire for complaints to be managed and resolved in line with best practice principles, such as those set out in the Commonwealth Ombudsman's Better Practice Guide to Complaints Handling ("Better Practice Guide"). We note that the Ombudsman's Guide is directed more towards the internal complaint practices of government agencies, rather than external complaint handling practices, although the principles are broadly similar. It is the Bureau's view that there are a number of other complaint handling systems that are more applicable to a proposed new therapeutic goods system and the Bureau notes that it regularly assesses its own complaint handling practices against a number of measures including:

- ASIC Regulatory Guide 139 - approval and oversight of external dispute resolution schemes;

- The ACCC *Guidelines for developing effective voluntary industry codes of conduct*;
- The Commonwealth Government's *Benchmarks for industry-based customer dispute resolution*; and
- The European Advertising Standards Association (EASA) Advertising Self-Regulatory Charter and Best Practice recommendations – which set out the relevant international standards for complaint resolution processes for systems of advertising self-regulation.

5.7 For completeness, we provide at **Appendix 1** our assessment of the Bureau's current complaint management processes against the best practice principles set out in the Better Practice Guide. A more detailed discussion of the principles underpinning the self-regulation complaints system is provided at **Appendix 3** for reference.

5.8 The Consultation paper sets out three potential models for complaint handling. We consider the most appropriate model is to outsource the process to the Bureau as an independent non-Government body whose complaint management processes already meet best practice principles, and to support the Bureau's role with an appropriate legislative backstop that provides encouragement for rogue advertisers to comply but respects the overwhelming responsible approach of most advertisers in the therapeutic products sector.

5.9 We have set out at **Appendix 2** the Bureau's suggested approach to managing complaints about the advertising of therapeutic products. This approach centralises the complaint process within the Bureau, leveraging off our existing and independent processes but with some minor modifications to provide relevant expertise at three stages of the process – within the Bureau itself as secretariat; within the membership of the Standards Board; and in the form of independent experts to provide advice on substantiation and efficacy matters early in the process as required. The process also provides for competitive complaints to be handled on a user pays basis, consistent with our current procedures for the handling of competitive complaints.

5.10 In putting this approach together, we have consulted with numerous industry bodies in the advertising and therapeutic product sectors in an effort to ensure that we address the common characteristics that these diverse industry representatives are seeking from the new complaint management process.

5.11 The Bureau's process provides a level of independence that cannot be achieved through the use of panels of industry participants. Additionally, the Bureau's proposed process addresses concerns raised about transparency of the current process. The Bureau's complaint process steps are clearly articulated on the Bureau website and all case reports since the establishment of the Bureau are published online in a searchable format and in a timely manner upon finalisation of the case report. This includes findings of the Independent Review process, where applicable and decisions made on review.

6. Conclusion

- 3.1. We are strongly of the view that the Government should pursue the second option under Recommendation Fifty Six of the Review. That is, to call for tenders from external organisations to undertake the complaint management function and together with that decision, to bring some consistency to consumer complaints about advertising generally by appointing the Bureau to manage the function.
- 3.2. We reiterate our comments from our submission to the Review that the Bureau is well placed and willing to take on the management of complaints about the advertising and marketing of therapeutic products.
- 3.3. Having the Bureau as the single authority for receiving complaints about the advertising and marketing of therapeutic products will:
 - provide significant cost savings to the Australian Government; and
 - be consistent with the Australian Government's Deregulation Agenda and Best Practice Regulation Policy.
- 3.4. Bringing complaints about the advertising of therapeutic products within the complaint resolution process managed by the Bureau addresses the concerns raised in previous reviews regarding the timeliness, independence and effectiveness of the complaint resolution process relating to advertising of therapeutic products. It will provide clarity, efficiency and effectiveness for consumers and the industry.
- 3.5. It will also bring the approach in Australia into closer alignment with the regulation of advertising of therapeutic products in New Zealand.
- 3.6. We would be pleased to discuss our proposal in this submission in further detail.

Assessment of Bureau process against Commonwealth Ombudsman *Better Practice Guide to Complaint Handling*

The Consultation document indicates that the Government has agreed that complaints will be managed and resolved in line with best practice principles such as those set out in the Commonwealth Ombudsman's Better Practice Guide to Complaints Handling. This Guide describes five elements of effective complaint handling:

Culture: *Agencies must value complaints as a means of strengthening their administration and improving their relations with the public*

- Unlike the internal complaint handling processes which the Commonwealth Ombudsman's Guide is intended for, the Bureau is in the business of complaint resolution – this is our key role and primary purpose.
- The Bureau invests in regular research and promotional activities to measure and improve public awareness of the complaints process.
- The Bureau has invested in complaint management systems to support an efficient, accessible and effective complaint process.
- Community complaints are welcomed as the Bureau exists to give voice to consumer values and guide advertisers in maintaining decent, honest advertising aligning with prevailing community values.

Principles: *An effective complaint handling system must be modelled on the principles of fairness, accessibility, responsiveness, efficiency and integration*

Fairness:

- The complaint process is based on the principles of procedural fairness for complainants and advertisers alike. The complaint adjudication process steps are clearly set out and available on the Bureau's website.
- The process is transparent, with all important information – the complainant(s) concerns, the advertiser's statement and the Board's determination - included in the final case report that is published online.

Accessibility:

- The Bureau's complaint process is accessible as a free service to all members of the public.
- Complaints may be made via an online complaint form, by post or facsimile.
- The Bureau will accept complaints over the phone from those people who have no capacity to communicate electronically or in writing.

Responsiveness:

- A single written complaint is sufficient to initiate the complaint process.
- The Standards Board meets at least twice per month, which contributes to timely turnaround of complaints. Extraordinary meetings can be scheduled within 72 hours.

- The Bureau is committed to continuous improvement, taking into account input from the public and the industry, past Government Inquiries, and having regard to international best practices relating to advertising self-regulation. Since 2005, the Bureau has undergone substantial remodelling, including a range of initiatives to improve the transparency and accountability of its complaint handling service.

Efficiency:

- Ongoing improvements in our case management system have allowed us to maintain prompt turnaround of complaints and to more accurately report on timeliness. During 2015 the average case time was 36.5 calendar days from initial receipt of first complaint to publication of the final case report.
- The focus on continuous improvement has increased the efficiency of communication with all parties to complaints and improved the way advertiser's respond to complaints.

Integration:

- N/A – advertising complaint handling and adjudication is our core business.

People: *Complaint handling staff must be skilled and professional*

- As at 30 November 2016, the Bureau has an average staff tenure of 6.8 years. Complaint management staff are skilled and experienced in our core business.
- The small size of the workforce allows all staff to be familiar with the complaints handling/case management processes.
- Staff are provided with extensive training, both on-the-job and external. Strong emphasis is placed on knowledge and skills about the application of principles of natural justice/procedural fairness in the complaint adjudication process.
- Twice yearly, all Bureau staff and the Standards Board convene for training and development purposes.

Process: *The seven stages of complaint handling – acknowledgement, assessment, planning, investigation, response, review, and consideration of systemic issues – should be clearly outlined*

- The complaint process steps are clearly set out and available to all on the Bureau website, along with information about how the Standards Board makes its determination and the review process.
- All complaints are acknowledged and each complaint is assessed against the advertiser codes. Complaints about matters outside the Standards Board's charter are referred to the appropriate body.
- Complaints are determined by the independent, impartial Standards Board. Decisions are notified to all parties and published on the Bureau website.
- The process includes ongoing capture of complainant/advertiser feedback. The outcomes of ongoing surveys are considered by the Bureau's corporate governance board.

Analysis: *Information about complaints should be examined as part of a continuous process of organisational review and improvement*

- As a pure complaint adjudication body, the Bureau is committed to continuous improvement, taking into account input from the public and the industry and having regard to international best practice on advertising self-regulation.
- Regular research is undertaken into community standards to test Standards Board decisions against views of the community. Research also includes public awareness to assess the visibility of the Bureau and the Standards Board in the community.

Suggested therapeutic goods complaint adjudication process

Key roles and responsibilities:

Industry bodies

- Voluntary copy advice process for members and open to non-members.
- Co-delivery with the Bureau of education and training initiatives to industry participants on requirements of the code, decision trends and the complaint process.

Code Administration Committee

- Representative of key industry participants/consumer representatives/government.
- “Code Owner” role - responsible for code development, regular review and maintenance.
- Development of advisory materials for industry, where appropriate.

Bureau (independent self-regulation body)

- Administration of the complaint resolution process for all therapeutic product advertising.
- Administer both consumer and competitor (user pays) complaint processes – complaints must be in writing and anonymous complaints are not sufficient to initiate a formal complaint.
- Report to Code Administration Committee on statistics, trends and consumer/industry concerns.
- Responsible with industry bodies for regular co-delivery of education and training to industry participants on the code and complaints process.
- Secretariat to Standards Board and recruitment and engagement of a pool of independent experts.
- To include staff with expertise in regulatory issues and appropriate technical background for effective administration of complaints about advertising of therapeutic products.

Independent Experts

- A pool of experts, providing individual independent expert opinion on technical material and substantiation of claims on a case by case basis– to be submitted to the Standards Board with complainant and advertiser materials for determination.
- Expected to provide input in most competitor complaints (on user pays basis).

Advertising Standards Board

- Independent panel of community members to determine complaints under the code, having regard to “probable impact upon the reasonable person to whom the advertisement is directed”.
- To include some public health qualified health care professionals among its members – required to be present for determinations of complaints about therapeutic products.
- Currently meets twice monthly with ability to call an urgent meeting where a case warrants it.

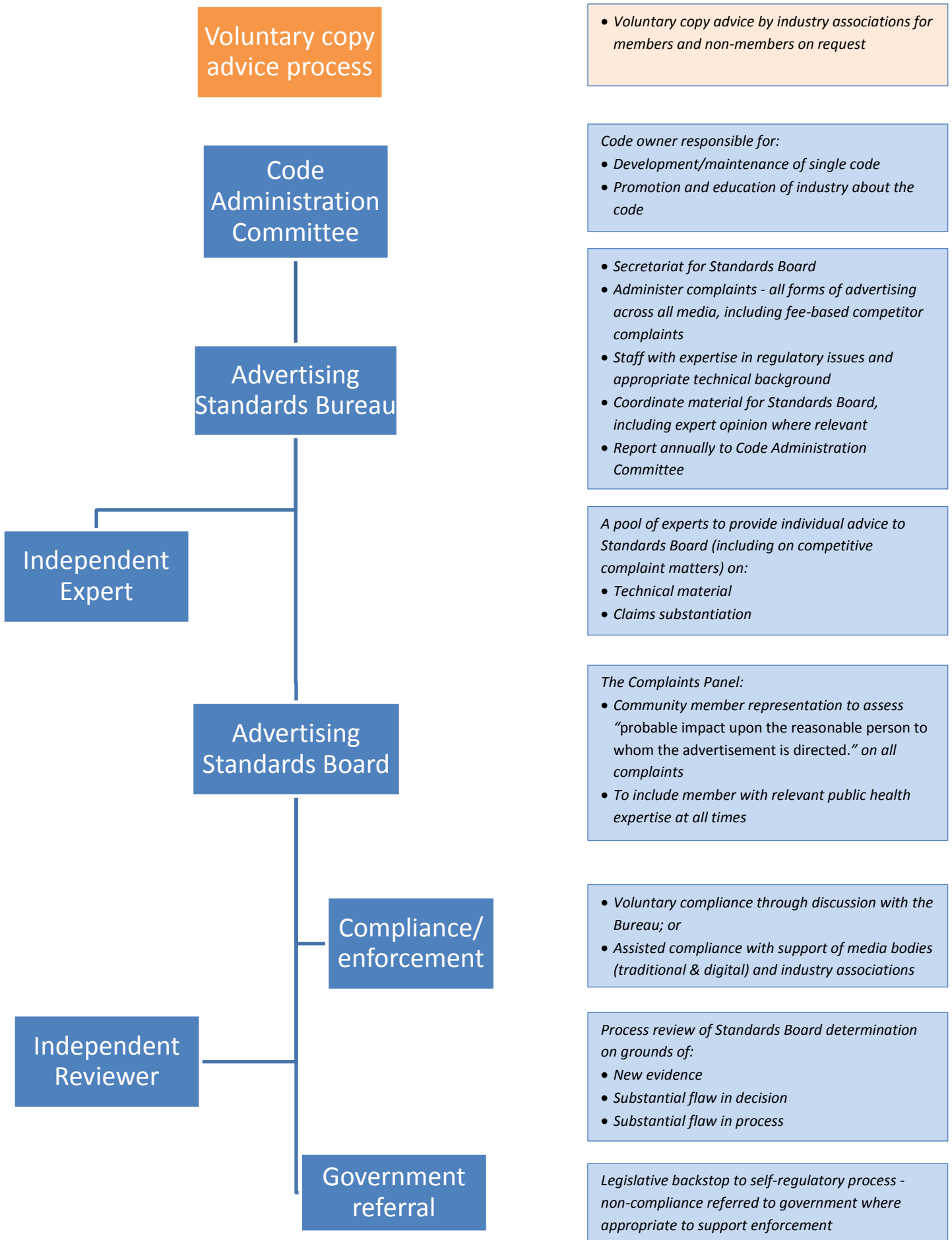
Independent Reviewer

- Provides an avenue for review of the Standards Board’s determination.
- In line with international best practice, the role of the Independent Reviewer is to assess the validity of the process followed by the Standards Board, or to assess any new material provided by the parties to the case. The Independent Reviewer does *not* provide a further merit review of a case.

Government

- Legislative backstop to support the self-regulatory process where required, with compliance incentives in the form of appropriate penalties and sanctions.

Bureau complaint management process structure



The advertising self-regulation system

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.

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.

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.

High standards of advertising are maintained through the interaction of the various parts of the self-regulation system:

- through the existence and development of appropriate codes and initiatives relating to advertising standards;
- the voluntary compliance of advertisers;
- the efforts of other industry stakeholders in ensuring compliance, supporting industry education and public awareness programs, and supporting enforcement where required; and
- the operation of the complaint resolution process.

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.

1 Role of the Bureau

The Bureau administers the complaint resolution component of the advertising self-regulation system. The work of the Bureau is not underpinned by any Government legislation.

The Bureau's 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.

The Bureau 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.

Currently, the Bureau administers the following codes of practice relating to advertising and marketing communications in Australia:

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

These codes apply to all advertising and marketing communications across all media. The Bureau 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.

The Bureau is secretariat for the Standards Board and the Advertising Claims Board (Claims Board), the bodies appointed to adjudicate public and competitor complaints and to ensure compliance with the relevant codes and industry initiatives. The two boards have separate and distinct roles considering public and competitor complaints about advertising against the advertising codes they administer. Members of the Standards Board are community representatives, independent of the industry and appointed following a publicly advertised application and interview process. Members of the Claims Board are legal practitioners sourced from a register of lawyers experienced in advertising and/or competition and consumer law.

2 Role of the Bureau Corporate Board

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

The Corporate Board is responsible for management of the business of the Bureau consistent with the Bureau’s objectives and, with the Chief Executive Officer, is also responsible for the corporate governance of the Bureau. The Corporate Board deals with strategic, financial and operational concerns, and works to improve the operation of the Bureau so that it is the foremost complaints resolution body for advertising in Australia.

The Corporate Board has the integrity of the advertising self-regulation system at heart and it insists that the work of the Corporate Board and of the Standards Board be absolutely separate.

3 Role of the Standards Board

The Standards Board is the independent body established to determine public complaints about advertising and marketing communications against the principles set out in the relevant codes. The Standards Board 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.

The Standards Board comprises 20 members of the community and reflects a diverse knowledge and experience base. The Standards Board 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.

Individual Standards Board 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 Standards Board member absents herself or himself from the meeting.

The Standards Board 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.

Membership of the Standards Board is on a fixed term basis. New appointments are staggered to avoid desensitisation and to ensure the Board retains a mix of corporate knowledge and at the same time introducing people with different experiences, views and skills. Profiles of current Standards Board members are available to all on the Bureau website (www.adstandards.com.au).

Standards Board appointments are made following a publicly advertised application and interview process. People sought for appointment to the Standards Board ideally have an interest in, and views on, advertising and have been exposed to a broad range of community activities and interests.

Standards Board 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 Claims Board

The Claims Board 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.

The Claims Board 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.

The Claims Board considers complaints which breach Part 1 of the AANA Code of Ethics. This includes complaints about: the legality of an advertisement; misleading or deceptive advertisements; and advertisements that contain misrepresentations likely to harm a business.

Complaints received by the Claims Board 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 Standards Board determinations

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

The independent review process provides the community and advertisers a channel through which they can appeal decisions made by the Standards Board in prescribed circumstances. The review process is available to the advertiser and the person(s) who originally made a complaint.

In line with international best practice, the Independent Reviewer's role is to assess the validity of the process followed by the Standards Board, or to assess any new material provided by parties to the case. The Independent Reviewer does not provide a further merit review of a case. Their role is to recommend whether the Standards Board'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 board that makes determinations on the basis of community standards.

There are three grounds for review:

- Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided;
- Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the codes or initiatives, or clearly made against the weight of evidence); and/or
- Where there was a substantial flaw in the process by which the determination was made.

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 Standards Board, stating whether the Standards Board's original determination should be reviewed or confirmed.

During the review process, the original determination (and any subsequent remedial action or withdrawal of the advertisement) will stand. The Bureau publishes the initial determination until the outcome of the review is known at which point the revised determination with Independent Reviewer recommendation is published.

Information about the review process is available on the Bureau 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

(a) Accessibility of complaint process

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.

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

Ensuring consumers know where to complain about advertising is an important issue for the Bureau. The Bureau considers that the increase in complaint numbers over recent years is partly attributable to the success of the Bureau awareness campaign, “People like you”, launched on television in early March 2014. In addition to raising awareness of the role and composition of the Advertising Standards Board, the awareness campaign highlighted how easy it is to lodge a complaint online. This campaign has also been extended to social media and will continue to be highlighted in that medium during 2016-17.

In community research commissioned by the Bureau during 2015, when participants were provided with a list of organisations which they could contact if they wanted to make a complaint about advertising, 42% of respondents indicated that they would contact the ‘*Advertising Standards Board*’ while one third (36%) proposed that they would contact the ‘*Advertising Standards Bureau*’. In previous research, participants in 2009, 2010 and 2012 were also asked to nominate an organisation. Overall, 62% of the general public in the 2012 community perceptions study were aware that they could complain to the Bureau if they had a complaint about paid advertising. This result remained stable since the 2010 sexuality research (63%) and 2009 violence research (67%). The result was also significantly higher than the level of unprompted awareness in the 2006 community awareness research (10%), which drove the development of an earlier awareness raising campaign commencing in 2008 with television, radio and print advertisements.

In the 12 months prior to the 2015 research, 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.

(b) Transparency of complaint process and decision making

The Bureau is committed to a high standard of transparency with regards to Standards Board determinations.

A single written complaint is sufficient to initiate a formal investigation by the Bureau. 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.

Complaints are promptly assessed as to their appropriateness for submission to the Standards Board for determination. The Bureau, as secretariat for the Standards Board, 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.

In 2010, the Bureau initiated the development of a series of “Determination Summaries”, aimed at providing a general overview of Standards Board determinations on complaints about particular issues covered by the codes. The Determination Summaries are available from the Bureau website and cover topics including *Discrimination and vilification in advertising*, *Use of sexual appeal in an exploitative and degrading manner* and *Portrayal of gender in advertising*.

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 Standards Board itself in understanding how the Standards Board has viewed particular issues covered by the codes that have been the subject of complaints in the past.

All case reports are also made publicly available on the Bureau website promptly after determination. Case reports contain details about the complaint, a description of the advertisement, the advertiser response and the Standards Board’s determination, along with a summary of the reasons for its decision.

(c) Robust decision making

The Standards Board 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.

To assist the Standards Board in its deliberations, the Bureau 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 Standards Board 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.

All community standards research which the Bureau regularly undertakes on behalf of the Standards Board is discussed at training days both during the draft stage and subsequently during a formal presentation of the final research report. The Bureau also involves the Standards Board in the development of the Determination Summaries which provide precedent information regarding previous Standards Board determinations on particular issues.

All case reports following Standards Board determinations are published on the Bureau website. Since these documents are available to the entire community, the Bureau ensures that determinations in case reports are articulated clearly, logically and concisely.

The Standards Board 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 Standards Board followed, increases the Standards Board's resolve to ensure sound decision making.

(d) Responsiveness of complaints handling

The Bureau's 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 2015, 82% 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 2015 was 36.5 calendar days from initial complaint receipt to final publication.

Since early 2009 the Standards Board 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 Bureau notification of complaints, Target immediately withdrew the advertisement, prior to the Standards Board 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.

Neither the Standards Board nor the Bureau 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.

(e) No cost to the community

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 Standards Board and the self-regulatory system. Financial management of the funds is outsourced to a chartered accounting firm and the Annual Financial Statements of the Bureau and the AASC are audited by independent auditors.

(f) Continuous improvement

The Bureau 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.

Since 2005, the Bureau 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:

- 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.
- Public awareness
 - Major public awareness campaigns were conducted in 2008 and continued in 2011 and 2014.
 - Community standards research has included testing of community awareness about the Bureau 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 the Bureau and determination search functionality. The launch of a blog in 2012 has assisted in improving our community engagement.
- Community standards research
 - Research to determine the level of unprompted awareness of the Bureau (2006).
 - World-first research testing the Standards Board'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 Standards Board, 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 Board's alignment with those standards (2012).
 - Exploitative and degrading advertising (2013).
 - Advertising directed primarily to children (2015).
 - Full research reports are available from the Bureau website.
 - Research conducted provides the Standards Board with valuable feedback and Standards Board members have taken the results of such research into account in their consideration of complaints under the codes.
- Maintaining an independent and effective Standards Board
 - Since 2005, a number of changes have been made to the structure and procedural arrangements of the Standards Board, including expansion to a membership of 20 and appointment of new members at staggered intervals to ensure that the Standards Board has a mix of experienced and new members.
 - The frequency of meetings has increased, with the Standards Board now meeting twice a month to consider complaints and also between scheduled meetings, usually by teleconference, if the Bureau considers that a case should be considered as a matter of urgency.

- Introduction of an Independent Review process
 - An Independent Review process was introduced in April 2008 as part of the Bureau’s efforts to meet international best practice. The process enables original complainants and advertisers to appeal determinations made by the Standards Board.
 - There are currently two Independent Reviewers, Professor Robin Creyke, appointed in June 2015 and Ms Victoria Rubensohn AM, appointed in August 2011.
- 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.

The Bureau 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.

(g) Keeping up to date with international advertising standards

The Bureau is a member of the European Advertising Standards Alliance (EASA) which is the key organisation regarding advertising self-regulation issues in Europe and beyond. EASA promotes responsible advertising and high ethical standards in commercial communication and assists members and others via initiatives such as the EASA Advertising Self-Regulatory Charter and Best Practice recommendations. Membership of EASA allows the Bureau to measure its performance and operations against international standards and ensures that we have access to an appropriate best practice model for advertising complaint resolution.

In line with the EASA work and in Bureau Chief Executive Officer, Fiona Jolly’s role as Acting Chair of the International Council on Advertising Self-Regulation, the Bureau has worked to promote advertising self-regulation in the Asia/Pacific region. In November 2012, the Bureau played the lead role in organising and conducting a Dialogue on Advertising Standards-Principles and Practice held in Hanoi for APEC economies. Since that time the Bureau has also provided high level assistance in organising APEC events in Beijing China (2014) and Lima Peru (2016).

7 Upheld rates

Compared to the total number of advertisements considered by the Board in 2015, the number of advertisements found to breach the codes equated to an upheld rate of 17 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 Standards Board members and a greater awareness within the Standards Board of community standards, particularly about issues relating to sex, sexuality and nudity.

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 Bureau research shows that the Standards Board is generally in line with community views.

8 Compliance with Standards Board determinations

The Bureau has a record of nearly 100 per cent compliance by industry with decisions of the Standards Board. The Bureau's 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 Standards Board determinations

Regardless of an advertiser's reaction to a Standards Board 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 the Bureau has developed a range of enforcement actions to ensure compliance with Standards Board decisions.

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

Other actions can include:

- An advertiser's failure to respond will always be included in the final case report which is made public on the Bureau's website. This is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided.
- In a similar fashion, an advertiser's failure to respond can feature in information released to the media which follows the relevant Standards Board meeting, and the Bureau 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.
- Should an advertiser fail to respond to the Bureau's request to remove or modify advertising, the Bureau 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.
- Under appropriate circumstances, the Bureau 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 the Bureau 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.