

**Advertising Standards Bureau
Submission**

**Parliament of New South Wales
Committee on Children and Young People**

Inquiry into sexualisation of children and young people

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Executive summary

- The Australian advertising self-regulation system effectively regulates advertising in all media, including outdoor, electronic, print and social media throughout Australia, including in New South Wales.
- Complaints demonstrate that advertising does not sexualise children but in the rare instances where an image would be seen as sexualising a child, the self-regulation system is effective in having the advertisement removed.
- The self-regulation system is effective in minimising the exposure of children to inappropriately sexualised images and content in advertising and marketing in all forms of media.
- The level of complaints raising issues about the sexualisation of children is very low (2.6% of total cases over the last six years).
- The self-regulation system is industry funded and well supported by all parts of the industry – advertisers, advertising agencies, media buyers, media operators and industry associations. This support ensures compliance with Advertising Standards Board (Standards Board) decisions and signifies the commitment by industry to responsible advertising.
- 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 and supporting enforcement where required; and
 - the operation of the complaint resolution process.
- The complaint resolution process managed by the Advertising Standards Bureau (Bureau) is an effective and efficient way to respond to consumers' concerns about advertising.
- The complaint process is transparent and accessible to all consumers, with easy to follow steps and support throughout the process provided by Bureau staff.
- The vast majority of advertising and marketing communications in Australia complies with the relevant codes and do not receive any complaints, while the majority of those complained about are not found to be in breach of the codes. Where a breach is found, the Bureau has a record of nearly 100 per cent compliance by industry with Standards Board determinations – demonstrating the commitment of the vast majority of advertisers to the system and to maintaining high standards of advertising.

1. Introduction

The Bureau appreciates the opportunity to provide this submission to the Committee on Children and Young People (Committee) Inquiry into the sexualisation of children and young people (the Inquiry).

The Bureau administers the complaint resolution component of the advertising self-regulation system, which applies to advertising and marketing communications in all forms of media across Australia. The current advertising self-regulation model is working well to maintain high advertising standards and ensure consumer trust and protection is met for the benefit of all of the community.

This submission addresses the following three Inquiry terms of reference, to the extent that these are relevant to the role of the Bureau:

- i. The sexualisation of children and young people in electronic, print and social media and marketing;
- ii. The exposure of children and young people in NSW to sexualised images and content in public places, electronic, print and social media and marketing; and
- iv. Adequacy of current measures at state and federal level to regulate sexualised imagery in electronic, print and social media and marketing, and effectiveness of self-regulation measures.

We also provide a broad outline of the advertising self-regulation system and the Bureau's role within that system as an Appendix to this submission at **Appendix 1**, and relevant provisions of the advertising codes that address issues relating to the sexualisation of children and young people are set out in **Appendix 2** to this submission for ease of reference.

2. Term of Reference i -

Sexualisation of children and young people in marketing

In the context of this term of reference as it relates to advertising or marketing communications, we have taken sexualisation of children to refer to the manner in which children and young people are depicted in advertising or marketing communications.

Australia has stringent self-regulatory rules around the depiction of children in advertising, particularly in regard to the issue of sexualisation. These rules are set out in the Australian Association of National Advertisers (AANA) codes, which underpin the self-regulatory system.

The depiction of children and young people in this context is regulated through the operation of Sections 2.2 (exploitative and degrading) and 2.4 (sex, sexuality and nudity) of the *AANA Code of Ethics* (Code of Ethics) and Section 2.4 (sexualisation) of the *AANA Code for Advertising and Marketing Communications to Children* (Children's Code). These provisions are set out in **Appendix 2**, together with relevant guidance on the application of these provisions provided in AANA Practice Notes.

Sexualisation of children is an issue which raises only a small number of complaints to the Standards Board. Over the past six years, the number of cases which raised issues about sexualisation of children amounted to only 2.6% of total cases (this included *both* sexualised depictions of children as well as exposure of children to sexualised images, which is discussed in the next section). Records indicate that there have been no more than 30 cases raised in this time where the manner in which a child (or children) was depicted was considered to be sexualised by a complainant. Only five cases considered by the Standards Board over the past six years were found to have breached the Code in relation to the depiction of a child in a sexualised manner.

Despite the low level of complaints and breaches found in relation to sexualisation of children, both the Standards Board and the community continue to hold strong concerns over any imagery in advertising which may exploit or sexualise children. All complaints against the AANA codes that concern the sexualisation of children are taken seriously and considered carefully by the Standards Board. We provide below some examples of cases considered by the Standards Board that relate to this issue, demonstrating how the Standards Board applies the relevant provisions of the AANA codes (refer **Appendix 2** for provisions and note that full reports of all cases referred to are available on the Bureau website):

2.1 Standards Board application of Code of Ethics provisions

In 2015, the Standards Board considered a complaint about a television advertisement that depicted a young girl in a bikini against Section 2.2 of the Code of Ethics (*Case 0188/15 – Toyota*). The Standards Board noted that in order to breach this section of the code, the image would need to use sexual appeal in a manner that is both exploitative and degrading. The advertisement featured a family going camping, with one scene showing the children playing in a stream. The Standards Board considered that most members of the community would agree that the image of the girl did not employ sexual appeal at all, noting that the girl's behaviour was consistent with a child at a water venue; her pose was not sexualised; her swimwear was appropriate for her age and the situation; and there was no undue focus on her body. The Standards Board also found no breach of Section 2.4 of the Code of Ethics in this case, noting that the depiction of a child in swimwear was in the context of the depiction of a family enjoying themselves in the countryside and is not inappropriate.

In 2014, one of many images found in an internet advertisement (*Case 136/14 – Witchery*) was found in breach of Section 2.4 of the Code of Ethics for presenting material contrary to community standards on sex, sexuality and nudity with respect to children. In the image of concern, the girl wore a short skirt and had her legs apart, which the Standards Board viewed as a pose that was more adult than child-like, noting that the camera angle highlighted the shortness of the skirt. The Standards Board view was that the image amounted to a depiction of a child which is sexualised and therefore not appropriate.

The use of younger-looking women in advertising can also raise community concern in relation to inappropriate sexual behavior. In this regard, the Standards Board accepts that there is a genuine community concern about inappropriate behavior of a sexual nature including grooming and sex offences. This issue was raised by complainants about an internet advertisement featuring a young woman at home listening to a phone call from a male (*Case 0265/14 – Chloe Perfume*) in which she is depicted as excited and happy to hear the voice of the man on the phone. In the Standards

Board's view, the woman in this advertisement was young looking but definitely depicted as a young woman and not a child, and although mildly sexualised the advertisement treated the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which could include children.

In 2014, the Standards Board also considered images of children and teenagers modelling clothing in several cases (*Cases 0084/14 and 0181/14 – Target, 0304/14 and 0401/14 – Pacific Brands Holdings Pty Ltd, and 0236/14 – Myer/Grace Bros*). Complaints received concerned the sexualisation of children with particular note of the poses, clothing choice and make-up worn by children. The Standards Board determined the images used were not sexualised or inappropriate, but noted that advertisers should take care when using images of children in advertising. In these cases, the Standards Board view was that the poses used were typical of the types of positions that children carry out themselves when asked to pose for a photo and were in line with the types of images used in catalogues and not depictions which most reasonable members of the community would find sexualised.

2.2 Standards Board application of Children's Code provisions

Section 2.4 of the Children's Code was inserted as part of a review of the Children's Code by the AANA in early 2008 to specifically address community concerns about the sexualisation of children.

Paragraph (a) of Section 2.4 of the Children's Code prohibits advertising or marketing communications to children from employing sexual appeal and paragraph (c) prohibits advertising from suggesting children are sexual beings or linking products to enhancement of their sexuality.

The provisions of the Children's Code apply only to advertising which is directed primarily to children of 14 years or younger (taking into account the theme, visuals, and language used in the advertisement) and which is for products that are targeted towards or of principal appeal to children. Accordingly, the Standards Board must first consider whether the advertising is "directed primarily to children" before considering the complaint against the provisions of the Children's Code. This does not, however, prevent the Standards Board from considering complaints against the provisions of the Code of Ethics, as outlined above, which also apply to protect children and young people from sexualisation in advertising or marketing communications.

In 2010, the Standards Board determined that an image of two children kissing did breach Section 2.4 of the Children's Code (*Case 333/10 – Waves*). In this case, the Standards Board considered that the advertisement inappropriately depicted children in a sexualised or sexually suggestive pose. The Standards Board noted that there is a measurable and not insignificant readership which is 14 years and younger and considered that the advertisement breached Section 2.4 of the Children's Code by including sexual imagery in contravention of prevailing community standards.

3. Term of Reference ii –

Exposure of children and young people to sexualised images and content

The protection of children from exposure to sexualised images, themes or words is regulated through the operation of Section 2.4 of the Code of Ethics and Section 2.4 of the Children’s Code (refer **Appendix 2**).

The use of sex, sexuality and nudity in advertising (Section 2.4 of the Code of Ethics) has, in the past, generated the most complaints compared with any other section of the Code of Ethics. However, in 2014 Section 2.4 was only the third most complained about section (14.27 per cent of complaints – refer **Appendix 3**) and preliminary results for 2015 suggest a similar result (16.08 per cent of complaints).

The low level of complaints raising issues in relation to the sexualisation of children was noted above (2.6% of total cases over six years). Over the past six years, the Standards Board found only six breaches of the codes relating to the use of a sexualised image that was considered to be unsuitable for a child audience.

We again provide below some examples of cases considered by the Standards Board that relate to this issue, demonstrating how the Standards Board applies the relevant provisions of the AANA codes:

3.1 Standards Board application of Code of Ethics provisions

Section 2.4 (sex, sexuality and nudity) of the Code of Ethics contains a “relevant audience” test that provides the Standards Board with the flexibility to consider the different audiences that may, for instance, exist for different media, different locations and different time zones.

When applying this test, the Standards Board is particularly careful to distinguish between acceptability of content in public domains where children may be exposed to the advertising (such as billboards) and in other forms of media which may have more restricted audiences, such as internet sites and television advertisements with timing restrictions.

The Standards Board also takes into account feedback from past government inquiries as well as research commissioned by the Bureau in relation to community perceptions of sex, sexuality and nudity (discussed in **Part 4**) in ensuring it is continuing to reflect prevailing community standards surrounding these issues.

Cases considered in this context can cover a range of matters. For example, in 2014 the Standards Board considered two cases (*0290/14 – La Trobe University* and *0237/14 – Nutricia Australasia Pty Ltd*) which depicted women breastfeeding their children. The Standards Board’s view in these cases was that in the context of an image of a woman breastfeeding a baby, the level of nudity in the advertisement was not inappropriate for a broad audience which would include children.

A poster for lingerie store *Honey Birdette (0505/15)* was recently found in breach of Section 2.4 of the Code of Ethics for presenting material contrary to community standards on sex, sexuality and nudity. The advertisement depicted a woman in red underwear standing with her bent knee resting on the lap of Santa who is bound and gagged on a chair, with the accompanying text, “Silent night...”

The Standards Board noted the overall impression of the advertisement was sexualised. Noting that the inclusion of Santa in a large store front window would be likely to draw the attention of children, the Standards Board considered that overall the woman's pose and the inclusion of a bound and gagged Santa suggests a sexual scene in a manner that is not sensitive to the likely broad audience.

In 2014, a window poster, *Mars Leather 0225/14*, was found in breach of the Code of Ethics for a sexualised depiction of a child. The advertisement featured a group of men wearing denim and leathers with a small boy wearing only boots and sunglasses with his groin covered by a wooden fence paling and the text, "Thomas Cook Johnny R. Born tough". The Standards Board noted the advertiser's response that the poster is an advertisement for boots and has been on display in their store for over thirty years, however since the advertisement was first published there has been a significant increase in public awareness and sensitivity regarding images of children. The Standards Board determined that the nudity of a child in the company of a group of adult men in a context which does not clearly justify the level of nudity, especially of a child, is not appropriate for a broad audience. Based on the above the Standards Board considered that the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience.

An email advertisement for men's clothing, *Roger David – 0284/11* was also found in breach of the Code of Ethics for sexualised depictions of a child. The poster featured an image of a young girl with a large object filling her mouth, a bar code 'tattooed' on her arm with the word 'slave' and the accompanying text 'New Love Club'. The Standards Board noted that the girl in the image was 18 but considered that she was depicted in a way that made her appear younger than 18. The Standards Board also considered that the image of the girl could be seen to be suggestive of the girl being held against her will – with the 'slave' reference on her arm and the depiction of her with an object filling her mouth which, in the Standards Board's view, evoked a sense of the girl being 'gagged'. The Standards Board considered that the advertisement inappropriately depicted a young girl in a sexualised manner and that this depiction was not a treatment of sexuality in a manner sensitive to the relevant, in this case adult male, audience.

3.2 Standards Board application of Children's Code provisions

As noted above, Section 2.4 of the Children's Code was inserted to specifically address community concerns about the sexualisation of children.

Paragraph (a) of Section 2.4 of the Children's Code prohibits the employment of sexual appeal in advertising directed primarily to children and paragraph (b) prohibits the inclusion of sexual imagery in advertising directed primarily to children.

An example of the Standards Board's application of this section was discussed above at **Part 2.2**.

4. Term of Reference iv, part (a) - Adequacy of current measures at state and federal level to regulate sexualised imagery in marketing

Advertising standards throughout Australia are maintained through the interaction of the various parts of the self-regulation system (refer **Appendix 1**).

In the context of this Inquiry, the current self-regulation system operates at a national level to address community concerns about the sexualisation of children in advertising through:

- the operation of key provisions in the codes relating specifically to the issue of sexualisation of children (which address the depiction of children and young people in advertising) and the treatment of sex, sexuality and nudity more generally (which address the exposure of children and young people to sexualised images, themes or words in advertising);
- the voluntary commitment of advertisers to comply with these provisions along with other provisions of the codes;
- the efforts of other industry stakeholders in ensuring compliance and supporting enforcement when required; and
- the operation of the complaint resolution process through which the Standards Board considers complaints raising concerns about the sexualisation of children.

The adequacy of the current level of regulation in this area can be assessed in a number of ways. This includes:

- the appropriateness of existing code provisions to cover concerns about sexualisation of children;
- the rate of complaints received by the Bureau raising issues about sexualisation of children;
- the level of public awareness about the complaint process managed by the Bureau;
- the level of community concern and alignment of Standards Board decisions with community perceptions; and
- the findings of previous inquiries on the adequacy of the self-regulation system including the complaint process.

4.1 Appropriateness of existing code provisions

The relevant code provisions which work to regulate sexualised imagery in advertising and marketing and to protect children and young people from sexualisation are set out in **Appendix 2**.

As noted in **Appendix 2**, further clarity around how the code provisions apply to address these issues has been provided by the AANA through its Practice Notes and also the *AANA Practice Guide: Managing Images of Children and Young People* (published 2009).

The Bureau is not aware of any issues relating to sexualisation of children that are not currently covered by the AANA codes and able to be brought to the Standards Board for consideration. The complaint process is effective in ensuring that any complaints raising issues about sexualisation of children in advertising or marketing will be put before the Standards Board for determination. There do not appear to be circumstances where issues relating to sexualisation of children might fall outside the scope of the complaints process and as a result would not be captured within the Bureau's complaint statistics. Our process involves erring on the side of caution to ensure complaints

that raise valid concerns but do not readily fit a particular section of the codes will be given consideration.

The Bureau monitors complaint statistics, including complaints that are found to be not within the Standards Board's remit. The Bureau works closely with the AANA to provide feedback on the application of the codes and the level of complaints in particular areas, to ensure that any potential "gaps" in the codes or perceived changes in community concerns can be quickly addressed through the AANA's code development process.

4.2 Rate of complaints raising issues about sexualisation of children

The existing capability of the self-regulation system to regulate sexualised imagery in advertising, and thereby protect children and young people from exposure to sexualisation, is demonstrated by the low level of complaints raising issues about the sexualisation of children.

As discussed earlier, an analysis of advertising complaints received by the Bureau against the AANA codes shows a very low level of cases assessed that raise issues about the sexualisation of children (2.6% of total cases over six years). Over the past six (6) years, the Standards Board found 11 breaches of the Codes in relation to this issue – five (5) related to the depiction of a child in a sexualised manner and six (6) related to the a sexualised image unsuitable for a child audience.

Full complaint statistics up to 2014 are provided at **Appendix 2** for reference. These statistics are published on an annual basis in the Bureau's Review of Operations, made publicly available on the Bureau website.

4.3 Research into community perceptions and public awareness

While the rate of complaints is an important measure of the level of community concern over a period, this is also supplemented by regular research commissioned by the Bureau to gauge the level of community concern about particular issues and also to measure the level of public awareness of the Bureau, Standards Board and the complaint process.

The research provides an effective tool to test the Standards Board's perception and understanding of changing community standards and to provide feedback about how their decisions are aligning with those standards. This feedback complements the collective and diverse knowledge and experience that Standards Board members bring to their role. This includes personal experience as parents and grandparents, and involvement working in professional or volunteer roles with children and young people in various capacities.

Standards Board members endeavor to apply research findings in their decision making process. Where research has demonstrated a misalignment between decisions of the Standards Board and community perceptions, this has been communicated to the Standards Board as part of training and development and members of the Standards Board adjust their positions accordingly to take into account the research.

However, the research is not just intended as a valuable information and training tool for the Standards Board. It is also intended to be useful to advertisers in designing campaigns. Full research reports are made available on the Bureau's website.

Community perceptions research

The Bureau has commissioned research on community awareness (2007), discrimination and vilification in advertising (2009), community perceptions of violence in advertising (2009), community perceptions of sex, sexuality and nudity in advertising (2010), community perceptions (2012), community perceptions of exploitative and degrading advertising (2013) and community perceptions of advertising directed primarily to children (2015).

The 2010, 2012, 2014 and 2015 research in particular, provides useful findings relevant to this Inquiry.

The research commissioned in 2010 aimed to explore and report on community perceptions of the portrayal of sex, sexuality and nudity in advertising with a particular focus on sexualisation of children and the medium in which an advertisement appears. This research found that the outcomes of the Standards Board's considerations of the cases forming the basis of the research were generally aligned with the community views but noted that there is a level of community concern around the content of advertising for sex related products.

In 2012, community perceptions research was undertaken to assess current community attitudes to the five core provisions of the AANA Code of Ethics. The research results suggested that the community is in general more conservative than the Standards Board regarding themes of strong language and sex, sexuality and nudity. With regard to language, there was concern over the exposure of children to strong language and it was noted that this is an area where community views appear to have become more conservative since earlier research conducted in 2007.

Research commissioned in 2013 considered community perceptions of exploitative and degrading images in advertising. The research highlighted concerns about images able to be viewed by children. The research also explored the use of children in advertising and when this is acceptable or not. This research found that it was unacceptable to use children in advertising for adult products such as sex products, drugs or alcohol, or when the product advertised was not related to children or to family use. The use of children in advertising was considered acceptable if the product was relevant to the child, when children were undertaking childlike activities, and when parents have consented to using their children in the advertisements. The research showed that, consistent with prior years, sex, sexuality and nudity continued to be the main area of concern among the general public (20% in 2013, 26% in 2012, 22% in 2010 and 26% in 2009), although as noted in **Part 3**, the level of concern about sex, sexuality and nudity seems to have been lower in 2014 and 2015.

The most recent research published by the Bureau in December 2015 relates to community perceptions of advertising directed primarily to children. This research showed that, when it came to specific sections of the Code, such as sexualisation of children, parental authority and food and beverage advertising, the Standards Board's determinations were generally in line with community perceptions.

The research found that only 16% of all respondents indicated that they had recently been exposed to any advertising that they found unacceptable. Of those 16%, issues of "sex, sexuality and nudity" were the main factor that was deemed unacceptable.

The research also showed that there is still concern in the community about images of young people used in advertising and marketing. The results of the research, as with all research commissioned by the Bureau, is communicated to members of the Standards Board as feedback and to enable them to recalibrate their understanding of community standards in relation to issues addressed in the codes. The Standards Board has used these findings to make more strict decisions in this area, particularly when children are involved.

Public awareness

Our most recent research shows that unprompted awareness levels of the Bureau and Standards Board are at similar levels to that of government organisations which deal with complaints. When prompted, 42% of research respondents indicated that they would contact the Standards Board to make a complaint and 36% nominated the Bureau. A large portion of respondents also nominated media bodies, such as television/radio stations and newspapers/magazines – this is why the Bureau works with the media sector to ensure that complaints about advertising are referred to the Bureau for Standards Board consideration.

Based on this and prior research, we consider that the low level of complaint numbers is not a reflection of a low level of awareness of where to complain, rather it shows a low level of concern. This view was further tested in the 2015 research, which found that in the 12 months prior to the survey, the majority (90%) of respondents had not made a formal complaint about advertising standards. Of that 90%, the main reason they nominated for not making a complaint was that they were not concerned about any advertising that they had seen or heard (50%).

The Bureau continuously works with industry organisations to promote responsible advertising practices and raise awareness of changing community concerns. This ensures that advertisers and marketers are aware of advertising codes and initiatives during the creative process, and are more likely to produce responsible advertising and to comply with the advertising self-regulation system. Industry training always includes information around sexualisation of children in advertising.

4.4 Self-regulation system found adequate by past government inquiries

Successive Government inquiries have determined that the advertising self-regulation system is working and should remain in place. To the extent that any recommendations were made for improving the system, these have been considered and where valid and feasible, changes have been implemented in line with the Bureau's approach to continuous improvement.

These included:

- Queensland Legal Affairs and Community Safety Committee consultation on *Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013* (2013)
 - The Committee recommended that the Bill not be passed and considered it prudent to wait for the outcome of the Queensland Health and Community Services Committee inquiry before making any alternate recommendations.
- Queensland Health and Community Services Committee Inquiry into sexually explicit outdoor advertising (2013)
 - The Inquiry considered the adequacy of existing regulation of outdoor advertising in Queensland.

- The committee “found limited evidence of recent sexually explicit and inappropriate outdoor advertising in Queensland” and noted that “an industry self-regulation model is widely used internationally”.
- The committee noted that “the self-regulatory system is generally effective, but that some improvements could be achieved, for example greater clarity in the Code of Ethics”, with the potential option of “light touch” co-regulation to address the limited situations involving on-premise/transport advertisers failing to comply and “to provide a regulatory back stop to ensure that the Standards Board’s decisions are complied with”.
- The Bureau worked with the former Queensland Government to find a workable solution to refer Standards Board decisions for enforcement assistance and is continuing to seek support with this from the current Queensland Government;
- Australian Law Reform Commission (ALRC) Review of Classification in Australia (2011)
 - The ALRC recommended against advertising being brought into the new classification scheme.
- House of Representatives Inquiry into Billboard Advertising (2010)
 - The Committee concluded that “the current self-regulatory model should remain in place subject to further review by 30 June 2013” and follow-up was provided to the Attorney-General in 2012 and 2013.
 - The Committee rejected the classification system as “an inappropriate system for regulating outdoor advertising” and “failed to be convinced that a government regulatory or classification model would improve compliance or provide a more effective means of regulating the industry in line with community expectations”.
- Senate Inquiry into the Australian film and literature classification scheme (2010)
 - The Committee found that, subject to certain recommendations being followed, “the current complaints procedure for industries covered by a code of practice would remain largely in place”.
- Senate Inquiry into the sexualisation of children (2008)
 - While some recommendations were made for potential improvements for the complaint processes applying to media generally as well as the Bureau, the report states that “The committee endorses the current self-regulatory systems for the maintenance of advertising and media standards in Australia as both cost-effective and appropriate.”

The Bureau applies a continuous improvement approach to its process, as detailed in **Appendix 1**. This has included taking on board the feedback provided in government inquiries to achieve our aim of continuing to improve community awareness of our service and to promote responsible advertising practice, which is in line with community expectations, to the Australian business sector.

Examples of our responsiveness to the feedback and recommendations of government inquiries include:

- Our efforts to find a workable solution with the former Queensland Government that would enable the Bureau to refer determinations of the Standards Board for enforcement assistance in the limited circumstances where this was required.
- Continued investment in commissioning regular research to test alignment of Standards Board decisions with community perceptions.
- Continued investment in our processes and systems and efforts to improve our complaint turnaround, which is currently at 36.5 (calendar) days.
- Further public awareness campaigns, including *People Like You* launched on television and social media in 2014 and development of a new website in 2015.

- Continuing to work closely with our industry partners to ensure that all complaints about advertising are referred to the Bureau and that industry participants continue to understand and support the role of the Bureau and the complaint process, and self-regulation in general.

5. Term of Reference iv, part (b) – Effectiveness of self-regulation measures

The existing self-regulation system is a cost effective and efficient system of regulation for advertising and marketing communications, providing appropriate protections and safeguards for the community. The operation of the advertising self-regulation system is explained in detail in **Appendix 1**.

The current 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.

A determination that an advertisement breaches community standards means the prompt removal of the advertisement and prohibits use of the advertisement in the future. The current system effectively meets the objective of protecting consumers and promoting responsible advertising.

The current self-regulation system operates at no cost to government or the community. The system is funded by industry at a relatively small level of 0.05% of advertising expenditure. The complaints management system works in a manner that minimises costs to the sectors of industry who work within the relevant industry codes and imposes appropriate compliance costs on those who breach the codes.

The effectiveness of the complaint resolution component of the self-regulation system is regularly tested through independent research commissioned by the Bureau (discussed at **Part 4.3** above) and measured through the Bureau's complaint and compliance statistics, reported in its annual Review of Operations published on the Bureau website.

5.1 Upheld rates

Preliminary statistics for 2015 identify that, 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 16.8 per cent. This compares to 3.9 per cent in 2005 and 10 per cent in 2010.

We consider that this is primarily due to the Bureau's continuous improvement initiatives (refer **Appendix 1**), and in particular the introduction of new and more diverse Standards Board members and a greater awareness within the Standards Board of community standards, particularly around 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.

5.4 Compliance with Standards Board determinations

The Bureau has a 99.5% overall average rate of compliance by advertisers with Standards Board determinations over its 16 year history, and 100% compliance where a complaint has been upheld in relation to sexualisation of children in advertising.

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.

As noted earlier, our success with compliance rates is attributable to the effective interaction of the different parts of the self-regulatory system and it also demonstrates the high level of commitment from the vast majority of advertisers to complying with the complaint resolution process administered by the Bureau.

5.5 Enforcement of Standards Board determinations

Regardless of an advertiser's reaction to a Standards Board determination, in the vast 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.

6. Conclusion

The self-regulation system for advertising in Australia is an effective way to ensure high advertising standards across all media and is more than adequate to meet the concerns of the community.

The combined commitment of advertisers, advertising agencies, media buyers, media operators and industry associations has meant that the vast majority of advertisements do not receive complaints and, of those that do, the majority are found not to be in breach of community standards. It has also contributed to the excellent compliance record of the Bureau in enforcing Standards Board decisions, of nearly 100 per cent compliance.

The Bureau and the Standards Board each recognise the important responsibility they have to the community to ensure advertising content meets prevailing community standards in accordance with the advertising codes.

The complaint adjudication process administered by the Bureau is working well in ensuring consumers have the opportunity to be heard when they consider an advertisement does not meet the standards set out in the codes.

The Standards Board takes its responsibility regarding issues around the sexualisation of children in advertising or marketing very seriously. Decisions to dismiss complaints in this area are made with the appropriate and careful consideration the Standards Board gives to all cases. Consistent with the nature of a self-regulatory body made up of community representatives, the Standards Board takes into account changing community perceptions towards particular types of media and particular issues covered by the codes.

The Bureau is committed to continuous improvement of the complaint resolution process, as indicated in **Appendix 1** of this submission and welcomes any relevant feedback that may come out of this Inquiry.

The Bureau recommends that the Committee consider the value of the current processes in ensuring the needs of complainants, advertisers and the general community are effectively balanced and met, having particular regard to:

- the fact that the vast majority of advertisements do not receive any complaints;
- the majority of those complained about are not found to be in breach of community standards; and
- the Bureau's success with ensuring compliance where the Standards Board upholds complaints about an advertisement is nearly 100%.

We are happy to provide the Committee with any additional information it requires and to participate in the public hearings for the Inquiry to further expand on the important roles of the Bureau and the Standards Board in the self-regulation system.

Appendix 1 - 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 1997. 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.

A. 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:

- 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;
- Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising;
- Australian Food and Grocery Council (AFGC) Responsible Children’s Marketing Initiative; and
- AFGC 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.

B. 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.

C. 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 Standards 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.

D. 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 competition and consumer law.

E. Role of the 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.

F. 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 increase in actual complaint numbers and actual number of advertisements complained about between 2013 (442) and 2014, is partly attributable to the success of a new ASB 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.

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 regard to Standards Board determinations.

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. Recent presentations have included representatives from FreeTV discussing the revisions to the Free TV Code of Practice as well as a representative from the Traffic Accident Commission, discussing research into the effectiveness of graphic advertising messages in a Community Service setting.

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. Preliminary figures for 2015 indicate that the average case completion timeframe for 2015 was 36.5 calendar days, whilst 77% 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.

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 an advertisement by a major retail chain which depicted an act

considered by many in the community to be dangerous. Upon receipt of Bureau notification of complaints, the advertiser 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 to protect consumer interests within a fair and impartial system.

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 resulting in improvements in the efficiency and timeliness of complaint processing.
 - A streamlined complaint lodgment form introduced as part of ASB’s revised website.
- Public awareness
 - Following earlier public awareness campaigns in 2008 and 2011, ASB launched a TVC in 2014 focusing on the fact that members of the Advertising Standards Board are “real” people who take complaints seriously.
 - Community standards research has included testing of community awareness about the Bureau and advertising self-regulation.
 - A new website was developed in 2015, with significant improvements to the presentation of information about the complaint process and role of the Bureau and determination search

functionality. The revised website incorporates ASB's blog which is also used to improve our community engagement.

- Community standards research
 - In 2006, the Bureau commissioned research to determine the level of unprompted awareness of the Bureau
 - World-first research commissioned by the Bureau in 2007 testing the Standards Board's decisions against the views of the community.
 - Research conducted in 2009 on community perceptions of violence in advertising (the full report is available on the Bureau website).
 - In 2009, research was also commissioned into discrimination and vilification in advertising at the request of the Standards Board, to better inform them about issues in this area (the full report is available on the Bureau website).
 - Research in 2010 considered community perceptions of sex, sexuality and nudity in advertising (the full report is available on the Bureau website).
 - In 2012, research was again commissioned into community perceptions to assess current community attitudes and seek information about possible shifts in community standards and the Board's alignment with those standards (the full report is available on the Bureau website).
 - Research in 2013 considered community perceptions of exploitative and degrading images in advertising.
 - Research in 2015 considered community perceptions of advertising directed primarily to children.
 - 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 meeting 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, Ms Victoria Rubensohn AM, appointed in August 2011 and Emeritus Professor Robin Creyke appointed in June 2015.
- Introduction of consistently dismissed category
 - A "consistently dismissed" category was introduced in 2010, responding to concerns that Bureau resources were too stretched and to ensure that resources are devoted to the work that is 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. Bureau Chief Executive Officer, Ms Fiona Jolly, represents the Bureau at the EASA General Council Meetings each year.

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 our role as Deputy Chair of International Council on Advertising Self-Regulation, ASB has worked to promote advertising self-regulation in the Asia/Pacific region. For a number of years ASB has been a leading player in seeking and achieving endorsement for the introduction of best practice self-regulatory advertising standards throughout APEC economies.

Appendix 2 – Advertising Code provisions addressing the sexualisation of children

AANA Code of Ethics

The foundation code for advertising self-regulation is the *AANA Code of Ethics* (Code of Ethics). Relevant provisions are contained in Sections 2.2 and 2.4:

- 2.2 *Advertising or Marketing Communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.*
- 2.4 *Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.*

In 2012, the AANA issued a revised Practice Note to the Code of Ethics, making clear the intended application of these provisions in regard to depictions of children and young people. Relevantly, the Practice Note states:

Images of Children and Young People

- *Particular care must be exercised when using images of children and young people in [marketing communications].*
- *Advertisers should have regard to the AANA Practice Guide: Managing Images of Children and Young People.*

Objectification (Section 2.2)

- *In advertisements where images of children are used, sexual appeal is not acceptable and will always be regarded as exploitative and degrading. Advertisements must not state or imply that children are sexual beings and that ownership or enjoyment of the advertised product will enhance their sexuality. Children must not be portrayed in a manner which treats them as objects of sexual appeal.*

Sex, sexuality or nudity (Section 2.4)

- *Advertisements with appeal to young people (under 14 years) which contain sexualised images or poses are to be used with caution. Models which appear to be young should not be used in sexualised poses.*

The Practice Note also explains that “relevant audience”, as referred to in Section 2.4, is determined by examining the media placement plan (formal or informal) and audience measurement data and:

Relevant audience is informed by the media placement plan and content of the [marketing communications]. It requires the Board to examine the media plan (formal or informal). It is the audience that the advertiser intends to see the [marketing communications]. The Board shall have regard to the audience or readership composition data for the relevant media. ...In the case of social media, the Board should have regard to the opt-in nature of the medium and the age gating which may apply to some social media sites in determining the relevant audience.

Broad view of “audience” taken by the Board. For the purposes of advertisements in public places, the Board will not only take account of the relevant audience, but it can also take a broad view of the “audience”. This recognises the broad nature of the audience for advertisements in public places. The Board will not just have regard to whom the advertisement is targeted (the

relevant audience) but the Board also looks at who can see it and the Board will take that into consideration in determining their view of whether the advertisement treats sex, sexuality and nudity with sensitivity to that audience or in regards to whether the language used is appropriate for that audience.

The Practice Note provides guidance to assist advertisers, agencies and the community in understanding the intended application of the Code of Ethics provisions and is taken into consideration by the Standards Board when it makes its determinations.

AANA Children's Code

In addition to the provisions of the Code of Ethics, in early 2008 the AANA introduced a revised *AANA Code for Advertising and Marketing Communications to Children* (Children's Code), incorporating a specific provision to address the issue of sexualisation of children. The revised code aimed at providing advertisers with the clear message that advertisements which sexualise children are unacceptable and providing the public with a specific code provision against which they can make complaints about advertisements that allegedly sexualise children.

Section 2.4 of the Children's Code provides:

Advertising or Marketing Communications to Children:

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

In this context, "Advertising or Marketing Communications to Children" is defined to mean:

Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for [goods, services and/or facilities which are targeted toward and have principal appeal to Children].

"Children" is defined to mean children 14 years old or younger.

Appendix 3 - Complaint/Case Statistics

	2010	2011	2012	2013	2014
PRODUCT CATEGORY ATTRACTING COMPLAINT (%)					
Automotive	0.00%	0.00%	0.00%	0.37%	20.51%
Sex Industry	5.00%	5.67%	2.82%	4.62%	15.40%
Toiletries	7.88%	6.30%	5.63%	4.25%	11.46%
Community Awareness	5.58%	7.14%	6.04%	5.42%	11.41%
Professional services	5.38%	5.25%	5.23%	1.32%	9.02%
Food and Beverages	21.92%	18.28%	23.74%	7.99%	7.91%
Gambling	0.96%	2.94%	2.21%	1.32%	3.45%
Vehicles	4.81%	6.51%	6.64%	13.92%	3.00%
Insurance	3.27%	2.73%	2.82%	1.17%	2.98%
Entertainment	2.88%	7.98%	6.64%	2.05%	2.46%
Travel	0.96%	0.63%	2.41%	4.03%	2.03%
Clothing	7.31%	13.45%	7.44%	8.94%	1.80%
House goods/services	4.42%	4.20%	4.43%	2.20%	1.65%
Alcohol	5.19%	3.78%	3.02%	7.84%	1.30%
Lingerie	0.00%	0.00%	0.00%	7.91%	0.94%
Finance/Investment	3.46%	0.63%	1.81%	3.15%	0.80%
Retail	1.54%	2.73%	4.23%	4.54%	0.59%
Health Products	3.46%	0.84%	3.02%	2.64%	0.57%
Information Technology	0.77%	0.21%	0.60%	0.15%	0.40%
Education	0.96%	0.00%	0.00%	0.00%	0.38%
Slimming	0.19%	0.00%	0.00%	0.00%	0.24%
Telecommunications	2.88%	1.47%	1.21%	3.22%	0.24%
Hardware/machinery	1.35%	1.05%	1.21%	0.37%	0.21%
Bars and Clubs	0.00%	0.00%	0.00%	0.44%	0.19%
Beauty Salon	0.00%	0.00%	0.00%	0.22%	0.19%
Other	2.88%	2.10%	1.41%	0.73%	0.19%
Toys & Games	0.77%	0.84%	1.01%	0.44%	0.14%
Tourist Attractions	0.00%	0.00%	0.00%	0.29%	0.12%
Mobile Phone/SMS	0.38%	0.42%	0.00%	1.61%	0.07%
Media	1.54%	0.84%	1.81%	0.29%	0.05%
Real Estate	0.19%	0.84%	0.80%	1.17%	0.05%
Employment	0.19%	0.00%	0.00%	0.00%	0.00%
Leisure & Sport	3.85%	1.47%	2.01%	2.12%	0.26%
Office goods/services	0.00%	0.42%	0.00%	0.00%	0.00%
Religion/Beliefs	0.00%	0.00%	0.00%	1.25%	0.00%
Restaurants	0.00%	1.26%	1.81%	4.03%	0.00%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

	2010	2011	2012	2013	2014
ISSUES ATTRACTING COMPLAINT (%)					
AANA Section 2.1 – Discr/Vil	19.58%	20.68%	28.49%	18.10%	27.61%
Other	3.12%	1.33%	2.10%	5.57%	16.61%
AANA Section 2.4 - Sex, S & N	45.23%	32.05%	23.41%	23.12%	14.27%
AANA Section 2.3 - Violence	9.62%	11.82%	5.92%	16.11%	12.13%
AANA Section 2.2 - Objectification	n/a	n/a	13.98%	8.31%	11.51%
AANA Section 2.6 - Health and Safety	9.62%	13.59%	9.50%	15.64%	9.38%
AANA Section 2.5 - Language	4.85%	6.06%	12.17%	7.07%	5.23%
AANA Food and Beverage Code	3.08%	6.35%	1.03%	1.09%	1.87%
FCAI Code	1.13%	3.55%	1.87%	4.35%	1.25%
AANA Advertising to Children Code	2.34%	1.33%	0.76%	0.00%	0.05%
AFGC RCMI	0.87%	1.03%	0.16%	0.39%	0.04%
QSRI	0.52%	1.48%	0.41%	0.21%	0.04%
AANA Environmental Code	0.04%	0.74%	0.21%	0.05%	0.01%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

	2010	2011	2012	2013	2014
MEDIA ATTRACTING COMPLAINT (%)					
TV	62.25%	44.16%	65.47%	62.10%	77.72%
Billboard	9.69%	26.35%	4.80%	9.59%	5.32%
Pay TV	2.42%	1.95%	2.90%	3.46%	4.09%
Transport	0.76%	3.67%	1.49%	3.50%	2.32%
Poster	1.99%	7.43%	1.88%	2.13%	2.22%
Internet	7.55%	5.57%	7.84%	5.45%	2.08%
Radio	1.66%	3.24%	4.09%	3.57%	1.80%
Internet - Social Media			2.59%	1.91%	1.58%
Other	0.00%	0.00%	0.06%	0.72%	0.99%
Print	3.56%	4.86%	4.94%	4.54%	0.94%
Outdoor	8.40%	1.67%	1.38%	1.55%	0.54%
Cinema	0.43%	0.19%	1.41%	0.79%	0.33%
Mail	1.28%	0.91%	1.16%	0.69%	0.07%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

	2010	2011	2012	2013	2014
ANALYSIS OF CASES BY MEDIA (%) ****					
TV - Free to air	52.12%	42.02%	45.07%	44.13%	44.77%
Transport	2.50%	4.62%	3.82%	5.40%	7.89%
TV - Pay	5.77%	5.04%	5.43%	7.98%	7.34%
Internet	6.73%	6.93%	10.26%	7.04%	7.16%
Radio	5.96%	6.93%	5.63%	6.81%	7.16%
Poster	4.23%	8.40%	4.02%	5.87%	6.42%
Billboard - static	5.77%	11.55%	8.45%	8.45%	5.14%
Print	9.62%	8.19%	6.44%	5.87%	5.14%
Outdoor	5.00%	3.15%	4.23%	3.52%	2.94%
Internet - Social Media	0.00%	0.00%	3.02%	1.41%	2.20%
Cinema	1.35%	0.42%	1.41%	2.35%	1.47%
Mail	0.96%	2.73%	2.01%	0.47%	0.55%
App	0.00%	0.00%	0.00%	0.23%	0.55%
TV - Out of Home	-	-	-	-	0.55%
Promo material	0.00%	0.00%	0.00%	0.23%	0.37%
Flying banner	0.00%	0.00%	0.00%	0.23%	0.18%
Billboard - mobile	-	-	-	-	0.18%
SMS	0.00%	0.00%	0.20%	0.00%	0.00%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%

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

	2010	2011	2012	2013	2014
GEOGRAPHIC SOURCE OF COMPLAINTS (%)					
NSW	35.98%	29.16%	32.52%	31.77%	37.63%
VIC	24.22%	21.49%	22.24%	23.08%	25.43%
QLD	22.73%	27.82%	21.88%	20.84%	14.58%
WA	6.81%	8.43%	9.26%	9.52%	9.79%
SA	6.53%	9.81%	9.81%	9.05%	8.96%
ACT	2.29%	1.38%	1.98%	2.13%	1.93%
TAS	1.07%	1.00%	1.98%	2.99%	1.25%
NT	0.37%	0.91%	0.33%	0.50%	0.33%
Unspecified	0.00%	0.00%	0.00%	0.11%	0.10%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%