



ADVERTISING  
CLAIMS  
BOARD

## Advertising Claims Board Procedural guidelines for participants

### 1. INTRODUCTION

#### 1.1 Voluntary system of self-regulation

The advertising self-regulation system was established in 1998 by the Australian Association of National Advertisers (AANA). It recognises that advertisers share an interest in promoting consumer confidence in and respect for general standards of advertising.

Self-regulation of advertising has been achieved by establishing a set of rules and principles of best practice to which the industry voluntarily agrees to be bound. 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. These rules are expressed in a number of industry codes and initiatives.

The *Advertising Standards Bureau* (Bureau) administers the complaint resolution process that regulates compliance of advertising and marketing communications with the industry codes and initiatives. The process provides for resolution of both public and competitor complaints.

Responsibility for adjudicating complaints rests with two bodies established for this purpose – the *Advertising Standards Board* (Standards Board) and the *Advertising Claims Board* (Claims Board). The Bureau supports both Boards as secretariat. The Standards Board considers consumer complaints about the content of advertisements against the relevant industry codes and initiatives. The Claims Board functions primarily as an alternative dispute resolution scheme for competitive complaints, operating on a user-pays basis.

#### 1.2 Complaints to the Claims Board

Competitor complaints can be made to the Bureau for consideration by the Claims Board.

The objective of the Claims Board is to provide a system of alternative dispute resolution to address and resolve challenges to advertising that might otherwise lead to litigation. With the complainant bearing the cost, the system is designed to provide timely and cost effective resolution of competitive claims, obviating the need for expensive and time-consuming court actions.

#### 1.3 Claims Board scope

The Claims Board determines complaints on questions involving truth or accuracy of advertising or whether a particular advertisement breaches the law, with reference to Section 1 of the AANA Advertiser Code of Ethics.

It does not usually consider trivial issues or complaints involving:

- material that does not constitute an advertising or marketing communication for the purposes of the Code
- questions of taste, morality or decency
- advertising that is the subject of litigation, or an order by a court or government agency
- unlawful business practices
- highly technical issues

- packaging claims
- issues covered by a specific industry Code (eg slimming, therapeutic goods), or
- advertising that has been withdrawn or discontinued before challenge.

#### **1.4 Claims Board composition**

Determinations of the Claims Board are made by variable panels of legal practitioners experienced in the areas of advertising and/or competition and consumer law. The panels comprise of a minimum of three legal practitioners appointed from a list of qualified legal practitioners (the *Register of Lawyers*) maintained by the Bureau for that purpose. The practitioners included on the Register of Lawyers must have certified to having experience and expertise in the area of advertising and/or competition and consumer law and to holding a current practicing certificate.

A new panel is appointed by the Bureau for each case eligible for determination by the Claims Board. One of the three members appointed to the Claims Board will be appointed to act as Chair. Appointments are managed by the Bureau having regard to the availability of individual lawyers and any conflicts of interest.

At the time of appointment to the Claims Board, each Claims Board member is asked to confirm in writing that they have no conflict of interest or confidentiality. If at any time during the consideration of the complaint a member becomes aware of a conflict of interest or confidentiality, the member agrees to bring this immediately to the attention of the Bureau and then resign from the Claims Board in relation to that matter.

#### **1.5 Parties to Claims Board proceedings**

The party who lodges the complaint and/or who initiates Claims Board proceedings is referred to in these Guidelines as the 'Complainant'. The party about whose advertising or marketing communication the complaint is made is referred to in these Guidelines as the 'Advertiser'.

#### **1.6 User-pays basis**

The costs associated with the Claims Board process are payable by the Complainant. This includes:

- an Application Fee to cover administrative costs associated with assessing the application for eligibility for consideration by the Claims Board (under Clause 2.1 of these Guidelines)
- the Initial Costs, payable upfront and representing an estimate of the costs to the Bureau in administering the complaint and of the members of the Claims Board in making a determination (under Clause 2.5 of these Guidelines), and
- any Additional Costs that may be assessed during the process in excess of the Initial Costs estimate – proceedings may be suspended pending payment of any Additional Costs notified to the Complainant (refer Clause 4.5 of these Guidelines).

The Complainant must pay all fees associated with the Claims Board process before the process can proceed. A tax invoice will be provided by the Bureau for all fees payable in relation to the Claims Board process.

#### **1.7 Indemnity**

The Complainant is required to indemnify the Claims Board, individual members of the Claims Board, the Bureau and its related bodies, against any claims which may be brought against any of those bodies arising out of the determination of the complaint. Indemnities must be lodged in a form supplied by the Bureau.

## **2. INITIATION OF COMPLAINT PROCEDURE**

### **2.1 Making a complaint**

Complaints should be submitted to the Bureau as secretariat of the Claims Board.

The Complainant is required to submit:

- a completed Claims Board Complaint Application Form (available from the Bureau)
- a signed Claims Board Deed of Indemnity in the form required by the Bureau
- a signed Claims Board Costs Agreement in the form required by the Bureau
- five (5) copies of the following:
  - a detailed written complaint
  - the relevant advertisement (digital format preferred)
  - any supporting data to substantiate the complaint, and
- a non-refundable Application Fee in the sum of \$1,100 (\$1,000 plus GST).

The written complaint should set out as much detail as possible to facilitate a response by the Advertiser. In particular, it should include

- details as to the nature of the alleged misrepresentations
- details as to the Sections of the Code that are alleged to have been breached
- a description of the relevant advertisement(s), and
- all supporting data to substantiate the complaint.

The Application Fee is required to cover administrative costs of assessing the eligibility of the application for consideration by the Claims Board and must accompany the initial complaint. The Application Fee is not refundable, whether or not the complaint is found to be eligible for consideration by the Claims Board.

### **2.2 Confidentiality considerations – Complainant**

The Complainant should be aware that its written complaint together with all supporting data submitted by it will be made available to the Advertiser. Any material which the Complainant requires to be withheld from the Advertiser will not be considered or included in the case materials.

### **2.3 Complaints about more than one advertising or marketing communication**

Where a Complainant seeks to complain about more than one advertising or marketing communication by a single Advertiser, a separate application (including the Application Fee) should be made for each advertising or marketing communication, unless the advertising or

marketing communications clearly form part of a single campaign or are sufficiently similar to warrant consideration as a single complaint.

#### **2.4 Eligibility of complaint for consideration by Claims Board**

The Bureau will consider the Claims Board Complaint Application Form and accompanying materials provided by the Complainant to make an initial determination of whether the complaint is eligible for consideration by the Claims Board.

The Bureau will consider whether the complaint is within the scope of the Claims Board (as set out in Clause 1.3 of these Guidelines).

The Bureau will also consider whether sufficient information has been provided to facilitate a response from the Advertiser. The Bureau will contact the Complainant if additional information or clarification is required regarding the complaint before the process can proceed.

If the Bureau determines that the complaint is not eligible for consideration by the Claims Board, the Bureau will notify the Complainant in writing, setting out the reasons for this decision.

#### **2.5 Acceptance of complaint and payment of Initial Costs**

If the complaint is determined to be eligible for consideration by the Claims Board, the Bureau will assign the complaint a Claims Board Case Reference Number that should be used by both parties in all subsequent correspondence regarding the complaint.

The Bureau will estimate the Initial Costs payable by the Complainant and will provide the Complainant with a tax invoice for this amount.

The Initial Costs are an estimate of an amount sufficient to cover the fees payable to the Claims Board members and to cover the costs to the Bureau in administering the complaint.

The Claims Board process will not proceed further until the Initial Costs have been paid.

### **3. SUBMISSIONS PROCEDURE AFTER COMPLAINT ACCEPTED**

#### **3.1 Advertiser notified of complaint and response requested**

After the Complainant pays the Initial Costs, the Bureau provides the Advertiser with written notification that a complaint has been received and is to be considered by the Claims Board. The Advertiser is provided with a copy of the complaint and all supporting materials provided by the Complainant.

The Advertiser is requested to provide a substantial written response to the complaint within ten (10) business days of the date of the Bureau's written notification of the complaint.

The Complainant's supporting data will be made available to the Advertiser and any data which the Complainant wishes be withheld from the Advertiser will not be considered or included in the case materials.

The Advertiser is expected to provide five (5) copies of the following.

- A substantial written response, including
  - responses to the specific issues raised in the complaint
  - the Advertiser's substantiation of the claims at issue
  - a summary of arguments.

- Any supporting data to substantiate the claims that are the subject of the complaint
- All advertising material relevant to the complaint.

### **3.2 Confidentiality considerations - Advertiser**

If the Advertiser wishes to withhold information (submitted as part of the response) from the Complainant then it must make a special request claiming confidentiality and explaining the basis for that request. The Advertiser must, in this request, affirm that the information concerned is not publicly available. Despite claiming confidentiality, the Advertiser must still submit a comprehensive summary of its principal arguments and that summary must be made available to the Complainant.

### **3.3 Complainant reply to Advertiser response**

The Bureau notifies the Complainant in writing of the Advertiser's response, enclosing a copy of the response including all supporting materials received from the Advertiser. The Complainant has seven (7) business days from the date of the Bureau's written notification to submit a reply to the Advertiser's response.

### **3.4 Further Advertiser response**

The Bureau notifies the Advertiser in writing of the Complainant's reply, enclosing a copy of the reply including any materials received from the Complainant as part of its reply. The Advertiser has seven (7) business days from the date of the Bureau's written notification to submit a response to the Complainant's reply.

No further reply is required from the Complainant on receipt of the Advertiser's response under this clause.

### **3.5 Claims Board request for additional information**

Following receipt of final submissions (or once the relevant time frame for receipt of final submissions has elapsed), the Bureau will provide the members appointed to the Claims Board with copies of all submissions and supporting materials received from both parties.

The Claims Board members may request additional information/clarification from either party. The Bureau will notify the relevant party in writing if the Claims Board makes such a request. The requested party has five (5) business days from the date of the written notification from the Bureau to provide this information.

Additional information received by the Claims Board from either party in accordance with this clause is copied to the other party. However, no further response is required unless requested by the Claims Board.

### **3.6 Meeting of parties in lieu of or in addition to written submissions**

The Claims Board may agree to a written proposal from the Complainant or the Advertiser for a meeting with either or both of the parties in addition to or in lieu of a written submission. The proposal for such a meeting should be provided in writing to the Bureau and should specify the reasons why a meeting is required, a list of particulars, an agenda, a proposed date and a list of participants.

The Claims Board is not bound to accept such a proposal but has the discretion to do so.

## **4. RESOLUTION OF COMPLAINT**

### **4.1 Determination made by Claims Board**

Claims Board members meet to determine the outcome of a complaint once they have had an opportunity to review the parties' submissions and view the relevant advertising material. A meeting of Claims Board members may be convened by telephone or video conference or in person.

Claims Board determinations will be by a simple majority and no person will have a casting vote. Determinations are published after resolution.

The Claims Board must reach its determination within fifteen (15) business days of the members receiving the final submission or, if applicable, from the date of receiving any additional information requested in accordance with Clause 3.5.

The Chair of the Claims Board is responsible for preparing the written determination of the Claims Board, which is approved by the other members for inclusion in the Case Report for publication.

### **4.2 No appeal in regard to Claims Board determinations**

A determination of the Claims Board in relation to a particular complaint is final and not subject to appeal.

### **4.3 Types of determinations**

The Claims Board is part of a voluntary system and determinations cannot be enforced. Parties agree to comply with determinations as part of their commitment to supporting the self-regulatory system.

Determinations in the Claims Board case report will be published under the following headings:

- Advertising substantiated;
- Advertising modified or discontinued;
- Advertising referred to government agency;
- No substantiation received.

#### *4.3.1 Advertising substantiated*

If the Claims Board finds the Advertiser has substantiated the advertising or marketing claims that were the subject of the complaint, it will make a determination of 'Advertising Substantiated' and this will be recorded in the final Claims Board Case Report.

#### *4.3.2 Advertising modified or discontinued*

If the Claims Board determines that the Advertiser has not substantiated the advertising or marketing claims under consideration and the complaint should be upheld, the Bureau will notify the Advertiser of the Claims Board's determination and will provide the Advertiser with a draft copy of the Claims Board case report. The Bureau will request the Advertiser to provide, within five (5) business days an 'Advertiser Statement' as to whether the Advertiser agrees to modify or discontinue the advertising.

If the Advertiser has agreed to modify or discontinue the advertising, this will be recorded in the final Claims Board Case Report, which will record the determination as 'Advertising Modified or Discontinued.'

#### *4.3.3 Advertising referred to government agency*

If the Advertiser does not agree to modify or discontinue the advertising and/or fails to provide an 'Advertiser Statement' in accordance with Clause 4.3.2, the final Claims Board Case Report will record the determination as 'Advertising Referred to Government Agency' and the matter will be referred to an appropriate government agency. Copies of the final Case Report may also be sent to the media proprietors.

#### *4.3.4 No substantiation received*

The Claims Board will consider and determine a complaint whether or not it receives an Advertiser response at the outset of proceedings.

In these circumstances, the Claims Board will make a determination 'No Substantiation Received.' A draft Case Report will be prepared, summarising the claims challenged in the complaint and noting the Advertiser's default. The Bureau will notify the Advertiser of the determination and provide a copy of the draft Case Report. The Advertiser will be given a further ten (10) business days to file a response.

If the Advertiser again fails to file its response, the Bureau will notify the Complainant of the outcome and refer the matter to an appropriate government agency reporting that action in the final Case Report. Copies of the final Case Report may also be sent to the media proprietors.

### **4.4 Distribution of final Case Report**

Once the Case Report is finalised, the Bureau writes to both parties notifying them of the determination and enclosing a copy of the final Case Report.

### **4.5 Notification of any Additional Costs payable**

At the time of distribution of the final Case Report, or shortly thereafter, the Bureau will notify the Complainant in writing of any Additional Costs not already paid that are payable in accordance with Clause 1.6 and the Costs Deed.

Additional Costs are costs incurred by either the Bureau or by members of the Claims Board in excess of the Initial Costs estimate made under Clause 2.5. Such additional costs may arise because the complaint was more complex, procedural matters required greater attention or substantially more documentation was received than initially expected when the estimate was provided.

The Bureau will provide the Complainant with a tax invoice for the Additional Costs.

### **4.6 Publication of final Case Report**

Within fourteen (14) business days of distribution of the final Case Report to the parties, the Case Report will be made publicly available via the Bureau website.

## **5. ADMINISTRATIVE MATTERS**

### **5.1 Address for complaint, submissions, correspondence**

Complaints and all other correspondence for consideration by the Claims Board should be addressed to the Bureau as secretariat of the Claims Board.

Email correspondence is preferred where possible and should be addressed to: [administration@adstandards.com.au](mailto:administration@adstandards.com.au). Parties are requested to include the Claims Board Case Reference Number in the email subject line of all email correspondence. The Bureau will notify parties of the Case Reference Number with its first contact regarding the complaint.

Materials that cannot be emailed should be addressed to:

Advertising Claims Board  
C/- Advertising Standards Bureau  
Level 2, 97 Northbourne Avenue  
Turner ACT 2612

### **5.1 Payment of fees**

All fees should be paid by Electronic Funds Transfer to the Bureau:

Account Name: Advertising Standards Bureau  
BSB: 082 057  
Account Number: 46 026 1850.

The reference line of the Electronic Funds Transfer should include 'ACB' and the Complainant name (or abbreviation).

Alternatively, payments may be made by cheque in favour of the 'Advertising Standards Bureau'.

### **5.2 Failure to respond within time frames provided**

The Claims Board will consider a complaint whether or not it has received a response from the Advertiser (to the original complaint).

There are no automatic provisions for extension(s) of time. However, the Bureau as secretariat to the Claims Board has discretion to consent to a written request for an extension of time. The Bureau should be satisfied in these cases that the extension sought is reasonable and that the granting of an extension will in no way prejudice the other party to the proceedings.

### **5.3 Settlement of proceedings**

The Complainant and the Advertiser are naturally free to settle the dispute at any stage during the course of the proceedings. In this instance, the Complainant must notify the Bureau in writing that the matter has been settled and the complaint is withdrawn for that reason.

If the Bureau receives written notification of the withdrawal prior to the appointment of the members of the Claims Board, the Complainant will be liable to forfeit 20% of the Initial Costs paid. The remaining 80% of the Initial Costs will be refunded.

If such written notification is received after the Claims Board members have been appointed, in addition to the 20% already forfeited, an additional amount may be forfeited having regard to costs already incurred by the Bureau and the Claims Board members in considering the complaint. The balance will be refunded to the Complainant.



The Complainant will be liable to pay an amount of Additional Costs for any costs incurred in excess of the Initial Costs up to the date the Bureau receives written notification of the withdrawal, in accordance with Clause 1.6 and the Costs Deed.

#### **5.4 Withdrawal by Complainant from proceedings**

The Complainant is entitled to withdraw from the proceedings at any time. In this instance, the Complainant should notify the Bureau in writing providing reasons for its withdrawal.

If the Bureau receives written notification of the withdrawal prior to the appointment of the members of the Claims Board, the Complainant will be liable to forfeit 20% of the Initial Costs paid. The remaining 80% of the Initial Costs will be refunded.

If such written notification is received after the Claims Board members have been appointed, in addition to the 20% already forfeited, an additional amount may be forfeited having regard to costs already incurred by the Bureau and the Claims Board members in considering the complaint. The balance will be refunded to the Complainant.

The Complainant will be liable to pay an amount of Additional Costs for any costs incurred in excess of the Initial Costs up to the date the Bureau receives written notification of the withdrawal, in accordance with Clause 1.6 and the Costs Deed.

#### **5.5 Commencement of litigation by either party**

If the Complainant commences litigation it must withdraw from the proceedings and forfeit costs paid. If the Advertiser commences litigation, the Complainant must notify the Bureau in writing to cease the action. The Bureau will refund, to the Complainant, costs not yet incurred.

#### **5.6 Responsibility of Complainant to establish claim**

It is the responsibility of the Complainant to establish and substantiate its claim.

#### **5.7 Time available for all meetings**

The time available for all meetings and the last two responses cannot exceed twenty (20) business days from the time of the initial Advertiser response unless the Bureau as secretariat has granted extensions of time or requested further information on behalf of the Claims Board.

#### **5.8 Time frame for decision**

The Claims Board members must reach a determination and prepare a written determination for inclusion in the Claims Board Case Report within fifteen (15) business days of receipt of the last submission or, if applicable, from the date of receiving any additional information requested in accordance with Clause 3.5. The Case Report should clearly set out the Claims Board's determination and the reasons for the determination.