



# Case Report

1	Case Number	0064/16
2	Advertiser	Marriage Alliance
3	Product	Religion/Beliefs
4	Type of Advertisement / media	Internet - Social
5	Date of Determination	09/03/2016
6	DETERMINATION	Upheld - Modified or Discontinued

## ISSUES RAISED

2.3 - Violence Violence

2.6 - Health and Safety Within prevailing Community Standards

## DESCRIPTION OF THE ADVERTISEMENT

The image depicted a woman sitting at a desk, in an office work environment, with her head resting in her hands, with a multi-coloured rope attached to her neck. The accompanying text read: "same sex marriage increases PC bullying in the workplace"

## THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*It is totally inappropriate and against community standards to depict suicide in an advertisement. Particularly, the depiction of a person seemingly about to commit suicide by a specific method, as is done in this advertisement, is highly distressing for friends and relatives of people who have died by suicide and people with a past history of suicidal ideation.*

*The sad look of resignation on the woman's face, the lack of other people in frame, and the rope leading off from the noose out of frame (presumably to the ceiling) all lead to the most obvious interpretation of the image being that the woman intends to commit suicide by hanging, and the accompanying text does not in any way dispel this impression.*

*The subject matter of the ad does not justify the depiction of suicide through any anti-suicide message of community benefit and would therefore appear to be a breach of the Code of Ethics section 2.3 prohibition on the unjustified depiction of violence. Additionally, it would appear to breach Code of Ethics section 2.6, as a depiction of a means of suicide is clearly*

*against prevailing community standards regarding health and safety.*

*The Board has previously stated in determination 0125/13 that 'the issue of suicide is a depiction of violence which is not justifiable' and 'the use of images which are strongly suggestive of suicide is not appropriate'.*

*The cause being promoted by the advertisement, opposition to marriage equality, is in no way related to anti-suicide advocacy in such a way that could justify the depiction of a woman about to hang herself. Additionally, anti-suicide organisations note that depictions of means of suicide are highly likely to be harmful (e.g., see <http://www.mindframe-media.info/for-media/reporting-suicide> - 'explicit detail about method has been linked to increases in both use of that method and overall suicide rates').*

*For the avoidance of doubt, my complaint does not relate to the particular cause that the advertisement is promoting, but to its depiction of a specific method of suicide.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*We acknowledge receipt of your correspondence (herein the "Correspondence") in relation to the complaint (herein "Complaint" and "Complainant" respectively). The contents of this letter and its annexure constitute our response to the Complainant's Complaint.*

*In reply to the bullet point list on page 2 of the Correspondence, we say the following:*

### *Description of the Image*

*The image depicted a woman sitting at a desk, in an office work environment, with her head resting in her hands, with a multi-coloured rope attached to her neck. The accompanying text read: "same sex marriage increases PC bullying in the workplace" (herein the "Image").*

### *Comments in Relation to Complaint*

#### *1. Preliminary:*

##### *1.1. Jurisdiction:*

*You will be aware that our organisation is preparing for, and engaging in the preliminary stages of a political campaign concerning, inter alia, the proposed alterations to the definition of "marriage" and "family" throughout the Commonwealth (herein referred to as the same-sex-marriage or "SSM" campaign). This is a highly contentious political debate that has attracted a great deal of press and commentary.*

*On the most recent advice received from the Australian Electoral Commission, as a "Third Party Campaigner" we may be subject to the mandatory reporting provisions of the Australian Electoral Act 1918 (Cth). Accordingly, it is our view that our communications fall under the exclusion of "political advertising" as per the information on your website.*

*We therefore question the jurisdiction of the Advertising Standards Bureau in this matter but have decided to provide this response as a sign of good faith, on a without prejudice and no-admissions basis, and with all rights reserved.*

## 1.2. Other Legal:

*Notwithstanding the matters raised in 1.1 above, the Image is not an “advertisement”. It is not promoting a product or a service, nor is it tendering for any business or commercial enterprise of any sort. No money has been paid for its publication and no revenue has been generated by its publication. The Image is akin to an online “meme” which is a mere opinion represented in visual form. This particular Image’s dominant purpose is political and connected to a politically orientated campaign. That campaign is presently focused on the opposition to the proposed legalisation of SSM, however the campaign is also couched in a broader and ongoing public debate concerning bioethics and sexual morality issues, as well as how free discussion of these issues is being stifled. [See 1.3 for more information regarding this last point, below]*

*The Federal Constitution provides an implied protection over “communication on matters of government and politics” [Lang (1997) 189 CLR 520, 558-559]. Constitutionally protected political communication would also include “communication that influences attitudes towards public issues” such as, inter alia, “questions of appropriate parenting”, “use of reproductive technologies generally”, “questions of religion, moral philosophy, history, medical science and sociology” [Stone, A., (2001) No. 2 Melbourne Univ. Law R. 25 1, 18]. Furthermore, “political discussion [...] refers to all speech relevant to the development of public opinion on the whole range of issues which an intelligent citizen should think about” [Theophanus (1994) 182 CLR 104, 124].*

*We argue that matters pertaining to the scope and extend of political correctness within debates concerning the SSM campaign would fall under the penumbra of the above. It is further argued that a political opinion concerning issues ancillary or consequent to the legislation of SSM, especially if that opinion goes to the question of acceptable discourse on related issues (such as freedom of speech and conscience in the workplace) – all of these fall within the definition of “political discussion”. Accordingly, communication that falls within this penumbra is protected under the implied Constitutional guarantee.*

*Moreover, “[t]he character of the communication ought to be considered political, regardless of its personalised content and its likely incapacity to impact the wider political debate” [Jones, E., (2004) 36 Syd. Law Rev. 169, 179]. Furthermore, the protection afforded to the political communication will not be interfered with “no matter how undesirable these facts might be to a given person or minority group” [Zimmerman, A., (2013) Brigh. Young Univ. Law Rev. 457, 500; Fletcher (2005) VCAT para 7; as to the factual basis of the Image, see 2.1 below]. Indeed, “insults are a legitimate part of the political discussion protected by the Constitution [and] have been employed in political communication since the time of Demosthenes” [Coleman (2004) 220 CLR 1, 54, 78]. Accordingly, “the implied freedom has been found to protect insults, abuse, and ridicule made in the process of political communication” [Zimmerman, A., op. cit. at 498; also: Arony, N., (2006) F.L.R. 287, 312].*

*While the Image does not seek or intend to “insult”, it appears to have offended the Complainant. Be that as it may, in light of the political nature of the communication inherent in the Image, and the Constitutionally implied protection of political communication as defined above, it is respectfully submitted to the Board that the Image is protected as political communication under the implied freedom per the Federal Constitution and relevant High Court authority.*

### *1.3. Context of the Campaign and the Publication of the Image.*

*We draw the Board's attention to Media Watch Episode 29 of 17 August 2015. For your convenience, a transcript of that broadcast has been annexed to this Response. You will be aware of the growing significance and importance of decentralised social media and online networking technologies in campaigns. The current campaign has effectively been silenced in a significant portion of the television media.*

*Social media and social networking technologies will therefore be invaluable tools for the dissemination of political opinions designed to encourage, instigate and indeed provoke debates on the presently contested issue. In light of the controversial nature of that issue, it is only to be expected that individuals with strongly held positions will be 'offended' by provocative expressions that do not accord with their own personal biases.*

## *2. The Image*

### *2.1. Meaning, Interpretation and Basis in Fact*

*The Image is a figurative dramatization of the pressures that employees have felt as a result of politically correct thought and speech policing in the work environment. The symbolism in the image uses visual metaphor and analogy to convey meaning. This meaning is reinforced and highlighted by way of the explicit statement contained in the embedded text.*

*The aforementioned pressures felt by employees are based in fact, as attested to in the experience of individuals in overseas jurisdictions where SSM has been legalised. We draw the Board's attention, by way of representative example only, to the following cases that illustrate this point: Kevin Cocrane, Chris Kempling, Brendan Eich, Phil Robertson, Good News Employees Association and others. These cases received substantial media commentary here and abroad.*

*We have become aware that similar pressures have been felt by Australian employees, some of whom have contacted us and expressed their concerns about the following:*

*(a) Their fear in expressing opinions that might be described as 'orthodox' or 'traditional', particularly in connection with sexual morality issues including marriage, family and specifically matters related to the discussion concerning the push for SSM.*

*(b) Their fear that they may lose promotional opportunities or face termination if they express views contrary to the prevailing corporate culture, especially in situations where their employer has made:*

*i. Internal statements in support of SSM and 'suggested' symbolic ways in which employees might 'show their support' for SSM; and*

*ii. Public declarations of support for the 'Yes' campaign, contributed funding to that campaign or provided a license to use the corporate logo, branding and other good will for that campaign.*

*(c) Their perception that this creates an environment in which their opinions, and therefore*

*they themselves, are of lesser value, cannot be heard, are wrong, immoral or criminal.*

*(d) The feelings of personal ostracism consequent to the above.*

*(e) The anxiety that this politicised environment has caused employees personally.*

## *2.2. The “Rainbow Noose”*

*This is the symbolic, metaphorical and analogous aspect of the Image. The “noose” represents the choking and stifling effect of PC thought and speech policing that employees have suffered, as described in 2.1. The “rainbow” texture represents the ideological current of that PC policing. The woman’s demeanour illustrates the effect that this has on her emotionally and psychologically.*

## *2.3. Allusions to “Suicide”*

*There is no allusion to “suicide” in the imagery. The Complainant’s suggestion that the image showed or alluded to suicide by hanging is quite frankly absurd.*

*(a) The Image shows an individual sitting at a desk. Sitting is not hanging. We are unaware of anything that would or could lead a member of the public to believe in a concept called “Suicide by Sitting”.*

*(b) Contrary to the suggestions made by the Complainant, the Image does not trivialise suicide. In fact, the Image is a protest against the culture of employee bullying that has inadvertently been created by the politicization of the workplace environment. A plain reading of the Image’s embedded text makes this clear.*

*(c) The image of the rope is drawn from and informed by colloquial and vernacular discourse such as when a person is betrayed, fired, marginalised or ostracised, which is precisely the point the Image was conveying. Such a person may be described as:*

*i. being ‘hung out’ to dry,*

*ii. getting ‘terminated’, or*

*iii. being given ‘the chop’.*

*These terms, which are commonly used, are etymologically related to death or dying but are never literally or even figuratively interpreted as endorsing or depicting any activity that leads to death; nor does the symbolism in the Image.*

## *3. Conclusion*

*The alleged offence felt by the Complainant is based on an intentional and disingenuous misreading of the Image to supposedly ground a complaint under the Code; the complaint itself is but another attempt to silence an opinion on a political issue by way of a mendacious appeal to the provisions of the Code.*

*Annexure – Transcript of Media Watch Programme, Episode 29, 17 August 2015*

*Media equality on marriage equality?*

*Do both sides of the marriage equality debate get equal billing in the media?*

*And now to something else that was big last week ... and that's the debate over same-sex marriage ... where opponents of marriage equality are having difficulty getting their message out to the media:*

*Foxtel customers angered by ads against same-sex marriage Foxtel has been bombarded with irate messages from customers upset that the pay TV company has run ads from opponents of same-sex marriage. — The Age, 11th August, 2015*

*Yes, some Foxtel viewers don't just dislike the ads, they think the network shouldn't be running them, as you can see from comments like this on Foxtel's website.*

*@Foxtel subscription cancelled. I guess you can make money off homophobia and bigotry. — Foxtel online, 11th August, 2015 @Foxtel should be ashamed of themselves. But at least we know they're homophobic. #canceledsubscription ... — Foxtel online, 9th August, 2015*

*Whatever happened to freedom of speech? And was the ad really so offensive? Take a look at the TV commercial it ran from Marriage Alliance and judge for yourself.*

*VOICE OVER: So it's time to step back and consider all the issues around same-sex marriage, like how it will affect sex education in schools or how it will affect children. We could even lose certain rights, since changing the meaning of marriage has unintended consequences. — Marriage Alliance Ad, 9th August, 2015*

*All pretty mild, surely? But Fairfax and Channel Nine, who also published the ad, ran into similar flak, including this broadside from Mamamia.*

*The ad's inaccurate claims are offensive. They are untrue. They are inviting hate. And they are being aired to hundreds of thousands of Australians on free-to-air television. That's why today, we're asking: Why on earth did the Nine Network agree to air these ads? — Mamamia, 11th August, 2015*

*The ad in fact makes hardly any claims at all and in my opinion to say it's inviting hate is ridiculous. But by then, other media had already decided to ban it, with Channel Seven, Channel Ten, 2DayFM, The Australian Radio Network and Nova all refusing to give the ad an airing. So how did they justify this? Well, Ten refused to comment. While Seven told Media Watch unconvincingly:*

*We could not accommodate the booking and scheduling request. — Simon Francis, Director Corporate Affairs, Seven West Media, 13th August, 2015*

*And Nova at least came clean on its reasons, telling the Marriage Alliance in an email:*

*We simply feel that, this messaging [is] significantly out of alignment with the Nova brand and our audience. — Nova Entertainment, 4th August, 2015*

*By contrast, an ad from the other side of the debate—which supports same sex marriage or Marriage Equality—has run on Sky, Foxtel and WIN. And they've had no trouble getting their message to Australia:*

*Aren't we about a fair go? It's about respect. What's all the fuss? — Marriage Equality Ad*

*Well indeed. What is all the fuss about a station airing commercials that its viewers might disagree with? And whatever happened to a fair go for both sides of this debate? In response to the ban, Sophie York from Marriage Alliance issued a statement to complain.*

*“It is quite shocking that two major TV networks are denying the basic right to freedom of speech and expression on an issue that supports the current law of the nation “We are asking for a fair-go to have a debate about an issue that should be discussed openly and transparently, and without intimidation or fear. Why is public debate being silenced?” — Marriage Alliance Media Statement*

*But aside from the ads being banned, are opponents of marriage equality getting an equal run in the media? Or at least a fair hearing. We don't think they are. When Canberra Airport lit up in rainbow lights last Sunday to support same sex marriage, it was front page in The Age and The Canberra Times next morning and also big news in the Sydney Morning Herald. And it scored almost fifty mentions on radio and TV. But on Monday, when opponents of gay marriage piled flowers on the lawn at Parliament House it got just 14 mentions on radio and TV, one story on News.com.au, and this brief report on page 6 of the Adelaide Advertiser. Sure, the airport was a better story. But the overall media coverage of the debate has also been skewed. For example, none of the commercial TV stations covered the launch of the Marriage Alliance campaign. And major one-on-one interviews on radio and TV have also been out of kilter. With two key spokespeople for marriage equality, Rodney Croome and Christine Forster, scoring 32 interviews between them in the first 12 days of August And by our count, two key speakers against—Sophie York and David van Gend—scoring a grand total of only 12. Amazingly, the ABC has not interviewed Sophie York from the Marriage Alliance even once—despite 16 interviews with Forster and Croome. As the Australian Marriage Forum's van Gend told Media Watch:*

*No-one ever rings us. We send endless media releases ... I don't want to pester anyone, but we're here. — David van Gend, Australian Marriage Forum, 12th August, 2015*

*We think those figures speak for themselves and we can only agree with the Christian Federation's Peter Kentley, who told us:*

*The media has a bias. There's no question it is pro same-sex marriage. — Peter Kentley, Christian Federation, 12th August, 2015*

*And just before you pile into me on Twitter if you're not already doing so. I am a supporter of Marriage Equality. But, as we're constantly being reminded, this is a conscience issue and an important change that's being proposed, and surely both sides of the debate have an equal right to be heard.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concern that the advertisement features an image of a woman with a noose around her neck which is inappropriate, distressing and contravenes Prevailing Community Standards on health and safety.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Board noted that this advertisement was viewed on Twitter and features an image of a woman at a work desk with a noose around her neck and the text, “same sex marriage increases PC bullying in the workplace”.

The Board noted it had previously upheld a complaint against a television advertisement which depicted a person hanging from a noose in case 0125/13 where:

“The Board noted that imagery in the advertisement includes a male and female character deliberately causing an explosion which appears to lead to their deaths and that the final scene shows the logo of the game which features a figure hanging by a noose from a palm tree. The Board noted the Advertiser had responded to say that whilst they were sympathetic to members of the community who had been affected by suicide, the depictions in the advertisement were intended to be viewed in the context of the game advertised. The Board noted the fantasy content and the stylised nature of the advertisement and considered that the issue of suicide is a depiction of violence which is not justifiable even in the context of an advertisement for a computer game aimed at adults.”

In the current advertisement the Board noted it had been placed on the advertiser’s Twitter feed. The Board noted the advertiser’s response that they are a ‘Third Party Campaigner’ therefore their advertising falls under the category of Political Advertising and falls outside the Board’s jurisdiction.

The Board noted that on the Marriage Alliance’s website they describe themselves as “an independent alliance bringing together individuals and organisations supporting a common cause”. The Board considered that the adjudication of complaints about political and election material is outside the charter of the Board, for reasons including the importance of the Board being seen as an impartial adjudicator on advertising. The Board noted it had previously considered advertising for similar organisation, Exit International (0448/10) where the issue of Euthanasia was raised and How Good is That (0107/11, 0108/11) where the issue of Abortion was raised. The Board noted that same-sex marriage is a current political concern for the Australian community and considered that its consideration of the current complaint would be limited to the image used and not to the accompanying text or political viewpoint/message.

The Board noted that the image used in the advertisement features a woman with a noose around her neck. The Board noted that it is not clear whether the woman has had the noose

placed around her neck by someone else or by her own hands but noted that the reference in the material is to ‘bullying’ and so it is possible either that the advertisement is suggestive of bullying. The Board considered that regardless of whether the image is suggestive of suicide or not the placement of a noose is a graphic depiction of an activity which leads to serious harm or death..

The Board noted that Section 2.3 of the Code is clear that depictions of violence may be acceptable only if they are justifiable in the context of the product or service advertised. In this material the political issue is suggestive of bullying however in the Board’s view a realistic image of a woman with a noose around her neck is a depiction of a consequence of bullying which is extreme and is a depiction of violence which is not justifiable in the context of the product or service advertised.

The Board determined that the advertisement did breach Section 2.3 of the Code.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that there is strong community concern around the issue of suicide and the link between cyber-bullying and self-harm.

The Board noted that research has shown that mention of the word ‘suicide’ has been shown to be a trigger to some members of the community (<http://www.livingisforeveryone.com.au/uploads/docs/LIFE-research-web.pdf>, page 23).

The Board noted the Australian Press Council’s Standards Relating to Suicide, 2011 (<http://www.presscouncil.org.au/document-search/standard-suicide-reporting/>) which provides:

“Published material relating to suicide should be accompanied by information about appropriate 24-hour crisis support services or other sources of assistance with these problems...”

The Board also noted similar rules in the FreeTV Code of Practice. The Board noted that these rules do not apply to the advertiser in question as they are not covered by the particular rules; however in the Board’s view the rules represent a community standard regarding references to suicide.

The Board noted it had previously upheld a complaint about an advertisement which featured the word suicide in case 0193/15 where:

“The Board noted that the use of the term ‘suicide’ in the advertisement is in the context of a movie promotion and a minority of the Board considered that its use in this context and the relevance of the word to the theme of the movie was not inappropriate and did not breach Prevailing Community Standards on health and safety.

The majority of the Board however noted that as well as the word ‘suicide’ the other Google search references included ‘party photos’ and ‘boyfriend’ and considered that by displaying the word ‘suicide’ in this context it trivialises and normalises an issue which is serious.

The majority of the Board noted that whilst there is no obligation for the promoter of a movie to provide information about appropriate support services for anyone concerned about the issue of suicide in the Board's view it is not appropriate to display this word in an advertisement without providing support services information and in the absence of support information in the context of this advertisement, the concept of suicide can be seen as attractive an option as being at a party or with your boyfriend.

The majority of the Board considered that the use of the word 'suicide' in the advertisement was a depiction of material contrary to Prevailing Community Standards on health and safety around mental health issues."

In the current advertisement the Board noted that whilst the word 'suicide' is not used there is a reference to bullying and the accompanying image of a woman with a noose around her neck is strongly suggestive of a person coming to serious harm, either by their own or someone else's hand. The Board noted that the issues of bullying and suicide are of strong community concern and considered that these issues are being trivialised in the advertisement as the suggestion is that you encounter bullying at work so the next step, given that no other person is depicted in the advertisement, is to hang yourself.

The Board noted that the advertisement does not contain contact information with regards to support services information and considered that consistent with its determination in case 0193/15 the absence of support information in the context of an advertisement which mentions bullying and features a realistic image of a woman with a noose around her neck is contrary to Prevailing Community Standards around mental health issues and workplace bullying.

The Board determined that the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach Sections 2.3 and 2.6 of the Code the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

The advertiser has not provided a response to the Board's determination. The ASB noted that this Twitter post is no longer available on the advertiser's Twitter feed.

