



Case Report

1	Case Number	0164/16
2	Advertiser	Fair Dinkum Sheds
3	Product	House Goods Services
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	27/04/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a man and child fishing from a stationary boat in calm waters. The boy has a life vest on, the man doesn't. The boy asks his dad if the boat they are in will fit in their shed and the man replies that fitting the boat in isn't a problem with the Fair Dinkum Shed design around. He then uses a tablet to demonstrate how to design your own shed. The final scene shows the man holding a fish he has just caught and we see the Fair Dinkum Sheds logo on screen with the text, "Anywhere, anytime".

THE COMPLAINT

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

Both are not wearing safety jackets while in a boat on water. This maybe be acceptable but I believe it does not meet the boating standards currently in place. This is showing an unsafe and possibly illegal act.

THE ADVERTISER'S RESPONSE

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

- *Talent used in TV advertisement is Paul Worsteling – host of iFish TV on Ten/One/Southern Cross Ten. His son is also in the ad.*
- *He is a huge advocate of boating safety and reinforces these rules when on his TV show.*
- *He applied the same safety rules whilst shooting the TVC that he does when shooting the TV show.*
- *TVC was shot in Victoria, where it is a legal requirement on all but a few recreational vessels in Victoria to carry an appropriate size and type of lifejacket for each person on board. They must be stored or placed to allow quick and easy access and be in good condition and working order.*
- *Here is a summary of Victorian legislation:
<http://www.wearalifejacket.vic.gov.au/lifejacket-laws>*
- *The boat he was in is over 6m in length and is motor driven. He was in the Port Philip bay area of Australia.*
- *His son was wearing a Personal Flotation Device (PFD) that complies with the requirement for children under 10 to wear a Type 1 (Level 100+) lifejacket in this instance.*
- *The laws that applied to Paul Worsteling were as per below. No requirement existed for him to be wearing a life jacket, only to have one available to him on board which was absolutely the case.*

All persons must wear a Type 1 (Level 100+) lifejacket when in an open area of a vessel that is underway at the following times of heightened risk:

- *operating alone*
- *operating at night (one hour after sunset until one hour before sunrise)*
- *crossing an ocean bar*
- *crossing Port Phillip Heads*
- *boating in restricted visibility*
- *when the vessel is disabled*
- *the vessel is operating in an area where the Bureau of Meteorology has issued a weather warning of the following kind:*
 - o a gale warning*
 - o a storm force wind warning*
 - o a hurricane force wind warning*

- o a severe thunderstorm warning*
- o a severe weather warning.*

Boating regulations around Australia vary.

We met regulations in all states:

- An approved PFD was accessible for everyone in the boat*
- His son who was 8 at the time of shooting, was wearing a Type 1 (Level 100+) PFD*
- The boat (which is over 4.8m) was not operating in open waters or an area of heightened risk (general definition below which may vary by state)*

Heightened risk

A heightened risk situation is any time when there is a greater risk of either an incident occurring or if an incident was to occur, when it might be difficult to help yourself, which includes:

- Boating in bad weather such as in a gale warning, storm warning, severe thunderstorm warning or other severe weather warnings issued by the Bureau of Meteorology*
- When a yacht does not have safety barriers, lifelines, rails, safety harnesses or jack lines in use*
- Boating by the elderly, non-swimmers and people with serious medical conditions*
- When the vessel has broken down*
- When there is a significant likelihood that the vessel may be capsized or swamped by waves, or the occupants of the vessel may fall overboard or be forced to enter the water*
- Other similar circumstances.*

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 concerns that the advertisement shows a man and a child in a boat on the water, with neither wearing safety jackets, which is an unsafe and possibly

illegal act.

The Board viewed the advertisement and noted the advertiser's response. The Board did note, consistent with the advertiser's response, that the child is wearing a flotation device and the vessel is stationary and at anchor, in view of the shore.

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 across Australia, life jacket laws differ from state to state and noted the advertiser's comment [regarding] the difficulties this created. The Board considered the advertiser's comments that the advertisement was filmed in Victoria and the activity shown complied with Victorian laws, including adherence to all water way rules, speed limits and regulations.

The Board considered that the advertisement's depiction of the man not wearing a life jacket in a stationary boat close to shore did not amount to an unsafe or illegal act given the laws governing the wearing of life jackets are not harmonised but jurisdictionally determined. In line with a previous determination (case 0059/13):

"The Board noted that the issue of safety at sea is a very important community concern but that there is not yet a community standard regarding wearing life vests. The Board noted that the advertisement depicts only fleeting images of the men on the boat and that in each scene the conditions appear to be calm and the men do not appear to be in any danger from unsafe sailing conditions".

The Board considered that wearing life jackets on a boat may be considered best practice for adults and children but is not law in the situation depicted in the advertisement, in all jurisdictions. The Board further noted that all applicable jurisdictional laws did state that children must wear a life jacket, and this has been complied with in the advertisement.

The Board was of the view that the material depicted would be contrary to Prevailing Community Standards on safety when the advertisement was shown in a jurisdiction where the law required a flotation device to be worn by both adults and children in the circumstances shown, however, in this instance the Board considered that the advertisement did not depict material contrary to Prevailing Community Standards.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

