



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	Case Number	0319/18
2	Advertiser	Department of Health
3	Product	Community Awareness
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/07/2018
6	DETERMINATION	Dismissed

## ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

## DESCRIPTION OF THE ADVERTISEMENT

The complaint refers to two television commercials branded Long Live You. They feature a montage of older Australians doing the activities they enjoy. The background music is a choir singing a rendition of Bright Side of the Road. They have a different script and imagery, but both finish with the same end scene which is the subject of the complaint, a hand trailing in the water of a moving boat.

## THE COMPLAINT

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

*The last six seconds of the ads show a person "Bow Riding" by placing their arm in the water from a moving boat. NSW Roads and Maritime services states that "Bow Riding" is illegal and that "Bow riding means: Extending any part of your body outside the perimeter of a power-driven vessel that is making way, or being on the bow in a position that increases the risk of falling overboard."*



*The Australian government have the two ads available to view online at <https://campaigns.health.gov.au/longliveyou/resources>*

## **THE ADVERTISER'S RESPONSE**

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

*The Long Live You television commercials adhere to section 2.1–2.5 and 2.7 of the AANA Code of Ethics.*

*The commercials do not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.*

*The commercials do not employ sexual appeal, or portray sex, sexuality or nudity.*

*The commercials do not present or portray violence.*

*The commercials use language which is appropriate in the circumstances and do not include strong or obscene language.*

*The commercials are clearly distinguishable as advertising to the relevant audience.*

*In regards to section 2.6 of the Code of Ethics, the creative agency that produced the commercials, BMF Advertising, was tasked with ensuring all health and safety protocols were adhered to during the shoot and that the activities depicted in the final materials were in line with community standards on health and safety.*

*In the sequence identified in the complaint, there is a bench seat at the back of the boat (not visible in the shot) and the woman is sitting down, not leaning over the bow. It's a relatively small boat and the back sits quite low in the water when moving. The woman was wearing a life jacket and the boat was moving slowly. The sequence used a high film speed for visual effect, which may suggest that the boat was moving faster than it actually was.*

*In addition, there was a safety officer as part of the crew on set at all times.*

*The commercials were approved by Commercials Advice (CAD) and they would have asked this scene to be removed if they deemed it to be showing dangerous or illegal behaviour.*

*The media buy concluded on 30 June 2018; the commercials are no longer on television. If the Australian Government decides to use the commercials in future*



*advertising, this final scene can be edited out.*

## **THE DETERMINATION**

The Ad Standards Community Panel (“Panel”) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the “Code”).

The Panel noted the complainant’s concerns that the advertisement features unsafe and illegal behaviour.

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

The Panel noted that the advertisement featured a montage of older Australians participating in activities they enjoy. In particular, the Panel noted a scene at the end of the advertisement which depicted a hand over the side of a boat, trailing through the water.

The Panel 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 Panel noted the complainant’s concern that the advertisement features ‘bow riding’ which is against the law in NSW.

The Panel considered the advertiser’s response that the woman featured in the advertisement was seated in a slow moving boat and wearing a life jacket and was not participating in any unsafe activity.

The Panel acknowledged that boat safety is an important issue of concern to people using the waterways and considered that advertisers should take care to ensure the overall impression of advertising on showing activity on waterways is not inconsistent with safety messages.

The Panel noted that this is a national campaign which can be seen by audiences in all states and territories in Australia, including NSW.

The Panel noted that the NSW Marine Safety Regulation 2016 (<https://www.legislation.nsw.gov.au/#/view/regulation/2016/308/sch4>) , Schedule 4, Part 1, Clause 3 advises that:

“ (1) This clause does not apply to:

(a) commercial vessels that are not hire and drive vessels within the meaning of the National Law, or



(b) a regulated Australian vessel or vessel regulated under the Navigation Act 2012 of the Commonwealth.

(2) The operator of a power-driven vessel must not allow any person on board the vessel to extend any part of that person's body outside the perimeter of the vessel while the vessel is making way.

(3) A person on board a power-driven vessel must not extend any part of the person's body outside the perimeter of the vessel while the vessel is making way.

(4) The operator of a power-driven vessel must not allow a person to be on the bow of the vessel, in a position that puts the person at increased risk of falling overboard, while the vessel is making way.

(5) A person must not be on the bow of a power-driven vessel, in a position that puts the person at increased risk of falling overboard, while the vessel is making way.

(6) The operator of a power-driven vessel that is making way must not allow any person to sit on, ride on or hang onto a swim ladder, swim platform or transom attached to the vessel.

(7) A person on board a power-driven vessel that is making way must not sit on, ride on or hang onto a swim ladder, swim platform or transom attached to the vessel.

(8) This clause does not apply to a person who is:

(a) conducting an activity related to the operation of the vessel including, but not limited to, hoisting or lowering sails, anchoring, mooring or casting off, or

(b) fishing while the vessel is anchored, moored or drifting, or

(c) involved in any activity relating to securing the safety of any person or property, or

(d) the operator of, or a passenger on, a personal watercraft.

(9) In this clause, a reference to a vessel making way is a reference to the vessel being underway and propelled by the vessel's machinery."

The Panel noted that no similar rule could be found in any other state or territory, except SA which advises that passengers do not sit on the bow or dangle their legs in the water while the boat is moving

[https://www.sa.gov.au/\\_\\_data/assets/pdf\\_file/0010/11701/SA-Recreational-Boating-Safety-Handbook.pdf](https://www.sa.gov.au/__data/assets/pdf_file/0010/11701/SA-Recreational-Boating-Safety-Handbook.pdf) and Qld which has similar advice <https://qorf.org.au/wp->



content/uploads/2017/08/Boatsafe\_Workbook.pdf.

The Panel considered that the depiction of the woman's hand in the water is a very brief and closely framed shot. The Panel considered that the woman's position in the boat and the kind of boat being used is not clear.

The Panel noted they had previously considered a case relating to personal watercraft safety in case 0588/17, in which:

"The Majority considered that the scene in which you see the two jet skis is very fleeting and it is hard to tell how far apart the craft are and how fast they are going. The Majority considered that while one craft appears to have crossed the wake of another we do not see this in the advertisement and where we do see the craft they appear to be an appropriate distance from each other.

The majority of the Board noted the depiction of people using two jet skis in the vicinity of each other does not appear to be a depiction that is contrary to Prevailing Community Standards on health and safety. The Board determined that the advertisement did not breach Section 2.6 of the Code."

In the current advertisement, the Panel considered that the image is very fleeting and it is not clear what type of vessel the woman is in. The Panel considered the woman may be in a sailboat and the advertisement did not clearly show that the woman was in a power-driven vessel.

The Panel noted that in a recent independent review for case 0097/18, the Independent Reviewer had recommended that:

"Significantly, it is virtually impossible to imagine what could better constitute a reflection of prevailing community standards on this issue of road safety, than the Road Rules (especially such a serious Rule) made by a government which has been elected by the community. This is the underlying principle of representative government: that a government is elected by the majority of the community and is thereby taken to represent the community in its lawmaking. It is this principle that gives credibility and authority to legislation and rulemaking. Thus, on this principle of representative rule making, it is the view of the Reviewer that an advertisement which depicts the breach of NSW Road Rules would, under normal circumstances and unless conclusive evidence proving otherwise was offered, necessarily be contrary to Prevailing Community Standards on safety.

In the reconsideration of case 0097/18 the Panel considered that:

The Panel noted that this is an advertisement which is promoting a not for profit organisation, aiming to elicit donations to support children, and that the image of the woman stopping the vehicle was not the emphasis of the advertisement. The Panel



however considered that although the woman's stopping was not the focus of the advertisement it did agree that there was a depiction of material that breached the Australian Road Rules, and that there was no surrounding information or depictions that would override the impression.

The Panel therefore considered that the advertisement did depict material contrary to Prevailing Community Standards on road safety and did breach Section 2.6 of the Code."

Unlike Case 0097/18, the Panel considered that there is no clear depiction of a nationally applicable Maritime Law being breached, as the close up frame of the advertisement makes the type of vessel being used ambiguous.

The Panel considered that there was no suggestion in the advertisement that the fleeting scene was encouraging or promoting unsafe activity.

The Panel considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety. The Panel determined that the advertisement did not breach Section 2.6 of the Code.

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

