



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0320-19</b>
<b>2. Advertiser :</b>	<b>Tabcorp Holdings Limited</b>
<b>3. Product :</b>	<b>Gambling</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>9-Oct-2019</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification  
AANA Code of Ethics\2.3 Violence  
AANA Code of Ethics\2.4 Sex/sexuality/nudity  
AANA Code of Ethics\2.6 Health and Safety

### DESCRIPTION OF ADVERTISEMENT

This advertisement is a campaign to raise money for prostate cancer. It features Shane Crawford and Anthony Minichiello in a studio describing the campaign and asking for players and fans to embrace the initiative. During the advertisement several scenes depict the men tapping each other on the bottom.

### THE COMPLAINT

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

*I object to the advertisement and was offended by it as it promotes unwanted physical contact/ advances to others in the workplace. It therefore encourages sexual harassment in the workplace. The advert encourages male NRL football players to tap others on the bottom in their workplace to raise money for charity (for PCFA). But to me, this advert seems very inappropriate and offensive as it is encouraging others to make physical contact with an intimate part of their body without their consent, and for money.*



*The advert does not fulfil the requirements of section 2.2 of the AANA code of ethics standards (consumers) as it fails to treat sex, sexuality and nudity with sensitivity to the relevant audience. Specifically, it is not sensitive to gay and bisexual men that may be subjected to unwanted physical advances of an intimate nature in their workplace. Would it be OK if the workplace encouraged men to touch women's bottoms in the workplace be OK? I don't think so.*

*Further to this, the advertisement fails to acknowledge that gay and bisexual men may play NRL. The advertisement therefore fails to recognise that some men may not wish to be 'touched' in this way in their workplace. The advertisement therefore fails to comply with standard 2.1 of the AANA code of ethics standards, as it systematically discriminates against men who play NRL that may be gay or bisexual (it fails to recognise how they may feel about being touched by another man in their workplace).*

*The advertisement also fails to fulfil the AANA code of ethics standards (consumers) 2.4, as the advertisement fails to treat sex, sexuality and nudity with sensitivity to the relevant audience. I would feel very uncomfortable if an advertisement like this encouraged others in my workplace to tap me on the bottom to raise money for charity. In fact, if someone kept doing that to me in my workplace I would be inclined to call this sexual harassment, and this is also why I think the advertisement is offensive. I would like it withdrawn please. I also don't want my child to see this type of advertisement, which is effectively conveying the message that it's OK to touch someone without their permission in the workplace, in an intimate part of their body.*

*Advertisement directly promoted sexual assault amongst other men players of football. An unwarranted touch or that without permission is sexual assault regardless of gender.*

*As a gambler in recovery I find it offensive that a gambling company can use a charity to try to get people to increase their betting. I am trying hard to fight my addiction as many others are and to see these ads on tv does not help. Others have said it's ok to make a be if it helps charity but not for addicts like me. I find it very inappropriate to on tv were anyone can see, I believe if they want to do this then advertise it in their venues.*

*It is teaching people that touching other people's butt's is ok. If it were a man Taichung a ladies butt it would be harassment. It's not good for your children to be taught it's ok to touch someone's butt. What if the man is gay, perhaps he doesn't want his butt touched. It's messed up on so many levels. Who ever came up with the idea should be fired. Surely a thumbs up is better then touching someone's butt*

*It encourages sexual harassment. It was disturbing to see this as being acceptable behaviour. And will likely result in the behaviour being seen as ok, where it is not. Society has fought for a long time against such behaviours, particularly in these sporting codes. The ad is to be removed.*



*Whilst a charity donation is great, promoting uninvited touching of another person's private body areas without consent is HIGHLY inappropriate! This is also essentially sponsoring and promoting sexual harassment in the workplace for AFL players.*

*Touching someone with out consent is assault. Hitting some one on the bottom without consent is sexual assault. The add equates to promotion of sexual assault. Considering that there is a documented increase in domestic violence during the final season and add promoting violence should be banned.*

## **THE ADVERTISER'S RESPONSE**

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

*We refer to your letter dated 24 September 2019 (the Letter) in relation to eight complaints received by Ad Standards on the 17th, 18th, 19th, 22nd and 23rd of August 2019 in relation to a TAB television advertisement (the Advertisement) that aired on various Free to Air television programs (the Complaints).*

### *Description of the advertisement*

*The Advertisement is part of the "Tap Initiative" charity campaign, which seeks to raise awareness about prostate cancer and raise funds for the Prostate Cancer Foundation of Australia.*

*For this charity campaign, TAB donates \$100 to the Prostate Cancer Foundation of Australia each time a player taps another player on the behind during the Australian Football League and National Rugby League finals season (the Campaign).*

*The Advertisement shows Shane Crawford and Anthony Minichiello in a recording studio describing the Campaign and asks for players and fans to embrace the initiative. This call for support recognises that without each player's consent and support, TAB could not run the Campaign and raise funds for the Prostate Cancer Foundation of Australia.*

### *Consideration of Section 2 of the Code of Ethics*

*Our responses to each part of Section 2 of the AANA Advertiser Code of Ethics (the Code of Ethics) are outlined below:*

*1. Discrimination or vilification – The Advertisement does not contain any matter that could be considered discriminatory or that vilifies any members of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief. One complaint states the Advertisement discriminates against gay or bisexual men because these players may wish not to be touched.*

*We do not consider the Advertisement to discriminate against gay or bisexual men because the right not to be touched without consent is a right that applies to all*



*people, regardless of their sexual preference. The Campaign applies to all football players playing in the final series, regardless of any factor listed above.*

*2. Exploitative or degrading – The Advertisement does not employ sexual appeal in a manner that is exploitative or degrading of any individual or group of people. One complaint states the Advertisement infringes this section because it is not sensitive to gay or bisexual men that may be subjected to unwanted physical advances of an intimate nature in their workplace.*

*The Campaign relies on an act that occurs regularly during football matches to raise funds for the charity PCFA. It does not contain or employ sexual appeal.*

*The right not to be touched without consent is a right that applies to all people and football players, regardless of their sexual preference. Therefore, in addition to there being no use of sexual appeal, the advertisement does not degrade or exploit any individual or group of people.*

*Violence – The Advertisement does not present or portray any form of violence. One complaint states the Advertisement directly promotes sexual assault amongst players and that touching without permission is sexual assault regardless of gender.*

*The right not to be touched without consent is a right that applies to all people and football players, regardless of their sexual preference. The Campaign has been prepared and developed on this basis. The Advertisement does not encourage any player to touch another player without consent. Rather, the Advertisement seeks to leverage a consensual act that regularly occurs during a football match.*

*3. Sex, sexuality and nudity – The Advertisement does not refer to any matters of sex or nudity. The Advertisement only shows people that are completely clothed replicating an act that regularly occurs in a football match. One complaint states the complainant would feel uncomfortable if an advertisement encouraged others in the complainant's workplace to engage in this conduct.*

*The Advertisement, and the broader Campaign, does not encourage all members of society to participate in this behaviour. The Campaign is limited to football players while they are participating in finals football matches.*

*Context is key here as a tap on the behind during a football match occurs regularly, with consent, and is not considered inappropriate or a matter of sex or nudity according to community expectations.*

*4. Language – The Advertisement does not contain any strong or obscene language and is therefore appropriate in the circumstances.*

*5. Health and Safety – The Advertisement does not depict images contrary to public health and safety, including in relation to unsafe practices, motor vehicles, bullying or body image.*



*6. Distinguishable as advertising – The Advertisement is clearly distinguishable as advertising, including because there is a call to action for TAB at the conclusion of the Advertisement.*

*Consideration of Section 2 of the Wagering Code*

*We have reviewed Section 2 of the AANA Wagering Advertising and Marketing Communications Code (the Wagering Code) and note as follows:*

*1. Directed to Minors – The Advertisement is not directed primarily towards minors.*

*2. Depiction of Minors – The Advertisement does not depict a minor.*

*3. Depiction of a person aged 18-24 years – The Advertisement does not depict a person aged between 18 – 24 years old engaging in wagering activities.*

*4. Alcohol – The Advertisement does not portray, condone or encourage wagering in combination with the consumption of alcohol.*

*5. Promise of winning – The Advertisement does not state or imply a promise of winning.*

*6. Relief of financial or personal difficulties – The Advertisement does not portray, condone or encourage participation in wagering activities as a means of relieving a person's financial or personal difficulties.*

*7. Sexual success – The Advertisement does not state or imply a link between wagering and sexual success or enhanced attractiveness. The Advertisement does not depict, portray or encourage participation in any wagering.*

*8. Excessive participation in wagering – The Advertisement does not depict, portray or encourage participation in any wagering. The Advertisement only describes the Campaign.*

*9. Peer pressure to wager – The Advertisement does not portray, condone or encourage peer pressure to wager.*

*We also note that one complaint states the Advertisement attempts to use charities to increase wagering activity. There is no aspect of the Advertisement that attempts to encourage people to participate in wagering activities. The Advertisement simply informs the public that we are donating money to the Prostate Cancer Foundation of Australia.*

*Prostate cancer is the most commonly diagnosed cancer in men, and there is a stigma and fear within the community of being tested for the disease. Part of the objective of the Advertisement is to shed light on this issue and to assist in removing this fear and stigma. We would ask the Ad Standards panel to consider this context and this*



*objective when considering our response. If required, we would welcome the opportunity to discuss this matter further with you.*

## **THE DETERMINATION**

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

The Panel first outlined the complaints received about the advertisement.

- Complainants’ were concerned that the advertisement promotes sexual harassment and sexual assault.
- Complainants’ were concerned that a gambling company is using charity to get people to increase betting.
- Complainants’ were concerned that the advertisement discriminates against gay and bisexual men as it fails to acknowledge that they may play NRL and fails to recognise how they may feel about being touched in their workplace.
- Complainants’ were concerned that the advertisement encourages NRL players to assault others in their workplace.
- Complainants’ were concerned that the advertisement fails to acknowledge that people should gain consent before touching someone.

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

The Panel noted the advertiser’s response that the intent of the advertisement is to raise awareness about prostate cancer and raise fund for the Prostate Cancer Foundation of Australia.

The Panel noted a complainant’s concern that a gambling company is using charity to get people to increase betting.

The Panel noted the advertiser’s response that there is no aspect of the advertisement that attempts to encourage people to participate in wagering activities.

The Panel considered that while some members of the community may find it tasteless for a gambling company to partner with or promote a charity, this concern is not an issue under the Code.

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray 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 Panel noted the Practice Note to Section 2.1 of the Code which provides the following definitions:



*“Discrimination – unfair or less favourable treatment  
Vilification – humiliates, intimidates, incites hatred, contempt or ridicule”.*

The Panel noted the complainants’ concerns that the advertisement is discriminatory towards gay and bisexual men as it fails to acknowledge that they may play NRL and fails to recognise how they may feel about being touched in their workplace.

The Panel considered that not specifically addressing or referencing homosexual or bisexual people in an advertisement is not of itself discriminatory. The Panel considered that the overall impression of the advertisement did not depict or suggest any behaviour or depiction that would be likely to be interpreted as being ridiculing of any group of people on account of their sexual preference or gender and does not treat any section of the community less favourably, and therefore the advertisement did not breach Section 2.1 of the Code.

The Panel noted that one complaint references Section 2.2 of the Code, however the description provided about this issue related to Section 2.4 and the Panel considered that concern under Section 2.4 instead.

The Panel 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 Panel noted complainants’ concerns that the advertisement depicts and promotes sexual assault.

The Panel considered that the advertisement does depict people being tapped on the bottom. However the Panel considered that the depiction is in the context of the advertisement seen as a gesture made by football players during a football game as a sign as a sign of congratulations or commiseration by teammates. The Panel considered that this depiction would be unlikely to be considered by most members of the community to be violent or non consensual behaviour in this context. The Panel also noted that the advertisement is not a call to action for consumers to undertake this activity in daily life.

The Panel considered that the advertisement did not breach Section 2.3 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Panel considered whether the advertisement contained sex, sexuality or nudity.

The Panel noted the Practice Note for the Code states:



*“Images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience. Explicit sexual depictions in marcomms, particularly where the depiction is not relevant to the product or service being advertised, are generally objectionable to the community and will offend Prevailing Community Standards.”*

The Panel noted complainants’ concerns that the advertisement depicts and promotes sexual assault.

The Panel considered whether the advertisement depicted sex. The Panel noted the dictionary definition of sex most relevant to this section of the Code of Ethics is ‘sexual intercourse; sexually stimulating or suggestive behaviour.’ (Macquarie Dictionary 2006).

The Panel considered that the advertisement as a whole did not contain sex.

The Panel considered whether the advertisement depicted sexuality. The Panel noted the definition of sexuality includes ‘sexual character, the physical fact of being either male or female; the state or fact of being heterosexual, homosexual or bisexual; sexual preference or orientation; one’s capacity to experience and express sexual desire; the recognition or emphasising of sexual matters’. The Panel noted that the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

The Panel considered that while some concerns related to the depiction of sexual harassment or assault, these concerns related to the social issue more so than the content of the advertisement depicting sexual material, and the Panel addressed these concerns in the consideration of Section 2.6 of the Code. The Panel considered that for the consideration of Section 2.4, the advertisement itself did not depict sexuality.

The Panel considered whether the advertisement contained nudity and noted that the dictionary definition of nudity includes ‘something nude or naked’, and that nude and naked are defined to be ‘unclothed and includes something ‘without clothing or covering’. The Panel considered that the Code is intended for the Panel to consider the concept of nudity, and that partial nudity is factor when considering whether an advertisement firstly contains nudity and secondly treats that nudity with sensitivity to the relevant audience.

The Panel considered that the advertisement as a whole did not contain nudity.

The Panel determined that the advertisement did not breach Section 2.4 of the Code.

The Panel considered whether the advertisement was in breach of 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 complainants' concerns that the advertisement promotes sexual harassment and sexual assault, that the advertisement encourages NRL players to assault others in their workplace, and that the advertisement fails to acknowledge that people should gain consent before touching someone.

The Panel considered that the advertisement promotes the advertiser's pledge to donate \$100 to the Prostate Cancer Foundation of Australia every time a player taps another during the finals season of football. The Panel noted that this advertisement does not contain a call to action for viewers to touch other people themselves.

The Panel noted the advertiser's response that the advertisement does not encourage all members of the community to participate in this behaviour, rather the campaign is limited to football players while they are participating in finals football matches.

The Panel noted complainants' concern that touching another person without consent is assault, and that touching another person's bottom is highly inappropriate. The Panel noted that that is an issue of significant concern in the community.

The Panel agreed with complainants that typically such an action would be inappropriate in a workplace, however considered that in the context of the particular sport setting depicted this is behaviour that is common and there is nothing in the contact that suggests that the touching is inappropriate.

The Panel considered that a tap on the bottom is a common occurrence in football games, typically occurring when a goal or try is scored as a celebratory or congratulatory action. The Panel considered that this is recognised form of camaraderie or mateship within many sports, and that many people would be familiar with the action in a sporting context.

The Panel noted that in the advertisement, hands are depicted as tapping another's bottom. The Panel considered that the hands do not linger, slide or otherwise infer the gesture is sexual.

Overall, the Panel considered that the advertisement did not depict material contrary to Prevailing Community Standards and did not breach Section 2.6 of the Code.

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