



**ADVERTISING  
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Dear Sir/Madam

**Advertising Standards Bureau submission: Inquiry into the Australian film and literature classification scheme**

The Advertising Standards Bureau (referred to in this submission as “the Bureau”, “we” or “our”) appreciates the opportunity to make this submission to the Committee in relation to its inquiry into the Australian film and literature classification scheme (the Inquiry).

Our submission firstly addresses the following terms of reference of the Inquiry:

- (h) the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme;
- (k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising.

It then provides the Committee with information about the advertising self-regulation system and the important role of the Bureau within that system.

I would be happy to elaborate on the comments provided in this submission if required by the Committee.

Yours sincerely,

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Advertising Standards Bureau

4 March 2011

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Inquiry into the Australian film and literature classification scheme**

4 March 2011

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## Executive Summary

- The self-regulation system effectively regulates outdoor advertising and it is neither appropriate nor necessary to give responsibility for regulation of billboards to the National Classification Scheme.
- The self-regulation system is effective in meeting current and developing community standards around depictions of women in advertising.
- The self-regulation system is effective in minimising the exposure of children to sexualised images in advertising.
- The self-regulation system is effective in ensuring children are not portrayed in a sexualized manner in advertising.
- The self-regulation system is industry funded and well supported by all parts of the industry – advertisers, advertising agencies, media buyers, media operators and industry associations.
- The Bureau is responsible for the administration of the complaint resolution component of the advertising self-regulation system, supporting the work of the Advertising Standards Board (Standards Board), which is the body established to consider complaints about advertising and marketing communications against the provisions set out in the relevant advertising codes.
- High standards of advertising are maintained through the interaction of the various parts of the self-regulation system:
  - through the existence and development of appropriate codes and initiatives relating to advertising standards;
  - the voluntary compliance of advertisers;
  - the efforts of other industry stakeholders in ensuring compliance, supporting industry education and public awareness programs, and supporting enforcement where required; and
  - the operation of the complaint resolution process.
- The complaint resolution process managed by the Bureau is an effective and efficient way to respond to consumers' concerns about advertising.
- The complaint process is transparent and accessible to all consumers, with easy to follow steps and support throughout the process provided by Bureau staff.
- The vast majority of advertising and marketing communications in Australia comply with the relevant codes and do not receive any complaints, while the majority of those complained about are not found to be in breach of the codes. Where a breach is found, the Bureau has a record of nearly 100 per cent compliance by industry with Standards Board determinations – demonstrating the commitment of the vast majority of advertisers to the system and to maintaining high standards of advertising.

- If required, the Bureau is supported in enforcing compliance with Standards Board determinations in relation to third party outdoor advertising by the Outdoor Media Association's commitment on behalf of its members to act on Standards Board decisions.

## 1. Background – Interaction between the National Classification Scheme and the Bureau

The Bureau may occasionally receive complaints about the classification of films, publications or computer games, which are outside its jurisdiction. In such cases, Bureau staff refer complainants to the Classification Branch of the Attorney-General's Department.

The Bureau also receives complaints about advertising of films and computer games, which are put before the Standards Board for its consideration. This includes advertising and marketing communications in all media, including television, pay television, outdoor, internet, cinema, radio and print.

Preliminary findings for 2010 suggest that all complaints received by the Bureau about the advertising of films and computer games related to depictions of violence (under Section 2.2 of the Code of Ethics), and sex, sexuality and nudity (under Section 2.3 of the Code of Ethics) in equal numbers.

In some cases, advertising of films and computer games will be subject to audience or time zone restrictions under the National Classification Scheme or television classifications applied by FreeTV's Commercial Advice Department (CAD) and such classifications and restrictions will be taken into account by the Standards Board if relevant to its determination.

However, the classification of the film or game being advertised would not always be a relevant consideration, for example where the relevant audience for the advertisement is not the same as the audience suggested by the film or game product's classification.

For example, in Case 378/07, the Standards Board considered the application of Section 2.2 of the AANA Code of Ethics, which provides that 'advertisements shall not present or portray violence unless it is justifiable in the context of the product or service advertised'. The Standards Board upheld the complaints and the determination stated:

*The Board noted that the advertisement is for a horror movie that is for mature adult audiences. In the context of the particular movie the Board considered that a certain level of graphic horror image was justified in the advertisement. However the Board noted that, as a billboard, the advertisement is visible by children and young adults under the age of 15. The Board considered that the advertisement was overtly violent with clear depictions of the items covered in blood and with bits of what appear to be skin and hair left on the scissors. The Board considered that these images were very strong and were inappropriate for an outdoor advertisement where there was an unrestricted audience. The Board determined that the advertisement breached Section 2.2 of the Code by depicting a level of graphic violence that was not justified by the product advertised.*

The Bureau has not received complaints about advertising of publications that are either Restricted or Refused Classification. This is most likely because the National Classification Scheme prohibits advertising of RC publications and restrictions are imposed on where Restricted publications can be advertised. However, the National Classification Scheme imposes no restrictions on advertising publications that have been classified as Unrestricted. This is where the self-regulation system provides members of the community with an avenue to complain about any advertising of publications that they find offensive. Where such complaints are covered by the relevant advertising Codes, they will be forwarded to the Standards Board for its consideration.

## 2. The Possibility of including Outdoor Advertising in the National Classification Scheme

The Bureau strongly believes that the existing self-regulation system is a cost effective and efficient system of regulation for outdoor advertising, providing appropriate protections and safeguards for the community. We consider that including outdoor advertising within the National Classification Scheme is neither an appropriate nor necessary regulatory intervention.

The current system provides an effective, transparent and robust mechanism for consumers to raise concerns about the content of particular advertisements and provides a robust, independent and fair system for assessing whether or not an advertisement meets the broader community's standards.

A determination that an advertisement breaches community standards means the immediate removal of the advertisement and prohibits use of the advertisement in the future.

The current system effectively meets the objective of protecting consumers and promoting responsible advertising.

Regulatory intervention is not required or justified for the less than .07 per cent of advertisements which have been complained about and failed to comply with the system in more than 12 years of operation. This is particularly the case as the Bureau is already working with government bodies to address the gaps.

The Committee must carefully consider the financial impact of any changes to the advertising self-regulation system as it relates to advertising in outdoor formats or in any other medium.

The current self-regulation system operates at no cost to government or the community. The system is funded by industry at a relatively small level of 0.035% of advertising expenditure. The complaints management system works in a manner that minimises costs to the sectors of industry who work within the relevant industry codes and imposes appropriate compliance costs on those who breach the codes.

The Australian Government is required to consider the regulatory impact of any proposals around regulatory decisions. The Bureau urges the Committee to ensure that they give proper consideration in the form of a Regulatory Impact Analysis (RIA)<sup>1</sup> to any recommendations for regulatory intervention in the advertising self-regulation system. Proper impact analysis will improve government and Committee actions by:

- requiring consideration of whether acting in response to a perceived problem through regulatory action is required at all;
- requiring understanding of the implications and impacts of regulatory intervention; and
- ensuring that the information on which any government regulatory decision is made is transparent.

In considering any additional requirements that advertisers must meet or government intervention in the assessment of advertisements, such as including outdoor advertising within the National Classification Scheme, the Committee must:

- consider the impact on advertisers;
- consider the costs to government, industry and the community as a whole; and
- justify how any change to the current system will lead to improved outcomes for the Australian community.

Issues with including outdoor advertising in the National Classification Scheme and how existing self-regulation maintains standards in outdoor advertising are considered further below.

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<sup>1</sup> Australian Government RIS requirements, Department of Finance and Deregulation 2011

## 2.1 Issues associated with including outdoor advertising in the National Classification Scheme

Providing the Classification Board with power to classify billboards – on a submittable publication basis - is unlikely to be effective for the primary reason that the classification system will not provide outcomes that as effectively meet community needs.

The Advertising Self-Regulation system is characterised by very high levels of voluntary compliance by industry. Where there is a failure to comply with a Board decisions the Bureau has proven to be able to achieve compliance regardless of State/Territory boundaries, restrictions around jurisdiction and regardless of whether or not companies are ‘members’ of an industry body.

Other submissions draw the Committee’s attention to systemic failures in the enforcement of classification decisions, particularly around the banning of X rated material in most jurisdictions, and the difficulty in obtaining agreement of all jurisdictions to any expansion of the role of the Classification Board. In particular we note comments from FamilyVoice:

- the call-in system associated with submittable publications does not work effectively
- complementary legislation would need to be enacted to ensure full constitutionality
- a cooperative approach to standards and enforcement would be needed.

Similarly, suggestions that a G (general) classification be applied to all outdoor advertising is also unlikely to offer any significant advantages over the existing regulation of outdoor advertising, for the following reasons:

- The G Standard permits: violence, sexual activity, nudity, language, suicide, themes, dangerous imitable activity and other (things creating tension or fear)
- These themes can all be used in limited ways provided that they are ‘absolutely justified by the story line or program content’, which offers no substantive changes from the existing approach taken by the Standards Board in making determinations in incorporating considerations of the relevance of the advertising to the product and/or context.

## 2.2 How existing self-regulation maintains standards of outdoor advertising

Regulation of outdoor advertising, including billboards, comes within the self-regulation system.

Self-regulation provides an effective and efficient way for advertisers to engage with consumers and to respond to consumers’ concerns about advertising. It ensures consumer protection by providing a free and fast route for consumers to express their views about advertising and to have an impartial body to contact.

The roles of the Bureau and Standards Board are only part of the self-regulation system as it relates to outdoor advertising. The system starts with the voluntary actions of advertisers in agreeing to be bound by the AANA codes and other relevant codes of advertising conduct. The commitment of advertisers, their agencies, media buyers, media operators and industry associations are all essential to ensure community expectations about advertising standards are being met. The Bureau is active in maintaining close working relationships with those industry stakeholders, providing them with information and education as appropriate, and ensuring they are maintaining their commitment to the system.

The relevant industry association in relation to third party outdoor advertising is the Outdoor Media Association (OMA). The OMA plays a key role in ensuring compliance of its members in relation to third party outdoor advertising sites. They do this by incorporating the AANA codes into the Code of Ethics



applying to OMA members and committing OMA members to abide fully by the decisions of the Standards Board and to remove content if a complaint is upheld by the Standards Board.

These preventative measures around self-regulation complement the complaint adjudication process managed by the Bureau, which seeks to capture those instances where members of the community consider an advertisement offensive and lodge a complaint for consideration by the Standards Board.

It is important to note that the vast majority of advertisements do not trigger complaints and in the majority of cases where complaints are received, the Standards Board finds there has been no breach of the Codes. We are firmly of the view that the reason for this is that Australian advertisers, for the most part, adhere to the rules set out in the Codes.

Prevailing community standards are at the heart of all Standards Board decisions and are the reason the Standards Board is made up of members of the community. The overriding objective of the Standards Board is to make decisions relating to the AANA Code of Ethics and other AANA codes based on what it perceives are prevailing community attitudes. In this way, the Standards Board aims to draw community expectations into its consideration of the rules set out in the Codes. This is frequently a difficult task, as views on the types of issues set out in the AANA codes are in many cases necessarily personal and subjective and often attract very differing views in the community.

To address this issue, the Bureau ensures that the membership of the Standards Board is as diverse as possible. The Standards Board comprises members who are from a diverse range of ages, professional backgrounds, geographic locations, family and personal circumstances. The diversity of the current membership means that the Standards Board, as a whole, is well placed to judge current community standards and to apply those community standards to the Codes that it administers.

In addition to the diverse community experiences and views that the members bring to the Standards Board, the Bureau now conducts research into community standards on a regular basis, to measure whether the Standards Board's decisions are in line with community standards.

Research conducted for the Bureau and Standards Board in 2007, 2009 and 2010 indicates that Standards Board decisions generally reflect community standards on the key provisions of the AANA Code of Ethics. Research conducted in 2007 related broadly to the Code of Ethics, while research conducted in 2009 related to community perceptions of violence in advertising and in 2010 related to community perceptions of sex, sexuality and nudity in advertising. Standards Board members have taken the results of such research into account in their consideration of complaints under the Codes. Full reports of the research conducted in 2009 and 2010 (Attachment A) are available on the Bureau website. Information about Community Standards research conducted on behalf of the Bureau in 2007 is at Attachment B.

Cases over the past few years relating to billboard and outdoor advertising provide good examples of situations where the Standards Board has taken into account feedback contained in the research commissioned by the Bureau, as well as feedback in the media and previous government inquiries.

Standards Board determinations relating to billboard and outdoor advertising have in the last few years made clear reference to the broad nature of the audience for billboard and outdoor advertising and the fact that more rigorous standards therefore need to be applied to such advertising.

### 3. How self-regulation addresses the sexualisation of children in advertising

*Defining sexualisation of children: The Bureau refers to sexualisation of children as consisting of two separate elements. First is the depiction of children in advertisements in sexualised poses. The second is the exposure of children to sexualised images, themes or words in advertising. Our submission deals with each element separately.*

As noted above, advertising standards are maintained through the interaction of the various parts of the self-regulatory system. Self-regulation addresses community concerns about the sexualisation of children in advertising through:

- the operation of key provisions in the Codes relating specifically to the issue of sexualisation of children and the treatment of sex, sexuality and nudity more generally;
- the voluntary commitment of advertisers to comply with these provisions along with other provisions of the Codes;
- the efforts of other industry stakeholders in ensuring compliance and supporting enforcement when required; and
- the operation of the complaint resolution process through which the Standards Board considers complaints raising concerns about the sexualisation of children.

The relevant provisions of the Codes addressing the sexualisation of children and the Standards Board's consideration of those provisions are discussed in further detail below.

#### 3.1 Relevant code provisions relating to sexualised images of children

The AANA Code of Ethics (Code of Ethics) contains a requirement that “Advertising or Marketing Communications to Children” shall comply with the AANA Code for Advertising and Marketing Communications to Children (Children’s Code).

The relevant provision of the Children’s Code that specifically addresses the sexualisation of children is Section 2.4, which provides:

*Advertising or Marketing Communications to Children:*

- (a) must not include sexual imagery in contravention of Prevailing Community Standards;*
- (b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.*

In this context, “Advertising or Marketing Communications to Children” is defined to mean:

*Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for [goods, services and/or facilities which are targeted toward and have principal appeal to Children].*

“Children” is defined to mean children 14 years old or younger.

Section 2.4 of the Children's Code was inserted as part of a review of the Children's Code by the AANA in early 2008 to specifically address community concerns about the sexualisation of children.

Depictions of sexualised images of children may also be addressed by the Standards Board under Section 2.3 of the Code of Ethics, relating to the treatment of sex, sexuality and nudity. Section 2.3 of the Code of Ethics provides:

*Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.*

If necessary, the Board can also consider whether images of children in advertising meet the requirements of section 2.6 of the Code which provides:

*Advertising or Marketing Communications shall not depict material that contrary to prevailing community standards on health and safety.*

The Board has considered whether depictions of very slim women are a breach of this standard and in a similar fashion could consider whether sexualised images of children breach community standards on child health or safety.

In addition to the code provisions in place that address the sexualisation of children, the AANA has also published a *Practice Guide Managing Images of Children and Young People*, which provides relevant guidance for advertisers in relation to the use of images of children and young people in advertising.

### **3.2 Standards Board consideration of complaints about sexualised images of children**

As explained above, the Standards Board can consider complaints about sexualised images of children under either Section 2.4 of the Children's Code (where the advertising is directed primarily towards children) or under Sections 2.3 and 2.6 of the Code of Ethics.

In 2010 the Bureau received 30 complaints which raised the issue of sexualised images of children in advertising. Of these complaints, one was rejected as it involved an image in a magazine article – not an advertisement. Thirteen cases were raised in relation to the remaining 29 complaints (one case attracted 15 complaints and two others attracted 2 complaints each).

Complaints about two of these advertisements were upheld.

In the other cases the Standards Board did not agree with the complainants' interpretation that the images of children complained about are sexualised and therefore found no breach under those provisions of the codes. We provide at Attachments D (Case 187/10) and E (Case 435/10) two recent cases in which complaints raised concerns about depictions of sexualised images of children, but no breach of the Codes was found and the complaints were dismissed by the Standards Board. Copies of all 13 advertisements (a number of which are television advertisements) which considered the issue of how children are depicted can be provided on request.

One recent case in which the Standards Board did uphold complaints on the basis of sexualised images of children is Case 333/10 (case report and still image provided at Attachment C). In this case, the Standards Board determined that the advertisement inappropriately depicted children in a sexualised or sexually suggestive pose and found that the advertisement breached both Section 2.3 of the Code of Ethics and Section 2.4 of the Children's Code. In another case 123/10, which was a television advertisement for Red Bull, the

Board considered that the depiction of a child (albeit a cartoon image) attending a strip show was inappropriate.

In some cases, complaints that come before the Board on this issue may involve depictions that many in the community would regard as acceptable. For, example, advertisements showing babies having their nappies changed have in the past prompted complaints by some members of the public that such depictions could encourage paedophiles. For example, Case 188/06 (case report provided at Attachment F) and Case 402/10 (case report and still image provided at Attachment G).

More recently, a complaint was received raising similar concerns in regard to a baby shampoo advertisement that depicted a naked baby snuggled up to the parent. In this instance, under a new procedure for consistently dismissed complaints, the Chairman of the Standards Board determined the complaint and the relevant advertisement would not breach the Codes. This decision was made on the basis that, although offensive to the complainant, the issue raised involves an interpretation of, or concern about the advertisement, that is unlikely to be of concern to the broader community.

### **3.3 Relevant code provisions relevant to children’s exposure to sexualised images, themes or words**

The protection of children from exposure to sexualised images, themes or words is also regulated through the operation of Section 2.3 of the Code of Ethics and Section 2.4 of the Children’s Code.

Section 2.3 of the Code of Ethics contains a “relevant audience” test that provides the Standards Board with the flexibility to consider the different audiences that may, for instance, exist for different media, different locations and different time zones.

Paragraph (a) of Section 2.4 of the Children’s Code prohibits the inclusion of sexual imagery in advertising directed primarily towards children and paragraph (b) prohibits advertising from suggesting children are sexual beings or linking products to enhancement of their sexuality.

### **3.4 Standards Board consideration of complaints about children’s exposure to sexualised images**

The Bureau’s complaint management system separately identifies complaints captured under Section 2.3 of the Code of Ethics that raise issues about the sexualisation of children. This enables the Bureau to monitor the level of complaints about this issue within the broader category of issues relating to sex, sexuality and nudity. Complaints captured as raising issues about the sexualisation of children under Section 2.3 may include complaints about both sexualised images of children or children’s exposure to sexualised images. In 2010, less than 2% of all complaints received were identified as raising issues relating to the sexualisation of children under either Section 2.3 of the Code of Ethics or Section 2.4 of the Children’s Code.

Under Section 2.3 of the Code of Ethics the Standards Board takes into consideration the “relevant audience” of the advertisement in determining whether the advertisement treats sex, sexuality and nudity with sensitivity. The Standards Board recognises the broad nature of the audience for billboard and outdoor advertising and takes this into consideration in ensuring rigorous standards are applied to such advertising. In this regard, the Standards Board has taken into account feedback from past government enquiries as well as research commissioned by the Bureau in relation to community perceptions of sex, sexuality and nudity (see 3.5) in ensuring it is continuing to reflect prevailing community standards surrounding these issues. For example, the Board upheld two recent cases (at Attachment H – 504/10 and 464/10) in which complainants expressed concerns about children’s exposure to sexualised images.

### **3.5 Research undertaken to support Standards Board determinations on complaints about the sexualisation of children**

The Standards Board takes its responsibility regarding issues surrounding the sexualisation of children very seriously. Decisions to dismiss such complaints under the relevant provisions of the Code of Ethics and Children's Code are made with the appropriate and careful consideration the Standards Board gives to all cases.

The wide experience and understanding of Standards Board members in relation to the community means it is well placed to make determinations reflecting the community's attitude and expectations and the overall acceptability of an advertisement having regard to the particular provisions of the Codes. Members with specific experience relevant to a particular issue in the code are able to contribute that experience to the discussion of advertising complaints in Standards Board meetings. The current membership of the Standards Board includes members with experience and knowledge in relation to social and child psychology, psychiatry and early childhood education. Some other members bring to the table their experience as parents, grandparents and involvement in community organisations working with children and young people. This collective experience provides the Standards Board with a solid basis to consider complaints raising issues around the sexualisation of children.

To further enhance the existing knowledge and experience of Standards Board members, the Bureau commissioned research into community perceptions of sex, sexuality and nudity in 2010 (full report available from the Bureau website and at Attachment A). One of the aims of the research was to explore and report on community perceptions of the portrayal of sex, sexuality and nudity in advertising with a particular focus on sexualisation of children and the medium in which an advertisement appears. The research found that the outcomes of the Standards Board's considerations of the cases forming the basis of the research were generally aligned with the community views but noted that there is a level of community concern around the content of advertising for sex related products. The research has provided the Standards Board with valuable feedback and Standards Board members have taken the results of such research into account in their consideration of complaints under the Codes. The research is not just intended as a valuable information and training tool for the Standards Board. It is also intended to be useful to advertisers in designing campaigns.

## **4. How self-regulation addresses the objectification of women in advertising**

Issues about the objectification of women in advertising are similarly addressed through the interaction of the various elements of the self-regulation system. The Codes provide relevant provisions that advertisers must consider when putting together advertising or marketing communications to ensure advertising standards are maintained. Those same provisions are taken into account by the Standards Board where considering complaints about the objectification of women.

### **4.1 Relevant code provisions relating to objectification of women**

Complaints raising issues about the objectification of women may fall within Section 2.3 of the Code of Ethics, relating to the treatment of sex, sexuality or nudity, or Section 2.1 of the Code of Ethics, which includes discrimination and vilification on the basis of sex.

Section 2.3 of the Code of Ethics was outlined above at 4.1.

Section 2.1 provides:

*Advertising or Marketing Communications shall 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, sex, age, sexual preference, religion, disability or political belief.*

It is important to note that Section 2.1 of the Code of Ethics prohibits advertisements containing discrimination or vilification on the basis of 'sex'. The Board has consistently interpreted this term to include not just the physical characteristics of being a man or a woman (such as having breasts or being pregnant), but to also include discrimination or vilification on the basis of gender.

#### **4.2 Standards Board consideration of complaints about the objectification of women**

Complaints raising issues relating to the sexualisation of children are considered by the Standards Board against Section 2.1 and/or Section 2.3 of the Code of Ethics, outlined above. The Bureau accepts complaints raising issues covered by these provisions and forwards them to the Standards Board for its consideration.

Issues relating to the treatment of sex, sexuality and nudity (Section 2.3 of the Code of Ethics) and discrimination and vilification (Section 2.1 of the Code of Ethics) are consistently the most frequently complained about to the Bureau. For example, in 2010 the highest number of complaints received related to Section 2.3 of the Code of Ethics (45.23%), with the next most complained about provision being Section 2.1 (19.58%).

However, these sections cover a range of matters in addition to concerns about objectification of women or men, including the sexualisation of children as discussed above and discrimination on grounds other than sex. In 2010, less than 10% of all complaints were identified as relating to discrimination or vilification on the basis of gender.

Table 4 of Attachment I provides a more detailed breakdown of the code issues attracting complaint from 2007 to 2010.

Recent examples of cases in which the Standards Board upheld complaints on the basis of objectification include Case 261/09 (at Attachment J) and Case 517/10 (at Attachment K).

A recent case in which complaints raised concerns about the objectification of women, but the complaints were dismissed by the Standards Board is Case 461/10 (case report and still image at Attachment L).

As stated in relation to cases involving complaints about the sexualisation of children, the Standards Board takes its responsibility regarding issues surrounding the objectification of women very seriously and due care is taken before dismissing complaints raising this issue. The Standards Board comprises members with a broad range of experiences, including members with specific knowledge and/or experience in gender issues and discrimination. Members with specific experience or knowledge relevant to an issue have the opportunity to bring that knowledge and experience to the discussion when considering complaints about an advertisement.

Standards Board members are also provided with appropriate training and support in relation to the issues covered by the Codes. This includes training in relation to research undertaken by the Bureau on the Board's behalf. As noted at 4.2, research was undertaken in 2010 on community perceptions of sex, sexuality and nudity in advertising, aimed at measuring whether Standards Board decisions around these issues are in line with current community views. The full report of the research is available to all from the Bureau website and is at Attachment A. The research indicated Standards Board decisions do generally reflect community

standards on sex, sexuality and nudity but the Board has taken into account a level of concern about advertising of sex related products in outdoor media in particular.

Research was also commissioned in 2009 into discrimination and vilification in advertising at the request of the Standards Board, to better inform them about issues in this area. The full report is available to all from the Bureau website – Attachment M.

In addition to the independent research commissioned by the Bureau, in 2010 the Bureau developed a series of “Determination Summaries” aimed at assisting advertisers and consumers in understanding how the Standards Board applies particular provisions of the Codes. The Determination Summaries are available on the Bureau website. The Determination Summaries provide a general overview of Standards Board determinations on complaints about particular issues covered by the Codes. The summaries are not “how to” guides and are not intended to operate in the manner of binding legal precedents, but are designed to assist the advertising industry, consumers and the Standards Board itself in understanding how the Standards Board has viewed particular issues covered by the Codes that have been the subject of complaints in the past.

Two of the Determination Summaries provide advertisers and complainants with information relevant to the issue of objectification of women. These are the Determination Summaries on *Discrimination and Vilification in advertising* and *Portrayal of gender in advertising* (copies attached at Attachments N and O). The Determination Summaries provide guidance to advertisers as to where the Standards Board sees community standards have moved in relation to these issues, by taking into account the views of the Standards Board expressed in recent decisions.

## 5. Self-regulation of advertising in Australia

The Bureau operates the complaints adjudication component of the advertising self-regulation system. The system meets world best practice in self-regulation and operates, at no cost to the consumer, on the principles of accessibility, transparency, responsiveness and robust decision making.

The system, established by the Australian Association of National Advertisers (AANA) in 1997, applies to advertising and marketing communications in Australia. It recognises that advertisers share a common interest in promoting consumer confidence and respect for general standards of advertising. The aim of self-regulation is to maintain high advertising standards and ensure consumer trust and protection for the benefit of all of the community.

Self-regulation of the advertising industry has been achieved by establishing a set of rules and principles of best practice to which the industry voluntarily agrees to be bound. These rules are expressed in a number of codes and industry initiatives. The rules are based on the principle 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. Self-regulation of advertising is not designed to set community standards, but rather to reflect community standards.

Industry support is fundamental to the success of Australia’s world-class system of advertising industry self-regulation:

- Participating advertisers demonstrate their support for self-regulation by instructing their advertising agencies to adhere to its various codes of advertising standards, by agreeing to the levy being applied to their media expenditures, and by complying with decisions of the Standards Board.

- Participating advertising agencies support the system by monitoring the various codes and determinations made by the Standards Board and consulting with their advertiser client.
- Participating media buyers support the system by collecting and remitting the levy which funds the system through their accounting systems.
- Participating media operators support the system by promoting self-regulation through information and advertising material prepared by the Bureau and by assisting with the removal of advertisements where appropriate.

As a voluntary system, self-regulation relies very much on the good will, good sense, and commitment of advertisers to provide consumers with appropriate advertisements and through this promote consumer and government confidence in the general standards of advertising.

The components of the complaint resolution arm of the self-regulation system are: the Bureau; the Bureau Corporate Board; the Standards Board; the Advertising Claims Board (Claims Board) and the Independent Reviewer.

## 5.1 Role of the Bureau

The Bureau administers the complaints resolution component of the advertising self-regulation system. The work of the Bureau is not underpinned by any Government legislation.

Our mission is to administer a well respected, effective and independent advertising complaints resolution service that regulates advertising standards in Australia, adjudicating both public and competitor complaints, and to ensure compliance with relevant codes.

Our purpose is:

- to efficiently manage and promote the complaints adjudication component of the advertising self-regulation system in Australia;
- to ensure the community, industry and government is confident in and respects the advertising self-regulatory system; and
- to ensure the general standards of advertising are in line with community values.

Currently, the Bureau administers the following codes of practice relating to advertising and marketing communications in Australia:

- AANA Code of Ethics;
- AANA Code for Advertising and Marketing Communications to Children;
- AANA Food and Beverages Advertising and Marketing Communication Code;
- AANA Environmental Claims in Advertising and Marketing Code;
- Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising;



- Australian Food and Grocery Council Responsible Children’s Marketing Initiative of the Australian Food and Beverage Industry;
- Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.

These codes (collectively referred to hereafter as “the Codes”) apply to all advertising and marketing communications across all media.

The Bureau also works with the Alcohol Beverages Advertising Code (ABAC) management scheme and accepts, and forwards to the ABAC chief adjudicator, all complaints about alcohol advertisements.

The Bureau is secretariat for the Standards Board and the Claims Board. The Bureau promotes the work of the Standards Board and Claims Board and the role of the Bureau in the advertising self-regulation system. The two boards have separate and distinct roles in considering complaints about advertising against the advertising codes they administer. The roles of the Standards Board and Claims Board are considered in further detail below, at parts 1.3 and 1.4.

## **5.2 Role of the Bureau Corporate Board**

The Bureau is a limited company headed by a Board of Directors (Corporate Board). Under the Constitution of the Bureau, there must be between three and six directors of the Bureau.

The Corporate Board is responsible for management of the business of the Bureau consistent with the Bureau’s objectives and, with the Chief Executive Officer, is also responsible for the corporate governance of the Bureau. The Corporate Board deals with strategic, financial and operational concerns, and works to improve the operation of the Bureau so that it is the foremost complaints resolution body for advertising in Australia.

The Corporate Board has the integrity of the advertising self-regulation system at heart and it insists that the work of the Corporate Board and of the Standards Board be absolutely separate.

## **5.3 Role of the Standards Board**

The centre piece of the self-regulation system is the Standards Board. The Standards Board is independent, dedicated and diverse. It comprises 20 people from a broad range of age groups and backgrounds and is gender balanced and as representative of the diversity of Australian society as any such group can be.

Individual Standards Board members do not represent any particular interest group (industry or consumer) and are individually and collectively clearly independent of the industry. On the rare occasion an individual member has a connection with a party concerned in a particular determination, that Standards Board member absents herself or himself from the meeting.

The sole function of the Standards Board is to determine complaints about advertising and marketing communications against the principles set out in the relevant Codes. The Standards Board makes determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety.

The Standards Board discharges its responsibilities with fairness, impartiality and with a keen sense of prevailing community values in its broadest sense. Its task is often a difficult one and the outcomes of its determinations will not and cannot please everyone.

Membership of the Standards Board is on a fixed term basis. New appointments are staggered to avoid desensitisation and to ensure the Board retains a mix of corporate knowledge, and at the same time introducing people with different experiences, views and skills. Profiles of all current Standards Board members are available to all on the Bureau website ([www.adstandards.com.au](http://www.adstandards.com.au)) and are at Attachment P.

Standards Board appointments are made following a publicly advertised application and interview process. Appointments are made by the Directors of the Corporate Board of the Bureau. The most recent appointment of new members to the Standards Board was in 2008 and the Bureau will call for applications again in March 2011. People sought for appointment to the Standards Board ideally have an interest in, and views on, advertising and have been exposed to a broad range of community activities and interests.

#### **5.4 Role of the Claims Board**

The Claims Board provides a separate competitive complaint resolution service and is designed to determine complaints involving issues of truth, accuracy and legality of advertising on a user pays cost recovery basis.

The Claims Board is a system of alternative dispute resolution aimed at addressing and resolving challenges to advertising that might otherwise lead to expensive and time consuming litigation.

The Claims Board considers complaints which breach Part 1 of the AANA Code of Ethics. This includes complaints about: the legality of an advertisement; misleading or deceptive advertisements; and advertisements that contain misrepresentations likely to harm a business.

Complaints received by the Claims Board are considered by a panel of legal advisors with experience and expertise in advertising and/or trade practices law.

#### **5.5 Role of the Independent Reviewer of Standards Board determinations**

As part of its ongoing commitment to international best practice in delivering the advertising self-regulation system in Australia, the Bureau introduced a review process for Standards Board determinations in April 2008.

The Independent Review process provides the community and advertisers a channel through which they can appeal decisions made by the Standards Board in prescribed circumstances. A fact sheet outlining the review process is available to the advertiser and the person(s) who originally made a complaint. The fact sheet is available to all on the Bureau website and is at Attachment Q. Please note that this fact sheet has very recently been amended to take into account comment from respondents to the 2010 internal review of the Independent Reviewer process. The most significant change to the process involves a reduction in cost to complainants wishing to request a review (from \$500 to \$100) and the refund of the review fee if the Board decisions changes following the Independent Review. Former Federal Court Justice Ms Deirdre O'Connor and former Australian Federal Police Commissioner Mick Palmer are the Bureau's Independent Reviewers.

During the review process, the original determination (and any subsequent remedial action or withdrawal of the advertisement) will stand. The Bureau publishes the initial determination until the outcome of the review is known at which point the revised determination with Independent Reviewer recommendation is published.

A brief outline of requests for Independent Review since 2008 is at Attachment R.

## 5.6 Principles underpinning the self-regulation complaints system

### *(a) Accessibility of complaint process*

The complaint process is accessible to all members of the public. Complaints may be made via an online complaint form, by post or facsimile. A single written complaint is sufficient to initiate the complaint process.

The complaint process is a free service and provides fairness for complainants and advertisers. Process steps are clearly set out and available to all on the Bureau website, along with information about how the Standards Board makes its determinations (copy at Attachment S). Members of the public without access to the internet are able to contact the Bureau and request information about the complaint process.

The issue of whether consumers know where to complain about advertising is an important issue for the Bureau. In 2006 the Bureau undertook research to gain an understanding of the level of unprompted awareness. Survey participants in 2009 and 2010 were asked the same question. Survey of spontaneous awareness identified in the 2010 sex, sexuality and nudity research showed the level of Bureau awareness at 63 per cent (67 per cent in 2009) and was significantly higher than the 10 per cent (unprompted) in the 2006 Community Awareness research.

Following the 2006 research which demonstrated a low level of unprompted awareness, the Bureau developed an awareness raising campaign. The campaign, which commenced in June 2008, featured television, print and radio advertisements encouraging the community to complain to the Bureau if it has concerns about advertising. The campaign will be extended to outdoor and internet advertising in 2011. The Bureau is supported in its campaign by industry who have developed the campaign at reduced costs and who broadcast the advertisements in relevant media at no charge to the Bureau.

### *(b) Transparency of complaint process and decision making*

The Bureau is committed to a high standard of transparency with regard to Standards Board determinations.

Complaints are promptly assessed as to their appropriateness for submission to the Standards Board for determination. The Bureau, as secretariat for the Standards Board, responds to all complainants, informing them of the status of their complaint and keeps complainants and advertisers informed of the progress of complaints throughout the process via written correspondence.

In 2010, the Bureau developed a series of “Determination Summaries”, also available to all from the Bureau website (a copy of the *Portrayal of gender in advertising* Determination Summary is at Attachment O). The purpose of the Determination Summaries is to provide a general overview of Standards Board determinations on complaints about particular issues covered by the Codes. The summaries are not “how to” guides and are not intended to operate in the manner of binding legal precedents, but are designed to assist the advertising industry, consumers and the Standards Board itself in understanding how the Standards Board has viewed particular issues covered by the Codes that have been the subject of complaints in the past.

All case reports are also made publicly available on the Bureau website promptly after determination. Case reports contain details about the complaint, a description of the advertisement, the advertiser response and the Standards Board’s determination, along with a summary of the reasons for its decision.

### *(c) Robust decision making*

The Standards Board has the complex and sometimes difficult task of making determinations in relation to a wide range of issues covered by the various Codes mentioned above. To assist the Standards Board in its

deliberations, the Bureau conducts two training days each year in which issues of topical or general importance and determination precedent are discussed. For example, in November 2010, the Australian Food and Grocery Council (AFGC) presented information regarding the new AFGC Responsible Children's Marketing Initiative to enhance Standards Board member understanding of the Code and clarify issues regarding complaints under the Code. Similarly, Google provided information about Internet Advertising, and the Communications Council and a Media Buying organisation talked to the Standards Board about advertising to children.

All community standards research which the Bureau undertakes on behalf of the Standards Board is discussed at training days both during the draft stage and subsequently during a formal presentation of the final research report. Copies of two such research reports, *Community perceptions of sex, sexuality and nudity in advertising* and *Community perceptions of violence in advertising* are at Attachment A. Both research reports, and another covering *Discrimination and vilification in advertising* (Attachment M) are available to all on the Bureau website. The Bureau also involves the Standards Board in the development of the Determination Summaries which provide precedent information regarding previous Standards Board determinations on particular issues.

All case reports following Standards Board determinations are published on the Bureau website. Since these documents are available to the entire community, the Bureau ensures that determinations in case reports are articulated clearly, logically and concisely.

The Standards Board is extremely careful to follow appropriate process in making its determinations. The introduction of the Independent Reviewer process in 2008, which allows for a request for review on the basis of a flaw in the determination or a flaw in the process the Standards Board followed, increases the Standards Board's resolve to ensure sound decision making.

***(d) Responsiveness of complaints handling***

The Bureau's complaint handling system is efficient. Implementation of our new case management system has allowed us to more accurately report on timeliness. From April to December 2010 we turned around 23 per cent of cases within 30 calendar days and 73 per cent within 45 calendar days. Over the reporting period, all cases were completed within 90 calendar days and only five per cent of cases took longer than 60 calendar days to complete.

It is important to note that the turnaround times indicated are based on *calendar days* and covers the period from receipt of the complaint by the Bureau until resolution of the complaint and publication of the final case report recording the Standards Board's determination on the matter. This period includes:

- processing and assessing complaint(s) to ensure the complaint addresses a matter covered by a relevant code and that the information provided adequately identifies the advertisement that is the subject of the complaint (this may also include assisting complainants through the process);
- notifying the advertiser of the complaint received and obtaining a copy of the relevant advertisement and a response to the complaint from the advertiser (this may also include assisting advertisers through the process);
- seeking expert advice or opinions (e.g. nutritional advice may be required in the case of a food advertisement), for complex matters;

- Bureau staff preparing information received from all sources for consideration by the Standards Board at its next meeting and providing this information to Standards Board members in preparation for the next meeting;
- consideration of the matter at the Standards Board meeting;
- preparation by Bureau staff of a draft case report;
- review of the draft case report by the Chair of the relevant Standards Board meeting;
- notification of determination to advertisers and complainants; and
- publication of the final case report.

As mentioned above at 1.5, complainants and advertisers also have the opportunity after the Standards Board determination to seek an independent review of the determination, provided there are appropriate grounds for review. The set time for the Independent Reviewer to make a decision is 10 working days.

Complaint processes in other sectors of the media and communications industry work to similar timeframes to those of the Bureau, although the Bureau's complaint process covers a broader range of activities. For example:

- There are mandated complaint response times applying to commercial television licensees under the Commercial Television Industry Code of Practice. This complaint process is essentially an “in-house” process with licensees making the initial response to complaints. Licensees are required to provide a substantive written response to complainants within 30 *working days* of receiving the complaint. This translates to approximately 42 calendar days.
- Commercial radio licensees are required under the Commercial Radio Codes of Practice to respond substantively in writing to complainants within 30 *business days* (approximately 42 calendar days) of receiving the complaint. Again, this is essentially an in-house process. The code allows licensees to provide a final reply within 45 *business days* (approximately 63 calendar days) of receiving the complaint where further investigation is required.
- The Australian Broadcasting Corporation (ABC) Code of Practice indicates complainants will receive a response from the ABC within 60 days of receipt of their complaint (although the ABC aims to respond to all complaints within four weeks of receipt and if a considered response cannot be provided quickly, an acknowledgement will be sent).
- The Special Broadcasting Service (SBS) Code of Practice indicates that the SBS Ombudsman will endeavour to provide a written response to the complainant within 30 days of receipt of the complaint, but in any event must do so within 60 days.
- Complainants who are not satisfied with a broadcasting licensee's response, or who have not received a response within 60 days of making the complaint, may then make a complaint to the Australian Communications and Media Authority (ACMA). According to the ACMA's Annual Report 2009-10, 1,538 out of 1,676 (92 per cent) written complaints and enquiries were actioned within a timeframe of seven days, while 171 of 189 (90 per cent) broadcasting investigations were completed within a timeframe of six months.
- The Classification Board is prescribed by regulation a maximum of 20 *working days* (approximately 28 calendar days) in which to process a standard application for classification of films, computer games,

publications and other material. In addition to this, applications staff must firstly undertake a series of administrative and validity checking tasks in relation to each application to ensure the Classification Board has the information it requires to make a classification decision. The administration period in the case of a standard application is not to exceed 5 *working* days (approximately 7 calendar days). Importantly, applicants for classification decisions are required to provide all relevant documentation and materials for the application to be processed. This contrasts to the process undertaken by the Bureau, in which Bureau staff must actively seek copies of relevant material from the advertiser (based on the complainant's description of the advertisement) as well as an advertiser response and any other relevant materials so that the Standards Board has the necessary information to make a determination.

To improve the turnaround of complaints, since early 2009 the Standards Board has met at least twice per month. It is also possible to provide a 48 hour turn around for cases where it is likely that the advertisement will breach the Code or if there is immediate and significant community concern. In the latter case, however, most advertisers would remove the advertisement voluntarily – an example of this is a Target advertisement which depicted an act considered by many in the community to be dangerous. Upon receipt of Bureau notification of complaints, Target immediately withdrew the advertisement, prior to the Standards Board determination (in which the complaints were upheld).

Neither the Standards Board nor the Bureau considers the receipt of complaints a problem. Complaints provide a good test of the self-regulatory system and of the alignment of the Codes to community opinion. We do not aim for, or expect to experience, a situation where the community does not complain about advertising at all. No system of regulation is foolproof and the role of the complaints process is to act as a safeguard to ensure participants continue to comply with the Codes, having regard to changing community standards.

**(e) *No cost to the community***

The system is funded by industry – it receives no government funding. Responsible advertisers assist in maintaining the self-regulation system's viability and support its administration by agreeing to a levy being applied to their advertising spend. The levy is paid to and administered by the Australian Advertising Standards Council (AASC). The AASC holds the industry funds in an account which is drawn down to pay the costs of managing the Standards Board and the self regulatory system. Financial management of the funds is outsourced to a Chartered Accounting firm and the Annual Financial Statements of both the Bureau and the AASC are audited by independent auditors.

**(f) *Continuous improvement***

The Bureau is committed to continuous improvement, taking into account input from the public and the industry, and having regard to international best practices relating to advertising self-regulation.

During 2011 the Bureau's major initiative will be to develop and implement a "Board Online" process in which non-controversial cases can be dealt with quickly out of session via the Bureau's Extranet. We anticipate that this initiative will significantly reduce determination turn-around times, providing an even faster and more responsive complaint resolution outcome for consumers. Other cases that require more detailed analysis will be considered at scheduled meetings or, if necessary, at a special meeting.

Since 2005, the Bureau has undergone substantial remodeling, including a range of initiatives to improve the transparency and accountability of its complaint handling service. Recent initiatives include the following:

- Complaint processing

- A new case management system was implemented in 2010 resulting in improvements in the efficiency and timeliness of complaint processing.
- Public awareness
  - A major public education campaign was conducted in 2008.
  - Community standards research has included testing of community awareness about the Bureau and advertising self-regulation.
  - A new website was developed in 2006 and further refined in 2010, with improvements to the presentation of information about the complaint process and role of the Bureau and determination search functionality.
- Community standards research
  - In 2006, the Bureau commissioned research to determine the level of unprompted awareness of the Bureau.
  - World-first research commissioned by the Bureau in 2007 testing the Standards Board's decisions against the views of the community.(Attachment B)
  - Research conducted in 2009 on community perceptions of violence in advertising (full report available on the Bureau website - Attachment A).
  - Research in 2010 on community perceptions of sex, sexuality and nudity in advertising (full report available on the Bureau website - Attachment A).
  - Research conducted provides the Standards Board with valuable feedback and Standards Board members have taken the results of such research into account in their consideration of complaints under the Codes.
- Maintaining an independent and effective Standards Board
  - Since 2005, a number of changes have been made to the structure and procedural arrangements of the Standards Board, including expansion to a membership of 20 and appointment of new members at staggered intervals to ensure that the Standards Board has a mix of experienced and new members.
  - The frequency of meetings has increased, with the Standards Board now meeting twice a month to consider complaints and also meeting between scheduled meetings, usually by teleconference, if the Bureau considers that a case should be considered as a matter of urgency.
- Introduction of an Independent Review process
  - An Independent Review process was introduced in April 2008 as part of the Bureau's efforts to meet international best practice. The process enables original complainants and advertisers to appeal determinations made by the Standards Board.
  - Following the appointment of the inaugural independent reviewer in 2008, the Bureau appointed a second Independent Reviewer in 2009 to ensure the operation of the Independent Review system was not affected by absences.
- Introduction of consistently dismissed category
  - A "consistently dismissed" category was introduced in 2010, responding to concerns that Bureau resources are too stretched and to ensure that resources are devoted to the work that is most likely to be upheld. This initiative has resulted in streamlining of this type of complaint and enabled the Board to spend more time discussing more complex cases.

- Provision of information seminars
  - During 2010 the Bureau presented papers at 18 Seminars/Conferences to a total audience of approximately 825. Presentations were made to: 450 industry personnel; 40 students; 50 non-government organisational representatives; 75 legal practitioners; and 210 State and Federal Government staff and non-government organisation representatives.

A priority for 2011 is to explore partnerships with bodies which represent small business, such as Chambers of Commerce, to commence a program of education for this sector who are less aware of their obligations under the advertising Codes.

The Bureau will continue to work with the advertising industry, associated national and international bodies and the community to maintain a healthy system of advertising self-regulation.

*(g) International approach to outdoor advertising*

The Bureau is a member of the European Advertising Standards Alliance (EASA) which is the single authoritative voice on advertising self-regulation issues in Europe and beyond. EASA promotes responsible advertising and high ethical standards in commercial communication and assists members and others via initiatives such as the EASA Advertising Self-Regulatory Charter and Best Practice recommendations. Membership of EASA allows the Bureau to measure its performance and operations against international standards and ensures that we have access to an appropriate best practice model for advertising complaint resolution. An outline of the EASA Best Practice Principles and Best Practice Recommendations is at Attachment T.

The majority of international self-regulatory organisations (SROs) do not have specific arrangements for outdoor advertising. Exceptions are Poland, Hungary and Romania. There is a specific article in the Polish Code that allows the jury to apply stricter rules to outdoor advertising that targets children. Hungary and Romania ban alcohol advertisements inside and within 200 metres of the main entrance of educational and health establishments. Romania applies the same ban to tobacco advertising.

Most SROs do not offer preclearance (examination of advertisements by SROs as a **compulsory** pre-condition of publication) for outdoor advertisements. Exceptions apply in some jurisdictions for some or all alcohol advertisements, for example preclearance of alcohol advertisements is mandatory in Ireland; voluntary in Canada and New Zealand. Preclearance is used as a sanction in exceptional cases in Belgium and in the UK against repeat offenders who are incapable of or unwilling to comply with the Codes. In Lithuania, preclearance is mandatory for outdoor advertising only and is administered not by the SRO, but by each local Municipality. (The Lithuanian situation is under review and it is likely that all outdoor advertising administration will be incorporated within the SRO's responsibility).

Copy advice (SRO advice on a proposed advertisement or advertising campaign at the request of an advertiser) is more common in international SROs. Most copy advice is provided free to advertisers, advertising agencies and the media and is generally offered orally on a non-binding basis in relation to all forms of advertising. Some jurisdictions charge non-members of the SRO for copy advice. The Austrian SRO provides copy advice in writing and the advice is produced using an online voting system. Since 2008, the advertising industry in France has implemented a system whereby any advertisement containing environmental claims should request copy advice. A French advertising industry decision in 2005 requires that if an SRO provides negative copy advice on a billboard project, the SRO should advise outdoor media companies who then make a judgment whether or not to use the advertisement.



## 5.7 Upheld rates

The rate of advertisements upheld across all categories increased from 5 per cent to 13.7 per cent between 2006 and 2009 which reflects a level on par with international counterparts and also reflects the Standards Board's response to changing community sensitivities. This is mostly due to the introduction of new and more diverse Standards Board members; and a greater awareness within the Standards Board of community standards, particularly around issues relating to sex, sexuality and nudity. Preliminary statistics for 2010 indicate that the upheld rate across all categories was 10.24 per cent.

There is no right or wrong number for an upheld rate. There will always be circumstances in which people make valid complaints about an advertisement, but whose complaint is not in line with the broader community. There is a wide range of community views on particular issues and Bureau research shows that the Standards Board is generally in line with community views.

## 5.8 Compliance with Standards Board determinations

Regardless of an advertiser's reaction to a Standards Board determination, in the vast majority of cases where Code breaches are found, advertisers quickly ensure that their advertisement is removed or modified. Very few advertisers require more encouragement to comply.

The Bureau has a record of nearly 100 per cent compliance by industry with decisions of the Standards Board. The Bureau's ability to achieve compliance across Federal, State and Territory jurisdictions, regardless of the size of the advertiser, is something that legislation and government administration is very unlikely to rival.

The instances in which voluntary compliance was not obtained are described below at 1.9.

## 5.9 Enforcement of Standards Board determinations

In the vast majority of cases where Code breaches are found, advertisers quickly ensure that their advertisement is removed or modified. However, if necessary the Bureau has developed a range of enforcement actions to ensure compliance with Standards Board decisions.

Firstly, if a complaint indicates that an advertisement may breach government regulations or has broken the law, the Bureau can refer the case report to an appropriate government agency or industry body that has the authority to withdraw the advertisement. This can be done without a case going to the Standards Board for consideration.

Other actions can include:

- An advertiser's failure to respond will always be included in the final case report which is made public on the Bureau's website. This is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided.
- In a similar fashion, an advertiser's failure to respond can feature in information released to the media which follows the relevant Standards Board meeting, and the Bureau Chief Executive Officer will respond to all media requests with a full account of the particulars of the case, including the timeliness of the advertiser's compliance.
- Should an advertiser fail to respond to the Bureau's request to remove or modify advertising, the Bureau will liaise with industry and media bodies such as FreeTV and the Outdoor Media Association, which will

either negotiate with the advertiser directly for the removal of the advertisement or in specific cases, take action to remove the advertisement.

- Under appropriate circumstances, the Bureau will refer an advertiser to a government agency such as: the Commonwealth Department of Communications, Broadband and the Digital Economy; the Australian Communications and Media Authority; the Attorney-General's Department; or to State Police Departments to request that these agencies assist in taking action against the advertiser. In some cases, local councils may also have relevant authority to assist with the removal of an advertisement, although this authority varies greatly between jurisdictions. Although Government agencies can be of assistance should the Bureau be unable to facilitate removal of an advertisement, it is apparent that they do not have relevant powers or funding to achieve enforcement outcomes or, in some cases, are unable to act quickly or on the basis of community concerns.

During 2009 and 2010 the Bureau referred four decisions to government authorities.

- i. In November 2009 the Bureau notified the Australian Competition and Consumer Commission (ACCC) of community concern about the truth and accuracy of advertising claims made by the Advanced Medical Institute. At that stage, the ACCC advised that it did not propose to take any further action. In December 2010, the ACCC launched legal proceedings against the Advanced Medical Institute regarding breaches of the Trade Practices Act.
- ii. In May 2010 the Bureau notified the Fraser Coast Regional Council that a billboard owner would not remove the billboard. Council replied and has removed the billboard (although only on the basis that the development was not approved – not on the basis of the content of the billboard).
- iii. In September 2010 the Bureau notified the Yarra City Council that a local store would not remove a sandwich board. Council replied and advised that it is unable to revoke the approval of the sandwich board on the basis of content.
- iv. In January 2011 the Bureau notified the Victorian Government that advertising for an adult premises breached the Code and asked that the Government take appropriate action. A substantive response has not yet been received.

## 6. Conclusion

The self-regulation system for advertising in Australia is an effective way to ensure high advertising standards across all media.

The combined commitment of advertisers, advertising agencies, media buyers, media operators and industry associations has meant that the vast majority of advertisements do not receive complaints and, of those that do, the majority are found not to be in breach of community standards. It has also contributed to the excellent compliance record of the Bureau in enforcing Standards Board decisions, of nearly 100 per cent compliance.

The Bureau and the Standards Board each recognise the important responsibility they have to the community to ensure advertising content meets prevailing community standards in accordance with the Codes.

The complaint adjudication process administered by the Bureau is working well in ensuring consumers have the opportunity to be heard when they consider an advertisement does not meet the standards set out in the Codes.

The Standards Board takes its responsibility in regard to maintaining advertising standards across all media very seriously. It has given particular attention over the last few years to concerns about the sexualisation of children and objectification of women, particularly in regard to outdoor advertising, responding to community concerns about those issues. Decisions to dismiss complaints raising such issues under provisions of the Codes are made with the appropriate and careful consideration the Standards Board gives to all cases. The Standards Board recognizes the broad nature of the audience for outdoor advertising and, consistent with the nature of a self-regulatory body made up of community representatives, takes into account changing community perceptions towards particular types of media and particular issues covered by the Codes.

The Bureau recommends that the Committee consider the value of the current processes in ensuring the needs of complainants, advertisers and the general community are effectively balanced and met, having particular regard to:

- the fact that the vast majority of advertisements do not receive any complaints;
- the majority of those complained about are not found to be in breach of community standards; and
- the Bureau's success with ensuring compliance where the Standards Board upholds complaints about an advertisement is nearly 100 per cent.

We are happy to provide the Committee with any additional information it requires to further expand on the important roles of the Bureau and the Standards Board in the regulation of outdoor advertising and in addressing the issues of sexualisation of children and objectification of women in advertising.

## List of attachments

- Attachment A** – *Community perceptions of sex, sexuality and nudity in advertising* Research Report; *Community perceptions of violence in advertising* Research Report
- Attachment B** – Community Standards Research - 2007
- Attachment C** – ASB Case Report 333/10
- Attachment D** - ASB Case Report 187/10
- Attachment E** - ASB Case Report 435/10
- Attachment F** - ASB Case Report 188/06
- Attachment G** - ASB Case Report 402/10
- Attachment H** – ASB Case Reports 504/10 and 464/10
- Attachment I** - Statistics relating to complaint adjudication
- Attachment J**- ASB Case Report 261/09
- Attachment K** - ASB Case Report 517/10
- Attachment L** – ASB Case Report 461/10
- Attachment M** – *Discrimination and vilification in advertising* Research Report
- Attachment N** - *Discrimination and vilification in advertising* Determination Summary
- Attachment O** - *Portrayal of gender in advertising* Determination Summary
- Attachment P** - Advertising Standards Board members
- Attachment Q** – The Independent Review process
- Attachment R** - Outline of requests for Independent Review 2008 – 2010
- Attachment S** - Advertising Standards Board complaints process
- Attachment T** - EASA Best Practice Principles and Recommendations