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## **Submission**

on the

## **Regulation of billboard and outdoor advertising**

to the

### **House Standing Committee on Social Policy and Legal Affairs**

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## 1. Introduction

On Tuesday 14 December 2010 the Attorney-General, The Hon Robert McClelland MP, asked the House Standing Committee on Social Policy and Legal Affairs to inquire into and report on the regulation of billboard and outdoor advertising.

The Committee has invited submissions to be received by Friday 18 February 2011.

## 2. Billboard advertising – the current regime

Billboard and other forms of outdoor advertising are currently self-regulated under the Australian Association of National Advertisers *AANA Code of Ethics*.<sup>1</sup>

Complaints about breaches of the code by advertisers can be made in writing, including via an online complaints form to the Advertising Standards Board.<sup>2</sup>

After the Advertising Standards Board has made a determination the advertiser is free to implement it, ignore it or appeal it to the Independent Reviewer. Complainants may also seek a review of a determination. Review is only available if there is additional material or a flaw in the process.

In 2009 complaints about outdoor advertising represented 23.9% of all complaints up from just 3.7% in 2006.

In 2010 four of the ten most complained about advertisements were billboard advertisements within between 45 and 70 complainants for each advertisement. The Board upheld two of the complaints and dismissed two of them.

- Sexpo Pty Ltd - Case number 60/10 – Featuring woman on knees and man on motorbike – ad for Brisbane Sexpo in March. About 75 complaints. Board decision – Dismissed
- Ashley Madison - Avid Life - Case number 0292/10 – Life is short. Have an affair - Sydney. About 60 complaints. Board decision - Upheld
- Fernwood Fitness Centres Aust Pty Ltd (Billboard) – Case number 15/10 – "Join Now for Fox Sake" About 50 complaints. Board decision – Dismissed
- Calvin Klein (Billboard) – Case number 0411/10 - Image of one woman and three men. Woman is lying on her back with her head resting on the thighs of one of the men and he is looking down at her. Another man is crouched over her. About 45 complaints. Board decision – Upheld

### 2.1 Sexpo Pty Ltd

The Board describes this advertisement as follows:

*This outdoor advertisement features a woman wearing a blue bikini-like outfit, she is on her hands and knees and arching her back. A bare-chested male appears in the background. On the right side of the billboard is a man on a motorbike depicted in mid air.*

The Board determined in part:

*The Board noted the complainants concern that the image of a woman in a sexualised pose with skimpy clothing is inappropriate for the Billboard.*

*The Board considered whether the advertisement 'depicted sex, sexuality and nudity with sensitivity to the relevant audience'.*

*The Board noted that the woman is featured with her back arched and was wearing an outfit similar to a bikini. The Board noted that it had previously considered advertisements featuring scantily clad women and that the use of such images has at times been a divisive issue for the community. The Board noted that this advertisement is for a sex related product - a Sex expo - and that a mildly sexually suggestive image of a woman is relevant to that product or service. The Board noted that the relevance of the image to the product or service advertised is a factor in determining whether the advertisement treats sex, sexuality or nudity with sensitivity to the relevant audience.*

*The Board noted that the advertisement is on a billboard and is therefore available for viewing by a broad audience. The Board considered that some reasonable people would find the portrayal to be unacceptable but considered that the image is relatively discrete (the woman's breasts are mostly covered), the advertisement is only mildly sexually suggestive, and the image is relevant to the products advertised. On this basis the Board determined that the advertisement did depict sexuality with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.*

*The Board also considered whether the advertisement discriminated against or vilified women. Some members of the Board considered that the woman was depicted in a sexualised and objectified manner particularly when contrasted with the image of the man, who is depicted in a stronger more powerful position. The majority of the Board considered that this image, although objectifying the woman, was relevant to the product and did not amount to discrimination or vilification of women. On this basis the Board determined that the advertisement did not breach section 2.1 of the Code.<sup>3</sup>*

While noting that as a billboard the advertisement was “available for viewing by a broad audience” the Board did not give any specific consideration to the fact that this audience necessarily includes children even though its viewing by children was mentioned in six out of eight of the complaints cited by the Board in the determination.

It is unclear how the Board interprets the phrase “*sensitivity to the relevant audience*”. Does this mean the audience likely to see the advertisement, which in this case would include children? If so, it is surprising for the Board to find that this image depicted sexuality with sensitivity to children. An advertisement of this kind would not be cleared to screen during children’s viewing times on television.

There is also a degree of circular reasoning in the Board’s argument that because the advertisement was for a sexual product – a sex exposition – this justified the sexually suggestive image and the objectification of the woman.

The latter finding seems to mean that as Sexpo as a product objectifies women it is therefore acceptable for an advertisement for Sexpo to objectify women. It is acceptable, the Board seems to be saying, for the sex industry to objectify women and therefore acceptable for advertisements depicting such objectification to be displayed to a general audience – which necessarily includes children.

This decision alone seems to indicate the need for a new approach to outdoor advertising.

## 2.2 Fernwood Fitness Centres

This billboard advertisement featured the words "*Join Now for Fox Sake.*"

Unbelievably the Advertising Standards Board accepted the claim by the advertiser – surely not made with a straight face – that although they were aware that if said aloud the slogan could sound like it was using a strong four-letter expletive this was purely unintentional and the slogan, building on other advertisement for the product around the idea of women being foxy or fox-like, simply was intended to mean "Join Now for the sake of becoming foxy".<sup>4</sup>

This determination seems to treat the public with contempt as idiots. No person who is familiar with the four-letter expletive in question could possibly read this slogan and not have the phrase come to mind.

A play on words where one of the words is a four-letter expletive is simply not suitable for a billboard that can be read by all passers-by including children.

## 2.3 Advanced Medical Institute

There has been a long history of complaints about billboards advertising the services of Advanced Medical Institute (AMI).

Notably in a determination dated 13 August 2008 the Board reversed an earlier decision dismissing complaints against a billboard with the slogan "*Want Longer Lasting Sex?*". The Board opined that since they had last considered the slogan in 2007 community standards had changed and that there was now a new level of "*concern about the unsolicited exposure of children to advertisements dealing with sexuality*". Most commentators considered that it was the Board's opinion that had changed to conform to long existing community standards rather than any significant shift in community attitudes.<sup>5</sup>

Parents have never been comfortable having their children confronted with large advertisements with sexual or other inappropriate comment. It is patronising of the Board to suggest that this was some newly emerging sensitivity.

Since August 2008 the Board has upheld complaints about AMI billboards with the slogan "*Be a man and ... hold your load*"<sup>6</sup> while dismissing complaints about AMI billboards with the slogans "*Making love? Do it longer*"<sup>7</sup> and "*Impotence busters ... call HARD 1800 311 311*"<sup>8</sup>

## 3. Problems with the current regime

There are several problems with the current regime for regulating billboards and outdoor advertising:

- Insufficient regard or inconsistent weight is given to the reality that advertisements on billboards cannot be avoided by any member of the community going about their daily business in the vicinity of a billboard. In particular, this applies to families with young children, but also to adult members of the community who find more or less explicit advertisements for sexual services offensive. Unlike all other media there is no option to "turn it off" or "not open it".
- Insufficient regard is given to objections to the overt advertising of sexual services as such even if the depictions of or references to sexual activity are relatively constrained. Why does the Board not understand that a billboard advertising Sexpo is in itself offensive regardless of how explicit the accompanying images are?

- The complaints based system operates only after an advertisement has been placed on a billboard – indeed, often on many billboards around the country (AMI's "*Want Longer Lasting Sex?*" advertisement was on 120 billboards across Australia<sup>9</sup>). Even after a determination is made, given the physical nature of billboard advertising, it may take some time to remove all such advertisements. In the AMI's "*Want Longer Lasting Sex?*" case it was accepted by the Board that it could take AMI up to 30 days to remove all the relevant advertisements. Naturally thousands of people have seen the offending advertisements before they are removed.

## 4. Possible solutions

### 4.1 Amending the AANA Code of Ethics

The AANA Code of Ethics could be amended by incorporating a section dealing specifically with billboards and other forms of outdoor advertising.

This section would need to make it clear that the direct advertising of sexual services and products is not acceptable and that there should be no references – explicit or implied – to sexual activity, to coarse language, to drug use and that there be no sexualised imagery.

The standard should be at least as strict as that used to classify advertisements for exhibition on free to air television as GENERAL "G".

These advertisements are defined as "*Commercials which comply with the G classification criteria in Appendix 4, Section 2 of the Code of Practice and provided the content is very mild in impact and does not contain any matter likely to be unsuitable for children to watch without supervision.*"<sup>10</sup>

This category does not permit any advertising of adult products and services or of condoms, except in a public health announcement context. Sexpo, AMI and the Fernwood "for Fox Sake" advertisement almost certainly would not be classified GENERAL for broadcast on free to air television during the G classification time zone.

However, merely changing the Code is unlikely to remedy the problem given the issues identified with the Board's lack of judgement and commonsense and the problem of delay with a complaints based system.

### 4.2 Pre-placement classification system

FreeTV offers a service to advertisers on a commercial basis which classifies their advertisements to ensure they are broadcast only in the appropriate classification time zones.

The Association of Australian National Advertisers could develop a similar service for billboard and outdoor advertising.

This could build on an improved AANA Code of Ethics by ensuring that before advertisements are placed on billboards they are tested against the proposed new GENERAL "G" standard for billboards and outdoor advertising.

A complaints system would still be in place as a check on the pre-placement classification system.

This would have the advantage of preventing offensive advertisements from being placed on billboards in the first place.

However, this proposal still relies on self-regulation and on the Advertising Standards Board as the arbiter.

### **4.3 Classification Board**

Another approach would be to require advertisements on billboards and other prominent forms of outdoor advertising to be submitted to the Classification Board for a classification before being placed. The Classification Board has the necessary expertise and systems. The service would be on a cost recovery, user pays basis.

The scheme could either require all advertisements to be submitted or be based, like the scheme for the classification of publications, on a notion of "submittable" advertisements which would need to be defined in legislation as any advertisement which may exceed the requirements for the GENERAL "G" classification.

It should be noted, however, that there is currently a systemic failure in the call-in system associated with submittable publications with the Classification Board reporting a pattern of distributors ignoring call-in notices. Careful thought would need to be given to the enforcement mechanisms if such a scheme was put in place for billboard and other prominent outdoor advertising.

Complementary legislation would need to be introduced by the Commonwealth and the States to ensure full constitutionality and a cooperative approach to standards and enforcement.

## **5. Conclusion and recommendations**

The current regime for monitoring billboard and outdoor advertising is inadequate. It has failed to ensure that the community, especially families with young children, is not confronted with inappropriate and offensive advertising in public places.

This system needs replacing.

#### ***Recommendation 1:***

***That a new standard for advertisements on billboards and other outdoor advertising be defined to exclude any advertising of adult products and services and to be at least as strict as the GENERAL "G" classification as defined by FreeTV Commercial Advice.***

#### ***Recommendation 2:***

***That a scheme for pre-placement classification of either all or a defined category of advertisements for billboards and other outdoor advertising be put in place to ensure that offensive advertisements are not displayed to the public, especially families with children.***

***This scheme could be administered on a commercial basis by AANA or could be provided by the Classification Board. In the latter case attention should be paid to ensuring an effective call-in scheme and other enforcement provisions.***

## 6. Endnotes

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1. <http://www.aana.com.au/documents/AANACodeofEthicsAugust2009.pdf>
2. <http://www.adstandards.com.au/process/theprocesssteps/initiatingacomplaint>
3. <http://122.99.94.111/cases/60-10.pdf>
4. <http://122.99.94.111/cases/15-10.pdf>
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10. FreeTV Commercials Advice, *Classification Handbook*, 2010, p. 67;  
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