



**Submission to the House of Representatives Standing Committee
on Social Policy and Legal Affairs**

Regulation of Billboard and Outdoor Advertising

'Visceral clutch' is a gut response to sexual matters that paralyses reasoning. And without reasoning there can be no solutions to problems - Beatrice Faust, The Australian, May 4th 1996.

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Eros Association
PO Box 69
Deakin West
ACT
02 6285 2477
fiona@eros.org.au

Introduction

The Eros Association is Australia's peak adult industry group representing the owners of over 1,000 adult products businesses and over 13,000 adult services and entertainment businesses as well as their customers who now number over five million adults.

The adult retail industry is a major employer group providing employment to over 20,000 people in Australia and contributing an annual turnover of around \$1.5 billion dollars to the national economy.¹

The adult industry is generally satisfied with the decisions that the Advertising Standards Bureau makes and upholds, with regard to complaints. Our issues are more to do with censorship decisions being taken by other parties in the process of regulating billboard content.

Discrimination

Billboard and outdoor advertising plays an important part in the promotional mix that our members need to run a profitable business, however it is one of the most discriminatory and difficult areas of all to deal in. As a result many traders in this industry who would like to use outdoor advertising, choose not to. Many of them report that it is not the content of the ads that is an issue with billboard owners but simply the fact that they are from the 'adult industry'.

Discrimination on the grounds of job, occupation, profession or calling is an offense in the ACT punishable by fines of up to \$250,000. Consequently the adult industry has no problems with outdoor advertising in this jurisdiction. However in all other jurisdictions our members face constant discrimination on these grounds by the owners and managers of billboard sites and advertising agencies who immediately judge any material put forward by adult companies as intrinsically 'immoral and trouble-making'. They do **not** apply this same yardstick to medical companies, therapeutic agencies, the fashion industry, alcohol manufacturers and many other businesses that use sex and sexuality to promote their products or services.

We welcome this inquiry as an opportunity to express the enormous levels of frustration felt by this industry over many years towards the owners of outdoor advertising companies for their discriminatory attitudes and their willingness to accept the view that any advertising from the adult industry should be treated as 'toxic' and is likely to generate controversy that will land them before the ASB. We do not see this same attitude reflected within the ASB.

Religion

We hope that the Committee approaches this submission with an open mind and that any religiously inclined Committee Members try and put their ideologies to one side and view this submission through the eyes of the 92.5% of Australians who, in

¹ IBISWorld sex industry report (2010); Eros Association report (2000)

the last national Census, stated that they did not hold strong religious beliefs by virtue of the fact that they do not attend church on a weekly basis. It is our firm view that a very small minority of strongly religious people (the 7.5% who attend church once a week or more) punch well above their weight in making complaints around billboard advertising. They use shrill and righteous rhetoric to drive their arguments rather than fact and logic.

It is a major failure of the system that complainants to the ASB and to Billboard companies are not asked to disclose whether their religious beliefs have influenced their complaint. It is clear to most people that a large percentage of complaints are ideologically driven. The websites of Australia's largest morals groups (Catch the Fire Ministries, Australian Christian Lobby, Australian Family Association) show that it is common for church groups and clergy to even lobby parishioners from the pulpit, about how to make a complaint over what they see as inappropriate depictions of sexuality. An organised and ideologically driven complaint, should be seen by business operators and regulators alike, as not being a genuine complaint as they are tinged with self aggrandisement, often in pursuit of another goal entirely and frequently not embraced by the actual complainant.

Religious campaigns to rid the highways of 'filth' and 'pornography' often reflect cultish behaviour and attract slightly unhinged people to them. We would draw the Committee's attention to the activities of an American comedian and CBS television employee, Buck Henry, during the 1960s, as evidence of this phenomena.

Under the alias of G. Clifford Prout, Henry pretended to be a moral's campaigner dedicated to the mammoth task of clothing naked animals around the world. Of special interest were those near highways who could often be seen engaging in sexual acts - much to the horror of many parents who had to explain to their children what they were doing. He formed the Society for Indecency to Naked Animals ('SINA') and pushed slogans like 'a nude horse is a rude horse' and 'decency today means morality tomorrow'. After an appearance on the Today Show he quickly attracted over 50,000 concerned citizens to his cause. The hoax was finally brought to an end on CBS News by well known journalist, Walter Cronkite. But even three years after Henry had been outed, the organization continued to produce a journal for the faithful which published media releases and sewing patterns for pet clothing.

These people are alive and well in Australia today and complaining about billboards.

Case Studies

As stated previously, discrimination toward the adult industry is unfair and often an opportunity for people to get on their high horse about morality in general. Most complaints about our member's outdoor advertising are in fact more about the industry than the signage itself, even though complainants and media tend to focus on the sign. This point is clear from the following examples.

Sexyland Billboard

- 1) In June 2007 the Sexyland adult store on Lonsdale st, Dandenong (Vic) was the subject of a complaint from a local resident. The basis of her complaint was that:
 - i) the billboard promoted a legal, adult retail shop which she found difficult to explain and embarrassing when asked by her son 'what is Sexyland?'
 - ii) billboards that promote adult shops fail to foster a moral society
 - iii) the billboard was inappropriate and offensive to women
 - iv) the sign offended her family
 - v) the sign in some way contributed to crime in Dandenong



The rest of her comments in the local paper show that it was the broader adult industry that she was objecting to and that she had a personal agenda about society becoming 'sex-obsessed'. It is unclear why she had formed that opinion. The sign itself showed no imagery at all so her complaint was left to apply to the three words 'bigger, brighter, better' and the shop name 'Sexyland'. In front of educated minds there is no point in even trying to argue the ridiculousness of the assertion that these words in themselves could be offensive. As to her inability and awkwardness about explaining what an adult shop is to a young enquiring mind, this woman clearly needs help in relating to her children. Nine year old boys are already discussing sexuality in the school yard with their mates. Her shortcomings as a parent in this area should never have been accepted by the local paper or the local Council as a reason to defame or restrict the adult shop. This case is typical of many.

Sexpo Billboard

- 2) In February 2009 a billboard on the Gold Coast highway promoting an upcoming Sexpo was the subject of two very similar complaints on the same day. The language and sequence of the complaints was almost as if they had been written by the same person. If two or more people collaborate to lodge a complaint we believe it should be treated as one complaint – although we

suspect that the people in the ASB informally do this.

Complaint received by E-mail on : 12/02/2009

Complainant Details

Name: [REDACTED]

Nature of Complaint

Portrayal of sex/sexuality/nudity – section 2.3 -

Complaint Details Ad Details: Billboard, Gold Coast Highway, western side, Tugun. Today. 10am, 12/2/09SEXPOSEXPO Description of Ad: Large Billboard with large letters SEXPO with a photo of a topless woman with her hands over her breasts. Reason for Concern: We recently had a billboard ad at Tugun for "Need Longer Sex" which after a while had the Sex part XXX out, I presume after someone complained. Sexpo seems no different. It is very large and the photo of the girl is fairly explicit for a public road for 24 hour a day exposure. The school bus stops at the Shell Service Station nearby and I feel it is an inappropriate ad for general view.

Complaint received by E-mail on : 12/02/2009

Complainant Details Not to be disclosed

Nature of Complaint

• Portrayal of sex/sexuality/nudity – section 2.3 -

Complaint Details Ad Details: Billboard, Gateway motorway Currently present Sexp oThe sexpo exhibition - something to do with cricke tDescription of Ad: "SEXPO" in bold letters, a topless woman holding up her large breasts with cricket gloves pouting a large amount of her breasts showing Reason for Concern: 1) AMI nasal delivery technology ads were recently changed from "SEX" to "DO IT" which seemed like progress, and now here is the word "SEX" again in 10ft letters on a busy motorway.2) Furthermore, this ad also has a clearly sexual image of a woman in a sexual and provocative pose, revealing a large amount of her naked breasts. Can you tell me where else I can take this complaint? As I find this billboard really disgusting.

Again we are seeing complainants register their personal inability with the word 'sex' as a major part of their complaint. They are not even alleging that the word is being misused or misrepresented or taken out of context. It is simply the use of the word. 'Sex' is not an obscenity. It has no special power to coerce people or make them drive on the wrong side of the road. We believe that complaints about a word per se, should be dismissed out of hand and that taxpayer's money should not be wasted on people's unreasonable biases and 'bete-noirs'.



The complaints about images of breast nudity are more real. However in this circumstance the amount of breast nudity was no more than the complainant would have seen on any of the Gold Coast beaches that day and was certainly no more or less than what they would have been seen on a magazine cover in the local newsagent. A recent unrestricted cover from one of the world's most popular magazines, Vanity Fair, is offered as a comparison for what is an acceptable amount of public breast nudity.



This magazine is distributed throughout newsagents in Australia and provides a reasonable benchmark for what is acceptable in the public domain. The argument that the Billboard is fixed on site while the magazine comes and goes and is therefore less impactful, is a non sequitur. The billboard is gone as soon as someone drives past it the same as the tv ad is gone when it finishes and the magazine cover is gone when you walk out of the newsagent. The real issue here for regulators, billboard owners and advertising agencies is, *what is the community standard?* And as long as women sunbake on Australian beaches and as long as popular magazines show this amount of breast nudity on covers, then the breast nudity on the Sexpo billboard has to be acceptable as well.

There is an issue with billboards that have come under enough criticism for the

billboard owner or agency to take the sign down and later, for the ASB to rule that the advertisement was OK. This happened in the case of this Sexpo billboard on the Gold Coast with Mayor Paul Pisasale playing to the media and declaring the need for national standards on billboards.



His efforts were enough for the ad agency to tear up the contract with Sexpo under fine print and bring down the image. Later on the ASB ruled that ad was acceptable and the contention of some people that a bicycle had been positioned to appear to be going into Monica Mayhem's bottom, was clearly wishful thinking. However the decision was too late for Sexpo to put up another sign before their event started.

Another billboard for last year's Adelaide Sexpo had a complaint against it upheld by the ASB for what was foreshadowed in the ad rather than what was.



The first model was said to have offended community standards by 'threatening' to pull her bikini bottom down, even though she had not done it yet. This is a concerning ruling from the regulator in that it is uncharacteristically without much logic or rationale. If the model's bikini was pulled down, clearly it would be offensive. The model next to her is not touching her bikini and has been found to not offend community standards. Therefore the ASB has ruled that 'intent' in itself can be offensive.

There is also the issue of whether Australian billboard standards are keeping up with those in other countries. I attach a copy of Sexpo's billboard ad for their latest event

in South Africa and suggest that this would have brought forth howls of complaint if it had been run in Australia. They have had no formal complaints at all in South Africa over this ad.



Complaints about Sexpo and other adult industry billboards are rarely about the content. If Sexpo put a fully dressed couple on a billboard saying 'Come to Sexpo' it would get complaints. In this respect we would like regulators, billboard owners and ad agencies to closely examine the nature of complaints and where it can be reasonably ascertained that a specific complaint is actually masking a person's point of view about the appropriateness of adult goods and services in general or even that they offend against that person's religious beliefs, that the complaint be ruled vexatious or not genuine.

Advanced Medical Institute (AMI) Billboards

We believe that these ads for 'longer lasting sex' have been almost entirely responsible for this enquiry in the first place. Notwithstanding this, we make two points about the ads. We believe that billboard owners and agents have allowed AMI to use sex and sexual themes in a way that they would not allow the adult industry to do. If the adult industry had put forward an ad for their products or services that stated that they helped people to have 'longer lasting sex', the ads would never have even got off the ground let alone made it to the ASB for adjudication. The use of sexual themes in outdoor advertising should not be discriminatory depending on which industry the ad comes from.

Messages in Public Spaces

One of the main points of contention for complainants of the AMI ads appears to be the embarrassment factor for some parents in explaining to curious children what the ad means. Reproduction and sexuality are important issues within the community and the fact that these ads targeted, in plain English, what many Australian couples are looking for should not, of itself, be cause for censorship. How do these people explain to their children about suicide bombers blowing up innocent people on the nightly news? Explaining the facts of life and why Mummy and Daddy might like to have longer lasting sex would seem far easier.

The problems that some parents have in explaining sexuality to children is their own problem – not one for advertisers or businesses who seek to get a sexual message across to the public that is not obscene, rude or insulting. Asking people if they want longer lasting sex should be seen as no different from asking them if they want longer lasting relief from headaches or longer lasting weight loss. And public spaces should be available for these sorts of messages as private ones are. Public space is space that is owned as well as being available to the general public.

We hear through billboard owners and agencies that informal complaints about religious billboards outnumber all others they receive but rarely make it to the ASB. We have no evidence to support these allegations however the number of religious billboards in the country that carry the most appalling and offensive messages on them seem to attract very few complaints at the ASB. We found only two over the last ten years. A billboard that carried the message, ‘Sex is the answer...’ would no doubt attract plenty of complaints from religious groups or individuals representing them. The intellectual message of the billboard below is equally if not more offensive than this. We wish the Committee to consider that religious advertising can be as offensive as sexual advertising and investigate the reason why there are so few complaints about it.



Sex and Violence

There is another issue in this area we wish the Committee to consider. Sex and sexual themes get by far the most complaints to the ASB. The most recent statistics we could find on the ASB website showed 40% of complaints were for sex, sexuality and nudity while only 7% were for violence. Violent depictions in outdoor advertising are as numerous as sexual themes so why is there this discrepancy in complaint rates?



The above ad for the game Red Dead Redemption was carried on a Melbourne tram and is typical of promotional material put out by the mainstream entertainment industry. Here we have a red neck yobo pointing a shotgun at everyone on the street beside the tram and no complaints. Yet a billboard showing a young women with a bikini on is banned because she hooks her thumb inside the bikini bottom. There is, of course, complete nonsense. The vast majority of people would rate the violent image as way more offensive than the girls-in-bikini image. The Committee needs to ask how and why these incongruous situations are allowed to rise within the current regulatory framework.

The Complaints Mechanism

The major issue here for the adult industry is that only one complaint is needed to trigger an enquiry. This places an unfair expense on the advertiser who then has to commit time, money and resources into preparing a submission to counter the complaint. Many billboards are seen by upward of 200,000 people. Medical experts agree that around 10% of the community has some form of mental disorder and we feel that complaints over sexually based advertising attract a good deal more of these people than other industries so. We believe that there needs to be a new benchmark set to trigger a complaint and that a figure of 1% of the estimated viewing audience of the billboard would be a fairer and reasonable number.

In electoral terms a political party needs to get 4% of the vote before it is eligible for public funding. This benchmark is used to gauge whether there is legitimate and broadly based support for the party and whether its platform is worthy of public support. Alongside this benchmark, a 1% level of support in the form of a petition, for an enquiry into the suitability of a billboard ad, would appear to be generous to the protesters. Allowing one person out of 200,000 who sees a billboard to trigger a formal complaint is asking for unstable and unsupported crazies to rort the system.

Canberra's new airport has three new backlit billboards above the incoming luggage carousel for major weapons manufacturers. Clearly these have been strategically placed to get the attention of federal MPs, diplomats, defence public servants and business executives. How acceptable is this in a public place and if it is, surely an ad

for better sex or Sexpo strategically placed on a Gold Coast highway to attract young married couples and singles, is equally acceptable. It would appear that the arms manufacturer's ads do not appear to have had a single complaint. Perhaps the author of this submission should try and change that by making a complaint to aid this submission. It would only take one letter but then would that complaint be a legitimate complaint, as my reasons for making it would be to aid my submission rather than registering the offence that I felt at seeing an arms manufacturer advertising in front of children at the airport.

Regulatory Burden on Business

We strongly resist the creation of yet another government agency to handle the regulation of billboard advertising in Australia. We also do not see the need to involve the Australian Classification Board (ACB) or any other official body in the process. People's lives are already over-regulated and there is a distinct rejection of increasing government interference in people's lives appearing on the political scene. The Committee needs to be aware of the fact that the NSW government recently gave state police the power to make classification decisions without reference to the ACB or any other media regulator. This is the beginning of a very slippery slope for civil liberties. Any move to place outdoor advertising in the hands of government censorship authorities could well involve state police in the near future – something that the entire outdoor advertising industry would completely reject.

Conclusion

Given that it is only a matter of time before all media is available on all screens, the notion of officially classifying all media becomes ridiculous and completely impossible. The current inquiry into the Classification Act is a recognition of the convergence of all media (including billboards and outdoor advertising) and the inevitability that at a point in the not too distant future, all media will be connected and what is available on one screen will be available on half a dozen different platforms at the same time. A billboard on a highway now, will very soon become a screen on a mobile phone or an iPad at the same time. Electronic billboards and outdoor advertising is already being linked to websites. At last count there were over four million adult sex related websites – 12% of all sites. Unless we want to increase the size of the Classification Board and other regulatory agencies like ACMA to the size of Treasury or Social Security, we need to look at new models of ensuring compliance with community standards.

Gauging community standards is something that government agencies and departments are notoriously bad at doing. For example, the ACB has not conducted a community opinion poll for over 20 years but still maintains that it knows what community opinion is. We believe that the ASB should have regular professional polling incorporated into its charter so that clients and government can be sure that they know how the community is thinking every year.

When community opinion is accurately assessed though, clearly the most efficient and most affordable way of getting public advertising to comply with community standards is to strike an arrangement with the people and companies that are selling media in Australia, which is currently being done by the ASB. To start looking at putting an official layer of classification/censorship around billboard advertising would be to walk away from self regulation at a time that all other media stakeholders were starting to embrace it.