

Dr Kris Veenstra  
Inquiry Secretary  
House of Representative Standing Committee on Social Policy and Legal Affairs  
House of Representatives  
Parliament House  
Canberra ACT 2600  
Australia

**Dear Dr Veenstra**

**Submission to the House Committee regarding the regulation of billboard advertising**

On behalf of The Communications Council, the peak body for Australia's \$30 billion marketing communications sector, please find enclosed our submission regarding the regulation of billboard advertising.

The Council thanks the Committee for the opportunity to comment and we look forward to discussing this submission with the Committee in further detail.

Yours sincerely,



Daniel Leesong  
Chief Executive Officer  
The Communications Council

## OVERVIEW

### How we understand the issue:

- The community has a legitimate expectation that it will be protected from offensive outdoor and billboard advertising.
- Outdoor advertising can be considered particularly contentious given its high visibility and propensity to be located near areas of high public thoroughfare, like freeways and busy street corners.
- This concern has been a media issue at various times in the last few years, largely in response to deliberately provocative and occasionally explicit advertising by a handful of protagonists; for example the Advanced Medical Institute.
- The nature of the media's coverage of this issue has led some in the community to question the efficacy of current regulatory arrangements for outdoor and billboard advertising.

### The Communications Council's response:

- The Communications Council and its members support the right of the community to be protected from inappropriate and offensive billboard and outdoor advertising.
- However, existing industry self-regulatory arrangements are working; We draw the Committee's attention to the fact that according to the Advertising Standards Bureau (ASB), the vast majority of outdoor and billboard advertising do not give rise to complaints.
- Industry compliance with the code of conduct is very high and that the code is in step with community expectations.
- Any proposed changes to the self-regulatory system should take into account financial implications and the regulatory burden on the industry

The Communications Council works closely with its partner peak bodies in the fields of advertising, marketing and communications. As such, rather than all respond separately to the Committee's terms of reference, we will only respond with reference to our own purview, ie – issues relating to the education of agencies in this area and our creative contribution to society.

As such, The Communications Council will submit the following commentary alongside the Terms of Reference of this Inquiry, while allowing its partners to provide an in-depth response from their more specific or expert perspectives.

The Communications Council supports the existing self-regulatory scheme for advertising generally, and also believes that the system works as it adheres to billboard and outdoor advertising.

We believe that the Advertising Standards Board-administered scheme is one of the most effective and efficient, and the statistics bear this out.

We are concerned that if the existing scheme is altered or replaced – for example by a government regulatory scheme – this may result in slower determinations in response to complaints, and may act as a brake on the sector’s growth, and hence its contribution to the economy and job creation.

One concern levelled at the scheme by members of the community has been the length of time taken to respond to billboard advertisements that were in breach of the ASB guidelines. We ask the Committee to take into account the logistical issues associated with removing billboard advertisements, which in many cases requires the blocking of roads for example.

Finally, the Council notes that billboard and outdoor advertisements are subject to relevant state and Commonwealth laws relating to misleading and deceptive conduct.

### **About The Communications Council**

The Communications Council was formed on 1 January 2010, merging the former Advertising Federation of Australia (AFA) with the Account Planning Group (APG) and Australasian Writers and Art Directors Association (AWARD) and more recently the Australasian Promotional Marketing Association (APMA). The Communications Council is the peak body representing agencies in the marketing and communications industry to government, industry, media and the public.

We help grow member businesses and develop individual careers through the provision of professional development services, advocacy and support.

The Communications Council represents businesses in marketing communications sector which contributes in excess of \$30 billion towards Australia’s GDP.

### **Billboard and Outdoor Advertising**

The Council incorporates members from a wide spectrum of creative disciplines, including traditional advertising agencies, through to healthcare advertising agencies, design agencies and production companies.

None of the Communications Council’s members specialises in outdoor advertising only, but the majority of its members include outdoor advertising as an important channel of communication to consumers.

**In 2010, there were approximately 14,500 outdoor campaigns that ran, comprising some 30,000 advertisement across 73,000 advertising display panels.<sup>1</sup>**

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<sup>1</sup> Statistics provided to The Communications Council by the Outdoor Media Association (OMA).

## 1. The industry self-regulatory system

The Communications Council has always been a strong supporter of the principle of self-regulation as an effective mechanism to market brands responsibly across all channels.

The Council recognises that the advertising sector carries an above-average expectation on it for social responsibility, and must be aware of existing community concerns and standards when creating marketing communications campaigns.

As a supporter of the self-regulatory system, when members join our industry body, they are made aware of those responsibilities under the self-regulatory system.

There are a variety of voluntary and self regulatory codes of application to agencies.

Among these are:

- The Therapeutic Goods Advertising Code regulating advertising of non-prescription drugs, regulated by the Therapeutic Goods Advertising Code Council (TGACC). The Communications Council's, formerly represented by the Advertising Federation Australia (AFA), is represented on the TGACC Committee, with a view to informing the Communications Council's Healthcare committee of developments in this particular area of marketing communications.
- The Alcohol Beverages Advertising Code (ABAC) regulating Alcohol advertising, administered by a Management Committee which includes industry, advertising and government representatives, including our CEO, Daniel Leesong. Complaints are handled by the Advertising Standards Bureau (ASB). Alcohol advertising is prevetted by the Alcohol Advertising Pre-Vetting System (AAPS).
- The AANA Code of Ethics stipulating that advertisements are legal, decent, honest and truthful administered by the Australian Association of National Advertisers (AANA) and adjudicated by the ASB.
- The AANA Code on Advertising and Marketing to Children, aimed at ensuring that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing to children in Australia.
- The AANA Food and Beverages Code, aimed at ensuring social responsibility in advertising and marketing food and beverage products in Australia, as well as the Environmental Claims in Advertising Code, dealing with misleading and deceptive claims in areas of 'green marketing'.
- The Motor Vehicle Code, the Voluntary Code of Practice for Motor Vehicle Advertising instituted by the Federal Chamber of Automotive Industries (FCAI) as a means of industry self-regulation of motor vehicle advertising in Australia in regards to appropriate standards for the portrayal of images, themes and messages relating to road safety.
- Other codes around Weight Management and Financial Advertising.

In addition:

- The Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974) prohibiting misleading or deceiving advertising, packaging, logos, endorsements or sales pitches applies to agencies (referred to in section 3).

### **The Communications Council's role in the industry Self-regulatory System**

- The Communications Council in its former guises has been educating agencies on the AANA Code of Ethics, administered by the Advertising Standards Bureau (ASB), since 2001. The Communications Council regularly conducts workshops with members on the different acts, codes and guidelines that may impact on marketing communications agencies with the intention to promote compliance and reduce legal and commercial risks to advertisers and their agencies.
- It closely monitors ASB determinations to inform agencies of changing interpretations and/or community standards as they apply to the Code
- It provides non-legal advice to agencies where questions arise around the taste, decency and/or risks associated by communications campaigns, prior to their appearance in various channels, including outdoor media.
- It refers agencies to a solicitor specialising in this area of legislation where legal advice is requested or required.
- It monitors and distributes research reports by the ASB, such as the recent report published in 2010, regarding community perceptions on sex, sexuality, nudity in advertising, with a view to informing members of changing community perceptions and standards.
- It facilitates annual ASB workshops with our members with a view to educating them on the ASB system.

The Communications Council maintains a working relationship with the Advertising Standards Bureau in order to inform members accurately about the ASB complaint handling structures.

In addition, we provide input on the ASB system where requested, such as on the occasion of the recent Review into the independent reviewer system, conducted in November 2010.

Advertising agencies comply with the system by:

- Ensuring key staff are aware of relevant codes and their application by training or up-skilling them in the areas of codes and regulations.
- Discussing the application of Codes with their clients, and informing them of risks associated with the content of the ad where necessary or appropriate.
- Where necessary, responding to requests by the ASB on information relating to complaints lodged, ie detail about the advertisement, its wording and statements about how the advertisement complies with sections of the relevant Codes.

## 2. Current arrangements meeting community expectations

The AANA Code of Ethics was adopted by the Australian Association of National Advertisers (AANA) as a means of advertising and marketing self-regulation in Australia and is intended to apply widely to all forms of advertising and marketing communications. It is the building block for other industry codes and an important component of the self-regulatory system.

- The object of the Code of Ethics is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors.

Complaint statistics indicate that the vast majority of advertisements do not trigger complaints and – that in the majority cases in which complaints are lodged, the ASB finds that there the Code has not been breached. We therefore submit that the current system is effective in ensuring that advertisers and their agencies are in step with community expectations.

We submit that the solid education and training delivered by the industry, plays a major role in ensuring campaigns are in line with community standards.

### Agencies and consumers

The Communications Council's members share a commitment to provide consumers with appropriate advertisements that are in line with community standards, with a view to promoting consumer confidence and confidence in the self-regulatory system more broadly.

Advertisers and their agencies are committed to the system which is informed by an understanding that a failure to meet community expectation will result in ineffective marketing messages, and may result in reputational damage to the brand.

### Adverse implications relating to ASB findings

In addition, the publication of ASB reports and the publicity they attract can result in negative exposure for advertisers and their agencies.

In the case of the agency, The Communications Council is aware of instances in which accounts have been lost because advertising content was deemed in breach of the AANA Code of Ethics. In such instances a breach of compliance results in a direct financial loss for the agency.

In addition, for the advertiser, there are substantial costs associated with the removal of marketing campaigns in case of a breach, and in case modification of an advertisement is required.

### **3. Trade Practices and Fair Trading Legislation**

The Communications Council regularly educates and advises members on the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974) with the intention to promote legal compliance and reduce legal and commercial risks to advertisers and their agencies.

Under ACCC regulations, it is unlawful for businesses to make false or misleading representations about goods or services in promotions or advertising.

### **4. Keeping pace with technical developments in billboard advertising**

As a matter of course, The Communications Council keeps informed on evolving technologies, and marketing practices, by keeping up to date with agencies' work and the channels they use for their campaigns.

The Council champions the principle of responsible self-regulation as an effective mechanism to respond to changing technologies and practices, as well as changing consumer expectations.

In this context, the Communications Council considers that new technology developments may create opportunities for advertisers to become more targeted in outdoor campaigns, considering time slots and likely audience in preparing outdoor campaigns.

We submit that the industry, with its strong record of effective self-regulation, is best placed to adapt and change its system to incorporate new channels and technologies as they emerge.

### **6. The rate and nature of complaints about billboard advertising**

The Communications Council's response to this term of reference is contained at appropriate junctures throughout this document.

### **7. Improvements to the Self-regulatory system**

The Communications Council believes its members should operate responsibly and within the confines of its self-regulatory system, outlined above, as well as within relevant state and federal legislation.

Where changes are made to the self-regulatory system, the Council will continue to educate its members, and update its membership to reflect newly introduced provisions.

The Communications Council is a regular contributor to discussions around best practice in the self-regulatory system, maintaining working relationships with the ASB and the AANA.

## 8. The desirability of minimising the regulatory burden on business

The Communications Council supports the self-regulatory system as it exists at present and would urge the Committee to consider closely the financial impact of potential changes to the existing system.

This position is informed by the fact that:

- The self-regulatory system is industry funded and supported, and operated at no cost to government
- The self-regulatory system costs are borne by those responsible for the communications, rather than the consumer
- Industry is well placed to respond rapidly and effectively to changing technologies and marketing practices

In addition The Communications Council submits that:

- The ASB reports that the vast majority of marketing communications do not attract complaints
- The ASB reports that the majority of complaints are rigorously assessed, and are dismissed
- The ASB system has resulted in upheld complaints being actioned and addressed in an effective and timely manner, achieving a compliance of nearly 100%<sup>2</sup>
- In respect to outdoor complaints specifically, the ASB only considered 90 cases about outdoor advertisements in 2010, at least 23 of which were not third-party advertisements (for example, they were on-premise signs, or mobile phone advertisements).
- 15 of these were found to be in breach of the AANA Code of Ethics, of which 7 were not third-party advertisements. That is, 46.6% of upheld cases were not about third-party advertisements.
- The 8 third-party advertisements that were the subject of an adverse finding by the ASB represent 0.026% of all outdoor industry advertisements in 2010.

Lastly, it is in the interests of the industry to remain in step with prevailing community attitudes. Failure to remain in step with community standards can result in brand damage and serious financial cost, and undermines the confidence the community, and government, has in the self-regulatory system.

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<sup>2</sup> Advertising Standards Board Statistics relating to complaint determinations with emphasis on outdoor advertisements.