
The Parliament of the Commonwealth of Australia

Reclaiming Public Space

Inquiry into the regulation of billboard and
outdoor advertising

House of Representatives

Standing Committee on Social Policy and Legal Affairs

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Canberra

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Foreword

No one can avoid outdoor advertising. This is what makes outdoor advertising appealing to advertisers – it cannot be turned off or put away if a consumer wishes to ignore it. Having seen the dominance of outdoor advertising in my own electorate, and being concerned about the images my own children were being exposed to, I was pleased to lead this inquiry investigating community concerns about the regulation and monitoring of outdoor advertising.

The Committee considers that outdoor advertising constitutes a specific category of advertising because of the way that it occupies public spaces, dominates civic landscape, and targets captive, unrestricted audiences. The inquiry addressed particular concerns about the impact of increasing, cumulative and sustained exposure to advertisements that contain sexual, discriminatory or violent material and to advertisements for alcohol and unhealthy foods and beverages.

As such, the Committee concluded that industry self-regulation of advertising standards needs to include a specific code of practice for outdoor advertising. This code of practice should reflect the particular nature of outdoor advertising, recognising that all members of society are exposed to it and do not have a choice about viewing it. Community sentiment supported the Committee's opinion that there is a need to reclaim public space from any wayward interests of commercial advertising.

Furthermore, the self-regulatory system for advertising as a whole requires strengthening to address some of the concerns that were raised at public hearings and in submissions to the inquiry.


The definition of 'community standards' is a contentious issue, given the wide range of views held by all members of society. More research into community attitudes about outdoor advertising standards should be conducted to increase the public's confidence in decisions about advertising that purport to reflect community norms.

Moreover, the Committee recommends that the advertising self-regulatory system adopt international best practice measures such as the provision of independent advice to advertisers on their advertising content prior to publication, and the establishment of a monitoring role to promote high levels of compliance with the voluntary advertising codes.

This report contains many recommendations to advertising industry bodies. The Committee expects the recommendations to be adopted and implemented by the relevant bodies, as the industry has demonstrated that it is keen to preserve the system of self-regulation. However, if the industry does not demonstrate over the next few years that self-regulation can appropriately operate within the bounds of community expectations for appropriate outdoor advertising, then the Committee strongly recommends that the Australian Government institute regulatory measures.

Public spaces are for the use of all members of the community – men, women and children – and the right to enjoy the amenity of a space should not be compromised by an advertiser’s array of inappropriate images. This report has listened to the Australian community and, on behalf of the Australian community, it says enough is enough. It is time to reclaim our public spaces.

Mr Graham Perrett MP
Chair



Membership of the committee

Chair	Mr Graham Perrett MP
Deputy Chair	The Hon Judi Moylan MP
Members	Mr Shayne Neumann MP
	Ms Michelle Rowland MP
	Ms Laura Smyth MP
	The Hon Dr Sharman Stone MP
	Mr Ross Vasta MP

Committee secretariat

Secretary	Dr Anna Dacre
Inquiry Secretary	Dr Kris Veenstra (until 22 February 2011) Ms Natalya Wells (from 23 February 2011)
Senior Research Officer	Ms Natalya Wells (until 22 February 2011)
Office Manager	Mrs Donna Quintus-Bosz



Terms of reference

Having regard to:

- community concerns about large-scale public advertising;
- trade practices and fair trading legislation in all jurisdictions that contain consumer protection provisions that prohibit false, misleading and deceptive advertising;
- relevant industry codes including the Australian Association of National Advertisers' *Advertiser Code of Ethics*; and
- the role of the Advertising Standards Bureau:

Refer to the House of Representatives Standing Committee on Social Policy and Legal Affairs for inquiry and report matters relating to the extent to which the current arrangements for the regulation of billboard advertising continues to be an effective method for managing this form of advertising in Australia in line with Australian community expectations.

In performing its functions in relation to this reference, the Committee will consider:

1. the existing self-regulatory scheme for advertising
2. whether the current arrangements, including the Industry Codes administered by the Advertising Standards Bureau, meet community concerns about billboard advertising
3. trade practices and fair trading legislation in all jurisdictions that contain consumer protection provisions that prohibit false, misleading and deceptive advertising
4. technical developments in billboard advertising, if any
5. the rate and nature of complaints about billboard advertising
6. any improvements that may be made to current arrangements
7. the desirability of minimising the regulatory burden on business, and
8. any other related matter.



List of acronyms

AANA	Australian Association of National Advertisers
ABAC	Alcohol Beverages Advertising (and Packaging) Code
ACCC	Australian Competition and Consumer Commission
ACCM	Australian Council on Children and Media
ACL	Australian Christian Lobby
ACMA	Australian Communications and Media Authority
AFGC	Australian Food and Grocery Council
APC	Alcohol Policy Coalition
ASA	Advertising Standards Authority (United Kingdom)
ASB	Advertising Standards Bureau
ASC	Advertising Standards Canada
ASCB	Advertising Standards Complaints Board (New Zealand)
CCA	<i>Competition and Consumer Act 2010</i>
CCMCAAY	Cancer Council Western Australia and the McCusker Centre for Action on Alcohol and Youth
CFAC	Coalition on Food Advertising to Children
EASA	European Advertising Standards Alliance

FCAI	Federal Chamber of Automotive Industries
ICC	International Chamber of Commerce
KF2BK	Kids Free 2B Kids
OMA	Outdoor Media Association
PCA	Pedestrian Council of Australia
POW	Proving Outdoor Works
QRSI	Quick Service Restaurant Industry
RCMI	Responsible Children's Marketing Initiative
RTA	Roads and Traffic Authority of New South Wales



List of recommendations

Recommendation 1—Advertising and industry bodies

The Committee recommends that the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme report to the Attorney-General's Department by 30 December 2011 detailing their responses and how the relevant recommendations will be implemented.

The Committee further recommends that the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme provide a comprehensive report to the Attorney-General's Department by 30 December 2012 detailing how the relevant recommendations contained in this report have been implemented.

Recommendation 2—Australian Government

The Committee recommends that the Attorney-General's Department review by 30 June 2013 the self-regulatory system for advertising by evaluating the industry implementation reports and assessing the extent to which there has been effective implementation of the recommendations contained in this report.

If the self-regulatory system is found lacking, the Committee recommends that the Attorney-General's Department impose a self-funded co-regulatory system on advertising with government input into advertising codes of practice.

The Committee recommends that the Attorney-General's Department conduct five-yearly reviews of the advertising regulatory system to

ensure that technological advances and changes in advertising trends are being addressed adequately in line with community expectations.

Recommendation 3— Australian Association of National Advertisers

The Committee recommends that the Australian Association of National Advertisers introduce a code of practice for out-of-home advertising and for use by the Advertising Standards Board when determining complaints about out-of-home advertising. The code of practice should recognise that out-of-home advertisements:

- occupy public space and have the potential to affect the amenity of that space for some community members;
- can be viewed by an unrestricted audience, regardless of their target audience; and
- have a cumulative impact on the community through the social messages they convey.

Recommendation 4—Australian Government

The Committee recommends that the Attorney-General's Department investigate, through its anti-discrimination legislation consolidation project, how to include the unrestricted display of racist or sexualised images in the public space under the scope of discriminatory practice.

Recommendation 5— Advertising Standards Bureau

The Committee recommends that the Advertising Standards Bureau introduce a transparent copy advice service, which provides independent advice on the suitability of proposed advertisements, for all outdoor advertising.

Recommendation 6— Advertising Standards Bureau

The Committee recommends that the Advertising Standards Bureau conduct and publish annual random compliance surveys of outdoor advertising across specific industries and specific elements of advertising codes, such as:

- the food and beverage sector;
- the alcohol sector;

- outdoor advertising that portrays children;
- advertising at event venues and sportsgrounds; and
- outdoor advertising that portrays sex, sexuality or nudity.

The Committee also recommends that Advertising Standards Board members take on a formal monitoring role of outdoor advertising and self-initiate investigations where warranted. The Committee considers that the compliance surveys would inform the monitoring role.

Recommendation 7— Australian Association of National Advertisers

The Committee recommends that the Australian Association of National Advertisers establish a more regular program to review each of the voluntary codes of advertising, in consultation with stakeholders and relevant organisations and experts in the field.

Recommendation 8— Australian Association of National Advertisers

The Committee recommends that the Australian Association of National Advertisers amend its Advertising Code of Ethics to proscribe sexual objectification of men, women and children.

Recommendation 9— Advertising Standards Bureau

The Committee recommends that the Advertising Standards Bureau, in conjunction with relevant industry bodies, conduct research every two years into:

- community perceptions of the use of sex, sexuality and nudity in advertising in general and specifically in outdoor advertising;
- prevailing community standards on health and safety in advertising in general and specifically in outdoor advertising;
- prevailing community standards on the advertising of food and beverages;
- prevailing community standards on advertising to children; and
- prevailing community standards on the advertising of alcohol.

These findings should be reflected accordingly in determinations by the Advertising Standards Board.

Recommendation 10— Alcohol Beverages Advertising Code

The Committee recommends that the Alcohol Beverages Advertising Code Scheme conduct research every two years into prevailing community standards on the advertising of alcohol.

This research should include particular reference to outdoor advertising and the findings should be reflected accordingly in Alcohol Beverages Advertising Code panel determinations.

Recommendation 11—Australian governments

The Committee recommends that the Monitoring of Alcohol Advertising Committee continue to monitor alcohol advertising and report annually to the Intergovernmental Committee on Drugs.

The Committee further recommends that the Intergovernmental Committee on Drugs oversee the operation of the Alcohol Beverages Advertising Code Scheme and provide reports every two years of its assessed effectiveness to Health ministers.

Recommendation 12— Federal Chamber of Automotive Industries

The Committee recommends that the Federal Chamber of Automotive Industries conduct transparent reviews of the Voluntary Code of Practice for Motor Vehicle Advertising every two years in consultation with road safety authorities and government representatives, and publish the findings of the reviews on the Federal Chamber of Automotive Industries website.

Recommendation 13— Australian Association of National Advertisers

The Committee recommends that the Australian Association of National Advertisers amend the Australian Association of National Advertisers Food and Beverage Code to include sports sponsorship as a form of advertising and therefore subject to advertising codes of practice. This should be implemented by 30 October 2011.

Recommendation 14— Australian Food and Grocery Council

The Committee recommends that the Australian Food and Grocery Council act immediately to include outdoor advertising in the definition of 'media' as it applies to the Responsible Children's Marketing Initiative.

The Committee recommends that this should be in place by 30 October 2011, notwithstanding that a review of the Responsible Children's Marketing Initiative is scheduled for 2012.

The Committee further recommends that the Australian Food and Grocery Council amend both the Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children and the Responsible Children's Marketing Initiative to include sports sponsorship as a form of advertising. This should be implemented by 30 October 2011.

Recommendation 15— Advertising Standards Bureau

The Committee recommends that the Advertising Standards Bureau amend its complaint process to also accept complaints about advertising by telephone and email and accept and investigate anonymous complaints. These changes should be implemented by 30 October 2011.

Recommendation 16— Advertising Standards Bureau

The Committee recommends that the Advertising Standards Bureau establish regular nation-wide information and awareness campaigns about the advertising complaints system across all forms of media, including outdoor, television and print.

In particular, information on the outdoor advertising code, once it is developed, and the complaints process should be provided to:

- all federal and state or territory elected representatives; and
- the Australian Local Government Association for distribution to local governments.

Recommendation 17— Advertising bodies

The Committee recommends that the Australian Association of National Advertisers require its members to forward any complaints from the public about their advertising to the Advertising Standards Bureau.

The Committee also recommends that the Outdoor Media Association require its members to forward any complaints from the public about their advertising displays to the Advertising Standards Bureau.

Recommendation 18— Advertising Standards Bureau

The Committee recommends that the Advertising Standards Bureau address instances of advertiser non-compliance by:

- establishing a dedicated webpage, easily accessible from the Advertising Standards Bureau website, that names advertisers, and their products, who have breached advertising standards or refused to comply with Board determinations;
- circulating the names of non-compliant advertisers in industry newsletters and other means of communication;
- providing the names of non-compliant advertisers to the Outdoor Media Association and encouraging their members to consider not accepting advertisements from them;
- providing the names of non-compliant advertisers to the Attorney-General so that the Attorney-General's Department can consider legislation that would require the naming of non-compliant advertisers in Parliament, similar to the *Equal Opportunity for Women in the Workplace Act 1999*; and
- reporting annually to the Attorney-General's Department on the non-compliance rate and steps taken to achieve compliance.

Recommendation 19— Advertising Standards Bureau

The Committee recommends that the Advertising Standards Bureau strengthen the independent review process by:

- providing a comprehensive explanation of the independent review process on its website and in informational material to increase the public's understanding of the role of the Independent Reviewer;
- tasking the Independent Reviewer with checking a random sample of determinations annually to assess the validity of Advertising

Standards Board determinations that have not been appealed formally;
and

- aiming for 90 per cent or higher Independent Reviewer agreement with Advertising Standards Board determination processes in the random sample.

Unlike the 'private' world of magazine and television advertising, outdoor advertising pervades public space, thus making regulation of the medium a pertinent public policy concern. The inescapable nature of outdoor advertising, compounded with the increasingly sexualised display of women within it, demands that a public policy response occurs.¹

Introduction

- 1.1 Outdoor, or out-of-home, advertising is distinct from other forms of advertising. It is highly visible, often very large, and placed in heavily trafficked areas in order to attract as many viewers as possible. Moreover, unlike television, radio, print, internet, cinema, and mail advertising, outdoor advertising cannot be turned off, put away or easily avoided.
- 1.2 Outdoor advertisements take on a myriad of forms, such as billboards on land adjacent to a road, shopfront and window displays, murals on buildings, vehicle decals, and sandwich boards. Advertising space can be leased on and inside trains, trams, buses and taxis. Purpose-built third-party media display sites include billboard structures, mobile billboards, displays found in shopping centres, bus and train stations, and airports, and street furniture. The latter include:
 - public transport shelters;
 - kiosks;
 - public toilets;
 - waste bins;

¹ L Rosewarne, *Sex in Public: Women, outdoor advertising and public policy*, Cambridge Scholars: Newcastle, 2007 p. 137.

- public bicycle stations;
 - phone booths; and
 - park benches.
- 1.3 The range of outdoor advertising is expanding and this has raised questions about the appropriateness of content and placement.
- 1.4 In Australia, advertising standards, including those related to outdoor advertising, are governed by a system of industry self-regulation. This system is funded by a voluntary levy paid by advertisers.
- 1.5 Questions regarding the effectiveness of the current arrangements for the regulation of billboard and outdoor advertising have given rise to this inquiry.

Scope of inquiry

1.6 On 14 December 2010, the Attorney-General, the Hon. Robert McClelland MP, referred to the Committee an inquiry into the regulation of billboard advertising.

1.7 The terms of reference of the inquiry are as follows:

Having regard to:

- community concerns about large-scale public advertising;
- trade practices and fair trading legislation in all jurisdictions that contain consumer protection provisions that prohibit false, misleading and deceptive advertising;
- relevant industry codes including the Australian Association of National Advertisers' *Advertiser Code of Ethics*; and
- the role of the Advertising Standards Bureau:

Refer to the House of Representatives Standing Committee on Social Policy and Legal Affairs for inquiry and report matters relating to the extent to which the current arrangements for the regulation of billboard advertising continues to be an effective method for managing this form of advertising in Australia in line with Australian community expectations.

In performing its functions in relation to this reference, the Committee will consider:

- the existing self-regulatory scheme for advertising;

- whether the current arrangements, including the Industry Codes administered by the Advertising Standards Bureau, meet community concerns about billboard advertising;
 - trade practices and fair trading legislation in all jurisdictions that contain consumer protection provisions that prohibit false, misleading and deceptive advertising;
 - technical developments in billboard advertising, if any;
 - the rate and nature of complaints about billboard advertising;
 - any improvements that may be made to current arrangements; the desirability of minimising the regulatory burden on business; and
 - any other related matter.
- 1.8 The Committee considered that the primary objective of the inquiry is to examine the adequacy of the current regulatory arrangements in relation to advertising which can be viewed from public spaces, and therefore where the audience is not able to exercise an individual choice with regard to what they see. Accordingly, in line with the final term of reference, to consider 'any other related matter', the Committee resolved to include within its inquiry consideration all types of advertising which can be viewed from public spaces.
- 1.9 The Committee undertook to investigate the distinctive category of outdoor advertising and the suitability of the current self-regulatory scheme. In its examination, the Committee considered a number of issues relating to complaints and compliance. Of particular interest is the question of whether the existing system of self-regulation meets community concerns about outdoor advertising content.

Purpose of inquiry

- 1.10 Outdoor advertising in public space, such as billboards, posters and on public transport, is difficult to avoid. Unlike television, radio, internet or print advertising, outdoor advertising cannot be switched off or closed if the consumer does not wish to view it. As the Outdoor Media Association (OMA) likes to spruik, outdoor advertising (at its best) achieves direct communication with consumers wherever they go:

... where they live, work, play, where they drive and shop,
where they commute, and where they congregate.²

2 Outdoor Media Association (OMA), 'What makes Good Outdoor' <<http://oma.org.au/what-makes-good-outdoor>> viewed 23 May 2011.

- 1.11 In 2005, the OMA (then known as the Outdoor Advertising Association of Australia) undertook a research project entitled Proving Outdoor Works (POW) to demonstrate the 'reach and frequency, creative effectiveness and attitudes to outdoor advertising in general'.³
- 1.12 The POW campaign appeared for four weeks across all main outdoor formats such as billboards, street furniture, posters, buses, taxis and inside airports. Results of that research showed that over 91 per cent of the respondents surveyed recalled seeing the POW campaign during that period with the majority seeing it every day or several times per week. Moreover, 70 per cent of respondents said that they see 'quite a lot of outdoor advertising in their daily lives'.⁴
- 1.13 At the same time as outdoor advertising is proving to be an increasingly prevalent and effective means of reaching an audience, community concern about it appears to be rising. For example, statistics produced by the Advertising Standards Bureau show that complaints about outdoor advertising rose from 14 per cent in 2007 to 20 per cent in 2008, to more than 26 per cent in 2009, and levelled to 20 per cent in 2010.⁵ The most complained about advertisement in 2009 related to a billboard image, and four of the top ten most-complained about advertisements in 2010 were billboards.⁶
- 1.14 This inquiry was conducted in response to growing concerns that outdoor advertising, in its currently self-regulated form, is not matching community attitudes about the nature of advertising images that are displayed in the public arena.
- 1.15 As technological advances are made, the media available for outdoor advertising is also likely to become increasingly sophisticated. Even today, there are a wide range of options available including: backlit, neon, holograms, giant video screens, live theatre, giant product models, two- or three-dimensional displays, trivision, animated neon, computerised message displays, custom built mechanicals, reflective materials, screen printing, inflatable objects, signwriting, and computer generated images.⁷

3 goa billboards, 'Proving Outdoors Works' <<http://www.goa.com.au/billboards/proof.html>> viewed 28 January 2011.

4 OMA, 'POW Campaign Findings' <<http://oma.org.au/media/Pdf/POWSummaryFindings.pdf>> viewed 28 January 2011.

5 Advertising Standards Bureau (ASB), *Submission 27*, p. [50].

6 ASB, 'Most Complained about Ads in 2009', *Media Release*, 15 December 2009; ASB, 'Most Complained about Ads for 2010', *Media Release*, 14 December 2010.

7 OMA, 'What makes Good Outdoor' <<http://oma.org.au/what-makes-good-outdoor>> viewed 23 May 2011.

Increasingly sophisticated technology such as facial recognition software enables outdoor advertisements to target passers-by.

- 1.16 The future forms of outdoor advertising are expanding and may take on forms we cannot yet imagine. However, whatever form they may take, we must ensure that an appropriate regulatory system is in place that addresses community concerns and consumer protection.

Relevant reviews and inquiries

- 1.17 This inquiry is the first parliamentary inquiry to focus on the special category of outdoor advertising. However, a number of other inquiries have addressed advertising in general or for specific industry sectors.
- 1.18 In November 1983, the House of Representatives Standing Committee on Road Safety tabled its report, *The Impact of Advertising Standards on Road Safety*. This report noted the impact of advertising on driving behaviour and recommended that an advertising code for road safety be developed. As a result, the Federal Chamber of Automotive Industries developed a voluntary Code of Practice for Motor Vehicle Advertising.
- 1.19 In June 2008, the Senate Standing Committee on Community Affairs published a report into the *Alcohol Toll Reduction Bill 2007 [2008]*, which dealt primarily with alcohol advertising and the Alcohol Beverages Advertising Code Scheme.
- 1.20 The Senate Environment, Communications and the Arts Committee tabled a report in June 2008 entitled *Sexualisation of Children in the Contemporary Media*. While not focussed on outdoor advertising, a number of submissions to the inquiry expressed concern about the exposure of children to sexual innuendo and material contained in billboard advertising.⁸
- 1.21 The Senate Committee recommended that:
- ...the Advertising Standards Board rigorously apply standards for billboards and other outdoor advertising to more closely reflect community concern about the appropriateness of sexually explicit

8 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media*, June 2008, p. 71.

material and the inability of parents to restrict exposure of children to such material.⁹

- 1.22 In response to that recommendation the Government noted the independence of the Advertising Standards Board and that the placement of outside advertising is within the purview of local and/or state government planning authorities.¹⁰
- 1.23 Concurrent with this Committee's inquiry into the regulation of billboard and outdoor advertising, a number of related reviews are underway.
- 1.24 On 21 December 2010, the Attorney-General announced that the Australian Law Reform Commission will conduct a review of classification in Australia in light of changes in technology, media convergence and the global availability of media content.¹¹ The Australian Law Reform Commission released its *National Classification Scheme Review Issues Paper* on 20 May 2011, and plans to provide its report by 30 January 2012.¹²
- 1.25 Additionally, the Senate Legal and Constitutional Affairs Committee announced on 16 September 2010 that it will inquire into the Australian film and literature classification scheme. The Senate Committee examined the scheme with particular reference to a number of issues including 'the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme'.¹³ The report was tabled on 23 June 2011.
- 1.26 The Australian Association of National Advertisers (AANA) has also commissioned an independent review of the Code of Ethics which underpins the current system of self-regulation. The AANA states that the aim of the review is to 'update and where necessary develop the Code of Ethics to ensure that it continues to meet all stakeholders' requirements and expectations'.¹⁴ The AANA advised the Committee that it has delayed

9 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media*, June 2008, pp. 73–74.

10 Australian Government, *Government Response: Inquiry into the sexualisation of children in the contemporary media environment*, July 2009, pp. 9–10.

11 The Hon. Robert McClelland MP, Attorney-General, and the Hon. Brendan O'Connor MP, Minister for Home Affairs, 'Review of the National Classification Scheme', *Joint Media Release*, 21 December 2010.

12 Australian Law Reform Commission, 'National Classification Scheme Review' <<http://www.alrc.gov.au/inquiries/national-classification-review>> viewed 25 May 2011.

13 Senate Legal and Constitutional Affairs Committee, 'Inquiry into the Australian Film and Literature Classification Scheme' <http://www.aph.gov.au/Senate/committee/legcon_ctte/classification_board/info.htm> viewed 28 January 2011.

14 Australian Association of National Advertisers (AANA), 'AANA Code of Ethics Review – 2010' <<http://aana.com.au/CodeofEthicsReview2010.htm>> viewed 28 January 2011.

the release of the review in order to enable consideration of the findings of this inquiry.

Conduct of the inquiry

- 1.27 The inquiry's terms of reference and an invitation for written submissions were advertised on 20 December 2010. The Committee also wrote to a number of organisations seeking submissions. The terms of reference and other information about the inquiry are advertised on the Social Policy and Legal Affairs Committee's homepage at <http://www.apf.gov.au/house/committee/spla/reports.htm>.
- 1.28 The inquiry received 51 submissions, six supplementary submissions and three exhibits. Lists of submissions and exhibits received can be found at Appendices A and B respectively.
- 1.29 Seven public hearings were held in 2011 in Canberra, Sydney and Melbourne (see list at Appendix C). Transcripts from these hearings are available through the Committee's website. A number of witnesses gave evidence to the Committee at these public hearings. The names of witnesses are listed at Appendix C. The Committee thanks the witnesses for giving their time to the inquiry and assisting with the Committee's investigations.

Structure of the report

- 1.30 The report is comprised of five chapters, containing 19 recommendations. In addition to making recommendations to the Australian Government, the Committee has made recommendations to the relevant advertising industry bodies. In doing so, the Committee acknowledges that neither the Committee nor the Government has authority over these industry bodies.
- 1.31 The Committee recognises that the advertising industry has demonstrated a willingness to review and make changes to the self-regulatory system. The Committee is of the view that the industry will implement the recommendations contained in this report in order to improve their own operation. Each recommendation is titled to indicate which of the various government and non-government bodies it is directed to.
- 1.32 Chapter Two provides a background to the system of advertising self-regulation and the history of advertising self-regulation in Australia. It

also sets out why outdoor advertising must be considered a special category of advertising.

- 1.33 Chapter Three considers different regulatory models – government regulation, co-regulation, and self-regulation – and assesses their advantages and disadvantages for regulating outdoor advertising.
- 1.34 Chapter Four deals with the relevant voluntary codes of advertising that apply to outdoor advertising, and the Advertising Standard Board’s determinations against these codes.
- 1.35 Chapter Five discusses the effectiveness of the complaint process in addressing community concerns about advertising and in enforcing adherence to the voluntary codes.

Approaches to advertising regulation

- 2.1 Advertising refers broadly to notices of products or services in a variety of media – such as magazines and newspapers; television; posters and billboards; brochures and leaflets; cinema screens; direct and indirect mail; the internet; commercial e-communication; CD, DVD, video, SMS and fax; and promotional activities. Outdoor advertising refers to the placement of these advertisements in public spaces where viewing is unrestricted.
- 2.2 The Australian Association of National Advertisers (AANA) is a peak body for companies and individuals involved in Australia’s advertising, marketing and media industry.
- 2.3 The AANA provides the following definition for advertising or marketing:
- ... matter which is published or broadcast using any Medium [with the exception of labelling and packaging] in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct.¹

1 Australian Association of National Advertisers (AANA), ‘AANA Code of Ethics’ <http://www.aana.com.au/advertiser_ethics_code.html> viewed 1 November 2010.

- 2.4 Outdoor (or out-of-home) advertising is aimed at consumers when they are outside their home. Such advertising can be found:
- on walls;
 - on billboards, including digital billboards, and posters;
 - on street furniture such as bus shelters, kiosks, and other forms of public infrastructure;
 - in and on taxis, buses, trams, trucks and train carriages;
 - inside public transport stations and airports; and
 - in shopping malls and at sportsgrounds.
- 2.5 While these spaces may be privately owned, their access is generally unrestricted to the public. Consequently, for the purpose of this inquiry, the Committee has chosen to refer to them as 'public spaces'. Such advertising is not necessarily 'outdoor' and is more correctly referred to as 'out-of-home' advertising. However, again for the purpose of this inquiry, the Committee uses the terms 'outdoor' and 'out-of-home' synonymously to refer to advertising that is displayed in public spaces.
- 2.6 This chapter discusses the history and practice of advertising self-regulation in other countries and in Australia. It makes the case that outdoor advertising should be considered a special category in the regulatory scheme of advertising.

International comparisons of advertising self-regulation

- 2.7 Advertising industry self-regulation, including of outdoor advertising, is the standard practice in the developed world. The International Chamber of Commerce (ICC) issued the first code of advertising practice in 1937, on which many current self-regulatory systems, including Australia's, are based. This general code has been regularly updated ever since, and separate codes have been added on sales promotion, sponsorship, direct marketing, electronic media and environmental advertising, as well as on market research and direct selling. In 2006, the ICC issued its eighth revision of the *Consolidated ICC Code of Advertising and Marketing Communication Practice*.

2.8 The basic principles of the ICC Code are as follows:

All marketing communication should be legal, decent, honest and truthful.

All marketing communication should be prepared with a due sense of social and professional responsibility and should conform to the principles of fair competition, as generally accepted in business.

No communication should be such as to impair public confidence in marketing.²

2.9 Article 2 of the ICC Code pertains to decency:

Marketing communication should not contain statements or audio or visual treatments which offend standards of decency currently prevailing in the country and culture concerned.

2.10 Articles 3 and 4 discuss honesty and social responsibility and Article 26 advises respect for self-regulatory decisions. The ICC Code includes provisions for advertising to children and young people.

2.11 The aims of the ICC Code are as follows:

- to demonstrate responsibility and good practice in advertising and marketing communication across the world;
- to enhance overall public confidence in marketing communication;
- to respect privacy and consumer preferences;
- to ensure special responsibility as regards marketing communication and children/young people;
- to safeguard the freedom of expression of those engaged in marketing communication (as embodied in article 19 of the United Nations International Covenant of Civil and Political Rights);
- to provide practical and flexible solutions; and
- to minimise the need for detailed governmental and/or inter-governmental legislation or regulations.³

2.12 Most self-regulatory advertising organisations pay special attention to the suitability of advertising aimed at children. Furthermore, self-regulation

2 International Chamber of Commerce, *Advertising and Marketing Communication Practice: Consolidated ICC Code*, International Chamber of Commerce: Paris, 2006, p. 13.

3 International Chamber of Commerce, *Advertising and Marketing Communication Practice: Consolidated ICC Code*, International Chamber of Commerce: Paris, 2006, p. 9.

occurs within national legal regulatory frameworks, which are designed to protect consumers and ensure fair trading practices.

- 2.13 The European Advertising Standards Alliance (EASA) is a global peak body that represents advertising self-regulation systems in Europe and beyond. Australia is a one of eight non-European member countries.
- 2.14 The EASA aims to promote and strengthen advertising self-regulation across the European Union, and provides a cross-border complaints system for advertising broadcast from or encountered in another EASA member country.⁴ Almost all European Union countries have advertising self-regulatory systems.

United Kingdom

- 2.15 In the United Kingdom, broadcast advertising is co-regulated and non-broadcast advertising is self-regulated. Outdoor advertising, which falls under the non-broadcast advertising category, is self-regulated by the industry, which writes the codes, and these codes are enforced by the Advertising Standards Authority (ASA). The ASA does not need a complaint to be lodged before it can take action to have an advertisement withdrawn or changed. The ASA conducts spot checks on approximately 10 000 advertisements a week.⁵
- 2.16 When considering whether an advertisement is in breach of the codes, the ASA takes into account the context, the medium in which an advertisement appears and the audience. The placement of an advertisement will have a direct bearing on whether the ASA judges it to be acceptable. Thus an advertisement that may be considered acceptable if placed in a magazine that was unlikely to be read by children, could equally be considered unacceptable if placed on a billboard that children could view.⁶

Canada

- 2.17 Canada's independent advertising self-regulatory body is Advertising Standards Canada (ASC), which administers the *Canadian Code of Advertising Standards*, manages a consumer complaints process, and
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4 European Advertising Standards Alliance <<http://www.easa-alliance.org/page.aspx/240>> viewed 9 May 2011.

5 Victorian Department of Premier and Cabinet Office of Women's Policy, *The Portrayal of Women in Outdoor Advertising*, 2002, p. 18.

6 Advertising Standards Authority, 'Children and Advertising' <<http://www.asa.org.uk/Resource-Centre/Hot-Topics/Children-and-advertising.aspx>> viewed 3 November 2010.

provides advertising preclearance for five regulated categories, including alcohol, children's advertising, consumer drugs, cosmetics, and food and drink.

- 2.18 The ASC established Gender Portrayal Guidelines in 1981. These guidelines address the portrayal of authority, decision-making, sexuality, violence, diversity and offensive or exclusive language.

New Zealand

- 2.19 New Zealand's Advertising Standards Authority self-regulates advertising under codes of practice. Complaints are heard by an independent Advertising Standards Complaints Board (ASCB) and there is a right of appeal to the independent Advertising Standards Complaints Appeal Board. The ASCB comprises five public representatives and four industry members.

United States

- 2.20 The United States does not have a single national self-regulating body and instead there are several bodies which represent or monitor advertising. There are also several bodies which accept complaints about advertising from members of the public.
- 2.21 The Outdoor Advertising Association of America is the lead trade association representing the outdoor advertising industry. The American Advertising Federation is the oldest national advertising trade association. The National Advertising Review Council has developed a self-regulatory system that supports advertiser compliance.
- 2.22 The states of Vermont, Hawaii, Maine, and Alaska have banned all billboards, and approximately 1 500 American cities and towns prohibit the construction of new billboards.⁷

Advertising regulation in Australia

- 2.23 Advertising content, and therefore that of outdoor advertising, is self-regulated in Australia by the industry. Australia has had two advertising self-regulatory systems in its history. Originally, the Advertising

7 Scenic America, 'Background on Billboards' <<http://www.scenic.org/billboards/background/communities>> viewed 3 November 2010.

Standards Council functioned as the independent complaints body. It was established by the national representative bodies of advertisers, advertising agencies, and media.

- 2.24 In 1996, the Australian Competition and Consumer Commission (ACCC) deemed the media arm's accreditation system for advertising agencies uncompetitive and decided to conduct a review of advertising standards. The ACCC found that the self-regulatory system relied on outdated codes and lacked compliance, administrative control, confidence and commitment.⁸
- 2.25 The national advertisers' body, the AANA, created a new self-regulatory system in 1998. This new system established a Code of Ethics and the Advertising Standards Bureau (ASB), which incorporates an independent Advertising Standards Board to hear complaints regarding standards of taste and decency, and an Advertising Complaints Board for rival advertiser complaints.
- 2.26 The self-regulatory system exists within the framework of relevant Commonwealth and State or Territory legislation. Advertising that breaches legislation is not considered by the self-regulatory system.
- 2.27 Government and commercial contracts may also impose self-determined restrictions on advertising content and placement.
- 2.28 There are a number of voluntary codes, in addition to the AANA Code of Ethics, that apply to advertising as a whole or specific to an industry or product. The Advertising Standards Bureau administers the majority of these codes.

Government legislation

- 2.29 Advertising content must comply with the *Competition and Consumer Act 2010* (Cth) (the CCA). The Competition and Consumer Act contains the Australian Consumer Law, which is a national law that protects consumers from false and misleading representations and misleading and deceptive conduct.
- 2.30 The Advertising Complaints Board acts as an internal dispute resolution system for advertisers who object to allegedly false or misleading claims made by competitors. The remit of the Advertising Standards Board does

8 D Harker, et al, 'Developing Effective Advertising Self-Regulation in Australia: Reflections on the Old and New Systems', *Australasian Marketing Journal*, vol. 9, no. 1 (2001), p. 12.

not cover consumer complaints under the CCA, which are referred instead to the ACCC or relevant State/Territory departments.

- 2.31 The ACCC is an independent statutory authority set up by the Australian Government to administer the CCA. It is responsible for regulating the truth and accuracy of claims made in advertising, but not the standard of the content.
- 2.32 The ACCC gave the Committee some examples where outdoor advertising had been found by the ACCC to be in breach of the Australian Consumer Law in making misleading or deceptive claims.⁹ As the Australian Consumer Law has been adopted by all states and territories, the standards of fair trading practices are uniform across Australia.
- 2.33 The ACCC has a number of enforcement measures, including infringement notices and court action.¹⁰ In addition to accepting up to 100 000 complaints each year, including anonymous and oral complaints, the ACCC initiates investigations where breaches are seen to have occurred.¹¹
- 2.34 Advertising of tobacco products is prohibited under the *Tobacco Advertising Prohibition Act 1992* (Cth), and the advertising of therapeutic goods is regulated under the *Therapeutic Goods Act 1989* (Cth) and *Therapeutic Goods Regulations 1990* (Cth).
- 2.35 Advertising content on television is co-regulated under the *Broadcasting Services Act 1992* (Cth). Television, and other such media, is outside the scope of this inquiry.
- 2.36 All states and territories have enacted application legislation to adopt the Australian Consumer Law, so this law applies equally in all states and territories. State and territory governments regulate the advertising of gambling.
- 2.37 Governments at the state, territory and local level regulate advertising signage and position in terms of public safety (including road safety), planning laws, and the visual impact.¹² Private and third-party outdoor advertising must comply with council regulations regarding placement.

9 Mr Scott Gregson, General Manager, Enforcement and Compliance, Australian Competition and Consumer Commission (ACCC), *Committee Hansard*, Canberra, 3 March 2011, p. 2.

10 Mr Gregson, ACCC, *Committee Hansard*, Canberra, 3 March 2011, p. 3.

11 Mr Gregson, ACCC, *Committee Hansard*, Canberra, 3 March 2011, pp. 3, 6.

12 Colleen Keegan, 'Outdoor Advertising – Establishing a Foundation for Regulation: UNESCO City of Design Network', March 2010, p. 2, Outdoor Media Association <http://oma.org.au/media/Pdf/Colleen_Keegan_Final_Report.pdf> viewed 3 November 2010.

Government and commercial contracts

- 2.38 Advertisers and media display companies may enter into contracts or licence agreements with government, council or corporate bodies. These contracts will often include internal policies regarding the placement or content of advertising.¹³
- 2.39 For example, the Roads and Traffic Authority of New South Wales (RTA) stipulates that advertising under its licence must not contain reference to alcohol, tobacco, politics, pornography, religion, or 'any other products which are unsuitable in the [RTA's] opinion'.¹⁴
- 2.40 Westfield Brandspace, which partners with an outdoor advertising company, has its own advertising content policies that advertisers must adhere to.¹⁵

Voluntary advertising codes

- 2.41 Advertising content is also subject to a number of voluntary industry codes. This inquiry will address only those codes that apply to outdoor advertising.
- 2.42 Fundamental to the self-regulatory advertising system is the Code of Ethics, which the AANA describes as 'the cornerstone of the advertising self regulatory system in Australia' and claims that it 'provides the overarching set of principles with which all advertising and marketing communications, across all media, should apply'.¹⁶
- 2.43 The Code of Ethics contains two sections. The first section addresses the basic principles of legal, honest and truthful marketing communication and is administered by the Advertising Complaints Board, which acts as a dispute resolution system for advertisers. The second section deals with decency and community standards, and is administered by the Advertising Standards Board.
- 2.44 In addition to the Code of Ethics, the AANA has created the following supplementary codes:
- Food and Beverages Advertising and Marketing Communications Code

13 Outdoor Media Association (OMA), *Submission 32*, p. 17; Communications Council, 'Media Codes and Regulations' <<http://www.communicationscouncil.org.au/public/content/ViewCategory.aspx?id=310>> viewed 12 November 2010.

14 OMA, *Submission 32*, p. [109].

15 OMA, *Submission 32*, p. [110].

16 AANA, *Submission 17*, pp. 3, 7.

- Code for Advertising and Marketing Communications to Children, and
 - Environmental Claims in Advertising and Marketing Code.
- 2.45 Specific industries have advertising codes of practice, such as the Alcohol Beverages Advertising Code (ABAC). The ABAC Scheme is unique in that it is a quasi-regulatory scheme rather than self-regulatory. The Federal Chamber of Automobile Industries has a Voluntary Code of Practice for Motor Vehicle Advertising.
- 2.46 Some members of the fast-food industry have established the Quick Service Restaurant Initiative (QSRI), managed by the Australian Food and Grocery Council (AFGC) to complement the AANA Food and Beverages Advertising and Marketing Communications Code.
- 2.47 The Therapeutic Goods Advertising Code and the Weight Management Industry Code also apply to outdoor advertising, but are not administered by the Advertising Standards Bureau.
- 2.48 The Outdoor Media Association has its own Code of Ethics for third-party outdoor advertisers, but this is not assessed by the Advertising Standards Board.
- 2.49 The various codes and their administration will be discussed more fully in Chapter Four.

Advertising Standards Bureau

- 2.50 As indicated, the AANA established the Advertising Standards Bureau (ASB), which includes an Advertising Standards Board (the Board) that manages complaints about advertising standards. The ASB is funded by the advertising industry through a levy of 0.035 per cent of gross media expenditure, which is maintained separate to AANA funds and confidential from the ASB.
- 2.51 The ASB provides a free public service of complaint resolution for:
- Section 2 of the AANA Code of Ethics, which deals with matters of taste and decency;
 - AANA Food and Beverages Advertising and Marketing Communications Code;
 - AANA Code for Marketing and Advertising Communications to Children;
 - AANA Environmental Claims in Advertising and Marketing Code;

- Federal Chamber of Automobile Industries Voluntary Code of Practice for Motor Vehicle Advertising
 - AFGC Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children; and
 - Alcohol Beverages Advertising (and Packaging) Code.
- 2.52 The Board makes determinations on complaints in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, health and safety, and marketing of food and beverages to children.
- 2.53 Advertisements are not pre-vetted by the Board, and the Board only makes determinations after a complaint has been received.
- 2.54 The Board comprises 20 members who are independent of the industry, 'from a broad range of age groups and backgrounds [that] is gender balanced and as representative of the diversity of Australian society as any such group can be.'¹⁷ Board members are appointed on a fixed-term basis by the Directors of the Board following publicly advertised application and interview processes.¹⁸
- 2.55 Complainants and advertisers can appeal decisions made by the Board through an independent review process, which was established in 2008.¹⁹ The ASB recently conducted and published a review of the independent review system that sought input from industry and the community through questionnaires.²⁰ Further discussion on the independent review process is provided in Chapter Five.
- 2.56 As a self-regulatory system, the ASB cannot enforce its decisions. However, the ASB claims that nearly 100 per cent of advertisers comply with its decisions.²¹ In cases where compliance is not achieved, the ASB can:
- refer the case, where the advertisement breaches legislation or regulations, to the appropriate government agency or industry body;
-

17 Advertising Standards Bureau (ASB), *Submission 27*, p. [4].

18 ASB, 'The Advertising Standards Board' <<http://www.adstandards.com.au/aboutus/theadvertisingstandardsboard>> viewed 3 November 2010.

19 ASB, 'Independent Reviewers' <<http://www.adstandards.com.au/aboutus/independentreviewers>> viewed 3 November 2010.

20 ASB, 'Help Fine Tune the Independent Reviewer System', *Media Release*, 20 September 2010; ASB, 'Review of Independent Review Process 2010' <<http://www.adstandards.com.au/publications/factsandfigures>> viewed 11 April 2011.

21 ASB, 'Supporting the System' <<http://www.adstandards.com.au/self-regulation-system/upholdingsupportingthesystem>> viewed 3 November 2010.

- make the non-compliance publicly available on its website or through a media release;
- ask industry bodies, such as the Outdoor Media Association, to negotiate directly with the advertiser; or
- refer the case to the Australian Communications and Media Authority or to state police departments.

Outdoor advertising: a special category?

- 2.57 Currently Board determinations may take into consideration the medium of an advertisement, such as use of a billboard, in addition to its placement. Certain codes place restrictions on the placement of outdoor advertisements for some products. However, there is no separate regulatory code or process for outdoor advertising.
- 2.58 Despite their public and unavoidable nature, outdoor advertising is regulated by the ASB in the same manner as other forms of advertising. Central to this inquiry is the issue of whether outdoor advertising warrants consideration as a special category.
- 2.59 Dr Kurt Iveson, in his submission to the inquiry, observes that ‘debates about outdoor advertising have a very specific inflection because by their nature, they are also debates about the nature of urban public spaces’.²²
- 2.60 The Castan Centre for Human Rights Law adds that ‘outdoor advertising occupies a privileged place in the public space’.²³ It is similar to a form of public speech or expression, which needs to be mindful of appropriateness to culture and place.
- 2.61 In addition to being unavoidable, there is no control over the prevalence of outdoor advertising. Submissions to the inquiry have raised the issue of not just inappropriate but also cumulative exposure to advertising of people outside the target audience, particularly children.
- 2.62 Moreover, outdoor is a rapidly growing medium for advertisers. The Media Federation of Australia advises that ‘outdoor advertising offers a unique and compelling environment as a powerful communication tool

22 Dr Kurt Iveson, *Submission 46*, p. 2.

23 Castan Centre for Human Rights Law, *Submission 40*, p. 2.

and has the significant advantage of appealing to a captive and mobile audience'.²⁴

2.63 Consumers cannot exercise their choice to view or ignore advertisements displayed in the public space, as may be possible with other mediums. Ms Karyn Hodgkinson asserts in her submission that 'such public advertising is undemocratic – there is no choice involved when a huge billboard is in the public arena where all are forced to see'.²⁵

2.64 The Salvation Army Australia Southern Territory describes outdoor advertising as 'a particular form of ubiquitous advertising that by their very nature invade public visual space without discrimination or individual consent'.²⁶

2.65 The Australian Christian Lobby agrees:

By its very nature outdoor advertising is a public broadcast medium, and because it is static, can be examined more closely by members of the public. It is not possible to filter those who see the advertising and there is no opportunity for members of the community to exercise choice to not see it.²⁷

2.66 These are the very features that make outdoor advertising appealing to advertisers. APN Outdoor boasts on its website that 'outdoor is the only advertising medium that is virtually immune to consumer avoidance. It can't be turned off, flipped to the next page or thrown away. And it is free to view.'²⁸

2.67 The very nature of outdoor advertising, with its unrestricted audience, means that adults and especially children can be exposed to material that is not necessarily directed at them, and may not be considered appropriate viewing for all community members.

2.68 For example, advertising directed *at* children and the portrayal (including sexualisation) of children in advertising are subject to specific stricter codes. However, children can be exposed to inappropriate material through outdoor advertising that targets an adult audience but is displayed in a public thoroughfare used by children in the course of their daily lives. The advertisement may be acceptable according to prevailing

24 Media Federation of Australia, *Submission 26*, p. 2.

25 Ms Karyn Hodgkinson, *Submission 33*, p. [2].

26 The Salvation Army Australia Southern Territory, *Submission 11*, p. 4.

27 Australian Christian Lobby, *Submission 24*, p. 3.

28 APN Outdoor <<http://www.apnoutdoor.com.au/Insights/Trends.aspx>> viewed 8 February 2011.

community standards for adults, but regarded as inappropriate for children. This then raises the issue of the appropriateness of the advertisement in an out-of-home setting with unrestricted viewing.

- 2.69 Equally, a number of submissions objected to sexual and degrading images of women which accost them in out-of-home advertisements during their daily lives. These same or similar images may appear in other media, but many considered that the large scale nature of these outdoor advertisements and their placement in public spaces robbed them of their freedom of choice.
- 2.70 The UK and New Zealand advertising self-regulatory systems recognise the special nature of outdoor advertising. The UK Advertising Standards Authority explains that 'a risqué advertisement in an untargeted medium, such as a billboard, is likely to raise more concerns than if it appeared in a targeted medium, such as a women's magazine, where children are less likely to see it'.²⁹ According to the NZ Advertising Standards Authority:
- Billboards seen by all including schoolchildren differ from magazines or targeted radio or television programmes for specialised audiences, for example. A beer advertisement using graffiti failed the high social responsibility test when it appeared on a billboard. While the product had a target audience of 25-34 year-olds, the Board observed, quoting an earlier decision, 'once a billboard goes up, the advertisement is no longer confined to that audience and any communication or message extends to people of all ages and in fact the public at large'.³⁰
- 2.71 The Australian Council on Children and the Media notes that 'it is ironic that billboards and outdoor advertising are one of the least regulated forms of advertising under our legal system, considering that they are the hardest form for consumers to avoid if they object'.³¹
- 2.72 The feminist organisation, 2020women Inc, recommends that outdoor advertising be subject to 'stronger controls than prime time television because it is unavoidable to the public and the physical size of the advertisement increases its impact'.³²

29 Advertising Standards Authority, 'Background Briefing on Children' <<http://asa.org.uk/Resource-Centre/Hot-Topics/Children-and-advertising.aspx>> viewed 3 November 2010.

30 Advertising Standards Authority, *Bugger... It's ok! The Case for Advertising Self-regulation*, Advertising Standards Authority: Wellington, p. 18.

31 Australian Council on Children and the Media, *Submission 28*, p. 3.

32 Ms Jenni Colwill, President, 2020women Inc, *Committee Hansard*, Melbourne, 4 April 2011, p. 39.

2.73 Although specific mention of outdoor advertising is not made in the AANA Code of Ethics, the Board has indicated in its determination summaries that it does take the public nature of outdoor advertising and its placement into consideration when determining the acceptability of its content:

Outdoor advertising is in the public domain and has a broad audience. The Board believes that messages and images presented in this medium need to be developed with a general audience in mind and has given particular attention to the placement of such advertising e.g. outdoor advertising depicting violence or sexual content that is placed close to schools and churches is of particular concern.³³

2.74 Certainly the proportion of all complaints related to outdoor advertising received by the ASB indicates a particular community concern with the current content and placement of outdoor advertising. In 2010, 20 per cent of all advertising complaints were regarding outdoor advertisements,³⁴ despite the fact that outdoor advertising represents a smaller share of all advertising media. In addition, 16.7 per cent of those complaints were upheld compared to an overall rate of 9.4 per cent for complaints about all media.³⁵

2.75 These figures suggest that outdoor advertising attracts proportionately more dissatisfaction from the community. The higher rate of upheld complaints for outdoor advertising suggest that the industry may be using content in outdoor advertising that community members consider inappropriate for a wider audience.

2.76 Two issues are raised from this evidence. Firstly, should outdoor advertising constitute a special category of advertising which is subject to a different code regarding content and placement? The second issue is whether the current self-regulatory system has the capacity to adequately regulate outdoor advertising. This is considered in the following chapter.

Committee comment

2.77 The Committee understands that advertising self-regulation, within existing legislative frameworks, is the standard system in many developed countries. The self-regulatory system in Australia has undergone a

33 ASB, 'Determination Summary: discrimination and vilification in advertising', October 2010, p. 5, <<http://adstandards.com.au/files/view/?id=189>> viewed 18 October 2010.

34 ASB, *Submission 27*, p. [50].

35 ASB, *Submission 27*, p. [49].

number of changes to improve its operation in relation to the development of codes addressing specific products and certain types of advertising. However little consideration has been given to outdoor advertising despite the expansion of this form of advertising and an increased number of complaints related to this form of advertising.

- 2.78 Outdoor advertising occupies public space and demands attention from a captive audience. As such, the content of outdoor advertising is a public policy issue as it affects the comfort and amenity of the public.
- 2.79 The Committee is of the view that outdoor advertising constitutes a special category of advertising. It should be addressed in different ways to that of other types of advertising, such as print and television, wherein consumers have more choice about engaging with the advertising. In much the same way as advertising to children and alcohol advertising are regulated by codes that ensure a social responsibility in line with community expectations is met, outdoor advertising requires a more socially responsible approach.
- 2.80 The Committee is not seeking to define what may or may not be acceptable to the Australian community. The Committee recognises that a breadth of views exist and that, due to that diversity, when an advertisement appears in a public space then its appropriateness should be considered with regard to an unrestricted audience.
- 2.81 This is not to suggest that ‘conservative views’ or what some might term ‘prudishness’ should prevail. Rather, the Committee considers that the appropriateness of content should be considered in line with the mainstream Australian community views of tolerance and acceptability. The target audience may be a minority group, however the presentation, placement and images of the advertisement should be in line with what a community would deem acceptable in an unrestricted public place. Such an approach should not curtail the effectiveness of targeted public interest campaigns, but should inform them in making a responsible choice.
- 2.82 To achieve this, the Committee concludes that outdoor advertising requires specific regulatory attention in order to address the unique nature of these advertisements that populate public spaces.
- 2.83 Defining the most appropriate regulatory approach to outdoor advertising requires an assessment of alternative regulatory models and the effectiveness of the current self-regulatory system for advertising. This is considered in the following chapter.

Regulating outdoor advertising

- 3.1 This inquiry was tasked with considering the effectiveness of the current industry self-regulatory system, with a focus on outdoor advertising. The Committee is of the view that any regulatory model should be subject to regular review, monitoring and improvements.
- 3.2 This chapter considers possible models for the regulation of outdoor advertising, and a number of initiatives to provide more rigour in the regulation of outdoor advertising content.
- 3.3 The Committee considered different models available to regulate outdoor advertising, including:
- independent statutory regulation;
 - quasi-regulation and co-regulation; and
 - self-regulation.
- 3.4 Particular attention is given to the Classification Board, which regulates print and film media, as a possible regulatory model.

Statutory regulation

- 3.5 A large number of submissions called for outdoor advertising to be regulated by the government through an independent statutory body.¹

¹ Cancer Council Western Australia and the McCusker Centre for Action on Alcohol and Youth, *Submission 36*; Alcohol Policy Coalition, *Submission 37*; Coalition on Food Advertising for Children (CFAC), *Submission 31*; Kids Free 2B Kids, *Submission 44*; Collective Shout, *Submission 43*; Australian Council on Children and the Media, *Submission 28*; Ms Gretchen Gamble, *Submission 29*.

Many of these submitters felt that decisions by the current Advertising Standards Board did not reflect their personal view among the spectrum of opinions represented within the submissions. Collective Shout suggests that 'responsibility for regulation should be given to an independent body or authority, with power to establish a system of pre-vetting billboards before their placement'.²

- 3.6 The advertising industry opposes government regulation. The Outdoor Media Association (OMA) warned the Committee that:

A government regulatory or co-regulatory system would be more costly and less efficient than the current system, and would add an unnecessary regulatory burden on businesses and further the impact of the resulting delays.³

- 3.7 The OMA notes that the third-party outdoor advertising industry contributes to the national gross domestic product and has contributed millions of dollars' worth of free advertising space to charities and social organisations.⁴ The Committee notes the social responsibility of the industry and its contribution to community causes and charitable organisations.

- 3.8 The Communications Council advised that:

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.⁵

- 3.9 The Eros Association, the peak body for the adult industry, also opposes government regulation, saying that 'we strongly resist the creation of yet another government agency to handle the regulation of billboard advertising in Australia'.⁶

- 3.10 The drawbacks of government regulation are the costs of setting up and resourcing an agency to administer the regulatory system and the unlikelihood of reducing the time taken to respond to complaints.

2 Collective Shout, *Submission 43*, p. 6.

3 Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association (OMA), *Committee Hansard*, Sydney, 25 March 2011, p. 2.

4 OMA, *Submission 32*, pp. 9-10.

5 Communications Council, *Submission 34*, p. 2.

6 Eros Association, *Submission 41*, p. 10.

- 3.11 The Committee explored the framework of an existing government authority, the Classification Board. Several submissions suggested the Classification Board as a model for determining standards and applying classification ratings to outdoor advertisements. The following section considers the Classification Board as a model of a government regulatory approach to outdoor advertising.

Classification Board

- 3.12 The Classification Board is an independent statutory body established by the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (Classification Act). The Classification Board classifies films, computer games and certain submittable publications in Australia.

- 3.13 According to the Classification Act:

... a submittable publication is an unclassified publication that contains depictions or descriptions that are likely to cause the publication to be classified RC (Refused Classification), are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication, or is unsuitable for a minor to see or read.

Publications which are likely to be classified 'Unrestricted' are not generally required to be classified. The 'Unrestricted' classification encompasses a wide range of material. Descriptions and depictions of classifiable elements may contain some detail but the impact must not be so strong as to require legal restriction.⁷

- 3.14 Publications that are deemed submittable but have not been submitted for classification can be called in for classification by the Director of the Classification Board. Last financial year, the Director issued 49 call-in notices but none was complied with, leading the Classification Board to refer the publishers to State and Territory law enforcement agencies.⁸

- 3.15 The National Classification Code stipulates that classification decisions are to be made under the following principles:

- adults should be able to read, hear and see what they want;
- minors should be protected from material likely to harm or disturb them;

⁷ Attorney-General's Department (AGD), *Submission 47*, p. 2.

⁸ AGD, *Submission 47*, p. 1.

- everyone should be protected from exposure to unsolicited material that they find offensive; and
 - the need to take account of community concerns about:
 - ⇒ depictions that condone or incite violence, particularly sexual violence; and
 - ⇒ the portrayal of persons in a demeaning manner.⁹
- 3.16 Classification decisions are made by the Classification Board, which is:
... deliberately appointed to be representative of the Australian community. Their terms are deliberately limited to seven years so that there is turnover ... that its make-up does evolve in time and therefore reflect the evolving nature and views and moral standards of the Australian community.¹⁰
- 3.17 The Classification Board views material in its original format to make classification assessments. For example, films for cinema release are viewed on a large screen whereas DVDs are viewed on a television screen.
- 3.18 The National Classification Scheme operates four industry assessor schemes to complement the work of the Classification Board in the following areas:
- computer games;
 - additional content;
 - television series; and
 - advertising for unclassified films and computer games.¹¹
- 3.19 Industry assessors must undertake appropriate training with the Attorney General's Department to be authorised to assess material in one of the four schemes.¹² Authorised assessors commonly come from the entertainment distribution industry.
- 3.20 Federal and state or territory governments operate the Classification Liaison Scheme, whereby liaison officers visit publication, film and

9 The National Classification Code (May 2005).

10 Mr Chris Collett, Acting Assistant Secretary, Classification Branch, AGD, *Committee Hansard*, Canberra, 10 February 2011, p. 8.

11 Mr Christopher Lee, Acting Principal Legal Officer, Classification Branch, AGD, *Committee Hansard*, Canberra, 10 February 2011, p. 9.

12 AGD, *Submission 47*, p. 2.

computer game traders and distributors and provide advice about the National Classification Scheme.¹³

3.21 Publications can be classified 'Unrestricted', 'Category 1 Restricted', 'Category 2 Restricted' and 'Refused Classification'. The Classification Branch of the Attorney-General's Department advised the Committee that its Board has not received an application to classify a billboard as a publication, but that it might be possible for this to be done.¹⁴

3.22 The G, PG, M, MA15+, R18+, X18+ and 'Refused Classification' classifications apply to films and the G, PG, M, MA15+ and 'Refused Classification' classifications apply to computer games.

3.23 Several submitters to this inquiry suggested that, because of the public nature of outdoor advertising and its unrestricted audience, outdoor advertising should be subject to a G rating similar to that given to films and computer games.

3.24 The G rating for films and computer games means they are appropriate for a general audience. According to the *Guidelines for the Classification of Films and Computer Games*, the G category means that:

- sexual violence is not permitted;
- sexual activity should be very mild and very discreetly implied, and be justified by context
- coarse language should be very mild and infrequent, and be justified by context
- drug use should be implied only very discreetly, and be justified by context, and
- nudity should be justified by context.¹⁵

3.25 The inclusion of outdoor advertising in the classification scheme for films and computer games, with outdoor advertising content limited to the equivalent of a G or PG classification, was raised several times. The Australian Christian Lobby argues for:

... outdoor advertising to have a general classification (G); this would include shop windows, billboard and bus shelter

13 Classification Website, 'National Classification Scheme' <http://classification.gov.au/www/cob/classification.nsf/Page/ClassificationinAustralia_NationalClassificationScheme#section9> viewed 25 May 2011.

14 Mr Lee, AGD, *Committee Hansard*, Canberra, 10 February 2011, p. 12.

15 AGD, *Guidelines for the Classification of Films and Computer Games*, March 2008, p. 7.

advertising. The only exception to this may be educational advertising regarding drink-driving or smoking messages that may be deemed to be in the best interests of children.¹⁶

- 3.26 2020Women Inc, a feminist organisation, agrees ‘as the images and messages on billboards are visible to the entire community, they should be included in the National Classification Scheme and a “G” rating should be applied to all billboards and outdoor advertising.’¹⁷ Mrs Kristen Butchatsky believes that a G classification ‘would not place an unhelpful “burden” on business but instead force advertisers to be more creative and imaginative rather than constantly resorting to the old mantra that “sex sells”’.¹⁸
- 3.27 However, the Castan Centre for Human Rights Law (the Castan Centre) cautions that a G classification could ‘exclude advertising that is in the public interest,’ such as illicit drug awareness, sexual health messages, or graphic road safety campaigns and that ‘we may need a new system of classification with respect to this kind of advertising’.¹⁹
- 3.28 The Australian Association of National Advertisers (AANA) told the Committee that:

The classification regime is not one-size-fits-all. Our view is that taking that classification scheme and laying it across billboard advertising would be a very heavy-handed way to deal with the very small percentage of advertisers who have been found in breach of the system. It would be quite a heavy-handed approach and quite a departure from the self-regulatory scheme that we have and the scheme that is in place overseas.²⁰

Quasi-regulation and co-regulation

- 3.29 The Australian Government’s *Best Practice Regulation Handbook* describes quasi-regulation as:

16 Australian Christian Lobby, *Submission 24*, p. 10.

17 2020Women Inc, *Submission 16*, p. 2.

18 Mrs Kristen Butchatsky, *Submission 21*, p. 2.

19 Ms Tania Penovic, Associate, Castan Centre for Human Rights Law (Castan), *Committee Hansard*, Melbourne, 4 April 2011, p. 32.

20 Ms Alina Bain, Director of Codes, Policy and Regulatory Affairs, Australian Association of National Advertisers (AANA), *Committee Hansard*, Canberra, 24 February 2011, p. 21.

... a wide range of rules or arrangements where governments influence businesses to comply, but which do not form part of explicit government regulation. Some examples of quasi-regulation include industry codes of practice developed with government involvement, guidance notes, industry-government agreements and accreditation schemes.²¹

3.30 The Alcohol Beverages Advertising (and Packaging) Code Scheme (ABAC Scheme) comes under this definition of quasi-regulation:

Under ABAC, guidelines for advertising have been negotiated with governments, consumer complaints are handled independently, but all costs are borne by industry. The ABAC Scheme is administered by a Management Committee which includes industry, advertising and government representatives.²²

3.31 The alcohol industry states that the ABAC Scheme 'is world best practice for regulating alcohol advertising'.²³ The ABAC Scheme offers pre-vetting advice to alcohol advertisers for a fee.²⁴ The pre-vetting scheme 'sets the regulation of alcohol advertising apart from the other 98.7% of the advertising spend'.²⁵

3.32 The Ministerial Council on Drug Strategy recommended in 2009 that the ABAC Scheme should be 'reformed as a mandatory co-regulatory scheme'.²⁶ Co-regulation is defined as:

... the situation where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced. This is often referred to as the 'underpinning' of codes, standards and so on. Sometimes legislation sets out mandatory government standards, but provides that compliance with an industry code can be deemed to comply with those standards. Legislation may also provide for

21 Australian Government, *Best Practice Regulation Handbook*, 2010, Canberra, p. 35.

22 Distilled Spirits Industry Council of Australia and Winemakers' Federation of Australia and Brewers Association of Australia and New Zealand (DSICA, WFA, BAANZ), *Submission 49*, p. 3.

23 DSICA, WFA, BAANZ, *Submission 49*, p. 1.

24 ABAC Scheme, *Alcohol Advertising Pre-Vetting Service*, <<http://www.abac.org.au/about/prevettingscheme/>> viewed 3 May 2011.

25 DSICA, WFA, BAANZ, *Submission 49*, p. 9.

26 Ministerial Council for Drug Strategy, *Communiqué 24 April 2009*.

government-imposed arrangements in the event that industry does not meet its own arrangements.²⁷

- 3.33 An example of a co-regulatory system is television program classification. The *Broadcasting Services Act 1992* (Cth) provides for industry groups to devise codes of practice in consultation with the Australian Communications and Media Authority (ACMA), who monitors the codes and deals with unresolved complaints. Most free-to-air television content is classified in-house, although ACMA is responsible for classifying television programs for children.²⁸

Self-regulation

- 3.34 As discussed in the previous chapter, advertising in Australia, including outdoor advertising, is currently self-regulated. This is the most common method of advertising regulation around the world, and is preferred by the advertising industry as costs to industry are low, as is the regulatory burden, which enables the industry to be 'fast-paced' and responsive, and provides scope for industry innovation and competition in advertising practices.
- 3.35 The Australian Government's *Best Practice Regulation Handbook* advises that self-regulation is an appropriate option for industries where 'there is no strong public interest concern, in particular no major public health and safety concerns'.²⁹
- 3.36 Advertising stakeholders point out that they have an interest in ensuring that the self-regulatory system is effective, in order to avoid any public scrutiny that may result in stronger regulation. The AANA, Communication Council, and OMA Outdoor Advertising Advisory Paper and Checklist notes that 'self-regulation could be placed at risk if there was a perception, valid or otherwise, that the industry is not interested in addressing concerns raised by the public about advertising standards'. They advise that:

27 Australian Government, *Best Practice Regulation Handbook*, 2010, Canberra, p. 35.

28 Australian Communications and Media Authority, 'Broadcasting codes and schemes index' <http://www.acma.gov.au/web/standard/pc=ind_reg_codes_bcast> viewed 27 April 2011; Attorney-General's Department, 'Classifying television and music' http://www.ag.gov.au/www/cob/classification.nsf/Page/Community_and_ConsumersClassifying_Television_and_Music> viewed 27 April 2011.

29 Australian Government, *Best Practice Regulation Handbook*, 2010, Canberra, p. 34.

Whether employed alone or as part of a multi-media campaign, outdoor advertising is in all instances open to general exhibition. Therefore careful consideration should be given to the choice of content.³⁰

- 3.37 The advertising industry claims that the low number of complaints upheld by the Board demonstrates that the self-regulatory system is working. The Communications Council argues that ‘when we look at the number of advertisements out in the marketplace, the number of complaints received and the number of decisions upheld, we are talking about a very small percentage’.³¹
- 3.38 Five per cent of the advertising spend in Australia in 2010 went to third-party outdoor advertising.³² This accounted for more than 30 000 different advertisements.³³ Outdoor on-premise advertising probably accounts for an additional several hundreds of thousands.
- 3.39 In that same year, the ASB received complaints about a total of 520 advertisements.³⁴ Of these, 90 were outdoor advertisements (23 on-premise signage and 67 third-party displays), and 15 of the 90 were upheld by the Board.³⁵
- 3.40 The OMA states that ‘the self-regulatory system is efficient and effective, and the small number of cases that have been upheld by the ASB do not justify government intervention into the outdoor media industry’.³⁶
- 3.41 The ASB contends that advertisers are concerned about upholding their image, and that the publication of an advertiser’s refusal to abide by Board determinations ‘is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided’.³⁷
- 3.42 The OMA highlighted to the Committee the role of third-party outdoor media companies in contributing to the building and upkeep of public

30 Advertising Federation of Australia, ‘Outdoor Advertising Advisory Paper and Checklist’, p. [2], c. 2001, <<http://www.communicationscouncil.org.au/public/content/ViewCategory.aspx?id=310>> viewed 4 November 2010.

31 Mr Daniel Leesong, Chief Executive Officer, Communications Council, *Committee Hansard*, Sydney, 25 March 2011, p. 4.

32 AANA, *Submission 17*, p. 4.

33 AANA, *Submission 17*, p. 5.

34 Australian Standards Bureau (ASB), *Submission 27*, p. [49].

35 AANA, *Submission 17*, p. 5.

36 Ms Moldrich, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 2.

37 ASB, *Submission 27*, p. 10.

infrastructure, such as bus shelters, footbridges, public toilets, and kiosks.³⁸ These companies also have an economic interest in refusing controversial advertising that may attract graffiti or vandalism of media displays.

3.43 The OMA devised its own Code of Ethics (OMA Code) for its third-party outdoor media members. It is a voluntary code that outlines third-party outdoor media companies' responsibilities to the community and the environment.³⁹

3.44 Industry advocates argue that it is in the interest of the advertisers to avoid producing advertisements that have the potential to be the subject of complaints and possibly incur the cost and inconvenience of having to be withdrawn. However, it can also be argued that the publicity generated by a complaint and assessment is an incentive for advertisers to produce offensive advertisements.⁴⁰

3.45 Collective Shout argues in its submission that 'the advertiser ... benefits from the controversy stirred up by the billboard. Advertisers ... [can] deliberately exploit the self-regulation system for publicity'.⁴¹

3.46 Certainly Windsor Smith benefited from the public controversy surrounding one of its outdoor advertising campaigns in 2000. The company acknowledged that:

... the publicity generated by complaints contributed to 'the best branding exercise we could have ever asked for. The media coverage was estimated to be worth more than \$4 million for our brand. The reaction was absolutely fantastic for us and the shoe featured in the ad became one of our best sellers'.⁴²

3.47 However, parts of the advertising industry have demonstrated a strong commitment to ensuring appropriate content in outdoor advertising. The OMA Code endorses the AANA codes, the FCAI Code and ABAC (these codes are discussed further in Chapter Four). In addition, the OMA has established Alcohol Advertising Guidelines for its members.

38 OMA, *Submission 32*, p. 5.

39 OMA, 'Outdoor Media Association's Code of Ethics' <http://oma.org.au/media/Pdf/Code_of_Ethics_2009_revised.pdf> viewed 1 November 2010.

40 J Wallace, et al, 'Analysis of Market Circumstances where Industry Self-Regulation is likely to be Most and Least Effective', Tasman Asia Pacific: Canberra, May 2000, p. 54.

41 Collective Shout, *Submission 43*, p. 4.

42 A Hornery, 'Adverts controversy is a marketer's dream', *The Sydney Morning Herald*, p. 3, 28 November 2000.

3.48 The OMA state that their code was developed in recognition of the fact that:

Outdoor advertising is a medium that reaches almost every member of the community when they are travelling outside of their home. Outdoor advertising can be seen at any time of the day or night and cannot be turned off, fast-forwarded, put aside or be left unopened.⁴³

3.49 Some OMA members have created their own internal guidelines within the OMA Code and have processes in place to ensure that advertising is checked before display.

3.50 For example, Adshel has Prohibition Guidelines that prevent advertisements from being displayed on Adshel media if they contain certain material, such as religious references, political messages, defamation, imagery that resembles road signs, imagery that infringes trademarks, and sexually explicit images.⁴⁴ Moreover, Adshel restricts alcohol advertising within 300m of schools.

3.51 oOh!media has a policy that restricts advertising on oOh!media sites if they contain material that is, for example, violent, explicit, obscene, offensive, discriminatory.⁴⁵ There is also a requirement to submit advertising to oOh!media two weeks in advance for assessment against their internal code.⁴⁶

Committee comment

3.52 The Committee gave careful consideration to the regulatory models available, especially in light of what appears to be escalating community concern regarding outdoor advertising.

3.53 In regards to the Classification Board as a possible government regulatory approach to advertising, the Committee notes the Senate Legal and Constitutional Committee has recently tabled a report from its inquiry into the Australian film and literature classification scheme. That Senate Committee had wide-ranging terms of reference focussed on classification,

43 OMA, 'Outdoor Media Association's Code of Ethics' <http://oma.org.au/media/Pdf/Code_of_Ethics_2009_revised.pdf> p. [1], viewed 1 November 2010.

44 OMA, *Submission 32*, p. [112].

45 OMA, *Submission 32*, p. [114].

46 OMA, *Submission 32*, p. [115].

with one point addressing the possibility of including billboards under the classification scheme.

- 3.54 The approach of this House of Representatives Committee on Social Policy and Legal Affairs is significantly different in that the focus is on the category of outdoor advertising. This Committee is tasked with investigating the effectiveness of the current self-regulatory arrangements to continue to regulate outdoor advertising in line with community expectations.
- 3.55 After careful consideration of the National Classification Scheme, the Committee has rejected the classification system as an inappropriate system for regulating outdoor advertising. The purpose of classification is to provide information on a cover about a publication, film or computer game's content, so that consumers can make an informed decision to purchase or view the item. It is not feasible to classify an outdoor advertisement that does not contain any additional content other than that which is on display.
- 3.56 Furthermore, publications are classified 'Unrestricted', 'Category 1 Restricted', 'Category 2 Restricted' and 'Refused Classification', rather than rated G, PG, et cetera, like films and computer games. It is apparent to the Committee that outdoor advertisements, regardless of the offensiveness of some of them, are similar in content to publications that are 'Unrestricted', such as most women's or fashion magazines.
- 3.57 In addition, outdoor advertisements are an effective means of conducting public health and social awareness campaigns, and if the content of such campaigns is appropriate to a public space, these should not be restricted by a G rating. Further, a regulatory scheme based on Government classification would likely place a greater financial and administrative burden on the industry, and it is consumers who would ultimately bear these costs.
- 3.58 The Committee failed to be convinced that a government regulatory or classification model would improve compliance or provide a more effective means of regulating the industry in line with community expectations.
- 3.59 The Committee recognises that under the current self-regulatory system the number of complaints for outdoor advertising is low compared to the number of outdoor advertisements that a person may see in a single day. In addition, the number of complaints about outdoor advertising that are upheld by the Board is even lower.

- 3.60 However, the low number of upheld complaints only supports the self-regulatory model if there are no barriers to lodging complaints and if Board decisions do in fact reflect community standards. This inquiry has found that many members of the public do not believe that this is the case. Similarly, the Committee has concerns about aspects of the current operation of the complaints and determination processes.
- 3.61 The Committee recognises the role of the OMA and its members in improving industry compliance and awareness, displaying social responsibility and building infrastructure that benefits the public. However, OMA represents mainly third-party media display companies rather than businesses that advertise on-premise.
- 3.62 On-premise outdoor advertising is much more common than third-party outdoor advertising. The OMA measured outdoor advertisements on a stretch of road in Sydney and counted only 14 third-party advertisements compared to 2 140 on-premise advertisements.⁴⁷
- 3.63 Therefore, the industry peer pressure that the ASB, AANA and OMA refer to as an effective means of ensuring compliance only applies to a small slice of the outdoor advertising landscape. While industry desire to maintain and promote self-regulation may be high, there remain some 'rogue' businesses which do not comply.
- 3.64 Following this inquiry, the Committee is unable to endorse fully the current operation of the ASB. However, neither did the Committee find flaws in the ASB operation which it considered could be only be rectified by imposing a government regulatory model. To impose a government regulatory model as a response would be over-reactive and would not necessarily provide solutions to the current problems.
- 3.65 There is significant public interest and concern about the regulation of outdoor advertising, and the Committee concludes that a more rigorous system of self-regulation that is better in tune with community standards and with the unique category of outdoor advertising is the most appropriate future approach. The Committee also recognises the lower regulatory burden of self-regulation on Government and the advertising industry.
- 3.66 That is not to diminish the significant problems that have been identified with the current system. These must be addressed. It is the conclusion of the Committee that the current self-regulatory model should remain in place subject to further review by 30 June 2013.

47 OMA, *Submission 32*, p. 4.

- 3.67 At that point, it is the expectation of the Committee that the ASB and other bodies named in this report will have implemented the recommendations made here and demonstrated improved practices across the range of issues identified.
- 3.68 If this is not the case, then the Committee considers that an alternative advertising co-regulatory model should be instated, with particular regard to the regulation of outdoor advertising.

Recommendation 1—Advertising and industry bodies

- 3.69 **The Committee recommends that the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme report to the Attorney-General’s Department by 30 December 2011 detailing their responses and how the relevant recommendations will be implemented.**

The Committee further recommends that the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme provide a comprehensive report to the Attorney-General’s Department by 30 December 2012 detailing how the relevant recommendations contained in this report have been implemented.

- 3.70 The Committee will consult with the Attorney-General’s Department to review the implementation of this report’s recommendations and may revisit these issues if it is not satisfied with progress made.

Recommendation 2—Australian Government

- 3.71 **The Committee recommends that the Attorney-General’s Department review by 30 June 2013 the self-regulatory system for advertising by evaluating the industry implementation reports and assessing the extent to which there has been effective implementation of the recommendations contained in this report.**

If the self-regulatory system is found lacking, the Committee recommends that the Attorney-General's Department impose a self-funded co-regulatory system on advertising with government input into advertising codes of practice.

The Committee recommends that the Attorney-General's Department conduct five-yearly reviews of the advertising regulatory system to ensure that technological advances and changes in advertising trends are being addressed adequately in line with community expectations.

- 3.72 Even though the Committee does not consider that government regulation of outdoor advertising content is warranted, the Committee expresses its strong view that the current self-regulatory system needs to be more rigorous and transparent in order to address the serious issues raised in the inquiry.
- 3.73 In particular the Committee acknowledges the involvement of the ASB during the inquiry, their willingness to engage in the process, and hear and address criticisms in order to improve their practices. The Committee was impressed by the commitment and professionalism of those representing the industry and their genuine desire to provide the Committee with full access to the workings of the ASB.
- 3.74 It is in part the professionalism of ASB representatives that has persuaded the Committee that the industry has the desire and capacity to implement the recommended changes in the time set.
- 3.75 The following section outlines the necessary steps to establish a more rigorous self-regulatory system that is able to reflect community standards and expectations, with particular reference to outdoor advertising.
- 3.76 The following two chapters outline other issues which must be addressed by the ASB and other industry bodies in order to establish a robust self-regulatory system for the future. Issues include deficiencies in the current codes, review processes and improved complaints processes.

More rigorous self-regulation

- 3.77 The Committee commends the advertising self-regulatory system for responding over the years to suggestions, recommendations and research findings. However, these improvements have been largely reactive in

nature, whether to public criticism or other threats to the status quo. The Committee considers that the self-regulatory system needs to be far more forward-looking and proactive.

- 3.78 The advertising industry has sought to demonstrate that the self-regulatory system can be flexible and responsive in a way that legislation cannot.
- 3.79 For example, technological developments may result in outdoor advertising that is more intrusive, interactive and realistic. The AANA and ASB need to anticipate changes in the outdoor advertising industry that may need to be addressed in revisions to advertising codes or Board determination practices.
- 3.80 A more dynamic and proactive approach would likely reduce the number of complaints made and so the administrative cost of addressing complaints.
- 3.81 Rather than a reactive regulatory body, the AANA and ASB must establish themselves as leaders in the industry, taking on new responsibilities such as:
- addressing the particular category and concerns of outdoor advertising;
 - educating and informing industry and local governments;
 - keeping ahead of technological developments and changing advertising trends;
 - continuously checking the pulse of community standards and amending Board determinations and industry codes accordingly;
 - increasing the advisory service provided to industry; and
 - monitoring their own effectiveness by surveying advertising practices.
- 3.82 The following sections set out a number of key initiatives to improve the effectiveness of the self-regulatory system to address community concerns regarding outdoor advertising.

Outdoor advertising code

- 3.83 Outdoor advertising is a popular medium for advertisers, and is a growing market. The Media Federation of Australia explains that:

The advertising spectrum will continue to explode with more consumer choice and an increasing amount of time is being spent

on the many visual devices available in the market to stay connected, informed and entertained.⁴⁸

- 3.84 Furthermore, the regulation of outdoor advertising should not be more lax than that of advertising in other media. The National Preventative Health Taskforce Report explains that:

Experience from tobacco control indicates that when restrictions do not cover all media, marketing is likely to become concentrated in those media that are not covered, or not as heavily restricted ... Research indicates that food marketers are responding to pressures to reduce television advertising by increasingly using print and new technologies ... These other non-broadcast media are often used by children without parental supervision, making them more difficult for parents to monitor and control.⁴⁹

- 3.85 The Committee is aware that regulation of advertising only in certain media can lead to a displacement of advertising to other media. At present there are debates in society about classifying the endless array of mobile phone game applications, and how to deal with the proliferation of internet advertisements that can be hosted in any country. It would be unfortunate for effective measures to be put in place in some media only to result in inappropriate material burgeoning in outdoor advertising.

- 3.86 Considering the unique case of outdoor advertising, which is visible to all audiences and cannot be avoided, the Committee strongly recommends that a specific code for outdoor advertising be incorporated into the advertising self-regulatory system. Such a code should be mindful of the nature of outdoor advertising given that all people, including children, do not have a choice about viewing it.

- 3.87 People may not support the product or, in the case of public awareness campaigns, even the message of the advertisement. However the presentation of the advertisement should not itself be offensive to generally held community standards or be inappropriate to be viewed by children.

- 3.88 As pointed out in the Senate report on the sexualisation of children in the media:

The real inability of parents to prevent the exposure of their children to billboard advertising would be a legitimate

48 Media Federation of Australia, *Submission 26*, p. 2.

49 National Preventative Health Taskforce, 'National Preventative Health Strategy: The roadmap for action', 30 June 2009, p. 122.

justification for the ASB and outdoor media advertisers and marketers treating this as a special case under the current system of self-regulation.⁵⁰

- 3.89 In addition, the ever-present and unsolicited nature of advertising in the public sphere has led to concerns about the cumulative impact of the exposure to certain advertising content.
- 3.90 The Coalition on Food Advertising to Children discusses a 2008 study of outdoor food and beverage advertisements near primary schools in New South Wales, which found that 80 per cent were for products that are surplus to daily nutritional requirements.⁵¹
- 3.91 With regard to alcohol advertising, industry members are:
... very keen on a form of regulation that evaluates the way a single marketing practice is promoted and published, rather than regulation that in general restricts the volume of commercial communication of alcohol marketing.⁵²
- 3.92 The Committee believes that when the Board takes into account prevailing community standards in its decision-making, community concerns about the prevalence of outdoor advertising in the public domain should be considered. In particular this should be a consideration when assessing outdoor advertisement with sexualised images or stereotypes.
- 3.93 Opponents of sexual objectification of women in outdoor media point out that the cumulative nature of exposure to such material is more significant than exposure to a single instance.
- 3.94 This is reflected in Commonwealth discrimination legislation, which in some cases has acknowledged that the cumulative impact of certain workplace incidents can result in sexual or racial discrimination in the conditions of employment. The Australian Human Rights Commission noted that 'significantly, conduct which, of itself, might not be discriminatory, may contribute to a work environment that is detrimental to women and give rise to liability for discrimination.'⁵³

50 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media*, Commonwealth of Australia: Canberra, June 2008, p. 73.

51 CFAC, *submission 31*, p. 4.

52 Attributed to M Kuunders in SC Jones, D Hall and G Munro, 'How Effective is the Revised Regulatory Code for Alcohol Advertising in Australia?', *Drug and Alcohol Review*, January 2008, p. 30.

53 Australian Human Rights Commission, 'The Right to a Discrimination-Free Workplace', July 2008 <<http://www.hreoc.gov.au/legal/publications/dfw.html#5>> viewed 5 May 2011.

- 3.95 Anti-discrimination legislation for the workplace is designed to ensure a workspace that is amenable to all and free from offensive images. There are obvious parallels to ensuring the amenity of public spaces. Hence the cumulative impact of certain types of advertising and images should be considered when assessing their appropriateness for outdoor advertising and ensuring that they do not contribute to a hostile and discriminatory public environment.
- 3.96 The Committee concludes that recognising outdoor or out-of-home advertising as a special category will provide a more effective self-regulatory regime that can respond to community concerns in this area.
- 3.97 In addition the Committee notes that there is not clear legislation regarding the display of racist or sexualised images in the public space. The Committee recommends that the Attorney-General's Department investigate how such displays may be brought under the scope of discriminatory practice.

Recommendation 3— Australian Association of National Advertisers

- 3.98 **The Committee recommends that the Australian Association of National Advertisers introduce a code of practice for out-of-home advertising and for use by the Advertising Standards Board when determining complaints about out-of-home advertising. The code of practice should recognise that out-of-home advertisements:**
- **occupy public space and have the potential to affect the amenity of that space for some community members;**
 - **can be viewed by an unrestricted audience, regardless of their target audience; and**
 - **have a cumulative impact on the community through the social messages they convey.**

Recommendation 4—Australian Government

- 3.99 **The Committee recommends that the Attorney-General's Department investigate, through its anti-discrimination legislation consolidation project, how to include the unrestricted display of racist or sexualised images in the public space under the scope of discriminatory practice.**

Copy advice and pre-vetting

- 3.100 The European Advertising Standards Alliance (EASA), of which the ASB is a member, describes advertising copy advice as ‘non-binding, pre-publication advice’ that is ‘one of the key elements of a self-regulatory system’.⁵⁴
- 3.101 A European Union roundtable on advertising self-regulation identified copy advice as a basic component of a best practice self-regulatory system, and recommended it ‘particularly for media where advertising copy may have so short a shelf-life to negative adjudications. Copy advice should ideally be provided free of charge.’⁵⁵
- 3.102 The roundtable further noted that:
- The principle purpose of copy advice is to prevent problems before they happen; this benefits not only the advertiser, agency and media immediately concerned, but also the wider advertising industry, by avoiding complaints and being seen to promote social responsibility.⁵⁶
- 3.103 Providing copy advice, or a pre-vetting service, for outdoor advertising campaigns minimises the negative effect of controversial advertisements being displayed while complaints directed against it are being assessed.
- 3.104 As the Castan Centre notes:
- The absence of a vetting mechanism places the onus on complainants to address concerns about outdoor advertising. It furthermore enables the most inappropriate advertisements to remain on public display for the duration of the complaints determination process.⁵⁷
- 3.105 The ASB does not have a formal system of pre-vetting advertisements, although there are some informal arrangements in the advertising industry. The AANA has a copy advice system for members who request

54 European Advertising Standards Alliance, *Advertising Self-regulation in Europe and Beyond: A reference guide to self-regulatory systems and codes of advertising practice*, European Advertising Standards Alliance: Brussels, 2010, p. 50.

55 EU Roundtable on Advertising Self-regulation, *Self-Regulation in the EU Advertising Sector: A report of some discussion among interested parties*, July 2006, p. 5 <http://ec.europa.eu/dgs/health_consumer/self_regulation/index_en.htm> viewed 1 November 2010.

56 EU Roundtable on Advertising Self-regulation, *Self-Regulation in the EU Advertising Sector: A report of some discussion among interested parties*, July 2006, p. 19 <http://ec.europa.eu/dgs/health_consumer/self_regulation/index_en.htm> viewed 1 November 2010.

57 Castan Centre, *Submission 40*, p. 6.

it, which was 'put in place following the Senate inquiry into the sexualisation of children. It is a very informal process and it is available at present just for AANA members. It is not widely used'.⁵⁸

- 3.106 OMA members have 'internal vetting systems' in place for advertising accepted for display.⁵⁹ The Alcohol Beverages Advertising Code Scheme offers a pre-vetting service for a fee.
- 3.107 The Communication Council advises that it offers '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.'⁶⁰
- 3.108 Collective Shout argues that a regulatory body should have the 'power to establish a system of pre-vetting billboards before their placement'.⁶¹ The Castan Centre states that pre-vetting might improve the self-regulatory system, noting that 'while the vetting of all advertisements is one option, a more targeted process may direct itself to particular products or services or to advertisers who have been the subject of prior complaint'. The Castan Centre further recommends that the ASB, a committee of the ASB, or an agency similar to the Classification Board perform this function.⁶²
- 3.109 Pre-vetting does not preclude advertisements from being subject to complaints, including upheld complaints, but minimises the likelihood of this happening and enables obvious breaches to be detected before display. The Committee envisages that outdoor advertising pre-vetting would provide advice on whether the advertisement is likely to comply with outdoor advertising regulations and, with reference to similar advertisements in similar media, advise whether complaints are likely to be received.
- 3.110 The OMA noted to the Committee that pre-classified advertisements on television 'get the majority of complaints to the ASB and still they have complaints that are upheld'.⁶³ However, the classification requirement for television commercials is to determine timeslot programming, not their acceptability by the community. This in-house classification service, which

58 Ms Bain, AANA, *Committee Hansard*, Canberra, 24 February 2011, p. 15.

59 Ms Moldrich, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 12.

60 Communications Council, *Submission 34*, p. 4.

61 Collective Shout, *Submission 43*, p. 6.

62 Castan Centre, *Submission 40*, pp. 18, 19.

63 Ms Linda Black, Senior Policy Adviser, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 20.

is paid for by the advertiser, does not constitute legal advice and is not a substitute for ensuring compliance with relevant legislation and codes.⁶⁴

- 3.111 Given that some outdoor advertisements such as billboards can take time to remove following any complaint being upheld, and during any consideration of a complaint they continue to be seen by a large and unrestricted audience, the Committee considers that a non-binding copy advice or pre-vetting service should be available.

Recommendation 5— Advertising Standards Bureau

- 3.112 **The Committee recommends that the Advertising Standards Bureau introduce a transparent copy advice service, which provides independent advice on the suitability of proposed advertisements, for all outdoor advertising.**

Monitoring

- 3.113 The EASA has issued a Best Practice Recommendation on Advertising Monitoring, which discusses ‘how to target monitoring on specific sectors, media or issues which have attracted high levels of complaint’ and notes that monitoring gives a self-regulatory system ‘a proactive role in ensuring advertising code compliance’.⁶⁵
- 3.114 Unlike the Australian self-regulatory system, the UK Advertising Standards Authority has a compliance and monitoring team that conducts regular compliance surveys of specific industry sectors, such as alcohol, gambling and cosmetics advertising, and proactively monitors advertising for breaches of the advertising codes.⁶⁶
- 3.115 Monitoring advertising for breaches is a way of minimising the impact of unacceptable advertising on the public, and could address public reluctance to lodge complaints. According to EASA:

64 Free TV, *Commercials Advice* <http://www.freetv.com.au/content_common/pg-cad-about-cad.seo> viewed 4 May 2011.

65 European Advertising Standards Alliance, *Advertising Self-regulation in Europe and Beyond: A reference guide to self-regulatory systems and codes of advertising practice*, European Advertising Standards Alliance: Brussels, 2010, p. 50.

66 Advertising Standards Authority, ‘Monitoring Compliance’ <<http://www.asa.org.uk/ASA-action/Monitoring-compliance.aspx>> viewed 11 May 2011.

To be truly effective, a [self-regulatory system] cannot afford to restrict its activities to responding to complaints: if it does, its interventions will inevitably be haphazard and lack consistency of thoroughness.⁶⁷

- 3.116 In relation to the current Australian system, the Salvation Army Australian Southern Territory (Salvation Army) submits that ‘the system at present relies on the public’s constant vigilance and commitment to lodge complaints’.⁶⁸
- 3.117 Compliance surveys can identify overall compliance rates without relying on the public to report outdoor advertising or have knowledge of applicable codes. Measuring compliance rates across different sectors can inform monitoring and education practices. For example, training can be directed at an industry that has low outdoor advertising compliance rates, and more focused monitoring can be targeted on that sector to check whether compliance improves.
- 3.118 The Committee was interested in the Classification Board’s industry assessor schemes and liaison scheme. These appear to be a means of establishing good industry liaison and being proactive in monitoring the content of classifiable material.
- 3.119 Elements from both of these schemes could improve the advertising self-regulatory system. Industry assessors perform a similar role to the provision of copy advice and the liaison scheme enhances businesses’ understanding of their responsibilities and obligations under the relevant regulations.
- 3.120 The Committee suggests that the ASB investigate these options as mechanisms to be more active in their regulation rather than relying on complaint responsiveness from the public.

67 European Advertising Standards Alliance, *Advertising Self-regulation in Europe and Beyond: A reference guide to self-regulatory systems and codes of advertising practice*, European Advertising Standards Alliance: Brussels, 2010, p. 242.

68 The Salvation Army Australia Southern Territory (Salvation Army), *Submission 11*, p. 5.

Recommendation 6— Advertising Standards Bureau

3.121 The Committee recommends that the Advertising Standards Bureau conduct and publish annual random compliance surveys of outdoor advertising across specific industries and specific elements of advertising codes, such as:

- the food and beverage sector;
- the alcohol sector;
- outdoor advertising that portrays children;
- advertising at event venues and sportsgrounds; and
- outdoor advertising that portrays sex, sexuality or nudity.

The Committee also recommends that Advertising Standards Board members take on a formal monitoring role of outdoor advertising and self-initiate investigations where warranted. The Committee considers that the compliance surveys would inform the monitoring role.

New technologies

3.122 The advent of new technologies is already changing the landscape and impact of outdoor advertising, and will continue to do so in the future. The OMA's website indicates that outdoor advertising can be produced with holograms, three-dimensional displays, animated neon, and inflatables, among other products.⁶⁹

3.123 JCDcaux boasts outdoor advertising displays that can transmit a range of information to consumers on the spot via Bluetooth or mobile phone technology.⁷⁰ Smartphones have the ability to transform two-dimensional images from billboards into animated images.⁷¹

3.124 The Salvation Army recognises that:

Technological advances have also changed the nature and level of sophistication available for advertising purposes. Growing

69 OMA, <<http://oma.org.au/what-makes-good-outdoor/>> viewed

70 JCDcaux, <<http://www.jcdecaux.com.au/innovate/mobile-interactivity>> viewed 9 May 2011.

71 S Sakr, BBC News, *Augmented reality goes beyond gimmicks*, 3 May 2011 <<http://www.bbc.co.uk/news/business-13262407>> viewed 3 May 2011.

prosperity in Australia has also resulted in children, tweens and teenagers becoming a significant marketing target cohort.⁷²

- 3.125 The Communications Council suggests 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’.⁷³
- 3.126 Some consideration was given to utilising digital billboards to restrict certain advertisements to time zones when children would be unlikely to be in public, such as late evening. However, the OMA notes that this may not be cost-efficient: ‘If we are only talking about .02 per cent that are in question, do you really want to have a whole system of time-of-day viewing for that .02 per cent?’⁷⁴ Furthermore, digital display infrastructure is more expensive.⁷⁵
- 3.127 However, as technological advancements are made and infrastructure becomes more affordable, it is likely that outdoor media will embrace new methods of drawing attention to advertisements.
- 3.128 The Committee urges the ASB to take a proactive approach to monitoring these developments and respond appropriately with guidelines and codes as required.

Conclusion

- 3.129 This inquiry was prompted by concerns that outdoor advertising content is not in line with community standards of what is acceptable for display in the public space that we all use. Outdoor advertising is a unique form of advertising because it affords consumers very little choice about viewing it.
- 3.130 If consumers do not approve of advertisements on television, radio or in print, they can change channels, stations or the page. Outdoor advertising cannot be avoided, and nor can children’s exposure to it be controlled or moderated by parents.

72 Salvation Army, *Submission 11*, p. 3.

73 Communications Council, *Submission 34*, p. 6.

74 Ms Black, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 22.

75 Ms Moldrich, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 22.

- 3.131 The Committee set out to investigate the self-regulatory system for advertising in Australia, and to determine whether it can address community concerns about outdoor advertising.
- 3.132 The advertising industry, as well as specific industry sectors such as alcohol and food producers, was helpful in outlining to the Committee the self-regulatory system that applies to advertising and the various industry-initiated schemes that aim to bolster self-regulation. These stakeholders are keen to demonstrate that self-regulation is effective and that the status quo should remain unchanged.
- 3.133 On the other hand, the Committee heard from a number of passionate individuals and advocacy groups who object to the content and unavoidable nature of outdoor advertising on a number of grounds. Many parents are concerned that their children are exposed to sexualised images and messages that they are not mature enough to digest. Many women in particular are angered by the prevalence of sexual objectification in advertising images, and the messages that these send in the public space. The Committee finds it difficult to see how such images can ever be in the public interest.
- 3.134 Groups advocating for measures to reduce rates of obesity, especially in children, are displeased that outdoor food advertising is counteracting public health campaigns. Similarly, organisations that educate the public on the potential negative impacts of inappropriate alcohol intake are incensed by outdoor advertising that appears to target young people.
- 3.135 The Committee concluded that there are significant concerns about the content and volume of advertising that appears in public. However, the self-regulatory system has its advantages and is not unworkable. The Committee conclude that more rigour and leadership should be incorporated to strengthen the system and address the concerns specific to outdoor advertising.
- 3.136 The advertising self-regulatory system should formally acknowledge that outdoor advertising constitutes a unique medium with certain characteristics that require additional attention. A code of practice for outdoor advertising is needed for the industry to demonstrate this recognition.
- 3.137 Furthermore, a more proactive Advertising Standards Bureau is needed to provide more comprehensive oversight of outdoor advertising in the form of a copy advice service – to eliminate blatantly unacceptable advertising copy from being produced – and a regular monitoring role.

- 3.138 The Committee notes that the industry does act to deflect criticisms of shortcomings in the self-regulatory system, but expects to see more proactive behaviour that anticipates changes in the public mood or possible implications of technological advancements in the outdoor advertising medium. The Committee believes that the advertising industry has had many chances to prove that self-regulation works, and asserts that this is the last chance.
- 3.139 The Committee considers that the Government has a responsibility to regularly revisit this issue as it is a matter of public concern that affects all of us as we occupy, utilise, meet in, enjoy and travel through *our* public spaces.

Voluntary advertising codes

- 4.1 As detailed earlier, the current advertising self-regulatory system was established in 1998 by the Australian Association of National Advertisers (AANA). The AANA developed the AANA Advertising Code of Ethics, followed in other years by more specific codes. Some industries have developed specific advertising codes of practice, most in consultation with AANA.
- 4.2 This chapter discusses the application and interpretation of different voluntary codes that apply to outdoor advertising in Australia and against which the Advertising Standards Board (the Board) of the Advertising Standards Bureau (ASB) determines complaints. These codes are:
- AANA Advertising Code of Ethics;
 - AANA Food and Beverages Advertising and Marketing Communications Code;
 - AFGC Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children;
 - AANA Code for Marketing and Advertising Communications to Children;
 - Alcohol Beverages Advertising (and Packaging) Code;
 - Motor Vehicle Code; and
 - AANA Environmental Claims in Advertising and Marketing Code.
- 4.3 The Alcohol Beverages Advertising (and Packaging) Code Adjudication Panel assesses complaints about alcohol advertising, but the ASB also deals with general complaints about alcohol advertising that are outside the scope of the alcohol advertising code.

- 4.4 The Therapeutic Goods Advertising Code is administered by the Therapeutic Goods Advertising Code Council,¹ and the Weight Management Industry Code of Practice, administered by the Weight Management Council Australia Ltd., prohibits misleading or inaccurate advertising or marketing practices.² The Committee did not receive evidence about either of these codes.
- 4.5 Discussion of the advertising self-regulatory system during the course of this inquiry focused largely on the scope and voluntary nature of the codes and the Board's application and interpretation of the codes, particularly in relation to defining community standards.
- 4.6 The ASB notes that:
- 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.³
- 4.7 Although an analysis of Board determinations shows that the Board appears to apply prevailing community standards to general advertising complaints,⁴ 'prevailing community standards' are explicitly mentioned only in the following sections of the various codes:
- Section 2.6 of the AANA Code of Ethics, which states that advertising 'shall not depict material contrary to prevailing community standards on health and safety';
 - Section 2.1 of the AANA Code for Advertising and Marketing Communications to Children, which states that advertising to children 'must not contravene prevailing community standards'; and

1 Therapeutic Goods Advertising Code Council, <<http://www.tgacc.com.au>> viewed 20 May 2011.

2 Weight Management Council Australia Ltd, <<http://www.weightcouncil.org>> viewed 20 May 2011.

3 Advertising Standards Bureau (ASB), *Submission 27*, p. [12].

4 See, for example, ASB Case Reports 0554/10; 0164/10; 346/09; 368/04; 75/04.

- Sections 2.1 and 2.2 of the AANA Food and Beverages Advertising and Communications Code, which stipulates that advertising of food and beverages shall not be deceptive or otherwise contravene prevailing community standards, or 'encourage ... excess consumption ... by means otherwise regarded as contrary to prevailing community standards'.
- 4.8 However, no research has yet been conducted to identify or measure prevailing community standards in relation to the three specified areas of health and safety, advertising to children, and advertising food and beverages. This is despite the fact that the AANA defines 'prevailing community standards' as:
- ... community standards determined by the ASB as those prevailing at the relevant time, and based on research carried out on behalf of the ASB as it sees fit, in relation to Advertising or Marketing Communications.⁵
- 4.9 Ms Fiona Jolly, Chief Executive Officer of the ASB, advised the Committee that:
- There is a whole range of ways [to ascertain community standards]. Obviously we monitor what is in the media. They tend to report people who are dissatisfied with the system, so we are very aware of when people feel that we have not made the right decision. The board now has 20 people, and we try to make them very diverse. We bring people to the board who represent a wide range of community values, backgrounds and standards. So the board itself brings a whole diversity of what people in the community think about ads.⁶
- 4.10 The issue of determining prevailing community standards is a vexing one, as evidenced by the number of submissions arguing that the Board does not accurately reflect the standards of the community it represents. Community standards are meant to inform Board determinations of advertising complaints, however there is insufficient commitment by the Board or the ASB to regularly gauge and inform itself of prevailing community views.
- 4.11 The Committee acknowledges the range of concerns raised in the submissions regarding how community standards are defined and

5 Australian Association of National Advertisers (AANA), 'Code of Ethics' <http://www.aana.com.au/advertiser_ethics_code.html> viewed 12 April 2011.

6 Ms Fiona Jolly, Chief Executive Officer, ASB, *Committee Hansard*, Canberra, 24 February 2011, p. 21.

applied, and whether the Board is reflecting or creating the standards it claims to represent.

- 4.12 The Committee is particularly concerned regarding how ‘prevailing community standards’ are gauged. This goes to the very heart of community concern around outdoor advertising. The need to more adequately reflect and keep in touch with community standards is considered in the following sections in relation to each of the different codes.
- 4.13 A more systemic failure in relation to the voluntary codes of advertising relates to the lack of a programmed system of review and the limited expert and public input that has gone into some reviews.
- 4.14 The Committee is pleased to note that the AANA has indicated, without specifying dates, that in future it will conduct regular and ongoing reviews of the Code and other AANA codes.⁷
- 4.15 The Committee suggests that there should be scope for public comment on code content and wording in future reviews. A regular program of review for each of the codes should be established. Further, consultation with women’s groups, public health experts, child health professionals, and road safety organisations should be a core element of the consultative process when reviewing each of the codes.

Recommendation 7— Australian Association of National Advertisers

- 4.16 **The Committee recommends that the Australian Association of National Advertisers establish a more regular program to review each of the voluntary codes of advertising, in consultation with stakeholders and relevant organisations and experts in the field.**

AANA Code of Ethics

- 4.17 The AANA advertising Code of Ethics (the Code) has been in operation since 1997. It is a voluntary code that ‘provides the overarching set of principles with which all advertising and marketing communications, across all media, should comply’.⁸

7 AANA, *Submission 17*, p. 15.

8 AANA, *Submission 17*, p. 7.

4.18 The Code comprises two sections:

- Section 1:
 - 1.1 Advertising or Marketing Communications shall comply with Commonwealth law and the law of the relevant State or Territory.
 - 1.2 Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.
 - 1.3 Advertising or Marketing Communications shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor.
 - 1.4 Advertising or Marketing Communications shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.
 - 1.5 Advertising or Marketing Communications shall not make claims about the Australian origin or content of products advertised in a manner which is misleading.
- Section 2:
 - 2.1 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.
 - 2.2 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.
 - 2.3 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.
 - 2.4 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising and Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising and Marketing Communications to Children applies.
 - 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.
 - 2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

- 2.7 Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.
- 2.8 Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food and Beverages Advertising and Marketing Communications Code as well as to the provisions of this Code.⁹

4.19 AANA defines 'Advertising and Marketing Communications' as:

matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct, but does not include [product labels or packaging].¹⁰

4.20 In May 2010, AANA commissioned Dr Terry Beed to conduct the first review of the Code. The revised Code will be released following consideration of the findings of this report.¹¹

4.21 The Committee commends the AANA for conducting this review and for committing to take account of the findings of this inquiry before releasing the outcomes of the review.

4.22 However, the Committee notes that this review is the first since the Code was established in 1997, and considers that the Code should be reviewed more frequently, as recommend above. Furthermore, when conducting reviews, the AANA should seek input from relevant experts on issues such as discrimination or vilification or the impact of sexualised images on women and children, as well as from community members.

9 AANA, 'AANA Code of Ethics' <http://www.aana.com.au/advertiser_ethics_code.html> viewed 12 April 2011.

10 AANA, 'AANA Code of Ethics' <http://www.aana.com.au/advertiser_ethics_code.html> viewed 12 April 2011.

11 AANA, *Submission 17*, p. 15.

- 4.23 The current review has found thus far that ‘the Code is in step with and in some cases ahead of codes which underpin the self regulation of advertising and marketing communications elsewhere in the world.’¹²
- 4.24 However, the Code has been described by critics as ‘short and vague’¹³ and the Committee received many submissions arguing that the Code is inadequate and requires amending or strengthening.¹⁴ The majority of the identified shortcomings in the Code related to:
- depictions of sex, sexuality and nudity and the portrayal of women in advertising; and
 - the definition of ‘sensitivity to the relevant audience’.
- 4.25 The following sections discuss these two areas of significant concern.

Sex, sexuality, nudity, and the portrayal of women

- 4.26 Section 2.1 of the Code prohibits discrimination or vilification on the basis of sex and sexual preference and Section 2.3 of the Code advises advertisers to treat sex, sexuality and nudity with sensitivity to the relevant audience.
- 4.27 The concerns raised in the submissions to this inquiry about the use of sex and nudity and the portrayal of women in advertising reflect the level of community concern about this issue. The ASB has noted that 41 per cent of complaints received in 2009 and 45 per cent of complaints in 2010 pertained to the portrayal of sex, sexuality and nudity, and that this topic ‘was of particular concern to respondents to the ASB’s 2010 community research’ on perceptions of sex, sexuality and nudity in advertising.¹⁵
- 4.28 The Code does not define the phrase ‘treat sex, sexuality and nudity with sensitivity’ beyond its ordinary meaning. The Castan Centre for Human Rights Law (Castan Centre) states that ‘Section 2.3 is broadly worded and allows scope for a range of different interpretations’.¹⁶

12 AANA, *Submission 17*, p. 14.

13 D Harker, G Wiggs, and M Harker, ‘Responsive Advertising Regulation: A case study from New Zealand’, *Australian Journal of Political Science*, vol. 40, no. 4, 2005, p. 550.

14 Australian Council on Children and the Media (ACCM), *Submission 28*; Castan Centre for Human Rights Law (Castan Centre), *Submission 40*; Kids Free 2B Kids (KF2BK), *Submission 44*; Ms Jenna Weston, *Submission 6*; Collective Shout, *Submission 43*; Cancer Council Western Australia and the McCusker Centre for Action on Alcohol and Youth (CCMCAAY), *Submission 36*.

15 ASB, ‘Determination Summary: Portrayal of Gender in Advertising’ <<http://adstandards.com.au/files/view/?id=203>> viewed 6 January 2011, p. [4]; ASB, *Submission 27*, p. [50].

16 Castan Centre, *Submission 40*, p. 19.

- 4.29 Nor does the Code provide guidelines for determining whether advertisements comply with the Code. The ASB has published on their website an interpretation guide to determinations of complaints related to the portrayal of gender. This guide suggests that 'discreet portrayal of nudity and sexuality in an appropriate context' is acceptable but does not define 'discreet' nor explain why 'toiletries and fashion' are appropriate contexts.¹⁷ It is not clear how these guidelines have been formulated or who deemed sex and nudity relevant to the context of selling toiletries or clothing but not trucks or tools.
- 4.30 Sexual objectification of women does not appear to be considered contrary to the prohibition of discrimination or vilification. For example, ASB case number 60/10 reports that '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.'¹⁸ Another Board determination concludes that the model in the particular advertisement was 'depicted as being a sexual object' but this 'was not demeaning and did not amount to discrimination against women'.¹⁹ The ASB interpretation guide to determinations of complaints related to discrimination and vilification does not mention sexual objectification.²⁰
- 4.31 The lack of guidelines to underpin the Code has been noted previously. In 2002, the Victorian Department of Premier and Cabinet published a report on the portrayal of women in outdoor advertising, noting 'widespread support for advertising guidelines to deal with the issue of problematic advertising imagery in relation to gender'.²¹ The report recommended the development of gender portrayal advertising guidelines, and suggested a set of draft guidelines based on Advertising Standards Canada's 1981 Gender Portrayal Guidelines.
- 4.32 As a contrast, the Classification Board has detailed notes about the types of images, suggestiveness, degree of nudity etc which are permissible at different classification levels. This approach ensures transparency as well as consistency in decision-making.

17 ASB, 'Determination Summary: Portrayal of Gender in Advertising' <<http://adstandards.com.au/files/view/?id=203>> p. [2], viewed 6 January 2011.

18 ASB, Case Report 60/10.

19 ASB, Case Report 0153/11.

20 ASB, 'Discrimination and Vilification in Advertising' <<http://adstandards.com.au/files/view/?id=202>> viewed 6 January 2011.

21 Victorian Government, *Portrayal of Women in Outdoor Advertising*, February 2002, p. 9.

4.33 In its submission, Kids Free 2B Kids (KF2BK) states that:

There are still no specific guidelines in the code of ethics that offer comprehensive and research based guidance to the ASB regarding the portrayal of women. Decisions are based on the individual board members interpretation of a narrow code ... KF2BK recommends the Standing Committee on Social Policy and Legal Affairs review the 2002 Victorian Government Gender Portrayal Guidelines for Outdoor Advertising.²²

4.34 The Committee believes that sexual objectification of men, women and children should be referred to and proscribed explicitly in the Code of Ethics.

Recommendation 8— Australian Association of National Advertisers

4.35 **The Committee recommends that the Australian Association of National Advertisers amend its Advertising Code of Ethics to proscribe sexual objectification of men, women and children.**

4.36 Another criticism of the Code is that it addresses only the content of advertising, rather than its increasing prevalence, which is increasing to a level that is causing concern. Collective Shout argues that:

We are talking about not just one billboard or ad here or there; we are talking about the cumulative impact of these messages on women and girls and also what they teach boys. They are socialising boys to see women and girls only in terms of their orifices and what they can offer sexually. That is harmful.²³

4.37 The Australian Council on Children and the Media (ACCM) agrees that the Code:

... tends to treat each billboard as an isolated instance, whereas the effect is cumulative. One woman-objectifying campaign would probably not be a problem; the problem is that there are so many campaigns, and have been for so long.²⁴

22 KF2BK, *Submission 44*, p. 4.

23 Ms Melinda Tankard Reist, Founder, Collective Shout, *Committee Hansard*, Melbourne, 4 April 2011, p. 44.

24 ACCM, *Submission 28*, p. 3.

- 4.38 Moreover, several submissions pointed out the similarities between sexualised images of women on display in public and images that are illegal under the *Sex Discrimination Act 1984* (Cth) to display in workplaces.²⁵
- 4.39 Mrs Celeste Sell reminded the Committee that many of the images in outdoor advertising would be illegal if acted out by individuals in a public place.²⁶ Reverend Ivan Ransom adds in his submission, 'if an adult parades nude in public they are arrested for indecent exposure'.²⁷
- 4.40 It was argued that the Code should be amended to reflect 'the fact that unsolicited and unwanted exposure to sexualised and pornified images is a form of sexual harassment'²⁸ and that 'pornified imagery [in public spaces] is a form of sexual harassment'.²⁹
- 4.41 The Australian Partnership of Religious Organisations describes this inquiry as an 'important matter of public concern'.³⁰ One submission maintains that 'exposure to [sexualised] material has been shown to negatively affect attitudes to women in general; it infringes basic human rights and makes equality between men and women impossible.'³¹
- 4.42 The Committee heard that the Code should address not only the offensive nature of sexualised or nude images but also the harmful influences that research has shown these images have on young people, especially women.
- 4.43 The ACCM notes that:
- ... the criteria applied under the Codes are quite narrow, and focussed on what might be offensive rather than what might be harmful (especially to children's development). It would be preferable to have ... criteria that go to the root of community concerns about sexism, sexual objectification and sex-obsession, rather than merely depictions of sexual activity or nudity.³²
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25 Castan Centre, *Submission 40*, p. 11; Collective Shout, *Submission 43*, p. 1; Mrs Kristen Butchatsky, *Submission 21*, p. 1; Ms Rosaleen Noel Commins, *Submission 8*, p. 1; Ms Maree Hawken, *Submission 22*, p. 1; 2020women Inc (2020women), *Submission 16*, p. 3; Australian Christian Lobby (ACL), *Submission 24*, p. 3.

26 Mrs Celeste Sell, *Committee Hansard*, Sydney, 25 March 2011, p. 59.

27 Reverend Ivan Ransom, *Submission 2*, p. 1.

28 Collective Shout, *Submission 43*, p. 6.

29 Ms Jenna Weston, *Submission 6*, p. 2.

30 Australian Partnership of Religious Organisations, *Submission 13*, p. 1.

31 Ms Maree Hawken, *Submission 22*, p. 1.

32 ACCM, *Submission 28*, p. 3.

4.44 Collective Shout argues that:

The AANA code of ethics should be amended to reflect the growing body of research in regard to the sexualisation of children and objectification of women. Objectification and sexualisation of women and girls should be treated as threats to the health, well-being and status of women and girls.³³

4.45 Several submissions made complaints about the Board's interpretation of community standards relating to the representation of sex, sexuality and nudity. The Castan Centres notes that:

Complaints about advertisements of a sexually suggestive nature which ... draw on pornography have been dismissed on the basis that there is no nudity, or that the degree of sexualisation is acceptable.³⁴

4.46 Collective Shout describes the contradictory reasoning of some of the Board determinations:

What we as an organisation have noticed is that the Advertising Standards Board relies on a code of ethics and, to be honest, their interpretation of the code is often very baffling; it is a very loose interpretation. The ASB's response to complaints about an advertisement which many people would recognise as being sexualised is that, 'although the ad is *mildly sexually suggestive*, it is *not sexualised*' (italics added).³⁵

4.47 The diversity of community views was reflected in the range of submissions, some of which suggested that certain outdoor advertising images were sexual and inappropriate, while others argued that they were acceptable to most community members and there should be fewer restrictions on advertising.

4.48 The Eros Association, the peak body for the adult industry, supports the need for better understanding of community standards, saying '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.'³⁶

33 Collective Shout, *Submission 43*, p. 6.

34 Castan Centre, *Submission 40*, p. 6.

35 Ms Melinda Liszewski, Representative, Collective Shout, *Committee Hansard*, Sydney, 25 March 2011, p. 60.

36 Eros Association, *Submission 41*, p. 10.

- 4.49 The recent public controversy about a sexual health campaign featuring a real-life gay couple that was displayed on Adshel bus shelters in Brisbane reveals that community opinion cannot be assessed simply by relying on complaints. In this instance, pressure organised by a lobby group resulted in the third-party outdoor media display company removing the advertisements. However, the subsequent public outcry demonstrated that other sections of the community wholeheartedly approved of the campaign. This confirms that complaint numbers are not necessarily indicative of community views and that research and regular review is required to determine community standards on sex, sexuality and nudity.
- 4.50 The ASB commissions research into general public opinions and perceptions of advertising acceptability and Board decisions. In 2007, Colmar Brunton Social Research surveyed community attitudes in relation to Board decisions of print, radio and television, but not outdoor, advertisements. The results showed that the Board was less conservative than the public in terms of representations of sex, sexuality and nudity.³⁷
- 4.51 More recent research from 2010, which included outdoor advertising, indicated that the Board 'has been largely congruent with opinions of the general public' regarding the use of sex, sexuality and nudity in advertising.³⁸
- 4.52 However, the Australian Christian Lobby (ACL) observes that this research:
- ... showed that a majority of women surveyed found objectionable a number of advertisements that received complaints that were subsequently dismissed by the Bureau.³⁹
- 4.53 The 2010 research report also identified sexual objectification of women as a factor in the general public's opinion of what makes advertising unacceptable, but concluded that:
- [this] is an interesting topic and some observations on this topic could be valuable, but ultimately unless it comes back to 'being sensitive to the audience' it is not relevant in any decision about the acceptability of an ad in relation to this section [2.3] of the code.⁴⁰

37 ASB, *Submission 27*, p. [44].

38 ASB, *Community Perceptions of Sex, Sexuality and Nudity in Advertising*, June 2010, p. 16.

39 ACL, *Submission 24*, p. 2.

40 ASB, *Community Perceptions of Sex, Sexuality and Nudity in Advertising*, June 2010, p. 85.

4.54 A paper given at a marketing conference in 2009 argued that:

... the decisions of ASB suggest a disjuncture between community perceptions and ASB applications of these principles. ... There is a need to create a more reasonable yardstick for the measurement of prevailing community attitudes, to determine whether particular ads are within or outside community standards in relation to portrayals of sexuality, vilification, violence, and offensive language.⁴¹

Sensitivity to the relevant audience

4.55 In addition to the ambiguity around the appropriate level of sex, sexuality and nudity in advertising, there is criticism relating to the 'sensitivity to the relevant audience' clause in the Code. First, criticism is directed at the lack of definition of what constitutes the 'relevant audience', particularly in outdoor advertising. Second, the Board has been criticised for its interpretation of 'relevant audience' as applied to outdoor advertising complaint determinations.

4.56 Mr Paul Tyler argues in his submission that the Code's 'lack of definition of "relevant audience" clearly poses a problem of interpretation. Is this the target audience? Is it a collective group of people exposed to the advertisement as a whole?'⁴² Even though the majority of a billboard's audience may not be offended by it, consideration needs to be given to those who are younger or more conservative who will nonetheless be subject to the advertisement.

4.57 The ASB contends that:

The board will always consider the relevant audience for any type of ad. So for an outdoor ad – a billboard, we will say – our decisions will show that what they think about this is that 'this is a billboard, it is a broad audience who can see it'. They do not look at who it is targeted to; they look at who can see it. And they will take that into consideration in their view of whether the ad treats sex, sexuality and nudity with sensitivity to that audience.⁴³

41 SC Jones and K Van Putten, *Whose Standards? An examination of community attitudes towards Australian advertising*, 2009, p. 3, <<http://duplication.net.au/ANZMAC09/papers/ANZMAC2009-151.pdf>> viewed 7 March 2011.

42 Mr Paul Tyler, *Submission 42*, p. 6.

43 Ms Jolly, ASB, *Committee Hansard*, Canberra, 24 February 2011, p. 19.

- 4.58 However, the Castan Centre claims that ‘the interpretations made by the ASB have placed insufficient emphasis on the reality that the “relevant audience” for outdoor advertising is the general public’⁴⁴ and that:

While the broad stipulation in section 2.3 that advertising ‘shall treat sex, sexuality and nudity with sensitivity to the relevant audience’ affords scope for examination of children’s interests, an analysis of the complaints determined by the Advertising Standards Board (ASB) raises concerns that these interests have been accorded insufficient weight.

... many advertisements deemed by the ASB to treat sex, sexuality and nudity with sensitivity would be considered inappropriate in the context of free to air television viewed by children.⁴⁵

- 4.59 FamilyVoice Australia queries that:

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 [of a particular advertisement that was subject to a complaint] depicted sexuality with sensitivity to children. An advertisement of this kind would not be cleared to screen during children's viewing times on television.⁴⁶

- 4.60 As KF2BK notes, ‘people who are not in the target market or “relevant” audience cannot switch off a billboard. There is only one audience for billboards - the whole population.’⁴⁷

- 4.61 The Outdoor Advertising Advisory Paper and Checklist, created by the AANA, the Communications Council and the Outdoor Media Association, cautions that ‘outdoor advertising is in all instances open to general exhibition. Therefore careful consideration should be given to the choice of content.’⁴⁸

44 Castan Centre, *Submission 40*, p. 19.

45 Castan Centre, *Submission 40*, pp. 6, 10.

46 FamilyVoice Australia, *Submission 1*, p. 2.

47 KF2BK, *Submission 44*, p. 5

48 Advertising Federation of Australia, ‘Outdoor Advertising Advisory Paper and Checklist’, c. 2001, <<http://www.communicationscouncil.org.au/public/content/ViewCategory.aspx?id=310>> viewed 4 November 2010.

4.62 The Advisory Paper and Checklist further advises that:

Particularly where outdoor advertising is located in close proximity to schools and shopping centres, it should meet established AANA *Guidelines for Advertising to Children...*⁴⁹

4.63 Moreover, the ASB's interpretation guides to determinations of complaints advise that:

Outdoor advertising is in the public domain and has a broad audience. The Board believes that messages and images presented in this medium need to be developed with a general audience in mind and has given particular attention to the placement of such advertising.⁵⁰

4.64 However, several submissions argue that the Code's reference to the 'relevant audience' should specifically address the broad audience that is exposed to outdoor advertising. Mrs Kristen Butchatsky states in her submission that:

... the statement in [section] 2.3 that the communications shall treat sex etc with *sensitivity to the relevant audience* is completely meaningless when put in the context of billboard advertising. The relevant audience for billboard advertising includes children. They may not be the 'target audience' for marketers, but they have full and complete access to these communications.⁵¹

4.65 The KF2BK agrees:

If the system is to work - there needs to be precise guidelines about what sort of images are appropriate for general exhibition in the public domain - with consideration that there is no 'relevant' audience. People who are *not* in the target market or 'relevant' audience cannot switch off a billboard. There is only one audience for billboards - the whole population. We are a 'captive' audience.⁵²

49 Advertising Federation of Australia, 'Outdoor Advertising Advisory Paper and Checklist', c. 2001, <<http://www.communicationscouncil.org.au/public/content/ViewCategory.aspx?id=310>> viewed 4 November 2010.

50 ASB, 'Determination Summary: Discrimination and Vilification in advertising' <<http://adstandards.com.au/files/view/?id=202>> p. [4], viewed 6 January 2011.

51 Mrs Kristen Butchatsky, *Submission 21*, p. 2.

52 KF2BK, *Submission 44*, p. 5.

4.66 The Castan Centre states that:

Complaints under section 2.3 are determined without any consultation with child development professionals and without specific regard to parental concerns about the ... harms which may emanate from cumulative exposure to this type of material.

An examination of ASB determinations reveals that images and messages of a highly sexualised nature drawing on pornography have been considered acceptable. ... Such images may be acceptable to an audience comprising adults; they are unsuitable for an audience which includes children.⁵³

Food and beverages advertising

4.67 The AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code) contains three sections. The first section provides definitions, the second addresses advertising food and beverage products, and the third deals with advertising food and beverage products to children (14 years or younger).

4.68 'Advertising or Marketing Communications to Children' is defined in the Food and Beverage Code as advertising that:

... having regard to the theme, visuals and language used, are directed primarily to Children and are for ... any food or beverage product other than alcoholic beverages ... which is targeted toward and has principal appeal to Children.⁵⁴

4.69 Section 2 of the Food and Beverages Code addresses the general advertising of food and beverages:

- 2.1 Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

53 Ms Tania Penovic, Associate, Castan Centre, *Committee Hansard*, 4 April 2011, Melbourne, pp. 25–26.

54 AANA, 'AANA Food & Beverages Advertising & Marketing Communications Code' <http://www.aana.com.au/food_beverages_code.html> viewed 29 March 2011.

- 2.2 Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.
- 2.3 Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.
- 2.4 Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non misleading and non deceptive manner clearly understandable by an Average Consumer.
- 2.5 Advertising or Marketing Communications for Food or Beverage Products shall not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is none, nor otherwise use scientific terms to falsely ascribe validity to advertising claims.
- 2.6 Advertising or Marketing Communications for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.
- 2.7 Advertising or Marketing Communications for Food or Beverage Products appearing within segments of media devoted to general and sports news and/or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communications without clearly distinguishing between commercial promotion and editorial or other program content.
- 2.8 Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.
- 2.9 Advertising or Marketing Communications for Food and/or Beverage Products must comply with the AANA Code of Ethics and the AANA Code for Advertising and Marketing Communications to Children.

4.70 Section 3 of the Code addresses appropriate advertising of food and beverages to children:

- 3.1 Advertising or Marketing Communications to Children shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.
- 3.2 Advertising or Marketing Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.
- 3.3 Advertising or Marketing Communications to Children shall not state nor imply that possession or use of a particular Children's Food or Beverage Product will afford physical, social or psychological advantage over other Children, or that non possession of the Children's Food or Beverage Product would have the opposite effect.
- 3.4 Advertising or Marketing Communications to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.
- 3.5 Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.
- 3.6 Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered.⁵⁵

4.71 The Food and Beverage Code has been in operation since 2007, and is based on International Chamber of Commerce principles.⁵⁶ The Food and Beverage Code will be reviewed by Dr Terry Beed following the review of the Children's Code in the second half of 2011.⁵⁷

55 AANA, 'AANA Food & Beverages Advertising & Marketing Communications Code' <http://www.aana.com.au/food_beverages_code.html> viewed 29 March 2011.

56 AANA, *Submission 17*, p. 8.

57 AANA, *Submission 17a*, p. 3.

4.72 In addition, the Australian Food and Grocery Council (AFGC) manages two self-regulatory initiatives:

- Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI) for the fast-food industry;⁵⁸ and
- Responsible Children's Marketing Initiative, which does not apply to outdoor advertising.⁵⁹

4.73 There are seven signatories to the QSRI, which commenced in 2009 in response to community concerns about the 'level of advertising ... [of] foods high in energy, fat, sugar and salt'.⁶⁰ The principles of the initiative as they apply to outdoor advertising are:

- Advertising or Marketing Communications to Children for food and/or beverages must:
 - ⇒ represent healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals; and/or
 - ⇒ represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:
 - healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals; and
 - physical activity.
- Popular Personalities or Licensed Characters must not be used in Advertising or Marketing Communications to Children for food and/or beverage products, unless such Advertising or Marketing Communications represent healthier choices or healthy lifestyles.
- Participants must not engage in any product-related communications in Australian schools, except where specifically requested by, or agreed with, the school administration, or related to healthy lifestyle activities under the supervision of the school administration or appropriate adults.
- Participants must not advertise Premium offers in any Medium directed primarily to Children unless the reference to the Premium is

58 Australian Food and Grocery Council (AFGC), *Submission 30*, p. 4.

59 AFGC, 'The Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry', p. 1 <<http://www.afgc.org.au/industry-codes/advertising-kids.html>> viewed 20 April 2011.

60 AFGC, *Submission 30*, p. 5. The seven signatories are McDonald's, KFC, Pizza Hut, Hungry Jack's, Oporto, Red Rooster and Chicken Treat.

merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes.⁶¹

- 4.74 To represent 'healthier choices', QSRI meals must not comprise more than 0.4g of saturated fat per 100kJ, 1.8g of sugar per 100kJ, or 650mg of sodium.⁶² The George Institute of Global Health is nominated as an independent arbiter.⁶³
- 4.75 The participants of the QSRI undertook to conduct a review in 2010, but at the time of this report, the review has not taken place.⁶⁴
- 4.76 Before assessing an advertisement for compliance with the sections of the codes that address children, the Board first determines whether an advertisement is considered to be directed primarily to and has principal appeal to children (14 years old or younger for the Food and Beverage Code and under 14 years for the QSRI).
- 4.77 Despite these voluntary codes of advertising, high levels of concern remain about outdoor advertising for unhealthy foods. The National Preventative Health Taskforce noted that:

It is now accepted by international health agencies such as [the World Health Organization] that restrictions on food and beverage marketing directed to children should form part of a comprehensive and multifaceted strategy to address the growing problem of childhood obesity ...

There is also growing international consensus that food advertising influences children's food preferences, diet and health, and that this influence is harmful to children's health, as most advertising to children is for products high in salt, sugar and fat.⁶⁵

- 4.78 The Coalition on Food Advertising to Children (CFAC) supports the National Preventative Health Taskforce recommendation to 'reduce exposure of children and others to marketing, advertising, promotion and
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61 AANA, 'Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children', <<http://www.aana.com.au/documents/QSRAInitiativeforResponsibleAdvertisingandMarketingtoChildrenJune2009.pdf>> viewed 20 April 2011.

62 AANA, 'Appendix 1 - Nutrition Criteria for Assessing Children's Meals', <<http://www.aana.com.au/documents/NutritionCriteriaforAssessingChildrensMeals.pdf>> viewed 20 April 2011.

63 AFGC, *Submission 30*, p. 6.

64 AANA, 'Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children', p. [4] <<http://www.aana.com.au/documents/QSRAInitiativeforResponsibleAdvertisingandMarketingtoChildrenJune2009.pdf>> viewed 20 April 2011.

65 National Preventative Health Taskforce, 'National Preventative Health Strategy: The roadmap for action', 30 June 2009, p. 121.

sponsorship of energy-dense nutrient-poor foods and beverages'⁶⁶ but does not believe that the current self-regulatory codes go far enough in addressing this need.

- 4.79 The CFAC notes that the voluntary nature of the codes is a limitation, as are the codes' complexity and narrowness.⁶⁷ As it is up to the discretion of fast food companies to sign up to the QSRI:

It is not immediately apparent to consumers that not all food product and fast food companies are signatories to these industry developed codes, and difficult for consumers to determine which companies are signatories and which are not.⁶⁸

- 4.80 The AFGC notes that some companies are reluctant to become signatories to the QSRI because they claim that they do not advertise directly to children.⁶⁹ However, children still absorb messages that are not directed specifically to them, and children certainly consume products that are advertised to adults and families.

- 4.81 The CFAC attributes the low number of complaints about food advertising to the confusing system of multiple, ambiguous and ill-defined codes. To remedy this, Cancer Council NSW has implemented a project called Junkbusters that 'is helping parents cut through the confusion of how they might complain about an advertisement that they are unhappy with'.⁷⁰

- 4.82 The CFAC believes that definitions in the codes are:

... loose and open to wilful misinterpretation ... The definition of 'primarily directed towards children' ... seems to be particularly open to manipulation when advertisers can say that the intent of the advertisement is aimed at the main grocery buyer when the advertisement clearly has great appeal for children.⁷¹

- 4.83 The CFAC brought to the Committee's attention a number of outdoor advertisements that they felt contravened, or ought to contravene, the Food and Beverages Code, through the use of a premium in the form of a

66 Coalition on Food Advertising to Children (CFAC), *Submission 31*, p. 2.

67 CFAC, *Submission 31*; Ms Clare Hughes, Nutrition Program Manager, CFAC, *Committee Hansard*, Sydney, 25 March 2011.

68 CFAC, *Submission 31*, p. 3.

69 Ms Peta Craig, Manager, Nutrition Policy and Codes, AFGC, *Committee Hansard*, Canberra, 12 May 2011, p. 8.

70 Ms Hughes, CFAC, *Committee Hansard*, Sydney, 25 March 2011, p. 29; Junkbusters, <<http://junkbusters.com.au/>> viewed 9 April 2011.

71 CFAC, *Submission 31*, p. 3.

prize, an appeal to children to 'pester' adults to make a purchase, or sponsorship of community sports programs by a fast food chain.⁷²

4.84 The CFAC also criticises the Food and Beverages Code for not including sports sponsorship, which is 'particularly confusing for children as brand placement and sports links are a subtle form of product advertising'.⁷³

4.85 Most of the current research on the relationship between advertising and children's eating habits focuses on television advertising, but Australian researchers are beginning to investigate the role of outdoor advertising as well. Dr Kelly et al studied outdoor food advertising in the vicinity of primary schools, and noted that:

Outdoor advertising is an important food marketing tool that should be considered in future debates on regulation of food marketing to children.⁷⁴

4.86 Some complaints were received about how the Board determines community standards in relation to advertising food and beverages:

I guess we are also concerned that the view of the Advertising Standards Bureau on what is community sentiment is quite different to what we think parents' view of prevailing community sentiment would be.⁷⁵

4.87 The CFAC cites research showing that parents want 'restrictions to adjust the balance of unhealthy versus healthy food advertising' and 'to be responsible for what their children are eating but at the same time they do not want to be undermined'.⁷⁶

4.88 Moreover, CFAC points out that:

The current determinations by the ASB often refer to 'prevailing community standards' however the process to determine this is not declared or whether in fact there is a monitoring process for community standards for food advertising to children.⁷⁷

72 Ms Wendy Watson, Nutrition Project Officer, CFAC, and Ms Hughes, CFAC, *Committee Hansard*, Sydney, 25 March 2011, pp. 30-32.

73 CFAC, *Submission 31*, p. 3.

74 B Kelly et al, 'The commercial food landscape: Outdoor food advertising around primary schools in Australia', *Australian and New Zealand Journal of Public Health*, vol. 32, no. 6, 2008, p. 522.

75 Ms Hughes, CFAC, *Committee Hansard*, Sydney, 25 March 2011, p. 29.

76 Ms Hughes, CFAC, *Committee Hansard*, Sydney, 25 March 2011, pp. 25, 28.

77 CFAC, *Submission 31*, p. 4.

- 4.89 The ASB has not conducted research into prevailing community standards regarding the advertising of food and beverages.

Advertising to children

- 4.90 The AANA Code for Marketing and Advertising Communications to Children (Children's Code) has been in operation since 2003.⁷⁸ The Children's Code was reviewed in 2007 and revised in 2008 in response to the Senate Committee for the Environment, Communications and the Arts' report on the sexualisation of children in the media. This revision of the Children's Code incorporated 'a direct prohibition against the sexualisation of children and a ban on the use of sexual imagery in advertising targeted at children'.⁷⁹ The Children's Code will be reviewed later this year by Dr Terry Beed.⁸⁰
- 4.91 The AANA defines 'Children' as individuals 14 years or younger. In comparison, the age of consent in most Australian states is 16, the legal age of majority is generally 17, and in some states girls can obtain contraceptive prescriptions without parental consent at age 16.
- 4.92 The definition of 'Advertising or Marketing Communications to Children' is advertising that:
- ... 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.⁸¹
- 4.93 The Castan Centre points out that because the Children's Code is narrow, 'a sexualised advertisement featuring a 15-year-old would fall outside the purview of that code'.⁸²
- 4.94 The Children's Code regulations that apply to outdoor advertising are:
- 2.1 Advertising and Marketing Communications to Children must not contravene Prevailing Community Standards.
 - 2.2 Advertising and Marketing Communications to Children must:

78 AANA, *Submission 17*, p. 7.

79 AANA, *Submission 17*, p. 12.

80 AANA, *Submission 17b*.

81 AANA, 'AANA Code for Advertising & Marketing Communications to Children' <http://www.aana.com.au/childrens_code.html> viewed 12 April 2011.

82 Ms Penovic, Castan Centre, *Committee Hansard*, Melbourne, 4 April 2011, p. 25.

- ⇒ not mislead or deceive Children;
- ⇒ not be ambiguous; and
- ⇒ fairly represent, in a manner that is clearly understood by Children:
 - the advertised Product;
 - any features which are described or depicted or demonstrated in the Advertising or Marketing Communication;
 - the need for any accessory parts; and
 - that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non-commercial communication.
- 2.4 Advertising or Marketing Communications to Children:
 - ⇒ must not include sexual imagery in contravention of Prevailing Community Standards; and
 - ⇒ must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.
- 2.5 Advertising or Marketing Communications to Children:
 - ⇒ must not portray images or events which depict unsafe uses of a Product or unsafe situations which may encourage Children to engage in dangerous activities or create an unrealistic impression in the minds of Children or their parents or carers about safety; and
 - ⇒ must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.
- 2.6 Advertising or Marketing Communications to Children:
 - ⇒ must not portray images or events in a way that is unduly frightening or distressing to Children; and
 - ⇒ must not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability.
- 2.7 Advertising or Marketing Communications to Children:
 - ⇒ must not undermine the authority, responsibility or judgment of parents or carers;
 - ⇒ must not contain an appeal to Children to urge their parents or carers to buy a Product for them;
 - ⇒ must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and

- ⇒ must not state or imply that persons who buy the Product the subject of the Advertising or Marketing Communication are more generous than those who do not.
- 2.8 Prices, if mentioned in Advertising or Marketing Communications to Children, must be accurately presented in a way which can be clearly understood by Children and must not be minimised by words such as 'only' or 'just' and Advertising or Marketing Communications to Children must not imply that the Product being promoted is immediately within the reach of every family budget.
- 2.9 Any disclaimers, qualifiers or asterisked or footnoted information used in Advertising or Marketing Communications to Children must be conspicuously displayed and clearly explained to Children.
- 2.10 An Advertising or Marketing Communication to Children which includes a competition must:
 - ⇒ contain a summary of the basic rules for the competition;
 - ⇒ clearly include the closing date for entries; and
 - ⇒ make any statements about the chance of winning clear, fair and accurate.
- 2.11 Advertising or Marketing Communications to Children must not use popular personalities or celebrities (live or animated) to advertise or market Products or Premiums in a manner that obscures the distinction between commercial promotions and program or editorial content.
- 2.12 Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium:
 - ⇒ should not create a false or misleading impression in the minds of Children about the nature or content of the Product;
 - ⇒ should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;
 - ⇒ must make the terms of the offer clear as well as any conditions or limitations; and
 - ⇒ must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.
- 2.13 Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products.

- 2.14 If an Advertising or Marketing Communication indicates that personal information in relation to a Child will be collected, or if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain parental consent prior to engaging in any activity that will result in the disclosure of such personal information.
 - 2.15 Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits and must comply with the AANA Food and Beverages Advertising and Marketing Communications Code.
 - 2.16 Advertising or Marketing Communications to Children must comply with the AANA Code of Ethics.⁸³
- 4.95 The AANA Practice Guide to Managing Images of Children and Young People encourages advertisers to obtain personal or parental consent for an image to be taken and used, and to avoid sexually exploitative images of children and young people.⁸⁴ This practice guide refers to images in general and does not specify advertisements directed primarily to children.
- 4.96 In the same way that many people believe the 'relevant audience' definition in the Code of Ethics should reflect the inclusion of children when it comes to outdoor advertising, the main criticism of the Children's Code is that it is not applied to outdoor advertising unless the advertisement is specifically targeted at children, despite children's unmonitored exposure to such advertising.
- 4.97 Several submissions contend that at the very least children should be considered part of the audience when it comes to outdoor advertising.
- 4.98 The Castan Centre observes that 'outdoor advertising ... does not address itself to children but nevertheless commands their attention'⁸⁵ and that 'the predominant concern is that outdoor advertising material of a sexual

83 AANA, 'AANA Code for Advertising & Marketing Communications to Children' <http://www.aana.com.au/childrens_code.html> viewed 12 April 2011.

84 AANA, 'Practice Guide: Managing Images of Children and Young People' <http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople_FinalOct2009.pdf> viewed 20 May 2011.

85 Castan Centre, *Submission 40*, p. 5.

nature which addresses itself to the adult market may be inappropriate for children who are exposed to it'.⁸⁶

4.99 Ms Gabrielle Sullivan argues in her submission that:

... billboards are 24/7 static broadcast medium - meaning, everyone passing sees them regardless of whether its relevant or appropriate to them or not. Therefore ... similar classification regulations that apply to the highest common denominator for other broadcast media (e.g. daytime children's TV time) should at least apply.⁸⁷

4.100 A number of submissions observed that the stipulation that advertising should 'not undermine the authority, responsibility or judgment of parents or carers' did not seem to apply to outdoor advertising. Western Australian parliamentarians Hon. Nick Goiran and Mr Michael Sutherland point out that:

Whilst outdoor advertisements may not be directed specifically to children, because children are invariably exposed, this contradicts the intent of section 2.7 as it undermines the parent's and carer's ability to monitor children's exposure to certain materials.⁸⁸

4.101 Mr Paul Tyler notes that:

... when it comes to outdoor advertising, a parent or care giver is stripped of their right to control the exposure of children under their care to material they as a parent deem to be inappropriate.⁸⁹

4.102 The ACL argues that:

Given the fact that outdoor advertising is public, and that it can be reasonably assumed that a wide cross section of society, including children, will view such advertising, ACL maintains that [outdoor advertisers] breach their own codes of ethics every time a sexually explicit billboard is displayed. The display of sexual imagery, prominently located in public spaces with the intent of gaining brand or product exposure, clearly breaches prevailing community standards and undermines the authority of parents and carers to determine the suitability of viewing content for their children.⁹⁰

86 Castan Centre, *Submission 40*, p. 2.

87 Ms Gabrielle Sullivan, *Submission 12*, p. 2.

88 Hon. Nick Goiran MLC and Mr Michael Sutherland MLA, *Submission 19*, p. 2.

89 Mr Paul Tyler, *Submission 42*, p. 7.

90 ACL, *Submission 24*, p. 1.

- 4.103 Although the Children's Code was revised to prohibit the portrayal of children as sexual beings, the 2006 Australia Institute report, *Letting Children be Children*, notes that children can be indirectly sexualised when 'exposed to stereotypical and highly sexualised images of adults in advertising material long before they can be expected to understand or analyse these images in adult ways.'⁹¹
- 4.104 The Castan Centre recommends that:
- Revisions to the Code of Ethics pursuant to the current review may include a provision concerning the impact of advertising on children with reference to the paramount consideration of the best interests of the child. The application of such a provision may be informed by the use of current research and the involvement of parents, child health professionals and young people, where appropriate.⁹²
- 4.105 Many submissions clearly consider the exposure of children to sexualised images as being contrary to community standards. However, the 'prevailing community standards' that are referenced in the Children's Code do not apply unless the advertisement is specifically directed to, or the product has principal appeal to, children younger than 15 years of age.
- 4.106 Western Australian parliamentarians Hon. Nick Goiran and Mr Michael Sutherland argue that 'when considering advertisements which will be viewed by children, it is inadequate that the adverse effects of sexually explicit and offensive material on children are not considered'.⁹³
- 4.107 ASB's own research confirms the level of community concern about children's exposure to sex, sexuality and nudity, finding that 'parents were highly sensitive' to outdoor advertising that depicted sex, sexuality and nudity because of their 'lack of control over their child's exposure'.⁹⁴
- 4.108 The Castan Centre recommends that 'all outdoor advertising space is accessible to children and should be regulated with reference to the interests of children'⁹⁵.
- 4.109 The ASB has not conducted research into prevailing community standards regarding the advertising of food and beverages. Ms Jolly advised the

91 E Rush and A La Nauze, *Letting Children be Children: Stopping the sexualisation of children in Australia*, The Australia Institute, Discussion Paper No. 93, December 2006, p. 18.

92 Castan Centre, *Submission 40*, p. 19.

93 Hon. Nick Goiran MLC and Mr Michael Sutherland MLA, *Submission 19*, p. 1.

94 ASB, *Community Perceptions of Sex, Sexuality and Nudity in Advertising*, June 2010, pp. 19-20.

95 Castan Centre, *Submission 40*, p. 18.

Committee that the ASB does not currently have plans to conduct research into the impact of advertising on children or into community standards regarding this issue.⁹⁶

Alcohol advertising

- 4.110 Between 2005 and 2007, alcohol advertising expenditure in Australia increased from 44 per cent to 50 per cent of all beverage advertising expenditure. Over this time outdoor alcohol advertising expenditure increased from 21 per cent to 32 per cent of all alcohol advertising expenditure.⁹⁷
- 4.111 Alcohol advertising is quasi-regulated in Australia: alcohol advertising guidelines are created in consultation with the government, but the guidelines are voluntary and the alcohol industry funds the system.
- 4.112 The Alcohol Beverages Advertising (and Packaging) Code (ABAC) is administered by the ABAC Scheme and came into operation in 1998.⁹⁸ The ABAC Scheme is funded by the Brewers Association of Australia and New Zealand, the Distilled Spirits Industry Council of Australia and the Winemakers Federation of Australia.⁹⁹ The members of these three organisations are signatories to the ABAC Scheme.
- 4.113 Complaints regarding alcohol advertising are handled by the ASB, which forwards complaints to the ABAC Scheme Chief Adjudicator for assessment by the ABAC Scheme Adjudication Panel, and also considers them against the AANA Code of Ethics. The Adjudication Panel is independent of the alcohol industry, and includes at least one public health professional.¹⁰⁰
- 4.114 In 2003, the Ministerial Council on Drug Strategy (the Council) commissioned a report into the ABAC Scheme by the National Committee for the Review of Alcohol Advertising. The report did not recommend that

96 Ms Jolly, ASB, *Committee Hansard*, Melbourne, 4 April 2011, p. 5.

97 Monitoring of Alcohol Advertising Committee, *Alcohol Beverage Advertising in Mainstream Australian Media 2005 to 2007: Expenditure and exposure*, pp. 7, 10.

98 The ABAC Scheme Ltd, 'Frequently Asked Questions' <[http://www.abac.org.au/uploads/File/ABAC%20FAQ%20-%20November%202009\(1\).pdf](http://www.abac.org.au/uploads/File/ABAC%20FAQ%20-%20November%202009(1).pdf)> viewed 19 April 2011.

99 The ABAC Scheme Ltd, 'Frequently Asked Questions' <<http://www.abac.org.au/uploads/File/ABAC%20FAQ%20-%20November%202009.pdf>> viewed 19 April 2011.

100 Distilled Spirits Industry Council of Australia and Winemakers' Federation of Australia and Brewers Association of Australia and New Zealand (DSICA, WFA, BAANZ), *Submission 49*, p. 4.

alcohol advertising be government-regulated, but neither did it recommend that the ABAC Scheme continue without enhancements.¹⁰¹ The recommended changes were incorporated into the ABAC Scheme by the end of 2005.¹⁰²

4.115 The report expressed concern that not all industry members are signatories to ABAC:

While those not captured [0.01 to 0.05 per cent of the industry] are very small players in the market, there is a view among the larger industry members that it is these smaller members who generally contravene the ABAC.¹⁰³

4.116 In 2006, the Council established a Monitoring of Alcohol Advertising Committee to monitor the regulation of alcohol advertising.¹⁰⁴ In 2009, the Council announced that:

...ABAC, which is meant to ensure that alcohol advertising is responsible and doesn't encourage underage drinking, had significant shortcomings and should be reformed as a mandatory co-regulatory scheme.¹⁰⁵

4.117 The Council made a number of recommendations, including:

- Mandatory pre-vetting of all alcohol advertising;
- Expanding the ABAC management committee to have a more balanced representation between industry, government and public health;
- Expanding the adjudication panel to include a representative specialising in the impact of marketing on public health;
- Expanding the coverage of the scheme to include emerging media, point-of-sale and naming and packaging; and
- Meaningful and effective sanctions for breaches of the Code.¹⁰⁶

4.118 At its final meeting, the Council expressed 'continuing concerns about the exposure of children to alcohol advertising' and asked the Australian National Preventative Health Agency to monitor this issue.¹⁰⁷

101 National Committee for the Review of Alcohol Advertising, *Report to the Ministerial Council of Drug Strategy. Review of the self regulatory system for alcohol advertising*, 2003.

102 DSICA, WFA, BAANZ, *Submission 49*, p. 4.

103 National Committee for the Review of Alcohol Advertising, *Report to the Ministerial Council of Drug Strategy. Review of the self regulatory system for alcohol advertising*, 2003, p. 11.

104 Ministerial Council on Drug Strategy, *Communiqué* 15 May 2006.

105 Ministerial Council on Drug Strategy, *Communiqué* 24 April 2009.

106 Ministerial Council on Drug Strategy, *Communiqué* 24 April 2009.

107 Ministerial Council on Drug Strategy, *Communiqué* 25 February 2011.

- 4.119 Alcohol industry members have assured this Committee that the ABAC Scheme made changes that addressed the above issues.¹⁰⁸
- 4.120 Unlike other industry sectors, the ABAC Scheme provides a voluntary user-pays pre-vetting scheme to its members that has been in operation since 1992.
- 4.121 Pre-vetting is a commendable measure for minimising the production of irresponsible alcohol advertising. However, not all alcohol advertisers are ABAC members. In a 2010 case, the ABAC Adjudication Panel upheld a complaint against a non-ABAC signatory but acknowledged that ‘this means that the outdoor advertising was not subject to pre-vetting prior to its showing. Further, this decision by the Panel does not have any binding force on the advertiser.’¹⁰⁹
- 4.122 The Outdoor Media Association (OMA) established placement Alcohol Advertising Guidelines for its members in 2009. These guidelines prohibit its members from accepting alcohol advertising that has not been pre-vetted by an Alcohol Advertising Pre-vetting Service.¹¹⁰ However, the Cancer Council Western Australia and the McCusker Centre for Action on Alcohol and Youth (CCMCAAY) note that these OMA guidelines do not carry sanctions and nor are they monitored for compliance.¹¹¹
- 4.123 The alcohol industry explains that pre-vetters assess potential alcohol advertisements ‘against agreed community standards’.¹¹² However, it is not clear how these standards are agreed. The Alcohol Policy Coalition (APC) suggests that:
- Community attitude surveys ... consistently show strong support for the restriction of alcohol advertising from times and in places where it is likely to reach a significant number of children and young people.¹¹³
- 4.124 A 2005 study into consumer opinion of alcohol advertising found that for those who expressed concerns, the exposure of young people to alcohol

108 Mr Stephen Swift, Executive Director, BAANZ, *Committee Hansard*, Canberra, 12 May 2011, p. 5.

109 ABAC Scheme, Determination no. 76/10, p. 4 <<http://www.abac.org.au/publications/adjudication-decisions>> viewed 19 April 2011.

110 OMA, *Submission 32*, p. [82].

111 CCMCAAY, *Submission 36*, pp. 3-4.

112 DSICA, WFA, BAANZ, *Submission 49*, p. 1.

113 Alcohol Policy Coalition (APC), *Submission 37*, p. 12.

advertising was rated second behind content.¹¹⁴

- 4.125 Some submissions express concerns that the self-regulation of advertising is ineffective and not in the best interests of the public's health when it comes to alcohol, and that outdoor advertising in particular should be regulated.¹¹⁵ These submissions argue that the volume and placement of outdoor alcohol advertising need to be regulated in addition to their content.
- 4.126 The OMA Alcohol Advertising Guidelines restrict fixed advertising of alcohol within a 150m sightline of schools, except where a school is in the vicinity of a licensed outlet.¹¹⁶
- 4.127 However, the APC criticises the loopholes in these guidelines that allow alcohol advertising on transport that passes schools and allow fixed alcohol advertising in the case that a school is near a licensed venue.¹¹⁷
- 4.128 Findings from a study of outdoor alcohol advertising near schools in Chicago 'clearly suggest that exposure is associated with increased risk of future drinking and greater susceptibility to drink' and 'could suggest that the amount, not just content, of alcohol advertising is an important influence on alcohol intentions'.¹¹⁸ Another US study showed that increased exposure to alcohol advertising resulted in increased drinking among youth.¹¹⁹ Youth who were exposed to higher than the average number of alcohol advertisements consumed more than the average amount of alcohol.
- 4.129 The CCMCAAY note that young people aged 18-24 are more likely to use, and therefore be exposed to, advertisements placed in public transport areas.¹²⁰
- 4.130 The APC argues that:

... the most effective means for reducing the exposure of children

114 Department of Health and Ageing, 'Consumer Perceptions of Alcohol Advertising and the Revised Alcohol Beverages Advertising Code', October 2005, p. 18, <<http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/consum-percept>> viewed 28 April 2011.

115 APC, *Submission 37*; CCMCAAY, *Submission 36*. The Dalgarno Institute, *Submission 20*, goes further and recommends that alcohol advertising be banned altogether.

116 OMA, *Submission 32*, p. [82].

117 APC, *Submission 37*, p. 8.

118 K Pasch et al, 'Outdoor Alcohol Advertising near Schools: What does it advertise and how is it related to intentions and use of alcohol among young adolescents?', *Journal of Studies on Alcohol and Drugs*, July 2007, p. 594.

119 Dalgarno Institute, *Submission 20*, p. 4.

120 CCMCAAY, *Submission 36*, p. 2.

and young people to outdoor advertising is to restrict the medium generally rather than merely focussing on advertising content.¹²¹

Motor vehicle advertising

- 4.131 The AANA and the Federal Chamber of Automotive Industries (FCAI) jointly developed the Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code), which has been in operation in its current form since 2004.¹²²
- 4.132 The explanatory notes to the FCAI Code indicate that a review would be conducted in 2005 and 2006.¹²³ The Committee understands that although the type and results have not been made publicly available, a review has been conducted, and that review concluded that no changes were required to the FCAI Code.
- 4.133 The Committee received evidence from the Pedestrian Council of Australia about the FCAI Code at a public hearing in Sydney. Mr Harold Scruby, Chair of the Pedestrian Council of Australia, advised the Committee that ‘the code in itself is not bad, it is the interpretation’, but noted that if the FCAI ‘were continually tightening up its code, no-one would be screaming for government intervention’.¹²⁴
- 4.134 There was some criticism of the ‘fantasy clause’ in the FCAI Code, which provides scope to display driving practices if considered to take place in a fantasy or humorous context.¹²⁵ The FCAI Code:
- ... acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code.¹²⁶

121 APC, *Submission 37*, p. 9.

122 AANA, *Submission 17*, p. 8.

123 AANA, ‘Voluntary Code of Practice for Motor Vehicle Advertising’ <<http://www.aana.com.au/pdfs/AutoCode.pdf>> p. 3, viewed 19 April 2011.

124 Mr Harold Scruby, Chair and Chief Executive Officer, Pedestrian Council of Australia (PCA), *Committee Hansard*, Sydney, 25 March 2011, p. 43.

125 Mr Scruby, PCA, *Committee Hansard*, Sydney, 25 March 2011, p. 42.

126 AANA, ‘Voluntary Code of Practice for Motor Vehicle Advertising’ <<http://www.aana.com.au/pdfs/AutoCode.pdf>> p. 2, viewed 19 April 2011.

- 4.135 The draft National Road Safety Strategy 2011-2020 recommends that the Government work 'with the vehicle industry to strengthen regulation of vehicle advertising to avoid display and promotion of unsafe and illegal behaviours.'¹²⁷

Committee concluding comments

- 4.136 In relation to these codes, the Committee makes the following comments and recommendations.

Assessing community standards

- 4.137 The effectiveness of the self-regulatory system based on voluntary codes of advertising standards will best be measured by the extent to which the Board is able to accurately reflect 'prevailing community standards'.
- 4.138 The Committee notes that the Code of Ethics, the Food and Beverages Code, the Children's Code and ABAC all refer to prevailing community standards, yet there is no regular research or review process to determine these standards. The Committee commends the ASB for recently commissioning research into community perceptions of sex, sexuality and nudity in advertising and other topics. Such research should be conducted on a regular basis.
- 4.139 Research needs to be undertaken to determine community standards in relation to health and safety, advertising of food and beverages, advertising to children, and advertising of alcohol. The ASB should include these topics in its research agenda to ensure that community standards, particularly in relation to out-of-home advertising, are accurately reflected by the Board.
- 4.140 The ABAC Scheme should similarly conduct research for the benefit of the ABAC adjudicators.
- 4.141 The Committee considers that the development of a specific code for outdoor advertising, as recommended earlier, and the application of this code to Board determinations will assist in addressing some community concerns about the type of advertising occupying public spaces. However, it is paramount that the ASB conduct research on a regular basis to

127 Australian Transport Council, *National Road Safety Strategy 2011-2020: Draft for consultation*, 1 December 2010, p. 40.

determine community standards, and that this research distinguish the standards regarding outdoor advertising.

Recommendation 9— Advertising Standards Bureau

4.142 **The Committee recommends that the Advertising Standards Bureau, in conjunction with relevant industry bodies, conduct research every two years into:**

- **community perceptions of the use of sex, sexuality and nudity in advertising in general and specifically in outdoor advertising;**
- **prevailing community standards on health and safety in advertising in general and specifically in outdoor advertising;**
- **prevailing community standards on the advertising of food and beverages;**
- **prevailing community standards on advertising to children; and**
- **prevailing community standards on the advertising of alcohol.**

These findings should be reflected accordingly in determinations by the Advertising Standards Board.

Recommendation 10— Alcohol Beverages Advertising Code

4.143 **The Committee recommends that the Alcohol Beverages Advertising Code Scheme conduct research every two years into prevailing community standards on the advertising of alcohol.**

This research should include particular reference to outdoor advertising and the findings should be reflected accordingly in Alcohol Beverages Advertising Code panel determinations.

Children

4.144 **The Committee believes that the advertising industry has a good grasp of how to advertise to children appropriately. However a consistent concern through the inquiry was that children are exposed to inappropriate outdoor advertising that is not aimed at them but nonetheless visible to**

them and capable of having a negative impact on their physical or psychological well-being.

- 4.145 The Committee considers that a specific code for practice for outdoor advertising, as recommended earlier, is essential in order to recognise children as the unintended audience of all outdoor advertising and the need to moderate advertisements accordingly.
- 4.146 In regards to advertising that is directed to children, the Committee commends the AANA for amending its Children's Code to address the issue of sexualisation of children in advertising media. Whilst noting that the AANA Practice Guide to Managing Images of Children and Young People does not specify the audience for such images, the Committee notes that restrictions to sexualised images of children as contained in the Children's Code are only explicitly applied to advertising directed to children.
- 4.147 The Committee is of the opinion that all advertising, regardless of the audience, should avoid portraying children in any sexual manner. The AANA should give consideration to including a similar clause to Section 2.4 of the Children's Code in the Code of Ethics for all advertisements, including those primarily directed at adults, and in particular outdoor advertisements.

Alcohol

- 4.148 The Committee notes the level of concern over a number of years about the limited effectiveness of alcohol advertising regulation. The Committee is very conscious of the physical, emotional and financial cost of alcohol-related illness, accidents and violence to the Australian public. Australian governments invest large funds in public health awareness campaigns but lack the same level of advertising resources as the alcohol industry.
- 4.149 The Committee notes that the ABAC Scheme has cooperated with previous recommendations made to it, and commends its pre-vetting system. The Committee encourages the ABAC Scheme to expand its membership to the entire alcohol industry.
- 4.150 The Committee recognises that the OMA's Alcohol Advertising Guidelines are a step in the right direction. However, when the loopholes are taken into account, the initiative seems to be little more than a token gesture. A more significant and responsible action would be to limit alcohol advertising in the outdoor medium, given its inevitable exposure to children.

Recommendation 11—Australian governments

- 4.151 **The Committee recommends that the Monitoring of Alcohol Advertising Committee continue to monitor alcohol advertising and report annually to the Intergovernmental Committee on Drugs.**

The Committee further recommends that the Intergovernmental Committee on Drugs oversee the operation of the Alcohol Beverages Advertising Code Scheme and provide reports every two years of its assessed effectiveness to Health ministers.

Motor vehicles

- 4.152 As with alcohol advertising, the Committee recognises the physical, emotional and financial cost of motor vehicle accidents related to speed and dangerous driving practices, and the investments made by Australian government in road safety campaigns.
- 4.153 As such, the motor vehicle industry needs to advertise their products in a manner that does not counteract the efforts of road safety education. The Committee suggests that the motor vehicle industry continue to consult with road safety authorities to ensure that the voluntary advertising code maintains a high standard.

Recommendation 12— Federal Chamber of Automotive Industries

- 4.154 **The Committee recommends that the Federal Chamber of Automotive Industries conduct transparent reviews of the Voluntary Code of Practice for Motor Vehicle Advertising every two years in consultation with road safety authorities and government representatives, and publish the findings of the reviews on the Federal Chamber of Automotive Industries website.**

Sports sponsorship

- 4.155 The Committee considers sponsorship that involves the obvious display of products or product names to be a form of advertising and is disappointed that this is not included in any of the voluntary codes relating to the advertising of food and beverages. Sponsorship implies that the event condones the product when in fact it may not have any relevance to the event.

- 4.156 The Committee notes that the food and beverages industry has taken commendable steps in implementing initiatives that require advertisers to consider the messages and audience of advertisements for food products and meals that are high in fat, sugar or salt. The Committee encourages those initiatives to expand their membership so that they may have some credibility as 'industry' regulations.
- 4.157 Advertising regulations and guidelines should ideally address all forms of advertising to be effective and consistent. While noting that a review of the Responsible Children's Marketing Initiative (RCMI) is scheduled for 2012,¹²⁸ the Committee recommends that more immediate action be taken by the AFGC to ensure that outdoor advertising is included in the RCMI definition of 'media'.

Recommendation 13— Australian Association of National Advertisers

- 4.158 **The Committee recommends that the Australian Association of National Advertisers amend the Australian Association of National Advertisers Food and Beverage Code to include sports sponsorship as a form of advertising and therefore subject to advertising codes of practice. This should be implemented by 30 October 2011.**

Recommendation 14— Australian Food and Grocery Council

- 4.159 **The Committee recommends that the Australian Food and Grocery Council act immediately to include outdoor advertising in the definition of 'media' as it applies to the Responsible Children's Marketing Initiative.**

The Committee recommends that this should be in place by 30 October 2011, notwithstanding that a review of the Responsible Children's Marketing Initiative is scheduled for 2012.

The Committee further recommends that the Australian Food and Grocery Council amend both the Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children and the Responsible Children's Marketing Initiative to include sports sponsorship as a form of advertising. This should be implemented by 30 October 2011.

128 AFGC, *Submission 30*, p. 7.

Complaints process

- 5.1 An accessible complaints and investigation process is key to a robust self-regulatory system. A great deal of the evidence received by the Committee demonstrated concerns about the Advertising Standards Bureau (ASB) complaints process.
- 5.2 This chapter discusses the complaints process, including public awareness of the process, timeliness of ASB determinations, the lack of sanctions, and the Independent Review process.
- 5.3 The current advertising self-regulatory system is complaints-driven, meaning that the ASB only investigates advertisements after a complaint has been made. The ASB (or the Australian Association of National Advertisers) does not pre-vet advertisements prior to their production or monitor the standard of existing advertisements.
- 5.4 The ASB accepts complaints in writing via their online form, mail or facsimile. Anonymous complaints are recorded but not accepted as formal complaints.¹ Complaints about alcohol advertising are forwarded by the ASB to the Alcohol Beverages Advertising Code Scheme for assessment against that code by an adjudication panel.
- 5.5 The ASB secretariat forwards legitimate and eligible complaints to the Advertising Standards Board (the Board). Only one complaint is required to launch an investigation into an advertisement. Complaints are assessed for determination by the Board, which meets twice a month. In instances where there is 'significant community concern' or a likely breach, the

1 Advertising Standards Bureau (ASB), 'Complaint Process Steps' <<http://adstandards.com.au/process/theprocesssteps/initiatingacomplaint>> viewed 28 April 2011.

Board can convene by teleconference and reach a determination in 24–48 hours.²

- 5.6 The number of complaints for a particular advertisement is not factored into the Board's decision. All legitimate complaints are investigated by the Board, even when an advertiser independently withdraws an advertisement that has been subject to complaints.
- 5.7 The Board determines, by simple majority, whether a complaint breaches any of the advertising codes, and is upheld or dismissed on that basis. The Chair, a position that rotates between Board members, has a casting vote in the event of a tied vote.
- 5.8 During the determination of a complaint, the complainants and the advertiser are informed of the process by the ASB, and when a determination is reached, the case report is published on the ASB's website.³

Receipt of complaints

- 5.9 The robustness of any complaints process must in part be determined by public awareness of the process, accessibility to the complaints process and trust in its independent operation. The ASB conducted a survey in 2006 to determine community awareness of where to direct complaints about advertising and found that only 10 per cent of the respondents could identify the Board or the ASB.
- 5.10 This finding is corroborated by a University of Wollongong study conducted soon after, which found that only 12.6 per cent of respondents knew of the ASB.⁴ The authors of the study note that 'community awareness of the complaints body ... [is] a necessary part of the self regulation system for advertising and promotion of this should be ongoing and widespread.'⁵

2 ASB, *Submission 27*, p. 8.

3 ASB, *Submission 27*, p. [7].

4 K Van Putten and SC Jones, 'Amplified Voices, but they are speaking to the Wrong People: Why the complaint system for unacceptable advertising in Australia is not working', 2008, p. 3, ANZMAC <http://www.anzmac2008.org/_Proceedings/PDF/S01/van%20Putten%20&%20Jones_S2%20S1%20P4.pdf> viewed 10 March 2011.

5 K Van Putten and SC Jones, 'Amplified Voices', 2008, p. 3.

- 5.11 The low rate of community awareness prompted the ASB to run an awareness campaign in 2008 in television, radio and print media.⁶ A subsequent survey in 2010 found that 63 per cent of respondents were aware of the ASB.⁷
- 5.12 Some submitters, such as Mr Richard Andrew, advise that ‘a public awareness raising campaign needs to be run in regard to the complaints process’.⁸
- 5.13 The ASB notified the Committee that its awareness campaign would be extended to the outdoor medium in the later part of 2011.⁹
- 5.14 The Department of Health and Ageing conducted a survey of consumer awareness of the Alcohol Beverages Advertising (and Packaging) Code (ABAC) Scheme in 2005 and found that:
- 28 per cent of respondents were aware that restrictions on alcohol advertising existed (up from 20 per cent in 1994);
 - 14 per cent had heard of ABAC, but more than half of these respondents did not know what ABAC covered; and
 - only 15 per cent knew to direct complaints about alcohol advertising to the ASB or the ABAC Scheme.¹⁰
- 5.15 There are many alternative avenues that complaints about outdoor advertising may be directed to: the advertiser itself, the third-party outdoor media company that is displaying the advertisement, the local council, the local newspaper, and local and federal members of parliament.
- 5.16 Therefore, in light of the low level of public awareness of the ASB and the many alternative avenues for complaints, the number of complaints that the ASB receives may not represent the true number of complaints actually lodged.
- 5.17 The ASB itself does not appear to have investigated how many complaints may be directed elsewhere. Although the ASB advises that relevant

6 ASB, *Submission 27*, p. 13.

7 ASB, *Community Perceptions of Sex, Sexuality and Nudity in Advertising*, June 2010, p. 46.

8 Mr Richard Andrew, *Submission 5*, p. 2.

9 ASB, *Submission 27a*, p. 2.

10 Department of Health and Ageing, ‘Consumer Perceptions of Alcohol Advertising and the Revised Alcohol Beverages Advertising Code’, October 2005, pp. 14–16, <<http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/consum-percept>> viewed 28 April 2011. Complaints against the ABAC should be directed to the ASB.

industry bodies direct consumers to the ASB from their websites and forward on complaints to the ASB, this process is informal.

- 5.18 One submission claims that a council member in Victoria received more than 1 000 complaints about a particular outdoor advertisement.¹¹ These complaints do not show up in the ASB statistics, indicating that those complaints were not referred on to the ASB for consideration.
- 5.19 The Committee notes that it is not only awareness of the complaints process that is essential to the proper functioning of the self-regulatory system. Members of the public must have the time, incentive and means to translate a potential objection to an outdoor advertisement into a written complaint. Mrs Celeste Sell told the Committee that 'a majority of people are complaining, but not officially. Why is that? Who has the time?'¹²
- 5.20 One submission comments that:
- It must be kept in mind that one formal complaint represents many complaints which have not been formalised. Many people in today's society are very time-poor and will often complain to their work colleagues, friends or neighbours but not take the time to make a formal complaint.¹³
- 5.21 The Australian Council on Children and the Media (ACCM) advises that:
- It would be deceptive to use [complaint rates] as a measure of community concern. It will not reflect, for example, widespread but relatively low-level concern. It must also be noted that consumers can become inured to certain kinds of advertising if these are ubiquitous, and also be afraid of appearing to be a 'wowsers'. They might not know where to complain, or may simply think it won't do any good to complain.¹⁴
- 5.22 Mrs Marion Smith told the Committee, 'I have not tried for a long time to make any complaint. It was really very pointless.'¹⁵ Collective Shout agreed with Mrs Smith, saying that:

It is pointless to make a complaint. When they make a complaint about an ad which, in their judgement, is inappropriate for viewing by children because it objectifies women and is sexist,

11 Kids Free 2B Kids (KF2BK), *Submission 44*, p. 13.

12 Mrs Celeste Sell, *Committee Hansard*, Sydney, 25 March 2011, p. 59.

13 Mr Ian Moller, *Submission 7*, p. 1.

14 Australian Council on Children and the Media, *Submission 28*, p. 4.

15 Mrs Marion Smith AM, *Committee Hansard*, Sydney, 25 March 2011, p. 56.

they get knocked back. So why would they bother complaining again?¹⁶

- 5.23 Market research conducted by the Victorian Portrayal of Women Advisory Committee:

... identified the psychology of complaints as a significant issue. In particular the low rate of conversion from seeing something inappropriate to wanting to complain, and then from wanting to complain, to actually making a complaint. Of the female respondents who had seen something inappropriate in outdoor advertising (37%), almost two in every three (62%) had thought about complaining, but only 4% of those who thought about complaining did so.¹⁷

- 5.24 The Coalition on Food Advertising to Children suggests that 'the relatively low rate of successful complaints and the reasoning given for the dismissals act as a deterrent for members of the public to complain' about food and beverage advertising.¹⁸

- 5.25 The Alcohol Policy Coalition raised an additional concern about the added media attention that is given to controversial complaints or determinations which may then increase the exposure of a potentially inappropriate advertisement:

From a public health perspective ... we are often at the crossroads of whether we complain about an ad and that then gives it more notice, or we sit back and allow the ad to run its course without making that sort of song and dance about it.¹⁹

Committee comment

- 5.26 The Committee is concerned that anonymous and telephone complaints are not investigated as formal complaints by the ASB. In contrast, the Australian Competition and Consumer Commission (ACCC) accepts complaints by telephone, even anonymous calls.²⁰ While there is an increased chance that anonymous complaints are vexatious, they should

16 Ms Melinda Liszewski, Representative, Collective Shout, *Committee Hansard*, Sydney, 25 March 2011, p. 61.

17 Victorian Government, *Portrayal of Women in Outdoor Advertising*, February 2002, p. 13.

18 Coalition on Food Advertising to Children, *Submission 31*, p. 4.

19 Ms Sondra Davoren, Legal Policy Adviser, Alcohol Policy Coalition, *Committee Hansard*, Melbourne, 4 April 2011, p. 22.

20 Mr Scott Gregson, General Manager, Enforcement and Compliance, Australian Competition and Consumer Commission, *Committee Hansard*, Canberra, 3 March 2011, p. 6.

not automatically be precluded from an initial investigation. The Committee does not consider that a complaints phone line, to be an onerous one for the ASB to implement.

- 5.27 In addition, the Committee appreciates that the number of complaints about an advertisement cannot be used solely to determine its acceptability. However, when an advertisement does elicit a disproportionately large number of complaints, the Board should give due consideration as to whether the volume of complaints are from a single lobby group and thus representing only one sector of society, or whether they are a true indicator of widespread community concern.

Recommendation 15— Advertising Standards Bureau

- 5.28 **The Committee recommends that the Advertising Standards Bureau amend its complaint process to also accept complaints about advertising by telephone and email and accept and investigate anonymous complaints. These changes should be implemented by 30 October 2011.**
- 5.29 The Committee heard anecdotally that members of the community are not aware of the complaints process should they have objections to outdoor advertising. Moreover, it was evident from some of the submissions that it is not clear to the general public that the advertising standards body is not a government body.
- 5.30 The number of complaints received and considered is important in validating the low rates of upheld decisions that the industry relies on to demonstrate the efficacy of the self-regulation system. However, questions about the accessibility and reach of the complaints system raise doubts as to whether the small number of advertisements found to be breaching advertising codes does in fact represent community satisfaction with advertising standards.
- 5.31 The Committee commends the ASB for running an awareness campaign in response to poor survey results of community awareness of the complaints process, and believes that it is timely to extend this campaign to the outdoor media. The Committee encourages the ASB to run its awareness campaign on a continuing cycle across all forms of media.
- 5.32 The Committee also considers it vital that the ASB is more proactive in ensuring that all advertising complaints are brought to their attention by liaising with other bodies that may have complaints directed to them, such

as advertisers, outdoor media display companies, and local, state or territory, and federal governments.

- 5.33 In particular, the Committee recognises that local governments and councils are often the recipient of complaints about advertisements in public spaces. While not determining the content of these advertisements, in many instances local governments are responsible for the approvals for a structure to be erected or displayed.
- 5.34 The Committee suggests that the ASB undertake to present seminars on an annual basis to the Australian Local Government Association about the advertising complaints system to ensure effective referral of local advertising complaints to the Advertising Standards Bureau.
- 5.35 The Committee is aware that the ASB does undertake some liaison and education roles with other agencies. However the Committee considers that the ASB should undertake to provide to local governments and parliamentarians with more information on appropriate advertising guidelines and complaints procedures, especially in regard to outdoor advertising.

Recommendation 16— Advertising Standards Bureau

- 5.36 **The Committee recommends that the Advertising Standards Bureau establish regular nation-wide information and awareness campaigns about the advertising complaints system across all forms of media, including outdoor, television and print.**

In particular, information on the outdoor advertising code, once it is developed, and the complaints process should be provided to:

- **all federal and state or territory elected representatives; and**
- **the Australian Local Government Association for distribution to local governments.**

Recommendation 17— Advertising bodies

5.37 **The Committee recommends that the Australian Association of National Advertisers require its members to forward any complaints from the public about their advertising to the Advertising Standards Bureau.**

The Committee also recommends that the Outdoor Media Association require its members to forward any complaints from the public about their advertising displays to the Advertising Standards Bureau.

Timeliness of determinations

5.38 Timeliness in reaching determinations about complaints is another component that is integral to the effectiveness of a complaints process. Given that outdoor advertising occupies public spaces and continues to be viewed by a large and unrestricted captive audience, this issue is particularly important with regard to outdoor advertising.

5.39 The Board meets twice a month to make determinations on complaints. Time periods for determining complaints vary, with the majority of determinations completed within 45 calendar days and only five per cent of cases taking between 60 and 90 days.²¹

5.40 Within 10 business days of reaching a determination, the ASB sends a draft case report to the advertiser, advising of their decision.²² Advertisers who have had complaints upheld against their advertisements are given an additional five working days to respond to the determination by modifying or removing the advertisement.²³ The complaint, the advertiser's response, the Board's determination, and, where applicable, the advertiser's response to an upheld complaint, are published together as a case report on the Bureau website.

5.41 The ASB claims that 'in the vast majority of cases where Code breaches are found, advertisers quickly ensure that their advertisement is removed or modified'.²⁴

21 ASB, *Submission 27*, p. [7].

22 ASB, 'Complaint Process Steps' <<http://adstandards.com.au/process/theprocesssteps/initiatingacomplaint>> viewed 28 April 2011.

23 ASB, 'Complaint Process Steps' <<http://adstandards.com.au/process/theprocesssteps/initiatingacomplaint>> viewed 28 April 2011.

24 ASB, *Submission 27*, p. [10].

5.42 Several submissions criticised the length of time taken to resolve complaints about an advertising medium that generally relies on short-term campaigns to reach a wide audience. The Pedestrian Council of Australia questions:

But why, when it comes to the ASB, are there six weeks ... when they all know that, for most motor vehicles, 90 per cent of the campaigns are for a maximum of four weeks, sometimes for a week, and then the ad is over? By the time the complaint is upheld, it is pointless, so that is a farce.²⁵

Most outdoor advertisements have very short cycles and by the time the advertisement has had the complaint lodged and acted upon, the view cycle may be over anyway, or the advertisement may have had little time left to run by the time it has been axed. Therefore advertisers could resort to short runs thereby effectively avoiding being axed.²⁶

5.43 Mrs Kristen Butchatsky states in her submission that 'once a complaint is lodged, the length of time it takes to have an offending billboard removed is so long it practically negates the point of complaining in the first place'.²⁷

5.44 Collective Shout cites a specific case where an advertiser did not agree to remove an offending advertisement until the end of the season, which was likely the original end date for that campaign, and states that:

One of our big problems is that often [advertisers] will withdraw but, by the time the complaints process is finalised, they have finished their campaigns anyway. It does not hurt them to withdraw, because they were going to finish up anyway.²⁸

5.45 The Castan Centre for Human Rights Law suggests that even 'when complaints are upheld, advertisers are still afforded sufficient time to get their message to a broad general audience'.²⁹

25 Mr Harold Scruby, Chair and Chief Executive Officer, Pedestrian Council of Australia (PCA), *Committee Hansard*, Sydney, 25 March 2011, p. 43.

26 Mr Richard Andrew, *Submission 5*, p. 2.

27 Mrs Kristen Butchatsky, *Submission 21*, p. 2.

28 Ms Melinda Tankard Reist, Founder, Collective Shout, *Committee Hansard*, Melbourne, 4 April 2011, p. 43.

29 Ms Tania Penovic, Associate, Castan Centre for Human Rights Law, *Committee Hansard*, Melbourne, 4 April 2011, p. 26.

- 5.46 The Communications Council defends the time it takes to remove outdoor advertisements, citing 'logistical issues associated with removing billboard advertisements, which in many cases requires the blocking of roads for example'.³⁰
- 5.47 The Outdoor Media Association (OMA) also advises that 'it can be a complex logistical operation to remove an advertisement at short notice'.³¹
- 5.48 However, Adshel's internal approval process notes that the receipt of complaints will result in an advertising campaign being 'removed from the offending area(s) or completely within 24 hours'.³²
- 5.49 FamilyVoice Australia raises the logistical issues of removing outdoor advertising and how this may undermine any determination:
- 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.³³
- 5.50 Mrs Claire Boyd queries in her submission why outdoor advertisements are not removed during the complaints process: 'Surely this is putting the advertiser first above the community. They are still able to advertise in an inappropriate way until the complaint is processed thereby achieving their goal.'³⁴

Committee comment

- 5.51 The Committee understands that outdoor advertisements cannot be removed before a decision has been made about its acceptability. Equally the Committee agrees that having a complaint upheld against an advertisement some weeks after its installation does little to prevent its intended purpose – broad exposure – from being achieved.
- 5.52 Outdoor advertising, in this regard again differs from other forms of media, such as print and television, where advertisements can be

30 Communications Council, *Submission 34*, p. 2.

31 Outdoor Media Association (OMA), *Submission 32*, p. 18.

32 OMA, *Submission 32*, p. [111].

33 FamilyVoice Australia, *Submission 1*, p. 4.

34 Mrs Claire Boyd, *Submission 38*, p. 1.

withdrawn immediately from air or the next print run once found to breach advertising standards.

- 5.53 While physical structures can take some time to remove or modify, the OMA provides example scenarios of short deadlines that the industry appears to be capable of meeting despite the need to physically install and uninstall advertisements.³⁵
- 5.54 The Committee considers that the most effective means of dealing with complaint regarding outdoor advertising that causes public concern during the determination process is to prevent content that is likely to cause offence from being displayed in the first place.
- 5.55 However it is recognised that, regardless of the most stringent codes and best efforts of the ASB and the OMA, some outdoor advertising will be the subject of complaints.
- 5.56 In recognition of the special nature of outdoor advertising, including the growing use of electronic signage, the Committee strongly urges the Board to ensure that its investigations and determinations are expedited. The Board should make full use of teleconference facilities in order to provide an immediate response where required to outdoor advertising complaints. This is of particular importance where the advertisement is in multiple locations, near an area where children would be expected to congregate, or of a large or imposing form in a public space.

Sanctions for upheld complaints

- 5.57 The ASB advises the Committee that 'a determination that an advertisement breaches community standards means the immediate removal of the advertisement and prohibits use of the advertisement in the future.'³⁶
- 5.58 Ms Fiona Jolly, Chief Executive Officer of the ASB, explained that if an advertiser is reluctant to accept a Board determination against them, she first advises them that 'really it is in the interests of industry and of the self-regulation system for them to do the right thing'.³⁷

35 OMA, *Submission 32*, p. [116].

36 ASB, *submission 27*, p. 17.

37 Ms Fiona Jolly, Chief Executive Officer, ASB, *Committee Hansard*, Canberra, 24 February 2011, p. 6.

5.59 Furthermore:

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.³⁸

5.60 The Communications Council acknowledges that:

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.³⁹

5.61 However, the ASB has no power to impose formal sanctions for advertisers who do not comply with Board determinations. The ASB does have a number of options available to them to engage others to enforce their ruling in the following situations:

- If the advertisement breaches government regulations, the ASB can refer the case to the relevant government body
- If the advertisement is on a third-party outdoor media site, the ASB can request that the Outdoor Media Association ask their member to remove the advertisement
- If appropriate, the ASB can refer the case to local law enforcement bodies or local councils.⁴⁰

5.62 Regarding upheld complaints for all types of advertising, the ASB claims 'nearly 100 per cent compliance by industry'.⁴¹ Ms Jolly advised the Committee that of 15 upheld complaints for outdoor advertisements in 2010, the ASB had compliance problems with two of them.⁴² Neither of

38 ASB, *Submission 27*, p. 10.

39 Communications Council, *Submission 34*, p. 7.

40 ASB, *Submission 27*, pp. [10-11].

41 ASB, *Submission 27*, p. [10].

42 Ms Jolly, ASB, *Committee Hansard*, Canberra, 24 February 2011, p. 9.

these advertisements was on a third-party site.

- 5.63 The advertising industry claims that because self-regulation is in the industry's interest, advertisers will strive to adhere to the rules. The ASB notes that 'advertisers share a common interest in promoting consumer confidence and respect for general standards of advertising'.⁴³
- 5.64 The Communications Council points out that 'there are also substantial costs ... if they need to remove or take down a campaign'.⁴⁴ Furthermore, creative advertising agencies risk the loss of business if they provide inappropriate content to advertisers:
- ... the reality is that if an agency puts up creative that is knocked back it has a significant flow-on effect in costs for the company. And that has a significant flow-on effect on whether the agency is used again in the future. There have been a number of cases where major accounts have been lost, so it has been at costs of millions of dollars to particular businesses because they got it wrong.⁴⁵
- 5.65 However, several submissions argue that advertiser interest in 'pushing the envelope' to attract attention to their brand is stronger than any negative publicity that might arise from disregarding Board decisions. There are no penalties arising from disregarding a Board decision, and some argued that negative publicity may still benefit an advertiser.
- 5.66 The Australian Christian Lobby claims that:
- ... the 'honour system' is not working because there are no disincentives or penalties to discourage the display of offensive outdoor advertisements. In fact, placing an offensive advertisement, knowing that it will offend and draw both complaints and media exposure, will have achieved its objective of brand or product awareness.⁴⁶
- 5.67 Mrs Butchatsky argues 'the fact that there are no penalties in place for breaching ethical codes means there is nothing to deter companies from running further ads in a similar vein'.⁴⁷

43 ASB, *Submission 27*, p. 2.

44 Ms Linde Wolters, Media and Public Affairs Officer, Communications Council, *Committee Hansard*, Sydney, 25 March 2011, p. 17.

45 Mr Daniel Leesong, Chief Executive Officer, Communications Council, *Committee Hansard*, Sydney, 25 March 2011, pp. 17-18.

46 Australian Christian Lobby (ACL), *Submission 24*, p. 9.

47 Mrs Kristen Butchatsky, *Submission 21*, p. 2.

- 5.68 Ms Jenna Weston agrees in her submission that ‘there is no incentive for advertisers to change their behavior, because there is no penalty for breaching the code. This results in repeat offending’.⁴⁸ Mrs Boyd compares the lack of penalties to ‘speed limits without speeding fines’.⁴⁹
- 5.69 There is concern that breaches of the self-regulatory system are not taken seriously. In their submission, Collective Shout points out that APN Outdoor, an outdoor media display company that is a member of OMA, included in its online gallery a Calvin Klein advertisement about which the ASB upheld complaints.⁵⁰
- 5.70 Kids Free 2B Kids (KF2BK) notes that a complaint about an advertisement that appeared on the side of a bus was upheld by the Board, but the advertiser simply moved the bus into storage, which is open-air and no less visible than before.⁵¹
- 5.71 The advertiser then transferred the image to smaller vehicles, eliciting complaints that were again upheld by the Board six months later. The advertiser did not respond to the second case determination.⁵² According to KF2BK, the offending vehicle was still on display three months after the Board upheld the complaint: ‘The owners know the image is not allowed in the public space – what are the penalties for continuing to ignore the ASB?’⁵³
- 5.72 As the ASB does not have the power to enforce its decisions, the ASB referred this particular case to the Victorian Government to ‘take appropriate action’.⁵⁴
- 5.73 The Australian Christian Lobby suggests that ‘a system to control rogue elements, especially repeat offenders is necessary’.⁵⁵ Mr Richard Andrew suggested banning advertisers from outdoor advertising for a period of time if they breach the codes several times in several years.⁵⁶

48 Ms Jenna Weston, *Submission 6*, p. 1.

49 MRs Claire Boyd, *Submission 38*, p. 2.

50 Collective Shout, *Submission 43*, p. 4; APN Outdoor, ‘Campaign Gallery’ <<http://www.apnoutdoor.com.au/Interact/Gallery/>> viewed 10 March 2011.

51 KF2BK, *Submission 44*, p. 18.

52 ASB, Case No. 0504/10.

53 KF2BK, *Submission 44*, p. 17.

54 ASB, *Submission 27*, p. [11].

55 ACL, *Submission 24*, p. 9.

56 Mr Richard Andrew, *Submission 5*, p. 2.

Committee comment

- 5.74 The Committee is concerned about the lack of enforcement power in the advertising self-regulatory system, and is conscious that public confidence is difficult to maintain when players who breach the rules are not seen to be disadvantaged in some way.
- 5.75 Noting that the industry relies heavily on peer pressure and threats to brand reputation to ensure advertiser compliance with Board rulings, the Committee recommends that this leverage be used more strongly by the ASB. Although the website publishes all complaint determinations, the names of advertisers and products that have breached advertising codes are not prominently displayed. Visitors to the website must search all case reports for specific advertisers or time periods.
- 5.76 Moreover, the name of the parent company of an advertiser or product is not always known to the general public. For example, searching for Lynx deodorant will fail to bring up any case reports as they are filed under the parent company Unilever Australasia. Searching for Unilever brings up all case reports related to their products and each report needs to be downloaded individually to identify the product and determine whether the complaint was dismissed or upheld.
- 5.77 The Committee notes that two of 15 outdoor advertisements that had complaints upheld against them did not comply with the Board's determinations. This rate is substantially lower than the 'nearly 100 per cent' compliance rate that the ASB boasts overall. In the category of outdoor advertising, the rate of upheld complaints and in particular the two advertisers who did not comply with the Board's decisions are disturbing. These outdoor advertisements may represent the repeated exposure of inappropriate content to an unrestricted audience over a prolonged period of time. The disregard shown to the ASB by 'rogue elements' highlights the failure of industry peer pressure to ensure compliance in all instances.
- 5.78 While recognising the seriousness of a lack of sanctions and some compliance failure, a remedy to this is problematic. The Committee appreciates that legislating some form of enforcement power is a strong response to the low rates of non-compliance. Nonetheless, lack of compliance, no matter how infrequent, is still a significant deterrent to public and governmental approval and acceptance of self-regulation.
- 5.79 The Committee considers that there are many examples of consumers wishing to exercise choice in their buying power, and the clear publication of non-compliant brands and products may enable consumer pressure to

succeed where industry peer pressure is insufficient. The Committee recommends a 'name and shame' type approach to non-compliance through publication on the ASB website.

- 5.80 Further, if the public and the Australian government are to have confidence in the capacity of the industry to self-regulate, then monitoring of compliance rates is essential and should form part of the ASB's reporting regime.

Recommendation 18— Advertising Standards Bureau

- 5.81 The Committee recommends that the Advertising Standards Bureau address instances of advertiser non-compliance by:
- establishing a dedicated webpage, easily accessible from the Advertising Standards Bureau website, that names advertisers, and their products, who have breached advertising standards or refused to comply with Board determinations;
 - circulating the names of non-compliant advertisers in industry newsletters and other means of communication;
 - providing the names of non-compliant advertisers to the Outdoor Media Association and encouraging their members to consider not accepting advertisements from them;
 - providing the names of non-compliant advertisers to the Attorney-General so that the Attorney-General's Department can consider legislation that would require the naming of non-compliant advertisers in Parliament, similar to the *Equal Opportunity for Women in the Workplace Act 1999*; and
 - reporting annually to the Attorney-General's Department on the non-compliance rate and steps taken to achieve compliance.

Independent review process

- 5.82 The ASB introduced an independent review process in 2008 for complainants and advertisers who object to the Board's decisions.

Requests for a review must be lodged within 10 working days from the date of the ASB's notification of determination.⁵⁷

- 5.83 A fee is charged for an independent review, and the Committee was pleased to hear that the fees have recently been reduced substantially. In March 2011, the ASB announced that the fees for lodging a review request had been lowered to \$100 for individuals, \$500 for non-profit organisations, \$1 000 for advertisers who pay the ASB levy and \$2 000 for advertisers who do not pay the ASB levy. In addition, the fee will be reimbursed if the Board subsequently changes its determination.⁵⁸
- 5.84 There are three grounds for requesting a review of a Board decision:
- new or additional evidence which was not previously available;
 - a substantial flaw in the Board's determination; or
 - a substantial flaw in the Board's determination process.⁵⁹
- 5.85 At present there are two Independent Reviewers, former Federal Court Justice Ms Deirdre O'Connor and former Australian Federal Police Commissioner Mick Palmer. The ASB states that the role of the Independent Reviewer is to:
- ... assess the validity of the process followed by the Board, or to assess any new material provided by parties to the case. The Independent Reviewer does not provide a further merit review of a case. Their role is to recommend whether the Board's original determination should be confirmed or be reviewed.⁶⁰
- 5.86 Thus the review is only of the decision process, rather than the decision itself or the grounds for complaint. The ASB explains that the rationale for this narrowly-prescribed role is that 'it is inappropriate to set up one person as a decision maker in place of a 20 member Board that makes determinations on the basis of community standards'.⁶¹

57 ASB, 'Independent Review of ASB Determinations', <<http://adstandards.com.au/process/theprocesssteps/independentreviewofasbdeterminations>> viewed 2 May 2011.

58 ASB, Review of Independent Review Process 2010, March 2011, p. 21.

59 ASB, 'Independent Review of ASB Determinations', <<http://adstandards.com.au/process/theprocesssteps/independentreviewofasbdeterminations>> viewed 2 May 2011.

60 ASB, 'Independent Review of ASB Determinations', <<http://adstandards.com.au/process/theprocesssteps/independentreviewofasbdeterminations>> viewed 2 May 2011.

61 ASB, 'Independent Review of ASB Determinations', <<http://adstandards.com.au/process/theprocesssteps/independentreviewofasbdeterminations>> viewed 2 May 2011.

5.87 According to the ASB, an Independent Reviewer's finding that the Board's determination should be reviewed does not necessarily mean that the Board determination would change:

... the independent review might find that there is a flaw in the process or that there is new evidence, so the board has to fix the process or look at the new evidence, but fixing the process does not mean that the board's decision will necessarily be different.⁶²

5.88 In these instances, the Independent Reviewer may have determined that the decision-making process was flawed or that new evidence requires consideration. However, in re-considering the case, the Board may or may not arrive at the same decision.

5.89 One witness complained to the Committee that independent review decisions should be final, and that the application fee for review should be reimbursed if the Independent Reviewer finds in the complainant's favour.⁶³

5.90 Since the introduction of the independent review process, 12 cases have been brought for review, six by the advertiser and six by a complainant.⁶⁴ In only half of these cases, the Independent Reviewer has confirmed the Board's decision. Of the six cases where the Board was recommended to review its original determination, the Board reached a different determination to its original on only one occasion.

Committee comment

5.91 The Committee feels that the independent review process is not well understood by the community, and that measures need to be taken to improve public awareness and confidence in the process. The Committee also notes that even though the fees for lodging a request for a review have been decreased substantially, nevertheless \$100 presents a significant barrier to individuals who may object to a Board decision.

5.92 In the Committee's opinion, the independent review process as it currently operates is ineffective in providing independent oversight. The role of the Independent Reviewer could be improved significantly by formally empowering them to confirm and monitor Board decisions.

62 Ms Jolly, ASB, *Committee Hansard*, Melbourne, 4 April 2011, p. 11.

63 Mr Scruby, PCA, *Committee Hansard*, Sydney, 25 March 2011, pp. 43, 44.

64 ASB, *Submission 27*, pp. [32-33].

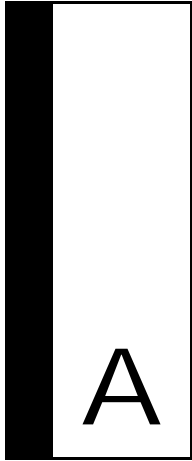
- 5.93 Half of the cases for review thus far were returned to the Board to reconsider due to faulty decision-making processes.⁶⁵ Although this sample is skewed, as it comprises those cases that are subject to appeals, Independent Reviewer recommendations to review 50 per cent of the cases suggest flaws in the integrity of the Board's determination processes.
- 5.94 The Committee expresses concern that the number of appeals lodged is low – potentially due to the cost barrier, a lack of public awareness and the 10-day window of opportunity. The Committee urges the ASB to review to what extent these factors inhibit appeals and potentially undermine confidence in the complaints and appeals processes.
- 5.95 The integrity of the Board's decision-making processes should be confirmed by the Independent Reviewer taking on the role of examining a random sample of Board determinations. The results of such reviews, being independent and transparent, would improve the Board's work and inspire public confidence in the process.

Recommendation 19— Advertising Standards Bureau

- 5.96 **The Committee recommends that the Advertising Standards Bureau strengthen the independent review process by:**
- **providing a comprehensive explanation of the independent review process on its website and in informational material to increase the public's understanding of the role of the Independent Reviewer;**
 - **tasking the Independent Reviewer with checking a random sample of determinations annually to assess the validity of Advertising Standards Board determinations that have not been appealed formally; and**
 - **aiming for 90 per cent or higher Independent Reviewer agreement with Advertising Standards Board determination processes in the random sample.**

65 ASB, *Submission 27*, pp. [32-33].

Graham Perrett MP
Chair

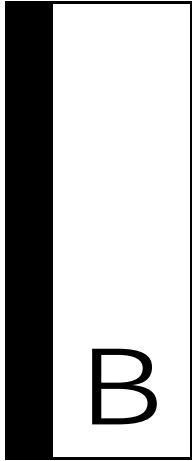


Appendix A—List of submissions

1. FamilyVoice Australia
2. Reverend Ivan Ransom
3. Australian Toy Association Ltd
4. Ms Deborah Harris
5. Mr Richard Andrew
6. Ms Jenna Weston
7. Mr Ian S. Moller
8. Ms Rosaleen Noel Commins
9. Ms Karen Elkington
10. Mr Hugh Dakin
11. The Salvation Army Australia Southern Territory
12. Mrs Gabrielle Sullivan
13. Australian Partnership of Religious Organisations
14. Mrs Marion Smith AM
15. Ms Heather Golding
16. 2020women Inc
17. Australian Association of National Advertisers
- 17a. Australian Association of National Advertisers – Supplementary Submission
- 17b. Australian Association of National Advertisers – Supplementary Submission

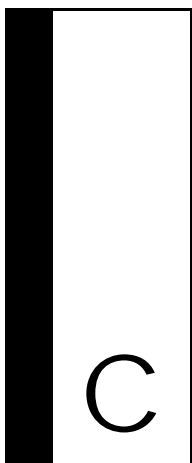
18. Ms Noelene Hunt
19. The Hon. Nick Goiran MLC and Mr Michael Sutherland MLA
20. Dalgarno Institute
21. Mrs Kristen Butchatsky
22. Ms Maree Hawken
23. Ms Celeste Sell
24. Australian Christian Lobby
25. Ms Parnell McGuinness
26. Media Federation of Australia
27. Advertising Standards Bureau
- 27a. Advertising Standards Bureau – Supplementary Submission
- 27b. Advertising Standards Bureau – Supplementary Submission
28. Australian Council on Children and the Media
29. Ms Gretchen Gamble
30. Australian Food and Grocery Council
- 30a. Australian Food and Grocery Council – Supplementary Submission
31. Coalition on Food Advertising to Children
32. Outdoor Media Association Inc
- 32a. Outdoor Media Association Inc – Supplementary Submission
33. Ms Karyn Hodgkinson
34. The Communications Council
35. Ms Deborah Malcolm – CONFIDENTIAL
36. Cancer Council Western Australia and McCusker Centre for Action on Alcohol and Youth
37. Alcohol Policy Coalition
38. Mrs Claire Boyd
39. Mr Warner Spykar
40. Castan Centre for Human Rights Law
41. EROS Association

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42. Dr Paul Tyler
 43. Collective Shout
 44. Kids Free 2B Kids
 45. Ms Caitlin Roper
 46. Dr Kurt Iveson
 47. Attorney-General's Department
 48. Media Standards Australia
 49. Distilled Spirits Industry Council of Australia, Winemakers Federation of Australia, and Brewers Association of Australia and New Zealand
 50. Australian Competition and Consumer Commission
 51. Mr Andrew Youd



Appendix B—List of exhibits

1. Copies of appeals from the Pedestrian Council of Australia
2. Copy of letter and submission to Advertising Standards Bureau Review from the Alcohol Policy Coalition
3. ARUP Final Report from the Pedestrian Council of Australia



Appendix C—List of witnesses appearing at public hearings

Canberra – Thursday, 10 February 2011

Classification Branch, Attorney-General's Department

Mr Chris Collett - Acting Assistant Secretary

Ms Wendy Banfield - Principal Legal Officer

Mr Christopher Lee - Acting Principal Legal Officer

Canberra - Thursday, 24 February 2011

Australian Association of National Advertisers

Ms Alina Bain - Director of Codes, Policy and Regulatory Affairs

Dr Terence Beed – Associate Professor, University of Sydney, Independent AANA Code Reviewer

Advertising Standards Bureau

Ms Fiona Jolly – Chief Executive Officer

Canberra – Thursday, 3 March 2011

Australian Competition and Consumer Commission

Mr Scott Gregson – General Manager, Enforcement and Compliance Executive

Mr Richard Fleming – Director, Enforcement and Compliance Executive

Canberra – Thursday, 24 March 2011

EROS Association

Mr Robbie Swan – Coordinator

Sydney – Friday, 25 March 2011

Outdoor Media Association

Ms Charmaine Moldrich – Chief Executive Officer

Ms Linda Black – Senior Policy Adviser

Media Federation of Australia

Mrs Carol Morris – Executive Director

The Communication Council

Mr Daniel Leesong – Chief Executive Officer

Ms Linde Wolter – Media and Public Affairs Officer

Coalition on Food Advertising to Children

Ms Clare Hughes – Nutrition Program Manager

Ms Wendy Watson – Nutrition Project Officer

Pedestrian Council of Australia

Mr Harold Scuby – Chairman/Chief Executive Officer

Australian Partnership of Religious Organisations

Mr Jeremy Jones AM

Dr Natalie Mobini-Kesheh

Melbourne – Monday, 4 April 2011

Advertising Standards Bureau

Ms Fiona Jolly – Chief Executive Officer

Ms Sara Mattila – Communications Manager

Australian Association of National Advertisers

Ms Alina Bain – Director of Codes, Policy and Regulatory Affairs

Alcohol Policy Coalition

Association Professor John Fitzgerald – Acting Chief Executive Officer, VicHealth

Ms Sondra Davoren – Legal Policy Advisor

Ms Jane Martin – Manager, Legal and Policy

Dalgarno Institute

Mr Shane Varcoe – Executive Director

Kids Free 2B Kids

Ms Julie Gale – Director

Castan Centre for Human Rights Law

Ms Tania Penovic – Associate

Australian Christian Lobby

Ms Wendy Francis – Queensland State Director

Mr Robert Ward – Victorian State Director

The Salvation Army Australia – Southern Territory

Ms Elli McGavin – Territorial Social Policy and Program Manager

2020women Inc

Ms Jennifer Colwill – President

Collective Shout

Ms Melinda Tankard Reist – Founder/Spokesperson

Canberra – Thursday, 12 May 2011Distilled Spirits Industry Council of Australia Inc

Mr Gordon Broderick – Executive Director

Winemakers' Federation of Australia

Mr Andrew Wilshire – General Manager, Policy and Government Affairs

Brewers Association of Australia and New Zealand Inc

Mr Stephen Swift – Executive Director

Australian Food and Grocery Council

Mr Tony Mahar - Director, Sustainable Development

Ms Peta Craig - Manager, Nutrition Policy and Codes

Mr Justin Fromm - Policy Advisor