



**ADVERTISING
STANDARDS
BUREAU**

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Dr Ian Holland
Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
Department of the Senate
PO Box 6100
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[By Email]

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19 June 2008

Dear Dr Holland,

Advertising Standards Bureau Supplementary submission: Inquiry into the sexualisation of children in the contemporary media environment

The Advertising Standards Bureau (the Bureau) makes this supplementary submission to the Committee to:

- provide additional information;
- elucidate particular points regarding Bureau processes and procedures; and
- to respond to comments made in other submissions and at the public hearings to the Inquiry into the sexualisation of children in the contemporary media environment (the Inquiry).

1. Misperceptions about the role of the Bureau in self-regulation system

The Bureau considers it very important that the Committee have a clear understanding of its role within the advertising self-regulation system. Some comments made in other submissions and during the hearing process suggest that there are still some misperceptions about its role.

The Bureau was established solely to administer the complaint resolution process as part of the advertising self-regulation system in Australia. While a key aspect of self-regulation, the complaints process is still only one part of the overall system.

Like all self-regulatory systems, the basis of the advertising self-regulation system is the codes that the Bureau administers and the commitment to comply with those codes by participants of the system. The first, proactive step by participants is the establishment of the codes of conduct that they commit to comply with. The codes of conduct were developed by the Australian Association of National Advertisers (AANA), whose advertiser members represent 85% of advertising spend in Australia. The codes are maintained and reviewed by the AANA.¹ The participation of advertisers in developing and committing to the codes means that they also actively ensure that the rules are effectively applied and enforced.²

The role of the complaints process that the Bureau administers is to act as a safeguard aimed at ensuring that participants continue to comply with the codes, having regard to ever-changing community standards. The Advertising Standards Board (the Board) was established as an independent panel to adjudicate on complaints of alleged breaches and to assess compliance with the codes. The Bureau acts as secretariat for the Board and handles the administration of matters relating to the complaints process. Such matters include undertaking research into issues where the Board would like clarification or information about community attitudes. For example, as mentioned during the public hearing, the Board recently requested some research into the issues of violence and discrimination and vilification.

Criticisms that the self-regulation system is solely a “complaints-based” system ignore the first important aspect of the system (development and commitment to the codes), described above. We are firmly of the view that the reason the vast majority of advertisements do not trigger complaints and that the vast majority of complaints made to the Bureau are not upheld by the Board is that Australian advertisers, for the most part, adhere to the rules set out in the industry codes. Criticisms that the process is not working because of the small number of complaints upheld assume that all complaints are well founded, which is simply not the case.

In regard to questions raised about reviewing advertisements prior to broadcast or publication, we confirm that the Bureau does not have any responsibility for reviewing advertisements for compliance with the AANA codes prior to publication or broadcast (pre-vetting). To a large extent, as a self-regulatory system, responsibility for reviewing advertisements for compliance with the codes prior to publication or broadcast falls on the advertiser itself. Advertisers that have committed to abide by the codes are expected to give due regard to code requirements when developing advertising material. The codes exist so that advertisers have a reference point for standards of advertising that are acceptable to the wider community. Additionally, advertisers that are members of the AANA have an obligation as part of that membership to comply with the AANA codes and Board determinations.

¹ Submission 68 to the Inquiry, from the AANA, makes reference to its most recent review of the codes.

² The advertisers’ commitment to the system extends to a significant financial commitment, which is described in section 2.3 of this supplementary submission.

However, there are also pre-vetting arrangements currently in place in regard to advertising on commercial television (through Free TV Australia's Commercials Advice division) and in relation to alcohol advertising across all media (through the Alcohol Advertising Pre-vetting System, that is part of the Alcohol Beverages Advertising Code (ABAC) Scheme).

2. Complaint process

Some questions and criticisms have been raised during the Inquiry in regard to the Bureau's administration of the complaints process. Some of these criticisms are considered below.

2.1 Receipt and assessment of complaints

Some submissions were critical of the fact that complaints must be in writing.

The Bureau will normally only accept written complaints – via the online complaint form or by post or facsimile. Complaints submitted by email are redirected to the Bureau website. However, in exceptional circumstances, if a complainant is unable to write, oral complaints may be accepted and recorded by Bureau staff. The requirement for written complaints ensures that the complaints process is genuine and transparent. The ability to take oral complaints in exceptional circumstances ensures that members of the public that cannot write, or cannot write in English, are not disadvantaged.

The Board complaint resolution process is a free service. A single written complaint is sufficient to initiate the complaint process.

Complaints received by the Bureau which fall within section 2 of the AANA Code of Ethics are referred for consideration by the Board. Complaints are promptly assessed as to their appropriateness for submission to the Board for determination. Complaints are not forwarded to the Board if they do not fall within section 2 of the AANA Code of Ethics. For complaints to fall within section 2, they must firstly relate to an "Advertising or Marketing Communication" as defined in the code. An example of something that falls outside section 2 would be complaints about unpaid community service announcements.

The Bureau, as secretariat for the Board, replies to all complainants informing them of the status of their complaint. The Bureau also notifies the relevant advertiser/marketer of the complaint and requests a written response. The complaint and this response, along with copies of the relevant advertising or marketing communication, are dealt with at the next meeting of the Board.

2.2 *Awareness of complaint process and ease of use*

A number of submissions expressed concern that members of the public may not have sufficient knowledge of the complaint process in order to make a complaint or find the complaints process too confusing or onerous.

In regard to the first concern, we would point out that the Bureau undertakes its own advertising and promotion in relation to the complaint handling process and invites people to complain about matters that concern them. Various government, industry bodies and other organisations with an interest in advertising, list the Bureau's contact details on their website, including the Australian Communications and Media Authority (ACMA), the Department of Broadband, Communications and the Digital Economy, the Classification Board, Free TV Australia and the Outdoor Media Association. Additionally, members of the public can, of course, contact the relevant media operators that broadcast or published an advertisement and complaints are in fact often forwarded to the Bureau from media operators, such as television stations. Complaints have also been forwarded to the Bureau from ACMA and State or Territory consumer affairs departments. A simple internet search for "advertising complaint" will also direct interested persons to the Bureau website.

In regard to the second concern, as noted in our submission, a recent major website redevelopment has greatly enhanced the accessibility and efficiency of the complaint handling service. The introduction of a screening and referral page directs complainants to the most relevant agency for their complaint, reducing the number of complaints received that fall outside the Bureau's charter (and as a result, improving the Bureau's efficiency in dealing with complaints that are appropriate for Board consideration). Increasing the amount of information available on our website has also provided the community with a valuable and user-friendly resource.

As of March 2008, our website is consistently averaging 250-300,000 hits per month. Increases in the number of complaints received at the Bureau indicates awareness about the complaints-handling process is continuing to rise.

Additionally, the Bureau undertook research in 2006 to test public awareness about advertising self-regulation and lodging complaints about advertising. Telephone interviews were conducted with 600 respondents across Australia, using Australian Bureau of Statistics population data to ensure participants were representative of the general public within each state and territory. While only 10% of those surveyed were aware of the Bureau without being prompted, awareness increased to 65% after prompting.

As noted in our submission to the Inquiry, an interesting comparison of these findings can be made against the results of a survey released in 2007 by the European Advertising Standards Alliance (EASA), a non-profit organisation bringing together national advertising self-regulation organisations in Europe. The survey was conducted across 13 European countries to test public awareness of advertising self-regulation and lodging

complaints about advertising. The survey showed that in Europe, spontaneous awareness of the advertising complaints process was 3%, rising to 17% after prompting.

Results from the public awareness research were also encouraging on the perception of the advertising complaints system in Australia – only 18% of respondents said that they would not complain about an advertisement because they thought it would have no effect. 35% of respondents cited the main barrier for lodging complaints as too much of a hassle or could not be bothered. The results also found that 78% of respondents believed the role of the Bureau was important. This is reflected in statistics which have shown a rise in advertising complaints every year since self-regulation began in 1998.

However, the Bureau believes there is still scope for greater education and, as mentioned in our earlier submission, with this in mind, a public education campaign is being launched on 9 July 2008. We note that calls for such a public education campaign were raised during the Kids Free 2B Kids attendance at the public hearings. We expect that the campaign will increase awareness in the community about the complaints process and hope that it addresses the concerns raised in some submissions to the Inquiry.

2.3 Length of complaint process

A number of submissions were critical of the length of the complaints process and this issue received attention during the public hearings.

As described in our earlier submission and during the public hearing, recent enhancements to the website and automating of many processes that were previously undertaken manually has improved the timeliness of the complaint handling process. The length of the process will vary, depending on the time within the monthly cycle of Board meetings that the complaint is received. The introduction of a regular January (holiday period) Board meeting in the last two years is another example of how the Bureau has responded to the needs of complainants and introduced further enhancements to the complaint process.

As stated during the hearing, world's best practice (according to the EASA) is a two-month turnaround. The complaint process applying to the broadcast media (content) allows 30 days for the broadcaster to respond to the complainant and then the complainant has the opportunity to take the matter to ACMA for review. We consider that the decision making timeliness of the Board complaint process is extremely good and is certainly superior to either of those examples. However, we are continuing to look at ways to further improve the turnaround time on complaints, as part of our ongoing commitment to continuous improvement.

2.4 Funding of complaint process and independence

The commitment of advertisers to the self-regulation system (referred to at 1 above) includes a significant financial commitment in the form of the voluntary levy that funds

the system. Responsible advertisers pay the levy in recognition of the value self-regulation provides to the broader community, advertisers and their agencies.

During the public hearings and in some submissions, the criticism was made that, because the Bureau is funded by advertisers, the Bureau cannot be independent and will take actions that favour the advertisers.

In response to such concerns, we would highlight to the Committee some of the mechanisms in place to ensure that funding of the Bureau is at arms-length. The levy of 35 cents per \$1,000 (0.035 per cent) of an advertiser's gross media expenditure is remitted to a separate funding body, the Australian Advertising Standards Council (AASC). All monies collected by the voluntary levy system are applied exclusively to activities necessary to the maintenance of the self-regulation system, with management of the funds outsourced and accounts audited by separate firms of chartered accountants.

The independent nature of the AASC ensures commercial confidentiality in relation to the expenditure of individual advertisers on particular products and services, and provides for proper accountability for the monies applied to the operational and promotional activities of the Bureau. It also means that the Bureau is unaware of who has or has not paid the voluntary levy. As a result, the Bureau cannot be influenced by financial considerations in administering complaints and financial considerations also cannot constrain the Board from making tough determinations against the big advertisers.

3. Board determinations

A number of submissions and witnesses during the public hearings were critical of the Board and the manner in which it makes its determinations. We have addressed some of those criticisms below.

3.1 Expert assessment of advertisements

The Board is not intended to be a panel of expert judges as has been proposed in some submissions. Advertising self-regulation, as reflected in the Bureau system and the AANA Code of Ethics, is based on prevailing community attitudes and standards rather than those of any particular individual or group. Decisions of a panel of experts may result in decisions different to those of a Board of community people, but there is no guarantee that such decisions would be in line with community standards.

As stated during the public hearings, the Board does have the opportunity to access expert advice if Board members consider that they cannot make a determination without seeking addition information or advice. The Board has previously requested advice of a legal nature and at a broader level has requested the Bureau to undertake research in relation to particular issues covered by section 2 of the AANA Code of Ethics – for example, in the areas of violence and discrimination and vilification. The Board has not, to date, requested the advice of an expert in childhood psychology or education, but would be

able to do so, if this were considered necessary in relation to a particular complaint. The Bureau can also arrange for experts in various fields to present to the Board to assist Board members' understanding of areas of the code and how those issues might be perceived in the wider community or impact on particular parts of the community.

3.2 Board representation

In regard to the balance of views represented on the Board, as stated in our submission, the Board determines complaints through a panel of public representatives from a broad cross-section of the Australian community. The Board represents a diverse cross-section of views and skills, a broad range of age groups and is gender-balanced. The Board discharges its responsibilities with fairness, impartiality, detailed discussion and thorough consideration of all issues, and with a keen sense of prevailing community values in its broadest sense. Its task is often a difficult one and the outcome of its determinations will not and cannot please everyone.

Individual Board members do not represent any particular interest group – they are there to represent their individual views on what is acceptable to the Australian community (and this is where community involvement is an important selection criterion). Those individual views will differ, as they do in the community itself.

The intention is that the ensuing debate and discussion between Board members would reflect the kind of debate we would expect to find in the wider community about a particular advertisement. Community standards are never cut and dry – there will always be varied views reflecting the diversity of the Australian community.

We have already provided the Committee with a summary of the Board selection process. In recruiting members for the Board, the Bureau's aim is to ensure that the Board broadly reflects, as best as possible with a Board of 16 or so people, those diversity of views in the wider Australian community. We make a concerted effort to ensure that Board appointments are made having regard to maintaining a balance of views, experience, gender and age.

Board members are individually and collectively clearly independent of the industry. Criticisms that the Board comprises members of the advertising industry are unfounded. The backgrounds of each Board member are available on the Bureau website. They include a diverse range of individuals, each with a common commitment to serving the community by adjudicating on advertisements as part of the complaints process. A key selection criteria is community involvement, which in some cases means that Board members are well-known to the public, but this makes them no less representative of the community than other members who are lesser known. Among the current Board members are a psychiatry registrar, a full-time mum, a retired Uniting Church minister with a degree in theology and early childhood education, a former Commissioner for Equal Opportunity, an author, and a working artist. Many of the Board members are parents and/or grandparents.

Some Board members do have experience or an interest in marketing. In our view, such experience does not mean that those members are therefore aligned with the advertising industry, but it does ensure that the Board includes some members who have the ability to interpret or breakdown advertising or marketing communications effectively as part of the adjudication process. In this regard, we have noted some commentators have also highlighted the need for marketing expertise on any panel making decisions relating to advertisements. We also note that some critics of the Board seem to confuse experience in various aspects of the media (for example, journalism, acting, writing or even academia) as implying allegiance with the advertising industry.

3.3 *Short-term and once-off promotions*

Some submissions argued that the complaints process is ineffective in relation to short-term or once-off advertising campaigns. The concern was raised that, having been discontinued, the advertisement would not be considered by the Board and as a result advertisers could continue to use potentially inappropriate messages in future.

It is not correct to suggest that the Board *never* considers once-off promotions or other withdrawn/discontinued advertisements. Under Bureau policy, if a complaint is received and the advertisement has been discontinued or has finished, the Bureau is not obliged to consider the advertisement but has discretion to consider the advertisement. In making a decision about whether or not to bring a discontinued advertisement to the Board the Bureau will consider:

- the date on which the advertisement was last broadcast/published viz a viz the date of the complaint;
- whether the advertisement could reasonably be considered to be current or recent at the time the complaint was made;
- whether there is some intention on the part of the advertiser to re-publish or broadcast the advertisement; and
- whether the complaint raises a significant issue of public interest.

Since late 2005, more advertisements in the withdrawn/discontinued category are now referred to the Board, particularly those that most clearly raise issues under the AANA Code of Ethics. This has been largely based on the view that the complaint raises a significant issue of public interest.

When an advertisement is withdrawn or discontinued prior to a complaint being considered by the Board, the advertiser is informed that the advertisement must not be shown or must be modified before it can be shown again.

3.4 *Complaints about advertisements previously considered by the Board and number of complaints received*

Some submissions expressed concern that the Board does not take into consideration complaints made about an advertisement after a determination has been made. There were also submissions that alleged the Board does not take into consideration the number of complaints received, while other submissions accused the Board of only making decisions based on the number of complaints received.

In making its determination, the Board takes into account *all* complaints received up until the date of determination. In regard to any further complaints received after the determination has been made, complainants are provided with a copy of the case report stating the determination made and reasons for determination. Prior to April 2008, Board determinations were final and an advertisement would not be reconsidered by the Board for a period of five years, except in exceptional circumstances as determined by the Bureau Chief Executive Officer. Since April 2008, complainants may request a review of a Board determination under an independent reviewer process.

The role of the Board is to assess whether a particular advertisement complies with section 2 of the AANA Code of Ethics. Advertisements referred to the Board are considered against the *whole* of section 2 – the Board is not confined to considering only the issue(s) raised by the complainant(s). If the advertisement is in breach in any way, the complaint is upheld – this will be the case even where the Board finds the advertisement did not breach a particular subsection that was complained about, but did breach another subsection.

The Board does not explicitly factor the number of complaints received about an advertisement into its assessment of whether an advertisement breaches any part of section 2 of the AANA Code of Ethics. The Board is, however, aware of how many complaints have been received and takes into account all complainants' views in making its decision.

If the Board based its decisions on the number of complaints received, rather than on the compliance of the advertisement with section 2 of the AANA Code of Ethics, this would significantly diminish the Board's capacity to uphold complaints. Many of the advertisements considered by the Board are the subject of only one complaint. In the view of the Bureau and the Board, that one person's complaint has as much weight as any other person's complaint.

The advertiser is informed of the number of complaints received and receives full copies of all complaints (including any complaints received after Board determination). Often, advertisers will act to discontinue an advertisement because of the type of concerns raised in a single complaint or because of the volume of complaints received. This is an example of the self-regulation system working as it should. Where the Board has been scheduled to consider an advertisement at its meeting, but the advertiser has chosen to voluntarily withdraw the advertisement in response to complaints received by the Bureau

or by the advertiser directly, the Board is not required to consider the advertisement but may do so having regard to the policy described above at 3.3.

The Bureau will take into account the volume of complaints in relation to a particular issue for the purpose of providing feedback to the Board or to other stakeholders. For example, the Board has requested the Bureau to undertake research in the areas of violence and discrimination and vilification because of the significant concerns that have been raised in these areas recently. The Bureau has also previously provided information to the AANA and Advertising Federation of Australia, for the information of their members, in regard to increasing numbers of complaints about internet advertising and the Bureau's position in regard to such complaints.

3.5 Research into community standards

As stated in our submission, research was conducted on behalf of the Bureau in 2007 aimed at considering whether the Board's decisions are in-line with prevailing community standards on advertising in Australia. Information about the research is attached as **Attachment 1** for your information.

A number of submissions were critical of the fact that the research found some gaps between Board positions and the views of the community in regard to its adjudication of the code provision relating to sex, sexuality and nudity and the issue of politically incorrect statements when used with humour. Those submissions contend that the fact that the research found some areas for the Board to address meant that the Board process was failing and should be overhauled.

In response to those submissions, we note that the whole purpose of the research was to identify if there were any gaps between Board decisions and prevailing community standards, so that those gaps could be addressed. The research was a proactive initiative on the part of the Bureau to ensure the efficacy of the complaint adjudication process. The research was independent and objective and served its purpose of informing the Board so that it could make any necessary corrections to its approach to adjudication, which it has done. The Bureau announced publicly the results of the research and how the Board had and would address gaps noted in the research.³

The research is to be conducted every two to three years. The research is part of an ongoing commitment to best practice in advertising self-regulation and shows the commitment of the Bureau and the Board to revisiting community standards. The Bureau and Board recognise that the Board has occasionally faced criticism in the media that its decisions are out of step with prevailing community standards. The research in 2007 examined the validity of these claims and demonstrated that they were generally unfounded. Where the research did show a gap between Board positions and views of the community (in the areas noted above), the Board has taken on this feedback and applied it to its subsequent decisions.

³ By media release on 4 December 2007.

The research is an important way for the Board to survey the community and reassess their understanding of ever-changing community standards. It serves as a benchmark or yardstick against which existing Board members can make determinations and as an important educational tool for future Board members.

Any public board or panel that aims to represent the Australian community can never be fully representative of the *whole* community, but by undertaking such research on a regular basis the Bureau aims to equip the Board with information that will enable it to remain responsive to changing community views and demographics.

We cannot (and should not) guarantee that such research will always give the Board a “clean report card”, but we can guarantee that the research will serve to support and educate the Board to better ensure that its decisions remain in line with evolving community standards.

3.6 Revolving membership

In response to a question during the public hearings about how the Board could be more representative of community standards, Dr Lauren Rosewarne (private capacity) stated that she has “suggested revolving panels – panels of people who constantly change”. She later made reference to the “problem with any board: people who are sitting on the board – and this has been a criticism of the Film and Literature Classification Board as well – get institutionalised”.

In response to this, we would like to highlight to the Committee the summary of the Board selection process, previously provided, where we made reference to the fact that Board appointments made since 2006 are on fixed terms and staggered. As we advise in the summary, such a process ensures the Board retains a strong community understanding, involvement and focus and a mix of experienced and new members. It is also designed to reduce any ‘desensitising’ (or ‘institutionalisation’ using Dr Rosewarne’s language) that members of the Board as a whole may have from long term appointments.

4. Enforceability and sanctions

A number of submissions expressed concern that determinations made by the Board were not enforceable because of the absence of any sanctions. It was contended that, as a result, advertisers were under no obligation to remove or amend an advertisement following an upheld determination and would face no consequences should they fail to do so.

In this regard, we note that advertisers that are members of the AANA (which represents 85% of advertising spend in Australia) have an obligation as part of that membership to comply with the AANA codes and to abide by Board decisions. However, Board

determinations are not limited to advertisers that are members of the AANA and non-members have complied with Board decisions in the past and will continue to do so, because of the sanctions that are in place.

The Board does not have the power to compel in the form of financial penalties or the authority of law, in the same way that governments have power to compel action of citizens. However, an upheld determination by the Board can have significant impact on a brand and its bottom-line, which should not be discounted.

Since 2005, each Board meeting is followed by a media release outlining key decisions of the Board and notifying the media that all case reports have been published on the Bureau website and are freely available to the public. The impact of potential press coverage on a brand's reputation, coupled with the financial impact on an advertiser of having to abandon or significantly revise its advertising or marketing campaign can be very serious, particularly where the campaign crosses several different media. An upheld determination can also impact the relationship between the advertiser and its advertising agency.

Importantly, if an advertisement is found to breach section 2 of the AANA Code of Ethics and the advertiser does not respond to the opportunity to modify or discontinue the advertisement within the allowed time frame, the Board can do any or all of the following:

- Include the advertiser's failure to respond in the case report;
- Forward the case report to media proprietors;
- Post the case report on the Bureau's website; and
- If appropriate, refer the case report to the appropriate government agency or industry organisation.

An example of the effectiveness of these sanctions is a recent case involving an advertiser that is not a member of the AANA. In this case, the Board upheld complaints about the relevant advertisement. The advertiser felt compelled to act on the determination of the Board when alerted by the Bureau to the above sanctions that the Board can impose for failure to act on the determination.

In relation to the second point above, it should be noted that the various media associations, such as Free TV Australia, Commercial Radio Australia and the Outdoor Media Association, have publicly stated their commitment (on behalf of their members) to complying with determinations of the Board. If necessary, the Bureau will ask the associations and/or their members to take action to remove/discontinue an advertisement that is the subject of an upheld complaint.

For example, action has previously been taken by the Outdoor Media Association at the request of the Bureau where an advertiser declined to comply with the Board's determination and remove an advertisement. This was the Windsor Smith case (Case

79/00) referred to by other witnesses during the hearings. In this case, the Outdoor Media Association arranged the removal of the advertisement by the media owner, at the Bureau's request. More recently, an advertiser refused to respond to Bureau contact regarding the obligation for him to remove his advertisement. Negotiation with relevant newspaper media in the relevant jurisdiction resulted in no further publication of the advertisement. Through this involvement of the media associations, in supporting the self-regulation system, there has been 100% compliance by advertisers and affiliated organisations with Board determinations.

I appreciate the opportunity to provide the Committee with this supplementary submission and response to other submissions. I would be happy to elaborate on any of the comments provided here, if required by the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alison Abernethy', written over a horizontal line.

Alison Abernethy
Chief Executive Officer