



HEALTH AND COMMUNITY SERVICES COMMITTEE

Members present:

Mr TJ Ruthenberg MP (Chair)
Mrs JR Miller MP (Deputy Chair)
Ms RM Bates MP
Mr SW Davies MP
Dr AR Douglas MP
Mr JD Hathaway MP
Mr DE Shuttleworth MP

Staff present:

Ms S Cawcutt (Research Director)
Ms K Dalladay (Principal Research Officer)
Mr K Holden (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO SEXUALLY EXPLICIT OUTDOOR ADVERTISING

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 30 JULY 2013

Brisbane

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Committee met at 10.17 am

CHAIR: Good morning and welcome. I declare this public briefing of the Health and Community Services Committee open. Our purpose today is to be briefed on the committee's sexually explicit outdoor advertising inquiry. I will introduce the committee. My name is Trev Ruthenberg. I am the member for Kallangur. The deputy chair is Mrs Jo-Ann Miller MP, member for Bundamba. Other committee members include Ms Ros Bates MP, member for Mudgeeraba; Mr Steve Davies MP, member for Capalaba; Dr Alex Douglas MP, member for Gaven; Mr John Hathaway MP, member for Townsville; and Mr Dale Shuttleworth MP, member for Ferny Grove.

KERR, Associate Professor Gayle, Advertising, Marketing and Public Relations Business School, Queensland University of Technology

SCHULTZ, Professor Don, Northwestern University, Illinois

CHAIR: I welcome Professor Kerr from the Advertising, Marketing and Public Relations Business School at the Queensland University of Technology. I also welcome Professor Don Schultz, professor emeritus in integrated marketing communications at Northwestern University, Illinois, USA. I understand, Professor, you have arrived just within the last 24 hours?

Prof. Schultz: Correct.

CHAIR: Professor Kerr may wish to defer to you from time to time. We certainly welcome your input and understand your position and knowledge within this area of briefing.

Prof. Schultz: Thank you for the invitation.

CHAIR: I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. Mobile phones should be turned off or switched to silent. Hansard is making a transcript of the proceedings. The committee intends to publish the transcripts of today's proceedings unless there is good reason not to.

The inquiry was referred to the committee by the Legislative Assembly on 17 April. The committee will hold public hearings on 7 and 21 August to hear from invited witnesses. We are required to report to the parliament on this inquiry by 31 January 2014. Before we start, I apologise to those who are attending as you are looking at our backs. We have a hearing immediately after this and we have had to configure the room to be able to use the videoconferencing facilities. Professor Kerr, I would invite you to start your briefing.

Prof. Kerr: Good morning. Thank you for the opportunity to share one of my research passions with you, which is advertising self-regulation. As Trevor has said, I am from next door—from the QUT's School of Advertising, Marketing and Public Relations. I actually like QUT quite a lot because I graduated from there three times. The first time I did so I worked in the advertising industry as a copywriter. I have also researched in IMC and led advertising education in Australia through my role as president of ANZAA, the Australia and New Zealand Academy of Advertising, and through my involvement in the American Academy of Advertising. I have also researched in advertising self-regulation since the new system began and continue to do so now it has moved on to the online area. I have had the pleasure of researching with this illustrious gentleman beside me. Don is currently visiting with us at QUT as he does every year. I brought him along to answer the tricky questions that you may have for me.

Today there are a couple of things that I really want to touch on. The first is the difference between controversial products and controversial advertising. I think it is important to get that clear. I will then look at how advertising is regulated, at the overlap between government regulation and self-regulation, at how our system works in Australia and give an evaluation of its performance to date.

Firstly, let us distinguish between controversial products and controversial advertising. There are some products which are legally available in Australia that people do not like—products like cigarettes and adult clubs. Often these kinds of products are regulated in terms of when they can be

advertised or are totally banned, as in the case of cigarettes. There are also quite inoffensive products such as Tourism Australia, which can drop a swear word in an advertisement and suddenly become offensive. So that is a controversial execution. I think it is important to draw that difference, because there are some products people do not like and do not believe should be advertised despite the fact that they have a mandate to do so. However, it is the controversial executions I think which cause most concern for our self-regulatory system.

Advertising, controversial or not, is regulated through law and through our self-regulation system. Government regulation has a number of mandates, as I am sure you are aware—mainly to stop unlawful conduct or to undo any harm that was caused by someone contravening the code. So that might require them to do some kind of corrective advertising or make some other restitution. Then they can impose fines or penalties. Governments in 45 countries internationally support self-regulation. These frameworks from nation to nation tend to vary based on their own regulatory systems and the culture of the country. However, I would like to stress that the importance of protecting customers from deceptive advertising is a universal mandate. I think that is the intention of government and self-regulation throughout the world.

When we look at self-regulation, there are generally six tasks involved. You will see in a lot of my slides that I refer to Boddewyn. He is the guru in advertising self-regulation. I have been doing some recent research with him in that area. He has identified six tasks. They are things like developing standards or codes of ethics, making those standards known to practitioners or the people who need to be mindful of them, advising advertisers and agencies of the grey areas in these standards, monitoring compliance, handling complaints and penalising bad behaviour. Most often in a self-regulatory system this is through publicising wrongdoings and denying access to the media, so shutting the ads down and taking down the billboards.

If we do self-regulation well, there are incredible benefits for our society. The first is that it is upholding the law. It applies the statutory laws, since the first principle of ethical behaviour is to respect the law. It is also generally more flexible than the law in dealing with soft issues—things like taste, decency and sexism. So it is more responsive in that way. It also relieves a lot of the administration that agencies and courts have. The appeals process, as you can imagine, is quite burdensome, quite costly and quite a complex task. So it takes this away from government responsibility. It is also generally faster than government intervention. Last year, for example, the ASB, which is our self-regulatory body, took on average 36 calendar days to deal with a complaint. That is from the initial lodgement of the complaint through to publicising the final report. That is calendar days, including weekends. I think that is a pretty fast turnaround.

What is important to note, though, between government regulation and self-regulation is that these two systems do not operate in isolation. A good part of the law reflects generally accepted community standards and market standards. The role of self-regulation, then, is to encourage those who deal in advertising to internalise these standards so we get this kind of moral adhesion to the standards. People do the right thing. The role of self-regulation is not to apply additional norms but to reinforce the norms from our community, from our marketplace and from our state or our government. If we reinforce government regulation with self-regulation, we have a system that works and we have practitioners that internalise the spirit of the law and hopefully the standards of the community.

The ICC, the International Chamber of Commerce, was one of the first bodies involved in developing and administering self-regulation. The ICC code has been the universal basis for self-regulation globally and certainly it is the prototype for our own code here in Australia. I think this quote from them is quite telling. It states—

The distinction and preference between rules of self regulation and statutory regulation is too simplistic. There is a large category of rules of self regulation which are applied by the courts as rules of law, and there are statutory rules which the self regulatory bodies use as professional recommendations.

So there is a sharing and overlap between the two of them. It continues—

It is also a mistake to think that professional rules are less restrictive than laws; they affect the freedom of the business quite as much and sometimes more.

There are of course some limitations to what self-regulation can achieve. The common fallback or default position is that if self-regulation does not work then the government will step in and take over, but there is a shared feeling that government reaction may be overreaction, may be

restrictive, may not be representative of social good and may perhaps be detrimental to marketing practice.

How does it work in Australia? In Australia our legal framework involves two key acts in terms of advertising—the Australian Communications and Media Authority Act 2005 and the Australian Competition and Consumer Act 2010. I will leave you to go through the details of these acts, but the key points are that the ACMA is responsible for the regulation of broadcasting, the internet, radio communications and telecommunications. The ACCC, on the other hand, ensures that individuals and businesses comply with the Commonwealth's competition, fair trading and consumer protection laws. You have probably heard about the ACCC's visibility in the marketplace.

Our current system of advertising regulation began in 1998. It is essentially run by the Australian Association of National Advertisers, the AANA, who responded to some research that was conducted in consultation with industry, government and consumers and who put together a new independent complaint resolution process. It is handled by the Advertising Standards Bureau, and they administer the complaints through two boards. The first, the Australian Claims Board, deals with competitor-to-competitor complaints and is on a user-pays basis.

The second board, which is our focus here today, is the Advertising Standards Board, the ASB. It deals with complaints from the general public on matters of health and safety, the use of language, the discriminatory portrayal of people, the protection of children, and the portrayal of violence, sex, sexuality and nudity. These relate to section 2 of the code.

The membership of the ASB is meant to be representative of the general public. It was certainly one of the intentions of the board when it was set up and one of the criticisms of the previous system of self-regulation. We currently have a 20-member board that comprises a broad spectrum of Australians: people who work in business, in media, in religion, human rights, women's rights, children's rights and even some students. There is a diversity of ages, opinions and ideals, and it is also gender balanced. Members are recruited through public advertisements for fixed-term positions. Anyone in the room who has a few spare hours can apply to be part of this process. It is an inclusive process.

The board receives complaints from the general public. They have facilitated the easy lodgement of these complaints online since 2006, and last year they also introduced a tablet app on which you can lodge complaints, so it is an easy process. The board receives these complaints and evaluates them against the AANA code of ethics, which I will go through soon. Generally they invite comment from the advertiser about the complaint and then take this into consideration and issue a determination.

They can either dismiss the complaint or they can uphold the complaint. If the complaint is upheld, the advertiser is asked to modify or withdraw the offending advertising; however, there is no enforcement mechanism. In the previous system we had the media on board as part of a tripartite system, and the advertisement was automatically removed by the media. Under this new system there is no enforcement mechanism; however, there is a default. The media typically remove offending advertising if the advertiser fails to do so. In the case of outdoor advertising, their members have 100 per cent compliance with this. If the ASB rules that an ad is offending and the advertiser refuses to take it down, the members of the Outdoor Media Association will remove it.

The basis of the deliberations is the AANA code of ethics. The intention of the code is to ensure that ads are legal, decent, honest and truthful and they have been prepared with a sense of obligation to the consumer and society and a fair sense of responsibility to competitors. I will leave you to peruse the code, because it is quite in-depth. Essentially, section 1 relates to competitive advertising complaints, complaints from competitors. Section 2 is really what the ASB deals with in terms of its different provisions. I think it is also important to note that the AANA code of ethics has responded to changes in society. It has developed special codes of practice. As you can see from this long list, they have added to their main code of practice. You can see issues that relate to children and obesity; you can see special product codes. So they are being quite responsive to changes in our society and concerns from the general public in developing new codes of practice.

In addition to what the ASB has as their codes of practice, we also see the industry has media clearing systems. Many media frameworks such as outdoor can refuse to run an ad before a complaint is even made, so it just does not go to air or it does not go up on the billboard. I have used the example here of the OMA, the Outdoor Media Association, as this is a focus of the

committee's inquiries. Members such as AdShel, for example, if they receive copy for an ad and feel that it is inappropriate, can reject it at that point—and they do so quite frequently. If they think there is a possibility that it may be controversial, they can send it to OMA as an organisation and get an opinion or an advice on the ad. If they think it is fine to run, it will go up; if not, they will reject it. If they run an ad and the ASB upholds that there is some complaint about it, they will remove the ad immediately. As I mentioned previously, they have 100 per cent compliance with the ASB's directive.

These systems of clearance are supported by codes of ethics. For the OMA you can see they have a number of different codes which reinforce their practice and kind of help them internalise the essence of the law. They encourage cooperation and also, I think, encourage a bit of peer pressure to make sure they are doing the right thing amongst the media members. I think this is a problem when we look at the online environment, where we do not have this cooperation from the media. So I think it is a key part of our system.

I thought I would throw up some complaint statistics. These are out of the ASB. I thought we would look generally at complaint statistics, and then I have some that just relate to outdoor. There were a lot of complaints—1,280—which sat in matters of ASB jurisdiction. They get other complaints that are outside of their terms of reference. Of those, 404 ads were found to be consistent with the code and the complaints were dismissed; 69 ads were found to be in breach of the code. Three of these were not modified or discontinued after a complaint was upheld. In such a case the ASB continues to work with the advertiser to try and get a resolution. They will also seek advice from the state government and industry bodies. One of the main offenders is Wicked Campers. You may be aware of its track record. None of them are outdoor, but there are particular renegade advertisers who are not members of the AANA who are a problem in this area.

If we look at where the complaints came from, most of them were in discrimination, vilification, sex, sexuality and nudity, which is a mandate of this committee. About a quarter of the complaints related to those. I think it is interesting that, when you put it all together, 66 per cent of the complaints were in the first three areas. Let us look at outdoor. Firstly, the OMA ran more than 12,000 different advertisements in Queensland alone in 2012. Of those, 83 were considered by the ASB and 14 of these were found to be in breach of the code.

I think it is interesting here to kind of look at the ones that breach the code. Eleven of these were not hosted by OMA members, so what that means is they were not on your big billboards that you will see down the road that are run by AdShel and the Outdoor Media Association members. These were ads that someone put up on the front of their shop, or on the front of their premises or in a schoolyard, but it is not run by the association. So the main lot of complaints are not coming from ads through the OMA. I think their process is working quite well; it is these other ads that people just put up that seem to be the problem. In terms of ads that were posted on main billboards across Australia, only three outdoor ads, or 0.01 per cent, of the 30,000 outdoor ads in Australia nationally last year breached the code. None of these three was specific to Queensland; none of these breaches was in the area of sex, sexuality and nudity.

I also looked at complaints in terms of the sexualisation of children, and this is an interesting one because you will remember that we were looking here at those 11 that were not hosted by OMA members. Well, one of them, an ad by the Queensland Theatre Co., came up as being in breach of the code for the sexualisation of children. They ran two ads that were the problem. The ads, which were for a play that they were running, featured models over the age of 18; however, people thought they looked younger. The ruling from the ASB was that advertisements which appeal to younger people which contained sexualised images or poses are to be used with caution, and models who appear to be young should not be used in sexualised poses. That was really the issue there. It is interesting, because these ads were actually displayed on the theatre itself as promotion for the upcoming play. They had presented these ads to the OMA to run on billboards around the place. The OMA said that these contravened the code. They told them. They said that these would be in breach of the code. They actually worked with the Queensland Theatre Co. to produce an ad which actually did not contravene the code and ran on billboards around the place.

CHAIR: Professor Kerr, we have five or so minutes left.

Ms BATES: Was that the *Romeo & Juliet* ones?

Prof. Kerr: Yes. I tried to put some pictures up, but I could not. They were PDFs and they would not copy across. But I have copies if you want to have a look at them. It is really interesting.

Who complains? Most of us do not. That is what academic research shows. Our complainants are not generally representative of the general public. They are older, female, generally with higher income, professional occupations and also from lobby groups. So, statistically, they are not representative of the population.

One thing that I would like you to consider is the other complainants that will never lodge a complaint through the ASB. They will go online. There is a case here, for example, of a local campaign, 'Rip and Roll', where there were 220 complaints to the ASB. The complaint was dismissed by the ASB and yet AdShel, who also received the complaints, decided to remove the campaign. Within 24 hours there were 25,000 complaints about the removal of the ad through the online environment. So all I am suggesting is that there is a whole other kind of complainant which is not even being considered. We have done a lot of research on the online environment. Bloggers especially are a whole new force in advertising regulation.

To try and get this voice of the community right, the ASB does some research into consumer perceptions. They test the five core propositions of the code to make sure that their deliberations are in line with what consumers are thinking. The last research highlighted that the community were generally more conservative than the board in terms of the issue of strong language. The board has kind of taken that on and it was presented to the board, so that will flow on for their ongoing determination.

Is it working? Well, I do not think any system is perfect, from our legal system through to the parking system at QUT. I think there is a lot of international support and evidence for our system. Globally we are seeing a de-evolution towards self-regulation. There are also complementary reports on self-regulation by scholars and an international push for best practice which I think is very important.

I also think that in Australia our self-regulatory system is no stranger to scrutiny. There have been two parliamentary inquiries that have recommended that self-regulation remain, including one which relates to billboard and outdoor advertising.

I think it is also important to look at the ASB. I think as an organisation they are committed to continuous improvement. They did things like join the European Advertising Standards Alliance in 2006 to try to work out best practice. In doing so, they have introduced changes like increasing the number of board members, increasing the meeting frequency, introducing an independent review process, even engaging in the community perceptions research that I just mentioned to you. Their work has led them to win a bronze award for best practice internationally which I think is a glowing report on their service, mainly on their remit on social media, but they are also leading the whole international push through APEC. They led the dialogue recently in Hanoi, so they are doing great things.

I also think you need to look at the OMA as a media organisation because I think media are essential to a system that does not have an enforcement mechanism, and I think that the OMA really is a good example of Boddewyn's internalisation of advertising standards. They have really got their act together with their code of practice. I particularly like their content review policy, where they work with organisations such as the Queensland Theatre Co. to develop appropriate material and their members have been 100 per cent compliant.

Lastly, I think perhaps a little enlightenment always helps. Confucius said if you lead the people with governmental measures and regulate them by law and punishments they will avoid wrongdoing but have no sense of honour or shame; if you lead them by virtue and regulate them by rules of propriety they will have a sense of shame and, moreover, set themselves right. Herein I think lies the strength of advertising self-regulation—by upholding the will of the state, the market and the community and by getting the people who create the advertising to believe in its integrity the most. Thank you.

CHAIR: Thank you. Members, we have about three minutes before we have to wind up because we have to get ready for the next hearing by videoconference. We have to allow time for the technical people to do that. Depending on the length of the answer, I will probably only allow two or three questions, if that is okay.

Dr DOUGLAS: Why did we fail with AMI? Why did AMI defeat all attempts? I had a pretty good go at them, and I have been involved in this for a long time. The numbers did not come up there—that is, the Advanced Medical Institute. How did they get through?

Prof. Kerr: I guess they followed the process. Complaints were certainly made. They went to the ASB and the feeling is that it does not contravene the community's standards. So I really do not see it as a failure; I think of it as a reflection of societal standards.

Dr DOUGLAS: I just find that very difficult to accept. I am a GP and have been involved in that for 25 years. Those ads are probably the most offensive ads I have ever seen on any billboard or in any marketing campaign in Australia. I do not accept that. Certainly on the Gold Coast—I can speak about there—there were more complaints about those ads to the council and to members than any other ad campaign ever run by anyone else, and that includes Windsor Smith and everybody else. How can the organisation state that everybody else is wrong and they are right?

Prof. Kerr: I think you have to look at the process and how it represents community standards and I think it followed a process. Certainly there are a lot of people who have strong opinions in this area. There are certainly very vocal people with opinions on advertising. I think it goes through a process and it gets judged by community standards and sometimes they are different from our own personal standards.

Mr DAVIES: Professor Schultz, you are from the US. As far as the US goes—and I was there only a few months ago—even on TV your standards seem to be a lot higher than Australia. Where does outdoor advertising sit as far as what is appropriate?

Prof. Schultz: The US standards are pretty much the same as Australia's and our process is pretty much the same. I think the question you really need to struggle with here is: are you trying to reduce the content or are you trying to reduce the media? There are two questions here. It is not just about what is on the billboard; it is about whether or not the billboard should be there. So what are you talking about? Are you talking about the content of the billboard or are you talking about the form of communication that is there?

Mr DAVIES: No, the content of the billboard.

Prof. Schultz: The content of the billboard is essentially up to community standards. That is essentially what everyone has maintained. I have not seen the ones that are in question here, but that is pretty much the standard almost around the world, or at least in the Western world—that is, there is a hearing process, exactly as was described, and those sorts of things go through that process and the self-regulation essentially works pretty well.

Mr DAVIES: Foxtel, for example, had a billboard in Kings Cross which depicted a man simulating sex with an animal, a beast—a pig. Obviously they put that up. It was pulled down pretty much straightaway, but there was the flow-on. I do not know whether that was ambush style marketing, because it got in all of the papers. For their buck they put one billboard up but it got in every paper. Obviously within the marketing world that was a success as far as they were concerned.

Prof. Kerr: I suppose it depends what their objectives were in the first place, but certainly it achieved a lot of publicity. I think that is what happens with anything that is controversial, and sometimes that publicity is detrimental to the marketer and sometimes it is positive towards the marketer. It really depends on the context.

CHAIR: I am sorry, but we really must move on. We have run out of time here. Professor Kerr, thank you. I appreciate the time that you have put in to prepare that presentation for us. It certainly helps greatly. Professor Schultz, thank you for attending. Thank you for your time.

Prof. Schultz: My pleasure and thank you.

Committee adjourned at 10.51 am