

# **Inquiry into sexually explicit outdoor advertising**

**Report No. 36**

**Health and Community Services Committee**

**January 2014**

## Health and Community Services Committee

**Chair** Mr Trevor Ruthenberg MP, Member for Kallangur

**Deputy Chair** Mrs Jo-Ann Miller MP, Member for Bundamba

**Members** Ms Ros Bates MP, Member for Mudgeeraba

Dr Alex Douglas MP, Member for Gaven

Mr John Hathaway MP, Member for Townsville

Mr Jon Krause MP, Member for Beaudesert

Mr Dale Shuttleworth MP, Member for Ferny Grove

**Staff** Ms Sue Cawcutt, Research Director

Ms Lee Archinal, Principal Research Officer (part-time)

Ms Kathleen Dalladay, Principal Research Officer (part-time)

Mr Karl Holden, Principal Research Officer (part-time until November 2013)

Ms Liz Sbeghen, Principal Research Officer (part-time from October 2013)

Ms Stephanie Cash, Executive Assistant

**Contact details** Health and Community Services Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**Telephone** +61 7 3406 7688

**Fax** +61 7 3406 7070

**Email** [hcsc@parliament.qld.gov.au](mailto:hcsc@parliament.qld.gov.au)

**Web** [www.parliament.qld.gov.au/hcsc](http://www.parliament.qld.gov.au/hcsc)

# Contents

<b>Abbreviations</b>	<b>viii</b>
<b>Chair's foreword</b>	<b>ix</b>
<b>Recommendations</b>	<b>x</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Role of the committee	1
1.2 Terms of reference	1
1.3 The committee's process	1
1.3.1 Submissions	1
1.3.2 Public briefings and hearings	2
1.3.3 Parliamentary and expert reports	2
1.3.4 Legislation and regulatory frameworks	3
1.3.5 Protection of children	3
<b>2 Scope of the committee's inquiry</b>	<b>4</b>
2.1 Introduction	4
2.2 Industry bodies	4
2.2.1 Australian Association of National Advertisers	4
2.2.2 Outdoor Media Association	4
2.3 Outdoor advertising	4
2.3.1 Range and locations of outdoor advertising	4
2.3.2 Advertising industry – out-of-home advertising	5
2.3.3 Submissions to the committee	5
2.3.4 House of Representatives Committee inquiry into billboard and outdoor advertising	5
2.3.5 Committee view	6
2.3.6 Size of the outdoor advertising industry	6
2.4 Unique features of outdoor advertising	6
2.4.1 Wide audience	6
2.4.2 No choice – cannot be 'switched off'	7
2.4.3 Cannot be avoided by children	7
2.5 Sexually explicit advertising	7
2.5.1 What is 'sexually explicit'?	7
2.5.2 Range of views about what is "sexually explicit and inappropriate"	8
2.6 The extent of sexually explicit outdoor advertising in Queensland	10
2.7 Regulation of sexually explicit outdoor advertising - findings and recommendations of other inquiries	11
2.7.1 Sexualisation of children in contemporary media	12
2.7.2 Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising	14
2.7.3 Review of the National Classification Scheme: achieving the right balance	17
2.7.4 Classification – Content Regulation and Convergent Media (February 2012)	18

<b>3</b>	<b>Current self-regulation of outdoor advertising</b>	<b>19</b>
3.1	Introduction	19
3.2	Industry self-regulation – Advertising Standards Board	19
3.2.1	<i>Background</i>	19
3.2.2	<i>Standards Board determines complaints</i>	19
3.2.3	<i>Criteria for determining complaints about advertisements</i>	20
3.2.4	<i>AANA Code of Ethics</i>	20
3.2.5	<i>Process for complaints and determinations</i>	20
3.2.6	<i>Action if a complaint is upheld</i>	21
3.2.7	<i>Review of ASB decisions</i>	21
3.2.8	<i>Timeliness of complaint process</i>	21
3.2.9	<i>Outdoor advertising complaint as a proportion of advertising complaints</i>	21
3.2.10	<i>Modifications to the AANA Code of Ethics</i>	22
3.2.11	<i>Consistency of Standards Board decisions with prevailing community standards</i>	22
3.3	Case studies – complaints and determinations	22
<b>4</b>	<b>Impact of sexually explicit advertising on children (sexualisation and other adverse impacts)</b>	<b>33</b>
4.1	Introduction	33
4.2	Sexually explicit and inappropriate images	33
4.3	Sexualisation and children	34
4.4	The audience for outdoor advertising	35
4.5	The impacts of sexually explicit advertising on children	36
4.5.1	<i>Definition of child</i>	36
4.5.2	<i>Research evidence of impacts</i>	36
4.6	Community concerns about the impact of sexual imagery in outdoor advertising	37
4.6.1	<i>Self-regulation and consistency with prevailing community standards and values</i>	38
4.6.2	<i>Placement of outdoor advertising using sexual imagery</i>	40
4.6.3	<i>Perception of greater prevalence of sexual imagery in outdoor advertising</i>	41
4.6.4	<i>Lack of parental control</i>	42
4.6.5	<i>Other concerns</i>	43
4.7	Adopting a precautionary approach to protect children	44
<b>5</b>	<b>Current regulation of other media and aspects of advertising</b>	<b>47</b>
5.1	Introduction	47
5.2	Types of regulation	47
5.3	Legislation which applies to outdoor advertising	48
5.3.1	<i>Misleading, false and deceptive advertising – Commonwealth</i>	48
5.3.2	<i>Queensland licensing laws</i>	48
5.4	Queensland regulation of advertising within the boundaries of, or visible from, state-controlled roads	49
5.5	Queensland local government legislation	49
5.5.1	<i>Example: Brisbane City Council's Advertisements Local Laws</i>	49
5.6	Regulation of advertising of specific types of products	50
5.6.1	<i>Tobacco advertising – government regulation</i>	51

5.7	Regulation of other forms of media	51
5.7.1	<i>National Classification Scheme – government regulation</i>	51
5.7.2	<i>Classification of films and computer games</i>	52
5.7.3	<i>Classification of publications</i>	52
5.7.4	<i>Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013</i>	53
5.8	Television content and advertising – co-regulation	54
<b>6</b>	<b>International regulatory approaches to outdoor advertising</b>	<b>56</b>
6.1	Introduction	56
6.2	The International Chamber of Commerce (ICC)	56
6.3	European Advertising Standards Alliance	57
6.4	United Kingdom	57
6.4.1	<i>Self-regulation</i>	57
6.4.2	<i>Code of Conduct and Charter</i>	57
6.4.3	<i>Complaints process</i>	58
6.4.4	<i>Sanctions</i>	59
6.5	Canada	59
6.5.1	<i>Self-regulation</i>	59
6.5.2	<i>Code of Conduct</i>	59
6.5.3	<i>Complaints process</i>	60
6.5.4	<i>Sanctions</i>	60
6.6	New Zealand	60
6.6.1	<i>Self-regulation</i>	60
6.6.2	<i>Codes of Conduct</i>	61
6.6.3	<i>Complaints process</i>	61
6.6.4	<i>Sanctions</i>	61
6.7	United States	61
6.8	Summary	62
<b>7</b>	<b>Adequacy of existing regulation of outdoor advertising in Queensland</b>	<b>63</b>
7.1	Introduction	63
7.2	Community awareness of the complaints system	63
7.2.1	<i>Knowledge of where and how to complain</i>	63
7.2.2	<i>Committee comment</i>	63
7.2.3	<i>Public awareness of how complaints are assessed</i>	64
7.2.4	<i>Committee comment</i>	64
7.3	Enforcement of Advertising Standards Board decisions	65
7.3.1	<i>Industry co-operation essential to the current system</i>	65
7.3.2	<i>No enforcement capacity if advertiser does not voluntarily comply</i>	65
7.3.3	<i>Should there be penalties for breaches of the Code of Ethics?</i>	66
7.3.4	<i>Non-compliance with Standards Board – small business</i>	66
7.3.5	<i>Non-compliance with Standards Board – campervan hire</i>	66
7.3.6	<i>Compliance with Standards Board – variation of advertisement</i>	67
7.3.7	<i>Committee comment</i>	67

7.3.8	<i>Potential for non-compliance to generate additional publicity</i>	67
7.3.9	<i>Committee comment</i>	67
7.4	Timeliness of action on advertisements that breach the Code of Ethics	68
7.4.1	<i>Standards Board and ASB meetings to consider complaints</i>	68
7.4.2	<i>Community views about timeliness</i>	68
7.4.3	<i>Committee comment</i>	68
7.5	Placement of outdoor advertisements	69
7.5.1	<i>Committee comment</i>	69
7.6	Advertiser awareness of relevant standards	70
7.6.1	<i>Committee comment</i>	70
7.7	Summary	70
<b>8</b>	<b>Is reform needed?</b>	<b>71</b>
8.1	Introduction	71
8.1.1	<i>Broad range of community views about advertising content</i>	71
8.1.2	<i>Industry response to community views</i>	71
8.1.3	<i>Limited reform required</i>	71
8.2	Government regulation	72
8.2.1	<i>National Classification Scheme for films, computer games and publications – ‘G-rating’</i>	72
8.2.2	<i>Public nuisance offence - offensive slogans and images on vehicles</i>	73
8.3	Co-regulation	74
8.4	Government representation on Standards Board	74
8.5	Strengthened self-regulation	74
8.6	Preferred approach to reform – co-regulation and strengthened industry complaints system	74
8.6.1	<i>Code of Ethics</i>	75
8.6.2	<i>Adjudication board</i>	77
8.6.3	<i>Decisions of the Standards Board</i>	77
8.6.4	<i>Referral to the Department of Justice and Attorney-General - enforcement of decisions</i>	78
8.6.5	<i>Fines and other actions available to the Department</i>	78
8.6.6	<i>Research into prevailing community views</i>	79
8.6.7	<i>Timeliness of complaints process</i>	79
8.6.8	<i>Self-initiated investigations</i>	80
8.6.9	<i>Promote awareness of complaints handling process</i>	81
8.7	Community and local government action about outdoor advertising	81
	<b>Appendices</b>	<b>82</b>
	Appendix A – List of Submissions	82
	Appendix B – Witnesses at public hearings and briefings	85
	Appendix C – Australian Association of National Advertisers <i>Code of Ethics</i>	86
	Appendix D – Recommendations of Parliamentary Inquiries and Responses	88

## **Case Studies**

Case Study 1: Advanced Medical Institute	23
Case Study 2: Wicked Campervans	27
Case Study 3: Honey Birdette	30
Case Study 4: HoneyB's	31

## **Tables**

Table 1: Classification of films and computer games	53
Table 2: Classification of television content and advertising	55

<b>Abbreviations</b>	
AANA	Australian Association of National Advertisers
AASW	Australian Association of Social Workers
ABAC scheme	Alcohol Beverages Advertising Code Scheme
ACB	Advertising Claims Board
ACCC	Australian Competition and Consumer Commission
ACL	Australian Christian Lobby
ACMA	Australian Communications and Media Authority
ALRC	Australian Law Reform Commission
AMI	Advanced Medical Institute
APA	American Psychological Association
ASA	Advertising Standards Authority (UK)
ASB	Advertising Standards Bureau
ASBOF	UK Advertising Standards Board of Finance
ASC	Advertising Standards Canada
CAP	UK Committee of Advertising Practice
Classification Scheme	National Classification Scheme for publications, computer games and films
the committee	Health and Community Services Committee
EASA	European Advertising Standards Alliance
HRSCSPLA	House of Representatives Standing Committee on Social Policy and Legal Affairs
ICC	International Chamber of Commerce; it issued a code of advertising practice in 1937 and many self-regulatory systems, including Australia's, are based on the current ICC code.
LACSC	Legal Affairs and Community Safety Committee
NZ ASA	New Zealand Advertising Standards Authority
NZ ASCB	New Zealand Advertising Standards Complaints Board
OAAA	Outdoor Advertising Association of America
OMA	Outdoor Media Association
OMAC	Out-of-Home Marketing Association of Canada
OMANZ	Outdoor Media Association of New Zealand
PACT	Protect All Children Today Inc
SLCARC	Senate Legal and Constitutional Affairs References Committee
SRC	Social Responsibilities Committee
SSCECA	Senate Standing Committee on Environment, Communications and the Arts
Standards Board	Advertising Standards Board
UK ASA	UK Advertising Standards Authority
UK OMC	UK Outdoor Media Centre
US ASRC	US Advertising Self-Regulatory Council



## Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the committee's inquiry into sexually explicit outdoor advertising

The committee's terms of reference required it to inquire into and report on the impact of sexually explicit outdoor advertising on children, and whether reform is needed to protect children. The committee was also required to consider the findings of recent parliamentary committee and expert reports, and to consult with stakeholders and industry.

The committee received a significant number of very brief submissions from people concerned about the content of outdoor advertising, and more substantial submissions from peak bodies, industry organisations and professional bodies.

As part of its deliberations, the committee worked to ensure it was well informed of the current situation in terms of:

- the current legal framework for the regulation of outdoor advertising and the extent and limitations of the different jurisdictional responsibilities in this area
- the impact sexually explicit outdoor advertising might have on children and their development
- the findings and recommendations of other recent parliamentary inquiries relevant to the scope of this inquiry
- the current practice and standards adopted in other countries to address this issue.

Against this backdrop, the committee considered the complex issue of community standards in relation to appropriate outdoor advertising, and how regulation might better reflect community expectations in this area. The committee was concerned to ensure that its recommendations would not create a large, complex bureaucracy. The committee's recommendations are made with the intention of ensuring that outdoor advertising in Queensland is acceptable to the general population while not creating unnecessary red tape for industry. The committee also acknowledges the good work of the majority of the outdoor advertising industry in earnestly trying to ensure that the advertising they place is acceptable to the general community.

The committee also considered the impact of its recommended approach to better supporting regulation on the existing intergovernmental arrangements of the national approach to content regulation. We believe that our recommendation for Queensland legislation in this area will only enhance that national framework, and not detract from it. We believe our recommendations will provide an excellent platform for other jurisdictions to strengthen their own legislation if required.

I believe that the committee has made recommendations that will enhance the reputation of the industry and provide the necessary enforcement options to respond to rogue companies which do not act in the best interest of their communities.

On behalf of the committee, I thank those who made written submissions on this Bill and gave evidence at its public briefings and hearings.

I commend the report to the House.



**Trevor Ruthenberg MP**

**Chair**

## Recommendations

### Recommendation 1

75

The committee recommends that the Queensland Government introduce legislation to establish a co-regulatory approach to outdoor advertising, which:

- a. provides for recognition of an industry body – in the first instance the Australian Association of National Advertisers
- b. requires the recognised industry body to develop a draft advertising code of ethics to apply to all forms of outdoor advertising, after consultation with industry, the public and the Department of Justice and Attorney General, and that this be submitted to the Attorney General
- c. provides for the code of ethics to be given effect by regulation if the Attorney General is satisfied that it is supported by the majority of the industry, that the public has had adequate opportunity to comment on the draft Code and that it provides appropriate community safeguards
- d. provides for the code of ethics to be reviewed every two years by the recognised industry body
- e. provides for the establishment by industry of an adjudication board to determine whether outdoor advertisements breach the code of ethics, and that the adjudication board be the Advertising Standards Board, with the Advertising Standards Bureau as its secretariat
- f. enables the adjudication board, if an advertiser does not comply with its determination, to refer the matter to the Department of Justice and Attorney-General to consider enforcement and penalties, including:
  - i. imposition of significant fines that would have a deterrent effect, and which can be increased for subsequent offences
  - ii. to require an advertiser to have proposed advertisements pre-vetted for a specified period
- g. provides for funds from fines and income from mandatory pre-vetting of advertisements to be allocated to the management of complaints, research, adjudication of matters and related issues by the adjudication board and its secretariat.

### Recommendation 2

76

The committee recommends that the Australian Association of National Advertisers amend its Code of Ethics so that it puts beyond doubt that the 'relevant audience' for outdoor advertising includes children, and states that care should be taken to avoid locating advertisements which include sex, sexuality and nudity in places frequented by children.

### Recommendation 3

77

The committee recommends that the Outdoor Media Association develop a placement policy to guide its members and other businesses that advertise outdoors. The placement policy should provide clear advice about the appropriate content of outdoor advertising placed in the vicinity of schools, child care centres and other locations frequented by children.

### Recommendation 4

77

The committee recommends that the Advertising Standards Bureau website include more clearly defined criteria for appointment as a member of the Advertising Standards Board, including the skills, expertise and the range of views required, geographical location, age and gender of members. In addition the Bureau should publish information about the process and timing for expressions of interest and recruitment of new members of the Standards Board.

**Recommendation 5** **79**

The committee recommends that the Advertising Standards Bureau undertake more frequent research about prevailing community views to inform the decisions of the Advertising Standards Board, noting the committee's other recommendations that the Bureau charge for pre-vetting advertisements and that revenue from fines be directed to the Bureau to support the system of complaints and determinations.

**Recommendation 6** **80**

The committee recommends that the Advertising Standards Bureau formalise policies and procedures to prioritise and 'fast track' consideration of complaints about advertisements that meet criteria which suggest that the *Code of Ethics* may have been breached. The policy and procedures should be published on the Bureau's website.

**Recommendation 7** **81**

The committee recommends that, where an outdoor advertisement uses sex, nudity and sexuality, and potentially breaches the *Code of Ethics*, the Advertising Standards Bureau and the Advertising Standards Board consider the matter without the need for a complaint.

**Recommendation 8** **81**

The committee recommends that the Australian Association of National Advertisers and the Outdoor Media Association adopt a policy that all outdoor advertisements display brief information about where to complain about an advertisement.



## **1 Introduction**

### **1.1 Role of the committee**

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, consisting of government and non-government members.

Under the *Parliament of Queensland Act 2001* a portfolio committee is responsible for considering legislation, public works and public accounts, and issues referred to it by the Legislative Assembly. This inquiry was referred to the committee on 17 April 2013, for report to the Legislative Assembly by 31 January 2014.

### **1.2 Terms of reference**

The terms of reference for this inquiry are:

1. That the Health and Community Services Committee inquire into and report on the current regulation of outdoor advertising in Queensland and whether reform, including legislative reform, is needed to protect children from being exposed to sexually explicit and inappropriate outdoor advertising.
2. That in undertaking this inquiry, the Committee is to consider:
  - a. the sexualisation of children and other adverse impacts on children through sexually explicit outdoor advertising;
  - b. the range of outdoor advertising, including roadside billboards, shopfront windows, on public shelters and public transport, and the existing regulation of such advertising spaces;
  - c. the adequacy of the existing regulation of outdoor advertising in Queensland, focusing on the effectiveness of the regulatory model to limit children's exposure to sexually explicit images and slogans;
  - d. the regulatory framework for other forms of media including publications and television that limits children's exposure to sexually explicit and inappropriate advertising and whether such framework could be applied to outdoor advertising;
  - e. previous parliamentary and expert reports on the regulation of outdoor advertising; and
  - f. any recommendations for reform for the regulation of outdoor advertising in Queensland.
3. Further, that the committee take public submissions and consult with relevant local, Queensland and Commonwealth government agencies, business and industry groups and other key stakeholders.
4. Further, that the committee is to report to the Legislative Assembly by 31 January 2014.

### **1.3 The committee's process**

#### *1.3.1 Submissions*

The committee sought submissions from the public, industry and interested stakeholders through its website, an advertisement in the Courier Mail on 11 May 2013 and by direct invitation to organisations expected to be interested in the inquiry.

A total of 178 submissions were accepted and published, and are listed in Appendix A.

The committee received a significant number of brief emails in response to a stakeholder social media campaign. The committee contacted each email author and accepted these emails as submissions if names and addresses were provided.

Six ‘petitions’ advocating ‘G-rated’ outdoor advertising were received from colleges, a mosque and related community organisations, containing names and signatures but no other identifying details. The petitions were not accepted as submissions; however, the senders were advised that the committee acknowledged the indication of community concern about sexually explicit outdoor advertising, and would take account of the material.

### 1.3.2 Public briefings and hearings

The committee received public briefings from:

- Associate Professor Gayle Kerr of the Advertising, Marketing and Public Relations Business School, Queensland University of Technology, on 30 July 2013, and
- Associate Professor Kerry Robinson of the School of Social Sciences and Psychology, University of Western Sydney, on 16 October 2013.

Transcripts of the briefings are available on the committee’s website.

The committee held two public hearings on 7 and 21 August 2013. Eight witnesses from the community, stakeholder groups and the advertising industry attended the two hearings. Supplementary information was provided by some witnesses and was considered by the committee. Witnesses are listed in Appendix B.

### 1.3.3 Parliamentary and expert reports

As required by the terms of reference, the committee has considered the findings and recommendations of previous parliamentary and expert inquiries, and the Government and industry responses to those inquiries. The committee considered the following parliamentary inquiries and related responses:

- ***Sexualisation of children in contemporary media***, Senate Standing Committee on Environment, Communications and the Arts, June 2008. The inquiry examined the sexualisation of children in the contemporary media environment (e.g. radio, television, children’s magazines, other print, advertising material and the Internet).
- ***Review of the National Classification Scheme: achieving the right balance***, Senate Legal and Constitutional Affairs References Committee, June 2011. The primary focus of the review was to examine the National Classification Scheme (the Classification Scheme) which covers films, computer games and certain publications.
- ***Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising***, House of Representatives Standing Committee on Social Policy and Legal Affairs, July 2011. This inquiry considered whether the self-regulation of outdoor advertising was an effective method for managing outdoor advertising in line with community expectations.
- ***Classification – Content Regulation and Convergent Media***, Australian Law Reform Commission, ALRC Report 118, February 2012. This report examined whether the existing censorship and classification scheme continue to provide an effective framework for the classification of media content in Australia.

Those inquiries, their recommendations, and the outcomes in terms of action taken, are considered in more detail at section 2.7 of this report.

The committee also considered a major independent review into the commercialisation and sexualisation of childhood undertaken for the UK government by Reg Bailey in 2011, *Letting Children be Children*. The Bailey review was cast much broader than outdoor advertising, or even advertising more generally, but made recommendations about ‘on-street’ advertising containing sexualised imagery.

#### *1.3.4 Legislation and regulatory frameworks*

The regulatory frameworks that apply to media content, particularly publications and television, and regulation of advertising of specific types of product have also been examined to assess their applicability to outdoor advertising. The committee considered the current system of self-regulation, the National Classification Scheme for television, film and publications, other co-regulatory schemes, and a report on a private members' Bill by the Legal Affairs and Community Safety Committee (see section 5.7.4).

#### *1.3.5 Protection of children*

The committee's terms of reference focus on whether reform is needed to protect children from exposure to sexually explicit and inappropriate outdoor advertising. The committee examined literature about child protection, advertising and sexualisation of children to assess what is known from the research evidence of the impact that sexually explicit advertising may have on children. There is limited available evidence of precisely what impact sexually explicit outdoor advertising has on children. While some research examines the impact on children of pornography, such images do not appear in outdoor advertising, making it difficult to draw conclusions about the impacts of exposure to sexual imagery in outdoor advertising on children. However, stakeholders informed the committee of their concerns about potential impacts on children, and those views are discussed in Chapter 4.

## 2 Scope of the committee's inquiry

### 2.1 Introduction

The committee considered a number of issues about the scope of the terms of reference, and definitions of terms in the terms of reference. Issues considered included the outdoor advertising industry's activities, and the range of views about what constitutes "sexually explicit and inappropriate" advertising. The committee also reviewed the incidence of sexually explicit outdoor advertising in Queensland to the extent possible.

### 2.2 Industry bodies

#### 2.2.1 Australian Association of National Advertisers

The Australian Association of National Advertisers (AANA) is the peak national body of advertisers, representing the advertising, marketing and media industry. Its members come from a range of industries, including automotive, retail travel, alcohol, food and beverages, telecommunications and media. The AANA states that it represents approximately 85 per cent of Australian advertisers.<sup>1</sup>

The AANA established the Advertising Standards Board (Standards Board) and the Advertising Standards Bureau (ASB) in 1998 to operate as an advertising industry self-regulation scheme. The Standards Board considers complaints about advertisements and determines whether they breach the AANA *Code of Ethics* or another of the industry specific codes.

#### 2.2.2 Outdoor Media Association

The Outdoor Media Association (OMA) is the peak body for outdoor media display companies and production facilities (e.g. billboard owners). The OMA represents 90 per cent of Australia's outdoor media industry.<sup>2</sup> Its members do not create the advertisements that are displayed outdoors, but sell space to advertisers for their product and service advertisements.<sup>3</sup> The OMA has a voluntary code of principles that define the industry's standards for doing business with advertisers and regulators, and its responses toward the community and the environment.<sup>4</sup> To promote compliance with the AANA codes, the OMA *Code of ethics* incorporates the AANA codes.<sup>5</sup> The industry regulator does not consider complaints about breaches of the OMA code.

The OMA provides a regular program of training for the industry to help its members better understand and apply various advertising codes of practice. It also has a Content Review Policy, under which OMA members undertake to endeavour to seek copy advice from OMA before posting contentious advertisements. If the advice is that an advertisement is likely to breach a code of practice, the advertisement must not be displayed.

### 2.3 Outdoor advertising

#### 2.3.1 Range and locations of outdoor advertising

The committee's terms of reference required it to consider:

*the range of outdoor advertising, including roadside billboards, shopfront windows, on public shelters and public transport ...*

To determine the scope of outdoor advertising which it would consider, the committee examined the definition adopted by the House of Representatives Standing Committee on Social Policy and Legal

---

1 Alina Bain, AANA, Public Hearing Transcript 21 August 2013, p.13

2 Charmaine Moldrich, OMA, *Public Hearing Transcript*, 21 August 2013, p.21

3 Charmaine Moldrich, OMA, *Public Hearing Transcript*, 21 August 2013 p.21

4 OMA, Submission 7, Appendix 3

5 Advertising Standards Board, Submission 21, p.5



Affairs, the approach taken by the AANA and the OMA, and the views expressed in submissions to the inquiry.

### 2.3.2 Advertising industry – out-of-home advertising

The OMA represents outdoor media display companies and production facilities that advertise third party products:

- on buses, trams, taxis, pedestrian bridges, billboards and free-standing advertisement panels
- on street furniture (for example, bus shelters) and
- in bus stations, railway stations, shopping centres, universities and airport precincts.<sup>6</sup>

The outdoor advertising industry uses the term ‘out-of-home’ advertising rather than ‘outdoor advertising’. In addition to advertising that is outdoors, out-of-home advertising includes public toilets, phone booths, and shopping centre displays. While not outdoor, these advertisements occupy spaces frequented by, and visible to, the general public.

In its submission to the committee, Collective Shout referred to the OMA’s use of the term ‘out-of-home’ rather than ‘outdoor’ and that this could include advertising that was displayed inside a building (such as an airport or office foyer).<sup>7</sup>

The OMA explained that ‘on-premise’ advertising, which is ‘more prolific’ than third-party advertising, is not covered by the OMA’s membership.<sup>8</sup>

### 2.3.3 Submissions to the committee

Submitters raised concerns about advertising in a broad range of locations, including shopping centres. Danny Weldon defined a shopping centre as an ‘indoor public place’ and maintained that, therefore, there should be accountability for the appropriateness of shop windows and displays.<sup>9</sup> Catherine Knijnenburg also noted the use of ‘highly sexualised images’ in shopfront windows in her submission.<sup>10</sup> While it could be argued that this type of advertising is, physically, ‘indoors’, it shares key features of outdoor advertising: accessibility and the absence of choice about exposure to the advertisements.

### 2.3.4 House of Representatives Committee inquiry into billboard and outdoor advertising

The Parliament of Australia’s House of Representatives Standing Committee on Social Policy and Legal Affairs considered billboard and outdoor advertising in 2011. It defined outdoor advertising as advertising “aimed at consumers when they are outside their home”. Such advertising could be found on walls, billboards and posters, street furniture such as bus shelters and other public infrastructure, in and on forms of transport, inside public transport stations and airports, in shopping malls and at sportsgrounds. The Standing Committee justified its inclusion of some spaces that may be privately owned on the basis that “their access is generally unrestricted to the public”.<sup>11</sup>

The Standing Committee’s scope for the 2011 inquiry was considered to be consistent with both the industry perspective, and the views of consumers brought to this committee’s attention.

---

6 OMA, Submission 7, p.4

7 Collective Shout, Submission 16, p.5

8 OMA, Submission 7, p.4

9 Danny Weldon, Submission 30

10 Catherine Knijnenburg, Submission 17, p.2

11 Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space*, July 2011, p.10, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=report\\_register/bykeylist.asp?id=3202](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bykeylist.asp?id=3202)

### 2.3.5 Committee view

After considering submissions, the approach of other inquiries and the industry definition of out-of-home advertising, the committee decided that the inquiry would consider out-of-home advertising, including advertising in shopping centres and similar locations. The committee therefore adopted an approach similar to the House of Representatives Standing Committee, which includes the industry definition of 'out-of-home' advertising to be outdoor advertising for the purposes of this inquiry.

The current regulation of outdoor advertising is described in Chapter 3.

### 2.3.6 Size of the outdoor advertising industry

The OMA advised the committee that the outdoor media industry in Queensland employed 150 full time equivalent staff in 2012 and contributed an estimated \$10.43 million to the upkeep of public infrastructure (for example, providing and maintaining bus shelters and park benches) as well as donating funds and free advertising space to Queensland charities and not-for-profit organisations. The third-party advertising industry ran more than 12,000 different advertisements in Queensland in 2012, displayed across more than 14,000 different advertising display panels.<sup>12</sup>

In evidence at the public hearing, OMA said that much of the outdoor advertising in Queensland is "advertising local Queensland businesses. In fact, we know that Queensland has the highest proportion of local outdoor advertisers of any state".<sup>13</sup>

In a recent media release the OMA's CEO, Charmaine Moldrich, noted the importance of outdoor advertising, "We are pleased that advertisers are recognising that Out-of-Home is the number one broadcaster in today's fragmented media market. We are the one traditional media channel still able to reach a mass audience and we do that very cost efficiently".<sup>14</sup>

## 2.4 Unique features of outdoor advertising

Outdoor advertising has a number of unique features that distinguishes it from other advertising media.

### 2.4.1 Wide audience

The OMA's information on the coverage of third-party outdoor advertising and its comments regarding the scale of on-premise advertising show the scale and extent of outdoor advertising in Queensland. Outdoor advertising has a wide audience reach and is regarded as a very effective marketing tool.

The OMA also notes that "... outdoor advertising is designed as an at-a-glance medium".<sup>15</sup>

In its submission to the committee, the Uniting Church commented that:

*Outdoor advertisements in public spaces are usually places in locations which maximise the public's exposure to the products/messages being advertised or promoted. This commonly includes large roadside billboards, sandwich boards and advertisements in public transport, at bus stops and in public toilets. It is rare to leave your home or work place and not encounter at least one form of outdoor advertising.*<sup>16</sup>

---

12 OMA, Submission 7, p.4

13 Charmaine Moldrich, OMA, *Public Hearing Transcript*, 21 August 2013, p.21

14 OMA media release, 'More Out-of-Home growth', [http://oma.org.au/data/assets/pdf\\_file/0006/7098/131001-Out\\_of\\_Home\\_Third\\_Quarter\\_2013\\_Revenue\\_Results\\_Final.pdf](http://oma.org.au/data/assets/pdf_file/0006/7098/131001-Out_of_Home_Third_Quarter_2013_Revenue_Results_Final.pdf), 2 October 2013

15 Charmaine Moldrich, OMA, *Public Hearing Transcript*, 21 August 2013, p.21

16 Uniting Church, Submission 36, p.3

#### 2.4.2 No choice – cannot be ‘switched off’

Lauren Rosewarne notes that the outdoor advertising medium “... is broad brush; it is visible by all consumers all of the time; it can be placed anywhere and is largely inescapable. This inescapability dissolves ‘choice’ justifications relevant to advertising in other media ...”.<sup>17</sup> She also argues that “outdoor advertising presents a unique case in that unlike advertising in other media, an individual’s capacity to avoid exposure is prevented”. According to Rosewarne outdoor advertising is “inescapable”.<sup>18</sup>

Outdoor advertising cannot be ‘switched off’ as other advertising and media can. In *Reclaiming Public Space*, the House of Representatives Standing Committee on Social Policy and Legal Affairs noted the captive nature of the audience for outdoor advertising, “Outdoor advertising occupies public space and demands attention from a captive audience ... it affects the comfort and amenity of the public”.<sup>19</sup>

A number of submissions noted the difficulty of avoiding outdoor advertising with comments such as “outdoor advertising is ubiquitous, all pervasive and cannot be avoided”<sup>20</sup> and “... currently there is nothing we can do about the ‘in-your-face’ nature of much of the advertising seen in public places”.<sup>21</sup>

The Uniting Church submission made the point that “... outdoor public spaces are there for everyone to enjoy, and that this should not be compromised by inappropriate advertising images and messages”.<sup>22</sup> In her submission to the committee, Alison Dennehy suggested that “it is the right of every person to walk freely through a mall or drive down a road without having another person’s sexual agenda forced upon them”.<sup>23</sup>

#### 2.4.3 Cannot be avoided by children

Many submissions also made the point that outdoor advertising is inescapable and captures a general audience that includes children. In her submission Janelle Patch told the committee, “I try to avoid places that these would be shown so my children will not view them. However, billboards and other large signs at bus shelters are just so big and prevalent that they are really unavoidable especially when you are driving”.<sup>24</sup> Another submission noted that “the fact that billboards are public means I have no choice if my child sees it or not”.<sup>25</sup>

### 2.5 Sexually explicit advertising

#### 2.5.1 What is ‘sexually explicit’?

The terms of reference asked the committee to consider “sexually explicit and inappropriate outdoor advertising”, particularly with reference to the impact of this advertising on children. The Macquarie Dictionary defines ‘explicit’ as: “leaving nothing merely implied; clearly expressed; unequivocal”.<sup>26</sup>

The UK Advertising Standards Agency (equivalent to the Australian industry self-regulatory body, the Advertising Standards Board) *Statement on sexual imagery in outdoor advertising* includes examples of images to illustrate how the UK Advertising Standards Agency determines whether advertising is sexually suggestive or overtly sexual. Those images bear out the importance of context for different

---

17 Lauren Rosewarne, *Sex in Public: Women, Outdoor Advertising and Public Policy*, 2007, Cambridge Scholars Publishing, Newcastle UK, p.16

18 Lauren Rosewarne, *Sex in Public: Women, Outdoor Advertising and Public Policy*, p.9

19 Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space*, p.23

20 Chris McCormack, Submission 199

21 A Cameron, Submission 76

22 Uniting Church, Submission 36, p.1

23 Alison Dennehy, Submission 50

24 Janelle Patch, Submission 70

25 Name suppressed, Submission 188

26 The Macquarie Dictionary Online, October 2013, available at <http://www.macquariedictionary.com.au/>

images and also the pose in defining whether an image is overtly sexual in comparison with those that are mildly sexual or sexually suggestive.

People can view any use of sexual suggestion in advertising as essentially pornographic. In her book *Deadly Persuasion*, Jean Kilbourne notes that “sex in advertising is pornographic because it dehumanizes and objectifies people, especially women ...”. She goes on to note that “the poses and postures of advertising are often borrowed from pornography, as are many of the themes ...”.<sup>27</sup>

The AANA *Code of Ethics* does not define ‘sexually explicit’ but instead provides that sexual appeal should not be employed in an exploitative or degrading manner, and that sex, sexuality and nudity should be treated with sensitivity to the relevant audience, and strong or obscene language should be avoided. The *Code of Ethics* is in Appendix C.

The Practice Note to the *Code of Ethics* states that images which are “highly sexually suggestive and inappropriate for the relevant audience” are not permitted in advertisements. Full frontal nudity and explicit pornographic language is not permitted and images of genitalia are not acceptable. The AANA also advises that “explicit sexual depictions” in advertisements, particularly where the depiction is not relevant to the product or service being advertised, are generally objectionable to the community and will offend.

The AANA states that images of nipples may be acceptable in some advertisements. Discreet portrayal of nudity and sexuality in an appropriate context is generally permitted depending on the relevant audience. Images of “scantily clad women or men” in advertisements are generally acceptable, if relevant to the product.<sup>28</sup>

In its submission, Family Planning Queensland noted that the meaning of the terms sexually explicit and sexualisation:

*needs to be explored further. The difference between sexuality, sexual development, sexually appropriate as well as sexually degrading or sexually inappropriate need to be more fully explored and understood, particularly in light of the fact that messages regarding health sexual development may be important in public health campaigns ...*<sup>29</sup>

#### 2.5.2 Range of views about what is “sexually explicit and inappropriate”

The issue of what is “sexually explicit and inappropriate” is subjective and will be strongly based in the particular moral and ethical framework embraced by an individual. Some people are offended by particular types of imagery and language and some are not. For many people, the appropriateness of images and language is dependent on location, timing, audience and the element of choice.

Submissions and evidence to the committee provided varying views on the images used in outdoor advertising in Queensland.

##### *Individual values inform views*

A number of submissions referred to ‘sexually explicit’ outdoor advertising which is unlikely to have been sexually explicit according to the dictionary definition. Other submissions indicated individual opinions that outdoor advertising was too sexually explicit. For example, one noted being “subjected to M+ and sometimes R rated advertising on main roads around our city and state”.<sup>30</sup> Other submissions used terms such as:

---

27 Jean Kilbourne, *Deadly Persuasion*, 1999, The Free Press, New York, p.271

28 AANA, Practice Note to Code of Ethics, [http://www.aana.com.au/codes/AANA\\_Code\\_of\\_Ethics\\_Practice\\_Note-26112012.pdf](http://www.aana.com.au/codes/AANA_Code_of_Ethics_Practice_Note-26112012.pdf)

29 Family Planning Queensland, Submission 4, p.1

30 Kerri-Anne Dooley, Submission 91

- ‘overtly sexualised images’<sup>31</sup>
- ‘sexually suggestive’<sup>32</sup>
- ‘adult themes’<sup>33</sup>
- ‘highly sexualised imagery’,<sup>34</sup> and
- ‘scantily dressed women’.<sup>35</sup>

There were alternative points of view. The Queensland Council for Civil Liberties advised the committee in its submission that it objected “to the notion that all nudity can be deemed obscene even to minors” and that it had “found no example of a billboard which it would consider needs to be banned”.<sup>36</sup> The author of another submission advised the committee that, although a Christian with a personally ‘conservative view’ on what should be seen in public advertising, the author did not want to see limits put on freedom of speech through regulation.<sup>37</sup>

In its submission the Queensland Association for Healthy Communities highlighted the importance of ensuring that the regulation of outdoor advertising is based on “objective standards of content, directly related to the issues of sexually explicit or sexualised content and not the moral objections of a minority to social issues (including homosexuality)”. As an example, Healthy Communities noted that only one outdoor advertisement during several years of a safe sex campaign for condom use had been the subject of a complaint. The image used was not sexually explicit or sexualised but depicted a fully clothed homosexual couple.<sup>38</sup>

*Other concerns that impact on views of “sexually explicit and inappropriate”*

Submissions received by the committee also indicated that other concerns impacted on people’s views of what is “sexually explicit and inappropriate”.

Some submissions indicated discomfort with the perception that advertising using sexualised images and adult themes was prevalent. In her submission to the committee, Heather Angus highlighted this feeling, saying there was “too much advertising with a sexual content ...”.<sup>39</sup>

Other submissions made it clear that people were concerned about the advertising of adult businesses and strip clubs in outdoor media, regardless of the image or language employed. Nicola Saad and Joanne and Ken Mothershaw objected to “adult businesses spruiking in the public eye” and Sandra Skinner asked the committee to include in the scope of the inquiry “a blackboard outside the pub with a message ... handwritten in chalk would be an advertisement for topless waitresses”.<sup>40</sup> In relation to concerns about advertising by Australian Medical Institute (AMI), Fiona Jolly, CEO of the ASB, told the committee that

*One of the problems for AMI which is not something that is within our jurisdiction is that they just annoy people, and that is not relevant to our decision. It is about whether the level of sex in the ad is appropriate to the audience. ... So AMI are a complex example because there are a whole range of issues about their operations and methods that are not related really to the content of their ads.*<sup>41</sup>

---

31 Australian Christian Lobby, Submission 14, p.5

32 George Szykarski, Submission 87

33 Stephanie and Stephen Lake, Submission 159

34 Kayla Eadie, Submission 162

35 Cecily MacAlpine, Submission 25

36 Queensland Council for Civil Liberties, Submission 37, pp.2&3

37 name suppressed, Submission 11

38 Queensland Association for Healthy Communities, Submission 41, pp.2&4

39 Heather Angus, Submission 174

40 Nicola Saad, Submission 147, Joanne and Ken Mothershaw, Submission 133, Sandra Skinner, Submission 45

41 Fiona Jolly, CEO, Advertising Standards Board, *Public Hearing Transcript*, 21 August 2013, p.21

Submissions also indicated that people's perceptions of the appropriateness of sexual imagery used in outdoor advertising were adjusted for what was considered to be 'age-appropriate' given that the audience in public places includes children. Stephanie Bloomfield's view that there are advertisements on bus shelters, billboards and other outdoor areas that "are far too sexually explicit for our children to view" reflected the comments made in many submissions to the committee.<sup>42</sup>

#### *Implied adult themes and messages*

Submissions and evidence also indicated concerns about messages that could be considered "sexually explicit" without using explicit imagery or language.

In its submission, Collective Shout, a grassroots campaigning movement against the objectification of women and sexualisation of girls in media, advertising and popular culture, noted that:

*It is important to recognise, then, that images and messages in advertising, which contribute to child sexualisation and have other adverse impacts on children may not be as immediately explicit as the messages they convey ... We urge the committee to keep these distinctions in mind when identifying and defining appropriate messaging and content in outdoor advertising.*<sup>43</sup>

At the committee's public hearing, Collective Shout expanded on this idea. Melinda Liszewski outlined examples of billboard advertisements for adult entertainment venues that are "sexually explicit without employing the use of nudity" and that do "not feature any text with the word 'sex' or any of those words that would raise the red flags among people. But it has a very sexually explicit message ...".<sup>44</sup>

## **2.6 The extent of sexually explicit outdoor advertising in Queensland**

As a first step in assessing the prevalence of sexually explicit outdoor advertising in Queensland the committee considered a sample of images and slogans collected from outside adult shops and massage parlours and on billboards in the greater Brisbane area over a week and a half in 2013.

Advertisements considered to be sexually explicit or offensive were also brought to the committee's attention in submissions. Some of those examples were no longer current or had been found in breach of the *Code of Ethics* by the Standards Board. Other examples had not been displayed in Queensland. The committee has included four case studies of controversial Queensland outdoor advertisements and their treatment under the current system of self-regulation at section 3.3.

The OMA submission noted the importance of ensuring that the images referred to in any consideration of the content of outdoor advertising images are accurate and recent. In particular, it pointed out that the AMI, Windsor Smith and various Sexpo advertisements, often employed to illustrate arguments regarding inappropriate imagery in outdoor advertising, had been banned and were no longer used. These examples were drawn to the committee's attention in submissions.

The committee also noted that an advertisement for a Foxtel channel referred to in a number of submissions had been displayed in Sydney and not in Queensland, except on social media.

The committee considered complaints made to the ASB about between January 2012 and October 2013 about outdoor advertisements and the Standards Board's decisions. According to the ASB website, Standards Board determinations on 96 complaints nationally were about out-of-home advertisements (billboard, transport, poster and outdoor categories) that related to concerns about sex, sexuality and nudity or inappropriate language. The Standards Board found that 20

---

42 Stephanie Bloomfield, Submission 74

43 Collective Shout, Submission 16, p.3

44 Melinda Liszewski, Collective Shout, *Public Hearing Transcript*, 21 August 2013, p.2

advertisements breached the *Code of Ethics*. Information on complaints by state of origin is not readily available from the ASB website.

The ASB *Review of Operations 2012* notes that, in 2012, 21.9 per cent of all complaints about any type of advertisement (not just out-of-home) were from Queensland.<sup>45</sup>

The committee identified very few examples of outdoor advertising in Queensland that were sexually explicit in the period from 2012 to 2013. One example was an image on an adult shop window that was only visible to pedestrian traffic. As far as the committee is aware no complaints have been made about that advertisement. Another example of a sexually explicit advertisement was a slogan on a Wicked Camper Van. A case study about complaints made about Wicked Camper Vans is at section 3.4. There were examples of outdoor advertising that used sexualised images or implied adult sexual themes but these were not considered to be sexually explicit.

As noted earlier, advertisements were brought to the committee's attention that were perceived by individuals to be offensive and that may have implied adult sexual themes but were not sexually explicit. Objections were made to some advertisements on the basis that they advertised products that people would prefer to not to see advertised in outdoor settings and public places, although the images used were not sexually explicit. There were also a number of past advertisements that were sexually explicit that continued to be referred to in submissions and in evidence to the committee.

The committee found only very few current examples of sexually explicit and inappropriate outdoor advertising in Queensland.

## **2.7 Regulation of sexually explicit outdoor advertising - findings and recommendations of other inquiries**

The committee's terms of reference asked that it consider previous parliamentary and expert reports on the regulation of outdoor advertising as part of its inquiry.

There have been three parliamentary committee reports and one Australian Law Reform Commission (ALRC) report that comment on the regulation of outdoor advertising and issues related to the terms of reference. They are:

- *Sexualisation of children in contemporary media*, Senate Standing Committee on Environment, Communications and the Arts (SSCECA) - June 2008
- *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, House of Representatives Standing Committee on Social Policy and Legal Affairs (HRSCSPLA) - July 2011
- *Review of the National Classification Scheme: achieving the right balance*, Senate Legal and Constitutional Affairs References Committee (SLCARC) - June 2011, and
- Classification – Content Regulation and Convergent Media (ALRC Report 118), Australian Law Reform Commission - February 2012.

The committee considered the recommendations of those reports that were relevant to the current terms of reference and sought information on the response of government and industry. The recommendations in those reports are discussed below, and are also summarised in a table at Appendix D.

The committee notes that industry bodies modified their approach to self-regulation following the reports of other parliamentary committees.

---

45 ASB Review of Operations 2012, p.71, available at [http://issuu.com/cre8ive/docs/2012\\_review\\_of\\_operations\\_report?e=1531671/1970231](http://issuu.com/cre8ive/docs/2012_review_of_operations_report?e=1531671/1970231)



### 2.7.1 Sexualisation of children in contemporary media

#### *Background*

The SSCECA examined the sexualisation of children in contemporary media, including radio, television, children's magazines, other print, advertising material and the Internet. The inquiry was prompted by public concern following the publication of two papers by the Australia Institute in 2006: *Corporate Paedophilia: Sexualisation of children in the media* and *Letting Children be Children: Stopping the sexualisation of children in Australia*.

The inquiry report discussed the sources of inappropriate sexualisation of children and its potential impact on children, for example, on body image, self-esteem, eating disorders and sexual behaviour. It assessed the effectiveness of media and advertising regulation and existing complaints mechanisms. The report also examined the potential role of sexual, reproductive and relationships education in reducing the potential effects of inappropriate sexualisation of children.

The SSCECA noted that children are a legitimate commercial market and acknowledged concerns about some products and advertising aimed at children. Despite the greater exposure of children to such media content, the committee considered "it would be a mistake to equate these influences with actual harm".<sup>46</sup> The SSCECA noted the lack of definitive evidence about the effect of inappropriate sexualisation in the media on children. A key message of the report was that parents have a pivotal role to play in how children engage with sexualised material.

Better complaints processes were seen as one way the media could be made more responsive to prevailing community standards about what parents believe is appropriate media and advertising content for children.

#### *Recommendations*

The SSCECA recommended that:

- As inappropriate sexualisation of children in Australian was of increasing concern, with the onus on broadcasters, publishers, advertisers, retailers and manufacturers to take account of community concerns, steps should be taken to address it by industry bodies and further considered by the Senate in 18 months' time (Recommendation 1).
- The Commonwealth commission a major longitudinal study into the effects of premature and inappropriate sexualisation of children (Recommendation 2).
- A media and advertising complaints clearing house be established to receive and forward complaints to the relevant bodies and provide advice to complainants (Recommendation 8).
- The ASB produce a consolidated half-yearly list of all complaints which involve the impact of an advertisement on a child (Recommendation 9).
- The ASB introduce a pre-vetting service to provide independent advice on the suitability of proposed outdoor advertising before it is advertised (Recommendation 10).
- The ASB develop a formal schedule or process for community consultation, including the use of focus groups, and research to act as a benchmark for board determinations (Recommendation 11).
- The ASB rigorously apply standards for outdoor advertising to more closely reflect community concern about the appropriateness of sexually explicit material and the inability of parents to restrict children's exposure to such material (Recommendation 12).

---

46 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts *The Sexualisation of children in contemporary media*, June 2008, p.16, available from [http://www.aph.gov.au/binaries/senate/committee/eca\\_ctte/sexualisation\\_of\\_children/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf)



## Response

*Further consideration by Senate committee:* The SSCECA had resolved to review the steps taken by industry in response to its recommendations 18 months later. However, in January 2010, the SSCECA decided not to conduct the review.

*Longitudinal study:* The Australian Government agreed in principle to the recommended longitudinal study but noted that the topic fell out of the range of work of the NHMRC and that it would therefore explore other opportunities for the conduct of the proposed research.

*Pre-vetting of advertisements:* The ASB advised that the OMA provides a copy advice service to its members and that it consults with the ASB regarding concept advice. The ASB also noted that the AANA and Communications Council offer informal copy advice to advertisers. The ASB publishes determination summaries on its website which provides advertisers with a way of understanding what is considered acceptable according to current community standards and assist them to avoid breaching those standards.<sup>47</sup>

*Complaints clearing house:* No media and advertising complaints clearing house has been established.

*List of complaints that involve an impact on children:* In response to recommendation 9, the ASB advised that a search function on its website means it is possible to locate complaints which mention children, although there does not appear to be a readily available list of complaints which claim an impact on children.

*Process to develop a benchmark community views:* Research on community views on issues covered by the codes administered by the Standards Board is undertaken by the ASB and used to provide feedback to the Board. In its submission, the ASB advised that it:

*conducts research into community standards on a regular basis, to measure whether the Standards Board's decision are in line with community standards. Research has been conducted for the Bureau and Standards Board regularly since 2007. The research aims to assess the extent to which Standards Board decisions about advertisements align with how the community would apply the codes and whether or not they meet requirements of the codes. This provides a useful mechanism for providing feedback to the Standards Board about constantly evolving community standards and allows them to adjust their approach to the code provisions if required, to ensure community standards continue to be reflected in the decisions they make. It also provides a useful tool for advertisers to understand changing views in the community in regard to advertising standards and to apply this to the advertising they produce.*<sup>48</sup>

The ASB submission to the committee noted that research in 2007, 2009 and 2010 indicated that ASB decisions generally reflect community standards on provisions of the AANA *Code of Ethics*. In 2012, the research indicated that the community is less conservative than the Board on issues about health and safety, violence and discrimination, and that the community is more conservative than the Board on themes of sex, sexuality, nudity and strong language, particular regarding the exposure of children to strong language.<sup>49</sup> The ASB submission stated that the research is taken into account when considering complaints under the codes.

---

47 Fiona Jolly, ASB, *Correspondence*, email 11 November 2013, Attachment - Letter from ASB to the Australian Government Attorney-General's Department, 31 October 2013

48 ASB, Submission 21, p.6

49 ASB, Submission 21, p.6

### *2.7.2 Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*

#### *Background*

The HRSCSPLA inquiry considered whether the current self-regulation of outdoor advertising was an effective method for managing billboard and outdoor advertising in line with community expectations.

The scope of the inquiry was broader than this committee's inquiry. While the terms of reference for the current inquiry focus on 'sexually explicit and inappropriate' advertising, the HRSCSPLA considered sexuality, nudity and the portrayal of women in advertising, advertising aimed at children and advertising of food and beverages, alcohol and motor vehicles.

The HRSCSPLA examined approaches to advertising regulation in Australia and internationally and considered whether statutory regulation, quasi-regulation, co-regulation or a self-regulation was the best option.

The HRSCSPLA concluded that a more rigorous self-regulation system that was better in tune with community standards and, with the unique category of outdoor advertising, was the most appropriate approach to regulation.

#### *Recommendations*

The HRSCSPLA recommended that:

- The AANA should introduce a specific code of practice for outdoor advertising. The code of practice should recognise that outdoor 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
  - have cumulative impact on the community through the social messages they convey (Recommendation 3).
- The ASB introduce a pre-vetting service which provides independent advice on the suitability of proposed outdoor advertising before it is advertised (Recommendation 5).
- The ASB conduct and publish annual random compliance surveys of outdoor advertising across specific industries and specific elements of advertising codes, including outdoor advertising that portrays sex, sexuality or nudity. Board members should take on a formal monitoring role and self-initiate investigations (Recommendation 6).
- The AANA establish a regular program to review the voluntary codes of advertising, in consultation with stakeholders, relevant organisations and experts in the field (Recommendation 7).
- The ASB 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 (Recommendation 9).
- The ASB take complaints by telephone and email and investigate anonymous complaints (Recommendation 15).
- The ASB establish regular, nation-wide information and awareness campaigns about the advertising complaints systems (Recommendation 16).
- The AANA and the OMA forward any complaints received from the public to the ASB (Recommendation 17).
- The ASB address advertiser non-compliance with the code by: naming the advertiser and their products on a dedicated, easily accessible, webpage; circulating the name of the advertiser in industry newsletters etc.; providing names to OMA to encourage members not to accept advertisements from the advertiser; and providing names to the Attorney-General (Recommendation 18).

- The ASB strengthen the independent review process by providing a comprehensive explanation of the process on its website. The Independent Reviewer should also undertake annual random reviews of the Board's determinations (Recommendation 19).

#### *Response*

The ASB was asked to respond to the recommendations by December 2011, and to implement them by December 2012. The deadlines were subsequently extended to September 2012, in order to consider the ALRC's classification report. The report also stated that the HRSCSPLA would conduct a further review by 30 June 2013. The committee understands that the HRSCSPLA is not currently scheduled to undertake the review.

*Response to Australian Government:* The ASB wrote to the Australian Government Attorney General's Department in September 2012 and October 2013.<sup>50</sup> The committee is not aware of any direct response from the AANA. At the committee's public hearing on 21 August 2013, however, Charmaine Moldrich described the OMA's response:

*The OMA established policies and practices to ensure that our members were themselves aware of best practice in this area. To this end we developed a regular program of content training for our members in conjunction with the ASB and the AANA, and we have delivered this training to 400 of our members over the last two years. We also developed a content review policy, including a copy advice service, which sees the OMA provide members with between five and 10 pieces of copy advice per month – whether ads fit within the code. So the members have their own system where they look at ads that come in and look at whether they work within the codes. When they think it is borderline, or when they do not know whether it fits into the code, they send it to the OMA and we give them copy advice. Once we have said that an ad could breach, then we let all members know so that no-one will run that ad. We also provide a concept advisory service which is available for advertisers and creative agencies to help them understand the extra requirements for outdoor advertising at an early stage of a campaign's development, so advertisers can come to us and show us a concept and we can give them a determination on whether that concept will reach or not breach the code.<sup>51</sup>*

*Code of practice:* Since 2011 the AANA's *Practice Note* has been strengthened in line with the inquiry's recommendation, and now provides that "where images of children are used, sexual appeal is not acceptable and will always be regarded as exploitative and degrading". It also provides that "advertisements with appeal to young people (under 14 years) which contain sexualised images or poses are to be used with caution. Models which appear to be young should not be used in sexualised poses".<sup>52</sup> Section 2.4 of the AANA *Code of Ethics* has a "relevant audience" test which enables the Board to consider different audiences, e.g. in different media, times or locations. The AANA 2012 *Practice Note* states:

*For the purposes of advertisements in public places, the Board will not only take account of the relevant audience, but it can also take a broad view of the 'audience'. This recognizes that broad nature of the audience for advertisements in public places. The Board will not just have regard to whom the advertisement is target (the relevant audience) but the Board also looks at who can see it and the Board will take that into consideration in determining their view of whether the advertisement treats sex,*

---

50 Fiona Jolly, ASB, *Correspondence*, email 11 November 2013, Attachment - Letter from ASB to the Australian Government Attorney-General's Department, 31 October 2013

51 Charmaine Moldrich, OMA, *Public Hearing Transcript*, 21 August 2013, p.21

52 ASB, Submission 21, p.11

*sexuality and nudity with sensitivity to that audience or in regards to whether the language used is appropriate for that audience.*

*Pre-vetting of advertisements:* Following the inquiry report the OMA introduced a *Content Review Policy*. The policy states that OMA members “recognise that outdoor advertising is visible to a broad audience and that this needs to be taken into account when considering compliance with the AANA *Code of ethics*”. The policy states that members will endeavour to seek copy advice from OMA before posting advertisements that may not conform with the provisions of the AANA *Code of Ethics* that address sex, sexuality, nudity, strong and obscene language, among other issues.<sup>53</sup>

*Compliance surveys and self-initiated investigations:* The ASB advised the Australian Government Attorney-General’s Department that:

- the UK Advertising Standards Authority was considering reducing self-initiated investigations other than in exceptional circumstances
- any compliance survey would need to be carefully considered to ensure useful results and
- the ASB it did not have the funds to self-initiate investigations.

The AANA advised the committee that it amended the *Code of Ethics* after the 2011 parliamentary inquiries. It noted that it had:

*included within the code and within the system of restrictions a new clause that prohibits the use of sexual appeal, which is exploitative and degrading. Further this clause restricts the use of sexual appeal and images of children in all cases, as the use of sexual appeal in the images of children is always regarded as exploitative and degrading under the code. We also keep our members up to date with the latest on community standards through AdWatch, a service that we provide to our members, which gives them case notes and analysis of recent ad standards decisions and determinations.*<sup>54</sup>

The following provision was added to the AANA *Code of Ethics*, effective in January 2012:

*2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.*

*Research on community standards:* The ASB noted that it has already committed to regular research on community standards which was undertaken in 2008, 2009 (2), 2010, 2011 and 2012. Its view is that it does not have capacity to undertake annual research into all of the matters listed in the recommendation each year. The ASB advised that it was working on a new research project to test Board decisions against the views of the community with respect to section 2.2 of the *Code of Ethics*, which deals with exploitative and degrading advertising.

*Anonymous and telephone complaints:* The ASB did not agree that it should accept anonymous complaints, but noted that they are kept on file and can be included in information considered if a formal complaint is made. Telephone complaints are accepted if a complainant is unable to write, however written complaints are preferred. The ASB ran a national promotional campaign about complaining to the ASB in late 2011. The OMA’s submission noted that its members had donated \$1.6 million to the campaign.<sup>55</sup> The committee was advised that a new public awareness campaign was being developed.

*Forwarding complaints to the ASB:* There is no requirement for AANA members to forward complaints to the ASB; however, the document containing the AANA *Code of Ethics* details how to

---

53 OMA Content Review Policy, Appendix 6 to Submission 7, p.9 available at [http://oma.org.au/\\_data/assets/pdf\\_file/0020/2459/OMA-Content-Review-Policy.pdf](http://oma.org.au/_data/assets/pdf_file/0020/2459/OMA-Content-Review-Policy.pdf)

54 Alina Bain, AANA, *Public Hearing Transcript*, 21 August 2013, p.13

55 OMA, Submission 7, p.14

make a complaint and the ASB works closely with industry bodies to ensure their members are aware of the complaints process. The OMA *Code of Ethics* states: “When we receive a complaint about any advertisement we display we refer the complainant to the Advertising Standards Bureau, an independent complaint adjudicator.”<sup>56</sup>

*Advertiser non-compliance:* Information about advertiser non-compliance with Standards Board determinations is available on the ASB website. Case reports identify the advertiser and product and include a summary of the advertiser’s response to the complaint, or the fact that no response was received. Media alerts, newsletters and the annual Review of Operations report on non-compliant advertisers. When considered appropriate, the ASB seeks assistance from local, state and federal authorities on non-compliance matters. The ASB was of the opinion that publication of a list of non-compliant advertisers might raise anti-competition or restraint of trade issues.<sup>57</sup>

*Independent review of Standards Board determinations:* The ASB website and 2011 *Fact Sheet* explains its independent review process. The ASB advised that in the course of each independent review, it considers any possible improvements in the system. In responding to the inquiry’s recommendation, the ASB advised that it does not have the resources to task the independent reviewer with a random survey and assessment of cases and noted that, in its opinion, this activity would be inconsistent with the role.<sup>58</sup>

### 2.7.3 *Review of the National Classification Scheme: achieving the right balance*

#### *Background*

This inquiry examined the National Classification Scheme (the Classification Scheme) covering films, computer games and certain publications. It was the first major review of the Classification Scheme in 15 years.

The terms of reference for the inquiry also included examining the possibility of including outdoor advertising in the Classification Scheme and the effectiveness of the Classification Scheme in preventing the sexualisation of children and the objectification of women in all media.

#### *Recommendations*

The SLCARC recommended a uniform and simple classification scheme across all jurisdictions and all media. It was strongly of the view that a uniform approach to the same or similar content is required, regardless of the medium of delivery, including outdoor advertising. The SLCARC therefore recommended that:

- The industry codes of practice be legally required to imitate the classification principles (e.g. minors should be protected from material likely to harm or disturb them; everyone should be protected from exposure to unsolicited material that they find offensive; and community concerns should be taken into account in relation to the portrayal of persons in a demeaning manner and the sexualisation of society and the objectification of women).
- The industry would continue to self-assess its own content. However, it would need to be accredited by the Government and employ in-house classifiers, trained by the Classification Board. The industry body would then be subject to annual audits of decisions.
- Incorrect classification by the industry body would be subject to substantial monetary fines.

---

56 OMA, Submission 7, Appendix 1, p.3

57 Fiona Jolly, ASB, *Correspondence*, email 11 November 2013, Attachment - Letter from ASB to the Australian Government Attorney-General’s Department, 31 October 2013, p.8

58 Fiona Jolly, ASB, *Correspondence*, email 11 November 2013, Attachment - Letter from ASB to the Australian Government Attorney-General’s Department, 31 October 2013, p.9

- The complaints handling processes be improved. To this end, the committee endorsed the recommendation in the Sexualisation of children in contemporary media inquiry that a complaints clearing house be established to help complainants navigate the system.
- The industry body would continue to self-assess complaints. However, if a complainant disagreed with the Board's decision they could appeal to the Classification Review Board (an independent statutory body). Any transgressions, if verified by the Classification Review Board, would be punishable by substantial monetary fines.

The SLCARC also recommended that the Senate urgently establish an inquiry to consider the progress made by industry bodies in addressing the sexualisation of children, and specifically, progress with implementing the recommendations in the report *Sexualisation of children in contemporary media*.

### *Response*

*Referral to the ALRC:* At the time of the Senate Committee undertaking its inquiry, and prior to finalisation of its report, the Government referred the Classification Scheme to the ALRC for review.

The ALRC reported to the Australian Government on 29 February 2012 and the Australian Government tabled the final report on 1 March, 2012. As the Classification Scheme is a cooperative scheme between the Commonwealth and all state and territory governments, consultation with all the States and Territories was undertaken. In April 2013 the Australian Government announced the first stage of reforms to the Classification Scheme, which would implement several recommendations of the ALRC.

The Australian Government response to the Senate Committee review noted that the ALRC review report discussed advertising and had concluded that advertising should not be brought within the scope of the Classification Scheme. The ALRC had recommended that advertisements for classifiable content be managed under the existing self-regulatory arrangements for advertising and amendments to advertising codes. The recommendation of the Senate Committee that industry codes of practice under current self-regulatory and co-regulatory schemes, including the advertising industry, should be required to incorporate the classification principles, categories, content, labelling, markings and warnings of the Classification Scheme was, therefore, not accepted.

### *2.7.4 Classification – Content Regulation and Convergent Media (February 2012)*

#### *Background*

The ALRC was asked to examine whether the existing censorship and classification scheme continues to provide an effective framework for the classification of media content in Australia, particularly in light of changes in technology, media convergence and the global availability of media content.

#### *Recommendations*

The ALRC recommended a new classification scheme for the new convergent media landscape.

The commission recommended that advertising not be brought into the new classification scheme. The report stated that if the Government decided to include advertising in the proposed classification scheme, outdoor advertising could continue to be assessed or classified by the industry. The commission suggested that decisions by the industry could be monitored by the regulator of the proposed classification scheme and subject to review by the Classification Board.

If the Government decided to bring outdoor advertising into the proposed classification scheme, the ALRC also suggested that a law prohibiting the display in public places of content likely to have a higher-level of classification and generate most concern in terms of community standards, may be appropriate.

### 3 Current self-regulation of outdoor advertising

#### 3.1 Introduction

Generally, advertising is not subject to the national classification scheme that applies to film, publications and computer games, nor to Queensland legislation about classification of film and publications.<sup>59</sup>

Advertising, including outdoor advertising, is overseen by a system of industry self-regulation. In recent years the system of self-regulation has been examined by several parliamentary and expert committees. Detail about the findings of those inquiries and their outcome was provided in section 2.7 but relevant findings are also noted below.

#### 3.2 Industry self-regulation – Advertising Standards Board

##### 3.2.1 Background

The AANA established the Standards Board and the ASB in 1998 to operate as an industry self-regulation scheme, following extensive consultation with industry, consumer and government representatives.<sup>60</sup> The ASB and Standards Board are funded by a voluntary levy on media-buying agencies, advertisers and advertising agencies that buy media space.<sup>61</sup> There is also an Advertising Claims Board (ACB) that considers complaints from other advertisers. The ASB provides administrative and secretariat support to the Standards Board.

##### 3.2.2 Standards Board determines complaints

The Standards Board consists of 20 members drawn from a cross-section of the community and described by the ASB as independent of the industry.<sup>62</sup> The ASB described the members as:

*... from a diverse range of ages, professional backgrounds, geographic location, family and personal circumstances. The diversity of the current membership means that the Standards Board, as a whole, is well placed to judge current community standards and to apply those community standards to the codes that it administers.*<sup>63</sup>

Board appointments are made following a publically advertised application and review process.<sup>64</sup> Membership is for a fixed period, and appointments are staggered to avoid desensitisation and ensure a mix of experienced and new members.<sup>65</sup> Board members attend twice yearly training days to reinforce codes and initiatives and highlight issues that impact on community standards in advertising.<sup>66</sup>

---

59 The advertising of films and publications, however, is subject to the national classification scheme and Queensland legislation

60 ASB, accessed 8 October 2013 from <http://www.adstandards.com.au/self-regulation-system/aboutselfregulation>

61 Parliament of Australia, Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: achieving the right balance*, June 2011, p.133, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/classificationboard/report/~media/wopapub/senate/committee/legcon\\_ctte/completed\\_inquiries/2010-13/classification\\_board/report/report.ashx](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/classificationboard/report/~media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2010-13/classification_board/report/report.ashx)

62 ASB, accessed 8 October 2013 from [www.adstandrds.com.au/aboutus/theadvertisingstandrdsboard](http://www.adstandrds.com.au/aboutus/theadvertisingstandrdsboard), p.1

63 ASB, Submission 21, p.16

64 ASB, accessed 8 October 2013 from [www.adstandrds.com.au/aboutus/theadvertisingstandrdsboard](http://www.adstandrds.com.au/aboutus/theadvertisingstandrdsboard), p.1

65 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.17, ASB Submission 21, p.16

66 ASB, Submission 21, p.16

### 3.2.3 Criteria for determining complaints about advertisements

The Standards Board determines complaints based on the AANA *Code of Ethics*, Practice Notes and other supplementary industry codes. The codes that are relevant to complaints about sexually explicit outdoor advertising are:

- AANA *Code of Ethics*
- part of the AANA Code for Marketing & Advertising Communications to Children.

### 3.2.4 AANA Code of Ethics

Section 1 of the AANA *Code of Ethics* deals with competitor complaints and addresses basic principles of legal, honest and truthful marketing communication. It is administered by the Advertising Claims Board which acts as a dispute resolution system for advertisers.

Section 2 of the AANA *Code of Ethics*, 'Consumer Complaints', deals with issues of decency and community standards. It provides that advertising and marketing:

- should not employ sexual appeal in a manner which is exploitative and degrading
- shall not portray violence unless it is justifiable in the context of the product advertised
- shall treat sex, sexuality and nudity with sensitivity to the relevant audience
- shall only use language which is appropriate in the circumstances and the strong or obscene language shall be avoided
- shall not depict material contrary to Prevailing Community Standards on health and safety.<sup>67</sup>

The provisions in section 2 of the Code are subject to what the AANA and the ASB call 'prevailing community standards'. The Practice Note to the *Code of Ethics* states that prevailing community standards are determined primarily by the Standards Board, whose members are representative of the community, on a case-by-case basis.

The Practice Note provides guidance about the prevailing community standards based on Board decisions, the AANA's intent in developing the Code and on research undertaken by the ASB. AANA Code for Market & Advertising Communications to Children

The supplementary AANA Code for Market & Advertising Communications to Children deals with advertising to children. One section is relevant to sexually explicit outdoor advertising:

*Advertising or Marketing Communications to Children: (a) must not include sexual imagery in contravention of Prevailing Community Standards; (b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.*<sup>68</sup>

### 3.2.5 Process for complaints and determinations

Any person may make a complaint about outdoor advertising to the ASB. Complaints may be made on-line, which is how 85 per cent of complaints are lodged.<sup>69</sup> The Standards Board meets twice a month to consider complaints, and meets more frequently by teleconference if the ASB considers that a case should be considered urgently.<sup>70</sup>

The Standards Board determines whether an advertisement breaches any of the codes, and in reaching its decision it considers prevailing community standards. The Board decides, by simple majority, to either uphold or dismiss the complaint.

---

67 AANA, Submission 9, Appendix 3, AANA Code of Ethics

68 AANA, Submission 9, Appendix 6, p.3

69 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013 p.15

70 ASB, Submission 21, p.21



### 3.2.6 *Action if a complaint is upheld*

If a complaint is upheld, the advertiser is asked to remove or amend the offending advertisement as soon as possible after receiving a copy of the draft case report. The advertiser is asked to advise the Board, within 5 business days, whether it agrees to modify or discontinue the advertising. The advertiser is also advised of the opportunity to include an Advertiser's Statement in the case report, which is published on the ASB website.

The ASB stated that, in the vast majority of cases, advertisers quickly ensure that their advertisement is removed or modified.<sup>71</sup> Industry compliance with Standards Board decisions was reported at "over 99.6 per cent".<sup>72</sup>

If an advertisement is found to breach a provision of the Code, and the advertiser does not modify or discontinue the advertising within the allowed time frame, the Board may:

- include the advertiser's failure to respond in the case report
- forward the case report to media proprietors for action; for example, the advertiser of Windsor Smith footwear in 2000 refused to discontinue the advertisement, however it was removed by the billboard owner
- post the case report on the ASB website
- if appropriate, refer the case report to the appropriate government agency.

### 3.2.7 *Review of ASB decisions*

Complainants and advertisers can appeal the Board's determination through an independent review process which was introduced in 2008. The independent reviewer's role is to assess the validity of the process followed by the ASB, 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.

### 3.2.8 *Timeliness of complaint process*

In 2012 75 per cent of cases were completed (from receipt to final publication of a case report) within 42 calendar days.<sup>73</sup> The ASB indicated that 80 per cent of consumer complaints are resolved in 35 days, although it has the ability to resolve complaints within 24 to 48 hours if there is a campaign the ASB thinks is problematic or a short term advertising campaign.

A complainant told the committee that the ASB decided it would not determine a complaint about an advertisement that had only two days to run after the complaint was received.<sup>74</sup>

### 3.2.9 *Outdoor advertising complaint as a proportion of advertising complaints*

The OMA submitted that in 2012 over 12,000 pieces of advertising copy had been displayed. It said that billboards generated three complaints in 2012, which was 4.8 per cent of complaints received by the Standards Board. Those complaints contravened the AANA Guideline about violence (1) and health and safety (2). The OMA stated that no complaints had been generated in 2013.<sup>75</sup>

As noted above, the ASB considers complaints about all forms of advertising. In 2012, the proportion of complaints received about outdoor advertising was:

- billboard 4.8 per cent of complaints
- transport 1.49 per cent of complaints

---

71 ASB, Submission 21, p.23

72 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.14

73 ASB, Submission 21, p.19

74 Melinda Liszewski, Collective Shout, *Public Hearing Transcript*, 21 August 2013, p.4

75 OMA, Submission 7, p.15

- outdoor 1.38 per cent of complaints, and
- poster 1.88 per cent of complaints.<sup>76</sup>

### 3.2.10 *Modifications to the AANA Code of Ethics*

The AANA *Code of Ethics* was revised in January 2012. Following the recent parliamentary inquiries, the AANA included in its *Code of Ethics* a new clause that prohibits the use of sex appeal which is exploitative and degrading. The clause also restricts the use of sexual appeal and images of children in all cases, as the use of sexual appeal in the images of children is regarded as exploitative and degrading under the Code.<sup>77</sup>

### 3.2.11 *Consistency of Standards Board decisions with prevailing community standards*

To ensure that the Standards Board's decisions are in line with community views, since 2007 the ASB has undertaken annual research to assess the extent to which decisions align with how the community would apply the codes.<sup>78</sup> The ASB advised that broadly the Standards Board's decisions are in line with community views. In 2010 the ASB undertook research into community perceptions of sex, sexuality and nudity in advertising. The ASB has found that over the years, the community is more conservative on issues of sexualised images.<sup>79</sup>

## 3.3 Case studies – complaints and determinations

The committee found that case studies of controversial out-of-home advertisements in Queensland assisted in understanding the operation of the current self-regulation of outdoor advertising.

---

76 ASB, Submission 21, p.8

77 Alina Bain, AANA, *Public Hearing Transcript*, 21 August 2013, p.13

78 ASB, Submission 21, p.6

79 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.16

## Case Study 1: Advanced Medical Institute

### *Complaints reviewed*

Advertising Standards Board (Standards Board) Case Reports of its decisions on complaints about outdoor advertising (billboards and car) by the Advanced Medical Institute (AMI) between 2007 and October 2013 have been reviewed. There were twelve cases during this time, one of which was a re-examination of an earlier determination. No case reports appear for 2010 or 2011. The advertisements and decisions are discussed below in date order. The table at the end of this case study provides more detail about the decisions.

### *Relevant sections of Code of Ethics*

The Standards Board considers whether advertisements have breached the *Code of Ethics* developed by the Australian Association of National Advertisers (AANA). The sections of the AANA *Code of Ethics* relevant to the content of AMI advertisements are:

*2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.*

*2.4 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.*

*2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.<sup>80</sup>*

Amendments to the *Code of Ethics* came into effect in January 2012.

### *“Want longer lasting sex?” advertisements*

In 2007 the Standards Board dismissed a complaint about an AMI billboard advertisement with the words, “Want longer lasting sex?” and noted that “this ad was ‘at the higher end’ of what might be considered acceptable by the Australian community.” The ASB continued to receive complaints and the case was re-examined in March 2008.

On re-examination the Standards Board decided that the advertisement breached the *Code of Ethics*. It noted that changes had occurred since its earlier dismissal of the complaint. The changes were the billboard’s appearance in many locations across several States, greater community discussion about the sexualisation of children and a shift in community standards, to the extent that the content of the billboard was no longer deemed acceptable. The Standards Board noted the words “Want longer lasting sex” were a “blatant message about a sexual act”, rather than medical or clinical in nature as had been suggested by the advertiser, and that recent ASB research suggested this treatment of sex in advertising would be unacceptable to the community. The Standards Board decision required AMI to replace its billboards, which occurred.

A modified version of the “Want longer lasting sex?” advertisement was considered by the Standards Board later in 2008. The word ‘sex’ was covered with the word ‘censored’. The Standards Board considered that this version of the advertisement was not contrary to prevailing community standards and that it did not breach the *Code of Ethics*.

80 AANA, *Code of Ethics*, 1 January 2012, available at [http://www.aana.com.au/codes/AANA\\_Code\\_of\\_Ethics-01012012.pdf](http://www.aana.com.au/codes/AANA_Code_of_Ethics-01012012.pdf)

### Case Study 1 (continued)

More recently a 2012 AMI advertisement on a car was found to breach the *Code of Ethics*. The advertisement included the words: "Want Longer Lasting Sex. Call or SMS Oral Strip". The Standards Board considered that the phrase "longer lasting sex" is a blatant message about the sexual act and not appropriate for a broad audience, and the language is not appropriate in mobile, transport advertisement with a large attention grabbing format.

### Other advertisements with the words 'longer' or 'bigger'

Three advertisements considered by the Standards Board in 2009 had similar wording about 'longer' sex. They were: "Men do it LONGER!", "Making love? Do it ... longer!" and "MAKING LOVE? DO IT LONGER ....Call or SMS "TRY". None were found to breach the *Code of Ethics*; however the Standards Board commented that two were at the "upper end of acceptable".

A 2012 decision found that an advertisement using the words "Its time! ORAL STRIP to last longer making Love" did not breach the *Code of Ethics*. The Standards Board considered that the advertisement was "at the upper end of acceptable" and that the words 'longer lasting love' were not as blatant as earlier advertisements and were a more subtle reference to sex.

An advertisement using the words "Making Love...make it bigger & last longer" was found by the Standards Board in 2013 to breach the *Code of Ethics*. The Standards Board noted that it had previously considered an advertisement with the wording "... Do it Longer" and found it to be at the higher end of acceptable. In the more recent case, the majority of the Standards Board considered that the wording was more sexualised in nature, particularly with reference to "make it bigger" and gave a clear reference to sexual activity. The advertisement could be viewed by a broad audience, including children, and made a sexual reference without appropriate regard to this audience.

### Advertisements with images

Four cases considered by the Standards Board in 2007, 2008 and 2009 used a combination of images and words. None were found to breach the *Code of Ethics*.

In 2007, the Standards Board dismissed a complaint about an advertisement with a picture of a couple in a suggestive pose. The Standards Board considered, "... on balance, that the advertisement did not treat sexuality insensitively enough to warrant the ad's removal from billboards". Another advertisement depicting a 'shocked' woman visible between the legs of a shirtless man was found not to breach the *Code of Ethics*. The Standards Board considered that the advertisement was in bad taste, was not sexually explicit and that children were unlikely to understand it.

In 2008, an advertisement included a picture of a couple embracing within a male symbol, accompanied by the words "Restore your sex life". While the Standards Board found that the advertisement did not breach the *Code of Ethics*, it considered that "this ad was 'at the higher end' of what might be considered acceptable by the Australian community".

An advertisement with a picture of a woman lying on top of a man in a bed, and the words "Ladies. Faking it? Feel it for real" was considered in 2009. A majority of the Standards Board considered that, as the product was sex related, the image of the couple was relevant and the words discrete enough not to be understood by children. The Board found that it did not breach the *Code of Ethics*.

<b>Outdoor advertisements by Advanced Medical Institute – Advertising Standards Board Determinations 2007–2013</b>	
<b>Case No.*</b> <b>Summary of advertisement content (and type of media)</b>	<b>Standards Board decision and summary of reasons</b>
<b>2007</b>	
519/06 Man with back to camera wearing jeans and no shirt. Belt appears undone. Between his legs you can see a woman in bed, looking towards the man, with her hand up and mouth open as if in shock.	<u>Did not breach Section 2.3:</u> While the advertisement was in bad taste, it did not contain nudity, was not sexually explicit and was unlikely to be understood by children.
20/07 “WANT LONGER LASTING SEX?”	<u>Did not breach Section 2.3:</u> The advertisement was for a sex-related product, did not contain any graphic images and the word “sex” itself is not offensive. The ad was at the “higher end” of what might be considered acceptable by the community.
<b>2008</b>	
87/08 “RESTORE YOUR SEX LIFE” with couple embracing within a male symbol	<u>Did not breach Section 2.3:</u> The advertisement was for a sex-related product, did not contain any graphic images and the word “sex” itself is not offensive. The ad was at the “higher end” of what might be considered acceptable by the community.
278/08 “WANT LONGER LASTING SEX?” re-examination of case 20/07	<u>Breached Section 2.3:</u> The Board dismissed a complaint about this advertisement in February 2007 (case 20/07). The Board noted that since this time the billboard had appeared in many locations across several States, there had been greater community discussion about the sexualisation of children, there had been a shift in community standards (as evidenced in ASB research) and the content of the billboard was no longer acceptable. The placements, size, colours and message made it confronting to a large section of the community and the words “want longer lasting sex” were a blatant message about a sexual act. The advertiser complied with the Board’s decision and replaced all 120 billboards.
392/08 “WANT LONGER LASTING CENSORED?” (Modified version of previous advertisement; “sex” replaced with “censored”).	<u>Did not breach Section 2.3:</u> While “s” was visible beneath the word “censored”, it could stand for a number of words beginning with ‘s’. Children would be likely to ignore it and unlikely to understand the message as relating to sex, while adults would understand the reference to sex.
<b>2009</b>	
555/08 “Men do it LONGER”	<u>Did not breach Section 2.3:</u> The advertisement did not use direct or overt references to sex or sexuality, using only the words “Do it” to direct adults to the relevant meaning. Children would not be aware of what “Do it” was supposed to refer to.
81/09 Includes an image of a man, naked from the waist up, lying on a bed and crouched over by a woman wearing a camisole, and the words “Ladies. Faking it? Feel it for real”	<u>Did not breach Section 2.3:</u> The text is a reference to sexual performance or satisfaction that is unlikely to be understood by children. The image did not depict the couple kissing or in an overtly sexualised position. The product being advertised is a product related to sexual performance.
289/09 “Making love – Do it Longer”	<u>Did not breach Section 2.3:</u> The billboard was a mixture of phrases that had been used by the advertiser in the past and references to sex were more subtle than in previous advertisements i.e. “making love” rather than “want longer lasting sex”. Some of the concern is about the product and the fact that it can be advertised – this issue is not within the Board’s jurisdiction. The ad is at the upper end of acceptable.

<b>Outdoor advertisements by Advanced Medical Institute – Advertising Standards Board Determinations 2007–2013</b>	
<b>Case No.*</b>	<b>Standards Board decision and summary of reasons</b>
<b>Summary of advertisement content (and type of media)</b>	
<b>2009 (continued)</b>	
419/09 "Making Love? Do it longer ...Call or SMS "TRY"	<u>Did not breach Section 2.3 or 2.5:</u> The billboard was a mixture of phrases that had been used by the advertiser in the past and references to sex were more subtle than in previous advertisements i.e. "making love" rather than "want longer lasting sex". Some of the concern is about the product and the fact that it can be advertised – this issue is not within the Board's jurisdiction. The ad is at the upper end of acceptable.
<b>2010 &amp; 2011 (No case records for AMI)</b>	
<b>2012</b>	
217/12 "It's time! ORAL STRIP to last longer making love"	<u>Did not breach Sections 2.4 or 2.5:</u> This version of the advertisement was not as blatant as earlier ads, with a more subtle reference to sex. The language was not strong or obscene and the ad would not be readily understood by most children. The ad was at the upper end of acceptable.  Some of the concern was about the product, the fact that it can be advertised and the location of specific billboards – these are not matters for the Board.
350/12 Red and black writing on side of yellow car: "Want Longer Lasting Sex? Call or SMS Oral Strip to 1800 511 511"	<u>Breached Sections 2.4 and 2.5:</u> The reference to longer lasting sex may be understood by older children, the phrase "longer lasting sex" is a blatant message about the sexual act and is not appropriate for a broad audience and the language is not appropriate for a mobile, transport advertisement.  Some of the concern was about the product and the fact that it can be advertised. Research conducted for ASB in 2012 indicated that the community was more conservative regarding advertising relating to sex, sexuality and nudity, particularly where children may be exposed to it.
<b>2013</b>	
272/13 "Making Love ... Make it bigger & last longer. Call or SMS 'LONGER' to 1800 711 711 <a href="http://www.amiaustralia.com.au">www.amiaustralia.com.au</a> "	<u>Breached Sections 2.4 and 2.5:</u> A previous version of the ad (case 419/09) was considered at the upper end of acceptable. The current text was more sexualised in nature, providing a clear reference to sexual activity. The ad could be viewed by a broad audience, including children, and made sexual reference without appropriate regard to the broad audience.

\* The case number shows the year the complaint was made, which may be the year before the Standards Bureau made a determination

## Case Study 2: Wicked Campervans

### *Complaints to the Advertising Standards Board*

Seven cases about advertisements on Wicked Campers' vans were considered by the Standards Board between 1 January 2012 and 31 October 2013 and have been reviewed using Case Reports published on the ASB website. All cases were found to breach section 2 of the AANA *Code of Ethics*.

### *Overview of cases and determinations*

All seven cases involved complaints about an offensive phrase or language on the back or side of a Wicked Campervan. Phrases used strong language, such as the word 'fuck', and commonly vilified women and homosexuals.

In considering these cases the Board determined:

- three had breached section 2.1 of the *Code of Ethics*, which states that advertising will not portray people or material in a way which discriminates against or vilifies a person or a section of the community,
- four had breached section 2.5 of the *Code of Ethics*, which states that advertising will only use language which is appropriate to the circumstances and that strong or obscene language shall be avoided
- two had breached multiple parts of section 2 of the *Code of Ethics*, including:
  - section 2.2, which states advertising should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people,
  - section 2.3, which states that advertising will not portray violence unless it is justifiable in the context of the product advertised, and
  - section 2.4, which states that advertising will treat sex, sexuality and nudity with sensitivity to the relevant audience.

A summary of each of the cases is provided at the end of this case study.

### *Advertisers' response*

Wicked Campervans has a history of not complying with Standards Board determinations. This was noted in evidence by Fiona Jolly of ASB and by Associate Professor Gayle Kerr of the Queensland University of Technology when briefing the committee.<sup>81</sup>

The Standards Board notifies advertisers of a complaint and requests a response before considering the case and making a determination. In all seven cases the advertiser did not provide the Board with a response to the complaint.

In two cases, Wicked Campervans advised, after the determination was made, that the advertisement had been removed from their van.

In three cases the Board's case reports state that the Standards Bureau is "continuing to work with the Queensland police to remove the advertisements".<sup>82</sup>

81 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.19 and Associate Professor Gayle Kerr, *Public Briefing Transcript*, 30 July 2013, p.4

82 ASB Case Reports 0101/13, 0079/130078/13

## **Case Study 2 (continued)**

### *Difficulties enforcing compliance*

The ASB wrote to the Queensland Minister for Police and Safety in March 2013 to seek assistance with enforcing Standards Board's determinations about Wicked Campervans. The letter stated that the advertiser's principal office is located in Fortitude Valley and that "over the past year, Wicked Campers has failed to comply with several Standards Board decisions".<sup>83</sup> The Bureau requested that the Minister consider "the issues raised in the complaints and the potential application of relevant State law to achieve removal of the relevant material". The ASB advise that it had written to the former Minister for Police in 2009 about a similar matter involving the same advertiser.

In response, the Office of the Minister for Police and Community Safety advised the ASB that there are no provisions in legislation administered by the Queensland Police Service that would assist in enforcing the outstanding determinations with respect to Wicked Campers.<sup>84</sup>

---

83 Correspondence from Advertising Standards Bureau to Queensland Minister for Police and Safety, 19 March 2013

84 Correspondence from Office of the Minister for Police and Community Safety to the Advertising Standards Bureau, 23 August 2013



### Advertising Standards Board Complaints – Wicked Campervans – 1 January 2012 to 31 October 2013

Case No. Phrase	Board's determination and comments	Advertiser's response
0373/12 "It's better to be black than gay cos you don't have to tell your parents"	<u>Breached 2.1</u> : The advertisement portrays being black and homosexual as inferior to being white and heterosexual and presents skin colour and sexual preferences in a manner that is negative. This portrayal amounts to a depiction which discriminates and vilifies sections of the community.	The ad has "since been removed from our van".
0086/12 "I wouldn't trust anything that bleeds for five days and doesn't die"	<u>Breached 2.1</u> : The reference to 'bleeding for five days' is a clear reference to a woman's menstrual cycle and is tasteless and denigrating. The text was highly likely to cause offense and vilifies women.	Nil.
0079/13 I'm straight; don't rear end me!"	<u>Breached 2.1</u> : The most likely interpretation is that the advertisement is making a statement to the gay community about unwanted sexual advances. The advertisement portrays homosexuality in a negative light and is discriminatory towards homosexuals.	Nil. The Standards Bureau is "continuing to work with the Queensland police to remove the advertisements".
0487/11 "Fuck Google Ask Me"	<u>Breached 2.5</u> : The text on the van is clearly discernible and able to be seen by a wide audience. The "F" word is still considered strong if not obscene by the broader community.	Nil.
0101/13 "Fuck it Dude..... let's go bowling"	<u>Breached 2.5</u> : The advertisement is on a vehicle and is likely to be viewed by a wide audience. The "F" word is not appropriate for such an audience and is a word which most members of the community consider offensive.	Nil. The Standards Bureau is "continuing to work with the Queensland police to remove the advertisements".
0375/12 "If God was a woman would sperm taste like chocolate?"	<u>Didn't breach 2.1</u> : Members of the community with strong religious beliefs may consider using the words God and sperm in the same sentence sacrilegious and offensive. The use of the word 'God' is in the context of a commonly posed opening statement and does not make any derogatory statement about religion or religious beliefs. <u>Breached 2.4</u> : The reference to sperm tasting like chocolate clearly refers to a sexual act. The advertisement is available to a broad audience, including children, and a reference to a sexual act is not appropriate in this instance. <u>Breached 2.5</u> : Recent research which tested Board decisions against broader community views identified that the community is concerned about language, particularly where it may be viewed by children. The ad appears on a vehicle, which can be viewed by children, and the word 'sperm' is used in a manner which is not relevant to the advertised product.	The ad has "since been removed from our van".
0078/13 "If you've ever met a woman with crooked teeth, you've met a woman who has given Chuck Norris a blow job."	<u>Breached 2.2</u> : The advertisement objectifies women by suggesting that women with crooked teeth have such as a result of giving a blow job. This is demeaning and degrading to women. <u>Breached 2.3</u> : The link made between crooked teeth and blow jobs could be interpreted as the woman having crooked teeth as a result of a violent sexual act or violence following a sexual act. To imply violence in this manner is not justifiable in the context of the product. <u>Breached 2.4</u> : The reference to a blow job is blatantly sexual and not appropriate for a broad community. <u>Breached 2.5</u> : The sexual phrase 'blow job' is not appropriate for the back of a mobile van.	Nil. The Standards Bureau is "continuing to work with the Queensland police to remove the advertisements".

### Case Study 3: Honey Birdette

#### *Complaints to the Advertising Standards Board*

Case Reports about outdoor advertisements by Honey Birdette between 1 January 2012 and 31 October 2013 were reviewed. Two of the three cases about poster advertisements were found to breach section 2 of the *Code of Ethics*. The remaining case was found not to have breached the Code. The three cases are summarised below.

#### *Advertisements which breached section 2 of the Code of Ethics*

Two promotional posters of women in Honey Birdette lingerie were considered by the Standards Board in March 2012 and January 2013. Both posters were located in storefront windows, facing out into a busy shopping centre.

The first poster showed a woman in red lingerie, stockings and shoes, accompanied by the phrase "It's burlesque baby". The woman's bra is low cut and her nipples are covered with gold shields. The second poster showed a woman in a pink full length corset and briefs, black stockings and a Santa hat, accompanied by the phrase "naughty or nice".

While the Standards Board noted that it was reasonable for an advertiser of lingerie to use their products in their advertising and that it had previously dismissed complaints for images for the same provider, it determined that both posters breached section 2.2 of the *Code of Ethics* as they did not treat sex, sexuality and nudity with sensitivity to the relevant audience.

The combination of a low cut bra and clearly visible nipple coverings in the first poster was described by the Standards Board as drawing attention to the breast and nipples of the woman in a manner which was not appropriate for a broad audience, including children.

The Standards Board also noted the amount of breast shown in the second 'Santa' poster and concluded that the advertisement was highly sexualised, and again placed in an area which could be viewed by children.

The advertiser did not accept the Standards Board's ruling on the 'Santa' poster and noted that the poster was a Christmas promotion, which had already been replaced.

#### *Advertisements found not to breach section 2 of the Code of Ethics*

A store window poster of 'Bombshell Rita' dressed in a push up bra, matching underpants and suspender belt with stockings, the phrase 'Tasty Treats' and a picture of an ice cream, was considered by the Standards Board in August 2013.

When considering the advertisement's consistency with section 2.2 and 2.4 of the *Code of Ethics*, the Standards Board noted that the lingerie covered the woman's private areas, the product was for women, the styling and colours used were consistent with targeting a female market and the pose was not overtly sexual.

The majority of the Standards Board considered that the term 'Tasty Treat' referred to the lingerie, rather than the woman.

The Standards Board also acknowledged that there was a level of community concern about the sexualisation of children and that the placement of the poster meant that the relevant audience could include children.

The Standards Board determined that the image was not exploitative or degrading of women and that the ad did treat sex, sexuality and nudity with sensitivity to the relevant audience.

## Case Study 4: HoneyB's

### *Complaints to the Advertising Standards Board*

The Standards Board has considered one complaint about outdoor advertising for HoneyB's, an adult club in an inner suburb of Brisbane. The complaint was made in July 2012 about a billboard which included a side view of the bottom half of a female torso, with the section from midriff to upper thigh completely covered in a yellow honey-like graphic. The woman's legs are bare, she is wearing strappy black high heeled shoes, and her legs are astride the writing "Brisbane's Sweeeetest adult club". On Caxton St [www.honeybs.tv](http://www.honeybs.tv). HoneyB's"

The Standards Board noted that it was reasonable for an advertiser to depict the name of the venue in its advertisement, that there is an obvious connection between the colour of the writing, the outfit on the woman and the use of the word 'sweeeetest' in relation to the business' name and that the drawn image of the woman lessens the sexualised nature of the advertisement.

The Standards Board also noted that while the billboard is placed in an area where children are likely to see it, the content of the advertisement was appropriate for a broad audience, including children.

The Standards Board determined that the advertisement treated sex, sexuality and nudity with sensitivity to the relevant audience. In the Standard's Boards view, the billboard did not breach section 2.4 of the Australian Association of National Advertisers' *Code of Ethics*.

### *Views of submitters*

The Australian Christian Lobby (ACL) and Collective Shout used a HoneyB's billboard advertisement to illustrate what they described as "inadequate regulation of billboard advertising in Queensland".<sup>85</sup>

A billboard placed outside Brisbane boys' grammar school in February 2013 was almost identical to the subject of the July 2012 complaint to the Standards Board. It is described as depicting the lower half of a woman's body straddling the word "sweetest", with honey dripping over her bottom and legs, and includes text advertising Honey B's as "Brisbane's sweetest adult club".

The ACL stated that complaints about the billboard "were ignored by the ASB"<sup>86</sup> while Collective Shout said that a school teacher's complaint was "immediately dismissed"<sup>87</sup> as complaints about this advertisement had been rejected previously. Both organisations expressed concern about the Standards Board's unwillingness to take the location of the billboard into account when making a decision.<sup>88</sup>

85 Collective Shout, Submission 16, p.8

86 ACL, Submission 14, p.6

87 Collective Shout, Submission 16, p.8

88 ACL, Submission 14, p.6, and Collective Shout, Submission 16, p.8

**Case Study 4 (continued)**

The committee also received a submission from the teachers who made the complaint. The submission confirms that the complaint to the Standards Board was dismissed and outlines the OMA response to petitions organised by the teachers,<sup>89</sup> which included an online petition on the Change.org website.<sup>90</sup>

The petitions “accumulated thousands of signatures” and called for “the ASB, Eye (owner of the billboard) and the Brisbane City Council to prevent the sex industry from targeting minors through outdoor advertising”.<sup>91</sup> One petition was tabled in Federal Parliament by the teachers’ local member, Teresa Gambaro MP.<sup>92</sup>

The teachers stated that the OMA contacted them in relation to the online petition to advise that “whilst the OMA do not have a placement policy, this particular billboard would be removed in this case”.<sup>93</sup>

The ACL stated that the billboard was later placed near the Enoggera Army Barracks.<sup>94</sup> The organisation’s CEO, Wendy Francis, advised the committee during a public hearing that this billboard was located in her neighbourhood, opposite the army barracks and 400 metres from a childcare centre, and that her complaint was “immediately dismissed by the ASB because the case had already been considered and dismissed”.<sup>95</sup>

89 Tanya Mathias and Pip Douglas, Submission 15

90 <http://www.change.org/en-AU/petitions/advertising-standards-board-stop-sex-industry-billboards-outside-schools>

91 Collective Shout, Submission 16, p.8

92 Collective Shout, Submission 16, p.8

93 Tanya Mathias and Pip Douglas, Submission 15

94 ACL, Submission 14, p.6; Collective Shout, Submission 16, p.8

95 Wendy Francis, ACL, *Public Hearing Transcript*, 7 August 2013, p.2

## **4 Impact of sexually explicit advertising on children (sexualisation and other adverse impacts)**

### **4.1 Introduction**

The terms of reference for the inquiry ask the committee to investigate “whether reform, including legislative reform, is needed to protect children from being exposed to sexually explicit and inappropriate outdoor advertising”. In considering this, the committee was asked to “consider the sexualisation of children and other adverse impacts on children through sexually explicit outdoor advertising”.

This chapter canvasses the evidence relating to the sexualisation of children and other adverse impacts of sexually explicit outdoor advertising in order to identify the impacts. In submissions to the committee and in evidence at hearings the committee also heard community concerns expressed about the possible impacts of sexually explicit outdoor advertising on children. The question of whether regulatory reforms are needed in response is further discussed in Chapter 8.

A review of literature and research relating to the impacts of advertising on children, including the findings of previous parliamentary inquiries in this area as requested in the terms of reference, did not provide the committee with strong evidence about the impact of sexually explicit outdoor advertising on children, adverse or otherwise. Despite strong concerns and a general sense from submitters and witnesses that exposure to sexually explicit advertising is detrimental to children and less than desirable, little hard evidence to support this opinion has been identified, other than anecdotal examples. As noted in section 3.5.2 research is needed to better understand the impact of sexually explicit advertising on children.

While the actual impacts on children of sexually explicit outdoor advertising are not known, the committee did identify significant concerns on the part of submitters and witnesses about the appropriateness of sexual imagery and a perception of its proliferation in public spaces. Community views suggest that a precautionary approach to protecting children from its possible impacts should be considered.

### **4.2 Sexually explicit and inappropriate images**

The terms of reference asked the committee to consider the impact of ‘sexually explicit and inappropriate images’ used in outdoor advertising. As noted earlier in Chapter 2, the Macquarie Dictionary defines ‘explicit’ as: “leaving nothing merely implied; clearly expressed; unequivocal”.

The committee considered a range of images from outdoor advertising in Queensland that were on display in 2013 in order to clarify those that may be ‘sexually explicit and inappropriate’. Few images were ‘sexually explicit’ according to the dictionary. Some images brought to the committee’s attention with concerns about their appropriateness were not sexually explicit, but rather, implied a sexual message.

In its *Content Review Policy* (developed to support its members’ compliance with the AANA *Code of Ethics*), the OMA expands on what might constitute failure to treat sex, sexuality or nudity with sensitivity to the broad audience that will view an outdoor advertisement. It notes that this includes but is not limited to:

*1.3.1 Advertising in which male or female models are portrayed in a sexualised manner*

*1.3.2 Advertising that uses scantily clad models, where such models are not relevant in the context of what is being advertised.*

*1.3.3 Advertising where significant amounts of a model's torso, breasts, cleavage or buttocks are exposed.*

*1.3.4 Advertising for adult-only products and services.<sup>96</sup>*

In tightening its stance on sexual imagery in response to the UK's Bailey review, the UK's Advertising Standards Agency specified characteristics it might consider sexually suggestive or overtly sexual in some detail. It also noted that "advertisers should be particularly cautious about the imagery they use to advertise gentlemen's clubs or sex shops because our research tells us that the public responds differently to those images in light of the product or service offered".<sup>97</sup>

The committee recognises that what is considered 'sexually explicit and inappropriate' in an outdoor advertisement has an element of subjectivity. This is explored further below in considering concerns expressed to the committee by the community.

The committee notes that community perceptions of appropriate sexual imagery are researched by the ASB to inform decision making by the Standards Board and the *Code of Ethics*. Under the code, sexually explicit images are not appropriate. The OMA, in its pre-vetting service for outdoor advertisements, seeks to limit sexual imagery to what is considered appropriate under the code and in line with community standards in order to reduce potential complaints made to the Standards Board.

### **4.3 Sexualisation and children**

The committee needed to consider a range of definitional issues in the terms of reference and the impact of advertising on children. One of the most important was consideration of the meaning of sexualisation with respect to children.

The American Psychological Association's (APA) definition is useful and is widely referred to in literature about this issue. The APA states that 'sexualisation' is occurring when:

- a person's value comes only from his or her sexual appeal or behaviour, to the exclusion of other characteristics
- a person is held to a standard that equates physical attractiveness (narrowly defined) with being sexy
- a person is sexually objectified—that is, made into a thing for others' sexual use, rather than seen as a person with the capacity for independent action and decision making, and/or
- sexuality is inappropriately imposed upon a person.<sup>98</sup>

The APA definition has been criticised as being too broad to be helpful in determining sexualisation and its possible occurrence in practical terms and the purposes of appropriate regulation.<sup>99</sup>

A useful differentiation was made between two types of sexualisation of children in two different contexts by the ASB in its evidence to a 2011 Senate Committee review of the Classification Scheme. The ASB draws a distinction between sexualisation of children in terms of the depiction of children in

---

96 OMA, Content Review Policy, available at [http://oma.org.au/\\_data/assets/pdf\\_file/0020/2459/OMA-Content-Review-Policy.pdf](http://oma.org.au/_data/assets/pdf_file/0020/2459/OMA-Content-Review-Policy.pdf)

97 UK Advertising Standards Agency, 'ASA statement on sexual imagery in outdoor advertising', p.4, available at <http://www.cpp-pub.org/IMG/pdf/OutdoorAdvertisingStatementforIndustry.pdf>

98 American Psychological Association, *Report of the APA Taskforce on the Sexualization of Girls*, 2007, p.1, available from <http://www.apa.org/pi/women/programs/girls/report-full.pdf>

99 Commissioner for Children and Young People Western Australia, Literature review: the sexualisation of children, March 2012, p.10, available at <http://www.ccpw.wa.gov.au/files/Literature%20Review%20-%20Sexualisation%20of%20children.pdf>

sexualised poses, and the sexualisation of children through the exposure of children to sexualised images, themes or words in advertising.<sup>100</sup>

The Senate Committee that reported on the sexualisation of children in contemporary media in June 2008 saw the sexualisation of children as:

*... a continuum from the explicit targeting of children with images, attitudes and content that inappropriately and prematurely seek to impose a sexual identity on a child, through the presentation of one-dimensional and stereotypical images of children and young people, predominantly girls, in content, products and advertising directed at them, to what might be described as the 'background noise' of society at large where products, advertising and other materials made for and directed at adults are readily accessed by children and reinforce the sexualising messages they are receiving.<sup>101</sup>*

The committee has not seen any evidence of outdoor advertising that depict children in sexualised poses in Queensland or any evidence of outdoor advertisements that explicitly targeted children inappropriately. There was evidence that a small number of outdoor advertisements have depicted adult sexual themes or words.<sup>102</sup>

#### 4.4 The audience for outdoor advertising

As discussed earlier in Chapter 2, outdoor advertising cannot be “switched off” and its possible audience is the whole community.

The AANA advised the committee that, rather than being less regulated, restrictions around language, sex and nudity were more strictly applied to outdoor advertising than for a television or magazine audience:

*This acknowledges that within the outdoor audience there may be children present and this is firmly reflected in this more restrictive approach and application of community standards in the outdoor space. In the outdoor space, marketing must treat sex, sexuality and nudity with sensitivity to that broader audience. Similarly, the language used must be appropriate in all the circumstances, including appropriate for that relevant audience—that broad audience—and strong or obscene language must always be avoided.<sup>103</sup>*

Submissions made to the committee from individuals made clear that there were significant concerns about the appropriate use of sexual imagery in outdoor advertising more broadly, with its general audience that includes children. Graeme Kelly outlined this concern in his submission to the committee:

*We are strongly of the opinion that our children need to be protected from visual exposure to such material in public places as it is totally unsuitable for their age. Even for us as adults, this type of material seen in many public places is highly distasteful, offensive and a further sad indictment of the loss of moral substance in our society.<sup>104</sup>*

---

100 Parliament of Australia, Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: achieving the right balance*, June 2011, p.155, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/classificatioboard/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/classificatioboard/report/index)

101 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media*, June 2008, p.8, available at [http://www.aph.gov.au/binaries/senate/committee/eca\\_ctte/sexualisation\\_of\\_children/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf)

102 See section 2.6 and case studies at section 3.3.

103 Melinda Liszewski, Collective Shout, *Public Hearing Transcript*, 21 August 2013, p.4

104 Graeme Kelly, Submission 170

## 4.5 The impacts of sexually explicit advertising on children

In light of the terms of reference given to the committee for this inquiry and its focus on the appropriate regulation of outdoor advertising, the committee limited its consideration to the sexualisation of children and other adverse impacts on children through sexually explicit outdoor advertising. Therefore, conclusions and evidence drawn from research into the effects of pornography on children, and research into the sexualisation of children through other forms of media and advertising were of limited assistance to the committee's consideration of the impact of advertising in public places. As noted in Chapter 2, few examples of sexually explicit outdoor advertising were identified by the inquiry.

Many submissions made to the committee reflected a general view in sections of the community that there is a link between sexually explicit advertising and negative impacts on children. They also reflected a sense that these types of images were proliferating in public spaces, bombarding people in places where they could not escape images they saw as offensive.

*It is the right of every person to walk freely through a mall or drive down a road without having another person's sexual agenda forced upon them. It is the right of every child to grow up in an environment free from the sexual agenda of those who wish to profit from sexual advertising. It is impossible to ignore or avoid outdoor advertising.*<sup>105</sup>

The committee notes that individual submissions, however, provided little evidence or examples of the link between sexually explicit outdoor advertising and adverse impacts on children.

### 4.5.1 Definition of child

In considering the impacts of sexually explicit outdoor advertising on children the committee noted that definitions of 'a child' can vary. In Queensland, the age of majority (legally deemed an adult) is 18, however, the age of sexual consent is 16 years, and children under the age of 10 cannot be charged with a criminal offence. A child under 18 may make decisions about their own medical treatment, if they are capable of understanding its significance.

In evidence to the committee, Fotina Hardy of the Australian Association of Social Workers (AASW) raised the issue of an appropriate definition of 'child', noting that a general definition is that a child is under the age of 12 and that 'young people' are aged 13 to 17.<sup>106</sup> In its approach to self-regulation, the advertising industry defines children as being 14 years or younger. AASW expressed concern about the inconsistency of definition, as did some other witnesses.<sup>107</sup>

The committee noted that the advertising definition of 'child' tends to be used in considerations of what constitutes appropriate advertising specifically to children, rather than with respect to considering the impact of images on children more generally.

For the purposes of the existing *Code of Ethics* and appropriate regulation of outdoor advertising, for which the relevant audience is considered to be everyone, the issue of varying definitions of 'child' is not as critical as it may first seem. The audience for outdoor advertising is the whole community.

### 4.5.2 Research evidence of impacts

Very little research has been published with a specific focus on the effect of sexually explicit outdoor advertising on children, or its impacts generally. The committee was therefore unable to identify research and expert evidence about any adverse impacts there may be on children to inform its consideration of appropriate regulation. Research work in this area is limited due to the significant ethical issues involved in exposing children to sexual imagery appropriately.

---

105 Alison Dennehy, Submission 50

106 Fotina Hardy, AASW, *Public Hearing Transcript*, 7 August 2013, p.10

107 Bravehearts, Submission 20, Attachment, p.17



There is a need for greater evidence-based research into the real impact that sexually explicit advertising in general may be having on children. During the committee's public hearing, Fotina Hardy, of AASW, emphasised that despite some evidence pointing towards the negative effects of sexually explicit advertising on children, further research is required to identify links.<sup>108</sup> Paul Martin of the Queensland Association for Healthy Communities also noted that good research about what actual harm results from exposure of children to sexual images is not available.<sup>109</sup>

Most research in the area is based on reporting by parents and very little explores the experiences of children directly. A March 2012 literature review undertaken by the Western Australian Commissioner for Children and Young People in response to concerns about the contemporary media and the sexualisation of children noted the lack of evidence of impacts on children and in particular the lack of research that approached children directly to explore the impacts. Its review made the point that, of the range of inquiries considered, "only two (conducted in the United Kingdom) made any real effort to obtain the views of children and young people about how they perceive and make sense of apparently sexualised media representations or products". The report indicated a concern that "unfounded assumptions" may be made based on anecdotal evidence from only the adult perspective. Interestingly, the report concluded that the evidence from studies that "engaged in a meaningful way with children and young people" was that they were "reasonably adept at navigating the media and filtering out age-inappropriate media".<sup>110</sup>

This conclusion is similar to the results of research undertaken by Professor Kerry Robinson of the University of Western Sydney. Her research has involved seeking the experiences and views of children directly in exploring children's perspectives and knowledge of sexuality and relationships.

In evidence to the committee, Fotina Hardy of the AASW noted that it is "really important to get the views of young people about this whole issue".<sup>111</sup>

Despite the lack of longer term research evidence, the committee is concerned about the possibility of the indirect sexualisation of children over time. In *Reclaiming Public Space*, the House of Representatives Standing Committee commented that:

*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<sup>112</sup>, 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.'*<sup>113</sup>

#### **4.6 Community concerns about the impact of sexual imagery in outdoor advertising**

The committee received a large number of submissions from concerned individuals. There are strong and varied community views about what should be considered to be sexually explicit. Submissions also indicated significant unease about the adverse impacts on children a perceived increase in the

---

108 Fotina Hardy, *Public Hearing Transcript*, 7 August 2013, p.8

109 Paul Martin, Executive Director, Queensland Association for Healthy Communities, *Public Hearing Transcript*, 21 August 2013, p.6

110 Commissioner for Children and Young People Western Australia, Literature review: the sexualisation of children, March 2012, p.13, available at <http://www.cyp.wa.gov.au/files/Literature%20Review%20-%20Sexualisation%20of%20children.pdf>

111 Fotina Hardy, AASW, *Public Hearing Transcript*, 7 August 2013, p.12

112 Rush, E 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

113 Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation and outdoor advertising*, July 2011, p.80 available at [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=spla/outdoor%20advertising/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/outdoor%20advertising/report.htm)

number of sexually explicit images in public places may be having. People are also anxious about perceptions of increasingly blurred boundaries around sexual imagery and pornographic images. Submissions from individuals were often based on anecdotal evidence or expressed opinions and values about advertising.

Many individuals and organisations expressed concerns about appropriate outdoor advertising and its perceived impacts on children and their families to the committee in the course of the inquiry. In general, the concerns expressed were about:

- the community standards and values reflected in outdoor advertising regulation
- the appropriate placement of outdoor advertising using sexual imagery, particularly near schools and childcare
- a perception of that the use of sexual imagery in outdoor advertising is much more prevalent than it was, and
- the lack of parental control over images used in outdoor advertising and the associated concerns about possible impacts on children.

#### 4.6.1 Self-regulation and consistency with prevailing community standards and values

As discussed in Chapter 2, the AANA *Code of Ethics* deals with issues of decency and community standards. The provisions in section 2 of the Code are subject to what the AANA and the ASB call ‘prevailing community standards’.

During the committee’s public hearings, there was discussion about whether the current self-regulatory approach to outdoor advertising was working, and if the AANA’s ‘prevailing community standards’ were accurate reflections of community opinion. In its submission, the Australian Christian Lobby (ACL) said that:

*“Prevailing community standards” are also being ignored. Such standards would hold that such sexualised images are inappropriate for children. They would also hold that advertisements for prostitution services and for erectile dysfunction are likewise inappropriate for children.*<sup>114</sup>

Other submissions also maintained that the standards applied through self-regulation of outdoor advertising did not reflect community standards.<sup>115</sup> For example, in her submission, Cynthia Barker told the committee that:

*... I find myself offended by some of the advertising, and am often grateful that I don't have small children to whom I am required to explain them. We are not able to control what we or our children see in the public spaces, because, unlike the television, we are unable to simply "turn it off".*<sup>116</sup>

Melinda Liszewski of Collective Shout suggested that the current standards were not an accurate representation of community opinion:

*Our organisation receives correspondence all the time about outdoor advertising ... Once people have made complaints to the ad standards board and had their complaints knocked back, they are reluctant to go through that process again.*<sup>117</sup>

At a public hearing Wendy Francis of the ACL added that:

---

114 ACL, Submission 14, p.5

115 Submissions 15, 16, 20, 47 for example.

116 Cynthia Barker, Submission 193

117 Melinda Liszewski, *Public Hearing Transcript*, 21 August 2013, p.2

*It seems to me that our society has become immune to the sex saturated environment that we have developed and we have failed to realise that our children are growing up normalised to it.*<sup>118</sup>

In giving evidence to the committee, Hetty Johnston of Bravehearts also indicated that she felt that there was community concern about sexually explicit advertising and pornography generally, and made the connection between that and child sexual assault:

*... So when you talk about community expectations and how you gauge that, we should look at how the community is reacting to issues around child sexual assault generally. They have had enough. They have had enough because they are frightened for their children, and they have every right to be.*<sup>119</sup>

In responding to issues of whether self-regulation reflects community standards at the public hearing, the AANA countered that:

*Throughout this inquiry, the committee has received submissions and heard evidence that outdoor advertising is sexualised and that the self-regulatory system has failed. We submit that this is incorrect. The self-regulatory system restricts the use of language. It restricts the use of images which depict sex, sexuality and nudity, or sexual appeal. It restricts the use of violence. It restricts depictions of people in relation to discrimination and vilification. It also contains a general and very broad restriction in relation to health and safety generally. We also include within the system some specialised codes around food and beverage advertising and a code that contains particular restrictions in relation to advertising to children.*<sup>120</sup>

During the hearing, the AANA indicated that the common ethical standards used by the association have evolved over 85 years, and as the advertising and marketing industry has evolved, so have the standards. The system of restrictions is a national one and applies in all states and to all advertising material in the media. In the outdoor space, this includes all forms of outdoor media including billboards, shopfront signage and menu boards.

The level of complaints received about outdoor advertising may also provide some indication of whether community standards are adequately reflected by the *Code of Ethics* and its regulation.

In her briefing for the committee on advertising self-regulation, Professor Gayle Kerr from Queensland University of Technology touched on some statistics relating to complaints about outdoor advertising. Professor Kerr indicated that of the 12,000 different advertisements run by OMA members in Queensland in 2012, 83 were considered by the Standards Board and 14 of these were found to be in breach of the code.<sup>121</sup>

In its evidence to the committee Melinda Liszewski of Collective Shout noted with regard to the number of complaints about outdoor advertisements and any obvious patterns that:

*In terms of actually having data and being able to give you percentages and things like that, we do not have that. I can tell you from our organisation's perspective. We are a non-profit organisation. We have people contact us about different issues. Our primary goal is to motivate other people to take action in their communities, whether that be making complaints, writing letters to MPs, writing petitions—that kind of thing. People*

---

118 Wendy Francis, ACL, *Public Hearing Transcript*, 7 August 2013, p.1

119 Hetty Johnston, Bravehearts, *Public Hearing Transcript*, 7 August 2013 p.16

120 Alina Bain, AANA, *Public Hearing Transcript*, 7 August 2013, p.13

121 Associate Professor Gayle Kerr, *Public Briefing Transcript*, 30 July 2013, p.4

*are weary of doing this. So we do rely on people getting in contact with us about these issues.*<sup>122</sup>

Paul Martin of the Queensland Association for Healthy Communities encapsulated the difficulty with mandating a single level of acceptable sexual imagery and ensuring that public health messages, in particular, can still be advertised:

*... one of the key questions for the committee is: where do you draw the line on advertising? I think most in the community—and certainly at Healthy Communities—would agree that things like the sexualised imagery of children should not be allowed; imagery that depicts sexual acts should not be allowed; swear words, genital nudity and sexual objectification of people, particularly women, should not be allowed; and sex used to sell a product that is unrelated to sex should not be allowed, although I would guess there is probably a bit more of a debate in the community around that one.*

*So there is a spectrum. It is not black and white. At one end of the spectrum there are things that are clearly pornographic. At the other end of the spectrum there is the ban on any public discussion and any outdoor advertising that in any way relates to sex. I guess our recommendation is that the line not be drawn at that extreme, that banning any discussion of sexuality and relationships in the public sphere would be detrimental to the health and wellbeing of the community*<sup>123</sup>.

The committee notes that there is a broad range of views across the Queensland community about what should be considered appropriate outdoor advertising. Sexual imagery used in advertisements can strongly imply sexual concepts and adult sexual themes that are not necessarily made explicit. These images can be viewed differently according to the particular values and moral stance of individuals.

#### *4.6.2 Placement of outdoor advertising using sexual imagery*

Submissions and evidence to the committee also expressed concern about the appropriateness of some outdoor advertising in the light of its placement, for example near schools or churches or places frequented by children and their families.

At the time of the committee's public hearings, there was significant concern about a particular advertisement that had previously been placed opposite a school and then near an army barracks on a busy road travelled by children. The case is outlined in detail in **Case Study 4** earlier in this report at section 3.3.

The committee noted that the *Code of Ethics* does not include a specific placement policy to guide outdoor advertisers. The specific advice about the 'relevant audience' for outdoor advertisements is in the form of a Practice Note attached to the code rather than the code itself. The Practice Notes make clear that the relevant audience in the case of outdoor advertising, regardless of the target of the ad, is everyone including children. It is possible that advertisers may have less regard to this advice about outdoor advertising when it is not noted specifically in the code.

The committee believes that regulation of outdoor advertising could more adequately meet community concerns if it included a specific placement policy for outdoor advertising employing sexual imagery.

---

122 Melinda Liszewski, Collective Shout, *Public Hearing Transcript*, 21 August 2013, p.4

123 Paul Martin, *Public Hearing Transcript*, 21 August 2013, p.6

#### 4.6.3 Perception of greater prevalence of sexual imagery in outdoor advertising

The committee heard strongly held views that outdoor advertising using inappropriate sexual imagery had become more prevalent and was ‘bombarding’ people with images they preferred not to confront in public spaces.

In July 2011 in its report, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, the House of Representatives Standing Committee on Social Policy and Legal Affairs considered whether the self-regulation of outdoor advertising was an effective method for managing this form of advertising in line with community expectations. It recommended that the self-regulation scheme should remain, but be strengthened. The committee also noted that:

*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. 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.*<sup>124</sup>

*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.*<sup>125</sup>

The number of complaints about billboards decreased from 26.4 per cent of complaints in 2011 to 4.8 per cent in 2012.<sup>126</sup> Amendments to the *Code of Ethics* came into effect in January 2012 regarding sexual issues that are likely to have had an impact on Standards Board decisions on complaints. These changes were outlined in more detail in Chapter 2.

Outside Australia, the *Independent Review of the Commercialisation and Sexualisation of Childhood* was conducted by Reg Bailey for the UK Minister of State for Children and Families. Mr Bailey was selected for his experience as Chief Executive of the Mothers Union, a charity supporting parents and children.

The Bailey Review report was based on feedback from parents and children and contains mostly anecdotal evidence and many quotes highlighting the feelings and perception of review participants.

*... Sexualised imagery is now a mainstream part of children’s lives, forming the ‘wallpaper’ or backdrop to their everyday activities whether in public places through billboards and shop windows, or in the home through television and other media (National Federation of Retail Newsagents, 2011; Scottish Parliament, February 2011).*

---

124 Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation and outdoor advertising*, July 2011, p.4, available at [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=spla/outdoor%20advertising/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/outdoor%20advertising/report.htm)

125 Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation and outdoor advertising*, July 2011, p.59, available at [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=spla/outdoor%20advertising/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/outdoor%20advertising/report.htm)

126 ASB, *Review of Operations 2012*, p.73 available at [http://issuu.com/cre8ive/docs/2012\\_review\\_of\\_operations\\_report?e=1531671/1970231](http://issuu.com/cre8ive/docs/2012_review_of_operations_report?e=1531671/1970231)

... There is evidence that our society is becoming more sexualised (Attwood, 2009; Nikunen et al, 2007) and the increasing number of media channels through which we receive these messages mean that we are under ever-increasing exposure to sexualised content and imagery. Sadly, some parent contributors even felt that there is ‘no escape’ and, for children, no ‘clear space’ where they can simply be themselves. And the nature of this imagery is becoming increasingly explicit (Attwood, 2009) – commentators have referred to the ‘pornification’ of society – with the blurring of boundaries between pornography and the mainstream (Nikunen et al, 2007).<sup>127</sup>

The Bailey Review noted that these were not new concerns on the part of parents. The Bailey Review report quotes the findings of an independent assessment of the wider context of parental and societal views of childhood undertaken for the review and it may be useful to consider in this context as well:

*There is a very dominant strain of nostalgia here – a looking back to a ‘golden age’ when childhood and family life were apparently harmonious, stable and well adjusted. But it is often far from clear when that time was, or the social groups to whom this description applies; and the basis on which historical comparisons are being made is frequently unclear. Historical studies of childhood certainly give good grounds for questioning whether such a ‘golden age’ has ever existed.*<sup>128</sup>

#### 4.6.4 Lack of parental control

Submissions from individuals often raised the issue that parents are unable to control children’s exposure to outdoor advertising using sexual imagery or messages. For example, Liz Cunningham noted in her submission that, while parents could control access to many forms of media and advertising, “outdoor advertising however, is beyond the control of caring and careful adults”.<sup>129</sup> Phil Garrad said in his submission that:

*Our children can be shielded from pornography and semi-porn in newsagencies, TV and the internet to a large degree, but it is difficult to keep their eyes off an outdoor advertisement if we don’t know it is just around the corner.*<sup>130</sup>

The use of sexual imagery and wording employed in outdoor advertising also led to parents being asked questions about sex and sexuality by their children in circumstances that were not of parents’ choosing and not conducive to proper discussion of the issues. In his submission Brian Allbutt explained that “children are embarrassed (if they are old enough) and their parents are embarrassed and sometimes have to try to explain why such crude images are there for all to see”.<sup>131</sup> Janelle Patch said that:

*I am responsible, as a parent, to teach my children about their sexuality. It is very difficult to teach them appropriately and age-specifically if they are bombarded with images and messages that are beyond what they can process.*<sup>132</sup>

Lyndall Daniel suggested that in order to address this issue, regulation “should ensure outdoor ads are acceptable to the entire community”.<sup>133</sup> Many other submissions called for the application of a

127 Bailey, Reg. *Letting Children be Children: A Review of the Commercialisation and Sexualisation of Childhood*, June 2011, p.23, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/175418/Bailey\\_Review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175418/Bailey_Review.pdf)

128 Buckingham, quoted in Bailey, Reg. *Letting Children be Children: A Review of the Commercialisation and Sexualisation of Childhood*, June 2011, p.43, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/175418/Bailey\\_Review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175418/Bailey_Review.pdf)

129 Liz Cunningham, Submission 44, p.1

130 Phil Garrad, Submission 156, p.1

131 Brian Allbutt, Submission 150, p.1

132 Janelle Patch, Submission 70, p.1

‘G-rating’ to outdoor advertising and this possibility is addressed further in Chapter 8. A number of submissions noted in this context that, as there were many other avenues for advertising employing sexual imagery or wording, such ads would not be disadvantaged by being excluded from outdoor advertising.<sup>134</sup>

#### 4.6.5 Other concerns

Some submissions made to the committee noted that other issues, such as exposure to sexual content in the home via social media, have a bigger impact on children.<sup>135</sup> Paul Martin of the Queensland Association for Health Communities told the committee that:

*I think we need a little bit of perspective around ... what is the actual harm that happens to particularly young people but anybody who sees sexualised images in outdoor advertising versus the actual harm that is done through the promotion of unhealthy foods in Australia ... advertising of unhealthy foods is by far – by far – a more serious health issue concerning the Australian population.*<sup>136</sup>

Queensland Association for Healthy Communities also noted that while young people:

*... need to be protected from harmful representations of sex ... they should not be shielded from the reality of sexuality, and it is important that young people are able to talk about sexuality, to know their own bodies and able to talk about those bodies, particularly when changes happen at puberty, and to understand what is appropriate and inappropriate.*<sup>137</sup>

Submissions also stressed that education was needed as exposure to advertising could not be eliminated and it would be better to ensure that children had access to education that would empower them to put such exposure into an appropriate context.<sup>138</sup>

The AASW advised the committee that it was:

*concerned about the sexualisation and commodification of children and young people through advertising generally. This is the advertising that specifically targets, for example, young girls to look like or be something that is developmentally inappropriate and that perpetuates particular social myths and roles. Our concern is particularly focused from the point of view of the impact on a child or young person’s psychological and emotional wellbeing, their gender construction, health and wellbeing in relation to sense of identity, body image and issues around eating disorders, self-harm—all of those sorts of things. The AASW concurs with the research in this area that shows the significant role that the media has in influencing gender role socialisation and socialisation generally, particularly in relation to values and mores.*<sup>139</sup>

*Furthermore, we believe that there needs to be an evidence based approach so that decisions are based on research and knowledge of what is effective as opposed to personal views and values. We are not proponents of overregulation. That whole issue about personal views and values goes back to the point that the chair made about*

---

133 Lyndall Daniel, Submission 138, p.1

134 Submissions 49 and 55, for example.

135 Protect All Children Today Inc (PACT), Submission 28

136 Paul Martin, Queensland Association for Healthy Communities, *Public Hearing Transcript*, 21 August 2013, p.6

137 Paul Martin, Queensland Association for Healthy Communities, *Public Hearing Transcript*, 21 August 2013, p.6

138 PACT, Submission 28 and Family Planning Queensland, Submission 4

139 Fotina Hardy, AASW, *Public Hearing Transcript*, 7 August 2013, p.8

*prevailing community standards. Our view is that we need to have evidence based around this, because different people have different views.*<sup>140</sup>

The committee noted that the advertising referred to here by the AASW relates to a range of media and not just outdoor advertising and may not involve sexually explicit images.

Bravehearts, an organisation that advocates for sexually abused children, told the committee of its experiences with children. The committee noted that the images referred to by Bravehearts in the context of its work with children were images that spanned a wide spectrum from pornography to implied sexual imagery and were images used across various forms of media and advertising and not specifically in outdoor advertising. Bravehearts also refers to work by the Australian Crime Commission that investigates the link between the viewing of sexual imagery and child sexual assaults in its evidence to the inquiry. The committee notes that this work is about the impact of pornography and not images that are displayed in outdoor advertising.

Hetty Johnston from Bravehearts told the committee:

*In relation to the impacts on our children, I can tell you from a Bravehearts perspective that we are seeing increasing numbers of children harming other children. There is no doubt about that. Let us not wait for another 100 years to find the research that tells us what is a no-brainer: monkey see, monkey do. Children are looking at this stuff. They are being hit with it from every direction. They are curious and they are acting out. We are getting increasing numbers of phone calls from teachers, child care workers and other professionals. This is happening in preschools. We are talking about little, little children.*<sup>141</sup>

As the committee established from its review of the research, Bravehearts also noted that the evidence from research concerning the impacts on children is limited, and that there is a range of views about the impact:

*We also recognise that there are differing views on the long-term impacts. Some of the research is actually a bit mixed and what that raises for us is the importance of more research. That is really a recommendation that we are making—that there does need to be more research in this area, because outdoor advertising is one part of the whole general impact of media on our children and women in particular.*<sup>142</sup>

While research on the impacts on children of viewing sexual imagery may be limited, the committee noted the point made by Collective Shout in its submission that the ASB does little or no consultation with child development experts in making its decisions regarding the appropriateness of outdoor advertising.<sup>143</sup> The ASB advised the committee that it is “conscious that expertise can be required in order to ensure the Board can properly assess certain issues”. It has recruited a Board member with skills and experience in child psychology.<sup>144</sup>

#### **4.7 Adopting a precautionary approach to protect children**

The committee noted that the limited empirical evidence regarding the impacts on children of sexual images in advertising, however, does not mean that it can be concluded that there are no impacts on children from such exposure. It only means that no information is available. The evidence from submissions and hearings considered by the committee indicates significant unease in the

---

140 Fotina Hardy, AASW, *Public Hearing Transcript*, 7 August 2013, p.8

141 Hetty Johnston, Bravehearts, *Public Hearing Transcript*, 7 August 2013 p.14

142 Fotina Hardy, AASW, *Public Hearing Transcript*, 7 August 2013, p.8–9

143 Collective Shout, Submission 16, p.1

144 Fiona Jolly, ASB, *Correspondence*, 11 November 2013, p.1, Attachment 2, p.2



community about the use of nudity and sexual imagery in public spaces, and the impact on children of what seems to be its increasing prevalence.

The Commission for Children and Young People and Child Guardian listed a number of potential risks to children of premature sexualisation through exposure to adult sexual themed advertising in its submission. The Commission advised the committee that its view was that “given the potential risks to children and young people of their exposure to adult sexual themes through outdoor advertising, such exposure should be limited to the greatest extent possible”.<sup>145</sup>

In its submission the Social Responsibilities Committee (SRC) of the Anglican Diocese of Brisbane noted that the sexualisation of children was “... a matter of increasing concern in Australia and internationally”. The SRC told the committee that “Like parents in the UK cited in the Bailey Review, we reject the appropriateness of contemporary sexualised society becoming the “wall paper of children’s lives””.<sup>146</sup>

In a review undertaken for the UK Government on the sexualisation of young people in 2011, Linda Papadopoulos outlined community concerns about the ‘cumulative effect’ on children of exposure to images. She noted that “children’s ability to interpret messages is directly linked to their ability to understand abstract concepts ... yet ... all age groups are increasingly being exposed to the same images and messaging”.<sup>147</sup>

In its June 2008 report *Sexualisation of children in contemporary media*, the Senate Standing Committee on Environment, Communications and the Arts came to a similar view, commenting on the ‘complex interactions’ involved in children’s experience of the media:

*... The committee notes that children’s emotional and physical development appears both complex and nuanced, based as it is on the totality of their experience, the significant influence of parents and their own interpretation of media and messages to which they are exposed. However, equally, the committee observes that modern media comprises a significant proportion of children’s experience. So too, the media shapes and influences adult role models, and broadly expresses and reflects social attitudes and values which are no doubt potentially powerful factors within the totality of a child’s experience of the world and society.*<sup>148</sup>

The AASW raised the issue of the importance of acting to protect children from exploitation and harm:

*We know that childhood is a time of development where children need to be protected from exploitation and harm. That really is at odds with the increasingly powerful commodification of children and sex role stereotyping that goes on and the overly sexual advertising. It is the very hard role of government, to work with the key stakeholders to find a balance between what are acceptable and effective strategies to deal with what is inappropriate.*<sup>149</sup>

Wendy Francis of the ACL argued for intervention in the regulation of outdoor advertising in order to provide protection for children, noting that the Brisbane City Council had recently acted pre-emptively to protect drivers from fast moving outdoor digital advertising.<sup>150</sup>

---

145 Commission for Children and Young People and Child Guardian, Submission 3, p.1

146 Social Responsibilities Committee, Anglican Diocese of Brisbane, Submission 6, pp.1&2

147 Linda Papadopoulos, *The Sexualization of Young People (Review)*, pp.25&28

148 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media*, June 2008, p.25, available at [http://www.aph.gov.au/binaries/senate/committee/eca\\_ctte/sexualisation\\_of\\_children/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf)

149 Fotina Hardy, AASW, *Public Hearing Transcript*, 7 August 2013, p.10

150 Wendy Francis, ACL, *Public Hearing Transcript*, 7 August 2013, p.3

In considering the research and evidence available of the impacts of sexual imagery on children, the 2008 Senate standing committee reported that:

*... In clinical or scientific terms, the committee observes that there is a lack of evidence of the effect of early exposure to sexual themes and images on children's development and that it is, consequently, not well understood. Despite the relatively broad range of research cited or alluded to, there is no definitive understanding of how child development is affected by early exposure to sexual imagery and concepts, and particularly its influence and impact on sexual development.*<sup>151</sup>

The Senate committee, however, went on to address claims that the paucity of evidence linking exposure to certain content in media and advertising to the sexualisation of children meant that no action need be taken, saying:

*... The committee treated these claims with a degree of scepticism. While it may be acknowledged that the research into this area has not established clear causal relationships between particular types of advertising, media or products and earlier sexualisation of children, the cumulative affect of this material seems to be beyond dispute.*<sup>152</sup>

Given community unease about sexual imagery in outdoor advertising and the need to protect children from its impacts in the absence of evidence about what those impacts are, the committee recommends that a precautionary approach should be taken by government in limiting children's exposure to sexual imagery through appropriate regulatory regimes.

---

151 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media*, June 2008, p.23, available at [http://www.aph.gov.au/binaries/senate/committee/eca\\_ctte/sexualisation\\_of\\_children/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf)

152 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media*, June 2008, p.13, available at [http://www.aph.gov.au/binaries/senate/committee/eca\\_ctte/sexualisation\\_of\\_children/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf)

## 5 Current regulation of other media and aspects of advertising

### 5.1 Introduction

There is no Commonwealth or State legislation which specifically regulates sexually explicit outdoor advertising, or outdoor advertising generally.

The committee's terms of reference require it to consider the regulatory framework for other forms of media including publications and television that limits children's exposure to sexually explicit and inappropriate advertising and whether such framework could be applied to outdoor advertising.

This chapter of the report provides an overview of legislation which is relevant to outdoor advertising, including Australian Consumer Law, State-based legislation about advertising devices on State-controlled roads, State licensing laws and local government laws. This chapter also outlines legislation which regulates the advertising of specific types of product, for example, alcohol and tobacco products.

The Commonwealth legislation which regulates television content and advertising, and the National Classification Scheme for publications, computer games and films (the Classification Scheme) are also discussed in this chapter. Of particular relevance to this inquiry is the Classification Scheme, which has been considered by other inquiries and raised in submissions as a possible model for the regulation of outdoor advertising.

Chapter 8 of this report discusses whether any of the regulatory frameworks outlined in this chapter could be applied to outdoor advertising.

### 5.2 Types of regulation

This chapter discusses various approaches to the regulation of advertisements and other forms of media. The different regulatory approaches can be categorised as: government regulation; co-regulation; quasi-regulation; and self-regulation.

The Australian Government's *Best Practice Regulation Handbook* describes:

- Government regulation as:  
*... comprises primary and subordinate legislation. It is the most commonly used form of regulation.*<sup>153</sup>
- Co-regulation as:  
*... 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 '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 government-imposed arrangements in the event that industry does not meet its own arrangements.*<sup>154</sup>
- Quasi-regulation as:  
*... a wide range of rules or arrangements that are not part of explicit government regulation, but nevertheless seek to influence the behaviour of businesses, not-for-profit*

---

153 Australian Government, *Best Practice Regulation Handbook*, July 2013, p.56, available at <http://www.finance.gov.au/obpr/proposal/handbook/docs/bpr-handbook.pdf>

154 Australian Government, *Best Practice Regulation Handbook*, July 2013, p.56, available at <http://www.finance.gov.au/obpr/proposal/handbook/docs/bpr-handbook.pdf>

organisations and individuals (for example, industry codes of practice, guidance notes, industry–government agreements and accreditation schemes).<sup>155</sup>

- Self-regulation as:

... generally characterised by industry-formulated rules and codes of conduct, where industry is solely responsible for enforcement.<sup>156</sup>

### 5.3 Legislation which applies to outdoor advertising

#### 5.3.1 Misleading, false and deceptive advertising – Commonwealth

Advertising content must comply with Australian Consumer Law, as provided for in the *Competition and Consumer Act 2010 (Cwlth)*. The Australian Consumer Law protects consumers from false and misleading representations and misleading and deceptive conduct.

The Australian Competition and Consumer Commission (ACCC) regulates the truth and accuracy of claims made in advertising, but not the standard of the content. The Australian Consumer Law is part of a national scheme underpinned by the *Intergovernmental Agreement on Consumer Law*,<sup>157</sup> and the Australian Consumer Law is applied in Queensland by the *Fair Trading Act 1989*.

The ACCC has a number of enforcement measures, including issuing infringement notices and court action.<sup>158</sup> The courts may make an injunction restraining current or future conduct, make orders to achieve financial redress for consumers or businesses and impose significant financial penalties.<sup>159</sup>

The Advertising Claims Board (ACB), part of the ASB, acts an alternative disputes resolution system for advertisers who object to allegedly false or misleading claims made by competitors. The ACB does not consider consumer complaints, which are dealt with by the ACCC.<sup>160</sup>

Allegations of misleading and deceptive advertisements about financial products and services are dealt with by the Australian Security and Investments Commission under the *Australian Security and Investments Commission Act 2001*.<sup>161</sup>

#### 5.3.2 Queensland licensing laws

The *Liquor Act 1992 (Qld)* regulates the advertising of adult entertainment that occurs in premises with a liquor licence, for example strip clubs. The restrictions include not advertising (including on signs) the sexually explicit nature of the acts performed, and not advertising free or discounted alcohol.<sup>162</sup>

155 Australian Government, *Best Practice Regulation Handbook*, July 2013, p.13, available at <http://www.finance.gov.au/obpr/proposal/handbook/docs/bpr-handbook.pdf>

156 Australian Government, *Best Practice Regulation Handbook*, July 2013, p.55, available at <http://www.finance.gov.au/obpr/proposal/handbook/docs/bpr-handbook.pdf>

157 Available at: <http://www.coag.gov.au/node/211>

158 Parliament of Australia, House of Representatives, Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space – Inquiry into the regulation of billboard and outdoor advertising*, July 2011, p.15, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=report\\_register/bykeylist.asp?id=3202](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bykeylist.asp?id=3202),

159 Australian Competition and Consumer Commission, *ACCC Compliance and Enforcement Policy*, 2013, accessed 28 October 2013 from <http://www.accc.gov.au/system/files/ACCC%20Compliance%20and%20Enforcement%20Policy.pdf>

160 Parliament of Australia, House of Representatives, Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space – Inquiry into the regulation of billboard and outdoor advertising*, July 2011, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=report\\_register/bykeylist.asp?id=3202](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bykeylist.asp?id=3202)

161 OMA, Submission 7, p.13

162 *Liquor Act 1992*, sections 148B and 168A, available at <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LiquorA92.pdf>

## 5.4 Queensland regulation of advertising within the boundaries of, or visible from, state-controlled roads

The *Transport Infrastructure Act 1994* makes provision about the erection of advertising devices on state-controlled roads. The Transport Operations (Road Use Management Accreditation & Other Provisions) Regulation 2005 and the *Transport Infrastructure Act 1994* also make provision to ensure the advertising does not create a danger to traffic.

The criteria for the placement, size and shape of roadside advertising and enforcement measures for advertisements deemed to be traffic hazards are set out in the Department for Transport and Main Road's *Roadside Advertising Guide*.<sup>163</sup> Some local government local laws also include requirements about driver and pedestrian distraction and safety in their regulation of outdoor advertising.

## 5.5 Queensland local government legislation

The *Local Government Act 2009*<sup>164</sup> and the *City of Brisbane Act 2010*<sup>165</sup> provide that local government may make and enforce any local law necessary or convenient for the good rule and local government of its local government area.

The scope of the power to make local laws is very broad; local laws cover issues such as animal management, parking and local pest control. Some councils have made local laws to control advertising in their area.

The scope of the local laws appears to vary significantly. Local laws examined by the committee regulate the type, size, shape and placement of advertising, but not the content of advertisements. An example of local laws to control advertising is below.

### 5.5.1 Example: Brisbane City Council's Advertisements Local Laws

The *Advertisements Local Law 2013* (the Local Law) and *Advertisements Subordinate Local Law 2005* (the Subordinate Local Law) regulate the type, size, shape and placement of advertising in Brisbane.

The Local Law 2013 aims to ensure that advertisements and associated structures are constructed and maintained to essential standards of public safety, and complement, or do not unreasonably detract from the desirable characteristics of the natural and built environment. A note in section 2 of the Local Law 2013 states, in part, that the Council –

*does not have jurisdiction under this local law to enforce matters concerning the content of signs which relate to public taste or community expectations. The relevant State legislation is the Classification of Publications Act 1991. ... The Advertising Standards Bureau is an industry body which handles complaints about advertising.*<sup>166</sup>

While it is not clear that the *Classification of Publications Act 1991* does apply to outdoor advertisements, it is apparent that the Brisbane City Council does not intend the Local Law 2013 to regulate the content of outdoor advertising that may be sexually explicit and inappropriate.

Under the Local Law, the Council may classify an advertisement as 'permitted', based on:

- the advertisement's nature, dimensions, structure or other physical characteristics
- the content of the advertisement (for example, size of text)

---

163 Department for Transport and Main Roads, *Roadside Advertising Guide – Edition 1.2*, 2 August 2013, available at <http://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Roadside-advertising-guide.aspx>

164 *Local Government Act 2009*, section 28

165 *City of Brisbane Act 2010*, section 29

166 Brisbane City Council, *Advertisements Local Law 2013*, section 2, Note. Available at <http://www.dlg.qld.gov.au/information-for-local-governments/local-laws-online-database.html>

- the part of the local government area (for example, a particular area classification established by a town planning scheme), and
- the position in relation to an allotment boundary, building, road, footpath, other thoroughfare or another physically identifiable point or line, and other criteria stated in the relevant subordinate local law.

If an advertisement is not a 'permitted advertisement', Council approval is required to exhibit it. If the advertisement requires planning approval under the *Sustainable Planning Act 2009*, the application for approval to exhibit must include evidence of planning approval.

The Subordinate Local Law sets out detailed requirements for the types of advertisement that are 'permitted' according to the 'city environment'. An advertisement must also meet other requirements, for example, requirements for low impact and high impact electronic display component signs, building site signs, changeable message signs, commercial flag signs and others. Requirements for a billboard sign include the maximum size, height, alignment and distance between signs.

## **5.6 Regulation of advertising of specific types of products**

Alcohol advertising and packaging in Australia is regulated by the Alcohol Beverages Advertising Code Scheme (ABAC Scheme). The ABAC Scheme has been described as a quasi-regulatory system.

The ABAC Scheme comprises of the Alcohol Beverages Advertising Code (standards, negotiated with government, for the content of alcohol advertising), Alcohol Advertising Pre-vetting Service and a complaints mechanism. All alcohol advertisements are required to comply with the Alcohol Beverages Advertising Code, as well as the AANA's *Code of Ethics*. Alcohol advertisements must also comply with other format specific codes, such as the Commercial Television Industry Code of Practice, the Codes for Commercial Radio and the OMA *Code of Ethics* and Alcohol Advertising Guidelines.<sup>167</sup>

The ABAC Scheme is governed by a Management Committee made up of representatives from the alcohol industry, the Advertising Federation of Australia and a government representative. The ABAC Scheme is funded by the alcohol industry.<sup>168</sup>

Complaints about alcohol advertising and packaging are made initially to the ASB. If the complaint relates solely to the content of alcohol advertising, it is referred to the ABAC Adjudication Panel. If a complaint raises issues under both the ABAC and the AANA *Code of Ethics*, then the ABAC Adjudication Panel considers any ABAC issues and the Advertising Standards Board considers issues about the AANA *Code of Ethics*.

Complaints referred to the ABAC Adjudication Panel are considered by a three member panel; with one member with a professional background related to public health, nominated by the Minister responsible for alcohol related matters.<sup>169</sup> If the panel upholds the complaint, the company in question is asked to remove or modify the advert within five business days.<sup>170</sup>

The OMA Alcohol Advertising Guidelines requires all members to limit the advertising of alcohol products on fixed signs, i.e. billboards that are located within a 150 metre sight line of a primary or secondary school. This policy does not, however, apply to clubs, pubs or bottle shops located near schools. The OMA guidelines also state that members will only accept copy for alcohol advertising

---

167 The ABAC Scheme, *Alcohol Beverages Advertising (and Packaging) Code: Guidance Notes*, available at <http://www.abac.org.au/wp-content/uploads/2013/05/ABAC-Guidance-Notes-19-February-2013.pdf>

168 The ABAC Scheme Limited, *About the ABAC Scheme*, accessed 28 October 2013 from <http://www.abac.org.au/about/>

169 The ABAC Scheme Limited, *The ABAC Scheme: Rules and Procedures*, accessed 28 October 2013 from <http://www.abac.org.au/wp-content/uploads/2013/06/ABAC-Rules-and-Procedures-5-12-12.pdf>

170 The ABAC Scheme Limited, *About the ABAC Scheme*, accessed 28 October 2013 from <http://www.abac.org.au/about/>



that has been approved for display through the Alcohol Advertising Pre-vetting Service under the ABAC Scheme.<sup>171</sup>

The advertising of therapeutic goods is administered via a co-regulatory regime including representatives from consumer groups, health professionals, industry, the media, advertisers and government.

Advertisements for therapeutic goods are subject to the *Therapeutic Goods Act 1989* (Cwlth) and regulations.<sup>172</sup> The advertising of prescription medicines direct to consumers is banned. Advertisements directed to consumers for non-prescription medicines must comply with the Therapeutic Goods Advertising Code made under the *Therapeutic Goods Act 1989* (Cwlth).

Prior approval is required for advertisements directly to consumers in broadcast media (television and radio), print media (newspapers & magazines (including inserts)), outdoors (including billboards, bus shelters, sides & interiors of buses, taxi displays) and cinemas. The Secretary of the Department of Health and Ageing or his/her delegate is responsible for approving advertisements. Under co-regulatory arrangements, this responsibility has been delegated to industry associations.<sup>173</sup>

Complaints about direct-to-consumer advertising on television or radio, newspapers, consumer magazines, billboards and cinema films or the Internet are considered by the Complaints Resolution Panel, a body established by Regulation.<sup>174</sup>

#### 5.6.1 Tobacco advertising – government regulation

Advertising of tobacco products is banned under the *Tobacco Advertising Prohibition Act 1992* (Cwlth), and the *Queensland Tobacco and Other Smoking Products Act 1998* regulates the retail display and advertisement of tobacco and smoking products.

### 5.7 Regulation of other forms of media

#### 5.7.1 National Classification Scheme – government regulation

The National Classification Scheme provides for the classification of film, computer games and publications. It was established by the Intergovernmental Agreement on Censorship in 1995, following the ALRC's report, *Film and Literature Censorship Procedure*.<sup>175</sup>

The Commonwealth enacted the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth) (the Classification Act) to establish the National Classification Scheme. The Classification Scheme comprises of:

- the National Classification Code which sets out the principles to be followed in making classification decisions for publications (mainly magazines), computer games and films
- specific guidelines for the classification of films, computer games and publications
- the Classification Board – an independent statutory body responsible for classification decisions
- the Classification Review Board – an independent statutory body, which reviews classification decisions in certain circumstances and can provide a fresh classification decision, and

---

171 OMA, *OMA Alcohol Advertising Guideline*, accessed 30 October 2013 from

[http://oma.org.au/\\_data/assets/pdf\\_file/0019/6094/OMA\\_Alcohol\\_Guidelines\\_2013.pdf](http://oma.org.au/_data/assets/pdf_file/0019/6094/OMA_Alcohol_Guidelines_2013.pdf)

172 Australian Government, Department of Health Ageing, *Regulation of therapeutic goods advertising in Australia*, accessed 28 October 2013 from <http://www.tga.gov.au/industry/advertising-regulation.htm>

173 Australian Government, Department of Health Ageing, *Regulation of therapeutic goods advertising in Australia*, accessed 28 October 2013 from <http://www.tga.gov.au/industry/advertising-regulation.htm>

174 Australian Government, Department of Health Ageing, *Regulation of therapeutic goods advertising in Australia*, accessed 28 October 2013 from <http://www.tga.gov.au/industry/advertising-regulation.htm>

175 ALRC, *Report 55, Film and Literature Censorship Procedure*, 1991, Available at <http://www.alrc.gov.au/report-55>

- the Classification Liaison Scheme which assists retailers and distributors of publications, films and computer games to comply with their legal obligations.<sup>176</sup>

Under the Classification Scheme, the Commonwealth (via the Classification Board) makes classification decisions, and the States and Territories enforce them. In Queensland, the *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* and *Classification of Publications Act 1991* (the Queensland Classification Acts) provide for the enforcement of the Classification Scheme. The legislation includes offences and penalties for breaches. In Queensland, the Office of Fair Trading monitors and enforces the classification laws.

#### 5.7.2 *Classification of films and computer games*

The Classification Act requires films and computer games be classified by the Classification Board, using the National Classification Code and the Guidelines, before they are released or advertised.<sup>177</sup> The classification categories for films and computer games are at Tables 1 and 2.

#### 5.7.3 *Classification of publications*

State and Territory laws require that ‘submittable publications’ (those likely to warrant restriction to adults) must be submitted to the Classification Board for classification before they can legally be sold, distributed or advertised.<sup>178</sup> Publications which are likely to be classified ‘Unrestricted’ are not generally required to be classified.<sup>179</sup> The Director of the Classification Board may call in publications that are deemed submittable, but have not been submitted for classification.<sup>180</sup>

All publications that are classified must be appropriately labelled showing the classification category and relevant consumer advice. Where appropriate, publications must also include a cover.<sup>181</sup> Table 1 outlines the classification categories for publications.

---

176 Australian Government, *National Classification Scheme*, accessed 29 October 2013 from <http://www.classification.gov.au/About/Pages/National-Classification-Scheme.aspx>

177 *Guidelines for the Classification of Films 2012*

178 *Guidelines for the Classification of Publications 2005*

179 Australian Government Attorney-General’s Department, Submission 46 to the Senate Legal and Constitutional Affairs References Committee Review of the National Classification Scheme, p.2, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed%20inquiries/2010-13/classificationboard/submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/classificationboard/submissions)

180 *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth), section 23

181 *Guidelines for the Classification of Publications 2005*



**Table 1: Classification of films and computer games**

*There are five types of classification that apply to films and computer games. In addition, films and computer games may be refused classification (RC).*

Classification and description	Sexual content
<b>General (G):</b> content is very mild; appropriate for a general audience.	Sexual violence is not permitted; sexual activity should be very mild and very discreetly implied and justified by context; coarse language should be very mild and infrequent and be justified by context; nudity should be justified by context.
<b>Parental Guidance (PG):</b> content is mild; but may contain content that children find confusing or upsetting and may require the guidance or parents and guardians.	Sexual violence is not permitted; sexual activity should be mild and discreetly implied, and be justified by context; coarse language should be mild and infrequent, and be justified by context; nudity should be justified by context.
<b>Mature (M):</b> content is moderate; recommended for teenagers aged 15 years and over.	Sexual violence should be very limited and justified by context; sexual activity should be discreetly implied, if justified by context; coarse language may be used; nudity should be justified by context.
<b>Mature Accompanied (MA 15+):</b> content is strong in impact; legally restricted to persons 15 years and over. It may contain classifiable elements such as sex scenes and drug use that are strong in impact.	Sexual violence may be implied, if justified by context; sexual activity may be implied; strong coarse language may be used; nudity should be justified by context. <sup>182</sup>
<b>Restricted R18+:</b> content is high impact; restricted to adults. Such material may contain classifiable elements such as sex scenes and drug use that are high in impact and may be offensive to sections of the adult community.	Sexual violence may be implied, if justified by context; sexual activity may be realistically simulated (general rule is “simulation, yes – the real thing, no”); there are virtually no restrictions on language; nudity is permitted.
<i>The following classification applies to films only:</i>	
<b>Restricted X18+:</b> restricted to adults; only available for sale or hire in the ACT and the NT.	This classification is a special and legally restricted category which contains only sexually explicit content. That is, material which shows actual sexual intercourse and other sexual activity between consenting adults. <sup>183</sup>

#### 5.7.4 Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013

The private members bill, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, introduced into the Queensland Legislative Assembly, sought to amend the Queensland Classification Acts to create geographical zones for billboards based on the classifications under the National Classification Scheme (e.g. G, PG, M rated). For example, the Bill would have provided that only G rated billboards could be placed in areas highly frequented by families and children, such as schools, bus stops and train stations.

The Bill was referred to the Legal Affairs and Community Safety Committee (LACSC) for examination. The LACSC reported to the Legislative Assembly on the Bill on 25 November 2013.

The LACSC recommended that the Bill not be passed. The LACSC found that a classification system based on the classification of films and computer games was not an appropriate system for

<sup>182</sup> Guidelines for the Classification of Films 2012; Guidelines for the Classification of Computer Games 2012

<sup>183</sup> Guidelines for the Classification of Films 2012

regulating billboards, and that it would be inappropriate to attempt to apply the scheme for a purpose beyond the scope it was designed for.<sup>184</sup>

## 5.8 Television content and advertising – co-regulation

Advertising content on television is co-regulated by the Australian Government and industry under the *Broadcasting Services Act 1992 (Cwlth)* (the Broadcasting Services Act).

The Broadcasting Services Act provides for the development of a code of practice for content of commercial television. The *Commercial Television Industry Code of Practice* (the Code of Practice) was developed by Free TV and registered with the Australian Communications and Media Authority (ACMA) – a statutory authority within the Australian Government’s communications portfolio.

The Code of Practice operates alongside the Broadcasting Services Act, ACMA’S Children’s Television Standards, which is determined by ACMA and regulates regulate the content of children’s programs and advertisement directed to children, and the Australian content of programs and advertisements.

Films shown on television are classified under the Classification Scheme. All other material is classified in accordance with the Television Classification Guidelines. Table 2 outlines the classification categories for television. The Code of Practice establishes classification periods which stipulate when programs that have been classified G, PG, MA, for example, may be shown.

Section 6 of the Code of Practice deals with the classification and placement of advertisements. It provides, for example, that advertisements for an R18+ film may only be broadcast after 8.30 pm. In relation to sexual content the Code of Practice provides, for example, that condom commercials may only be broadcast in PG, M, MA and AV classification periods, unless the commercial contains a public health or safety message. A commercial for a telephone sex-line or similar service must be classified MA and only scheduled after 11.00pm and before 5.00am and not within any religious program or sports program or in any drama program with a religious theme.<sup>185</sup>

The majority of complaints are dealt with initially by the broadcasters. If a complainant is not satisfied with a response, the complainant may refer the matter to ACMA for investigation. In some cases, for example, tobacco advertising and potential breaches of the Children’s Television Standard, complaints can be made directly to ACMA. If ACMA upholds a complaint, it may impose a range of penalties, including suspension or cancellation of a broadcaster’s license.

---

184 Parliament of Queensland, Legal and Community Safety Committee, Report 47, November 2013, available at <http://www.parliament.qld.gov.au/documents/committees/LACSC/2013/BillboardAdvertising/rpt-047-25Nov2013.pdf>

185 Free TV, *Commercial Television Industry Code of Practice*, available at [http://www.freetv.com.au/media/Code\\_of\\_Practice/2010\\_Commercial\\_Television\\_Industry\\_Code\\_of\\_Practice\\_July%202013.pdf](http://www.freetv.com.au/media/Code_of_Practice/2010_Commercial_Television_Industry_Code_of_Practice_July%202013.pdf)

Table 2: Classification of television content and advertising

Classification and description	Sexual content
<b>Children (C) and Preschool Children (P):</b> must satisfy the requirements of the ACMA's Children's Television Standards.	
<b>General (G):</b> not necessarily intended for children, but must be very mild in impact and must not contain matters likely to be unsuitable for unsupervised children.	Visual depiction of, and verbal references to, sexual activity must be brief, infrequent, contain little or no detail and be strictly limited to the story line or program context. Restrained, brief and infrequent visual depiction of nudity only when absolutely necessary to the story line or program context.
<b>Parental Guidance (PG):</b> may contain careful presentations of adult themes or concepts, but must be mild in impact and remain suitable for unsupervised children.	Visual depiction of and verbal reference to sexual activity must be restrained, mild in impact and justified by the story line or program context. Restrained visual depiction of nudity is permitted, but only where justified by the story line or program context.
<b>Mature (M):</b> recommended for viewing only by persons aged 15 years or over because of the matter it contains, or of the way this matter is treated.	Visual depiction of intimate sexual activity may only be implied or simulated in a restrained way. It must be justified by the story line or program context. Verbal references to sexual activity should not be detailed. Visual depiction of nudity must be justified by the story line or program context, and must not be detailed if in a sexual context.
<b>Mature Audience (MA):</b> suitable for viewing only by persons aged 15 years or over because of the intensity and/or frequency of sexual depictions, or coarse language, adult themes or drug use.	Visual depiction of intimate sexual activity may contain detail but must only be implied and relevant to the story line or context. The impact shall not be high. Visual depiction of nudity must be relevant to the story line or program context. The impact shall not be high. Verbal references to sexual activity may be detailed but the impact shall not be high and must be relevant to the story line or program context.
<b>Adult Violence (AV):</b> suitable for viewing only by persons aged 15 years or over. Content is unsuitable for MA classification because of the intensity and/or frequency of violence, or because violence is central to the theme. <sup>186</sup>	

186 *Television Classification Guidelines*

## 6 International regulatory approaches to outdoor advertising

### 6.1 Introduction

Advertising regulation refers to the rules by which products can be advertised in particular jurisdictions. Regulation may define aspects of advertising such as content (including sexual images), medium (including outdoor advertising), placement (including proximity to schools and places of worship), penalties for non-compliance (including removal of the advertisement) and complaints procedures.

As part of its inquiry, the committee considered the approaches taken to the regulation of outdoor advertising internationally. The common approach to regulating advertising in the countries examined is self-regulation, where the industry polices itself, through self-regulatory bodies.<sup>187</sup> Self-regulation is funded by the industry through levies.<sup>188</sup>

Advertising regulation consists of two main elements:<sup>189</sup>

- (a) *Policies and procedures outlined in voluntary codes* which advertisers must abide in terms of how they advertise.
- (b) *Self-regulatory bodies* which are responsible for the monitoring, policing and enforcing of relevant codes. These bodies undertake data collection and research for their stakeholders. A number of self-regulatory bodies offer copy and pre-clearance services. The outdoor advertising industry is represented through industry trade associations.

*Complaints Resolution Process:* self-regulatory bodies are responsible for dealing with consumer and competitor complaints about advertising and to ensure that advertising abides by the relevant voluntary industry code of conduct and guidelines. Complaints are dealt with by an independent complaints board which is responsible for interpretation the relevant code, applying it to specific cases and deciding on the appropriate action to take.<sup>190</sup> Members on the complaints board may be drawn from a cross section of society and can include academics, members of public, and members of consumer organisations.

*Sanctions:* Self-regulation may include sanctions for advertisements in breach of codes. Sanctions can include publication of decisions and the withdrawal of the advertisement.

### 6.2 The International Chamber of Commerce (ICC)

Many international regulatory systems, including Australia's, are based on the International Code of Advertising Practice published by the International Chamber of Commerce (ICC), which was first issued in 1937 and is updated regularly.<sup>191</sup> Although in some countries the codes have developed beyond the basic ICC Code, all are based on the central premise that "advertising must be legal, honest, truthful, prepared with a sense of social responsibility and respect for the principles of fair competition".<sup>192</sup> National codes usually reflect the cultural, legal and commercial traditions of their jurisdiction.<sup>193</sup>

---

187 Parliament of Australia, House Standing Committee on Social Policy and Legal affairs, *Inquiry into the regulation of billboard and outdoor advertising*, Chapter 2 Approaches to advertising, p.2, accessed 15 October 2013 from [www.apph.gov.au/business/committees/house\\_of\\_representatives\\_committees](http://www.apph.gov.au/business/committees/house_of_representatives_committees); and Outdoor Media Association, Submission 7, p.5

188 Outdoor Media Association, Submission 7, p.5

189 Responsible Advertising and Children, *Some facts about advertising self-regulation*, available at [www.responsible-advertising.org/selfregulation.asp](http://www.responsible-advertising.org/selfregulation.asp) on 22 October 2013, p.1

190 European Advertising Standards Alliance, *Advertising Self-Regulation – The Essentials*, p.8

191 European Advertising Standards Alliance, *Advertising Self-Regulation – The Essentials*, p.9

192 European Advertising Standards Alliance, *Advertising Self-Regulation – The Essentials*, p.9

193 European Advertising Standards Alliance, *Advertising Self-Regulation – The Essentials*, p.10

### 6.3 European Advertising Standards Alliance

The European Advertising Standards Alliance (EASA) is a global peak body that represents advertising self-regulation systems in the EU and other European countries. Australia is one of eight non-European member countries. The EASA provides a cross-border complaints system for advertising that is broadcast from or encountered in another EASA country.<sup>194</sup> The EASA also conducts research and publishes advice. In order to improve self-regulatory practices, the EASA published its Common Principles of Best Practice, which set out operating procedures, such as provision of copy advice, availability of an appeals procedure and the routine publication of decisions.<sup>195</sup>

### 6.4 United Kingdom

#### 6.4.1 Self-regulation

The Advertising Standards Authority (UK ASA) administers and enforces the *Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing* (UK Code) and responds to and investigates complaints made by the public about advertisements.<sup>196</sup> The UK Code covers outdoor advertising.

The Committee of Advertising Practice (CAP) is responsible for writing and maintaining the UK Code and provides advice and guidance to the advertising industry on how to comply with the UK Code.<sup>197</sup> Members of CAP represent advertisers, agencies and the media.<sup>198</sup> A free copy service is provided by CAP to its members.<sup>199</sup>

The self-regulatory system is funded by a voluntary levy on advertising spend, which is collected on behalf of UK ASA and CAP by the Advertising Standards Board of Finance (ASBOF).<sup>200</sup> The Chairman of the ASA and the Chairman of CAP (on a part-time basis) are appointed by the ASBOF.

The Outdoor Media Centre (UK OMC) is the industry association representing companies that sell outdoor advertising in the UK.<sup>201</sup>

#### 6.4.2 Code of Conduct and Charter

The UK Code is primarily concerned with the content of non-broadcast advertising, including outdoor advertising.<sup>202</sup> It is regularly updated and periodically reviewed by CAP to ensure its relevance.

Under section 4 of the UK Code, “marketers should take account of the prevailing standards in society and the context in which a marketing communication is likely to appear to minimise the risk of causing harm or serious or widespread offence”.<sup>203</sup> Section 4.1 states:

---

194 Parliament of Australia, House Standing Committee on Social Policy and Legal affairs, *Inquiry into the regulation of billboard and outdoor advertising*, Chapter 2 Approaches to advertising, p.2, accessed 15 October 2013 from [www.aph.gov.au/business/committees/house\\_of\\_representatives\\_committees](http://www.aph.gov.au/business/committees/house_of_representatives_committees), p.2

195 European Advertising Standards Alliance, *Advertising Self-Regulation – The Essentials*, p.17

196 Advertising Standards Authority and Committee of Advertising Practice, *Keeping ads honest: A fair deal for consumers and competitors*, Annual Report 2012, p.8

197 Advertising Standards Authority and Committee of Advertising Practice, *Keeping ads honest: A fair deal for consumers and competitors*, Annual Report 2012, p.8

198 Advertising Standards Authority, *Non-broadcast sanctions*, available at [www.asa.org.uk/Industry-advertisers/Sanctions/Non-broadcast](http://www.asa.org.uk/Industry-advertisers/Sanctions/Non-broadcast), p.1

199 Committee of Advertising Practice, *Copy Advice Team*, accessed 22 October 2013 from [www.cap.org.uk/Advice-Training-on-the-rules/Copy-Advice-Team](http://www.cap.org.uk/Advice-Training-on-the-rules/Copy-Advice-Team), p.1

200 Committee of Advertising Practice, *Frequently Asked Questions* available at <http://www.cap.org.uk/News-reports/FAQs.aspx>

201 Outdoor Media Centre, *Outdoor Media Centre Charter – Standard of Best Practice*, 2011, p.1

202 Committee of Advertising Practice, *Frequently Asked Questions*, available at [www.cap.org.uk](http://www.cap.org.uk), p.3

203 Committee of Advertising Practice, *The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing*, Section 4 – Harm and offence, accessed 22 October 2013 from [www.cap.org.uk](http://www.cap.org.uk)

*Marketing communications must not contain anything that is likely to cause serious or widespread offence. Particular care must be taken to avoid causing offence on the grounds of race, religion, gender, sexual orientation, disability or age. Compliance will be judged on the context, medium, audience, product and prevailing standards.*<sup>204</sup>

The Bailey Report *Letting Children be Children* into the commercialisation and sexualisation of childhood in the UK noted the need to reduce “the amount of on street advertising containing sexualised imagery in locations where children are likely to see it”.<sup>205</sup> In response, the UK ASA issued the *ASA statement on sexual imagery in outdoor advertising* (the statement) to provide guidance to industry about its approach to sexual imagery in outdoor advertising. The statement provides direction to members on the sort of sexual imagery that may prompt closer UK ASA examination and issues that the UK ASA will take account of in considering advertising complaints.<sup>206</sup> In the statement the UK ASA noted that it will take into account the ability of advertisers to restrict the placement of their outdoor advertising e.g. not within 100 metres of schools.<sup>207</sup>

Specifically for outdoor advertising, the *Outdoor Media Centre Charter – Standard of Best Practice* (the charter) sets out standards of best practice for outdoor media owners throughout the UK.<sup>208</sup> Members of the UK OMC are expected to adhere to the standards set out in the UK Code.<sup>209</sup> In addition, the charter states:

- *For social responsibility reasons, do not display any advertising on static sites for lap dancing clubs or sex shops within 100 m of schools or other sensitive locations such as churches and mosques.*
- *Insist any such advertisers – and any other advertisers where you have reasonable cause to believe their ads may cause offence – to seek copy clearance from CAP/ASA prior to display.*
- *Offer the opportunity to all advertisers to not advertise on static panels within 100m of schools, should they flag up that requirement at the point of booking.*<sup>210</sup>

#### 6.4.3 Complaints process

The UK ASA is responsible for administering a consumer complaints process for non-broadcast advertising in the UK. A complaint by the public can be submitted to the UK ASA either online, by telephone or by writing. The UK ASA Council adjudicates on potential breaches of the UK Code. The UK ASA Council comprises 13 members, two-thirds of whom are independent of the advertising industry. Members of the UK ASA Council can serve three year terms to a maximum of six years. Vacancies for independent members are publically advertised.<sup>211</sup>

A complainant can request that the UK ASA Council reconsider its adjudication by writing to The Independent Reviewer of ASA Adjudications. The Independent Reviewer evaluates the request with advice from two Assessors: Chairman of ASBOF (or nominee) and the Chairman of the UK ASA.

204 Committee of Advertising Practice, *The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing*, Section 4 – Harm and offence, accessed 22 October 2013 from [www.cap.org.uk](http://www.cap.org.uk)

205 Department of Education, *Bailey Report, Letting Children be Children*, accessed 12 November 2013 from [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/175418/Bailey\\_Review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175418/Bailey_Review.pdf), p.14

206 Advertising Standards Authority, *ASA statement on sexual imagery in outdoor advertising*, 15 October 2013, pp.1–2

207 Advertising Standards Authority, *ASA statement on sexual imagery in outdoor advertising*, 15 October 2013, p.1

208 Outdoor Media Centre, *Outdoor Media Centre Charter – Standard of Best Practice*, 2011, p.1

209 Outdoor Media Centre, *Outdoor Media Centre Charter – Standards of Best Practice*, 2011, p.3

210 Outdoor Media Centre, *Outdoor Media Centre Charter – Standards of Best Practice*, 2011, p.4

211 Committee of Advertising Practice, *How the system works*, accessed 12 November 2013 from <http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML/How-the-system-works.aspx>, p.7

The UK ASA monitors advertisements and will, in certain circumstances, intervene to stop an advertisement, which it considers in breach of the UK Code, even in the absence of a complaint.<sup>212</sup>

#### 6.4.4 Sanctions

If a complaint is upheld by the UK ASA to be in breach of the UK Code, an advertisement has to be withdrawn or amended. The majority of sanctions for non-broadcast advertising are co-ordinated through the UK ASA and CAP. There are several sanctions for not complying with the UK Code including:

- *adverse publicity – ASA adjudications are published weekly on its website.*
- *ad alerts – CAP can issue alerts to its members, including the media, advising them to withhold certain services e.g. access to advertising space.*
- *pre-vetting – frequent offenders of the UK Code may be required to have advertising material pre-vetted before publication. In the case of outdoor advertising, advertisers found to have breached the UK Code may be required to seek mandatory pre-vetting advice for a two year period.*<sup>213</sup>

### 6.5 Canada

#### 6.5.1 Self-regulation

The industry self-regulatory body in Canada is Advertising Standards Canada (ASC), which administers the *Canadian Code of Advertising Standards* (Canadian Code).<sup>214</sup> Members of the ASC include advertisers, advertising agencies, media organisations and suppliers to the advertising industry.<sup>215</sup> On request, the ASC provides a fee-based copy clearance service to the advertising and marketing industry through ASC Clearance Services.<sup>216</sup>

The Out-of-Home Marketing Association of Canada (OMAC) represents 90 per cent of Canada's out-of-home media inventory.<sup>217</sup>

#### 6.5.2 Code of Conduct

The Canadian Code sets out the criteria for acceptable advertising in Canada and is used to evaluate complaints about advertising, including outdoor advertising.<sup>218</sup>

In relation to sexual imagery, clause 14 of the Canadian Code provides that advertisements shall not:

*(c) demean, denigrate or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule; and*

*(d) undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.*

212 Committee of Advertising Practice, *How the system works*, accessed 12 November 2013 from <http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML/How-the-system-works.aspx>, p.7

213 Outdoor Media Centre, *Outdoor Media Centre Charter – Standards of Best Practice*, 2011, p.3

214 Advertising Standards Canada, *The Canadian Code of Advertising Standards Frequently Asked Questions*, accessed 15 October 2013 from [www.adstandards.com/en/standards/frequentlyAskedQuestions.aspx](http://www.adstandards.com/en/standards/frequentlyAskedQuestions.aspx), p.1

215 Advertising Standards Canada, *Standards Matter, 2011–12 Annual Report*, p.1

216 Advertising Standards Canada, *Advertising Preclearance*, accessed 15 October 2013 from <http://www.adstandards.com/en/advertisingpreclearance/advertisingpreclearance.aspx>

217 Out-Of-Home Marketing Association of Canada, *Formation*, accessed 22 October 2013 from [www.omaccanda.ca/en/aboutus/formation/default.omac](http://www.omaccanda.ca/en/aboutus/formation/default.omac), p.1

218 Advertising Standards Canada, *The Canadian Code of Advertising Standards*, accessed 15 October 2013 from [www.adstandards.com](http://www.adstandards.com), p.6



Guidance issued by the OMAC is limited to guidelines specific to product categories e.g. alcohol.

### 6.5.3 Complaints process

The Canadian Code establishes a mechanism for consumers' concerns about specific advertisements to be reviewed and adjudicated.<sup>219</sup> The ASC accepts and responds to all written complaints submitted either online, by letter or fax. Once the ASC receives a written complaint it evaluates it against provisions of the Canadian Code. If a potential issue is identified under a clause, the advertiser is asked to respond to the complaint.

Following receipt of the advertiser's response, complaints that raise an issue may be referred by the ASC to one of the five national and regional Consumer Response Councils for review and adjudication. The Councils are comprised of senior advertising and public representatives. Councils meet on a regular basis to adjudicate consumers' complaints about advertising.<sup>220</sup>

An appeal service is available to the complaint. Appeals are heard by a five-person Appeal Panel selected from a roster of persons who did not serve on the original Council decision, with at least two persons being public representatives.<sup>221</sup>

The ASC issue regular Ad Complaints Reports which include a summary of complaints that have been found to contravene the Canadian Code.<sup>222</sup>

### 6.5.4 Sanctions

If a Council determines that an advertisement breaches the Canadian Code, the advertiser is requested to amend or withdraw the advertisement within a specified timeframe. If an advertiser does not comply with the Councils decision, the exhibiting media are notified to not display the advertisement.<sup>223</sup> The ASC may publically declare that the advertising in question and the advertiser have been found to breach the Canadian Code.<sup>224</sup>

## 6.6 New Zealand

### 6.6.1 Self-regulation

The Advertising Standards Authority (NZ ASA) is the self-regulatory body for advertising in New Zealand and is responsible for the *Advertising Code of Ethics* (NZ Code).<sup>225</sup> Members of the NZ ASA consist of trade associations (including the Association of New Zealand Advertisers and the Outdoor Media Association of New Zealand (OMANZ)) and principal media organisations.<sup>226</sup>

The NZ ASA established and funds the Advertising Standards Complaints Board (NZ ASCB) which administers the NZ Code.<sup>227</sup>

The NZ ASA is funded by an annual subscription fee and by levies paid by advertisers on media placement.

---

219 Advertising Standards Canada, *The Canadian Code of Advertising Standards*, accessed 15 October 2013 from [www.adstandards.com](http://www.adstandards.com), p.11

220 Advertising Standards Canada, *The Canadian Code of Advertising Standards*, accessed 15 October 2013 from [www.adstandards.com](http://www.adstandards.com), p.6

221 Advertising Standards Canada, *The Canadian Code of Advertising Standards*, accessed 15 October 2013 from [www.adstandards.com](http://www.adstandards.com), p.6

222 Advertising Standards Canada, *Advertising to Children in Canada, A Reference Guide*, May 2006, p.6

223 Advertising Standards Canada, *Advertising to Children in Canada, A Reference Guide*, May 2006, p.9

224 Advertising Standards Canada, *The Canadian Code of Advertising Standards*, accessed 15 October 2013 from [www.adstandards.com](http://www.adstandards.com), p.7

225 Association of New Zealand Advertisers, *A guide to self-regulation of advertising in New Zealand*, February 2008, p.1

226 Advertising Standards Authority, *Bugger ...it's OK, The case for advertising self-regulation*, p.14

227 Advertising Standards Authority, *Advertising Standards Complaints Board*, accessed 22 November 2013 from <http://www.asa.co.nz/ascb.php>, p.1



The peak industry body for outdoor advertising in New Zealand is OMANZ.

### 6.6.2 Codes of Conduct

The NZ Code sets out rules within which all advertising should comply, including outdoor advertising.<sup>228</sup> Under Rules 4 (Decency) and 5 (Offensiveness) of the NZ Code, advertisements should not contain anything that would clearly offend against prevailing community standards, taking into account the context, medium, audience and product.

The OMANZ Member's Code of Practice (OMANZ Code) sets out industry standards for members of outdoor media in New Zealand. Under the OMANZ Code, members are required to adhere to the NZ Code.<sup>229</sup>

### 6.6.3 Complaints process

The NZ ASCB is responsible for adjudicating on complaints received about advertisements which may be in breach of the NZ Code<sup>230</sup>. The NZ ASCB consists of nine members, five public representatives, one of whom is the Chairperson, plus four persons nominated by the NZ ASA, representative of media, advertising agencies and advertisers.<sup>231</sup>

Members of the public may lodge a complaint about an advertisement in any media (including outdoor advertising) which they believe breaches the NZ Code. Complaints can be made online or by mail. The Chairperson of the NZ ASCB determines whether the complaint is suitable for NZ ASCB consideration and within jurisdiction.<sup>232</sup> The Chairperson of the NZ ASCB can choose to release NZ ASCB decisions to the media.<sup>233</sup> The NZ ASCB can advise the NZ ASA on interpretation of the NZ Code.

Decisions of the NZ ASCB may be appealed to the NZ ASCAB. There are two public representatives on the NZ ASCAB and one industry representative.<sup>234</sup>

### 6.6.4 Sanctions

If a complaint is upheld by the NZ ASCB the advertiser is asked to voluntarily withdraw the advertisement.<sup>235</sup> Media members of the NZ ASA are also asked not to publish an advertisement that which has been held by the NZ ASCB to be in breach of the NZ Code.<sup>236</sup>

## 6.7 United States

The Advertising Self-Regulatory Council (US ASRC) establishes the policies and procedures for advertising industry self-regulation in the United States (US); however questions of taste and morality regarding advertisements published in the US are not within its mandate.<sup>237</sup>

The Outdoor Advertising Association of America (OAAA) is the lead industry organisation for outdoor media in the US, representing more than 90 per cent of industry revenues.<sup>238</sup> Members of the OAAA

---

228 Advertising Standards Authority, *Home*, accessed 22 October 2013 from [www.asa.co.nz](http://www.asa.co.nz), p.1

229 Outdoor Media Association of New Zealand, *Code of Practice*, Appendix A, accessed 12 November 2013 from <http://www.omanz.co.nz/wp-content/uploads/2010/12/OMANZ-Code-of-Practice-and-Industry-Standards-May-2011.pdf>, p.3

230 Advertising Standards Authority, *Advertising Standards Complaints Board*, accessed 22 November 2013 from <http://www.asa.co.nz/ascb.php>, p.1

231 Advertising Standards Authority, *Advertising Codes of Practice*, January 2013, p.10

232 Advertising Standards Authority, *Advertising Codes of Practice*, January 2013, p.3

233 Owen Morgan, *The Self-Regulation of Advertising*, University of Auckland Business Review, Vol.4, No. 1, 2002, p.9

234 Advertising Standards Authority, *Advertising Codes of Practice*, January 2013, p.10

235 Advertising Standards Authority, *Advertising Codes of Practice*, January 2013, p.3

236 Advertising Standards Authority, *Advertising Codes of Practice*, January 2013, p.3

237 Advertising Self-Regulatory Council, *The Advertising Industry's Process of Self-Regulation*, accessed 16 November 2013 from <http://www.ascrcreviews.org/wp-content/uploads/2012/10/NAD-CARU-NARB-Procedures-Updated-10-9-12.pdf>, p.5

have adopted a set of voluntary industry principles, the *OAAA Code of Industry Principles* (OAAA Code).<sup>239</sup>

In relation to the content of advertising the OAAA Code supports “the right of media companies to reject advertising that is misleading, offensive or otherwise incompatible with individual community standards” and that the OAAA “reject the posting of obscene words or pictorial content”.<sup>240</sup>

The OAAA Code commits its members to placement restrictions for advertisements of products illegal to sale to children, including:

*We are careful to place advertisements for products illegal for sale to minors on advertising displays that are a reasonable distance from the public places where children frequently congregate; and*

*We are committed to a program that establishes exclusionary zones that prohibit stationary advertisements of products illegal for sale to minors that are intended to be read from, at least 500 feet of, elementary and secondary schools, public playgrounds, and established places of worship.*<sup>241</sup>

Four states in the US have banned billboards (Alaska, Hawaii, Maine and Vermont), prohibiting the construction of new billboards, or have passed restrictive laws on outdoor advertising.<sup>242</sup>

## 6.8 Summary

The committee notes that, internationally, industry self-regulation is the primary mechanism for regulating outdoor advertising. The exception is those states of the USA that have banned billboards or restricted outdoor advertising. In general, the *International Code of Advertising Practice* is the starting point for the various Codes of Ethics adopted in the countries considered.

---

238 Outdoor Advertising Association of America, *About OAAA*, accessed 22 November 2013 from <http://www.oaaa.org/About/AboutOAAA.aspx>, p.1

239 Outdoor Advertising Association of America, *OAAA Code of Industry Principles*, accessed 22 November 2013 from <http://www.oaaa.org/About/OAAACodeofIndustryPrinciples.aspx>, p.1

240 Outdoor Advertising Association of America, *OAAA Code of Industry Principles*, accessed 22 November 2013 from <http://www.oaaa.org/About/OAAACodeofIndustryPrinciples.aspx>, p.1

241 Outdoor Advertising Association of America, *OAAA Code of Industry Principles*, accessed 22 November 2013 from <http://www.oaaa.org/About/OAAACodeofIndustryPrinciples.aspx>, p.1

242 C Taylor and G Franke, ‘Business Perceptions in the Role of Billboards in the U.S. Economy’, *Journal of Advertising Research*, June 2003, pp.150–162, p.1

## 7 Adequacy of existing regulation of outdoor advertising in Queensland

### 7.1 Introduction

The inquiry terms of reference require the committee to consider the adequacy of existing regulation of outdoor advertising, focusing on the effectiveness of the current regulatory model to limit children's exposure to sexually explicit images and slogans.

As noted earlier in this report, many of the concerns that were brought to the committee's attention related to advertising that may not have been sexually explicit, but which some sectors of the community found offensive. In some instances people objected to the nature of the service or goods being advertised, such as sex shops, rather than to the advertisement for the service or product. Others found advertising images offensive because they were perceived as showing excessive or unnecessary nudity, or because the images were sexualised.

The committee recognises that community views about what images are acceptable in outdoor advertising vary considerably, and that there is inevitably a degree of subjectivity in the assessments made about what is acceptable or appropriate.

This chapter outlines the evidence received by the committee about the adequacy of the current system of self-regulation of sexually explicit outdoor advertising. Due to the subjectivity that is inherent in people's views about what images are acceptable, the discussion that follows necessarily touches on advertisements that some parts of the community regard as acceptable, and others find to be unacceptable.

### 7.2 Community awareness of the complaints system

#### 7.2.1 Knowledge of where and how to complain

The ASB tests the level of public awareness of the ASB when it conducts other research, and advised the committee that:

*[o]ver the past four years there has been between 62 per cent and 67 per cent unprompted awareness in the community of ASB as a place to complain about advertising. That is an amazingly high number. So we do not think that lack of knowing where to complain is an issue.*<sup>243</sup>

Fiona Jolly, CEO of the ASB, also told the committee that the ASB is planning a new advertising campaign that will focus on encouraging people to complain as it will trigger a process of examination of the complaint to assess whether it meets community standards and the codes.<sup>244</sup> The ASB has recently launched a tablet version of its complaint form in recognition that people may prefer to complain in that way.

Karen Donnelly recommended in her submission that reporting concerns be made easier, noting that "the current complaints process through the Advertising Standards Board involves quite a bit of time ...".<sup>245</sup> Melinda Liszewski from Collective Shout told the committee that while it is easy to make a complaint on the ASB website, people become weary of making complaints and tend to assume that somebody else should be monitoring outdoor advertisements.

#### 7.2.2 Committee comment

The committee commends the ASB for the accessibility of its complaints system. The committee considers that community awareness of how to complain could be further improved by adopting a

---

243 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.16

244 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.16

245 Karen Donnelly, Submission 40, p.2

suggestion made to the United Kingdom Bailey Review. A parent suggested that posters and shop windows should display a sticker to give information about how to complain, similar to the United Kingdom's "How's my driving" message on taxis.

The committee considers there would be merit in a standard message about where to complain being included on all outdoor advertisements, whether billboards, store window advertisements, posters, transport advertisements and others.

#### 7.2.3 *Public awareness of how complaints are assessed*

The committee received information about how the current system of self-regulation operates (see Chapter 3) and about the way that the Standards Board is constituted. Fiona Jolly of the ASB told the committee that there is now:

*.... a regular turnover of board members to reduce the issue of desensitisation. We have a larger board to better represent the diversity of the Australian community. The board meets more often to improve our turnaround time and response times. We introduced an independent review mechanism in 2008 to make sure that the community and the industry had a mechanism of ensuring that our processes afforded natural justice.*<sup>246</sup>

Fiona Jolly described the members of the Standards Board as:

*.... not from the advertising industry nor though are they from lobby groups or activist groups. These are people from the community who have shown in their work and lives an interest in upholding community standards. We have a very independent, and very dedicated and a very diverse board, with 20 people from a broad range of age groups, backgrounds and geographic locations.*<sup>247</sup>

The ASB website states that people sought for appointment to the Standards Board "ideally have an interest in, and views on, advertising and community standards".<sup>248</sup>

The ASB also makes Standards Board determinations publicly available on its website.

#### 7.2.4 *Committee comment*

The committee notes that the Standards Board appears to include a range of people and the ASB genuinely attempts to ensure it reflects the range of views in the community and the expertise needed to consider complaints about advertisements. The committee considers that public confidence in the complaint process would be enhanced by more transparent arrangements for the Standards Board.

The committee suggests that the ASB ensure that the range of expertise, knowledge and interests that is required on the Standards Board is more clearly specified in the public arena. To improve public confidence in the body determining complaints, it is essential that more detailed information about Standards Board appointments is published on the ASB website. This should include more clearly defined criteria for membership of the Standards Board to reflect a range of expertise, community views, members' location, age and gender. It could also include, for example, the expected timing of the next call for expressions of interest in appointment to the Standards Board, and clear statements on whether members were appointed following advertisement or were co-opted because of their specific expertise, e.g. in food advertising.

---

246 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, pp.14–15

247 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.15

248 ASB website, accessed 6 December 2013, <http://www.adstandards.com.au/aboutus/theadvertisingstandardsboard>

## 7.3 Enforcement of Advertising Standards Board decisions

### 7.3.1 Industry co-operation essential to the current system

The current system of self-regulation relies on the co-operation of advertisers or the owners of outdoor advertising space to remove advertisements if the Standards Board decides that the *Code of Ethics* has been breached (see section 3.2 for a description of the current self-regulatory system). In the vast majority of cases, advertisers voluntarily comply with Standards Board decisions by removing or modifying an advertisement that has been found to breach the *Code of Ethics*.

Fiona Jolly, CEO of the ASB, told the committee:

*The vast majority of advertising and marketing communications in Australia complies with the codes and does not receive any complaints, while the majority of those complained about are not found to be in breach of the codes. Where a breach is found, which in around 13 per cent of cases, we have a record of over 99.6 per cent compliance by industry with our decisions, demonstrating the commitment of the vast majority of advertising to the system and to the maintenance of high standards of advertising.*<sup>249</sup>

It is important to note that the OMA, which represents billboard owners, has an important role in facilitating voluntary compliance with Standards Board decisions. If the advertiser did not agree to remove or modify an advertisement that breached the *Code of Ethics*, the owner of the billboard could remove it.

The House of Representatives Committee that inquired into billboard advertising noted that “on-premise advertising is much more common than third-party outdoor advertising”.<sup>250</sup> Because the majority of outdoor advertising is not on billboards, it is therefore not subject to the influence of OMA members who have the capacity to ensure an advertisers’ compliance with relevant standards.

### 7.3.2 No enforcement capacity if advertiser does not voluntarily comply

As noted above, most advertisers or owners of advertising space comply with Standards Board determinations. The committee’s examination of ASB Case Reports about sexual issues in 2012 and 2013 confirms that only a small number of outdoor advertisers do not respond, or dispute the Standards Board’s determinations. Advertisers who disagree with the Standards Board may sometimes have removed the advertisement in the normal course of their advertising campaign. A small number of advertisers have simply ignored the Standards Board’s determinations. Ms Jolly, ASB, told the committee:

*... advertisers whose ads are complained about do comply with board decisions and remove or modify their ads within short time frames. Very few advertisers provide any opposition to board decisions. Certainly, I have a lot of conversations with advertisers who are unhappy with decisions, but at the end of the conversation they will always agree to have their ads removed.*<sup>251</sup>

Melinda Liszewski of Collective Shout said:

*The issue at the moment is that there are no powers. There are a number of examples where stubborn advertisers refuse to move their signage. There is no power to enforce that.*<sup>252</sup>

---

249 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.14

250 Parliament of Australia House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space*, 2011, p.37

251 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.15

252 Melinda Liszewski, Collective Shout, *Public Hearing Transcript*, 21 August 2013, p.3

She also noted that:

*as much as enforcement needs to take place and that would involve police, most people would agree that police attention should probably be reserved for other things than having to continually monitor companies not willing to take down their advertising.*<sup>253</sup>

The committee agrees that, while there is potential for offence from a small number of advertisements, those matters are not ones it considers to be a priority for police action.

### 7.3.3 Should there be penalties for breaches of the Code of Ethics?

Referring to a Sydney digital billboard which briefly advertised a Foxtel program, Wendy Francis of the ACL highlighted the need for a penalty:

*The bestiality billboard in Sydney got massive media for them having done that. They are actually rewarded. So at the very least we should introduce penalties for stepping over the mark – and big penalties – and those penalties should be increased for reoffenders.*<sup>254</sup>

### 7.3.4 Non-compliance with Standards Board – small business

Submissions highlighted a recent case where the Standards Board found that an advertisement breached the *Code of Ethics*. Jane Chester expressed her frustration that her complaint about an advertisement was upheld, but no change was implemented. She told the committee that she was extremely concerned about an advertisement for a Townsville sex shop which had “hot stuff” branded across a woman’s buttock.<sup>255</sup> The advertisement was opposite a church and not far from schools. In November 2012 the Standards Board found that the banner advertisement breached the *Code of Ethics* as it used sexual appeal in a manner which is exploitative and degrading.<sup>256</sup> Jane Chester’s submission explained that she was informed of the Standards Board decision, and she again contacted ASB when the advertisement remained in place in April 2013. Her submission notes that she was informed by ASB that the owner of the banner was not responding to the ASB. Angela Burrows submission states that the owner of the advertisement said he would consider modifying it.<sup>257</sup>

At a public hearing Ms Jolly explained the process that followed the Standards Board determination:

*Because the advertiser’s sign is on their own building, we do not have any third party that we can talk to, to encourage the ad to come down. We have quite a good conversation with the council, who are similarly limited because the council can only approve how big the sign is and where it is. The Council does not make rules about what can be on the sign generally. Having said that, we liaised with the council representative in Townsville and the ad eventually came down. But that took quite a long time and it showed up in our statistics as a ‘not removed’. So the only area where we have problems is with the small operator who generally has an ad in one premise, on one building.*<sup>258</sup>

### 7.3.5 Non-compliance with Standards Board – campervan hire

The committee’s analysis of Standards Board Case Reports from January 2012 to the end of October 2013 confirmed that the vast majority of advertisers remove or modify advertisements that have been found to breach the *Code of Ethics*. The majority of the outdoor advertising Case Reports which were not removed or modified were about Wicked Campervans. Details are shown in Case Study 2

---

253 Melinda Liszewski, Collective Shout, *Public Hearing Transcript*, 21 August 2013, p.4

254 Wendy Francis, ACL, *Public Hearing Transcript*, 7 August 2013, p.4

255 Jane Chester, Submission 51

256 ASB, *Case Report 0470/12*, available at <http://ms.adstandards.com.au/Cases/0470-12.pdf>

257 Angela Burrows, Submission 42

258 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.17

in section 3.3. The business did not respond to invitations to comment on complaints. After the Standards Board decisions, some slogans were removed from vans but others were not.

Ms Jolly acknowledged that there was a problem with enforcement of Standards Board decisions about Wicked Campervans, and said that the ASB had asked enforcement authorities to assist by taking action to have offensive images and slogans removed from vans.

### 7.3.6 Compliance with Standards Board – variation of advertisement

Concerns were raised about the approach taken by AMI. The ASB told the committee that AMI had consistently complied with Standards Board decisions (see the summary of decisions in Case Study 1 in section 3.3). Some members of the community perceived that AMI was not complying because it modified its advertisement in a way that they did not consider to be acceptable. For example, Wendy Francis of the ACL said:

*... the AMI advertising: the big yellow and red signs that we have all come to know and hate. They were banned, so they changed the wording slightly and now they are everywhere again. The self-regulation system is broken.*<sup>259</sup>

### 7.3.7 Committee comment

The committee notes that formal enforcement action is not necessary for approximately 99 per cent of Standards Board decisions. The committee also notes that a very small number of advertisers do not comply, and some deterrent or capacity for enforcement appears to be necessary to address non-compliance. The committee's proposals in this area are outlined in Chapter 8.

### 7.3.8 Potential for non-compliance to generate additional publicity

The absence of any fine or other sanction means there is no deterrent to advertisers who may decide to use material that may provoke a strong public reaction. Lauren Rosewarne cites the example of a Windsor Smith advertising campaign, which may have been "deliberately designed to cause a brouhaha and to deliver the additional publicity that eventuated".<sup>260</sup>

The Windsor Smith advertisement, which commenced on 1 March 2000, pictured a woman wearing revealing clothing with a man standing between her legs cupping her face in his hand in close proximity to his groin. The Standards Board determined that the Windsor Smith advertisement breached the *Code of Ethics*; however, the advertiser "decided to stand by their belief that the billboard campaign ... is not inappropriate and to leave the billboards up".<sup>261</sup>

The Windsor Smith case is an old one, and the advertisement has not appeared since 2000 when it was found to have breached the Code.<sup>262</sup> While the committee is persuaded that most outdoor advertisers now voluntarily comply with Standards Board determinations, this case illustrates the potential for a 'rogue' advertiser to ignore the Standards Board, as there is no real disincentive.

### 7.3.9 Committee comment

The committee notes that the current system of self-regulation largely functions effectively because the majority of advertisers work co-operatively with the Standards Board, the ASB and the OMA to remove or modify advertisements that are found to breach the *Code of Ethics*. There is, however, a 'gap' in the regulatory system that is currently used by a small number of advertisers who do not co-operate and comply voluntarily with the Standards Board's decisions.

---

259 Wendy Francis, ACL, *Public Hearing Transcript*, 7 August 2013, p.2

260 Lauren Rosewarne, *Sex in Public: Women, Outdoor Advertising and Public Policy*, Cambridge Scholars Publishing, 2007, p.199

261 ASB, Case Report 79/00, Windsor Smith Pty Ltd, March 2000, <http://ms.adstandards.com.au/cases/79-00.pdf>

262 OMA, Submission 7, p.18



The committee recognises the value of a co-operative self-regulatory scheme, but remains concerned that Standards Board decisions are not enforceable and are ignored by a small number of advertisers. The committee is also concerned about the potential for future advertisers to exploit this gap in the regulatory system, and publish sexually explicit and inappropriate advertisements which do not comply with the AANA *Code of Ethics*.

## **7.4 Timeliness of action on advertisements that breach the Code of Ethics**

### *7.4.1 Standards Board and ASB meetings to consider complaints*

Fiona Jolly of the ASB highlighted the promptness of its complaint process, stating that from receipt of a complaint to a Standards Board decision, 80 per cent of matters are finalised within 35 calendar days.<sup>263</sup> She said:

*We resolve consumer complaints within an average of 35 calendar days. This is a time frame that no government agency is able to come anywhere close to competing with from our experience.*<sup>264</sup>

The Standards Board meets twice a month, and can meet within 24 to 48 hours “if there is a campaign that we think is problematic or is a short-term campaign ...”.<sup>265</sup>

Charmaine Moldrich from the OMA told the committee that the average large-format billboard campaign lasts for 28 days, but a company might buy it for six months or a full year.

### *7.4.2 Community views about timeliness*

While the committee acknowledges that the ASB and Standards Board have a record of prompt decisions on complaints, it also notes the concerns of members of the public who perceive the time an offending advertisement remains visible to be excessive. Some of the concerns raised with the committee were not about current or recent advertisements; however the committee notes that an AMI advertisement mentioned in its August 2013 public hearings was at that time awaiting finalisation. The case report quotes AMI’s response about changing the advertisement:

*As you might appreciate there are a number of billboards in different locations and it will take a few weeks to complete the process of changing all skins however this should be completed in 2 – 3 weeks at the latest.*<sup>266</sup>

Assuming that an advertisement may be in place for a week before complaints are made, and that Standards Board takes the average of 35 days between receipt of complaint and publication of a Case Report, over 40 days may have elapsed. The time then required for the logistics of removing an advertisement found to breach the Code of Ethics may mean it is up to 9 weeks from appearance of an advertisement to its removal. If ASB decides to convene an urgent out-of-session Standards Board meeting, this time could be considerably reduced, but may still result in an advertisement that breaches the *Code of Ethics* being on view for several weeks.

### *7.4.3 Committee comment*

The committee sees merit in the ASB establishing a ‘fast-track’ process for the Standards Board to consider complaints that appear to be potentially in breach of the *Code of Ethics*. The ‘fast track’ process could include assessment criteria for cases, urgent Standards Board consideration, and truncated timeframes for advertiser comments on a complaint, on a Standards Board decision and publication of a Case Report on the ASB website.

---

263 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.18

264 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.14

265 Fiona Jolly, ASB, *Public Hearing Transcript*, 21 August 2013, p.17

266 ASB, *Case Report 0272/13*, available at <http://ms.adstandards.com.au/cases/0272-13.pdf>



## 7.5 Placement of outdoor advertisements

A number of submitters and witnesses highlighted their concerns about billboards with sexual content that were located close to schools or other places where children congregate. Two locations of Honey B's advertisements attracted critical comment from stakeholders. Melinda Liszewski from Collective Shout told the committee that a Honey B's ad had been located near a school. The advertisement was not found to breach the *Code of Ethics*; however, the OMA raised the issue of location with its member, who was not aware that the billboard was close to a school.<sup>267</sup> A case study about Honey B's advertisements is at section 3.3.

Stakeholders also commented on the proximity to schools of the AMI's "Make it bigger and last longer" advertisement.<sup>268</sup> At the time of the committee's deliberations the Standards Board was considering complaints about the advertisement. The Standards Board found that the advertisement breached the *Code of Ethics*, and the advertiser advised that it was in the process of changing the billboards back to an earlier approved version.<sup>269</sup>

One submission to the committee said that "every day I pass by a sexually explicit poster in a bus station right outside Cavendish Road State High School".<sup>270</sup> Graham and Allison Kelly maintained that such advertising should "not be allowed on roadside billboards, shopfront windows, on public shelters and public transport and any other outdoor area where viewing by children can take place".<sup>271</sup> Kerrie Fanning said that in her opinion "sexually explicit outdoor advertising should not be advertised near schools or in areas that children frequent, such as parks and shopping centres".<sup>272</sup>

Some submissions suggested a higher standard should be imposed for advertising in public spaces where children would be in the audience. Murray Hunter and Chris Foote were both of this view noting that:

*While parents have the ability to choose what movies, games and printed publications, as well as television & radio programs and advertising their children are exposed to simply by switching off or removing the source, the same is not possible or at least practical when it comes to outdoor advertising. If there is a public road, or a public venue such as a mall, bus stop, shopping centre or market place this is a place that children are likely to visit for a variety of everyday reasons. It follows then that the advertising standards for outdoor places should be significantly more regulated or higher than for the other aforementioned media.*<sup>273</sup>

As noted previously, the OMA does not have a placement policy. The AANA *Code of Ethics* does not have an explicit placement policy, but its Practice Note states that the Standards Board will consider the general audience for outdoor advertisements in considering cases.

### 7.5.1 Committee comment

The committee notes that the Standards Board takes account of the wide audience for outdoor advertising and the location of outdoor advertising that it considers. It is not clear however whether all advertisers have a good understanding of the importance of careful placement of outdoor advertisements, particularly those that have sexual content. In the committee's view, there should be greater clarity about placement of outdoor advertisements. This could be achieved by amendments to the *Code of Ethics* to put beyond doubt the importance of placement of outdoor

---

267 Wendy Francis, ACL, *Public Hearing Transcript*, 7 August 2013, p.2

268 Melinda Liszewski, Collective Shout, *Public Hearing Transcript*, 21 August 2013, p.3

269 ASB, *Case Report 0272/13*, <http://ms.adstandards.com.au/cases/0272-13.pdf>

270 Name suppressed, Submission 181

271 Graeme and Allison Kelly, Submission 170

272 Kerrie Fanning, Submission 122

273 Chris Foote and Murray Hunter, Submissions 56 & 57

advertisements, and by the development of a placement policy to guide advertisers. Those proposals are outlined in the next chapter.

## **7.6 Advertiser awareness of relevant standards**

The OMA advised the committee that it believed that companies displaying on-premise advertising “are often not aware of” the controls and regulations on outdoor advertising with which the third-party advertisers covered by the OMA seek to comply.

The OMA noted that, of the 14 outdoor advertisements found to be in breach of the *Code of Ethics* in 2012, 11 were not third-party advertisements.<sup>274</sup> The advertisements found to be in breach included some billboards, posters, advertisements on transport and store windows.

### **7.6.1 Committee comment**

The committee acknowledges that the OMA has worked to ensure that its members are aware of relevant advertising standards, and notes that some advertisers may have limited understanding of the *Code of Ethics*.

It appears that one limitation of the current system of self-regulation is that on-premise and transport advertising is common, but may not be reached by the information and awareness raising that is undertaken by the AANA and the OMA for their members. The committee considers that this could be addressed by ensuring that information is made available to all advertisers, including on-premise advertisers, about the standards that are expected in advertisements.

## **7.7 Summary**

The committee notes that the self-regulatory system is generally effective, but that some improvements could be achieved, for example greater clarity in the *Code of Ethics*. In light of the small number of advertisers who do not comply with the determinations of the Standards Board, the committee recommends a ‘light-touch’ co-regulatory system. The next chapter outlines the options considered by the committee and its recommended approach. In particular, the committee considers that penalties of sufficient magnitude to act as a deterrent are required. Ideally, penalties would rarely need to be imposed.

---

274 OMA, Submission 7, p.5

## 8 Is reform needed?

### 8.1 Introduction

The terms of reference for the inquiry require the committee to consider whether reform is needed to protect children from being exposed to sexually explicit and inappropriate outdoor advertising.

As discussed in Chapter 2 of this report, the committee found limited evidence of recent sexually explicit and inappropriate outdoor advertising in Queensland. The committee notes that limited research has been undertaken into the potential sexualisation of children and other adverse impacts on children through sexually explicit outdoor advertising where it exists, as discussed in Chapter 4. The committee also notes that, as found in Chapter 6, an industry self-regulation model is widely used internationally.

#### 8.1.1 *Broad range of community views about advertising content*

The committee notes the subjective nature of responses to advertising, and acknowledges the variety and breadth of views about what is acceptable or offensive in the content of outdoor advertising. The committee recognises that the variety of views may reflect the moral and ethical values of various sectors of the Queensland community.

A large number of submissions raised concerns about the appropriateness of some outdoor advertising which may not be sexually explicit, but rather, implied a sexual message or contained nudity. Those submissions raised concerns about the potential adverse impact of such advertising on children, including the direct and indirect sexualisation of children.

#### 8.1.2 *Industry response to community views*

The committee acknowledges that the AANA, ASB and OMA have taken steps aimed at ensuring outdoor advertising reflects prevailing community views on sex, nudity and sexuality. These steps include implementing some of the recommendations made in the various parliamentary reports (see section 2.7). The committee considers that the industry has demonstrated that it is able to adjust its decision making in response to prevailing community views, notwithstanding the committee's comments at section 7.2.4 about the Standards Board.

The committee recognises the positive steps taken by the industry, and the impressive 99.6 per cent compliance rate with Standards Board decisions about complaints from 1999 to 2013.<sup>275</sup> This compliance rate is particularly notable given the voluntary nature of self-regulation scheme and the fact that it is industry funded. While the high compliance rate does not necessarily mean that the Standards Board's decisions reflect prevailing community views, it does mean that the vast majority of advertisers comply with Standards Board decisions.

#### 8.1.3 *Limited reform required*

Based on the evidence it has received and its examination of the issues, the committee considers that limited reform is needed to ensure that the content of outdoor advertising in Queensland more accurately reflects prevailing community views about sex, nudity and sexuality. The committee considers that the ASB requires assistance to deal with the very small number of advertisers who do not comply with its decisions, particularly those advertisers who are not members of the AANA or the OMA.

There are a number of options for reforming the way that outdoor advertising is regulated in Queensland to achieve these objectives – ranging from strengthening of the current self-regulation of advertising to government regulation of advertising. The terms of reference specifically asked the

---

275 Fiona Jolly, ASB, *Correspondence*, letter of 11 November 2013, Attachment p.8

committee to consider whether the regulatory framework for publications and television could be applied to outdoor advertising.

The rest of this chapter summarises the regulatory options considered by the committee, and sets out the committee's preferred approach for reform.

## 8.2 Government regulation

### 8.2.1 National Classification Scheme for films, computer games and publications – 'G-rating'

#### *Stakeholders' views*

A large number of submissions stated that because children and parents are exposed to outdoor advertising, which cannot be avoided or turned off, all outdoor advertising should be G-rated. For example, Greg Peirce stated that he supported the concept of G-rated outdoor advertising to protect his children from "images and concepts that are not suitable for them to see".<sup>276</sup>

It appears to the committee that submitters had a range of views about how G-rating could be applied to outdoor advertising. The committee has interpreted this suggestion in submissions, as either that the National Classification Scheme for films, computer games and publications should be applied to outdoor advertising, or that the content of all outdoor advertising should be suitable for a 'General' audience, including families and children. The committee has considered both of these approaches.

#### *Application of the National Classification Scheme to outdoor advertising*

Chapter 5 of this report describes the National Classification Scheme for films, computer games and publications. In summary, the Classification Scheme consists of the National Classification Board which classifies all films and computer games and certain publications against the National Classification Code and guidelines which are provided for in legislation.

The committee considered whether it would be appropriate to apply the National Classification Scheme to outdoor advertising. The committee supports the view expressed in the House of Representatives Standing Committee report that:

*... 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 informed decisions 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.*<sup>277</sup>

The committee also notes OMA's comments that:

*... even with a G rating, references to sex, nudity and violence would still be permitted in some circumstances. A system of classification of advertisements will not eradicate complaints or, on some occasions, breaches.*<sup>278</sup>

The OMA also raised concerns that:

*... a G rating system may preclude the display of a number of different public health and community awareness campaigns. For example, campaigns similar to the NSW government award winning binge drinking campaign may not achieve a G rating ...*<sup>279</sup>

---

<sup>276</sup> Greg Peirce, Submission 54, p.1

<sup>277</sup> Parliament of Australia House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, p.36 available at [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=spla/outdoor%20advertising/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/outdoor%20advertising/report.htm) p

<sup>278</sup> OMA, Submission 7, p.20

In relation to the applicability of the classification scheme for publications to outdoor advertising, the House of Representatives Standing Committee's report stated that:

*... 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.*<sup>280</sup>

If the National Classification scheme was applied to images and slogans in outdoor advertising, some advertisements the committee examined could be classified as 'Unrestricted' under the publication scheme, and appear in magazines targeted at women and those targeted at young men.

The committee notes that outdoor advertising is different to the content of magazines because outdoor advertising cannot be avoided. The committee considers that applying the current classification scheme for publications to outdoor advertising would have little effect. This is because the majority of outdoor advertisements that have caused offence to some sections of the community would most likely be classified 'Unrestricted', if the current publications criteria were applied. They would therefore be permitted to be displayed anywhere, including near schools.

The committee also concluded that it would be disproportionate to require every advertisement to be submitted to a statutory body for approval prior to display. In reaching this view, the committee had regard to the relatively small number of examples of sexually explicit imagery or slogans on billboards. The committee also took into account the cost to the public purse of funding a statutory body to consider and approve the large number of billboard advertisements which are installed each year.

While the Classification Scheme is not considered suitable for application to outdoor advertising, the committee does consider that the wording of the National Classification Code and the information in the supporting guidelines (see section 5.7 of this report) should inform amendments to the *Code of Ethics* to ensure that the content of outdoor advertising is suitable for a 'General' audience (see section 8.6.1).

#### 8.2.2 Public nuisance offence - offensive slogans and images on vehicles

A number of submissions raised concerns about images and slogans displayed on Wicked Campervans (see Case Study 2 at section 3.3).

The committee considered a number of options to address those concerns. Options included whether the public nuisance offence under the *Summary Offences Act 2005* could apply to offensive, obscene, indecent or abusive images and slogans on commercial vehicles.<sup>281</sup> The committee notes that the ASB mentioned this option in its letter of 19 March 2013 to the Queensland Minister for Police.<sup>282</sup> In his response, the Minister's Chief of Staff stated that the Queensland Police Service considers that the *Summary Offences Act 2005* "does not apply to activities such as inappropriate advertising, signage, slogans on t-shirts and the like".<sup>283</sup>

The committee concluded that concerns raised about images and slogans on Wicked Campervans could be addressed more effectively by other methods, rather than charging drivers or registered owners of commercial vehicles with a criminal offence. As noted in Chapter 7, the committee does not consider that enforcing outdoor advertising compliance is an appropriate priority for police time.

---

279 OMA, Submission 7, p.20

280 Parliament of Australia House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, p.36 available at [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=spla/outdoor%20advertising/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=spla/outdoor%20advertising/report.htm)

281 *Summary Offences Act 2005*, section 6

282 Fiona Jolly, ASB, *Correspondence*, 19 March 2013

283 David Crossen, Chief Of Staff, Minister for Police and Community Safety, *Correspondence*, 23 August 2013

### 8.3 Co-regulation

The committee considered the applicability of the current co-regulation system for television content and advertising (summarised in section 5.8 of this report) to outdoor advertising.

The committee considers that elements of the co-regulation scheme for television content and advertising could be applied to outdoor advertising. The committee's preferred approach, outlined at section 8.6, contains a number of elements of the co-regulatory scheme for television content and advertising.

### 8.4 Government representation on Standards Board

The committee considered whether it would be appropriate for outdoor advertising to be governed by a quasi-regulation scheme, similar to the Alcohol Beverages (and Packaging) Code Scheme (the ABAC Scheme).

As outlined in chapter 5, the ABAC Scheme provides for the industry to negotiate with the government during the development of the Alcohol Beverages Advertising Code. The government is also represented on the management committee and decision making board.

A quasi-regulatory approach, similar to the ABAC Scheme, could ensure government input into the development of the Code of Ethics and provide for government representation on the Board of Directors of the ASB and the Standards Board. This approach might help ensure that Standards Board decisions reflect prevailing community views.

The committee concluded, however, that this approach would not address concerns about advertisers' non-compliance with Standards Board decisions. The committee also notes that there are concerns about the appropriateness of the quasi-regulation of alcohol advertising. Most significantly, it noted the Ministerial Council on Drug Strategy's recommendation in 2009 that the ABAC Scheme should be reformed as a mandatory co-regulatory scheme.<sup>284</sup>

### 8.5 Strengthened self-regulation

The committee considered whether the existing system of self-regulation could be strengthened to ensure outdoor advertising continues to reflect prevailing community views about the use of sexual imagery and slogans and nudity in a timely way. The committee considered a number of possible measures, for example, amending the *Code of Ethics* to better reflect prevailing community views on sex, nudity and sexuality, reviewing the composition of the Standards Board and implementing an explicit placement policy for outdoor advertising using sexual imagery and slogans and nudity, which are set out in more detail in section 8.6.

The committee concluded, however, that such steps to strengthen self-regulation would not, in isolation, be sufficient to address the issue of those advertisers who refuse to comply with Standards Board decisions and community concerns about the current use of sex, nudity and sexuality in outdoor advertising.

### 8.6 Preferred approach to reform – co-regulation and strengthened industry complaints system

The committee therefore recommends that the Government legislate to establish a 'light touch' co-regulation model for outdoor advertising in Queensland that incorporates measures to strengthen the current industry self-regulatory system and a Queensland legislative framework.

The overarching purpose of the committee's preferred model would be to provide a regulatory back stop to ensure that the Standards Board's decisions are complied with and that outdoor advertising adequately reflects prevailing community views.

---

284 Ministerial Council on Drug Strategy, Joint Communiqué, 24 April 2009, available at <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mclds-24apr09-communication>

The committee's preferred approach to reform of the system is outlined below, and includes strengthening of the current industry scheme and the introduction of legislation to create a co-regulatory model.

**Recommendation 1**

The committee recommends that the Queensland Government introduce legislation to establish a co-regulatory approach to outdoor advertising, which:

- a. provides for recognition of an industry body – in the first instance the Australian Association of National Advertisers
- b. requires the recognised industry body to develop a draft advertising code of ethics to apply to all forms of outdoor advertising, after consultation with industry, the public and the Department of Justice and Attorney General, and that this be submitted to the Attorney General
- c. provides for the code of ethics to be given effect by regulation if the Attorney General is satisfied that it is supported by the majority of the industry, that the public has had adequate opportunity to comment on the draft Code and that it provides appropriate community safeguards
- d. provides for the code of ethics to be reviewed every two years by the recognised industry body
- e. provides for the establishment by industry of an adjudication board to determine whether outdoor advertisements breach the code of ethics, and that the adjudication board be the Advertising Standards Board, with the Advertising Standards Bureau as its secretariat
- f. enables the adjudication board, if an advertiser does not comply with its determination, to refer the matter to the Department of Justice and Attorney-General to consider enforcement and penalties, including:
  - i. imposition of significant fines that would have a deterrent effect, and which can be increased for subsequent offences
  - ii. to require an advertiser to have proposed advertisements pre-vetted for a specified period
- g. provides for funds from fines and income from mandatory pre-vetting of advertisements to be allocated to the management of complaints, research, adjudication of matters and related issues by the adjudication board and its secretariat.

#### 8.6.1 Code of Ethics

##### *Legislation to require a Code of Ethics*

The committee recommends that the Queensland Government introduce legislation to require the recognised industry body (the AANA) to develop a Code of Ethics for advertising in Queensland. The Code of Ethics must be developed in consultation with the industry, the public, community groups and the Department of Justice and Attorney General (the Department). The Code of Ethics would apply to all forms of outdoor advertising, including on-premises advertisements by a single business, advertisements on transport, billboards and other forms of outdoor advertising.

The legislation should require the industry body to submit a draft of the Code of Ethics to the Attorney General. If the Attorney General is satisfied that the draft Code of Ethics provides appropriate community safeguards; is supported by the majority of the industry; and the public has been given adequate opportunity to comment on the draft code, he or she must give it effect by regulation.

### *Regular review of the Code of Ethics*

The legislation would also require the industry body to review the Code of Ethics every two years to ensure that it continues to provide appropriate community safeguards and reflect prevailing community views on issue, such as sex, nudity and sexuality.

### *Clarification of Code of Ethics*

The committee recommends that the existing AANA Code of Ethics form the basis of the code to be approved by regulation. However, in light of community concerns about the content of outdoor advertising, the committee recommends that section 2.4 of the AANA *Code of Ethics* be amended. The committee recommends that the amendments to the *Code of Ethics* be informed by the fact that the viewing audience for outdoor advertising is a “general” audience.

Section 2.4 of the Code of Ethics currently provides that “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”. The committee recommends that section 2.4 be amended to put beyond doubt that the ‘relevant audience’ for outdoor advertising is everyone, including children. This could be achieved by specifying in the Code of Ethics that when considering complaints about outdoor advertising, the Standards Board will have regard not just to whom the advertisement is targeted, but also to who can see the advertisement.

Section 2.4 of the *Code of Ethics* should specify that, when considering the placement of advertisements which include sex, sexuality and nudity, particular care should be taken to avoid locations frequented by children, for example, schools, sports grounds and public transport.

The committee notes that information is already included in the AANA Practice Note to the *Code of Ethics*. The committee considers that the information should be included in the actual *Code of Ethics* to send a clear message to advertisers, and to clarify that the Standards Board will enforce this position in its determinations.

#### **Recommendation 2**

The committee recommends that the Australian Association of National Advertisers amend its Code of Ethics so that it puts beyond doubt that the ‘relevant audience’ for outdoor advertising includes children, and states that care should be taken to avoid locating advertisements which include sex, sexuality and nudity in places frequented by children.

### *Placement policy for fixed outdoor advertising*

The committee recommends that the OMA develop a specific placement policy to provide guidance to outdoor advertisers about how to comply with the placement requirements in the amended Code of Ethics. This should include the provision of information about the locations frequented by children and the appropriate distances to be considered when advertisements include nudity, sex or sexuality. The OMA’s placement policy should have regard to community views.



**Recommendation 3**

The committee recommends that the Outdoor Media Association develop a placement policy to guide its members and other businesses that advertise outdoors. The placement policy should provide clear advice about the appropriate content of outdoor advertising placed in the vicinity of schools, child care centres and other locations frequented by children.

**8.6.2 Adjudication board**

The committee recommends that the new legislation require the industry body to establish a board to consider complaints that advertisements have breached the Code of Ethics in Queensland. Based on the evidence it has received, the committee recommends that the ASB and Standards Board should continue to perform this function in Queensland.

Under the committee's preferred approach, the process for Board appointments, the number of Board members and the required expertise, knowledge and experience of Board members would continue to be the responsibility of the industry body.

The committee is grateful for the information provided by the ASB about its recruitment process for the appointment of Board members.<sup>285</sup> The committee recommends that the ASB publish this information on its website to promote transparency and attract potential new Board members. As suggested in chapter 7, the committee recommends that the ASB should publish more clearly defined criteria for membership of the Standards Board, including the skills and expertise required, the range of community views, geographical location from which members are drawn, age and gender of members. The process for recruitment and when expressions of interest will be sought for new members should also be published on the ASB web site.

Given the subjective nature of the issue of the use of sexual content and nudity in advertising, the committee encourages the ASB to examine periodically the balance of views, skills and experience of members of the Standards Board to ensure that it provides a balanced view and reflects prevailing community views on issues such as the use of sex and nudity in outdoor advertising.

**Recommendation 4**

The committee recommends that the Advertising Standards Bureau website include more clearly defined criteria for appointment as a member of the Advertising Standards Board, including the skills, expertise and the range of views required, geographical location, age and gender of members. In addition the Bureau should publish information about the process and timing for expressions of interest and recruitment of new members of the Standards Board.

**8.6.3 Decisions of the Standards Board*****Standards Board determinations should continue***

The committee recommends that the Standards Board continue to consider complaints about potential breaches of the Code of Ethics under a co-regulatory model in Queensland, and decide whether the complaint should be dismissed or upheld.

Currently, if a complaint is upheld, the Standards Board asks the advertiser to remove or amend the offending advertisement, as soon as possible, after receiving a copy of the draft Case Report. The

---

285 Fiona Jolly, ASB, *Correspondence*, email of 11 November 2013, Attachment 'Recruitment process'

advertiser is asked to advise the Standards Board, within five business days, whether it agrees to modify or discontinue the advertising. The advertiser is also given the opportunity to include an Advertiser's Statement in the Case Report, which is published on the ASB website.

If an advertisement is found to breach a provision of the Code of Ethics, and the advertiser does not modify or discontinue the advertising within the allowed time frame, the Standards Board may:

- include the advertiser's failure to respond in the case report
- forward the case report to media proprietors for action
- post the case report on the ASB website
- if appropriate, refer the case report to the appropriate government agency.

#### *Pre-vetting of advertisements if the Code of Ethics is breached*

The committee recommends that, in addition to the above measures, the Standards Board ask advertisers who have been found to have breached the Code of Ethics to submit their advertisements for pre-vetting, to be arranged by the AANA, prior to the placement of the advertising for a period specified by the Standards Board.

The Committee of Advertising Practice (CAP) in the United Kingdom has adopted a similar approach. In the UK, the CAP can require persistent or serious offenders to have their marketing material vetted before publication – the pre-vetting can last for two years.<sup>286</sup>

The committee recommends that, where the Standards Board asks an advertiser to undergo pre-vetting of its advertisements, the advertiser should be required to pay for the service.

#### *8.6.4 Referral to the Department of Justice and Attorney-General - enforcement of decisions*

The committee recommends that the Government legislate to provide that if the Standards Board has upheld a complaint about an outdoor advertisement, and the advertiser or media propriety (i.e. billboard owner) refuses to comply with a request to modify or remove the advertisement, the Standards Board may refer the matter to the chief executive of the Department of Justice and Attorney General (the Department).

On receipt of a matter, the Department may endorse or reject the Standards Board's decision about the advertisement. If the Department endorses the Standards Board's decision, it may impose a fine or other sanction (see section 8.6.5 below).

#### *8.6.5 Fines and other actions available to the Department*

The committee recommends that the legislation provide for the Department to impose significant monetary fines and sanctions on advertisers who have been found to have breached the *Code of Ethics* and not complied with a Standards Board request to remove or modify an advertisement.

The committee recommends that the fines prescribed in the legislation should be set at a level that will act as a disincentive to advertisers who have been found to have breached the *Code of Ethics* from repeating such behaviour in the future. The legislation should provide for the fines to be increased for persistent offenders.

The committee recommends that the legislation provide that the Department may enforce a decision by the Standards Board that an advertiser be required to undergo mandatory pre-vetting for a specified period. This approach will ensure that advertisers who are not members of the AANA, and therefore who may not comply with the Standards Board's decision, are required to undergo

---

286 The Advertising Standards Agency, *Non-broadcast sanctions*, accessed 18 November 2013 from <http://www.asa.org.uk/Industry-advertisers/Sanctions/Non-broadcast.aspx>

mandatory pre-vetting. As noted above such advertisers would be required to pay the AANA for this service.

The committee recommends that the money raised by fines imposed on advertisers by the Department and the money raised from the mandatory pre-vetting service should be used as a funding stream for the ASB to operate the complaints and regulatory system, in particular, to conduct research into community views (see section 8.6.6) and self-initiate investigations (see section 8.6.8).

#### 8.6.6 *Research into prevailing community views*

The ASB conducts periodic research into community standards. In 2010, the ASB conducted research into community perceptions of sex, sexuality and nudity in advertising, and in 2012, the ASB conducted research into community perceptions about community views on five core provisions of the Code of Ethics: discrimination and vilification; violence; sex, sexuality and nudity; language; and health and safety.<sup>287</sup>

The ASB indicated that its research “aims to assess the extent to which the Standards Board decisions about advertisements align with how the community would apply the codes and whether or not they meet requirements of the codes”.<sup>288</sup> The ASB stated that its research:

*... provides a useful mechanism for providing feedback to the Standards Board about constantly evolving community standards and allows them to adjust their approach to the code provisions if required, to ensure community standards continue to be reflected in the decisions they make. It also provides a useful tool for advertisers to understand changing views in the community in regard to advertising standards and to apply this to the advertising they produce.*<sup>289</sup>

The committee commends the ASB for the research it has undertaken. The committee recommends that the ASB conduct research to inform the decisions of the Standards Board and behaviour of advertisers more frequently. The committee recommends that the ASB conduct research every two years into community views on the use of sex, sexuality and nudity in outdoor advertising. This research should form part of periodic review of the *Code of Ethics* required under the proposed legislation.

#### **Recommendation 5**

The committee recommends that the Advertising Standards Bureau undertake more frequent research about prevailing community views to inform the decisions of the Advertising Standards Board, noting the committee’s other recommendations that the Bureau charge for pre-vetting advertisements and that revenue from fines be directed to the Bureau to support the system of complaints and determinations.

#### 8.6.7 *Timeliness of complaints process*

The ASB stated that the average time to complete cases in 2012 was 36.8 calendar days and in 2013 the current average completion time, at the end of October, was 36.2 calendar days.<sup>290</sup> The committee notes that the Standards Board is able to consider complaints within 24 to 48 hours,

---

287 ASB, *Research Reports*, accessed 19 November 2013 from <http://www.adstandards.com.au/publications/factsandfigures>

288 ASB, Submission 21, p.6

289 ASB, Submission 21, p.6

290 Fiona Jolly, ASB, *Correspondence*, email of 11 November 2013, Attachment - Letter from ASB to the Australian Government Attorney-General’s Department, 31 October 2013, p.2

where it is likely that the advertisement will breach the Code of Ethics or if there is immediate and significant community concern.<sup>291</sup>

The committee recommends that the ASB amend its policies and procedures to provide that the Standards Board will prioritise the consideration of complaints about an advertisement that meets certain criteria. The criteria for 'fast track' consideration should include that an advertisement uses sex, nudity and sexuality and is located near a place frequented by children. The committee recommends that the Standards Board should aim to consider complaints that meet the criteria within 48 hours. The criteria should be published on the ASB's website. The time provided for an advertiser to respond to a complaint, and for publication of a Case Report should be as short as possible, having regard to natural justice.

**Recommendation 6**

The committee recommends that the Advertising Standards Bureau formalise policies and procedures to prioritise and 'fast track' consideration of complaints about advertisements that meet criteria which suggest that the *Code of Ethics* may have been breached. The policy and procedures should be published on the Bureau's website.

**8.6.8 Self-initiated investigations**

The House of Representatives Standing Committee on Social Policy and Legal Affairs report, *Reclaiming Public Space – Inquiry into the regulation of billboard and outdoor advertising*, recommended that the Standards Board take on a formal monitoring role of outdoor advertising and self-initiate investigations where warranted.<sup>292</sup> In its letter of 31 October 2013 to the Commonwealth Attorney-General's Department, a copy of which was provided to the committee, the ASB stated that the ASB does not have the funds to self-initiate.<sup>293</sup>

The committee accepts that the ASB and Standards Board do not currently have the financial or staff resources to undertake annual compliance surveys of outdoor advertising, as recommended by the House of Representatives committee. The committee recommends, however, that the ASB and Standards Board take a more pro-active approach to its role of regulating outdoor advertising. This could include using informal feedback and comments or industry knowledge to self-initiate investigations about particular advertisements without the trigger of a complaint.

The committee believes that it would be in the industry's interest to be seen to act on contentious advertisements displayed in public spaces, particularly any involving the use of sex, nudity and sexuality, before a complaint is received. As outlined in section 8.6.5, funds generated from fines imposed on advertisers by the Department and fees paid by advertisers who are required to use the pre-vetting service could be used to fund the ASB and Standards Board to self-initiate investigations.

---

291 ASB, Submission 21, p.19

292 Parliament of Australia, House of Representatives, Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space – Inquiry into the regulation of billboard and outdoor advertising*, July 2011, p.48, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=report\\_register/bykeylist.asp?id=3202](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bykeylist.asp?id=3202)

293 Fiona Jolly, ASB, *Correspondence*, email of 11 November 2013, Attachment – Letter from ASB to the Australian Government Attorney-General's Department, 31 October 2013, p.5

**Recommendation 7**

The committee recommends that, where an outdoor advertisement uses sex, nudity and sexuality, and potentially breaches the *Code of Ethics*, the Advertising Standards Bureau and the Advertising Standards Board consider the matter without the need for a complaint.

**8.6.9 Promote awareness of complaints handling process**

The committee acknowledges that the ASB and OMA have taken a number of steps over recent years to promote awareness of the advertising complaints handling system. The details of how to make a complaint are included in the Code of Ethics. The committee is aware that the ASB conducted a national promotion campaign in 2011 about complaining to the ASB. The committee also notes that a new public awareness campaign is currently being developed.<sup>294</sup>

The committee recommends that the ASB and OMA take steps to further promote awareness of the complaints handling system. Such steps should include the display of the web address for complaints on all billboards and outdoor advertisements.

**Recommendation 8**

The committee recommends that the Australian Association of National Advertisers and the Outdoor Media Association adopt a policy that all outdoor advertisements display brief information about where to complain about an advertisement.

**8.7 Community and local government action about outdoor advertising**

In addition to the committee's preferred approach to reform, it is also open to local government to make local laws about the content of outdoor advertising in their area, under the *Local Government Act 2009*.

The committee also notes that in some areas local residents have suggested innovative ways to address concerns about images and slogans on Wicked Campervans. For example, Sunshine Coast residents have suggested that the council instruct its caravan park lease holders to refuse entry to any Wicked Campervan that breaches certain guidelines.<sup>295</sup> In the committee's proposed approach to co-regulation, advertisements on transport would be covered by the Code of Ethics, as would all types of outdoor advertising.

The committee encourages local government and the communities they represent to take action to address concerns about outdoor advertising in their local area. The committee suggest that communities and individuals make use of the AANA *Code of Ethics* and information about Standards Board decisions, which are made publicly available on ASB's website.

---

294 Fiona Jolly, ASB, *Correspondence*, email of 11 November 2013, Attachment - Letter from ASB to the Australian Government Attorney-General's Department, 31 October 2013, p.7

295 Sunshine Coast Daily, *Wicked ways can be stamped out*, 13 October 2013 accessed 19 November 2013 from <http://www.sunshinecoastdaily.com.au/news/wicked-ways-can-be-stamped-out/2049699/>

## Appendices

### Appendix A – List of Submissions<sup>296</sup>

Sub #	Name	Sub #	Name
1	Helen Dowling	30	Danny Weldon
2	Elizabeth Sharp	31	Name suppressed
3	Commission for Children and Young People and Child Guardian	32	David Rodgers
		33	Shirley Myers
4	Family Planning Queensland	34	Candice and Peter Schmidt
5	Janet McGeever	35	Paul Groves
6	Anglican Diocese of Brisbane Social Responsibilities Committee	36	The Uniting Church in Australia, Queensland Synod
7	Outdoor Media Association	37	Queensland Council for Civil Liberties
8	Jennelle Dupuy	38	Leanne Daniell
9	Australian Association of National Advertisers	39	Melissa Lowcock
		40	Karen Donnelly
10	Angela Street	41	Queensland Association for Healthy Communities
11	Name suppressed		
12	Sally Vincent	42	Angela Burrows
13	The Australian Family Association	43	Kirsten Anstey
14	Australian Christian Lobby	44	Liz Cunningham MP, Member for Gladstone
15	Tanya Mathias and Pip Douglas		
16	Collective Shout	45	Sandra Skinner
17	Catherine Knijnenburg	46	Queensland Law Society
18	Cherie Bailey	47	Philip Young
19	<i>not accepted</i>	48	Colette Galli
20	Bravehearts Inc.	49	Christine Campbell
21	Advertising Standards Bureau	50	Alison Dennehy
22	Australian Association of Social Workers	51	Jane Chester
23	Chamber of Commerce and Industry Queensland	52	Kathy Ducker
		53	Laurence and Nicola Stevens
24	FamilyVoice Australia	54	Greg Peirce
25	Cecily Mac Alpine	55	Jennifer Kerr
26	Kathleen Bates	56	Chris Foote
27	Islamic Council of Queensland Inc.	57	Murray Hunter
28	PACT – Protect All Children Today Inc.	58	Jonathan Murray
29	Julie Robinson	59	Valma Lord

<sup>296</sup> Of the 198 submissions received, 178 were accepted and published. See section 1.3.1 for more information

## Sexually explicit outdoor advertising

Sub #	Name	Sub #	Name
<i>#s 60-68 not used</i>		106	Rebecca Jones
69	Joel Delaney	107	Megan Sterling
70	Janelle Patch	108	Priscilla Gash
71	Laurie Anne OLeary	109	Peter and Jennifer Scotland
72	Graham Slaughter	110	<i>not accepted</i>
73	Ed and Ann Pitt	111	Leon and Beth Holder
74	Stephanie Bloomfield	112	Ted Skuse
75	Sue Innes	113	Laura Heazlewood
76	<i>not accepted</i>	114	Gerard and Joan O’Keeffe
77	Lindy Stevenson	115	Sharon (surname suppressed)
78	Paul Clark	116	Brynley and Rachelle Sadler
79	Margaret Williams	117	Jo Grice
80	<i>not accepted</i>	118	Peter Francis
81	Karen Cronje	119	Lisa Hechtl
82	<i>not accepted</i>	120	<i>not accepted</i>
83	Name suppressed	121	Maira Blau
84	Chris Taylor	122	Kerrie Fanning
85	Dianne Cowling	123	<i>not accepted</i>
86	Terry and Mandy Irvine	124	Brad Clow
87	George Szykarski	125	Hazel Alley, Member for Capricornia
88	Jasmine Swilks	126	Bill Burns
89	Kerrie Coulstock	127	Joan Apthorp
90	Irene Pass	128	Jennifer Harding
91	<i>not accepted</i>	129	Linda Hart
92	Mathew White	130	<i>not accepted</i>
93	<i>not accepted</i>	131	Genevieve Lee
94	<i>not accepted</i>	132	Brenda Rudolph
95	Lee Gray	133	Joanne and Ken Mothershaw
96	Rochelle Cocksedge	134	Lenore Stevenson
97	L and I Voeselek	135	Mandy Morgan
98	Jeremy and Tamryn Descroizilles	136	<i>not accepted</i>
99	Angi Eirene Bennett	137	Sharron Collins
100	Adrian Eldridge	138	Lyndall Daniel
101	R. Clements	139	Sue Hamilton
102	Murray and Irene Valentine	140	Shane Ginn
103	Marilyn Rowsome	141	Anna Deuar
104	Lee Nightingale	142	Gav Stilgoe
105	Geoff and Mary Parry	143	Tim Baird

## Sexually explicit outdoor advertising

Sub #	Name	Sub #	Name
144	Michael Cox	176	Terri-Ann Clifford
145	Elly McIntyre	177	David and Alex Todd
146	Joanne George	178	<i>not accepted</i>
147	Nicola Saad	179	<i>not accepted</i>
148	Donna Greenslade	180	Paul Curlis
149	Jean Monks	181	Name suppressed
150	Brian Allbutt	182	Genevieve Swan
151	Jemina de Silva Macedo	183	Stacy Richards
152	<i>not accepted</i>	184	Alka Hingorani
153	Bernadette McCabe	185	Shalender Hingorani
154	Sky-Lee Martin	186	<i>not accepted</i>
155	Grace Nakhla	187	Tina Herak
156	Phil Garrad	188	Name suppressed
157	Lyn Caverhill	189	Fern Lee
158	Debra Mieth	190	Christine Moore
159	Stephanie and Stephen Lake	191	Rea Barrett
160	Leanne Dunn	192	Jillian Hudson
161	David Skerritt	193	Cynthia Barker
162	Kayla Eadie	194	Vito and Lynette Cuzzubbo
163	<i>not accepted</i>	195	Dawn Farrell
164	Ruth Humphries	196	Bruce Daniel
165	Cheryl Flanagan	197	Scott Farrell
166	Kerry Reece	198	Sue Buchanan
167	<i>not accepted</i>	199	Chris McCormack
168	Marcia Tatters	200	Gavan Duffy
169	Patricia Heazlewood	201	Vivienne Corney
170	Graeme and Allison Kelly	202	<i>not accepted</i>
171	Rodney Dart	203	Sarah Wiseman
172	Alf and Deidre Mills	204	Karen Mitchell
173	Phil Smith	205	Guerrero Family
174	Heather Angus	206	Joe M. Anderson
175	Cr Peter Cox, Sunshine Coast Regional Council	207	Quinton Gilmour



## Appendix B – Witnesses at public hearings and briefings

### Public briefing – 30 July 2013, Brisbane

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

Professor Don Schultz, Northwestern University, Illinois

### Public hearing – 7 August 2013, Brisbane

Wendy Francis, Queensland Director, Australian Christian Lobby

Fotina Hardy, Queensland Branch President, Australian Association of Social Workers

Hetty Johnston, Executive Director, Bravehearts

### Public hearing – 21 August 2013, Brisbane

Alina Bain, Director Operations and Regulatory Affairs, Australian Association of National Advertisers

Fiona Jolly, Chief Executive Officer, Advertising Standards Bureau

Melinda Liszewski, Collective Shout

Paul Martin, Executive Director, Queensland Association for Healthy Communities

Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association

### Public briefing – 16 October 2013, Brisbane

Dr Kerry Robinson, Associate Professor, School of Social Sciences and Psychology, University of Western Sydney

## Appendix C – Australian Association of National Advertisers *Code of Ethics*



### OBJECTIVES

This Code has been adopted by the Australian Association of National Advertisers (AANA) as part of advertising and marketing self regulation. Its object is to ensure that advertisements and other forms of marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.

This Code comes into effect on 1 January 2012. It replaces the previous AANA Code of Ethics and applies to all advertising and marketing communications on and from 1 January 2012.

This Code is accompanied by a Practice Note which has been developed by AANA. The Practice Note provides guidance to advertisers, complainants and the Advertising Standards Board (Board) in relation to this Code.

### DEFINITIONS AND INTERPRETATION

In this Code, unless the context otherwise requires:

**Advertising or Marketing Communications** means any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

**Advertising or Marketing Communications to Children** means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. "Product" is defined in the Code for Advertising & Marketing Communications to Children as follows: **Product** means goods, services and/or facilities which are targeted toward and have principal appeal to Children.

**The Board** means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

**Children** means persons 14 years old or younger and **Child** means a person 14 years old or younger.

#### **Excluded Advertising or Marketing Communications**

means labels or packaging for products, public relations communications (corporate or consumer) and related activities and, in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

**Prevailing Community Standards** means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications. Prevailing Community Standards apply to clauses 2.1–2.6 below. The determination by the Board shall have regard to Practice Notes published by AANA and any research conducted by the Advertising Standards Bureau.

### SECTION 1 COMPETITOR COMPLAINTS<sup>1</sup>

- 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.

<sup>1</sup> Complaints under Section 1 are made to the Advertising Claims Board, <http://www.adstandards.com.au/process/claimsboardprocess>



Australian Association of National Advertisers Suite 301, 100 William Street Sydney NSW 2011  
P +61 2 9221 8088 F +61 2 9221 8077 E [admin@aana.com.au](mailto:admin@aana.com.au) W [www.aana.com.au](http://www.aana.com.au)

1 January 2012  
1 of 2

## AANA CODE OF ETHICS

- 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 CONSUMER COMPLAINTS<sup>2</sup>

- 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, gender, age, sexual preference, religion, disability, mental illness or political belief.
- 2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.
- 2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

- 2.4 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.
- 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). 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.

### SECTION 3 OTHER CODES

- 3.1 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.
- 3.2 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.
- 3.3 Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code.

This section does not form part of the Code of Ethics and is provided here for information only.

### COMPLAINTS UNDER THE AANA SELF REGULATORY SYSTEM

Complaints about the content of an advertisement or marketing communication can be made under this Code and the other AANA Codes to the Advertising Standards Bureau<sup>3</sup>.

You can make a complaint by:

- Lodging a complaint online at:  
<http://www.adstandards.com.au/process/theprocesssteps/makingacomplaint>
- Writing a letter (and sending via post or fax) to:  
The Advertising Standards Bureau  
Level 2  
97 Northbourne Avenue  
TURNER ACT 2612  
Fax: (02) 6262 9833

Once the Advertising Standards Bureau has received your complaint, it then assesses the complaint to determine whether it is eligible for consideration by the Advertising Standards Board. The Board is the body established to consider complaints. If accepted the advertiser/marketer is notified and a response is requested. The complaint is then considered by the Board and the advertiser and complainant are advised of the determination. A case report is then published.

The original complainant or advertiser/marketer can also ask for a review of the determination.

<sup>2</sup> Complaints under Section 2 are made to the Advertising Standards Board <http://www.adstandards.com.au/process/theprocesssteps>

<sup>3</sup> If your complaint is about a program (not an advertisement) on television or radio, please contact the relevant industry body.



Australian Association of National Advertisers Suite 301, 100 William Street Sydney NSW 2011  
P +61 2 9221 8088 F +61 2 9221 8077 E [admin@aana.com.au](mailto:admin@aana.com.au) W [www.aana.com.au](http://www.aana.com.au)

1 January 2012  
2 of 2

## Appendix D – Recommendations of Parliamentary Inquiries and Responses

Inquiry Recommendation	Australian Government and/or Industry Response
<p><b><i>Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising, House of Representatives Standing Committee on Social Policy and Legal Affairs, 2011</i></b> <sup>297</sup></p> <p><b><i>Note on the inter-relationship between inquiries and the Australian Government's responses:</i></b> Before the House of Representatives Standing Committee report was tabled the Government referred the National Classification Scheme to the Australian Law Reform Commission (ALRC). After the Standing Committee reported (July 2011) the Government referred its report to the ALRC. The ALRC report was tabled in March 2012.</p> <p>The Australian Government response to the Standing Committee report (August 2012) states that, as the National Classification Scheme is a cooperative arrangement between the Commonwealth and States and Territories, it has sought the views of the States and Territories about the ALRC report, and will then be able to develop its position about the ALRC recommendations (incorporating consideration of the Standing Committee's recommendations where appropriate) and in due course finalise the Government response to the ALRC Report.<sup>298</sup> The first phase of the Australian Government response to the ALRC report is reproduced later in this document.</p>	
<p><b>1. Advertising and industry bodies</b></p> <p>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.</p> <p>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.</p>	<p><b>Government Response – agree</b></p> <p>Recommendation 1 has been referred to 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. As the Government was awaiting the ALRC Report before taking any action, advice as to their responses has been requested by 28 September 2012. Those bodies have been requested to provide copies of any advice to relevant line departments which work closely with industry on advertising including the Department of Health and Aging and the Department of Infrastructure and Transport.</p> <p><b>Advertising Standards Board (ASB)</b></p> <p>The ASB wrote to the Commonwealth Attorney General's Department in September 2012 and October 2013 about its response (see description in section 2.7.2 of this report)</p> <p><b>Australian Association of National Advertisers</b></p> <p>No response located.</p> <p><b>Outdoor Media Association</b></p> <p>The OMA established policies, practices and a regular program of content training for its members in conjunction with the ASB and the AANA. Training had been delivered to 400 OMA in the two years to August 2013. OMA developed a content review policy and a copy advice service, to provide members with copy advice on whether ads fit within the code.</p>

297 House of Representatives, Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space – Inquiry into the regulation of billboard and outdoor advertising*, July 2011, available at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=report\\_register/bykeylist.asp?id=3202](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bykeylist.asp?id=3202)

298 The Australian Government response - <http://www.ag.gov.au/Consultations/Documents/AusGovResponseToTheHouseOfRepsStandingCommitteeonSocialPolicyandLegalAffairs/Governmentresponse-HouseofRepsBillboardsInquiry.pdf>



Inquiry Recommendation	Australian Government and/or Industry Response
<b><i>Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising, House of Representatives Standing Committee on Social Policy and Legal Affairs, 2011</i></b> <sup>297</sup>	
<p><b>2. Australian Government</b></p> <p>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.</p> <p>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.</p> <p>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.</p>	<p><b>Government Response – noted</b></p> <p>The ALRC review into the NCS was concluded earlier this year and its Final Report publicly released on 1 March 2012.</p> <p>The ALRC considered and discussed other media content (outside the content traditionally classified under the current NCS) in relation to possible classification obligations.</p> <p>In its Final Report, the ALRC noted that the Committee 'rejected the classification system as an inappropriate system for regulating outdoor advertising'. The ALRC concurred with the Committee's view explicitly stating that it 'does not recommend that advertising be brought into the new classification scheme'.</p> <p>The ALRC made a further recommendation that advertising for classifiable content (e.g., films and computer games) should be managed solely under the existing advertising self-regulatory framework and that advertising codes be amended accordingly. The recommendation states:</p> <p style="padding-left: 40px;">8-5 - Advertisements for content that must be classified should continue to be subject to the existing voluntary advertising codes, with complaints being handled by the Advertising Standards Board. These voluntary codes should be amended to provide that, in assessing the suitability of an advertisement for media content that must be classified, the following matters should be considered:</p> <p style="padding-left: 80px;">(a) the likely audience of the advertisement;</p> <p style="padding-left: 80px;">(b) the impact of the content in the advertisement; and</p> <p style="padding-left: 80px;">(c) the classification or likely classification of the advertised content.</p> <p>The Government will consider the Committee's recommendation in developing its response to the ALRC Report.</p>
<p><b>3. Australian Association of National Advertisers</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• occupy public space and have the potential to affect the amenity of that space for some community members;</li> <li>• can be viewed by an unrestricted audience, regardless of their target audience; and</li> <li>• have a cumulative impact on the community through the social messages they convey.</li> </ul>	<p><b>Government Response – referred to the Australian Association of National Advertisers for attention and response by 28 September 2012</b></p> <p><b>Australian Association of National Advertisers and Advertising Standards Board response/action</b></p> <p>The Bureau describes how the AANA Code of Ethics and Practice Notes (that supports the Code of Ethics) address sexualised images of children in advertising and exposure of children to sexualised images:</p> <p><u>Sexualised images of children</u></p> <ul style="list-style-type: none"> <li>• since 2011 the AANA Practice Note has been strengthened, and provides that "where images of children are used, sexual appeal is not acceptable and will always be regarded as exploitative and degrading"</li> <li>• advertisements with appeal to young people (under 14 years) which contain sexualised images or poses are to be used with caution. Models which appear to be young should not be used in sexualised poses"</li> </ul> <p><u>Children's exposure to sexualised images, themes, words</u></p> <ul style="list-style-type: none"> <li>• Section 2.4 of the AANA Code of Ethics has a "relevant audience" test which enables the Board to consider</li> </ul>

Inquiry Recommendation	Australian Government and/or Industry Response
<b>Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising, House of Representatives Standing Committee on Social Policy and Legal Affairs, 2011</b> <sup>297</sup>	
	<p>different audiences, e.g. in different media, times or locations</p> <ul style="list-style-type: none"> <li>The AANA 2012 Code of Ethics Practice Notes states <i>For the purposes of advertisements in public places, the Board will not only take account of the relevant audience, but it can also take a broad view of the 'audience'. This recognizes that broad nature of the audience for advertisements in public places. The Board will not just have regard to whom the advertisement is target (the relevant audience) but the Board also looks at who can see it and the Board will take that into consideration in determining their view of whether the advertisement treats sex, sexuality and nudity with sensitivity to that audience or in regards to whether the language used is appropriate for that audience.</i> <sup>299</sup></li> </ul>
<p><b>4. Australian Government</b></p> <p>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.</p>	<p><b>Government Response – not agree</b></p> <p>The Government notes that section 18C of the Racial Discrimination Act 1975 (Cwth) prohibits public acts which offend, insult, humiliate or intimidate people on the basis of race, which may apply to outdoor and out-of-home advertising.</p> <p>However, the project to consolidate Commonwealth anti-discrimination laws into a single Act is not the appropriate vehicle to consider any specific regulation of outdoor and out-of-home advertising.</p> <p>See further response to Recommendation 2.</p>
<p><b>5. Advertising Standards Bureau</b></p> <p>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.</p>	<p><b>Government Response – referred to the Advertising Standards Bureau, for attention and response by 28 September 2012</b></p> <p><b>Outdoor Media Association action</b></p> <p>In response to the House of Representatives Standing Committee inquiry the OMA introduced a <i>Content Review Policy</i>). The policy states that OMA members "recognise that outdoor advertising is visible to a broad audience and that this needs to be taken into account when considering compliance with the AANA Code of Ethics". <sup>300</sup> The policy states that members will endeavour to seek copy advice from OMA before posting advertisements that may not conform with the provisions of the AANA Code of Ethics that address sex, sexuality, nudity, strong and obscene language, among other issues. <sup>301</sup></p>

299 Advertising Standards Bureau, Submission 21, p 11

300 OMA Content Review Policy, Appendix 6 to Submission 7, p.9

301 OMA Content Review Policy, Appendix 6 to Submission 7, p.9

Inquiry Recommendation	Australian Government and/or Industry Response
<b><i>Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising, House of Representatives Standing Committee on Social Policy and Legal Affairs, 2011</i></b> <sup>297</sup>	
<p><b>6. Advertising Standards Bureau</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• the food and beverage sector;</li> <li>• the alcohol sector;</li> <li>• outdoor advertising that portrays children;</li> <li>• advertising at event venues and sportsgrounds; and</li> <li>• outdoor advertising that portrays sex, sexuality or nudity.</li> </ul> <p>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.</p>	<p><b>Government Response</b> – referred to the Advertising Standards Bureau and the Advertising Standards Board for attention and response by 28 September 2012</p> <p><b>Advertising Standards Bureau and Board response/action</b> The ASB advised the Commonwealth Attorney-General's Department that:</p> <ul style="list-style-type: none"> <li>• the UK Advertising Standards Authority was considering reducing self-initiated investigations other than in exceptional circumstances</li> <li>• any compliance survey would need to be carefully considered to ensure useful results</li> <li>• the ASB it did not have the funds to self-initiate investigations.</li> </ul>
<p><b>7. Australian Association of National Advertisers</b></p> <p>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.</p>	<p><b>Government Response</b> – referred to the Australian Association of National Advertisers for attention and response by 28 September 2012</p> <p><b>Australian Association of National Advertisers response</b> The AANA advised the committee that it amended the code after the 2011 parliamentary inquiries; the AANA "paused the code review pending the outcome of those inquiries. Following those inquiries, we included within the code and within the system of restrictions a new clause that prohibits the use of sexual appeal, which is exploitative and degrading. Further this clause restricts the use of sexual appeal and images of children in all cases, as the use of sexual appeal in the images of children is always regarded as exploitative and degrading under the code. We also keep our members up to date with the latest on community standards through AdWatch, a service that we provide to our members, which gives them case notes and analysis of recent ad standards decisions and determinations". <sup>302</sup></p>

302 Alina Bain, Australian Association of National Advertisers, Transcript, Public Hearing 21 August 2013, p.13

Inquiry Recommendation	Australian Government and/or Industry Response
<b>Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising</b> , House of Representatives Standing Committee on Social Policy and Legal Affairs, 2011 <sup>297</sup>	
<p><b>8. Australian Association of National Advertisers</b></p> <p>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.</p>	<p><b>Government Response</b> – referred to the Australian Association of National Advertisers, for attention and response by 28 September 2012</p> <p><b>Australian Association of National Advertisers response/action</b></p> <p>The following provision was added to the AANA <i>Code of Ethics</i>, effective January 2012:</p> <p><i>2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.</i></p>
<p><b>9. Advertising Standards Bureau</b></p> <p>The Committee recommends that the Advertising Standards Bureau, in conjunction with relevant industry bodies, conduct research every two years into:</p> <ul style="list-style-type: none"> <li>• community perceptions of the use of sex, sexuality and nudity in advertising in general and specifically in outdoor advertising;</li> <li>• prevailing community standards on health and safety in advertising in general and specifically in outdoor advertising;</li> <li>• prevailing community standards on the advertising of food and beverages;</li> <li>• prevailing community standards on advertising to children; and</li> <li>• prevailing community standards on the advertising of alcohol.</li> </ul> <p>These findings should be reflected accordingly in determinations by the Advertising Standards Board.</p>	<p><b>Government Response</b> – referred to the Advertising Standards Bureau and the Advertising Standards Board for attention and response by 28 September 2012</p> <p><b>Advertising Standards Bureau</b></p> <p>ASB has already committed to regular research on community standards which was undertaken in 2008, 2009 (2), 2010, 2011 and 2012. It is beyond the ASB capacity to undertake annual research into all of the matters listed in the recommendation each year.</p> <p>In 2013 the ASB is working on a new research project to test Board decisions against the views of the community with respect to section 2.2 of the <i>Code of Ethics</i>, which deals with exploitative and degrading advertising</p> <p>Also, see response below to recommendation 11 of the 2008 Senate Standing Committee inquiry, <i>Sexualisation of children</i>.</p>
<p><b>15. Advertising Standards Bureau</b></p> <p>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.</p>	<p><b>Government Response</b> – referred to the Advertising Standards Bureau, for attention and response by 28 September 2012</p> <p><b>Advertising Standards Bureau action</b></p> <p>Telephone complaints are accepted if a complainant is unable to write, however written complaints are preferred.</p> <p>The ASB does not agree that it should accept anonymous complaints, but does keep them on file and can be included in information considered if a formal complaint is made.</p>
<p><b>16. Advertising Standards Bureau</b></p> <p>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.</p>	<p><b>Government Response</b> – referred to the Advertising Standards Bureau, for attention and response by 28 September 2012</p> <p><b>Advertising Standards Bureau response/action</b></p> <p>A national promotional campaign about complaining to the ASB was run in late 2011. A new public awareness campaign is currently being developed.</p> <p>Many complaints are received via federal and state elected representatives.</p>



Inquiry Recommendation	Australian Government and/or Industry Response
<b>Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising, House of Representatives Standing Committee on Social Policy and Legal Affairs, 2011</b> <sup>297</sup>	
<p>In particular, information on the outdoor advertising code, once it is developed, and the complaints process should be provided to:</p> <ul style="list-style-type: none"> <li>• all federal and state or territory elected representatives; and</li> <li>• the Australian Local Government Association for distribution to local governments.</li> </ul>	<p><b>Outdoor Media Association</b>          “The OMA’s members donated a \$1.6 million campaign to advertise the ASB complaints process, which commenced mid-August 2011.” <sup>303</sup></p>
<p><b>17. Advertising bodies</b></p> <p>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.</p> <p>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.</p>	<p><b>Government Response</b> – referred to the Australian Association of National Advertisers, the Advertising Standards Bureau and the Outdoor Media Association for attention and response by 28 September 2012</p> <p><b>Australian Association of National Advertisers</b>          The document containing the AANA <i>Code of Ethics</i> has details of how to make a complaint to the Advertising Standards Bureau</p> <p><b>Advertising Standards Bureau</b>          The ASB provides information to organisations and government agencies about the complaints process and works closely with industry bodies to ensure their members are aware of the complaints process.</p> <p><b>Outdoor Media Association</b>          The Outdoor Media Association <i>Code of Ethics</i> states: “When we receive a complaint about any advertisement we display we refer the complainant to the Advertising Standards Bureau, an independent complaint adjudicator.” <sup>304</sup></p>
<p><b>18. Advertising Standards Bureau</b></p> <p>The Committee recommends that the Advertising Standards Bureau address instances of advertiser non-compliance by:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• circulating the names of non-compliant advertisers in industry newsletters and other means of communication;</li> <li>• providing the names of non-compliant advertisers to the Outdoor Media Association and encouraging their members to consider not accepting</li> </ul>	<p><b>Government Response</b> – referred to the Advertising Standards Bureau, for attention and response by 28 September 2012</p> <p><b>Advertising Standards Bureau action</b>          Information about advertiser non-compliance is available on the ASB website which has a search function for determination. Case reports identify the advertiser and product and include a summary of the advertiser’s response to the complaint, or the fact that no response was received. Media alerts, newsletters and the annual Review of Operations report on non-compliant advertiser.</p> <p>Publication of a list of non-compliant advertisers may raise anti-competition or restraint of trade issues</p> <p>When considered appropriate the ASB seeks assistance from local, state and federal authorities on non-compliance matters.</p> <p>The Advertising Standards Bureau advised that action in response to non-compliance with a determination can include:</p> <ul style="list-style-type: none"> <li>○ failure to respond is included in the case report (as described above)</li> <li>○ information about the failure to respond can be released to</li> </ul>

303 Outdoor Media Association, Submission 7, p.14

304 Outdoor Media Association, Submission 7, Appendix 1, p.3

Inquiry Recommendation	Australian Government and/or Industry Response
<b><i>Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising, House of Representatives Standing Committee on Social Policy and Legal Affairs, 2011</i></b> <sup>297</sup>	
<p>advertisements from them;</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• reporting annually to the Attorney-General's Department on the non-compliance rate and steps taken to achieve compliance.</li> </ul>	<p>the media</p> <ul style="list-style-type: none"> <li>○ the Bureau liaises with relevant industry bodies (e.g. OMA) which will negotiate with the advertiser to remove the ad, or take action to remove it</li> <li>○ where appropriate, refer to a relevant government agency</li> </ul>
<p><b>19. Advertising Standards Bureau</b></p> <p>The Committee recommends that the Advertising Standards Bureau strengthen the independent review process by:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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</li> <li>• aiming for 90 per cent or higher Independent Reviewer agreement with Advertising Standards Board determination processes in the random sample.</li> </ul>	<p><b>Government Response</b> – referred to the Advertising Standards Bureau, for attention and response by 28 September 2012</p> <p><b>Advertising Standards Bureau response/action</b></p> <ul style="list-style-type: none"> <li>• The Advertising Standards Bureau website and March 2011 Fact Sheet explains the review process, including who may seek a review, the timeframe, lodgement fee, grounds, role of the independent reviewer and what happens after a review.</li> <li>• ASB does not have the resources to task the Independent Reviewer with random survey and assessment of cases; it is also inconsistent with the role of the Independent Reviewer.</li> <li>• During and following each Independent Review, the ASB considers any possible improvements in the system.</li> </ul>

Inquiry Recommendation	Australian Government Response
<b>Classification – Content Regulation and Convergent Media</b> , Australian Law Reform Commission, ALRC Report 118, February 2012	
<p><b>Classification scheme</b></p> <p>The ALRC made detailed recommendations about a proposed Classification of Media Content Act, to implement a new media classification system. Those detailed recommendations are not in this table as most are not relevant to outdoor advertising. The ALRC comments about outdoor advertising and consideration of the House of Representatives Standing Committee report are below.</p>	<p><i>The Standing Council on Law and Justice considered the ALRC Review of the National Classification Scheme on 4 April 2013. An extract from the Communique is below.</i></p> <p>Ministers discussed a number of recommendations from the Australian Law Reform Commission's Final Report into the Review of the National Classification Scheme and:</p> <p>(a) agreed to more streamlined, pragmatic and less legally complex exemption arrangements (Queensland agreed to this decision in principle)</p> <p>(b) agreed to amend the Classification (Publications, Films and Computer Games) Act 1995 (Cwth) to allow for the use of classification decision-making instruments, such as online questionnaires (Queensland abstained from this decision)</p> <p>(c) agreed to include the requirement in the <i>Classification (Publications, Films and Computer Games) Act 1995 (Cwth)</i> that classified content and advertisements for classified content must display classification markings. In addition, the Commonwealth Minister will be empowered to determine principles in regard to classification markings</p> <p>(d) agreed that the <i>Classification (Publications, Films and Computer Games) Act 1995 (Cwth)</i> should be amended to make the current modification rules less prescriptive (e) agreed that the <i>Classification (Publications, Films and Computer Games) Act 1995 (Cwth)</i> should be amended to enable consumer advice to be assigned or changed independently from the classification category.</p> <p>Ministers also agreed that any model for implementing these reforms should include an appropriate reporting requirement to ensure the integrity of publicly available classification information</p> <p>(f) noted that the Commonwealth plans to implement a three-stage program of research into classification matters</p> <p>(g) agreed to amend the <i>Classification (Publications, Films and Computer Games) Act 1995 (Cwth)</i> to enable the Commonwealth Attorney-General's Department to notify law enforcement authorities of content that is potentially RC without first having the content classified by the Classification Board.</p>

Inquiry Recommendation	Australian Government Response
<b>Classification – Content Regulation and Convergent Media</b> , Australian Law Reform Commission, ALRC Report 118, February 2012	
<p><b>Outdoor advertising</b> “... does not recommend that advertising be brought into the new classification scheme. However, this Report provides for authorised industry classifiers and industry-specific codes. ... if advertising were brought into the new scheme, outdoor advertising could continue to be assessed or classified by industry, but decisions might be monitored by the Regulator and subject to review by the Board. Industry assessment or classification might minimise any expected financial and administrative burden on industry, which the Committee was concerned could come with ‘Government classification’. If the Australian Government chose to bring outdoor advertising into the new co-regulatory classification scheme, the ALRC would suggest that a law prohibiting the display in public places of media content likely to have a higher-level classification may be appropriate.”<sup>305</sup></p>	<p>As no formal recommendation was made by the ALRC, there is no Government response.</p>

---

305 ALRC Report 118, p.202

Inquiry Recommendation	Australian Government Response
<p><b>Sexualisation of children in contemporary media</b>, Senate Standing Committee on Environment, Communications and the Arts, June 2008</p> <p><b>Note</b> that the Senate Committee examined sexualisation of children in all types of advertising. The recommendations shown below are those that are, or may be, relevant to sexually explicit outdoor advertising.</p>	
<p><b>Recommendation 1</b></p> <ul style="list-style-type: none"> <li>The committee considers that the inappropriate sexualisation of children in Australia is of increasing concern. While noting the complexity of defining clear boundaries around this issue, the committee believes that preventing the premature sexualisation of children is a significant cultural challenge. this is a community responsibility which demands action by society. In particular, the onus is on broadcasters, publisher, advertisers, retailers and manufacturers to take account of these community concerns.</li> <li>Noting this heightened concern the committee believes that this issue should be followed up and therefore recommends that the steps taken to address it by industry bodies and others should be further considered by the Senate in 18 months' time.</li> </ul>	<p><b>Australian Government Response</b><sup>306</sup></p> <p>The Government notes this recommendation.</p>
<p><b>Recommendation 2</b></p> <p>The committee recommends that the Commonwealth through the National Health and Medical Research Council or other appropriate body commission a major longitudinal study into the effects of premature and inappropriate sexualisation of children.</p>	<p><b>Australian Government Response</b></p> <p>The Government agrees in principle with this recommendation.</p> <p>The National Health and Medical Research Council (NHMRC) is Australia's main health and medical research funding body, and is tasked with developing health advice for the Australian community, health professionals and governments, and providing advice on ethical behaviour in health care and in the conduct of health and medical research. The NHMRC has advised that this topic falls outside the range of health and medical research that it commissions. The Government will explore other opportunities for the conduct of the proposed research.</p>
<p><b>Recommendation 9</b></p> <p>The committee recommends that the Advertising Standards Board produce a consolidated half-yearly list of all complaints, including those received by 'phone, where the impact of an advertisement on children, however described, is a factor in the complaint.</p>	<p><b>Australian Government Response</b></p> <p>The Government notes this recommendation, but recognises that the Advertising Standards Board is an independent organisation.</p> <p><b>Advertising Standards Bureau action</b></p> <p>A search function on the Advertising Standards Bureau website means it is possible to locate complaints which mention children. There does not appear to be a list of complaints where an impact on children is claimed.</p>

306 Government Response, Inquiry into the Sexualisation of Children in Contemporary Media Environment, July 2009, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Complete\\_d%20inquiries/2008-10/sexualisationofchildren/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Complete_d%20inquiries/2008-10/sexualisationofchildren/index)

Inquiry Recommendation	Australian Government Response
<p><b>Sexualisation of children in contemporary media</b>, Senate Standing Committee on Environment, Communications and the Arts, June 2008</p> <p><u>Note</u> that the Senate Committee examined sexualisation of children in all types of advertising. The recommendations shown below are those that are, or may be, relevant to sexually explicit outdoor advertising.</p>	
<p><b>Recommendation 11</b></p> <p>The committee recommends that, to ensure that the Advertising Standards Board is able to make determinations that are in keeping with prevailing community standards, the Advertising Standards Bureau should develop a formal schedule or process for community consultation, including the use of focus groups, and research to act as a benchmark for board determinations.</p>	<p><b>Australian Government Response</b></p> <p>The Government notes this recommendation, but recognises that the Advertising Standards Board is an independent organisation.</p> <p><b>Advertising Standards Board action/response</b></p> <p>Research on community views on issues in the Codes which the Advertising Standards Board (the Board) is undertaken by the Advertising Standards Bureau (the Bureau) and used to provide feedback to the Board. The Bureau “conducts research into community standards on a regular basis, to measure whether the Standards Board’s decision are in line with community standards.</p> <p>Research has been conducted for the Bureau and Standards Board regularly since 2007. The research aims to assess the extent to which Standards Board decisions about advertisements align with how the community would apply the codes and whether or not they meet requirements of the codes. This provides a useful mechanism for providing feedback to the Standards Board about constantly evolving community standards and allows them to adjust their approach to the code provisions if required, to ensure community standards continue to be reflected in the decisions they make. It also provides a useful tool for advertisers to understand changing views in the community in regard to advertising standards and to apply this to the advertising they produce.”<sup>307</sup> The ASB submission notes that research in 2007, 2009 and 2010 indicated that ASB decisions generally reflect community standards on provisions of the AANA Code of Ethics. In 2012, the research indicated that the community is less conservative than the Board on issues about health and safety, violence and discrimination, and that the community is more conservative than the Board on themes of sex, sexuality, nudity and strong language, particular regarding the exposure of children to strong language.<sup>308</sup> The ASB submission states that the research is taken into account when considering complaints under the codes.</p>

307 Advertising Standards Bureau, Submission 21, p.6

308 Advertising Standards Bureau, Submission 21, p.6

Inquiry Recommendation	Australian Government Response
<p><b>Sexualisation of children in contemporary media</b>, Senate Standing Committee on Environment, Communications and the Arts, June 2008</p> <p><u>Note</u> that the Senate Committee examined sexualisation of children in all types of advertising. The recommendations shown below are those that are, or may be, relevant to sexually explicit outdoor advertising.</p>	
<p><b>Recommendation 12</b></p> <p>The committee recommends that the Advertising Standards Board rigorously apply standards for billboards and outdoor advertising to more closely reflect community concern about the appropriateness of sexually explicit material and the inability of parents to restrict exposure of children to such material.</p>	<p><b>Australian Government Response</b></p> <p>The Government notes that the Advertising Standards Board is an independent organisation. Moreover, the Government recognises that the placement of billboards is within the purview of local councils and/or state government planning bodies.</p>

